

Singapore Management University

Institutional Knowledge at Singapore Management University

Research Collection School of Social Sciences

School of Social Sciences

2-2009

Proclaiming trade policy: 'Delegated Unilateral Powers' and the limits on Presidential Unilateral Enactment of Trade Policy

Brandon ROTTINGHAUS
University of Houston

Elvin T. LIM
Singapore Management University, elvinlim@smu.edu.sg

Follow this and additional works at: https://ink.library.smu.edu.sg/sooss_research



Part of the [American Politics Commons](#), and the [International Relations Commons](#)

Citation

ROTTINGHAUS, Brandon, & LIM, Elvin T..(2009). Proclaiming trade policy: 'Delegated Unilateral Powers' and the limits on Presidential Unilateral Enactment of Trade Policy. *American Politics Research*, 37(6), 1003-1023.

Available at: https://ink.library.smu.edu.sg/sooss_research/2810

This Journal Article is brought to you for free and open access by the School of Social Sciences at Institutional Knowledge at Singapore Management University. It has been accepted for inclusion in Research Collection School of Social Sciences by an authorized administrator of Institutional Knowledge at Singapore Management University. For more information, please email cherylids@smu.edu.sg.

Proclaiming Trade Policy

“Delegated Unilateral Powers” and the Limits on Presidential Unilateral Enactment of Trade Policy

Brandon Rottinghaus

University of Houston, TX

Elvin Lim

Wesleyan University, Middletown, CT

This article examines presidential proclamations on trade policy, a category of presidential unilateral power that we call delegated unilateral power that is used frequently in creating or modifying trade policy, between the period 1974 and 2006 and tests the boundaries of the explanations predicted by the unilateral powers literature. We also find that the use of proclamations on trade policy is independent of the partisan balance in Congress. The use of proclamations modifying policies was the only tactic that comported with predicted actions from the unilateral presidency. Therefore, contrary to the expectations of the unilateral presidency, presidents are not unrestrained political agents on trade policy, and although presidents have the capacity to do so, they rarely use political factors as a pretext to enact unilateral policy on trade. Ultimately, unilateral powers are not all created equal, as some allow for considerable presidential authority and some are more limited.

Keywords: *presidency; unilateral presidency; presidential power; trade policy; presidential proclamations*

Presidential use of unilateral action has recently received significant scholarly attention. Most scholars argue that presidential use of unilateral actions is strategically smart for presidents faced with a political environment that forces them to share political powers (Mayer, 2001; Moe & Howell, 1999b). The ambiguity of certain shared Constitutional powers gives strength and resilience to these powers, especially when Congress

Authors' Note: The authors wish to gratefully thank research assistance by Josh Harman and Jon Cooper as well as generous research grants from the Idaho Humanities Council and the University of Houston. Please address correspondence to Brandon Rottinghaus, Assistant Professor, Department of Political Science, University of Houston, Phillip Guthrie Hoffman Hall Room 447, Houston, TX 77204; e-mail: bjrottinghaus@uh.edu.

delegates responsibility to the executive, and neither Congress nor the courts are likely to stop presidents from exercising significant discretion within the bounds of delegated authority (Moe & Howell, 1999a, p. 859). This body of work suggests that a president's ability to shape and act without the consent of Congress, the courts, and (often) the public is largely unchecked by traditional institutional arrangements (Howell, 2005). These important works have given credence to the developments of an emerging strong executive compared to Congress and have charted the shifting balance of powers between the executive and legislative branches (Deering & Maltzman, 1999; Howell & Pevehouse, 2005).

However, additional work needs to be conducted on the tense balance of powers shared by the legislative and executive branches under the auspices of "shared" policymaking powers (Jones, 1994). Scholars have suggested that supplemental work on the span of unilateral presidential powers needs to be conducted and the necessity of adding discussion of "a comparable literature that scrutinized the conditions under which presidents issue unilateral directives and the influence that they glean from doing so" (Howell, 2005, p. 436). Beyond those works that examine presidential unilateral action in regulatory politics (Moe & Howell, 1999a, 1999b), the establishment of executive agreements (Margolis, 1986), executive authority to detain "enemy combatants" (Elsea, 2003), or presidential recess appointments (Black, Madonna, Owens, & Lynch, 2007), few works systematically examine specific policy issues that might illuminate under what political and economic conditions presidents are more likely to undertake unilateral action.

This article extends this analysis by examining a single case of shared political and economic powers: trade policy. We undertake this analysis by using data from a source of presidential unilateral action rarely employed to study shared executive–legislative authority: presidential proclamations. A presidential proclamation is "an instrument that states a condition, declares a law and requires obedience, recognizes an event or triggers the implementation of a law (by recognizing that the circumstances in law have been realized)" (Cooper, 2002, p. 116). These are unilateral actions but are different from executive orders because proclamations rely on Congressional statute to be legally enacted into law. Often derided as merely symbolic, presidential proclamations evoke the same force of law as executive orders (as specified by the Supreme Court) and are, therefore, an important, but overlooked, area of presidential unilateral action (Cooper, 1986). Many proclamations involve significant substantive economic powers, including primarily (a vast majority of those substantive proclamations) the shared

power of trade (Rottinghaus & Maier, 2007). These proclamations are frequently employed by presidents (on average 7.34 per year) on trade policy to modify or create trade policy.

Indeed, many presidential proclamations on trade policy are important, especially because trade policy is linked to U.S. foreign policy, and presidents have staked the latter as their eminent domain. For example, Congress passed amendments to the Ethics in Government Act in 1985 that gave President Ronald Reagan the authority to suspend normal trade relations (NTR) treatment to products of Afghanistan as the result of the erstwhile Soviet Union's invasion of the country. To this effect, President Reagan issued Proclamation 5437 in 1986. Also, to encourage Afghanistan's cooperation with the Bush Administration's efforts in its war against the Taliban, the president restored NTR with Afghanistan in 2002 with Proclamation 7553. In both cases, trade politics and foreign policy were intertwined. Similarly, proclamations are useful for reaching out economically to emerging allies. For instance, President Carter reached out to normalize trade with the People's Republic of China in 1979 (Proclamation 4697), and President Clinton established favorable trade agreements for several African nations (Proclamation 7350). Nevertheless, both President Reagan and President Clinton have also used their proclamatory power to react to trade noncompliance or political problems in countries, such as punishing Japan for flooding the United States with cheap electronics (Reagan, Proclamation 5631) and Bulgaria for lack of economic and political reform (Clinton, Proclamation 6922).

More important, presidential proclamations on trade policy constitute a special case of unilateral presidential action we call delegated unilateral power. Although all unilateral actions are subject to posthumous review by the other two branches, "delegated unilateral actions" are subject to prior policy restraint because Congress initially limits the policy action that presidents can undertake. Unlike other instruments of unilateral action, presidents must use proclamations within a specific policy boundary outlined by Congress and show that conditions have been met to invoke additional powers (granted by statute or legal holding). This might suggest that there is more delegation than unilateralism, yet because these require executive interpretation to begin, the legal imperative is on the White House to make determinations and initiate action. Overturning such determinations require majorities in Congress that may be difficult to muster, similar to other unilateral actions (see Howell, 2003, 2005; Moe & Howell, 1999a).¹ Because all such proclamations require some coordination between the president and Congress regarding the implementation of policy, this

theoretical precept is an important addition to understanding how the balance of power works in unilateral power arrangements. This framework can test the boundaries of the explanations predicted by the unilateral powers literature.

Examining presidential proclamations on trade policy is a good test case for the extension of the literature on presidential unilateral policy actions because, in addition to expanding our understanding of the kind of Constitutional tools presidents use, this investigation allows us to explore presidential directives under conditions where Congress has delegated some authority to the president. Because proclamations are an important part of the president's tool chest, the investigation of the parameters of success is critical in understanding how unilateral presidential power works in contexts other than for executive orders. It is, therefore, a power located somewhere in between maximal autonomy as specified in the unilateral actions literature and complete subordination to Congress. Our aim in this article is to determine where on this spectrum delegated unilateral power lies and when such additional powers are used.

Shared Powers on Trade Policy: Competing Explanations

Many scholars of the policymaking institutions in the United States have commented on Corwin's (1957) explanation of shared policymaking powers as "an invitation to struggle." In perhaps no other venue is this relationship a "struggle" than in matters involving the U.S. role in the affairs of other nations. The shared power to create and implement policy on foreign affairs is at the center of the relationship between the authorities vested in Articles I and II of the Constitution. Article I provides Congress the ability to regulate commerce with foreign nations, whereas Article II provides the executive branch with the ability to negotiate treaties (concurrent with Senate approval). The Supreme Court has been similarly ambiguous in distributing the balance of power in these arrangements, where several holdings have given the president the broad authority to negotiate treaties and enter into certain treaties without Congressional consent,² but if presidents engage in activity that is outside of the boundaries of established Congressional desire on trade policy, that policy is rendered illegal by the Supreme Court (Fisher, 1998). Yet when it comes to trade policy politics the precise determinants of when presidents exercise delegated unilateral power remains to be clearly understood.

It makes sense to begin our analysis of trade proclamations and the delegated unilateral power arrangement in 1974 because the Trade Reform Act of 1974 substantially established a shared relationship and “dramatically changed U.S. trade policy making” (O’Halloran, 1994, p. 221). In this legislation,

Not only was the President given a five-year mandate to enter into trade agreements to reduce all tariffs above 5% ad valorem by as much as 60%, the largest percentage ever granted in a trade bill, and to eliminate all tariffs below 5%, but for the first time in U.S. history, he was granted authority to negotiate agreements to harmonize, reduce, or eliminate all barriers to free trade. (Pastor, 1980, p. 137)

Further, Congress allowed the president, without consultation, to eliminate trade barriers and extend duty-free entry of specific items under the Generalized System of Preferences (GSP). Presidents exclusively invoke the Trade Act of 1974 in their trade-based proclamations after 1974.

However, Congress also asserted itself, even while providing additional powers to the White House. Pastor (1980) notes “the new law increased Congress’s involvement in the making of trade policy without unduly restricting or inhibiting the executive” (p. 191). The act provided for a 5-year limit on negotiating authority (a policy that has been extended several times), a 10-year limit on the extension of preferential trade treatment to developing countries under the Generalized System of Preferences, a requirement that the president seek advice from the International Trade Commission on the appropriate scope of action, and limits on tariff reductions that included “staging requirements, and reserving certain articles from negotiations” (O’Halloran 1994, p. 97). Similar safeguards required that the White House seek Congressional authorization for any agreement reached (which could be overturned by a majority in either house; Diebold, 1974). This provided Congress the power to extend their policymaking powers beyond the initial implementation of the statute.

As is clear from the statutory authority governing trade policy, the president does not have the broad legal authority to independently and dramatically modify trade policy without Congressional consent. The Trade Act of 1974 provides Congressionally based authority to allow the White House to remove trade barriers and negotiate bilateral and multilateral trade agreements, yet “at the same time, Congress increased its participation in the negotiating process to ensure that domestic law or interests would be promoted vigorously in international arenas” (Pastor, 1980, p. 191). Thus, any authority provided by Congress to the White House where the president

is eligible to make specific legal proclamations (such as a changing situation where trade policy to a specific country must be altered) must “be based on authority delegated by Congress” (Fisher, 1998, p. 118). Indeed, in subsequent legislation following the Trade Act of 1974, Congress built in several safeguards to ensure the president take congressional concerns onto account when formulating trade policy (Holmer, 1987), in keeping with the general resurgence of congressional oversight of the executive branch following the Watergate era (Lindsay, 1994).

Yet Moe and Howell (1999a) argue that when Congressional delegations of authority are broad (as in the case of trade policy), “presidential powers of unilateral action are at their greatest” (p. 859). Indeed, to alter trade policy, based on a particular statute, presidents use proclamations to make official “determinations” of fact or particular conditions, allowing the White House to define a situation as stated in the text of a law. These are especially important when a “statute or ratified treaty specifically authorizes the president to take action if specified events occur” (Cooper, 2002, p. 121). The vast proliferation of statutes in general expands the president’s total responsibility and gives him “the formal basis for extending his authoritative reach into new realms” (Moe & Howell, 1999a, p. 860; see also Mayer, 1996). Substantiating this thinking, Vanderbush and Haney (2002) find that it is the informal (noncodified) powers of the president to make policy related to Cuba that reveals “who makes” trade policy.

Therefore, a puzzle is apparent: Given the delicate balance of power on trade policies, when might presidents invoke their political powers to create or modify trade policy? Do presidents act strategically to capitalize on political factors that might prompt unilateral action (especially to further their own political goals) or do presidents use these delegated unilateral powers to carry out Congress’ will? On one hand, presidents are responsible for maintaining a strong economy via international trade and concurrently retain significant autonomy to create trade agreements. The Employment Act of 1946 formally assigned the president responsibility for maintaining a healthy national economy, and the public expectations have strongly reinforced this statutory mandate (Anderson, 1999). Key’s landmark studies of the political economy of presidential approval suggest that the public punishes presidents for bad economic times and rewards them for good economic times (Key, 1968). Presidents are blamed for downturns in the economy by the public and Congress, so the president will seek to manipulate economic levers to secure a strong and healthy national economy (Erikson, 1989).

On the other hand, Congress has a significant say in the making of trade policy simply by establishing rules that the president must follow (especially since the 1970s; see Destler, 1981). In addition, Congress has preferences for restrictive trade policies to protect specific industries or specific constituent groups in their districts. Devereaux, Lawrence, and Watkins (2006) identify several instances when labor unions have lobbied Members of Congress to limit free trade because they believed that a globalized economy enabled U.S. companies to move jobs overseas where the cost of labor is significantly lower. Scholars have also discovered that on specific trade agreements such as the North American Free Trade Agreement (NAFTA) Members of Congress were more likely to vote against the legislation if labor contributions were higher (Uslaner, 1998); for example, when the district expected local job losses from NAFTA (Kahane, 1996) or when there is greater Latino and African American constituency strength (Wink, Livingston, & Garand 1996), which implies constituency interests are important considerations for Members of Congress.

Expectations of Unilateral Action

To extend our knowledge of when presidents exercise their delegated unilateral executive power, in this section we investigate several instances (culled from the literature on unilateral action and on trade policy politics) that will illustrate when the unilateral action literature predicts presidents should evoke a proclamation on trade policy. Given that the powers of the executive and legislative branches are “linked” in the data we examine, what communal political factors encourage the president to act: Do presidents act strategically according to the unilateral actions literature or do presidents act in concert with Congress where the factors traditionally governing unilateral presidential action do not hold? To test this question, the literature on the unilateral presidency yields at least three natural expectations for when presidents might act unilaterally. Therefore, if presidents are strategic unilateral actors, presidential actions under three particular communal political conditions (discussed as follows) should be significant.

Unilateral Hypothesis 1: Declining Popularity: To determine the relative effect of presidential popularity on the crafting of trade policy, especially emphasizing when the president might take unilateral action, we model the change of presidential popularity on the alteration of trade status. Specifically, we include a variable measuring presidential popularity to test theories described in the unilateral

presidency literature.³ The expectation of the unilateral presidency literature is that lower presidential popularity will make presidents more likely to modify the GSP, enact a new trade policy, and establish a less protectionist (or an expansionist) trade agenda. Under this scenario, presidents use unilateral action as a political crutch to enact unilateral trade policy during times where they believe that they have less political support from the public (see Mayer, 1999).

Unilateral Hypothesis 2: Divided Government: The literature on the unilateral presidency generally predicts that divided government should prompt more unilateral presidential actions (in this case, in modifying the GSP more frequently, establishing new trade agreements and providing for nonprotectionist policies). It is clear that partisanship colors the relationship between the executive and legislative branches when engaging in trade policy. Lohmann and O'Halloran (1994) note, "The institutional constraints placed on the president's trade policymaking authority have been strengthened in times of divided government and loosened under unified government" (p. 628; but also see Karol, 2000). These are times where the president is theoretically more likely to engage in unilateral action. Howell (2005) concurs with this and suggests that when Congress is gridlocked, presidents "seize the opportunity to issue policies through unilateral directives that would not possible survive the legislative process" (p. 436; see also Howell, 2003).

Similarly, instances of divided government will also help explain when presidents seek nonprotectionist trade policies. Gibson (2000) argues that the past two decades have revived in Congress a desire for additional protectionist policies to protect the interests of their districts. There are also intercameral differences, with the House being more protectionist than the Senate since 1949 (Karol, 2007; Magee et al., 1989). Presidents, however, are more likely to prefer free trade policy to promote or expand economic growth (nonprotectionist policies). O'Halloran (1994) notes that because the president has a national constituency, and, therefore, theoretically less susceptible to particularistic concerns, presidents are more likely to attempt to enact less protectionist policies than Congress. As Lohmann and O'Halloran (1994) note, "U.S. trade policy is significantly more protectionist under divided than under unified government in the postwar era" (p. 628). Thus, because presidents can impose this policy unilaterally under the authority provided by Congress, we expect presidents will pursue expansionist policies (not protectionist) when government is divided.

Indeed, by providing additional evidence to support this claim, the reverse of this finding is also found to be true. O'Halloran (1994) argues that presidents will be less constrained in making trade policy when facing unified government. Presidents are similarly found to gain more support on

trade policy from their congressional copartisans (Karol, 2000). Biglaiser, Jackson, and Peake (2004) find that House members experience stronger pressures on trade when a member of their party is the president, suggesting that presidential persuasion has some effect on trade policy especially when bargaining with members of his own party. Similarly, Uslander (1998) finds that a strategic President Clinton concentrated lobbying on undecided or leaning against NAFTA and that the effectiveness of this contact from the White House was strong in persuading Democratic Members of the House.

Unilateral Hypothesis 3: "Late" Action Presidential Moments: As presidential ability to utilize political "capital" declines, presidents should attempt to use their unilateral action more radically. In acting *late* (defined as presidents in the second half of their terms or in their second administrations), presidents hedge their political power against the "end game" of declining bargaining power by utilizing their ability to act without the need to bargain with Congress (through unilateral action).⁴ This is the core implication of the literature on the unilateral presidency—presidents act unilaterally when they desire a policy to be enacted and when Congress would otherwise not do so (for instance, when Congress perceives the president to be less powerful because they are on their way out of office). Indeed, presidents have been found to use more unilateral actions (especially executive orders) at the ends of their terms (Mayer, 1999). Therefore, if acting strategically, presidents will be more likely to reshape the trade environment by modifying the GSP, offering new rules, and less likely to offer protectionist policies (because, as discussed above, presidents typically prefer free trade policies) late in their terms and in their second terms.

Data and Methods

Our research design models the determinants of the political relationship between Congress and the president when it comes to presidential use of proclamations to establish or alter trade policy. To accomplish this task, we collected and coded 235 presidential proclamations issued between 1974 and 2006 involving U.S. trade policy across a number of dimensions (appendix includes a full accounting of the coding procedure and data sources).⁵ Following previous work on presidential proclamations, any presidential proclamation that was statutory based (meaning that the president's power was generally authorized by Congressional statute) and involved trade between nations was coded for these analyses (see Cooper, 1986). Most presidential actions on trade policy involve proposing new policies or modifying existing policies, a pattern which we mirror in our

analysis (Rottinghaus & Maier, 2007). Each proclamation was utilized as the unit of analysis.

We examine three distinct dependent variables to help identify possible predictors of unilateral presidential action on trade policy. The three most common functions of these proclamations are (a) *modification of the GSP*, (b) *establishing a new trade agreement* (i.e., creating a new trade policy on goods to a country, not by modifying a current trade policy toward a country by amending previous proclamations),⁶ and (c) *enacting protectionist policies* (policies restricting goods from entrance to the United States or increasing tariffs on specific goods or countries). These variables are coded dichotomously, so each proclamation is coded in one of the three categories identified. We also utilize several control variables to control for the economic environment in which the trade policy is occurring, including inflation, Gross Domestic Product (GDP and change in GDP), the U.S. trade balance (with all nations), the total amount of exports, and several controls for policy related to individual industry (such as steel, agricultural products, and oil).⁷

Unilateral Action or Presidential Deference on Trade Policy?

To address the question of whether or not presidents are strategic unilateral actors with “delegated unilateral powers” in the manner outlined above, we use a logistic regression analysis that allows us to determine the relative effect of our independent variables on our dichotomous dependent variable. We chose not to conduct an ordinary least squares (OLS) regression because the dichotomous nature of our leadership measure is better suited to a logit analysis.⁸ The results of our model are displayed in Table 1 (predicted probabilities in Table 2), with each column holding the place for the conditions we lay over our three columns of trade policy types (see explanations in previous section). In addition, we include control variables in our analyses with the assumption that these variables may have an effect on each trade policy.⁹

Interestingly, divided government has no effect on any of the three measures of trade policy implementation, although the unilateral presidency literature predicted it would be important in predicting unilateral action (see Unilateral Hypothesis 2).¹⁰ The coefficients are in the hypothesized direction in that they are all positive, but none achieve statistical significance.¹¹ In alternate models run without the presence of the economic variables, divided government variables were often significant, suggesting

Table 1
Probability Models for Presidential Trade Policy Action

Variable	Unilateral Presidential Action		
	Modify Rule	New Rule	Protectionist Policy
Divided government	.038 (.749)	.382 (.779)	.642 (.625)
Presidential popularity	-.030 (0.22)	.023 (.023)	.011 (.019)
Inflation	-.308 (.166)	.391** (.171)	-.145 (.121)
Unemployment	-.205 (.284)	-.004 (.288)	.011 (.299)
GDP change	-.002 (.003)	.002 (.003)	-.005* (.002)
GDP prior year	-.000 (.000)	-.000 (.000)	-.001** (.000)
Imports	.001 (.007)	.001 (.006)	.011** (.006)
Trade balance	.003 (.005)	-.002 (.003)	.004 (.005)
Agriculture product	-1.41*** (.592)	1.48*** (.595)	.423 (.406)
Steel product	-1.24* (.713)	1.82** (.837)	1.19** (.561)
Oil product	—	.549 (1.14)	1.78** (.840)
Protectionist policy	-1.77 (1.19)	18.52*** (3.79)	—
Free trade policy	-1.55 (1.16)	18.37 (3.84)	—
Second term	-1.49** (.766)	1.21 (.769)	-.011 (.645)
Last 2 years	1.36** (.652)	-1.54** (.666)	.711 (.531)
<i>N</i>	235	235	235
Pseudo <i>R</i> ²	.189	.239	.120
LR Chi-square	52.07	68.92	38.23
Probability > Chi-square	.000	.000	.000
Cases correctly predicted	58%	91%	44%
Proportionate reduction of error	33.33%	36.11%	14.43%

Note: Dependent variable: dichotomous variable indicating presidential enactment of that policy position in a proclamation (see text for details). Calculated using the SPost for STATA from Long and Freese (2006). The figures are rounded off. Standard errors in parentheses. Blank spaces denote variables removed due to collinearity concerns or because the data overlapped.

p* > .10. *p* > .05. ****p* > .01.

that economic conditions are more important than political trends when it comes to shaping trade policy. Indeed, an examination of all of these trends in Table 1 suggests that economic and industry or product-specific factors are consistently as important as political factors.¹² This provides some compelling evidence that presidents are consistently not taking advantage of political circumstances predicted by the unilateral presidency literature when it comes to trade policy, partly because these powers evoked under trade proclamations are shared policy arrangements.

Table 2
Predicted Probabilities of Political Factors

Communal Political Variables	Presidential Unilateral Action		
	Modify GSP (in percentage)	New Rule (in percentage)	Protectionist Policy (in percentage)
Presidential popularity	0	5	3%
Divided government	-19	8	7
Second term	-28	12	0
Second half term	26	-15	8

Note: Predicted probabilities derived from the coefficients in Table 2. Calculated using the “prchange” Spost command for STATA from Long and Freese (2006). The percentages are the change in the predicted probability of the variable as the dependent variables (unilateral action) changes from a half a unit below the standard deviation below the base to half a unit above the standard deviation above the base. Numbers in bold indicate significant coefficients from Table 2.

Looking closer at each type of trade policy proclamation, in column 1 of Table 1, we examine cases where the president modifies the GSP.¹³ The modification of a rule is often a moderate change in the GSP where certain goods are added or removed to the GSP list or a tariff is raised or lowered, most often to a specific country.¹⁴ Only one of the hypotheses on rule modification passed muster: Unilateral Hypothesis 3 suggested that all late-term actions would be positive when modifying rules and unilateral behavior is significant in the last 2 years of a president’s term. Table 2 indicates that presidents are 26% more likely to modify the GSP in the second half of their term. However, contradicting the Unilateral Hypothesis 3, presidents are less likely to engage in modifying rules in their second terms (coefficient is negative and significant in Table 1). Table 2 indicates that presidents are 28% *less likely* to modify the GSP in their second terms. Again, we see divergence from the unilateral powers literature because presidents are more likely to work with Congress on trade policy than simply proclaim a policy.

In considering those cases for which presidents offer a new trade rule (defined above as those cases where presidents create a new trade policy on goods to a country), none of the hypotheses was proven correct. Indeed, contradicting the unilateral presidency theories, presidents are *less likely* to create a new trade rule under “late action movements.” Specifically, in their last 2 years, presidents are significantly less likely to establish a new trade rule (the coefficient for second-term presidents is positive but not statistically significant in Table 1). The predicted probabilities in Table 2 reveal

that presidents are 15% less likely to proclaim a new rule in the second half of a term. Unlike the situation when presidents are more apt to modify a rule when they are in their last 2 years of a term, presidents do not unilaterally set new rules during this time. Setting a new rule is politically (and perhaps economically) risky because the probability of Congress noticing rule changes may be greater than for those that simply modify a policy within the margin already set by Congress. Presidents are meeker in these instances when it comes to setting new policy before an election in part due to fear of Congressional displeasure (or override) close to an election that might damage the president politically.

Furthermore, economic considerations play a much larger role in establishing new rules than they do for modifying rules, demonstrating the relative weight of economic and product-specific considerations in driving trade policies. For instance, rising inflation is shown to cause new trade rules, as is when the issue is an agriculture or steel policy. Presidents are also significantly likely to offer protectionist policies on new trade rules, comporting with what are typically Congressional policy wishes (Devereaux, Lawrence, & Watkins, 2006, p. 188). In these instances, presidents appear to attempt to insulate the economy from rising imports or during times of increasing inflation. These findings also clearly imply that the president is concerned about particular industries (steel and agriculture) similar to Members of Congress, perhaps because of the need to gain the support of industrial and agricultural states important to a president's core constituency or reelection (Bailey, 2001). This conclusion likewise supports a "shared" power conclusion where the president is acting in coordination with Congressional will, although this is difficult to decipher accurately.

Similarly, the findings from our third dependent variable, the *enactment of protectionist policies* (column 3 in Table 1), suggest that *no* political factors predict these policies.¹⁵ In these circumstances, only economic factors explain protectionist policies. More important, the results suggest that presidents are, again contrary to their predicted general interests, more likely to engage in protectionist policies when imports are rising and when the industry in question is the steel or oil industry. Presidents are, however, less likely to engage in protectionist policies when the GDP from the previous year was rising and when the change in GDP from the previous year was greater, but the coefficients and predicted probabilities are very small for each. The findings here imply that presidents are more protectionist than predicted by the unilateral presidency literature on trade. This demonstrates that presidents do use their delegated unilateral powers to achieve broad economic goals but that those goals are typically more in line with Congressional preferences (protectionist) than broad economic growth desires.

Discussion and Conclusion

These conclusions help to shed light on the president's use of "delegated unilateral policy action" to enact his preferred policy and further illustrate the political economy of trade policy. Trade politics is clearly nested within a complicated and interactive set of factors, and we do not presume to explain the whole of trade policy politics. Our goal here is to extend the literature on the parameters of when and on what policies presidents invoke their unilateral policymaking powers within a shared policy arrangement. Specifically, we asked: Are presidential trade proclamations governed by the same conditions as other unilateral political actions? Overall, contrary to the predictions of consistent unilateral presidential action, (a) economic issues are often as important as the president's favorable political conditions in predicting presidential action on trade policy, and (b) political factors predicted by the unilateral presidency thesis are often not significant in predicting presidential action using proclamations on trade policy.

The fact that these proclamations are "hybrid" executive actions (needing prior support of Congress and presidential will to initiate them) reflects the fact that they do not fit neatly into the predicted explanations for unilateral actions of scholars to date on unilateral presidential actions. This is an interesting and important finding for this reason and one that suggests, as our thesis regarding the shared role of "delegated unilateral powers" argues, all unilateral powers are not created equal—some allow for considerable presidential authority and some are more limited. Proclamations on trade policy clearly fall into the latter category where unilateral policies enacted by such an order are inherently limited by the politics of Congressional agreement. This does not prevent the president from acting unilaterally, but does provide a serious barrier to such actions and provides the literature on the unilateral presidency an important nuanced explanation for how the shared power arrangements function.

Indeed, the results for trade actions when presidents modify trade policy did not always conform to the expectations of the unilateral presidency, although of the three types of proclamations examined here, this one came the closest. The status of presidential popularity did not ever have an effect on presidential issuance of trade proclamations. "Late action moments" are significant predictors of presidential unilateral action to modify rules, although only presidential action in their last 2 years in a term is positive (whereas second terms are negative indicators of the same policy activity). This is the legacy of Congressional abdication of power on trade policy since the 1930s, where Congress provided the president the authority to make changes to the GSP without their consent. It is generally safe for

presidents to modify trade policy unilaterally, especially because Congress has allowed these kinds of changes and when such changes are often marginal changes to policies involving single products.

In addition, when establishing a new trade rule, again economic factors seem to more significantly drive these determinations, where rising inflation, agriculture, oil, or steel policy issues or considering a protectionist policies are each strong and significant predictors of new trade rules. This implies that presidents play (economic) defense when establishing new trade policies comporting with the philosophy of a generally protectionist Congress. This might be a case where the president and Congress work together to achieve mutual goals on trade policy—the White House seems less willing to act under their own accord and Congress's broad goals of industry protection are met. The factors argued by the unilateral presidency literature to guide presidential action prove less significant here: Declining presidential popularity has no effect, divided government has no effect, second term has no effect, and second half of term has a negative effect (the reverse of what was predicted).

Economic considerations clearly influence each of the three types of trade policies examined in this article but none as much as when the policy is a protectionist action. Presidents react exclusively to economic considerations in these circumstances, making protectionism largely an economic calculation rather than a political consideration (see Gourevitch, 1996). Interestingly, the White House's reaction to these domestic economic trends (within their unilateral proclamatory power) is typically used in concert with those preferences more likely to be held by Congress (Bailey, 2001; Kahane, 1996). Specifically, presidents are more likely to enact a protectionist policy when faced with rising imports in the steel or oil industry. The case of President George W. Bush enacting such protectionist policies in 2001 for economic relief of the steel industry from foreign competition suggests that these findings are correct (Kahn, 2001). This contradicts much of the unilateral and trade literature suggesting that presidents would use a broad mandate of power (as in the case of trade policy) to enact their own preferred free trade agenda; rather, they appear to act in concert with Congressional preferences.

Indeed, these general findings seem to imply that presidents are not unrestrained political agents on trade policy. Contrary to the literature on presidential unilateral action, presidents are only likely to take advantage of political circumstances that favor them in instances when they set out to modify trade policy, one of the more innocuous forms of managing trade policy. In those instances, however, economic factors often play as large a role as political factors. Therefore, although presidents still engage in

unilateral action under these circumstances, they do so as much out of economic necessity as political opportunity. Not unexpectedly and given the type of power studied, the present findings hint that the president is aware of the constraints placed by Congress and only selectively goes beyond those boundaries of expected Congressional approval. Ultimately, although presidents have the capacity to do so, they infrequently use positive political leverage as a pretext to enact unilateral powers on trade policy. These findings suggest that there are limits to unilateral presidential power.

Appendix

Coding Procedures and Data Sources

Protectionist: A trade policy that attempts to protect American interests by making it more difficult for foreign manufacturers to import their goods into the United States. This is usually accomplished by increasing the tariffs or duties, setting limits on the total amount of goods that may enter the United States in a given year, and in some instances preventing a certain type of product from being imported at all. In many instances, when each proclamation was being examined, many were coded as *protectionist* because they contained specific language that lent itself to this classification. For example, many protectionist trade proclamations include a statement very similar (if not identical) to the following: “Product X is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article.” This statement is usually followed by a number of actions the president recommends to solve the perceived problem.

Consumer Price Index for All Urban Consumers (CPI-U): The CPI-U is often used as a measure of inflation because it is “the average change in prices over time in a ‘market basket’ of goods and services purchased either by urban wage earners and clerical workers or by all urban consumers” (U.S. Census Bureau 2007, p. 465). The base for this measurement is the period between 1982 and 1984 during which time a “market basket” of goods was equal to \$100.00. Using this base, data from the Bureau of Labor Statistics Web site (<ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.ai.txt>) list the percent change in the CPI-U from one year to the next. Data were available from year 1913 to the present. These figures were then coded to each proclamation and then used to compute the mean percent change of the CPI-U which was 4.9%. For the purposes of this analysis, a dramatic increase in the CPI-U is any change above the mean.

Unified and Divided Government: Using the Internet, the composition of both houses of Congress was obtained from the official House of Representatives and the United States Senate Web sites (House—http://clerk.house.gov/art_history/house_history/partyDiv.html and Senate—www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm). These were then coded to the party of the president to

(continued)

Appendix (continued)

determine the total number of times that the president, House, and Senate were all controlled by the same party. Government was considered *divided* when at least one of these three actors was controlled by a party differing from the other two. Government was considered *unified* when all three were controlled by the same party.

Popularity: Popularity was recorded using the data available on the American Presidency Project Web site (www.presidency.ucsb.edu/data/popularity.php). This Web site contains presidential approval ratings data originally compiled by *Gallup*. Data for this variable were only available for the period from July 22, 1941 to the present. For the purposes of this study, the poll conducted to the closest date (usually within 1 to 3 weeks) prior to the proclamation being issued was recorded. Furthermore, between July 22, 1941, and September 21, 1981, the question used by *Gallup* to measure a president's popularity was phrased as, "Do you approve or disapprove of the way [president's last name] is handling his job as president?" From October 30, 1981, to the present, the question used to gauge presidential popularity was rephrased and the new *Gallup* question is now asks, "Do you approve or disapprove of the way [president's first and last name] is handling his job as president?" Popularity for Congress was similarly measured by the *Gallup* question, "Do you approve or disapprove of the Congress is handling their job?"

Unemployment Rate: *Unemployment* was chosen as a variable because it is often used to gauge the condition of the U.S. economy. The unemployment rate for each year was recorded and matched to each proclamation using data from the Bureau of Labor Statistics Web site (<http://data.bls.gov/cgi-bin/survey/most?bls>). It is important to note that data were not available for proclamations issued prior to 1941.

Gross Domestic Product (GDP): According to the *Statistical Abstract*, GDP is defined as "the total output of goods and services produced by labor and property located in the United States, valued at market prices" (U.S. Bureau of the Census 1999, p. 425). This variable was selected because it is often used to gauge growth of the U.S. economy over time. GDP data for each year was collected from the U.S. Department of Commerce and recorded for each proclamation over a 2-year period. The difference in the GDP from Year 1 and Year 2 was calculated and then converted into a percent change.

Balance of Trade: To calculate the balance of trade, the *Statistical Abstract of the United States* was used to record the corresponding import and export values for each year and each trade proclamation. After recording the values for each proclamation, imports were subtracted from exports and the corresponding total was converted into a percentage to create a standard unit of measure that could be used across the entire range of dates and all proclamations. A negative score in this instance indicates that on average, the U.S. operates on a trade deficit (imports exceed exports).

Notes

1. In particular, the Trade Act of 1974 indicates that a joint resolution of both houses must be established to disapprove of a president's trade action (Title 19, Chapter 12, Subchapter I, Part 5, § 2192, (a)), requiring two thirds of each chamber to approve.

2. See, for instance, *United States v. Curtiss-Wright Export Corporation* (1936), and *United States v. Belmont* (1937).

3. The measure of presidential popularity is described in appendix. The measure of changing presidential popularity is the percentage of the public approving of the president at the closest recorded popularity measure to the proclamation in question subtracted from the popularity measure just prior to that measure.

4. This timing coding corresponds to how other scholars have articulate "late" presidential actions (see Mayer, 1999).

5. These data are easily attainable and captured from the Public Papers of the Presidents (accessed from The American Presidency Project, www.presidency.ucsb.edu).

6. Our goal in coding these new rules separately was to capture a degree of presidential invocation of the authority to create trade policy but still within the boundaries of Congressional consent; for example, 1 connotes that the president created a new rule, 0 connotes that the rule was not a new rule. This coding structure comports with those scholars who argue that presidential control of trade policy has expanded and allows us to capture the president's establishments of new rules (within an already established structure). See, for example, Proclamation 4980 (September 30, 1982). The difference between this category of trade proclamations and a simple modification of the GSP is that the latter category represents any modification (including new rules, altering old rules, superseding previous proclamations, and terminating agreements). The code number 1 connotes that the president modified the GSP in some way, 0 connotes that the GSP was not modified. The modifications of previous proclamations were often routine and did not dramatically change U.S. trade policy (see, for instance, Proclamation 5050, April 15, 1983).

7. The sources for each set of data are included in appendix. We have lagged the years for each economic measure to incorporate changes from the previous year. Industry or product-specific variables are coded as dummy variables.

8. Although there are estimation differences between logit and probit models, the application of these coefficients to the predicted probabilities in Table 2 are identical (see Long & Freese, 2001).

9. Each of our three models explain a sufficient level of variation as measured by the pseudo R^2 measure; however, a better measure of explanatory ability for these cases are the "cases correctly predicted," which is almost equal or higher than 50 % in all three models. A difficulty in determining the "goodness of fit" is present because the dichotomous nature of the dependent variable yield either very high or very low probabilities. This suggests an R^2 measure should not be exclusively relied on for estimates of explanatory variance (see Kennedy, 1998, p. 223). In addition, the proportionate reduction of error for the models is between 14% and 40%, implying the models to a good job of accounting for error.

10. In the model, we have separated out divided government in the House and Senate due to the different roles that each chamber plays in trade politics. Models run, but not shown here, which included controls for which party controlled the chamber (on the assumption that Democrats would act differently than Republicans on trade policy), did not substantively change the results.

11. In alternative models run (but not shown here) there was no effect of separate model specifications including alternate variables including (a) the totals of each party or of just the total numbers of the president's party, (b) divided government split by chamber, or (c) divided government when the Democratic party was in control. These nonfindings provide robustness to our conclusions.

12. In alternative models run (but not shown here) other economic variables were included but not found to be significant and without any effect on the model (including productivity by month, government deficit, and trade balances with specific countries).

13. In alternative models run (but not shown here), presidential dummy variables were included. Each president exhibited the same pattern, with all presidents having positive and statistically significant coefficients for modifying trade rules and establishing protectionist policies while they each exhibit negative and statistically significant coefficients for establishing new rules. This suggests that the presidents each follow similar patterns and there is not much variation by administration.

14. On this point, the coefficient for a "free trade policy" is negative (but not significant) suggesting presidents are not imposing their economic will through modification proclamations. In separate models run with interactions between protectionist policies and each of the three types of industries (steel, agriculture, and oil), the coefficients were the same. This suggests that presidents are more likely to engage in protectionism on behalf of these industries. This specification was not included here to keep the industries included uniform across all three types of policy.

15. This includes both the modification to or establishment of protectionist policies.

References

- Anderson, J. E. (1999). Economic policy: Comparative advisory arrangements. In S. Shull (Ed.), *Presidential policymaking: An end-of-century assessment* (pp. 224-246). Armonk, NY: M.E. Sharpe.
- Bailey, M. (2001). Quiet influence: The representation of diffuse interests on trade policy, 1983-94. *Legislative Studies Quarterly*, 26, 45-80.
- Biglaiser, G., Jackson, D. J., & Peake, J. S. (2004). Back on track: Support for presidential trade authority in the House of Representatives. *American Politics Research*, 32, 679-697.
- Black, R. C., Madonna, A. J., Owens, R. J., & Lynch, M. S. (2007). Adding recess appointments to the president's "tool chest" of unilateral powers. *Political Research Quarterly*, 60, 645-654.
- Cooper, P. J. (1986). By order of the president: Administration by executive order and proclamation. *Administration & Society*, 18, 233-262.
- Cooper, P. J. (2002). *By order of the president: The use and abuse of executive direct action*. Lawrence: University of Kansas Press.
- Deering, C., & Maltzman, F. (1999). The politics of executive orders: Legislative constraints on presidential power. *Political Research Quarterly*, 52, 767-783.
- Destler, I. M. (1981). Trade consensus, SALT stalemate: Congress and foreign policy in 1970s. In T. E. Mann & N. J. Ornstein (Eds.), *The new Congress* (pp. 329-362). Washington, DC: AEI.
- Devereaux, C., Lawrence, R. Z., & Watkins, M. D. (2006). *Case studies in U.S. trade negotiation: Vol. 1: Making the rules*. Washington, DC: Institute for International Economics.

- Diebold, W., Jr. (1974). U.S. trade policy: The new political dimensions. *Foreign Affairs*, 52, 472-496.
- Elsa, J. K. (2003). Presidential authority to detain "enemy combatants." *Presidential Studies Quarterly*, 33, 568-601.
- Erikson, R. S. (1989). Economic conditions and the presidential vote. *American Political Science Review*, 83, 567-573.
- Fisher, L. (1998). *The politics of shared power: Congress and the Executive* (4th ed.). College Station, TX: A&M.
- Gibson, M. (2000). *Conflict amid consensus on American trade policy*. Washington, DC: Georgetown University Press.
- Gourevitch, P. A. (1996). The macropolitics of microinstitutional differences in the analysis of comparative capitalism. In S. Berger & R. Dore (Eds.), *National diversity and global capitalism* (pp. 239-262). Ithaca, NY: Cornell University Press.
- Holmer, A. F. (1987). Congress and the president—The issues. In C. E. Barfield & J. E. Makin (Eds.), *Trade policy and U.S. competitiveness* (pp. 13-16). Washington, DC: AEI.
- Howell, W., & Pevehouse, J. (2005). Presidents, Congress, and the use of force. *International Organization*, 59(1), 209-232.
- Howell, W. D. (2003). *Power without persuasion: The politics of direct presidential action*. Princeton: Princeton University Press.
- Howell, W. D. (2005). Unilateral powers: A brief overview. *Presidential Studies Quarterly*, 35, 417-439.
- Kahane, L. H. (1996). Congressional voting patterns on NAFTA: An empirical analysis. *American Journal of Economics and Sociology*, 55(4), 395-409.
- Kahn, J. (2001, June 6). Bush moves against steel imports. *The New York Times*. Retrieved February 17, 2009, from <http://query.nytimes.com/gst/fullpage.html?res=9800E5D9103F935A35755C0A9679C8B63&sec=&spon=&pagewanted=1>
- Karol, D. (2000). Divided government and U.S. trade policy: Much ado about nothing? *International Organization*, 54, 825-844.
- Karol, D. (2007). Does constituency size affect elected officials' trade policy preferences? *Journal of Politics*, 69, 483-494.
- Key, V. O., Jr. (1968). *The responsible electorate: Rationality and presidential voting, 1936-1960*. New York: Vintage.
- Lindsay, J. M. (1994). *Congress and the politics of US foreign policy*. Baltimore, MD: Johns Hopkins University Press.
- Lohmann, S., & O'Halloran, S. (1994). Divided government and U.S. trade policy: Theory and evidence. *International Organization*, 48, 595-632.
- Long, J. S., & Freese, J. (2006). *Regression models for categorical dependent variables using Stata*. College Station, TX: Stata Press.
- Magee, S. P., Brock, W. A., & Young, L. (1989). *Black hole tariffs and endogenous policy theory*. New York: Cambridge University Press.
- Margolis, L. (1986). *Executive agreements and presidential power in foreign policy*. New York: Praeger.
- Mayer, K. R. (1996, August). *The importance of moving first: Executive orders and presidential initiative*. Paper presented at the 1996 Annual Meeting of the American Political Science Association, San Francisco, CA.
- Mayer, K. R. (1999). Executive orders and presidential power. *Journal of Politics*, 61, 445-466.

- Mayer, K. R. (2001). *With the stroke of a pen: Executive orders and presidential power*. Princeton: Princeton University Press.
- Moe, T. M., & Howell, W. (1999a). Unilateral action and presidential power: A theory. *Presidential Studies Quarterly*, 29, 850-873.
- Moe, T. M., & Howell, W. (1999b). The presidential power of unilateral action. *Journal of Law, Economics and Organization*, 15, 132-179.
- O'Halloran, S. (1994). *Politics, process and American trade policy*. Ann Arbor: University of Michigan Press.
- Pastor, R. A. (1980). *Congress and the politics of U.S. foreign economic policy*, Berkeley: University of California Press.
- Rottinghaus, B., & Maier, J. (2007). The power of decree: Presidential use of executive proclamations, 1977-2005. *Political Research Quarterly*, 60, 338-343.
- United States v. Belmont, 301 U.S. 324 (1937).
- United States v. Curtiss-Wright Export Corporation, 299 U.S. 304 (1936).
- U.S. Bureau of the Census. (1999). *Statistical abstract of the United States, 1998*. Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration.
- Uslaner, E. (1998). Let the chits fall where they may? Executive and constituency influences on congressional voting on NAFTA. *Legislative Studies Quarterly*, 23, 347-371.
- Vanderbush, W., & Haney, P. J. (2002). Clinton, Congress, and Cuba policy between two codifications: The changing executive-legislative relationship in foreign policy making. *Congress & The Presidency*, 29, 171-194.
- Wink, K. A., Livingston, D., & Garand, J. C. (1996). Dispositions, constituencies, and cross-pressures: Modeling roll-call voting on the North American free trade agreement in the U.S. House. *Political Research Quarterly*, 49, 749-770.

Brandon Rottinghaus is an assistant professor at the University of Houston. His research interests include the presidency, public opinion and executive-legislative relations. His work on these subjects has appeared in several journals and in a forthcoming book titled *The Provisional Pulpit: Modern Conditional Presidential Leadership of Public Opinion*.

Elvin T. Lim is Assistant Professor of Government at Wesleyan University and author of *The Anti-intellectual Presidency: The Decline of Presidential Rhetoric from George Washington to George W. Bush* (Oxford University Press, 2008).