Expressions of Power in International Trade Negotiations: The Case of Agricultural Liberalization

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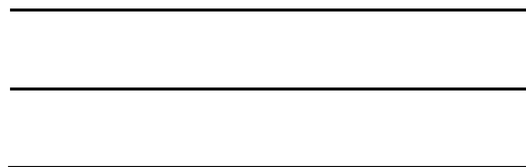

Agricultural trade policy has always been an incredibly thorny issue. From early on in the inception of the GATT, agriculture was granted special status, even as liberalization was pushed forward for other trade in goods. While domestic support for protectionism in this sector has long been robust, the unique treatment institutionalized in the GATT framework generated even higher levels of protection and entrenched such interests further—particularly in industrialized countries in which export subsidies are favored as a means of underwriting less competitive industries while maintaining market share. Such policies, practiced widely by major industrialized states such as the US, European Union and Japan, led to large market distortions, and became the source of frequent trade disputes. Farm lobbies are a constant and powerful political force in each of these countries, and because of the concentrated benefits and diffuse costs of agricultural protectionism, politicians gain little—and may even have to pay a high price among certain constituencies—as a result of liberalization. Yet, in the past three decades, substantial liberalization of agriculture has taken place, albeit in a fitful and seemingly desultory manner. While international efforts for increased liberalization have been constant throughout this time, these efforts have been met with intermittent success. Often, the same pairs of states argue over particular agricultural policies for years or even decades, across a wide variety of forums, before finally agreeing to liberalize. What is responsible for this variation in liberalization outcomes? Why do states like the EU and Japan, who have

clearly demonstrated their strong interest in maintaining protectionist agricultural policies, sometimes accede to demands for liberalization?

Leaders come to the bargaining table in international trade negotiations with the need to balance the interests of powerful domestic constituencies benefiting from protectionist trade policy with increasingly strong pressures for market liberalization. Though these countervailing pressures are a constant in trade negotiations, the degree of liberalization achieved in these negotiations exhibits a great deal of variation. Numerous explanations have been set forth to explain this variation, and disagreement remains regarding the role played by the institutional context and the "rules of the game" in affecting outcomes—not only in regards to trade but in all negotiations conducted through formal international organizations. While many argue that variation in the institutional context itself drives variation in outcomes,[1] a large and historically influential literature highlights the role of power, threats, and coercion in explaining divergent outcomes.[2] I will take up this enduring puzzle here, and seek to demonstrate that institutional outcomes in agricultural trade policy continue to be shaped by power politics in spite of the attempted muting of these tactics in the design of institutional forums. While features of the institutional context do play an important role in shaping outcomes, this role is often determined by the most

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[1] Davis 2005, Haftel and Thompson 2006, Kucik and Reinhardt 2008, Simmons and Danner 2010, Dreher and Voigt 2011

[2] Krasner 1976, Gilpin 1981, Gowa 1994, Gruber 2000, Drezner 2001, Thompson 2009

powerful actors who create and selectively employ the rules of the game to tilt the balance in their favor.

Helen Milner provides an overview of existing explanations for the trend of freer trade and increasing liberalization more generally in her piece “The Political Economy of International Trade.” Milner groups explanations for the rush to free trade into three broad camps: domestic trade policy preferences, evolving political institutions, and international politics. Domestic politics explanations focus on changing preferences among political leaders, societal groups, and the general public, arguing that these groups have all moved towards favoring freer trade. Milner finds this explanation to be the weakest, claiming that theories of domestic political preferences provide partial explanation at best and are often “underspecified and ad hoc.” Institutional arguments largely look to features of the domestic institutional landscape such as the state’s administrative capacity, the nature of the party system, the structure of the government, and the degree of insulation of policymaking. Milner points out that this explanation implies that significant institutional transformation should be seen to precede liberalization, and this does not appear to have occurred in most cases. Finally, the international politics argument, which contains two separate strains, turns to features of the international system: one strain focuses on the distribution of capabilities among actors, and the other highlights the presence and influence of international institutions. Milner argues the apparent declining hegemony of the US seems to contradict traditional distribution of capabilities arguments regarding

the role of the hegemon in providing stability and encouraging liberalization; she also discredits the role of international institutions, as the causation here seems to be reversed—proliferation of institutions seems to have followed from changed preferences for freer trade. Thus, while each theory appears to have some degree of validity, Milner claims none of the existing explanations appear to do very well on their own, and concludes by conceding that research on this puzzle remains incomplete. [3]

The application of these arguments to the puzzle of agricultural liberalization leads to some illuminating conclusions. Changing domestic policy preferences can be eliminated as a cause of liberalization in this case, as farm lobbies, particularly in the EU and Japan, have certainly not cooled in championing protectionist policy, and publics in these states remain supportive of the cause of domestic farmers.[4] Similarly for the domestic institutional argument, political institutions in these states have undergone relatively little change during the time period in question, and what little change has taken place does not coincide with periods of liberalization. This leaves international politics, and while Milner was right to be critical of the two strains of arguments as they stood at the time of her writing in 1999, both have undergone significant development and elaboration since her analysis. In her book *Food Fights over Free Trade*, Christina Davis takes up this puzzle, advancing an argument that explains the

[3] Milner 1999
[4] See Davis 2005 p. 80-83, 120-125, 232-239 for more on this

likelihood of agricultural liberalization as resulting from features of the institutional setting in which international negotiations take place.

For Davis, the negotiation structure is crucial and drives the variation in successful liberalization outcomes across time. She investigates five different cases involving the US, the EU and Japan that take place across a variety of institutional frameworks, including bilateral negotiations, GATT dispute settlement panels, WTO trade rounds and Asia-Pacific Economic Cooperation (APEC) summits. There is a great deal of variation in the degree of agricultural liberalization achieved as a result of these negotiations, and, following in the same vein as Keohane, Davis attributes this to differences in the negotiation structure.

Davis puts forth two aspects of the negotiation structure as decisive: liberalization becomes most likely when a strong cross-sectoral issue linkage or high level of legal framing is employed. Davis convincingly argues for the importance of these two institutional variables throughout the book as she evaluates her cases. This appears to be a decisive victory for neoliberal institutionalists and others who claim that institutions play an important independent role in determining outcomes and leveling the playing field. But in spite of the power of Davis's explanation, critical questions remain unanswered regarding what factors go into the choice of institutional context, and how these important variables—issue linkage and legal framing—come to be credibly established in negotiations.

While Davis does consider the role of Milner's other international politics variable, the distribution of capabilities, this analysis is limited. Throughout both her quantitative analysis and her case studies, she constrains the role of power politics to the explicit employment of threats issued by the United States. While this undoubtedly underestimates the tools that powerful states can use to coerce trade partners, she still finds an important and statistically significant relationship between the use of threats and resulting liberalization. Nevertheless, Davis largely discounts this variable, as she finds "the effect of a strong cross-sector linkage or a violation ruling is greater than that of a threat."[5]

This essay seeks to expand upon the ways that power politics and the distribution of capabilities affect international trade negotiations, as well as identify under what conditions the institutional features recognized above are able to come into play and influence outcomes. By asking what makes for a credible issue linkage, and why legal framing appears to "drop out" in some important cases, I will push back Davis's investigation to focus on how states are able to effectively employ institutional tools such as issue linkage and legal framing. I will argue that, at the end of the day, the most powerful actors can manipulate the institutional context to their liking, and choose to employ Davis's mechanisms when it fits their preconceived notion of the national interest. Institutional structures can be used credibly and effectively only when employed by economic powerhouse states. Thus, it is not the institutional context itself that

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[5] Davis 2005, p. 100

is driving the variation in the degree of liberalization, but the manipulation of this context and employment of powerful coercive tactics by the strongest states that explains trade outcomes.

I will seek to show the epiphenomenal nature of issue linkage and legal framing by reinvestigating three of Davis's original cases—the Uruguay Round, and GATT disputes over beef between the US and the EU, as well as the US and Japan. I will take this further by adding a fourth case, the Doha Round, the current round of WTO trade negotiations which remains stalled in no small part as a result of disagreement over demanded reductions in agricultural subsidies. Since agriculture was only first brought into the GATT framework during the Uruguay Round negotiations, the entire universe of cases for international trade rounds involving agricultural discussions will be considered by investigating both Uruguay and Doha. The GATT disputes over beef will reveal that legal framing is selectively successful and has little swaying power when employed against the most powerful states, while analysis of the Uruguay and Doha Rounds will demonstrate that issue linkage can be made credible only when backed by coercive threats (either implicit or explicit) made by states with the ability to credibly threaten exit or non-negligible retaliation if their objectives are not met. At the core of this explanation lies power—forum-shifting power,[6] agenda-setting

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[6] Shaffer 2005

power, and go-it-alone power[7]—tools available only to the world's leading economic players.

While many of the most advanced economies are able to exert strong influence in negotiations, scholars have long looked to the overwhelming influence of the "Quad" in the GATT/WTO context: the US, the EU, Japan, and Canada.[8] While GATT/WTO decisions are made by consensus, negotiations are often conducted in large part through "Green Room" processes, in which significantly smaller groups of self-selected states get together to decide on the most important and most divisive issues; for example, agendas for upcoming trade round negotiations are often decided in Green Rooms. These consultations almost always involve the Quad, along with a select number of other developed states and developing states.[9] While this has been touted as a necessary part of the GATT/WTO negotiation structure, condensing discussions to involve only the (allegedly) most pertinent and knowledgeable parties to the negotiations, developing states have pointed out that this results in exclusionary practices and outcomes dominated by the Quad and other select other Green Room participants.[10] Beyond controlling the negotiations themselves through these institutionalized practices, there are a number of other tools available to these

[7] Gruber 2000
[8] Kleimann and Guinan 2011, Engdahl 2006, Schott and Watal 2000, Smith and Johnston 2002
[9] Schott and Watal 2000
[10] Kenworthy 2000

select members through which they are able to express their power even in contexts intended to promote parity among all participants.

Expressions of Power in International Forums

“Multilateralism need not constrain our option[s];
done right, it expands them”
-Richard Haass, Director of Policy Planning Staff for George W. Bush

The United States, the European Union, and Japan are all economic powerhouses, and each has played the role of strong proponent of trade liberalization in various negotiations (though it is important to note that each has also played the role of fierce defender of protections for certain “special” industries). Powerful economic players have a number of options available to them when they wish to shape negotiations or sway outcomes in their favor. The forms of power that actors have available to them in international trade negotiations are quite different from those they might use in the “high politics” realm of security, but that doesn’t mean that the states with the strongest negotiating positions aren’t able to throw their weight around. States can use power and status to their advantage through a number of mechanisms: choosing the forum in which they see the highest likelihood of achieving their interests; agenda setting; forum shifting or threatening a forum shift, and as a result of this threatening to “go-it-alone” by establishing bilateral trade agreements (and thereby threatening exclusion for problem states who may be holding up

negotiations); and through threatening retaliatory action against protectionism. In what follows, I will go into detail on how states use these power tools to get what they want out of negotiations.

At the outset, *choice of forum* is available to first-movers when it comes to trade liberalization. For example, when the US desires to see increased openness in a particular sector, it can choose between multilateral trade negotiations (such as took place in the Uruguay Round), regional trading arrangements (such as engaging in negotiations with ASEAN or MERCOSUR), or in direct bilateral negotiations with offenders (such as the extensive talks with Japan over tariffs on citrus and beef).[11] By weighing a number of factors, including the extent to which liberalization is desired and the scope of the desired liberalization, actors who wish to push for increased openness can pursue their interest in one of these settings in which they see the greatest potential for achieving their desired outcome, or even engage in negotiations across multiple forums simultaneously.

Agenda setting is a long-acknowledged manner of influencing outcomes that certain powerful states may be able to take advantage of in institutional settings; it has long been acknowledged that WTO members with greater resources drive WTO agendas.[12] Control over the agenda not only gives an actor the ability to define the problem itself (thereby taking off the table aspects of the problem that the agenda setter does not wish to address), but also affords the

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[11] Hufbauer and Scott 1998
[12] Shaffer 2005

ability to put forward what potential solutions will be discussed (thus also barring discussion of solutions seen to be unfit or insufficient).[13] As noted by Downes in his article on agenda-setting power in WTO negotiations regarding Trade-Related Aspects of Intellectual Property Rights (TRIPS), this form of power "relates to the ability to influence the preferences of other actors and is shaped by how various perspectives are presented in relation to dominant policy concerns… agenda-setting power involves the provision of information and normative frames,"[14] thus directly influencing policy debates and outcomes.

Even after a forum has been agreed upon for a set of negotiations, powerful members like the US and the EU can engage in forum-shifting—or even just threaten a forum shift—to force progress or speed up ongoing discussions. This involves engaging in simultaneous bilateral or regional negotiations, playing off states' fear of exclusion from an agreement that will offer benefits to other actors. In his chapter on power in the WTO, Shaffer argues that the United States exploited forum shifting to attain agreement on TRIPS from developing countries. In this case, once the US was able to convince certain weaker states to accede to its demands under bilateral agreements (under the threat of exclusion from its markets), other developing states that had initially been excluded from the agreement were now at a disadvantage.[15]

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[13] Foot, MacFarlane, and Mastanduno 2003
[14] Downes 2011
[15] Shaffer 2005

This concept behind forum-shifting is very similar to that of "go-it-alone" power, employed by Gruber in his book examining supranational institutions. Gruber notes that powerful actors are able to employ coercive threats, like the threat of closing off important markets, against weaker states if they fail to comply with the powerful state's demands; he terms this "go-it-alone" power.[16] In this model, powerful state Y can threaten to go it alone with state X (on a trade agreement, for example), which will result in a shift of the status quo. While states Y and X realize utility gains as a result of this shift in the status quo, excluded state Z has been made worse off, as the original status quo has been removed from the set of alternatives. Now Z can choose either to go along with the new agreement or to be left at a permanent disadvantage because of the new benefits accruing to states X and Y.

Finally, the most straightforward power tool that the strongest actors can turn to is the threat of retaliatory action if an agreement is not reached. The US infamously enshrined into law its right to take retaliatory action against states that "burden or restrict US commerce" in Section 301 of the Trade Act of 1974.[17] This legislation does not require that the dispute involve a violation of an existing trade agreement in order for the US to implement sanctions, and the US has made extensive use of Special 301 in achieving its goals—particularly since amendment of the original legislation to expand Section 301's application to intellectual property. As will be discussed in more detail later, threats of

[16] Gruber 2000
[17] Flynn 2013

retaliatory action by the US played a significant role in the lead-up to a final agreement in the Uruguay Round.

All of the power tools described above have been forms of compulsory power—applying to relations between states in which one actor has the ability to directly affect the actions or circumstances of another.[18] In focusing on these more tangible forms of power, the diffuse and less direct (and also less measurable) structures of influence that have been identified by constructivist scholars remain unacknowledged. Barnett and Duvall point to the importance of structural power (through which structures "allocate differential capacities and advantages to different positions") and productive power (the "constitution of all social subjects with various social powers through systems of knowledge and discursive practices of broad scope"), which almost certainly afford the most powerful actors even greater advantages in bargaining.[19]

In the following sections, I will turn to case analysis to trace the way influential states use these tools to effectively and credibly manipulate institutional structures to their advantage. In the first and second cases, disputes over beef between the US and Japan, and the US and the EU, are examined to investigate the role played by legal framing in affecting outcomes. In the US/Japan case, what appears to be a successful use of legal framing by US negotiators will be shown to be but one step in an escalatory process that did not result in concrete changes in Japan's behavior until retaliatory threats were

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[18] Barnett and Duvall 2005
[19] Ibid.

employed. In the US/EU case, legal framing is employed to induce changes in EU policy, but it fails to result in any change at all, and what results is a stand-off in which power is met with power. Next, I will turn to multilateral trade rounds to investigate the role of issue linkage, looking first to the Uruguay Round, in which agriculture was first formally brought into the negotiations' mandate, and finally to the still-stalled Doha Round. At Uruguay, significant liberalization was achieved once the Europeans could be induced to make some difficult trade-offs, and this is often attributed to the credible issue linkage that was established in the Dunkel Draft. I will show that, while the issue linkage did play a key role in ensuring the EU couldn't back out of agricultural discussions, it was Clinton's employment of a credible exit threat, forum-shifting and threats of retaliation that induced concessions. Finally, the strong and credible linkage employed at Doha, resulting in a blockage lasting more than a decade, will be used to demonstrate that issue linkage itself is insufficient to motivate states to make the difficult trade-offs necessary for agreement to be reached.

Legal Framing in Beef Negotiations: Explaining Divergence between US/EU and US/Japan Bilateral Talks

Legal framing can be inserted into a negotiation through appeals to formal rules that exist to regulate international trade, often by appealing to a third party dispute settlement process that must be viewed by all actors involved as fair, objective, and non-biased. Employing a legal framing is said to result in higher likelihood of liberalization by conferring legitimacy on the final determination

made by the dispute settlement panel, and amplifying reputation costs in the face of non-compliance.[20] States will risk earning a bad reputation if they cheat on trade agreements, which could threaten their ability to reach agreement on future critical trade policy issues if they are not believed to be trustworthy. Disregarding the ruling made by an impartial third party not only damages a state's reputation (and involves breaking international law), but also threatens to undermine the whole structure of the existing system that hinges on voluntary compliance by member states.[21]

Even before the institutionalization of the WTO as a result of the Uruguay Round, the GATT multilateral system included procedures for resolving disputes through adjudication by independent panels of experts. These experts were given the authority to issue reports with a ruling and recommendations for resolution of the dispute. The procedures initially established in the GATT were clarified and improved by a decision made during the Uruguay Round proceedings, and included measures that gave reasonable time-frames for the process, allowed for formal monitoring of implementation of panel rulings, and eradicated the right of individual parties to block the establishment of panels.[22] It is clear that since the creation of the GATT legalization has grown increasingly stronger, particularly in dispute settlement procedures as formal rules have grown in breadth and

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[20] Davis 2005
[21] Keohane 1984
[22] Weston and Delich 2000

precision.[23] The high level of legalization involved in WTO panels has been noted by many, as "lawyers present detailed legal arguments that require a response from all parties; panel members construct their decisions with the assistance of a legal secretariat that helps them to resolve legal issues rather than broker a political compromise."[24] Thus, the employment of legal framing in settling disputes should be expected to play a substantial role in increasing the likelihood of liberalization.

Both the EU and Japan have long histories of restricting imports of US beef, dating as far back as their accession to the GATT system. Given the long-standing and highly contentious nature of these disputes over beef, they are ideal as a hard case for testing the effects of legalization. Additionally, there is a significant amount of variation in the outcome of these bilateral talks—between 1960 and 2000, the US engaged in several rounds of negotiations with both the EU and Japan over trade restrictions on beef, with some achieving far greater success than others. These negotiations also took place across a variety of forums, including bilateral talks, GATT dispute settlement procedures, and in the Tokyo and Uruguay rounds. Focusing in on negotiations surrounding one commodity also ensures that other factors affecting the outcome, such as economic and political features of the industry surrounding the commodity, are held constant. These disputes over beef will demonstrate the important role of retaliatory threats and coercive tactics in catalyzing liberalization. In the

[23] Goldstein and Martin 2000, Kim 2008
[24] Goldstein et al 2000

US/Japan case, legal framing is employed shortly before liberalization results, but a closer look reveals that this is but one step in an escalatory process that did not result in concrete changes in Japan's behavior until explicit and credible retaliatory threats were employed. In the US/EU case, the US resorted to both legal framing and retaliation, but these measures fail to result in any change at all, and what results is a stand-off in which power is met with power. This demonstrates in a slightly different light that powerful actors can evade the institutional tools designed to induce compliance, and are not fully bound by the rules of the game.

US/Japan Negotiations

Japan extensively blocked beef imports since first acceding to the GATT, first under the "balance of payments" clause, and later maintained these strict quotas as a residual import restriction—quotas which were seen by many to be in violation of the GATT.[25] While the prevention of the spread of foot-and-mount disease (of which Japan had been free) was one source of claims for trade protectionism, protection of Japanese farmers is deeply entrenched in the political system and in social attitudes for a variety of reasons. One of the most important factors creating strong pressure for protectionism is the electoral bias towards agricultural producers built into the Japanese system—until 1994, rural votes counted for more than three times the weight of urban votes, and rural

[25] Dyck 1998

votes still today have about twice the weight of urban votes.[26] Beyond this straightforward bias, farm interests are widely supported throughout the Japanese population and by all major political parties, and the goal of self-sufficiency in agriculture has long been touted as both desirable and beneficial to all Japanese citizens. With this backdrop, it is not difficult to understand why strong support for existing beef quotas prevented even the most liberal of Japanese political figures from coming out in favor of liberalization. But with Japan as one of the largest markets for US exports, and the importance of beef exports in particular for the US (for both economic and symbolic reasons),[27] eliminating these quotas rose to the top of the US list of items deserving "prompt and favorable" attention[28] by the Japanese government as far back as the late 1960s.

In spite of the increased pressure applied by the US government, little progress was made in easing the restrictions throughout the 1970s and early 80s. Two rounds of bilateral negotiations between the two parties in 1971 and 1981-84 resulted in minor expansions of the beef quotas, and a four-year agreement reached between US and Japanese negotiators in the context of the Tokyo round did ease some of the mounting tension,[29] but this progress was far less substantial than what US officials sought. Upon the expiration of the temporary 1978 agreement, another four-year deal was reached that expanded

[26] Davis 2005
[27] Coyle 1986
[28] Dyck 1998
[29] Ibid.

regional quotas—particularly for high quality beef—but by the late 1980s, tensions were reaching a fever pitch. As Davis describes it, the restrictions on US beef (and citrus products) by the Japanese came to be seen as "a lightning rod for all frustrations over the US-Japan trade imbalance,"[30] and US negotiators repeatedly threatened legal recourse in talks throughout this time.[31] As Japan's current account surpluses continued to grow, calls began to rise up from within Japan for greater liberalization of agriculture, but with public opinion still heavily in favor of protecting agricultural production, politicians felt their hands were tied.

Up through the late 1980s, American threats of recourse to GATT legal mechanisms had resulted in incremental, minor improvements; when Japanese negotiators again offered a package of limited quota expansion upon expiration of the previous four-year agreement in 1983, US negotiators had had enough, and presented a request for Article XXIII:1 consultations on 12 agricultural categories to the GATT.[32] Interestingly, beef was not included in these categories, as US negotiators hoped including less politically sensitive commodities would allow them to use the precedent set here to go after larger and more difficult categories such as beef. The early phases of consultation were conflict-ridden, and Director of the Japanese Ministry of Agriculture, Forestry, and Fisheries (MAFF) Minoru Tsukada fired back at the US, claiming that the Japanese agricultural market *was* liberalized in comparison with the US's

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[30] Davis 2005, p. 138
[31] Eichmann 1990
[32] Eichmann 1990

farm policy. But, eventually, yet another four-year truce was reached; unsurprisingly, this was but another stopgap, and when the deal expired in 1986, the US made a formal request for Article XXIII:2 consultation—establishment of a dispute panel.

Negotiations over these products were drawn out, highly technical, and legalized, involving three rounds of panel meetings in which Japan argued for the political, economic, and social necessity of the quotas. In late 1987, the panel announced a ruling in favor of the US: 10 of the 12 quotas were found to be in violation of the GATT.[33] News spread quickly, and Deputy USTR Michael Samuels made a public statement declaring that "complete changes domestically" were required if the Japanese hoped to avoid retaliation.[34] Japanese negotiators came back offering partial concessions on eight of the ten illegal quotas, but the US refused to accept anything less than full adoption of the panel report, citing the need to set the right precedent for future disputes. Backed into a corner, Japan attempted to block adoption of the panel report in December of 1987, leading to more threats from the USTR of pursuance of US interests "through other means."[35] This was widely understood to be an invocation of Special 301—the US's reserved right to retaliate to unfair trade practices. By February, Japan had dropped its formal opposition to the report and demonstrated a new willingness to negotiate over the disputed goods.

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[33] Davis 2005
[34] Eichmann 1990
[35] Ibid.

What was the role of the legal framing in Japan's eventual agreement to renegotiate its agricultural policy on these commodities? Davis points to the high regard for international institutions in Japan and strong support for GATT rules—with Japanese officials even stating that international law supersedes domestic law in the constitution—as the propelling factor leading to liberalization of these products in later years. For Davis, concerns over Japan's international obligation and reputation resulting from the panel ruling against it are what set this round of negotiations apart from past discussions, where little progress resulted. But an examination of other factors and placement of these negotiations in the context of the broader Japan-US relationship reveals that legal framing is not a sufficient explanation for the resulting liberalization.

While the formal GATT dispute panel process did bring Japan's agricultural protectionism loudly and conspicuously out into the open, the problematic quotas were already at the forefront of negotiators' minds, and Japan was simultaneously engaged in two other panel disputes over non-agricultural trade issues. While even counterfactual analysis could not truly determine whether legal framing was a necessary component, I argue that it was threats of retaliation and the need for "goodwill" from the US and other contracting parties[36] that drove Japan's eventual elimination of the quotas.

The US had employed threats throughout decades of negotiations as an almost standard practice in prodding Japanese progress. Until 1983, this mainly

[36] Eichmann 1990

involved threats of recourse to legal action through the GATT procedures—it wasn't until after Japan announced its desire to block adoption of the panel ruling that the US first employed the Special 301 threat of retaliatory action. While the panel ruling may have boosted the legitimacy of the US threat, the favorable ruling wasn't necessary for the US to institute Special 301 action—in fact, retaliation under this section would most likely not have been consistent with US GATT obligations.[37] Thus, it seems this threat is properly viewed as an additional escalatory step in the negotiations, separate from the ruling of the panel, as US negotiators feared that even the panel ruling would be insufficient to affect change. It wasn't until after the invocation of this possibility by the USTR that the Japanese stance officially changed to adoption of the ruling.

Beyond the ominous and seemingly real possibility of US retaliation, the Japanese negotiating position in late 1987 through early 1988 was precarious. Japanese negotiators had already announced their desire to address agricultural liberalization in the context of the upcoming Uruguay Round, and knew they were facing a hugely uphill battle for continued protection of many of their most significant agricultural products, including rice, beef and citrus. One European GATT ambassador observed in regards to Japan's ongoing trade disputes that: "[t]he Japanese were completely alone on this subject, and they were well aware of it. There were a lot of other wider-ranging negotiations coming up in which they will need support, particularly in the agricultural field, and it was apparently felt in

[37] Eichmann 1990

Tokyo that it was easier to cut losses on this one in exchange for more support elsewhere in the next months."[38] This again speaks to the significance of relationship features outside of the formal legal framing of the ruling—the Japanese desire to avoid further hostility and isolation that could result in even greater losses in upcoming negotiations.

A counterfactual scenario in which no formal ruling was issued is hard to imagine—particularly because the US taking the Japanese through the formal dispute process appears to be one step of many in an escalation process—but for the purposes of identifying causality this counterfactual will be attempted. Had the US never initiated its Article XXIII request, and instead continued attempts at bilateral negotiations, it is highly likely that these negotiations would again fail to achieve significant liberalization. Rather than moving through the GATT's formal legalized process, if we imagine that at this stage the US skipped straight to proclaiming its intention to invoke Special 301 retaliation, would the Japanese have backed down? For legal scholar Erwin Eichmann, the answer is clear:

> The United States twice reached settlements with Japan regarding these twelve residual restrictions, a two-year truce in 1983 and the adoption of the panel report in 1988. Both times, settlement involved considerations external to the legal and procedural argumentation of the case itself. In 1983, the two year truce came about largely because of Japan's related trade concerns with beef

[38] Eichmann 1990

> and citrus. Similarly, Japan's 1988 adoption of the panel report coincided with the growing concern regarding semiconductor restrictions and the Uruguay Round negotiations. In both instances, it was the *United States' trade leverage* that led to the substantive settlement. On the other hand, the settlement might have been reached regardless of the United States' leverage because in this arena of international relations, parties may value their ongoing relationship more than any position in a specific dispute.[39]

This case is deceptive upon first glance, as it would be easy to assume that the legal ruling exercised against the Japanese was the decisive factor in the resulting liberalization. But a closer look at the timing and details of the Japanese decision to liberalize beef reveals that this was not the case—Japanese officials continued to resist policy change after the panel ruling, even going so far as moving to block the ruling, until the US publicly announced its intention to institute retaliatory action unless Japan adopted the panel ruling. This demonstration of the commitment and strong interest on the part of the US in achieving liberalization made clear to the Japanese that not only could they not bear the cost of retaliatory sanctions in the short run, but that continued resistance would put them in a very difficult negotiating position in the newly initiated Uruguay Round. With agricultural subsidies at the forefront of the negotiation schedule (in large part as a result of efforts by the US), Japanese officials could not afford

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[39] Eichmann 1990, emphasis added

continued acrimonious relations with their most valuable trading partner—nor could they afford to be the target of intense scrutiny over their agricultural policies in a round of negotiations that would focus first and foremost on this issue. Thus, it was Japan's weakness relative to the US in regards to its negotiation position, in combination with the powerful threat of Special 301 retaliation, which resulted in willingness on the part of the Japanese to revise beef policy.

EU/US Negotiations

While entirely distinct from Japan-US negotiations over beef, the EU-US beef dispute is understood to be just as acrimonious, complex, and even more enduring than the previous case. This ongoing dispute over hormone-treated beef once again makes an excellent case for examining the efficacy of legal framing, as discussions have transpired across nearly 30 years and across a variety of institutional and informal settings. As in Japan, a robust and durable base of support exists for agricultural protection in the EU, dating back as far as the establishment of the European Economic Community in 1957. The Treaty of Rome laid the foundation for deeply institutionalized support in stating the need for a common agricultural policy (CAP) among member states. One of the stated objectives of the CAP even from its beginnings was to "ensure a fair standard of living for farmers," entailing the use of protectionist trade policies.[40] The CAP originally protected farmers through direct production and export subsidies; it has

[40] European Parliament 2003

evolved since the 1990's to rely largely on quotas and direct payments to farmers. The farm lobby is a hugely powerful force in EU politics, and consumers remain largely sympathetic to agricultural protectionism for European farmers.

The EU-US trade relationship accounts for nearly one third of all world trade flows, and has long been the largest bilateral trade relationship in the world. In spite of (and in many ways as a result of) extensive linkages and high levels of interdependence, this trade relationship is often steeped in conflict, particularly on the issue of agriculture (though it is worth noting that many of the EU's trade partners have disputed the CAP, and legal challenges to its policies have been recurrent). The dispute over US-produced beef products began in the early 1980s as public opinion in the EU began to turn against the use of growth-promoting hormones in beef production. Horror stories of dubious source circulated widely, including rumors that baby food contaminated by hormone-treated beef had resulted in Italian infants displaying characteristics of the opposite sex.[41] The resulting fear-driven consumer panic led first to bans by individual European governments, including West Germany, Italy, and Belgium. The issue gained momentum as more and more consumer groups spoke out against hormone use in beef, and under the auspices of protecting consumer health the European Parliament passed a ban on all hormones in 1985, set to go into effect in 1988.[42]

[41] Rountree 1999
[42] Kerr and Hobbs 2002

From the outset, the US government adopted the stance that this ban was nothing more than a trade barrier shrouded in misinformation. American beef producers had first used hormones in the 1950s, as they resulted in animals growing larger and more quickly. These hormones, which naturally occur in cattle, lower production costs in a market where profit margins are incredibly thin, and are used extensively in beef production in the US, Canada, Australia, Japan, and Mexico, among other countries.[43] Studies conducted by the World Health Organization, United Nations Food and Agriculture Organization, and a variety of other credible scientific sources documented no health risk stemming from the use of hormones, but European politicians claimed that their hands were tied by public opinion. Higher beef prices for European consumers and significant revenue losses for American beef producers (with estimates ranging from $100 - $500 million annually) did not faze European policymakers, and threats of significant retaliatory action by the US also failed to result in policy change.[44]

Upon the ban's entry into full force in 1989, the US responded swiftly with 100% *ad valorum* retaliatory tariffs on a range of EC imports valued at $93 million (justified again under Special 301 as a response to unfair trade practices).[45] Though perhaps justified, the EC chose not to respond with counter-retaliation, maintaining the ban was rooted in consumer health and safety rather than trade protectionism, and continued to block the US request to form a GATT panel to

[43] Johnson 2015
[44] Rountree 1999
[45] Johnson 2015

determine whether the ban was in fact legitimate. The US responded in kind by blocking formation of a panel investigating its invocation of Special 301.[46]

The standoff continued throughout the early 1990s, withstanding both initiation and conclusion of the Uruguay Round. Important changes had been made to the world trade system as a result of Uruguay's conclusion, including establishment of the World Trade Organization, modifications to the dispute settlement process, and, perhaps most significantly for this dispute, the adoption of the new Agreement on Application of Sanitary and Phyto-sanitary Measures (SPS).[47] The SPS agreement was an effort to set forth sanitation and quality standards, and one of its central pillars emphasized the role of scientific consensus as a basis for evaluating consumer health risks. When this agreement took effect in 1995, the US initiated a WTO dispute settlement request (which the EU could no longer block—another result of Uruguay negotiations) with confidence that the new SPS agreement would support its desired outcome.[48]

Unsurprisingly, the SPS agreement had the expected effect and led to a 1997 panel ruling against the EU's beef hormone ban, with the justification that the prohibition was not based on scientific findings related to health risks—even going so far as to call the standard "arbitrary… unjustifiable distinctions in the levels of sanitary protection it deemed suitable in different situations."[49] The policy recommendation following upon this panel finding urged EU compliance

[46] Davis 2005
[47] Kerr and Hobbs 2002
[48] Kerr and Hobbs 2002
[49] Sien 2007

with the SPS agreement through modification of the existing policy. Shortly thereafter, the EU announced it would be appealing the panel's decision (another signal that there was no intention of reversing the current policy), leading to a review by the Appellate Standing Body. While panel decisions are final, the Appellate Body is able to challenge the legal interpretations of the panel and can thus dispute panel findings. Less than a year after the challenge was issued, the Appellate Body corroborated the panel's decision—though not fully. The Body pointed out that WTO members reserve the right to implement standards above and beyond generally accepted norms, though only with proper scientific justification.[50] Though the original finding against the hormone ban did stand, the EU revealed again its intention to maintain the policy by requesting a four-year implementation period during which it would conduct further analysis in an attempt to demonstrate health risk. When arbitration processes over the length of the implementation period resulted in allowance of only 15 months for compliance, the EU claimed it would be unable to complete its scientific assessments in such a time frame and announced its intention to resist making the requested policy change, thus defying the ruling.[51] Even today the EU maintains that the ban is "justified and in compliance with its WTO obligations,"[52] and the US has continued with its retaliatory response.

[50] Rountree 1999
[51] Kerr and Hobbs 2002
[52] Johnson 2015

The European Union's failure to comply with the WTO ruling demonstrates again the insignificant role played by legal framing, with the EU unabashedly remaining in open violation of its WTO obligations for more than a decade. Davis claims the insignificant role of legal framing in the case of the EU is an anomaly, asserting that the "interlocking nature of the CAP policies means that a negative panel ruling holds wider implications beyond any single issue,"[53] making compliance difficult and problematic. While this may help explain the thinking of European policymakers in general when it comes to agricultural policy, it fails to explain the EU's decision in this case, as the ban could have been repealed without threatening broader CAP policies. The failure of legal framing in this case is particularly significant given the generally very high regard for international institutions and the obligations they entail among EU citizens and policymakers. As the US's largest trade partner, the EU plays an irreplaceable role as a market for US goods and a supplier for US demand, granting it an inevitably high degree of leverage in negotiations. While the US did institute retaliatory sanctions of approximately the value of damage resulting from the hormone ban, European policymakers are certainly aware that the larger trade relationship is not in danger, and have no real incentive to repeal the ban (as it must be assumed, given the outcome, that reputational consequences were not significant enough to compel change). This again demonstrates that powerful actors are able to

[53] Davis 2005, p. 319

exempt themselves from the reputational and retaliation-related concerns that bind less economically dominant states.

While these cases are only two among hundreds brought before dispute settlement panels, this qualitative case analysis demonstrates that the effects of legalization are often contingent on other factors, such as retaliatory threats. This result has been confirmed through quantitative analysis as well: Bown (2004) conducted an in depth analysis of WTO trade disputes between 1973 and 1998, seeking to demonstrate which factors are most significant in pushing governments to commit to trade liberalization. Bown concludes:

> It is the potential costs of retaliation that allow governments to commit…On the other hand, we find only limited evidence that the cost of 'international obligation,' or the stigma associated with failing to comply with a negative GATT/WTO panel ruling, is sufficiently large so as to impact a defendant's liberalization decision… The evidence suggests that when it comes to the economic success of dispute settlement, it is economic incentives that matter. Reforms that target legal or institutional efficiency and not economic incentives may therefore have a small economic impact.

Bown's findings conform with the outcomes of the cases analyzed here—he firmly concludes that it is the potential costs of retaliation that play the most important role in affecting liberalization. With regards to the EU ban on hormone-treated beef, neither legal framing nor retaliatory threats by the US were sufficient

to induce change—but this result is unsurprising. While the retaliatory sanctions instituted by the US did approximate the value of lost income to US beef farmers, this was not by any means a significant portion of the overall trade relationship, nor would it cause any real harm to European economies. In this case, power was met with power, and the US's unwillingness to further escalate the dispute resulted in a stalemate.

Cross-Sector Issue Linkage in Multilateral Trade Negotiations: Success in Uruguay, Failure in Doha

Issue linkage, or the simultaneous negotiation of (often-unrelated) issues for joint settlement as a package deal,[54] has often been acknowledged as one of the most important ways that institutions can increase the likelihood of states achieving mutually beneficial agreement. "Linkages secure agreement either by creating benefits for a party that would otherwise find a treaty to be of little value or by incentivizing a party to commit to an agreement from which it would otherwise defect."[55] In his article, "The WTO as Linkage Machine," Jose Alvarez outlines the many ways that the GATT/WTO regime has successfully linked new trade issues into the existing framework. Given the regime's origins as an institution that focused almost solely on achieving reciprocal reductions in tariffs on goods, the extent of issues covered by agreements today is remarkable. Much of this progress has resulted from GATT/WTO multilateral trade rounds, in which

[54] Sebenius 1983
[55] Poast 2012, p. 278

treaties incorporating package deals have incentivized trade-offs by member states that result in substantial liberalization.[56]

In *Food Fights Over Free Trade*, cross-sector issue linkage is Christina Davis's second explanatory variable. Cross-sector linkages bring together negotiation of policies in separate sectors, such as services, primary goods, and manufactured goods. In the case of agricultural liberalization, Davis argues that a strong cross-sector linkage will increase the credibility of an agreement by raising the costs of defection, mobilize domestic interests that can offset the entrenched protectionism of farm groups, and expand the policy jurisdiction beyond agricultural ministries and policy committees as a result of the broadened stakes. This is a powerful and convincing argument, and issue linkage can clearly result in the effects outlines by Davis. But what allows for the formation of a strong issue linkage, credible enough to result in significant liberalization, in these multilateral trade rounds? To answer this question, I will look first to the successful case of linkage in the Uruguay Round, and then to the case of stalled negotiations in the Doha Round—in which a strong linkage was established very early on in the negotiations—to demonstrate that issue linkage can work as a double-edged sword. While this feature of the negotiation structure does play a significant role in affecting the likelihood of reaching agreement in difficult sectors, that role can be either to push progress or stall agreement altogether

[56] Alvarez 2002

depending on whether states have sufficient external inducement to make those difficult trade-offs.

Credibility Derived from Power: Success in the Uruguay Round

Following the largely successful conclusion of the Toyko Round in 1979, the initiation of a new round of trade talks was first put forth by the United States in 1982 in the midst of a difficult economic environment as a result of global recession and the emerging debt crisis in developing countries. The round was proposed as a way to encourage further progress and prevent the build up of protectionist pressure during the recession, but perhaps more importantly, many thought that the progress made during the Tokyo round was partial at best and incomplete.[57] In large part, this was a result of the exemption of agriculture from the Tokyo negotiations, and the US in particular was determined to see agricultural policy take a central role during this next round of negotiations.

From the outset, it seemed there was very little room for bargaining over agriculture between the EC and US, given their conflicting positions on what was hoped to be achieved at Uruguay. As discussions began, US negotiators set the stage for a conflictual and lengthy process in their demand for the removal of *all* trade-distorting agricultural subsidies. European negotiators countered this proposal with equal vehemence in their official position seeking to limit reform to

[57] Schott 1994

no more than "modest cuts in domestic price supports."[58] In reality, it is widely thought that EC negotiators had no real intention of modifying existing CAP policy, and most likely assumed that agriculture would be removed from the negotiations in order to allow for a timely and successful conclusion of the round. The gap between US and EC preferences appears even greater when considering the ideological positions underpinning these stated preferences. While European policymakers operated under the dependent agriculture paradigm, viewing unregulated markets as the source of problems in agricultural trade, American policymakers had long since adopted the competitive agriculture paradigm, believing that agricultural markets would stabilize if market-distorting government supports were eliminated.[59] In spite of clear reluctance to allow CAP policies to be opened up to further scrutiny and reform, the EC's desire to see progress in other areas discussed for the first time at Uruguay, such as services and intellectual property, was sufficient to bring European negotiators to the table.

As a result of these opposing positions, representing a deep and fundamental disagreement over the ideal role of government in agricultural policy, the first four years of Uruguay have been referred to as a "dialogue of the deaf,"[60] and until 1990, very little progress was made on agricultural issues. The US, backed by the Cairns Group of agricultural exporting states, had continued to

[58] Schott 1994
[59] Daugbjerg 2008
[60] Schott 1994

insist on substantial liberalization with a key element of their proposal being the tariffication of all non-tariff barriers. But as time continued to pass, US negotiators backed down from the Zero Option proposal, well aware that EC negotiators would never accept such terms, and set forth a new proposal in late 1990 for the upcoming Brussels ministerial meeting. This plan still called for the eventual removal of GATT Article XI.2, which allowed for special treatment of agriculture, and again called for the slow phasing out of non-tariff barriers. Perhaps as a result of extensive demonstrations across France, Italy, England, and other EC member states, European negotiators failed to produce their promised trade liberalization offer; thus, it was the US-backed Hellstrom text that was brought forth at the Brussels meeting. This proposal, though a significantly moderated version of earlier American proposals, called for 30% reductions on export subsidies, border protection, and internal support over a period of five years—significantly more liberalization than European negotiators were prepared to consider.[61] When the EC rejected this proposal, Cairns Group negotiators walked out of the meeting (which had been intended to conclude the Uruguay Round), leading to its collapse.[62]

This breakdown left European negotiators in an unfavorable position, as it was apparent that the EC was largely responsible for the significant delays and lack of progress. As much of 1991 came and went without further progress, it was GATT Director General Arthur Dunkel who took the reins and presented a

[61] Hillman 1992
[62] Daugbjerg 2008

new proposal, retaining from earlier drafts the tariffication of non-tariff barriers but reducing cuts in domestic support and export subsidies to lower levels than the Hellstrom text had proposed. But this draft did not only address agriculture—it situated these agricultural proposals within the broader framework of the negotiations as a whole by including the text of agreements already reached in other areas during the first five years of negotiations. This firmly situated agriculture in the middle of a package deal agreement that European negotiators had strong incentives to accept. The US and Cairns Group accepted the proposal, called the Dunkel Draft, but once again, French negotiators outright rejected the draft. Given the increasingly apparent culpability of the EC in stalling negotiations, and the Europeans sincere desire to reach a deal so as to achieve gains from liberalization in other sectors, EC Commissioner for Agriculture Ray MacSharry set forth a draft of his own which, though more moderate than the Dunkel Draft, did call for major reform of the CAP. While discussions continued to move slowly through the last two years of negotiations, eventually the MacSharry proposal and the Dunkel Draft were merged successfully (with the Dunkel Draft remaining largely unchanged), setting the stage for acceptance of the broader Uruguay Round package in 1994.[63]

Why did the Europeans eventually make significant compromises, given their earlier intransigence? It is certain that issue linkage did play some role here, as European negotiators would clearly have preferred to leave agriculture out of

[63] Hillman 1992; Schott 1994

the deal and move forward with negotiations without touching CAP policy.[64] But what actually forced the Europeans to accept this package deal and backtrack on their earlier obstinacy was a series of power plays by the Americans: credible exit threats, Clinton's forum-shifting and the threat of making use of go-it-alone power, and threats of major retaliation over existing agricultural disputes.

The US Congress presented a credible exit threat in early 1993 by voting, once again, on whether to extend fast track negotiating authority—but only through the end of 1993. George H.W. Bush had first requested this authority in 1990, and had it been renewed in 1991 upon request. Clinton's repeat request for extension of authority in 1993, the third request for fast-track authority within the Uruguay Round negotiations, represented something of a now-or-never precipice for the deal. The deadline had intentionally been set at the end of the year, and it was highly unlikely that Congress would renew the fast-track authority yet again after this deadline was passed. This hand-tying communicated a credible exit threat, as it was unlikely that the administration would be granted yet *another* extension of this authority by an increasingly frustrated Congress.[65] Given the substantial benefits that would accrue to the EC as a result of negotiations on trade in services, trade-related aspects of intellectual property rights (TRIPs), and trade-related investment measures (TRIMs), exit of the US from Uruguay talks and the resulting breakdown of all agreements was antithetical to EC interests and induced compromise.

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[64] Davis 2005
[65] Schott 1994

President Clinton also engaged in forum-shifting in early 1993 to demonstrate that the US and its more willing trade partners could go it alone, shifting the status quo independent of the EC and thereby (at least partially) excluding the EC from benefiting from agreements reached. The first annual Economic Leaders meeting of the Asia Pacific Economic Cooperation (APEC) held in Seattle in 1993 was widely regarded as highly successful, and demonstrated to European negotiators that the US both could and would pursue its liberalization goals in other forums if talks within the GATT framework continued to falter.[66]

On top of employing these more subtle forms of coercive threats, the US also made use of very explicit retaliatory threats in bilateral meetings throughout 1992 over an enduring dispute regarding oilseeds. In November of that year, the US made it very clear that this threat was credible by ordering the imposition of 200 percent duties on $300 million worth of EC exports in one month's time unless agreement could be reached on this and other unresolved agricultural disputes between Europe and the US. It was later *that same month* that a bilateral agreement was reached (loud objections from the French notwithstanding), known as the Blair House deal; this deal would be taken to the GATT multilateral negotiations shortly thereafter for final agreement.[67]

While it is clear that the strong issue linkage in Uruguay negotiations allowed for acceptance of the package deal, it is also clear that American

[66] Schott 1994
[67] Davis 2005

coercive tactics played the critical role in ensuring that the package deal was first agreed to and later accepted. European negotiators fully understood that US would pursue agreements in alternate forums if agreement could not be reached by the deadline set for fast-track negotiation, excluding the EC and unilaterally altering the status quo. Not only would the EC be made worse off by exclusion from alternative liberalization agreements, but it would be faced with bearing the costs of extensive agricultural retaliation from its most important market for agricultural goods. While issue linkage cannot be said to play an insignificant role, it was the US use of its substantial leverage and employment of coercive tactics that "activated" and credibly established this linkage. This can be more clearly seen in the case of Doha, in which a strong linkage employed without a powerful actor willing to employ that power to compel agreement has resulted in failure to reach agreement at all.

When Credible Linkage Doesn't Suffice: Stalled Discussions at Doha

It is fair to characterize the agricultural liberalization achieved at Uruguay as substantial—particularly because of agriculture's formal institutionalization in the WTO's Agreement on Agriculture (AoA) and the organization's adoption of the competitive agriculture paradigm over the dependent agriculture paradigm. In spite of this, many scholars have noted that the concrete change in levels of protectionism resulting from the Uruguay agreement is minor—the agreement did not lower levels of agricultural protection in OECD countries after 1995, largely

because of the many exceptions granted in the framework.[68] Though world trade had increased since the conclusion of the Uruguay Round by approximately 6% per year, barriers and maximum tariff levels had not decreased, making their impact even more strongly felt as time continued to pass.[69]

Doha Round negotiations began in a tense but hopeful environment in late 2001, with the breakdown of the most recent WTO Ministerial Conference in Seattle and the September 11, 2001 terrorist attacks very fresh in the minds of negotiators. Poverty and underdevelopment were seen as the source of many of the international community's most pressing problems—including terrorism—and it was in this mindset that negotiators agreed that Doha should be framed as a "development round" in which the focus would center on alleviating poverty and fostering development.[70] But it wasn't long into this new round of negotiations before it became clear that the ambitious agenda would face significant difficulties in the quest to reach agreement among the WTO's 151 member states. While deep disagreements began to surface on a number of the most difficult issues being discussed, it is with agricultural policy that the largest share of the blame lies for the resulting decade (and more) of deadlock.

Of great importance to note here is that from the outset Doha has been conducted as a single undertaking, connoting a very strong linkage between any and all agreements reached in the negotiations. In the declaration put forth at the

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[68] Messerlin 2005, Beierle 2002, Sharma 2005
[69] Mattoo and Subramanian 2009
[70] Kleimann and Guinan 2011

round's initiation, members stated that "the conduct, conclusion, and entry into force of the negotiations shall be treated as parts of a single undertaking," and all members signed on to this proposition.[71] This robust and credible linkage agreed upon by all of Doha's participants makes these negotiations a strong test of the effects of issue linkage on liberalization outcomes. Though Doha technically remains an open and ongoing round of negotiations, making it difficult to reach concrete conclusions regarding Doha's official outcome, the round has now been in progress for more than fourteen years, and agreement still seems far off. It is thus fair to comment on the effect of linkage politics on discussions so far and reach some tentative conclusions about its likely effect on the eventual outcome of Doha.

While there are undeniably numerous sources of the insuperable conflict between Doha's participants, including the overloaded agenda, the reemergence of protectionist pressures resulting from the global economic crisis, and steeply rising world food prices, there are two factors that stand out as most directly contributing to the deadlock in agricultural negotiations: global power transitions resulting in greater influence for emerging economies such as India, Brazil, and China, and the resulting restructuring of the negotiating landscape; and the increasing rigidity of WTO rules and the strict, formulaic nature of existing frameworks that seem to have locked negotiators into a insuperable stalemate.

[71] Wolfe 2008

By the initiation of this latest round of trade negotiations, a full three-quarters of the WTO's membership is made up of developing economies. Daniel Drache and Marc Froese point to this factor as driving the decline of trade multilateralism in their piece examining the deadlock in Doha: "With the rise of new global trading powers such as India, China and Brazil, the geopolitical playing field is in flux and the steady accumulation of political and market power in the global South has sapped the WTO's forward momentum… The new southern geographies of power agree with the United States on one thing – a bad deal is worse than no deal at all."[72] Developing economies made significant concessions throughout the Tokyo and Uruguay Rounds, ceding considerable liberalization in intellectual property and services in exchange for promises regarding agricultural market access—promises that still remain largely unfulfilled. Unwilling to yield such substantial concessions without obtaining significant benefits in this latest round, emerging economies have gained considerable leverage not only from their increasing importance to the world economy but also from their ability to sit back on their heels and wait out a deal that meets these expectations in a single undertaking setting.[73]

While it would be categorically wrong to claim that the developing countries espouse the same negotiating positions or seek the same goals, the lumping together of *all* countries in the single undertaking gives naysayers the ability to stymie progress for all. In the words of Susan Schwab, United States

[72] Drache and Froese 2008
[73] Henn and Le Hen 2011

Trade Representative from 2006 to 2009, "in the context of Doha, the [single undertaking] rule has enabled individual countries to play the spoiler and seek lowest-common-denominator outcomes or to free-ride on others' concessions."[74] Yet it is not those countries choosing to play spoiler that Schwab places the most blame on, but the "dramatic imbalance of negotiating flexibilities available to the emerging economies as opposed to the advanced economies…Even if the emerging countries wanted to put more on the table, their offers today would look like unilateral concessions, since the developed countries have nothing of perceived value left to concede in return." [75] These are very different circumstances than those of Uruguay, in which the US was able to use unilateral pressures to coerce its desired outcomes out of the only party willing and able to forestall conclusion of the round—the EC. These significant fluctuations in bargaining power and positions have restructured the playing field such that no single actor has the incentives or the unilateral ability to force through its desired package deal. With the large agricultural exporters in the G-20, championed by Brazil, pushing hard for deep cuts in agricultural subsidies and tariffs, and the OECD countries gaining new support in their trade protectionism from G-20 members such as India and China that remain staunchly protective of their substantial farming population, the "end of the traditional dominance of the 'Quad' of the United States, European Union, Japan and Canada"[76] seems to have

[74] Schwab 2011
[75] Ibid.
[76] Kleimann and Guinan 2011

resulted in an impasse that may not be surmountable through the use of coercive tactics.

Beyond the “new geography of power”[77] that negotiators have yet to find a way to navigate effectively, the increasingly inflexible and hyper-legalized nature of WTO rules is also significantly at fault for preventing the liberalization process from moving forward in the multilateral context. Judith Goldstein first and most famously put forth this argument that has since found significant support among trade scholars, arguing that the WTO’s “organizational rigidity” has been on the rise ever since the US’s push for increased legalism and enforceable dispute settlement procedures in Uruguay negotiations.[78] This problem has been particularly acute in its effects on the dispute settlement process, in which 85% of disputes involve at least one developed country.[79] In his article evaluating the effects of increasing legalization in WTO procedures, Moonhawk Kim finds a distinct divergence in outcomes between developed and developing states:

> Due to their greater capacity to exploit complex procedural rules, developed countries have increased their likelihood of utilizing the new dispute settlement procedures more than developing countries. Since procedural costs are a function of both institutional rules and countries’ capacities, procedural costs a country confronts increase as the state’s capacity falls...the country's lower capacity to meet

[77] Drache and Froese 2008
[78] Barton et al 2006
[79] Drache and Froese 2008

the administrative and the expertise demands of dispute settlement implies that its preparations for the proceedings will be less adequate than a country with a higher capacity to meet the procedural requirements.[80]

These divergent effects of legalization have troublesome consequences for developing states considering whether to enter into new agreements in which they may not be able to maneuver the system as well as their more developed counterparts. But the ultra-legalized nature of the WTO affects the ability of member states to reach agreement in any even more direct way, as pointed out by USTR Schwabb: "the combination in the framework of rigid formulas and ill-defined, largely nonnegotiable flexibilities put all the negotiators in a defensive posture from the outset, left to assume that their own import-sensitive constituencies would face severe tariff cuts but unable to point to the kind of concrete gains in market access necessary to build domestic support for the trade talks."[81] Members that wish to prevent liberalization in certain areas are able to exploit the multitudinous legal loopholes, which range from slight adjustments to the agreed-upon flexibilities to complete exemptions, with least-developed countries receiving full exemption from any tariff reductions. Negotiations collapsed throughout the round, though perhaps most dramatically

[80] Kim 2008
[81] Schwabb 2011

at the ministerial conference in July 2008, as a result of the inability of member states to agree on agricultural modalities—the formulas for making tariff cuts.[82]

While shifting power geographies and legal inflexibility deserve the largest shares of the blame for the deadlock in the Doha Round, consensus has begun to emerge around the negative consequences of the single undertaking framework. It was long thought that the single undertaking would encourage states to make difficult trade-offs, mobilize new interests in favor of liberalization, and expand domestic policy jurisdiction for states that might otherwise have a hard time getting a liberalization deal accepted at home—but these effects have yet to kick in at Doha, and it seems unlikely that they will. USTR Schwabb pointed out that the single undertaking empowers naysayers and spoilers—Menon goes further in her analysis to claim that the single undertaking has allowed the negotiation process to be "held hostage by members unwilling to liberalize or wanting to do so only if they can extract a concession in a different sector."[83] Others point to the fact that the single undertaking may encourage timidity on the part of negotiators who focus all of their efforts on the segments of the package deal that they most desire to achieve,[84] while still others have gone so far as to call single undertaking a "straightjacket" in an environment with far

[82] VanGrasstek 2013, Drache and Froese 2008
[83] Menon 2011
[84] VanGrasstek and Suave 2006

too many members and competing interests to reach a single all-encompassing agreement.[85]

Though the negative consequences of this strong and credible linkage may come as a surprise to those who heralded the benefits of linkage after the conclusion of Uruguay, it certainly comes as no surprise to those who attributed the round's successful conclusion to the coercive tactics employed by the US. With the changing geopolitics of power playing out in volatile and often unpredictable ways throughout Doha, it is clear that American negotiators will not so easily be able to obtain their preferred outcomes through the use of tools and tactics that were only available to the most powerful actors in the past.

Conclusion

These four cases have demonstrated the epiphenomenal nature of issue linkage and legal framing by revealing that legal framing is selectively successful and has little swaying power when employed against the most powerful states, and that issue linkage is only effective when backed by coercive threats (either implicit or explicit) made by states with the ability to credibly threaten exit and/or retaliation if their objectives are not met. States fight hard to achieve the economic outcomes they believe will advance their national interest, and will not make concessions lightly—the most powerful states will certainly not surrender

[85] Drache and Froese 2008

significant interests unless they are met with a pressing and compelling reason to do so.

In spite of the now apparent fact that the most powerful actors can and have manipulated the GATT/WTO institutional context to achieve their desired outcomes in the past, the Doha Round seems to signify a sea change in the ability of these powerhouse states to manipulate and coerce their counterparts. Shifting power balances and increasingly legalized procedures make it difficult for actors like the US to know where to direct their energies, and the ability of the most anti-liberalization states to play spoiler across different sectors of negotiations makes progress less and less likely. As states are less able to achieve desirable outcomes in the context of these multilateral forums, we are seeing a huge rise in regional and bilateral forums, perhaps partially signifying that states like the EU, the US, and Japan are seeking other settings in which they can more readily exert influence and achieve desired outcomes. While institutional context does affect the likelihood of states' achieving agreement, as can be mostly clearly seen in the distinction between Uruguay and Doha, it is the use of coercive tactics, threats, and other "power tools" available to the few that remain the most effective and efficient way for powerful states to achieve the national interest.

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