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Ideas, institutions, and American trade policy

Judith Goldstein

Nowhere is America's hegemonic decline more evident than in changing trade patterns. The United States trade balance, a measure of the international demand for American goods, is suffering historic deficits. Lowered demand for American goods has led to the under-utilization of both labor and capital in a growing number of traditionally competitive American industries. Conversely, Americans' taste for foreign goods has never been so great. Japanese cars, European steel, Third World textiles, to name a few, are as well produced as their American counterparts and arrive on the U.S. market at a lower cost.

It is no surprise that as America's trade position suffers, the subject of commercial policy again looms large on the political agenda. The questioning of America's trade policy was common throughout the 19th and early 20th century. In the post-World War II period, however, a consensus arose that America should have an open, liberal trade posture. In the late 1960s, those who questioned that commitment found little support. By the 1980s, however, newspapers and journals were heralding the return of protectionism and sounding the death knell for America's liberal trade policies.

Changes in America's market position also have led academics to predict policy change. Such predictions are no surprise. They derive directly from current analyses of American politics. Among scholars, the explanation for protectionism is often presented as the flip side of a theory of trade liberalization. The lack of the causal structure that explains the choice to pursue openness predicts protection.

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Two genres of theory offer predictions for American trade policy. One looks to social pressures as an explanation for policy; the other looks to international structure. Of the two, the former dominates the study of American trade policy. Among American scholars, the seminal analysis of trade policy was conducted by E. E. Schattschneider.[1] His analysis of 1929–30 Smoot Hawley Act made tariff policy the prima facie proof of extensive interest group influence over the making of American laws. Although studies of later legislation led to revisions in the original analysis of the tariff-making process, an often implicit belief that interest group activity determines protectionism remains ingrained in analyses of American economic policy.[2]

The alternative approach used by international relations scholars considers trade as a foreign policy issue and looks to international structure as the determinant of state interest. These analysts argue that liberal trade and an absence of protectionism were prefaced by America's ascendancy to hegemony after World War II.[3] With a decline in American power has come a decline in interest and resources with which the U.S. can maintain a liberal trade regime. As in the interest group approach, the loss of American power and market share leads to the prediction of an increase in trade protectionism.

This article argues that neither of these approaches captures the dynamic of protectionism in the U.S. Both approaches envision government as a conduit translating either group pressure or international demands into state policy. Neither approach looks at the institutional arrangements through which domestic demands and international constraints are filtered. In this article, state structure is used to explain policy. The argument made is that state structures are historically determined and reflect the biases of decision-makers present at their creation. Critical in decisions of protection is the evaluation by the state of the legitimacy of claims brought forth by social actors. What the law designates as a legitimate claim for aid has varied systematically over time. This article explains the origins and scope of three types of legitimate claims for state aid.

1. E. E. Schattschneider, *Politics, Pressures and the Tariff* (New York: Prentice-Hall, 1935).
2. See, for example: Robert Baldwin, "The Political Economy of Postwar U.S. Trade Policy," *Bulletin,* 1976–4. (New York: N.Y.U. Graduate School of Business, 1976); *The Political Economy of U.S. Import Policy* (Cambridge: MIT Press, 1985); "The Inefficacy of Trade Policy," *Essays in International Finance* 150 (December 1982), pp. 1–26. See also Raymond Bauer, Ithiel DeSola Pool, and Lewis Anthony Dexter, *American Business and Public Policy: The Politics of Foreign Trade* (Chicago: Aldine, 1983); and J. Pincus, "Pressure Groups and the Pattern of Tariffs," *Journal of Political Economy* 83 (August 1975), pp. 757–78.
3. Robert O. Keohane and Joseph Nye, *Power and Interdependence* (Boston: Little, Brown, 1977); Keohane, "The Theory of Hegemonic Stability and Changes in International Economic Regimes, 1967–1977," in Oli Holsti, Randolph M. Siverson, and Alexander L. George, *Change in the International System* (Boulder: Westview, 1980); and Stephen Krasner, "State Power and the Structure of International Trade," *World Politics* 28 (April 1976), pp. 317–47.

Understanding protectionism

The explanation for American protectionism or the systematic exclusion of industries from general American trade policy has three components. First, policy-making is dominated by a belief in the efficacy of free trade. That belief has been encased in post-World War II laws and institutional structures that service continued trade liberalization and ensure minimal legitimacy for social claims for protectionism. Second, U.S. policy has a "fair" trade component. Previous to America's move towards openness in the mid-1930s, policy was protectionist. From the end of the Civil War to 1934, policy reflected the belief that the U.S. could maintain an isolationist policy with respect to imports and still expand trade in foreign markets. The impact of this period is evident in laws and institutions that legitimate social claims for state intervention to favor domestic producers over foreign competitors. Third, there is a welfare component to U.S. policy. Policies exist that are redistributive. The state both compensates uncompetitive sectors and helps industries adjust to foreign competition that results from liberalization. Viewing America's policy on protectionism, an analyst finds state policies based on often contradictory ideas about the correct relationship between state and society. Laissez-faire, intervention against foreign producers, and intervention to redistribute social goods all coexist as legitimate state policies.

How can the coexistence of three apparently contradictory policies be explained? Most simply, these different policies exist because institutions, once created, live substantially beyond the mandate they originally served. Government organizations do change but more slowly than does their environment. In the U.S., a society embalmed in the "rule of law," legal constraints encourage the layering, rather than the replacing, of government institutions.[4]

As in geological surveys, the institutions of American government can be organized by the historical period of their birth. Institutions are created to serve a particular legal mandate. Mandates evolve from a political consensus that was generated to support a particular response to a government or social need. Institutions, then, reflect a set of dominant ideas translated through legal mechanisms into formal government organizations. If ideas become encased in institutions through legal procedures, they will continue to have policy impact over time. Generally, this institutional influence derives from the existence of formal organizations whose rules, norms, expectations, and traditions establish constraints on individuals within these

4. For an interesting argument on the force of legal constraints in trade policy, see Alan Wolff, "The Role of America's Trade Policy in the International Competiveness of American Industry," Harvard Business School, 1984.

organizations, on elected leaders outside these organizations, and on society in general.[5]

Institutional structures alone are an insufficient explanation for postwar American trade policies. As critical is the belief system of those individuals who enforce laws.[6] In the U.S., liberal beliefs about trade policy have dominated the debate and thinking of those involved with policymaking. In the post-Depression period, liberalism gave decision-makers both a design for economic reconstruction and organizing principles that directed what was then seen as a problematic relationship between government and society. The Great Depression was the necessary prerequisite for the acceptance of liberalism. The Depression not only led to international decline and war but also led to a domestic crisis emanating from the fear that congressional pork-barrel politics had caused or at least contributed in a major way to great economic and political dislocation. Crisis was a requisite, a necessary but not sufficient cause, for liberalism to take on an ideological character. In its early years, liberalism can be explained in that it served the interest of the U.S. and its central decision-makers. However, the existence of unprecedented postwar affluence and power for the U.S., which came to be associ-

5. See James March and Johan Olsen, "The New Institutionalism: Organizational Factors in Political Life," *American Political Science Review* 78 (September 1984), pp. 734–50, for an overview of the institutional perspective.

6. There is a vast and growing literature on the role of ideas, cognitions, values, norms, and ideologies in the political process. In this essay, ideas refer to shared intellectual outlooks. In particular, the shared outlook is the efficacy of government pursuing one economic policy rather than another. In this essay, I do not address questions of why one set of ideas dominates the process by which society transmits particular outlooks or the cognitive process associated with having a particular outlook. Following closely on the way that John Odell uses ideas as a variable in *U.S. International Monetary Policy: Markets, Power, and Ideas as Sources of Change* (Princeton, N.J.: Princeton University Press, 1982), the emphasis of the essay is on the political influence of the content of an idea, not the cognitive processes. It is assumed that ideas reflect more than the translation of international needs into domestic policy. Rather, we assume that there are competing interpretations of optimal economic policy for a given environment and the ascendance of one policy idea, rather than another, has important policy ramifications.

This way of viewing ideas and, on a macro level, ideology is similar to that used in a variety of subfields within political science. For instance, Philip Converse defines belief systems as "a configuration of ideas and attitudes in which the elements are bound together by some form of constraint or functional interdependence." (Converse, "The Nature of Belief Systems in Mass Publics" in David Apter, *Ideology and Discontent* (New York: Free Press, 1964), p. 207. Looking at organizations, Franz Schurmann suggests that organizations can be characterized by "a manner of thinking" and concludes that there are ideologies of organization in addition to those of classes and individuals. An organizational ideology is defined as "a systematic set of ideas with action consequences serving the purpose of creating and using organization." *Ideology and Organization in Communist China* (Berkeley: University of California Press, 1966), p. 18. As defined by Douglass North, "Ideologies are intellectual efforts to rationalize the behavioral patterns of individuals and groups." *Structure and Change in Economic History* (New York: W. W. Norton, 1981), p. 48. These scholars agree on a definition of ideas or ideology; variations exist on the explanatory value and independence of ideas. A number of other social scientists, in addition to those mentioned above, look to "ideas" as explanation for policy. See, for instance, Anthony King, "Ideas, Institutions and the Policies of Governments: A Comparative Analysis," *British Journal of Political Science* 2 (July 1973); and Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, 1955).

ated with a particular international economic policy, elevated liberalism into a realm untouchable by interest group politics. Crisis followed by affluence became the necessary and sufficient criteria for the entrenchment of liberal doctrine.[7]

In sum, this article reexamines protectionism in the U.S. In particular, it attempts an explanation for patterns of aid. We begin with the observation that over time, societal actors have become increasingly threatened by foreign producers. In the postwar period, the U.S. has continually lowered barriers to trade at home. The result has been that American producers have encountered increasingly stiff competition at home as well as abroad. Average ad valorem tariffs have declined dramatically since the 1930s (see Table 1). Import penetration has increased more quickly than either exports or GNP. In the 30 years following World War II, Americans have almost tripled their consumption of foreign goods. Whereas only 5 percent of personal consumption expenditures were for imports in 1945, that proportion increased to 14 percent by 1984. Both industry and labor have responded to loss in market share by attempting to gain state aid. Petitions for aid increased dramatically in the 1970s in all the categories examined below. Although Congress showed little interest in protectionist legislation in the 1960s, it entertained hundreds of bills pertaining to some aspect of America's trade program in the 1970s and 1980s.

This article focuses on five particular mechanisms available to these complainants. They are differentiated by the historical period in which Congress first created each form of aid. The article maintains that variation in aid is greater across the various forms of protectionism than within each form. Types of aid should be differentiated by the legal criteria used by the government to adjudicate cases. These differences in laws reflect historic shifts in ideas about what constitutes a legitimate claim for state aid. Laws alone, however, cannot explain the pattern of aid in the U.S. Equally important are the beliefs of those who adjudicate the laws. Thus, "ideas" appear twice in the explanation of protectionism. First, they are critical independent variables that explain why different laws arise in different historical periods. Second, the ideas or beliefs of those who administer the laws affect outcomes. However, contemporary beliefs of decision-makers affect the ability of groups to obtain aid only to the extent that there is room for discretion in the administration of these laws.

This article does not seek to give a general theory of American trade policy. Rather, its purpose is to show the value of studying the institutional

7. Within government, a number of mechanisms reinforced the policy dominance of free trade ideas. For example, in the mid-1970s, members of the House Ways and Means Committee had to pass a "free trade" test to be recruited onto the committee. Throughout the postwar period, economists have been united in support for free trade, influencing economic options presented to central decision-makers. In a third example, shared perceptions by a cohort of government officials about the causes of the Depression continue to influence policy.

TABLE 1. *Change in U.S. GNP, imports, and tariffs, 1948–84 (%)*

Years	*GNP*	*Imports*	*Tariff*
1948–58	74	80	−20
1958–68	93	160	+ 2
1968–78	146	423	−47
1978–84	155	223	−42

Source. Calculated from U.S. Government, *Historical Statistics of the United States: Colonial Times to the Present* (Washington, D.C.: GPO), part 1, 1970, 1975, p. 224; Part 2, pp. 884–900; *Statistical Abstract of the U.S.* (Washington, D.C.: GPO), 1973, pp. 778–90; 1980, pp. 439, 872–74; 1982–83, pp. 833–44; 1984, pp. 448–49, 831–41.

and cognitive bases for American policy. We argue that neither the disintegration of American power nor the rise of interest group activity fully explains the pattern of protectionism. A more complete explanation resides in the study of state institutions themselves.

The role of the state

Models traditionally used to explain commercial policy underplay the autonomy of the state. Government is an important variable in both societal and international structural theories, but one portrayed as essentially regulated by variables external to government institutions. The state is either an arena in which social groups fight over the allocation of scarce resources or a necessary vehicle for translating international constraints and opportunities into public policy. Studies abound on the functioning of American government institutions. Few, however, attempt to explain policy as the result of the interests and beliefs of the state. Rather, independent state action is not expected. When found, such policy is explained away as the anomalous result of unintended actions. In essence, the state is often portrayed in modern American scholarship as epiphenomenal.

In the 1970s, scholars reacted to the lack of a shared ontological conception of the state. From both the field of comparative politics and the field of international relations, questions of national development, of economic policy, and of national interest led analysts to seek a common definition of the state.[8] Following Krasner, four definitions have emerged from this discussion.[9]

1. The state both as a legal order and a public bureaucracy (or administrative apparatus) modeled as a coherent totality.

8. E. Nordlinger, *On the Autonomy of the Democratic State* (Cambridge: Harvard University Press, 1981). Theda Skocpol, *States and Social Revolutions* (Cambridge: Cambridge University Press, 1979). Charles Tilly, ed., *The Formation of National States in Western Europe* (Princeton, N.J.: Princeton University Press, 1975).

9. Stephen Krasner, "Approaches to the State: Alternative Conceptions and Historical Dynamics," *Comparative Politics* 16 (January 1984).

2. The state as the collective set of personnel who occupy positions of decisional authority in the polity.
3. The state as ruling class.
4. The state as normative order.

Given these choices, what is the view of the state taken here? There are two. The state, when seen as an exogenous source of explanation for phenomena, as in much of this article, is implicitly being defined as in the first definition. The state itself, its institutional design, its legal precepts, and its normative views explain particular policy options. Use of such a shorthand explanation for public policy is, however, time-bound. It is bound by crucial periods in which social forces, not state institutions, determine policy. At these times, the state is better conceptualized as in the second definition—that is, merely as a collective set of personnel more or less representing social groupings. The plasticity of the state suggested in the second definition is, however, temporary. Winning coalitions cement their victory by creating institutions which, by design, protect their interests. Change then occurs slowly and only under duress. The state moves forward according to its inner logic even as those social groupings, so influential in the past, find that changes in their needs do not lead to changes in state policy.

The First definition is closest to the view of the state used in most studies of international relations. When the national interest for a single state is deduced from the distribution of power of all states, government is portrayed as a totality.[10] Few international relations scholars, however, are willing to ignore domestic variables in favor of "black boxing" government processes. Still, many favor international structure as a primary determinant of a nation's interests and policies. The compromise is to define the state explicitly as in the first definition. Although bringing back the politics of the nation-state unit, policies do not reduce the push and pull of the societal actors. Rather, the state is the institution which interprets, more or less correctly, national needs. Thus, international structure can remain the basic determinant of the national interest. States do, however, vary in their ability to act on these interests. Administrative units vary in their ability to extract from society resources necessary to pursue optimal national policies.[11]

There exists a major difference between this international structural approach and the one used here. The difference relates not to the definition of the state nor to qualifications about the capabilities of state, but rather to the importance of international structure of our understanding of behavior. The international distribution of power is not accorded a central

10. Kenneth Waltz, *Theory of International Politics* (Reading, Mass: Addison-Wesley, 1979).

11. Peter J. Katzenstein, "Introduction: Domestic and International Forces and Strategies of Foreign Economic Policy," *International Organization* 31 (Autumn 1977), pp. 587–607.

role in the explanation of American policy in this article. Since we seek to explain the lack of change in American trade policy in the face of changing international power relations, international structure cannot be the explanation. Instead, the explanation is rooted in American politics and American history.

In sum, two sets of domestic variables are essential to the explanation of state-society relations. These variables are only tangentially related to foreign policy goals; they do not constitute ad hoc additions to the core of a structural theory.[12] To the point, instead of arguing that ideas and institutions become operative at times when structural constraints are not present, it is argued here that ideas and institutions are always operative and are isomorphic with state needs, as detailed by an international structure approach only in periods of international crisis. The status of ideas and institutions in normal times moves from that of intervening variable, as in other statist analyses, into an independent role.

An analysis of trade policy would be incomplete without consideration of state institutions. Public organizations establish, maintain, and monitor the rules under which social actors seek protection. Variables rooted in social action alone are not sufficient to explain variation in the amount of aid groups receive from government. Government preferences, too, affect outcomes. Although in the long term groups may be able to organize and change the general character of American institutions, in the short term laws and norms have significant impact on their ability to translate social action into public goods.

This article maintains that social actors do not face a uniform set of constraints in obtaining protection. Analogously, state and social actors are interacting in a number of different "games" of protection. These games vary in their rules; they vary in their payoff matrices. This variation makes it easier for groups to receive one type of aid than another and encourages actors to pursue particular strategies.

The next sections examine three types of protectionist policy. Two themes are repeated. First, each section argues for the uniqueness of that type of policy. Each policy is identified with a set of legitimating ideas, with an organizational design that translates these ideas into law, and with a unique set of political processes. Once established that there exist three different types of legal institutions, data on the extent of change in protectionist institutions are examined. Highlighted is the finding that the U.S. is not simply becoming more protectionist over time. Although state responsiveness has risen, the more interesting variations are between types of aid, not over time.

12. Imre Lakatos, "Falsification and the Methodology of Scientific Research Programs," in Lakatos and Alan Musgrave, eds., *Criticism and the Growth of Knowledge* (Cambridge: Cambridge University Press, 1970); Robert Keohane, "Theory of World Politics: Structural Realism and Beyond," in Ada W. Finger, ed., *Political Science: The State of the Discipline*. (Washington, D.C.: APSA, 1983).

The liberal idea

In the postwar period, America's commercial policy has centered on the creation and perpetuation of a liberal trade regime. As envisioned after World War II, that regime called for the opening of national borders to the free flow of goods, services, and capital. Although many aspects of the liberal regime were never accepted by America's trading partners, the U.S. has continually attempted to inculcate the neoclassical economic view of trade into international practice.

Although components of the liberal regime, most particularly the General Agreement in Tariffs and Trade (GATT), have come under criticism, support for liberalism has only minimally eroded among American central decision-makers. Liberalism still holds a social position not unlike a "sacred cow" in the policymaking community. In content, America's liberal ideas stem from two intellectual roots: 19th-century British thought and 18th-century American political philosophy.

The institutionalization of the liberal idea of free trade can be dated to 1934. Although entertained as a policy earlier in the 19th century (for example, see debate on Walker tariff, 1846), it was only after 1934 that American central decision-makers looked to free trade ideas as a basis of policy. The primary event that prefaces this move to liberalism is the Great Depression. The failure of the Smoot–Hawley tariff of 1929–30 to deal with economic decline set up a policymaking crisis. The delegitimization of protectionism forced the political community to search for an alternative theoretical approach to explain past errors and provide guidelines for future behavior.

Economic decline breeds numerous interpretations. The Great Depression was no exception. Two sets of events allowed for the particular shift towards free trade. First, institutional responsibility for tariff-making shifted to the executive. A Democratic Congress relinquished its constitutionally granted mandate under the guidance of a strong Democratic president. Party discipline alone, however, does not explain this change. The president needed to have a cognitive explanation of the interconnections between electoral misfortune, the Great Depression, and the protectionist policies of earlier administrations to gain congressional agreement. These connections were made repeatedly to the President and Congress by "free traders" such as Secretary of State Cordell Hull.

Liberalism began as one policy alternative among many. It became a policy bias only after the U.S. began to prosper under the free trade regime. Although in 1934 Congress undertook a policy of liberalization, there was no immediate opening of America's borders. The lesson of the Depression was far more modest. It was clear that Congress could no longer protect noncompetitive sectors of the American economy. Market forces could not be ignored in the rush to aid constituents. Politically, this meant that powerful private interests wishing protection would have to be ignored. In the 1930s,

however, central decision-makers did not agree that free trade was the only policy option for the U.S. Liberalism became ingrained as a policy bias as intellectuals and elected officials attributed the return to abundance and postwar growth to the successive, although incremental, policy of reducing barriers to trade. Success was taken to mean that those who argued that liberalism was the optimal policy for the U.S. were correct. By the early 1970s, liberalism had become more than a policy option, it was a policy bias and a policy constraint.[13]

Liberalization after 1934 was characterized by two processes. First, state mechanisms were developed that supported liberal trade. Not only did Congress allocate tariff-making authority to the executive, but it repeatedly endorsed the right of the U.S. to engage in negotiations to lower tariffs while nurturing bureaucracies whose mandate was to foster liberal trade relations.[14] And second, liberalism was accepted only with safeguards. Understanding that interest groups would continue to demand particularistic import preferences, Congress created a set of safeguards to protect its policies from group interference. The method used was to create alternative mechanisms through which groups could articulate their needs. Instead of going to Congress, interest groups could go to bureaucratic agencies whose legal task was to placate potential congressional clients. As an example of this process, we turn to the escape clause.

Escape clause

In the postwar years, Congress has instituted a number of measures that protect constituents unable to compete with foreign producers within the U.S. The measure with the longest history of both legislation and adjudication is the "escape clause." As compared with protectionist legislation written before America's move towards liberalism, the escape clause is more difficult to obtain, may be overruled at a number of decision points, and once received, needs repeated renewals to keep protection in force. In short, although potentially a device that could create great barriers to trade, the escape clause was created in a manner making attainment a difficult and arduous process. As such, this legislation has deterred a rise in protectionism and helped maintain liberalism. Cases are decided by the International Trade Commission (ITC), an independent bureaucracy, that selects recipients based on a set of objective criteria established by Congress. As opposed

13. See Stephen Blank, "Britain: The Politics of Foreign Economic Policy, the Domestic Economy and the Problem of Pluralist Stagnation," *International Organization* 31 (Autumn 1977), pp. 673–721 for a similar explanation of British monetary policy.

14. A number of good accounts of the liberalization process have been written. See, for example: Robert Pastor, *Congress and the Politics of U.S. Foreign Economic Policy: 1929–1976* (Berkeley: University of California Press, 1980); and Ernest Preeg, *Trades and Diplomats: An Analyses of the Kennedy Round Negotiations under the General Agreement on Tariff and Trade* (Washington, D.C.: Brookings Institution, 1973).

to the pre-1934 period, the ITC, not Congress, deals with formal petitions for aid. By distancing congressional representatives, the ITC acts as a buffer, mediating potentially disruptive political pressures.

Since the escape clause was instituted by Executive Order in 1947 and incorporated into statute in 1951, the U.S. has always included safeguard provisions in trade treaties and legislation. The escape clause provision allows an industry that has been seriously injured by imports to be exempted from an American trade agreement that would lower its tariff. The initial intent of the escape clause was to accomplish what the old peril point had failed to do—that is, to keep imports at a level that precluded injury to domestic producers.

The concept of the escape clause was first used as a provision in a 1942 trade agreement with Mexico. The idea reappeared in debate over the 1945 trade act as a compromise by the executive following congressional transference of increased tariff-making authority. In return for legislation, Truman issued Executive Order 9381 (1/25/48), establishing that all future trade agreements were to include escape clause provisions.[15]

To ensure congressional assent, the U.S. backed inclusion of an escape clause provision, similar to domestic law, in the GATT. The provision, Article XIX, was condemned by then President Truman as "an embarrassment to be avoided in the interest of maintaining an image of American leadership and dependability in world and foreign affairs."[16] Once the escape provision was in place, however, the U.S. was the first to invoke it four years later, in a case involving hatter's fur. Under American tutelage, GATT held that the U.S. was "entitled to the benefit of the doubt" in its estimation of criteria of injury. This somewhat loose interpretation of Article XIX led to the prediction that the liberal tenets of GATT would be defeated in an onslaught of cases using a nation's own definition of injury as grounds for protection. However, the use of Article XIX to escape liberalization by the U.S. or any of its trading partners has been limited. In effect, the magnitude of changes in trade patterns over the postwar period has *not* been reflected in use of Article XIX.

Although the earlier intent of the escape clause procedure was frozen into GATT rules, its American counterpart has evolved over time. In fact, escape clause procedures have been reexamined each time Congress has mandated further liberalization; in substance, however, much of the original program remains. By statute, a request from the president, Congress, Senate Committee on Finance, or House Ways and Means Committee, an ITC motion, or an application from an interested party (industry, union, or association) will induce an escape clause investigation. The investigation, according to the 1951 law, determines whether any industry "product on which a trade

15. William Ris, "Escape Clause Relief Under the Trade Act of 1974: New Standards, Same Results," *Columbia Journal of Transnational Law* 16 (1977), p. 299.
16. Ibid., p. 300.

agreement concession has been granted is *as a result,* in whole or in part, of the customs treatment reflecting such concession being imported in such increased quantities either *actual or relative,* as to *cause or threaten to cause injury* to the domestic industry producing like or directly competitive products'' (emphasis mine). If the ITC rules that imports did threaten an industry, it can recommend an increased import barrier. The finding, however, is by statute only a recommendation to the president. The president could choose to ignore the finding, to accept the finding but choose a different remedy, or to accept the advice of the ITC.

Since 1951, Congress has reviewed this legislation three times. An examination of the textual changes in the law reveals the 1962 criteria to be the most difficult to fulfill. This becomes obvious by looking at the evolution of the phrases emphasized above.

First, the 1951 Act required imports to have ''contributed substantially'' to injury or threat of injury. In 1962, this criterion was considered too permissive; instead, imports had to be ''the main factor'' in causing injury in order to justify aid. Under the Trade Act of 1974, the criteria again eased. Increased imports had to be only ''a substantial cause'' rather than ''the major cause'' of injury.[17]

Second, the early law required proof that injury resulted from a customs concession. Again, Congress in 1962 voted to stipulate more strictly that causal connection. The 1962 Trade Expansion Act stipulates that injury must have resulted ''in major part'' from the concession not just ''in whole or in part.'' When reexamined in 1974, the newer requirement was dropped.

Third, the specification of whether imports have to increase in absolute or in relative terms to constitute grounds for protection has varied. In 1951, either constituted just cause; in 1962, however, the tightening of aid criteria led to legislation which specified that only an absolute increase in imports warranted aid. This interpretation was again overturned in 1974 for the earlier, more flexible interpretation.

The one criterion that has been consistently eased is the specification of what constitutes serious injury. In 1951, the ITC was mandated to consider, among other things, ''a downward trend of product, employment, prices, profits, or wages in the domestic industry concerned, or a decline in sales, an increase in imports, either actual or relative to domestic production, a higher or growing inventory, or a decline in the proportion of the domestic market supplied by domestic producers.''[18] In 1962 this mandate to the ITC was expanded to include ''all economic factors which it considered relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment.''[19] The factors

17. Substantial cause was defined as one ''which is important and not less than any other cause.''

18. Stanley Metzger, ''The Trade Expansion Act of 1962,'' *Columbia Law Review* 61 (Spring 1961), p. 444.

19. Ibid., p. 445.

to be considered were further expanded in 1974. Congress declared that the ITC must consider, among other things, the "idling of productive facilities, the ability to reap a profit, unemployment and underemployment and downward trends in production, profits, wages, or employment in the affected industries."[20]

Although these procedural issues have been addressed and changed by Congress, a basic relationship between the executive and the legislature has not been violated. In particular, Congress has never taken from the executive his jurisdiction as final judge on escape clause cases. Although sentiment has been expressed for a renewal of a congressional role in aiding industries injured by imports, the reaction of Congress has been to give more power to the bureaucracy through easing aid requirements, not to take authority from the president. As early as the 1962 hearings, the position expressed on aid was that "relief ought not to be denied for reasons that have nothing whatever to do with the merits of the case. . . . In particular . . . no U.S. industry which has suffered serious injury should be cut off from relief for foreign policy reasons."[21]

Yet the 1962 Act was the most antiprotectionist to come out of committee. During these hearings, Congress expanded executive discretion with the inclusion of adjustment assistance as an additional alternative to using the escape clause without establishing enforceable rules to dictate presidential choice. It was not that curtailment of executive privilege was not discussed. Congress dictated guidelines for the president but did not choose to make them mandatory.

For instance, Congress has expressed preferences for one type of aid to be given over others in positive escape clause cases. In 1974 hearings, a popular opinion espoused in Congress was that in the choice between consumer interests and the interests of those unemployed, "the President should adopt the latter course and protect the industry and the jobs associated with the industry."[22] In terms of referred remedies, Congress stated that an import duty was to be considered and used first while an Orderly Marketing Agreement (OMA) was to be considered last. This advice has been repeatedly ignored.

In sum, although Congress has argued about the form, amount, and duration of escape clause aid to industries affected by imports, the power to make those decisions has remained with the president. In legislation aimed at affecting the decision-making criteria used by the bureaucracy, Congress has maintained guidelines established in the 1950s, a time when there was little interest and minimal pressure for protectionism. Although a presidential veto of an ITC decision could be overturned by Congress with increased ease over time, the power has never been exercised. Rather,

20. Ris, "Escape Clause Relief," p. 306.
21. Ibid., p. 307.
22. Ibid., p. 309.

Congress is content with what appears to be symbolic measures to aid industry.

That Congress plays only a symbolic role in aiding industry is counterintuitive, given the structural relationship between Congress and powerful private groups. Congress has been a focal point for societal pressures aimed at gaining relief from imports. Even though negotiating authority was given to the president in 1934, the ability to legislate protective duties remains with Congress. Yet Congress has not responded to industry malaise with legislation—on the occasions when a quota was passed by one of the houses, executive intervention has forestalled implementation. Although the 1980s have been filled with accounts of impending congressional intervention, the large increase in bills entered in the *Congressional Record* has led to relatively few changes in law. The fear of a "slippery slope" to protectionism continues to affect the legislative process.

The role Congress does play is to establish criteria by which the technocrats in the ITC or the other trade-related bureaucracies adjudicate cases. As more pressure is placed on Congress, it responds by expanding the powers of the bureaucracy, not by intervention. Congress retains the right to hold hearings and has done so for key sectors such as the steel and automobile industries. However, once a hearing is completed, it is executive, not congressional, action that dictates whether that industry will receive effective aid. Congressional consent is necessary to appoint commissioners to the ITC. And congressional hearings and pressures from interested private groups affect the constitution of the ITC itself. But, since even a pro-protectionist ruling by the ITC in an escape clause case will be meaningless if the executive does not accept the ITC's advice, the role of Congress is severely constrained.[23]

In sum, two facts emerge from this review of the legal history of the escape clause. First, legislation has changed, but in only marginal ways, over the postwar period. In the periods before 1962 and after 1974, the criteria for escape clause aid were easier to meet than under the 1962 Act. We expect that ITC decisions will reflect these changes in law. Second, although Congress has changed the legal criteria over time, the basic design of the legislation has remained substantially the same. Congress sets standards, the ITC adjudicates cases, but the president makes all final decisions on relief and amount. In short, the law gives much latitude to the president. The power of the executive office to maintain trade policy is the institutional design that has fostered liberalism in the postwar period.

Escape clause data

To illustrate the points discussed above, two types of data are presented. Both evaluate the state's behavior in granting aid to import-sensitive indus-

23. For an analysis of executive–congressional relations, see Pastor, *Congress and Politics*.

TABLE 2. *Escape clause cases (in effect 1958–81)*

Year[a]	Average no. petitions/year (total)	ITC acceptance rate[b]	Presidential acceptance rate	
			Approved[c]	Approved with ITC relief
1958–62	11 (56)	.27	.14	.07
1963–74	3 (31)	.30	.13	.03
1975–78	10 (40)	.60	.23(.20)[d]	.03
1979–83	4 (18)	.56	.39(.23)[d]	.11

a. Organized by legislative periods.
b. Includes split votes and cases to extend relief due to expire.
c. An award of adjustment assistance alone is not considered aid.
d. Number in parentheses indicates acceptance rate for an industry not already covered by escape clause action.
Source. U.S. International Trade Commission, *Annual Report* (Washington, D.C.: GPO, 1975–82); U.S. President, *Annual Report of the President of the U.S. on the Trade Agreements Program* (Washington, D.C.: GPO, 1958–82); U.S. Tariff Commission, *Annual Report* (Washington, D.C.: GPO, 1958–74).

tries. Table 2 gives the petition activity, ITC response, and final presidential decisions on all escape clause cases in effect between 1958 and 1983. Table 3 looks at cases adjudicated for a sample twenty-year period and models the attributes of those who get aid.

Table 2 presents data according to the major legislative periods discussed above. Two points are noteworthy. First, petition activity is not a good predictor of either ITC or presidential acceptance rates. The years of lowest acceptance rate by the ITC are during the period of highest interest. Conversely, the highest acceptance rate is in the most recent period, when there have been relatively fewer petitions for aid. Thus, the ITC does not simply respond to increasing numbers of petitions by increasing aid. Presidential acceptance, too, seems unresponsive to petition activity. The president was most responsive to petitions after 1979, a period of relatively few escape clause petitions. Furthermore, in the periods before 1962 and after 1979, the president was most likely to accept both the form and amount of aid recommended by the ITC. Yet petition activity varied greatly in these periods.

Second, better explanations for acceptance rates are legislated changes in the law. The ITC has increased its rate of acceptance from 27 to 62 percent in the time period examined. As expected, the ITC acceptance rate increased sharply after passage of the 1974 law. This relationship between congressional legislation and ITC votes is less apparent in the 1958–62 period. Although the legislation was similar to that found after 1974, the acceptance rate was low. This probably reflects fewer industries meeting the criteria of injury as a result of a yet unlowered tariff.

Although ITC behavior seems predicated on congressional action, presidential behavior is less explicable from these tables. Two aspects of presidential behavior are revealed. First, presidents have routinely vetoed ITC decisions. More than half the time the ITC decides an industry has met the legal criteria for aid, the president overrules that decision on grounds of the national economic interest. On the whole, presidential action has served to minimize the potentially protectionist decisions of the ITC. The presidential acceptance rate, however, is on the rise. The rate was stable in the period through 1974, but the president accepted more cases in the following years. Second, presidents who accept ITC decisions do not necessarily accept the ITC remedies. This presidential authority is one of the more obscure but important forms of influence he has on trade policy. We can assume that ITC decisions on amount of aid reflect the advice of technical experts. Still, the president has repeatedly accepted the finding of injury while awarding a remedy below that needed for industrial recovery. This pattern suggests that the president uses his authority to minimize closure of the American market.

The effect of aid that was "too little, too late" is reflected in measures of market penetration. Looking at market shares in 1981, in only 1.6 percent of the escape clause cases decided by 1978 did aid receipt lead to either domestic market growth or maintenance.[24] In short, very few industries receive effective aid. The U.S. may be giving aid, but it is not necessarily aid that explicitly stops imports. And, although there has been an increase in the president's acceptance rate since 1979, the number declines if only new cases are considered; the data show that it is easier to garner a continuance in aid than to qualify initially for protection.

In sum, the escape clause reflects the biases of its creators. As compared with the legislation considered in the next section, the escape clause allows much discretion on the part of both the ITC and the president. Although elements of the law have been scrutinized in the postwar period, the criteria for aid are more open-ended than in other types of protectionist legislation. The ability of the president to veto an ITC decision or accept the decision and change the remedy is further evidence that Congress sees executive discretion to be legitimate in trade policy. The effect of executive discretion has been to maintain openness whenever possible, thus counteracting the more protectionist pressures felt by Congress. This is not to say that the executive has never granted protection. Under sufficient pressure, any elected leader will respond to the demands of his constituency. Rather, we argue that the institutional arrangement of the escape clause has allowed liberal presidents to be more isolated from constituent pressure than would otherwise be the case. We see less protectionism than is predicted from shifting constituent and international interests.

24. Judith Goldstein, "The Political Economy of Trade: The Institutions of Protection," *American Political Science Review* 80 (March 1986), pp. 161–84.

TABLE 3. *Predicting escape clause aid, 1958–78*

Variable	*B (Standard error)*
Change in number of employees	−1.51[a]
	(.32)
Government petitions	.28[b]
	(.17)
New capital expenditures	10.78[a]
	(2.00)
Association petitions	−1.18[a]
	(.26)
Average import penetration	−6.29[a]
	(1.30)
Industry petitions	.93[a]
	(.17)
Weight	1.16
	(.179)

a. Significant at .01 level.
b. Significant at .05 level.
Source. See Table 2; U.S. Department of Commerce, *Census of Manufactures* (Washington, D.C.: GPO, 1964, 1967, 1972, 1977, 1982); U.S. Department of Commerce, *U.S. Imports, SIC Based Products, FT 210 Annual* (Washington, D.C.: GPO, 1964, 1972, 1978, 1979, 1980, 1981); U.S. Department of Commerce, *U.S. Exports, SIC Based Products, FT 610 Annual* (Washington, D.C.: GPO, 1965, 1972, 1978, 1979, 1980, 1981).

A second way of assessing legitimacy is to model the traits of social groups who are successful in gaining state aid. This is done for a twenty-year period in Table 3. By comparing the variables that actually predict a successful petition with the legal rules, we can assess the relative weight of legislation and decision-making discretion. This exercise is particularly interesting when we compare these models across aid programs.

If the aggregate data portray the escape clause as legitimating freer trade, so too does our regression model. The data on petitions filed between 1958 and 1978 show that a number of variables significantly affect the decision of who gets escape clause aid. As grouped, four of seven sets of factors that were entered into this and subsequent aid equations appeared as important.[25]

25. The data that appear in Table 2, 4, and 6 were modeled from the same data set. That data set included all industries that applied for any of these three aid types between 1958 and 1983. Petitions were disaggregated by 8-digit product categories and then reorganized into 4-digit Standard Industrial Classification (SIC) codes. This method allows petitions covering large product groups to be appropriately weighted. The estimations to the model were produced using a weighted least square method. For computation of weights, see Judith Goldstein, "A Re-examination of American Trade Policy: An Inquiry into the Causes of Protectionism," Ph.D. diss., UCLA, 1983; and A. Zeller and T. H. Lee, "Joint Estimation of Relationships Involving Discrete Random Variables," *Econometrica* 33 (April 1965). In total, 313 industries (4-digit) petitioned for at least one of these aid types.

In modeling an explanation for government response, industry variables were organized into the following analytic groups: (1) indicators of international competitiveness; (2) measures of

First, who petitions is explanatory. Data were collected on five types of petitioners—single industries, trade associations, government, unions, and unions and industries filing jointly. Three of these petitioners appear in the regression. Government petitions and industry petitions had a better chance of gaining aid; conversely, petitions from associations were inversely related to success-rate. That government petitions would be more favorably received was expected—these petitions to the ITC, either from Congress, the president, or the ITC itself, designate cases of special attention. Often they are cases that have been refused before. Although repeated petitioning generally does not seem to increase an industry's propensity to receive aid, a repeat of a petition from a government agency probably does. Why industry petitions are more likely to get aid than association petitions are is less clear. The explanation may lie in the types of cases filed by single industries and those filed by associations. If association petitions represent smaller industries or ones that have had less previous contact with the government petition process, they may have a more difficult time receiving government assistance. When examined, this proves to be the case. Petitions from industries were from larger manufacturers with relatively high petition activity. Although size and total number of petitions filed do not directly enter the model, who petitions may be considered an indirect surrogate for these factors.[26]

Three other factors weigh into the explanation of who gets escape clause aid: change in number of employees is negatively related to success; new capital expenditures are positively related to success; and average import penetration is negatively related. All three of these findings contradict what is commonly envisioned as the typical aided industry. Of those industries who have asked for aid, those who receive escape clause aid are *not* the industries that are relatively less sophisticated nor the ones suffering from the greatest import penetration. They are, however, the industries having relatively large declines in employment, which perhaps makes an executive veto politically unfeasible.

These regression findings are suggestive. First, those who have received aid do not necessarily fit the criteria for aid established by Congress. Most striking, aid receipt is not related in the expected direction to import penetration. All the industries in the sample were import-competing. However, those who did receive aid were not necessarily those with the most penetrated markets. Second, who petitions seems to matter as much as the merits of the case. This finding suggests a political, rather than economic, explana-

import penetration or export strength; (3) indicators of relative industrial size; (4) measures of relative industrial strength; (5) a measure of previous petition success; (6) measures of change in industry characteristics (whether or not due to imports); (7) for a subgroup, the country that would be affected if a positive ruling were made.

26. The Pearson correlation between average employment (1963–77) and petition activity is .69 ($P = .00$). The correlation between employment and petitioning as an industry (not through an association) is .45 ($P = .00$).

tion for protectionism. Third, industries that received aid were relatively "healthier" than the bulk of industries in the sample. These industries still invested in capital improvements, which in these equations serves as a proxy for a range of other industry attributes. In short, it appears that the more competitive members of the sample received aid. Last, we find a strong relationship between the size of the industry and aid receipt. Large industries suffering declines in employment are apt to get a favorable state response.

These results are compatible with our explanation of the politics of escape clause protectionism. The findings that who petitions affects outcome, that employment declines elicit a state response, and that aid goes to the most competitive of the industries that petition speak to the discretion built into this trade legislation. These results also indicate that an interest group model of politics alone does not explain the pattern of aid. Industries that are the worst off may be repeatedly articulating their need for aid, but it is the upper strata of manufacturers that receive government protection. The more interesting finding from this exercise, however, is in comparisons across types of aid. This comparison of models of aid suggests that three different political processes drive American policy.

The defense of fair trade

The escape clause is only one mechanism open to industries needing import protection. The other forms of aid, to which we now turn, are based on differing notions of what constitutes a legitimate claim for protection. These laws, conceived before the Great Depression, reflect a period when the ideas of List and Hamilton dominated those of Smith and Ricardo. It is this period, from the end of the Civil War to Smoot–Hawley, in which ideas of "autarky" led policymakers to see gains from trade only in terms of export expansion. (By 1913, liberal ideas had gained increased acceptance among a subset of policymakers. Only after 1934, however, did legal and institutional changes allow these ideas to be translated into policy.) This period gave rise to what is labeled here as a "fair" trade law.

Indicative of differing views on trade, the legislative debates on tariffs in this earlier period are distinguishable. The question addressed by those debating the tariff in the earlier period was whether a tariff's primary purpose should be to raise revenue or to protect national industry; in the later period the debate turned on the tariff as a foreign policy instrument. In the earlier period, the tariff was subject to congressional logrolling; after 1934, tariff-making authority was given to the executive. Finally, the first set of tariffs was more reflective of the nexus of competing interests of the time. Since no one position on what was an optimal tariff had emerged, the type of tariff passed was a function of the capabilities of particular groups within and

outside Congress. After 1934, agreement on one position on tariff policy—that is, liberalism—substantially transformed the interest group process.[27]

What is somewhat unusual in the U.S. move to free trade is that liberalization occurred without the dismantling of pre-liberal norms, values, and institutions. Laws written in America's pre-liberal period reveal a far different set of state interests than would be the case after the Depression. In design these "mercantile" statutes reflect earlier American concerns with economic nationalism, not with later interest in the international gains free trade would afford. These laws changed little, even as the U.S. revamped her basic approach to trade policy. Thus, even in America's most liberal period, a legal mandate existed to exclude imports under these sets of laws.

Three laws are examined in this section. All have their legal roots in the pre-1934 period of American tariff history. All establish a set of criteria for "fair" trade based on a narrow interpretation of legitimate market behavior. Created in a period in which the U.S. wanted to discourage imports, these laws establish criteria for fair trading and state involvement in the production process that could exclude the majority of America's current trading partners. A philosophical difference exists between how cases of "fair" competitive trade that adversely affects an American producer and cases of "unfair" trade that may cause the same result are viewed. Belief in the long-term beneficial aspects of the market has translated into a condemnation by American decision-makers of foreign governments and foreign industries that attempt to interfere with "natural" market mechanisms, especially if the goal of that manipulation is predatory. The relationship between the American state and private industry is the model used to evaluate actions taken by other nations. The law stipulates that no country assist home industries or interfere with consumer market preferences to a greater extent than is done in the U.S.

A number of problems exist in the administration of these "fair" trade laws. First, there is a problem in the discovery and definition of a violation. Rulings in all three types discussed below are subject to difficulties with data collection; administrators must rely on domestic and foreign producers to supply information, which is often incomplete and difficult to assess. In laws in which the intent of the foreign producer to undercut an American producer is critical to the state's ruling, it is even more difficult for American complainants to prove their case. Foreign producers do engage in what Americans view as unfair practices but often without predatory intent. There is a dilemma in how to judge, for example, national pricing policies or subsidized research and development programs. In such cases foreign prac-

27. For analysis of pre-1934 tariffs, see G. W. Taussig, *The Tariff History of the United States* (New York: Knickerbocker, 1914); and *International Trade* (New York: Augustus Kelley, 1966); Tom E. Terril, *The Tariff, Politics and American Foreign Policy, 1874–1901* (Westport, Conn.: Greenwood, 1973); David Lake, *Structure and Strategy: The International Sources of American Trade Policy, 1887–1939,* Ph.D. diss., Cornell University, 1984.

tices were often not created to gain a market advantage but merely reflect national goals.

Second, administrators must adjudicate cases based on overly ethnocentric standards. States vary greatly in their philosophical and historical relationship to producers. The relationship found in the U.S. is not characteristic of that found in other polities. To use the U.S. case as a benchmark establishes criteria on the extreme end of a continuum. The enforcement of American values of the state-industry relationship not only interferes with a set of foreign policy goals that seek prosperity in noncommunist states but also translates into interference into other states' domestic politics. Such interference alienates allies and in principle deviates from the regime norm of sovereignty.

These issues were not of great importance in the early years of the liberalization program. As competition increased in the American market, however, these laws were rediscovered. Industries filed better claims and increasingly qualified under the narrow interpretation of "fair" trade as embodied in early law. This presented a dilemma for liberal central decision-makers who thought it in the nation's economic interest to keep the American market open. Administrators responded, whenever possible, by obfuscating the law through delays, noncollection of extra duties, and loose interpretations of findings. Such practices are no longer broadly accepted. Unfair trade issues are viewed by Congress, by the population, and by many administrators as more legitimate than their escape clause counterpart. "Cheating" remains antithetical to liberal norms. The problem facing central decision-makers who accept the principle of fair trade, however, is how to maintain openness while adhering to the narrow interpretation of fairness established in American statutes.

Antidumping legislation

Antidumping legislation appeared in its modern form in 1921, although earlier, in the Revenue Act of 1916, a similar condemnation of unfair trade practices was legislated. The intent of an antidumping law is to counter international price discrimination.[28] Legislation protects home producers from competition arising from imports being sold at values below those at which they are sold in their home market or below their cost of production. If such a practice is found to exist, an additional duty equal to that price differential is assessed on the product.

Until the Trade Act of 1979, the request of a domestic producer to the

28. See Frederick Davis, "The Regulation and Control of Foreign Trade," *Columbia Law Review* 66 (December 1966), pp. 1428–59; and Lowell E. Baier, "Substantive Interpretations under the Antidumping Act and the Foreign Trade Policy of the United States," *Stanford Law Review* 17 (March 1965), pp. 428–46. Since antidumping laws are aimed at international price discrimination, they have a domestic analogue in the Robinson–Patman Act.

Customs Bureau of the Treasury Department would trigger a preliminary appraisal of whether just cause existed for an antidumping investigation. If the appraisal was negative, the case was rejected. This preliminary judgment process, which determined the fate of many cases, was often inconsistent and highly discretionary.

Upon a positive preliminary determination, the Treasury Department would launch an investigation. The major component of the investigation determined whether sales were at Less Than Fair Value (LTFV). Compared with the other forms of aid examined in this essay, the criteria for such a determination were quite detailed. Dumping is defined by 300 lines of text in the Antidumping Act with an additional 1,000 lines on administrative regulation in the *Federal Register*. In contrast, the only criterion the Trade Act of 1974 imposed on the president's escape clause decisions was "the national economic interest of the United States," and the criteria by which the 1974 Trade Act charged the ITC with judging injury take up only thirty-five lines.[29]

If a LTFV ruling is made by the Treasury Department, the case goes to the ITC for a determination of whether there has been domestic "injury" as a result of the dumping activity.[30] Until 1979 the ITC had a wide amount of discretion in its determination. No hearing was necessary, even if requested by the petitioners. If the ITC found in the affirmative, a report was issued to the secretary of the treasury, who issued a "finding of dumping." As opposed to escape clause cases, a tie vote in the ITC became an affirmative finding. Until 1979, some redundancy existed between the Treasury Department and the ITC mandate. In particular, the information the ITC studied in making its final determination did not necessarily have to apply only to the injury determination. The ITC could find no injury based on a redetermination that the foreign producer was not, in its judgment, dumping, and overturn the Treasury Department ruling.[31]

The discretionary nature of the injury determination was of central concern to foreign producers in the Tokyo Round of GATT negotiations. The antidumping code agreed to in Geneva incorporated the notion of "material injury," not just any injury, by reason of LTFV imports. In previous hearings on the Kennedy Round of negotiated agreements, Congress had held that the international codes signed in 1967 did not change the 1954 revisions of the antidumping law. In question was whether any degree of injury other than *de minimus* constituted injury. The U.S. agreed that it did, although this conflicted with the view of other signatories of the agreement. To conform

29. J. M. Finger, H. Keith Hall, and Douglass R. Nelson, "The Political Economy of Administered Protection," *American Economic Review* 72 (June 1982), pp. 452–66.

30. This additional criterion was instituted in 1954.

31. This ITC practice is cited by Davis, "Regulation and Control of Foreign Trade," p. 1442; and Baier, "Substantive Interpretations," p. 418. The most frequently noted example is the case of 1964 Vital Wheat Glut in Canada.

with international standards, the Senate instructed the ITC to define "material" as "harm which is not inconsequential, immaterial or unimportant." This move was more symbolic than substantive. The ITC had never determined injury using the "more than *de minimus*" criterion, and had used its discretion to undercut, not increase, dumping rulings.

The changes made in 1979 trade legislation point directly to the weaknesses in the administration of antidumping law. New time limits were set for the assessment of dumping duties. In the past, duties could be delayed for long periods; for example, $400 million worth of duties were delayed seven years in the case of television receivers from Japan.[32] That the Treasury Department did not move quickly to collect these duties reflects the original intent of dumping legislation. In the past, if dumping margins were found to exist, yet were corrected before new merchandise entered the American market, no penalty was levied. It was assumed that foreign producers would change their prices when charged with a dumping finding. The Customs Department never developed the administrative structure necessary to collect back taxes from intransigent producers. Legislation was aimed at stopping future infringements, not punishing past infractions. The incentive thus existed to dump, at least until caught, onto the American market. Since 1979, however, a one-year statutory time limit has been set for collection.

In the period through 1979, when an investigation was in process, an importer was required to make a deposit through a customs bond for the merchandise under question. There were limited direct costs attributed to this bond and thus no incentive to stop a dumping practice until a final judgment or to provide necessary information to the Treasury Department or the ITC. After 1979, deposits of estimated dumping duties on merchandise imposed a far more substantial financial burden on importers. This new practice is consistent with the administrative practices of the European community, with GATT codes, and with the intent of American law; it is not a form of "new protectionism."

Finally, and perhaps most basically, after 1979 LTFV determinations were made by the Department of Commerce, which, as proponents of the bureaucratic transfer suggested, may be more responsive than the Treasury Department to domestic producers. Although the administrative organization has changed, the legal mandate has not. The Treasury Department did use the latitude it was granted under the law to maintain a liberal American market. Commerce may choose not to use its discretionary authority in that way. If adjudicated to the letter of the law, antidumping actions will lead to increased closure of the American market.

32. Matthew Marks, "Recent Changes in American Law on Regulatory Trade Measures," *The World Economy* 2 (February 1980), p. 434.

Countervailing duty legislation

If a nation is directly or indirectly giving a bounty or a grant—that is, a subsidy—to a domestic producer, U.S. law stipulates that an additional duty equal to the net amount of the subsidy should be levied on that product upon its importation into the country. In the U.S., the imposition of a countervailing duty follows a distinct set of procedures; conversely, in most other countries, subsidized exports are not distinguished from sales below cost.[33] The current form of legislation appeared in the Tariff Act of 1930, but similar mandates against such foreign practices appeared in both 1909 and 1913 legislation. In 1909, countervailing duties appeared as part of the maximum and minimum arrangements. This arrangement stipulated two tariff schedules, with the higher schedule being applied to nations using undue discrimination against the U.S. in the way of "tariff rates or provisions, trade or other regulations, charges, exactions in any other manner" or on export bounty or duty.[34] Again in 1913, the Secretary of the Treasury was authorized "to impose additional duties equal to the amount of any grant or bounty on exportation given by any foreign country."[35]

The procedures in countervailing duty cases are straightforward. Upon complaint, the Customs Bureau (Department of Commerce after 1979) initiates an investigation. Until 1979 there was no delineation of how the investigation should be conducted or of the appropriate criteria. Rather, upon completion of the investigation the secretary of the treasury would decide whether to impose the duty, and the appropriate "equalizing" amount. The 1974 and 1979 Trade Acts added an injury requirement in order to make U.S. law consistent with the GATT codes.[36] The 1979 law also specifies, for the first time, procedure and guidelines for the new overseeing agency, the Department of Commerce.[37]

The period between 1930 and 1979 was characterized by great latitude in countervailing duty cases. The size of the duty imposed was not subject to judicial review, and in general the Treasury Department had much freedom to interpret the law. The 1979 reforms came about because of the belief that such freedoms had been at the cost of the petitioner.[38] The laws themselves were repeatedly defended by the Congress. It was the administrative agencies that were seen as undermining the intent of congressional legislation. As with antidumping legislation, the discretionary nature of the legislation had allowed liberal administrators to undercut protectionism. With the move to

33. David, "Regulation and Control," p. 1445.
34. Taussig, *International Trade,* p. 403.
35. Ibid., p. 443.
36. The United States opposed the inclusion of an injury criteria for both countervailing duty and antidumping cases under the "grandfather clause," which exempted legislation in effect prior to the General Agreements signing in October 1947.
37. Marks, "Recent Changes," pp. 430–34.
38. See prepared statement of Charles Carlisle to the *U.S. Senate Committee on Finance Hearings on 1979 Act,* 10 July 1979, pp. 489–96.

the Department of Commerce and the mandate from Congress to enforce its legislation, countervailing duty laws could increasingly become an impediment to trade.

Section 337

Section 337 of the Tariff Act of 1930 empowers the ITC to investigate complaints of unfair competition in the importation or sales of items from foreign producers.[39] Section 337 has the potential of applying to a wide variety of predatory import practices. In general, most cases have dealt with patent violations. Under this law, if the ITC found that such practices destroyed or substantially injured an industry "efficiently and economically operated in the U.S.," the product could be excluded from entry into the U.S. Following an ITC exclusion order (a cease-and-desist order after 1974) the president had sixty days (under 1974 law) in which to intervene and override the ITC's decision "where he determines it necessary because of overriding policy reasons." Unlike countervailing duties or cases of dumping, the administration of unfair trade did not change under the 1979 law.

This review leads to three general conclusions about the politics behind unfair trade laws. First, there appears to be significant flexibility in the prosecution of these laws. Such flexibility has undercut the protectionist potential of these statutes. Even with the delineation of the LTFV criteria, the Treasury Department was never fully constrained by Congress to enact a particular type of policy in dumping and countervailing duty cases. In effect, Congress gave to the Treasury Department the right to regulate in this area as it saw fit. And, as the data show, it often decided not to grant protection. In the case of Section 337 violations, Congress gave to the ITC guidelines, but allowed the ITC's decisions to be sidestepped through both legal and extralegal means. Both the courts and the office of the president encouraged settlements.

Second, and related, there appears no clear criterion in the legislative histories by which to assess whether these laws are becoming more or less protectionist. Rather, continuity has existed in the form, basic organization, and use of these laws, even though administrative agencies have changed. This is true even with the 1979 legislation. In the countervailing duty and antidumping cases, the injury determination makes it somewhat more difficult to obtain aid; the change of administrative responsibility to the Department of Commerce may make it easier.

Third, what separates unfair trade laws from escape clause legislation is the autonomy vested in the bureaucracy. In the escape clause cases, the president has the authority to ignore an ITC finding if it is in the national interest. This has been an effective mechanism used by executives to keep the Amer-

39. For basis of statutory language, see George Bronze, "The Tariff Commission as a Regulatory Agency," *Columbia Law Review* 61 (Spring 1961), p. 483.

ican market open. Most post-Depression legislation has so aggrandized the rights of the president. Of the unfair trade laws studied, only one includes a role for the executive. Neither antidumping nor countervailing duty legislation allows the executive to counteract a protectionist ruling by the bureaucracy. Beginning in the 1970s, this presented a foreign policy problem to central decision-makers. Since the end of World War II, American security interests dictated that the U.S. maintain a strong economic alliance with both Europe and Japan. Analysts who studied postwar trade policy argue that America was willing to allow the EEC and Japan to protect their markets because American security interests took precedence over the establishment of a worldwide liberal trade regime. The onset of negative sanctions in the early 1960s, however, cannot be explained as a sharp reversal in security policy. Rather, the U.S. was able to allow the Japanese and Europeans latitude in the first twenty years after the war because their products posed no threat to American producers. As soon as foreign products began to threaten home producers, the government responded, even though sanctions conflicted with other elements of foreign policy. Although escape clause cases were sidestepped, unfair trade petitions forced central decision-makers to sanction Japan and Europe. These statutes withheld from the executive prerogative he had gained in other foreign policy areas since the 1940s.[40]

In short, unfair trade laws posed little threat to the trade regime in the 1960s. Although infringements of these statutes were prosecuted when found, American producers had little need to resort to them. In the 1970s, however, as competition intensified, producers found that state-society relations in most nations qualified them for state aid under unfair trade statutes. The rise in petitions with potentially positive rulings led liberal administrators to obscure the intent of these laws. The executive, too, in this period attempted circumvention of these statutes. Two examples are noteworthy. First, the 1974 law included a provision allowing a cabinet member, the secretary of the treasury, to waive a countervailing duty if necessary for the nation's interest. Second, negotiation and administration of the extralegal form of aid, trigger prices, gave the executive authority in dumping cases denied him by law. In essence, trigger prices created a powerful alternative to the Treasury Department route for steel petitioners.

With more public attention given to the issues of fair trade, the laws began to be administered more closely to their legislative mandates. Such attention undercut the flexibility members of government had had in interpreting the laws in line with general foreign policy or regime interests. Taken in conjunction with increasing import pressures and growing awareness on the part

40. For the growth of executive power and foreign policy, see Theodore Lowi, *The Personal President: Power Invested, Power Unfilled* (Ithaca, N.Y.: Cornell University Press, 1985); and Franz Schuman, *The Logic of World Power* (New York: Pantheon, 1974).

of producers of their legal rights in these cases, these laws have increasingly posed a problem for government officials who want to maintain openness. Some prosecution of unfair trade laws is helpful to liberalization; the U.S. never understood liberalism to mean that she take the "sucker's payoff." The problem facing central decision-makers, however, is that America's unfair trade laws hold an overly narrow interpretation of the legitimate relationship between producers and the state.

Unfair trade data

Table 4 displays petition activity and acceptance rates for the three unfair trade laws discussed above. None of the forms of aid showed the radical increase in acceptance rates found in escape clause cases. Although petition activity increased rather dramatically in the 1970s, government response has not mirrored increasing societal interest. In the case of countervailing duties, the acceptance rate has declined; for antidumping petitions, the rate rose after 1962, but has not significantly changed since then. The acceptance rate of Section 337s rose under the 1974 law and stayed the same for the next ten years.

In countervailing duty cases, the high rate of acceptance in the early period reinforces the notion that subsidies were never considered legitimate. As the number of cases accelerated, however, the high acceptance rate undercut America's commitment to the further liberalization of world commerce. The waiver provision, used for over 90 percent of the products that had technically qualified for aid, was an executive-centered mechanism for circumventing duty increases. After the completion of the Tokyo Round, the acceptance rate almost mirrored what it would have been without executive privilege.

Perhaps most striking about the antidumping law is its long history of use. The antidumping law has been used consistently since the early 1960s as a mechanism to keep the American market "fair." Low approval rates in the late 1950s may be attributed to American economic preponderance—few foreign manufactures had yet acquired the capacity to endanger American producers at home. With postwar recovery, antidumping legislation again became a central element of American trade policy. From an acceptance rate of under 5 percent in the early 1960s, dumping duties increased to an average 23 percent after 1963. After the 1979 shift of administration to the Department of Commerce, acceptance rates for dumping cases did increase from the previous period. Low rates under the 1974 Act, however, were partially due to the use of the trigger price mechanism to "pull back" steel cases. In conjunction with the slight increase in acceptance rates in countervailing duty cases, these changes suggest that if acceptance rates continue to rise, even with countervailing duty cases being subject to an additional material injury test, this shift in administrative responsibility will have a great impact on American trade policy.

TABLE 4. *Antidumping (AD), Countervailing Duty (CD), and Section 337 cases, 1958–83*

	Average petitions per year			*Acceptance rate*		
Year[a]	*AD*	*CD*	*337*	*AD*	*CD*	*337*
1958–62	28	1	1	.04	1.00	0
1963–74	24	1	4	.22	.93	.13
1975–78	42	37	12	.15	.30 (.08)[b]	.28
1979–83	32	24	22	.33	.34	.28

a. Organized by legislative periods.
b. Number in parentheses is acceptance rate if waived cases are counted as negative.
Source. See Table 2; U.S. Government, *Federal Register* (Washington, D.C.: GPO, 1958–83).

The procedure for obtaining a market exclusion as a result of a claim under Section 337 is the most technical of the types of protectionism examined. Section 337 cases typically involve complex issues relating to patent law or antitrust violation, or both. Adjudication is conducted by one or two ITC administrative law judges who conduct hearings and make recommendations to the ITC as a whole. The procedure encourages settlement between parties. Overall, in the period studied, the number of settlements was greater than the number of positive findings. The average rate of acceptance in the 1958–83 period for Section 337s has been 16 percent. That rate, however, has varied from 0 percent in the late 1950s and early 1960s to 28 percent in the late 1970s. It is noteworthy that, although the president is so empowered, he intervened in almost none of these cases. There are two explanations. First, in most cases a positive finding clearly represents an international predatory practice on the part of a particular foreign producer towards American technology. Violated are both international and domestic norms. Patent violations or other forms of industrial espionage are not viewed anywhere as legitimate. Second, a positive ruling arises from a complex process. The ITC clout resides in the sophistication of the procedures used to adjudicate the cases. Thus, both the content of the ruling and the method of its determination serve to dampen the incidence of a presidential veto. The nature of the cases too may explain why presidential action is unlikely. High settlement rates, especially after 1974, undercut the government's need to exclude many of these products as private parties arrived at some form of agreement.

The comparison of these laws with each other and with escape clause cases reveals a number of things about the institutional history of each of these laws. First, since the 1960s, societal interest in stopping unfair trade has increased dramatically. Although there was increasing interest in the escape clause after 1974, it was neither as great nor as sustained as the

interest in these three unfair trade statutes. Although antidumping legislation had always been used by American producers, it is only after 1974 that manufacturers discovered the clout of countervailing duty petitions and Section 337s as a potential remedy to rising competition on the home market. And given the close relationship between governments and producers among America's chief trading rivals, the claim that subsidies were the cause for trade problems was easier to prove and received a far better reception from government officials than did the assertion that manufacturers could not compete due to lowered tariffs.

Second, although the majority of affirmative findings occurred after 1968, they did not occur at significantly higher rates than in the earlier period. It is correct to note an increase in the aggregate number of positive rulings. The success rate, however, is more constant. As the number of petitions rose and more industries qualified by legal standards, the number of political vetoes and extralegal settlements increased. Compared with escape clause data, which show a dramatic increase in positive determinations after 1974, the data on unfair trade laws show constancy rather than change.

Third, to predict protectionism, analysts need to consider both the administrative agency and the legal statute. Agency alone is an insufficient explanation. The ITC decides both Section 337 and escape clause cases, yet they tend to rule favorably twice as often in the latter cases. Conversely, the law alone may not explain all the variation in aceptance rates. Changes in law do not explain variation within unfair trade statutes or between these laws and escape clause rulings. The views of individuals and agencies assigned to monitor laws may be as important as the laws themselves. The Treasury Department acted as did the president in escape clause cases; given the mandate, it waived the vast majority of countervailing duty cases. Criticism of this role led Congress to give the Department of Commerce jurisdiction in these cases. It is still too early to determine whether Commerce will look more favorably on petitions for aid. But as will be discussed below, Commerce gave almost all petitioners adjustment assistance, suggesting that the slight rise in acceptance rates we see in the first four years of its tenure will continue in the future.

The second manner in which unfair trade laws may be compared with the escape clause is to repeat the modeling exercise presented in Table 3. The unfair trade model is presented in Table 5.

When all of these agencies' decisions are grouped, they reveal a pattern of aid receipt that varies greatly from that found for escape clause cases. As well as the variables studied in Table 3 (see note 25), the nation affected by the unfair trade suit was added to the list of possible explanations for aid receipt. Four variables appear as predictors. First, a country bias is apparent. Although Japan is the nation most often named in petitions for relief, it is the European petitions that appear to have a higher propensity for receiving aid. This high rate of success cannot be explained by a higher incidence

TABLE 5. *Unfair trade aid model, 1958–78*

Variable	*B* (*Standard error*)
Petitions from Europe	1.23[a]
	(.35)
Total number of unfair trade petitions	−0.42[a]
	(.12)
Average value of export shipments	2.04[a]
	(.73)
Average new capital expenditures	−6.24[b]
	(2.82)
Weight	.85
	(.13)

a. Significant at the .01 level.
b. Significant at .05 level.
Source. See Tables 3 and 4.

of "cheating." Rather, it is probably related to these cases being easier to document.

Three other attributes of the petitioning party explain variation in petition success rate. Industries that are relatively more export-oriented gain aid. Industries that have spent relatively less on new capital expenditures gain aid. And, finally, those that have petitioned less often seem to gain a positive government response.

The finding of a negative relationship between aid and capital expenditures is the most intuitive of the three. The industries that receive aid are the relatively least competitive of the applicant pool—they have chosen not to reinvest in their industries, perhaps because business practices of other nations have led to a more competitive foreign product. Most analysts agree that it is these noncompetitive industries that are expected to apply and receive protectionism. This finding itself is not exceptional; it is the absence of this variable in the escape clause model that is more noteworthy.

The other two findings need more explanation. The negative relationship between number of attempts at aid receipt is counterintuitive. Most theories of American politics look to pressure upon government officials as the primary explanation for protectionism. Here the relationship runs in the opposite direction. One explanation may be that if it is the weight of the case based on legal interpretation that explains aid, the need to repetition may indicate relatively weak cases. The more one needs to apply, the less likely it is that one initially had a strong case.[41]

41. Alternatively, the data may be picking up the effects of the trigger price mechanism. The president controlled steel dumping duties in the late 1970s by convincing petitioners to voluntarily pull back their petitions. Since it is coded as a petition that did not receive aid, the model could be picking up this dynamic.

The relationship between exports and aid can be explained in a similar way. The firms that are most involved with world trade are most affected by the trading practices of their competitors. They are also most aware of the trading practices of different countries and firms. Both contribute to the legitimacy of their legal claim. In effect, these laws were tailored for the company that is able to compete well on foreign markets but faces unfair competition at home.

In sum, the politics of getting unfair trade aid is nothing like that for the escape clause. Although the same industries apply for relief under both sets of laws, different laws dictate a different purpose for each type of aid. There is not one formula for gaining state aid from import pressures. This point is even more obvious when the last type of aid program, what we label here as redistributive aid, is examined.

The idea of trade adjustment

As with the other two tenets of American commercial policy, the origins of American adjustment policies trace to a cognitive model of the proper relationship between state and society. At issue here is the extent of state involvement in mitigating the social effects of economic fluctuations. After the 1930s, such active state participation gained increased legitimacy. Exigencies due to the business cycle, technological advances, or capital migration, to name but a few, were accepted by state leaders as costs of maintaining the capitalist economy. The role accepted by the government, however, was only that of adjustment; by the 1950s, the position of direct state intervention into the economy, a position that had gained some acceptance in the 1930s, was rejected.

At heart, trade adjustment policies reflect post-New Deal political norms. Adjustment policies are essentially compensatory. The state compensates industries and labor groups adversely affected by trade policy, from an ever-expanding economic "pie."[42] If trade policy had adversely affected constituents, they were entitled to state aid.

Trade Adjustment Assistance (TAA) was first proposed during the Eisenhower administration in a minority opinion to the Randall Commission report.[43] Adjustment was envisioned as a substitute, in the form of federal financial aid, for escape clause aid. With limited support, a weak version of TAA appeared in the 1962 Trade Act, was used in the Automotive Products Trade Act of 1965, and was ultimately expanded in the 1974 bill. Those who

42. For a similar argument, see Charles Maier, "The Politics of Productivity: Foundations of American International Economic Policy after World War II," *International Organization* 31 (Autumn 1977).

43. Daniel Mitchell, *Labor Issues of American International Trade and Investment* (Baltimore: Johns Hopkins University Press. 1976), p. 33.

understand TAA only as a method to sell trade liberalization fail to appreciate the welfare function the program has played. Though clearly not so conceived in the early 1960s, adjustment assistance evolved as an important component of trade policy as the state was forced to react to the rise in industry petitions for protection.

Under the 1962 Trade Act, workers and firms were eligible for aid. Petitions were filed with the Tariff Commission, which conducted investigations (limited to sixty days) to determine whether the petitioners fulfilled the legislative criteria. The criteria of eligibility were fulfilled (1) if injury was due in major part to a trade concession, (2) if injury resulted in increased quantities of a like or directly competitive product, and (3) if imports were a major factor in causing or threatening to cause serious injury to the applicant firm, domestic industry, or group of workers. Once passed by the Tariff Commission, the president certified the petitions; if the Commission vote was tied, the president was empowered to decide the case. In just about all cases, the president approved aid. Since the criteria used in TAA cases were similar to those dictating escape clause relief, a dilemma existed. In a sense, the Tariff Commission "could not be liberal in approving adjustment assistance petitions without being liberal in approving escape clause petitions. Thus, adjustment assistance—which was supposed to foster freer trade—was included in the Trade Expansion Act in such a way as to make its actual use inconsistent with that objective."[44]

As a response, TAA was revamped under the 1974 law. First, coverage was extended to communities as well as firms and workers. Second, the investigatory responsibilities and determination of injury were given to the Labor Department for worker cases, and to the Department of Commerce for cases involving firms and communities. And third, eligibility criteria changed from the earlier stricter requirements to the following: (1) that a significant number of workers be affected, (2) that there be an absolute decrease in sales and production, and (3) that imports of a like or directly competitive article contributed importantly to a decline in sales or production. "Contributed importantly" was interpreted as a cause that is important but not necessarily more important than any other cause.[45] This last criterion, that imports be of a similar nature to a product made in the U.S., served to disqualify a number of otherwise qualified applicants, especially in cases involving auto production. In the late 1970s, manufacturers of auto parts such as bumpers were being laid off as a result of the sale of foreign cars. Yet, because no foreign bumper was being imported, their case did not meet the necessary criteria.

Once certified, firms and communities received low-cost loans and other development assistance. Workers were paid a weekly adjustment allowance

44. Ibid., p. 43.

45. This adjustment assistance language was modeled on that used for the escape clause, which required imports after 1974 to be a "substantial cause" of injury. The main difference was that, in adjustment assistance cases, imports could be a less important "cause."

of 65 percent (in the 1962 Act) or 70 percent (in the 1974 Act) of their average weekly wage for up to fifty-two weeks, with a twenty-six-week extension for workers in training or workers over sixty years of age. In no case was aid to exceed 65 percent (70 percent in the 1974 Act) of the average weekly manufacturing wage. Employment services and relocation allowances were offered to facilitate re-employment, but these constituted a small part of the program.

The original 1974 program was extended in 1981 for two years. However, early in the Reagan administration it was announced that the program would be eliminated, and in October 1981, in the Budget Reconciliation Act (Title 25), the benefit program was changed. After 1981, and for the life of the program, aid would be given as an extension to unemployment insurance for the long-term unemployed. The previous concept of an additional payment to those unemployed due to imports (which brought income to 70 percent of previous levels) ceased. Furthermore, after 9 February 1982, cases had to show "substantial cause"—that is, imports had to be the primary cause of industry malaise, the criterion used under the 1962 Trade Act.

In essence, TAA was a program of transfer payments. Liberalism incurs differential costs and benefits. Adjustment assistance was an institutional response to these costs, and has acted both as a welfare policy and as a way to diffuse potential opposition. It was the latter function that propelled its creation, but the former that was its engine for growth. Adjustment assistance or its functional equivalent is a necessary ingredient in a liberal American trade policy. The program ensures support for free trade through redistribution. Liberal trade policy was accepted because it brought wealth; if an unregulated market leads to visible economic upheaval, the cognitive basis of liberalism will be questioned. The following section seeks to show that adjustment assistance served the critical role of "buying off" potential opposition to state policy. Without some agency playing this role, increasing dissonance over free trade is inevitable.

Adjustment assistance data

As in the previous two sections, two types of data were examined for trade adjustment assistance. Table 6 presents the aggregate list of petitions and acceptance rates over time. Table 7 models the determinants of this form of aid. The aggregate data show large increases in aid requests over time. Requests increased from under twenty a year while the program was administered by the ITC to over 1,000 a year under the 1974 Act and over 2,000 a year after 1979. The 1974 changes, which eased aid requirements and changed administrative responsibility, were followed by a significant increase in interest in the program. TAA numbers dwarf the number of requests for the escape clause, although these two laws served the same constituency. The number of petitions receiving aid is also much greater

TABLE 6. *Adjustment-assistance cases, 1963–81*

	Average petitions per year		Acceptance rate	
Year[a]	*Commerce*[b]	*Labor*	*Industry*	*Worker*
1963–75[b]	5	19	.37	.30
1975–78	8	882	.91	.45
1979–81	623[c]	2071	.81	.28

a. By legislative periods.
b. Prescreening at regional offices reduces number of cases and increases possibility of aid.
c. Data do not include 1981.
Source. Department of Labor data; Department of Commerce data: ITC, *Annual Reports* (Washington, D.C.: GPO), various years.

than with the escape clause. As opposed to other aid types, a majority of those who applied for aid did receive aid. Table 6, however, does not reflect changes to the program during the Reagan administration. In 1981 alone, worker aid receipts declined to 9 percent, as compared with 41 percent during the previous two years.

This decline was not unexpected. The Reagan administration was committed to the state playing a reduced role. Thus, the initial premises of an adjustment program were considered illegitimate. The administration did not agree that governments bear a burden for either economic redistribution or compensation. Sympathetic with the arguments of neoclassical economists, Reagan's advisors argued for the benefits of trade unfettered by state involvement.

The welfare function of TAA is clear in our regression model. Contrary to the model produced for escape clause aid, adjustment assistance seems predicated on variables more commonly argued to predict import aid. The industries most often thought to need and receive aid are industries losing their competitive position; import penetration is indicative of general industrial decline.

Table 7 lists ten predictors of adjustment aid. These variables show that the industries that received aid faced heavy import competition, were relatively small in size, had declining exports, were closing factories, and showed increasing labor costs.

The other attributes of those that received aid were less expected. In looking at these industries, we tried to measure how they had fared for the twenty-year period covered by this model. Although all these industries began to decline after 1968, their membership included the large "boom" industries of the postwar period. These "boom" industries, which included steel and autos, received significant amounts of adjustment assistance in this period. These cases are reflected in the regression results. Relative to all industries that applied for adjustment assistance, those that were successful were more capital intensive and had gone through relatively greater changes

TABLE 7. *Adjustment assistance model, 1963–78*

Variable	*B* *Standard error*
Average value of imports	5.76[a]
	(.74)
Value of shipments	.34
	(.05)
Growth in exports	−.24[a]
	(.03)
Change in number of production plants	−.14[a]
	(.03)
Change in labor costs	.28[a]
	(.07)
Average capital intensity	.03[a]
	(.01)
Change in capital intensity	1.15[a]
	(.19)
Change in number of employees	.02[a]
	(.004)
Change in export shipments	.21[a]
	(.04)
Change in level of technological sophistication	.34[b]
	(.16)
Weight	−5.53
	(.63)

a. Significant at .01 level.
b. Significant at .05 level.
Source. See Tables 3, 4, and 6.

in industry technology in the years of this study—they were industries which had had large export sectors in the postwar period that are now in a decline and had experienced fluctuations in the numbers employed in the industry.

Escape clause and adjustment assistance legislation have one important element in common. Both were created in America's liberal period to serve industries adversely affected by trade policy. In reading the general legislation, this joint purpose is apparent. Philosophical differences between the two, however, have led to substantial variation between who qualifies for one form of aid rather than the other. The discretionary nature of escape clause legislation translates into a state policy that uses criteria other than need. Comparatively, as a transfer payment or an illusory form of protectionism, adjustment assistance is given to industries that *are* suffering from the openness of the American market. Although the same industries demand both forms of aid, the state differentiates its rewards. This pattern of aid led us to distinguish categorically between the two. Variations, however, are not due to legislative mandate alone. They result because individuals who are entrusted to carry out laws are biased in their interpretation of the law.

Conclusion

Two types of conclusions are offered here. The first are more theoretical. The points addressed center on the ability to defend the role of institutions and ideas as important determinants of American politics. The second are substantial. The remarks address the trade data and their implications for the future of general trade policy in the U.S.

This article offers an alternative method for understanding protectionism in the U.S. Neither of the two dominant genres of analysis looks towards the state as the critical variable in explaining policy outcomes. Societally based explanations look to social forces; international explanations look to power structures. Our explanation does not deny the validity of either of these approaches. Rather, we argue they are insufficient in their explanation of American protectionism. This article looks to a dominant role for ideas, as embedded in institutional design and laws, and the beliefs of central decision-makers as an additional explanation for policy.

Protectionism should be viewed in its historical context. Viewed over time, it can be organized by the time period in which protectionist legislation was first written. In particular, laws have varied on what constitutes a legitimate claim against the state for aid, on the institutional structures used to adjudicate forms of aid, and on the discretion granted to administrators. The first type of aid examined we labeled liberal, created after the U.S. moved towards opening up its borders to trade. Philosophically, the period is characterized by limited state intervention; governments serve their societies most efficiently when they do not interfere with market mechanisms. The institutional structure is executive centered, and administrators have considerable discretion in adjudicating cases. The second set of ideas were labeled as "fair" trade. Here the legitimate role of government in trade is to ensure that American producers compete in a fair market. Written in the years preceding World War II, these laws are more Congress centered, are more detailed in the criteria administrators use to adjudicate the case, and on the whole allow less discretion than do other trade laws. The overt use of discretion to counter the intent of these laws by the Treasury Department was the central issue that led Congress to move administrative control to the Department of Commerce.

The third set of beliefs we labeled redistributive. Here, the government is portrayed as having some responsibility for abrogating the ill effects of the market. As with the escape clause, these laws are executive centered. And, as above, the president has the right to overturn decisions. The administration of these laws, however, was given to sympathetic departments with strong ties to affected communities. From the start, this form of aid was envisioned as a method of alleviating the painful aspects of liberalism.

This article shows that each of these three types of protectionism operated according to a different logic and aided a different type of constituent. By

examining laws that direct the relationship between the state and society on trade matters, we saw that legislation reflected differing notions about the legitimate role of the state. Viewing laws over time, we saw that each functioned with a different internal logic and a different calculus of politics. Even though the escape clause was potentially a protectionist instrument, the structure of the statute encouraged liberal central decision-makers to undercut the ability of groups to use the law effectively. Conversely, the laws we designated as "fair" trade legislation have consistently forced central decision-makers to protect the American market. Liberal central decision-makers have done *whatever* is possible to undercut these laws. This too is reflected in the data. However, these laws were structured in a period of congressional ascendance. The executive is not granted the rights he gained in post-Depression legislation. To illustrate the third component of policy, we turned to Trade Adjustment Assistance. Adjustment assistance was argued to be a transfer payment to industries hurt by imports.

It is both interesting and important that in the period through the early 1970s these laws did not interfere with America's international commitment to the liberal trading regime. By pushing for fair trade, unfair trade laws served to reinforce the norm that market mechanisms, not government policy, should determine comparative advantage. Later, however, unfair trade laws, with their narrow interpretation of legitimate government policies, posed a problem to the continuation of free trade. Similarly, the TAA program served liberalism during the 1970s. By creating an alternative to a trade barrier, TAA diffused potential industrial pressures on government for a more substantial response. However, TAA became overwhelmed by petitioners in the late 1970s who took financial aid but continued to file more potent suits against the state. Neither of these programs created much interest among central decision-makers in the 1960s; both were seen as problematic to some aspect of American trade policy two decades later.

A general review of the data presented reveals a number of counterintuitive empirical findings. First, it is clear that as the U.S. became increasingly more open, domestic groups put up resistance. Increased resistance, however, is not the explanation for aid receipt. Rather, it is the fit between the strategy employed by groups and state structures that explains state response.

Second, a free trade bias seems to exist among central decision-makers and is part of an explanation for policy. In particular, the Office of the President has been active in protecting America's liberal position. Although the congressional position on trade has varied, the position of the executive has been unambiguous. When confronted by a choice between giving aid or not, the executive gave no aid. When protectionism was mandated by the bureaucracy, the president often chose to give a transfer payment, to give less than recommended, or in the case of countervailing duties, to sanction a tariff waiver. In dumping cases, legislation precludes direct executive ac-

tion. In response, the president has attempted to control petition activity, using a variety of incentives to convince petitioners to halt the dumping investigation voluntarily.

It is in the category of circumvention of protectionism that we find VERs and OMAs. All were used as mechanisms to give industries less than they would have received either from an ITC, Treasury Department, or Department of Commerce ruling. In terms of fiscal impact, these marketing arrangements constitute a transfer of funds from the American treasury (funds which would have been collected from an equivalent tariff) to foreign governments. They are only rational as a presidential attempt to reconcile systemic interests in maintaining liberalism with a domestic need to respond to industries that fulfill the legal requisites for aid. They are not explicable as a response to group demands for such agreements, as the most efficient mechanism to aid industries, or as a new form of the old protectionism.

Third, of the ideas that have contributed to current trade policy, the notion of redistribution has had the weakest hold on the policymaking community. With budget deficits and a decline in wealth, this policy directive was abandoned. The explanation for the need for adjustment was never as developed as the explanation for free trade or as institutionalized as fair trade practices. Given our review of the functioning of trade policy within the U.S., this lack of an adjustment assistance strategy may ultimately undermine liberalism. The structure of politics in the U.S. places great pressure on government leaders. Some mechanism is necessary to act as a pressure valve. Without this support for groups adversely affected by imports, the pressures on government will lead to a questioning of their cognitive beliefs and make alternative approaches to trade more attractive.

Finally, what is the future of free trade in the U.S.? The U.S.-sponsored trade regime has had a unique character. The U.S. never confronted the political trade-offs associated with free trade doctrine, despite being the major force behind the liberalization of world trade. From free trade's inception, the U.S. never had the institutional capability to maintain all aspects of liberalization. Although accepting the norms of free trade, there was no consensus in Congress to repeal the traditional protections afforded to domestic industry. Thus, the norms and institutions of fair trade coexisted with their liberal counterparts. It is these laws that have the potential of undercutting the regime itself. It is no surprise that of the solutions suggested to America's declining trade balance, it is the call for fair trade and expanded access to export markets, not for the protection of noncompetitive sectors, that has received the greatest attention.

The prosecution of unfair trade laws, however, should not be interpreted as the first step down a "slippery slope" towards high barriers to trade. Liberalism still retains overwhelming support in the U.S. Ideas such as liberalism, however, do have life cycles. The inevitable conflict between free and fair trade in a period of chronic trade imbalance has led to a questioning

of the tenets of American trade policy. Currently, however, there is no legitimate theoretical alternative to liberalism. The protectionism of the inter-war period has no support. Welfare-redistributive policies are fiscally not viable. Thus, although there is discontent, a radical change in American policy is unlikely.