

The (Domestic) Power of Legalization: U.S. Support of WTO Dispute Settlement

Alexander Thompson
Ohio State University
Thompson.1191@osu.edu

IPES Participants: The paper is still under construction and is not yet available. I will be happy to email you a copy when the draft is complete. Here I provide an abstract so you have a sense of what the project is about.

Abstract

Why did the United States promote the increased legalization of the international trade regime during the Uruguay Round (1986-1994)? The WTO's dispute settlement mechanism is more legalized than its GATT predecessor in several key respects: Rulings are binding, additional authority is delegated to a standing Appellate Body, and the process is rationalized and clarified in important ways. While the literature offers various explanations for such legalization in terms of aggregate efficiency, in both a political and economic sense, none of these accounts explains why the United States in particular spearheaded the move toward dispute settlement reform. Existing functionalist accounts also do not explain the timing of dispute settlement legalization.

This behavior presents a theoretical puzzle from a variety of perspectives. Realism cannot explain why a powerful state would choose to entangle itself in a legalized institution. Bargaining theory predicts that the United States, with its large and relatively autarkic economy, would prefer the advantages of the more decentralized GATT setting, where bilateralism thrived. The newer literature on delegation to IOs (e.g., Hawkins et al. 2006) suggests that powerful actors should be the most reluctant to establish institutional agents with substantial authority. Indeed, James McCall Smith (2000) finds that powerful states avoid establishing legalized dispute settlement in regional trade agreements.

I argue that the best explanation for U.S. behavior lies in domestic politics, a realm that tends to be overlooked in the legalization literature (Goldstein and Martin 2000). Executives gain influence relative to other domestic actors—in particular, legislatures—when issues are shifted the international level. This occurs through various mechanisms. First, since executives negotiate agreements, they have agenda setting power when it comes to creating new rules and institutions at the international level. Second, since it is executives that are represented in IOs they have sources of control, including formal decisionmaking power, that are not available to other domestic actors. Third, because they interface more with IOs over time, executives gain an information and expertise advantage vis-à-vis legislatures when issues are delegated to the international level. These various advantages give executives significant leverage and bargaining power over other domestic actors when it comes to IO-based policy issues.

This helps us understand why a powerful state might choose to delegate authority to an IO even if the international-level benefits are not obvious. In some cases, an executive may even prefer

to sacrifice some international influence (relative to other states) in order to gain domestic influence (relative to the legislature).

In the early and mid-1980s, the U.S. President faced growing pressure from Congress to pry open foreign markets and to protect American companies from foreign competition. While the President and Congress often disagree on trade issues, soaring trade deficits created an unusually wide gulf between executive and legislative preferences during this period. Indeed, Congress began exploring new trade laws in the mid-1980s designed explicitly to limit the President's discretion and to force a more aggressive stance toward trading partners, a process that culminated in the passage of the 1988 Trade Act and its Super 301 provision. In the face of such challenges to its authority, the President had an interest in shifting trade policy—and trade dispute resolution in particular—to the international level, where he could exercise more control and could more easily resist Congressional pressure even if it came at the expense of diminished unilateral and bilateral options. I provide evidence that this domestic-level logic was indeed among the motivations for pursuing dispute settlement reform during the Uruguay Round and that, in practice, presidents have taken advantage of the new system to more effectively pursue trade agendas in line with their preferences and at the expense of Congress's.