

# The Politicization of International Institutions: Empirical Evidence from Global Economic Governance\*

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## Introduction

Politics is not always politicized. Many political decision making processes in history were dealt with behind the scenes by rulers and bureaucrats without being reported to and discussed in the general public. Only with 18<sup>th</sup> and 19<sup>th</sup> century enlightenment have more and more political decisions become publicly contested, i.e. politicized. Think for example of the successful social mobilization for the abolition of slavery, an “institution that had stood above criticism for 3000 years” (Fogel 1989). Even today not all politics, i.e. the making of collectively binding decisions with the claim to enhance the common good, is politicized. Take for instance the bulk of decisions that are made by the bureaucracy or courts, but also a good number of decisions made in parliament or by government which never catch the eye of the general public.

In international politics, a “lack of politicization” remained very common until the late 20<sup>th</sup> century. Sure, some international decisions such as peace treaties after great wars – the Treaty of Vienna in 1815 and the Versailles Treaty in 1918 – led to heated discussions in a wider public (LIT). But the much greater part of international decisions was made by diplomats in the proverbial backrooms. The general public did either not take note of international decision making and if it took note, it rarely got involved in public debates, let alone heated ones. This “lack of politicization” of international politics seems to evaporate. Widely discussed recent manifestations of politicization are the protests, for instance, at the WTO ministerial conference in Seattle in 1999 as well as the G8 meetings in Genova in 2001 and in Heiligendamm in 2007 (see e.g. Rucht 2005). But even beyond these well-known-

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manifestations, decisions made by international institutions, conferences or networks are increasingly debated in the wider public. Not only the European Union (Checkel/Katzenstein 2009, Hooghe/Marks 2009), but also other international institutions become increasingly politicized (e.g. Bédoyan, et al. 2004, Tarrow 2005, Zürn, et al. 2007). Yet, the level of contestation varies: some debates, e.g. the discussions in European societies on the so-called WTO banana case between the US and the EU are conducted cool bloodedly; others, like the Hormones case lead to heated debates (Zangl 2006); and still others, like the WTO decision on Genetically Modified Food (GMF), are likely to lead to open protests either by GMF-critical consumer or by GMF producers (Lusk, et al. 2003).

Whereas there seems to be a general agreement among International Relations (IR) as well as Social Mobilization (SM) scholars that there is a clear trend of increasing politicization of international politics, which began in the 1980s and 1990s (e.g. Keck/Sikkink 1998, Reimann 2006), there is disagreement on how to explain this trend (see e.g. the discussion in Zürn, et al. 2007, 149-158). Broadly speaking, two families of explanations are relevant (Nonhoff, et al. 2009, 238-239): First, *society-centered* hypotheses regard politicization to be triggered by the fundamental process of social and economic development. As citizens' socioeconomic resources and their interdependence via trade and division of labor are enhanced they are better able to and more interested in participating in political decision making (e.g. Inglehart/Welzel 2005, Lipset 1960). Just as these processes led to the politicization of national politics, they are now, in the age of interdependence and globalization, taken to the global level and lead to the politicization of international politics (see e.g. Furia 2005, Rosenau 2003). Second, *polity-centered* hypotheses attribute the politicization of international politics to the increasing scope and authority of international institutions. They stress that international institutions gain in "bite", because their decisions no longer rely on intergovernmental consensus alone, but can increasingly employ majoritarian and supranational decision making competencies. Just as the growing authority of sovereign states led to the politicization of national politics, the building of international institutions with increasing authority drives the politicization of international politics (see e.g. Hooghe/Marks 2009, 6-8, Woods/Narlikar 2001, 572-579, Zürn, et al. 2007, 150-152).

Against this scholarly debate the paper seeks to clarify whether the process of politicization of international politics can best be explained by society- or polity-centered approaches. We aim to advance the debate by explaining the variance across cases, rather than analyzing general trends of politicization over time, as much of the previous literature has done. We first lay out our concept of politicization and elaborate on the alternative society-

and polity-based accounts that claim to explain the recent wave of the politicization of international politics. For each of the two approaches we derive two related (and possibly complementary) hypotheses. Second, we introduce our comparative case study design. We selected four cases from the issue area of international taxation: (1) the 1976 General Agreement on Tariffs and Trade (GATT) decision that US tax preferences to so-called Domestic International Sales Corporations (DISC) violated international law; (2) the March 2000 World Trade Organization (WTO) decision that the tax preferences the US gave to so-called Foreign Sales Corporations (FSC) were not compatible with WTO law; (3) the 1998 Organization of Economic Cooperation and Development (OECD) decision to curb so called harmful tax competition; (4) and finally the 2001 decision of the OECD's Global Forum on Taxation (GFT) that so-called tax havens have to exchange information on foreign taxable income with other countries. Third, we will lay out how we measured the level and form of politicization in the selected cases by means of a quantitative content analysis of US quality newspaper articles on the respective policies. As we will demonstrate, the level of politicization was comparatively high in the OECD case, medium in the WTO case, and low in the GFT and GATT cases. In the fourth section we will assess the explanatory power of the society-based and the polity-based accounts respectively. The finding is that the polity-centered approaches fare better in explaining the observed variance in the level of politicization than society-centered approaches. This finding will be summarized and its implications for further study discussed in the conclusion.

## **1. Approaches on the Politicization of International Policies**

We define politicization to be given if issues that did not catch the eye of the general public are increasingly debated in the public sphere. Three conditions have to be met for politicization to be given. First, issues must be *political*, i.e. deal with collectively binding decisions that come with the claim of enhancing the common good. Second, they have to be taken note of in civil society, i.e. debated among *societal* actors. Third, issues must provoke a visible degree of *contestation*, i.e. there must be conflicting positions about what the common good entails (cf. Schmitter 1969, 165-6).<sup>1</sup> Consequently, politicization is given if collectively

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<sup>1</sup> Notice that politicization is different from democratization. While the concept of democratization implies institutional reforms that allow civil society to participate in collective decision making, the concept of politicization refers to an increasing involvement of civil society in collective decision making independently of whether the institutional set-up prevents or promotes such involvement. We, hence, can have politicization without democratization, while we can also have democracy without

binding decisions increasingly become the subject of controversial public debates among societal actors.

The politicization of the decisions of international institutions – and the related phenomenon of civil society activism – has received some attention in recent research. On the one hand scholars coming from International Relations research have overcome their state-centric view of international politics and are interested in how an increasingly transnational civil society reacts to, becomes involved in, and impacts on decisions made in international institutions (Keck/Sikkink 1998, Reimann 2006, Rosenau 2003, Scholte 2002, Steffek, et al. 2007). On the other hand scholars interested in Social Mobilization have overcome their nation-centric view of social mobilization and are increasingly addressing issues of transnational politicization of an emerging transnational civil society (Bédoyan, et al. 2004, Tarrow 2005, Kriesi, 1995 #3880). In both strands of research there is an emerging consensus that a process of politicization of international politics is in fact taking place. While truly transnational politicization – transnational movements or advocacy networks successfully mobilizing against the decisions of international institutions on a transnational scale – is still considered to be rare, domesticated transnational politicization – national movements mobilizing against international decisions – is considered to be on the rise (Bédoyan, et al. 2004, 39-41, Tarrow 1998, 192). There is agreement that in national civil societies as well as in an emerging transnational civil society international institutions are no longer seen as merely technical instruments to help states to cooperate with each other in order to realize common interests. Rather they are increasingly seen as political institutions making binding decisions on “who gets what, when and how” (Lasswell 1935) that have to be discussed in public. Accordingly, decisions of international institutions have become the object of heated debates not only in the international community of states, but also in the general public of national and an emerging global civil society (cf. e.g. Lipschutz 1992).

Yet, beyond the emerging consensus that there is a trend of increasing politicization, there is no agreement on what the reasons for the politicization of international politics are. It is neither clear why since the late 1980s such a process of politicization is going on and why it appears to be more advanced for the decisions of some international institutions while still rudimentary for others. Despite the fact that there is no well established pool of theoretical approaches and hypotheses one can roughly distinguish society-centered arguments on the

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politicization. Take the public protests against the current regime in Iran as an illustration of the former and the bulk of decisions that are made by the bureaucracy in Western democracies that do not catch the eye of the public as an example for the latter.

one hand and polity-centered arguments deriving from global governance theories on the other. While proponents on both sides are often engaged in the construction of complex explanations integrating society- and polity based arguments (see e.g. Tarrow 1998), it seems justified to distinguish the accounts according to their main emphasis on society- or polity-based arguments.<sup>2</sup> To assess the merits of both approaches, the paper seeks to move on from analyzing rather general trends of politicization over time, as most of the previous literature has done, to a close comparative analysis of the levels of politicization spurred by the decisions of international institutions. For the purpose of their assessment, we therefore reformulate society- and polity-based hypotheses about general trends of politicization over time into hypotheses about the variance of the politicization of international decision-making over different societal and institutional settings.

### ***Society-centered Approaches***

From a society-centered perspective it has been argued that the process of socio-economic development and modernization triggers politicization, first on the national, now on the global level. It is a bottom-up story; politicization has its roots in society, and is carried “upwards” to the political system. Two complementary hypotheses can be distinguished, one pointing at the importance of interdependence, the other focusing on the opportunity structures provided by civil society organizations.

(1) *Interdependence*: Due to socio-economic development and the ensuing functional differentiation and increasing complex interdependencies more and more individuals are affected by public policies which constitute and regulate these interdependencies. Therefore more and more individuals become interested in and demand information about public policy making (Deutsch 1966, Lipset 1960). The demand for information is met by a growing mass media – newspapers, radio, and television. It continues to grow as the socioeconomic resources at people’s command increase. Especially growing education and sophisticated means of communication enhance their capabilities to act according to their autonomous individual interests. The result of socio-economic development and interdependence is a process of politicization in which individual citizens get involved in public debates about

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<sup>2</sup> A third approach relies on policy-centered hypotheses, which maintain that the level of politicization largely depends on the issue-area in which policies are made (Lowi 1972). In this view, tax policies might be considered as being more likely to be politicized than, say, policies of research funding. We agree! We nevertheless bracket this approach, because we do not see how it would help us to identify the drivers of the process of increasing politicization of international politics over time.

public policies and try to influence them (Anderson 1983, Inglehart/Welzel 2005, 15-47, Tarrow 1998, 4).

The interdependence hypothesis states that this process of politicization which on the national level took place in very many Western countries in the late 19<sup>th</sup> century has reached the international level in the 21<sup>st</sup> century – the age of globalization. Functional differentiation becomes increasingly international and creates complex cross-border interdependencies. This triggers ordinary individual's interest in international public policies, because they are affected by them. First, economic globalization, i.e. the transnational flow of goods, services and possibly labor, raises peoples' material interests in the global economy and the rules under which it operates. While economic globalization may increase overall welfare, it also creates new inequalities and tensions between winners and losers of this process. In developed countries, high-skilled and mobile labor should benefit from globalization, while low-skilled and immobile labor could suffer wage loss or unemployment. According to the interdependence hypothesis, these distributive conflicts become politically salient and not only lead to new or additional cleavages in domestic politics (see e.g. Frieden/Rogowski 1996, Garrett 1998, Hooghe/Marks 2009), but may also lead to the politicization of international politics. In particular those international institutions, which set and/or enforce the rules of the global economy (such as the WTO, IMF or OECD) or set the agenda for liberalization or regulation (such as the G-8 respectively G-20) may become the targets of societal politicization.<sup>3</sup>

Second, in addition to economic interdependence there is social interdependence, i.e. an increase in personal contacts across borders or cultural exposure to other nations. Social interdependence is caused by mass tourism and migration, but also by increasingly global mass media. Perhaps most importantly, modern telecommunication services facilitate trans-border communication. Especially the internet, to which broader populations have access since the 1990s, makes information on other parts of the globe and on international policies easily available to individuals (at least in the industrialized world) and links groups with the same cause across borders. Add to this the increase in individuals' socioeconomic resources; the "skill revolution" leads to an "increased capacity of individuals to know when, where, and

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<sup>3</sup> One may also argue that domestic governments incite citizens' criticism of international institutions by shifting the blame for unpopular decisions to international or supranational organizations

how to engage in collective action” (Rosenau 2003, 52).<sup>4</sup> In consequence, more and more individuals not only require increasingly detailed information on international public policy making but develop their own interests with regard to these policies and try to be heard in international institutions’ policy-making (Tarrow 1998, 178). All in all, the interdependence hypothesis expects the politicization of international institutions to correlate positively with economic and social interdependence. To the extent that interdependence has steadily increased after World War II, politicization should be stronger in the 1990s and 2000s than the 1970s and 1980s.

(2) *Opportunity Structure*: The second society-based hypothesis complements the first. Its proponents agree that economic development and interdependence drive the politicization of both national and international politics. Yet, they claim that interdependence is only part of the story of societal politicization. It is only a necessary but not a sufficient condition for politicization to be increasingly well informed and affected by international public policies. Whether politicization occurs or not depends crucially on the existence of “opportunity structures” that enable individuals to organize themselves and make their interests heard. Due to collective action problems, individuals are hard to mobilize even if well informed and directly affected (Kriesi, et al. 1995, Tarrow 1998, 16-23, Tilly 1978). Individuals may understand that a collective effort with like-minded individuals against a certain policy furthers their interests. Yet, they also understand that they are better off, if others bear the costs of mobilization while they profit from their efforts as a free-rider. If, however, everybody tries to free-ride, nobody will mobilize against the policy despite the common interest in doing so. In this view, the politicization of public policies became possible only after the emergence of modern interest groups, clubs, unions, associations, and parties, i.e. modern civil society organizations. The creation of these civil society organizations provided the social opportunity structure for the politicization of national politics in the 19<sup>th</sup> century (Tarrow 1998, 47-50).

According to society-based approaches, this process of opportunity structure building has now reached the international level facilitating the politicization of international politics (Rosenau 2003, 57-62). The emergence of numerous international non-governmental organizations (NGOs) is seen as providing the backbone of global opportunity structures that allow individuals with common interests to mobilize on a transnational if not on a global scale

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<sup>4</sup> In fact it can be shown that mobilization against the decisions of international institutions, conferences and networks is predominately driven by well-educated individuals (see e.g. Ecker-Ehrhardt/Wessels forthcoming, Mau forthcoming).

(Tarrow 2005, 15-33). In their view especially interest groups working together in transnational movements or transnational action networks are able to mobilize individuals for their common interests (Keck/Sikkink 1998, Risse-Kappen 1995, Rosenau 1995). The opportunity structure hypothesis expects politicization of international institutions' policies to be stronger in the 1990s and 2000s – the age of NGOs – than in the 1970s and 1980s, when fewer NGOs existed (Reimann 2006). More specifically, politicization should be stronger in issue areas with dense networks of interest groups than in issue areas with few NGOs (Keck/Sikkink 1998).

### *Polity-centered Approaches*

Polity-centered approaches, developed by global governance theorists, stress that politicization on the international, as on the national level, is mainly triggered by the increasing “bite” of the respective polities.<sup>5</sup> In this view, politicization is a top-down process; political institutions gain hierarchical decision-making power and this provokes counter-reactions “on the ground” – they are subjected to increasing societal scrutiny. Two hypotheses can be distinguished, one focusing on the centralization of international institutions' decision making power and another, complementary one pointing at the lack of legitimacy of these institutions.

(1) *Centralized Decision Making Power*: According to the first polity-centered hypothesis the accumulation of both, the power to make and to enforce collectively binding decisions by modern nation states is the most fundamental trigger for the politicization of the masses in the 18<sup>th</sup> and 19<sup>th</sup> century. In this view, the rise of state power triggered a counter reaction by individuals that did not want to subordinate themselves to the state. This became all the more pressing as the state became the centre of decision-making in ever more issue areas in the course of the 19<sup>th</sup> and 20<sup>th</sup> century. It no longer dealt only with ensuring security for the individuals on its territory, but also with issues of taxation, public infrastructure, economic growth, education, healthcare, culture, social security and so on (Genschel/Zangl 2008). More people were increasingly affected by states' decisions in their daily lives (Elias 1969). As the activities of the central state expanded and penetrated society, this stimulated countervailing powers in society (see e.g. Giddens 1985, Mann 1993, Poggi 1990, 52-79, Tilly 1990). The

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<sup>5</sup> Of course, global governance theorists do not deny the idea that politicization is partly a consequence of interdependence. As has already been stated, we concentrate on the approaches' main emphasis, which is on the effects of different polities.

centralization of decision making power led to politicization, because individuals wanted to influence the state and often had diverging interests with respect to the policies pursued.

According to many global governance theorists a comparable process is now taking place internationally (Zürn, et al. 2007, 149). Many of today's international institutions gain in decision making powers (Mathews 1997, Rosenau 1995, Strange 1996). They make ever more decisions that do not only regulate issues of inter-state conduct – so called *at* the border issues –, but more and more intra-state issues – so called *behind* the border issues (Zürn 2004, 268-270). In consequence not only states, but individuals are directly addressed by international institutions. Moreover – and more importantly – decisions in international institutions are no longer always based on intergovernmental consensus. While enforcing these decisions mostly remains a decentralized prerogative of sovereign states, supranational and majoritarian decision-making in international institutions is on the rise. For example, the European Commission or the International Criminal Court can engage in *supranational* decision-making; others, such as the European Council of Ministers or the United Nations Security Council are able to make *majority* decisions (Genschel/Zangl 2008). In any case, the increasingly centralized decision making power of international institutions (in combination with the increasing invasiveness of their decisions) triggers the politicization of international institutions (Zürn, et al. 2007, 149-152). From the point of view of this hypothesis it is therefore to be expected that the politicization of the decisions of international institutions is the stronger the more their decision making is centralized.<sup>6</sup>

(2) *Legitimate Procedure*: The legitimate procedure hypothesis accepts and builds on the conjecture that increasing decision-making power of international institutions is a trigger of politicization. Yet, global governance theorists supporting this hypothesis maintain that on the international as on the national level, the intensity of politicization depends on the legitimacy of the respective institutions' decision making procedures (Franck 1990). This may be less important for international institutions that make decisions by intergovernmental consensus, but it is particularly salient for institutions with “bite” (Zürn 2004, 277-278). In this view, the politicization of the masses in the nation-state context in the 18<sup>th</sup> and 19<sup>th</sup> century was largely due to the lack of legitimacy of the absolutist states of the ancient regime. As these states did follow neither democratic nor rule of law principles their decisions lacked the legitimacy that could silence those individuals that were negatively affected by absolutist states' decisions.

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<sup>6</sup> Nonhoff et al. (2009) argue by contrast, that politicization is largely independent of whether an international institutions' decision making is supranational, majoritarian or merely intergovernmental.

The fact that they did not have a say in the policy making process and could not have trust into a consistent application of rules did not only provide material incentives to influence public policies, by which they were affected. More importantly, it violated their sense of justice and their normative believe in the basic right to have a voice in public policy making and to be treated alike in its application (LIT).

According to this hypothesis the same applies to the international level. Whereas the demand for legitimization is low in institutions with intergovernmental decision-making, the demand for legitimacy becomes pressing as international institutions assume centralized, i.e. supranational and/or majoritarian, decision making powers (Ecker-Ehrhardt/Zürn forthcoming, Woods/Narlikar 2001, 572-579, Zürn, et al. 2007, 152-156). But even international institutions with centralized decision making power might keep the politicization of their decisions at bay if they are legitimate – i.e. if on the one hand their rule-setting is organized according to the democratic principle that those affected by the rules should have the chance to partake in rule-setting while on the other hand their rule application is institutionalized following the rule of law principle that those affected have access to judicial review if they feel that rules have been violated. Hence, from this point of view it is to be expected that institutions with purely intergovernmental decision-making hardly provide the stuff for politicization because they create only low demand for legitimacy. International institutions with supranational and/or majoritarian decision-making power, by contrast, which are neither inclusive with regard to rule-setting nor politically independent in their rule-application, are likely to display a high level of politicization. Supranational and/or majoritarian institutions providing legitimate procedures are expected to exhibit an intermediate level of politicization.<sup>7</sup>

## **2. Case Selection: International Policies on Issues of Taxation**

To test the four hypotheses we compare US public debates about four contested international tax policies. We selected the following four cases of international institutions' tax policies:

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<sup>7</sup> One may also think that politicization increases when institutions provide for democratic elements (e.g. opening up for civil society participation). And that it is very low in truly authoritarian systems, which repress opposition. Indeed, the consensus in the social movement literature is that the relation between democracy and politicization is curvilinear. Politicization is highest in states with a mix of authoritarian and democratic characteristics and decreases towards both ends of the democracy-autocracy spectrum (see Tarrow 1998, 77). Since international institutions are not authoritarian, any additional democratic legitimacy they acquire should lead to a decrease in politicization.

(1) *GATT*: We selected as a first case the 1976 GATT decision that US tax preferences for so-called Domestic International Sales Corporations (DISC) were violating its international obligations. The decision – one of the earliest decisions of an international institution on tax issues – came as a consequence of a 1972 complaint by the European Community (EC) under the GATT dispute settlement system and led to hot debates between the US and the EC about the GATT-conformity of their respective tax systems. Upon a request by the EC the GATT-Council decided in July 1973, after a series of fruitless consultations between the disputants, to establish a GATT panel to settle the dispute. By November 1976 the panel – whose work was repeatedly hindered by the disputing parties – published its report saying that US tax preferences for DISCs provided for export subsidies that were illegal under GATT. The US, however, blocked – against heavy pressure of almost all other GATT-members – the adoption of the panel report by the GATT-council for more than 5 years. And even after it finally gave up its blockage in 1981 so that the GATT-council was able to adopt the report, the US refused to comply with it for another 3 years. It was only in July 1984 when the US repealed its tax law to come into conformity with its GATT obligations (Zangl 2006).

(2) *WTO*: We selected as a second case the March 2000 WTO decision that US tax preferences to so-called Foreign Sales Corporations (FSC) – created as a substitute for Domestic Sales Corporations criticized by GATT – were not compatible with WTO law. The decision reflected a WTO complaint of the European Union (EU) in November 1997. After the obligatory consultations between the disputing parties failed the EU requested in July 1998 a panel to be established to decide on the legality of the US tax provisions. In its report of October 1999 the panel concurred with the EU that the preferential tax treatment for FSCs provided export subsidies that were illegal under WTO law. The US appealed, but in its report of February 2000 the Appellate Body also requested the US to bring its tax laws in conformity with WTO law. Though highly critical of the report, in November 2000 the US replaced the FSC scheme with a so-called Extra Territorial Income scheme (ETI), which it claimed to be in compliance with WTO law (Zangl 2006).

(3) *OECD*: Our third case is the OECD decision in April 1998 to curb so called harmful tax competition (HTC). Mandated by the G-7, the OECD published a report (OECD 1998) that identified so-called harmful tax practices. The goal was to make tax havens change their national tax laws so that they did not “poach” other countries’ tax bases any more.<sup>8</sup> Since the

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<sup>8</sup> In addition, the project also asked OECD governments to bind themselves to abolish so-called preferential tax regimes, i.e. those regimes trying to attract foreign capital by offering better tax treatment than was available to domestic investors.

OECD does not possess the legal competence to enforce decisions upon states, a “naming and shaming” approach was adopted. In order to exert pressure on the tax havens the OECD drew up a blacklist of uncooperative jurisdictions in June 2000 (OECD 2000). Also, OECD countries threatened to impose “defensive measures”, such as terminating certain provisions for the avoidance of double taxation, if tax havens would not comply. Tax havens rejected these requests for various reasons. For one, they questioned their legitimacy by dismissing them as an undue interference with their national tax sovereignty, to which they had not agreed (cf. e.g. Sharman 2006, 83-86). Second, they argued that OECD governments were hypocritical. While they demanded non-OECD members to change their tax systems they did not expect the same from infamous OECD tax havens Switzerland and Luxembourg, which had abstained from the original report (Rixen 2008;Rixen, 2007 #1312).

(4) *GFT*: Our fourth case is the July 2001 decision of the OECD’s Global Forum on Taxation (GFT) that tax havens have to meet information exchange (IE) requirements concerning foreign taxable income. In 2001, tax haven governments found an important supporter in their conflict with the OECD. After fierce lobbying by business interests (see Ring 2008, 24-32), the new US administration of George W. Bush declared that the United States would not support efforts to proscribe to other countries what their tax systems should look like. It suggested limiting the scope of the project on better administrative cooperation between haven and non-haven countries. In particular the aim should be to improve the exchange of information between tax authorities. This would be sufficient to ensure that the home country of the taxpayer could enforce its tax laws. While this means that tax haven countries have to compromise their secrecy laws (bank secrecy and unwillingness to exchange information with other countries) they can leave their national tax systems (i.e. low tax rates) unchanged. The OECD agreed on the American proposal on July 28, 2001. By March 2004 basically all tax havens, except for Andorra, Liechtenstein, Liberia, Monaco and Marshall Islands, had made advance commitments to cooperate with the standard to be further developed over time (Rixen 2007;2008).

Why did we decide to study the public debates in one country only? By doing so, we do not focus solely on genuine transnational politicization, but rather include so-called domesticated transnational politicization. We know from existing research, that international policies tend to lead to higher politicization in the domestic setting of national states than truly transnational mobilization (Hooghe/Marks 2009, Tarrow 1998, 192). Thus, our focus on one

country provides us with a more sensitive instrument for assessing trends and differences in politicization than a focus on genuinely transnational mobilization.<sup>9</sup>

Why did we select the focus *on the US*? First, the US was chosen, because it is a “most intense case” (Patton 2002) for politicization, i.e. a case where we would expect a high level of politicization. As the most powerful country the US is usually able to prevent unwanted decisions of international institutions. It thus can be assumed that in the US unwanted decisions provoke more public debates than in less powerful countries in which the public is much more used to decisions of international institutions that are not considered to reflect the best national interest. The US should also be a most intense case because it has a long established tradition of being the most important innovator in international tax policies. This suggests that international tax issues are of great importance in this country. Lastly, within the realm of a *most similar case design* the focus on the US also enables us to control for country characteristics. As the politicization in France and Germany may take a different form than in India or Brazil the focus on one country – the US – allows us to rule out that country characteristics distort the comparison between the levels of politicization that were provoked by varying international tax policies.

Second, the focus on *tax policies* was chosen, because taxation can be considered a *most likely case* for politicization. As the famous Boston Tea Party illustrates, tax policies are particularly easy to politicize. In addition, the focus on international tax policies enables us to control within a *most similar case design* for policy characteristics. Assuming that “policy determines politics” (1972) we selected tax policies that are similar to the extent that they not only stem from the same issue area, but also that they aim at reducing international tax competition. To gain competitive advantages, national authorities had previously adopted national tax policies that, in the context of economic globalization, benefited the individual country, but had negative externalities for other countries.<sup>10</sup> To abate the respective tax policies international institutions made decisions that do not merely address at-the-border issues, but rather behind-the-border issues with far reaching consequences for states’ domestic tax policies. The similarity of the respective decisions allows us to rule out that policy

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<sup>9</sup> Note however that we do not exclude transnational politicization. To the extent that US newspapers report about transnational movements etc. this will be picked up by our indicator (see operationalization of dependent variable in part 3).

<sup>10</sup> For a discussion of different potential regulatory dynamics as a result of globalization, see e.g. Simmons (2001) or Genschel and Plümper (1997).

characteristics distort the comparison between the levels of politicization that were provoked by varying international tax policies.

Third, the main reason for the above case selection is, however, that it provides for the necessary variance on the side of the independent variables for a simultaneous evaluation of the four hypotheses. We explicate the variance offered by our cases in part 4, where we explain how we operationalized the independent variables and assess the validity of the hypotheses.

### **3. Assessing the Politicization of International Tax Policies**

To test the four hypotheses we have to assess the level and form of politicization the DISC-case under GATT, the FSC-case under the WTO, the HTC-case under the OECD and the IE-case of the GFT provoked in the US.

#### ***Operationalization***

To measure politicization in these cases we analyzed articles – reports, commentaries, and letters to the editor – in US quality newspapers that were concerned with the four cases respectively. By focusing on US *quality* newspapers we rely on a particularly sensitive measuring instrument; had we looked at papers or other with a mass appeal, we would very likely have found little on these policies.<sup>11</sup> With a complex keyword search in the electronic newspaper archives LexisNexis and Factiva we identified articles in The Financial Times, The New York Times, The Washington Post, Business Week and The Wall Street Journal that were published in the aftermath of the relevant decisions by the four international institutions.<sup>12</sup> In the GATT case we looked at articles starting from November 1976 when the panel ruled the DISC regime a violation of trade law until July 1984 when the US repealed its

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<sup>11</sup> This also indicates that the overall level of politicization compared to other potential cases – think of the mass protests in Seattle or Heiligendamm – is quite low. Nevertheless our cases exhibit sufficient and significant variance to study the potential causes of politicization.

<sup>12</sup> In the WTO case we used the following keyword search: "foreign sales corporation" or "foreign sales corporations" or fsc or (export same subsid\*) or (tax same (rebate\* or subsid\* or incentive\* or legislation or deferr\*)) and (wto or World Trade Organization. For the GATT case we used: "domestic international sales corporation" or "domestic international sales corporations" or disc or (export same subsid\*) or (tax same (rebate\* or subsid\* or incentive\* or legislation or deferr\*)) and (gatt or "General Agreement on Tariffs and Trade". For the OECD and the GFT cases we used: oecd or "organization for economic co-operation and development") and ((harmful same tax) or (competition same tax) or (project same tax) or (report same tax).

tax law to come into conformity with its international obligations under GATT.<sup>13</sup> In the WTO case we selected articles from July 1998 when the WTO made the decision to establish a panel to decide on the EU's complaint to November 2000 when the US repealed the illegal FSC provisions in its tax law. For the OECD case we searched for articles stemming from a period between April 1998 when the OECD published its HTC report and June 2001 when it gave up the attempt to force tax havens to change their tax systems and substituted it for the less demanding information exchange requirements. And for the GFT case we selected articles starting from July 2001 when the information exchange program was inaugurated and running until March 2004 when the progress report (OECD 2004) showed that almost all countries had made commitments. Overall, we identified 339 articles in the specified newspapers and time periods that reported on or referred to our cases. We classified articles according to whether they contained evaluative statements on the respective policies or whether they were reports, i.e. purely non-evaluative. Overall, our sample exhibits the following structure:

**Table 1: The Sample**

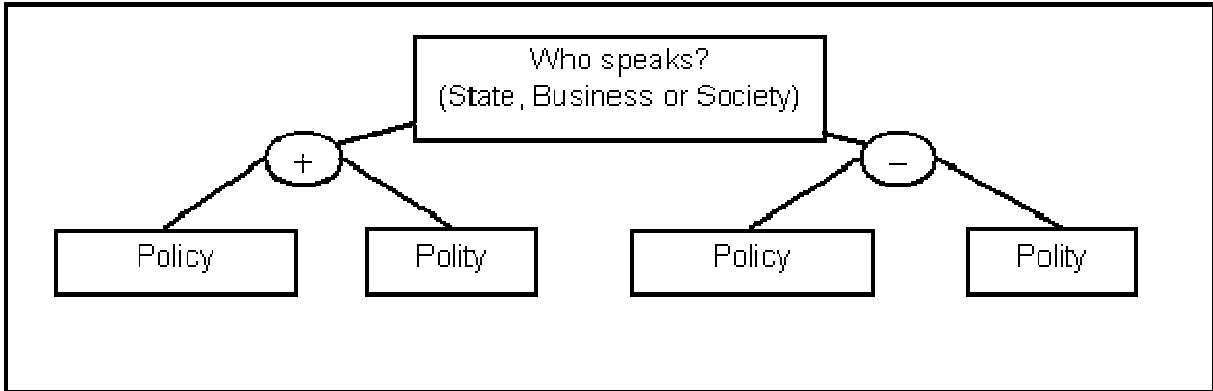
	<b>Number of Articles</b>	<b>Articles without Evaluative Statements</b>	<b>Articles with Evaluative Statements</b>	<b>Ratio Evaluative to Non-Evaluative Articles</b>
<b>GATT</b>	55	44	11	0,25
<b>WTO</b>	117	86	31	0,36
<b>OECD</b>	119	28	91	3,25
<b>GFT</b>	48	24	24	1,00
<b>Overall</b>	339	182	157	0,86

While the simple number of articles or the ratio of evaluative and non-evaluative articles may tell us something about politicization in the respective cases, we are of the opinion that it is too broad an indicator. In order to get a more adequate picture of the level and form of politicization in each of the four cases we developed four indicators that are based on a more complex coding scheme (figure 1). Our scheme takes evaluative statements about the four selected policies as the unit of analysis rather than articles. We focus on evaluative statements, i.e. the expression of opinions about the respective policies, because as explained politicization is about the degree of public contestation of political decisions. Coding of the

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<sup>13</sup> One newspaper, the Financial Times has only been available to us from 1981 onwards. Thus, we have not been able to search for articles in this newspaper for the GATT case from 1976 to 1980. The remaining years are covered however. As all our indicators are standardized, either with respect to the number of evaluative statements or the number of articles, this should not distort our results.

articles was undertaken in the following process: We developed a first coding scheme and undertook pre-tests with it. This was done by both authors together with a research assistant. On the basis of the pre-test we refined the coding scheme. Then the two authors coded about 20 articles together to develop a common understanding of how to apply the scheme. After that every author coded about half the texts on his own. In the final round, the authors discussed all codes to check for inter-coder reliability. Overall, we identified 356 evaluative statements, 13 on the GATT’s DISC-policy, 75 on the WTO’s FSC-decision, 228 on the OECD’s HTC-project and 40 on the GFT’s IE-policy.



**Figure 1: Coding Scheme for Evaluative Statements**

(1) Our first indicator looks at which actors contribute evaluative statements differentiating among state actors, civil society, and business actors. The rationale of this indicator is that the more societal actors participate, the more public are the respective debates. For example consider the following passage from an article in the Financial Times of 7 February 2000: “Some countries offer privileges, some don’t,” said Patrice, a bank worker. “Taking that away takes away a whole lot of jobs, a whole lot of opportunities”. This has been coded as a statement of a business actor.<sup>14</sup> A higher (lower) share of statements made by civil society and business actors implies a higher (lower) level of politicization.

(2) A second indicator looks at the average number of evaluative statements per article about the respective policy. This indicates not only if issues are taken note of in the public sphere, but also tells us something about the level of contestation. Consider the following passage from the Financial Times of 25 February 2000: “Charlene Barshefsky, US trade representative, said Washington disagreed with the ruling”. This was coded as an evaluative statement (in this case by a state actor). A higher (lower) average number of evaluative

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<sup>14</sup> For this indicator, an evaluative statement ends, when a new speaker starts to speak.

statements of this kind per article is regarded as indicative for a higher (lower) level of politicization.

(3) A third indicator is the ratio of negative to positive statements. The idea is that a policy attracting more criticism is more contested, whereas, if media coverage does largely contain praise for the respective policies, politicization is lower.<sup>15</sup> In order to construct this indicator, we coded negative and positive statements about the respective policy. In the above examples the statements were negative; the following passage from the Financial Times of 25 February 2000, by contrast, was coded a positive statement: “Charlene Barshefsky, US trade representative, said Washington [...] respected its WTO obligations and did not want this issue to jeopardise ties with the EU”. This has been coded as a positive statement, because it is the attempt to justify compliance with an adverse WTO decision. In any case, a higher (lower) ratio of negative statements is thus seen as indicating a higher (lower) level of politicization.

(4) The fourth indicator focuses on the ratio of polity to policy statements, because statements referring to the polities in which the policies are made can be seen to be of a more principled and general kind than those merely referring to the desirability of a particular policy. We coded a statement as a polity statement, if it refers not only to the contested policy but also contains an evaluation of the international institution that was responsible for the respective policy.<sup>16</sup> As an example, consider the statement: “For many, the crackdown on tax havens is an issue of sovereignty. People ask why an independent country should change to suit clubs of wealthy nations such as the Organization for Economic Co-operation and Development” (Financial Times of 7 February 2000). It has been coded as a polity statement, because it not only calls into question the OECD’s tax policy but also the OECD as the adequate polity for dealing with the tax regimes of states that are not OECD members (tax havens). Notice that one statement may at the same time be coded as a positive and a negative evaluation, because it assesses the policy and the polity differently.<sup>17</sup> We take a higher (lower) ratio of polity-to-policy-statements to indicate a higher (lower) level of politicization.

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<sup>15</sup> Alternatively, one could argue that contestation is highest the more equal the shares of positive to negative statements are. We do, however, contend that contestation is highest if there is more criticism.

<sup>16</sup> We only code polity statements when they are clearly part of a statement on the policy we are looking at. Hence, a general criticism about the WTO is not coded even if it is made in an article that is also mentioning the FSC case. A criticism, by contrast, that is part of a larger critique of the WTO’s FSC decision is coded as “polity statement”.

<sup>17</sup> For example, the following statement has been coded as both a positive polity and a negative policy statement: “Charlene Barshefsky, US trade representative, said Washington disagreed with the

We use these indicators to compare politicization across the four cases. On the basis of the values for each indicator in the respective case, we construct a rank order of politicization, i.e. ordering the cases from the most politicized to the least politicized.<sup>18</sup> We also aggregate across the four indicators. Acknowledging that we do not know whether any of the indicators is of a higher value in indicating the underlying concept of politicization, they enter into the aggregate index with equal weight. The combined indicator is thus constructed by simply aggregating the rank orders across the five simple indicators.

### *Empirical Findings*

The four indicators – plus the combined indicator – applied to our four cases of international tax policies show that the levels and forms of politicization in the DISC-case under GATT, the FSC-case under the WTO, the HTC-case of the OECD and the IE-case of the GFT differ quite remarkably (see table 2).<sup>19</sup>

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ruling but respected its WTO obligations and did not want this issue to jeopardise ties with the EU". This also means that it may be the case that we only coded one speaker (indicator 1) with two or more statements. In consequence the overall number of evaluative statements is higher than the number of identified speakers.

<sup>18</sup> By simply using the rank orders of politicization, we disregard the differences between the absolute values of the indicators. This may not be entirely unproblematic, but given the difficulties in defining a plausible metric across the indicators, this seems a reasonable simplification.

<sup>19</sup> It gives us confidence in the reliability of our indicators that they lead to very similar rank orders. The OECD or WTO case are almost always on first or second rank, whereas the GFT and GATT cases almost always end up on third or fourth place. Only indicator 2 relying on the average number of evaluative statements is an exception to this rule.

**Table 2: Politicization in the Four Cases**

	$\emptyset$	GATT	WTO	OECD	GFT
(1) Share of societal speakers	0.32	0.25 (3 <sup>rd</sup> rank)	0.50 (1 <sup>st</sup> rank)	0.35 (2 <sup>nd</sup> rank)	0.18 (4 <sup>th</sup> rank)
(2) Evaluative statements per article	0.91	0.24 (4 <sup>th</sup> rank)	0.64 (3 <sup>rd</sup> rank)	1.92 (1 <sup>st</sup> rank)	0.83 (2 <sup>nd</sup> rank)
(3) Ratio negative to positive statements	2.08	1.17 (4 <sup>th</sup> rank)	2.26 (2 <sup>nd</sup> rank)	2.8 (1 <sup>st</sup> rank)	2.08 (3 <sup>rd</sup> rank)
(4) Ratio polity to policy statements	0.25	0.18 (3 <sup>rd</sup> rank)	0.53 (1 <sup>st</sup> rank)	0.2 (2 <sup>nd</sup> rank)	0.08 (4 <sup>th</sup> rank)
<b>Overall result<sup>20</sup></b>		<b>14</b> <b>(4<sup>th</sup> rank)</b>	<b>7</b> <b>(2<sup>nd</sup> rank)</b>	<b>6</b> <b>(1<sup>st</sup> rank)</b>	<b>13</b> <b>(3<sup>rd</sup> rank)</b>

### **GATT**

The level of politicization of the GATT decision that US tax law for DISCs is violating international trade law is comparatively low. In our sample, most of the media reports on the GATT decision are mainly neutral reports. They contain information on the dispute between the US and the EC. The positions of the two disputants are described and the legal reasoning behind these positions is laid out. Only few articles on the DISC-case contain information on the evaluation of the GATT decision by state or non-state actors. The number of evaluative statements per article at 0.24 is much lower than our four-case average of 0.91. In addition, the low level of politicization in the DISC case under GATT is also reflected in the fact that the bulk of evaluative statements stems from state, rather than non-state actors. But even here, most of the time, it is merely reported that the US holds that the DISC scheme is GATT-compatible, despite a panel report to the contrary: “The US again argued yesterday that DISCs do not violate GATT because they merely compensate exporters for disadvantages arising from the US company tax system” (The Financial Times of 22.07.1984). Thus, the ratio of public to private actors’ evaluative statements of 0.25 (12:3) in the DISC case is somewhat lower than our four-case average of 0.32.<sup>21</sup>

<sup>20</sup> The overall result has been determined by summing up the ranks for each case across the indicators. The lowest sum, which is shown in brackets, indicates the highest level of politicization. Note that this result does not depend on the choice of indicators used. Results not reported here, but available upon request, show that the same rank order results if we use additional indicators, e.g. based on the ratio of norm- and interest-based arguments.

<sup>21</sup> Remarkably all the non-state actor statements that we found were made by business actors, while civil society actors were entirely absent from the debate.

Moreover, the low level of politicization of the DISC-case is visible in the low ratio of negative-to-positive statements of 1.17 (7:6) as well as the low ratio of polity-to-policy statements of 0.18 (2:11). Both ratios are clearly below our four-case averages of 2.08 and 0.25 respectively. Therefore we find only one statement in our sample of 55 DISC related evaluative statements that extends the negative evaluation of the GATT policy to the GATT polity. Here the US claims not only that the GATT tax policy is wrong but argues also that the GATT is the wrong polity to deal with tax issues: “The US has called for a new forum within the General Agreement on Tariffs and Trade to study taxation systems which may subsidise exports in violation of GATT rules” (Financial Times 01.07.1982). Yet, even in this statement the tone remains rather soft, thus testifying the rather low level of politicization in the DISC case.

## **WTO**

The overall level of politicization of WTO’s FSC-decision is higher than under GATT, but compared to the OECD’s HTC case it remains moderate. As in the DISC case under GATT, many articles in our sample are rather neutral and do not contain many evaluative statements. The number of evaluative statements per article of 0.64 is thus lower than the four case average of 0.91. Yet, measured by the non-state actor involvement in public debates the FSC-case displays a much higher level of politicization than the DISC-case. To be sure, 33 out of 67 evaluative statements that we found in our FSC sample were made by state actors. Mostly it is reported that the US argues against the WTO for criticizing its FSC legislation. But 34 out of 67 were now made by non-state, i.e. societal actors. We found reports that contain evaluative statements from business and civil society actors.<sup>22</sup> The share of social speakers of 0.50 is not only above the four case average of 0.32, but in fact the highest of all the four cases.

The high level of politicization of the FSC case is also reflected in the high ratio of negative-to-positive statements of 2.26 (52:23) as well as the very high ratio of polity-to-policy statements of 0.53 (26:52). Both ratios are clearly above the average of 2.08 and 0.25. It is remarkable however, that very many negative statements on the WTO policy come with a positive statement on its polity. In some of these statements the positive evaluation of the WTO polity is actually used as an argument why the US should comply with the failed FSC

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<sup>22</sup> In the FSC case, not only business actors but also civil-society actors participated in public debates. 15 out of 67 evaluative statements stem from business actors, while 19 out of 67 were made by civil society actors.

policy. One example is a statement by USTR Charlene Barshefsky reported by the Financial Times: „Charlene Barshefsky, US trade representative, said Washington disagreed with the ruling but respected its WTO obligations” (Financial Times 25.02.2000).

### ***OECD***

Politicization in the OECD case dealing with harmful tax competition is, compared to our other cases, highest. It has by far the highest number of evaluative articles (over three times more than neutral reports) and the number of evaluative statements per article is by far the highest and with 1.92 more than twice as high as the average (0.91). The majority of the statements reported about in the newspapers are made by state actors or representatives of international organizations; the share of societal speakers is nonetheless the second highest (but with 0.35, or 74:209 very close to the average of 0.32).

The great majority of all statements come from business or state representatives from tax havens, which usually paint a very negative picture of the policy and the OECD, often referring to the OECD as an imperialist organization violating the sovereignty of their jurisdictions. However, this is not the only reason for the high ratio of negative to positive statements. Even journalists and other civil society speakers, while most of them express sympathy for the policy of the OECD, criticize it for having excluded the tax havens from the decision-making process, i.e. what we have termed the OECD’s majoritarian twist. Take for example the following passage from the Financial Times of 22 April 2000: “The game became an ‘us and them’ play by the OECD against offshore financial centres. This undermined the sound principles underlying the work by allowing the tax havens to accuse their pursuers of hypocrisy”. Statements along those lines are very common and consequently the OECD with 2.8 (168:60) not only exhibits the highest ratio of negative to positive statements (compared to an average of 2.08), but also the ratio of polity to policy statements is quite high at 0.2 (38:190).

### ***GFT***

Politicization in the GFT case is low. With 0.18 (7:38) it exhibits the lowest share of societal speakers of all four cases. Many statements in the GFT case explain to readers that the OECD has changed its approach to become more inclusive and less strict on the kinds of permissible policies. As in the OECD case, the articles report many statements from tax havens. However their tone has become less critical. The following exemplifies both aspects: “A shadow was cast over the sector by the unfair and unjust assault on us by the OECD, and

this took its toll on international business,” says Reginald Farley, the economic development minister [of Barbados]. “We were pleased we were able to convince the OECD that our laws, provisions and regulations meant that its concerns did not apply to us. We did not have to sign any letter of intent or give any undertakings.”

With the conflict between tax havens and normal tax states having cooled down, public interest has decreased significantly, as the small number of articles indicates (48 as compared to 119 in the OECD case). Nevertheless, the number of evaluative statements per article remained relatively high with 0.83 (40:48). The evaluative statements are about twice as often negative than positive. The reasons for critique vary significantly, however. Now that the OECD has compromised its initial goals, the critique comes from two sides. On the one hand, the organization is criticized for letting tax havens off the hook too easily. On the other hand, tax havens still question whether the OECD is really serious about implementing a level playing field, blaming it for being too soft on OECD members Switzerland and Luxembourg. Nevertheless, the ratio of polity to policy statements is lowest in the GFT case at 0.08 (3:37). This can be taken as evidence that giving up on the majoritarian twist, which was a main driver of politicization in the OECD case, has significantly decreased politicization.

Taken together we can see that there are two cases exhibiting a high level of politicization, the OECD and the WTO case, and two cases with a low level, the GATT and GFT case. While the level of politicization can be described as high in both the WTO and OECD case, they differ in the form of politicization. Most importantly, while the policy draws criticism in the WTO case, the polity is often viewed in positive terms. In contrast, the polity is viewed quite negatively in the OECD case.

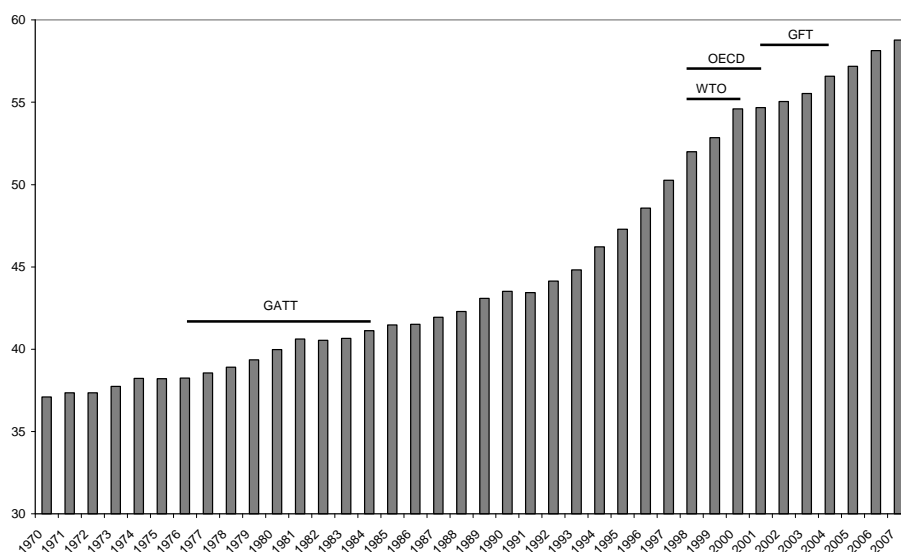
#### **4. Explaining the Politicization of International Tax Policies**

How do the four hypotheses fare in explaining the varying levels and forms of politicization in the four cases? We first consider the two society-centered hypotheses and then turn to the polity-centered hypotheses.

##### ***Society-centered Approaches***

According to the *interdependence hypothesis* politicization should be higher the more interdependent countries in the world are. To operationalize the hypothesis we use data from the KOF index on globalization (Dreher 2006), which measures the globalization of all countries, for which data is available. We combined the sub-indices on economic globalization and social globalization with equal weights for the world, i.e. averaged over the

up to 181 countries in the data set.<sup>23</sup> The resulting index, for the years 1970-2007 is depicted in diagram 1.



**Diagram 1: Index of Economic and Social Globalization**

According to this indicator we find interdependence/globalization to be lowest in the GATT case (the index value ranging from 38 in 1976 to around 41 in 1984) and much higher in the three later cases (ranging from around 51 to around 56). Of the later cases, we take interdependence to be equal among the WTO and the OECD cases as they took place at more or less the same time. It is highest in the GFT place, which happened in a later time period. The interdependence hypothesis thus predicts the following rank order of politicization:<sup>24</sup>

$$\mathbf{GFT > OECD = WTO > GATT}$$

The second society-centered hypothesis focuses on *opportunity structure*. It predicts that politicization is higher in those cases, in which more organizations exist, which make it easier

<sup>23</sup> The index on economic globalization is constructed from international trade, foreign direct investment (FDI) flows and stocks, international portfolio investment and income payments to foreign nationals (all as a percentage of GDP) and measures on trade restrictions (hidden import barriers, mean tariff rate, taxes on international trade as percent of current revenue and capital account restrictions). The index on social globalization is constructed from data on personal contact (telephone traffic, transfers, international tourism, foreign population, international letters), on international information flows (internet users, television, trade in newspapers) and on cultural proximity (number of McDonald's restaurants, number of Ikea, trade in books). The data and more information on the indices are available at <http://globalization.kof.ethz.ch>.

<sup>24</sup> We would have arrived at the same rank order, had we only used either economic or social globalization, or if we had also included the third subcategory in the KOF index, political globalization.

for individuals to overcome the collective action problem of mobilization. In order to measure organizational opportunity structures we use as a proxy the number of NGOs concerned with issues of taxation and active at the time when the respective cases took place. We searched through our data set of newspaper articles and identified 41 NGOs that were at least once mentioned in these newspaper articles as being concerned with at least one of our cases of international tax policies. In a second step we then identified on their websites the dates when these NGOs started to operate. These dates range from the late 19<sup>th</sup> century when, for instance, the American Bar Association was founded to the early 21<sup>st</sup> century when the Center for Freedom and Prosperity came into existence. In 1976 when the GATT case emerged merely 23 of these NGOs existed. In 1998, by contrast, when the WTO and the OECD case became virulent the number of NGOs that we found active with regard to issues of taxation has already gone up to 38 and it had further increased to 41 when in 2001 the GFT was activated. This means that in the cases at hand, the opportunity structure and the interdependence hypothesis expect the same rank order of politicization. The order expected under the opportunity structure hypothesis is also<sup>25</sup>

**GFT > OECD = WTO > GATT**

Both society-centered approaches do not fare very well in explaining the respective levels of politicization in our cases. The prediction differs quite substantively from the level of politicization that we observed in our cases. This becomes obvious if we compare the ranking as predicted by the hypotheses with the respective rankings according to our four indicators of the level of politicization. In table 4 below, we have evaluated each hypothesis by measuring the sum of the rank distances<sup>26</sup> between the theoretical predictions and the empirical evidence as measured by each of our four indicators. The lower the sum of the distances the better does the respective hypothesis fare. The comparison reveals that both hypotheses do not predict correctly any ranking deriving from any of our four indicators. The rank distance equals 3 for

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<sup>25</sup> We would have arrived at the same rank order if we had focussed on all NGOs rather than just those NGOs that were mentioned in our population of tax-related newspaper articles. According to the Yearbook of International Organizations (Union of International Associations (UIA) 2010) the total number of NGOs was at 9521 in 1978 right after the GATT case emerged, at 42100 at the beginning of the WTO and OECD cases in 1998, and at 49471 in 2002 right after the GFT case had emerged. Also, the overall funding available to NGOs would have led to the same rank order (Reimann 2006).

<sup>26</sup> The rank distances are calculated as follows: If a hypothesis expects the WTO on first rank, whereas it is on third rank, this is a rank distance of 2. Going through each of the four ranks we determine this distance and then sum them up. In case, a hypothesis predicts an equality of politicization of two cases, they are both ranked equally, e.g. on rank 2. In that case, the following case is lowered by one rank, e.g. on rank 4.

two of our four indicators and even amounts to 5 (the highest distance we find in our sample) with regard to the other two. The total sum of rank distances for all four indicators equals 16 and is significantly higher than the average total of rank distances for the other two hypotheses.

Two points are noteworthy. First, as can be seen in table 4, both society-centered hypotheses fare very badly at the indicator of the share of societal speakers. The fact that this indicator deviates strongly from the rank order predicted spells serious trouble in particular for the opportunity structure hypotheses, because we would expect the presence of favorable opportunity structures to raise the share of societal speakers, which did however not occur.<sup>27</sup> Second, one may think that the bad results for the society-centered approaches are largely driven by the fact that we introduced a rank order between the GFT case and the OECD and WTO cases. A defender of the society-centered approaches may argue that the differences between the GFT and the other two cases in terms of interdependence and opportunity structure are too small to warrant such a differentiation, because both hypotheses are about differences over long time stretches and do not claim to be able to make short-term predictions. However, even if one would acknowledge this objection, then society-centered approaches would expect all three late cases to exhibit relatively high levels of politicization. This is however not corroborated. In particular the GFT case exhibits a much lower level of politicization than society-centered hypotheses would expect.

### ***Polity-centered Approaches***

According to the *centralized decision making power* hypothesis it is expected that the politicization of international institutions is the stronger the more their decision making is centralized. In operational terms, three forms of decision making in international institutions are to be distinguished: intergovernmental decision making is the least centralized insofar as decisions are always based on a consensus among the governments of the states that are participating. Each and every government does have the possibility to veto any decision. Majority decision making is more centralized, because here decisions can be made against the governments of states that are in a minority position. However, the most centralized form of decision-making in international institutions is supranational. Here decision making implies that supranational bodies of an international institution – not the governments of states – are

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<sup>27</sup> At the same time the fact that both hypotheses fare equally bad at the indicator on the ratio of polity to policy statements may not come as a big surprise. Rather, the polity-centered approaches should be particularly strong at this indicator.

vested with central decision making powers. They can make decisions that do not simply reflect the interests of member states' governments.

According to this operationalization we find that GATT decision making is largely intergovernmental – i.e. decentralized. This holds for so-called GATT rounds which decide on the fundamental rules for the international trading regime. But this holds also for the GATT dispute settlement procedures in which the decisions on the DISC regime were made. Sure, reports on the GATT-compatibility of US tax law are drafted by a panel which consists of independent experts, but the establishment of panels and the adoption of panel reports require unanimous decisions of the GATT council where all member states are represented. Thus, even the disputants can block these decisions so that the GATT procedure largely amounted to an intergovernmental arena for dispute settlement. Decision-making in the WTO, by contrast, is much more centralized. Of course, many decisions in the WTO are made through intergovernmental negotiations and thus require consensus among the governments of all member states. But the WTO dispute settlement procedure which produced the decisions on the FSC-case now defines a supranational process. As under the GATT-system, reports are drafted by panels of independent experts and – in the case of an appeal – the independent judges of the Appellate Body, but neither the establishment of a panel or the involvement of the Appellate Body nor the adoption of panel or Appellate Body reports can be blocked by the disputants. The reports are automatically adopted unless the Dispute Settlement Body takes a unanimous decision against it (Zangl 2008, 830-831).

Decision-making in the OECD case is also quite centralized. To be sure, in principle OECD decisions are made as a result of intergovernmental negotiations among all members. In the case at hand however, the OECD defined harmful tax practices from which not only members, but especially non-members had to abstain in order to avoid being black-listed by the OECD. As most of the non-members were against this decision they found themselves in a similar position as the minority after a majority decision has been made. Therefore, we take the OECD case to be majoritarian. This majoritarian twist was overcome when the GFT process began. After the US default from the original policy the process became more inclusive. Tax havens were invited to participate in the newly founded GFT, which defined minimum standards of transparency and information exchange. Practicing more decentralized modes of decision making, the GFT served as an intergovernmental arena in which members and non-members alike could now block decisions that they were unwilling to comply with. Consequently, the decision-making power hypothesis predicts the following rank order of politicization:

## WTO > OECD > GFT = GATT

The second polity-centered hypothesis focuses on *legitimate procedures*. It predicts the level of politicization to be high in those cases where, due to centralized decision making power, the demand for legitimacy is high but the institution's legitimacy is low. To operationalize the hypothesis two aspects of the legitimacy of international institutions are to be distinguished (Genschel/Zangl 2008). For rule-setting decisions it is important that they follow democratic principles of inclusiveness: those who are affected by decisions should have a say in the decision making process, which implies that not only states, but civil society representatives too, become involved. Of course, the participation of stakeholders from civil society in the decision making process of international institutions does not make them democratic in any demanding sense of a representative democracy. Nevertheless it does at least approximate some principles of deliberative democracy according to which all those affected by the rules should have equal chances to take part in the deliberations about the respective rules (Zürn 2000). Decisions concerning the application of rules to specific circumstances, in contrast, have to follow rule of law principles. The decision procedures have to ensure that binding rules are applied consistently. This generally implies that decisions are made by politically independent judicial bodies that are committed to decide exclusively on the basis of legal reasoning (Keohane, et al. 2000). Again, the existence of formally independent international bodies responsible for judicial review is certainly not enough for the rule of law to become a reality. Nevertheless, such bodies institutionalize rule of law principles, e.g. the principle that like cases should be treated alike (Brownlie 1998, Zangl 2008, 825-7).

According to these criteria there is no pressing legitimacy deficit in the GATT and GFT cases. Both are largely intergovernmental institutions in which the relevant decisions were made in consensus-based procedures that do not create substantive demands for legitimization; at any time any state could have blocked any decision.<sup>28</sup> The WTO by contrast, with its supranational dispute settlement procedure creates demand for legitimization. This is, however, at least partially satisfied because the WTO dispute settlement system follows fundamental rule of law principles. To ensure the rule of law the dispute settlement process is

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<sup>28</sup> Note also that contrary to the OECD case there was no credible threat of sanctions in the GFT case. While OECD governments did not officially withdraw the threat of sanctions after the policy was redirected towards information exchange, it was agreed that no sanctions would be employed unless all OECD countries – including tax havens Luxembourg and Switzerland – themselves had removed the harmful features from their own tax systems. In effect this made the threat toothless.

dominated by politically independent bodies – panels and the Appellate Body – which consist of politically independent personalities – legal experts and judges – which are committed to decide disputes on the basis of existing WTO law and thus engage in legal reasoning. In short, the WTO dispute settlement procedure is comparatively legitimate (Zangl 2008, 830-831). OECD decision-making in the HTC-case is, by contrast, much less legitimate. As it was majoritarian it creates substantive demands for legitimization. However, the OECD procedures do not follow democratic principles of inclusive rule-making that could possibly satisfy the demand for legitimization. The OECD members tried to set rules for states that were not part of the rule-setting process and thus violated the principle of granting voice to all affected interests. Thus, rule making, was not only majoritarian, it was hegemonic – if not imperial. Moreover, the rule-making process did not include civil society actors – or other stakeholders – that could have provided legitimacy. In any case, the lack of legitimacy hypothesis predicts the level of politicization to be comparatively low in the low-demand for legitimacy settings of GATT and GFT, while being medium in the WTO-setting of high-demand combined with good provisions for legitimacy and highest in the OECD case, combining a high demand with no provisions for legitimacy. It thus anticipates the following rank order:

**OECD > WTO > GFT = GATT**

Both polity-centered hypotheses prove to be quite successful in explaining the varying degrees of politicization in our four cases. Table 4 shows that the two hypotheses provide reasonably good fits with respect to most indicators. The centralized decision hypothesis exhibits a rank distance of only 1 for the share of societal speakers and the ratio of polity to policy statements indicators. The legitimate procedure hypothesis is very good at the negative to positive statements indicator. The hypotheses do however fare rather badly in terms of the evaluative statements per article. Overall, the two hypotheses are successful because the prediction of comparatively high levels of politicization in the supranational/majoritarian WTO and OECD cases and low levels in the intergovernmental GATT and GFT cases is corroborated empirically. The total sum of rank distances for all four indicators equals 10 for both polity-centered hypotheses and is thus significantly lower than for society-centered ones.

However, on the basis of our results, we cannot derive definite conclusions whether the centralized decision or the legitimate procedure hypothesis are better explanations. They disagree on the order of politicization between the supranational/majoritarian OECD and WTO cases. According to the centralization hypothesis the WTO should be first, whereas the

legitimation hypothesis predicts the OECD to be first. According to our combined indicator (table 2) the legitimation hypothesis wins. On the other hand, the legitimation hypothesis loses against the centralization hypothesis precisely on the one indicator, where one would expect it to be particularly strong, i.e. the ratio of polity to policy statements, which can be considered to be close to issues of legitimation.<sup>29</sup> Irrespective of this, the results show that the level of politicization is clearly associated with the factors stressed in the two polity-centered approaches.

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<sup>29</sup> This result is robust to other potential specifications of the indicator, e.g. ratio of negative polity statements over negative policy statements or ratio of negative polity statements over all policy statements.

**Table 3: Summary of Predicted Rank Orders**

Hypothesis	Predicted Rank Order			
	1.	2.	3.	4.
Interdependence	GFT	> OECD	= WTO	> GATT
Opportunity structure	GFT	> OECD	= WTO	> GATT
Centralized decisions	WTO	> OECD	> GFT	= GATT
Legitimate procedure	OECD	> WTO	> GFT	= GATT

**Table 4: Evaluation of the Four Hypotheses**

Indicator	Rank Order				Distance to Hypothesis
	1.	2.	3.	4.	
(1) Societal speakers	WTO	> OECD	> GATT	> GFT	Interdependence: 5 Opportunity structure: 5 Centralized decisions: 1 Legitimate procedure: 3
(2) evaluative statements per article	OECD	> GFT	> WTO	> GATT	Interdependence: 3 Opportunity structure: 3 Centralized decisions: 5 Legitimate procedure: 3
(3) Ratio negative to positive statements	OECD	> WTO	> GFT	> GATT	Interdependence: 3 Opportunity structure: 3 Centralized decisions: 3 Legitimate procedure: 1
(4) Ratio polity to policy statements	WTO	> OECD	> GATT	> GFT	Interdependence: 5 Opportunity structure: 5 Centralized decisions: 1 Legitimate procedure: 3
<b>Overall Result - Sum of Rank Distances</b>					Interdependence: <b>16</b> Opportunity structure: <b>16</b> Centralized decisions: <b>10</b> Legitimate procedure: <b>10</b>

## Conclusion

Before we summarize our findings, we briefly discuss three caveats that show why our findings cannot be regarded as final prove that polity-centered approaches are better at explaining the politicization of international politics than society-centered approaches. First of all, the two approaches and their hypotheses do not necessarily contradict each other. It might be fruitful for future research to search for combinations of society and polity based conditions that go along with varying levels of politicization. For instance, it seems highly plausible that some degree of interdependence and civil society organization is needed before

centralized decision making and legitimate procedures can have an impact on the level of politicization. In fact, this threshold may not have been reached in the GATT case. In this vein, society-based approaches appear to offer a good explanation why the GATT case was much less politicized than not only the OECD and WTO cases, but also than the GFT case – a result that polity-based approaches cannot explain.

Second, it has to be underlined that our finding that polity-based approaches are doing better than society-based approaches is based on a within-issue area comparison. By focusing on tax-related decisions we tried to control for issue-area related differences. We thus simply cannot know whether we would have gotten the same result in other issue areas such as the environment, human rights or security. In particular we cannot know whether polity-based or society-based approaches are able to explain differences in politicization across different issue areas. For instance, polity-based approaches do not seem to offer an explanation for why, as anecdotal evidence suggests, the level of politicization is higher in the issue area of climate change than in the issue area of taxation. Neither the centralized decision making hypothesis nor the legitimate procedures hypothesis appear to be able to account for this. It may be that the interdependence and the opportunity structure hypotheses could provide an explanation.

Third, one has to admit that there are more paths to politicization than only the one that comes as a reaction to decisions of international institutions. One alternative path seems to be that non-decisions – or the lack of effective decisions – are politicized (Ecker-Ehrhardt/Zürn forthcoming, Rixen forthcoming). With regard to climate change but also concerning the financial crisis politicization clearly does not come predominantly with international decisions that are seen as too intrusive but with the lack of international decisions that would effectively prevent the acceleration of climate change or the recurrence of the financial crisis. Sure, it may be that polity-based approaches are able to explain this path of politicization too. The non-decisions of institutions with centralized decision making powers that cannot draw on legitimate procedures might provoke more politicization than the non-decisions of institutions with legitimate procedures. But it might equally well be that polity-based as opposed to society-based approaches have little to say on this path of politicization.

To come to more robust conclusions on what drives the politicization of international politics and institutions, more empirical research is required. With our paper we began such work. The empirical analysis of tax-related decisions of four international institutions – the GATT decision on DISCs, the WTO decision on FSCs, the OECD decision on HTC and the GFT's decisions on IE – indicates that the politicization of these decisions in the US varied substantively. Operationalized in terms of public contestation in US quality newspapers it was

comparatively high in the OECD case, somewhat lower but still comparatively high in the WTO case while being much lower in both the GFT and the GATT cases. Our analysis shows that the varying levels of politicization cannot be explained by society centered approaches focusing on interdependence and opportunity structure; our findings rather lend support to the polity-based approaches of the centralized decision making power and legitimate procedure hypotheses. At least for the area of international tax policies we are confident that politicization is much more driven by the changing authority and legitimacy of international institutions than by social and economic globalization or the opportunity structures provided by an increasingly global civil society.

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