Designing Credibility: The Political Economy of Dispute Settlement Design in Preferential Trade Agreements

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Abstract

This paper focuses on the political economy of legalization, as seen through the dispute settlement provisions of Asia's preferential trade agreements (PTAs). The analysis addresses two main questions regarding the determinants of legalization in the dispute settlement mechanisms of PTAs, as demonstrated in their levels of obligation and delegation that include formal processes and binding resolutions. The first is whether the degree of legalism in Asia's PTAs can be explained by a *demand*-driven account in which domestic economic actors, as major stake-holders in Asia's globalization, seek greater protection through formal and highly legalized dispute settlement provisions in PTAs. The second question concerns the *supply* of such protection. More specifically, it is concerned with the role of the World Trade Organization (WTO) as an alternative forum for the settlement of trade disputes and thus, whether membership of PTA-participants in the WTO affects the level of legalism in 'their' PTAs. These political economy arguments of demand and supply are juxtaposed with diffusion accounts of dispute settlement design in Asia. In the empirical part of the analysis, we test our theoretical arguments using quantitative methods on a sample of 57 PTAs in the Asia-Pacific region, controlling for alternative explanations for Asia's traditional 'aversion' to legalization. The findings support the demand-side and diffusion explanations of dispute settlement mechanism design. Supply-side as well as instrumental and strategic factors, however, fail to show significant effects on the creation of formal dispute settlement processes or the degree of legal obligation of dispute resolutions.

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Legalization in the Asia-Pacific has been notably low. Even with growing interdependence in both the security and economic arenas, the region is known for few multilateral institutions during the Cold War period.[1] Miles Kahler (1988; 2000) has noted that there may even be an explicit aversion to legalization on the part of states in the region. However, after the end of the Cold War, the Asia-Pacific witnessed an ambitious move toward institution-building, with the creation of such institutions as the Asia-Pacific Economic Cooperation (APEC) forum in 1989 and the ASEAN Regional Forum (ARF) in 1994. Nonetheless, institutions remained largely informal and, in some cases, explicitly rejected formal rules and obligations.[2] More often than not, Asian countries opted for codes of conduct or principles rather than agreements that codify rules, and they steered clear of dispute settlement mechanisms that entail delegation to third-party adjudication.

In the global economy, while the global trading system experienced a rapid spread of preferential trade agreements (PTAs) in the early 1990s, Asia was again an exception. The "new wave of regionalism" (Mansfield and Milner 1999, 617) and economic institution-building in the area

[1] The Southeast Treaty Organization (SEATO) is one of the few examples of multilateral institutions in the Asia-Pacific. However, it is also a prominent example of the lackluster performance of the multilateral institutions in the region. An attempt to construct a multilateral security institution for Asia and hardly formed in 1955, SEATO was already dissolved by 1977.

[2] Even the ARF, as the most 'formal' of Asia's post-Cold War institutions, lacks any concrete mechanism for conflict resolution.

of trade failed to sweep the region. As a consequence, Asia continued to be only sparsely populated by PTAs for the first years of the post-Cold War period, and there was not much indication of change. However, recent years have seen much change, as states in the region are increasingly turning to trade agreements that codify the terms of trade liberalization. As of January 2010, Asia's PTA landscape includes 222 PTAs that are currently in the process of formation according to the Asian Development Bank.[3] Moreover, the institutional arrangements provided for in these trade agreements vary widely in their legal commitments to the removal of trade barriers, provision of trade remedies, and the management of trade disputes.

This paper focuses on the political economy of legalization in Asia, as seen through the dispute settlement provisions of Asia's PTAs. The analysis addresses two main questions regarding the determinants of legalization in the dispute settlement mechanisms of PTAs, as demonstrated in their levels of obligation and delegation (Abbott, Keohane, Moravcsik, Slaughter, and Snidal 2000) that include formal processes and binding resolutions. The first question is whether the degree of legalism in Asia's PTAs can be explained by a *demand*-driven account in which domestic economic actors, as major stake-holders in Asia's globalization, seek greater protection through formal and highly legalized dispute settlement provisions in PTAs. The second question concerns the supply of such protection. More specifically, it is concerned with the role of the World Trade Organization (WTO) as an alternative forum for the settlement of trade disputes and thus, whether membership of PTA-participants in the WTO affects the level of legalism in 'their' PTAs. These political economy arguments of demand and supply are juxtaposed with diffusion accounts of dispute

[3] Trade agreements in the process of formation include those that have been proposed, are under negotiation, or where a framework agreement has been signed to proceed with negotiations. It also includes signed and implemented agreements.

settlement design in Asia. In the empirical part of the analysis, we test our theoretical arguments using quantitative methods on a sample of 57 PTAs in the Asia-Pacific region, controlling for alternative explanations for Asia's traditional 'aversion' to legalization. The findings support the demand-side and diffusion explanations of dispute settlement mechanism design in PTAs in the Asia-Pacific region. Supply-side as well as instrumental and strategic factors, however, fail to show significant effects on the creation of formal dispute settlement processes or the degree of legal obligation of dispute resolutions.

The Political Economy of Legalization

This section presents the main hypotheses of interest in this paper, which highlight the political economy explanations of legalization in Asia as seen through the delegation functions of PTAs. PTAs are mechanisms of credible commitment that tie the hands of participants to trade liberalization provisions, and as do other international economic agreements, are one among many types of international institutions created to resolve credible commitment problems (Simmons and Danner 2010). Though different from membership in a multilateral trade agreement such as the WTO, PTAs also redress the inefficient, terms-of-trade externality that prevails between trading partners in the absence of such agreements (Bagwell and Staiger 2009). They help to mitigate the protectionist, 'beggar-my-neighbor' policies that governments pursue in a terms-of-trade driven Prisoner's Dilemma setting such as liberal trade.

Among a PTA's institutional provisions, delegation involves the transfer of authority to a third party, whether within or outside an international institution, to "implement, interpret, and apply the rules; to resolve disputes and (possibly) to make further rules" (Abbott, Keohane,

Moravcsik, Slaughter and Snidal 2000, 401). The delegation function represents perhaps the most legalized aspect of a trade agreement, as it creates the formal mechanism for the enforcement of agreement terms. As such, dispute settlement mechanisms are an integral part of the credible commitment that ties the hands of agreement participants, reinforcing liberalization commitments of the agreement by raising the costs of reneging. As it designates the 'agent' for enforcing the legal obligations of its 'principals' (Hawkins, Lake, Nielson, and Tierney 2006), PTAs are also notable for the variability in the strength, or legalism of this delegation function.

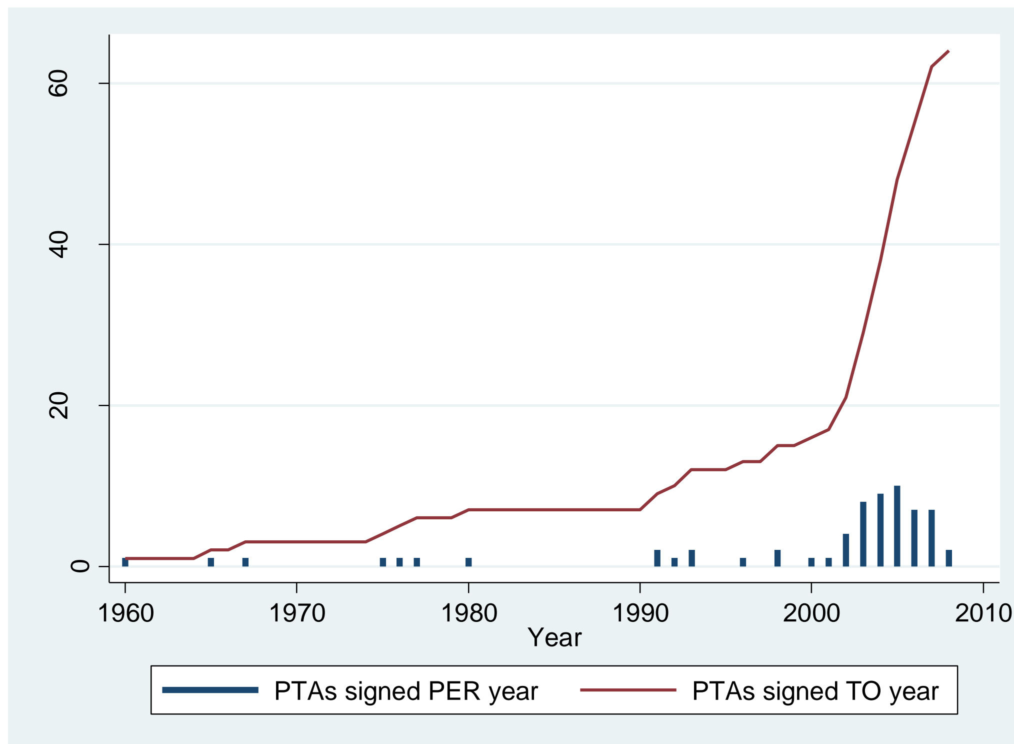
This paper focuses on the variability of legalism in the dispute settlement mechanisms of Asia's PTAs. It builds on the existing international political economy literature on institutional design, such as the rational design project (Koremenos, Lipson, and Snidal 2001), which identifies key dimensions of variation in institutional choice, and the comparisons of international institutions across regions (Acharya and Johnston 2007). This paper greatly extends the empirical domain for examining institutional variability, providing a quantitative analysis of institutional variability in 57 PTAs in Asia. It provides a valuable point of comparison vis-à-vis case studies of regional institutions such the ASEAN Free Trade Area (AFTA) and the ASEAN Regional Forum (ARF) (Khong and Nesadurai 2007). In doing so, the paper also engages Asia-specific arguments that emphasize informality and the aversion to legalization as exemplified in the 'ASEAN Way.' By adopting a broadly-framed political economy perspective for explaining legalization in Asia's PTAs, it challenges the existence of Asian 'exceptionalism' in the global network of PTAs. Rather, the paper examines whether Asian countries are strategic in their institutional preferences, which are derivable from factors associated with the domestic political economy of trade.

A long-standing and widely accepted explanation for the low levels of legalization in Asia emphasizes its distinct legal culture. This line of argument relies on cultural explanations for the design of dispute settlement mechanisms. One explanation, in particular, is specifically directed at Asian countries and their opposition to high levels of legalization. Kahler (2000, 176) makes the widely accepted claim that the major regional institutions in Asia – APEC, the Association of Southeast Asian Nations Regional Forum (ARF), and the Association of Southeast Asian Nations (ASEAN) – can and should be distinguished from 'Western-style' institutions because of the differences in legal and institutional traditions of Asian countries. This explanation emphasizes the distinctness of 'Asian culture,' which is supposed to be especially characterized by the avoidance of outright conflict and the reliance on consultation and consensus, both in the context of decision-making and the management of disputes. This argument asserts that 'Asian values' are less adversarial, less litigious, and seek to avoid conflict. In the management of disputes, Asian norms are claimed to emphasize "group harmony, consensus, and informality and avoidance of legalism" (Green 1995, 730-31).

The 'ASEAN Way' perhaps best captures this mode of decision-making that relies on the practice of consultation and consensus, much in the way decision-making proceeds in the village societies of Southeast Asia. The ASEAN Way has significantly shaped Asia's major regional institutions, providing a blueprint for behavioral and conflict management norms and practices in these institutions (Acharya 2001). In the case of the APEC forum, for example, the Kuching Consensus defined ASEAN's role in APEC and explicitly registered its opposition to legalization, stipulating that APEC "should not lead to the adoption of mandatory directives for any participant to undertake or implement" (Soesastro in Kahler 2000, 173).

However, the argument for an Asian 'exceptionalism' and that idea that PTAs in the Asia-Pacific were or would have to be different because of a distinct Asian culture has come under scrutiny both theoretically and empirically. Despite the 'culturalist logic' of ASEAN Way hypothesis and the fact that legal culture is a popular explanation in the existing literature for the low levels of legalization found in the Asia-Pacific region, it is important to note that even Kahler (2000) sees little support for this argument. He argues that Asia is characterized by legal pluralism, not just between, but within societies, a pluralism that originates in the different religious and colonial histories of the region's states, nations, and societies. Appealing to the cultural element may actually be a strategic move on the part of governments or political and bureaucratic elites to direct domestic interest group pressures away from the judiciary and prevent the latter from assuming a greater role in domestic politics. Therefore, the supposed effects of legal culture on the design of dispute settlement mechanisms of Asian trade agreements might actually be more about politics than ethnographic idiosyncrasies.

Figure 1: Number of PTAs in the Asia-Pacific over Time



Empirically, the recent increase in the number of PTAs and, especially, more legalized PTAs calls the assumption that Asia is just different into question. Figure 1 above depicts the dramatic increase in PTAs over the last 5-10 years. Perhaps it is not that Asia is fundamentally different from the rest of the world, but that it has simply arrived late in the game, and is now just catching up with global trends toward PTA-formation and legalization. Rather than requiring Asia-specific explanation for the past aversion to and recent diffusion of legalization and delegation, arguments that take Asian culture or Asian traditions into consideration, we argue that the choice and design of dispute settlement mechanisms in the Asia-Pacific region can be explained by broader factors on institutional design discussed in the general international political economy and legalization literatures. More specifically, the following paragraphs take a closer look at three complementary

perspectives: demand for, supply of, and interdependence in the design of robust mechanisms of dispute settlement in PTAs.

Demand for Legalization: Who Demands?

The first major hypothesis of interest in this paper concerns the demands for the protection of property rights and the mitigation of economic uncertainty generated by greater economic integration as an explanation for the variation in dispute settlement mechanisms in PTAs. Economic integration through trade, whether bilaterally between prospective PTA participants or multilaterally in terms of overall trade openness, produces increasingly internationalized domestic economic constituencies, in the leadership (Solingen 1998) and in the broader national economy. These constituencies demand, by way of the political arena, a stable and 'rule-governed' environment for their international economic transactions. They lobby their governments for highly legalized international arrangements that govern market access, constrain government policies, and mitigate uncertainty for economic actors. Where successful, the institutional preferences of internationalized domestic economic constituencies are translated to PTAs with high levels of delegation, i.e., with strong dispute settlement mechanisms to provide for the interpretation of rules and adjudication of disputes that may arise. The existing literature, indeed, finds support for the argument that high levels of economic integration, whether proposed (Pevehouse and Buhr 2005; Smith 2000) or actual, promote strong dispute settlement mechanisms with high levels of legalization.

The demand for a strong dispute settlement mechanism in a PTA can be expected to be especially strong from firms in the export-oriented sector, which would have the most at stake in increased market access in the prospective PTA-partner. *Export-oriented firms*, whose interests lie in gaining greater market access in the partner country through the PTA, would also likely seek

protection from arbitrary and discriminatory trade policies from the partner country and mechanisms for redress in the event of such incidents. Firms from the export-oriented industries would thus be expected to lobby their government for highly legalized dispute settlement mechanisms to monitor and to enforce the market access conditions negotiated in the PTA and to resolve conflicts that may arise after the agreement is put into effect.

Import-competing firms also have interests in a highly legalized dispute settlement mechanism. In negotiations over the terms of the PTA, import-competing firms have strong interests in having their government retain the maximum amount of discretion, so as to minimize adjustment costs in the course of trade liberalization through the PTA and also to maintain policy discretion in cases of unexpected import surges and exogenous shocks (Horn, Maggi, and Staiger 2010). They would also support a highly legalized dispute settlement processes in a PTA, mostly due to the necessity of securing protection against retaliatory measures from the partner country in the event that flexibility mechanisms, such as anti-dumping or countervailing measures, safeguards, or escape clauses are invoked in the implementation stage of the agreement. Thus import-competing firms are likely to lobby for maximum policy discretion on the part of their governments in negotiating a PTA, which include provisions in the PTA for a wide range of flexibility mechanisms such as those noted above to respond to import surges and exogenous shocks. At the same time, it is also in the interest of import-competing industries to have formal and legalized dispute settlement procedures in place should these mechanisms be invoked, so as to protect these industries from unfair retaliation from a PTA-partner country. Thus both export-oriented and import-competing industries stand to benefit from greater legalization in a PTA's dispute settlement process.

We test this hypothesis of demand-driven functionalism, first, by examining the impact of economic integration through trade.[4] As the data are in dyadic format and precludes disaggregation of trade into imports and exports, we assess the overall impact of bilateral trade as a measure of trade integration between the PTA-partners.

Hypothesis 1: The more economically integrated two states are (in terms of bilateral trade), the more probable it is that the PTA they form will have a highly legalized dispute settlement mechanism.

[4] The demand-side argument also captures the political demands generated by specific assets related to regional trade and investment (Yarbrough and Yarbrough 1992). Where specific assets exist, where investments are both linked to intraregional economic exchange and have few alternative uses, concerns regarding opportunistic behavior on the part of governments hosting these investments give rise to demands for more highly legalized institutions that have built-in dispute settlement mechanism. These demands are driven by the understanding that highly legalized institutions are effective antidotes to opportunistic behavior on the part of governments. They prevent reneging on commitments by providing both the information to facilitate identification of violations and violators and the mechanisms for the determination and imposition of sanctions in cases of violations. In the case of foreign direct investment, highly legalized dispute settlement mechanism signal a strong commitment to the protection of property rights of existing investors and, subsequently, should also be an effective means of attracting further inflows of investment (Büthe and Milner 2008). This leads to the hypothesis that the more economically integrated two states are (in terms of bilateral investment), the more probable it is that the PTA they form will be highly legalized. Due to lack of comprehensive bilateral investment data for the countries in the Asia-Pacific, we unfortunately do not test this hypothesis in the empirical section of our paper at this point.

Supply of Legalization: Forum Shopping on PTA- or WTO-Avenue?

Looking at dispute settlement mechanisms from a supply-side point of view, we can also explain why states may choose low levels of legalization when designing trade agreements or international institutions in general. To the extent that states already have access to institutional mechanisms outside the region to address legal issues and to seek redress in cases of violations, there is less need for additional, highly legalized dispute settlement mechanism in newly-created PTAs. Perhaps the most important of these alternative institutional mechanisms is the dispute settlement process available through the WTO. While Busch (2007) argues that where PTAs and the WTO already coexist, they provide opportunities for forum-shopping on the part of prospective participants, and that states and economic actors pursue their interests strategically, bringing disputes to the forum which is more likely to find in their favor, we examines the role of forum choice in the negotiation or pre-agreement stage of the PTA. At this stage, participants must consider the relative utility of constructing strong dispute settlement mechanisms in the presence of an existing mechanism. The WTO already supplies a strong dispute mechanism that might only get 'watered down' by the creation of additional fora that can be strategically 'abused' by trade partners.

We test the hypothesis that where the WTO's dispute settlement process is already available, the ability to take disputes to the WTO reduces the demand for legalization in PTAs. Where the WTO already supplies protection from arbitrary and discriminatory trade policies and an established mechanism for redress in the event of such incidents exists, the marginal utility of designing additional dispute settlement mechanisms declines. Therefore, joint WTO membership is expected to reduce the level of legalization in a PTA:

Hypothesis 2: If two states are both members of the WTO, it is less probable that the PTA they form will have a highly legalized dispute settlement mechanism.

Diffusion of Legalization: Is the 'ASEAN Way' Giving Way?

Finally, in addition to the demand- and supply-side hypotheses regarding the strength of dispute settlement mechanisms in Asia's PTAs, this paper also considers diffusion mechanisms, the effect of interdependence of PTA formation and design as an explanation for the recent trend to more legalization of dispute settlement in the Asia-Pacific region. Here, we distinguish between the spatial influence of peers and leaders.

Interdependent choices are at the heart of policy diffusion studies, where diffusion is defined as "a process where choices are interdependent, that is, where the choice of a government influences the choices made by others and, conversely, the choice of a government is influenced by the choices made by others" (Braun and Gilardi 2006, 299). The discussion of the details and causal mechanisms behind this process rapidly evolved of the last couple of years. Gray (1973) introduced the idea of diffusion as a process of imitation. This notion of diffusion as mimicry has been echoed more recently in studies that claim that political leaders learn from others to the extent that "when confronted with a problem, decision makers simplify the task of finding a solution by choosing an alternative that has proven successful elsewhere" (Berry and Baybeck 2005, 505). Other studies in as diverse fields as sociology (Rogers 1995), economics (Young 2009), or political science (Simmons and Elkins 2008) have offered host of additional and different conceptualizations of diffusion mechanisms. However, there seems to be agreement that in most situations one of three or four mechanisms is at work. These mechanisms are learning, competition, imitation, and (to a less extent) coercion (Shipan and Volden 2008).

Turning from this general discussion of diffusion mechanisms to the specific topic of this paper, we argue that states in the Asia-Pacific region, when deciding whether to sign a PTA with strong dispute settlement, consider what other states have done on the issue. While the specific mechanism at work in this context may vary from case to case and could certainly be more closely examined, we are only interested in whether the decisions by Asian countries to create PTAs with high degrees of delegation and obligation are interdependent or not. Such interdependencies between states would manifest themselves in reactions of Asian countries to actions by their Asian peers or in their interaction with international leaders in legalized dispute settlement design from outside the Asian-Pacific region.

The peer argument is based on the idea that interdependence occurs due to the (perceived) similarities between Asian countries. Asian states see other Asian states as their peers as they have similar histories, share an Asian culture, face similar economic challenges (e.g., Asian financial crisis), interact in multiple fora, etc. These peers functions as benchmarks from which countries learn or with whom they compete, and political leaders choose PTA designs for their countries that are similar to those chosen by the political leaders of those benchmark countries. As a consequence, we expect that countries in the Asian-Pacific region take into account what other countries in the region have already done. As the number of PTAs with highly legalized dispute mechanisms in the region increases, this number should increase even further – at least until a 'saturation effect' sets in.

Hypothesis 3a: The more highly legalized PTAs have already been signed by the peers of two countries, the <u>more</u> probable it is that the PTA they form will have a highly legalized dispute settlement mechanism.

Above, we mentioned the ASEAN Way. Following the logic of hypothesis 3a, a shared Asian culture that is characterized by the avoidance of outright conflict and the reliance on consultation and consensus might also lead to the continued spread and adoption of PTAs without legalized dispute mechanisms via imitation and learning. Therefore, we explicitly control for Asian culture in our analysis. Doing so enables us to compare the relative influence of the ASEAN Way with a second hypothesized diffusion effect. This second diffusion effect deals with the effect that the interaction with extra-regional leaders of PTA creation and legalized dispute settlement design has on Asian-Pacific laggards. More specifically, hypothesize that Asian culture and the ASEAN Way might influence Asian political leaders in their interaction with other Asian leaders. However, when Asian countries negotiate PTAs with countries from other parts of the world, where PTAs with strong provisions for binding conflict resolution are less the exception and more the rule, they imitate these countries and learn from their experience, i.e., agree to signing PTAs that provide for legalized means of dispute settlement.

Hypothesis 3b: If one of the two states is non-Asian (vs. both being Asian), it is more probable that the PTA they form will have a highly legalized dispute settlement mechanism.

Having discussed our theoretical expectations for the effects of the *demand*-side pressures for legalization, the *supply* of an existing forum for dispute resolution, and *interdependence* on the decisions of Asian-Pacific countries to sign PTAs with strong dispute settlement provisions, we now turn to the empirical section of our paper.

Analysis

In this section of our paper, we empirically test our hypotheses for a sample of 57 PTAs signed by states in Asia between 1967 and 2008.[5] The analysis includes bilateral and multilateral PTAs signed between Asian states as well as trans-regional agreements that include at least one Asian country and at least one non-Asian country. Countries in Asia are defined according to their membership in the Asian Development Bank, which includes 48 countries from five sub-regions: East Asia, Central and West Asia, the Pacific, South Asia, and Southeast Asia.[6]

The unit of analysis is the PTA-dyad in the year of signature, thus pairing each agreement country with its agreement partners.[7] The use of the dyad as the unit of analysis is most applicable to bilateral agreements, as asymmetries in economic power (Smith 2000) between the two countries in a dyad figure strongly in the institutional arrangements that are constructed. As the analysis also investigates the dynamics between pairs of states in multilateral PTAs, we control for the bilateral or multilateral scope of the agreement by including this institutional dimension among the covariates.

[5] As the coding of our two dependent variables is based on the agreement text, we have to exclude those PTAs, for which the text is not (publicly) available.

[6] http://www.adb.org/countries.

[7] Dyads may be repeated with overlapping membership across trade agreements. Also, as the paper analyzes the determinants in PTA design rather than the effects of a PTA following implementation of its provisions, we take the year of signature as the 'temporal reference point' for the construction of our dataset.

Dependent Variables

The analysis includes two dependent variables. Both variables measure the degree of legalization of the dispute settlement mechanisms in PTAs, but capture different aspects of these mechanisms. These dependent variables were constructed utilizing data from Hicks and Kim (2010) and expanded to include the PTAs that were signed after 2006. The first dependent variable (*Formal Process*) indicates whether the agreement provides for a formal process (1) rather than an informal dispute settlement mechanism that relies on consultations (0). This variable is measured as a dichotomous variable. The second measure (*Binding Resolution*) operationalizes the degree to which the results of the dispute settlement process are binding to dispute participants. Recommendations or rulings can be merely suggestive or strongly binding. The degree of (legal) obligation attending the results of the dispute settlement process is measured in terms of a four-point scale ranging from no mention (0) to resolutions that are binding and cannot be appealed (3). More specifically, the categories include (cf. Hicks and Kim 2010):

a) no mention of how binding the results of the dispute settlement are,

b) resolution is suggestive, but not binding,

c) resolution is binding, but can be appealed, and

d) resolution is binding and cannot be appealed.

Independent Variables

The independent variables of interest correspond to the main hypotheses developed above and are discussed below.

Demand-Driven Legalization. For the demand-side hypothesis that links legalism to the level of economic integration, the paper operationalizes both the proposed (Smith 2000) and actual levels of

trade-related economic integration that precede the signing of the PTA. As a proxy for the proposed level of integration, the analysis utilizes the type of trade agreement (Hicks and Kim 2010) that the states proposed to sign. This variable (*Type of Agreement*) can take on the value preferential trade agreement (0) that liberalizes only a limited number of products or free trade agreement (1) that is more ambitious in its scope and coverage. As a measure of the actual level of economic integration (*Integration*), the analysis utilizes bilateral trade as a proportion of GDP in the year before the signing of the PTA. Values for both countries in the dyad are included, defined in terms of the lower and the higher trade-to-gdp ratios, as well as the interaction of the two trade-to-gdp terms that measures the impact of high levels of dyad-wide economic integration and interdependence. In addition, we include a variable that measures the difference between the two trade-to-gdp ratios. Bilateral trade data were obtained from the Correlates of War Project Trade Data Set.[8] GDP data were obtained from the World Bank's openly accessible World Development Indicators (WDI).[9]

To capture the impact of internationalized domestic interests (*Interests*) created by trade, the analysis also includes trade-to-gdp ratios, constructed as the sum of all exports and imports as a proportion of GDP. Data on these variables were also obtained from the WDI. Variables include individual terms for each member of the dyad, the difference between the two members, as well as an interaction term between the individual terms to account for the joint impact of these variables. The expectation is that high levels of economic openness, individually and in tandem, produce internationalized domestic interests that favor a highly legalized dispute settlement mechanism in a trade agreement to mitigate concerns about government opportunism in economic relations.

[8] http://www.correlatesofwar.org/COW2%20Data/Trade/Trade.html for the bilateral trade data compiled by Barbieri, Keshk, and Pollins (2009; 2008).

[9] http://data.worldbank.org/data-catalog.

Alternative Legal Fora. To test the supply-side hypothesis, the analysis includes a joint General Agreement on Tariffs and Trade (GATT)/WTO membership variable (*WTO*). This dichotomous variable indicates whether both states in a dyad are GATT/WTO members at the time of PTA signature. It captures whether an alternative form for the settlement of disputes exists. To the extent that high levels of integration call for legalism, the need for a highly legalized dispute settlement mechanism is tempered by the availability of such a mechanism outside the confines of the PTA. GATT/WTO membership data was obtained from the WTO's own website.[10]

Diffusion and the ASEAN Way. To test for the peer effect of existing PTAs with legalized dispute settlement mechanisms in the Asia-Pacific region, we include a counter of such agreements (*PTA Counter*) as an independent variable in our analysis. This variable simply counts the number of signed PTAs that provide for a formal process in any given year. Assuming that Asian-Pacific countries do indeed imitate or learn from their regional peers, we expect this variable to have a positive and significant effect on the probability that newly signed PTAs include strong provision for dispute resolution.

The effect of interactions with leaders of legalized dispute settlement, on the one hand, and legal cultures and institutions, exemplified in the informal and nonbinding features of the ASEAN Way, on the other, is operationalized through a dummy variable (*Trans-Regional*) that indicates whether the trade agreement is intra-regional (0), that is, signed between Asian states, or trans-regional (1), signed between a mix of Asian and non-Asian states. As noted above, Asian countries are defined according to the Asian Development Bank.

[10] http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

The expectation for this variable is that trade agreements between Asian states – given legal cultures and institutions that largely eschew formal and binding institutional arrangements – are most likely to be associated with informal disputes settlement processes that produce only weakly binding and suggestive resolutions. On the other hand, we expect that where Asian states, characterized in this line of argument as preferring informal and non-binding institutional arrangements, enter into trade agreements with extra-regional partners of different legal cultures and institutions, i.e., with leaders of legalized dispute settlement, such agreements are more likely to include a more formal process of dispute settlement and binding resolutions. It should be noted that this may not only be due to 'traditional' processes of diffusion. It could be that the differences in legal culture and institutions themselves motivate agreement partners to seek greater codification and legalism. Also, where the non-Asian partners are countries with very stronger legal cultures and institutions, such differences may simply translate to higher levels of legalism in their PTA provisions, including the dispute settlement mechanism, as the negotiations of a new PTA are a bargaining process characterized by both taking and giving.

Control Variables

The analysis controls for a host of alternative explanations for Asia's 'aversion' to legalization found in the existing literature. These control variables reflect two major lines of argument that emphasize (i) the role of domestic politics and sovereignty costs and (ii) instrumental and strategic factors that may affect states' preferences for formal and binding legal institutional arrangements.

Domestic Politics and Sovereignty Costs. This line of argument points to two main causal factors that lead to resistance to legalization: political homogeneity that originates in a common experience with colonialism and political heterogeneity in regime type and domestic legal institutions. Both factors give rise to high sovereignty costs (Abbott and Snidal 2000) from participation in highly legalized institutions, sovereignty costs that figure prominently in the calculus (not only) of developing and newly independent countries when considering the adoption of formal dispute settlement mechanisms.

With the prominent exception of Thailand, most states in Asia share a common history as colonial territories, whether through unequal treaties imposed by Western powers in the 19th century or by invasion and occupation by Japan in the interwar years. Experience as colonies gives rise to a "post-Colonial syndrome" (Kahler 2000, 177), a strong attachment to sovereignty and opposition to institutional arrangements, which involve delegation, the ceding of some part of sovereignty to third parties. Decision-making and dispute resolution by consensus, in contrast, give each actor effective veto power over the outcome and are likely to be favored over binding legal mechanisms that challenge the internal legitimacy of regimes and the existing political order.

In tandem with the political homogeneity of Asian states in their common experience as colonies, the Asia-Pacific region is also characterized by political heterogeneity, seen most prominently in the diverse mix of democratic and authoritarian regimes. While democratic trading partners are more likely to sign preferential trade agreements with highly legalized dispute settlement mechanisms (Pevehouse and Buhr 2005), authoritarian regimes are likely to oppose agreements that impose constraints on their behavior, whether domestically or internationally. As a consequence, the political heterogeneity of Asian countries negatively affects the development of dispute settlement

mechanisms that include third-party arbitration through a formal process that yields legally binding consequences.

The analysis employs two measures to capture the effects of political homogeneity and political heterogeneity, respectively. Political homogeneity is measured in terms of colonial experience and it utilizes a dummy variable (*Colony*) to indicate whether at least one country in the dyad is a former colony (1, otherwise 0). Data on colonial history were obtained from the Issue Correlates of War (ICOW) Colonial History Data Set.[11] For political heterogeneity, the analysis utilizes the modified Polity 4 and Polity 4D data, which provide extrapolations and estimates not included in the original Polity IV data and thus ensures fewer missing data points.[12] Political heterogeneity within the dyad is measured in terms of the difference in Polity scores (*Democracy*) for the two members, thus yielding a dyadic measure. For robustness checks on this variable, the analysis also employs separate Polity scores for each dyad member as well as an interaction term.[13]

Instrumental and Strategic Factors. This line of argument relies on the assumption that support or opposition to legalization is instrumental or strategic (Kahler 2000), in which states support legalization where and when it serves the notion of national interest. Instrumental and strategic refer to motivations for concluding trade agreements that are intended to serve other purposes beyond

[11] http://www.paulhensel.org/icowdata.html for the ICOW data compiled by Hensel (1999).

[12] http://privatewww.essex.ac.uk/~ksg/polity.html for the Polity 4 and Polity 4D data compiled by Gleditsch (2008).

[13] Instead of the Polity score, we also used a dummy variable for each country that equals one if its democracy score is above 6, used in the literature to indicate an advanced democracy, and an interaction term that combines these indicators. Using this operationalization of political heterogeneity does not lead to substantially different findings.

the liberalization of trade relations. Such purposes can be the provision of economic benefits to an alliance and its partners or, as in the case of ASEAN and its free trade agreement, the desire to achieve overall deeper economic integration among the ASEAN members. Focusing on security, the particular calculus applied to the construction of a highly legalized dispute settlement mechanism weighs the instrumental benefits of the trade agreement for security objectives against the previously discussed sovereignty costs that are associated with delegation of dispute settlement to a third party.

At the same time, states' preferences on the level of legalizations of trade agreements are formed with strategic considerations in mind, as states consider the relative capabilities of their agreement partners. Asymmetries in the economic (and legal) capabilities of negotiating countries (Smith 2000, 148) as well as the ability and willingness of powerful economic actors to resort to unilateral enforcement can be expected to yield opposition to legalization. While less powerful states might prefer trade agreements that level the playing field with strong dispute settlement mechanisms, it is the more powerful states' preferences that function as the lowest common denominator on legalization.

The analysis employs two measures to capture the instrumental and/or strategic motivations of states in designing dispute settlement mechanisms in trade agreements. To operationalize the instrumental motivations of agreement participants, a dummy variable (*Alliance*) indicates the presence (1) or absence (0) of an alliance between them. The data were obtained from the Alliance Treaty Obligations and Provisions (ATOP) project, in which an alliance may be a defense pact, a neutrality and nonaggression pact, or entente.[14] This variable is intended to reflect the degree, to

[14] http://atop.rice.edu/home for the ATOP data compiled by Leeds, Ritter, McLaughlin Mitchell, and Long (2002).

which an instrumental purpose, such as the generation of security externalities (Gowa 1994), motivates a country to agree to a highly legalized dispute settlement agreement. Though the mere signing of the trade agreement, irrespective of the provisions, may have the same effect, a highly legalized institutional mechanism may provide a stronger and more formalized institutional setting, within which to strengthen these bilateral ties.

As for strategic considerations underlying the choice toward greater legalism, the analysis employs the Herfindahl-Hirschman index of total GDP shares within the dyad (*Asymmetry*). This measure operationalizes the degree of asymmetry in economic power between the two countries. It captures asymmetry in economic power that translates to asymmetric bargaining power between agreement participants, which again might affect the degree of legalization in trade agreements.

Methodology

As we have two dependent variables that have different levels of measurement, we use different estimators to estimate our formal process- and binding resolution-models, respectively. A standard maximum likelihood probit model is used to analyze the effects of our independent variables on the dichotomous dependent variable *Formal Process*. *Binding Resolution* is an ordinal variable. Therefore, we use a generalized ordered probit model that does not impose the strong parallel regression assumption of the more common ordered probit model. Instead, it allows us to relax the assumption for some of our independent variables while maintaining it for others (Maddala 1983). All independent variables are lagged by one year, so as to capture the impact of explanatory factors in the year preceding the signage of the PTA.[15]

[15] Additionally, we employed longer lags, i.e., 2 and 3 years, as well as the 5-year average preceding PTA signature. However, the choice of lags does not affect the major findings of our

Findings

Table 1 presents the findings from the analysis of the effects of demand, supply, and diffusion, while controlling for the effects of domestic politics and sovereignty costs as well as instrumental and strategic factors. The coefficients indicate the effect that each independent variable has on the probability that the PTA signed by the countries in a dyad provides for a formal dispute settlement process. On the one hand, the results provide support for both the demand-side and diffusion arguments. In addition, a colonial heritage reduces the probability of creating a highly legalized dispute settlement mechanism. On the other hand, the supply-side argument about GATT/WTO as an alternative forum for dispute settlement is strongly rejected by the data. If anything, it is GATT/WTO members that endow their PTAs with mechanisms similar to the Dispute Settlement Understanding of the WTO. Besides the colonial history variable, none of the other control variables significantly affects the design of dispute settlement mechanisms.

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analysis. Therefore, we settled on the shorter lags, not least to preserve as may observations as possible.

Table 1: Formal Process

Model:	(1)	(2)	(3)	(4)
Demand				
Type of Agreement	1.947*** (0.49)	1.784*** (0.42)	1.586*** (0.23)	
Integration (high)	91.063** (45.30)	71.593* (41.86)		-0.737 (1.04)
Integration (diff.)	-101.188** (47.41)	-79.415* (43.15)		0.275 (1.77)
Interests (high)	-0.004 (0.01)	0.005 (0.01)		
Interests (diff.)	0.006 (0.01)	-0.001 (0.01)		
Supply				
WTO	0.631* (0.33)			
Diffusion				
PTA Counter	0.051*** (0.02)			
Trans-Regional	1.001** (0.42)			
Controls				
Colony				
Democracy (diff.)				
Alliance				
Asymmetry				
Constant	-0.547* (0.32)	0.035 (0.27)	0.412*** (0.11)	0.948*** (0.09)
Observations	222	222	319	261
Pseudo R2	0.41	0.24	0.22	0.00058
Log likelihood	-59.1	-76.1	-111	-121

Robust standard errors with clustering on dyads in parentheses. *** = p 0.01, ** = p < 0.05, * = p < 0.10.

Table 1: Formal Process (cont.)

Model:	(5)	(6)	(7)	(8)
Demand				
Type of Agreement				
Integration (high)				
Integration (diff.)				
Interests (high)	0.007* (0.00)			
Interests (diff.)	-0.003 (0.00)			
Supply				
WTO		0.439* (0.25)		
Diffusion				
PTA Counter			0.081*** (0.02)	
Trans-Regional				0.642** (0.26)
Controls				
Colony				
Democracy (diff.)				
Alliance				
Asymmetry				
Constant	0.394* (0.21)	0.906*** (0.08)	0.875*** (0.08)	-0.299 (0.26)
Observations	248	319	319	318
Pseudo R2	0.037	0.011	0.024	0.25
Log likelihood	-107	-142	-140	-106

Robust standard errors with clustering on dyads in parentheses. *** = p 0.01, ** = p < 0.05, * = p < 0.10.

Table 1: Formal Process (cont.)

Model:	(9)	(10)	(11)	(12)
Demand				
Type of Agreement	1.975*** (0.72)	1.792*** (0.36)		
Integration (high)	0.061 (37.05)		2.169* (1.30)	
Integration (diff.)	-10.328 (39.26)		-6.402** (2.69)	
Interests (high)	-0.004 (0.01)			0.002 (0.01)
Interests (diff.)	0.012 (0.01)			0.005 (0.01)
Supply				
WTO	0.418 (0.35)	0.230 (0.30)	0.144 (0.32)	-0.149 (0.28)
Diffusion				
PTA Counter	0.045*** (0.01)	0.041** (0.02)	0.083*** (0.02)	0.067*** (0.02)
Trans-Regional	0.488 (0.48)	0.610 (0.48)	0.057 (0.54)	0.032 (0.47)
Controls				
Colony	-1.708*** (0.61)	-1.403*** (0.42)	-1.060** (0.41)	-1.356** (0.54)
Democracy (diff.)	0.025 (0.03)	0.012 (0.03)	0.031 (0.03)	0.012 (0.03)
Alliance	0.216 (0.39)	-0.110 (0.30)	0.581** (0.25)	0.857*** (0.30)
Asymmetry	-0.480 (0.90)	-1.399* (0.76)	0.243 (0.65)	-0.582 (0.67)
Constant	1.198 (1.19)	1.693* (0.95)	-0.045 (0.71)	0.708 (0.82)
Observations	184	208	201	191
Pseudo R2	0.46	0.45	0.32	0.35
Log likelihood	-43.0	-55.6	-65.2	-55.2

Robust standard errors with clustering on dyads in parentheses. *** = p 0.01, ** = p < 0.05, * = p < 0.10.

With respect to the demand for formal institutions for dispute settlement, we show that first, the type of agreement, as a proxy for the proposed level of integration, has a positive and statistically significant impact on the nature of the dispute settlement mechanism. FTAs relative to mere preferential trade agreements are more likely to yield a formal dispute settlement mechanism in trade

agreements. That is, agreements that provides for a wider scope of liberalization, as compared to the limited liberalization characterizing PTAs, are associated with demand for more legalized dispute settlement processes. As the consequence the participating states are more likely to design such institutions when signing FTAs rather than just PTAs.

At the same time, existing levels of actual economic integration between the PTA participants, measured in terms of bilateral trade as a proportion of GDP, also has an impact on the design of dispute settlement mechanisms. Higher levels of integration tend to lead to more legalized dispute settlement mechanisms. However, the greater the difference in the level of actual integration is between the countries is, i.e., if trade with the other country is only substantially important to one of the two countries, the less it is that the PTA will feature a formal dispute resolution mechanism. Hence, the highest probability for the design of a legalized dispute settlement mechanism exists when both countries are highly integrated and economically dependent on the other country. There have to be internationalized economic interests that promote and lobby for legalization in dispute resolution in both countries for formal dispute settlement mechanisms to be created.

The degree to which agreement participants differ in their general economic openness, measured in terms of total trade as a proportion of GDP, has next to no effect. Its effect on the demand for highly legalized PTAs is overshadowed by the impacts of the level and difference in levels of bilateral, PTA-specific economic integration. We also do not find any support for our supply-side argument. Joint GATT/WTO membership has no effect on dispute settlement mechanism design. If anything, it might even increase the probability that the partner countries adopt institutions for conflict resolution (cf. results from bivariate regression in model 6). Of course, this finding is not too surprising in the light of research by Mansfield and Reinhardt (2003), who

showed that it is exactly processes within the GATT/WTO that drive member states to create PTAs, PTAs that can have formal dispute settlement mechanisms.

The analysis also shows that agreements between Asian and non-Asian countries might be more likely to have a formal dispute settlement mechanism. In spite of the differences in legal culture and institutions, though crudely captured by the dummy variable, the findings suggest that in concluding trade agreements with leaders of dispute settlement design from outside the Asian-Pacific region, Asian countries are more likely to conform to a more formal standard for dispute settlement. As we already pointed out in the theoretical section of this paper, one explanation for this may be diffusion by learning. Alternatively, the differences in legal cultures and institutions between Asian and non-Asian countries might encourage these countries to seek greater assurance through legal mechanisms in case of trade disputes.

Hypothesis 3a about the effect of Asian peers on the probability that Asian countries sign PTAs that have highly legalized dispute settlement mechanisms is strongly supported. There clearly is a spatial component to the spread of legalism in PTAs in the Asia-Pacific. It is this diffusion by either imitation or learning form peers that can explain the ASEAN Way has given way to more formalized forms of dispute settlement and the Asia-Pacific region has finally caught up with the rest of the world in terms of the number and the degree of legalization of their PTAs.

With respect to the control variables, the analysis finds that colonial history has a negative and statistically significant impact on legalism in PTAs. PTA dyads, in which at least one country has been a colony are less likely to provide for a formal dispute settlement process. The difference in the level of democracy between dyad members has no impact on the design of a PTA's dispute

settlement mechanism. While democracies might be slightly more likely to commit to greater legalism in trade agreements (cf. also Pevehouse and Buhr 2005)[16], the disparity between dyad members in their democratic features has no effect on PTA design.

The findings for the two variables that reflect strategic interests and bargaining power, namely the dichotomous alliance variable and the economic asymmetry variable, are only significant in some of the estimated models. If we find anything with respect to these variables at all, it might be that alliance partners are somewhat more likely to sign PTAs with formal dispute settlement procedures. The non-finding for difference in bargaining power, utilizing the Herfindahl-Hirschman formula, is not surprising. On the one hand, James McCall Smith's (2000) has argued in his study of economic asymmetry that where a country has greater bargaining power vis-à-vis its PTA agreement partner, the former is likely to resort to power-based reciprocity rather than recourse to legal measures in enforcing the terms of the PTA, and thus may not necessarily support a legalized dispute settlement mechanism. On the other hand, the less powerful partner might want to insist on the creation of a legalized dispute settlement mechanism so that it will not be taken advantage of by its more powerful trading partner. As a consequence, these opposite incentives for and against legalized dispute settlement cancel each other out and lead to the statistically insignificant result.

[16] We also find a negative and significant coefficient for the 'weaker democracy link' in some of the models (not shown in Table 1, but available on request) that we ran as robustness checks.

Table 2: Binding Resolution

Model:	(1)			(2)		
Step:	1	2	3	1	2	3
Demand						
Type of Agreement	-3.728***	26.191***	-8.643***	-0.455	24.712***	-5.401***
	(1.08)	(4.11)	(1.57)	(0.86)	(5.14)	(1.06)
Integration (high)	27.554***	-16.202***	-15.715***			
	(6.34)	(5.22)	(4.75)			
Integration (diff.)						
Interests (high)	0.006	0.000	0.019***			
	(0.01)	(0.01)	(0.01)			
Interests (diff.)						
Supply						
WTO		-1.163			-0.935	
		(0.90)			(1.16)	
Diffusion						
PTA Counter		-1.102		0.445	-8.430***	-0.435
		(0.76)		(0.90)	(2.53)	(0.84)
Trans-Regional	-0.033	-0.652***	0.275***	-0.031	-0.517***	0.242***
	(0.02)	(0.10)	(0.05)	(0.02)	(0.11)	(0.05)
Controls						
Colony				0.912	-2.251	-4.406***
				(1.31)	(1.51)	(1.05)
Democracy (diff.)					0.069	
					(0.04)	
Alliance				-2.985***	0.556	-0.663
				(0.75)	(0.89)	(1.02)
Asymmetry				7.031***	-10.134**	-3.546
				(2.35)	(3.94)	(2.30)
Constant	-0.494	4.884***	-4.687***	-5.032**	12.516***	2.039
	(0.58)	(1.16)	(1.10)	(2.40)	(3.67)	(1.76)
Observations	222	222	222	206	206	206
Pseudo R2	0.72	0.72	0.72	0.68	0.68	0.68
Log likelihood	-81.5	-81.5	-81.5	-85.2	-85.2	-85.2

Robust standard errors with clustering on dyads in parentheses. *** = p 0.01, ** = p < 0.05, * = p < 0.10.

Table 2: Binding Resolution (cont.)

Model:		(3)			(4)	
Step:	1	2	3	1	2	3
Demand						
Type of Agreement						
Integration (high)		11.742 (15.01)				
Integration (diff.)		-17.622 (16.03)				
Interests (high)				-0.086*** (0.02)	0.013 (0.01)	-0.001 (0.01)
Interests (diff.)				0.091*** (0.02)	-0.015 (0.01)	0.003 (0.01)
Supply						
WTO		0.361 (0.98)			0.479 (0.78)	
Diffusion						
PTA Counter	-2.226*** (0.75)	1.235 (0.81)	1.243* (0.68)	-5.304*** (1.51)	0.850 (1.14)	1.861*** (0.72)
Trans-Regional	0.031* (0.02)	0.065*** (0.02)	0.129*** (0.03)	-0.023 (0.02)	0.066*** (0.02)	0.118*** (0.03)
Controls						
Colony	1.035 (1.21)	-2.172** (0.88)	-3.183*** (0.69)		-2.682*** (0.65)	
Democracy (diff.)	0.148** (0.06)	-0.198*** (0.05)	-0.080* (0.05)		-0.073** (0.03)	
Alliance	-3.891*** (0.73)	-0.127 (0.68)	-0.108 (0.71)	-3.437*** (0.75)	0.225 (0.76)	0.480 (0.72)
Asymmetry	11.326*** (2.24)	-3.902** (1.97)	-3.368* (1.84)	6.335*** (1.94)	-4.267** (1.79)	-3.749** (1.68)
Constant	-8.610*** (2.37)	3.932** (1.69)	0.251 (1.45)	3.804** (1.59)	4.437*** (1.52)	-0.007 (1.47)
Observations	200	200	200	188	188	188
Pseudo R2	0.51	0.51	0.51	0.51	0.51	0.51
Log likelihood	-125	-125	-125	-120	-120	-120

Robust standard errors with clustering on dyads in parentheses. *** = p 0.01, ** = $p < 0.05$, * = $p < 0.10$.

Table 2 presents the findings from the analysis of the effects of demand, supply, and diffusion on the probability that states create a dispute settlement mechanism that provides binding rulings and not just suggestive recommendations. Again, we also control for domestic politics and sovereignty costs as well as instrumental and strategic factors. While our findings for the dependent variable *Binding Resolution* are not a perfect mirror image of the findings for *Formal Process*, we can see

that many of the same factors that determine whether countries form legalized PTAs also affect the degree of legal obligation that characterizes the formal (or informal) dispute settlement mechanism.

First, the parallel regression assumption is not met for the type of agreement in any of the models specifications in table 2, that is, the probability to 'move' from a dispute settlement mechanism that does not mention how binding the results of the dispute settlement are to a mechanism that only provides for non-binding resolutions is not identical to the probability to move from a mechanism that provides for non-binding to binding or from binding to non-appealable resolutions. Indeed, this holds true for most of the independent variables. However, this does not mean that one could not interpret the estimated coefficients and draw some general conclusions. It seems that the dispute settlement mechanisms of FTAs (vs. PTAs) are fairly unlikely to fall into the category of highest legal obligation. While they are more likely to be legalized, their degree of legalization does not typically reach the binding plus non-appealable level. The findings for the other demand-side variables are not robust. The other demand-side variables – level of actual integration and general trade openness – do neither systematically promote nor prevent provisions for binding dispute settlement

On the supply-side, joint GATT/WTO membership does not have a statistically significant effect in most models. The findings, once more, undermine the argument that the need for a highly legalized dispute settlement mechanism is tempered by joint GATT/WTO membership. Just because PTA members can have their trade disputes paneled in front of the WTO, they do not decide to endow their PTA with less legalized mechanisms for dispute resolution than countries that cannot take their disputes to the WTO.

Our analysis the effect of interdependence on the degree of legalization shows that if agreements between Asian and non-Asian countries mention dispute settlement mechanisms, they are significantly more likely to come with the highest degree of legal obligation, i.e., resolutions are not just binding, but cannot be appealed. The same holds true the more Asian peers have signed PTAs with binding forms of conflict resolution.

Finally, if at least one country has been a colony, this colonial history significantly reduces the probability that a PTA has provisions for the binding resolution of trade conflicts. The other control variables have no clear and significant impact on the degree of legal obligation. Neither the alliance variable, nor the democracy variable or economic asymmetry have consistent effects on whether states agree to create dispute settlement mechanisms that can lead to binding rulings.

Conclusion

This paper has focused on the determinants of legalism in Asia's PTAs. The analysis applied mainstream arguments from the international political economy literature to examine the determinants of legalization, as reflected in the formal and binding aspects of dispute settlement provisions of PTAs. These arguments captured the demand-side effect of domestic economic interests and the supply-side effect of alternatives for dispute settlement mechanisms, as well as the diffusion effect from institutional arrangements of peer groups. In doing so, this study also challenged the notion of Asian "exceptionalism" and a cultural explanation of the avoidance of legalization in Asia's institutions. Rather, this study conceptualized the behavior of Asian countries as strategic, and the institutional bargains they strike with trade partners reflect the impact of domestic politics, alternative fora, and diffusion effects.

Our empirical findings support the demand and diffusion arguments, but contradict the hypothesis that joint GATT/WTO reduces the probability that countries in the Asia-Pacific region sign PTAs with formal and binding mechanisms for dispute resolution. Especially the proposed level of integration and imitating or learning from Asian peers seem to be good predictors of whether or not Asian countries design dispute settlement mechanisms. Of the control variables, only sovereignty costs via colonial history seem to matter. All other control variables, especially those related to instrumental and strategic factors, fail to show significant effects on the creation of formal dispute settlement processes or the degree of legal obligation of dispute resolutions.

Our next steps of this project will primarily be twofold. On the theoretical side, we intend to refine our theoretically derived hypotheses and, especially, to make sense of surprising and consistent finding of a positive effect of joint GATT/WTO membership on the design of PTA dispute resolution mechanisms. On the empirical side, we plan to collect more and better data. This means, for instance, expanding our sample of PTAs beyond the Asia-Pacific region.

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