

# Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note

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## **ABSTRACT:**

More may not necessarily be better if the goal of legalization is to strengthen international collaboration. Finding a balance between lowering the risks of opportunism and lowering the possible negative impacts of legalization on domestic political processes is necessary to achieve the ideal degree of legalization. Over time, the global trade system, which attempts to liberalize commerce, has become more and more lawful. The nature of governmental duties and the information environment have altered as a result of increased legalization, which has also had an impact on how domestic interest groups mobilize around trade issues. We offer some potential negative implications of legalizing from the standpoint of promoting the future growth of liberal trade, contending that these effects must be evaluated against the favourable benefits of legalization on raising national compliance. Since the weakly legalized GATT institution was successful in sustaining extensive liberalization, a compelling argument for additional legalization is necessary to support significant change in the international trading system.

## **KEYWORDS:**

Domestic, Information, Legalization, Mobilization, Organization, Trade.

## **I. INTRODUCTION**

In this essay, we take into account the interactions between rising levels of international trade liberalization and domestic actors' interests in trade. We describe ways in which the unforeseen consequences of legalization on the actions of domestic economic players might obstruct the achievement of gradual liberalization of global trade, even as it may lessen incentives for unfair trade by particular states. Domestic politics must be seen as unimportant or as an illogical source of mistake that interferes with legalization's goals. Instead, politics functions in a structured manner and is the means through which legalization has an impact. Beyond lessening opportunism by unitary regimes, these consequences span a wide number of areas. The international trade system has grown from its beginnings as a decentralized and largely weak organization to become a legal body via gradual development in the postwar years. The laws established in 1947 now include a much larger number of nations and a larger volume of commerce. By defining and extending commercial rules and processes, including those that are related to the system of resolving disputes, the regime significantly strengthened its expectations on members after 1995 and the establishment of the World Trade Organization (WTO). In actuality, the regime's development in the years after World War II has made trade regulations more exacting and obligatory. As a result, all participants now have a greater understanding of the consequences or behavioral requirements of regulations [1], [2].

We contend that, contrary to what proponents have said, more legalization does not inevitably portend further trade liberalization. The General Agreement on Tariffs and Trade (GATT) regime, which was only loosely legalized, was extraordinarily effective in liberalizing trade; it is not immediately clear if the advantages of greater legalization would exceed their costs. This conclusion comes from a study of domestic politics, namely the incentives that governments face to ratify and then maintain a liberal international trade system. We analyze two trade politics-related topics to support our argument. First, we look at how legalization affects domestic groups' motivations to organize and exert pressure on their governments to pass laws in their favor. We think that more information will provide protectionists an advantage over free traders in discussions about the signing of new agreements and free traders an advantage over protectionists in discussions about adhering to current accords. Second, we consider the effects on member countries of a more "binding" GATT/WTO. The mechanisms for employing escape clauses and other loopholes intersected with domestic political circumstances in a manner that made their use more uncommon, even if GATT regulations were always legally binding. The

degree to which governments are "obliged," in a political sense, to uphold their liberal pledges has risen as a result of this reality and a stronger dispute-resolution process under the WTO. The likelihood that governments would act opportunistically by claiming bogus criteria for preserving their industry is decreased when their capacity to withdraw from agreements is restricted. On the other hand, in the ambiguous world of international commerce, strict, harsh regulations might backfire. We argue that legalizing may not provide the "correct" balance between these two impacts of binding when taking into account the reality of having insufficient knowledge about upcoming economic shocks [3], [4].

The theoretical justification and empirical evidence for our warning remark on the domestic repercussions of legalization are developed in this essay. The predictability that comes with legality has an impact on the regime's aim of trade liberalization in both good and negative ways, according to our first analysis of information and group mobilization. The "bindingness" of trade regulations is then examined. We contend that trade rules have grown more binding, even though *pacta sunt Servando* has always applied to such rules, and that enforcement of rules is now more assured via an analysis of the employment of safeguards and the new dispute-resolution procedure [5], [6].

### **Legalization, information, and domestic group mobilization**

The discussions surrounding the GATT's transformation into the WTO were heavily influenced by the logic of specificity, delegation, duty, and improved transparency. The purpose of these WTO changes was to broaden the scope of the trade system and improve compliance in order to boost the advantages of membership. This theory had a flaw in that it ignored internal politics. Because of the disparate mobilization of those who support liberalization and those who oppose further opening up the economy to foreign goods, maintaining free trade is politically challenging. Mobilization itself depends on a variety of variables, such as the cost of mobilization and the possible benefits of group action. Greater openness and predictability regarding the consequences of trade agreements have been one result of legalizing the trade system. This kind of increased knowledge has conflicting consequences on the mobilization of domestic interests and, therefore, on governments' capacity to continue supporting free trade policies [7], [8].

### **The Logic of Mobilization**

First, consider the effects of tighter regulation of trade throughout the trade negotiating process. The organizations that have been organized in favor of or against the deal will determine if leaders are able to sign it. The pattern of mobilization is not always predictable, and overcoming strong collective-action issues is necessary to mobilize interest groups. First, participants in these organizations must acknowledge their shared interest in governmental policy. Then, they must learn to see the value in enduring the expenses of group action. Mobilization may be undermined by a variety of circumstances. The size and spread-out nature of some economic interests, the lack of knowledge that certain actors' interests are at stake in international negotiations, and potential calculations that the costs of influencing government policy outweigh anticipated benefits are the factors that are most important to international trade. The possibility that parties who want economic closure may have issues with concerted action is a godsend from the standpoint of promoting the liberalization of global commerce. Liberalization's chances would be slim if all anti-trade groups were well-organized and able to put significant pressure on their elected officials [9], [10].

At this stage, the relationship with legalization is considered. Legalization alters the behavior of domestic groups by enhancing the knowledge that actors have access to on the distributional implications of trade agreements. Legalization comprises a process of greater rule clarity and transparency. Legalization might jeopardize liberalization to the degree that such information makes it easier for antitrade forces to mobilize than already well-organized protrude movements. Both protectionist and pro-liberalization interests need information. However, if these groups are differently mobilized before the legalizing process, the marginal impact of knowledge will be greater on the less well-organized groups. Throughout the post-1950 period, the multilateral trade regime's framework, which is founded on the reciprocity principle, has offered significant incentives for exporters to organize. Strong and successful lobbying efforts by proponents of free trade have also resulted from the economy's increasing reliance on exports and the international nature of economic interests. Therefore, our focus is on the potential effects of more knowledge on the motivations of protectionist organizations.

## **II. DISCUSSION**

The proposed link between information and mobilization is made clear by a simple model. Define  $p$  as the likelihood that a group anticipates that its interests will be at risk during talks. This subjective probability,  $p$ , is a random variable with a range of values depending on the current state of the information. We start by assuming a

lack of knowledge, where groups are only aware of the overall number of groups affected and not which specific groups would be impacted. Consider that  $N$  groups are interested in trading. These groups are not first mobilized. Assume they are aware that discussions will have an impact on  $n$  groups, but they are unsure of which  $n$  groups. Despite being a gross assumption based on incomplete knowledge, this is a good place to start. Since the ratio of impacted to all groups is  $n/N$ , each group calculates the chance that it will be involved in discussions. This is their best estimate of the likelihood of being impacted by discussions given the absence of information. Thus, the variable  $p$  has the value  $n/N$ ;  $p \approx n/N$  in the prelegalization context. The value of  $p$  will evolve as knowledge increases.

Does it make sense for a group to organize given this value of  $p$  before legalization? The computation is based on the correlation between anticipated benefits and mobilization expenses. The group must be in  $n$  in order to reap the rewards of mobilization,  $B$ . If a group is not in  $n$ , it receives no advantages but instead must pay the expenses of mobilizing should it decide to do so. Given the value of  $p$  before legalization, the anticipated advantages of negotiations are  $p \cdot B$ , or  $nB/N$ . If the anticipated advantages surpass the mobilization costs  $C$ ;  $p \cdot B > C$ , groups will mobilize. Therefore, if  $nB/N > C$  in the lack of information environment, each group will mobilize. When  $N$  is big, the ratio  $n/N$  is often low. Thus, groups won't be motivated to mobilize until  $B$  is really huge or the costs of mobilization are minimal. We anticipate that only a small number of organizations will fulfill this demanding prelegalization mobilization criteria. With more accurate information,  $p$  rises over the  $n/N$  minimum. The ratio of  $B$  to  $C$  has to be high in order to enable mobilization, but  $p$  is still tiny due to uncertainty about the distributional consequences of discussions.

Following legalization, we assume that groups will know for sure if they will be involved in talks; as a result, their estimate of the probability  $p$  now either becomes zero or one because organizations know whether or not their interests are at stake. As informational circumstances change, the random variable  $p$ 's value varies. Groups won't organize if their interests aren't at risk. The need for organizations impacted by negotiations to mobilize, however, is now  $p \cdot B > C$  with  $p \approx 1$ , or just  $B > C$ . As long as collective-action costs are manageable (which they could be for big, dispersed groups like consumers), this requirement is significantly simpler to satisfy. As a result, we anticipate that many more organizations will decide it is beneficial to organize in the post-legalization context with more knowledge. Even while  $p$  does not increase to the extreme values of zero or one, it gets close to these limitations and has the anticipated results. As was previously said, knowledge has an impact on organizations that may both benefit and be injured by talks. Our goal is to highlight the political issues brought on by increased antitrade group mobilization, not to make specific predictions about the policy effects of the relative mobilization of exporters and protectionists. Given more clarity about how interests would fair under an agreement, it is obvious that knowledge will cause both parties to organize. Increased knowledge is likely to support proprotectionist mobilization, according to a variety of criteria. This stance goes beyond the conventional theory, such as Schattschneider's, which holds that free-trade interests are widespread and protectionist interests are concentrated.

The first reason is that protected groups are favored by the current quo rather than potential new exporters. Those who gain from the status quo have veto power because changes from the status quo need explicit affirmation, such as the ratification of a treaty. Therefore, customary institutional practices that value the status quo tend to favor interests that prefer protection over those that want liberalization. The hazy nature of exporter profits is another element pointing in the same way. Exporters merely anticipate the opening of certain markets; they have no idea how they will take advantage of these opportunities in the face of global competition. In contrast, protectionists are more motivated to organize than exporters since they are aware of the exact protection they would lose as a consequence of liberalization. Experiments have shown, moving beyond a purely rationalist model, that actors often respond more strongly to losses than to benefits, again favoring protectionist groupings in this mobilization dynamic. Last but not least, if we assume as Gilligan does that exporters are either completely or virtually fully mobilized and are already engaged in the political process, the increase in knowledge ought to result in a significantly stronger mobilization of the less involved, i.e., the antitrade organizations.

One should not automatically anticipate economic closure based on the logic of accuracy and mobilization. The result is the reverse when more information is taken into account when upholding as opposed to establishing a trade commitment. A more legalized system may have the effect of mobilizing exporters in circumstances of specific market losses *ex post*, even while information may have the ability to mobilize import-competitors before to the execution of an agreement. In this situation, knowing with certainty which exporters would be responsible for paying the price of retaliation in a trade dispute helps to mobilize exporting interests that otherwise would not be involved in the trade dispute. They will put pressure on countries to enforce trade laws given the possibility of a market loss. Their interests in spending money to defend free commerce at home are stronger the more likely it is that the retaliatory action would harm them.

So, according to logic, increased rule clarity will have two distinct and conflicting consequences on trade liberalization. By empowering import-competing parties with veto power, increased determinacy might jeopardize trade agreements. Contrarily, clear guidelines on how to respond to rule violations would encourage more trade liberalization by encouraging exporters in the offending nation. If methods of retaliation are properly developed, over time we expect not only see more antitrade organizations forming but also greater political involvement by export groups.

### **Mobilizing Antitrade Groups**

According to empirical data, organizations impacted by trade policy are often well-organized and persuasive. Those whose interests would be harmed by ongoing or increased access to foreign products, services, and markets are vociferous advocates for certain policies, whether the group be farmers in France, automakers in the United States, or computer businesses in Japan. These organizations often play the veto role, and presidents who want to negotiate the opening of global markets discover that domestic competition anxiety weakens support for their freetrade coalition. It depends on pro-liberalization organizations' and those who gain from liberalized trade's benefits' readiness to organize and be equally active in their support for them for leaders to be able to disregard protectionist demands. Governments struggle to maintain a freetrade strategy in the absence of exporters or other interested groups who express their freetrade perspectives. All democracies exhibit evidence of this issue with assembling and sustaining a free-trade coalition, which is partly caused by the concentrated advantages of trade barriers and their dispersed costs. Consumers who suffer from increased costs are seldom heard from in political debates; instead, trade politics is more commonly influenced by the balance between organizations with particular interests in either openness or closure. This equilibrium is impacted by structural reasons in certain nations. For instance, groups may be overrepresented due to the voting process, as is the case with Japanese agricultural producers, or because of bureaucratic or corporatist support in the political system.

Protectionist demands from these sectors have been lessened after World War II thanks to modifications to both local and international trade policymaking processes. Countries' support for liberal trade policies which were difficult to justify in the years before World War II can be attributed to reciprocal trade agreements, delegation to executive agencies, electoral reform, and altered legislative voting procedures. Both the reality of liberalization and the details of the process are balanced. The process could alter for external causes or because the underlying interests change. Changes in the process have profound effects on policy, regardless of the specific cause for the change. Process modifications have facilitated the organizing of exporter interests while making it more difficult for organizations competing with importers to get a majority to support their stance. However, the success of pro-liberalization organizations shouldn't be seen as a sign that decision-makers no longer need to be concerned about veto groups undermining trade policy. The protection lobby's appearance may have altered as a result of liberalization, but its potential influence has not. Even in the United States, a country that has long supported an open trading system, elected leaders often come under pressure from antitrade organizations. Strategic trade negotiators have bundled the benefits to exporters from access to new markets with the losses to import-competing producers from new foreign competition as a result of these societal constraints.

Whatever the details of this trade-off at the negotiation table, the end result has to be a deal that can win approval from the majority of the population. If knowledge of the distributional implications of agreements influences the inclination of groups to organize during talks, it could be simpler to reach that "optimal bundle" when there is some ambiguity over who will and won't be impacted by the trade agreement. One of the main purposes of the modern trade regime is to provide this information on the implications of either a proposed commercial agreement, the actions of a trading partner, or the termination of a trading arrangement. In advance of trade negotiations, the WTO gathers and disseminates trade data, keeps track of compliance, and catalogs country policies that restrict the free flow of goods and services.

The GATT/WTO regime's capacity to provide member nations with this information has significantly improved over time.<sup>10</sup> Tariff data wasn't routinely gathered throughout the earliest stages of discussions. Nations depended on the information provided by their negotiation partners, and as a result, figures that were often inadequate were used to calculate offers and counteroffers for "balance." The Trade Policy Review Mechanism was approved in 1989 during the Montreal Uruguay Round midterm review. This started a series of routine country studies, which gave information on the practices of GATT members in terms of sectors and products. Canada, the European Union (EU), Japan, and the United States are the four greatest trading powers, and their status is evaluated every two years. The next sixteen members in terms of trade value are examined every four years, while the majority of other members are reviewed every six years. A more symmetrical information environment has emerged as a consequence.



According to the criteria used, this enhanced monitoring effort is not by itself a consequence of "legalization." However, it has been closely linked to greater formalization and specificity of promises made at the beginning and over the course of an agreement. As a consequence, the information environment is far richer than it has ever been. The ministerial meeting is one component of WTO operations that is more open than in the past. Less secrecy in WTO procedures has been one of the main demands of antitrade organizations, along with changes in WTO policy. Even while certain Western nations, such as the United States, have backed the idea of openness, the majority of WTO delegates vehemently oppose it. Nevertheless, transparency has grown over time. Early rounds resembled clubs. Behind closed doors, agreements were reached among a select number of like-minded people. Later rounds avoided this standard negotiation structure. Private discussions did take place, and they were often the most fruitful ones, but more time was spent in official settings, when representatives delivered prepared statements that gave few, if any, genuine trade concessions. As a result, the need for more openness has been answered by more open sessions and media attention, but the impact of these specific reforms has been limited; delegates continue to be concerned about local constituencies and are hesitant of saying anything that will get them in trouble back home.

We acknowledge that increased information sharing with delegates does not imply total openness in the trading system. We cannot assert that we have arrived at a condition of perfect and comprehensive knowledge, despite the fact that legalization has led to a drive toward openness. Many of the GATT's features are still present in the WTO, notably the protection of member nations' right to confidentiality. We are unable to accurately determine the amount of transparency based on the actual facts. However, a tendency toward more openness may be seen. The secrecy provision enacted by member nations when the GATT was created in the late 1940s was the tightest of any implemented by postwar international agencies. Any delegate might argue that their communication is privileged. Information became permanently secret if a delegate did not officially revoke a confidentiality request after three years. Why is this regulation in place? Delegates just did not want information to get back home. Offers made during talks may be very sensitive, and even if the final package would be made public, it would be a "closed deal" that would be difficult for organizations to dissect.

### **Mobilizing Export Groups**

The mobilization of groups limits the kinds of new accords that are feasible but also explains why signed agreements remain in effect. Even under pressure from formidable rent-seeking sectors, leaders seldom break a GATT trade agreement. The GATT's fines against such adjustments were not the cause of this stability. Instead, a number of safeguard features in the GATT framework made it quite simple to change particular tariffs in accordance with the regulations. According to GATT regulations, as long as the overall tariff level stayed the same, countries might alter their rates every three years during the "open season," in the interim "out of season," and/or under Article 28:5. However, it was difficult for domestic legislators to maintain the general level of tariffs. Giving compensation has the drawback of creating a conflict between the organization requesting assistance and another producer. Politicians struggle with trade-offs like these.

What is remarkable is that, despite the regime's great legal flexibility, these rules have seldom ever been used. Only a small number of nations cancelled an agreement to tie their tariffs despite the thousands of items that were impacted by the cutbacks. These clauses were like a Pandora's Box for GATT participants. Without reciprocal advantages, having to alter a timetable piece by piece meant switching one domestic industry for another. Few GATT nations decided to address import issues in this way because of the political issues it produced. Attempts to strategically use threats of reprisal to mobilize export groups in favour of free trade are illustrative of another angle on mobilization. While a state threatens reprisal in an effort to mobilize exporters abroad, as the United States did while enforcing Section 301, it must take into account how to maximize the pressure that exporters put on the target nation. It would not be effective to make threats of concrete reprisal against just a few organizations. These organizations would undoubtedly organize, but not the ones who weren't included on the short list. On the other hand, failing to mobilize many exporters would result from publishing a very long or ambiguous list of potential targets of retaliation. Since each exporter would only be a member of a possibly global coalition and so face incentives to free ride, this technique would greatly complicate collective action. Additionally, the vagueness of the potential targets of retaliation may tempt exporters to postpone mobilization rather than face the certain, upfront costs of doing so.

If our narrative about mobilization is accurate in light of these factors, the strategic application of punitive threats should be pretty accurate. Additionally, it should focus on a group of exporters that is large enough to exert pressure on the government but not so sizable as to worsen issues with collective action. Since they indicate the possible targets of retaliation when the foreign government does not reach a settlement with the United States, Section 301 cases provide a useful source of evidence on the employment of retaliatory threats. When used with

the right level of accuracy, the fear of reprisal mobilizes export groups. This implies that in the event that a regime norm is broken, retribution should be permitted or even encouraged by the GATT/WTO. Even under safeguard provisions, the GATT framework, which included reciprocal retribution and/or alternative market access in response to reneging on a concession, may have been preferable to the WTO's solution. For the first three years of a safeguard measure, WTO regulations forgo the right to compensation and/or reprisal. The change's proponents said that it would encourage countries to abide by the rules because, where countries could justify the use of safeguard steps as "just," they ought to be shielded from reprisals.

Here, the reasoning implies the exact opposite. The idea that domestic organizations mobilize in reaction to government threats that undermine their market position is supported by circumstantial evidence in the United States. For instance, the United States found it politically hard to increase tariffs on a Japanese automobile, the Lexus, in what was intended to be a straightforward instance of applying market limitations in a Section 301 case. This was due in large part to push back from Lexus dealers in the United States. The American people do not generally feel very sympathetic toward Lexus sellers. However, they discovered that their interests were immediately at risk when a trade conflict with Japan reached a boiling point in 1995. The United States issued a list of 100% retaliatory tariffs on Japanese luxury products that would take effect on June 28 in an effort to pressure Japan to further open its market.<sup>18</sup> Dealers of Lexus, Infiniti, and Acura automobiles as well as cars with a retail value above \$30,000 were immediately threatened by this list of vehicles. They launched a significant lobbying and public relations operation in response. Finally, a last-minute agreement with Japan prevented penalties. To sum up, we argue that improved accuracy about the distributional consequences of trade agreements and the mobilization of domestic parties, both protectionist and free trade in orientation, would combine to produce one of the main political repercussions of legalizing the trading system. In order to determine if mobilization really has the desired effect, we have examined the information on trade negotiations and the application of retaliatory tariffs during trade disputes in this section.

We collect evidence to support our assertions from various angles. Lobbying efforts during negotiations depend on the information that particularistic interests have access to. It may be good to have less than perfect openness regarding the specifics of talks for strategic politicians who are striving to construct the negotiating process in order to boost their capacity to develop bundles of agreements that are mutually beneficial. Discussions are made more challenging by anti-trade group pressure, and discussions for trade liberalization will be hampered to the degree that transparency fosters anti-trade group mobilization. Politicians also plan how to divulge information during trade conflicts in order to organize groups correctly — in this case, to maximize the mobilization of exporters in the target nation. Our results shouldn't be taken as a forecast of a trade stoppage. Instead, we make the more modest assertion that consideration should be given to one little-recognized consequence of global legalization—the mobilization of domestic organizations. Understanding the circumstances in which legalization of the trade system will be effective requires a consideration of the interactions between legalization, information, and domestic groups.

## CONCLUSION

Questions about the connection between global legalization and commerce served as the inspiration for this study. The advantages of legalization come from the fact that it becomes more difficult for a unitary state to act opportunistically and break trade agreements the more effectively a regime provides information, lowers transaction costs, and monitors member conduct. However, a study of domestic requirements for free trade reveals that legalization may have unintended consequences that must be evaluated against its advantages. The presumption that greater legalization results in more open trade becomes dubious when we regard compliance with the trade regime to be a function of the interests of domestic political actors. Although we are unable to show that legalization has advanced to the point where it poses a danger to liberalization, we do want to issue a warning based on how legalization has affected the organization of protectionist organizations.

We looked at three theoretical concerns raised by the legality of the trading system. We first questioned how more accuracy during treaty negotiations alters anti-trade organizations' motivations to organize. We claimed that legalization might actually prevent the completion of cooperative accords because it results in more and better knowledge regarding the distributional impacts of prospective agreements. Second, we applied the same logic of knowledge and mobilization to expectations for the upkeep of already-in-effect agreements. Finally, we examined how a highly deterministic system of sanctions affected domestic agents. Here, we argued that trade regimes require some flexibility in their enforcement practices since too much enforcement might discourage domestic players from supporting open trade policies while too little enforcement could promote opportunism.

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