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Institutional Persistence and Change of the U.S. Trade Policy Regime

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Policy regime refers to those institutional constraints that shape and constrain the whole policymaking process. Once established, policy regimes tend to endure for a long time despite environmental changes. However under some crisis circumstances, there may occur institutional change of policy regimes. The U.S. trade policy regime, established in the 1930s, had lasted for about half a century with two major traits: free trade as basic ideology and delegation of policymaking authority to the Administration. However, huge trade deficits in the 1980s triggered institutional change. The new trade policy regime, which still persists today, is characterized by reciprocity as a new policy ideology and renewed Congressional activism in trade matters. This paper analyzes why and how that institutional change of U.S. trade policy took place.

Keywords: Policy Regime, New Institutionalism, U.S. Trade Policy, Super 301

1. INTRODUCTION

Since the 1980s, the U.S. trade policy has been characterized by aggressive efforts to open up foreign markets. The Omnibus Trade and Competitiveness Act of 1988 (OTCA), one of the most important American trade laws, enacted Super 301, a provision which permits mandatory retaliation against unfair trade partners. It dictates the U.S. government to investigate whatever foreign trade practices deemed unfair and to break down import barriers of foreign markets with a threat of indiscriminating retaliation. The aim of Super 301 was to resolve the ever-increasing trade deficit in the 1980s. Although the U.S. had suffered trade imbalance since the early 1970s, the new policy instrument to deal with that same problem was fundamentally different from those used in the past. Until the early 1980s, the U.S. tried to decrease trade deficit by restricting foreign imports. Super 301, on the contrary, aimed at achieving the same goal by forcing other governments to open their markets to American exporters.

The foundation of Super 301 was Section 301 of the Trade Act of 1974. The original Section 301 had remained dormant, rarely put into action, until revived in a much more powerful version by the OTCA. In the past, U.S. trade policymakers had been reluctant to use Section 301, considering it "a tool of *very last resort*," for it was too aggressive (Clements 1983: 50). But now Super 301 has become the primary weapons for American trade warriors. This implies that American trade policy system has undergone a fundamental transition. The enactment of the OTCA and Super 301 was not merely another policy revision; it signaled an institutional change of the whole trade policy regime of the U.S. This paper analyzes why and how that institutional change occurred.

2. THE OMNIBUS TRADE AND COMPETITIVENESS ACT AND SUPER 301

In early 1986, the House proposed H.R. 4800, the Trade and International Economic Policy Bill, which was composed of diverse bills from six committees (*Congressional*

Quarterly 24 May, 1986: 1154-1158). In the same year, the House Finance Committee introduced a similar bill, S. 1860. In 1987, the House bill was reintroduced as H.R. 3, entitled the Omnibus Trade and Competitiveness Bill, while the Senate bill was also reintroduced as S. 490. In June, 1987, ten bills from nine Senate committees, including S. 490, were combined into a larger single bill for floor action (*Congressional Quarterly* 20 June, 1987: 1318-1321). On April 30, the House passed H.R. 3; the Senate passed its version of H.R. 3 on July 21.

Although H.R. 3 was passed in both chambers, it had to wait for almost a year to be enacted as a law. First of all, it was not easy for the conference committee to reconcile the differences between two 1,000-page bills. Indeed, the conference committee itself was a huge group: 44 senators from 9 Senate committees and 144 House members from 14 committees. In addition, President Reagan had already labeled the bill "protectionist" and promised to veto the bill if it survived the conference. Criticizing H.R. 3, Treasury Secretary James A. Baker III declared sector-specific legislation "the wrong way to go," and warned that mandatory retaliation would ignite a trade war and worldwide recession (*Congressional Quarterly* 21 February, 1987: 335). However, the White House proposed on February 19, 1987, a similar trade competitiveness bill (S. 539, H.R. 1155) which the administration officials called "import relief," not "protectionist." When H.R. 3 was referred to him, Reagan did veto the bill on May 24, 1988, with nominal objections to the plant-closing notice provisions and the restraints on the export of Alaskan oil (*Business America* 6 June, 1988: 16-17).

A few months later, however, both chambers passed the bill again with sufficient support to override another veto by the President. On July 13, 1988, the House passed by a lopsided 376-45 vote, a new version of the omnibus trade bill (H.R. 4848). The Senate also passed it on a sweeping 85-11 vote on August 3. On August 23, 1988, President Reagan finally signed the OTCA of 1988 (Public Law No. 100-418) (*Congressional Quarterly* 22 October, 1988: 3083). Having been bipartisan from its early origin, this massive legislative crusade represents the heightened anger and anxiety of Congress over the administration's inaction on huge trade deficits (*Congressional Quarterly* 6 August, 1988: 2215-2222).

The OTCA significantly amended the 1974 Trade Act's Section 301, which was primarily intended to ease American firms' access to foreign markets. The original statute provided that Section 301 may be used to take action against "any act, policy or practice of a foreign country that the President determines 1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or 2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts Unites States commerce." (Lande and VanGrasstek 1986: 41) In contrast to the fairly strict statutory definitions in American trade laws for dumping and subsidization, Section 301 leaves a tremendous degree of latitude for the U.S. government.

Under the new amendment, the administration of Section 301 proceedings was profoundly strengthened. One important change was the transfer of final determination, decision-making, and implementation authority from the President to the USTR (U.S. Congress 1988: 3-4). Unlike the "old" Section 301, the USTR came to have the authority to determine not only whether foreign practices meet Section 301 criteria, but also whether and what type of action is appropriate. By transferring the central authority to the USTR, Super 301 substantially decreased presidential discretion, which in the past had been used by the Administration to avoid Section 301 actions. In contrast, Congress tightened its own ties to the USTR by requiring it to submit annual reports on unfair trade partners.

Also, the OTCA narrowed overall discretion in granting a remedy for violations of Section

301 by establishing categories in which relief is mandatory. The USTR must act wherever existing trade agreements have been violated or "unjustifiable" actions of a foreign country's policy or practice "burden and restrict United States commerce." The USTR may proceed against acts, policies, or practices that are "unreasonable or discriminatory" and burden or restrict U.S. commerce when it determines action would be appropriate.[1]

Moreover, Super 301 also orders the USTR to identify "Priority Foreign Countries" (PFCs) the elimination of whose unfair practices "is likely to have the most significant potential to increase United States exports."[2] In part, because very few Section 301 proceedings were materialized in the past, the Super 301 required self-initiated investigations on bundled or generic practices (*Business America* 24 October, 1988: 2-6), rather than waiting for sector-specific petitions. After the list of PFCs has been determined, the USTR must conduct negotiations with each of the individual countries designated. If no satisfactory agreements are reached within two years, then the USTR must take whatever retaliatory actions available against those countries.

3. POLICY REGIME

Policymakers do not act in a state of vacuum. They are surrounded by institutions, i.e. sets of commonly shared norms and rules. In other words, policymaking behavior is bounded by the institutionalized values and organizational arrangements to which all the actors ascribe. Policy regime refers to those institutional constraints concerning the policymaking process. The word 'regime' has been frequently used in political science. In a study about policy implementation, Elkin (1986) defined regime as a political arrangement that institutionalizes values important in public policymaking. According to Stoker (1989), regime is "a set of organizational arrangements that help to define and support the political values inherent in it." Stephen D. Krasner (1983: 2), in his work on international regimes, defined regime as a "set of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations." Following Krasner's conceptualization, J. Kim (1996) defined policy regime as a set of implicit or explicit principles, norms, rules, and decision-making procedures around which policymakers' expectations converge in a given policy issue-area. Principles refer to "beliefs of fact, causation, and rectitude" and norms mean "standards of behavior defined in terms of rights and obligations." Rules are "specific prescriptions or proscriptions for action" and decision-making procedures are "prevailing practices for making and implementing collective choice."

As the new institutionalism suggests, institutions govern the policymaking process by

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[1] "Unjustifiable" actions are those that actually violate the international legal rights of the U.S. In contrast, "unreasonable" actions refer to those that are not necessarily in violation of the international legal rights of the U.S. but "deemed" by the USTR to be "unfair and inequitable" nevertheless. An act is "discriminatory" when it denies national or most-favored-nation treatment to U.S. exports. See definitions in Public Law No. 100-418, Section 1301.

[2] On May 25, 1989, the USTR submitted to Congress the official report which designated three countries as PFCs: Japan for satellites, supercomputers, and wood products, Brazil for licensing requirements, and India for foreign investment and insurance. "U.S. Cites Japan, India, and Brazil as Unfair Traders," (*The New York Times* May 26, 1989).

defining the context in which policymakers act (Immergut 1998; March and Olsen 1989; Ostrom 1990: 51). Policy regimes function as a guide for simplification and a source for legitimacy as well. They simplify the complex policymaking task by delineating what is acceptable and what is not, thereby greatly reducing the number of alternatives to be considered. They also set a boundary of legitimate policymaking by determining what kinds of issues deserve to be on the public policy agenda, who is entitled to participate in the policy process and in what issues. They critically affect the selection of the goals and means of public policy by setting the criteria of legitimate policy objectives and acceptable policy measures. In short, policy regimes constrain policymaking behavior throughout the whole process.

Once established, policy regimes tend to endure for a long time. They remain unchanged even after the original circumstances which led to their creation are altered (Kranser 1976). That policy regimes, or institutions, are persistent is one of the major claims of the new institutionalist approach, which views the state as a set of institutional arrangements. One important implication of the "stickiness" of policy regimes is that, in explaining a policy outcome, it is not enough to examine current environmental changes or the immediate struggle for public policy (Ikenberry 1988); policymaking is significantly confined by prevailing policy regimes, which are a product of the past. Thus, the enduring nature of policy regimes installs some stability and inertia in the policymaking process regardless of the circumstantial variations.

While policy regimes do persist, they do not last forever; they may undergo quantum changes at times. Instrumental rules or procedures may be modified. More fundamentally, the underlying norms and principles may be altered or replaced with totally new ones. We may call the former case changes within policy regimes, and the latter case changes of policy regimes themselves. Of the two types of policy regime changes, it is the latter that significantly alters the basic characteristics of a policy regime. Placing too much emphasis on the persistent nature of institutions might make one overlook major policy shifts. Consequently, the new institutionalist approach is likely to miss the critical situation when those policy shifts signal significant changes in policy regimes themselves. In order to overcome this weakness, the researcher must be explicit about the possibility of institutional change as well as persistence. This is important because any changes in a policy regime would result in significant changes in the content, as well as the procedures, of policymaking. Since policy regimes govern the whole policy process, any changes in them would also change the policy outcomes.

A given problem accepted as a legitimate policy issue during one policy regime may no longer be so in another. Likewise, as policy regimes change, both the range of appropriate alternatives and the composition of legitimate participants in the policymaking process change. As the norms or principles regarding given issue area change, policy alternatives that used to be considered suitable for a given purpose may no longer be so. Sometimes, a measure that has been taboo might suddenly appear permissible. Therefore, what kinds of policy options will be considered proper alternatives and which one will be finally selected depends critically on the characteristics of the prevailing policy regime.

In this respect, one of the major functions of policy regimes is to provide what Kingdon (1984: 173) called a "policy window." According to his definition, the policy window is "an opportunity for advocates of proposals to push their pet solutions, or to push attention to their special problems." A policy regime opens the window to certain kinds of issues and alternatives while closing it to others. Changes in a policy regime result in changes in the range of issues and alternatives to which the policy window will be opened. Thus, a given policy option which had been dormant under the past policy regime may well be activated as a new regime, opening a policy window for it.

If policy regimes do change sometimes, then what are the sources of change? The forces that change policy regimes may originate in the state, the domestic society, or the international environment. Policy regime changes may be initiated by the state leaders. Policy regimes may change as a result of domestic political struggle or lobbying activities by societal groups. Also, changes in the international political economic circumstances may force a change of national policy regimes.

Given the sticky nature of policy regimes, there must be a very strong impetus for any change to occur. This is especially so in the case of a change in the norms and principles shared among policymakers, since they are matters of a value system. As psychological studies show, beliefs and attitudes of people do not change easily. Even in the presence of discrepant information, policymakers tend to maintain their beliefs and world views, rather than accept new circumstances and adjust their old belief systems (Jervis 1979: Ch. 6). Typically, some crisis situations force them to modify the way they perceive the world. As Roskin (1974) argued, a shift of "policy paradigm" could be triggered only when the application of the old ideas result in some policy catastrophe. Therefore, policy regimes are most likely to change when faced with some catalytic events.

4. THE OLD TRADE POLICY REGIME OF THE U.S.

The old American trade policy regime was originated from the failure of the high-tariff policy set by the Smoot-Hawley Act of 1930 and was established with the passage of the Reciprocal Trade Agreements Act (RTAA) of 1934. RTAA institutionalized two prominent features of the U.S. trade policy regime: 1) free trade as the basic principle, and 2) delegation of policy authority to the Executive branch as the decision-making norm.

4.1. Free Trade as the Basic Idea

Since the early 1930s, free trade had been the central philosophy underlying U.S. trade policymaking. As Baldwin (1984: 5) pointed out, "trade liberalization [was] the most noteworthy feature of U.S. commercial policy over the past fifty years." After World War II, the U.S. had pushed other countries to participate in building a liberal international economic order. As the global economic hegemon, the U.S. took the lead in reducing tariffs and removing other discriminatory trade restrictions. Through a series of multilateral and bilateral negotiations, for instance, U.S. tariffs had been cut to only about 20 percent of their 1930 average level. By doing so, the U.S. provided open markets for other nations to freely export their goods.

At that time, the provision of open markets by the U.S. was not strictly reciprocal. In fact, the U.S. tolerated discriminatory policies by other countries against American exports (Keohane 1984: 139). The reason it allowed Europe or Japan to "cheat" was "because their industries posed no threat to American producers" (Goldstein 1986: 165). Even though the U.S. market was freely open, few foreign producers could actually compete with American firms. Moreover, the role of international trade was far less important in the American economy than domestic commerce. Thus, the U.S. had little to lose even if it opened its market without requiring strictly reciprocal market access abroad. In addition, liberal trade policy was further buttressed by a security concern (Destler 1986a: 5). In order to counter the threat of communism, it was necessary for the U.S. to help its pro-American allies prosper. For that purpose, the U.S. was willing to tolerate their protectionist policies. Thus, due to the combination of the unchallenged competitiveness of the American industries and the global security concerns, the U.S. maintained free trade policy, often one-sidedly. It simply did not care about trade barriers in other countries.

Continuation of the open-market policy for nearly half a century had institutionalized a strong commitment to the idea of free trade in the U.S. trade policymaking circles. There existed, as Goldstein (1986: 179) expressed, a "free trade bias" in the beliefs held by central U.S. decision makers. The Great Depression had set the stage for this liberal trade policy in the U.S. The failure of the Smoot-Hawley tariff caused a policy crisis as it deepened the Depression further by stimulating country after country to raise tariff barriers in retaliation, thereby stagnating world trade. Having experienced the utter bankruptcy of the high-trade-barriers policy, the American political community abandoned protectionism and searched for a new and hopefully more successful alternative. This policy vacuum was filled in by the ideology of free trade. Not only did the free trade idea promise to increase global welfare by promoting mutual benefits, but it also was in harmony with political liberalism, i.e. democracy, that the U.S. advocated after World War II.

However, America's version of economic liberalism was not pure free trade, but rather what Ruggie (1983) called the "compromise of embedded liberalism." The essence of this historic compromise was to pose the balance between economic liberalism and economic nationalism. While encouraging the benefits of international free trade, the government also assumed much more direct responsibility for domestic social security and economic stability. That is, in order to pacify the potentially destructive protectionist demand, U.S. trade laws provided "safeguard" provisions, such as the "Escape Clause," which were designed to help domestic industries injured by the increased penetration of foreign imports. In addition, to protect American firms from unfairly traded foreign imports, antidumping and countervailing duties provisions were made available as policy tools. Thus, the U.S. could pursue a free trade policy even though it might hurt some domestic industries, because they were guaranteed of relief from the government.

Nevertheless, the central focus was on free trade. Fair trade mattered little when the U.S. was the unchallenged global economic hegemon, and safeguard provisions were the exception, not the rule. In sum, American trade policymaking had been "dominated by a belief in the efficacy of free trade," which was institutionalized to "ensure minimal legitimacy for social claims for protectionism" (Goldstein 1988: 181).

4.2. Delegation to the Executive Branch

In the U.S., both Congress and the Executive are responsible, in varying degrees, for making foreign trade policy. Formally, it is the legislative branch which has the ultimate authority over the matters regarding international trade. According to the U.S. Constitution, it has the power to regulate commerce with foreign nations and to levy duties and tariffs (Article 1, section 8). However, the Constitution leaves somewhat vague the relationship between Congress and the President in foreign trade policymaking. Even though it grants no trade-specific authority to the President, he nevertheless has the power to conduct foreign relations (Article 2, section 2). Thus, foreign trade policy falls into what Robert H. Jackson called "twilight zone," in which Congress and the President share concurrent authority or the distribution of authority is uncertain (Mann 1989: 5). Since international trade occurs at the intersection between the two branches' duties, i.e. foreign commerce and foreign relations, neither has monopolized trade policymaking. Rather, U.S. trade policy has been shaped through the interaction between Congress and Executive (Pastor 1980: 50).

Since the passage of the RTAA in 1934, however, Congress as a rule has stayed out of making specific trade policies by delegating its authority to the executive branch. According to Holmer (1987: 13), "the debacle over the Smoot-Hawley Tariff Act of 1930 and its contribution to Depression encouraged Congress to cede a greater role to the executive branch and the President in this increasingly complex area." Within four years after the passage of the disastrous Smoot-Hawley, Congress surrendered to the executive branch its Constitutional authority to determine the tariff level. This historic shift of authority was achieved by the RTAA, which allowed the President to negotiate tariff-reduction agreements with U.S. trading partners (Haggard 1988). Since the tariff was the primary tool of trade policy at that time, this delegation meant a "hands-off" position for Congress in the area of foreign trade. Thus, with the passage of the RTAA, the delegation of trade policymaking authority became institutionalized, rather than merely *ad hoc*. Why, then, did Congress voluntarily give up its Constitution-given authority?

The most important reason was that Congress wanted to insulate itself from domestic protectionist pressures. After the failure of the infamous Smoot-Hawley Act, congressional members had to face a contradictory political reality. That is, it was generally accepted that "'protectionism' was bad," but at the same time the "'free trader' label was not politically rewarding either" (Destler 1986b: 98). Consequently, foreign trade became at best a second-order issue for congressional politicians; it was not the stuff from which national reputation could be made, or an election won. Nevertheless, Congressmen could not completely escape from the societal pressures since, under the Constitution, they had the primary responsibility for regulating "commerce with foreign nations."

As a solution to this dilemma, "Congress legislated itself out of the business of making product-specific trade law" (Destler 1986a: 11). By giving away the trade policymaking authority to the executive, members of Congress could protect themselves from the protectionist pressure. When businessmen demanded import protection, they could be referred to the Administration's bureaucrats, who did not need to be as sensitive as politicians to constituents' demands. In fact, this system gave great leeway to the members of Congress. They were free to make noise, to give protectionist speeches, to introduce bills favoring particular sectors, or to do whatever that would make them look sympathetic to protectionist demands, knowing that nothing statutory was likely to result from their gestures. Regardless of what they were doing, Congress members "could avoid final responsibility for product-by-product trade action, and thus avoid the choice between what they felt to be good politics and what they believed to be good policy" (Destler 1986a: 31). In other words, "Congress, recognizing its vulnerability to industries seeking import restrictions, opted to exercise 'voluntary legislative restraint'" (Destler 1986b: 98).

5. CHANGE OF THE AMERICAN TRADE POLICY REGIME

The institutional change of the post-war trade policy regime of America was triggered by a huge amount of trade deficit in the 1980s. Until the mid 1970s, the U.S. had maintained a relatively favorable balance of payment in foreign trade. However, the trade deficit of 24.3 billion dollars in 1980 soared to 106.7 billion dollars in 1984 and reached a record high level of 159.6 billion dollars in 1987. It was at this point that the new trade policy regime started officially with the passage of the OTCA. This burgeoning trade deficit had put the old policy regime under severe "stress" (Destler 1986b: 98). The rapid aggravation of trade balance turned out to be a critical crisis that broke down the old system. The new policy regime which continues to persist today is characterized by significant changes of the basic principle of trade policy — from free trade to aggressive reciprocity — and of the decision-making norm — substantial increase of congressional influences on trade policy.

5.1. Fair Trade and Aggressive Reciprocity

Since the 1980s, the central emphasis of American trade policy has shifted from *free* trade to *fair* trade, which emphasizes *reciprocity* as the new principle (Bhagwati and Irwin 1987: 98). Of course, this does not mean that in the past the U.S. had single-mindedly pursued free trade and now has switched completely to fair trade. As Goldstein (1988) correctly pointed out, it is true that the U.S. trade policy throughout the post-war period contained both free and fair trade components. However, she didn't recognize that there was indeed a fundamental shift of the basic idea underlying the American trade policy regime. While both free and fair trade elements had coexisted in American trade policies and laws, the relative importance of each element as a primary policy objective did change. In the past, only the free trade aspect was emphasized while the fair trade side was largely neglected. During the American hegemonic period, it hardly mattered to the U.S. whether others were playing fairly or unfairly since foreign economies could not match the American economy anyway. However, it mattered a lot when the relative strength of the American economy was on the decline.[3] The U.S. would no longer tolerate "unfair" practices of other countries alleged to have eroded American competitiveness. Now, the U.S. wants every partner to be a fair trader. Consequently, the focus of U.S. trade policy has shifted from free trade to fair trade.[4] The latter is emphasized as an essential prerequisite for the former. That is, "'free trade' *must be reciprocal*, or else the trade is *not* free."[5]

This change in the basic norm occurred both in the Administration and in Congress. In the 1980s, the Administration shifted its previous policy emphasis on "free" and non-interventionist trade toward "fair" trade (Y. Park 1988: 37). As Baldwin (1983: 21) argued, the Reagan administration pursued the goal of fair trade more vigorously than any previous administration. When it first came to office, it had no strong, consistent convictions on trade policy. However, by mid-1981, it had developed a more comprehensive statement of U.S.

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[3] According to Bhagwati (1988), the decline of the United Sates in relation to world income and trade created a psychological trauma, or what he called the "diminished giant syndrome." This panic, he argued, was the main reason behind the shift in the basic idea of U.S. trade policy.

[4] The typical dichotomy between protectionism and liberalism is no longer adequate in today's complex international trade(Milner and Yoffie 1989: 239). Discrete from both ideas, the principle of reciprocity, as embodied in the strong call for fair trade, is itself a distinct idea. Thus, the lack of clear evidences for the resurge of protectionism does not necessarily mean the survival of liberalism. The U.S. trade policy has moved away from both typical ideas toward a third one, reciprocity.

[5] *Telecommunications Trade Act of 1984*, Hearing before the Subcommittee on International Trade of the Committee on Finance, U.S. Senate, S.Hrg. 98-1222 (September 12) 1984, p. 29.

trade policy. In July, Ambassador William Brock of the USTR officially announced the Reagan administration's stance on trade issues before the Senate Finance Committee. In this 'Statement on U.S. Trade Policy,' Brock maintained that "free trade, consistent with mutually accepted trading relations," (Niskanen 1988: 39) was essential to the pursuit of the goal of a strong U.S. economy. At the same time, however, he emphasized that the Administration would more strictly enforce U.S. laws and international agreements regulating unfair trade practices (Baldwin 1983: 11).

In its second term, the Reagan administration made a clearer shift of policy emphasis from free trade to fair trade. In 1985, the White House prepared a draft "Trade Policy Action Plan," which renewed President Reagan's commitment to free trade. Under the auspices of White House Chief of Staff Donald T. Regan, it was revised to conclude that "if trade is not fair for all, then trade is 'free' in name only" (Niskanen 1988: 40). The major element of Reagan's new trade program was the initiation of a series of actions against "unfair" trade practices by other governments, with the definition of fair trade being made unilaterally by the U.S. considering the long tradition of the executive branch's unilateral commitment to free trade, this was a significant change indeed.[6]

The waking-up of the fair trade idea has given a subtle, but very significant, twist to the concept of "fairness." The U.S. now increased the "demand for 'fair' share of overseas markets for its own industries on the basis of the reciprocity principle" (C. Kim 1988: 81). While the increase in antidumping and countervailing duty actions showed a growing concern over fair play *within* the U.S., Section 301 actions reflected the new concern over fair play *outside* the U.S. as well. Since its inception in 1974, petitions based on Section 301 had never been raised until 1979. During the first half of the 1980s, however, more than 40 petitions were filed (C. Kim 1986: 11). By the end of 1984, 47 investigations were initiated under Section 301, but not a single one led to direct retaliation under the statute. Section 301 authority was first used in June 1985, when President Reagan ordered that increased duties be assessed against European pasta (Lande and VanGrasstek 1984: 46).

This pattern of increased use of Section 301, which Goldstein hardly considered, suggests that there was indeed a substantial shift of the basic idea of U.S. trade policy. Not only has the U.S. increasingly required foreign producers to be fair in the American market, but it has actively demanded that foreign governments be fair in their markets also. That is, the U.S. has become more and more willing to curb unfair practices in foreign markets as well as at home. In this vein, James A. Baker III (1987: 5), then Treasury Secretary proclaimed that it was the Reagan administration's principal duty and also the centerpiece of its trade policy to seek to remove unfair foreign trade barriers. Thus, whereas the U.S. in the past used to punish unfair competition only in "my court," it now sought to "level the playing field" in "their courts," too. Therefore, although the fair trade element had already existed in the existing U.S. trade policy regime, not only has it been much more emphasized for the sake of import-competing

[6] The Administration's new emphasis on fair trade was manifested in the records of actions under unfair trade statutes. In response to industry petitions, the Department of Commerce initiated 10 countervailing duty investigations in 1980, 27 in 1981, 30 in 1983, and 43 in 1985. In contrast, there had been only one investigation initiated in 1973 and five in 1974. Also, antidumping investigations increased from 26 cases in 1979 to 46 in 1980, 62 in 1982, and 76 in 1984 (Destler 1986a: 125). During the 16-year period from 1958 to 1974, 52 antidumping petitions and only two countervailing duty petitions were filed. However, those numbers increased to 74 and 61 respectively during just half the previous period, from 1975 to 1983 (Goldstein 1988) What these statistics reveal is that, even though such measures had been legal, they were far less frequently invoked in the past. In other words, "fair" trade components existed in the code books more than in actual practices.

industries, but it also is now posing a more aggressive stance toward other countries for the sake of American exporters.

This change of policy emphasis was largely initiated by Congress' new reciprocity movement, which signaled a major departure from the traditional free trade policy. In case of Congress, which had long been less enthusiastic about free trade than the executive branch, the rise of concern about the "unfairness issue" was more conspicuous and aggressive. Frustrated with record-breaking trade deficits in the 1980s, Congress urged action against foreign unfair practices which it believed to be a major cause of the U.S. trade deficit. Even though some members recognized that other factors, such as the strong dollar or macroeconomic policy were important, they nevertheless tended to emphasize "unfair trade" as the major source of the deficit (Stern 1990: 50). Indeed, the widespread perception in Congress was that "the borders of the Unites States are far more open than those of virtually all other countries and that, through trade barriers and financial assistance, foreign governments are creating competitive advantages for their firms to the detriment of unaided American industries" (Maskus 1987: 415). It was not fair, Congress argued, that foreign imports received better treatment in the American market than U.S. exports did in foreign markets.

The growing complaints against foreign unfair practices led to the search for fair trade by ensuring reciprocally equal opportunities for American firms in foreign markets. In particular, the concept of reciprocity has shifted "from the traditional concern with equality of concessions exchanged in negotiations to concerns with the equality of the remaining restrictions and their impact upon trade" (Gadbaw 1982: 694). In order to achieve this new reciprocity, members of Congress relied on their own legislative power rather than the administrative actions. This was because Congress perceived that the Administration had been timid and not tough enough in its efforts to rectify foreign unfair practices. Congress wanted action, not just talks.

Most of the trade bills introduced in the 1980s aimed at eliminating unfair trade barriers abroad and obtaining reciprocal market access for U.S. exports. The first major reciprocity bill was the Reciprocal Trade and Investment Act of 1982, introduced by Senator John Danforth, Chairman of the Senate Finance International Trade Subcommittee. He claimed "it would for the first time establish reciprocal market access as a principle of U.S. trade policy" (Ahearn and Reifman 1983: 38). Most of the following bills also adopted as the central policy objective the obtainment of "substantially equitable competitive opportunities," initially proposed by Danforth. To U.S. trading partners, the reciprocal trade legislation sent the strong message that, as Chairman of the House Ways and Means Committee Dan Rostenkowski put it, "the time for excuses is over" (*Congressional Quarterly* 28 March, 1987: 554). That is, the U.S. would no longer tolerate unfair trade restrictions on U.S. exports overseas.

In order to obtain reciprocal treatment from trading partners, Congress opted to use access to the U.S. market as a bargaining chip. It was the core argument of these congressional reciprocity bills that only serious threats of retaliation, made credible by deadline and automatic retaliation triggering mechanisms, could convince intractable trading partners to cease their unfair practices (Maskus 1987: 415). Since the U.S. is the largest market in the international economy, it was believed, no country could afford to lose its export opportunity. Thus, a threat to close the American market in retaliation would be a forceful "stick" to make other countries more amenable to the U.S. demand to liberalize their markets. As Rostenkowski put it, "it is [a message] that they will ignore at their own peril"(*Congressional Quarterly* 28 March, 1987: 554). In this sense, the new reciprocity is aggressive in that it uses a threat of retaliation as leverage to secure the "level playing field" (Cline 1983: 16-17).

In fact, reciprocity was claimed to be a kind of "second best" alternative to secure free trade. Ideally, "[t]he doctrine of free trade dictates free access for foreign products *irrespective* of what other countries may do."(Dell 1986: 126) In a time of relative decline, however, it was extremely difficult for the U.S. to unilaterally maintain an open-door position (Krugman 1990). In this situation, "an eye for an eye ... is maybe the only language they understand," said Senator Bob Packwood who chaired the Senate Finance Committee (*Congressional Quarterly* 30 March, 1985: 609). In several cases of trade disputes, Rhodes (1989) confirmed empirically that reciprocity is indeed an effective means of eliciting cooperation from trading partners. In this sense, Super 301 demonstrated the strong determination of Congress to employ what Baldwin (1988: 254) called the "aggressive approach to liberalization." As a powerful weapon for American negotiators, Super 301 utilized the large American market as a leverage to drive foreign governments to reciprocal liberalization.

5.2. Renewed Congressional Activism in Trade Policymaking

Another prominent feature of the new trade policy regime was "renewed congressional activism" in the area of foreign trade (Mann 1989: 1). Since the passage of the RTAA in 1934, Congress had stayed out of the troublesome business of making specific trade policy decisions by delegating its policymaking authority to the executive branch. Congressional members wanted to be insulated from the domestic protectionist pressure. In this respect, the old trade policy regime was, as Destler (1986b: 96) has put it, the system of "protection for Congress." However, this cozy system had been under increasing "stress," which became particularly sore in the 1980s (Destler 1986a). Compared to the previous periods, the 1980s saw Congress show a far greater concern about foreign trade and seek to regain its constitutional authority to "regulate commerce with foreign nations." The pace of congressional involvement in trade policymaking accelerated during the Reagan presidency.

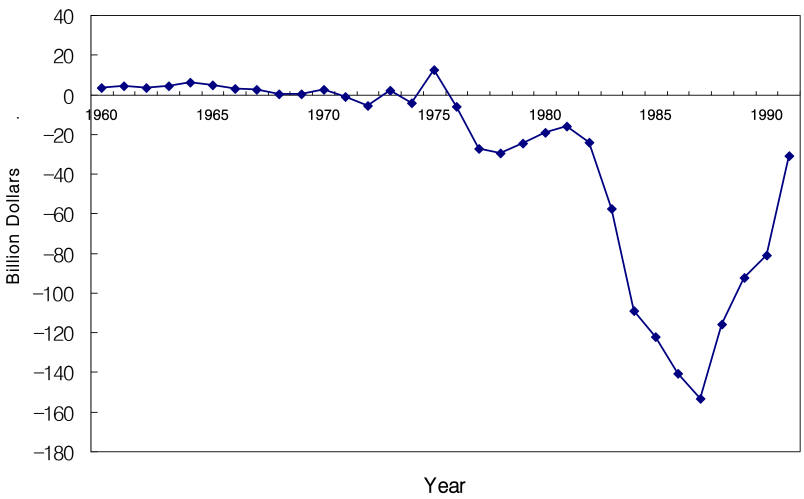
Why did this change occur? The simplest answer is that the old system no longer worked. But, two further questions follow. First, how did the old system function successfully? Second, why and how did it change in the 1980s?

According to Fürst (1989: 67-68), a pattern had been developed since the 1930s in the inter-branch politics between the legislative and the executive branches. Faced with pressure from interest groups, Congress demanded more protectionist measures. In response, the President initiated new rounds of bilateral or multilateral negotiations. Any agreement reached on the negotiation table was sent back to Congress for approval. At this point, both branches compromised: the executive responded to protectionist demands, and Congress quickly pushed through the legislation exercising self-restraint.

The key to this interaction mechanism was the executive's responsiveness to signals from Congress and presidential leadership in the process of creating a new trade act. Traditionally, Congress was a whistle-blower for unfair trade practices and an advocate of more protectionist policy, while the Administration was an adroit policy blender, mixing protectionist demands with free trade policies. This institutionalized division of labor between the two branches made it possible to protect Congress, as well as the President, from domestic pressures. For Congress, pressures from special-interest groups could be relieved by granting the President authority for trade policymaking and negotiations. The President, on the other hand, could be exempted from protectionist pressures by calling for new international trade negotiations, which not only demonstrated his being responsive to them, but also helped build public support for free trade policy. This mechanism continued to function relatively well into the 1970s.

In the 1980s, however, this system began to break down because of burgeoning trade deficits. The balance in the division of labor between the two branches became increasingly unstable as the Administration failed to quench the domestic thirst for protectionism. During the 1970s and 1980s, the international environment for U.S. trade policy changed significantly. The world became a tougher place for America to compete in; the relative position of the U.S. in the global economy declined as Japan and Asian NICs joined European rivals. As figure 1 clearly shows, the overall trade deficit burgeoned in the 1980s, reflecting that structural change. A nation-wide sense of crisis developed in America. Naturally, there occurred a strong demand to deal with the trade deficit. In order to reduce it, two options were possible. One was to restrict imports, which had a strong flavor of protectionism, and the other was to expand exports, which became the central tenet of the reciprocity movement. Some industries demanded protectionist policies, while some others sought reciprocal trade policies. Regardless of their policy preference, all industries pressed both Congress and the Administration for action. In order to alleviate these pressures, Congress in turn had to lean harder than ever on the Administration, pushing it to act on trade problems.

Figure 1. U.S. Trade Deficit



However, administrative actions did not bring about any immediate cure. Due to its long commitment to free trade, the Administration was reluctant to impose import restrictions. On the other hand, foreign governments were not amenable to pleas to open their markets and lift restrictions on American exports. Bilateral negotiations with important surplus nations produced little visible evidence that the situation was being improved. Trade talks dragged on while the U.S. trade deficit broke records year after year. Such slow progress could not soothe the frustrated Congress.

With so little achievement on such a crucial problem, Congressional members naturally developed “a near universal, bipartisan consensus that the White House was doing nothing about the trade problem and perhaps did not even recognize its existence” (Destler 1986b: 102). In fact, Congress grew more and more skeptical over the Administration’s trade policy. Not only did Congress perceive that “the President doesn’t care about trade,” but it also complained that the Administration’s trade policy was unclear, weak, inconsistent, confusing, even nonexistent (Ahearn and Reifman 1986: 108). Moreover, Congress’ frustration on trade issues was further exacerbated by its perception that the President tended to wield his discretion, granted by existing trade laws, to subordinate U.S. economic concerns to diplomatic and security ones (Stern 1990: 51). For instance, Senator Bill Bradley contended that the Administration “must stop treating trade policy as a stepchild of foreign policy”(U.S. Congress 1984: 3). Despite the unprecedented trade imbalance, Congress believed, the Reagan Administration was not sufficiently tough in administering U.S. laws dealing with unfair trade practices. Consequently, the frustration of Congress members grew larger since the Administration was not providing them with “political help and political insulation at a time when they needed it more than ever” (Destler 1986b: 103).

Having lost faith in the Administration’s trade policy, Congress found itself under enormous pressure to do something on its own. Now it became resolute to fully exercise its constitutional authority to regulate commerce with foreign nations by drafting trade bills. So, the number of bills soared.

The direction of this new legislation was significantly shaped by the way Congress perceived the situation. The basic thrust of the major comprehensive trade bills was threefold. First, Congress wanted to obtain “more open, equitable, and reciprocal market access” by reducing or eliminating “barriers and other trade distorting policies and practices.”[7] Since it believed, correctly or not, that the U.S. was the only country in the world with a genuine free trade policy, it sought to ensure fairness by forcing other nations to imitate “liberal America.” Demanding the reciprocal opening of foreign markets was politically attractive, too, since it allowed the politicians to sound tough but not protectionist (Maskus 1987: 416). Second, Congress wanted to strengthen unfair trade provisions as much as possible. Section 301 of the Trade Act of 1974 was thought to be the best candidate since the threat to close the U.S. market in retaliation seemed to be the only workable alternative to eliminate foreign trade barriers. Thus, Congress fortified the provisions, and the Super 301 was born.

Third, while strengthening Section 301, Congress also sought to reduce presidential discretion in the use of that weapon. In the past, it had virtually no control over Section 301 proceedings since it was the President who had the final authority to determine whether or not any action was necessary, as well as what kinds, if any. Congress sought to minimize the presidential discretion by transferring decision-making authority to the U.S. Trade Representative, which had originally been created by Congress and placed inside the executive branch. At the same time, Congress did not allow the USTR much discretion, either. It tightened control over the USTR by installing automatic triggering mechanism and making important actions mandatory. In a sense, Super 301 targeted not only foreign countries but also the Executive.

In the summer of 1985, three prominent Democrats on trade committees Bensten of Senate Finance, and Rostenkowski and Gephardt, both of House Ways and Means co-sponsored a bill to impose a surcharge on those countries running heavy trade surpluses with the U.S. After

[7] Public Law No. 100-418, Section 1101, (a).

several modifications later, their bill ultimately became the Omnibus Trade and Competitiveness Bill of 1988 (H.R. 3), which was the culmination of Congress' bipartisan effort to take initiative in trade policy. Although President Reagan vetoed the bill, lopsided votes in both the Senate and the House finally overrode his objection. The enactment of this massive bill marked a turning point in the U.S. trade policy regime.

What, then, is the significance of the shift in trade policymaking authority? It would have meant nothing at all if Congress and the Administration had shared exactly the same policy preferences. In general, the Administration and Congress had similar policy objectives. Both branches agreed that the highest priority should be to expand exports opportunities by opening foreign markets and eliminating trade barriers overseas. However, they differed over how to achieve that goal. Congress wanted mandatory actions with little room for discretionary decisions by administrative officials, whereas the Executive wanted increased authority.

A good example of the controversy between Congress and the Administration was Super 301. Initially, the Reagan Administration agreed with Congress on greater use of Section 301. There was a proviso, though. It supported the revision as long as any amendment explicitly extended the President's authority in deciding when to employ the strengthened Section 301 (Baldwin 1983: 22). Therefore, when Congress narrowed the President's discretion, the Administration strenuously opposed the revision. For example, the former U.S. Trade Representative Clayton Yeutter even called the congressional revision of Section 301 the "H-bomb of trade policy," warning of the negative impacts of mandatory retaliation provisions (*Congressional Quarterly* 35 April, 1987: 770). When both chambers of Congress finally worked out a reconciled version of H.R. 3 in the spring of 1988, President Reagan vetoed the bill, denouncing it as protectionist. However, his veto could not stop Congress. By eliciting bipartisan unity on the trade issue, Congress finally overrode the President's veto to enact the bill into one of the most important trade laws in the U.S. history.

6. CONCLUSION

This paper analyzed through the concept of policy regime the institutional change of American trade policy. Policy regimes function as institutional frameworks that basically shape and constrain the whole policymaking process. As the new institutionalism suggests, policy regimes tend to last long after environmental circumstances are altered. U.S. trade policy provides a good case for the study of institutional persistence and change. The old policy regime, established in the 1930s, had endured for about fifty years. But institutions do change sometimes. In case of American trade policy, a crisis situation triggered by huge trade deficits in the 1980s finally brought about the change of the U.S. trade policy regime. Table 1 summarizes the main characteristics of each policy regime.

The enactment of the OTCA of 1988 clearly showed the institutional change of U.S trade policy in two aspects. First, the central policy ideology had shifted from free trade to fair trade, emphasizing aggressive reciprocity embodied in Super 301 as a new basic principle. In the past, such a policy measure would have been rejected as a contradiction to the idea of free trade. Second, the policymaking authority in foreign trade shifted from the executive back to the legislative branch. Perplexed with the Administration's failure to solve problems related to trade deficits, Congress was determined to regain its initiative in trade policy. The current American trade policy regime is likely to persist for a very long time in the future unless some catastrophic incidents occur.

Table 1. Changes of the U.S. Trade Policy Regime

Period	Principle	Norm	Rule	Decision-making Process	Cause of Policy Regime Change
Before the 1930s	Protectionism	Infant Industry Protection	High Tariff	The Legislative	-
1940s～1970s	Free Trade	U.S. Free Market	No Trade Retaliation	The Executive	Great Depression
After the mid 1980s	Fair Trade	Aggressive Reciprocity	Super 301	The Legislative	Burgeoning Trade Deficit

What does the analysis of this paper imply then? Super 301 was revived three times during the Clinton Administration; in March 1994 right after the conclusion of the U.R. negotiation in December 1993, in September 1995 the same year the WTO was launched, and in January 1999 after Clinton's reelection. The U.S.T.R. regularly investigates foreign governments' policies and practices regarding intellectual property rights and publishes Special 301 reports annually (U.S.T.R. 2006). The message is clear. In order to open up foreign markets, as the USTR ex-ambassador Barshevsky acknowledged, the U.S. is willing to wield such unilateral measures as Super 301 or Special 301 whenever it likes to, despite the existence of the WTO (Kim 2001). Considering the sticky nature of policy regime, it is not surprising to see the U.S. keep pressing hard on its trade partners for more and more open markets.

This certainly poses a serious threat for Korea. Ever since the 1980s, Korea has experienced numerous trade conflicts with the U.S., most of which were invoked by the U.S. demand to open Korean market. One might point to the fact that Super 301 has never been actually exercised after the establishment of the WTO in 1995. But the essence of the current trade policy regime of the U.S. is its focus on fair trade. American trade policymakers have frequently vowed that U.S. would utilize whatever measures that seem effective to break down foreign trade barriers and secure American business interests overseas. Super 301 is just one of such policy options for that purpose. Mastel (1996: 54-56) argues that the U.S. trade partners do not have to worry too much since Super 301 has never led to actual trade war. Bayard and Elliott (1994: 45) claimed that Clinton's Super 301 was much softer than the old one. However, the "ordinary" Section 301 itself has been much strengthened to a degree unimaginable in the past. Yeutter grasped the essence of Super 301 when he called it "H-bomb of trade policy." Nuclear powers exercise inconceivable power over non-nuclear states not because they actually deploy nuclear bombs but because they just have them. The mere possession of nuclear weapons throws formidable threats upon other countries. The Section 301 provisions play exactly the same role in trade wars.

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