
LEGALIZATION AND COMPLIANCE: HOW JUDICIAL ACTIVITY UNDERCUTS THE GLOBAL TRADE REGIME

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ABSTRACT

The World Trade Organization (WTO) has been a subject of debate over whether to replace the political-diplomatic dispute settlement model under the General Agreement on Tariffs and Trade (GATT) with a legalized dispute settlement model. The GATT model allowed a panel report to be given full legal force only if adopted by a consensus of GATT Contracting Parties. The WTO model automatically adopts a panel or Appellate Body report unless a negative consensus is reached. Critics argue that the legalized approach might be cumbersome in different political contexts.

The World Trade Organization crisis highlights the trade-off between legalization and compliance in international legal systems. Extending legal precedent can reduce flexibility in agreements. This highlights the life cycles of international organizations and questions of design and cooperation in international legal systems. Most WTO disputes focus on interpretation of vague provisions or silent agreements. The Dispute Settlement Body (DSB) could grant exceptions to rigid contractual obligations to "complete" incomplete contracts. The study examines the independence of international courts from state influence and how they manage the tension between legal principles and political concerns. It reveals that the ad hoc nature of WTO dispute settlement panels, judicial hierarchy, and panelists' concern for compliance encourage them to moderate rulings against powerful members. The study suggests that WTO panels use judicial economy to reduce the scope of having an underlying issue regarding the judicial compliance and dispute resolution in the international trade.

Keywords: WTO, Dispute resolution, Judicial precedents

INTRODUCTION

Significant advantages are offered by international exchange in international economic interactions between states and businesses around the world. International trade is vital since it gives room for expansion of market as well as making it possible to import goods which may not be available domestically, hence resulting in lower prices and cheaper products reaching customers. It is important to appreciate how much international trade contributes to global efficiency as capital and labor shift towards the most effective use within industries. Additionally, international trade creates a global marketplace upon which the world economy relies for prosperity. It fosters the economic growth, development, and poverty reduction. It broadens market size, stimulates economies, and promotes efficiency internationally. International trade is important because it provides an arena that leads to economic growth and prosperity across nations throughout the world.

Today's world relationships re-volve around a careful mix of global trade rule-s and deals. These rule-s shape how countries work togethe-r economically. The desire- is for fair, clear, and stable international trade-. Law structures and ways to solve disputes show the- world's dedication to operating trade across borde-rs based on clear rules. But, whe-n court actions mix with these laws, we se-e interesting and subtle- shifts. It makes us question the e-ffectiveness and unplanne-d results of the global trade system.

The Agreement Establishing the World Trade Organization (WTO Agreement) significantly enhances and refines the trade regulations previously outlined in the General Agreement on Tariffs and Trade (GATT). This expansion aims to streamline trade processes, foster economic growth, and generate employment within the increasingly interconnected global economy. Advocates of trade liberalization generally applaud these updated regulations, particularly highlighting the considerable improvements in dispute resolution procedures¹. However, certain environmental and labor organizations express reservations about whether the newly established dispute settlement rules may subordinate or weaken objectives unrelated to trade policy. These concerns have been

¹ American Journal of International Law, Volume 90 , Issue 3 , July 1996 , pp. 416 – 418 DOI: <https://doi.org/10.2307/2204065>

prominently voiced, especially by some American politicians endorsing economic nationalism².

Many regard the WTO crisis as an illustration of their rising disenchantment with decades-long neoliberal policies. But the issues with the WTO existed before the current "populist backlash." The organization's underlying fundamental problems are reflected in the crises. The boundaries of legality in international dispute settlement are shown by the WTO. Institutions become "legalized" when states give power to a set of exact, legally-binding regulations. Theoretically, states can gain from highly legalized entities. There is a common interest among governments to bind each other to the law³. However, efforts to uphold international law may fail. States defend their sovereignty, and they oppose giving over power to arbitral tribunals with legal force. This study focuses on how legalization, courts and behaviour compliance interact in global trade. As countries use more legal methods to solve trade conflicts and translate intricate contracts, the effect of court rulings on global trade order's stability and effectiveness comes under the spotlight.

RESEARCH OBJECTIVE:

- ☐ To examine the legal dispute resolution mechanisms and judicial activity in International trade disputes.
- ☐ To analyze the impact of national level judicial activities upon the International trade in dispute resolutions and trade decision making.
- ☐ To observe the consequences of non-compliance in the international trade laws.
- ☐ To understand the need for legalization and compliance of trade policies as per international agreements.

RESEARCH QUESTIONS:

- ☐ How effective and influential is the international trade law dispute settlement system?

² Kucik, J., Peritz, L., & Puig, S. (2023). Legalization and Compliance: How Judicial Activity Undercuts the Global Trade Regime. *British Journal of Political Science*, 53(1), 221-238. doi:10.1017/S0007123422000163

³ Id, at 221

- Do judicial perspectives on international trade law at the national level support judicial independence and trade decision-making?

RESEARCH HYPOTHESIS

The significant reliance on precedents and noncompliance with legislative techniques related to the reasons of unsuccessful GATT negotiation rounds and reliance on precedent by international tribunals have a favorable impact on the body that settles disputes pertaining to international trade.

RESEARCH METHODOLOGY

The researcher had followed the method of doctrinal, descriptive, and analytical for the entire research. And the researcher had referred the books based on the given topic for the wide information that can be included in this research paper.

LEGALISATION AND COMPLIANCE UNDER INTERNATIONAL TRADE

At the international level there is the concept of legalisation which means giving authority to a mechanism having clear rules. This implies that legal rules have to be generated and diffused as well as making sure that legal bonds are firm enough and the enforcement process is efficient. First, highly legalized institutions tie one state's hand to the law and help another to protect its sovereign interest and flexibility⁴.

However, compliance in the context of international trade includes tangible policy changes by the respondents in reaction to judicial rulings or pledges they have previously made. Compliance is about observing the laws of the country whose products are being exported to or imported to. However, for WTO the concept of compliance⁵ means a mere quantitative evidence of policy change in response to unfavourable ruling and hence does not depend on mere amendment. Briefly, "legalization" stands for developing and promoting binding legal rules, and "compliance" means real changes in concrete policies as a result of court judgments and pledges. These ideas are

⁴ Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal, The Concept of Legalization, <https://www.princeton.edu/~amoraves/library/concept.pdf>,

⁵ What is Trade Compliance?, Mouse and Bear (m&B), accessed on 21/11/23, <https://www.mouseandbear.com/blog/what-is-trade-compliance.htm>.

relevant to the operational mechanisms of world trade regulation and implications arising from jurisdiction activities towards international commerce.

International trade is greatly determined by a compromise that happens among legalization and compliance in international law systems. The act of giving rise to legal norms, and subsequently making them binding, contributes to adherence to universal trading regulations. They remind us that even after becoming law – it is beyond the power of state, to hold this or any other event of such nature⁶.

The WTO crisis shows how increased legalization of trade law may be an expensive gamble. Increasing reliance upon precedent to enforce trade law too much often results in more legality of trade law, which might unbalance the politics of compliance. In addition, the legalization process may impact on the behaviour of domestic groups inasmuch as it enhances the exactness of legislations and openness of contracts which ultimately lead to observance of international trade regulations. The expansion of legal provisions and intensification of its effects brought on standardized regulations on trade activities among most countries globally. This affects how domestic groups behave and adherence to international trade laws⁷.

Finally, the trade-offs involved in international legal system as far as legalisation and compliance have a strong effect on international trade transactions. Legal norm multiplication, coupled with growing stringency, is pertinent for interpreting trade laws, while legitimacy versus compliance issue is pivotal to analyses on co-operation.

IMPACT OF CURRENT JUDICIAL MECHANISM UPON LEGALISATION AND COMPLIANCE OF INTERNATIONAL TRADE

Judicial mechanism effects in terms of legality and compliance to global trading process is a broad and advancing issue. The recent events underscore the choice that must be between the formalisation and compliance in international law system especially amidst WTO crises.

⁶ Kucik, Jeffrey & Peritz, Lauren & Puig, Sergio, 2023. "Legalization and Compliance: How Judicial Activity Undercuts the Global Trade Regime," *British Journal of Political Science*, Cambridge University Press, vol. 53(1), pages 221-238, January.

⁷ Arie Reich, *From Diplomacy to Law: The Juridicization of International Trade Relations*, 17 *Nw. J. Int'l L. & Bus.* 775 (1996-1997)

Resistance to honour binding rulings can contradict the states' wills and desires to safeguard their sovereignty and retain flexible commitments, exemplified by WTO's ongoing crisis⁸. Adhering to trade law raises a dilemma as it might be viewed as reducing the flexibility intentionally incorporated within trade agreements thus derailing the fragile political compromise necessary for trading nation's compliance with trade Law.

Conventionally, most countries have adopted a legal regime that regulates their mutual trade relations owing to the increase in legal norms and their enforcement. Nevertheless, dispute bodies going beyond their jurisdiction and the continued application of legal precedent may create less immediate conformity leading to more delays in member compliance. The need to reform WTO disputes settlement system, such as the inflexibility which arises out of overreach will be highlighted⁹. Therefore, it is important to state that the effect on legalization and compliance of the current judicial mechanism in the international trade are crucial. Balancing legalisation with enforcement poses a challenge in global trade relationships; excessive judicial activity may encourage non-compliance which defeats the global trade system by default.

However, reforms to the dispute settlement system might have to be enacted in order to combat these issues as well as to restore some of the flexibility lost by way of being too controlling. Additional studies and analyses should be undertaken in order to better comprehend this issue from all aspects and propose measures aimed at increasing the effectiveness of courts' influence on legality and fairness of the world trade.

INFLUENCE AND EFFICIENCY OF TRADE DISPUTE MECHANISM

The cornerstone of the multilateral trade system and the WTO's distinct contribution to the stability of the world economy is dispute settlement. The rules-based system would be less successful if there was no way to resolve conflicts since the rules could not be enforced. The WTO's process strengthens the rule of law and improves the security and predictability of the trading system. The

⁸ Simmons, Beth A. "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs." *The American Political Science Review*, vol. 94, no. 4, 2000, pp. 819–35. JSTOR, <https://doi.org/10.2307/2586210>. Accessed 22 Nov. 2023.

⁹ Kahler, Miles. "Conclusion: The Causes and Consequences of Legalization." *International Organization*, vol. 54, no. 3, 2000, pp. 661–83. JSTOR, <http://www.jstor.org/stable/2601348>. Accessed 22 Nov. 2023.

World Trade Organization's whole membership either accepts or rejects the panel's initial decisions. Legal issues of contention may give rise to appeals.

But making judgments is not the purpose. The first priority is to resolve conflicts, preferably through talks. Of the about 369 cases, only around 136 had proceeded to the full panel stage by January 2008. The most of the remaining cases have either been declared settled "out of court" or are still in the lengthy consultation stage, some of which date back to 1995¹⁰.

DISPUTE MECHANISM IN INTERNATIONAL TRADE

One of the main functions of the WTO is the settlement of trade disputes. When one member nation feels that another is breaking a deal or a pledge it has made to the WTO, a dispute breaks out. One of the world's busiest international dispute resolution processes is found within the WTO. Over 350 decisions have been made in 621 disputes that have been brought to the WTO since 1995¹¹. All WTO members make up the Dispute Settlement Body, also known as the General Council in another incarnation, which is in charge of resolving disputes. The exclusive power to form "panels" of experts to review the case and decide whether to accept or reject the panels' conclusions or the outcome of an appeal rests with the Dispute Settlement Body. It oversees the application of the decisions and suggestions and can order punishment against a nation that disobeys a rule.¹²

First stage: Consultation (up to 60 days). Before taking any other actions the countries in dispute have to talk to each other to see if they can settle their differences by themselves.

Second stage: The panel (up to 45 days for a panel to be appointed, plus 6 months for the panel to conclude). If consultations fail, the complaining country can ask for a panel to be appointed. The country "in the dock" can block the creation of a panel once, but when the Dispute Settlement Body meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel). After these the hearing will be happening with an ending

¹⁰ World Trade Organisation, https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm, (last visited 21st November 2023)

¹¹ World Trade Organisation, https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm, (last visited 21st November 2023)

¹² Id

report which would later become a ruling. During the recent years the influence or interaction of third party was increased or up to a 90% they had a greater influence in the dispute mechanism¹³.

The WTO's dispute resolution process is one of its main features. Statesmen who participated in the Uruguay Round, as well as present ambassadors and officials of the WTO, are rather proud of this trait. The international trade system and trade diplomacy have been greatly impacted by the WTO dispute settlement process. Its juridical and legalistic framework for resolving disputes, along with the nearly automatic and binding execution of its rulings and reports to its members, set it apart from other international legal organizations. Furthermore, the queries put up to the dispute resolution mechanism frequently get at the core of the conflict between the defence of national sovereignty and the globalization of national economies, which need increasingly broad cooperation systems to flourish globally¹⁴.

IMPACT OF NATIONAL LEVEL JUDICIAL DECISION MAKING ON INTERNATIONAL TRADE LAW

National court's position within the framework of international trade relations and its influence on judicial independence and the process of making trade decisions is a very complicated issue that continues to develop. National courts' views on international trade law may affect independent justice and trade policy making¹⁵. Judicial review in international trade has become much more significant as individuals resort more often to national courts basing their claims on international rules.

For instance, the US court of international trade is extremely vital jurisdiction on international trading¹⁶. To put it differently, it's one of those institutions that contribute to rule of law. In his article, "The Role of National Courts in International Trade Relations", Meinhard Hilf¹⁷ discusses

¹³World Trade Organisation, https://www.wto.org/english/tratop_e/dispu_e/disputats_e.htm, (last visited 21st November 2023)

¹⁴ Jackson, John H. "The Role and Effectiveness of the WTO Dispute Settlement Mechanism." *Brookings Trade Forum*, vol. 2000, 2000, p. 179-219. Project MUSE, <https://doi.org/10.1353/btf.2000.0007>.

¹⁵ Meinhard Hilf, *The Role of National Courts in International Trade Relations*, Volume 18, *Michigan journal of international law(MJIL)*, 324-356, cited pg 327, 1997

¹⁶Jackson, John H. "Perspectives on the Jurisprudence of International Trade." *The American Economic Review*, vol. 74, no. 2, 1984, pp. 277–81. JSTOR, <http://www.jstor.org/stable/1816369>. Accessed 22 Nov. 2023.

¹⁷ Supranote 9

latest practices in judging review in the field of foreign affairs and evaluates whether there is judicial review at national and international levels of protection as well as prospects to couple them. Additionally, the thesis "From Diplomacy to Law: "The Juridicization of International Trade Relations" calls for an integrated approach to look at the global trade relations, seeing law as generally combining substantial and institutional components that are not limited to the multilateral level exclusively. The sources present arguments about the changing role of national courts in global commerce, the risk of curtailment of judicial independence and fair judicial trade determination. Nevertheless, more exploration with regard to this subject might be required for one to comprehend the intricate nature of the matter¹⁸.

At the same time for a smooth and perfect trading the policies or decisions made by a state have more importance which has a proportional impact from judicial perspective. A judiciary can independently serve as a counterbalance to the power of executive institutions and act in compliance with legal rather than political approaches to trading affairs. A clearer and broader understanding of international trade law is possible with an independent judiciary, which may aid in better decision making¹⁹. These will ensure that trade decisions become more consistent and regular. The judiciary with an independent opinion can have a free and more effective judgements regarding trade disputes and also may enable making trade decision in favour of the merits of the case and not on the basis of politics. The rule of law that are prevailing regarding the International law will be endorsed with more prevalence if an independent judiciary can come up. Finally, it can be concluded that judicial independence is crucial in making the right decisions on trade. The constitution provides for an independent judiciary in order to enhance norms clarity, facilitate better decision making process, curtail excessive executive power and ensure fairness based on rule of law in trading issues²⁰.

CONCLUSION

The global trade regime entails legalisation and conformity under international trade. The increase

¹⁸ Supranote 2

¹⁹ Hansen, Wendy L., et al. "Specialized Courts, Bureaucratic Agencies, and the Politics of U.S. Trade Policy." *American Journal of Political Science*, vol. 39, no. 3, 1995, pp. 529–57. JSTOR, <https://doi.org/10.2307/2111643>. Accessed 22 Nov. 2023.

²⁰ Id

in the spread of legal norms and the reinforcement of their conventional value has created an international legal regime regulating inter-country trading between major states at large. Though this implies that trade laws must be stricter to ensure compliance, stringent legislation may not always bring desired results. As it may turn out, an attempt to reinforce already existing trade regimes may cause negative politics, which in turn, undermines trade regulations. It is important to ensure legal certainty, enhance the involvement of NGOs and foster international collaboration so as to tackle these problems. With this undertaking, states will be able to understand how the legalization and compliance relate to international trade relations and make way for a plan on promoting compliance in accordance with the international trade laws and spurring economic development.

Promoting the legal certainty will push countries towards the establishment of clear and predictable legal frameworks regarding international trade that can lead to compliance with international trade laws and subsequent economic growth; Strengthen nongovernmental organization's influence on developing countries in terms of encouraging such countries towards the achievement of compliance with international trade. Encourage cooperation between countries: Develop and promote cooperation among countries to combat problems surrounding international trade in goods and services. This will ensure common problems are identified and proper remedies developed.