

Chapter 8

DOMESTIC POLITICS AND INTERNATIONAL DISPUTES*

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Abstract

Domestic political interests and institutions are important determinants of international trade dispute processes. Domestic politics affects the inclusion and design of dispute settlement procedures (DSPs) in trade agreements. In particular, DSPs enhance the flexibility of the trade regime, permitting leaders to offer temporary, tolerated protection for politically influential industries. Regime type, leader turnover and other political phenomena affect the patterns of use of DSPs once in place, and they affect the patterns of outcomes and likelihood of settlement of disputes. Finally, the information generated by the DSPs is shown to feed back and affect the domestic politics of the signatory states in ways not unanticipated by the leaders that negotiated these agreements in the first place.

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International trade in goods and services occurs within a complex international legal framework, constituted by both negotiated treaties and customary international law. The General Agreement on Tariffs and Trade (GATT) (which is still operative under the structure of the World Trade Organization (WTO), subject to the modifications of 1994) forms the backbone of international trade law, and together with regional or Preferential Trade Agreements (PTAs), are designed to lower trade barriers and increase the flows and benefits of trade among member states.

States that accede to these international regulatory environments in general intend to comply with their obligations (Downs, Rocke, and Barsoom, 1996; Chayes and Chayes, 1993). Occasionally, political pressures to protect certain industries, sectors or interests may be difficult to avoid even if the international agreements restrict such action (Rosendorff and Milner, 2001; Rosendorff, 2005). States therefore must balance the need to comply with their international obligations with the domestic political need to protect political supporters from international competition. Domestic politics matters for understanding the pattern of compliance with international obligations. Policymakers deviate from WTO and PTA obligations in search of enhanced electoral returns. (Simmons, 1998; Naoi, 2009).

Policymakers, responding to the needs of politically influential groups, or the voters at large, enter the gray area between compliance and abrogation of their international commitments. Subsidies (usually implicit) in favor of export interests are, for example, rationalized as a legal response to unfair protection abroad; tariffs at home are often argued as reasonable and legal responses to foreign dumping or to provide temporary protection while an industry retools, or necessary to protect the health and safety of the domestic consumers. Such trade policy choices may or may not be legal under the WTO or the PTAs to which a state is a signatory. Aware of this ambiguity, states have developed and refined dispute settlement mechanisms to more effectively adjudicate these disputes,

to clarify obligations, to offer avenues for escape and to enhance flexibility within the world trading system.

Domestic politics (actors and institutions) affect the decision to include a dispute settlement procedure (DSP) into an international trade agreement in the first place. Politics also affects the design of, and the rules that govern the practice of, the DSP and the choice to use the mechanism once in place. In this chapter we explore how domestic actors and institutions influence the presence or absence of dispute settlement mechanisms and how they influence the use and the outcome of the adjudicatory procedure. We close the chapter with a recognition of a feedback effect: that the dispute settlement process and the disputes themselves in turn have an effect on the domestic politics (and economics) of the signatory states, an effect not unanticipated by the authors and designers of these international agreements, and the drafters of the international law.

1 Domestic Politics and Design

The procedures specified in the Dispute Settlement Understanding (DSU) adopted during the Uruguay Round of negotiations at the WTO permit a contracting party to file a complaint with the WTO regarding a perceived violation of the treaty on the part of another member. If formal, bilateral consultations are unproductive (an attempt at a negotiated resolution), the complainant may request that a panel of independent experts investigate the matter and make a recommendation. If the panel finds that the offending action is “inconsistent,” the offending party is obliged to terminate the violating measure and bring its practice back into conformity with its obligations, or compensate the complainant for damages.¹ Ultimately, if a measure is not rescinded, and compensation not paid, retaliation can be authorized. The finding by the panel can also be appealed to the Standing Appellate Body.

Across the realm of PTAs, there is significant variation in dispute settlement procedures, ranging from “weaker” non-binding informal opportunities for consultation and negotiation (a more diplomatic route) to “stronger” formal, binding, standing, third-party courts, the decisions of which have the force of international law, with appeals processes, to even stronger cases where there is the possibility of sanctions for violation (more “legalistic” design). Scholars have developed a variety of measures of the degree of legalism, including Hofmann and Kim (2013a) and Haftel (2013).

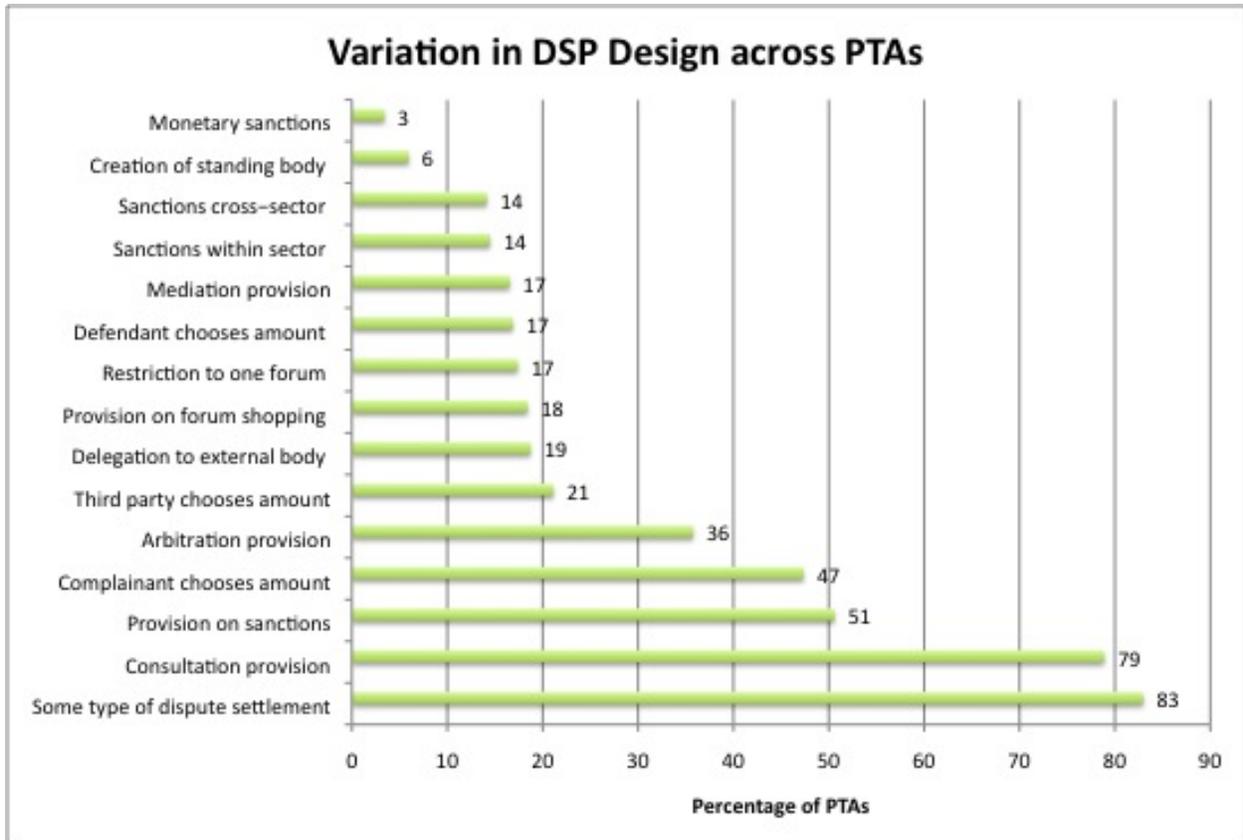
The DESTA (Baccini, Dür, and Elsig, 2013) dataset is probably the most comprehensive and compelling compilation of facts regarding PTAs. They study 587 agreements for more than 100 measures, including details on embodied dispute settlement mechanisms. They find that 87 percent of agreements include some type of dispute settlement provision; and 6 percent create a standing legal body to adjudicate cases. Figure 1 offers a summary of the variation in the characteristics of DSPs identified in the DESTA dataset.

1.1 Political Uncertainty, Dispute Settlement and Flexibility

Leaders, once an international agreement is in place, experience uncertainty regarding the costs of compliance. Industries occasionally experience unanticipated surges of imports, or technological shifts abroad that lowers competitiveness of local sectors or particular skill sets held by local professions. These groups, if they are organized will influence trade policymakers to provide protection. This has been described as a “time-consistency” problem, in which a treaty design that is optimal in expectation *ex ante* may not be so, *ex post*.

Of course at the time these international trade agreements are negotiated, the member states are aware of these potential contingencies, and are less likely to build institutions and agreements they know they will have difficulty complying with. Leaders build flexibility into the agreements to manage this time-consistency problem, of which DSPs are a

Figure 1:



Source: Baccini, Dür, and Elsig (2013). Percentages of the 587 PTAs coded that have the feature specified.

central flexibility-enhancing mechanism.

Some argue that the signatories use an instrument of international law to prevent them from succumbing to the particularistic demands of special interests to the benefit of social welfare. This “tying-of-the-hands” interpretation of trade agreements (for instance Maggi and Rodriguez-Clare (1998)) would suggest that the stronger is the agreement in preventing violations, the more the leaders can withstand domestic political pressure and the greater is the degree of international cooperation.

States interested in maximizing the gains from trade might then be expected to design very rigid agreements, with deep concessions and few (if any) opportunities for abrogation. This would especially be true of democratic states. If democracies are more responsive to political pressure to protect affected industries (at least on average), we might be inclined to predict that democracies will build agreements that bind very tightly.

In fact the agreements regulating international trade (and for that matter international investment, environmental and other issue area agreements) to varying degrees embody a variety of flexibility-enhancing devices designed to reduce the rigidity of the agreements, and to manage these periods of intense, unexpected political pressure to protect a sector, interest or industry.² A “flexibility provision” is “any provision of an international agreement that allows a country to suspend the concessions it previously negotiated without violating or abrogating the terms of the agreement” (Rosendorff and Milner, 2001).³

The WTO articles, for instance, explicitly allow signatories to renege on their commitments under certain circumstances. Article XIX allows a country, for a limited time, to suspend its obligations, when increased imports “cause or threaten serious injury to domestic producers” of import-competing goods.⁴ Article VI of the GATT, the Antidumping (AD) and Countervailing Duties (CVD) codes allow member states to apply duties when imports are “dumped” or when the foreign competitor is being subsidized. Balance of payments exceptions (Articles XVII and XII), infant industry protection (XVIII), and tariff

renegotiation (XXVII) are also opportunities for WTO-legal application of trade barriers. Kim (2010) offers a historical account of how this need for flexibility resulted in these provisions in the original GATT texts. She finds, for example, that “uncertainty regarding domestic political support for free trade and trade liberalization in the United States . . . was a significant factor leading to flexibility in the design of the General Agreement” (p.41).

A state suffering from a set of circumstances that results in a clamoring by a group or a sector for a policy of protection may, in an exercise of policy discretion, choose to oblige the special interest. This runs the risk, of course, of opening itself up to complaints by its trading partners. A provision that provides protection for a domestic industry by definition reduces access to the market by the member’s trading partners. The trading partners’ complaints may eventually take the form of formal trade disputes either under the auspices of the WTO or the mechanisms of the applicable PTAs.⁵

If there are opportunities for signatories to escape their obligations (at least temporarily until the unexpected political pressure passes to a more “normal” state of affairs), an affected country may subject itself to the discipline of a DSP under the WTO or under a PTA. The use of a DSP therefore allows a contracting partner to violate the (spirit if not the letter of the) agreement, and still remain within the community of cooperating nations, and not be immediately punished or banished for its actions. Trading partners acquiesce, for they may be in need of similar toleration sometime in the not too distant future. The dispute settlement processes built into the international trading regime adds flexibility to an otherwise rigid system.

These opportunities for “tolerated defection” (Rosendorff, 2005) (or alternatively, “forbearance” (Bowen, 2010), or “efficient breach” (Sykes, 1991; Dunoff and Trachtman, 1999) or “involuntary defection” (Putnam, 1988)) all suggest that states that are more susceptible to political pressure are less likely to sign on to agreements that lack these

flexibility provisions. Political leaders are going to need to know that when their political survival is on the line, the agreements permit them to take ameliorative action before they would be willing to sign them. Compliance is a political decision; so is the decision to accede to a compliance regime.

The evidence indeed suggests democratic polities are *more* likely to join preferential trading agreements (Mansfield, Milner, and Pevehouse, 2007), and to trade more freely (Mansfield, Milner, and Rosendorff, 2000; Rosendorff, 2006), and are more likely to join agreements that embody stronger dispute settlement procedures (Pevehouse, Hafner-Burton, and Zierler, 2002; Pevehouse and Buhr, 2013).

Further evidence that flexibility provisions make accession to trade agreements more likely comes from Kucik and Reinhardt (2008), who show that states that are able to take advantage of a domestic antidumping mechanism (a key flexibility device) are significantly more likely to join the WTO, agree to more tightly binding tariff commitments, and also implement lower applied tariffs. That is, flexibility makes accession at deeper levels more likely. Kucik and Reinhardt (2008) take seriously the problem of endogeneity when understanding the effect of a flexibility provision on the willingness to join an agreement. They correctly remark that “several different endogenous variables are co-determined: specifically, 1) the existence of flexibility provisions in an agreement; 2) a state’s decision to enter into the agreement; and 3) the level of concessions” of the depth of the agreement (p. 479). Johns (2013) establishes that once we control for the benefits of trade liberalization, deep agreements will be more flexible, while shallow agreements will be more rigid. Only if a leader knows that she has the flexibility to violate a trade agreement when times are tough, will she commit to deeper tariff concessions, initially at the time of trade agreement negotiations.

1.2 Variation in Dispute Settlement Design across PTAs

Hofmann and Kim (2013a) identify a set of hypotheses in the literature that explain the degree of delegation and obligation (terms defined by Goldstein et al. (2000)), proxies for the depth of legalized agreements. Pevehouse and Buhr (2013) and Smith (2000) suggest the depth of commercial integration in terms of trade volumes predicts DSP legalism; depth in terms of specific assets susceptible to capture and holdup such as foreign direct investment also predict a stronger DSP (Büthe and Milner, 2008). Haftel (2013) shows that strength of the negotiated DSP is correlated with the depth of implementation of the agreement. Colonial history among the members makes stronger DSPs less likely, but democracy makes stronger DSPs more likely (Hofmann and Kim, 2013a).

There is significant cross-country spillover when it comes to PTA, and DSP design. More legalistic approaches to PTA formation appear to diffuse across borders. Within the set of 57 PTAs in the Asia-Pacific, Hofmann and Kim (2013a) find that despite the “ASEAN way” of Asian countries not engaging in open conflict with each other, more legalistic dispute settlement mechanism are diffusing across agreements: the more legalistic are the agreements the members have already joined, the more likely a new PTA between them will be more legalistic. Like much of the literature on diffusion (Simmons and Elkins, 2004), little explanation is offered as what is driving this diffusion - is it learning, competition, emulation, or some other process?

These studies exploring the domestic and international sources of variation in the degree of “legalism”, generally suffer from the problem of endogeneity. The strength of the dispute settlement procedure is codetermined with other dimensions of the treaty design - the depth, scope and the scale of its membership (Johns, 2013). Hence to isolate one dimension and look for independent causal variables, perhaps taking the other dimensions as given and exogenous generates substantial misspecification bias.⁶

2 Functioning and Outcomes of DSPs

Once a mechanism is in place for dealing with the uncertainty associated with domestic politics, and the pressure for protection, it follows that domestic politics will influence the incidence of disputes, or the relative frequency with which the various dispute settlement mechanisms are appealed to. Similarly, if political uncertainties are driving the design of DSPs and the frequency with which they are appealed to, they will necessarily influence the outcome of the dispute settlement process – in particular, how often cases are settled before trial, and the circumstances under which cases actually make it to trial.

2.1 On the incidence of disputes: Who files?

2.1.1 Democracy and Development

Within the context of the WTO, substantial modifications were made in the DSP in the shift from GATT to WTO in 1994. The diplomatic nature of the GATT made the hearing of a dispute rare and somewhat weak and ineffective. The WTO now entrenches a complainant's right to a panel, providing for the automatic adoption of panel reports (except in the case of "negative consensus" - where all member states, including the complainant and defendant, agree to void the report), and making appellate review available. The DSP in addition has jurisdiction over all disputes arising under the various GATT agreements that were rolled into the WTO.

Busch (2000) argues the democratic dyads are more likely to escalate their disputes to the panel stage than are other dyads. Reinhardt (2000) using data on dispute initiation within all GATT/WTO directed dyads from 1948 through 1998, finds that democracies participate in more, not fewer, GATT/WTO disputes, and they resolve those disputes less cooperatively as well. Rosendorff and Smith (2013) find that the most democratic nations are between 6.5 and 51 times more likely to initiate a WTO dispute compared to the most

autocratic nations. Dyads that have had recent disputes (defined as a dispute within the dyad in either of the two previous years) are far more likely to have future disputes than dyads without a recent history of disputes.⁷ The rate of WTO dispute onset is less than 6 per 10,000 dyad years without a recent history of disputes. When there is a prior history of disputes, then the rate of dispute onset jumps to about 39 per 10,000 dyad years.

WTO disputes occur between large economically powerful nations. Rosendorff and Smith (2013) estimate that the predicted probability for a country at the 75th percentile of GDP and population of initiating a dispute is a mere 0.00007, less than one dispute per 10,000 dyad years. In larger nations (GDP and population at the 95th percentile) the rate of dispute onset is substantially higher: approximately 20 disputes per 10,000 dyad years.⁸

2.1.2 “Who files?” is endogenous to “Who violates?”

This literature ignores to a substantial degree the selection effect - not all violations end up as formal disputes. Some are settled via a negotiation process and are not even reported to the WTO. Davis (2012) reports that the United States National Trade Estimate Report (which monitors the trade barriers of U.S. trade partners) listed 126 trade barriers by Japan between 1995 and 2004, of which only 6 were addressed in WTO dispute settlement (p. 9). There is therefore an outstanding question - what determines the set of cases that are in fact adjudicated (from the set of actual violations)?

Firstly, it could be the tough cases, where there is genuinely an issue of interpretation or clarification of obligations required, and not simply a matter of opportunistic protectionism taking place. Secondly, cases, once decided, that are more likely to result in compliance are perhaps, more likely to be brought. Rulings are more likely to be limited to those that can be implemented cheaply rather than those that are (politically) expensive for the defendant. Hence bringing a case, for which the expected ruling is unlikely to be complied with, may potentially bring the court’s legitimacy into question, an outcome a potential

plaintiff state may not prefer to initiate.⁹ If expected rulings are a function of the member state's and the courts concern for the legitimacy of the court, this will affect the set of cases brought from the set of actual violations.¹⁰

Davis (2012) suggests that the checks and balances that characterize democracies bias dispute settlement via public lawsuits (filings) and away from informal settlements (negotiations). Davis argues that leaders, in order to enhance their domestic political prospects, must be seen by their legislatures and politically influential sectors and industries to be enforcing international trade obligations abroad. Filing a lawsuit is a public signal of their commitment to redistributing in favor of that industry; negotiation, as an alternative strategy may solve the problem, but is done behind closed doors, and prevents a credible signal of the leader's commitment to that industry from being sent. There is therefore a political demand for what Davis calls "adjudication," and this demand is heightened in polities in which leaders are more accountable, notably democracies.

The decision to file therefore is indeed a political one; we have argued that the decision to violate (or at least appeal to the flexibility enhancing devices as a basis for the violation) is also a political decision. Most of the literature however treats the sample of filings as given. Davis and Shirato (2007) and Davis (2012) do consider the political determinants of the decision to file, given a set of observed violations. But the decision to violate depends crucially on whether the potential violator expects to be filed against. Hence taking the set of violations as somehow exogenous from domestic politics in both the domestic and foreign countries is probably a flawed approach.¹¹ The answer to the question "Who files?" is determined simultaneously with the answer to the question "Who violates?" Current work doesn't manage to address this endogeneity.

2.1.3 Leader Turnover

Leaders rely on a coalition of supporters in order to remain in office. Government changes, especially those associated with changes in the underlying coalition of supporters, generate a shift in the profile of trade policy. Leadership changes, especially those associated with shifts in the underlying support coalition lead therefore to changes in a nation's tariff and subsidy profile. When a trade policy profile - a set of policies across industries or sectors - changes, it is likely that some outstanding disputes are now settled, and other sectors see new disputes initiated. Sectors that see their protection decline are associated with settlement of preexisting disputes; sectors receiving enhanced protection may be associated with new disputes initiated against their government.

Leader change, therefore, and especially those changes in leadership associated with changes in the underlying support coalition, are associated with changes in the pattern of dispute settlements and filings at the WTO. Bobick and Smith (2013) find that leader change leads to more new disputes and more settlements of disputes. Rosendorff and Smith (2013) show that this effect is accentuated when the leader turnover is associated with a change in the underlying support coalitions compared to either situations of no leader change, or leader change without a change in the underlying support coalition.

These findings are conditioned by regime type. The effect of leader change on dispute initiation is much larger in non-democracies than in democracies. Elections in democracies that bring new leaders to office have a relatively small effect on new dispute initiation; leader changes in autocracies, especially those associated with changes in support coalition have a much larger effect on dispute initiation.¹² Simulation of the size of the substantive effect suggests leader change in an autocracy increases the risk of dispute onset about 8-fold when compared with a democracy (Rosendorff and Smith, 2013).

A democracy requires a larger supporting coalition; protection is likely to cover a wider

set of industries. However protection for more sectors comes at a greater cost to the individual consumers and voters by way of higher goods prices. In contrast, autocracies have smaller winning coalitions, and little regard for consumers in general; protection is likely to be deeper for a smaller set of industries. Since protection benefits industries (and workers in those industries, but harms consumers in general), protection will be wider but shallower in democracies than in autocracies that provide deep but narrow protections.

Since protection for any specific sector is shallower in democracies, the likelihood that the state becomes a defendant in a WTO dispute filing in that sector is lower. The deep protection offered by an autocracy makes the likelihood of WTO dispute initiation much larger. Hence leader change in an autocracy is likely to be associated with more new dispute initiation than leader change in a democracy.

2.2 Politics and Outcomes: Adjudication or Settlement?

Disputes (once filed) can be concluded in one of three ways. The case can simply be “dropped” - 35% of all cases that are filed fail to report any formal settlement with the WTO, and no panel is established, although many of these may actually have been settled, and the settlement simply not reported (Chaudoin, Kucik, and Pelc, 2013). Settled cases (those that reach a mutually agreed solution), and those cases that go to rulings via litigation and a panel report (about 50% of all cases) make up the rest.

Busch (2000) establishes that cases are more likely to be paneled when the disputants are democracies. He also finds that those cases paneled by democratic dyads are more likely to end with concessions by the defendant states. Democracies are also more likely to be named in petitions filed by the US in antidumping cases (Busch, Raciborski, and Reinhardt, 2008). Democracies are more willing to participate in the adjudicatory mechanisms of the WTO and comply with its findings.

“Early settlement” offers the greatest chance of obtaining greater concessions from a

defendant at the GATT/WTO. Developing countries, however, have been more likely to have disputes proceed to the panel stage against developed countries (Busch, 2000). As a result, they have fared less well in extracting concessions from defendants. The newer, stronger DSP system reinforces this outcome, given both the incentives to litigate as well as developing countries' lack of capacity to push for early settlement (Busch and Reinhardt, 2003).

The designers of the WTO's DSP clearly intended for member states to solve their differences via negotiation and settlement. Even when dispute reaches the panel stage, a ruling often takes the form of an interpretation of the text in the context of the dispute, rather than a finding of explicit violation. The WTO's various provisions require a (re-) negotiated solution whenever possible. Johns and her co-authors (Johns and Pelc, 2014; Johns, 2013; Gilligan, Johns, and Rosendorff, 2010; Gilligan and Johns, 2012) describe this as "post-adjudicative bargaining." Stronger courts – with higher levels of enforcement and jurisdiction – may come with hidden costs: if a plaintiff has private information about the value of a legal claim, as international courts grow stronger, legal claims matter more, and the asymmetric information becomes more important. This lessens the likelihood of an early settlement to the dispute and increases the likelihood of costly litigation, exacerbating conflicts between states.

3 Closing the Loop: The Effects of DSPs on Trade, Trade Policy and Domestic Politics

Domestic politics has been shown to matter for the design of these mechanisms for settling international disputes. Domestic politics influences the frequency with which violations occur, the decision to file a dispute and the outcomes of the dispute settlement procedure.

Domestic politics influences the design, form and function of international institutions.

There is also a feedback effect. A dispute, and the dispute settlement institution can influence domestic politics. It is, of course, a central question both of international political economy scholars, and those in international law, to ascertain the conditions under which international economic law can affect state behavior (Martin and Simmons, 1998). State behavior, in turn, is the product of domestic political bargaining and conflict.

Disputes are “fire alarms” that sound when states violate their obligations (McCubbins and Schwartz, 1987). They can activate domestic actors to punish their government politically for offering distortionary protection to industries (McGillivray and Smith, 2000, 2004). If the public cannot observe the policy-choices of their executives directly, these fire alarms may improve the quality of the information that the public can use to infer their government’s behavior. An election in adverse conditions could result in the “unfair eviction” of the executive – eviction because the voters suspect the executive has been extractive; unfair because it could simply have been bad aggregate economic conditions rather than extractive behavior that has generated the adverse economic environment. Executives, in order to insure themselves against this unfair eviction sign PTAs, especially those with DSPs, so that their non-extractive behavior can be more easily observed by the public. Democratically accountable executives are particularly sensitive to this logic, and hence are more likely to trade away extractive opportunities in return for holding onto office during economic downturns by signing PTAs. Autocratic executives, less sensitive to the will of the voters, sign PTAs less frequently, or are less concerned about embodying an effective DSP. As a result democracies are more likely to sign PTAs, especially those with DSPs, than are autocracies (Mansfield, Milner, and Rosendorff, 2000, 2002; Rosendorff, 2006). Democracies are also likely to cooperate more on trade issues due to other mechanisms. Mansfield, Milner, and Rosendorff (2000) argues, for instance, that the separation of powers characteristic of democracies leads to more cooperative behavior than in unitary

states.

This feedback implies that there are both economic and political effects of trade disputes.

3.1 Economic: DSPs and Trade Policy

Domestic politics appears to condition the effect of DSPs on trade volumes. A recent flurry of papers (Chaudoin, Kucik, and Pelc, 2013; Hofmann and Kim, 2013*b*; Bechtel and Sattler, 2011; Bown, 2001) explore if disputes increase trade. After all, a dispute is initiated if a measure adopted by a signatory state has restricted market access by another member state. Once the dispute is finalized - either via settlement or ruling - and the offending measure is removed or an equivalent concession is offered, one might expect trade volumes to resume to levels that existed prior to the implementation of the offending measure.

Bown (2001) and Chaudoin, Kucik, and Pelc (2013) find almost no effect of disputes on trade volumes; Bechtel and Sattler (2011) finds a positive effect of dispute settlement on trade volumes – exports from a complainant country in a WTO dispute rise significantly in the three years after a panel ruling, and similar effects are evident in the exports of pro-complainant third parties. Furthermore, pro-complainant third parties experience more exports than neutral or pro-defendant third parties. Hofmann and Kim (2013*b*) find that settled cases end with more trade. However, among cases that end and then return to the WTOs DSP for compliance hearings – indicating that compliance is in dispute – trade falls. Furthermore, consistent with what Bhagwati has called the “law of constant protection,” new barriers appear to rise when compliance is in dispute (Bhagwati, 1988).

This confusing picture is probably the result of a misperception of the role of the DSP in the international trading system. The question that should be put, is not *does trade increase after a dispute?*; it is rather, *is there more trade in a world trading system with a DSP compared to a world trading system without one?*

The temptation is to think of panel findings as ordering the removal of a policy that is ruled as a violation. There is no question that panels clarify obligations, and demand that the parties return to the bargaining table, and renegotiate given the clarifications of the obligations that the panel has made. The panels of course, have no enforcement power. The effects, as we have argued above is to permit tolerated defection or forbearance, and to add flexibility and enhance stability of the system. Panel rulings encourage further (“post-adjudicative”) negotiation, and may actually facilitate collusion. Consequently, the DSP is not a mechanism to ensure that trade increases on average; it is instead a mechanism to manage tolerated defection.

A system with a DSP therefore better manages defections than a system without one. Defections are tolerated without the system collapsing into retaliatory trade wars. This enhanced stability of the system comes at some cost, however. There is less per period cooperation relative to a system without a DSP; but such system is more prone to collapse when severe political shocks hit one or more of the member states. A DSP permits the member states therefore to reap the long term benefits of a more stable trading regime even at the cost of some short term defection.

The extra flexibility a DSP offers within a trading system also makes countries who are otherwise less likely to want to sign such an agreement, more willing to do so. Leaders, concerned that the caps on the levels of permitted protection will prevent them from offering policies in favor of an industry in their supporting coalition when adverse shocks hit, will find that a DSP permits a government the flexibility to do what it needs to do in times of enhanced political pressure. Such a system therefore is more inclusive, and permits a greater number and variety of states to join it (Rosendorff, 2005).

The benefits therefore of a DSP are not associated with more trade after a dispute is concluded; the benefits of a DSP are increased stability of the system and a larger membership within a more liberalized world trading system.

3.2 Political: DSPs, Information and Leader Survival

The previous section has suggested that the extra flexibility a trading system with a DSP offers reduces the likelihood of breakdown and increases membership. Presumably these features improve the political prospects of the leaders that join these agreements. Clearly the ability to protect an influential sector in times of political crisis has benefits for leaders, concerned with their political survival. But the leaders are committing themselves to systems in which the levels of protection are capped, the procedures by which trade policy can be changed are restricted and limited, and heightened transparency over trade policy is required. Presumably they make these commitments because their (re-)electoral prospects are heightened by doing so,

Mansfield, Milner, and Rosendorff (2002) argue that the information generated by the DSP plays a crucial role in enhancing the electoral survival of leaders in democracies. The DSP via its role as a clearing-house for information regarding trade conflicts clarifies if a violation has occurred, and when it has been resolved to the satisfaction of both sides. Protection for an industry acts like a tax on consumers and voters at large; but if voters are poorly informed about the trade policy choices of their leaders, it may be difficult for voters to identify how much their current economic distress (say) is the result of poor policy choices by their leaders, and how much is due to unfavorable economic conditions. A trade agreement, with a well functioning DSP, helps the voters disentangle these two effects. The information provided by the DSP helps the voters discern if the bad current conditions are indeed the result of reallocation of income via trade policy, or instead, a consequence of circumstances beyond the leader's control.

Where the will of the voters matters for leader survival - say in democracies - leaders will be more likely to sign agreements with DSPs in order to insure themselves from being evicted from office in bad times. In autocracies, where leaders are insulated from popular

concerns, will find the information generated by a DSP less helpful and perhaps even a nuisance. Information plays a key role in the explanation here, and DSPs are providers of information the voters use to discipline their leaders, and keep them from being excessively extractive. The DSP, in addition to adding flexibility to the world trading system, adds transparency to the policymaking process domestically, which facilitates monitoring by the voters, at least in democracies.

Mansfield, Milner, and Rosendorff (2002) don't actually test this informational mechanism. They offer a reduced-form empirical specification, linking democracies to trade. While consistent with the theoretical story, it is not quite a complete test. In an even more direct test of the mechanism – that voters use information generated by the international organization to make political decisions – Pelc (2012) investigates Google searches as a measure of the information flows from the WTO to the voters. He finds, using this really innovative measure, that U.S. citizens are concerned about their country being branded a violator of international law, even when they have no direct material stake in the case at hand. He finds little evidence however that material interests magnify the reaction to U.S. filings against trade partners.¹³

A recent paper (Hollyer and Rosendorff, 2012) revisits this question and tests two aspects of this problem more closely. Presumably leaders that sign PTAs survive in office longer – on the basis of the political gains from signing we have discussed earlier. Secondly, this is more true of democratic leaders than of autocratic leaders.

PTAs codify and clarify the permitted policy choices by member states, and they reduce the volatility of trade policy and limit the trade-policy uncertainty experienced by domestic actors. When policymaking becomes more predictable, domestic economic agents make better and more efficient investment and resource allocation decisions. Reduced uncertainty improves economic performance, strengthening the sitting government's hold on office, especially for governments responding to the will of the broader electorate. The

effect of signing a PTA is accentuated by the degree to which the leadership is accountable to the electorate – the degree of democracy.

Hollyer and Rosendorff (2012) build a formal model in which PTAs reduce the volatility of noisy signals about the economy. A risk-averse voter hears these signals and chooses an action that most closely matches the true state of the economy. After learning the true state of the economy, the voter decides whether to reelect the government. PTAs provide an electoral benefit: less volatility increases the voter's expected utility, which in turn increases the likelihood that the voter reelects the government. However, PTAs are costly for the government because they limit discretion over trade policy. When the government decides how many PTAs to sign, it balances the electoral benefits against the policy discretion costs. Hollyer and Rosendorff also provide convincing evidence: PTAs increase the likelihood that a government will survive in office, and this effect is heightened in democracies.

PTA accession increases leader survival, especially in democracies by virtue of reducing uncertainty. DSPs are a mechanism by which information is generated within a PTA: filings, panels and rulings all produce information relevant to inferring the actions of policymakers and leaders. Less uncertainty and more transparency leads to improved resource allocation decisions and higher expected welfare of the voters at large – hence the enhanced effect within democratic polities.

4 Conclusion

The WTO's Dispute Settlement Understanding (DSU) plays an increasingly central role in the "legalized" realm of world trade (Goldstein and Martin, 2000), especially in a period when the diplomatic or negotiating track of the multilateral system seems to be stalled, and the gains from the Uruguay Round incomplete.

The WTO and the “spaghetti bowl”¹⁴ of PTAs, all attempt to manage a fundamental tradeoff: deeper concessions in the form of lower tariff bindings increase the gains from freer trade; but countries are reluctant to join an institution that binds too tightly, and if they do, tighter bindings may lead to increased violations. The rules that govern international trade can’t be too onerous, or states won’t cooperate; treaties can’t be too lax either, or they don’t change behavior in any significant way and have little effect in bolstering a freer trading regime.

Member states search for the line between permitted policy responses to domestic political pressure and violations of their international obligations. The policy choices, especially those that tack closely to the fine line between legal and not, are motivated by the political benefits that accrue to the government and the policymakers. When those policies are disputed as to their legality by a trading partner, the dispute itself, becomes subject to and explained by domestic political concerns.

Domestic political institutions – regime type, electoral rule, sectoral political influence – affect the presence and the form of dispute settlement procedures in the agreements that regulate international trade. These political determinants are influential in understanding both the set of violations, as well as the set of disputed cases. Moreover once a case is filed, whether it proceeds to adjudication, or is settled via negotiation is a political question. Domestic politics affects the design and functioning of the international trade dispute settlement process.

It is essential to remember however, that these agreements and the broader international trade law regime did not emerge independently of the leaders (and the policy choices they make) who find themselves subject to that law. That is they choose a legal architecture via a negotiated process with an eye to its effects on their political survival. Hence the need to balance the benefits of freer trade with the flexibility associated with opportunities to protect politically influential industries in times of distress. Leaders design

these instruments fully anticipating the effect of these institutional choices on the domestic politics they currently face (and might face in the future).

The inclusion of a DSP and its use is designed therefore to enhance political survival of leaders that negotiate them in the first place. The presence and/or functioning of a DSP feeds back and affects domestic politics.

Consequently, this simultaneity of international design and domestic politics makes the identification of causal arguments difficult. This is especially true when one of the causal processes is via “information” – where information generated by the DSP affects a domestic political conflict – that is difficult to measure and observe.

This simultaneity makes one of the central questions of international relations scholarship more difficult to answer. The question is of course: What is the effect of international organizations on states’ policies and behavior? Identifying the causal effects is made all the more difficult in that the international organizations are themselves the product of a political process. An emergent research agenda will be one that takes this simultaneity more seriously, and develops theory and evidence consistent with this feedback process.

Notes

¹Article 3.5 of the DSU, requires that “all solutions . . . shall be consistent with [the WTO] agreements.” Even bilateral deals reached in private consultations must, under the terms of the treaty, extend any trade concessions to all WTO members. Also, third parties may join a dispute’s proceedings, and observe and contribute to proceedings at every stage.

²Just a few non-trade examples: Hafner-Burton, Helfer, and Fariss (2011) view the opportunity for states to “derogate” from human rights treaties as a form of tolerated escape/flexibility necessary during emergencies; and flexibility provisions have been studied in climate change treaties (von Stein, 2008; Thompson, 2010) and in regional trade agreements (Baccini, 2010), among others.

³Pelc (2009) suggests “escape clauses, or ‘pressure valves,’ allow members of an agreement to temporarily suspend their obligations under that agreement following an exogenous shock, while assuring other state members a return to compliance in the following period.”

⁴Sykes (1991) suggests that the purpose of Article XIX safeguards is to permit policy-makers to respond to the the political pressures of materially injured sectors.

⁵See Busch (2007) on forum shopping.

⁶Johns and Peritz (Chapter 18, this volume) catalogue comprehensively the important elements along which international trade institutions vary: In addition to depth, scope and membership, they identify rigidity and institutionalization as being interdependent design elements which in combination affect state behavior.

⁷Davis and Bermeo (2009) makes a similar finding: past experience in trade adjudication, as either a complainant or a defendant, increases the likelihood that a developing country will initiate disputes. States that frequently file GATT/WTO complaints are however, less likely to be targeted in U.S. anti-dumping decisions (Blonigen and Bown, 2003; Bown, 2001).

⁸Simmons and Guzman (2005) find evidence that poorer countries file fewer cases because they lack the resources to do so, but not that they fear retaliation from more powerful trading partners. In contrast, Sattler and Bermauer (2011) suggests that power does play a role in preventing cases from making it to the WTO, and are perhaps instead dealt with outside the WTO.

⁹Courts are usually treated as non-strategic actors in this literature. Courts, however, concerned about their own legitimacy, and anticipating increased compliance might be willing to rule more severely (drawing from the same set of cases). Or if the court is concerned about having its rulings ignored – and undermining

its legitimacy – it may rule less severely.

¹⁰Busch and Pelc (Chapter 21, this volume) offer an innovative suggestion to dealing with this long standing problem of selection. They suggest that there is now new data on *specific trade concerns* (STCs), reported to the committees on Technical Barriers to Trade and sanitary and Phytosanitary measures at the WTO. The key here is that not all of these STCs escalate into dispute settlement cases, giving the scholar a sense of the universe from which disputes may be drawn, and insight into the dogs that didn't bark, the cases that didn't get filed.

¹¹Rickard (2010) goes some way to explore the decision to violate - governments elected via majoritarian electoral rules and/or single-member districts are more likely to violate GATT/WTO agreements than those elected via proportional electoral rules and/or multi-member districts, but does so independent of the effect of the violation on the potential dispute that might follow.

¹²This work makes use of two new datasets: one collected by Bobick and Smith (2013) which is an extension of the data collected by Busch and Reinhardt (2003) on the list of cases filed at the WTO; and the second (the CHISOLS dataset) on leader and coalition change collected by Leeds and Mattes (2013).

¹³In contrast to Davis (2012) who argues that countries file disputes do so to credibly convey to industries that they are serving their interests. Filing, in Davis' view (partly) is pandering to exporters.

¹⁴A term credited to Bhagwati.

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