



Shopping for Protection: The Politics of Choosing Trade Instruments in a Partially Legalized World*

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This article investigates the conditions under which states use General Agreements on Tariff and Trade (GATT)/World Trade Organization (WTO) legal measures rather than bilateral or unilateral instruments to protect domestic industries. Contrary to the conventional wisdom that international trade has become increasingly legalized and multilateralized, we demonstrate that domestic electoral politics loom large in a state's decision to resort to international law. Legislators' need to mobilize votes and campaign donations and the electoral systems had substantial effects on the government's choice to use GATT/WTO compliant protection among a wide array of protectionist instruments. The article tests this argument using new commodity-level data on trade instrument choice (subsidy, voluntary export restraints [VERs], and GATT/WTO legal measures) from the second largest economy that has experienced major electoral reform, Japan. The results lend strong support to our argument. Higher electoral competition is associated with the likelihood of using VERs and the electoral reform of 1994 was a force behind the sudden surge of legislators' interests in using WTO legal safeguard measure. The article finds, moreover, legislators strategically deviate from the new WTO rules, such as prohibition of VERs, when it is electorally beneficial to do so.

The General Agreements on Tariff and Trade (GATT) and its successor World Trade Organization (WTO) set out common legal rules on the use of trade protection by permitting some instruments (e.g., antidumping or escape clause protection) while prohibiting others (e.g., voluntary export restraint agreement under WTO). Conventional wisdom in the legalization literature suggests that member states' choice of protectionist instruments should converge toward GATT/WTO compliant protection because legal rules either raise the costs of using alternative instruments or diffuse norms and expectations among member states to be GATT/WTO compliant (Hathaway 2005; Simmons 2000; Tomz 2007). Contrary to this prediction, observers find that states' propensity to use

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these GATT/WTO compliant measures vary substantially across countries, commodity cases and over time.¹ What then accounts for when states seek recourse to international law to protect domestic industries?

Existing studies on state's use of GATT/WTO compliant measures tend to suffer from a selection bias by analyzing only a government's propensity to use a single instrument such as an antidumping duty (Kono 2006).² Consequently, this literature has focused on factors that affect the government's responsiveness to protectionist interest groups, such as the political and economic characteristics of import-competing industries (Hansen 1990) and domestic political institutions (Rosendorff and Milner 2001). Another strand of literature—consistent with a realist tradition—suggests that states use GATT/WTO compliant instruments as retaliatory tools.³ What the literature misses, however, is the fact that the government may choose protectionism by other means, such as bilateral voluntary export restraint negotiations and domestic subsidy.

This article addresses the issues of selection bias by asking not *who* uses GATT/WTO legal instruments, but rather, *under what conditions* a government chooses to use GATT/WTO compliant measures from among the wide array of protectionist instruments. We focus on the government's choice across unilateral, bilateral, and GATT/WTO legal instruments of import regulation over the past two decades: domestic subsidies, voluntary export restraints (VERs), and GATT/WTO legal measures (safeguard and antidumping duties), respectively. This universe of cases—which includes only cases where the government grants protection—controls for the government's responsiveness to protectionist interest groups and allows us to focus on the determinants of the instrument choice. Using a new commodity-level data set of instrument choice, we provide some of the first systematic empirical evidence that a government's choice to turn to international law is rooted in domestic electoral politics, in particular, legislators' reelection incentives that are shaped by electoral institutions. To do so, we leverage the case of the second largest economy that went through an electoral reform without a major partisan change, Japan.

This article aims to advance our understanding of compliance with international law and trade politics in three respects. First, GATT/WTO agreements regarding when and how governments may restrict their imports underwent major revisions, yet to what extent these legal rules constrain government policy choice has not yet been explored. This article opens a new discussion of how electoral politics affects a government's compliance with international rules by analyzing how the government's instrument choice changed in response to revisions of these rules (Dai 2005; Rosendorff and Milner 2001).

The article demonstrates that legislators strategically deviate from new WTO rules—such as prohibition of VERs—when it is electorally beneficial to do so. By focusing on the politics after the law was enacted, this approach differs from a formalistic view of legalization that often misses the domestic politics determining whether recourse is made to international law.

¹ Studies such as Hansen (1990), Tharakan (1995), Prusa (1999), Goldstein and Martin (2000), and Kucik and Reinhardt (2008) have suggested that member states have not rigidly complied with the GATT/WTO rules governing the use of safeguard and antidumping measures due to (1) loopholes in the agreements, (2) domestic politics, and (3) legal capacities.

² Kono (2006, 382) aptly points out: “most studies of trade policy...examine only a single instrument: either tariffs or NTBs.” Recent work by (Davis and Shirato 2007) addresses the selection bias issue by including all the potential WTO-incompliance cases and modeling the selection effects. Yet, the literature tends to focus on the most commonly used GATT/WTO-legal protection measure, antidumping, rather than asking a question about the choice across GATT/WTO-compliant vs. traditional unilateral or bilateral instruments.

³ Blonigen and Bown (2003) show this with dyadic data on the use of antidumping measures and Gawande and Hansen (1999) suggest this using dyadic data on nontariff barriers (NTBs).

Second, the literature on legalization has identified two major channels through which international law constrains governments' behaviors: material interests and norms (Hathaway 2002, 2005; Simmons 2000; von Stein 2005; Tomz 2007). Indeed, a prevailing explanation for why Asian countries are not aggressive users of legal instruments is that their cultures are not legalistic (Chia 1996).⁴ We systematically test this claim using a commodity-level data set on the state's recourse to international law to assess whether the government's instrument choice differs vis-à-vis Asian vs. non-Asian states controlling for electoral conditions and the political economic characteristics of industries. We demonstrate that the cultural argument about the lack of legalization in Asia is unfounded and that legislators' incentives and industry characteristics account for the substantial variations in the instrument choice.

Third, although a vast political economy literature has sought to explain *the levels* of trade protection, there has been very little focus on how governments choose across different *instruments* of protection. Trade economists have formalized the political economic determinants of trade instrument choice (Baldwin 1985; Bhagwati and Ramaswami 1963; Hillman and Ursprung 1988; Krueger 1974; Rosendorff 1996; Rosendorff and Milner 2001), yet the empirical work has lagged far behind the theories.⁵ The literature, moreover, has understudied how electoral systems and GATT/WTO rules interact to shape the instrument choice. This article aims to fill this significant gap. Specifically, we demonstrate that export-oriented and import-competing industries have divergent preferences over instruments of import regulation and that legislators strategically weigh these heterogeneous preferences to stay in office. Electoral systems—that is, majoritarian vs. proportional representation—and the nature of electoral competition shape legislators' incentives to privilege exporters vs. import-competing groups and hence influence the instrument choice. This pluralistic approach disaggregates the unitary actor assumption employed in the majority of the legalization literature and brings the supply side of a state's recourse to international law—the legislators—to the center of the analysis.⁶

The Puzzle

GATT/WTO allows signatory states to restrict imports under two circumstances. First, under "unfair trade" provisions, member states may punish the dumping of goods by imposing antidumping measures or a countervailing duty (Article VI). Second, under safeguard provision, signatory states are allowed to temporarily raise tariffs for import-injured industries without violating GATT/WTO principles (Article XIX).

Despite the uniformity of these rules, signatory states' use of these measures varies substantially across countries and commodity cases (Goldstein and Martin 2000; Prusa 1999; Rodrik 1997). In particular, Japan's behavior has been puzzling. The United States and the European Union have investigated more than 200 antidumping cases since 1995, while Japan has investigated only 11 cases.⁷ While the United States and European Union used the safeguard measure (escape clause) more than 10 times in the past 20 years, Japan adopted it for the first and only time in 2001.

Furthermore, the United States, Europe, and South Korea have increasingly chosen antidumping measures over safeguard measures to protect domestic industries because antidumping measures have a lower evidentiary hurdle and no obligation

⁴ Kahler (2000) shows that the lack of legalization in Asia was a strategy rather than a norm.

⁵ An emerging empirical work, moreover, tends to use aggregate levels of various forms of protection rather than a government's choice of instrument. See Mansfield and Busch (1995) and Kono (2006).

⁶ Exceptions are Simmons (1994) and Dai (2005).

⁷ Author's data set which will be discussed in detail later.

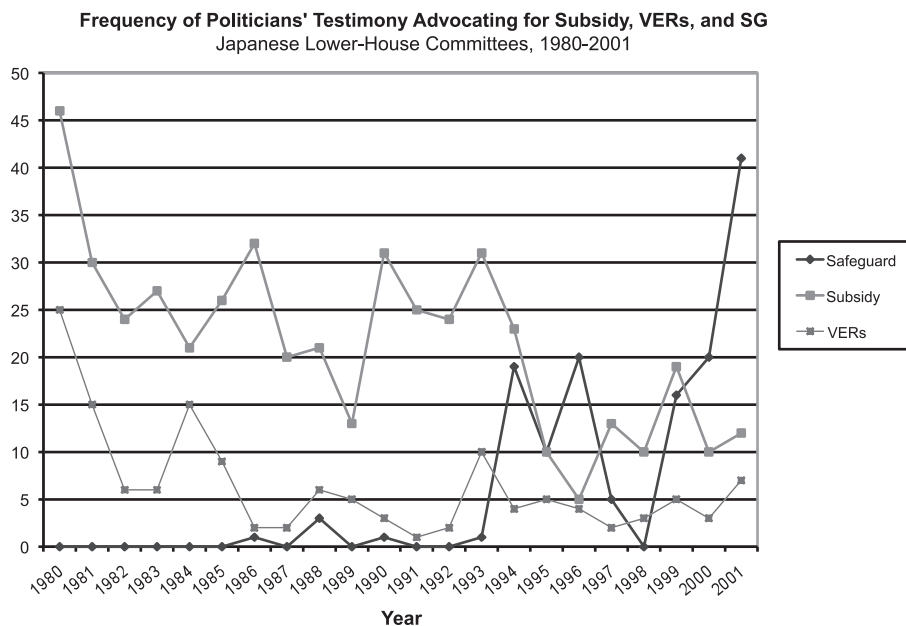


FIG. 1. Annual Frequency of Politicians' Testimony Advocating for Subsidy, VERs, and Safeguard Measures

to compensate the targeted country.⁸ The Japanese record shows the opposite trend. Figure 1 shows legislators' testimony before the lower house committees advocating for a use of a particular instrument of protection in Japan. The legislators began to advocate the use of safeguard measures around mid-1990s.

The sudden surge of legislators' interests around mid-1990s is puzzling. First, for office-seeking politicians, GATT/WTO legal instruments had long been the least preferred instrument in terms of mobilizing either votes or campaign donations. Japanese exporters have long been a target of antidumping and safeguard measures adopted by the European Union and the United States.⁹ Exporters object to the government's use of GATT/WTO legal instruments because they are more likely to provoke the use of retaliatory antidumping or safeguard investigations by the targeted states than VERs or import-injury relief subsidies (Kampfer and Willett 1989; METI 2002).¹⁰ Exporters use campaign contributions to lobby legislators for an instrument of protection that is least likely to provoke retaliation such as a VER.¹¹

⁸ Rodrik (1997, 558) states: "In recent years, trade policy in the United States and the European Union has...increased use of antidumping measures and limited recourse to escape clause actions. This is likely because WTO rules and domestic legislation make the petitioning industry's job much easier in antidumping cases: there are lower evidentiary hurdles than in escape clause actions, no determinate time limit, and no requirement for compensation for affected trade partners, as the escape clause provides."

⁹ Officially, Japanese exporters and the METI have been strong advocates of more restrictive use of these measures at GATT/WTO negotiation rounds. See METI (2002).

¹⁰ Milner (1988) and Gilligan (1997) examine the role of exporters in resisting protectionist trade policy.

¹¹ VERs also gives exporters an opportunity to collude with foreign importers to set the price higher than the world market as formalized by Hillman and Ursprung (1988). When China retaliated against Japan's adoption of WTO-legal safeguard measures by imposing 100 percent tariffs on Japan's electronics and automobile products in 2001, the proportion of political donations from the targeted two exporting sectors per total exporting sectors' donations dropped from 90 percent to 60 percent. This anecdote confirms that exporting sectors prefer the instrument that is least likely to provoke retaliatory actions and campaign contribution is one of the ways to influence the LDP politicians to pursue VERs. To test this link between exporters' campaign donations and the government's instrument choice more directly was not possible as the record of campaign donations was not available before 1996.

Second, GATT/WTO legal instruments take much longer time to investigate, approve, and implement than VERs or subsidies, which makes it an unattractive instrument for politicians' credit-claiming. Finally, bureaucrats also have viewed safeguard measures as "the treasured shield that can never be drawn"¹² due to Japan's position as a target, rather than a user, of GATT/WTO legal instruments.¹³

Existing explanations for the Japan puzzle described above have identified bureaucracy and trade-dependent industries (Pekkanen 2001a, 2001b, 2008) and the market environment (Davis and Shirato 2007) as major forces behind the surge of interest in using legal options.¹⁴ These studies, however, tend to miss the domestic actors' divergent preferences to use legal options (i.e., exporters vs. import-competing groups). The heterogeneity of the demand-side preferences makes the role of legislators critical as they strategically weigh these preferences to stay in the office.

Legislators' Preferences Across Three Instruments

Who Decides? Institutional Settings

Under the Japanese Customs Tariff Law (Ministry of Finance 2001), there is no independent agency such as the International Trade Commission in the United States to investigate and implement GATT/WTO legal protection. Instead, two or three ministries collectively make decisions.¹⁵ Interministerial politics over instrument choice is prevalent as ministries' preferences and jurisdictions differ across various instruments of protection.¹⁶ This provides much greater opportunity for legislators to influence decisions than in a country with an independent agency since elected legislators who represent their constituents' interests occupy ministerial positions.¹⁷

Furthermore, domestic legislation does not give private actors such as industries or firms the right (legal standing) to file complaints and request investigations into the adoption of GATT/WTO legal protection. Instead, ministries have standing to initiate such investigations. To ensure that bureaucrats pick the "right" industries from the sea of informal petition letters, industries depend on powerful politicians to exercise their influence over the ministries' decision-making process.¹⁸ This top-down decision-making process paradoxically gives legislators ample space to exert influence over the use of GATT/WTO legal protection.¹⁹

¹² The Japanese proverb (*denka no houtou*) means "the final trump card that can never be played."

¹³ Interview with then-Head of Textile Bureau of the METI and a senior official, July 23 and July 29, 2002, Tokyo, Japan. Interview with a senior official at the Japan Fisheries Cooperatives "Zengyoren," January 29, 2002. The senior official at the Federation of Japan Fisheries Cooperatives aptly put: "well-informed politicians will never request the adoption of safeguards—they should know how hard it is to succeed and do not want to lose face to their constituents by attempting in vein."

¹⁴ To be accurate, Pekkanen (2001a, 2001b) discusses increasing legalization of trade policy *over time*, while Davis and Shirato (2007) discuss variations among firms' use of WTO panel ruling after 1995.

¹⁵ Three ministries are: the Ministry of Finance, the Ministry of Economy, Trade, and Industry (METI) and the ministry with a jurisdiction over a given commodity.

¹⁶ The METI has jurisdiction over quota restriction (Foreign Exchange and Foreign Trade Control Law) while the Ministry of Finance has jurisdiction over tariffs (cf., Customs Tariff Law, sec. 9).

¹⁷ Gawande and Hansen (1999) show systematically that even with the independent agency like ITC in the United States, interest groups influence the antidumping rulings via lobbying legislators.

¹⁸ On how the LDP's "agricultural policy tribe" politicians pressed the MAFF to adopt a safeguard measure, see Takii (2001).

¹⁹ On the procedure to adopt GATT/WTO escape clauses in Japan, see METI (2002).

Legislators' Preferences

Import-injured industries are relatively indifferent to the choice of instrument because all three provide protection although they tend to seek the instrument that is most likely to succeed in providing protection. However, export-oriented industries and legislators are more sensitive to the choice of instrument because they differ with respect to the risk of provoking retaliation from targeted states and electoral returns.²⁰ Three electoral factors shape legislators' choice to privilege exporters vs. import-competing interests: the nature of political competition, electoral cycles, and electoral institutions.

The nature of political competition with opposition parties affects the LDP politicians' need to use a subsidy to mobilize political support. A subsidy differs from VERs and GATT/WTO legal protection because of its ability to mobilize political support from geographically concentrated industries (Busch and Reinhardt 2000; McGillivray 2004). A subsidy is also the only instrument over which politicians possess formal decision-making power in the Diet. In particular, the LDP politicians have enjoyed better access and influence over the budget policy than opposition party politicians for the past five decades.

We hypothesize that when the LDP is strong in the lower house, it can more easily dole out subsidies for narrow, sectoral or geographic interests—that is, import-injured industries—without much political scrutiny.²¹ On the other hand, during the two periods in which the LDP was weak, the opposition parties tended to represent urban workers and consumers which forced the LDP to target spending to broader constituencies, increasing social and welfare spending. Furthermore, we hypothesize this incentive to use subsidies to mobilize political support should be stronger during election years than nonelection years (Nordhaus 1975).

Hypothesis 1: *LDP Politicians prefer subsidy when the party is strong and during general election years.*

While the LDP politicians' preferences for subsidies are mainly driven by their need to mobilize votes, their preference for VERs is derived from the need to raise campaign financing (Grossman and Helpman 1994; Hillman and Ursprung 1988; Rosendorff 1996). Despite its long-standing platform as a rural and agricultural party, the LDP receives approximately 70 percent of its top ten political donations from exporting sectors (auto, steel, and electronics).²² Politicians' and parties' need for campaign finance, therefore, should affect whether they privilege exporters' preferences. This need for campaign finance is directly related to the level of political competition. A higher level of political competition should encourage LDP politicians to prefer VERs over GATT/WTO legal protection in order to increase political donations by accommodating exporters' interests.²³

Hypothesis 2: *LDP Politicians prefer VERs when the party is weak in the lower house.*

²⁰ Voluminous literature on endogenous trade policy suggests legislators' electoral incentives affect trade policy outcomes. Krueger (1974), Hillman and Ursprung (1988), Magee, Brock, and Young (1989) and Grossman and Helpman (1994) tend to explain the levels of trade protection as opposed to the instrument choice. Furthermore, these studies are exclusively concerned with domestic politics and do not pay sufficient attention to how GATT/WTO agreements constrain state's instrument choice.

²¹ Naoi (2009) shows direct evidence that lobbying by geographically organized interests is more prevalent when the LDP is stronger in the lower house.

²² Exporters give campaign donations to the LDP to ensure the party's commitment to an open economy. The data are from 1996, calculated by the author using Saigusa (1998, 207).

²³ Interviews with then-Vice Head of International Adjustment Bureau at the MAFF, January 10, 2002, and with then-Head of Textile Bureau of the METI and a senior official, July 23 and July 29, 2002.

Electoral Reform

Under the previous electoral system where same party candidates competed under a multimember district system (MMD), targeted subsidies for narrowly concentrated interests, such as import-injured industries, was one of the most important means to cultivate personal votes. Under the new electoral system, which came into effect with the 1996 election, 200 seats are allocated to proportional representation and 300 seats are allocated to single-member districts (SMD). PR seats are divided into 11 regional blocks and each block encompasses a much more diverse set of industries and constituencies than did the previous MMD system.

Following Rogowski's (1987) logic that PR should insulate legislators from pressure from narrowly concentrated interests, we expect that this electoral reform would decrease legislators' incentives to use subsidies to mobilize political support from import-competing groups.²⁴ Instead, the shift to PR systems would encourage legislators to target organized interests with political clout in a larger regional block by advocating for the use of GATT/WTO legal instruments.

Hypothesis 3: *Politicians will have stronger interests in using subsidies under MMD (1980–1995) than a mixed electoral system (1996–2001).*

Hypothesis 4: *Politicians will have stronger interests in using GATT/WTO legal measures under a mixed electoral system (1996–2001) than a majoritarian system (1980–1995).*

Another important debate concerns whether politicians need more campaign financing under an MMD system than a SMD system. Cox and Thies (1998) find that the LDP politicians spent more money under MMD system due to intra-party competition in electoral districts. If VERs are preferred as a means to extract campaign donations from exporting firms, we would expect LDP politicians to have stronger incentives to use VERs under the MMD system (1980–1995) than the SMD/PR system.²⁵

Hypothesis 5: *Politicians will have a stronger interest in using VERs under the MMD system (1980–1995) than the SMD/PR system (1996–2001).*

Partisan Preferences for GATT/WTO Legal Instruments

Finally, two characteristics of GATT/WTO legal instruments—the instrument least favored by export-oriented industries (and hence the LDP) and its relative unattractiveness for credit-claiming compared to subsidies—offer a hypothesis about the particular types of politicians who prefer to use them.

Hypothesis 6: *GATT/WTO legal measures are a preferred instrument for opposition party politicians (1) who do not rely on export-oriented industry's political donations and (2) who do not possess strong influence over subsidies.*

Instrument Choice Data Set and Methods

Our dependent variable is the unordered, categorical policy choice: subsidies, VERs, and GATT/WTO legal instruments. We use official reports to identify the

²⁴ Rogowski and Kayser (2002) and Bawn and Thies (2003) suggest that PR enhances the power of organized (i.e., producers) over diffused (i.e., consumers) interests. This argument predicts whether a government adopts pro-producer (i.e., higher price, more protection) or pro-consumer policy (i.e., free trade), but does not provide a prediction regarding its instrument choice.

²⁵ PR portion of the new electoral system should also require much less money than the previous MMD system, although systematic empirical tests of this claim are few and far between.

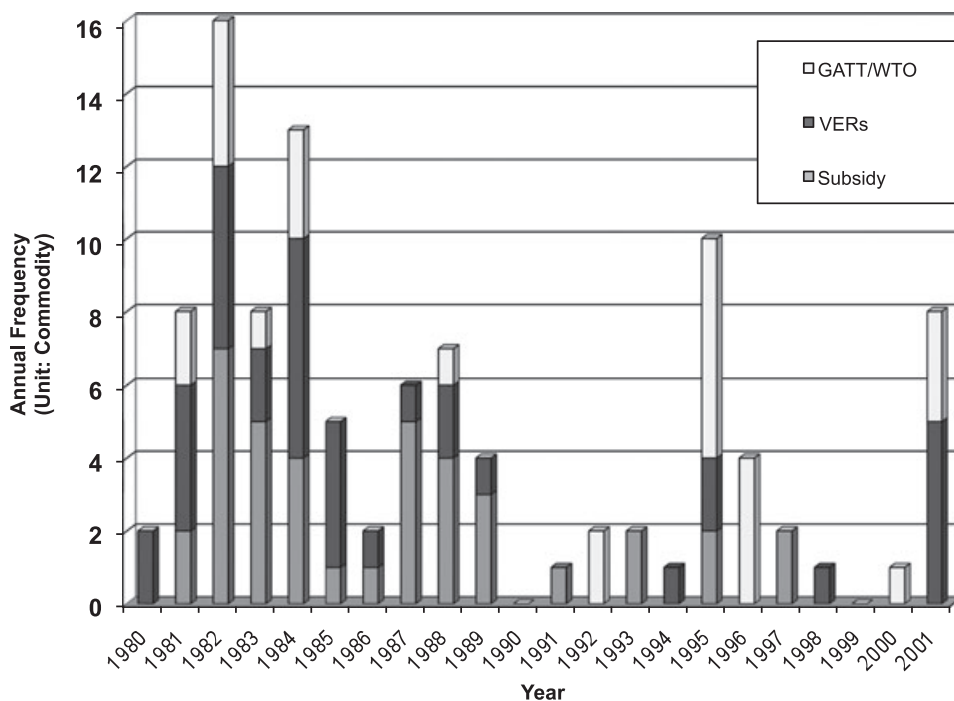


FIG. 2. The Japanese Government's Instrument Choice, 1980–2001

commodity cases where the government launched official investigations on GATT/WTO legal protection and newspaper reports,²⁶ the government's whitepapers and internal documents obtained at various ministries to track the decisions on VERs and subsidies. From these documents, we identified commodities that suffered from an increase in imports, the year when the government granted protection, and which instrument the government chose. The data consist of the government's instrument choice in 103 commodity-level cases between 1980 and 2001. Detailed coding rules are described in the Appendix. Figure 2 shows the annual usage frequency of the three instruments.

Because there were many cases where the Japanese government used different instruments of protection for the same commodity from different exporting countries²⁷ or in different periods of time,²⁸ the unit of empirical analysis is a commodity-exporting country-year.²⁹ Unilateral tariffs are not included in the data because Japan has not adopted unilateral tariff increases without using GATT/WTO legal protection at any time during the period covered by this

²⁶ We used five newspapers: *Nihon Keizai Shimbun*, *Nihon Sangyo Shimbun*, *Nihon Kinyu Shimbun*, *Nihon Ryutsu Shimbun*, and *Asahi Shimbun*.

²⁷ The government adopted VERs to protect the synthetic rubber industry in 1984 from Mexico and Taiwan, but imports from the United States, which consisted 75.3 percent of total imports, were untouched (June 22, 1984, *Nihon Keizai Shimbun*).

²⁸ In 1980, the government decided to negotiate VERs for the silk yarn industry with China. But when silk yarn industry suffered again from China's export in 1991, it granted "Employment Adjustment Assistance" without any discussion to use VERs or escape clauses (February 14, 1980, *Nihon Sangyo Shimbun*; January 30, 1991, *Nihon Keizai Shimbun*).

²⁹ This universe of cases excludes industries that did not demand the government's intervention (self-help) and industries that were not granted one of the three instruments of protection. A potential selection bias issue is that the government's instrument choice may be endogenous to the first stage of its decision to grant or not to grant protection (Hansen 1990). We used a nested logit framework that allows us to model the government's choice as a two-stage decision, and found that there is no endogeneity between the first and the second stage of selections.

study. Quality NTBs—for example, regulation to make producers declare the country of origin—are also excluded as they are difficult to track systematically from the official documents or news articles.

Electoral Incentives: Competition, Cycles, and Reform

We use the percentage of LDP seats in the lower house in year t as an indicator of the level of electoral competition (*Ldp seat share*). We assign a dummy variable a value of one for years with general elections and zero otherwise to estimate the effect of electoral cycles on instrument choice (*Election years*). For our measure of the effect of electoral reform on legislators' incentives, we have collected records of the lower house's official Diet committee discussions from 1980 to 2001 to determine how many times per diet-year legislators expressed a need for import regulations. We coded these testimonies according to whether they are advocating for the use of subsidies, VERs, or GATT/WTO legal measures and calculated the frequency of testimony demanding each instrument per year (*Testimony*). The variable provides a direct measure of legislators' preferences for the various instrument choices in both the pre- and post-electoral reform periods.³⁰

Alternative Hypotheses: Legality vs. Retaliation

To demonstrate the relative validity of our electoral incentives argument, we test for two alternative channels through which international law affects government's instrument choice: legality and retaliation. First, the government's instrument choice may simply be a response to the legal status of the instruments under GATT/WTO. Two changes in the WTO rules during the period of our study may affect the government's instrument choice. First, while the use of VERs was allowed under GATT, a new WTO rule prohibits the use of VERs by member states. Second, the WTO's new Agreement on Subsidies and Countervailing Measures prohibits the use of a narrowly targeted, specific subsidy to "an enterprise or industry or group of enterprises or industries" (Article 2.1).³¹ We create a dummy variable taking a value of one for legal instruments under GATT and WTO rules and zero otherwise.

The government's motivation to comply with the GATT/WTO rules may be normative (e.g., pressures of international legitimacy, habit of compliance), or, interest-driven (e.g., law raises the costs of reneging by ex post punishment or via reputation mechanism) (Hathaway 2002, 2005; Tomz 2007). We investigate the relative validity of these motivations by testing whether it is the legal status of an instrument per se or the cost of ex post punishment for using an illegal instrument (i.e., retaliation in the form of countervailing, antidumping duties, or safeguard) that shapes the government's instrument choice. If the motivation is normative and it is legality per se that influences the government's choice, *Legality* alone should be positively associated with the government's propensity to use instruments that are legal under GATT and WTO agreements. Conversely,

³⁰ Detailed coding rules are described in the Appendix. One could argue that legislators' preference for instrument choice expressed in the Diet is not entirely independent of the government's actual policy choice—legislators are likely to express interests in an instrument that is more likely to materialize as protection. To test whether this endogeneity is a serious concern, we analyzed the testimony data as a dependent variable to see what political and economic covariates affect the pattern of testimony. The results suggest that macroeconomic factors such as unemployment, GDP growth, and election years have systematic effects on the frequency of testimony but *the LDP seat share* does not have systematic effects. Thus, endogeneity between electoral factors and the pattern of testimony is not a serious concern.

³¹ A subsidy that is limited to certain enterprises located within a particular geographic region is also considered as a specific subsidy (Article 2.2).

if the government's motivation is interest-driven, we expect to see the government's recourse to international law when the risk of provoking retaliation is low or none.

To test these motivations, we leverage an additional revision of rule that altered the costs of provoking retaliation. Under the WTO's *Agreements of Safeguard* (Article 8), which were in effect beginning in 1995, targeted states are not allowed to retaliate against a safeguard measure for the first 3 years. Under GATT rules, however, immediate retaliation was allowed (WTO 1994). We analyze how the Japanese government's choice of instrument changed in response to this revision of the rules by estimating the effect of exporters' interests (*Exporters' interests*)—a variable capturing Japan's exports to country j as a percentage of Japan's total exports in year t —on the instrument choice in three different hypothetical situations. One in which GATT/WTO rules prohibiting retaliation do not constrain a targeted state's retaliation, that is, a realist's view of an anarchic world (nonlegalized world) (Blonigen and Bown 2003; Reinhardt 2001),³² another in which GATT/WTO rules fully constrain targeted state's retaliation as the formalistic view of legalization suggests (legalized world) (Sykes 2005), and another in which GATT/WTO rules constrain member state's retaliation but do not constrain nonmember states (partially legalized world).

Empirically, we estimate three different models. For the “nonlegalized world,” the effect of exporters' interests on the government's instrument choice is estimated throughout the GATT and WTO periods (1980–2001). If we find that the *Exporters' interests* continue to have negative effects on the government's choice of the GATT/WTO safeguard measures after 1995, it suggests that exporters and the government perceived that the prohibition of retaliation would not constrain retaliation from the targeted state. This is a scenario in which governments avoid using GATT/WTO compliant instruments because they do not perceive that international law will constrain state behavior.

In the second model, “partially legalized world,” we consider the Japanese exporters' interests in its major trading partner, China. China was not legally constrained by WTO rules prohibiting retaliation until its entry to WTO in December 2001.³³ We hypothesize that even after the transition to WTO, *Exporters' interests* will continue to have negative effects on the government's choice to use WTO legal instruments vis-à-vis China but not vis-à-vis member states. This is a scenario in which a government complies with international law only when doing so is compatible with legislators' electoral incentives.

The third model (legalized world) estimates the effect of *Exporters' interests* on the instrument choice conditional on whether GATT/WTO rules allow retaliation for the adoption of a given instrument. *Exporters' interests* is interacted with a dummy variable indicating whether retaliation is allowed or not allowed (“1” for allowed “0” otherwise) for each of the three instruments. If we find that *Exporters' interests* have positive effects on the government's choice to use a legal instrument that prohibits a targeted state's retaliation (i.e., safeguard under WTO), we reason that the government's motivation to comply with international law is interest-driven (i.e., law raises the cost of violation by ex post punishment) rather than norm-driven.

³² Retaliation can be “legalized” (e.g., retaliatory antidumping actions) or unilateral. Busch and Reinhardt (2003) argue that whether member states' decision to retaliate or not is not determined by GATT/WTO-rules, but rather, by their legal capacities.

³³ This does not necessarily mean China did not embrace any WTO rules before its entry. China has used WTO rules prohibiting the government's involvement to VERs as an excuse not to accommodate Japan's request for VERs (Yoshimatsu 2002).

Controls

Building on existing works on choice of trade instrument, we include a battery of controls. First, the import-competing industry's characteristics significantly affect the instrument choice (Ray 1981).³⁴ Hence, commodities are categorized into three groups (1. textile, 2. metal and raw materials, 3. agriculture, fishery and forestry) and are assigned dummy variables in the model (*Commodity*).³⁵

Second, studies on states' use of international law posit that whether an instrument is external or domestic has important political implications because governments use the former to shift blame or to externally commit (Pekkanen 2001b; Simmons 1994). To control for this, we create a dummy variable taking a value of one for two external instruments (GATT/WTO legal measures and negotiated export restraints) and zero for domestic subsidy (*External*).

The likelihood of reaching VERs agreement partially depends on whether a few countries dominate the market in exports to Japan. When fewer exporting countries are involved, it is easier to negotiate and reach VERs agreements than when exports are dispersed across many states.³⁶ "*Import concentration*" is calculated as the import value of a given commodity from country *i* in year *t* as a percentage of the total import value of the commodity in Japan.

Macroeconomic conditions may affect the government's choice of domestic subsidies over other instruments. Thus, the unemployment rate (*Unemployment*) and the annual growth rate of the government budget (*Budget growth*) are included in the model. Previous qualitative studies suggest that the Japanese government used VERs almost exclusively with Asian states. To test this claim, dummy variables are assigned to distinguish between commodities that are exported by Asian states and those that are not (*Asian exporters*).

Model and Measures

A major hurdle in analyzing the effects of electoral reform on trade policy is the issue of simultaneous change. The transition from GATT to WTO in 1995 and the electoral reform from a majoritarian to a mixed SMD/PR system (1994) occurred around the same time in Japan.³⁷ Conventionally, the effect of electoral reform on the government's policy is estimated indirectly through a temporal variable (a dummy variable indicating pre- and post-reform period) but the simultaneous change makes this approach indeterminate at best.

This article addresses this problem in two ways. First, we analyze the government's instrument choice using a conditional logit model also known as McFadden's choice model. The conditional logit model allows us to estimate how attributes of cases (a government- and commodity-specific characteristic) interact with attributes of the instruments themselves (e.g., whether an instrument is legal or illegal, whether retaliation is allowed for a targeted state under

³⁴ Hansen (1990) discusses the selection effects in ITC applications. Davis and Shirato (2007) argue that Japanese business in low velocity environment tends to pursue WTO adjudication.

³⁵ For instance, politically powerful groups should prefer to lobby for a more politicized instrument (i.e., subsidy) rather than for safeguard or antidumping measures as the former is more likely to deliver protection. Commodity dummies highly correlate with geographical concentration of industries and thus we include the former as a measure of political power in the model.

³⁶ To illustrate, consider the following case involving a two-commodity economy. One country exports commodity X, which represents 80 percent of Japan's total import value of commodity X, whereas each of five major exporters exports 20 percent of total import values of commodity Y. Other things being equal, the government will choose VERs for commodity X but not for commodity Y because negotiating with one major exporter is easier than negotiating with five major exporters.

³⁷ The problem is not unique to Japan—Italy (1993), New Zealand (1996), South Africa (1994), or Thailand (1997), to name a few. Each of these countries transitioned from a majoritarian, at least partially, to proportional representation system around the time that GATT transitioned to WTO. Rogowski (1987) has shown that this may not be a coincidence because highly trade-dependent small countries are more likely to adopt PR systems.

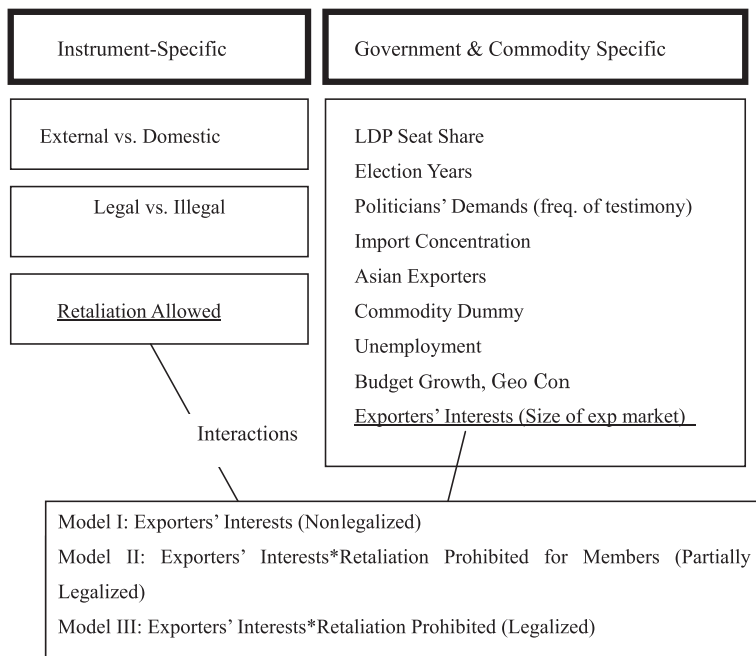


FIG. 3. Conditional Logit Model of Instrument Choice

GATT/WTO agreements) to affect the government's instrument choice (Alvarez and Nagler 1998; Desposato 2006; Maddala 1983; McFadden 1974). Figure 3 describes the conditional logit model with instrument-specific and case-specific variables.

The conditional logit model is thus useful for situations where not only the attributes of the actors but also the characteristics of the choices themselves change over time, such as analyzing voting decisions when the left-right positions of political parties changed over time (Alvarez and Nagler 1998) or estimating legislators' party switching decisions when party systems changed over time (Desposato 2006).³⁸ The model is specified as follows:

$$\text{Instrument Choice}_{ij} = \beta_0 + \beta_1(\text{INSTRUMENT-SPECIFIC})_{ij} + \psi_j(\text{CASE-SPECIFIC})_{ij} + e_{ij},$$

where $(\text{INSTRUMENT-SPECIFIC})_{ij}$ indicates a variable measuring the characteristics of instrument j relative to a case i . $(\text{CASE-SPECIFIC})_{ij}$ is a vector of characteristics of the i th commodity case or characteristics of the government. The model yields one coefficient (β) for each instrument-specific variable and J coefficients ($\psi_1, \psi_2, \dots, \psi_J$) for each case-specific variable where J is the number of alternatives (i.e., instruments). Original errors are assumed to be distributed log-Weibull and the error terms of each policy instrument are assumed to be

³⁸ To illustrate the advantages of this model over a conventionally used multinomial logit model, consider the following statement: "the Japanese government is more likely to rely on safeguard measures to protect politically powerful industry under a new WTO rule prohibiting retaliation by a targeted state." In order to test the validity of this argument, a multinomial logit model would estimate the effects of industry-level and the government's characteristics on the probability of Japanese government choosing GATT/WTO-legal measures. A conditional logit model, on the other hand, could estimate how characteristics of industry and the government *interact with* characteristics of instruments themselves to affect the probability of the government's choice of GATT/WTO-legal measures. See Alvarez and Nagler (1998) for further discussion.

TABLE 1. Descriptive Statistics

<i>Variable</i>	<i>Observations</i>	<i>Mean</i>	<i>Standard Deviation</i>	<i>Minimum</i>	<i>Maximum</i>
Case-specific					
LDP seat share	103	55.486	5.294	43.6	62
VERs testimony	103	7.699	4.931	1	25
WTO testimony	103	5.560	11.563	0	41
Exporters' interests	103	5.671	6.897	0	37.14
Election year	103	0.272	0.447	0	1
Import concentration	103	33.688	32.080	0	99.97
Asian exporter	103	0.786	0.412	0	1
Commodity	103	1.864	0.755	1	3
Unemployment	103	2.850	0.754	2	5
Budget growth	103	3.628	1.119	0.766	5.03
Instrument-specific					
Chosen instrument (dependent variable)	309	0.333	0.472	0	1
External	309	0.667	0.472	0	1
Legal	309	0.375	0.375	0	1
Interactions					
ExpIntersts*nonlegal	309	2.463	5.097	0	37.14
ExpIntersts*partially legal	309	1.840	4.600	0	37.14
ExpIntersts*legalized	309	1.330	4.396	0	37.14

Note. The number of observations for case-specific variables is $N = 103$ and $N = 309$ for instrument-specific variables. When conditional logit models are estimated, all the case-specific variables are assigned to each instrument choice (subsidy, VERs, and GATT/WTO) to generate three coefficient estimates for each of the three instruments ($N = 103 \times 3 = 309$).

independent of each other.³⁹ The estimated models also include several case-specific variables that trend over time (politicians' testimony, budget growth, and unemployment rate) to control for the passage of time.

Second, we address the issue of simultaneous change by estimating the effect of the annual frequency of legislators' testimony advocating for a particular instrument (*Testimony*) on the instrument choice. "*Testimony*" captures legislators' preferences across the three instruments annually, and, thus, is a more direct indicator of the effect of electoral reform on legislators' preferences than a temporal dummy variable.⁴⁰ Thus including *Testimony* as covariates allows us to isolate the effect of the GATT-WTO transition from the effect of electoral reform. The partisan affiliations of legislators who advocated for the use of safeguard measures are also identified in order to test Hypothesis 6.

Results

Table 1 shows descriptive statistics for the variables used in the analysis. Table 2 shows the coefficient estimates and Figures 4–6 show predicted probabilities for

³⁹ This means that the ratio of the likelihood of choosing domestic subsidies to choosing VERs does not change if one adds another policy option such as GATT/WTO provisions to the model (Independence of Irrelevant Alternatives "IIA"). We conducted a Hausman specification and confirmed that the IIA assumption holds. Another potential problem with the IIA assumption is that government decisions to grant a certain form of protection may be serially correlated (Hausman and McFadden 1984). I conducted a test by comparing the three results from estimating the unstructured, independent, and AR(1) correlation matrixes and found that it is safe to assume that serial correlation is not an issue.

⁴⁰ Including "*Testimony*" as one of the covariates has three advantages over the temporal dummy variable. First, testimony is annual data (as opposed to periodized 0–1 dummy) that captures the structural breaks (i.e., sudden changes) in legislators' preferences. Second, testimony is a continuous variable that measures the strength of such preferences and its changes over time. Finally, testimony is an instrument-specific variable (i.e., we estimate the frequency of testimony for each instrument on the instrument choice) as opposed to the temporal dummy that cannot capture the instrument-specific changes.

TABLE 2. Conditional Logit Model of Instrument Choice

Chosen Instrument	Nonlegalized World		Partially Legalized (China Factor)		Legalized World	
	Model I		Model II		Model III	
	VERs	GATT/WTO	VERs	GATT/WTO	VERs	GATT/WTO
<i>ELECTORAL Hypotheses</i>						
LDP Seat Share	-0.126** (0.059)	-0.063 (0.061)	-0.128** (0.058)	-0.065 (0.061)	-0.127** (0.059)	-0.062 (0.061)
Diet Testimony	0.129** (0.055)	0.051 (0.035)	0.128** (0.055)	0.055* (0.034)	0.129** (0.055)	0.050 (0.035)
Exporters Interests	-0.070 (0.046)	-0.084* (0.046)	-0.058 (0.044)	-0.077* (0.045)	-0.061 (0.044)	-0.089* (0.050)
Election Year	0.725 (0.648)	-0.446 (0.859)	0.684 (0.647)	-0.434 (0.853)	0.740 (0.646)	-0.435 (0.857)
<i>ALTERNATIVE: Forum-Shopping & Legalization</i>						
External	4.019 (3.050)		4.073 (3.021)		3.970 (3.034)	
Legality	0.846 (0.756)		0.489 (0.725)		0.346 (0.722)	
<i>CONTROLS</i>						
Import Concentration	0.022** (0.011)	0.026** (0.012)	0.021** (0.010)	0.025** (0.012)	0.021** (0.011)	0.026** (0.012)
Asian Exporter	1.109 (0.765)	-0.888 (0.829)	1.111 (0.764)	-0.925 (0.811)	1.100 (0.764)	-0.945 (0.808)
Commodity (Geo Con)	0.356 (0.433)	-0.373 (0.506)	0.361 (0.433)	-0.466 (0.493)	0.397 (0.432)	-0.470 (0.496)
Observations	309	309	309	309	309	309

Note. Standard errors are in parentheses. Subsidy is used as a base group.
 *significant at 10%; ** significant at 5%; *** significant at 1%

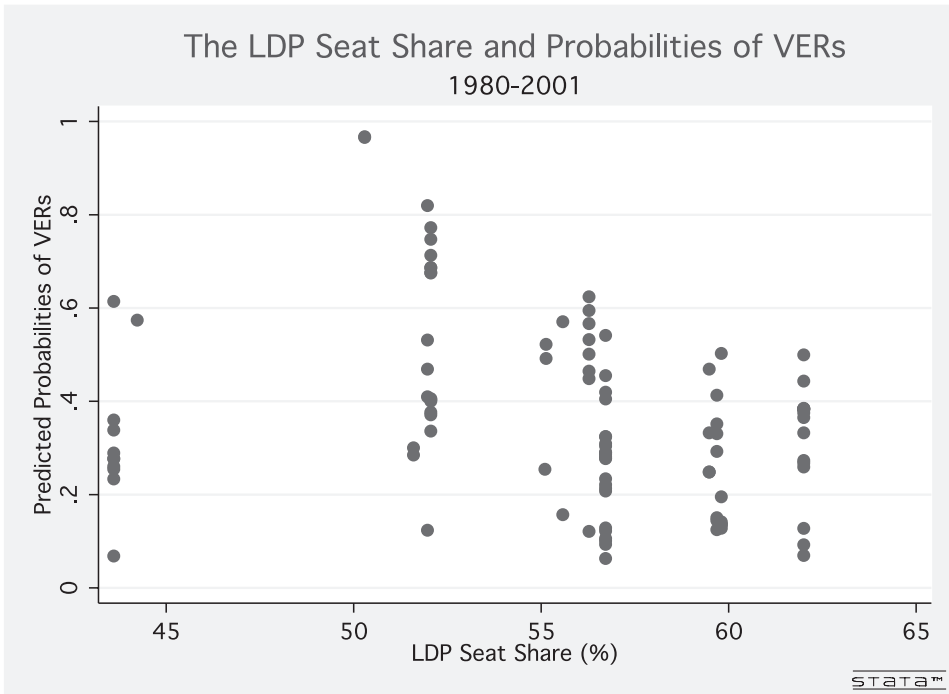


FIG. 4. The LDP Seat Share (*x*-axis) and Probabilities of the Government Adopting VERs (*y*-axis)

each instrument choice. Throughout the three models, our electoral hypotheses fit the Japanese case quite well. The nature of electoral competition and an electoral reform have substantial effects on the choice of instrument. The government's decision to use GATT/WTO legal instruments is responsive to legislators' demands for such instruments, which suddenly rose after the electoral reform of 1994. We discuss specific results below.

Electoral Competition

LDP seat share has substantial effects on the instrument choice. Politicians prefer VERs when the LDP is weak in the lower house. On the other hand, they prefer subsidies when the LDP is strong (Hypothesis 1). Subsidies appear to decline in the face of higher political competition.⁴¹ *LDP seat share* does not have a systematic effect on the government's decision to use GATT/WTO legal protection which is consistent with the expectation that the LDP, which relies heavily on the exporting sectors' political donations, would not pursue GATT/WTO legal instruments.

The substantive impact of *LDP seat share* on the instrument choice is large.⁴² A 10 percentage-point increase in the LDP seat share (from 52 percent to 62

⁴¹ The finding contradicts a seminal study by Calder (1988) that shows that the LDP increased the level of subsidy when it faced more political competition with opposition parties. We believe that our finding differs from his for two reasons. First, we focus on the choice to use subsidy as opposed to the levels of subsidy that he looked at. Second, our data span from 1980 to 2001 while his data end in the mid-1980s.

⁴² CLARIFY is not compatible with a conditional logit model.

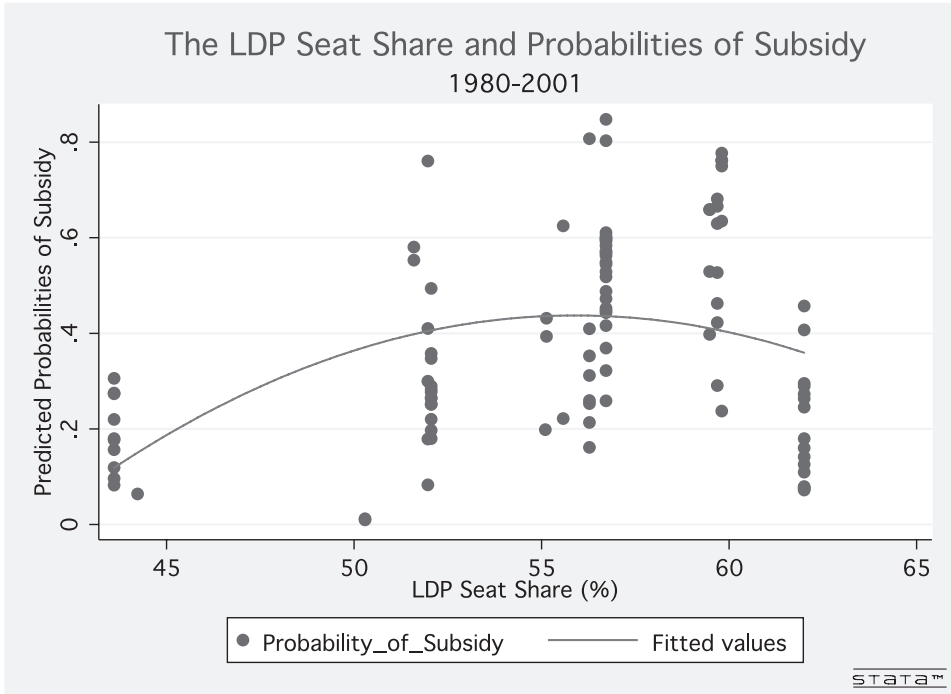


FIG. 5. The LDP Seat Share (x-axis) and the Probabilities of the Government Adopting Subsidy (y-axis)

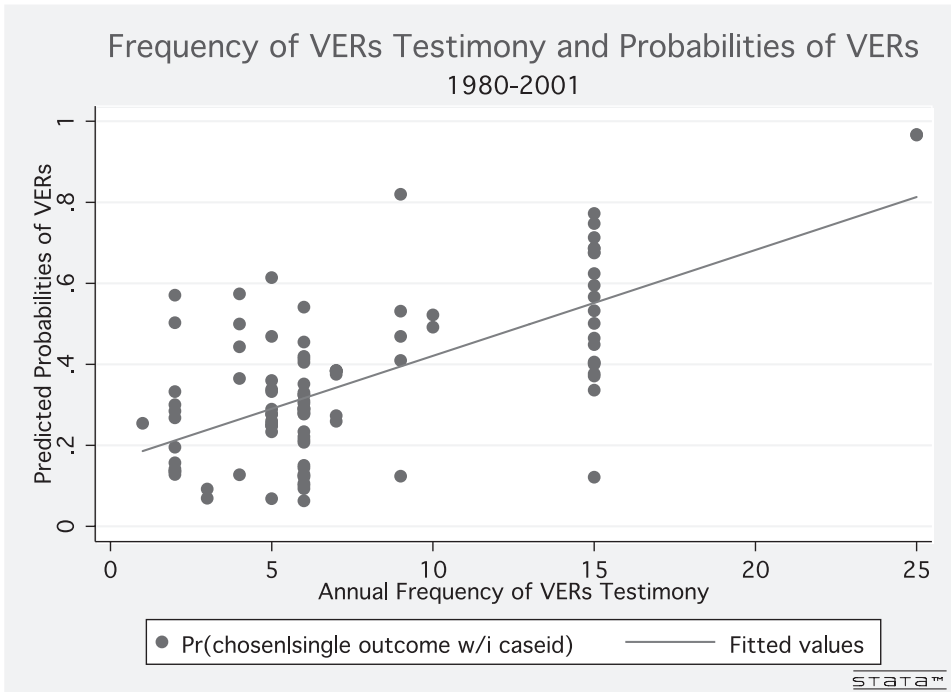


FIG. 6. Frequency of VERs Testimony (x-axis) and the Probabilities of Choosing VERs (y-axis)

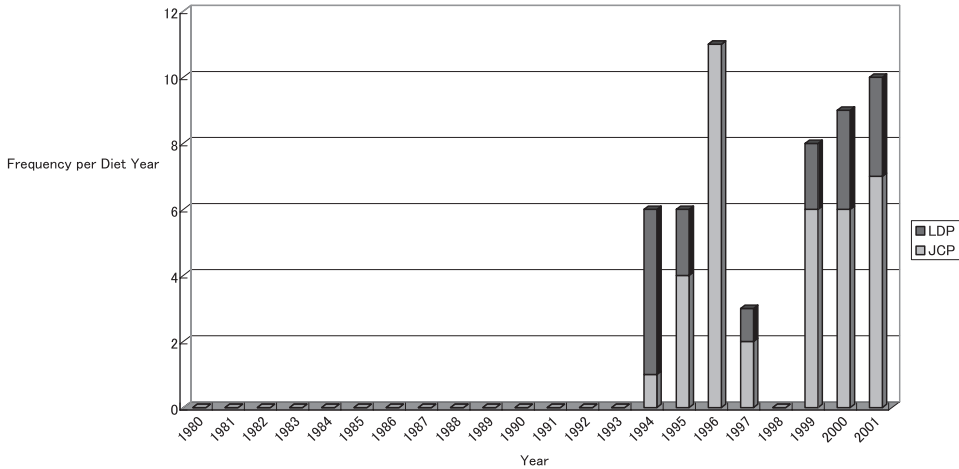


FIG. 7. LDP vs. JCP: Annual Frequency of Politicians' Testimony Advocating for SG Adoption (Excluding the LDP Ministers)

percent) will decrease the predicted probability of the government's using VERs by 40 percentage points (60 percent to 20 percent)⁴³ and will increase the predicted probability of using subsidies by 40 percentage points (Figures 4 and 5).

Electoral Reform and Legislators' Demands

Table 2 shows that legislators' preferences expressed before the Diet Committees (*Testimony*) have substantial positive effects on the government's decision to adopt VERs and weak, yet systematic, positive effects on its choice of GATT/WTO legal instruments. The finding confirms the importance of legislators in choosing an instrument of protection. The effect of legislators' demands is much larger on the government's choice for VERs than on GATT/WTO legal protection as expected.

Partisan Preferences for GATT/WTO Legal Instruments

Figure 7 shows this frequency by party affiliations. Since 1995, the Japanese Communist Party (the JCP) politicians have dominated in the testimonies advocating for Japan's adoption of safeguards.⁴⁴ The JCP's strong interests in GATT/WTO legal instruments are consistent with Hypothesis 5. The JCP politicians do not risk seats by advocating for the use of GATT/WTO legal instruments as their main constituents are import-competing groups and consumers. The party does not depend on campaign donations from export-oriented industries, either.⁴⁵ Furthermore, unlike LDP politicians who enjoy influence over the budget, the JCP does not. GATT/WTO legal instruments provide an opportunity for the JCP to legitimately claim credit, due to instrument's unpopularity among ruling party

⁴³ The relationship between *LDP seat share* and the instrument choice is not spurious as the data on legislators' testimony—a more direct measure of politicians' preferences—also confirm the hypotheses. Legislators indeed had a stronger preference for VERs when the LDP was weaker. The legislators' policy preferences are consistent with the government's actual decision to use VERs as Table 2 suggests. The finding is consistent with Hillman and Ursprung's (1988) formalization that politicians prefer VERs to tariffs because of campaign donations from exporting and importing industries.

⁴⁴ Interview at Ministry of Agriculture Forestry and Fishery, January 10, 2002, Tokyo.

⁴⁵ The JCP's major source of revenues is the nation-wide subscription of their newspaper *Akahata*.

politicians and a general lack of knowledge among legislators about the procedures necessary to implement GATT/WTO legal protection. The JCP recognized that obtaining the WTO legal safeguard protection was a promising party platform.⁴⁶

Another important factor driving the JCP's campaign was the electoral reform which came into effect in 1996. The shift from MMD to SMD meant that the JCP could not win a seat in a SMD district. For the party to survive, it needed to win broader support from PR regional blocks. The JCP's motivation was clear from their trade policy testimony—the JCP candidates who testified before the Diet for safeguard adoption tended to call for support to declining industries in a broader regional block than their home districts which confirms Hypothesis 3.⁴⁷

The JCP's campaign alone was insufficient to realize the government's adoption of safeguards. The LDP politicians who represented agricultural districts eventually bandwagoned with the JCP and pressured the ministries to adopt safeguard measures for scallions, rush-woven floor mats (*tatami*), and *shiitake* mushrooms in 2001. The adoption of safeguard measures provoked retaliation from China—imposition of 100 percent tariffs on Japan's exports of automobiles, mobile phones, and air conditioners. The estimated economic loss to the Japanese economy was 25 billion yen—seven times more than the benefits enjoyed by the three commodities that were granted the safeguard protections. Exporters who were harmed by the retaliation reduced their campaign donations to the LDP by 30 percentage points.⁴⁸

The JCP's role in the process of safeguard adoption suggests that GATT/WTO legal instruments may offer an opportunity for credit-claiming for opposition party politicians who do not possess influence over the more politicized instruments of protection such as subsidies or VERs.

Legality vs. Retaliation: Exporters' Interests in a Partially Legalized World

The third important finding concerns the two alternative channels through which international law affects the government's instrument choice: legality and retaliation. The GATT/WTO rules specifying *Legality* of an instrument per se proved to have no systematic effects on the government's instrument choice. The Japanese government continued to use VERs after 1995 in 25 percent of the total cases, despite the new WTO rule prohibiting their use. Legislators strategically deviated from the WTO rule when it was electorally beneficial to do so (i.e., the higher levels of electoral competition).⁴⁹

On the other hand, GATT/WTO rules prohibiting or allowing retaliation have systematic effects on the government's instrument choice. Table 2 compares whether *Exporters' interests* are associated with the government's choice to use GATT/WTO legal instruments in the nonlegalized, partially legalized, and legalized worlds. *Exporters' interests* have systematic, negative effects on the government's choice to recourse to international law only when retaliation is allowed under GATT/WTO agreements (Models II and III).

The substantive impact of exporters' interests on the instrument choice is large. The result suggests that when the size of the export market increases by 10 percentage points (e.g., the percentage of Japan's export to a given country

⁴⁶ An officer at the National Association of Farmers' Movement which is associated with the JCP believes that its membership has doubled since 1995, despite declining JCP popularity and agricultural population, due to their campaign to realize safeguards. Interview with *Nominren's* officer, Tokyo, January 24, 2002 and internal document on the membership increase obtained at *Nominren* office.

⁴⁷ Kenjiro Yamahara's Testimony before the Sixth Sub-Committee on Budget, February 21, 1995.

⁴⁸ See footnote 14.

⁴⁹ Even when Japan was negotiating VERs with nonmember state (China), it still violates the WTO's rule as it specifies that a member state cannot initiate or participate in the VERs negotiation.

per total export increases from 10 percent to 20 percent), the likelihood of the government choosing GATT/WTO legal protection decreases by 89 percentage points. The result may explain why Japan has never adopted antidumping or safeguard measures against the United States, the largest export market for Japan, although it extensively targets smaller economies.

The Japanese government's different responses to the revisions of GATT/WTO rules suggest that Japan's trade policy has not been moving uniformly toward "legalism" or "multilateralism." Rather, legislators have used GATT/WTO legal instruments selectively and strategically for political survival. The electoral reform of 1994 encouraged some legislators to demand safeguard measures and the strength of such demands in the Diet committees have had substantial effects on the government's choice to use GATT/WTO legal instruments.

Several control variables have the expected effects on policy choice. When fewer countries monopolize export to Japan (i.e., higher import-concentration ratio), the more likely the government is to choose VERs. An interesting finding is that the import-concentration ratio, which should only affect the government's choice of VERs, has a similar, positive effect on the government's choice of GATT/WTO legal instruments. This is because most of the GATT/WTO legal investigation cases were withdrawn before the Japanese government actually adopted them (Rosendorff 1996). The Japanese government may have relied on the shadow of GATT/WTO legal instruments to induce VERs from targeted states.

One macroeconomic condition, *Unemployment*, has a strong positive effect on the government's use of VERs. It does not, however, have a systematic effect on the government's decision to use GATT/WTO legal instruments. No strong evidence is found to support the effect of electoral cycles in the government's choice across instruments. The government's choice does not systematically differ among the three commodity groups (textile, row/metal materials, and agricultural/fishery/forestry), either.

The findings here also contradict several beliefs about Japanese trade policy. First, this study shows that legislators have substantial influence on the government's decision to use international law. The finding is surprising given the importance attached to bureaucracy in the existing studies on Japan and international institutions in general and trade policy in particular. Second, the majority of studies on Japan's trade policy have focused on bilateral relations between the United States and Japan (Davis 2004; Schoppa 1993). This empirical scope has set the tone of the existing analyses on Japan's trade policy as "bullied" rather than a "bully." The Japanese government frequently passed the costs of protection onto emerging economies via VERs particularly when legislators had stronger needs to raise campaign finance from export-oriented industries at home.

Finally, the analysis does not find any systematic evidence that whether an exporting country is Asian or not has an effect on the government's instrument choice. This is surprising given several qualitative studies suggesting that the Japanese government relied most heavily on VERs against Asian NIEs (Dore 1986; Uriu 1996). Instead, factors that account for the choice of VER were the material and strategic interests of legislators, such as a given commodity's import-concentration ratio and the LDP strength in the lower house. The finding suggests that we need to reconsider the common assertion that Asian regional integration is characterized by its informal negotiations and nonlegal "Asian culture."

Conclusion

Contrary to the arguments that international trade has moved toward multilateralism and legalism, this article has shown that domestic electoral politics continues to loom large when governments choose the legal rules specified by

GATT/WTO from among the wide array of protectionist instruments. Legislators turn to multilateral rules selectively and strategically when it is electorally beneficial to do so, but the legal status of an instrument under GATT/WTO per se does not prove to have systematic effects on the instrument choice. The effect of international law on how states protect domestic industries is filtered through electoral politics.

Our argument that electoral incentives affect a government's recourse to legal rules provides fertile ground for comparative, cross-national research. The testable implications of our electoral argument, particularly its generalizability beyond the Japanese case, are as follows. First, three conditions must be met for legislators to be responsive to exporters' interests and, therefore, to pursue alternative instruments, rather than resorting to international law: (1) ministries with politically appointed ministers, instead of an independent trade commission, initiate and decide antidumping or safeguard investigations, (2) campaign finance regulation allows firms to make donations to legislators or political parties, and (3) electoral campaigns are costly (i.e., money matters for electoral success).

Thus, it makes sense that some of the heaviest users of antidumping and safeguard measures have domestic institutions that insulate themselves from exporters' lobbying when making decisions about AD/SG use, such as independent International Trade Commissions (e.g., the United States and South Africa), or supranational trade commissions (e.g., European Union).⁵⁰ Contrary to the established findings on the benefits associated with central bank independence (Alesina and Summers 1993; Keefer and Stasavage 2003), the independence of trade commissions often enhances the relative power of import-competing industries by blocking exporters' and legislators' influence from entering the government's strategic calculation about the instrument choice. One of the promising lines of comparative research thus would be to examine how different domestic procedures regarding how complaints are filed and investigated for the use of GATT/WTO legal protection shape states' propensity to resort to international law.⁵¹

The second generalizable finding is that the availability of alternative means of protection—such as subsidies and VERs—and their relative electoral returns vis-à-vis GATT/WTO measures affect the government's propensity to turn to international law for recourse. This may explain why some of the heaviest users of GATT/WTO legal instruments—both old and new—are federal states where decentralized political and fiscal structures tend to lower the electoral returns of import-injury subsidies and the decentralized enforcement authorities makes VER negotiations harder to coordinate and enforce (Naoi 2007). Argentina, South Africa, the United States, and Canada are some of the examples of federations that have been the most aggressive users of GATT/WTO contingent protection measures.⁵²

The third generalizable finding concerns the effect of electoral systems—that is, majoritarian or proportional—on the governments' propensity to recourse to international law. If PR indeed decreases the electoral returns to subsidies and

⁵⁰ The cross-national ranking of frequency of AD/SG usage, calculated by absolute frequency per year and per import U.S. dollar, is available at Bown (2006).

⁵¹ See Alter (2000). New Zealand's domestic institutions, for instance, resemble those of Japan in that the Minister of Economic Development has discretionary authority to initiate and conduct antidumping and safeguard investigations and the Minister of Commerce has authority to impose trade remedies such as antidumping duties (Ministry of Economic Development 2008). This 'political filter,' to borrow a term coined by Sykes (2005), indeed allows New Zealand to have one of the lowest records of antidumping investigations and initiations among OECD countries. A country such as South Korea would be an interesting case because the authority to investigate and adopt GATT/WTO-legal protection was transferred from existing ministries to an independent agency in 1993.

⁵² Of course, a systematic empirical test of this claim linking federalism and GATT/WTO-contingent protection is a task for another article which is currently in progress.

VERs as demonstrated in this article, we would expect an increasing convergence toward the use of GATT/WTO compliant protection as more countries shift to PR systems.

The broader implications of this study are threefold. First, the literature on international institutions and domestic policy choices tends to understudy legislators' divergent preferences over recourse to international law. Our approach to modeling how legislators weigh heterogeneous constituents' interests in using legal options should be applicable to other issue areas where such heterogeneity exists such as forum-shopping in dispute settlements and compliance to international agreements.

Systematic empirical work, moreover, on legislators' preferences about international institutions and multilateral agreements has lagged far behind the theoretical progress made in the literature (exceptions are Broz 2005; Magee and Baldwin 2000). Studies often infer legislators' preference post hoc from actual policy outcomes without examining their preferences. This article has suggested one way to measure legislators' preferences more directly and independently from the policy outcomes by using their testimony before the Diet Committees.

Finally, this article has offered a methodological suggestion to analyze the interactions between international institutions and domestic politics more rigorously using a conditional logit model. This conditional logit model is widely applicable to other areas of research in international relations where actors' choices are a function of attributes of the actors as well as attributes of the choices themselves. Issues such as states' compliance with international law, forum-shopping, and dispute settlements are examples of such issue areas.

Although international trade has become multilateralized and legalized in the eyes of some, the effect of international law is filtered through domestic electoral politics. Further study on how different electoral systems shape legislators' incentives to comply with international law will be beneficial for improving the design of multilateral agreements in the future.

Appendix: Coding Rules for the Choice Across the Three Instruments

Domestic Subsidies

Include all cases that were given narrowly defined, commodity-level compensation by the Ministry of Industry and Trade, Ministry of Agriculture, Forestry and Fishery and Ministry of Labor from 1980 to 2001. Cases that were granted more broadly defined compensation packages, such as subsidies for "small and medium-size companies" or for "vegetable farmers" are not included in this category.

Voluntary Export Restraints

Include all cases where the Japanese government or industries negotiated VERs with exporting countries, or where importing companies in Japan restricted imports in response to the government's administrative guidance. Whether the negotiations induced successful VERs from exporting countries is not the focus of this study. The focus is whether the Japanese government chose VERs over other protectionist instruments.

GATT/WTO Legal Instruments

Include all cases where the Japanese government officially investigated or adopted safeguards (special and general safeguard measures), antidumping, or countervailing measures.

Operationalization of Variables

LDP seat share: the percentage of lower-house seats held by LDP politicians.

Testimony: the number of times that politicians expressed a need for subsidy (*hojokin* or *taisakuhi*), VERs (“import regulations” [*yunyu kisei*], “ordered imports” [*chitsujo aru yunyu*]), or GATT/WTO legal measures (*seifu ga-do*) in the lower house committee discussions in the Diet per diet year.

Exporters interests: the percentage of Japanese exports to a given country per total Japanese exports calculated using Ministry of Finance, *Gaikoku Boueki Gaikyo* (Overview of Foreign Trade), Various Years. Percentages are calculated in yen.

Election year: a dummy variable (1) represents years with general upper-house and lower house elections and (0) represents years without them.

External: a dummy variable (1) represents VERs and GATT/WTO legal measures, and (0) for subsidy.

Legality: a dummy variable (1) represents legal measures under GATT and WTO, and (0) represents otherwise.

Import concentration: the percentage of import values of a given commodity from a country per total import values of the commodity in Japan (percent calculated in Yen). Calculated using Japanese Custom Association under Ministry of Finance, *Jikkou Kanzeiritsuhyo* (Customs Tariff Schedules of Japan), Various Years.

Asian exporter: a dummy variable (1) represents South Korea, China (PRC), Taiwan, Thailand, Malaysia, Indonesia, Pakistan and the Philippines, and (0) represents otherwise.

Commodity: a dummy variable (1) represents textile commodities, (2) represents raw and metal materials, and (3) represents agricultural, fishery, and forestry commodities.

Unemployment: the annual unemployment rate (percent) available at World Bank’s *World Development Indicators* (WDI).

Budget growth: annual growth rate of government budget available at World Bank’s WDI.

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