

Learning from the Past: WTO Litigation Experience and the Design of PTAs

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Our Central Claim

Experiences in WTO litigation

↓ Learning by domestic industries

PTA design:

1. Enforcement
2. Flexibility

Existing Literature

- ▶ **Learning and preferences for institutional design:**

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1. Learning from prior interaction with a **future treaty partner**
(Copelovitch and Putnam, 2014)

Existing Literature

- ▶ **Learning and preferences for institutional design:**

1. Learning from prior interaction with a **future treaty partner**
(Copelovitch and Putnam, 2014)
2. Learning from experiences in **trade and investment disputes**
(Elsig and Eckhardt, 2015, Manger and Peinhardt, 2014, Poletti and De Bièvre, 2016, Rühl, 2014)

3 Assumptions

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 - 2.1 Exporters: On-set and scope of PTA negotiations
 - 2.2 Import-competing industries: PTA enforcement and flexibility

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1. Trade policy = $f(\text{domestic industries})$
2. Mobilisation:
 - 2.1 Exporters: On-set and scope of PTA negotiations
 - 2.2 Import-competing industries: PTA enforcement and flexibility
3. Industry mobilisation: Fire-alarm mechanism

Causal Mechanism

Opposition in a WTO dispute



Updating of the **belief** about $\text{prob}(\text{challenge})$ under PTA:
 $\text{prob}_2(\text{challenge}) > \text{prob}_1(\text{challenge})$



Increase in **mobilisation**



Government **preference** for PTA design:

1. Enforcement ↘
2. Flexibility ↗

Hypotheses

H1

The more countries were opposed in WTO disputes prior to signing a PTA, the weaker the enforcement mechanism found in their trade agreement.

H2

The more countries were opposed in WTO disputes prior to signing a PTA, the higher the degree of flexibility found in their trade agreement.

Operationalisation

DVs

Enforcement:

Legal dispute settlement (0-1)

Retaliation mechanism (0-5)

Flexibility:

Flexibility strings (0-6)

Source: Design of Trade Agreements (DESTA)
database (Dür et al., 2014)

n = 347 PTAs post-1990

Operationalisation

EV

Prior interaction in WTO litigation:

WTO disputes opposed
(count; log-transformed)

Sources: Datasets on WTO members' positioning in disputes (Bechtel and Sattler, 2015, Kucik and Pelc, 2015), supplemented with own coding
n = 415 disputes

Operationalisation

EV

Prior interaction in WTO litigation:

A	B	C
defendant	complainant	third pro-complainant

AB, AC: opposition

BC: alignment

Baseline Results

Variables	Legal Dispute Settlement	Retaliation mechanism	Flexibility strings
WTO disputes opposed	-0.383 (0.383)	-0.440** (0.199)	-0.350** (0.174)
Political and economic controls	Included	Included	Included
Regional FE	Included	Included	Included
Temporal FE	Included	Included	Included
Observations	347	347	347
Model	Probit	Ordered probit	Ordered probit

Standard errors in parentheses. Constant (cuts) omitted from the output table.

Levels of statistical significance set conventionally: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.10$

Predicted Probabilities

Strength of the PTA retaliation mechanism

**Prior interaction
in WTO disputes**

**0
(weakest)**

No interaction

0.301

Opposition (1 case)

0.414

Recap

- ▶ **Past experiences** spill over to **PTA design negotiations**.
- ▶ Opposition in **WTO** disputes leads to weak **retaliation mechanisms** and few if any **flexibility strings**.
- ▶ Learning from the past takes place, but it is confined to litigation experience at the **WTO** as a proximate and salient forum for interaction.

Many thanks for your attention!

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Operationalisation

CVs

Further variables for prior interaction:

Alignment in WTO disputes

WTO coalitions

BITs and BIT disputes

UN-notified bilateral treaties

Political and economic controls

Regime type and democratisation

Veto players

WTO membership and mission size

GDP, GDP per capita and GDP asymmetry

Trade flows

European Union and United States dummy

Member states, depth and escape flexibility

Temporal and regional FE

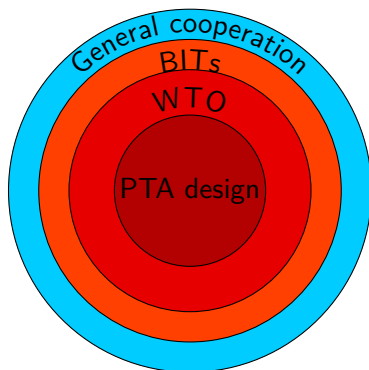
Extended Baseline Results

Variables	Legal Dispute Settlement	Retaliation mechanism	Flexibility strings
WTO disputes opposed	-0.383 (0.383)	-0.440** (0.199)	-0.350** (0.174)
WTO disputes aligned	0.414 (0.290)	0.158 (0.186)	0.179 (0.163)
WTO coalitions	0.0764 (0.315)	0.234 (0.209)	0.0661 (0.185)
BIT	-0.197 (0.212)	-0.145 (0.162)	-0.235 (0.143)
BIT dispute	-0.667 (0.791)	-0.0150 (0.477)	-0.233 (0.449)
UNTS bilateral	0.0323 (0.134)	-0.140 (0.0986)	0.172** (0.0874)
Political and economic controls	Included	Included	Included
Regional FE	Included	Included	Included
Temporal FE	Included	Included	Included
Observations	347	347	347
Model	Probit	Ordered probit	Ordered probit

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Levels of statistical significance set conventionally: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.01$

Dilution effect



Illustration

- 2009** | Launch of the **CETA** negotiations
- 2011** | European Union **challenges** Canada for procurement rules in energy (Ontario Power Authority; WTO DS246)
- 2013** | **Canadian energy sector** calls upon the government to “fully safeguard its existing policy flexibility over procurement and renewable energy” (Sinclair, 2013)
- 2016** | CETA Annex 19-4 with **flexibility** for procurement by Ontario Power Generation

Robustness Checks

- ▶ Ordered logit estimation
- ▶ Maximum number of disputes
- ▶ Intra-industry trade and retaliation
- ▶ Power asymmetries (OECD, GDP-weighted templates)
- ▶ General template provisions
- ▶ Binary litigation variables
- ▶ Moving time windows (20 to 3 years)
- ▶ General litigation experience
- ▶ Two-stage estimation

Two-Stage Estimation

Variables	Retaliation mechanism Second stage	Retaliation mechanism First stage	Flexibility strings Second stage	Flexibility strings First stage
WTO disputes opposed	-0.482** (0.207)	-0.0114 (0.0656)	-0.311* (0.172)	-0.0131 (0.0650)
WTO disputes aligned	0.314 (0.211)	0.386*** (0.0662)	0.198 (0.157)	0.385*** (0.0660)
Political and economic controls	Included	Included	Included	Included
Regional FE	Included	Included	Included	Included
Temporal FE	Included	Included	Included	Included
Observations	347	75'456	347	75'456
Model	Ordered probit	Probit	Ordered probit	Probit

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Levels of statistical significance set conventionally: *** p<0.01, ** p<0.05, * p<0.01

General Litigation Experience

Variables	Retaliation mechanism	Flexibility strings
WTO disputes opposed	-0.496** (0.194)	-0.321* (0.168)
WTO disputes defendant activity	-0.494** (0.245)	-0.576*** (0.211)
Political and economic controls	Included	Included
Regional FE	Included	Included
Temporal FE	Included	Included
Observations	347	347
Model	Ordered probit	Ordered probit

Standard errors in parentheses. Constant (cuts) omitted from the output table.

Levels of statistical significance set conventionally: *** $p < 0.01$, ** $p < 0.05$, * $p < 0.01$