

5. CONCLUSIONS

The question of why states agree to cooperate and build international institutions has long been a major topic in the field of international relations (e.g. Gilpin, 1981; Keohane, 1984; Mearsheimer, 1994). International institutions have ensured the survival of liberal international economic order and promoted cooperation and prosperity since the end of World War II. Over the last two decades, they have increasingly become more and more legalized through the development of strong dispute settlement mechanisms. Despite disadvantages and fear of dispute settlement mechanisms (e.g. limited use of power to exercise for the haves vs. high costs of litigation for the have-nots), states choose to delegate authority to international institutions to resolve their disputes. By providing an effective and impartial way to resolve disputes, dispute settlement mechanisms are fundamental to the international trading system which prevents major trade wars and sustains the global economic order.

The demise of the WTO's Appellate Body 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. Understanding institutional design of dispute settlement mechanisms and states' choices regarding their use of international adjudication is crucial for evaluating the role of international institutions in shaping state behavior and maintaining the global economy in the liberal order.

This dissertation focuses on the design of dispute settlement mechanisms and states' strategic choice of forum. Both the theory and empirical analysis compare the choice of institutional design of dispute settlement mechanisms over international trade regimes. In Chapter 2, I develop a game theoretic model of trade disputes and examine three different scenarios: private bargaining, GATT bargaining, and WTO bargaining. The GATT bargaining model demonstrates that the weak complainant has bargaining leverage when (1) her pow-

erful counterpart gets a substantial amount of an additional benefit from prevailing in the case in international court, and (2) her chance of winning the dispute in court exceeds her cost of litigation. When those conditions are satisfied, litigation occurs in the GATT which generates bargaining leverage for the weak complainant and increases her payoff. Given that those conditions are unlikely to be satisfied simultaneously, however, the weak complainant is unlikely to have bargaining leverage under the GATT.

Nevertheless, the WTO bargaining model predicts that the weak complainant fares well relative to bilateral bargaining regardless of occurrence of litigation. For the WTO's dispute settlement mechanism to benefit the weaker complainant, therefore, the one following condition should be met: the complainant's winning the case in litigation is greater than her cost of litigation. This result suggests that the WTO's highly legalized dispute settlement mechanism (e.g. states can no longer wield a veto) helps level the playing field for the small and weak complainants by empowering them in the early stages of dispute resolution.

This research contributes to the literature on international institutions and international adjudications by developing a game-theoretic model to explain how legal features of dispute settlement mechanisms shape state behavior and affect distributional consequences of international cooperation. The theory and findings of this research deepen our understanding of legalized dispute settlement mechanisms. A series of bargaining models demonstrates that the legal teeth of the WTO increases the size of the pie for weak complainants. Specific and firm rules supported by fair international adjudication help weak complainants insulate themselves from power politics. Nevertheless, the sheer existence of international arbitration alone, as seen in the GATT bargaining game, is not an effective means of threat by which those weak complainants do so. Despite the limitations of international institutions, this study demonstrates that legalization can effectively offer a voice to less powerful states and improve the distributional gains from cooperation.

In Chapter 3, I further explore the dispute settlement systems of the GATT and the WTO by testing three key theoretical relationships drawn from the models presented in Chapter 2. I develop a theory about litigation and third party participation to explain how increased legalization of the international trade regime empowers small and poor countries. I argue (1) disputes filed in the WTO are more likely to reach litigation than those filed in the GATT, and (2) the odds of litigation increase in the number of third parties involved. I further develop a theory about a conditional effect of WTO dispute settlement on post-dispute trade flows between disputing parties. I argue that the WTO helps poor states disproportionately. This leads to such a strong post-dispute distributional effect in the WTO that poor states restore trade over the disputed products after WTO disputes more than they could do after GATT disputes, while rich states are unlikely to experience such a trade impact from the WTO relative to the GATT. I test my arguments using original data on disputes at the GATT and the WTO from 1980 until 2018 and post-dispute trade flows for each GATT/WTO dispute filed between 1989 and 2015. Empirical evidence strongly supports my arguments.

This study contributes to the literature on the GATT/WTO disputes and legalization of dispute settlement systems, and also speaks to a broader literature on the role of international institutions. My contribution is threefold. First, this study lays out and empirically tests circumstances where legalized dispute settlement systems help small and poor countries insulate themselves from power politics in the multilateral trading system. Second, while most research relies on aggregated trade flows to examine the distributional consequences of the GATT/WTO dispute settlement, I analyze disaggregated trade data (i.e. bilateral trade flows of the affected products directly listed in the dispute) and examine the direct economic consequences of international adjudication. Third, I construct an original database for disputes at the GATT and the WTO. Compared to the existing relevant data, the coverage of my database is significantly greater in terms of number of dispute cases. To the best of my knowledge, my database is also the most fine-grained of the available data sets.

Chapter 4 analyzes a structural (dis)advantage of regional trade agreements to large and small economies by comparing dispute settlement mechanisms between regional and multilateral trade systems. The model demonstrates that in RTAs, states face losses of strategic flexibility and systemic stability, as well as disparities in the losses for asymmetric partners. The greater loss of flexibility states face in RTA DSMs compared to that in the WTO DSM will increase per period probability of breakdown and, consequently, reduce the stability of the trading system. This suggests that the frequent use of the WTO's dispute settlement system results from its superiority in avoiding system breakdown and leveling the playing field for small and poor countries.

This research contributes to the literature on regionalism and legalism in international institutions by suggesting a game-theoretic model of trade disputes in regional trade agreements compared to that in the WTO. This study highlights how the dispute settlement mechanisms of RTAs shape state behavior in response to changes in domestic politics and increase the gap in strategic choices between the strong and the weak. The results bring us to what lies at the root of the relative disuse of dispute settlement systems of RTAs despite the proliferation of regionalism.

The results have important policy implications too. Small and weak countries need to be careful joining RTAs with larger and stronger partners if there is a high chance of political pressure for protection and consequent high odds of defection. As shown in many empirical findings, access to external legal support in RTAs would reduce the inequality in dispute settlement. Given that the apparent disadvantages that small and poor countries expect to take in RTAs, the WTO should provide them with more incentives to lower the burdens of membership; they otherwise are more interested in joining RTAs not to suffer from extremely high costs of being an innocent bystander in a natural trading region.