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Enforcing Conditionality: Human Rights and Preferential Trade Agreements

By

Victoria Ruth Kingsley

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

Political Science

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor David Vogel, Chair

Professor Robert Powell

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Abstract

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by

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Whether human rights can be promoted and promulgated with persuasion or coercion has been much debated in the literature. But coercive measures, such as economic sanctions, for human rights purposes are often viewed with skepticism because of their inconsistent use and application. Against this backdrop, some economically dominant states have been increasingly attaching social clauses to trade agreements. These clauses stipulate standards that must be upheld if the beneficiary state is to continue to receive preferential market access.

In this dissertation I examine and quantitatively evaluate the operation of so-called hard law enforcement mechanisms. I ask whether the observed pattern of enforcement is consistent with a concern for human rights violations or do other factors, such as economic or strategic relationships, offer a better explanation. In particular, I focus on the operation of the US Generalized System of Preferences because it is one of the longest running trade agreements with a clearly articulated formal annual review and suspension process should a beneficiary state violate standards. Moreover, the set of eligible beneficiary countries is geographically broad.

I collect information from original source documents produced by the US Trade Representative in order to compile a unique dataset detailing enforcement proceedings over the last twenty-five years. This extensive dataset provides numerous cases of enforcement (and non-enforcement) from which I draw inferences about the factors influencing the US decision to punish violating states and thereby assess the institutional credibility of the GSP.

The extant literature on the operation of the US GSP has been qualitative in nature. This dissertation contributes by offering the first quantitative cross-country empirical assessment. I offer formal inferences, as opposed to anecdotal evidence, and in doing so I uncover new insights about the review and enforcement process.

While I find that, for the most part, economic and strategic factors are an important part of the explanation for the enforcement pattern, they are not the only determining factors. The level of violations does play a role, albeit a small role at a key juncture in the review process — a juncture that is overlooked and obscured by previous studies. In addition, I find domestic politics also plays a role, in particular, the composition of Congress.

To ISC,
I love you so much too.

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Abbreviations

AGOA	African Growth and Opportunity Act
ATPA	Andean Trade Preference Act
CBI	Caribbean Basin Initiative
CBTPA	Caribbean Basin Trade Partnership Act
FTA	Free Trade Agreement
GSP	Generalized System of Preferences
GSPS	GSP Subcommittee
ILO	International Labor Organization
NAFTA	North American Free Trade Agreement
NAALC	North American Agreement on Labor Cooperation
OPIC	Overseas Private Investment Corporation
PTA	Preferential Trade Agreement
TPA	Trade Promotion Act
TPSC	Trade Policy Staff Committee
USTR	United States Trade Representative

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I could not have written this dissertation without the assistance of several people in gathering petition data. In particular, two people from the Office of the US Trade Representative (who wished to remain anonymous) provided me with access to key documents that enabled me to collect a complete history of petitions; their help was pivotal and I am indebted to them for their generosity. Tameka Cooper at the GSP Information Center also assisted me with retrieving archived documents while I was in Washington, DC. Finally, I would have been lost at the National Archives at College Park, MD were it not for Lynn Goodsell.

My husband's support and patience has never wavered over the years, even when I thought I would never get to this point. And lastly, a special thank you to my daughter. I intended to finish this dissertation before she was born, but things took a bit longer; I am sorry for all the times I had to work instead of painting or reading or building houses.

Chapter 1

Introduction

1.1 Motivation

The promotion of human rights has long been a part of foreign policy. In the nineteenth century Britain embarked on a campaign to eliminate the international slave trade using the Navy, at substantial expense, to enforce a prohibition. In 1930, the US Congress passed the Smoot-Hawley Tariff Act banning the importation of goods manufactured by convict or forced labor — an act that remains in force today. Yet not every violation, even the most severe of abuses is punished: the United States maintains trade concessions to China despite its ongoing human rights abuses;¹ Colombia continues to receive military aid from the United States even though it is in breach of the human rights conditionality clause² attached to the agreement; and the sale of over \$50 million of US armaments to Bahrain looks set to be completed despite congressional concerns over the widespread suppression of anti-government protestors and the “excessive and unnecessary lethal force” used by Bahraini security forces.³ The European Union has similarly been criticized for its inconsistent approach to human rights violations: an interim preferential trade agreement with Turkmenistan has been approved despite the government’s consistently repressive record that has been labeled as “the worst of the worst” by Freedom House.⁴ The EU lifted Uzbekistan’s

¹In 1994, President Clinton backed down on his promise that China would be granted most-favored nation status only if “significant progress” was made in respecting human rights, <http://tech.mit.edu/V114/N27/china.27w.html>. The Obama administration has been equally reluctant to criticize China’s human rights record.

²Roth (2010).

³The sale was originally announced on September 14, 2011 and included humvees and TOW missiles. Following congressional criticisms over the proposed sale, the Obama administration delayed the sale. Congress was subsequently notified that the sale would go ahead but excluding humvees and other weapons that could be used to suppress domestic protesters. See <http://www.reuters.com/article/2012/05/12/us-usa-bahrain-idUSBRE84A11R20120512>.

⁴See “Turkmenistan: Consultations Pose Test of EU’s Resolve,” 7 May 2013 <http://www.eurasianet.org/node/66937>

arms embargo, initiated after the government killed hundred of protests in 2005, despite continuing criticism of the regime with Amnesty International claiming, “the EU has shown its sanctions [against Uzbekistan] lack teeth.”⁵ These are just a few examples illustrating how geopolitical considerations and economic issues can often supersede self-professed human rights concerns.⁶

Against this backdrop some states, particularly economically dominant states, such as the United States and the European Union, have recently formally institutionalized a link between trade and human rights through the signing of preferential trade agreements (PTAs). These PTAs move beyond a statute conditioning military or foreign aid on the observance of human rights norms. In the event of a breach they mandate suspension and require annual compliance assessments with some going so far as to invite public petitions and participation in the event of a transgression. This development would appear to represent a significantly increased effort to ameliorate human rights abuses because it offers an enforcement mechanism that is missing at the international level. But as the examples mentioned earlier demonstrate, human rights promotion is only one aspect of foreign policy and any instrument, such as a PTA, cannot be considered in isolation from a state’s broader foreign policy goals. It is therefore reasonable to question whether the operation of these PTAs and the embedded conditionality clause is subject to political vagaries. In light of this I ask what conditions determine a state’s decision to withhold trade benefits granted under a PTA because a beneficiary state has violated the human rights conditionality clause. Is there evidence that the rhetoric of human rights concerns corresponds to state actions? The inconsistent application of the conditionality clause has meaningful implications for the international human rights regime because, as Brilmayer notes, “norms are devalued by going unused — when norms are inconsistently followed, they simply lose their character as norms.”⁷

1.2 Outline of Dissertation

This dissertation proceeds as follows. In Chapter 2 I discuss human rights and the challenges posed by the lack of enforcement at the international level. I then describe the operation of preferential trade agreements (PTAs) and the unilateral decision of economically powerful states to link trade and human rights standards and how trade is leveraged to further normative aims. I also address the difference between so-called “hard” and “soft” PTAs and the effect this difference has on expectations for repressive state behavior.

⁵There have been some suggestions that Germany has pushed for the lifting of sanctions because it uses military bases in Uzbekistan as part of its Afghani operations. See “Europe Ends Its Attempt to Penalize Uzbekistan” http://www.nytimes.com/2009/10/28/world/asia/28uzbek.html?_r=0

⁶Stork (1999)

⁷Brilmayer (1991, p.338).

Chapter 3 is a detailed overview of the legislation enacted by the United States that contains some provision for human rights standards. I outline the evolution of this approach to foreign relations and how the multiplicity of statutes overlap. My focus then shifts to the Generalized System of Preferences (GSP) and why this particular piece of legislation merits an in-depth evaluation. I also discuss a pivotal concept of this dissertation, namely what it means to say the GSP is a coercive instrument and the role credibility plays in the empirical evaluation conducted.

A literature review is presented in Chapter 4. In particular, I consider previous work evaluating the GSP program. The general conclusion reached by this literature is that the conditionality clause is applied inconsistently. However, this conclusion is based exclusively on a qualitative approach, with most authors considering a single case study. I argue that while this approach can provide detail and nuance involved in a particular petition and the interaction between the beneficiary state's economic and political situation and US foreign policy at a given time, it is not best suited for evaluating the GSP scheme as a whole. The quantitative approach adopted in this dissertation allows for an evaluation of the application of the conditionality clause across all eligible countries over the last twenty-five years of operation. This approach and assessment is unique amongst the literature and a key contribution of my dissertation.

Chapter 4 also presents a brief discussion of the international relations theory literature. One of the motivations of this study is to move beyond a case-study approach and attempt to ground any evaluation of the GSP scheme within a theoretical framework. I therefore turn to the IR literature and use this to derive the testable hypotheses that form the core of the empirical section. This literature suggests explanations for state behavior, in particular a state's decision to sanction another state for a normative cause like human rights. I conclude the chapter with a summary table of the hypotheses that will be assessed.

The empirical section is found in Chapter 5. I first present the variables used in my model, discussing in detail how I operationalized the theoretical concepts stemming from my hypotheses and the advantages and disadvantages of the data sources available. A contribution of this dissertation is the unique dataset that I compiled from original source data obtained from the USTR. No other study has attempted to gather and collect comprehensive data on the outcome of the enforcement of the conditionality clause with a view to analyzing it quantitatively. I then discuss the particular methodological challenges faced in modeling the GSP annual review process. Not only is the timing of any decision taken crucially important for matching up the corresponding independent variable observations, the review process is a multi-step process and the model I use had to take this into account. I present my results in two sections. I initially discuss the impact of each explanatory variable on a univariate basis so that I can parse out the causality at work in terms of the individual hypotheses and test alternative data sources when an option existed. I conclude this chapter with the fully-specified multivariate model and a discussion of some of the issues aris-

ing from the observed positive relationship between regime type and respect for labor rights; I conclude by offering a solution to this problem. My concluding remarks are found in Chapter 6 including how this dissertation contributes to the literature and the broader implications of my findings.

1.3 Brief Overview of Results

Evaluating the history and operation of the GSP conditionality clause is not as clear cut as previous qualitative work claims. My quantitative analysis finds that labor rights are not determinative of enforcement proceedings, but neither are they entirely irrelevant. Geopolitical concerns are an important explanation of the observed pattern of enforcement, but US domestic politics play a role — in particular, the composition of Congress — at a key point overlooked by previous studies. In failing to take into account the complexity of the review process, the literature has obscured openings where domestic politics and labor rights can make a difference and push the United States toward using its trade leverage to further the respect of labor rights regardless of a state's economic and strategic importance.

Chapter 2

Human Rights and Compliance

2.1 The Problem of Enforcement

Human rights became a concern of international politics after World War II with the establishment of the United Nations. The UN Charter affirms that the “unilateral respect for, and observation of human rights” is an obligation of all members and subsequent documents formed the basis of the nascent international human rights regime, by creating binding legal obligations covering issues such as civil and political rights, labor rights, living conditions and the right to education. Since then, numerous regional treaties and conventions have been signed, promulgating and refining the norms contained in the corpus of international human rights. Despite the widespread acceptance of these norms, as evidenced by the near-universal ratification of key treaties¹, reports of human rights abuses have continued unabated.²

State compliance with human rights treaty obligations has been much debated and examined, although quantitative studies suggest a persistent lack of compliance. Keith (1999) tested for the effect of the ICCPR and found no evidence that it changed state behavior. Hathaway (2002) considered the impact of a greater number of treaties covering multiple norms (including genocide, civil liberties, and fair trials), but similarly found state behavior unchanged after treaty ratification, particularly for non-democracies.³ Neumayer (2005) refined this by uncovering a mediating role for civil

¹The number of parties bound to core human rights treaties is given in parentheses: International Covenant on Civil and Political Rights — ICCPR (168); International Covenant on Economic, Social and Cultural Rights — ICESCR (162); Convention on Elimination of All Forms of Racial Discrimination — CERD (177); Convention on Elimination of all Forms of Discrimination Against Women — CEDAW (188); Convention on the Rights of the Child — CRC (194); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment — CAT (155); Convention on the Prevention and Punishment of the Crime of Genocide (146). Information available at the UN Treaty Collection Database <https://treaties.un.org/> accessed August 11, 2014.

²See, for example, annual reports published by Human Rights Watch or Amnesty International amongst others.

³In fact, Hathaway (2002) finds treaty ratification can lead to worsening human rights practices

society; through a strong civil society, governments can be held accountable for the obligations they agree to undertake when ratifying a treaty, and so the absence of civil society limits the extent of a treaty's impact on state behavior. This finding is echoed by Simmons (2009), who finds that ratification of human rights treaties provides "ammunition" for domestic groups that in turn legitimizes their demands for government compliance, "[t]reaties matter because they potentially change the ideas that inspire political organization".⁴ The enforcement structure of the human rights regime is inherently weak, limited to monitoring, reporting, and the "naming and shaming" of violators. Enforcement, because of the anarchic setting of international relations is often seen as a fundamental problem of international law more generally, but it is particularly acute in the realm of human rights. Unlike trade agreements, there is no case for reciprocity or the long shadow of the future to ensure cooperation between states. Indeed it is not clear the issue of human rights compliance is one of cooperation, as traditionally understood in the literature since there are no externalities for one state if another state in the system chooses to abuse its citizens and there are no mutual gains to be had from compliance.

In response to the lack of compliance with international treaties and the weak enforcement mechanism of human rights treaties, some states have taken it upon themselves to unilaterally punish violators, engaging in a range of actions to pressure for norm compliance. Economic sanctions and other economic instruments such as foreign aid and lending have been frequently utilized by states to foster human rights compliance. Sanctions were leveled against Idi Amin's regime in Uganda in 1978 by the United States⁵ because of gross human rights violations; similarly South Africa's Apartheid regime⁶ was targeted during the 1980s with the US Congress enacting the Comprehensive Anti-Apartheid Act (CAAA), overriding President Reagan's veto in doing so. In their comprehensive study of economic sanctions Hufbauer et al. (2009) detail 109 sanctions episodes in which the United States was a party, and 27 of these were for human rights purposes, not including cases of restoring democracy or destabilizing oppressive governments. However, violations are routinely ignored and because the costs incurred from using sanctions are often high, they "will be intermittent

which she argues is due to weak monitoring and a failure to ensure signatories keep their promise to alter behavior in conformity with the treaty.

⁴Simmons (2009, p.144).

⁵The initial congressional impetus for the eventual trade embargo came from Donald Pease (D-OH) who was frustrated by his inability to persuade US coffee companies to voluntarily cease purchasing Ugandan coffee. Coffee represented nearly all of Uganda's exports and the US share of this was over 40% in 1977. See Nurnberger (1982) for details of US trade sanctions against Uganda.

⁶The case of South Africa has often been cited as an example of how sanctions can be effective, with leading activists, such as Desmond Tutu and Nelson Mandela acknowledging the positive impact sanctions had on destabilizing the regime. See "Case Study of South Africa Sanctions: cases 62-2 and 85-1" conducted by the Petersen Institute for International Economics available at <http://www.piie.com/publications/papers/paper.cfm?ResearchID=1821> (accessed 29-June-2014). Levy (1999) offers an alternative viewpoint.

and ad-hoc, responding . . . to political exigencies in the sanctioning states”.⁷ Given the inconsistent record of using economic sanctions for human rights purposes, the existence of PTAs mandating sanctions is even more perplexing.⁸ Sanctions, such as those authorized under the International Emergency Economic Powers Act (IEEPA) are ad-hoc by design; such statutes permit action against a human rights violator, but do not require it — the President has to choose if, and when, to act. Such a mechanism allows a state to use human rights as a cover for geopolitical concerns when expedient, leading to claims that any human rights discussion is merely “cheap talk.” PTAs, on the other hand, create an institutional structure that continually monitors and assesses compliance with the statute’s conditionality clause in order to provide an incentive for states to adopt human rights norms and resist any urge to deviate and weaken standards after joining. In the terminology of Simmons (2009), PTAs institutionalize issue linkage between trade and human rights and therefore have the potential to approximate reciprocity-like consequences.

2.1.1 Preferential Trade Agreements and Repressive State Behavior

PTAs vary in institutional design and Hafner-Burton (2005) examines which form of institutional structure is more effective at changing a repressive state’s ex-post behavior: coercion or persuasion. She compares state practice under preferential trade agreements (PTAs) with hard standards (material benefits such as market access are explicitly tied to behavior) to practice under PTAs with soft standards (benefits are unconditional). She hypothesizes that soft PTAs operate in a similar manner to human rights agreements, at least empirically with respect to their expected impact on repressive state behavior. This is because both institutional forms are deficient in enforcement and therefore contain no mechanism for punishing defection.⁹ Persuasion works through changing preferences for repressive behavior, while coercion works by changing the cost of behaving in a certain way — the threat of punishment (in this case withdrawal of duty-free market access) can bring about behavior consistent with preferences for human rights compliance, without actually requiring a change in the preferences held by elites. Political elites face a trade-off between preferences for liberalization and preferences for repression, “PTAs . . . may increase the costs of repression for any domestic actors that favor liberalization . . . [but] are likely to be

⁷Chayes & Chayes (1998, p.2). Chayes & Chayes (1998) instead argue states comply with international law because of the legal norm of “pacta sunt servanda”. Non-compliance can be explained by a state’s misunderstanding of the terms of agreement or because it lacks the resources to comply.

⁸Throughout I use the term “sanctions” to refer to any action intended to punish another state because it has transgressed. In other words, to use Carter (1988)’s definition, sanctions are “coercive economic measures taken against one or more countries to force a change in policies, or at least demonstrate a country’s opinion about the other’s policies.” (p.4)

⁹Aside from reporting and publicly “naming and shaming.”

much less effective in influencing armed opposition groups or governments . . . where preferences for liberalization are low.”¹⁰

The central question of Hafner-Burton (2005) is whether utilizing trade-based conditionality can increase state compliance with human rights obligations. For Hafner-Burton, “hard laws are essential” in the area of human rights and hard PTAs use coercion to change “repressive actors’ costs and benefits of actualizing their preferences for repression.”¹¹ In an empirical analysis from 1976 to 2001 she finds that states belonging to a hard PTA¹² are “systematically more likely to decrease repression,” while “state commitments to comply with human rights agreements and soft PTAs do not systematically lead to decreasing repressive behavior.”¹³ In contrast to a constructivist argument or the legal literature on state compliance (e.g., Chayes & Chayes (1998)), Hafner-Burton argues her results suggest, “some form of coercion may often be essential to bringing about better practices.”¹⁴

Hafner-Burton (2009) elaborates on the role of PTAs and human rights, examining the causes of the regulatory shift in human rights through the linking of trade and norms and the differences between the structural design of European and US PTAs. She follows the unfolding political process of PTA formation and the eventual inclusion of human rights conditionality into trade agreements. In her account this conditionality is not simply a result of answering the demands of human rights advocates or protectionist calls from labor unions. Rather, it is the institutions in which policymakers operate that matters: human rights standards emerge in response to “domestic political battles,” not necessarily as an attempt to strengthen or promote the norms themselves. She tells a story of a Baptist-Bootlegger coalition in which the human rights paradigm serves as justification for a given policy outcome (a trade agreement or concession); while some policymakers “wanted to win public support, some wanted to save people’s lives, and some wanted to foster more trade.”¹⁵ She further elaborates on Hafner-Burton (2005) arguing that the regulations that are emerging are not just “cheap talk” because “countries that belong to European¹⁶

¹⁰Hafner-Burton (2005, p.607).

¹¹Hafner-Burton (2005, p. 607).

¹²Hafner-Burton (2004) tests for the endogeneity of state membership of varying institutions, that is whether violators only join agreements with soft standards, hence potentially distorting the impact of hard PTAs on repressive behavior. She finds that there is no systematic difference — violators seemingly join hard PTAs almost as often as protectors.

¹³Hafner-Burton (2005, p.619).

¹⁴Hafner-Burton (2005, p.623).

¹⁵Hafner-Burton (2009, p.174).

¹⁶In this book Hafner-Burton considers only European free trade agreements (FTAs) in the quantitative chapter examining the effectiveness of trade conditionality. US FTAs do not have a sufficient history of operation to be analyzed since the majority of them have only been in force since the mid-2000s. This differs from her original 2005 article that considered both European and US PTAs. The 2008 analysis also seems to focus on FTAs specifically, rather than the larger group of PTAs (FTAs are a subset of PTAs; PTAs refer to unilateral and bilateral trade agreements, in addition to free trade agreements).

PTAs [with hard standards] ... are statistically more likely than countries that do not belong to improve their human rights practice over time.”¹⁷ She reiterates the claim of Hafner-Burton (2005) stating, “these regulations demonstrate the capacity to enforce some compliance with human rights norms, and they have proven to be one of the more effective means available for initiating implementation of very basic human rights in some places.”¹⁸

In conclusion, Hafner-Burton’s work strongly suggests that the linking of trade and human rights norms, in the form of trade agreements with conditionality clauses, can offer a forum for individual states to enforce international human rights norms. At the core of her argument is that these agreements, in contrast to human rights treaties like the ICCPR, act coercively to alter a state’s ex-post cost-benefit analysis of using repression.

2.2 Proposed Extension

Hafner-Burton notes that she “proceeds under the working assumption that hard PTAs supply a positive degree of credible threats.”¹⁹ But this assumption deserves further empirical examination and assessment given the controversy surrounding the effectiveness of economic sanctions and claims that any human rights discussion is nothing more than “cheap talk”. Indeed, it would perhaps seem surprising that any government is motivated to enforce such an agreement particularly if it involves economically or strategically important states.²⁰

I start with the findings of Hafner-Burton (2005) and propose an extension in

¹⁷Hafner-Burton (2009, p.162).

¹⁸Hafner-Burton (2009, p.164).

¹⁹Hafner-Burton (2005, p.614, footnote #82).

²⁰The foreign aid literature offers an analogy to unilateral trade benefits. This literature examines the effectiveness of foreign aid to alleviate poverty and whether a state’s human rights rhetoric corresponds to its aid allocation decisions (foreign and military aid). If the human rights discourse is sincere then aid allocation should be positively correlated to a state’s human rights record, yet the general conclusion from the literature is that national interests determine aid allocations. Neumayer (2003) examines OECD donors and finds no consistent pattern, while Bueno De Mesquita et al. (2005) also examine OECD countries and find national security interests and trade levels overrule humanitarian ideals. Blanton (2000) offers a more complex narrative, mapping the process of foreign aid allocations: the decision to give aid is a two-stage process, in which states must initially decide whether to give any aid, and then subsequently must decide the level of aid to give. Blanton finds that human rights matter at the gatekeeping stage (the first stage) but not for the level of aid awarded. Apodaca & Stohl (1999) examines the impact of human rights under different presidents — Reagan then Clinton — and finds that human rights take on a secondary importance to strategic concerns like the presence of US troops in the country. Cingranelli & Richards (1985) stands out as a contrary study in finding that human rights concerns matter for aid distribution to Latin America in 1982. In sum, the foreign aid literature strongly suggests that foreign aid disbursements and allocations are subject to national security interests, and not contingent on a recipient’s human rights abuse, contrary to statutory requirements.

order to understand how PTAs that condition trade benefits on the observance of a set of human rights standards function in practice. In examining the pattern of enforcement and whether transgressors are consistently punished, or at least threatened with punishment, I hope to determine empirically the circumstances affecting a state's decision to withhold trade benefits when faced with human rights abuses.

The focus of this study is on the *credibility* of hard PTAs. In Hafner-Burton (2005) it is hard agreements that are claimed to have a positive impact on state behavior because they can coerce or bribe the recipient. But this requires that the threat to withdraw benefits is credible and the expected cost of sanctions is greater than the cost of complying.²¹ If beneficiaries perceive enforcement is not credible, then there is surely no reason for states to change their repressive behavior in order to reap trade benefits; benefits that were intended to be conditional are in practice unconditional, and there would therefore be no *functional* difference between hard and soft PTAs as defined by Hafner-Burton (2005). Through an empirical analysis of the operation of PTAs I hope to ascertain whether it is possible to distinguish a pattern of enforcement. I ask what factors determine whether a state will respond to a violation and resort to the mandated suspension of benefits — are states guided by the underlying human rights situation or by broader geopolitical concerns?

This study carries on from where Hafner-Burton (2005, 2009) leaves off: she explains the formation and evolution of PTAs to include human rights conditionality clauses and the effect they have on state practice. The next line of inquiry is to ask what the political process of implementation and enforcement is. If these institutions were not created to pursue global norms for their own sake (as Hafner-Burton herself claims), then there is reason to be concerned about the political will to follow through and objectively apply the conditionality clause. If hard PTAs are not actually being implemented as mandated, then it is not clear what it means to say they are effective.²² In mapping out the domestic politics of enforcement, I ask whether these PTAs act as coercive instruments and how they operate within a state's broader foreign policy objectives. Hafner-Burton (2005) considers PTAs instigated by both the United States and the European Union.²³ However, this study will focus solely on

²¹It is important to emphasize that throughout my discussion of credibility and enforcement I assume that coercion is necessary for a change in state behavior. This is a corollary of examining hard PTAs as described by Hafner-Burton (2005) which she claims are necessary to change repressive state behavior. I make no judgment as to the validity of such a claim, nor do I take a stance on the debate over the necessity of coercion versus persuasion for promoting human rights.

²²Examining the effectiveness of hard agreements seems like “putting the cart before the horse.” Again the analogy to the foreign aid literature is illustrative. In general, this literature examines the effectiveness of foreign aid in alleviating poverty and finds it has not reduced poverty levels as intended. Alesina & Dollar (2000) argue this is because foreign aid is not given to alleviate poverty but instead given to secure political and strategic concessions. Consequently, any study evaluating foreign aid from the perspective of reducing poverty is bound to paint a misleading picture of the effectiveness of foreign aid.

²³Only sufficiently large economic states can engage in coercive PTA activity, or rather the state

US activity, partly to narrow the scope, but also because the United States has been a forerunner in linking human rights to economic instruments and consequently has an extensive history of conditionality clauses promoting human rights, thus providing ample data from which to conduct a quantitative analysis and draw inferences.

offering PTA benefits must have a sufficiently large domestic market such that the economic benefit of duty-free access is great enough to leverage an abatement in repressive behavior, which (presumably) carries some benefit or reward to the state.

Chapter 3

Legislation Relevant To Study

The United States has several pieces of legislation in place that link economic relations and the respect for human rights. Tables 3.1 through 3.5 provide a summary arranged according to issue area.¹ While all can be used to further human rights goals, many lack clearly specified human rights standards. In order to be considered in this study the legislation needs to clearly articulate a well-defined set of human rights standards that must be adhered to in order to receive any benefits, and additionally an enforcement mechanism must be identified in the event of any breach; agreements must satisfy two of the elements in the typology of Abbot & Snidal (2000).² Moreover, since Hafner-Burton's original study looked at preferential trade agreements, I will focus only on agreements related to trade and not those that cover investment or foreign aid. The following is a more detailed discussion of the relevant subset of US legislation.

3.0.1 The Jackson-Vanik Amendment

The aim of the 1975 Jackson-Vanik amendment was to liberalize the emigration policies of Communist countries through trade incentives; most-favored nation (MFN) status would only be awarded to a non-market economy provided it granted its citizens the freedom to emigrate. The impetus to the amendment's passage was an emigration tax being applied to Jews leaving the Soviet Union, a tax that was supposedly meant

¹For an extensive discussion and exploration of the full range of US legislation authorizing sanctions, see Carter (1987). Carter breaks down US legislation according to five categories: foreign assistance, exports, imports, private financial transactions and financial institutions.

²Abbot & Snidal (2000) develop a typology for understanding how international institutions operate based on a "continuum" of legalization from "hard" to "soft". International institutions vary according to: (1) the degree to which obligations are binding; (2) precision of rules; and (3) the extent to which enforcement is delegated to a third party. The PTAs covered in this study are not ideal "hard" law instruments according to this framework because enforcement is carried out by the United States itself, not an independent party and thus they are "soft" in one dimension. See Abbot & Snidal (2000) for a detailed discussion.

to recover educational costs paid by the Soviet government, but that was seen by politicians in the United States as a violation of basic human rights.³ Under the amendment, if MFN status is granted, the Executive has to furnish Congress with semi-annual reports outlining the emigration policies of the beneficiary country in order for the renewal of MFN status — a renewal process that provides Congress with an ongoing mechanism through which it can exert pressure for more liberal emigration policies. While Soviet emigration policies changed little in response, the Jackson-Vanik amendment has had some success: in 1983 the Reagan Administration threatened Romania with the loss of MFN status as a result of a newly imposed education tax, a threat which resulted in a prompt reversal in policy.⁴ However, since the end of the Cold War the number of countries subject to the amendment has decreased, particularly as countries have joined the WTO and today only nine countries are still subject to its provisions.⁵

3.0.2 The Caribbean Basin Initiative (CBI)

The Caribbean Basin Initiative refers to several successive pieces of legislation designed to promote economic development through export diversification in the Caribbean and Central American region. Instituted in 1983 through the Caribbean Basin Economic Recovery Act, the CBI provides duty-free access to the US market for eligible countries⁶ across a wide range of products. One of the criteria to be used for beneficiary designation includes “the degree to which a country . . . [promotes] workers rights and [permits] rights of organization and collective bargaining.”⁷ This statute represents the first inclusion of a labor rights conditionality clause into a bilateral agreement. The 1990 Expansion Act, which renewed and extended CBI benefits, adopted the labor rights language contained in the GSP statute (discussed in the next section). In doing so, a criteria that was initially discretionary⁸ was strengthened so

³See Beasley et al. (1976), and McMahon (1980) for a history of the passage of the Jackson-Vanik amendment and a preliminary assessment. Lansing & Rose (1984) also provides a discussion of the amendment and its efficacy in increasing emigration.

⁴See Forsythe (1987) for a discussion of the use of MFN status, additionally see Lansing & Rose (1984).

⁵The premise of the Jackson-Vanik amendment is incompatible with WTO rules, see <http://www.cfr.org/trade/reassessing-jackson-vanik-amendment/> p.19734 for discussion.

⁶As of August 2014, the scheme covers seventeen countries. At inception, twenty-one countries were beneficiaries, but the number of eligible states has declined as countries have signed FTAs with the United States. In particular, CAFTA-DR signed in August 2004 covering Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic. See <http://www.ustr.gov/trade-topics/trade-development/preference-programs/caribbean-basin-initiative-cbi> for more details.

⁷19 USC §2702(c)(8).

⁸Originally, the CBI statute contained both mandatory and discretionary criteria for designating a beneficiary country. Discretionary criteria are aspects that the President is directed to merely *consider* when making a decision on beneficiary status; labor rights were initially a discretionary

that a country could not be granted beneficiary status if it “has not or is not taking steps to afford internationally recognized worker rights to workers in that country.”⁹ The CBI was again expanded in 2000 through the Caribbean Basin Trade Partnership Act (CBTPA) so that instead of “taking steps” the provision now required “the extent to which” internationally recognized worker rights are being provided, a change that was intended to “elevate the compliance standard.”¹⁰ These successive amendments have each expanded or strengthened the original labor rights conditionality standards suggesting a continued on-going Congressional interest in using this approach to ameliorate working conditions abroad. Countries can be both GSP and CBI beneficiaries; the CBI permits a broader range of product categories to be imported duty-free, and in this sense provides additional incentives to select GSP countries (Caribbean region) to adhere to labor standards.

3.0.3 The Generalized System of Preferences (GSP)

The Generalized System of Preferences was originally signed in 1976 with a view to assisting developing countries by permitting products to enter the US market duty-free. From the outset certain countries were excluded from the program: countries with a communist government; countries belonging to an international commodity cartel (implicitly, OPEC); any state that in giving preferential treatment to products of a developing country causes an adverse effect to US commerce; any country that has expropriated or nationalized US property without compensation; any country that does not recognize or enforce arbitral awards in favor of US citizens or corporations; or any country that supports terrorism.¹¹

The labor rights clause was not inserted until the GSP Renewal Act of 1984¹², at which point a country’s participation was conditioned on whether it “is taking steps to afford internationally recognized worker rights to workers in the country.”¹³ If a beneficiary country is later determined to not be adhering to the “internationally recognized worker rights” articulated in the statute, the 1984 amendment requires the

criteria. See Ballon (1987, p.77) for a critique of the discretionary criteria, describing it as being “symbolic” — an article that was written prior to the 1990 amendment.

⁹For details of the 1990 amendment and change in language see Department of Commerce International Trade Administration (2000).

¹⁰See DiCaprio (2005) for a discussion of the change in language.

¹¹19 USC §2462 (b)(2)(A)-(E).

¹²For a discussion of whether the US unilateral trade preferences are compatible with the “Enabling Clause” of GATT, see Mason (2004). The Enabling Clause permits preference schemes to developing countries contrary to the MFN clause. Mason (2004) is based on a WTO Appellate Body ruling on India’s challenge to the EU’s GSP scheme that granted preferential treatment to Pakistan. The Appellate Body concluded a country “may not discriminatorily provide additional GSP preferences to some GSP beneficiaries” (p.516). The US has yet to be challenged, but it offers additional benefits based on geographic location, e.g., the CBI, a non-objective criteria that Mason believes may be illegitimate based on the India ruling.

¹³19 USC §2462 (b)(2)(G).

President to suspend or withdraw GSP benefits. Thus, embedded within the GSP Renewal Act is an annual review process¹⁴ that forms part of an ongoing relationship between the United States and the beneficiary country with respect to labor rights. The five internationally recognized worker rights are defined as:

1. the right of association;
2. the right to organize and bargain collectively;
3. freedom from compulsory labor;
4. a minimum age for the employment of children; and
5. acceptable conditions or work with respect to minimum wages, hours of work, and occupational safety and health.¹⁵

3.0.4 Andean Trade Preference Act (ATPA)

In an attempt to encourage viable alternatives to the narcotics industry, the ATPA specifically focuses on economic development in Bolivia, Colombia, Peru and Ecuador. The ATPA was adopted in 1991 and, like the 1990 CBI amendment, used the GSP labor rights eligibility standards (see list in previous section) as a framework. In 2002, it was replaced with the Andean Trade Promotion and Drug Eradication Act, allowing Congress to strengthen the labor rights language; it would now include the “extent to which” language as found in the 2000 CBTPA amendment. The 2002 re-authorization also adopted the GSP review mechanism format, thus enabling “interested parties” to be part of the review process.¹⁶

3.0.5 African Growth and Opportunity Act (AGOA)

Signed in 2000 with the aim of encouraging Sub-Saharan Africa to move toward a market-based economy while improving labor rights standards. Eligibility is determined each year by a subcommittee of the United States Trade Representative

¹⁴Since inception the US Trade Representative has reviewed product eligibility annually. Following the 1984 Renewal Act that added labor rights conditionality (and intellectual property rights standards), country practice reviews have been added to the annual review cycle.

¹⁵See the GSP Guidebook published by the USTR available at http://www.ustr.gov/webfm_send/1597

¹⁶Congress allowed the Andean Trade Promotion and Drug Eradication Act to expire on February 12, 2011. Benefits were retroactively applied to Colombia and Ecuador upon renewal in October 2011. Peru’s benefits were terminated upon a FTA coming into force in 2009, while Bolivia has been suspended since June 2009 for failing to curb its narcotics industry. Colombia became ineligible following the conclusion of FTA negotiations in 2011. Ecuador remained the sole beneficiary until it offered asylum to Edward Snowden, at which point Congress threatened Ecuador with suspension. In response, Ecuador rescinded its beneficiary status and the program expired on July 31, 2013.

(USTR)¹⁷, and as of 2014, there are thirty-nine eligible countries. In order to receive AGOA benefits a country must be GSP eligible. AGOA provides duty-free entry into the United States for certain goods, benefits in addition to the GSP, especially for textiles and apparel goods. The President can designate a country as eligible if it has “established, or is making progress toward the protection of international recognized worker rights,” using the GSP definition, and legislation mandates eligibility be revoked if a country is found in violation.¹⁸ In contrast to the GSP, all benefits must be rescinded, the partial suspension of benefits through the removal of certain categories of goods from the duty-free list, is not an option.

3.0.6 Free Trade Agreements (FTAs)

The language in FTAs differs to that found in the unilateral preference schemes: in the GSP, it is Congress that defines labor standards and the Executive that monitors and enforces them, while the beneficiary country has no influence on the standards and chooses to accept them (or not) as they are presented. FTAs, in contrast, seek to respect state sovereignty and both parties agree and negotiate the language of any labor provisions. The first trade agreement signed by the United States that included a labor rights stipulation was NAFTA, which entered into force in 1994. Labor-related issues are contained in a separate side agreement known as the North American Agreement on Labor Cooperation (NAALC). The NAALC contains eleven labor rights issue areas that signatories are expected to uphold through their domestic labor laws, although parties are only required to “effectively enforce” existing laws that cover these eleven principles. However, only three of these standards are subject to potential sanctions if a country fails to uphold them: labor protection for children; minimum employment standards; and the prevention of occupational injuries and illnesses. Collective bargaining and the right to strike, considered “core” standards by the ILO, are not subject to sanctions. To date there have been thirty-seven complaints submitted, more than half of them against Mexico for failing to adhere to the right to organize and bargain collectively.¹⁹ The NAALC has been heavily criticized because of its soft enforcement structure.²⁰ For the vast majority of complaints the harshest punishment available is a ministerial-level consultation — an outcome that does not

¹⁷I use USTR to refer interchangeably to both the Office of the Trade Representative and the individual appointed by the President.

¹⁸Countries recently denied beneficiary status are Mauritania (2006, restored in 2009), Guinea (2009, restored in 2011), Madagascar (2009, restored in 2014), Niger (2009, restored in 2011), Mali (2012, restored in 2014), and Guinea-Bissau (2012). See <http://trade.gov/agoa/eligibility/index.asp> for details and updates of beneficiary status (accessed August 2014).

¹⁹See Bolle (2001, p. 11) for details.

²⁰See Harvey (1996), Adams & Singh (1997), Chew & Posthuma (2002). See also Human Rights Watch (2001) for a discussion of NAFTA’s structure and a critique of its provisions, this report also discusses each of the complaints lodged up to 2001.

result in the termination of trade benefits²¹, thereby limiting the coercive pressure that can be exerted. Additionally, while the NAALC covers a broad-range of labor issues, it does not actually establish a minimum standard that each party must uphold and key ILO rights are not covered by sanctions.

Prior to the enactment of the 2002 Trade Promotion Act (TPA), President Clinton concluded the US-Jordan FTA.²² This agreement differed from the NAALC because the labor rights criteria was included in the main body of the text, as opposed to being kept separate in a side agreement. This was seen as elevating the significance of the labor rights clause because it would be subject to the same enforcement mechanism as other issues such as intellectual property rights. But while the labor rights provision was included in the main body of the agreement, this clause was undermined by letters exchanged between the two governments stating that they would not suspend benefits under the trade agreement as a result of labor rights violations.

The 2002 Trade Promotion Act was used as template for the subsequent spate of FTAs signed in the mid-2000s. The act was intended to hasten or “fast track” trade agreements by allowing the President to negotiate an agreement and present it to Congress for vote without amendment provided the agreement satisfied the “principal negotiating objectives” laid out in the TPA: each party must promote respect for worker rights consistent with ILO core labor standards.²³ The TPA essentially harmonized the labor rights conditionality clauses appearing in bilateral trade agreements that were negotiated before the TPA expired on 1 July, 2007.²⁴ Baker (2005) sees the United States as using FTAs as part of a deliberate program to “export domestic legal rules and norms into the international arena” and thereby form trading blocs based on “shared norms.”²⁵ However, this does not mean that FTAs harmonize labor standards across trading partners; FTAs do not export US labor protections or standards, neither is there any stipulated minimum standard. Rather an FTA²⁶

²¹Fourteen petitions have reached this stage. Data taken from the Department of Labor’s website <http://www.dol.gov/ilab/programs/nao/status.htm> (accessed October 21, 2011).

²²See http://www.piie.com/publications/chapters_preview/375/03iie3616.pdf for a discussion of the US-Jordan FTA and a comparison to the NAFTA agreement, including a comparison of the labor rights clause.

²³19 USC §3802(a). These standards are subsequently defined to include: freedom of association; the right to collective bargaining; the elimination of all forms of compulsory or forced labor; the abolition of child labor; and acceptable working conditions and minimum wages.

²⁴Just prior to the expiration of the TPA, a bipartisan agreement was reached which has affected the language of FTAs signed with Peru, Colombia, Panama and South Korea. The labor clause has been strengthened so that parties must now “adopt as fully enforceable commitments” the five internationally recognized workers rights. See Smith (2011, p. 2) for details of the 2007 agreement. What this difference means in practice is hard to ascertain since they have only entered into force recently. Up-to-date information on the progress of each FTA can be found on the USTR’s website, see <http://www.ustr.gov/trade-agreements/free-trade-agreements>

²⁵Baker (2005, p.1314).

²⁶Full text of agreements can be found at <http://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/>

merely requires that each party “effectively enforce its labor laws” while striving to ensure these laws conform to international standards.

Moreover, the enforcement mechanism is soft at best since there are “no penalties, such as fines or trade benefit suspension, for parties whose laws fail to uphold workers’ rights.”²⁷ The proliferation of FTAs in recent years marks an important development in the linking of trade and human rights. The absence of any minimum standards and the weak enforcement mechanism suggests labor protections are waning under FTAs — a particular concern since countries are graduated (i.e., beneficiary status revoked) from the GSP scheme if they ratify a FTA with the United States, thus removing them from a trade arrangement that has a much stronger enforcement mechanism. To date, there have been only three complaints under the recent FTAs — against Guatemala, Jordan, and Honduras²⁸ and so it is too early to ascertain the effect these agreements have on labor standards or draw inferences about how enforcement proceedings operate.²⁹

WCMS_115531/lang--en/index.htm

²⁷Human Rights Watch (2008, p.4).

²⁸Details of the Guatemala complaint may be found at <http://www.dol.gov/ilab/media/reports/otla/20090116Guatemala.pdf>. Details about the Jordan complaint may be found at <http://www.aflcio.org/mediacenter/prsptm/pr09212006.cfm>. Details about the Honduras complaint may be found at <http://www.usleap.org/honduran-unions-file-cafta-labor-complaint-afl-cio>.

²⁹This means that Hafner-Burton (2005) could only have analyzed the NAALC (Mexico and Canada), FTAs with Jordan (entered into force on December 17, 2001), Chile (entered into force on January 1, 2004), Singapore (entered into force on January 1, 2004), and the Cambodia Textile Agreement. This latter agreement was structured differently from the other bilateral agreements discussed because, while labor rights standards were an important component (and compliance was monitored by the ILO), the agreement increased the textiles quota depending on adherence to labor standards. Benefits were not suspended if there was a violation, rather Cambodia would only receive a baseline annual increase in the quota of 6%; if Cambodia were judged to be complying with the labor standards, then the quota was increased up to an additional 14%. In this sense, it provides an incentive mechanism, rather than putative coercion. The agreement was in place between 1999 and 2005 and applied only to workers in the textile industry (which accounts for 70% of Cambodia’s labor force). For details of the quota increases, see USTR press release available at <http://www.fordschool.umich.edu/rsie/acit/LaborStandards/LaborInUSCambodiaTextile.pdf>.

Table 3.1: Summary of Human Rights Legislation

Issue Area	Statute	Details	Specific Rights
Security Assistance	Foreign Assistance Act (1961) P.L.87-195 §502B amended 1974	No government can receive security assistance from the US if it engages in “a consistent pattern of gross violation of internationally recognized human rights”.	None
	Leahy Amendment (1997) P.L. 106-429 §56. Foreign Operations Appropriations Act Art. 570	Prohibits military assistance to foreign security forces if there is evidence that the unit has committed gross violations of human rights.	None
Economic Assistance	Agricultural Trade Development & Assistance Act (1954) P.L. 83-480	Prohibits the supply of agricultural commodities to the government of any country that engages in “a consistent pattern of gross violations of internationally recognized human rights”.	None
	Foreign Assistance Act (1961) [Harkin Amendment] P.L.87-195 §116 amended 1975	Prohibits development assistance to the “government of any country which engages in consistent pattern of gross violations of rights.”	None
	Assistance for the Independent States, amendment to Foreign Assistance Act (1961) P.L. 97-195 §498A enacted 1996	Prohibits assistance to independent states of former USSR if the government is engaged in “a consistent pattern of gross violations of internationally recognized human rights.”	None

Table 3.2: Summary of Human Rights Legislation (cont'd)

Issue Area	Statute	Details	Specific Rights
Economic Assistance (cont'd)	Unilateral Trade Preferences Jackson-Vanik Amendment of the Trade Act 1974 19 USC §2432	Withdraws Most-Favored Nation trade benefits from a Communist state if government denies, or restricts, the freedom to emigrate.	Emmigration
	Caribbean Basin Initiative (CBI) 19 USC §§2701-2706	Enhanced tariff benefits for imports from Caribbean countries provided the beneficiary country respects “internationally recognized worker rights.”	GSP worker rights
	Generalized System of Preferences (GSP) 19 USC §§2461-2466	Tariff benefits to developing countries provided they afford “internationally recognized worker rights”.	Freedom of association, right to organize and bargain collectively, age limit for child labor, minimum employment conditions, worst forms of child labor.
	Andean Trade Promotion Act (ATPA) 19 U.S.C §§3201-3206	Enhanced tariff benefits for imports from Andean countries provided the beneficiary country respects “internationally recognized worker rights”.	GSP worker rights, excluding worst forms of child labor
	African Growth and Opportunity Act (AGOA) 19 USC §§3701-3703	Enhanced tariff benefits for imports from African countries provided the beneficiary country respects “internationally recognized worker rights”.	GSP worker rights, excluding worst forms of child labor

Table 3.3: Summary of Human Rights Legislation (cont'd)

Issue Area	Statute	Details	Specific Rights
Economic Assistance (cont'd)	Bilateral Trade Agreements	US-Cambodia Bilateral Textile Agreement (1999)	Cambodia must enforce own labor laws within textile factories in order to receive a 14% increase in textile quota.
	Free Trade Agreements (FTAs)	Israel (1985), NAFTA (1994), Jordan (2001), Chile (2004), Singapore (2004), Australia (2005), Morocco (2006), Bahrain (2006), Oman (2009), Peru (2009), CAFTA-DR (2006), Colombia (2012), Korea (2012), Panama (2012).	None
	Trade Restrictions	US Tariff Act 1930 §307 [Smoot-Hawley], 19 USC §1307	Prohibits the importation of any goods or merchandise produced with convict, forced or indentured labor.
		Trade Act 1977 §301, 19 USC §2411	GSP worker rights, excluding worst forms of child labor

Table 3.4: Summary of Human Rights Legislation (cont'd)

Issue Area	Statute	Details	Specific Rights
Economic Assistance (cont'd)	International Economic Powers Act (IEEPA) (1977)	If the President declares an extraordinary threat to national security, foreign policy or economy of the United States, he is then authorized to impose wide-ranging sanctions including freezing assets, blocking transactions, confiscating property and restricting currency and trade. Has been used for human rights purposes, although no specific rights are articulated in the statute. Statutory source for economic sanctions since the Export Administration Act expired in 2001.	None
Trade Restrictions (cont'd)	Export Administration Act (1979)	Act	None
		Regulates exports of “dual-use” goods, i.e., civilian technology or goods that have military applications. The President can impose restrictions because of national security or foreign policy. Has been used for human rights purposes, although no specific rights are articulated in the statute.	

Table 3.5: Summary of Human Rights Legislation (cont'd)

Issue Area	Statute	Details	Specific Rights
Investment	Overseas Private Investment Corporation (OPIC) 19 USC §3753	Can only provide insurance for a project if the country in which the project it to be undertaken is “taking steps to adopt and implement laws that extend internationally recognized worker rights”.	GSP worker rights
	International Financial Institutions Act (1977) §701.	Congress instructed the Executive, via §701 to use “its vote and voice” in IFIs to “channel assistance toward countries other than those whose government engage in a consistent pattern of gross violation of internationally recognised human rights”.	None
	Export-Import Bank	No approval for insurance of a sale of defense articles or services unless “the purchasing country has not used any such articles to engage in a consistent pattern of gross violations of internationally recognized human rights”.	None

3.1 The Importance of the GSP

Despite extensive legislation containing labor rights conditionality, the GSP is arguably the most influential piece: not only is it one of the earliest and most geographically broad schemes, but a suspension occurring under the GSP annual review process automatically feeds into several other separate pieces of legislation.³⁰ GSP review decisions can have a multiplicative economic impact on a country through this linkage, heightening the significance of the review mechanism. The GSP represents a significant step in attempts to develop an enforcement mechanism that could provide a remedy for human rights abuses and it has been described as “the primary worker rights legislation available to advocacy groups.”³¹ By formally linking trade and human rights, it was the first “institution ever [to] back[ed] up the labor rights principle with concrete action to punish a labor rights violator.”³² It was not just the first attempt by the United States to create such a link, but rather the first attempt globally to do so.³³ The impact of the GSP scheme has been argued to extend to more than just beneficiary countries: because it “has given birth to a plethora of labor think-tanks, lobbying groups . . . [and] helped decisively in building up a global network of unions, human rights organizations.”³⁴

Of interest in this study is the enforcement mechanism accompanying the labor rights conditionality clause, and while there have been instances of suspension under the statutes listed in Tables 3.1 through 3.5, the most extensive enforcement history comes from the GSP. This long history provides numerous case-filings and outcomes with which to analyze the workings of enforcement proceedings under a conditionality clause. Moreover, because there is an embedded formal review process the GSP also offers a history of “non-punishment”, i.e., countries that are reviewed and not

³⁰For example, the Overseas Private Investment Corporation (OPIC) drops any countries suspended from the GSP and AGOA beneficiaries must first satisfy the GSP criteria prior to being granted AGOA status. Additionally, Compa & Vogt (2001) claim GSP beneficiary status is “an important marker for US trade negotiations” (p. 204).

³¹Government Accountability Office (1994, p. 114).

³²Compa & Vogt (2001, p.208).

³³The EU GSP scheme covers 176 countries but only included a labor rights clause in 1995. It differs from the US scheme because it offers additional duty reductions or “special incentives” to any country implementing ILO conventions covering the right to organize, the freedom of association, and a minimum employment age (known as GSP+). Only fourteen countries currently benefit from these additional preferences: Armenia, Azerbaijan, Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Honduras, Mongolia, Nicaragua, Paraguay, Panama. The first suspension occurred in 1997 when Burma’s privileges were withdrawn for use of forced labor. Belarus was suspended in 2006 and El Salvador in 2008. Switzer (2008, p.117) claims “[t]he history of the preference system . . .has been one of avoidance of GSP-linked sanctions”. Moreover, only the use of forced or prison labor warrants a suspension of privileges. Additionally, the EU has the Lomé IV agreement, which included human rights conditionality in 1995, but this agreement is more geographically constrained since it only covers Africa, Caribbean and Pacific countries.

³⁴Tsogas (2000, p.360).

punished.

The lack of an independent third-party adjudication means that the decision to enforce the conditionality clause and punish a beneficiary state for a transgression is potentially subject to political manipulation. A perceived selectivity in punishment has led critics to contend that “the Reagan Administration, followed by the Bush and Clinton Administrations, politicized the process [of enforcement]”³⁵ But the “legitimacy of unilateral human rights enforcement efforts” is crucially tied to the manner in which sanctions are applied; “states are much more likely to voluntarily comply with international norms that they perceive to be fair.”³⁶ Suspension from the scheme must occur consistently to avoid the charge of politicization; if suspension depends on economic or political alliances between the United States and a beneficiary state then the GSP conditionality clause will never be viewed as impartial and “selective enforcement may feed perceptions of bias and illegitimacy.”³⁷ The pivotal question asked in this study is whether the GSP and its enforcement mechanism is coercive. Alexander George defined coercive diplomacy³⁸ as backing a demand of an adversary “with a threat of punishment for non-compliance that he will consider credible enough and potent enough to persuade him to comply with the demand.”³⁹ The GSP can only be coercive (successfully coercive) if its threats and promises are credible — beneficiary states must believe threats will be executed as stated. As Jentleson (2006) describes, a state needs to “establish the credibility of the threat of coercion. . . . that [it] would take action if necessary . . . [and the action will] inflict substantial costs and punishment”.⁴⁰ From a practical perspective, credibility generally refers to whether the coercing state has a reputation for following through with its threats. In this study I assume that the actors involved are rational such that they update their beliefs of a given outcome when new information is presented. I further assume that GSP beneficiary states use the publicly observable annual petition process as the basis and evidence for updating their beliefs, that is, they do not have privileged access to confidential information that would change their expectations of the likelihood of punishment.⁴¹ States can observe whether or not the United States implements the

³⁵Collingsworth (2002, p.186). Collingsworth citing the oft-referenced example of Nicaragua’s suspension under the Sandinista regime, yet the continual benefits granted to El Salvador and Guatemala.

³⁶Cleveland (2001, p.86).

³⁷Robinson (2013, p.206).

³⁸Coercive diplomacy may refer to deterrence or compellence. In the case of the GSP annual review, I argue that compellence is the more appropriate description since the review mechanism only occurs when a beneficiary state has violated labor rights and a petition has been submitted. The review therefore acts as a threat to stop a state from continuing with a course of action. Although, the GSP conditionality clause acts as a form of deterrence for other beneficiary states; in undertaking a review the United States is (potentially) demonstrating its willingness to fulfill the threat to withdraw preferences and this can deter other states from violating labor rights.

³⁹George (1991, p.4).

⁴⁰Jentleson (2006, p.6).

⁴¹Most of the documents connected to the review process are made available to the public for

GSP labor rights conditionality clause and the specific inherent characteristics of the states subjected to the petition process.

I collect data and statistically analyze if the United States does what it says it is going to do and so ask if it is reasonable for a beneficiary state to believe it will be punished should it violate the labor rights clause. Credibility does not require that every violation be punished; rather credibility requires that punishment does not exhibit bias or prejudice. I assert that if none of the political or strategic explanatory variables considered are significant and instead the pattern of enforcement can be explained by a country's level of abuse, then the GSP conditionality clause is credible. If, for example, the trade relationship between the United States and a violating state determines the pattern of enforcement then the conditionality clause exhibits bias and this compromises its credibility. A pattern of bias and selective enforcement dependent on state characteristics unrelated to respect for labor rights will weaken the reputation of the United States and calls into question Hafner-Burton's assumption that hard PTAs "supply a positive degree of credible threats."⁴²

3.2 The GSP Legislation in Detail

The GSP program was established by Title V of the 1974 Trade Act and through it Congress sought to use trade for development goals by permitting countries with economic need⁴³ to import goods to the US market duty-free, thereby stimulating industrialization and ultimately decreasing reliance on foreign aid. Problems soon emerged because US firms sought to capture this trade benefit by relocating their production to those foreign countries accorded GSP beneficiary status. Capital flight was also spurred by the potential lower production costs due to the cheaper availability of labor.⁴⁴ But the inclusion of a labor rights clause was not solely the result of

viewing, including details of the petition lodged and transcripts from any hearings. Information is withheld if it is deemed "business-sensitive."

⁴²Hafner-Burton (2005, p.605).

⁴³To be eligible for GSP benefits a country must be designated a developing country or a least-developed country (LDC). LDCs receive additional benefits — they can import an extra 1770 articles excluded from the general scheme free of duty. If a state attains "high income" country status, it will "graduate" from the program, 19 USC §2462 (e), where "high income" is determined by World Bank data on GNP per capital, currently \$12,616. There is also a "competitive needs limit" which kicks in when imports from a particular country exceed 50% of total US imports of that product in a year, or if they exceed a dollar amount (\$165 million in 2014) — this is a product-based cap on benefits, not country-based, see US Trade Representative (2013) for details. Certain products may lose duty-free status if they become too competitive (product graduation), while countries may lose benefits if their GNP per capita surpasses a threshold (country graduation). Countries recently graduated include: Bermuda, Brunei, Hong Kong, Mexico, Nauru, Singapore, South Korea, Taiwan, Israel, Malaysia, Mexico, and the Bahamas.

⁴⁴See Belanger (1996, pp.110-113) for details of Congressional motivations behind the inclusion of a labor rights clause. Davis (1995) also provides a similar discussion on the theoretical debates

protectionist motivations; labor advocates were actively involved in the process, arguing that any comparative advantage held by a developing country was unacceptable if it were due to “murdering workers who try to organize unions . . . using the work of young children . . . [or] ignoring life-threatening health and safety standards.”⁴⁵ Congressman Donald Pease (D-Ohio) took up the labor rights cause and proposed an amendment to the GSP beneficiary requirements that would include a labor rights standard. His concern was both economic (capital flight) and normative (exploitation of cheap labor). He convinced Republicans “that supporting a labor rights clause in the GSP gave them a chance to . . . tell their constituents that they were doing something on trade for workers.”⁴⁶ Congress echoed this dual concern, as noted in a House Report, “the lack of basic rights for workers . . . encourages capital flight and overseas production by US industries [but also] . . . tend [sic] to perpetuate poverty . . . and sow the seeds of social instability.”⁴⁷

After much debate, the 1984 GSP Renewal Act made labor rights part of the mandatory set of criteria to be considered when granting beneficiary status, “the President shall not designate any country a beneficiary country . . . if such a country has not taken or is not taking steps to afford internationally recognized worker rights to workers”, where these rights are defined as:

1. the right of association;
2. the right to organize and bargain collectively;
3. a prohibition on the use of any form of forced or compulsory labor;
4. a minimum age for the employment of children and a prohibition of the worst forms of child labor; and
5. acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.⁴⁸

There are three separate mechanisms through which a country’s eligibility may be examined: the unilateral revocation by the President; a general review; and through the annual country review process. The only general review undertaken occurred during the first two years the labor clause was operational (1985-1987). This review has been described as “passive” because the GSP Subcommittee only considered a country’s beneficiary status if a petition had been filed by a third party (at the start of the review, all countries were declared eligible), and only then “with great

surrounding the inclusion of a social clause.

⁴⁵Compa & Vogt (2001, p.201).

⁴⁶Compa & Vogt (2001, p.203).

⁴⁷US House, Committee on Ways and Means (1984).

⁴⁸19 USC §2462(b)(2)(G)

reluctance and barely concealed hostility.”⁴⁹ The Renewal Act additionally granted labor advocacy groups (amongst others) legal standing in the review process, “any person may file a request to have the GSP status of any eligible beneficiary country reviewed with respect to any of the designation criteria.”⁵⁰ These groups have pushed, sometimes aggressively so, for the improvement of labor rights and have played a key role in the annual country review process. Annual reviews have been conducted since the conclusion of the general review following a set timeline.⁵¹

The monitoring of the GSP scheme is carried out by the GSP Subcommittee (GSPS)⁵² of the Trade Policy Staff Committee (TPSC). Any individual, organization or party with “a significant economic interest” or representing a “significant economic interest” may submit a petition during the annual review if a violation of the statutory provisions is suspected. The GSPS has discretion over which petitions it will accept for review and only if a petition is accepted will the GSPS carry out an in-depth investigation into the prevailing labor conditions and make a recommendation to the USTR as to whether the country in question should be suspended. The USTR then presents its recommendations to the President, who then makes the final decision on the termination of benefits. Thus, the annual review is actually a two-stage process — for a country to be considered for suspension from the GSP scheme, it must first have been accepted for review at the initial stage, and it is the GSPS that determines the outcome of each stage — the initial selection and the final decision. The preliminary determination is meant to ascertain only if the petition satisfies the regulatory standards required of a petition.⁵³ Under the Renewal Act, the GSPS is permitted to initiate a review itself, although it does not use this discretionary power, instead relying on the petitions lodged by human rights groups and labor advocates.⁵⁴

Thus, the process of enforcement is: (1) accept or deny a petition for review; (2) conduct review if accepted; (3) terminate the review because the country is found not to be in violation of the labor rights clause or suspend beneficiary status because of a violation. In practice however, the USTR has introduced a third category, that of “further review” or “continuing review,”⁵⁵ in which it declines to make a decision

⁴⁹Harvey (1995, p.2).

⁵⁰15 CFR §2007.0(b).

⁵¹This timeline has been interrupted in years when the re-authorization of the program has been delayed, resulting in the temporary suspension of the scheme. The annual review cycle is outlined at 15 CFR §2007.3(a).

⁵²The GSPS is an inter-agency group that is part of the USTR. A USTR representative chairs the GSPS, the remainder of the committee is made up of officials from the State Department, the Labor Department, Commerce Department, Agriculture Department and the Treasury. Input from local embassies is also sought.

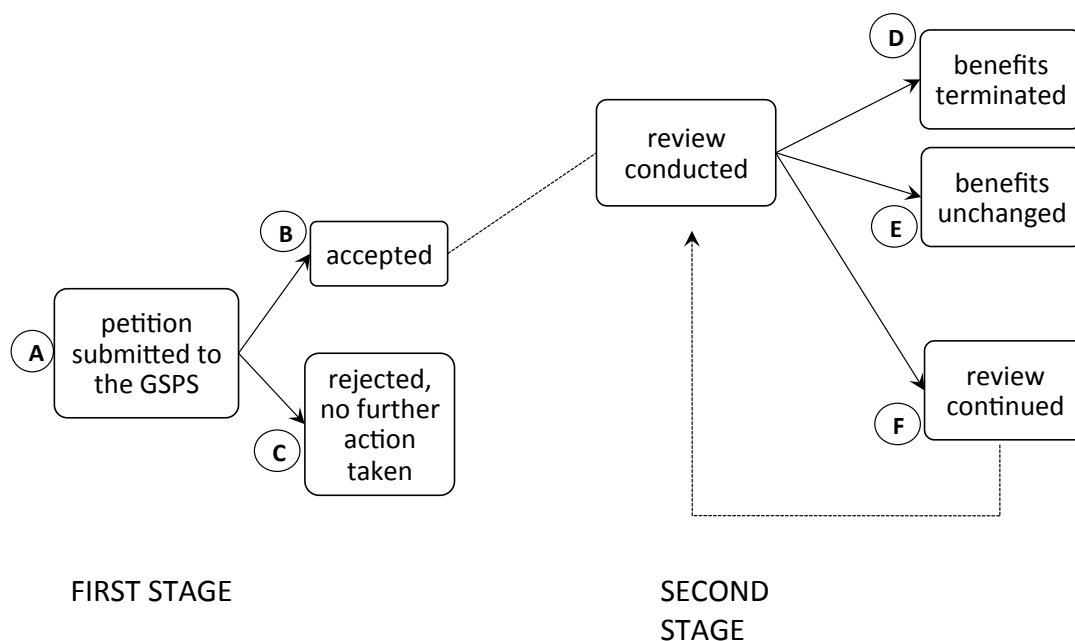
⁵³There are detailed regulations regarding how a petition should be formatted and structured. Failure to follow the guidelines will result in a rejected petition, regardless of the veracity of the complaint. See 15 CFR §2007.1 et seq for details.

⁵⁴The only exception to this is the case of Guatemala in 2000. The GSPS threatened to investigate Ecuador in 2001 but never followed through, see DiCaprio (2005).

⁵⁵See Belanger (1996) for a discussion of the continuing review process.

in a given review cycle and instead postpones the decision until subsequent review cycles. A country's beneficiary status is unchanged while a review is being conducted; benefits are lost only if it is determined that a country is in violation. Continuing review status in effect allows the USTR to maintain benefits to a potential violator without making any official decision — somewhat like being on probation, although this status has no basis in the GSP legislation. Figure 3.1 summarizes the review process and potential outcomes. The first stage, as I have termed it, refers to a petition being submitted and the decision to accept it for review (actions A through C). The second stage encompasses the in-depth review and final outcome (actions D through F).

Figure 3.1: Stages of the GSP Annual Review



Furthermore, there is an optional “get-out” clause embedded in the GSP legislation that allows the President to overrule the recommendation of the GSPS, thus, even if a country is found in violation of the conditionality clause, the President can utilize his discretion but only if “doing so would be in the national economic interests of the United States.”⁵⁶ Additionally, the GSP statute sets a higher barrier for re-submitting a petition in a subsequent cycle: if a country has been reviewed previously,

⁵⁶The President can waive these standards if it is in the national economic interest to designate the country as a GSP beneficiary, but the President must supply Congress with a report testifying to this.

then a repeat petition must “include substantial new information”⁵⁷ otherwise it will be rejected without further investigation. This requirement creates a “loophole” that prevents petitioners and advocates from addressing continued violations — a country may promise to improve the labor rights situation, but fail to follow through, yet a new petition cannot be brought based on the failed promises alone.⁵⁸

⁵⁷“If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue” 15 CFR §2007.0(b)(5).

⁵⁸Belanger (1996, pp.120-121).

Chapter 4

Sanctions and the Role of Human Rights

4.1 The GSP and Human Rights

In general, the literature that specifically analyzes the US GSP adopts a case-study approach to assessing whether working conditions have improved in beneficiary countries. Perhaps the most comprehensive study in this vein is Compa & Vogt (2001). While the authors argue that the GSP program has “on balance” improved labor rights, they are more concerned with the “inconsistent application” of the GSP review process as evidenced in the case studies selected.¹ In particular, they believe that economic or geopolitical interests, such as investment and exports, trump any concerns for labor rights to the extent that “the merits of a petition have little bearing on the outcome of a case.”² While the cases they examine suggest such a conclusion, particularly Guatemala and Indonesia, the GSPS has reviewed fifty-four different countries to date and it is possible that the cases cited by Compa & Vogt are exceptions.

Belanger (1996) takes a single case study, of Guatemala in 1994, to analyze the efficacy of the GSP program. The GSPS³ repeatedly rejected petitions until 1992, but the eventual investigation into working conditions did prompt a change in the Guatemalan Labor Code. The 1993 coup led by Jose Serrano came under pressure from business elites because of the threat of GSP suspension. The country was placed “under review” and consequently there was some moderate labor reform. The review

¹They consider six countries: Chile (1986, 1987), Guatemala (1988-1992), Malaysia (1987, 1988, 1990), Indonesia (1992), Pakistan (1993) and Belarus (1997), where parentheses denote the year the country was petitioned.

²Compa & Vogt (2001, p.235).

³When discussing the annual review process I use GSPS and USTR interchangeably to refer more generally to the government agents involved in the decision-making process. In this sense, I do not make a distinction between them.

status was extended and despite claims that violations of GSP standards were occurring, the GSPS failed to suspend Guatemala's benefits. While the initial GSP review had some modest success, "the workers rights provision of the GSP loses legitimacy as an economic sanction when threats to revoke beneficiary status are illusory."⁴ Belanger claims the minor changes undertaken by the Guatemalan government were merely "evasive tactics" to deflect the attention of the GSP Subcommittee. She criticizes the "continuing review" status and the failure of the USTR to instigate economic sanctions when confronted with evidence of repeated violations⁵ and argues this can undermine the coercive potential of the GSP.

Clay examines the GSP labor rights provision through a case study of the Bangladesh petition initiated in 1991 (and again in 1999) and claims that "economic reality, political powers, and trade policy limitations"⁶ affected the process. She argues the political powers affecting the application of the GSP enforcement mechanism came from several sources. The most obvious source is the US government itself: as a unilateral trade policy, the administration of the GSP is entirely controlled by the US government and hence, "developing nations' overall skepticism of GSP worker rights provisions . . . [because] . . . China is not punished for continual rights violations, while other, smaller developing countries face exacting scrutiny."⁷ Additionally, the USTR plays a crucial role in the implementation process, but "[a]s an appointed member of the President's cabinet, the USTR is anything but an impartial observer."⁸ However, the government is not the only source of relevant political power: businesses and unions have an interest in the outcome of the GSP review process — both seeking enforcement because of protectionist motivations. While the points raised by Clay have merit, the evidence presented to support them is limited, she herself notes that "[t]he Bangladeshi petitions do not appear to be heavily influenced by truly political motivations. There is no disfavored government, no competing trade policy, and no apparent ulterior motive."⁹

Davis (1995) concludes that in the case of El Salvador, the "threat to withdraw GSP benefits created a limited political opening for Salvadoran unions," but this effect was constrained by overriding political concerns, "[t]he Reagan and Bush administrations . . . displayed little enthusiasm for enforcing the worker rights laws".¹⁰ The rejection of the 1987 through 1989 Americas Watch petitions highlights how "the United States often uses these laws to promote foreign policy objectives unrelated to

⁴Belanger (1996, p.130).

⁵The failure to enforce labor laws was even detailed in the annual State Department human rights reports.

⁶Clay (2001, p.190).

⁷Clay (2001, p.195). It should be noted that China is not GSP eligible, nor has it ever been a beneficiary. However, I interpret her comment more as a general reflection on the inconsistency of the human rights rhetoric.

⁸Clay (2001, p.194).

⁹Clay (2001, p.195).

¹⁰Davis (1995, p.1213).

actual respect for worker rights.”¹¹ The USTR did not deny that abuses were occurring, rather they applied a limited interpretation of the GSP statute: some of the reasons given for rejecting the petition were that union members subject to abuse were part of the insurgent movement in El Salvador and that the government could not be held responsible for actions carried out by death squads. While it has been argued elsewhere that Republican presidents have been less keen to apply the GSP provisions, the Clinton Administration terminated the 1992-3 petition despite “the Salvadoran government’s failure to comply with its promises to the USTR, the ILO and Salvadoran unions”.¹² While Davis provides a detailed history of the Salvadoran labor movement and the intersection of the GSP review process with key political events, there is no attempt to link this case to any others occurring at the same time or comment on how typical this case is. He is interested only in the Salvadoran experience and while he suggests factors that may be systemic, he fails to enunciate what “political factors” are “a more important determinant.”¹³

Tsogas (2000) is a comparative study of the US and EU GSP programs with a view to assessing the value of social clauses more generally, however it highlights some important factors that affect the petition process in the United States. Tsogas considers the petition process from both angles: the nature of the petitioners (the selection of countries on whose behalf a petition is filed) and the USTR (countries selected for review). Tsogas argues that the AFL-CIO and the International Labor Rights Fund have been the primary petitioners because the informational requirements for initiating a petition are burdensome and this limits the ability of smaller organizations without the resources of the AFL-CIO to participate. Tsogas further claims the AFL-CIO “concentrated on countries which have gained the greatest advantage from duty-free access to the US market, such as Singapore, South Korea and Taiwan.” in the mid to late-1980s suggesting it might be motivated by protectionist concerns. In terms of the USTR, while the motivations behind a petition’s acceptance “have not always been transparent, foreign policy consideration, cold war sentiments and economic nationalism seem important”.¹⁴ Tsogas believes that “[t]he more open developing countries are, or the closer they are politically to the USA, the more likely the are to have their labor practices placed under scrutiny,”¹⁵ while any country suspended likely has limited trade with the United States, such as Romania, Burma, Central African Republic, Liberia and Sudan. He notes that the “Clinton administration has shown greater interest in worker rights violations,”¹⁶ in contrast, the Reagan Administration favored geopolitical interests — continually denying the repeated petitions of El Salvador, yet readily suspending a Sandinista-governed Nicaragua. This senti-

¹¹Davis (1995, p.1180).

¹²Davis (1995, p.1208).

¹³Davis (1995, p.1214).

¹⁴Tsogas (2000, p.353).

¹⁵Tsogas (2000, p.357).

¹⁶Tsogas (2000, p.357).

ment is echoed in Amato (1990), in which she describes the Reagan Administration as “pursu[ing] its own political agenda despite the clear legislative intent of Congress to sanction labor rights violators”.¹⁷ Tsogas concludes that a multilateral approach would be a more appropriate forum for redressing labor rights abuses because “experience has shown that over the last 15 years the USA has simply exercised its economic and political power over countries which the government dislikes”.¹⁸ Again, a similar conclusion to other studies, but little substantive evidence to justify it — a table of petitions and outcomes is presented (up to 1995) but there is no analysis or attempt to demonstrate a *consistent* pattern of selective enforcement.

A recurring criticism within the literature centers on the statutory language of the provision and the legal effect of “taking steps” — language that was a necessary part of the political compromise needed for the 1984 Renewal Act to pass. The Reagan Administration, which presided over the bill, wanted discretion when applying sanctions.¹⁹ In practice this effectively weakened the conditionality clause but labor rights advocates accepted it because this compromise ensured the bill would pass and it ultimately created a legal opening for them to push for labor rights reform through their participation in the annual petition process. Political discretion is embedded in the phrase “taking steps”²⁰ — nowhere in the GSP legislation is it articulated what is meant by taking steps or how this criteria relates to the five workers rights; whether is it necessary to be taking steps in all five areas, or whether some are given more weight than others when assessing compliance. According to Mandel (1988-1989) the taking steps language “indicates that a government which is violating worker rights will not be penalized so long as the violations decline and conditions improve each year”.²¹ This deliberate vagueness has been cited as the cause for the rejection of several petitions. In the case of Guatemala, the USTR rejected petitions filed annually from 1988 to 1991 because “the introduction of labor reform . . . indicated that the government was ‘taking steps’ to afford rights” despite widespread “assassinations, arrests, and torture of trade union activists”.²² Similarly, Davis cites this statutory weakness as the reason El Salvador was able to “thwart the intent of the statute” because the regime could undertake “token reforms” and stave off sanctions.²³

Harvey (1995) is also concerned with the effectiveness of the GSP, but this is the only study I know of that discusses what it means to say the GSP program is “credible” — although he does not actually use this nomenclature. He disagrees with the “tendency among our labor and human rights colleagues to judge the success

¹⁷Amato (1990, p.119).

¹⁸Tsogas (2000, p.365).

¹⁹See discussion in Compa & Vogt (2001) for details of legislative history and passage of the final bill.

²⁰GSP benefits are dependent on whether a state is “taking steps to afford international recognized worker rights” at 19 USC §2462(6)(2)(G).

²¹Mandel (1988-1989, p.471).

²²Compa & Vogt (2001, p.215).

²³Davis (1995, p.1209).

of the GSP program by the number of countries removed”.²⁴ Amato (1990), for example, contends that the entire GSP review process is discriminatory because “the pool of those countries sanctioned under the GSP is suspiciously small in terms of the number of labor violators around the world”.²⁵ Although it should be noted that the GSP does not cover every country, and hence not every potential violator, nor does it cover every possible labor standard²⁶ — so Amato’s benchmark is not the correct one to use when assessing political bias. Harvey instead argues that while “a program that never suspends . . . is quickly perceived as toothless, it does not require too many actual suspensions for countries to quickly get the point”.²⁷ It is the credible threat of sanctions that propels countries “to react in positive ways to a review”.²⁸ To date fifty-four different countries have been investigated for labor rights abuses, which represents slightly more than a third of all beneficiary countries.²⁹ In total there have been over 120 country petitions related to labor abuses and more than 60 have been accepted for review (approximately a 50% acceptance rate). Harvey agrees with other critics that “[t]he early years were marked by . . . arbitrary decisions unrelated to the level of labor rights abuses, and frequent manipulation”,³⁰ but the review process “improved significantly” after the 1990 lawsuit filed by a coalition of labor rights advocates.³¹ As already noted, some observers cite the change in administrations as the reason for the change in the review outcomes, but Harvey believes any improvement “*predate[s]* the election of a Democratic president”³² (*italics added*).

Alston, writing in 1993, summarizes the prevailing views of commentators, “virtually all analyses of the actual approach to implementation have concluded that political factors are generally the overriding consideration in determining the outcome of cases”.³³ The overall picture painted of the GSP review process is that it is inherently flawed — politics are allowed to interfere in the application of a legal standard and handicap the accompanying enforcement mechanism.³⁴ While the scheme may have

²⁴Harvey (1995, p. 6).

²⁵Amato (1990, p.124).

²⁶Discrimination is notably missing from the list of internationally recognized worker rights.

²⁷Harvey (1995, p.6).

²⁸Harvey (1995, p.6).

²⁹The number of eligible countries varies from year to year depending on suspensions and additions to the beneficiary list.

³⁰Harvey (1995, p.3).

³¹In 1990, a suit was filed by a collaboration of twenty-three human rights NGOs involved in petitioning for workers’ rights, *ILRERF v Bush*. The suit alleged that the administration had failed to properly enforce the GSP worker rights clause as evidenced by an arbitrary enforcement history. The court dismissed the case on the basis of non-justiciability — the vagueness of the original statutory language meant there was no clear standard against which any enforcement history could be judged. Upon appeal, the Appeals Court dismissed the case because the parties lacked standing to bring such a case.

³²Harvey (1995, p.4).

³³Alston (1993, p.21).

³⁴There have also been Congressional attempts to persuade the USTR to review a petition, see

made a difference in some cases, albeit a small difference, it has been hamstrung by political machinations that have restricted the realization of significant behavioral changes. Thus the GSP-specific literature seems at odds with Hafner-Burton's assertion; in this instance, a hard PTA³⁵ has made very little difference to repressive behavior and the explanation is that there is no "positive degree of credible threat" to back up the statutory standards — a "hard" law is "soft" in application. The case studies discussed here are not extensive in either their country coverage or time frame, and arguably present only anecdotal evidence and so by themselves do not contradict Hafner-Burton.

4.2 Theoretical Explanations for Sanctions

This section will review the major strands of international relations theory and the motives for state behavior with a view to understanding why a state would initiate sanctions in response to human rights abuse. The brief summary of each approach will outline the main actors, the level of analysis and how state preferences are formed. From this discussion testable hypotheses will be derived that will form the basis of the statistical analysis contained in Chapter 5. The aim of this study is to move beyond a mere descriptive analysis of punishment under the GSP and develop a framework for understanding when states choose to react to violations of human rights norms. None of the previous studies of the GSP have adopted a theoretical approach combined with a quantitative evaluation.

4.2.1 Realism

Realism encompasses multiple writers who share a belief that states are motivated by power and security, not ideals.³⁶ While realism argues a state is the main actor in international relations, it takes human nature in its most extreme egotistical and self-interested form as a starting point for understanding state behavior. The absence of a leviathan means each state is responsible for its own survival and self-preservation, which in turn leads to the pursuit of power and a constant state of conflict between nations. Security necessitates power and wars are fought to prevent others from acquiring military strength; morality or ethics have no place in international relations. A distinction is drawn between a leader and the actions of a leader, for example, Machiavelli argues that a leader may be moral, but allowing moral concerns to govern foreign policy decisions may weaken a state and render it vulnerable. Morgenthau

Davis (1995, p.1198) for details in the case of El Salvador.

³⁵The GSP is probably as close to an ideal "hard" PTA as the United States has in operation based on the Abbot & Snidal (2000) typology.

³⁶Classical realism can be traced back to the work of Thucydides, Machiavelli and Hobbes through to the twentieth century with Carr and Morgenthau.

argued that political leaders “think and act in terms of interest defined as power.”³⁷ Power is viewed as an end itself and any expression of moral concern is merely rhetoric, but those dominant in the system can impose moral norms on other states through coercion if it suits them to do so.

4.2.2 Neorealism

Waltz (1979) sought to develop a theoretical understanding of state behavior to explain why states act in similar ways despite having differing forms of government or regime types. States are rational, unitary actors and according to Waltz and his system-level analysis³⁸ the structural constraints of the international system (defined as the distribution of capabilities among states) determine the observed state behavior of balancing and re-alignment. Under anarchy, states cannot fully trust one another and this uncertainty surrounding other state’s intentions means all states in the international system are functionally alike and they “at a minimum, seek their own preservation and, at a maximum, drive for universal domination”.³⁹ Behavior is determined at the system level, not at the state level where political ideology and regime type are located. While states are functionally similar in seeking survival, they differ according to their capabilities and therefore a shift in the international distribution of power may alter a state’s relative position. Uncertainty over another’s intentions and concerns for relative gains result in a bleak outlook for cooperation; a state is not concerned about whether there is gain to be had from cooperation, but whether it will gain more than another state.

Neorealism⁴⁰ has a normative component — states should focus on national interests and abstain from moral crusades to spread liberal norms or engage in humanitarian interventions because they are nothing but a drain on resources. As Kennan claimed, “the primary obligation [of a government] is to the interests of the national society it represents, not to moral impulses that individual elements of that society may experience”.⁴¹ Regime type is irrelevant when contemplating the distribution of power since all states behave the same; if a state is gaining power then others must balance against it, regardless of its political ideology. Power is a relative concept and consequently not all states can increase power simultaneously, thus international politics is necessarily conflictual and a relentless competition for security.

³⁷Morgenthau (1948, p. 5).

³⁸Waltz’s predictions about the stability of a bipolar system versus a multipolar system will not be discussed here for the sake of brevity. Moreover, the statistical analysis conducted in this study covers the period 1985 through 2010 — a period in which the system has remained unipolar.

³⁹Waltz (1979, p.118).

⁴⁰There is a divergence between neorealists regarding hegemonic ambitions. For offensive realists states seek to maximize their power, which ultimately leads to hegemony, see Mearsheimer (2001) for discussion. Whereas for defensive realists, hegemony is potentially unstable, see Waltz (1979).

⁴¹Kennan (1985-86, p.206).

Waltz claimed states balance against power, defined as an aggregate quality encompassing a state's military strength and economic size, population size and endowment of natural resources.⁴² However, Walt (1987) refined this by arguing that states balance against threats, not power. It is not that power is irrelevant, power is still an important component, but threat is a more complicated notion encompassing a state's intentions and offensive behavior; a state could be powerful but not necessarily threatening according to Walt. The level of threat posed by a state is affected by geographic proximity, offensive capabilities and aggressive intentions⁴³ — it is how power is wielded that matters for Walt's theory of alliance formation. He also examines other potential determinants of alliance formation including foreign aid and ideology. At best, Walt finds they are weak motives for alliances and remain subordinate to security concerns, while geographic proximity is important.⁴⁴

Neorealism and Human Rights

Neorealism sees no role for moral concerns in foreign policy. However, there are two possibilities for why states may seem as if they are responding to human rights violations. The first is that it is just “cheap talk” — political leaders use the rhetoric of human rights to cover up or legitimize their pursuit of power and wealth; there is no underlying belief in the importance of human rights. Any seeming compliance with international norms is not because international law has bite, but rather because it is coincident with the self-interested actions a state would undertake anyway. No state alters its behavior to comply with a norm and institutions or international law have no independent effect.⁴⁵ The second explanation is that smaller states in the system are coerced by more powerful states or a hegemon to adhere to a set of prescribed norms. Some states may have an excess of resources such that they can guarantee their territorial security and pursue secondary goals like establishing respect for human rights. Very few states are in this position with such a preponderance of power that resources can be diverted away from security. In this scenario, the hegemon provides for a public good and incurs a disproportionate share of the costs of doing so, while other states “free ride”.⁴⁶ Krasner (1995) addressing directly human rights

⁴²Waltz (1979, p.131).

⁴³Like other neorealists, Walt considers power to be an aggregate concept of a state's total resources (industrial production, total population, military capacity). Offensive power is not the same as aggregate power; power has to be transformed into offensive power or “large, mobile military capabilities”, see Walt (1987, p.24) for further discussion.

⁴⁴Geography acts a mediating variable for power — the greater the distance between two states the less powerful they seem to each other. Alliances are therefore more likely to be formed “in response to nearby powers than in response to those that are distant” (Walt (1987, p.23)).

⁴⁵See Mearsheimer (1994-1995).

⁴⁶Kindleberger (1973) argues the economic depression in the 1920s and 1930s was due the absence of “benevolent leadership” — it was not sufficient for a hegemon to have the necessary resources to ensure economic stability, it must be willing to undertake the task. This benevolent hegemon contrasts with the “coercive hegemon” discussed in Gilpin (1981) and Snidal (1985). The coercive hegemon extracts contributions from weaker states for the maintenance of the international regime,

regimes and American hegemony notes that acquiescence to a human rights regime “is not a function of the extent to which a regime enhances information or discourages cheating; rather it is a function of the extent to which more powerful states in the system are willing to enforce the principles and norms of the regime”.⁴⁷ The regime or institution of human rights is not capable of exercising any autonomous influence. Moreover, the closer the hegemon is geographically, the more the target is subject to its coercive power. Donnelly (1986) specifically discusses the hegemonic role of the United States in maintaining the strength and functioning of the Inter-American human rights regime,⁴⁸ cajoling states into cooperating with the Commission and promoting its goals and objectives. But in this coercive approach, human rights reflect the interests of the dominant state in the system, and the regime will fall into neglect if it ceases to be in the interest of the hegemon to maintain it. It is also subject to failure if the hegemon’s power recedes. As such, it is epiphenomenal and international law is not determinative of state behavior. While it may seem like states care about promoting human rights, this will prove secondary to security concerns.

Neorealism: Summary and Expected Use of Sanctions

Realism suggests that sanctions are nothing more than an exercise in geopolitical interests and any apparent concern for human rights is forsaken for strategic priorities. Strategic and economic concerns are mediated by geography — states that are geographically close (to the US in this instance) are more likely to be of strategic importance and, in addition, are more likely to be a trading partner.⁴⁹

\mathbb{H}_1 : *Sanctions do not systematically respond to the level of human rights abuse.*

\mathbb{H}_{2a} : *Sanctions activity is inversely related to the target’s economic importance.*

\mathbb{H}_{2b} : *Sanctions activity is inversely related to the target’s strategic importance.*

\mathbb{H}_3 : *Sanctions are more likely if the target is perceived to be a threat more generally.*

\mathbb{H}_{4a} : *Sanctions are less likely if the target is an ally.*

\mathbb{H}_{4b} : *Sanctions are more likely if the target is an adversary.*

similar to a tax, while the benevolent hegemon ensures regime stability without such a burden.

⁴⁷Krasner (1995, pp.140-141).

⁴⁸Donnelly (1986) notes that hegemonic power is likely to be of limited use in a human rights regime because “issue-specific countervailing power is largely absent” in a way that is not true of materialistic regimes such as trade.

⁴⁹Geography often appears as an explanatory variable in studies explaining state conflict. Diehl (1992) finds that geographic proximity increases the likelihood of war; also see Russett (1992) and Buhaug & Gleditsch (2006). Vasquez (1995) offers several possible explanations for this finding: (1) as distance increases, the practicality of fighting decreases; (2) territorial or border disputes (often a cause for war) tautologically require states to be close to each other; and (3) countries are more likely to have repeated interactions if geographically close and this consequently leads to greater opportunities for conflict.

4.2.3 Neoliberalism

While accepting neorealism's core assumptions of anarchy and states as unitary, rational actors with given interests, neoliberalism argues for a more optimistic outlook for cooperation. Neoliberals view institutions as independent variables that can alter state behavior such that cooperation may be rational for self-interested states because they define rules and norms and hence direct expectations.⁵⁰ States, as rational actors can be diverted from opportunities for short-term gain with the promise of long-term benefits and in doing so, institutions increase the costs of cheating. Institutions allow states to overcome informational asymmetry that under neorealism leads to the constant fear of others' intentions as well as pool resources and share in monitoring obligations and costs to ensure compliance⁵¹, as such they are "rational, negotiated responses to the problems international actors face".⁵² Keohane (1984) shows through a simple tit-for-tat strategy that states will comply for the most part with a regime because doing otherwise may result in retaliation. Furthermore, if states engage in repeated interactions, then concerns for reputation can become meaningful — future cooperation may be affected by behavior today, that is the "shadow of the future" can make cooperation rational.⁵³ For this to hold states only need to value the future and be able to monitor any defections. Central to neoliberalism is the rationality of states: states must be able to weigh the costs of foregone short-term gain from cheating against the long-term benefit they will obtain from compliance.

Neoliberalism and Human Rights

Neoliberalism offers a rebuttal to neorealism's skepticism of cooperation between states. For neoliberals, international human rights law can be a constraint, but only if there are costs for violating it. States often have to incur high costs in order to comply with human rights treaties and they will undertake these expenses and modify behavior only if they will be sanctioned for not doing so, or if there is a significant cost to their reputation from failing to comply.

Neoliberalism: Summary and Expected Use of Sanctions

Neoliberalism suggests that states should attempt to coordinate sanctions and seek out sanctioning partners⁵⁴ to prevent free riding. This is particularly so if the target state is economically large since other states in the system stand to benefit greatly from re-directed trade with the target, while the sender incurs the costs from

⁵⁰Krasner (1983, p.2) defines regimes as "principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area".

⁵¹Keohane (1983, p.141).

⁵²Koremenos et al. (2001, p.768).

⁵³See Axelrod & Keohane (1985), Lipson (1984).

⁵⁴Martin (1992) finds that sanctions are more effective as the number of sanctioning partners increases, even though it is difficult and costly. Drezner (2000) argues multilateral sanctions coordinated by an international organization can have a meaningful impact; the absence of an international organization to support multilateral sanctioning efforts can be counterproductive.

a closed export market. The GSP scheme itself is a formal institution governing trade relations between the United States and beneficiary states. But it operates alongside or nested within alternative institutions — the WTO and the international human rights regime. The WTO has long resisted any attempts or suggestions to include social clauses within its purview arguing such issues are more suited to soft law instruments, while the ILO lacks the structure and authority to enforce any standards. As Hafner-Burton (2009) describes, the United States opted to modify the existing GSP institutional form to incorporate labor rights standards because of frustrations with existing institutions. Potential beneficiary states choose whether or not to accept this conditionality clause — market access is unaffected by a country’s GSP beneficiary status, rather a country can choose to continue with abusive behavior and incur the duty costs from importing goods to the United States. As such, if a country requests (and is granted) GSP beneficiary status, trade relations between the US and the country in question are institutionalized and subject to the scrutiny of the USTR. The GSP mandates punishment in the event of a transgression and neoliberalism would suggest the threat of forfeiture of duty-free privileges is the incentive mechanism necessary for state cooperation with labor rights respect. Therefore any deviation from the rules and norms prescribed should result in a penalty. This is not punishment for human rights abuse in the sense of moral outrage⁵⁵, it is punishment because a rule of the regime has been violated.

\mathbb{H}_5 : *The US should prefer multilateral sanctions, and will not sanction unilaterally if multilateral sanctions are an option.*

\mathbb{H}_6 : *Deviations from behavior prescribed by a regime should result in sanctions.*

4.2.4 Constructivism

Constructivism encompasses several strands of research that challenges the traditional “rational” approach in international relations and instead views states as social entities whose actions are governed by the “logic of appropriateness”.⁵⁶ The international structure is composed of multiple overlapping social relations and this determines a state’s interests and behavior⁵⁷, not the distribution of power or capabilities as neorealism claims. Constructivism does not rule out that a state is motivated by material interests, only that it should not be assumed this motivation applies across all states — alternative cultural values, such as concern for human rights, may

⁵⁵As already discussed, the inclusion of the labor rights conditionality clause was not due exclusively to moral concerns and so the operation of the review process and punishment cannot be viewed in purely altruistic terms.

⁵⁶See Checkel (1998) and Ruggie (1998) for further discussion. Snyder (2004) offers a summary of constructivism and comparison to realism and liberalism.

⁵⁷See Wendt (1999) for a detailed discussion. Finnemore (1996) examines how international social relations shape state preferences and can redefine political goals.

matter more. Preferences are endogenous to the system and can vary over time⁵⁸ depending on how interests and identities are constructed through social exchange.⁵⁹ Any stability of interests is an empirical observation — preferences should not be assumed to be fixed. In order to understand a state’s foreign policy decisions we therefore need to ask about its identity and how this identity is shaped by the international structure. Wendt argues that the forces shaping and affecting identity can be both international and domestic.⁶⁰

Transnational activists and civil society play an important role in the constructivist approach because they act as “norm entrepreneurs”⁶¹ gathering information about norm violations, monitoring compliance⁶² and “naming and shaming” violators.⁶³ Activists can act as a channel for disseminating information, pressuring governments to change their policies by reconstructing beliefs and expectations about appropriate behavior. The actions of non-state actors can promote change in state behavior bringing about a “norm cascade”. This normative discourse forms the interaction between state and society and consequently state actors modify their interests and “norm internalization” results. Constructivism can therefore draw attention to actors not considered by alternative international relations theories, as well as explain variations in observed behavior across states.

Constructivism and Human Rights

Constructivism highlights that there may be many norms and rules specifying how states should act. The human rights regime is comprised of numerous conventions covering torture, genocide, civil liberties and women’s rights — even non-liberal states have signed onto many of these treaties. Under this regime, states have a duty to protect not only the rights of their own citizens, but also an obligation to protect the rights of citizens in other states.⁶⁴

But the norm of human rights protection and promotion comes into conflict with the norm of state sovereignty. Human rights activists would argue that the development of the international human rights regime has transformed the meaning of sovereignty, and as such the Westphalian definition no longer applies; instead a norm of intervention has emerged.⁶⁵ If the social identity of states has been shaped by the

⁵⁸Wendt (1992). Anarchy does not logically imply that states resort to self-help; self-help is “inter-subjective” for the states involved.

⁵⁹See, for example, Wendt (1994), Wendt (1999), Ruggie (1998), or Katzenstein (1996).

⁶⁰Wendt (1995), see also Risse-Kappen (1996).

⁶¹Finnemore & Sikkink (1998).

⁶²Donnelly (1986).

⁶³Keck & Sikkink (1998).

⁶⁴Reus-Smit (2001).

⁶⁵The doctrine of the “responsibility to protect” (R2P) emerged after genocide in Somalia and Rwanda. It charges that states have a duty to protect their citizens, in addition to a collective duty to do so. But humanitarian intervention is accepted only if the state in question is not protecting its citizens, that is, sovereignty is conditionally respected and the meaning of Westphalian sovereignty is moderated. R2P was cited in the intervention in Kenya (2007-2008), Ivory Coast (2011) and more

norm of human rights protection then it is in a state's interest to adhere to this norm — human rights are upheld because it is “appropriate” to do so. States that violate human rights will be considered a threat to the community as a whole since the assessment of a threat is determined by the social structure that states are embedded in, not by a state's capabilities.

Constructivism: Summary and Expected Use of Sanctions

The norm dynamic of Finnemore & Sikkink (1998) demonstrates how domestic norms can eventually become international norms defining appropriate behavior for states. Socialization at the international level can necessitate sanctions to pressure states into adopting a new norm, while networks of norm entrepreneurs aid in monitoring compliance. This is a “norm cascade” in which numerous states in the system adopt a new norm, eventually leading to “norm internalization” and automatic state compliance. In the case of human rights, states have clearly not reached the stage of “norm internalization”, but it is true that there are “norm leaders”. The United States, through the GSP, could be argued to be an integral actor at the “norm cascade” stage, using sanctions and incentives to pressure developing countries to adopt human rights norms⁶⁶ as part of the socialization process that occurs at the international level. For this to hold, a long period of enforcement is required to move from being regulatory to constitutive; while weak enforcement can lead to self-interested deviations and the decay of a the norm.⁶⁷ I would therefore expect economic sanctions when the community determines it is an appropriate response to a norm violation.

III₇: *Sanctions should respond to levels of human rights abuse, irrespective of US material interests.*

4.2.5 Liberalism

Liberalism diverges from traditional International Relations approaches by relaxing the unitary state assumption and instead adopting a bottom-up approach in order to examine how individual preferences are aggregated within a polity, thereby driving a state's foreign policy decisions. State behavior is determined by domestic politics, not the international balance of power as in realism. Although liberalism assumes states are rational and exist under anarchy, states are not assumed to all share the same goal of wealth pursuit, rather each state has distinct preferences.⁶⁸ A state's

recently in South Sudan and the Central African Republic (2013). Military intervention in Libya in 2011 was also justified on the basis of R2P.

⁶⁶See Sikkink (1993) for a detailed discussion of how human rights policies in the United States and Europe were affected by principled ideas.

⁶⁷Fearon & Wendt (2002).

⁶⁸There are variants of liberalism each focussing on a different basis of state interests: republican, commercial or ideational.

interests are not immutable⁶⁹ because who has influence and power in the political process can change. It is the relative power of domestic groups and the political institutions that channel these interests that determines foreign policy and this is the focus of liberal enquiry. How interests are represented turns the focus of study to regime type and questions about how state behavior varies according to the national characteristics of each state in the system. A strand of liberal research examining the behavior of states and their individual regime types is the democratic peace literature. If we are willing to view sanctions as analogous to war in the sense that both are coercive foreign policy tools, this research agenda may provide some insights into the application of the GSP conditionality clause. The democratic peace is an important theoretical proposition because it challenged the realist focus on systemic effects and balance-of-power considerations for determining state behavior. It originated⁷⁰ with Babst (1964)'s empirical observation that democracies rarely fight each other, which subsequently gave rise to a body of research aimed at understanding the logic and causality of this observation.⁷¹ Indeed, this statistical finding has become so entrenched that it has been claimed that the absence of war between democracies "comes as close as anything we have to an empirical law in international relations."⁷² Several explanations have been put forward for this observation.⁷³ The normative account claims democracies do not fight because disagreements are resolved through compromise and cooperation, that is, they are normatively opposed to fighting and these norms govern international relations. In externalizing pacific norms, states expect other democracies to behave similarly and allies (or adversaries) are determined by a state's political ideology. A structural approach focuses instead on the domestic institutional constraints that elected officials in democracies are subject to; audience costs limit democratic leaders in way that is not true for autocracies.⁷⁴

⁶⁹For a discussion of liberal theory and key concepts and assumptions see Moravcsik (1997). Doyle (1986) discusses the liberal tradition from the perspective of three theorists: Schumpeter, Machiavelli and Kant.

⁷⁰Originated in terms of empirical research. As a theory it was first proposed by Kant in 1795. In *Perpetual Peace* he theorized that democracies would not fight because citizens would never vote to go to war except for self-defense since they are the ones who bear the costs, hence in a world of republics, war would end and perpetual peace would reign. Doyle (1983) subsequently investigated Kant's assertion empirically.

⁷¹The resurgence of this research agenda began with Doyle (1983), Doyle (1986), and Russett (1993). For an in-depth overview see Chan (1997).

⁷²Levy (1989, p. 88).

⁷³The democratic peace literature is not without detractors: Spiro (1994) argues that democracies fighting is a rare event so one cannot draw any conclusions; Layne (1994) claims there is no causal mechanism, just correlation and definitions have manipulated so as to make it hold. Farber & Gowa (1995) find it holds only from 1945 onwards and is a product of the Cold War and democracies allying with each other. Mearsheimer (1990) offers a similar realist argument arguing that the democratic peace is merely "epiphenomenal".

⁷⁴Morgan & Campbell (1991) argue electoral constraints prevent the escalation of a dispute, not disputes themselves. Bueno De Mesquita & Lalman (1992) offer a comparison between a realist

Another domestic level group that influences US foreign policy decisions is Congress. Decisions regarding the termination of GSP benefits are determined solely by the President and are not subject to Congressional approval. However, the legislation authorizing the GSP has to be regularly renewed by Congress, leading to opportunities for tensions between the two branches of government to arise regarding the implementation of the statute. Congress has even felt it necessary on occasion to intervene in the GSP review process, questioning why particular states have not been investigated and sanctioned for their labor rights practices.⁷⁵

Martin (2000) argues that a state's commitment to international cooperation can be influenced by Congressional action. She finds that when the government is divided (the President is from a different party to the legislative), Congress is more willing to provide oversight and expose any "presidential shirking and evasion of legislative intent"⁷⁶ and these actions actually strengthen a state's commitment to a sanction's coalition. This incentive dissipates when they are of the same party because politicians care about "party reputation ... [and] ... revelation of presidential shirking is not an unconditional benefit".⁷⁷ Her finding, while related to the credibility of a state's commitment to multilateral sanctions, suggests that Congress may exert a significant influence on foreign policy decisions, particularly when executive action is required. The Democratic party has historically been identified with human rights and it will be assumed to favor, publicly, the application of human rights based

explanation based on constraints of the international system and domestic level constraints, asking if domestic level considerations additionally constrain leaders. While Bueno De Mesquita et al. (1999) focus on the political survival of leaders; if survival depends on the successful outcome then a leader will shift extra resources into any war effort and this extra effort provides a military advantage over autocrats. Gelpi & Griesdorf (2001) argues audience costs encourage leaders to only select international conflicts that they will win.

⁷⁵For example, Guatemala's 1994 petition as discussed by Belanger (1996). More recently, Democrats pushed for the suspension of Bangladesh's GSP benefits following the Rana Plaza disaster in 2013, see <http://www.reuters.com/article/2013/06/25/usa-trade-bangladesh-idUSL2NOF10W820130625>. Congress has also been active on human rights issues more generally. The US sanctions history of Burma highlights the influence Congress can wield on US foreign policy. The Burma Freedom and Democratization Act was initially introduced by Senator Mitch McConnell in 1995, and while the original language was weakened in the final legislation, key members of Congress were responsible for pushing the President to sanction Burma. For a comprehensive overview of this history see, CRS Report #R4293 "US Sanctions on Burma: Issues for 113th Congress", Michael Martin, January 11, 2013. In 2007, against the wishes of President Bush, both the House and Senate passed the Sudan Accountability and Divestment Act, see <http://www.democraticleader.gov/newsroom/house-passes-sudan-accountability-and-divestment-act-of-2007/>. A more recent example of tension between President Obama and the legislative occurred over sanctions against Venezuela because of human rights abuse with the President resisting sanctions see http://www.huffingtonpost.com/2014/05/08/venezuela-sanctions_n_5290484.html.

⁷⁶Martin (2000, p. 95).

⁷⁷Martin (2000, p. 95).

legislation and the promotion of labor rights over Republicans.⁷⁸

Liberalism and Human Rights

Liberalism explains state behavior and foreign policy choices as determined by whichever domestic constituents hold power in the decision-making process. The US has acted on numerous occasions to defend human rights abroad even when such actions have been costly, but the response over time has been inconsistent. Liberalism suggests that a human rights policy is possible, but requires an influential group to champion it.

Liberalism: Summary and Expected Use of Sanctions

Measuring or quantifying the impact special interest groups have on the decision-making process is complicated.⁷⁹ Moreover, a priori it is not necessarily obvious what stance a particularly group will take with regards to sanctions. Business groups might be expected to lobby against sanctions, especially in the case of the GSP because imports become more expensive (imported components used for manufacturing goods in the US). But it is equally plausible to expect groups representing US industries competing⁸⁰ against GSP importing industries to hold protectionist motives and to lobby for sanctions in order that they can stave off competition⁸¹ since GSP benefits

⁷⁸As recently as April 7, 2014 Democrats publicly criticized Colombia for weak enforcement of labor laws and a lack of reform after the signing of the US-Colombia Labor Action Plan, see <http://democrats.edworkforce.house.gov/press-release/columbian-workers-continue-face-widespread-violence-human-rights-violations-members>. It is House Democrats who are pushing the USTR to include labor rights protection in the Trans-Pacific Partnership (TPP), citing Vietnam, Malaysia, Brunei and Mexico for particular opprobrium, “the final agreement should be withheld until these countries embrace the need to reform their labor laws”, see “House Dems press for strong labor rights in Asia-Pacific trade deal” available at <http://thehill.com/policy/finance/207666-house-dems-press-for-strong-labor-rights-in-asia-pacific-trade-deal#ixzz3BSerYRj1>. In 2012 the Republican platform called on Congress to reject three still-to-be-ratified human rights treaties: The Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities. Republicans blocked a bill to increase the federal minimum wage in April 2014, while Wisconsin’s Republican governor won a high-profile battle with state employees over the right to bargain collectively in 2011. Aaronson & Zimmerman (2007, p. 166) note that “Republicans were unwilling to accept trade sanctions as a tool to enforce labor obligations in trade agreements”. For a comprehensive overview of Republican efforts (backed by multinational corporations) to undermine labor rights, see Lafer (2013).

⁷⁹ “[T]he interest group approach implies that sanctions [is] motivated by interest group lobbying, and the ultimate result will reflect the relative political influences of the competing groups” (Kaempfer & Lowenberg (1992, p.46)). See also, Kaempfer & Lowenberg (1988).

⁸⁰Kaempfer & Lowenberg (1992) argue that import sanctions provide domestic protectionism and so one should expect US firms to lobby for sanctions. In theory, GSP benefits are only granted to products that do not compete with domestic producers thereby limiting this argument. There is a separate petitioning process, “product challenges,” that permits US producers to push for protectionism. Thus, they do not need to use the worker rights review process to this end.

⁸¹The GSP has been previously examined for protectionism. Mandel (1988-1989) argues that there

act like a subsidy to importing countries.

An alternative special interest group that may actively lobby is expatriates or former nationals of a target country. The foreign aid literature frequently cites colonial links as a determinant⁸² of a donor's allocation decision. However, this factor is more relevant to these studies because they are cross-country analyses of donors, including many European countries that have a strong colonial history; this is not true of the United States. The United States does however have a strong history of immigration and diaspora politics. Some ethnic groups have been active in attempting to influence US foreign policy directly through lobbying for a particular cause⁸³ and indirectly through the dissemination of information.⁸⁴

Moreover they can be active in their homeland's domestic affairs through the funding of political parties or the more extreme action of equipping rebels and insurgents as has been the case with the LTTE and the Tamil diaspora.⁸⁵ Diaspora groups are not necessarily homogenous, "within each diaspora there might be significant differentiation between groups"⁸⁶ and these differences may change over time, not to mention it would be a mistake to assume that diaspora groups behave similarly across ethnicities. Parsing out the motives of a given diaspora is best left for qualitative research and will not be attempted here. It is also problematic to operationalise: one option is the Census information and data on self-reported ancestry or ethnic origin to ap-

is no evidence to support charges of protectionism — human rights groups have been instrumental in the petitioning process (not business groups) and the states petitioned have some of the worst records of labor rights repression. Harvey (1995) also discusses the potential for US domestic industries to abuse the review process for protectionist motives and finds no evidence. In his study, evaluating the first ten years of the GSP worker rights clause, there were no examples of industry groups petitioning for country suspension. The data I collected on petitions substantiates that organizations without a labor rights agenda have not used the petition process. The most active petitioners are the AFL-CIO, ILRF (formerly ILRERF), Human Rights Watch and USLEAP; no petition has been lodged by a business or trade group.

⁸²Gillies (1996) argues states feel a moral obligation to their former colonies and this results in aid after independence; aid is used to maintain influence. These results are echoed by Alesina & Dollar (2000) and McGillivray (2003).

⁸³Perhaps the most prominent group, with numerous lobbying groups, especially from a sanctions perspective is the Cuban-American population, many of whom actively oppose the Castro-regime and support the US embargo. But Cuban exiles also include pro-Castro supporters and those who believe the embargo is misplaced more generally.

⁸⁴Shain & Barth (2003, p.462). For example, Iraqi exiles were particularly influential in the run-up to the US invasion of Iraq in 2003. See <http://www.businessinsider.com/chalabi-could-be-the-countrys-next-prime-minister-2014-6> for a discussion of Ahmed Chalabi's role and <http://www.bostonglobe.com/ideas/2013/03/16/kanan-makiya-regret-about-pressing-war-iraq/k6ZsBxp4sXptfXrcRAocd0/story.html> for Kanan Makiya's role.

⁸⁵Diasporas have been shown to have a significant effect on the risk of renewed conflict — this risk is "six times higher in the societies with the largest diasporas in America than in those without American diasporas" (Collier & Hoeffler (2000, p. 26)). See Byman et al. (2001, Chapter 3) for a detailed discussion of diaspora support for insurgents in the Tamil case.

⁸⁶Shain & Barth (2003, p.463).

proximate the size of a diaspora. But this is a crude and perhaps even inaccurate proxy; in 2011 Cuban-Americans numbered just over two million people (or less than 1% of US total population) and less than half that of Chinese-Americans⁸⁷, yet it has successfully entrenched itself in US foreign policy decisions for over four decades. Rather than introduce an improperly specified causal mechanism that cannot be operationalized reliably, I decided to omit this variable from my analysis.

\mathbb{H}_{8a} : *If a regime is illiberal then the likelihood of sanctions increase (since the US is a democratic regime).*

\mathbb{H}_{8b} : *If a regime is liberal then the likelihood of sanctions decrease (since the US is a democratic regime).*

\mathbb{H}_9 : *As the number of Democrats in Congress increases relative to the number of Republicans, the likelihood of sanctions increase. Moreover, this effect should be stronger if the President is a Republican (and the government divided).*

4.2.6 Economic Sanctions Literature

Within the economic sanctions literature there are several general arguments made for why states would opt to use sanctions.⁸⁸ The most obvious explanation for sanctions is for instrumental reasons; senders want to change the behavior of the target. For this mechanism to operate, sanctions need to inflict sufficient pain on a target such that it is in self-interest of the state to change its behavior and comply.⁸⁹ But this is not the only reason offered for sanctions — the domestic politics of the sender state may also play a role particularly in the post-Cold War period.⁹⁰ Sanctions can take on a symbolic dimension because politicians have to be seen to be doing something and sanctions demonstrate a leader’s willingness to act, regardless of their eventual outcome.⁹¹ Doing nothing is costly because it creates an image of a weak

⁸⁷Data obtained from <http://diasporaalliance.org/americas-largest-diaspora-populations/>.

⁸⁸This literature often focuses on sanctions efficacy and whether sanctions achieve their stated purpose. There is a fundamental selection bias problem in the empirical study of sanctions because sanctions can work at the threat stage to alter a state’s behavior so one does not observe a sanctions episode, yet target behavior is altered, see Eaton & Engers (1999), Lacy & Niou (2004). The Hufbauer et al. (2009) dataset, one of the most commonly used datasets in empirical work on sanctions only contains instances of when sanctions were leveled, thereby making it a non-random sample of cases. Two opposing views of this dataset exist: first, studies can underestimate the impact of sanctions because they ignore cases where sanctions were threatened, but not carried out (Drezner (2003)); second, the dataset can bias results in the direction of overstating the success of sanctions because states will only initiate sanctions when they believe the probability of success is high (Morgan & Schwebach (1997)).

⁸⁹Baldwin (1999-2000) discusses the use of sanctions relative to other forms of coercive foreign policy options and argues there is a “logic of choice” that favors the use of sanctions, despite their poor record of effectiveness because they are cheaper than military action.

⁹⁰Elliott & Hufbauer (1999).

⁹¹Daoudi & Dajani (1983), Smith (1995).

leader, while military action is often too costly, both economically and politically.⁹²

Drury (2001) finds domestic factors matter for sanctions initiation; sanctions are more likely the higher the President's approval rating or if elections are close, but he notes that not all foreign policy issues will generate the same attention from the domestic audience.⁹³ Whang (2011) adopts the symbolic approach focusing specifically on how voters assess a leader who instigates sanctions. Using a cost-benefit analysis, he finds politicians can be incentivised to use sanctions, despite the lack of instrumental success because "they can work as a low-cost display of a foreign policy commitment, which often generates strong domestic support for the incumbent leader"⁹⁴. A leader will sanction if the benefits outweigh the costs, which includes not just the economic costs of sanctions but also the audience costs from ending sanctions if they prove to be unsuccessful. In his empirical study of presidential approval ratings and sanctions initiation he finds presidents resort to sanctions when they suffer from a low approval rating because the public rewards him for responding to the unacceptable actions of a target state. In conclusion, the literature is divided about how and when presidents respond to a crisis and choose to utilize economic coercion: whether high public approval is determinative or whether sanctions are used as a diversionary tactic.

Sanctions can also act as a signal on the international level. They can be used as a signal of US foreign policy to the wider international community because, as Wallensteen (1968) notes, sanctions serve to "tell the world what norms the sender in general dislikes".⁹⁵ In terms of relations between states and their impact on the decision to sanction, Drezner (1999) theorizes that allies are less likely to sanction each other because they have lower expectations of future conflict. For Drezner, allies are determined if two states "share a history of cooperation and mutual trust in security and other issues that is not disrupted by shifts in the international distribution of power".⁹⁶ But this "conflict expectations" model generates a "sanctions paradox"

⁹²Empirical studies have not consistently supported the proposition that the domestic sphere is an important source of behavior. Ellings (1985) argues for a systemic explanation for sanctions over domestic variables. Similarly, Drezner dismisses the domestic politics argument in favor of a relative gains explanation for state behavior.

⁹³Drury does acknowledge that international factors are the most significant determinant of the decision to sanction, but domestic factors, such as a President's political capital (measured by approval rating) can influence the decision.

⁹⁴Whang (2011, p. 789).

⁹⁵Wallensteen (1968, p. 262). Nossal (1989) and Schwebach (2000) also make a case for sanctions as sending a message to the other states in the international system.

⁹⁶Drezner (1999, p.34). This is a different definition of ally to Walt who claims geographic proximity is an important explanation. The effect of geography on the decision to sanction is potentially mixed. If we believe Walt that allies are determined by geographic proximity, then following Drezner, we would expect sanctions to be inversely related to geography: senders do not punish states closest to them because they are allies. But Askari et al. (2003, p.4) instead suggest that "powerful nation-states invariably have broad interests in territories in close proximity to their own" and so are more likely to sanction those states closest to them.

because senders are more likely to impose sanctions on a target with whom they expect a greater number of conflicts in the future, but these states are less likely to capitulate because they fear any concession will threaten their security in the future.

Some scholars have recently applied the democratic peace theory to the study of economic sanctions.⁹⁷ Lektzian & Souva (2003) argue the joint pacifying influence of democracy between dyads extends to the economic realm. In an extension of Bueno De Mesquita et al. (1999), they find democracies will prefer to target autocracies with sanctions. Moreover, because democracies are vulnerable to domestic pressure, they opt for sanctions that inflict a minimal amount of harm to their constituents, choosing, for example, targeted financial sanctions over broad trade sanctions. Cox & Drury (2006) adopt a similar approach and extend the statistical analysis through to 2000 and similarly find democracies sanction other democracies less than they sanction non-democracies,⁹⁸ but this is because they sanction for issues such as human rights abuse — issues that are more common in non-democracies. Additionally, in contrast to the argument of Drezner, they find that the United States is willing to sanction its allies.

\mathbb{H}_{10} : *As a President's approval rating increases, the likelihood of sanctions increases. (But this relationship is contentious).*

\mathbb{H}_{11} : *The likelihood of sanctions decreases if the target state is an ally of the United States.*

4.2.7 Summary

The following table summarizes the hypotheses outlined in the preceding discussion categorized according to the theoretical foundation from which they are derived.

⁹⁷Several studies have noted that regime type can affect the probability of a successful sanctions episode because autocracies can shield themselves from sanctions in a way that democracies cannot. See Pape (1997); Bolks & Al-Sowayel (2000).

⁹⁸The literature is not unanimous on this point however. Nooruddin (2002) finds that senders are more likely to target democracies than non-democracies because they stand a greater chance of success since democracies are more likely to concede.

Table 4.1: Summary of Main Hypotheses

	Variable	Relationship to Likelihood of Sanctions
Neorealism		
H ₁	Level of human rights abuse	No relationship
H _{2a}	Economic importance of target	Negative
H _{2b}	Strategic importance of target	Negative
H ₃	Threat level of target	Positive
H _{4a}	Target is considered an ally	Negative
H _{4b}	Target is considered an adversary	Positive
Neoliberalism		
H ₅	Multilateral sanctions in place	No unilateral sanctions sought
H ₆	Target deviates from rules of GSP institution	Positive
Constructivism		
H ₇	Level of human rights abuse	Positive
Liberalism & Domestic-level Explanations		
H _{8a}	Level of autocracy of target regime	Positive
H _{8b}	Level of democracy of target regime	Negative
H ₉	Number of Democrats in Congress	Positive
H ₁₀	President's Approval Rating	Positive or Negative
H ₁₁	Target is considered an ally	Negative

Chapter 5

Research Design

5.1 Data

The first and perhaps most important data-related issue is the construction of the dataset for the left-hand side variable. This process will be discussed in detail focusing on where the data was sourced and how this was operationalized so that it could be used in a quantitative analysis. Then the right hand side variables selected to best capture and test the hypotheses identified in Section 4.2 will be outlined. Once the dataset has been identified, the discussion moves on to the model itself and statistical techniques used, with particular attention to the modeling complexities of the GSP annual review process. A detailed discussion of the results follows.

5.1.1 Dependent Variable

The question asked in this study is whether or not the United States punishes a state that violates human rights; it is punishment via the suspension of GSP benefits that is of interest. The unit of analysis is therefore a petition (or absence of petition), not the occurrence of human rights abuses. The necessary information for the dependent variable comes from the universe of GSP country practice petitions from 1985 to 2010¹ and a list of countries eligible for GSP benefits.² The data collected included the date of the original petition and the country targeted, the initial decision by the GSP Subcommittee (whether to accept or reject the petition for review) and the final

¹The GSP Annual Review process covers country practice petitions for worker rights, intellectual property rights and arbitral awards — only those petitions relating to labor rights were collected.

²The Harmonized Tariff Schedule (HTS) lists all countries added or removed from the GSP beneficiary list each year. Countries can be added because they have had their status reinstated, or removed because they breach the income level requirements or for a violation (of labor rights or intellectual property rights). A country had to be added to the list by January of a given year to be regarded as eligible and a potential petition target. I assumed, given the informational requirements for a petition that there would need to be at least six months notice for a petitioner to be able to file a petition.

outcome of the review process (meeting standards or benefits suspended).³ The date of any official decision taken at every decision node was noted so as to ensure that independent variables could be matched up appropriately.⁴

There was no pre-constructed dataset available in a usable format, indeed, as far as I am aware, there has been no cross-country time-series attempt to analyze the review process. Consequently, I had to construct this unique dataset using primary source material obtained in person from the GSP Subcommittee at the Office of the US Trade Representative, the National Archives at College Park, Maryland, and the Federal Register. These documents were not necessarily available in an easy-to-use format, and a first step was identifying the case number attached to a petition so that a given petition could be tracked through each stage of the annual review process, and therefore ensure that all decision points in a case were collated.⁵ To establish that the entire universe of petitions had been collected, the list of petitioned countries and cases was cross-referenced with documents from petitioners such as the AFL-CIO, ILRF, USTR Press Releases and secondary sources. Some GSP-eligible countries have never been petitioned, while some have been petitioned multiple times.⁶

Having identified the countries petitioned and corresponding case numbers, USTR press releases and GSP Subcommittee documents could then be used to track the review process at each decision node. It should be noted that the review process could last several years and span multiple annual reviews. The date of any published decision or case update was carefully recorded so that it could be assigned to the appropriate review year. In general, the deadline to petition a country occurs in June of the start of the review year and decisions are enacted July of the following year.⁷

At most decision nodes a clearly identifiable decision was issued, such as the rejection of a petition or the suspension of benefits. In a few cases no decision was released (that could be determined from official documents) and it was assumed that the case was under continuing review for that year if there was an update in a subsequent

³See Section 3.2 for details of the review process.

⁴That is to say that any independent variable used in the quantitative study reasonably captures information available to the GSP Subcommittee decision makers at the time a decision was taken and no forward-looking data was used.

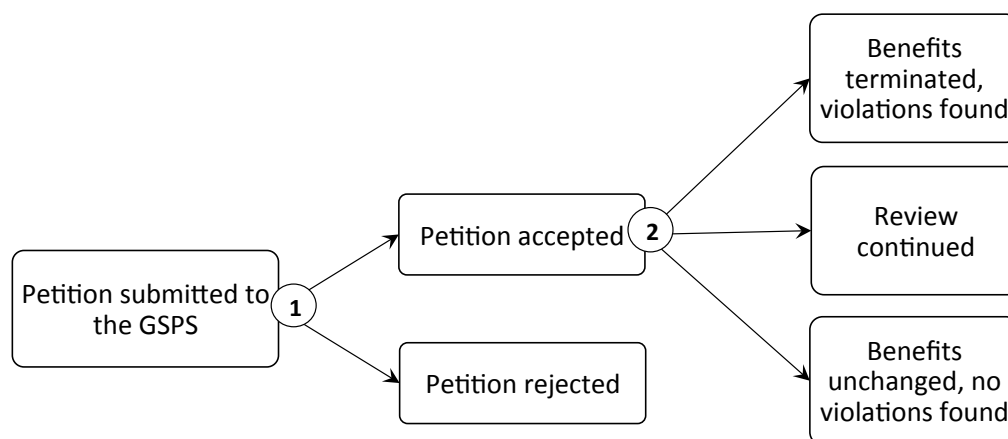
⁵This is particularly relevant for countries subject to multiple and repeated petitions.

⁶Throughout the empirical analysis I drop observations on non-independent countries and territories (NICTs) as corresponding data for the independent variables are not available for these states. Moreover, some countries have been subject to multiple petitions in a given review cycle (from different petitioners). In all instances, the outcome was the same — either all accepted or all rejected — I therefore counted these multiple petitions as one petition because I am interested in the outcome of a petition not the reason for a petition.

⁷As detailed in 15 CFR §2007.3. This pattern held during the initial authorization of the GSP. In subsequent years, the GSP renewal legislation has been subject to delays and lapses. In each review year the dates were matched up to ensure the appropriate data was used in the analysis. See Table 7.1 (in Appendix) for a detailed list of legislative delays and lapses. The longest lapse was fourteen months and resulted in a missed annual review in 1996 and consequently an “out-of-cycle” review for the 1997 petition cycle.

annual review, however in no case was there an indeterminate final decision.

Figure 5.1: The Dependent Variable and the Review Process



At decision node 1 the choice is dichotomous with a yes coded as 1 and 0 otherwise. At node 2 the choice set is more involved and outcomes were coded as: 2 if benefits were suspended, 1 if the country was put under continuing review and 0 if benefits were unchanged. See Figure 5.1 for a graphical representation of this sequential process. The dependent variable is not a continuous variable and this presents particular statistical challenges that will be discussed in a later section. The dataset includes incidences of non-punishment and not just the instances of punishment because I am interested in the conditions that determine whether or not benefits are suspended in response to human rights violations in beneficiary countries. Consequently, there are a number of observations across countries and years where the dependent variable takes on the value zero (i.e., no petition).

5.1.2 Independent Variables

Human Rights Violations

A key independent variable is the prevailing human rights conditions in the beneficiary state. Any discussion of punishment requires an understanding of whether a state is actually complying with the stipulations of the GSP statute, but this is also perhaps the most problematic variable to measure. Indeed even the notion of compliance is subject to debate. Hathaway (2002) notes “compliance with human

rights treaties must [therefore] be defined on a continuum based on the degree to which behavior deviates from the legal requirement of the treaty and not regarded as a simple, dichotomous “comply”/“not comply” variable.”⁸ That is, there is some “wiggle room” when considering a state’s compliance; a state may be deemed in compliance even if it does not conform precisely to the legal obligations. As discussed in Section 4.1, the vagueness of the GSP statute clouds the notion of compliance and consequently any evaluation, but this is a criticism that could be leveled at any study of the GSP in practice. A further complication is the actual quantification of human rights violations and the difficulty of obtaining consistent and accurate information about a state’s behavior. I chose not to construct my own index because of concerns for reliability and instead rely on established measures that have been extensively used in the political science literature — the advantages and disadvantages of each will be discussed in turn.

The Political Terror Scale (PTS) score⁹ produces two separate measures of political violence and personal integrity based on the scoring of annual reports issued by Amnesty International and the State Department.¹⁰ The coders consider state sanctioned violence on a scale of 1 (least repressive) to 5 (most repressive) based on instances of torture, disappearances, political imprisonment and killings. While this indicator is used extensively in quantitative studies relating to human rights, it is not particularly suited to this study since state terror encompasses more extreme political violence than workers’ rights and so I cannot assume it paints an accurate picture of the labor rights situation in a country. One would expect worsening labor rights and increasing political terror to be correlated, such that if political terror is widespread the labor rights situation would also be dire. However, poor respect for labor rights need not imply extensive political terror. Thus, political terror is unlikely to be a satisfactory proxy for labor rights — this is especially important as this is a key explanatory variable in my analysis.

Freedom House¹¹ publishes a measure of political freedom, often used as proxy for a state’s level of democracy. It is based on two separate scores on a 1 (most free) to 7 (least free) scale for political rights and civil liberties which are then averaged and based on this rating a state is then classified as “not free”, “partially free” or “free”. The political rights index covers the electoral process, political pluralism and functioning of government, while the civil liberties index covers freedom of expression, the right of association and organization, the rule of law, and personal rights. It is this latter index, of civil rights, that is more closely related to the GSP requirements, although this would be a noisy approximation of the GSP statute requirements because it includes additional information on non-GSP issues.

⁸Hathaway (2002, p.1965).

⁹See <http://www.politicalterroryscale.org/faq.php> for discussion of coding.

¹⁰The State Department reports have been accused of bias, see Carleton & Stohl (1987). This bias has been countered, especially for later time periods, see Poe & Tate (1994).

¹¹See <http://www.freedomhouse.org> for further information and data.

The Cingranelli & Richards (CIRI) Human Rights Data Project¹² is a quantitative measurement of government respect for fifteen internationally recognized human rights broadly covering physical integrity, civil rights and women’s rights. The scores are based on a content analysis of State Department annual reports (and Amnesty International reports for physical integrity rights) on a scale of 0 (least respect) to 2 (full respect). Unlike the PTS dataset, the CIRI is broader, encompassing more dimensions of human rights than physical integrity and the disaggregated data is more relevant and useful to this particular study. Two key indexes directly address the intent of the GSP conditionality clause. The workers’ rights measure has the advantage of being coded directly from the State Department’s annual reports that detail the workers’ rights situation in each GSP beneficiary country.¹³ This is a brief summary of information the GSP Subcommittee has access to from the State Department, which in turn, participates in the annual review process. The CIRI index measures the prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. A separate, related measure is also produced — freedom of association and assembly score that quantifies any restrictions imposed by a government on trade unions and political parties. Together these two indexes cover the five internationally recognized workers rights outlined in the GSP statute.

Table 7.2 (in Appendix) displays the correlations across the various human rights measures discussed. As can be seen in the table, measures aimed at providing a quantitative assessment of the level of human rights are generally only weakly correlated with available measures for workers rights. This confirms that, for this study, the only suitable existing measures are the CIRI WORKER and ASSN indexes.

Strategic Interests

US aid — foreign aid and military aid — is often used in quantitative studies to proxy for the degree of strategic importance of a country to the United States because aid can be used to buy concessions. There is a modest correlation (approximately 50%) between the two series, but there are some extremes present in both, such as the military aid given to Israel, which accounts for approximately 40% of total aid given to GSP beneficiary countries in a given year. Aid is denoted in constant US dollars sourced from the US Overseas Loans and Grants (Greenbook) and where there is no data it is assumed that zero aid is given.

Additionally, I created an indicator variable that takes on the value 1 if a country is an oil producer in a given year. A minimum production value of 1% of global output per day was used as a cut-off point. Data were obtained from the BP Statistical

¹²See Cingranelli & Richards (2010) for a discussion of how the data set is constructed and comparison to the PTS score. The data set can be downloaded from <http://www.humanrightsdata.org>.

¹³This reporting requirement was made mandatory after the labor rights amendment to the GSP statute.

Review of World Energy. I initially wanted to use data on the volume of oil the United States imports from a country because this would better capture US vulnerability to a particular country, but this disaggregated data is only available from 1992 onwards and results in a substantial loss of observations.¹⁴

Threat or Power of Target

The notion of state power or threatening stance of a state can be captured in several ways: size of economy or national wealth; military strength and population size. Nominal GDP data were obtained from the World Bank Development¹⁵ Indicators (WDI) and used in constant US dollars. Population figures were also obtained from the same source so as to ensure compatibility when constructing GDP per capita figures used for a control variable (discussed later). The Correlates of War dataset¹⁶ produces a composite variable of national material capabilities (CINC) which is comprised of six indicators: military expenditure, number of military personnel, energy consumption, production of iron and steel, as well as population size both total and urban. This broad index is used as a measure of the concept of national power rather than the individual components as per the authors' recommendations. The ratio of capabilities between dyads is frequently used in the literature to capture the notion of power¹⁷, however GSP beneficiaries would be dwarfed relatively by the United States and would exhibit little variation — the data would just be a series of miniscule ratios and so the CINC index is used in its raw form. Geographical distance from the United States was measured from the capital city of the beneficiary country to Washington, DC as the crow flies to take into account that states closer to the United States would seem more threatening.¹⁸

The Militarized Interstate Dispute (MID) data set produced by the Correlates of War Project contains data on disputes between states including whether force was threatened. The variable “hostility level” is coded on a five-point scale from 1 (no militarized action) to 5 (war). Upon further examination the only GSP-eligible countries that threatened the United States were Russia, Haiti and Venezuela and so this data set is not useful for this quantitative study.¹⁹

I also constructed a dichotomous variable denoting whether a state was in possession of nuclear weapons and/or classified as a state that supports terrorism. However, this index contained limited information²⁰, especially because any state deemed to

¹⁴Data obtained from the Energy Information Agency.

¹⁵Data available at <http://data.worldbank.org/data-catalog/world-development-indicators>.

¹⁶<http://www.correlatesofwar.org>

¹⁷For example, Oneal & Russett (1997).

¹⁸Choice of city in the United States affects the absolute distance, not the relative distance and this is all that is trying to be captured by this variable — a ranking of countries and potential threat based on their geographic location. Distance was calculated using Google maps.

¹⁹Other states have threatened the United States over the sample period but they were not GSP eligible around the time of the dispute.

²⁰Of the Nuclear Non-Proliferation Treaty (NPT) nuclear weapons states only Russia is eligible

support terrorism is statutorily ineligible for GSP benefits.

Adversary or Ally Status

Determining how to measure whether a state is an adversary is far from obvious. The United States has labeled states as “rogue” states, although there is not enough data for this to be usable, especially since many of these states are not eligible for GSP benefits under the statutory provisions (for example, communist countries are excluded as are those states that support terrorism). As such, I cannot test the effect adversary status has on enforcement proceedings (Hypothesis #4b) because states are not simply classified into adversaries and allies.²¹

An explicit variable for strategic relationship is available from the Correlates of War (COW) dataset and this is used as a measure of ally status. The formal alliance dataset classifies a dyadic relationship as either: defense pact, neutrality agreement, non-aggression pact, or entente, with defense pact the highest level of commitment possible and entente the lowest level of military commitment between two states. To operationalize this qualitative measure the data were transformed into a quadranominal scale and assigned a value of 4 to defense pact through 1 to entente. Since a dyad can have multiple agreements in place of varying levels of commitments, a decision has to be made about how to use this information. Some studies take only the highest level of commitment between two states because they are interested in the maximal strength of the relationship or they simply dichotomize the variable to account for whether an alliance was in place or not. An alternative approach was adopted here and I instead created an additive measure to capture not just the depth of strategic relationship, but also how institutionalized the relationship is.

Economic Importance

Trade links between the United States and target country capture a state’s economic importance to the United States. This trade link is calculated as a share of US total trade with GSP countries. This study is asking about the US decision-making process and the factors that influence it, hence why the trade variable uses US total trade in the denominator. This is different from the sanctions literature analyzing the impact or effectiveness of sanctions which considers how important the sender state is to the target because of its potential to influence it. This study is interested in the obverse: how important the target is to the sender. Moreover, the measure of

for GSP benefits (from 1994 onwards following the collapse of the USSR). India and Pakistan are the only other states with known nuclear capabilities that are GSP eligible. North Korea has never been eligible (neither has Iran if it does indeed possess nuclear weapons). South Africa signed the NPT in 1991 and became eligible for GSP benefits the following year. Kazakhstan handed its nuclear arsenal over to Russia in 1995, a year after joining the GSP, while Belarus did likewise in 1996 (again a year after joining the GSP). The Ukraine joined the GSP in 1994 and voluntarily disposed of its nuclear weapons by 1996. There is some debate over Israel’s nuclear capability, but it was graduated out of the program in 1995. See Norris & Kristensen (2010) for stockpile details.

²¹That is, the total number of adversaries is not just the difference between the total number of states less the number of allies.

trade used is imports because raw materials are often imported into the US under the GSP scheme as components for US manufacturing, and so using imports picks up the pressure US manufacturers may exert on the USTR to not sanction a violator.

Foreign direct investment (FDI) is measured as US investment²² in a beneficiary country each year in constant US dollars to capture how important the potential target is as a market for the United States, where there was no data it was assumed investment levels were zero and coded as such. While investment levels can vary greatly between countries, there were non-zero values for over 80% of beneficiary countries each year.

Regime Type

The Polity IV dataset²³ provides a measure of regime type encompassing the level of democracy and autocracy within a given polity each year. The measures of democracy and autocracy are additive indexes based on a 0 to 10 (more democracy /or autocracy) scale, but it is the combined polity score that is more widely used in quantitative work. This score is derived by subtracting a country's autocracy score from its democracy score and results in a possible range of -10 (highly autocratic) to +10 (highly democratic). The combined single figure is noted by the index authors to be contrary to the original intention of the polity dataset construction that argued for viewing a polity as possessing elements of both democracy and autocracy; combining the indexes risks obscuring these separate elements, so I therefore use the measures of autocracy and democracy separately.²⁴

International Institutions

To try to test how institutions may affect the decision-making process, a variable was included to denote if there were United Nations Security Council (UNSC) sanctions against the country. In the spirit of multilateralism, the United States would choose not to impose unilateral sanctions if the UN is already active. While conceptually this is a logical approach, the instances of UNSC sanctions is limited; since 1990 there have been twenty-four sanction episodes, but of these only ten have been instigated against GSP eligible countries.²⁵ I therefore cannot test this argument (Hypothesis #5).

Domestic Institutions

Constraints on the decision-making process at the domestic level are captured by several variables: the Democrat-Republican ratio in both the House and the Senate.²⁶

²²Data obtained from the Bureau of Economic Analysis. While other sources are available, the BEA was chosen because it is believed to be the most consistent source for US investment data.

²³Information about data collection and downloads can be obtained from <http://www.systemicpeace.org/polity/polity4.htm>

²⁴See Monty Marshall, *Polity IV Project Dataset Users' Manual* (2010) for details.

²⁵Libya, Iran, and North Korea have never been eligible, while the Sudan, Yugoslavia, Iraq and Afghanistan have not been eligible for benefits coincidental with a UNSC sanctions episode.

²⁶Information available from the Office of the Clerk of the House of Representatives.

An interaction term was also constructed to capture if there is a divided government — the ratio of Democrats to Republicans is multiplied by a dummy variable that takes on the value 1 if the President is of a different party to the majority in Congress. I also collected data on the President’s approval rating to test Hypothesis #10. Data were obtained from the UCSB’s American Presidency Project which publishes daily approval ratings. I calculated annual average approval ratings to align with the frequency of observation for all other variables.

Control Variables

As part of the GSP statute, the review committee is ordered to consider the developmental needs of the beneficiary state and whether the state is a member of the International Labour Organization (ILO).²⁷ As such, a dummy variable is included taking on the value 1 if the state is a member, 0 otherwise²⁸; GDP per capita is also included.

Another variable constructed is the number of core ILO conventions²⁹ signed by a given state — the aim is to capture how far the state has institutionalized a commitment to labor rights (albeit in a non-enforceable forum). Although the core conventions are non-enforceable they may be a sign of intention and it is not true that all countries have signed all of the eight core conventions. This variable takes on the value 0 (none) to 8 (all core conventions signed). An additional variable was created to cover the intent of the GSP statute³⁰ to take account of hours of work, minimum wage and health and safety requirements of the GSP (which are not considered “core” by the ILO); this additional variable takes on the value 0 (none) to 3. Finally, the table below summarizes the data used to operationalize the explanatory variables.

²⁷A report submitted by the Committee on Foreign Affairs in conjunction to the OPIC Amendment of 1985 that added GSP labor rights conditionality offers some guidance to the review committee when evaluating a state’s compliance. A country should be found in compliance if: 1) is a member of the ILO and a signator of the ILO Constitution; 2) has laws conforming to one or more of the delineated worker rights; and 3) demonstrates continued progress in implementing worker rights.” Furthermore, the committee “does not expect that developing nations attain the prevailing labor standards of the United States . . . acceptable minimum standards may vary from country to country”. See US House, Committee on Foreign Relations (1985).

²⁸See International Labor Organization “Country Profiles” for a list of member states and date of accession, available at <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11003:0::NO::>.

²⁹ILO core conventions are #87, #98, #29, #105, #100, #111, #138, #182.

³⁰GSP-related conventions are #001, #131, #155.

Table 5.1: Summary of Explanatory Variables and Data Used

Conceptual Variable	Operationalization
Respect for labor rights	Composite index constructed from CIRI dataset
Economic importance of target	Trade relationship based on imports/exports Foreign direct investment by US in target Nominal GDP of target state
Strategic importance of target	Oil producing status of target Military aid and foreign aid from US to target
Threat level of target	Aggregate size of target by population and nominal GDP Power of target (COW CINC series) Geographic proximity to the US
Target is considered an ally	Nature of security alliance between US and target
Domestic institutions	Ratio of Democrats to Republicans in House (and Senate) Interaction term for periods of divided government Presidential approval rating
Regime type	Autocracy/Democracy score (Polity IV)

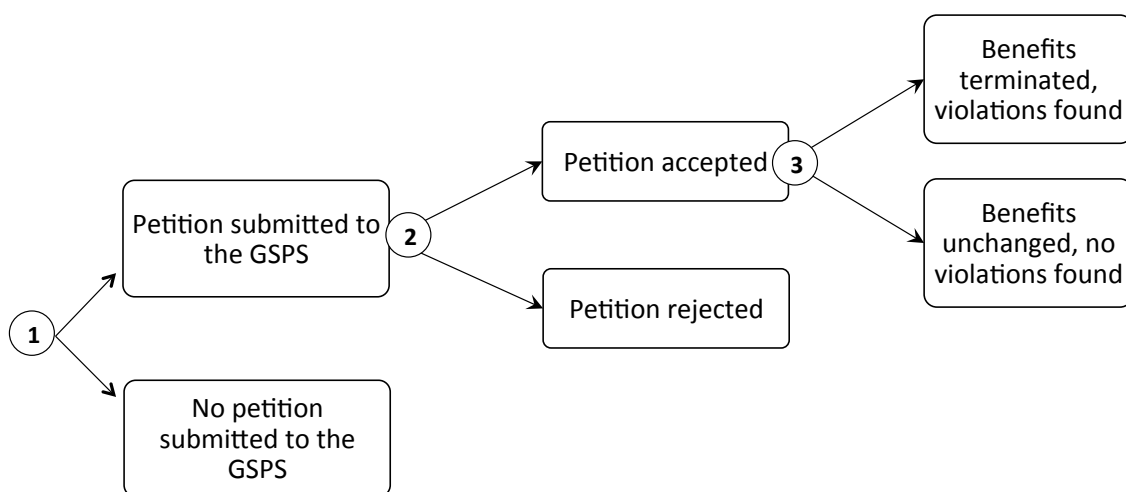
5.2 Modeling Approach

The modeling approach I use falls under the designation of an ordered response model. In an ordered response model the outcome variable is characterized by a structural ordering. Each category is mutually exclusive and there is an inherent ordering, from lowest to highest, across outcomes. In general, however, it is assumed that the outcomes are not measured in specific units and so the ranking is ordinal rather than cardinal. In other words, the interpretation of a variable taking on a value of 2 versus 1, is not the same as the variable taking on a value of 3 versus 2.

Figure 5.2 illustrates the review process. It is clear that as enforcement proceedings progress and we move to the right on the outcome tree there are specific nodes that *must* be reached in order to progress further. Specifically, a country cannot have its GSP rights suspended if its initial petition has not been accepted. In turn,

a petition cannot be accepted unless it has been submitted in the first place. This process means the probability of reaching decision node 3 (benefits terminated or not) is conditional on first a petition being submitted (decision node 1) and then subsequently accepted for review (decision node 2). The fact that each node is reached in a successive fashion is most naturally modeled by a sequential response model.³¹

Figure 5.2: Enforcement Proceedings and Empirical Application



There are three separate decision nodes involved in the enforcement of the GSP conditionality clause and they are marked (1) through (3) in the diagram with the available actions at each node described in the corresponding boxes. As already discussed, at node 3 there are three possible outcomes: benefits terminated; review continued; country found in compliance. However, in terms of modeling this decision process only the choice to suspend benefits or not is considered. Any review that is continued eventually concludes with a termination of benefits (or not). The decision to continue a review matters for the timing of data.

5.3 Main Results

This section presents the main results of this dissertation. First, I present a baseline specification which relates the GSP decision process to a measure of labor

³¹I use the `seqlogit` package in Stata to implement the model. Technical details may be found in the Appendix.

rights. This is the starting point of my analyses. In the following section additional variables are added on a univariate basis to this baseline model to assess whether these data are consistent with the individual hypotheses derived from the theoretical discussion summarized in Section 4.2. I conclude with results from the multivariate model of enforcement. Robustness checks in support of the main results are provided when appropriate.

5.3.1 Baseline Specification

My baseline specification relates the outcome data of the GSP review process to a measure of labor rights. In doing so, this baseline specification provides a test of Hypothesis #1.³² To make this operational, I construct an additive index of labor rights by taking the sum of the two CIRI variables, WORKER (the workers' rights measure) and ASSN (freedom of association and assembly) in order to capture the specific concerns of the GSP conditionality clause.³³ This measure will be referred to as the GSP labor rights index in all tables and graphs. I also include two control variables in this specification to address the directions stipulated in the GSP statute discussed in footnote 27 on page 60. The first control variable is whether the country in question is a member of the ILO. However, because this study begins in 1985, there is no variation in this variable — nearly every country is a member of the ILO.³⁴ Instead, I use the combined data on the number of ILO core conventions and the number of GSP-specific conventions signed by the country because I believe this captures not just whether a state is a member but how committed it is to labor rights (from an ILO perspective) and in keeping with the spirit of the guidance report issued to the review committee which recommends that membership of the ILO and continued progress in implementing labor rights should be taken as indicators of compliance with the statutory requirements of the GSP. The second control variable is (log) GDP per capita which is included to address the developmental aim of the GSP scheme more generally and to acknowledge that labor standards vary (to some

³²This baseline specification also provides an unqualified test of the neoliberal argument that a deviation from the rules of an institution should increase the likelihood of sanctions (see Hypothesis #6) and a constructivist argument that norms matter for state behavior (see Hypothesis #7).

³³It is common practice in the empirical political science literature to combine index variables by summation. Moreover, attaching different (non-equal) weights to each index requires knowledge of which rights matter more to the GSP subcommittee in determining enforcement and indeed whether this is true; there is nothing in the Renewal Act to suggest a preference ordering. As an example, the CIRI physical integrity index is an additive index combining individual indices summarizing incidences of torture, extrajudicial killings, political imprisonment and disappearances.

³⁴Note that states cannot be an ILO member if they are not a member of the UN. The list of UN members that are not also ILO members is: Bhutan, Micronesia, Nauru, Taiwan and Tongo. However, Micronesia, Nauru and Taiwan lost their GSP eligibility in the late 1980s because they graduated from the program and/or signed a trade agreement. Therefore the only two countries which receive GSP benefits but are not ILO members are Bhutan and Tongo.

extent) with a country’s level of development. Both the baseline specification and all other models considered will include both of these two control variables.

Table 7.3 presents the results for the pooled baseline specification. Each column presents the estimated coefficient and associated p-value in parentheses. The first column reports the estimated coefficient for the GSP labor rights index associated with the first node in the sequence — whether the GSP Subcommittee receives a petition. The second column reports the estimated coefficient for the GSP labor rights index associated with the second node in the sequence — whether the GSP Subcommittee decides to accept or reject the petition given that a country has been petitioned. Finally, the third column reports the estimated coefficient for the GSP labor rights index associated with the third node in the sequence — whether the GSP Subcommittee decides to terminate a country’s benefits given that they have accepted the petition and conducted a review. Thus, the columns of this table (and all other tables of results) line up with the transition nodes of the review process illustrated in Figure 5.2. I have noted the relevant decision node in parentheses after the variable name to facilitate interpretation. As discussed in Section 5.1, the observed independent variables are aligned with the GSPS decision, that is the most up-to-date data that would have been available to the subcommittee at the time the decision is made is used in the regression analysis.

The first observation from the table is that at all nodes a higher value for the GSP labor rights index is associated with a lower probability of continuing through the review process. Recall that both components of the GSP labor rights index take on larger values the more labor rights are respected in a country. Thus, the signs of the estimated coefficients imply that at each step of the GSP review process — from the decision to petition through to the decision to terminate benefits — the worse a country’s labor rights are, the more likely they are to progress to the next stage. When interpreting the coefficients for the first node, it is important to point out that this decision node represents the choice to either submit a petition for a country or not. Although in theory the GSP Subcommittee could initiate a review this is not the norm but the absence of USTR “self-review” (i.e., the USTR choosing to initiate a petition) is also informative when asking about enforcement of the conditionality clause.³⁵ Although a detailed investigation of this part of the review process is beyond the scope of this work, and is more suited to a qualitative analysis,³⁶ I include and discuss the results associated with this node for two reasons: (1) it is a natural output

³⁵There has only been one review initiated by the USTR throughout the history of the GSP and that occurred in October 2000 in the case of Guatemala following many years of repeated petitioning and a lengthy period where the country was kept under review. For details on the case of Guatemala see USLEAP (2007).

³⁶This decision node encompasses the decision process of those groups choosing to petition of which there have been many (AFL-CIO, Human Rights Watch, US LEAP, amongst others). Compounding the incentives of each petitioner into a single analysis may be uninformative if there are idiosyncratic motivations for the act of petitioning.

from the model I choose to use; and (2) from a target country’s perspective this would be the best available data to inform their decision to respect labor rights. In terms of statistical significance, at each node the p-value associated with the estimated coefficient of the GSP labor rights index is less than or equal to 15%. At the second node, when the decision is made to accept or reject a petition, the associated p-value for the estimated coefficient of the GSP labor rights index is 8%, while at the final node, the p-value is 15%.

This is initial evidence that the administration of the GSP conditionality clause *is* responsive to a country’s respect for labor rights and petitions taken up for further review are selected based on the beneficiary’s respect for labor rights (Hypothesis #1). However, other variables may also matter and could change these conclusions. I turn to these results next.

5.3.2 Other Specifications

In the following section I build off of the baseline specification just introduced to test the individual hypotheses derived in Section 4.2. After discussing the individual models I conclude with a full joint specification which includes multiple explanatory variables suggested from the separate hypotheses.

Economic Importance

Table 7.4 presents results for the baseline specification plus an additional explanatory variable — the share of US imports from the target country. Specifically, for each country I calculate its share of US imports, that is the country’s exports of goods that are imported by the United States in a given year within the universe of GSP-eligible countries. This normalizes the measure with respect to the set of countries which are eligible for the GSP.³⁷ The first column shows results for the first node. As in Table 7.3, the more a country respects labor rights the less likely it is to be petitioned. I also find that the larger role a country plays in US imports the higher is the likelihood of being petitioned. While this finding may seem counterintuitive at first, I would argue that this likely reflects the strategic choice by the NGO about which country to target for a GSP petition. For example, it may reflect the fact that petitioning countries with larger US import shares generates more media interest and publicity both for the petition and the group more generally. Alternatively, it may reflect the fact that countries with larger import shares are necessarily more open, and thus gathering and analyzing information about labor rights practice is easier.³⁸

³⁷Then I transform this variable. A common approach to transforming variables is to apply the natural logarithm to the variable. However, when the variable can take on values of zero this is no longer appropriate. Instead my approach is nested in the generalized Box-Cox transformation of Box & Cox (1964). Specifically, the variable is raised to the power of 1/6.

³⁸This result is consistent with the discussion of Tsogas (2000) and also Ron et al. (2005) who examine patterns in Amnesty International reporting and find supporting evidence for these explanations.

The second and third columns of Table 7.4 provide evidence in support of the neorealist claim that the more economically important a country is the less likely it is to be targeted (Hypothesis #2a) — economic relations matter. The probability that a petition is rejected rises with the share of US imports a country supplies with a p-value of 7% (node 2). Similarly, the probability that GSP benefits are maintained and a country is found in compliance rises with its import share (node 3) with a p-value of 12% which is borderline significant at conventional levels. Moreover, it is also important to point out that the inclusion of the share of US imports dampens the significance of the labor rights measure at nodes 2 and 3. An alternative measure of economic importance is foreign direct investment, but in unreported results, while the sign of the coefficient was consistent with the hypothesized relationship, it was highly insignificant. This is perhaps not surprising as the vast majority of *GSP-eligible* countries have negligible amounts of direct investment from the United States. Another measure of economic importance considered in the literature is nominal GDP. However, I opted to use imports because I believe it is a cleaner measure of a state's economic importance to the United States; nominal GDP could pick up a developmental aspect of a country and given that the GSP scheme is envisaged as a development tool, this could obscure the causal argument.

Strategic Importance

The results for foreign aid are presented in Table 7.5 and the pattern of coefficients and statistical significance is similar to that of import share (Table 7.4) — although the p-values are smaller with total aid showing as highly significant at the 5% level or less. Relative to the baseline specification aid levels compromise the explanatory power of the labor rights index (as was the case with import share). Again, mirroring the economic variable, the coefficient signs are opposite at node 1 versus nodes 2 and 3 — those states receiving aid are more likely to be petitioned, perhaps reflecting the strategic approach of petitioning agents. Here, total aid is measured by the average share of military aid and foreign aid within the GSP universe, that is, I calculate how important a state is strategically in relation to other GSP-eligible countries, not the international system as a whole. The variable was then transformed as for imports. I did consider specifications with military and foreign aid entering separately and the results were very similar, so for parsimony I combined the variables into a single measure. As a robustness check I ran the regressions omitting Egypt, Israel and the Latin American region because of the disproportionate share of military aid they receive; the implications and significance were unchanged. I therefore do not believe the results are driven by recipient outliers and include them in the analysis.

The oil producing status of target is an alternative conceptualization of strategic importance. As discussed in Section 5.1 disaggregated data on US imports from a given country are only available from 1992 onwards. In unreported results I find that this variable is insignificant for all three nodes — perhaps because I lose substantial

power from the reduction in available observations.³⁹ In an attempt to address this issue I constructed an indicator variable denoting whether a given country produces a sizable amount of global output (available for all years) as measured by at least 1% of global production in each year. The results are provided in Table 7.6 and the picture mimics the pattern of total aid. The sign of the estimated coefficients suggest that those states which are oil producers are less likely to have their petitions accepted for review or eventually sanctioned; however, the statistical significance is only borderline at the second node and highly insignificant at the third node. This relationship is reversed at node 1 — oil producers are more likely to be a target of a petition. Upon closer inspection of the data, it is evident that major oil suppliers to the United States such as OPEC countries or Canada are excluded from GSP beneficiary status and this could explain the weak significance of this explanatory variable.⁴⁰

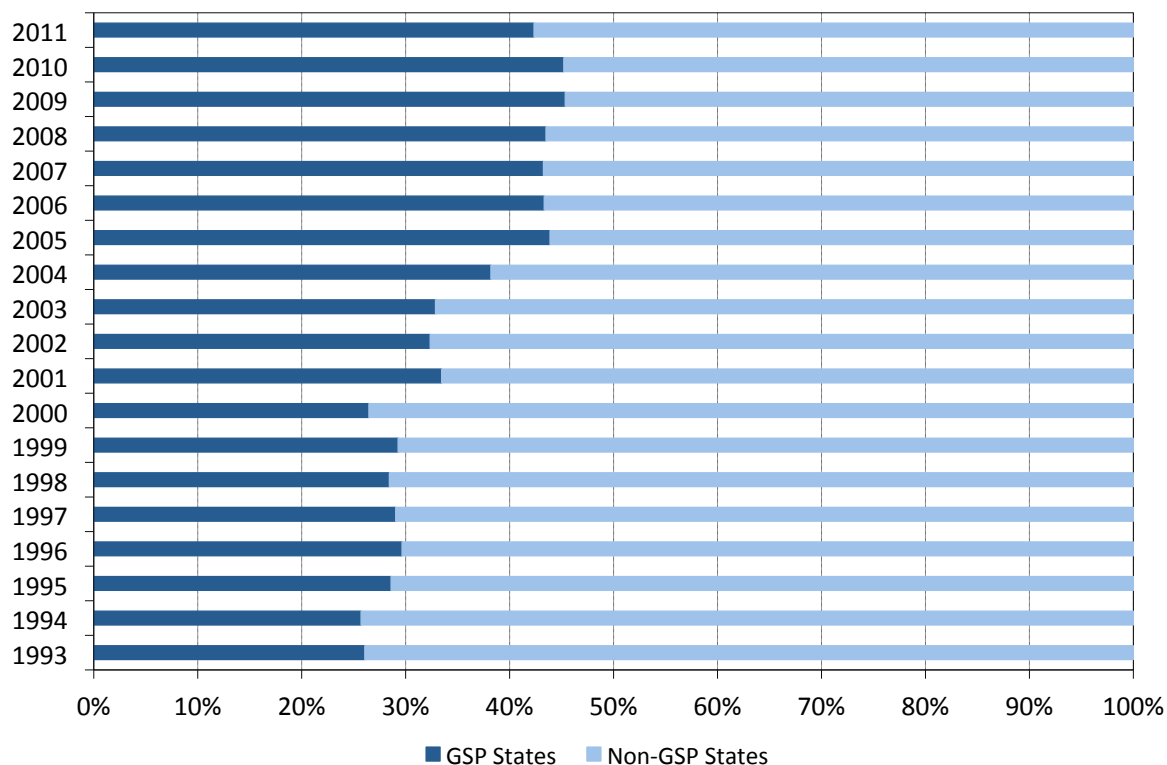
Chart 5.3 provides a summary of the share of oil imports to the United States from GSP beneficiaries versus non-beneficiaries, with GSP states supplying approximately 35% of US oil imports per year. In 1995, the top-10 suppliers accounted for 84% of US imports of which only Venezuela and Angola were GSP beneficiaries and they supplied 21%. In 2010, 42% of US oil imports came from Canada, Mexico and Saudi Arabia (all ineligible). The top-10 suppliers accounted for 72% of all imports and four of them were GSP beneficiaries supplying 22% of total imports. Looking at Chart 5.3 one can observe three distinct jumps in import levels from GSP beneficiaries. The first occurs between 2000 and 2001 when imports rise from 26% to 33% with the addition of Nigeria to the eligibility list. The second jump occurs between 2003 and 2004 when imports from GSP states increases to 38%, due to the addition of Algeria. Finally, the most recent jump, between 2004 and 2005 occurred when Iraq became eligible. GSP imports now total approximately 44%. Nearly half of all US oil suppliers are GSP-eligible, but at least 80% of these GSP-eligible countries supply 1% or less of US imports per year. This means that in aggregate GSP states are a meaningful source of US oil imports but on an individual basis they cannot be argued to be significant and it is unlikely a country's oil imports play a meaningful role in enforcement proceedings — and consequently total aid appears to be a better measure of strategic importance.⁴¹

³⁹This data restriction resulted in a nearly 30% reduction in the number of observations.

⁴⁰The cartel exclusion was modified to exclude only those OPEC members that had participated in the 1979 oil embargo (Arab OPEC states), hence why Venezuela, Nigeria and Algeria were granted GSP-beneficiary status. Iraq, despite its role in the embargo, was recently granted beneficiary status — an exception for economic developmental purposes. Such an exception is not without precedent as trade benefits to Indonesia and Thailand were expanded following the 2004 tsunami to aid in reconstruction and recovery.

⁴¹It should be noted that Iraq was petitioned in 2006 (although the petition was not accepted) and petitioned again in 2008. As of the conclusion of the 2012 annual review cycle Iraq was still under continuing review. This apparent reluctance to punish Iraq could be attributed to its significant oil supply; however, given the broader geopolitical concerns involving the United States and Iraq it is difficult to imagine that one could disentangle the effects and determine any causality.

Figure 5.3: Oil Imports to the United States



Threat Level

The first conceptualization of the threat level posed by a state is the CINC index⁴² from the Correlates of War dataset. The hypothesis is that the higher the CINC score the more likely a country is to be sanctioned (Hypothesis #3). However, the results in Table 7.7 show that this only appears to hold at the first node; this highly significant finding suggests NGOs choose to petition countries which are relatively more powerful. I would suggest a similar argument could be made for this observation as for the case of imports and foreign aid. At the second node — the decision to accept a petition — the result is inconsistent with the hypothesized relationship that more powerful countries would be targeted for review with a p-value of 8%. While at the final node

⁴²To recap, the CINC variable is composed of total population, iron and steel production, energy consumption, military personnel, and military expenditures.

the coefficient is similarly negative but highly insignificant (with a p-value of 84%). One potential explanation for these contrary results is that the countries granted GSP benefits are all relatively low on the CINC scale, as compared to countries like China or Germany. Consequently, none are viewed as direct threats to the United States such that the likelihood of punishment through the GSP is elevated. Interestingly, relative to the baseline specification, the CINC index does not detract from the explanatory power of a state's level of labor rights abuse. I also considered geographic proximity as a proxy for threat level but this variable was insignificant at all nodes (results unreported). This likely reflects the fact that during the period under analysis the United States is geographically secure and the end of the Cold War occurred early in the sample period.⁴³ Finally, as mentioned in Section 5.1.2 the offensive intentions of GSP countries toward the United States was not suitable for my analysis since there are only three countries (Russia, Haiti and Venezuela) that displayed offensive intentions (as measured by the index) in the sample period. In conclusion, I find no evidence that a state's threatening stance as conceptualized by the available data is determinative of enforcement. The only point of significance occurs at the decision to accept a petition for further review using the CINC index, but the results are contrary to my hypothesis.⁴⁴

Relationship to the United States

I used multiple different measures of whether a state was an ally or adversary but they were all insignificant at all three nodes. As a measure of ally I employed the COW formal alliance dataset compiled into a single measure as discussed in Section 5.1.2. Upon further inspection of the formal alliance measure, it is unsurprising that no systematic relationship could be found as *GSP-eligible* countries either have no formal alliance with the United States, or those that do, are primarily from the Caribbean region or from Central and South America.⁴⁵ Figure 5.4 provides a summary of the distribution of the alliance score for GSP beneficiaries. Approximately 73% have a score of zero which corresponds to no formal alliance with the United States; however, 24% have a score of seven. Those countries that score seven in the index do so either because they are signatories of the Inter-American Treaty of Reciprocal Assistance (also known as the Rio Treaty) or because they are considered strategically important due to drug trafficking routes into the United States.⁴⁶ In sum, the bifurcated nature

⁴³Geographic proximity is a variable with ambiguous effects. Under a neorealist argument it proxies for threat and that countries closer seem more threatening. While it can also proxy for whether the state is an ally since allies and trade partners tend to be located closer to a state and this would therefore generate results contrary to the threat argument. Since the variable is insignificant I do not need to parse out the causal mechanism at work.

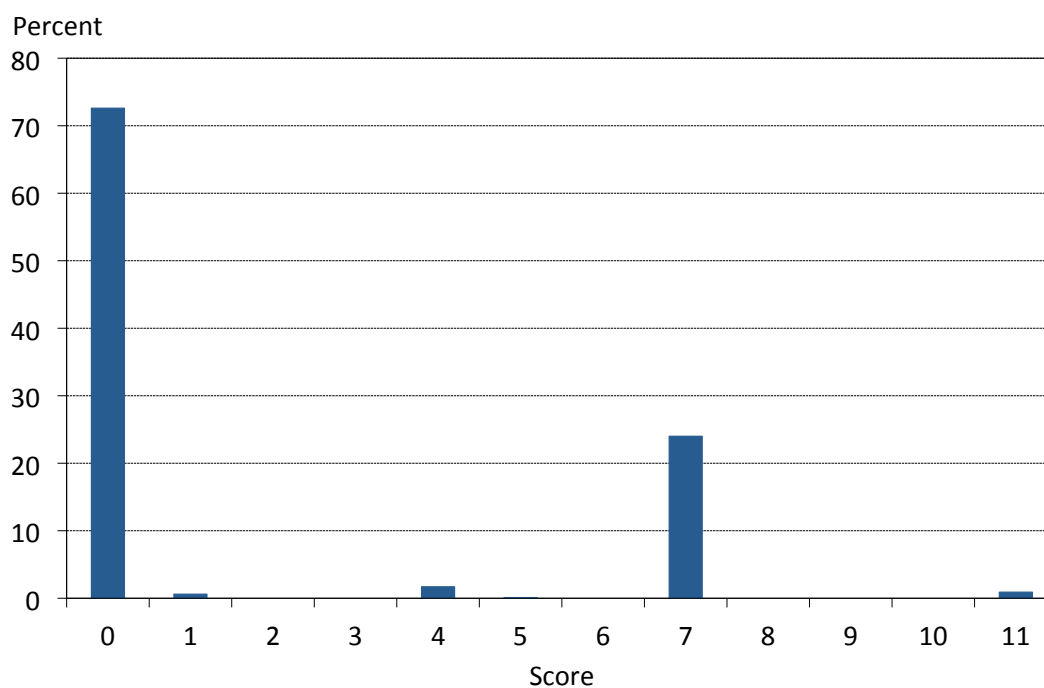
⁴⁴The literature has also used population as a proxy for threat; however, for GSP-eligible countries this variable would likely instead capture developmental concerns.

⁴⁵The exceptions to this are Poland, Hungary and the Czech Republic who all joined NATO in 1999, but subsequently they had their GSP eligibility rescinded upon EU membership in 2004.

⁴⁶See <http://www.state.gov/s/l/treaty/collectivedefense> for a list of active US collective

and the limited variation in the formal alliance score means that it cannot be used in this data analysis. It is instead essentially a dummy variable for whether a country is in Latin America (or equivalently whether a country is geographically close to the United States). The measures of an adversarial relationship with the United States were also limited and did not lend themselves to a quantitative analysis. In summary, I find no evidence to support the argument that ally status matters for enforcement (Hypothesis #4a), while data limitations prevented the operationalization and testing of adversarial status (Hypothesis #4b).

Figure 5.4: Distribution of Alliance Scores



Domestic Political Institutions

To test the liberal argument that domestic institutions matter I devised a variable to quantify the role of Congress. Congress is not directly involved in the GSP review process — it is assigned to the Executive, under the auspices of the USTR, to make any decisions. However, Congress has repeatedly involved itself in GSP enforcement issues, particularly members of the Democratic party disposed to labor rights. To test Hypothesis #9, I constructed a variable of the ratio of Democrats to Republicans in both the House of Representatives and the Senate, although results (unreported) are not sensitive to whether I use the House ratio or the Senate ratio. I opt to utilize

defense arrangements.

the House ratio for my analysis because when both variables are included the House ratio is a better explanatory variable than the Senate ratio.

Results may be found in Table 7.8. At node 1 the variable is positive and highly significant with a p-value below 1%, suggesting that the greater the number of Democrats in the House the more likely a country is to be petitioned. Perhaps NGOs perceive Democrats to be more receptive to their concerns and therefore more likely to support a petition when they are in the majority. In contrast, Republicans may hamper any petition efforts and thus make an NGO less likely to petition a country when they believe it will be unsuccessful and thereby waste their limited resources. Given the requirements for *re-petitioning* a violating state are substantial, NGOs may strategize and delay petitions until the political environment is more hospitable rather than risk squandering an opportunity to petition a particular state.

At node 2, the decision to review a petition, the variable is also positive and again highly significant with a p-value of 1% — a country is more likely to be taken up for further review the greater the number of Democrats in the House. At the final node, the sign is as expected, but the variable is not significant (although only marginally insignificant). This points to Congress having an active role in the petition process despite the bureaucratic structure of the annual review process, but interestingly there is limit on Congressional influence. Congress can make a difference at the initial stage — in whether a country is accepted for an in-depth examination of its labor rights practices, but this influence diminishes when it comes to the final decision of whether to sanction a country. Of note is the significance attached to the labor rights variable at each decision node — at nodes 2 and 3 the labor rights index is significant at the 10% level or less. This implies that in this model labor rights matter above and beyond congressional influence (which is assumed to reflect labor concerns). As an alternative test of the importance of domestic institutions, I considered the President's approval rating (Hypothesis #10) and results are presented in Table 7.9. As discussed in Section 4.2 the hypothesized relationship between approval rating and the likelihood of sanctions is mixed with the literature arguing it could be either a positive or negative relationship. The results point to a positive relationship at each of the three nodes; although it is strongly insignificant at nodes 2 and 3 (p-values of 46% and 70%, respectively). Only at node 1 — the NGO decision node — is it significant at the 10% level. This pattern of results is similar to that of the Democrat/Republican ratio in Table 7.8 suggesting approval rating may be partially capturing episodes of Democratic majorities. Given the insignificance of these results, I omit this variable from any further analysis and instead rely on the Democrat/Republican ratio.⁴⁷

Regime Type

To test for the influence of regime type (Hypotheses #8a and #8b) I include the

⁴⁷I also tested the divided government argument by including an interaction term denoting when the President is Republican (and the Democrats are in the majority in the House), but this variable was not significant (results not reported).

separate measures of democracy and autocracy compiled by the Polity Project. Both measures are utilized in keeping with the variable's construction and the authors' claims that a state can exhibit both characteristics to a varying degree. The expected relationship is evidenced in the signs of the estimated coefficients at nodes 2 and 3 (see Table 7.10) — autocracies are more likely to be reviewed, while democracies are less likely to be investigated. At node 1, the relationship is inverted such that autocracies are less likely to be petitioned. I argue this likely reflects the informational requirements for a petition — the more open a state is the easier it is for an NGO to observe and report on labor conditions. However, at all three nodes the statistical significance is very low with p-values ranging from 43% to 93%. At the same time, the statistical significance of the labor rights index also shifts to being low. These results deserve further investigation.

Given that democracies, theoretically and empirically, tend to have better human rights records than non-democracies⁴⁸ the strong correlation between measures of regime type and data on human rights violations over my sample period is to be expected. For example, the correlation between my composite labor rights index and regime type as measured by the POLITY2 score is above 70%.⁴⁹ This empirical relationship makes it statistically challenging to infer whether the GSP Subcommittee is reacting to the level of human rights (a normative argument) or is instead punishing non-democracies (a liberal argument). In an attempt to distinguish and disentangle the constructivist argument from the liberal argument I introduce a new explanatory variable (and no longer consider regime type explicitly) that captures any labor rights abuse but is also independent of regime type — the change⁵⁰ in the GSP Labor Rights Index.⁵¹ I argue this variable captures the notion that changes in political regime from

⁴⁸Democratic leaders cannot engage in repression because there are limits on executive authority (Poe et al. (1999)). Democratic institutions also allow public participation in government policies and the public therefore does not have to engage in protests or civil uprising (which then leads to suppression); see Cingranelli & Richards (1999), Poe & Tate (1994), Henderson (1991), Davenport (1995). Moreover, elected officials cannot expect to remain in office if they permit public repression (Zanger (2000)). Although this link between democratic institutions and democracy may be time dependent and require the development and deepening of the constraints on authority that democracy implies (Diamond (1999), Bueno De Mesquita et al. (2005)), that is, repression does not automatically diminish during the transition to, and early stages of, a democracy (Rose & Shin (2001)).

⁴⁹The composite POLITY2 measure refers to the “fixed” annual composite POLITY score (standardized authority codes are modified) that combines autocracy and democracy measures into a single index.

⁵⁰This change is calculated as the change between decision node points. At node 2 it represents the change between the date of petition submission and date of petition acceptance. At node 3 the change is calculated between the date of petition acceptance and the date of review conclusion. This variable does not appear at node 1 because I have no knowledge of what the appropriate time frame might be and is likely to vary from petitioner to petitioner (e.g., smaller NGOs may require a longer time period to compile a petition).

⁵¹This variable has approximately no correlation with regime type (less than 5% correlation in absolute value).

autocracy to established democracy tend to be slow moving, occurring over a number of years, while changes in labor rights and state repression are often more acute. In the full model which I review in the next section, I will add this variable and discuss the implications for the liberal and constructivist hypotheses.

A summary of the univariate results, whether the findings are consistent with the hypothesized relationship and the corresponding statistical significance is presented below for exposition before the discussion moves to the full model specification.

Table 5.2: Summary of Findings Based on Univariate Specifications

Variable	Hypothesized Relationship	Statistical Findings
Labor rights abuse	No relationship (\mathbb{H}_1) or Positive (\mathbb{H}_7)	Positive; Significant
Economic importance	Negative (\mathbb{H}_{2a})	Consistent; Significant
Strategic importance	Negative (\mathbb{H}_{2b})	Consistent; Highly significant
House D/R ratio	Positive (\mathbb{H}_9)	Consistent; Highly significant at node 2
Threat level	Positive (\mathbb{H}_3)	Inconsistent
Ally/Adversary status	Negative (\mathbb{H}_{4a})/Positive (\mathbb{H}_{4b})	Consistent; Highly insignificant
President's approval rating	Positive or Negative (\mathbb{H}_{10})	Positive; Highly insignificant

Full Specification

Up until this point, each of the explanatory variables has been tested on a univariate basis so that I could parse out the additional explanatory power the respective variable holds in conjunction with the GSP labor rights index (and the control variables). This was partly because there were several alternative data sources for operationalizing many of the explanatory variables and I wanted to be able to identify which data sources held the most explanatory power. It was also because it simplified the discussion and clarified the role a variable was playing in the process. The discussion now turns to the fully specified multivariate specification.

$$\begin{aligned}
 \textit{PetitionOutcome} = & K + \textit{Labor Rights} + \textit{Import Share} + \textit{Total Aid} \\
 & + \textit{House Ratio} + \Delta\textit{Labor Rights} + \textit{Error} \quad (5.1)
 \end{aligned}$$

Table 7.11 shows results of the full specification. At the first node, all the variables are highly significant at the 5% significance level or less. A country can expect to be petitioned the greater the violation of labor rights committed, as well as the more important it is to the United States in terms of economic and strategic importance. Moreover, the preponderance of Democrats in Congress is positively related to the likelihood of a petition submission. While I do not claim this models the decision-making process of an NGO choosing to petition (since that information is private to the organization and I did not derive hypotheses for this part of a process), it does serve as a warning to eligible countries. Even if they are not subsequently punished, their economic and strategic importance makes them a *target* for NGO attention and a petition risks drawing attention and greater scrutiny to state practice — and

if Democrats are in the majority in the House of Representatives, this likelihood is increased.

The results for the second and third nodes are similar (and I discuss them concurrently), although the significance of all variables at the third node is diminished relative to the second node. While this may seem to challenge the model, it should be remembered that the third node models the decision to suspend a country and there are relatively fewer observations at this node than at earlier nodes since many petitions do not make it to this stage. As such, standard p-value criteria are perhaps not the best guide for assessing the significance at this stage.

At both nodes the coefficient on the labor rights index is negatively signed suggesting that the worse a state's abuses are, the greater the likelihood is that it will be sanctioned, as a constructivist argument would hypothesize (Hypothesis #7). However, the labor rights index is insignificant with p-values of 23% at node 2 and 35% at node 3. This evidence is consistent with the neorealist argument that norms are irrelevant for explaining state behavior (Hypothesis #1). Both the share of imports and foreign aid variables are inversely related to the likelihood of punishment consistent with Hypotheses #2a and #2b, substantiating the neorealist argument that state actions are determined by economic and strategic interests. At node 2 this relationship is significant at the 10% level for aid and borderline significant for imports, while at node 3 the p-values are larger, between 18% and 19%.

Notably, the ratio between House Democrats to Republicans is positive at both nodes, that is, as the proportion of Democrats in the House of Representatives increases, a state is more likely to find a petition against it accepted and its benefits suspended. At node 2 it is highly significant, at less than a 1% level, although it is insignificant at the final decision node — the decision to sanction. This finding is noteworthy because it offers some support for a liberal argument that domestic institutions can explain state motives and challenges systemic-based explanations.

As for the new additional explanatory variable — the change in the labor rights index — it is inversely related to punishment at node 3 — as labor rights deteriorate sharply a state is increasingly likely to be subject to sanctions. This result is intuitive; in response to a sharp decline in labor rights standards, the GSP subcommittee looks to punish the transgressor. What is conspicuous is *when* this variable is significant. Not only is it the only significant explanatory variable at node 3 (at the 10% level), it is highly insignificant at node 2 (p-value of 97%). This means that the decision to accept a country for review is indifferent to any deterioration in labor rights, but when considering whether to sanction a beneficiary it is highly determinative. It is, in fact, the only variable that is determinative in a statistical sense.

To sum up, I find strong evidence that economic and strategic considerations explain the observed pattern of enforcement of the GSP conditionality clause. Norms are not sufficient to determine enforcement outcomes suggesting that they are subjugated to competing foreign policy concerns. However, it is not true that only the neorealist hypotheses held explanatory power. Although I could not include regime

type variables in my multivariate specification because of their high correlation with my measure of labor rights, domestic-level variables are important. The influence of Congress, captured by the party composition in the House of Representatives, plays a significant role when the GSP subcommittee is deciding whether to review a petition — the greater the number of Democrats, the more likely it is that a petition will be accepted; an influence that would have been overlooked had I only considered systemic-level explanations. Moreover, while the level of labor rights violations did not drive enforcement, the sudden deterioration does significantly affect the probability a country under *already* review is ultimately suspended from the GSP scheme.

What does this suggest about US reactions to norm violations? For the most part, they are rhetoric — those states that are economically and strategically important are less likely to be investigated if they should find themselves petitioned, and based on the evidence presented here, it is hard to argue the GSP conditionality clause is applied objectively based on state's observance of the enumerated standards.

Despite this pessimism, the picture is more complex and human rights do play a limited role. The multistage decision process allows for additional factors to influence proceedings in surprising ways. Once a country has been petitioned, it could reasonably expect to avoid any further investigation of its practices if it is an important trade partner or strategic ally. But this is only true, on average, so long as the Republicans outnumber Democrats in the House of Representatives. During episodes where there are relatively more Democrats than Republicans, the likelihood of punishment increases across all states, including those considered to be strategically important.

Given the limited number of suspensions from the GSP scheme, a state may believe it is unlikely to be punished, particularly if it is a large trading partner. Yet again, such a simplified conclusion is misguided: if a state under review violates labor rights sufficiently that a sharp deterioration is noted, it may very well find its benefits terminated — and this caveat applies to all states. Due to the GSP subcommittee's habit of continuing a review, extending over two or three review cycles, there is often an expansive time frame for such a deterioration to occur and be observed.

So while some states, a lot of the time, can be comfortable their idiosyncratic qualities grant them license to engage in repressive behavior, a change in the US domestic political configuration could result in the suspension of benefits should the labor rights situation take a turn for the worse.

Chapter 6

Conclusion

This dissertation investigated which conditions determine when the United States chooses to enforce the labor rights conditionality clause attached to its Generalized System of Preferences. My objective was to investigate the validity of an assumption frequently made in the literature that the conditionality clause is credible and thereby acts coercively to alter the costs of repression, and in doing so, change state behavior. Previous work on the GSP considered the effectiveness of a social clause in changing state behavior, but this approach necessarily assumes that the clause is credible. The starting point of any study concerned with the utility of conditionality clauses linking trade benefits with human rights norms must be the operation of the clause and an examination of enforcement proceedings.

I collected and analyzed a unique dataset of petition outcomes and present comprehensive empirical evidence regarding the pattern of enforcement over the last twenty-five years of the operation of the GSP conditionality clause. By asking if the pattern of enforcement is consistent with the intent of the statute, I offer an explanation of when the United States acts to promote labor rights. I sought to build my analysis on a theoretical foundation and therefore turned to the main IR theories to devise hypotheses of the likelihood of punishment. In doing so, my empirical analysis systematically considered all of the potential explanatory factors where data was available.

Although the role of labor rights in the enforcement process is minimal, particularly when compared to other foreign policy concerns, my results do suggest norms can matter for enforcement outcomes, but perhaps not in an anticipated way. One of the most noticeable conclusions of this study is that the decision-making process is more complicated and involved than whether human rights matter or never matter. But this is because the underlying enforcement process is complicated with multiple stages; this multiplicity of stages allows for distinct causal mechanisms to operate. This facet of the GSP review process has not been previously acknowledged by the literature and suggests caution in simplifying any enforcement process not just that of the US GSP. The extant literature treats the political factors influencing review outcomes as operating across all decision points and thereby obscures the nuances of

the process.

In the case of the GSP enforcement process, labor rights matter at two distinct points in two distinct ways: initially, the level of a state's labor rights abuse affects the likelihood a petition is submitted — the worse the absolute level, the more likely a state is to be petitioned. Labor rights are subsequently determinative only if there is a deterioration *after* a petition has been accepted and a state's practice is under review. But this influence only matters if the petition is accepted for review and this decision is dependent on two separate factors: economic and strategic interests negatively impact the likelihood, while the composition of Congress positively impacts it as the number of Democrats rises relative to Republicans. To put it another way, an economically or strategically important state may find it is not shielded from punishment should a petition be submitted while there is a Democratic majority in Congress and it subsequently commits additional violations during a lengthy review.

The pattern of enforcement uncovered in this study cannot be explained by the prevailing labor conditions in a state. The pivotal role played by economic and strategic factors suggests enforcement is selective, and while enforcement does not have to be universal for the mechanism to be considered credible, it must be applied objectively. For the GSP to act coercively a state must perceive that the cost of punishment is greater than the cost of complying with the stipulated standards. But the observed enforcement pattern suggests those states that are economically and strategically significant to the United States will attach a very low probability to the loss of benefits in expectation, and a much lower probability than that of smaller trade partner beneficiaries.

What then are the implications of these findings for Hafner-Burton (2005)? The willingness of the United States to enforce the GSP conditionality clause is contingent — states are treated unevenly and differentially — and institutional coerciveness likely varies across countries. While the pattern of enforcement is not as categorically biased as the case-study literature suggests, it is certainly not apparent that the GSP can be considered a “hard” law PTA as described by Hafner-Burton. The GSP, with its current pattern of enforcement may still be as hard of a PTA as the United States has in operation, but that does not mean it is hard in the sense used by Hafner-Burton. My results also underscore a problem inherent in much of the evaluation literature. Any evaluation of a policy's effect (whether it is the labor rights clause of the GSP or an IMF structural adjustment program) necessarily requires a thorough understanding of how the policy is actually implemented. It is insufficient to compare behavior *ex-ante* to behavior *ex-post* and ask whether there has been a significant change without first establishing that the policy is implemented as intended. While the GSP as mandated in the legislation is a hard law, in practice it is less so and this distinction is crucially important for any discussion about the necessity of using coercion for the promotion of human rights. I am not claiming coercion is not necessary, but a study based on an assumption of credibility does not further our understanding of the utility of social clauses and their place in institutionalized trade

relations.

6.1 Contribution to the literature

One important contribution of this dissertation is a theoretically developed explanation for the pattern of enforcement. In using the IR literature as a basis for the empirical section, I correct a criticism of some of the previous case studies of the GSP: that the cases chosen seem to be selected precisely because they illustrate that strategic and economic interests dominate the proceedings to the exclusion of any normative concerns. While for the most part my results are consistent with this finding, I did not formulate any prior expectations of the relevant factors and consequently I uncovered the distinct causal mechanisms operating at *each* of the decision nodes — a dimension previously overlooked in the literature. My study was also comprehensive — I studied every petition between 1985 and 2010 and this extensive history permitted me to draw general conclusions and predictions that a case study approach cannot. These conclusions are important for understanding how trade measures and social clauses more generally can be used to ameliorate labor conditions. How the United States has responded to GSP petitions and used its trade leverage to apply pressure on beneficiary states provides a reference for generalizing to the use of social clauses in trade agreements.

The role of labor rights is arguably minor, but it can be determinative at the crucial point of choosing to suspend benefits. So while norms do not matter at earlier stages in ensuring a petition reaches this decision node, when the final decision is made, they can influence the outcome. This understanding has practical implications for labor advocates and NGOs involved in the petitioning process. It suggests when and how they should direct their efforts: once a petition has been submitted they need to focus on those in Congress that are sympathetic to their cause and use them to push for the acceptance of a review. If accepted, efforts should then be directed to closely monitoring the situation in the country. Any deterioration in the labor rights situation should then be highly publicized because this change can push the GSP subcommittee into suspending benefits.

This study also contributes to several other questions. Firstly, it is evidence of how the United States reacts to violations of human rights and suggests conditions under which the United States will punish a violator. Further work could expand on these findings and ask how these results compare to other forms of sanctions including the suspension of aid to form a more complete picture. Additionally this study suggests factors that should be considered in any qualitative study of FTA enforcement history. Secondly, sanctions are not just about punishing a deviant state; they are also a way to articulate acceptable standards of behavior and promote transnational norm internalization.¹ But if sanctions carry this attribute then it

¹See Cleveland (2001) for a discussion of how unilateral sanctions can work in this regard in a

is crucial to know how they are being applied and utilized. In examining the US GSP in greater detail and how it operates in practice I can suggest what signals are being sent by the United States regarding its views of human rights violations and how US unilateral action is working against the international human rights regime. International law is described as a “horizontal” legal system, thus any enforcement of rules or norms is dependent on the legal system of each individual state. A cursory glance at the GSP scheme suggests it is one way of implementing international norms of labor standards, particularly in light of the reluctance of the WTO to address such issues. But the evidence presented in this study suggests the reality is not what one would wish for. Customary international law² evolves over a long time period based on state practice (and *opinio juris*); when lawyers or judges determine if a rule is part of customary law they look to state practice, but repetition and consistency is crucial. The failure to enforce the conditionality clause and sanction deviant behavior suggests that such behavior is acceptable.³ This repeated failure to punish transgressors within the institutional context of a PTA could lead to the erosion of the norms and halt progress in establishing them as customary international law, potentially leading to long-term implications for the human rights norms themselves.

case study of Burma.

²Customary law is considered the second most important source of international law after treaty law. See Malanczuk (1997) for a detailed discussion of sources of the sources of international law.

³In *Nicaragua*, the ICJ stated that for customary law to hold “instances of state conduct inconsistent with a given rule should generally have been treated as breaches of the rule.”

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Chapter 7

Appendix

Table 7.1: List of Legislative Renewals

Cycle Year (Start)	Expired	Renewed	Length of Lapse
1993	July 4, 1993	August 10, 1993	2 months
1994	September 30, 1994	December 8, 1994	2 months
1995	July 31, 1995		14 months
1996	October 1, 1996	out of cycle review 1997	
1997	May, 31 1997	August 5, 1997	2 months
1998	June 30, 1998	October 21, 1998	4 months
1999	June 30, 1999	December 17, 1999	5 months
2000			
2001	September 30, 2001		
2002		August 6, 2002	10 months
2003			
2004			
2005			
2006	December 31, 2006	January 2, 2007	<1 month
2007			
2008	December 31, 2008	January 1, 2009	<1 month
2009	December 31, 2009	January 1, 2010	<1 month
2010	December 31, 2010		

Table 7.2: Cross-correlations of Human Rights Measures

	PTS (SD)	PTS (AI)	FHPR	FHCL	PHYSINT	WORKER	ASSN
PTS (SD)	1						
PTS (AI)	0.772	1					
FHPR	0.444	0.334	1				
FHCL	0.494	0.414	0.910	1			
PHYSINT	-0.798	-0.732	-0.426	-0.502	1		
WORKER	-0.307	-0.230	-0.468	-0.456	0.414	1	
ASSN	-0.342	-0.245	-0.718	-0.717	0.473	0.563	1

PTS (SD) and PTS (AI) are the Political Terror Scale based on State Department and Amnesty International reports, respectively. FHPR and FHCL are the Freedom House political rights and civil liberties scores. PHYSINT is the CIRI physical integrity index. WORKER and ASSN are the CIRI worker rights and right of association indexes

Table 7.3: Labor Rights and GSP

	GSP Outcome		
	_2_3_4v1	_3_4v2	_4v3
GSP Labor Rights Index [Node 1]	-0.125	(0.12)	
GSP Labor Rights Index [Node 2]		-0.306*	(0.08)
GSP Labor Rights Index [Node 3]			-0.845 (0.15)
Constant	-3.313***	(0.00)	2.715* (0.10) 6.332* (0.07)

p-values in parentheses

(_2_3_4v1) represents decision node 1; (_3_4v2) represents decision node 2;

(_4v3) represents decision node 3.

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 7.4: Economic Importance and GSP

	GSP Outcome		
	_2_3_4v1	_3_4v2	_4v3
GSP Labor Rights Index [Node 1]	-0.185**	(0.03)	
US Import Share [Node 1]	3.922***	(0.00)	
GSP Labor Rights Index [Node 2]		-0.210	(0.26)
US Import Share [Node 2]		-1.999*	(0.07)
GSP Labor Rights Index [Node 3]			-0.510 (0.41)
US Import Share [Node 3]			-4.862 (0.12)
Constant	-3.093***	(0.00)	3.072* (0.07) 6.642* (0.06)

p-values in parentheses

(_2_3_4v1) represents decision node 1; (_3_4v2) represents decision node 2;

(_4v3) represents decision node 3.

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 7.5: Strategic Importance and GSP

	GSP Outcome		
	_2_3_4v1	_3_4v2	_4v3
GSP Labor Rights Index [Node 1]	-0.0734 (0.38)		
Total Aid [Node 1]	2.026*** (0.00)		
GSP Labor Rights Index [Node 2]		-0.285 (0.11)	
Total Aid [Node 2]		-1.463** (0.05)	
GSP Labor Rights Index [Node 3]			-0.522 (0.35)
Total Aid [Node 3]			-4.727** (0.05)
Constant	-5.087*** (0.00)	4.076** (0.03)	12.42** (0.04)

p-values in parentheses

(_2_3_4v1) represents decision node 1; (_3_4v2) represents decision node 2;

(_4v3) represents decision node 3.

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 7.6: Strategic Importance and GSP

	GSP Outcome		
	_2_3_4v1	_3_4v2	_4v3
GSP Labor Rights Index [Node 1]	-0.112 (0.17)		
Oil Producer [Node 1]	0.730**		
GSP Labor Rights Index [Node 2]		-0.345* (0.06)	
Oil Producer [Node 2]		-1.139 (0.13)	
GSP Labor Rights Index [Node 3]			-0.980 (0.12)
Oil Producer [Node 3]			-12.13 (0.97)
Constant	-3.199***	3.164* (0.06)	7.021* (0.06)

p-values in parentheses

(_2_3_4v1) represents decision node 1; (_3_4v2) represents decision node 2;

(_4v3) represents decision node 3.

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 7.7: Threat Level and GSP

	GSP Outcome		
	_2_3_4v1	_3_4v2	_4v3
GSP Labor Rights Index [Node 1]	-0.109 (0.20)		
CINC [Node 1]	4.425*** (0.00)		
GSP Labor Rights Index [Node 2]		-0.381** (0.04)	
CINC [Node 2]		-4.955* (0.08)	
GSP Labor Rights Index [Node 3]			-0.851 (0.14)
CINC [Node 3]			-1.523 (0.78)
Constant	-4.632*** (0.00)	4.872** (0.02)	6.976* (0.10)

p-values in parentheses

(_2_3_4v1) represents decision node 1; (_3_4v2) represents decision node 2;

(_4v3) represents decision node 3.

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 7.8: Domestic Political Institutions and the GSP

	GSP Outcome		
	_2-3-4v1	_3-4v2	_4v3
GSP Labor Rights Index [Node 1]	-0.124 (0.13)		
House D-R Ratio [Node 1]	2.271*** (0.00)		
GSP Labor Rights Index [Node 2]		-0.376** (0.04)	
House D-R Ratio [Node 2]		2.486*** (0.01)	
GSP Labor Rights Index [Node 3]			-0.946 (0.11)
House D-R Ratio [Node 3]			2.658 (0.29)
Constant	-6.699*** (0.00)	-0.762 (0.72)	1.861 (0.73)

p-values in parentheses

(_2-3-4v1) represents decision node 1; (_3-4v2) represents decision node 2;

(_4v3) represents decision node 3.

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 7.9: Domestic Political Institutions and the GSP

	GSP Outcome		
	_2_3_4v1	_3_4v2	_4v3
GSP Labor Rights Index [Node 1]	-0.139*	(0.09)	
Presidential Approval Rating [Node 1]	0.0177**	(0.04)	
GSP Labor Rights Index [Node 2]		-0.345*	(0.06)
Presidential Approval Rating [Node 2]		0.0141	(0.46)
GSP Labor Rights Index [Node 3]			-0.805 (0.16)
Presidential Approval Rating [Node 3]			0.0165 (0.70)
Constant	-4.387***	(0.00)	2.041 (0.27) 5.216 (0.25)

p-values in parentheses

(_2_3_4v1) represents decision node 1; (-3_4v2) represents decision node 2;

(_4v3) represents decision node 3.

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 7.10: Regime Type and the GSP

	GSP Outcome		
	_2_3_4v1	_3_4v2	_4v3
GSP Labor Rights Index [Node 1]	-0.136 (0.21)		
Democracy Measure [Node 1]	0.0398 (0.50)		
Autocracy Measure [Node 1]	-0.0110 (0.86)		
GSP Labor Rights Index [Node 2]		-0.139 (0.55)	
Democracy Measure [Node 2]		-0.0487 (0.77)	
Autocracy Measure [Node 2]		0.0876 (0.59)	
GSP Labor Rights Index [Node 3]			-0.217 (0.74)
Democracy Measure [Node 3]			-0.0394 (0.93)
Autocracy Measure [Node 3]			0.310 (0.43)
Constant	-2.958*** (0.00)	1.501 (0.41)	5.214 (0.22)

p-values in parentheses

(_2_3_4v1) represents decision node 1; (_3_4v2) represents decision node 2;

(_4v3) represents decision node 3.

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

Table 7.11: Joint Model

	GSP Outcome		
	2_3_4v1	3_4v2	
		4v3	
GSP Labor Rights Index [Node 1]	-0.190**	(0.03)	
US Import Share [Node 1]	3.461***	(0.00)	
Total Aid [Node 1]	1.050***	(0.00)	
House D-R Ratio [Node 1]	1.826***	(0.00)	
GSP Labor Rights Index [Node 2]			-0.278 (0.23)
US Import Share [Node 2]			-1.894 (0.13)
Total Aid [Node 2]			-1.437* (0.08)
House D-R Ratio [Node 2]			2.849*** (0.00)
Change in GSP Labor Rights Index [Node 2]			0.0105 (0.97)
GSP Labor Rights Index [Node 3]			-0.717 (0.30)
US Import Share [Node 3]			-5.796 (0.18)
Total Aid [Node 3]			-4.321 (0.19)
House D-R Ratio [Node 3]			0.882 (0.79)
Change in GSP Labor Rights Index [Node 3]			-1.612* (0.09)
Constant	-6.727***	(0.00)	0.204 (0.93)
			19.55 (0.18)

p-values in parentheses

(-2_3_4v1) represents decision node 1; (-3_4v2) represents decision node 2;

(-4v3) represents decision node 3.

* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$

7.1 Discussion of the Model

The basic model of applied statistical analysis is the linear regression model,

$$y_k = x'_k \beta + \varepsilon_k,$$

where x_k is a vector of observed explanatory variables and ε_k is an unobserved, mean-zero error term. In this specification, the outcome variable y_k is linearly related to the explanatory variables and the error term.

But there exists situations in which the outcome variable can take on only two values: $y_k = 0$ or $y_k = 1$. For example, a country k in certain year is either subject to a petition submitted to the GSP ($y_k = 1$) or is ($y_k = 0$). The term $x'_k \beta$ can be interpreted as the probability that a certain event will occur. If the linear regression model was estimated using this outcome variable there would be certain values of x_k for which estimated probabilities could be either smaller than 0 or greater than 1.

An alternative approach is to model the probability an event in a way that ensures estimated probabilities are bounded between zero and one. One common approach is referred to as a binomial logit model. The binomial logit model can be motivated by the following construction. Let y_k^* be an unobserved outcome variable (also referred to as a “latent” variable) that follows a linear model:

$$y_k^* = x'_k \beta + u_k,$$

where the x_k are, again, observed explanatory variables and u_k is an unobserved, mean-zero error term. It is not assumed that y_k^* is observed, but it is assumed that y_k is observed. In particular, $y_k = 1$ if $y_k^* \geq 0$ and $y_k = 0$ if $y_k^* < 0$. Thus, the probability that $y_k = 1$, for example, the probability that a country is subject to a GSP petition to the GSP, depends on the value taken on by the latent variable y_k^* . In a binomial logit model the probability that this event occurs is equal to the cumulative distribution function of a logistic distribution evaluated at the linear function of the explanatory variables,

$$\Pr(y_k^* \geq 0 | x) = \Pr(y_k = 1 | x) = \frac{\exp\{x'_k \beta\}}{1 + \exp\{x'_k \beta\}}.$$

The main results provided in Section 5.3 are obtained from a sequential logit model. This model is constructed by making an assumption about the functional form of the *conditional* transition probability of moving from one node to another. Then the *unconditional* probabilities of transitioning across nodes are calculated recursively. The exact derivations may be found in, for example, Tutz (1991). An appealing property of these models is that the estimation problem can be reduced to repeated, separate binary logit estimation problems.