Elite Theory, Individual Autonomy and Interest Groups: An Examination Of America's Rules On Imported Vehicles

2015

Jared A. Rosenholtz
University of Central Florida

Find similar works at: http://stars.library.ucf.edu/honortheses1990-2015

University of Central Florida Libraries http://library.ucf.edu

Part of the Political Science Commons

Recommended Citation

http://stars.library.ucf.edu/honortheses1990-2015/1882

This Open Access is brought to you for free and open access by STARS. It has been accepted for inclusion in HIM 1990-2015 by an authorized administrator of STARS. For more information, please contact lee.dotson@ucf.edu.
ELITE THEORY, INDIVIDUAL AUTONOMY AND INTEREST GROUPS: AN EXAMINATION OF AMERICA’S RULES ON IMPORTED VEHICLES

by

JARED A. ROSENHOLTZ

A thesis submitted in partial fulfillment of the requirements for the Honors in the Major program of Political Science in the College of Sciences and in the Burnett Honors College at the University of Central Florida Orlando, Florida

Fall Term 2015

Thesis Chair: Barry Edwards Ph.D.
ABSTRACT

The purpose of this research is to examine the legislative process that led to the Imported Vehicle Safety Compliance Act of 1988. This research will look at the original intent of the law, as well as its possible irrelevance today. This research will compare the environment that existed during its creation, and compare it to the drastically different landscape that exists now in the new car market. From this comparison, this paper will recommend a route for the United States to better open trade with other countries and allow more consumer freedom.

This research will look at the Imported Vehicle Safety Compliance Act from a political science viewpoint. This analysis will take into consideration the legislative process that led to this act and show that it is an example of the legislative process helping large companies while hurting ordinary consumers. The history of this legislation will show that the justification presented represents protecting consumers from a harmful product. However, the recent history will reveal a government that is quick to make assumptions without regard to facts that disprove the reasoning for this act. This research will seek to use the Imported Vehicle Safety Compliance Act as example of a law that is in need of an update, but has not had any meaningful reform. The goal of this research will be to illustrate why laws that are no longer effective remain without reform.
DEDICATION

For all of the American car enthusiasts that lusted after a car that they could not have,

For my mentors Nick Schenk, Barry Edwards, and David Bassion who pushed me beyond my own expectations

And to my mother, Deena Levenson for supporting my passion and pushing my academic achievement as well as all of her love and support
ACKNOWLEDGEMENTS

I would like to thank all of my professors that motivated me to push my academic potential beyond my own expectations. I would like to pay special thanks to my thesis committee members Dr. Barry Edwards, Dr. Aubrey Jewett, and Dr. Steven Leon. I appreciate the guidance that you provided by recommending the books that would make my thesis so unique. To Dr. Edwards, your commentary and ideas have been crucial to making this thesis possible. To Nicholas Schenk, thank you for pushing me achieve more in my academic career than I had ever thought possible. Without you, I would have never had the courage to write a thesis paper. To Coach David Bassion, thank you for instilling in me the belief that I can achieve even more than my original goals. Your training has shaped me into an individual who will continue to push my own boundaries for the rest of my life. And Mom, I could not have done any of this without your continued love and support and your desire to see me succeed.
# TABLE OF CONTENTS

Chapter 1: Political Problems ................................................................. 1  
   Elite Theory ........................................................................................................... 1  
   Interest Groups .................................................................................................... 2  
   Individual Autonomy ............................................................................................ 5  

Chapter 2: Historical Context ................................................................. 7  
   The Vehicle Grey Market .................................................................................... 7  
   The New Rules ..................................................................................................... 11  
   Legislative History ............................................................................................... 14  

Chapter 3: Practical Application .............................................................. 21  
   Policy Evaluation ................................................................................................. 21  
   Government Seizures ......................................................................................... 24  
   The Defender Case ............................................................................................. 25  

Chapter 4: Fixing The Issue ..................................................................... 35  
   Modern Barriers ................................................................................................. 35  
   Transatlantic Trade and Investment Partnership .............................................. 38  
   Benefits of Harmonization ................................................................................. 42  
   Online Petitions ................................................................................................. 44  

LIST OF FIGURES

Figure 1: Grey Market Mercedes Benz (The Grey Market: Cheaper but Chancer Imports, 1985) 9

Figure 2: Porsche 959 ................................................................................................................... 14

Figure 3: Land Rover Defender Older Than 25 Years (Patrick George 2015b) ....................... 26

Figure 4: Land Rover Defender Newer Than 25 Years (Patrick George 2015b) .................... 27

Figure 5: Fuel Economy Comparison (Canis & Lattanzio 2014) ........................................... 37

Figure 6: Vehicle Production (Canis & Lattanzio 2014) ....................................................... 43

Figure 7: Petition.gov Document ............................................................................................. 45

Figure 8: TVR Sagaris ............................................................................................................. 50
LIST OF TABLES

Table 1: Document of Seized Defender VIN Numbers (Patrick George 2015b) .......................... 30

Table 2: Differences in US and EU Regulations (Canis & Lattanzio 2014) ............................ 40
Chapter 1: Political Problems

Elite Theory

There is a common belief that the will of the people influences public policy. However, Thomas Dye, in his explanation of elite theory, suggests that the people are actually ill-informed about public policy decisions and that elites actually shape mass opinion on policy questions (Dye, 1987). Elite theory suggests that policies trickle downwards from elites and do not arise from the demands of the masses. It also suggests that there is a disproportion of power between the few elite, and the large masses. In a balanced system, governments should choose policies that result in improvements to society and exceed costs. However, when elites have influence over policies, legislation can be skewed in favor of the elites. In this case, policies emerge that benefit elites and large corporations, rather than individual citizens.

There is a clear assumption that organization is key to influencing public policy. When analyzing policies making using elite theory, there are clear advantages that allow them to influence policy. For example, elite theory points to the relative lack of resources among members of the lower class (Peters, 1999). This means that despite the masses retaining the right to organize, it is exceedingly difficult for poorer individuals to overpower the elites in government. Elites, on the other hand, can spend excessive amounts of money to limit issues that would be a threat to its interests as well as bring attention to issues that hurt their interests (Peters, 1999).

The elements of elite theory represent a recurring theme in this paper. When discussing the elements that lead to the Imported Vehicle Safety Compliance Act, signs of elite theory are prevalent. Throughout the legislative process that led to this act, there are clear indications that
the elites, represented by Mercedes Benz and other car manufacturers, had a greater say in policy than individual citizens. Interest groups are used to give elites a stronger influence in public policy. In order to actively influence policy, Mercedes Benz used an interest group to give them power in the issue of the vehicle grey market. The vehicle grey market consisted of the sale of vehicles that were never intended for sale in the US. This issue was prevalent in the 1980’s and caused an issue for Mercedes Benz.

**Interest Groups**

The Imported Vehicle Safety Compliance Act came about due to lobbying by car companies in Congress during the 1980’s. Lobbying is defined as the process of “people who want to influence government decisions that affect their lives and welfare” who “recognize the advantages of banding together with others of like mind and asking astute and powerful friends to help out” (Kernell, Jacobson, Kousser, & Vavreck, 2000, p. 423). In the case of the vehicle grey market, this interest group was formed by concerned automakers that wished to end the sale of grey market cars in the United States through legislation. Lobbying serves an important purpose in American politics, but can create adverse effects to theory of democracy.

Without claiming any legislative victories, the mere existence of lobbying in Congress creates questions about the basic principles of democracy. It is a political belief that special interests win at the expense of public interest (Kernell et al., 2000). This theory argues that lobbying effectively hinders our principles of democratic equality and majority rule because it gives more power to those who can organize readily for collective action. For example, a large company such as Mercedes Benz has far greater access to lawyers and researchers as well as gathering other companies as supporters. The grey market importers, on the other hand, had far
less ability to organize and argue their side of the interest. This process inherently gives large
corporations the advantage in creating legislation that may aid fewer people than it hurts. The
legislative history of the Imported Vehicle Safety Compliance Act as documented in chapter 2 of
this paper clearly shows that the small grey market importers who clearly outmatched in hearings
that eventually led to significant legislation.

Interest groups have been criticized for several reasons, yet they also serve an important
function in American politics. Early U.S. politicians such as James Madison argued that because
groups would be free to organize and participate in the political system, competing interests
would eventually form and balance each other out. Madison’s theory was that “if established
groups advocated policies that threatened the interests of other citizens, the threatened would
organize to defend themselves” (Kernell et al., 2000, p. 429). The theory states that if a group
overreaches on its demands, it would stir up opposition even if the opposing side could not be as
organized.

In the case of the imported vehicle grey market, Mercedes Benz launched their multi-
million dollar congressional lobbying effort to stop the private importation of vehicles. In
opposition, importers from several states organized to form the Automotive Importers
Compliance Association (AICA). In a proper showing of Madison’s theory, each of these groups
should have an equal right to argue for their interests. However, in the case of the Imported
Vehicle Safety Compliance Act, legislation was passed regardless of any burden of proof being
met.

No sufficient evidence was shown to prove that grey market vehicles had significantly
different performance than their American counterparts, yet the Imported Vehicle Safety
Compliance Act of 1988 effectively ended the vehicle grey market completely. Several accusations have been made that the process of lobbying used by Mercedes was improper and should not have led to successful legislation. Although there have been accusations, none have been large enough to garner support in court. Advocates of importing foreign vehicles have been attempting to galvanize as a community to prove that the lobbying done by Mercedes was possibly illegal and supported without sufficient proof. Though Mercedes Benz spent millions of dollars campaigning and conducting studies to prove that imported vehicles were unsafe, their research and dollars never reached a definitive conclusion.

Mancur Olson discusses the reasons that common interests such as car manufacturers seek to control the market in *The Logic of Collective Action*. Olson describes that organizations in a competitive industry, like the automotive industry, have a common interest in obtaining a higher price for the industry’s product (Olson, 1971). Auto manufacturers have an interest in selling their product, and encountering as little unforeseen competition as possible. In this system, the government is able to help car manufacturers control the price of vehicles through aid or intervention. However, if an outside factor began to offer cheaper alternatives in the marketplace, the demand for vehicles may be affected negatively for the manufacturers. In the case of the vehicle grey market, the addition of cheaper versions of Mercedes Benz models affected the supply chain of the dealerships located in the United States.

Before 1988, the process of importing grey market vehicles was perfectly legal. However, Mercedes saw the opportunity to use their extensive ability to organize to gather help from the government. The competition that Mercedes faced from an influx of cheaper versions of their own cars was seen as a threat. Rather than sell their cars as cheaply as grey market cars,
Mercedes could rely on help from the United States government to shut down the market all together. Mancur Olson predicts that in order to gain help from the government, the industry will likely organize a lobbying organization that will actively pressure legislators (Olson, 1971). Feeling the pressure of cheaper grey market imports, Mercedes Benz decided to utilize the power of interest groups to change the landscape of the automotive industry in the United States.

**Individual Autonomy**

When Mercedes Benz changed the landscape of the American car market, they did so against the interests of private citizens. The Imported Vehicle Safety Compliance Act represents the interests of Mercedes Benz and other powerful car manufacturers. This act goes against the theory of Individual Autonomy. This theory suggests that in a democracy, the government should make sure that the autonomy of each citizen to make decisions about his or her own life is maximized (Peters, 1999). This theory maximizes democracy and limits government intervention in private lives. In the case of imported vehicles, this theory would assume that individuals should be able to purchase a vehicle even if the government deems it to be unsafe. Under the premise of this theory, individuals should be able to make decisions that could possibly harm them. In order to show whether or not individuals should be able to make these decisions, it is important to analyze the legitimacy of government intervention. In many cases, such as child labor, government intervention is clearly necessary to protect children who are assumed to be incapable of making decisions for themselves (Peters, 1999). This theory clearly makes exceptions in instances where individuals are incapable of making an informed choice. There are other exceptions to this theory as well, such as loss of life.
This theory admits that the value of preserving life is more important than the value of preserving individual autonomy (Peters, 1999). Therefore, products that can bring harm to consumers are outlawed. In the case of imported vehicles, this has often been used as justification to why the US government does not allow imported vehicles into the country. The government claims that vehicles that do not meet US standards are unsafe, and can cause death. However, the government clearly allows imported vehicles that are older than 25 years old, regardless of how unsafe they are to consumers. This policy calls into question the government’s purpose in imposing these restrictions. If the government’s goal is to protect consumers from harm, why allow them to import an old vehicle that would clearly be dangerous to a consumer? As this paper will show in Chapter 3, there are many examples of vehicles that would be fully legal for import, that are virtually identical to an older model which is deemed unsafe.

The restrictions that were set up in the Imported Vehicle Safety Compliance Act serve to appease the interests of car companies such as Mercedes Benz, not to protect citizens as the act intended. Using the theory of Individual Autonomy, there is no reason for restricting imported vehicles in the US. The legislative hearings that were held in order to debate the Imported Vehicle Safety Compliance Act show that the government’s goal to protect consumers was clearly secondary to the interests of big businesses.
Chapter 2: Historical Context

The Vehicle Grey Market

In the United States, the Imported Vehicle Safety Compliance Act creates limitations for the number road legal vehicles in the United States. With this law, there are a myriad of cars that are road legal in other markets that do not meet the specific U.S. standards for safety and emissions. The issues that resulted in the enacting of this law have steadily dissipated to a point of insignificance. Over the last few decades, the differences between cars in the European and Asian market compared to the US market have dissolved dramatically. This research will show the legislative history of this act as well as show the market factors that have resulted in its current irrelevance.

In the 1980’s, American businesses would import vehicles for individuals who wanted to buy a car that was not available to the U.S. market. This was due to the availability of cars with more power or technology being available in countries such as Germany. In addition, the currency exchange during this time allowed these cars to imported for less than buying a similar model from a US dealership. The market for these cars became known as the vehicle grey market. The term grey market, is used to describe “cars which enter the U.S. via channels other than Factory authorized importers” (Payton, 1986). Grey Market cars are now illegal to import under National Highway Traffic Safety Administration (NHTSA) guidelines. These guidelines restrict the importation of cars that “do not conform to Federal standards” ("Imported Vehicle Safety Complicance Act of 1988," 1988). While these cars are now illegal, they were quite popular as a savvy method for getting the discounted car.
In the 1980’s, advertisements sprang up to promote the cheaper purchase of expensive, foreign automobiles. With these purchases, consumers would make a 10% to 15% down payment to the importer, who would ship the car to the U.S. Then, depending on the importer, the car would be converted to meet U.S. standards. Issues arose with the process of converting the grey market cars to American standards. Owners of these vehicles were held responsible for the modifications done to their car. In order to purchase the car at such a discount, buyers were sacrificing the manufacturer’s warranty, also the “car might sell for less money in the resale market than the same model originally built to U.S. specifications” ("The gray market: cheaper but chancy imports," 1985). US news media began to inform consumers about the grey market vehicles. Articles such as The Grey Market: Cheaper but Chancer Imports praised the enormous savings that imported vehicles offered, but warned readers these cars would forgo the manufacturers warranty which provided peace of mind. These articles would often include images that showed how much money could be saved as well the costs to modify the car after importation.
Before this legislation, the process for certifying a car’s compliance was simpler. “Before foreign cars less than five years old can be driven in this country, proof that they meet all safety and emission requirements must be submitted to the [NHTSA]” ("The gray market: cheaper but chancy imports," 1985). This typically meant that the cars would need new door reinforcements, bumpers, seatbelts, as well as emissions equipment such as a catalytic converter. Figure 1 shows that these modifications would have added about $5000 to the price of a Mercedes Benz in 1985. In addition to the modifications, “other costs included $800 for shipping, $250 for the customs broker, a $200 bond fee and a 2.6% duty on the assessed value of the car” ("The gray market: cheaper but chancy imports," 1985).
Even after factoring the cost of modifying a grey market car, they were still less expensive than similar models that were sold in the U.S. However, one downside to importing such a car was the burden of making sure the car met U.S. specifications. Failure to make all of the modifications could result in a repossession of the vehicle. The U.S. customs Service required anyone who imports a car that does not conform to the standards to post a “performance bond”, which could “amount to as much as three times the assessed value of the car plus the duty” ("The gray market: cheaper but chancy imports," 1985). If the modifications weren’t completed in 180 days, the bond could be forfeited and the car confiscated.

Manufacturers began to become unhappy with the vehicle grey market. They made claims that the modifications done by the importers were unsafe or incomplete, causing them to pollute, require additional service, and reduce their resale value. Mercedes Benz was the most prominent manufacturer that lobbied for laws limiting the grey market. The grey market created a threat to Mercedes sales in the 1980’s. Their cars made up 60% to 70% of all grey market imports.

Mercedes Benz began lobbying in Congress to prevent importers in the US from bringing European models into the US. Before this legislation, importers would modify and sell models such as the Mercedes Benz 500 SEL. Through an importer, this car could have been “as much as $11,000 cheaper than a $53,000 500 SEL bought from a US dealer” ("The gray market: cheaper but chancy imports," 1985). The intended goal of this legislation was to protect consumers from cars that were modified improperly through less than reputable grey market importers. This legislation also brought enormous benefits to automakers that lobbied for its implementation. After the passage of the Imported Vehicle Safety Compliance Act, car companies like Mercedes
Benz no longer had to worry about private companies bypassing their dealership network and selling their cars to consumers in the United States for a lower cost.

Mercedes argued that bad modifications by these companies would reflect poorly on their company’s image. The dealers were concerned about “assumption of liability when the attempt to service and repair such vehicles” (Payton, 1986). After the Imported Vehicle Safety Compliance Act of 1988 was signed into law, importers would no longer be able to ship cars into the United States that did not already meet the requirements for safety and emissions standards. These rules continue to prevent the importation of foreign market vehicles, with few exceptions.

The New Rules

The Imported Vehicle Safety Compliance Act of 1988 “requires the Secretary of Transportation to establish procedures for registering importers of [grey] market vehicles” (Walker, Whittaker, & Luken, 1988). The rules of the legislation state that only registered importers would be permitted to sell grey market vehicles. The National Highway Traffic Safety Administration, herby known as the NHTSA, would provide the guidelines for importing vehicles and registering them for use in the United States. The cars would need to be “certified to ensure that in fact the vehicles comply with NHTSA's safety standards” (Walker et al., 1988).

Although non-eligible cars can be certified by the NHTSA, the process was not made simple for importers. The importers need to prove that the vehicle in question is “substantially similar” or could be modified to meet safety standards. This rule was included in mainly to allow easy impartation from Canadian cars that are nearly identical to cars sold in the United States. However, this rule makes it difficult to prove that a car sold in Europe is substantially similar, even if the same car is sold in the United States. In order to prove that the vehicle was
“substantially similar”, the importers would have to crash test more than ten examples of the vehicle. This process to approve a vehicle model for import is not a viable option for cars that have an extremely high collector value. Even if the vehicle in question were inexpensive, the NHTSA certification process would require an individual to spend large sums to crash test the cars and therefor make the car available at a reasonable price for other buyers.

This process makes it difficult for an individual to prove that a certain model can conform to US safety and emission standards. Tim Day, Owner of Mesa Auto Wholesalers in Arizona, says that the cost of approving a car for US imports might be millions of dollars. Day then states that an individual willing to absorb this cost could “put the [vehicle] on a government roster of approved vehicles, meaning that the next one would cost its owner just ‘thousands’ to import” (Robinson, 2006). The cost of conducting the necessary tests makes importing grey market vehicles far more difficult than it was before the Imported Vehicle Safety Compliance Act.

There are specific exceptions to The Imported Vehicle Safety Compliance Act. One of the exceptions is the “Show and Display Rule”. This rule states that if a vehicle is “deemed to be of unusual historical or technological significance” it can be “imported for purposes of show or display” ("Importation and Certification FAQ’s,"). The rules of show or display state that the vehicle must not be driven in excess of 2500 miles per year, the vehicle must have had less than five hundred examples produced, and the vehicle must not have had a version built for the US market. This rule is very exclusive, and eliminates a large number of rare and valuable vehicles that might be valuable to import into the US. For example, this law was used to give the Porsche 959 an exemption. Only 337 Porsche 959s were ever built, and their value today can exceed one
million dollars. The Porsche 959 was a topic of discussion during the hearings for the Imported Vehicle Safety Compliance Act. The apparent confusion that this legislation would cause to legislators and consumers can still be seen today. Wealthy owners saw some gains when the Imported Vehicle Safety Compliance Act prevents the importation of the 959 to the United States. ¹

The Porsche 959 was mentioned specifically during the Congressional hearings for the Imported Vehicle Safety Compliance Act. This model was produced in a limited run of only 337 examples. This limited run was produced because of the regulations of Group B rallying, which the 959 competed in. This race series stipulated that a car could only compete if at least 200 road going models were built for sale to the general public. This process of making road legal versions of racecars was known as homologation.

Racing series that wanted to encourage the image that a car that consumers could buy was similar to the car that they saw on television racing enforced homologation. This process put a burden on the manufacturers to design a car that would be competitive, but was not so far beyond the scope of reason that it could not qualify as a road car. Homologation has resulted in many rare vehicles with enormous collector value, including the 959. The cost of the 959 in 1987 was $225,000 and has risen to a value of over well over $1,000,000 today. This Porsche clearly

¹ Famous owners of the Porsche 959 include Microsoft founder Bill Gates who’s personal 959 was stored for thirteen years by the Customs Service at the Port of San Francisco. Gates and other enthusiasts were successful in having the show or display rule passed to import rare vehicles with severe limitations on their usage.
represented the argument that a specialty car might be made illegal because of this legislation.

Figure 2: Porsche 959

**Legislative History**

The Congressional hearings that took place prior to the enacting of the Imported Vehicle Safety Compliance Act do not show cohesive reasoning that led to the 25-year rule that is now in place. When questioned about certain goals of the proposed legislation, it is apparent that the goals represented the interests of Mercedes Benz, rather than consumers. During the hearings in the House of Representatives, Kansas Republican Robert Whittaker spoke on his proposed Imported Vehicle Safety Compliance Act. After describing the current climate of the vehicle grey market, Representative Whittaker explained his position with the following statement:

This system provided satisfactory results as long as the number of [grey] market vehicles remained small. In 1980, the number of [grey] market vehicles entering the United States was only about 2,400, and these were imported mostly for personal use. But with the
increase in the value of the dollar in the early 1980’s the number of [grey] market imports rose rapidly, reaching a peak of 67,000 in 1985. The nature of the market also changed as many of these vehicles were imported by commercial importers for purposes of resale. This rapid change in the market resulted in significant problems in enforcement of the law relating to [grey] market vehicles. Many vehicles slipped through the cracks and were not properly brought into compliance with our safety laws. (Walker et al., 1988)

After Representative Whittaker finished presenting the small changes that were attached to the bill, questions began to come from a Pennsylvania Representative Robert Walker. Rep. Walker began to question the overall intentions of this bill and offered several criticisms that ultimately align with the criticisms proposed in this paper. Demonstrating his knowledge of the automotive industry, Rep. Robert Walker voiced his criticism of the bill with his initial statement:

If I understand what the bill purports to do, it is that we are now going to eliminate the ability to import vehicles that are not substantially similar to models that are already imported into the country, thereby saying to people who might want to buy a car, for instance, as a car collector of an exotic model that is built in only a few copies overseas, that they will not even be able to bring that car in, despite the fact they are willing to modify it to meet the standards. Is that what I gathered this bill is going to ultimately accomplish? (Walker et al., 1988)

Rep. Walker’s statement opened up a dialogue that brought into question the tangible effects that this bill could inflict on the vehicle market rather than the theoretical impact. This line of questioning called out the possibility that the true intention of the bill was to help automakers rather than protect the people. Rep. Walker even proposed the notion that this bill is “suspiciously similar to a bill that is billed in the automobile enthusiasts' magazine as the Mercedes-Benz dealers bill”, referenced in this paper as the Mercedes Relief Act (Congressional Record House, 1987). Rep. Walker clearly noticed that this bill was a way for Mercedes Benz to stop the grey market importation of their cars. He then criticized the apparent harshness of the
legislation because it could virtually destroy the collector market for rare vehicles in the United States. He gave the example of the Porsche 959, a car made in limited numbers of fewer than 200 examples. With his stance, Rep. Walker was clearly questioning why the guidelines proposed by the bill would affect a car such as the Porsche. Being made in such few number, the Porsche clearly could not represent a significant portion of the market and would clearly not pose any inherent risk on the road merely because it was never designed with US standards in mind.

In defense of the bill, Rep. Whittaker argued that “the primary purpose of the bill is to save lives” and that “no maker is identified here”, referring to Rep. Walker’s concern that this bill was created simply to aid Mercedes Benz (Congressional Record House, 1987). Rep. Walker’s concerns continued when the intent of collectors and enthusiasts is called into question. He held the position that true car enthusiasts, who were spending upwards of $100,000 to import a rare, nonconforming vehicle, would propose no greater risk to safety than anyone who would be buying an average car such as a Toyota. In response, Rep. Whittaker pointed out that the bill would allow for collector vehicles to be imported once they were 25 years old and that “many of the cars the gentleman might allege would have a resale value in the multiples of thousands of dollars generally are antiques, and would not be covered under this bill” (Congressional Record House, 1987).

Despite Rep. Whittaker’s argument, there was never any reason given as to why the bill chose 25 years as the minimum age for a car to be considered exempt. The assumption remains that 25-year-old vehicles are antique, and therefore void of any factory warranties or regulations to meet American crash and emission standards, yet many vehicle that are newer than 25 years old also meet these criteria. This further supports the notion that this bill was created simply to
support Mercedes Benz, rather than to save lives as Rep. Whittaker claimed. This is due to the fact that the bill itself allows for the importation of cars that could be potentially harmful to occupants or the environment, so long as a car company, such as Mercedes, would not be obliged to offer any warranty or emissions service on the vehicle. The stance of Rep. Whittaker also completely ruled out the notion that a car that was newer than 25 years old could possibly pass these criteria. Despite the debate that occurred in the legislative hearing, no considerations were included that there might be cars that were newer than 25 years old that may be highly collectable, and adequately out of date based on the criteria of this legislation.

As stated in Chapter 1, the theory of individual autonomy was used to highlight the importance of giving citizens the ability to make decisions, so long as they did not bring severe risk. In cases that involve loss of life, individual autonomy must be forfeited in order to protect consumers. This theory is able to maximize consumer autonomy, while preventing loss of life. When explaining the Imported Vehicle Safety Compliance Act, Robert Whittaker clearly took the stance that this legislation would be enacted to protect consumers from potentially harmful imported vehicles.

The resulting legislation does little to protect citizens from dangerous products. Instead, the 25-year rule seems to be targeted with the purpose of protecting the sales of Mercedes Benz in America. While this rule does prevent the importation of countless vehicles, it turns a blind eye to antique vehicles despite their inherent lack of safety. Mr. Whittaker claims that this was done to allow collectors to import rare vehicles, yet it prevents collectors from importing many vehicles that are less than 25 years old that have already reached collector value. While the restrictions allow for any vehicle that is 25 years or older to be imported, it does restrict newer,
safer models that might compete with vehicles that are currently on sale in the United States. These semantics give government protection to Mercedes Benz and other car companies from an influx of newer imported vehicles, even if these vehicles are perfectly safe for consumers. The Imported Vehicle Safety Compliance Act misuses the premise of forgoing individual autonomy to preserve safety and welfare in order to protect car manufacturers.

When referring to rare vehicles such as the Porsche 959, Rep. Walker questioned the necessity of subjecting vehicles to a crash test in order to be considered eligible for import. In his criticism, Rep. Walker was confused as to how anyone could import a car such as the Porsche, when the requirements stipulated that someone would need to “run it into barriers in order to bring it into the country” (Congressional Record House, 1987). In this line of questioning, Rep. Whittaker’s response stated only that the rules would not create an issue because they would only be “talking about one, two, maybe five, conceivably a dozen automobiles in the entire United States in 1 year's time” (Congressional Record House, 1987). This answer was far from acceptable for Mr. Walker, so he pointed out that it would be a larger issue than Rep. Whittaker was willing to admit. Representative Walker explained that this the proponents of this legislation were “suggesting there are some cars that are never going to be allowed to come into the United States” (Congressional Record House, 1987).

The debate by Rep. Walker clearly called into question the severity of the proposed legislation. He believed that the legislation was too extreme, and put too much of a financial burden on the individual to import a car and follow all standards. When he began to ask questions about the difficulty of the newly proposed import process, Rep. Whittaker seemed to dance around the questions and simply claim that the issues that were brought up were small, and
that not enough people would even care. Rep. Walker was correct when he claimed that this legislation would prevent someone from even spending an incredibly large amount of money to bring a low production, hand built car into the United States. 2

Representative John Dingell, in connection with Representative Whittaker, stated the overall intention of the proposed legislation after the questions that were asked by Rep. Walker. The idea is that people have been doing very well going abroad buying cars that do not meet U.S. standards, bringing them over here and having them modified so that supposedly they "meet U.S. standards" when, in fact, they do not do so. This bill is meant to deal with that in two ways. First of all, see to it that it is done in an orderly manner and a proper fashion and no more games played. Second, it is done to see to it that the American firms that deal in imported automobiles will bring in honest automobiles which are directed at meeting fully U.S. standards, in fact, do meet those standards and that they are protected against this kind of unfair competition. A lot of these vehicles will be modified by fly-by-nights and people of that character, under current law there are situations where later they do not meet U.S. standards. So, this is an attempt to rationalize that kind of situation. (Walker et al., 1988)

Although this rebuttal aligns with what Rep. Whittaker had claimed, it did give any method moving forward where an individual could import a vehicle without spending an  

2 Even today, cars such as the Pagani Zonda are built in incredibly low numbers (less than a dozen) for millions of dollars, and are not eligible to be driven in the United States.
exorbitant sum. Mr. Walker concluded the debate simply by stating that “the bill may go too far” 
(*Congressional Record House, 1987*). At the conclusion of this debate, the voice of the car 
enthusiasts (represented by Mr. Walker) effectively died. With the passage of the Imported 
Vehicle Safety Compliance Act, the assumptions made by representative Walker came to 
fruition. After 1988, it became incredibly difficult to import any vehicle into the United States. 
As a lingering effect of this legislation, it is very difficult to sell and import cars into the country. 
Our laws allow for “antique” cars to be excluded from regulations after 25 years. This arbitrary 
number lags behind other countries such as Canada and New Zealand with 15 and 20 years 
respectively.
Chapter 3: Practical Application

Policy Evaluation

When analyzing public policy, it is important to ask, “do these [policies] have any beneficial effects on society?” and “could we be doing something else with more benefit to society with the money and manpower devoted to these programs?” (Dye, 1987, p. 312). With the Imported Vehicle Safety Compliance Act, there are clearly detriments to society in regards to how the government carries out this policy. For example, owners of imported vehicles are given little notice that their property will be seized, and the Department of Homeland Security (DHS) uses taxpayer dollars to seize these vehicles without sufficient evidence. The DHS has an annual budget of over $13.5 million that is used to employ more than 60,000 agents for US Customs and Border Protection (CBP). These agents were responsible to checking more than 25 million shipping containers in 2015. The CBP conducted more than 23,000 seizures of goods with a value of over $1.2 billion.

Policy evaluation is “the assessment of the overall effectiveness of a national program in meeting its objectives” (Dye, 1987, p. 312). When looking at the efforts of the CBP, it is important to point out the department’s objective.

U.S. Customs and Border Protection (CBP) is responsible for securing America’s borders to protect the United States against terrorist threats and prevent the illegal entry of inadmissible persons and contraband, while facilitating lawful travel, trade, and immigration. CBP performs these missions with vigilance, integrity, and professionalism ("DHS Budget in Brief," 2015)
When conducting seizures, the CBP is acting on its goal of keeping inadmissible contraband off of American shores and facilitating lawful trade. The Imported Vehicle Safety Compliance Act has given these distinctions to cars that would otherwise not deserve it. When looking at the modern differences that exist between US and EU regulation, it is apparent that the CBP's efforts are over warranted. These differences have become trivial over the years, and have created a market where companies must reengineer their cars for the US market. Some of the US safety and emissions regulations are even inferior to the standards set elsewhere in the world.

In his article, *A Simple Explanation Why America Doesn't Get European Hatchbacks*, Raphael Orlove points out some of the simplistic differences in vehicle testing that results in the over warranted response by the DHS. For example, most vehicle manufacturing countries build their cars to meet the international safety standards called the UNECE standards (United Nations Economic Commission for Europe). Despite having the word Europe in the title, these are global standards that most countries adhere to, except the US and Canada.

The differences between cars in the US and cars in the EU can be very insignificant on the surface. Some differences are significant “like the U.S. rule that requires protection for passengers not wearing seat belts, which has no European equivalent” ("A Perfectly Safe Car-Just Not in the US," 2008) Others are small “like the U.S. requirement that vehicles have side lights, which are optional in Europe” ("A Perfectly Safe Car- Just Not in the US," 2008). These differences, both large and small add up to create a large financial burden of making a car pass US government regulations.

Even more controversies emerge when car manufacturers must pass criteria set by the Insurance Institute For Highway Safety (IIHS) in Virginia. The IIHS has its own criteria for
crash tests that differ from European tests. For example, the “the US and Europe put their crash
test dummies in different seating positions, which can affect how the air bags should deploy” ("A
Perfectly Safe Car- Just Not in the US," 2008). Another difference is that the IIHS requires car
manufacturers to design their airbags to account for passengers that are not wearing their
seatbelt. Such passengers account for over 45% of fatalities in the US. This may sound like the
US is safer in this regard, however car makers argue that the requirement makes cars less safe
for belted passengers because “protecting people without seat belts requires more powerful air
bags and other changes”("A Perfectly Safe Car- Just Not in the US," 2008). The car makers go
on to claim that they “would much prefer to design a vehicle that provides good protection for
unbelted occupants but is tuned specifically to protect occupants that are doing what they’re
supposed to be doing” ("A Perfectly Safe Car- Just Not in the US," 2008).

These types of differences have accounted for lack of choice in vehicles as well as
government intervention in the grey market. The United States has fought to keep its own vehicle
standards separate from the rest of the world. In the process, the government has created a
landscape where vehicles that are perfectly safe in the majority of the world, are suddenly treated
as hostile and illegal. This phenomenon explains why so many vehicles remain unavailable to
American consumers.

As a result of the large costs involved in retooling a car only for the American/Canadian
market, most manufacturers won't even dream of spending all of the money to rebuild a
model unless they think that it will be a reasonable success in North America.
Consequently, the US and Canada actually have a shockingly low number of car models
available compared to most other places. (Orlove, 2014).
Government Seizures

The Imported Vehicle Safety Compliance act has drastically affected the new and used market for vehicles in the United States. The provisions of the act make it illegal to own and operate a vehicle that was not built to US specifications. These provisions have created several problems for both consumers and manufacturers in the new and used market. Certain provisions in the Imported Vehicle Safety Compliance Act allow for vehicles that meet certain criteria to be imported lawfully. It can also lead to an interesting situation where a vehicle may be nearly identical to a model offered years prior in the United States, but still be illegal to import. With these issues, the federal government has exhibited a lack of diligence in their research that has led to a few notable issues.

Two cars provide a prime example of a vehicle production creating abnormalities for US import laws. The first car, the Mini Cooper, was produced with few changes from 1961 to 2000. This car was only sold in the United States from 1960 to 1967 due to new emissions laws that were enacted in 1968. The Mini Coopers produced after 1968 were therefore not manufactured with American guidelines in mind. As of now, many of these Mini Coopers are available for import because they meet the 25-year requirement of the Imported Vehicle Safety Compliance Act.

The Land Rover Defender also enjoyed a long production run. For years, importers have been accused of falsifying the VIN numbers on newer Defenders, claiming that the cars in question were older than 25 years. This created an issue for Defender enthusiasts who may have purchased one of these cars. Civil Forfeiture laws give the government the ability to confiscate cars that they believe are newer than 25 years old. After the vehicles are seized, “85 percent of
civil forfeiture cases go uncontested” because “people don’t have the means to fight it out in court” (George, 2015a). The long manufacturing run of the Land Rover Defender for over sixty years has resulted in issues for both owners, and the federal government. Recently, a dispute over falsely imported Land Rovers has called into question the government’s process of civil forfeiture.

The Defender Case

As mentioned earlier, the production longevity of models like the Defender has created a scenario where a fully legal 1986 Land Rover Defender would be virtually identical to a non-legal 1996 Defender that even had a similar US spec version. In July of 2014, the department of Homeland Security conducted seizures of several Defenders on the claim that the importer of the vehicles had falsified the VIN Number, which identifies the production year and other information. During the seizures, Defender owners described armor clad security agents and local policemen arriving at each of their residences with warrants to seize the trucks. One of the owners, Jack Montgomery, stated the police “threatened to arrest him for obstruction of justice if he or his family took photos of them” (George, 2015b).

Before delving into a recent issue related to the Land Rover Defender, it is important to understand what makes this vehicle special. Despite being badged a Land Rover, the Defender is far from the expensive luxury vehicles that are sold by the company today. Owners describe the Defender as “a boxy, rugged, truck-like 4x4, stripped out and basic, mechanically simple and easy to work on” (George, 2015b). Rather than a new Land Rover, that is available with leather, heated, and massaging seats, the Defender was offered with a very bare bones interior. With a bare bones interior and excellent off-roading prowess, the Defender was the vehicle of
choice for exploring areas such as Africa and Australia. The Defender was sold in the North American market from 1993 to 1997. These models were low production and tend to be expensive, leading to a large market for older examples from the UK or other countries.

Figure 3: Land Rover Defender Older Than 25 Years (Patrick George 2015b)
The confusion in the case of the Defender is due to the similarity that existed during its long production run. Zak Moseiur, an importer of Defenders explains the unique aspect of the truck that can lead to confusion of the manufacturing date.

"At a glance, the trucks all look the same," Mosieur said. "You can't really tell the difference." In fact, due to the Defender's longevity and modular nature — it's built for farm and military duty, after all — many exporters will sell trucks with newer doors, body panels, or interior parts grafted onto older vehicles. Some are on their second or third engine. Telling their true age is hard because so many different parts may have been grafted onto the original frame, which along with the engine is what really matters where import laws are concerned. (George, 2015b)
This unique aspect of the Land Rover Defender has led to the seizures of vehicles that were imported legally into the country. Many of these cars, despite being old enough to be imported, were seized and crushed under the assumption that the importer faked the age of the vehicle. The federal government has shown a lack of research with these trucks. In many cases, a Defender that is older than the legal 25 years, is assumed to be newer because of small replacement parts such as door handles or bumpers. The confusion created by the Defender has led to an important case of government seizures that began in 2014.

The seizures were conducted on the basis that the original importer of these Land Rovers had falsified the VIN numbers. On a vehicle, the VIN number is a combination of 17 letters and numbers that are assigned to the vehicle when it is built, and stay with the car for the life of the vehicle. The government claimed that Aaron Richardet, a North Carolina chiropractor that imported the Defenders, had swapped the VIN numbers with older vehicles in order to pass the 25-year requirement to import them into the country. However, in this case, each of the Defenders was older than 25 years old during the seizures. The government made the claim that the trucks were not older than 25 years old during the time of their importation. The seizures were conducted as part of an ongoing criminal investigation of Richardet, who despite the investigation, was not charged with any crime during the time of the seizures.

After the seizures took place, a lawyer and Land Rover Defender enthusiast, Will Hedrick, took on the case pro bono in order to win back the wrongfully seized Defenders. In his argument for the owners, Hedrick pointed out that the seizures are mute because all of the Defenders were now older than 25 years old. Just months after the seizures, Hedrick was able to return six of the Defenders to their owners. The government has claimed that the Defenders
were knowingly faked to appear to be older, yet many of the trucks were showing signs of age and were in a state of repair during the time of the seizures. One of the owners retold this argument to the security agents; “Look at the frame. It's even got rust. They said that could be faked” (George, 2015b).

As part of government evidence, Jaguar-Land Rover provided evidence that the VIN numbers of the seized vehicles belonged to cars that were newer than the importer claimed. Hedrick argued that “the government, as well as Jaguar Land Rover North America, made more than a few errors in supplying and interpreting the information that led to the seizure of the cars” (George, 2015b). This misinformation would lead the government to expect to find a group of VIN swapped vehicles. The process of VIN swapping involves taking the VIN number from an older model vehicle, and putting it on a newer model of the same manufacturer.
Table 1: Document of Seized Defender VIN Numbers (Patrick George 2015b)

In the case of the allegedly VIN swapped Defenders, the government did not take into account the possibility of the parties being innocent. After hearing the stories from the owners, it is possible that the “seizures are a gross violation of their property rights, an overreach by the government that hasn't been explained to them very well” (George, 2015b). Owner’s accounts of their seizures include government officials arriving with guns, not telling them why their vehicles were being taken, and threatening owners not to take pictures or be hit with obstruction of justice charges.
In this case, Will Hedrick proved that Jaguar-Land Rover, herein known as JLR, was mistaken when giving information to the government. The VIN numbers that were run by JLR were ‘based only on the last six digits of the VIN, a sequence that is the vehicle's serial number and thus may repeat for certain models after a number of years” (George, 2015b). This means that cars manufactured in the 1980’s could have the same final six digits of a newer model.

Soon after the seizures, Hedrick had already successfully returned six Defenders to their owners and continued to argue that “there's never been anything presented in the government's case as to their non-compliance”(George, 2015b). The concern in this case was that without Hedrick representing the victims pro bono, the legal cost to regain the vehicle might exceed the vehicle’s value. The owners worried about the condition of their possession being devalued sitting on secret government impound lots around the country. This case showed an injustice where citizens are treated as guilty until proven innocent.

Almost one year after the Land Rover seizures, Will Hedrick was successful in returning the trucks to their owners after the government dropped its case. At the conclusion of the case “The government has agreed to return all of the seized Defenders to their owners, at no cost to them, within 30 days, Hedrick said. Officials also agreed not to pursue the vehicles in the future” (George, 2015a). The government could not prove that the Defenders were newer than 25 years old at the time of their importation. They also could not show any criminal wrong doing by Aaron Richardet who imported the trucks. Jennifer Brinkley, who had her Defender seized one-year prior, stated, “I hate the waste of taxpayer money and people’s time” (George, 2015a). Without Hedrick giving pro-bono representation, this case might have ended differently. The legal cost to contest the seizure might have amounted to more than the value of
the Defenders. Hedrick has asked for nothing from the owners other than a request to send him a picture standing next to their returned Defenders.

The result of this case demonstrates a large fault with the current system as written in the Imported Vehicle Safety Compliance Act. With the current legislation, vehicles are being seized from their owners with little to no proof of any illegality. Owners are forced to turn over their cars to teams of homeland security agents that are able to seize their car without telling the owners where they are taking their property. The 25-year rule constitutes very little significance in regards to safety and emissions. As shown in the Defender case, the government can make mistakes in regards to the manufacturing date of certain vehicles. In certain situations, the government can make mistakes that lead them to believe that a vehicle is newer and therefore not eligible to be imported. However, this does not always have any practical application in regards to safety or emissions. For example, the Defenders were thought to be newer than 25 years old, yet they were perfectly acceptable for American roads. In most cases, a vehicle that is 25 years old would be just as acceptable for American roads as several newer vehicles.

This case shows that the 25-year rule is designed simply to protect manufacturers such as Land Rover or Mercedes from American’s importing cars without using their dealership network. This protection clearly differs from the “the primary purpose of the bill [which] is to save lives” (Congressional Record House, 1987). Rep. Walker Clearly stated that this bill would be created to protect consumers against unsafe vehicles that were being prepared improperly by grey market importers. However, the bill that resulted allows for people to import “an old safety-free smog belcher”, “while treating the fully catalyzed, crashable, and economical [car] like radioactive waste?” (Robinson, 2006). Situations like the Defender case
illustrate the gap between the law’s intent and puzzling rules that exist in reality. This law essentially states, that you can import a car that is very unsafe and poor to the environment as long as it is old enough. However, for your safety, you cannot import a modern vehicle with airbags that is environmentally friendly.

This case clearly calls into question the placement of power in the United States. Elite theory places the majority of political power among few elites. The Defender case clearly points to the relative lack of resources among members of the lower economic class (Peters, 1999). Without the pro bono legal services of Will Hedrick, the owners of the Defenders would likely have forfeited their vehicles, without proper evidence ever existing that the trucks should have been seized. The actions of the US government when enforcing the Imported Vehicle Safety Compliance Ac clearly act against the benefits of individual citizens and represent a gross misuse of authority.

The goal of the Department of Homeland Security in the Defender case was to remove the allegedly illegal vehicles from American roads. This stance was motivated under the assumption that the vehicles are unsafe for American roads. However, the negligence in this case hurts the credibility of the Department of Homeland Security in imported vehicle seizures. Not only did the Department fail to prove that the vehicles were illegal before the seized them, they also muddied their stance by believing that the fully legal Land Rovers were in some way unfit for American roads. Given that the trucks were seized under the claim that they were unsafe, the government’s stance can now be called into question. These vehicles possessed traits that the government thought was unsafe. Now that it has been proven that the trucks were completely legal, the government’s assumptions on what vehicles are legal should be revised. If the
government truly believed that the Defenders were unsafe for American roads, then it is clearly time to revise the criteria that make vehicles legal.

After evaluating the implementation of this policy, it is clear that the effectiveness of this policy can be called into question. The used market for imported vehicles is far different than it was in the 1980’s. However, US policy continues to question the validity of imported vehicles coming into the country. The government involvement in the Defender case shows that the rules of the Imported Vehicle Safety Compliance Act hurt consumers in the United States. With these import law in place American consumers are prevented from importing both collectible, and discounted vehicles.

Many vehicles, such as the Land Rover Defender, have collector value in the United States. The Imported Vehicle Safety Compliance Act makes many of these vehicles illegal and prevents consumers from investing in similar cars. The Defender is collectible due to its short production run in the United States. However, because it was produced in great numbers in the UK, these examples are inexpensive and can be sold for a profit in the US. As the Defender case has proven, there are few logical conclusions as to why these vehicles are still considered illegal. The Imported Vehicle Safety Compliance Act clearly causes injustices by limiting individual autonomy; therefor this legislation is in need of reform.
Chapter 4: Fixing The Issue

Modern Barriers

The Imported Vehicle Safety Compliance Act brought an end to the vehicle grey market in the United States. Essentially, this limited the selection of vehicles that could be purchased by American consumers. Many vehicles that were sold in markets such as Europe and Asia would be forbidden fruit for Americans. Their manufacturers never sold these forbidden fruit cars in the US market for several reasons. First among these reasons was a lack of financial incentive. Some vehicles are simply sold in markets where the manufacturer knows it will thrive. Due to the buying tenancies of American consumers, some vehicles are ruled out simply because there is not enough probability of financial success. If a vehicle would not sell well to American consumers, it would not offered for sale here. Other factors that prevent vehicles from being sold in the United States are emissions and safety. Vehicles sold to the US market must comply with federal crash and emissions standards. The Imported Vehicle Safety Compliance Act enlarged the financial and engineering hurdles that exist in the US market.

The Imported Vehicle Safety Compliance Act put in place an enormous trade barrier between the United States and other countries. Even today, car manufacturers need to reengineer their models for sale in the United States. Even models that are currently for sale in both U.S. and European markets might be offered with completely different engine options. For example “Ford Motor Company’s ECOncetic high-efficiency diesel engine, made in Great Britain, gets up to 71 miles per gallon (mpg) of fuel” (Canis & Lattanzio, 2014). This engine, despite its impressive fuel economy, does not meet U.S emissions standards. Ford has determined that expanding their engine plant in Mexico to build a North American version of this engine would
cost approximately $350 million and “it does not believe consumer demand justifies the expenditure” (Canis & Lattanzio, 2014).

The Ford ECOncetic diesel engine is only one of many high fuel economy engines that cannot be sold in the United States due to emissions standards. Many cars that are for sale in Europe and Asia can achieve higher miles per gallon of gasoline (MPG) than vehicles sold in the United States. Vehicles such as the Volkswagen Polo Blue motion Diesel can achieve “a combined 71 mpg” (Meiners, 2009). When comparing this number to the most fuel efficient cars in the United States, it becomes apparent that many cars that are sold in Europe are far more fuel efficient. Specifically, “hybrids such as the Honda Insight and Toyota Prius, which are EPA city/highway rated at 40/43 mpg and 51/48 mpg, respectively” both figures are lower than the Polo “(Meiners, 2009). In fact, when examining the entire car market for Europe and the United States, the discrepancies are exacerbated.
Figure 4 shows the historical, as well as the proposed fuel economy standards for the United States and the European Union. Dating back to 2000, European cars have held an approximately ten mile per gallon advantage or more at any given time. Each government has also proposed targets for fuel economy in the future. As the chart shows, both governments have set goals to increase fuel economy standards, but the European standards will remain significantly higher.
The discrepancy in fuel economy figures can be attributed to the differences in how each government regulates the automotive market. In the US, “Congress has delegated vehicle regulation to federal agencies, occasionally providing specific direction through legislation” (Canis & Lattanzio, 2014). The discrepancy can be traced back the Imported Vehicle Safety Compliance Act. The ramifications of this act have reverberated through the American car market and have drastically impaired the ability manufacturers to sell vehicles in the United States. This affects global trade as well as the safety and fuel efficiency goals of manufacturers as well as US government agencies.

The market surrounding the Imported Vehicle Safety Compliance Act has dramatically changed since its passage into law in 1988. Car manufacturers have found solutions to the complex obstacles that are associated with selling the cars in the US market. In an attempt to lower their global costs, manufacturers have developed new ways to build cars for global markets without having to reengineer their vehicles. For example, the “Ford Focus was developed in Europe but is built with similar components in the United States, China, Germany, Russia, and Thailand and sold in 130 countries” (Canis & Lattanzio, 2014). Automakers efforts have narrowed down the differences between cars sold in Europe, and cars sold in the U.S. The extreme safety and emissions differences that existed in 1988 have narrowed to a point of irrelevance, yet importation laws have not been reformed to reflect this change. Many organizations now seek other methods to reduce the differences for global market cars including tightening world emission standards, and growing the U.S. interest in diesel powered vehicles.

Transatlantic Trade and Investment Partnership
In March of 2013, “President Obama notified Congress that his Administration would seek a comprehensive Transatlantic Trade and Investment Partnership (TTIP) with the European Union (EU)” ((Canis & Lattanzio, 2014). This partnership is meant to reduce the regulatory barriers that exist in transatlantic trade, specifically for cars. This issue is highly important for cars, because current laws create enormous barriers that prevent free trade of automobiles between these two large entities. Specifically, this partnership will analyze the current differences between cars in the US and EU via three criteria that are evaluated by agencies in each entity.

- **Safety**: U.S. automakers self-certify that they are meeting U.S. vehicle standards in Europe, vehicles must obtain “type approval” from a government before an automaker can bring out a new model.

- **Emissions**: U.S. and EU emissions regulations are administered by the U.S. Environmental Protection Agency (EPA) and the European Commission (EC), respectively. While U.S. and EC rules address a similar range of pollutants, including carbon monoxide, nitrogen oxide, and non-methane organic oxides, allowable emissions levels in the EU are different from those in the United States and they are stricter in more than a dozen U.S. states than in the other states. The United States and the EU have similar “type approval” systems for new engine models.

- **Fuel Efficiency**: Auto manufacturers selling in the United States must meet the Corporate Average Fuel Economy (CAFE) standards enforced by the National Highway Traffic Safety Administration (NHTSA). Under the Obama Administration, greenhouse gases (GHG) in vehicle emissions are being regulated for the first time, making fuel
economy standard-setting a joint venture between NHTSA and EPA. The EU does not directly set fuel economy standards, but it effectively does so by regulating greenhouse gas emissions of new vehicles (Canis & Lattanzio, 2014).

Table 1: Comparison of Major U.S. and EU Motor Vehicle Regulatory Differences

<table>
<thead>
<tr>
<th></th>
<th>United States</th>
<th>European Union</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-certification for safety regulations</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Type approval for safety regulations</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Government labs used for all testing</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Type approval for emissions</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Mutual recognition of regulations by other countries</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Government sets fleet fuel economy standards</td>
<td>•</td>
<td></td>
</tr>
<tr>
<td>Fuel economy standard (miles/gallon)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In 2016</td>
<td>34.1</td>
<td>n/a</td>
</tr>
<tr>
<td>In 2020</td>
<td>38.9</td>
<td>n/a</td>
</tr>
<tr>
<td>Government sets emissions standards</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Emissions standards for pollutants (grams/mile):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nitrogen oxides (NOx)</td>
<td>.07</td>
<td>.10/29\a</td>
</tr>
<tr>
<td>Non-methane organic gases (NMOG)</td>
<td>.09</td>
<td>.11/1.4\b</td>
</tr>
<tr>
<td>Carbon monoxide (CO)</td>
<td>4.2</td>
<td>0.8</td>
</tr>
<tr>
<td>Greenhouse gases (GHG, in 2016)</td>
<td>250</td>
<td>208</td>
</tr>
<tr>
<td>Greenhouse gases (GHG, in 2020)</td>
<td>213</td>
<td>152</td>
</tr>
<tr>
<td>Form of vehicle emission testing</td>
<td>FTP\c</td>
<td>NEDC\d</td>
</tr>
</tbody>
</table>

Source: CRS analysis.

Notes: In the EU, gasoline and diesel standards differ.

a. Through UNECE, the EU provides mutual recognition to other countries. The United States does not.

b. Gasoline and diesel standards.

c. Federal Test Procedure, described later in the report.

d. New European Drive Cycle.

Table 2: Differences in US and EU Regulations (Canis & Lattanzio 2014)

As Figure 7 shows, there are several regulatory differences in how the EU and US certify cars. For example, the EU is more regulatory when approving emissions as well as safety
regulations. However, there is a discrepancy when accepting regulations of other countries. The EU, as shown in figure 7, accepts the standards set by other countries. This makes it possible for citizens in the EU to import cars that were not specifically designed for sale there. Both the EU and US have separate methods for approving vehicles for emission standards. In some categories, such as Nitrous Oxide and Non-methane organic gases, the US regulations are lower than the EU. However, the EU holds the advantage in emission standards for Carbon Monoxide, as well as Greenhouse gases. In the US’s case “some of these differences may reflect past efforts to protect domestic vehicle industries against foreign competition” where as the EU regulations “may result from different legal traditions or divergent views as to the best way of achieving goals such as cleaner air and reduced oil consumption” (Canis & Lattanzio, 2014). The US regulations can be directly traced back to the Imported Vehicle Safety Compliance Act, which based our regulations as a way to protect against foreign imports.

In the United States, the National Highway Traffic Safety Administration (NHTSA) manages the approval process for automobile compliance. This agency collects data on vehicle crashes and creates a database. However, the NHTSA is not responsible for making sure that vehicles comply with regulations. Instead, the responsibility is put on the manufacturer. In contrast, the EU sets regulations that manufacturers must follow in advance of manufacturing. In 1952, the UN established the “the Working Party on the Construction of Vehicles known as Working Party 29 or WP. 29—a subsidiary body of the Inland Transport Committee of the United Nations Economic Commission for Europe (UNECE)” (Canis & Lattanzio, 2014). The signatories approved that certain components used in vehicles could be used identically in several countries. The US did not sign this agreement because “it would require mutual
recognition of standards generated outside the United States” which meant that US cars could not be exported without significant changes (Canis & Lattanzio, 2014). This disagreement on behalf of the United States points out another key obstacle to creating a uniform car market. The United States has been unwilling to accept the standards for vehicles set in other countries.

Efforts to unify car markets around the world grew after the 1952 Working Part 29 agreement. In 1998, the United Nations created the World Forum for Harmonization of Vehicle Regulations. This organization was created “as a global forum allowing open discussions on motor vehicle regulations” in which any current member of the UN may participate ("World Forum for Harmonization of Vehicle Regulations (WP 29),"). This organization has strived to create universal regulations for automobiles in order to effectively allow for free trade. The United States does not currently participate in this forum.

**Benefits of Harmonization**

The TTIP would help unify the second and third largest automobile producers in the world. The United States and Europe account for almost one third of total vehicle production in the world. In 2012, the US and Europe produced more than 26 million of the roughly 84 million vehicles produced that year as can be seen in figure 6. Total trade of vehicles and parts between the US and EU reached 57 billion in 2012, yet this total is hindered by current barriers to trade established by the US. The alliance involved with the TTIP contend that their proposals would “increase trade, lower costs, create jobs and improve the international competitiveness of the industry” in both North America and Europe” (Canis & Lattanzio, 2014).
American regulations create a difficult market for vehicle sales. For example, Ford would need to spend over 350 million dollars in order to sell its Fiesta model with a diesel engine that would meet US emissions. The TTIP has estimated that these trade barriers are equivalent to a 26% tariff on imported vehicles. This significantly raises the cost of trade between the United States and Europe for automobiles. Their estimates also show that eliminating these “tariffs”, it could “raise U.S. vehicle and parts exports to the EU by over 200% and EU parts and vehicle exports to the United States by 71%” (Canis & Lattanzio, 2014).
Online Petitions

There is a large community of American citizens that take issue with the Imported Vehicle Safety Compliance Act. In the United States, as well as in other countries, individuals who enjoy cars as a hobby are often referred to as car enthusiasts. A love of cars has caused enthusiasts to take issue with the limitations that are set by the Imported Vehicle Safety Compliance Act. Car enthusiasts have created petitions for the government to repeal the Imported Vehicle Safety Compliance Act. The petitions have made three arguments that “Differences between U.S. vehicle and the rest of the car producing world are shrinking all the time”, “Most 15-year-old cars coming from Canada, Europe, or Japan will not be significantly different in safety or emissions” and “[there is] no reason why rules couldn’t be relaxed with no real detriment to safety or environment” ("Repeal the DOT/EPA “25 Year Rule” Car Import Ban to 15-years and Allow the Importation of Non-conforming Cars and Trucks," 2014). While this petition had over sixty thousand signatures, it did not reach the one hundred thousand signatures necessary on the petition website to be sent to the president’s desk. As can be seen below in figure 8, the petition was successful in garnering the support of over 60,000 people.

This petition stresses the importance of individual autonomy. Over 60,000 people take issue with the government regulations that remove freedom when purchasing a car in the United States. The petition mentions that the current rules do not consider that many restricted vehicles could be imported with no detriment to safety. The signatories of this petition would like the government to consider that the Imported Vehicle Safety Compliance Act no longer serves its purpose of protecting citizens.
Advocates of these online petitions typically focus on the most notable exception to the Imported Vehicle Safety Compliance Act, the 25-year rule. This rule states that a vehicle that is “at least 25 years old can be lawfully imported into the U.S. without regard to whether it complies with all applicable [Federal Motor Vehicle Safety Standards]” ("Importation and Certification FAQ’s,"). This means that a vehicle may be imported into the country, regardless of how safe or environmentally friendly it is. The purpose of this rule was discussed in Congressional hearings. Representative Robert Whittaker, sponsor of the legislation stated “there are provisions in the bill providing that for a true antique, there are no requirements imposed
upon the importation” (Walker et al., 1988). Although the 25-year rule does allow for the importation of several rare and valuable vehicles, it does not take into account cars that may be less than 25 years old, but fundamentally antique.

Critics of this legislation have asked why a 15-year rule would not allow for the same intended effect. For comparison, in Canada “if the vehicle you plan to import was manufactured for sale in the United States and is less than 15 years old, or is a bus manufactured on or after January 1, 1971, you need to find out if it qualifies for importation under Transport Canada's Registrar of Imported Vehicles (RIV) program” (“Importing a Vehicle Into Canada,” 2010). Canada has comparable importation rules as the United States, but is less stringent with which cars can be exempt. Even by supporting the stance of companies such as Mercedes Benz of prohibiting the import of new cars into the US, the arbitrary 25 year rule could be reset to 8 years, or “the period after which automakers are released from their emissions-equipment warranties” (Robinson, 2006).

**World Initiatives**

Although petitions from citizens have been unsuccessful, there is evidence that the UN has marked this issue as one that could be changed to benefit many trading nations. As part of the US and EU Transatlantic Trade Negotiations, several paths have been formulated to create a unified vehicle market. These include the following:

- **Harmonization of rules:** Harmonization need not mean having identical rules in both regions. From the viewpoint of auto manufacturers, it means minimizing unnecessary
differences in regulations so that a “single vehicle standard can be built to satisfy all requirements.”

- **Comprehensive mutual recognition:** This approach would permit automakers to sell vehicles in either market if they meet either a U.S. standard or a standard accepted in the EU. A car certified as compliant with U.S. safety, emission, and fuel efficiency standards would be accepted as compliant in the EU, and vice versa. This approach is how the EU certification process works.

- **Selective mutual recognition:** This approach would identify certain major standards for which TTIP could provide mutual recognition, rather than providing mutual recognition of all standards. U.S. and European automakers have identified occupant crash protection, side impact protection, child restraint systems, and some emissions standards as priorities for selective mutual recognition.

- **Forward-looking rules:** A fourth option would be to forge an agreement on emerging regulations, such as those dealing with electric and fuel cell vehicles, rather than focusing on existing regulations. Under this approach, the United States and the EU would commit to jointly develop standards covering new issues or technologies (Canis & Lattanzio, 2014).

The United States continues to be stubborn when discussing reforms to vehicle safety and emissions standards. While countries in Europe have decided to move forward with vehicle market harmonization, the US continues to impede it. Some efforts have been made to discuss US involvement in vehicle harmonization. President Obama authorized research to be conducted
to allow analyze the costs and benefits of Transatlantic Trade Negotiations. Theses negotiations would enhance the trade in several markets, none more than vehicles. The results of the research show that creating standard vehicle standards for the US and EU would increase US vehicle exports to the EU by over 200%. This would create billions of dollars in economic growth for the US and EU vehicle markets.

**Future Changes**

The future of vehicle harmonization is difficult to predict. Although this research has shown that American laws greatly impede the vehicle market, it is difficult to predict what changes, if any, will be made to rectify the problems. For several decades, the United States has been content with its own regulations, and has not modified the restrictions to legally import a car into the country. For consumers, this means that carmakers will continue to be required to spend large amounts in order to make their cars conform to American standards. This will continue to limit the number of models that US consumers will be able to choose from. It will also continue to prevent consumers from importing a vehicle for reasons that are no longer geared for protecting citizens.

The approaches by Bill Canis and Richard Lattanzio would fix the issues that result from the Imported Vehicle Safety Compliance Act. Comprehensive mutual recognition, Selective mutual recognition, and Forward-looking rules each aid car manufacturers by reducing the cost of manufacturing cars that are legal for the United States. Both the Comprehensive mutual recognition and the Selective mutual recognition would fix the issue of importing vehicles into the United States. However, based on the research conducted in this thesis, these solutions are unlikely to be implemented by the United States. The legislative history of America’s
importation process shows no interest in recognizing the standards that any other country sets for vehicles. If anything, the US has shown a complete distain of the rules and regulations that other countries have set for vehicles, and has made it extremely difficult for manufacturers and consumers to have a car that does not meet American standards on American roads.

Based on this thesis, forward-looking rules are the only viable pathway to vehicle harmonization between the US and EU. This approach would not require the United States to essentially go back on their years of rejecting the policies of other countries. While this approach will not fix the problems that exist with the 25-year rule, it would dissolve the issue moving forward. If the United States and EU could agree to negotiate new, joint standards for vehicles, both car manufacturers and consumers would finally be able to benefit from a free market. This would allow car manufacturers to sell vehicles in both markets without reengineering them completely, thus lowering vehicle costs. It would also allow consumers to buy unique models that were not previously available. This solution is the most viable method for solving the issues that the Imported Vehicle Safety Compliance Act has caused.

Any implementation of forward-looking rules is completely speculative. As seen in Chapter 2, few policy makers tend to be knowledgeable, much less passionate about automobiles. Most members of congress will never lust after rare cars such as the TVR Sagaris. The love of cars is what drives car enthusiasts to write petitions to repeal the Imported Vehicle Safety Compliance Act. While some of these petitions have garnered over 60,000 signatures, car enthusiasts have not met the numbers necessary to spark legislative change. As shown in Chapter 1, elite members of society hold more power to influence government policies. While some rare instances have occurred, such as Bill Gate’s support of the Porsche 959, car enthusiast typically
lack the political influence that large companies like Mercedes Benz can garner by spending millions of dollars and building interest groups. Both Elite Theory and Interest Group theory would assume that this issue would continue to go unreformed. However, the Theory of Autonomy would predict that individual citizens should be allowed to purchase vehicles without the government influencing their decision. This theory, would assume that a car such as the TVR Sagaris should be allowed into the United States. The Sagaris had many shortcomings that prevented it from being imported, such as a lack of airbags. However, the Theory of Autonomy explains that consumers should be allowed to make purchasing decisions by themselves. While unlikely, this research is hopeful that the US government will eventually make concessions that will fix the issues created by the Imported Vehicle Safety Compliance Act.

![Figure 8: TVR Sagaris](image-url)
Conclusions

The results of this research take into account the importance of elite theory and interest groups when analyzing the Imported Vehicle Safety Compliance Act. These theories place power in the hands of the wealthy and politically powerful individuals and companies. Elite theory suggests that people are ill informed about public policy, and that elites in society drive policy changes rather than allowing them to arise from the masses. This theory mirrors the continued effects of the Imported Vehicle Safety Compliance Act, which was created in reaction by demands from Mercedes Benz, not from the masses. Despite the negative effects of limiting consumer choice, this law continues to remain in place because of the disproportionate power that is held by elites like Mercedes Benz.

With the Imported Vehicle Safety Compliance Act, Mercedes Benz used interest groups to maximize the power that elite theory predicts is disproportionately owned by elites. Elite theory stresses that elites have a greater ability to organize, which is exactly what Mercedes was able to do in this case. By using their large corporate funds, Mercedes could hire attorneys and researchers to lobby for their issue in Congress. Mercedes’ monetary advantage gave them the ability to have more power than ordinary citizens who could not garner the same monetary and legal support in opposition of this legislation.

With the passage of the Imported vehicle Safety Compliance Act, the underlying effects of elite theory and interest groups violate the fundamental democratic right of individual autonomy. This theory suggests that governments should maximize the ability of each citizen to make decisions about their own life. By gaining disproportionate power, companies such as Mercedes Benz can garner support for issues that are on their agenda. This can be done despite
opposition from citizens who may be hurt by the agenda. In the case of the Imported Vehicle Safety Compliance Act, small companies that performed grey market imports were put out of business due to the lobbying by Mercedes. In addition, individual citizens are now unable to maximize their buying power in the automotive sector, because many viable vehicles are not available due to this legislation. The Imported Vehicle Safety Compliance Act engenders a fundamentally nondemocratic concept. By giving into the demands of Mercedes Benz, the US government went against the will of the people, and instead supported the idea that wealthy individuals and corporations are the ones who truly make the decisions for the country.
References


Importation and Certification FAQ's.


http://congressional.proquest.com.ezproxy.net.ucf.edu/congressional/result/congressional/pqdpdocumentview?accountid=10003&groupid=107036&pgId=52d164f7-44d6-4d29-a78b-cc4db394b0e2