

Legalization of International Institutions and Its Discontents: Does the WTO disadvantage big powers?

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LEGALIZATION OF INTERNATIONAL ORGANIZATIONS

Many scholars criticize international organizations and multilateral negotiations, arguing that they are driven by power politics (Stone, 2011; Vreeland, 2007; Brutger and Morse, 2015). In recent decades, world politics has become increasingly legalized through the creation of international courts in various areas like trade, investment, security, human rights, environment and so on. Yet, there is limited consensus among political scientists on whether legalized international institutions are straining big powers.

Do legalized international institutions mitigate power asymmetries? Do they help weak states at the expense of the interests of powerful states? I answer these questions in the context of the transition of the dispute settlement mechanism (DSM) from the General Agreement on Tariffs and Trade (GATT) to the World Trade Organization (WTO).

WHY THE WTO?

A large and growing body of literature has emerged to analyze the role of the WTO DSM which is widely recognized as one of the most legalistic institutions. As a matter of fact, the most striking change of the WTO from its predecessor GATT in 1995 was the transition to a strongly legalized dispute resolution system. The WTO DSM provides more precise, elaborated, and binding rules and time lines than the GATT. For example, the introduction of the permanent Appellate Body (AB) composed of highly-qualified lawyers contributes to the rule of law in the multilateral trading system. Also, the introduction of the semi-automatic establishment of panels and adoption of panel/AB reports does not allow a losing party to block a dispute settlement procedure anymore.

The existing literature provides mixed findings on the role of legalization of international institutions, in the context of the WTO, in particular. Some argue that the strongly legalized dispute settlement system of the WTO provides a more level playing field (Horn et al., 1999). For example, strengthening the rule of law in multilateral trade regimes raises the costs of defection, which leads to cooperative behavior (Sattler et al., 2014; Baccini and Kim, 2012; Busch and Reinhardt, 2000). Yet, others claim that international institutions inevitably reflect the unequal distribution of power (Bown, 2005; Guzman and Simmons, 2005).

DOES THE WTO EMPOWER WEAK STATES?

Drawing on both game theory and empirical analysis, my research investigates if and how legalization of trade through the WTO reform affects power asymmetries by empowering weak states. In particular, I look at if and how the WTO helps weak and poor countries when it comes to disputes with their more powerful counterparts. I find that the legal features of the WTO DSM strengthen the bargaining power of weaker complainants. As a result, they have fared better under the WTO than they do under the GATT.

I also find that the WTO helps smaller and poorer complainants disproportionately. Small and poor complainants are more likely than large and rich complainants to increase their exports of the disputed products to the defendant's market after the dispute ends in the WTO relative to the GATT. These results indicate that the highly legalized dispute settlement mechanism of the WTO provides significant *de facto* trade gains for poor and small complainants.

DISCONTENTS AND THREATS

My empirical analysis further shows that the richest complainants (e.g. the US) will decrease their post-dispute exports in the WTO relative to the GATT. This may cause discontent among the most powerful and largest economies. Powerful states abandoning such institutions is not

unlikely. The former US president Donald Trump had continuously threatened to withdraw the US from the WTO, arguing that the WTO treats the US unfairly. As a matter of fact, the US had blocked the nomination of the new judges of the WTO's Appellate Body, which seriously damaged the WTO system.

This crisis in the WTO indicates that not only did increased legalization reduce the inequality of the global trade system, but the high level of legalization also posed a serious challenge to the system by putting its leadership at risk. It also implies that legalization of international institutions has the potential to destabilize the global economic system by causing discontent among the most powerful and largest economies who are used to being the major beneficiaries of the multilateral trade regime and, consequently, their withdrawal from the system.

FUTURE OF THE WTO

Despite many challenges and reforms, international institutions have long sustained the current liberal global order since 1944. And the WTO is one of the central pillars of the system. Over the last years, we have seen dramatic changes in the world, including a rising backlash against globalization along with the WTO, the fragmented global production, increasingly integrated markets, and a changing balance of power with a rise of China and BRICS. It seems obvious that the WTO needs to reform to reflect those big changes in the global economy. What my research suggests is that the the WTO should not go back to the old GATT system where *might* perseveres over *right*. Overall, the results highlight that the WTO's strong dispute settlement system benefits a significant portion of developing countries. If the system collapses, the biggest losers will be developing countries.

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