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UNILATERALISM, PACIFIC BASIN TRADE DISPUTE SETTLEMENT, AND THE MAINTENANCE OF THE GATT REGIME

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Introduction

"International regimes," contends Robert Keohane, "are easier to maintain than to construct."[1] Oran Young, too, attests to the durability of international regimes--"principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue area."[2] Yet, if Keohane and Young are right that regimes are durable and "easier" to maintain, nevertheless, two new international economic regimes were created at the close of the second world war and a third international economic regime carried forward into post-war economic relations but only one of the three regimes has been maintained throughout the post-war era. The Bretton Woods monetary regime and the expropriation foreign direct investment regime collapsed. The GATT goods trade regime, on the other hand, has been maintained. Why? How can we explain the maintenance of the GATT regime? of international economic regimes in general?

Conventional wisdom would have it that the existence of a hegemon ensures the maintenance of international economic regimes. Yet, the comparison of historical experiences of the GATT, monetary, and investment regimes shows that the hegemon can be no more than a necessary condition. Indeed, contradicting hegemonic stability theory, Keohane argues that international cooperation depends not on the existence of the hegemony, but on

the existence of the mutual interests. Thus, hegemony may not even be a necessary condition. I argue that maintenance or collapse of international economic regimes depends not upon the structure of international power but upon characteristics of the regime itself: regime rules and regime dispute settlement procedures.

I employ the lens of trade dispute settlement in the Pacific Basin and the maintenance of the GATT regime to contribute to theory regarding international economic regime change. 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 the GATT regime, more interesting problems than the Pacific Basin. The great trade expansion and its corollary trade problems in the Pacific Basin were caused by a variety of factors including importantly the adoption of export-led development strategies by one after another of the governments of the region and, to a lesser extent, by the opening toward the West of China.[3]

These government development strategies encouraged new commercial competition in the Pacific Basin. For American business, the new competition proved to be stiff. Some American businesses found that their capacities to compete had eroded in the 1960s and 1970s. These American businesses were saddled with problems of their own making--finance-driven, short-time horizon corporate strategies, over-bureaucratized management structures, waning productivity gains--and of their government's making--high

capital costs, an over-valued dollar, shortages of well-trained labor.[4] Other American businesses, on the other hand, became even more determined to exploit their competitive advantages in foreign markets, including East Asian markets.

If the proximate cause of Pacific Basin trade dispute settlement has been new competition in East Asian and American markets, the remote, deeper causes lie in differences in the political economies of the Pacific Basin. All these states are today contracting parties to the GATT regime, but all did not carry out equally rigorous commitments to compliance with the rules of the regime at their times of accessions. Yet, rule noncompliance in itself says nothing about the maintenance of the regime: Rule noncompliance may or may not indicate the imminent change of a regime. Dispute settlement reveals whether the rules are effective and the regime will be maintained or whether the rules are ineffective and the regime will collapse.

Disputes are settled within the GATT regime through unilateral demand for bilateral consultation and negotiation assisted or unassisted by the multilateral institution. Unilateralism, however, is misunderstood in international trade relations. Much loose talk distorts understanding of the relationship between unilateralism and regime maintenance. To that end, I offer a Regime Effect Test of unilateral foreign policy action. Unilateral action may take one of three forms: Maintenance Unilateralism, Subversion Unilateralism, or Growth Unilateralism. The three types of unilateralism impact differently upon the maintenance of the GATT regime: Maintenance

Unilateralism maintains the GATT regime; Growth Unilateralism promotes the growth the GATT regime; Subversion Unilateralism subverts the GATT regime. All bilateral trade dispute outcomes between GATT contracting parties can be evaluated under the Regime Effect Test.

In this study, I apply the Regime Effect Test to American unilateral trade demands made against Japan, Korea, and Taiwan in the GATT era. I find that Maintenance Unilateralism and Growth Unilateralism have far outnumbered Subversion Unilateralism. Contrary to much conventional wisdom, I argue that American trade unilateralism can and often does promote the maintenance of and growth of the GATT regime.

This paper first draws from extant theory regarding international regime change in order to focus attention on rules and dispute settlement as the key explanatory variables for GATT regime maintenance. The paper presents a Regime Effect Test of unilateral foreign economic policy, which is employed using the evidence of Pacific Basin trade dispute settlement. The paper explains the implications of this research for understanding of GATT regime maintenance and growth. The paper concludes by offering an explanation of maintenance and collapse of international economic regimes generally, with comparison of the GATT, the monetary, and the investment regimes.

Theory Regarding International Regime Change

Theories regarding regime change employ three types of variables--power, institutional, and/or cognititve. In *Power and*

Interdependence, Robert Keohane and Joseph Nye present four explanatory models of international regime change: (1) economic processes, (2) overall power structure in the world, (3) power structure within issue areas, and (4) power capabilities as affected by international organization.[5]

The Economic Process Model presumes that increasing economic interdependence and technological change out-pace existing international regimes. Hence, the model predicts regime collapse and re-construction now and then. The model has intuitive appeal but does not offer specifics. When? Immediate catalyst? Direction of change?

The Overall Power Structure Model presumes that the distribution of military power determines the structure of world power. The model contends that the militarily powerful states make and re-make the rules in world politics. Hence, changes in the overall distribution of world power explain international regime change. However, the model is too general. The Issue Structure Model refines the Overall Power Structure Model. Like the Overall Power Structure Model, the Issue Structure Model contends that the distribution of power explains international regime change. But, the Issue Structure Model presumes that there is no hierarchy of issues in world politics such that military power can be exploited to affect change in all types of international regimes, regardless of issue area. The Issue Structure Model explains international regime change with reference to the distribution of power capabilities within a given issue area, such as trade, money, or natural resources.

The International Organization Model--favored by Keohane and Nye--presumes that international relations are carried out under the condition of complex networks of multilevel linkages, norms, and institutions. The International Organization Model presumes that, once created, international regimes themselves contribute to their own maintenance. Keohane and Nye explain, "Regimes are established and organized in conformity with distributions of capabilities, but... as time progresses, the underlying capabilities of states will become increasingly poor predictors of the characteristics of international regimes." They contend that "power over outcomes will be conferred by *organizationally dependent capabilities*, such as voting power, ability to form coalitions, and control of elite networks...."[6] This model looks inside the regime to power relationships as ordered *by* the regime. The International Organization Model advances understanding of regime change by synthesizing institutional and power theories. It is my starting point.

Oran Young wrote in *International Regimes* that international regimes change because of (1) shifts in the underlying structure of power, (2) internal contradictions, and/or (3) the impact of exogenous forces.[7] He noted that internal contradictions among the "central elements" of a regime may emerge over time leading finally to the collapse of the regime. Too, he explained that exogenous forces such as technology, population, or of another regime could lead to regime change. By looking at the characteristics of the regime itself, in addition to state power, for sources of change, Young followed the impulse of Keohane and

Nye. But, Young emphasized ideas within institutions while Keohane and Nye emphasized decision making processes within institutions. Unfortunately, however, Young offered only an ambiguous notion of "internal contradictions" and little supporting analysis. Nevertheless, the outline of an adequate explanation of regime change begins to take shape.

Two studies traced the processes of creation and of transformation of particular international economic regimes: Charles Lipson's *Standing Guard: Protecting Capital in the Nineteenth and Twentieth Centuries* and Vinod Aggarwal's *Liberal Protectionism: The International Politics of Organized Textile Trade*.[8] The two studies approach the problem similarly. Each investigates the structure of issue power and the role of ideas in order to describe international regime change. They also examine the domestic sources of foreign policy behavior concerning regimes, e.e., interest groups. The sub-national level of analysis is helpful, but at explaining state foreign policy toward regimes, not regime change itself. Too, Aggarwal distinguishes analytically between a "regime" and a "meta-regime." By the former he means rules and procedures; by the latter he means norms and principles. Either a regime or a meta-regime may undergo change.

Studies have examined aspects of international trade regimes. James Dunn contends that the automobile voluntary export restraint is part of an "automobile trade regime."[9] We could similarly speak of a "steel regime" or an "agriculture regime." Each is an example of demands for trade protection

which has led to the creation of a sub-regime: a specialized regime subservient to the GATT regime. Carolyn Rhodes argues in her study of several cases of bilateral dispute settlement that reciprocal trade strategies reinforce a so-called "cooperative regime" of international trade relations. As pointed out below, reciprocity is an important underlying principle of the GATT regime.

Beverly Crawford and Stefanie Lenway synthesize a power approach with a cognitive approach derived from theory about organizations and negotiation.[11] Through the study of the history of several regimes associated with Cold War East-West trade relatios, they offer a quite intersting and helpful, but ultimately unsatisfactory, explanation: They argue that state, state policy goals, and information explain regime "cooperation" and regime "demise." They point out that cooperation with regard to regimes does continue despite the absence of issue structure hegemony, but does so depending upon how policy goals and information interact with the structure of state power. They explain why the United States acted as it did, why the Europeans acted as they did, and so, how the international policy outcome happened. But, Crawford and Lenway fall short of their goal of explaining regime cooperation and demise. Ignoring institutional research by Keohane, Nye, and Young, they pay insufficient attention to the regimes themselves. They treat the regimes as epiphenomena. Their real interest seems to be explaining the strategy of state behavior within given sets of power structures. As important as that is, explanation of regime maintenance and

collapse has eluded them. A more satisfactory account encorporates regime variables.

International law scholars John H. Jackson, Victor Louis, and Mitsuo Matsushita have examined whether the trade policies of certain states are GATT compliant.[11] Though not deliberately so, this type of analysis leads to considerations about the maintenance of the GATT regime. In another work, Jackson explains that "the various techniques for the peaceful settlement of international disputes can be divided into two types:

> (1) settlement by negotiation and agreement with reference (explicitly or implicitly) to the relative power statuses of the parties;
>
> (2) settlement by negotiation and agreement with reference to the norms and rules upon which both parties previously have agreed."[12]

He calls the former power-oriented diplomacy; he calls the latter rule-oriented diplomacy. Jackson's notion of "rule-oriented diplomacy" is stimulating for analysis regarding regime maintenance. The goal of international regimes (ultimately unrealizable, perhaps) is that all dispute settlement will be by rule-oriented, not power-oriented, diplomacy. Jackson's emphasis on the significance of dispute settlement is representative of a long-established research tradition in international law studies.

Bringing together research traditions from international politics and international law, I suggest that dispute settlement provides an excellent means to the study of international regime change. Through dispute settlement, all the explanatory

variables specified by extant theory are easily examined: the structure of state power as ordered by the regime, the domestic sources of foreign policy behavior, internal consistencies within the rules of the regime, exogenous problems impinging upon the regime.

Most social science research, however, examines trade dispute settlement processes and outcomes not with regard to rule-oriented diplomacy and the maintenance of regimes, but in order to test for protectionism or liberalism. Economists such as J. Michael Finger, Bernard Hoekman, Michael Leidy, Tracy Murray, Robert Staiger, and Frank Wolak contend that antidumping and countervailing duty laws (especially those of the United States) are protectionist and thereby a defect of the GATT regime.[13] They may be right: Antidumping and CVD laws may be protectionist and may be a defect of the GATT regime. However, these rules are a part of the regime because the framers of the GATT--rightly or wrongly--aimed to implement the principle of fair trade.

Research by Robert Baldwin, Judith Goldstein, and Stefanie Lenway examines the institutional explanations for why antidumping, countervailing duty, and intellectual property rights procedures nevertheless result in less protection than we would expect.[14] Vinod Aggarwal, Robert Keohane, David Yoffie, and Wendy Hansen have employed industry level analysis to account for the level of protectionism provided by these procedures.[15] Peter Evans in a case study of the American dispute with Brazil over its informatics policies argues that the Section 301 policy

is further evidence that the United States is a declining, anti-liberal economic hegemony. Indeed, in a synthesis of some of the political economy research of this brand, Cletus Coughlin concludes, "Overall, the evidence is that trade-remedy laws hinder rather than facilitate free trade."[16]

The protectionism-liberalism test provided by this brand of research is important and useful. It is important because economic theory has shown fairly convincingly that liberal trade should be preferred to protectionist trade as a matter of international and national public policy. It is useful because most of these studies are systematically empirical. Unfortunately, on the other hand, research premised on the protectionism-liberalism test sometimes leads to loose assertions about what all this means for the maintenance of the GATT regime and rule-oriented trade diplomacy.

While certain types of trade dispute settlement procedures, e.g., antidumping, countervailing duty, safeguards, have been intensively studied, the American Section 301 law has until recently received little study. Lawyers such as Judith Bello, Bart Fisher, and Alan Holmer have described the legislative demands of the Section 301 law.[17] But, not until a recent conference (which resulted in an edited volume) has serious analysis been attempted concerning the impact of the American Section 301 law on the GATT regime and international trade relations. Jagdish Bhagwati, Hugh Patrick, and an international panel of trade policy experts expressed their views on Section 301, Super 301, and Special 301.[18] Some thought 301 good for the

GATT regime; some expressed no view; most thought 301 bad for the GATT regime.

In another work, Bhagwati declares that America's "aggressive unilateralism" "cut[s] at the heart of multilateralism" and "threatens" the continued existence of the GATT regime.[19] Bhagwati and other scrutators of the world economy contend that American demands for trade behavior change by its trading partners, often under its Section 301 law, contradict the rule-based world trading system. International law scholar Robert Hudec argues the contrary: Some unilateral action brought under the American Section 301 law may be "justified disobedience."[20] Unfortunately, the panel did not work from a common and explicit set of assumptions about the GATT regime and none presented systematic empirical evidence.

In this study, I analyze Section 301 and other examples of American-initiated unilateralism in the Pacific Basin according to their effect on the GATT regime. Unilateralism is the demand by one state for policy change by another state. In the extant world of sovereign nation states, unilateralism must be a foreign policy option. However, the need for unilateralism in support of regimes depends upon the enforcement author authority of the regime. The need for unilateralism is greater in the GATT regime (which lacks rule enforcement capability) than in the international monetary regime (where the IMF possesses some rule enforcement capability).

Unilateralism may be merely declaratory or may involve action. Declaratory unilateralism means surveillance: the

public announcement by one state that another state's policy ought to change. Unilateral surveillance, if stated in terms of the existence of regime noncompliant behavior, always promotes regime maintenance. Such surveillance can never harm an international regime. However, all unilateral *actions* do not affect regimes in the same way.

I offer a "Regime Effect Test" of unilateral foreign economic policy actions. Unilateral action may take three forms:

Maintenance Unilateralism: Unilateral action which aims to change rule noncompliant state trade behavior toward rule compliant state trade behavior promotes the regime and may be called "unilateral enforcement."

Subversion Unilateralism: Unilateral action which aims to change rule compliant state behavior into rule noncompliant state behavior subverts the regime unless the action is a regime-sanctioned exception (such as a GATT rule compliant safeguard/escape clause action).

Growth Unilateralism: Unilateral action which aims to change state behavior toward behavior compliant with *emerging* rules promotes the growth of the regime.

The three types of unilateralism impact differently upon the maintenance of the GATT regime: Maintenance Unilateralism maintains the GATT regime; Growth Unilateralism promotes the growth of the GATT regime; Subversion Unilateralism subverts the GATT regime. All bilateral trade dispute outcomes between GATT

contracting parties can be evaluated under the Regime Effect Test. Furthermore, all the dispute settlement procedures of the GATT contracting parties can be evaluated under this test. For example, Section 301, safeguard, antidumping, and countervailing duty procedures may be evaluated under this test. For students of international relations, this test offers a useful measure of rule-oriented trade diplomacy. It offers a useful means of tracking state trade policy and behavior which promotes and which subverts the maintenance of the GATT regime.

The GATT Regime and Dispute Settlement

The GATT regime is based upon the 1947 General Agreement on Tariffs and Trade,[21] an agreement which was intended by the twenty-three original contracting parties to be a provisional step toward the creation of the International Trade Organization (ITO).[22] Though the ITO never came into being, the contracting parties nevertheless developed the GATT into an international regime aimed at regulating state trade policies concerning trade in goods. Jock Finlayson and Mark Zacher pointed out in their study for the *International Regimes* volume that the GATT

> is at the center of a particular international trade regime, which has for the most part been concerned with one international trade issue area, namely, trade barriers, which are *state* policies or practices that impede the access countries enjoy to each other's markets for their exports. Other trade matters, such as prices and earnings deriving from the export of primary commodities of the effect of

> private business practices on trade--which were both brought within the ambit of the ITO--were not addressed by the 1947 General Agreement. They have not since been brought within the GATT's regulatory-consultative framework to any significant extent.[23]

They were right, but GATT rule creation regarding service trade, intellectual property rights, standards harmonization, and investment carried out in the Uruguay Round Multilateral Trade Negotiation[24] and regarding antitrust and competition policy under discussion in GATT fora indicate that the GATT is on the way to becoming the General Agreements on Everything regarding Commercial Policy. Hence, we ought now simply and explicitly speak of a "GATT regime" (with its presently 103 members) and its constituent sub-regimes. UNCTAD and the commodity regimes have not ceased to exist, but they contradict the principles of the GATT regime.[25]

The GATT regime includes an international governmental organization and thereby an executive head and secretariat staff (albeit technically leased from the United Nations) which administers the activities of the organization. The regime includes rules regarding contracting party trade behavior which have been codified into the original GATT treaty and into many subsequent agreements. The regime includes a forum--the multilateral trade negotiations--for additional rule creation.[26] The regime includes procedures for the settlement of disputes between and among the contracting parties concerning their GATT rights and obligations.[27]

The history of early negotiations toward the General Agreement and failed ITO charter as well as the evolution of the regime shows that the GATT regime is guided by six principles: (1) reduction of trade barriers, (2) multilateralism, (3) nondiscrimination, (4) reciprocity, (5) fair trade, and (6) economic development. These principles are the GATT regime's "meta-regime," in Aggarwal's parlance. However, I stress that the meta-regime is a complex assemblage of ideas. The GATT regime has never been reducible to the phrase "liberal trade regime."[28] It is premised on the achievement of several values, not just one. With this understanding of the GATT meta-regime, the phrase "liberal protectionism" announces no irony. Analysis of the GATT regime which fails to recognize these multiple principles for the GATT regime, such as analysis premised upon the GATT being about nothing more than the reduction of trade barriers, is misguided. Bhagwati and others seem to have fallen into this trap.

The rules and activities of the GATT regime are manifestations of the various underlying principles. For example, the tariff reductions carried out under Article II in the MTNs and the Article XI prohibition against quantitative restraints are representative of the principle of reduction of trade barriers. The very existence of the GATT regime testifies to the multilateral expectations of the participants. The Article I most favored nation provision and Article III national treatment provision are representative of the nondiscrimination principle.

These principles, however, are sometimes incompatible. That is, as with principles underlying national constitutions, all values cannot be simultaneously maximized. The principles often come into conflict with each other and must be weighed and balanced against each other. The participants in the GATT regime when taking actions must choose among principles. For example, the Generalized System of Preferences promotes the GATT principles of development and reduction of trade barriers even as it subverts the GATT principles of multilateralism, reciprocity, fair trade, and nondiscrimination. Free trade arrangements and customs unions maximize reduction of trade barriers and economic development at the expense of nondiscrimination, multilateralism, reciprocity, and fair trade. The antidumping and countervailing duty rules place value on the principle of fair trade, though disregard the principle of reduction of trade barriers. Bilateral dispute settlement demand these trade-offs as well.

Disputes between and among the contracting parties regarding their rights and obligations within the regime occasionally occur. When disputes occur, the regime specifies procedures for settlement. The basic dispute settlement procedure provided in the GATT treaty is "consultation," i.e., bilateral negotiation. GATT Article XXII provides that

> Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

GATT Article XXIII explicitly obligates the contracting party states to consult when noncompliance is charged:

> If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of (a) the failure of another contracting party to carry out its obligations under this Agreement, or (b) the application by another contracting party of any measure whether or not it conflicts with the provisions of the Agreement, or (c) the existence of any other situation, the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

Article XXIII specifies a role in bilateral trade dispute settlement for the GATT *qua* institution:

> If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1 (c) of this Article, the matter may be referred to the contracting parties. The contracting parties shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which

> they consider to be concerned, or give a ruling on the matter as appropriate.

However, it is important to point out Article XXIII does not obligate disputants to take their problem to the GATT institution for settlement: The disputants may resolve their problem bilaterally. The practice at GATT nevertheless developed for the contracting parties, upon request of the disputants, to assist in the resolution of bilateral disputes through the formation of "working parties" (by 1948) and "panels of experts" (by 1952).[29]

Article XXIII further provides that GATT contracting parties may sanction retaliation against the noncompliant state:

> If the contracting parties consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other obligations under this Agreement as they determine to be appropriate in the circumstances.

The sanction of suspension of benefits is thereby explicit in the GATT regime. Yet, the policy option also includes even termination of participation in the whole GATT regime. According to GATT law scholar Robert Hudec: To the GATT authors "[c]onsultations could not guarantee a satisfactory remedy. The only complete protection against nonreciprocity was a termination clause that would allow the disappointed party to get out of the agreement altogether, on short notice."[30] After 45 years of regime development, however, this is no longer a viable policy option for most GATT members.

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 MTN.[31] 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 law into domestic law. Hence, each GATT contracting party state has its own particular procedures to resolve disputes brought by their citizens against allegedly GATT noncompliant trade behavior. 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.

Since the GATT regime is a de-centralized institution without police power, participants in the regime necessarily must unilaterally act to enforce their GATT rights. A state which believes that it has been injured by noncompliant behavior of a trading partner must demand that the trading partner change its behavior. However, rule-oriented trade diplomacy means that states resolve their commercial conflicts with reference to the rules of the GATT regime.

Pacific Basin Trade Dispute Settlement

In order to study these issues, through US government documents, press and other secondary sources, and policymaker interviews in Washington, Tokyo, Seoul, and Taipei, I compiled the (approximate) universe of American-initiated, bilateral trade disputes with Japan, Korea, and Taiwan in the post World War II era through 1989. When commentators refer to "American unilateralism," they typically mean the Section 301 trade law. Hence, I examine unilateralism as carried out under the US Section 301 trade law and similar actions, not under the escape clause, antidumping, and countervailing duty procedures.

The compilation includes all of the formally initiated Section 301 cases brought by the US against Japan, Korea, and Taiwan. However, in order to minimize possible bias, I tried to come as close as possible to the real universe of these types of cases. Hence, I included cases of unilateralism which were not formally, publicly initiated under the Section 301 law. "Initiation" means a formal, public announcement by USTR that it is carrying out an investigation under the auspices of the Section 301 law.[32] The Office of the US Trade Representative and other American government representatives also negotiate bilateral trade disputes without formal initiation. Since the US government does not make documents for the non-initiated cases public, assuring a full universe is difficult. Though a few disputes undoubtedly escaped my net, my compilation of 47 cases

in Table 1 probably represents a substantial proportion of the true universe.

Table 1 about here

I applied the GATT Regime Effect Test to the cases of American unilateralism against Japan, Korea, and Taiwan. The findings are presented in Table 2. When coding I used the definitions of Maintenance, Subversion, and Growth Unilateralism described above. It is reasonable to use the GATT Regime Effect standard in all disputes since Japan and Korea are contracting parties to the GATT and since Taiwan has bilaterally agreed with the US to comply with GATT obligations. I coded by specifying the GATT legality of the trade policy before and after dispute settlement. The findings are summarized in Table 3.

Tables 2, 3 about here

As Table 3 shows, the history of American unilateralism with respect to Japan, Korea, and Taiwan shows that Maintenance and Growth Unilateralism has far outnumbered Subversion Unilateralism. Of the total 47 cases studied here, negotiations and a dispute settlement agreement occurred in 44 cases. Of

these 44 cases, 22 (50%) were Maintenance Unilateralism, 12 (27%) were Growth Unilateralism, and 10 (23%) were Subversion Unilateralism. Indeed, the three cases where no action was taken promoted the GATT regime as well. If action had been taken, it would have been Subversion Unilateralism. In sum, 37 of 47 cases (approaching 80%) of American-initiated trade dispute settlement in the Pacific Basin in the period from 1955 to 1990 have promoted the maintenance of and the growth of the GATT regime. Only 10 cases have subverted the GATT regime by concluding with agreements that violated extant or emerging GATT rules.

Occurrences of Pacific Basin trade dispute settlement increased markedly across time. As Table 4 shows, only 4 (9%) of the disputes occurred in the 1950s and 1960s. The disputes increased to 11 (25%) in the 1970s and 29 (66%) in the 1980s. The disputes in the 1950s and 1960s were all Subversion Unilateral actions. Pacific Basin trade dispute settlement, however, shows a clear trend toward more Maintenance and Growth Unilateralism and less Subversion Unilateralism during the 1970s and 1980s. Only four cases of the 32 examples of American unilateralism in the 1980s were Subversion Actions. Hence, contrary to some trade policy commentary, American unilateralism in the 1970s and 1980s encouraged compliance with GATT law and encouraged the writing of new GATT law in the Tokyo Round and Uruguay Round MTNs more than it subverted the GATT regime. Yet, what accounts for this pattern?

Tables 4, 5, 6 about here

As Table 5 indicates, more than half of the Pacific Basin trade dispute settlement cases have been regarding the manufacturing sector. Nearly a third of the cases have involved agriculture markets, while a few have involved service markets. Table 6 presents some quite interesting patterns: First, all agriculture cases were Maintenance Unilateralism. Second, all service cases were Growth Unilateralism. Third, manufacturing was distributed among all three types of unilateralism.

Agriculture cases were all Maintenance Unilateralism because noncompliance with GATT rules in that market sector has been--and continues to be--widespread ever since GATT's beginning. Pacific Basin dispute settlement regarding agriculture trade indicated a weakness of the GATT regime. Yet, the problems were nevertheless solved within the regime. More compliance with GATT rules has been the result of dispute settlement.

Service cases emerged as bilateral trade dispute problems in the Pacific Basin because of the growth during the 1970 and 1980s of international service trade. All of the service trade disputes in the region were Growth Unilateralism because GATT did not cover of service trade. Only bilateral treaties of Friendship, Commerce, and Navigation were sources of international law for trade in these markets. Thus, dispute settlement in the Pacific Basin regarding service trade indicated another weakness of the GATT regime. Yet, the disputes were

resolved consistently with the GATT regime principles of reduction of trade barriers and nondiscrimination. Examples of Growth Unilateralism such as the settlement in the insurance dispute with Korea served to promote the creation of new GATT law by pressing East Asian state trade behavior in the direction of emerging GATT rules, a General Agreement for Trade in Services (GATS). These examples of dispute settlement promoted the growth of the GATT regime.

The wide GATT Regime Effect Test distribution of manufacturing market dispute settlement in the Pacific Basin may be explained by changes during the 1970s and 1980s in the world economy. The East Asian economies were growing rapidly: Their businesses were competing more aggressively in the American market (thus, the Subversion Unilateralism) and their markets became more attractive to American producers (thus, the Maintenance and Growth Unilateralism). The US-Japan dispute over excessive Japanese automobile exports to the US market, the US-Taiwan dispute over machine tools, and the US-Korean dispute over color televisions are examples of Subversion Unilateralism which contravened the GATT regime. On the other hand, the US-Japan dispute over supercomputers, the US-Taiwan dispute over appliances, and the US-Korea dispute over intellectual property (pharmaceuticals, books, and music products) are examples of unilateral foreign economic policy action which promoted the GATT regime.

Sixty-one percent (27 cases) of American unilateralism in the Pacific Basin has been directed at Japan, as Table 3

indicates. The remaining examples of unilateralism have been about equally directed at Korea (9 cases) and Taiwan (8 cases). However, 9 of the 28 disputes between the United States and Japan occurred before 1980, so the trend for American unilateralism has been toward Korea and Taiwan. Furthermore, most American trade unilateralism against Japan has been of the Maintenance or Growth type. Though seven examples of Subversion Unilateralism have been directed by the American government at Japan (and the examples are prominent--textiles, color TVs, autos, etc.), the evidence shows quite clearly that American unilateralism has more often been directed at making Japanese trade policy more compliant with extant or emerging GATT rules. The evidence, then, contradicts commentators who charge that American trade unilateralism against Japan has just been "Japan bashing."

The case is similar with regard to Korea and Taiwan. Fourteen of seventeen examples of American unilateralism aimed at these two countries were Maintenance and Growth Unilateral actions. In short, the settlements in the Pacific Basin bilateral trade disputes brought by the United States have led to more compliance with GATT: fewer quotas, more open bidding processes, fewer discriminatory regulations. The United States has in these instances acted as an agent for the GATT contracting parties.[33]

Yet, the nuances of the relationship between trade unilateralism and the maintenance and growth of the GATT regime must be discussed.

GATT Regime Maintenance and Growth

One possible objection to my use of Maintenance Unilateralism is that the action may result in a GATT-promoting outcome but only through a GATT subverting process. That is, it is argued that when the US (or any state) names a trading partner as a GATT violator, it becomes judge and jury as well as prosecutor. The initiator of the dispute, according to this argument, should take the alleged breach of GATT obligations to GATT for the settlement by a panel of experts under its Article XXIII procedures. However, as we have seen the GATT regime does not demand that disputes be brought before it for resolution. It demands dispute settlement according to specific procedures in safeguard, antidumping, and countervailing duty disputes and according to ambiguous obligations to "consult" in the type of disputes investigated in this paper. As the empirical evidence presented above shows, American-initiated dispute settlement was usually rule-oriented diplomacy.[34]

Nevertheless, with regard to Japan, the evidence shows that in Maintenance Unilateralism cases the US often did take the dispute before a GATT panel as part of the dispute settlement process. It did in thrown silk, leather, tobacco, leather and footwear, and agriculture.[35] In all these cases the issue was GATT noncompliant quotas. However, in several cases--regulations regarding baseball bats, wood products, pharmaceuticals, telecommunications as well as satellite procurement--the US and Japan did not request GATT panels. At issue were alleged noncompliance with the national treatment obligation of Article

III, the transparent regulations obligation of Article X, and the government procurement obligations of the Tokyo Round Government Procurement Code. The US apparently did not seek panel decisions in these cases because GATT jurisprudence in the form of GATT panel experience with these types of issues is scant.[36]

Nevertheless, it can be said on the behalf of US negotiators that they did carry out rule-oriented diplomacy. They used these GATT rule provisions as their guide in writing the settlement agreements. Rule-oriented bilateral trade dispute settlement can be thought of as "out of court" settlements.[37] The notion of an out of court settlement is a useful one. The maintenance of the GATT regime is enhanced by the development of GATT jurisprudence. The Anglo-American concept of stare decisis if applied in the GATT regime would increase legitimacy by ensuring more consistency in panel decisions and could quicken dispute settlement. After all, if a state's quota on beef has been made illegitimate by a GATT panel, is a year-long, expensive GATT panel process necessary to make illegitimate a state's quota on citrus products?

The evidence with regard to Korea is similar. A GATT panel ruled against Korea in the 1988 beef quota dispute, thus offering precedent for the other negotiations going on simultaneously regarding cigarette and wine quotas. Too, as with the Japanese disputes, the settlement agreements moved Korean policy into compliance with or, at least, into the direction of compliance with GATT rules. The same holds true for US-Taiwanese disputes, though, since Taiwan is not a signatory to the GATT, Taiwan

cannot appear before a GATT panel. In short, the assertion that the initiator becomes judge and jury as well as prosecutor does not stand up to careful scrutiny.

A second possible objection to my notion of Maintenance Unilateralism is that it legitimizes the non-reciprocal offering of trade concessions. Unilateralism, it has been argued, perverts the GATT principle of "reciprocity" away from a *multilateral* notion of reciprocity, which meant equivalent reduction in trade barriers, toward a *bilateral* reciprocity, which means something akin to "fair trade."[38] Indeed, the meaning of "reciprocity" has changed in the GATT regime, but not along the multilateral versus bilateral dimension. The concept has evolved in concert with changes in the world economy and in concert with advances in our understanding of international relations.

If today reciprocity has come to mean, in Michael Gadbaw's phrase, "substantially equivalent competitive opportunities,"[39] that is because international commercial competition has become much more intense than when GATT was founded. The US is no longer willing to allow states to persist with noncompliant trade policies that perhaps should have been changed at the times of their accessions to the GATT. In the cases of Japan and Korea, US diplomats shepherded both accessions through GATT with more concern for the development of their economies and their balance of payments problems than for the GATT legality of their political economies. A one-third tariff cut by the Japanese government at the time of the GATT accession was its first of the

century. Only after a 40% cut during the Kennedy Round and another 20% cut in 1972 was Japanese tariff policy in-line with other advanced industrialized societies. Japanese quantitative restraints imposed on manufactured goods as well as commodities were not addressed during the GATT accession process and persisted for many years. Korean and Taiwanese trade policy change recalls the Japanese experience. The Korean government has employed a number of policy tools aimed at protecting domestic industries, including quotas, tariffs, and special customs duties, and taxes. The GATT panel in the 1988 US-Korea dispute over beef policy removed the right of the Korean government to impose import quotas in order to protect its balance of payments position. Indeed, even in 1980, Korean general tariff levels averaged 25% and manufactures averaged 32%. In Taiwan, about half of import sectors faced tariffs up to 30% and the other half of import sectors faced import tariffs between 31 and 165%. Not a GATT contracting party, Taiwan nevertheless responded to American unilateral pressure beginning in the 1970s.[40]

If today reciprocity has come to be separated by Robert Keohane into "specific reciprocity" and "diffuse reciprocity,"[41] that is because research in international relations has shown that reciprocal actions lead to cooperative outcomes, such as "substantially equivalent competitive opportunities" in GATT member markets. The GATT regime was in the past advanced by a commitment to a reciprocity which produced an equivalence of contributions in tariff reductions, but states have moved to a

new period when rule compliance is ever more important to the world economy.

A third possible objection to my notion of Maintenance Unilateralism, related to the second, is that Maintenance Unilateralism can lead to dispute settlement agreements which discriminate against third parties. That is, even though GATT noncompliant trade behavior is made more compliant, the settlement agreement nevertheless violates the Article I rule of most favored nation treatment. In contradiction, I contend that the action moves state policy in the *direction* of GATT compliance, thereby promoting the maintenance of the regime. Yet, critics make a good point: Examples of discriminatory settlement agreements, if they can be found, damage the GATT regime by supplanting one case of rule noncompliance with another.

However, though critics of unilateralism raise this objection, I can find no examples. When Japanese and Korean beef markets were opened, Australian and New Zealander exporters profited as well as American exporters. When Japanese citrus markets were opened, Brazilian citrus exporters made sales as well as American exporters. Since the Korean insurance markets have opened, 13 foreign companies from five countries sell insurance in Korea.[42] In this way, the unilateral initiator of trade dispute settlement often does act as an agent for the other contracting parties to the GATT regime.

The GATT regime gets bigger in two ways: It "enlarges"; it "grows." By enlargement I mean getting more members. Since its

founding with 23 members, accessions have increased its membership to 103 states. By growth I mean covering with its rules more areas of commercial policy. Why GATT regime growth?

It is important to remember the trade milieu of the 1980s: rapidly increasing business competition throughout the world, movement from a unipolar world economic power structure to a multi-polar world economic power structure, the relative insignificance of tariffs as trade barriers, the rise of nontariff barriers to trade, the dramatic increase in transnational service trade, increasingly rapid technological change. A GATT regime founded to begin to address the trade problems of 1947 and refined by additional rule making in the Kennedy and Tokyo Rounds was ill-equipped to manage these trade problems. As Robert Keohane argues in *After Hegemony*, transnational problems lead to international cooperation. The Uruguay Round multilateral trade negotiation--emphasizing service trade, trade-related investment issues, intellectual property rights, regulatory and standards harmonization, etc.--is a cooperative response to the need for more GATT rule creation, to the need for GATT regime growth.[43]

During periods--such as the 1980s--when GATT rules are incapable of helping states settle their trade problems, the maintenance of the GATT regime is threatened. Trade problems will be "solved" one way or another. If not by new GATT rule formulation than through some other (likely odious) mechanism. Growth Unilateralism can promote the maintenance of the GATT regime during these times.

Some examples of late 1980s American Growth Unilateralism did serve to promote the growth of the GATT regime. The dispute settlement with Korea over intellectual property rights--which violated international treaties regarding intellectual property but not GATT--has led to Korean patent, copyright, and trademark law being more consistent with emerging GATT norms. The construction procurement dispute led Japanese policy to move in the direction of emerging GATT rules. The insurance disputes have led Taiwanese and Korean policies--which violated the bilateral FCN treaties, but not GATT, since GATT does not apply to service trade--to move in the direction of emerging GATT rules. Since states seem increasingly willing to accept GATT rules as settled law regarding international commerce, the successful completion of new international law regarding service trade, investment, antitrust/competition policies, and intellectual property should improve future dispute settlement in these issue areas.

On the other hand, a risk of Growth Unilateralism is that it can be pettiness from the powerful. The US-initiated dispute with Taiwan over auto export requirements amounted to 150,000 automobiles in a world market of 40 *million*. The dispute resulted in a Taiwanese commitment to eliminate the export requirements from the investment contract.[44] That the Taiwanese did so was not a great victory for American trade policy, even if, since Uruguay Round negotiators have been trying to write new international law in this area, the case was, strictly speaking,

an example of Growth Unilateralism. For the initiator of Growth Unilateralism, the burden of justification is high.

Makato Kuroda, former Vice-Minister of MITI has expressed a concern that

> the danger of the US approach can be easily imagined. The most likely scenario is a situation in which other nations resist the United States by employing 301-like provisions against their trading partners. The dire consequences of such "mirroring" are immediately obvious, but serve to illustrate several important points. What if the EC was to assert that the US patent system is discriminatory and should be repealed since it takes "first inventing, first served" as its premise for Americans and "first applying, first served" as its basis for dealing with foreigners? What if Central and South American countries were to insist that US restrictions on sugar imports are clear impediments to trade and demand their removal? What if Japan and Taiwan were to claim that the US requirement for voluntary restraints on machine tool exports are harmful to domestic industry and demand compensation? Would the United States enter into negotiations with the trading partners?[45]

As we have seen, however, American unilateralism in the Pacific Basin has generally been worthy of emulation: The "mirroring" of Maintenance and Growth Unilateralism by other states would promote the maintenance of the GATT regime.

The argument made here does not entail the conclusion that the GATT Article XXIII dispute settlement process needs no

improvement. GATT dispute settlement will become more credible and legitimate when potential disputants come to believe that a GATT panel will reach an authoritative decision. The credibility of GATT panels will also be augmented by ensuring a ready supply of credibly unbiased, technically expert, prudent panel participants. At present, the state decision to spurn GATT rules brings bilateral power relationships to the fore. The big state trader can employ its power superiority to inflict economic costs on the small, noncompliant state. When the poles of trade dispute are reversed, the small state may possess only a limited ability to inflict economic costs on the large, noncompliant state.

Arthur Stein points out in his *Why Nations Cooperate* that states in regimes can free ride and too much free riding threatens the continued existence of the regime.[46] GATT rule noncompliance is free riding. Nineteen eighties trade politics in the United States made free riding by trading partners intolerable for US foreign policymakers. I believe it can reasonably be argued that, without unilateralism generally and American unilateralism specifically, American policy commitment to the GATT regime would have waned even more than it did. Since American commitment to GATT remains crucial, Maintenance Unilateralism and Growth Unilateralism have been important to the maintenance of the GATT regime.

Explaining International Economic Regime Change

Foreign economic policy actions may be assessed according to the impact they have on international regimes, thus I presented here a Regime Effect Test. American-initiated unilateralism with regard to Pacific Basin trade dispute settlement has been shown here to have more often been Maintenance and Growth Unilateralism than Subversion Unilateralism. Unilateralism of Maintenance and Growth types supported the maintenance of the GATT regime. This paper concludes by comparing the GATT regime with the international monetary and investment regimes in order to say something more general about the nature of international economic regime maintenance and change.

The Bretton Woods international monetary regime was created at the Bretton Woods conference in 1944, where the original Articles of Agreement of the International Monetary Fund were negotiated.[47] American and British diplomats and economists led the negotiations and were largely responsible for the terms of agreement. The IMF Agreement established a code of conduct for contracting parties with regard to exchange rate and balance of payments behavior. The Bretton Woods negotiators apparently believed that the new monetary regime should be guided by the principles of (1) multilateralism, (2) reciprocity, (3) economic development, (4) exchange rate stability, and (5) balance of payments adjustment toward equilibrium. In Article IV, they established the rules that a contracting party must specify a

single fixed par value in terms of gold for its currency and must only change the par value with the permission of the Fund.[48]

However, noncompliance with these rules, in the form of multiple exchange rates, persisted among the advanced industrialized countries until the late 1950s.[49] The Fund worked with the central banks and finance ministries of these countries to unify their exchange rate policies. By 1958, most of these countries had specified single par values for their currencies. Yet, during the 1960s, some economists and policymakers criticized that the par values were not adjusted often enough, thus resulting in under-valued and over-valued currencies which distorted international business competition and balances of payments.[50] They called for the replacement of the Bretton Woods par value exchange rate regime with a floating exchange rate international monetary regime.

Though the Fund during the 1960s permitted fluctuating rates by several countries (Canada, Bolivia, Thailand, etc.) for short periods of time, the par value rule remained in force. The regime began to break down, however, after 1970. The British pound, French franc, the German mark, and the Dutch guilder were first devalued, then the latter three were allowed to float, rather than be fixed, against the dollar.[51] Then in August 1971, the United States unilaterally suspended the convertibility of the dollar into gold, ending the Bretton Woods par value monetary regime.[52] American policymakers believed that the dollar had become chronically over-valued, but that the Bretton Woods regime did not allow the United States to devalue the dollar against the

other major currencies. After agreement which temporarily returned the regime to fixed currency values, the regime was reconstructed with floating exchange rates.

The history of the Bretton Woods monetary regime, then, shows that noncompliance with the rule of the specification of a single par value was widespread in the early years of the regime. However, unlike the GATT, the Fund possessed rule enforcement capability--and used it. Yet, once the Fund achieved substantial compliance with the rules implementing the principle of exchange rate stability, then problems emerged in the implementation of the principle of adjustment toward balance of payments equilibrium. Persistent noncompliance coupled with the inability of dispute settlement to restore compliance led to the change of the rules of the regime, i.e., a change of the regime.

Though less developed than the international regimes regarding trade and monetary relations, an international investment regime may be specified. Inherited from nineteenth century bilateral treaties of Friendship, Commerce, and Navigation, the post-war international investment regime shares several of its underlying principles with the trade and monetary regimes. The international investment regime is apparently guided by the following principles: (1) private property rights, (2) national sovereignty, (3) reciprocity, (4) nondiscrimination, (5) multilateralism and (6) economic development. The principle of nondiscrimination is implemented in the investment treaties through the rules of most favored nation and national treatment in the treatment of foreign-owned property. However, the

principles of private property rights, national sovereignty, and multilateralism are directly at odds regarding expropriation by national governments of foreign-owned property.

As Charles Lipson explains in his *Standing Guard*, nineteenth century European practice led to the legal practice of the advanced industrialized countries in the post-war twentieth century that sovereign national governments may expropriate the private property of foreign owners. But, states claimed a multilateral standard for expropriation: The *uncodified* rule was that "prompt, adequate, and effective" compensation must be offered by the expropriating government to the foreign property owner.[53] However, noncompliance with this "rule" was widespread. The Soviet Union and Latin American governments in the inter-war period had challenged this rule with some success, typically paying compensation only slowly and grudgingly.

Too, no multilateral treaties codified the compensation rule during even the heady days of rule-creation immediately after World War II. Indeed, to the contrary, various United Nations resolutions (a source of international law) regarding investment did not discuss a right of compensation.[54] The legitimacy of the rule was thereby called into question. Nevertheless, during the 1950s and 1960s, the United States unilaterally enforced the "rule" of prompt, adequate, and effective compensation for expropriated property. But, *only* the United States consistently attempted to enforce the compensation standard.[55] By the 1970s, even the United States stopped unilateral enforcement of the compensation rule. Today, American policy demands that

international investors look to insurance and multilateral dispute settlement to minimize investment risk.

The history of the international investment regime, then, shows that noncompliance with a key rule was widespread. Maintenance Unilateralism promoted the regime for a time, but became the exception rather than the norm. In the end, since dispute settlement could not restore compliance, a central rule of the international investment regime became de-legitimized. The regime changed.

Hence, despite the same global political and economic milieu for the post-war international trade, monetary, and investment regimes, only the trade regime survived with its key rules in tact. The comparison of the international monetary and investment regimes with the GATT regime suggests the following: Maintenance Unilateralism, i.e., power, cannot ultimately sustain a regime which is composed of ineffective rules. That the GATT regime was maintained through the turbulent world economy of the 1970s and 1980s, while the international monetary and investment regimes changed, attests to the resiliency of the original GATT rules and to the effectiveness of dispute settlement within the GATT regime.

Hence, international economic regime maintenance depends upon effective rules and effective dispute settlement. And it is dispute settlement which indicates whether the rules are effective or not. Rule noncompliance in itself says nothing about the maintenance of the regime: Rule noncompliance may or may not indicate the imminent change of a regime. Dispute

settlement reveals whether the rules are effective and the regime will be maintained or whether the rules are ineffective and the regime will collapse.

Notes

[1]Robert O. Keohane, After Hegemony: Cooperation and Discord in the World Political Economy (Princeton, NJ: Princeton University Press, 1984).

[2]Oran R. Young, International Cooperation: Building Regimes for Natural Resources and the Environment (Ithaca, NY: Cornell University Press, 1989), 62. Definition is that of Stephen Krasner in "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in Krasner (ed.), International Regimes (Ithaca, NY: Cornell University Press, 1983), 1.

[3]Chalmers Johnson, MITI and the Japanese Miracle (Stanford, CA: Stanford University Press, 1982); Samuel P.S. Ho and Ralph W. Huenemann, China's Open Door Policy (Vancouver, BC: University of British Columbia Press, 1984); Frederic C. Deyo (ed.), The Political Economy of the New Asian Industrialism (Ithaca, NY: Cornell University Press, 1987); J.W. Wheeler, "Comparative Development Strategies of South Korea and Taiwan as Reflected in their Respective International Trade Policies" Michigan Journal of International Law 11(winter 1990)2, 472-508; "Special Issue: East Asian Development Model," International Studies Notes 15(winter 1990)1, 1-40; Stephan Haggard, Pathways from the Periphery: The Politics of Growth in the Newly Industrializing Countries (Ithaca, NY: Cornell University Press, 1990) Robert Wade, Governing the Market: Economic Theory and the Role of the Government in East Asian Industrialization (Princeton, NJ: Princeton University Press, 1990.

[4]David Halberstam, The Reckoning (New York: William Morrow, 1986); Stephen S. Cohen and John Zysman, Manufacturing Matters: The Myth of the Post-Industrial Economy (New York: Basic Books, 1987); Michael L. Dertouzos et al., Made in America: Regaining the Productive Edge (Cambridge, MA: MIT Press, 1989). For industry by industry analyses, see Gary C. Hufbauer, Diane T. Berliner, and Kimberly Elliott, Trade Protection in the United States: 31 Case Studies (Washington, DC: Institute for International Economics, 1986); John Zysman and Laura Tyson (eds.), American Industry in International Competition: Government Policies and Corporate Strategies (Ithaca, NY: Cornell University Press, 1983). For analyses of the broader economic problems of the region and world economy, see C. Fred Bergsten and William R. Cline, The United States-Japan Economic Problem (Washington, DC: IIE, 1985); C. Fred Bersten, Global Economic Imbalances (Washington, DC: IIE, 1985); Bala Balassa and John Williamson, Adjusting to Success: Balance of Payments Policy in the East Asian NICs (Washington, DC: IIE, 1987); Thomas O. Bayard and Soo-Gil Young (eds.), Economic Relations between the United States and Korea: Conflict or Cooperation? (Washington, DC: IIE, 1988).

[5]Robert Keohane and Joseph Nye, Power and Interdependence (Boston, MA: Little, Brown, 1977), 39-60.

[6]Keohane and Nye, Power and Interdependence, 55, emphasis in original.

[7]Young, "Regime Dynamics," in Stephen D. Krasner (ed.), International Regimes (Ithaca, NY: Cornell University Press, 1983), 106-112.

[8]Charles Lipson, Standing Guard: Protecting Foreign Capital in the Nineteenth and Twentieth Centuries (Berkeley, CA: University of California Press, 1985); Vinod Aggarwal, Liberal Protectionism: The International Politics of Organized Textile Trade (Berkeley, CA: University of California Press, 1985).

[9]James A. Dunn, Jr., "Automobiles in International Trade: Regime Change or Persistence" International Organization 41(spring 1987)2, 225-252; Carolyn Rhodes, "Reciprocity in Trade: The Utility of a Bargaining Strategy" International Organization 43(spring 1989)2, 273-300.

[10]Beverly Crawford and Stefanie Lenway, "Decision Modes and Regime Change," World Politics 37(1985), 375-402.

[11]John H. Jackson, Jean-Victor Louis, and Mitsuo Matsushita, Implementing the Tokyo Round: National Constitutions and International Economic Rules (Ann Arbor, MI: University of Michigan Press, 1984); John H. Jackson, "The GATT Consistency of Export Restraint Arrangements" The World Economy 11(December 1988)4, 485-500.

[12]John H. Jackson, "The Birth of the GATT-MTN System: A Constitutional Appraisal" Law and Policy in International Business 12(spring 1980), 21-58.

[13]J. Michael Finger, H. Keith Hall, and Douglas R. Nelson, "The Political Economy of Administered Protection" The American Economic Review 72(June 1982)3, 452-466; J. Michael Finger and

Tracey Murray, "Policing Unfair Imports: The United States Example" Journal of World Trade Law 24(August 1990)4, 39-53; Bernard M. Hoekman and Michael P. Leidy, "Dumping, Antidumping, and Emergency Protection" Journal of World Trade Law (October 1989); Michael P. Leidy, "Quid Pro Quo Restraint and Spurious Injury: Subsidies and the Prospect of Countervailing Duties" presentation, Conference on Analytical and Negotiating Issues in the Global Trading System, Ann Arbor, MI, 31 October-1 November 1991; Tracey Murray and Donald J. Rousslang, "A Method for Eliminating Injury Caused by Unfair Trade Practices" International Review of Law and Economics 9(1989), 149-164.Robert W. Staiger and Frank Wolak, "The Determinants and Impacts of Antidumping Suit Petitions in the United States: An Industry Level Analysis" presentation, Conference on Analytical and Negotiating Issues in the Global Trading System, Ann Arbor, MI, 31 October-1 November 1991.

[14]Robert E. Baldwin, The Political Economy of US Import Policy (Cambridge, MA: MIT Press, 1985); Judith Goldstein, "The Political Economy of Trade: Institutions of Protection" American Political Science Review 80(March 1986)1, 162-184; Judith Goldstein, "Ideas, Institutions, and American Trade Policy" International Organization 42(winter 1988)1, 179-217; Judith Goldstein and Stefanie Ann Lenway, "Interests or Institutions: An Inquiry into Congressional-ITC Relations" International Studies Quarterly 33(September 1989)3, 303-328; Stefanie Ann Lenway, The Politics of US International Trade (Boston, MA: Pitman, 1985).

[15]Vinod Aggarwal, Robert Keohane, and David Yoffie, "The Dynamics of Negotiated Protectionism" American Political Science Review 81(June 1987)2, 345-366; Wendy L. Hansen, "The International Trade Commission and the Politics of Protectionism" American Political Science Review 84(March 1990)1, 21-46.

[17]Peter B. Evans, "Declining Hegemony and Assertive Industrialization: US-Brazil Conflicts in the Computer Industry" International Organization 43(spring 1989)2, 207-238; Cletus C. Coughlin, "US Trade-Remedy Laws: Do They Facilitate or Hinder Free Trade?" Federal Reserve Bank of St. Louis (July-August 1991), 3-18.

[18]Bart S. Fisher and Ralph G. Steihardt III, "Section 301 of the Trade Act of 1974: Protection for US Exporters of Goods, Services, and Capital" Law and Policy in International Business 14(1982); Judith Hippler Bello and Alan F. Holmer, "Section 301 of the Trade Act of 1974: Requirements, Procedures, and Developments" Northwestern Journal of International Law and Business 7(fall/winter 1986), 633-669; Judith Hippler Bello and Alan F. Holmer, "The Heart of the 1988 Trade Act: A Legislative History of the Amendments to Section 301" in Jagdish Bhagwati and Hugh Patrick (eds.), Aggressive Unilateralism: America's 301 Trade Policy and the World Trading System (Ann Arbor, MI: University of Michigan Press, 1990), 49-90.

[19]Jagdish Bhagwati, The World Trading System at Risk (Princeton, NJ: Princeton University Press, 1991), 4-5.

[20]Robert Hudec, "Thinking about the New Section 301: Beyond Good and Evil" in Bhagwati and Patrick, Aggressive Unilateralism.

[21]General Agreement on Tariffs and Trade, 55 U.N.T.S. 194.

[22]William J. Diebold, The End of the ITO (Princeton, NJ: Princeton University Press, 1952); John H. Jackson, World Trade and the Law of GATT (Indianapolis, IN: Bobbs-Merrill, 1969); Kenneth Dam, The GATT: Law and International Economic Organization (Chicago, IL: University of Chicago Press, 1970).

[23]Jock A. Finlayson and Mark W. Zacher, "The GATT and the Regulation of Trade Barriers" in Krasner, International Regimes (Ithaca, NY: Cornell University Press, 1983), 274.

[24]Jeffrey J. Schott (ed.), Completing the Uruguay Round (Washington, DC: IIE, 1990).

[25]Finlayson and Zacher, Managing International Markets: Developing Countries and the Commodity Trade Regime (New York: Columbia University Press, 1988).

[26]Jackson, "Birth of the GATT-MTN System."

[27]Robert E. Hudec, The GATT Legal System and World Trade Diplomacy (2nd. ed.) (Salem, NH: Butterworth Legal Publishers, 1990).

[28]Charles Lipson makes this point in "The Transformation of Trade," in Krasner, International Regimes, 233-272.

[29]Hudec, GATT Legal System.

[30]Hudec, GATT Legal System.

[31]John H. Jackson, "Dispute Settlement Techniques Between Nations Concerning Economic Relations--With Special Emphasis on GATT" in Thomas Carbonneau (ed.), Resolving Transnational Disputes Through International Arbitration (Charlottesville, VA: University Press of Virginia, 1984), 44.

[32]House Committee on Ways and Means, Overview and Compilation of US Trade Statutes, H.R. Doc. No. 14, 101st Congress, 1st Session 379 (1989).

[33]Without implicating him with responsibility for the argument, I thank John H. Jackson for suggesting this characterization to me.

[34]For discussion of this and related issues, see my "Strategy and Compliance with Bilateral Trade Dispute Settlement Agreements: USTR's Section 301 Experience in the Pacific Basin" Michigan Journal of International Law 12(summer 1991), 799-827 and "The Logic of Second Order Compliance with International Law: Bilateral Trade Dispute Settlement in the Pacific Basin".

[35]Pierre Pescatore, William J. Davey, and Andreas F. Lowenfeld, Handbook of GATT Dispute Settlement (Ardsley-on-Hudson, NY: Transnational Juris Publications, 1991).

[36]Pescatore, GATT Handbook.

[37]Without implicating him with responsibility for the argument, I thank Edward Lincoln for suggesting this characterization to me.

[38]Keith A.J. Hay and Andrei Suzenko, "US Trade Policy and `Reciprocity'" Journal of World Trade Law 16(November-December 1982).

[39]R. Michael Gadbaw, "Reciprocity and Its Implications for US Trade Policy" Law and Policy in International Business 14(1982)3, 691-746.

[40]F.V. Meyer, International Trade Policy (New York: St. Martin's, 1978), 193; Warren Hunsberger, Japan and the United

States in World Trade (New York: Harper & Row, 1964), 10-11; Paul W. Kuznets, Economic Growth and Structure in the Republic of Korea (New Haven, CT: Yale University Press, 1977), 153; Okyu Kwon, "An Assessment of Korean Trade Policies," in US-Korea Economic Relations (Bloomington, IN: Korea Economic Insitute of America, 1992), 144; Robert Wade, Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization (Princeton, NJ: Princeton University Press, 1990), 123.

[41]Robert O. Keohane, "Reciprocity, Reputation, and Compliance with International Commitments" presentation, Annual Meeting of the American Political Science Association, Washington, DC, 1-4 September 1988).

[42]Korea Business World (October 1991), 51.

[43]Schott, Completing the Uruguay Round.

[44]USTR, Federal Register 86-25861; Italo Ablondi et al., "Statement on Behalf of Taiwan Automobile Dealers" (Washington, DC: Ablondi & Foster, June 1986), 4.

[45]Makato Kuroda, "Super 301 and Japan" in Bhagwati and Patrick, Aggressive Unilateralism, 221.

[46]Arthur A. Stein, Why Nations Cooperate (Ithaca, NY: Cornell University Press, 1990), 35.

[47]Margaret Garritsen de Vries, The IMF in a Changing World, 1945-85 (Washington, DC: International Monetary Fund, 1986), 9. See also Richard N. Gardner, Sterling-Dollar Diplomacy in Current Perspective (New York: Columbia University Press, 1980).

[48]de Vries, IMF in a Changing World, 17.

[49]de Vries, IMF in a Changing World, 26.

[50]de Vries, IMF in a Changing World, 47.

[51]de Vries, IMF in a Changing World, 83.

[52]See John S. Odell, U.S. International Monetary Policy (Princeton, NJ: Princeton University Press, 1982) and Joanne Gowa, Closing the Gold Window (Ithaca, NY: Cornell University Press, 1983).

[53]Lipson, Standing Guard, 37-139.

[54]Lipson, Standing Guard, 88-89.

[55]Lipson, Standing Guard, 107-111.

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

American-Initiated Trade Disputes in the Pacific Basin, 1955-89

Dates	State	Dispute	IL Violation	Settlement	Unilateralism
1955	Japan	cotton textile export volume	none	VER	Subversion
1963	Korea	cotton textile export volume	none	VER	Subversion
1969	Japan	steel export volume	none	VER	Subversion
1969-71	Japan	wool textile export volume	none	VER	Subversion
1976-77	Taiwan	106% tariffs on home appliances	none	lower tariff	Growth
1976-78	Japan	EC OMA diverts steel to US	none	no action	X
1977	Japan	thrown silk import ban	GATT Art XI	end quota	Maintenance
1977-79	Japan	leather import quotas	GATT Art XI	end quota	Maintenance
1978	Japan	color TV export volume	none	OMA	Subversion
1978	Japan	beef import quotas	GATT Art XI	expand quota	Maintenance
1978	Japan	citrus import quotas	GATT Art XI	expand quota	Maintenance
1979	Korea	color TV export volume	none	VER	Subversion
1979	Japan	NTT telecom procurement	emerging code	open bidding	Growth
1979-81	Japan	cigar distribution limits	GATT Art III	change practices	Maintenance
1979-81	Japan	pipe tobacco distrib limits	GATT Art III	change practices	Maintenance

Table 2b

American-Initiated Trade Disputes in the Pacific Basin

Dates	State	Dispute	IL Violation	Settlement	Unilateralism
1979-80	Korea	insurance selling ban	FCN	grant licenses	Growth
1980	Japan	baseball bat regulations	GATT Art III	change regulations	Maintenance
1980-81	Japan	automobile export volume	none	VER	Subversion
1982-85	Japan	footwear import quota	GATT Art XI	end quota	Maintenance
1982-83	Korea	footwear tariff	none	lower tariff	Growth
1982-83	Taiwan	footwear customs procedures	none	no action	X
1983	Korea	steel wire rope subsidies	TR code	DoC action	X
1983	Taiwan	rice export subsidies	TR code	export restrictions	Maintenance
1983-84	Taiwan	film import quota	FCN	expand quota	Growth
1985	Korea	insurance selling ban	FCN	grant licenses	Growth
1985	Korea	intell prop protection	code?	write IPR laws	Growth
1985-86	Japan	wood products regulations	GATT Art III	change regulations	Maintenance
1985-86	Japan	pharmaceutical standards	GATT Art III	accept foreign test	Maintenance
1985-86	Japan	electronics intell prop	code?	improve patent law	Growth
1985-86	Japan	telecom standards	code?	make transparent	Growth

Table 2c

American-Initiated Trade Disputes in the Pacific Basin

Dates	State	Dispute	IL Violation	Settlement	Unilateralism
1985-86	Japan	semicond import limits	none	20% market goal	Subversion
1985-86	Japan	tobacco distribution	GATT Art III	change practices	Maintenance
1986	Taiwan	auto FDI exp performance	emerging code?	end practice	Growth
1986	Taiwan	insurance selling ban	FCN/code?	grant licenses	Growth
1986	Taiwan	auto customs procedures	TR code	change procedures	Maintenance
1986	Taiwan	beer, wine, tobacco quotas	GATT Art XI	end quotas	Maintenance
1986	Taiwan	machine tool export volume	none	VER	Subversion
1986-88	Japan	12 agriculture quotas	GATT Art XI	remove quotas	Maintenance
1988	Japan	beef import quota	GATT Art XI	end quota	Maintenance
1988	Japan	citrus import quota	GATT Art XI	end quota	Maintenance
1988	Korea	beef import ban	GATT Art XI	end quota	Maintenance
1988	Korea	cigarette distribution	GATT Art III	change practices	Maintenance
1988-89	Korea	wine import quota	GATT Art XI	end quota	Maintenance
1988-91	Japan	construction procurement	code?	increase licenses	Growth
1989-90	Japan	satellite procurement	TR code	make transparent	Maintenance
1989-90	Japan	supercomputer procurement	none	throw out low bids	Subversion
1989-90	Japan	wood products standards	GATT code	change standards	Maintenance

Table 3

American Initiated Trade Disputes in the

Pacific Basin 1955 - 89

Regime Effect Test and State

	Japan	Korea	Taiwan	Total
Maintenance	16 (36%)	3 (7%)	3 (7%)	22 (50%)
Growth	4 (9%)	4 (9%)	4 (9%)	12 (27%)
Subversion	7 (16%)	2 (5%)	1 (2%)	10 (23%)
Totals	27 (61%)	9 (21%)	8 (18%)	44 (100%)

Note: Total N=47; no action taken in 3 cases.

Chi-Square = 5.728; p = .2204

Table 4

American - Initiated Trade Disputes

in the Pacific Basin, 1955 - 1989

Regime Effect Test and Time

	1950-60s	1970s	1980s	Totals
Maintenance	0	6 (14%)	16 (36%)	22 (50%)
Growth	0	3 (7%)	9 (21%)	12 (27%)
Subversion	(9%)	2 (5%)	4 (9%)	10 (23%)
Totals	4 (9%)	11 (25%)	29 (66%)	44 (100%)

Chi-Square = 15.07; p = .0046

Table 5

American - Initiated Trade Disputes

in the Pacific Basin, 1955 - 1989

Market and Time

	1950-60s	1970s	1980s	Totals
Manufacture	4 (9%)	5 (11%)	15 (34%)	24 (54%)
Services	0	2 (5%)	5 (11%)	7 (16%)
Agriculture	0	4 (9%)	9 (21%)	13 (30%)
Totals	4 (9%)	11 (25%)	29 (66%)	44 (100%)

Chi-Square = 3.805; p = .433

Table 6

American - Initiated Trade Disputes

in the Pacific Basin, 1955 - 1989

Regime Effect Test and Market

	Manufacturing	Services	Agriculture	Total
Maintenance	10 (23%)	0	13 (29%)	23 (52%)
Growth	5 (11%)	7 (16%)	0	12 (27%)
Subversion	9 (21%)	0	0	9 (21%)
Totals	24 (55%)	7 (16%)	13 (29%)	44 (100%)

Chi-Square = 34.827; p = .0001