Abstract

The role of legitimacy in international relations is the topic of much debate, yet there is little understanding of the mechanism behind it. Here I address this discrepancy by asking: are state threats perceived as (il)legitimate more or less likely to be successful? By operationalizing illegitimacy as unilateral action in the presence of a multilateral option, I consider the variation in the success of US trade measures from 1975 to 2000. As I show, the (il)legitimacy of threats modifies the nature of the signal sent by concessions to those threats, and this effect can be measured and predicted. I find that, controlling for material pressure, perceived illegitimacy of US trade threats decreases the likelihood of a target conceding by over 34%. Moreover, it pays to resist: targets that resist illegitimate unilateral measures from the US are 25% less likely to encounter similar unilateral measures over the following 5 years.

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State leaders are regularly observed going to great lengths to portray their actions as resting on a base of legitimacy, rather than relative power. The reasoning behind such behavior, as argued by social scientists since Max Weber, is that preserving order through coercion alone is costlier than obtaining it through voluntary compliance, and leads to less stable orders.¹ In an international system devoid of a central authority, however, it remains unclear exactly what those costs should result from.

Indeed, despite widespread beliefs linking legitimacy and the effective wielding of state power, there is surprisingly little evidence for any relation between the two. Nor is there a clear theoretical understanding of the mechanism behind the working of legitimacy. Such a disparity between conventional wisdom and evidence provides this paper’s puzzle: in the realm of international trade, is state coercion that is perceived as (il)legitimate more or less likely to be successful?

The legitimacy of coercion is best determined by examining the means through which it is exerted. Accordingly, I consider that state threats formulated multilaterally are legitimate; unilateral threats in the presence of a multilateral option are not. This reflects a broad literature, which argues that channeling power through a multilateral institution has been the predominant means of obtaining legitimacy in the last half century.² Nonetheless, I devote an entire section of the paper to justifying this operationalization of legitimacy, relying both on theory and archival evidence.

¹ Weber 1964.
Rather than taking the familiar approach of considering the costs of illegitimacy imposed by third-party states,\(^3\) I examine the impact that the legitimacy of threats has on the response of targeted states themselves. I argue that the signal sent by targets’ concessions to threats varies according to the perceived legitimacy of those threats. States that concede to extra-legal, illegitimate coercion incur a reputational *loss*. With only material power undergirding a threat, concessions signal weakness, in keeping with classic realist expectations, and increase the expected value to the sender from further unilateral threats. Indeed, senders want to change the target’s policy, but would prefer to achieve this without the constraints imposed by a multilateral institution. If the sender believes that material power alone will not sway the target—a belief formed by the target’s past actions—then it is more likely to trade-off autonomy for increased pressure through a multilateral instrument. Concessions to legitimate threats made in keeping with international rules, conversely, signal the target’s willingness to play by international rules even when those rules happen to go against its immediate interests. In sum, seeking to strategically control the signals they send pushes states, all things constant, to concede to legitimate threats and resist illegitimate ones.

I test these claims by comparing the success of two instruments through which the US tried to influence foreign countries’ trade practices from 1975 to 2000. The first is a domestic legislative measure, Section 301, which allowed the US to take a number of retaliatory actions against any foreign measures violating existing agreements or otherwise impeding its interests. Section 301 was universally condemned by foreign powers.

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states as “aggressive unilateralism” that undermined international trade rules.\(^4\) The second instrument is the multilateral World Trade Organization (WTO) and its predecessor, the General Agreement on Tariffs and Trade (GATT), through which the US could bring foreign measures to dispute settlement. The GATT/WTO is a longstanding multilateral agreement that enjoys legitimacy flowing from its internationally shared principles. The simultaneous existence of these two options of divergent perceived legitimacy but similar objectives presents a unique opportunity for isolating the role of legitimacy by comparing their success in getting targets to concede to US demands.\(^5\) The comparison is all the more compelling given that the material sanctions behind the unilateral Section 301 were by all accounts as credible, if not more so, than those behind GATT.

The results of the statistical analysis strongly corroborate the paper’s claims, showing that US trade pressure is significantly less likely to elicit concessions when it is perceived as illegitimate. Moreover, the results provide strong evidence for the signaling mechanism I point to as the explanation behind legitimacy effects: I find that if a given country resists US unilateral threats, then it is 25% less likely to encounter similar unilateral threats (rather than being brought to legitimate multilateral dispute settlement) in the following five years. The US, indeed, prefers not to give up its autonomy with regards to a given threat, but will accept institutional constraints if unilateral power alone is deemed unlikely to elicit concessions. In other words, it pays to resist illegitimacy:

\(^4\) The term “aggressive unilateralism”, which has gained wide currency, is attributed to Jagdish Bhagwati, and the book of the same title (Bhagwati 1990).

\(^5\) A state is said to “concede” to a trade threat if it removes or sufficiently modifies the trade measure that the complainant deems harmful.
despite a high immediate cost (in the form of likely US trade sanctions), countries with a history of resistance are much less likely to become targets of unilateralism in the future.

I go to considerable lengths to guard against a possible selection problem. It is essential to verify that cases that end at Section 301 are not somehow fundamentally different from those that went to GATT directly, or those that started as 301 measures and went on to GATT. To be clear, the selection of trade instrument need not be random, but it should not be correlated with potential concessions.

One implication of this article for the study of international relations is that taking legitimacy seriously need not entail abandoning a rationalist view of politics. There does exist a norm against unilateralism in the presence of a multilateral option, and I illustrate how member states appeal to it, but it is by no means removed from state interests, which allows us to hypothesize on the conditions under which such a norm will emerge.

**Legitimacy and Power Among States**

In large measure inspired directly by the work of Max Weber, political scientists have long been interested in the observation that state leaders seek to portray their actions—if not to their citizenry as a whole, then at least to their subordinates—as resting on a base of legitimacy. A consensus of sorts has developed around the Weberian view of legitimacy which suggests that material power alone is often insufficient to establish a stable order, and that it relies in part on some form of voluntary compliance.

Scholars have examined the effect of perceived illegitimacy in the success of foreign policy,6 humanitarian intervention,7 use of force,8 and environmental reforms.9

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6 Walt 2005
7 Coleman 2007.
These studies all treat multilateralism as a proxy for legitimacy, and unilateralism in the presence of a multilateral option as a proxy for illegitimacy. Existing research thus not only shows that power is sometimes crippled by its illegitimate exercise, but also that legitimate coercion backed by weak power is often successful in achieving its ends.\(^\text{10}\)

While there is a prevalent sense that legitimacy plays some role in pushing others to act in a certain way, there is, however, little quantitative evidence to support such an effect, much less an understanding of the mechanism through which legitimacy affects the exercise of power.

Behavioral economics has perhaps been most successful in this regard, providing some support for non-material decision-making factors through controlled experiments that show how individuals will sometimes turn down a positive sum rather than accept an “unfair” allocation. In other words, when individuals perceive that they are treated unfairly, the norm of fairness sometimes trumps cost-benefit calculations, and they are willing to “punish” unfairness even at a cost to themselves.\(^\text{11}\) Equivalent studies of state behavior have proven more problematic.

If there is any consensus around the concept of international legitimacy, it is in regards to its changing nature, and to the way it is derived from the perception of the actors involved.\(^\text{12}\) And while this allows for strategic behavior to play some role in the rise of certain norms, scholars also agree that when powerful actors design and buy into institutions that engender a certain view of (il)legitimate action, they become bound by

\(^8\) Franck 1990.
\(^9\) Bodansky 2000.
\(^10\) Hurd 2005.
\(^11\) For a review of similar experiments, see Kahneman, Knetsch, Thaler 1986. More recently, see Davis and Holt 1993.
that view in a way that is not easily reversible. Hurd provides an especially compelling account of how Libya succeeded in delegitimizing UN sanctions against it by strategically using existing norms of liberal internationalism.\textsuperscript{13} Precisely because such clashes occur in the normative sphere, they are likely to be fought without recourse to material power.

Though I do not deal explicitly with the \textit{emergence} of norms of legitimacy, the paper’s findings nonetheless hold important implications in this regard. Constructivists, who have long been examining how norms affect state behavior, are sometimes faulted for not elaborating on which norms gain in importance, and which ones do not.\textsuperscript{14} Here, I show that in some cases, the emergence of one norm over another can be traced to state interests: examining the signal sent by conceding to unilateral pressure in the presence of a multilateral option leads us to expect the emergence of a norm against such unilateral behavior. Recognizing rationalist explanations of norm emergence, however, need not \textit{reduce} them to interests. Appeals to norms belong to a special category of state behavior. They rally support more easily than expressions of transparent self-interest: most GATT members reacting against Section 301 were never targeted by it. They lead to ostensibly disproportional, emotion-laden reactions: the usually reserved GATT representatives branded US actions as “a Damocles’ sword”, “an irreparable act of folly”, “suicidal logic”, “war against all”, etc.\textsuperscript{15} And as Hurd’s work aptly demonstrates, successful appeals to norms need not rely on preponderant material power. This paper thus amounts to a particular cross-fertilization of “isms”. As I show, norms have a unique means of

\textsuperscript{13} Hurd 2005.
\textsuperscript{14} These critiques more often than not come from within the constructivist camp. See, for example, Checkel 1998, Legro 1997.
\textsuperscript{15} GATT 1989, C/M/233, 13; ibid; C/163, 5. Also, see infra, fn. 61.
directing state behavior, one that cannot be reduced to purely rationalist accounts; yet their emergence is by no means divorced from the interests of states.

Scholars looking specifically at why states channel coercive measures through multilateral institutions usually point to the “political costs” imposed by third-party states on governments acting unilaterally. In this vein, Thompson considers the “active sanctions” imposed by third-party states on governments exerting force without Security Council approval.\(^\text{16}\) When he turns his attention to the same Section 301 threats examined in this paper, he again points to the “political backlash” from third-party states that resulted from the exercise of this trade instrument.\(^\text{17}\) Similarly, Martin examines the benefits of imposing sanctions through multilateral institutions by pointing to the increased likelihood of cooperation by third-party states.\(^\text{18}\)

This paper departs from these approaches by focusing not on the consequences inflicted by third-party states, but on those resulting from the behavior of the target itself. Indeed, I argue that in economic agreements especially, where states have some latitude in their choice to resist or concede, the channel through which coercion is conducted accounts for much of the variation in targets’ behavior. I am as interested, therefore, in the incentives of states choosing between channels of coercion, as in the incentives of those states targeted by such coercion. The latter is, moreover, causally prior to the former. It is precisely the expectation of how targets will respond to unilateral vs. multilateral coercion that will determine a coercing state’s choice between the two.

Of the scholars looking at US trade measures over the relevant period, Bayard and Elliott conduct the most comprehensive empirical study on the evolution and variation in

\(^{16}\) Thompson 2006.
\(^{17}\) Thompson 2006, 7; 2008.
\(^{18}\) Martin 1993.
effectiveness of Section 301. Among other tests, the authors look for the effect of legitimacy by checking whether those cases that received a favorable ruling at GATT were any more likely to elicit concessions. The belief is that a guilty verdict may portray US pressure as valid, and push defendants to concede. They find no significant effect, suggesting that legitimacy of US measures plays a negligible role in their success.

This result comes as no surprise. By confining their analysis to GATT rulings, Bayard and Elliott overlook most of the action of dispute settlement, which, as Busch points out, occurs prior to a ruling. This is true of all credible threats: by the time sanctions are implemented, threats have exhausted all their deterrent effect. Indeed, only about 45% of GATT/WTO cases ever make it to a panel, 39% to a ruling; strikingly, even positive rulings are shown to decrease the probability of full concessions.

Schoppa picks up where Bayard and Elliott left off, claiming that that the variation in the effectiveness of US trade pressure on Japan can be explained in part by variation through time of the perceived legitimacy of US trade measures. Schoppa presents an insightful depiction of US trade measures and Japanese reactions, but because the variation in his independent variables occurs at the tail end of Section 301 activity (post 1992), his analysis can only rely on four cases for evidence. Schoppa discusses three of these—two of which do follow his expectations—yet he glosses over the one case in that period that did not, Japan Agricultural Products, where Japan conceded on all issues. Schoppa’s argument moreover rests on the problematic assumption that the weakness of GATT “justified” American unilateral measures, which, as I argue, does not

21 Drezner 2003, 647.
22 This decrease is relative to the pre-ruling stage. Busch and Reinhardt 2001, 161, 164.
23 Schoppa 1999.
square with erstwhile perceptions. Correcting for this, by relying on recently declassified GATT archives to give a more accurate image of the perception of Section 301 throughout its history, yields a model that provides a better fit between theory and evidence.

Theory

How does variation in the perceived legitimacy of threats sent by states affect the outcome of those threats, if at all? The answer lies in the link between the perceived legitimacy of a threat and the signal conveyed by conceding to it. If concessions to legitimate threats are interpreted by the rest of the world differently from concessions to illegitimate threats, then one should expect that a rational target would respond differently to each. In trade as in other issue-areas, the consequences of concessions are not limited to the period of the threat; they affect the future of the conceding states. The way in which states seek to control the signal sent by their response to threats drives much of the variation in the success of US trade measures between 1974 and 2000.

The fundamental difference between the two instruments used by the US to influence foreign trade practices over this period is in their source of compliance pull. The GATT-WTO relies primarily on decentralized enforcement: it regulates state behavior by creating a dispute resolution mechanism where members can file complaints against purported violations by other members. The ruling over the accuracy of the violation is delegated to a panel, which may then authorize retaliation against the defendant if the established violation persists. Importantly, the same process also allows
defendants to strike down invalid claims by the complainant. Section 301, by contrast, relied only on the (credible) threat of retaliation as a source of compliance pull.

It is worth recalling that the GATT was created as an institution based not on threats and enforcement, but on agreement and diplomacy. Tellingly, targets of complaints could legally block the dispute settlement process at three stages: panel formation, panel ruling, and retaliation request.24 The GATT was fundamentally devoid of teeth, and it is in part its alleged ineffectiveness in prying open foreign markets that led a frustrated US Congress to push for a unilateral alternative.

The introduction of Section 301 in 1974 resulted from the coincidence of many factors.25 An overvalued dollar in the early 70s led to a growing trade deficit, while imports from Asia, and especially from Japan, were growing independently, and leading to what was seen as the deindustrialization of America.26 The US global economic position was visibly declining, creating domestic pressure for import protection and expansion of foreign markets. Since the GATT was thought too weak to fix a perceived imbalance in the openness of the United States versus that of other countries, a unilateral pressure mechanism was seen as a necessity.27 Section 301 was not limited by the procedural weaknesses of GATT, where a defendant could block proceedings at any stage of the dispute. Importantly, especially from the point of view of members of Congress responding to domestic interest groups, it also worked on a fast clock, as

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24 That is, until 1989, when the general right to a panel was granted through the Dispute Settlement Procedures Improvements (Castel 1989). Hudec (1993) lists ten blocked panel reports in GATT history.
25 A predecessor to Section 301 existed in the form of the Trade Expansion Act of 1962, which targeted mostly foreign agricultural tariffs, but it saw little use.
27 Later, the introduction of Super 301 and Special 301, amendments meant to tighten 301’s schedule and expand its scope to cover intellectual property (which at the time was not covered by GATT) was a result of Congress’ dissatisfaction with what was seen as the President’s halfhearted application of Section 301.
opposed to dispute settlement, which was prone to multiple delays. Here was a mechanism that leveraged US economic power in a way that GATT dispute settlement alone could not. This becomes evident when one observes that while the economic power undergirding unilateral retaliation and GATT retaliation was the same, the rate of retaliation under Section 301 was far higher. Following either a petition by an industry group or “self-initiation”, the USTR would launch an investigation into purported unfair trade practices. Retaliation was mandatory if no concessions were forthcoming from the target, unless a GATT panel found no violation of US rights. In all cases, however, retaliation remained at the discretion of the President and USTR.

The fundamental reason why the US adopted Section 301, then, was because it could. Thanks to its size and economic power, the US was uniquely capable of affording a tool of extra-legal, unilateral enforcement. This one-sidedness is also the main reason behind the widespread condemnation of Section 301. Hudec described it a mechanism where “the United States plays both prosecutor and judge, [and] in which the defendants are tried in absentia”, a representative of India at a GATT meeting employed a similar analogy when he claimed that 301 appointed the US as “judge, jury and executioner”.

The reasons why countries concede to unilateral and multilateral coercion differ, and this difference constitutes the first step towards understanding the variation in concessions to the two American trade instruments. The reason why states concede to the demands of

28 Section 301 imposed a 12 or 18-month limit on the resolution of cases, one that GATT dispute settlement had little chance of meeting (Hudec 1993, 119).
29 Retaliation in GATT was only authorized once, in a case pitting the Netherlands against the US, but the Netherlands never exercised it. Retaliation therefore remained a very unlikely event under GATT. (Bagwell and Staiger, 2003, fn. 11) In comparison, the US retaliated roughly 16% of cases examined in Bayard and Elliott (Bayard and Elliott 1994).
31 Hudec 1990, 114.
32 GATT 1989, C/M/233, 8
GATT-WTO complainants is not only to avoid retaliation, which in practice occurs very rarely, but also to avoid the reputational cost that comes from being branded a violator. When countries concede to an unfavorable ruling today, or when they preempt that ruling by conceding early, they are more likely to elicit reciprocal compliance from a target in the following period when the tables are turned, and more likely to obtain cooperation in future trade rounds. Indeed, cooperation over trade barrier abatement is contingent on cooperation over enforcement; otherwise, the benefits of reaching a deal are devalued. Stated generally, the factor that compels states to concede to threats legitimately conducted through an institution is the benefit they expect to derive from remaining a compliant member of the institution.

The corollary is that GATT not only increases the costs of cheating, it also binds the arbitrary nature of coercive action. GATT members only expect to be made to modify their trade measures if they can be shown to be in violation of the institution’s rules, in a process during which the defendant’s arguments are assessed against the complainant’s claims. Indeed, the defendant’s ability to strike down a threat by appealing to shared rules is in part what renders the process legitimate. As mentioned above, it was precisely the inability to contest Section 301 claims that made the US “both prosecutor and judge”, and drew the allegation of illegitimacy. That being so, the absence of a ruling does not undermine perceived legitimacy. Indeed, the legitimacy of threats channeled through GATT resides not in the occurrence of the verdict, but in its existence as a means of countering invalid claims. If the ruling is pre-empted through early concessions, it is the result of a rational decision by the defendant to avoid what it expects will be an adverse

33 Busch and Reinhardt 2001.
ruling, and the reputational costs that entails.\textsuperscript{34} This expectation is most often correct: even among the 39\% of cases that \textit{do} make it to a verdict (where the defendant presumably believes that the chances of a favorable ruling are relatively high), only three out of 41 rulings are strongly in favor of the defendant.\textsuperscript{35} To draw a direct comparison with the unilateral option, it is useful to translate the multilateral process to the language of threats and promises that is most often used with respect to Section 301. GATT/WTO proceedings can be thought of as representing the following conditional statement: I will impose trade sanctions against you \textit{if} the panel upholds my claims \textit{and} your non-compliance persists.\textsuperscript{36}

In other words, the constraints that the GATT puts on countries’ behavior not only cover their own trade policies, but also the means they can employ to coerce other states to change theirs. A state wishing to open foreign markets and protect its own can do so only by working through the existing rules, or by negotiating new ones during trade rounds, usually by offering reciprocal concessions. Taken together, these two sets of constraints attain the major GATT objective of increasing “security and predictability” in trade among its members.\textsuperscript{37} To sum up, targeted states always prefer to face coercion

\textsuperscript{34} Busch and Reinhardt 2001. Focusing only on rulings as the source of institutional legitimacy, as Bayard and Elliott do, raises concerns of selection bias when assessing the success of different instruments. If the deterrent is legitimate, then cases of successful deterrence should fall under the same category. This is akin to the point made by Drezner (2003) in the context of economic sanctions.

\textsuperscript{35} For the period relevant to this article. These cases are \textit{Spain—Soyabeans, EC—Wheat Flour,} and \textit{Japan—Film}. While one could argue that because the US claims were shown to be invalid, these disputes should not be coded as legitimate GATT cases for the purposes of the statistical tests, they only render these tests more conservative, since as expected, all three pro-defendant cases result in no concessions on the part of the target.

\textsuperscript{36} Here, for simplification, I abstract from many stages of the dispute settlement process. In practice, under the WTO, the defendant could first appeal an unfavorable ruling, then a compliance panel would verify the persistence of non-compliance, and the DSU would rule on the exact amount of retaliation. These different stages, moreover, highlight the benefit of unilateralism and the cost of losing autonomy.

\textsuperscript{37} This objective was explicitly incorporated into the WTO’s DSU Article 3.2. Interestingly, it also becomes key in the \textit{Section 301} WTO case, where the DSU is construed as providing guidance to entrepreneurs and traders, and not only to the national governments concerned. DSU Art. 3.2; \textit{United States
conducted multilaterally, since the formal constraints regulating such coercion put a limit on the amount and type of retaliation threatened, and importantly, offer targets the opportunity to challenge the complainant’s claims before a panel. For the same reasons, all things constant, senders prefer not to give up their autonomy, and send threats unilaterally.\(^3\)

Unilateral threats under Section 301, indeed, are made outside of the GATT. Thus they rely entirely on classic realist variables such as relative economic power and signaled resolve to compel states to behave in a certain way.\(^3\) They do not benefit from the GATT’s compliance pull to elicit concessions. States that concede to such unilateral threats do so only to avoid incurring the material cost with which they are being threatened. This also implies that the use of unilateral measures is bound only by their expected success. Indeed, Section 301 targets not only violations of formal rules, but any measure that impedes US trade interests; it is precisely this flexibility and autonomy that makes unilateral instruments attractive to states.\(^4\) The US can employ unilateral

\(^{3}\) Sections 301-310 of the Trade Act of 1974, and WT/DS152/R, paras. 7.73, 7.75-7.77, in: Jackson, 2004, 116. John Jackson has argued that the stated WTO objective of “security and predictability” is “the most important ‘central element’ of the policy purposes of the [DSU]” (Jackson 2004, 112, 117)

\(^{3}\) This preference has given rise to an entire literature addressing the puzzle: why do powerful countries give up their autonomy by channeling their power through institutions? See: Thompson 2007, Hurd 2005, Martin 1993.

\(^{39}\) It is no coincidence that states often employed martial references to describe US unilateralism. As the trade representative of Japan put it in a special GATT meeting about Section 301: “Unilateralism… meant falling back to a state of war against all and the imposition of the will of the most powerful.” (GATT, C/163, 5). Using another military analogy, the India representative declared: “Those who posses such an arsenal [Section 301] would always be tempted to use it against those less well-armed to defend themselves.” (GATT, C/M/233, 13)

\(^{40}\) Bello and Holmer 1990, 88.
measures as long as it expects targets to concede to them.\textsuperscript{41} As realists commonly argue, “aggressors disproportionately challenge those they expect will back down”.\textsuperscript{42}

This expectation, in turn, is derived from observing the target’s past behavior. Hence the importance of reputation. At this point in the argument, it comes as no surprise that targets would resist unilateral threats as a means of decreasing the likelihood of being unilaterally targeted again in the future, either by the sender or by other states. This logic may be restated from the sender’s point of view: when the US encounters resistance from a target, it downgrades its expectation of future concessions, and is more likely to employ the more legitimate, though less aggressive and more institutionally constrained, GATT option against that target in the future. If a target cannot be swayed to concede by force alone, then the US is more likely to trade-off autonomy and flexibility for increased pressure through a legitimate, multilateral instrument. It is no coincidence that the country least likely to be swayed by force alone, the EC, was rarely targeted with 301 actions unaccompanied by GATT dispute settlement.

Having outlined the reputational dynamic in both instruments, it is useful to recall that the material element ultimately undergirding them is in essence identical. In both cases, the material threat is retaliation though “suspension of concessions”, or some form of heightened trade barriers, backed by American market power. Most often, these trade barriers take the form of tariffs put on the products concerned, though both the WTO agreements and Section 301 envisaged targeting other products if necessary. For the

\textsuperscript{41} This preference for unilateral measures motivates Thompson’s recent article (Thompson, 2006), where he asks why powerful states would ever choose to conduct coercion through an international organization, at the loss of autonomy and flexibility.

\textsuperscript{42} Press 2005, 15.
purposes of the argument, it is also important to recall that these sanctions are no more likely under GATT than under Section 301; if anything, the opposite is true.

The above reasoning provides the logic for the paper’s main theoretical claim: threats are (less) more likely to elicit concessions from targets when they are perceived to be (il)legitimate, even as the material power backing them remains constant. This argument is not an unfamiliar one; a similar mechanism explains seemingly irrational behavior in a wide range of contexts. Insurance companies aggressively prosecute fraudulent claims in court and publicize their outcomes, often spending far more than the size of the initial claim in the process, as a way of staving off future attempts at fraud.43 State leaders vow they will not negotiate with terrorists, regardless of the immediate costs, as a means of deterring future incidents.44 Similarly, when states resist illegitimate coercive pressure from other states, even at an immediate cost to themselves, they do so with an eye to the future. Applying this claim to the two instruments of pressure used by the US yields a pair of eminently testable hypotheses, which correspond to expected behavior by the target and the sender, respectively.

1. *Cases that end at the unilateral Section 301 are less likely to lead to the target conceding than cases that go on to the multilateral GATT.*

The hope behind Section 301 and its increasingly aggressive amendments was that it would be credible enough in the sanctions it threatened to get other countries to liberalize their trade with the US, but not so threatening that it would lead to counter-retaliation and

43 Clarke 1990, 8.
44 Lapan and Sandler 1988. The authors actually throw doubt on the optimality of “we do not negotiate with terrorists” policies, claiming that if terrorists hold a perception of perfect information about government preferences, governments face a time inconsistency problem, where they cannot pre-commit credibly to not negotiating. Nonetheless, they confirm the policy’s wide usage, or claim of it.
trade war. Yet judging from the widespread condemnation it faced throughout its history, the effectiveness of this powerful but illegitimate instrument of pressure in eliciting concessions is unclear.

2. If states resist unilateral threats by offering no concessions, then they are less likely to encounter unilateral pressure—as opposed to legitimate pressure through multilateral dispute settlement—in the near future.

Resistance to unilateral threats should yield an observable reputational gain. In other words, if states resist an illegitimate threat by weathering retaliation, they should benefit from it in the future. Past resistance by a target should lead the US to decrease its expected value for unilateralism. This change should be observable in the decreased likelihood for that country of being targeted unilaterally, that is, outside of GATT.

An Alternative Explanation

I briefly consider the main alternative explanation that gets at the link between legitimacy of threats and their effectiveness: the role of threat credibility. If low legitimacy is associated with a disproportionate cost to the sender of exercising the threat, as it often is, then the target may well question the likelihood of the sender doing so, conclude that the threat is “cheap talk”, and choose to ignore it as a result. Applying this logic to a somewhat different issue-area, Martin argues that economic sanctions exercised through international institutions are more likely to elicit concessions, since the sender raises the audience costs against backing away from the proposed sanctions by making

45 Milner 1990, 176.
46 Owing to some sort of external cost, either informal social disapproval or formal punishment. Think of the classic mugger/muggee game in game theory, where the cost to the mugger of being jailed if he exercises his threat renders it non-credible.
them within an institutional forum.\textsuperscript{47} By making the abandonment of sanctions costly to itself, a state appears more credible in its commitment, and others are more likely to join it by implementing parallel sanctions against the target, which increases the likelihood of success for the sanctions. In Martin’s explanation, legitimacy is correlated with credibility, since it happens to be associated with the type of forum that increases audience costs, but it has no causal effect of its own.

For a number of reasons, however, it is unlikely that a link between legitimacy and credibility plays a significant role in responses to unilateral versus multilateral US threats. Because enforcement in international trade institutions such as the GATT-WTO relies on the complainant to impose sanctions, retaliation is nearly as costly to the sender as it is to the target.\textsuperscript{48} As a result, it occurs very rarely. Related, one could claim that the reputational costs from working outside the multilateral system would affect the credibility of US unilateral threats. Again, it does not seem that these costs were high enough to dissuade the US from making \textit{and} exercising unilateral threats. If anything, the record shows that retaliation following unilateral trade measures such as Section 301, where it is unencumbered by multilateral rules, occurs more often than in multilateral trade institutions.\textsuperscript{49} The credibility of retaliation is not Section 301’s weak point. An explanation centered on credibility would thus point to Section 301 leading to more concessions than GATT/WTO rather than less. Along these lines, Reinhardt goes so far as to argue that taking a dispute to GATT is a signal of the complainant’s \textit{lack} of resolve.\textsuperscript{50} Finally, my two hypotheses are self-reinforcing. Rejecting the null for the

\begin{footnotesize}
\textsuperscript{47} Martin 1993.
\textsuperscript{48} Hudec 2000, 22.
\textsuperscript{49} see fn. 29, supra.
\textsuperscript{50} Reinhardt 2000.
\end{footnotesize}
second hypothesis, by showing that resistance to unilateral threats significantly reduces the likelihood of being targeted unilaterally in the future, would also undermine alternative explanations based on threat credibility. Indeed, if it pays to resist unilateralism, it becomes less likely that the success and failure of unilateral threats by the US is due mainly to variation in credibility.

**Operationalizing Legitimacy**

Before describing the operationalization of my variables and the statistical model, I briefly consider the coding of legitimacy. Much of the work on legitimacy suffers from a weak definition of its central concept. There are two ways to operationalize legitimacy, each of which suggests disparate empirical approaches.\(^{51}\) While a first group of scholars considers the legitimacy of an action to be determined by the content of state actions and their end-result,\(^ {52}\) the other argues that the legitimacy of actions is reflected in the process and means through which they are conducted.\(^ {53}\) In a recent exploration of legitimacy in

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\(^{51}\) This split mirrors the closely related teleological / deontological split in ethics.

\(^{52}\) Hudec (1990) thus speaks to a relatively popular view among American scholars when he argues that there is a case for “justified disobedience” in the use of unilateral trade measures such as Section 301, if those measures can jolt useful GATT reform, or obtain globally beneficial trade liberalization. See also: Sykes (1990). In another issue-area, Drezner (2007) argues that NATO may have had greater legitimacy in intervening in Kosovo than the UN would have had because it had earlier demonstrated effectiveness in dealing with Bosnia. (in Kreps, forthcoming, fn. 25) The underlying belief in such statements is that a greater likelihood of success (for whatever reason) leads to greater legitimacy. Not surprisingly, both the Clinton and Bush administrations argued that going to war without the UN Security Council’s approval was legitimized by its beneficial outcome (Walt 2005, 164).

\(^{53}\) When constructivists argue that state actions reflect abeyance or violation of international norms, they are usually referring to such a procedural view of legitimacy. Norms are not concerned with outcomes of actions, as much as with the social significance of the way they are carried out. Constructivists are not alone in this reading. Bhagwati argues that Section 301 lacks legitimacy first and foremost because it demands unrequested concessions from other countries by threatening GATT illegal retaliation, and because it does not tolerate equivalent tools of pressure from other countries, both of which are procedural points. When Franck (1995) speaks of a rule’s perceived legitimacy emanating from its “pedigree”, he is referring to a similarly procedural type of legitimacy.
international politics, Clark (2005) draws a similar distinction between, respectively, substantive and procedural legitimacy.

Which of these two views of legitimacy is better suited to an investigation of the effects of (il)legitimate threats on concessions? Given that the first definition relies mostly on *ex-post* valuations of the end-result of an action, including its unintended consequences, the second definition, which reflects an *ex-ante* perception of legitimacy, appears better suited for an examination of the immediate outcome (resistance or concessions by the target state) of coercive pressure.\(^{54}\) Hudec may well be right in arguing that in retrospect, Section 301 appears as a necessary evil; what concerns us here, however, is only whether the rest of the world viewed it as an evil at that time.\(^ {55}\)

The concept of legitimacy is therefore employed throughout the empirical section in its procedural sense: it refers to the means used by states to achieve their objectives. How should this view be applied in the context of Section 301 and GATT? Coding the perception of legitimacy is always a thorny issue, but the recent availability of declassified transcripts of GATT meetings throughout the existence of Section 301 is tremendously helpful in this regard, and provides an unambiguous portrayal of the world’s view of Section 301 versus that of GATT.

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\(^{54}\) Supporting this belief, the Japanese trade representative argued: “seeking certain objectives in negotiations was one thing, pursuing that objective through the kind of measures which were at issue at this meeting was another.” (GATT 1989, MTN.SB/10, 7).

\(^{55}\) This is in keeping with much of the literature, that points to how notions of legitimacy are derived from the perception of relevant actors, and hence “that the pull to compliance is essentially procedural, rather than substantive.” (Clark 2005, 19, on Franck 1990)
Perceptions of Section 301

Not only was Section 301 universally condemned as a unilateral measure per se, but it was widely seen as “jeopardiz[ing] the entire process of multilateral negotiation”.\(^56\) It is hard to overstate just how distressed GATT’s membership was over its existence: at a Special Meeting on Dispute Settlement, and referring directly to 301, the EC began by saying that “it did not intend to go into other important subjects such as protectionism, sectoralism or managed trade. Unilateralism had become the burning topic.”\(^57\) GATT members repeatedly concurred that the US had every right to pursue its interests forcefully, but had to do so within the GATT rules, using the same mechanisms that were available to all.\(^58\)

Member countries early on saw American unilateral threats, made outside of the multilateral system, as a means of improving the US bargaining position within it.\(^59\) The GATT membership had targeted precisely such behavior through the “standstill commitment”, made at Punta del Este, under which a member could “not take any trade measures in such a manner as to improve its negotiating positions.”\(^60\) Members then protested that Section 301 hung as “Damocles’ sword” over them, skewing bargaining power in favor of the US.\(^61\) Such reactions from the membership lends support to the

\(^{56}\) See also: GATT 1989, C/M/233, 5-13.
\(^{57}\) EC Representative, ibid, 10.
\(^{58}\) Mexico and Japan representatives, MTN.SB/10, 4. In a similar vein, the Canadian representative declared: “the US had the right to pursue that issue through normal and improved GATT procedures… but to proceed through unilaterally or to threaten unilateral action threatened GATT’s credibility.” (GATT 1989, C/M/234, 23)
\(^{59}\) Referring to “outside options”, Voeten (2001) has pointed to a similar dynamic in the context of the United Nations Security Council. According to this view, the credible option of unilateral action can better an actor’s bargaining position in a multilateral context.
\(^{60}\) MTN.SB/10, 4. The Standstill Commitment was contained in the Punta del Este Declaration, Section C (iii). (ibid)
\(^{61}\) The analogy to Damocles’ sword was used repeatedly by members. See for e.g., GATT, C/M/234, 22. Also within the negotiation realm, countries argued that the US threatened the credibility negotiations,
observation by economic bargaining scholars who argue that negotiations do not end at an agreement’s conclusion, but also follow from it, and that compliance is not a dichotomous variable, but rather is itself the product of bargaining. These same authors point out that the type of bargaining that occurs in the post-agreement phase may be more susceptible to power politics than the negotiations leading up to the agreement.  

In my perusal of GATT archives of the period, I have not come across a single non-US statement that would reflect Schoppa’s belief that 301 was seen as “justified” by GATT’s lack of enforcement teeth; numerous statements, conversely, express precisely the opposite view. As India unambiguously voiced, “the dispute settlement mechanism under GATT was where complaints among contracting parties should be brought”. Further in the same session, the Indian representative added: “it did not seem that the US had convinced any contracting party that the multilateral and bilateral approaches were consistent.”  

In an important 1989 GATT Special Meeting, over a dozen members, most of them not targeted by Section 301, echoed this feeling. The EC representative, in turn, referred to Section 301 as a “commercial nuclear bomb”, leading to a potential “apocalypse” where the US itself “would not be spared”.  

The discussions of GATT members amount to a generalizable view: legitimate threats are exercised through shared mechanisms constructed by a plurality of actors, and allow for reciprocal action in future, symmetrical situations. Illegitimate coercion, in

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63 Schoppa 1999.
64 GATT, 1989, C/M/234, 22
66 Ibid.
67 The concept of legitimacy in law is often drawn from the legal doctrine Nemo jus sibi dicere potest: No one can declare the law for himself/herself (Cyclopedic Law Dictionary 1922, 684).
turn, relies for its effectiveness on an advantageous distribution of power. It follows that, as per the argument of several institutionalist scholars, the distinction in this case between legitimate and illegitimate only becomes possible once a multilateral option exists.\textsuperscript{68} For all these reasons, I consider any action where the US relies on 301 alone as illegitimate, and any action that is coupled with GATT dispute settlement as legitimate. Anecdotal evidence also suggests such a view to be consistent with erstwhile state perceptions: as a European Commission official claimed, once a US trade investigation makes it to dispute settlement, “there is no longer the fear of getting hit by unilateral sanctions”.\textsuperscript{69} The historical record provides further support for this view: once the US began GATT proceedings, it did not turn back to unilateralism. The US never retaliated unilaterally nor threatened to do so after a panel finding against it, and it never blocked a panel report following from a 301 investigation.\textsuperscript{70}

Looking at discussions among members in the GATT, it is undeniable that the reactions of both targets and other member states were motivated in great measure by normative considerations. To be sure, existing regulations (such as the “standstill” commitment”, and more explicitly, the subsequent Article 23 in the WTO Agreement) prohibited recourse to unilateralism, but members’ reactions appealed to more than these formal violations. Countries expressed outrage at the US reliance on power even as an institution existed precisely to bind such power, and explicitly appealed to norms against such behavior when publicly vowing to resist unilateralism. That these appeals were of a normative nature, rather than purely self-interested, also explains why countries that were never targeted by Section 301 (e.g. Yugoslavia) reacted with equal vehemence.

\textsuperscript{68} Claude 1966.
\textsuperscript{69} Quoted from an interview in Thompson (2005).
\textsuperscript{70} See the data in Hudec (1993).
There is therefore no easy partition between norm-based and interest-based reactions in this case. What I attempt to show, however, is that the norm that had already arisen in GATT, and one that exists in many institutions—namely that once an international agreement is reached, working outside of that agreement is considered illegitimate—is by no means removed from the rational considerations of states. Once a multilateral option exists, unilateral threats carry added information about the sender’s intent. As a result, conceding to unilateralism signals weakness, while resisting it signals strength. And it is in great measure based on targets’ past behavior that the US chooses the instrument through which to channel its power.

The Data

The data I use cover all 189 trade threats made by the US from 1975 to 2000, and can be thought of as constituting three categories of cases. The first is made up of cases investigated under Section 301 that are not sent to dispute settlement (82 cases); the second encompasses cases that start as a Section 301 investigation and are then sent to GATT (51 cases); the third is made up of those cases sent directly to GATT (56 cases). The first category contains all unilateral cases; the last two contain all multilateral cases. Keeping with common practice, the unit of observation is a case filed against a given country, so that when in 1976 the US files a dispute against both Japan and the EC on

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Steel Products, this is counted as two separate cases, since we are interested in the reaction of each target separately.

The first variable of interest is Concessions, that is, the degree to which target countries comply with US pressure. Concessions is first coded on a full \{1, 2, 3\} scale, as per Bayard and Elliott, with 1 denoting no concessions, and 3 denoting full concessions; this score is then reduced to a dummy variable in two ways: 1 if the full score equals 2 or 3, and 0 otherwise; and 1 if the full score equals 3, and 0 otherwise. I refer to these variables as Concession1, Concession2, and Concession3, respectively. The breakdown of all the data by concession level can be seen in Table 6.

The main explanatory variable, Multilateral, indicates whether the case eventually goes to GATT or not, either directly or by way of a Section 301 investigation. It is coded 1 if the US brings the case to multilateral dispute settlement, either at the GATT or later at the WTO (and regardless of whether the case then goes to a panel or is settled beforehand) and 0 otherwise.

The two main control variables, market power and export dependence, account for power differentials between the US and the target, in a manner similar to Bayard and Elliott.\(^{72}\) Market power (which corresponds to the US relative market power) is the ratio of US GDP over the total GDP of the US and the target country, for the first year of any given case. Export dependence is coded as bilateral exports from the target to the US over the target’s GDP. Materialist expectations would lead us to believe that the more targets depend on the US market for their exports, the greater the threat represented by sanctions, and the more likely we are to see compliance with US demands, all things equal.

\(^{72}\) Bayard and Elliott 1994.
To denote the shift from GATT to the WTO, with the change in dispute settlement it entails, I code a variable, *Post 1995*, where all cases from years after 1995 are coded as 1, and 0 otherwise. The other period of interest is the one between 1988 and 1992, which covers the period during which the Omnibus Act of 1988, perceived as particularly aggressive and illegitimate by other members, was in force. I control for it using a dummy variable coded 1 for the relevant years, and 0 otherwise. I control for the level of democracy of the target, using *Polity IV* data, which codes democracy on a scale from −10 to 10, since regime type may plausibly influence either vulnerability to threats or compliance with trade rules. I also add dummy variables for cases where the target is the European Communities or Japan, since some anecdotal evidence on Section 301 suggests that these states were especially targeted by the United States Trade Representative (USTR), which may therefore influence the likelihood of concessions.73 Finally, I use a variable to control for cases that were self-initiated by the USTR,74 since self-initiation may proxy for some internal characteristic of cases, and these may be treated differently by targets as a result.

**Analysis**

I begin by reproducing the Bayard and Elliott test for legitimacy effects, by seeing whether a favorable GATT ruling has any effect on concessions. The underlying belief is that cases that receive a favorable ruling by a multilateral panel are viewed as more

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73 See Schoppa 1999.
74 When the USTR pursues a Section 301 investigation into foreign trade measures, it does so either following a petition by a private party, or through its own volition, in which case the investigation is said to be “self-initiated”.
legitimate, and benefit from greater normative pressure on the target to concede.\textsuperscript{75} The sample used here contains all Section 301 cases, but it does not contain cases that went straight to the GATT or WTO. I run a simple probit model, as did Bayard and Elliott, and control for similar variables as they did: the democracy level of the target, the target’s export dependence on the US, relative market power. Since my data goes up to 2000, I also add a dummy for threats formulated after 1995.\textsuperscript{76}

The effect of rulings, seen in Table 2, turns out to be insignificant, as per Bayard and Elliott’s own results.\textsuperscript{77} In other words, a favorable ruling supporting US pressure indeed does little to move targets to concede. Again, this is unsurprising, and tends to be true of all threats. Concessions are most likely to occur in the shadow of penalties, before those penalties are implemented.\textsuperscript{78}

(Table 2 about here)

After confirming the insignificance of favorable rulings, I go on to test my first hypothesis: are cases conducted through Section 301 alone more or less likely to result in concessions than cases that are coupled with GATT dispute settlement? To avoid the risk of finite sample bias, I use a rare events correction for the logistic regressions in this section, since my sample tends to be small (n=133 for the most part) and is slightly unbalanced in some of the tests, with far less “success” than “failure” counts on the dependent variable.\textsuperscript{79} I control for relative market power and the target’s export dependence on the US, the democracy level of the target, whether the case was conducted

\textsuperscript{75} Bayard and Elliott 1994, 90.
\textsuperscript{76} Running a rare events logit instead, as I do in the remaining tests, in no way changes the results.
\textsuperscript{77} ibid
\textsuperscript{78} Drezner 2003, 647.
\textsuperscript{79} See King and Zeng 2001.
after 1995 or during the Omnibus Trade Act period, whether the case was USTR-initiated, and whether the target is Japan or the EC.

The results strongly corroborate the main hypothesis. As seen in the first column of Table 3, the effect of GATT is positive and significant. That is, controlling for relative economic variables, cases that go to multilateral dispute settlement are significantly more likely to elicit concessions from the target. Interpreting the coefficients of to obtain substantive results shows that going to GATT, rather than relying only on Section 301, increases the probability of obtaining concessions from 56.7% to 91.0%, keeping all other variables at their mean. The added legitimacy of GATT thus increases the likelihood of concessions by 34.3%. As expected, market power and export dependence are positively signed and significant, meaning that the greater the relative market power of the US, and the more the target depends on the US market for exports, the higher the likelihood of concessions. The significance of export dependence offers support to Bayard and Elliott’s main findings. What is striking from this paper’s point of view, however, is that controlling for these material variables, the effect of legitimacy is so important. Similarly, holding other variables at their mean, cases that are self-initiated by the USTR are 34.3% more likely to lead to concessions, as are cases against both Japan and the EC. Overall, the model displays excellent fit for the data, as it correctly predicts the level of concessions in 83.1% of cases.

I rerun the model using Concede3, which identifies only full concessions, and considers partial concessions as resistance by the target; the results are shown in the second column of Table 3. The significance of Multilateral is not affected, and its

80 I use Clarify to interpret the Rare Events coefficients (Tomz, Wittenberg and King, 2003).
81 Bayard and Elliott 1994, 86.
substantive effect is slightly higher: going to multilateral increases the likelihood of full concessions by 39.3%. Interestingly, however, the dummy for Japan cases is no longer significant, and that for EC cases loses effect and statistical significance as well. Moreover, the effect of export dependence disappears.

Next, I rerun the regression on a sample limited to GATT (pre-1995) cases, on my original dependent variable Concede2. The results are presented in the third column of Table 3. The effect of Multilateral is equally significant, and substantively stronger. When looking only at the period from 1975 to 1994, corresponding to 106 cases, taking an investigation to multilateral dispute settlement increases the likelihood of concessions from 43.8% to 88.0%, a change of 44.2%. The greater effect in the period preceding the WTO is expected: after 1995, the incentive to resist illegitimacy is decreased, since there are enough constraints on unilateralism in the WTO to decrease the threat of rampant unilateral coercion, and so a reputation for resistance to unilateralism loses much of its value. Further, 1999 saw the ruling on the case brought by the EC against the US’ Section 301, during which US committed itself, through a Statement of Administrative Action, to employ Section 301 in a manner consistent with GATT/WTO rules, after which the trade instrument lost much of its unilateral bite.  

82 (Table 3 about here)

For added robustness, I rerun the regression using a multinomial probit model, which includes no correction for limited sample bias, but does allow me to use the full Concession1 variable, and see the effect of going multilateral separately for partial and full concessions. The results, not reported here, are equally significant, and the effect on

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82 United States — Sections 301–310 of the Trade Act 1974, WT/DS152/R. The panel ruled that “the United States had lawfully removed this threat by the "aggregate effect of the Statement of Administrative Action (‘SAA’)"” (ibid).
partial and full concessions appears linear, with a slightly higher effect for full concessions. An added control variable for whether a country was a GATT member at the time of the 301 investigation is insignificant and does not affect the results. I also add a variable corresponding to the trade balance between the US and the target to every relevant model, as per some of Bayard and Elliott’s regressions: it is insignificant throughout, and does not affect the results. Finally, I add time fixed effects to all three regressions; the findings are unchanged.

While Tables 2 and 3 confirm the legitimacy effect predicted in my first hypothesis, they do little to test the specific mechanism I identify. Indeed, if legitimacy acted through a perception of credibility—as in Martin’s argument—rather than a signaling mechanism, we would expect to observe much the same effect, and would have little means of differentiating between the two mechanisms. To test my story against possible alternative explanations, I use the following model to get at my second hypothesis.

If states resist illegitimate threats with an eye on the future, as a means of lowering the likelihood of future illegitimate threats, then we would expect to be able to observe this deterrence effect at work. I code a variable, Resist301, as 1 if any Section 301 case against the target of the current threat met with resistance during the 5 preceding years, and 0 otherwise. This variable functions as an indicator of past resistance to unilateralism, and a summary of the beliefs that the US has about the target’s likely behavior given past actions. Similarly, I code a second variable, Concede301, which is

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83 Martin 1993.
the analogous indicator of past concessions.\textsuperscript{84} I take out the 13 cases that targeted non-members, since they lead to a determined outcome, and am left with 120 cases. With \textit{Multilateral} now as my dependent variable, I run a rare events logit model to see whether such past resistance has any effect on the likelihood of being taken to GATT, rather than being threatened unilaterally. I also control for the target’s export dependence on the US, which was significant in the preceding models; the level of democracy of the target, since there is some reason to believe that the US may target more (less) democratic targets differently; whether the case is self-initiated by the USTR, which may have some influence over how a case is conducted; and whether the dispute occurred before or after 1995, since the WTO’s improved dispute settlement understanding will likely affect the likelihood of a case going to dispute settlement.

(Table 4 about here)

The results, presented in the first column of Table 4, are convincing. Resisting a unilateral threat makes a given country significantly less likely to be threatened unilaterally over the 5 following years. Specifically, a history of resistance makes a country 25.1\% less likely (from 60.3\% to 35.2\%) to encounter a unilateral threat, rather than be taken to GATT dispute settlement, keeping other variables at their means. In other words, once a unilateral threat falls flat, the US modifies its strategy for a time, and tends to deal with the country multilaterally. As argued by Thompson and others, the US would prefer to conserve its autonomy, and avoid institutional constraints in the formulation of threats.\textsuperscript{85} But when “political costs”—in this case, the higher likelihood of

\textsuperscript{84} Note that these two variables have no necessary negative correlation, since a lack of history in both would be coded as 0, and countries could simultaneously have an instance of concessions and one of resistance in the preceding 5 years.

\textsuperscript{85} Thompson 2005.
resistance by the target, become too high, the US prefers to trade-off some lost autonomy against a higher likelihood of success. As for other variables, threats past 1995, as might be expected, are more likely to be formulated multilaterally. This may also be due to a backlog of cases that were awaiting the improvement of the dispute settlement understanding before being brought to GATT. Somewhat interestingly, self-initiated investigations by the USTR are more likely to go to dispute settlement, which offers some insight into USTR preferences.

Not only does legitimacy affect the likelihood of a target conceding, but the behavior of targets resisting illegitimate threats is rational: doing so once, even at a considerable immediate cost, makes a country less likely to face unilateral threats in the future. The model provides good fit for the data, correctly predicting the forum in which the US pursues targets in 77% of cases.

To see how robust the history proxy is, I lengthen the period of interest by two years: this variable is now 1 if any Section 301 case against the target of the current threat met with resistance during the 7 preceding years, and 0 otherwise. The results are presented in the second column of Table 4. The results are unchanged, except that the history of resistance now has a stronger effect (increasing the odds of encountering a multilateral, rather than a unilateral dispute, by 27.0%) and is more significant.

In both versions of the model, however, Concede301 does not behave as expected. According to the implications of my second hypothesis, not only should past resistance deter the US from making further unilateral threats against a given country, but past concessions should have the opposite effect, by leading the US to update its expectations of concessions upward. Yet Concede301 here appears to have no significant
effect. A likely explanation comes from taking a closer look at the data. There are simply very few instances of full concession to unilateralism (which is in keeping with the main argument, that countries tend to resist unilateralism disproportionately) and as a result, there is not much opportunity to observe a history of concession at work. Specifically, there are 39 cases of resistance to Section 301 threats, compared to only 17 cases of full concessions (see Table 6). Data idiosyncrasies aside, existing theory also accounts for a lack of symmetry between the effect of a history of resistance and one of concessions. In his influential study of reputation, Mercer argues that actors tend to update their beliefs only when observed behavior by others (allies or adversaries) goes against the actor’s interests. Accordingly, observed resistance would lead to change in Foreign’s reputation and thus Home’s behavior, but observed concessions would not have a similar effect. Once again, however, the available data do not allow for a reliable comparison of the effects of histories of retaliation and histories of concession, for lack of the latter. For a similar reason, when I test the previous model looking at the effect of resistance in the past 3 years (not shown here), the effect becomes insignificant. The history is too short to “grip” the data, given the relatively low frequency of interaction, and as a result, that history shows little effect.

The third column of Table 4 adds the 56 cases that went straight to dispute settlement. The results remain much the same: not only does past resistance do a good job of predicting the choice between Section 301 and coupling Section 301 with GATT, but it also does a good job of predicting the choice of sending a case straight to dispute settlement. The effect of past concessions is negative, but once again insignificant.

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86 Mercer 1996.
Guarding Against Bias

One concern may be that the cases that do not go beyond Section 301 are somehow fundamentally different from the cases that eventually go to GATT, or those that are sent to dispute settlement directly, resulting in a selection bias driven by an omitted variable. To be clear, the selection of pressure instrument need not be random, but it should not be correlated with potential concessions.87

To test for this possible bias, I use the set of all GATT and WTO disputes brought by the US from 1975 to 1999, which contains both cases that went straight to dispute settlement and cases that began as a Section 301 action, for a total of 107 cases. Using this portion of the data, I run a parsimonious rare events logit model to see whether disputes that originated in Section 301, as opposed to cases that went straight to dispute settlement, are any more or less likely to elicit concessions. The underlying belief is that if cases that went straight to dispute settlement are fundamentally different in any way, then those cases that first went through Section 301 should be “tainted” by the selection factor. The results, presented in Table 5, suggest the absence of any selection bias. What I find is that the 301 Origin, a dummy coded 1 if a GATT-WTO dispute originated in Section 301, and 0 otherwise, is both substantively and statistically insignificant. Interaction variables made up of the 301 Origin dummy and the two economic variables are equally insignificant. That is, among GATT-WTO disputes, whether a case started out in Section 301 does not affect the probability for concessions in either direction. This test does not rule out the possibility of bias entirely, since the regression only covers cases that ended up in dispute settlement, but the insignificance of 301 Origin is a good

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87 For an especially useful review of selection bias pitfalls in studies of inter-state disputes, see Huth and Allee (2002).
indication that any selection that occurs between cases that go on to dispute settlement and those that end at Section 301 is not correlated with the ex-ante likelihood of concessions. I analyze the same data with a multinomial probit model (not shown here), and the effect of a Section 301 origin is insignificant for both partial concessions and full concessions.

An argument could be made that 301 cases that targeted areas not yet covered under GATT, such as intellectual property (IP) rights, may bias the likelihood of concessions downward, since it reflects a harder area for trade pressure. I thus include controls for all 301 cases targeting IP rights; the coefficient is insignificant, and other variables are unaffected. I also rerun all regressions in Tables 2 and 3 with an IP dummy, which remains insignificant. The models also show unchanged results when those cases are taken out entirely.

(Table 5 about here)

Moreover, a likely unobservable selection factor that accounts in some measure for the choice between Section 301 and GATT, but which is unlikely to be correlated with concessions, further serve to undermine the possibility of selection bias. As Busch demonstrates in a recent study, countries choose which forum to raise trade disputes in largely on the basis of the size and nature of the audience in which a dispute’s precedent is set.  

88 Countries will often shy away from too resounding a victory, if such a win will result in a net loss when the precedent they establish is used against them.  

89 Conversely, they will bring even minor cases to dispute settlement if they represent a valuable

\[\text{88 Busch 2007.} \]

\[\text{89 While the GATT/WTO formally has no notion of legal binding precedent, or stare decisis, dispute settlement panels and the Appellate Body consistently bring past rulings and arguments to bear on present cases. WTO scholars often refer to “de facto stare decisis”. See Bhala, 2001.} \]
precedent for the country. Section 301 led to bilateral cases that did not set a precedent in the same way that multilateral dispute settlement, with published rulings and transparent reasoning, did. Once a ruling is made in GATT, it belongs to that body of law, from which future reasoning is drawn. Accordingly, it is likely that in the case of certain trade measures, the US would prefer a mechanism of smaller echo that would not come back to haunt it. In either case, it becomes plain that despite the benefit of legitimacy, the US sometimes could not or would not bring cases to multilateral dispute settlement. Since I can think of no valid argument linking the selection factor of precedent to the *ex-ante* likelihood for concessions, the importance of precedent in this case reduces the probability of bias.

The evidence for my second hypothesis—that the US is more likely to turn to legitimate, multilateral coercion if it encounters resistance to its unilateral threats—also gives a good indication of the decision process at the USTR. The evident swiftness with which the US switches from one mechanism to the other based on even a single past failure in eliciting concessions suggests that there is no fundamental difference between cases that end at 301 versus cases that go on to multilateral dispute settlement. Finally, as existing literature makes clear, legal merit or the nature of the issue at hand does not seem to be a good predictor of the decision to litigate. The US litigated IP cases before clear law existed on the matter, and conversely, kept cases with considerable legal merit out of the GATT.

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90 Bhala 2001 refers to the WTO’s de facto *stare decisis*.  
91 Reinhardt 2000.  
92 For example, the US initiated a GATT dispute in the *Brazil Informatics* case in 1985, before the advent of clear IP law in GATT, but soon after chose to handle a case with considerable legal merit, *EC Enlargement*, unilaterally. (Reinhardt, 2000, 1)
While eliminating the possibility of bias entirely in these cases is often unfeasible, these observations raise the confidence that what is affecting the variation in concessions are not the fundamental characteristics of the cases themselves, but the perceived legitimacy attached to the means through which those cases are conducted.

“Aggressive Unilateralism”: A Net Loss for the US?

This paper suggests an upper bound for the extent to which a superpower can coerce weaker states unilaterally. In the presence of a multilateral option, unilateral action provides strong incentives for targets to resist coercion, and goes against a norm that targets and potential targets can rally around. These findings might be read as suggesting US irrationality in creating and exercising Section 301. Certainly, US backtracking immediately following the announcement of Section 301’s most aggressive provisions, in 1988, would seem to support conclusions of a policy miscalculation.93

Evidence of disproportional resistance to unilateralism, however, should not be read as suggesting that Section 301 resulted in a net loss for the US. Indeed, states with an eye on the future may react to illegitimate coercion in two (not mutually exclusive) ways: by resisting disproportionately to unilateral threats, or by sweetening the multilateral deal. And while I have shown evidence for the former, anecdotal evidence suggests that the latter also took place.

By way of illustration, in 1989 the EC trade representative scolded the United States for its unilateral actions, saying “we have made crystal clear that this unilateral

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93 After unveiling the first Super 301 list of targets, in 1988, the US faced a barrage of criticism and counter-threats from the EC and Japan, especially, and were forced to back off, not targeting the EC at all in the end, and narrowly interpreting the Super 301 legislation to minimize the number of targeted Japanese sectors (Milner, 1993, 177-179). By all accounts, the US did not expect the magnitude of the backlash.
way of dealing with trade matters is not what we are ready to accept”.

That very same week, however, the EC ceased blocking panel proceedings in a dispute over its farm subsidies, suddenly agreeing that the panel should “proceed immediately”, thus giving in to longstanding US demands in the multilateral forum. Hudec’s discussion of “justified disobedience” also suggests that we should consider the effect of Section 301 on the negotiation outcome of the Uruguay Round. Five years before its conclusion, Hudec pointed out that Section 301, especially in its more aggressive form, may prove to be a necessary evil if it achieves a desirable conclusion in otherwise lagging negotiations. In the end, countries reached an agreement, which on the one hand covered many of the issues that the US had been pushing for, such as intellectual property rights and investment measures, and on the other hand included explicit measures against unilateral recourse by members, in the form of Article 23. In many ways, Article 23 became the formal embodiment of the normative condemnation of unilateralism in the presence of a multilateral option.

Moreover, the analysis does not take into account the deterrence effect of Section 301. It may be that states resisted domestic protectionist pressure more than they would have otherwise because of the fear of being targeted by American unilateralism had they raised barriers. This was most clearly the case with South Korea in 1989, which suddenly made significant concessions to US demands as a means of avoiding a Section 301

95 ibid
96 Hudec 1990.
97 “When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.” (WTO DSU Article 23.1)
investigation in the first place.\textsuperscript{98} In order to get at the overall effect of 301, one would thus have to net the preemptive concessions and any increased cooperation within GATT that resulted from the existence of Section 301 with the increased resistance it incited.

Conclusion

Power alone is often insufficient to push other state actors to act in a specified way. This also explains why power rarely shows itself undorned: state leaders put much care into couching their actions in the trappings of legitimacy, because the way in which their threats are perceived by the rest of the world in great measure determines their effectiveness.\textsuperscript{99}

As the paper demonstrates, statistical methods may be especially well suited for handling situations where some of the actors have good reason not to reveal their preferences, making the collection of qualitative evidence all the more difficult. US trade officials would likely not offer many observable cues demonstrating a tendency to shift to multilateralism when faced with resistance to Section 301, lest it provide further incentives for targets to resist unilateralism. Statistical analysis allows us to pick up on such behavior by looking at outcomes in the aggregate.

That being so, statistical methods are inherently limited, since they do not allow us to trace causality in the way that, for instance, in-depth case studies do. Specifically, the paper leaves some questions unanswered. The finding that cases self-initiated by the

\textsuperscript{98} South Korea opened its markets to products such as food, pharmaceuticals, and cosmetics in 1989, shortly before the US announced its Super 301 “hit list” of unfair trading nations.

\textsuperscript{99} It may be worth recalling that the most cited example of the unapologetic use of force, that of the Athenians threatening the Melians in Thucydides’ account of the Peloponnesian Wars, met with resistance, in spite of the Athenians’ preponderant power. “The strong do what they can and the weak suffer what they must”, but at times the weak put up more resistance than common sense would lead us to expect.
USTR are more likely to get compliance by targets, but less likely to go to GATT dispute settlement, raises questions about how the process through which firms petition for trade measures affects the credibility of these measures, and foreign responses to them. On the one hand, trade measures may gain in credibility, and thus in effectiveness, when they are taken directly in reaction to demands by interests groups, benefiting as they do from real domestic support. On the other hand, such cases have been portrayed as a means of using a panel ruling to tie one’s hands vis-à-vis a domestic industry, which could suggest the opposite effect. Case studies are likely better suited than statistical methods to weigh such possibilities by tracing causal mechanisms, and would thus provide a valuable complement to this paper’s results.

A broad implication of the findings is that countries do sometimes consider past actions of other states in determining their own behavior. A recent crop of scholars have questioned this premise in the case of military inter-state disputes, but the evidence presented here supports the significance of past actions in the realm of international trade and economic threats. Parsing out where investments in reputation pay off and where they do not promises to be a fruitful area of future empirical study.

Finally, the paper leads to a somewhat unconventional view of the GATT. Rather than the weak diplomatic agreement devoid of “teeth” that the GATT is often portrayed as, here I show it to have been an effective constraint on state behavior, including that of its most powerful member. And while Section 301 is sometimes taken as evidence that states are never truly constrained by the institutions they set up, these findings suggest otherwise. An effort on the part of the US to go against the normative framework that

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100 See Odell 2000. This is also the implication of Putnam 1988.
101 Reinhardt 1999.
emerged from the GATT’s inception fell short of its immediate objectives. In this case, the US ultimately found it in their interest to reverse course, and push for greater formal constraints in the Uruguay Round that ultimately raised the costs of unilateralism further.

This paper therefore goes much beyond showing that a now outdated trade measure proves not to have been as effective in coercing trade partners as might have been thought; the broader implication is that taking legitimacy seriously need not entail abandoning a rationalist view of politics. By examining how the legitimacy of threats affects the signal that is sent by conceding to them, one can account for how targeted states vary their responses to coercive pressure.
Table 1. Bivariate Correlations For Key Variables

<table>
<thead>
<tr>
<th></th>
<th>Multilateral</th>
<th>Concede1</th>
<th>Target Democracy</th>
<th>Market Power</th>
<th>Export Dependence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multilateral</td>
<td>1.000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concede1</td>
<td>0.382</td>
<td>1.000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Target Democracy</td>
<td>0.230</td>
<td>0.036</td>
<td>1.000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Market Power</td>
<td>-0.110</td>
<td>0.129</td>
<td>-0.166</td>
<td>1.000</td>
<td></td>
</tr>
<tr>
<td>Export Dependence</td>
<td>-0.258</td>
<td>-0.105</td>
<td>-0.376</td>
<td>0.318</td>
<td>1.000</td>
</tr>
</tbody>
</table>
Table 2. Probit Model of Concessions, based on Bayard and Elliott (1994)

<table>
<thead>
<tr>
<th></th>
<th>Coefficient</th>
<th>Robust SE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Favorable Ruling</td>
<td>0.694</td>
<td>0.571</td>
</tr>
<tr>
<td>Export Dependence</td>
<td>0.076***</td>
<td>0.027</td>
</tr>
<tr>
<td>Market Power</td>
<td>-0.795</td>
<td>0.725</td>
</tr>
<tr>
<td>Target Democracy</td>
<td>-0.004</td>
<td>0.023</td>
</tr>
<tr>
<td>Post 1995</td>
<td>1.042***</td>
<td>0.368</td>
</tr>
<tr>
<td>Constant</td>
<td>0.439</td>
<td>0.650</td>
</tr>
</tbody>
</table>

n = 133
* denotes 2-tailed $p < 0.10$; **, $p < 0.05$; ***, $p < 0.01$
<table>
<thead>
<tr>
<th></th>
<th>(1) Coefficient</th>
<th>Robust SE</th>
<th>(2) Coefficient</th>
<th>Robust SE</th>
<th>(3) Coefficient</th>
<th>Robust SE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multilateral</td>
<td>2.014***</td>
<td>0.573</td>
<td>1.841***</td>
<td>0.521</td>
<td>2.258***</td>
<td>0.626</td>
</tr>
<tr>
<td>Export Dependence</td>
<td>0.158***</td>
<td>0.052</td>
<td>-0.012</td>
<td>0.018</td>
<td>0.153***</td>
<td>0.054</td>
</tr>
<tr>
<td>Market Power</td>
<td>0.177***</td>
<td>0.063</td>
<td>0.094**</td>
<td>0.046</td>
<td>0.145**</td>
<td>0.064</td>
</tr>
<tr>
<td>Target Democracy</td>
<td>-0.044</td>
<td>0.050</td>
<td>-0.017</td>
<td>0.045</td>
<td>-0.056</td>
<td>0.049</td>
</tr>
<tr>
<td>Self-Initiated</td>
<td>2.272***</td>
<td>0.694</td>
<td>1.925***</td>
<td>0.602</td>
<td>1.892***</td>
<td>0.715</td>
</tr>
<tr>
<td>Post 1995</td>
<td>1.277</td>
<td>0.988</td>
<td>0.758</td>
<td>0.662</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>1988-1992 Period</td>
<td>0.293</td>
<td>0.595</td>
<td>0.259</td>
<td>0.641</td>
<td>0.376</td>
<td>0.614</td>
</tr>
<tr>
<td>EC Target</td>
<td>8.779***</td>
<td>2.814</td>
<td>4.177**</td>
<td>2.049</td>
<td>7.413***</td>
<td>2.717</td>
</tr>
<tr>
<td>Japan Target</td>
<td>6.279***</td>
<td>2.088</td>
<td>2.399</td>
<td>1.463</td>
<td>5.821***</td>
<td>2.150</td>
</tr>
</tbody>
</table>

n = 133 for columns (1) and (2), n = 106 for column (3), which covers the pre-WTO period.
* denotes 2-tailed $p < 0.10$; **, $p < 0.05$; ###, $p < 0.01$
Table 4. Rare Events Logit Model of USTR Decisions to Formulate Threats Multilaterally

<table>
<thead>
<tr>
<th></th>
<th>(1)</th>
<th></th>
<th>(2)</th>
<th></th>
<th>(3)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Coefficient</td>
<td>Robust SE</td>
<td>Coefficient</td>
<td>Robust SE</td>
<td>Coefficient</td>
<td>Robust SE</td>
</tr>
<tr>
<td>Resist 301 History</td>
<td>1.026**</td>
<td>0.431</td>
<td>1.098***</td>
<td>0.411</td>
<td>1.009***</td>
<td>0.383</td>
</tr>
<tr>
<td>Concede 301 History</td>
<td>0.240</td>
<td>0.533</td>
<td>0.180</td>
<td>0.531</td>
<td>-0.263</td>
<td>0.441</td>
</tr>
<tr>
<td>Export Dependence</td>
<td>-0.025</td>
<td>0.026</td>
<td>-0.026</td>
<td>0.026</td>
<td>-0.001</td>
<td>0.013</td>
</tr>
<tr>
<td>Market Power</td>
<td>0.002</td>
<td>0.042</td>
<td>-0.007</td>
<td>0.043</td>
<td>0.004</td>
<td>0.025</td>
</tr>
<tr>
<td>Self-Initiated</td>
<td>-1.149**</td>
<td>0.573</td>
<td>-1.129**</td>
<td>0.568</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Post 1995</td>
<td>2.596***</td>
<td>0.743</td>
<td>2.612***</td>
<td>0.765</td>
<td>2.500***</td>
<td>0.478</td>
</tr>
<tr>
<td>1988-1992 Period</td>
<td>0.622</td>
<td>0.563</td>
<td>0.598</td>
<td>0.579</td>
<td>0.818*</td>
<td>0.497</td>
</tr>
<tr>
<td>EC Target</td>
<td>0.858</td>
<td>1.701</td>
<td>0.547</td>
<td>1.738</td>
<td>1.190</td>
<td>1.026</td>
</tr>
<tr>
<td>Japan Target</td>
<td>0.844</td>
<td>1.224</td>
<td>0.394</td>
<td>1.217</td>
<td>0.513</td>
<td>0.754</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.399</td>
<td>4.023</td>
<td>-0.585</td>
<td>4.115</td>
<td>-1.406</td>
<td>2.397</td>
</tr>
</tbody>
</table>

n = 120 for columns (1) and (2), n = 176 for column (3).
* denotes 2-tailed \( p < 0.10 \); **, \( p < 0.5 \); ***, \( p < 0.01 \)
### Table 5. Rare Events Logit of Concessions to all US GATT-WTO Disputes, 1975-1998

<table>
<thead>
<tr>
<th>Variable</th>
<th>Coefficient</th>
<th>Robust SE</th>
<th>Coefficient</th>
<th>Robust SE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 301 Origin</td>
<td>0.781</td>
<td>0.500</td>
<td>-1.019</td>
<td>1.889</td>
</tr>
<tr>
<td>Export Dependence</td>
<td>0.012</td>
<td>0.021</td>
<td>0.004</td>
<td>0.025</td>
</tr>
<tr>
<td>Market Power</td>
<td>-0.011</td>
<td>0.037</td>
<td>-0.016</td>
<td>0.039</td>
</tr>
<tr>
<td>Post 1995</td>
<td>0.052</td>
<td>0.526</td>
<td>0.056</td>
<td>0.504</td>
</tr>
<tr>
<td>EC Target</td>
<td>-1.072</td>
<td>1.714</td>
<td>-0.883</td>
<td>1.806</td>
</tr>
<tr>
<td>Japan Target</td>
<td>0.403</td>
<td>1.234</td>
<td>0.497</td>
<td>1.238</td>
</tr>
<tr>
<td>Export Dependence X 301 Origin</td>
<td>--</td>
<td>--</td>
<td>-0.031</td>
<td>0.072</td>
</tr>
<tr>
<td>Market Power X 301 Origin</td>
<td>--</td>
<td>--</td>
<td>2.497</td>
<td>2.522</td>
</tr>
<tr>
<td>Constant</td>
<td>1.976</td>
<td>3.539</td>
<td>2.392</td>
<td>3.766</td>
</tr>
</tbody>
</table>

n = 107

* denotes 2-tailed $p < 0.10$; ** $p < 0.05$; *** $p < 0.01$
Table 6. Distribution of Cases by Level of Concession, Forum, and Period, 1975-2000

<table>
<thead>
<tr>
<th>Concessions</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>301 only,</td>
<td>39/0</td>
<td>20/6</td>
<td>14/3</td>
<td>82</td>
</tr>
<tr>
<td>pre 1995/post1995</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>301 and GATT/WTO,</td>
<td>5/2</td>
<td>14/2</td>
<td>15/13</td>
<td>51</td>
</tr>
<tr>
<td>pre 1995/post1995</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GATT/WTO only,</td>
<td>6/7</td>
<td>11/1</td>
<td>10/21</td>
<td>56</td>
</tr>
<tr>
<td>pre 1995/post1995</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
<td>52</td>
<td>76</td>
<td>189</td>
</tr>
</tbody>
</table>

Pre-1995 cases correspond to the relevant GATT period (1975-1994); post-1995 cases correspond to all cases initiated after the WTO’s inception in 1995.


Busch, Marc, 2000, “Accommodating Unilateralism? US Section 301 and GATT/WTO Dispute Settlement”, typescript, Queen’s University.


Heston, Alan, Summers and Aten, 2002, Penn World Table Version 6.1, Center for International Comparisons at the University of Pennsylvania (CICUP).


