

# Connecting regimes: Preferential Trade Agreements and the management of the intellectual property rights regime.

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## Abstract

International economic agreements such as Preferential trade agreements (PTAs) increasingly reference international norms and treaties in related policy fields. Yet, we still lack a complete understanding of what motivates this behaviour. This paper examines how PTAs connect to the international property rights regime. We provide an explanation for the types of connections and the underlying motivations. We differentiate between connections to the World Trade Organization (WTO) and connections to the wider Intellectual Property (IP) regime orchestrated by the World Intellectual Property Rights Organizations (WIPO) and between connections to treaties that are following a trade protection logic and one that foresees a challenge to the dominating logic. We posit that specific connections are used as devices to signal regime compatibilities; or by contrast challenge existing trade-law obligations.

We theorize that leading trading powers and supporters of multilateralism will be more likely to increase compatibility. As to PTA characteristics, we expect treaties which are characterized by economic power asymmetry, the innovative capacity of domestic industries but also the existing investment in the international order to matter. We test our expectations using new data on the design of IPR obligations in over 500 PTAs signed between 1992 and 2018. Findings from descriptive network and multivariate regression analyses support our claims on the different underlying logics and the impact of member composition on treaty design. The paper speaks to literatures on political economy of trade and international regime complexity. Our findings provide additional evidence that dominating states use various fora to strengthen existing norms, while a set of countries skeptical about the WTO treaties try to connect to fora closer to their own positions.

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## **Introduction**

Many issue areas in international relations are governed by multiple, overlapping institutions, giving rise to what has been variously termed regime complexes, regime complexity, and global governance complexes. Much existing work suggests that this overlap leads to the fragmentation of international law, as it creates inconsistency of rules, duplication of tasks, and contestation over which institutions and rules states should use (Alter and Meunier 2009; Orisini et al., 2013; Raustiala and Victor 2004; Morse and Keohane 2014; Alter and Raustiala 2018). Yet, recent research also suggests that fragmentation is not an inherent feature of all regime complexes (Eilstrup-Sangiovanni and Westerwinter 2022). Instead, studies find that there is often considerable order (Henning and Pratt 2020; Eilstrup-Sangiovanni 2022), including stable divisions of labor (Gehring and Faude 2013, 2014) and patterns of deference between constituent institutions within regime complexes (Pratt 2018).

What we do not know, however, is how states attempt to create order (or disorder) within a given regime complex. In other words, what strategies do states adopt to make a regime more or less fragmented? In this paper, we theorize that one strategy states have is to make explicit references to existing institutions when they engage in additional rounds of cooperation. Importantly, this strategy of “connecting” is used by states to increase the degree to which a given regime complex is preference compatible. Thus, some states engage in connecting to harmonize rules around a single, dominant set of institutions, which they can accomplish by creating more order (coherence) in the regime. In contrast, other states will create connections as a way to promote alternative rules within the regime, fostering more fragmentation. The extent to which they do this, however, will depend on their preferences towards the regime as well as their ability (power) to do so in different negotiating forums.

To assess our theoretical perspective, and to better understand how states attempt to manage the evolution of rules with regime complexes, we examine the intellectual property (IP) issue area, where governance is shared between the World Trade Organization (WTO), the World Intellectual Property Rights Organization (WIPO), and several other IOs, as well as through the rules contained in a dense network of preferential trade agreements (PTAs). The trading system, as well as the interplay (and overlap) between the trading system and the IP regime, has been a frequent object for studying regime overlap and complexity (Busch 2007, Young et al. 2008; Meunier and Alter 2009, Dupont and Elsig 2017; Helfer 2004). The IP regime is an interesting case given that the creation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the auspices of the WTO in 1995, as well as efforts by developing countries to develop “counter-regime norms” in other venues, has sparked concerns about pervasive regime shifting (Helfer 2004, 2009). Thus, there seems to be both centrifugal and centripetal forces at play simultaneously, with countries promoting different sets of institutions. How this plays out, and, importantly, whether this has led to more or less fragmentation in the regime over time is less well understood.

In this paper, we argue that states strategically use PTAs as a vehicle to make connections to and reinforce existing institutions that govern IP rights, but that they do so based on different logics. States with an interest in strong IP protections globally, primarily advanced industrial economies and states with a strong stake in the WTO system, make connections to the WTO and WIPO in an attempt to harmonize the rules across these two institutions as they view them as largely complementary. In this sense, these connections are more of an effort at coherence-making and “hedging” than actual rule expansion.<sup>5</sup> However, we also argue that PTAs with

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<sup>5</sup> See also Morin (2009) who has been sceptical about the effectiveness of such an approach.

memberships of developing countries, who prefer less stringent IP protection on average, will make references to alternative IP treaties that seek to challenge the dominant WTO and WIPO rules therefore contesting the industrialized countries' norms on IP. Ultimately, PTAs are an important legal battleground where states seek to promote their preferred norms in the IP regime, but depending on their preferences, this entails fostering connections to a different set of existing institutions.

To empirically evaluate our argument, we employ descriptive network analysis and multivariate statistical analyses on new data that comprehensively tracks IPR provisions in PTAs (Surbeck 2019). These data allow us to empirically assess connections, including the strength of connections, to the core TRIPS agreement and WIPO conventions, as well as alternative IP instruments, including the convention on biological diversity (CBD). Several findings stand out. First, we show that countries with a preference for strong IP protections make regular connections to core institutions in the IP regime complex in their PTAs. This includes references to TRIPs, WIPO conventions, as well as stronger, more substantive connections to both. Second, we show that these connections are especially prevalent in North South PTAs, suggesting that global north countries use their leverage in PTAs in order to push for connections to their preferred institutions. Third, we show that influential developing countries also push for connections to counter regime institutions in North South agreements.

Overall, these results have important implications for scholarship on international relations, trade agreements, and intellectual property rights protections. Broadly, they show how states strategically use PTAs in order to navigate regime complexity – some countries seek to establish connections that strengthen the core rules and institutions, whereas others aim to foster counter-regime norms. By exploring how these connections are made, as well as which actors are

likely to make them, we can better understand the evolving architecture of global governance in IP as well as other important issue areas.

### **Regime complexity and international economic law**

In recent years there has been a newfound appreciation by IR and legal scholars that in most issue areas there exist multiple, overlapping institutions, often with distinct rules and varied constellations of actors. This has led to an explosion of theorizing on what has been variously termed regime complexes, regime complexity, and global governance complexes. The central insight of this literature is that international rulemaking does not proceed on a “blank slate” (Alter and Raustiala 2018, p. 330). Instead, most issues areas are characterized by overlapping, non-hierarchical, nested, and parallel institutional fora, which affects how actors behave both within and across the myriad institutions of global governance (see Helfer 2004; Alter and Meunier 2009; Orsini et al., 2013; Jupille, et al., 2013; Morse and Keohane 2014; Lipsky 2017; Pratt 2018; San-Giovanni and Westerwinter 2022).

The predominant definition of a regime complex is “an array of partially overlapping and non-hierarchical institutions that includes more than one international agreement or authority” (Alter and Raustiala 2018 p. 333). Given the lack of hierarchy inherent in this definition, many scholars have theorized – and several have empirically shown – that regime complexes can lead to a fragmentation of international rules. In particular, much scholarship has emphasized that the presence of multiple institutions gives states (and other relevant actors) opportunities for regime shifting (Helfer 2004), forum-shopping (Busch 2007), and other strategies of contestation (Morse and Keohane 2014) that can generate rule inconsistency and duplication and lead to enforcement problems (Alter and Meunier 2009). Others emphasize how the presence of multiple institutions

in a given issue area leads to a complex politics of institutional choice and creation (Jupille, Mattli, and Snidal 2013; Kastner et al., 2018; Vabulas and Snidal 2013, 2021), which can affect the functioning and centrality of existing institutions (Lipsy 2017; Pratt 2020; Clark 2021; Eilstrup-Sangiovanni 2022; Lugg 2022).

Recent research, however, challenges the notion that regime complexes are inherently un-ordered (or non-hierarchical), or that regime complexity is always an obstacle to effective cooperation. For example, newer scholarship suggests that there can be significant divisions of labor that develop within regime complexes (Gehring and Faude 2014). Studies show that IOs regularly defer to others' authority over given issues (Pratt 2018) and often pool their resources collectively (Clark 2021). Other research shows that many international institutions are created with explicit linkages to existing institutions, which often means that they are nested in larger institutional assemblages (Shanks et al., 1996; Aggarwal 1998; Johnson 2017; Lugg 2022), and that legal agreements frequently cite or re-use international rules across multiple agreements and fora (Alschner and Skougarevskiy 2016; Allee, Elsig and Lugg 2017a; Allee and Elsig 2019; Peacock et al., 2019; Chaisse et al., 2022; Clark and Pratt 2023). Importantly, these newer approaches suggest that the degree of order or disorder within a regime complex is likely a function of the political choices and strategies of the actors in the regime complex, as well as features of the complex itself. For example, recent contributions have proposed alternative conceptualizations of regime complexes, such as the global governance complex (Eilstrup-Sangiovanni and Westerwinter 2022), which does not assume an absence of hierarchy to be a constitutive feature. Instead, these approaches suggest that the degree to which a given complex is ordered should vary across issue areas and over time.

Ultimately, an important research frontier is to better understand several core dynamics of regime complexes. First, research needs to address variation in the ordering principles across different regimes and over time within regimes. Some complexes are more orderly and hierarchical than others, but the sources of this variation are still poorly understood. Second, we need to better understand how states (and other actors) attempt to navigate complexity through the adoption of what has been called “complexity management” (Oberthür and Stokke 2011 p. 6; Eilstrup-Sangiovanni and Westerwinter 2022 p. 247). One such strategy is to layer, link, or nest new institutions on-top of existing ones, which has thus far been observed in several different contexts (Aggarwal 1998; Reinsberg and Westerwinter 2021; Lugg 2022). However, what this looks like, and whether these linkages are created in order promote more coherent cooperation or contest existing cooperation is still poorly understood. This paper begins to fill this gap by examining the dynamics of institutional connections in the regime complex governing intellectual property. It highlights the role of trade agreements in reinforcing and bringing greater coherence to the WTO, WIPO, and related agreements that are included as part of the TRIPS agreement. The analysis models the drivers of these institutional connections, locating their origins in the interests and institutional preferences of the states that bargain over intellectual property in trade agreements.

### **The intellectual property regime complex**

The IP regime was never self-contained. Interactions with the trade regime go back to the early 20<sup>th</sup> century with examples of cross-fertilization (see Cottier, Sieber-Gasser and Wermelinger 2015). Yet, the overlaps and connections received a new quality with the creation of the WTO in 1995 and the specific legal commitments concluded through the TRIPS agreement. As Abbott

writes, “WIPO was perceived as an ineffectual institution because its governing agreements failed to adequately prescribe the types of IPRs protection sought by the developed countries, and because the WIPO arrangement lacked an effective enforcement mechanism” (2000:66). The TRIPS agreement strengthened the WIPO-administrated treaties as the TRIPS agreement incorporated directly a set of WIPO conventions to which not all former GATT members were party to but more importantly also future WTO Members. For instance, with respect to the WIPO administrated Berne Convention on Copyrights, Article 9 of the TRIPS agreement clearly states that “Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto.” Due to the WTO’s relatively strong enforcement tools through third-party dispute settlement, the WIPO regime therefore underwent a “hardening” of law as WIPO standards that were originally seen as optional became quasi mandatory (see Shaffer and Pollack 2010). Dupont and Elsig (2017) describe this as an outcome of a controlled “border shift”, supported as well by a strong convergence among key actors in the respective regimes about the need for stringent IP rules (see also Sell 2003).

The TRIPS agreement explicitly connects the WTO with WIPO in governing intellectual property. The preamble notes the signatories’ desire to “establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (...) as well as other relevant international organizations.”<sup>6</sup> The TRIPS agreement also integrates commitments in four specific existing treaties: the Paris Convention of 1967, the Berne Convention of 1971, the Rome Convention of 1961, and the Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC Treaty) of 1989. These treaties are applied to varying degrees within the scope of

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<sup>6</sup> Preamble, TRIPS Agreement.



the TRIPS agreement.<sup>7</sup> In terms of the relationship between TRIPS and these treaties, the former explicitly provides that there be no derogations from existing obligations in the latter.<sup>8</sup>

Since the 2000s and mounting difficulties in WTO negotiations to develop further rules, research has focused increasingly on how PTAs incorporate WTO-type IP rules (Allee, Elsig and Lugg 2017b). They find that 60% of IP chapters in PTAs make references to the WTO. In addition, on average more than 10% of each PTA text is copied directly from the TRIPS agreement. Other work has focused on the degree to which IP commitments go beyond WTO rules, so-called TRIPS+ obligations (Morin and Surbeck 2020). They find that deeper agreements correlate with TRIPS+ provisions and that economic asymmetry and the strength of domestic IP law matter. Similarly, Dür and Mödlhamer (2019) show that major trading powers when negotiating with lower-income developing countries push for such provisions, whereas non-Western powers pursue alternative templates. They find that Brazil, Russia, India, and China sign shallower PTAs when it comes to IP (TRIPS-).

While there is increasing evidence that leading WTO Members have tried to strengthen IP rules within the trade regime, we know surprisingly little about what drives negotiators in bilateral and plurilateral trade talks to connect to trade-related IP rules back to the “original” property rights regime represented by WIPO.

Connections can affect the actual content or norms on the “receiving” institution, can influence how the “targeted” regime operates politically, and may lead to coordination attempts

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<sup>7</sup> The TRIPS agreement covers: i) Copyright and Related Rights; ii) Trademarks; iii) Geographical Indications; iv) Industrial Designs; v) Patents; vi) 6. Layout-Designs (Topographies) of Integrated Circuits; vii) Protection of Undisclosed Information; and Control of Anti-Competitive Practices in Contractual Licences.

<sup>8</sup> TRIPS agreement, Article 2 (Intellectual Property Conventions), paragraph 2: ‘Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.’

to actively manage the regime overlap created through linkage. In addition, connections can affect the appeal of the “source” regime and strengthen its importance and reach. In his work on the trade-IP linkage, Helfer (2009) focuses what he calls “regime-shifting” which he sees as enabling “both powerful and weaker states and their allies to relocate rulemaking initiatives to international venues concerned with other issue areas—such as foreign investment, human rights, public health, and biodiversity.” He argues that the EU and the US after the creation of the WTO treaties and incorporation of key WIPO conventions into the trade governance focused their efforts in strengthening IP rules going beyond the WTO negotiation rules (so-called TRIPS+). In line with this, Dür and Mödlhamer (2019) find that the US often goes beyond WTO rules in their PTAs.

Yet, Helfer (2009) also provides evidence that opponents of WTO-type IP rules directed their attention to other regimes where both norms and decision-making processes provided more alignment for their interests and influence. In other words, legal treaties or organizations, such as the Convention on Biological Diversity (CBD) or the Food and Agricultural Organization (FAO) promote biodiversity or plant genetic sources and consider these as public goods and foresee limitations for access and use by private IP owners.<sup>9</sup> These institutions are therefore more in line with the goals of IP sceptics. In addition, the US and the EU have comparably less influence in these fora.<sup>10</sup> And finally, the FAO and CBD provide more access points to civil society organizations allowing some form of coalition-building against industrialized countries economic motivations and private power.

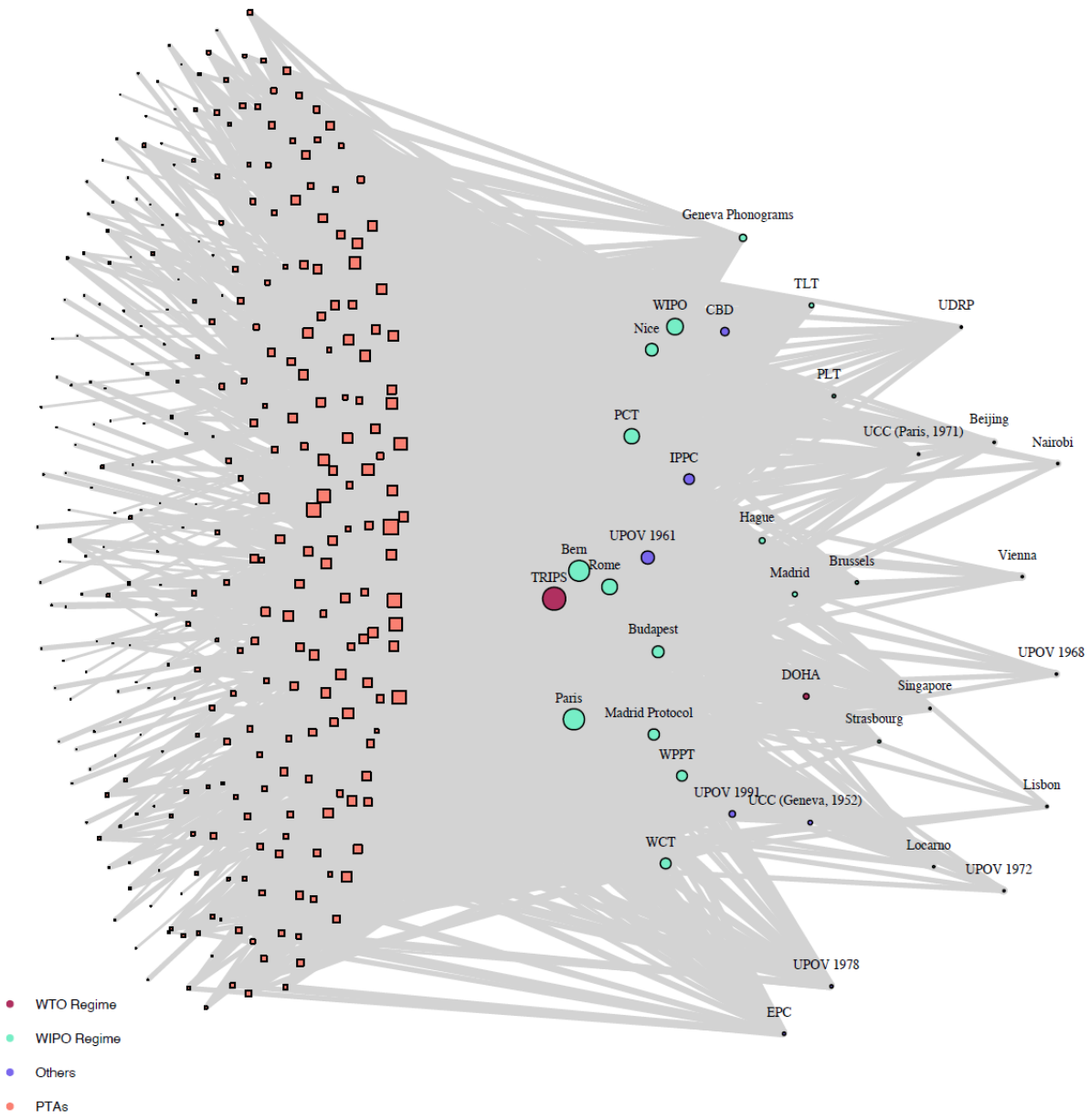
## **Visualization using Network Analysis**

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<sup>9</sup> On WTO and CBD relations, see also Rosendal 2001.

<sup>10</sup> The US has not ratified the CBD convention.

The connections between IP provisions in trade agreements and the IP regime complex can be modeled using a bipartite network. A bipartite network models the connections between two sets of nodes. In this case, one set of nodes comprise the treaties that are referenced in PTAs, and the other set of nodes consists of the PTAs themselves. Figure 1 presents a bipartite network linking IP conventions with PTAs. On the left-hand side of the graph, the nodes (as orange-colored squares) represent PTAs, while on the right-hand side of the graph, the nodes consist of specific international conventions on IP. There are lines (edges) running between the set of PTAs and the set of IP treaties. A line or edge shows that a given PTA refers to a particular IP treaty in its IP provisions. The PTA may refer to multiple IP conventions, thus resulting in more than one edge between the PTA on the left and the set of IP treaties on the right. The lines or edges are also each weighted by the strength of obligation, which has three levels. Where there is no mention of a particular treaty, there is no edge or line between the PTA and a given IP treaty. Where there is a link represented by the edge, it is weighted by whether there is a reference (=1); reaffirmation of certain parts (Articles, Paragraphs) and obligation of compliance (=2); or recommendation towards accession (=3), where the last level (3) represents the strongest IP provision.



The bipartite network graph in Figure 1 tells us how PTAs are linked to international conventions in the area of IP governance. It shows, in particular, that the WTO's TRIPS agreement is the most heavily cited treaty in PTAs for governing intellectual property related to trade. Clustered around TRIPS are the nodes for the Paris, Bern, and Rome agreements as well as the WIPO convention, all of which are referenced in TRIPS Article 2, paragraph 2. Overall, Figure 1 shows that in the area of the regime complex governing intellectual property that is driven by PTAs, there is a hierarchy of institutions that is centered on the TRIPS agreement and its related conventions under the WTO. Thus, there is both consistency and coherence with the WTO in the regulation and management of intellectual property rights covered in trade agreements. The objective of this study is to investigate the factors that drive this feature of the regime complex governing intellectual property. The analysis focuses on the attributes of the bargaining parties and how they contribute to the bargaining dynamic that produces the connections between IP provisions in PTAs and relevant international conventions.

### **Theory – connecting regimes**

Our theoretical approach builds on existing literature on the dynamics of regime complexes, as well as work on the IP regime more specifically. Our central argument is that countries have an interest in promoting coherence within regime complexes, but only as long as doing so encourages the adoption of their preferred rules/standards. Thus, countries will seek to promote coherence among the institutions in a regime by building connections to the ones that convey their preferred rules. Crucially, however, whether states engage in this type of connection building will depend on the starting point of the rules in the regime. If the dominant norms in the

regime are preference-compatible, then states will seek to promote coherence in the regime by making connections to and among the elemental institutions. This diminishes the legitimacy of alternative rules, which reduces the chance that states will forum-shop or regime shift away from the dominant norms in the regime while also increasing the costs for opting out. Moreover, this connection-building helps build the resilience of the core rules in the regime through a hedging strategy such that the dominant norms in the regime will persist even if one (or more) of the elemental institutions becomes weaker. In other words, connecting helps preserve and reinforce the status quo.

In contrast, if the dominant or emergent norms in the regime are preference-incompatible, then states will seek to promote connections to alternative institutions and rules in the regime, engaging in a strategy of contestation that seeks to move the regime towards their preferred rules. This is similar to what others have called a strategy of “contested multilateralism”, except that the strategy here is not competitive regime creation nor is it regime shifting (Morse and Keohane 2014). Instead, the goal here is to reinforce the legitimacy of the rules at alternative institutions; by building connections to them in new fora this will enhance their legitimacy thereby challenging the dominant rules.

Our general framework builds upon several important strands of IR theory. First, we build upon power-based theories of cooperation, which suggest that the uneven distribution of power globally impacts the ways in which global governance is designed and maintained (Gilpin 1981; Krasner 1991; Gruber 2000; Voeten 2001; Ikenberry 2001; Drezner 2007; Stone 2011; Allee and Peinhardt 2014). In the present context, this means that the strategies that states adopt vis-à-vis the IP regime will depend on their ability to translate their preferences to policy outcomes via power. Second, we build upon recent work on the contextual design of

international institutions, which assumes that states' behavior in a given issue area is in part determined by the current configuration of global governance in that area, including the number, type, and density of existing institutions (see Jupille, Mattli, and Snidal 2013; Reinsberg and Westerwinter 2021; Eilstrup-Sangiovanni 2021). This view suggests that states will choose different regime management strategies depending upon the institutional context at a given point in time. We differ from extant theories in an important regard, however. Here we do not assume that powerful states prefer informal cooperation (Stone 2013) or that they disproportionately benefit from fragmentation (Drezner 2009). Instead, we assume that the strategies that states adopt will depend on their ability to pursue their preferences as well as the current configuration of the given regime. Thus, powerful states may seek to create connections among multiple institutions, even if doing so is costly, in order to promote coherence that helps advance their interests and maintains the overall resiliency of the regime.

In the present context, this means that states with a preference for strong IP protections will seek to promote coherence among their preferred IP institutions, whereas states with a preference for looser IP standards will seek to promote alternative institutions that challenge these prevailing norms. In the international trading system, PTAs are a particularly important venue in which this contest takes place. PTAs can be thought of as an institutional blank slate – countries can choose to negotiate with whomever and they can include whatever provisions they can get a partner or partners to agree to. Indeed, we see wide variation in the actual legal language contained in PTAs; some contain extensive text devoted to matters including IP and other “behind the border” issues, whereas others contain relatively shallow provisions (Dür et al., 2014; Allee and Elsig 2016). For this reason, PTAs can be used to layer new commitments on top of existing obligations (Faude 2020), and there is extensive evidence that states, including

powerful states, reference and copy-paste their favored legal text strategically in them (Allee and Lugg 2016; Allee and Elsig 2016). In this sense, PTAs can play a similar role to that of informal intergovernmental organizations (Vabulas and Snidal 2020), which can be deployed by powerful states in order to seek “hegemonic consensus” and by weaker powers in order to pursue counter-regime strategies. In sum, we expect that PTAs will serve as an important institutional outlet for states as they attempt to make connections to the IP regime, but that the nature and form that these connections take will be determined by their power and interests.

Our first set of expectations, therefore, is that states with a preference for strong IP protections are more likely to create connections to the core institutions of the regime in their PTAs in order to promote convergence to their preferred IP rules. We expect that the promoters for IP rights will make references to both the WTO treaties as well as WIPO conventions, as these reflect the current, dominant norms articulated by the advanced industrial countries, including the US, EU, Japan, and others. WIPO-administrated conventions, such as the Rome Treaty on Copyrights, the Paris Treaty on Industrial Designs or the Patent Law Treaty, are considered to be aligned with providing private IP holders with necessary protection against infringements of a set of IP rights related to patents, copyrights and trademarks in particular. This signal largely follows a re-affirmation of existing rights but also incorporates any potentially dynamic and future developments in the like-minded regimes.<sup>11</sup> We also expect that countries will seek to make connections to both the TRIPS agreement and WIPO treaties in the same PTA, enhancing coherence in the regime overall. This is particularly important as this indicates that states will try to establish connections to multiple elemental institutions in order to build resiliency into the regime.

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<sup>11</sup> In their work on WTO presence in PTAs, Allee, Elsig and Lugg (2017) show for IP references in PTAs that these are overwhelmingly affirmative in nature.



*H1: PTAs comprised of states with a preference for strong IP protections will make connections to the WTO's TRIPS agreement in their PTAs.*

*H2: PTAs comprised of states with a preference for strong IP protections will make connections to core WIPO conventions in their PTAs.*

*H3: PTAs comprised of states with a preference for strong IP protections will make legally strong connections to the WTO's TRIPS and WIPO conventions in their PTAs.*

*H4: PTAs comprised of states with a preference for strong IP protections will make connections to both TRIPS and WIPO conventions in their PTAs.*

At the same time, PTAs are negotiated in the shadow of power. Thus, the extent to which a given PTA connects to the IP regime, and the nature of those connections, will be determined by the relative power and interests of the states at the negotiating table. Importantly, PTAs provide states a different forum through which to make institutional connections, such that the degree to which they promote connections in these typically smaller negotiating fora will be of central concern. We expect that global north countries, who have a preference for strong IP connections, will be particularly likely to use PTAs with global south countries as a way to make connections to TRIPS and WIPO conventions. In a smaller negotiating forum, which may often be bilateral, global north countries have asymmetric influence, they can use market access as a way to push for concessions on stringent IP rules. Moreover, global south countries are also those that are more likely to be critical of or challenge strong IP norms/rules more generally. Thus, global north countries will view connections to their preferred institutions as particularly valuable in the context of a north-south agreement. In contrast, making these regime connections in north-north treaties will be less of a priority, as these countries already have strong protections domestically. This motivates the following hypotheses:

*H5: PTAs including a global north and global south partner are more likely to reference the WTO's TRIPS agreement.*

*H6: PTAs including a global north and global south partner are more likely to reference core WIPO conventions.*

*H7: PTAs including a global north and global south partner are more likely to make legally strong references to TRIPS and WIPO conventions.*

*H8: PTAs including a global north and global south partner are more likely to make connections to both TRIPs and WIPO conventions in their PTAs.*

To this point, we have generated hypotheses primarily with respect to how advanced industrial countries with a preference for strong IP connections will make connections to the TRIPS agreement as well as core WIPO conventions in their PTAs. However, our theoretical perspective also suggests that countries with a preference for counter regime rules, particularly special and deferential treatment for developing countries in the IP issue area, will attempt to make connections to alternative parts of the regime complex. We expect that these sceptics will focus on organizations and regimes that question the granting private actors of wide-ranging protection, which they view as potentially leading to market domination, higher prices and unfair sharing of the benefits. We expect therefore particular references to the Doha WTO waiver on public health. The Waiver is an inner-WTO compromise to address some of the concerns of developing countries raised to address public health emergencies by bypassing stringent IP rights to allow for instance easier access to compulsory licensing and exporting essential medicine.<sup>12</sup> Also, we expect on average more attention to IP-related rules in CBD and conventions administrated by organizations skeptical of IPR, such as the FAO. In terms of the FAO, we in

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<sup>12</sup> Drezner argues that the US also tried to water down and restrict the Doha WTO waiver through its PTAs (Drezner 2007).

particular consider the International Plant Protection Convention (IPPC) managed under its auspice. However, as was the case with advanced industrial countries with a stake in strong IP protections, we expect that developing countries will primarily push for counter-regime norms in their north south agreements. These are the subset of agreements that matter the most in terms of the development of the regime. Moreover, many south-south agreements are unlikely to cover IP protections at all given that these PTAs are often shallow agreements that only liberalize some trade in goods, thus the IP issue may never make it on the negotiating table, creating the potential for false negatives. This motivates the following hypotheses:

*H9: Developing countries will push for special and deferential treatment with respect to IP provisions by referencing alternative institutions within the IP regime, including the IPCC, the CBD treaty, the Geneva conventions on copyrights, and the Doha Waiver in their North South Treaties.*

## **Research Design**

In order to evaluate our theory, we utilize comprehensive data on the IP references contained in the full universe of PTAs signed since World War II (Surbeck 2019), which is integrated in the DESTA database.<sup>13</sup> The data distinguishes between simple references to various IP treaties, reaffirmations of rights and obligations under these legal instruments as well as obligations to accede to agreements and conventions for PTA partners not yet members to these treaties.

Below, we provide some examples of how these connections are phrased in legal language in PTA treaties building the bases for coding.

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<sup>13</sup> See [www.designoftradeagreements.org](http://www.designoftradeagreements.org).

The first example is drawn from the Columbia-Peru-EC Agreements of 2012 in which we find both a reaffirmation of existing rights under the WTO TRIPS Agreement as well as extended obligations to accede to a WIPO convention (chapter 3, article 202):

*“The Parties shall abide by the rights and obligations existing under the Paris Convention and the TRIPS Agreement (...) The European Union and Colombia shall accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989 (hereinafter referred to as the ‘Madrid Protocol’) within 10 years from the signature of this Agreement. Peru shall make all reasonable efforts to adhere to the Madrid Protocol (...) The European Union and Peru shall make all reasonable efforts to comply with the Trademark Law Treaty adopted in Geneva on 27 October 1994 (hereinafter referred to as the “Trademark Law Treaty”). Colombia shall make all reasonable efforts to adhere to the Trademark Law Treaty.”*

Second, an example of connection to a counter-regime can be found in the Andean-Mercosur PTA of 2004. In addition to references to the WTO, we find explicit mentioning of the CBD (Article 32):

*“The Signatory Parties shall be governed by the Agreement on Trade-Related Aspects of Intellectual Property Rights of the WTO, as well as by the rights and obligations contained in the 1992 Convention on Biological Diversity. They shall also seek develop norms and disciplines for the protection of traditional knowledge.”*

Similarly, we find in an PTA between Canada and India the explicit need to protect biological diversity (Article 612):

*“As signatories, both parties reaffirm their commitment to the Convention on Biological Diversity with a view to respecting both parties’ sovereign rights over their biological and genetic resources while facilitating access to those resources. In particular, both parties recognize the importance of Article 8.j which stipulates: “Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”.*

A third example relates to the TRIPS Waiver. We find many PTAs that stress and emphasize the flexibility agreed within the WTO. For instance, the PTA between Japan-Peru from 2011 simply states in Art. 188 and the IP chapter.

*“This Chapter should be interpreted and implemented in a manner supportive of the Parties’ rights to take measures to protect public health in accordance with the TRIPS Agreement and the decisions by the Ministerial Conference or the General Council of the WTO, related to the TRIPS Agreement and public health.”*

### *Dependent variables*

In our analyses we utilize several dependent variables from above data in a multiple regression framework in order to assess the nature of the connections between PTAs and IP institutions. For hypotheses 1 through 8 we use 4 dependent variables, each of which assesses a positive connection in the PTA to the IP regime complex. A first variable, *TRIPS (0/1)*, is a dichotomous dependent variable that tracks whether a given PTA references the 1995 TRIPS agreement negotiated under the auspices of the World Trade Organization. A second is *WIPO (0/1)*, which is a dichotomous variable that tracks whether or not the PTA references any of the core WIPO treaties. A third is *TRIPS Strength*, which is an ordinal variable with 4 categories indicating the strength of the TRIPS references: 0 indicates no TRIPS reference; 1 indicates a reference to TRIPS; 2 indicates a clear reaffirmation of specific legal language contained in TRIPS, and; 3 indicates an intent to accept all the current and future obligations contained in TRIPS. Fourth we use the variable *WIPO Strength* which is a non-negative count variable that tracks how many of 22 WIPO IP treaties are reaffirmed in the PTA.<sup>14</sup> Fifth, we use the variable *TRIPS + WIPO* which is an ordinal variable that assess whether the PTA includes a reference to MFN treatment of IP, a reaffirmation of WIPO, at least one additional WIPO convention, and a reaffirmation of TRIPS.

In order to assess connections to institutions that promote counter-regime norms, we use 6 dichotomous variables that track connections to alternative institutions in the IP regime complex. A first is *IPCC (0/1)*, which tracks whether the PTA references the 1951 International Plant Protection Convention, which is developing standards under the auspice of the FAO and

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<sup>14</sup> These include the 1961 treaty on industrial designs, 1968 Locarno Treaty, UPOV 1961....

focuses on trade-induced risks limiting the scope of IP holders. A second is *CBD (0/1)*, which tracks whether the PTA references the 1992 Convention on Biological Diversity, which advocates a fair and equitable sharing of benefits arising from the use of genetic resources. A third, *UCC Geneva (0/1)*, tracks whether the PTA references the 1952 Universal Copyright Convention signed in Geneva, which was negotiated in UNESCO and was set-up as a clear alternative to the Berne Convention. A fourth, *UCC Paris (0/1)*, tracks whether the PTA references the 1971 Universal Copyright Conventions signed in Paris, which follows the UCC Paris. A fifth is *TRIPS Doha (0/1)*, which tracks whether the PTA references the 2001 TRIPS waiver signed in Doha, which provides legal exemptions from the TRIPS agreement. And, finally, a sixth, *Any Counter Regime (0/1)*, tracks whether or not the PTA references any of the previous 4 treaties.

### *Independent variables*

For hypotheses 1 through 4, we seek to evaluate the extent to which states with preferences for strong IP protections make connections to the core institutions of the IP regime in their PTAs. As far as we know, there is no single measure that perfectly captures preferences for IP protection, thus we rely on the variable *IP earnings*, which is the total payments between residents and nonresidents for the use of IP, including patents, trademarks, copyrights, industrial processes, and designs, as well as royalty payments related to the domestic production of materials with copyrights including software, books, and music.<sup>15</sup> We divide this measure by GDP measured in dollars for each country, and we then take the average across all PTA signatories which we then take the natural logarithm of.

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<sup>15</sup> We use the indicator BX.GSR.ROYL.CD.

Hypotheses 5 through 8 are intended to evaluate the extent to which bargaining dynamics between the global north and the global south drive connections to the IP regime. Our argument suggests that PTAs with members from the north and south are most likely to include connections to the IP regime as these are the PTAs where global north countries are most likely to push for strong connections in order to help strengthen the regime as well as push for their preferred provisions. Therefore, we create three dichotomous variables for each possible PTA membership composition: *North North*, *North South*, and *South South*.<sup>16</sup>

Finally, hypothesis 9 evaluates whether countries who are influential global south members make connections to institutions that reinforce counter regime norms within the IP regime complex. To test this hypothesis, we include the variable *WTO G20 Group*, which includes 23 countries at the WTO that have formed a coalition intending to advance developing country interests.<sup>17</sup>

#### *Control variables*

We also include several control variables in order to guard against alternative explanations for connections to the IP regime in PTAs. First, we include *Democracy*, which is the average polyarchy score for all members of the PTA taken from the VDEM data. We include this because we believe regime type characteristics associated with democracy are likely to influence whether countries include references to international law in general. Second, we include *PTA Depth*, which is the most common measure of PTA depth taken from the DESTA database (Dür

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<sup>16</sup> Global north countries include Australia, Canada, Japan, New Zealand, United States, and all Western European countries.

<sup>17</sup> These include Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, Zimbabwe.



et al., 2014). We include this variable given the fact that deeper agreements are more ambitious on average and so are more likely to include IP provisions. Third, we include *Year*, which is the year of signature of the PTA. Over time PTAs have become more deeper on average, suggesting that newer generation treaties are more likely to mention IP.

### *Regression model specifications*

For all models with dichotomous dependent variables including models 1, 2, 6, 7, and 11 through 16, we use logistic regression. For models 4, and 8, which are both non-negative count variables that are overdispersed, we use negative binomial regression. Finally, for models 3, 5, and 8 and 10, which are ordered, we use ordered logit.

### **Regression Results**

Table one below evaluates hypotheses 1 through 4 which assess whether states with preferences for strong IP protections build connections between institutions in the larger IP regime complex using PTAs. Overall, the results provide strong support for this proposition. The variable *IP Earnings* is in the expected positive direction and statistically significant in 4 of the 5 models. Particularly important, is that it is significant at the 99% level in model 5 which shows that PTAs composed of states that earn substantial IP royalties are more likely to include strong references to both the WIPO and TRIPS regimes into their PTAs. There are no major surprises with respect to the control variables. The coefficient for *Democracy* is positive and statistically significant at the 99% level in all 5 models, indicating a robust association between average level of democracy of PTA members and connections to core IP institutions in the regime complex. Furthermore, the coefficient for *PTA Depth* is also positive and statistically significant at the

99% level in all models. As expected, this indicates that deeper agreements are more likely to make connections. Finally, the coefficient for *Year Signed* is also positive and statistically significant in all models, indicating that connections have been increasing over time.

**Table 1. Preferences for Strong IP Protections and Connections to the IP Regime Complex.**

	Model 1 TRIPS (0/1)	Model 2 WIPO (0/1)	Model 3 TRIPS Strength	Model 4 WIPO Strength	Model 5 TRIPS + WIPO
<i>IP earnings (average logged)</i>	0.165* (0.0881)	0.234*** (0.0845)	0.193** (0.0833)	0.078 (0.0649)	0.260*** (0.071)
<i>Democracy (average)</i>	2.904*** (0.795)	2.798*** (0.751)	2.729*** (0.744)	2.166*** (0.552)	2.884*** (0.628)
<i>PTA Depth</i>	0.450*** (0.0943)	0.515*** (0.0860)	0.368*** (0.0863)	0.296*** (0.0645)	0.333*** (0.072)
<i>Year Signed</i>	0.114*** (0.0272)	0.069*** (0.0172)	0.105*** (0.0247)	0.099*** (0.0133)	0.034* (0.020)
<i>Constant</i>	-230.6*** (54.67)	-140.5*** (34.45)		-197.9*** (26.70)	
<i>cut1</i>			211.6*** (49.57)		67.5*** (40.3)
<i>cut2</i>			211.7*** (49.57)		68.5*** (40.29)
<i>cut3</i>			216.7*** (49.68)		69.5*** (40.3)
<i>Cut4</i>					70.3*** (40.3)
<i>lnalpha</i>				0.966***	

				(0.107)	
N	363	503	363	503	363
AIC	374.9	445.2	517.8	1834.0	1129.0
BIC	394.3	466.3	545.1	1859.3	1148.4

Standard errors in parentheses. All significance tests two tailed.

\*  $p < 0.1$ ; \*\* $p < 0.05$ ; \*\*\* $p < 0.01$

Importantly, the results are also substantively significant as well. Table 2 summarizes the predicted values of the dependent variables in each model, holding all other variables in the models at their observed values, while varying the value in the primary independent variable, *IP Earnings*, from the 10<sup>th</sup> percentile to the 90<sup>th</sup> percentile. For model 1 we see that increasing the value of *IP Earnings* yields an increase in the predicted probability of a PTA referencing TRIPS by 27%. For model 2, we see that increasing the value of *IP Earnings* increases the predicted probability of a WIPO reference by 53.55%. For Model 3, which is an ordinal variable, interpretation is slightly different. Here we use the predictions from the model for the observance of a 2, which is the most observed positive category. The predicted probabilities suggest that the probability of observing 2 increases by approximately 35% in response to a change in *IP Earnings*, with similar increases in probability for other values of the dependent variable. For model 4, we see that increasing the value of *IP Earnings* increases the expected count of WIPO conventions referenced from 3.5 to nearly 5, an increase in approximately 40%. Finally, we also see from model 5 that the probability of observing a 4 in the WIPO + TRIPS variable – the highest value – goes up by approximately 128% as *IP Earnings* increases.

**Table 2. Predicted Values for Models 1 through 5.**

Dependent Variable	Independent Variable	Change	Prediction	Change in Prediction
Model 1: <i>TRIPS (0/1)</i>	<i>IP Earnings</i>	10th percentile	0.463	

Model 2: <i>WIPO (0/1)</i>	<i>IP Earnings</i>	90th percentile	0.588	27.00%
		10th percentile	0.282	
Model 3: <i>TRIPS Strength</i>	<i>IP Earnings</i>	90th percentile	0.433	53.55%
		10th percentile	0.407	
Model 4: <i>WIPO Count</i>	<i>IP Earnings</i>	90th percentile	0.549	34.89%
		10th percentile	3.567	
Model 5: <i>WIPO + TRIPS</i>	<i>IP Earnings</i>	90th percentile	4.997	40.09%
		10th percentile	0.108	
		90th percentile	0.246	127.78%

Note: All predictions are average marginal effects for a change in IP Earnings using the observed values in the models for other variables. For models 1, 2, 3, and 5 the predictions are predicted probabilities. For model 4 the predictions are predicted counts. For model 3 the reported change is the change observed when the value of TRIPS Strength is 2. For model 5 the reported probabilities are when WIPO + TRIPS is a 4.

Table 3 evaluates hypotheses 5 through 8 which theorize that connections to the WTO and WIPO are more likely, and will be stronger, in North South PTAs than in other PTAs. The regression results strongly support this argument. Across all five dependent variables we see that the coefficients for *North South PTA* are positive and statistically significant, at the 95% level of higher in 3 models and the 99% level in the remaining 2 models. This provides strong support of our central contention, showing that North South PTAs are more likely than North North and South South agreements to include connections to these core IP institutions. Interestingly, we see that the coefficient for both *Average GDP* and *IP Earnings* fail to reach statistical significance in these models. This result suggests to us that even though developed countries have a strong generalized preference for making connections, they value them more and likely push for them more in North South agreements. The other control variables perform largely as they did in previous models. Again, *Democracy* is highly correlated with connections to core IP institutions, and we also see that deeper and more recent PTAs are also more likely to include connections.

**Table 3. North South Bargaining and Connections to the IP Regime Complex.**

	Model 6 TRIPS (0/1)	Model 7 WIPO (0/1)	Model 8 TRIPS Strength	Model 9 WIPO Strength	Model 10 TRIPS + WIPO
<i>North South PTA</i>	1.737** (0.779)	1.742*** (0.573)	1.622** (0.733)	0.943** (0.397)	0.605*** (0.235)
<i>South South PTA</i>	0.505 (0.937)	0.0869 (0.730)	0.511 (0.864)	0.242 (0.549)	0.346 (0.281)
<i>GDP per capita (average)</i>	0.00463 (0.0189)	-0.00658 (0.0161)	0.0109 (0.0164)	-0.0103 (0.0111)	0.00738 (0.00458)
<i>IP Receipts (average, logged)</i>	0.0209 (0.108)	0.0511 (0.108)	0.0301 (0.102)	0.0226 (0.0838)	0.0391 (0.0391)
<i>Democracy (average)</i>	2.331*** (0.851)	2.270*** (0.834)	2.190*** (0.785)	2.184*** (0.595)	0.993*** (0.295)
<i>PTA Depth</i>	0.358*** (0.101)	0.439*** (0.0917)	0.261*** (0.0930)	0.260*** (0.0682)	0.102*** (0.0315)
<i>Year</i>	0.122*** (0.0279)	0.0892*** (0.0192)	0.113*** (0.0253)	0.105*** (0.0144)	0.0135 (0.00825)
<i>Constant</i>	-247.5*** (56.06)	-181.8*** (38.27)		-212.2*** (28.80)	-27.88* (16.57)
<i>cut1</i>			229.6*** (50.84)		
<i>cut2</i>			229.8*** (50.84)		
<i>cut3</i>			235.0*** (50.96)		

<i>lnalpha</i>				0.927*** (0.109)	-16.04 (558.9)
N	363	503	363	503	363
AIC	366.9	425.4	507.9	1831.5	1119.4
BIC	398.0	459.2	546.9	1869.5	1154.4

Standard errors in parentheses  
 \* p<0.1; \*\* p<0.05; \*\*\* p<0.01

Importantly, these results are also substantively significant. Table 4 below shows the changes in predicted values for the dependent variables in models 6 through 10 when the treaty is North South, holding all other variables in the models at their observed values. The predictions for model 6 show that a *North South* PTA is about 72% more likely to have a TRIPS reference. The predictions for model 7 show that a *North South* treaty is about twice as likely to have a WIPO reference. For model 8, which is ordinal, we again focus on instances where the dependent variable can take on a value of two, which is the most numerous non-zero value. The predictions show that a *North South* agreement is approximately 73 percent more likely to be a two. The predictions for model 9 show that *North South* PTAs are expected to reference nearly 7 WIPO conventions, an increase of about 157 percent over the baseline. Finally, the results from model 10 suggest that a North South PTA is approximately 275 percent more likely to have a reference to MFN, WIPO, and TRIPS all in the same treaty.

**Table 4. Predicted Values for models 6 through 10.**

Dependent Variable	Independent Variable	Value	Prediction	Change in Prediction
Model 6: <i>TRIPS (0/1)</i>	<i>North South</i>	0	0.435	
		1	0.749	72.18%
Model 7: <i>WIPO (0/1)</i>	<i>North South</i>	0	0.274	
		1	0.550	100.73%
Model 8: <i>TRIPS Strength</i>	<i>North South</i>	0	0.395	

Model 9: <i>WIPO Count</i>	<i>North South</i>	1	0.682	72.66%
		0	2.708	
Model 10: <i>WIPO + TRIPS</i>	<i>North South</i>	1	6.950	156.65%
		0	0.092	
		1	0.346	276.09%

Note: All predictions are average marginal effects for a change in the specified independent variable using observed values in the models. For models 1, 2, 3, and 5 the predictions are predicted probabilities. For model 4 the predictions are predicted counts. For model 3 the reported change is the change observed when the value of TRIPS Strength is 2. For model 5 the reported probabilities are when WIPO + TRIPS is a 4.

Finally, table 5 below presents results for hypothesis 9, which tests whether PTAs comprised of members of the G20 group of developing countries at the WTO – those most likely to challenge the prevailing industrial countries’ norms in the regime complex – are more likely to make connections to alternative IP instruments in their PTAs. Recall, however, that we expect this dynamic to primarily be operative with respect to North South PTAs as we do not expect many South South PTAs to have IP chapters at all, let alone sophisticated attempts to challenge prevailing regime norms. Overall, the results are somewhat supportive of our central contention. All of the coefficients for *WTO G20 Group* are in the expected positive direction. Moreover, the coefficient is statistically significant at the 95 percent level or better in models 11, 13, and 16. In models 12 and 14 the coefficient is positive and statistically significant at the 90 percent level in a one-tailed test. The coefficient is positive but not statistically significant in model 15. Importantly, we see that the coefficient is positive and statistically significant at the 95 percent level in model 16, which tracks whether the PTA mentions any counter regime institutions. This result gives us confidence in the general tenor of the results, suggesting that North South PTAs with a least one WTO G20 member are more likely than other treaties to mention at least one counter-regime legal instrument or institution.

An explanation for the particular finding for the Doha Waiver could be that not only WTO G-20 countries referenced to the Doha Waiver, but contrary to many expectations at the

time, the US and other highly developed countries re-emphasized the importance of the Doha Waiver as well. This might have been a result of existing fears that PTAs could be used to water down the inner-WTO compromise. A more detailed look at US PTAs post Doha provides interesting evidence that the US has overwhelmingly embraced the compromise and was not trying to limit the extent to which the Waiver applied. Noteworthy is the PTA between the US and Morocco, where a side letter became an integral part of the treaty. The letter dated 15 July 2004 and signed by Taïb Fassi Fihri, Minister Delegate for Foreign Affairs and Cooperation, addressed to the acting USTR Robert Zoellick, states that both parties have reached a common understanding that the IP obligations in the treaty:

*“do not affect the ability of either Party to take necessary measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency. In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and public health (WT/L/540) and the WTO General Council Chairman’s statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively the “TRIPS/health solution”).”*



**Table 5. Counter Regime IP Institutions in North South PTAs.**

	Model 11	Model 12	Model 13	Model 14	Model 15	Model 16
	IPCC (0/1)	CBD (0/1)	UCC Geneva (0/1)	UCC Paris (0/1)	TRIPS Doha (0/1)	Any Counter Regime (0/1)
<i>WTO G20 Group</i>	1.298** (0.594)	0.877* (0.565)	1.407** (0.620)	1.535* (0.967)	0.293 (0.664)	1.284** (0.532)
<i>IP Receipts (average, logged)</i>	0.265 (0.350)	0.0265 (0.354)	-0.764** (0.381)	-0.616 (0.517)	0.689 (0.458)	0.407 (0.354)
<i>GDP per capita (average)</i>	-0.134*** (0.0347)	-0.0469* (0.0266)	0.0427 (0.0296)	0.0564 (0.0461)	0.0311 (0.0305)	-0.0491** (0.0250)
<i>Democracy (average)</i>	1.526 (2.084)	0.321 (2.070)	-0.749 (2.432)	-4.374 (3.454)	-0.585 (2.440)	-0.231 (1.850)
<i>DESTA depth</i>	0.529** (0.237)	0.224 (0.216)	0.193 (0.261)	0.686 (0.515)	1.435*** (0.432)	0.467** (0.188)
<i>Year</i>	0.199*** (0.0504)	0.259*** (0.0642)	0.137** (0.0590)	0.0443 (0.0760)	0.139* (0.0816)	0.166*** (0.0440)
<i>Constant</i>	-398.7*** (101.4)	-520.9*** (129.3)	-283.6** (119.3)	-98.32 (152.5)	-284.8* (164.5)	-331.6*** (88.66)
N	168	134	168	160	85	168
AIC	100.8	109.8	96.48	53.67	84.50	126.2
BIC	122.7	130.1	118.3	75.20	101.6	148.1

Standard errors in parentheses. Models 1,3,5,6 use two-tailed significance tests; 2 and 4 are one tailed.

\* p<0.1, \*\* p<0.05, \*\*\* p<0.01

The substantive effect for our counter regime dependent variables should be interpreted with caution given that they were weaker than the models related to connections to the core institutions of the regime. However, they are informative nonetheless, and do show in several important instances that G20 members are substantially more likely to include references to counter regime institutions in their PTAs. Table 6 below summarizes the substantive significance of several of what we consider the more important variables. Chief among them, the predicted probabilities show, using the results from model 16, that a North South PTA with a WTO G20 member is about 56 percent more likely to reference at least one counter regime institution.

**Table 6. Predicted Probabilities for models 11 through 16.**

<b>Dependent Variable</b>	<b>Independent Variable</b>	<b>Change</b>	<b>Prediction</b>	<b>Change in Prediction</b>
Model 11: IPCC (0/1)	WTO G20 Group	0	0.22	
		1	0.333	51.36%
Model 12: CBD (0/1)	WTO G20 Group	0	0.228	
		1	0.334	46.49%
Model 13: UCC Geneva (0/1)	WTO G20 Group	0		
		1		
Model 14: UCC Paris (0/1)	WTO G20 Group	0	0.019	
		1	0.074	289.47%
Model 16: Any Counter Regime (0/1)	WTO G20 Group	0	0.264	
		1	0.412	56.06%

## **Discussion and Conclusion**

The results in this paper have important implications for the study of international relations, as well as the study of trade agreements and intellectual property. Broadly, they suggest that states strategically use newer instances of international cooperation, in this case the negotiation of PTAs, in order to create connections to their preferred institutions in regime complexes in related issues areas such as IP. By strategically layering connections in these newer venues, we argue that states can seek to strengthen their preferred rules in adjacent regime complexes, as well as build resiliency should one or more of the elemental institutions in that complex be weakened in the future. In the case of states with a preference for dominant norms in a regime complex – in this case strong IP protections globally for their industries – this entails making connections to the core institutions as well as simultaneous connections to both. In the case of states with preferences for alternative norms, this will entail attempting to create connections to alternative institution more in line with their preferences.

This helps advance our understanding of the politics of international regime complexity in several ways. First, it shows that states do in fact adopt different regime management strategies as has been theorized in the literature (Eilstrup-Sangiovanni 2022; Green 2013; Oberthür and Stokke 2011). Here we show that states can contextually design PTAs so that they make connect to institutions in adjacent regime complexes. This linkage strategy, we argue, can help promote coherence in a regime complex (see also Abbott 2014; Abbott and Faude 2022; Reinsberg and Westerwinter 2021), but, importantly, it does so in a way that serves the interests of different constellations of actors. Second, we show that it is unlikely that all actors in a regime will be adopting this strategy uniformly. Instead, countries with counter-regime preferences will use the same legal terrain – PTAs in this case – a way to promote connections to alternative

norms and institutions. Thus, this builds upon emerging research showing how weaker actors often adopt distinct strategies to pursue their preferences (Milewicz, Hale, and Snidal, *forthcoming*). Future research should further untangle this dynamic, as it has important implications for the degree of fragmentation in a given regime. In our assessment, relative power of the competing coalitions, as well as the intensity of their preferences, are likely to be important determinants of over time variation in the degree of fragmentation observed in a given regime. However, this is likely that ability (and success) of creating these linkages also varies systematically in other ways as well.

Our findings also have important implications for PTA and the IP regime. One central dynamic is that even though the advanced industrial states have clearly sought to use PTAs in order to make connections to their preferred IP institutions, we do not know what the consequences of this strategy have been at this point. Has this led to convergence in global standards? Or, alternatively, have counter-regime strategies lead to fragmentation? Relatedly, how has the adoption of these linkage strategies by states affected the day-to-day management of the regime? To put it another way, have bureaucrats at the elemental institutions had to expend additional resources in order to promote coherence and monitor complex treaty obligations? Similarly, has the layering of additional commitments created additional costs for states and economic actors, who may be unsure of their obligations and legal requirements? Future research, therefore, should focus on understanding in more detail how these connections affect not only the functioning of the regime overall, but also how it affects the strategies adopted by other participants.

Ultimately, the IP regime remains one of the most contested issues areas in global economic governance, as the negotiation history of trade agreements such as the CPTPP and the

ongoing EFTA-India PTA demonstrate. Our contribution here has been to show that states attempt to use PTAs in order to make connections to their IP preferred institutions, which they hope will help advance their interests. Future studies should further unpack this dynamic so that we have a better sense of how this strategy has affected the development of the IP regime as well as how this dynamic plays out in other issue areas.

## Bibliography

- Abbott, F. M. (2000). Distributed governance at the WTO-WIPO: an evolving model for open-architecture integrated governance. *Journal of International Economic Law*, 3(1), 63-81.
- Abbott, K. W. (2014). Strengthening the transnational regime complex for climate change. *Transnational Environmental Law*, 3(1), 57-88.
- Abbott, K. W., & Faude, B. (2022). Hybrid institutional complexes in global governance. *The Review of International Organizations*, 17(2), 263-291.
- Aggarwal, V. K. (1998). Institutional nesting: Lessons and prospects. *Institutional Designs for a Complex World: Bargaining, Linkages and Nesting*.
- Allee, T., & Peinhardt, C. (2014). Evaluating three explanations for the design of bilateral investment treaties. *World Politics*, 66(1), 47-87.
- Allee, T., & Elsig, M. (2016). Why do some international institutions contain strong dispute settlement provisions? New evidence from preferential trade agreements. *The Review of International Organizations*, 11, 89-120.
- Allee, T., & Lugg, A. (2016). Who wrote the rules for the Trans-Pacific Partnership?. *Research & Politics*, 3(3), 2053168016658919.
- Allee, T., Elsig, M., & Lugg, A. (2017). Is the European Union Trade Deal with Canada new or recycled? A text-as-data approach. *Global Policy*, 8(2), 246-252.
- Allee, T., Elsig, M., & Lugg, A. (2017). The ties between the world trade organization and preferential trade agreements: A textual analysis. *Journal of international economic law*, 20(2), 333-363.
- Allee, T., & Elsig, M. (2019). Are the contents of international treaties copied and pasted? Evidence from preferential trade agreements. *International Studies Quarterly*, 63(3), 603-613.
- Alschner, W., & Skougarevskiy, D. (2016). Mapping the universe of international investment agreements. *Journal of international economic law*, 19(3), 561-588.
- Alter, K. J., & Meunier, S. (2009). The politics of international regime complexity. *Perspectives on politics*, 7(1), 13-24.
- Alter, K. J., & Raustiala, K. (2018). The rise of international regime complexity. *Annual Review of Law and Social Science*, 14, 329-349.

- Busch, M. L. (2007). Overlapping institutions, forum shopping, and dispute settlement in international trade. *International Organization*, 61(4), 735-761.
- Chaisse, J., Elsig, M., Jusoh, S., & Lugg, A. (2022). Drafting investment law: Patterns of influence in the Regional Comprehensive Economic Partnership (RCEP). *Journal of international economic law*, 25(1), 110-128.
- Cottier, T., Sieber-Gasser, C., & Wermelinger, G. (2015). The dialectical relationship of preferential and multilateral trade agreements. *Trade cooperation: the purpose, design and effects of preferential trade agreements*. Cambridge University Press, Cambridge, 465-496.
- Clark, R. (2021). Pool or duel? Cooperation and competition among international organizations. *International Organization*, 75(4), 1133-1153.
- Clark, R., & Pratt, T. (2023). Emulation as Legitimation: Treaty Design and Legitimacy in Global Governance.
- Elsig, M., & Dupont, C. (2017). *Performance and international organisations' borders: The case of the World Trade Organization* (pp. 376-403). Cambridge University Press.
- Drezner, D. W. (2007). The new new world order. *Foreign Aff.*, 86, 34.
- Drezner, D. W. (2009). The power and peril of international regime complexity. *Perspectives on politics*, 7(1), 65-70.
- Dür, A., Baccini, L., & Elsig, M. (2014). The design of international trade agreements: Introducing a new dataset. *The Review of International Organizations*, 9, 353-375.
- Dür, A., & Mödlhamer, C. (2022). Power and innovative capacity: Explaining variation in intellectual property rights regulation across trade agreements. *International Interactions*, 48(1), 23-48.
- Eilstrup-Sangiovanni, M., & Westerwinter, O. (2022). The global governance complexity cube: Varieties of institutional complexity in global governance. *The Review of International Organizations*, 17(2), 233-262.
- Eilstrup-Sangiovanni, M. (2022). Ordering global governance complexes: The evolution of the governance complex for international civil aviation. *The Review of International Organizations*, 17(2), 293-322.
- Gehring, T., & Faude, B. (2013). The dynamics of regime complexes: Microfoundations and systemic effects. *Global governance*, 119-130.

- Gehring, T., & Faude, B. (2014). A theory of emerging order within institutional complexes: How competition among regulatory international institutions leads to institutional adaptation and division of labor. *The Review of International Organizations*, 9, 471-498.
- Gilpin, R. (1981). *War and change in world politics*. Cambridge University Press.
- Green, J. F. (2013). *Rethinking private authority: Agents and entrepreneurs in global environmental governance*. Princeton University Press.
- Gruber, L. (2000). *Ruling the world: Power politics and the rise of supranational institutions*. Princeton University Press.
- Henning, C. R., & Pratt, T. (2020). Hierarchy and differentiation in international regime complexes: A theoretical framework for comparative research. *Unpublished manuscript*.
- Helfer, L. R. (2004). Regime shifting: the TRIPs agreement and new dynamics of international intellectual property lawmaking. *Yale J. Int'l L.*, 29, 1.
- Helfer, L. R. (2009). Regime shifting in the international intellectual property system. *Perspectives on politics*, 7(1), 39-44.
- Ikenberry, G. J. (2001). American power and the empire of capitalist democracy. *Review of International Studies*, 27(5), 191-212.
- Johnson, T. (2013). Institutional design and bureaucrats' impact on political control. *The Journal of Politics*, 75(1), 183-197.
- Jupille, J. H., Mattli, W., & Snidal, D. (2013). *Institutional choice and global commerce*. Cambridge University Press.
- Kastner, S. L., Pearson, M. M., & Rector, C. (2018). *China's strategic multilateralism: Investing in global governance*. Cambridge University Press.
- Krasner, S. D. (1991). Global communications and national power: Life on the Pareto frontier. *World politics*, 43(3), 336-366.
- Lipsky, P. Y. (2017). *Renegotiating the world order: Institutional change in international relations*. Cambridge University Press.
- Lugg, A. (2022). Re-contracting International Organizations: Membership Change and the Creation of Linked Intergovernmental Organizations. In *Political Economy of International Organizations Conference*.



- Morin, J. F., & Surbeck, J. (2020). Mapping the new frontier of international ip law: Introducing a trips-plus dataset. *World Trade Review*, 19(1), 109-122.
- Morse, J. C., & Keohane, R. O. (2014). Contested multilateralism. *The Review of international organizations*, 9, 385-412.
- Oberthur, S., & Stokke, O. S. (Eds.). (2011). *Managing institutional complexity: regime interplay and global environmental change*. MIT Press.
- Orsini, A., Morin, J. F., & Young, O. (2013). Regime complexes: A buzz, a boom, or a boost for global governance. *Global governance*, 19, 27.
- Peacock, C., Milewicz, K., & Snidal, D. (2019). Boilerplate in international trade agreements. *International Studies Quarterly*, 63(4), 923-937.
- Pratt, T. (2020). Value differentiation, policy change, and cooperation in international regime complexes. *Unpublished paper*.
- Pratt, T. (2018). Deference and hierarchy in international regime complexes. *International Organization*, 72(3), 561-590.
- Raustiala, K., & Victor, D. G. (2004). The regime complex for plant genetic resources. *International organization*, 58(2), 277-309.
- Reinsberg, B., & Westerwinter, O. (2021). The global governance of international development: Documenting the rise of multi-stakeholder partnerships and identifying underlying theoretical explanations. *The Review of International Organizations*, 16, 59-94.
- Shaffer, G., & Pollack, M. A. (2010). How Hard and Soft Law Interact in International Regulatory Governance: Alternatives, Complements and Antagonists. *World Scientific*.
- Sell 2003
- Stone, R. W. (2011). *Controlling institutions: International organizations and the global economy*. Cambridge University Press.
- Shanks, C., Jacobson, H. K., & Kaplan, J. H. (1996). Inertia and change in the constellation of international governmental organizations, 1981–1992. *International organization*, 50(4), 593-627.
- Stone, R. W. (2013). Informal governance in international organizations: Introduction to the special issue. *The Review of International Organizations*, 8, 121-136.

- Surbeck, J. (2019). *Intellectual property rights in preferential trade agreements: Mapping the content, analysing the design, studying the effects* (Doctoral dissertation, Wirtschafts-und Sozialwissenschaftliche Fakultät der Universität Bern).
- Vabulas, F., & Snidal, D. (2013). Organization without delegation: Informal intergovernmental organizations (IIGOs) and the spectrum of intergovernmental arrangements. *The Review of International Organizations*, 8, 193-220.
- Vabulas, F., & Snidal, D. (2020). Informal IGOs as mediators of power shifts. *Global Policy*, 11, 40-50.
- Vabulas, F., & Snidal, D. (2021). Cooperation under autonomy: Building and analyzing the Informal Intergovernmental Organizations 2.0 dataset. *Journal of Peace Research*, 58(4), 859-869.
- Young et al. 2008
- Voeten, E. (2001). Outside options and the logic of Security Council action. *American Political Science Review*, 95(4), 845-858.

## Appendix 1. Alternative Regressions Models.

**Alternative Table 1: Average Patents Logged and GDP PC.**

	Model 1 TRIPS (0/1)	Model 2 WIPO (0/1)	Model 3 TRIPS Strength	Model 4 WIPO Strength	Model 5 TRIPS + WIPO
Patents (average, logged)	0.0512 (0.0697)	0.265*** (0.0728)	0.0543 (0.0623)	0.166*** (0.0407)	0.0588*** (0.0205)
avg_gdp_pc_1000	0.0281** (0.0118)	0.0120 (0.00941)	0.0291*** (0.0106)	0.00688 (0.00626)	0.00886*** (0.00304)
avg_polyarchy	0.456 (0.926)	0.485 (0.941)	0.470 (0.857)	0.561 (0.631)	0.153 (0.323)
desta_pta_depth	0.487*** (0.104)	0.632*** (0.103)	0.407*** (0.0958)	0.410*** (0.0638)	0.198*** (0.0351)
year_signature	0.131*** (0.0282)	0.0830*** (0.0224)	0.120*** (0.0253)	0.0881*** (0.0137)	0.0215*** (0.00818)
reg_europe	0.678** (0.311)	1.533*** (0.312)	0.656** (0.295)	1.314*** (0.190)	0.702*** (0.101)
reg_asia	-0.958** (0.478)	-1.358** (0.543)	-0.918** (0.440)	-1.296*** (0.320)	-0.570*** (0.183)
reg_africa	-0.401 (1.129)	0 (.)	-0.458 (1.123)	-19.36 (7704.7)	-1.554 (1.007)
_cons	-265.8*** (56.54)	-171.3*** (44.85)		-178.8*** (27.49)	-44.21*** (16.39)
cut1			243.4*** (50.71)		

cut2				243.6***	
				(50.71)	
cut3				248.8***	
				(50.83)	
lnalpha				0.714***	-14.91
				(0.114)	(364.4)
N	392	500	392	518	392
AIC	390.5	416.1	534.2	1782.8	1109.5
BIC	426.3	449.9	577.8	1825.3	1149.2
Standard errors in parentheses					
* p<0.1	** p<0.05	*** p<0.01			

**Alternative table 2 – Hypotheses 5 through 8. (NOTE: These models all work really well and are quite robust to different model specifications.)**

	Model 1 TRIPS (0/1)	Model 2 WIPO (0/1)	Model 3 TRIPS Strength	Model 4 WIPO Count	Model 5 TRIPS + WIPO
North-South PTA	1.781* (2.33)	1.824** (3.27)	1.694* (2.37)	1.088** (2.72)	0.677** (2.87)
South-South PTA	0.759 (0.82)	0.0642 (0.09)	0.750 (0.88)	0.338 (0.63)	0.419 (1.49)
avg_gdp_pc_1000	0.00954 (0.57)	-0.0106 (-0.78)	0.0144 (0.99)	-0.0120 (-1.19)	0.00804 (1.95)
avg_polyarchy	2.134** (2.82)	2.703*** (3.43)	2.072** (2.93)	2.903*** (5.10)	1.323*** (4.68)
desta_pta_depth	0.392*** (3.99)	0.475*** (5.24)	0.301*** (3.33)	0.283*** (4.08)	0.118*** (3.78)
year_signature	0.123***	0.0975***	0.115***	0.118***	0.0185*

	(4.67)	(5.30)	(4.80)	(8.59)	(2.32)
constant	-249.2*** (-4.73)	-199.2*** (-5.44)		-238.7*** (-8.71)	-38.52* (-2.42)
N	409	626	409	626	409

t statistics in parentheses

\* p<0.05

\*\* p<0.01

\*\*\* p<0.001

**Alternative table 3. Interaction between G20\_WTO and NS. (Alternative empirical test for hypothesis 9).**