

# WTO Adjudication as a Tool for Conflict Management

Christina Davis

Department of Politics  
Princeton University

November 12, 2010

# How Effective are International Courts?

- Effective court must resolve disputes and prevent future incidence
- International law lacks strong enforcement mechanism
- Negotiation of treaties leads to incomplete contract
- What do states gain by filing legal complaint?
  
- Challenges for analysis of court effectiveness:
  - Selection bias in docket of cases
  - Need to compare adjudication with alternative strategies

# Forum Choice in Trade Disputes

- WTO dispute settlement process offers premier international court:
  - broad scope of economic regulations
  - legal process with right of appeal
  - nearly automatic adoption of rulings
- WTO relies on states for monitoring and enforcement
- No legally binding precedent

## Research Questions

- 1 Does filing legal complaint improve outcomes relative to negotiation?
- 2 Does the use of adjudication prevent future disputes?

# Overview

- This paper evaluates WTO effectiveness on 3 dimensions:
  - ① policy change
  - ② dispute duration
  - ③ frequency of complaints
- Original “potential dispute” dataset for analysis of U.S. trade policy
  - Filing legal complaint brings reform of trade barrier
  - Adjudication on average reduces duration of dispute
- Time trend for complaints filed by all members
  - Decline in complaints over time
  - Trend strongest for technical barriers, absent for trade remedies

# Legalization and Dispute Resolution

- Litigation represents costly signal of commitment
- Filing formal complaint provides information about preferences that improves bargaining efficiency
- International obligation offers additional leverage

*Hypothesis: The process of raising issue in legal forum will improve likelihood of dispute resolution*

# Trade Barrier Data

- To address selection, one needs a sample of *potential cases*
- USTR National Trade Estimate Reports
  - Annual reports mandated by Congress in 1974 Trade Act
  - List complaints about trade barriers and report government actions
- Data scope
  - Trade barriers of 9 major trade partners: Canada, EU, Japan, Korea, Mexico, Brazil, India, Malaysia, and Singapore
  - 1995 to 2004
  - agriculture and manufacturing sectors
- 249 industry specific trade barriers with negotiation or adjudication action reported

# Measuring Dispute Resolution

- Evaluate outcome with two dependent variables:
  - ① Policy change to resolve trade complaint
    - Measure whether NTE describes progress to reduce barrier
    - Use statistical technique of matching to bring observational data closer to comparison of cases similar in all but treatment
    - Include variables that were important in forum choice decision
  - ② Dispute duration
    - Measure duration of complaint being listed in NTE reports
    - Cox proportional hazards regression to model risk of dispute ending

# Dispute Outcomes

Dispute Outcome	WTO DS	Negotiation	All cases
No Progress (percent)	7 (20.59)	101 (46.98)	108 (43.37)
Progress (percent)	27 (79.41)	114 (53.02)	141 (56.63)
Total cases	34	215	249



# Independent Variables

- **WTO DSU:** Complaint filed to initiate legal process
- **Propensity score:** selection probability for WTO DSU
- Political influence: contributions by industry, Section 301 petition
- Partner industry controls: import penetration (employment, tariff)
- U.S. economic interest controls: production, exports
- Trade barrier controls: import policies, distortion
- Duration of barrier
- Partner fixed effects

<b>Variable</b>	<b>Coefficient</b>	<b>(Std. Err.)</b>
WTO DS	1.399*	(0.568)
Propensity score	-5.987*	(1.896)
Contributions	-0.249	(0.214)
Section 301	3.770*	(0.987)
Production (log)	0.009	(0.089)
Exports (log)	-0.137*	(0.057)
MPEN (partner)	0.005	(0.007)
Import policy	0.720	(0.445)
Distortion	1.107*	(0.465)
EU	-0.090	(0.680)
Japan	-0.553	(0.560)
Mexico	-0.184	(0.450)
Korea	0.427	(0.658)
Non-OECD	0.503	(0.755)
Duration	0.292*	(0.124)

# Evidence for Effectiveness of WTO DS

- Dispute settlement increases predicted probability of progress resolving complaint by 33 percentage points (95% CI [0.15, 0.47])
- Model correctly predicts progress 77 percent of time
- WTO DS is significantly more effective relative to negotiation after taking into account selection process in forum choice

	Coefficient	Std. Err.	Exp(Coef)
WTO DS	0.38*	0.22	1.47
Contributions	-0.24 * *	0.12	0.79
Section 301	0.13	0.29	1.14
Production (log)	0.29	0.23	1.34
Exports (log)	-0.04	0.08	0.97
MPEN (partner)	0.00	0.00	1.00
Import Policy	0.49 * *	0.19	1.64
Distortion	-0.32 * *	0.12	0.73
EU	0.13	0.43	1.13
Japan	-0.74	0.58	0.47
Mexico	0.35	0.36	1.42
Korea	-0.03	0.37	0.97
Non-OECD	-0.83*	0.50	0.44
N	261		

Adjudication brings **1.5-fold increase in risk** that a trade dispute will end compared with other disputes.

# Legalization and Conflict Prevention

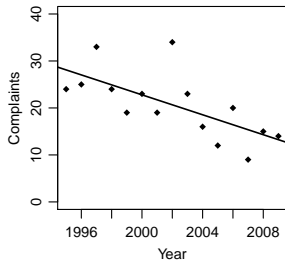
- Deterrent effect:
  - Plaintiff activity increases the credibility of enforcement by demonstrating that states will monitor and challenge violations
- Precedent effect:
  - Legal precedent completes an incomplete contract
  - Past cases set precedent from standpoint of experience

*Hypothesis: The frequency of disputes will decline over time.*

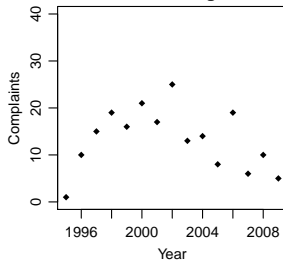
## Variation Across Legal Agreements

- WTO complaints cite agreements as basis for legal complaint
- Some agreements will be more likely to exhibit precedent effect
- GATT agreement reflects general trend
- New agreements are amenable to precedent effect
  - High uncertainty over resolve and terms of agreement
- Technical standards are amenable to precedent effect
  - Consistent policy determinants with long time horizon
- Trade remedies are less predictable!
  - Respond to macroeconomic conditions and lobbying pressure

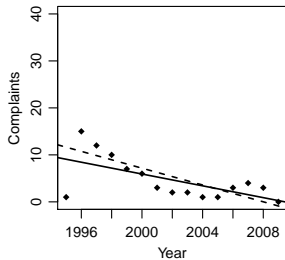
**GATT**



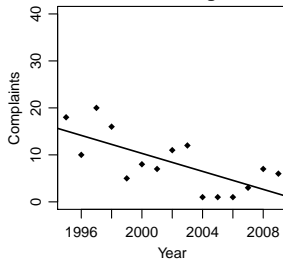
**Remedies:  
AD, SCM, Safeguards**

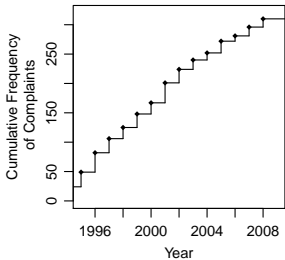
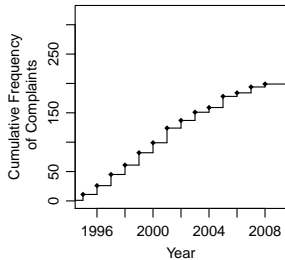
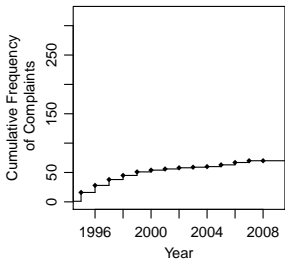
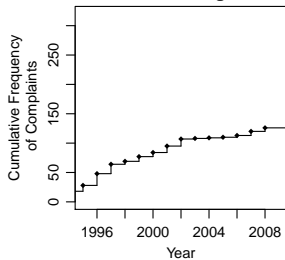


**New Agreements:  
TRIPS, TRIMS, GATS**



**Standards:  
TBT, SPS, Licensing, Customs**



**GATT****Remedies:  
AD, SCM, Safeguards****New Agreements:  
TRIPS, TRIMS, GATS****Standards:  
TBT, SPS, Licensing, Customs**



# Conclusion

- The WTO is an effective conflict resolution mechanism
  - Attracts disputes with high political stakes on both sides
  - Facilitates cooperation to resolve disputes
  - Brings policy change and shortens duration
- The WTO may *prevent* conflict
  - Use of system adds to deterrence and precedent effect
  - Trend toward reduction of complaints in technical areas
  - Politics will continue to fuel demand for disputes
  - Need better analysis of legal precedent