

INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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overcoming collective-action problems that can be quite intense. Actors within these groups must realize first that they have a common interest in government policies. They must then come to believe that it is worthwhile to bear the costs of collective action. A number of factors can undermine mobilization. The factors most relevant to international trade include the large and diffuse nature of some economic interests, lack of information that the interests of actors are at stake in particular international negotiations, and possible calculations that the costs of influencing government policy outweigh anticipated benefits.³

From the perspective of encouraging the liberalization of international trade, the fact that groups who prefer economic closure might suffer from collective-action problems is a blessing. If all antitrade forces were well organized and able to exert substantial pressure on their political representatives, the prospects for liberalization would be dim. The interaction with legalization enters the analysis at this point. In that legalization entails a process of increased precision of rules and transparency of agreements, it affects the behavior of domestic groups by increasing the information available to actors about the distributional implications of trade agreements. To the extent that such knowledge enhances the mobilization of antitrade forces relative to already well-organized protrade groups, legalization could undermine liberalization. Information matters for both protectionist and proliberalization interests. However, if these groups are differentially mobilized prior to the process of legalization, information will have the larger marginal effect on the groups that are not as well organized. The structure of the multilateral trade regime, based on the principle of reciprocity, has provided strong incentives for exporters to organize throughout the post-1950 period.⁴ Growing dependence on exports and the multinational character of economic interests has also led to strong and effective lobbying efforts by free-trade advocates.⁵ We therefore concentrate on the likely impact of greater information on the incentives facing protectionist groups.

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³ Collective-action problems have been central to the literature on endogenous tariff formation. See, for example, Magee, Brock, and Young 1989; and Mayer 1984.

⁴ Gilligan 1997.

⁵ Milner 1988.

A simple model clarifies the posited relationship between information and mobilization. Define p to be the probability with which a group believes that its interests will be at stake in negotiations. This subjective probability, p , is a random variable that takes on different values as information conditions change. We begin by assuming a poor information environment, where groups know only the total number of groups affected, not which of them will be affected.

Assume that there are N groups with an interest in trade. These groups are not mobilized initially. Assume they know that n groups will be affected by negotiations but have no information about which n groups this will be. This is an extreme assumption of poor information but a useful starting point. Each group therefore estimates that it will have a stake in negotiations with probability n/N , the ratio of affected groups to all groups. Given a lack of information, this is their best guess of the probability of being affected by negotiations. Thus, in the prelegalization environment, the variable p takes on the value n/N ; $p = n/N$. The value of p will change as information improves.

Given this value of p prior to legalization, does it make sense for a group to mobilize? The calculation depends on the relationship between the expected benefits and costs of mobilization. The benefits of mobilization, B , are realized only if the group is in n . If the group is not in n , it gains no benefits, but will have to bear the costs of mobilization if it chooses to mobilize. Given the prelegalization value of p , the expected benefits from negotiations are $p * B$, or nB/N . Groups will mobilize if the expected benefits outweigh mobilization costs C ; $p * B > C$. Thus each group will mobilize if $nB/N > C$ in the poor information environment. N is a large number, and the ratio n/N is typically small. Thus, unless B is extremely large or the costs of mobilization negligible, groups will not have an incentive to mobilize. Our expectation is that few groups will meet this stringent prelegalization mobilization condition. As information improves, p increases above the n/N minimum. However, with uncertainty about the distributional implications of negotiations, p remains small and the ratio of B to C must be large to allow mobilization.

After legalization, we assume that groups know with certainty whether they will be included in negotiations; that is, their estimate of the probability p now becomes either zero or 1, as groups know whether their interests are at stake or not. The value of the random variable p changes as information conditions change. Groups that do not have their interests at stake will not mobilize. However, the condition for groups that are affected by negotiations to mobilize is now $p * B > C$

with $p = 1$, which is simply $B > C$. This is a much easier condition to meet, as long as collective-action costs are not prohibitive (as they may be for large, diffuse groups such as consumers). Therefore, we expect that many more groups will find it worthwhile to mobilize in the richer information environment postlegalization. Even if p does not improve to the extreme values of zero or 1, it approaches these limits, with the expected effects.

As suggested earlier, information has effects on groups that may be harmed as well as helped by negotiations. Our intention here is not to make precise predictions about the policy outcomes of relative mobilization of exporters and protectionists, but simply to draw attention to the political problems created by enhanced mobilization of antitrade groups. Clearly, information will lead both groups to mobilize, given increased certainty on how interests will fare in an agreement. However, a number of factors suggest that increased information is likely to favor proprotectionist mobilization. This position goes beyond the classic explanation, for example, Schattschneider's, that protectionist interests are concentrated and free-trade interests diffuse, which still has some force.⁶

The first factor is that the status quo favors protected groups, not potential new exporters. Since changes from the status quo require explicit affirmation – for example, ratification of a treaty – those who benefit from the status quo gain veto power. Thus typical institutional procedures that privilege the status quo will tend to favor protectionist over liberalizing interests. Another factor pointing in the same direction is the uncertain nature of gains for exporters. Exporters only know that some market will open up, not whether they will be able to capitalize on this opportunity in the face of international competition. In contrast, protectionists know precisely what protection they will be losing as a result of liberalization, enhancing their incentives to mobilize relative to exporters. Moving beyond a strictly rationalist model, we could also mention experimental evidence that actors tend to react more strongly to losses than to gains, again favoring protectionist groups in this mobilization dynamic. Finally, if we assume, as does Gilligan, that exporters are either fully or almost fully mobilized and are already participating in the political process, the increase in information should lead to a relatively greater mobilization of the less involved, that is, the antitrade groups.

The logic of precision and mobilization does not necessarily lead one to expect economic closure. When we consider the effects of more

⁶ Schattschneider 1935.

information when maintaining as opposed to creating a trade commitment, we get the opposite effect. Although information may mobilize import-competers before the conclusion of an agreement, the effect of a more legalized regime may be to mobilize exporters in cases of certain market losses, *ex post*. In this case, precision about which exporters will bear the costs of retaliation in a trade dispute works to mobilize exporting interests who would otherwise have no involvement in the trade dispute. Given the potential of a market loss, they will press governments to uphold trade rules. The higher the probability that the retaliatory action will hurt them, the greater their interests in expending resources to maintain liberal trade at home.

Therefore, logic suggests that increasing rule precision will have two different, and competing, effects on trade liberalization. Increased determinacy can undermine trade deals by activating import-competing groups with veto power. Conversely, precise rules regarding responses to rule breaches will result in more trade liberalization by activating export groups in the offending country. Over time, we should see not only more antitrade groups organizing but also more political activity by export groups if strategies of retaliation are appropriately designed.

Mobilizing Antitrade Groups

Empirical evidence suggests that groups affected by trade policy are often well organized and articulate. Whether the group is farmers in France, auto producers in the United States, or computer companies in Japan, those whose interests will be hurt by either continued or expanded access to foreign goods, services, and markets are articulate spokespersons for specific policies. These groups often act as veto players, and leaders who would like to negotiate the opening of world markets find that fear of competition at home undermines support for their free-trade coalition. The ability of leaders to ignore protectionist pressures rests on the willingness of proliberalization groups, those who benefit from liberalized trade, to organize and be equally active in their support. In the absence of exporters or other interested parties who articulate their free-trade positions, governments find it difficult to maintain a free-trade policy.⁷

⁷ Numerous empirical studies document the importance of groups in setting trade policy. For a cross-national, cross-sectional examination of groups' involvement, see, for example, Verdier 1994.

Evidence of the effects of this problem of mobilizing and maintaining a free-trade coalition is found in all democracies and partially results from the concentrated benefits of trade barriers and their diffuse costs.⁸ Rarely are those who are hurt by higher prices (consumers) present in political debate; more often, trade politics is determined by the balance between groups with specific interests in either openness or closure. In some countries, structural factors affect this balance. For example, groups may be overrepresented because of the electoral process, such as with agricultural producers in Japan, or because they have bureaucratic or corporatist support in government.

Since World War II, protectionist pressures from such groups have been mitigated through changes in the trade policymaking process, both domestic and international.⁹ Reciprocal trade agreements, delegation to executive agencies, electoral reform, and changing legislative voting rules help explain why countries support liberal trade policies that were difficult to defend in the pre-World War II period. The fact of liberalization and the specifics of the process are in equilibrium. The process may change either because underlying interests change or for exogenous reasons. Regardless of the particular reason for change, changes in the process have far-reaching consequences for policy. Process changes have made it more difficult for import-competing groups to find a majority to support their position while encouraging the organization of exporter interests.

The success of groups who support liberalization, however, should not be construed as evidence that policymakers no longer need to worry about veto groups undercutting trade policy. Liberalization may have changed the face of the proprotection lobby, but it has not eliminated its potential power. Even in the United States, long a proponent of the liberal trade regime, elected officials repeatedly face pressures from antitrade groups. *** These social pressures have led strategic trade negotiators to bundle the gains to exporters from access to new markets with the losses to import-competing producers from new competition from abroad.

⁸ On trade and interest groups, see Destler 1995; and Lohmann and O'Halloran 1994.

⁹ Whether it was a change in the balance of group interests or a shift in trade policymaking that explains the ability of governments to lower barriers to trade is difficult to determine in the early years of the GATT regime. Certainly, in the United States interest-group activity was muted because the costs of organizing increased when the president obtained increased control of trade policymaking. Still, the shift toward openness would not have occurred without underlying social support. For an analysis of the relationship between institutional and underlying social variables, see Bailey, Goldstein, and Weingast 1997.

Whatever the specifics of this trade-off at the negotiating table, the result must be an agreement that can garner majority support at home. If information about the distributional implication of agreements affects the propensity of groups to organize during negotiations, it may be easier to get to that “optimal bundle” in situations where some uncertainty exists about who is and who is not affected by the trade deal. Providing this information about the effects of either a potential commercial agreement, the behavior of a trading partner, or the dissolution of a trading pact is a central function of the contemporary trade regime. The WTO collects and disseminates trade data in preparation for rounds of trade talks; it monitors compliance and inventories national practices that undermine the free flow of goods and services.

Over time, the GATT/WTO regime has dramatically increased its ability to deliver this information to member countries.¹⁰ In initial rounds of negotiations, tariff information was not systematically collected. Nations relied on data supplied by their negotiating partners, and thus the computation of offers and counteroffers for “balance” was done using often-incomplete statistics. *** In 1989, the Trade Policy Review Mechanism was authorized at the Montreal midterm review of progress in the Uruguay Round. This began a process of regular country studies, providing sector and product information on practices of GATT members. The four largest trading powers – Canada, the European Union (EU), Japan, and the United States – are reviewed every two years; the sixteen member countries that are next in the value of their trade are reviewed every four years; most other members are reviewed every six years.¹¹ The result has been a more symmetric information environment.¹²

This increased monitoring activity in itself is not a result of “legalization” according to the definition adopted. Still, it has been tightly bound up with increased formalization and precision of commitments both at the time of and during the life of an agreement. The result is a far richer information environment than at any previous time. One aspect of WTO operations, for example, that is more public than in the past is the ministerial meeting. *** Along with changes in WTO policy, a key demand of antitrade groups has been less secrecy in WTO proceedings. Although

¹⁰ Keesing 1998.

¹¹ Ibid.

¹² The GATT’s move to the Trade Policy Review Mechanism was motivated by the perception that information was key in negotiations but that it was available only to the large countries. Ibid.

some Western governments, including the United States, have defended the principle of transparency, most representatives in the WTO strenuously resist this demand.¹³ Still, transparency has increased over time. Early rounds were akin to clubs. Deals were struck among a small group of like-minded representatives, behind closed doors. Later rounds eschewed this general negotiating form. Although private negotiations occurred, and were often the most productive, more time was spent in formal settings, with delegates giving prepared speeches that offered few, if any, real trade concessions. Thus the demand for more transparency has been met by more open meetings and more press coverage, but the effect of these particular changes has been muted; delegates continue to worry about domestic constituencies and remain wary of saying anything that would get them into trouble at home.

Increased provision of information to delegates is not, we acknowledge, evidence of complete transparency in the trade regime. Although legalization has resulted in a movement toward transparency, we cannot claim to have reached a situation of complete and perfect information. The WTO retains many of the elements of the GATT, including its preservation of member countries' rights to secrecy. The empirical evidence does not adequately allow us to make precise estimates of the level of transparency. We can, however, identify a trend toward greater openness. When the GATT was established in the late 1940s, the confidentiality rule adopted by member countries was the strictest of any adopted by postwar international institutions.¹⁴ The correspondence of any delegate could be claimed as privileged. If a delegate did not formally rescind a confidentiality request within three years, the information became confidential in perpetuity. Why this rule? Simply, delegates did not want information to leak back home. Offers made during negotiations could be highly sensitive, and although the final package would be made public, it came home as a "closed" deal – groups could not easily pick it apart.

The early delegates to the GATT understood that too much information would incur import-competing group pressures and undermine their ability to make trade-offs among groups. Policymakers need to be able to bundle agreements in order to procure majorities in their home countries. For politicians, the logic of membership in a multilateral trade institution is to facilitate the creation of larger bundles than are possible through bilateral bargaining.

¹³ *New York Times*, 4 December 1999, A6.

¹⁴ Richard Blackhurst interviews.

TABLE 8.1. *Trade Bills in the U.S. House of Representatives, 1975-98*

	Number of bills	Percentage providing side payments rather than direct protection
1975-78	79	14
1979-82	43	28
1983-86	61	26
1987-90	61	21
1991-94	47	13
1995-98	48	38

Source: *Congressional Index*, various years.

Efforts to devise free-trade coalitions in an environment of market liberalization help explain the changing structure of trade rounds. ***

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*** Politics was never removed from the liberalization process, although the regime's structure did affect which domestic groups were able to translate their preferences into policy. Thus, adopted formulas were never intended to be binding on parties, and national offers were rife with exceptions. Preparation for rounds involved difficult negotiations with potentially powerful veto groups, often leading to an assortment of side payments issued in the early phase of negotiations.¹⁵ Drawing on U.S. congressional indexes, we illustrate in Table 8.1 one way that this phenomenon manifested. The table summarizes the rise in the number of bills that provided side payments, usually in place of a more direct policy to curb imports. During the 1975-94 period, the number of side-payment bills that made their way to the House floor is high, though fairly stable. The data for 1995-98 suggest that under the WTO even more side-payment bills were used, as our analysis predicts.

Our attention to antitrade groups derives from two related observations. First, although liberalization has been extremely successful in the postwar period, it has always occurred in the shadow of organized opposition. Second, groups respond to information about impending trade talks, which motivates them to pursue particularistic policies. The existence of continued openness should not be interpreted as an absence of

¹⁵ Goldstein 1993.

protection group pressures. Although protection groups may have been more constrained, had less “voice,” and been balanced by well-organized exporter groups, once organized, they have powerful effects on policy.

Has there been a rise in interest-group activity since the creation of the WTO, as suggested by our analysis? Given the WTO’s brief existence, assessing the data is difficult. However, as evidenced by the significant rise in the number of groups attending the WTO’s November 1999 ministerial meeting, the WTO itself has engendered more attention from a wider range of domestic groups than ever before. For a whole host of reasons, some associated with legalization, the WTO has become a focus of attention not only for labor and producer groups, the traditionally interested parties, but also for environmental, health, and safety groups. Such attention is a result of the expansion of knowledge about what the WTO is doing as well as structural changes in the scope of the regime.

The regime’s effect on the mobilization of groups may also explain problems faced in initiating a new round of trade talks. The stated focus for a new WTO Millennium Round of talks is far more targeted than ever before; knowledge of who has been targeted has led to more and earlier activity than in previous rounds. The best exemplar is the agricultural sector, where good information about the locus of talks led to a cross-national campaign of producers to undercut negotiations.¹⁶ These types of increasing pressures, generated by more information about the liberalization process, will make it more difficult to find nations willing to launch trade rounds and, for those who do make it to Geneva, more difficult to make the necessary trade-offs among producers, even if export groups stay mobilized. After the November 1999 ministerial meeting the fate of the Millennium Round remains an open question, with most observers offering pessimistic assessments.

Mobilizing Export Groups

Although the mobilization of groups circumscribes the type of new deals that are possible, it also explains the stability of signed agreements. Leaders rarely renege on a GATT trade deal, even when faced with pressure from powerful rent-seeking industries. This stability was not due to GATT sanctions against such changes. Rather, changing specific tariffs, according to the rules, was relatively easy under a number of safeguard

¹⁶ Josling 1999.

TABLE 8.2. *Post-Negotiation Tariff Changes by Invoked Article for all GATT Members, 1961-90*

	Open season ^a	Out of season ^b	Article 28:5 ^c
1961-66 ^d	9	14	3
1967-72	8	7	15
1973-78	5	3	31 ^e
1979-84	1	1	66 ^f
1985-90	1	1	19
1991-93/94	4	1	5

^a *Open season* refers to the usage and invocation of GATT Art. XXVIII: 1.

^b *Out of season* refers to the usage and invocation of GATT Art. XXVIII: 4.

^c Before the end of a period of "firm validity," a country may reserve to modify their schedule. The numbers in this column refer not to the election of this right, but to its usage (the actual modification).

^d The time periods correspond to two periods of "firm validity," except the last time period (1991-93/94) for which we have only three years of data. Art. XIX data are as of 1 December 1993. Art. XXVIII data are as of 30 March 1994.

^e Of these cases, 22 are either New Zealand's or South Africa's.

^f Of these cases, 32 are South Africa's.

Source: *GATT Analytical Index* 1994.

provisions of the GATT regime. Under GATT rules, nations could change tariffs every three years during the "open season," in between these times "out of season," and/or under Article 28:5, as long as the general tariff level remained the same. Keeping the overall level of tariffs stable, however, was not easy for politicians at home. The problem with giving compensation was the trade-off it created between the group pressing for aid and some other producer. This type of a trade-off is difficult for politicians.

Table 8.2 shows the use of these provisions for changing particular tariffs post-negotiation. What is striking is that, although the regime legally provided a substantial amount of flexibility, these provisions have only rarely been invoked. Given the thousands of products affected by cuts, only a few countries rescinded an agreement to bind their tariffs. For GATT members, these provisions were akin to a Pandora's Box. Having to change a schedule, item by item, in the absence of reciprocal benefits meant trading off one domestic sector for another. The political problems this engendered assured that few GATT countries chose to deal with import problems through these means.

Another perspective on mobilization is evident in attempts to mobilize export groups in support of free trade by strategically using threats of retaliation. States making a threat of retaliation that is intended to mobilize exporters in other countries, such as the United States in implementing Section 301, must consider how to maximize the pressure applied by exporters to the other government. Announcing threats of definite retaliation against just a few groups would not have the desired effect. These groups would certainly mobilize, but those left off the short list would not. At the other extreme, announcing a very large or vague list of possible targets of retaliation would also fail to mobilize many exporters. This tactic would create massive collective-action problems, since each exporter would be only part of a potentially universal coalition and therefore face incentives to free ride. In addition, lack of precision in the possible targets of retaliation might encourage exporters to wait and take their chances on being hit, rather than bearing the definite, immediate costs of mobilization.

With these considerations in mind, if our story about mobilization is correct, the strategic use of retaliatory threats should be quite precise. In addition, it should target a group of exporters large enough to put pressure on the government, but not so large as to exacerbate collective-action problems. Section 301 cases provide a good source of evidence on the use of retaliatory threats, since they list the potential targets of retaliation when the other government does not reach a settlement with the United States.

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The threat of retaliation, if issued with an appropriate degree of precision, activates export groups. This suggests that the GATT/WTO should allow or even encourage retaliation in the face of deviation from regime rules. The GATT structure, incorporating reciprocal retaliation and/or alternative market access in response to renegeing on a concession, even under safeguard clauses, may have been better than the alternative adopted by the WTO. WTO rules waive the right to both compensation and/or retaliation for the first three years of a safeguard action. Those who supported the change argued that this would encourage nations to follow the rules – when nations could defend their reasons for invoking safeguard actions as “just,” they should be protected from retaliation.¹⁷ The logic offered here suggests the opposite. Circumstantial evidence in

¹⁷ Krueger 1998.