

The Strategic Logic of International Agreement Design

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April 2016

Thesis submitted in partial fulfilment of the requirements for the degree of DPhil in
International Relations in the Department of Politics and International Relations at the
University of Oxford

Word Count: 65,810

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Abstract

Conventional wisdom suggests that weak international actors should avoid concluding ambiguous agreements with much stronger partners because this increases their vulnerability to subsequent exploitation. Why then do we observe so many instances of just such agreements signed under conditions of extreme power asymmetry? I answer this question by emphasising an underappreciated factor shaping the agreement design strategies of actors: Power trajectory. Focusing on international trade, I develop a three-part framework which demonstrates first, that powerful but rising states gain from securing narrow agreements because as the scope of these agreements is broadened, they are provided with more opportunities to use their growing power to secure increasingly favourable deals. Conversely, powerful but declining states are incentivised to conclude broad agreements as a way to lock-in an advantage that will decline over time.

Second, I demonstrate that because of the particular vulnerabilities faced by weak states as a result of these narrow agreements, strong but rising powers are often required to make up-front concessions in order to secure their preferred contract and overcome the fears of their weaker counterparts. Third, I show that powerful but rising states can reap the benefits of subsequent rounds of bargaining because the initial agreement has induced the weaker party to make transaction specific investments which serve to drastically reduce its exit options.

In developing this framework, I make three contributions; *first*, from a theoretical standpoint I specify more precisely the conditions under which powerful states choose to tie their hands and so qualify both the liberal claim that powerful states must always do so, and the realist suggestion that they strive to maintain freedom of action. *Second*, I make an empirical contribution by placing the trade policies of four major economic powers in detailed comparative perspective. *Finally*, I make a substantive contribution by demonstrating yet another mechanism by which the strong secure their preferences at the expense of the weak in international affairs.

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Abbreviations

ASEAN	Association of South East Asian Nations
BOP	Balance of Payments
DRM	Dispute Resolution Mechanism
DSM	Dispute Settlement Mechanism
EHP	Early Harvest Program
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
IPR	Intellectual Property Rights
NAFTA	North American Free Trade Area
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
WTO	World Trade Organization

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Acknowledgements

There are a number of people to thank in particular for their role in supporting the completion of this project. First of all, I would like to thank Duncan Snidal for his support, guidance, and thoughtful insights over the course of the DPhil. I found our regular discussions not only constructive but enjoyable and his ability to focus in on the root of the matter was crucial in pushing me to clarify my ideas. I would also like to express my gratitude to Walter Mattli who has offered me invaluable support and advice since I first arrived in Oxford to begin my MPhil. I thank also both Karolina Milewicz for her helpful suggestions on this project at the confirmation stage, and Christina Davis for her comments on earlier drafts of this project during my time in Princeton.

I would like to include in my thanks my college, Balliol, who have supported me throughout the DPhil, not least through the generosity of the Bower Scholarship. I thank also the Department of Politics and International Relations for the financial support provided to me throughout this project and would like to record my gratitude for receiving a Vice Chancellor's Award from the University of Oxford. I also thank Princeton University, the Procter Fellowship, and the Fulbright Program for their financial and research support during my third year.

In acknowledging the input of others I would like to highlight in particular the contribution of my partner Julia and thank her for her unwavering support, perceptive advice, understanding, and limitless patience, throughout the many years of the DPhil, without which this thesis would not have been completed.

I would also like to express my appreciation for the friendship and advice of my fellow DPhil students throughout the course of my degree, particularly Quentin Bruneau, James Hollway, Katherine Millar, Ellen Ravndal, Densua Mumford, Jack Seddon, and Tom Wallenius. Last but not least, I would like to thank my family for their continual support over the years, I dedicate this thesis to them.

Part I: International Contracts in the Shadow of Power

Chapter 1: The Strategic Consequences of International Cooperation

The very study of international relations is founded upon an analogy drawn between the state of nature and the anarchical structure of the international system because in both environments the central problem created by the absence of formal authority is thought to be how cooperation can be sustained when individual actors have incentives to renege on the commitments that they make.¹ In important ways however this analogy is misleading when applied to the international environment where, unlike in the state of nature, the problem of sustaining cooperation is exacerbated by the presence of extreme power asymmetries among the participants.² This disparity in the distribution of capabilities creates additional incentives for the powerful in particular to renege on their commitments because they know weaker actors are often unable to effectively retaliate.³ This, in turn, has crucial consequences for international cooperation more generally and these have long been recognized by both realists and institutionalists who find rare consensus on the principle that when the weak cooperate with more powerful counterparts they increase their vulnerability to exploitation and must

¹ H.J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (Knopf, 1985)., E.H. Carr, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations* (Macmillan, 1956)., Kenneth N. Waltz, *Theory of International Politics* (New York: McGraw-Hill, 1979)., Robert Powell, "Anarchy in International Relations Theory: The Neorealist-Neoliberal Debate," *International Organization* 48, no. 02 (1994)., Helen Milner, "The Assumption of Anarchy in International Relations Theory: A Critique," *Review of International Studies* 17, no. 1 (1991)., C.R. Beitz, *Political Theory and International Relations* (Princeton University Press, 1979), 35.

² David A Lake, *Hierarchy in International Relations* (Cornell University Press, 2009), 2., Mark A Heller, "The Use & Abuse of Hobbes: The State of Nature in International Relations," *Polity* (1980)., Jan Niklas Rolf, "The State of Nature Analogy in International Relations Theory," *International Relations* (2014)., David A Lake, "Escape from the State of Nature: Authority and Hierarchy in World Politics," *International Security* 32, no. 1 (2007)., Jack Donnelly, "Sovereign Inequalities and Hierarchy in Anarchy: American Power and International Society," *European Journal of International Relations* 12, no. 2 (2006).

³ David A Lake, "Anarchy, Hierarchy, and the Variety of International Relations," *International Organization* 50, no. 01 (1996): 19.

therefore exercise extreme caution.⁴ In the international realm then, much more so than the domestic, weak actors must be particularly wary of the strategic consequences of their cooperative endeavours.

Despite the long-standing and widely accepted nature of this orthodoxy however we see little empirical evidence that the weak are particularly cautious when it comes to concluding deals with more powerful counterparts. In fact, we see the exact opposite, with many instances of weak states concluding agreements under extreme power asymmetry that are less well specified even compared to agreements between states of relatively similar power positions.⁵ What explains this behaviour? In this thesis I account for this surprising outcome by developing a framework that combines the contributions of transaction cost analysis with original insights regarding the central role of state power trajectory. In so doing I demonstrate that the relative power trajectory of the most powerful state in a given negotiation determines, in large part, its contract design preferences, which in turn, given its superior bargaining power, largely determines the form of cooperative arrangements. The variation we observe in the comprehensiveness of international contracts, I argue then, is not a result of fluctuating levels of commitment but rather a reflection of variation in the strategy of the most powerful states.

In developing this framework, I make three contributions; *first*, from a theoretical standpoint I specify more precisely the conditions under which powerful states choose to tie their hands and so qualify both the liberal claim that powerful states always do so, and the realist suggestion that they strive to maintain freedom of action. *Second*, I make an empirical

⁴ Waltz, *Theory of International Politics.*, G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars* (Princeton: Princeton University Press, 2001)., B. Womack, *Asymmetry and International Relationships* (Cambridge University Press, 2015), 47.

⁵ In the Continent of International Law data set for example, of 93 bilateral agreements covering all issues, 68 are coded as less than precise and of these 55 are concluded under conditions of extreme power asymmetry. See Barbara Koremenos, "The Continent of International Law," *Journal of Conflict Resolution* 57, no. 4 (2013). and appendix 1

contribution by placing the trade policies of four major economic powers in detailed comparative perspective. *Finally*, I make a substantive contribution by demonstrating yet another mechanism by which the strong secure their preferences at the expense of the weak in international affairs.

1.1 The Puzzle

Though realists and institutionalists agree that international actors must approach cooperation with more powerful counterparts warily, they of course differ upon the question of how, if at all, this problem can be resolved. The logic underlying the realist analysis is straightforward, for them most international interactions are characterized by zero-sum dynamics and insecurity because a lack of a central governing authority in world politics ensures that states must be wary of the long term distributional consequences of their actions.⁶ Precisely because there is no authority to enforce cooperation through punishment of cheating, opportunism is thought to be ubiquitous.⁷ Thus even where cooperation benefits all participants in absolute terms, each must be wary of the distribution of these gains because such inequality can eventually threaten the survival of less fortunate states. For realists then international actors must ask not how much each participant gains from cooperation but rather ‘who gains more?’⁸ It follows that for relatively weak states, this concern becomes all the more acute since an asymmetric distribution of gains from cooperation is likely to exacerbate an already precarious security situation. From the realist perspective then, the solution to the problem of cooperation under anarchy is for the weak to avoid forms of cooperation that increase their insecurity and should they fail to heed this advice their very survival will be at risk.

⁶ Joseph M Grieco, "The Maastricht Treaty, Economic and Monetary Union and the Neo-Realist Research Programme," *Review of International studies* 21, no. 01 (1995): 27.

⁷ Lake, "Anarchy, Hierarchy, and the Variety of International Relations." cited in A. Cooley and H. Spruyt, *Contracting States: Sovereign Transfers in International Relations* (Princeton University Press, 2009), 9.

⁸ Waltz, *Theory of International Politics*, 105.

Whilst institutionalists share the same basic assumptions with respect to insecurity under anarchy they are more optimistic regarding the possibilities for cooperation under certain specific conditions.⁹ This is the crux of the debate that has raged between institutionalists on the one hand, who argue that particular international agreements can serve as a restraint on power and thereby support cooperation under conditions of power asymmetry, and realists on the other, who suggest that such arrangements are merely a reflection the distribution of power itself and therefore any restraining effects are illusory.¹⁰ Given this, the primary institutionalist solution offered to the dangers of opportunism is for all cooperating parties, but particularly the more powerful, to tie their hands in some credible way in order to reassure each other that their future actions will be restrained and predictable.¹¹ By serving as a restraint on the powerful then '[R]ules ranging from general principles of non-intervention to agreements like the nuclear non-proliferation treaty can be seen as bounding the struggle for power.'¹² This same basic logic is fundamental to the more ambitious claims of John Ikenberry, who, in *After Victory*, suggests that an international order embodied by particular institutional frameworks can create something akin to a constitutional system and thus reduce 'returns to power' in international interactions.¹³ This is achieved, he suggests, because international institutions, just like domestic constitutions can credibly tie the hands of the

⁹ Robert O Keohane and Lisa L Martin, "The Promise of Institutional Theory," *International Security* 20, no. 1 (1995)., Duncan Snidal, "Coordination Versus Prisoners' Dilemma: Implications for International Cooperation and Regimes," *American Political Science Review* 79, no. 04 (1985)., "International Cooperation among Relative Gains Maximizers," *International Studies Quarterly* 35, no. 4 (1991)., Robert Axelrod and Robert O. Keohane, "Achieving Cooperation under Anarchy: Strategies and Institutions," *World Politics* 38, no. 1 (1985)., Lisa L Martin, "Credibility, Costs, and Institutions: Cooperation on Economic Sanctions," *ibid.* 45, no. 03 (1993).

¹⁰ For a summary of this debate see David A Baldwin, "Neoliberalism, Neorealism, and World Politics," *Neorealism and neoliberalism: The contemporary debate* 3 (1993).

¹¹ Barbara Koremenos, "Contracting around International Uncertainty," *American Political Science Review* 99, no. 04 (2005)., Barbara Koremenos, Charles Lipson, and Duncan Snidal, "The Rational Design of International Institutions," *International organization* 55, no. 04 (2001)., Alexander Thompson, "Rational Design in Motion: Uncertainty and Flexibility in the Global Climate Regime," *European Journal of International Relations* 16, no. 2 (2010)., Robert Powell, "War as a Commitment Problem," *International Organization* 60, no. 01 (2006)., Beth A Simmons, "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs," *American Political Science Review* 94, no. 04 (2000).

¹² Kenneth W Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International organization* 54, no. 03 (2000): 447.

¹³ Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*.

more powerful and reassure the weak, which in turn results in a cooperative outcome that ultimately serves the interests of all parties.¹⁴

Of course though, not all international institutions play an equal role in supporting cooperation in this way, and in recent years an interesting new body of research, employing insights from transaction cost analysis, has sought to make this general institutionalist insight more specific by clarifying the particular design elements that can effectively serve as a restraint on power.¹⁵ This work produces a powerful theoretical claim that when cooperating with more powerful counterparts, weak states must insist on one of two specific forms of hand-tying. Either they must ensure supranational institutionalization of cooperation or ensure that cooperative arrangements are supported by a comprehensive detailed agreement as either mechanism can serve as an effective restraint on the actions of the most powerful.¹⁶

The logic underlying this claim is explored in detail in the subsequent discussion, but for now it is sufficient to note that a large and important body of international relations research has developed a disarmingly simple and compelling solution to one of the most intractable problems of international relations: To avoid domination, exploitation, and ultimately the collapse of international cooperation, the weak must avoid tying themselves closely to more powerful actors in the absence of sufficient safeguards. This then is an intuitive solution to an absolutely fundamental question and - if we take the claims of prominent liberal scholars seriously - the very stability of the contemporary international system is thought to rest upon such restraints on the application of raw power.¹⁷ There is just one problem with this solution - *we continue to observe an overwhelming range of empirical evidence which contradicts the core predictions of this logic.* The chart below illustrates this using the Continent of

¹⁴ Ibid.

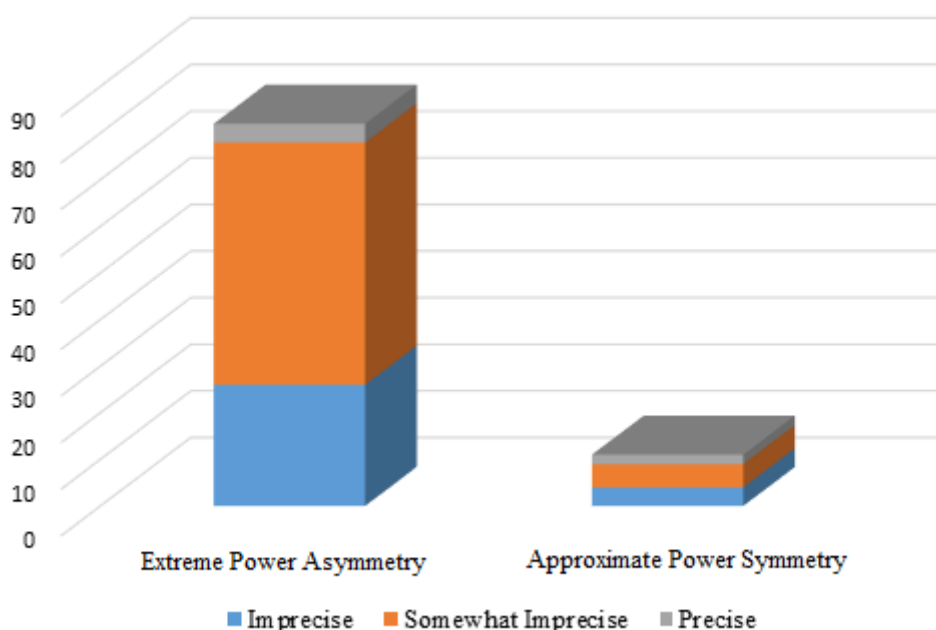
¹⁵ Cooley and Spruyt, *Contracting States: Sovereign Transfers in International Relations*, 36-37.

¹⁶ Ibid.

¹⁷ G John Ikenberry, "Institutions, Strategic Restraint, and the Persistence of American Postwar Order," (2012).

International Law dataset which classifies international agreements in all issue areas in terms of their levels of precision. I combine this data with GDP figures to separate agreements concluded between states of approximately equal economic size (on the right) and those where agreements are concluded between states where one is at least twice the size of their counterpart (on the left).

Figure 1.1: Number of Agreements by Level of Precision Under Conditions of Varying Power Asymmetry¹⁸



Aside from demonstrating the prominence of asymmetric relations in general, this chart shows that the variation in agreement precision is relatively evenly distributed when power is symmetrical but under conditions of extreme asymmetry a much higher proportion are somewhat, or very, imprecise. This is the *exact opposite* of what we would expect to see if the data conformed to the predictions of the conventional wisdom and it challenges the common intuition that the weak will be more cautious when concluding deals with much more powerful counterparts.

¹⁸ Source: Koremenos, "The Continent of International Law." Extreme asymmetry defined here as one participant possessing a GDP over twice the size of its negotiating partner. N = 93, bilateral agreements only. See Appendix 1 for summary of these agreements.

More concretely we can take specific examples of weaker states tying themselves closely to far more powerful counterparts in the absence of institutional or contractual safeguards in areas ranging from arms limitation agreements, to regional integration deals, to global economic, and trade cooperation. The landmark arms limitation agreements concluded by the United States and Russia since the end of the Cold War for example, incorporate neither supranational transfer of power or entail particularly comprehensive and detailed contractual obligations despite the fact that the United States possesses a significant and growing advantage in bargaining power.¹⁹ Similarly regional integration schemes outside of Europe have rarely incorporated either of these safeguards despite the significant power inequalities that are present. This can be seen with reference to organizations such as MERCOSUR and ASEAN which imply very little supranational institutionalization or comprehensive contracting but are dominated by one or two large states.²⁰ In international trade too, as we shall see, there are numerous instances of weak states concluding vague contracts with more powerful counterparts despite the supposed risks. In fact, so prevalent are such instances of collaboration in the contemporary international system that were they absent, the study of international cooperation would be a sterile endeavour.

To understand why theoretical predictions fall far short of empirical reality this study addresses the following precise research question: *why do we see weak states engage in formal cooperation with much more powerful counterparts in the absence of appropriate safeguards?* To answer this I emphasise a hitherto neglected area of analysis – the influence of relative power trajectory on the strategies of states when it comes to designing cooperative arrangements. In so doing I turn to an analysis of international trade cooperation, and develop

¹⁹ George W Downs, David M Rocke, and Peter N Barsoom, "Is the Good News About Compliance Good News About Cooperation?," *International Organization* 50, no. 03 (1996): 390., A.F. Woolf, *Nuclear Arms Control: The Strategic Offensive Reductions Treaty* (DIANE Publishing Company, 2010), 1.

²⁰ In relation to MERCOSUR the dominant member is Brazil and for ASEAN this is Indonesia, and to a lesser extent, Malaysia

a parsimonious framework, that accounts for many of the existing empirical anomalies without jettisoning completely the intuitive logic of hand-tying as a restraint on power.

In the process of developing an answer to the puzzle, the framework also provides insights into fundamental processes shaping international cooperation more broadly and in particular explains why states choose the forms of cooperative arrangements that they do, as well as illustrating the downstream distributional consequences of particular arrangements. Even more broadly, this framework provides important insights into how states of all kinds manage the trade-off between the risks and benefits entailed by formalized international cooperation.

1.2 Summary of the Argument: The Role of Power Trajectory in Contract Design

The present research begins from the simple premise that any serious account of complex political phenomena must include at its heart a sophisticated understanding of the role of power in determining outcomes because it is power that is at the very heart of the political as a social and relational phenomenon.²¹ In applying this premise, the analysis focuses predominantly on international trade cooperation. There are three reasons for this: First without limiting the area of inquiry this question would be extremely difficult to address in anything approaching a satisfactory fashion. Second and more importantly, it is selected because in the study of international trade cooperation, the role of power has been relatively neglected, in part due to the desire of mainstream rationalist theory to challenge the pessimistic assumptions of early realism by emphasising the mutually beneficial gains that

²¹ Michael Barnett and Raymond Duvall, *Power in Global Governance*, vol. 98 (Cambridge University Press, 2004)., R.O Keohane and J.S. Nye, *Power and Interdependence* (Longman, 2001)., R. Harrison Wagner, "The Concept of Power and the Study of Politics," in *Political Power: A Reader in Theory and Research.*, ed. Roderick Bell, David V Edwards, and R. Harrison Wagner (New York: The Free Press, 1969)., Robert A Dahl, "The Concept of Power," *Behavioral science* 2, no. 3 (1957).

result from economic cooperation.²² Finally, trade is selected because it is an area that incorporates a large range of variation in the forms of cooperation and is thus likely to provide a fruitful area to explore this particular research question.²³

In short then, trade is selected as the focus not because there is thought to exist a close relation between power and trade cooperation but *rather* because there is a greater tendency to assume that strategic matters are of relatively minor importance in this particular sphere of international relations.²⁴ By studying the role of power in this issue area I am therefore selecting the environment which is supposedly the most inhospitable to the factors that I will assign the greatest explanatory role. In this sense any important power dynamics that are found in the area of trade may well be all the more important across other issue areas.²⁵

In the present study I develop a three-part framework to account for the inexplicable empirical observation that the weak are willing to tie themselves to the strong by emphasising the role that power trajectory plays in shaping the design of international contracts via its effects on the calculations of the powerful regarding the trade-off between reducing

²² This emphasis is largely a result of earlier debates between realists and institutionalists, see David A Baldwin, *Neorealism and Neoliberalism: The Contemporary Debate* (Columbia University Press, 1993)., Robert O. Keohane, *Neorealism and Its Critics* (Columbia University Press, 1986)., B Peter Rosendorff and Helen V Milner, "The Optimal Design of International Trade Institutions: Uncertainty and Escape," *International Organization* 55, no. 04 (2001)., Judith Goldstein, Douglas Rivers, and Michael Tomz, "Institutions in International Relations: Understanding the Effects of the Gatt and the Wto on World Trade," *ibid.* 61, no. 01 (2007).

²³ Jeffrey Kucik, "The Domestic Politics of Institutional Design: Producer Preferences over Trade Agreement Rules," *Economics & Politics* 24, no. 2 (2012)., Andreas Dür, Leonardo Baccini, and Manfred Elsig, "The Design of International Trade Agreements: Introducing a New Dataset," *The Review of International Organizations* 9, no. 3 (2014).

²⁴ Tim Büthe and Helen V Milner, "The Politics of Foreign Direct Investment into Developing Countries: Increasing Fdi through International Trade Agreements?," *American Journal of Political Science* 52, no. 4 (2008)., Goldstein, Rivers, and Tomz, "Institutions in International Relations: Understanding the Effects of the Gatt and the Wto on World Trade.", Kiminori Matsuyama, "Perfect Equilibria in a Trade Liberalization Game," *The American Economic Review* (1990)., Todd Allee and Manfred Elsig, "Are the Contents of International Treaties Copied-and-Pasted? Evidence from Preferential Trade Agreements," (2015). for important exceptions see Lloyd Gruber, "Power Politics and the Free Trade Bandwagon," *Comparative Political Studies* 34, no. 7 (2001)., Joanne Gowa and Edward D Mansfield, "Power Politics and International Trade," *American Political Science Review* 87, no. 02 (1993).

²⁵ On the role of crucial cases in qualitative research see Alexander L George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Mit Press, 2005).

transaction costs and maintaining freedom of action. First, in terms of *power trajectory*, I explain that more powerful but rising states in trade negotiations gain from securing narrow agreements as these kinds of contracts imply expansion and amendment of over time. Because of a lack of an international judiciary, this expansion and amendment of an agreement occurs with reference to new bargains, the outcome of which, in turn, is determined by the bargaining power of the negotiating parties. Thus as the scope and coverage of these agreements is broadened, rising powers are provided with more bargaining opportunities within which they can take advantage of their increasing power in order to secure progressively more favourable deals. These states are willing to incur greater transaction costs that result from iterated negotiations because they can benefit from this bargaining dynamic. As a result, it is in the interest of these states to leave as many details as possible to future negotiations. Using this same logic, I also then show that powerful states with declining power trajectories are incentivised to conclude the broadest possible agreements as soon as possible as a means to lock-in an advantage that they perceive as likely to decline over time and reduce long-term transaction costs. In this understanding then power plays *a double role* in determining the design of trade contracts: The trajectory of the most powerful determines its design strategy whilst its static bargaining power determines the outcome of negotiations largely in favour of its preferences.

The second part of the framework makes this general claim more specific and explains that because of the more acute vulnerabilities faced by weak states under conditions of growing power asymmetry and more narrow agreements which imply renegotiation and amendment, strong but rising powers are often required to make *up-front, one-sided concessions* in order to secure their preferred agreements and overcome the fears of their weaker negotiating counterparts. On the other hand, powerful but declining states are not required to offer these concessions to secure their preferred (more comprehensive) contracts because these also

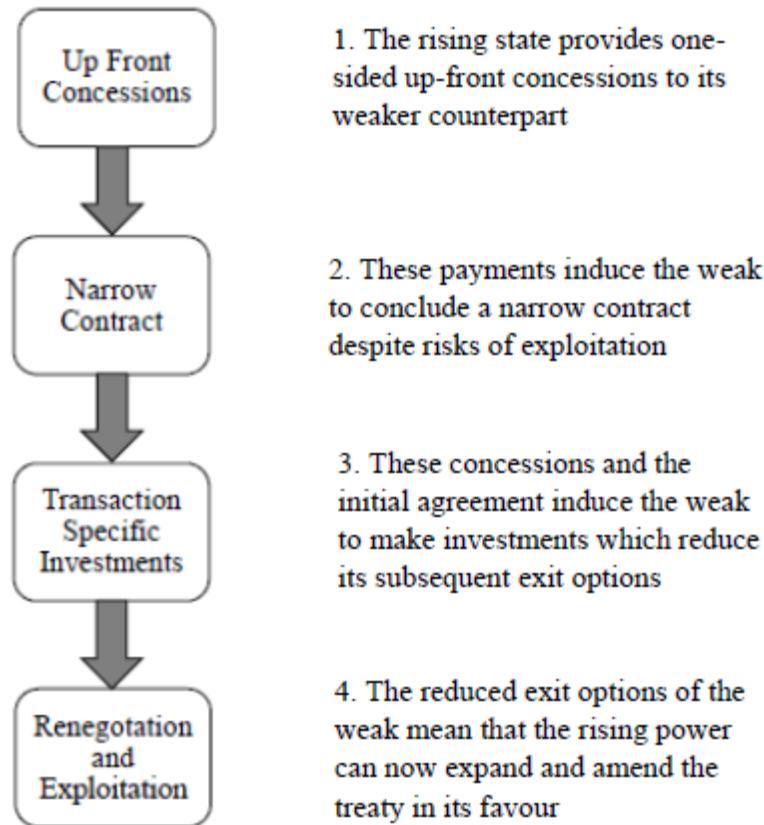
happen to serve the interests the weak by reducing their vulnerability. Quite simply, comprehensive deals are sought by powerful declining states in order to lock-in a deteriorating advantage in bargaining power whilst they are sought by the weak because they serve as a signal of commitment from the more powerful, precisely as conventional wisdom would suggest. In this sense when the more powerful is declining, a natural equilibrium emerges between the strong and the weak in relation to contract selection.

Finally, the third element of the framework suggests that the conclusion of a deal entails increased *dependency which facilitates exploitation*. The powerful but rising state can reap the benefits of further negotiation and amendment of the initial contract as the agreement and generous concessions have induced the weaker party to make transaction specific investments. As a result of these investments which, by their nature, are costly to transfer to other trading relationships, the exit options of the weak are drastically reduced because there is now little economic or domestic political incentive to repudiate the deal. In this sense the initial agreement induces dynamics – a path dependence in the relationship – which were not present before the deal was concluded. As a result, the bargaining dynamics following conclusion of an agreement are entirely different from those present at the beginning of negotiations. Thus the timing and sequence of negotiations are absolutely essential in explaining the design outcomes.

The subsequent empirical analysis will demonstrate that this three-part framework can explain, not only why the weak are willing to tie themselves to the strong in the absence of safeguards, but also account for the otherwise inexplicable and generous, one-sided payments we observe from the powerful to the weak in many international trade negotiations. As a result, two otherwise puzzling anomalies are explained with a common cause - the relative

power trajectory of the most powerful state. The diagram below illustrates the basic logic of this argument by highlighting the bargaining strategy of a strong rising power.

Figure 1.2: The Bargaining Strategy of a Strong, Rising Power



1. 3 Research Structure

In the subsequent analysis I develop the explanatory framework in three distinct parts. Part I consists of two chapters, the first of which lays out the research question, whilst the second summarizes the broader research context by exploring the contributions of existing explanations for variation in the coverage of international trade agreements. This is done in order to avoid ‘reinventing the wheel’ or assigning causation to variation in power trajectory when more compelling explanations may already exist elsewhere. This section includes a survey of work on domestic politics, legal culture, learning and diffusion and their role in

contract design. In the concluding section of this chapter I will show, using examples drawn from the data, how these existing explanations, though useful, are insufficient to address the research question because they neglect the role of strategic interaction.

Part II consists of two chapters, 3 and 4, which set out the structure of the new theoretical framework. I begin in Chapter 3 by exploring the fundamental nature of international contracts themselves and outline the difficulties of applying transaction cost analysis to the international realm without a close examination of the implicit assumptions of a theoretical framework originally designed to apply domestically. Then by combining realist and institutionalist insights regarding the role of international law, I argue that the crucial difference between domestic and international law is not only the well-known lack of impartial arbitration and enforcement but also the absence of impartial interpretation in relation to incomplete (or narrow) contracts. This characteristic of international law leaves the weak subject not just to one but two separate and distinct vulnerabilities as a result of narrow contracts: *reneging and* manipulation/domination by stronger powers. This manipulation is manifest in repeated subsequent explicit or implicit bargaining implied by the ‘filling in’ of these narrow contracts. In short then, narrow agreements in particular leave the weak vulnerable because issues which are not explicitly incorporated in the contract cannot be enforced even in a decentralized fashion. In the final part of this section, I show how the transaction specific investments induced by the contract on the part of the weak drastically reduce the freedom of exit for the weaker party down the line and thereby exacerbates their vulnerability to renegotiation and amendment.

In the next chapter, chapter 4, I build on this theoretical groundwork to begin with the development of a stylized illustration of strategic bargaining of the design of trade contracts. This section starts with a discussion and justification of a bounded rationality assumption in

relation to the actors, and an exploration of the variation in discount rates of the negotiating states determined by the asymmetry in their relative bargaining power. A simple three period bargaining scenario is then constructed which incorporates power shifts, transaction costs and up-front concessions. This example is illustrated in the form of a decision tree which has three stages, 1. offer, 2. acceptance/refusal, and 3. renegotiation. This is used to illustrate why powerful but rising states are willing to offer up-front concessions to their weaker counterparts in order to secure a narrow agreement and the manipulation pay-offs that come with it. After disaggregating the most important elements of these negotiations this section concludes by drawing out theoretical implications and conjectures derived from this stylized example.

Part III of this thesis is concerned with applying the theoretical framework empirically through the case studies. Chapter 5 is concerned with the empirical operationalization of the model and as such it incorporates a discussion of how power is to be measured in bargaining over trade. I then explore the differences between power employed within and outside of particular bargaining dynamics and point to the often double-edged character of certain attributes traditionally associated with power. The role of patience is emphasised in conferring a particular bargaining advantage and so a number of metrics relating to actor patience are selected which will subsequently be applied in the empirical analysis. The next section of this chapter naturally addresses the measurement of contract comprehensiveness and justifies the focus on contractual breadth/narrowness before clarifying three metrics by which this will be evaluated. Two measures from other research projects and my own index of contractual comprehensiveness are thus outlined at the end of this section. The chapter concludes with a broader discussion of methodology and case selection and justifies the focus on major trading powers, China, India, Japan and the United States in the subsequent case studies.

Chapter 6 consists of two case studies on the powerful but rising states, China and India. The first section of this chapter provides an overview of the trends observed in the behaviour of these states with reference to descriptive statistics and secondary sources. The remainder of this section will focus upon an analysis of specific bilateral agreements concluded by these two countries, and will conclude each section with summary tables of the main results of contractual breadth alongside indicators of power trajectory in relation to their trade partners. Chapter 7 follows a similar structure to that of 6 whilst focusing on the two status-quo powers of interest; the United States and Japan.

The next chapter, 8, is concerned with an analysis of the framework in light of the results of the four case studies and in so doing engages in a direct comparison of agreements signed by all four powers with common partners in order to further highlight the commonalities and differences between them. Agreements signed by Chile, Peru, ASEAN and Singapore are consequently a particular focus. This chapter also consists of four subsections that evaluate the theoretical conjectures directly in light of the empirics in terms of 1. Contract coverage, 2. Up-front concessions, 3. Renegotiations, and 4. Dependence. The final chapter, 9, then turns to the broader theoretical contributions of the framework before considering its implications beyond trade.

Chapter 2: International Trade Cooperation: Risks and Rewards

Whilst not commonly associated with the realm of power politics in contemporary IR theory, the choice of trade as the focus of this analysis is in other respects an obvious one. This is because the double edged nature of international economic cooperation has long been understood: whilst it provides states with opportunities for the accumulation of wealth, economic development and prosperity, it can also present a threat to their sovereignty, autonomy, and even their security by diluting their capacity for self-reliance.²⁶ As a result, the consensus between realists and institutionalists surrounding the dangers of cooperation under power asymmetry finds an antecedent in the shared acknowledgement of mercantilists and free traders of the dangers presented by trade cooperation and interdependence. Whilst an emphasis of these dangers is of course fundamental to the mercantilist creed with its proto-realist, zero-sum understanding of international economics, it was also recognized by proponents of free trade, the most famous of which, Adam Smith, when speaking of trade with the colonies lamented that

‘In her present condition, Great Britain resembles one of those unwholesome bodies in which some of the vital parts are overgrown and which, upon that account, are liable to many dangerous disorders...A small stop in that blood vessel...through which an unnatural proportion of the industry and the commerce of the country has been forced to circulate is likely to bring on the most dangerous disorders upon the whole body politic. The expectation of a rupture with the colonies accordingly has struck the people of Great Britain with more terror than they have ever felt for a Spanish Armada or for a French invasion.’²⁷

As this quote suggests, the sources of trade vulnerability are relatively straightforward; by its very nature trade creates a dependence of one entity upon another actor upon which control cannot be directly exercised and therefore produces an uncertainty and increased insecurity

²⁶ A.O. Hirschman, *National Power and the Structure of Foreign Trade* (University of California Press, 1980), Keohane and Nye, *Power and Interdependence*, A. B. Tickner, "Core, Periphery and (Neo)Imperialist International Relations," *European Journal of International Relations* 19, no. 3 (2013).

²⁷ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Publishing in Motion, 1804). in Hirschman, *National Power and the Structure of Foreign Trade*, 73.

for the participants due to uncertainty over the behaviour of their erstwhile partners. What is more, as the quote from Smith implies, these vulnerabilities naturally increase in proportion to the significance of the trading relationship, the lack of available alternative partners, and the relative power of the state with which one is trading.²⁸ Consequently whilst trade presents both opportunities and threats for all states, these threats are naturally more acute for relatively weaker states that are both more vulnerable and less able to react to significant alterations in the pattern of trade.²⁹ Further, because of their relative economic size weaker states can become more easily dependent upon trade with a more powerful partner or group of partners and therefore more vulnerable to fluctuations in that relationship.³⁰

Aside from the more obvious risks that trade cooperation entails it has also been demonstrated that such collaboration can involve risks of more subtle forms of manipulation or even domination, because it can be employed as an instrument of the powerful by which it can direct the policy and behaviour of the weak.³¹ Alongside the direct vulnerability of dependence weak states must therefore contend with the risk that trading relationships will alter their domestic balance of power, and 'lead to more and more effort to administer the accord' or even transform the 'weaker power's cultural identity and autonomy'³² If a trading relationship particularly benefits a group or collection of groups in the weak country then, in the words of Albert Hirschman, 'these groups are likely to form a sort of "commercial fifth column"' and can, in the most extreme cases, drastically alter the policy preferences of the weak state.³³ These observations, though possessed of a classically realist tone, also find

²⁸ Keohane and Nye, *Power and Interdependence*., Hirschman, *National Power and the Structure of Foreign Trade*.

²⁹ They arguably also present greater opportunities since a small, weak state is much less likely to be economically self sufficient

³⁰ Hirschman, *National Power and the Structure of Foreign Trade*.

³¹ Ibid.

³² Stephen Krasner, "Simple Y Obstaculos Para La Cooperacion Entre Mexico Y Estados Unidos," *Interdependencia: Un Enfoque Util Para El Analisis De Las Relaciones Mexico - Estados Unidos?* (1990). Summarized in M.A. Cameron and B.W. Tomlin, *The Making of Nafta: How the Deal Was Done* (Cornell University Press, 2002).

³³ Hirschman, *National Power and the Structure of Foreign Trade*, 29.

familiar echoes from proponents of dependency theory who have long evoked the drawbacks of international trade for weaker countries, because trade with the ‘core’ industrialized states, far from increasing the wealth of all participants, undermines economic development in the ‘periphery’ by reinforcing and increasing inequality.³⁴ In this sense the international system of trade can form a part of the structure by which the strong dominate the weak.

In the spirit of these insights, in the following sections I evaluate the strategic implications of both multilateral and bilateral cooperation in trade and show how, though bilateral cooperation is thought to be particularly risky for weaker states, that these forms of cooperation are proliferating in recent years. Despite this, we fail to see these weaker states insist on appropriate institutional safeguards. I conclude this section by demonstrating how this empirical anomaly is the result of an under specification of existing mainstream theory around credible commitments. I then turn to alternative explanations for these outcomes and highlight the surprising neglect of strategic dynamics across all existing accounts of contractual variation.

2.1 A Multilateral Solution?

Despite the risks sometimes associated with trade between asymmetric powers, some have suggested that since 1945 the more acute and egregious forms of dependency which manifest through direct trade relations have been attenuated by the open and multilateral character of post-war trade liberalization which simultaneously provides weak states with the opportunity to diversify their trading relations - and therefore their dependence - and to find strength in numbers when negotiating the trade deals themselves. As Stephen Krasner has suggested:

³⁴R. Prebisch and Inter-American Development Bank, *Change and Development: Latin America's Great Task* (Inter-American Development Bank, 1970)., Julia Gray and Philip BK Potter, "Trade and Volatility at the Core and Periphery of the Global Economy," *International Studies Quarterly* 56, no. 4 (2012)., Tibor Iván Berend et al., *The European Periphery and Industrialization 1780-1914* (JSTOR, 1982).

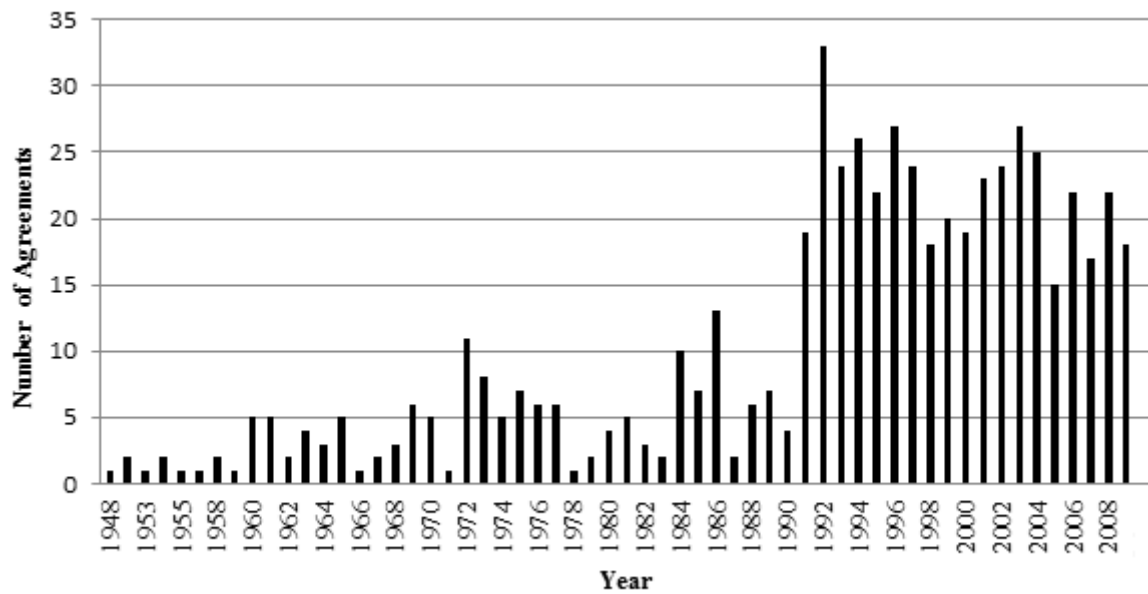
‘[M]ultilateralism is more attractive to weak states because [they] can build coalitions against the stronger powers.’³⁵ Such an account, is also one which hegemonic stability theorists would find explicable given the role that a major power is thought to play in upholding a stable trading system.³⁶ Indeed, a number of scholars have pointed favourably to the ways in which the traditional relationship between trade politics and ‘high foreign policy’ had been successfully suppressed by the consensus that had emerged following World War II and the establishment of the Bretton Woods system. Writing in 1972 the economist Richard Cooper argued that this new economic order, underpinned by American power, ‘permitted trade issues to be discussed and resolved...without intruding into other areas of policy.’³⁷ The underlying logic of such arguments is clear: Whilst all forms of trade cooperation come with risks and opportunities, the multilateral variants of such cooperation aid in minimizing the down-sides and increasing the up-sides, particularly for much weaker states. In this line of thinking then bilateral, not multilateral cooperation presents the greatest risks for the weak under conditions of asymmetry. As a result the rapid proliferation of bilateral and regional trade agreements in recent decades should give even the most enthusiastic proponents of free trade pause for thought and would suggest that in trade at least, we should see weak states exercising an even greater degree of caution than usual.

³⁵Krasner, "Simple Y Obstaculos Para La Cooperacion Entre Mexico Y Estados Unidos." in Cameron and Tomlin, *The Making of Nafta: How the Deal Was Done*, 18.

³⁶ See for example C.P. Kindleberger, *The World in Depression, 1929-1939* (University of California Press, 1986)., for a critique see Duncan Snidal, "The Limits of Hegemonic Stability Theory," *International organization* 39, no. 04 (1985).

³⁷ Richard N Cooper, "Trade Policy Is Foreign Policy," *Foreign Policy*, no. 9 (1972): 19.

Figure 2.1: The Rapid Proliferation of International Trade Agreements (1948-2008)



Source: Dür, A., Baccini L., and Elsig M. 2014. The Design of International Trade Agreements: Introducing a New Dataset. *The Review of International Organizations*, 9(3): 353-375.

The data in figure 2.1 illustrates the dramatic shift away from multilateral liberalization and in particular one can see that since the 1970s the world has witnessed a sharp increase in the number of preferential trade agreements as states increasingly move toward bilateral and regional varieties of trade liberalization at the expense of multilateral initiatives under the auspices of the World Trade Organization (WTO). This proliferation in the number of agreements worldwide has resulted in 379 agreements in force as of 2014 compared to less than 50 in 1990.³⁸ The explosion of bilateral agreements would suggest that in trade at least, the potential for exploitation of the weak by the strong has increased because the weak no longer have strength in numbers or other multilateral mechanisms to reduce the effects of power asymmetry.

However, as we have seen, even under purely bilateral arrangements conventional wisdom suggests that weak states nonetheless possess a minimal capacity to protect themselves against the opportunism or domination of the strong through two safeguards – supranational

³⁸ Dür, Baccini, and Elsig, "The Design of International Trade Agreements: Introducing a New Dataset."

institutionalization or comprehensive contracting.³⁹ Both mechanisms are thought to tie the hands of the more powerful, limit its ability to renege down the line and thus reassure the weak. Hitherto the discussion has left this central claim unexamined - to see the fundamental logic underlying this argument and begin to understand why we don't see the expected caution on the part of weak states, we must turn to the problem of credible commitment.

2.2 Contracts and Commitment in Trade

The credible commitment problem looms large in international relations and is simple to describe if not resolve: When two actors bargain under conditions of power asymmetry how can the more powerful reliably commit not to renege or exploit the weaker down the line? The ability of states to make commitments under such conditions is fundamental to the maintenance of international economic cooperation and without it states would live in constant fear of exploitation and - judging that the potential risks outweigh the benefits of cooperation - walk away from many otherwise productive and beneficial cooperative endeavours. As we have seen - to overcome this problem states must signal in some way that the likelihood of their renegeing is sufficiently low that it becomes advantageous for all parties to engage in mutually beneficial cooperation, despite the risk of exploitation. The literature suggests that this can be achieved through comprehensive contracts, it is the purpose of this section to explore this claim more fully.

The question of how commitments can be made credible has preoccupied international relations scholars at least since Schelling's work on bargaining and is reflected in the vast array of research conducted on this topic in recent decades.⁴⁰ This work establishes that signalling of credible commitments can take different forms from acquiescing to third party

³⁹ Cooley and Spruyt, *Contracting States: Sovereign Transfers in International Relations*, 9.

⁴⁰ Thomas C. Schelling, "An Essay on Bargaining," *The American Economic Review* 46, no. 3 (1956).

enforcement, to sinking costs.⁴¹ But what all of these signals of commitment have in common is that they increase the costs of breaking a promise or renegeing on a deal down the line. Empirical research on this issue has repeatedly confirmed this common-sense intuition and has demonstrated that in the absence of such commitment, international actors, particularly those in a relatively weak power position, will be reluctant to cooperate.⁴² The logic here is straightforward and constitutes the received wisdom in many fields of research. It has been demonstrated for example that the absence of credible commitment devices can undermine the functioning of international legal institutions,⁴³ lead to more protracted civil and interstate conflicts,⁴⁴ undercut military alliances,⁴⁵ and destabilize the international trading system.⁴⁶

A number of these treatments specifically address the role of contract design.⁴⁷ This is a natural area of focus - contracts by their very nature are about commitment; they exist to ensure compliance of the contracting parties with the terms of an agreement in order to facilitate more predictable and efficient exchange relations.⁴⁸ Consequently important work in international relations has built on the insights of transaction cost analysis, which points to the role of transaction costs and residual rights of control in determining contract design

⁴¹ James D Fearon, "Signaling Foreign Policy Interests Tying Hands Versus Sinking Costs," *Journal of Conflict Resolution* 41, no. 1 (1997).

⁴² Cooley and Spruyt, *Contracting States: Sovereign Transfers in International Relations*.

⁴³ Beth A Simmons and Allison Danner, "Credible Commitments and the International Criminal Court," *International Organization* 64, no. 02 (2010).

⁴⁴ Monica Duffy Toft, "Issue Indivisibility and Time Horizons as Rationalist Explanations for War," *Security Studies* 15, no. 1 (2006).

⁴⁵ Michaela Mattes, "Reputation, Symmetry, and Alliance Design," *International Organization* 66, no. 04 (2012).

⁴⁶ Raymond Hicks and Soo Yeon Kim, "Credible Commitment through PTAs and Their Effects on Trade: A Study of Asia's Reciprocal Trade Agreements" (paper presented at the Prepared for the Annual Meeting of the American Political Science Association, September. SSRN: <http://ssrn.com/abstract>, 2009).

⁴⁷ Koremenos, "Contracting around International Uncertainty.", Leonardo Baccini and Johannes Urpelainen, "Easing the Pain of Adjustment? Preferential Trading Agreements, Foreign Aid, and Credible Commitment to Economic Reform," (2010)., "International Institutions and Domestic Politics: Can Preferential Trading Agreements Help Leaders Promote Economic Reform?," *The Journal of Politics* 76, no. 01 (2014).

⁴⁸ Oliver E Williamson, "The Economics of Organization: The Transaction Cost Approach," *American Journal of Sociology* 87, no. 3 (1981): 549.

outcomes.⁴⁹ These transaction costs are incurred through economic exchange and can be thought of as ‘the economic equivalent of friction in physical systems.’⁵⁰ These tend to increase with uncertainty and the frequency of iterated exchanges between cooperating parties.⁵¹ Contracts then can be seen as mechanisms by which transaction costs can be reduced by minimizing uncertainty surrounding the exchange relationship. Residual rights on the other hand can simply refer to those rights not given up by contracting parties⁵² or more specifically can refer to the right of a party to use an asset under conditions not specified by the contract.⁵³ A moments thought will tell us that there is, all else equal, a trade-off between these two elements because when more residual rights are retained, greater uncertainty over behaviour exists and transaction costs therefore tend to increase over time because participants must plan for a wider number of eventualities (such as planning for the possibility of renegeing by the other party).

As a result of this trade-off, an international treaty with a more comprehensive character by its very nature will require the parties to surrender more rights and the contract will take longer to negotiate, its long-term consequences will often be more significant, and it will require greater resources up-front to conclude than a more simplistic agreement. These up-front costs incurred in concluding a contract can be thought of in terms of ex - ante transaction costs.⁵⁴ These contracts are often justified because they allow parties to reduce ex-post transaction costs - that is, the costs of maintaining an exchange relationship under uncertainty - over time. Conversely, more incomplete agreements may arise precisely because they allow subsequent alteration which ‘ensures problems of information and

⁴⁹ Ronald H Coase, "The Nature of the Firm," *economica* 4, no. 16 (1937).

⁵⁰ Oliver E Williamson, *The Economic Institutions of Capitalism* (Simon and Schuster, 1985), 19.

⁵¹ "Transaction-Cost Economics: The Governance of Contractual Relations," *Journal of Law and Economics* 22, no. 2 (1979): 239.

⁵² Oliver Hart, "An Economist's Perspective on the Theory of the Firm," *Columbia law review* (1989): 1765.

⁵³ Jean Tirole, "Incomplete Contracts: Where Do We Stand?," *Econometrica* 67, no. 4 (1999): 743.

⁵⁴ Williamson, *The Economic Institutions of Capitalism*, 20-21.

verification that pertain to the initial contract can be identified and resolved and/or refined.⁵⁵

Where there is significant *environmental* uncertainty then, a less comprehensive agreement reduces ex-ante transaction costs and is often the more efficient choice since ex-post costs will be incurred in any event due to the fact that, uncertainty means that the contract cannot be framed to anticipate unforeseen circumstances and will need to be adjusted or filled-in over time.⁵⁶

Distributional considerations, of course, also play a role the design of these international contracts – it has been suggested that if states are unsure about the distribution of gains resulting from an agreement, cooperation may be maintained by limiting its duration to allow renegotiation once participants have discovered the resulting distribution of costs and benefits.⁵⁷ These less comprehensive agreements are more efficient under the particular kind of uncertainty relating to the share of gains accruing to each party - *distributional* uncertainty.

Finally, and crucially in relation to the commitment problem, incomplete contracts may also arise where there is no uncertainty at all but simply because power asymmetries exist between the contracting parties.⁵⁸ Under these conditions, the stronger may have an incentive to use the incomplete nature of an agreement to exploit the weaker down the line and the weaker knows this. This problem of commitment even under conditions of relative certainty can be thought of as a ‘pure’ commitment problem and is in some ways more difficult to resolve than commitment problems induced by uncertainty.⁵⁹ Crucially, *because contracts are thought to constrain and more detailed contracts constrain more fully*, in essence,

⁵⁵ Cooley and Spruyt, *Contracting States: Sovereign Transfers in International Relations*, 6.

⁵⁶ Williamson, *The Economic Institutions of Capitalism*, 21.

⁵⁷ Barbara Koremenos, "Loosening the Ties That Bind: A Learning Model of Agreement Flexibility," *International Organization* 55, no. 02 (2001): 292.

⁵⁸ Robert Powell, "Commitment Problems and Shifting Powers as a Cause of Conflict," in *The Oxford Handbook of the Economics of Peace and Conflict*, ed. R. Garfinkel Michelle and Skaperdas Stergios (Oxford University Press, 2012), 52-54.

⁵⁹ *Ibid.*, 52.

incomplete contracts can arise due to ‘a strategic advantage gained by one of the parties from renegotiating the agreement at a later date.’ As a result of this, it is suggested that weak states that agree to incomplete contracts must fear the ‘subsequent defection by, and increased leverage of, the more powerful.’⁶⁰

This then is how we arrive at the conclusion that powerful states cannot use incomplete agreements to exploit the weak precisely *because* of the commitment problem. It is this line of thought which predicts that because weaker actors can foresee the potential for future exploitation entailed by incomplete or narrow agreements they will therefore not acquiesce to such deals. Consequently, in order for a stronger power to get weaker states to agree to cooperate, the stronger must credibly commit either by agreeing to a comprehensive contract or by credibly binding itself through supranational institutionalization.⁶¹ In the area of trade the binding of the U.S. through the comprehensive contract of NAFTA, and the transfer of power by Germany to the EEC serve as illustration of each respective mechanism.⁶² So far, so persuasive.

2.3 Theoretical and Empirical Flaws in Conventional Wisdom

Though intuitively compelling I have already hinted at the two fundamental problems with this line of reasoning: one theoretical, the other empirical, and I detail these more precisely here. First though institutionalization can improve commitment through external enforcement, it is not immediately clear how comprehensive contracts protect the weak as no specific causal mechanism is provided by existing frameworks.⁶³ That is, no clear reason is

⁶⁰ Cooley and Spruyt, *Contracting States: Sovereign Transfers in International Relations*, 6.

⁶¹ *Ibid.*, 36-37., Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*.

⁶² Ikenberry, "Institutions, Strategic Restraint, and the Persistence of American Postwar Order."

⁶³ Walter Mattli, "Comparative Regional Integration: Theoretical Developments," in *Oxford Handbook of the European Union* ed. Anand Menon, Erik Jones, and Stephen Weatherill (Oxford: OUP, 2012).

provided as to why the comprehensiveness of an international contract should resolve the commitment problem and make a more powerful state less likely to renege on its obligations down the line. Second, and - I will argue - relatedly, despite the prediction that weak states will avoid concluding ambiguous agreements under conditions of extreme power asymmetry, we continue to see significant numbers of trade agreements signed under precisely these conditions. This is the central puzzle with which this research began - rather than observing weak states insisting on clear and comprehensive contracts we in fact continue to see wide variation in the design of trade deals, with many characterised by low levels of liberalization, narrow issue coverage, and vague specification, as the figures below illustrate.

Figure 2.2 illustrates the results of a recent study by Dür, Baccini, and Elsig which measures the comprehensiveness of the trade deals using an index score based on seven potential substantive provisions contained in each contract, one provision indicates whether an ‘agreement foresees that all tariffs (with limited exceptions) should be reduced to zero... The other six provisions capture cooperation that goes beyond tariff reductions, in areas such as services trade, investments, standards, public procurement, competition and intellectual property rights.’ It clearly shows that the majority of trade agreements entail relatively narrow coverage. Figure 2.3 summarizes results from the same study with contractual comprehensiveness measured instead using latent trait analysis on 48 variables that are related to the depth of an agreement.⁶⁴ The authors explain ‘these variables pertain to such aspects as services liberalization, trade-related investment measures, intellectual property rights and standards’.⁶⁵ Table 2.1 summarizes the variation in the inclusion of specific clauses across trade agreements using data from another recent but separate study.⁶⁶

⁶⁴ Dür, Baccini, and Elsig, "The Design of International Trade Agreements: Introducing a New Dataset."

⁶⁵ Leonardo Baccini et al., "The Design of Preferential Trade Agreements: A New Dataset in the Making," (WTO Staff Working Paper, 2011).

⁶⁶ Kucik, "The Domestic Politics of Institutional Design: Producer Preferences over Trade Agreement Rules."

Figure 2.2 Number of Trade Agreements by Contract Coverage (Measure 1)⁶⁷

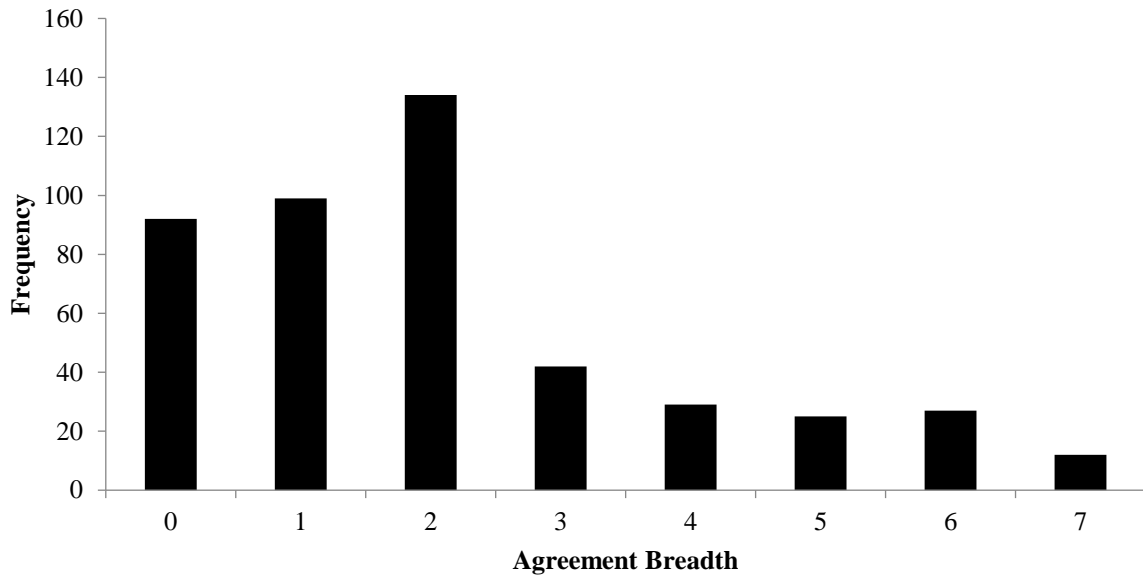
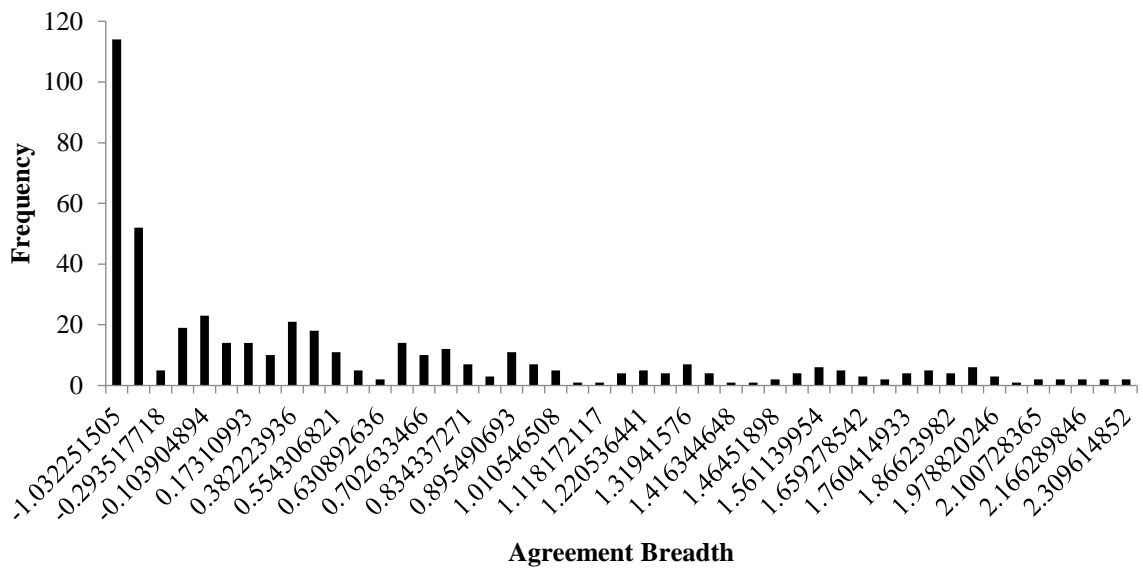


Figure 2.3: Number of Trade Agreements by Contract Coverage (Measure 2)



Source: Dür, A., Baccini L., and Elsig M. 2014. The Design of International Trade Agreements: Introducing a New Dataset. *The Review of International Organizations*, 9(3): 353-375.

⁶⁷ 7 indicates the broadest coverage and 0 the most narrow

Table 2.1: Variation in Clauses Included in Trade Agreements (N = 224):⁶⁸

Clause	Yes	No	Provision Word Count Range
Exemptions	149	34	-
Uneven Concessions	102	81	-
Safeguards	169	14	100 - 3775
Anti-Dumping	156	27	70 - 11751
Counter-Vailing Duties	80	103	310 - 20420
TBTs	89	94	99 - 8730
SPS	99	84	40 - 13400
BOP	149	34	40 - 1733
DSM	103	80	20 - 6300

Remembering that conventional wisdom suggests that bilateral agreements in particular are thought to increase the vulnerabilities of the weak, it is crucial to note that *of the 424 bilateral and regional trade agreements concluded since 1945, 334 are particularly narrow*⁶⁹ *and of these narrow agreements 199 are concluded under conditions of extreme power asymmetry.*⁷⁰

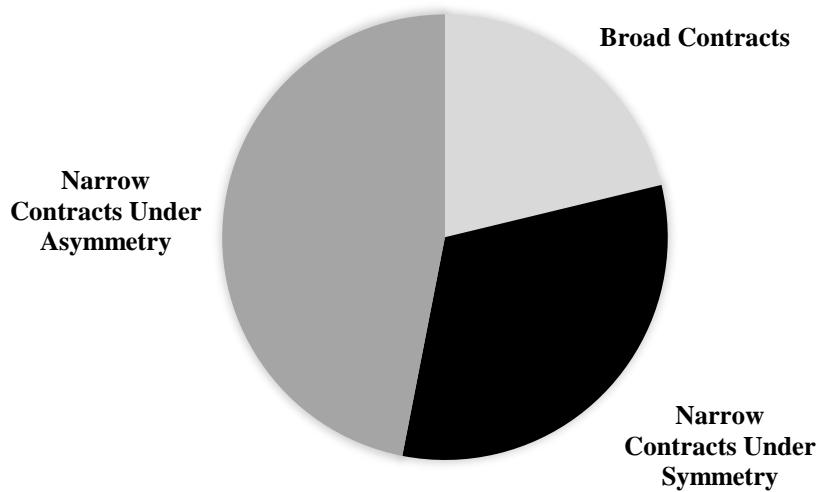
We see trade deals such as those between Bhutan and India, or Brazil and Guyana, or Mexico and Nicaragua signed under conditions of significant asymmetry in power, but which also omit many details and clauses compared to similar agreements. This despite the supposed risks such agreements present for the weak. These deals then are neither comprehensive nor imply the transfer of powers to supranational institutions, yet they are extremely common. The chart below summarizes this observation, showing that the proportion of narrow agreements signed under asymmetry (again defined as one state possessing a GDP of more than twice the size of its counterpart) is almost equal to that of all other types of agreements.

⁶⁸ Kucik, "The Domestic Politics of Institutional Design: Producer Preferences over Trade Agreement Rules."

⁶⁹ They score less than 3 on the comprehensiveness score in Dür, Baccini, and Elsig, "The Design of International Trade Agreements: Introducing a New Dataset."

⁷⁰ As indicated by one of the participants possessing a GDP of at least twice the size of its counterpart. GDP data from the "Gdp at Market Prices (Current Us\$)," ed. The World Bank, National Accounts Data (<http://data.worldbank.org/indicator/NY.GDP.MKTP.CD2016>).

Figure 2.4: The Proportion of Narrow Trade Contracts Signed Under Extreme Power Asymmetry⁷¹



Consequently, though we find compelling theoretical arguments suggesting that that weak states should not tie themselves to strong states without certain safeguards, particularly when concluding bilateral agreements, the empirical evidence strongly challenges these accounts. To understand why, we must resolve the theoretical flaw in this line of thought. However, to begin this process, we must first consider the applicability of other explanations in order to avoid neglecting ready-made solutions to this question.

2.4 The Research Context: Accounting for Contractual Variation

There are of course a multitude of reasons why one international agreement might be more or less comprehensive than another, and fortunately a number of distinct research agendas already provide important insights on this question. It would be remiss not to recount them here if only because doing so will decrease the potential for assigning causation to erroneous factors in the subsequent analysis. These agendas address the question of variation in contract design, some more directly than others, and can be broken down into three broad categories:

⁷¹ Compiled with data from "The Design of International Trade Agreements: Introducing a New Dataset." and "Gdp at Market Prices (Current Us\$)."

The first encompasses explanations which focus on sub-state or domestic factors such as the role of domestic political structures and the distribution of power among different domestic interest groups, the general claim here is usually that the relative distribution of power between protectionist and free trade groups determines the comprehensiveness of an agreement. The second category focuses upon cultural factors, and suggests quite simply that at least some of the variation in contract coverage results from dissimilarity in the legal cultures of the particular states drafting the agreements – which tend to favour more or less comprehensive approaches.

The final category of explanations emphasises the role of learning and the diffusion of ideas between state actors themselves, in these accounts variation in design is explained, at least in part, by the relative experience possessed by state negotiators in relation to international trade agreements. For example, greater negotiating expertise correlates positively with the comprehensiveness of trade deals signed by a given state. In a separate but related agenda are explanations which rather focus on the role of diffusion of particular clauses or agreement templates between states, in this line of work variation can be explained by the relative success of particular templates adopted by states which may result from the arrangement of cooperation between groupings of economically interdependent states or simply result from the desire of states to maximize efficiency and reduce the costs of drafting new agreements.⁷²

Following a review of each of these research tracks in more detail, the final section of this chapter concludes by highlighting some of their weaknesses, and their inability to provide a mechanisms explaining why weak states subject themselves to the supposed vulnerabilities of narrow contracts. This is because, I will suggest, in focusing on sub-state variables these accounts neglect important inter-state strategic dynamics. In making this critique my

⁷² Allee and Elsig, "Are the Contents of International Treaties Copied-and-Pasted? Evidence from Preferential Trade Agreements," 10.

objective is not to discredit these accounts but rather demonstrate how much of the design variation in international trade agreements can be satisfactorily accounted for by these explanations and therefore how a new account incorporating power trajectory may complement these accounts. A greater understanding of this research therefore suggests that the contribution of the present research will be additive and will mean that the scope and applicability of the framework developed subsequently can be appropriately defined and certain biases in the interpretation of empirical material may be avoided.

2.5 Domestic Politics

An important and increasingly rich focus of trade research concentrates attention on the role of domestic political variables in shaping the design of international trade contracts and these explanations can be divided into two sub-categories: The first emphasises the distribution of power within domestic interest groups on the design of trade deals, whilst the second group focuses more exclusively upon the particular political structures of states and how these mediate the relation between domestic groups on trade policy and, particularly how bureaucratic dynamics shape the negotiating stance of certain states.

It has been long understood that when state representatives come to the international negotiating table they are simultaneously involved in multilevel negotiations with domestic groups.⁷³ As a result it has been suggested that the preferences and relative power of consumers and producers in a given state directly shapes the levels of liberalization (and therefore contractual comprehensiveness) sought by states at the international level. Specifically, the more powerful is the consumer lobby in a given state, the higher is the rate of liberalization that is sought by that state in international negotiations. This is simply

⁷³ Robert D Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International organization* 42, no. 03 (1988).

because liberalization and therefore increased competition among producers is thought to result in lower prices and greater choice for consumers. Clearly however this opening of markets is not always welcomed by producers or indeed the employees of these firms who face greater competition from imports.⁷⁴ More specifically, it has been suggested that where factors of production are mobile between domestic industries, political coalitions divided along class lines are more common whereas narrow industry coalitions are found where factor mobility is low.⁷⁵ Where these narrow industry-based coalitions benefit from liberalization we would therefore expect to see these sectors more often and more deeply liberalized by states where these conditions hold domestically, and thus we should expect to see more comprehensive contracts result from international negotiations. On the other hand, where politically salient and well-organized sectors of the economy are likely to suffer rather than benefit from liberalization we are more likely to see these sectors protected or excluded completely from liberalization, a good example of this would be the powerful agricultural sector in Japan.⁷⁶ This would result (*ceteris paribus*) in more narrow international trade contracts in terms of the liberalization that is implied. Thanks to such research then we have a direct explanation for some of the variation in coverage in many international trade agreements – deeper agreements are more likely to be concluded by states with politically salient groups likely to benefit from trade liberalization whilst narrow agreements result from powerful protectionist forces at the domestic level.

The effects of these groups are of course mediated by the domestic institutions of each country and Downs and Rocke show how domestic uncertainty shapes international cooperation due to the intermittent nature of domestic interest group demands for

⁷⁴ Judith Goldstein, "Trade Liberalization and Domestic Politics," in *The Oxford Handbook on the World Trade Organization*, ed. Martin Daunton, Amrita Narlikar, and Robert Stern, M. (Oxford: Oxford University Press, 2012)., see also Megumi Naoi, "Shopping for Protection: The Politics of Choosing Trade Instruments in a Partially Legalized World*," *International Studies Quarterly* 53, no. 2 (2009).

⁷⁵ M.J. Hiscox, *International Trade and Political Conflict: Commerce, Coalitions, and Mobility* (Princeton University Press, 2002).

⁷⁶ Aurelia George Mulgan, *The Politics of Agriculture in Japan* (Routledge, 2013).

protectionist measures.⁷⁷ More generally similar research contributions focus upon the variation in institutional structure among democratic states and how this mediates the effects of domestic group pressure on trade agreement outcomes.⁷⁸ For example a more centralized or non-democratic polity may be able to ignore the protectionist impulses of some of their constituents and thus lead to a more comprehensive agreement. On the other hand, it might be argued that democracies are more likely to pursue more comprehensive agreements because of the benefits this can provide to the consumer in terms of the lower cost of goods. The fact that some of the causal factors can have dual effects on contract coverage implies that much research remains to be conducted in this regard.

In a similar but separate line of research Goldstein and Martin have pointed to some of the domestic political *effects* of highly legalized agreements, arguing that legalization can increase the ex-post incidence of protectionism because this increases the information available to protectionist actors regarding the distributional implications of the agreement. Thus those sectors that suffer negatively as a result are more informed and thus more easily mobilized against liberalization.⁷⁹ The implication of this argument of course is that states that fear a backlash against particular protectionist lobbies should seek ambiguity in at least some aspects of the agreements that they sign and thus expectations surrounding the ex-post effects of these contracts will shape their initial designs. Elsewhere Grossman and Helpman have shown that when individual tariff rates are set on many goods (i.e liberalization is relatively restricted to certain specific areas), the main domestic political battles are between

⁷⁷ George W Downs and David M Locke, *Optimal Imperfection?: Domestic Uncertainty and Institutions in International Relations* (Princeton University Press Princeton, NJ, 1995).

⁷⁸ Helen Milner and B Peter Rosendorff, "Democratic Politics and International Trade Negotiations Elections and Divided Government as Constraints on Trade Liberalization," *Journal of Conflict Resolution* 41, no. 1 (1997)., Eric Reinhardt, "Tying Hands without a Rope: Rational Domestic Response to International Institutional Constraints," in *Locating the Proper Authorities: The Interaction of Domestic and International Institutions* ed. Daniel Drezner (Ann Arbor: University of Michigan Press., 2003). in Daniel W Drezner, *Locating the Proper Authorities: The Interaction of Domestic and International Institutions* (University of Michigan Press, 2003).

⁷⁹ Judith Goldstein and Lisa L Martin, "Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note," *International organization* 54, no. 03 (2000).

export interests in one country and import competing interest in the same industry in the other country. In contrast, where a trade agreement liberalizes all bilateral tariffs to zero, export interests in a country are pitted against the import competing interests in that same country.⁸⁰ Thus the authors argue that if some of these industries can be excluded or provided with long adjustment periods then the prospects for an agreement are improved. Such circumstances would encourage states to seek less comprehensive contracts in order to protect these industries and therefore this mechanism may explain why certain sectors are excluded in particular trade contracts.

In similarly important contribution Kucik shows that escape clauses (flexibility) in trade agreements provide particular benefits to import competing industries by allowing extra room for adjustment whilst export dependent industries bear the costs (due to symmetrical protections deployed by the import competing industries of the other country) – this consequently creates domestic political competition over design and the outcome is decided by the relative power of these competing groups.⁸¹ In a similar vein McCall Smith accounts for variation in levels of agreement legalization with reference to the trade-off between the domestic political costs and benefits of compliance versus policy discretion for executive actors themselves.⁸²

Finally, Christina Davis provides a qualification to the over-emphasis on domestic actors by suggesting that power and interests of states and domestic groups alone fail to account for the variation we observe in contract design: ‘Strong states sometimes are unable to persuade weaker states to open their markets and influential lobby groups are not always able to

⁸⁰ Gene M Grossman and Elhanan Helpman, "The Politics of Free Trade Agreements," (National Bureau of Economic Research, 1993).

⁸¹ Kucik, "The Domestic Politics of Institutional Design: Producer Preferences over Trade Agreement Rules."

⁸² James McCall Smith, "The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts," *International Organization* 54, no. 01 (2000).

prevent their government from signing a liberalization agreement.’⁸³ Thus, she suggests, careful analysis must also incorporate considerations the institutional structure under which these negotiations take place because these shape which alternatives are considered and how they are selected – it is this institutional structure then which can likely account for the limited nature of some trade agreements. All of this suggests that there are compelling and often well-supported accounts of how conditions at the sub-state level can shape the contract design preferences of negotiators and as such no comprehensive account of international contract design can afford to ignore them. Nevertheless, as Davis suggests, establishing clear causation between the preferences of domestic groups and the representatives of a state is no simple task and there is a risk that these factors are emphasised to the exclusion of others. As a result there is a tendency for such accounts to significantly underplay the role of state representatives because they conceive of trade negotiators as mere delegates responding to the changing preferences of domestic constituencies. In order to balance this oversimplification, it is essential that a greater appreciation of strategic diplomatic factors is gained, if only because we know such factors shape international negotiations in important ways. Without such a richer understanding of how these factors combine purely domestic political accounts are likely to remain incomplete.

2.6 Legal Culture

A second category of explanations indirectly suggests some of the difficulties of isolating the effects of domestic politics on contract design because those countries which share similar governmental institutions also tend to possess similar legal cultures. Much of this work on the role of legal culture is not directed specifically toward international trade but can nonetheless provide some important insights into the reasons that states adopt different approaches with

⁸³ Christina L Davis, "International Institutions and Issue Linkage: Building Support for Agricultural Trade Liberalization," *American Political Science Review* 98, no. 01 (2004).

respect to the design of trade contracts. The concept of legal culture is of course a complex and contested subject,⁸⁴ it has been defined variously as the ‘ideas values, expectations and attitudes toward law and legal institutions which some public or some part of the public holds.’⁸⁵ Elsewhere it is seen as a reflection of the history and traditions of a particular system which are reflected ‘in the actions or behaviours of the actors, institutions, and even of the substance of the system [which] exists not because of regulation of substantive law, but as a result of the collective response and actions of those participants in the legal system.’⁸⁶ In yet other works it has been defined as ‘a specific way in which values, practices, and concepts are integrated into the operation of legal institutions and the interpretation of legal texts.’⁸⁷ Whilst these definitions demonstrate that the nature of legal culture itself remains contested, a weak consensus can be found on the identity of distinct legal cultures (at least in terms of their analytical utility), such as those of the common law in the Anglo-Saxon world, the civil law traditions of much of Continental Europe, African law, Asian (or Confucian) legal traditions, and Islamic law. Such categories, as with the definition of legal culture itself, are of course imperfect - within these broad categories there are countries which possess hybrid cultures, for example Turkey with respect to Islamic and civil legal traditions or India with respect to Asian and Common law traditions. Nevertheless, these categories tell us something important about key characteristics of certain cultures that can provide important insights into the international behaviour of states belonging to each.

It has been observed that Asian legal cultures in particular tend to emphasise personal relationships as a means of resolving disputes in contrast to the more formalized and

⁸⁴ Susan Silbey, "Legal Culture and Cultures of Legality," *Handbook of cultural sociology* (2010): 470.

⁸⁵ David Nelken, "Using the Concept of Legal Culture," *Austl. J. Leg. Phil.* 29 (2004): 472.

⁸⁶ Colin Picker, "International Trade and Development Law: A Legal Cultural Critique," *The Law and Development Review* 4, no. 2 (2011): 46.

⁸⁷ Mark Van Hoecke and Mark Warrington, "Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law," *International and Comparative Law Quarterly* 47, no. 03 (1998): 498.

legalistic approach of western (Common and Civil law) cultures.⁸⁸ Studies have also pointed to the non-individualistic, collectivist and non-rationalist character of Asian legal culture resulting from 'Confucian traditions of thought'.⁸⁹ These traditions are thought to emphasise harmony and as a result even if a party is on the right side of a dispute it is expected that they behave in a reasonable and merciful manner to the party that is in the wrong.⁹⁰ Consequently in resolving disputes mutual concessions are expected and in fact encouraged because 'Social order... started from the idea that harmony should prevail between individuals. Disputes should be dissolved rather than resolved. Law [is] viewed negatively, because it was not virtuous for one to assert one's rights.'⁹¹ When analysing international contracts then, the researcher should be aware that ambiguity in legal matters does not hold the same meaning in these cultures as for others, it has been suggested that for Asians, vague language 'is often necessary to ensure consensus on sensitive issues...For Westerners, in contrast, ambiguity is a weakness--a reflection of weak resolve or a feeble mind.'⁹²

Of course such accounts can be overly reductive and in this context Asian legal culture is a slightly clumsy label that is more accurately thought of as an East Asian or even Chinese (or Confucian) legal culture. Indeed, the very existence of an Asian legal culture is undermined by the wide variety of different legal cultures on that continent, Singapore for example has adopted a common law system whilst Japan possesses a civil law tradition.⁹³ Nevertheless, despite the clumsiness of these terms they may tell us something about the variation we observe in trade contract design. For example, as a consequence of their legal culture, it would be unsurprising to find that agreements signed by states in East Asia would be (all else equal) narrower and incorporate less rigorous dispute resolution mechanisms than those

⁸⁸ Ibid., 502.

⁸⁹ Ibid., 505-06.

⁹⁰ Shin-yi Peng, "The Wto Legalistic Approach and East Asia: From the Legal Culture Perspective," *Asian-Pacific Law & Policy Journal* 1, no. 2 (2000): 10.

⁹¹ Ibid., 11.

⁹² Ibid., 21.

⁹³ Ibid., 19.

signed by their American and European counterparts. In China for example it is clear that more informal, so called ‘guanxi’ relationships and networks remain significant in the operation of the legal system.⁹⁴ This has knock-on effects in international interactions and in trade in particular ‘Partly due to a weak legal culture at home, Chinese decision makers tend to trust a relation-based approach in handling WTO affairs.’⁹⁵ The ambiguity or narrow coverage we observe in Asian trade deals then can be made explicable with reference to cultural particularities which value ambiguity and the resolution of disputes through informal processes. Indeed, even in the realm of international law where more uniformity may be expected, this does not necessarily lead to uniform application and enforcement at the more local levels.⁹⁶

Elsewhere in Asia, research on legal culture has identified similar tendency characteristics with respect to the Japanese approach - in a seminal work, *Dispute resolution in Contemporary Japan*, Kawashima points to the important role of informal mechanisms of dispute resolution and the reluctance to engage in formal litigation in anything but the last resort.⁹⁷ This he assigns to the nature of traditional social groups in Japan which are ‘epitomized by two [elements] First, they are hierarchical in the sense that social status is differentiated in terms of deference and authority... Second . . . social roles are defined in general and very flexible terms . . . [T]his definition of social roles can be, and commonly is, characterized by the term ‘harmony.’”⁹⁸ The parallels with Chinese legal culture are obvious.

Remaining in Asia, it has been suggested that India exhibits particular behaviours in relation

⁹⁴ Pitman B. Potter, *The Chinese Legal System: Globalization and Local Legal Culture* (Taylor & Francis, 2001), 12.

⁹⁵ M. Sornarajah and J. Wang, *China, India and the International Economic Order* (Cambridge University Press, 2010), 210.

⁹⁶ Pitman B Potter, *Globalization and Local Adaptation in International Trade Law* (UBC Press, 2011), 15-16.

⁹⁷ Takeyoshi Kawashima., "Dispute Resolution in Contemporary Japan," in *Law in Japan: The Legal Order in a Changing Society*, ed. Arthur T. Von Mehren (Cambridge MA: Harvard University Press, 1963). in Arthur Taylor Von Mehren, "The Legal Order in Japan's Changing Society: Some Observations," *Harvard Law Review* (1963). in David Feldman, Franklin Meisel, and Robert R. Pennington, *Corporate and Commercial Law : Modern Developments* (London: Lloyd's of London Press, 1996), 51.

⁹⁸ Kawashima., "Dispute Resolution in Contemporary Japan." in Feldman, Meisel, and Pennington, *Corporate and Commercial Law : Modern Developments*, 53.

to the legal processes of the WTO that contrast with China's approach because of divergence in their legal cultures.⁹⁹ This difference is attributed to the Anglicization of Indian law as a result of its colonial past which results in a more legalistic approach than many of its Asian counterparts.¹⁰⁰

This work points to the value of an understanding of the generally more legalistic approaches of western states in comparison to their Asian counterparts and is particularly useful in assisting in avoiding erroneously assigning causation to factors more easily explained by cultural peculiarities. The problem with such accounts however is their inability to explain the extensive variation we observe within these legal cultures, or indeed, the variation in the behaviour of single states. In short a factor such as legal culture which varies slowly, if at all, will be unable to account for temporal and geographically specific variation. As a result, as with the work on domestic politics, a focus on legal culture alone would lead to erroneous conclusions.

2.7 Learning and Diffusion

A third research agenda implies that much of the variation in international contract design results from the learning processes of negotiators: at its simplest this work suggests that a lack of negotiating experience is associated with the conclusion of more narrow agreements. We can deductively identify two mechanisms by which this might occur, first, less experience can lead to greater uncertainty about the future and therefore a reluctance of these novice negotiators to incur high negotiating costs as a result of a comprehensive agreement which will likely require alterations in any case – much better instead for such inexperienced

⁹⁹ Sornarajah and Wang, *China, India and the International Economic Order*, 210.

¹⁰⁰ Lloyd I Rudolph and Susanne Hoeber Rudolph, "Barristers and Brahmans in India: Legal Cultures and Social Change," *Comparative Studies in Society and History* 8, no. 01 (1965): 42., Marc Galanter, "The Displacement of Traditional Law in Modern India*," *Journal of Social Issues* 24, no. 4 (1968): 73.

diplomats to simply write a brief agreement and amend over time as they learn more about the application of the deal. The second mechanism by which this can occur is that a lack of experience may result in an inability to find consensus over numerous issues between negotiating parties because of the relative lack of diplomatic skill and finesse which is often a necessary ingredient to reach broad agreements. Thus lacking this ability, only a minimal degree of common ground can be established between the negotiating parties.

A connected but separate body of work considers the role of learning, not in terms of experience but in terms of information gathering through diffusion – defined as a ‘process through which ideas, normative standards or... policies and institutions spread over time.’¹⁰¹ That is, design variation can occur where states adopt different agreement templates which allow them to minimize the costs of drafting and re-drafting new agreements for each particular negotiation.¹⁰² Again, there are a number of logics by which this diffusion may occur: diffusion can be seen as the result of utility maximising states simply ‘shopping around’ for the most efficient solution to particular design problems.¹⁰³ As a result of this we see states ‘boilerplating’ (adopting of standard agreement templates in order to reduce legal costs).¹⁰⁴ Elsewhere Gulati and Scott have suggested that this behaviour can result simply from factors such as the bounded rationality of actors, or risk aversion which itself is probably closely correlated with negotiating experience.¹⁰⁵

Aside from these attempts to reduce transaction costs (following a logic of consequences), contract design elements may diffuse also due to a logic of appropriateness – actors adopt

¹⁰¹ Fabrizio Gilardi, "Transnational Diffusion: Norms, Ideas, and Policies," *Handbook of international relations* 2 (2012): 25.

¹⁰² Allee and Elsig, "Are the Contents of International Treaties Copied-and-Pasted? Evidence from Preferential Trade Agreements."

¹⁰³ Naoi, "Shopping for Protection: The Politics of Choosing Trade Instruments in a Partially Legalized World*."

¹⁰⁴ Allee and Elsig, "Are the Contents of International Treaties Copied-and-Pasted? Evidence from Preferential Trade Agreements," 10.

¹⁰⁵ *Ibid.*, 11.

certain templates and approaches because they believe such an approach to be the ‘right’ one. Such a dynamic can arise from socialization among certain groups (in this case states).¹⁰⁶ Similarly this may occur as a result of power dynamics – weaker states may be compelled to adopt certain rules or procedures when negotiating certain agreements – for example states which have strong trading partnerships with the U.S. or E.U. have been shown to adopt similar agreement templates.¹⁰⁷ In short then, narrow trade agreements may result from risk aversion or cognitive limitations¹⁰⁸ or may simply be the result of a close economic relationship between states, where states are simply emulating the best practices of another or at its most extreme, emulation may occur due to a relationship of dependence or even coercion.¹⁰⁹ It has been argued as a result that trade dependence is a strong determinant of similarities in agreement design: ‘Weaker states that extensively trade with a major power are likely to face substantial costs if they fail to match their policies with those of the more powerful country.’¹¹⁰ For example states that tend to trade more with the United States adopt PTAs that resemble the NAFTA model more closely than do other countries.’¹¹¹

There are also examples of international groupings such as ASEAN adopting institutions modelled on, for example, the E.U Committee of Permanent Representatives not as a result of whole-sale diffusion but selective copying.¹¹² Similarly, in the case of bilateral investment treaties competition has provided the stimulation for states to adopt the practices of those countries which have been able to reassure investors and thus secure greater investment

¹⁰⁶ Etel Solingen and Tanja A. Börzel, "Introduction to Presidential Issue: The Politics of International Diffusion—a Symposium," *International Studies Review* 16, no. 2 (2014): 5.

¹⁰⁷ *Ibid.*, 178.

¹⁰⁸ G Mitu Gulati and Robert E Scott, "The Three and a Half Minute Transaction: Boilerplate and the Limits of Contract Design," *Hofstra L. Rev.* 40 (2011). in Allee and Elsig, "Are the Contents of International Treaties Copied-and-Pasted? Evidence from Preferential Trade Agreements," 10.

¹⁰⁹ Solingen and Börzel, "Introduction to Presidential Issue: The Politics of International Diffusion—a Symposium," 178.

¹¹⁰ Leonardo Baccini, Andreas Dür, and Yoram Z Haftel, "Imitation and Innovation in International Governance: The Diffusion of Trade Agreement Design" (paper presented at the European Political Science Association Annual Meeting, Barcelona, 2013), 11.

¹¹¹ *Ibid.*, 19.

¹¹² Anja Jetschke and Philomena Murray, "Diffusing Regional Integration: The Eu and Southeast Asia," *West European Politics* 35, no. 1 (2012): 174.

flows. Elkins, Guzman and Simmons have shown for example how states are more likely to adopt bilateral investment treaties where their competitors have done so and thus find support for both learning and a weak form of coercion in shaping design preferences (but less support for explanations that privilege the role of legal culture).¹¹³ Thus a certain degree of design contract design variation can be convincingly explained with reference to diffusion that occurs from voluntary adoption to coercive transfer.¹¹⁴ However this work implies that we cannot hope to understand the reasons driving transfer of practices without understanding the broader strategic and power political context in which they occur, particularly because they highlight the extent to which it is the practices of the powerful that tend to diffuse the most effectively.

2.8 The Insufficiency of Existing Accounts

The preceding discussion demonstrates that each of the research agendas outlined here contribute some important insights which improve our understanding of the variation observed in the design of trade agreements, it will therefore be useful in framing the subsequent discussion. Domestic politics, legal culture, and learning/diffusions undeniably all play an important role in shaping the contract design choices of states; indeed, in some situations there is little reason to think that these factors should not be expected to be even more fundamental than purely power political mechanisms. It would therefore be misguided to focus primarily on strategic explanations for a full account of this variation. Yet as a means of providing a comprehensive account of design variation, all of these explanations possess flaws and, crucially, none of them can explain in particular the central question of why weak states continue to conclude narrow agreements under conditions of significant power

¹¹³ Zachary Elkins, Andrew T Guzman, and Beth Simmons, "Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960-2000," *U. Ill. L. Rev.* (2008): 811.

¹¹⁴ David P Dolowitz and David Marsh, "Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making," *Governance* 13, no. 1 (2000): 13.

asymmetry. We may say for example that a weak state acquiesces to narrow agreements because it possesses a particularly legal culture favouring informality, but this does not alter the fact that it is simultaneously opening itself to strategic risks – if mainstream IR theory is to be taken seriously.

More specifically, cultural explanations cannot explain, for example, why we see China and Japan, who supposedly share similar attitudes to legalization and dispute resolution, conclude agreements that differ significantly in their coverage and dispute resolution provisions, or indeed why Japan's agreements are much more similar to those of the United States in terms of their coverage.¹¹⁵ Similarly, it cannot explain why China and India, though possessed of very different legal traditions, adopt similarly narrow agreements. In short, legal culture is unsatisfactory in explaining why powerful states with such different traditions seemingly pursue the same kinds of trade contracts whilst those that share the same cultures often tend to pursue divergent strategies. The legal culture account is also far too broad to explain variation within cultural groupings or variation within countries, why does India for example conclude a detailed agreement with Japan but not with other countries such as Nepal or Korea?

Domestic political accounts though useful, similarly cannot explain why the agreements of India, Mexico and China are very limited in their coverage, whilst agreements signed by the United States, Canada and Japan are much more comprehensive. The domestic institutions of countries such as India, Mexico and China differ in important respects and the economies of each share wildly different compositions, yet they adopt similar approaches in the design of their agreements, why? Indeed, in terms of their domestic institutions two of these states possess democratic institutions whilst the other does not. Whilst such accounts can help to

¹¹⁵ Dür, Baccini, and Elsig, "The Design of International Trade Agreements: Introducing a New Dataset."

explain observations such as Japan's consistent reluctance to comprehensively cover the agricultural sector in its agreements, it cannot provide a compelling causal account of the broader approach that this state adopts.

Likewise, accounts that focus on the experience of negotiators in explaining variation in agreement coverage are undermined by the fact that some of the most experienced negotiators strive to secure less comprehensive deals. For example, the data shows that China's agreements are consistently narrow in coverage, yet even by 2000 (a year before its WTO entry) China is said to have 'boasted a strong cadre of seasoned and highly sophisticated diplomats.'¹¹⁶ We also do not see agreements concluded by states such as China become more comprehensive over time, as one would expect if pursuing the learning explanation. Elsewhere the Japanese score highly on the comprehensiveness of their trade deals yet are comparative newcomers to negotiating bilateral trade agreements whilst Canada has concluded a number of shallow agreements despite its wealth of experience.¹¹⁷

With respect to diffusion, it is again clear that this plays a role in helping states reduce the costs of writing contracts and to signal their commitment to shared norms by copying the clauses and agreements adopted by other states. Yet outside of a few isolated cases there is little evidence that states routinely adopt the approach of others when designing their trade contracts. In fact, most copying of trade agreements occurs through states simply employing clauses written in their own previous agreements in order to reduce the costs of drafting another.¹¹⁸ The cases that best support the diffusion argument are those countries that trade

¹¹⁶ Claude Barfield, "Dragon Stirs: China's Trade Policy for Asia-and the World," *Ariz. J. Int'l & Comp. L.* 24 (2007): 96-97.

¹¹⁷ Data from Dür, Baccini, and Elsig, "The Design of International Trade Agreements: Introducing a New Dataset."

¹¹⁸ Allee and Elsig, "Are the Contents of International Treaties Copied-and-Pasted? Evidence from Preferential Trade Agreements," 10.

heavily with the United State and the European Union (where power dynamics are surely also important), elsewhere however there is little evidence of any significant effects.¹¹⁹

Finally, in addition to the three broad research tracks, a simpler economic development argument might be suggested, i.e. developing states sign more incomplete agreements in order to protect their infant industries and they simply exclude certain clauses in order to protect these more fragile sectors. There are a number of problems with this line of thought however. First it is not clear that lack of coverage equates to more protection. For example, coverage of a particular industry in an agreement might explicitly entail specific protections and safeguards in the agreement itself, making it more, not less comprehensive.¹²⁰ Second, this cannot explain the behaviour of developed but nonetheless rising states such as the United States in the 1980s who signed more narrow agreements despite their overwhelming advantages in all areas subsequently covered in their agreements. In terms of the developing economy argument this cannot explain why countries such as Chile, Mexico and Colombia have sometimes concluded much more comprehensive deals than more developed countries such as Australia and Canada.¹²¹

As specific illustration of these trends we can see that developed states such as Australia and New Zealand concluded an agreement with a comprehensiveness score of 3 (out of 7) in 1983, similarly Australia and Canada signed a deal with a score of 0 in 1960. Elsewhere Canada and Israel concluded a deal with a score of 3 in 1996 and The Canada-EFTA deal of 2008 also scores only 3. The European Community and Norway concluded a deal with a score of only 2 in 1973 despite their developed economic status, whilst Canada and the U.S. signed a deal of only 3 in 1988.

¹¹⁹ Ibid., 21.

¹²⁰ One can think of mechanisms such as tariff rate quotas (TRQs) whereby a specific clause is included in order to place a limit on the import on a certain good or service in order to protect a domestic industry

¹²¹ Dür, Baccini, and Elsig, "The Design of International Trade Agreements: Introducing a New Dataset."

On the other hand, developing countries such as Chile and Peru have concluded agreements with a score of 5 in 2006. Likewise, the deal between Mexico and Nicaragua finalized in 1997, scores 6, and the same is true of Mexico's deal with Uruguay in 2003. The Czech Republic and Slovakia concluded a deal with a score of 5 in 1992 just a few years after the fall of the Berlin Wall when they can reasonably be considered as still developing countries. Accounts focusing on levels of economic development also have difficulties explaining within case variation, for example why is India more willing to sign a comprehensive agreement with South Korea and Singapore than with Bhutan? Surely the former two countries present far more competition for important sectors of the economy in India than does the latter?

Of course the proponents of these research agendas would likely not claim that they could account for all the observed design variation on their own. In combination with one another however it is clear that these agendas can plausibly account for many of the differences that we observe. However, crucially, these research agendas, either in isolation or in combination, because of their focus on sub-state factors, are still unable to explain why weak states acquiesce to narrow trade agreements despite the supposed risks that this entails, either there is a problem with these accounts or the conventional wisdom of mainstream IR theory. Domestic factors, legal culture or diffusion have as yet provided *no causal mechanism* by which weak countries are compelled to ignore the strategic vulnerabilities to which they subject themselves by tying themselves closely to a more powerful state with an ambiguous agreement. To understand this we must move beyond these purely sub-state explanations to understand more fully the strategic dynamics that shape these deals in the first place.

Part II: A New Framework

Chapter 3: The Strategic Logic of International Contracts

To understand *why* existing accounts do not adequately explain the persistence of narrow contracts under power asymmetry, and to begin to resolve the theoretical flaws in mainstream accounts, we must begin with an exploration of the fundamental nature of these contracts, their purpose, and their place in the broader context of international law. By doing so a greater appreciation of the benefits and costs that such contracts offer for both the weak and the strong in strategic and economic terms may be attained. Therefore, in this chapter I briefly describe the broader theoretical debate on the role of international contracts before turning to a more in-depth analysis of the major dimensions of contract design. I use this discussion to point to the vulnerabilities that may accrue to the weak as a result of particular design choices and highlight the particular risks entailed by concluding *narrow contracts*. I suggest that, because excluded elements of narrow contracts cannot, by definition, be enforced this leads to particular vulnerabilities for the weak in terms of re-negotiation, re-interpretation, and amendment by stronger counterparts down the line. I develop this discussion in order to resolve a theoretical flaw in current thinking by establishing a specific causal mechanism by which broad contracts protect the weak – by facilitating enforcement of a broader number of clauses and thereby restrict the behaviour of the more powerful across a greater number of dimensions which, in turn, increases certainty.

3.1 The Broader Theoretical Context

Of course, there exists a long-running debate over the role of international law itself in the context of international relations with the main camps divided across familiar realist and

liberal institutionalist lines. Institutionalists of course argue that international law and institutions have real effects and significant value both as a coordination device and as a way of expressing shared norms.¹²² On the other hand realists traditionally see international law as largely epiphenomenal, merely reflecting the distribution of power and interests of states.¹²³ In terms of contractual commitment in particular Stephen Krasner has enumerated six ways in which realists see power asymmetries as specifically inhibiting cooperation:

‘(1) the more powerful state prefers to act unilaterally and not limit itself by formal accords; (2) the weak state will not enter accords that increase its interactions with the more powerful state, which in the long run increases its vulnerability; (3) even if the terms of the accord benefit the weak state, it will be reluctant to accept because of how the accord will be implemented in practice; (4) the weak state’s leaders will perceive that greater interactions will alter the distribution of material and human resources within the government, and lead to more and more effort to administer the accord; (5) greater levels of exchange will alter the weaker power’s cultural identity and autonomy; and (6) multilateralism is more attractive to weak states because it can build coalitions against the stronger powers.’¹²⁴

This realist position underlies the logic of much of the work on credible commitment and contracts that suggests weak states should not sign incomplete contracts with more powerful counterparts. In fact, this more general realist account goes further – it implies that weak states should be reluctant to conclude *any* bilateral deals even where comprehensive contracting or institutionalization are present because of the dangers that such an approach would present. All these factors should therefore meditate toward the rejection of incomplete agreements by weaker states when negotiating with more powerful counterparts.

¹²² Abbott and Snidal, "Hard and Soft Law in International Governance," 448.

¹²³ John J. Mearsheimer, "The False Promise of International Institutions," *international Security* 19, no. 3 (1994)., *The Tragedy of Great Power Politics* (New York: Norton, 2001)., Joseph M Grieco, "Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism," *International organization* 42, no. 03 (1988).

¹²⁴ Krasner, "Simple Y Obstaculos Para La Cooperacion Entre Mexico Y Estados Unidos." in Cameron and Tomlin, *The Making of Nafta: How the Deal Was Done*, 18.

On the other side of the debate, institutionalists point to the utility of international contracts as an effective means of reducing transaction costs and thereby increasing the shared gains of all of the contracting parties.¹²⁵ In a sense however the dichotomy between these positions is a false one created by those striving to carve out a unique theoretical space - both the realist and institutionalist views are to some extent correct and can be fruitfully reconciled. Though they erroneously underplay the importance of power in shaping institutional design, institutionalists are correct to point to the utility of contracts as coordination devices.¹²⁶ Similarly, though underplaying the important independent effects of institutions, realists are correct to emphasise the significance of power in shaping their design and operation.¹²⁷ This power can be employed in international institutions because of the most obvious dissimilarity between domestic and international law: the lack of an authority in the international sphere above that of states analogous to that which exists domestically with respect to individuals.

At the heart of the difficulty of transferring our domestic understanding of law and contracts to the international system then is the fact that law and contracts imply that certain behaviours are obligatory, yet each state is formally sovereign and can therefore repudiate these obligations at any time.¹²⁸ The implications of this lack of formal authority have been widely explored, the most important consequence for international contracts is the absence of centralized judicial enforcement. That is, there exists no body in the international sphere above that of states that possesses unquestioned and effective enforcement power in a way analogous to the judiciary at the domestic level. Ultimately sovereign states can ignore the rulings of international judicial bodies should they wish to do so. As the legal philosopher H.L.A Hart observed:

¹²⁵ Koremenos, "Contracting around International Uncertainty."

¹²⁶ Koremenos, Lipson, and Snidal, "The Rational Design of International Institutions."

¹²⁷ Mearsheimer, "The False Promise of International Institutions."

¹²⁸ HLA Hart et al., *The Concept of Law* (OUP Oxford, 2012), 176.

‘The absence of an international legislature, courts with compulsory jurisdiction, and centrally organized sanctions have inspired misgivings in the breasts of legal theorists. The absence of these institutions means that the rules for states resemble that simple form of social structure, consisting only of primary rules of obligation, which, when we find it among societies of individuals, we are accustomed to contrast with a developed legal system.’¹²⁹

There are two primary implications of this for international contracts in particular: first, in the international sphere the impartial adjudication of disputes is non-binding in the sense that states remain sovereign. Less analysed, but no less important however is a lack of another important judicial function - *interpretation* of contracts; A crucial difference between domestic and international law then is not just the lack of enforcement capacity provided by courts but the absence of their interpretive function; that is, the ability to interpret the intentions of the signatories once an agreement is concluded and the consequent ability to fill in missing, faulty, or ambiguous elements of a contract in future.¹³⁰ For this reason incomplete contracts have entirely different implications in the international arena than in the domestic. Due to this fundamental difference it has been observed that a lack of international judicial authority means that ‘Incomplete domestic contracts are filled in by the courts, incomplete international agreements remain incomplete.’¹³¹ The implications of incomplete international contracts however have not been completely thought through - the contention that incomplete international contracts remain incomplete is not precisely correct. Of course incomplete international agreements, like any other contract, are filled in, the difference is *the mechanism* by which this is achieved. In the international sphere this is achieved not through the judgement of an impartial body but rather by the contracting parties themselves with reference to their respective bargaining power in order to fill-in these details. It is obvious then that the functions of impartial arbitration and interpretation entailed in domestic

¹²⁹ Ibid.

¹³⁰ Charles Lipson, "Why Are Some International Agreements Informal?," *International Organization* 45, no. 04 (1991): 502.

¹³¹ Ibid., 503.

contracts do not map well to the international system due to state sovereignty and the absence of an overarching authority or impartial judiciary with the power to impose settlements. But what are the deeper strategic implications of this?

3.2 Three Dimensions of Contract Design

The discussion thus far is predicated on the contention that incomplete or under-specified trade agreements create vulnerabilities for the weaker party. But what does it mean to say that a trade agreement is under-specified and how exactly does this relate to the vulnerability of the weak? First, though the theory of incomplete contracting is decades old, the employment of the concept remains haphazard and this can lead to some conceptual confusion. Accordingly, it has been said that ‘incomplete contracts are not members of a well-circumscribed family; at this stage an incomplete contract is rather defined as an ad hoc restriction on the set of feasible contracts in a given model.’¹³² In short, contractual incompleteness is usually assumed rather than empirically derived.¹³³ To empirically ascertain the degree of incompleteness in a given trade deal we must therefore first evaluate the universe of elements usually associated with such deals. To maximize simplicity, we can say that an agreement is relatively incomplete if it covers fewer elements than the most comprehensive agreements that have been observed in a given issue area. An incomplete agreement then is simply a contract which addresses a subset of issues addressed by the most comprehensive observed deals in a given sphere.

This is a simple and straightforward definition but its application to trade is not as uncomplicated as it may first appear. Trade agreements in particular can incorporate different

¹³² Tirole, "Incomplete Contracts: Where Do We Stand?," 743.

¹³³ Henrik Horn, Giovanni Maggi, and Robert W Staiger, "Trade Agreements as Endogenously Incomplete Contracts," (National Bureau of Economic Research, 2006), 1.

dimensions of comprehensiveness and this in itself has proved a fruitful area of research. For example, in applying the idea of incomplete contracts to trade, an important distinction has been drawn between three different dimensions of contract comprehensiveness: depth, breadth, and rigidity.¹³⁴ In terms of the first dimension, deep treaties imply greater levels of liberalization (tariff reductions) whilst shallow treaties liberalize less. It is suggested that these deeper agreements increase the likelihood of reneging since the obligations of the treaty are more demanding.¹³⁵ The second dimension, rigidity, on the other hand, refers to the degree to which ‘treaty violations are tolerated’.¹³⁶ Milner and Rosendorff show how international agreements that incorporate escape clauses are more stable than those that do not. In line with Koremenos, but against Fearon, they find that escape clauses actually make the initial bargains easier to reach.¹³⁷ Elsewhere Kucik and Reinhardt similarly find that flexibility provisions in international agreements promote cooperation under conditions of uncertainty.¹³⁸

Both of these measures of depth and rigidity relate directly to the level of residual rights surrendered by the contracting parties – deep and rigid agreements require that more rights are surrendered up-front. For example, a shallow agreement allows parties to retain the ability to choose relatively higher tariffs than do deep treaties, and so these shallow agreements may be less efficient in terms of reducing ex-ante transaction costs but allow parties to retain more residual rights. On the other hand, rigid agreements restrict signatories’ rights by incorporating a lower threshold for punishment of violations – that is, rigid agreements allow

¹³⁴ Leslie Johns, "Depth Versus Rigidity in the Design of International Trade Agreements," *Journal of Theoretical Politics* 26, no. 3 (2014): 469-70. See also Michael J Gilligan, "Is There a Broader-Deeper Trade-Off in International Multilateral Agreements?," *International Organization* 58, no. 03 (2004).

¹³⁵ Johns, "Depth Versus Rigidity in the Design of International Trade Agreements," 468.

¹³⁶ *Ibid.*, 470.

¹³⁷ Rosendorff and Milner, "The Optimal Design of International Trade Institutions: Uncertainty and Escape," 852.

¹³⁸ Jeffrey Kucik and Eric Reinhardt, "Does Flexibility Promote Cooperation? An Application to the Global Trade Regime," *ibid.* 62, no. 03 (2008).

parties less freedom of action in exchange for securing more gains from cooperation since adherence to the contract is more likely.¹³⁹

With respect to a third dimension of contract comprehensiveness, breadth, Baccini et al explore what they term the *depth* of trade agreements in their quantitative analysis, however the measures they employ more accurately refer to the breadth of coverage (that is, they are measuring the number of issues included in the agreement rather than levels of liberalization per se). All the aforementioned analyses focus then on slightly different measures of contract comprehensiveness summarized in table 3.1. But what should be the dimension of concern in relation to the potential vulnerabilities faced by the weak under conditions of power asymmetry?

Table 3.1: Contract Dimensions Summary

Dimension	Characteristic
Flexible	Limited Costs Imposed on Reneging
Shallow	Limited Liberalization
Narrow	Limited Issue Coverage

3.3 How Broad Contracts Protect the Weak: Defining the Causal Mechanism

To begin to address the question of vulnerability, the issue of enforcement must first be addressed since it is only the enforcement of a contract which confers upon it any value as a commitment device (or else it would be indistinguishable from a non-formalized agreement). In this section I thus explore the three different dimensions of contract coverage in relation to the vulnerability of the participants and show that *narrow agreements* in particular create vulnerabilities that cannot be remedied through enforcement and thus present the greatest

¹³⁹ Andrew T Guzman, "A Compliance-Based Theory of International Law," *California Law Review* (2002): 1828.

danger to relatively weak states. It is this insight that leads to a focus on narrow contracts in the subsequent empirical analysis.

Of course when considering issues of international enforcement, it is important to note that many contractual arrangements are self-enforcing,¹⁴⁰ that is, due to the benefits derived from the agreement itself, the contracting parties have incentives to adhere to it simply because the costs of cooperation failure outweigh the temporary benefits of renegeing, and in such circumstances the commitment is implicit.¹⁴¹ In many circumstances however contracts do not have this fortuitous quality: Where the incentive structure that stimulated the agreement can shift or be altered in a way that makes it beneficial for at least one actor to renege, a credible commitment is required in order to sustain cooperation.

Aside from self-enforcement then, three sub-types of exogenous enforcement can be identified which underpin the credibility of contractual commitments: The first is bilateral and takes the form of one party appropriating or damaging the relation-specific investments of the renegeing party or otherwise inflicting hardship (through punishment) following the act of cheating. Of course this is possible only if the victim of cheating is sufficiently powerful to impose costs of a significant nature to deter its counterpart. The two remaining methods of enforcement are however immune to this requirement. The second method of exogenous enforcement is centralized; in such cases an actor (such as a judicial body) is imbued ex ante by the contracting parties with the power to punish cheaters, this then changes the incentive

¹⁴⁰ Lester G Telser, "A Theory of Self-Enforcing Agreements," *Journal of business* (1980): 27. defines such as: 'self-enforcing agreement between two parties remains in force as long as each party believes himself to be better off by continuing the agreement than he would be by ending it.' See also Beth V Yarbrough and Robert M Yarbrough, "Reciprocity, Bilateralism, and Economic 'hostages': Self-Enforcing Agreements in International Trade," *International Studies Quarterly* (1986).

¹⁴¹ This is commitment in the motivational sense, see Kenneth A. Shepsle, "Discretion, Institutions, and the Problem of Government Commitment," in *Social Theory for a Changing Society*, ed. Pierre Bourdieu and James Coleman (Boulder: Western Press, 1991), 249-50. in Douglass C North, "Institutions and Credible Commitment," *Journal of Institutional and Theoretical Economics (JITE)/Zeitschrift für die gesamte Staatswissenschaft* (1993): 14.

structure of the participants and can help to deter renegeing. The third type of enforcement is of the decentralized variety whereby an actor that reneges on its commitments is forced to incur certain diffuse costs (such as reputational costs) and thus face punishment from a collection of individual actors. This punishment can be either direct or indirect: in the latter case a cheater can lose out on the potential for beneficial cooperation with others, in the former, specific directed sanctions can be applied by the community. In the case of trade, an example of such enforcement could be the imposition of barrier specifically directed towards an offending state (though this could also be purely bilateral). This reputational enforcement can be seen in many social settings at the subnational level,¹⁴² and arguably plays an even more important role at the international level due to the lack of hierarchical authority.¹⁴³

In applying these understandings of enforcement to the case of weak states concluding deals with more powerful counterparts it is obvious that (by definition) relatively weak states cannot rely on bilateral enforcement measures due to their relatively inferior bargaining power and thus must opt for either centralized or de-centralized enforcement of contracts. To ensure that these enforcement mechanisms can operate effectively there is therefore a need to clarify precisely the duties and obligations that a particular contract entails for each signatory. Without such clarity, exploitation or manipulation by the powerful is a real possibility *given that elements of cooperation that are not codified precisely cannot be enforced either through centralized or de-centralized means.*

This last point is absolutely crucial - where agreements are broad there is generally one vulnerability to which the weak are subject: the danger that the more powerful reneges on an

¹⁴² Robert C. Ellickson, *Order without Law : How Neighbors Settle Disputes*, ed. Inc ebrary (Cambridge, MA: Harvard University Press, 1991).

¹⁴³ R.M. Axelrod, *The Evolution of Cooperation* (Basic Books, 2006). Even where these centralized enforcement mechanisms are present, their effectiveness is always in doubt due to state sovereignty. In this sense centralized enforcement simply reduces to decentralized enforcement since states only adhere to the decision of the centralized authority due to the reputational costs this would incur. (In this sense there is no truly centralized enforcement in international affairs)

agreement down the line. Where agreements are narrow however there is a further vulnerability with which the weak must contend; the danger that the narrowness of the agreement will be used as a means by which the strong can manipulate the relationship in their favour. Intuitively there are two sub-mechanisms by which this manipulation can occur: First, the strong can make use of its greater bargaining power to fill in gaps in the agreement in a way that is favourable to itself (amendment is made with reference new bargains and therefore to the bargaining power of the actors). Second, it may retain ambiguous or incomplete sections and use its greater bargaining power to interpret these sections in its favour. The same is true to a lesser degree for shallow agreements (that reduce tariffs) – manipulation here is possible but circumscribed because a shallow agreement only implies the possibility of deeper liberalization in particular issue area that has already been agreed upon by both parties. The shallowness of the deal does not imply ambiguity in other areas in and of itself, it is the lack of coverage in those other areas that does this.

It is also crucial to note here that the utilisation of these two mechanisms of control by the powerful only make sense if the stronger state expects itself to be in a relatively superior position at subsequent points when these new bargains occur, thus if it is declining it will reap no reward from delaying bargaining over certain aspects of an agreement in future, indeed it may incur a worse outcome. At this point we can return to the earlier discussion of the commitment problem and the particular claim that either supranational institutionalization or comprehensive contracts can protect the weak from exploitation by the strong. In particular, we can provide an explanation as to *why more comprehensive contracts provide protection to the weak*. We can say that supranational institutionalization protects against the risk of renegeing by facilitating centralized punishment of deviations from a contract. However, such a body (or indeed any actor) cannot enforce that which is not codified in a contract. Broad (or comprehensive) contracts then facilitate decentralized forms of

enforcement by codifying precisely the duties and obligations of the parties and thereby protect the weak from renegeing and manipulation by the strong. In short, an actor can only incur costs by renegeing on an explicit commitment. *It is this insight which remedies the under-specification of existing accounts and explains how broad or comprehensive contracts can provide protection to the weak.*

Table 3.2: A Typology of Contractual Vulnerabilities and Their Safeguards

Characteristic	Vulnerability	Safeguards
Flexible (Limited Rigidity)	Reneging	Centralized and Decentralized Enforcement
Shallow (Limited Liberalization)	New Bargaining Rounds	Circumscribed number of additional Bargaining Rounds
Narrow (Limited Issue Coverage)	New Bargaining Rounds	None

Table 3.2 summarizes the logic - for an agreement to be flexible it must incorporate elements which imply that the costs incurred by the renegeing party are relatively low. Consequently, centralized enforcement is limited by the agreement itself and can offer little protection to the weak if the strong wishes to renege. On the other hand, decentralized enforcement may still serve as an effective safeguard for such agreements should the more powerful incur reputational costs for renegeing on a flexible agreement as other states would be less willing to conclude such a deal with this state in future.¹⁴⁴ A flexible agreement also does not present any problems for a weaker party in relation to manipulation since flexibility in itself does not imply that the coverage of the deal is limited.

Shallow agreements on the other hand do create vulnerabilities for the weak since the level of liberalization of certain elements is left to future negotiations and thus the shape of

¹⁴⁴ Robert Axelrod and William Donald Hamilton, "The Evolution of Cooperation," *Science* 211, no. 4489 (1981)., George W Downs and Michael A Jones, "Reputation, Compliance, and International Law," *The Journal of Legal Studies* 31, no. S1 (2002).

liberalization is likely to be decided with reference to the bargaining power of the two states. Fortunately, the opportunities for exploitation are circumscribed by the level of liberalization in the initial agreement – in this sense though opportunities for further negotiation exist they are limited and the weak thus do not face a high degree of uncertainty. To take a concrete example, two states may initially agree on liberalization of a particular good to a tariff rate of 50%, if it is more favourable to the powerful to reduce this tariff down the line it can use its bargaining power to achieve this; however, the scope of this change is limited by the initial settlement and the tariff cannot now be increased over 50% without incurring the costs of decentralized enforcement.

Finally, narrow agreements present opportunities for manipulation of the weak by the strong because they imply that the agreement can be expanded and that this will be achieved through future negotiations within which the bargaining power of the participants will be decisive. This demonstrates the need to focus on the breadth of an agreement (and to a lesser extent depth) rather than rigidity/flexibility; a less rigid agreement implies that either party can repudiate the agreement at a lower cost, however any party that does so will nevertheless incur decentralized costs if it repudiates the agreement for an unjustifiable reason. On the other hand, opportunities for manipulation exist with both narrow and shallow agreements because those elements that are not codified are still open to manipulation without any enforcement protections. A non-rigid or flexible agreement can still be enforced in a decentralized fashion and the weak state has to agree to these provisions up-front before it makes transaction specific investments.

It is the particular vulnerabilities that result from *narrow agreements* then that should be the focus of an analysis of contracts as commitment devices, as a result the breadth/narrowness of agreements is the dimension upon which I will concentrate. However, identifying the

particular vulnerabilities and protections of narrow international contracts does not address the research question directly, in fact it brings it into starker relief - though broad contracts *do indeed* offer protections to the weak why do we continue to see these states conclude narrow trade agreements despite the vulnerabilities that they entail? With a framework for understanding the nature of these contracts and the vulnerabilities that they entail we can begin to answer this question directly.

Chapter 4: The Theoretical Framework

When seeking to construct an explanation for any phenomena within political life, an obvious and useful starting point is to ask: Who benefits? In this case the nature of the mechanisms of control outlined in the previous section suggest a preliminary answer to the question of why we see narrow agreements: By securing a narrow agreement and delaying the negotiation of details to later bargaining stages a more powerful but rising state can secure an increasingly advantageous deal. However, whilst suggesting a preference for such *deals on the part of relatively rising powers, this remains insufficient to explain why the weaker negotiating counterpart would willingly accede to such an arrangement given the vulnerabilities such an agreement implies*. To understand why this might occur we need to turn to the preferences and decision-making processes of both of the participants. In this chapter I begin by describing the insights that can be gleaned employing a bounded rationality assumption in real-world bargaining scenarios and build on this to show how the time-horizons of weak and powerful actors differ. This difference results from the fact that they possess dissimilar aspiration levels, which are determined by the size of their decision space. This in turn is a function of their power (the more powerful a state, by definition, the more options it possesses in terms of its behaviour). A crucial implication of this is that weak actors value immediate gains more highly than more powerful counterparts because the realization of future gains is relatively less certain for them (because they have fewer options with which to control events) and they therefore discount the future at a higher rate. Crucially, it is this difference in discount rates which creates a bargaining range within which a deal can be made between rising powerful states and their weaker counterparts.

4.1 The Empirical Utility of Bounded Rationality

When modelling the behaviour of actors in such bargaining scenarios, the assumption of hyper-rationality is commonplace throughout much of the bargaining and contracting literature and is often usefully employed in order to maximize tractability on a particular aspect of the process whilst minimizing theoretical complexity. Nevertheless, this assumption and the related expectation of optimizing behaviour are not without their flaws, particularly when discussion moves from modelling stylized interactions to real-world applications. Since it is the object of this study to resolve an empirical puzzle this is particularly problematic.

The most important defect of the standard rationality assumption as applied to agents in a complex environment (such as the international trade system) is the problem of infinite regress with respect to selection of a halting rule by which a decision is arrived at. In other words, under the assumption of hyper-rationality individual actors are taken to optimize, that is, select the best choice in order to maximize their utility (however defined).¹⁴⁵ They do this by considering all the possible choices available to them and calculate the consequences of each choice before finally opting for the one that maximizes benefits and reduces costs. Under complexity this utilitarian approach places a premium both on the gathering of accurate information and high levels of calculative ability. However, information is not immediately available in practice and even were it to be so processing information is costly even when individuals are perfectly rational. That is, even where information is accessible it does not follow that it is accessible in a costless fashion, it also does not follow then that even if information is easily accumulated that the calculation of the best course is costless. Given that information gathering and calculation is costly in time and resources a rational actor must

¹⁴⁵ Herbert A Simon, "A Behavioral Model of Rational Choice," *The quarterly journal of economics* (1955). in Gary Klein, "The Fiction of Optimization," in *Bounded Rationality: The Adaptive Toolbox*, ed. Gerd Gigerenzer and Reinhard Selten (London MIT Press, 2001). in Gerd Gigerenzer and Reinhard Selten, *Bounded Rationality: The Adaptive Toolbox* (Mit Press, 2002), 15.

estimate not only the best course of action but also ‘[T]he marginal utility of the information not yet gathered, in order to judge whether or not to obtain it. However the act of deliberating about the marginal value of information is itself time consuming and effortful’ One must consequently consider the ‘marginal value of the cognitive resources [expended] trying to figure out whether to gather information and so on’¹⁴⁶ Thus where cognitive and informational limitations are salient the assumption of perfect rationality is problematic due to a lack of a satisfactory halting rule when seeking optimal solutions under conditions of complexity.¹⁴⁷ This then is too much of an heroic assumption to apply empirically to a complex environment such as the international system.

In an effort to avoid this fundamental problem and add realism to empirical analysis, the behavioural assumptions of transaction cost analysis depart from the assumptions employed in classical economics by incorporating two elements. First the assumption ‘that human agents are subject to bounded rationality’ and second that ‘at least some agents are given to opportunism.’¹⁴⁸ The first assumption implies that agents are endowed with limited calculative ability and so do not seek to optimize decision-making, (crucially this does not imply irrationality of action on the part of these boundedly rational agents).¹⁴⁹ The originator of the concept of bounded rationality, Herbert Simon described the decision making of such actors as a search process guided by aspiration levels.¹⁵⁰ In this framework an aspiration level is a goal that must be reached or surpassed in order for an actor to abandon its search; Simon called this behaviour ‘satisficing’ in contrast to the optimizing of hyper-rational agents. Aspiration levels and goals therefore vary according to the situation and environment; they are increased if better alternatives are easy to come by and decreased if they are not.¹⁵¹

¹⁴⁶ Klein, "The Fiction of Optimization."

¹⁴⁷ Gigerenzer and Selten, *Bounded Rationality: The Adaptive Toolbox*.

¹⁴⁸ Williamson, "The Economics of Organization: The Transaction Cost Approach," 553-54.

¹⁴⁹ *Ibid.*, 553.

¹⁵⁰ Gigerenzer and Selten, *Bounded Rationality: The Adaptive Toolbox*, 15.

¹⁵¹ *Ibid.*, 18.

Consequently, an actor with relatively few resources is more likely to possess a lower aspiration level in absolute terms than its relatively more powerful counterpart simply because the alternatives that it is capable of securing are circumscribed by the limited power that it possesses. As a result, the decision space of a weak actor is much more circumscribed than that of a comparatively more powerful actor and this means that the weak are much more likely to value more certain immediate gains over greater but less certain future ones. This of course has important implications for states bargaining over the design of international trade contracts, to which I will return.

The second assumption of transaction costs analysis, opportunism, has been defined as ‘self-interest seeking with guile’. Though it is the bounded rationality of agents that cause contracts to be incomplete (because of the incapacity to address every foreseeable eventuality), *it is the opportunism of some actors that prevents contracts from being ubiquitous* since such agents will not be trusted to fulfil the obligations set out in a contract.¹⁵² It is this logic which suggests that states with the power and opportunity to renege or manipulate down the line will do so and thus their weak counterparts will be particularly vulnerable. This self-interest seeking with guile can be related back to the pure commitment problems - it is not uncertainty that causes the commitment problem in such cases but rather the incentive structure faced by a particular actor. Both of these assumptions map well on to real negotiations over trade given the complexity of the situation facing agents and the potential disparities in power between them. They can therefore provide important insights into why weak states continue to conclude narrow trade agreements.

¹⁵² Williamson, *The Economic Institutions of Capitalism*.

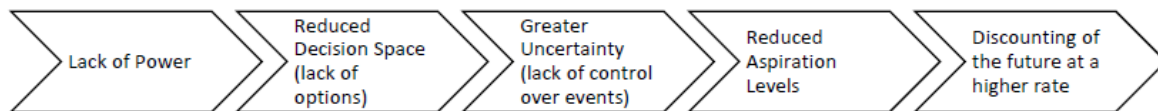
This also has important implications for negotiations between the weak and the strong: For example, gains that will be realised in two years have less value for a weak state than a strong one because the weak state is operating under conditions of higher uncertainty given its more precarious power position, its aspiration levels are therefore likely to be lower. Because the realization of future gains is more uncertain the relatively low aspiration levels will manifest themselves as the weak privileging immediate gains much more highly than future ones, even if the expected value of the future gains is objectively higher (the value of these gains can be summarized by their utility times the likelihood of their realization – as an actor becomes weaker this likelihood decreases). On the other hand, a powerful state that is rising is likely to discount such future gains at a lower rate since its power means that it is *more* likely to achieve those gains in future, its aspiration levels are therefore higher.¹⁵³

As a consequence of this it is reasonable to assume divergence in the time-horizons of the two actors, and an important implication stems from this – a powerful rising state will be more willing to sacrifice an immediate gain for future benefits, whilst the weaker actor will tend to privilege immediate gains much more highly than uncertain future outcomes. Because of its reduced aspiration levels, it is also willing to accept a less appealing deal than the strong. *This creates a bargaining range* that would otherwise be absent and means that in order to overcome the reticence of the weak to sign a narrow agreement which will confer advantages on the powerful in future. The powerful merely has to increase the gains which the weak can realize at the initial stages of the negotiations. It can do so through the transfer of up-front concessions which increases the value of the immediate gains and thereby induce the weaker state to overcome its reticence over the potential future vulnerabilities that a narrow contract entails. The stronger will be willing to provide these concessions because of

¹⁵³ The somewhat similar idea that wealthier or more powerful agents discount the future at a lower rate is well established in the economics literature, see for example Masao Ogaki and Andrew Atkeson, "Rate of Time Preference, Intertemporal Elasticity of Substitution, and Level of Wealth," *Review of Economics and Statistics* 79, no. 4 (1997). Or Andrew Atkeson and Masao Ogaki, "Wealth-Varying Intertemporal Elasticities of Substitution: Evidence from Panel and Aggregate Data," *Journal of Monetary Economics* 38, no. 3 (1996).

the value it can extract subsequent negotiations and a more favourable contract exceed the costs of these initial concessions. Figure 4.1 illustrates the relation between relative power and discount rates.

Figure 4.1: The Relation between Power, Bounded Rationality, and Discounting



4.2 Creating Dependence through Investment Specificity

Clearly the up-front concessions from the powerful state to its weaker counterpart are important in securing the initial bargain but they also have other important consequences. By their nature they will play a crucial role in creating increased dependence of the weak upon the strong which will have important implications for future bargaining rounds for the simple reason that greater dependence reduces the exit options of the weak during subsequent rounds of bargaining. It is the *lack of exit options* that allow the strong to continually renegotiate or amend the deal in their favour without the collapse of the cooperative relationship. The dependence of the weak on the strong is likely to be increased then by the initial concessions because they will induce the weak (or more precisely firms within the weak state) to make transaction specific investments because this is now where the highest return (or biggest market) is as a result of the agreement.

These investments can subsequently be used as an important point of leverage by the more powerful state and facilitate future changes to the treaty. As Albert Hirschman observed; if a state wishes to tie a trading partner to itself using foreign trade for purposes of increasing its influence this may be accomplished by either: ‘making him better off, i.e. by granting him

better terms of trade [or] by changing his indifference system so as to make him worse off in the eventuality of the interruption of trade.’¹⁵⁴ The up-front concessions and consequent investments are likely to be one way that the powerful ensures that this is the case.

To illustrate how this mechanism operates precisely consider a bargaining scenario where a more powerful rising state A offers its weaker counterpart B, generous terms with respect to B’s export of mechanical products to A’s market. These more favourable terms will imply that producers of these products in B may re-direct their manufacture and export of these products to A’s market to secure increased returns. These producers may change their behaviour in two ways: first, they may shift production to products that are in greater demand in country A or they may create more specialized versions of products suited primarily to the market of country A (perhaps because of regulations particular to country A). Thus firms and producers in country B are induced to make transaction specific investments as a result of the generous terms offered by A and the conclusion of the trading contract. These investments by definition then ‘cannot be [easily] redeployed because they are specialized to a particular task.’¹⁵⁵ Aside from the economic impact that repudiation of a trade deal would have on country B the domestic political consequences are potentially even more significant - particularly if the generous terms are directed toward industries that are politically salient in country B.¹⁵⁶

In this way the producers of country B become hostages to the continuation of the trading relationship between with A and reduce the exit options of that country. This could equally apply also to industries that import specific goods from country A, but the strategic effects and negotiating outcomes are the same – the ability of the weaker state to exit an agreement

¹⁵⁴ Hirschman, *National Power and the Structure of Foreign Trade*, 47.

¹⁵⁵ Williamson, "The Economics of Organization: The Transaction Cost Approach." also "The Modern Corporation: Origins, Evolution, Attributes," *Journal of economic literature* (1981).

¹⁵⁶ Hirschman, *National Power and the Structure of Foreign Trade*, 48.

is now far reduced compared to when the agreement was concluded. These investments then are *absolutely critical* in transforming the relationship between the weak and the strong and allow the strong to revise and interpret the agreement differently in future. Prior to such investments being made by the weak, it has a credible exit option of walking away from negotiations. In the initial round of bargaining then something analogous to negotiations under market competition occurs when the powerful state is attempting to induce the weak to sign the contract. However once the contract is concluded any interstate competition dynamics disappear and the relationship becomes more like that of a monopoly or akin to the hierarchical structure observed within firms.

To understand the asymmetry of this type of interdependent relation a useful distinction has been drawn between sensitivity and vulnerability.¹⁵⁷ This is a crucial distinction: ‘Two countries importing 35 percent of their petroleum needs, may be equally sensitive to price rises; but if one could shift to domestic sources at moderate cost, and the other had no such alternative, the second state would be more *vulnerable* than the first.’¹⁵⁸ Where an investment is specific to a relationship the costs of switching becomes much higher and thus vulnerability increases. We should therefore not make the mistake of assuming that a relationship of *interdependence* implies that the dependence between actors is *symmetrical*. Where a weak state is dependent upon exporting certain goods or services to a particular market or on the supply of a certain good or services from a particular supplier its level of vulnerability is much higher than that of a comparably more powerful state.

The concessions and consequent investments thus alter the incentive structure for the weaker states and this dynamic has been neatly summarized elsewhere: ‘Consider for example a free trade agreement between a large and a small state. The likely result is a change in the smaller

¹⁵⁷ Keohane and Nye, *Power and Interdependence*, 10-11.

¹⁵⁸ *Ibid.*, 11. emphasis added

state's self-perception of its own interest: it will converge toward that of the larger. Why? Because the simple act of participation in the arrangement strengthens those who benefit from it relative to those who do not.'¹⁵⁹

4.3 Renegotiations

In order for the powerful state to reap the rewards of a narrow agreement that the weak cannot now escape it must be able to renegotiate or re-interpret the contract in its favour. Much of the contract literature has focused on this renegotiation process of contracting parties following the conclusion of an incomplete contract¹⁶⁰ which are thought to lead to ex-post efficient investment of resources.¹⁶¹ In order to capture the dynamics of renegotiation of international contracts in particular I now turn to a simple stylized example involving two actors, one strong and one weak. They engage in a bargaining game over three stages. The strong makes the initial contract offer (broad or narrow) based on its preferences and the weak then decides whether to accept or refuse. If it refuses, the powerful state can decide whether or not to offer up-front concessions and exploit the narrowness of the contract.

The restrictive assumption here is that the game has only three periods. This has obvious implications in undermining the enforcement effects of a longer shadow of the future, the presence of which would undermine incentives for the strong to renege. Consequently, it might be suggested that a three period game is structurally biased towards rewarding

¹⁵⁹ Jonathan Kirshner, "States, Markets, and Great Power Relations in the Pacific: Some Realist Expectations," in *International Relations Theory and the Asia-Pacific*, ed. G. John Ikenberry and Michael Mastundano (NY: Columbia University Press, 2003), 227.

¹⁶⁰ See Rogerson (1984), Grout (1984), Hart and Moore (1988) and Tirole (1986) in Surajeet Chakravarty and W Bentley MacLeod, "Contracting in the Shadow of the Law," *The RAND Journal of Economics* 40, no. 3 (2009): 4.

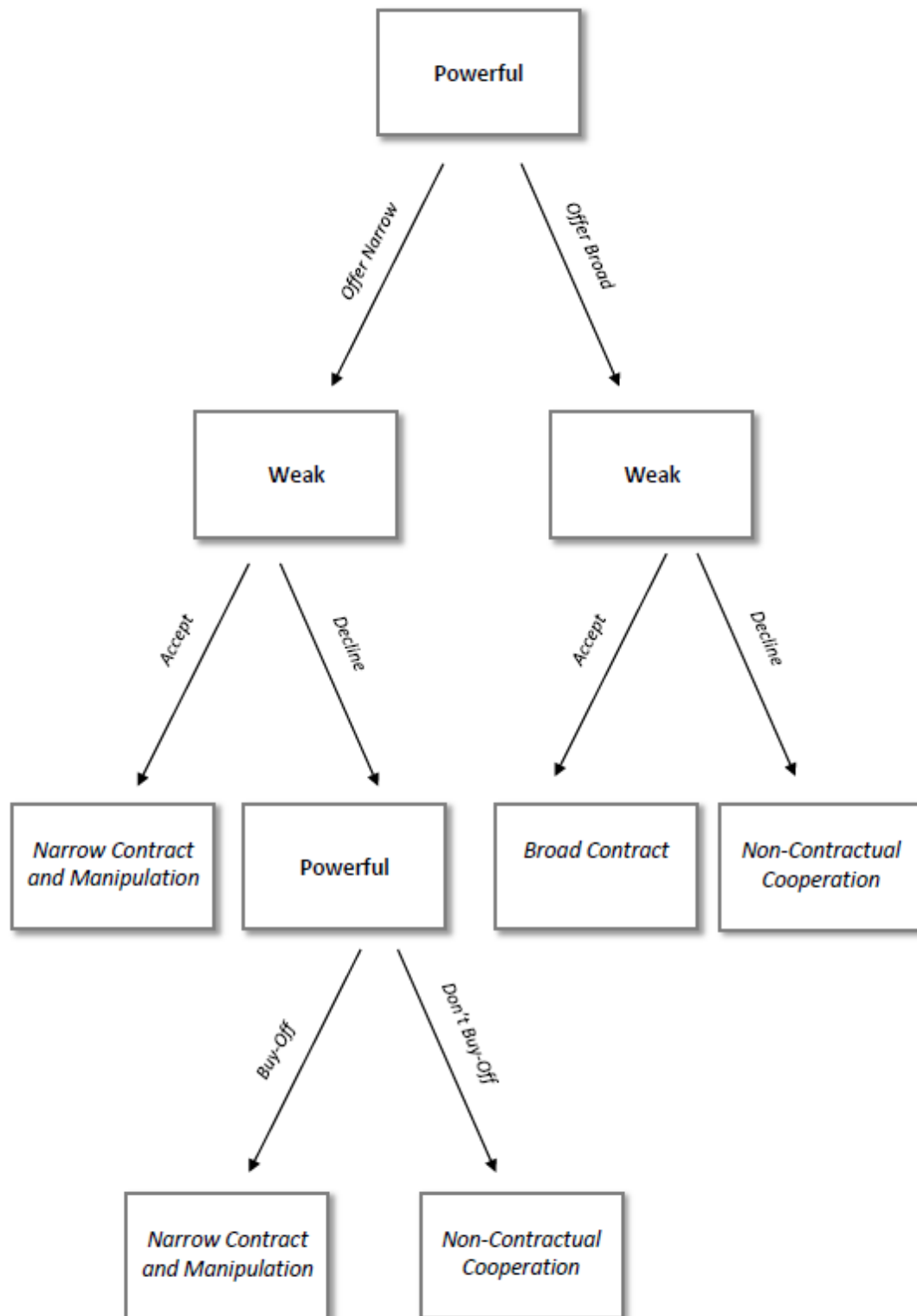
¹⁶¹ Oliver E Williamson, "Markets and Hierarchies," *New York* (1975). in Chakravarty and MacLeod, "Contracting in the Shadow of the Law," 4.

defection and thus producing erroneous insights.¹⁶² However this is not the case since manipulation and re-interpretation of the contract in favour of the strong does not end in cooperation breakdown in any case (due to the transaction-specific investments of the weak) and since the strong is not renegeing on explicit elements of the treaty (because it is narrow) it also does not incur any costs in terms of third-party enforcement through the traditional reputational mechanism. These two elements render the shadow of the future an irrelevant consideration when it comes to the renegotiation and amendment of narrow international contracts.

To choose the particular contract that is offered, strong states use backwards induction to decide the best course of action. If the rewards that result from manipulation and subsequent negotiation exceed the costs required to secure a narrow agreement, then they will offer a narrow agreement. If not, they will opt for a comprehensive agreement that minimizes transaction costs. The rewards that derive from subsequent manipulation are determined by the difference between the contract payoffs in the first period and the *third period*. Substantively this means that the manipulation reward is determined by the change in bargaining power possessed by the strong state from t to $t+2$. The figure below illustrates this simple logic and begins with an offer from the powerful state of either a broad or a narrow initial contract.

¹⁶² On the enforcement effects of a long shadow of the future see James D Fearon, "Bargaining, Enforcement, and International Cooperation," *International Organization* 52, no. 02 (1998)., Axelrod and Hamilton, "The Evolution of Cooperation.", Koremenos, "Loosening the Ties That Bind: A Learning Model of Agreement Flexibility."

Figure 4.2: Two Actor Negotiations



Whilst this diagram provides an intuitive sense of the bargaining structure, to understand this process more fully it is useful to disaggregate its most important aspects. We can think again of these two states, a powerful and a weak that are bargaining over the distribution of shared gains from trade cooperation. $P \in (0, 1)$ represents a share of these gains accruing to the more powerful with $1-P$ going to the weak. T represents transaction costs incurred through the trading relationship which can be reduced in proportion to the level of comprehensiveness of the contract that is structuring cooperation. Again, the powerful can offer either a broad or narrow contract. If the weak state refuses the contractual forms of cooperation offered by the powerful then cooperative outcomes without contracts (i.e. a spot market) occurs, which incurs increased transaction costs (T). E represents the exploitation payoffs received by the powerful (the benefits gained by the powerful from exploiting the weak through renegotiation and amendment), and donations, D represent up-front concessions from the powerful to the weak.

The powerful state's power advantage can increase or decrease over time and, all else equal, states are assumed to secure gains in direct proportion to their power. S represents strength of the most powerful state. The powerful always makes the first offer and to introduce power trajectory more formally into the scenario we can say that the power position of the powerful at t is S_1 which in the first instance will increase to $S_2 > S_1$ in the next period, $t+1$. The higher the relative growth of the powerful over two periods, the greater the rewards that it can reap from subsequent manipulation. In line with the predictions of the contract literature in international relations, when an incomplete/shallow contract is offered by the more powerful, the weaker can be exploited at subsequent points and this exploitation is conceptualized as a significantly reduced share for the weaker than it could expect from a fully contractual bargain in period t .

When rising in power the powerful cannot credibly commit to restraint and therefore the weaker prefers to refuse a narrow contract in favour of ad-hoc cooperation. If these states cannot conclude any bargain at t this is clearly an inferior outcome for both parties given that they can both increase their gains by trading through a contract and reduce transaction costs. How might this be resolved? As we have seen, existing theory suggests that when the powerful is rising it cannot commit not to exploit the weak in the second period unless it signs a comprehensive contract. However, the gains that the powerful derives from a broad contract at $t+1$ can be less than it can gain from a narrow contract and exploitation. In any event, hand-tying by the powerful will not be credible given its growing power. The weak will refuse to conclude an agreement if the payoffs received from the non-contractual cooperation (i.e the spot market) are higher than that on offer from the powerful. Since it expects exploitation this will always be the case without additional payment from the powerful.

The powerful state can therefore make the initial payoff more favourable for the weak in order to incentivize it to acquiesce at t even if the latter anticipates exploitation in the second period. Thus, the commitment problem may be bypassed through compensation from the powerful to the weak at t when the powerful is rising (or through comprehensive contracting when the powerful is declining). This is done in order to reduce the costs imposed on the weak when acquiescing to the incomplete contract. The powerful state offers these up-front payments when the value of the benefits of a narrow contract and exploitation minus the costs of up-front payments in the first period, is greater than the benefits derived from ad-hoc cooperation minus transaction costs. This will hold if the powerful state expects to reap large gains from exploitation of the weak down the line (that is, if E is large). If this does not hold (i.e if it is declining and $S_1 < S_2$), it offers a bargain agreeable to both parties at t that incorporates a comprehensive contract.

The important thing to note from this is that the payoff and strategy of the powerful is determined by its likelihood of a better deal in future (reaping the exploitation payoff), which in turn, is determined by its relative power trajectory. Crucially it is the fact that the powerful retains greater residual rights of control through a narrow contract that it is able to exploit the weak over time.

Conversely the example shows why when the powerful is declining it is not incentivized to buy-off the weak because it has no opportunity to use a narrow initial contract to exploit at the 2nd stage and the value of E will be close to zero (it gains no extra advantage at subsequent negotiation points and may even incur a more disadvantageous position) whilst the donation (i.e concession) from the strong to be will remain positive. Whenever the weak refuses the offer, cooperation occurs without a contract and thus the payoffs are P-T and 1-P-T. Both contractual forms of cooperation reap greater total gains than non-contractual cooperation because overall transaction costs (T) are reduced by each contract type. Finally, it always makes sense for the weak to accept the broad contract when offered by a declining powerful state since exploitation is not anticipated. The best outcome then for both parties, given the expected actions of the other, is mutual commitment when the powerful is declining.

When the powerful is rising, a broad contract gives it a payoff of $P + E$ because it pays no up-front costs but can still exploit the weak. However, it can never attain this payoff because the weak will refuse to accept this offer as it knows its counterpart is rising. Thus when the powerful is rising it has a greater incentive to buy-off the weak in order to reap the rewards of subsequent exploitation, which it can do because it will get a progressively better deal as time goes on (the value of E increases in line with its bargaining power or S). Again both

contractual forms of cooperation are almost always superior to a ‘spot market’ because of the higher transaction costs incurred through the latter. Finally, *it always makes sense for the weak to accept the buy-off when offered because this is a superior outcome to any of the other realistic options – no cooperation or a spot-market.* The incomplete contract is therefore the best option for each party given the anticipated actions of the other party. Crucially this facilitates both parties to make transaction specific investments since the commitment problem in the first round has been overcome.

An obvious question emerges from these conclusions; do the up-front concessions from the strong not induce a new commitment problem from the other side (i.e. the weak cannot commit to the strong after payment is received)? The reason that this does not occur is precisely because the agreement in period 1 has caused both to make transaction specific investments and so they are now locked into a contract that is costlier to exit. This was obviously not the case in the first round. Crucially in this scenario the weak knows it will be exploited *but still accepts* cooperation because it makes it better off and thus this mechanism offers a unique solution to the pure commitment problem.

More concretely, we can think of up-front payments from the powerful as generous terms of trade which actively encourage the weak to make transaction specific investments because this is now where the weak states’ highest payoff, per unit of investment, will be. However once this is locked-in then the powerful is free to exploit down the line. For this strategy to be adopted then two conditions must be satisfied:

1. When $(P - D + E) > (P - T)$ The more powerful will opt to **buy-off**. This is satisfied when there is a value for D that is less than the advantage derived from E (that is, when E is large which is determined by the size of S).¹⁶³

¹⁶³ $P - T$ of course always results in a value less than P since T is positive whilst $P-D+E$ can result in a value greater than P when E is sufficiently large

2. When $(1 - P - E) > (1 - P - T)$ the weak will accept the **buy-off**. This is satisfied simply when the costs incurred through E are lower than those costs incurred through T. Where this is not the case the powerful state will add a donation to the left of the equation. $(1 - P + D - E) > (1 - P - T)$
3. Both of these conditions are satisfied then when $E > D > T$

This simple example demonstrates how under certain conditions both states can secure outcomes that are superior to the status quo or ad hoc cooperation but the stronger power nevertheless gains disproportionately more over time.

Figure 4.3: Disaggregated Negotiations

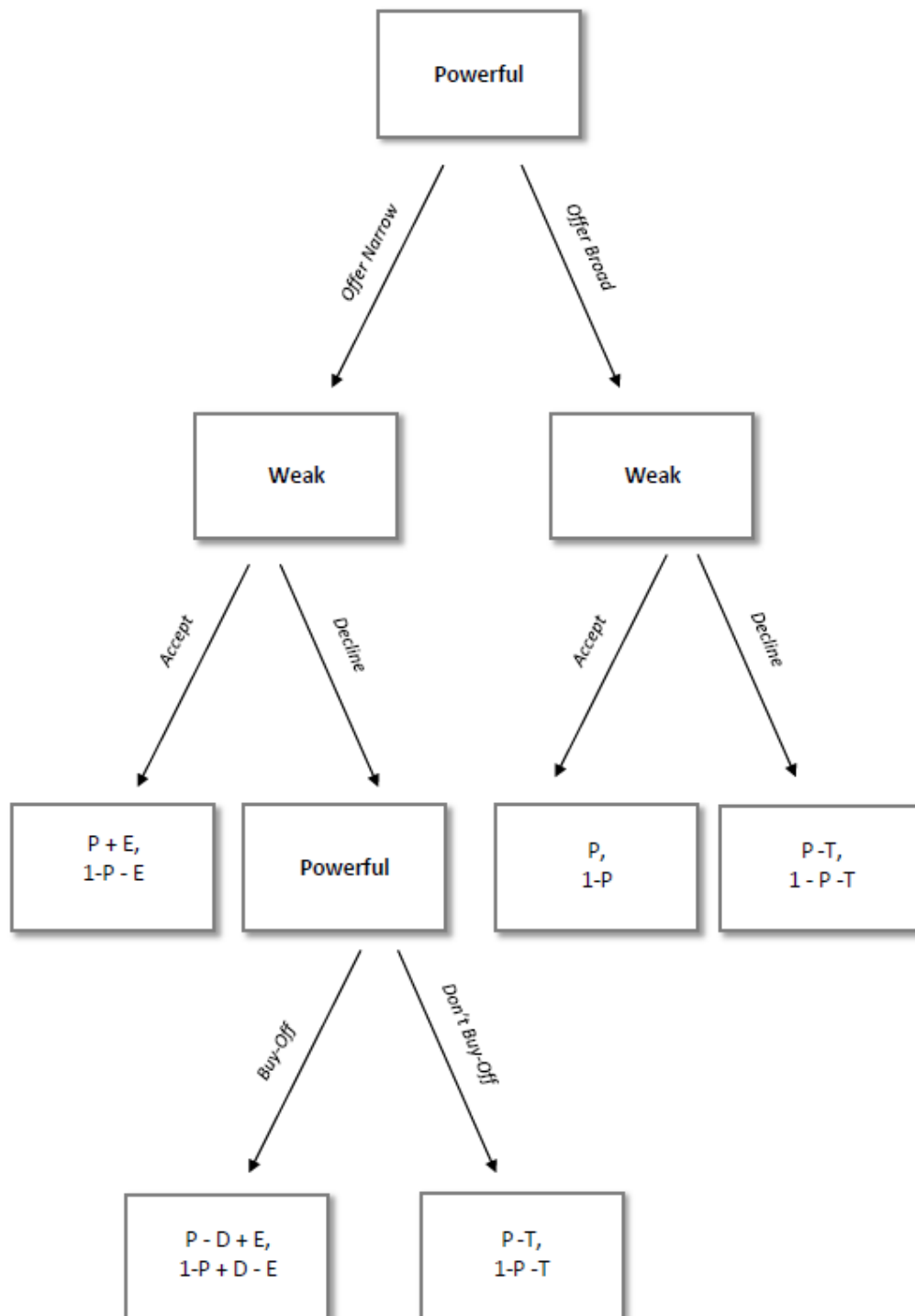


Fig.4.4: The Distribution of Gains

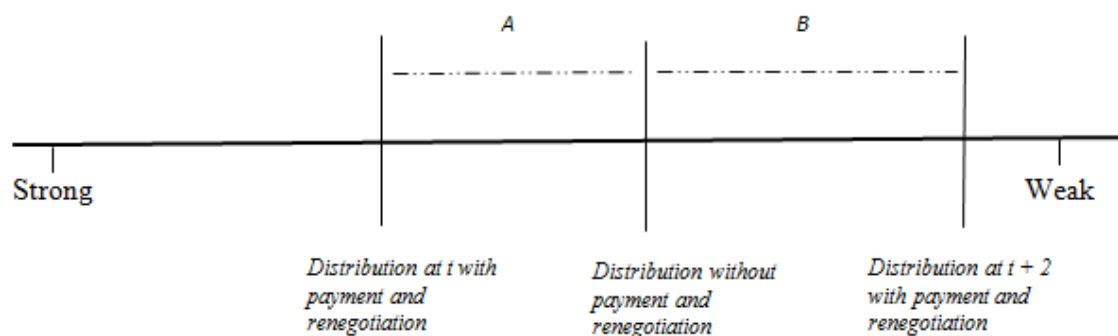


Figure 4.4 summarizes the simple logic of the bargaining game, with the horizontal line representing all possible gains from cooperation and each vertical line representing a particular distribution. A vertical line at the far right would represent a division such that all payoffs accrue to the strong, a line at the far left would signify all gains accruing to the weak. For the strong to be incentivized to pursue a buy-off and renegotiation strategy distance B must exceed distance A as this means that the gains from renegotiation exceed the costs of the initial up-front payments combined with the value of the foregone gains resulting from the narrower contract in the initial period. It is again important to note that the value of E is directly related to the size of the increase in the bargaining power of the strong state.

Of course this is in a three period scenario; in an indefinite game the incentives for buy-off and manipulation would be even greater for the more powerful state, since the buy-off is temporally limited whilst the benefits of manipulation are indefinite. From the point of view of the weaker state it can foresee the possibility of manipulation at subsequent points and so it is rational for that state to reject the offer of a narrow contract if the costs of manipulation exceed the costs of concessions from the strong, however since it discounts the future at a higher rate, there is a level of buy-off payment at which it will accept a narrow contract. Finally, it is rational for the weak to accept the buy-off when offered because this is a superior outcome to any of the other realistic options – no cooperation or a ‘spot-market’ in

which transactions between the two states are not structured with a contract and thus transaction costs are incurred.

Thinking even more specifically about the substantive forms of renegotiation that might occur we can think of a strong state securing an agreement that does not include intellectual property protection (in this one dimension the agreement is narrow). In subsequent years it then becomes in the interest of this stronger state to incorporate clause on IP protection (perhaps due to economic development and a movement to producing higher end goods) it is now in a position to use the incomplete nature of the agreement and its increased bargaining leverage to secure an outcome on this issue that is much more favourable than it might have secured at the first stage of an agreement. *There are two mechanisms here*, the first is that the rising power is simply getting a better deal than it would initially, the second is that there are certain issues that only become of interests at later points.

Finally, we must ask, given the advantages of a more incomplete contract why don't strong decliners adopt the same exploitation strategy? The answer is that simply because, as decliners, they are unlikely to get a better deal by holding-off negotiation to a later date and therefore there is no justification for them to incur the ex-post transaction costs resulting from later amendment.

4.4 Conjectures

The preceding discussions have addressed the nature of international trade contracts and highlighted two vulnerabilities to which the weak are potentially subject – there is a danger that the more powerful state reneges on the terms of the contract but there is also a risk that an ambiguous contract provides opportunities for manipulation of the weak. I have discussed

the mechanisms by which institutionalization can remedy the former danger whilst comprehensive contract rectifies the latter. Crucially, a narrow contract offers neither safeguard.

The framework shows that even if weaker states are aware of the dangers of a narrow contract they are nonetheless willing to accede if offered concessions up-front by their stronger counterparts. They are willing to be bought-off in this way because they discount the future at a higher rate than more powerful states since their lack of power means the realization of future gains is more uncertain. Crucially these opportunities for manipulation take the form of a new bargaining game between the two contract signatories. I have argued that this is crucial because delaying bargaining is only beneficial to an actor that expects to be in a superior power position it is powerful but rising states that are willing to offer concessions up-front because the reward of manipulation exceeds the costs of these payments and the benefits that are foregone as a result of the narrower initial contract. The framework suggests this calculation is different for powerful but declining states – since their relative power position is expected to deteriorate there are likely to be many fewer gains accrued by delaying rounds of bargaining to a later date. Adding to this dynamic is the fact that powerful declining states (like their weak counterparts) discount the future at a higher rate than do rising states because their declining power position makes the realization of future gains more uncertain.

Finally, the discussion of transaction specific investments has illustrated the important strategic dynamics that emerge from the conclusion of the initial treaty. The favourable up-front concessions encourage the weaker states to make investments that cannot be easily transferred to another relation. In international trade these investments have particular implications because of their effects on the domestic politics of the weaker state – there are

now significant groups in the weaker state that have an interest in the continuation of the agreement no matter the consequences for the country as a whole. The conclusion of the initial contract thus turns the bilateral relation into a much more hierarchical structure than existed previously (more akin to a firm than a free market) and the exit options of the weak are far reduced. A number of conjectures can be inferred from this discussion and will be evaluated following the empirical applications of the framework. These are listed below.

Table 4.1: Theoretical Conjectures

1. <i>Contract Coverage</i> : Where a more powerful state in a dyad is rising (divergence) it will push for a narrow contract, where it is declining (convergence) it will push for a broad contract
2. <i>Concessions</i> : In order to secure a narrow contract, the rising powerful state will offer up-front concessions to its weaker counterpart
3. <i>Renegotiation</i> : When the powerful, rising state secures a narrow contract it will utilise its leverage to exploit its weaker partner over time.
4. <i>Dependence</i> : When an initial agreement is combined with up-front concessions from the powerful the dependence of the weak is increased and its exit options reduced.

These simple conjectures entail certain observable implications which will aid the subsequent empirical analysis. The first conjecture implies that we should see those states with a positive power trajectory in relation to their direct negotiating partners select trade agreements that cover relatively fewer issues and entail comparatively little liberalization in the issue areas that are covered. On the other hand, where the most powerful state is declining in relation to its partner we should expect to see agreements that have both wide issue coverage and deep liberalization in the areas covered by the agreement.

In terms of the second conjecture; the rewards that can be accrued by the more powerful as a result of a narrow contract will depend upon the value of the exploitation payoff. In cases where the payoff is high for the more powerful, then the up-front concessions from the powerful to the weak will be proportionately greater. These concessions can be part of the

agreement itself in terms of the powerful offering more generous terms in relation to liberalization or they can be separate but explicitly linked to a particular agreement.

In relation to the third conjecture we would expect to see exploitation take a number of forms, however the most directly observable will relate to the agreement itself, in particular the amendment, extension, and renegotiation of the deal. We should also expect this extension to favour the more powerful state in terms of its trade and economy, whilst simultaneously increasing the dependence of the weaker state by reducing its exit options even further.

Finally, in terms of the fourth conjecture we would expect to see the dependence of the weaker state upon the continuation of the initial agreement increase over time, particularly where the initial agreement and up-front concessions benefits politically salient economic sectors within this country. In the final analysis chapter I will return to these implications and re-evaluate them in light of the empirical analysis.

Part III: Empirical Applications

Chapter 5: The Empirical Approach

5.1 Bargaining Power – Definition and Measurement

Power is at that very heart of strategic bargaining scenario outlined in the preceding discussion and operates at two levels – power dynamics determine the design strategies of the most powerful whilst static power largely determines bargaining outcomes. However, to evaluate the empirical relevance of the framework and the resulting conjectures, we must establish precisely what it means to say one state is more powerful than another in the context of international trade. Complicating this task however is the fact that power has long been an essentially contested concept.¹⁶⁴ Consequently there is no universally agreed upon definition of the term and it has been employed in countless different ways and, as a result, whilst power may be easy to recognize it remains difficult to define precisely.¹⁶⁵ The contested nature of the term has led some to argue in favour of the employment of multiple conceptions¹⁶⁶ whilst others emphasise the need to specify it in terms of scope and domain.¹⁶⁷ In heeding this advice it is the purpose of this section to define a particular conception of power through establishing the scope and arena of its application, and in so doing settle on a definition of power that will add clarity to the observations of the subsequent empirical analysis and improve its applicability to the theoretical discussion.

¹⁶⁴W.B Gallie, "Essentially Contested Concepts," in *the Proceedings of the Aristotelian Society, 1956* (1956). cited in Michael Barnett and Raymond Duvall, eds., *Power in Global Governance* (Cambridge: Cambridge University Press, 2005), 97.

¹⁶⁵J. Pfeffer, *Power in Organizations* (Pitman Pub., 1981), 3. in Williamson, *The Economic Institutions of Capitalism*, 258.

¹⁶⁶Barnett and Duvall, *Power in Global Governance*, 97.

¹⁶⁷David A Baldwin, "Power Analysis and World Politics: New Trends Versus Old Tendencies," *World Politics* 31, no. 02 (1979). in Barnett and Duvall, *Power in Global Governance*, 98.

The first thing to observe is that measurement of a concept such as power is a process which should not and cannot, be separated from theory and therefore the definition that is employed must depend upon both the object of inquiry and the question that is being asked.¹⁶⁸ In short, an objective measure of power cannot exist prior to, or outside of, a given theoretical framework and the definition is therefore determined, in large part, by the object of the analysis. It is for this reason that it is important to closely define the area of study, the objectives of the inquiry and the intended scope of its conclusions. In this case, the area of study is the bargaining between two states over issues directly related to the design of bilateral trade agreements. This step of identifying the area of interest is particularly important in relation to this kind of bargaining because, those attributes that can seem advantageous in one sphere - and thus indicative of power - can be rendered useless or even counterproductive in another, and consequently there are few universal bargaining advantages in international relations.¹⁶⁹ Once a definition is selected which meets this criteria in relation to international trade, the next consideration must be how this can be operationalized effectively. The subsequent discussion thus begins with a fundamental exploration of power before moving on to questions of operationalization.

In exploring the nature of power in the political sphere two broad understandings have most often been employed: first, power has been defined as the capacity to perform an action, whilst elsewhere it has been thought of simply in terms of a resource endowment.¹⁷⁰ The second of these interpretations is limited because it is unable to describe situations where an actor is possessed of abundant resources, yet lacks the ability to employ them effectively, there is therefore little relation between the objectives of this state and the outcomes that we

¹⁶⁸ R. Bell, D.V. Edwards, and R.H. Wagner, *Political Power: A Reader in Theory and Research* (Free Press, 1969), 12.

¹⁶⁹ Schelling, "An Essay on Bargaining," 299. suggests that in many cases weakness can be strength, what he means here is that the lack of capacity, or lack of options may increase your bargaining power since your ability to change your stance is thus limited.

¹⁷⁰ Wagner, "The Concept of Power and the Study of Politics." in Bell, Edwards, and Wagner, *Political Power: A Reader in Theory and Research*, 12.

observe (we might think here of a country possessed of enormous natural resources but with an infrastructure that is too weak to reap the benefits of this). The first of these understandings of power is therefore more compelling and relates to the ability of an actor to make an impact on the external environment. Consequently, assessing an actor's power is difficult without assessing the impact or consequences of that power. Given this and the nature of politics as a social practice, power must therefore be thought of in relational terms since we are interested in the impact of the behaviour of one actor upon that of another.¹⁷¹

Following a similar logic to this, many definitions have incorporated the idea that power is the capability of one social actor to 'overcome *resistance* in achieving a desired objective or result.'¹⁷² As Thomas Hobbes argued, in the political sphere 'Correspondent to cause and effect, are power and act; nay, those and these are the same things.'¹⁷³ Thus if we are interested in the cause and effect in politics we must concern ourselves with the relational aspects of power. However, this task is not as simple as it might first appear because it is not only the ability to deploy resources that determines the power of an actor but also the particular bargaining structure within which it operates that determines which resources are relevant and how they are employed effectively to achieve one's aims.

¹⁷¹ Steven Lukes, *Power: A Radical View*, vol. 1 (London Macmillan, 1974), 111.

¹⁷² Pfeffer, *Power in Organizations*, 2. in William R Torbert, *The Power of Balance: Transforming Self, Society, and Scientific Inquiry* (Sage Newbery Park, 1991), 214. emphasis added

¹⁷³ Thomas Hobbes, *De Corpore Politico., or, the Elements of Lavv, Moral & Politick. With Discourses Upon Several Heads; as of the Law of Nature. [of] Oathes and Covenants. [of] Severall Kind of Government. With the Changes and Revolutions of Them* (1650), 187-88. in James H Read, "Thomas Hobbes: Power in the State of Nature, Power in Civil Society," *Polity* (1991): 512.

5.2 Endogenous and Exogenous Power

When considering bargaining between two or more actors an important distinction must be drawn between power derived from factors exogenous to the bargaining process (the ability to employ resources) and those endogenous to it (power derived from the particularities of the bargaining structure itself). This is essential because an advantage in one setting can quickly become a disadvantage in another, thus an attribute we might ordinarily think of as weakness might become an advantage in certain bargaining situations.¹⁷⁴ As a simple illustration of this – we can think of two individuals that are bartering over the purchase of a particular good, we might intuitively think that the wealthier individual is more powerful in this particular context than a less wealthy individual because he possesses the resources to secure possession of the good that he desires. Nevertheless, a less wealthy individual may be able to utilise his lack of resources as an advantage in such a bargain because he can credibly claim not to be able to bid above a certain point. In such a setting a lack of options translates into greater bargaining leverage.¹⁷⁵ On the other hand, outside of this particular bargaining structure one can think of innumerable scenarios in which a greater range of options are beneficial and thus the wealthier individual has a power advantage over a less wealthy counterpart.

A more technical example of an endogenous form of bargaining power may be termed hold-up power, and we can find a simple illustration in international relations. For example, if a large powerful state imports the vast majority of its oil from just one source (a resource rich but otherwise weak state) then in direct bilateral negotiations with this country the large powerful state will be at a particular bargaining disadvantage, particularly if alternative sources are not readily or cheaply available. That is, in a bargaining situation an actor that is exogenously weak may nonetheless counterbalance the greater bargaining power of another

¹⁷⁴ Schelling, "An Essay on Bargaining," 299.

¹⁷⁵ *Ibid.*, 300.

actor if the bargaining structure means that the latter possesses few alternative options. The relation to the availability of these options and transaction specific investments is obvious since transaction specific investments make it difficult to realize alternative options without incurring costs. The more burdensome and specific are these investments then, the less bargaining power is possessed by the actor making the investments.

There are of course situations where exogenous and endogenous power overlap, where powerful actors possess the power to shape the structure of a bargaining scenario itself for example, this can ensure that the powerful are not disadvantaged. A means by which a more powerful state can achieve this is by exercising what has been termed elsewhere as ‘go it alone power.’¹⁷⁶ In a bargaining setting this power is derived from a more powerful actor’s ability to secure some (though not necessarily all) potential gains on its own and in doing so change the payoff structure for non-participants in a way that incentivises their subsequent participation in a bargaining structure that is shaped in part by the powerful.¹⁷⁷ In short then, a sufficiently powerful state can alter the structure of the bargain itself.

It is important to note also that, the ability of the more powerful to overcome the objections of its negotiating partner or the ability of the weaker to hold-out for a better deal is often directly related the patience of each actor, or the strength of its desire to conclude a deal. With respect to the weaker party then the ability to hold out for a better deal is related to its ability to forego gains in a particular issue area, so even where the strong can alter the incentives of the weak, the latter may still resist if it is sufficiently patient. Given the importance of patience and the nature of the questions investigated by this research, in addition to defining the spatial scope of the application of power we must also define its

¹⁷⁶ Lloyd Gruber, *Ruling the World: Power Politics and the Rise of Supranational Institutions* (Princeton University Press, 2000), 7.

¹⁷⁷ Ibid.

temporal limits.¹⁷⁸ That is, how one measures power also depends upon the time period that one examines. For example, an actor that works towards an aim for many years does not give demonstration to its power in each discrete period in time but rather at the end of an indefinite time period. Thus in the short term such a state may appear weak given that its aims may merely be of a more ambitious or long-term nature, yet in the final analysis it may have shown itself to be powerful by the realization of gains that are the fruit of many years' work. In short, the question 'who is powerful' is too imprecise a question for any analysis discussing the influence of power dynamics and we should instead ask two separate questions 'who is powerful now?' and 'who will be powerful in future?' For the purposes of this study then it can be seen why static analysis is insufficient; in a one or two period analysis rising and declining powers may both possess equal power and thus from this narrow point of view we would expect to see identical preferences in terms of agreement outcome exhibited by both actors. However, this is unlikely to be borne out in reality because of each actor's awareness of the future and therefore the level at which it discounts the future. In a given bargaining game then what is important is not only power at t but power in the period subsequent to t that determines the shape of the negotiating outcome. Of course, whilst this must be recognized, this is not to say that static power relations are irrelevant, the most powerful actor in any bargaining dyad (in terms of an advantage in a particular issue area) whether declining or rising, will determine the majority of the outcome in the first period. Crucially though, their preferences are shaped by the anticipated power in subsequent periods.

This all suggests that we must be aware of the double role of power, first anticipated future power shapes the immediate preferences of actors but second, it also determines, in large part, the outcome of immediate negotiations. Power then is not an attribute conducive to uni-

¹⁷⁸ David A Baldwin, *Paradoxes of Power* (Oxford: Blackwell, 1989). cited in Cooley and Spruyt, *Contracting States: Sovereign Transfers in International Relations*.

dimensional, static analysis but changes depending on the time-horizon that is analysed.¹⁷⁹

Any analysis then must concern itself not then not only with power dynamics but also how these play out in various bargaining structures.

5.3 Patience and Relational Power

The preceding discussion suggests why measurement of power in international relations cannot be separated from the significance of the impact of behaviour on another international actor.¹⁸⁰ Indeed most definitions of power incorporate some understanding of causal change in the behaviour of other actors against their will.¹⁸¹ In international bargaining, this relational aspect is captured most closely in the role of patience in increasing an actors bargaining power because an actor that is willing to wait longer for (or more willing to forego) a bargain than is its counterpart then it will be able to secure relatively favourable terms compared to the more impatient state. Consequently, when considering power in the context of trade negotiations we must ascertain those attributes which afford states greater patience when negotiating a trade deal. An obvious candidate for such an attribute in the area of trade would be Gross Domestic Product (GDP) as this is a clear and simple indicator of the size of a given economy. Share of global GDP in particular will provide a simple indication of relative market power (and the value that can be gained by other actors from accessing this market, which after all, is the crux of trade negotiations). Another clear indicator related to patience and power in trade is a state's trade-to-GDP ratio, that is, a state that possesses a higher ratio is relatively more dependent upon trade and thus will gain more from a given trade agreement (controlling for GDP). Therefore, it will be more likely to wish to secure a trade deal more urgently than one that is barely dependent upon trade, in this respect we must

¹⁷⁹ Paul Pierson argues that analysis that incorporates time dynamics provides a richer, more realistic understanding of social phenomena than a purely static 'snapshot.' See Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton University Press, 2004).

¹⁸⁰ Lukes, *Power: A Radical View*, 1, 111.

¹⁸¹ Torbert, *The Power of Balance: Transforming Self, Society, and Scientific Inquiry*, 214.

also consider the degree to which an actor is dependent upon a particular state for a valuable trade relationship and relatedly the number of outside options it possesses if such a relationship should collapse. So for example, we may look at the distribution of a particular state's trade and if a disproportionate amount of this trade is with one country we may say that in negotiations with that country in particular it is likely that it will exhibit less negotiating patience because the gain that it may secure are large (on the assumption that the trading relationship is not equally important for its counterpart). The importance of patience upon design outcomes in particular is neatly summarized by Abbott and Snidal:

‘Consider a patient state (low discount rate) that is seeking a concession but is unwilling to offer enough immediately (for example in linkage to other issues) to induce an impatient state to offer the concession. The patient state may nevertheless be willing to make a (smaller) current payoff in return for a soft legal agreement that has some prospect of enmeshing the impatient state in a process that will deliver the concession down the road. Insofar as states find it progressively more costly to extricate themselves from legal processes...’¹⁸²

The preceding discussion has dealt with the measurement of static power, but given the double role of power, a clear measure of state power trajectory is also required. To this end the relative growth rates of GDP will be employed alongside analysis of trends in composite index of national capability scores. The Composite Index of National Capability (CINC) measure is also utilised to show the trajectory of non-economic capabilities of each states. The CINC measure is developed by combining the following state attributes: total population of the country, urban population of the country, iron and steel production of the country, primary energy consumption, military expenditure, military personnel (Each of these measures is presented as a ratio of world totals).

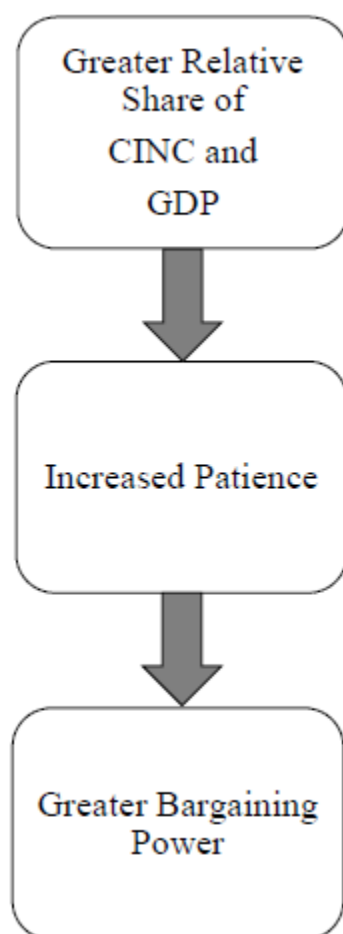
Of course problems such indicators are never perfect and though useful due to their simplicity do incur costs in terms of generalizability. As demonstration of the potential weakness of

¹⁸² Abbott and Snidal, "Hard and Soft Law in International Governance," 447.

utilising CINC scores for example, we can see that using this data alone can lead to surprising conclusions. For example, the CINC data set suggests that Syria is consistently ranked above Israel in terms of its capability scores and this would seem to clash with our general understanding of the situation between these two states. Indeed, such problems have informed critiques offered by Organski who in this respect makes a useful distinction between national power, national capability and military might.¹⁸³ Such critiques must therefore be kept in mind when considering subsequent conclusions. Nevertheless, despite important constraints, the CINC is a frequently used data set with clarity and transparency in coding of variables and as such both its strengths and weaknesses are well known. This familiarity should facilitate rather than prevent the inference of appropriate conclusions and indeed subsequent evaluation of their utility. Furthermore, the incorporation of contextual variables such as trade dependence and Trade-to-GDP ratios, should minimize the potential for drawing faulty conclusions based on imprecise metrics. Employing these measures in the subsequent analysis then, the growth in the gap between negotiating parties (in terms of GDP and CINC scores) will indicate a strong but rising power and thus power divergence between the negotiating parties. Conversely a narrowing of this gap will indicate a strong but declining power and thus power convergence. Figure 5.1 summarizes the relation between these attributes, patience, and bargaining power.

¹⁸³ A.F.K. Organski and J. Kugler, *The War Ledger* (University of Chicago Press, 1981), 5.

Figure 5.1: Measuring Bargaining Power in International Trade



5.4 Measuring Contractual Breadth: Three Metrics

Having dealt with measurement of the independent variable attention now turns to the dependent variable, agreement depth. The previous discussion on the particular vulnerabilities presented to states by different dimensions of contract comprehensiveness suggests that the analysis should focus primarily on the breadth of a contract because this is where the most acute vulnerabilities are likely to be found simply because clauses that are not incorporated into the initial agreement cannot be enforced but the agreement can nonetheless be expanded. This is also true, but to a lesser extent in terms of the dimension of depth. Consequently, the measures employed in the empirical analysis must reflect this. In terms of measuring agreement breadth, I will employ existing measures from the literature in the form of a data set that quantifies contractual comprehensiveness in two distinct ways. On a metric I

will label *measure 1*, scores are derived from latent trait analysis on a total of 48 variables that are theoretically related to the depth of an agreement (these variables relate to aspects such as services liberalization, trade-related investment measures, intellectual property rights and standards) to arrive at a measure of depth.¹⁸⁴ What I label *measure 2* is an additive index that combines seven key provisions that can be included in PTAs.¹⁸⁵ I employ these measures because as they have been developed elsewhere for an unrelated research project, they are unlikely to be systematically biased in terms of the relationship of interest in this research. However, to increase the robustness of the subsequent analysis I also measure depth using similar but distinct measurements developed here, this measure, labelled *measure 3*, defines an agreement as narrow if it does not include common GATS provisions (such as government procurement or competition), or Singapore Issues (such as labour provisions) where one of these clauses is included in an agreement it adds 0.5 to the score, so an agreement with a score of 3 will incorporate 6 of these provisions. All these characteristics inform the contract comprehensiveness scores that will be summarized at the end of each case study.¹⁸⁶

These descriptive statistics are used to support the qualitative analysis and use of primary and secondary sources. In analysing agreements, I will explore the original agreement texts alongside related World Trade Organization (WTO) analysis documents - factual presentations, trade profiles, and question and replies reports. These factual presentations are reports compiled by the WTO committee on regional trade agreements which summarize the details of particular deals. Questions and replies documents meanwhile record queries from the WTO and its members to the signatories of these agreements and details their responses. These are often particularly useful in ascertaining the degree of practical implementation following the conclusion of the initial deals. In addition to these primary sources I also

¹⁸⁴ See Dür, Baccini, and Elsig, "The Design of International Trade Agreements: Introducing a New Dataset," 360.

¹⁸⁵ Ibid.

¹⁸⁶ For scores see Annex 2

incorporate the secondary literature on the trade policies of the four major states to provide appropriate context.

Table 5.1: Defining the Independent Variable: Power

Gross Domestic Product
Trade-to-GDP Ratio
Trade Dependence
Composite Index of National Capability Scores

Table 5.2: Defining the Dependent Variable: Contract Breadth

Name	Description
Measure 1	Latent Trait Analysis on 48 Variables
Measure 2	Clauses and Liberalization
Measure 3	Non-Trade Clauses

5.5 Case Selection

In the following empirical sections, I develop and analyse four separate cases in depth. Because I am interested in the effects of power asymmetry on agreement design in trade I select four major trading powers as my focus: two rising powers, China, India, and two status quo/declining powers, the United States, and Japan. Within each case I will conduct an analysis of every bilateral agreement concluded by each country and this amounts to an analysis of forty agreements in total across the four cases. Though the framework is expected to apply in both bilateral and multilateral settings, focus in the cases is solely on bilateral agreements due to the greater degree of vulnerability thought to be entailed by such agreements, and also because of the difficulties multilateral cases present for accurate causal inference. On the latter point, it has been demonstrated that there is an inverse relationship between the number of parties to an agreement and the comprehensiveness of the final outcome. This is simply because as the number of participants increase the likelihood of unanimity decreases because of the reduction in common ground due to the greater diversity

of interests.¹⁸⁷ Therefore in order to avoid cases where multiple factors can explain the same outcome I focus exclusively on bilateral examples. Furthermore, from an empirical point of view it is also more difficult to disentangle precise power relations in multilateral settings due to shifting coalitions etc. Despite these caveats however there is no obvious theoretical reasons why the subsequent findings cannot apply in a multilateral setting. In these environments the different effects of power trajectory are likely to be a matter of degree rather than qualitatively different, simply because weak states are less vulnerable to manipulation in multilateral settings, therefore we would expect the behaviours predicted here to be less acute – so we would expect to see less generous concessions and less egregious manipulation on the part of powerful rising states in multilateral settings.

The four cases are selected for variation in the primary independent variable: power trajectory, as well the simultaneous but contradictory variation across variables already noted as important in the literature. Specifically, there is variation across cases with respect to levels of experience in negotiating trade contracts, legal culture, the structure of domestic politics and the distribution of economic power within these states. These cases should thus provide insight not only into the role of power trajectory but also the relative salience of these other variables. Further, I focus exclusively on major economic powers because this is where the literature implies that the commitment problem will be most acute.

¹⁸⁷ Baccini, Dür, and Haftel, "Imitation and Innovation in International Governance: The Diffusion of Trade Agreement Design," 11.

Figure 5.2: Variation on the Independent Variable: Direct Comparison of Power Trajectory

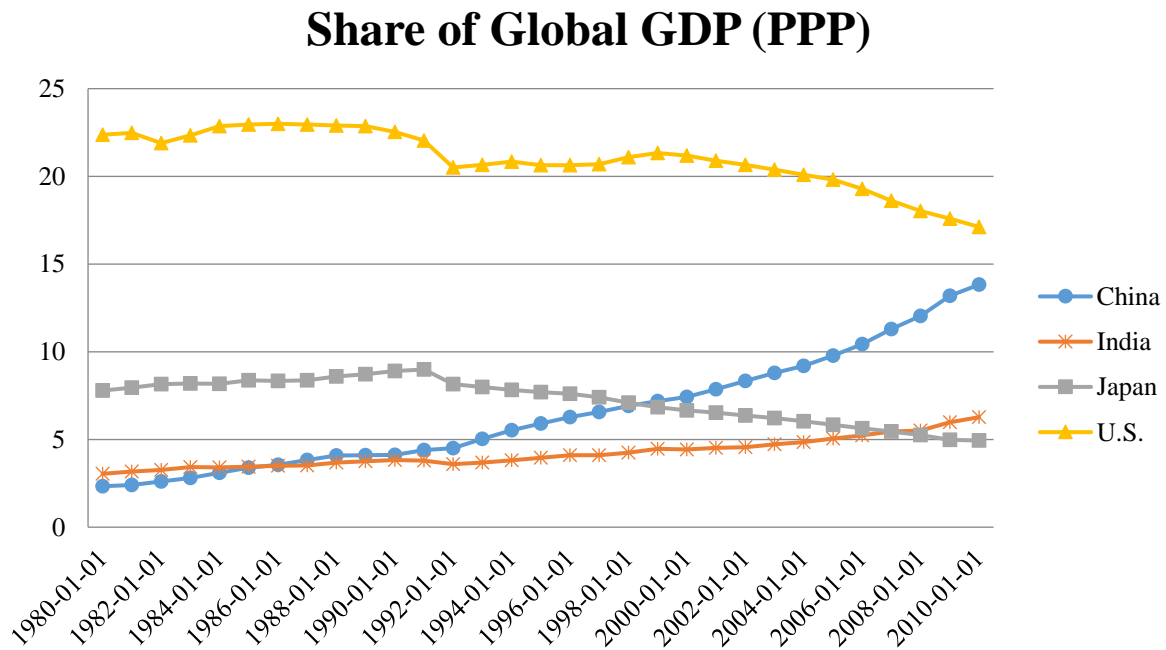


Figure 5.2 shows within case variation on the independent variable is captured by fluctuations in the power of these states over the periods examined. I also maximize where possible, analysis of agreements signed by the four states with common partners to allow direct focused comparison. For this reason, I focus particularly on agreements with ASEAN, Peru, Chile, and Singapore in the subsequent analysis. Selecting similar cases helps to isolate the effects of the hypothesized independent variable on the dependent variable while minimizing the risk, as far as possible, that important intervening variables are neglected. In this sense they are the hardest cases I could have selected from the data available as variation caused by the identity of junior partners in negotiations should be minimized.

Of course from a methodological point of view, though selecting cases based on variation on the independent variable does not increase bias, it does limit the potential generalizability of the conclusions due to the non-randomness of the selection process.¹⁸⁸ However, the bias induced by the non-randomness of selection should be attenuated (within cases at least) by

¹⁸⁸ Gary King, Robert O Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton University Press, 1994), 137.

examination of the entire universe of trade agreements signed by these major powers. At the conclusion of the analysis I will also specify closely the scope conditions of the framework and use both the case studies and the descriptive statistics to make inferences beyond the cases covered,¹⁸⁹ I do so in order to establish more clearly the level of uncertainty associated with the claims of the theoretical framework.¹⁹⁰ Such a detailed qualitative examination of the trade agreements signed by China, India, Japan and the United States, predominantly utilising primary sources, has not, to my knowledge, been conducted in the international relations literature thus far, in this sense alone this will provide an important empirical contribution to the literature.

5.6 Summary of the Empirical Approach

The preceding discussion has defined the dimensions of the subsequent empirical analysis, however the more indirect assumptions that stem from this also merit elucidation. Underlying the analysis is the assumption that power trajectory is determined by states' own perception (that is, if the policy makers of a given state view it as relatively rising, it will be expected to behave as such). It is further assumed that the views of these (boundedly rational) policy makers are informed by broad indicators such as GDP and growth in national capabilities (measured here through composite index of national capability scores and GDP data from the World Bank). This I believe, does not place an unrealistically high burden on the knowledge and calculative ability of these actors and thus is an empirically justifiable assumption. The qualitative nature of the case study analysis will assist in providing contextual measures of bargaining power such as trade-to-GDP ratios and relative dependence in order to reduce the starkness of inferences drawn from the CINC and GDP measures.

¹⁸⁹ Ibid., 8. The authors suggest that the domain of inference be restricted in space and time

¹⁹⁰ Ibid., 9.

The preceding analysis also implies that, in terms of the dependent variable; the dimensions of contract design of most interest will be agreement breadth, (the degree of coverage of issues entailed in an agreement). To illustrate this concretely, we can take an agreement that covers both trade in goods and services: such a deal will be defined as broader than one which covers only goods. Likewise, an agreement that does not include government procurement is considered narrower than one that does so. This focus on agreement breadth has been justified substantively in the preceding discussion: narrow agreements imply that more issues can be included in the agreement over time and this implies iterated bargaining. However, the absence of these clauses means that until new bargaining rounds occur neither centralized nor de-centralized enforcement of these agreements along these dimensions is possible.

Finally, in terms of the up-front concessions from the stronger power to the weaker, these will be defined by the lack of reciprocity from the more minor negotiating partner. Admittedly such concessions are difficult to disentangle in trade negotiations simply due to the complex and long term implications of the agreements themselves. However, this problem should be attenuated with the detailed nature of case-study analysis and I will focus only upon the clearest examples of such concessions.

Chapter 6: Rising Powers

The following two chapters consist of four case studies constructed using primary and secondary sources which are supplemented by background knowledge garnered from interviews with trade officials at the WTO. Alongside the primary WTO documents, descriptive statistics will be employed to illustrate both the power trajectory of the states and the breadth of the agreements that they sign. Each of the four case studies will proceed in a chronological fashion and include a discussion of the power relationship between the major power and its trading counterparts using measures of GDP and CINC share indicators, alongside a qualitative evaluation of the trade relationship in particular. Following this the major characteristics of each agreement will be highlighted. Specific reference is made to up-front concessions, agreement breadth, and the two mechanisms of control. At the end of each case study a summary table will be included to illustrate the comprehensiveness of the agreements signed by each power.

The next chapter will be concerned with the trade agreements negotiated by the rising powers, China and India. At the end of both of these sections will be section that will compare and contrast the agreements of these two rising powers. Following these chapters will be an analysis of the agreements of the status-quo powers, Japan and the U.S. Cross case comparisons between all four countries using agreements that all four have concluded with common partners, for example Chile, Singapore and Australia. This will allow an even further reduction in the effects of possible confounding variables. Finally, this chapter will conclude with a replication of the decision tree from the stylized example with real empirical illustrations.

These sections largely confirm the empirical relevance of the conjectures derived from the framework: First that rising but powerful states exhibit a preference for more narrow trade agreements. Second, that there is clear evidence of unusual up-front concessions from the more powerful to the weaker party, particularly in relation to economically important sectors within these weaker states. Finally, the case studies of China and India both show numerous instances of agreement amendment and extension, supporting the third conjecture of the framework.

6.1 China's Approach to Trade Agreements

It has been observed that 'the first major development that should be emphasized when discussing China's contemporary foreign policy is the remarkable degree of "economization" that has taken place over the last decade. Policies directly aimed at assuring China's economic security and development have emerged as one of the primary drivers of China's foreign policy orientation'¹⁹¹ And indeed this shift in emphasis towards a greater focus on economics is undeniable since a new direction in the foreign policy of China was set by Deng Xiaoping in the early '80s as a result of internal economic reforms and the 'unleashing of capitalist forces'. In order to support these domestic reforms, the Chinese thus pursued a gradually more economically engaged foreign policy and consequently by 1994 relations were established and normalized with eighteen different countries.¹⁹² The ultimate fruition of this more open economic policy was China's entry into the World Trade Organization (WTO) in 2001 following more than 15 years of complex negotiations. This marked a significant milestone for China's integration into the multilateral trading system and was described by the Director General of the WTO as 'a defining moment that changed the world

¹⁹¹ Christopher A McNally, *China's Emergent Political Economy: Capitalism in the Dragon's Lair* (Routledge, 2007), 212.

¹⁹² Barfield, "Dragon Stirs: China's Trade Policy for Asia-and the World," 94.

for the better.¹⁹³ This was an important milestone then not only for the PRC but for the global trading system as a whole and China's growing integration in the international trading system has played a huge role in the growth in international trade.¹⁹⁴

That China constitutes a rising power within the system, both in terms of measures of economic growth and in the popular imagination, there can be no doubt. Since its economic reforms of the early 80s the Chinese economy has grown at an average annual rate of 9.7 percent and its share of global GDP has increased from around 2 percent in 1980 to over 15 percent in 2015.¹⁹⁵ The same story can be told with respect to China's national capabilities, its CINC scores have increased from just over 0.1 to 0.2 in the latest figures.¹⁹⁶ Over the last three decades a greater proportion of China's growth has come from trade and its trade-to-GDP ratio has grown significantly and the states with which it trades are far more diverse today than even 15 years ago. The broad trends in China's power trajectory, relative to its trade partners can be observed in the charts below and with respect to each of the countries with which China has concluded a trade deal there is a clear pattern of power divergence in favour of China both with respect to its CINC scores and GDP growth.

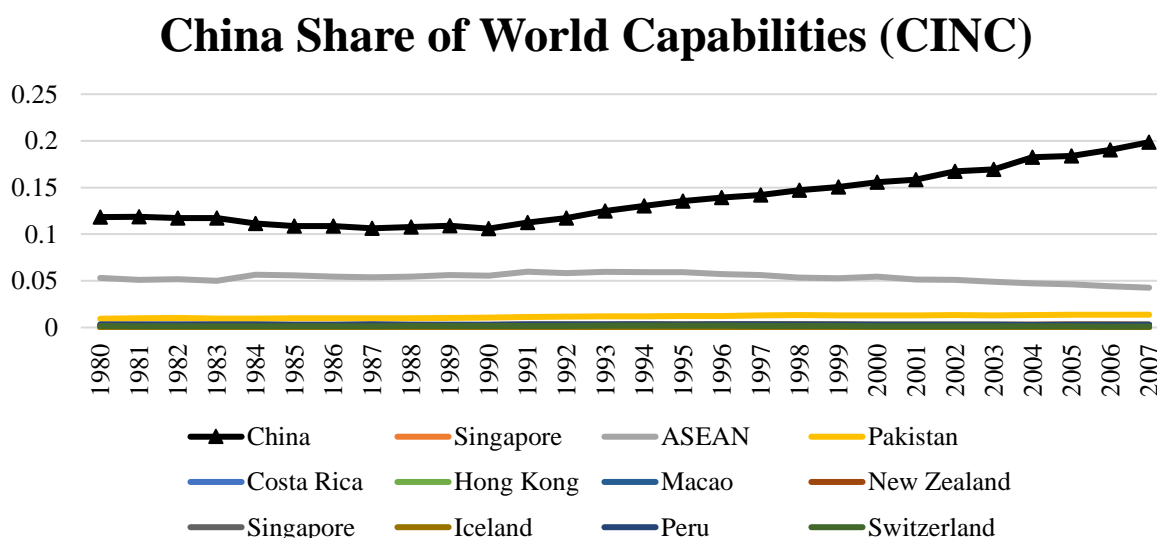
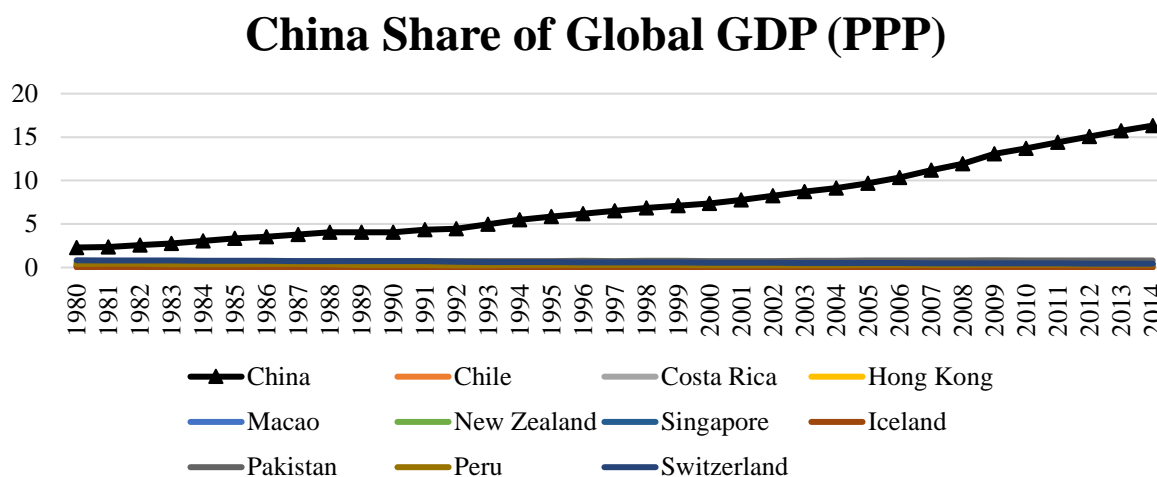
¹⁹³ M. Matsushita, D. Ahn, and T. An, *Wto and East Asia: New Perspectives* (Cameron May, 2004), 291.

¹⁹⁴ Thomas Rumbaugh and Nicolas Blancher, "China: International Trade and Wto Accession," (2004): 3.

¹⁹⁵ "Gdp at Market Prices (Current Us\$)."

¹⁹⁶ David J. Singer, Stuart Bremer, and John Stuckey, "Capability Distribution, Uncertainty, and Major Power War, 1820-1965," in *Peace, War, and Numbers*, ed. Bruce Russett (Beverly Hills: Sage, 1972).

Figure 6.1: China's Power Trajectory in Relation to Trade Partners



Not only has China become the workshop that supplies the developed world but it has also become an increasingly important economic hub in Asia with a growing proportion of its imports come from its Asian partners and its exports to the region also growing, consequently China is increasingly the most import destination for exports from many Asian countries.¹⁹⁷ China is also of course an important participant in the rapidly growing number of trade agreements, particularly in Asia.¹⁹⁸ In terms of these bilateral trade agreements, China is a relative newcomer to the process, despite the fact that it is today the most significant trading

¹⁹⁷ Rumbaugh and Blancher, "China: International Trade and Wto Accession," 3.

¹⁹⁸ Barfield, "Dragon Stirs: China's Trade Policy for Asia-and the World," 104.

state in the world. In 2013 it exported goods worth \$2.21 trillion and in recent years the Chinese have become more active in the pursuit of a trade strategy which aims to ‘strengthen economic linkages with major trading partners and deepen cooperation with emerging markets and developing countries.’ As a result, China is today party to 11 bilateral agreements with ASEAN, Pakistan, Hong Kong, Macao, Australia, Chile, Singapore, New Zealand, Costa Rica, Switzerland, and Iceland.

Analysis of the choice of China’s partners immediately reveals number of patterns – China has tended to target economically minor but potentially strategically significant partners (Pakistan, ASEAN, Hong Kong, Macao, New Zealand), the majority of which are in the Asia-Pacific. We can also see that most agreements have been concluded with emerging economies despite the pronounced turn toward negotiating deals with developed economies in recent years. For Chinese officials these agreements are divided into two broad categories, the first is with nearby countries where China has adopted the ‘neighbouring country relations strategy’. The second category is with countries possessed of particular resources and raw materials required for supporting China’s rapid economic growth. Of course these categories, as we shall see, need not be mutually exclusive and there is significant overlap in important instances.¹⁹⁹ As a result of this approach it is difficult to separate China’s trade policy from its foreign policy, particularly in relation to Asia and it has even been suggested that ‘given the centralized, authoritarian nature of PRC governance, it is natural for China’s top leaders to plan and execute trade policy as an instrument of larger political and security goals.’²⁰⁰

China’s first bilateral agreements were concluded in 2003 with Hong Kong and Macao, the political motivations behind these deals are obvious given the nature of these territories –

¹⁹⁹ Ibid., 111.

²⁰⁰ Ibid., 93.

these agreements allowed China to demonstrate the benefits of greater economic integration with the mainland whilst also ensuring ever closer political ties. These contracts also illustrate well China's approach of signing narrow agreements – in the case of the agreement with Hong-Kong there is a clause that explicitly stipulates further negotiations to extend the deal at a later stage.²⁰¹ Supplemental agreements have consequently been negotiated six times since the first agreement was signed in 2003, with negotiations taking place in 2004, 2005, 2006, 2007, 2008 and 2009. Further, given Hong Kong's historical status as a trading port, the agreement entailed a 'one-sided concession' from China to unilaterally reduce tariffs on imports to zero by 2006. Interestingly as a result it has been said that China gained 'little mercantilist advantage from the deal as prior to the agreement only around 20 percent of goods trade from Hong Kong was tariff free but after implementation this figure stood at 90 percent.'²⁰² Partially as a result of the agreement the two economies are increasingly interdependent and, 'Hong Kong economy's dependence on the PRC has grown considerably'.²⁰³

The next agreement concluded by China was perhaps its most important to date, the 2004 deal with ASEAN is significant both economically and politically. Despite their fears surrounding China's increasing economic power, the Association of Southeast Asian Nations (ASEAN) countries made clear their desire to reengage with China by the mid-1990s.²⁰⁴ Though reticent at first the Chinese came to see such economic cooperation as a way of ameliorating the perceived 'China threat', particularly following the 1989 Tiananmen incident; and the Taiwan Strait crisis of 1995.²⁰⁵ In political terms then an agreement with ASEAN formed part of China's strategy to allay fears in East Asia related to its dramatic

²⁰¹ "Mainland and Hong Kong Closer Economic Partnership Arrangement," (Hong Kong, 2003).

²⁰² Gary Clyde Hufbauer and Yee Wong, "Prospects for Regional Free Trade in Asia," *Institute for International Economics Working Paper Number WP 05-12* (2005): 7.

²⁰³ Bruno Cabrillac, "A Bilateral Trade Agreement between Hong Kong and China: Ceta," *China Perspectives*, no. 54 (2004): 9.

²⁰⁴ Barfield, "Dragon Stirs: China's Trade Policy for Asia-and the World," 95.

²⁰⁵ *Ibid.*, 93.

economic growth and helped demonstrate the tangible benefits that result from Chinese economic prosperity. Consequently, during the ASEAN-China summit in November 2000, China's then Premier, Zhu Rongji proposed the establishment of the ASEAN-China Free Trade Area (ACFTA). The leaders of China and ASEAN agreed to commence negotiations at the November 2001 ASEAN plus China summit and approved the implementation of the FTA by 2010. Subsequently the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China was signed on November 4, 2002.²⁰⁶ Prior to the conclusion of the goods deal in 2004 a framework agreement was signed in 2002 which laid out the structure of future cooperation, subsequent talks occurred in 2003. Interestingly in the case of the ASEAN-China framework agreement the dispute resolution mechanism was also negotiated subsequent to its signing: Article 11 of the text of the agreement states:

‘The Parties shall within 1 year after the date of entry into force of this Agreement, establish appropriate and formal dispute resolution procedures and mechanism for the purpose of the agreement. Pending the establishment of the formal dispute settlement procedures and mechanism under paragraph 1 above, any disputes concerning the interpretation, implementation or application of this Agreement shall be settled amicably by consultations and/or mediation.’²⁰⁷

The sequential nature of China’s approach to negotiations can be seen in the way that a services deal was eventually concluded in 2007 and investment was covered by an agreement in 2009. Alongside this cautious negotiating approach, Chinese officials professed to be pursuing a policy of generosity, pointing to the approach of ‘giving a lot’ whilst receiving little in return.²⁰⁸ The goods agreement with ASEAN allows each party to register hundreds of sensitive goods that are not subject to tariff reductions until 2020 – further highlighting its narrowness.

²⁰⁶ Teofilo C Daquila and Le Huu Huy, "Singapore and Asean in the Global Economy: The Case of Free Trade Agreements," (2003): 910.

²⁰⁷ "Framework Agreement on Comprehensive Economic Co-Operation between Asean and the People's Republic of China, Article 11," (Website of the ASEAN Secretariat, 2002).

²⁰⁸ Nargiza Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," (U.S. - China Economic and Security Review Commission 2015), 8.

As conventional wisdom would suggest ASEAN states were initially wary of concluding an agreement due to the significant asymmetries in power with respect to China. There was a particular fear that their markets would be swamped by cheaper and superior Chinese goods. In part to allay these fears China offered ASEAN an 'Early Harvest Program' (EHP) which allowed tariffs on around 200 agricultural products to be eliminated by China whilst reciprocal liberalization was not required on the part of less developed ASEAN members Cambodia, Myanmar, Laos and Vietnam. Related to these countries was another ASEAN concern that a development gap would emerge between these states and the more economically advanced members of ASEAN. As a result, China agreed to extend most favoured nation status to ASEAN's newer members which provided these states an additional 5 years to comply with the agreement.²⁰⁹ This meant that these states gained access to the Chinese market long before reciprocal access was granted. In a final signal of goodwill China also agreed to write-off debts owned by these states and in the years since the conclusion of this deal ASEAN countries have reaped significant benefits from increased economic interaction with China, particularly with respect to growing exports to the Chinese market.²¹⁰ Nevertheless, ASEAN and China remain direct competitors, particularly in relation to labour intensive exports of manufactures and low technology products.²¹¹

The services component of the deal between ASEAN and China is also narrow, evidenced by the clause that states 'At subsequent reviews... the Parties shall enter into successive rounds of negotiations to negotiate further packages of specific commitments under Part III of this Agreement so as to progressively liberalise trade in services between the Parties.'²¹² In terms of depth too, the services agreement falls well short of E.U. and NAFTA agreements and in

²⁰⁹ Alice D. Ba, "China and Asean: Renavigating Relations for a 21st-Century Asia," *Asian Survey* 43, no. 4 (2003): 637.

²¹⁰ Rumbaugh and Blancher, "China: International Trade and Wto Accession," 13.

²¹¹ Ibid.

²¹² "Framework Agreement on Comprehensive Economic Co-Operation between Asean and the People's Republic of China, Article 11."

terms of rigidity it has been observed that ‘with no rigorous mechanism for settling disputes, doubts remain whether the deal will have real teeth’.²¹³

China’s fourth trade agreement was concluded just a year following conclusion of the goods deal with ASEAN. Like its previous agreements the 2005 deal with Chile was not negotiated as a single undertaking and goods and services components were negotiated sequentially. At the time of the negotiations China possessed a lower trade to GDP ratio than did Chile and prior to the agreement China was importing far more goods from Chile than it was exporting.²¹⁴ The initial agreement incorporates tariff reductions and investment promotion only but is reasonably deep in terms of liberalization as it foresaw liberalization on 98 percent of Chile’s tariff and over 97.2 percent of China’s tariff by 2015.²¹⁵ It has been noted that ‘Chile’s liberalization commitments are more ambitious in terms of frontloading the lion’s share of its tariff phasing out commitments whereas China is eliminating the bulk of lines subject to higher MFN duties only 5 to 10 years after the entry into force of the agreement.’²¹⁶ With respect to China’s liberalization there are also significant exemptions: 214 tariffs covering ‘agricultural products, chemicals, wood products, pulp and paper and textiles are not liberalized under the Agreement.’²¹⁷ As is the case with many of China’s FTA agreements, there are no provisions on export duties and charges.²¹⁸ It seems that China’s primary motivation for concluding this agreement was to secure preferential access to raw materials and this is substantiated by the fact that the main exports from Chile to China

²¹³ The Economist, "The China-Asean Free Trade Agreement: Ajar for Business: More Breadth Than Depth " *The Economist* 2010.

²¹⁴ WTO, "Free Trade Agreement between Chile and China (Goods): Factual Presentation," (WTO, 2008), 1.

²¹⁵ Ibid.

²¹⁶ "Free Trade Agreement between Chile and China: Questions and Replies," (WTO, 2008), 2.

²¹⁷ Ibid., 3.

²¹⁸ Ibid., 6.

currently include copper, iron, steel, chemicals, plastic and other mining materials,²¹⁹ consequently import of base materials make up nearly half of China's imports from Chile.²²⁰

A year after the conclusion of the deal with Chile, China penned a bilateral agreement with Pakistan in 2006. At the time of the agreement Pakistan was importing substantially more goods from China than it was exporting.²²¹ The initial agreement again only covered liberalization in goods only, and of these tariffs were eliminated on 35 percent of products upon entry into force.²²² Further demonstrating the narrowness of the deal is the fact that renegotiation is again explicitly built into the agreement and future liberalization and other measures are entirely dependent on subsequent negotiations under phase II of the agreement.²²³ The two sides thus agreed that a commission

‘Comprising representatives of the parties was established and regular meetings [will] be held. The Commission might consider including these provisions during the regular meetings if it deems necessary. Furthermore, these issues might also be discussed during the Phase II of the Agreement by the Parties’.²²⁴

Alongside this there was also weak liberalization in a number of areas including textiles and plastics – the agreement consequently falls far short of commitments under GATT article XXIV on eliminating tariffs on ‘substantially all trade’ and does not include chapters on intellectual property, competition or government procurement.²²⁵

In strategic terms China's relationship with Pakistan has been significant in respect of China's broader Asia policy; since the early 1960s China has sought to counterbalance India

²¹⁹ Government of Chile: General Directorate for International Economic Affairs, "China-Chile Trade Statistics", ed. Department for Asia and Oceania (http://www.direcon.cl/documentos/China2/intercambio_comercial_chile_china_marzo_2006_en.pdf2010).

²²⁰ WTO, "Free Trade Agreement between Chile and China (Goods): Factual Presentation," 3.

²²¹ *Ibid.*, 2.

²²² "Free Trade Agreement between Pakistan and China: Factual Presentation" (Geneva: WTO, 2008), 6.

²²³ "Free Trade Agreement between Pakistan and China: Questions and Replies" (WTO, 2009), 1.

²²⁴ *Ibid.*, 2.

²²⁵ "Free Trade Agreement between Pakistan and China: Factual Presentation" 8-9.

by developing close relations with Pakistan and this fits with China's strategy of seeking to maintain periphery stability by 'making neighbours partners'.²²⁶ For Pakistan developing a close relationship with China has been partially driven by its uneasy and often unpredictable relations with the United States,²²⁷ and increasing economic integration with China may be a significant element of Pakistan's strategy of reducing dependence on the U.S. Thus given the low level of liberalization in the FTA it is likely then that political factors were again important drivers of the agreement and given the strategic importance of Pakistan it is to be expected that China would wish to maximize its leverage by securing an incomplete agreement which entails significant subsequent negotiations. In this respect given that agriculture forms over 20 percent of Pakistan's economy and employs 43 percent of the labour force,²²⁸ the Early Harvest Program and the need for subsequent liberalization in the agricultural sector may serve to maximize China's political leverage in future negotiations and across other issue areas.²²⁹

Following the Pakistan deal, China signed its first agreement with an advanced economy – New Zealand in 2007. At the beginning of negotiations China was New Zealand's fourth largest export market and its second largest import source whilst New Zealand was China's 59th largest destination for exports and 52nd largest import source.²³⁰ The choice of New Zealand had particular symbolic significance as it was also the first advanced economy to recognize China's status as a market economy, a status which had important implications for China's position within the WTO. The agreement is again narrow compared to international standards, there are no provisions on government procurement, no coverage of behind the

²²⁶ Sumita Kumar, "The China– Pakistan Strategic Relationship: Trade, Investment, Energy and Infrastructure," *Strategic Analysis* 31, no. 5 (2007): 758.

²²⁷ *Ibid.*, 764.

²²⁸ "World Fact Book: Pakistan," ed. Central Intelligence Agency (2007).

²²⁹ Agricultural goods constitute over 20% of all of Pakistan's exports

²³⁰ WTO, "Factual Presentation: Free Trade Agreement between China and New Zealand (Goods and Services)" (Secretariat, 2010), 1.

border (or Singapore) issues.²³¹ During negotiations New Zealand was pushing for broader market access but was rebuffed by the Chinese.²³² However, in relation to the few areas that are covered liberalization has been relatively deep and unlike other agreements signed by China the goods and services components were concluded simultaneously. Despite this coverage of services was limited due to China's insistence on a positive list approach (whereby only services explicitly mentioned in the agreement are covered).²³³

In the same year that the New Zealand deal was concluded China struck a deal with Singapore. The deal built on the agreement with ASEAN (of which Singapore is a member) and is broader in coverage than many other agreements signed by China. Unlike many other agreements signed by China, the agreement with Singapore covers trade in goods, services and has clauses related to rules of origin, trade remedies, sanitary measures and technical barriers to trade and investment.²³⁴ Despite this the agreement covers fewer issues than comparable agreements signed by Singapore, for example with the United States. The China-Singapore FTA is significantly shorter; it extends to around 75 pages whereas the U.S agreement is over one and a half thousand pages long, which points the relative limited coverage of the Chinese agreement despite the fact that it is one of the most comprehensive concluded by China to date. No notable concessions were offered by either party though China probably conceded slightly more in tariff reductions due to the already high level of liberalization by Singapore as an open trading state. The agreement provides preferential coverage for around 95 percent of Singapore's exports to China whilst Singapore grants preferential tariff-free treatment to all of China's exports to Singapore.²³⁵

²³¹ Ibid., 30-31.

²³² Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," 9.

²³³ WTO, "Factual Presentation: Free Trade Agreement between China and New Zealand (Goods and Services)" 30.

²³⁴ "Factual Presentation: Free Trade Agreement between China and Singapore (Goods and Services)" (Secretariat, 2014), 30-32.

²³⁵ Ibid., 10-11.

Two years following the conclusion of the Singapore agreement, China concluded its second deal with a Latin American state with Costa Rica in 2010. At this time Costa Rica was China's 110th largest export market and 39th source of imports. Conversely China was Costa Rica's 11th largest export destination and its 3rd largest source of imports, indicative of large gulf in both power and dependence between the two parties.²³⁶ The agreement itself covers both goods and services but China agreed to open only 7 service sectors whilst Costa Rica opened 45. The agreement also includes no clauses on government procurement or health services. On entry into force only 55 percent of exports from China to Costa Rica will be tariff free and in international terms this agreement is both narrow and shallow; before implementation 12 percent of Chinese exports to Costa Rica were duty free and upon full implementation this figure was 55 percent. By 2025 it is anticipated that this figure will stand at approximately 85 percent of imports from China.²³⁷ The agreement also includes no clauses on government procurement, finance or health services and is therefore extremely narrow in its coverage.²³⁸

China has also concluded a deal with Peru and in terms of the substance of the agreement, on implementation only 1 percent of imports from China were liberalized and most liberalization is expected to take place in 2019, ten years after it was first concluded. By this time Peru plans to liberalize tariffs on over 87 percent of Chinese exports (by value in 2009). Overall the agreement ultimately anticipates liberalization of 91 percent of trade from China.²³⁹ From China's perspective by 2019 18.4 percent of imports from Peru will be duty-free whilst by 2026 the agreement envisions 99 percent of trade from Peru to have been liberalized.²⁴⁰

²³⁶ "Trade Policy Review: Costa Rica," (Secretariat, 2013), 34.

²³⁷ "Factual Presentation: Free Trade Agreement between China and Costa Rica (Goods and Services)," (Secretariat, 2013), 9.

²³⁸ *Ibid.*, 27.

²³⁹ "Factual Presentation: Free Trade Agreement between Peru and China (Goods and Services) " (2010), 12.

²⁴⁰ *Ibid.*, 13.

There are no provisions on competition or government procurement in this agreement.²⁴¹ Finally, the agreement allows each party to select a forum to settle disputes.²⁴² Thus, though the agreement is relatively deep, it is both flexible and narrow. Peru is an important partner because it is one of the world's largest suppliers of raw metals, particularly copper.²⁴³ 'Similar to the New Zealand FTA, China only agreed to grant future MFN status, and Peru was not able to compel China to agree to broadened market access rules. However, China did agree to accord fair and equitable treatment according to "customary international law," the first such incorporation of a Western standard for China's investment policy.'²⁴⁴

In 2013 China signed its first deals with European partners in the form of Switzerland and Iceland. Both agreements again adopt a positive list approach which tends to result in dramatically reduced breadth of coverage than does a negative list, in terms of liberalization however the treaty with Switzerland is very deep with tariffs on 99.7 percent of Chinese exports abolished, and 84.2 percent of tariffs abolished on Swiss exports. Both the agreement with Iceland and Switzerland concluded deals on goods and services simultaneously, despite this however the agreements remain narrower than comparable contracts signed by either of these countries.

China's most recently concluded agreement, with Australia, took more than a decade to conclude and the reasons for this can provide insight into China's broader strategy. Negotiations between the two consistently stalled – an important reason for this was the inability of the parties to agree on the desirable level of agreement flexibility. The aim of Australian negotiators was to secure a 'commercially meaningful' comprehensive

²⁴¹ Ibid., 20.

²⁴² Ibid., 47.

²⁴³ Ibid.

²⁴⁴ Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," 11-12.

agreement²⁴⁵ with Chinese negotiators preferring a ‘selective, gradual approach to trade liberalisation under the FTA rather than a comprehensive “single undertaking” as preferred by Australia.’²⁴⁶ Chinese negotiators also argued that so-called ‘behind the border issues’ (WTO plus issues, such as transparency, technical barriers to trade (TBT), intellectual property rights (IPR) and sanitary and phytosanitary (SPS) measures) should not be included in the initial agreement.²⁴⁷ There was also disagreement over the form of any dispute resolution mechanism (DRM): Australia had a preference for clear, formalized dispute resolution procedures whereas China preferred ‘bilateral negotiation and friendly consultation, with third-party adjudication as the last resort.’²⁴⁸ Liberalization of services in particular was one obstacle to a deal, ‘with Australia keen on greater opening but China reluctant to liberalize beyond what it agreed to at WTO accession.’²⁴⁹ Ultimately liberalization in services sector is unlikely to be high.²⁵⁰ Crucially Australia’s economy is interdependent with China’s to a greater extent than any other developed country, particularly in terms of agricultural products, where New Zealand, concluded its own FTA with China in 2008.²⁵¹ China is Australia’s second largest export market for goods and second-largest trade partner overall.²⁵² ‘China...buys almost a third of all Australian exports, valued at nearly \$108 billion in 2013-14.’²⁵³ This dependence on China is concentrated in specific and politically important sectors, namely agriculture and energy. China buys more of Australia’s agricultural exports than any other country and ‘in 2013-14, this market was

²⁴⁵ Yang Jiang, "Australia-China Fta: China's Domestic Politics and the Roots of Different National Approaches to Ftas," *Australian Journal of International Affairs* 62, no. 2 (2008): 181.

²⁴⁶ *Ibid.*, 182.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*, 185.

²⁴⁹ "Australia-China Fta: China’s Domestic Politics and the Roots of Different National Approaches to Ftas," *Australian Journal of International Affairs* 62, no. 2 (2008): 189.

²⁵⁰ Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," 10-11.

²⁵¹ *Ibid.*

²⁵² Tran Hoa, "Australia-China Free Trade Agreement: Causal Empirics and Political Economy," *Economic Papers: A journal of applied economics and policy* 27, no. 1 (2008): 19.

²⁵³ Australian Government, "China-Australia Free Trade Agreement: Factsheet," ed. Department of Foreign Affairs and Trade (2016).

worth \$9 billion to Australian farmers and the broader agricultural sector.’²⁵⁴ China is also Australia’s import destination for energy related products and the agreement eliminates all of Chinese tariffs on Australian resources and energy products.²⁵⁵

On the other hand, it has been argued that the trade relationship between these two nations does not ‘have a statistically significant and beneficial impact on China’s growth.’²⁵⁶ However, even before the agreement Australia’s growth gained ‘substantially from bilateral trade with China.’²⁵⁷ The asymmetric dependence of Australia will surely only grow following conclusion of the deal. Talking of the agreement ‘China’s commerce minister explained that the Australian deal incorporates “[T]he highest degree of liberalisation of all the FTAs China has so far signed with any economy.”²⁵⁸

Again political and strategic consideration have figured prominently in China’s selection of Australia as a partner because ‘China views Australia as an important country in the South Pacific and feels that Sino—Australian bilateral relations are not close enough...’²⁵⁹ In this way the Chinese hoped that the agreement would upgrade relations with Australia ‘from “friendly cooperation” to a “strategic partnership.”’²⁶⁰

6.2 Summary of China’s Approach to Trade Agreements

It has been recognized for some time that ‘China [offers] an alternative to U.S. leadership of the global trading system with its emphasis on low-quality FTAs driven largely by political

²⁵⁴ Ibid.

²⁵⁵ Dan Conifer, "Australia and China Sign 'History Making' Free Trade Agreement after a Decade of Negotiations," *Australian Broadcasting Corporation* 2015.

²⁵⁶ Hoa, "Australia-China Free Trade Agreement: Causal Empirics and Political Economy," 26.

²⁵⁷ Ibid.

²⁵⁸ Daniel Hurst, "China and Australia Formally Sign Free Trade Agreement " *The Guardian* 2015.

²⁵⁹ Guoyou Song and Wen Jin Yuan, "China's Free Trade Agreement Strategies," *The Washington Quarterly* 35, no. 4 (2012): 113.

²⁶⁰ Ibid.

considerations'.²⁶¹ The preceding analysis confirms this claim by demonstrating the relative narrowness of all of China's agreements. These deals are notable because 'unlike the models recently employed by the US and EU... they are diverse in form and coverage, that the relative brevity of the agreements leave many aspects as the subject of continued negotiations, and that several omit elaborate dispute resolution procedures.'²⁶²

In contrast to agreements signed by many other states Chinese contracts incorporate few 'advanced provisions' and often simply reiterate existing WTO commitments. The advanced provisions that are included in Chinese trade deals are usually vague compared to other deals. U.S. agreements for example cover more products and are 'negotiated from the start with as comprehensive a list as possible' in contrast to China's positive list agreements which often also restrict access to certain important sectors.²⁶³ Chinese agreements also incorporate strict ownership provisions meaning that investors must establish joint ventures with Chinese companies in order to secure equal status with Chinese firms. Only the FTA with New Zealand does not incorporate requirements related to using local Chinese labour.²⁶⁴ Thus not only is the issue coverage of Chinese agreements narrow but dispute mechanism procedures are weak and vague and are often not clearly defined in the initial agreements.

Table 6.1 summarizes the comprehensiveness of China's agreements using three different measures, a clear pattern can be observed – all of China's agreements are less comprehensive or narrower than those signed by other major economic powers and the deals signed with its Asian partners are the narrowest of all the agreements. This supports the conjecture that

²⁶¹ Fred C. Bergsten, "China and Economic Integration in East Asia: Implications for the United States," (Peterson Institute for International Economics 2007), 174.

²⁶² Jarrod Hepburn et al., "Sustainable Development in Regional Trade and Investment Agreements: Policy Innovations in Asia?," *Centre for International Sustainable Development Law (CISDL) Legal Working Paper* (2007): 20.

²⁶³ Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," 18.

²⁶⁴ Ibid.

narrow agreements increase in their utility to the powerful the more strategically significant are their partners. Confirming the case study analysis, the results show that the broadest agreements signed by China are with Singapore and New Zealand whilst the narrowest with politically salient partners – ASEAN, Hong Kong, Macao and Pakistan. In terms of up-front concessions, the Chinese themselves emphasise this aspect of their approach and have argued that that ‘China has given more than it has asked for in the FTA negotiations. The sacrifices that have been made in terms of economic interests have not been equal on both sides’.²⁶⁵ This is borne out in the analysis where we see very generous terms offered to ASEAN and Pakistan in particular but also in relation to all China’s trade partners in terms of the levels of liberalization and implementation where China has liberalized a wider range of goods and services over a shorter time period than its partners.

This section has also demonstrated the tendency of the Chinese to opt for trade deals with smaller partners that, it has been said, ‘either do not have the leverage to exact concessions or are unable to inflict substantial damage on Chinese industry.’²⁶⁶ In other words these states do not have the capacity to engage in unilateral enforcement, and the ambiguous nature of the agreements mean that both centralized and de-centralized enforcement are also precluded.

The summary table below confirms the indicators of the case study and shows the relative narrowness of China’s agreements in terms of all three measure of contract coverage.

Table 6.1: China Agreement Summary²⁶⁷

Year	Agreement	Measure 1	Measure 2	Measure 3	Region
2003	Hong Kong	-0.103	2	1.50	Asia
2003	Macao	-0.293	2	1.50	Asia

²⁶⁵ Chinese Trade Official quoted in T. Chin and Richard Stubbs, "The Political Economy of the Asean-China Free Trade Agreement and East Asian Regionalism," in *International Studies Association Conference* (New York 2008), 9.

²⁶⁶ Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," 4.

²⁶⁷ Switzerland and Iceland are not included in this data because, as of writing, these have only been notified to the WTO and have not entered into full implementation

2004	ASEAN	-0.103	2	1.25	Asia
2005	Chile	0.630	3	1.75	S. America
2006	Pakistan	0.954	3	1.25	Asia
2007	New Zealand	1.464	4	2.00	Pacific
2007	Singapore	1.368	4	2.25	Asia
2009	Peru	1.609	5	2.00	S. America

6.3 India's Approach to Trade Agreements

India, like China, has seen dramatic economic growth in recent years with its GDP growing at an average rate of 6 percent a year since 1980, going from \$275 billion to over \$1 trillion in 2008.²⁶⁸ An instrumental part of this process has been the Indian decision to gradually abandon its traditional protectionist approach in the early 1990s and as a result India's trade to GDP ratio increased dramatically from 15 to 35 between 1990 and 2005, demonstrating the growing importance of trade to its impressive rate of growth. India's exports of goods and services also grew faster than the global average, by over 10 percent in the 1990s.²⁶⁹

In terms of its broader economy, agriculture still accounts for a large proportion of India's GDP and this has historically been protected from import competition by tariffs and non-tariff barriers and this remain the case today.²⁷⁰ The share of GDP accounted for by manufacturing has grown steadily in recent decades and India particularly specializes in low technology products. Yet it is the service sector which accounts for by far the largest share of India's GDP.²⁷¹ In this sector India has a particular advantage in terms of low labour costs and thus we might expect to see them emphasise services liberalization in their trade agreements. The charts below show a clear divergence between India and its trade partners both with respect to its GDP and its share of world capabilities.

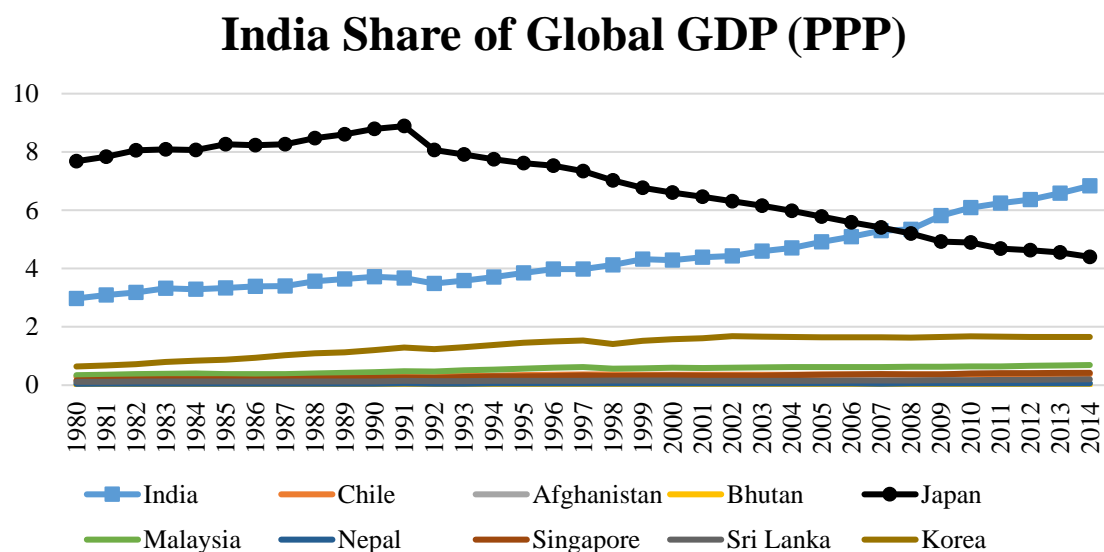
²⁶⁸ "Gdp at Market Prices (Current Us\$)."

²⁶⁹ Arvind Panagariya, "Why India Lags Behind China and How It Can Bridge the Gap," *The World Economy* 30, no. 2 (2007): 232.

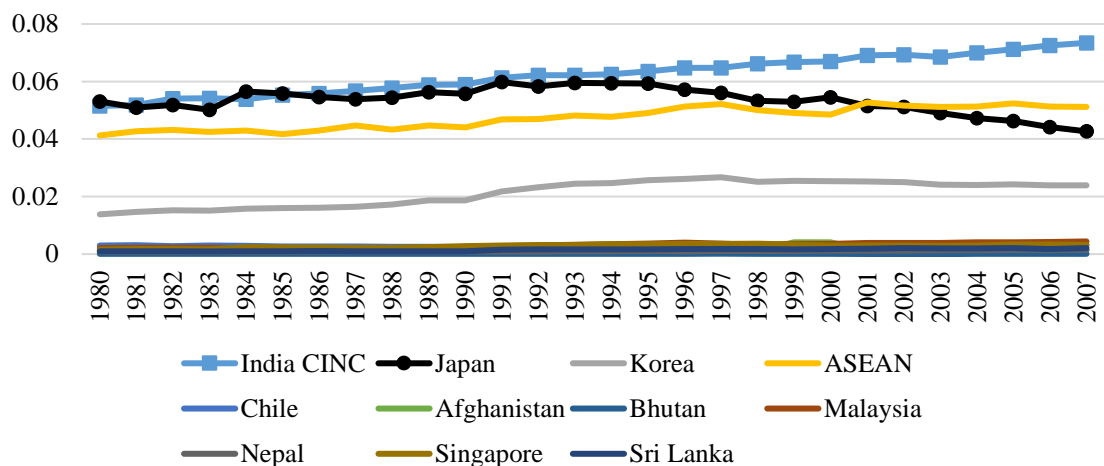
²⁷⁰ Vudayagiri N Balasubramanyam, "India: Trade Policy Review," *ibid.* 26, no. 9 (2003): 1361.

²⁷¹ *Ibid.*, 1358.

Figure 6.2: India's Power Trajectory in Relation to Trade Partners



India Share of World Capabilities (CINC)



As with the general trend in world trade bilateral trade agreements have played an increasingly significant role in this new policy and since 1991 India has signed bilateral agreements with ten partners, the most recent of which was concluded with Japan in 2011.²⁷² Of India's agreements still in force, the earliest was signed with its neighbour Bhutan in 1949, this initial agreement was extended and renewed in 1972, 1983, 1990 and 1995. The 1995 deal finally expired in 2005 but was renewed for another ten years in 2006 and this

²⁷² Preeti Ramdasi, "An Overview of India's Trade Strategy," *Institut Du Development Durable Et Des Relations Internationales (Working Paper)* (2010): 34.

deal remains intact to this day. As with China, the approach of revising, expanding and amending trade deals is evident in India's approach to international trade contracts from the very beginning. With respect to this first agreement - the geographical proximity and the great asymmetry in the size of the two economies, has meant that Bhutan highly dependent upon India, a country which accounts for around 80 percent of Bhutan's imports and is the recipient of 94 percent of Bhutan's exports. This dependence has only increased since India provided financial assistance to the country in order to develop a massive hydro-electricity project and Bhutan now exports a great deal of energy created by this project to India.²⁷³ Interestingly Bhutan is also the only South Asian country that is not a member of the WTO so even the weak dispute resolution mechanisms of this body are not open to the small nation. Under details of the agreement India agreed from the beginning that Bhutan may, impose non-tariff restrictions on import of certain goods of Indian origin in order to protect its infant industries.²⁷⁴ The coverage agreement itself is narrow in that it covers liberalization in goods only and does not include competition, government procurement, intellectual property, the environment or labour standards.²⁷⁵ The agreement itself stretches to a mere five pages with additional notes and annexes, a clear example of a very incomplete, narrow contract, which by its design entailed significant amendments and additions over the years.

As with the agreement with Bhutan India's trade deal with another of its small neighbours, Nepal has gone through a large number of iterations. The first agreement was concluded in 1950 and was followed by agreements in 1960, 1971, 1978, 1991, 1996, 2002 and finally 2009, the last of which remains in force. Each of these iterations gradually broadened the scope of the deal and in 2009 the agreement validity period was increased from 5 to 7 years

²⁷³ A. Batra, *Regional Economic Integration in South Asia: Trapped in Conflict?* (Taylor & Francis, 2012), 70.

²⁷⁴ Debamitra Mitra, "'Yam'between Two Boulders: Re-Assessing India-Bhutan Relationship," *Jadavpur Journal of International Relations* 17, no. 2 (2013): 197.

²⁷⁵ The Government of the Republic of India and The Royal Government of Bhutan, "Agreement on Trade, Commerce and Transit between the Government of the Republic of India and the Royal Government of Bhutan," (2006).

with an automatic extension of another seven years built-in.²⁷⁶ As in the case of Bhutan, India is Nepal's most important trade partner and accounts for around 50% of all trade by Nepal.²⁷⁷ Again this agreement is extremely narrow and only covers liberalization in goods and again does not include provisions on broader issues such as competition, government procurement, e-commerce, intellectual property, the environment or labour.²⁷⁸ The agreement did however include a liberalization of the rules of origins requirements that led to a massive growth in exports from Nepal to India.²⁷⁹ The 1996 is particularly notable in that The Indo-Nepal trade treaty of 1996 was a landmark in Indo-Nepal bilateral trade, as India it 'provided duty-free access to all products manufactured in Nepal on the basis of a Certificate of Origin issued by the Nepali authorities'. This led to a significant surge in imports in the period from 1996-2002, however this early concession was subsequently withdrawn by India when it introduced tariff rate quotas in the 2002 revision of the treaty.²⁸⁰

India's next agreement was signed with another relatively minor regional partner, Sri Lanka in 1998. This agreement is particularly interesting in that it had been specifically designed to address the economic disparity between the two states.²⁸¹ As a result Sri Lanka was given more time to liberalize under the agreement than was afforded to India. India also agreed to remove tariffs on a greater number of goods, liberalizing tariffs on 1,351 products whilst Sri Lanka agreed to immediate liberalization of only 319 products.²⁸² Those products not immediately liberalized by India but of special interest to Sri Lanka (such as tea) were covered by tariff rate quota which allowed a limited quantity of those goods access to the Indian market. Restrictions on these particular products have gradually been lifted in recent

²⁷⁶ Batra, *Regional Economic Integration in South Asia: Trapped in Conflict?* 80

²⁷⁷ *Ibid.*, 80.

²⁷⁸ The Government of the Republic of India and the Government of Nepal, "Indo-Nepal Treaty of Trade," (2009).

²⁷⁹ Batra, *Regional Economic Integration in South Asia: Trapped in Conflict?*, 69.

²⁸⁰ Nisha Taneja, Subhanil Chowdhury, and Shravani Prakash, "India–Nepal Economic Cooperation Towards a New Paradigm*," *India Quarterly: A Journal of International Affairs* 67, no. 2 (2011): 131.

²⁸¹ Batra, *Regional Economic Integration in South Asia: Trapped in Conflict?*, 70.

²⁸² *Ibid.*

years, rules of origin criteria were also relaxed by India to allow even greater access to exports from Sri Lanka. As with the iterated deals with Nepal and Bhutan, Sri Lanka and India apparently now desire to extend the terms of this agreement even more broadly to include services and investment alongside the goods liberalization that is already in place.²⁸³

Following these regional pacts there was a pause in India's approach and its next major bilateral agreement was not until 5 years after the deal with Sri Lanka, in 2003, again with an economically minor regional partner – Afghanistan. There is remarkably little information available on the results of this agreement but the contract itself covers trade in goods only and is extremely narrow. As part of the agreement India has agreed to liberalize tariffs on just 38 goods and Afghanistan to liberalize with respect to only 8.²⁸⁴ The agreement also excludes the more common provisions on competition, government procurement, labour, the environment and services liberalization.²⁸⁵ Given the extremely limited nature of this contract it is hard to avoid the conclusion that the motives behind it were primarily political and strategic rather than economic.

Only a year after the deal with Afghanistan entered into force, India was finalizing the details of its most important bilateral agreement up to that point – its first agreement with a regional group, MERCOSUR. Like the deal with Afghanistan this treaty covers goods only but not services or investment and the goods liberalization is itself extremely narrow – the agreement liberalizes tariffs on only 452 products exported from India to the MERCOSUR region whilst India liberalized even fewer products at 450. Following the conclusion of the initial

²⁸³ Ibid.

²⁸⁴ The Government of The Republic of India and The Islamic State of Afghanistan, "Preferential Trade Agreement between the Republic of India and the Transitional Islamic State of Afghanistan," (2003).

²⁸⁵ Ibid.

agreement we again see India's gradual approach to expanding these deals and five annexes were negotiated over six rounds of further negotiations.²⁸⁶

In keeping with its fast pace of negotiations and broadening its partnerships beyond its immediate neighbourhood, in the following year, 2005, India concluded a trade deal with Singapore. As with the China-Singapore agreement this is one of India's most comprehensive deals and is the first agreement signed by India to incorporate liberalization of both goods and services. The agreement requires India to liberalize 23.6 percent of tariffs which corresponds to '75% of imports from Singapore by value'. For its part Singapore already placed zero tariffs on 99.9 percent of all goods and services from India.²⁸⁷ In this sense, as with the Chinese deal, the contract itself constitutes a one-sided concession on the part of India since it gains no benefit from further liberalization. Any remaining tariffs on Indian goods were eliminated immediately on entry into force of the agreement whereas tariffs on Singaporean goods were reduced over a period of four years. Both parties' commitments on services took effect immediately once the deal entered into force and these commitments include provision on intellectual property and government procurement – another first for an agreement signed by India.²⁸⁸ This was consequently the broadest agreement concluded by India up to this point which is perhaps attributable to Singapore's status as a particularly open trading economy and the lack of direct competition between the two countries.

Following conclusion of its agreement with Singapore, India signed a bilateral agreement with Chile in 2006, its first with a single country outside Asia. Though the agreement was signed more recently than the deal with Singapore, it is nevertheless narrower and covers only goods and not services (or investment), this alone suggests that the narrowness of

²⁸⁶ WTO, "Factual Presentation: Preferential Trade Agreement between Mercosur and India (Goods)," (Secretariat, 2015), 5.

²⁸⁷ "Factual Presentation: Comprehensive Economic Cooperation Agreement between India and Singapore (Goods and Services)," (Secretariat, 2008), 10-12.

²⁸⁸ *Ibid.*, 22.

India's agreements does not result from a lack of experience on the part of its negotiators since we would expect this latter treaty to be more comprehensive were it the case. The contract is also limited – it does not incorporate the complete elimination of any tariffs but only foresees 'reductions'. These reductions were scheduled to cover 181 tariff lines, which corresponds to 94.8 percent of India's imports from Chile in terms of value.²⁸⁹ The agreement then is partial scope and as a result four further meetings have taken place since conclusion of the deal in order to discuss further deepening of the agreement. Here we see again the amendment and revision mechanism explicitly built into the agreement. Interestingly, even when compared to the deal concluded between Chile and China, the Indian agreement is much more limited, involving as it does only a reduction in average tariffs of between 10 and 50 percent on a very small list of products.²⁹⁰

There was an uncharacteristically long period between finalization of the deal with Chile and India's next deal with ASEAN in 2009. As with China, this is perhaps the most important agreement signed by India to date in terms of strategic, political and economic impact. Relations between ASEAN and India had been strong long before negotiations on the agreement began as India was already a Full Dialogue Partner of ASEAN in 1996.²⁹¹ Again like China (but, as we shall see, unlike Japan), India opted to conclude the goods and services agreements with ASEAN sequentially. This is a particularly interesting approach for India to have taken given ASEAN's relative advantage in the exporting of goods to India and India's relative advantage in exporting services.²⁹² ASEAN countries generally have a much higher export-to-gdp ratio than India²⁹³ meaning both that a goods agreement is of greater importance and that the potential for dependence to develop on exporting to India is high. It

²⁸⁹ "Factual Presentation: Preferential Trade Agreement between Chile and India (Goods)" (2010), 8.

²⁹⁰ Ibid., 4-5.

²⁹¹ Suthiphand Chirathivat, "Asean-India Cooperation in Trade and Tourism: Trends and Prospects," *Journal of Asian Economics* 7, no. 4 (1997): 744-45.

²⁹² Parthapratim Pal and Mitali Dasgupta, "The Asean-India Free Trade Agreement: An Assessment," *Economic and Political Weekly* 44, no. 38 (2009): 13.

²⁹³ Ibid., 14.

has been argued that before negotiations began, India was in a somewhat favourable negotiating position vis-à-vis ASEAN:

‘the financial crisis and the loss of market in developed countries have hurt [ASEAN] countries significantly. Consequently, it can be expected that [they] will be pursuing export opportunities in new markets quite vigorously. India, with its high growth rate and large domestic market, can be a possible alternative for these countries’²⁹⁴

It is somewhat surprising therefore that India opted to negotiate the goods deal first. In terms of the goods agreement itself – its coverage is again relatively narrow because India excluded 489 items from the concession list completely and an additional 590 items from complete tariff elimination.²⁹⁵ This list of exceptions is subject to annual review and as part of the agreement India agreed to bring down tariffs to a greater extent than ASEAN which was again surprising given India’s supposed favourable bargaining position. In fact, such was the asymmetry in the liberalization timetable that it was questioned whether the schedule favours ASEAN too much.²⁹⁶ In addition to this there have been questions about whether India relinquished too much bargaining power by concluding the goods agreement before the services agreement given competition between the two parties in relation to the former and India’s competitive edge in the latter.²⁹⁷

On the other hand, as we would expect, ASEAN, as the weaker negotiating party, was concerned about tying itself too closely to a more powerful partner with a narrow agreement. Singapore, Thailand and Malaysia in particular were ‘concerned [at] the proposal by India to exclude a substantial portion of trade from the FTA through exclusion of a large number of

²⁹⁴ Ibid., 13.

²⁹⁵ The Governments of ASEAN and the Government of India, "Framework Agreement on Comprehensive Economic Cooperation between the Republic of India and the Association of Southeast Asian Nations," ed. ASEAN (2004).

²⁹⁶ Ranajoy Bhattacharyya and Avijit Mandal, "Estimating the Impact of the India–Asean Free Trade Agreement on Indian Industries," *South Asia Economic Journal* 15, no. 1 (2014): 103.

²⁹⁷ Ibid.

products from tariff concessions.’²⁹⁸ Consequently reassurance was required on the part of India, and this perhaps can be an explanation for the initial emphasis on goods liberalization.

As with the deal with China, India sought to alleviate ASEAN concerns with respect to the agricultural sector by implementing an Early Harvest Program (EHP) which ensures easier liberalization schedules for ASEAN to protect the agriculture sector in the less developed member states. The tariff reduction under this program meant that elimination of tariffs was to be completed by 31 October 2007 for the ASEAN-6 and India, and 31 October 2010 for the New ASEAN Member States. Giving less developed members space to adapt to the agreement.²⁹⁹ Partly as a consequence of this, the reduction of tariffs “will be asymmetric, while ASEAN’s access to markets in India will rise to a significant extent, India will get lesser access to their markets due to the FTA.”³⁰⁰ Despite power asymmetry in favour of India then the tariff reduction commitments it offered have been termed generous as the framework would predict.

Following the landmark deal with ASEAN India’s preference for narrow agreements was again apparent in the next pact it concluded with South Korea in 2009. Though this agreement covers liberalization in both goods and services the scheduled reduction in tariffs on 85 percent of Korean exports over eight to ten years is ‘slower and less comprehensive than the Korea-U.S. and the Korea-EU free trade agreements, which will reduce or eliminate tariffs on 93% to 99% of Korean products over ...five years. [The] CEPA has also been criticized for not addressing the financial sector.’³⁰¹ Beyond liberalization the only Singapore

²⁹⁸ Siddharth Srivastava, "India’s "Flexible" Approach at Asean," <http://www.worldsecuritynetwork.com/India/siddharth-srivastava/India%E2%80%99s-flexible-approach-at-ASEAN>; Siddharth Srivastava, "India’s "Flexible" Approach at Asean," *World Security Network* 2005.

²⁹⁹ India, "Framework Agreement on Comprehensive Economic Cooperation between the Republic of India and the Association of Southeast Asian Nations."

³⁰⁰ Bhattacharyya and Mandal, "Estimating the Impact of the India–Asean Free Trade Agreement on Indian Industries," 103.

³⁰¹ Ahmed Shahid, "India - Korea Cepa: An Assessment," *Korea and the World Economy* 12, no. 1 (2011): 86.

issue addressed by the agreement is government procurement and labour, the environment, intellectual property and e-commerce provisions were not concluded. As a consequence of the limited scope of the agreement South Korea has recently been pushing India to upgrade the treaty, particularly because there is a perception that Japan was offered a comparatively 'better deal.'³⁰² In response an Indian commerce official has been quoted as saying: 'South Korea is very keen on upgrading the CEPA. However, we feel that it is too early to revise it. Moreover, we are in the process of studying the FTAs we have signed so far. So, until that process is over, we will not be able to revise the CEPA'³⁰³ This again demonstrates a potential mechanism by which advantage may be gained by India through amendment of the agreement, the opportunities for issue linkage are also great.

In terms of this issue linkage India's then Foreign Secretary argued in 2007, that though "we are now negotiating a Comprehensive Economic Partnership Agreement...I am of the firm belief that we need to give strategic orientation to our bilateral partnership in order to take it to the next level".³⁰⁴ He also suggested that "India should pay special attention to developing closer relations with South Korea and a comprehensive strategy should be designed, which must go beyond the Comprehensive Economic Partnership Agreement (CEPA) to achieve this"³⁰⁵ As of January 2014 both countries have announced an ambition to widen the scope of the agreement to take in up to 90 percent of goods subject to tariffs up from the current 75 percent.³⁰⁶

India's next trade agreement was a separate, additional agreement between India and ASEAN member Malaysia in 2011. Full implementation for India is anticipated by 2016 and Malaysia

³⁰² Times of India, "India-Asean Services & Investment Fta to Be in Force from July," 2015.

³⁰³ Ibid.

³⁰⁴ Quoted in David Scott, "India-South Korea Strategic Convergence and Security-Defense Cooperation: A Useful Relationship in the Indo-Pacific," in *On South Korea-India Strategic Cooperation*, ed. L. Singh (Kyungnam University Press, 2014), 305.

³⁰⁵ Quoted in *ibid.*, 307.

³⁰⁶ Mary Swire, "South Korea, India Agree to Upgrade Fta, Revise Dta," Tax-News.com.

by 2019, again pointing to a more generous schedule for the weaker partner.³⁰⁷ The shallow nature of the agreement can also be seen in the fact that for India, at end of the implementation period, 2,783 tariff lines will remain dutiable... representing 53.2% of imports from Malaysia.³⁰⁸ For Malaysia's part at the end of the implementation period it will have eliminated all but 17.2 percent of the tariff, 'corresponding to 8.1% of imports from India.'³⁰⁹

Finally, India's agreement with Japan provides an important contrast to the deals with Korea and ASEAN and provides an interesting example of a clear declining power negotiating with a rising power. The deal is more comprehensive than the agreements with Korea and ASEAN and is also the only agreement with a relatively more powerful state at the date of signature. The framework developed here would predict this, given Japan's position as the relatively stronger state that prefers to reduce future vulnerabilities by locking-in a comprehensive agreement. Unlike Korea it will not need to request revision and unlike ASEAN, Japan does not have to settle for an agreement covering goods only – an area from which it stands to gain less given India's advantage in labour costs.

Under the agreement Japan will liberalize 89 percent of its tariffs on imports from India by 2026. On the other hand, India will remove tariffs on 84 percent of imports from Japan by 2021.³¹⁰ Thus the agreement is slightly more generous to India than Japan, in line with what we would expect in terms of up-front payments from the stronger. In economic terms Japan is likely to benefit particularly from the disappearance of India's reduction of tariffs in relation

³⁰⁷ WTO, "Factual Presentation: Free Trade Agreement between India and Malaysia (Goods and Services) " (Secretariat, 2013), 9.

³⁰⁸ Ibid.

³⁰⁹ Ibid., 9-10.

³¹⁰ "Factual Presentation: Free Trade Agreement between Japan and India (Goods and Services) " (Secretariat, 2013), 9-10.

to key parts of the auto industry.³¹¹ Interestingly, unlike the vast majority of India's agreements we see little evidence on renegotiations or amendments to the initial deal with Japan, again from the point of view of the framework this is unsurprising given Japan's superior bargaining position.

6.4 Summary of India's Approach to Trade Agreements

The broad pattern of India's approach to the design of trade agreements can be summarized by noting that its agreement with Chile is very narrow, with Korea somewhat narrow, and Japan relatively broad (in relation to other agreements concluded by India). All three examples can be convincingly explained by the framework – the narrowness of the agreement with Chile is determined primarily by efficiency concerns due to the extreme power gap (and the desire of India to access raw materials). The agreement with Korea can be seen as a result of strategic bargaining given India's growing power advantage over time. Conversely the relatively comprehensive agreement with Japan can be explained by Japan's relative power advantage at the conclusion of the deal and its expectation of relative decline. It is also interesting to note that both China and India's agreements demonstrate a wider variance in their breadth than agreements concluded by similar sized countries. The table indicates that on average India's agreements tend to be even narrower than agreements signed by China. The agreement with Singapore is a clear outlier in terms of its comprehensiveness but is narrow compared to Singaporean contracts signed with other partners.

³¹¹ Jijo Jacob, "India-Japan Free Trade Agreement: A Win-Win Deal," *International Business Times* 2011.

Table 6.2: India Agreement Summary

Year	Agreement	Measure 1	Measure 2	Measure 3	Region
1998	Sri Lanka	-1.032	1	1.00	Asia
2003	Afghanistan	-0.293	2	0.50	Asia
2004	MERCOSUR	0.046	1	1.00	S.America
2005	Singapore	1.319	4	2.50	Asia
2006	Chile	0.046	1	0.50	S.America
2006	Bhutan	-1.032	1	0.75	Asia
2009	Nepal	-1.032	1	0.75	Asia
2009	ASEAN	-0.293	2	0.75	Asia
2009	Rep. Korea	1.416	5	1.75	Asia

6.5 Comparison of the Rising Powers

The two preceding case studies demonstrate that both rising states tend to liberalize a reasonable amount of goods trade in their agreements but this is less true with respect to services liberalization, they also exhibit a strong tendency to negotiate these elements sequentially, with extensive extensions and amendments of the initial contracts over time. Another notable feature of the agreements of both countries is that they also address relatively few Singapore issues and rarely cover government procurement, competition, the environment, or labour rights. This tendency is particularly stark when contrasted with the comprehensive deals signed by the U.S.³¹² Indeed with respect to government procurement in particular China has failed to meet its pledge to join the WTO agreement on Government Procurement ‘as soon as possible.’³¹³ We also see a notable tendency for both states to offer generous up-front terms to their negotiating partners alongside their clear preference for more limited agreements. These are most obvious in their offers to protect particular industries in partner countries and their tendency to offer more generous liberalization schedules.

³¹² Ganeshan. Wignaraja, "Comparing China and India's Fta Strategies," *East Asia Forum* 2012.

³¹³ Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," 18.

Despite the significant similarities in approach between these two rising powers however it would be misleading to suggest that both states have adopted an entirely uniform approach. For example, of the deals signed by the two states, four cover services in a limited manner whilst seven of China's agreements cover one or two extra clauses relating to investment and trade facilitation.³¹⁴ China's agreement with Singapore in particular is far more comprehensive than that with ASEAN states and includes goods and services in the initial treaty.³¹⁵ It is also interesting to note that in general China refuses to treat foreign investors the same as their domestic counterparts, doing so only if these investors set up operations in China.³¹⁶ Interestingly the two exceptions to this stance are Pakistan and ASEAN who have been granted full national treatment—all other partners are only treated in accordance with 'customary international law.'³¹⁷ Likewise there is variation across India's agreements – the agreement with Japan stands out in particular for its level of coverage, incorporating trade facilitation, competition policy and investment which contrasts significantly with the rest of India's more narrow deals.³¹⁸

There is also variation *between* the two powers, China's agreements tend to incorporate slightly more goods liberalization than do India's³¹⁹ and there is variation also in terms of coverage of Singapore issues. Seven of China's agreements include one or two Singapore issue related clauses whilst the agreement with Pakistan covers only investment. India's agreement with Korea, on the other hand, incorporates three Singapore issues, whilst incorporating lower levels of liberalization of goods than even China's agreements. Three of

³¹⁴ Wignaraja, "Comparing China and India's Fta Strategies."

³¹⁵ "Economic Reforms, Regionalism and Exports: Comparing China and India.," *Policy Studies* 60 (2011): 56.

³¹⁶ Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," 18.

³¹⁷ *Ibid.*, 12.

³¹⁸ Wignaraja, "Comparing China and India's Fta Strategies."

³¹⁹ "Economic Reforms, Regionalism and Exports: Comparing China and India.," 55.

India's agreements are especially narrow in that they only cover trade facilitation and no Singapore issues whatsoever.³²⁰

China and India also differ markedly in their level of integration with the international trading system more broadly, China is far more integrated than India and the structure of their trade has also diverged in important ways. China now sells a far greater percentage of its exports to industrialized countries than in the early 1990s (35% in 1990 to 52% in 2006) whilst exports to developing countries have declined at the same time. For India the opposite is true, its exports to industrialized economies have decreased whilst its exports to developing countries has grown, perhaps due to its greater emphasis on low-cost services.³²¹ In terms of their trade partners China competes directly with most of its East Asian neighbours, ASEAN, South Korea, and Hong Kong as well as Japan. This is less true with respect to its partners in Latin America; Chile, and Peru and this may provide some clues to the comparatively broad nature of these deals when compared to other deals signed by China.³²² There are thus important similarities in the approach of India and China when it comes to their approach to designing and negotiating trade agreements but these important differences must not be ignored. Consequently, in order to fully ascertain the relative importance of these differences, the rising powers will be evaluated in the context of the analysis of all four major powers and then re-evaluated in the following chapters.

³²⁰ Ibid., 50.

³²¹ Mahvash Saeed Qureshi and Guanghua Wan, "Trade Expansion of China and India: Threat or Opportunity?," *The World Economy* 31, no. 10 (2008): 1329.

³²² Ibid., 1339.

Chapter 7: Status Quo Powers

The theoretical framework developed in the present research suggests that in negotiations where the most powerful actor is declining relatively in relation to its partners (or at the very least not diverging) then we would expect to see relatively broad agreements as the outcome. This is because such agreements will allow the powerful to lock-in their advantage over time and provide the weaker with more certainty by facilitating decentralized forms of contractual enforcement. It also has the added benefits of reducing ex-post transaction costs associated with amendment and renegotiation. Due to the interest of both parties in the same agreement, unlike in the cases of the rising powers, we would not expect to see any generosity from the more powerful both in terms of payments or more generous liberalization schedules. The following case studies, exploring the approaches of United States and Japan, provide compelling evidence for each of these conjectures and show both relatively declining states adopt far more comprehensive agreements than their rising counterparts, whilst offering few if any asymmetric concessions to their weaker partners. In fact, we see the opposite, in the U.S. case in particular we see the most powerful actor secure more favourable terms than their weaker counterparts in terms of liberalization schedules and industries covered. Each of these elements then provide strong empirical support for explanatory value of the framework.

7.1 The United States' Approach to Trade Agreements

For decades following World War Two the United States upheld the multilateral trading system and, as the founder of the Bretton Woods institutions, trade liberalization under the auspices of the General Agreement on Tariffs and Trade (GATT) and later the WTO, has been at the heart of U.S. trade policy since 1945.³²³ In recent decades however, partly in

³²³ Richard E Feinberg, "The Political Economy of United States' Free Trade Arrangements," *The world economy* 26, no. 7 (2003): 1020.

reaction to moves by China and others, and in attempt to avoid the negative political and economic externalities associated with exclusion from existing deals, the U.S. has turned towards a policy of what officials have termed ‘competitive liberalization’.³²⁴ The rationale for this shift was simple - it was hoped that by pursuing a more proactive approach, the more comprehensive deals pursued by the United States would serve as a stimulus to the proliferation of higher quality trade agreements across the world, particularly in Asia, and once again place the United States at the very heart of the international trading system.

Despite its somewhat laborious and largely reactive approach to trade in recent years, the United States remains the major economic and trading power in the world today, with its share of world goods exports standing at 9 percent, it imports 12 percent of the rest of the worlds exports, and despite this, its trade to GDP ratio remains remarkably low at 29.9. It also ranks as number one in the world for both imports and exports of commercial services and first and second (behind China) respectively in imports and exports of goods.³²⁵ The U.S. remains particularly strong in commercial services and today exports almost 14 percent of all commercial services trade in the world.³²⁶ Nevertheless, despite the unquestionably impressive position that it retains in world trade, its relative trajectory is undoubtedly negative, with the U.S. share of global GDP falling from over 22 percent in 1980 to just over 16 percent in 2015.³²⁷ The charts below demonstrate this large but narrowing advantage both in terms of its share of global GDP and its national capability scores in relation to its negotiating partners.

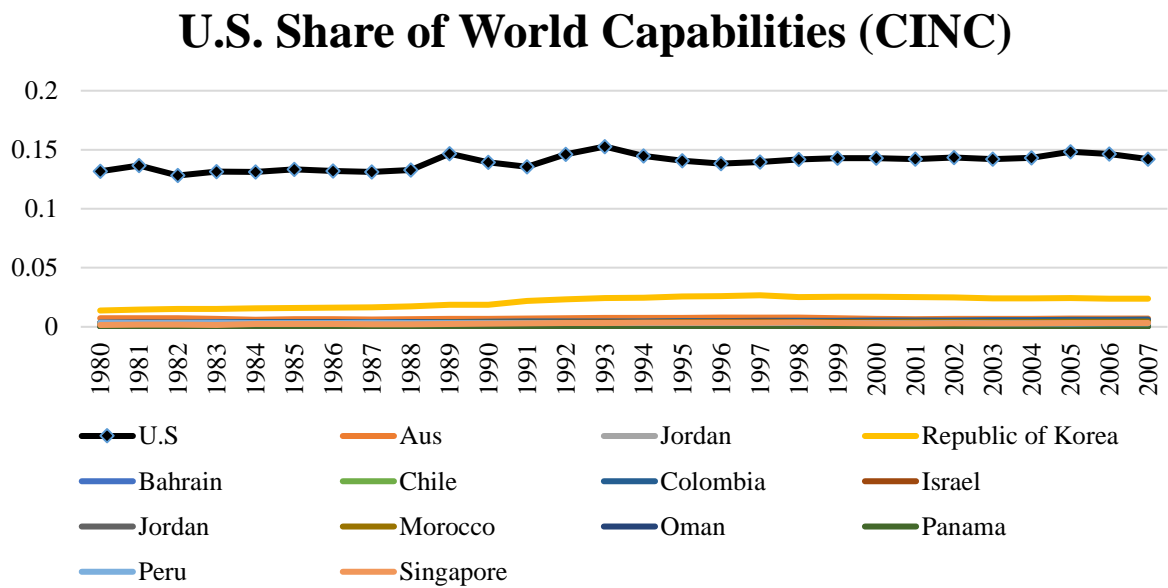
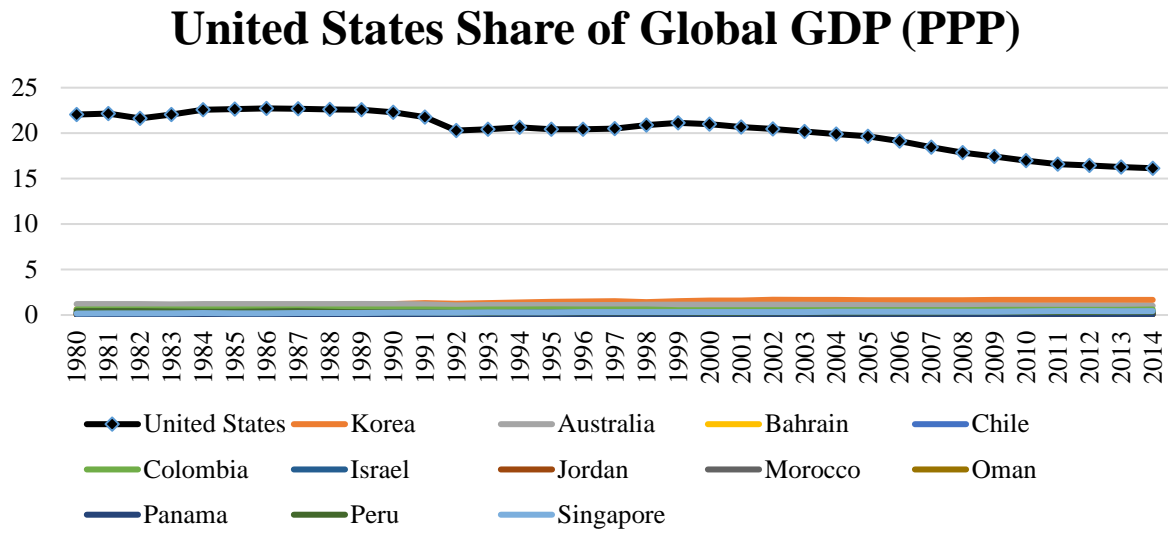
³²⁴ Vinod Aggarwal, "Look West: The Evolution of Us Trade Policy toward Asia," *Globalizations* 7, no. 4 (2010): 455.

³²⁵ WTO, "U.S. Trade Profile," (Secretariat, 2015).

³²⁶ Ibid.

³²⁷ "Gdp at Market Prices (Current Us\$)."

Figure 7.1: The United States' Power Trajectory in Relation to Trade Partners



The charts show that as the U.S. has reacted to the broader trend toward bilateral and regional agreements it has concluded thirteen deals since 1985, with most of these agreements concluded much more recently than this. In 2001 the U.S. was party to only two of the 130

preferential trade agreements in force and only one of the 30 free trade agreements in the western hemisphere.³²⁸

As a result of its new approach to bilateral agreements the U.S. has become well known for the comprehensive character of its deals both in terms of issue coverage and levels of liberalization and in negotiating these pacts, it has been suggested that U.S. officials have pursued a number of distinct objectives. First they have sought ‘asymmetric reciprocity’ that is, deals that open markets in ways that advantages U.S. businesses. Second, they seek to establish precedents that stimulate more comprehensive trade agreements elsewhere in the form of its policy of competitive liberalization. Third, the U.S. has attempted to use its deals to support domestic reform in its negotiating partners. Finally, it utilises its agreements to strengthen its so-called ‘strategic partnerships’.³²⁹ Not only has the U.S. adopted a different approach from China and India in terms of the kinds of agreements it signs, it has also adopted a distinctive negotiating approach. In pursuing its preferred agreements, it has also been observed that the U.S has sought to take advantage of a ‘dual asymmetry – of market power and of international salience – the U.S. has not hesitated to leverage FTA negotiations to advance its broader international policy agendas.’³³⁰

In line with this broader strategic approach then, the political nature of U.S. agreements can be easily discerned in its choice of partners, with countries such as Jordan, Bahrain, Panama and Israel. These states were clearly not selected for the size or potential of the bilateral trading relationship between them since these remain relatively tiny even years following the conclusion of the deals. Indeed, the choice of Israel as its first negotiation partner was clearly not driven primarily by economics given the close strategic relationship between the two

³²⁸ Feinberg, "The Political Economy of United States' Free Trade Arrangements," 1019.

³²⁹ Ibid., 1020.

³³⁰ Ibid.

states. This is also borne out in the structure of the agreement itself, it is the narrowest deal signed by the United States, yet unlike the Chinese and Indian trade deals, it nevertheless includes provisions on intellectual property and government procurement (in contrast to those agreements signed by China and India) and also incorporates a section on the need to work to liberalize bilateral trade in services. On entry into force 43 percent of bilateral trade was duty-free and this figure rose to only 58 percent by early 1989. Interestingly as part of this agreement the U.S. included a provision that was intended to protect infant industries in Israel.³³¹ This, as we shall see, is a rare instance of the United States providing concessions to its weaker partner and it is perhaps not a coincidence that this occurred in the mid-1980s when the U.S. bargaining advantage was still growing.

As a result of its focus on negotiating NAFTA in the succeeding years, the next *bilateral* U.S. agreement was not concluded by the United States until 2000, 15 years after the Israel agreement, with another Middle Eastern ally, Jordan. The relatively meagre volume of trade between the two countries prior to this date again suggests that the primary driver behind the deal was not economic. Indeed, it was widely seen as a reward by the U.S. administration for King Hussein's role in the Oslo peace process.³³² The agreement itself covers both goods and services and includes provisions on intellectual property, government procurement, labour and the environment. In fact, the agreement was ground-breaking in its breadth as it was the first agreement of its type to include a provision on e-commerce.³³³ In one respect only is the coverage of the agreement limited in that it does not cover investment but this is simply due to the pre-existing investment agreement between the two parties. Both this agreement and

³³¹ "Free Trade Agreement between the United States and Israel: Biennial Report on the Operation of the Agreement," (Secretariat, 2005)., Howard Rosen, "Free Trade Agreements as Foreign Policy Tools: The Us-Israel and Us-Jordan Ftas," *Free trade agreements: US strategies and priorities* (2004): 51.

³³² "Free Trade Agreements as Foreign Policy Tools: The Us-Israel and Us-Jordan Ftas," 62.

³³³ "Free Trade Agreement between the United States and Israel: Biennial Report on the Operation of the Agreement."

the agreement with Israel have been termed ‘clear examples of the use of trade policy – specifically bilateral trade agreements – as a means of pursuing foreign policy objectives.’³³⁴ The next agreement concluded by the U.S. was with Singapore in 2003, a country that has clearly been a favoured partner for all the major trading powers due to its openness to trade. In this case it was Singapore that was the catalyst pushing for an agreement as part of its strategy of strengthening its position as a regional trading hub and base for large multinationals.³³⁵ At first the U.S. rejected the initiative of the Singaporeans until late 2002 when the U.S. came to see the advantages of negotiating a deal with an advanced economy that posed little threat to its trade and Singapore's status as a highly developed economy meant that negotiations ‘were concluded quickly and smoothly’.³³⁶ Interestingly the U.S. consequently used the deal to establish ‘certain precedents’ in matters such as financial services and e-commerce, labour rights and the environment, and these can also be seen in the subsequent deal with Chile for example.³³⁷

Indeed, it has been suggested that so comprehensive are these deals that the Singapore agreement and the later deal with Chile used the archetypal complete trade contract, NAFTA, as a model agreement.³³⁸ In fact, the Singapore agreement goes beyond even the coverage of NAFTA and under the deal Singapore agreed to eliminate all tariffs on U.S. exports immediately upon entry into force whilst on the other hand U.S. liberalization was due to take place over a period of ten years following implementation. Interestingly in negotiating this agreement the U.S. was able to secure Singaporean consent for

‘certain precedents that could be advanced elsewhere. Precedents were claimed in financial services and capital account openness, regulatory transparency, travel by

³³⁴ "Free Trade Agreements as Foreign Policy Tools: The Us-Israel and Us-Jordan Ftas," 51.

³³⁵ Daquila and Huy, "Singapore and Asean in the Global Economy: The Case of Free Trade Agreements," 910.

³³⁶ David A Gantz, "Evolution of Fta Investment Provisions: From Nafta to the United States-Chile Free Trade Agreement, The," *Am. U. Int'l L. Rev.* 19 (2003): 682.

³³⁷ Feinberg, "The Political Economy of United States' Free Trade Arrangements," 1030.

³³⁸ Gantz, "Evolution of Fta Investment Provisions: From Nafta to the United States-Chile Free Trade Agreement, The," 680.

business professionals, e-commerce and protection of intellectual property rights. As in the U.S-Chile FTA, new procedures were established for protecting labour rights and the environment.³³⁹

Not only did Singapore guarantee zero tariffs on all U.S goods immediately but the FTA also ‘ensured that Singapore will eschew duties on future U.S products whose very existence is not yet imagined but that will constitute the cutting edge and eventually the bulk of U.S-Singapore trade.’³⁴⁰ It would be difficult to find an example of a more comprehensive trade deal than this. In short the agreement applies to goods, services and investment and includes clauses on government procurement, intellectual property, financial services, labour and the environment. It is therefore an extremely comprehensive deal compared to similar trade pacts signed by other major powers.

In the same year that the Singapore agreement was finalized, the U.S. concluded its first bilateral agreement with a Latin American country – Chile. The original intention here was to integrate Chile into the NAFTA framework but for domestic political reasons in the U.S. this did not come to fruition.³⁴¹ Initially following separate bilateral deals with Mexico and Canada Chile proposed negotiations in 1999 but it was not until 2003 that a deal was finalized.³⁴² The agreement covers trade in services, goods, investment and includes dedicated sections on telecommunications and financial services. Like most U.S. agreements (except, interestingly those with Israel and Jordan) the agreement with Chile adopts a negative list approach, meaning that all products or industries are liberalized unless explicit exceptions are made, this usually results in much higher levels of liberalization than the positive list approach adopted by China and India. As a result, 85 percent of bilateral trade

³³⁹ T.J. Pempel and Shujiro Urata, "Japan: A New Move toward Bilateral Trade Agreements," in *Bilateral Trade Agreements in the Asia-Pacific: Origins, Evolution and Implications*, ed. Vinod K. Aggarwal and Shujiro Urata (New York: Routledge, 2006), 75-78.

³⁴⁰ Vinod Aggarwal and S. Urata, *Bilateral Trade Agreements in the Asia-Pacific: Origins, Evolution, and Implications* (Taylor & Francis, 2013), 109.

³⁴¹ Gantz, "Evolution of Fta Investment Provisions: From Nafta to the United States-Chile Free Trade Agreement, The," 680.

³⁴² *Ibid.*, 680-81.

between Chile and the U.S. became duty-free upon enactment of the agreement and under the deal liberalization is somewhat asymmetrical in favour of the United States. It has been suggested that the agreement can be viewed ‘as primarily an asymmetric package to lower non-manufactures trade barriers.’³⁴³ In addition to this Chilean agricultural tariffs were scheduled to be removed 4 years subsequent to the agreement whereas U.S. agricultural barriers could remain in place up to 12 years after the agreement entered into force. This then is almost the complete opposite of the early harvest programs offered by China and India where the agricultural sectors in the weaker countries were given more time to adjust. In comparison to the deal between Chile and China too, the U.S. agreement is broader and conforms to the more comprehensive approach adopted by the U.S. and covers intellectual property, government procurement, investment, labour and the environment. The dispute resolutions provisions in the agreement with Chile were also expanded beyond those found even in the NAFTA agreement and included protection against ‘breach of “an investment authorization” or “an investment agreement”’³⁴⁴

Following the deal with Chile the next U.S. agreement with Australia in 2004 resulted from a shift in Australian policy that sought to improve access ‘to the world’s largest consumer market, but also to secure the attention and gain the confidence of the world’s largest source of investment capital’³⁴⁵ The agreement itself adopts a familiar structure and covers goods, services, and investment. By 2015 all Australian tariffs on U.S. goods had been removed whilst the same will be true for U.S. barriers to Australian goods only by 2022. Again it is clear from these schedules that the U.S. was able to secure a more favourable liberalization timetable than its economically weaker partner. The deal again adopts a negative list

³⁴³ John Whalley and Leith. J. Clark, "Competitive Liberalization and a Us-Sacu Fta," *NBER Working Paper No. 10168* (2003): 29.

³⁴⁴ Gantz, "Evolution of Fta Investment Provisions: From Nafta to the United States-Chile Free Trade Agreement, The," 752.

³⁴⁵ Feinberg, "The Political Economy of United States' Free Trade Arrangements," 1031.

approach and covers government procurement, intellectual property, competition, labour, the environment and e-commerce.³⁴⁶

A notable aspect of this agreement in particular is the concession required of Australia in terms of intellectual property rights: ‘significant chunks of Australian law [needed] to be rewritten, or frozen, in return for a free trade deal with the United States’³⁴⁷ The Australia-U.S. agreement thus required significant changes to Australian copyright law perhaps because the U.S has faced opposition to adoption of its IP standards in multilateral settings. What is particularly striking about the IPR clause in the agreement is its complexity; ‘it is breathtakingly long, detailed, and opaque.’³⁴⁸ A clear example of the U.S utilising its power to lock in an advantage. Indeed, it was observed that

‘in multilateral forums like the WTO [and] has moved to impose its preferred standards through FTAs using a template approach—the IP Chapter in each [U.S] FTA is negotiated according to a template set by the last, with the same provisions included in each, regardless of whether they address some ‘problem’ in the negotiating partner country.’³⁴⁹

Thus the extensiveness of the FTA has locked Australia in to a particular model of IP law.³⁵⁰ The comprehensiveness of the U.S-Australia FTA again contrasts with the difficulties faced in negotiations between China and Australia due to disagreements between those countries over the scope of that agreement.

In the same year as the Australian deal, the U.S. concluded an agreement with its first North African partner, Morocco. The agreement states that by the end of the implementation period in 2023 100 percent of imports from Morocco to the U.S. will be duty free. The same will be

³⁴⁶ Government, "China-Australia Free Trade Agreement: Factsheet."

³⁴⁷ Kim Weatherall, "Locked In: Australia Gets a Bad Intellectual Property Deal," *Policy* 20, no. 4 (2004): 3.

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*, 4.

³⁵⁰ *Ibid.*, 1.

true of 94 percent of imports to Morocco from the U.S. and the agreement again adopts the standard U.S. template in terms of covering intellectual property, e-commerce, labour and the environment and is thus well above the standards of the average trade agreements.³⁵¹

A year after the deal with Morocco, in 2005, the U.S. concluded an agreement with yet another middle-eastern ally – Bahrain. The agreement covers goods and services trade, intellectual property, government procurement, labour and the environment. Since 2002 an agreement on investment was in place so this is not included in the trade deal for that reason. Like with many of the U.S. agreements the United States was able to secure a more favourable liberalization schedule for itself – on entry into force Bahrain provided immediate duty free access for U.S. agricultural imports but the transition period for the United States was again longer. The agreement again adopts a negative list approach, implying that the agreement is both broad and deep in terms of levels of liberalization.³⁵²

In 2006 the U.S. accelerated the pace of negotiating trade agreements and concluded three deals, the first of which was with Oman in January of that year. At this time trade between the two parties was relatively meagre and the trade-to-GDP ratio of Oman stood at 108.9, whilst the comparable figure for the U.S. was 30.5. The agreement covered trade in goods, services and investment and again incorporates clauses on intellectual property, government procurement, e-commerce, labour and the environment. The agreement adopts a negative list approach and is extremely comprehensive in its coverage of issues despite the low level of trade between the countries.³⁵³ In the same year the U.S. also concluded a deal with Peru which follows the same template approach seen in all U.S. agreements and conforms to the

³⁵¹ WTO, "Factual Presentation: Free Trade Agreement between the United States and Morocco (Goods and Services) " (Secretariat, 2008), 35.

³⁵² "Factual Presentation: Free Trade Agreement between the United States and the Kingdom of Bahrain " (Secretariat, 2015), 35., Arona M. Butcher et al., "U.S. - Bahrain Free Trade Agreement: Potential Economywide and Selected Sectoral Effects," (United States International Trade Commission, 2004).

³⁵³ WTO, "Factual Presentation: Free Trade Agreement between the United States and Oman (Goods and Services) " (Secretariat, 2014), 12.

U.S. agenda of including clauses on non-trade related issues like the environment and labour. By 2018 99.5 percent of all Peruvian tariffs on U.S. imports will be eliminated whilst 100 percent of Peruvian exports to the U.S. will be free of tariffs.³⁵⁴ The final U.S. agreement of 2006 was concluded with another Latin American partner – Colombia and provides that nearly all tariffs on goods trade will be eliminated 17 years after entry into force for the United States and 19 years for Colombia whilst overall implementation for Colombia is due to be finalized by 2030. The agreement again incorporates provisions on government procurement, intellectual property, e-commerce, labour and the environment.³⁵⁵

In 2007 the U.S. concluded two deals, the most significant of which was with the Republic of Korea, which was perhaps the most significant U.S. agreement signed to date and provides a useful point of comparison with the Korea - India agreement. The U.S. agreement implies liberalization of over 95 percent of industrial and consumer goods trade between the two countries. For the United States all tariffs will be eliminated by 2026 and for Korea 99.7 percent of tariffs will be removed on imports from the United States. The agreement thus covers trade in goods and services as well as investment and incorporates all the extra clauses included in other U.S. deals. The agreement again adopts a negative list approach but also incorporates new and unique elements sought by the U.S. including a ‘snapback clause whereby the U.S can respond if there are “any harmful surges in South Korean auto imports due to the agreement.” Under this safeguard, the U.S will be able to re-impose a 2.5% tariff on Korean vehicles.³⁵⁶ Further, in terms of ‘future-proofing’ trade between the two countries, the agreement incorporates a clause that in fact means

³⁵⁴ "Factual Presentation: Free Trade Agreement between the United States and Peru (Goods and Services) " (Secretariat, 2010), 50.

³⁵⁵ "Factual Presentation: Free Trade Agreement between the United States and Colombia (Goods and Services) " (Secretariat, 2015), 9.

³⁵⁶ *Ibid.*, 5.

‘when new services emerge in the U.S. or South Korean economies, those services are automatically covered by the FTA unless identified as an exception; if either country unilaterally liberalizes a measure that it had listed as an exemption, it is automatically covered under the FTA. Furthermore, if one KORUS FTA partner extends preferential treatment to service providers from a third country under another FTA, it is to extend the preferential treatment to its KORUS FTA partner.’³⁵⁷

This clause is similar to that included in the U.S. – Singapore agreement and illustrates the extreme comprehensiveness of many U.S. deals. Observers have noted this deal will have particular diplomatic and security implications in terms of deepening the U.S - Korea alliance and also serves to respond directly to China’s moves in bilateral trade in Asia.³⁵⁸ The removal of obstacles toward final implementation of the agreement in 2012 can also be seen as part of the Obama administration’s foreign policy ‘pivot’ to Asia.³⁵⁹ As part of this more flexible strategy the U.S. conceded on its demand for unrestricted access to the South Korean beef market, a key sticking point for the Koreans.³⁶⁰ Again in 2007 the U.S. also finalized details of a bilateral agreement with Panama and this agreement again adopts the standard U.S. template and is consequently broader than agreements signed by either China or India.

7.2 Summary of the U.S. Approach to Trade Agreements

The case study analysis meets the expectations of the framework outlined in the preceding sections of this thesis in terms of the more powerful status quo state seeking comprehensive deals. It also supports the contention that status quo states need not offer more generous terms to their weaker partners in order to secure their preferred contract because these are often sought by the weaker negotiating parties in any case. Crucially, in many U.S. agreements, it

³⁵⁷Ibid., 30.

³⁵⁸ William H. Cooper et al., "The U.S.-South Korea Free Trade Agreement (Korus Fta): Provisions and Implications " (Congressional Research Service), 3.

³⁵⁹ Ibid., 46.

³⁶⁰ Howard Schneider, "U.S., South Korea Complete Free-Trade Deal," *The Washington Post*, 3-12-2010; "U.S., South Korea Complete Free Trade Deal," *ibid.* 2010.

is the U.S. that is securing the more generous liberalization schedules with more protections built-in for particular sectors.

The U.S. clearly employs a comprehensive agreement template when negotiating trade deals, and as a result these deals cover issues such as e-commerce, the environment, and labour provisions. This comprehensive approach fits with the U.S goal of competitive liberalization by providing a high benchmark for liberalization and coverage but has sometimes caused difficulties in negotiations with partners. This can be seen for example in the long-running and often contentious negotiations with South Korea that resulted in delayed implementation of the agreement. Similarly, when ASEAN proposed a bilateral agreement the U.S. signalled ‘that it would not accept a least-common-denominator approach to accommodate ASEAN laggards’ in the way that China and India have done with respect to the generous concessions it has offered these ASEAN members.³⁶¹

In fact unlike the asymmetrical concessions we observe from the powerful to the weak in Chinese and Indian negotiations it has been emphasised that ‘Asymmetric reciprocity has characterised US FTAs: trading partners have had to make more concessions (in mercantilist terms) and remove more trade barriers and investment restrictions’³⁶² The U.S. has used its greater bargaining power to set the negotiating agenda and it has been ‘the champion of comprehensive FTAs, going beyond industrial market access to include agriculture as well as a broad range of services, issues of investment protections, regulatory regimes and intellectual property, and e-commerce and digital piracy’³⁶³

³⁶¹ Feinberg, "The Political Economy of United States' Free Trade Arrangements," 1034.

³⁶² Ibid., 1036.

³⁶³ Ibid.

The summary table below supports these findings and shows that U.S. agreements are significantly more comprehensive than those signed by either China or India. The one obvious outlier in terms of two of the three measures is the agreement signed with Israel in 1985. This agreement however is explicable in terms of the framework developed here – there was little power convergence between the two parties in 1985 and thus a narrower agreement would serve the strategic interests of the U.S.

Table 7.1: U.S. Agreement Summary

Year	Agreement	Measure 1	Measure 2	Measure 3	Region
1985	Israel	0.554	4	1.00	M.East
2000	Jordan	1.512	4	3.00	M.East
2000	Vietnam	1.609	4	3.00	Asia
2003	Singapore	1.921	7	3.00	Asia
2003	Chile	1.866	6	3.00	S.America
2004	Australia	2.166	7	3.00	Pacific
2004	Morocco	2.100	6	3.00	Africa
2005	Bahrain	1.978	6	3.00	M.East
2006	Oman	2.100	6	3.00	M.East
2006	Peru	2.235	7	3.00	S.America
2006	Colombia	2.309	7	3.00	S.America
2007	Panama	2.100	6	3.00	S.America
2007	Korea	2.235	7	3.00	Asia

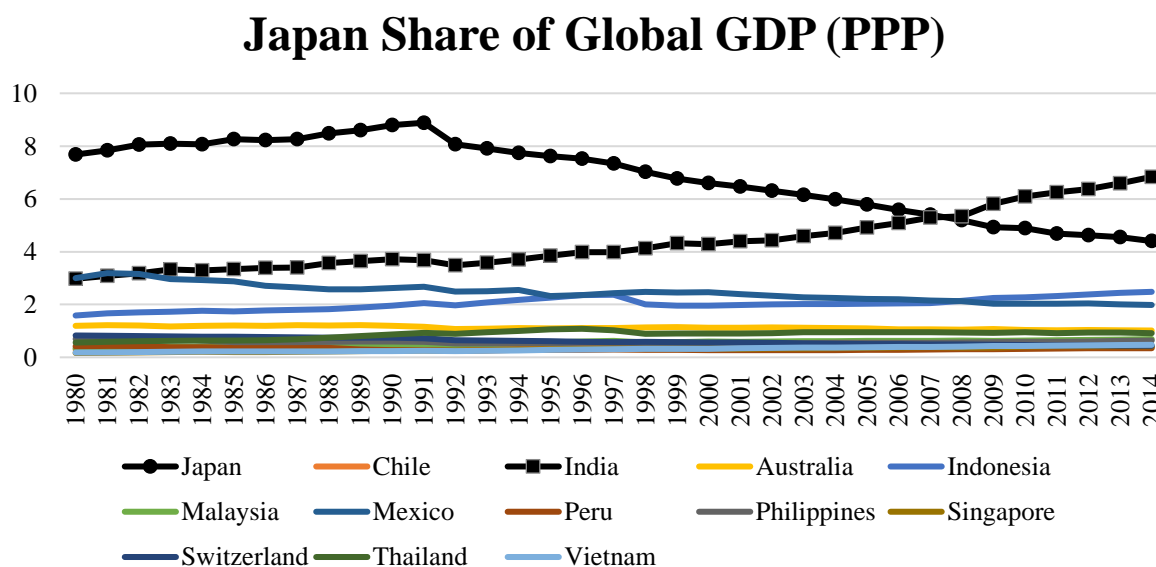
7.3 Japan's Approach to Trade Agreements

As with the U.S., Japan's economy remains one of the largest in the world but has been in relative decline for the last twenty years. Partially as a consequence of this, Japan's approach to bilateral agreements has also been transformed over recent years - since 1974 Japan only concluded a few limited bilateral deals usually with the U.S. specifically related to 'single products or a limited number of industrial sectors, and were designed to solve specific and politically sensitive bilateral trade problems.'³⁶⁴ Aside from these very narrow agreements,

³⁶⁴ Pempel and Urata, "Japan: A New Move toward Bilateral Trade Agreements.", 76

Japan has tended to favour multilateral liberalization under the auspices of the WTO and has only reluctantly engaged in bilateral and regional trade agreements as a reaction to China's move toward such deals. Indeed, Japanese officials feared that Japan's influence would be reduced if it was unable to implement an FTA strategy of its own.³⁶⁵ Thus it was only in the late 1990s that the Japanese government began to consider seriously the negotiation of bilateral free trade agreements.³⁶⁶ Maintaining its regional trading position is of particular importance to Japan not just for strategic reasons but also because East Asian countries have traditionally imposed the highest trade barriers against Japanese exports and exports to these countries have also accounted for the highest share of Japanese trade.³⁶⁷ The charts below illustrate the dramatic convergence between Japan and its negotiating partners, particularly those elsewhere in Asia, both in terms of GDP and CINC scores.

Figure 7.2 Japan's Power Trajectory in Relation to Trade Partners

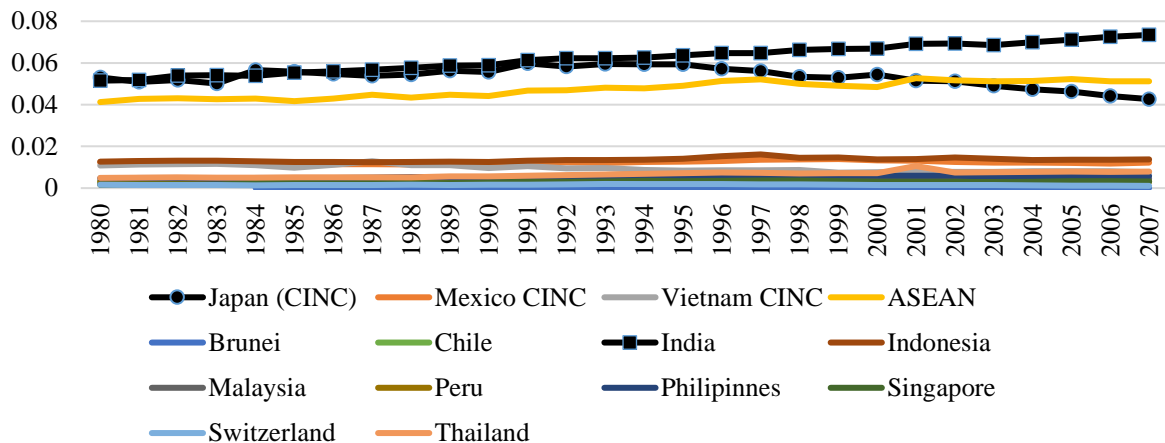


³⁶⁵ Raymond J. Ahearn, "Japan's Free Trade Agreement Program," (Library of Congress: Congressional Research Service, United States Congress, 2005), 7.

³⁶⁶ Aurelia George Mulgan, "Japan's Fta Politics and the Problem of Agricultural Trade Liberalisation," *Australian Journal of International Affairs* 62, no. 2 (2008): 164.

³⁶⁷ Ahearn, "Japan's Free Trade Agreement Program," 3.

Japan Share of World Capabilities (CINC)



Japan's turn toward bilateral agreements was a practical necessity and Japan now aims at the extension of its 'network of economic partnership agreements.'³⁶⁸ Interestingly Japanese officials refer to its agreements as Economic Partnership agreements (EPAs) because they cover cooperation beyond just trade in goods and services. These tend to be of higher quality (covering more GATS and Singapore issues and resulting in greater liberalization) than those signed by China and India³⁶⁹ and Japan has signed thirteen trade agreements with ASEAN, Chile, India, Australia, Indonesia, Malaysia, Mexico, Peru, The Philippines, Singapore, Switzerland, Thailand and Vietnam. Most of these agreements include goods, services and investment liberalization in the initial contract, they also incorporate a wider range of so-called behind the border issues.

A good illustration of the broad nature of Japan's agreements is its first bilateral deal with Singapore concluded in 2002. Dialogue on this deal began in late 1999 when the two countries established a joint study group to explore the benefits of an agreement,

³⁶⁸ WTO, "Trade Policy Review, Report by the Secretariat: Japan," (WTO, 2013), 20.

³⁶⁹ For example, the agreements signed by Japan all tend to include 'behind the border' issues.

subsequently negotiations began in 2001 following a positive report from the group.³⁷⁰ The agreement aimed at ‘liberalizing and facilitating trade and investments, and promoting bilateral cooperation in a wide range of areas including financial services, information and communications technology, human resource development, small and medium enterprises and tourism.’³⁷¹ Like U.S. agreements, this deal incorporated government procurement, intellectual property and competition, but unlike U.S. agreements does not cover labour or the environment. In contrast to the positive list approach favoured by China and India, the JSEPA also adopts a negative list approach and thus results in deeper liberalization because all goods are liberalized unless explicitly stating otherwise. Agricultural liberalization in particular is a long running issue in many of Japan’s trade negotiations given the power of the agricultural lobby, but since there was virtually no agricultural trade with Singapore, the JSEPA was easier to conclude. Subsequently, this agreement has served as a blueprint for Japan’s approach to subsequent deals and it has been suggested that ‘from Japan’s perspective the significance of this initial FTA seems to be a good learning experience for its negotiators.’³⁷² As a result of this, the JSEPA has been called a ‘new age’ agreement because it includes provisions on intellectual property, education, broadcasting, and tourism.³⁷³

The lessons of the Singapore agreement were applied in Japan’s next deal with Mexico in 2004. As with other Japanese deals the scope of the agreement is restricted with respect to agriculture but eliminates tariffs on 96 percent of trade between the two countries and covers not only goods and services but also investment, government procurement, and competition.³⁷⁴ By the end of implementation in 2015, 87 percent of tariffs on Mexican

³⁷⁰ Thomas W Hertel, Terrie Walmsley, and Ken Itakura, "Dynamic Effects of the " New Age" Free Trade Agreement between Japan and Singapore," *Journal of Economic Integration* (2001): 447.

³⁷¹ Daquila and Huy, "Singapore and Asean in the Global Economy: The Case of Free Trade Agreements," 918.

³⁷² "Singapore, Thailand Reap Fta Rewards," *The Nikkei Weekly* May 30 2005. in Evgeny B Kovrigin, "Japanese Fta Policy in Asia Pacific: Current Situation and Perspectives," (2006): 50.

³⁷³ "Japanese Fta Policy in Asia Pacific: Current Situation and Perspectives," 50.

³⁷⁴ The Government of Japan and the Government of Mexico, "Agreement between Japan and the United Mexican States for the Strengthening of Economic Partnership," (2004).

imports to Japan were scheduled to be duty free whilst for Mexico 94 percent of Japanese imports will achieve the same status.³⁷⁵ In this deal Japan has made extensive use of tariff-rate quotas, which are placed on around 217 tariff lines indicating that whilst the coverage of the agreement is broad, there remains a lack of depth in important areas.³⁷⁶ Indeed, initial negotiations stalled 'due to a major disagreement over the Japanese proposal to exclude agriculture entirely from the negotiations.'³⁷⁷ This was eventually overcome with the intervention of the Japanese Prime Minister. It is possible that Japan's negotiating strategy was an attempt to lock-in agricultural exceptions and set a precedent for future agreements.³⁷⁸ In terms of Japan's motives for selecting Mexico as negotiating partner: It is clear that a major consideration was to gain access to the Mexican market without incurring the costs of negative externalities implied by the North American Free Trade Agreement (NAFTA).

Japan's next agreement came with ASEAN member Malaysia in 2005, at the time of negotiations Japan was Malaysia's largest trading partner in terms of imports and 3rd largest as an export destination. On the other hand, Malaysia was Japan's 11th largest source of imports and 11th largest export destination.³⁷⁹ The balance of trading power thus favoured Japan given Malaysia's greater dependence on the relationship. This greater level of dependence also manifested in the asymmetry of the deal that was concluded. Indeed, contrary to what we saw in the case of India and China, the agreement envisions that by 2021 94 percent of imports from Malaysia to Japan will be duty free whilst, by 2016, over 99 percent of imports from Japan will be duty free, indicating a concession on the part of

³⁷⁵ WTO, "Factual Presentation: Economic Partnership Agreement between Japan and Mexico (Goods and Services)" (Secretariat, 2008), 12.

³⁷⁶ *Ibid.*, 16.

³⁷⁷ Mireya Solis and Saori N. Katada, "The Japan-Mexico Fta: A Cross-Regional Step in the Path Towards Asian Regionalism," *Pacific Affairs* 80, no. 2 (2007): 280.

³⁷⁸ *Ibid.*, 281.

³⁷⁹ WTO, "Trade Policy Review: Japan," (Secretariat, 2015). 16

Malaysia both in terms of the implementation period and levels of liberalization, again in contrast to what we see in the negotiations conducted by China and India.³⁸⁰

In the year following the agreement with Malaysia, Japan concluded a deal with another ASEAN member, the Philippines. This points to an important difference between Japan on the one hand, and China and India on the other, in their approach to ASEAN in that Japan sought to agree deals with individual members first before concluding a deal with the organization as a whole and this has obvious implications for the relative bargaining power of the two parties. When the agreement with Malaysia entered into force, Japan was the Philippines second largest export market and source of imports whilst the Philippines was Japan's 18th largest market for exports and 21st largest source of imports, indicating asymmetry in favour of Japan.³⁸¹ Further, the trade-to-GDP ratios of the two countries were very different: between 2006 and 2008 the Philippines averaged a ratio of 85.1 whilst that same figure for Japan was 34.3. This once again indicates the greater dependence of the Philippines in relation to Japan and trade and much like in the case of Malaysia, we find an asymmetric deal: by the end of implementation in 2018 97 percent of imports from Japan to the Philippines will be duty-free and whilst it will only be in 2023 that 90 percent of imports from the Philippines to Japan will be free of tariffs.³⁸² This again points to concession on the part of the weaker party with respect to implementation schedules and levels of liberalization. The agreement covers goods, services and investment as well as government procurement, intellectual property, the environment and labour, indicating the broadness of the deal.

Following the Philippines deal Japan continued its policy of bilaterally engaging with ASEAN countries and concluded a deal with Brunei in 2007. The agreement covers goods,

³⁸⁰ "Factual Presentation: Economic Partnership Agreement between Japan and Malaysia (Goods and Services) " (Secretariat, 2009), 17.

³⁸¹ "Trade Policy Review: Japan." 16

³⁸² "Factual Presentation: Economic Partnership Agreement between Japan and the Philippines (Goods and Services)," (Secretariat, 2010), 11.

services and investment, government procurement, and intellectual property but again excludes environment and labour, repeating the tendency of Japanese agreements to sit somewhere between U.S. and Chinese deals in terms of coverage. By the end of full implementation in 2018 over 99 percent of imports from Japan to Brunei will be duty free whereas by 2023 100 percent of imports from Brunei to Japan will be free of tariffs. Japan has again secured exceptions in relation to agriculture.³⁸³

Shortly before the deal between Japan and Brunei was finalized, Japan concluded a deal with Thailand (another ASEAN member) in 2007. Thailand's trade to GDP ratio at this time stood at 139.4 compared to 32.2 for Japan indicating that it was likely more impatient for a deal given the greater importance of trade in its economy and particularly in terms of bilateral trade Thailand was more dependent upon trade with Japan than vice versa. The agreement again covers trade in services and goods and covers intellectual property, government procurement, investment and the environment. Thailand's implementation period ends in 2017 and will result in removal of duties on over 84 percent of imports from Japan. Japan's implementation period is longer and ends in 2022 but will result in 92 percent of imports from Thailand becoming duty-free.³⁸⁴

In the same year that the Brunei and Thailand agreements were concluded Japan finalized its second deal with a Latin American country, Chile. Again unsurprisingly Chile was more dependent upon trade with Japan than vice-versa. The agreement again includes provisions on competition, government procurement, intellectual property, the environment, and labour and this contrasts starkly with the equivalent agreements signed by Chile with India and China in terms of the breadth of the agreement. By the end of the transition period in 2022

³⁸³ "Factual Presentation: Economic Partnership Agreement between Brunei Darussalam and Japan (Goods and Services) Report by the Secretariat " (Secretariat, 2009), 25.

³⁸⁴ "Factual Presentation: Economic Partnership Agreement between Japan and Thailand (Goods and Services)," (Secretariat, 2011).

almost 100 percent of imports from Japan will be duty free, for Japan 92 percent of imports (by value) from Chile will be duty free by 2022, indicating a slightly better deal in terms of liberalization for Japan.³⁸⁵

Following the deal with Chile Japan returned to negotiating agreement with individual ASEAN members, this time Indonesia. Clearly if efficiency and the desire to reduce ex-ante transactions costs were the driving concern for Japan this was not manifest in its bilateral approach to negotiations with ASEAN members. The transition period envisioned in the deal with Indonesia is due to end in 2023 when 92 percent of Japan's exports to Indonesia will be free of barriers and over 94 percent of Indonesia's exports to Japan will also be free of tariffs. The agreement covers goods and services and investment. It also includes provisions on competition, government procurement, intellectual property, the environment and energy and thus is far broader than agreements concluded by either China or India.³⁸⁶ However, it does not include the extra provisions that U.S. deals do, in terms of, for example, e-commerce.

It wasn't until March 2008 that Japan finally concluded a trade deal with ASEAN as a whole, even after securing agreements with 6 of its individual members. In strategic terms the AJCEP has been seen as a reaction to the 'ASEAN-China FTA which caught Japanese leaders by surprise'.³⁸⁷ Under the agreement Japan will eliminate tariffs on 93 percent of imports from ASEAN whilst 6 ASEAN members will lift tariffs on 90 percent of imports from Japan.³⁸⁸ In contrast to China's approach, Japan sought to secure standardized rules for greater liberalization of investment laws³⁸⁹ and the agreement with itself covers liberalization of goods and services and contains provisions on investment whilst the list of exemptions

³⁸⁵ "Factual Presentation: Strategic and Economic Partnership Agreement between Japan and Chile (Goods and Services)," (Secretariat, 2008).

³⁸⁶ "Factual Presentation: Economic Partnership Agreement between Japan and Indonesia (Goods and Services) " (Secretariat, 2009).

³⁸⁷ Daquila and Huy, "Singapore and Asean in the Global Economy: The Case of Free Trade Agreements," 912.

³⁸⁸ "Japan, Asean Reach Fta, but Rice Excluded," *Japan Today*, August 26 2007.

³⁸⁹ Ibid.

covers over 90 percent of trade between the two parties.³⁹⁰ Japan also agreed to eliminate tariffs on 93 percent of imports from ASEAN within 10 years while six ASEAN members agreed to remove tariffs on 90 percent of Japanese imports within the next 10 years.³⁹¹ In short, despite agricultural exceptions, the AJCEP is relatively comprehensive in terms of issue coverage and liberalization when compared to the deals signed by China and India. Crucially, as we have seen, Japan also differed in its negotiating approach; in contrast to China, it had adopted a bilateral approach, choosing to negotiate with each member of ASEAN individually as well as negotiating an agreement with ASEAN as a whole subsequently. By separating member states Japan inevitably increased its bargaining leverage and flexibility. Each agreement signed between Japan and ASEAN states includes clauses on investment and intellectual property, as well as dispute settlement, trade facilitation and the environment.³⁹²

Interestingly, in the same year that this deal was concluded Japan finalized a deal with Vietnam, yet another ASEAN member, in 2008. At this time the trade-to-GDP ratio of Vietnam was 161.3 whilst that for Japan was 32.2, again indicating that Vietnam would be more impatient for a deal given the greater importance of trade to its economy. Vietnam was also unsurprisingly more dependent upon trade with Japan in particular, as indicated by the greater importance of Japan as an import source and export market. The agreement covers goods, services and investment as well as intellectual property, and government procurement. By the end of implementation of the deal in 2024 over 96 percent of Vietnam's exports to

³⁹⁰ Jeerawat Na. Thalang and Sucheera Pinijparakarn, "Japan-Asean Tariff Free List Agreed" 'Japan-Asean Tariff Free List Agreed.," *The Nation, Singapore* 2007.

³⁹¹ "Japan, Asean Reach Fta, but Rice Excluded."

³⁹² Gregory P. Corning, "Between Bilateralism and Regionalism in East Asia: The Asean-Japan Comprehensive Economic Partnershit," *The Pacific Review* 22, no. 5 (2009): 640.

Japan will be duty free whilst 90 percent of Japan's exports to Vietnam will achieve the same status.³⁹³

A year after the agreement with Vietnam, Japan signed its first agreement with a European partner, Switzerland in 2009. The agreement entails liberalization in goods, services and investment and includes clauses on intellectual property, government procurement and taxation. At the time of signing Switzerland had a significantly higher trade-to-GDP ratio than Japan again indicating greater impatience and dependence on the part of the weaker negotiating party. By the end of implementation in 2024 over 99 percent of Swiss exports to Japan will be free of duties whilst for Japan this figure will be just under 100 percent. By 2011 Japan was concluding its third agreement with a Latin American partner in Peru and the agreement covers goods and services, government procurement, intellectual property and competition. By 2027 tariffs on 99 percent of exports from each country will have been removed.

In 2011 Japan also signed a deal with India, this India – Japan agreement provides an excellent example of negotiations between an unambiguously rising power and a declining power and so crystalizes the power dynamics emphasised in the present research. Negotiations on the agreement began in January 2007 and were concluded in February 2011, with the agreement entering into force in August 2011.³⁹⁴ Bilateral trade between the two countries was worth \$10.3 billion in 2009³⁹⁵ and the trade to GDP ratios of the two countries are 30.9 for Japan and 47.7 for India, consequently, India is somewhat more dependent on trade than Japan.³⁹⁶ The agreement between India and Japan is more comprehensive than those signed by India with Korea and ASEAN and it is also the only agreement signed with a

³⁹³ WTO, "Factual Presentation: Economic Partnership Agreement between Japan and Viet Nam (Goods and Services)" (Secretariat, 2011), 12.

³⁹⁴ "Factual Presentation: Free Trade Agreement between Japan and India (Goods and Services)" 4.

³⁹⁵ Jacob, "India-Japan Free Trade Agreement: A Win-Win Deal."

³⁹⁶ WTO, "Factual Presentation: Free Trade Agreement between Japan and India (Goods and Services)" 4-5.

more powerful state at the date of signature. However, the agreement does not include specific provisions on safeguards in services which reduces its level of comprehensiveness compared to other deals concluded by Japan.³⁹⁷

Finally, the most recent agreement concluded by Japan was with Australia in 2014. The choice of Australia as a negotiating partner can be ascribed at least partially to China's negotiations with that country and the agreement covers goods, services and investment and includes provisions on taxation, intellectual property and government procurement. The agreement envisions deep liberalization and thus in its scope compares favourably to the agreement recently concluded by China with the same country.³⁹⁸

7.4 Summary of Japan's Approach to Trade Agreements

Japan's approach to bilateral trade agreements has evolved significantly in recent decades; though relatively new to negotiating such agreements Japanese FTAs tend to be of higher quality (that is, they cover more issues and result in greater initial liberalization) than agreements signed by China or India. The agreements signed by Japan all tend to include goods, services and investment in the initial agreement, as well as 'behind the border' issues. The case study also demonstrates that Japan's EPAs address issues not dealt with in a number of China's or India's agreements such as financial services, information and communications technology, human resources development, small and medium enterprises and tourism. However, the case also demonstrates that these agreements often result in less coverage than U.S agreements, primarily due to the level of exceptions related to agricultural and other goods.

³⁹⁷ Ibid., 31.

³⁹⁸ Government of Australia: Department for Foreign Affairs and Trade, "Japan-Australia Economic Partnership Agreement: Outcomes at a Glance," (2015).

Another notable aspect of Japan's agreements is that it has offered few if any concessions to negotiating partners in order to secure these deals. This despite significant fears of China's growing regional influence related to the successful conclusion of its FTAs. Indeed, China's decision to negotiate an FTA with ASEAN was a seminal event for Japanese trade diplomacy³⁹⁹ as many Japanese officials feared that Japan's influence would be much reduced if it was unable to implement an FTA strategy of its own. Maintaining its regional trading position is of particular importance to Japan as traditionally East Asian countries have imposed the highest trade barriers against Japanese exports,⁴⁰⁰ yet exports to such countries have also accounted for the highest share of Japanese trade 'thereby providing the greatest additional opportunities for expanding Japan's economy via cuts in both foreign and domestic trade barriers'⁴⁰¹ The agreement summary table below demonstrates the comprehensive nature of all of Japan's agreements – all three measures suggest that the coverage of these deals place them between the U.S. on the one hand, and China and India on the other in terms of their relative coverage.

Table 7.2: Agreement Summary Table

Year	Agreement	Measure 1	Measure 2	Measure 3	Region
2002	Singapore	1.464	6	2.50	Asia
2004	Mexico	1.760	6	2.50	S.America
2005	Malaysia	1.709	6	2.00	Asia
2006	Philippines	1.609	6	2.50	Pacific
2007	Indonesia	1.561	5	2.50	Asia
2007	Brunei	1.319	4	2.00	Asia
2007	Chile	1.760	7	3.00	S.America
2008	Vietnam	1.709	6	2.00	Asia
2008	ASEAN	0.283	2	1.25	Asia
2009	Switzerland	2.309	6	2.50	Europe

³⁹⁹ Ahearn, "Japan's Free Trade Agreement Program," 7.

⁴⁰⁰ Ibid., 3.

⁴⁰¹ Ibid.

7.5 Comparison of the Status Quo Powers

Though Japan's agreements entail a comparatively high level of liberalization when compared to both China and India, important exemptions for the agricultural sector must be emphasised in any direct comparison with the U.S. The Japan – Singapore agreement for example liberalized only 18.8 percent of agricultural products and whilst the agreement with Mexico was better in this regard it still only liberalized 41 percent of these products.⁴⁰² The case study also points to the fact that there are a significant list of product lines that are not liberalized under many of Japan's agreements.⁴⁰³ Elsewhere other studies have demonstrated that Japan's agreements result in liberalization of around 94 percent on imports in terms of import value, but in terms of tariff lines it is lower than 90 percent.⁴⁰⁴ It is for this reason that the results show Japanese agreements to be less comprehensive than those of the U.S. particularly in relation to measure 2 which evaluates levels of liberalization as well as issue coverage.

As we have seen, China and India have also tended to adopt a positive list approach which means that only those areas explicitly mentioned in the agreement are covered. This is in contrast to the approach of both Japan and the United States, who tend to both adopt a negative list. However, in contrast to Japan, the U.S. agreements template tends to cover 'substantially all trade' in line with its GATTs commitments, alongside a wide range of Singapore issues.⁴⁰⁵ In terms of concessions Japan, like the U.S., has offered few if any up-front concessions to its negotiating partners and has in fact sought to maximize its bargaining

⁴⁰² Ibid., 5.

⁴⁰³ Ibid., 6.

⁴⁰⁴ Daisuke Hiratsuka, Hitoshi Sato, and Ikumo Isono, "Impacts of Free Trade Agreements on Business Activity in Asia: The Case of Japan," *ADB Working Paper Series* 143: Asian Development Bank Institute (2009): 4.

⁴⁰⁵ Yang Jiang, "China's Pursuit of Free Trade Agreements: Is China Exceptional?," *Review of International Political Economy* 17, no. 2 (2010): 256.

leverage as much as possible by, for example, negotiating with individual members of ASEAN before concluding a deal with the organization overall. Finally, for Japan, like the U.S. there is little evidence that it has engaged in significant amendments or renegotiations of its initial treaty commitments.

Chapter 8: Empirical Analysis

The four case studies illustrate an important and, from the point of view of the framework, an unsurprising divergence in the treaty design strategies of rising and declining powers. Consequently, attention now turns to a more detailed analysis of these results in combination with more focused, direct comparisons in order to explore the implications of these results. In this section I relate the findings of the case studies to the framework through four specific dimensions: Contract coverage, concessions, renegotiation, and dependence. I focus on these dimensions in particular because these are the areas upon which the original conjectures were focused. In addition to this, I engage in comparisons of agreements signed by the four major powers with common partners – Singapore, Chile, ASEAN and Peru in order to more directly ascertain the relation of the key variables to one another. In each of these sections the empirical material provides strong support for the conjectures and the framework more broadly, alongside some caveats, which will allow a more precise delineation of the scope conditions of the framework.

The chapter following the analysis is concerned with drawing out the broader theoretical implications of the findings and will return to the literature which instigated this research: The relation between the credible commitment problem and international contracts. It outlines the ways in which we might think differently about the problem of commitment in international relations more generally and in so doing relates the findings of the framework to liberal institutionalist and realist theory in order to outline the important qualifications that this framework and findings presents for each. Finally, in terms of theory, this chapter considers how this research develops the insights of transaction cost analysis as applied to the field of international relations. In so doing I emphasise some important additional insights that can be drawn from historical institutionalism, particularly given the emphasis on timing

and process as well as the path dependency induced by the initial trade contract. I conclude the overall analysis with a discussion of ‘so what?’ question and outline the substantive contribution of this research, particularly in terms of distributional inequality and international cooperation more broadly. I conclude this section by considering applications beyond trade and point to some new directions for future research.

8.1 Analysis

The four case studies have demonstrated a clear correlation between rising but powerful states and more narrow trade contracts and this is supported by three separate quantitative measures of contract breadth. We find Japan and the United States signing more comprehensive deals compared to China and India, with the latter two powers preferring to negotiate their agreements sequentially. Alongside this there is an evident tendency for China and India to engage in gradual amendment and extension of the contracts over time alongside compelling examples of asymmetric up-front concessions from these rising states to their weaker counterparts just as the framework predicts. The box plots below summarizes the findings with respect to contract coverage and illustrates both the greater coverage of U.S. and Japanese trade agreements but also the greater degree of variance observed in deals concluded by India and China.

Figure 8.1: Average Agreement Coverage by Country

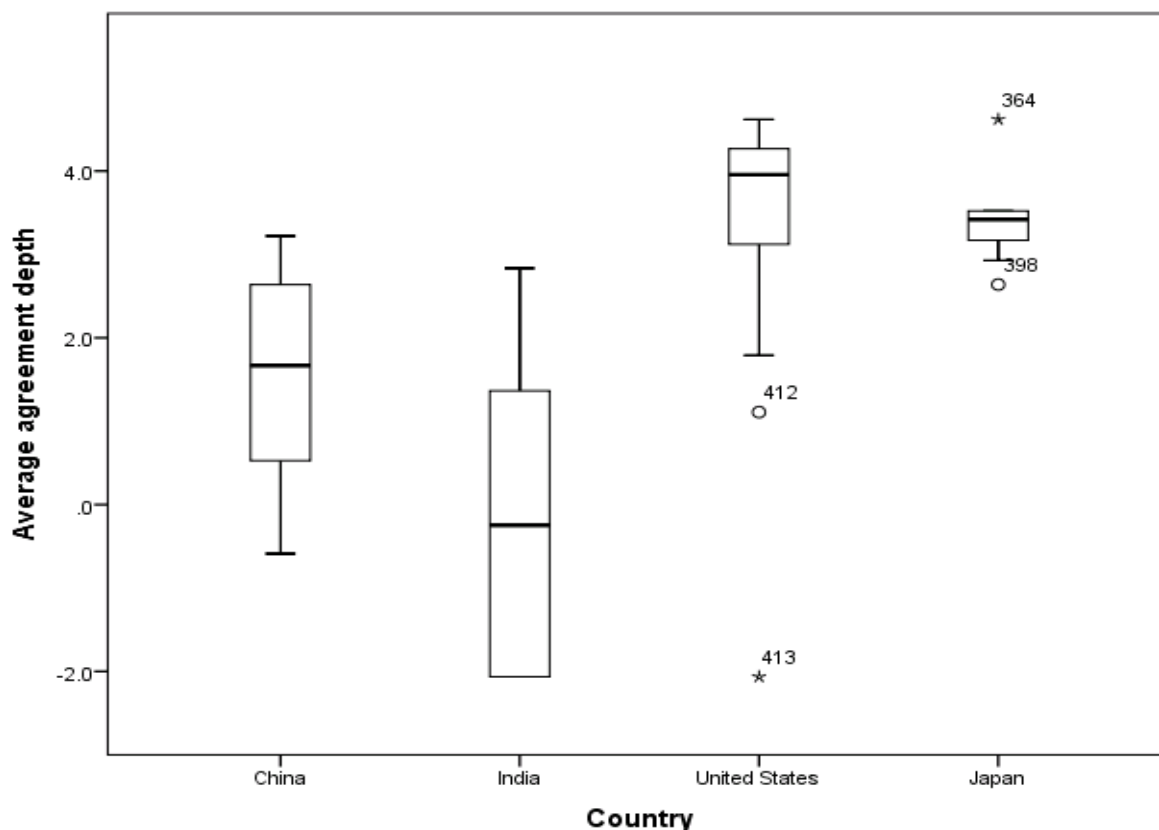


Figure 8.1 shows that the U.S. possesses by far the most comprehensive agreements, followed by Japan, then China, and finally India. Interestingly the outlier agreement for the United States is also its earliest agreement – that with Israel in 1985. Table 8.1 below deals with the dependent variable of contract breadth in more detail and the primary conjectures of the framework – namely that rising states will conclude more narrow agreements whilst status quo states prefer broader deals. It summarizes the overall results using measure 2 of contractual breadth with a cut off score of four out of seven and above for broad contracts, whilst asterisks indicate success of the framework.

This table shows strong support for the framework: *Only three of the forty cases do not conform to the expectations of the framework* and even these exceptions tell us something important in terms of its scope and applicability. The relative narrowness of the ASEAN-Japan deal for example can be explained by the two-track approach of the Japanese in

concluding bilateral deals with ASEAN members prior to concluding an overall deal. As a result, the coverage necessitated by the deal with ASEAN was necessarily lower, this example alone emphasises the utility of the case study analysis.

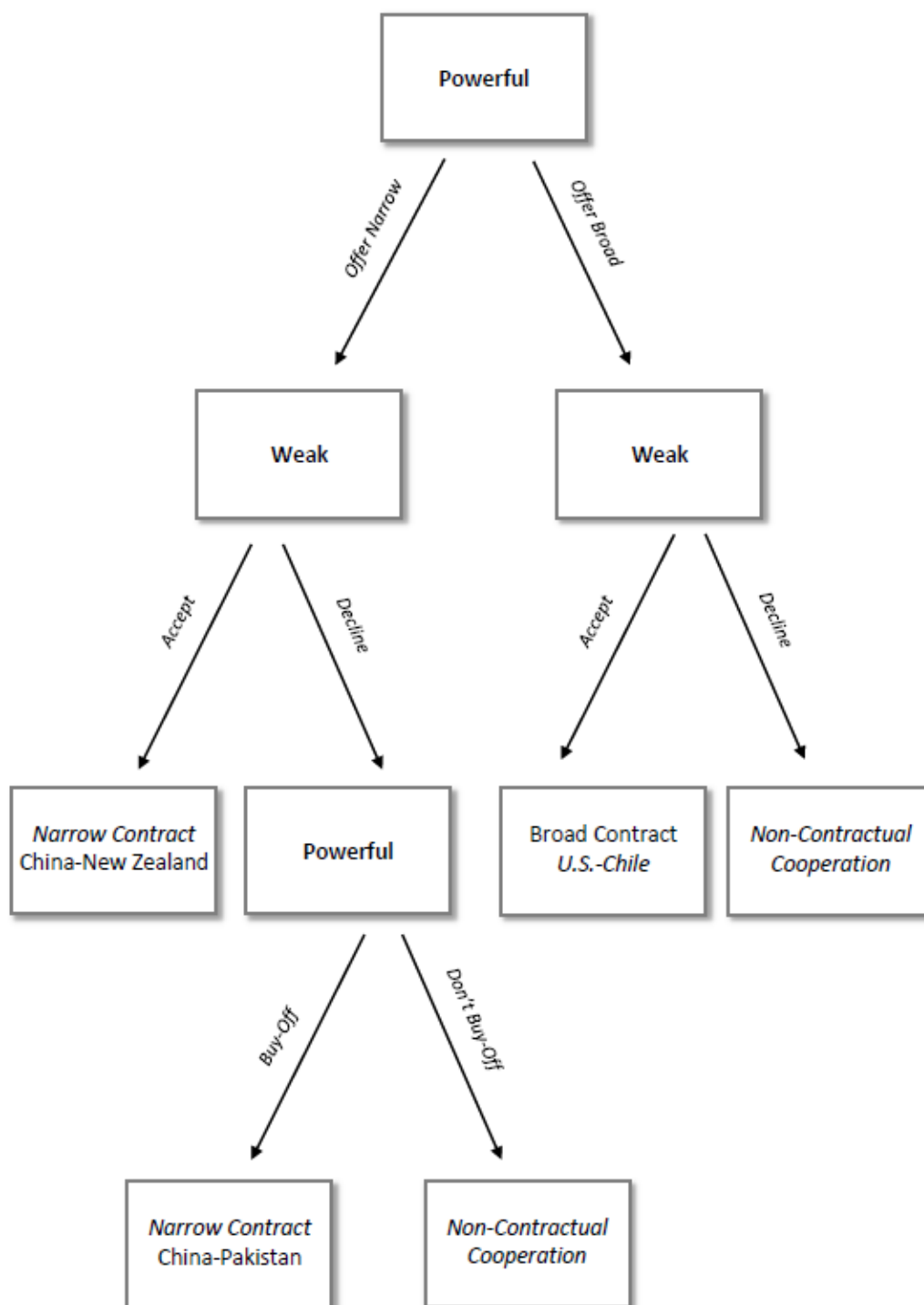
Table 8.1: Overall Results

Broad	Narrow
Japan-Singapore*	China-Hong Kong*
Japan-Mexico*	China-Macao*
Japan-Malaysia*	China-ASEAN*
Japan-Philippines*	China-Chile*
Japan-Indonesia*	China-Pakistan*
Japan-Brunei*	China-New Zealand*
Japan-Chile*	China-Singapore*
Japan-Vietnam*	Japan-ASEAN
Japan-Switzerland*	India-Sri Lanka*
U.S.-Jordan*	India-Afghanistan*
U.S.-Vietnam*	India-MERCOSUR*
U.S.-Singapore*	India-Singapore*
U.S.-Chile*	India-Chile*
U.S.-Australia*	India-Bhutan*
U.S.-Morocco*	India-Nepal*
U.S.-Bahrain*	India-ASEAN*
U.S.-Oman*	
U.S.-Peru*	
U.S.-Colombia*	
U.S.-Panama*	
U.S.-Israel*	
U.S.-Korea*	
India-Korea	
China-Peru	

Using these results figure 8.2 below reproduces the two-party negotiation structure of the stylized example used to develop the framework with empirical examples of trade agreements derived from the case study analysis. The Pakistan-China deals serves as an archetypal narrow contract that required both generous concessions up-front and implied subsequent renegotiations along with creating a significant degree of dependence of Pakistan's agricultural sector on Chinese trade. The China-New Zealand deal meanwhile serves as a good example of a narrow contract which required relatively few up-front concessions from

the more powerful state. This may suggest that strategic considerations factor more prominently in Chinese agreements with its Asian neighbours or that the relative value of expansion and amendment was relatively low for the Chinese and thus did not merit the up-front payments. In terms of broad contracts, the U.S.-Chile agreements serves as a good illustration of a comprehensive deal where no concessions were provided, in fact the case studies demonstrated the opposite – a more favourable initial deal was secured by the more powerful state in this case.

Figure 8.2: Framework with Empirical Illustrations



Overall the findings of the case studies point to the empirical relevance of the framework; however, it may be objected that the variation we have observed thus far in the average depth

of agreements is simply a function of the four major powers concluding agreements with different collections of states. Fortunately, because they have concluded deals with common partners we can test this theory by examining whether the same trends hold when the identity of the negotiating partner is held constant. The charts below illustrate that the same trends can be observed in agreements signed with Chile, Singapore, ASEAN and Peru by each of the major powers. Each table shows the relative breadth of the major partner agreements with each country in terms of all three measures of contract coverage.

This data also allows us to address the other possible explanations we examined in chapter 2 such as learning over time. For example, the Singapore agreements show that the deal with China was signed many years after the deal with the United States yet is nonetheless more narrow in its coverage. It would be difficult to account for this in terms of the relative inexperience of Chinese or Singaporean negotiators. The agreements with Chile are also a clear demonstration of the trend of China and India to conclude more narrow agreements than the status quo powers, and this is again confirmed across all three measures. The ASEAN agreements present a more mixed picture – in terms of measure 1 the results are as the framework would predict but in terms of measures 2 and 3 which address directly the inclusion of certain clauses, agreement breadth across the 3 countries is very similar. Again however this may be explicable by Japan's approach of negotiating with ASEAN members separately and is thus slightly anomalous. Finally, the direct comparison between the Chinese and U.S. agreements with Peru present results exactly in line with the predictions of the framework across all three measures.

Figure 8.3: Chile's Trade Agreements

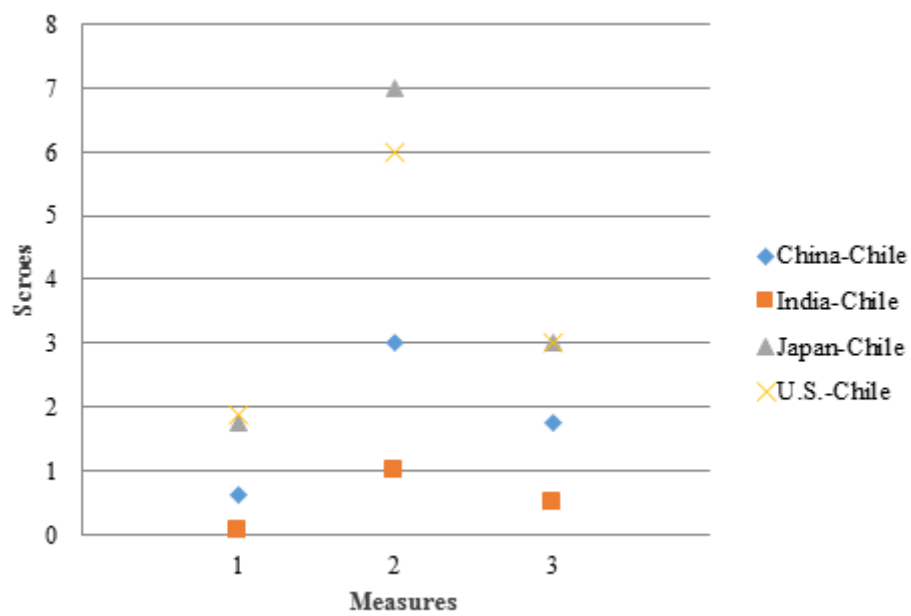


Figure 8.4: Singapore's Trade Agreements

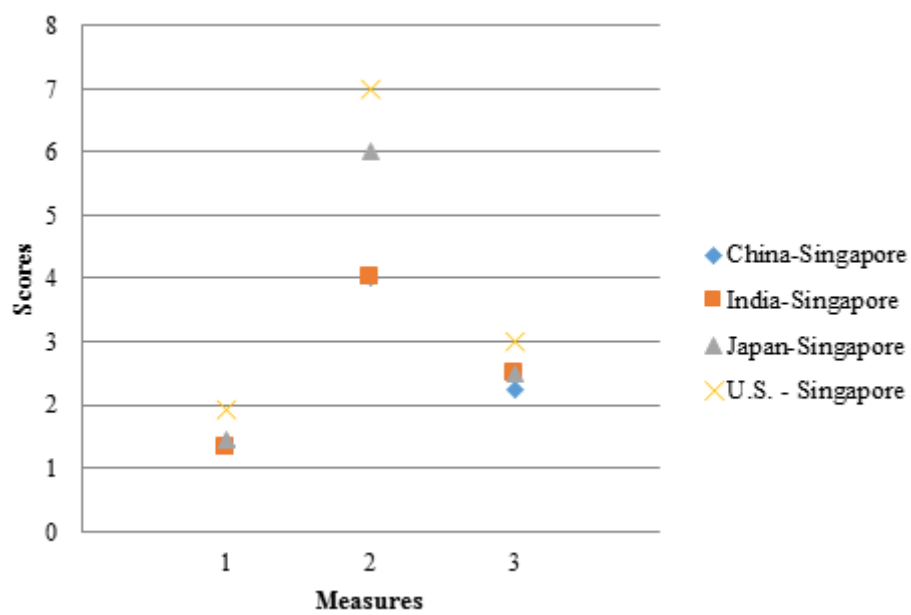


Figure 8.5: Peru's Trade Agreements

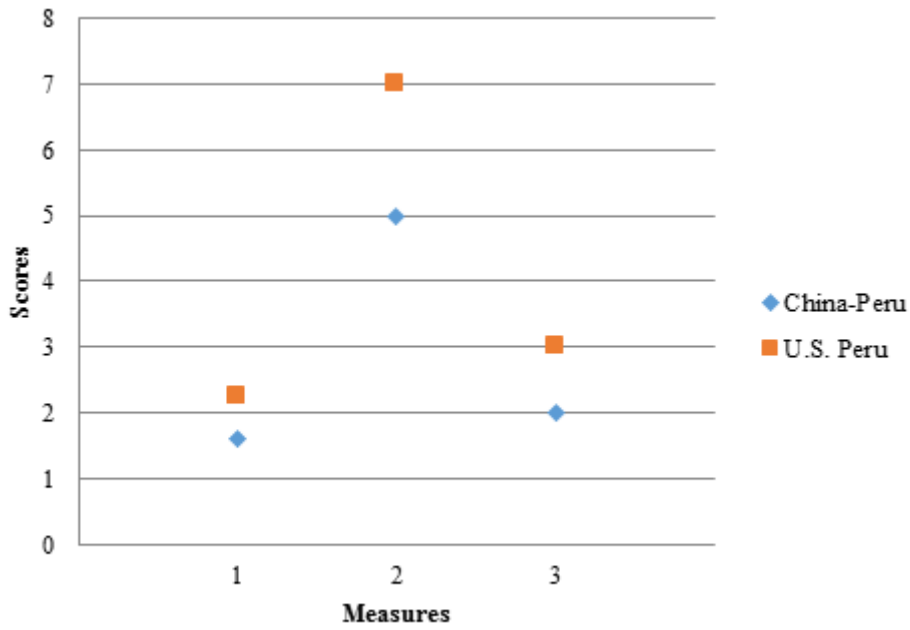
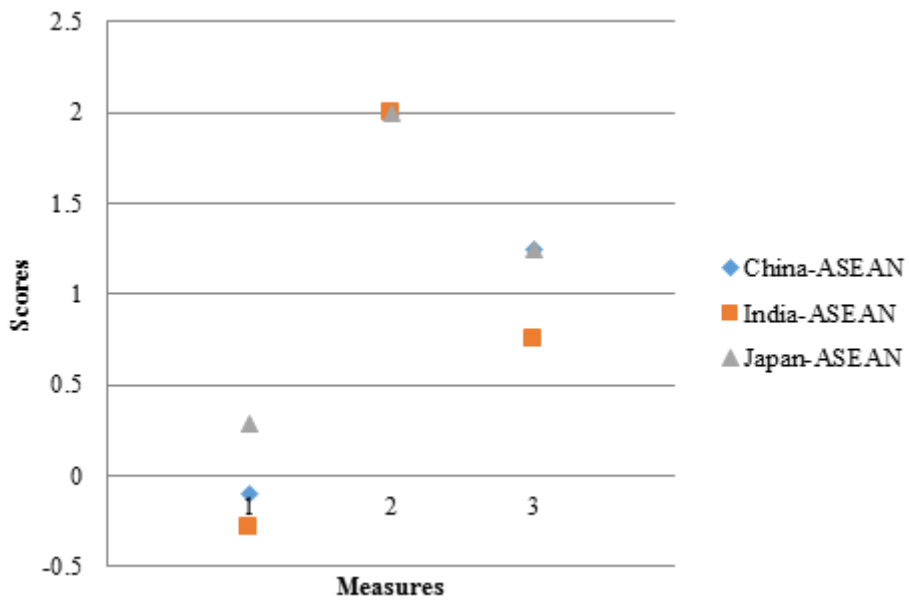


Figure 8.6: ASEAN's Trade Agreements



The tables above demonstrate the key difference in approach to negotiating trade agreements between rising and declining powers even whilst holding the identity of the negotiating parties constant. To explore these comparisons even more deeply it is worth focusing closely on some examples, and it is useful to turn to work on the comparative approach of China and

the United States in their negotiations with both Chile and Peru. In terms of the difference in approach between the rising and declining power, it has been demonstrated that in the China – Chile agreement the parties pay lip service to the importance of labour rights, environmental issues and social security, yet these references are ambiguous and not formally implemented in the agreement, rather they are ‘addressed in separate agreements that are not binding or enforceable’.⁴⁰⁶ The China-Peru agreement also incorporates even less coverage than this and there is no mention whatsoever of labour or the environment. Conversely in the U.S. agreements both incorporate detailed and binding sections dedicated to these issues, indeed, the environmental sections of these agreements include annexes that cover specific areas of cooperation.⁴⁰⁷ The differences in the preambles to these agreements has also been noted elsewhere – those in the Chinese agreements are far shorter, whilst the U.S. sections detail cooperation in fields as diverse as corruption or drug-trafficking.⁴⁰⁸

Compared to China’s deals particularly then, the U.S. agreements cover more product categories and are negotiated ‘from the start with as comprehensive a list as possible. [Whereas] China prefers to start with a much narrower list, and expands it if necessary.’⁴⁰⁹ Additionally China’s deals have tended to ‘contain few advanced provisions’ as it tends to repeat its pre-existing commitments under the terms of its WTO accession and even those agreements that do include mention of advanced provisions these are often limited to particular sectors of the economy, or tacked-on ‘in a separate document, such as a memorandum of understanding.’⁴¹⁰ As supported by the case studies then China’s agreements rarely incorporate WTO-plus provisions ‘that would advance global trade rules beyond the

⁴⁰⁶ Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," 30-31.

⁴⁰⁷ *Ibid.*, 31.

⁴⁰⁸ *Ibid.*

⁴⁰⁹ Hepburn et al., "Sustainable Development in Regional Trade and Investment Agreements: Policy Innovations in Asia?," 17.

⁴¹⁰ Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," 18.

WTO Uruguay Round.’⁴¹¹ Table 8.2 summarizes the results of the direct comparisons in greater depth with a complete breakdown of the clauses included in agreements concluded with the same partner countries, it illustrates the substantive brevity of agreements concluded by both China and India.

⁴¹¹ Hepburn et al., "Sustainable Development in Regional Trade and Investment Agreements: Policy Innovations in Asia?," 18.

Table 8.2: Agreements with Common Partners: A Detailed Comparison

Agreement	Goods	Services	Competition	Government Procurement	Intellectual property	E-commerce	Environment	Labour
Chile-China	Yes	No	No	No	Partial	No	Partial	Partial
Chile-India	Yes	No	No	No	No	No	No	No
Chile-Japan	Yes	Yes	Yes	Yes	Yes	No	Partial	Partial
Chile-U.S.	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Peru-China	Yes	Yes	No	No	Partial	No	No	No
Peru-U.S.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Singapore-China	Yes	Yes	No	Partial	No	No	No	No
Singapore-India	Yes	Yes	No	No	Partial	Yes	No	No
Singapore-Japan	Yes	Yes	Partial	Yes	Partial	No	No	No
Singapore-U.S.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
ASEAN-China	Yes	No	No	No	No	No	No	No
ASEAN-India	Yes	No	No	No	No	No	No	No
ASEAN-Japan	Yes	No	Partial	No	partial	No	Partial	Partial
ROK-India	Yes	Yes	Yes	Partial	Partial	No	No	No
ROK-U.S.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Crucially, the preceding analysis on common partners demonstrates that the variation we observe is not simply an artefact of these powers concluding agreements with different counterparts. In agreements signed by Chile, those concluded with United States and Japan score 6 on measure 2 or 1.86 on measure 1 for the U.S., and 7 and 1.76 for Japan on measure 2 and 1 respectively, whilst China and India score much lower at 3 and 0.63 and 1 and 0.04 respectively. Similarly, in agreements with Singapore, the U.S. and Japan score 7 and 1.92 and 6 and 1.46 respectively whilst China and India score 4 and 1.36 and 4 and 1.31. This supports the predictions of the framework outlined here.

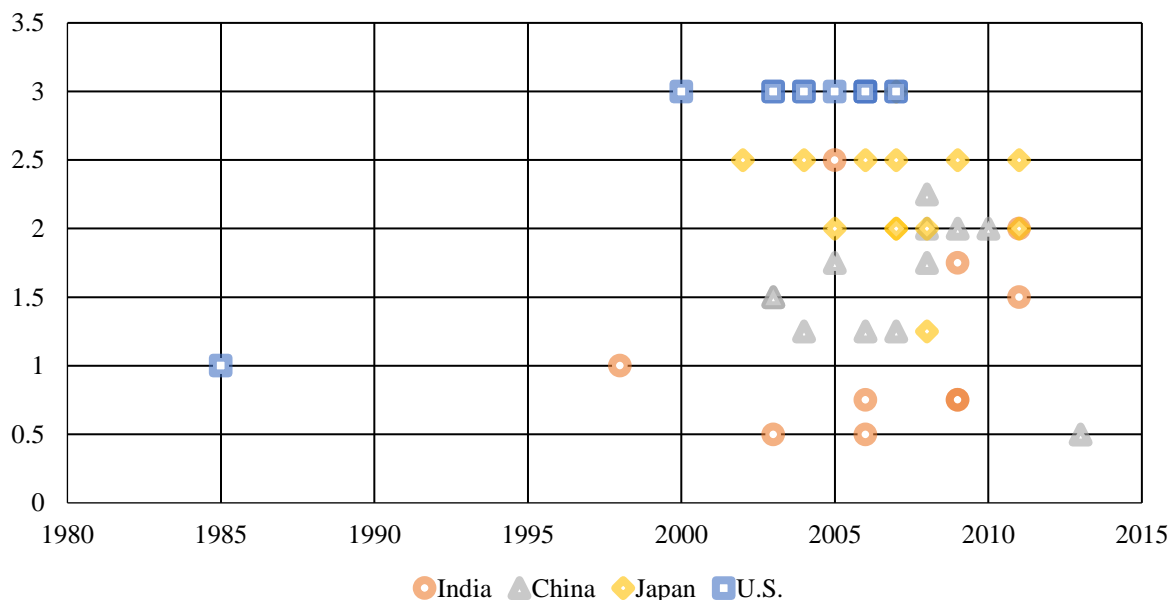
The disparities observed between the major powers with common partners are useful in holding other variables constant and consequently they also seem to contradict cultural explanations for design variation – as we have seen, China and Japan have long been seen as possessing similar approaches both in terms of legal ambiguity and on their emphasis on social harmony and distaste for formal dispute resolution procedures – yet their approach to the design of trade agreements are wildly divergent.⁴¹² Even more interestingly, India, as a result of its imperial legacy of common law traditions, might be thought to adopt an approach similar to that of the United States, yet this is the opposite of what we see, rather the breadth of its agreements bear much closer resemblance to those of China.

⁴¹² Kawashima., "Dispute Resolution in Contemporary Japan.", Potter, *The Chinese Legal System: Globalization and Local Legal Culture*, 8.

8.3 Conjecture 1: Contract Coverage

The central conjecture derived from the theoretical framework developed here is that power trajectory alters the contract design strategy of the most powerful actor and alters its calculation with respect to the trade-off between maximizing efficiency through reducing transaction costs and retaining residual rights of control. Specifically, the framework suggests that when the trajectory of the most powerful state in a bilateral negotiation is positive, we would expect to see less comprehensive agreements when compared to those signed by the status quo powers. The case studies and descriptive statistics demonstrate the differences and similarities in the design approaches of the four major powers. Figure 8.7 places these comparisons in broader chronological perspective by ranking agreements by the four powers, by year, in terms of the third measure of contract breadth which considers the relative number of clauses included in a given contract only (not levels of liberalization).

Figure 8.7: Score by Country, Agreement, and Year (Measure 3)



At the narrowest end of the contracting spectrum are India's agreements which cover the fewest issue areas, result in shallow liberalization, and very often omit clauses on government

procurement, intellectual property, competition, and investment. These agreements also rarely address liberalization in services, an especially surprising fact given India's strengths in this area, particularly in relation to its negotiating counterparts. What is also particularly interesting about India's agreements is that there appears to be no trend whatsoever in terms of the comprehensiveness of its agreements over time suggesting that learning processes are not significant causal factors shaping design.

Next on the comprehensive contracting spectrum is the other rising power China, its agreements tend to cover only slightly more issue areas than do India's though there is wide variation among China's agreements in this regard. The relative breadth of the agreement with Singapore for example contrasts sharply with the narrow agreement with Pakistan. As with India's trade deals, China's agreements often result in shallow liberalization and incorporate weak dispute resolution procedures.

Next along the contracting spectrum sits Japan with its hybrid approach, combining elements of the U.S. and Chinese approach. Its agreements cover fewer substantive areas than do U.S. agreements and often result in more shallow levels of liberalization. Many Japanese agreements include clauses on intellectual property and government procurement but often neglect labour, the environment and e-commerce that are addressed in U.S. deals. These deals also tend to carve out significant concessions in the area of agriculture due to the domestic political strength of the agricultural lobby.⁴¹³ In the Japanese agreements we also see few if any concessions offered to their weaker counterparts. Finally, at the end of the spectrum with the broadest agreements sits the U.S. – famous for its comprehensive template approach and innovative agreements that incorporate clauses on government procurement, competition, intellectual property, investment, e-commerce, labour, and the environment. The cases also

⁴¹³ Davis, "International Institutions and Issue Linkage: Building Support for Agricultural Trade Liberalization."

showed how U.S. agreements are notable for their strong dispute resolution mechanisms and the high levels of liberalization that they entail.⁴¹⁴ The negotiating approach of both the United States and Japan are also notable for the lack of concessions offered to the weaker negotiating partners, indeed the cases demonstrate a tendency for them to secure more favourable liberalization schedules, levels of liberalization and sectoral protection for themselves. A particularly good illustration of this difference in approach is the contrast between Japanese negotiations with ASEAN and those between ASEAN and China and India. Japan sought to maximize its leverage by negotiating with each individual ASEAN member before concluding an overall agreement with ASEAN itself in what has been termed a 'divide and conquer' approach: 'China and Japan took inverse approaches to negotiating trade agreements with ASEAN. China was willing to sit down with all ten ASEAN members from the outset. China also allowed ASEAN countries to establish individual tariff schedules within the free trade area, signed a special agriculture deal with Thailand, and permitted an eight-year early harvest period.'⁴¹⁵

On the other hand, Japan in signing bilateral agreements with seven out of ten ASEAN members before completing the AJCEP counteracted the collective bargaining leverage of ASEAN. In its negotiations China used the "number of imported items" measure as the base for calculating its reduction of import tariffs; Japan used only the "value of imports" as the base, allowing it to exclude several agricultural products.⁴¹⁶ Perhaps unsurprisingly China's agreements also include few details in intellectual property protections beyond what is required by its existing WTO commitments and their agreements also tend to exclude any provisions on labour or environmental standards, in contrast to U.S. agreements.⁴¹⁷

⁴¹⁴ Feinberg, "The Political Economy of United States' Free Trade Arrangements," 1033.

⁴¹⁵ Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements," 16.

⁴¹⁶ Ibid.

⁴¹⁷ Ibid., 18-19.

The case studies also point to some striking similarities in the approaches of the two rising powers: the asymmetrical concessions that they provide in terms of transition periods, sectoral protections and mechanisms such as the Early Harvest Programs. As we have seen, such behaviour is absent from the negotiations conducted by the U.S. and Japan, even when negotiating with the same counterparts, what explains this? Some scholars of Chinese politics have suggested that China's concessions are 'a sign of benevolent hegemony – or big country generosity – that has historical roots in China's tributary system.'⁴¹⁸ But this cannot account for the similar approach adopted by India. Similarly, it might be suggested that the lack of coverage in these deals is a result of the status of China and India as developing countries hoping to protect still fragile economic sectors from outside competition. But this cannot explain their simultaneous willingness to open their important agricultural sectors to competition and in fact provide would-be competitors with more favourable conditions than even their own domestic sectors in this regard. Nor does this particularly explain why India has been willing to liberalize its manufacturing sector before its services sector, despite the fact that the former is widely acknowledged to be the area in which India faces the greatest competition from its trade partners (such as ASEAN), whereas the latter is the area of its greatest comparative advantage and is certainly not threatened by the countries with which it has concluded deals. Thus the narrowness of these agreements coupled with the generous concessions offered by each rising power undermines the most obvious explanations for these behaviours.

The difference in trade strategies between China and the United States in particular provides interesting indicators of the approach of rising and declining powers – U.S. agreements follow a template similar to that adopted in NAFTA and U.S. officials emphasise their desire only to conclude comprehensive (or so called WTO plus) deals, these 'WTO plus' deals

⁴¹⁸ Ibid.

cover issues beyond that achieved in multilateral liberalization under the WTO, as a result the agreements of the U.S. all include intellectual property, government procurement, labour and the environment. These deals are consequently ‘detailed and often run to thousands of pages.’

⁴¹⁹ This approach is in stark contrast to approach adopted by China – Chinese negotiators have tended to avoid templates and approach negotiations on a case-by-case basis. ⁴²⁰ As a result of this approach though all of China’s agreements are comparatively narrow, there remains significant variation between agreements, for example the agreement with Hong Kong is reasonably detailed in including investment and financial services whilst ‘the agreements with Australia and New Zealand are much less explicit, and actually amount to little more than indicative statements for future goals in a number of areas.’ What all these Chinese deals have in common however is that they exclude traditional WTO provisions on things like intellectual property, labour rights and environmental standards. ⁴²¹

Compared to ASEAN’s deals with other countries, its agreement with China liberalizes far fewer service sectors. Finally, it is important to note not only variation between China and the United States but also variation within agreements signed by China. The preceding discussion has highlighted the particularly shallow nature of agreements with Pakistan and ASEAN and the especially generous up-front payments from China that accompanied these deals. On the other hand, agreements with New Zealand and Singapore have tended to be of higher quality, though still somewhat below that of those signed by the U.S. who tend to adopt a template approach. ⁴²² The dispute resolution provisions of India’s agreements are similarly ambiguous and lack real teeth. The notable exception in this regard is its deal with a declining Japan.

⁴¹⁹ Barfield, "Dragon Stirs: China's Trade Policy for Asia-and the World," 109-10.

⁴²⁰ Ibid., 110-11.

⁴²¹ Ibid., 111.

⁴²² Ibid., 22.

When comparing the approach of rising and declining powers dispute resolution mechanisms must also be of particular interest because of they determine the costs of renegeing – which is an important potential safeguard for the weak. In this respect (and aside from the exclusion of these substantive provisions) it is also clear that Chinese trade agreements incorporate dispute resolution mechanisms that are often vague: ‘A comparison of the fine print in Chinese and U.S. FTAs with Peru and Chile illustrates important discrepancies in the two countries’ approaches’. For example, it has been demonstrated that under U.S. dispute resolution rules panel hearings are made public and these clauses strongly encourage ‘consultation with civil society and...private actors.’⁴²³ The clause in U.S. agreements also specifies more exact rules relating to the need for compensation if a party does not adhere to the decision of the dispute resolution panel. On the other hand, China’s dispute resolution clauses do not include any requirements that panel hearings be made public and, unlike in the U.S. agreements, there is no encouragement to consult more widely. The Chinese clauses are also more vague about compensation as they only refer ambiguously to ‘mutually acceptable compensation’.⁴²⁴ Such vague language increases the likelihood that and dispute outcome will be settled with reference to the bargaining power of the contracting parties, implying a greater number of subsequent negotiations.

8.4 Conjecture 2: Concessions

The second part of the framework suggested the need for the powerful but rising state to offer up-front concessions in order to overcome the reluctance of the weaker states to conclude a narrow contract. It predicts that this will occur when the rewards from exploitation and manipulation are expected to be high. The case studies demonstrate that this has indeed

⁴²³ Salidjanova, "China's Trade Ambitions: Strategy and Objectives Behind China's Pursuit of Free Trade Agreements." 18

⁴²⁴ Ibid., 16-20.

occurred in a number of the negotiations conducted by the rising powers. For example, the liberalization entailed by the agreements between China and Hong Kong and China and Macao on the part of the PRC is a one-sided concession given the nature of those two entities as trading ports which imposed zero tariffs on Chinese goods in any case. Before the agreement only 20 percent of goods from Hong Kong entered China tariff free, subsequent to the agreement this rose to 90 percent. With respect to ASEAN too China offered generous concessions in the form of the Early Harvest Program which ensured elimination of tariffs on around 200 agricultural products by China without reciprocal liberalization on the part of less developed ASEAN members. China also agreed to extend Most Favoured Nation Status to newer members of ASEAN and allowed them an additional five years to reduce tariffs in line with the agreement. China also agreed to cancel debts owed to it by a number of ASEAN states. Elsewhere Pakistan was also offered an Early Harvest Program to secure an agreement that entailed greater tariff reductions on the part of China than Pakistan.

For India as well, the cases illustrate a number of significant up-front concessions, the 1998 agreement with Sri Lanka was designed specifically to address the economic inequality between the two states. Consequently, India provided Sri Lanka with more time to liberalize under the agreement than was afforded to India. India also agreed to remove tariffs on more goods, liberalizing tariffs on 1,351 products whilst Sri Lanka agreed to immediate liberalization of only 319 products. In the agreement with Afghanistan for example India liberalized around 4 times as many goods as did Afghanistan and in this sense constitutes a one-sided lowering of barriers by India. Similarly, the deal with Singapore is also a one sided concession in that Singaporean tariffs were removed on 99.9 percent of Indian goods prior to the conclusion of the agreement and so this is another asymmetrical lowering of barriers in favour of Singapore.

With ASEAN, India provided less developed members space to adapt to the agreement and partly as a consequence of this the reduction of tariffs ‘will be asymmetric, while ASEAN’s access to markets in India will rise to a significant extent, India will get lesser access to their markets due to the FTA.’⁴²⁵ India also offered ASEAN an Early Harvest Program similar to that offered by China. Finally, India also agreed to liberalize services prior to goods and this is thought to give ASEAN an advantage.

The outliers in the data also provide some important indications with respect to this second conjecture. For example, the lack of concessions offered by China and India to non-regional partners suggests either that the lack of proximity entails fewer risks for the weaker power or that the powerful rising states are unwilling to offer up-front payments to secure narrow contracts because the rewards reaped from renegotiation and amendment are too low. In this respect the fact that these agreements also tend to be the most comprehensive supports the predictions of the framework.

8.5 Conjecture 3: Renegotiations

The third conjecture derived from the framework predicts that following conclusion of the narrow agreements and provision of up-front concessions, the more powerful rising states would seek to reap the rewards of amendment and renegotiation. And though many of the trade agreements concluded by the rising powers are relatively new there is some important evidence in relation to the renegotiation and amendment of some of these deals, as the framework would predict.

⁴²⁵ Bhattacharyya and Mandal, "Estimating the Impact of the India–Asean Free Trade Agreement on Indian Industries," 103.

A number of China's agreements have been subject to amendment already and incorporate provisions to allow this to occur following the conclusion of the trade deal. The deal with Hong Kong has already been amended on six separate occasions, the agreement with Pakistan also specifically incorporates subsequent amendment due to the limited nature of the initial agreement.⁴²⁶ However the timeline for this expansion and the mechanism by which it will be achieved remains unclear. Elsewhere the agreement with Singapore has been upgraded as recently as 2015 and now incorporates 'enhanced trade facilitation and greater investment protection in China, as well as address[es] investment barriers.' Both parties have also agreed to explore 'greater cooperation in areas such as legal services and financial services... the CSFTA will also be enhanced with new generation elements such as E-commerce and environment.'⁴²⁷

In terms of the ASEAN-China agreement too, in addition to the sequential negotiations over goods and services, there have also been amendments in the years since conclusion of the initial agreement with both parties agreeing to the 'further opening up the services market and lifting the level of economic and technological cooperation'⁴²⁸ With these amendments '[the deal is] expected to contribute and meet the goals set forth by the leaders of ASEAN and China to achieve two-way trade of US\$1.0 trillion and investments of US\$150bil by 2020.' Officials from both sides have also emphasised the need for the 'scope and content of the ACFTA [to] continue to grow in line with the current regional and global economic landscape and [make them] comparable to other modern free trade agreements.'⁴²⁹ Aside from amending deals with its Asian partners, China has also agreed to do the same with New Zealand and at the end of 2014 both countries agreed to an 'exploration of an upgrade to the

⁴²⁶ WTO, "Free Trade Agreement between Pakistan and China: Questions and Replies ".

⁴²⁷ "China, Singapore to Negotiate Upgrade of Fta, Sign Mous," *Channel News Asia* 2015.

⁴²⁸ "China, Asean Seals Deal to Upgrade Bilateral Fta," *Xinhua News Agency* 2015.

⁴²⁹ "Asean, China Sign Protocol to Upgrade Economic Agreement Framework ", *The Star Online (Malaysia)* 2015.

New Zealand-China Free Trade Agreement.⁴³⁰ The first part of which is for 'New Zealand and China to produce a "joint assessment" which will set out the possible parameters of such an upgrade.'⁴³¹ This again supports the third conjecture of the framework.

Crucially, the same proclivity for amendment and expansion can be viewed with respect to many of India's trade agreements. For example, in 2015 both parties agreed to upgrade the India-Korea FTA. The agreement was initially concluded in 2010 'but Korea has called for upgrading the deal in an effort to more widely open the massive Indian market of 1.2 billion people to Korean firms.'⁴³² With respect to the India-ASEAN deal both countries have 'reached a high level of consensus on active participation in the negotiations on agreements on trade, services and investment, paving the way to establish a comprehensive ASEAN-India Free Trade Area and creating favourable conditions for the two sides and partners to negotiate the Regional Partnership (RCEP), fostering linkages in the fields of air, sea and land transport, digital technology, and the building of a Mekong-India Economic Corridor.'⁴³³

Finally, India's deal with Thailand is also the subject of discussions over expansion: 'Thailand, the first ASEAN member to enter into a free trade agreement with India, albeit a limited one with 82 products in 2004, is now back demanding a full-fledged comprehensive agreement including goods, services and investment.'⁴³⁴ This extensive list of expansions, renegotiations and amendments again highlights the empirical relevance of the model, and indeed the recent nature of many of these amendments and expansions suggest that these findings are by no means comprehensive and the process of contract expansion is one that can be expected to continue for many years to come. However, in contrast to the approach of

⁴³⁰ Claire Trevett, "Nz Seeks Better Deal with China," *New Zealand Herald* 2015.

⁴³¹ Rupa Damodaran, "Asean, China Sign Fta Upgrade Protocol " *The New Straits Times* 2015.

⁴³² Kang Seung-woo, "Korea, India to Upgrade Bilateral Free Trade Deal " *The Korea Times* 2015.

⁴³³ The Government of Thailand, "Prime Minister Yingluck Backs Upgrade of Asean-India Ties to Strategic Partnership," ed. Royal Thai Embassy (http://www.thaiembassy.sg/press_media/news-highlights/prime-minister-yingluck-backs-upgrade-of-asean-india-ties-to-strategic-p2015).

⁴³⁴ Amiti Sen, "Thailand Keen on Full Trade Pact Now," *The Times of India* 2010.

India and China, the case study analysis demonstrates that U.S. and Japan do not engage in comprehensive amendments or significant expansion of their trade deals.

8.6 Conjecture 4: Dependence

The final element of the framework suggests that the weak states are willing to acquiesce to the repeated renegotiations and amendments because important parts of their economies now have a vested interest in the continuation of the deal. This dynamic is exacerbated by some of the up-front concessions supplied by the powerful to the weak during the initial negotiations which tend to target economically and politically important sectors. As Albert Hirschman observed many years ago ‘The nation conducting a power policy has an interest in diverting its trade to poor countries in which the marginal utility of income is high’⁴³⁵ That is, weak or poor countries should be the target of a power policy because trade is relatively more valuable to them and thus the opportunities for the powerful to exercise influence over them is the greatest.

To evaluate this, we can examine in closer detail the economic relationship between these rising powers and their weaker trade partners to see whether this is borne out empirically. Interestingly for China’s trade partners, the vast majority depend upon China either as their top source of imports or primary export destination (or in many cases both).⁴³⁶ Of the ASEAN countries China is the largest source of imports for all but one (Brunei), it is also the most important export destination for Singapore and Thailand and the second most important for Indonesia and Malaysia.⁴³⁷ For not a single ASEAN country is China less than the 4th most important destination for exports or source of imports. The same is true of Hong Kong,

⁴³⁵ Hirschman, *National Power and the Structure of Foreign Trade*, 25.

⁴³⁶ WTO, "China Trade Policy Review " (Secretariat, 2014).

⁴³⁷ "Trade Profile: Malaysia," (Secretariat, 2015).

New Zealand, and Peru with China as the largest source of imports and destination for exports.⁴³⁸ For Pakistan China is its third largest export destination but its largest source of imports and interestingly 20 percent of Pakistan's exports are made up of agricultural goods so the impact of the Early Harvest program provided by China is particularly significant.⁴³⁹ The same may also be said of the members of ASEAN, the other recipients of the Early Harvest Program; for Indonesia and Myanmar this figure is over 25 percent, for Vietnam and Thailand it is 17 percent and for Malaysia and the Philippines it is over 10 percent.⁴⁴⁰

Similar patterns can be observed in the selection of India's trade partners, for Bhutan and Nepal India is unsurprisingly the largest source of imports and the biggest destination for exports. For Sri Lanka and Afghanistan too India is no lower than 5th in these figures.⁴⁴¹ The average trade to GDP ratio is also significantly higher for partners of India and China compared to the U.S. and Japan, indicating a greater sensitivity of trade partners to fluctuations in the trading relationship.

Table 8.3: Conjecture Summary

Conjecture	Empirical Support?
1. Contract Coverage	Yes
2. Concessions	Yes, with qualifications ⁴⁴²
3. Renegotiation	Yes
4. Dependence	Yes

⁴³⁸ "China Trade Policy Review ".

⁴³⁹ "Trade Profile Pakistan," (Secretariat, 2015).

⁴⁴⁰ "Trade Profile: Philippines," (Secretariat, 2015)., "Trade Profile: Malaysia.", "Trade Profile: Vietnam," (Secretariat, 2015)., "Trade Profile: Thailand," (Secretariat, 2015).

⁴⁴¹ "Trade Policy Review: India," (Secretariat, 2015).

⁴⁴² These are most notable in negotiations with neighbours or strategically important partners

8.7 Clarifying the Scope of the Framework

The case studies and descriptive statistics suggest some minor but important qualifications to the originally proposed framework. In particular, it seems that the relative variation in the degree of coverage of contracts of the major rising powers suggest that strategic dynamics become more acute when dealing with regional neighbours. This is borne out by the greater value of concessions offered to neighbours by both China and India and the concurrent proclivity to amend these treaties more often. For examples of this we can simply revisit the China-Hong Kong, China-ASEAN, China-Pakistan, India-ASEAN, India-Bhutan, and India-Nepal deals. From the point of view of the initial framework this is explicable because the value of manipulation and exploitation through issue linkage is likely to be higher and therefore the costs of the up-front payments are worth the expense to the rising power, this is less likely to be true with respect to non-regional partners such as Chile.

The results also implicitly suggest that a greater level of certainty over one's trajectory is associated with a greater willingness on the part of the rising powers to pursue narrower contracts and offer up-front concessions. That is, where there is dramatic divergence we see more generous payments and more narrow agreements (compare India-Nepal with India-Korea for example), conversely when the power relationship is more indeterminate or the partner country is strategically insignificant considerations of efficiency are much more likely to dominate the design preferences of these states. Greater uncertainty over the nature of the power relationship will also mean that rising powers are unwilling to forego immediate gains in order to secure future gains since the realization of these gains is more uncertain. In this sense uncertainty over relative power trajectory has the same effect that more generalized conditions of uncertainty are expected to exert over actors by traditional contract theory, i.e. a greater focus on minimizing ex-post transaction costs.

In short then, as with uncertainty over the degree of power divergence, the results suggest that a lack of power asymmetry between two states will lead both parties to focus on maximizing overall shared gains since little is to be gained by either party by manipulating the sequence of bargaining since, ultimately, the outcome will be relatively equitable given the power position of each under such conditions.

Table 8.4: Summary of Scope Conditions

Characteristic	Description
Degree of Uncertainty	Where there is greater uncertainty over the future power relationship we would expect states to return to a focus on efficiency in contract design, this is also more likely when the negotiating states are particularly close in power
Degree of Divergence	Where the degree of divergence is particularly high we should expect to see more narrow agreements because the value of delaying bargaining rounds is higher for the most powerful
Degree of Strategic Importance	Where the weak state is particularly important in strategic terms we should expect to see up-front concessions increase in value since the delayed payoff for the more powerful through manipulation and exploitation will be greater

All of these suggest important boundary conditions that must be placed upon the framework but they are not inconsistent with it. In all three cases these factors simply determine the size of the payoff that can be reaped by the powerful rising power and therefore the concessions that it is willing to offer up-front.

Chapter 9: Broader Theoretical Implications

Having evaluated the framework in light of the empirical material we can now begin to evaluate the relevance of the cases for existing accounts of design variation and for IR theory more broadly. As well as suggesting limits to the literature which deals directly with contract design, the framework makes contributions to four distinct research agendas. First, it contributes to the discussion on when the powerful choose to tie their hands. Second, it clarifies the extent to which contracts do in fact serve as a mechanism of signalling effective commitments. Third, it speaks to the different ways in which transaction cost analysis applies in international affairs. Finally, it utilises and thus demonstrates the empirical utility historical institutionalist insights for questions of international contract design. Before I turn to these more general contributions however I first return to the existing explanations for contract design variation.

The results of the analysis suggest that domestic political explanations help us to understand important behaviours such as why Japan continues to protect its politically important agricultural sector and can also explain the specific targeting of concessions to politically salient sectors in the weaker countries. The case studies also suggest specific ways in which trade negotiators are indeed engaged in complex two-level games and so imply that regime type matters indirectly. Yet it also shows how India as a parliamentary democracy concludes far more narrow agreements than the democracies of Japan and the United States. Indeed, India's agreements are far more similar to those signed by China despite the authoritarian politics of the latter. This suggests that though such accounts are valuable there are important qualifications to domestic political explanations.

Of course, economic development also shapes the design choices of states, but the case studies suggest that this influence is not necessarily unidirectional. For example, do lower levels of development mean that fewer sectors are included in order to protect developing industries? Or conversely would comprehensive contracts provide greater certainty and protection for particular sectors? The development variable does not explain why India for example left the negotiation of services agreements to subsequent negotiations when negotiating over goods since the service sector is a particularly strong one for India. The case studies suggest then that the driving concern behind India's design of agreements was not the desire to protect its infant industries since the greatest competition is likely to come in the area of goods rather than services. Thus the development level of a state might give us some indicators of its design preferences but may also provide a misleading picture if unaccompanied by more careful analysis and the case studies suggest that more work is required on this specific point.

The analysis also does not refute the important role of the legal culture in explaining design outcomes but again suggests some important qualifications. After all, the cases show that the U.S. possesses a far more legalistic culture than does China and it consequently stands to reason that U.S. agreements should be more comprehensive, indeed superficially the results suggest some support for this contention. Nevertheless, India shares the common law tradition with the United States but signs far more narrow agreements. Furthermore, the role of Asian legal culture also cannot explain the stark difference in agreement design observed between Japan and China despite the legal literature suggesting that both cultures share a preference for informality. These results show then that whilst legal culture must be taken into account we should be wary of applying generalizations too broadly.

Likewise, explanations that privilege the role of diffusion in explaining the design variation are often compelling, but these studies emphasise the tendency of states to self-copy and as a result cannot explain the role of power politics and strategic interaction in shaping design choices. Further, if diffusion was the most important dynamics driving design choices we would expect to see increased uniformity over time and across cases, in fact the cases studied here point to trends in the opposite direction – a greater degree of design diversity, particularly with China providing a powerful and clear alternative to the U.S. approach in recent years. Similarly, the related argument that suggests that narrow agreements are associated with lower levels of familiarity with concluding similar agreements is intuitive but the case studies suggest this explanation is insufficient to account for the fact that the less experienced Japanese negotiators conclude broader contracts than the more experienced Chinese or why we don't see a uniform trend towards more and more comprehensive agreements in the agreements of individual countries as their collective experience increases. In fact, the results show that some recent agreements signed by China and India are actually more narrow than those that precede them, thus providing an important qualification to explanations that privilege the role of learning.

In general then, the preceding analysis identifies the important limitations of existing accounts of variation in the design of agreements and suggests some concrete directions for future research. However, the framework developed here and its empirical applications also suggest broader implications for cooperation in international relations theory, therefore in this section I focus in more detail on implications in relation to the credible commitment problem, the realist-institutionalist debate over hand-tying by the powerful, as well as sketching out some important implications for transaction cost analysis and historical institutionalism.

9.1: Credible Commitment

This research began by demonstrating the lack of clarity in the literature on contracts and commitment; specifically, it highlighted the failure of existing accounts to provide a mechanism by which comprehensive contracts protect the weak – a claim that was nonetheless widely accepted despite its under-specification. In the process of developing this framework a causal mechanism has been suggested by emphasising that broad contracts increase the potential for enforcement of a broader range of cooperation. I now turn to the broader implications of this mechanism.

Mainstream research on credible commitments conceptualizes comprehensive contracts as explicit commitment devices, from this perspective then it is natural to expect that when a weak actor concludes a trade contract with a very powerful counterpart the commitment problem will become more acute as a result of the greater capacity of the latter for exploitation of the former. It follows that the strength of the commitment device needs to increase in proportion to the power asymmetry in order to provide sufficient reassurance to the weak. From this standpoint it is unsurprising that the United States, the most powerful state in the international system, also signs the most comprehensive trade agreements. As has been noted elsewhere ‘The U.S has been the champion of comprehensive FTAs going beyond industrial market access to include agriculture as well as a broad range of services, issues of investment protection, regulatory regimes and intellectual property.’⁴⁴³ Accordingly the data shows that U.S. agreements constitute four of the top five of most comprehensive bilateral agreements, including the first and third most comprehensive.⁴⁴⁴ Given this evidence it is unsurprising then that much analysis stops here.

⁴⁴³ Aggarwal and Urata, *Bilateral Trade Agreements in the Asia-Pacific: Origins, Evolution, and Implications*, 228.

⁴⁴⁴ Dür, Baccini, and Elsig, "The Design of International Trade Agreements: Introducing a New Dataset."

But it begs the question: What work are these comprehensive deals really doing? Are these types of agreements necessary prerequisites for overcoming the commitment problem in the presence of high power asymmetry? The analysis here in fact suggests not - clearly India and China are large, economically powerful states that have concluded agreements with weak partners, yet the coverage of their trade contracts are notably lacking in comparison to those of the United States and Japan, obviously then these comprehensive contracts are not a *necessary* signal of commitment. I have shown that China's agreements in particular are unlike those employed by the US; they are diverse in form and coverage, and 'their brevity leave many aspects as the subject of continued negotiations, and that several omit elaborate dispute resolution procedures.'⁴⁴⁵ The data and case studies demonstrate that India's agreements are less comprehensive even than this. Clearly then agreements signed by China and India address a subset of issues addressed by more comprehensive U.S. agreements, the definition of a more incomplete contract.⁴⁴⁶ The data shows that all bilateral U.S. agreements possess an average depth score on measure one of 5.43.⁴⁴⁷ Similarly Japan's average depth score on the same measure is 5.45. On the other hand, the average depth of agreements signed by China is 0.76 whilst India's score is -0.12 in terms of the first measure. Likewise, on Dur et al's secondary measure of depth, the U.S. and Japan both score 5.4 whilst China and India score 3.2 and 2 respectively.⁴⁴⁸

The important take-away from these findings is the fact that the mechanism used to resolve the commitment problem when the most powerful state is rising is not the comprehensiveness of the contract *per se* but rather the up-front concessions which the weak accept because they

⁴⁴⁵ Agata Antkiewicz and John Whalley, "China's New Regional Trade Agreements," *National Bureau of Economic Research Working Paper Series* No. 10992 (2004). in Hepburn et al., "Sustainable Development in Regional Trade and Investment Agreements: Policy Innovations in Asia?," 19.

⁴⁴⁶ Tirole, "Incomplete Contracts: Where Do We Stand?," 743.

⁴⁴⁷ Derived from data in Dür, Baccini, and Elsig, "The Design of International Trade Agreements: Introducing a New Dataset."

⁴⁴⁸ Derived from data in *ibid*.

discount the future at a higher rate. In this sense comprehensive contracts are merely an indicator that the more powerful lack the incentives to renege in future rather than the mechanism by which such states are effectively constrained, as liberal and institutionalist scholars suggest.⁴⁴⁹ In short, it is either the negative power trajectory or the up-front concessions of the more powerful that overcome the commitment problem rather than the coverage of the contracts themselves which are merely symptomatic of a desire not to renege down the line.

9.2: Realism and Institutionalism

Attention can now turn specifically to the institutionalist works which contended that comprehensive international agreements are a signal of commitment and that weak states will not conclude agreements without the safeguard either of supranational institutionalization or comprehensive contract. This conventional wisdom incorporates a strange implicit and unquestioned assumption – that the weak have the ability to hold-out for these contractual safeguards. On the other hand, I showed how realists suggest that the weak will avoid such cooperation completely or rather simply ‘suffer what they must’. In this line of thinking broad, comprehensive contracts are not a sign of commitment at all, here the implicit assumption is the exact opposite of the institutionalist one, namely that the weak have no bargaining power whatsoever.

Combining some of these insights, the framework developed here has proposed a more nuanced understanding of the role of power in the design of contracts and consequently the results of this thesis speak to one of the major debates in international relations theory. For

⁴⁴⁹ G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars* (Princeton University Press, 2009); Ikenberry, "Institutions, Strategic Restraint, and the Persistence of American Postwar Order."

realism there are a number of surprising implications of the framework - first that international contracts play an independent role means that in some cases powerful states are willing to tie their hands to reap the rewards available from cooperation. In others they are willing to incur greater up-front costs to reap the benefits of incomplete deals. These contracts then do indeed serve as instruments of states but not because these deals have little independent effect but precisely because of their unique effects shaping subsequent cooperation through limiting the decision space of participants, particularly that of the weaker.

Conversely, the findings of this research confirm certain realist expectations in important respects. For example, realists have long pointed to the role of relative state power in shaping the content of international law, which results in ‘bargaining outcomes that may be pareto improving but are still skewed distributively in favour of powerful states’⁴⁵⁰ However in arguing that institutions ‘matter only at the margins’ and that they ‘have minimal influence on state behaviour’⁴⁵¹ realists have largely ignored and are unable to account for the work that international law is doing and why states continue to attach importance to it.⁴⁵² Whilst preserving these important realists insights then, the framework applies them to help show precisely the work that institutions ‘do’ in furthering state objectives.

Thus though realist insights help to show how power shapes institutions, they are unable to recognize the ways in which institutions shape *the exercise of power* itself, and create both opportunities and vulnerabilities that would not exist in their absence. The framework

⁴⁵⁰ Richard Steinberg, H, "Wanted Dead or Alive Realism in International Law," in *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* ed. Jeffrey L Dunoff and Mark A Pollack (Cambridge: Cambridge University Press, 2013), 156. See also Gruber, *Ruling the World: Power Politics and the Rise of Supranational Institutions*.

⁴⁵¹ Mearsheimer, "The False Promise of International Institutions," 7. in Anand Menon, "Power, Institutions and the Csdp: The Promise of Institutionalist Theory," *JCMS: Journal of Common Market Studies* 49, no. 1 (2011): 86.

⁴⁵² Steinberg, "Wanted Dead or Alive Realism in International Law," 165.

developed here has explored the close interdependence between power and institutions in trade and has shown that when perceived as beneficial, powerful states are willing to tie their hands with institutions in order to lock-in their power advantage when they are declining. On the other hand, powerful rising states will seek a very loose institutional structure which they use to induce the weak to make transaction specific investments. In short, institutions do reflect the distribution of power but are no less important for this (and this does not logically imply that they have no independent effects), because they allow power to be exercised in particular ways that are impossible outside of these institutional contexts.

Liberal institutionalists for their part, are far more sanguine than realists when it comes to the possibilities for interstate cooperation under anarchy.⁴⁵³ Indeed they see institutions as one of the key mechanisms by which states can resolve a number of cooperation problems, including the commitment problem. Institutions can do this because they ‘provide information, reduce transaction costs, make commitments more credible, establish focal points for coordination and in general facilitate the operation of reciprocity.’⁴⁵⁴ For liberals such as Ikenberry institutions can help resolve the commitment problem specifically by reducing the ‘returns to power’ for powerful states – as international institutions can create something of a constitutional order which the powerful use to credibly tie their hands and thereby reassure the weak. In this understanding the powerful must always tie their hands if they wish to reap the full rewards of international cooperation.⁴⁵⁵ The framework developed here crucially qualifies this proposition and shows that the willingness of the powerful to do so is *conditional* upon their power trajectory in relation to their negotiating partners. When they

⁴⁵³ Robert O. Keohane, *After Hegemony : Cooperation and Discord in the World Political Economy* (Princeton, N.J.: Princeton University Press, 1984)., Kenneth W Abbott and Duncan Snidal, "Why States Act through Formal International Organizations," *Journal of conflict resolution* 42, no. 1 (1998)., Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*.

⁴⁵⁴ Keohane and Martin, "The Promise of Institutional Theory," 42.

⁴⁵⁵ Ikenberry, "Institutions, Strategic Restraint, and the Persistence of American Postwar Order."

are declining it is in the interests of all parties that the powerful agree to restrict their behaviour, however when they are rising it is only in the interests of the weak that they do so.

What this all means is that current thinking on the behaviour of powerful states in relation to hand-tying is under specified which can lead to misleading predictions. Indeed, the idea that institutions provide ‘voice opportunities’ to the weak must also be recognized as dependent upon the nature and design of the institution itself. Crucially then the framework developed here suggests that institutionalists exaggerate ‘the degree to which institutions dampen power and underestimate the role of power in shaping their development and workings.’⁴⁵⁶

9.3: Historical Institutionalism

As the preceding discussion highlights, the framework developed here also emphasises the role of temporality both in terms of power dynamics and the downstream consequences of the initial agreement outcome. It thus implicitly combines transaction cost analysis with insights from historical institutionalism, a research agenda which tends to view institutions not merely as coordination devices that allow international actors to achieve a stable cooperative equilibrium but are also ‘embedded in concrete temporal processes’⁴⁵⁷ Historical institutionalism then emphasises the importance of path dependence, that is, the idea that once a particular path is taken, ‘it can become “locked in,” as all the relevant actors adjust their strategies to accommodate the prevailing pattern.’⁴⁵⁸ The framework developed here illustrates an important example of this in terms of how the bargaining dynamics change once an initial agreement is concluded, indeed the idea of the powerful locking-in a favourable equilibrium is at the heart of the framework. These findings particularly show how trade

⁴⁵⁶ Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*, 96.

⁴⁵⁷ Kathleen Thelen, "Historical Institutionalism in Comparative Politics," *Annual review of political science* 2, no. 1 (1999): 369.

⁴⁵⁸ *Ibid.*, 384.

contracts are not value-neutral coordination devices but exacerbate pre-existing inequalities because such institutions reinforce the power position of the already powerful we start to see a feedback process that restricts the options available to all actors and as a result 'decisions at one point in time can restrict future possibilities by sending policy off onto particular tracks'⁴⁵⁹ Thus this framework points to the ways in which it is impossible to understand the bargaining dynamics surrounding the negotiation of trade agreements without an understanding of how the initial agreement limits the decision space of the weak state down the line, particularly through the stimulation of transaction specific investments.

9.4: Transaction Cost Analysis

Transaction cost analysis has been usefully employed elsewhere in international relations by institutionalists in particular and the framework developed here has important implications in this respect also. It has long been recognized that the structure of international relations is not purely anarchical but incorporates important elements of hierarchy.⁴⁶⁰ Relatedly, the economist Ronald Coase was concerned with explaining the emergence of a particular type of hierarchy at the domestic level – firms. For Coase firms emerge when the costs of completing economic transactions through the market exceed costs incurred through vertical integration because the transactions costs of market exchange can be reduced by centralized organization.⁴⁶¹ Conversely where a firm becomes large, the internal transaction costs of the firm can exceed those of market exchange and so there is an upper limit on the size of such firms.⁴⁶² This then is an efficiency story, however, in international relations, the distinction between market transactions and vertical integration is less clear because economic relations

⁴⁵⁹ Margaret Weir, *Politics and Jobs: The Boundaries of Employment Policy in the United States* (Princeton University Press, 1993), 18-19. cited in Thelen, "Historical Institutionalism in Comparative Politics," 394.

⁴⁶⁰ Lake, "Anarchy, Hierarchy, and the Variety of International Relations.", Hedley Bull, *The Anarchical Society*, 3rd ed. (Basingstoke: Palgrave, 2002).

⁴⁶¹ Coase, "The Nature of the Firm."

⁴⁶² Ibid.

between states simultaneously incorporate both elements of anarchy and hierarchy, that is, there is neither perfect market competition nor absolute vertical integration among states.⁴⁶³ Consequently, in order to explain the design of international agreements I have demonstrated the need to go beyond focusing purely on considerations of efficiency and look toward the strategic logic driving design choices. Whilst the analysis demonstrates that the concern to reduce transaction costs certainly exists for states, there is a parallel consideration to improve one's position in relation to others and the present research has demonstrated the ways in which both considerations combine to determine agreement outcomes.

Specifically, the power trajectory of states is crucial in informing their calculations in relation to the downstream positional effects of contracts and, as a result we see narrow contracts emerge even where there is little uncertainty, an inefficient, and therefore surprising outcome for traditional transaction cost analysis. These contracts emerge rather, because the most powerful state believes it will be in a position to take advantage of the structure of the agreement down the line. Conversely the emergence of broad, comprehensive contracts, even under conditions of high uncertainty are made explicable by the framework developed here because I have shown how these agreements can emerge where a declining power wishes to lock-in its advantage. As a result of all of this we can draw an important and counter-intuitive conclusion with respect to transaction cost analysis, namely that under conditions of power divergence more narrow contracts entail greater hierarchy because they entail more control for the powerful, conversely under conditions of power convergence broad contracts lead to greater hierarchical control for powerful but declining actors.

⁴⁶³ Perhaps the closest analogy with firms in international relations are regional integration schemes. For an argument on how such integration reduces transaction costs see Walter Mattli, *The Logic of Regional Integration: Europe and Beyond* (Cambridge University Press, 1999).

Table 9.1: The Strategic Logic of International Contracts

	Narrow Contract	Broad Contract
Powerful, rising state	Greater hierarchical control	Less hierarchical control
Powerful, declining state	Less hierarchical control	Greater hierarchical control

This framework is absolutely crucial then for understanding not only why these agreements emerge but also their downstream strategic and distributional effects. Indeed, though this framework has been developed with respect to the international sphere, there is little reason why we would not see similar dynamics at the domestic level (albeit reduced in degree because of the role of the judiciary in not upholding unfair contracts). In this sense the framework developed here suggests a broader research agenda and suggests these dynamics merit much broader exploration.

9.5: Conclusion: Contracting Horizons

This thesis began with a simple empirical puzzle: why do we see weak states sign under-specified agreements under conditions of extreme power asymmetry despite the risks that dominant theoretical paradigms tell us that this entails? In particular, conventional institutionalist theory had suggested that weak states should only sign agreements if they incorporate specific safeguards – that either contracts must be comprehensive or the participants must transfer residual rights of control to a supranational body.⁴⁶⁴ However it was not clear how or why comprehensive contracts should provide any greater protection than narrow agreements. Without an understanding of the mechanism by which these contracts provide protection it was difficult to answer why we continue to see weak states conclude ambiguous agreements. In summary then, existing theoretical explanations were at best underspecified and at worst misleading. The present research rectified this problem by

⁴⁶⁴ Cooley and Spruyt, *Contracting States: Sovereign Transfers in International Relations*, 36-37.

demonstrating how and why comprehensive contracts provide protection to the weak by facilitating decentralized enforcement on a wider range of behaviours and in a greater variety of circumstances and thus require the surrendering of more rights by the more powerful contracting party. Crucially I have suggested that such deals serve as a signal, not of commitment per se, but rather of the fact that the most powerful actor in the negotiation *lacks the exogenous incentives* to renege on a deal in future.⁴⁶⁵

I have also argued that narrow contracts conversely leave the contracting parties with a greater degree of discretion than do broad deals but the consequences of this are not symmetrical for both parties. Under conditions of extreme power asymmetry then when matters are left to the discretion of parties, this invariably means that disagreements over the operation or amendment of a treaty are resolved with reference to the bargaining power of the parties. I have suggested that this provides the most powerful participant greater opportunities for manipulation due to the lack of any third party able to enforce or interpret contractual ambiguity impartially. Further, I have shown why this contractual discretion might be particularly valuable to a contracting party that expects its bargaining position to improve over time and consequently such parties are willing to incur additional transaction costs in the initial negotiation. The structure of international relations means that settling disputes or amending or extending a contract requires iterated bargaining and consequently delay of that bargain only benefits the actor that expects to be in a more favourable position down the line. These actors are willing to provide up-front payments because they do not discount future gains as highly as their weaker negotiating partners, simply because the probability of securing future gains increases in proportion to the power of the actor. The converse of this logic implies that weak states are willing to accept such deals, despite the potential

⁴⁶⁵ In this sense contracts are a symptom not the cause of a lack of incentive to renege

vulnerabilities this entails, because they value immediate gains more highly than potential gains, in this sense they are more risk averse by virtue of the relative power position.

Next, in developing this simple insight, I speculated that these payments would be targeted in such a way as to encourage the weaker state to make transaction-specific investments, investments which have little value outside the specific trading relationship and thus make it much costlier to switch to other relationships. These concessions thereby serve the dual purpose of encouraging the weak state to sign the deal and to invest in such a way that they are less able to exit in future. There is some, albeit indirect, evidence of this occurring in the trade agreements analysed here, particularly in relation to the rising powers targeting up-front payments toward politically salient agricultural sectors.⁴⁶⁶ Implicitly building on insights of Albert Hirschman's analysis, in the next step of the framework I suggested that once a narrow deal is concluded the stronger is free to manipulate and renegotiate the agreement because of the lack of external enforcement and the reduced ability of the weak to exit the deal.

Following the development of this framework, four cases were selected based on variation on the independent variable – power trajectory. These cases illustrated the willingness of the rising powers, China and India to offer up-front concessions in order to secure more narrow trade agreements, particularly when negotiating with strategically valuable counterparts such as ASEAN, Pakistan, Nepal and Bhutan. The framework implies that this is because the manipulation of more strategically important counterparts offers greater rewards than comparably unimportant negotiating partners.

The case studies on the status quo powers conversely demonstrated, in line with the predictions of the framework, that the United States and Japan pursue more comprehensive

⁴⁶⁶ See especially China-ASEAN, India-ASEAN, China-Pakistan

agreements in and fail to offer up-front payments to secure their preferences. Indeed, in the case of the United States it has often managed to secure up-front concessions from its weaker negotiating counterparts. The framework explains this behaviour – as relatively declining states the United States and Japan have no incentive to pay up-front costs in order to secure relatively narrow contract because their power trajectory makes it unlikely that they will reap significant rewards from the delay of bargaining to a later date. On the contrary, because their power is likely to decline they are incentivized to conclude as many details as possible up-front in order to lock-in their deteriorating power position. The U.S. case study pointed to one significant outlier in all of the comprehensive agreements signed by these two powers which was that signed between the United States and Israel in 1985, when the U.S. was still possessed of a positive power trajectory. These case studies, along with the direct analysis of agreements signed with common partners such as Singapore, ASEAN, Peru and Chile, confirm the conjectures of the framework. In doing so the present research has challenged existing accounts that suggest that powerful states either must always tie their hands as a signal of commitment or always avoid doing so in order to minimize restraints in the exercise of their power advantage.

In making this contribution my claim has not been that strategic considerations related to the power trajectory of actors are the only important factors shaping contract design, or indeed always the most important. Rather the hope was that this emphasis on strategic factors has redressed an imbalanced tendency to focus purely on questions of efficiency and domestic level factors when it comes to the design of international contracts. This is an important contribution because the simple insight about the relation between power dynamics and contractual strategies developed here can provide a better understanding of cooperation beyond international trade to other substantive issue areas also. For example, the relative power trajectory of the U.S. and Great Britain in the 19th Century may explain why both

countries were able to settle their differences in Central America with a series of surprisingly broad contracts (both in terms of issue coverage and temporal scope).⁴⁶⁷ Here the framework would suggest that a natural equilibrium emerged between the powerful but declining state (Britain) and the relatively weaker but rising state (the United States) over the suitability of a comprehensive contract. As the framework would suggest then, Britain saw its power advantage eroding over time and thus saw a benefit in securing deals that maintained the status quo and thus prevent further U.S. expansion into Central America.⁴⁶⁸ On the other hand, the U.S. for its part saw the advantages of restraining a powerful rival that was possessed of a seemingly insurmountable position near its southern borders.⁴⁶⁹ The framework might also provide insights in to why, in contemporary arms limitation negotiations, the U.S. has sought narrow deals with Russia and has provided a number of concessions up-front to secure these contracts. The U.S. with its significant and growing advantage in nuclear technology is seemingly reluctant to be tied down whilst there is an obvious desire on the part of the Russians to make any agreement as broad and comprehensive as possible.⁴⁷⁰

In addition to this, a broader point may also be made with respect to hegemonic stability theory as the framework points to some new implications for such institutional arrangements. For example, if a hegemon perceives itself to be in relative decline the framework implies that we may well see it insist on far more comprehensive institutional arrangements over time. For a hegemon this would have the advantage of locking-in its advantage in the medium term, but the longer term effects may well lead to systemic sclerosis as the more rigid system becomes increasingly unable to adapt to changing circumstances due to the rigidity of this

⁴⁶⁷ Michael Sampson, "From Competition to Partnership: The Lessons of Anglo-American Cooperation in Central America During the 19th Century.," *International Affairs Review* 23, no. 3 (2015).

⁴⁶⁸ I.D. Travis, *The History of the Clayton-Bulwer Treaty* (Michigan Political Science Association, 1900), 74.

⁴⁶⁹ James J. Barnes, *Private and Confidential: Letters from British Ministers in Washington to the Foreign Secretaries in London, 1844-67*, ed. Patience P. Barnes (London: Associated University Presses, 1993), 48.

⁴⁷⁰ Woolf, *Nuclear Arms Control: The Strategic Offensive Reductions Treaty.*, Downs, Rocke, and Barsoom, "Is the Good News About Compliance Good News About Cooperation?."

new institutional structure. The framework might suggest then that argument of institutionalists that hegemonic order can outlive the hegemon is likely to be true only in a limited, a fact that will have important consequences not only for the current international order but international stability more generally.⁴⁷¹

This speculative discussion points to the potential for further research into the causes and consequences of international institutional design more broadly, particularly in relation to the important downstream distributional consequences of certain design choices. However, before concluding, it is also appropriate here to consider some potential important objections. Though, following the preceding analysis, it may be accepted that narrow international contracts create particular dangers for the weak and lead to the reinforcement of distributional inequality, one might still ask: how substantively important is the fact that we continue to see such agreements? Indeed, it may be argued that the solution to the original empirical anomaly outlined in the introduction has a far simpler explanation than the one offered here: the weak simply accept these contracts because they have no other choice and, in any case, a cooperative agreement, no matter how precarious, is superior to no agreement simply because of the benefits that it provides to all parties. In this line of thought then, though the weak get a relatively small slice, the agreement means the pie is bigger for everyone and thus the results of the preceding analysis are of a technical rather than substantive nature.

In one sense this argument is correct and not fundamentally in contradiction to the framework developed here, but in a larger sense it is beside the point. Such a superficial analysis, draws a far too limited set of conclusions regarding the power dynamics at play in international affairs. To draw a simple analogy with other types of power relations and distributional inequalities - we might say that the individual sweatshop worker is in a superior financial

⁴⁷¹ Robert O Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press, 2005).

position with his job than without it, it is therefore unsurprising that he accepts such a role despite the risks that this entails for his future welfare. Yet whilst this is strictly true, we are nonetheless concerned with the nature of his position, the broader bargaining structure that compels him to make such choices, and the more general impact that this may have for social stability in the longer term. We therefore not only recognize his weak bargaining power and satisfy ourselves that the analysis is complete, we also concern ourselves with the structural disadvantages that are faced by those in similar positions. In this analogy then the worker is exploited not simply because he loses out in bargaining (i.e. that their situation is merely a reflection of their bargaining power) there is a deeper structure at play which determines the nature of the bargaining process itself. So it is in international relations - we must not ignore the ways in which international cooperative arrangements can exacerbate distributional inequalities, for, as was observed by another, 'there exist between nations relations of exploitation and subjection just as with individuals.'⁴⁷² What then does it mean to say that a weak international actor is exploited?

In domestic law there has tended to be an implicit assumption that contracts protect the weak precisely because such arrangements imply that any disputes are no longer resolved with respect to the bargaining power of the contracting parties but with reference to a neutral third party.⁴⁷³ Such exploitation is usually seen as a sufficient reason for government interference in the freedom of contracts in the sense that the judiciary refuses to uphold a contract that is exploitative, secured under duress, or false pretences.⁴⁷⁴ This literature identifies two specific sub-types of duress 'Ex-ante duress occurs when a party is wrongfully coerced to make a

⁴⁷² Max Sering, *Die Handelspolitik Der Grossmächte Und Die Kriegsflotte* (1900), 32. cited in Hirschman, *National Power and the Structure of Foreign Trade*, 11.

⁴⁷³Ronald M Dworkin, "The Model of Rules," *The University of Chicago Law Review* (1967)., Prosper Weil, "Towards Relative Normativity in International Law," *American Journal of International Law* (1983)., W Michael Reisman, "A Hard Look at Soft Law," (1988). and C.E. Lindblom, *Politics and Markets: The World's Political Economic Systems* (Basic Books, 1977). in Abbott and Snidal, "Hard and Soft Law in International Governance," 447.

⁴⁷⁴ Rick Bigwood, "Contracts by Unfair Advantage: From Exploitation to Transactional Neglect," *Oxford Journal of Legal Studies* 25, no. 1 (2005): 65-66.

contract. [Whilst] ex post duress occurs when a party is wrongfully coerced to modify an existing contract. Contract law applies the same legal standard in both cases: A contract or a modification is unenforceable if a party's consent thereto was obtained by an improper threat that left the party no reasonable alternative but to submit.⁴⁷⁵ In the cases described in the present research we can reasonably identify both types of duress in the bargaining structure of international trade – the weak are unfairly induced to conclude a contract and are then forced to accept subsequent, potentially unfavourable, modifications. Thus, not only does the international system not offer the protections of the domestic level, but the narrow contracts described in the analysis crucially do not facilitate de-centralized enforcement either. In short, there are even fewer legal safeguards for the weak in international affairs than in the domestic realm.

I have suggested then that the specific kinds of exploitation involved in the trade contracts relate to inducements which lead to contracts which unfairly alter the structure of the relationship so that advantage may be taken down the line. This advantage-taking takes the form of extracting a more favourable equilibrium for the powerful than it could otherwise expect at the beginning of negotiations given their relative bargaining power. As a result, the form of these agreements result not from a need to limit the powerful as we would be led to believe.⁴⁷⁶ Rather it is about limitation and exploitation of weak whilst the contracts in fact place no restriction on what the powerful would do in their absence.⁴⁷⁷

It is here that more substantive questions of distribution may begin to be addressed; hitherto the mainstream rationalist literature has tended to adopt an implicit (or sometimes even

⁴⁷⁵ Alan Schwartz and Robert E Scott, "Contract Theory and the Limits of Contract Law," *Yale Law Journal* (2003): 566.

⁴⁷⁶ Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*.

⁴⁷⁷ Abram Chayes and Antonia Handler Chayes, "On Compliance," *International Organization* 47, no. 2 (1993).

explicit) utilitarian normative perspective.⁴⁷⁸ In practical applications this means that in any given system - whether the international system itself or a subset of this – the ‘best’ outcome is that which provides the greatest good for the greatest number of actors within the system. In this line of thought then justice is done when the good of the system as a whole is maximized and very little attention is paid to questions of distribution within it. This then is where traditional realists have erred in dismissing the independent relevance of institutions because in doing so they rendered themselves unable to explore these important substantive questions in the face of the utilitarian challenge.

As a result, to the extent that distributional issues are addressed in the institutionalist literature at all, it is done as a practical matter, not as a substantive or normative one – in terms of questions such as: how must goods be distributed in order to ensure the maximum degree of cooperation and avoidance of conflict?⁴⁷⁹ In this way of thinking since cooperation and the maximization of efficiency are intrinsically good, the question becomes how this can be sustained. The results of the present analysis suggest we should re-examine these unreflective assumptions about the nature of international cooperation as this would, not only be a normatively productive thing to do, but also such an uncritical approach to cooperation has meant that important strategic dynamics have been neglected or ignored and our understanding of international interactions are all the poorer for this.

As a simple illustration, we can take the institutionalist employment of the concept of exploitation which has not thus far received sufficient attention, particularly by those within the rationalist tradition within which the present research is situated. Indeed, exploitation, if employed at all, is used only in the narrowest sense, referring to the reward received by a

⁴⁷⁸ Jack S Levy, "Prospect Theory, Rational Choice, and International Relations," *International Studies Quarterly* 41, no. 1 (1997)., Keohane, *After Hegemony : Cooperation and Discord in the World Political Economy.*, Koremenos, Lipson, and Snidal, "The Rational Design of International Institutions.", Rosendorff and Milner, "The Optimal Design of International Trade Institutions: Uncertainty and Escape."

⁴⁷⁹ Koremenos, Lipson, and Snidal, "The Rational Design of International Institutions."

player that reneges on a cooperative arrangement. In renegeing it receives an exploitation payoff, - a payoff at the expense of its cooperating partners, which is greater than that derived from the continuation of cooperation. This simplicity is useful in isolating particular bargaining dynamics but has less utility for empirical and substantive applications. Therefore, in order to broaden our understanding of international contracting dynamics we must incorporate a richer understanding of exploitation that allows us to observe the bargaining structure and power dynamics that exacerbate international distributional inequalities.

Thus the problematic elements of the conventional narrative with which this thesis began are important to emphasise for substantive rather than merely technical reasons. The conventional institutionalist story that, first, comprehensive contracts protect the weak, and second, that the weak have the ability to hold-out until afforded this protection, is just too convenient a tale which, the new framework implies, serves the interests of the powerful by ignoring the strategic dynamics shaping design choices and the subsequent distributional consequences that flow from them. For their part realists, though possessed of the conceptual tools with which to challenge such a story have largely failed to do so because of their general dismissal of the role of institutions.⁴⁸⁰ If maintained, this superficial understanding of international contracts will mean that our picture of international cooperation will remain theoretically, normatively, and substantively barren. By developing a more sophisticated understanding of the strategic logic driving international agreement design it is hoped that the present research will contribute to the avoidance of such an outcome.

⁴⁸⁰ Joseph Grieco, Robert Powell, and Duncan Snidal, "The Relative-Gains Problem for International Cooperation," *American Political Science Review* 87, no. 03 (1993)., Stephen Krasner, "Global Communications and National Power: Life on the Pareto Frontier," *World politics* 43, no. 03 (1991).

Appendix

Appendix 1: Continent of International Law Data combined with Relative GDP Data

Agreement	Country1	Country2	GDP Country1(1990 GK\$)	GDP Country2 (1990 GK\$)	Difference	Agreement Precision
Exchange of notes constituting an agreement concerning grain to be supplied by the Government of the United Kingdom of Great Britain to the Government of Mali within the framework of the Cereals Food Aid Programme of the European Economic Community	UK	Mali	665,984	3,831	662,153	Somewhat
Agricultural Commodities Agreement under Title I of the Agricultural Trade Development and Assistance Act, as amended (with exchange of notes).	US	China	2,046,727	441,694	1,605,033	Precise
Agreement relating to the transfer of agricultural commodities.	US	Mozambique	3,868,829	14,055	3,854,774	Precise
Agricultural Commodities Agreement under Title I of the Agricultural Trade Development and Assistance	US	Israel	1,878,063	7,761	1,870,302	Precise

Act (with agreed minute and memorandum of Understanding).						
Agreement for sales of agricultural commodities	US	India	3,701,163	551,402	3,149,761	Precise
Agreement for sales of agricultural commodities.	US	Dominican Republic	2,983,081	5,628	2,977,453	Somewhat
Agreement for the sale of agricultural commodities (with minutes of negotiations of 20 March 1978).	US	Lebanon	4,089,548	11,539	4,078,009	Somewhat
Exchange of notes constituting an agreement concerning trade in cotton textiles (with annex).	US	Mexico	2,847,549	188,258	2,659,291	Precise
Agreement for sales of agricultural commodities.	US	Vietnam	3,346,554	35,815	3,310,739	Somewhat
Agreement concerning economic, scientific and technical co-operation in the field of sugar production and sugar by-products (with additional note).	Mexico	Cuba	398,788	26,165	372,623	Somewhat
Exchange of notes constituting an interim agreement relating to the	US	Japan	1,688,804	229,151	1,459,653	Somewhat

purchase of surplus agricultural commodities.						
Supplementary Agreement for sales of agricultural commodities.	US	Vietnam	2,983,081	28,329	2,954,752	Precise
Exchange of notes (with annex) constituting an agreement regarding the changes which the Government of the United Kingdom propose to introduce in their production and trade policies relating to cereals.	UK	Argentina	516,584	130,074	386,510	Somewhat
Agreement for sales of agricultural commodities.	US	Paraguay	3,081,900	4,636	3,077,264	Somewhat
Agreement for sales of agricultural commodities.	US	Egypt	3,526,724	47,680	3,479,044	Somewhat
Agreement on the prevention of accidental nuclear war.	USSR	UK	1,673,159	695,699	977,460	Somewhat
Interim Agreement on certain measures with respect to the limitation of strategic offensive arms.	USSR	US	1,395,732	3,346,554	-1,950,822	Precise
Agreement concerning financial co-operation—Refuse Disposal in the Freetown	Germany	Sierra Leone	1,105,099	3,721	1,101,378	Somewhat

Metropolitan Area.						
Agreement on co-operation in the field of environmental protection.	GDR	Sweden	993,132	121,891	871,241	Somewhat
Agreement on co-operation in the field of environmental protection (with agreed minutes).	US	Japan	3,516,825	1,265,661	2,251,164	Somewhat
Agreement concerning the protection of frontier forests against fire.	Argentina	Chile	122,809	33,941	88,868	Somewhat
Exchange of letters constituting an agreement concerning the free passage of salmon in Vanern Lake.	Sweden	Norway	99,919	38,122	61,797	Precise
Agreement for the protection of migratory birds and birds in danger of extinction and their environment.	Japan	Australia	1,227,706	176,586	1,051,120	Vague
Memorandum of understanding on cooperation in earth sciences and environmental studies.	US	UK	4,228,647	740,370	3,488,277	Somewhat
Agreement for plant protection--Sudan quelea bird research project.	US	Sudan	3,868,829	19,932	3,848,897	Somewhat
Agreement concerning co-operation in the	Austria	Hungary	51,567	42,056	9,511	Vague

matter of plant protection.						
Agreement for cooperation relating to the marine environment.	Canada	Denmark	409,246	81,656	327,590	Somewhat
Agreement on co-operation in the field of environmental protection.	USSR	UK	1,556,984	666,755	890,229	Vague
Exchange of notes constituting an agreement concerning land use and soil conservation in the eastern Amazon region.	Germany	Brazil	1,092,615	587,289	505,326	Somewhat
Agreement on plant protection and phytosanitary quarantine.	United Arab Republic	Bulgaria	4,147	34,067	-29,920	Somewhat
Agreement concerning the protection of the Sound Oresund from pollution.	Sweden	Denmark	118,212	69,379	48,833	Somewhat
Exchange of notes constituting an agreement on the project Soil management and conservation in East Amazonia.	Germany	Brazil	1,150,951	625,438	525,513	Precise
Agreement concerning financial co-operation on the Lake Volta Transport System.	Germany	Ghana	1,105,099	12,747	1,092,352	Somewhat
Agreement relating to the purchase by Poland of	US	Poland	1,305,357	67,788	1,237,569	Somewhat

surplus property prior to January 1, 1948.						
Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.	Italy	Australia	749,233	218,512	530,721	Precise
Exchange of notes constituting an agreement concerning the delivery of a linear accelerator to the Cancer Institute.	India	Denmark	544,683	68,921	475,762	Precise
Agreement concerning financial co-operation.	Germany	Central African Republic	1,150,951	1,803	1,149,148	Somewhat
Agreement concerning financial co-operation.	Germany	Indonesia	1,099,799	283,922	815,877	Somewhat
Agreement concerning financial co-operation.	Germany	Niger	1,050,404	4,394	1,046,010	Precise
Agreement for financing certain educational exchange programs.	US	Ecuador	1,843,455	8,373	1,835,082	Precise
Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.	Japan	United Arab Republic	813,984	5,037	808,947	Precise
Agreement Concerning	Germany	Thailand	1,109,276	127,211	982,065	Somewhat

Financial co-operation.						
Agreement concerning the compensation of Netherlands interests.	Netherlands	Egypt	531,385	43,861	487,524	Somewhat
Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with protocol).	Czechoslovakia	Norway	118,488	58,690	59,798	Precise
Convention between Her Britannic Majesty in respect of the United Kingdom of Great Britain and Northern Ireland and His Majesty the King of the Belgians for the avoidance of double taxation and the prevention of fiscal evasion with respect to t	UK	Belgium	371,646	51,071	320,575	Precise
Reciprocal Trade Agreement between the United States of America and Mexico	US	Mexico	1,318,809	43,754	1,275,055	Somewhat
Agreement concerning financial co-operation.	Germany	Bangladesh	1,202,151	60,011	1,142,140	Somewhat
Fran-Belgian Agreement on passenger traffic.	France	Belgium	102,154	36,132	66,022	Precise

Agreement on the fundamental rights of nationals.	France	Congo	704,012	2,947	701,065	Somewhat
Convention of establishment.	France	Mali	756,545	4,648	751,897	Somewhat
Convention concerning the mutual promotion and protection of investments.	France	Syrian Arab Republic	756,545	45,254	711,291	Somewhat
Treaty concerning the promotion and reciprocal protection of capital investment (Cotonou on 29 June 1978)	Germany	Benin	1,050,404	3,301	1,047,103	Somewhat
Exchange of notes constituting an agreement relating to the guaranty of private investments.	US	Nicaragua	1,997,061	2,920	1,994,141	Somewhat
Exchange of letters constituting an agreement relating to investment guaranties.	US	Colombia	2,220,732	44,120	2,176,612	Precise
Agreement concerning financial assistance	Germany	UK	952,571	666,755	285,816	Somewhat
Agreement for the promotion and protection of investments.	UK	Bangladesh	728,224	48,239	679,985	Somewhat
Agreement on the mutual protection of investments (with exchange of notes).	China	Sweden	1,186,387	125,508	1,060,879	Somewhat
Convention on	France	Mauritius	683,965	3,169	680,796	Somewhat

the protection of investments						
Exchange of notes constituting an agreement relating to the guaranty of private investments.	US	Liberia	2,046,727	1,297	2,045,430	Somewhat
Agreement for the promotion and protection of investments.	UK	Egypt	665,984	52,501	613,483	Somewhat
Agreement on reciprocal promotion and protection of investments.	France	Equatorial Guinea	842,787	403	842,384	Precise
Foreign Investment Insurance Agreement.	Canada	Senegal	392,561	7,590	384,971	Somewhat
Exchange of notes constituting an agreement relating to investment guaranties.	US	Zambia	2,778,086	4,007	2,774,079	Vague
Exchange of notes constituting an agreement relating to investment guaranties.	US	Cameroon	2,847,549	5,736	2,841,813	Precise
Agreement on the mutual promotion and guarantee of investments.	Romania	Denmark	91,517	78,010	13,507	Somewhat
Agreement on the mutual promotion and protection of investments (with exchange of letters)	France	Haiti	865,172	6,256	858,916	Somewhat
Convention concerning the	Netherlands	Tunisia	105,686	6,806	98,880	Vague

encouragement of capital investment and the protection of property						
Agreement on processing and protection of investments (with exchanges of letters)	France	Panama	842,787	10,939	831,848	Somewhat
Exchange of notes constituting an agreement relating to Canadian investments in the Kingdom of Thailand (with related letters).	Canada	Thailand	409,246	141,504	267,742	Somewhat
Agreement concerning the encouragement and reciprocal protection of investments.	Denmark	Sri Lanka	88,897	35,381	53,516	Somewhat
Exchange of notes constituting an agreement relating to guarantees authorized by Section 111 (b) (3) of the Economic Cooperation Act of 1948, as amended.	US	China	1,625,245	305,854	1,319,391	Precise
Agreement for the promotion and protection of investments	UK	Panama	755,779	11,013	744,766	Somewhat
Agreement concerning financial co-operation.	Germany	Somalia	1,119,394	6,098	1,113,296	Somewhat
Exchange of notes constituting an	UK	Belgium	574,775	90,293	484,482	Precise

agreement regarding the guarantee by the Government of the United Kingdom and the maintenance of the minimum sterling proportion by Ireland.						
Exchange of Notes and Monetary Agreement between the Netherlands and France	UK	Netherlands	347,035	24,880	322,155	Precise
Monetary Agreement between the Government of Belgium and the Government of the United Kingdom of Great Britain and Northern Ireland	UK	Belgium	327,044	40,563	286,481	Somewhat
Agreement between Thailand and Japan concerning settlement of Special Yen Problem	Japan	Thailand	248,855	22,162	226,693	Precise
Agreement concerning financial co-operation.	Germany	Nepal	742,299	9,563	732,736	Somewhat
Exchange of letters constituting an agreement concerning the Guarantee by the Government of the United Kingdom and the	UK	Sierra Leone	574,775	2,791	571,984	Precise

maintenance of the Minimum of Sterling Proportion by the Government of Sierra Leone.						
Exchange of notes constituting an agreement concerning the Guarantee by the Government of the United Kingdom and the maintenance of the Minimum Sterling Proportion by the Government of Libya.	UK	Libya	574,775	15,395	559,380	Precise
Exchange of notes constituting an agreement relating to military assistance: Eligibility requirements pursuant to the Foreign Assistance Act of 1973 and the International Security Assistance and Arms Export Control Act of 1976.	US	Greece	3,701,163	74,296	3,626,867	Somewhat
Exchange of notes constituting an agreement relating to military assistance: Eligibility requirements pursuant to the International	US	Indonesia	3,701,163	213,675	3,487,488	Precise

Security Assistance and Arms Export Control Act of 1976.						
Exchange of notes constituting an agreement relating to mutual security.	US	Italy	1,625,245	190,541	1,434,704	Somewhat
Exchange of notes constituting an agreement relating to mutual security.	US	Greece	1,566,784	15,765	1,551,019	Somewhat
Exchange of letters constituting an agreement on a defense security arrangement.	Netherlands	Australia	196,392	190,653	5,739	Precise
Exchange of notes constituting an agreement relating to assurances under the Mutual Security Act of 1951.	US	Portugal	1,625,245	18,428	1,606,817	Somewhat
Exchange of notes constituting an agreement relating to mutual security.	US	Turkey	1,625,245	43,295	1,581,950	Somewhat
US and Kuwait: Technical Security Arrangement concerning special security measures (16314)	US	Kuwait	3,701,163	19,466	3,681,697	Precise
Security Agreement concerning certain exchanges of	France	Sweden	683,965	114,064	569,901	Somewhat

secret information.						
Exchange of notes constituting an agreement relating to mutual security.	US	Korea	1,625,245	17,497	1,607,748	Vague
Exchange of notes constituting an agreement relating to military assistance: eligibility requirements pursuant to the International Security Assistance and Arms Export Control Act of 1976.	US	Malaysia	3,868,829	39,513	3,829,316	Precise
Exchange of notes constituting an agreement relating to mutual security.	US	Belgium	1,625,245	49,486	1,575,759	Somewhat
Co-operation Agreement on civil defense and security.	France	Morocco	822,116	43,054	779,062	Somewhat

Source⁴⁸¹

⁴⁸¹ Agreement data adapted from Koremenos, "The Continent of International Law." Combined with Data from World Bank, "Gdp at Market Prices (Current Us\$)."

Appendix 2: Measuring Contractual Flexibility: Robustness Measure
*Summary Table for Rising Powers Bilateral Agreements*⁴⁸²

Agreement	Goods Liberalization ⁴⁸³	Coverage of Service Sectors	Coverage of Singapore Issues	Overall Score ⁴⁸⁴
PRC-ASEAN(G)	WTO Compliant	None	Investment only	1.25
PRC-ASEAN(S)	None	Comprehensive	Investment Only	1.25
PRC-Pakistan	Partial	Partial	Investment only	1.25
PRC-Hong Kong	WTO Compliant	Partial	None	1.50
PRC-Macao	WTO Compliant	Partial	None	1.50
PRC-Chile	WTO Compliant	Partial	Trade Facilitation	1.75
PRC-NZ	WTO Compliant	Partial	Partial	2.00
PRC-Peru	WTO Compliant	Partial	Partial	2.00
PRC-Singapore	WTO Compliant	Comprehensive	Trade Facilitation	2.25
PRC-Thailand	Partial	None	None	0.50
PRC- Costa Rica	WTO Compliant	Partial	Partial	2.00
India-Sri Lanka	WTO Compliant	None	None	1.00
India-ROK	WTO Compliant	Partial*	Govt Procurement	1.75
India-Singapore	WTO Compliant	Comprehensive	Partial	2.50
India-Bhutan	Partial	None	Trade Facilitation	0.75
India-Chile	Partial	None	None	0.50
India-Malaysia	Partial	Partial	Partial	1.50
India-ASEAN	Partial	None	Customs only	0.75
India-Japan	WTO Compliant	Partial	Partial	2.00
India-Nepal	Partial	None	Trade Facilitation	0.75
India-Afghanistan	Partial	None	None	0.50

⁴⁸² Table partially derived from Wignaraja, "Economic Reforms, Regionalism and Exports: Comparing China and India.," 50.

⁴⁸³ Note: Though agreements may be WTO compliant this does not mean that liberalization is on the exact same level, Japan's agreements also only report liberalization by import value, not by percentage of tariff lines.

⁴⁸⁴ *Comprehensiveness score. [Scoring: Compliant = 1, Comprehensive = 1, Partial = .5, One issue = 0.25]*

*Summary Table for Status Quo/Declining Powers Bilateral Agreements*⁴⁸⁵

Agreement	Goods Liberalization	Coverage of Service Sectors	Coverage of Singapore Issues	Overall Score
U.S-Australia	WTO Compliant	Comprehensive	Comprehensive	3.00
U.S-Bahrain	WTO Compliant	Comprehensive	Comprehensive	3.00
U.S-Chile	WTO Compliant	Comprehensive	Comprehensive	3.00
U.S-Israel	WTO Compliant	None	None	1.00
U.S-Jordan	WTO Compliant	Comprehensive	Comprehensive	3.00
U.S-Morocco	WTO Compliant	Comprehensive	Comprehensive	3.00
U.S-Oman	WTO Compliant	Comprehensive	Comprehensive	3.00
U.S-Panama	WTO Compliant	Comprehensive	Comprehensive	3.00
U.S-Peru	WTO Compliant	Comprehensive	Comprehensive	3.00
U.S-Singapore	WTO Compliant	Comprehensive	Comprehensive	3.00
U.S-Colombia	WTO Compliant	Comprehensive	Comprehensive	3.00
U.S-ROK	WTO Compliant	Comprehensive	Comprehensive	3.00
Japan-Chile*	WTO Compliant	Comprehensive	Comprehensive	3.00
Japan-ASEAN*	WTO Compliant	None	Investment only	1.25
Japan-Swiss*	WTO Compliant	Comprehensive	Partial	2.50
Japan-India*	WTO Compliant	Partial	Partial	2.00
Japan-Peru*	WTO Compliant	Partial	Comprehensive	2.50
Japan-Mexico*	WTO Compliant	Partial	Comprehensive	2.50
Japan-Singapore*	WTO Compliant	Partial	Comprehensive	2.50
Japan-Malaysia*	WTO Compliant	Partial	Partial	2.00
Japan-Indonesia*	WTO Compliant	Partial	Comprehensive	2.5
Japan-Philippines*	WTO Compliant	Partial	Comprehensive	2.5
Japan-Thailand*	WTO Compliant	Partial	Comprehensive	2.5
Japan-Vietnam	Partial	Partial	Comprehensive	2.0
Japan-Brunei*	WTO Compliant	Partial	Partial	2.0

⁴⁸⁵ Source: elaboration from relevant WTO Factual abstracts and presentations, USTR, MOFA.

* Agricultural exceptions – also only compliant by volume of trade not tariff line

** No trade facilitation

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