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THE UNINTENDED CONSEQUENCES OF INTERNATIONAL REGIMES

by

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M.Phil., Jawahar Lal Nehru University, India, 1993

A Dissertation Submitted to the Graduate Faculty of the University of Georgia in Partial Fulfillment of the Requirements of the Degree

DOCTOR OF PHILOSOPHY

ATHENS, GEORGIA

2001

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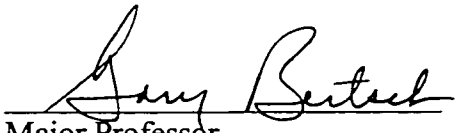

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August 10, 2001

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JYOTIKA SAKSENA
The Unintended Consequences of International Regimes
(Under the Direction of DR. GARY K. BERTSCH)

International regimes have been credited with being able to affect state behavior by creating incentives for cooperation. However, a closer examination reveals their limited capacity to do so. Empirical research provides evidence that regimes foster behavior among states that is counterproductive to the purposes of the regime itself. States find alternative ways that are harder to detect, while continuing to be abiding members of the regime. I refer to this phenomenon as the 'unintended consequences' of regimes. The purpose of the study is to explain the nature and causes of the unintended consequences of regimes. It focuses on the trade regime, GATT/WTO. I conduct a statistical analysis from 1988-1996 to highlight the causes of the rise in non-tariff barriers as tariff barriers decline. The study shows that domestic factors are important in understanding state behavior within international regimes

INDEX WORDS: Unintended Consequences, International regimes, Nontariff barriers, International trade.

Acknowledgments

Writing a dissertation is a tremendous challenge not only in terms of creativity and patience but also in terms of time commitment. This task could not have been easily achieved without the guidance of my professors and the support of my friends and family. Each of them has contributed through the process of my Ph.D by either assisting me or making the experience more enjoyable. First, I would like to thank my major professor Dr. Gary K. Bertsch who not only guided me through my dissertation but also provided constant support through my years of doctoral work. I would also like to thank Dr. John Duffield, Dr. Christopher S. Allen, Dr. Markus Crepaz and Dr. William O. Chittick, whose constant feedback and direction made my task easier.

The Department of Political Science at the University of Georgia was extremely helpful during my student life. I would especially like to thank Dr. Thomas P. Lauth for generously funding me through my student years. Members of the departmental staff provided incalculable help in assisting me in meeting the challenging demands of paperwork and deadlines. Teresa Wood, Geneva Bradberry, Nancy Power, and Pam Smith must be singled out for their patience in helping me find my feet.

My friends, Cate Moses, Robert Rhudy, Lea Rondonck, Vicki Birchfield and Lee Ann Pingel, made my graduate life a memorable and happy one. Liam Anderson's input to my dissertation has been critical. He read various drafts of the prospectus and chapters of my dissertation and proved to be an invaluable sounding board and critique for my

nascent ideas. Thanks are also due to Stephen Hill for the editorial assistance rendered by him at very short notice.

My father, Professor K.P. Saksena inspired me to follow the not so lucrative but immensely gratifying path of academia. My mother, Urmila Saksena's constant love, support and faith in my abilities made every difficult task of my life easier. I would like to thank my parents who taught me everything that is good and worth cherishing in life.

Finally, I would like to extend my appreciation to my husband and my best friend, Milind Thakar, who has put my every need before his own and constantly supported me through this difficult journey.

To all these people, I offer my endless thanks.

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Chapter 1

Introduction

In the postwar period, both in the empirical world and political science literature, international regimes have occupied a central position[1]. After the uncertain period of the two world wars and the debacle of the Great Depression, the international community was anxious to avoid any repeat of these the past follies and establish a system that was more institutionalized and predictable. The answer was found in the comfort of international institutions that provided guidelines for the state behavior in given issue areas. A much stronger United Nations was set up to replace the old League of Nations to provide a common ground for different states of the world to confer with and express themselves in varying areas of common interest ranging from security and economic development to health and human rights. The Bretton Woods system was set up to deal with issues of monetary control, cooperation and regulation. The General Agreement on Tariffs and Trade (GATT) was designed to foster and encourage free trade among the nations of the world. In time, many formal and informal rules developed around these and other institutions that began to govern state behavior and became an inextricable part of the international system. Over the years there has been a proliferation of such formal and informal rules, in many areas of state interest including environment, security, health, and

[1] In this dissertation, hereafter the word regime is used only to denote international regimes as opposed to domestic (government) regimes.

human rights among others. These rules and processes are commonly referred to as international regimes.

As in the international arena, international regimes have been the focus of study in academic circles as well. International regimes have allegedly revolutionized the interaction of states by establishing greater predictability of state behavior, thus providing a much-needed incentive for international cooperation. States acting as rational unitary actors choose to become part of regimes that provide cooperative benefits to the states as a whole. Neo-liberals argue that by predetermining the policy choice for a state, reducing transaction costs and eliminating information costs, regimes make cooperation more likely.

The postwar period witnessed a record number of inter-state cooperative efforts in the interaction of states. According to neo-liberals, the credit goes to international regimes. International regimes help set up distinct codes of behavior for states in given issue areas, and states assenting to these regimes agree to abide by the rules. Membership of these regimes is voluntary and states that disagree with the regime rules can choose not to be part of a regime or opt out of it at will. States are assumed rational in their decision-making and once they choose to be part of a regime, they are expected to abide by the rules. Nevertheless, if they are unhappy in any way with the regimes, they can and do defect. Thus, international regimes have succeeded in bringing order to the anarchic world of Realism and have made cooperation a reality in an increasingly interdependent world. Regimes have played a critical role in establishing a level of predictability of both individual and collective state behavior and thus made cooperation more feasible.

However, a closer examination of state behavior casts doubt on the success of international regimes in changing state behavior. It is the assumption of the regime theorists that states joining the regimes are rational actors and choose to be part of the regimes in order to fulfill common goals. If the regimes do not fulfill the aspirations of a state in a given area, they are free to opt out. However, a scrutiny of state behavior reveals a different story. While continuing to be part of a regime, states find other means to fulfill their national interest when it conflicts with regime goals. These actions or means used are contrary to the purposes of the regime and yet states continue to remain compliant members of the regime. In other words, when regimes no longer serve the national interest of a state, rather than defecting or opting out of the regimes, states find alternative ways to satisfy their interests. These alternative state actions do not technically defy the formal rules of the game, but are contrary to the purposes of the regimes. Therefore, what states indulge in is informal defection as opposed to formal defection. States therefore continue to enjoy the benefits of being part of international regimes yet, through informal defection, pursue individual state interest.

Therefore, compliance of regime rules by states has not necessarily meant success in resolving the problems in that particular issue area. States have tended to find alternative means to fulfil their individual interests at the cost of the interests of the collective community whilst remaining compliant and respected members of the international regimes. This resort to alternative means to pursue state interests without an overt defiance of the regime itself is usually more devious and harder to identify and consequently more difficult to stop. I term this phenomenon the "unintended consequences of regimes" (hereafter UC).

Evidence of this phenomenon can be found in the case of different types of regimes ranging from environmental to security to economic regimes. In fact, several good examples can be found in the environmental regime. For many years, there has been rising concern about the extinction of species of animals and plants due to poaching, trading, and black marketing. For this purpose a Convention on International Trade in Endangered Species (CITES) was set up in 1973 to establish varying levels of protection for roughly 3,000 species of animals and 30, 000 species of plants. However, even though CITES has striven to protect several endangered species, there has been a dramatic increase in poaching and black marketing. Some environmentalists believe that the bans have aggravated the situation by driving the trade underground,[2] in other cases the lack of availability merely increasing the price making it more profitable to trade.[3] Similarly, in 1987, the Montreal Protocol was created to help protect the earth's ozone layer. However, ten years later and about $ 2.4 billion in new fluorocarbon R&D later, the ozone hole is still with us, as a black market in illegal chlorofluorocarbons (CFC) and legal trade in recycled CFCs thrives.[4]

A careful analysis of environmental regimes reveals that by making the trade in environmentally sensitive products and endangered species illegal, regimes have not achieved success in their goals. Regimes have not seen triumph in changing or reforming state behavior but only driven the matter out of the hands of the state into the black market. It is interesting to note that this situation is not only true for what are traditionally termed weak states, but also for strong states like the US and most European

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[2] "An Africa without Elephants", LA Times. *The Los Angeles Times*, May 25 1989, p. 6.
[3] Andres Gomez-Lobo, "Market Forces and the Aphrodisiac Rhino Brew," *The Guardian* (London), September 12, 1996.

countries as well. This brings into question the issue of whether governments are unable or unwilling to control the market because of obvious monetary benefits.

Similar evidence of UC can also be found in security regimes. In 1995, with the indefinite extension of the Nuclear Nonproliferation Treaty (NPT) the international community celebrated the success of the nuclear regime. In the past twenty-eight years, no new member had formally entered the nuclear club.[5] The international community celebrated the successfully growing norm against nuclear testing by formulating the Comprehensive Test Ban Treaty (CTBT) in 1995 designed to ban any nuclear explosion in the future by all nations. Before the treaty was formalized and ready for state signatures, China and France conducted nuclear tests. As members of the NPT these states were legitimately allowed to conduct nuclear tests. In May 1998, however, India conducted five nuclear tests after a gap of twenty-four years, followed by Pakistan in May 1998.

It can be argued that neither of these states openly defied the formal rules of the regimes. China and France were permitted to conduct nuclear tests under the NPT. Similarly, even though both India and Pakistan were not legally permitted to conduct nuclear tests under the NPT, neither of them had signed the treaty and therefore, technically, were not bound by its rules. Since the CTBT had not yet been signed, none of the states could be accused of defying it. Yet, four states conducted nuclear explosions just before the treaty to ban all nuclear explosions came into force. One of these states,

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[4] Agnes Shanley, " Coolant Controversy Heats Up," The McGraw-Hill Companies, Inc. Chemical Engineering, 104, http://web.lexis-nexis.com/universe/docu, p. 63.

[5] Under the NPT, signed in 1968, only five states, US, UK, France, Soviet Union (now Russia) and China were allowed to conduct nuclear tests and keep nuclear weapons. India did conduct a nuclear test in 1974, but claimed that it was a peaceful nuclear explosion for civilian purposes only and did not exercise the option of keeping nuclear weapons.

Pakistan, had never conducted nuclear explosions and India had not tested in twenty-four years. All four states informally defied the CTBT even before it was formalized. It can be justifiably argued that all four states chose to conduct tests before the option to do so was closed. Therefore, the treaty actually provided an incentive for states to conduct tests including those that had never done so.

Let us look at another regime discrepancy. The General Agreement on Tariffs and Trade (GATT) was created to liberalize international trade. This was to be achieved principally through a process of reduction in tariff barriers (TB) and by increasing transparency. The first major round of GATT negotiations, the Kennedy Round, took place in 1962. The main purpose of this round was to further reduce tariff barriers with the aim of eliminating them. By the early 1970s the world's major trading nations had rendered tariffs almost obsolete as an instrument of protection in their relations with one another.

At the same time, however, non-tariff barriers (NTBs) became "so pervasive that there was increasing fear that they constituted a "new protectionism" threatening the world trading system".[6] Therefore although the Kennedy Round was successful in eliminating tariff barriers, it did not reduce protectionism. TBs were now replaced by a new kind of protectionism that was less transparent and therefore more difficult to deal with. Even though the Tokyo Round (1973-1979) was devoted to dealing with the problem of remaining NTBs, the international community witnessed an increase in trade protectionism of a new kind, one that was disguised in various forms ranging from voluntary export restraints to anti-dumping duties. The subsequent Uruguay Round also

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[6] Joseph M. Grieco, *Cooperation among Nations: Europe, America and Non-tariff Barriers to Trade,* (London: Cornell University Press, 1990), 3.

tried to deal with the issue of non-tariff barriers. The World Trade Organization (WTO), the successor of the GATT, inherited the problem of NTBs and had to set up special courts to deal with this problem. In other words, though the trade regime has succeeded in reducing tariff barriers, it has not succeeded in reducing the desire of states to protect their markets, products and entrepreneurs from foreign competition. States have, therefore, found alternative solutions in NTBs. An interesting aspect of this phenomenon is that as successive rounds of GATT have identified existing NTBs and declared them illegal, states agreeing to eliminate them in their trade relations have found new NTBs to protect their markets.

Defining the Concept

Finding a universally acceptable definition of international regimes has been a difficult and controversial task. The concept has been criticized for its "woolliness" and lack of precision[7]. This criticism has been accepted by many of those favorable to the concept, and attempts have been made to find a more precise and acceptable definition. Stephen Krasner's consensus definition has found acceptance among the majority of the proponents of regimes. Krasner defines regimes as "implicit or explicit principles, norms, rules, and decision-making procedures around which actor's expectations converge in a given area of international relations." Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations.

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[7] Susan Strange, "Cave! Hic Dragons: A Critique of Regime Analysis," *International Organization*, 36, Spring 1982, 337-354.

Rules are specific prescription or proscription for action. Decision-making procedures are prevailing practices for making and implementing collective choice.[8]

This consensus definition has, however, been criticized for its lack of precise meaning and relationship among the four regime components. What distinguishes the principles, norms, rules and procedures from each other?[9] Young referred to it as a "list of elements that is hard to differentiate conceptually and that often overlap in real-world situations".[10] Consequently, a more straightforward definition, like the one formulated by Robert Keohane, has found greater acceptance. Keohane defined regimes as "*institutions with explicit rules, agreed upon by governments, that pertain to particular set of issues in international relations*".[11] For the purposes of this dissertation, I will use Keohane's definition.

Having found an agreeable definition of international regimes, the next step is to define the unintended consequences of regimes. This is a phenomenon that has not found much attention in the international regime literature and consequently I have been unable to find a definition in the literature that defined the concept under study. *I, therefore define the unintended consequences of regimes as those outcomes in which a regime generates incentives for states to defect informally, which undermine the goals of the regime without violating the formal rules.* In that sense, these UC undermine the basic principles of the regimes.

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[8] Stephen Krasner, ed., *International Regimes*. Ithaca, Cornell Univ. Press, 1983) 2.
[9] For a fuller discussion see Hasenclever, Mayer and Rittberger, *Theories of International Regimes*, (Cambridge: Cambridge University Press, 1997) 8-12.
[10] Oran Young, "International Regimes: Problems of Concept Formation". *World Politics*, 39 (1992): 106
[11] Robert Keohane, "Neo-liberal Institutionalism: A Perspective on World Politics" in *International Institutions and State Power: essays in International Relations Theory*, ed. Robert Keohane (Boulder. Westview Press, 1989), 4.

UC are different from *non-compliance* in that unintended consequences can take place even when members of regimes continue to comply with the formal rules of the regimes.[12] UC can also be distinguished from *defection or cheating* in that UC can take place within a regime even when the culprit states continue to be compliant members of the regime. UC are distinguishable from regime *ineffectiveness*, in that a regime is considered ineffective if it is unsuccessful in ensuring compliance of its members to the regime rules.[13] In contrast, UC cannot be measured by the successful compliance of its members, as a regime may be effective and yet have UC. For example, GATT as a trade regime was successful in eliminating TB. This is an example of regime effectiveness. However, the UC of the GATT is that TB have now given way to a new kind of protectionism, ranging from Voluntary Export Restraint (VER) to anti-dumping duties, that are less transparent and more difficult to deal with. UC can take place both among members and non-members. For example, India and Pakistan's nuclear tests were an unintended consequence of the nonproliferation regimes even though they were not formal members of those regimes. Similarly, even though both China and France were permitted to test under the NPT, their latest rounds of tests were instigated by the CTBT foreclosing any future chance of conducting nuclear tests. Finally, UC are different from regime *failure* in that the regime fulfils its original role. Yet these regimes generate incentives to take action that defeat the purpose of the regime itself. In that sense, alone UC can be considered as at least partial failure of the regime.

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[12] Compliance is defined by Arild Underadal as "to act in accordance with and fulfillment of the obligation accepted by signing (and ratifying) the agreement" in Arild Underaldal, "Explaining Compliance and Defection: Three Models", *European Journal of International Relations* l4 (1998): 6.

[13] Oran young defines ineffectiveness as when, "its operation impels actors to behave differently than they would if the institution did not exist or if some other institutional arrangement was put in its place" in Oran Young, "The Effectiveness of International Institutions: Hard Cases and Critical Variables" in *Governance*

Choice of Case Study: GATT/WTO

In order to understand the causes of the phenomenon of UC, it is important to conduct an in-depth analysis of a regime. For this purpose, I have chosen to focus on the trade regime. Neo-liberals argue that issues of economics and trade lend themselves naturally to cooperation and hence regime formation and persistence. These are issues that states have common interests in and by reducing the attractiveness of cheating they are able to promote cooperation.[14] Keohane has further suggested that neo-liberalism "insists on the significance of international regimes, and the importance of the continued exploration of the conditions under which they emerge and persist," and in his opinion, "judging from the literature in international relations journals, this battle has been won in the area of international political economy."[15] The trade regime is therefore touted as one of the successful examples of regimes. By making a case and providing reasons for UC in trade regimes, it should be easier to explain a similar phenomenon in areas that are less naturally prone to cooperation.

Further, in the case of the trade regime, the phenomenon of UC is much more clear-cut and obvious. As explained earlier, one of the main functions of the GATT regime was to increase free trade among states by removing tariff barriers. While the regime succeeded formally by lowering tariff barriers in the various rounds of GATT, TBs have now been replaced by NTBs that are less transparent and much harder to deal

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without Government: Order and Change in World Politics edited by J.N Rosenau, and E.O Czempiel (NY: Cambridge Univ. Press; 1992), 161.

[14] For a similar argument, see Grieco, 1990, p. 11-14. Also see Charles Lipson, " International Cooperation in Economic and Security Affairs," *World Politics* 37 (1984): 18.

[15] Robert O. Keohane, "Neo-liberal Institutionalism: A Perspective on World Politics," in Robert Keohane ed., *International Institutions and State Power: Essays in International Relations Theory* (Boulder, Colorado: Westview Press, 1989).

with; which are in effect UC. Despite efforts in the Tokyo Round and later in the Uruguay Round to eliminate non-tariff barriers, they have continually been replaced by newer kinds of NTBs.[16] The trade regime, therefore, provides a clear cut example of UC and thus it is easier to make broad generalization based on this example.

Research Schema

The central question that I will undertake in this research is why do regimes have UC. Having explained and defined the basic concept in this chapter, the next chapter will provide a survey of the regime literature. Since UC of regimes is a virgin topic and not one that has been a subject of research so far, I will scan through three major international relations theories (neo-liberal, neo-realists and constructivists) to find possible answers to the research question. I conclude that the regime literature, and its treatment of the state as a unitary actor, is ill equipped to deal with the puzzle of UC. Through an examination of the literature, the next chapter attempts to bridge that gap between international relations and comparative politics and outlines the theoretical basis of my dissertation. I discuss my theory of UC and why they take place. Briefly, I argue that the UC of regimes occur when a government faces pressure from domestic actors to provide relief from the (harsh) impact of an international regime. Since governments lack the freedom to either opt out of the regime or ignore domestic pressure, they try to alleviate domestic concerns by finding alternative ways that provide the benefits of non-compliance whilst at the same time not openly defying the regime. Chapter 4 applies this

[16] For details on efforts to remove NTBs see William R. Cline, Noboru Kawanabe, T.O.M. Kronsjo, and Thomas Williams, *Trade Negotiations in the Tokyo Round: A Quantitative Assessment* (Washington, D.C: The Brookings Institution, 1978). Also, see Anne O. Krueger, *The Political Economy of Trade Protection* (Chicago: The University of Chicago Press, 1996).

theory to the case of the trade regime, WTO/GATT to test its validity. I do so by focusing on the use of TBs and NTBs. Since the data available was not conducive for pure time series analysis, I use qualitative methods to show the increase in the use of nontariff measures by states as tariff barriers continued to decline as legitimate sources of protection. I also employ quantitative methodology, using pooled time series cross sectional analysis, in order to explain the causes of the rise of NTBs. I test the hypotheses that the size of the state, the nature of its domestic institutions and the level of the organization of domestic actors each have an impact on the level and intensity of NTBs used by states. Chapter 5 delineates the methods and the research design used. Within this chapter, I explain my selection of countries, time period, and my choice of independent variables. Theoretical concepts are operationalized and empirical indicators are included. The next chapter provides the results, followed by the conclusion where I summarize my arguments and the implications from the research.

Chapter 2

Scanning the Regime Literature

International relations theorists, especially neo-liberals, have been fascinated by regimes and their ability to foster cooperation among states by institutionalizing state interaction. The majority of work on international regimes has been concerned with regime formation, sustenance and effectiveness. Studies have focused on examining what accounts for the emergence of rule-based cooperation in the international system. Do international institutions affect state behavior and collective outcomes in the issue areas they address? Which factors affect the stability of international regimes? There have been very few studies done on regime consequences. Those that have been conducted have tended to take a rather benign and uncritical view of international regimes themselves; focusing instead on their effectiveness in fulfilling stated goals[17] rather than the broader impact, they have in the concerned issue area. In that sense regime consequences, whether intended or unintended (especially unintended), have been a rather neglected aspect of the study of international regimes. Part of the reason is that in the face of growing criticism from Realists, regime proponents have felt the need to justify the formation, existence, and the need for international regimes.

The following review will survey the three international relations theories dominant in the study of international regimes, i.e., neo-liberal, neo-realist, and

[17] See for example, Volker Rittberger, *Regime Theory and International Relations* (Oxford: Clarendon Press, 1993).

constructivist. Since, no research has been done on the UC of regimes and little systemic study on regime consequences, I will examine those aspects of each school of thought that might shed light on explaining the UC of regimes. I begin by examining the literature that has focused on regime consequences, including negative consequences. Next, I sift through the research on regime effectiveness to find evidence of regime features that matter in making a regime effective. Further, I inspect the research undertaken by neo-liberals and constructivists in trying to explain the success or failure of regimes. I conclude that the regime literature, which treats the state as a unitary actor, is ill equipped to provide answers to the puzzle of UC.

Neo-Liberalism

Negative Impact

While the majority of regime analysis as conducted by the neo-liberals seems to focus on the positive, some theorists have centered their attention on those consequences of international regimes that are far from benign. A large part of such criticism has been directed at the United Nations. For example, Roger Brooks, in his criticism of the Food and Agriculture Organization (FAO), has argued that the institution's administration supports a model of agricultural development that is antithetical to private sector growth and therefore inhibits general economic development in the developing countries. The UN has been accused of working as a destabilizing force in international politics because of the inflammatory way it mediates disputes.[18] It has also been criticized for

[18] *Backgrounder*, a journal published by the right wing Heritage foundation has published numerous studies that take a very critical view of the UN. See, for example, Juliana Geran Pilon, "The Center on Transnational Corporations: How the UN Injures Poor Nations," *Backgrounder* 608, October 1987. Also

perpetuating underdevelopment because of its anti-market bias.[19] Charles Kindleberger has argued against the international monetary organization and their lending policies. According to him, providing abundant liquidity to debt-ridden nations creates a moral hazard by giving debtors fewer incentives to promote the economic changes that would reduce their economic dependence.[20]

The majority of this work, however, has been atheoretical and little attempt has been made to provide generalizations about when and how these negative consequences can be found in international organizations (IO). An exception to this rule is the article by Giulio Gallarotti on the limits of IO. According to him, an IO is "most antithetical to orderly international relations when its failures make international problems worse or generate new problems-that is when (the) IO itself is a destabilizing force in world politics".[21] Gallarotti suggests that bureaucrats and scholars alike need to reassess the role of multilateral management and its effects on international relations within and across issue areas. He presents a typology of systemic failures of IOs. According to him, IOs can be destabilizing when 1) they attempts to manage complex, tightly coupled systems, especially politico-economic relations; 2) their solutions discourage nations from pursuing more substantive or long-term resolutions to international problems, including disputes, or when they serve as a substitute for responsible domestic or foreign policy; 3) IOs can actually intensify international disputes under several circumstances: when they are used as a weapon of confrontational statecraft, when they encourage

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see, See Roger Brooks, " Africa Is Starving and The United Nations Shares the Blame," *Backgrounder* 480, Heritage Foundation, January 1986.

[19] See Abraham Yeselson and Anthony Gaglione, "The Use of the UN in World Politics," in, *At Issue: Politics in the World Arena*, edited by Steven Spiegel (New York: St. Martin Press, 1981), 392-99.

[20] Charles Kindleberger, *The International Economic Order* (Cambridge, Mass: MIT Press, 1988).

[21] Giulio M. Gallarotti, "The Limits for International Organization: Systemic Failure in the Management of International Relations," *International Organization*. 45 (1991), 183-300.

confrontational solutions to problems, when they create road-blocks to the resolution of disputes, when they are a source of destabilizing linkages and predatory or confrontational collusion, and when they takes sides in international disputes, and finally, 4) IOs can have destabilizing effects when they are a source of moral hazard. In their efforts to avoid crises, IOs reduce the incentive for states to eliminate the underlying problem, which is the behavior itself. For Gallarotti then, the principal element of failure in the first category is technical, but the other three categories focus on the political system itself that act in ways that can make cooperation destabilizing. While Gallarotti's typology is helpful, it is more specific to IOs than a systemic study of international regimes.

Michael Barnett and Martha Finnemore have also argued that many IOs stray from the efficiency goals espoused by their supporters and that many exercise power autonomously in ways unintended and unanticipated by states at their creation.[22] Barnett and Finnemore trace the source of pathologies to the bureaucratic culture of organizations. According to them, the same internally generated cultural forces that give IOs their power and autonomy can also be a source of dysfunctional behavior. Drawing upon studies in sociology and anthropology, the authors list five mechanisms by which bureaucratic cultures can breed pathologies in IOs: the irrationality of rationalization, universalism, normalization of deviance, organizational insulation, and cultural contestation. Though a novel idea in international relations literature, it does not shed light on the UC of regimes. Bureaucracies emphasize the solidification of existing rules and procedures that may continue to survive even if they no longer serve the goals of the

[22] Michael N. Barnett and Martha Finnemore, "The Politics, Power, and Pathologies of International Organizations," *International Organization* 53 (1999), 699-732.

organization and thus create pathologies of IOs. However, in the case of UC, it is not the existing rules that are defying the purposes of the regimes, but the adoption by states of alternative policies that are contrary to the basic goals of the regime.

Lisa L. Martin and Beth A. Simmons in their article, "*Theories and Empirical Studies of International Institutions*", have directly tried to address the issue of UC.[23] According to them, it is important to distinguish between unintended and unanticipated consequences. Effects can be anticipated but not intended. Moreover, it is the genuinely unanticipated effects that present a larger challenge. Martin and Simmons identify a list of conditions under which unanticipated consequences are most likely to confound international cooperation. These are 1) *changes in secondary rules* (i.e. rules about rules), 2) *changes in voting rules* and, 3) *changes in decision-making procedures*. According to the authors, states are least likely to withdraw from an institution in the face of unanticipated consequences when they are dealing with issues that exhibit increasing returns to scale, which, in turn create conditions of path dependence. Martin and Simmons suggest that in issue areas where there is less of an incentive for strategic interaction like human rights practices, one may see more divergence in state policies. Conversely, they argue that in issue areas where incentives exist to adopt similar policies, such institutions should not lead to divergent behavior.[24] According to their analysis, in issue areas like security and trade, we should expect to find more convergence than divergence in behavior. This may seem apparent if one examines the total number of regimes and organizations in issues related to security and economic interests. However, convergence of interest becomes a moot point when states seek to converge their interest

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[23] Lisa L. Martin and Beth A. Simmons, " Theories of Empirical Studies of International Institutions," *International Organization*, Vol. 52, No. 4, Autumn 1998, 749-757.

on one level, and look for alternative ways to serve individual interests on another. Further, the Martin and Simmons article does not go beyond the mere suggestion of typologies or the need for a more systematic study of UC.

In their article, "*Theories of International Regimes*",[25] Stephan Haggard and Beth Simmons suggest that a fit between regime rules and national behavior may not occur for three reasons. The first is that the norms characterizing the regime may not be formulated to be authoritatively binding. Secondly, states may negotiate regimes with the intention of breaking them or knowingly exploit others' compliance in order to extract higher payoffs, what the authors term as 'opportunism'. The third reason is "involuntary defection," which happens when a party reaching or supporting an international agreement is unable to maintain commitments because of domestic political constraints.[26] The authors focus on the non-compliance with the formal rules of regimes by states whether it is due to lack of appropriate compliance mechanisms or state intentions. What the authors do not take into account are instances where states continue to follow the strict rules of the regime but find alternative ways to defy the regimes that are not explicitly denied in the regime. Further, what is ignored in the study of domestic pressure is that the pressure may be a response to the impact of the regime itself.

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[24] Martin and Simmons, 756.
[25] Stephan Haggard and Beth A. Simmons, "Theories of International Regimes" *International Organization* 41 (1987), 491-517.
[26] ibid, 514.

Regime Consequences

Volker Rittberger and Michael Zurn, in "Towards Regulated Anarchy in East-West Relations: Causes and Consequences of East-West Regimes",[27] suggest that investigating the consequences of international regimes requires a counterfactual argument. For example, if a regime does exist in an issue area one would have to determine what would happen if it did not exist, and if it does not exist then what could its establishment achieve? Charles Lipson similarly considered both the indirect and direct effects of regimes in his analysis of the global trade regime. He concluded that the trade regime has served as a catalyst for major US postwar trade legislation, created incentives for policy harmonization between trading countries, and expanded trade more generally. To support his contention that global regimes have a causal effect on the expansion of trade, Lipson also employs an explicit counterfactual argument.[28] However, counterfactual arguments, besides being very ambiguous, are also not very helpful in shedding light on the UC of regimes.

Helmut Breitmeir and Klaus Dieter Wolf, in their study of environmental regime consequences consider three separate dimensions of regime consequences; issue areas, the domestic and the international context.[29] They employ four evaluative criteria: 1) just conflict resolutions, 2) sustainable conflict resolution, 3) domestic democratization, and 4) international civilization. In order to explain and understand the determinants of regime consequences the authors have tried to relate systematically regime structures or

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[27] Volker Rittberger and Michael Zurn, " Towards Regulated Anarchy in East-West Relations: Causes and Consequences of East-West Regimes" in *International Regimes in East-West Politics*, ed. Volker Rittberger, (London: Pinter Publishers, 1990) p. 64-89.
[28] Charles Lipson, 1983.
[29] Helmut Breitmeir and Klaus Dieter Wolf, "Analyzing Regime Consequences: Conceptual Outlines and Environmental Explorations" in *Regime Theory and International Relations, ed.* Volter Rittberger with Peter Mayer (London, Oxford: Clarendon Press, 1993), 338-360.

properties to regime consequences. The authors identify three typologies: 1) External/Internal Regimes: this typology creates a distinction between regimes that have external (selective membership) or internal (open to all members) membership. According to the authors external regimes will support an unequal distribution of resources between members and non-members in issue areas and therefore this regime type would be detrimental to the overall relationship among states by encouraging the pursuit of relative gains between members and non members; 2) Market oriented/state-oriented/internationalist regimes: internationalist regimes that are characterized by delegation of distributive and regulative authority to a multilateral body as opposed to the state will have more effective distributional justice; 3) Internal and external regime capability: internal compatibility refers to consistency in application of regime rules. In terms of external compatibility regime rules must conform closely to the system's prevailing structures of power, interdependence and affinity relations.[30] However, according to the authors, the regime types discussed do not seem to be generally applicable to all kinds of issue areas, nor do they offer sufficient explanations in the environmental field to which the typologies were applied.

Other regime theorists have also emphasized the importance of regime design. Duncan Snidal in focusing on the nature and different sources of regime variation argues that different regime forms may provide different solutions to the same problem.[31] According to Snidal different solutions are likely to entail other important differences. More formal regimes may have advantages in preventing states from taking noncooperative actions for short-run benefit, whereas less well institutionalized regimes

[30] ibid, 345-8.

may be better at allowing states flexibility to adapt international norms to domestic needs. Further, he argues that different issue areas represent fundamentally different solutions to different problems. Different histories and contexts of particular international issues may facilitate different solutions in different issue areas. He further argues that the underlying strategic structure of issues is fundamentally different, which also governs the difference in the nature of interdependence among states. "These different strategic structures, and different contexual variation within strategic structures, have important consequences for regime characterstics ranging from degree of centralized authority they require through their relationship to distribution of global power and interest. Thus the analysis of the formation and development of international political regimes cannot be studied without an appropriate understanding of the strategic structure of the underlying issue area".[32] According to Snidal different issues require different kinds of institutions. He highlights his point by distinguishing between coordination and collaboration games.

Lisa Martin, in her article, "Interests, Power and Multilateralism", also distiguishes between collaboration and coordination games and claims that cooperation is more easily achieved in coordination regimes vis-à-vis collaboration regimes.[33] According to Martin, multilateral norms fail to resolve, or may even exacerbate collaboration dilemmas. Collaboration problems contain strong incentives to defect from established cooperative patterns of behavior, since defection results in immediate payoffs. Therefore, she suggests extensive monitoring and compliance assessment for successfully resolving collaboration problems. Further, she suggests strategies of specific reciprocity, such as

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[31] Duncan Snidal, "Coordination Versus Prisoners' Dilemma: Implications for International Cooperation and Regimes," *American Political Science Review* 79 (1985): 923-943
[32] ibid, 941.
[33] Lisa L. Martin, "Interests, Power, and Multilateralism," *International Organization* 46 (1992): 765-792

tit-for-tat, for maintaining cooperation . According to her, diffuse reciprocity with its lack of direct retaliation for defections, is unlikely to maintain cooperation in collaboration games. For example, GATT provides for direct retaliation for unfair trading practices, which is a clear example of specific reciprocity. Martin further suggests that limited membership will increase the chances of cooperation since many players can increase the conflict of interest among the players. Evidence of this may be found in GATT's adoption of strategies that allow major trading powers to negotiate agreements rather than mandating negotiations with the entire membership. Negotiations on arms control have followed a similar pattern of decomposition and *de facto* delegation to those with the most at stake. According to her, as the GATT membership and the complexity of issues with which GATT deals grows, there is an increased need for a centralized mechanism of dispute settlement. Therefore, according to Martin, "in collaboration games with many actors, high incentives to engage in undetected cheating lead us to expect the emergence of strong organizations, unless enforcement and monitoring are taken over by a hegemon."[34]

Stephan D. Krasner, in his book *International Regimes*,[35] points out that regimes have been conceptualized as intervening variables standing between basic causal factors on the one hand and outcomes and behavior on the other. He posits that this formulation raises two basic questions. First, what is the relationship between basic causal factors such as power, interest, values and regimes? Second, what is the relationship between regimes and related outcomes and state behavior? His argument, however, focuses attention on basic causal factors that lead to regime formation or survival. Little attention is paid to

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[34] ibid, 782.

the regime effects or consequences other than whether they matter or not. For Krasner, the causal arrow is: Basic causal variable → Regimes → Related behavior and outcome.

Regime Compliance

A significant number of international regime theorists have tried to understand and explain regime compliance so that it may shed some light on state behavior. Chayes and Chayes in their article "On Compliance"[36] have argued that noncompliance is more a deviance than an expected behavior. Therefore, Chayes and Chayes de-emphasize the formal enforcement measures and even to some extent coercive informal sanctions. According to them, the root of non-compliance can be found under three circumstances: 1) ambiguity and indeterminacy of treaty language, 2) limitations on the capacity of parties to carry out their undertakings, and; 3) the temporal dimension of the social and ecnomic changes contemplated by regulatory treaties. Such sources of non-compliance can be managed by routine political processes.

Thus, the improvement of dispute resolution procedures will help with the problem of ambiguity; technological and financial assistance may help cure the capacity deficit; and transparency will make it likelier that over time, national policy decisions are brought into line with agreed international standards. The authors therefore place the responsibility of noncompliance not on the states themselves, but on defective regime design, social and economic factors, and limitations of the state. According to the authors very rarely does the treaty violation fall into the category of a willful flouting of legal

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[35] Stephen D. Krasner, " Structural Causes and regime Consequences: Regimes as Intervening Variables," in *International Regimes,* ed, in Stephen D Krasner, (Ithaca, Cornell University Press, 1983), 1-21.
[36] Abram Chayes and Antonio Handler Chayes, "On Compliance," *International Organization* 47 (1993): 175-205.

obligations. However, this does not explain state behavior as highlighted by the UC of regimes, where states willfully look for alternative ways to achieve their interest. These actions do not amount to legal violations, but nevertheless strike at the spirit of the regime.

Ronald Mitchell in his article argues that state compliance or noncompliance is a function of regime design.[37] He examines the two sub-regimes set up to deal with international oil spills. The two regimes regulated similar behavior by the same nations and tankers over the same time period. One regime required tanker owners to install expensive pollution reduction equipment by specified dates and the other prohibited tanker operators from discharging oil in excess of specified limits. According to the author, "the equipment standard elicited significantly higher compliance because they selected a point for regulatory intervention that allowed for greater transparency, increased the likelihood of forceful responses to detected violatons, built on existing institutions, and coerced compliance by preventing actors from violating them rather than merely deterring actors from doing so."[38]

Arild Underdal sets up three different models drawing on the rational-actor model, the domestic politics model and social learning to explain variance in compliance levels.[39] His conclusions also focused on regime design. According to him, Model A (rational-choice model) leads us to expect that an actor is prone to defect whenever its marginal costs of compliance exceed marginal benefits. Therefore, international

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[37] Robert B. Mitchell, " Regime Design Matters: Intentional Oil Pollution and Treaty Compliance," *International Organization* 48 (1994): 425-58.
[38] ibid, 456-7.
[39] Arild Underaldal, "Explaining Compliance and Defection: Three Models." *European Journal of International Relations,* 4, (1998), 5-30.

agreements should be designed to be strongly integrative and to minimize the opportunities for fear of free-riding. Drawing on Model B (domestic politics), he suggested that in order to enhance the chances of effective domestic implementation, policies should be designed to benefit the organized sectors of the economy, while costs should be distributed throughout the society. Finally Model C (social learning) dictates that since actors' perceptions and beliefs are formed and modified through the policy process, compliance can be enhanced by developing or strengthening consensual knowledge and shared policy norms, and by incorporating regime rules into the standard operationg procedures of domestic bureaucracies. According to Underdal, Model A provided the best explanation for compliance, while the other two models helped better understanding of variation in emission standards of ten European countries.

Regime Effectiveness

Since it is so difficult to determine regime consequences, many theorists have tried to show the impact of regimes in terms of their effectiveness. Oran Young [40] argues that effectiveness is a measure of the role of social institutions in shaping or molding behavior in international society. An institution is effective to the extent that its operations impel actors to behave differently than they would if the institution did not exist, or if some other institutional arrangement were put in its place. Effectiveness of an international institution can be measured in terms of its success in areas of implementation, compliance, and persistence. In order to prove that institutions do matter, Young selects what he terms as hard cases or situations in which circumstances at hand are distinctly

unfavorable to the operation of social institutions. Factors likely to produce such conditions are: 1) one or more predominant members of the subject group are predisposed to dislike the outcomes; 2) it is comparatively easy to violate the rules of the regime; and 3) ongoing changes in the character of international society raise doubts about the sociological or intellectual underpinnings of the regimes. He argues that if in spite of these conditions, international institutions play a significant role in shaping the behavior of their members then it would be easy to establish that institutions will have an impact in more benign situations as well. For his cases he chooses the regimes established for the Svalbard Archipelago (1920), the regime for whaling (1946), and the GATT (1947).

Young's article touches upon the fact that regimes may not necessarily satisfy every state and that sociological changes may reduce the significance of regimes. He concludes that despite these circumstances, regimes will continue to play an important role in shaping the behavior of states. His assumption, however, seems to be that this behavior will necessarily be benign.

Young and Levy, in trying to understand and explain the effectiveness of international regimes, differentiate three dimensions of effects: 1) effects within the behavioral complex of a specific issue or issue area, 2) direct and indirect effects, and 3) effects that help to solve a problem and those that make it worse.[41] The effort is not to set up a universal scale or index of effectiveness, but rather to understand the full range of significant effects that each regime is responsible for. However, their study of regime

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[40] Oran R. Young, " The Effectiveness of International Institutions: Hard Cases and Critical Variables," in *Governance Without Government: Order and Change in World Politics*, J.N. Rosenau and E.O Czempiel, eds., (New York, NY: Cambridge University Press, 1992), 160-194.

effectiveness is at best cursory. The authors mention at several places in the book that "a regime can easily have effects that make problems more difficult to solve", but do not actually provide any substantial examples to support their claim. Nor does their study of regime effectiveness sufficiently address that concern. [42] According to them, however, side effects typically fall into the category of negative externalities. For example, the geographical limits of the Long-Range Transboundary Air Pollution (LRTAP) regime appear to have produced effects in Siberia's easternmost areas by generating incentives for Soviet-Russian policymakers and managers to move some production facilities eastward instead of shifting to cleaner technologies.[43] In order to understand the pathway, through which institutions produce results, the authors focus on the roots or the sources of the behavior of the members of regimes as well as important actors operations under the auspices of regime members. They do so by studying the situation before and after a regime was established, using the counterfactual method. According to the authors, since the study does not seek to test a set of theoretically derived hypothesis, the results are not generalizable. However, the authors do find positive impact of regimes as utility modifiers, bestowers of authority, teaching facilitators, role definers and as agents of internal (domestic) realignment.

In his book *Governance in World Affairs*, Oran Young tries to identify the sources of regime effectiveness.[44] He indicates five such sources.[45] According to Young, the structure of the problem, to a large extent, determines the effectiveness of a regime.

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[41] Oran Young, ed., *The Effectiveness of International Environmental Regimes: Causal Connections and Behavioral Mechanisms* (Cambridge, MA: The MIT Press, 1999).
[42] For example see, ibid, 10, 11and 15.
[43] ibid, 10-11.
[44] Oran R. Young, *Governance In World Affairs* (Ithaca, NY: Cornell University Press, 1999).
[45] See Young, 1999, chapter 5.

Coordination problems are easier to deal with than are collaboration problems, largely because participants do not have incentives to violate the rules developed to solve coordination problems. Regime attributes include the capacity to respond flexibly and to evolve. According to Young, institutional arrangements that treat compliance problems as management problems rather than enforcement issue are also likely to see better success. Social practices and norms that develop around a regime also have a positive impact on regime effectiveness. Institutional linkages, both horizontal and vertical also have an impact on effectiveness. For example GATT/WTO has been accused of having a destructive and exploitative impact on long-standing resource regimes operating at local and regional levels.[46] Finally, Young argues that the broader social and political setting within which the regime operates or is established also has an impact on its effectiveness. He believes, for example, it would be very difficult to devise an effective regime for international rivers in such areas as the Middle East or the Indian Subcontinent. For future research, Young suggests finding alternatives to utility maximization as sources of behavior for regimes, relaxing the assumption of unitary actor and the role of non-state actors in determining the effectiveness of environmental regimes. [47]

Young in an earlier volume tried to set the stage for a systematic study of the determinants of regime effectiveness by exploring a range of variables that require consideration.[48] He identified six distinct dimensions of effectiveness. These are, effectiveness as problem solving, effectiveness as goal attainment; behavioral effectiveness (causes members to alter their behavior by terminating or redirecting prior

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[46] See David P. Ross and Peter J. Usher, *From the Roots Up: Economic Development as if Community Mattered,* (Croton-on-Hudson, NY: Bootstrap Press, 1986).
[47] Young, 1999, 127-9

patterns of behavior); process effectiveness (whether provision of a treaty are implemented in domestic, legal and political systems of member states); constitutive effectiveness (give rise to social practices involving the expenditure of time, energy and resources by its members), and evaluative effectiveness (regime produces results that are efficient, equitable, sustainable or robust). While these dimensions may be helpful in measuring or determining whether a regime is effective or not it does not tell us much about circumstances under which states may use alternative (and devious) means to serve self-interest while undermining the regime (in other words, UC). Young does in fact acknowledge that international regimes may also produce side effects that their creators never intended or foresaw. He warned that those responsible both for designing international regimes and those seeking to provide overall assessments of their performance should be alert to the prospect of these side effects. According to him, "in individual cases, the impact of side effects may equal or even exceed the magnitude of the intended effects attributable to the operation of international regimes, a fact that should give pause to regime enthusiasts who advocate the creation of new institutions as a solution to every problem."[49] Again, other than merely mentioning the relevance of the issue, Young does not go further in suggesting ways to examine the problem. Similarly, Haas, Keohane, and Levy, in their book, *Institutions for the Earth*, acknowledge that if rules and practices of international institutions are inconsistent with realities of power or ecology, they may become meaningless; and if their content creates perverse incentives,

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[48] Oran Young, *International Governance: Protecting the Environment in a Stateless Society* (Ithaca: Cornell University Press, 1994) 140-162.
[49] Young, 1994, 152-3.

they may do more harm than good.[50] The volume, however, concentrates on whether international institutions have a positive impact and no further attention is paid to harmful effects of the regime. According to the authors, to be effective, international institutions must create networks over, around and within states that generate the means and the incentives for effective cooperation among states.

Although, many neo-liberals do acknowledge that regimes can and sometimes do have unintended, negative consequences, most of the studies have confined themselves to studying the benign nature of international regimes. Their focus tends to be on trying to understand and explain how regimes can function as effective institutions in resolving the dilemma of cooperation in the international arena. Solutions are provided in terms of better mechanisms of regime compliance, overall regime design, membership and state strength among others. These studies may help us to explain the success and failure of a regime and how they can be made more effective, but they do not provide us with any explanation of the dual nature of state behavior; one that is a compliant member of an international regime and another that works towards undercutting the main purposes of the regime.

Neo-realism

Neo-realists may have a better time explaining the UC of regimes. In fact, UC of regimes provide realists with reasons to claim success over neo-liberals. Realists, unlike the neo-liberals, argue that regimes are not successful in alleviating the concerns of the states. For neo-liberals in an anarchic world, states seek to maximize their individual

[50] Peter Haas, Robert Keohane and Marc A. Levy, *Institutions for the Earth: Sources of Effective International Environmental Protection* (Cambridge: Massachusetts, MIT Press, 1993), 5.

absolute gains and are unconcerned about the gains of others. Cheating is the greatest impediment to cooperation among rationally egoistic states. However, as explained earlier, for neo-liberals, international institutions help alleviate concerns about cheating. They argue that institutions reduce verification costs, and make it easier to punish cheaters. Neo-realists like Grieco, on the other hand, argue that although states seek absolute gains and worry about compliance, they are positional and not atomistic in character. In addition to being concerned about cheating, states in cooperative arrangements also worry that their partners may gain more from cooperation than they do. For realists, "a state will focus both on its absolute and relative gains from cooperation, and a state that is satisfied with a partner's compliance in a joint arrangement might nevertheless exit from it because the partner is achieving relatively greater gains".[51] Realism's concerns are based on the idea that states in anarchy fear for their survival as independent actors. However, according to Robert Jervis, for relative gains concerns to be aroused, a state's survival need not be in immediate danger. Given that "minds can be changed, new leaders can come to power, values can shift, and new dangers and opportunities can arise."[52] Furthermore states fear that today's friend may be tomorrow's enemy in war, and fear that achievements of joint gains may produce a more dangerous potential foe in the future. As a result, states are more concerned about gains of partners.[53]

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[51] Joseph M. Grieco, "Anarchy and the Limits of cooperation: A Realists Critique of the Newest Liberal Institutionalism," *International Organization* 42 (1998): 487.
[52] Robert Jervis, "Cooperation Under the Security Dilemma", *World Politics* 30 (1978): 168.
[53] Some neo-liberals like Robert Keohane and Lisa Martin have argued that institutions can play an important role in mitigating states concerns about relative gains by helping to settle distributional conflicts and by assuring states that gains are evenly divided over time, for example by disclosing information about the military expenditures and capacities of alliance members. See Robert Keohane and Lisa Martin, "The Promise of Institutional Theory," *International Security* 20 (1995): 45-6.

In order to assert that relative gains do matter to states (and that neo-realism has better explanatory power vis-à-vis neo-liberals) Grieco conducted a study of states' attempts to remove NTBs to trade as part of the Tokyo Round of the GATT.[54] The pattern of success and failure to implement the NTB codes was consistent with realist expectations regarding relative losses.[55] The most important was the sub-agreement concerning government procurement and technical barriers. The European Economic Community (EEC) members feared that they might lose ground to the US and Japan in technologically critical industries. Thus, although the agreements were beneficial to the Europeans in absolute terms, they failed because they were even more beneficial to European competitors in the international market.[56]

The argument favoring state concerns about relative gains as opposed to absolute gains provides support for UC. In such a scenario UC present a perfect option for a state concerned about relative gains. UC provide the unique opportunity for a state to be part of a regime and therefore enjoy the benefits that accrue from a cooperative arrangement. At the same time, a state can find alternative ways to achieve their interests without violating the regime rules and therefore alleviate its fears about partners surging ahead in relative capabilities. Therefore, a state can enjoy the best of both worlds without having to sacrifice its security concerns.

While both realism and neo-liberalism take us a step closer to finding an explanation for the UC of regimes, neither seems to completely resolve the question of why states engage in this dual behavior. Neo-liberals tend to place the focus on the

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[54] Joseph Grieco, *Cooperation Among Nations: Europe, America, and Non-tariff Barriers to Trade* (Ithaca, New York: Cornell University Press, 1990).
[55] Grieco 1990, Chapter 7.

regime design and the quest seems to be for finding that perfect regime design that will help control and direct state behavior. Some seem to find that the nature of the issue area that lends itself to a particular kind of regime design. The reference here is to coordination and collaboration regime types. Many others seem to place the responsibility on the compliance mechanism. Yet others have tried to test or account for regime effectiveness in terms of membership, changes in social and political circumstances, ability of a regime to be flexible and change with time, addition or subtraction of important players in the game, etc. However, neither of these explanations brings us any closer to providing an explanation of why and when states indulge in such behavior. If states by the neo-liberal logic are concerned about cheating but otherwise do benefit and believe in benefits of cooperation, then why do they indulge in activities that undermine the regime itself? Maybe regime design, membership, compliance mechanisms, etc, can reduce the chances of cheating (or in our case UC) but they still do not provide an explanation as to why states that inherently believe in cooperation and benefit from it will deliberately undermine the interests of the regime.

Realism claims that it is states' concerns about relative gains that encourage them to indulge in activities that will provide them with additional power leverage vis-à-vis other states. Realism therefore reduces regimes to a minor and a dependent factor. Further, many neo-liberals have argued that concerns about relative gains is conditional on factors such as the number of major actors in the system and whether military advantage favors offense or defense.[57] According to Duncal Snidal, relative gains are

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[56] See Grieco 1990, p. 182-209. The other four codes turned out to be far less relevant to Grieco's argument. The results of these codes were more or less consistent with both realism and neo-liberals.
[57] See David Baldwin, ed., *Neorealism and Neoliberalism: The Contemporary Debate* (New York: Columbia University Press, 1993), 323.

unlikely to have much impact on cooperation if the potential for absolute gains from cooperation are substantial, or in any context involving more than two states.[58] Further, as Keeley argues that this "power focus can at best tell us who wins and why; it cannot tell us what the contest was about (other than winning) or guide an analysis of the content of the regime which subsequently shapes the actor's behavior. Neither the point of the struggle nor some aspects of regime dynamics and functioning can be dealt with satisfactorily on this restricted basis"[59] Keeley further notes that realism tends to focus on great powers, thus reducing a large part of the state in the system to "passive triviality" ignoring the experiences and perspectives of most of the actors in a system. One flaw that both the realists and the neo-liberals share is that treating the state as the unit of analysis they completely ignore the role of society and the various actors within, that influence and are influenced by the state.

Constructivism

Both realists and neo-liberals have faced a growing level of criticism from constructivists who have tried to explain the existence and persistence of international regimes by emphasizing the role of norms. According to constructivists, norms arise because they are needed to bring about cooperation and affect the behavior of states independent of structure and material factors. Ann Florini argues that not only do ideas and norms matter, but also that the norms that are accepted do not merely reflect the interests of the materially powerful. According to her, only those norms survive that, 1)

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[58] See Duncal Snidal, "Relative Gains and the Pattern of International Cooperation," *American Political Science Review* 85 (1991): 701-726.
[59] James F. Keeley, "Towards a Foucauldian Analysis of International Regimes," *International Organization*, 44 (1990): 100.

become prominent enough in the norm pool to gain a foothold; 2) how well they interact with other prevailing norms with which they are not in competition; and 3) what external environmental conditions confront the norm pool.[60] She uses what she refers to as the norm of transparency in military activities to illustrate how the three factors outlined in the above work in the evolution of norms: 1) it became prominent primarily through the deliberative efforts of an entrepreneur, the US; 2) it fits coherently with the other relatively recent norms, particularly democratization, multilateralism, and the norm against the use of weapons of mass destruction; 3) several developments have provided a hospitable environment.

Martha Finnemore and Kathryn Sikkink suggest that norm influence can be understood as a three-stage process. The first stage is norm emergence; the second stage involves broad norm acceptance or what they refer to as "norm cascade" and the third stage involves internalization. Different actors, motives and mechanisms of influence characterize changes at each stage. In the first stage norm entrepreneurs attempt to convince a critical mass of states to embrace new norms. The second stage is characterized more by a dynamic of imitation as the norm leaders attempt to socialize other states to become norm followers. At the end of norm cascade, norm internalization occurs, where norms acquire a taken for granted quality and are no longer a matter of broad public debate. The authors provide many motives for why states would accept and then later internalize norms. These motivations range from altruism, empathy, and ideational commitment to concerns about reputation, legitimacy and esteem until all states finally conform to the norm.

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[60] Ann Florini, "The Evolution of International Norms", *International Studies Quarterly*, 40 (1996): 377-81.

Constructivists, although differing in their specific approaches, argue that international regimes are embedded in the broader normative structures of international society. Therefore states are not free to ignore institutional commitments like the other mainstream approaches suggest. Following Louis Henkin many cognitivists advocate that states feel compelled to comply with agreed upon rules and norms, even when they have both the incentive and capacity to break them.[61] States recognize that no society can exist without the confidence between nations that obligations and laws will be honored, and therefore they have common interest in maintaining and following the accepted rules and norms. As a result states tend to comply even with inconvenient norms and rules because acting selfishly will undermine their own interest in the long run. According to Andrew Hurrell, "states follow specific rules, even when inconvenient, because they have a longer-term interest in the maintenance of law-impregnated international community. It is within this broader context that ideas about reputation are most powerful and most critical."[62]

However, in trying to understand and explain what induces states to conform to or adhere to international norms, the crucial element missing from the study is state interest. What if some states are forced to conform to norms that are in conflict with their state interest because of concerns about reputation and esteem? What conspires between the second stage of norm cascade and norm internalization? When does a norm become internalized, how do we recognize when the norm has been internalized and do all states reach these stages simultaneously or some follow the others? Answers to these questions

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[61] Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Frederick A. Praeger, 1968), 36, 42, and 48.
[62] Andrew Hurrell, " International Society and Study of Regimes: A Reflective Approach", in *Regime Theory and International Relations*, ed. Rittberger, (Oxford: London, Clarendon Press, 1993), 59.

may help in the better understanding of the concept of UC. Without answers to these questions we are no closer to understanding the causes of UC.

Nicolas Onuf provides interesting insight into the concept of UC. According to him, people make society, and society makes people and it is rules that link the two elements together. Rules also tell us who the active participants in a society are. Constructivists call these participants agents. Within the international society, states function as primary agents simply by conducting relations with each other. Onuf argues that as rational beings, those agents who benefit from the rules will be more inclined to follow them. Agents who benefit less are still inclined to follow the rules because doing so still benefits them more than not doing so. Nevertheless, agents may break any given rule after weighing the consequences of either choice for themselves.[63]

Onuf also argues that in a complex world, agents often make choices that have consequences for themselves and others that they had not anticipated or do not care very much about. UC frequently form stable patterns with respect to their effect on agents. Any stable pattern of rules, institutions, and UC give society a structure. Agents are always observers. Insofar as they observe consequences that they had not intended, and accept them, such consequences are no longer unintended. According to Onuf, if agents decide that these consequences are bad for them, they will act to change them. If UC seem to rule, it is because agents intend for them to do so.[64]

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[63] Vendulka Kubálková, Nicholas Onuf, Paul Kowert, eds., *International Relations in a Constructed World* (Armonk, N.Y.: M.E. Sharpe,1998), 74-5.

[64] Nicholas Onuf, "Constructivism: A User's Manual", in *International Relations in a Constructed World*, edited by Vendulka Kubálková, Nicholas Onuf, Paul Kowert, 61-3.

Therefore, according to Onuf, if states decide that consequences of regimes are not in their interest then they will change them and if UC continue to exist it is because the agents (in other words, states) want them to. It would however, be helpful if we know how states decide when regime consequences are in their interests or not, who makes this decision and where within society this pressure comes for change or continuation of policy. However, by treating the state has a unitary actor we are unable to get answers to these relevant questions. Answers to these questions are pertinent in being able to understand state behavior, particularly if we are trying to understand the dual nature of state action. In fact, since UC signify dual behavior on part of the states, it goes against the neo-liberal and neo-realist logic of unitary actor. Both these schools of thought presume and therefore can explain a single rational (unified) action on behalf of the state. However, UC of regimes suggests dual action on part of the states, one that is a loyal, compliant member of the regime and other that pursues self-interest. This requires opening up the black box in order to better understand state behavior.

Chapter 3

The Theory of Unintended Consequences

In this chapter, I build on the discussion from the previous chapter to provide a theory of UC. Drawing on the literature reviewed I provide a list of four propositions that highlight the circumstances under which UC are likely to take place. According to these propositions, UC are more likely to take place in; 1) collaboration as opposed to coordination regimes; 2) inclusive membership regimes as opposed to exclusive membership regimes, and; 3) issues of critical importance like security and economy, that threaten the survival of the state or the office of the government in power, as opposed to less critical issues like human rights. I also provide a distinction between security and economic regimes and argue that in order to fully understand the causes of UC in economic regimes, we need to open the black box of domestic politics. Therefore, the chapter then examines the literature that purports to bridge the gap between international relations and domestic politics. Based on the literature reviewed I present a theory of why UC take place. Briefly, UC occur when a government faces pressure from domestic actors to provide relief from the harsh impact of an international regime. Since governments lack the freedom to either opt out of the regimes or ignore domestic pressure, they try to alleviate domestic concerns by finding alternative ways that do not openly defy the regime but are contrary to the purposes of the regime. Based on the

above theory, I put forth a list of general testable hypothesis that will be applicable across regimes.

Under what circumstances are UC more or less likely to occur?

Though regime literature does not provide any direct reference to the study of UC, based on the review of literature in the previous chapter, and drawing upon studies related to regime consequences, effectiveness and compliance, I come up with following propositions, that highlight the circumstances and the types of regimes are likely to witness UC.

Proposition 1: UC are more likely to take place in collaboration as opposed to coordination regimes.[65]

Coordination Regimes

UC are less likely to occur in coordination regimes, because here the purpose is merely to coordinate action, which does not change or conform to state policy. Even if the regime requires a change in policy, it is not such that it conflicts with the direct interest of the state. In coordination regimes, neither actor has a dominant strategy, nor does either prefer a single given outcome. Rather, there exist multiple equilibrium points that both value equally. However, these actors cannot be certain that they will arrive at one of these outcomes if they act independently and simultaneously. Without coordination, they may end up with one of the outcomes that neither of them wants. Such coordination problems are easy to deal with because the actors do not have divergent interests; neither has a

[65] Situational-Structuralists like Arthur Stein, Duncan Snidal, Kenneth Oye, Michael Zurn, and Lisa Martin have also distinguished between coordination and cooperation situation, each requiring different treatment.

preference for a particular outcome. Any procedure that allows convergence of their expectations makes coordination possible by allowing the actors to arrive at equilibrium. It is however, an equilibrium outcome from which neither actor can shift unilaterally to better its own position. Driving on the right side of the road (as opposed to the left), for example, is a simple coordination mechanism that allows for smooth movement of traffic without problems of collision. It is an arbitrary decision that allows for convergence of the actors' preferences on a given equilibrium. The other equilibrium would be driving on the left. The actors however, are indifferent to the two points of equilibrium.[66] Another example of a coordination regime is the World Meteorology Organization (WMO). The principal function of the regime is to establish internationally accepted rules and procedures for the conduct of international meteorology. This means identifying the networks and locations of meteorological stations that should be established, the types of observations, and the times at which they should be made.[67] In order that meteorological data collected by one country and transmitted to others be readily comprehensible, it is necessary that all countries use the same meteorological codes for such transmission. Similarly, the requirements of international aviation from meteorological data are of great importance from a safety viewpoint, and hence the rules concerning aeronautical meteorology are specified in detail and many have mandatory status. In both cases, it is usually in a state's own interest to observe these detailed provisions.

For an over all discussion on the contributions of situational-structuralists see Hasenclever, Meyer and Rittberger, 44-59.

[66] This is what Arthur Stein refers to as the dilemma of common aversion and common indifference where the actor's only preference is to coordinate. The actors are indifferent to the equilibrium outcome. See Arthur Stein "Coordination and Collaboration: Regimes in an Anarchic World," *International Organization* 36 (1982): 301-304.

[67] For details of the provisions see, David M. Leive, *International Regulatory Regimes: Case Studies in Health, Meteorology, and Food*, Vol. I, (Toronto, Lexington Books, 1976).

The regulatory instruments are viewed in a sense as practical operating instructions that members should follow; if they do not do so it is very often because they lack the requisite expertise or equipment and not because of any willful refusal to comply. In circumstances like this, the organization prefers to direct its efforts at providing technical assistance rather than screen non-compliance. Self-interest on the part of the members is probably the most powerful inducement to follow the regime's various rules and recommendations because each needs the meteorological data collected by others. Strict adherence to the coding rules is not only a legal obligation, but also a practical necessity, if the data collected are to be readily understood by all WMO members. Not only do members have an interest in securing the help of others, but equally as important is the fact that members generally have no reason not to cooperate with others. There is very little or no incentive to find loopholes in order to evade their obligations.[68] Further, members gain nothing by either formal or informal cheating/defection. Therefore instances of UC are not likely to be found in such simple coordination games.

Battle of the Sexes Game

Serious collective action problems can arise when actors favor different coordination points. Such kinds of regimes may be better explained by the battle of the sexes game. This game has two possible equilibrium outcomes, one of which is preferred by each of the players. Neither has a dominant strategy, so the best course of action depends on how the other player behaves. Such coordination games sometimes have major distributional implications, which make cooperative solutions difficult to achieve.

[68] See Leive, 285-8.

The central dilemma in this situation is deciding which of the two equilibrium points will prevail. The two players disagree on this and bargaining over the outcome might be quite intense, especially if the players expect the gains to hold far into the future. However, once equilibrium has been established, neither player has an incentive to defect from it. In this game, for example, both parties would like to go to dinner. The only disagreement is over which place to eat. Once that decision is made there is very little or no incentive to defect, because the preference (given) is to eat together. Defection may mean eating at your favorite place but it will also mean eating alone. Therefore there is no incentive for states to defect formally or informally because the first preference is to eat together, or to coordinate policies.

Nevertheless, such coordination is difficult to achieve despite the fact both actors prefer the same outcome because they disagree in the choice of preferred equilibrium. The greater this conflict of interest, the harder it is for them to coordinate their actions. Yet, once established, the regime that makes expectations converge and allows the actors to coordinate their actions is self-enforcing; any actor that departs from it hurts only himself. These kinds of decisions do not give any added advantage to the state or its domestic actors. There is no incentive for surreptitious cheating. Since the point of diverging from an established equilibrium is to force joint movement to a new one, defection must be public. The (deliberate) non-compliance that occurs is to indicate dissatisfaction with the distributional consequences of the regimes and is therefore public.[69] Thus, coordination games do not require institutions with strong mechanisms for surveillance and enforcement. Since no state would gain by deviating from the established outcome, each need devote little attention to prevention of cheating. As Lisa

Martin puts it, "under these conditions, secret defection makes as little sense as undertaking terrorist operations while attempting to prevent publicity about them."[70] In both the cases, the point is to impose high cost on others in order to force them to change their policies in a specified manner, which requires publicity about the reasons for and nature of defection.

An example is the Codex Commission or the Joint Food Standard Program, part of the FAO. The Codex Commission's principal function has been the development and adoption of recommended standards to be applied on a worldwide basis and covering a wide variety of foodstuffs. They are sent to member states that are entirely free to accept or reject them. Full acceptance means that the country undertakes to conform its food law to the particular standard. Products to which the standard applies will be permitted to be distributed freely, and those not complying with the standard will not be permitted to be distributed under the name and description specified therein. The adoption of identical standards by countries is intended to facilitate international trade and to reduce the incident of NTBs to international trade in food products.

Countries accepting the standard of the Codex Commission have two basic obligations. One, they must ensure that a product that does not comply with the standard's requirements is imported for domestic consumption or domestically produced for domestic consumption. To have limited the standard to import products would be considered discrimination.[71] The intent of the acceptance provision is that the obligation and responsibility for enforcement of food standards is placed on the country where the product is consumed and not on the exporting country. As in the case of WHO, or the

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[69] For a discussion on collaboration and coordination regimes see Hasenclever, etc. al, p. 45-51.
[70] Lisa Martin, " Interests, Power, and Multilateralism," *International Organization* (1992): 776-7.

Meteorology Regime, the lack of conformity is greater because of the lack of resources than the explicit desire to not follow the regime. Many of the recommended standards and codes of hygienic practice fill a genuine practical need. Moreover, the Codes' process ensures that the ultimate "users" of the standard, such as government ministries and industrial and commercial interests can have a reasonable measure of confidence in their content. Thus it perpetuates an informal tendency to follow a standard even in the absence of formal acceptance. Moreover, it helps set a uniform standard, which helps in free trade, and reduce the use of NTBs. The manner in which the Codex regime operates means that a country can be vitally affected by a recommended standard even if it has not accepted the standard, if countries importing its products have done so. Exports to such countries would have to comply with the standard, although domestic distribution within the non-accepting country need not conform. Therefore, not following the accepted standards does mean that your products will not be accepted in the foreign market. There are no incentives for surreptitious cheating and states can acquire no extra benefits from such cheating. However, they will lose out in terms of trade.

In coordination games where the actors have more than one preference, differences usually occur at the negotiating stage. Once the regime is established, like in a simple coordination game, there is very little incentive to defect. Any dissatisfaction with the regime needs to be voiced openly. Undetected, informal defection provides no advantages to a member state and therefore eliminates the possibility of UC.

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[71] Leive, vol. 2, 464

Collaboration Regimes

Collaboration games are characterized by situations in which equilibrium outcomes are sub-optimal. In another words, independent decision-making leads to equilibrium outcomes that are Pareto-deficient-outcomes in which all actors prefer another outcome to the equilibrium outcome. The most commonly used example is that of the Prisoners Dilemma, in which the actors' dominant strategies lead them to an equilibrium outcome that is Pareto-deficient. There is an alternative outcome that both actors prefer to the equilibrium one. To arrive at the Pareto-optimal outcome requires that all actors give up their dominant strategy. In addition they should not try to attempt to obtain their most preferred outcome once they have settled at the unstable outcome they prefer to the stable equilibrium. The dilemma arises when the Pareto-optimal outcome that the actors mutually desire is not an equilibrium outcome. In order to solve such dilemmas and assure the Pareto-optimal outcome, the parties must collaborate, and all regimes intended to deal with dilemmas of common interest must specify a strict pattern of behavior and insure that no one cheats. Each actor requires assurances that the other will give up its rational choice. A more formalized process of compliance also signifies such kinds of regimes.

However, such formalized behavior institutionalized by regimes is not able to overcome the state incentive to defect. "Multilateral norms fail to resolve, or may even exacerbate, collaboration dilemmas".[72] Collaboration problems contain strong incentives to defect from established cooperative patterns of behavior, since defection results in immediate payoffs. For example, states may have agreed to dismantle TBs in trade in order to ensure that states can follow free trade. However, if a state can find an alternative

to TBs to protect its market, then it can not only enjoy the benefits of free trade but also be able to protect its market and entrepreneurs from international competition. Therefore, here the incentives for defection are higher than in coordination regimes. Further, it is not only beneficial to defect; there is an added advantage if the state can find unofficial means for defection. That way a state can continue to enjoy the benefits of being part of the regime, without actually giving up the advantages of staying out of the regime. Similarly, in issue areas like security, states may for example have agreed under the CTBT to give up nuclear explosions. However, member states while complying with the rule of no-nuclear explosion could continue testing through computer simulations. States can therefore continue to follow the formal rules of the regime yet undercut the purpose of the regime through informal defection (UC). Incentives in collaboration regimes to defect formally or informally are far greater than in coordination regimes.

Proposition 2: UC are more likely to occur in all inclusive membership regimes as opposed to exclusive membership regimes of like-minded states (or states with similar capacity and/or capability).

In critical issue areas like security and economics, regimes that are inclusive in membership, that is, those that aspire to membership of all states in the international community are more likely to have UC. On the other hand, regimes that are exclusive in their membership, those that restrict their membership to only a select group of countries that share common features like geographic region, similar economic capacity, economic or political philosophy, or international status, are less likely to have UC.

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[72] Lisa Martin, *Interest, Power and Multilateralism*, 770.

Regimes that strive towards universal membership have to take into account the interests and limitations of all the states. Most regimes in such cases are inspired and supported by hegemons or states that have higher status and position in the international system.[73] These regimes therefore reflect the view and interests of the dominant partners.[74] Obviously, it is very difficult, if not impossible, to satisfy every player in a system. Therefore, some states are bound to have their interests ignored and may not be completely satisfied by the regime, but may nevertheless continue to be a member of the regime because of peer pressure or advantages that may accrue from being part of the regime. However, when faced with issues related to national interest or domestic pressure states may be forced to respond to demands placed upon them. Therefore, all-inclusive universal regimes are more prone to UC.

On the other hand, regimes that are based on exclusive membership often share a common bond among their members that goes beyond just the recognized need for cooperation in a specific issue area.[75] These members are united by either common geographic region, democratic tradition, etc, lending themselves to common feelings of solidarity, community and loyalty and thus for collective definition of interests, for example, the European Union, the NAFTA Agreement, the ASEAN community and NATO. Such kinds of arrangements are less likely to face UC. The states in such cases come together not only because they share a need to cooperate but also because they

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[73] For a discussion on the importance and role of hegemons on regime formation and survival, see Hasenclever, Mayer and Rittberger, 86-95.

[74] While this may be true of the exclusive regimes as well because of commonality of interest due to exclusive membership the view of the dominant partner are not very different from those of the other partners.

[75] Several international theorists have highlighted the benefits of a sense collective identity and community in facilitating international cooperation. For example see Alexander Wendt, "Collective Identity Formation and the International State", *APSR*. 88 (1994), Karl Deutsch, et al., *Political Community and the North Atlantic Area* (Princeton: Princeton University Press, 1957).

share several commonalties that makes their concerns and interests similar. Therefore, their approach to these problems is similar. Further, because these are exclusive membership regimes, and the members share similar capacities and capabilities, the provisions of the treaty are more likely to be acceptable to all the members as opposed to regimes that are more inclusive.

In neo-liberal analysis, there is an emphasis on the obstacles to cooperation in groups with large numbers.[76] It is to a large extent based on Mancur Olson's logic of collective action in which he argues, "the larger the group, the farther it will fall short of providing an optimal amount of collective good."[77] According to Kenneth Oye, cooperation requires recognition of opportunities for the advancement of mutual interests, as well as policy coordination once these opportunities have been identified. As the number of players increases, transactions and information costs rise. Very importantly, the intrinsic difficulty of anticipating the behavior of other players and of weighing the value of the future goes up with the number of players.[78] Oye further argues "the chances of including a state that discounts the future heavily, that is too weak (domestically) to detect, react, or implement a strategy of reciprocity, that cannot distinguish reliably between cooperation and defection by other states, or that departs from even minimal standards of rationality increase with the number of states in a game."[79] Similarly, Lisa Martin argues that in collaboration games with many actors, there is higher incentive to engage in undetected cheating unless enforcement and monitoring are taken over by a

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[76] For a critic of neo-liberal argument against cooperation in large numbers see Miles Kahler, "Multilateralism with Small and Large Numbers" in, *Multilateralism Matters: The Theory and Praxis of an Institutional Form* , edited by John G. Ruggie, (New York: Columbia University Press, 1993), 295-326.
[77] Mancur Olson, *The Logic of Collective Action* (New York: Schocken, 1968) 35.
[78] See Kenneth Oye, "Explaining Cooperation Under Anarchy: Hypothesis and Strategies" in Kenneth A. Oye, *Cooperation Under Anarchy* (New Jersey: Princeton University Press, 1986), 19.
[79] ibid

hegemon. Therefore, according to Martin, in collaboration games multilateral norms cannot promote cooperation except under the restricted circumstances of self-enforcing agreements among a small number of states.[80]

Proposition 3: UC are a function of issue areas. UC are more likely to occur in security regimes and issue areas that have direct or indirect economic benefits to domestic interests. In other words, UC are more likely to occur in issue areas that touch on the survival of the state or the government.

Within collaboration regimes, UC are more likely to occur in security regimes and issue areas that have economic benefits or place constraints on domestic interests.

UC are more like to occur in security regimes, because security is an area of "high politics" as Realists put it. Security of the country is the most critical element of any state's sovereign status and is closest to the direct national interest. Therefore, even though a state may be persuaded to join a security regime, it would be just as willing to defect from a regime if participants in any way threaten the survival or even the security of the country. If, on the other hand, it can find alternative means to enhance its security vis-à-vis other states and continue to enjoy the benefits of the regime, then it would be more likely to opt for an informal defection and thus UC.

Economic regimes place a different kind of pressure on states. Here, the states not only have to be concerned about the state interests as defined in unitary actor terms but also have to face pressure from domestic actors. Since maintaining its power status is a crucial element for any government, it cannot afford to ignore pressure or demands of domestic constituents that may have significant electoral leverage. Therefore, in such a

[80] Lisa Martin, Multilateralism, 782-3.

scenario a state is faced with dual pressure from the regime and domestic actors. It has to maintain its commitment to international regimes and thus continue to be a law-abiding member of the international community. On the other hand, a state also has to be a responsible and responsive government with the underlying knowledge that if it fails to appease or assuage its domestic community, it may not be able to stay in power for long. Therefore, the dilemma for a state is to maintain both its international reputation and domestic support. Such a scenario lends itself naturally to UC where the state maintains its membership of a regime, but finds alternative means to pacify its domestic interests.

John E. Richards[81] argues that national politicians create and maintain international institutions to maximize domestic political support. Election seeking politicians seek to create international institutions that benefit important domestic constituents. However, different governments face different constituencies and thus have divergent preferences over market place rules. It is these divergent preferences that generate conflict over the allocation of the increased wealth generated by international institutions. Richards argues that international institutions are created only when they are politically efficient, that is they provide an increase in electoral support for national politicians. International institutions may provide overall gains; some actors in practice gain more than others. Institution building at the international level thus provokes fierce domestic political battles. Domestic interests lobby national politicians to create international institutions favorable to their interests and election-seeking national politicians seek to create institutions that transfer wealth to important domestic constituents. National politicians create and maintain international institutions to

[81] John E. Richards, "Towards a Positive Theory of International Institutions: Regulating International Aviation Markets," *International Organization*, 53 (1999):1-37.

maximize domestic political advantage. He goes so far as to say that statesmen are willing to accept economically inefficient international regimes as long as they provide additional wealth to important domestic interests.[82] This indicates the degree of importance attributed to domestic actors in states' decision to join a regime. As argued earlier, what options do the politicians have if the institutions no longer fulfill the requirement of the domestic interest? Do they have an option to back out of the institutions? How feasible is that given nature of interdependence and globalization? Further, states have not only domestic interests, but also global interests and those of the state at large. They have to find a balance between these two interests. This restricts the ability of politicians to back out of a regime if it is no longer beneficial. However, what if the state has an option to stay in the regime, be a loyal member, and yet be able to satisfy its domestic interests? In other words UC.

Difference between Security and Economic Regimes

A very important distinction needs to be made regarding the two main issue areas where of UC are found. In the case of security issues, preferences of different actors in the legislature, executive and the interest groups are more likely to coincide. Therefore, in case of similar preference, a single national interest may emerge and in such a situation the unitary actor model is tenable. This scenario seems more likely according to Milner, in case of extreme situations like a house catching on fire or a county being invaded by another.[83] Similarly, Gourevitch argues that, "Defense of realm was (is) quintessentially that function which required a single sovereign; it required speed,

[82] Richards, 3.
[83] Milner, 1997, 12.

authoritativeness, secrecy, and comprehensiveness. These attributes were beyond the reach of representative assemblies."[84] Therefore, in most countries, the issue of security is not such that it involves the role of special interests. The most critical role in issues related to security is therefore played by the government. Leaders still have to make a decision that will ensure the security of the country and hence their position and yet will not fall short of its international commitments. On the other hand, issues that relate to economics have direct or indirect implications for domestic actors and, therefore, statesmen are more likely to experience pressure from others societal actors outside of government. Hence the unitary model does not seem tenable. Therefore, in order to understand the role played by domestic actors we need to shed light on the complexities of the black box of domestic politics and examine the literature that attempts to link the gap between domestic and international politics.

Bridging the Gap: Interaction of International Relations and Domestic Politics

Traditionally, international theorists have tended to treat the state as a unitary actor where state behavior is best explained by international constraints and opportunities. Even though the relevance of domestic actors has been conceded, it has been assumed that states are rational actors with stable preferences. However, many scholars have found the systemic assumption to be inadequate in explaining state behavior and found it helpful to focus on the interaction of both international and domestic factors. Peter Gourevitch was one of the first political scientists who brought the interaction between international relations and domestic politics to the forefront. He

[84] Peter Gourevitch, "The Second Image Reversed: The International Sources of Domestic Politics," *International Organization*, 32 (1978), p. 10.

was particularly interested in the impact of the international system on domestic structures. In his critique of the existing literature he puts forth three separate ideas. First, in using domestic institutions as a variable in explaining foreign policy, we must explore the extent to which these institutions derive from the exigencies of the international system. According to Gourevitch, two aspects of the international system have powerful effects upon the character of domestic regimes: the distribution of power among states, or the international state system; and the distribution of economic activity and wealth, or the international economy. These two aspects of a state's position in the international system have an impact upon the domestic regime type or the institutional structure (for example, constitutionalist or authoritarian, presidential or parliamentary) and on the coalition pattern or the type and mix of dominant elites.

Second, Gourevitch argues that it in trying to explain foreign policy, not only do the domestic institutions matter but also the interest seeking individuals occupying these institutions. In other words, politics shapes outcomes as much as institutions do. In trying to explain the relevance of state forms on foreign policy, Gourevitch suggests dealing with following questions: a) what is the position of the country being studied in relations to the world economy? If the country's policies are in accordance with that expectation, then there is no reason to elevate the relevance of "state structure" above "interest" as an explanation; b) within society, whom does the policy benefit? Who supports it? Who opposes it? Does actual policy correspond with the wishes of a significant coalition of interests? What levers do structures give various interests in policy battles? c) Who defines the policy alternatives, both the ones debated and the ones adopted as policy-officials of the state, politicians and civil servants, or agents of non-state actors, business,

union, voluntary association leaders? and finally d) How is the policy 'legitimated'? What makes the policy politically successful? Whose opposition would block the policy? Whose opposition could impose severe political costs on those who seek the policy? According to Gourevitch, an attempt to answer these questions will help clarify the argument.

Katzenstein, in the same vein, argued that in the present era of international interdependence, strategies of foreign economic policy depend on the interplay of domestic and international forces.[85] A selective focus on either the primacy of foreign policy or domestic politics overlooks the fact that the main purpose of all strategies of foreign economic policy is to make domestic politics compatible with international political economy. Katzenstein argues that management of interdependence is a key problem, which all advanced industrial states face. So how does one explain different national responses in dealing with these problems? The author contends that it is the difference in their domestic structures and the international context in which they are situated that dictates the adoption of different strategies of foreign economic policies. His book seeks to understand the different national responses by advanced industrial states to the international challenge of the oil crisis in the early 1970s. The author contends that a systematic analysis of domestic structures is essential in order to understand international political economy. At the same time the relevance of international factors cannot be slighted.

Robert Putnam, however, was the first to highlight the dual pressure that politicians face from both the domestic politics and international arenas in his article

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[85] Peter Katzenstein, ed., *Between Power and Plenty: Foreign Economic Policies of Advanced Industrial States*, (Wisconsin: Wisconsin Univ. Press, 1978).

"Diplomacy and Domestic Politics: The logic of two-level games" in 1988.[86] According to him "the politics of many international negotiations can be usefully conceived as a two-level game. At the national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision- makers, so long as countries remain interdependent, yet sovereign."[87] The two-level game is made complex by the fact that moves that are rational for a player at one board may not be politically sound for the same player on the other board. Further, any key player at the international table who is dissatisfied by the outcome may upset the game board, and conversely, any leader who fails to satisfy his fellow players at the domestic table risks losing power at home. Therefore, Putnam treats the state both as a unitary actor and as one of many players thus bridging the gap between international relations and comparative politics.[88] The tough task for the state is to reconcile its two roles in such a way that it is a winner on both the boards.

Peter Evan, Harold Jacobson and Robert Putnam further developed the two level game approach, in their book, *Double-edged Diplomacy*. The approach begins by assuming that "statesmen are typically trying to do two things at once; that is, they seek to manipulate domestic and international politics simultaneously. Diplomatic strategies

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[86] Robert D. Putnam, "Diplomacy and Domestic Politics: The logic of Two-level Games," *International Organization* 42 (1988).
[87] Putnam, 434.
[88] Scholars in international relations treat state as a unitary actor interacting with other states in the international system. Scholars in comparative politics on the other hand treat state (or the government) merely as one of the players (other players being pressure groups, special interests, labor unions, etc) in the domestic arena.

and tactics are constrained by what other states will accept and by what domestic constituencies will ratify."[89] Further, the authors contend that this image of the executive as "Janus-faced" that is forced to balance international and domestic concerns in a process of double-edged diplomacy is in sharp contrast to the images that is partial either to the demands of domestic politics or the systemic logic of national interest. The assumption is that when the two logics, international and domestic do not correspond, then an area of autonomy is created in which the chief executive must choose how to reconcile them. The two-level game approach differs from previous approaches in that it is primarily a theory of international bargaining. The theory also places key emphasis on the statesman as the central strategic actor and purports to reconcile various roles of statesmen as self-seeking goal maximizers, as agents of society seeking to maximize domestic political support, and as a statesmen faced with domestic constraints on mobilization. The most distinctive departure of this theory is that the statesman's strategies reflect a simultaneous "double-edged" calculation of constraints and opportunities on both the domestic and international boards.

While the authors have made a distinct departure from past theories in attempting to understand the pressures that the statesman face in their various roles, the theory is confined to understanding and explaining the bargaining stage only. The authors do not take into account the fact that in this bargaining process some are going to be winners and other losers. Not every state will be successful in reconciling its domestic and international interests and pressures. Very importantly, what the theory does not address is the after-effects of the international agreements. What happens once the agreement has

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[89] Peter Evans, Harold Jacobson, Robert Putnam, *Double-Edged Diplomacy: International Bargaining and Domestic Politics*, (Berkeley, University of California Press, 1993), 15.

been signed? Do the interests of the statesmen and the domestic actors remain static? As circumstances, coalitions and governments change, do the preferences of the actors involved modify? In these changed circumstances (such as the entry of new competitor in the market; acquisition by an adversary of new sophisticated weaponry; or loss of market because of new human rights or environmental standards; change in domestic coalitions; loss or gain of a hitherto important or not so important actor) can a statesman choose to opt out of an international agreement that is no longer completely beneficial? How do states deal with international agreements that may not be completely beneficial to domestic actors in particular and the state interest in general? States now face the dual pressure of domestic actors pressuring the state to defy the international rules to satisfy their interests whilst at the same time facing the obligation to abide by its international commitments. How do states deal with such kinds of dual pressure?

Keohane and Milner in their book emphasize the fact that we can no longer understand politics within countries without comprehending the nature of the linkages between national economies and the world economy, and changes in such linkages.[90] Their book essentially focuses on the effects of internationalization rather than its causes. The volume is built around two core sets of values. First, internationalization affects the policy preferences of actors within countries in broadly predictable ways, based on the economic interests of the actors. It expands the tradable sector within an economy, thus reducing the amount of economic activity sheltered from the international markets. Internationalization therefore increases the sensitivity of national economies to world market trend and shocks. However, according to the authors, internationalization affects

[90] Robert Keohane and Helen Milner, ed., *Internationalization and Domestic Politics* (Cambridge, Cambridge University Press, 1996).

policies and institutions differently from country to country; the existing institutional context conditions the incentives facing interests groups and politicians. Therefore, the second proposition of their work is that political institutions can block and refract the effects of internationalization. Political outcomes cannot be predicted simply on the basis of economic interests.

The focus of the book, therefore, is the impact of internationalization on domestic politics. The authors find that the effects vary cross-nationally on the basis of institutions and political and economic conditions. However, in order to understand the complete picture, focus needs to be concentrated not only whether internationalization has an impact on domestic politics, but also how these actors respond to pressure from the international arena. Do the domestic actors have to compromise their preferences, change them, or can they manipulate the situation and find alternative ways to satisfy their preferences. Therefore the situation should be seen more as a cyclical motion where internationalization has an impact on domestic actors and institutions who in turn, responding to the effects of internationalization have an impact on the international system itself.

In *Interests, Institutions and Information*, Helen Milner also puts forth the notion that domestic politics and international relations are inextricably interrelated.[91] She argues that a country's international position exerts an important impact on its internal politics and economics. Conversely, its domestic situation shapes its behavior in foreign relations. The book's central argument is that "cooperation among nations is affected less by fears of other countries relative gains or cheating than it is by the domestic

[91] Helen Milner, *Interests, Institutions, and Information: Domestic Politics and International Relations* (Princeton: NJ, Princeton University Press, 1997).

distributional consequences of cooperative endeavor. Cooperative agreements create winners and losers domestically; therefore they generate supporters and opponents. The internal struggle between these groups shapes the possibility and nature of international cooperative agreements. International negotiations to realize cooperation often fail because of domestic politics, and such negotiations are often initiated because of domestic politics. All aspects of cooperation are affected by domestic considerations because cooperation is a continuation of domestic political struggles by other means."[92]

Milner further claims that states are not unitary actors, that is, they are not hierarchical but are polyarchic composed of actors with varying preferences who share decision-making powers. Power is generally shared between the executive, the legislature, and societal interest groups. Domestic politics generally varies along a continuum from hierarchy to anarchy with polyarchy in between. The study starts with the premise that all polities exhibit some degree of polyarchy or policy sharing among multiple political actors. Because international cooperation may affect these actors in different ways, the actors exploit whatever institutional resources and information they possess to protect their interests. As a result, the prospects and terms of international cooperation depend crucially on the distribution of preferences, the nature of political institutions, and the availability of information with states. First, the more divided the government (that is the more divergent domestic actors interests) - the less likely is international cooperation, but the more likely is any agreement to favor legislative preferences. Second, political institutions define initiation, amendments, ratification or veto, proposal of referendums and side payments powers and therefore determine whose preferences will be reflected the most in foreign policy. Third, the domestic distribution

[92] Milner (1997), 9-10.

of information influences international cooperation. The above-mentioned claims are confirmed by the use of formal modeling.

The model however, confines itself to the period of international bargaining at the negotiation stage. It does not go beyond the difficulties of initiating and establishing cooperation to what happens once an agreement is signed. What if the preferences of actors change? States do not necessarily know nor can they predict the exact impact of an agreement on politics. In some cases international agreements succeed in bringing about more positive change than anticipated and in others fall short of expectation for some partners. Further, domestic or international circumstances may change (for example change in the political ideology of the government in power, entry of new competition in the international market, etc) to make the international agreement less attractive to some of the partners. What options do the dissatisfied partners have in such scenarios? Milner claims that international cooperation is affected by domestic considerations. However, not every state is able to take fully into account its domestic interests. States operate in a hierarchical international system and it is only the interests of the powerful that are reflected in the international institutions.

Frederick Mayer in his article, *Managing Domestic Differences in International Negotiations*, provides yet another way of thinking about the interaction between the domestic and international structures and processes.[93] According to him, international negotiations are modeled as an internal-external bargaining process in which nations are not unitary actors, rather they are composed of domestic factions, which share power but differ in their interests. Domestic factions negotiate over what position will be taken by

[93] Frederick W. Mayer, "Managing Domestic Differences in International Negotiations: the strategic use of Internal Side-payment," *International Organization*, 46 (1992).

their party in the external negotiation. The article seeks to provide a framework for thinking more systematically about the effects of domestic divisions on international negotiations. The article also focuses on an important characteristic of the internal bargaining process, that is, the capacity of domestic factions to make side-payments to one another. The framework further clarifies the conditions under which internal divisions can be an asset or a liability in international negotiations. Mayer considers three categories of structural attributes to be important: 1) characteristics of the domestic factions; 2) domestic political institutions governing the rules of the internal game; and 3) the nature of the external (international) bargain. The configuration of domestic factions and their interests' affect the constraints imposed on the negotiators at the international bargaining table. A bargain in which there is virtual consensus of interest among relevant domestic faction may be very different from one in which there are strong differences of interest among them. Their interests, rules of the domestic political game, and institutional attributes determine how domestic factional interests manifest themselves in international bargains. For example, voting rules make a clear difference; absolute consensus gives every faction the veto, whereas majority rule makes veto power a function of coalition dynamics. Whether domestic constraints are useful or not depends to a large extend on the nature of the international game between nations. In general, according to Mayer, the less there is to be gained by competition, and the more to be gained by cooperation, the less likely it is that factional blocking will prove useful for claiming value and the more likely it will prove detrimental to the realization of joint gains. Further, Mayer suggests that when the essence of the external bargaining problem is distributive, restrictive internal factional constraints may be quite useful to a nation in

claiming value. On the other hand, when the essence of the external bargaining problem is integrative, that are when parties need flexibility to realize joint gains, restrictive factional constraints are likely to be more costly than helpful.

Again, like most of the previous work cited, Mayer confines his analysis to bargaining and negotiating stages and provides no consideration of the period following the international negotiations. The assumption made is that once the difficult stage of negotiation is over and agreements are signed then, differences in domestic political and economic interests of relevant domestic actors do not matter because they have already been taken care off.

In other words, we can go back to treating the state as a unitary actor. However, logic would suggest that there are always going to be circumstances in international negotiations where all states or their domestic interests may not be completely satisfied. They may have been forced or persuaded to sign on to a document that was agreed upon by major powers. Further, there may be changes in the international arena like entry of new competition, an increase in the power of an adversary, new alliances by foes, entry of new products into the market, etc. Any of these changes in the international arena can make an existing agreement less attractive to existing members. There may be changes in the domestic field, like change in ideology of the government, adverse effects of the agreement on powerful domestic actor or change in domestic economic, social or political configuration. In these changed circumstances what are the options for a government? Does it ignore domestic pressure or defy international agreements? I would argue neither of these. States would have to find another option.

Theory of UC

Does the above discussion take us any closer to our understanding of UC? What it does tell us is that we need to open up the black box of politics in order to have a better understanding of UC. There is too much happening within the state and whose impact cannot be ignored nor can the state be treated as a unitary actor with a single decision-making structure and united interests. It is important here to distinguish between a state and a government. Explanations of interstate relations have traditionally been categorized according to their level of analysis.[94] Both the Realists and the Neo-liberals portray the state as a self-interested, goal-seeking actor whose behavior can be accounted for in terms of the maximization of individual utility.[95] States are assumed to have stable and broadly similar domestic preferences, decision-making procedures, and abilities to extract resources from societies. They are distinguished only by their relative position in the international system. Outcomes shift only in response to changing external constraints, not domestic changes. Domestic explanations, by contrast, locate the determinants of foreign policy and international relations within the nation-state itself. Liberals have viewed the state in the domestic arena as merely one of the many actors struggling to attain power.

Current domestic theories can be divided into three sub-categories. First, society-centered theories stress pressure from domestic social groups through legislatures,

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[94] For a good analysis see, G. John Ikenberry, David Lake, and Michael Mastanduno, "Introduction: Approaches to Explaining American Foreign Economic Policy," *International Organization* 42 (1988): 1-14.

[95] For explanations that deal with international levels of analysis see, Kenneth Waltz, *Man, the State, and War: A Theoretical Analysis* (New York: Columbia University Press, 1959), Robert Keohane, ed., *Neo-Realism and Its Critics* (New York: Columbia University Press, 1986).

interest groups, elections and public opinion.[96] Second, state-centered theories locate the source of foreign policy behavior within the administrative and decision-making apparatus of the executive branch of the state[97] Finally, the theories of state-society relations emphasize the institution of representation, education and administration that link state and society.[98] International theories concede like the domestic ones that domestic actors play an important role in foreign policy making. The question that often divides them is whether the observed domestic behavior can best be accounted for by using international or domestic theory.

While the state as a unitary actor in the international arena is assumed to make decisions on behalf of its people, it also operates as a mediator among several interests within the state. At the international level, a government has to be concerned about the survival and interest of the state as a whole, and at the domestic level, while negotiating between different interests, it has to be concerned about maintaining its power in the government. These interests of the state as a unitary actor and as one of several players are not necessarily exclusive and at times work together to place different kinds of pressure on the state. Putnam has argued that at the national level, domestic groups pursue their interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among these groups. At the international level, national governments seek to maximize their own ability to satisfy

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[96] See James Rosenau, ed., *Domestic Sources of Foreign Policy* (New York: Free Press, 1967). Charles Herman, Charles Kegley, and James, Rosenau, eds., *New Directions in the Study of Foreign Policy* (Boston: Allen and Unwin, 1987).

[97] See, Graham Allison, *Essence of Decision: Explaining the Cuban Missile Crisis* (Boston: Little, Brown, 1971), Judith Goldstein, " Ideas, Institutions and American Trade Policy," *International Organization* 42 (1988): 179-217.

[98] See, Michael Doyle, "Kant, Liberal Legacies, and Foreign Affairs," *Philosophy and Public Affairs*, 12 (1983): 205-235, 325-353. Henry Kissinger, "Domestic Structures and Foreign Policy," *Daedalus*, (1966): 503-529.

domestic pressure, while minimizing the adverse consequences of foreign developments. Central decision-makers can ignore neither of the two games, as long as their countries remain interdependent, yet sovereign.[99] According to Evans, Jacobson, and Putnam, "Diplomatic strategies and tactics are constrained both by what other states will accept and by what domestic constituencies will ratify".[100] When these two demands do not correspond, then the executive has to find ways to reconcile them. According to Putnam, "statesmen in this predicament face distinctive strategic opportunities and strategic dilemmas."[101] It is these constraints and dilemmas that we are most concerned about when dealing with UC.

While the majority of the work seems to revolve around the negotiation stage of the international agreements, UC are evident only after the negotiating stage. Therefore, we need to examine what happens after the negotiation stage. This next stage is not so much about the role played by the domestic actors during the negotiating phase and the resulting agreement that emerges from this process of bargaining and negotiations but the response of the domestic actors within a state to the impact of international regimes once they come into force. Once the international regimes are formed, they not only direct state behavior or determine state policy choices but also have an impact on domestic actors within a state. This impact may be positive or negative. If the impact is positive then there is no fear of UC. However, if the impact is negative then one can find evidence of UC. Negative impact may be caused by a number of reasons[102]:

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[99] Robert Putnam, "Diplomacy and Domestic Politics" in Evans, Jacobson and Putnam, *Double Edged Diplomacy*, (Berkeley, University of California Press, 1993), 436.
[100] Peter Evan, Harold Jacobson and Robert Putnam, 15.
[101] Ibid, 440.
[102] This list is by no means comprehensive but provides a few examples where an existing regime may not seem as conducive to a state as at the time of its inception.

1. Entry of a new adversary in the international realm.
2. Acquisition of new technology by an existing adversary.
3. A new coalition of foes.
4. New competitor in the international market.
5. New product in the international market.
6. Loss of market because of new competition.
7. New environmental, health or human rights standards.
8. Change in domestic coalition.

Change caused due to any of the above mentioned scenarios could cause an existing regime to lose its appeal for a state. This loss of appeal could be caused by a dissatisfied domestic actors or emergence of a situation that may cause the state in general to feel less secure in the international environment than before. In this scenario, what are the options for a state? It has neither the luxury to ignore its domestic interests nor the liberty to opt out of its international agreements. Since the central decision-maker (government) is dependent on the support of the domestic actors to maintain its power, he/she cannot ignore the interests of these pressure groups. At the same time, he is not completely free from international commitments and pressures to capitulate to domestic interests. In an interdependent world where states rely on each other, they are not free to break international commitments. States have to maintain their reputation in good standing as responsible members of the international community or face retaliation and/or isolation from its members. Default on this responsibility will also risk the position of the government at home. Jeopardizing the state's reputation as a law-abiding member of the international community may also hurt the interests of other domestic actors in the

international arena along with facing accusations of being a poor foreign policy maker. Therefore, a state can neither default on its international commitments nor dissatisfy powerful domestic interests.

The flawed assumption of international regime theory is that it assumes that state's interests are static, i.e., once international negotiations are made states will necessarily abide by the rule of the games. Most of the existing literature in international relations treats the state as a unitary actor and therefore does not take into account the various domestic pressures that a government faces. Even the segment of IR literature that acknowledges the domestic pressure faced by a state accepts its constraints only in the negotiations or the bargaining phase of a regime. The postulation is that once such international bargaining has taken place and states have given their assent to an international treaty or an agreement, they will comply with their international commitments. It is also assumed that all states are satisfied with the international agreement and, if they are not, they will either not sign the agreement or will defect at a later date. The regime literature does acknowledge that when negotiating international regimes it is usually the interests of the dominant state(s) that are reflected or taken into account. These dominant states, because of their international position, can and do railroad the smaller states to agree to their terms.

What the theorists have failed to conceive is that the smaller states face pressure from their domestic constituents as well. They may not fully acknowledge to their public or the relevant interest group how much of their position had to be compromised for sake of maintaining power but at the same time they may have to find alternative ways to satisfy their local interests. Further, as mentioned earlier, circumstances may change that

may make an international agreement less attractive to a state than it did at the time of its inception. It may also be that domestic actors in retrospect may find the regime to be too confining and restrictive and not necessarily economically or strategically viable. Further, it may be possible that while the regime is beneficial to the state in its interaction with some states, it may not be so in the case of other states. Therefore, it may not be in the interest of the state to openly defect from the international regime.

Other than the fact that the regime may not be entirely useless for a state and in fact may actually be beneficial in some aspects and therefore defection may not be such a good option, states also have to be concerned about their reputation. This may be true both of small and large, dominant states. There has been sufficient amount of work done, most notably by Robert Keohane, on the reputational concerns of states in their dealing with the international community.[103] States have to be careful about fulfilling their international commitments. Defection in the case of one agreement may make a state an untrustworthy partner and a pariah in the community of states. In addition to reputational concerns, smaller states also face fear of punishment by way of retaliation. Therefore, the option to defect has to be exercised carefully and selectively to be used only in cases of direct threat to the national interest of the state overall, as may be the case in issues related to security. However, that does not mean that statesmen can in anyway shy away from the pressure of relevant domestic interests to fulfill their changed (or unfulfilled) demands. As is often emphasized, the main aim of a statesman is to maintain power and failure in either arena, domestic or international, can cost him his power. Therefore, even after the agreements are signed statesmen continue to face dual pressure. Regimes take

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[103] Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (NJ: Princeton, Princeton University Press, 1988) 104.

away from a state the very essential element of its sovereignty, that is, a state's right to make policy choices on behalf of its people. International regimes necessarily restrict this right of a state. However, as mentioned earlier, states/governments cannot ignore domestic pressure, nor can they opt out of regimes. Therefore, the result is UC, where governments find alternative ways to fulfil the interests of the state domestic actors, without defying the formal rules of the regime.

Simply put, *UC occur when a government faces pressure from domestic actors to provide relief from the (harsh) impact of an international regime. Since governments lack the freedom to either opt out of the regimes or ignore domestic pressure, they try to alleviate domestic concerns by finding alternative ways that do not openly defy the regime but may be contrary to the purposes of the regime.*

This observation poses yet another relevant question, that is, do we find evidence of this behavior among all the states in the world and what are the factors that determine that a state would indulge in UC? To find an answer to this question we need to look deeper into the black box of domestic politics.

What can we learn from the existing literature?

Role of the Chief Decision-maker

An important aspect that has found place in the literature on the interaction of the domestic and international arenas is the key role played by the statesman/diplomat/central decision- maker. The reason that a statesman plays such a critical role is that he/she sits on two tables simultaneously; one, as a diplomat on foreign policy table and the other as a mediator of various interests in the domestic arena. The key aim of the decision-maker

is to balance the two interests in such a manner that it does not upset his position as the central decision-maker. Thus the main purpose of the decision-maker is to maintain his power. According to Siverson, "a venerable axiom of political analysis is that office holders desire to continue to hold office and behave accordingly"[104]. A recent line of work has begun to emerge from the assumption that political leaders shape their foreign policy choices with a view towards maintaining themselves in office.[105] Smith has argued that a leader's belief about the prospect for retaining office under varying circumstance shapes the kinds of policies that are chosen and the leader's willingness to make commitments about various choices. In other words, leaders choose those policies that help them survive.[106] The desire to retain office shapes both the choices and strategies. It is not merely, successes at home that determine the survival of a government, but a leader's international success affects his survival at home as well. Gilligan and Hunt go so far as to claim that even in issue related to security the critical element is not the survival of the state from foreign attack but rather the political survival of the politicians that make security policy.[107]

However, while the statesman is concerned about his domestic power, he also has to be concerned about international interests when negotiating agreements. He has to be able to negotiate policies that are not only acceptable to domestic actors but also to the other states as well. As Evans, Jacobson and Putnam argue, "statesmen are typically

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[104] Randolph Siverson, ed., *Strategic Politicians, Institutions, and Foreign Policy* (Michigan: Ann Arbor, The Univ. of Michigan Press, 1998), 1.
[105] . For example see Bueno de Mesquita and Randolph Siverson, "War and the Survival of Political Leaders. *American Political Science Review* 89 (1995): 841-55.
[106] Alastair Smith, "The Effects of Foreign Policy Statements on Foreign Nations and Domestic Electorates", in Siverson, ed. 1998, 221-254.
[107] Michael J. Gilligan and W. Ben Hunt, "The Domestic and International Sources of Foreign Policy: Alliance Formation in the Middle East, 1948-78" and Mesquita and Siverson, " War and Survival of Political Leaders: A comparative Study of Regime Types and Political Accountability" in Siverson. 1998.

trying to do two things at once: that is, they seek to manipulate domestic and international politics simultaneously. Diplomatic strategies and tactics are constrained both by what other states will accept and by what domestic actors will ratify."[108] The executive here is viewed as "Janus-faced", forced to balance domestic and international concerns, what Evans, Jacobson and Putnam refer to as the simultaneous double-edged calculation.

This is to a large extent, the key to understanding unintended consequences. Even though states are most active as diplomats when they are involved in signing international agreements, their responsibility does not end once these agreements are signed. At the same time, once agreements are negotiated and signed they may have the support of the domestic actors, and in most cases, be useful to the state. However, international agreements, like any other agreement, are restrictive by nature. They not only limit the state's ability to make policy but also restrict the relevant domestic actors in their pursuance of self-interest. Therefore, eventually these domestic actors will expect the state to assist them in pursuit of their interest. A government that wishes to stay in power cannot afford to dissatisfy domestic interests and at the same time cannot fall short on its international commitments. A statesman has to be careful that in trying to gain favors with domestic interest he/she does not defect on its commitments that might give the state a bad reputation among states as a less reliable partner. Therefore, a statesman continues to sit on two separate tables and cannot afford to fail on either. His best option therefore, is to find a way/policy that does not defy international commitments and yet is able to assist the relevant domestic actors in fulfilling their interest.

However, statesmen are not free to act in their effort to balance their two interests out. They are constrained by the interests of domestic actors, the level of their

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[108] Evans, Jacobson, and Putnam, 1993, 15.

organization, nature of the domestic institutions, the positioning of the state in the international arena, and the nature of the regime.

International Position or Internationalization

The impact of internationalization on both domestic institutions and actors and consequently on the national policy has also been a highlight of the literature on the interaction of domestic and international forces. According to Peter Gourevitch, two aspects of the international system have powerful effects upon the character of domestic regimes: the distribution of power among states, or the international state system; and the distribution of economic activity and wealth, or the international economy. These two aspects of a state's position in the international system have an impact upon the domestic regime type or the institutional structure (for example, constitutionalist or authoritarian, presidential or parliamentary) and on the coalition pattern or the type and mix of dominant elite. [109]

The level of impact a country faces depends on the size of state. Putnam argues that "all-purpose support for international agreements is probably greater in smaller, more dependent countries with more open economies, as compared to more self-sufficient countries, like the US, for most of whose citizens the cost of agreements are generally low.[110]

It has been argued that a state's positioning in the international system determines to a large extent the kind of pressure a state would face. Size of a state is also considered

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[109] There has been sufficient amount of literature that emphasizes the fact that the level of integration into the world economic system influences the nature of political institutions. For example see Peter Gourevitch, The Second Image Reversed, David Cameron (1978), Katzenstein, 1985).
[110] Putnam, 38.

relevant for the state in the extent of impact that it will face. The larger the state the more self-sufficient it will be and therefore its reliance on the international system will be far less as compared to a smaller state. Smaller states in comparison rely on other states for security and economic support and therefore, it is more likely that a larger state will be more willing and able to defy international rules than a smaller more dependent state.

H1: The larger the size of the state the more likely is the incidence of UC.

Domestic Actors

The preferences of domestic actors play a very important role in the understanding of the interaction between the domestic politics and international relations. Domestic actors face pressure from the international arena, which has an impact on the policy preferences of these actors. According to Helen Milner, domestic actor preferences are primordial and hold the key to understanding international cooperation.[111] The policy preferences of actors in domestic politics derive from their basic interests. Actors are assumed to have certain fundamental interests, captured by their utility functions, which they attempt to maximize. For political actors, this means maximizing their ability to retain office; for social actors, maximizing their net income. For both, their most preferred policy is one that maximizes their basic interests-that is retaining office or maximizing income. Even though the people ultimately elect political leaders, special interests can be of great help in the election process. They can provide contributions, votes, campaign organization, media attention and so on, all of which can make a major difference in winning or loosing an election. Therefore, leaders need the support of the

[111] Helen Milner, 1997, p. 33.

interest groups, and in order to gain it they must promote polices that help these groups. The process of internationalization has an impact on the interests and preferences of domestic actors. The domestic actors in turn expect the government to assist in dealing with the impact of internationalization.

Frieden and Rogowski argue that internationalization affects the policy preferences of actors within countries in predictable ways, based on the economic interests of the actors. Internationalization, for example, affects the relative prices of domestically produced goods or domestically owned factors, as compared to each other and to foreign goods and factors. Since changes in relative prices have implications both for growth and for income distribution, socioeconomic actors advantaged by these price changes will press for increased openness, while disadvantaged groups will seek restrictions, subsidies, or protection.[112] Helen Milner, however, argues that the actor's preferences differ by issue area. On different issues the actors will have different preferences, and hence the structure of these preferences may vary. There is no one single national structure of preferences in a state; rather this structure will change with the issue area. According to Mayer, the configuration of domestic factions and their interests does, however, affect the constraints imposed on negotiators at the international bargaining table. A bargain in which there is a virtual consensus of interest among relevant domestic factions may be very different from one in which there is a strong difference of interests among them.[113]

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[112] Jeffry A. Frieden and Ronald Rogowski, "The Impact of International Political Economy on National Policies: An Analytical Overview" in *Internationalization and Domestic Politics*, edited by Keohane and Milner 1996, p. 25-47.
[113] Mayer, 796.

However, for interest group preferences to be actualized into policies or have any influence on the policy making process, they have to be organized. Calmfors and Driffill (1988), for example, argue that where unions are weak, market pressures will lead to strong economic growth and low inflation and unemployment. Wage militancy will be mitigated- hence microeconomic performance will be improved–by the presence of powerful central labor confederations and national level bargaining arrangements.

I extend this argument to suggest that the more organized interest groups are, the more chances there are that domestic leaders will have to find alternative ways to satisfy the changed preferences of domestic actors in the light of adverse international pressure. Therefore, there will be more likelihood of UC if interest groups are organized.

H2: The more organized interest groups are the more likely the incidence of UC.

Role of Institutions

Within a country, not every group's preferences have the same impact on politics. Some groups' preferences are weighed more heavily than those of others in the political process. An important part of the reason is the nature of political institutions. Political institutions shape the process by which preferences are aggregated domestically. Institutions create a mobilization of bias in favor of some groups over the others. Institutions are a very prominent feature of politics. According to March and Olson "political institutions define the framework within which politics takes place."[114] Certain institutions privilege particular actors, and hence policy choices reflect their preferences.

Within the literature that emphasized the relationship between the domestic and international arena, the role of institutions has been especially emphasized. The impact

[114] March and Olsen, 1989, 18.

of international regimes, rules and regulations is filtered through the domestic institutions on to the local politics and economy. Similarly, the response of the domestic actors to international agreements, on to the government and in turn to the international system is also filtered through domestic institutions. Therefore, the degree and extent of international impact that actors feel, their ability to influence the domestic leaders, and the level of government insulation to these pressure are all a function of institutions.

According to Milner, "in the policy making process four elements are key powers for domestic players: the ability to initiate and set the agenda, to amend any proposed policy, to ratify or veto policy, and to propose public referendums. Control over these powers gives an actor influence in the policy making process."[115] Variation in these powers, both within and outside the country is to a large extent the function of the political institutions. Milner develops two critical hypotheses in her book that show the effect of the institutions on international cooperation. First, the probability and terms of cooperation depend on the distribution of legislative power. According to Milner, when these powers are concentrated in the executive, the probability of cooperation will depend on what the executive's preferences are to the foreign country and will essentially reflect the preferences of the executive. If on the other hand, when these powers are dispersed among domestic actors, the probability of cooperation changes and so do its terms. According to the second hypothesis, changes in these institutions after a cooperative agreement has been negotiated at the international level will be a cause for trouble.[116] Both these hypotheses provide specific links between institutions and outcomes. Certain

[115] Milner, 1997, 18.
[116] Ibid, 19.

institutions privilege particular actors, and hence policy choices reflect their preferences more.

Keohane and Milner, also place emphasis on the role that institutions play in the interaction between the international and domestic arena, in their book *Internationalization and Domestic Politics*.[117] They make four specific points first, the responsiveness of governments to changes in domestic preferences will vary significantly with regime type. Therefore, democratic governments will respond more to change in actors' preferences than authoritarian regimes. Second, the more institutions privilege groups that form the core cases of support for incumbent governments, the stronger are the incentives for government to maintain policies and institutions that benefit these constituencies (even if these are of declining market power). Third, the responsiveness of policy and institutional change to a given change in social preferences will be inversely correlated to the number of veto points in a political system. Finally, the more authority over policy rests in the hands of independent bureaucratic agencies, the less policy change should be associated with a given change in the constellation of preferences in the private sphere.[118]

Siverson, in his book, *Strategic Politicians, Institutions and Foreign Policy*, places strategic behavior of the politicians and his desire to maintain power, as the key factor in determining foreign policy. However, he also emphasizes that even though survival is the central concern of the decision-maker, the institutional context, as well as the nature of the international system affect his policy choices. Morgan and Palmer, in the same volume, argue that the method of leadership selection and the basis of how

[117] Keohane and Milner, 1996.
[118] Keohane and Milner, 1996, 53-4

foreign policy decisions are made account for the pattern of dispute initiation and reciprocation.

Extending the argument to the case of UC: Any negative impact of an international regime on the domestic actors instigates them to pressure the government to provide relief by either abrogating the regime (or altering it) or by finding alternative ways to alleviate the negative impact. Government's response to such pressure, or in other words, variation in different government's responses or UC, is a function of domestic institutions. Government's response will be determined by how insulated the government is from the domestic pressure. Institutions that matter are, 1) nature of elections: proportional or winner take all, will determine the amount of pressure and, 2) decision-making process: consociational/ majoritarian or corporatist.

H3: The more representative an institutional system, greater the UC.

H4: The more inclusive the decision-making process, the greater the UC.

Conclusion

Drawing upon the literature, this chapter has attempted to provide the reasoning for why UC take place and the kind of regimes in which they will be more prevalent. I also provide a list of proposition that underline when UC are more likely to take place and a list of testable hypotheses that highlight the causes of UC. The next few chapters attempt to test these hypotheses on one of the most successful economic regimes, the GATT/WTO trade regime.

SUMMARY OF THE THEORY OF UC

Circumstances Under Which UC Take Place

Proposition 1: UC are more likely to take place in collaboration as opposed to coordination regimes.

Proposition 2: UC are more likely to occur in all inclusive membership regimes as opposed to exclusive membership regimes of like-minded states or in words states with similar capacity and capability.

Proposition 3: UC are a function of issue area. UC are more likely to occur in security and issue areas that have direct or indirect economic benefits to domestic interests. In other words, UC are more likely to take occur in issue areas touch upon the survival of the state or the government.

Why do UC take place?

H1: The larger the size of the state the greater the incidence of UC

H2: The more organized the interest groups the greater the incidence of UC

H3: The more representative an institutional system, the greater the incidence of UC.

H4: The more inclusive the decision-making process, the greater the incidence of UC.

Chapter 4

Unintended Consequences and the International Trade Regime

In this chapter, I apply the theory of UC to the international trade regime. In doing so, I hope to accomplish two tasks. One is to provide reasons for choosing to focus on the trade regime and the other is to provide evidence that tariff reductions within the trade regime have led to UC i.e. an increase in NTBs. I begin by providing a rationale for focusing on the trade regime. Briefly, my choice was governed by two reasons, first, according to the theory of UC, although they are likely to take place in both security and economic regimes, the need to open the black box of domestic politics can be justified more easily in the case of economic regimes. Secondly, since the international trade regime is often touted as one of the most successful examples of an economic regime, by providing evidence of UC in the trade regime a case can be made for the other regimes as well. Next, the chapter lays out the purposes, goals and accomplishments of the international trade regime. I argue that these successes are limited due to the almost simultaneous rise of NTBs as a means of protection. I argue that NTBs are the UC of the trade regime. As TBs have successfully declined following the various rounds of GATT negotiations, they have been replaced by the use of NTBs as a means of protection. As mentioned earlier, NTBs as means of protection are opaque, hard to identify, and therefore, difficult to deal with. I provide

reasoning for both the increase in the use of NTBs and why the use of such barriers has made the trading system less transparent.

Choice of Trade Regime

Neo-liberals claim that states typically find it easier to cooperate in economic issue areas as opposed to security (or other) issues. Part of the reason for such a claim is that in the post war era, states have become less obsessed with power and security. While at one level, nuclear weapons have made war not only prohibitively expensive but also very conclusive, at another level, the increase in the economic interaction among states via trade has made states increasingly dependent on each other and therefore, more inclined to cooperate in these issue areas. Charles Lipson, for example, suggests, "our analysis has emphasized the possibilities for strategic cooperation that fosters development of rules, norms, and political institution in the world economy, and the more impoverished possibilities in security affairs."[119] Keohane goes further and suggests that neo-liberalism "insists on the significance of international regimes, and the importance of the continued exploration of the conditions under which they emerge and persist". He observes that "judging from the literature in international relations journals, this battle has been won in the area of international political economy: studies of particular international economic regimes have proliferated."[120]

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[119] Charles Lipson, 18.
[120] Robert O. Keohane, "Neoliberal Institutionalism: A Perspective on World Politics," *Introduction to International Institutions and State Power: Essays in International Relations Theory* (Boulder, Colorado: Westview Press, 1988), 14.

Neoliberals, in general, not only argue that international cooperation and regime formation is more possible in economic issue areas, but they also suggest that success has been achieved in this area. However, an examination of the UC of regimes suggests that they are most likely to occur in economic regimes. Economic issues place different kind of pressure on statesmen that make such regimes more susceptible to UC. In the case of economic regimes, states feel the pressure both from actors in the international and domestic arenas. At the international level, interest groups pressure statesmen to comply with the directives of the international regimes. On the other hand, statesmen also face pressure from domestic actors to comply with demands in the face of adverse consequences from the international regimes. A statesman cannot afford to ignore his responsibilities in either of the two arenas, and therefore finds refuge in undertaking action that satisfies the domestic actors on the one hand, while not violating the formal rules of the international regime the other. Security issues in a way provide more leverage to statesman in the sense that security issues are less open to public debate and discussion and are typically considered within the confines of the government administration. A statesman, of course, has to consider the implications of a regime in changed or unchanged circumstances, but he still has lot more leverage over these decisions.

The important issue to consider, however is that if we can prove that UC are more prevalent in economic issue areas, then the neo-liberals' claim that cooperation is not only more feasible but more successful in economic regimes is challenged. The international trade regime has been touted as one of the more successful examples of an economic regime. It has been credited with liberalizing international trade by

consistently reducing TBs to trade thereby making trade more transparent and open. The increase in NTBs to trade is seen not as much as a challenge to the success of the trading regime as a Prisoners Dilemma situation that can be resolved by way of providing more structured institutions and compliance mechanisms.[121] However, I argue that neither better institutional structure nor compliance mechanisms can resolve the problem of NTBs because states will find yet another means to fulfill their interests and that of their domestic interests.

GATT and the UC

GATT as a trading arrangement was set up in the postwar era, with the explicit purpose of liberalizing trade among nations. It has been argued that one of the primary causes of the Great Depression of the 1930s and the Second World War could be found in the mercantilist policies pursued by states. It was felt that a more liberal trading system would not only increase the level and volume of trade among nations, it would also increase the level of interdependence and thus reduce the possibility of war. The explicit purpose of GATT was to liberalize trade by reducing TBs among states, thus making the trading system more liberal and transparent.

After the demise of the International Trade Organization (ITO) as the leading institution set up to deal with trade issues, GATT remained as the only surviving appendage of ITO around which the rules of trade were organized. It was created mainly as a set of trading rules pending the completion of the ill-fated ITO, and it was put in place to accompany multilateral tariff-reduction negotiations that were held in 1948. GATT, therefore, emerged not so much as a formal organization, but as a forum

[121] For example, see, Axelrod, 7.

and a code of rules, a place where countries meet to negotiate their tariff and other trade regulations based on an agreed set of principles and procedures. In that sense, GATT is considered one of the most firmly established examples of a regime in international relations.[122] There were three fundamental objectives of GATT:

1) To provide an orderly framework for the conduct of trading relations.
2) To provide a system of rules and codes of conduct that would make it more difficult for individual nations to take unilateral action.
3) To provide a framework for the progressive elimination of trade barriers.

The agreement has two main components. It comprises lengthy schedule of specific tariff concessions for each contracting party- a series of tariff rates, which each country has agreed to with its partners. The second component comprises of a set of general principles for the conduct of international trade. These provide for unconditional most-favored-nation treatment, the removal of direct quantitative restrictions on trade, uniformity in customs regulations and an obligation by any member to negotiate for tariff remissions at the request of another GATT member, that deals with tariffs, quotas, preferences, internal controls and regulations affecting trade, customs regulations, state trading and government subsidies. [123]

The Articles of GATT deal with most aspects of trade relations. The Agreement falls into four parts. Part I (Articles I & II) relates to the basic obligations of all contracting parties. Part II (Articles III to XXIII) is in essence a code for fair trade, and lays down the general rules for customs valuation procedures, marks of origin and so on. It also sets outs conditions under which anti-dumping duties, duties to protect

[122] Gilbert R. Winham, *The Evolution of International Trade Agreements* (Toronto, University of Toronto Press, 1992), 45.

the balance of payments, or duties to safeguard domestic industries can be used. Part III (Articles XXIV to XXXV) deals with procedures for applications and conditions for the Amendment of Articles and Part IV (added in 1965) deals principally with the trade of less developed countries. [124]

GATT had three underlying principles: non-discrimination, reciprocity, and transparency.[125]

Non-discrimination: Article I of the GATT outlines the Most Favored Nation Treatment (MFN). This is the most important principle of GATT system, the aim of which was to ensure that any alterations in tariff rates or quotas imposed (through one of the exception clauses) are applied in a non-discriminatory manner. Likewise, if quantitative restrictions were imposed to safeguard domestic industry (under Article XIX) the restrictions had to apply to all importing countries rather than any particular group.

Reciprocity: According to this principle, countries that accept tariff concessions should offer comparable concessions in return. It is designed to encourage genuine multilateral trade liberalization and therefore increase global benefits from restricted trade.

Transparency: Article XI forbids the use of direct controls on trade, in particular quantitative restrictions, except under certain designated circumstances, e.g. balance of payments crisis (Article XII).

Exceptions: Exceptions are permitted to each of the principles adumbrated above, exceptions that derive from a recognition that short-term exigencies may require exceptional measure, or that political constraints may impose limits on the freedom of

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[123] W. W. Scammell, *The International Economy Since 1945* (New York, 1980), 44.
[124] For details see, David Greenaway, *International, International Trade Policy: From Tariffs to New Protectionism* (London, 1983), 83
[125] For details, see Greenaway (1983), 84-89.

individual governments to act. For example, GATT provides exemptions under certain circumstances under which direct controls could be implied, for example, temporary balance of payment difficulties, and the need temporarily to protect domestic industry from market disruption. Under certain circumstances, departures from the Most Favored Nation treatment (MFN) are also permissible. For example, under Article VI discriminatory action against goods that are dumped by a particular country is permitted via the imposition of countervailing duties. The most important exception to tariff liberalization according to the MFN criterion is contained in Article XXIV that delineates the rules of the establishment of free trade areas and customs unions, within which preferential treatment may be accorded to co-partners. The principal exception with respect to reciprocity is that obligation is effectively waived with respect to less developed countries.

GATT: A Successful Trade Regime?

One of the primary and most publicized activities of the GATT has been the periodic round of trade liberalization under which a series of tariff cutting exercises were undertaken. The process of tariff reductions was spread over seven rounds (not counting the Uruguay Round)[126] and began quite literally at the inception of GATT itself. The 23 nations that gathered in Geneva in 1947, agreed to make tariff concessions on some 45000 individual items, which together comprised half of world trade at the time. Measured either in terms of volume of trade directly affected by tariff concessions or of average depth of tariff reduction achieved after 1947, no negotiations

[126] Several news issue areas were added to this round that had so far been considered beyond the purview of GATT.

until Kennedy Round produced results like those of the first Geneva Agreement. Subsequent rounds held in Annecy in 1949 and Torquay in 1951 maintained momentum generated by the initial Geneva Round. By the completion of Torquay Round, bargains had been struck resulting in tariff concession being made on over 58,000 individual items. Between 1951-1964, however, progress within GATT was rather limited. There were two rounds in this period, one in 1956 in Geneva and one in 1960-61 called the Dillon Round, but relatively little was accomplished by way of further liberalization.[127] Part of the reason for the slow rate of success in tariff reductions in other rounds was that the item-by-item approach outlived its usefulness rather quickly even by the 1950s. In the early rounds, this item- by-item approach proved acceptable because it permitted negotiators to select items for concessions with minimum level of adjustment, but as early as 1950s such items were becoming increasingly difficult to find.[128] The Kennedy Round (1964-67) was able to make remarkable achievements by replacing the item-by-item approach by linear reductions of tariffs. This agreement was reached in May 1967 on tariffs that affected some $40 billion worth of world trade- 75 percent of total trade.[129] In terms of tariff liberalization, these results were the most spectacular of any GATT round to date. The weighted average of the Kennedy Round reduction on non-agricultural items came to about 35 percent of the pre-negotiation rates for the linear countries. The reductions were less in those countries that chose not to engage in linear tariff reduction and for those products that had been negotiated by sector.[130] Tariff concession in the Tokyo Round further affected about $112 billion of trade in

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[127] Greenaway (1983), 90.
[128] For details, see Greenaway (1983), 90.
[129] Greenaway (1983) p. 92.

industrial products (at 1976) prices or around 20 percent of the value of trade in industrial production.[131] In the United States, the average tariff declined by nearly 92 percent over the 33 years spanned by the Geneva Round of 1947 and the Tokyo Round (1973-79). By the early 1980s, the tariff level had gone down to 4.9 percent in the US, 6.0 percent in the EEC, and 5.4 percent in Japan. [132] These already low levels of tariff protection were to be further reduced by approximately 40 percent in five steps within four years after the implementation of WTO resulting in an unweighted average tariff rate of 3.6 percent for EC and the US and 1.7 percent for Japan.[133] The following table provides a summary of the rounds and the tariff cuts undertaken.

Table 1: A Summary of GATT Rounds

Round	Dates	No. of Countries	Value of trade, $b	Average tariff cut %	Av. Tariff Rater after
Geneva	1947	23	10	35	NA
Annecy	1949	33	NA	35	NA
Torquay	1950	34	NA	35	NA
Geneva	1956	22	205	35	NA
Dillion	1960-1	45	4.9	35	NA
Kennedy	1962-67	48	40	35	8.7 %
Tokyo	1973-79	99	155	34	6.3%
Uruguay	1986-94	120+	3.7 trillion	38	3.9%

Source, Jackson, 1997, p. 74.

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[130] J.W. Evans, *The Kennedy Round in American Trade Policy: The Twilight of the GATT* (Cambridge, Mass: Harvard Univ. Press, 1971),282-4.
[131] Greenaway (1983) 95.
[132] As cited in Jagdish Bhagwati, *Protectionism*, (Cambridge, Mass: MIT University Press, 1988), 3.
[133] Norbert Funke, *The World Trading System*, The Kiel Institute of World Economics, Working Paper no. 646, August 1994. A different trend in protectionism is identified for developing countries, since they are the recipients of many GATT exemptions. Therefore, tariff reductions have been more ad hoc in nature, 5.

Questionable Success: The Growing Threat of Nontariff Barriers

These huge reductions in tariffs that, accounted for almost 75 percent of the world trade, suggest tremendous success in liberalization efforts with minimal restrictions or constraints on trade among states. By the early 1970s, the world's major trading nations had rendered tariffs almost obsolete as an instrument of protection in their relations with one another. At the same time, however, the use of NTBs was becoming so pervasive there were increasing fears that they constituted a new protectionism threatening the world trading system.[134] According to a statement made by Thomas Curtis, the U.S. delegate to the Kennedy Round, in a speech before the Foreign Trade Council, "Many of us like to think that the decades since the war have been marked by continuing movement towards freer world trade and payments. The Kennedy Round in this vision is seen by short sighted persons as the crowning achievement...but they have ignored the fact that as tariffs have been dismantled ...quotas, licenses, embargoes, and other rigid and restrictive trade barriers have been created."[135]

Therefore, while on the one hand the world community was celebrating its successes in achieving freer trade by reducing the use of tariff barriers in its trade relations, on the other hand these same states were now resorting to other means of protecting their markets and products. If the purpose of decline in tariff barriers was to make trade more free then increases in NTBs went contrary to that purpose- i.e. it was anti-free trade and protectionist in nature.

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[134] Grieco (1990), 2-3.
[135] Evans (1971), 305.

Evidence of the use of NTBs, to protect industries that had been liberalized by the decline in TBs, can be found almost from the inception of the tariff reducing Rounds of GATT. For example, in the second session held in Geneva in 1948, the United States filed a petition under Article 23 that Cuba had nullified or impaired the benefits of tariff concessions on textiles. The complaint involved a new Cuban regulation that prohibited all but a few well-established importers from importing textiles; the regulation also prescribed quite burdensome documentary formalities for trade that was allowed. The basis of the United States complaint was that the new regulations were in violation of GATT obligations. It had stopped trade and had thereby nullified the benefits of the Geneva tariff concessions.[136] Similarly, Chile complained in the third session held in Annecy, France in 1949, that a change in Australia's subsidy program for fertilizers had nullified a tariff concession on fertilizers.[137] In the case of Chile, the working party found that the new regulations counted as barriers to trade and worked to nullify the concessions so far granted by GATT. In the case between Cuba and the US, the Working Party declared an impasse based on conflicting evidence presented by the two parties and suggested bilateral negotiations.[138]

Complaints of similar nature continued with each successive round of GATT negotiations that purported to reduce tariff barriers. Of the 40 complaints filed between 1952 and 1958, 39 dealt with a variety of impediments to the complainant's

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[136] Robert E. Hudec, *The GATT Legal System and World Trade Diplomacy*, (New York: Praeger Publishers, 1975) 67 and 154-59.
[137] Hudec, 68 and 279.
[138] See Hudec, 156. It is argued that the Working Party could have given a ruling, but it refrained from doing so on the grounds that the decision was bound to be challenged by the losing party. The loosing party was almost certain to have the resources to expose the weakness of the finding and thus the weakness of GATT's authority to act. See Hudec, 158.

exports. 33 of these complaints related to the defendant's domestic market, and discrimination was a central element in 11 of the complaints. The others concerned measures that served to protect domestic industry against imports in general; *the complaint in these cases was simply that the measures violated a tariff regulation or some other express GATT prohibition.* It is significant that the subject of discrimination, quantitative restrictions, and protective internal taxes (all NTBs) each accounted for a prominent share of the total. [139] According to Sam and Laird, "since the multilateral trade negotiations have greatly reduced available options for utilizing tariffs, developed countries now employ a wide range of NTBs for industrial protection. These measures, unlike tariffs, represent a breakdown of order in the trading system since they normally involve a lack of transparency and de facto discrimination among trading partners."[140] Studies showed that these incidences of NTBs were not random. Levels of incidence appear to be highest in those sectors that are traditionally protected, such as agriculture, and in sensitive sectors, while the highest rate of growth of protectionist action seems to be recorded in sectors where comparative advantage was shifting. Further, incidence of NTBs tends to be heaviest in those markets where Least Developed Countries (LDCs) are becoming increasingly important exporters. It has also been found that products experiencing a high incidence of NTBs also tend to be products that are subject to relatively high tariffs. This suggests that tariff barriers and NTBs are complementary, rather than substitutes. The phenomenon of multi-stacking of NTBs has also been frequently noted. In other words, those commodities, which are subject to NTBs, have a number of NTBs

[139] Hudec, 93-94.

imposed concurrently, rather than simply being subject to one.[141] The following table shows the increase in managed trade (in other words NTBs) by country for all products for the years 1974, 1979, and 1980.

Table 2: Managed Trade* by country for all products

Country	1974	1979	1980
Belgium	27.5	33.4	34.0
Denmark	29.5	42.8	43.2
France	32.8	42.6	42.7
Germany	37.3	47.1	47.3
Ireland	26.8	33.5	34.0
Italy	44.1	52.2	52.3
Netherlands	32.5	39.8	40.1
UK	38.5	47.4	47.9
EEC (9)**	35.8	44.5	44.8
Australia	17.9	34.8	34.8
Austria	20.8	30.3	30.3
Canada	22.4	18.3	18.3
Finland	32.9	33.6	33.6
Japan	56.1	59.4	59.4
Norway	16.3	33.7	33.7
Sweden	24.7	36.3	36.3
Switzerland	16.9	18.3	18.3
USA	36.2	44.4	45.8
OECD (22)**	36.3	43.8	44.3
World (122)**	40.1	47.5	47.8

* As a proportion of 1974 trade
** Number of countries indicated in parenthesis
Source: Greenaway, 1983, p.168

Efforts were made right from the beginning to deal with the incidence of NTBs. However, little progress was made either in liberalizing NTBs or in establishing a general approach for dealing with these measures. In the early stages of

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[140] Sam Laird and Alexander Yeats, *Quantitative Methods for Trade-Barrier Analysis*, (New York, New York University Press, 1990), 2.
[141] See Greenaway (1983), p.168-171. Also see, T. Murray and I. Walter, *Quantitative Restrictions, Developing Countries and GATT* (London, McMillan, 1977), I. Walter, "Non Tariff Protection Among

the Kennedy Round, it was decided that the efforts should be made to deal with the issue of NTBs along with TBs. Therefore, a major negotiating committee was established to focus specifically on NTBs. However, the attempts at devising a general approach for removing NTBs proved to be unsuccessful and the negotiators opted for liberalization on a barrier-by-barrier basis. In the end, the only NTB agreements were the GATT Anti-Dumping Code and the package in which the US agreed to abolish the American Selling Price (ASP) customs valuation procedure.[142] In the Tokyo Round, difficult negotiations produced several codes for specific practices (government procurement, technical barriers to trade, subsidies and countervailing duties, customs valuation practices, and import licensing procedures), but these fell far short of the objectives established at the start of the negotiations. Little progress was made in sectors like, agriculture, and textiles where NTB restrictions are most heavily applied.[143] It was hard to deal with the issue partly because it is hard to differentiate measures such as auto emission standards-, which are primarily intended to fulfill societal objectives of environmental from measures whose main purpose is to restrict the flow of imports. In addition, many NTBs such as Buy American Policies are difficult to quantify for reciprocal action. The Tokyo Round, however, did set up a code of conduct prohibiting legitimate domestic policies being

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Industrial Countries: Some Preliminary Evidence", *Economia Internazionale*, XXV, 1972, A.J. Yeats, *Trade Barriers Facing Developing countries* (London, McMillan, 1979).

[142] GATT provisions (article VII, 1 (a)) require that the dutiable value of a product should be phased on the actual value of the imported merchandise or like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values. However, under ASP tariff on a some imports like rubber footwear, and canned clams, were assessed on the value of domestically produced equivalent goods. Since US production, costs for these items were generally far higher than foreign producers this resulted in tariffs of over 170% on the actual import value of some products.

[143] Sam and Laird (1990) 9-11.

converted to NTB.[144] However, these codes were to apply only to nations that signed them.

The Uruguay Round made further attempts to deal with the issues relating to NTBs that were not sufficiently addressed by the Tokyo Round, those that were unsuccessful, and, finally, the new NTBs measures that were now frequently being used by the member states. Non-Tariff Measures (NTM) group negotiations mainly proceeded in two areas of pre-shipment inspections and rules of origin. In the second category, the reform of GATT rules negotiations were mainly intended to make incremental legal changes to the GATT that involved essentially taking up issues remaining from the Tokyo Round negotiations. The NTM Agreement group updated Tokyo Round Codes on technical barriers (standards), government procurement, and anti-dumping. The latter issue has become especially important owing to the increased frequency and scope of anti-dumping decision in EEC, US, Australia and other countries.[145] Anti-dumping investigations have more most-frequently been initiated against exports from developing countries as well as against producers from Central and Eastern Europe. It becomes difficult to distinguish between legitimate cases from trade restrictive intentions due to substantial discretionary elements in the procedures of initiation and evaluation of dumping actions. Developing countries and economies in transition often lack the adequate equipment to defend their interests in anti-dumping proceedings.[146] The following table shows the increase in the use of

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[144] For details see Gilbert R. Winham, *International Trade and Tokyo Round Negotiations* (Princeton, NJ: Princeton University Press, 1986) 212-255.
[145] See Sylvia Ostry, *Governments and Corporations in a Shrinking World: Trade and Innovation Polices in the United States, Europe, and Japan* (New York: Council on Foreign Relations Press, 1990), 39-52.
[146] Funke,22.

Countervailing duties and Anti-Dumping by some member states as a protectionist measure in the years 1990-1993.

Table 3: Number of Anti-Dumping (AD) and Countervailing Duty (CVD) Measures in Force by GATT Signatories, 1990-1993

Measure/Country	1990	1991	1992	1993
AD Measure				
United States	201	216	267	304
EU-12	137	144	159	150
Canada	78	69	73	85
Australia	24	30	44	76
Mexico	6	19	23	28
Brazil	0	2	9	23
Other	12	19	33	38
CVD Measures				
United States	94	87	93	122
EU-12	-	1	-	2
Canada	31	30	29	29
Australia	1	5	12	12
Mexico	-	1	13	13
Brazil	-	2	0	0
Other	-	-	1	1

Source: OECD Working Papers no. 68, 1997, p. 89.

The safeguard group further attempted to negotiate a reform of GATT Article XIX (escape clause). Negotiations over this matter in the Tokyo Round broke down over a dispute between the developing countries and the EC on whether Safeguards could be applied in a discriminatory (i.e. selective) manner. This subject continues to be critical since it involves gray-area measures such as Voluntary Export Restraints (VERs), which effectively operate outside the GATT rules altogether.[147] VERs are concentrated in a few sectors, including steel products, automobiles and other

[147] Winham (1992), p. 76. Also see, Brian Hindley, "GATT Safeguards and Voluntary Export Restraints: What are the Interests of Developing Countries?" *The World Bank Economic Review* 1 (1987): 689-706.

transport equipment, textiles and clothing with countries that are outside the Multi-Fiber Agreement (MFA), as well as electronic products. Japanese and most recently South Korean exporters and the EC have most frequently agreed to various export restraining arrangements.[148] Finally, the Subsidies/Countervailing duties group attempted to negotiate improvements to the Tokyo Round that had not been very successful in imposing meaningful discipline on national subsidy practices.

An interesting result of the increase in protectionism in the 1970-80s in the form of NTBs was the resort to unilateral action by member states against countries that maintained protectionist markets. Most notable is the Section 301 legislation, that was part of the Omnibus Trade and Tariff Act passed by the US Congress in 1988. Under this provision, the US could impose up to 100 percent duty on incoming products from those member states that do not allow access to their market. Under the Act, the US could demand negotiations from specified countries on practices that it found unacceptable, regardless of whether or not they were proscribed by the GATT and seek their abolition on a tight schedule.[149] This legislation was invoked for the first time in 1988 against Japan, India, and Brazil. Partly in response to states resorting to unilateral action and partly due to the weak legal system of GATT, efforts were made at the Uruguay Round to improve the GATT Dispute Settlement System that might have an impact on the overall trading system. As a result the WTO Dispute Settlement system is a much stronger body that has implementation mechanisms.[150] An additional

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[148] Funke, 22.

[149] For details see, Jadish Bhagwati, *The World Trading System at Risk*, (Princeton, NJ: Princeton University Press, 1990), chapter 4 and Appendix IV.

[150] For a discussion of the Dispute Settlement Procedures in GATT and WTO and the institutional improvements made, see John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations*, (Cambridge: Mass, MIT Press, 1997), chapter 4.

attempt at the Uruguay Round to counter the impact of NTBs was the introduction of Trade Related Investment Measures (TRIMS) that circumvents trade barriers largely.

However, despite all these attempts, the trading community has seen only modest success in dealing with issues of NTBs. According to Funke, the increasing importance of NTBs may be partly seen as a direct response to the restrictions imposed by GATT on the use of traditional trade distorting instruments. Even if NTBs are inconsistent under the GATT obligations in the narrow sense, it remains difficult to constraint their use. Many restrictions are informal and do not involve visible participation of governments. Even if government to government agreements are made, complaints by one of the parties involved remain very unlikely at least as long as agreements are voluntary.[151] In fact, in the last two decades, voluntary restraints on exports have become an important impediment to trade used by GATT member states. Three broad types of Export Restraint Agreements (ERAs) can be distinguished, ranging from heavy involvement of the government to little or none. Orderly Market Agreements (OMAs) restrict volume of trade through formal agreements between governments. The second (sponsored by the government) and third category of agreements, are arrangement among exporting firms to restrict exports. Furthermore, so called "gray measures", such as export forecasts, consultation arrangements, and prudent marketing arrangements also tend to restrict international competition. The presence of these informal arrangements may signal exporters the political threat of the imposition of more formal measures to reduce the intensity of competition, if exports increase above the implicit target. In the 1980s, a total of 289 VERs (excluding MFA) were reported worldwide, of which the EC as an importer

accounted for 60 percent. Out of the 173 VERs, affecting imports to the EC 96 were national agreements, while 77 were EC wide agreements.[152] An example of such an arrangement is the 1993 agreement between Japan and the EU, under which the market share of Japan's imports should not increase above 12.5 percent. Further, lower levels were agreed upon for five restricted national markets: France, Italy, Spain, Portugal, and the United Kingdom.[153] The EU in general has been accused in the growth of non-tariff restrictions. In addition to export arrangements, it makes use of restraints such as discriminatory public purchasing, technical standards biased in favor of local producers, and subsidy payments. In terms of the proportion of trade affected by NTBs, the EC appears to be similar to the US and less restrictive than Japan, but some data on coverage indicates that the impact may be larger. For example, for Germany it was estimated that the tariff equivalent of the German NTBs was relatively modest nominal terms (3.3 percent compared to 7.9 percent of tariffs). However, in effective terms, barriers to trade were much stronger at 22.4 percent, rising to 31.6 percent when subsidies were included.[154] A study done in 1984 in clothing further suggests that in the EC and EFTA countries NTBs are of about the same importance as tariffs in restricting trade. The tariff equivalent of import licenses was estimated at 15 percent compared with tariff value of 17 percent (comparable figures for the US were 23 percent and 21 percent).[155]

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[151] Funke, 22.
[152] Funke,13.
[153] GATT (1993), *Trade Policy Review*, European Communities, Vol. I, Geneva, August, p. 71, and p. 170.
[154] Greenaway, Cline, O' Brian and Thornton, *Global Protectionism* (New York, St. Martins Press, 1991), 72-3.
[155] Greenaway, et al, 1991, p. 73-4.

According to Norbert Funke, "Coming multilateral negotiations will have to focus increasingly on NTBs. A first prerequisite for successful negotiations is to increase transparency of these instruments. Only if transparency is guaranteed, improved enforcement mechanisms can be implemented."[156]

NTBs: Barriers Difficult to Deal With

Part of the concern in dealing with NTBs is not only that they have in many cases reversed the process of liberalization achieved by the various rounds of GATT but that they are opaque, lack transparency and are therefore harder to identify. Aside from their incidence, there is also concern about their changing nature since they involve a growing tendency for non-discriminatory trading policies to be replaced by bilateral or other discriminatory arrangements. Sam Laird and Alexander Yeats argue that, as a result, "the MFN principle that is the cornerstone of the GATT, has been eroded by an increasing reliance on NTBs directed at specific countries or country groups."[157] Jagdish Bhagwati similarly argued that, "the negotiated tariff agreements were accompanied and their incremental effect in loosening the restraints on the world trading system was seriously compromised by the growth of non-tariff barriers". [158]

It is important here to explain the two classes of NTBs, with wholly different implications: those that bypass GATT rules of law and the other are those that capture and pervert them.[159] The first kind, are those that fall outside the purview of GATT and therefore are not considered illegitimate and are therefore visible and politically

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[156] Funke, 23.
[157] Sam and Laird (1990), p. 1.
[158] Jagdish Bhagwati, *Protectionism*, (Cambridge: Mass, The MIT Press, 1988), 43.
[159] Bhagwati (1988), 43-4.

negotiated. The second kind are those that are permitted under the GATT aegis under certain circumstances, for example, countervailing duties and anti-dumping duties. However, most of the time it is difficult to determine if these exceptions are used for legitimate reasons or to protect domestic producers. Some of the most covert ones used to protect the market are health, safety, and environmental standards. Although efforts were made very early to deal with the issue of NTBs, a danger persists that as more and more knowledge is accumulated on such barriers, governments on the look out for new ways of distorting trade without openly infringing upon international obligations will be able to refer to carefully "amassed compendia" describing the nature and effect of every conceivable type of NTB.[160] According to Gerard and Victoria Curzon, "The cleverest and the most subtle ways of distorting trade is public knowledge. It seems only natural that industries will press for them at home and that governments will find it difficult to refuse them if nothing is done on an international level to redress the competitive situation. In short, the world economy may be at the start of a wholesale conversion from tariff to non-tariff protection which cannot but be cumulative and which might out put at least part of the trade liberalization achieved to date." [161]

The non-transparency aspect, further, makes it much harder to deal with NTBs. In some cases, they involve agreements between private parties that only receive the tacit consent of governments. In other cases, the restriction arises because of administrative procedures for processing, customs valuation, technical standards and health regulations, without the declared intention to limit trade. According to an

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[160] Gerard and Victoria Curzon, *Hidden Barriers to International Trade* (London: Ditchling Press Ltd., 1970), 3.

OECD Report, the non-transparency of NTBs may have increased since the 1970s. In part, this was because governments sought to avoid GATT obligations, notably under Article XIX, that permits safeguard measures only on a non-discriminatory basis. It was also because states wished to minimize the obvious departure from the free trade principle. Any assessment of the scope of NTBs therefore involves an element of controversy and subjectivity, as governments, independent experts and participants in world trade disagree on the range and incidence of measures appropriately classified as NTBs.[162] Matter are further complicated by the fact that NTBs may differ greatly in their degree of restrictions; some quotas, for example, may be set so high as to have no impact on trade flows; similarly some countries require import licenses for a broad range of products, these are granted liberally and do not hinder imports. On the other hand, certain administrative obstacles to imports, for instance, type-approval procedure for telecommunication products, may impose such an immense cost burden so as to be virtually prohibitive.[163]

Further, it is difficult to reach agreements relating to NTBs because all such agreements are likely to be opposed by governments on the grounds that they would limit a government's ability to deal with domestic problems. Furthermore, whereas tariffs are published in a recognizable form, most NTBs present difficulties even in specification, and may be virtually impossible to quantity. It affects not only the recognition of important adverse affects on trade but also negotiation and agreement to do something about them. It also makes it difficult to match and balance the concession made by each country. Another difficulty in the nontariff distortions is

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[161] Gerard and Victoria Curzon, (1970), 3.
[162] "Costs and Benefits of Protection", *OECD Report* (Paris, OECD, 1985), 30.

that in most countries it is difficult to harmonize state and local practices with international agreements negotiated by the central government. The line of authority between national and subsidiary government units varies considerably among countries, and has not been fully resolved in many cases. Government procurement is an area where this problem arises very clearly.[164]

Why the Increase in NTBs/Protectionism?

The world economy has seen an increase in (or many would argue return of) protectionism in trade relations among states since the 1970s. This has happened besides the tremendous successes in the elimination of the use of tariff in trade relations among states. Trade policy decisions by governments are the result of two sets of factors; pressures coming from the domestic interest groups whose well being is affected by trade, and government trade objectives, determined in part by the country's broader international interests and obligations.[165]

The increase in protectionism that has been witnessed since the 1970s (often referred to as "new protectionism" given the changing nature of protectionism used) has taken place in a broader context of changing nature of the international trading system. One of the important features that marked trade expansion in the two decades after the Second World War was that trade in manufactures was primarily among the developed nations. However, the 1970s saw the increase in the number of suppliers in the international market, most significantly Japan and the NICs.[166] This increasing

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[163] OECD Report, 1985, 30-1.
[164] "Nontariff Distortions of Trade", *CED Report*, September 1969.
[165] *OECD Report*, (1985), 184.
[166] For details on the rise of NICs and Japan see, *OECD Report*, 1985, 186-7.

challenge from the new suppliers was made worse by the slow growth of the international economy in the 1970s, spurred on by the oil crisis and the decline of the Bretton Woods system. The slower growth of the world market made even the relatively small shifts in the structure of international trade more difficult to absorb. This changing nature of the world economy placed two different kinds of demands on the governments, 1) changes in the size and distribution of costs and benefits of trade create a demand for protection on the one hand and, 2) increasing social and economic objectives of the government, on the other. Whether the demand for protectionism leads to protectionist measures depends on the capacity of the groups affected by trade to be able to express this demand through the political system, and the receptiveness of decision-makers to sectoral interests. In general, two tendencies can be identified; while the permeability of political systems to sectional demands has increased, the range of policy options that a governments has for dealing with these demands has diminished.[167] Economic and social actors in most democracies have therefore acquired new incentives to become more politically organized. At the government level, as the trade flows have come to affect a rising share of economic actors, and as actors are increasingly getting organized to advance their sectoral interests, the conduct of trade policy has become more politicized. The governments, therefore, are becoming increasingly sensitive to the sectoral demands, in order to increase their chances of re-election. Bruno Frey argues that every government may be assumed to pursue certain ideological goals, but is subject to a variety of constraints. The most important constraint perceived by most governments is the need to be reelected. When a government fears that it will lose a forthcoming election, it will undertake a policy,

[167] *OECD Report*, 1985, 192-196.

which promises to raise its popularity with the voters. A party committed ideologically to free trade may be forced to resort of protectionism if it appears that such a policy may improve its re-election chances. According to Frey, the consumer-voters interested in free trade are not very active, while the interest groups demanding protection try to exert as much influence by lobbying as possible. A government uncertain about election will therefore turn its attention to the demands of protection raised by the organized interests.[168]

However, in a more integrated and liberalized world economy, the international constraints bearing on each government's policy choices have become increasingly tight. New forms of protectionism, like the VER and Orderly Market Arrangements (OMA) are particularly attractive to governments. VERs and OMAs impose a tax on imports far less visible than that imposed by tariffs. Similarly, AD and CVD measures are clearly legitimate instruments of policy under GATT, but they can confer an aura of fairness to actions that are protectionist in motivation. According to Bruno Frey, explanation of the typical feature of NTBs may be based on economic theory of regulations.[169] It argues that regulators serve special interest groups. Government intervention in the market may be viewed as a politically optimal way of redistributing wealth from some constituents to others. When an outside interference takes place, the regulatory interventions have to be changed in order to re-establish political equilibrium. According to Frey, in the international trade area such interventions have been caused by the various tariff-reducing rounds initiated by the GATT regime.

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[168] Bruno Frey, "The Political Economy of Protection" in *Current Issues in International Trade: Theory and Policy* , ed, David Greenaway (NY: St. Martin's Press, 1985), 147-8.
[169] See for example, S. Pelzman, "Towards a More General Theory of Regulation", *Journal of Law and Economics* 19 (1976), 211-40.

However, the structure of protection has not been strongly affected because tariff reductions have been substituted by other form of protection, in particular by regulatory NTBs.[170] This interaction of TBs and NTBs with international trade was empirically tested by Marvel and Ray, for the year 1970 (when most of the Kennedy Round reductions had already materialized). Their results confirmed that NTBs are related to the historical political equilibrium before the Kennedy Round, in the form of the tariff rate of 1965. Furthermore, they found that those industries having the highest tariff protection also have the political influence to reach high non-tariff protection.[171] A similar cross-national study for the years 1983 and 1986 conducted by Mansfield and Busch, concluded that tariffs are strongly related to the incidence of NTBs, and that these forms of protection are substitutes.[172]

The granting of protection to particular sectors-in the form of import restrictions or subsidies- generates a momentum in the political system as a whole. More importantly, the visibility of the protection accorded to one group incites other groups to seek it; protection gains legitimacy from its repeated use and makes it difficult for governments to refuse comparable treatment to other groups. An OECD report argues that, "Governments seeking to re-affirm their international obligations with respect to a particular sector find both their own transgressions in other sectors and those of foreign governments being cited as arguments for protection. From being an obstacle

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[170] Frey, 1985, 152.
[171] H. P. Marvel and E. J. Ray, "The Kennedy Round: Evidence on the Regulation of International Trade in the United States," *American Economic Review 75 (* 1983):190-7.
[172] Edward Mansfield and Marc L. Busch, " The Political Economy of Nontariff Barriers: A Cross-national analysis", *International Organization* 49 (1995): 723-49.

to protectionist measures, the international system can become a transmitter of the pressure for them."[173]

To summarize, even though, the trade regime has been successful in its aforementioned task of reducing TBs as a means of protection, they have been replaced by the use of NTBs. Removal of TBs has meant more foreign competition and therefore loss of business, and jobs for the domestic groups. These groups in turn pressure the government to provide protection from the onslaught of foreign products. Governments cannot go back on the promises made at the international regime level, neither can they ignore domestic pressure if they desire to maintain public office. Their only recourse is to find alternative ways to protect the domestic market without openly violating the regime. States therefore resort to new means of protection that are not yet considered illegal under the formal rules of the regime. Therefore, one means of protection gives way to another means of safeguarding the domestic market. Matters have become worse because these new forms of protection are less transparent, hard to identify and thus much more difficult to deal with. However, not all the states resort to the use of NTBs at the same level. As the chapter reveals, some states are more likely to resort to the use of NTBs than do others. There are variations not just in the kind of NTBs used but also the frequency of their use. According to the theory of UC that I posit, these variations in the intensity and use of NTBs are caused by the size of the state, the nature of its domestic institutions and the level of organization of its domestic actors. The next two chapters attempt to study the causes of the rise and variations in the use of NTBs.

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[173] OECD Report (1985), 196.

Chapter 5

Methods and Design

This chapter outlines the research design and methodology used in the empirical part of the study. The purpose is to show whether the successful decline in the use of TB by member states has led to an increasing use of other forms of protectionism (NTBs). The chapter will begin by explaining the dependent variable, NTB, its definition and operationalization and why I chose the specific years of study. Next, I will identify the various factors (or independent variables) that are expected to play a role in the use of NTBs as protectionist measures. The chapter will also provide the reasoning and justification behind the inclusion of the various independent variables. I will test various hypotheses by using a cross-sectional pooled time-series analysis. Data selection and operationalization of variables are also explained in the chapter.

UC of international regimes are defined as *those outcomes in which a regime generates incentives for states to defect informally, in a way that undermines the goals of the regime without violating the formal rules.* The basic argument behind UC is that statesmen typically face two different kinds of pressures in their position, one from the international community to maintain their commitment to international regimes they have signed on to and another from domestic actors, who when faced with adverse impact of international regimes pressurize the government to provide relief. Governments cannot afford to default on their international commitments due to fear of retaliation and/or

reputational concerns, both at home and abroad. On the other hand, states are also not free to ignore domestic pressure due to concerns of re-election. Therefore, states find alternative means that not only satisfy domestic interests, but are also not considered illegal under the formal rules of the regime. However, these alternative means work contrary to the purposes and spirit of the regime and in that sense harm the regime in the end.

Taking the specific example of the GATT/WTO trade regime, the international community has been successful since the very inception of GATT in eliminating tariff barriers as a means of protecting domestic markets and therefore, liberalizing trade. However, the trading community has seen the alternative rise in the use of NTBs as means of protectionism used by member countries. These NTBs are less transparent and therefore harder to deal with. The most effective way of proving that, as TBs have declined they have been replaced by the use of NTBs as protectionist measures is to conduct a time series analysis showing that trend. However, due to various reasons it proved to be an inappropriate tool.[174] Country coverage for NTBs is far from complete and data coverage for each available year (even for the same country) may be different.[175] Therefore, data sets are not available over time but occasional cross sections. According to Alan Deardorf, a time series analysis would not work very well even if the data was available. NTBs are not reset each year, but rather tend to be set and/or negotiated in batches as in the Tokyo Round, the Uruguay Round, etc. The new rates are often phased in gradually over time or they are changed in large jumps when a new regime or a crisis

[174] In a personal correspondence with the responsible people in OECD and UNCTAD (the only two sources that collect NTB data) I was recommended not using time series analysis, May 8, 2000.
[175] Personal correspondence, Mr. Hiroake Kuwahara, the TRAINS Systems Manager (UNCTAD Data for TB and NTBs), May 8, 2000.

in a country causes them either, to liberalize or to become more restrictive. According to Deardorf, there is no normal time series model that would fit such data well, and even if it did, it would not tell us much.[176]

Therefore, the statistical part of the study will be confined to testing hypothesis related to the second aspect of the study, that is, why do UC take place. The study also attempts to explain variations in the use of NTBs by member states. I will use cross-section pooled time series analysis, since this will allow comparisons to be made across a number of countries using different variables.

Dependent Variable: NTB

NTBs are very difficult to define since they are defined by what they are not, rather than what they are. That is, NTBs consist of all barriers to trade that are not tariffs. NTBs, however, cannot be merely defined in terms of barriers since at times they include trade interventions such as export subsidies that serve to stimulate rather than retard trade and therefore are not barriers to trade at all. NTBs thus include several trade distorting measures like import quotas and VERs. New measure of trade barriers and distortions are added every year that impact on the price and quantity of trade,[177] thus, the difficulty in the precise definition of the term NTBs.

Attempts have been made in the past to define what constitutes a nontariff barrier. Robert Baldwin (1970), defined an NTB as "any measure (public or private) that causes internationally traded goods and services, or resources devoted to the production of these

[176] Personal correspondence with Alan Deardorff, May 9, 2000. For details on measurement of NTB and its limitation see, Alan V. Deardorf and Robert M. Stern, *Measurement of Nontariff Barriers (* Michigan, Ann Arbor: The University of Michigan Press, 1998).
[177] Alan Deardorff and Robert M. Stern, p. 3.

goods and services, to be allocated in such a way as to reduce potential real world income."[178] Laird and Yeats have criticized this definition arguing that such a definition requires an estimate of potential real world income or at a minimum, knowledge of directional movements in income under alternative policy measures. Further, it may be difficult to assess the effects of NTB. For example, it is difficult to determine if removal of some sanitary requirements for imports would increase or decrease income if the resulting trade expansion is accompanied by a decline in health standards and rising medical costs.[179]

Ingo Walter (1972) suggested an alternative definition according to which NTBs broadly encompass all private and government policies and practices that distort the volume commodity-composition or direction of trade in goods in services. By Walter's own admission this is a weak operational definition since it would be difficult to determine precisely what constitutes trade distortion. For example, firms may influence the volume and composition of trade by actions that affect demand and supply conditions or increasing product differentiation through advertising might provide sales advantage to a domestic firm. However, most economists will classify neither of these examples as non-tariff distortion. In other cases, firms may engage in practices like dumping that should be classified as NTBs due to their intent. Walter proposes that intent of different measures should be used as a factor in determining NTBs, however, as Laird and Yeats point out, it is difficult in many cases to determine the intent of measures like health or environmental standards, licensing procedures or labeling and packaging requirements.[180]

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[178] As defined in Laird and Yeats, p. 15.
[179] Sam Laird and Alexander Yeats, 15.
[180] Laird and Yeats, 1990, 15-16.

Therefore, though efforts have been made to find an acceptable definition, experts have tended to disagree on what would constitute a good definition.

For the purposes of this study, I will use the definition of NTBs employed by the Organization for economic Cooperation and Development (OECD) database. Accordingly, the term "non-tariff barriers" to trade encompasses those broader measures other than tariffs that may be used by countries, usually on a selective basis, to restrict imports. This definition excludes some other broad categories of assistance that are not considered border measures. Such non-border measures include direct subsidies, tax concessions, and the subsidy element of government procurement.[181] Since there are a large variety of non-tariff barriers, OECD relies on the "inventory list" of NTBs as identified by the United Nations Conference on Trade and Development (UNCTAD). This list includes: variable import levies and product specific charges (excluding tariff quotas); quotas; prohibitions (including season prohibitions); non-automatic import authorizations including restrictive import licensing requirements; quantitative 'voluntary export restraints' and trade restraints under the Multi-Fiber Arrangement.[182] The major NTBs can essentially be separated into two broad groups. The first group covers those NTBs that usually have a direct effect on importers costs and process. The second broad group, usually defined as quantitative restrictions (QRs), includes measures that involve quantity control, which tend to have an effect on import prices.

It is difficult to gauge the extent of NTBs within or across states. However, the UNCTAD trade coverage ratios are viewed by many experts as the most reliable

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[181] Indicators of Tariff and Non-tariff Barriers, OECD, Paris, 1996, 63.
[182] For a list and brief description of NTBs, based on UNCTAD classification of Trade Control Measures, see Appendix 1.

estimates of NTBs across states.[183] I used the data provided by OECD (using the UNCTAD database) on NTBs for eleven states.[184] The eleven states are Austria, Australia, Canada, Finland, Iceland, Japan, New Zealand, Norway, Sweden, Switzerland, and USA. The choice of countries was determined to a large extend by the availability of data. OECD provides harmonized data for NTBs for EU level rather than national level and therefore I could not use these countries in my data set.[185] However, the countries available did fulfill the purposes of my study. A significant part of my explanation derives from the fact that NTBs take place due to pressure that governments face from their interest groups. Therefore, I needed to pick countries that are democracies and have institutions for decision-making that allow for societal input. This is not to say that non-democracies do not possess mechanism for decision-making but it is hard to determine what these mechanisms are and in most cases, they are not as inclusive in nature. Further, I was more interested in countries that had similar level of development since this would allow for better comparison across states.

The OECD database provides NTB data in frequency ratio. Other scholars who have done research on NTBs have also suggested the frequency method to be most reliable and conducive for regression purposes.[186] Frequency ratios provide an indication of the pervasiveness of various NTBs within countries. The frequency ratio for a particular importing country typically indicates the proportion of national tariff lines that

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[183] On the merits of the UNCTAD trade coverage ratios, see, Edward E. Leamer, "The Structure and Effects of Tariff and Non-tariff Barriers in 1983," in *The Political Economy of International Trade* , ed, Ronald W. Jones and Anne O. Krueger, (New York: Basil Blackwell, 1990), 224-60.

[184] Although, I could have used the UNCTAD Data base and that would have given me figures for more countries, however, the data currently available through UNCTAD was in total percentage form, i.e. total percentage of NTBs employed. Further data for most countries was either 0 or 100% and therefore did not much variation and was not conducive for my purposes.

[185] Data for Austria, Finland and Sweden was provided since they were not part of the EU at the time.

are affected by a particular NTB or by a specified group of NTBs, irrespective of whether products affected are actually imported. The frequency ratio captures the pervasiveness of NTBs in member countries.[187] It includes ratios for all NTBs, and six main sub-categories of NTBs, namely core NTBs, three groups of quantitative restriction (export restraints, non-automatic licensing arrangements, other quantitative restrictions), and three groups of price control measures (PCMs) (variable charges, anti-dumping and countervailing actions together with voluntary export pricing restraints, other PCMs). [188]

The time points selected are 1988, 1993 and 1996. The choice of years was determined purely by the availability of data. These were the only years currently available that measured NTBs using the frequency method. Data was available for previous years but it was not consistent for most of the countries and therefore could not be used. While this limits the study to some extent the data at hand did allow for cross-sectional pooled-time series analysis. Three different time points further allow for greater temporal variability. It should be acknowledged that due to limited data, results might be driven by the years chosen. However, since the main explanation hinges around internal characteristics, results should not vary based on years chosen, unless there has been some major institutional change like the one experienced by New Zealand (New Zealand shifted from a winner-take all system to proportional representation in 1996).

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[186] For a discussion of methods of measurement of NTBs, see Deardorff and Stern, 1998, chapter 3.
[187] Indicators of Tariff and Non-tariff Measures, OECD, 1996, p. 11-12.

Independent Variables

1. Relative Size: A state's national interest with respect to trade is likely to vary across states. As argued in the third chapter, a state's economic size governs its national interest with respect to trade policy. Larger states display a more pronounced interest in protection than small states because large states are more likely to be vested with disproportionate market power. They can exploit their monopoly power using tariffs, as well as quotas and other NTBs that duplicate a tariff effect.[189] Therefore, large states can exercise their power by the use of TB or NTB (like quotas) without much fear of retaliation from smaller states since they do not have the requisite market power to retaliate. Thus, only a large state with similar monopoly will have the ability to retaliate. Since smaller states depend on the international market more, they do not possess the luxury of individual action, nor can they face the prospect for retaliation from other trade partners. Intuitively, it also makes sense that economies that are essentially dependent on imports rely on the international economy and trade and therefore are less likely to employ TBs or NTBs. Conversely, larger economies are more self-sufficient, less reliant on international trade and thus less resistant to protectionist attitudes.[190]

I use two measures to determine the size of the economy, Gross Domestic Product (GDP) of a country and imports as a percentage of GDP. GDP is important because states with relatively large GDP are likely to possess greater market power and to be better able to forgo commerce than are states with relatively small GDP. Although

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[188] See Appendix 1 for an explanation of these NTBs.
[189] For an analysis of conditions under which tariffs and quotas are equivalent, see Jagdish n. Bhagwati, "On the Equivalence of Tariffs and Quotas," in *Trade, Growth, and the Balance of Payments*, ed, Robert E. Baldwin el al. (Chicago: Rand McNally, 1965), p. 53-67.
[190] Anthony Scaperlanda, *Prospects for Eliminating Non-tariff distortions*, (Nevada, A.W Sijthoff International Publishing Company, 1973, 32-33.

Mansfield and Busch have used the ratio of a country's GDP over world GDP[191] as one of the indicators of the size of an economy, I find GDP of a country itself to be a good measure of economic size. Imports as a percentage of GDP further determines the dependence of an economy on international trade. As argued earlier, countries more dependent on international trade are less likely to employ NTBs than countries that are more self-reliant. Mansfield and Busch used ratio of country's imports to world imports as a measure of country size, however, the ratio of a country's imports over GDP is a better indicator of its reliance on the international market since it reveals the percentage of GDP that comes from imports and hence the degree of reliance on the international market. The source for both country GDP and size of imports is the European Marketing Data and Statistics. The data for imports is compiled using the UN, International Trade Statistics Yearbook and International Financial Statistics published by of the International Monetary Fund (IMF) National Statistical Office. Data for GDP is compiled using figures from IMF, National Statistical Offices and the Euro monitor.

The first two hypotheses are:

H1: ***The larger the ratio of a country's imports to its total GDP, the greater the frequency of NTBs.***

H2: ***The larger the size of a country's GDP greater the frequency of NTBs.***

2. Electoral System: Proportional Representation versus winner take all system

One of the critical reasons why UC take place, or in other words, the reason why governments are compelled to defy the international regimes, is the pressure they face from interest groups within the country. Specifically in the case of trade, such pressure

[191] See Mansfield and Busch, 1995, 728-9.

may come from business groups or infant industries that may be facing competition from imports due to reduction in TBs. Pressure to impose NTBs can also come from labor organizations that may face the prospect of job losses caused by the closing down of factories due to cheaper imports. Finally, governments may experience pressure in the face of rising unemployment to protect jobs by restricting imports. Wherever the pressure comes from, the critical issue is not so much that these pressures exist in society but how responsive is a government to such demands. In other words, how insulated are governments to such demands? This issue is not of critical importance when we are talking of non-democracies. However, it has been argued that even in democracies government's responsiveness is largely determined by the level of insulation its institutions provide.[192]

The most important criteria for a state to resist the pressures of protectionism is to be able to insulate its rulers from the demand of sectors or regions injured by changes in international markets. Further, it is also important that statesmen are insulated from firms, classes, or sectors or in other words enjoy independence from powerful private powerful interests, be it pork barrel or patronage. According to Rogowski, such insulation and independence is enjoyed by statesmen, in a system of proportion representation as opposed to majoritarian-winner-take all system. The plurality and majority single-member district methods are winner-take-all methods; the candidates supported by the largest number of voters' wins. Further, the party gaining a nationwide majority of plurality of the votes will tend to be over represented in terms of parliamentary seats. In contrast, the basic aim of proportional representation is to represent both majorities and

[192] For a discussion see, Markus Crepaz, "Consensus Versus Majoritarian Democracy: Political Institutions and Their Impact on Macroeconomic Performance and Industrial Disputes, *Comparative Political Studies*,

minorities by translating votes into seats proportionally.[193] The core difference between the two electoral systems is that the proportional representation (PR) system has a tendency towards multi-party systems and is more consensual in nature. Single-member plurality (SMP) systems on the other hand, have a propensity towards a two party system and are less consensual in nature. PR system is also characterized by stronger parties as opposed to parties in the winner-take-all system. In a PR, list system, candidates are chosen on the basis of, cumulative vote in the country. In this case, specific group of voters do not vote for a specific candidate, they vote for a party. In a SMP system, on the other hand, each candidate has to canvass for votes in specific districts where they are much more likely to be influenced by interest groups. More over in a PR system, political parties are stronger since voters vote more for the party than for the candidate. Further parties tend to be ideologically defined rather than broad based. Each party stands for one or a few narrowly defined issues. On the other hand, in the SMP system the candidate tries to appeal to as broad a cross section of voters as possible, thereby creating internally less cohesive and thereby weak parties. In list PR systems, the party is not dependent on the votes of a few individuals in a particular district; rather the cumulative votes of its supporters all over the country allow the party to define itself narrowly and necessitates strong party loyalties. Conversely, SMP systems do not afford parties this luxury making a candidate dependent on a plurality of votes within each districts thereby exposing him to more interest group pressure.

Therefore, according to Ronald Rogowski, strong parties in PR systems foster more autonomy from economic pressures than in the SMP systems. "Pressure groups are

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29 (1996), 4-12.

restrained where campaign resources or the legal control of nominations are centralized in the hands of party leaders". [194] Since proportional representation promotes fragmentation of interest, these groups have strong incentives to pursue particularistic interests without considering the costs of their activities on society as a whole. On the other hand, since the winner-take-all electoral system produces larger, more encompassing parties, groups in a winner-take-all system have greater incentives to pursue policies that are in general interest. Lijphart had similarly argued in an earlier book that while PR-based systems may provide benefits in terms of representation, fairness and democratic quality, strong single party governments characteristic of parliamentary-plurality systems are better able to provide the firm and decisive leadership necessary for superior macro economic performance.[195] A statistical study done by Mansfield and Busch also concluded that PR list systems, with their strong party cohesiveness, provide more autonomy to politicians. Accordingly, I would expect to find more incidence of NTBs in SMP systems than in list-system PR regime.

In order to operationalize, this variable I will use Lijphart's measurement of majoritarian and consensus model. Lijphart identifies ten elements across two dimensions, on which the distinction between consensus and majoritarian democracies can be expressed.[196] The first five constitute the "executive parties" dimension and the later five, the "federal unitary" dimension. For the purposes of this measure, I will chose the first four dimensions only. My choice is derived from the fact that the first four

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[193] See Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries,* (London: Yale University Press, 1999), 143.
[194] Ronald Rogowski, "Trade and the Variety of Democratic Institutions", *International Organization* 41 (1987): 208-9.
[195] Lijphart, 1993, 152-4).
[196] See Lijphart, 1999, chapter 3.

measures are logically connected to the underlying electoral system. The fifth measure, corporatism is not included because it is not reflective of the electoral system and therefore need not be included in this measure. Another reason for exclusion of corporatism, from this model is that I have included corporatism as a separate independent measure in my model. The logic of this will be explained later in the chapter. The new measure comprising the four elements will be referred to as a measure for majoritarianism.

The four elements are:

1) The proportionality of the electoral system: the more disproportional the electoral system, the more majoritarian the democracy.
2) Effective number of political parties: As argued earlier, single member plurality systems will tend to produce two dominant parties while PR systems are associated with multi-party systems.
3) Executive dominance: Majoritarian systems are characterized by executive dominance, while consensus democracies have a more balanced relationship between the two branches. Lijphart measures executive dominance in terms of cabinet durability. The more durable the cabinet, the more dominant the executive, and the more majoritarian the system.
4) Executive power-sharing: This measure captures the distinction between the one-party, bare majority cabinets characteristic of majoritarian democracies, and the sharing of executive power among several parties that tend to prevail in consensus systems. Measure is taken as the means of the percentage of minimum winning cabinets, and the percentage of one-party cabinets in power in each system.

Therefore a distinction is made between one-party and coalition governments. Minority governments are treated as theoretically equivalent to oversized coalitions.

While I am treating the four elements as a composite measure for majoritarian and PR systems, I will test each of these elements separately to see if they have an individual effect on the dependent variable as well. In order to operationalize this variable, I added up the above four measures. The higher the value the more majoritarian a system. The third hypothesis then is:

H3: ***The more majoritarian a system, the greater the frequency of NTBs***

3. Corporatism versus Pluralism

The difference between corporatism-pluralism may be yet another factor that can account for the increase of NTBs in some states and not others.[197] Corporatism refers to an interest group system in which groups are organized into national, specialized, hierarchical, and monopolistic peak organizations that are incorporated into the policy making process. The institution of corporatism involves a negotiated trade-off between organized business and labor interests with varying degrees of state involvement. The trade-off essentially involves guaranteed labor cooperation and moderation in wage demands in return for employment guarantees and increased influence for labor in the realm of economic and social policy. In other words, corporatism is an institutionalized means through which labor, business and the government negotiate social and economic

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[197] For a discussion of corporatism and pluralism see, Markus Crepaz, "Corporatism in Decline? An Empirical Analysis of the Impact of Corporatism on Macroeconomic Performance and Industrial Disputes in 18 Industrialized Democracies," *Comparative Political Studies* 25 (1992) 139-168. Also see, Lijphart and Crepaz, " Corporatism and Consensus Democracy in 18 Countries: Conceptual and Empirical Linkages," *British Journal of Political Science*, 1991, vol. 21, p. 235-256.

policy. This then also means that both the business and the labor groups have a guaranteed institutional means of influencing government policy.

On the other hand, the interest group system of majoritarian democracy is a competitive and uncoordinated pluralism of independent groups.[198] In such a system, no institutionalized structure exists that guarantees interest group representation and therefore, most groups rely on lobbying tactics to get the attention of influential politicians. Such a system provides less sure chances of influencing the decision-making structure. In other words, corporatism provides a more consensual and sure system for interest groups to influence relevant social and economic decisions than does the majoritarian pluralist system. Therefore, I would expect that corporatist democracies would have more incidences of NTBs than pluralist democracies.

In order to measure corporatism versus pluralism, I use the measure operational zed by Alan Siaroff (1998) and used by Arend Lijphart in his 1999 book.[199] Siaroff, in a study of twenty-four industrialized democracies takes eight basic aspects of the pluralism and corporatism contrast and rates his twenty-four democracies on each of these, using a five-point scale. He then averages these ratings to arrive at comprehensive score for each country. The eight judging criteria are based on the presence and strength of peak organizations, process of concentration, degree of centralized wage bargaining, strength and historical orientation-reformist versus revolutionary-of labor unions, success or failure of concentration in terms of the levels of strikes and lockouts in different countries. The values are recorded in such a way that, higher the value the more pluralist

[198] See Lijphart, 1999, chapter 9.
[199] See Lijphart, 1999, p. 175-180.

the system is and conversely, lower the value the more corporatist a system. Accordingly, the next hypothesis is:

H 4: The higher the level of corporatism in a country the greater the frequency of NTBs.

Level of Unionization (Union Density)

Level of unionization is another variable that I considered using. Level of unionization of a country indicates the number or the percentage of workers in the work force that are unionized. Being part of a union is an indication of high level of organization and therefore the ability to influence the government. However, I opted against using unionization as a variable. Level of unionization by itself is not an indicator of labor groups ability to influence economic policy. Much is dependent upon the institutional structure of the government, and if it open to influence by interest groups. In other words, the level of insulation that a government enjoys by way of its institution plays a crucial role in how much impact the level of unionization may have on governments policies. Corporatism as a measure worked out better because it is inclusive of both the labor groups and business groups and provides an institutionalized mechanism where the two forces can work with the government in being able to influence the policy making process. In it has been argued by some, that it is corporatism that provides the essential element to consensual democracies.[200] Therefore I chose to use corporatism and pluralism as a variable as opposed to level of unionization.

4. Unemployment

In trade policy analysis, it is widely accepted that a high level of unemployment is the single most important source of protectionist pressures.[201] Workers who are displaced due to increase in imports will find it progressively more difficult to obtain alternative employment and when they do, downward pressure will be placed on their wages. Imports in general are seen as a sign of loss of jobs and therefore we will find more opposition to imports when there are high levels of employment. A study conducted by Takacs covering the period 1949-1979 in the Untied States supported the hypotheses that micro-economic conditions significantly affect protectionist pressure. The lower the level of GNP and unemployment, higher is the demand for protection.[202] A similar study done by S.P Magee in 1982 for the period 1933-1977 found that protectionist pressure rises with rise in unemployment Magee found that in the period covered, a 10 percent increase in unemployed lead to about 9 percent increase in protectionist pressure.[203] As argued earlier, one of the main reasons governments respond to protectionist pressure is their concern for re-election. It has been found that in periods of economic downturn and especially unemployment such fears are increased manifold. Therefore, governments are more likely to respond to pressures for increase in protectionism when there is a rise in unemployment. The data for unemployment is from the European Marketing Data and Statistics. They have compiled the data using sources from International Labor Organization, and national statistical offices. The final hypotheses is:

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[200] Liam Anderson, "The Implications of Institutional Design for Macroeconomic Performance: Reassessing the claims of Consensus Democracy," *Comparative Political Studies*, Vol. 34, No. 4, May 2001, 429-452.
[201] For example, see C. Fred Bergsten and William Cline, *Trade Policy in the 1980s*, 179.
[202] W. Takacs, "Pressure for Protectionism: An Empirical Analysis," *Economic Inquiry*, XIX, 687-93.
[203] As cited in Greenaway, (1985), 155.

H5: ***The higher the level of unemployment the higher the frequency of NTBs.***

5. Political Ideology

Ideas and ideology influence political life in a number of specific ways. They provide a perspective through which the world is understood and explained. Arguably, consciously or unconsciously, every one subscribes to a set of political beliefs and values that guide their behavior. Political ideas therefore set goals that aspire political activity. Politicians are in that sense subject to two different sets of influences. As discussed earlier, all politicians desire power, which forces them to be pragmatic, to adopt those policies and ideas that are electorally popular and will favor them with the powerful groups in the society. Politicians also possess beliefs, values and convictions that have an influence on polices. Political ideas further help to shape the nature of political systems. Systems of government vary considerably throughout the world and are always associated with particular values or principles. Finally, political ideologies can act as a form of social cement, providing social groups, and societies with a set of unifying beliefs and values.[204]

Attempts have been made to categorize political ideas and ideologies and relate them to one another. The most familiar method of doing this is the left-right political spectrum. This is a linear spectrum, which locates political beliefs at some point between two extremes, the far left and the far right. The linear spectrum is commonly understood to reflect different political values or contrasting views about economic policy. In terms

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[204] For a discussion of the impact of ideology see, Andrew Heywood, Political Ideologies, (London: Macmillan Press Limited, 1998), chapter 1.

of values, the spectrum sometimes reflects values towards equality. Left-wingers are committed to equality and are optimistic towards the possibility of achieving it, while the right-wingers typically reject equality as being either undesirable or impossible to achieve. This is closely related to different attitudes towards the economy as well. It may be argued that right-wing conservatives are committed to free-market and capitalism and private property, while those on the far left believe in a state-planned economy. [205] While those leaning towards the left try to find a balance between the market economy on the one hand, and state intervention on the other hand, they are more likely to support protectionist demands. Left parties in general derive more of their members from labor groups and are therefore more likely to respond to labor groups' demands for protection from foreign imports that may cause them to lose jobs. Further, left-wing parties, following the Marxist tradition (though subdued) are more likely to be critical of unhindered free trade and favor self-reliance and self-sufficiency.[206] Therefore, one would find that governments with more leftist leanings are more likely to support NTBs.

The leftist leaning of a government is measured here as left seats as a percentage of seats held by all government parties. The data source is the Comparative Welfare States Data set.[207] Since the ideology of a government and consequently its policies cannot be determined (or formed) within one year, I took an average of previous five years for each data point. Accordingly the final hypothesis is:

H6: The more leftist a government, the greater the frequency of NTBs.

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[205] Ibid, 16-17.
[206] Ibid, chapter 4.

Summary of Hypotheses:

H1: *The larger the ratio of a country's imports to its total GDP, the greater the frequency of NTBs.*

H2: *The larger the size of a country's GDP, greater the frequency of NTBs.*

H3: *Higher the degree of majoritarianism, the more the frequency of NTB.*

H 4: *The higher the level of corporatism in a country the greater the frequency of NTBs.*

H5: *The higher the level of unemployment the higher the frequency of NTBs.*

H6: *The more leftist a government, the greater the frequency of NTBs.*

Design

This study employs a pooled time series (t=3), cross-sectional (n=11) analysis. Since this pooled design consists of only three time-periods, autocorrelation should not be a major concern.[208] Nevertheless, I will conduct the test for autocorrelation. The greatest advantage of pooled designs is that it increases the sample size, allowing for a greater number of variables to be used without drastically reducing the degrees of freedom.[209] My main hypothesis is:

NTB = GDP + MGDP + MAJ + CORP + UNEMP + IDEO + e

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[207] The data collected in this data set was collected by a project entitled "The Welfare State in Comparative Perspective: Determinants, Program Characteristics and Outcome" directed by Evelyne Huber, Charles Ragin, and John D. Stephens, Northwestern and University of North Carolina, 1997.

[208] Since this is essentially a cross-sectional dominant design (t=3, n=11) with only three time periods per unit, problem of autocorrelation are minimal. See J. Stimson, "Regression in Time and Space: A Statistical Essay," *American Political Science Review*, vol. 29,p. 914-947.

[209] See Vicki Birchfield and Markus Crepaz, "The Impact of Constitutional Structures and Collective and Competitive Veto Points on Income Inequality in Industrialized Democracies", *European Journal of Political Research*, vol. 34, p. 88.

Where:

GDP= Total Gross Domestic product

MGDP= Imports as a percentage of GDP

MAJ = Standardized score for majoritarian democracy

CORP= Corporatism versus plurality system

UNEMP= Total percentage of workers unemployed

IDEO = Left Seats as a percentage of parliamentary seats held by all government parties

Chapter 6

Results

This chapter presents the results of the empirical analysis of this study. As explained in the previous chapter, different hypotheses that may help explain when UC take place were tested. A pooled time-series cross-sectional analysis was used to regress different explanatory factors on the incidence of NTBs, the data being for the years 1988, 1993, and 1996. In this chapter, I begin by presenting the results of some of the curve estimates and discuss the findings. I test a few partial models and then present the entire model of my empirical analysis and analyze the results. I also provide statistics for mulitcollinearity and autocorrelation. Finally, I present the implications of my findings. The results of the statistical analysis support the theoretical argument presented that both the size of the economy and nature of domestic institutions have an impact on the NTBs. The following is the model expressed as a regression equation:

NTB = GDP + MGDP + MAJ + CORP + UNEMP + IDEO + e

Where:

NTB = Non-tariff barriers frequency ratio in that year

GDP = Gross Domestic Product in that year

MGDP= Imports as a percentage of GDP in that year

MAJ = Standardized score for Majoritarian democracy

CORP = Country Score on Corporatist-pluralist continuum

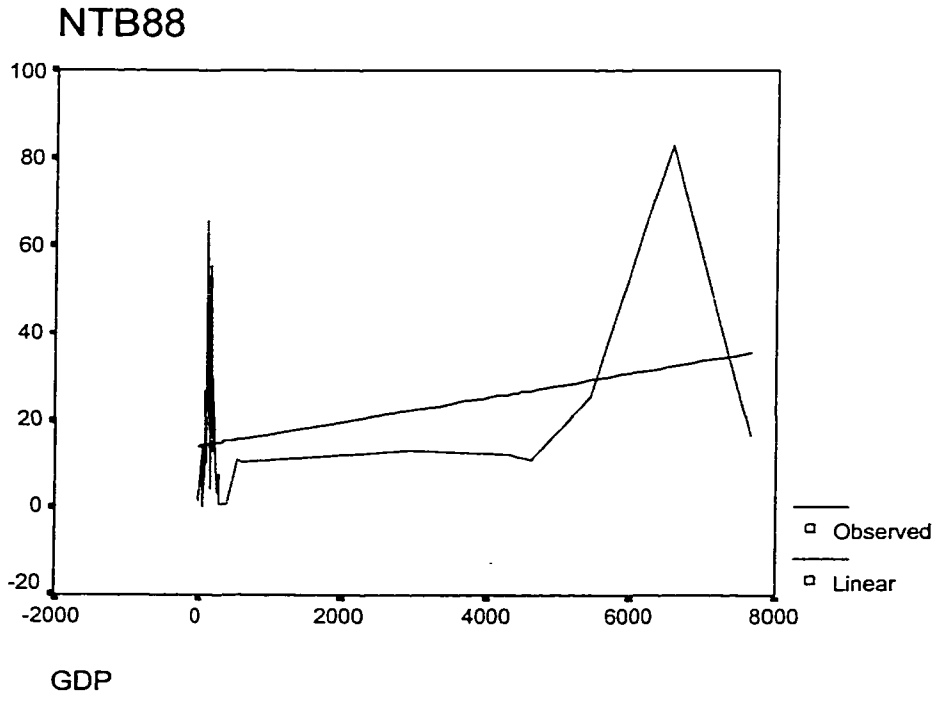
UNEM = Total percentage of unemployed workers

IDEO = Left Seats as a percentage of parliamentary seats held by all government parties

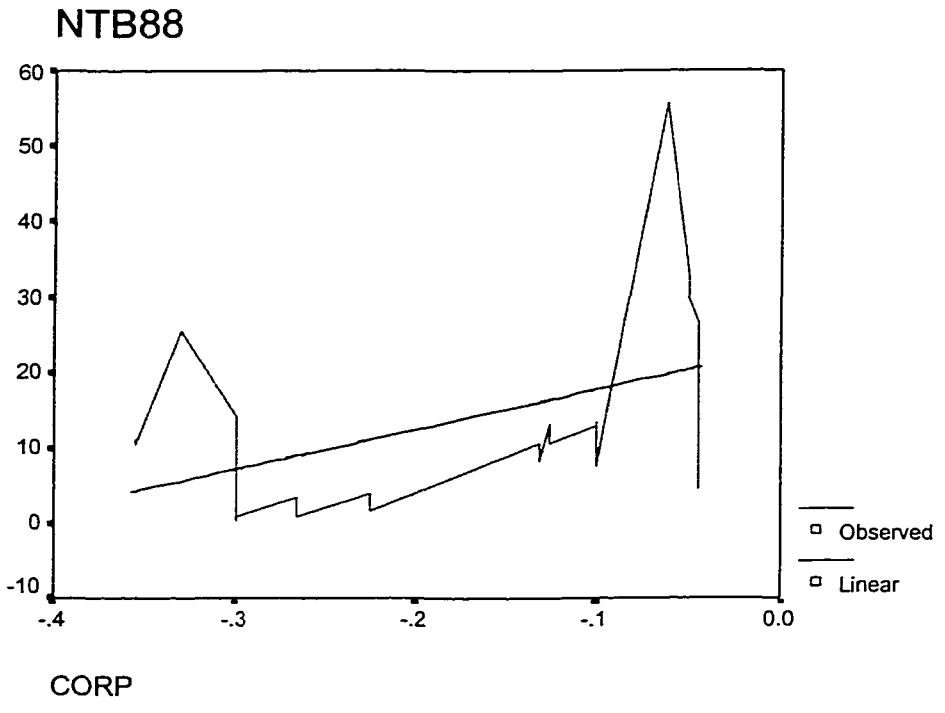
Data sources for the above have been explained in the preceding chapter. The data yielded 29 data points. These data points are for 11 countries for the years 1988, 1993, and 1996. However, dependent variable data is not available for Iceland in 1988, Austria in 1996, and Finland and Sweden in 1996. This limited the data points from a potential 33 to the available 29.

As a first step, I ran a few curve estimations to check for linear relationship between the dependent and independent variables. A clear linear relationship appeared between the dependent variable NTB and independent variables GDP and CORP. Graphs are shown bellow.

Graph 1: NTB and GDP, linear curve



Graph 2: Linear Relationship between NTBs and CORP



Next, I ran two separate models, one testing the relationship between NTB and MGDP and GDP, both related to the size and reliance of an economy and the other between, NTB and domestic institutions, i.e. CORP and MAJ. Their results are presented in the following table:

Table 1 – Regression using GDP and MGDP

Variables	B Score	Standard Error
GDP	6.402E03	.002*
MGDP	144.413	71.923*

* Significance at .05 level.
R^2= .217 Adjusted R^2= .157

As can be seen from the table both GDP and MGDP (indicators of size of an economy) are significant at the .05 level. This indicates that even without controlling for

other variables, the size of the economy plays an important role in determining the protectionist nature of a state.

Next, I regressed institutional factors, CORP and CONS on the dependent variable. Results are presented below:

Table 2 – Regression using MAJ and CORP

Variables	B Scores	Standard Error
MAJ	1.919	1.575
CORP	7.542	54.591*

* = Significance at 0.1 level

R^2= .094 Adjusted R^2 = .024

As the above table indicates, when the two institutional variables were regressed by themselves on the dependent variable NTB, only CORP emerged significant at 0.1 level.

Next, I conducted a multivariate regression analysis using the four most important variables, that is, GDP, MGDP, CORP and MAJ in the model together. The results are presented below.

Table 3: Partial Regression Model

Variables	B score
GDP	8.299E-03 (.002)*
MGDP	154.471 (63.879)***
CORP	123.575 (40.539)**
MAJ	3.104 (1.334)***

* = Significance at .001 level, ** = Significance at .005 level, and ** = .05 level

R2 = .436 Adjusted R2 = 3.42

As the above table indicates, all the four variables are significant. GDP emerged the most significant at .001 level. While, both MGDP and CORP are significant at .005 level. MAJ also emerged fairly significant at .05 level. Thus, all the four variables emerge statistically significant confirming the hypothesis that size of the economy and institutional structure play an important role in increasing use of NTBs.

Next, I conducted a multivariate regression using the full model. The results are presented below.

Table 4 – Regression with Full Model

Variables	B Scores
GDP	9.473E-03(.003)*
MGDP	186.143 (71.825)**
MAJ	3.257(1.660)***
CORP	131.330 (55.879)**
UNEMP	.678 (1.178)
IDEO	2.988(13.137)

* = Significant at .001 level. ** = Significant at .01 level, ***= Significance at .05 level.

R^2= .473 Adjusted R^2= .315

After including all the variables in the final model, the results did not improve, with the R2 actually going down from .342 to .315. However, the four important variables, GDP, MGDP, MAJ and CORP, remained significant at .05 level. GDP in particular were even more significant at the .001 level, indicating the empirical strength of the variables

in explaining the model. Both MGDP and CORP were significant at .01 level. However, unemployment and ideology emerged insignificant. I also conducted a regression analysis disaggregating the variable MAJ, to see if the four elements had any independent impact on the dependent variable NTB. Neither of the four elements were significant at all indicating that it is only the combined impact of various institutions that have an impact on policies.

Looking at each variable independently, the statistical significance of both GDP and MGDP supported the theoretical argument that both the size of the economy and degree of dependence play an important role in the imposition of NTBs. Looking at existing evidence, the United States, the largest economy in the world and one of the largest importers, has shown high incidence of NTB usage. In recent years, the US has levied the largest number of anti-dumping measures (though a legitimate tool, it is more often than not used as a NTB) against its trading partners. It has also been a common user of environmental and health restrictions as NTBs.

The two institutional variables also emerged significant indicating that the nature of domestic institutions plays an important role in determining how well statesmen respond to societal pressure. In other words, the degree of insulation provided by domestic instruments determines largely how responsive statesmen can be to international regimes. Therefore, states that are more majoritarian and follow the single-member-plurality system are more likely to experience protectionist pressure. As argued in the previous chapter, in SMP systems, interest groups have a better chance of influencing politicians directly than in list PR systems, since the decisions are made at party level. On the other hand, states that are corporatist in nature are more likely to experience increase in NTBs

than plurality systems. Corporatist systems provide an inclusive mechanism by which both business and labor have institutionalized means to influence the state. On the other hand, pluralist democracies that do not possess such mechanisms are less likely to experience institutionalized pressures.

Unemployment and ideology were the only variable that did not emerge significant. However, this does not mean that it has no impact at all. Normally in statistical analysis, we use significance levels of .01 or .05 level and unemployment is not significant at either level.[210] However, this does not mean that employment has no significance at all. We can still say that there is a 57 percent chance that unemployment explains variance in NTBs, but there is 43 percent chance that this is explained by random factors. Ideology however, emerged insignificant to be able to provide any statistical support for the theoretical argument. I however, decided to go with the full model despite the two variables insignificance, given the theoretical importance of these variables.

I also conducted an outliers test (Cooks Distance) to make sure that an outlier was not driving the statistics. Outliers create the problem of exerting undue influence on the model and there by "puling" the regression line. To determine whether the model suffered from an outlier(s), I decided to use the Cook's Distance (Cook's D) formula for all cases. Outliers are indicated by the Cook's D score for a case being greater than the number of variables divided by the number of cases. This may be described by the equation: Cooks D > Number of variables/ Number of cases.

The left-hand side of this equation is 6/27 = 0.22. In the calculation of Cook's Distance computed for all the cases for all the cases in the data set I found that case

[210] This means 99 or 95 percent confidence that this independent variable explains variance in the dependent variable.

number 21 (.68, USA 1993) and case number 29 (.85, USA 1996) had a higher score than the cooks distance. Therefore, to evaluate if these were outliers of any significance I ran the multivariate regression model after taking USA 1993 and 1996 out of the data set. The results showed considerable improvement in the R2, from .473 to .649 and adjusted R2, from .315 to .532. Significance levels for MGDP, MAJ and CORP went up, with these variables now being significant at .005 level. GDP's significance went down a little from .005 level to .05 level. The other two variables unemployment and ideology remained insignificant.

Table 5: Full Model without the Outliers

Variables	B Score
GDP	7.541E-03 (.003)*
MGDP	174.939 (59.685)*
MAJ	3.488 (1.127)*
CORP	14.149 (3.899)*
UNEMP	.364 (.790)
IDEO	.397 (9.985)

* = Significance at .005 level ** = Significance at .05 level

R2 = .649 Adjusted R2 = .532

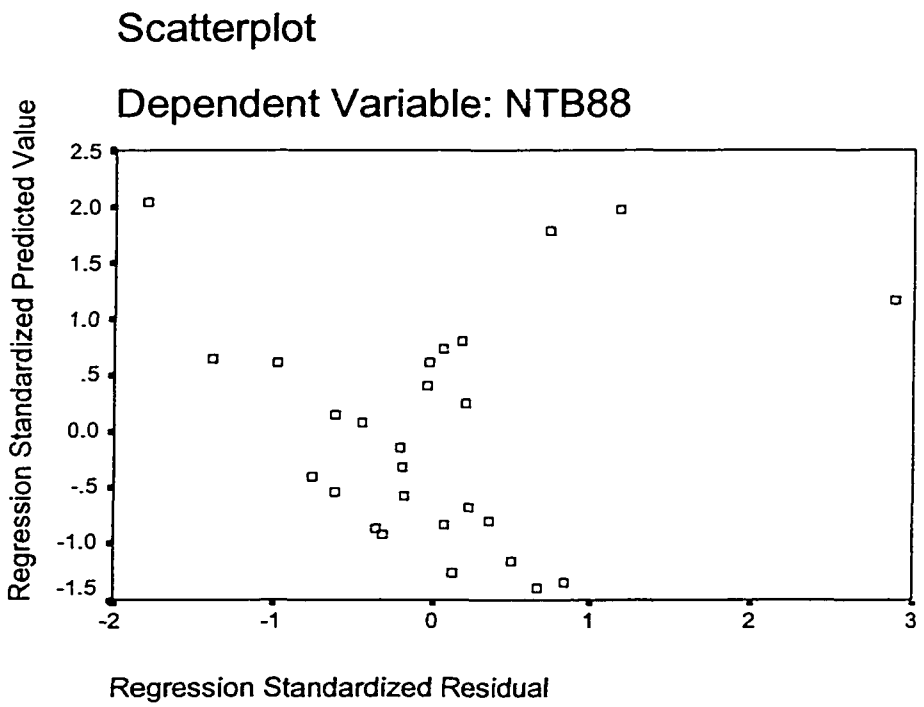
However, I decided to use the full data set for my final model because I did not want to exclude one of the largest economies, from my dataset. Further, even with USA 1993 and 1996 in the model, the relevant variables remained significant.

At this point, I conducted a multicollinearity test to make sure that my variables were not inter-correlated. This can be a problem since variables that are correlated may be capturing or explaining the same phenomenon. Multicollinearity can pose two types of problems. Firstly, it can depress the significance tests. It usually depresses one and leaves the others alone. Therefore, some variables may be actually more significant than they appear. The second problem is that multicollinearity expands the confidence levels by increasing standard error. I did the simple multicollinearity test by regressing each independent variable on all the other independent variables. Neither of the variables suffered from high multicollinearity. The highest R2 was for regression between GDP and MGDP .552. The R2 for CORP and MAJ was .498. Normally R2 of .6 and above is considered to a problem. Following this, I also tested for multicollinearity using the VIF and tolerance test. High tolerance of the model is indicated by a figure that is higher than .3 and above. For the VIF test the number should be less than or equal to 9. Neither of these tests showed any reasons to be concerned about multicollinearity.

Table 5: Multicollinearity Diagnostics

Variables	Tolerance	VIF
GDP	.276	3.629
MGDP	.389	2.572
CORP	.238	4.196
MAJ	.324	3.083
IDEO	.441	2.267
UNEMP	.697	1.435

The other problem that a model can experience, especially in a pooled time-series, cross-sectional analysis is that of auto-correlation, i.e. when the error terms are correlated. Auto-correlation can artificially boost up the significance levels of the model, thereby making the variables seem more significant than they are. I did a simple scatter-plot of the residuals and predicted values to check for auto-correlation. While the scatter-plot was not the ideal chocolate chip cookie pattern, it was random enough to not be a problem. Further, since multicollinearity depresses the significance levels, and auto-correlation increases the significance levels, this was not a major problem. The scatter plot of the residuals and predicted values is presented below.



Implications

The results based on the statistical analysis support the theoretical hypotheses in the previous chapter that both the size of the economy and the nature of the institutions

have an impact on the increase in NTBs. They not only confirm the theoretical arguments for why UC take place but are also helpful in explaining the differing levels of NTBs in different states and why they vary. Therefore, a state that has a large economy has a majoritarian, SMP system of democracy and has corporatist mechanisms, is likely to see high incidence of NTBs. Of course, it is hard to find all these features in any one country but a combination of one or more of these features can indicate if a country will have high or low incidence of NTBs. For example, United States has the largest economy in the world and has SMP system of democracy. Therefore, despite being a strong proponent of free trade, US experience's a high level of NTBs. On the other hand, Corporatist countries like Austria, Sweden and Norway, all three experience a high incidence of NTBs despite being relatively small economies. The implications of these results for the trade regime itself are also important. The increasing incidence of NTBs since the inception of GATT indicates that the trade regime has not been as successful. In fact, it can be argued that making the use of tariff measures illegal has made matters worse. The new means of protectionism, as argued earlier are less transparent, harder to identify and therefore, much more difficult to eliminate. This in itself raises a few different set of questions; what kind of an impact do NTBs have on international trade, does this new form of protectionism have the ability to threaten the world trading system, and finally, is protectionism in the long run detrimental of the state or of the trading system? The answers to these questions depend on who is asked the question.

Jagdish Bhagwati argues that despite the threat of NTBs, world trade has increased at a steady pace. According to him, one of the reasons for this is that as states have devised new means of protecting their markets, others have devised new ways to

penetrate the market.[211] Increase in foreign direct investment and its inclusion in the Uruguay Round of trade negotiations is an attempt by the proponents of free trade to by-pass some of the more stringent NTBs. Another reason is that the pace and volume of trade has increased so tremendously that the new protectionist measures have not been very successful in slowing down trade.

Whether protectionism is bad for a state is a much harder question to answer and really depends on who is questioned. From the point of view of economists and proponents of free trade, protectionism can be extremely detrimental to both society in general and the economy in particular.[212] However, there is increasing evidence, that in the current world of globalization and free trade, forces of protectionism are taking stronger hold. Not only are more and more societies becoming democratic and therefore facing pressure from domestic actors to be more responsive, but also the nature of state responsibility itself is changing. Increasingly, statesmen are not only being held responsible for maintaining law and order, but the state of the economy, employment, and medical support, are all becoming the responsibility of the state. Therefore, while on the one hand state responsibilities are increasing, their freedom to operate and respond to the needs of their citizens is being restricted by international regimes. States no longer have the freedom to impose higher environmental standards or even health standards, if they in are in any way contrary to the regulation of WTO and thus restrict trade. Even in the face of growing unemployment or harsh competition faced by infant industries due to competition from imports, states do not have the luxury to respond by restricting imports.

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[211] Bhagwati, 1988, p. 45.

[212] For a good argument of negative impact of protectionism, see David Greenaway, *Protectionism Again...?: Causes and Consequences of a Retreat from Freer Trade to Economic Nationalism*, (London, The Institute of Economic Affairs, 1979).

Therefore, in the face of such dual pressure and responsibility statesmen have no option but to resort to the use of NTBs.

Although the statistical results bear out the hypotheses that UC's (represented in the trade regime by NTBs) are affected by the size of the economy, and domestically, by the insularity of governmental institutions, one has to be careful when interpreting the implications of these results. Though a data set with only about 29 data points is acceptable for statistical analysis, generalizations cannot be made about the society at large. The data set covers only three time-points and eleven countries and therefore it may be possible that the results are driven by the years chosen or the selection of countries. Nevertheless, based on the available data and the analysis of the results it can be argued that both the size of the economy and the nature of domestic institutions have an impact on the occurrence of NTBs. The significance of these findings to the larger literature on the subject is addressed in the next chapter.

Chapter 7

Conclusion

The end of the Second World War has seen a steady proliferation of international regimes in almost every issue area of human concern. States have purported to set aside their own selfish goals in the broader interest of humankind and come together to set up rules and regulations in areas of common interest so that every state can enjoy common benefits and follow commonly set rules. This proliferation of regimes has been accompanied by an increasing interest among international relations theorists to explain this hitherto unusual phenomenon in the international interaction of state of states that had so far been dominated by wars and conflicts. The cooperative nature of regimes has obviously attracted a benign viewpoint and theorists have tended to explain this "marvel" in terms of institutional mechanisms, the presence of a dominant hegemon, and compliance mechanisms.

However, a closer examination of regimes reveals less than benign consequences. Careful analysis suggests that as regimes have boasted of success in resolving conflict in relevant issue areas, states have tended to find alternative means to fulfill their selfish interests. These alternative means do not openly defy the formal rules of the regimes and in that sense, are not considered illegal. However, these alternative means are more devious and therefore harder to identify and deal with, and they work against the spirit of the regime. Examples can be found in various trade, security and environmental regimes. Banning of ivory trade and trade in CFCs by international regimes has lead to an increase

in black market trade in these products, that have gone beyond the purview of the state itself. A long awaited agreement on a comprehensive ban on nuclear testing led to a proliferation of nuclear tests in the same decade. A concerted effort at export controls of nuclear and fissile material has led to increasing nuclear smuggling by some and rogue attempts at conducting their own nuclear tests by others. Finally, the replacement of TBs by NTBs as a means of protectionism in states interaction with one another has meant less transparency in trade relations.

A careful examination of the regime literature does not take us far in finding an explanation of this duality of behavior displayed by states in the international arena. For one thing, as argued earlier, most of the regime literature has taken a benign view of regimes. Regimes are mostly associated with positive influence in the interaction of states and therefore very little, if any, attention has been paid to the negative aspects of regime consequences. Further, the international relations literature is also limited in its reliance on the state as a unitary actor. Since states are treated as unitary actors, international relations literature is unable to explain the dual nature of state behavior. This dual nature is displayed on the one hand by being a compliant and even active proponent of international regimes and on the other, by following actions that may be in the self interest of a individual state, but go against the interests of the community of states and defy the basic purposes of the regimes.

The results and arguments presented in this research effort reveal that in order to be able to understand and explain dual behavior displayed by states we have to go beyond the unitary nature of the state and open up the black box of domestic politics. International relations theorists like Katzenstein (1978), Putnam (1988), and Milner

(1997) among others have emphasized the importance of the interaction of international and domestic actors and their relevance on explaining state behavior. This analysis reveals that the interaction of international and domestic factors play an important role in providing an explanation of state behavior displayed by UC. Simply put, regimes work to restrict the independent policy making powers of the state. Their main purpose to reduce the uncertainty involved at the international level in the interaction of states with one another. Since individual states are unsure of the behavior of other states in the community, they are therefore reluctant to cooperate even if it is in their own interest. In other words, states cannot trust one another to work in their common interest and not choose a path of self-interest. Regimes resolve this dilemma by making common rules for all states in a given issue area, and in addition, they provide institutionalized means to ensure compliance and monitoring of state behavior and thus reduce fears of uncertainty and costs of cooperation. However, in the process regimes also take away the essential element of state independence, which is to make policy on behalf of its own people. This in no way makes states less responsible for the welfare and well being of their citizens. So while at the international level a state may have sacrificed its individual right to policy on a given issue area, at the domestic level a state is no less accountable to its people. Matters are complicated further by the fact that governments, in order to maintain power, have to be responsive to their constituents and cannot take refuge behind the restrictions of international regimes. International regimes, though they may be in the best interest of community of interests, can in the long run actually hurt the domestic interests of states. For example, a ban of ivory trade hurt the ivory industry causing many industries to shut down. Ban on the use of CFCs hurt the refrigerator and air conditioning industry by

increasing their costs of production, and thus increasing the costs for the consumers. Similarly, other environmental and health standards are in the long-term interests of people, but they do increase the costs of production and make both the producers and consumers unhappy. Due to international pressures, states may be forced to sign international conventions banning child labor, however, this might not only result in increase in prices of certain commodities, but in some cases these jobs may be the only means of survival of young children. One may argue that feeding children is the responsibility of parents and of a state, but when states themselves are poor and can barely provide water and electricity to its people, then issues like childcare appear to be luxuries to be enjoyed only by the rich nations.

Any one of these issues and many others can tempt a state to defy the international regime. However, states do not enjoy that luxury either. They have to be mindful of their international obligations and they cannot afford to defy international regimes as and when their regulations appear to be inconvenient. Smaller states are concerned about retaliation from more dominant keepers of the world community. They may also fear being ostracized by the international community. Examples of North Korea and Iraq remind us of the severe consequences a state can face for defying internationally accepted rules and norms of behavior. On the other hand, larger states may not fear retaliation, but they have reputational concerns. They enjoy a certain status and position in the community of states. Public repudiation of international norms can cost them their reputation. Additionally, defiance of regime rules in one area may make a state an untrustworthy partner in other issue areas as well. Further, states cannot really use the option of staying out of regimes either. States, like a local neighborhood have

increasingly become closer and more dependent on each other. If you live in the neighborhood, you are part of the community, and if you opt out of community rules and regulations, you are ostracized. Additionally, a government that can govern well at home while maintaining its international commitments is better able to enjoy the confidence of its own people and therefore maintain its power structure.

The above-mentioned scenario does not leave much room for maneuverability for a statesman, unless he can find a way to maintain his commitment at the international level, and be a responsible member of a responsible community and at the same time find a way to satisfy his domestic interests. He does so by resorting to means that are not technically considered illegal under the rules of the regimes but allow him to respond to the concerns of his domestic interests. Thus, he maintains his commitment and responsibility in both the arenas of accountability. Therefore, states, when denied the option of tariff barriers as a legitimate means of protecting their markets and businesses, resort to the use of nontariff measures, that are either not considered illegal under the purview of the trade regime or are permissible only under certain (and therefore open to maneuverability) circumstance or in other words, UC. For example, the most commonly used NTBs currently are anti-dumping and countervailing duties, both of which are permissible under the GATT/WTO in legitimate cases to injury caused by unfair imports. However, since the hurt party determines what is legitimate, these restrictions are applied less than fairly. A similar but a slightly different example can be found in the case of nuclear regimes. Before, the CTBT could ban underground testing, four states, India, Pakistan, China and France conducted nuclear tests. Since the rules of this treaty were meant to be more stringent, and there is no way to hide nuclear tests unless conducted by

way of computer simulations, these states opted to conduct the necessary tests before the treaty could actually come into force. Though the nuclear tests may have defied the norms of non-proliferation, none of the aforementioned states performed an illegal act. India and Pakistan were not members of the Nonproliferation Treaty (NPT) that permitted tests only to those countries that had managed to join the club of nuclear states by conducting nuclear tests before January 1967. China and France both members of such a club were accorded the special status under which they were permitted to conduct tests. CTBT, that banned all underground tests by all nations, had not yet come into force and, therefore, no illegal act was performed. Yet, at a time, when the community of nations was celebrating the indefinite extension of the NPT (1995) and setting up of the CTBT (1998), four nations conducted nuclear tests.

Implications

The implications of this study should be addressed at two levels; one, what are the implications for the regime literature, and secondly, what does it mean for international regimes themselves? Have they achieved nothing other than mere hindrances in the path of states selfish acts; are they completely useless or do they have a larger purpose in life?

The study suggests two important lessons for the regime literature. International theorists have confined themselves to explaining the existence and justifying the persistence of international regimes. Part of the reason for this partial tilt is that neo-liberals have constantly faced criticism from the neo-realist school of thought accusing them of over simplifying the complexities of the anarchic nature in which the community of states struggle to survive and overstating the role played by international regimes in

taming this chaotic system. This constant justification and defense of international regimes has left little room for examining its negative impact. In that sense, this study purports to fulfill an important gap in regime literature. In order to have a more complete and through knowledge of international regimes, theorists have to concentrate their future work on studying not just the positive but negative impact of regimes as well.

The study also highlights the relevance of domestic factors in understanding and explaining state behavior. As mentioned earlier, international relations literature has tended to treat the state as a unitary actor. Though some scholars recognize the relevance of domestic actors, it has been assumed that treating the state as a unit of analysis can better explain state behavior without sacrificing explanatory power. However, as our research revealed, without bringing in the role of other domestic actors, any explanation or understanding of state behavior would be more parsimonious but incomplete. After all, once you open the black box of domestic politics, the government is only one of many actors struggling for control. State behavior then can only be understood in the broader context of its interaction with other players.

A more important question that arises out of this study is the lessons for the proponents of regimes. If regimes have not been successful in achieving their purposes, and states have tended to find alternative ways to fulfill their own self interest, then are international regimes mere showcases with no real purpose in life except to make a group of proponents feel good about themselves. I would argue to the contrary. International regimes have made a difference in almost every sphere of life. States have attempted and in most cases succeeded in duping the international community, but regimes have in turn succeeded in setting up norms and acceptable rules of behavior with which states are

forced to comply. Even though four states conducted nuclear tests in 1995 and 1998, it was only four states among a community of about 190 nations that chose that option. Ever since the setting up of the NPT in 1967, only three new nations have attempted to test nuclear devices and there has been no incidence of use of nuclear weapons. Nuclear weapons, though still treated as a status symbol and the ultimate source of security are considered a completely in appropriate means of international warfare.

Similarly, even though states are resorting to newer means of protectionism, international trade has continued to grow. In addition, the WTO provides a mechanism under which aggrieved parties can bring cases against perpetrators. Unlike the GATT, the WTO is now empowered with compliance mechanism, which provided the body some teeth.

International regimes have also succeeded in bring about certain acceptable standards for human rights. Even though, as many have argued, there may be a difference between adequate human rights between the Third World and the First World, human rights commissions have succeeded in establishing the basic norm for all nations. It is now much for difficult for states to hide behind the excuse of poverty and limited resources to either overlook or to be participant to human rights violations. States need to divert resources to alleviating hunger, disease, poverty and death. The meaning of the word security has to be broadened to include human security and not just territorial defense. Human rights regimes have succeeded in making tremendous progress in this direction.

Similarly, in the face of global warming, ozone layer depletion, scarcity of resources, acid rain and, oil spills, there needs to be an international body that will not

only take responsibility for this common resource, but will set standards and hold perpetrators against nature accountable. International regimes have made tremendous progress in this regard and their efforts cannot in any way be slighted but need to be applauded. International regimes are important, they have played a critical role in maintaining peace, reducing war, reducing human rights violations, alleviating hunger and increasing environmental awareness.

What is in question is not the relevance of regimes, but their ability to conform state behavior. What is in doubt is also not state commitment but the contradictory nature of state responsibility. It is only the combined efforts of neo-realism and their understanding of anarchic realities, the neo-liberal belief of cooperation and the constructivist's faith in learned behavior that can resolve this common dilemma that faces the community of nations.

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Appendix
Data Table

	Country	NTBs (Frequency ratio)	GDP (Billions of dollars)	MGDP (Imports as Percentage of GDP	CONS (Lijphart's index of Consensual democracy)	CORP (Siaroff's index of corporatism)	UNEMP (Unemployed as percentage of total labor force)
1	Austria, 1988	65.8	127	.29	1.62	-.06	4.8
2	Australia	3.4	258	.14	3.24	-.27	8.1
3	Canada	11.1	550	.20	3.90	-.36	6.9
4	Finland	10.6	104	.20	-4.82	-.13	5.0
5	Japan	13.1	2918	.06	-1.36	-.13	2.8
6	New Zealand	14.1	44	.17	4.45	-.30	4.1
7	Norway	26.6	98	.24	-1.27	-.04	2.5
8	Sweden	32.6	182	.25	-.74	-.05	2.8
9	Switzerland	12.9	186	.30	-5.72	-.10	1.0
10	USA	25.5	5439	.08	1.71	-.33	6.2
11	Austria, 1993	55.6	183	.27	1.62	-.06	6.8
12	Australia	.7	298	.15	3.24	-.27	10.9
13	Canada	11.0	553	.25	3.90	-.36	11.3
14	Finland	8.4	86	.21	-4.82	-.13	16.2
15	Iceland	3.9	6	.22	-2.08	-.23	4.3
16	Japan	12.2	4275	.06	-1.63	-.13	2.5
17	New Zealand	.4	44	.22	4.45	-.30	9.5
18	Norway	23.7	116	.21	-1.27	-.04	5.5
19	Sweden	29.8	186	.23	-1.74	-.05	8.2
20	Switzerland	13.5	237	.24	-5.72	-.10	4.5
21	USA	82.9	6558	.09	1.71	-.33	6.9
22	Australia, 1996	.7	408	.16	3.24	-.27	8.5
23	Canada	10.4	605	.29	3.90	-.36	9.7
24	Iceland	1.6	7	.29	2.08	-.23	4.3
25	Japan	10.7	4595	.08	-1.63	-.13	3.4
26	New Zealand	.8	65	.23	4.45	-.30	6.1
27	Norway	4.3	158	.23	-1.27	-.04	4.2
28	Switzerland	7.6	295	.25	-5.75	-.10	4.7
29	USA	16.8	7661	.11	1.71	-.33	5.4

Sources: NTB data was obtained from OECD's UNCTAD database. GDP, Imports, and Unemployment data were taken from the European Marketing Data and Statistics and International Marketing Data and Statistics Yearbooks. Data on Corporatism and Consensus measures were taken from Lijphart, 1999.

	Country	Ideology
1	Austria, 1988	.73
2	Australia	1.00
3	Canada	.00
4	Finland	.46
5	Japan	.00
6	New Zealand	.70
7	Norway	.54
8	Sweden	1.00
9	Switzerland	.28
10	USA	.00
11	Austria, 1993	.58
12	Australia	1.00
13	Canada	.00
14	Finland	.20
15	Iceland	-
16	Japan	.03
17	New Zealand	.57
18	Norway	.78
19	Sweden	.75
20	Switzerland	.26
21	USA	.00
22	Australia, 1996	1.00
23	Canada	.00
24	Iceland	-
25	Japan	.08
26	New Zealand	.17
27	Norway	.83
28	Switzerland	.27
29	USA	.00

Ideology is measured as a percentage of seats held by all government parties. The data source is *Comparative Welfare States Dataset* 1997.