Governance in International Trade Beyond the State: Collective Agency, the Actorness of Trading Blocs, and Institutional Learning



A thesis submitted in fulfilment of the requirements for the degree of
Doctor of Philosophy

Kenneth Stiller

Nuffield College
University of Oxford

Word Count: 57,571

August 2023

Abstract

The character of international cooperation is changing, turning increasingly complex, authoritative, and informal. Importantly, public authority is no longer confined to sovereign states but also exercised beyond the state. Addressing this aspect of international cooperation, this thesis develops a theory of transnational public authority that is based on authority-actor relationships rather than organisations. Moving beyond conceptualisations of delegation to international organisations (IOs), it presents a typology of distinct types of transnational actors. Collective agents – one of these types - allow multiple states to jointly act on the group's authority while maintaining direct control over implementation. It entails an increasingly variable and overlapping geometry of cooperation. The theory is then applied to explain the governance of international trade, where trading blocs emerge as transnational actors. Overwhelmingly operating as collective agents, not authoritative IOs, trading blocs engage in economic diplomacy and negotiate preferential trade agreements (PTAs) with third states. Trading blocs, it is argued, should thus be conceived of as collective political agents instead of static economic entities. Collective negotiations typically are a matter of choice: retaining the authority and capacity to negotiate on their own, trading bloc members have the ability to negotiate PTAs bilaterally and collectively. Collective negotiations are a means to overcome individual capacity constraints or to align intra-bloc rules with those governing external trade. Lastly, institutional diffusion processes from the multilateral trading system to the network of PTAs reveal how states' exercise of public authority is shaped by the indirect, epistemic influence of transnational actors. Learning experiences can help states overcome limitations caused by capacity constraints and, thus, mitigate heterogeneity in the international system. The empirical sections of this thesis follow a mixed methods approach. Analyses using a range of quantitative methods are complemented with more than 20 interviews with PTA negotiators and officials.

Acknowledgements

This thesis would not have been possible without the support, help and guidance of many other people and institutions - too many to mention exhaustively. So, if you read this thesis and feel that you have not been sufficiently acknowledged, please get in touch so that I can thank you directly.

I'd like to express my deepest gratitude to Duncan Snidal, who has supervised this entire project from the very beginning. His academic rigour and unfailingly constructive and helpful advice improved this thesis through each of its many iterations. Indeed, I remember - on more than one occasion - Duncan making a suggestion that I initially ignored, only to realise shortly afterwards I had been wrong in doing so.

Karolina Milewicz also supervised this thesis, which would not have been the same without her support and her direct and spot-on feedback, which I have always appreciated. It was also Karolina who encouraged me to gain my first teaching experience and to get involved in collaborative research projects. Karolina has never failed to provide helpful advice, both on my research projects and on the academic profession.

I am extremely fortunate to call Duncan and Karolina my friends. It is thanks to them that I have not only completed this thesis, but also learned how to be a good scientist, a member of the scientific community, and part of a larger endeavour that transcends the contribution and ego of any individual researcher.

It was at Oxford that I learned to challenge and to be challenged. Many people have played a part in this. I'd like to thank my College Advisors, David Leopold and Pepper Culpepper, for their guidance. Feedback at various stages of my thesis was provided by Andrea Ruggeri, Ria Ivandic and Richard Caplan. I'd also like to thank Todd Hall for the opportunity to present my work at the DPIR DPhil seminar and for his comments on my work. Most importantly, I'd like to thank the many participants in the IR Graduate Workshop for their rigorous comments and feedback on various earlier versions of this project. Since I believe that over the course of several years almost every participant has provided some feedback on my work in progress, I would like to express my gratitude to all of you.

I'd also like to thank Bernard Hoekman and Krzysztof Pelc, who kindly agreed to act as examiners and provided excellent comments which - I have no doubt - will be helpful in my future work.

This thesis would not have been possible without the financial support of Nuffield College and the Economic and Social Research Council, who jointly awarded me an Advanced Quantitative Methods

Studentship. The DPIR, where I was fortunate enough to gain my first teaching experience, provided a space for work and community as well as financial support through a Cyril Foster Grant. I would also like to thank Mansfield College, the Adam von Trott Foundation and Memorial Committee, and the German Foreign Office, without whose support I would not have been able to come to Oxford in the first place. I'm incredibly proud and humbled to have been part of this community and to have been an Adam von Trott Scholar.

Finally, my greatest thanks go to all those who have accompanied me on this journey, sometimes suffering the adverse consequences that may come with the task of writing a doctoral thesis. My friends who - after an abysmal football match in December 2019 – suggested we visit a random exhibition where I happened to stumble upon an 1837 free trade agreement that would later inspire parts of my work. I'm also fond of remembering the scramble across Crete to get to our hotel just in time for me to join an online call.

And, of course, my family, who provided the emotional support necessary to complete a doctoral thesis - and who gave me this opportunity and we there for me throughout all these years. In particular, my mum never stopped supporting me during short visits - despite sometimes ridiculous and rushed travel schedules. To them I will always be grateful and dedicate this thesis.

Table of Contents

Page

List of Abbreviations **VI**

1 Introduction **1**

1.1 Argument in Brief 2

1.2 Literature Review 3

1.3 Contribution 6

1.4 Overview of the Thesis 7

2 A Theory of Transnational Public Authority: The Rise of Collective Actors & Authority beyond Delegation to International Organisations **10**

3 Collective Negotiations or Going Bilateral? The Foreign Economic Policy of Trading Blocs as Collective Political Actors **48**

4 The WTO as Multilateral Diffusion Hub: Institutional Learning in WTO Disputes and the Design of Preferential Trade Agreements **119**

5 Conclusion **175**

References **177**

List of Abbreviations

ACP ..... African, Caribbean and Pacific Group of States
ALADI ..... Latin American Integration Association
APEC ..... Asia-Pacific Economic Cooperation
ASEAN ..... Association of Southeast Asian Nations
BIT ..... Bilateral Investment Treaty
CACM ..... Central American Common Market
CAIS ..... Central American Integration System
CARICOM ..... Caribbean Community
CJEU ..... Court of Justice of the European Union
CPTPP ..... Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CRNM ..... Caribbean Regional Negotiating Machinery
DESTA ..... The Design of Preferential Trade Agreements Database
DG ..... Directorate General
DSM ..... Dispute Settlement Mechanism
DSU ..... WTO Dispute Settlement Understanding
EAC ..... East African Community
EAEU ..... Eurasian Economic Union
ECJ ..... European Court of Justice
ECOWAS ..... Economic Community of West African States
EFTA ..... European Free Trade Association
EEA ..... European Economic Area
EU ..... European Union
FIGO ..... Formal Intergovernmental Organisation
GATT ..... General Agreement on Tariffs and Trade
GCC ..... Gulf Cooperation Council
GEFC ..... Gas Exporting Countries Forum
GOST ..... State Union Standard
IIGO ..... Informal Intergovernmental Organisation
IO ..... International Organisation
MERCOSUR ..... Southern Common Market
MIKTA ..... Group of Mexico, Indonesia, Republic of Korea, Turkey and Australia
NAFTA ..... North American Free Trade Agreement
OCTA ..... Office of the Chief Trade Adviser
OECD ..... Organisation for Economic Co-operation and Development
OPEC ..... Organization of the Petroleum Exporting Countries
PTA ..... Preferential Trade Agreement
RCEP ..... Regional Comprehensive Economic Partnership
SACU ..... Southern African Customs Union
SADC ..... Southern Africa Development Community
WTO ..... World Trade Organization

1 Introduction

One morning during a round of negotiation on the EU-MERCOSUR preferential trade agreement (PTA), an official from the French embassy, identifying a subject matter of interest to their country, sought to attend one of the sessions. *"Who is this person?"*, the irritated EU Chief negotiator - who is an official of the European Commission's Directorate-General Trade - asked, before having the French diplomat removed from the premises.[1] While this anecdote should be a rather unusual occurrence, it poignantly contrasts the differences between the negotiating parties. Despite commonly being framed as inter-bloc PTA, two different types of actors were negotiating the agreement: On one side of the table, European Commission officials were negotiating on behalf of the EU. Since trade policy is an exclusive EU competency, member states have surrendered the authority and ability to conduct their own trade policy. On the other side of the table, however, were officials from all MERCOSUR's member states, who jointly negotiated on behalf of the entire bloc.

This anecdote deserves closer scrutiny as it touches upon three important aspects of trade governance. Firstly, it illustrates distinct approaches to negotiating trade agreements by the EU and MERCOSUR. Despite operating within the framework of regional, formal intergovernmental organisations (FIGOs) - and thus usually considered the same type of actor, trading blocs -, the underlying processes varied vastly between the two parties. Whereas EU members conferred the authority to negotiate on EU staff, MERCOSUR members collectively negotiated on behalf of the bloc. Importantly, states overwhelmingly act collectively when negotiating as trading bloc. Identifying the relevant actors in global governance is a prerequisite to understanding how states organise governance beyond the state.

Secondly, the two distinct approaches entail significant consequences for the way states pursue trade policy. A collective approach, such as MERCOSUR's, allows trading bloc member states to retain both the authority and capability - e.g., in terms of personnel and technical expertise - to pursue their own independent trade policy. Economic integration typically does not preclude states from pursuing their own trade policy. In consequence, states may negotiate trade agreements both on their own and as part of a trading bloc. States indeed make ample use of this flexibility. When pursuing such dual trade policy, the choice about how states negotiate is situational.

Thirdly, the anecdote subtly hints at the role of state capacity in economic diplomacy and, possibly, its limiting states' policy leeway. Collective negotiations may help states overcome capacity constraints - it may be more difficult for MERCOSUR member states to conduct similar negotiations entirely on their own rather than collectively. In general, capacity is a prerequisite for autonomy

[1] Interview with an Uruguayan Official, 09.12.2021.

and shapes how states cooperate. Capacity, however, is not exogenous. Negotiators and officials can benefit from experiences they make from mutual exchanges in collective negotiations or in the multilateral trading system, where states can receive technical assistance. Learning processes thus can affect the strategy states follow as well as the process and outcome of economic diplomacy. Capacity constraints and learning experiences shape economic diplomacy, also in international trade, to a greater extent than may be acknowledged.

1.1 Argument in Brief

This thesis addresses the three aforementioned aspects of trade governance. It helps explain how governance in international trade is organised beyond states. In doing so, it explores the role of trading blocs, which - operating as collective agents - are actors in the international trading system. This thesis presents three separate yet connected papers that address central aspects of trade governance.

Conceptually, this thesis presents an alternative to organisational definitions of international cooperation - which already had been relaxed in various works on informal governance. While organisations are useful heuristics, they may not actually be authoritative actors in cooperation. At the same time, governmental tasks and responsibilities are no longer confined to sovereign states. To address this gap, this thesis develops a theory on the exercise of public authority beyond the state - transnational public authority. Rather than organisational features, the character of authority-actor relationships determines the transnational exercise of public authority. The theory's central contribution is the introduction of the concept of *collective agency*, where multiple states collectively act on behalf of the group's authority without delegation to IOs. In international trade, even when operating within the framework of a regional IO, states almost exclusive choose not to delegate authority to IOs. They operate as collective agent, which allows states to exert direct control throughout negotiations and to retain the capacity to act on their own.

Trading bloc members' acting as collective agent rather than through delegation of negotiations to an IO is consequential. States' collectively exercising public authority in international trade shapes how they conduct trade policy. The public authority framework acknowledges that trading bloc membership is less static and more variable. States simultaneously are members in multiple trading blocs and can also negotiate PTAs as part of several blocs. Trading bloc membership is not deterministic of how states pursue trade policy. Retaining the authority and capacity to act on their own, they can negotiate PTAs both bilaterally and as part of a trading bloc. In the latter case, collective negotiations allow states to overcome capacity constraints - by conducting negotiations they could not pursue on their own - or to align intra-bloc rules with those governing trade with third states. The latter allows states to reduce disruptive elements in trade governance. Trading blocs are political collective actors

as the decision between bilateral and collective negotiations entails an element of choice. Looking at organisational features alone may conceal how states exercise public authority and the flexibility they have in doing so.

State capacity shapes states' trade policy with respect to collective negotiations. However, capacity also affects bilateral negotiations. States that operate under capacity constraints cannot easily respond to institutional changes and innovation. Emphasising the role of the WTO, learning experiences in multilateral trade disputes are shown to influence the design of PTAs states subsequently conclude. The effect of institutional learning stresses the role of experiences for trade negotiators and officials beyond mere membership in institutions. Institutions may offer heterogenous opportunities and learning to their members. Diffusion through learning experiences helps transpose the institutional design of the multilateral system to PTAs. Thus, it contributes to the collective implementation of a single institutional model. Importantly, learning experiences are consequential for low-capacity states.

1.2 Literature Review

How do states organise cooperation in international relations and who are the relevant actors? The literature on international cooperation broadly revolves around a strand of research on the role of formal intergovernmental organisations (FIGOs) (Abbott/Snidal 1998), which is rich in theoretical and conceptual work. Besides seminal studies and various conceptual dimensions relevant to IOs such as *autonomy* (Haftel/Thompson 2006; Churchill/Ulfstein 2000); *independence* (Abbott/Snidal 1998); or *centralisation* (Koremenos et al. 2001; Abbott/Snidal 1998), the research agenda has expanded significantly in recent years.

More recently, the centre of attention has shifted to international authority, that is, the authority of IOs (Lenz et al. 2014; Zürn 2018; Hooghe et al. 2019). Being of central relevance for this endeavour, *delegation* of authority (to an independent IO body) and *pooling* (of sovereignty) have become prominent and widely-used concepts to conceive of the authority of IOs (Hooghe/Marks 2015; Hooghe et al. 2017). Delegation in broad terms can be defined as *"a conditional grant of authority from a principal to an agent that empowers the latter to act on behalf of the former"* (Hawkins et al. 2006, p. 7).[2] In terms of inter-state cooperation, delegation is expressed as a conferral of authority on an international body, i.e. IO, to act on behalf of member states (Bradley/Kelley 2008, p. 3). Partly in relation to these concepts, the autonomy and agency of IOs also has received increasing attention (Sarooshi 2005; Hawkins et al. 2006; Hooghe et al. 2017). The conceptual framework of pooling and delegation further has been the foundation for empirical projects aimed at quantifying the authority

[2]For an overview of general theories of delegation, see Bendor et al. 2001 and Nielson/Tierney 2003.

of IOs (Hooghe et al. 2017; Zürn et al. 2021).

Lamenting the lack of entrenchment in democratic systems with respect to international cooperation, Dani Rodrik critically noted that *"[u]ltimately, the quest for global governance leaves us with too little real governance"* (Rodrik 2011, p. 238). Given the growing yet selective politicisation of international cooperation (Zurn et al. 2012), the issue of legitimacy simultaneously has become ever more urgent (Tallberg/Zürn 2019). Concerns about legitimacy also contribute to the backlash against the liberal global order and its institutions (Börzel/Zürn 2021). Nonetheless, states have been observed to hamper the performance of IOs if they restrict the latter's autonomy (Lall 2023).

Relatively little attention, however, has been paid to IOs authority to act, that is, the extent to which they become actors in international relations. Typically, the role of actorness has largely been confined to the EU (Sjöstedt 1977; Bretherton/Vogler 2005). Conceptualisations of EU actorness, however, often are specifically tailored an in-depth analysis of a narrow policy area or instance of cooperation (Adriaensen 2016; Maurer/Raik 2018). Moving beyond rather abstract conceptualisations of actorness, the operational authority of EU agencies may offer a more succinct framework for actorness (Joosen/Brandsma 2017; Freudlsperger et al. 2022). That is, the authority to implement policies and, potentially, support or even replace responsibilities of states in selective - well-defined and limited - policy-areas. Conceptualisations of contracted authority, where authority derives from contracts among actors, can provide a framework for this logic (Lake 2009; Zürn 2018, p. 50).

Beyond formal institutions, the changing character of cooperation also is marked by other processes and forms of cooperation. The impact of technological change on diplomacy and the subsequent rise of transnational governance networks have altered the conduct of international relations (Slaughter 2005; Manulak/Snidal 2021). As part of a broader shift in the research agenda, recent work has increasingly been moving away from a conception entirely based on formal organisations. It thus relaxes the implicit organisational, and thus dichotomous, conception of IOs. Notably, a more nuanced distinction can be made between formal and informal intergovernmental organisations (IIGOs) (Vabulas/Snidal 2013; Vabulas/Snidal 2019). The latter are also conceived of as low-cost institution (Abbott/Faude 2020; Westerwinter et al. 2020). Besides emphasising the formality-informality nexus, these studies - either implicitly or explicitly - acknowledge that the organisational form of IOs can differ in meaningful ways.

Besides the rise of informal intergovernmental organisations, conceptions of relations in global governance also have moved beyond the principal-agent framework. Acknowledging different types of relations in global governance also helps qualify the role of IOs in indirect governance relationships, in particular with respect to non-governmental organisations (Johnson 2016). Orchestration and delegation have been identified as central mechanisms in indirect governance (Abbott et al. 2015; Abbott et al. 2016). More generally, Abbott et al. develop a systematic typology of indirect governance

relations and identify a competence-control trade-off governors are facing in indirect governance (Abbott et al. 2020).

Somewhat detached from the strand of literature on the organisation of international cooperation stands the revival of regionalism in international relations (Mansfield/Milner 1997 Söderbaum/Shaw 2003 Hettne 2005), which often is employed in the context of plurilateral cooperation or so-called club institutions. However, analyses often are limited to a small number of regional institutions and frequently centred on the inter-regional relations of the EU (Baert et al. 2014; Söderbaum 2015; Closa/ Casini 2016). This can be limiting, however, if regional IOs are considered a category sui generis, without considering meaningful commonalities shared by non-regional IOs. A focus on regional multi-purpose institutions also can conceal significant differences in cooperation across policy areas (Spandler/Söderbaum 2019).

The governance of international trade is a prominent field of international cooperation. Besides its regime complexity, research on trade can resort to abundant data, agreements, and organisations. Besides the multilateral cooperation under GATT and in the WTO, the network of PTAs is reflective of bilateral and plurilateral cooperation. The question of determinants of PTAs has received significant attention, both in terms of domestic and dyadic as well as economic and political determinants (Baier/ Bergstrand 2004; Manger 2009; Mansfield/Milner 2012). Explanations of the design of PTAs have seen similar effort to an ever more fine-grained level of detail (Dür et al. 2014). The expanding scope beyond traditional trade issues and the changing character of PTAs in recent years also impacts how states cooperate (Rodrik 2018; Maggi/Ossa 2020). The interdependence between PTAs creation and membership reflects the blurring boundaries of formal agreements and incentives to jointly participate in trade cooperation (Egger/Larch 2008; Chen/Joshi 2010; Manger et al. 2012; Kim et al. 2016). The role of trading blocs in PTA negotiations received some attention in recent years but often remains focused on the EU or its trading partners, most notably in terms of its relation to the ACP group of states. (Lindberg/Alvstam 2007; Meissner 2019; Krapohl/Van Huut 2020).

States' conduct of economic diplomacy can be limited by capacity constraints. Most prominently, the role of investor-state disputes laid bare bounded rationality in negotiating bilateral investment treaties (Poulsen/Aisbett 2013; Poulsen 2015). While not quite as consequential, capacity constraints have been shown to impact states' ability to negotiate agreements - both within the WTO and PTAs outside of the multilateral system (Dunlop et al. 2004; Jones et al. 2010; Jones 2013). The multilateral system, however, possesses institutions that can provide technical assistance to developing countries and, thus, can partially compensate for capacity constraints (Shaffer 2005) - a feature which is missing when it comes to PTAs. Importantly, limitations to states' ability to effectively implement trade policy also shapes their substantive preferences (Betz 2019).

1.3 Contribution

This thesis contributes to our understanding of how states organise transnational governance. While its emphasis is on international trade, the theoretical and conceptual contribution is not limited to this policy area. Building upon recent debates on the changing character of global governance, it develops a theory of *transnational public authority*. This theory offers a conceptualisation of the exercise of public authority beyond states. In this framework, authority-actor relationships distinguish how governance is organised transnationally - not organisational features. Similarly, actors are thus defined by the authority on which they act instead of procedural aspects (Murau/Spandler 2016). Based on the conception of contracted authority, states may confer authority on non-state actors or refrain from doing so when jointly exercising public authority. While this framework considers hierarchical principle-agent relationships, which are established through delegation to formal IOs, these are but one way to exercise public authority transnationally. The shift from organisations to contracted authority entails a more variable and fragmented conception of transnational governance.

The concept of *collective agency* is then introduced as a way for groups of states to jointly exercise transnational public authority without intermediaries. Collective agents are comprised of states that jointly act on the authority of the entire group of states. In other words, states exercise both decision-making and operational authority, although the latter is jointly exercised by constituent states on behalf not of their own but collective authority. As opposed to delegation, this allows states to aggregate public authority while retaining direct control, and the capacity to act, throughout the process of cooperation. When states operate as collective agents, relative to delegation, they can enter more flexible and situational cooperation schemes, mutually expand their capacity and ease legitimacy concerns as they refrain from involving intermediaries. Thus, collective agency may be particularly suitable for plurilateral rather than multilateral cooperation. Picking up Dani Rodrik's point on the lack of real global governance, collective agency may be instrumental in organising real, yet fragmented, transnational governance - even if it is the collective of states that ultimately acts.

Applying this framework to the governance of international trade, trading blocs are conceived as collective agents that act authoritatively on behalf of the group of their constituent states. Although sometimes ignored in research on trade policy, the question of who acts is a central one from an economic diplomacy perspective. The difference between delegation and collective agency is a consequential one. States are hesitant to delegate authority because control over the negotiating process matters. Indeed, with the exception of the EU, trade negotiations are led by collective agents. Thus, acknowledging collective agency entails a perception of the EU as outlier rather than typical case, or even role model, of a trading bloc - and can help overcoming a EU-centric bias (Lucarelli/Fioramonti 2009).

Trading bloc's operating as collective agents in negotiations with third states is consequential for their members trade policy.[3] Retaining the authority and capacity to act, states can pursue a dual trade policy - acting both bilaterally and as part of a trading bloc. This can meaningfully alter states' ability to conclude PTAs as capacity constraints may limit states' ability to do so on their own. Importantly, the level of integration and commitments among trading bloc members shapes the trade policy of states with respect to collective negotiations, which can be instrumental in aligning intra-bloc governance and rules governing trade with third states. They thus become a policy instrument to manage complex relations. Differentiation and exemptions are widespread and are meaningful aspects of collective approaches. Political choice, however, also is a central element in the decision to negotiate collectively or not. States' operating as collective agent and autonomy to act independently can also help legitimise trade cooperation by entrenching it in national executives.

The role of learning processes and capacity constraints sheds light on the spread of the institutional design of PTAs. Moving beyond emulation and the verbatim use of previous agreement text (*allee2019*; Peacock et al. 2019), experiences in the WTO are shown to provide learning opportunities to state bureaucracies, which in turn affect states' design choices in PTAs. Thus, the WTO serves as multilateral diffusion hub, facilitating the spread of institutional models in the decentralised network of trade agreements - rather than being contested by alternative institutions. Importantly, states do not simply copy multilateral design features but also moderately adjust them to their trading partners. States are more likely to adopt, and adapt, the dispute settlement design of the WTO after having experienced a dispute. Confrontations with institutions, thus, can induce states to adopt institutional designs. This is different from experiences made in the context of bilateral investment treaties, where states did not foresee the potential consequences of agreeing on investor-state arbitration. In either area, capacity still determines how states cooperate. Learning experiences are of particular relevance to states with low levels of capacity, whereas others may not require these experience to inform institutional choices. Institutions are not created in a vacuum and this analysis contributes to understanding the - heterogenous - effect of extant institutions on design choices (Jupille et al. 2013).

1.4 Overview of the Thesis

This thesis is comprised of three independent yet connected research papers. It entails one conceptual and two empirical papers that address the question of how states organise cooperation in international trade. The empirical papers rely on mixed method approaches, based on more than 20 interviews with trade negotiators and officials, as well as a range of quantitative methods, including regression

[3]Note that the variable character of collective agency means that the exercise of authority may differ with respect to members of trading blocs and third states. Importantly, the latter predisposes the recognition of a transnational actor by others. The European Free Trade Association (EFTA), for instance, operates as collective agent in negotiations with third states but internally conferred authority to the EFTA Court and EFTA Surveillance Authority.

discontinuity designs, matching techniques, and mixed effect models.

The first paper develops the theoretical framework and typology of transnational public authority. Moving beyond delegation, it conceptualises different authority-actor relationships as well as types of actors that are invested with operational authority. In doing so, it introduces the concept of collective agency, which allows multiple states to jointly exercise authority while retaining operational capacity. Thus, it is states that act upon joint authority, but they do so on behalf of the collective, not their own. Collective agency is then contrasted to other ways to exercise authority beyond national borders, most notably delegation. This paper thus addresses the question of *who* are authoritative actors beyond the state.

The second paper builds upon the theoretical framework and applies the concept of collective agency to the realm of international trade. It establishes that the collective agency of trading blocs, but not delegation to IOs, are widespread in international trade and trade negotiations. When negotiating trade agreements, numerous states face a choice between acting bilaterally or as part of a trading bloc, i.e., a collective agent. The paper conceives of trading blocs as political actors, not static economic entities. It develops a theory explaining why states are hesitant to surrender control over the negotiating process by stepping away from the negotiating table and why even collective agreements can be hard to achieve. Capacity constraints, which reduce the leeway to act bilaterally, and ex-ante commitments, which create incentives to align intra-bloc and external ties, are then identified as central determinants of trade strategy. Importantly, the decision between bilateral and collective negotiations involves a meaningful element of choice.

The third paper analyses how authoritative actors can inform the choices states make - even when states exercise sovereign authority in international cooperation rather than transnational authority. Nonetheless, decentralised institutional choices eventually give rise to a dominant institutional model. The paper investigates the asymmetric spread of provisions on dispute settlement in preferential trade agreements. Institutional learning is theorised to be the mechanism causing diffusion processes, with the WTO serving as diffusion hub where states learn through experiences in WTO dispute settlement. Thus, the paper shows how formal IOs indirectly affect cooperation beyond their formal jurisdiction. It stresses the role of capacity constraints in international economic treaty-making and explains how favourable conditions in the multilateral context can help alleviate constraints even in bilateral and plurilateral cooperation. It thus shows how cooperation is subject to spillover effects in complex governance regimes.

A brief conclusion brings together the central findings of this thesis, situates its main argument in debates on international cooperation and global governance, and briefly touches upon avenues for further research.

A Theory of Transnational Public Authority
The Rise of Collective Actors & Authority beyond Delegation to International Organisations

Abstract

Transnationalism usually is associated with civil society actors and non-governmental organisations. However, states increasingly cooperate and jointly exercise public authority in a way that transcends national borders, fulfilling governmental tasks and responsibilities. Cooperation often takes effect across states rather than between them, with public authority being organised beyond the state in selective areas and limited in scope. Addressing this aspect of governance, this paper develops a theory of transnational public authority based on authority-actor relationships and operational authority. This conception parts with organisation-based frameworks of international cooperation. Formal or informal organisations can be vehicles for the exercise of authority - but are neither necessary nor sufficient. Delegation to international organisations (IOs) is but one possible way to exercise transnational public authority. Transnational actorness emerges through the exercise of public authority beyond states and is defined by (i) diverse authority-actor relationships and (ii) different types of actors with operational authority. Combinations of these give rise to four ways to exercise public authority: (i) sovereign agency; (ii) collective agency; (iii) delegation of authority, usually to IOs; and (iv) transfers of authority to organisations that are supranational in character. Collective agency allows states to jointly act on the authority of multiple of states. In doing so, states exercise transnational public authority without resorting to intermediaries and retain direct control. Collective agency is contrasted to delegation before the role of control and state capacity on the exercise of transnational public authority is discussed. Transnational actors also have heterogenous consequences for the legitimacy of cooperation.

1 Introduction

On 8 October 2021, in an historic decision 136 countries agreed on a corporate minimum tax of 15%.[1] Importantly, the minimum tax rate refers to the *global* tax rate, where country-specific tax rates are not set but determined by companies' revenue. While initiated under the auspices of the OECD, the tax will be collected by national authorities in a tightly coordinated process - in other words, national tax authorities will work as a collective agent to retrieve the tax by jointly ensuring that the minimum rate cannot be undermined. The number of parties far exceeds OECD membership. International cooperation thus gave rise to a transnational - in this case almost global - policy collectively implemented by participating states. Cooperation among national authorities is an inherent part of the scheme - without the principle of a single jurisdiction, the tax could not effectively be levied in any jurisdiction.

One year earlier, legal disputes over the primacy of EU law between Poland and Germany, on the one hand, and the European Court of Justice (ECJ), on the other hand, escalated.[2] Rather than disagreeing on substantive issues, the actual dispute touched upon clashing authority between the ECJ, the guardian of EU law, and national constitutional courts, the highest judicial authorities in member states. National authority thus stands opposed to the ECJ's authority. Importantly, this is not a clash over the organisational relation between these courts: The ECJ's authority is derived from EU treaties while national courts refer to their role as the guardians of member states' national constitutions.

Military cooperation across the global is marked by limited schemes of joint structures aimed at increasing states' capabilities to provide security. Even in Europe, this is characterised by integrated units and plurilateral projects, not the creation of supranational forces. In the wake of the Russian invasion of Ukraine, these processes accelerated and reached unprecedented levels: Most strikingly, the entire land force of the Netherlands was integrated into the German army and largely put under German command.[3] The result are collective units that are comprised of national armed forces from both states.

These three cases are examples of important international cooperation that cannot satisfactorily be described by the often-invoked concept of *delegation*. There is no principal-agent relationship,

[1] OECD.08.10.2021."Internationalcommunitystrikesaground-breakingtaxdealforthedigitalage: "https://www.oecd.org/tax/beps/international-community-strikes-a-ground-breaking-tax-deal-for-the-digital-age.htm

[2] For the reasoning of the German constitutional court, see "Headnotes to the Judgment of the Second Senate of 5 May 2020": https://www.bundesverfassungsgericht.de/e/rs20200505_2bvr085915en.html.

[3] Bloomberg.30.03.2023."DutchMilitaryMergesItsLandCombatUnitsWithGermany:"https://www.bloomberg.com/news/articles/2023-03-30/dutch-military-merges-its-land-combat-units-with-germany#xj4y7vzkg.

and states may either act collectively without intermediaries, or non-state actors may act in their own right as in the case of the ECJ (Sarooshi 2005). While international organisations (IOs) are ubiquitous in international relations, they often are vehicles that bring together nations and foster cooperation *between* states. States often remain the decisive actors by creating rules and policies that transcend borders - that is, applying *across* nations and are transnational in character. Formal IOs, however, are neither necessary nor sufficient for such processes. Global governance and international cooperation are subject to changing realities and challenges (Zürn 2018), including the effect of technological change on the way states interact (Manulak/Snidal 2021). The rise of informal IOs (Vabulas/Snidal 2013; Vabulas/Snidal 2021) and a fine-grained understanding of the variety of indirect governance relationships (Abbott et al. 2015; Abbott et al. 2016; Abbott et al. 2020) have underlined the vast range of cooperation and the limited role of formal organisations. Conceptions of authority in the international system, however, largely rely on organisational features of formal institutions (Hooghe/ Marks 2015; Hooghe et al. 2017; Hooghe et al. 2019).

Building upon the literature on the changing character of cooperation but addressing the aforementioned gap, this paper develops a theory of *transnational public authority*, which is defined as the exercise of public authority transcending state borders. It offers a general framework and typology of public authority beyond sovereign states. Public authority here emphasises operational authority - and its relation to decision-making authority -, addressing the question of *who* exercises public authority beyond the borders of sovereign states. In doing so, this approach builds upon the changing character of international organisations yet parts with the predominant organisation-based conception of international cooperation. Conceiving of cooperation in terms of public authority helps conceptualise variable geometries of cooperation and dissolve the conceptual boundary between national and international authority. Transnationalism usually is associated with non-governmental actors or networks (Slaughter 2005) while public authority often is conceived of as confined to sovereign states. Public authority, however, is indeed increasingly exercised transnationally - beyond state borders - even in the absence of transnational polities. This is reflected in the rise of operational functions of IOs (Joachim et al. 2007) and operational European agencies (Joosen/Brandsma 2017; Freudlsperger et al. 2022).

Distinct ways to exercise public authority beyond states give rise to distinct types of transnational actors. Defining transnational actors in terms of authority, not organisational features, helps unravel that formal IOs are but one such type. Actorness is defined by (i) the *authority-actor relationship* - i.e., who is acting on whose authority - and (ii) the *type of actor* - i.e., is authority retained by states or contracted to non-state actors. These two dimensions distinguish four distinct ways to exercise authority: (i) sovereign agency; (ii) collective agency of states; (iii) delegation of authority to IOs; and (iv) the transfer of authority that entails the creation of supranational bodies. These types have distinct implications for cooperation.

Conceptualising and delineating *collective agency* as distinct form to jointly exercise authority is this paper's central contribution to the literature on global governance. It allows states to collectively act on joint authority without resorting to intermediaries. That is, multiple states are mutually conferring authority on each other, thus being authoritative in each other's jurisdictions and constituting a single actor. While instances of cooperation may be overlooked if states act collectively rather than through a single organisation, collective agency is a frequent feature in the international system. It allows states to act upon aggregate public authority, thus diluting national jurisdictions. Importantly, collective agency entails an element of group character that turns collective agents into more than the mere sum of its their constituent parts (Pettit 2003; Mitzen 2013).

Distinct types of transnational actors differ in terms of the control states exercise and the role of state capacity. Collective agency allows states to exercise direct control, unlike delegation to IOs. Moreover, the way states exercise transnational authority is shaped by - but also influences - state capacity. State capacity can alter the control-competence trade-off states face when relying on indirect forms of governance (Abbott et al. 2020). Importantly, collective agency enables states to cooperate in policy areas where control and state capacity are salient and delegation therefore undesirable. The popular backlash against globalism, and IOs in particular (Zürn 2018; Lall 2023), highlights the demand for legitimised cooperation. Collective actorness can entrench transnational authority in state executives, and thus contribute to the legitimacy of global governance (Delbrück 2003).

2 Making Sense of Cooperation: Pooling and Delegation

The role of IOs and authority in international relations have been operationalised along several dimensions that are related to delegation such as their *autonomy* (Haftel/Thompson 2006; Churchill/Ulfstein 2000); *independence* (Abbott/Snidal 1998); or *centralisation* (Koremenos et al. 2001; Abbott/Snidal 1998).[4] Extant research exhibits a divide between work on regional and the actorness of regional IOs, on the one hand, and the characteristics of IOs, on the other hand. While the literature on the autonomy and agency of IOs has made significant theoretical advances (Sarooshi 2005; Hawkins et al. 2006; Hooghe et al. 2017), the majority of studies on actorness is limited to regional institutions and case studies, most often analysing the inter-regional relations of the EU (Baert et al. 2014; Söderbaum 2015; Closa/Casini 2016). A narrow focus on regional multi-purpose institutions, however, omits a vast range of international cooperation and conceals significant differences across policy areas.

More recently, *delegation* of authority (to an independent IO body) and *pooling* (of sovereignty) have become prominent and widely used concepts to conceive of the authority of IOs (Hooghe/Marks

[4]Studies employing the - rather fuzzy - concept of *integration* often introduce ambiguity in terms of the concept's relation to other concepts.

2015; Hooghe et al. 2017). Pooling refers to the decision-making authority in IOs and the transfer of decision-making power from individual states to some form of collective rule at the expense of the surrender of the national veto (Hooghe/Marks 2015, p. 3). Delegation, referring to operational authority, in broad terms is defined as *"a conditional grant of authority from a principal to an agent that empowers the latter to act on behalf of the former."* (Hawkins et al. 2006, p. 7).[5] In international cooperation, delegation is expressed as a conferral of authority on an international body to act on behalf of the IO's members (Bradley/Kelley 2008, p. 3). This is usually an independent IO secretariat (Hooghe/Marks 2015), which is considered the defining non-state body when authority is delegated to non-state actors (Pollack 1997).

2.1 The Limits of Delegation: A Critique

Based on organisational criteria such as existence of IO secretariats, the concept of delegation is not exhaustive as it is oblivious to distinct relationships involving authority and variation in terms of authoritative actors. Delegation is inherently hierarchical and necessarily involves an agent that is distinct from authoritative principals. The implicit assumption that *delegation* and the principal-agent framework are exhaustive brings about both empirical and theoretical problems. From an empirical point of view, the existence of an independent IO secretariat, or other organisational features, may not always be relevant to policy-making or imply a meaningful grant of authority. In fact, many IO secretariats primarily fulfil administrative and auxiliary functions (Guzman/Landsidle 2008). Organisational characteristics alone do not reflect the authority conferred on IO's. In the cases of OPEC and the Forum of Gas-Exporting Countries (GEFC), for instance, member states take action, without granted meaningful authority to the secretariats. Even more strikingly, the Secretariat of Petrocaribe is hosted by the Venezuelan Ministry of Mining and merely is in charge of preparing and organising summits.

Conceptually, two features of delegation tend to omit other forms of international cooperation. Firstly, if international authority can only be exercised when a secretariat of a formal IO is involved, this denies the agency of other types of actors as well as the role of cooperation that does not depend formal IOs. For instance, the aforementioned global minimum tax does not rely on any formal IO. Secondly, an IO is usually assumed to serve as agent of states in the sense of a principal-agent relation, which is not always an appropriate characterisation (Bradley/Kelley 2008, pp. 6–9). This often disregards meaningful differences in control over agents as well as the dynamic character of authority, where delegation is usually limited in time or scope (Hawkins et al. 2006). The judicial struggle about primacy between European and member state courts would be mischaracterised as expression of a principal-agent relation - after all, both sides claim to be a principal in their own right.

[5] For an overview of general theories of delegation, see Bendor et al. 2001 and Nielson/Tierney 2003.

The organisation-based conception thus does not delineate delegation from pooling as clearly as would be desirable. Specifically, Hooghe et al. operationalise both pooling and agency in terms of the distinct actors: *'[d]elegation describes the autonomous capacity of international actors to govern. [...] Pooling describes collective governance by states themselves.'* (Hooghe et al. 2019, p. 33). Conceptualising these separately without accounting for the relationship between distinct actors, however, precludes their being distinct concepts. In practice, the ability of IOs to *govern* depends very much upon collective governance by states, above all on their collective decision-making mechanisms. While there can be pooling without delegation (Vabulas/Snidal 2019), Hooghe and Marks in their analysis accordingly do not find any instance of delegation without pooling (Hooghe/Marks 2015).[6] These conceptualisations of delegation and pooling infringe upon each other as delegation is conditional on pooling: delegation depends on states', i.e., principals', authority to make common decisions in the first place. Failure to consider qualitatively distinct relationships between states and non-state actors may also wrongly imply that IOs would be as authoritative as states.[7] This is problematic as delegation to IOs is not random. IOs tend to be most efficient when they enjoy autonomy and national interests of their members don't stand in their way (Lall 2023). Therefore, IOs can be expected to be less authoritative in areas that are deemed critical to their members, where states prefer retaining authority. In addition, brick-and-mortar organisations tend to suffer from inertia - which makes them less suitable for certain tasks.

Conceiving of international authority as delegation renders a reductionist conception authority beyond states. Technological advances have vastly altered the way international cooperation can be organised - and who is involved in these processes (Manulak/Snidal 2021). The changing character of the international landscape creates a supply of other forms of international cooperation and authority in areas that are not well suited to formal IOs. The result are more diverse and variable global and transnational governance regimes. Near constant communication at different levels of government reduces the need for formal vehicles for cooperation, giving rise to informal governance (Westerwinter et al. 2020), such as through informal intergovernmental organisations (IIGOs) (Vabulas/Snidal 2013) or low-cost institutions (Abbott/Faude 2020). Simultaneously, a wider range of indirect governance relationships, including the role of enlisting authority trough co-optation and orchestration in global governance, is being acknowledged (Abbott et al. 2016; Abbott et al. 2020). Pooling authority without delegating tasks to an international organisation does not necessarily preclude IIGOs from exercising authority as a group and, subsequently, appearing as unitary actor vis-à-vis other states. These developments also help explain why formal IOs tend to be more autonomous over time while new formal IOs are rarely established (Hooghe/Marks 2015), possibly reflecting a division of labour across institutional designs.

[6] This in accordance with Vabulas and Snidal's theory.

[7] A more nuanced view is possibly concealed due to a selection bias related to empirical analyses of delegation, which often are focus the most powerful IOs such as the EU or the UNSC within the UN.

The concept of *delegation*, therefore, does not fully account for how authority can be exercised beyond the state, nor does it consider distinct authoritative relationships these may entailed. Delegation in the sense of the principal-agent framework presupposes the existence of an external agent as well as a hierarchical contract between agent and principal. Thus, employing *delegation* as foundation for authoritative actors in international relations draws an incomplete picture of authority beyond the state.

3 Beyond Delegation: Transnational Public Authority

The concept of delegation is of limited use for the study of authority beyond the state as it runs risk of being reductionist by capturing a specific, albeit prominent and highly important, type of international cooperation. Specifically, it refers to merely one type of relationship between states and non-state actors. To conceive of cooperation in broader terms, this paper parts with organisation-based conceptions. It brings forward a theory that entails a shift from organisational aspects to the exercise of public authority. Transnational public authority is defined as public authority that transcends state borders - including but not restricted to IOs. Formal organisations, whether formal or informal, are neither necessary nor sufficient to exercise transnational public authority. A framework of contracted authority, with states being the locus of public authority, provides a theoretical framework that acknowledges a wider range of transformations in global governance.

The relationship between actors and authority is not uniform. The exercise of transnational public authority - not organisational features - is what gives rise to distinct types of *(transnational) public actorness*.[8] Transnational actorness is conceptually less restrictive, inclusive of various relationships, or conferrals of public authority, that result in transnational exercises of authority. More precisely, actorness can be distinguished along two dimensions: (i) the underlying authority-actor relationship, addressing the question whether authority is exercises in an individual or aggregated way as well as (ii) the type of actor, reflecting *who* is exercising authority, which may or may not be non-state actors. Based on operational authority, transnational actorness is conceptually distinct from the pooling of sovereignty and encompasses delegation to IOs.

The concept of actorness has received significant theoretical attention in the analysis of the EU.[9] Since the initial conception of actorness as the *"capacity to behave actively and deliberately in relation to other actors in the international system"* (Sjöstedt 1977, p. 16), the concept of EU actorness has taken an increasingly social behavioural and constructivist turn. Accordingly, the most influ-

[8] This terminology is used to emphasise the exercise of authority across borders and does not preclude - but in fact specifically accounts for - non-state actors that might be described as supranational and international actors.

[9] See Drieskens 2017 for an overview of the conceptual history of and a research agenda for EU actorness.

ential conceptualisation of EU actorness by Bretherton and Vogler considers opportunity, presence, and capability as constituent elements of actorness (Bretherton/Vogler 2005).[10] While constructivist conceptions allow for insightful in-depth comparisons of regional IOs (Murau/Spandler 2016; Hulse 2014; J.-U. Wunderlich 2012; Mattheis/U. Wunderlich 2017), they do not clearly delineate EU actorness from (the construction of) identity (Klose 2018; Hulse 2014, p. 549) or actual influence (Baracani 2020, p. 362). These conceptualisations of EU actorness, therefore, suffer from three flaws. First, several of the constructivist conceptions of EU actorness refer to the conditions of actorness, rather than to actorness itself. Even if the EU is perceived as an actor from a constructivist point of view, it might simply lack the authority to act (Schunz/Damro 2020, pp. 123–125; Sus 2019, p. 411). Second, conceptualisations of EU actorness tend to aim at the special case of the EU, treating it as political entity sui generis, and cannot easily be transposed to other IOs, let alone to other types of actors. This restrictive view, however, precludes a conceptualisation of actorness beyond the state per se. Third, the concept lacks a generalisable and systematic framework as the threshold for reaching actorness in a social constructivist sense (Rhinard/Sjöstedt 2019). When applied, the implicit threshold is rather low and leaves little room for a differentiation of actors.

Moving beyond EU actorness, a conceptualisation based on contracted authority provides the foundation for a general and systematic framework of transnational actorness. In this framework, transnational actors are those who *exercise public authority that transcends state borders in the international system.*[11] This could, for instance, entail implementing policies, carrying out political decisions or negotiating international treaties or agreements. Distinct types of actors, including states as well as international and supranational bodies, can be involved in the transnational exercise of authority (Avant et al. 2010; Zurn et al. 2012; Hettne 2014; Tallberg/Zürn 2019). This conceptualisation emphasises the relationship between actors and the source of their authority,[12] considering distinct types of relationships between authority and actor. These, in turn, give rise to distinct types of transnational actors.

The authority-based conceptualisation of *transnational actorness* rests on two assumptions. F First, the conceptualisation of *transnational actorness* is based on the exercise of public authority beyond borders, thus departing from a rather static organisation-based framework. The latter may conceal possible limited grants of authority or multi-level systems. The exercise of authority may be confined to certain policy-areas or even be temporarily limited. Second, it relies on the conception of authority as being contracted, that is, states can confer limited authority on actors. Public authority

[10] In a similar vein, Carporaso and Jupille define four criteria for actorness: authority, autonomy, cohesion and recognition (Jupille/Caporaso 1998).

[11] Public authority might be exercised both in relation to those that conferred authority on an actor (internal actorness) as well as to other actors (external actorness).

[12] The concept of *transnational actorness* does not reject the principal-agent framework, but goes beyond delegation and can be conceived of as embedding the PA framework in a more comprehensive framework.

usually rests with states and is subject to states' sovereign command.

3.1 From Organisations to (Operational) Authority

The link between organisations and the exercise of authority is not straightforward. Transnational actors (such as some IOs) usually exercise (limited) authority in some policy areas, while not having any say in others. The mere existence of a Secretariat or similar independent body, however, tells little about the authority of actors, as many IOs mainly serve as forum for inter-state cooperation (Prakash/Potoski 2016). Oftentimes, the mere existence of an IO Secretariat is used as the single criteria for delegation.[13] For instance, while Hooghe, Marks and Lenz collect highly detailed data on pooling and delegation, their operationalisation of these concepts rests on the organisational aspect of IOs, such as the admission of new members or the suspension of old ones, rather than actual policy-making procedures (Hooghe et al. 2017; Hooghe et al. 2019). In a similar vein, Haftel conceives of delegation as either the existence of a regional bureaucracy or a dispute settlement mechanism (Haftel 2013, p. 395).

States may well remain the only authoritative actors - in spite of a large number of IOs that may simply serve as a forum for states and facilitate coordination without exercising public authority at all. Mercosur, a multi-purpose IO with a strong emphasis on trade policy, for instance, does not employ any trade negotiators - the independent Mercosur secretariat merely collects data on its member states' external trade. Conversely, the G5 and G7, for instance, became central fora in global monetary governance when implementing the Plaza Accord and Louvre Agreement, respectively, thus being involved in exercising public authority to a substantively more meaningful degree than various formal IOs. Without a Secretariat, however, their member states collectively exercised authority.

Transnational public authority conceives of actors as being exercising authority beyond borders - not about the institutional design of organisations. Transnational actors come in distinct types - this is not to say that there is no difference in degree or extent to which certain actors matter, but a prior distinction must be made as to *whose* authority to act differs. Thus, the question of whether there is delegation turns into the question of *who* is exercising authority on *whose* behalf. Conceiving of actorness as non-dichotomy - both conceptually and empirically - and situating the concept alongside pooling acknowledges that states may act collectively even without pooling sovereignty, whereas a minimum level of pooling needs to be achieved for delegation to be meaningful.

Authority, touching upon power and legitimacy, is multidimensional and one of the most encom-

[13] Hooghe and Marks, for instance, apply a minimal definition when analysing a data set in which every IO has *'a secretariat with infrastructural functions such as running the IO's headquarters, organizing meetings, and maintaining records'* (Hooghe/Marks 2015, p. 19).

passing concepts in international relations. Accordingly, there is no shortage of theoretical approaches and conceptualisations of authority. Here, the theory of transnational public authority is based on the exercise of authority. *Operational authority* - or the authority to act - thus underlies transnational actorness and can be situated as an expression of public authority, alongside decision-making authority (Figure 1). For the sake of conceptual clarity, public authority is defined as subset of political authority. Whereas political authority can be conceived of as *"the right to rule"* (Friedman 1990, p. 68; see also Kahler/D. Lake 2004; Zürn 2018, p. 51), public authority provides a narrower conception of political authority, namely the powers and responsibilities of public entities.[14] Thus, public authority is restricted to government and its responsibilities, reflective of the exercise of authority, while being delineated from and excluding private authority (Kahler/D. Lake 2003, p. 1). Indeed, public authority is increasingly exercised on transnational level (Lenz et al. 2014; Hooghe et al. 2017; Zürn 2018, p. 50). Note that while this conception of public authority usually involves formal arrangements, it is not tied to organisational forms such as IOs. This definition of transnational actorness poses a high threshold and delineates the concept from epistemic authority, which touches upon *how* authority is constructed and legitimised (Hurd 1999; Mitzen 2013).[15] However, epistemic conceptions cover a much broader range of actors, relations and may be expressed situational and perceived instances such as in the case of expert authority.[16]

Operational authority - the authority to act - constitutes transnational actors. In the case of delegation, decision-making authority and operational authority are divided between principal and agent, but this does not have to be the case.[17] Importantly, transnational actors' requiring meaningful operational authority to act is a threshold most instances of delegation do not meet. Generally, three broad types of the responsibilities are delegated to IOs: (i) operational authority, e.g., the authority to act implement policies, executive tasks or negotiations; (ii) administrative capacity; and (iii) auxiliary tasks, which usually corresponds to a certain leeway to conduct research, gather statistics or disseminate information. Here, the threshold for transnational actorness is the exercise of operational authority, while the latter two tasks are non-authoritative and therefore insufficient. In a large number of cases, delegation mainly or almost exclusively refers to administrative capacity, i.e. organising the day-to-day functions of the secretariat such as convening summits and filing documents. This is not surprising as these functions are indispensable for maintaining the institution, but aren't ends

[14]Note that while this does not contradict the - simplified - assumption of authority being exclusively and centrally located within sovereign states, this conceptualisation specifically helps explain deviation from this scenario.

[15]For instance, Barnett and Finnamore consider both types when discussing IOs and defining *'authority as inducing deference from others'* (Barnett/Finnemore et al. 2004, p. 5).

[16]As opposed to epistemic authority, public authority does not include norms or rules (Zürn 2018, p. 6), nor transnational policy communities or regulatory networks (Scott 2002; Gaus 2019), unless states confer authority on them.

[17]Note that the relationship between authority and actor is decisive. Decision-making authority, and pooling of authority, are conceptually distinct from operational authority, which is not contingent on the process of decision-making.

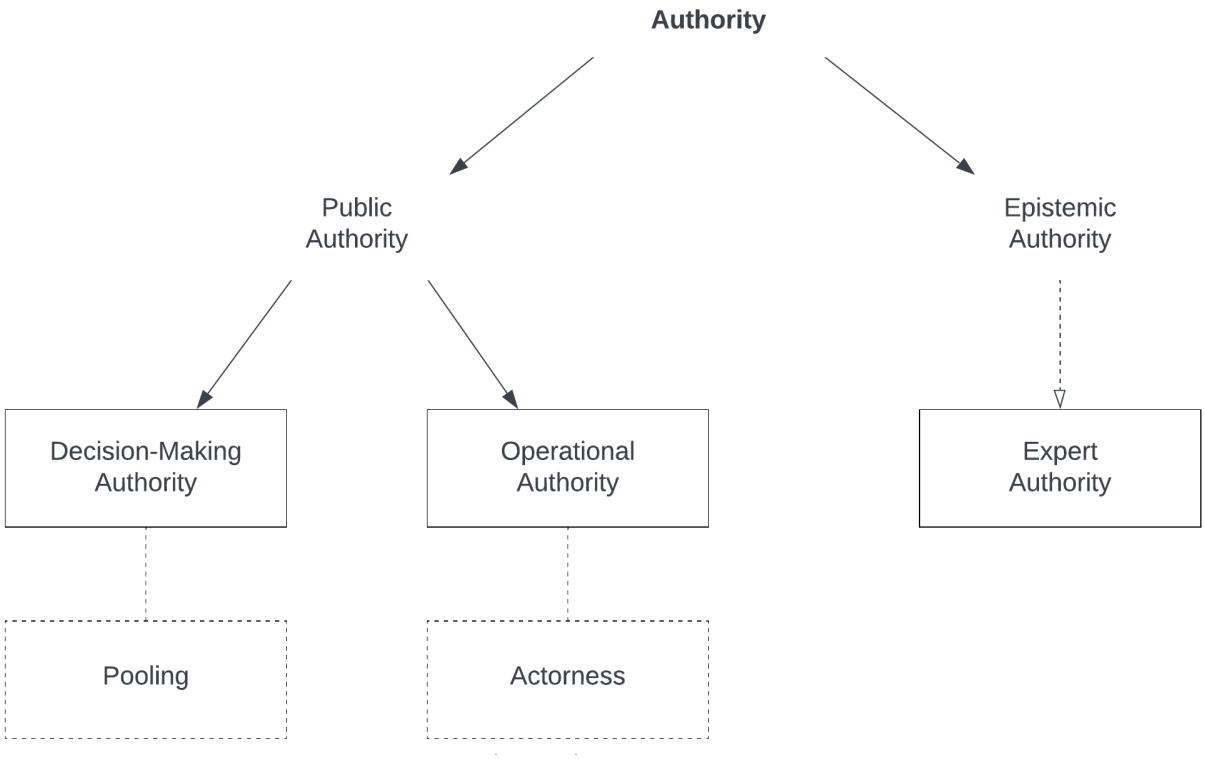


Figure 1: Schematic conceptual differentiation of authority.

in themselves.[18] Entrusting actors with operational authority is conceptually distinct. Although less prevalent, some IOs (especially regional IOs) have the authority to implement policies or to act independently in doing so, e.g. when negotiating international treaties (Joachim et al. 2007). To understand the relevance of transnational actors in global governance, identifying their role in governance is key.

3.2 The Foundation of Actorness: Contracted (Public) Authority

While epistemic authority on international level can be constructed and be self-sustaining, public authority requires the explicit and constant agreement of those over whom authority is being exercised. But what is the source of public authority on transnational level if there is no political community nor sovereign entity on international level? There is no implicit or explicit relationship that even closely resembled the vertical one between a state as political entity and its people. Rather, transnational public authority and actors must be created voluntarily and continuously maintained (Hettne 2014, p. 60). That is, transnational public authority is conferred on transnational actors by states, which exercise public authority over their domestic political community. Since transnational cooperation

[18] Organisation-based conceptions of delegation may often reflect administrative capacities as most prevalent if not only type of responsibility entrusted to an IO.

only evolves gradually, transnational public authority is inherently more dynamic and fragmented than state authority.

The principle of transnational public authority builds upon the contracted conception of authority, with states being able to selectively confer authority in limited and well-defined ways. This conception of contracted authority conceives of sovereign states as original locus of public authority, which might voluntarily decide to concede or confer authority on other actors.[19] The contracted approach conceives of sovereignty, and public authority, as a bundle that can be divided (D. A. Lake 2009, p. 3). While states are not – and never have been - perfectly delineated units of secure sovereign space (Agnew 1994, p. 77; Cutler 1999, p. 72), they generally retain ultimate control over their jurisdiction and, thus, public authority, in the international system of sovereign states. The contracted conception of public authority, which rests on the assumption of primacy of state authority, is the foundation of transnational actorness.

Although often considered uniform authoritative agents in international relations theory, most states are far from the being uniform subjects that act upon singular authority - usually due to non-uniform contracting of authority to the sub-state level. Indeed, in many cases contemporary institutional arrangements within states are the result of clashing authorities and bargains. The most pronounced form of such a contract is federalism - where the well-defined authority allocated to both the federal level and its constituent parts is the outcome of a bargaining process - the *'federal bargain'* (Riker 1964). In the federal systems, for instance, both national and subnational entities exercise authority in their own right. In devolved systems, subnational unit act on behalf of the national government, after the latter formally contracted (varying) authority to the communities in individual statutes. The state-making process defines the bargain and its institutional outcome - even if authority can be invariant for extended time frames, the process is dynamic and never fully comes to a stop.

Under the framework of contracted authority, the continuous bargain about authority, conceptually, applies to the transnational level as much as to the national level. In practice, the former is less pronounced due to transnational cooperation's being a bottom-up process in the absence of supranational actors that could weigh in. The absence of supranational authority is comparable to the pre-nation state stage in the process of state-making. For instance, its member states deliberately conferred authority on the EU, allowing it to act, initially, on behalf of its members. By now, the EU in some areas acts as an authoritative supranational entity which is a source of authority in its own right.

The result of contracting beyond states are fragmented multi-level governance architectures,

[19] This stands in contrast to conceptions of inscribed authority, i.e., authority emerging from social relations (Zürn 2018, p. 50). While this is not to say that inscribed authority does not matter, it is additive and cannot replace contracted public authority, especially when it comes to governance beyond states.

where authority is divided across multiple actors and levels. Indeed, governance even within the same policy-area varies vastly and often involves multiple actors and forms of exercising public authority. The architectures of regional public health governance stress the fragmented character of these processes as well as that organisational frameworks alone do not reveal how authority is exercised beyond the state. While national authorities remain the decisive actors in African health governance and are complemented by the newly established African CDC with auxiliary tasks, the Caribbean Public Health Agency also issues medical recommendations and technical advice. Only in Europe, however, is a non-state actor invested with operational authority, where formal approval is granted by the European Commission upon recommendation of the transnational European Medicines Agency.[20] These fragmented and asymmetric structures highlight the need to look beyond organisations and focus on authoritative transnational actors. That is, *who* exercises transnational public authority?

4 Actorness: Who Exercises Transnational Public Authority?

Transnational actorness arises through the exercise of public authority transcending state borders. That is, actors that have operational authority over transnational policies. Diverse relationships between authority and actor give rise to distinct forms of actorness. Both states and non-state actors, however, can exercise transnational public authority. Table 1 distinguishes four types of transnational public authority, namely the sovereign and collective exercise as well as delegation and the transfer of authority. These differ in terms of the type of actor and, importantly, in the underlying actor-authority relationship. Entities on whose authority actors operate usually retain decision-making authority. Since organisational features do not determine the exercise of authority, this typology of transnational public authority is independent of organisation-based typologies such as formal intergovernmental organisations (FIGOs) and informal ones (IIGOs). IOs *can* be conferred on meaningful authority and turn these institutions into transnational public actors. They can also remain mere fora for interstate cooperation. Moreover, organisations, both formal and informal, may serve as framework for different types of actors.

Authority-actor relationship and type of actor constitute different ways to exercise transnational public authority. Importantly, the exercise of transnational public authority also entails that these actors do so *in relation to* other actors or states. The boundaries of actorness might well be restricted to the states that confer authority on an actor (*internal authority*), or to outsiders (*external authority*). Moreover, the form of internal and external actorness might differ.[21] Formal organisations can entail delegated and collective exercises of authority or exercise authority in their own right following a

[20] While this is the standard process, states are able to make use of national exceptions.

[21] For instance, the EFTA secretariat has actorness when initiating disputes against its member states. However, the Secretariat does not have any competencies in external relations, which are conducted by member states collectively.

Type of Exercise of Authority	**Source(s) of Authority**	**Actor**	**Example**
Sovereign Exercise of Authority	Individual State	Individual State	Summits/Agreements/IIGOs/FIGOs *(G20; GECF; 16+1 Summits)*
Collective Exercise of Authority	Multiple States	Collective Agent	Agreements/IIGOs/FIGOs *(Chiang Mai; OPEC; Eurogroup)*
Delegation of Authority	Multiple States	IO	FIGOs *(Banco d. Sur; ESM)*
Transfer of Authority	Supranational Organisation	Supranational Organisation	FIGOs *(Andean Court; ECJ; ECB)*

Table 1: Distinct exercises of public authority and respective actors.

transfer of authority.[22]

Type of Actor: Retained v Contracted Authority

The first defining dimension of transnational public authority concerns the type of actor. States can retain authority and act themselves or contract authority to non-state actors. While transnationalism often refers to non-governmental actors, public authority also can be organised transnationally. For instance, the EU has seen an increase in operational agencies that complement but also operate beyond the reach of national authorities (Freudlsperger et al. 2022). Multilayered governance structures, however, involve a wide range of actors of global governance (Tallberg/Zürn 2019; Zurn et al. 2012; Avant et al. 2010). States can rely on intermediaries to govern, using their capabilities for their own political goals (Abbott et al. 2016, p. 1). Oftentimes, such arrangements can be well described employing the principal-agent framework, which most often is reduced to mere delegation of tasks by states. However, there is a variety of forms of indirect governance such as trusteeships (Alter 2006), orchestration (Abbott et al. 2015), or other relationships which can be defined by competency and control considerations (Abbott et al. 2020).

For the conceptualisation of transnational public authority, the distinction between retained and contracted authority - and therefore between states and non-state actors - suffices without exploring the vast range of indirect governance relationships in greater detail. For the exercise of public au-

[22]This is relevant, for instance, in dispute settlement. If dispute settlement is delegated to an IO, the question whether an IO is invested with the authority to hold states accountable and initiate disputes against them determines whether the IO acquires actorness or merely serves as institutional framework for dispute settlement between members. In the European Union, for instance, infringement procedures are very frequently initiated by the European Commission, taking action against member states (Andersen 2012).

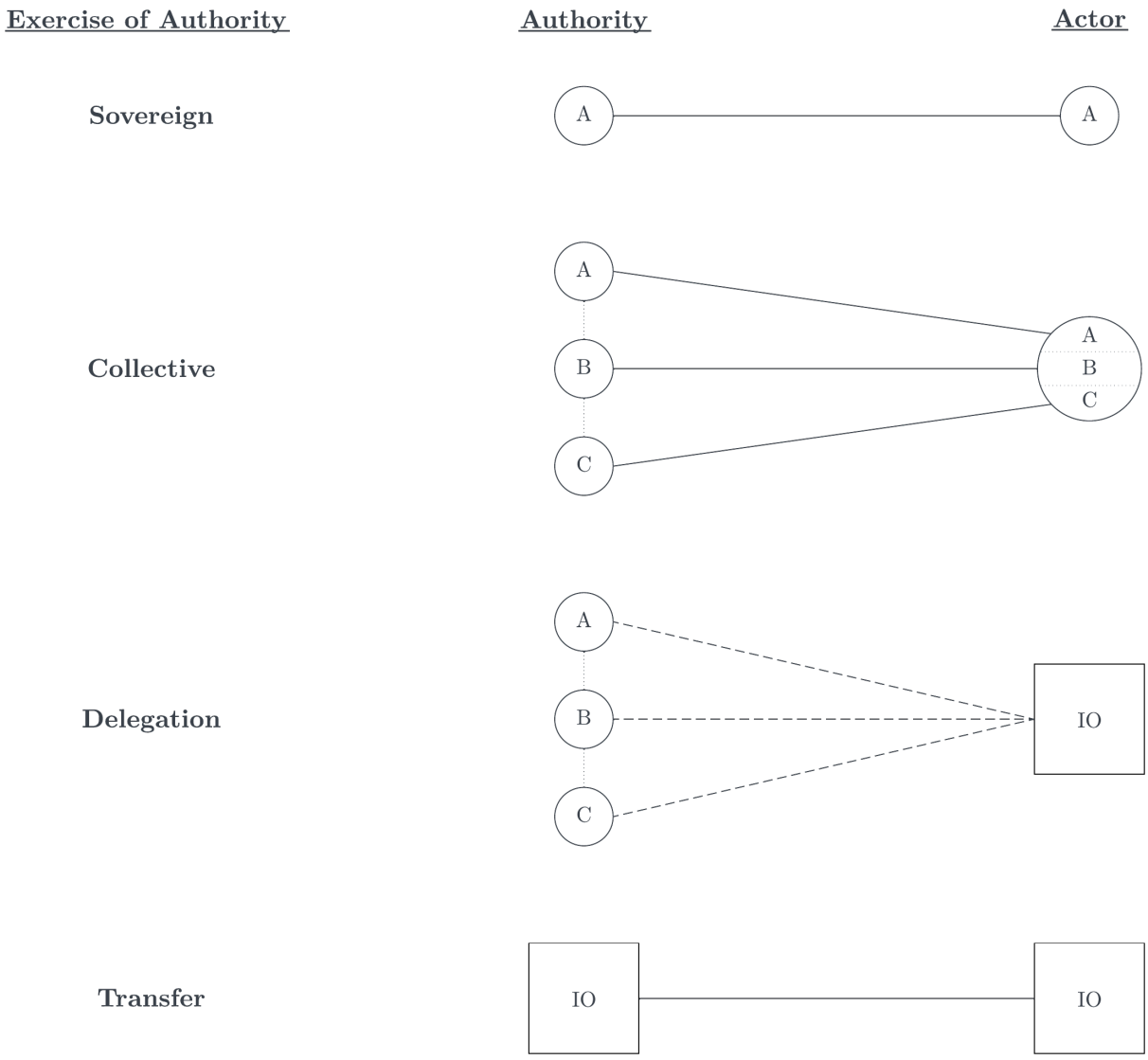


Figure 2: Distinct authority-actor relationships, visualised using the example of states A, B, and C. Solid lines connect representations of the same unit; dashed lines indicate a hierarchical control relationship; dotted lines indicate possible common decision-making or pooling. Circles indicate states while squares indicate non-state actors.

thority, the conferral of authority is central. Thus, the defining characteristic is whether states are the actors that exercise public authority, or whether states rely on other types of actors to do so by contracting authority. This corresponds to the distinction between only states being involved in governing, or third parties such as IOs and supranational bodies being invested with operational authority.

Authority-Actor Relationships: Individual v Aggregate Authority

The second dimension of transnational actorness concerns the congruency of the exercise of public authority. That is, it refers to the question of whether (i) the source of authority and (ii) the actor exercising that authority are identical. In other words, actors can either exercise individual or aggregate authority from multiple authoritative sources, respectively. Figure 2 visualises the authority-actor relationship entailed in distinct ways to exercise public authority. Actors can exercise their individual authority, thus acting independently. While the standard case is a state simply implementing individual policies (that it may or may not have coordinated with other states), the individual exercise of public authority is not restricted to states only. If an IO is invested with public authority in its own right, for instance, that IO also can exercise its authority individually - in which case the IO takes on the role of a supranational authority.

The typical case of an aggregate exercise of public authority, on the other hand, would be delegation of authority to a third party, such as an IO, that acts on behalf of state. That is, such actor is dependent on the continuous conferral of public authority by states (D. A. Lake 2009, p. 20). Accordingly, the IO is not able to exercise authority over its principal. Similarly, collective agents can act on behalf of their constituent groups of states, exercising the public authority of these states but do so as a collective, unitary actor. That is, states do not confer political authority on any other institution, but subject their authority to the group of states. The collective agent then acts on behalf of *all* its constituent states, creating an incongruency between each states' authority, on the one hand, and the actual collective exercise of authority, on the other hand. While the distinction between individual and aggregate exercises of authority may at times be blurred in reality, they are conceptually different, which is particularly relevant for the distinction between IOs as agents and trustees (Sarooshi 2005).

4.1 A Typology of Transnational Actors

The two dimensions establish a typologiy of different exercises of transnational public authority (Table 2).[23] The authority-actor relationship and the type of actor, which is defined by states' decision to retain or contract authority, determine the type of transnational actor. Most notably, situations in which states do not delegate authority to independent bodies, but nonetheless act collectively or transfer authority to non-state bodies, are not adequately captured by the concept of delegation. Multiple states, however, can act as unitary actor without delegating authority to an independent IO body by exercising authority collectively and operating as a *collective agent*, within or outside of the framework of an IO. This allows states both to act on aggregate public authority and yet retain the direct

[23] While the sovereign exercise of authority is not transnational in character, it remains included to keep the typology exhaustive. Furthermore, it can be conceived of as benchmark case and contrasted with other forms of actorness.

		TYPE OF ACTOR	
		States	*Non-State*
AUTHORITY - ACTOR RELATIONSHIP	*Individual*	Sovereign	Transfer
	Aggregate	Collective	Delegation

Table 2: Typology of distinct exercises of (transnational) public authority.

exercise of authority without intermediaries. While delegation can be the mechanism of choice in formal intergovernmental organisations (FIGOs), this is by definition not the case for IIGOs, or states that exercise authority collectively outside of the framework of an IO. They might also decide to transfer authority to IOs, allowing the latter to exercise public authority over the states that conferred their authority in the first place, thus acquiring authority in their own right. The four types of transnational actors will be discussed in turn.

States: Sovereign Authority

States do not exercise authority beyond their own borders and, thus, are not transnational actors. When concluding agreements or issuing declarations, states do not act on authority other than their own. Nonetheless, conceptualising sovereign actorness helps delineate the transnational actors. Summit diplomacy, bilateral agreements or loose coordination within IOs that serve as fora for inter-state cooperation, such as the ASEAN+3 and APEC frameworks, are typical examples of states being actors in global governance. Most plurilateral inter-state agreements will fall into this category as will most IOs that are talking shops and do not exercise meaningful authority on their own. After all, most agreement constitute mutual promises on sovereign action, without involving collective or joint initiatives - and without any prejudice beyond what has been agreed upon. Most trade agreements, double-taxation agreements and the 1930 Oslo agreements, in which several states pledged to notify all other parties before raising tariffs as well as mutual recognition agreements are examples of states' individual exercise of authority. The informal group of MIKTA states, for instance, serves as 'consultative forum'. Even formal IOs, such as GECF, can primarily serve as forum in which authority is not exercised other than individually by states.[24]

[24]This puts the GECF in contrast to OPEC, which in its function as cartel operates as collective agent.

International Organisations: Delegation of Authority

Delegation usually refers to the involvement of IOs in international cooperation. Delegation of authority constitutes the only hierarchical form of transnational actorness. Even though delegation entails the creation of a non-state agent with independent legal or organisational status, this does not necessarily result in that agent being a relevant transnational actor that exercises public authority. It is well possible for an IO or an international secretariat to be serving administrative and auxiliary functions, without having formal operational authority.

While IOs enjoy some extent of autonomy, they are under hierarchical control of their principals and cannot overstep the clear and specific contract between principals and agent. This process can be conceived of as two-stage process, which brings with it agency slack and other well-known problems associated with the principal-agent model.[25] A typical example of delegation is the regional financial safety net established in Latin America after the financial crisis in 2009. South American states founded the Banco del Sur, awarded it full legal identity and intended to delegate the task of crisis lending to the Bank. The bank's executive secretariat, not the council of ministers, would be in charge of approving disbursements.[26]

Supranational Organisations: Transfer of Authority

When states decide to transfer authority, they consent to be bound by decisions of the authoritative actor, i.e. they at least to some extent accept their authority as legitimate in their own right. Accordingly, the transnational actor is - in limited areas - able to unilaterally exercise authority over the respective group of states (Thatcher/Sweet 2002, p. 7). That is, beyond merely delegating a certain task to an agent, a such organisation then acts on its own authority, becoming supranational in character. EU members usually accept the primacy of EU law over their own national law, also having transferred entire responsibilities to the EU, which entails a transfer of capabilities, resources and personnel. The lack of UK trade negotiators after Brexit (and the realisation that all British trade negotiators were employed by the EU) is only one of the consequences of this transfer.[27] In a similar vein, international courts - such as the ECJ, Andean Court and Comesa Court - are not agents of states, but rather trustees (Alter 2006, p. 338), to whom authority has been transferred. Disputes between the courts and their

[25] For the sake of simplicity, representative agency as special case of delegation to another state is not considered. It usually is confined to deep bilateral relations. For instance, the foreign relations and security matters of all the constituent parts of the Kingdom of Denmark (such as The Faroe Islands and Greenland as self-governing nations within the Kingdom of Denmark) generally fall into the responsibility of the Danish government.

[26] Convenio Constitutivo del Banco del Sur, Article 8: https://web.archive.org/web/20220329045808/http://apw.cancilleria.gov.co/tratados/AdjuntosTratados/ae342_BANCO%20DEL%20SUR-2009.PDF

[27] FinancialTimes.15.07.2016."TheUKhasnotradenegotiators,saysformerBrexitminister:"https://www.ft.com/content/bbbdf998-4a6c-11e6-8d68-72e9211e86ab.

members are proof of the non-hierarchical relation of competing claims to act authoritatively.[28] In a landmark judgment, for instance, the CJEU ruled that judgments by constitutional courts of member states do not have to be abided by if in breach of EU law.[29]

The EU's approach to commercial policy gradually approaches a transfer of authority.[30] The European Parliament gradually received more authority, turning from a consultative body to the central actor that is more powerful than member state institutions. For agreements that concern EU competencies, national parliaments do not have any say at all - comparatively, the European Parliament is more authoritative in trade policy than parliaments in the UK, Canada and Australia.[31] In security policy, the failed European Defence Community would have established a hybrid system in the realm of security and defence. Member states would have been allowed to maintain national armed forces for a limited number of purposes, e.g. for individual military interventions outside Europe.[32] The Council of Ministers and the community's commissariat would have met regularly to harmonise the dual policy, with the commissariat being recognised as fully supranational and the council of ministers not being able to influence the community's decisions.[33]

Collective Agents: Collective Exercise of Authority

A group of states can operate as *collective agent* by jointly exercising authority on behalf of the group, thus acting transnationally. Unlike in the case of delegation, states hold decision-making and operational authority, although they act on the collective's authority. The collective exercise of public authority is organised directly, with no intermediary being involved, and aggregate as the collective agent exercises the authority of multiple states. States thus are authoritative in all involved states without exercising authority in each others' jurisdictions. Collective agency requires intentionality to bring about and maintain collective arrangements (Mitzen 2013, p. 7), which usually is expressed in a legal-formal agreement on the collective exercise of authority.[34] Collective agents can exer-

[28]The division of authority is not undisputed. On the contrary, confrontations over the right to exercise authority can be expected to increase with augmented transfers of authority to non-state actors.

[29]Judgment *ECLI:EU:C:2021:1034*. See: https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-12/cp210230de.pdf).

[30]Even if operational functions are fully delegated as is the case with some EU policies, states retain some form of control over the process (Adriaensen 2016). However, this rather resembles the role of (domestic) veto players. Since state authorities practically cannot influence the content of agreements, this procedure is comparable to the role of Congress in concluding US PTAs when fast track authority is invoked.

[31]Jones/Sands. 2020. "Ripe for reform: UK scrutiny of international trade agreements:" https://www.geg.ox.ac.uk/sites/default/files/2020-09/GEG%20WP%20144%20Ripe%20for%20reform-%20UK%20scrutiny%20of%20international%20trade%20agreements_0.pdf.

[32]Treaty Constituting the European Defense Community, Article 10: http://aei.pitt.edu/5201/1/5201.pdf.

[33]Treaty Constituting the European Defense Community, Articles 20.2 and 39.

[34]This falls short of the idea of shared sovereignty (Krasner 2005, p. 76), as collective agents do not necessarily establish deep or lasting forms of collectiveness or institutions. For instance, political authority might simply be exercised

cise transnational public authority in IIGOs, within the framework of FIGOs, or entirely outside the scope of organisations. Collective agency can be expressed in common negotiations of agreements or common, transnational policies that are implemented - collectively - by involved states.[35] States being collectively both the source of authority and agent means that collective agency is distinct from pooling, which depends on the decision-making mechanisms states adopt.[36] This may also include arrangements on ad-hoc basis without any pooling.

Exercising group authority by collectively implementing a single common policy as opposed to policy coordination is, in practice, the defining feature of the collective exercise of authority. In other words, this corresponds to a procedural equilibrium where several states intentionally act and exercise authority as one. Substantively, collective agency usually entails an element that enables states to achieve outcomes that go beyond the sum of individual states and could not be achieved separately. Even though the collective exercise of authority exhibits an inherent dualism between group actorness, on the one hand, and the agency of individual states (Pettit 2003),[37] on the other hand, collective agency is different from the mere sum of individual action by its constituent parts (List/Pettit et al. 2011, p. 3). Thus, collective agency is not entailed in plurilateral negotiations or agreements unless states choose to collective act upon their joint authority.

The example of the global corporate minimum tax rate shows how collective agency permits states to cooperate in areas where sovereign authority is insufficient but indirect governance architectures undesirable or not viable. The principle of collective agency lies at the heart of the rule's implementation. Involving no global tax authority, states acquire market jurisdiction regarding formerly unregulated global activities based on global information exchange.[38] Thus, a global minimum tax can jointly be enforced by participating states. Non-compliance would then effectively be penalised by - collectively induced - loses in taxation rights even in absence of a centralised authority. The same principle of cooperation applies to the implementation of the EU General Data Protection Regulation, which is collectively enforced by national supervisory authorities in their jurisdiction. These benefit from mutual exchange and enhanced cooperation. The potentially adverse effect due to - rather lose - collective agency is also reflected in the division of labour of the *Five Eyes'* intelligence services. With data collection of each countries' own citizens heavily restricted, collective agency

to negotiate collectively or implement policies with limited scope.

[35]For instance, this could correspond to custom and immigration enforcement in customs and economic unions.

[36]This also is different from the collective principal problem (Voorn et al. 2019; Nielson/Tierney 2003, p. 248) or from the multiple principal problem, which has occasionally been called common agency (Dixit et al. 1997). Collective agency as laid out here is characterised by a single collective agent and the multiple principals are not different from the collective agent, but form part of it.

[37]Pettit refers to this dualism as *Group Akrasia*.

[38]For technical details, see OECD. 2022. "Tax Incentives and the Global Minimum Corporate Tax:" https://www.oecd-ilibrary.org/docserver/25d30b96-en.pdf?expires=1680274259&id=id&accname=guest&checksum=12DAD9A17E8E9485041A0C9391855E02.

and mutual surveillance enables agencies to circumvent these restrictions on data gathering.

Conceptually, collective agency is distinct and must be delineated from sovereign exercises of authority. In the case of OPEC, for instance, the crucial element to cooperation is its cartel function. The group exercises its decisions collectively, and the viability of its policies is inherently dependent on the compliance of its members - i.e., collective implementation.[39] OPEC could not persist as oligopoly if its members acted individually. The similarity of OPEC, a FIGO, and OPEC+, which is a lose forum, highlights the distinctness of authority from organisational structures: in either case, the collective agent is constituted by states that jointly exercise public authority. Accordingly, states collectively remain in the drivers seat, whereas neither the formal nor informal IO is a relevant agent. Similarly, th early Bretton Woods system gave rise to a collective agent in monetary governance. The system of fixed currency exchange rates entailed a degree of interdependence that effectively created a unitary currency system centred on the US Dollar. With independent monetary policy being one element of the impossible trinity, even economic theory suggests that collective agency is conceptually distinct from sovereign authority.

Collective agency is also a common feature in international trade and financial governance. Mercosur member states are collectively represented when negotiating trade agreements, without the involvement of an independent body or non-state officials.[40] The multilateralization process of the Chiang Mai initiative, the regional financial safety net in East Asian, is another example of collective agency outside of IOs. Under this system, currency swaps would be executed not by a central institution but through the network of bilateral currency swap agreements. Due to a multilateralisation process, the network of bilateral agreements constitutes a collective that acts on the group's authority.[41] Similarly, members of the Schengen area act as a collective by giving each state the authority to act on behalf of the entire group of states, implementing a common policy - initially independent of organisations such as the EU. They issue visas and make decisions based on a single common policy and single framework.[42] Having mutualised the authoritative implementation of immigration policy on behalf of all members, each state issues visas for the entire group of states, without delegating that task to non-state parties. One of the weaknesses of this approach became evident when some countries refused to issue visas to Russian citizens in the wake of the invasion of Ukraine while most

[39]The OPEC statute directly refers to its aim as pursuing interests both *"individually and collectively."* (Article 2A, Statute of the OPEC.)

[40]Even in the early 19th century, collective actorness was a common feature of international commercial cooperation as the treaty between the Hanseatic Cities of Hamburg, Lübeck and Bremen, on the one hand, and the newly founded Republic of Venezuela, on the other hand, of 27 May 1837 suggests.

[41]Central Bank of the Philippines. 2020. "Chiang Mai Initiative Multilateralization:" https://www.bsp.gov.ph/Media_And_Research/Primers%20Faqs/CMIM_03-2020.pdf

[42]Community Code on Visas, Articles 25 and 37: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0810:20160412:EN:PDF

did not.

Collective agency also differs from delegation to an independent agent in several aspects. For instance, states maintain more direct *control* over the course of the implementation of decisions, eliminating agency slack. Collective efforts can allow states to overcome capacity constraints and even build *capacity* in its own bureaucracy due to mutual learning effects. Collective agency also precludes any questions regarding the *legitimacy* of non-state actors.[43] On the other hand, states may have to contradict their own preferences when acting collectively. For instance, Panamá is a part of the Central America group of states and negotiates trade agreements as part of the group. Given significant economic differences between Panamá and the rest of the group's members, this has been *"difficult. We have to defend a common agenda, not our own national interests."*[44] Increased bargaining power and collective capabilities, however, might be worth the collective effort.

One of the most significant advantages of collective agency is that it enables cooperation in areas where control is crucial, and states are reluctant to involve intermediaries. Security, and military cooperation, are arguably the least favourable areas for indirect governance. Here, collective agency can be a viable choice where delegation or even transfers of authority are not realistic. States seek to retain control over their armed forces, which is one of the strengths of collective agency. Indeed, rather than the ambitious creation of a European army, enhanced cooperation on lower military levels seems to be most successful. Joint EU military missions outside the EU, comprised of member state personnel, have become increasingly common. The mutual integration of German and Dutch military units has progressed over years, allowing these states to enhance their military capabilities while the participating units maintain allegiance to their home state.

More than the Sum of States: Emergence

Collective agency allows states to design transnational policies to be implemented that often could not have been adopted by their constituent parts on their own. In other words, a collective agent is conceptually distinct from - and usually more capable than - the mere aggregation of several states. *Emergence*, a concept borrowed from complex systems theory, can be helpful in understanding the significance of this change. Simply speaking, *"[e]mergence is about the properties of wholes compared to those of their parts, about systems having properties that their objects in isolation do not have. [...] in short the mechanisms producing novelty"* (Haan 2006, p. 294). The preeminent example of such a case is consciousness. The connection of and interaction among billions of cells invests

[43]The Eurogroup, for instance, is an informal IO, comprised of the finance ministers of the Eurozone. During the Eurozone crisis the group was a significant actor, most prominently vis-à-vis Greece. The informal nature of the Eurogroup gave its members an opportunity to act collectively in executing fiscal policies, and to overstep the political mandate of the EU, without requiring a formal decision to do so.

[44]Interview with Head of Department (Ministry of Commerce and Industry Panamá), 12.12.2019.

human brains with properties that can not be explained by the sum of involved cells, let alone any part alone.

A collective agent entails an exercise of authority that renders constituent parts mutually authoritative in their jurisdictions and, thus, goes beyond the sovereign exercise of a of its constituent parts on their own. Importantly, emergence must not be mistaken for synergy as it inherently entails an element of irreducible novelty (Corning 2002, pp. 22–24). The distinguishing feature is therefore the irreducibility of the collective's characteristic (Clayton 2008; Chalmers 2008) - in this case, the process of collectively exercising authority. When it comes to collective agency, it is the individual low-level units - states - that jointly act and exercise authority, but in doing so they enable high-level phenomena - transnational policies - that only become possible through the process of authority aggregation, not by the mere combination, of units' authority.

Take, for instance, the global corporate minimum tax, a policy that could also have been agreed on and implemented by a quasi-global government - yet is becoming reality in the complete absence of such an entity. It is being introduced precisely to stop a race to bottom driven by states' desire or need to lower corporate tax rates in order to attract foreign investment. The sum of states - without the intention to implement a collective rule - would not have been able to do so given the lack of crucial exchange of information among national tax authorities and incentives for individual states to deviate. This dilemma can be solved decentrally through collective actorness - states apply collective minimum tax rates and are even able to enforce compliance through collective action with respective to their jurisdictions. Similarly, OPEC+ are able to heavily impact the global crude oil price only due to its capacity as quasi-cartel which only emerges as result of their intent to collectively exercise authority - and not due its members' characteristics.

Collective Agency on Subnational Level

Collective agency is a form of direct governance that is not exclusive to the transnational realm. The typology of actorness applies as much to the subnational level. Indeed, particularly collective agency among subnational entities is an integral part of governance on national level of various federal and even devolved nations. Authority exercised by subnational public authorities can be aggregated by a nation's constituent units to implement effective policies that are harmonised or equivalent on national level - while subnational subjects retain the authority to act upon and implement such policies. The basic principle of collective agency on a lower level to achieve outcomes at a higher level remains unchanged. The logic of delegation and transfers of authority is also similar in sub-national settings, although the process can be bidirectional in federal regimes.

On subnational level, various interfederal – or rather *transfederal* – policies can be crafted to ex-

ercise collective authority and achieve policy outcomes on national level without conferring authority on the national government. Indeed, the tension between authority and outcomes is even implicit in Riker's federal bargain. Riker considered federalism not to have a meaningful impact on policy outcomes per se as public preferences ultimately are the decisive driver of change (Volden 2004, p. 102). Uniform preferences and efficiency gains of harmonisation might therefore well incentivise collective policies even in areas where the constitutional authority lies with subnational entities. From this perspective, federalism and devolved forms of government are two special forms of governance in which subnational levels exercise public authority in their own right or had been delegated *ex ante*, respectively.

Collaborative federalism – or the collective exercise of authority by subnational entities – is a feature of various federal and quasi-federal systems (Poirier/Saunders 2015; Klafki 2018). Interfederalism is particularly pronounced in Canadian politics and extends to various policy areas (Cameron/ Simeon 2002, p. 55), even in domestic trade relations. Collective agency is also in integral part of policy-making in Germany, where an elaborate conference system of sub-national administrations adopts and implements *'quasi-federal'* policies. While not a part of the federal government, for instance, these conferences take meaningful decisions on education policy on national level, which are then implemented through aligned state laws. [45] A similar case is the *Consejo Interterritorial del Sistema Nacional de Salud*, i.e. an interregional council, in Spain, where health policy and systems are largely governed by autonomous communities. The council serves as collective agent, coordinating and harmonizing decisions among the different health services to ensure equal quality across the country.[46] This approach is even more striking given that Spain merely devolved health policy to its autonomous communities. The relation between national and subnational authority is not always straightforward - and thus more similar to the fuzzy role of collective agency in the international system.

5 Designing Transnational Public Authority: Control, State Capacity and Legitimacy

The way public authority is exercised has substantive implications for cooperation. When exercising authority beyond the state, *control* and *capacity* are the principal distinguishing features of the different types of actorness. As opposed to loose forms of cooperation, states must consider the transnational exercise of public authority from an inherently dynamic perspective: Committing to a

[45] Interestingly, a secretariat was created in 1959 and gained status of a public authority only in 2014.

[46] Reglamento de Funcionamiento del Consejo Interterritorial del Sistema Nacional de Salud: `https://www.mscbs.gob.es/organizacion/consejoInterterri/docs/ReglamentoCISNS-23-07-2003.pdf`

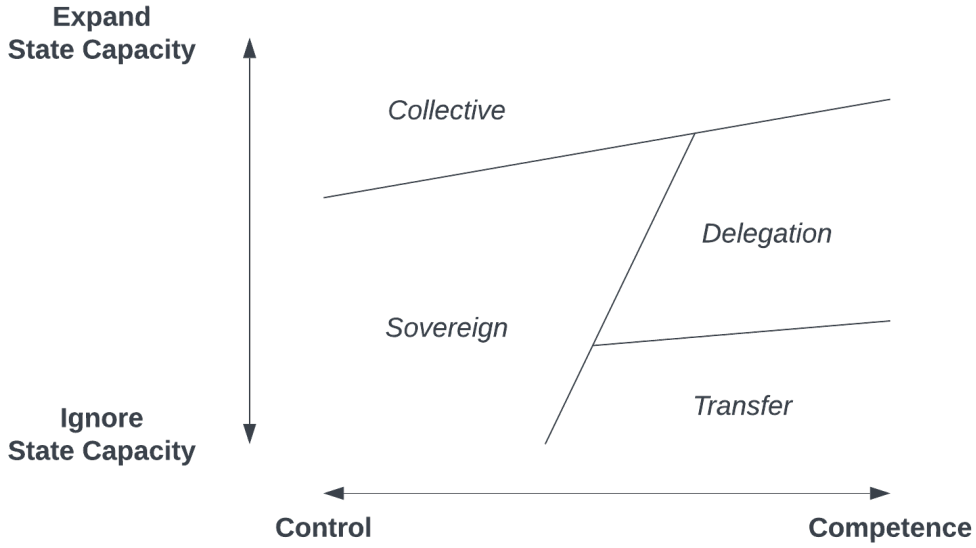


Figure 3: Schematic two-dimensional representation of design choices.

certain type of actor – such as by transferring authority – might restrict policy leeway and even state capacity in the future. Thus, such choices can create a feedback loop and shift capacity-constraints and limitations, rendering them endogenous to future choices. Capacity is not a secondary aspect of control - but can be an end in itself. For instance, states value the capacity to provide security on their own. Accordingly, they are hesitant to compromise on state capacity in this policy area. Finally, design choices regarding transnational public authority also reflect on the *legitimacy* of cooperation and transnational authority as well potential backlashes.

The choice to involve non-state actors is central. Do states retain control, or do they involve other actors, leveraging the competence of non-state agents at the expense of control? States – like all principals – face this competence-control trade-off when it comes it indirect governance arrangements (Abbott et al. 2020). When it comes to transnational public authority, capacity considerations mediate this trade-off. In a dynamic setting, states may value retaining or expanding capacity – even prospectively – or be indifferent to the effect cooperation arrangement may have on capacity.

States face trade-offs regarding control over cooperation and its effect on state capacity, which are schematically visualised in Figure 3. When states exercise sovereign authority, they retain control and their policy leeway is defined by their own capacity. Transferring authority to supranational actors entails the loss of control over policies and a potential loss of capacity to exercise sovereign authority. Thus, states' perception of and interest in maintaining national capacity can alter how states choose to cooperate. Whenever states do not value control but seek to maintain the (potential) capacity to act, even prospectively, they should delegate authority rather than entirely surrendering authority by

transfer. Thus, states remain capable to act on their own, despite involving an intermediary. When states seek to maintain control and overcome individual capacity constraints or extend their individual capacity to act, the collective exercise of authority provides a way to reconcile these aims.

Collective agency in particularly can help safeguard capacity and thus alter the trade-off as states aggregate authority without given up direct control over the process. Indeed, despite acting on the collective's authority, they individually remain involved throughout the process, from decision-making to implementation. This can be a significant advantage in the long-term. For instance, when states unilaterally recognise the decisions taken by stringent regulatory authorities in public health, states may forfeit the development of domestic regulatory capacity. Similarly, by turning trade policy largely into a EU competency, its member states have essentially lost the capacity to negotiate trade agreements on their own – a deficit the UK recognised soon after the Brexit referendum.

The salience of state capacity impacts how authority is exercised. If states deem capacity important, they are less willing to enter arrangements that could undermine their capacity to exercise sovereign authority. Collective agency, and to a lesser extent delegation, allow states to expand their capacity by pooling capacity or bringing in external capabilities. Note that delegation - by design hierarchical - often benefits the principal, at least to some extent, through oversight and access to organisational procedures. Even indirect governance can *'provide the governor with learning opportunities'* (Abbott et al. 2020, p. 23). Even more so can collective agency, where shortcomings can be compensated through the collective.

Security is a policy domain where capacity is most salient - arguably more so than direct control. States usually seek to maintain the capacity to guarantee security on their own. The leeway for transnational cooperation in this area therefore is rather limited, yet remains unexploited. However, states will seek to maintain control and cooperate primarily to expand capacity constraints, i.e. achieve defence cooperation in areas where significant security gains reward cooperation. These schemes could entail collective exercises of authority, which allow states to mutually expand capacity without giving up control - rather than delegation to other actors. The envisioned European Defence Community is an example of how cooperation that fails to consider these aspects is unlikely to succeed - and why military cooperation is most successful when addressing specific issues and limited to specific units - such as evidenced by the North American Aerospace Defense Command;[47] the integrated forces of the US and South Korea in case of war in Korea;[48] plurilateral yet limited integration initiatives under the EU's Permanent Structured Cooperation; and an envisioned Nordic air force.[49]

[47]The example of NORAD shows how collective agency can (i) expand the capacity of participating states to provide security and (ii) add a collective element to cooperation that exceeds the mere sum of material capabilities.

[48]United Forces Korea. ROK/US Combined Forces Command: `https://www.usfk.mil/About/CFC/`).

[49]Reuters. 24.03.2023. "Nordic countries plan joint air defence to counter Russian threat:" `https://www.reuters.com/world/europe/nordic-countries-plan-joint-air-defence-counter-russian-threat-2023-03-24/`.

Table 3: Characteristics of collective actorness and delegation as means to aggregate authority.

	Collective Agency	**Delegation to IOs**
Control	Direct	Hierarchical
Capacity-Building	Mutual	External
Legitimacy	Unmediated Governance	Depoliticisation

5.1 Exercising Authority Jointly: Collective Agency v Delegation

The most common forms of transnational public authority allow groups of states to aggregate authority and take joint action: The collective exercise of authority and delegation of authority. The choice between collective agency and delegation, however, is not a straightforward one. State capacity is a crucial element as a certain level of *ex-ante* capacity is necessary for states act collectively in an effective way – reversely, collective agency can also push capacity constraints as the collective exercise of authority is closely coordinated and parties can mutually benefit from each other's capabilities. Collective agency is inherently non-hierarchical, distinguishing it from both delegation and imperial forms of governance.

The choice for - and consequence of - either the collective exercise of authority or the delegation of authority entail important differences. The most pronounced characteristics in terms of control, state capacity, and legitimacy are presented in Table 3. The direct involvement of all constituent units - which follows from the direct exercise of transnational authority - is the most striking characteristic of collective agency. States exert direct control throughout the entire process of cooperation. This stands in stark contrast to the control states exercise *over* agents when delegating authority. The direct control states exert when acting collectively allows them to leverage their power in a more immediate way than in the case of delegation. Power politics is relevant to the design of IOs where states exert asymmetric influence (Gruber 2005), and may even be more so for collective agents. Indeed, the dominance of South Africa in the SADC - which is a collective actor – stands in stark contrast to the subjugation of national interests to common ones in the case of ECOWAS where authority often is delegated to a secretariat (Hulse 2014, p. 557).

The direct exercise of collective authority alters the competence-control trade-off inherent to indirect governance (Abbott et al. 2020). The distinction between the establishment of a collective agent's aims and implementation blur into one continuous stage. This is different from the case of delegation, where the former must be defined explicitly – and usually formally – while ex post control resembles surveillance of the agent. Collective agency might therefore be particularly suited for areas where necessary tasks and consequences of cooperation are abstract or diffuse and cannot be well-defined ex ante.

Collective and delegated exercises of authority furthermore have diverging relations to the role of *state capacity*. While, in principle, both are able to loosen capacity constraints, the underlying processes differ fundamentally. When delegating to an external agent, states might gain experience derived from overseeing and controlling the agent, without directly being involved in implementation. That is, external competence can advance state capacity. In the case of collective actors, states can mutually gain from their capabilities and experiences based on the exchange of information and task-sharing that is characteristic of collective agents. Notably, this means that advances in state capacity are limited to the learning effects among involved parties.

Since states jointly constitute the collective agent, it can also be less costly for individual states to defect from their commitments. States retain the capacity and resources to implement policies and do not have to substitute the operational capacity of IOs, unlike in the case of withdrawal from delegated forms of authority. This might render collective agents less stable than other arrangements - but also allows states to pursue cooperation in flexible arrangements and to engage in task-specific schemes that require constant re-assessment. This may contribute to delegation being less widespread in task-specific IOs (Lenz et al. 2014).

The choice between delegation and collective authority also involves meaningful choices related to the *legitimacy* of cooperation. Particularly in sensitive policy areas, there may be policies that could not be implemented by non-state actors but can be pushed through with operational authority remaining in the hands of states. Collective agency might thus contribute to legitimising cooperation. In light of a growing popular backlash against IOs, which often is rooted in their being distinct from states (Börzel/Zürn 2021), collective agency entrenches transnational policies in democratically legitimised national executives. While collective agency limits the responsibility borne by individual states as well as their leeway, the absence of intermediaries and IOs involved in the policy-making process increases can procedural legitimacy in policy areas where societies tend to reject IOs and cosmopolitanism (Tallberg/Zürn 2019, p. 600). This, of course, stands in contrast to the depoliticisation entailed in delegation and which also can legitimise policy-making by lending procedural credibility (Majone 2001). However, the latter may not always be conducive to cooperation. For instance, when Caricom's Common Negotiation Machinery – in the perception of member states – became oblivious to their national interests, states decided to curtail the authority of the Caricom body. Subsequently, they decided to largely repatriate the authority to negotiate external treaties. Disagreement over collective agency and delegation prevents a solution the dispute.

Conversely, it is precisely concerns about the legitimacy associated with executive personnel that have been a major point of contention in Brexit negotiations. Disputes over the responsibility for border controls have been the pivotal obstacle to a post-Brexit agreement over Gibraltar.[50] The

[50]The Guardian. 02.01.2023. "Spain 'ready for any scenario' as Gibraltar talks with UK falter:" `https://www.thegua`

UK insists EU staff - i.e. Frontex - conduct passport and customs controls to prevent any perception of joint sovereignty over Gibraltar. Joint sovereignty is a a goal long sought by Spain but staunchly opposed by the UK as it could undermine the legitimacy of the UK's rule over Gibraltar. Despite Frontex being the EU's first uniformed service, passport and customs controls at external borders are exclusively and collectively conducted by member state personnel - which is in line with the Spanish demand yet seemingly unacceptable to the UK.

6 Discussion

While the literature on global governance increasingly accounts for the influence of a wide range of international and transnational stakeholders, the changing character of public authority maybe does not receive the attention it deserves. Technological change allows for more decentralised and fragmented collaboration even in the international system (Manulak/Snidal 2021). At the same time, shrinking distances and an increasingly connected global public and network of actors have created a growing demand for transnational policies and regulations - that is, policies that constitute transnational solutions to problems. In the wake of these developments, IOs - and brick-and-mortar institutions in particular - preeminent status as vehicles for cooperation between states has declined. Moving away from the organisations as sole conceptualisation of authority beyond the state and category of measurement should be one of its consequences.

Responses to changes in global governance include operational non-stage agency, authority of supranational actors, enhanced collaboration and collective agents. Transnational public authority and the variety of transnational actors are comparatively fuzzy concepts and, certainly, not as easily to capture and delineate as organisational features. Identifying areas where authority is exercised transnationally as well as the related actors is even more difficult - and yet, understanding cooperation at that level of detail should remain an aspirational goal that gradually can be approached. Looking closer at who exercises authority and how this is done is a worthwhile endeavour. A more task-oriented conceptualisation, building upon the service conception of authority Raz 2006, could shed further light on how governance, and public authority specifically, is organised in the age of globalisation.

The design of cooperation is not a question secondary to preferences. Rather, what is desirable is contingent on what is feasible. Considerations on viability touch upon the authority-actor relationship and the choice of the actor. Retaining control over operational authority and capacity-building are central considerations of states when cooperative arrangements are designed. Cooperation and the

rdian.com/world/2023/jan/02/spain-ready-for-any-scenario-as-gibraltar-talks-with-uk-falter.

exercise of public authority are inherently dynamic processes, which fluctuate over time and in scope. They never are finished projects that reach a steady state - new challenges, preferences and conditions continuously demand further improvements. This is not to say that cooperation is a one-way street. Questions of legitimacy and backlashes to the loss of national control may well result in more nuanced governance architectures. Receding delegation should be understood as a possible change in the patterns of cooperation - not necessarily a withdrawal from it.

A transnational public authority perspective can provide an integrated conceptualisation of various processes and changes in governance. Accounting for qualitatively different types of cooperation, it can help explain how instances of cooperation change and evolve.[51] The European Parliament, for instance, turned from a collective agent with very limited authority via the delegation of authority to a transnational actor with - partial - authority over states in its own right. Institutions do not exist in a vacuum, even if the form of cooperation changes. The Western Committee for multilateral export controls, responsible for technology control, only was superseded by the multilateral Wassennar agreement after the Cold War came to an end. Similarly, the 'Military Inter-Allied Commission of Control and Organisation' in the post-WWI era functioned as a collative actor but was replaced by a League of Nations mechanism that lacked the capacity to act.

Collective agency may be a less stringent way to exercise authority but it enables states to cooperate in areas where cooperation may not be feasible otherwise. Maybe counterintuitively, less delegation can be associated with more cooperation. The prime example of this would be cooperation in security affairs. The very principle of collective security entails to collective actorness, allowing individual states to retain full capacity to defend themselves. Importantly, this dispenses of the need of non-state military actors. This also is the main reason why a so-called 'European Army' is likely to be based on collective arrangements or complement national defence forces in limited areas rather than replacing them. Indeed, partial mergers of forces and collective efforts are well under way. These crucial processes in security matters are not reflected in formal institutional and yet correspond to pathbreaking trajectories in how public authority is exercised beyond states.

7 Conclusion

Taking into account structural changes in international cooperation, this paper has shown that organisation-based approaches to conceptualising cooperation in the international system fail to acknowledge the wide range of actors that exercise authority beyond the state. It has brought forward a conceptualisation of transnational public authority, which gives rise to distinct transnational actors. Transnational

[51] Moreover, it can contribute to integrating theories of authority within and beyond states.

actorness is defined by (i) the authority-actor relationship and (ii) the type of actor. This includes but goes beyond the role of IOs with delegated authority. Multiple examples from various policy-areas have further shown that transnationalism is not a realm of non-state and civil society actors. In fact, the exercise of authority beyond the state can oftentimes more accurately be described as transnational. Transnational actorness is the vehicle that allows for the exercise of public authority beyond the state.

Transnational public authority is a feature of global governance that renders transnational cooperation fuzzy and fragmented, without establishing a clear or uniform division of authority between different levels of governance. Governance becomes more fine-grained and dynamic than it appears from an organisation-based perspective, with authority being policy or even issue-specific. The transnational exercise of public authority, defining transnational actorness, provides the framework for an integrated conceptualisation that helps overcome the divide between the international and national authority. Similar to transfederalism on subnational level, there is no reason why public authority could not be exercised in transnational fashion.

Delegation only reflects a limited range of transnational public authority. In absence of authoritative actors above the state level, conferrals of public authority to non-state actors are rather limited and overwhelmingly restricted to selective areas in which states are willing to surrender at least some extent of control. Delegation also tends to rely on possibly over-ambitious legal text, to which actual authority-relations may not live up.

The central contribution to the typology of actors is the concept of collective agency, filling a gap in the conceptualisation of public authority and situating it along other types of transnational actorness. Collective agency reflects a less formal yet widespread and potent form of cooperation, which allows states to aggregate their authority while maintaining direct control. States are both principals and form a collective agent, giving them the authority to collectively act on behalf of all involved states. This is distinct from delegation and the individual exercise of sovereign authority. Importantly, it opens up new possibilities for cooperation where other, usually more formal, approaches are inadequate. This, importantly, has consequences for the legitimacy of cooperation.

Control and state capacity are crucial aspects of distinct exercises of transnational authority. Retaining control over operational authority and capacity are central considerations of states and can, thus, shape the extent and type of cooperation. When state capacity is a salient factor, such as in security affairs, the competence-control trade-off actors face when delegating authority is altered: Maintaining or expanding the capacity to act then becomes a central objective of states and may supersede considerations about control. Preferences and viable design choices determine the extent of transnational public authority.

Conceiving of transnational cooperation as a one-way street of ever-increasing cooperation is misguided – the emergence of transnational public authority is a dynamic process in which authority is contracted and at times reversed. The transnational exercise of public authority can be fostered in some limited fields, while experiences from other instances may well show that states - or states as collective actors - are the more appropriate, effective and legitimate loci of public authority. Measuring transnational public authority would paint a more nuanced picture of cooperation and authority beyond the state. This is a difficult task, with transnational actors overlapping and differing across and within policy areas. It requires an analysis of formal and informal IOs as well as treaties and non-organisational arrangements. Nonetheless, it would reveal when and how public authority transcends borders.

References

Abbott, Kenneth W and Benjamin Faude (2020). "Choosing low-cost institutions in global governance". In: *International Theory*, pp. 1–30.

Abbott, Kenneth W and Duncan Snidal (1998). "Why states act through formal international organizations". In: *Journal of conflict resolution* 42.1, pp. 3–32.

Abbott, Kenneth W et al. (2015). *International organizations as orchestrators*. Cambridge University Press.

— (2016). "Two logics of indirect governance: Delegation and orchestration". In: *British Journal of Political Science* 46.4, pp. 719–729.

Abbott, Kenneth W et al. (2020). *The Governor's Dilemma: Indirect Governance Beyond Principals and Agents*. Oxford University Press.

Adriaensen, Johan (2016). *National administrations in EU trade policy: Maintaining the capacity to control*. Springer.

Agnew, John (1994). "The territorial trap: the geographical assumptions of international relations theory". In: *Review of international political economy* 1.1, pp. 53–80.

Alter, Karen J (2006). "Delegation to international courts and the limits of re-contracting political power". In: *Delegation and agency in international organizations*, pp. 312–38.

Andersen, Stine (2012). *The enforcement of EU law: the role of the European Commission*. Oxford University Press.

Avant, Deborah D, Martha Finnemore, and Susan K Sell (2010). *Who governs the globe?* Vol. 114. Cambridge University Press.

Baert, Francis, Tiziana Scaramagli, and Fredrik Söderbaum (2014). "Intersecting interregionalism". In: *Global Governance and the EU*.

Baracani, Elena (2020). "Evaluating EU actorness as a state-builder in 'Contested' Kosovo". In: *Geopolitics* 25.2, pp. 362–386.

Barnett, Michael, Martha Finnemore et al. (2004). *Rules for the world: International organizations in global politics*. Cornell University Press.

Bendor, Jonathan, Amihai Glazer, and Thomas Hammond (2001). "Theories of delegation". In: *Annual review of political science* 4.1, pp. 235–269.

Börzel, Tanja A and Michael Zürn (2021). "Contestations of the liberal international order: From liberal multilateralism to postnational liberalism". In: *International Organization* 75.2, pp. 282–305.

Bradley, Curtis A and Judith G Kelley (2008). "The concept of international delegation". In: *Law and Contemporary Problems* 71.1, pp. 1–36.

Bretherton, Charlotte and John Vogler (2005). *The European Union as a global actor*. Routledge.

Cameron, David and Richard Simeon (2002). “Intergovernmental relations in Canada: The emergence of collaborative federalism”. In: *Publius: The Journal of Federalism* 32.2, pp. 49–72.

Chalmers, David J (2008). “Strong and Weak Emergence”. eng. In: *The Re-Emergence of Emergence*. Oxford: Oxford University Press. ISBN: 9780199544318.

Churchill, Robin R and Geir Ulfstein (2000). “Autonomous institutional arrangements in multilateral environmental agreements: a little-noticed phenomenon in international law”. In: *American Journal of International Law* 94.4, pp. 623–659.

Clayton, Philip (2008). “Conceptual Foundations of Emergence Theory”. eng. In: *The Re-Emergence of Emergence*. Oxford: Oxford University Press. ISBN: 9780199544318.

Closa, Carlos and Lorenzo Casini (2016). *Comparative regional integration: governance and legal models*. Vol. 10. Cambridge University Press.

Corning, Peter A (2002). “The re-emergence of “emergence”: A venerable concept in search of a theory”. In: *Complexity* 7.6, pp. 18–30.

Cutler, A Claire (1999). “Location “Authority” in the Global Political Economy”. In: *International Studies Quarterly* 43.1, pp. 59–81.

Delbrück, Jost (2003). “Exercising public authority beyond the state: Transnational democracy and/or alternative legitimation strategies?” In: *Indiana Journal of Global Legal Studies* 10.1, pp. 29–43.

Dixit, Avinash, Gene M Grossman, and Elhanan Helpman (1997). “Common agency and coordination: General theory and application to government policy making”. In: *Journal of political economy* 105.4, pp. 752–769.

Drieskens, Edith (2017). “Golden or gilded jubilee? A research agenda for actorness”. In: *Journal of European Public Policy* 24.10, pp. 1534–1546.

Freudlsperger, Christian, Adina Maricut-Akbik, and Marta Migliorati (2022). “Opening Pandora’s Box? Joint Sovereignty and the Rise of EU Agencies with Operational Tasks”. In: *Comparative Political Studies* 55.12, pp. 1983–2014.

Friedman, Richard B (1990). *On the concept of authority in political philosophy*. Ed. by J Raz. 0. Oxford: Basil Blackwell, pp. 56–91.

Gaus, Alexander (2019). “Transnational policy communities and regulatory networks as global administration”. In: *The Oxford Handbook of Global Policy and Transnational Administration*.

Gruber, Lloyd (2005). “Power politics and the institutionalization of international relations”. In: *Power in global governance*, pp. 102–129.

Guzman, Andrew T and Jennifer Landsidle (2008). “The myth of international delegation”. In: *California Law Review* 96.6, pp. 1693–1723.

Haan, Jos de (2006). “How emergence arises”. In: *Ecological complexity* 3.4, pp. 293–301.

Haftel, Yoram Z (2013). “Commerce and institutions: Trade, scope, and the design of regional economic organizations”. In: *The Review of International Organizations* 8.3, pp. 389–414.

Haftel, Yoram Z and Alexander Thompson (2006). "The independence of international organizations: Concept and applications". In: *Journal of Conflict Resolution* 50.2, pp. 253–275.

Hawkins, Darren G et al. (2006). *Delegation and agency in international organizations*. Cambridge University Press.

Hettne, Björn (2014). "Regional actorship: A comparative approach to interregionalism". In: *Intersecting interregionalism*. Springer, pp. 55–70.

Hooghe, Liesbet, Tobias Lenz, and Gary Marks (2019). *A theory of international organization*. Oxford University Press.

Hooghe, Liesbet and Gary Marks (2015). "Delegation and pooling in international organizations". In: *The Review of International Organizations* 10.3, pp. 305–328.

Hooghe, Liesbet et al. (2017). *Measuring international authority: A Postfunctionalist theory of governance, Vol. III*.

Hulse, Merran (2014). "Actorness beyond the E uropean U nion: Comparing the International Trade Actorness of SADC and ECOWAS". In: *JCMS: Journal of Common Market Studies* 52.3, pp. 547–565.

Hurd, Ian (1999). "Legitimacy and authority in international politics". In: *International organization*, pp. 379–408.

Joachim, Jutta, Bob Reinalda, and Bertjan Verbeek (2007). *International organizations and implementation: enforcers, managers, authorities?* Routledge.

Joosen, Rik and Gijs Jan Brandsma (2017). "Transnational executive bodies: EU policy implementation between the EU and member state level". In: *Public Administration* 95.2, pp. 423–436.

Jupille, Joseph and James A Caporaso (1998). "States, agency, and rules: the European Union in global environmental politics". In: *The European Union in the world community* 17, pp. 157–182.

Kahler, Miles and David Lake (2003). "Globalization and Governance". In: *Governance in a Global Economy*. Princeton University Press, pp. 1–32. ISBN: 9780691114019.

— (2004). "Governance in a global economy: Political authority in transition". In: *PS: Political Science & Politics* 37.3, pp. 409–414.

Klafki, Anika (2018). "Legal Harmonization Through Interfederal Cooperation: A Comparison of the Interfederal Harmonization of Law Through Uniform Law Conferences and Executive Intergovernmental Conferences". In: *German Law Journal* 19.6, pp. 1437–1460.

Klose, Stephan (2018). "Theorizing the EU's Actorness: Towards an Interactionist Role Theory Framework". In: *JCMS: Journal of Common Market Studies* 56.5, pp. 1144–1160.

Koremenos, Barbara, Charles Lipson, and Duncan Snidal (2001). "The rational design of international institutions". In: *International organization* 55.4, pp. 761–799.

Krasner, Stephen D (2005). "Building democracy after conflict: The case for shared sovereignty". In: *Journal of democracy* 16.1, pp. 69–83.

Lake, David A (2009). *Hierarchy in international relations*. Cornell University Press.

Lall, Ranjit (2023). *Making International Institutions Work: The Politics of Performance*. Cambridge University Press.

Lenz, Tobias et al. (2014). "Patterns of international organization. Task specific vs. general purpose". In: *Task Specific vs. General Purpose (December 2014). Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS* 128.

List, Christian, Philip Pettit et al. (2011). *Group agency: The possibility, design, and status of corporate agents*. Oxford University Press.

Majone, Giandomenico (2001). "Two logics of delegation: agency and fiduciary relations in EU governance". In: *European Union Politics* 2.1, pp. 103–122.

Manulak, Michael W and Duncan Snidal (2021). "The Supply of Informal International Governance". In: *Global Governance in a World of Change*. Cambridge University Press, pp. 182–213.

Mattheis, Frank and Uwe Wunderlich (2017). "Regional actorness and interregional relations: ASEAN, the EU and Mercosur". In: *Journal of european integration* 39.6, pp. 723–738.

Mitzen, Jennifer (2013). *Power in concert: The nineteenth-century origins of global governance*. University of Chicago Press.

Murau, Steffen and Kilian Spandler (2016). "EU, US and ASEAN Actorness in G20 Financial Policy-Making: Bridging the EU Studies–New Regionalism Divide". In: *JCMS: Journal of Common Market Studies* 54.4, pp. 928–943.

Nielson, Daniel L and Michael J Tierney (2003). "Delegation to international organizations: Agency theory and World Bank environmental reform". In: *International organization*, pp. 241–276.

Pettit, Philip (2003). "Akrasia, collective and individual". In: *Weakness of will and practical irrationality*, pp. 68–96.

Poirier, Johanne and Cheryl Saunders (2015). "Comparing Intergovernmental Relations and Cooperative Mechanisms in Federal Systems: An Introduction". In.

Pollack, Mark A (1997). "Delegation, agency, and agenda setting in the European Community". In: *International organization* 51.1, pp. 99–134.

Prakash, Aseem and Matthew Potoski (2016). "Dysfunctional institutions? Toward a new agenda in governance studies". In: *Regulation & Governance* 10.2, pp. 115–125.

Raz, Joseph (2006). "The problem of authority: Revisiting the service conception". In: *Minn. L. Rev.* 90, p. 1003.

Rhinard, Mark and Gunnar Sjöstedt (2019). "The eu as a global actor: A new conceptualisation four decades after "actorness"". In: *Swedish Institute for International Affairs* 6.

Riker, W (1964). *Federalism: Origin, Operation, Significance*. Boston: Little Brown.

Sarooshi, Dan (2005). *International organizations and their exercise of sovereign powers*. Oxford University Press.

Schunz, Simon and Chad Damro (2020). "Expanding actorness to explain EU external engagement in originally internal policy areas". In: *Journal of European Public Policy* 27.1, pp. 122–140.

Scott, Colin (2002). "Private regulation of the public sector: a neglected facet of contemporary governance". In: *Journal of Law and Society* 29.1, pp. 56–76.

Sjöstedt, Gunnar (1977). *The external role of the European Community*. Vol. 7. Gower Publishing Company, Limited.

Slaughter, Anne-Marie (2005). *A new world order*. Princeton University Press.

Söderbaum, Fredrik (2015). *Rethinking regionalism*. Macmillan International Higher Education.

Sus, Monika (2019). "Institutional innovation of EU's foreign and security policy: Big leap for EU's strategic actorness or much ADO about nothing?" In: *International Politics* 56.3, pp. 411–425.

Tallberg, Jonas and Michael Zürn (2019). *The legitimacy and legitimation of international organizations: Introduction and framework*.

Thatcher, Mark and Alec Stone Sweet (2002). "Theory and practice of delegation to non-majoritarian institutions". In: *West European Politics* 25.1, pp. 1–22.

Vabulas, Felicity and Duncan Snidal (2013). "Organization without delegation: Informal intergovernmental organizations (IIGOs) and the spectrum of intergovernmental arrangements". In: *The Review of International Organizations* 8.2, pp. 193–220.

— (2019). "Soft Pooling: How IIGOs Govern Collective Decision-making without Delegation to formal IGOs". In: *Draft*.

— (2021). "Cooperation under autonomy: Building and analyzing the Informal Intergovernmental Organizations 2.0 dataset". In: *Journal of Peace Research* 58.4, pp. 859–869.

Volden, Craig (2004). "Origin, operation, and significance: The federalism of William H. Riker". In: *Publius: The Journal of Federalism* 34.4, pp. 89–108.

Voorn, Bart, Marieke van Genugten, and Sandra van Thiel (2019). "Multiple principals, multiple problems: Implications for effective governance and a research agenda for joint service delivery". In: *Public Administration* 97.3, pp. 671–685.

Westerwinter, Oliver, Kenneth W Abbott, and Thomas Biersteker (2020). "Informal governance in world politics". In: *The Review of International Organizations*, pp. 1–27.

Wunderlich, JENS-UWE (2012). "The EU an actor sui generis? A comparison of EU and ASEAN actorness". In: *JCMS: Journal of Common Market Studies* 50.4, pp. 653–669.

Zurn, Michael, Martin Binder, and Matthias Ecker-Ehrhardt (2012). "International authority and its politicization". In: *IT* 4, p. 69.

Zürn, Michael (2018). *A theory of global governance: Authority, legitimacy, and contestation*. Oxford University Press.

COLLECTIVE NEGOTIATIONS OR GOING BILATERAL? THE FOREIGN ECONOMIC DIPLOMACY OF TRADING BLOCS AS COLLECTIVE POLITICAL ACTORS

Abstract

What actors negotiate preferential trade agreements (PTAs)? A growing number of states negotiate PTAs with third states both bilaterally and collectively as part of trading blocs. Trading blocs tend to be mischaracterised as static economic entities, but collective negotiations typically do not preclude their member states' retaining the authority and ability to negotiate bilateral agreements. Emphasising the negotiating process and economic diplomacy, this paper seeks to address why states pursue a dual foreign commercial policy by negotiating agreements both bilaterally and collectively. In doing so, it develops a theory of trading blocs as collective political actors that help states manage their economic relations by representing common interests. Crucially, states do not delegate trade policy. Instead, representatives from member states collectively represent the trading bloc. As opposed to delegation, collective agency allows states to negotiate jointly yet remain in direct control at the negotiating table. Collective negotiations may be driven by necessity or choice. When capacity constraints limit states' ability to conduct economic diplomacy, collective agency helps states expand capacity by pooling expertise and resources while maintaining control - allowing them to negotiate agreements they could not conclude on their own. In the absence of capacity constraints, collective negotiations are a means to manage and align internal and external commitments. While collective negotiations involve a trade-off between a common compromise and autonomy, functional variability and exemptions allow for limited differentiation and thus favour collective agreements. The decision between collective and bilateral negotiations involves an element of political choice - like-mindedness and an interest in trading bloc cohesion facilitate collective negotiations. The theory of trading blocs as collective political actors is put to empirical tests using a regression discontinuity design, matching and multi-level models. Case studies and several interviews with trade representatives and negotiators provide evidence for the argument on the role of collective trade negotiations in international trade governance.

"It's not that we don't have a common external tariff because we have exemptions. We have a common external tariff precisely because we have exemptions."

- Former Director for International Trade Negotiations at the Ministry of Foreign Affairs and International Trade of Argentina[1]

1 Introduction

One morning during a round of negotiation on the EU-Mercosur preferential trade agreement (PTA), an official from the French embassy, identifying a subject matter of interest to their country, sought to attend one of the sessions. *"Who is this person?"*, the irritated EU Chief negotiator - who is an official of the European Commission's DG Trade - asked, before having the French diplomat removed from the premises.[2] While this anecdote may refer to a rather unusual occurrence, it poignantly contrasts the differences between the negotiating parties - which are consequential. Despite commonly being framed as inter-bloc PTA, two different types of actors were negotiating an agreement: On one side of the table, European Commission officials were negotiating on behalf of the EU. After delegating trade policy to the EU, member states have surrendered the authority and ability to conduct their own trade policy. On the other side of the table, however, were officials from all of Mercosur's member states, who jointly negotiated on behalf of the entire bloc. Representing a common position instead of multiple national ones, they operated as a collective agent.

The difference between collective agency and delegation is reflected both in the way negotiations unfold and in trade policy beyond negotiations. Most notably, states that negotiate as part of collective agents retain the authority and personnel to pursue their own trade policy. Indeed, on 24th April 2020, Argentina informed Mercosur that it will not participate in any further PTA negotiations as a group, citing the state of its domestic economy as the reason for this decision.[3] At that point, Mercosur already had jointly negotiated 13 PTAs, with three more at the negotiation stage. During the same period, Argentina negotiated only three bilateral PTAs. While the decision was reversed only a few weeks later, the incident casts doubts over Mercosur's future trade policy.

An increasing number of trading blocs has jointly concluded PTAs with third states, i.e., external partners outside the trading bloc. In many cases, collective negotiations are not exclusive and

[1] Interview 7.

[2] Interview 4.

[3] Ministry of Foreign Relations of Paraguay. 24.04.2020. "MERCOSUR: Argentina informó que dejará de participar de las negociaciones externas en curso": https://www.mre.gov.py/index.php/noticias-de-embajadas-y-consulados/argentina-decide-retirarse-de-las-negociaciones-externas-que-emprende-el-mercosur

member states additionally pursue a bilateral trade policy. The heavy focus on the EU (Meissner 2019; Krapohl/Van Huut 2020) - despite the delegation of trade policy being an exception, not the rule - often overshadows the heterogeneity and multi-level trade policy conducted by multiple states. Similarly, common nomenclatures of economic integration and an emphasis on trade flows miss this variable element of trade governance (Balassa 1967; Lindberg/Alvstam 2007). Collective agency cuts across classifications such as free trade areas or customs unions. With the scope of PTAs expanding, and global commercial relations growing ever more complex, static conceptions of trading blocs do not necessarily reflect how states organise their trade policy. Beyond determining tariff lines, PTAs help states navigate a complex web of heterogenous and differentiated economic relationships. Collective negotiations bring about both a territorial and functional change in how international trade is governed.

This paper addresses the question of why and under what conditions states conclude trade agreements bilaterally or collectively, and why many states pursue a dual trade policy - both bilaterally and as part of a collective agent - rather than relying on one of these two. The paper posits that states act as collective agents in order to exert direct control throughout the negotiating process. In doing so, they operate distinctly from delegated authority. Emphasising economic diplomacy, it argues in favour of conceiving trading blocs as political agents, which operate relationally and may overlap, rather than static entities. The argument brought forward in this paper is threefold: First, it establishes that bilateral trade policy and collective negotiations as part of a trading bloc are complementary, not mutually exclusive. Second, collective agency allows states to overcome capacity constraints as well as to align intra-bloc rules with those governing external trade, thus reducing disruptive elements in the governance of international trade. Third, while the decision between bilateral and collective negotiations thus is shaped by state capacity and ex-ante commitments, it involves a meaningful element of political choice.

Under this framework, collective negotiations can arise from both necessity and choice. When capacity constraints prevent states from conducting an independent foreign commercial policy, collective negotiations can help overcome these by pooling resources and filling capacity deficits. Paradoxically, giving up an independent trade policy may be a requirement for policy autonomy in such case. States also choose to collectively negotiate agreements even when able to pursue an independent trade policy. In the absence of capacity constraints, states seek to align ex-ante commitments within trading blocs with their external ties while maintaining direct control in negotiations. Deeper ex-ante commitments among trading bloc members therefore increase the incentives to negotiate collectively and agree on common rules with respect to third states. Accordingly, the effect of ex-ante commitments on trade policy is smaller for states with low capacity.

Collective agency entails a compromise among members of trading blocs. States must decide

whether the compromise they can achieve in collective negotiations is preferable to a bilateral agreement or even no agreement - which often is only determined after negotiations commenced. Differentiation and exemptions facilitate agreement and are a design feature of modern trade governance - not irregularities. Membership in multiple trading blocs and the situational actorness of collective agents reflect the dynamic and variable geometry of modern trade governance. A mixed methods approach puts the theory to test. A statistical analysis - employing a regression discontinuity design, matching, and multi-level models - and case studies of trading blocs based on interviews with negotiators and policy makers provide evidence for the theory.

This paper speaks to several strands of research on trade governance. With respect to research on the formation of PTAs (Mansfield/Reinhardt 2003; Mansfield et al. 2007; Egger/Larch 2008; Manger et al. 2012; Kim/Manger 2017), it shifts the question from the angle of whether a PTA is concluded by focusing on the negotiating process and the actors that conduct these negotiations. Moreover, the paper connects to the recent interest in multi-level governance in trade policy (Freudlsperger 2020; Broschek/Goff 2020). Instead of looking at the institutionalised subnational level, it extends the multilevel framework the other way by investigating how actors cooperate when there are little rules on how to cooperate beyond the state.

This contribution also relates to non-trade related research, addressing the literature on the international authority of IOs (Hooghe et al. 2017; Zürn 2018; Hooghe et al. 2019; Abbott et al. 2020a) and the rise of informal intergovernmental organisations (Vabulas/Snidal 2013) by stressing the role of collective agency for cooperation in international trade. Although often entrenched in a formal IO, collective agency presents itself as rather variable and overlapping arrangement, which operates distinctly from the logic of delegation. Further, it relates to the impact of capacity constraints and the limited leeway of affected states to effectively engage in economic diplomacy (Jones et al. 2010; Jones 2013; Poulsen/Aisbett 2013; Poulsen 2015), emphasising doubts about a level playing field in economic diplomacy. This analysis specifically does not focus on the EU as sui generis trading bloc but provides in-depth evidence from actors in South America, the Caribbean and the Pacific. Lastly, the role of collective agency contributes to understanding the potential of plurilateralism in the debate on the relation between bilateralism and multilateralism (Rixen/Rohlfing 2007; Thompson/Verdier 2014).

2 When Trading Blocs Become Actors: The Growing Prevalence of Bloc PTAs

The international trade order is undergoing substantive change. The post-Cold War period is marked by the growing prevalence of PTAs and their expanding scope, which are embedding trade into comprehensive economic governance. Rather than being about insiders and outsiders, trade governance entails managing intricate governance relations. Simultaneously, trading blocs beyond the EU have become relevant actors in organising international trade. The governance of international trade requires adequate governance structures that account for an growing scope, complexity, and depth - which trading blocs can contribute to provide.

Particularly so-called 'mega PTAs' - i.e. agreements between a large number of states such as CPTPP or RCEP - have received increasing media and scholarly attention (Kim et al. 2016; Velut et al. 2017; Bown 2017). Yet, these mega PTAs are but one special type of plurilateral agreement[4] - and not a new phenomenon either. Trading blocs - defined as a group of more than two states with a common PTA among its members or states that jointly negotiate PTAs[5] - can constitute *plurilateral actors* in the international trading system.

Several trading blocs move on to conclude numerous PTAs with external states or trading blocs, which can be thought of as *collective PTAs* - that is, jointly negotiated agreements with third parties. When plurilateral actors negotiate collective agreements as a group they attain agency, altering the dynamics of trade negotiations. These agreements are distinct from bilateral agreements and those which constitute trading blocs for plurilateral actors act as a collective: they represent a joint position of their member states, which pursue a common foreign commercial policy. Their members' interests and strategies are bound together.

Although often overlooked or even ignored, the role of trading blocs as plurilateral actors is not trivial. While many trading blocs are designed as an end in itself, the number of those that operates plurilateral actors in external relations has grown significantly. Indeed, the agency of trading blocs is a backbone of international economic governance - despite the proliferation of bilateral PTAs. In fact, the vast majority of country-dyads covered by PTAs involves trading blocs - either through common membership of collective PTAs (Figure 1). The figure further distinguishes bilateral agreements

[4]Plurilateral agreements are distinct from bilateral and multilateral agreements as they have a well-defined limit to membership and do not seek global coverage.

[5]There are only very few instances where a trading bloc is not constituted by a common PTA. In that case, it mostly arises from some other trade arrangement or is a subset of a larger bloc. Henceforth, the term *trading bloc* will be used interchangeably with *plurilateral actor* and therefore include these cases.

[6]If a dyad is covered by multiple types, precedence is given to trading blocs.

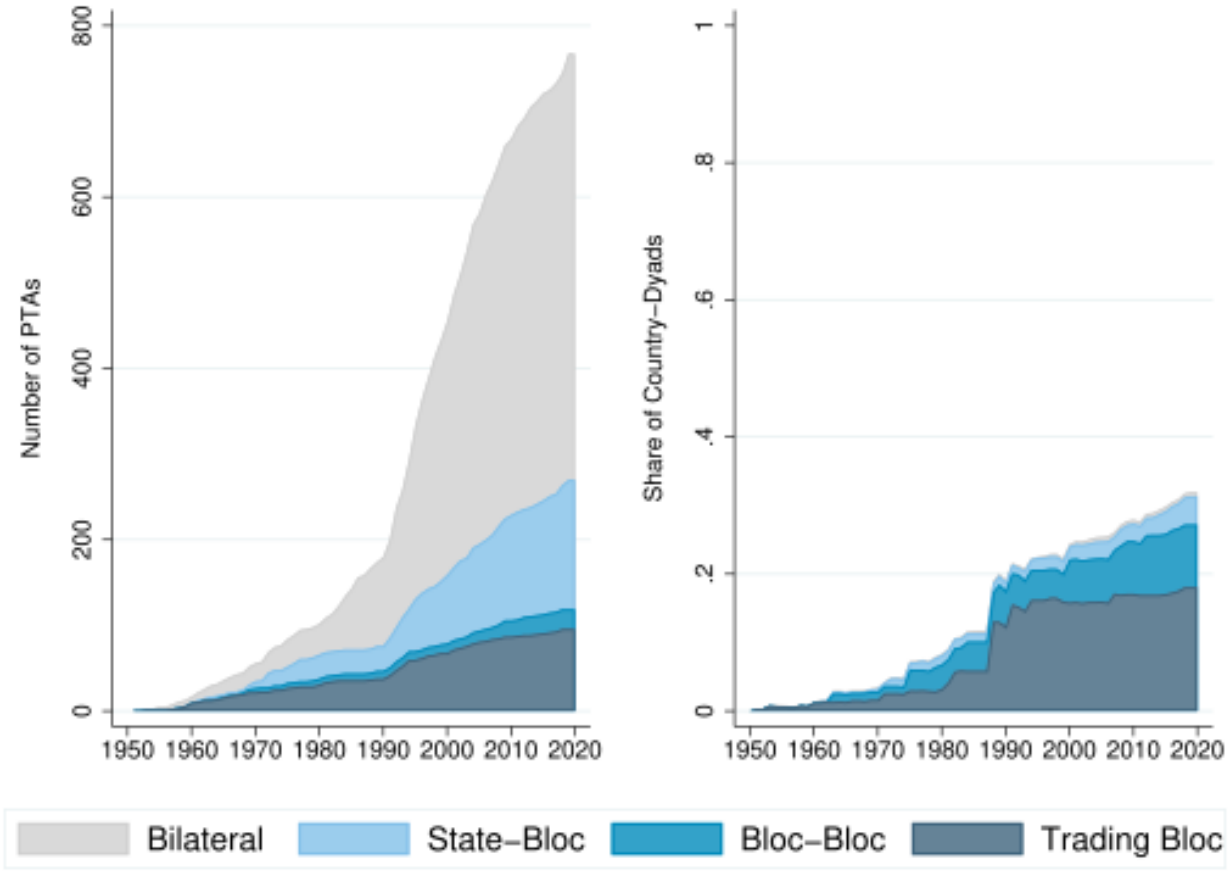


Figure 1: Number of PTAs (left panel) and share (right panel) of country-dyads covered by types of PTAs over time. *Data source: DESTA*.[6]

from trading blocs and the collective PTAs concluded by trading blocs. While clearly dominating in number, bilateral PTAs alone cover less than 1% of all country dyads[7] and less than 10% of all country-dyads covered by PTAs. Despite covering a disproportionate share of world trade, bilateral PTAs are, from a dyadic perspective, a fringe phenomenon in international trade.[8]

The early history of trading blocs, however, has been a heterogenous one. While regional trading blocs – mostly regional IOs such as EFTA, CARICOM or ECOWAS – were established around the globe, PTA negotiations were virtually confined to the European Communities, later the EU (Figure 2). Notably, this included several agreements with its former colonies in form of the group of African, Caribbean, and Pacific countries, mingling political and economic relations.[9] Over time, this relationship saw significant change, becoming increasingly coercive (Robertson 2017; Hurt 2003).

[7]This corresponds to merely about 100 pairs among 140 countries and thus about 0.6% in 2020.

[8]See Figure 15 for the share of PTA types among members of trading blocs.

[9]These include the Yaoundé Convention from 1963, the often revised Lomé Convention and the 2000 Cotonou Agreement. ACP is omitted from Figure 2.

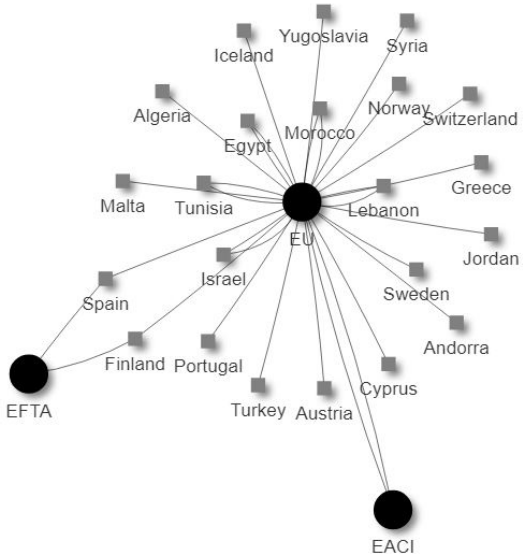


Figure 2: PTAs involving Trading Blocs as of 1990. Squares indicate states, while circles are represented as circles.

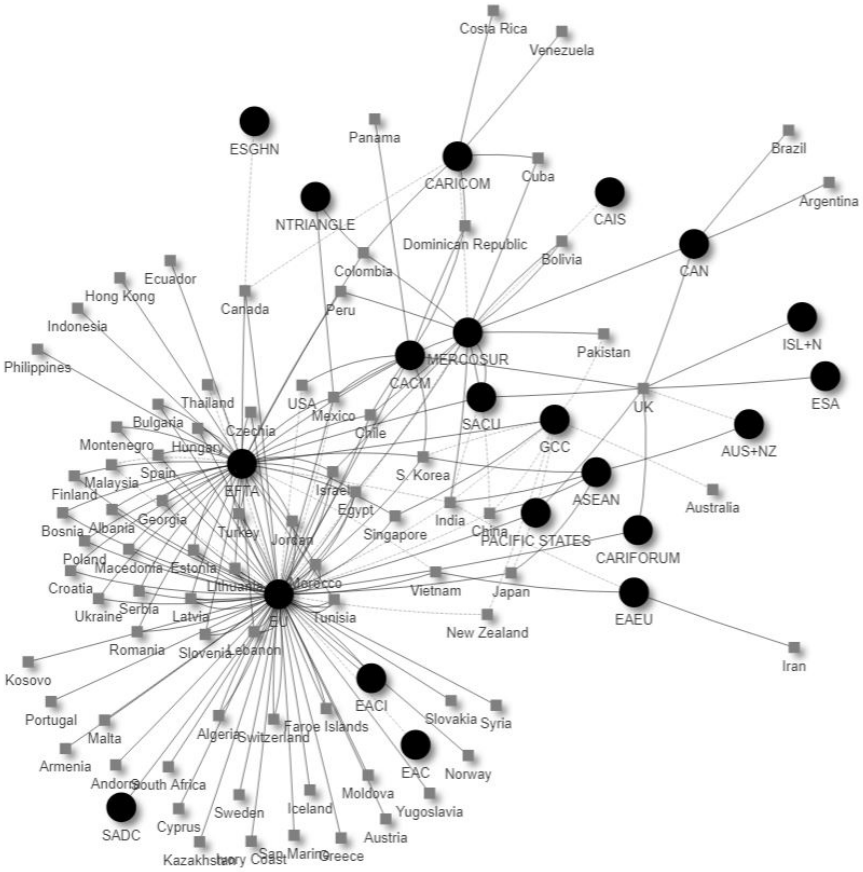


Figure 3: PTAs involving trading blocs as of 2020. Squares indicate states, while circles are represented as circles. Dashed lines show agreements that are being negotiated. Data from DESTA.

Following the end of the cold war amid the rise of new regionalism (Söderbaum/Shaw 2003), trading blocs have become more numerous and significantly more active in external relations (Figure 3). Collective negotiations are no longer restricted to the EU and its partners. As result of a growing number of trading blocs, about 20 had concluded at least one external PTA by 2020. More than 80 bloc-to-state agreements and 20 inter-bloc PTAs have been concluded, with several more being negotiated. These agreements have become much more diverse and multipolar. They include PTAs such as the one between the European Free Trade Association (EFTA) and the Gulf Cooperation Council (GCC); agreements concluded by the Eurasian Economic Union; and an agreement between the Common Market of the South (Mercosur) and the Southern African Customs Union (SACU), where domestic incentives and democratization within the two trading blocs played a central role (Mansfield/Milner 2012, pp. 54–55).

This development coincides with the changing character of the *content* of PTAs, which increasingly resemble regulatory or economic governance agreements. Whereas early PTAs indeed were centred on trade in goods, modern agreements reach far beyond traditional trade issues. Indeed, the classic trade-off between trade creation and trade diversion that might follow from PTAs (Viner 1950; Balassa 1967) seems not to hold for modern, deep PTAs (Mattoo et al. 2022). Accordingly, the *'label 'free trade agreements' does not do a very good job of describing what recent proposed agreements [...] actually do'* (Rodrik 2018, p. 74). Regulation, and the governance of differences are much more at the centre of modern agreements (Lawrence 2000; Fiorini/Hoekman 2018; Maggi/Ossa 2020). They *" cover regulatory standards, health and safety rules, investment, banking and finance, intellectual property, labor, the environment, and many other subjects"* (Rodrik 2018, p. 75). They also are linked to foreign investment (Manger 2009; Buthe/Milner 2012; Büthe/Milner 2014).

Modern trade governance therefore is not about insiders or outsiders or even trade flows – it is about navigating a complex web of asymmetric and differentiated economic relationships. Most states, particularly those that are embedded in regional integration schemes, have to consider the rules and architecture of their regulatory commitments before entering in negotiations with external trading partners – both if they intend to negotiate bilaterally and even more so as part of a trading bloc. It is particularly the latter that may contribute to a convergence of regulatory frameworks (Young 2015); the mutual recognition of standards (Messerlin 2014, p. 5); and, prospectively, the multilateralization of regional and bilateral regimes (Kemp/Wan et al. 1976, p. 76).

The conception of trading blocs as mutually exclusive and clearly delineated economic entities is not reflective of the increasingly fragmented and overlapping trading system. Besides the growing number of trading blocs as well as collective PTAs, the post-Cold War period witnessed the rise of variable arrangements and institutional overlap (Figure 4). On average, states now belong to 3.5 trading blocs – as opposed to between one and two before 1990. Unlike early regionalism's emphasis

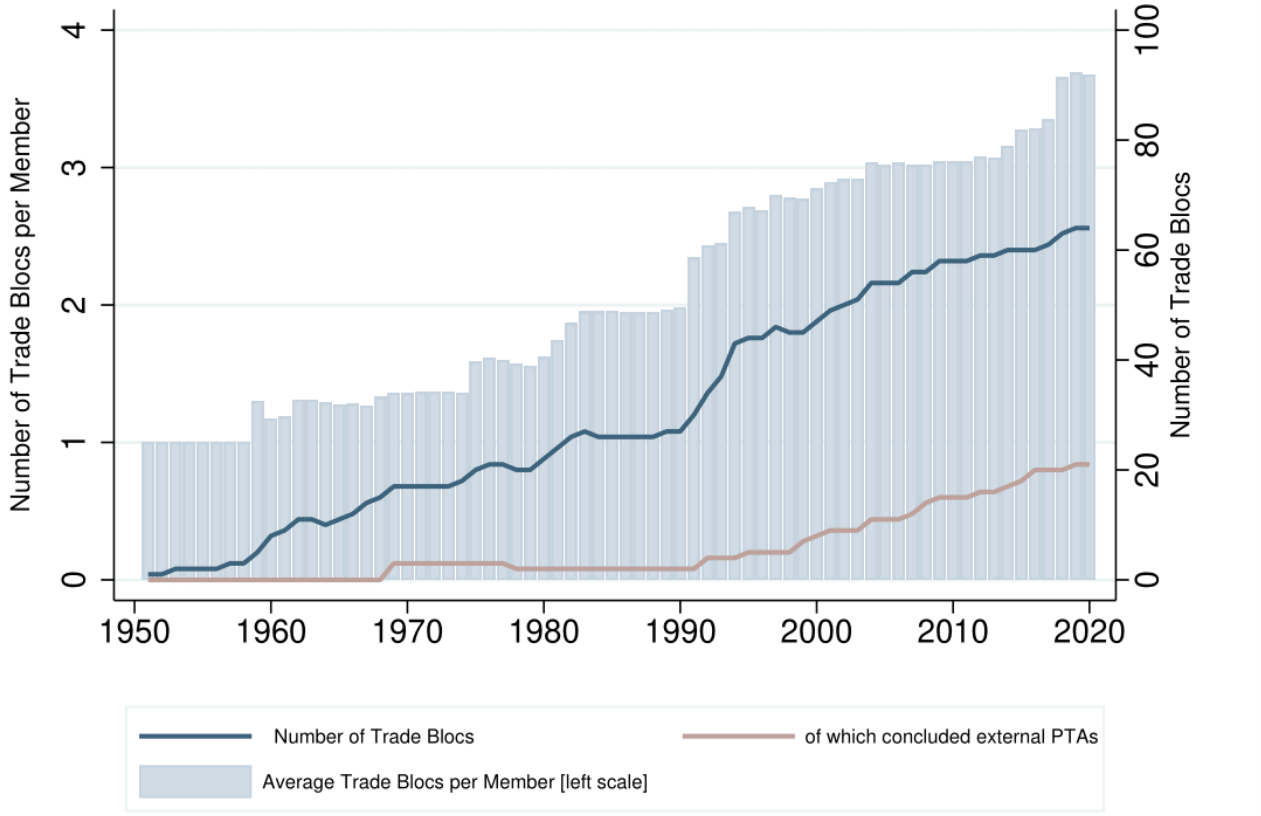


Figure 4: Number of trading blocs (of which concluded collective PTAs) and average number of trading bloc memberships per member state. Data from DESTA.

on deep regional integration, modern trading blocs are not necessarily defined by geography but serve as framework for situational cooperation, such as the D8 or Pacific Alliance. Trading blocs are not always congruent with economic geography or even regional IOs. Peru and Colombia, for instance, are members of ALADI, the Andean Community (which has a common external tariff) as well as the Pacific Alliance – and negotiate external agreements within the frameworks of the latter two.

Trading blocs have turned from static, inward-looking entities to variable, outward-looking actors. Attempts to pursue inward and outward-directed relations, however, may increase fragmentation. For instance, the EU-Kazakh PTA does not deal with tariffs at all as Kazakhstan is part of the Eurasian Customs Union whereas MERCOSUR tolerates deviations from its common external tariff.[10] Nonetheless, negotiating agreements as a trading bloc offers opportunities to organise and ensure the compatibility of economic relations. Purely trade-based taxonomies of integration do not account for these developments.

[10]So does - technically speaking - the European Customs Union, where the EU and Turkey pursue independent trade policies.

2.1 No Need for Delegation: The Variable Geometry of Collective Agents

While trading blocs act jointly, the relation between trading blocs and their members is more complex. A perception of states delegating their trade policy to trading blocs would be - in the overwhelming majority of cases - a mischaracterisation. Delegating authority is a consequential choice states may not be willing to make. Besides states, trading blocs appear as two types of actors in international trade: (i) trading blocs as collective agents that are composed of officials from each member state and (ii) international organisations that negotiate on behalf of a trading bloc, following the delegation of trade policy by member states. In the first and much more frequent case, states retain their policy autonomy and capabilities, which enables them to pursue a dual trade policy - both bilaterally and collectively as part of a trading bloc. Variable and situational geometries of governance relations and institutional overlap are the result.

The two types of trading blocs as actors can be conceived as instances of *delegation* and *collective agency*. In the case of delegation, member states - as principals - delegate the negotiation process and issue a negotiating mandate, but do not conduct external negotiations which are led by IO staff. States are not able to walk away or pursue an independent policy. Although the EU is often invoked as typical model IO, it represents one of the extremely rare instances of delegation. The European Commission negotiates with third states and its authority and autonomy is exceptional (De Bièvre/ Dür 2005; Woolcock 2016; Schade 2019). Therefore, considering the EU a role model or benchmark would be misleading. The EU's approach is the exception, not the rule, and not reflective of trade governance across the globe.

Collective agents operate in a very distinct way as the example of Mercosur showed. States retain both the capacity and authority to pursue a bilateral trade policy. They do not delegate their trade policy to IOs but form a common group that is comprised of representatives from member states, ensuring that all states are present at the negotiating table. Yet, officials and bureaucrats collectively represent a trading bloc and its common negotiation position, not their own state. Even when interests diverge, they speak for a *"common agenda, not [their] own national interests."*[11] As opposed to delegation, internal coordination is more fragile and complicates trade negotiations.

Negotiating jointly therefore adds a layer of complexity to the negotiation, and implementation, of agreements (Figure 5). Under the scenario of a delegated trade policy, IO staff negotiates agreements on behalf of the bloc. If states retain an independent trade policy, however, they face a choice of whether they want to negotiate collectively. If latter case, an internal negotiation, or development of a (broad) mandate is antecedent to actual collective negotiations with external partners. While this can be thought of as a simplified two-stage process, in reality there is no clear-cut distinction. The

[11] Interview 1.

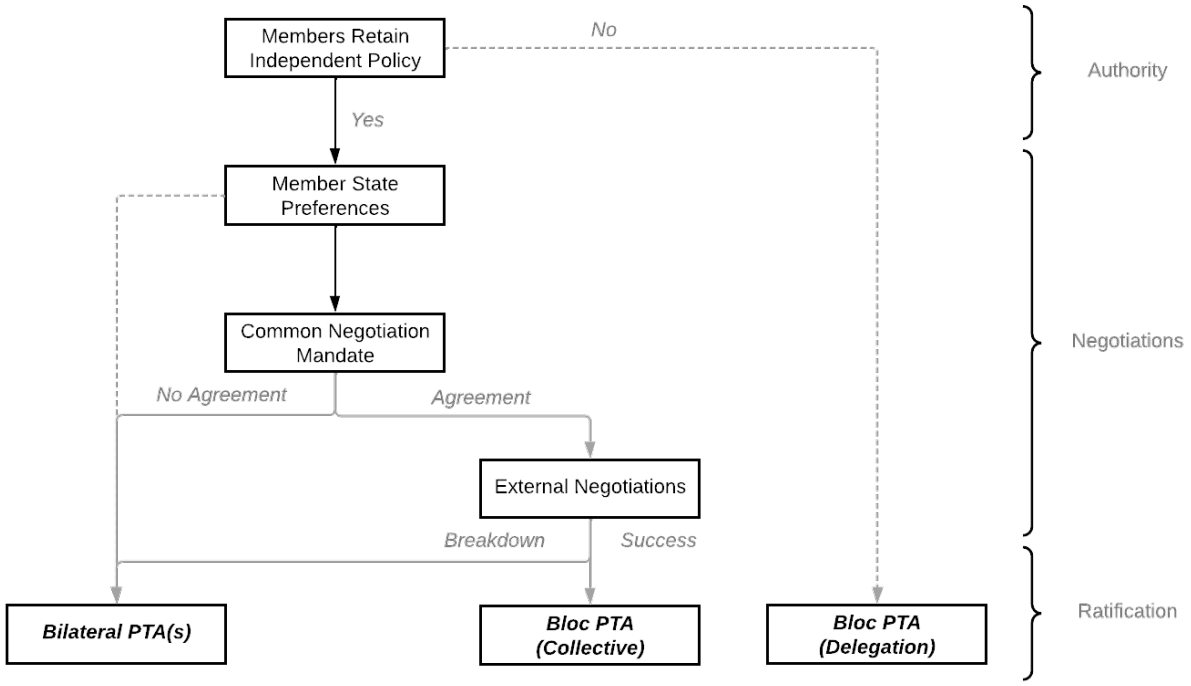


Figure 5: Stylised Flow Diagram of Joint Trade Negotiations.

internal consensus rather corresponds to continuous internal negotiations and may well break down during external negotiations. In consequence, there are significantly more breaking points in collective negotiations than in delegated or bilateral ones, increasing the chances of negotiations collapsing.

Whereas delegation usually entails a lasting choice, collective agency involves a continuous process that is not without alternative. As a result of this added layer, the failure of joint negotiations is not uncommon.[12] Bilateral negotiations are more likely to remain at the consultation stage whereas collective negotiations face difficulties *after* negotiations commence. In collective negotiations, individual state have an exit option of walking away and negotiating bilaterally when discontent with negotiations.[13] Alternatively, a negotiated agreement may simply not be signed or ratified and, thus, not come into force.

Collective negotiations can result in fragmented trade policies, where various states negotiate agreements both bilaterally and as part of - possibly multiple - trading blocs. Entering collective negotiations, however, does not necessarily translate to a fixed common policy when states retain leeway to act bilaterally. This can lead to three approaches to trade policy, ranging from solely

[12] See Table 5 for examples.

[13] For instance, after the failure of EU-ASEAN negotiations, the EU negotiated bilateral PTAs with selected ASEAN members - allowing for special rules of origin. Chile signed bilateral PTAs with three ASEAN member states in close temporal proximity.

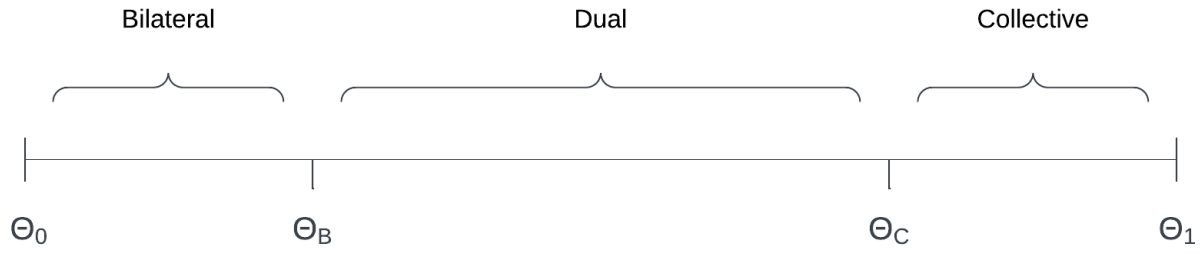


Figure 6: Schematic range of trade policies available to members of trading blocs.

bilateral via a dual trade policy to states that only conclude agreements as part of a trading bloc (Figure 6), dependent on the degree of common interests among trading bloc members (θ). Individual yet interdependent considerations among members of trading blocs lead to structural decisions. If common incentives are sufficiently strong for all members, consistently exceeding θ_C, they always act collectively. Single members defecting from the collective agent, however, may be sufficient to prevent a collective agreement. In that case, states can pursue a dual strategy, where they choice between collective or bilateral agreements is situational and varies by case $[\theta_B;\theta_C]$. Conversely, if common interests never exceed θ_B, states will stick exclusively to bilateral PTAs. Importantly, overall policy is a function of situational and incidental preferences, varying by member state and trading partner.[14] This also means that member states' trade policies are, to varying degrees, interdependent. The preferences and bilateral policy of other members shapes the options states have to conclude PTAs.[15]

Bilateral and collective trade negotiations are relevant governance features in international trade. Figure 7 shows the relation between the number of bloc PTAs and the average number of bilateral PTAs concluded per member state.[16] Each bubble represents a trading bloc. The size of the bubbles indicates the number of member states of a bloc, whereas the share of collective PTAs over the sum of collective and bilateral PTAs is indicated by the colour of the bubbles.[17] Looking at all cases (left panel) stresses the special character of the EU. Zooming in on the subset trading blocs with smaller numbers of PTAs (right panel) shows that the number of collective PTAs often is larger than the average number of bilateral PTAs. Disregarding the EU & EFTA due to the large number of agreements,[18] collective PTAs are shown to be a meaningful pillar of trade policy, ranging from 16%

[14]Breaking down this logic to individual trade negotiations, outcomes could be conceived of as a continuum reaching from a bilateral agreement via several bilateral agreements of member states to a collective bloc PTA.

[15]Japan, for instance, concluded bilateral PTAs with seven of the ten ASEAN states before concluding PTA with ASEAN. Conversely, Australia initiated negotiations with the UAE, which were then subsumed into ultimately unsuccessful negotiations with the entire GCC.

[16]This only includes PTAs concluded during membership in the respective trading bloc.

[17]Blue represents a larger share of collective PTAs whereas a white fill indicates a smaller share of collective PTAs.

[18]While overwhelmingly negotiating collectively, however, however, EFTA states also negotiate bilateral agreements

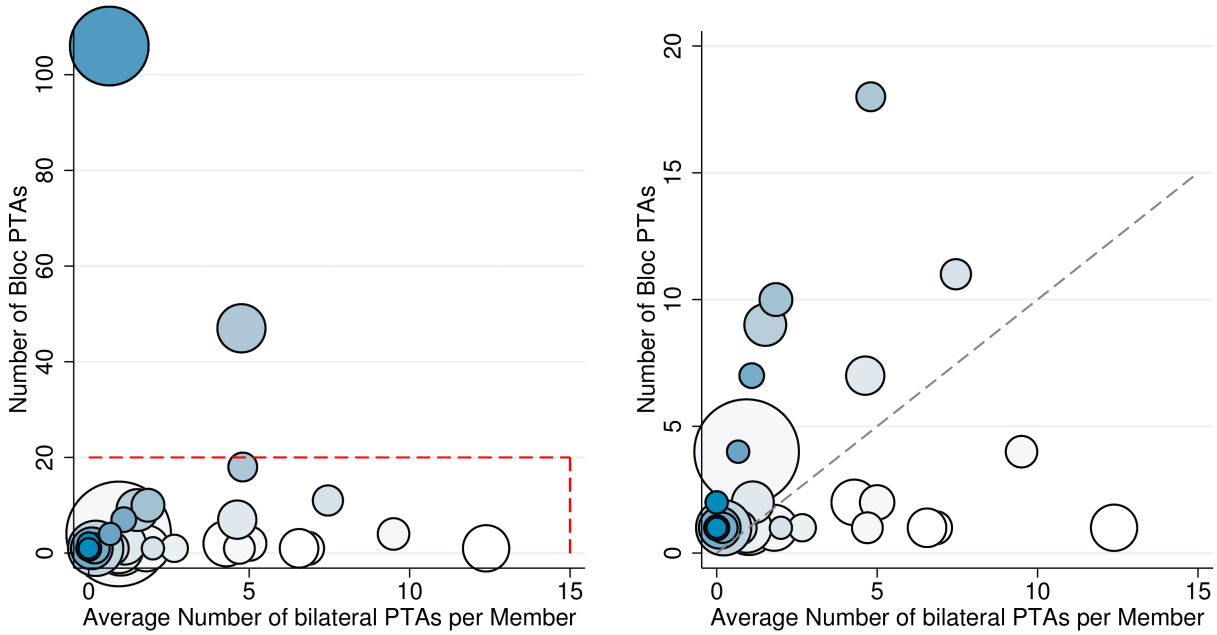


Figure 7: Bubble plot showing the relation of bloc to bilateral PTAs. Full plot (left panel) and zoom on highlighted area (right panel). *Data source: DESTA*.

to 66% of all PTAs concluded by the member states of trading blocs with more than five collective PTAs.[19]

Why do states pursue a dual policy and when do they choose to negotiate collectively or bilaterally? Static explanations revolving around bargaining power or economic parameters fail to explain this aspect of trade policy. If, for instance, a common external tariff prevented states from pursuing bilateral negotiations, they would either negotiate bilaterally or collectively - but not do both. Actual economic relations tend to indicate a more complex decision-making process. Why and under what conditions would states compromise on their policy autonomy?

3 Argument: Collective Political Agents Balancing Control, Capacity, and Commitments

With the evolution of trade agreements and the changing character of economic governance, static conceptions of mutually exclusive free trade areas and customs unions are not reflective of how states manage - external - economic relations. I argue that trading blocs are organic political actors, that,

unlike EU member states.

[19]These are ASEAN, CACM, CARICOM, GCC, Mercosur and SACU, where ASEAN and SACU have the smallest and largest share of collective agreements, respectively.

constituted by their members, attain a distinct agency that is more than the mere sum of their members. Trading blocs help states organise multi-dimensional and multi-layered economic relations in increasingly complex regimes. Collective negotiations allow states to align internal with external commitments, ensuring the compatibility of rules and minimising obstacles to private actors and overlapping rules. Growing fragmentation of actors is evidence of their agency as distinct from static conceptions of regionalism.

A trading bloc acts as coherently as its members choose to act. The decision to negotiate collectively is not determined by economic imperatives – economic structure constitutes the framework political agents operate in. Unlike deep regional integration where externalities and transaction costs are decisive (Mattli 1999a; Mattli 1999b), the relations of trading blocs with third parties are more fragmented and modular. Explanations focusing on relative market size and regionalism (Krapohl/ Van Huut 2020) or of the EU responding to coherence and trade flows in the regions of its trading partners (Meissner 2019) fall short of acknowledging that collective agency is not exogenous[20] - but a common objective and the result of the choice to negotiate collectively. Economic structure and diverging preferences can be accounted for in collective PTAs - if states are willing to manage necessary differentiation and exemptions. Ultimately, this is a political decision: *'if there is political consensus, the agreement will happen one way or another - whether with [state X] or with Mars.'*

The capacity to act independently is a prerequisite to having a choice. State capacity defines the leeway states have and if they have the ability to act independently. If states are unable to negotiate agreements on their own, they have to rely on collective negotiations out of *necessity*. Capacity constraints prevent equal legal rights from translating into equal opportunities in the international system (Poulsen/Aisbett 2013; Poulsen 2015), such as the pursuit of an independent trade policy. States then cannot achieve their goals on their own, leading to flawed outcomes (Betz 2019). This is no different for technically complex agreements such as PTAs that are several hundred pages long. Collective negotiations, may then be the only way to negotiate at all - facing no agreement as alternative. For many small countries, ministries of trade are comprised of only a few bureaucrats[21] or lack expertise, making it a challenge to even enter into negotiations.[22] Therefore, weak states have extensively built coalitions in WTO negotiations (Narlikar/Tussie 2004; Patel 2007; Odell 2010). Expanding capacity through collective negotiations can also help overcome constraints in the network of PTAs (Jones et al. 2010, pp. 48–52; Jones 2013, pp. 58–63). Paradoxically, these states have more policy leeway when they do not act independently but collectively as their ability to act alone is limited.

[20] For instance, the EU attempted to negotiate an agreement with ASEAN which failed due to diverging interests among ASEAN members - despite the latter's fairly successful record as collective actor.

[21] Interview 3.

[22] Interview 16.

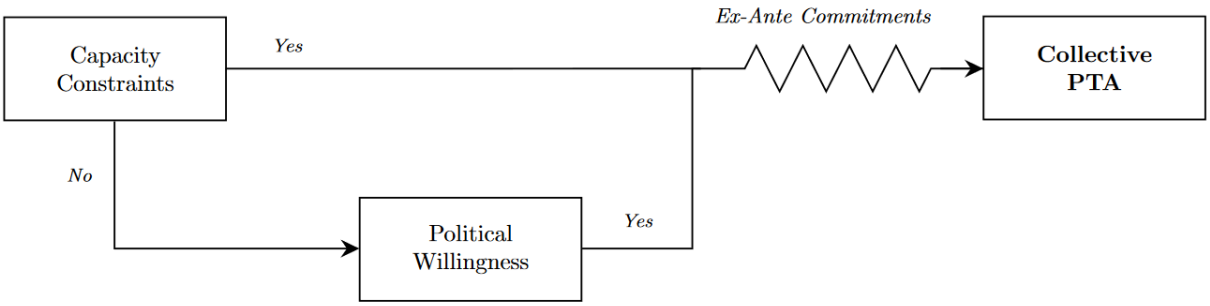


Figure 8: Simplified and stylised argument.

Collective trade negotiation are by no means limited to low-capacity states.[23] In the absence of prohibitive capacity constraints, states make a deliberate decision between bilateral and collective negotiations, entering the latter out of *choice* (Figure 8). Willingness is the crucial element, with states deciding whether the pooling of resources and collective provisions outweigh the loss of policy autonomy amid concessions in collective negotiations. The structure of - possibly distinct - ex-ante commitments, both within the trading bloc and in relation to third states, mediates this trade-off. States face different options and each collective negotiation and agreement entails a compromise, which each state may or may not consider preferable to bilateral negotiations.

Collective negotiations generally differ from bilateral approaches with respect to important dimensions. Collective agents or delegated authority give trading blocs increased bargaining power in external negotiations: *'it's a stronger position negotiating as a group'*.[24] This does not even require uniform provision but even a common offer can be an advantage. Heterogenous economies and balancing sensitive issues can give trading blocs an edge in negotiations.[25] However, different actors have varying effects on regulatory alignment and fragmentation. Individual states have leeway to commit to more flexible rules, whereas delegation ensures a high level of internal regulatory coherence, reducing regulatory fragmentation that might be caused by external PTAs. Collective agents allow for common approaches with more flexibility and differentiation - falling in-between bilateral and delegated negotiations. While internal discussions can be more difficult,[26] states can exploit a common stance related to internal rules.[27] Collective agency thus limits fragmentation through joint commitments without imposing a common approach.

Different types of actors also exhibit procedural trade-offs between control and the pooling of

[23] Brazil, Russia, Switzerland, Singapore, Norway and South Africa all have negotiated as part of trading blocs, amongst others.

[24] Interview 15.

[25] Interviews 6 & 16.

[26] Interview 15.

[27] Interview 6.

Table 1: Characteristics of different approaches to negotiating PTAs.

		EXPAND CAPACITY	
		No	*Yes*
RETAIN CONTROL	Yes	Bilateral Negotiations	Collective Agency
	No	*De facto* Transfer[35]	Delegation

capacity in negotiations. Even where capacity constraints are not prohibitive, mutually benefitting from each other's expertise, without necessarily bringing in external capacity, is an important element of collective negotiations. Limitations in processing information, screening the impact of agreements and so on can be a challenge in negotiations. Collective approaches help compensate for individual members' lack of technical competence,[28] or simply reduce the amount of supporting work and analyses: banally, it may just be *'easier to have [other member] pay.*[29] One trade negotiator highlighted that *'our training school was the WTO, after its stalling we stopped building capacity.*[30] Capability issues were amplified as negotiations became more complex and state capabilities didn't catch up.[31]

States, however, also seek to maintain control (Krasner 1985; Wendt 1999, p. 233; Howes 2003).[32] While collective negotiations require a compromise and thus may reduce policy autonomy, states nonetheless value direct control over negotiations throughout the process in its own right.[33] Accordingly, while preferring collective negotiations, many state representatives stress the importance of being able to act bilaterally.[34]

The result is a trade-off in negotiating PTAs (Table 1). States generally seek to maintain control while balancing capacity and control considerations (Abbott et al. 2020a; Abbott et al. 2020b). Bilateral negotiations allow states to maintain full control over policy but do not offer any advantages in the negotiating process. Delegation and collective agency entail joint commitments. Collective agency allows states both to exert direct control, i.e. remain at the negotiating table, and to compensate for individual deficits in expertise and capacity. Conversely, delegation of trade negotiations involves bringing in outside expertise - which also can benefit states through the hierarchical relationship - but does so only at the expense of control throughout the process. It therefore is a very rare occurrence.[36]

[28] Interviews 4 & 10.

[29] Interview 4.

[30] Interview 7.

[31] Interviews 7 & 16.

[32] For specific instances, see Catalinac 2010 or Gritsch 2005.

[33] The difference between policy leeway and control is reflected by states that would not be able to negotiate bilaterally. Another example is Brexit, where an increase in control reduced the UK's policy leeway - at least temporarily.

[34] Interviews 4 & 5.

[35] Legally, this case would correspond to delegation where states don't have the capacity to effectively oversee the agent. In consequence, this kind of relationship ceases to be hierarchical.

[36] If at all, this applies - besides the EU - in limited ways to ECOWAS (Hulse 2014, p. 557) and CARICOM. See the

If states cede control by delegation yet do not have sufficient capacity, a situation arises where states cannot effectively oversee negotiations. This could be described as dysfunctional delegation or de facto transfer of authority as the agent, in practice, can negotiate without being bound to the principal's mandate - in other words, the relationship ceases to be hierarchical.[37] The case of CARICOM's Regional Negotiating Machinery (RNM), where members feared their will was being overridden due to lacking capacity to oversee the RNM could be considered approaching this scenario.[38]

All these arrangements are an expression of the pursuit for an optimal trade policy. In collective negotiations, this can mean different things to states. With states being hesitant to step back from the negotiating table and functionality holding cooperation together, delegation is not necessary for trading blocs to act.[39] Collective agency satisfactorily accommodates this bureaucratic trade-off by allowing states to sit at the negotiating table while expanding capacity by pooling of capacity. Mostly operating under the logic of collective agency, trading blocs conduct negotiations that only differ in degree.

3.1 Maintaining Control in Negotiations through Collective Agency

Collective agency differs from delegation as it allows states to exert direct control over the negotiating process while retaining the capabilities to act on their own. Giving up their seat at the negotiating table is not required. Thus, it enables cooperation as a collective approach allows for situational cooperation and overcoming capacity constraints. Control, however, does not mean that states can pursue their independent policy goals. The logic of collective agency limits individual states' influence on negotiations. Internal bargaining thus determines the policy-leeway states enjoy as part of a collective agent. Contrasting delegation with collective agency helps clarify this difference. Figure 9 schematically visualises the negotiating process, ranging from the agreement of a common mandate (M) before negotiations begin to the agreement being signed (S).

Under delegation of the negotiating process to an external agent, member states - as principals - would issue a negotiating mandate, on the basis of which the agent negotiates an agreement. Principals act as veto players when signing and ratifying the negotiated agreement but do not interfere in the negotiating process. The loss of control during the negotiation stage can create typical conflicts between principals and agent (Hulse 2014, p. 557). In practice, states therefore still retain influence, even if informal or consultative, during negotiations even if authority has been delegated. Even in the EU, member states are kept in the loop during negotiations and are able to influence them (Adriaensen

section on case studies for a detailed discussion of the latter.

[37] Note that this is particularly problematic as states eventually must approve of and implement negotiated agreements.

[38] Interviews 11 & 12

[39] Interview 13.

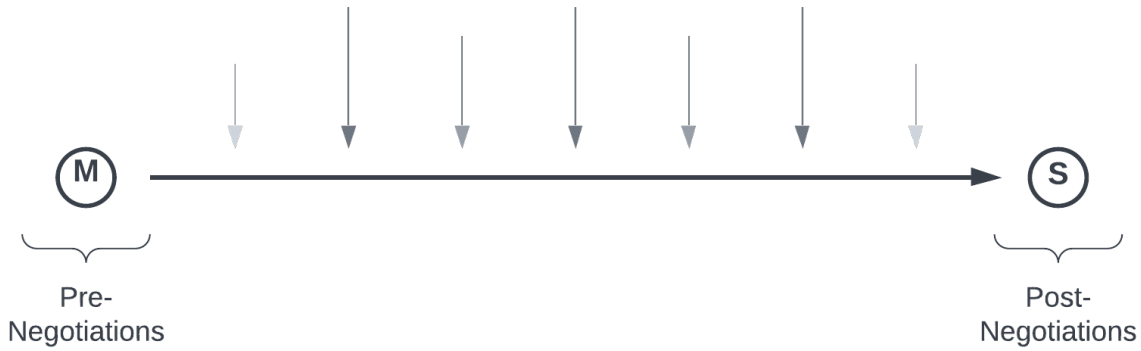


Figure 9: Schematic visualisation of the continuum of influence states can exert as part of a collective agent. Arrows cumulate, where lighter arrows add more autonomy states have during the negotiation stage.

2016). When necessary, EU member states even have opted to seize more control, shifting from structural to ad hoc delegation (Meunier/Nicolaidis 1999). Oversight by member states also was significantly closer during the Brexit negotiations, with member states being concerned about the Commission's ability to keep sensitive issues hidden from member states for a long time.[40]

Collective actors operate distinctly, where officials from all members that comprise the common actor sit at the negotiating table. Member states always have direct oversight of the negotiations and exert direct control during the entire negotiating process. This difference is important as states keep their voice: *'We all have microphones, we can all speak'*.[41] This is particularly salient for states with less bureaucratic capacity. Participation in working groups hinges on capacity, expertise and personnel constraints. While often not all member states can be represented in all groups, all usually have the same voting rights and must be consulted and approve of agreements.[42] Other states have no authority to decide on their behalf. Thus, effective cooperation requires some sense of solidarity and awareness of limitations.[43] Solidarity and an interest in joint success thus become an element to capacity building. Although states are in the driver's seat, their individual ability to steer varies - control does not translate into policy leeway. Negotiators must comply with the common negotiation mandate and represent the common position of the trading bloc, not their individual goals - which may be different.[44] Finding a common position corresponds to an additional negotiation. [45] As a

[40]Politico.eu. 19.10.2021. "Leaders look to break EU's impasse on trade deals": `https://www.politico.eu/article/eu-leaders-want-to-get-brussels-out-of-its-trade-impasse/`

[41]Interview 4.

[42]Interviews 6 & 10. Consultations usually run through chief negotiators, with capitals being consulted in rare cases.

[43]Interviews 5 & 16.

[44]Interviews 1 & 4.

[45]Interviews 5 & 12.

Mercosur negotiator put it: *'what we have within Mercosur is a negotiation, as much as with third states - as friends, but these are negotiations'*.[46]

Under collective agency, states directly control the negotiating process. Yet, their influence on negotiations depends on the way collective agents operate internally. The more flexible the common position is throughout negotiations, the larger individual impact on the common position during negotiating process - while directly remaining in control regardless. Trading blocs differ in their approach to joint negotiations. Mercosur does not have a common mandate in writing but understanding in principle and considers common positions a 'moving target'.[47] EFTA, on the other hand, agree on quite a detailed written mandate before entering negotiations, however, being aware that this is not going to be the final result.[48] In all cases, internal coordination happens continuously, during or between rounds,[49] via instant messengers[50] or informally *'during breakfast or with a beer in your hand'*.[51]

While collective agency facilitates joint negotiations by letting states maintain control over the process, it can also create a joint decision trap (Scharpf 1988), where desirable outcomes are unviable as states are unwilling to budge. This may render collective agents less stable. Accepting joint agreements remains a political choice. If states don't consider them good enough, they can 'veto' the agreement by walking away from negotiations or refuse to sign or ratify a negotiated agreement - and conclude bilateral PTAs unlike in the case of delegation.

Inducing Willingness: External Pressure

Political incentives can facilitate agreement on a collective compromise. Occasionally, external pressure serves as a catalyst for collective PTAs, particularly when paired with capacity constraints. Especially the EU's self-perception as model of successful integration has arguably led it to engage in region-building (Risse 2016; Börzel/Risse 2009), particularly after the differentiation of ACP relations through EPAs (Woolcock 2014). While not restricted to trade (Haastrup 2013; Lenz 2021), trade relations entailed the creation of regions abroad (Krapohl/Van Huut 2020) and were central in the creation of the South African Development Community (Buzdugan 2013). In doing so, the EU often followed its own conception of regions, disregarding extant cooperation schemes (Nicolaidis et al. 2014).[52] When negotiating with the Central American Common Market (CACM), the EU insisted Panama be part of the group – despite not being a member of CACM's economic integration system at that time. *"They told us we either get an agreement as part of CACM or no agreement at all"*,

[46] Interview 4.
[47] Interviews 4 & 7.
[48] Interview 6.
[49] Interviews 4, 5, 6, 7, 8 & 16
[50] Interview 16.
[51] Interview 4.
[52] Arguably, this may raise doubts about the legitimacy of these arrangements.

an official from Panama recalls.[53] The EU pursued a similar approach in the Caribbean, where the resulting group – CARIFORUM – is comprised of CARICOM and the Dominican Republic as the sole non-member.

External pressure on trading blocs, however, is neither always successful nor uniformly favouring collective negotiations. The EU insisted on negotiating with the entire Andean Community - despite Venezuela's problematic stance (Woolcock 2007, p. 5) and Bolivia's reluctance to conclude trade agreements. Colombia and Peru, which had just negotiated PTAs with the US and Canada, tried to accommodate this, but eventually had to ask the EU to negotiate as subset, which later was joined by Ecuador.[54] Conversely, Colombia refused to negotiate bilaterally with Uruguay after failed negotiations with Mercosur.[55] The refusal of several African states to apply the EU's agreements further indicates the limitations of this approach.[56] External pressure may also keep trading blocs from negotiating together. For a long time, China refused to negotiate with trading blocs, making EFTA states conclude bilateral ones without indicating any substantive reason.[57] Japan acted in a similar way.[58] Ultimately, external influence is a matter of trading partners' choices.

Destabilising Willingness: Political Exposure

The willingness to negotiate collectively can be undermined if trade policy is salient in domestic politics or exposed to the electoral cycle. PTAs entail a political compromise, especially as trade policy becomes more fragmented and variable. In general, domestic veto players reduce the probability of PTAs (Mansfield et al. 2007), with subnational actors playing a growing role in trade policy (Broschek/Goff 2020; Freudlsperger 2020; Paquin 2022). Collective agency adds a further layer and potential breaking point to this compromise. Political influence can complicate collective negotiations, especially when states have the option to go alone. The politicisation of trade policy played a role in EU-US negotiations (De Bièvre/Poletti 2020) and led to referenda in Switzerland on the EFTA-Indonesia agreement and in the Netherland on the EU-Ukraine agreement.[59] If the Swiss referendum had been successful, the EFTA agreement would have been in limbo.[60]

Not only public opinion can destabilise collective agency. Changing leaderships and elite opinion

[53] Interview 1.

[54] Interview 8.

[55] Interview 4.

[56] For instance, only Ivory Coast and Ghana are applying the 2016 EU-Western Africa agreement, whereas 14 other states chose not to do so.

[57] Interviews 5 & 6.

[58] Interviews 5 & 6.

[59] The latter of which quite obviously was a political signal. Similar agreements with several other states in Eastern and Southern Europe did not create any comparable momentum in any EU member state.

[60] Interview 16.

also impact states' ability to find common ground. Argentina's presidential system has made Mercosur's *'trade policy dependent on the electoral cycle'*.[61] Venezuela even decided to leave the Andean Community and join Mercosur because Colombia and Peru signed PTAs with the US.[62] Similarly, political upheavals in Myanmar limited Asean's ability to act collectively.

Collective negotiations may entail an element of depoliticization (Bianculli 2020). Individual concerns and reservations may dilute as part of a larger group, precisely because the interests of other must be taken into account.[63] Negotiators can more easily fend off private sector interests: *'in collective negotiations there's more at stake, the entire common effort could be undermined'*.[64] Hence, more concessions can be sold to a domestic audience.

3.2 Ex-Ante Commitments and Alignment in Collective Negotiations

With political choice at the centre of collective trade negotiations, states' perception of the negotiating process is key: The concessions in collective negotiations must not outweigh the perceived benefits. Economic structure and trade flows feature prominently in explaining the behaviour of trading blocs (Lindberg/Alvstam 2007; Krapohl/Van Huut 2020; Meissner 2019). Instead, I posit that while economic structure mediates this trade-off and shifts the perception of states, states face a political choice. Moreover, rather than looking at trade flows, economic constraints are better conceived of as ex-ante commitments of state, reaching beyond trade in goods.

Ex-ante commitments determine the framework for states to pursue their policy goals - sometimes posing significant constraints. For instance, a common external tariff generally is supposed to prevent states from setting their own tariffs. However, these commitments usually are far from deterministic with respect to states' leeway in collective negotiations. Rather, states must reasonably manage intra-bloc and external commitments. *Internal commitments* are more stringent the deeper a trading bloc is integrated, making it more costly to deviate. *External commitments* may be highly asymmetric, with states having vastly diverging ex-ante relations with third states.

Collective negotiations can help states align and manage commitments among trading bloc members and those towards third states, thus being a tool for establishing efficient governance frameworks. A collective PTA therefore requires a satisfactory balance between ex-ante commitments and regulatory relations - and must reflect the ambition of trading bloc members. In other words, *'our internal*

[61] Interview 7.

[62] Los Angelos Times. 20.04.2006. "Venezuela to Withdraw From Free Trade Pact": `https://www.latimes.com/archives/la-xpm-2006-apr-20-fi-briefs20.8-story.html`

[63] Interviews 7 & 10.

[64] Interview 15.

rules guide how our rules are negotiated externally'.[65] For ASEAN, internal commitments broadly limit the design of collective external agreements - with members going beyond common issues in bilateral agreements (Cremona et al. 2015, p. 137). The need to clarify to what extent the PACER Plus agreement would create obligations between Australia and New Zealand stresses this link.[66] Similarly, the close regulatory alignment among EFTA states through the EEA agreement highlights the value of collective negotiations beyond traditional trade issues.[67] Thus, trading blocs may contribute to a convergence of regulatory frameworks (Young 2015).

Internal commitments can also constrain states' policy leeway and, potentially, states' ability to negotiate PTAs. Increasingly, this concerns regulatory issues rather than trade in goods. Especially when it comes to harmonised rules and mutual recognition, ex-ante commitments can be an obstacle. Contradictory rules on geographic indication within Mercosur and under the bilateral Uruguay-Mexico PTA technically correspond to violations of either agreement and are repeatedly addressed in Mercosur's regulatory group without any progress.[68] The 2014 EU-Ukraine association agreement stipulates that Ukraine is to adopt European standards, withdrawing conflicting and gradually replacing GOST standards - which were developed in the Soviet Union and continued in Russia.[69] Initial attempts aimed at allowing Ukraine deeper integration with both the EU and the Russian-led EAEU required substantial exemptions.[70] While ex-ante commitments can be restrictive, differentiated rules and exemptions give states leeway to manage these commitments - if they are willing to act in such way

Managing Divergence in Collective Negotiations: Variable Rules, Differentiation, and Exemptions

Managing differences and differentiated provisions are not an irregularity but a crucial element to collective agency and joint negotiations. They are reflective of incongruent rules and regime complexity in economic governance, allowing states to blur governance boundaries. Sensitive policy areas or ex-ante commitments that are too restrictive can be dealt with by means of omissions or exemptions. They allow trading blocs to negotiate collectively in the presence of incongruent preferences or ex-ante commitments. Collective PTAs often entail somewhat differentiated provisions. If there is a will

[65] Interview 12.

[66] LetterfromToddMcClay,MinisterofTradeofNewZealand.14.06.2017:https://www.dfat.gov.au/sites/default/files/side-letter-on-pacer-plus-from-new-zealand-to-australia.pdf

[67] Interview 6.

[68] Interview 4.

[69] Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Article 56(8): https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529(01)&qid=1689525765551

[70] SüddeutscheZeitung.14.09.2014."DurchlöchertvonTausendenAusnahmen":https://www.sueddeutsche.de/politik/abkommen-zwischen-eu-und-ukraine-durchloechert-von-tausenden-ausnahmen-1.2125659

to so, states often can manage and accommodate divergence. As one negotiator put it: *'We must have honest discussions, but we'll find a way if we try.'*[71] In collective agreements, this can be achieved through (i) omissions; (ii) exemptions; (iii) differentiation; or (iv) the variable entry into force of provisions.[72]

Variable rules, differentiation and exemptions are abundant in collective PTAs. Trade in goods and market access can rather easily be differentiated, whereas this is less sensible, yet possible, for regulations. For many collective actors such as EFTA, market access remains a bilateral issue with individual tariff schedules.[73] PTAs do not necessarily have to include provisions on market access: Argentina was exempted from the market access chapter of the Mercosur-Korea PTA. Maybe counterintuitively, this also applies to customs unions: the Kazakh-EU agreement does not include trade in goods, whereas CARICOM has many exceptions from its common external tariff (Dunlop et al. 2004, p. 14). In its external PTAs, even the EU agreed on separate rules on agriculture for Spain and Portugal during the 1990s, whereas Turkey pursues an independent trade policy despite being a member of the European customs union.[74] EFTA used to conclude bilateral protocols on agriculture, before switching to a common approach[75] - yet, individual tariff schedules remain, so with respect to this area, *'bilateral agreements wouldn't look very different'*.[76]

The prominence of exemptions blurs the distinction between free trade areas and customs unions. Mercosur established an unwritten rule to negotiate jointly with trading partners from overseas while tolerating a fragmented approach in Latin America. Importantly, this *'was a matter of choice'*.[77] In Latin America, Mercosur technically concludes joint agreements with member states concluding bilateral agreements as additional protocols - which essentially *'was kind of a façade'*.[78] Arguably, these exemptions are necessary to maintain a common external tariff in the first place. Similarly, when the Andean Community negotiated with the US and Canada, negotiators were 'relieved' when Venezuela left the community so Peru and Colombia could achieve bilateral agreements with joint provisions.[79] Even if no joint agreement can be concluded, provisions such as cumulation of origins help pursue collective interests (Estevadeordal et al. 2009; Abreu Donner 2016), as does monitoring each others' bilateral policy.[80]

[71] Interview 7.

[72] Note that, moreover, bilateral agreements may extend some benefits to members of trading blocs that are non-parties.

[73] Interview 5.

[74] Turkey's PTA usually entail provisions in case Turkey accedes to the EU, whereas EU agreements include a declaration encouraging trading partners to initiate separate negotiations with Turkey.

[75] Interview 5.

[76] Interview 6.

[77] Interview 7.

[78] Interview 7.

[79] Interview 8.

[80] Interview 7.

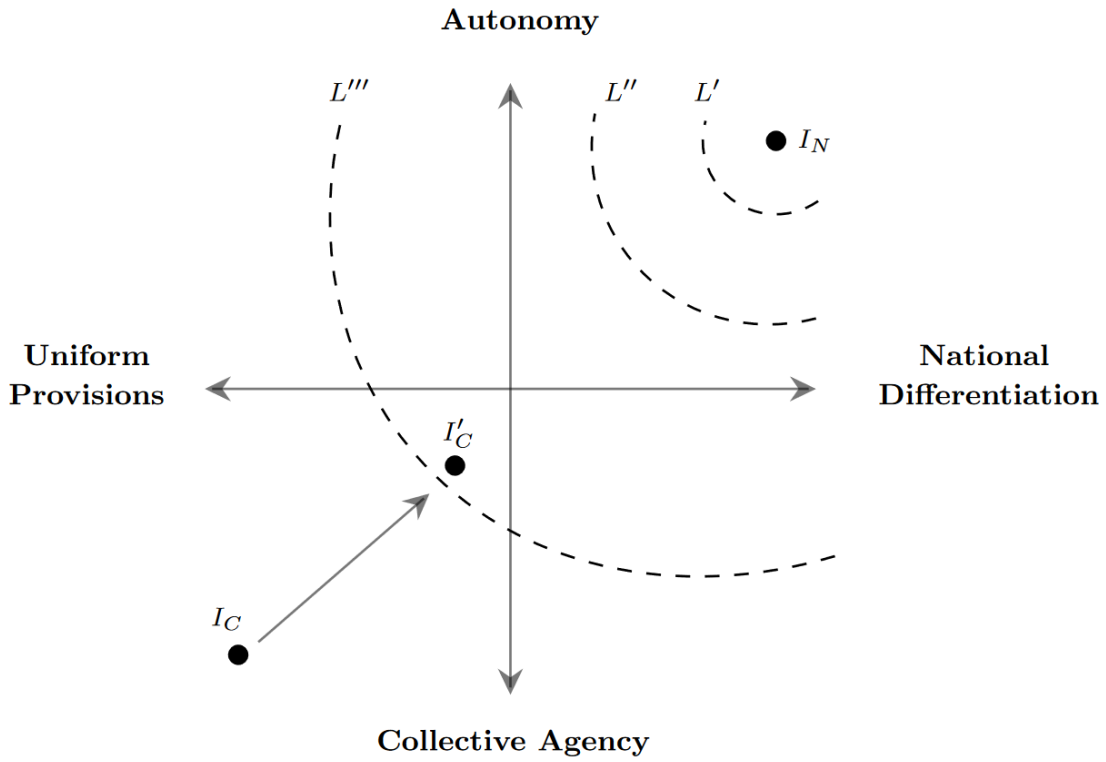


Figure 10: Schematic decion-making on collective negotiations. The vertical dimension reflects an *procedural* trade-off between individual autonomy during negotiations and collective agency. The horizontal dimension visualises a *substantive* trade-off between uniform and differentiated treaty provisions.

The trade-off between collective negotiations, and thus the collective management of provisions, and differentiation necessary to achieve a collective compromise determines if states prefer viable collective outcomes to alternatives - most notably a bilateral agreement or no agreement at all. The stringency of collective agency and the extent to which states are willing to accept exemptions, not economic structure per se, therefore constrain the political willingness of states to act collectively. Importantly, one state's decision to walk and pursue bilateral negotiations may be sufficient for collective negotiations to break down. The relatively frequent failure of collective negotiations reflects this tension.

Differentiation in collective negotiations is a matter of degree, entailing procedural and substantive trade-offs that are schematically visualised in Figure 10. Procedurally, states decide on the extent to which they represent a common position or enjoy meaningful leeway during negotiations, with the latter rendering negotiations more akin to simultaneous internal and external negotiations.[81] Process matters and may facilitate or complicate joint negotiations.[82] Substantively, collective agents agree

[81] Deep agreements such as CETA's Regulatory Cooperation Forum even require continuous cooperation on regulatory alignment.

[82] Interviews 6, 8 & 15.

on rules that are uniformly applied or entail meaningful differentiation, up to individual rules.[83] The figure shows the example for a single state, whose ideal point is located in the top-right corner (I_N). The trading bloc's possible collective agreement, under the scenario of no differentiation, is located in the bottom-left corner (I_C). The more ex ante commitments govern relations within a trading bloc, the closer these points are in substantive terms. If the state prefers this outcome to alternatives, it signs up to the collective agreement. Indifference curves (L) visualise this relationship.[84] If however, the state prefers an alternative to the collective agreement - such as in the scenario of L''' indicating the state's preferred alternative, it would drop out. In this case, a collective agreement with differentiation and exemptions, I'_C, can render the collective agreement preferable to alternatives. If the necessary degree of differentiation or autonomy becomes too costly to reconcile with this position, or states have strong preferences to purse bilateral negotiations,[85] as visualised by indifference curves L'' and L', a collective agreement is unlikely to be viable. The willingness to compromise and manage divergence, and the alignment of internal and external rules, thus determines if collective negotiations succeed.

3.3 Theoretical Expectations & Hypotheses

Summarising the role of state capacity and ex-ante commitments for states' decision to pursue collective negotiations, Figure 11 schematically visualises the expected prevalence of collective PTAs. For low-capacity states, joint PTAs are more common due to capacity constraints, independent of previous commitments. With growing state capacity, the choice to compromise and the likelihood to conclude joint PTAs decrease as alternatives are less costly and more suited to the individual state. Such states are able to more easily conclude bilateral PTAs. As theorised above, collective negotiations can be instrumental in managing commitments. Thus, trade strategy hinges on the stringency of states' ex-ante commitments, which alter the trade-offs states face when negotiating collectively. Generally, the share of collective PTAs grow as commitments become more stringent - and can be imagined as an upwards movement of the black line towards the dotted line in Figure 11. However, ex-ante commitments do not preclude bilateral agreements unless the capacity to negotiate agreements has been delegated to an IO. For collective agents, ex-ante commitments merely limit the potential incentives to act outside of the collective agent. Bringing together the theoretical considerations developed in this section, the following empirical expectations can be derived which will be tested in turn:

H1: Collective and bilateral trade policies are not mutually exclusive but complementary. Collective negotiations do not reduce the number of bilaterally negotiated agreements.

[83] Note that, in practice, these two dimensions likely somewhat overlap. For the sake of conceptual clarity, they are considered independent in this simplified model.

[84] The alternative may be a bilateral agreement or no deal at all, depending on interest and capacity.

[85] This may be the case with vastly diverging ambitions on the scope of an agreement - despite the political willingness to negotiate jointly.

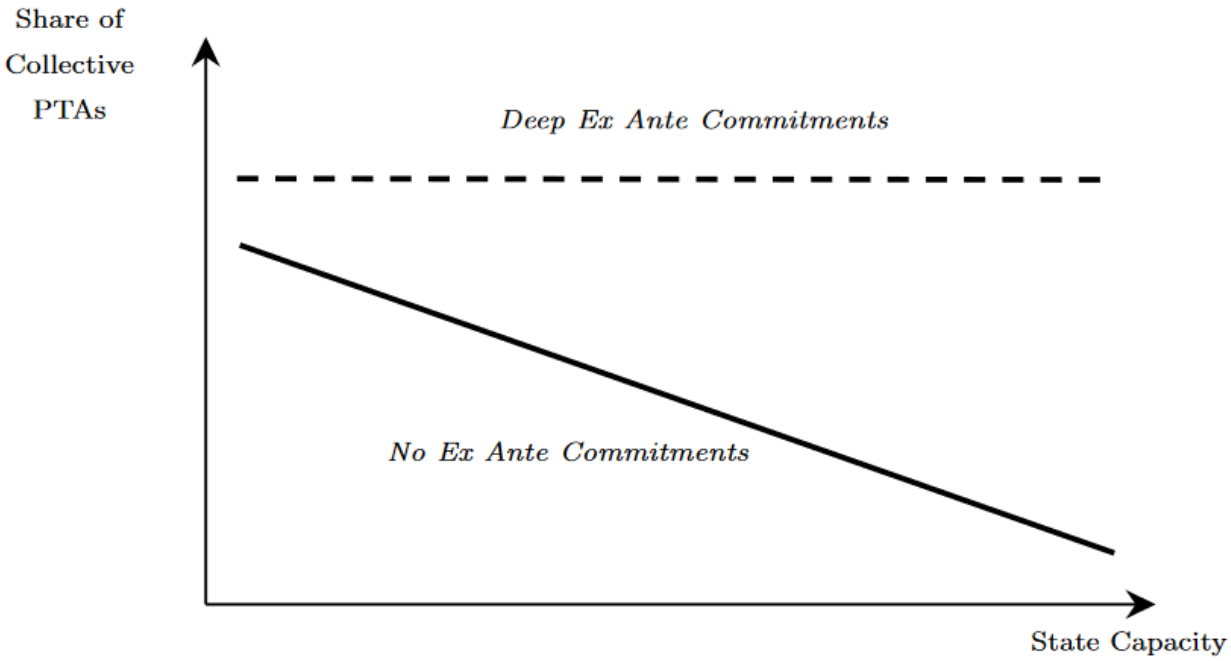


Figure 11: Expected prevalence of collective PTAs dependent on state capacity and ex-ante commitments.

H2: State capacity moderates the effect of ex-ante commitments. The lower state capacity is, the smaller the effect of ex-ante commitments on the choice between bilateral and collective PTAs.

H3: Unless capacity constraints are prohibitive or trade policy is delegated to an IO, collective negotiations are a result of political choice, not economic imperatives.

4 Empirical Analysis

To put the theoretical model and expectations to test, I employ a three-tiered approach. Firstly, I examine the impact of collective negotiations on states' overall trade policy, addressing the question of whether bilateral and collective trade policies are mutually exclusive. Secondly, I analyse when states conclude bilaterally and collectively negotiated PTAs, examining the role of state capacity and ex-ante commitments. Thirdly, I illustrate the role of (political) choice in deciding between bilateral and collective negotiations in a number of case studies. These cases reveal necessity, due to capacity constraints, and choice as the central determinants of collective agency.

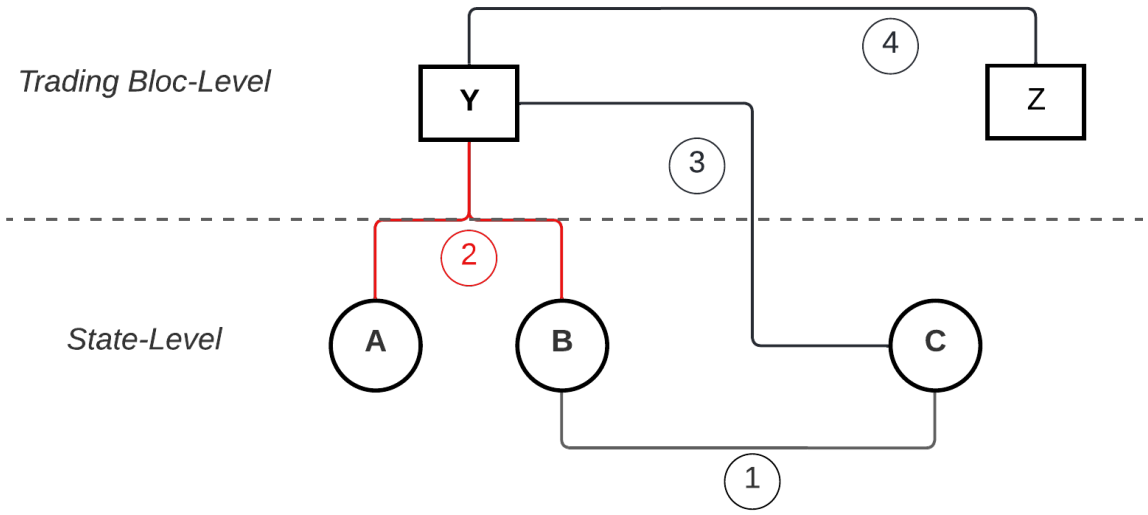


Figure 12: Schematic visualisation of distinct types of PTAs. PTAs that constitute trading blocs are highlighted in red.

4.1 Research Design

Conceptualising the collective agency of trading blocs is the central issue in analysing trade policy. Unlike IOs or supranational actors - such as the EU when it comes to trade - collective agents inherently exhibit an incongruence. Collective agents act on behalf of the sum of their constituent members yet are distinct from a sum of bilateral agreements. In international trade, this is reflected in their being a single agent during negotiations, whereas (partially diverging) trade rules cover all dyads between involved states and are collectively administered by states. From a methodological point of view, this creates some trade-offs when it comes to operationalising their agency.

Oftentimes, research does not distinguish between bilateral and plurilateral PTAs, or merely does so by inclusion of a dummy variable. Rather, the focus is on whether states conclude PTAs or whether a state-state dyad is covered by a PTA. For the very most research questions, this may be appropriate but from an economic diplomacy perspective this conceptualisation ignores an important aspect of trade negotiations. PTAs, however, can be classified into four distinct types (Figure 12): (i) bilateral PTAs between two states; (ii) PTAs between more than two states, constituting a trading bloc;[86] (iii) PTAs between a trading bloc and a state; and (iv) PTAs between two trading blocs, sometimes referred to as interregional PTAs.[87]

[86]This group includes 'mega-PTAs', which - despite not having collectively negotiated external agreements so far - in principle merely differ from regional trading blocs in terms of geography. However, their agency may change with efforts to multilateralise trading rules.

[87]Note that the latter name is unnecessarily restrictive and excludes agreements between blocs from the same region.

Broadly distinguishing between bilateral and plurilateral PTAs therefore conflates the latter three types. Separating trading bloc membership (type 2), which governs trade rules internally, and *external PTAs*, i.e. those that trading blocs conclude with third states (type 3 and 4), is imperative to understanding how states organise trade policy and identifying collective agency. Note further that external PTAs are actor-specific, implying directed dyads: When the UK concluded a PTA with the Andean Countries, for instance, the UK negotiated bilaterally, i.e. facing a single party, whereas the Andean Countries negotiated collectively. Accordingly, this PTA would be considered bilateral for the UK but a result of collective negotiations for the Andean Countries. This is an important difference and reflects diverging approaches in PTA negotiations.

Since the principle aim of this contribution is explaining the role of collective agency, the analysis focusses on the external PTAs concluded by trading blocs and their contrast to bilateral negotiations. I conceive of PTAs that constitute trading blocs as link between bilateral policy and collective negotiations. While not all trading blocs eventually become collective agents and a few collective agents are created through the conclusion of external PTAs,[88] this approach helps alleviate methodological problems. First, it narrows down the range of all possible cases of collective agency (Poast 2010). Second, it allows for the representation of multiple membership in trading blocs - as trading bloc memberships are not mutually exclusive -, thus keeping track of constellations through which states may collectively negotiate PTAs. While network analysis to model PTA conclusion has become increasingly popular (Manger et al. 2012; Kim/Manger 2017; Wu et al. 2020), collective agency in the context of multiple membership creates several methodological problems to modelling.[89] I therefore refrain from applying network analysis and rather account for the linkages of trading bloc membership in a monadic design, thus mitigating these problems (Cranmer/Desmarais 2016, p. 356; Diehl/Wright 2016). While it would be desirable to fully account for interdependence, the following analysis aims to be a first step in this direction as it seeks to contribute to understanding the complexity in trade policy introduced by collective agency.

4.2 Alternatives or Complements? The Role of Collective Negotiations

How do collective negotiations shape states' trade policy? Considering the EU as role model of regional integration may create the impression that there is a clear-cut threshold in terms of regional integration: either states negotiate collectively or they don't. The theoretical argument laid out above, however, paints a more nuanced picture. To address this issue, I analyse the relation between collec-

[88] This usually applies to subgroups of or moderately modified trading blocs, such as the Northern Triangle; Ecuador, Peru, and Colombia; or Island and Norway

[89] Hollway/Koskinen 2016 are coming closest to such a design but they but deal with one type of membership in fishery agreements, thus not facing the problem of collective agency.

tively negotiated PTAs and those negotiated bilaterally, using a monadic design. Note that EU member states are excluded if their first collective agreement was negotiated as EU member.[90] Further, ACP-EU Conventions are not considered in this part either due to simultaneity concerns regarding the analysis of the long-term effects.[91]

Data on trade agreements originate from the DESTA database (Dür et al. 2014). I transform constituting PTAs into a trading bloc membership matrix and classify each remaining PTA as either bilateral or involving a collective actor. In case of the latter, I code each state as either single party or part of a trading bloc, i.e. collective agent. I then mark each state's first collectively negotiated PTA, to be used as a cut-off in the first part of the analysis. I further record the number of bilateral PTAs each state had negotiated at that moment and the number of trading blocs of which they were members. I further consider GATT/WTO membership - based on data from GATT/WTO records - as well as GDP per capita from the World Bank (Bank 2022), and states' absolute GDP in constant 2005 US-$ as measure of market size, retrieved from Penn World Table (Feenstra et al. 2015).

In a first step, I investigate the immediate effect of collective negotiations on trade policy. To do so, each state's first collective negotiation serves as cut-off for a regression discontinuity design. I separately estimate the change in trade policy by analysing states' propensity to negotiate different types of PTAs *after* having negotiated one as part of a collective agent. The disruption to states' trade policy is visualised in Figure 13 for ten-year periods before and after the cut-off.[92] Note that the first collective PTA is removed to prevent a distorting effect. The plots reveal that the propensity to conclude bilateral PTAs is not meaningfully affected and remains at a likelihood of about 10% in after the cut-off. The likelihood to collectively conclude a PTA jumps from 0%, by design, to about 20%, which is remarkable as it is about twice the likelihood for bilateral PTAs. The total number of PTAs even increases at the cut-off, jumping from about 15% to 40%, albeit with an overall falling tendency. The number of trading blocs states join - Figure 17 in the annex - reveals no jump at the cut-off but a decline in the number of new blocs states join setting in a few years before their first collective PTA. It revolves just below 10% likelihood, however, indicating a consolidation rather than an end to joining new blocs.

Importantly, these visualisations strongly suggest that collectively negotiated PTAs are an additional tool for states and do not replace bilateral agreements - which remain almost equally likely as before the first collective PTA. To lend further credibility to the additive role of collective PTAs, I conduct a brief analysis of the full texts of PTAs around the cut-off. Exploratory results indicate that the cut-off is loosely associated with a change in the content of PTAs. I specifically focus the

[90] With an exceptional level of unity with common agency in the WTO and delegation of trade policy to the Commission, EU members' trade policy is invariant.

[91] Substantive results do not change, however, if these agreements are considered.

[92] See Figure 16 in the annex for annual changes.

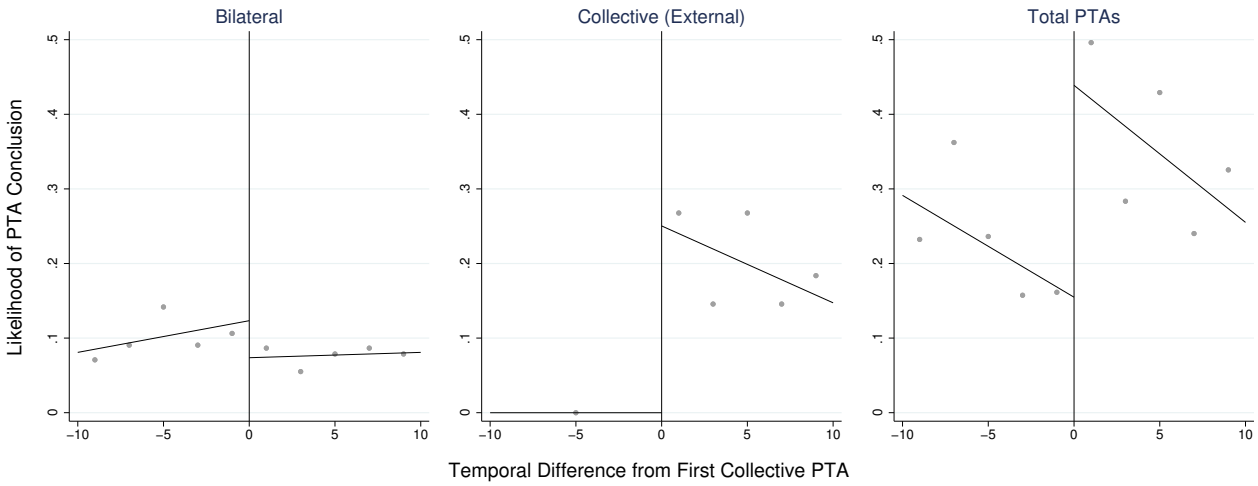


Figure 13: The immediate effect of first collective negotiations on trade policy by PTA type.

analysis on the term 'cumulation' - and derivations - which reflects interdependence by allowing for more permissive, i.e., cumulated, rules of origins as well as 'cohesion' and derivations. The results are visualised in Figure 18 in the annex. An increase in the use of 'cumulation' in PTA text can be observe, while there only seems to be a minor increase in PTAs that mention 'cohesion'. Note that this also includes bilateral PTAs, where extended cumulation addresses deeper links with other trading bloc members. While only indicative, this suggests that collective negotiations does affect trade policy both in terms of agency and content of PTAs, which seems to accounts for collective ties.[93]

Robust regression discontinuity models are then estimated for each PTA type, employing a means squared error-optimal bandwidth selection algorithm (Calonico et al. 2017). All models further include covariates for the country and year when the first collective PTA was negotiated with standard errors clustered on countries. Results for each PTA type are shown in Table 2. The results confirm the visual evidence - the number of bilateral PTAs does not change significantly whereas the number of collective PTAs, by design, and the total number of PTAs increases meaningfully. Whereas bilateral PTAs have a yearly likelihood to be concluded of 10% prior to the first collective negotiation, this only slightly falls to 8.3%. For total PTAs, the yearly likelihood rises from 23% to 34.7%.[94] Of course, these estimates cannot causally be interpreted as the cut-off is endogenous to trade policy. Yet, they show that collective negotiations disrupt states' trade policy and alter how states conduct economic diplomacy.

Is the change brought about by collective negotiations persistent or merely a moment or realignment and therefore transitory? I use matching techniques to assess the effect's longevity. I use the

[93] Importantly, the depth of PTAs states conclude does not change at or after the cut-off.

[94] The same models are re-estimated using second-order polynomials instead of linear ones (Table 6). Substantive results remain unchanged, yet a significant negative effect on trading blocs is reflective of the decrease a few years prior to the cut-off.

Table 2: RDD results based on states' first collective PTA.

	(1)	(2)	(3)	(4)
Pr(PTA)	Bilateral PTAs	Trading Blocs	Collective (Ext.) PTAs	Total PTAs
1^{st} Collective PTA	-0.0253	0.0106	0.241***	0.343***
	(0.0345)	(0.0244)	(0.0509)	(0.0878)
	[-0.105;0.0501]	[-0.0386;0.0798]	[0.121;0.355]	[0.179;0.585]
Mean DV Left_{10}	0.100	0.130	0	0.230
Mean DV Right_{10}	0.0833	0.0833	0.199	0.347
Covariates	Yes	Yes	Yes	Yes
Clustered SE	Yes	Yes	Yes	Yes
Bandwidth Selection	mserd	mserd	mserd	mserd
Polynomial Order	1	1	1	1

$^{***}p < 0.01$, $^{**}p < 0.05$, $^{*}p < 0.1$. *Robust RD Regressions. Robust SEs in Parentheses.*

year just before a state signs its first collectively negotiated PTA and match that state with observations from a pool of states that had not collectively negotiated any PTA by 2020. The difference in the number of PTAs that have been concluded between that year and 2020 is then the measure of interest. Coarsened exact matching is applied as it provides significant advantages - such as controlling the trade-off between exact and approximate balancing - over other approaches such as propensity score matching (Iacus et al. 2012; King/Nielsen 2019).[95] Nonetheless, the same models are re-estimated using propensity score matching (Rosenbaum/Rubin 1985), rendering virtually unchanged results.[96]

Two sets of covariates are used to match observations, which are then used to estimate the effect of collective negotiations on the subsequent number of PTAs. Effects are computed for the number of bilateral PTAs as well as the sum of bilaterally and collectively negotiated PTAs, rendering four estimates in total. The partial model considers the year in which a state concluded its first collectively negotiated PTA, the number of bilateral PTAs at treatment time as well as the number trading blocs to which a state is a member. The latter two address variation in states' trade openness and policy. The full model adds three more variables: WTO membership, GDP per capita and the total GDP of states as economic covariates.[97] Either approach satisfactorily achieves balance in covariates between treatment and control group.[98]

Results based on linear estimates based on the matched data, including the average treatment effect on the treated (ATT), are presented in Table 3. They confirm that the effect of collective negotiations is not transitory but persistent. As before, there is no significant effect on the number of bilateral PTAs, indicating that states that negotiate collectively, on average, do not compromise on

[95] All estimates are implemented using the *Matchit* package in R (Ho et al. 2011).

[96] Results for estimates using propensity score matching are presented in Table 7.

[97] While accounting for even more variables would be desirable, the curse of dimensionality as well as operating at state level impose meaningful constraints, precluding the estimation of a potentially moderated effect.

[98] See Figure 19 in the annex.

Table 3: Linear estimates of number of PTAs following coarsened Exact Matching.

	Bilateral PTAs		*Bilateral & Collective PTAs*	
Δ *PTAs*	Partial Model	Full Model	Partial Model	Full Model
$ATT_{CollectiveNegotiations}$	-0.679	0.259	5.23***	4.45***
	(0.539)	(0.241)	(1.17)	(0.383)
	[-1.74;0.378]	[-0.214;0.733]	[2.29;7.53]	[3.7;5.21]

$^{***}p < 0.01$, $^{**}p < 0.05$, $^{*}p < 0.1$. *Robust SEs in Parentheses.*

their bilateral trade policy. The total number PTAs is significantly increased. That is, states that negotiate collectively conclude on average about four PTAs more than states that do not engage in collective negotiations. Importantly, this increase does not come at the expense of bilateral PTAs. Therefore, the null effect on the number of bilateral agreements strongly indicates that collectively negotiated agreements are not substitutes but complementary to bilateral PTAs. It is well possible, however, that collective negotiations have diverging roles for different states, which will be addressed in the following section.

4.3 Who Goes Collective or Alone? A Mixed Effects Model

Whereas the previous analysis established that bilateral and collective negotiations are not mutually exclusive, the question remains of when states choose one approach over the other. To test the hypothesis on the influence of state capacity and ex-ante commitments, I model the propensity to conclude collectively negotiated PTAs relative to bilateral ones. Since the main interest is how states pursue trade policy, I use a monadic design that focuses on the choice of bilateral and collectively negotiated PTAs, reflecting the composition of states' trade policies. Rather than looking at whether trading blocs negotiate jointly, this approach assesses whether states conclude bilateral or collective PTAs given their membership in trading blocs. While each PTA is the outcome of negotiations among two or multiple varying parties, only in combination they comprise a state's trade policy. A monadic design also accounts for multiple membership in trading blocs.

This approach follows the tradition of treating PTAs as non-repeated events (Beck et al. 1998). It deviates from the common approach of estimating the likelihood of concluding a PTA relative to no agreement (Mansfield/Reinhardt 2003; Chen/Joshi 2010) in estimating the likelihood of a collective PTA relative to bilateral PTAs, which serve as reference group. While this design does not estimate when states conclude *any* PTA, it identifies systemic differences in states and treaty-level characteristics between the two types of PTAs. In doing so, it helps assess not *if* a state is likely to conclude an agreement but what type of PTA will rather be concluded by states. PTAs are chosen as unit of analy-

sis, not state-to-state dyads. That is, each PTA is counted exactly once per state.[99] This approach has two major advantages: First, it stresses the role of the negotiations and treats them as single process, without replicating implicit outcomes from the same process. Second, it allows to directly estimate the propensity to conclude bilateral or collective agreements relative to each other.

Mixed effects models, also known as multilevel models (Goldstein 2011; Bosker/Snijders 2012), are estimated to assess the effect of state capacity and ex-ante commitments on PTA conclusion. The advantage of this type of model is that they estimate general effects as a weighted average of between and within unit effects. Although I'm primarily interested in the differences between states, their characteristics (substantively) change over long temporal horizons and so does their membership in trading blocs - as well as the trading blocs themselves. Importantly, the state-specific random effects entailed in these models help account for heterogeneity across states.

In this model design, PTAs (level 1) are clustered in states (level 2), thus representing states' being a party to an agreement. Each PTA is represented exactly once for each states that has signed the agreement. Collectively negotiated PTAs are further clustered in trading blocs. Integrating trading bloc membership in this model entails meaningful trade-offs. They cannot simply be added as a further, third level without causing pseudoreplication, i.e., counting observations several times. This is due to two reasons: Firstly, trading bloc membership is cross-classified (i.e., PTA-trading bloc combinations can be heterogenous for states) rather than nested. Bilateral PTAs, for instance, do not cluster in a trading bloc but collective PTAs concluded by the same state do. Secondly, modelling trading blocs would require a multiple membership structure as states can simultaneously be part of several blocs. While such models can be estimated (Beretvas 2011; Rasbash 2014), this would render (extremely) low numbers of PTAs in unique country-bloc combinations and therefore be unlikely to render consistent models. Facing this trade-off, states are prioritised as level of primary interest where trade policy is organised. After all, it is the members of blocs that collectively decide to negotiate, not some independent authority.[100] I therefore implicitly address the problem of hyperdependencies (Cranmer/Desmarais 2016), i.e., interdependence within trading blocs, by modelling trading bloc membership as characteristics on state-level. This corresponds to incorporating the trading bloc level by means of a quasi hierarchical summary measure analysis (Fitzmaurice et al. 2012). Accordingly, I estimate mixed effects models with the following specification:

$$\log\left(\pi_{\mathrm{cp}}\right) = \mu + \rho(\mathbf{C_c}) + \sigma(\mathbf{X_c}) + \delta(\mathbf{C_c} \times \mathbf{X_c}) + \alpha(L_c) + \gamma(M_{cp}) + T_5 + \mathrm{u_c} + \varepsilon_{\mathrm{cp}}$$

[99] Splitting up PTAs into dyads would massively inflate and overestimate collective negotiations as collective agents are more likely to conclude inter-bloc PTAs.

[100] Trading blocs, as collectives, have less influence on the bilateral trade policy of members, especially if states are members in multiple blocs.

where

$$\pi_{\text{cp}} = Pr(Collective_{cp} = 1)$$

$$\text{u}_{\text{c}} \sim N\left(0, \sigma_c^2\right)$$

The dependent variable is a binary variable that indicates whether a PTA was negotiated bilaterally or collectively, and μ is an intercept. State capacity is indicated by C_c, whereas the level of states' ex-ante commitments is described by X_c. Their interaction effect, $C_c \times X_c$, is the central effect of interest. L_c describes a vector of control variables on state-level, which also includes information on trading bloc membership. Note that all variables on state-level are time-varying and measured in the year of PTA conclusion. M_{cp} is a vector of PTA-specific covariates, some of which are dyadic and therefore also state-specific. Five-year period fixed effects are indicated by T_5.[101] Lastly, u_{c} are country-level random intercepts and ε_{cp} a PTA-state-specific error term.

Data

The dependent variable is a binary indicator for whether a PTA was negotiated bilaterally or collectively. This allows to directly infer the propensity to conclude one type of PTA over the other. Data on PTAs originate from DESTA as before. For theoretical reasons, I exclude EU members from the analysis but retain the EU in its role as trading partner to other states.[102] To measure state capacity, I use the log of GDP per capita in constant 2015 US-$ (CAPACITY$_{GDP}$), with data retrieved from the World Bank (Bank 2022). Its availability and coverage are useful properties as is its being the base for the World Bank' income groups, which offer a rough approximation of state capacity. GDP per capita, however, is known to be a broad indicator that is often used to measure various concepts. I therefore use a second measure which is conceptually more precise at reflecting the capacity of state bureaucracy to lend credibility to the analysis. Hanson & Sigman's novel index on state capacity (CAPACITY$_{LLD}$) offers such a measure (J. Hanson/Sigman 2020; J. K. Hanson/Sigman 2021). Results are shown to be robust using either measure of capacity.

EX-ANTE COMMITMENT measures the level of commitments states have entered in trading blocs before negotiating a PTA. This is measured as a three component index - each component weighted equally - to adequately capture the heterogeneity of trading blocs. The first component indicates

[101] I choose five-year intervals to prevent observations from being dropped. Substantive results remain unchanged if year fixed effects are included instead.

[102] This is due to the unitary trade policy of the EU which does not allow for differentiation. Maintaining EU member states would therefore distort the analysis, particularly given its exceptionally large number of PTAs. One may be inclined to consider a dummy variable for EU members instead - this would only cause EU members to be dropped from the analysis, however, since there is no variation in the outcome. EU membership perfectly predicts trade policy.

the scope of trading blocs as indicated in their constituent PTAs, with data coming from DESTA.[103] The second component is a binary measure that indicates if a trading bloc is a customs union, also from DESTA. These two components are available for all agreements and are not specific to trading blocs.[104] The third component indicates deeper commitments and is only available for trading blocs that are part of or related to a regional integration scheme. Originating form the Regional Organisations' Competencies project (Panke/Starkmann 2019), it measures if a trading bloc's legal documents make commitments regarding (i) a free trade zone; (ii) free movement of goods, capital, or labour; and (iii) a common market. It thus accounts for commitments which go beyond the usual scope of trade agreements, stressing additional commitments for collective action. Each component can add up to a value of one, with the entire index ranging from zero to three. The level of commitments is annually recorded for each trading bloc. If a state is member to more than one trading bloc at any time, the maximum value of commitments is recorded to account for the more conservative measure. As a further robustness check, in some models I replace the index with only the third component supplemented by the indicator for customs unions (EX-ANTE COMMITMENT$_{Narrow}$), which represents a more conservative measure of commitments and is more specific to trading blocs rather than PTAs in general.

The models further account for TRADE OPENNESS, which reflects states' proportion of trade over GDP, from the World Bank (Bank 2022) as well as WTO membership. DEMOCRACY is measured using Polity V project data (Marshall et al. 2020). Moreover, the number of trading blocs (NUMBER TRADING BLOCS) to which a state is a member is used as a proxy for trade policy with respect to integration as well as to account for the overlap of commitments. Dyadic covariates account for CONTIGUITY$_{dyadic}$ with data from the Correlates of War Project (Douglas et al. 2002);[105]; whether the other party in a PTA is a trading bloc (TRADING BLOC$_{dyadic}$); and the share of trading bloc members that have already concluded a bilateral PTA with the partner state of a PTA to account for interdependent network effects (BLOC MEMBER PTAS$_{dyadic}$).[106] Robustness checks are conducted with additional covariates such as log of total GDP in 2005 US-$ (MARKET SIZE) from Penn World Tables, the share of bilateral trade with the PTA partners over a state's total trade (TRADE SHARE$_{dyadic}$) as well as the share of the sum of all trading bloc members' bilateral trade over their total trade (TRADE SHARE BLOC$_{dyadic}$), accounting for interdependent incentives. Data on trade were retrieved from UN Comtrade.

[103] This indicates if issues such as services, regulation, government procurement or others are covered - note that this measure is not specific to trading blocs.

[104] Data are covered on a yearly base and changes in consolidated treaties or protocols are accounted for.

[105] Data are available up until 2014 and were extrapolated beyond.

[106] If a state is member in more than one bloc, the maximum value is used.

Table 4: Main mixed effects models.

Pr(Collective PTA)	(1)	(2)	(3)	(4)	(5)
Ex-Ante Commitment	1.292***			-5.346***	0.935***
	(0.229)			(1.413)	(0.243)
Capacity_{GDP}		-0.681***		-1.623***	
		(0.225)		(0.317)	
Capacity_{LLD}			-0.950***		-2.331***
			(0.324)		(0.449)
Ex-Ante Commitment x Capacity_{GDP}				0.833***	
				(0.175)	
Ex-Ante Commitment x Capacity_{LLD}					1.306***
					(0.255)
Σ Countries	6.327***	8.865***	8.701***	6.086***	6.156***
	(1.627)	(2.219)	(2.147)	(1.520)	(1.502)
Covariates	Yes	Yes	Yes	Yes	Yes
5-Year FE	Yes	Yes	Yes	Yes	Yes
Country RE	Yes	Yes	Yes	Yes	Yes
N	1,633	1,590	1,633	1,590	1,633
Countries	141	139	141	139	141

$^{***}p < 0.01$, $^{**}p < 0.05$, $^{*}p < 0.1$.

Results

Main results of the mixed effects models are presented in Table 4.[107] The main effects are consistent and in line with theoretical expectations. Recall that the outcome reflects the likelihood of concluding PTA through collective negotiations relative to bilateral ones. As expected, deeper ex-ante commitments increase the negotiate collectively relative to bilateral negotiations. Moreover, larger state capacity is associated with a decrease in the likelihood to negotiate collective agreements, reducing the log-odds to do so by 0.681 or 0.95. Importantly, the results for different measures of CAPACITY are remarkably consistent, with differences in coefficient sizes arising due to their using different scales. Thus - when not accounting for the other - EX-ANTE COMMITMENTS generally are associated with a higher likelihood for collective negotiations whereas CAPACITY is associated with a lower likelihood. Furthermore, WTO MEMBERSHIP and the trading partner being a trading bloc are associated with higher likelihoods for collective negotiations, whereas CONTIGUITY and the share of bloc members that already had concluded a PTA with the partner state (BLOC MEMBER PTAS_{dyadic}) are associated with lower probabilities for collective PTAs.

The central effect of interest is modelled in columns 4 and 5, where the theorised interaction

[107] See Table 8 in the annex for full results of the models.

between the two central variables is examined. Strikingly, the interactions are highly statistically and substantively significant as well as similar in magnitude. Note that in interaction models the coefficients for individual variables cannot be interpreted in isolation and merely may reflect a null effect at values outside the sample. Indeed, the difference in the coefficient for EX-ANTE COMMITMENTS is due to this distortion as, in model 4, it refers to the variable's effect only when the GDP per capita is at zero - which is substantively not of interest. As usual in such case, calculating and plotting predicted probabilities provides a more intuitive and meaningful representation of the interaction effect.

The estimated effect based on model 4 is visualised in Figure 14, providing evidence for the hypothesised moderated effect of CAPACITY and EX-ANTE COMMITMENTS.[108] The figure meaningfully represents the estimated interaction effect and confirms that the effect is in line with theoretical expectations. It paints a more nuanced picture of the effect of EX-ANTE COMMITMENTS and CAPACITY than the separate estimations revealed. CAPACITY is still associated with a lower probability of collective negotiations, which are more pronounced the lower a state's EX-ANTE COMMITMENTS are. For the maximum level of commitments, there is virtually no difference in the outcome, or even a slightly increasing likelihood over state capacity. Looking at the minimum level of commitments, the difference across levels of CAPACITY is enormous. States at the maximum level of capacity have a near zero probability of collectively negotiating PTAs relative to bilateral ones, whereas states at the minimum have about a 60% predicted likelihood - despite having made no previous commitments. In general states with the minimum level of CAPACITY are predicted to be about as likely to conclude a collective PTA as a bilateral PTA, irrespective of EX-ANTE COMMITMENTS. At the other extreme, the gap in predicted probability dependent on commitments extends to about 75%-points.

The results remain substantively unchanged if the alternative measure of commitments, EX-ANTE COMMITMENTS$_{narrow}$ is used instead of the commitments index (Table 9 in the annex). Moreover, the results are robust to the inclusion of an extended vector of covariates (Table 10 in the annex) As a final robustness check, I estimate the same models using different estimators, namely pooled regressions with country-clustered standard errors as well as fixed effects models, which provide unchanged results (Table 11 in the annex).

The analysis provides evidence for the theorised moderated effect of state capacity and ex-ante commitments on states' trade policy. States that operate under capacity constraints are, relative to bilateral PTAs, more likely to collectively negotiated PTAs regardless of commitments. This is likely due to their limited leeway in pursuing trade policy. For states with high levels of capacity, ex-ante commitments matter tremendously. High-capacity states go bilateral without any significant commitments yet strictly stick to their intra-bloc commitments. This suggests that for moderate levels of ex-ante commitments, even high-capacity states tend to select the type of PTA they negotiate on

[108] The estimated substantive effect remains unchanged for model 5, see Figure 20 in the annex.

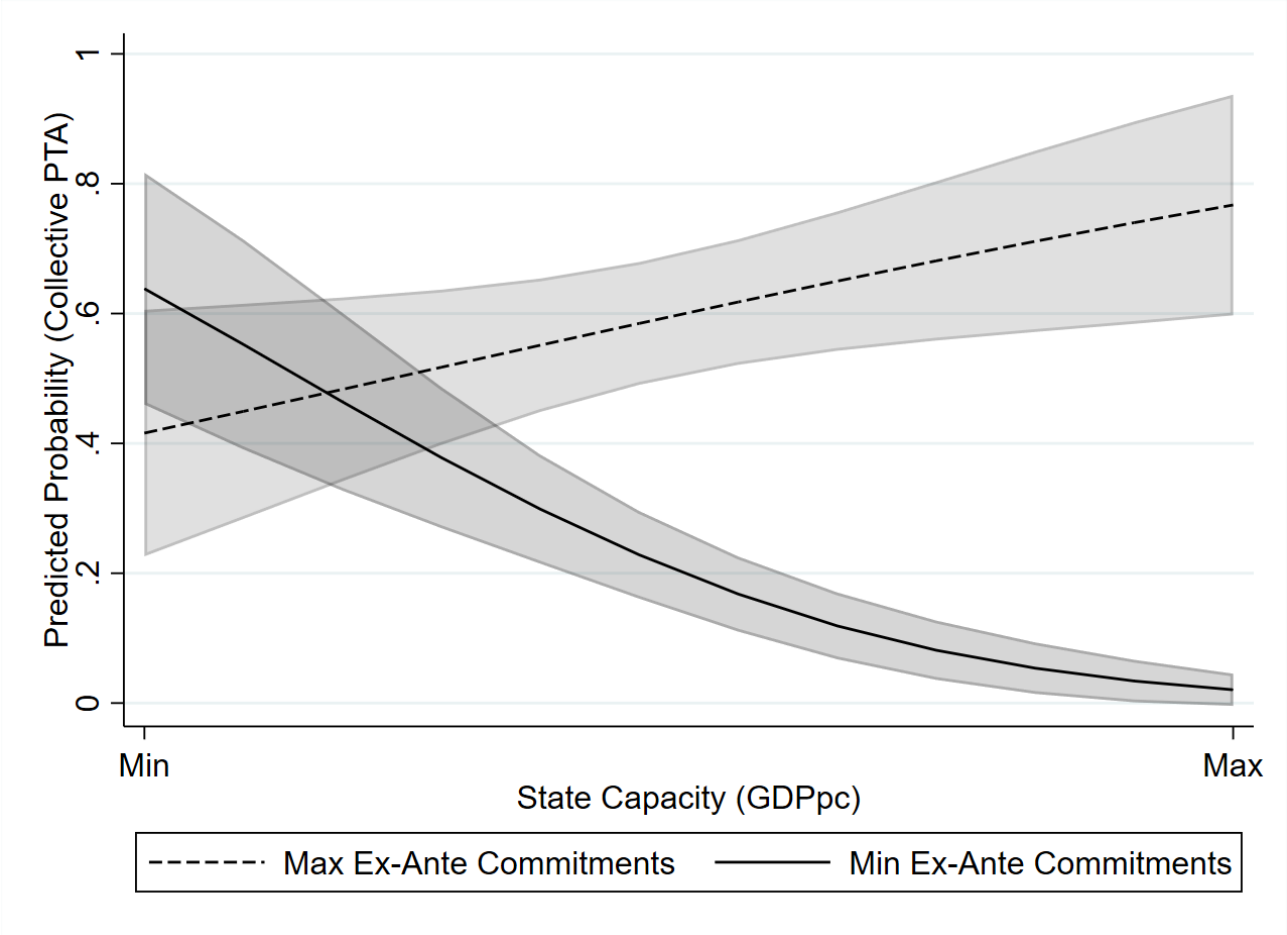


Figure 14: Predicted probabilities based on Model 4. 95% confidence intervals shown.

a case-by-case basis, taking advantage of both options. One reason to use bilateral PTAs could be to supplement collective trade negotiations where interests deviate and specific trading partners has vastly diverging importance to bloc members.

5 Case Studies & Qualitative Evidence

The empirical analysis has shown that collectively negotiated trade agreements selectively yet fundamentally shape the trade policy of states in lasting ways. They do so, however, differently and play varying roles in states' overall trade policy. This ranges from being the backbone of trade policy, notably for low-capacity states, to being a selective addition to bilateral agreements. Moreover, the process of representing a common interest can alter the relations among states in a way that makes collective agency the preferred or even default choice for states - both by necessity, or choice. After negotiating a larger number of agreements, EFTA states, for instance, *'know [their] approach and red*

lines.[109]

Importantly, collective and bilateral negotiations are *not* determined by trading bloc membership and mutually exclusive. Collective agency allows states to pursue both approaches simultaneously. The following cases reflect the differentiated role of collective negotiations. They show that not trade relations but political choice, mediated by capacity constraints and ex-ante commitments, shape collective agency. In either case, the stress that states desire not to lose control by delegating authority even if capacity constraints require bringing in external expertise.

5.1 Necessity: Collective Agency to Overcome Capacity Constraints

In order to contrast different approaches to collective trade negotiations, I broadly distinguish cases where joint negotiations where necessary for states to overcome capacity constraints from those where states choose to negotiate jointly in the presence of alternative options. Thus, the cases reveal how collective agents operate and emphasise the role of capacity-building for the former as well as control for both cases.

CARICOM: Facing Challenges, Building Capacity - Taking Back Control

The Caribbean is possibly the most insightful region when it comes to joint trade negotiations. Not only is the extent to which cooperation dominates trade policy insightful, but so is the institutional evolution of the trade policy regime in the region. After facing capacity constraints amid external challenges, Caribbean Community (CARICOM) created a system of partial delegation to deal with collective negotiations. Despite apparent success in negotiating PTAs, member states were not able to effectively oversee this arrangement and, thus, decided to take back control by redesigning the institutional architecture. Increasing political influence is one of the outcomes.

In the late 90s, the Caribbean simultaneously faced three major trade negotiations - which would have been beyond the ability of individual states: comprehensive WTO negotiations; the prospective free trade agreement of the Americas; and the post-Lomé relations with the EU. Anticipating that these negotiations would overwhelm the limited resources of many member states, the CARICOM established a common framework for trade negotiations,[110] called the Caribbean Regional Negotiating Machinery (CRNM), in 1997.[111] The basic principle of the CRNM was to make the most of members' expertise while adding regional capacity and resources to fill remaining gaps. This entailed

[109] Interview 6, also Interview 5.

[110] It is noteworthy that despite having a common external tariff since 1991, members' trade policies differ substantially due to various exemptions (Dunlop et al. 2004, p. 14).

[111] Interview 11.

leading those negotiations as well as the establishment of a 'College of Negotiators' to coordinate negotiations and provide technical capacity. On the other hand, member states would lead subject areas where they had expertise, such as Jamaica in competition policy.[112] Despite the weak technical capacity of some members, they were consulted and kept in the loop in an effective way, so that it was only after the first of these negotiations that CARICOM *'felt [they] were in a position to negotiate with the EU outside ACP'*. [113]

The CRNM and College of Negotiators indeed operated effectively, yet members' capacity to provide data, support and clear political guidance was often limited (Jones 2013, p. 142), leading to a situation where member states could exert only weak oversight. This is important from a negotiating perspective as states must eventually implement the agreement. Indeed, a lot of problems in implementing the EU agreement are caused by capacity constraints.[114] Politically, this imbalance led to growing tensions between the CRNM and member states (Bilal et al. 2007, p. 323), with member states gradually losing confidence in the framework. This was exacerbated by the fact that donations partially came from the states with whom the CRNM negotiated.[115] This resulted in a political backlash amid an impression that *'member state control wasn't there, that the will of the members was being overridden'*.[116] Concerns about control over negotiations and at the negotiating table made states re-evaluate the framework - *'members thought not to give primacy to the CRNM'*.[117]

As a result, the CRNM was incorporated into the CARICOM Secretariat in 2009 and renamed the Office of Trade Negotiations (OTN). In effect, this meant political guidance was closer to actual negotiations.[118] Another consequence of the incorporation was that technical assistance was reduced - the OTN operates without the College of Negotiators, professional trainees and under a smaller budget.[119] With the OTN preparing drafts and coordinating a common CARICOM position, its purpose has not changed. CARICOM members traded less autonomy for more political oversight and inefficiencies. Whereas the CRNM led negotiations in cooperation with member states, this approach changed, with members exercising more influence.[120] The process, involving more politics, thus became more difficult and inefficient, with *'states [asking] questions on stuff already agreed on.'*[121] Even though the OTN is not per se in charge of all external negotiations, its director-general served as chief negotiator in PTA negotiations with Canada.[122] Divisions among CARICOM mem-

[112]Interview 11.
[113]Interview 10.
[114]Interview 10.
[115]Interview 10.
[116]Interview 12.
[117]Interview 11.
[118]Interview 12.
[119]Interview 11.
[120]Interview 9.
[121]Interview 10.
[122]12

bers, however, were a major factor in Canada's decision to abandon negotiations.[123] Despite having been approached by trading partners, CARICOM currently does not negotiate any new agreements, even though feasibility studies are being commissioned.[124] The case of CARICOM shows that direct control in negotiations was deemed crucial by member states - even at the expense of outcomes.

Pacific Islands Forum: Bringing in Expertise without Delegation

The pacific island states faced a significant challenge when negotiating the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) with Australia and New Zealand.[125] Pacer Plus negotiations were triggered when the post-Cotonou agreement with the EU came into force, as the original - non-preferential - PACER agreement entailed a dynamic most-favoured-nation clause.[126] Due to geographic proximity, PACER Plus would have a much larger effect on the island states. Strikingly, intra-island trade is not significant in volume nor a main interest of the states when negotiating PACER Plus.[127] As in the EU agreement, the island states were mostly interested in access to labour markets and temporary migration (Jones 2013, p. 31).[128] Given the lacking interest in negotiating trade in goods and the diverging political outlook of the island states - some of them being US Compact states, others part of the Realm of New Zealand - amid changing geopolitics in the pacific, they were reluctant to negotiate the agreement,[129] which was brought onto them due to previous commitments.

The island states were dependent on external expertise as they lacked technical capacity. Besides the lack of data, for most countries *'the ministry of trade comprised one or two people only'*.[130] In response, the Office of the Chief Trade Advisor to the Forum Island Countries (OCTA) was created specifically to assist the island states in negotiating PACER Plus. The role was modelled on CARICOM's approach but adjusted to the less homogenous group and less robust institutions in the region.[131] Importantly, the role was specifically created as an advisory one to provide technical support. No control was ceded to the PIF Secretariat: *'We do not need delegation, we were able to hold coordination together this way'*.[132] It was deliberately designed as less than Chief Negotiator,

[123] Interview 10.

[124] Interview 10.

[125] Australia and New Zealand appeared as single actor also in relation to ASEAN before (Castle 2018).

[126] Pacific Agreement on Closer Economic Relations, Article 6: `https://www.forumsec.org/wp-content/uploads/2018/02/Pacific-Agreement-on-Closer-Economic-Relations-2001.pdf`.

[127] On the other hand, Australia and New Zealand bilaterally determined their mutual rights and obligations under PACER Plus, highlighting their appearance as collective actor in these negotiations. Letter from Todd McClay, Minister of Trade of New Zealand. 14.06.2017: `https://www.dfat.gov.au/sites/default/files/side-letter-on-pacer-plus-from-new-zealand-to-australia.pdf`

[128] Interview 3.

[129] Interview 13.

[130] Interview 3.

[131] Interview 13.

[132] Interview 13.

following the principle to retain states' autonomy in negotiating. This entailed providing technical support and coordinating positions internally but the negotiations with Australia and New Zealand were a collaborative effort coordinated by OCTA: *'I would speak from the mandate, states would also speak.'*[133] While the Chief Trade Advisor would partially negotiate on behalf of the states, foreign trade minister meetings always took place before negotiations.

Political aspects heavily shaped the negotiations. Australia and New Zealand were keen to keep the region together, possibly because they didn't want the EU to have an agreement they could not have.[134] At the same time, they opposed the creation of a new IO to coordinate Pacific trade policy in order to safeguard the Pacific Island Secretariat's relevance.[135] As a result, the OCTA was created as charity under Australian domestic law, with funds being directly disbursed to the advisor's private bank account.[136]

The necessity to negotiate collectively, however, does not necessarily translate into the necessity to collectively implement an agreement. Indeed, not all island states ratified or even signed the agreement due to concerns regarding its substantive provisions. Strikingly, Fiji and Papua New Guinea, which singled out their own benefits in negotiations with the EU (Jones 2013, p. 110), did not sign PACER Plus. Capacity constraints led to concerns about implementation costs amid modest gains[137] and severe losses in public revenue due to preferential market access to Australia and New Zealand.[138] Ex-ante commitments, capacity constraints and the desire to retain control thus shaped both the negotiating process and the substantive outcome.

5.2 Choice: Making the Most of Trade Governance

In the cases of CARICOM and the Pacific Islands, capacity constraints required states to take action in order to deal with upcoming negotiations. In contrast, various states that also negotiate bilateral agreements *choose* to collectively negotiate PTAs. As the cases below illustrate, it would be misleading to conceive of economic integration as being fully deterministic of states' trade policy. Rather, political preferences that are sought to be reconciled with previous commitments and agreements shape these states' trade policy.

[133] Interview 3.
[134] Interview 13.
[135] Interview 13.
[136] Interview 13.
[137] Bilaterals.org. 13.06.2017. "Joey Tau: Can the MSG bloc walk out on the PACER-Plus trade deal?:" `https://www.bilaterals.org/?joey-tau-can-the-msg-bloc-walk-out&lang=en`.
[138] RNZ. 25.10.2018 "Pacific trade deal signatories face heavy losses:" `https://www.rnz.co.nz/international/programmes/datelinepacific/audio/2018668199/pacific-trade-deal-signatories-face-heavy-losses-report`.

Pacific Alliance: Like-Mindedness Beats Economics

Established in 2011, the Pacific Alliance - comprised of Mexico, Chile, Colombia and Peru - is a relatively novel integration scheme in Latin America. While pursuing an ambitious economic and political agenda that includes the integration of members' stock exchanges and joint diplomatic missions, trade remains at the centre of the bloc. This is noteworthy as the bloc overlaps with others: most notably, its members are part of the Andean Community, a customs union, and NAFTA, whereas all members save Colombia are parties to CPTPP. Trade relations among members is reflective of this structure: intra-Pacific Alliance trade is remarkably low and, for instance, accounts for only about 1% of Mexican trade. Naturally, members' ties to outsiders remain much more important when it comes to trade volume. And yet, the Pacific Alliance has been playing an important role for its member states in collective trade negotiations. In fact, for Mexico, negotiations under the auspices of the Pacific Alliance have become more frequent than bilateral ones.

Rather than based on functionalist cooperation, the Pacific Alliance's role precisely originates from its bringing together a likeminded group if states. Unlike other integration schemes in the region, such as ALADI, its members pursue shared interests when it comes to commercial policies, despite diverging economic and trade relations.[139] Even in the deeply integrated Andean Community, political disagreements on free trade hinder a common approach. Whereas ALADI merely offers a framework for partial scope agreements, the members of the Pacific Alliance chose to collectively pursue their commercial interests. This choice does not only entail material benefits as politics also come into play: Member states also seek to signal a common interest and openness to traders and investors, which was an important consideration on joint negotiations with Singapore.[140]

One of the major advantages of joint negotiations is that negotiations with third states are easier:[141] the Alliance's member states have a stronger bargaining position as a group, sometime allowing them to make offers on a take-it-or-leave-it basis.[142] On the other hand, this means internal discussions can be more difficult and contested.[143] Therefore, this approach requires the political willingness to overcome internal differences.[144] Somewhat paradoxically, the character of collective negotiations can facilitate convergence on a joint position by curbing the influence of private sector interests. This is because in collective negotiations special interests are diluted due to the aggregation of broader preferences - with much more being at stake, actors prevent behaviour that could jeopardise the entire agreement. To safeguard the common effort, in collective negotiations states are not

[139] Interview 14.
[140] Interview 15.
[141] Interviews 14 & 15.
[142] Interview 15.
[143] Interview 8.
[144] This usually is managed through exemptions.

willing to allow the private sector to voice opposition in the same way as in bilateral fora - *'everyone can't put their own interest first.'*[145]

Given the relatively low levels of trade among the Pacific Alliance's members, considering and managing trade relations with respect to non-parties is crucial. Member states seek to maintain enhanced relationships with their top trading partners.[146] Amongst other means, rules such as the cumulation and extension of rules of origins contribute towards this aim.[147] Moreover, ex-ante commitments as common members in CPTPP helped the Alliance's members negotiate collective agreements, allowing them to build upon extant rules. For instance, when negotiating with Singapore, the negotiators ensured that rules of origin were compatible with those under CPTPP to prevent additional hurdles for the private sector.[148]

Importantly, states continue to pursue their own bilateral trade policy. A case of simultaneous negotiations emphasises the modular character of cooperation under the Pacific Alliance framework. In May 2017, Peru initiated bilateral negotiations with Australia - followed by the start of negotiations between the Pacific Alliance and Australia only five weeks later.[149] These negotiations were separate, pursuing different aspirations of economic cooperation.[150] While the bilateral agreement was successfully concluded, however, collective negotiations stalled due to substantive disagreements.

EAC: Going Together - but not at all Costs

Negotiations between the EU and the East African Community (EAC) on Post-Cotonou relations in the shape of an economic partnership agreement reveal how extant commitments can create meaningful obstacles to collective agency even if states seek to act collectively. External pressure and inconsistent preferences among EAC members prevented the implementation of a readily negotiated agreement. Despite the strong desire of the EAC to act collectively, the regional approach could not accommodate these aspects. Only after years of uncertainty, EAC members agreed on a variable geometry, after which Kenya concluded bilateral agreements with the UK and EU, and began negotiating a further PTA with the US.

The EAC is often considered an African role model regional integration scheme. Traditionally,

[145] Interview 15.
[146] Interview 8.
[147] Interview 14.
[148] Interview 15.
[149] DFAT. 24.05.2017. "Launch of Peru-Australia Free Trade Agreement (PAFTA) negotiations:" https://www.dfat.gov.au/trade/agreements/in-force/pafta/news/Pages/pafta-news; DFAT. 01.07.2017. "Launch of Pacific Alliance Free Trade Agreement negotiations:" https://www.dfat.gov.au/trade/agreements/negotiations/pacificalliancefta/Pages/pacific-alliance-fta-news
[150] Interview 8.

ties between the EAC and EU have been remarkable comprehensive, covering multiple areas and providing support for further regional integration (Trouille/Uwimbabazi 2021). Integration in the EAC seeks to give rise to a strong regional actor. Even the original agreement on the 'first' EAC, a short-lived attempt at regional integration in the late 1960s, already stipulated that *'no Partner State shall enter into arrangements with any foreign country whereunder tariff concessions are available to that Partner State which are not available to the other Partner States.'*[151]

The EAC-EU agreement concluded in 2014 also clearly stipulated that the EAC, collectively, was considered a single party to the agreement, noting that *'the term 'party' shall refer to the EAC Partner States acting collectively or the EU as the case may be'*.[152] The agreement further encouraged the EAC to mandate a representative on behalf of all members.[153] The agreement was signed by the EU and Rwanda and Kenya, but required all EAC members sign it before coming into force. By rejecting to do so, other members effectively blocked the agreement in its entirety. The EU expected the EAC to deal with its internal disagreements.

The stringent collective approach, however, would eventually turn into a significant problem for Kenya unless relaxed and replaced by variable rules. In 2014, Kenya was reclassified as low-middle income economy by the World Bank - which meant that, unless the agreement came into force, Kenya would suddenly lose non-reciprocal access to the EU market (Krapohl/Van Huut 2020). This put Kenya under severe pressure and divided the EAC. While Kenya sought to rally its fellow EAC members, the latter had little to gain from the agreement - being able to rely on non-reciprocal EU concessions. The EU passed the buck to Kenya by trying to keep the EAC together while raising the prospect of - essentially - punitive tariffs on Kenyan goods.[154] This mismatch between political aspirations and commitments increasingly left Kenya isolated in the EAC.

It was only until after the UK - by far Kenya's most important trading partner in Europe - concluded a bilateral agreement with Kenya in the course of its preparations for Brexit that the insistence on collective agency changed.[155] In response, the EAC agreed on the principle of 'variable geometry',

[151] Treaty for East African Cooperation (1967), Article 7 *External Trade Arrangements*: `http://kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Amendment%20Acts/No.%2031%20of%201967.pdf`

[152] Economic Partnership Agreement Between the East African Community Partner States, of the one Part, and the European Union and its Member States of the other Part, Article 132(2): `https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/4f8d4f46-48ba-45d8-a1d2-a1a934b56949/details?download=true`.

[153] Even further than this, the EU-West Africa economic partnership agreement establishes that all Western African states are considered a single party with respect to dispute settlement, creating collectively liability.

[154] Bilaterals.org. 10.08.2016. "Collapse of EU trade deal : Kenya finds itself isolated for a third time in four months:" `https://www.bilaterals.org/?collapse-of-eu-trade-deal-kenya&lang=fr`

[155] Note that the UK-Kenya agreement foresees the future accession of other EAC members. See also: The East African. 01.03.2021. "EAC secures unlimited access to Kenya-UK trade deal:" `https://www.theeastafrican.co.ke/tea/`

allowing Kenya to implement agreements bilaterally as long as other members *'are not in a position to sign the agreement'*.[156] Accordingly, an additional protocol was added to the EU-EAC agreement, allowing for its bilateral implementation. While more flexible in terms of implementation, the agreement substantively remains the same, simply being adjusted to the bilateral context.[157] While the bilateral agreement is now in force, its origins likely damaged the EAC's legitimacy - but stressed the element of politics and choice in collective negotiations.

A Political Compromise: MERCOSUR's Dual Strategy

Probably one of the most well-known regional integration schemes is MERCOSUR. Established in 1991, it is, potentially, one of the most powerful regional IOs due to its vast market size. After the introduction of a common external tariff in 1995, it nominally is a customs union although the incomplete character of its implementation has sparked debates on the true extent of MERCOSUR integration (Gardini 2011; Doctor 2013). Addressing doubts about the customs union issue, an Argentine negotiator poignantly put it this way: *'It's not that we don't have a common external tariff because we have exemptions. We have a common external tariff precisely because we have exemptions.*[158]

The case of MERCOSUR impressively shows that, even for relatively deeply integrated trading blocs, political choices prevail over institutions when it comes to trade policy. MERCOSUR's members negotiate trade agreements both bilaterally and collectively. The evolution of its institutional framework is reflective of the challenges and politics that shaped collective efforts. MERCOSUR's trade policy broadly went through three phases, with the last one yet to form. First, MERCOSUR states sought to negotiate collectively and, in fact, did so with a number of partners in the region. After this approach ran into difficulties, due to diverging preferences in negotiations both with Mexico and Chile, members agreed on a dual approach: MERCOSUR would collectively negotiate framework agreements, with subsequent bilateral agreements being added as additional protocols to the collective agreements.[159] MERCOSUR hence agreed on an unwritten rule, allowing bilateral agreements with ALADI members - i.e., essentially all of South America, Mexico, and Cuba - whereas agreements with trading partners from overseas were to be negotiated collectively.[160] Importantly,

business/eac-secures-unlimited-access-to-kenya-uk-trade-deal-3307788

[156]EAC. 27.02.2021. "Communiqué of the 21st Ordinary Summit of the East African Community Heads of State": https://www.eac.int/communique/1942-communiqu%C3%A9-of-the-21st-ordinary-summit-of-the-east-african-community-heads-of-state.

[157]EU Commission. 22.06.2021. "The European Union and the Republic of Kenya launch strategic dialogue and engage towards implementing the East African Community Economic Partnership Agreement:" https://web.archive.org/web/20211022073608/https://trade.ec.europa.eu/doclib/press/index.cfm?id=2279

[158]Interview 7.

[159]Technically, even the comprehensive and modern bilateral agreements between MERCOSUR member states and Chile merely are additional protocols to the common framework agreement (ACE 35).

[160]This occasionally led to incompatibilities between trading rules, yet political choices outweighed economic con-

this separation was a political agreement, *'a matter of choice'*.[161]

This second phase of geographic separation lasted for almost two decades. Tensions between MERCOSUR member states grew and subsided but reached a watershed moment when Argentina dropped out of negotiations with South Korea due to concerns about its manufacturing sector. This caused a rupture among members. An official from Uruguay stressed that collective negotiations are always preferable if all members want an agreement - *'but if there is disagreement, let us do it on our own'*.[162] This also touched upon the selection of trading partners. While the political aspect is more important to some members, others *'want more - we don't want to negotiate with Egypt and South Africa'*.[163] The desire to go alone eventually made Uruguay decide to enter formal negotiations with China regarding a bilateral agreement - thus *'opening Pandora's box*[164] and undermining MERCOSUR's consensus. This development has drawn severe criticism from other members amid its consequences for the future of MERCOSUR.[165] Amid its geopolitical consequences, Uruguay's efforts also prompted the US Senate to introduce bipartisan legislation that would entail unilateral tariff concessions - aimed at deterring Uruguay from pursuing the agreement with China.[166] Political considerations are unlikely to stop shaping MERCOSUR's trade policy.

6 Conclusion

Trade negotiations are a complex process. While there is abundant research assessing why and under what conditions states conclude PTAs, relatively little emphasis lies on how these negotiations unfold and *who* negotiates. This paper sought to address the latter. It argued that states seek to maintain control over trade policy and the negotiating process, and therefore do not delegate economic diplomacy to IOs - with the EU being the notable exception. Operating as collective agents, states retain the capacity to negotiate bilaterally and continue to do so: Collective negotiations as a trading bloc and a bilateral trade policy are not alternatives or even mutually exclusive. They can be combined and are elements of the trade policy for various states.

The benefits and opportunities of collective negotiations are not the same for all states. If states

straints.

[161] Interview 7.

[162] Interview 4.

[163] Interview 4.

[164] Interview 7.

[165] The Diplomat. 18.03.2023. "The Potential China-Uruguay Trade Deal Risks Fracturing Mercosur:" https://thediplomat.com/2023/03/the-potential-china-uruguay-trade-deal-risks-fracturing-mercosur/

[166] United States Uruguay Economic Partnership Act. Senate Committee on Foreign Affairs. MCC23740 J99. See: https://www.foreign.senate.gov/press/dem/release/menendez-hagerty-kaine-introduce-united-states-uruguay-economic-partnership-act.

lack the capacity to pursue their own trade policy - lacking the expertise and personnel to conduct increasingly intricate economic negotiations on their own - they will seek collective negotiations as necessity. Even negotiators, at times, face the constraints of their trading partners.[167] Oftentimes, however, the decision to collective negotiate a PTA is a matter of choice - with political considerations playing a crucial part. Ex-ante commitments in terms of depth of integration of trading blocs, rather than actual trade volume, meaningfully shape this decision-making process. Rather than being deterministic of trade policy, this analysis has painted a more nuanced picture of the effect of ex-ante commitments.[168] They enter states' decision-making because collective trade policy is an effective way to align - or even harmonise - internal and external commitments, thus providing the most effective governance framework for the private sector. In other words, economic relations create the structure in which political agents operate. For collective agents, it often is during the negotiating process when states identify the overlap and tension between each other's preferences - and establish whether choices can be reconciled with commitments in a collective compromise.

Collective agency's being distinct from delegation has significant consequences for trade policy. States eagerness to keep control over trade policy and throughout the negotiation process helps explain the institutional choices and success of collective negotiations. For instance, this approach helps qualify findings that regional hegemons hamper coalition building (Narlikar 2005, pp. 165–167): unequal bargaining power may not necessarily a problem - rather, states are keen to prevent effectively ceding control which is a more salient problem when a dominant power is involved. However, with collective agents being fragmented, trading partners may exploit in-group disagreements to their advantage (Carrión 2009, p. 22). Trading partners may also use collective agency as a vehicle to impose certain rules on an entire group of states as the example of the EU-EAC and Pacer Plus negotiations have shown, where non-reciprocal concessions were to be turned into reciprocal arrangements.

Collective trade negotiations also are evidence of the blurring boundaries of PTAs. Functionally, the expanding scope of PTAs towards economic governance agreements renders trade relations more complex, requiring a more active management of commitments. Geographically, collective agency helps align internal commitments with external trading rules as much as is desirable, even if exemptions remain and rules can be differentiated. Formal membership in agreements, however, is not the only demarcation of trade rules. If commercial ties between states exist, as is often the case within trading blocs, these ties can be acknowledged even if no collective agreement is concluded. Rules such as the cumulation or extension of origins can facilitate intra-bloc trade despite the lack of a common agreement. For the same reason, joint membership in trading blocs likely creates an interdependence of bilateral trade policies as well. While third party effects on the conclusion of PTAs

[167] Interview 16.

[168] This is similar to willingness being more relevant to coalition building in the WTO than the depth of regional integration (Narlikar 2005, p. 175).

have received increasing attention (Egger/Larch 2008; Chen/Joshi 2010), considering ex-ante commitments and trading bloc membership could help understand third party effects in a more nuanced manner. With deeper internal commitments, the bilateral choices of other members are likely to play a role for the strategic choices of trading bloc members. Another avenue for further research could be the analysis of the distributive effects of collective PTAs.

Capacity constraints are likely to be more severe the more complex and intricate PTAs become. This limit the policy leeway of states and render them dependent on collective negotiations. While this expands their leeway, their ability to enter preferential arrangements remains limited. Indeed, many states concluded PTAs when agreements were mainly about tariff rates while abstaining from more complex agreements. Yet, trade policy is merely one issue area in international cooperation. While possibly less obvious, similar constraints are likely to shape the institutions of cooperation both when it comes to negotiating agreements and their implementation. Environmental agreements and carbon pricing schemes, for instance, may pose similar challenges to bureaucracies around the globe. Collective agency holds the promise to alleviate these shortcomings and divide the costs of cooperation between several states. The growing prominence of summit diplomacy, such as in the case of African leaders' summits with various third states, is an example of joint approaches that help states share the transaction costs of modern diplomacy. Rather than conceiving of multilateralism and bilateralism as competing elements of international cooperation (Rixen/Rohlfing 2007; Thompson/Verdier 2014), plurilateralism may be an effective strategy to organise complex in-group and out-group relations that acknowledges economic and political limitations. From this perspective, collective agency could be a central element in constructing the 'second best' scenario to multilateralism.

References

Abbott, Kenneth W et al. (2020a). "Competence versus control: The governor's dilemma". In: *Regulation & Governance* 14.4, pp. 619–636.

Abbott, Kenneth W et al. (2020b). *The Governor's Dilemma: Indirect Governance Beyond Principals and Agents*. Oxford University Press.

Abreu Donner, Maria (2016). "Preferential rules of origin in regional trade agreements". In: *Regional Trade Agreements and the Multilateral Trading System*. Cambridge University Press, Cambridge, pp. 58–111.

Adriaensen, Johan (2016). *National administrations in EU trade policy: Maintaining the capacity to control*. Springer.

Balassa, Bela (1967). "Trade creation and trade diversion in the European Common Market". In: *The Economic Journal* 77.305, pp. 1–21.

Bank, World (2022). *World Development Indicators*. The World Bank.

Beck, Nathaniel, Jonathan N Katz, and Richard Tucker (1998). "Taking time seriously: Time-series-cross-section analysis with a binary dependent variable". In: *American Journal of Political Science* 42.4, pp. 1260–1288.

Beretvas, S Natasha (2011). "Cross-classified and multiple-membership models". In: *Handbook of advanced multilevel analysis*, pp. 313–334.

Betz, Timm (2019). "Tariff evasion and trade policies". In: *International Studies Quarterly* 63.2, pp. 380–393.

Bianculli, Andrea C (2020). "Politicization and regional integration in Latin America: implications for EU–Mercosur negotiations?" In: *Politics and Governance* 8.1, pp. 254–265.

Bilal, S, G Laporte, and S Szepesi (2007). "Talking Trade: Practical Insights on the Capacity to Conduct Trade Negotiations". In: *Navigating New Waters: A reader on ACP-EU trade*.

Börzel, Tanja and Thomas Risse (2009). "The rise of (inter-) regionalism: The EU as a model of regional integration". In: *APSA 2009 Toronto Meeting Paper*.

Bosker, Roel and Tom AB Snijders (2012). *Multilevel Aanalysis: An introduction to basic and advanced multilevel modeling*. 2nd. Sage.

Bown, Chad P (2017). "Mega-regional trade agreements and the future of the WTO". In: *Global Policy* 8.1, pp. 107–112.

Broschek, Jörg and Patricia Goff (2020). *The multilevel politics of trade*. Vol. 59. University of Toronto Press.

Buthe, Tim and Helen V Milner (2012). "The Interaction of International and Domestic Institutions: Preferential Trade Agreements, Democracy, and Foreign Direct Investment". In: *APSA 2012 Annual Meeting Paper*.

Büthe, Tim and Helen V Milner (2014). "Foreign direct investment and institutional diversity in trade agreements: Credibility, commitment, and economic flows in the developing world, 1971–2007". In: *World Politics* 66.1, pp. 88–122.

Buzdugan, Stephen Robert (2013). "Regionalism from without: External involvement of the EU in regionalism in southern Africa". In: *Review of International Political Economy* 20.4, pp. 917–946.

Calonico, Sebastian et al. (2017). "rdrobust: Software for regression-discontinuity designs". In: *The Stata Journal* 17.2, pp. 372–404.

Carrión, Gloria (2009). *Trade, regionalism and the politics of policy making in Nicaragua*. 5. Citeseer.

Castle, Matthew (2018). "Embedding regional actors in social and historical context: Australia-New Zealand integration and Asian-Pacific regionalism". In: *Review of International Studies* 44.1, pp. 151–173.

Catalinac, Amy L (2010). "Why New Zealand took itself out of ANZUS: Observing "opposition for autonomy" in asymmetric alliances". In: *Foreign Policy Analysis* 6.4, pp. 317–338.

Chen, Maggie Xiaoyang and Sumit Joshi (2010). "Third-country effects on the formation of free trade agreements". In: *Journal of International Economics* 82.2, pp. 238–248.

Cranmer, Skyler J and Bruce A Desmarais (2016). "A critique of dyadic design". In: *International studies quarterly* 60.2, pp. 355–362.

Cremona, Marise et al. (2015). *ASEAN's External Agreements*. Vol. 4. Cambridge University Press.

De Bièvre, Dirk and Andreas Dür (2005). "Constituency interests and delegation in European and American trade policy". In: *Comparative Political Studies* 38.10, pp. 1271–1296.

De Bièvre, Dirk and Arlo Poletti (2020). "Towards explaining varying degrees of politicization of EU trade agreement negotiations". In: *Politics and Governance* 8.1, pp. 243–253.

Diehl, Paul F and Thorin M Wright (2016). "A conditional defense of the dyadic approach". In: *International Studies Quarterly* 60.2, pp. 363–368.

Doctor, Mahrukh (2013). "Prospects for deepening Mercosur integration: Economic asymmetry and institutional deficits". In: *Review of International Political Economy* 20.3, pp. 515–540.

Douglas, Stinnett et al. (2002). "The correlates of war project direct contiguity data". In: *Conflict Management and Peace Science* 19.2, pp. 59–68.

Dunlop, Adam, Stefan Szepesi, and Kathleen Van Hove (2004). "Organising trade negotiating capacity at regional level". In: *A Caribbean case study. European Centre for Development Policy Management (ECDPM). Maastricht: ECDPM*.

Dür, Andreas, Leonardo Baccini, and Manfred Elsig (2014). "The design of international trade agreements: Introducing a new dataset". In: *The Review of International Organizations* 9, pp. 353–375.

Egger, Peter and Mario Larch (2008). "Interdependent preferential trade agreement memberships: An empirical analysis". In: *Journal of International Economics* 76.2, pp. 384–399.

Estevadeordal, Antoni, Jeremy Harris, and Kati Suominen (2009). "Harmonizing preferential rules of origin regimes around the world". In: *Multilateralizing Regionalism: Challenges for the Global Trading System*. Cambridge University Press, Cambridge, pp. 262–364.

Feenstra, Robert C, Robert Inklaar, and Marcel P Timmer (2015). "The next generation of the Penn World Table". In: *American economic review* 105.10, pp. 3150–3182.

Fiorini, Matteo and Bernard Hoekman (2018). "Trade agreements, regulatory institutions and services liberalization". In: *Global policy* 9.4, pp. 441–450.

Fitzmaurice, Garrett M, Nan M Laird, and James H Ware (2012). *Applied longitudinal analysis*. John Wiley & Sons.

Freudlsperger, Christian (2020). *Trade policy in multilevel government: Organizing openness*. Oxford University Press.

Gardini, Gian Luca (2011). "MERCOSUR: What you see is not (always) what you get". In: *European Law Journal* 17.5, pp. 683–700.

Goldstein, Harvey (2011). *Multilevel statistical models*. 4th. Vol. 922. John Wiley & Sons.

Gritsch, Maria (2005). "The nation-state and economic globalization: soft geo-politics and increased state autonomy?" In: *Review of International Political Economy* 12.1, pp. 1–25.

Haastrup, Toni (2013). "EU as mentor? Promoting regionalism as external relations practice in EU–Africa relations". In: *Journal of European Integration* 35.7, pp. 785–800.

Hanson, Jonathan and Rachel Sigman (2020). *Leviathan's Latent Dimensions: Measuring State Capacity for Comparative Political Research*. Version V1. DOI: 10.7910/DVN/IFZXQX. URL: https://doi.org/10.7910/DVN/IFZXQX.

Hanson, Jonathan K and Rachel Sigman (2021). "Leviathan's latent dimensions: Measuring state capacity for comparative political research". In: *The Journal of Politics* 83.4, pp. 1495–1510.

Ho, Daniel E. et al. (2011). "MatchIt: Nonparametric Preprocessing for Parametric Causal Inference". In: *Journal of Statistical Software* 42.8, pp. 1–28. DOI: 10.18637/jss.v042.i08.

Hollway, James and Johan Koskinen (2016). "Multilevel embeddedness: The case of the global fisheries governance complex". In: *Social Networks* 44, pp. 281–294.

Hooghe, Liesbet, Tobias Lenz, and Gary Marks (2019). *A theory of international organization*. Oxford University Press.

Hooghe, Liesbet et al. (2017). *Measuring international authority: A Postfunctionalist theory of governance, Vol. III*. Oxford: OUP.

Howes, Dustin Ells (2003). "When states choose to die: Reassessing assumptions about what states want". In: *International Studies Quarterly* 47.4, pp. 669–692.

Hulse, Merran (2014). "Actorness beyond the E uropean U nion: Comparing the International Trade Actorness of SADC and ECOWAS". In: *JCMS: Journal of Common Market Studies* 52.3, pp. 547–565.

Hurt, Stephen R (2003). "Co-operation and coercion? The Cotonou Agreement between the European Union and ACP states and the end of the Lomé Convention". In: *Third World Quarterly* 24.1, pp. 161–176.

Iacus, Stefano M, Gary King, and Giuseppe Porro (2012). "Causal inference without balance checking: Coarsened exact matching". In: *Political analysis* 20.1, pp. 1–24.

Jones, Emily (2013). *Negotiating Against the Odds: A Guide for Trade Negotiators from Developing Countries*. Palgrave Macmillan and Commonwealth Secretariat.

Jones, Emily, Carolyn Deere-Birkbeck, and Ngaire Woods (2010). *Manoeuvring at the Margins: Constraints Faced by Small States in International Trade Negotiations*. Commonwealth Secretariat.

Kemp, Murray C, H Wan et al. (1976). "An elementary proposition concerning the formation of customs unions". In: *Trading blocs: alternative approaches to analyzing preferential trade agreements*, pp. 203–6.

Kim, Soo Yeon and Mark S Manger (2017). "Hubs of governance: path dependence and higher-order effects of preferential trade agreement formation". In: *Political Science Research and Methods* 5.3, pp. 467–488.

Kim, Soo Yeon, Edward D Mansfield, and Helen V Milner (2016). "Regional trade governance". In: *The Oxford Handbook of Comparative Regionalism*. Oxford: University Press Oxford, pp. 323–350.

King, Gary and Richard Nielsen (2019). "Why propensity scores should not be used for matching". In: *Political analysis* 27.4, pp. 435–454.

Krapohl, Sebastian and Sophie Van Huut (2020). "A missed opportunity for regionalism: the disparate behaviour of African countries in the EPA-negotiations with the EU". In: *Journal of European Integration* 42.4, pp. 565–582.

Krasner, Stephen D David (1985). *Structural conflict: The third world against global liberalism*. Ithaca, NY: Cornell University Press.

Lawrence, Robert Z (2000). *Regionalism, multilateralism, and deeper integration*. Brookings Institution Press.

Lenz, Tobias (2021). *Interorganizational diffusion in international relations: Regional institutions and the role of the European Union*. Oxford University Press.

Lindberg, Lena and Claes G Alvstam (2007). "The national element in regional trade agreements: the role of Southeast Asian countries in ASEAN-EU trade". In: *ASEAN Economic Bulletin* 24.2, pp. 267–275.

Maggi, Giovanni and Ralph Ossa (2020). *Are trade agreements good for you?* Tech. rep. National Bureau of Economic Research.

Manger, Mark S (2009). *Investing in protection: The politics of preferential trade agreements between north and south*. Cambridge University Press.

Manger, Mark S, Mark A Pickup, and Tom AB Snijders (2012). "A hierarchy of preferences: A longitudinal network analysis approach to PTA formation". In: *Journal of Conflict Resolution* 56.5, pp. 853–878.

Mansfield, Edward D and Helen V Milner (2012). *Votes, vetoes, and the political economy of international trade agreements*. Princeton University Press.

Mansfield, Edward D, Helen V Milner, and Jon C Pevehouse (2007). "Vetoing co-operation: The impact of veto players on preferential trading arrangements". In: *British Journal of Political Science* 37.3, pp. 403–432.

Mansfield, Edward D and Eric Reinhardt (2003). "Multilateral determinants of regionalism: The effects of GATT/WTO on the formation of preferential trading arrangements". In: *International organization* 57.4, pp. 829–862.

Marshall, Monty G, Ted Robert Gurr, and Keith Jaggers (2020). "Center for Systemic Peace". In: *Polity IV Project*.

Mattli, Walter (1999a). "Explaining regional integration outcomes". In: *Journal of European Public Policy* 6.1, pp. 1–27.

— (1999b). *The logic of regional integration: Europe and beyond*. Cambridge University Press.

Mattoo, Aaditya, Alen Mulabdic, and Michele Ruta (2022). "Trade creation and trade diversion in deep agreements". In: *Canadian Journal of Economics/Revue canadienne d'économique* 55.3, pp. 1598–1637.

Meissner, Katharina L (2019). "Cherry picking in the design of trade policy: why regional organizations shift between inter-regional and bilateral negotiations". In: *Review of International Political Economy* 26.5, pp. 1043–1067.

Messerlin, Patrick (2014). "East Asia and the EU: Which contribution to the World Trade System". In: *Second East Asia-EU Round Table, Chinese Academy of Social Sciences (9*.

Meunier, Sophie and Kalypso Nicolaidis (1999). "Who speaks for Europe? The delegation of trade authority in the EU". In: *JCMS: Journal of Common Market Studies* 37.3, pp. 477–501.

Narlikar, Amrita (2005). *International Trade and Developing Countries: bargaining coalitions in the GATT & WTO*. Vol. 13. Taylor & Francis.

Narlikar, Amrita and Diana Tussie (2004). "The G20 at the Cancun Ministerial: Developing countries and their evolving coalitions in the WTO". In: *World Economy* 27.7, pp. 947–966.

Nicolaidis, Kalypso et al. (2014). "From metropolis to microcosmos: the EU's new standards of civilisation". In: *Millennium* 42.3, pp. 718–745.

Odell, John S (2010). "Negotiating from weakness in international trade relations". In: *Journal of World Trade* 44.3.

Panke, Diana and Anna Starkmann (2019). "Regional Organizations' Competencies (ROCO)". Version V1. In: DOI: 10.7910/DVN/UBXZHC. URL: https://doi.org/10.7910/DVN/UBXZHC.

Paquin, Stéphane (2022). "Means of influence, the joint-decision trap and multilevel trade negotiations: Ontario and Québec and the renegotiation of NAFTA compared". In: *Journal of World Trade* 56.5.

Patel, Mayur (2007). *New faces in the green room: developing country coalitions and decision-making in the WTO*. Tech. rep. GEG Working Paper.

Poast, Paul (2010). "(Mis) using dyadic data to analyze multilateral events". In: *Political Analysis* 18.4, pp. 403–425.

Poulsen, Lauge N Skovgaard (2015). *Bounded rationality and economic diplomacy: The politics of investment treaties in developing countries*. Cambridge University Press.

Poulsen, Lauge N Skovgaard and Emma Aisbett (2013). "When the claim hits: Bilateral investment treaties and bounded rational learning". In: *World Politics* 65.2, pp. 273–313.

Rasbash, Jon (2014). "Cross-Classified and Multiple Membership Models". In: *Wiley StatsRef: Statistics Reference Online*.

Risse, Thomas (2016). "The diffusion of regionalism". In: *The Oxford handbook of comparative regionalism*, pp. 87–108.

Rixen, Thomas and Ingo Rohlfing (2007). "The institutional choice of bilateralism and multilateralism in international trade and taxation". In: *International Negotiation* 12.3, pp. 389–414.

Robertson, Danielle (2017). "EU-ACP Economic Partnership Agreements: Modern Colonialism Disguised in Violation of the WTO". In: *Vand. J. Transnat'l L.* 50, p. 463.

Rodrik, Dani (2018). "What do trade agreements really do?" In: *Journal of economic perspectives* 32.2, pp. 73–90.

Rosenbaum, Paul R and Donald B Rubin (1985). "Constructing a control group using multivariate matched sampling methods that incorporate the propensity score". In: *The American Statistician* 39.1, pp. 33–38.

Schade, Daniel (2019). *The EU in Association Agreement Negotiations: Challenges to Complex Policy Coordination*. Routledge.

Scharpf, Fritz W (1988). "The joint-decision trap: lessons from German federalism and European integration". In: *Public administration* 66.3, pp. 239–278.

Söderbaum, Fredrik and Timothy M Shaw (2003). "Theories of new regionalism". In: *Theories of new regionalism. New York: Palgrave Macmillan*, pp. 1–21.

Thompson, Alexander and Daniel Verdier (2014). "Multilateralism, bilateralism, and regime design". In: *International Studies Quarterly* 58.1, pp. 15–28.

Trouille, Jean-Marc and Penine Uwimbabazi (2021). *The East African Community: Intraregional Integration and Relations with the EU*. Routledge.

Vabulas, Felicity and Duncan Snidal (2013). "Organization without delegation: Informal intergovernmental organizations (IIGOs) and the spectrum of intergovernmental arrangements". In: *The Review of International Organizations* 8.2, pp. 193–220.

Velut, Jean-Baptiste et al. (2017). *Understanding mega free trade agreements: the political and economic governance of new cross-regionalism*. Routledge.

Viner, Jacob (1950). "The Customs Union Issue". In: *The Customs Union Issue*.

Wendt, Alexander (1999). *Social theory of international politics*. Vol. 67. Cambridge University Press.

Woolcock, Stephen (2007). *European Union policy towards free trade agreements*. Tech. rep. ECIPE working paper.

— (2014). "Differentiation within reciprocity: the European Union approach to preferential trade agreements". In: *Contemporary Politics* 20.1, pp. 36–48.

— (2016). *European Union economic diplomacy: the role of the EU in external economic relations*. Routledge.

Wu, Gang et al. (2020). "Do self-organization and relational embeddedness influence free trade agreements network formation? Evidence from an exponential random graph model". In: *The Journal of International Trade & Economic Development* 29.8, pp. 995–1017.

Young, Alasdair R (2015). "Liberalizing trade, not exporting rules: the limits to regulatory co-ordination in the EU's 'new generation' preferential trade agreements". In: *Journal of European Public Policy* 22.9, pp. 1253–1275.

Zürn, Michael (2018). *A theory of global governance: Authority, legitimacy, and contestation*. Oxford University Press.

Annex

[List of Interviewees omitted for reasons of confidentiality.]

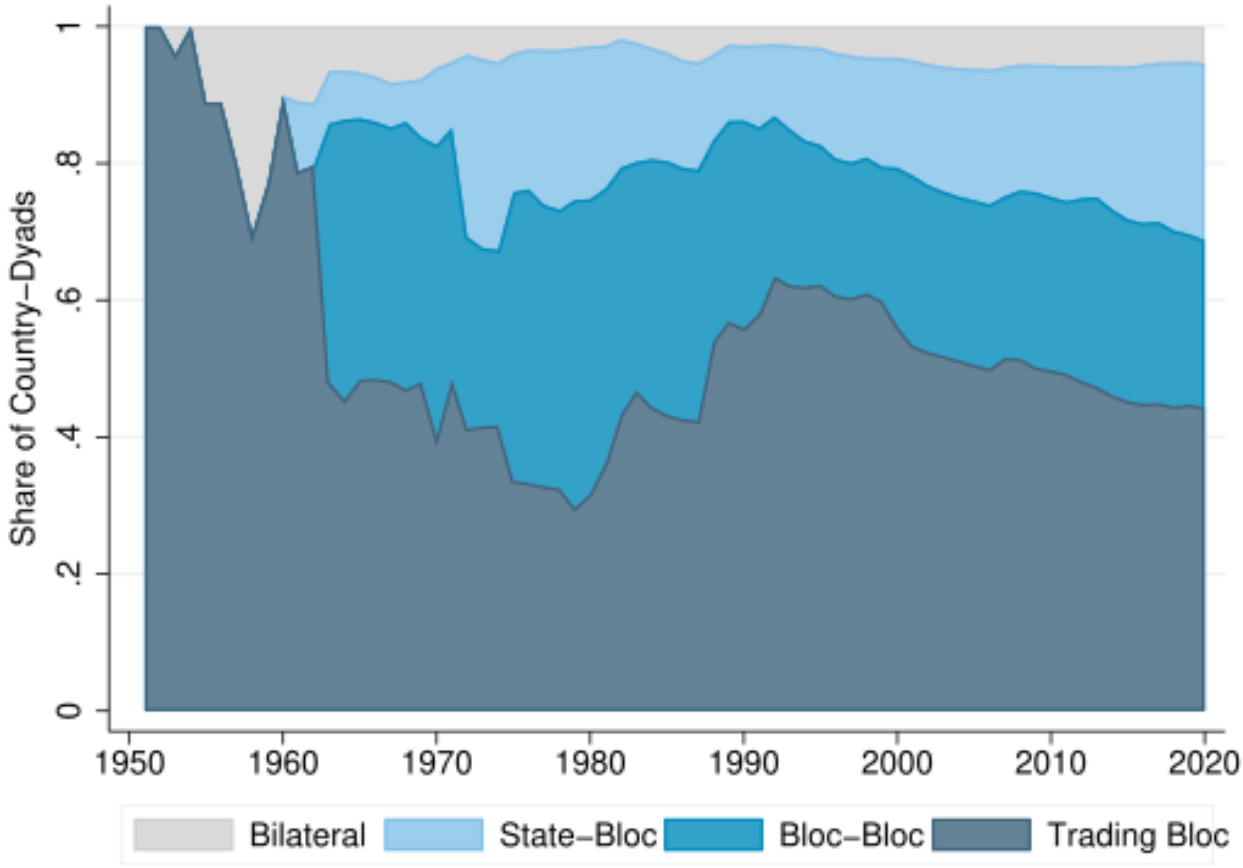


Figure 15: The plot shows the proportion of all country-dyads involving members of trading blocs covered by PTAs, distingushing different PTA types.

Outcomes of Failed Joint Negotiations	PTAs (Examples)
Negotiations Revived afer being on Hold	*EAEU - India*
	EU - New Zealand
	EU - Mexico
	EFTA - India
	EFTA - Vietnam
	EFTA - Malaysia
	SACU - India
	GCC - Pakistan
Negotiations Collapsed	*CARICOM - Canada*
	GCC - Australia
	EFTA - EAEU
	EU - USA
	EU - GCC
	EU - India
	EU - China
	GCC - Japan
	GCC - MERCOSUR
	GCC - India
	GCC - New Zealand
	GCC - China
	EFTA - Thailand
	SACU - China
	CAIS - Mercosur
	CAIS - CARICOM
Selective Bilateral PTAs	*Central America - Canada*
	Central America - South Korea
	Pacific Alliance - Australia
	EFTA - Central America
	EFTA - Japan
	EFTA - China
	Andean Community - USA
	Andean Community - Canada
	EU - Andean Community
	EU - ASEAN
	EU - Central Africa
	EU - ESA
	Pacific Islands - AUS/NZL
	Mercosur - South Korea (?)
Incomplete Ratification	*EU - EAC*
	EU - ECOWAS
	Pacific Islands - AUS/NZL

Table 5: Examples of failed joint negotiations.

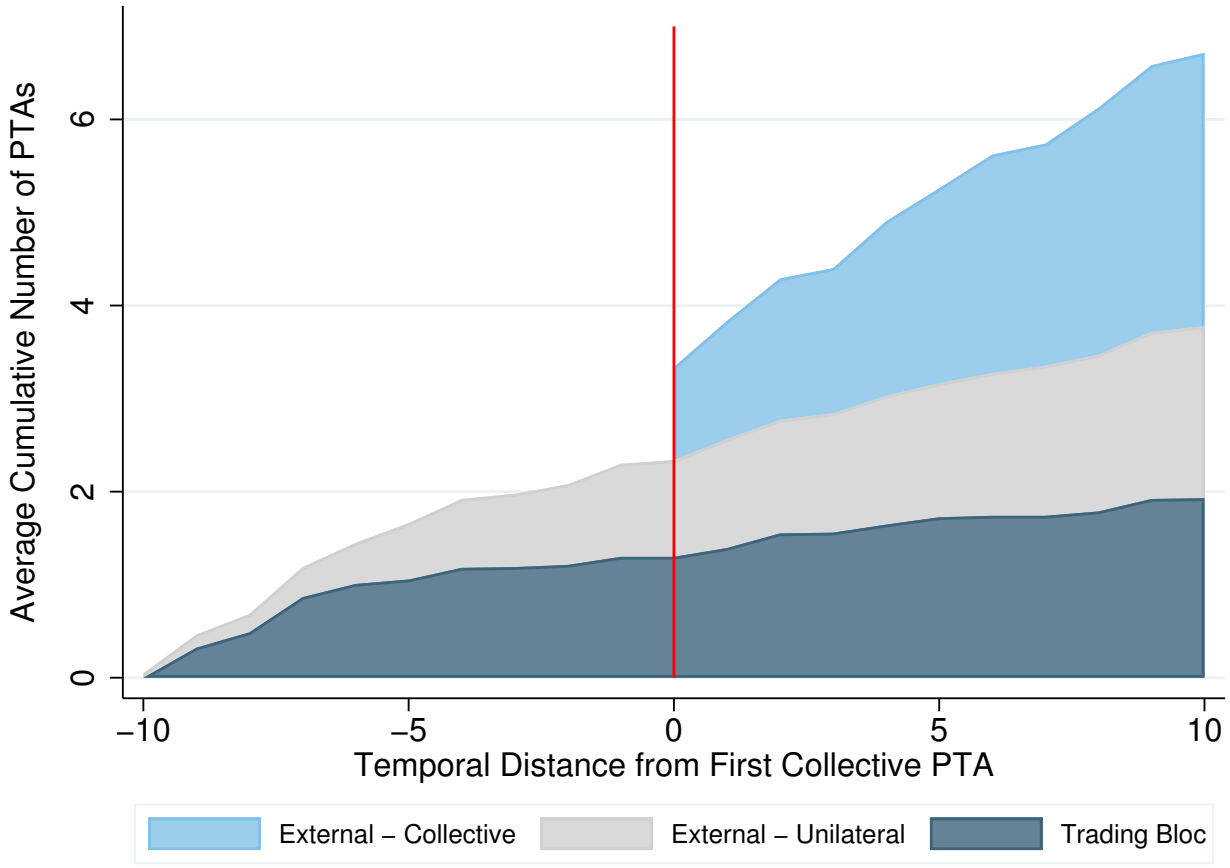


Figure 16: Share of PTAs concluded by type relative to states' first negotiation as part of a collective agent.

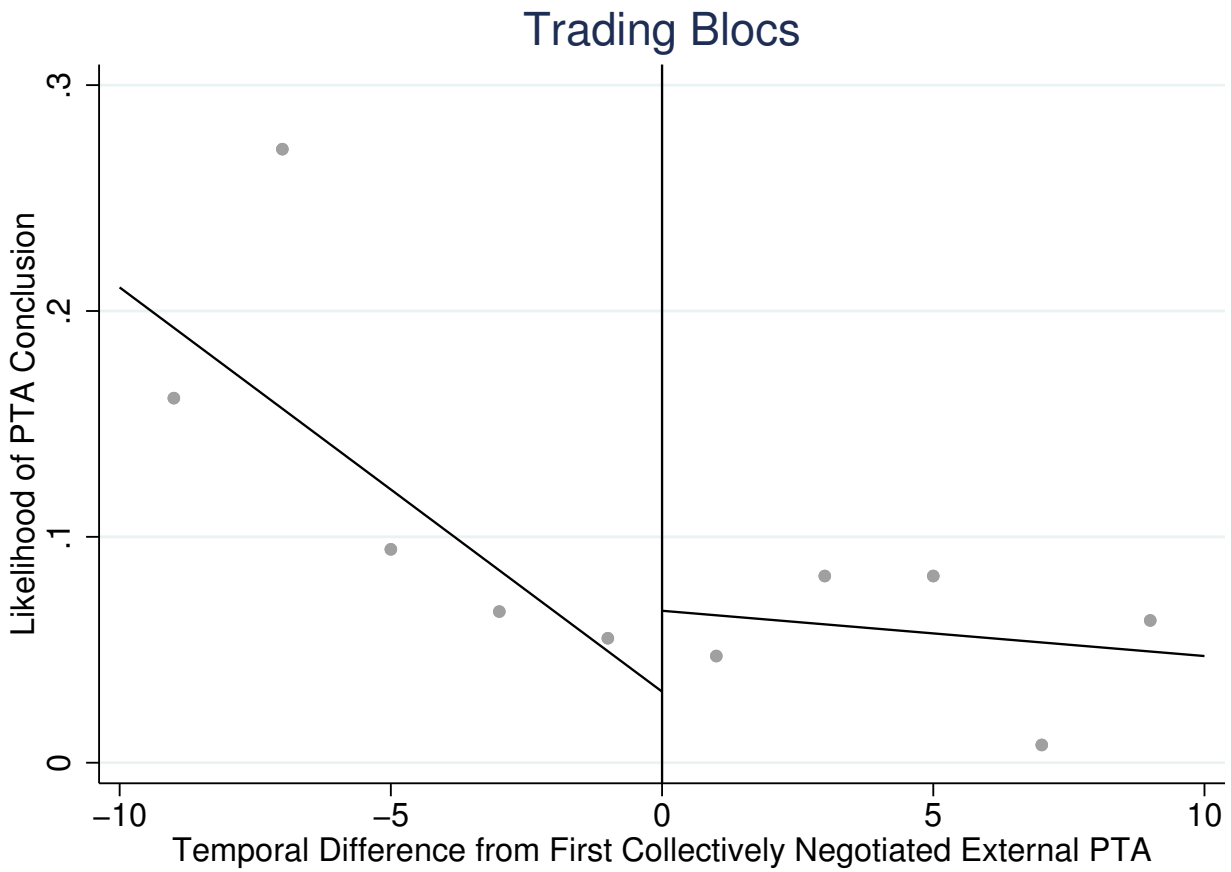


Figure 17: Rdplot visualising the likelihood of joining trading blocs relative to first collective PTA.

Table 6: RDD results based on states' first collective PTA. Second-order polynomial regression.

	(1)	(2)	(3)	(4)
Pr(PTA)	Bilateral PTAs	Trading Blocs	Collective (Ext.) PTAs	Total PTAs
1^{st} Collective PTA	0.00166	-0.131***	0.267***	0.411***
	(0.0533)	(0.0396)	(0.0670)	(0.103)
	[-0.109;0.133]	[-0.233;-0.0620]	[0.107;0.414]	[0.204;0.659]
Mean DV Left_{10}	0.100	0.130	0	0.230
Mean DV Right_{10}	0.0833	0.0833	0.199	0.347
Covariates	Yes	Yes	Yes	Yes
Clustered SE	Yes	Yes	Yes	Yes
Bandwidth Selection	mserd	mserd	mserd	mserd
Polynomial Order	2	2	2	2

$^{***}p < 0.01$, $^{**}p < 0.05$, $^{*}p < 0.1$. *Robust RD Regressions. Robust SEs in Parentheses.*

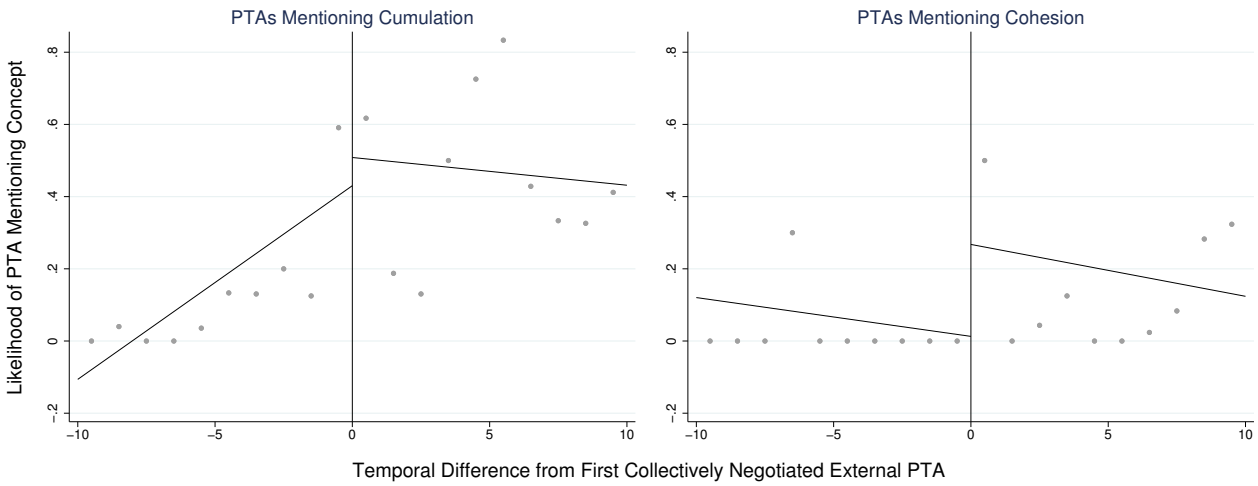


Figure 18: Mentions of sleected concepts in PTAs before and after first collective negotiation.

Table 7: Linear estimate after propensity score matching. Effect of collective PTA negotiations on number of PTAs.

	Number of Bilateral PTAs		*Number of Bilateral & Collecite PTAs*	
Δ *PTAs*	Partial Model	Full Model	Partial Model	Full Model
$ATT_{CollectiveNegotiations}$	-0.608	0.292	4.76***	4.05***
	(0.6)	(0.384)	(0.975)	(0.996)
	[-1.78;0.567]	[-0.46;1.04]	[2.85;6.67]	[2.09;6.00]

$^{***}p < 0.01$, $^{**}p < 0.05$, $^{*}p < 0.1$. *Robust SEs in Parentheses.*

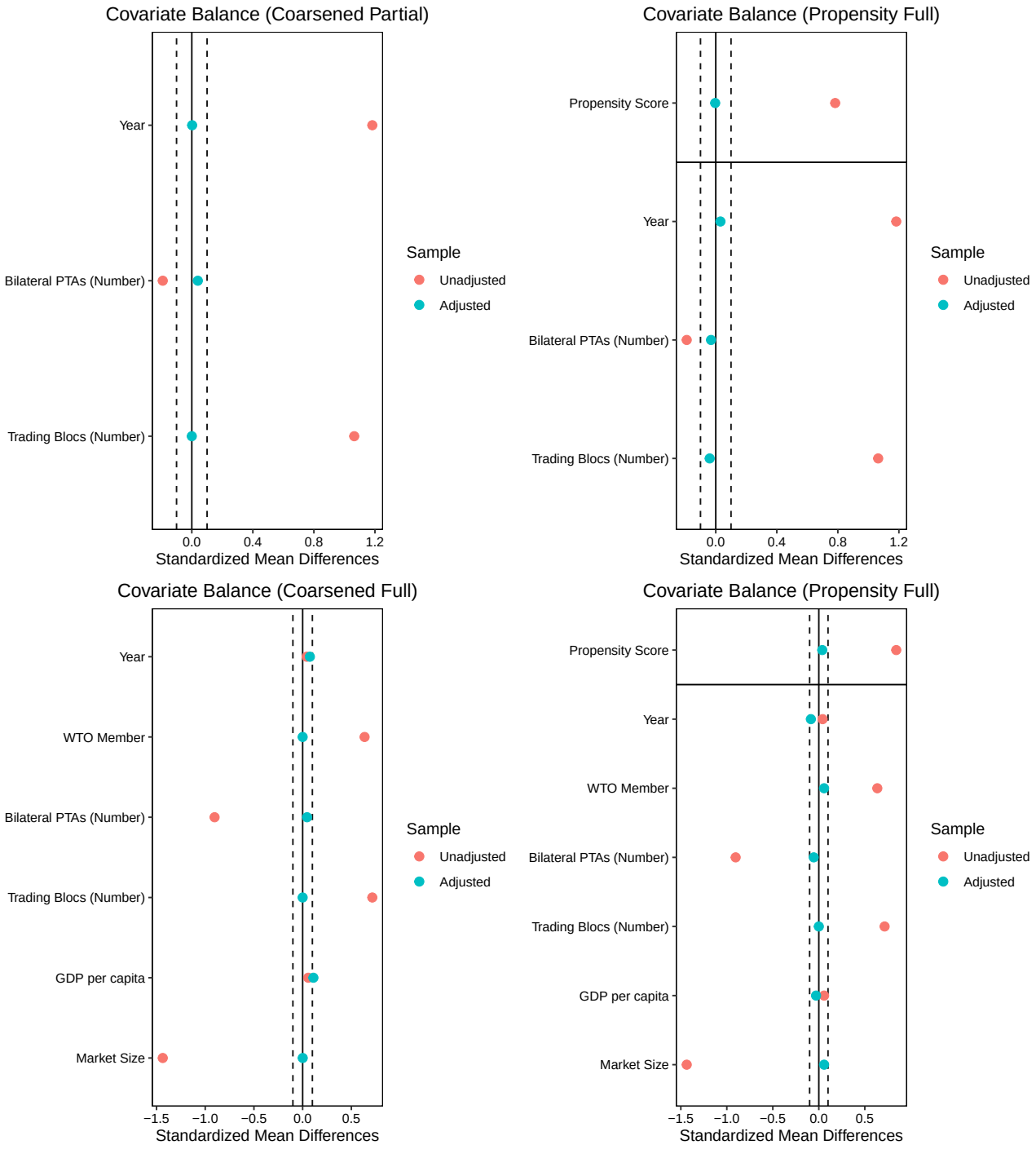


Figure 19: Balance plots for partial and full models using coearsened exact matching and propensity score matching.

Pr(Collective PTA)	(1)	(2)	(3)	(4)	(5)
Ex-Ante Commitment	1.292***			-5.346***	0.935***
	(0.229)			(1.413)	(0.243)
Capacity_{GDP}		-0.681***		-1.623***	
		(0.225)		(0.317)	
Capacity_{LLD}			-0.950***		-2.331***
			(0.324)		(0.449)
Ex-Ante Commitment x $\textit{Capacity}_{GDP}$				0.833***	
				(0.175)	
Ex-Ante Commitment x $\textit{Capacity}_{LLD}$					1.306***
					(0.255)
Trade Openness	0.00697	0.00856*	0.00756*	0.0101**	0.00721*
	(0.00424)	(0.00452)	(0.00448)	(0.00433)	(0.00426)
Democracy	-0.00380	0.0297	0.264	0.325	0.399
	(0.332)	(0.356)	(0.362)	(0.353)	(0.363)
WTO Member	1.401***	1.533***	1.538***	1.844***	1.667***
	(0.372)	(0.375)	(0.372)	(0.400)	(0.390)
Number Trading Blocs	0.131	0.296**	0.308**	0.0769	0.111
	(0.137)	(0.137)	(0.136)	(0.145)	(0.144)
$\text{Contiguity}_{Dyadic}$	-0.949***	-0.975***	-0.965***	-0.983***	-0.994***
	(0.272)	(0.272)	(0.268)	(0.280)	(0.276)
$\text{Trading Bloc}_{Dyadic}$	2.918***	2.783***	2.867***	2.842***	2.821***
	(0.287)	(0.290)	(0.286)	(0.293)	(0.286)
$\text{Bloc Member PTAs}_{Dyadic}$	-1.628***	-1.530***	-1.488***	-1.731***	-1.612***
	(0.297)	(0.297)	(0.290)	(0.308)	(0.298)
Σ Countries	6.327***	8.865***	8.701***	6.086***	6.156***
	(1.627)	(2.219)	(2.147)	(1.520)	(1.502)
Constant	-4.624***	1.174	-4.175***	8.093***	-4.087***
	(0.545)	(1.790)	(0.551)	(2.460)	(0.546)
5-Year FE	Yes	Yes	Yes	Yes	Yes
Country RE	Yes	Yes	Yes	Yes	Yes
N	1,633	1,590	1,633	1,590	1,633
Countries	141	139	141	139	141

*** p<0.01, ** p<0.05, * p<0.1

Table 8: Full main models

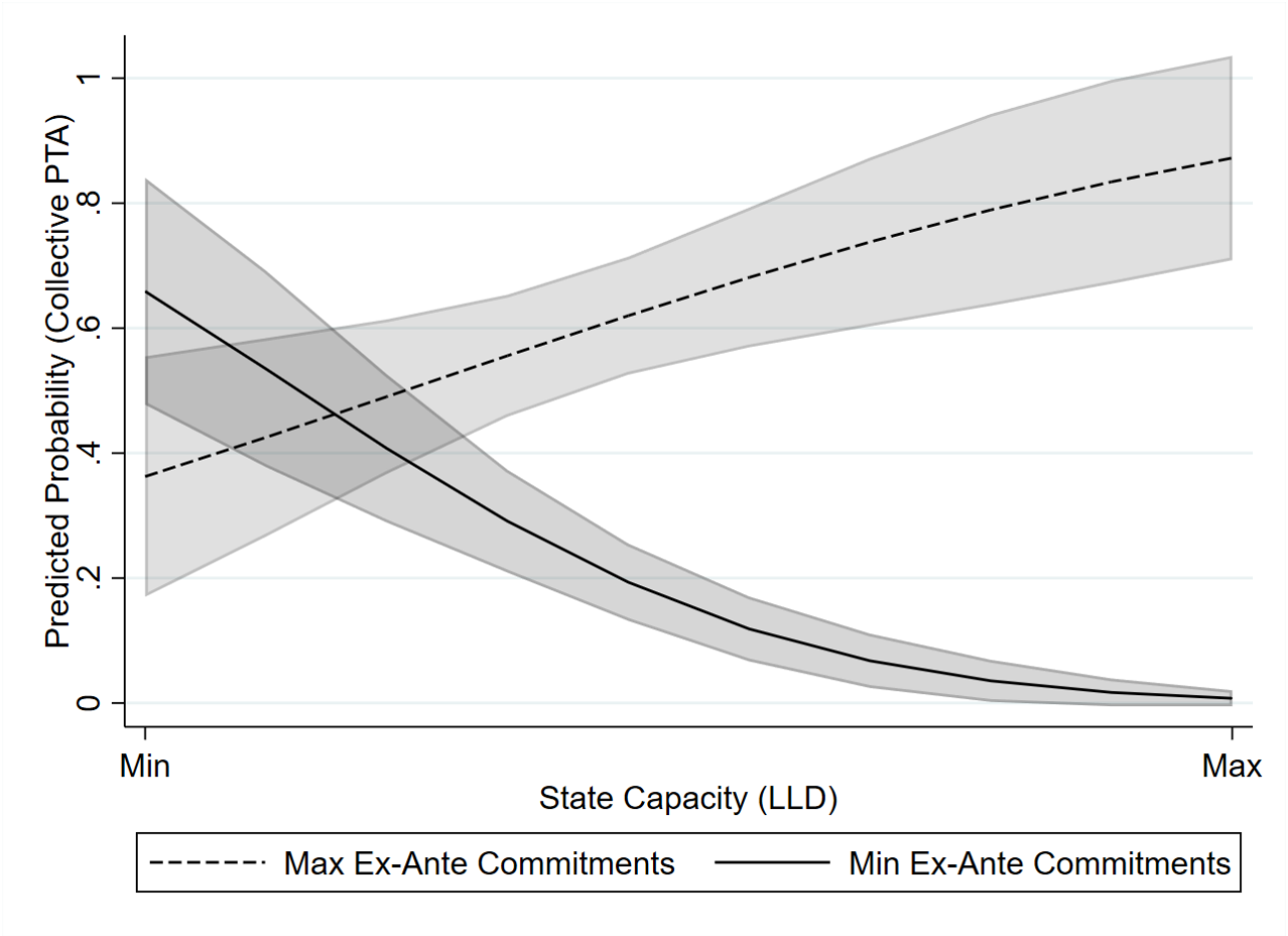


Figure 20: Predicted proabilities based on main model 5.

Pr(Collective PTA)	(R1)	(R2)	(R3)	(R4)
Ex-Ante Commitment	0.352	-11.63***		
	(0.360)	(2.446)		
Capacity_{GDP}		-1.818***		-1.157***
		(0.325)		(0.254)
Capacity_{LLD}	-2.723***		-2.291***	
	(0.469)		(0.413)	
Ex-Ante Commitment x		1.567***		
$\quad$ *Capacity*$_{GDP}$		(0.302)		
Ex-Ante Commitment x	2.336***			
$\quad$ *Capacity*$_{LLD}$	(0.430)			
$\text{Ex-Ante Commitment}_{Narrow}$			4.043***	-27.43***
			(1.059)	(6.309)
Ex-Ante Commitment$_{Narrow}$ *x*				4.203***
$\quad$ *Capacity*$_{GDP}$				(0.820)
Ex-Ante Commitment$_{Narrow}$ *x*			7.670***	
$\quad$ *Capacity*$_{LLD}$			(1.348)	
Trade Openness	0.00772*	0.0104**	0.0125***	0.0141***
	(0.00431)	(0.00443)	(0.00430)	(0.00441)
Democracy	0.553	0.269	0.430	0.0510
	(0.365)	(0.356)	(0.373)	(0.366)
WTO Member	1.531***	1.695***	1.520***	1.401***
	(0.376)	(0.385)	(0.397)	(0.403)
Number Trading Blocs	0.427***	0.436***	0.211	0.277**
	(0.136)	(0.136)	(0.138)	(0.140)
$\text{Contiguity}_{Dyadic}$	-1.004***	-0.990***	-0.955***	-0.962***
	(0.270)	(0.277)	(0.278)	(0.284)
$\text{Trading Bloc}_{Dyadic}$	2.805***	2.775***	2.843***	2.715***
	(0.284)	(0.289)	(0.293)	(0.295)
$\text{Bloc Member PTAs}_{Dyadic}$	-1.571***	-1.660***	-1.606***	-1.711***
	(0.296)	(0.305)	(0.293)	(0.303)
Σ Countries	6.442***	6.885***	5.751***	6.159***
	(1.579)	(1.731)	(1.415)	(1.546)
Constant	-4.131***	9.649***	-4.015***	4.951**
	(0.574)	(2.535)	(0.544)	(1.970)
5-Year FE	Yes	Yes	Yes	Yes
Country RE	Yes	Yes	Yes	Yes
N	1,633	1,590	1,502	1,462
Countries	141	139	138	136

Standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Table 9: Alternative measurement models

Pr(Collective PTA)	(R5)	(R6)	(R7)	(R8)
Ex-Ante Commitment	1.392***	-2.935*		
	(0.333)	(1.694)		
Capacity$_{GDP}$		-0.562		-0.257
		(0.359)		(0.289)
Ex-Ante Commitment x		0.569***		
Capacity$_{GDP}$		(0.203)		
Capacity$_{LLD}$	-0.873*		-1.416***	
	(0.514)		(0.486)	
Ex-Ante Commitment x	0.795***			
Capacity$_{LLD}$	(0.306)			
Ex-Ante Commitment$_{Narrow}$			3.115**	-20.97***
			(1.280)	(7.251)
Ex-Ante Commitment$_{Narrow}$ x				3.260***
Capacity$_{GDP}$				(0.923)
Ex-Ante Commitment$_{Narrow}$ x			5.887***	
Capacity$_{LLD}$			(1.456)	
Trade Openness	-0.000267	-0.000124	0.00555	0.00383
	(0.00442)	(0.00459)	(0.00471)	(0.00491)
Democracy	-0.179	-0.257	-0.0404	-0.524
	(0.429)	(0.428)	(0.443)	(0.440)
WTO Member	2.590***	2.755***	2.672***	2.463***
	(0.612)	(0.626)	(0.630)	(0.618)
Number Trading Blocs	-0.196	-0.258	0.0632	0.0984
	(0.170)	(0.173)	(0.161)	(0.161)
Market Size	-0.634***	-0.716***	-0.606***	-0.812***
	(0.174)	(0.189)	(0.185)	(0.201)
Contiguity$_{Dyadic}$	-0.673**	-0.638**	-0.597*	-0.563*
	(0.309)	(0.315)	(0.313)	(0.320)
Trading Bloc$_{Dyadic}$	1.116***	1.191***	1.351***	1.339***
	(0.323)	(0.331)	(0.325)	(0.329)
Bloc Member PTAs$_{Dyadic}$	-1.777***	-1.820***	-1.738***	-1.771***
	(0.304)	(0.312)	(0.304)	(0.310)
Trade Share$_{Dyadic}$	-0.682	-1.037	-1.358	-1.530
	(1.246)	(1.242)	(1.283)	(1.282)
Trade Share Bloc$_{Dyadic}$	0.113**	0.127***	0.108**	0.119***
	(0.0440)	(0.0454)	(0.0438)	(0.0449)
Σ Countries	4.431***	4.573***	5.036***	5.312***
	(1.201)	(1.253)	(1.331)	(1.424)
Constant	5.981***	11.05***	5.792***	10.07***
	(1.959)	(2.985)	(2.099)	(2.505)
5-Year FE	Yes	Yes	Yes	Yes
Country RE	Yes	Yes	Yes	Yes
N	1,254	1,237	1,236	1,219
Countries	134	133	132	131

*** p<0.01, ** p<0.05, * p<0.1

Table 10: Extended covariates models

Pr(Collective PTA)	(R9)	(R10)	(R11)	(R12)	(R13)	(R14)	(R15)
Ex-Ante Commitment	1.821***			1.447***	-2.376	0.414	-6.031**
	(0.293)			(0.291)	(1.614)	(0.436)	(2.609)
Capacity_{GDP}		-0.511**			-1.092***		0.623
		(0.230)			(0.393)		(1.145)
Capacity_{LLD}			-1.053**	-1.693***		-1.256	
			(0.412)	(0.495)		(1.084)	
Ex-Ante Commitment x					0.521***		0.793**
$\textit{Capacity}_{GDP}$					(0.199)		(0.309)
Ex-Ante Commitment x				0.844***		0.850**	
$\textit{Capacity}_{LLD}$				(0.285)		(0.433)	
Trade Openness	0.00434	0.00664	0.00632	0.00466	0.00614	0.00390	0.00575
	(0.00366)	(0.00422)	(0.00397)	(0.00349)	(0.00373)	(0.00733)	(0.00735)
Democracy	-0.308	-0.399	0.0143	0.0137	-0.187	-0.183	-0.450
	(0.523)	(0.688)	(0.684)	(0.563)	(0.551)	(0.516)	(0.548)
WTO Member	2.162***	2.496***	2.624***	2.465***	2.576***	2.146***	2.147***
	(0.762)	(0.695)	(0.742)	(0.771)	(0.756)	(0.765)	(0.782)
Number Trading Blocs	0.0285	0.395**	0.385**	-0.00261	-0.0529	-0.202	-0.365
	(0.180)	(0.179)	(0.174)	(0.176)	(0.176)	(0.224)	(0.228)
$\text{Trade Share}_{Dyadic}$	1.610*	1.015	1.089	1.755*	1.524*	0.783	0.565
	(0.883)	(0.870)	(0.871)	(0.921)	(0.906)	(1.067)	(1.103)
$\text{Contiguity}_{Dyadic}$	-0.837***	-0.847***	-0.808***	-0.908***	-0.885***	-0.518*	-0.441
	(0.314)	(0.308)	(0.302)	(0.318)	(0.323)	(0.309)	(0.316)
$\text{Trading Bloc}_{Dyadic}$	1.423***	1.505***	1.508***	1.401***	1.474***	1.005***	1.120***
	(0.346)	(0.340)	(0.335)	(0.343)	(0.351)	(0.322)	(0.336)
$\text{Bloc Member PTAs}_{Dyadic}$	-1.935***	-1.864***	-1.854***	-1.903***	-1.961***	-1.461***	-1.455***
	(0.487)	(0.512)	(0.487)	(0.479)	(0.504)	(0.301)	(0.310)
Constant	-1.168*	2.903*	-1.024	-1.167**	6.967**		
	(0.651)	(1.750)	(0.637)	(0.593)	(2.955)		
5-Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
C-Clustered SE	Yes	Yes	Yes	Yes	Yes	No	No
Country FE	No	No	No	No	No	Yes	Yes
N	1,348	1,325	1,348	1,348	1,325	617	605
Countries	141	139	141	141	139	53	52

*** p<0.01, ** p<0.05, * p<0.1

Table 11: Alternative Estimators: Logit models with clustered SEs (R9-13) and fixed effects models (R14 & R15).

THE WTO AS MULTILATERAL DIFFUSION HUB: INSTITUTIONAL LEARNING IN WTO DISPUTES AND THE DESIGN OF PREFERENTIAL TRADE AGREEMENTS

Abstract

Institutions are not created in a vacuum - but how do extant institutions influence design choices? Leveraging fragmentation in the global trade order, this paper stresses the relevance of experience and argues that the institutional influence of the World Trade Organization (WTO) extends beyond its jurisdiction through its centrality as *multilateral diffusion hub*: When states negotiate preferential trade agreements (PTAs), previous dispute settlement experiences in the WTO shape the design of dispute settlement mechanisms (DSMs). National bureaucracies undergo institutional learning processes when participating in multilateral trade disputes and subsequently conclude PTAs with DSMs that are similar to the institutions of the WTO, thus fostering their - decentralised - spread to the network of PTAs. The learning effect is particularly pronounced for states with low bureaucratic capacity. Employing a novel, unitary conceptualisation of DSMs in terms of complainant rights shows that the results of this diffusion process generally entail increased levels of complainant rights in PTAs. Importantly, institutional learning is more than mere emulation: states also adapt institutional design to individual context by considering the prior dispute experience of their trading partners. A dual empirical strategy and interviews with PTA negotiators corroborate the learning effect and its relevance during PTA negotiations.

Keywords: *WTO, PTAs, Dispute Settlement, Institutional Diffusion, Institutional Design, Trade Disputes*

Introduction

On 12th December 2019, the appellate body of the World Trade Organisation (WTO) became inoperative amid the blockade of the appointment of new members, only two months after settling the most enduring and 15-year-long dispute between the US and the EU about domestic subsidies for Airbus. The Appellate Body crisis is not incidental - it is the result of long-standing dissatisfaction with the WTO dispute settlement system (DSU) and disagreements on the scope of its authority (Garner-Knapp et al. 2022).[1] With the future of the WTO DSU in limbo and the simultaneous growth of the network of bilateral and plurilateral preferential trade agreements (PTAs), the institutional architecture of trade governance is changing. So what dispute settlement mechanisms (DSMs) do states include in PTAs, and how do they relate to the WTO?

The institutions of PTAs are not created in a vacuum - nor are the multilateral trading system and the network of PTAs independent. In practice, negotiators are subject to multiple, possibly contradicting influences such as the design of previously concluded PTAs. Mere membership in organisations may not be sufficient to persuade bureaucracies to deviate from their design choices, even if other institutional designs are publicly accessible: states are not optimisers but 'satisficers', picking institutions that are good enough (Jupille et al. 2013). The role of experiences in extant institutions can thus be crucial for design choices, helping explain how institutional designs are embedded in and informed by the context of extant institutions. Learning experiences accordingly can be conceived of as a mechanism that underlies institutional diffusion processes.

This paper argues that the influence of the WTO extends well beyond its jurisdiction by shaping the design of dispute settlement institutions in PTAs. Previous experiences in multilateral trade disputes are central to institutional learning and the subsequent adaptation of institutions to PTAs. The WTO thus serves as *diffusion hub* where its DSM model is spread to states through institutional learning in multilateral trade disputes, which subsequently influences the design of dispute settlement institutions in PTAs. Learning experiences alter bureaucracies' perception of the most suitable institutional design and make states model their PTAs on the institutional design of the multilateral trading system. Importantly, states do not simply emulate WTO legal text, but adapt the DSU's institutional features to the individual context of PTAs. Prior records in the role as complainant or defendant allow states to infer expectations about the future behaviour of themselves and their trading partners - and adjust the design of DSMs accordingly to hedge against likely complainants. Contributing to the literature on the institutional design of PTAs (Smith 2000; Arnold/Rittberger 2013; Jo/Namgung 2012; Allee/Elsig 2016), this paper provides an explanation for *how* a - new - institutional model proliferates in the network of PTAs.

[1] DSU will henceforth be used as synonym for the dispute settlement system of the WTO.

The learning-based logic of the multilateral diffusion hub stands in contrast to alternative influences of extant institutions, such as forum choice (Busch 2007); the uninformed emulation of PTA provisions (Peacock et al. 2019; Allee/Elsig 2019) as well as of investor-state dispute settlement institutions in the context of bilateral investment treaties (BITs), where states often lacked the capacity to grasp the consequences of design choices (Poulsen 2015). Institutional learning processes through experience distinctively allow states to assess the advantages and consequences of known institutions before adaptation.

This paper speaks to three broader debates in the field: first, in pointing out the importance of learning experiences, it contributes to understanding the impact of existing institutions on design choices and how these influence the decision-making of bureaucrats (DiMaggio/Powell 1983; Copelovitch/Putnam 2014; Jupille et al. 2013). Second, it helps understand the microfoundations of diffusion processes (Gilardi 2010), contributing to the sparse literature on multi-level diffusion within a single-issue area (Purdy/Gray 2009). Third, it addresses the relation between the WTO and the network of bilateral and plurilateral PTAs (Kwak/Marceau 2004; Donaldson/Lester 2009; Marceau/ Wyatt 2010).

The first section of the paper develops a novel conceptualisation of DSMs in terms of complainant rights, allowing a comparison of DSMs across governance regimes. This authority-based conceptualisation is less susceptible to correlation with regime-specific design features than extant conceptualisations. The following section develops the theory of the WTO as multilateral diffusion hub and process of institutional learning. Subsequently, the empirical analysis entails a twofold research design. First, fixed-effects ordered logistic regression estimators on treaty-level show that PTAs among parties with experience in multilateral trade disputes agree on DSMs that grant significantly more rights to complainants than parties without prior experience. States also translate experiences into expectations and adapt institutional designs. Parties to PTAs with vastly diverging records as complainant or defendant in WTO trade disputes - and diverging expectations about their roles in future disputes - agree on reduced levels of complainant rights. Accounting for limited bureaucratic memories, these effects also hold for narrow temporal horizons of ten years. Second, a monadic identification strategy confirms that participation in WTO dispute settlement makes states conclude PTAs with DSMs that are significantly more similar to the DSU by increasing the level of complainant rights. The learning effect is particularly pronounced for states with low bureaucratic capacity,[2] stressing the amplified role of direct learning experiences for these states. Lastly, the causal mechanism of experiences with the DSU for bilateral and plurilateral trade negotiations is emphasised in a number of interviews with trade negotiators. Dispute settlement mechanisms with vast complainant rights have become widespread, if not the norm in PTAs. The results reveal how

[2]To emphasise the learning effect within national bureaucracies, I refer to this concept as *bureaucratic capacity* in this context - which is not conceptually distinct from the less specific label of state capacity.

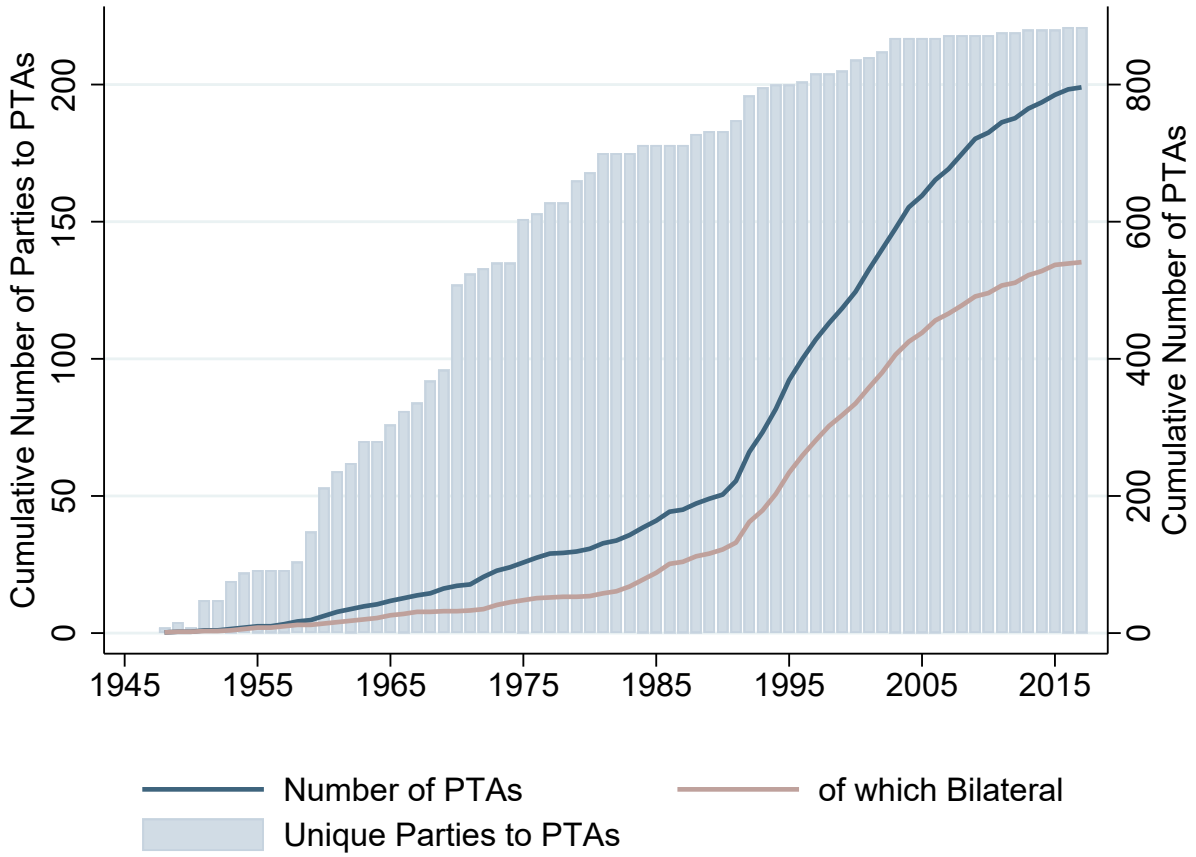


Figure 1: Number of PTAs and unique parties to PTAs over time. *Data: DESTA.*

informed design choices help spread institutional models in decentralised processes.

The WTO and PTAs: An Emerging Dual Order

Despite its inclusion of 164 members that account for more than 95% of global trade, the WTO is far from being the sole actor in governing international trade. The ever-growing network of PTAs has evolved to become the second pillar of the international trading order: Almost every state – including all WTO members - is party to at least one PTA (Figure 1). In fact, more trade volume is governed by PTAs than by WTO law (Heydon 2011, p. 238), despite the absence of agreements between the largest markets. For some countries such as Mexico or Turkey, hardly any trade is covered by most-favoured-nation (MFN) tariffs anymore (WTO 2011, p. 74).

Parallel to their proliferation, PTAs have become a comprehensive tool of economic governance that can be characterised as economic rather than trade agreements (Mavroidis 2015). Not tariff lines but complex barriers to trade, non-trade issues (Rodrik 2018, p. 75), foreign direct investment (Büthe/

Milner 2014) as well as regulatory alignment (Fiorini/Hoekman 2018) increasingly are at stake. An ever broader scope, however, increases the risk of disagreements among parties and introduces uncertainty about the treaty's provisions. DSMs play an important role in dealing with the partially incomplete nature of these contracts (Horn et al. 2010, p. 415): they enforce written agreements, but also deal with unforeseen issues and interpret treaty provisions or set precedents in the presence of uncertainties. The DSM provisions states commit to reflect the balance between an effective completion of the contract and the conferral of authority to these institutions.

While references to the WTO are common in PTA DSMs - ranging from a clarification that WTO rights and obligations remain unaffected to a priority for dispute settlement in the WTO (Donaldson/Lester 2009, pp. 397–398) - legal aspects regarding the overlap and compatibility of WTO law and PTA law remain largely undefined and are, at times, contradictory (Kwak/Marceau 2004). Although these inconsistencies also touch upon dispute settlement (Marceau/Wyatt 2010), the institutional linkages between the WTO and PTAs regarding the design of DSMs are even less clear than legal ones.

Complainant Rights: A Unitary Conceptualisation of Dispute Settlement Mechanisms

An analysis of the linkages between the WTO and PTAs requires a conceptualisation of DSMs that is reflective of the full spectrum of institutional choices. Conceptualisations based on specific institutional dimensions often are contingent on selective design features. Focusing on the authoritative rights states have under DSMs - *complainant rights* - and their rationale for granting them helps address this shortcoming. With states generally being risk averse, they seek meaningful guarantees against potential breaches of a treaty as well as discrepancies that may arise due to the incomplete nature of contracts. Accordingly, meaningful remedies must be at the disposal of parties that suspect a violation of the treaty. To achieve this, the authority to take measures in such case must be surrendered - ex ante and under a veil of ignorance – at conclusion of the treaty.

The grant of authority entailed in a DSM defines the *complainant rights*, which are the measures any party to the treaty is authorised to take in case of disagreement. Accordingly, the level of *complainant rights* reflects the extent to which parties are authoritative to address disagreements as well as to take action during the subsequent process within the institutional framework of the agreement.[3] The authority-based conceptualisation of DSMs in terms of *complainant rights* acknowledges nuanced variation that may evade single institutional dimensions, providing a more fine-grained conceptual framework. The grant of authority - or recognised rights - is crucial in the absence of an

[3]The rights of complainants are thus inversely related to the negative rights of defendants.

ex-ante enforcer, as is the case of most PTAs. The concept of *complainant rights* thus mitigates two weaknesses inherent to established concepts applied to DSMs, such as legalisation or enforcement: In terms of conceptualisation, the latter tend to capture merely one dimension of DSMs, disregarding other relevant institutional features that may permit complainants to act authoritatively. Empirically, they lack meaningful benchmarks and are hard to situate in institutional context, thus precluding coherent comparisons of DSMs across organisational areas.

Equally legalistic DSMs, for instance, may well entail meaningful differences. Comparing and quantifying DSMs then may result in misleading conclusions whenever the conceptualisation of DSMs is related to typical traits of a specific model of DSMs – even if they describe an important dimension of DSMs. Previous studies that use legalisation to conceptualise DSMs, for instance, tend to primarily capture differences between bilateral and plurilateral PTAs, particularly if latter constitute regional trading blocs (see Smith 2000, pp. 166–168; Jo/Namgung 2012, pp. 1044–1045).[4] Hence, differences in treaty types may wrongly be attributed to institutional design.

Complainant rights also help situate the DSMs of PTAs in relation to other institutions, allowing for meaningful substantive comparisons. Even though most states complement their WTO membership with PTAs, the connection between dispute settlement institutions in the multilateral trade system and PTAs has rarely been addressed. Previous findings of the effect of the multilateral trading system on legalisation in PTA DSMs were based on a time dummy variable for the WTO period (Jo/Namgung 2012, pp. 1058–1059), or do not relate the WTO DSU to the conceptualisation of DSM strength (Allee/Elsig 2016). Empirically, institutional strength or enforcement remain free-floating concepts that lack substantive benchmarks.

Measuring the level of *complainant rights* in DSMs thus addresses weaknesses selective institutional features bring with them. Since DSMs entail diverse and multi-dimensional provisions, a sound operationalization of the concept of complainant rights requires a multi-variate index of the mutual grants of authority among parties. This includes all entitlements of complainants to voice disagreement, have it addressed and actively shape the course of dispute proceedings - in short, the legitimate authority conferred on complainants. Importantly, such index must allow for comparisons between the multilateral trade system and PTAs, where the WTO DSU can serve as substantive benchmark for complainant rights. Deviation from multilateral institutions then provides an informative measure of institutional designs.

[4]Two of Smith's five criteria for legalisation concern third party involvement, which almost exclusively is restricted to plurilateral PTAs. A similar conceptualisation may wrongly ascribe changing patterns in PTA conclusion to temporal effects in Jo and Namgung's analysis.

Argument: The WTO as Multilateral Diffusion Hub

PTAs are not created in an institutional vacuum. The multilateral trade regime - the GATT and later the WTO - is the backbone of most states' trade policies. The institutional status quo and context of decision-making shape institutions (Copelovitch/Putnam 2014), for the design of institutions is the result of deliberate choice (Koremenos et al. 2001, p. 777). When negotiating bilateral and plurilateral PTAs, states may be able to rely on experiences with the well-known procedures and institutions of the multilateral trading system. That is, states transpose the institutional rules of the multilateral provisions on dispute settlement and adapt them to the individual context of the agreements they negotiate. The WTO, thus, serves as *multilateral diffusion hub* for the institutional design of the network of PTAs.

This logic is based on the proliferation of PTAs as second institutional pillar of trade governance being marked by diffusion processes, i.e. *"the adoption in new or reformed institutions of institutional features already operating in other institutions, national, international or transnational"* (Ovodenko/ Keohane 2012, p. 524). Bureaucracies are not merely subject to structural constraints but refine their objectives based on past experiences and institutional learning mechanisms. Experiences in multilateral trade dispute settlement thus lead to a transfer of institutional knowledge and practices from the multilateral regime to trade agreements, spreading the institutional design of the WTO DSU. The diffusion of institutional designs is a common process in foreign economic policy-making (Simmons/ Elkins 2004; Gehring/Oberthür 2009), such as through the spread of institutional models (Milewicz et al. 2018).

To serve as *diffusion hub*, however, an organisation must (i) be relevant to institutional choices in other fields due to organisational proximity or similarity in terms of substance and (ii) make institutional designs recognised as appropriate by multiple agents, for instance, through learning processes. Importantly, the hub helps spread a design, without necessarily inventing them.[5] For institutions are not exogenous, a *diffusion hub* usually constitutes the link between institutional innovators and a larger number of actors.

Consider the schematic case of a novel institutional design feature originating in state *A* (Figure 2). In absence of the hub, a novel design feature mainly spreads via direct connections, which, in turn, induces (trading) partners of the innovator to spread the design even further. The spread of a novel design feature is - initially - restricted to a small number of actors and thus rather slow, before it can spread to actor *Z* without a direct link to the source of the design. In the scenario where a diffusion hub facilitates institutional diffusion, its central position makes, in principle, institutional

[5]The EC an US, for instance, were the driving forces behind the design of the WTO DSU.

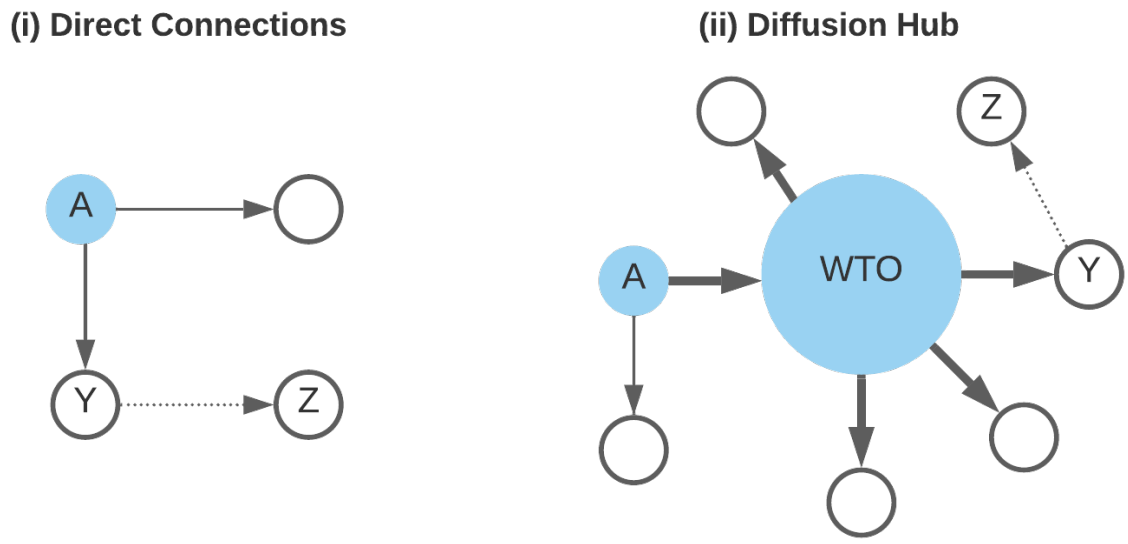


Figure 2: Schematic visualisation of the WTO's functioning as *Diffusion Hub*. Originating in the blue-shaded dot (*A*), solid lines indicate direct spread, dashed lines an indirect spread of the design.

designs accessible to all member states - as in the case of the WTO's central position in the global trading order. Here, diffusion effects do not require direct or even indirect relationships to state *A*. Due to the diffusion hub, more actors without any links to the innovator (such as *Y*) can spread new design features, even to those without links to the hub (*Z*). Design features spread farther and more quickly, possibly leading to temporarily increased divergence but eventually result in convergence: institutional variation increases as the hub links the design to a growing number of states before the population is saturated due to socialisation and network effects.

Bringing Agency Back In: Institutional Learning and the Spread of Institutional Designs

Analyses of diffusion often do not spell out a causal mechanism (Hassink/Lagendijk 2001) - but what is the causal mechanism underlying the diffusion processes emanating from the WTO as diffusion hub? I argue that institutional learning links the multilateral trading system and the design of DSMs in PTAs, where experiences in the WTO make bureaucrats recognise its institutional designs as appropriate and preferable to alternatives. Theorising learning processes requires negotiations be recognised as unique interactive processes that give agents leeway within the structure they operate in (Bayne/Woolcock 2016; Odell 2018). Rational-choice frameworks and analyses of PTA design may tend to exogenise the objectives states pursue in negotiations (Koremenos et al. 2001; Koremenos 2007). Negotiation strategies, however, are not fixed but shaped by perceptions of existing institutions - even if preferences remain unchanged. In other words, previous experiences matter.

Given the significant substantive proximity between the multilateral trade regime and PTAs, the relevance of the WTO to bilateral and plurilateral agreements is evident. Besides their own previous PTA negotiations, bureaucracies can learn from activities in the WTO and apply these lessons in designing dispute settlement in PTAs, building on experiences in the multilateral trading system.[6] Importantly, institutional learning is distinct from mere emulation of institutions.[7] Actors learn and adopt innovations selectively from their experiences (Gilardi 2010). Thus, as opposed to emulation, institutional learning requires familiarity with an institutional design (DiMaggio/Powell 1983; Hardy/ Maguire 2008; Weyland 2009), stressing the role of experience. The latter allows bureaucrats to resort to an easily available heuristic for the design of DSMs, thus leading to the diffusion of institutional designs.

Why would states recognise the the multilateral model as appropriate when designing the institutions of PTAs, possibly giving it precedence over their own previous model? The reasons for learning processes to shape the design of PTAs are threefold: First, institutional learning improves the *efficiency* of institutional choices. The multilateral institution provides an informational short-cut to negotiators that reduces the cost of designing institutions. Since bureaucrats already have experience with the processes and procedures of the multilateral model, prospective settlement under PTAs also is more efficient. If a familiar design already is at hand, states are likely to stick with it - which also is why states tend to recycle previous agreements.

Second, institutional learning helps avoid unnecessary *regime complexity* and reduces transaction costs. With a growing number of states learning from the multilateral system, concluding DSMs should become easier and less controversial – as a corresponding commitment had already been made at the WTO. The more widespread a singular model is, the more useful it is as common ground - even under constant preferences.[8] States therefore avoid creating multiple divergent DSMs they need to be able to respond to – or at least keep them broadly consistent. This improves the administration of rules and allows states to leverage synergies between WTO delegates and PTA negotiators. Note that the extent of these advantages and cost benefits may depend on a state's bureaucratic capacity.

Third, prior experiences can also prove the *utility* and therefore appropriateness of extant institutions. Given the general success of dispute settlement in the WTO, complainant rights are helpful in settling disagreements effectively - or even preventing disputes - without straining broader trade relations. Preventing dispute escalation by accommodating disagreements within the agreement's in-

[6] While different personnel usually is in charge of WTO affairs and PTAs, interviews with negotiators reveal that there is close communication between the two - if personnel is not rotating.

[7] This is different from arguments of PTAs as boilerplates (Allee/Elsig 2019) or PTAs copying WTO legal text (Allee et al. 2017).

[8] Note that legal compatibility of PTAs with WTO law cannot plausibly explain diffusion processes as PTA dispute settlement is formally independent from the WTO.

stitutional framework is crucial for PTAs. Note that this doesn't mean the design must be flawless. The model must be appropriate to serve as a starting point. Institutional learning can entail adjustments to preferences or improvements - which is why shortcomings of the WTO DSU design are addressed in PTAs, such as the infamous sequencing issue (Chase-Dunn 2016, p. 687).

At this point, the adverse consequences for states in dispute settlement under bilateral investment treaties may come to mind. This, however, would be a misleading guide and not an instance of institutional learning - with states being exposed to the DSM only after widely having adopted it. Dispute settlement in international trade notably differs in its exclusion of non-state actors and its primary aim of preventing dispute escalation rather than punishing rule violations. In practice, this is reflected in the large share of mutually agreed solutions and restraint shown by members in imposing authorised countermeasures in the WTO (Shaffer/Meléndez-Ortiz 2010, p. 82) as well as in the very rare formal use of DSMs under PTAs (Nakagawa 2007).[9]

Explanatory Concepts: Multilateral Trade Disputes and Capacity

The link between the WTO and PTAs is obvious - but for its being a diffusion hub, negotiators must consider its design the prioritised choice. How does the diffusion hub make its institutional designs accessible for states to learn and the latter recognise it as preferable design? I argue that participation in multilateral disputes corresponds to a strong learning experience, amplifying the aforementioned advantages of institutional diffusion. This learning experience induces states to build upon the design of the WTO and adjust it to their contextual needs. This is not to say that mere WTO membership would not matter - but it may well fall short of influencing bureaucrats' negotiation strategy in the way learning experiences do.

The WTO DSU is not a secret institution. Yet, assuming that the mere possibility to access the design would suffice to turn it into the default choice means disregarding *how* bureaucracies operate. Various considerations, not only the WTO, influence institutional choices. Bureaucracies also operate under varying yet significant time and capacity constraints. Importantly, relying on the, possibly competing, design of prior PTAs may well be the preferable and more straightforward option for states. Institutional learning processes must be sufficiently pronounced and relevant to make states deviate from previous choices.

The salience of learning experiences becomes clear when moving away from the assumption of states as optimisers. Bureaucrats are not perfectly rational agents that screen all available information at all times. Rather, they prioritise among multiple competing influences by being *satisficers*: they

[9]Regardless, informal consultations happen in the shadow of the law under PTA DSMs - even if they cannot clearly be delineated from regular exchanges between the parties.

adapt institutional choices in order to achieve satisfactory - not fully optimal - outcomes (Jupille et al. 2013, p. 7). That is, institutional designs that are considered 'good enough' suffice. Their preferred choices might change when a new design is considered more suitable - such as if it is recognised as appropriate for all institutions within a specific area (DiMaggio/Powell 1983). However, this choice does not only depend on the rules themselves, but also on bureaucratic efficiency and transaction costs.

The WTO DSU is a central feature of the multilateral trading system, but affects states' trade policies to varying degrees. Without any direct experience, bureaucrats may not see the need to deviate from previous design choices or fully be aware of the consequences of adopting the DSU design. Actors may lack the ability to correctly assess the long-term consequences of their institutional choices, especially if consequences remain in the abstract (Poulsen 2015, p. 161). Direct experience in multilateral disputes - and the legal processes and bureaucrats' experience they entail - therefore can tip the balance, make bureaucrats recognise the design as preferable and model their institutional choices on the multilateral system. Thus, learning experiences in multilateral trade disputes, beyond WTO membership, should matter. Previous findings indeed show that participation in multilateral trade disputes influences the likelihood of concluding PTAs (Mansfield/Reinhardt 2003, p. 848); the amount of overall PTA text that is directly copied from WTO legal text (Allee et al. 2017); and the likelihood to subsequently initiate disputes (Davis/Bermeo 2009, p. 1046).

Therefore, I expect experiences in trade disputes to entail institutional learning processes and significantly influence the design of DSMs in subsequent agreements - beyond effects that can be explained by membership in the WTO. Involvement in a multilateral dispute should alter bureaucrats' calculations regarding the efficiency of negotiations, institutional consistency and reduce uncertainty about the consequences of the multilateral design. Accordingly, states that have experience in multilateral trade disputes should be more likely to use the corresponding multilateral provisions as starting point for negotiating DSM chapters in PTAs.

H1a: States with previous experience in GATT/WTO trade dispute settlement conclude PTAs with DSMs that are more similar to the WTO.

This learning hypothesis should be complemented as two important qualifications must be made. First, it faces a problem regarding the unit of analysis. DSMs are concluded as the result of bilateral or plurilateral negotiations, whereas learning experiences are made by individual states. Accordingly, a complementary hypothesis on treaty-level can help deal with this mismatch. Importantly, the latter entails a separate aggregation effect that is consistent with the theorised mechanism: if more parties at the negotiation table have experience in multilateral trade disputes, the learning effect should be more likely to prevail in negotiations. It should then be easier for the parties to agree on the benchmark of

the multilateral design. Deviation from the multilateral model would be increasingly costly. Second and relatedly, unlike the absolute level of complainant rights, changes relative to the WTO cannot easily and credibly be identified on treaty-level. However, the provisions on dispute settlement in the WTO entail a particularly high level of complainant rights as compared to PTAs, which justifies the assumption that, for most states, approaching the multilateral design corresponds to an increase in the level of complainant rights.[10] In combination, the two hypotheses provide a robust test of the theorised learning effect.

H1b: The more parties to a PTA have previous experience in GATT/WTO trade dispute settlement, the higher the level of complainant rights in DSMs they conclude.

Significant differences in terms of capacity constraints remain among states (Busch et al. 2009, p. 565; Davis/Bermeo 2009; Shaffer/Meléndez-Ortiz 2010) - and also affect *how* states learn from experience. Being the drivers of institutional progress, high-capacity states tend to adopt novel designs independent of direct learning experiences in multilateral disputes, through indirect processes such as screening or institutional innovation. States with low bureaucratic capacity, on the other hand, operate under much heavier capacity constraints and are much less able to pick up innovative institutional designs on their own initiative. For instance, 70% of developing countries were not able to send the minimum of four delegates to Geneva in 2000 (Michalopoulos 2001, p. 159), with some officials that negotiate international economic treaties having no experience at all (Skovgaard Poulsen 2014, pp. 7–8). This gives bureaucrats significantly less space to look beyond their day-to-day tasks, and even less to pivot from previous institutional design choices - unless they are forced to confront institutions in mulitlateral dispute settlement. Thus, experience in multilateral trade disputes is more likely to 'tilt the balance' in favour of using the WTO design as starting point for low-capacity states. While being less likely to initiate multilateral disputes (Busch 2007, p. 196), low-capacity states also have most to gain from experience in multilateral trade disputes. They can significantly reduce the costs of negotiations and institutional complexity by agreeing on DSMs similar to the WTO DSU. Thus, the higher a state's bureaucratic capacity, the less important institutional learning through experience is relative to other, less direct sources informing institutional design choices - rendering direct experiences in the WTO less relevant.

H2: The learning effect of multilateral dispute participation is larger for states with low bureaucratic capacity.

Institutional learning does not simply imply emulation but entails the deliberate adaptation of a model institution to contextual requirements. The process of adaptation is crucial for it is evidence

[10]The WTO DSU has been likened to a *"multilateral trade court"* (Elsig/Eckhardt 2015).

of actual learning processes. Expectations about other agents' behaviour shape institutional choices (Koremenos et al. 2001, p. 797). This form of institutional adjustment can be observed in single PTA issue areas, where civil and political rights in partner countries affect the stringency of non-trade issues (Lechner 2016, p. 26) or BITs, where prior investment disputes of parties explain the number of options for dispute settlement available in BITs (Allee/Peinhardt 2014, p. 76). Bureaucracies can therefore be expected to adapt dispute settlement provisions to their trading partner.

Expectations about a trading partner's future dispute propensity should thus inform design choices - and past disputes are the channel through which these are formed. This information is, in a Bayesian sense, constantly updated and serves as a heuristic for inferring future dispute initiation. Therefore, not the number of disputes should matter but trading partners' propensity to initiate disputes or breach trade rules - i.e., their role as complainant or defendant in the WTO. While the propensity to initiate disputes is not necessarily independent of other economic indicators, past disputes - especially more recent ones - should be less abstract indicators that stick with negotiators. Since states generally seek protection against being over proportionately targeted by disputes, those that consider themselves likely defendants should be inclined to grant their trading partner fewer complainant rights under a PTA. That is, the desire to be protected against complaints should generally prevail in bilateral negotiations. Hence, asymmetric dispute records, i.e. a diverging inclination among states to initiate disputes, should make parties less willing to concede high levels of complainant rights in DSMs.

H3: Asymmetric records of prior trade disputes among parties negotiating a PTA result in DSMs with fewer complainant rights.

Methodology and Data

Research Design

The proposed causal mechanism emphasises *how* complainant rights spread to PTAs and how learning effects alter the institutional landscape. This poses two methodological challenges. First, any failure to account for temporal effects risks introducing substantial temporal bias and may conceal the causal link between the multilateral trading systems and PTAs. Second, there is a divergence in terms of level of analysis: while learning experiences are made by individual states, PTA design is the result of interstate negotiations. To address these problems and robustly test the hypotheses developed above, the analysis follows a dual approach, which is complimented with evidence from interviews with PTA negotiators.

First, an analysis on PTA-level gives consideration to contextual variables and confounders beyond the multilateral system. This requires the absolute level of complainant rights to be employed as dependent variable due to potentially countervailing influences of the predictors. Since the level of complainant rights is ordinal, corresponding estimators should be preferred to metric models (Liddell/Kruschke 2018). Accordingly, a fixed effects estimator for ordered logistic regression is suitable to account for general temporal trends, thus isolating direct learning effects and the sequence of the spread of complainant rights. The *blow-up-and-cluster* (BUC) estimator is used to this end as it outperforms other estimators when the sample size is small and the number of observations in some categories is low (Baetschmann et al. 2015, pp. 643–655; Dickerson et al. 2014, p. 327). This ordinal logit fixed effects estimator provides a statistically conservative threshold for the analysis. Note that this is computationally different from the widespread inclusion of time dummies - i.e. quasi fixed effects - which may bias results.[11] However, these models are less efficient than less complex estimators. Therefore, ordinary OLS models with fixed effects are additionally estimated using the principal component of the dependent variable.

Second, a monadic identification strategy helps identify the effect of multilateral dispute experience on the design of DSMs in PTAs. Estimating monadic two-way fixed effects models accounts for temporal effects while allowing for meaningful analyses of the level of complainant rights *relative* to the WTO. This cannot be easily addressed in models on treaty-level due to the indeterminate direction of the effect of dispute asymmetry and several dyadic variables. Taking advantage of the evolution of the multilateral trade system, this approach only considers states that had not been involved in any multilateral dispute by the time the WTO was established. Unlike anaylses on treaty-level,[12] a monadic design is suitable to identify the learning effect contingent on bureaucratic capacity as a moderator. Moreover, complementing analyses on treaty-level with this monadic design lends credibility to the findings in light of potential selection bias in PTA conclusion.[13]

[11] See `https://www.stata.com/statalist/archive/2003-09/msg00103.html`.

[12] Potentially distinct experiences of the parties involved would make it virtually impossible to disentangle the moderated learning effect on treaty-level.

[13] While multi-stage selection models are often used to address selection bias issue, I decide against running such models as they may entail severe shortcomings: To address endogeneity, Heckman models require a valid instrument - which is rather unlikely to satisfy the exclusion restriction in this case. Moreover, the model is most suitable for bilateral treaties. Multiple non-independent dyads of plurilateral PTAs that appear in the selection stage result in inconsistent standard errors (Clougherty et al. 2016, p. 296) Instead, a combination of different designs on treaty and state level is employed to mitigate the influence of selection bias in treaty-making.

Data

Data on PTAs originate from the *Design of Trade Agreements* (DESTA) database (Dür et al. 2014), which also includes PTAs that were not notified to the WTO. Due to the small number of PTAs signed and trade disputes before the Tokyo Round in 1979 (Hudec 1993, pp. 56–57)[14], PTAs concluded between 1979 and 2016 are considered. As mentioned, the first part of the analysis uses PTAs - i.e., outcomes of the negotiating process - as units of observation, which accounts for the influence of multiple parties in the negotiation process. Data for trading blocs are aggregated from state level.[15]

DV: Operationalisation and Measurement of Complainant Rights

The design of DSMs differs vastly. The concept of *complainant rights* shifts the focus to the authority parties can exert when encountering a treaty violation. Considering the most salient authoritative actions conferred on complainants, eight important complainant rights are identified and aggregated to a unitary additive index (Table 1).[16] These components provide significant advantages to complainants and are the rights to address a dispute under defined institutional rules (*DSM*); to refer a dispute to arbitration proceedings involving an authoritative third party (*Arbitration*); to have decisions enforced (*Bindingness*); to impose sanctions (*Sanctions*); to do so in any sector one deems appropriate (*Cross-Sector Sanctions*); to determine the level of retaliation without approval from the defendant or third parties (*Complainant determines Retaliation*); to impose monetary sanctions (*Monetary Sanctions*); and the right to choose the forum in which a dispute is settled (*Forum Choice*).

The resulting index is informative both in absolute terms and in relation to the WTO. It can take on values between zero and eight, with a value of one corresponding to the GATT and a value of five being equivalent to the WTO DSU. Given its ordinal scale, principal component analysis (PCA) is also applied to the index' components to create a continuous index.[17]

While for a long time broadly corresponding to the level of complainant rights in GATT, a clear trend towards DSMs with more complainant rights in PTAs set in *before* the establishment of the WTO (Figure 3). On average, complainant rights in PTAs have grown substantially since the Tokyo Round, accelerating after the establishment of the WTO and, on average, crossing a WTO-equivalent score in 2007. Complainant rights have continuously become more pronounced while DSMs have been more diverse shortly before and during the foundation phase of the WTO, followed by a decrease in institutional variation. This is in line with the expected effect of the diffusion hub leading to

[14]The 1960s only saw ten disputes under GATT, with consultations being the norm for dispute resolution.

[15]The EU is the only trade bloc that has agency in the WTO.

[16]A detailed rationale and tests on statistical consistency are discussed in annex II.

[17]The principal component of the index emerges with an eigenvalue of 3.67 and explains roughly 46% of variation. A more detailed description of its computation can be found in the annex.

Table 1: Composition of the complainant rights index (dependent variable).

Category	*Component*	*Score PTA*	*GATT*	*WTO*
Institutional Framework				
	DSM	1	Yes	Yes
	Arbitration	1	No	Yes
Enforcement				
	Bindingness	1	No	Yes
	Sanctions	1	No	Yes
Sanctions				
	Cross-Sector Sanctions	1	No	Yes
	Complainant determines Retaliation	1	No	No
	Monetary Sanctions	1	No	No
Fora				
	Multiple Fora	1	No	No
	Σ	0-8	1	5

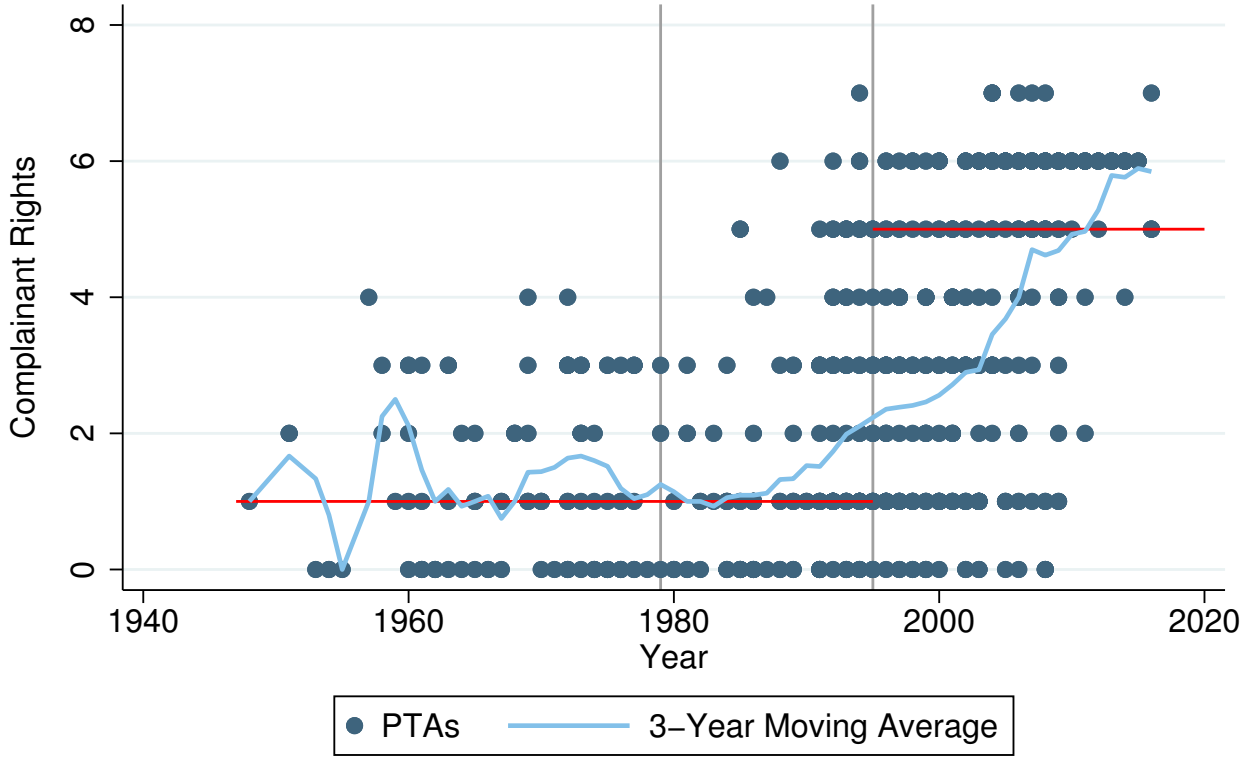
divergence and subsequent convergence. These descriptive findings stress the need to account for temporal effects, particularly as an increasing number of states participate in WTO disputes.

Independent Variables

Multilateral Trade Disputes

Experience in *Multilateral Disputes* is measured as the share of parties to a PTA that have been involved in at least one multilateral dispute before concluding a PTA.[18] This assumes a marginally decreasing institutional learning effect over the number of multilateral trade disputes, with the first dispute providing the strongest learning experience. While individual disputes may differ in substance and outcomes, they follow identical procedures. Both active involvement and third-party participation count as experience as the latter were shown to be relevant to PTA negotiations (Bergstrand et al. 2016), although the monadic models separately accounts for third-party participation. All 834 multilateral trade disputes under the GATT/WTO are taken into account.[19]

[18]There are both theoretical and empirical reasons for using experience rather than the outcomes of disputes. Outcomes don't reveal information about willingness to initiate disputes. Intentionality, however, is crucial. Empirically, such



Note: The red horizontal line indicates the complainant rights level of the GATT (1947–1994) and WTO (1995–2020). Vertical Lines indicate the GATT Tokyo Round (1979) and creation of the WTO (1995).

Figure 3: Complainant rights in DSMs of PTAs over time. *Data: DESTA.*

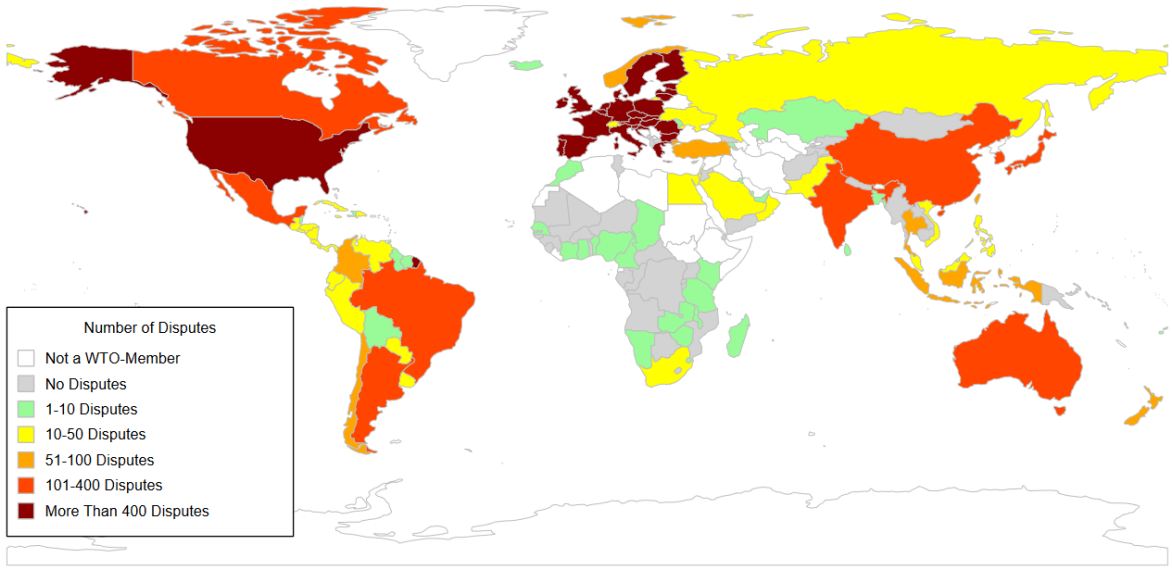


Figure 4: Cumulative number of multilateral trade disputes (GATT/WTO) by state.

measure would be imprecise as various disputes end with mutually acceptable solutions.

[19]Data originate from WTO 2018 and Kucik/Pelc 2016.

Dispute Asymmetry

The *Dispute Asymmetry* variable reflects the past dispute record of parties to a PTA, which may serve as a heuristic to anticipate the behaviour of trading partners. Importantly, it is a relational measure that reflects the asymmetry in the role - as complainant or defendant - of parties, independent of their absolute number of disputes. Accordingly, the variable is only available for a subset of PTAs where at least two parties have been directly involved in a multilateral dispute.[20]

Dispute Asymmetry ($\in [0;0.5]$) among parties to a PTA is measured as

$$Dispute\ Asymmetry_{i,j} = |0.5 - \frac{N_{Complainant|i} + N_{Defendant|j}}{N_{Complainant|i} + N_{Complainant|j} + N_{Defendant|i} + N_{Defendant|j}}|$$

The measure indicates the asymmetry between a state's trade dispute record and those of one or more trading partners in the GATT/WTO. If past roles - as complainant and defendant - are balanced, it equals zero; if past behaviour is perfectly asymmetric in either direction, it equals 0.5. In the case of plurilateral treaties, the scores are calculated for each state, with their average being used on PTA-level. The formula allows for dispute asymmetry to be calculated even if not all parties had been involved in multilateral disputes prior to concluding a PTA. Figures 4 and 5 visualise the two main independent variables, suggesting that they are not perfectly correlated.

Moderating Variable: Bureaucratic Capacity

Bureaucratic Capacity, given its rather broad conceptualisation, is operationalised in two ways. First, the number of delegates to international organisations in Geneva provides a more precise measure of trade-related capacity – approximating the size of delegations to the WTO (Elsig 2011).[21] This measure has the advantage that not only WTO members send delegates to Geneva, but also observer states and non-members. Since mission size only touches upon a highly specific aspect of capacity and does not consider varying expertise, GDP per capita is used as a proxy for bureaucratic capacity in a more general sense which should be more reflective of capacity in home states and related to trade beyond the WTO. Since learning experiences take place by individual states and treaty-level analyses therefore cannot convincingly account for such effect, estimation of the moderating effect is confined to the monadic design. Instead, the analyses on treaty-level controls for the difference in bureaucratic capacity among parties following the argument that DSMs are designed to accommodate

[20] Pairs of states without any multilateral dispute are not considered as – opposed to a balanced record - no expectations about the direction of disputes can be derived from previous behaviour in this case.

[21] Missing data between 2012 and 2018 are extrapolated. For trade blocs other than the EU, the maximum number of delegates is used.

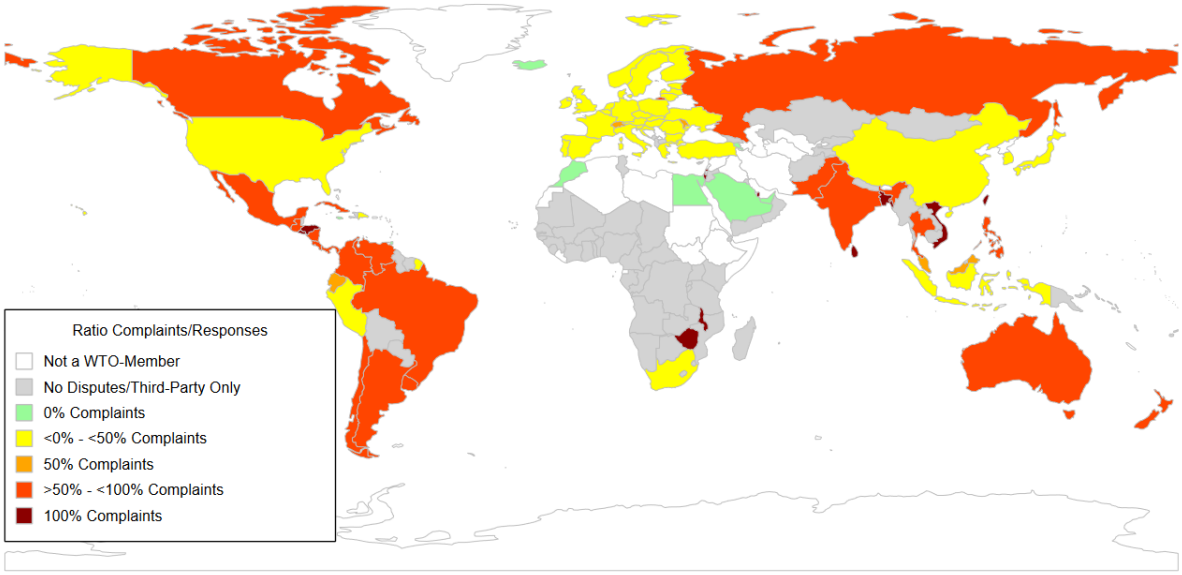


Figure 5: Propensity of dispute initiation in terms of share of complaints over total trade disputes per state.

power asymmetries (Allee/Elsig 2016, p. 89).[22]

Control Variables

In order to control for alternative determinants of the design of PTAs, models include control variables for *Democracy* from the Polity 4 project; *GATT/WTO Membership* indicating the share of GATT/WTO members among PTA parties and asymmetry of *Market Access* in terms of market size measured using an adjusted Herfindahl-Hirschman index.[23] *Retaliatory Capacity* measures economic dependence as the share of volume of PTA-wide trade over each respective trading partners' total trade in the year of PTA conclusion. On PTA-level, the value corresponds to the difference between the largest and smallest retaliatory capacity of members. Both market access and retaliatory capacity are reflective of the significance of the underlying trade relationship as well as the potential for effective sanctions.[24] The number of parties, *PTA Membership*, and depth of the agreement, *PTA Depth*, should also affect the stringency of DSM design (Allee/Elsig 2016), generally resulting in stronger complainant rights.[25]

[22] Note further that using average values would entail a loss of information in this regard. Main results remain unchanged if models additionally account for the absolute level of bureaucratic capacity, see Table 5 in the annex.

[23] Data on GDP originate from the World Bank (Dahlberg et al. 2019).

[24] Retaliatory capacity indeed plays a meaningful role in WTO dispute settlement (Bechtel/Sattler 2015, p. 379)

[25] Data on depth and membership originate from the DESTA database. Trading Blocs that collectively negotiated a PTA are counted as single party.

Table 2: Main models.

	Complete (1979-2016)		WTO (1995-2016)					
	FE O.Logit		FE O.Logit			OLS		
C. Rights	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Multilateral Disputes	1.876***		2.259***		1.318	1.593***		1.072**
	(0.443)		(0.509)		(0.838)	(0.264)		(0.389)
Dispute Asymmetry		-1.973**		-3.651***	-3.119***		-1.779***	-1.428**
		(0.927)		(0.928)	(0.981)		(0.571)	(0.572)
Δ Bureaucratic C.	0.0647*	0.0799**	0.0501	0.0771*	0.0899**	0.0230	0.0350	0.0389*
	(0.0351)	(0.0369)	(0.0445)	(0.0398)	(0.0388)	(0.0228)	(0.0215)	(0.0204)
Δ Market Access	-1.105**	-1.513***	-1.099*	-1.821**	-1.493*	-0.523*	-0.871**	-0.662
	(0.472)	(0.555)	(0.614)	(0.715)	(0.826)	(0.281)	(0.359)	(0.388)
Δ Retaliatory Capacity	-0.00629	-0.114	0.0203	-0.114	-0.112	0.00871	-0.0565	-0.0529
	(0.0556)	(0.0848)	(0.0788)	(0.119)	(0.110)	(0.0400)	(0.0677)	(0.0632)
WTO Membership	-0.371	1.299	-0.194	2.335**	1.701	-0.290	1.181**	0.568
	(0.547)	(0.822)	(0.664)	(1.110)	(1.077)	(0.271)	(0.567)	(0.535)
Democracy	0.0358	0.108	-0.0550	0.0817	0.0242	-0.106	-0.00993	-0.0141
	(0.380)	(0.461)	(0.468)	(0.561)	(0.541)	(0.191)	(0.261)	(0.249)
PTA Depth	0.951***	0.978***	0.900***	0.958***	0.950***	0.438***	0.453***	0.430***
	(0.111)	(0.113)	(0.147)	(0.146)	(0.146)	(0.0531)	(0.0572)	(0.0566)
PTA Members	0.0460***	0.0601***	0.0312*	0.0516**	0.0574***	0.0194	0.0251	0.0302*
	(0.0156)	(0.0198)	(0.0173)	(0.0217)	(0.0219)	(0.0119)	(0.0148)	(0.0155)
Previous PTAs	0.855***	0.687**	0.766**	0.624*	0.619*	0.278*	0.279	0.275
	(0.269)	(0.304)	(0.320)	(0.323)	(0.334)	(0.137)	(0.169)	(0.173)
N	450	349	332	260	260	320	260	260
Year-Clustered SE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pseudo R^2	0.463	0.455	0.466	0.465	0.470	0.578	0.517	0.530

Clustered Standard Errors in Parentheses. Principal Component (PCA) of Index used as DV for OLS models.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

To measure the consistency of DSM designs and the related influence of previous PTAs, a lower triangular matrix for *Membership Overlap* between each PTA and previously concluded PTAs is constructed, following Jo/Namgung 2012. The PTA overlap matrix captures the average value of complainant rights in all previously concluded PTAs that have at least one member in common.

Analysis & Results

Results of the main models, both for the complete period and the WTO era, are shown in Table 2.[26] Accounting for temporal effects is key to isolating the institutional learning effect and the spread of complainant rights. Fixed-effects ordered logistic models therefore provide the most stringent test of the effect. These models are reported alongside an OLS estimator using the index' principal component as dependent variable for the WTO period. The latter ensure the adequate use of linear

[26]Models for the GATT era are reported in the annex but suffer from few observations and limited participation in GATT dispute settlement.

models with ordinal dependent variables.

The models of main interest are the models explaining either *Multilateral Disputes* or *Dispute Asymmetry*. Full models merely show that the effect of *Dispute Asymmetry* is robust to the full specification. Recall that *Dispute Asymmetry* decreases the number of observations as this variable is only available for PTAs among states with relevant dispute experience, thus truncating the values of *Multilateral Disputes*. Accordingly, in models with both variables, *Multilateral Disputes* cannot be interpreted in the usual way: in these models, it merely explains the residual variation in plurilateral PTAs where at least two but not all members have multilateral dispute experience. In full models, there is no remaining variation in this variable for bilateral PTAs. In a similar vein, the meaning of the *WTO Membership* variable changes in models that include the *Dispute Asymmetry* variable and only captures the residual variation in plurilateral PTAs.

As opposed to mere *WTO membership* (and GATT membership), previous experience in *Multilateral Disputes* is a strong determinant of the level of complainant rights - both in the entire period as well as during the WTO era only. This is the case for the full sample (model 1) as well as for the WTO period only (models 3 and 6). The effect is substantively meaningful: The odds of concluding a DSM with the highest level of complainant rights are 6.5 times (full period) or 9.6 times (WTO period) larger for a PTA among parties that all had experiences in multilateral trade disputes compared to PTAs between parties without any such experience. *Dispute Asymmetry* is a consistently significant predictor of complainant rights both for the complete period and during the WTO era. Larger asymmetries in parties' previous record of multilateral disputes are associated with lower levels of complainant rights. This is in line with theory as a likely defendant should be less willing to agree on strong complainant rights than under a veil of ignorance with respect to roles in future dispute settlement. As the main models show, both *Multilateral Disputes* and *Dispute Asymmetry* significantly shape the institutional design of DSMs, particularly during the WTO period.

The effect of the two main variables of interest indeed is substantial during the WTO era (Figure 6). Note that, for the sake of visualisation, the plots are based on ordinal logit models with year dummies and year-clustered SEs but without fixed effects. Everything else being equal, PTAs among parties without any experience in multilateral disputes are about twice as likely to agree on complainant rights below the level of the WTO DSU than to match or exceed it (64% and 36%, respectively). This almost flips for PTAs exclusively among parties with previous experience in multilateral disputes - although the difference is just narrowly statistically significant.

The picture is reversed when it comes to the effect of *Dispute Asymmetry*. Parties with neutral or similar multilateral dispute records are, ceteris paribus, significantly more likely to match or exceed the level of complainant rights in the WTO. Those with exactly opposite dispute records in the WTO are predicted to be about as likely to agree on higher or lower levels of complainant rights as in the

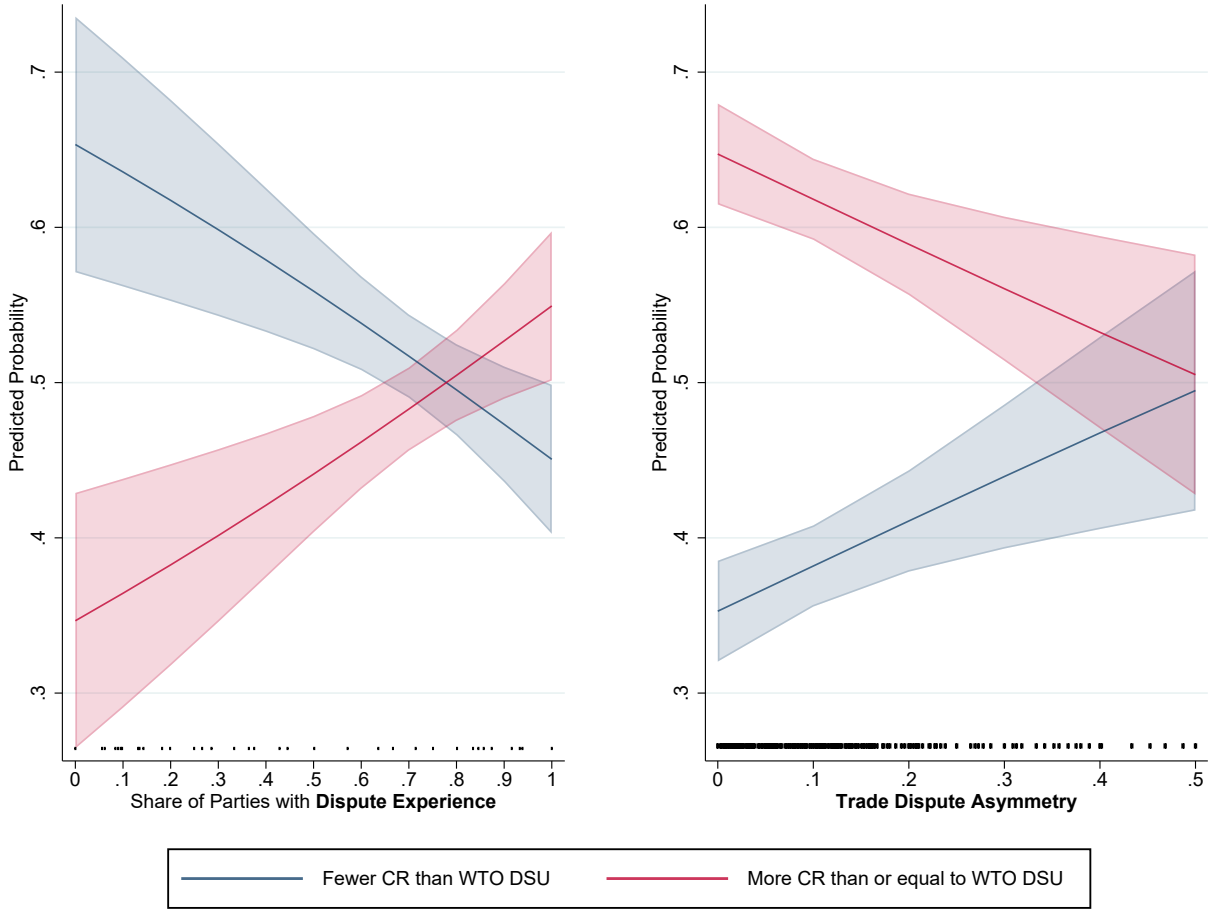


Figure 6: Predicted probabilities based on the specification of model 3 (left panel) and model 4 (right panel) – but with year dummies - for the WTO-period only (see models M8 and M9 in the annex).

WTO (49% and 51%, respectively), with significant differences disappearing.[27]

The depth of PTAs and the design of DSMs in parties' previous PTAs also are strong predictors of the level of complainant rights in DSMs, being positively associated with complainant rights as expected. Especially the latter is in accordance with the theorised mechanism of the relevance of institutional context. Estimated effects of the number of members are positive while asymmetries in *Market Access* are correlated with fewer complainant rights. The effect of asymmetries in *Bureaucratic Capacity* is mixed and rather inconsistent - while significant in the full sample models, its effect during the WTO era remains inconclusive. This may indicate that mission size might not be an ideal operationalisation of *Bureaucratic Capacity* and that capacity should be conceived of in broader terms.

Robustness checks are reported in the annex, including models employing GDP per capita as

[27]The reported probabilities correspond to a shift of 1.6 and 1.0 points on the complainant rights index, respectively. See Figure 10 in the annex.

Table 3: Component and time horizon models (WTO-Period only).

	Time Horizon Models			Component Models			
				DV: Forum Choice		DV: Index w/o F. Choice	
C. Rights	(T1)	(T2)	(T3)	(C1)	(C2)	(C3)	(C4)
Multilateral Disputes				6.465***	5.748***	1.373***	0.504
				(1.728)	(1.883)	(0.241)	(0.358)
Dispute Asymmetry					-3.869*		-1.176**
					(2.070)		(0.557)
Multilateral Disputes$_{t-10}$	1.378***		0.638				
	(0.234)		(0.431)				
Dispute Asymmetry$_{t-10}$		-1.363**	-1.152**				
		(0.494)	(0.501)				
Δ Bureaucratic C.				0.208***	0.224***		
				(0.0778)	(0.0747)		
Δ Bureaucratic C.$_{GDP}$	0.117	0.147**	0.159**			0.135**	0.191***
	(0.0707)	(0.0683)	(0.0714)			(0.0538)	(0.0517)
Δ Market Access	-0.530**	-0.820***	-0.721**	-0.0605	-0.479	-0.390	-0.617*
	(0.229)	(0.288)	(0.314)	(1.075)	(1.119)	(0.233)	(0.325)
Δ Retaliatory Capacity	0.0116	-0.0693	-0.0637	-0.228	-0.303**	0.0166	-0.0334
	(0.0385)	(0.0546)	(0.0526)	(0.146)	(0.125)	(0.0358)	(0.0562)
WTO Membership	-0.0237	1.114*	0.786	0.364	1.114	-0.136	0.657
	(0.236)	(0.631)	(0.603)	(1.915)	(1.949)	(0.264)	(0.534)
Democracy	-0.117	-0.0182	-0.0267	0.786	0.866	-0.0512	-0.00720
	(0.194)	(0.262)	(0.257)	(0.571)	(0.596)	(0.161)	(0.222)
PTA Depth	0.449***	0.427***	0.419***	0.940***	0.955***	0.348***	0.357***
	(0.0509)	(0.0572)	(0.0548)	(0.183)	(0.213)	(0.0459)	(0.0492)
PTA Members	0.0154	0.0209	0.0240*	0.0766	0.0913**	0.0146	0.0188
	(0.0121)	(0.0126)	(0.0133)	(0.0469)	(0.0374)	(0.0112)	(0.0136)
Previous PTAs	0.292*	0.302*	0.299*	0.164	0.102	0.316**	0.256*
	(0.143)	(0.146)	(0.150)	(0.461)	(0.486)	(0.123)	(0.145)
N	332	250	250	279	218	332	260
Year Clustered SE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pseudo R^2	0.566	0.519	0.525	0.640	0.603	0.559	0.504

Fixed-Effects OLS regressions with Principal Component as dependent variable for Time Horizon Models and C3-C4.
Logistic regression estimators used for Forum Choice component models.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

measure of *Bureaucratic Capacity*.[28] Moreover, models with categorical variables on previous dispute records support the finding that *Dispute Asymmetry* among PTA parties itself, and not an overall tendency in either direction, is a determinant of DSM design. This provides strong evidence for states indeed adjusting institutional designs to their trading partners.

To provide further evidence for the learning effect, the first three models in Table 3 display the results of time horizon models which consider only disputes within ten years prior to conclusion of a PTA. The reasoning is that only experiences that are part of the institutional or bureaucratic memory of delegations that negotiate PTAs should matter. While such memory is hard to define,

[28]These models as well as linear fixed effects-models, models with cubic time trends as well as naïve OLS models all confirm the main results.

any proceedings taking place decades before PTA conclusion should play minor roles for bureaucrats or future expectations, if at all. These models include *Bureaucratic Capacity* measured in GDP per capita as a more reflective measure of overall capacity.[29] As models T1-T3 show, the theorised learning effects are robust to this qualification: coefficients on the variables *Multilateral Disputes* and *Dispute Asymmetry* are strongly significant, with their magnitude being similar to the models considering all previous disputes. This strongly supports the theorised mechanism of institutional learning and its effect on the network of PTAs.

Component models (C1-C4) in Table 3 separate *Forum Choice* in DSMs from other components of the complainant rights index. *Forum Choice* is a distinct right in its creating a direct link between dispute settlement in the WTO and PTAs, allowing parties to bring PTA disputes to the WTO. The theorised argument therefore suggests that institutional learning should have a particularly strong effect on this component. This is indeed the case: both *Multilateral Disputes* and *Dispute Asymmetry* are strong predictors of forum choice and the remaining complainant rights. However, the effect of *Multilateral Disputes* is more pronounced for forum choice. This indicates that previous experience in multilateral dispute settlement incentivises states to extend the jurisdiction of that design beyond the WTO.

The WTO comes closest to a level playing field for states with asymmetric capacity. If mission size fails to capture more abstract differences in terms of *Bureaucratic Capacity*, it should predict and only predict the inclusion of *Forum Choice* in DSMs, without being related to other components of the index. This is precisely what the component models show: capacity differentials in terms of delegates determine the inclusion of forum choice. This provides further evidence for direct exposure and experience with institutions being a catalyst for institutional learning. Conversely, abstract differences in GDP do not predict the inclusion of forum choice in PTAs, but determine the inclusion of other complainant rights.[30] This indicates that the latter ones are shaped largely by more abstract differences in bureaucratic capacity than could be expressed by mission size in Geneva. Importantly, the direct learning effect in the WTO is complemented with an incremental learning process throughout PTA negotiations - the design of previous PTAs also does matter, as expected.

Monadic Identification Strategy

A monadic design allows for an identification of the multilateral learning effect irrespective of the idiosyncrasies of individual PTAs. Taking advantage of the significant expansion of participation in multilateral disputes after the establishment of the WTO (Figure 7), this identification strategy

[29] Main results are unchanged if mission size is used as measure of bureaucratic capacity, see Table 6 in the annex.

[30] See Table 10 in the annex for null models.

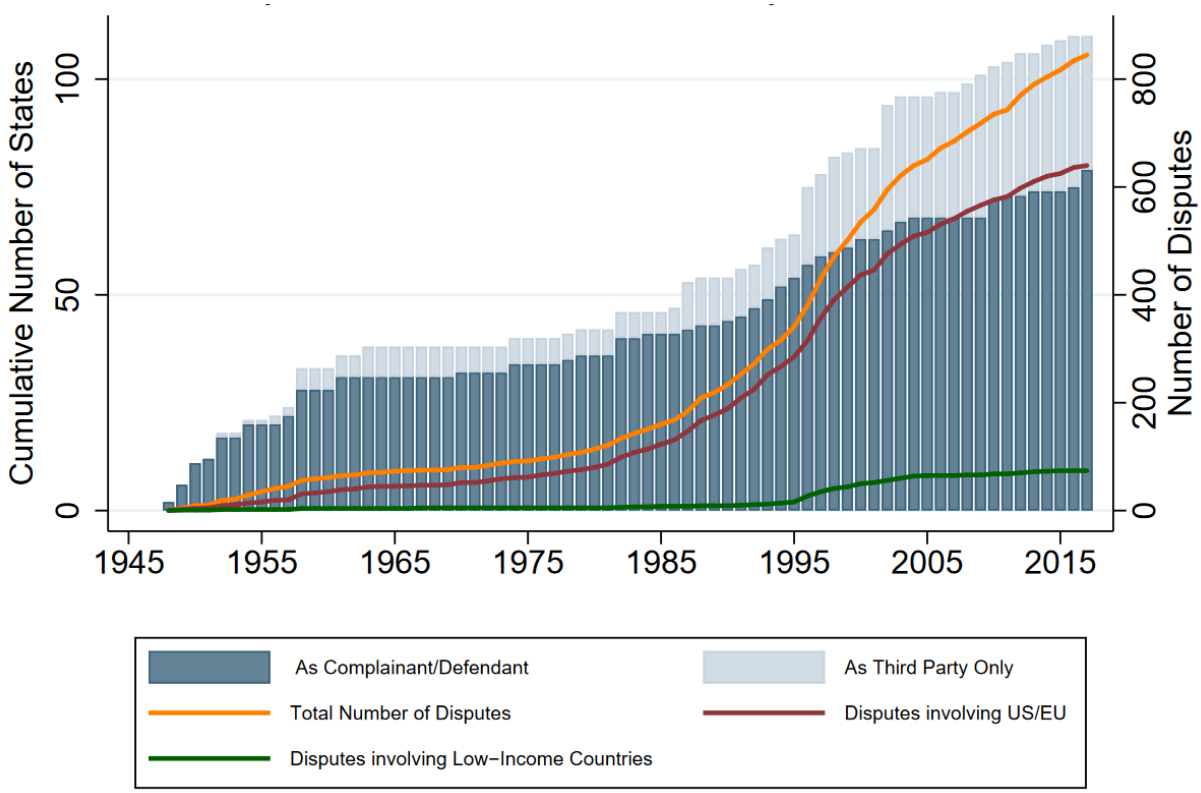


Figure 7: Participation in GATT/WTO dispute settlement over time. Note that third party participation is not considered for the line graphs. *Data: DESTA*.

only considers states that at the time of the establishment of the WTO had not been involved in any multilateral trade dispute under GATT. These are 138 states, 27 of which were directly involved in a WTO dispute between 1995 and 2017 with a further 29 that participated as a third party. The learning effect is measured in relative terms to capture institutional convergence. The dependent variable reflects the absolute distances between levels of complainant rights in PTAs and the WTO.

The monadic identification strategy entails two-way fixed effects (2FE) models that estimate within-state effects but are limited in terms of causal interpretation. Despite their frequent mischaracterisation, 2FE-models are not necessarily equivalent to a design-based, causal estimator (Imai/Kim 2021, p. 405). Here, the irregular nature of PTA conclusion precludes observing continuous changes that would be required for a causal interpretation. The multilateral learning effect corresponds to a case of staggered treatment adoption without reversal - that is, the effect also holds for subsequent PTAs. The monadic 2FE estimators nonetheless help isolate the learning effect by considering the entire population of states, thus addressing sampling bias. In combination with the treaty-level analysis, the monadic design thus provides a robust test of the theorised effect.

The 2FE models are shown in Table 4.[31] Models D1 to D3 consider only direct participation

[31] 2FE models are estimated using the REGHDFE command in Stata, based on Guimaraes/Portugal 2010.

Table 4: Monadic 2FE models.

	Complainants & Defendants			Including 3rd Parties		
Δ from WTO Complainant Rights	(D1)	(D2)	(D3)	(D4)	(D5)	(D6)
Multilateral Dispute	-0.591**	-0.628**	-1.056***	-0.386*	-0.423**	-0.667***
	(0.296)	(0.274)	(0.318)	(0.204)	(0.194)	(0.236)
Adjusted R^2	0.449	0.467	0.477	0.447	0.465	0.475
	(I1)	(I2)	(I3)	(I4)	(I5)	(I6)
Multilateral Dispute	-0.641**	-0.673***	-1.143***	-0.364*	-0.412**	-0.672***
	(0.264)	(0.245)	(0.289)	(0.212)	(0.203)	(0.232)
Multilateral Disputes	0.533**	0.460**	0.550*	0.072	0.035	-0.017
x Bureaucratic C.$_{GDP}$	(0.237)	(0.220)	(0.310)	(0.212)	(0.194)	(0.263)
Adjusted R^2	0.452	0.469	0.478	0.446	0.464	0.474
WTO Membership	No	Yes	Yes	No	Yes	Yes
US/EU-PTA Dummies	No	Yes	Yes	No	Yes	Yes
Country-Specific Time Trends	No	No	Yes	No	No	Yes
Observations	1,113	1,103	1,103	1,113	1,103	1,103
N (Countries)	138	135	135	138	135	135

All Models Include Country and Year Fixed Effects. Country-Clustered Standard Errors in Parentheses.
Bureaucratic Capacity centred on median for models I1-I6.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

as either complainant or defendant while models D4-D6 also consider third party involvement. To isolate the effect of dispute participation and ensure the no-anticipation assumption holds, models D2-D3 and D5-D6 control for WTO membership and PTAs with the US or EU as these generally allow for more complainant rights and might also impact subsequent PTAs. Models D3 and D6 further include country-specific time trends to consider divergent general trajectories. The learning effect of experience in multilateral disputes is significant for all specifications and distinct from mere accession to the WTO.[32] Experience in multilateral trade disputes is consistently estimated to reduce the average difference of complainant rights in PTAs from the WTO DSU by about 0.5 to 1 point on the 8-point complainant rights scale or 0.4 to 0.7 when considering third-party participation - which is a substantively strong effect.

Models I1-I6 replicate the model specifications of models D1-D6 but include an interaction term of multilateral disputes and states' bureaucratic capacity at time of the first WTO dispute.[33] While

[32]Event plots 11 and 12 in the annex visualise the disruptive effect of multilateral trade disputes on DSM design in PTAs.

[33]Note that this helps disentangle the learning effect from time-variant changes in terms of bureaucratic capacity, with linear developments of the latter being accounted for by country-specific time trends in models I3 and I6. Substantive results remain unchanged if bureaucratic capacity is allowed to vary across PTAs (15).

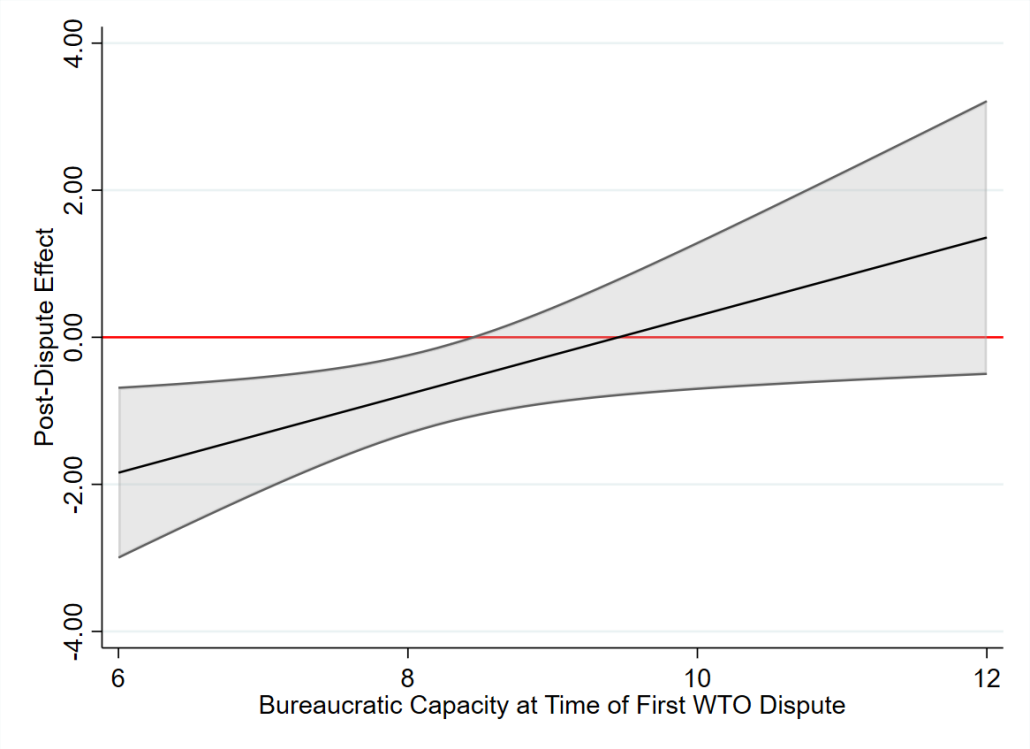


Figure 8: Estimated effect of multilateral disputes over capacity based on model I1.

moderated effects cannot easily be identified on treaty-level, the monadic design reveals that dispute experience as complainant or defendant in the WTO leads to institutional convergence for low-capacity states. Note that since coefficients are cented on the median, the interaction terms indicate the effect for the median level of bureaucratic capacity. For states with the minimum level of bureaucratic capacity, the effect corresponds to a two-point reduction on the complainant rights index between PTAs and the WTO (Figure 8).[34] Multilateral dispute experience only does not matter to states with very high levels of bureaucratic capacity - the learning effect is significant for roughly 75% of the states that had not been involved in a multilateral dispute before the WTO was established. The effect of third-party involvement is much less pronounced and independent of states' bureaucratic capacity. This indicates a weaker and much more variable experience as third party, which is less dependent on capacity than on a dispute's idiosyncracies. Overall, the result of institutional learning processes is a convergence of complainant rights levels in the WTO and PTAs.

Causal Mechanism: How does Multi-Level Diffusion Work?

States do not seek to extend the menu of institutional choice by opening additional fora that are substantively different from the WTO. Serving as *diffusion hub*, the WTO's design instead spreads

[34] Using the absolute level of complainant rights as dependent variable reveals that the effect is due to an increase in the level of complainant rights for low capacity states - which is in line with both H1a and H1b.

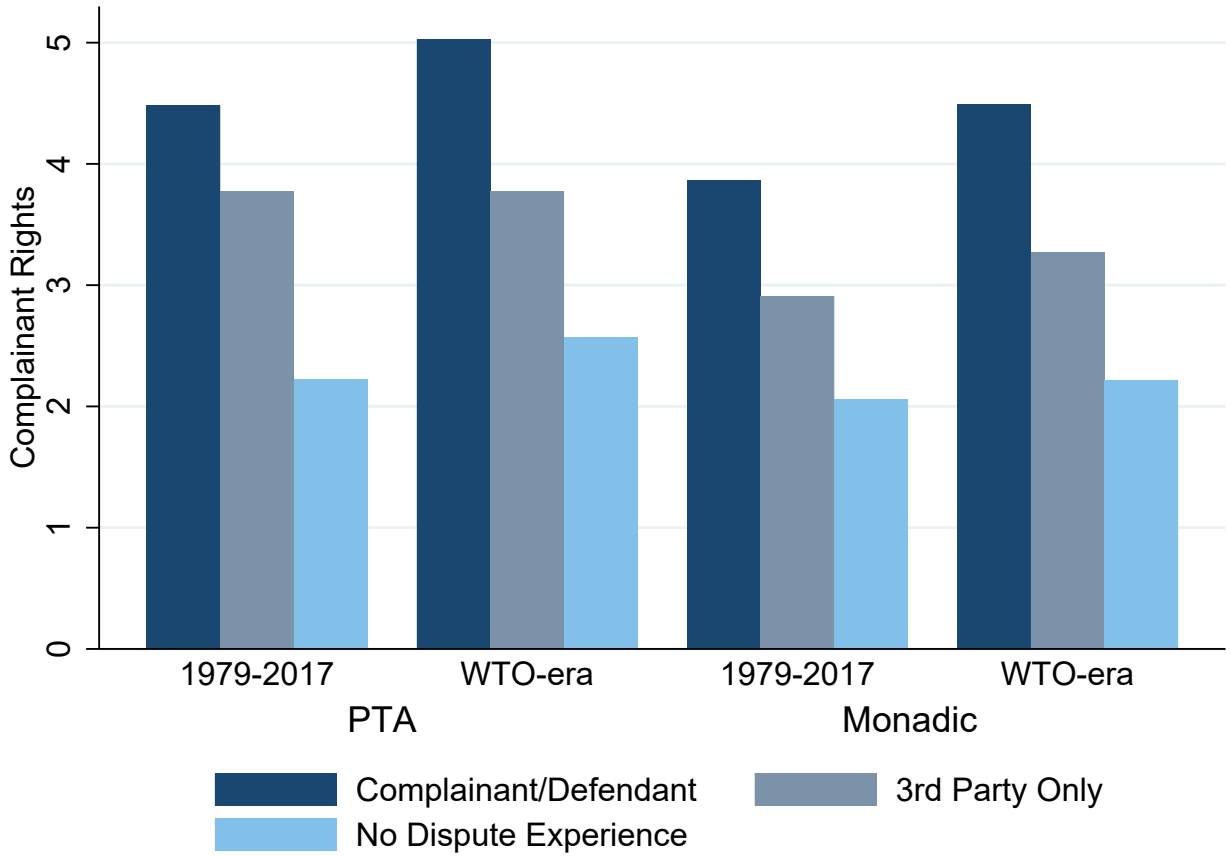


Figure 9: Average complainant rights in PTAs by previous experience in multilateral disputes of all parties to a PTA (*PTA*) or for each party (*Monadic*). In the former case, the 'minimum' level of experience is considered.

through learning experiences in multilateral trade disputes. Although states adapt the design individually, the consequences are meaningful, measured both on PTA-level and on state-level (Figure 9). In combination, the empirical analyses indicate robustness to selection bias in terms of PTA conclusion. Notably, this effect is independent of mere membership in the WTO.

How precisely do multilateral influences come into play during PTAs negotiations? Evidence from interviews with officials reveals that the mechanism is twofold: first, negotiators from states with prior experiences with the WTO DSU tend to use its institutional design as benchmark and point of reference during PTA negotiations.[35] The EU generally pursues the *"most efficient DSM design, based on the WTO DSU as starting point"*.[36] When Colombia commenced bilateral PTA negotiations with Japan, Colombian negotiators evaluated Japan's template on the chapter on dispute settlement –

[35]Telephone interview with the Chief of Legal and Multilateral Affairs, Ministry of Foreign Affairs of Panama, 12.12.2019.

[36]Interview with a legal officer of the European Commission, done at Brussels, 17.04.2019.

itself largely based on the DSU - against their previous PTAs and the WTO DSU.[37] Second, in doing so, they intentionally seek to agree on designs that are in line with the multilateral model, thus making available designs converge. PTAs and the WTO are not distinct spheres - as one official put it, *'we are always in dialogue with our experts at the WTO.'*[38]

Importantly, negotiators do not merely copy the WTO DSU. Legal officers also take expectations about their trading partner into account. Infamously, even the EU did so in its agreements with states in its vicinity. These usually have fewer complainant rights than PTAs with trading partners overseas, giving the EU political leverage. Conversely, Peru preferred a less strict DSM in negotiations with the EU, while similar limitations of complainant rights were not deemed necessary in simultaneous negotiations with India. Expectations about future trade disputes were the reason: Peru was simply *"more likely to face a complaint by the EU than to complain against the EU."*[39] Aware of likely treaty violations by the Peruvian Congress, the EU was considered much more likely to initiate a dispute than India. While the trade expertise of the EU bureaucracy is a general advantage, Peru's strategy was informed by bureaucrats' expectation about potential future disputes and their direct consequences - not abstract considerations.

Dispute settlement in the WTO and in PTAs are mutually linked, with bureaucracies learning from records and experiences in the multilateral forum and adapting this knowledge to PTAs. This is not to say that the design of the WTO would be inaccessible otherwise - but engaging in multilateral disputes changes the incentives to model PTA DSMs on the multilateral design. Dispute experience fosters the learning effect and shapes *how* the design spreads. This learning effect is particularly pronounced for states with lower levels of bureaucratic capacity. As one Argentine negotiator put it poignantly: *"our training school was the WTO."* [40] With the WTO thus serving as *diffusion hub*, staggered learning experiences amid a growing number of PTAs resulted in a short period of increased institutional variation during the early years of the WTO before high levels of complainant rights, decentrally agreed on, became the norm for PTAs.

Conclusion

The network of PTAs and the multilateral trading order are not separate. The WTO's institutional influence reaches beyond individual trade disputes and even the multilateral trade regime: the WTO

[37] Telephone interview with a legal officer at MINCET, Colombia's Ministry of External Commerce and Trade, 15.04.2019.

[38] Interview with Former Subsecretary for International Trade of Mexico, 10.03.2023.

[39] Telephone interview with a PTA negotiator at MINCETUR, the Ministry of External Commerce and Tourism of Perú, 16.04.2019.

[40] Telephone interview with Former Director of Trade Negotiations of Argentina, 30.11.2021.

DSU serves as *multilateral diffusion hub* for a DSM design that gives multiple rights to complainants – qualifying previous findings that DSMs have become less legalistic during the WTO era (Jo/Namgung 2012). WTO dispute settlement enables members involved in its dispute settlement process, particularly states with bureaucratic capacity constraints, to transpose institutional innovation from the multilateral level to bilateral and plurilateral agreements.

States learn not only from their previous treaties and agreements, but also can consider multilateral institutions as role models for institutional design - if they consider these preferable. Institutional learning through experiences in multilateral trade disputes - not emulation - underlies such diffusion processes, shaping the institutional design of PTAs and generally making them resemble the design of the WTO DSU. Instead of their previous PTAs, states use the WTO DSU as benchmark but adapt it to individual contexts. Quantitative and qualitative evidence suggests that expectations about future behaviour are the causal channel that makes bureaucrats adjust design choices to their trading partners - with prior disputes serving as corresponding heuristics. Bureaucrats consider their trading partners' prior dispute record and infer likely patterns of dispute initiation for their bilateral trade relations. While institutional memory can be short, the results are robust to only considering experiences made within a few years prior to PTA conclusion.

It certainly is not impossible for states to adapt institutional designs without direct experience. Yet, understanding the causal channels of diffusion processes requires moving away from structural explanations and acknowledging the role of bureaucrats - and their falling short of being optimisers. With bureaucracies operating under significant constraints and looking for institutions that are 'good enough' - institutional learning processes are a strong influence on institutional choices, particularly for low-capacity states that can rely less on other less direct forms of learning and innovation. Prior experiences further reduce uncertainty about the consequences of adopting certain institutions. Thus, experience with and commitment to the legal procedure causes a learning effect which goes beyond mere membership in organisations. The institutions of the WTO then serve as informational short cut and default procedure for addressing disputes – reducing transaction costs and institutional complexity.

This article reveals *how* a new institutional model spreads and proliferates. Although learning processes affect individual agents separately, the accumulation of institutional learning experiences results in systemic changes. Given the non-uniform exposure of states to the diffusion processes, an increase in institutional divergence is followed by convergence on what is increasingly considered a standard design. Decentralised experiences and design choices thus give rise to a quasi-multilateral architecture, which corresponds to an increase in complainant rights in PTAs. In fact, meaningful complainant rights and legal remedies have become the standard for most new PTAs. The findings refer to the population of PTAs that materialised. The overall tendency of institutional convergence

amid virtually all states becoming parties to PTAs - as well as the complementary empirical strategy combining analyses on treaty-level and a monadic design - alleviate concerns about selection effects that analyses of PTAs commonly entail.

Institutional learning is an important process that contributes to shaping the landscape of institutions. Learning-based diffusion stands in stark contrast to the controversial emulation of state-investor DSMs in bilateral investment treaties. While the latter often involved the adoption of unknown institutions - particularly by states that were not able or willing to assess their consequences (Poulsen 2015) - institutional learning is the foundation of informed diffusion. Bureaucracies are familiar with the processes and consequences of institutions due to previous experience, which alters states' subsequent choices. Institutional learning being distinct from emulation is why the number of disputes actually settled under PTAs being low (Nakagawa 2007; Porges 2011) - even though the number of disputes may grow amidst the WTO Appellate Body crisis - does not diminish the finding's external validity. States treat institutional choices as meaningful. Prior experiences in dispute settlement and states' adjusting institutions to their trading partners, even in terms of issues such as time limits, reveals that they are aware of the potential consequences of design choices - even if parties to PTAs eventually operate under the shadow of the law when dealing with disagreements.

Sequence matters when it comes to the influence of extant institutions on cooperation. Prior experiences in institutional processes can prove the appropriateness of institutions and result in states' making informed design choices. The stark contrast to investment treaties, where uninformed emulation was driving the spread of DSM designs, stresses how capacity constraints can be mitigated to allow states operating under constraints to cooperate. Acknowledging the role of institutional learning may help facilitate cooperation in other fields, particularly in emerging areas such as technology or environmental governance, where uncertainty is widespread and states exhibit vast differences in terms of bureaucratic capacity.

An avenue for further research on international trade is the tendency not to settle disputes under PTAs and its effect on the WTO. Does institutional convergence between the WTO and PTAs render the use of DSMs in PTAs more likely or does it strengthen the WTO's preeminent role in trade dispute settlement? In principle, institutional convergence even provides the foundation for the integration of dispute settlement. Yet, as one negotiator put it, there is a growing awareness among states to *'reconsider [their] approach to dispute settlement in PTAs'*.[41] – even if they do so, the rules and principles of the WTO DSU are enshrined in and likely to govern many disputes under PTA DSMs.

[41] Telephone interview with a PTA negotiator at MINCETUR, the Ministry of External Commerce and Tourism of Perú, 16.04.2019.

References

Allee, Todd and Manfred Elsig (2016). "Why do some international institutions contain strong dispute settlement provisions? New evidence from preferential trade agreements". In: *The Review of International Organizations* 11.1, pp. 89–120.

— (2019). "Are the Contents of International Treaties Copied and Pasted? Evidence from Preferential Trade Agreements". In: *International Studies Quarterly* 63.3, pp. 603–613.

Allee, Todd, Manfred Elsig, and Andrew Lugg (2017). "The ties between the world trade organization and preferential trade agreements: A textual analysis". In: *Journal of international economic law* 20.2, pp. 333–363.

Allee, Todd and Clint Peinhardt (2014). "Evaluating three explanations for the design of bilateral investment treaties". In: *World Politics* 66.1, pp. 47–87.

Arnold, Christian and Berthold Rittberger (2013). "The legalization of dispute resolution in Mercosur". In: *Journal of Politics in Latin America* 5.3, pp. 97–132.

Baetschmann, Gregori, Kevin E Staub, and Rainer Winkelmann (2015). "Consistent estimation of the fixed effects ordered logit model". In: *Journal of the Royal Statistical Society: Series A (Statistics in Society)* 178.3, pp. 685–703.

Bayne, Nicholas and Stephen Woolcock (2016). "The new economic diplomacy: Decision-Making and Negotiation in International Economic Relations". In: *Aldershot, Ashgate Publishing Limited*.

Bechtel, Michael M and Thomas Sattler (2015). "What is litigation in the World Trade Organization worth?" In: *International Organization* 69.2, pp. 375–403.

Bergstrand, Jeffrey H, Peter Egger, and Mario Larch (2016). "Economic determinants of the timing of preferential trade agreement formations and enlargements". In: *Economic Inquiry* 54.1, pp. 315–341.

Busch, Marc L (2007). "Overlapping institutions, forum shopping, and dispute settlement in international trade". In: *International Organization* 61.4, pp. 735–761.

Busch, Marc L, Eric Reinhardt, and Gregory Shaffer (2009). "Does legal capacity matter? A survey of WTO Members". In: *World Trade Review* 8.4, pp. 559–577.

Büthe, Tim and Helen V Milner (2014). "Foreign direct investment and institutional diversity in trade agreements: Credibility, commitment, and economic flows in the developing world, 1971–2007". In: *World Politics* 66.1, pp. 88–122.

Chase-Dunn, Christopher (2016). *Mapping of Dispute Settlement Mechanisms in Regional Trade Agreements–Innovative or Variations on a Theme?* Cambridge University Press.

Clougherty, Joseph A, Tomaso Duso, and Johannes Muck (2016). "Correcting for self-selection based endogeneity in management research: Review, recommendations and simulations". In: *Organizational Research Methods* 19.2, pp. 286–347.

Copelovitch, Mark S and Tonya L Putnam (2014). "Design in context: existing international agreements and new cooperation". In: *International Organization* 68.2, pp. 471–493.

Cureton, Edward E and Ralph B D'Agostino (1983). *Factor analysis: An applied approach*. Hillside, NJ: Lawrence Erlbaum Associates.

Dahlberg, Stefan et al. (2019). *The Quality of Government Basic Dataset, version Jan19*. University of Gothenburg. The Quality of Government Institute. DOI: 10.18157/qogbasjan19. URL: http://www.qog.pol.gu.se.

Davis, Christina L and Sarah Blodgett Bermeo (2009). "Who files? Developing country participation in GATT/WTO adjudication". In: *The Journal of Politics* 71.3, pp. 1033–1049.

DeVellis, Robert F (2003). *Scale development: Theory and applications*. Sage publications.

Dickerson, Andy, Arne Risa Hole, and Luke A Munford (2014). "The relationship between well-being and commuting revisited: Does the choice of methodology matter?" In: *Regional Science and Urban Economics* 49, pp. 321–329.

DiMaggio, Paul J and Walter W Powell (1983). "The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields". In: *American sociological review*, pp. 147–160.

Donaldson, Victoria and Simon Lester (2009). "Dispute Settlement". In: *Bilateral and regional trade agreements: Commentary and analysis*. Ed. by Simon Lester, Bryan Mercurio, and Lorand Bartels. Cambridge University Press, pp. 385–433.

Dür, Andreas, Leonardo Baccini, and Manfred Elsig (2014). "The design of international trade agreements: Introducing a new dataset". In: *The Review of International Organizations* 9.3, pp. 353–375.

Elsig, Manfred (2011). "Principal–agent theory and the World Trade Organization: Complex agency and 'missing delegation'". In: *European Journal of International Relations* 17.3, pp. 495–517.

Elsig, Manfred and Jappe Eckhardt (2015). "The creation of the multilateral trade court: Design and experiential learning". In: *World Trade Rev. s13* 14.

Fiorini, Matteo and Bernard Hoekman (2018). "Trade agreements, regulatory institutions and services liberalization". In: *Global policy* 9.4, pp. 441–450.

Garner-Knapp, Lindsey, Shaina D Western, and Henry Lovat (2022). "The US, the WTO, and the Appellate Body: From Great Expectations to Hard Times". In: *European Yearbook of International Economic Law 2021*. Springer, pp. 3–32.

Gehring, Thomas and Sebastian Oberthür (2009). "The causal mechanisms of interaction between international institutions". In: *European journal of international relations* 15.1, pp. 125–156.

Gilardi, Fabrizio (2010). "Who learns from what in policy diffusion processes?" In: *American Journal of Political Science* 54.3, pp. 650–666.

Guimaraes, Paulo and Pedro Portugal (2010). "A simple feasible procedure to fit models with high-dimensional fixed effects". In: *The Stata Journal* 10.4, pp. 628–649.

Hardy, Cynthia and Steve Maguire (2008). "Institutional entrepreneurship". In: *The Sage handbook of organizational institutionalism* 1, pp. 198–217.

Hassink, Robert and Arnoud Lagendijk (2001). "The dilemmas of interregional institutional learning". In: *Environment and Planning C: Government and Policy* 19.1, pp. 65–84.

Heydon, Ken (2011). "The OECD: Lessons from Investment and Services". In: *The New Economic Diplomacy: Decision-making and Negotiation in International Economic Relations*, p. 231.

Horn, Henrik, Giovanni Maggi, and Robert W Staiger (2010). "Trade agreements as endogenously incomplete contracts". In: *American Economic Review* 100.1, pp. 394–419.

Hudec, Robert E (1993). *Enforcing international trade law: The evolution of the modern GATT legal system*. Salem, NH: Butterworth.

Imai, Kosuke and In Song Kim (2021). "On the use of two-way fixed effects regression models for causal inference with panel data". In: *Political Analysis* 29.3, pp. 405–415.

Jo, Hyeran and Hyun Namgung (2012). "Dispute settlement mechanisms in preferential trade agreements: Democracy, boilerplates, and the multilateral trade regime". In: *Journal of Conflict Resolution* 56.6, pp. 1041–1068.

Jupille, Joseph Henri, Walter Mattli, and Duncan Snidal (2013). *Institutional Choice and Global Commerce*. Cambridge University Press.

Koremenos, Barbara (2007). "If only half of international agreements have dispute resolution provisions, which half needs explaining?" In: *The Journal of Legal Studies* 36.1, pp. 189–212.

Koremenos, Barbara, Charles Lipson, and Duncan Snidal (2001). "The rational design of international institutions". In: *International organization* 55.4, pp. 761–799.

Kucik, Jeffrey and Krzysztof J Pelc (2016). "Measuring the cost of privacy: a look at the distributional effects of private bargaining". In: *British Journal of Political Science* 46.4, pp. 861–889.

Kwak, Kyung and Gabrielle Marceau (2004). "Overlaps and conflicts of jurisdiction between the World Trade Organization and regional trade agreements". In: *Canadian Yearbook of International Law/Annuaire canadien de droit international* 41, pp. 83–152.

Lechner, Lisa (2016). "The domestic battle over the design of non-trade issues in preferential trade agreements". In: *Review of International Political Economy* 23.5, pp. 840–871.

Liddell, Torrin M and John K Kruschke (2018). "Analyzing ordinal data with metric models: What could possibly go wrong?" In: *Journal of Experimental Social Psychology* 79, pp. 328–348.

Mansfield, Edward D and Eric Reinhardt (2003). "Multilateral determinants of regionalism: The effects of GATT/WTO on the formation of preferential trading arrangements". In: *International organization* 57.4, pp. 829–862.

Marceau, Gabrielle and Julian Wyatt (2010). "Dispute settlement regimes intermingled: regional trade agreements and the WTO". In: *Journal of International Dispute Settlement* 1.1, pp. 67–95.

Mavroidis, Petros C (2015). "Dealing with PTAs in the WTO: Falling through the Cracks between Judicialization and legalization". In: *World Trade Rev. s107* 14.

Michalopoulos, Constantine (2001). *Developing Countries in the WTO*. Springer.

Milewicz, Karolina et al. (2018). "Beyond trade: the expanding scope of the nontrade agenda in trade agreements". In: *Journal of Conflict Resolution*.

Nakagawa, Junji (2007). "No More Negotiated Deals?: Settlement of Trade and Investment Disputes in East Asia". In: *Journal of International Economic Law* 10.4, pp. 837–867.

Odell, John S (2018). *Negotiating the world economy*. Cornell University Press.

Ovodenko, Alexander and Robert O Keohane (2012). "Institutional diffusion in international environmental affairs". In: *International Affairs* 88.3, pp. 523–541.

Peacock, Claire, Karolina Milewicz, and Duncan Snidal (2019). "Boilerplate in international trade agreements". In: *International Studies Quarterly* 63.4, pp. 923–937.

Porges, Amelia (2011). "Dispute Settlement". In: *In J. P. Chauffour and J. C. Maur (Eds.), Preferential trade agreement policies for development: a handbook*, pp. 467–501.

Poulsen, Lauge N Skovgaard (2015). *Bounded rationality and economic diplomacy: The politics of investment treaties in developing countries*. Cambridge University Press.

Purdy, Jill M and Barbara Gray (2009). "Conflicting logics, mechanisms of diffusion, and multilevel dynamics in emerging institutional fields". In: *Academy of Management Journal* 52.2, pp. 355–380.

Rodrik, Dani (2018). "What do trade agreements really do?" In: *Journal of economic perspectives* 32.2, pp. 73–90.

Shaffer, Gregory C and Ricardo Meléndez-Ortiz (2010). *Dispute settlement at the WTO: the developing country experience*. Cambridge University Press.

Simmons, Beth A and Zachary Elkins (2004). "The globalization of liberalization: Policy diffusion in the international political economy". In: *American political science review* 98.1, pp. 171–189.

Skovgaard Poulsen, Lauge N (2014). "Bounded rationality and the diffusion of modern investment treaties". In: *International Studies Quarterly* 58.1, pp. 1–14.

Smith, James McCall (2000). "The politics of dispute settlement design: Explaining legalism in regional trade pacts". In: *International Organization* 54.1, pp. 137–180.

Weyland, Kurt (2009). *Bounded rationality and policy diffusion: social sector reform in Latin America*. Princeton University Press.

WTO (2011). *World Trade Report 2011: The WTO and Preferential Trade Agreements: From Co-Existence to Coherence*. World Trade Organization (WTO).

— (2017). *A handbook on the WTO dispute settlement system*. Cambridge University Press.

WTO (2018). *GATT disputes: 1948-1995. Overview and One-Page Case Summaries*. World Trade Organization.

Annex

Annex I: Robustness Checks

Table 5: Main models with absolute bureaucratic capacity variable.

	Complete (1979-2016)		WTO (1995-2016)					
	FE O.Logit		FE O.Logit			OLS		
C. Rights	(B1)	(B2)	(B3)	(B4)	(B5)	(B6)	(B7)	(B8)
Multilateral Disputes	1.565***		2.067***		1.155	1.482***		1.000**
	(0.463)		(0.567)		(0.844)	(0.289)		(0.384)
Dispute Asymmetry		-1.589*		-3.340***	-3.027***		-1.611**	-1.386**
		(0.917)		(0.965)	(0.989)		(0.598)	(0.591)
Δ Bureaucratic C.	0.0928***	0.121***	0.0642	0.102**	0.102**	0.0294	0.0444*	0.0423*
	(0.0323)	(0.0381)	(0.0408)	(0.0432)	(0.0426)	(0.0222)	(0.0218)	(0.0216)
Bureaucratic $C._{Min}$	0.0772	0.0984**	0.0427	0.0598	0.0320	0.0243	0.0333	0.0128
	(0.0484)	(0.0449)	(0.0596)	(0.0559)	(0.0589)	(0.0329)	(0.0308)	(0.0341)
Δ Market Access	-1.162**	-1.550***	-1.109*	-1.799**	-1.518*	-0.521*	-0.854**	-0.670*
	(0.464)	(0.528)	(0.604)	(0.714)	(0.805)	(0.283)	(0.362)	(0.385)
Δ Retaliatory Capacity	-0.0134	-0.118	0.0153	-0.118	-0.115	0.00587	-0.0591	-0.0541
	(0.0549)	(0.0861)	(0.0779)	(0.120)	(0.112)	(0.0397)	(0.0671)	(0.0631)
WTO Membership	-0.523	0.832	-0.290	2.011*	1.613	-0.332	0.977*	0.531
	(0.555)	(0.816)	(0.649)	(1.029)	(1.022)	(0.272)	(0.506)	(0.511)
Democracy	0.0426	0.0600	-0.0479	0.0554	0.0160	-0.0927	-0.00496	-0.0119
	(0.377)	(0.456)	(0.468)	(0.558)	(0.542)	(0.193)	(0.260)	(0.251)
PTA Depth	0.946***	0.974***	0.899***	0.957***	0.949***	0.436***	0.451***	0.430***
	(0.114)	(0.114)	(0.151)	(0.150)	(0.149)	(0.0533)	(0.0568)	(0.0550)
PTA Members	0.0479***	0.0634***	0.0323*	0.0538**	0.0579***	0.0208*	0.0276*	0.0308*
	(0.0157)	(0.0204)	(0.0168)	(0.0220)	(0.0220)	(0.0117)	(0.0150)	(0.0152)
Previous PTAs	0.836***	0.652**	0.764**	0.610*	0.612*	0.268**	0.255	0.266
	(0.264)	(0.296)	(0.319)	(0.322)	(0.329)	(0.128)	(0.149)	(0.155)
N	450	349	332	260	260	320	260	260
Year-Clustered SE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pseudo R^2	0.465	0.461	0.466	0.467	0.471	0.579	0.521	0.530

Clustered Standard Errors in Parentheses. Principal Component (PCA) of Index used as DV for OLS models.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Table 6: Component and time horizon models (WTO-period only) with absolute bureaucratic capacity variable

	Time Horizon Models			Component Models			
				DV: Forum Choice		DV: Index w/o F. Choice	
C. Rights	(T4)	(T5)	(T6)	(C5)	(C6)	(C7)	(C8)
Multilateral Disputes				5.997***	5.405***	1.365***	0.513
				(1.656)	(1.739)	(0.241)	(0.362)
Dispute Asymmetry					-3.723*		-1.142*
					(2.065)		(0.598)
Multilateral Disputes$_{t-10}$	1.374***		0.629				
	(0.234)		(0.425)				
Dispute Asymmetry$_{t-10}$		-1.351**	-1.147**				
		(0.486)	(0.497)				
Δ Bureaucratic C.				0.254***	0.267***		
				(0.0779)	(0.0801)		
Bureaucratic C.$_{Min}$				0.0966	0.0860		
				(0.0998)	(0.0940)		
Δ Bureaucratic C.$_{GDP}$	0.143*	0.112	0.133			0.153**	0.221**
	(0.0745)	(0.128)	(0.131)			(0.0679)	(0.0951)
Bureaucratic C.$_{GDP\|Min}$	0.0477	-0.0548	-0.0414			0.0348	0.0500
	(0.0835)	(0.157)	(0.158)			(0.0828)	(0.135)
Δ Market Access	-0.546**	-0.801**	-0.708**	-0.110	-0.518	-0.402*	-0.636*
	(0.225)	(0.296)	(0.320)	(1.099)	(1.156)	(0.231)	(0.327)
Δ Retaliatory Capacity	0.0133	-0.0726	-0.0663	-0.257	-0.327**	0.0179	-0.0294
	(0.0386)	(0.0601)	(0.0579)	(0.161)	(0.143)	(0.0363)	(0.0612)
WTO Membership	-0.0501	1.121*	0.796	0.378	0.992	-0.152	0.646
	(0.226)	(0.631)	(0.596)	(2.220)	(2.071)	(0.258)	(0.525)
Democracy	-0.125	-0.0164	-0.0252	0.756	0.835	-0.0573	-0.0105
	(0.190)	(0.262)	(0.257)	(0.555)	(0.580)	(0.158)	(0.216)
PTA Depth	0.441***	0.436***	0.425***	0.940***	0.964***	0.343***	0.349***
	(0.0496)	(0.0543)	(0.0510)	(0.174)	(0.201)	(0.0438)	(0.0462)
PTA Members	0.0153	0.0213	0.0242*	0.0877**	0.0998***	0.0144	0.0182
	(0.0120)	(0.0130)	(0.0137)	(0.0384)	(0.0361)	(0.0112)	(0.0139)
Previous PTAs	0.277*	0.324*	0.316	0.131	0.0599	0.305**	0.235
	(0.157)	(0.185)	(0.190)	(0.463)	(0.490)	(0.140)	(0.182)
N	332	250	250	279	218	332	260
Year Clustered SE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pseudo R^2	0.566	0.520	0.525	0.644	0.607	0.559	0.504

Fixed-Effects OLS regressions with Principal Component as dependent variable for Time Horizon Models and C3-C4.
Logistic regression estimators used for Forum Choice component models.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Table 7: Main models with complainant rights index as DV (OLS) and ordered logit with year dummies instead of FE. Models M6 and M7 in this table are used to compute Figure 10.

	Complete (1979-2016)		WTO (1995-2016)					
	OLS		Ordered Logit			OLS		
C. Rights	(M1)	(M2)	(M3)	(M4)	(M5)	(M6)	(M7)	(M8)
Multilateral Disputes	1.163***		1.894***		1.308	1.522***		0.644
	(0.260)		(0.509)		(0.867)	(0.309)		(0.451)
Dispute Asymmetry		-1.189*		-2.574***	-2.072**		-1.984***	-1.773**
		(0.601)		(0.887)	(0.930)		(0.665)	(0.678)
Δ Bureaucratic C.	0.0345*	0.0399*	0.0523	0.0835*	0.0898*	0.0296	0.0423*	0.0446*
	(0.0195)	(0.0204)	(0.0535)	(0.0461)	(0.0465)	(0.0245)	(0.0234)	(0.0225)
Δ Market Access	-0.499*	-0.692**	-1.174*	-1.648**	-1.345	-0.518	-0.898**	-0.773*
	(0.262)	(0.323)	(0.668)	(0.780)	(0.903)	(0.324)	(0.398)	(0.444)
Δ Retaliatory Capacity	-0.00294	-0.0646	0.0338	-0.0708	-0.0656	0.00463	-0.0673	-0.0651
	(0.0341)	(0.0518)	(0.0715)	(0.124)	(0.116)	(0.0475)	(0.0740)	(0.0707)
WTO Membership	-0.188	0.689	-0.671	1.719*	1.118	-0.215	1.161	0.793
	(0.273)	(0.521)	(0.592)	(0.986)	(0.930)	(0.382)	(0.744)	(0.709)
Democracy	-0.00857	-0.0324	-0.116	0.0804	0.0781	-0.0186	-0.0323	-0.0348
	(0.176)	(0.226)	(0.394)	(0.526)	(0.500)	(0.211)	(0.276)	(0.270)
PTA Depth	0.507***	0.527***	0.909***	0.914***	0.890***	0.434***	0.458***	0.444***
	(0.0555)	(0.0569)	(0.133)	(0.148)	(0.149)	(0.0565)	(0.0596)	(0.0610)
PTA Members	0.0242**	0.0300**	0.0209	0.0363	0.0417	0.0183	0.0265*	0.0296*
	(0.0109)	(0.0127)	(0.0178)	(0.0249)	(0.0261)	(0.0127)	(0.0153)	(0.0162)
Previous PTAs	0.464***	0.386**	0.974***	1.020***	1.013***	0.467***	0.390**	0.388*
	(0.136)	(0.165)	(0.255)	(0.333)	(0.335)	(0.160)	(0.188)	(0.191)
N	450	349	332	260	260	320	260	260
Year-Clustered SE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	No	No	No	Yes	Yes	Yes
Pseudo R^2	0.526	0.479	0.340	0.318	0.321	0.534	0.479	0.483

Clustered Standard Errors in Parentheses.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Table 8: Robustness checks using alternative specifications (WTO-period only).

	I.C.$_{GDP}$			Weighted DV Index			Weighted DV Index + I.C.$_{GDP}$		
	PCA (FE OLS)		FE O.Logit	PCA (FE OLS)		FE O.Logit	PCA (FE OLS)		FE O.Logit
C. Rights	(R1)	(R2)	(R3)	(R4)	(R5)	(R6)	(R7)	(R8)	(R9)
Multilateral Disputes	1.634***	1.097***	1.255	1.337***	0.948**	1.267	1.378***	0.978**	1.292
	(0.259)	(0.384)	(0.812)	(0.251)	(0.401)	(0.798)	(0.244)	(0.397)	(0.796)
Dispute Asymmetry		-1.287**	-2.823***		-1.323*	-2.877**		-1.162*	-2.630**
		(0.564)	(0.968)		(0.682)	(1.130)		(0.665)	(1.075)
Δ Bureaucratic C.				0.0265	0.0440*	0.0783*			
				(0.0245)	(0.0220)	(0.0466)			
Δ Bureaucratic C.$_{GDP}$	0.119	0.171**	0.356**				0.123*	0.196***	0.443***
	(0.0703)	(0.0712)	(0.181)				(0.0665)	(0.0673)	(0.168)
Δ Market Access	-0.470**	-0.535	-1.317	-0.628**	-0.741*	-1.554*	-0.562**	-0.598	-1.425*
	(0.221)	(0.341)	(0.812)	(0.282)	(0.416)	(0.804)	(0.231)	(0.379)	(0.807)
Δ Retaliatory Capacity	0.00835	-0.0470	-0.0948	0.0148	-0.0388	-0.0797	0.0157	-0.0324	-0.0831
	(0.0396)	(0.0610)	(0.0870)	(0.0475)	(0.0712)	(0.127)	(0.0455)	(0.0683)	(0.110)
WTO Membership	-0.291	0.588	1.653	-0.279	0.553	1.536	-0.273	0.575	1.537
	(0.263)	(0.534)	(1.084)	(0.312)	(0.643)	(1.112)	(0.300)	(0.634)	(1.126)
Democracy	-0.0758	0.0358	0.192	0.0488	0.0663	0.0551	0.0789	0.124	0.288
	(0.189)	(0.253)	(0.539)	(0.199)	(0.256)	(0.570)	(0.196)	(0.257)	(0.524)
PTA Depth	0.433***	0.423***	0.940***	0.422***	0.424***	0.955***	0.417***	0.416***	0.950***
	(0.0542)	(0.0587)	(0.155)	(0.0518)	(0.0550)	(0.0889)	(0.0529)	(0.0574)	(0.0946)
PTA Members	0.0154	0.0235	0.0417**	0.0116	0.0228	0.0532*	0.00754	0.0151	0.0377
	(0.0126)	(0.0158)	(0.0201)	(0.0131)	(0.0175)	(0.0274)	(0.0135)	(0.0175)	(0.0235)
Previous PTAs	0.275*	0.270	0.528	0.231**	0.184	0.308	0.230**	0.180	0.243
	(0.138)	(0.172)	(0.358)	(0.105)	(0.131)	(0.231)	(0.108)	(0.134)	(0.237)
N	332	260	260	332	260	260	332	260	260
Year-Clustered SE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pseudo R^2	0.580	0.531	0.468	0.524	0.480	0.445	0.525	0.482	0.450

Year-Clustered Standard Errors in Parentheses.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Table 9: Robustness checks: key IVs as binary and categorical variables, respectively. (WTO-Period only).

	Binary Multilateral Disputes				Categorical D. Asymmetry		Both	
	PCA	FE-O.Logit	PCA	FE-O.Logit	PCA	FE-O.Logit	PCA	FE-O.Logit
C. Rights	(R10)	(R11)	(R12)	(R13)	(R14)	(R15)	(R16)	(R17))
Multilateral Disputes					1.293***	1.914**		
					(0.407)	(0.807)		
Multilateral Disputes (Dummy)	1.099***	1.808***	0.688***	1.085**			0.783***	1.357***
	(0.182)	(0.407)	(0.208)	(0.463)			(0.215)	(0.459)
Dispute Asymmetry			-1.322**	-2.784***				
			(0.545)	(0.923)				
Dispute Asymmetry (Categorical)					0.198	0.0437	0.185	0.0396
					(0.156)	(0.273)	(0.157)	(0.279)
Δ Bureaucratic C.	0.0417**	0.0999**	0.0438**	0.110***	0.0408*	0.0865**	0.0461**	0.109***
	(0.0193)	(0.0434)	(0.0197)	(0.0396)	(0.0200)	(0.0380)	(0.0192)	(0.0383)
Δ Market Access	-0.325	-0.752	-0.657*	-1.420*	-0.535	-1.214	-0.550	-1.205*
	(0.270)	(0.570)	(0.347)	(0.725)	(0.387)	(0.851)	(0.342)	(0.728)
Δ Retaliatory Capacity	0.0172	0.0289	-0.0457	-0.0975	-0.0280	-0.0420	-0.0218	-0.0291
	(0.0335)	(0.0701)	(0.0607)	(0.103)	(0.0542)	(0.0962)	(0.0513)	(0.0891)
WTO Membership	0.0693	0.0923	0.416	1.371	0.470	1.345	0.336	1.057
	(0.213)	(0.558)	(0.547)	(1.096)	(0.590)	(1.132)	(0.596)	(1.134)
Democracy	-0.0729	-0.0721	-0.0260	-0.0171	0.0130	-0.0431	-0.00220	-0.0749
	(0.177)	(0.453)	(0.246)	(0.541)	(0.241)	(0.518)	(0.238)	(0.520)
PTA Depth	.418***	0.896***	0.425***	0.947***	0.432***	0.942***	0.427***	0.940***
	(0.0518)	(0.144)	(0.0560)	(0.146)	(0.0494)	(0.137)	(0.0485)	(0.135)
PTA Members	0.0198	0.0277*	0.0291*	0.0531***	0.0278*	0.0475**	0.0264*	0.0420**
	(0.0123)	(0.0155)	(0.0155)	(0.0204)	(0.0147)	(0.0213)	(0.0143)	(0.0187)
Previous PTAs	0.313**	0.848**	0.276	0.641*	0.278*	0.592*	0.279*	0.624*
	(0.135)	(0.333)	(0.167)	(0.342)	(0.161)	(0.315)	(0.154)	(0.324)
N	332	332	260	260	260	260	260	260
Year-Clustered SE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pseudo R^2	0.578	0.472	0.540	0.480	0.521	0.455	0.532	0.468

Year-Clustered Standard Errors in Parentheses.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Table 10: Component and time horizon models with alternative measure of bureaucratic capacity (WTO-Period only)

	Time Horizon Models			Component Models							
				DV: Forum Choice				DV: Index w/o F. Choice			
C. Rights	(Y1)	(Y2)	(Y3)	(Z1)	(Z2)	(Z3)	(Z4)	(Z5)	(Z6)	(Z7)	(Z8)
Multilateral Disputes				6.465***	5.748***	4.901***	3.973**	1.373***	0.504	1.325***	0.450
				(1.728)	(1.883)	(1.337)	(1.545)	(0.241)	(0.358)	(0.242)	(0.359)
Dispute Asymmetry					-3.869*		-3.209**		-1.176**		-1.323**
					(2.070)		(1.507)		(0.557)		(0.570)
Multilateral Disputes$_{t-10}$	1.327***		0.639								
	(0.234)		(0.431)								
Dispute Asymmetry$_{t-10}$		-1.291**	-1.071**								
		(0.471)	(0.482)								
Δ Bureaucratic C.	0.0196	0.0272	0.0310	0.208***	0.224***					0.0197	0.0266
	(0.0225)	(0.0206)	(0.0199)	(0.0778)	(0.0747)					(0.0181)	(0.0177)
Δ Bureaucratic C.$_{GDP}$						0.00600	-0.0760	0.135**	0.191***		
						(0.438)	(0.465)	(0.0538)	(0.0517)		
Δ Market Access	-0.568*	-0.901**	-0.815**	-0.0605	-0.479	0.425	0.0819	-0.390	-0.617*	-0.424	-0.699*
	(0.291)	(0.342)	(0.364)	(1.075)	(1.119)	(1.073)	(1.150)	(0.233)	(0.325)	(0.278)	(0.361)
Δ Retaliatory Capacity	0.0135	-0.0661	-0.0611	-0.228	-0.303**	-0.122	-0.187	0.0166	-0.0334	0.0198	-0.0305
	(0.0384)	(0.0562)	(0.0545)	(0.146)	(0.125)	(0.139)	(0.138)	(0.0358)	(0.0562)	(0.0351)	(0.0569)
WTO Membership	-0.0116	1.085	0.756	0.364	1.114	0.981	1.561	-0.136	0.657	-0.120	0.628
	(0.236)	(0.637)	(0.602)	(1.915)	(1.949)	(1.799)	(1.828)	(0.264)	(0.534)	(0.269)	(0.538)
Democracy	-0.146	-0.0642	-0.0756	0.786	0.866	0.747	0.784	-0.0512	-0.00720	-0.0884	-0.0717
	(0.195)	(0.261)	(0.255)	(0.571)	(0.596)	(0.554)	(0.574)	(0.161)	(0.222)	(0.163)	(0.221)
PTA Depth	0.454***	0.436***	0.428***	0.940***	0.955***	0.863***	0.874***	0.348***	0.357***	0.354***	0.366***
	(0.0499)	(0.0555)	(0.0533)	(0.183)	(0.213)	(0.154)	(0.172)	(0.0459)	(0.0492)	(0.0449)	(0.0470)
PTA Members	0.0194	0.0258**	0.0293**	0.0766	0.0913**	0.0695*	0.0820**	0.0146	0.0188	0.0193*	0.0258*
	(0.0116)	(0.0119)	(0.0127)	(0.0469)	(0.0374)	(0.0421)	(0.0417)	(0.0112)	(0.0136)	(0.0110)	(0.0137)
Previous PTAs	0.297**	0.305**	0.301*	0.164	0.102	0.342	0.316	0.316**	0.256*	0.323**	0.270*
	(0.142)	(0.143)	(0.148)	(0.461)	(0.486)	(0.430)	(0.478)	(0.123)	(0.145)	(0.122)	(0.146)
N	332	250	250	279	218	279	218	332	260	332	260
Year Clustered SE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pseudo R^2	0.564	0.516	0.522	0.640	0.603	0.607	0.563	0.559	0.504	0.555	0.494

Fixed-Effects OLS regressions with PCA as dependent variable used for Time Horizon Models and Index Models.
Logistic regression estimators used for Forum Choice component models.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Table 11: Robustness checks: Models excluding *PTA Depth* to mitigate post-treatment bias.

	Entire Period				WTO Era			
	FE-O.Logit			PCA	FE-O.Logit			PCA
C. Rights	(R18)	(R19)	(R20)	(R21)	(R22)	(R23)	(R24)	(R25))
Multilateral Disputes	2.122***		1.136*	1.348***	2.563***		1.566**	1.805***
	(0.384)		(0.687)	(0.398)	(0.465)		(0.618)	(0.320)
Dispute Asymmetry		-3.167***	-2.651**	-1.525**		-3.757***	-2.986**	-1.907***
		(0.961)	(1.056)	(0.650)		(1.164)	(1.166)	(0.624)
Δ Bureaucratic C.	0.0748***	0.0772**	0.0864***	0.0369**	0.0666*	0.0788**	0.0879**	0.0411*
	(0.0273)	(0.0303)	(0.0319)	(0.0179)	(0.0357)	(0.0355)	(0.0358)	(0.0207)
Δ Market Access	-0.355	-0.584	-0.430	-0.147	-0.477	-0.980	-0.704	-0.195
	(0.454)	(0.507)	(0.534)	(0.308)	(0.515)	(0.626)	(0.725)	(0.370)
Δ Retaliatory Capacity	0.0711	-0.0214	-0.0120	-0.000777	0.0564	-0.0367	-0.0237	-0.0244
	(0.0593)	(0.0782)	(0.0787)	(0.0523)	(0.0786)	(0.106)	(0.101)	(0.0625)
WTO Membership	0.329	2.380***	1.698***	0.882**	0.181	3.057***	2.103**	1.116*
	(0.464)	(0.564)	(0.656)	(0.399)	(0.617)	(0.915)	(0.918)	(0.539)
Democracy	0.310	0.448	0.426	0.223	0.183	0.374	0.342	0.226
	(0.301)	(0.305)	(0.310)	(0.213)	(0.376)	(0.435)	(0.440)	(0.265)
PTA Members	0.0254	0.0361	0.0425*	0.0321**	0.00466	0.0126	0.0194	0.0234
	(0.0184)	(0.0235)	(0.0243)	(0.0142)	(0.0163)	(0.0203)	(0.0215)	(0.0154)
Previous PTAs	1.294***	1.314***	1.300***	0.752***	1.281***	1.319***	1.284***	0.694***
	(0.232)	(0.277)	(0.280)	(0.158)	(0.267)	(0.298)	(0.306)	(0.170)
N	332	332	260	260	260	260	260	260
Year-Clustered SE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pseudo R^2	0.280	0.219	0.225	0.275	0.317	0.255	0.269	0.339

Year-Clustered Standard Errors in Parentheses.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Table 12: Robustness checks: ordered logit and fixed effects OLS (using principal component of DV) with cubic time trend

	O. Logit		FE OLS (PCA)		
C. Rights	(R26)	(R27)	(R28)	(R29)	(R30)
Multilateral Disputes	1.295***		1.313***		0.923**
	(0.449)		(0.251)		(0.418)
Dispute Asymmetry		-2.523**		-1.741***	-1.444**
		(1.009)		(0.586)	(0.597)
Δ Bureaucratic C.	0.0457	0.0967**	0.0216	0.0401*	0.0421**
	(0.0428)	(0.0446)	(0.0224)	(0.0213)	(0.0203)
Δ Market Access	1.131**	-1.712***	-0.514*	-0.892**	-0.687*
	(0.503)	(0.620)	(0.288)	(0.356)	(0.396)
Δ Retaliatory Capacity	0.0579	-0.0532	0.0202	-0.0490	-0.0477
	(0.0646)	(0.0909)	(0.0401)	(0.0696)	(0.0658)
WTO Membership	0.352	1.184***	0.192	0.704***	0.469**
	(0.327)	(0.364)	(0.186)	(0.259)	(0.226)
Democracy	-0.0886	0.105	-0.0976	-0.00568	-0.00305
	(0.313)	(0.398)	(0.201)	(0.269)	(0.258)
PTA Depth	0.882***	0.898***	0.430***	0.446***	0.424***
	(0.146)	(0.156)	(0.0544)	(0.0595)	(0.0590)
PTA Members	0.0191	0.0446**	0.0191	0.0311*	0.0337**
	(0.0162)	(0.0208)	(0.0116)	(0.0162)	(0.0164)
Previous PTAs	0.973***	1.043***	0.273**	0.277	0.276
	(0.216)	(0.285)	(0.138)	(0.171)	(0.176)
N	332	260	332	260	260
Cubic Time Trend	Yes	Yes	Yes	Yes	Yes
Year FE	No	No	No	No	No
Pseudo R^2	0.340	0.324	0.578	0.526	0.536

Robust Standard Errors in Parentheses.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

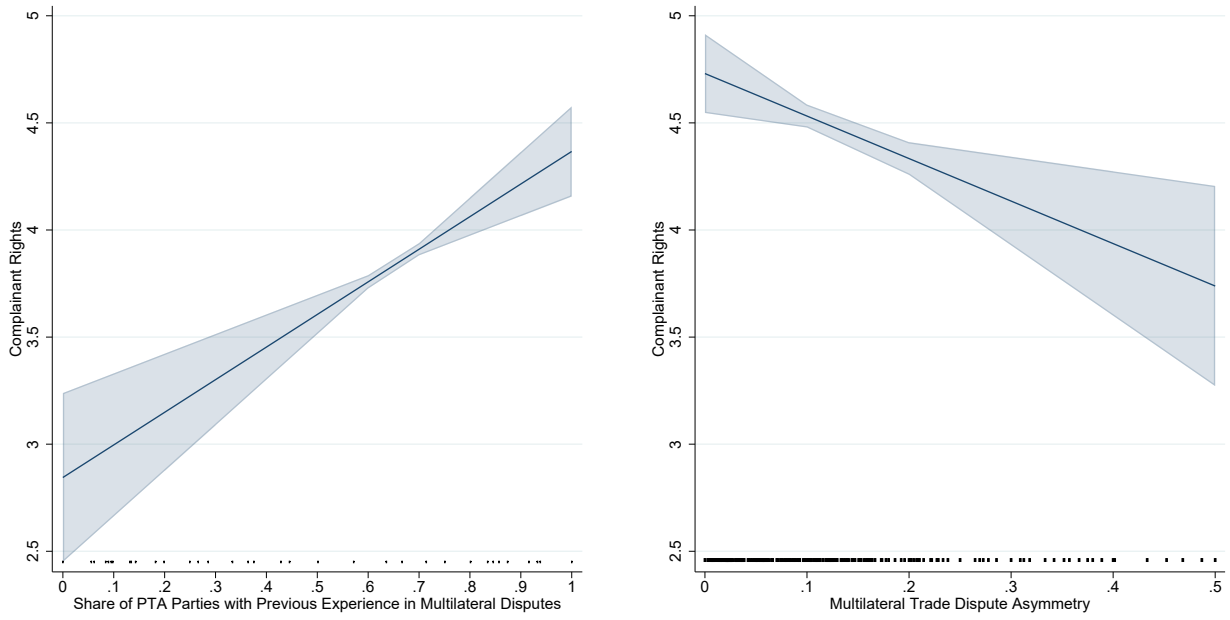


Figure 10: Marginal effects plot of OLS-FE estimations based on the specification of models M6 (left panel) and M7 (right panel) for the WTO-period only (Table 7). 95% confidence intervals indicated by shaded areas.

Table 13: Robustness checks: total trade volume instead of retaliatory capacity (WTO-period only).

	PCA	FE-O.Logit	PCA	FE-O.Logit	PCA	FE-O.Logit
C. Rights	(R38)	(R39)	(R40)	(R41)	(R42)	(R43))
Multilateral Disputes	1.428***	1.965***			0.990**	1.195
	(0.286)	(0.533)			(0.456)	(0.926)
Dispute Asymmetry			-1.216*	-2.557***	-1.015*	-2.216**
			(0.593)	(0.910)	(0.584)	(0.959)
Δ Bureaucratic C.	0.0172	0.0344	0.0205	0.0434	0.0266	0.0589
	(0.0234)	(0.0458)	(0.0236)	(0.0449)	(0.0220)	(0.0438)
Δ Market Access	-0.522**	-1.087*	-0.924**	-1.902***	-0.738*	-1.621**
	(0.245)	(0.555)	(0.327)	(0.725)	(0.356)	(0.825)
Trade Volume	0.0583	0.118	0.0588	0.0804	0.0398	0.0565
	(0.0383)	(0.0737)	(0.0555)	(0.0871)	(0.0590)	(0.0912)
WTO Membership	-0.246	-0.121	1.112*	2.189**	0.577	1.653
	(0.252)	(0.636)	(0.547)	(1.024)	(0.522)	(1.029)
Democracy	0.0721	0.0135	0.0462	0.164	0.0320	0.104
	(0.187)	(0.441)	(0.239)	(0.489)	(0.234)	(0.489)
PTA Depth	0.426***	0.880***	0.440***	0.928***	0.422***	0.924***
	(0.0507)	(0.149)	(0.0562)	(0.151)	(0.0564)	(0.151)
PTA Members	0.0152*	0.0238**	0.00821	0.0211*	0.0152*	0.0287**
	(0.00802)	(0.0119)	(0.00762)	(0.0110)	(0.00875)	(0.0115)
Previous PTAs	0.252*	0.726**	0.234	0.552*	0.243	0.562*
	(0.138)	(0.326)	(0.167)	(0.326)	(0.173)	(0.338)
N	332	332	260	260	260	260
Year-Clustered SE	Yes	Yes	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes	Yes	Yes
Pseudo R^2	0.584	0.472	0.519	0.463	0.529	0.467

Year-Clustered Standard Errors in Parentheses.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Table 14: 2FE Estimation (Only PTAs since 1995.)

	Complainants & Defendants		Including 3rd Parties	
Δ from WTO Complainant Rights	(D1)	(D2)	(D3)	(D4)
Multilateral Dispute	-0.764**	-0.770**	-0.487	-0.489*
	(0.327)	(0.337)	(0.294)	(0.266)
WTO Membership	No	Yes	No	Yes
US/EU-PTA Dummies	No	Yes	No	Yes
Observations	536	530	536	530
N (Countries)	106	103	106	103
Country FE	Yes	Yes	Yes	Yes
Year FE	Yes	Yes	Yes	Yes
Country-Clustered SE	Yes	Yes	Yes	Yes
Adjusted R^2	0.359	0.382	0.356	0.377

Country-Clustered Standard Errors in Parentheses.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Table 15: Monadic 2FE models with Time-Variant Bureaucratic Capacity.

	Complainants & Defendants			Including 3rd Parties		
Δ from WTO Complainant Rights	(DR1)	(DR2)	(DR3)	(DR4)	(DR5)	(DR6)
Multilateral Dispute	-0.566*	-0.599**	-1.105***	-0.369*	-0.407**	-0.667***
	(0.297)	(0.274)	(0.312)	(0.206)	(0.192)	(0.229)
Bureaucratic C.$_{GDP}$	0.162	0.255	-0.00517	0.168	0.262	-0.0107
	(0.234)	(0.193)	(0.259)	(0.223)	(0.182)	(0.268)
Adjusted R^2	0.432	0.458	0.472	0.430	0.456	0.468
	(IR1)	(IR2)	(IR3)	(IR4)	(IR5)	(IR6)
Multilateral Dispute	-0.613**	-0.639**	-1.206***	-0.353	-0.404**	-0.676***
	(0.268)	(0.247)	(0.286)	(0.214)	(0.202)	(0.225)
Multilateral Disputes	0.522**	0.441**	0.559	0.053	0.009	-0.035
x Bureaucratic C.$_{GDP}$	(0.229)	(0.212)	(0.341)	(0.213)	(0.194)	(0.267)
Bureaucratic C.$_{GDP}$	0.127	0.221	-0.0285	0.159	0.260	-0.0137
	(0.245)	(0.204)	(0.267)	(0.226)	(0.183)	(0.262)
Adjusted R^2	0.436	0.460	0.473	0.430	0.455	0.467
WTO Membership	No	Yes	Yes	No	Yes	Yes
US/EU-PTA Dummies	No	Yes	Yes	No	Yes	Yes
Country-Specific Time Trends	No	No	Yes	No	No	Yes
Time-Variant Bureaucratic Capacity	Yes	Yes	Yes	Yes	Yes	Yes
Observations	981	981	981	981	981	981
N (Countries)	123	123	123	123	123	123

All Models Include Country and Year Fixed Effects. Country-Clustered Standard Errors in Parentheses.
Bureaucratic Capacity centred on median for models IR1-IR6.
* $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

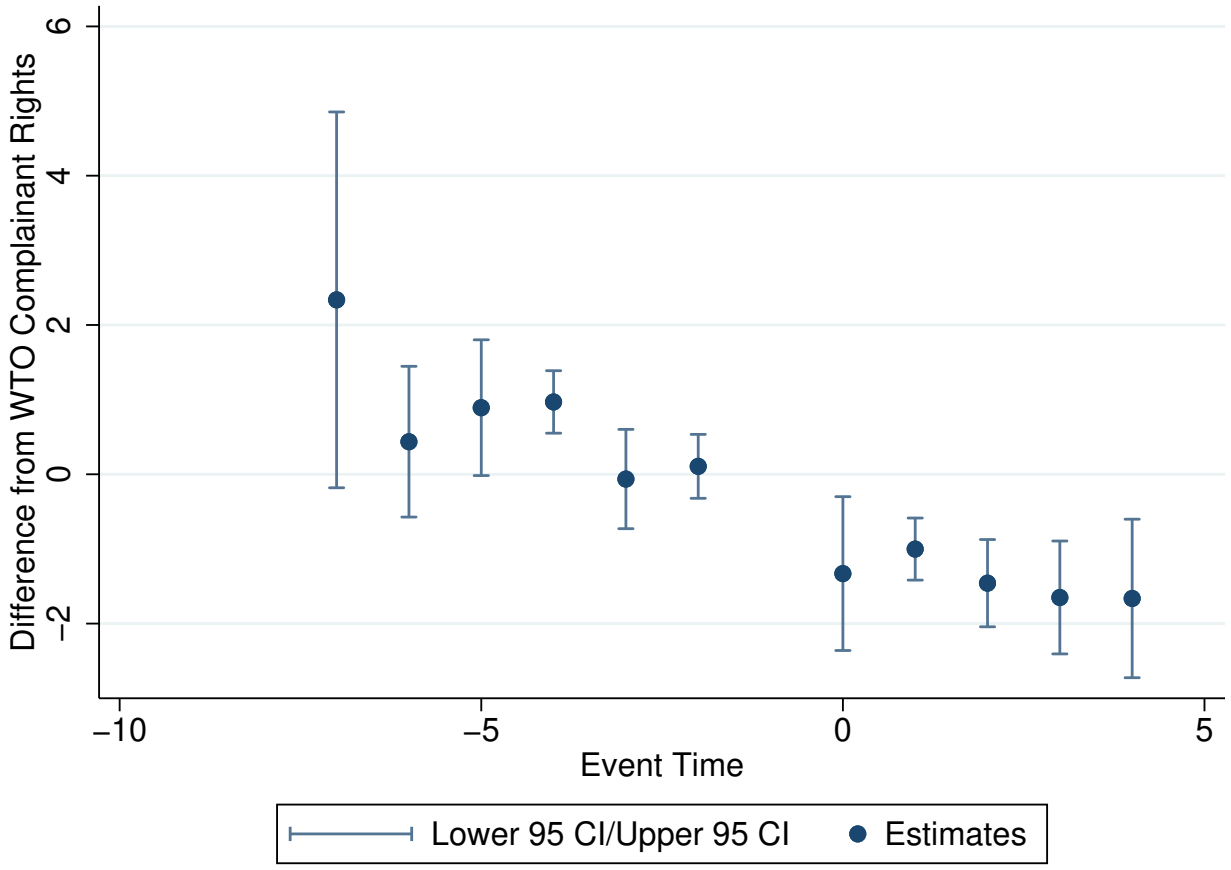


Figure 11: Event time plot for states experiencing their first multilateral dispute post-1995 (pooled over 5 years due to irregular conclusion of PTAs).

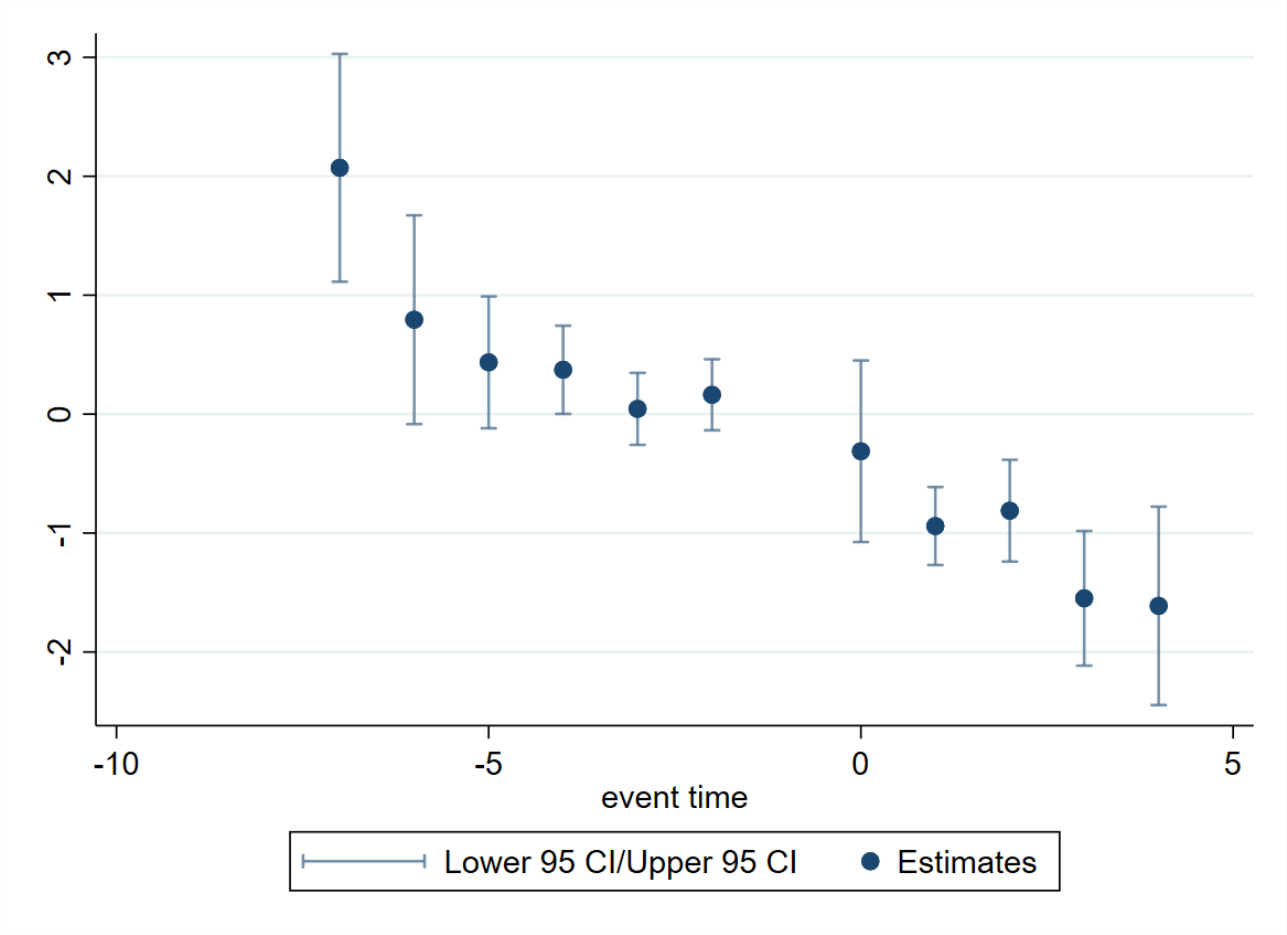


Figure 12: Event time plot for states experiencing their first multilateral dispute - including 3rd party participation - post-1995 (pooled over 5 years due to irregular conclusion of PTAs).

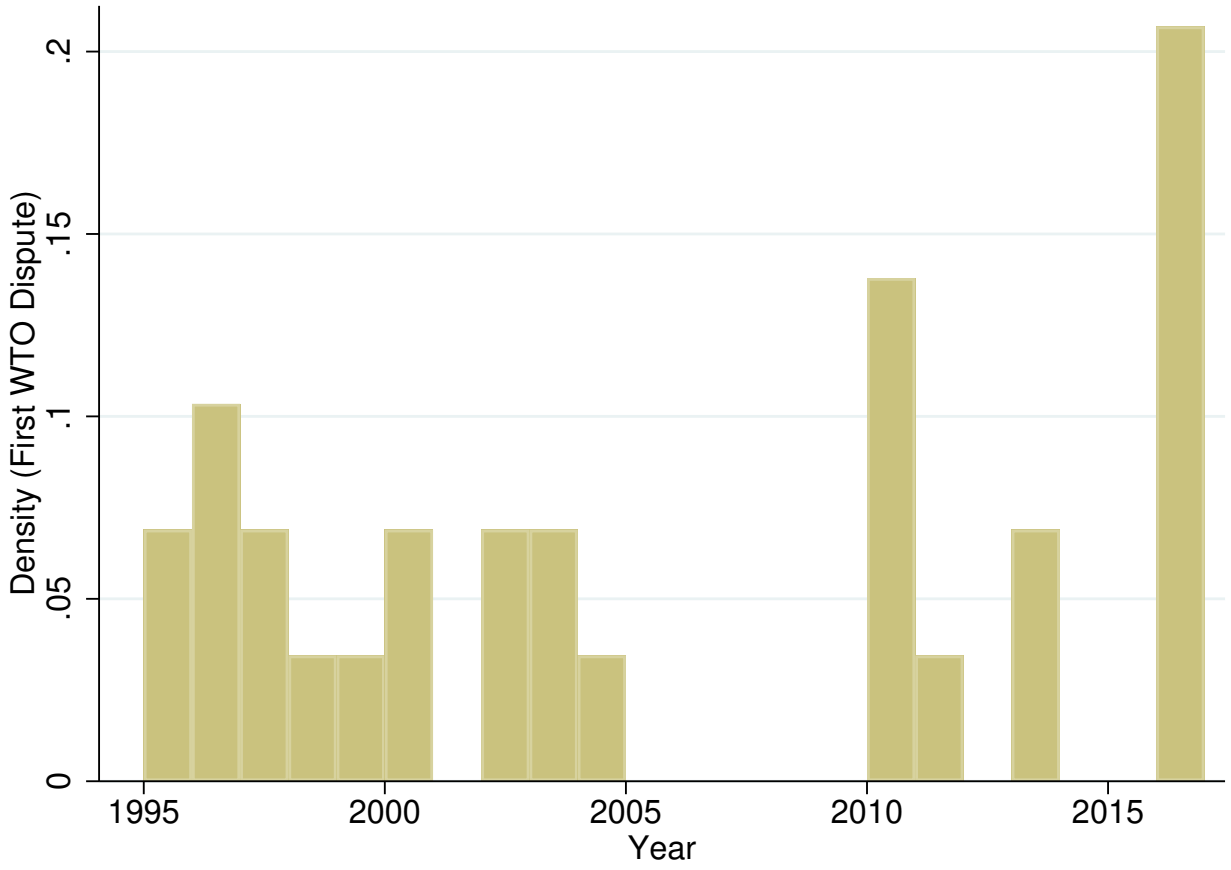


Figure 13: Temporal distribution of states experiencing their first WTO dispute (as complainant/defendant) among those without previous GATT disputes.

As laid out in the section on the operationalisation of the dependent variable, the complainant rights index is comprised of eight components. The following annex explains the rationale for their inclusion in the index.

DSM. The first component captures the type of *DSM*. PTAs without any provisions on dispute settlement are assigned a value of zero as the lack of a dispute settlement mechanism is equivalent to the lack of a potential complainant's right to have a violation of trade rules addressed.

Arbitration. If a PTA merely includes provisions on mediation or consultation, this is considered a significant advantage for defendants as complainants rely on defendants' goodwill. Provisions on arbitration give complainants the right to have disputes settled with the involvement of authoritative third parties.

Bindingness. The third component, *Bindingness*, indicates whether the provisions on dispute settlement are binding to the parties. Explicitly binding provisions are considered equivalent to the right of complainants to have a panel report or final decision be put into practice. While lack of bindingness may increase the flexibility of dispute resolution and create room to manoeuvre, it is considered to be generally an advantage to defendants. If provisions are not binding, a complainant will not be able to enforce a verdict even after costly arbitration procedures but be dependent on the goodwill of the defendant.

Sanctions. This component indicates whether a PTA contains provisions on *Sanctions*. If this is the case, a PTA contains provisions on legitimate sanctions in the case of non-implementation. Given the overwhelming importance for complainants to be able to respond to non-implementation by defendants, the right to impose sanctions on defendants is a particularly crucial right that can be exercised by complainants.

Cross-Sector Sanctions. The next component deals with *Sanction Types* complainants are allowed to select. In the WTO, countermeasures generally should be imposed in the same sector affected by the original violation of provisions. However, acknowledging that this might be of no use or even more disadvantageous to the complainant under certain circumstances, the WTO allows for countermeasures in other sectors or, if necessary, even under different agreements (Shaffer/Meléndez-Ortiz 2010, p. 83). This is of particular importance for small and developing countries. If provisions

in PTAs give complainants the right to impose cross-sector retaliation, this can be a crucial advantage for complainants over provisions that force complainants to retaliate in the same sector.

Retaliation. This component describes the choice of retaliatory measures in the case of non-implementation. In the WTO, both parties can request consultations to resolve outstanding issues. If after 20 days no satisfactory compromise has been reached, the complainant can ask for permission for compensation or impose countermeasures (suspension of concessions or other obligations), which have to be authorised by the DSU (WTO 2017, pp. 140–141). In the context of PTAs, different provisions both involving third parties or not can be found. However, the right of complainants to choose the level of retaliation themselves - without necessary approval of third parties or even the defendant, which would essentially have veto power - is a significant advantage to complainants.

Monetary Sanctions. The penultimate component indicates whether *Monetary Sanctions* are a possible form of sanction under PTAs. Monetary sanctions are not generally considered in the WTO, given that the removal of the initial barrier to trade remains the prime goal of dispute settlement. If monetary sanctions are permitted, complainants have the right to directly benefit from the outcome of disputes even in case in which retaliation would be costly or of no use to complainants.

Forum Choice The last component describes the possibility of *Forum Choice*. Many PTAs allow their parties to bring disputes either to the PTA's dispute settlement procedure or to external DSMs, mostly the WTO DSU. Thus, complainants are able to choose the most advantageous forum for their complaint. Some PTAs require complainants not to initiate a similar dispute in a different forum once a dispute has been initiated. Albeit at times ambiguous from a legal perspective, forum choice gives complainants the right to choose the most promising forum whenever the subject matter of a potential disputes allows for settlement in either.

Description of the Dependent Variable

Correlation coefficients among the index's components as well as the means and standard deviation of each component are indicated in Table 16. Standard deviations reveal the variance of the components' scores, with *Monetary Sanctions* showing relatively little variation. Provisions on DSMs are present in 86% of all PTAs, while complainants can be entitled to impose Monetary Sanctions in merely 3% of PTAs. Correlation coefficients among these components indicate modest to medium levels of correlations. Interestingly, the highest correlation can be found between *Forum Choice* and

Table 16: Correlation among the components of the complainant rights index.

	DSM	Arbitration	Binding	Sanctions	Forum C.	Retal.	Sector	Monetary
DSM	1							
Arbitration	0.361	1						
Bindingness	0.359	0.762	1					
Sanctions	0.381	0.501	0.532	1				
Forum C.	0.233	0.622	0.604	0.596	1			
Retaliation	0.185	-0.0578	-0.0633	0.486	-0.179	1		
Sector (Retal.)	0.209	0.579	0.552	0.549	0.820	-0.199	1	
Monetary S.	0.0750	0.0848	0.174	0.197	0.160	-0.0823	0.0576	1
Mean	*0.86*	*0.44*	*0.43*	*0.46*	*0.24*	*0.17*	*0.21*	*0.03*
St. Deviation	*0.35*	*0.50*	*0.50*	*0.50*	*0.43*	*0.38*	*0.40*	*0.18*

the right to impose sanctions in any sectors. To a lesser extent, bindingness and arbitration somewhat correlate. While this should be expected, there is still a significant number of PTAs that either allow for arbitration or are legally binding.

These eight components comprise an additive index of complainant rights in DSMs, allowing for comparisons to the level of complainant rights in the WTO DSU and, previously, GATT.[42]

The distribution of the complainant rights index for all PTAs signed after 1979, i.e. the Tokyo Round of GATT, is shown in Figure 14. None of the PTAs grant complainant rights in all eight dimensions, and only a few PTAs reach a value of seven. Combining those PTAs with complainant rights values of five, six or seven indicates that quite a large share (29%) of PTAs have DSMs that grant as many or more complainant rights as the WTO DSU.

Based on the composition of the additive index, its components are converted into a unidimensional variable using principal component analysis. A dominant dimension emerges, with an eigenvalue of 3.67.[43]

[42]The Kaiser-Meyer-Olkin measure of sampling adequacy for the index is 0.705, which indicates that the components of the index are suitable for principal component analysis to a satisfactory degree. This value exceeds the generally accepted cut-off points between 0.5 and 0.6 (Cureton/D'Agostino 1983, p. 389). Moreover, the scale reliability of the additive index is also sufficient, with Crohnbach's alpha being 0.775, surpassing the established cut-off point of 0.7 (DeVellis 2003, pp. 95–96). Note that Crohnbach's alpha is not measuring the uni-dimensionality of the index, which is what the principal component analysis does, but the internal consistency of the index.

[43]The loadings of the eight components for the first and second principal component, respectively, are as follows: *DSM* (0.25; 0.34); *Arbitration* (0.43; -0.07); *Bindingness* (0.44; -0.06); *Sanctions* (0.40; 0.41); *Forum Choice* (0.45; -0.21);

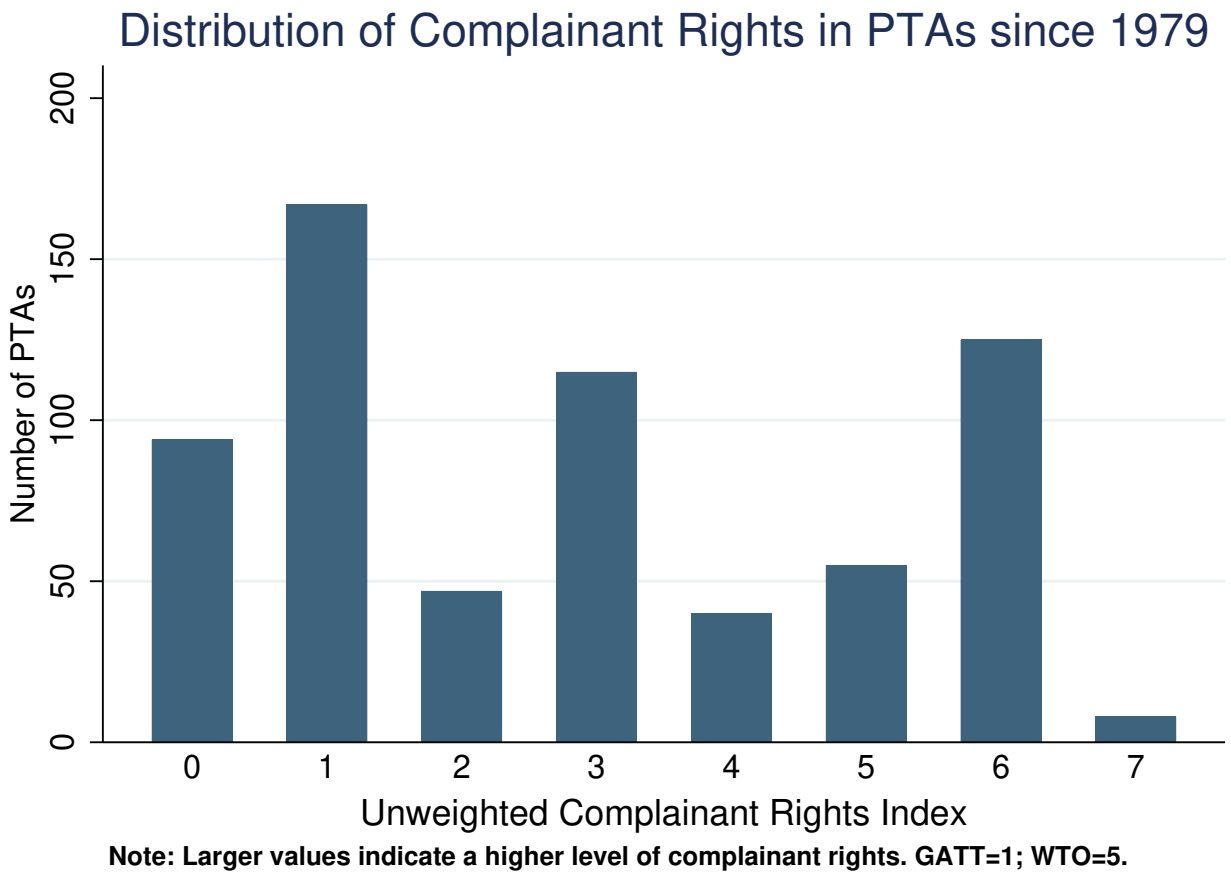


Figure 14: Distribution of the complainant rights index (DV)

The correlation coefficient between measurements of the dependent variable is satisfactorily large. The correlation coefficient between the main index and its principal component is 0.978, indicating nearly perfect correlation.

Retaliation (0.01; 0.78); *Cross-Sectorial Sanctions* (0.43; -0.23); *Monetary Sanctions* (0.11; -0.05).

5 Conclusion

Transnational and global governance are increasingly complex and differentiated. Not only has the number of stakeholders grown but so have the underlying mechanisms of governance and diplomacy. Technological advances have altered the way states interact and broadened the range of actors we refer as public entities. Globalisation in various areas is both creating further demand for transnational and global governance and changing how governance is organised. These developments have been addressed in theories on IOs and informal governance as well as indirect governance, amongst others.

This thesis makes a contribution to understanding, conceptualising and explaining how these developments shape a specific aspect of international cooperation and transnational governance. Its starting point is the realisation that governmental tasks and responsibilities, i.e., the public authority to act, is not confined to sovereign states. Addressing this gap, it developed a theory of transnational public authority, and a typology of ways to exercise public authority beyond states. This theory can be a useful framework for explaining how states organise public authority in an increasingly interdependent world. Collective agency is the central contribution to the typology, which allows a group of states to jointly act on behalf of the group's authority. Forgoing conferrals of authority to intermediaries, states exert direct control when collectively exercising authority. This is a meaningful difference from the delegation of authority to IOs. Moreover, collective agency enables participating states to mutually benefit from their expertise, thus mitigating individual capacity constraints. In consequence, collective agency may be a particularly salient form of transnational governance in policy areas where states value direct control and the capacity to act on their own.

This changing character of cooperation is particularly pronounced in international trade. The multilateral trading system and the network of PTAs create a complex system of heterogenous and differentiated relations. Functionally, the boundaries of trade governance are blurring and merging with other economic issues, reaching far beyond trade in goods. Interdependence and global supply chains create growing demand for comprehensive governance beyond states. Geographic boundaries in trade governance, thus, are blurring, too. States operate as collective agents in the form of trading blocs and collectively negotiate PTAs with third states. Acting as part of trading blocs allows states to align intra-bloc and extra-bloc commitments, which contributes to minimising disruptive trade rules. It can also help states work around capacity constraints, emphasising the heterogenous opportunities entailed in the actorness of trading blocs. The decision to negotiate collectively, however, often comes down to choice.

This thesis also addressed that states' exercise of public authority can be informed by other authoritative actors. Formal IOs can shape cooperation well beyond their jurisdiction, even across different levels of governance. Learning experiences, technical expertise and capacity travel across

different instances of cooperation, highlighting the spillover effects in complex governance regimes. The WTO is shown to operate as multilateral diffusion hub, which can create learning experiences for states that subsequently are reflected in the design of bilateral and plurilateral PTAs. Importantly, the learning effect once more stresses that institutions and economic diplomacy are not level playing fields.

These three papers on their own and jointly as parts of this thesis make a threefold contribution. Firstly, they offer a new angle at the conceptualisation of transnational governance and collective agency. Secondly, they emphasise the role of trading blocs as relevant actors in the governance of international trade and economic treaty-making. They do so as collective political agents, which allow their member states to pursue common interests. Thirdly, the role of extant institutions and state capacity help explain how states build upon experiences and consider institutional designs from related governance complexes. These then inform design choices when states cooperate.

Yet, much remains to be unravelled if we are to have a better understanding of transnational cooperation. Putting the theory of transnational public authority to empirical tests can help better understand why states choose different types of transnational cooperation across policy areas. The relevance of state capacity and control for this choice deserve closer scrutiny. A dynamic perspective on cooperation could contribute to explaining the evolution of governance regimes. That is, are different transnational actors alternative choices or do states transform them into other types? If the latter, why do states choose to alter the way transnational public authority is organised?

It would be worthwhile to further explore the role of trading blocs in trade governance. Specifically, the effects of collective negotiations on individual trading bloc members could shed light on the roles of rule alignment and effects on trade flows. Much remains to be scrutinised when it comes to the design of collectively negotiated agreements - and those bilaterally negotiated by member states of trading blocs. Are more permissive rules accounting for intra-bloc ties and value chains? If so, the collective agency of trading blocs could be foster a deeper interdependence that goes beyond negotiating collective agreements. Similarly, cooperation in multiple governance complexes and the transnational exercise of public authority through various schemes could entail even more comprehensive learning or even - decentralised - harmonisation. With transnational governance growing ever more complex, there certainly is no shortage in mechanisms to explore.

References

Abbott, Kenneth W and Benjamin Faude (2020). "Choosing low-cost institutions in global governance". In: *International Theory*, pp. 1–30.

Abbott, Kenneth W and Duncan Snidal (1998). "Why states act through formal international organizations". In: *Journal of conflict resolution* 42.1, pp. 3–32.

Abbott, Kenneth W et al. (2015). *International organizations as orchestrators*. Cambridge University Press.

— (2016). "Two logics of indirect governance: Delegation and orchestration". In: *British Journal of Political Science* 46.4, pp. 719–729.

Abbott, Kenneth W et al. (2020). *The Governor's Dilemma: Indirect Governance Beyond Principals and Agents*. Oxford University Press.

Adriaensen, Johan (2016). *National administrations in EU trade policy: Maintaining the capacity to control*. Springer.

Baert, Francis, Tiziana Scaramagli, and Fredrik Söderbaum (2014). "Intersecting interregionalism". In: *Global Governance and the EU*.

Baier, Scott L and Jeffrey H Bergstrand (2004). "Economic determinants of free trade agreements". In: *Journal of international Economics* 64.1, pp. 29–63.

Bendor, Jonathan, Amihai Glazer, and Thomas Hammond (2001). "Theories of delegation". In: *Annual review of political science* 4.1, pp. 235–269.

Betz, Timm (2019). "Tariff evasion and trade policies". In: *International Studies Quarterly* 63.2, pp. 380–393.

Börzel, Tanja A and Michael Zürn (2021). "Contestations of the liberal international order: From liberal multilateralism to postnational liberalism". In: *International Organization* 75.2, pp. 282–305.

Bradley, Curtis A and Judith G Kelley (2008). "The concept of international delegation". In: *Law and Contemporary Problems* 71.1, pp. 1–36.

Bretherton, Charlotte and John Vogler (2005). *The European Union as a global actor*. Routledge.

Chen, Maggie Xiaoyang and Sumit Joshi (2010). "Third-country effects on the formation of free trade agreements". In: *Journal of International Economics* 82.2, pp. 238–248.

Churchill, Robin R and Geir Ulfstein (2000). "Autonomous institutional arrangements in multilateral environmental agreements: a little-noticed phenomenon in international law". In: *American Journal of International Law* 94.4, pp. 623–659.

Closa, Carlos and Lorenzo Casini (2016). *Comparative regional integration: governance and legal models*. Vol. 10. Cambridge University Press.

Dunlop, Adam, Stefan Szepesi, and Kathleen Van Hove (2004). "Organising trade negotiating capacity at regional level". In: *A Caribbean case study. European Centre for Development Policy Management (ECDPM). Maastricht: ECDPM*.

Dür, Andreas, Leonardo Baccini, and Manfred Elsig (2014). "The design of international trade agreements: Introducing a new dataset". In: *The Review of International Organizations* 9, pp. 353–375.

Egger, Peter and Mario Larch (2008). "Interdependent preferential trade agreement memberships: An empirical analysis". In: *Journal of International Economics* 76.2, pp. 384–399.

Freudlsperger, Christian, Adina Maricut-Akbik, and Marta Migliorati (2022). "Opening Pandora's Box? Joint Sovereignty and the Rise of EU Agencies with Operational Tasks". In: *Comparative Political Studies* 55.12, pp. 1983–2014.

Haftel, Yoram Z and Alexander Thompson (2006). "The independence of international organizations: Concept and applications". In: *Journal of Conflict Resolution* 50.2, pp. 253–275.

Hawkins, Darren G et al. (2006). *Delegation and agency in international organizations*. Cambridge University Press.

Hettne, Björn (2005). "Beyond the 'new'regionalism". In: *New political economy* 10.4, pp. 543–571.

Hooghe, Liesbet, Tobias Lenz, and Gary Marks (2019). *A theory of international organization*. Oxford University Press.

Hooghe, Liesbet and Gary Marks (2015). "Delegation and pooling in international organizations". In: *The Review of International Organizations* 10.3, pp. 305–328.

Hooghe, Liesbet et al. (2017). *Measuring international authority: A Postfunctionalist theory of governance, Vol. III*.

Johnson, Tana (2016). "Cooperation, co-optation, competition, conflict: international bureaucracies and non-governmental organizations in an interdependent world". In: *Review of International Political Economy* 23.5, pp. 737–767.

Jones, Emily (2013). *Negotiating Against the Odds: A Guide for Trade Negotiators from Developing Countries*. Palgrave Macmillan and Commonwealth Secretariat.

Jones, Emily, Carolyn Deere-Birkbeck, and Ngaire Woods (2010). *Manoeuvring at the Margins: Constraints Faced by Small States in International Trade Negotiations*. Commonwealth Secretariat.

Joosen, Rik and Gijs Jan Brandsma (2017). "Transnational executive bodies: EU policy implementation between the EU and member state level". In: *Public Administration* 95.2, pp. 423–436.

Jupille, Joseph Henri, Walter Mattli, and Duncan Snidal (2013). *Institutional choice and global commerce*. Cambridge University Press.

Kim, Soo Yeon, Edward D Mansfield, and Helen V Milner (2016). "Regional trade governance". In: *The Oxford Handbook of Comparative Regionalism*. Oxford: University Press Oxford, pp. 323–350.

Koremenos, Barbara, Charles Lipson, and Duncan Snidal (2001). "The rational design of international institutions". In: *International organization* 55.4, pp. 761–799.

Krapohl, Sebastian and Sophie Van Huut (2020). "A missed opportunity for regionalism: the disparate behaviour of African countries in the EPA-negotiations with the EU". In: *Journal of European Integration* 42.4, pp. 565–582.

Lake, David A (2009). *Hierarchy in international relations*. Cornell University Press.

Lall, Ranjit (2023). *Making International Institutions Work: The Politics of Performance*. Cambridge University Press.

Lenz, Tobias et al. (2014). "Patterns of international organization. Task specific vs. general purpose". In: *Task Specific vs. General Purpose (December 2014). Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS* 128.

Lindberg, Lena and Claes G Alvstam (2007). "The national element in regional trade agreements: the role of Southeast Asian countries in ASEAN-EU trade". In: *ASEAN Economic Bulletin* 24.2, pp. 267–275.

Lucarelli, Sonia and Lorenzo Fioramonti (2009). *External perceptions of the European Union as a global actor*. Vol. 7. Routledge.

Maggi, Giovanni and Ralph Ossa (2020). *Are trade agreements good for you?* Tech. rep. National Bureau of Economic Research.

Manger, Mark S (2009). *Investing in protection: The politics of preferential trade agreements between north and south*. Cambridge University Press.

Manger, Mark S, Mark A Pickup, and Tom AB Snijders (2012). "A hierarchy of preferences: A longitudinal network analysis approach to PTA formation". In: *Journal of Conflict Resolution* 56.5, pp. 853–878.

Mansfield, Edward D and Helen V Milner (1997). *The political economy of regionalism*. Columbia University Press.

— (2012). *Votes, vetoes, and the political economy of international trade agreements*. Princeton University Press.

Manulak, Michael W and Duncan Snidal (2021). "The Supply of Informal International Governance". In: *Global Governance in a World of Change*. Cambridge University Press, pp. 182–213.

Maurer, Heidi and Kristi Raik (2018). "Neither Fish nor Fowl. How EU delegations challenge the institution of diplomacy: The cases of Moscow and Washington". In: *The Hague Journal of Diplomacy* 13.1, pp. 57–74.

Meissner, Katharina L (2019). "Cherry picking in the design of trade policy: why regional organizations shift between inter-regional and bilateral negotiations". In: *Review of International Political Economy* 26.5, pp. 1043–1067.

Murau, Steffen and Kilian Spandler (2016). "EU, US and ASEAN Actorness in G20 Financial Policy-Making: Bridging the EU Studies–New Regionalism Divide". In: *JCMS: Journal of Common Market Studies* 54.4, pp. 928–943.

Nielson, Daniel L and Michael J Tierney (2003). "Delegation to international organizations: Agency theory and World Bank environmental reform". In: *International organization*, pp. 241–276.

Peacock, Claire, Karolina Milewicz, and Duncan Snidal (2019). "Boilerplate in international trade agreements". In: *International Studies Quarterly* 63.4, pp. 923–937.

Poulsen, Lauge N Skovgaard (2015). *Bounded rationality and economic diplomacy: The politics of investment treaties in developing countries*. Cambridge University Press.

Poulsen, Lauge N Skovgaard and Emma Aisbett (2013). "When the claim hits: Bilateral investment treaties and bounded rational learning". In: *World Politics* 65.2, pp. 273–313.

Rodrik, Dani (2011). *The globalization paradox: why global markets, states, and democracy can't coexist*. Oxford University Press.

— (2018). "What do trade agreements really do?" In: *Journal of economic perspectives* 32.2, pp. 73–90.

Sarooshi, Dan (2005). *International organizations and their exercise of sovereign powers*. Oxford University Press.

Shaffer, Gregory (2005). "Can WTO technical assistance and capacity-building serve developing countries". In: *Wis. Int'l LJ* 23, p. 643.

Sjöstedt, Gunnar (1977). *The external role of the European Community*. Vol. 7. Gower Publishing Company, Limited.

Slaughter, Anne-Marie (2005). *A new world order*. Princeton University Press.

Söderbaum, Fredrik (2015). *Rethinking regionalism*. Macmillan International Higher Education.

Söderbaum, Fredrik and Timothy M Shaw (2003). "Theories of new regionalism". In: *Theories of new regionalism. New York: Palgrave Macmillan*, pp. 1–21.

Spandler, Kilian and Fredrik Söderbaum (2019). "Why Cooperate? National Sovereignty Understandings and Regionalism". In.

Tallberg, Jonas and Michael Zürn (2019). *The legitimacy and legitimation of international organizations: Introduction and framework*.

Vabulas, Felicity and Duncan Snidal (2013). "Organization without delegation: Informal intergovernmental organizations (IIGOs) and the spectrum of intergovernmental arrangements". In: *The Review of International Organizations* 8.2, pp. 193–220.

— (2019). "Soft Pooling: How IIGOs Govern Collective Decision-making without Delegation to formal IGOs". In: *Draft*.

Westerwinter, Oliver, Kenneth W Abbott, and Thomas Biersteker (2020). "Informal governance in world politics". In: *The Review of International Organizations*, pp. 1–27.

Zurn, Michael, Martin Binder, and Matthias Ecker-Ehrhardt (2012). “International authority and its politicization”. In: *IT* 4, p. 69.

Zürn, Michael (2018). *A theory of global governance: Authority, legitimacy, and contestation*. Oxford University Press.

Zürn, Michael, Alexandros Tokhi, and Martin Binder (2021). “The international authority database”. In: *Global Policy* 12.4, pp. 430–442.