EXAMINING EXTERNAL INFLUENCES ON WTO DISPUTE SETTLEMENT:

THE DEFENSIVE POWER OF REGIONAL TRADE AGREEMENTS

by

MICHAEL N. JACOBS

(Under the Direction of Douglas Stinnett)

ABSTRACT

The power-based vs. rule-based nature of the WTO dispute settlement process is investigated in this analysis. A probit regression is used to determine how variables representing power-based arguments, relative GDP advantages and regional trade agreement membership, and variables representing rule-based argument, the rulings issued from the dispute process, affect the dependent variable, the level of concessions that the complainant state in the dispute is able to induce from the respondent state. The results show that regional trade agreement membership gives respondents a statistically significant defensive advantage. Therefore, the nature of the WTO dispute settlement process is deemed to remain power-based.

INDEX WORDS: Regional trade agreements, WTO dispute settlement, Preferential trade agreements, RTA, PTA

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DEDICATION

Sir Isaac Newton once said, “If I have seen further it is by standing on ye shoulders of giants.” Granted, Newton was one of the greatest thinkers of all time and this paper is certainly not one of the greatest masters theses of all time (In fact, this paper is not even good enough to be a tribute to the greatest masters thesis of all time), instead of recognizing those great minds that have laid the foundation of my particular field, I would like to take a different approach than Newton and attribute my personal accomplishments to my family, and close friends—this paper is dedicated to all of these people.

A few family members that deserve special thanks: Mom and Dad for their unwavering support, my brother Tim and my sister Jill for affecting me positively in so many ways (and a special thanks to Kara, Tim’s wife, for having the courage to marry my brother), my uncle Nolan and my aunt Jennifer for their gracious hospitality, and all of my grandparents for being the epitome of what good grandparents should be.

A few of my friends that deserve special thanks: the Willis family (my adopted South Carolina family), my good friends from the Presbyterian College football team and Alpha Sigma Phi fraternity, and to my love that almost was, and yet somehow always will be.

All of these people, friends and family, have contributed to the person that I am today. To all of those I will be leaving behind as I head west to continue to fulfill my purpose, I leave you with these words partly borrowed from Dave Mustaine:

To all the South
To all my friends
I love you all
I have to leave

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CHAPTER 1: INTRODUCTION

The GATT/WTO regime has evolved from a primarily power-based system back in the late 1940s to a more rule-based system with the conception of the WTO in 1995, particularly because of the regime's new automatic and binding dispute settlement process (Jackson, 2000; Kim, 1999). Research conducted on the GATT period prior to the implementation of the WTO shows that the relative power of states did have a statistically significant effect on dispute outcomes during that period (Reinhardt, 2000). However, even with the recent WTO renovation, there is no guarantee that power politics have been completely driven from the dispute settlement process and there is a possibility that the recent proliferation in regional trade agreements (RTA) could provide another hole for the intrusion of power politics into the dispute process.

When in the multilateral trade negotiation (MTN) process, Mansfield and Reinhardt (2003) assume that states join RTAs in order to increase their bargaining power. The logic behind this process assumes that states can aggregate their market size and guarantee market access through RTA membership consequently improving their bargaining positions during MTNs.

Mansfield and Reinhardt's (2003) conclusions in combination with the undetermined consequences of the WTO's new dispute settlement process have led to the puzzle that this paper attempts to solve: is the WTO dispute settlement process governed primarily by legalistic principles or does it remain a power-based enterprise? The WTO dispute process is still power-based if factors outside the dispute process are able to

influence outcomes from the process.[1] Two factors that may detract from the strictly rule-based functions of the dispute settlement process are investigated. The first is the relative market power of each state in the dispute. The second involves the possible impact of RTAs.

Because the WTO dispute settlement process is bilateral in structure, many scholars assume that the process is largely based on the relative power of the states involved. These scholars believe that achieving success in dispute outcomes largely depends on the complainant state's ability to make a credible and potentially harmful retaliatory threat to the respondent state (Mansfield & Reinhardt, 2003; Brown, 2004; Reinhardt, 2001; Mavroidis, 2000). Therefore, the individual power of states involved in the dispute process and affects from RTA membership, guaranteed market access and increased market power, are expected to significantly influence a state's bargaining power, the results of which should be seen in the outcomes from the WTO dispute settlement process. Confirmation of the preceding theory would give strong backing to the assertion that the GATT/WTO system, even after the 1995 renovation, is still a power-based organization.

On the other hand, the WTO may have been able to oust power politics by fixing some of the ailments that plagued the GATT. Improved dispute settlement rules and regulations along with the presence of the shadow of the future could lead to the dominance of rule-based politics shown by adherence to rulings issued from the dispute process. Liberal-based theory suggests that even though powerful states may have a bargaining advantage, this advantage will not be exploited in a systematic way that would

[1] Outcomes refer to the overall result of the dispute, not just the ruling issued from the dispute process.

alienate less powerful states, tempting them to leave the WTO and rely primarily on their RTAs as tools to reduce trade barriers.

An accurate description of the dispute process probably lies somewhere near the middle of the legal-based/power-based spectrum. However, determining which way the system leans could add to the understanding of the WTO and to the potential of international organizations in general. This analysis could help determine which improvements made to the dispute process are making a positive impact and could lead to suggestions for future changes. This analysis could also help determine the impact that the proliferation of RTAs is having on the WTO.

In terms of deciphering the nature of the dispute process, results from the analysis are mixed. Research on the period from 1995-1998 shows that a state's individual power no longer had a significant impact on dispute settlement outcomes during that time. Moreover, the results show that RTA membership provided a statistically significant bargaining advantage, but only for respondent states in disputes. The significance of RTA membership for the respondent state in a dispute promotes the conclusion that RTA membership can be used for defensive purposes. In other words, RTA membership allows the respondent state to resist concessions. Therefore, the WTO dispute settlement process is still influenced by power-based politics.

In order to understand the potential effects that individual state power, aggregate power through RTA membership, and the recent structural improvements could have on the WTO dispute settlement process, this paper proceeds with the following chapters: the second chapter is "The Basics of RTAs." This chapter describes the characteristics of different types of RTAs and the WTO's role in RTA regulation. The third chapter, "The

Rules and Politics of the WTO Dispute Settlement Process," briefly describes the rules and regulations associated with the dispute process, and points out stipulations that could benefit powerful states and improvements that could promote rule-based politics. Chapter four, "Competing Theories Behind the Nature of the Dispute Settlement Process: Power-Based vs. Rule-Based," outlines the mechanisms at work that could lead to the intrusion of power politics in the dispute settlement process, both in terms of individual state power and the potential power gained from RTA membership. Chapter four also hashes out the rule-based argument by combining the basics of liberal theory with the rule-based improvements. The research design is described in chapter four followed by a chapter interpreting the results of the analysis and a final chapter on conclusions and implications for the future of the WTO and the multilateral trading system in general.

CHAPTER 2: THE BASICS OF RTAs

A review of the characteristics of RTAs is necessary to understand the role that RTAs could play in the dispute process. The first section of this chapter describes the different types of RTAs and their varying potential effects on dispute settlement. The second section summarizes the WTO's role in RTA formation and recognition highlighting the WTO's overall inability to control RTAs.

The Structure of RTAs

An RTA is established when two or more states grant greater access to each other's markets than to states outside the agreement (Lazer 1999). RTAs come in a variety of forms each characterized by a different degree of integration. RTAs can be organized into one of five basic categories. In order from least integration to greatest integration, RTAs go as follows: preferential trade agreements (PTA), free trade areas (FTA), customs unions, common markets, and economic unions. Although close geographic proximity is not a prerequisite for any of the different types of RTAs, these partnerships tend to be formed regionally among states that share common cultures, involve strategic alliances, share common business practices and legal systems, and are major trading partners with one another (Yeung et al., 1999).

PTAs involve only partial non-discriminatory tariff concessions that merely apply to a limited number of tariffs and non-tariff barriers (Das 2004; Yeung et al., 1999). FTAs are one rung up the integration ladder from PTAs and are characterized by a lack of

trade barriers within the agreement, but do not have a common external barrier to states outside the agreement (Das, 2004; Yeung et al., 1999). FTAs are by far the most common trade agreement in use. As of 2004, 72% of all RTAs were FTAs (Das, 2004, 17). FTAs are pervasive because they do not involve a deep degree of integration due to the lack of a common external barrier and therefore are relatively easy to negotiate (Das, 2004).[2] The following types of RTAs, custom unions, common markets, and economic unions, involve increasingly deeper levels of integration requiring progressively more political cooperation causing them to be much more difficult to negotiate and consequently fewer in number.

Like FTAs, custom unions have abolished intra-agreement tariffs; however, unlike FTAs, custom unions have a common external tariff to states outside the agreement (Das, 2004; Yeung et al., 2004). In order to negotiate and implement the common external tariffs, custom unions usually require the use of supra-national institutions and common trade laws (Das, 2004).

A common market maintains all of the characteristics of a custom union and involves the free movement of factors of production within the arrangement allowing national boundaries to be preceded (Das, 2004). A common market "attempts to harmonize some institutional arrangements and commercial and financial laws" (Das, 2004, 17).

The final and deepest level of integration is an economic union. An economic union "involves integrating national economic policies, including taxes and common currency" (Das, 2004, 17). Members of economic unions often share certain institutions.

[2] FTAs may also be easier to negotiate than PTAs because instead of deciding tariffs item by item like in most PTAs, FTAs eliminate virtually all intra-agreement tariffs.

Common institutions, policies, and laws are necessary to organize this deeply integrated trade agreement.

RTAs also occur in what has been dubbed "hub-and spokes" agreements (Das, 2004). These types of agreements are usually preferential, bi-lateral agreements between an existing RTA and an individual country. The European Community has participated as the hub for many of these hub-and-spokes agreements and has reached bilateral agreements with countries in Europe and all around the Mediterranean. RTAs may even conduct bilateral agreements with other RTAs. For example, the European Union and MERCOSUR have entered into a bilateral agreement with one another.

Even though certain categories can be established based on commonalities for the organization of different RTAs, it is fair to say that each RTA is as original as the states that comprise its membership. RTAs take a variety of sizes, shapes, and levels of integration. Therefore, all RTAs are not equal. When tested empirically, this should be kept in mind. Empirical tests that treat all RTAs equally tend to have dubious results (Das 2004). The benefits and drawbacks from RTA membership, as well as motivations for joining the RTA, could have dramatic differences depending on the type of RTA and the number of states involved.[3] RTAs that involve deeper levels of integration are better

[3] Mansfield and Reinhardt (2003) argue that institutional factors, such as increased GATT/WTO membership, have contributed to the increase in RTA membership. Increased GATT/WTO membership has led to several problems; for example, each member's individual leverage has decreased, the ability to monitor member behavior has decreased and interests are more diverse. All of these factors lead to collective action problems, enforcement issues, and negatively affect the ability of the GATT/WTO to reach a consensus, especially during MTNs. States are being drawn towards RTAs in order to increase their power within the system and hopefully overcome some of these problems (Das, 2004; Mansfield & Reinhardt, 2003; Yeung et al., 1999;).

Mansfield (1998) notes, "the proliferation of these arrangements erodes the bargaining power of states that remain uncovered by them" (527). This in turn causes other competing states to form RTAs in order to remain competitive by aggregating their markets and increasing their bargaining power (Mansfield & Milner, 1999).

States may also enter into RTAs with the intent of creating more trade and increasing general welfare and possibly, in some cases, for protectionist purposes. RTAs can be used to protect inefficient

suited to aggregate their resources for bargaining purposes. RTAs that eliminate all barriers among their member's markets, FTAs and up, should have a greater influence on bargaining abilities than PTAs that only grant partial access.

The WTO and RTA Formation

The WTO itself recognizes the potential benefits that RTAs could have by allowing for a deeper degree of liberalization, or lower trade barriers, than could be achieved on a larger scale within the confines of the WTO, as long as RTAs are not used for exclusionary or protectionist purposes (WTO, 2006).[4] The sheer number of states involved in negotiations at the multilateral level, many of which are competing for different trade policies, can be seen as an impediment to trade liberalization. Trade policy agreements are simply more feasible on a regional level where a smaller number of players are involved. Although the WTO allows states to form RTAs, it does so under certain conditions.

The GATT/WTO agreement contains certain stipulations that permit trade agreements outside of the regime. GATT Article XXIV, the Enabling Clause, and the Generalized System of Preferences provide the legal loopholes that allow for the formation of RTAs. Basically, Article XXIV allows for the formation of RTAs under three conditions. First, trade barriers to third party states should remain the same before and after an agreement. Second, agreements should facilitate trade in all areas. And

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industries from global competition (Yeung et al., 1999). However, RTAs may also be used to overcome domestic pressures and liberalize previously protected industries (Das, 2004).

[4] RTAs can lead to trade creation. Trade creation will occur when domestic production of a certain item is replaced by cheaper imports from an RTA member country (Yeung et al., 1999). The domestic population will benefit from inexpensive goods and the exporting country will benefit from additional markets, consequently improving the welfare for all involved.

third, the participating states should notify the WTO upon implementation of an agreement.

The Enabling Clause and the Generalized System of Preferences are special stipulations put into place to benefit developing countries. The Enabling Clause allows developing countries to form RTAs and grant members partial preferences. The Generalized System of Preferences allows developed states to grant preferences to developing states.[5]

Upon notification of an agreement, the WTO establishes a working party to monitor the RTA in hopes to ensure that the agreement is complying with the preceding regulations. Still, violations of these conditions due occur in the vast majority of RTAs; however, the WTO lacks the enforcement mechanism necessary to bring RTAs in line with its regulations (Yeung et al., 1999). The basic premise of RTAs is that they lower trade barriers to member states. This in itself is considered to be a violation of the WTO's most favored nation principle.[6] Without any sort of enforcement mechanism, RTAs will continue to proliferate as long as they are beneficial to their members.

[5] Developing states may use RTAs with developed countries as a way of increasing technology and capital transfer in order to spur development. Developed states may use RTAs as a way of inducing political change in developing states (Das, 2004; Yeung et al., 1999). For insurance reasons, RTA membership is even more important for small states than for large states (Mansfield & Reinhardt, 2003; Perroni & Whalley, 2000; Fernandez & Portes, 1998). Small states typically have more homogeneous economies and are therefore more susceptible to economic shocks (Fernandez & Portes, 1998). Involvement in a RTA can allow a small economy to devalue in order to improve its competitiveness without the potential threat of other RTA members to raise tariffs in response (Fernandez & Portes, 1998). Several scholars claim that small states seek to join RTAs with large states for such insurance reasons even though larger states often require side-payments, such as political reform within the state, in return (Perroni & Whalley, 2000; Fernandez & Portes, 1998).

[6] The term "most favored nation" can be deceptive. The most favored nation principle does not involve any special treatment from one state to another. In fact, it is just the opposite. When a states is granted most favored nation status by another state, the latter state is simply agreeing to give the former state the same degree of market access that it gives to other states that it has given most favored nation status to. The term refers to equality, not special treatment.

Scholars are still debating the effects that RTA membership has on the WTO and the liberalization of world trade in general.[7]

[7] See the conclusion for additional information on the possible affects that RTAs could have on multilateral trade.

CHAPTER 3: THE RULES AND POLITICS OF THE WTO DISPUTE SETTLEMENT PROCESS

This chapter outlines the dispute process highlighting the 1995 changes that could lead to rule-based politics and the specific factors that could allow for the intrusion of power politics. Once the possibility of both a remnants of power politics leftover from the GATT period and advancements in the dispute process that could lead to a more rule-based institution have been established, theories can be developed that attempt to predict the exact mechanisms at work during the dispute process.

The rule-based improvements stem from the newly instituted negative consensus mechanism that prevents the respondent state from being able to avert the dispute process, like it could during the GATT period. The primary intrusion point for power politics is the bilateral structure of the system that pits one country against the other as a way of enforcing rulings issued from the process. This chapter is organized in the following manner: the first section highlights the WTO's main improvements to the dispute settlement process that could lead to a more rule-based institution, the second section outlines the current dispute process, and the third section points out flaws in the dispute process that could allow for the presence of power-politics.

Rule-Based Improvements to the Dispute Settlement Process

The Uruguay Round of MTNs brought about the conception of the WTO in 1995 and marked the completion of the trade regime's almost fifty-year evolution from the

original 1947 GATT power-based treaty to the current regime's more rule-oriented system of trade regulation. The most drastic changes to dispute settlement came from the Understanding on Rules and Procedures Governing the Settlement of Disputes, also called the Dispute Settlement Understanding (DSU). The DSU brought about major changes in the dispute settlement process. These changes could possibly contribute to a shift in the nature of the dispute process making outcomes from disputes determined more so by legalistic principles.

The first major change was the creation of the Dispute Settlement Body (DSB). The DSB of the WTO supervises the entire dispute settlement process (DSU, art. 2.1). Membership in the WTO primarily entails keeping trade policies within agreed upon limits. When alleged violations of these limits occur, members have the option of taking their grievance to the DSB.

The second major change was the adoption of the negative consensus principle (for example see DSU, art. 6.1 or DSU, art. 16.4). This principle fixed what some thought was one of the major flaws of the GATT dispute process—the ability of either party to prevent an unfavorable ruling from going to the ruling body or to block panel formation altogether (Jackson, 2000; Palmeter & Mavroidis, 1999). Now, for a report to be blocked from going to the DSB or for a panel formation to be prevented, both parties involved must approve of the blockage.

The Modern WTO Dispute Settlement Process

The dispute settlement process can be separated into four basic phases: the consultation phase, the panel phase, the appellate phase, and the implementation phase.

The initial phase in the dispute settlement process is the consultation phase. This phase is initiated when the complainant government notifies the respondent government of its grievance and informs the DSB that it feels the respondent government is not upholding its agreed upon trade policies. This phase is primarily government-to-government interaction.

Article 4.6 of the DSU says that "consultations shall be confidential, and without prejudice to the rights of any member in any further proceedings." The consultation phase is meant to be a period where the disputing states can attempt to settle their differences without any fear of negotiations in this phase affecting other phases of the dispute process, should the dispute continue in that direction. No official records of the interactions in this stage are kept and no DSB or secretariat personal are present (Kim, 1999). This phase is kept rather secretive in order to be as conducive as possible for the disputing countries to find a mutually acceptable solution and avoid the rest of the dispute process altogether.[8] In fact, the majority of disputes actually end during the consultation phase (Busch, 2000).[9] If a mutually acceptable solution is not achieved at the end of the consultation phase, the complaining party is then authorized to request that the DSB initiate phase two of the dispute settlement process, the panel phase (DSU, art. 4.7).

Phase two, the panel phase, is made up of usually three, and sometimes five, members who are agreed upon by both sides in the dispute (DSU, art 8.5). Potential panel members are from a variety of backgrounds including member governments, retired

[8] Throughout the entire process, if both sides involved are able to come to a mutually acceptable solution, the process is immediately ended.

[9] Democratic governments in particular find making their concessions during the consultation phase to be beneficial because of the absence of a paper trail and the political face that conceding in this stage can save, especially to their domestic audiences (Busch 2000).

members of the secretariat, ambassadors, academics or other qualified persons (Jackson, 2000). If the necessary number of panel positions cannot be filled within twenty days, the WTO general director designates the remaining panelists (DSU, art. 8.7).

Once the panel has been established, a timetable for the proceedings is set and a working procedure is established (DSU, art. 7). The panel phase then moves in the following stages; first written submission is submitted, first written hearing takes place, rebuttal submission is submitted, second oral hearing takes place, descriptive part is issued, interim report is issued, and then the final report is issued (Kim, 1999). All oral arguments are closed to the public and to all WTO members not involved in the dispute. Once all of the written and oral arguments have been heard, the panel then issues the final report to the DSB for adoption (Jackson, 2000). The DSB will automatically adopt the final report unless one of the parties wishes to appeal the report or both sides agree to a negative consensus to block the report from being issued to the DSB (DSU, art. 16.4).

If the latter is the case, the dispute is then referred to the appellate body of the WTO that then follows the same basic procedures of oral and written arguments as the original panel; however, the appellate body will only review legal issues from the proceedings (DSU, art. 17.6). The appellate body can uphold, modify, or reverse the panel's findings (DSU, art. 17.13). The ruling given by the appellate body is then accepted, virtually always, by the DSB (Jackson, 2000). The ruling may be rejected by the DSB only if it agrees to do so through a consensus decision (DSU, art. 17.14).

The implementation phase is the final step in the process and is initiated if the panel and/or the appellate body substantiate the complainant's grievance. Another panel, the compliance review panel, is then formed to monitor the losing side of the dispute to

ensure that it complies with the decision rendered by the DSB (Palmeter & Mavroidis, 1999; Jackson, 2000). If the losing side of the dispute does not comply with the ruling made by the DSB within a reasonable period of time, the winning side may then implement countermeasures as a way of inducing compliance (Mavroidis, 2000). A "reasonable period of time" may vary. Moreover, because time for the legislative process in the losing country must be taken into account, some cases have allowed upwards of fifteen months for compliance, but the goal of the process is to limit the time available for compliance as much as possible (Jackson, 2000).

A WTO arbitrator, or panel, whichever is the case, determines the degree of countermeasures that the complainant country can implement on the respondent country (DSU, art 22.7). The countermeasures must be equivalent to the damage incurred (Mavroidis, 2000). However, the concept of equivalent used in the WTO does not imply proportionally equal, just monetarily equal. For example, if one million dollars worth of damage was done to the complainant country because of trade violations, it may only implement one million dollars worth of countermeasures on the non-complying respondent state, regardless of the effectiveness of the implementation of the one million dollar countermeasure.

Rule-Based Flaws of the Dispute Settlement Process

The most commonly cited critique about the current dispute system is its lack of an institutionalized enforcement mechanism, causing the system to be commonly referred to as a "court with no bailiff." Because of the lack of an enforcement mechanism, states involved in a dispute are left to handle the implementation and enforcement of a DSB

ruling bilaterally. This bilateral nature of dispute settlement is the main access point for the intrusion of power politics.

According to several scholars, the ability of a complainant state to implement potentially harmful countermeasures is the primary motivation for the respondent state to either accept or ignore an adverse DSB ruling (Brown, 2004; Mansfield & Reinhardt, 2003; Reinhardt, 2001; Marvroidis, 2000). In the current system, the DSB may issue a beneficial ruling for the complainant requiring the respondent state to adjust its trade policy but, if the complainant state lacks the means to apply harmful countermeasures, the respondent state has no immediate fiscal reason to fear an adverse DSB ruling.

The implementation process could also lead to several situations that give distinct advantages to states with powerful markets. First of all, weak market states may actually hurt themselves more through countermeasures then their target state (Mavroidis, 2000) by cutting themselves off from a potential trading partner as well as making imports more expensive to their already poor citizenry through increased tariffs. Second, the level of countermeasures approved by the WTO arbitrators may not significantly affect the target state. For instance, if the benefits from the respondent's violation of the WTO contract are greater than the negative effects of the countermeasures that the complainant state can induce, the respondent state will have no immediate fiscal incentive to comply with the DSB's ruling or give into countermeasures from the complainant party (Mavroidis, 2000).

CHAPTER 4: COMPETING THEORIES BEHIND THE NATURE OF THE DISPUTE PROCESS: POWER-BASED VS. RULE-BASED

Chapter three outlined the dispute settlement process and showed the potential points for the intrusion of power politics as well as the improvements made to the system that give credence to the regime's rule-based credentials. This chapter combines the implications described in chapter three with theory about the nature of the dispute settlement process. At the end of the chapter, hypotheses derived from the theories outlined are listed.

The first three sections of this chapter provide theory supporting the power-based view of dispute settlement. The basic premises of bilateral bargaining theory are described in the first section of this chapter in order to provide a basic understanding of power-based bargaining that is then applied to bargaining in the dispute settlement context in the second section. The third section addresses the potential benefits of RTA membership and applies those benefits to bargaining in the dispute process. The next section of this chapter explains the theory behind the rule-based argument.

The Basics of Bilateral Bargaining

When states are involved in bilateral bargaining, bargaining theory suggests that two basic perceptions matter, power and resolve (Morgan, 1994). These perceptions influence the bargaining ability of each state in a bilateral dispute. Power can be seen in terms of military capabilities or market size and access as in the WTO context. Power is

often relatively straightforward and difficult to misperceive (Morgan, 1994). The strength of one's military or the size of one's market is generally well known to the entire world. Powerful bargainers can dominate negotiations (Wagner, 1999; Morgan, 1994). Powerful states can force others into capitulation because their threats are credible. They have the ability to inflict damaging measures on other states if bargaining situations reach that level of intensity (Morgan, 1994).

Resolve, on the other hand, is difficult to measure. Resolve refers to what each side is willing to agree to as well as what each side is willing to risk in order to achieve their goals. A state that projects a high level of resolve will gain bargaining power (Morgan, 1994). States will often attempt to increase their perception of resolve in order to increase their bargaining power. One way for a state to achieve higher perceived resolve is to have alternative bargaining partners. Alternative bargaining partners decrease the effects of an opponent state's power by making them potentially replaceable (Wagner, 1999). In the WTO dispute context, alternative bargaining partners can be seen as those states that provide secure access to profitable trade.

Power Politics and Bilateral Bargaining in the WTO Dispute Settlement Process

As mentioned in chapter three, in the WTO dispute settlement process, the ability of a complainant state to implement potentially harmful countermeasures is the primary source of its bargaining power (Brown, 2004; Mansfield & Reinhardt, 2003; Reinhardt, 2001; Mavroidis, 2000). The degree of harm that countermeasures by the complainant state could possibly incur on the respondent state depend primarily on each state's market power relative to one another (Mansfield & Reinhardt, 2003)

Market power is comprised of several factors, market size and market access, that increase a state's power and resolve in the bargaining process. The first factor is the overall size of a state's market. A state with more imports, and consequently a larger, more powerful market, is better suited to harm another state through retaliatory tariffs. On the other hand, a state with a relatively small market will not be able to issue any sort of meaningful sanction. Larger market states are therefore able to implement more harmful countermeasures against states that have a relatively smaller market.

The second factor that determines a state's market power in the WTO dispute process is the combination of a state's access to alternative markets and its reliance on the market of the adversarial state in the dispute. The interplay between states in the dispute process and the ability of one state or the other to take advantage of their relative market power depends partially on the trade relationship between the two states in the dyad (Brown, 2000) as well as each state's level of export diversification, or access to alternative markets (Mavroidis, 2000). If the complainant state is the primary importer of the respondent state, especially in an economically or politically important area, the complainant state will gain significant leverage. Likewise, in a situation where the respondent state has a diverse selection of markets to exports to, the complainant state will lose a degree of leverage.

In accordance with logical arguments supporting the presence of a power-based biased in the WTO dispute settlement system, empirical results from Reinhardt (2000) sustain the power-based argument, at least for the GATT period. Reinhardt (2000) found that from 1948-1993, "larger states [were] able to induce more concessions from smaller

defendants" (20). The same research over the WTO period, the period starting in 1995 that includes the renovation of dispute settlement rules is tested in this analysis.

Power Politics and the Theoretical Impact of RTAs in the Dispute Settlement Process

As recently mentioned, success in the dispute process largely depends on market power (Mansfield & Reinhardt, 2003). As market power increases, bargaining power increases during the GATT/WTO dispute settlement process because of the power-based, bilateral enforcement mechanisms that characterize the system. RTAs could increase the bargaining power of the complainant and the respondent by artificially increasing a state's market size and market access.

RTAs may be able to aggregate the market size of member states consequently improving the bargaining power of all members. In the MTN process, RTAs have allowed groups of states to aggregate their markets and speak collectively resulting in increased leverage during those negotiations (Mansfield & Reinhardt, 2003; Perroni & Whalley, 2000; Fernandez & Portes, 1998). The same line of reasoning can be applied to the benefits from aggregating market size during WTO trade disputes. Even in the bilateral dispute process, states may be able to use the collective power of their markets to gain a bargaining advantage.

The type of RTA should determine the ability of a state to use RTA aggregate market size as a bargaining tool. RTAs that form common exterior tariffs, customs unions, common markets, and economic unions, should be the only RTAs that have the ability to aggregate their market size for use as a tool to gain concessions. For that reason, RTAs that do not have a common exterior tariff such as PTAs and FTAs should

not be able to aggregate their markets. Without the ability to set a common exterior tariff among the states in an RTA, states outside of the dispute dyad will not be able to help their fellow RTA member state because implementing countermeasures is done bilaterally. However, if all states in an agreement have the same exterior tariff, countermeasures issued by one state in an RTA could be implemented in the rest of the states in the agreement.

Joining an RTA is a way that states can guarantee market access (Mansfield & Reinhardt, 2003; Perroni & Whalley, 2000; Fernandez & Portes, 1998). When states form an RTA, in a sense they are guaranteeing preferential trade access to one another. RTAs should therefore provide a degree of security by guaranteeing trade relationships that have few, if any, trade restrictions. The benefits from guaranteed market access should only be slightly affected by the type of RTA. Guaranteed market access is a benefit from RTA membership that should be obtainable from RTAs that range from FTAs all the way through economic unions. Guaranteed market access from RTAs should benefit both the complainant and the respondent.

The complainant in a dispute should be able to benefit from the guaranteed market access that RTAs provide. Countermeasures can potentially harm the states that implement them because the countermeasures could essentially cause the loss of a trading partner. With guaranteed access to multiple markets, complainant states should not be as damaged by their own countermeasures and should be in a better position to risk separating themselves more from the respondent state by implementing countermeasures. Guaranteed market access could also benefit the respondent state in a WTO dispute for relatively similar reasons.

Because of the structure of the dispute process as described earlier, guaranteed market access can be a very powerful bargaining tool, especially for the respondent state. In the WTO dispute process, guaranteed market access can increase a state's appearance of resolve in the eyes of the other side of the dispute. For example, for the responding state in the process, guaranteed market access will make countermeasures less harmful. If one market closes due to countermeasures, a state can simply divert trade to other markets in their RTA. Often times, countermeasures hurt the complainant state as much or more than the respondent state. Each side of the dispute is aware of this fact. If the complainant state does not believe that countermeasures will achieve capitulation, they will most likely not implement them and risk hurting themselves.

Rule-Based Politics in the Dispute Settlement Process

Liberalism posits that international cooperation is indeed possible and that by providing the right circumstances, shadow of the future, transparency, forum for communication, and an overall interdependence, institutions can facilitate cooperation even in an anarchic environment (Keohane, 2005). Further extrapolating on liberalism, regime theory claims that regimes encourage cooperation by producing "common interests […] by narrowing the range of expected behavior" (Haus, 1991, 167). This theory "seeks to explain why self-interested states in an anarchic world do, in fact, cooperate with one another" by looking to "international economic, social, and political pressures" as possible explanations (Barfield, 2001, 152).

The most substantial of these liberal keys to cooperation is probably the idea of the shadow of the future, especially when one is considering the potential impact of

RTAs. If push came to shove, less powerful states in the WTO have given themselves a possible outside option through the use of RTAs if the WTO becomes unproductive to them due to the use of power politics by powerful states.

Hypothetically speaking, if the WTO were to not exist, or exist with only a limited function, all states would see a drop in welfare from the decrease in international trade that would result from a world-wide increase in tariffs. No state would benefit from this scenario. Therefore, liberals would suggest that all states involved, including powerful states, have an incentive to implement and maintain a universally acceptable standard of fairness.

As mentioned in chapter three, mechanisms have been introduced into the dispute settlement process in an attempt to increase the fairness and effectiveness of the dispute settlement process. Primarily, the WTO instituted the negative consensus rule, requiring both parties involved to agree to an early end to the dispute process. This combination of institutional rules and future incentives could be enough to stifle power-based politics for the most part in the new dispute settlement process.

The modern WTO dispute settlement process has seen some promising results. For instance, the small underdeveloped country of Costa Rica entered into a dispute as the complainant against the United States.[10] The ruling issued by the DSB was in favor of Costa Rica and the United States accepted the final ruling without protest.

Hypotheses

Generally accepted theory on bargaining posits that states with large markets and secured access to large markets will have a distinct advantage in the WTO dispute

[10] The case Costa Rica vs. United States occurred in 1995. See appendix B for additional information on the dispute.

settlement process. The theory proposed in this paper suggests that RTA membership can bolster both of the previously mentioned aspects of bargaining power. Liberal theory suggests that by creating the right circumstances, independent states in an anarchic environment can be enticed into following the dispute settlement rules of the WTO. The following hypotheses test these assertions.

In order to account for the market size of the two states immediately involved in the trade dispute and to test if a state's individual market power still influences concession levels, the first hypothesis tests the following: *When two states are engaged in the dispute settlement process, the complainant state is able to achieve more concessions from the respondent state as comparative individual market size increases in favor of the complainant*.

If RTA member states really are able to aggregate their market power and gain an advantage in the dispute process, results should be visible in the outcomes of the disputes. This thought leads to the second hypothesis: *Membership in an RTA gives states involved in the WTO dispute settlement process an increased ability to force a favorable outcome. RTA membership should increase concessions for the complainant and reduce them for the respondent*.

The third hypothesis tests the possible effects that guaranteed market access through RTA membership can have on the dispute process. The third hypothesis is: *When two states are engaged in the dispute settlement process, the complainant state will be able to achieve more concessions from the respondent state as the comparative guaranteed market access variable increases. Likewise, as the complainant's advantage*

in comparative guaranteed market access decreases, the level of concessions that the complainant is able to achieve should decrease as well.

The final hypothesis is the legal-based hypothesis. This hypothesis assumes the following: *Market size, market access, and RTA membership have no significant influence on outcomes from the dispute settlement process. Rulings issued by the dispute settlement body provide the primary measurement for concession levels*.

CHAPTER 5: RESEARCH DESIGN

In this chapter, a research design is constructed to test for the power-based vs. rule-based nature of the WTO dispute settlement process. The power-based nature of the process is accounted for both in terms of individual state power and in terms of the power that could be drawn from RTA membership. The rule-based nature is accounted for through the adherence to rulings issued by the dispute settlement body.

The Unit of analysis for this research design is the dyad of states involved in WTO dispute settlement cases. Dyads are looked at in this context from 1995, the time when the current dispute process was implemented as well as around the time RTAs began to proliferate, to 1998.[11] A probit regression is used to determine the effects that comparative individual state market size, RTA membership, comparative guaranteed market access, and rulings issued by the DSB, the explanatory independent variables, have on dispute settlement outcomes, the dependent variable. Since these prospective measurements are only expected to influence concessions in a specific direction, a one-tailed test is used.

Dependent Variable

The dependent variable in this analysis is the outcome of the dispute process. Previous research on WTO dispute settlement has divided outcomes from the dispute process into one of three possible categories. The previously used categories are

[11] The dataset used was obtained from Eric Reinhardt's homepage: http://user.service.emory.edu/~erein/. I would like to use this opportunity to thank Dr. Reinhardt for making his dataset available to the public.

substantial concession, partial concession, and no concession.[12] Substantial concession describes a case where the complainant's grievance is completely or almost completely vindicated by the respondent state (Hudec, 1993). Partial concession describes a case where significant action was taken by the respondent state to vindicate the complainant's grievance but full concessions were not achieved (Hudec, 1993). The last category, no concession, marks a case where a complainant state receives no vindication and the dispute process fails to enforce a ruling (Hudec, 1993).

The dependent variable in this analysis is consolidated into a dichotomous variable. The concession variable is coded 0 for cases where no concessions were received and 1 for cases where either partial or full concessions were received. The decision to consolidate the partial concession and full concession categories was made in order to focus on the overall outcome of the dispute. The goal of this analysis is to determine the political nature of the dispute process. The difference between significant concessions and full concessions does not add to the ability of this analysis to solve the research question at hand and in fact could confuse results by focusing too much on minor differences in outcomes instead of looking at the issue from the larger power-based vs. rule-based perspective.

Independent Variables

A set of dichotomous independent variables is used to account for RTA membership by the complainant and for RTA membership by the respondent in each dispute dyad. Each variable is coded 1 for membership and 0 for no membership.

[12] This method of categorizing levels of concessions was first used by Hudec (1993).

The next explanatory independent variable is the comparative market size of the two individual entities involved in a dispute. Market size, throughout the entire analysis, is measured by GDP. The GDPs posted by the IMF in current US dollars are used. The GDPs are taken from the year the dispute was initiated, not the year the dispute was resolved. This variable will be calculated by dividing the complainant state's GDP by the sum of the complainant and respondent state's GDP.[13]

$$\frac{\text{Complainant GDP}}{(\text{Complainant GDP} + \text{Respondent GDP})}$$

As the comparative market size variable approaches 1, the market size advantage is in favor of the complainant. As the variable approaches 0, the market size advantage is in favor of the respondent. When the variable equals .5, neither side has a market size advantage.

Comparative guaranteed market access is another explanatory independent variable. Guaranteed market access refers to the amount of market access each state has guaranteed with its trading partners through the use of an RTA. The comparative aspect of this variable refers to how the complainant in each dyad compares to the defendant in terms of guaranteed market access. The variable must be crafted with great care due to the varying effect that involvement in the same agreement could have two different states as well as the possibility for collinearity with the comparative market size variable.

Two separate states can receive varying benefits from membership in the same RTA. For example, picture a hypothetical RTA where the United States enters into a FTA with Honduras. The FTA would undoubtedly benefit Honduras more than it would the United States. Honduras would have guaranteed access to a market that it could not

[13] This method used to account for the relative GDP of the complainant state was used in Reinhardt (2000).

possibly saturate with its exporting abilities. On the other hand, the United States would gain very little market access compared to the size of its economy. Therefore, the relative market size of the countries involved must be taken into account when calculating guaranteed market access.

Comparative guaranteed market access is calculated through a two-step process. First, each state's guaranteed market access is calculated by adding together the market sizes of all the states within the subject state's RTA, not including the particular state in question.[14] Again, market size is quantified by each country's GDP as posted by the IMF for the year the dispute was initiated.

Because of the way the comparative guaranteed market access variable is created, even within the same RTA, each individual state's guaranteed market access will be different. Take the NAFTA states, the United States, Canada, and Mexico, for example. The guaranteed market access for the United States will be the sum of Mexico and Canada's GDP. Mexico's guaranteed market access will be the sum of the United States and Canada's GDP and Canada's guaranteed market access will be the sum of the United States and Mexico's GDP.

Second, the comparative guaranteed market access variable is calculated by taking the guaranteed market access and applying it to the same basic formula used to create the comparative individual market size variable. The complainant's guaranteed market access is divided by the sum of the complainant's guaranteed market access plus the respondent's guaranteed market access. The result is the comparative guaranteed market access of the two entities involved in a particular dispute dyad.

[14] Collinearity is a possible problem when trying to account for two possibly similar variables. In order to prevent collinearity, the individual GDP of a state will not be included in the comparative guaranteed market access variable since it was already accounted for in the comparative market size variable.

$$\frac{\text{(RTA GDP – Complainant GDP)}}{\text{(RTA GDP – Complainant GDP) + (RTA GDP –Respondent GDP)}}$$

When both the respondent and the complainant are RTA members, the variable will range from 0-1. As the variable approaches 0, market access is in favor of the respondent. As the variable approaches 1, market access is in favor of the complainant.

According to the formula, a dyad that pairs an RTA member respondent with a non-member complainant will always equal 0, giving the RTA membership advantage completely to the respondent. Likewise, a dyad that pairs an RTA member complainant with a non-member respondent will always equal 1, giving the RTA membership advantage completely to the complainant. This 0-1 rating system allows the analysis to account for dyads that contain both a non-member complainant and a non-member respondent. These dyads will be coded a .5, meaning that neither state has an advantage in RTA guaranteed market access.

Out of the 120 observations used in the analysis, only three cases are intra-RTA disputes.[15] All three of these disputes are among NAFTA states. Applying the normal guaranteed market access variable formula to these dispute dyads would be illogical. The formula would allow competing states to benefit from access to their opponent's markets. To control for these three dispute dyads, each will be coded .5 to indicate that neither state involved has a guaranteed market access advantage.

The final explanatory independent variable is cases ruled for in favor of the complainant. Cases are coded 1 if a ruling was issued in favor of the complainant. All other cases are coded 0. Theory supporting a legal-based interpretation of the dispute process predicts that rulings will have a positive effect on dispute outcomes. Power-

[15] These cases are; United States vs. Canada (1996), Mexico vs. United States (1996), and United States vs. Mexico (1998).

based theory expects that rulings will not have a statistically significant effect on outcomes.

RTA Selection

Around 170 RTAs are currently documented by the WTO with a possibility of additional RTAs existing outside of WTO recognition (WTO, 2006). Each of these agreements contains a degree of originality in their structure and membership. Picking from the confusing web of RTAs that existed from 1995-1998 to be used in this analysis is a tricky process and, if chosen incorrectly, could possibly lead to dubious or inaccurate results. Because of this "spaghetti bowl" effect caused from multiple, intertwined RTAs, stipulations are put into place in order to methodize which RTAs are used in the analysis.[16]

When trying to choose which RTAs should be used to gauge power politics in WTO dispute settlement outcomes, one must remember that all RTAs do not exert bargaining benefits equally. RTAs used in this analysis are chosen using the following four criteria: first, only RTAs registered with the WTO are used. To avoid problems concerning the legitimacy of an RTA or the date which the RTA was put into effect, the WTO website and the information that it provides is used as the primary source to determine what RTAs are involved in the analysis.

Second, in terms of integration, only RTAs that reach the FTA level or greater are used. PTAs are numerous, complex as a whole, and sometimes merely symbolic. The

[16] What has been called the "spaghetti bowl" phenomenon, a phrase coined by Jagdish Bhagwati, refers to the problems that arise from multiple, overlapping RTAs. A proliferation of overlapping RTAs can raise transaction costs to firms by forcing them to comply with multiple regulations and tariff rates which could result in a decrease of both efficiency and transparency (Bhagwati et al, 1998).

complexity of PTAs arises from the fact that they only reduce tariffs a certain percent on a limited number of goods and services, each PTA being different. This analysis presumes that PTAs would only provide a marginal increase in bargaining power because of their limited degree of liberalization and therefore are not included.

Third, no hub-and-spokes agreements, those agreements between an RTA and an individual state, are used. First of all, the vast majority of hub-and-spokes agreements are PTAs, eliminating them under the first criteria (Das, 2004). Second, allowing hub-and-spokes agreements under the methods used in this analysis would presume that states receive the same level of benefits from a hub-and-spokes agreement as from actually being a member of the hub RTA. Therefore, allowing hub-and-spokes agreements would logically make little sense and probably obstruct accurate results.

Fourth, no agreements, bilateral or multilateral, outside each country's primary RTA are accepted. Non-primary agreements are not used for roughly the same logic that hub-and-spokes agreements are not used. Allowing membership in a secondary RTA would imply the same benefits as a primary RTA. If a country is involved in multiple agreements, the agreement that allows for the greatest degree of integration is deemed the primary RTA.

If PTAs, hub-and-spokes agreements, and non-primary RTAs were all used in the analysis, the result would be an utterly incoherent, meaningless, chaotic mess. The overlapping of RTAs would stifle any hope getting to the nuts and bolts of WTO dispute outcomes. For example, Turkey was involved in over six RTAs from 1995-1998. Turkey has reached bilateral PTAs, FTAs, and hub-and-spokes agreements with a variety of countries and RTAs. Even though Turkey was not involved in a single multilateral,

deeply integrated RTA, according to the theory of this paper, if the previous criteria were not in place, Turkey would be predicted to be one of the most powerful states in the dispute process, according to the size of its guaranteed market access.

Control Variables

The overarching goal of this analysis is to determine whether or not WTO dispute settlement is a rule-based institution or an institution that can be dominated by power politics, either by the large markets of individual states or by guaranteed market access through RTAs. In order to insure that this is indeed what the analysis is examining, several control variables are put into place. Control variables are used to account for agricultural disputes, cases involving the European Community, rulings issued for the defendant and for politically sensitive cases.

Most agriculture agreements are conducted separately from RTAs (Das, 2004). Therefore, agriculture related disputes are controlled for by using a dummy variable coded 1 for disputes involving agriculture and 0 for non-agriculture disputes.[17]

The second control variable accounts for the European Community.[18] The European Community is the only RTA that argues its disputes as a whole, as opposed to arguing disputes individually, by state. A dummy variable is used to control for this phenomenon by coding cases where the European Community argues as an RTA 1 and all other cases 0, including the few cases where European Community member states argue disputes individually.

[17] The Reinhardt dataset used already coded agriculture cases in this manner.
[18] The European Union maintains the name "European Community" for WTO activities.

The rare cases that are ruled in favor of the respondent are accounted for with a control variable. Otherwise, these cases could throw off results by adding situations where the complainant state did not receive any concessions, but did not deserve to since the ruling was in favor of the respondent.

Politically sensitive cases are controlled for through the use of a dummy variable. These types of sensitive cases may incite instances where a country may act counter to its best economic interests, illogical empirical results could follow.[19] For example, politically sensitive cases could include cases where the future of an economically important industry or a politically powerful industry is hanging in the balance during a dispute case. Politically sensitive cases could dramatically increase a country's resolve, regardless of its market power.

Case Selection

All cases used in the Reinhardt (2000) dataset from 1995-1998 are used in this analysis. However, the body of cases that made its way into the dataset is in a way self-selected from a two-stage process. In the first stage, a state decides whether or not to take a grievance to the DSB. In the second stage, the stage that is being studied in this analysis, the actual dispute process is played out. Both stages have selection problems that could lead to type two error.

The cases used are by no means a random selection of possible dispute cases. For instance, say an economically weak state feels that an economically powerful state has violated trade agreements between the two countries. There exists a possibility that the wronged economically weak state will not take its grievance to the DSB because it

[19] Reinhardt (2000) coded this variable and determined which cases were considered politically sensitive.

believes that it has no hope of gaining concessions from the economically powerful state.[20] Hence, no dispute cases for this situation ever come into being. The result is a counterfactual, or a non-event, that is difficult to study.

This selection bias in the initial or pre-stage of dispute settlement could lead to type two error. Cases where powerful respondent states that would clearly not capitulate any ground to weaker complainant states do not make their way to the actual dispute settlement process. These types of cases would clearly benefit the power-based argument. Not being able to include theses cases causes the power politics variables to be less significant.

Only cases that the complainant state chooses to take to the dispute process are used in this analysis. The likely result is a selection of cases that has a slight advantage in favor of complainant states, since they are the ones that essentially choose their adversarial state in a dispute and the time when the dispute takes place.

The second stage of the selection process also possesses some inherent biases. Cases where the ruling of a dispute would clearly be in favor of the complainant state and where the respondent state would likely capitulate to a ruling are often settled early, before a ruling is issued. The result is an increase of type two error for the rule-based variables. Cases that would most likely benefit the rule-based variable accounting for rulings issued for the complainant are ended early in the process, before a ruling is ever issued.[21]

[20] Brown (2004) shows that underdeveloped states are increasingly able to induce greater concessions; however, he also shows that underdeveloped states are choosing weaker targets as defendant states.
[21] The literature is divided on this issue. Reinhardt (2001), for example, claims that greater concessions are induced in early settlement. Brown (2004), on the other hand, suggests that panel rulings result in larger concessions than early settlement.

Table 1: Description of Cases

Variable	Number of Cases Where the Variable is Present
Substantial/Partial Concessions	94
No Concessions	26
Ruling for Complainant	34
Ruling for Defendant	8
EC Involved	44
Agriculture Dispute	48
Politically Sensitive	22

Total Cases: 120

Table 2: Summary of Variables

Variable	Obs.	Mean	Std. Dev.	Minimum	Maximum
Concessions	120	.7833333	.4137009	0	1
Comparative State GDP	120	.5602718	.3691749	.0004584	.9942527
Complainant RTA Membership	120	.8166667	.388562	0	1
Respondent RTA Membership	120	.6666667	.4733811	0	1
RTA Guaranteed Market Access	120	.5438832	.4204066	0	1
EC Involved	120	.3666667	.4839149	0	1
Politically Sensitive Case	120	.1583333	.3665839	0	1
Agriculture Dispute	120	.3833333	.488237	0	1
Ruling for Complainant	120	.275	.4483865	0	1
Ruling for Defendant	120	.0666667	.2504897	0	1

CHAPTER 6: RESULTS

The results from the probit regression are intriguing and perhaps slightly ambiguous when looking at dispute outcomes from a power-based vs. rule-based perspective. Probably most interestingly, the relative GDP size of the individual countries in the dyad no longer has a statistically significant effect on dispute outcomes. Remember, Reinhardt's (2000) research showed that from 1948-1993, GDP size did have a statistically significant effect on dispute outcomes. This result rejects the first hypothesis. Apparently, during the period from 1995-1998 after the implementation of the WTO, the relative market size of the states involved in each dispute dyad no longer has a statistically significant effect on the level of concessions that the complainant state is able to gain from the respondent state. At first glance, one would think that this result would pose well for the rule-based merits of the WTO dispute process; however, the results concerning variables accounting for RTA membership and adherence to rulings need to be interpreted before such accolades can be given.

Only one of the variables that account for membership in an RTA, the variable accounting for RTA membership by the respondent, had a statistically significant effect on concessions. As predicted by the second hypothesis, when the respondent state is a member of an RTA, concessions that the complainant states are able to induce are significantly reduced. When the complainant is a member of an RTA, the concessions variable is affected positively, indicating increased concessions, but the result is not

statistically significant. RTAs appear to be better for defensive purposes, or resisting concessions, than they are for offensive purposes, or inducing concessions.

The third hypothesis predicts that comparative guaranteed market access is the source of the increased defensive power that RTAs apparently grant defendants. Interestingly enough, however, the variable guaranteed market access is not statistically significant.

The statistical insignificance of the guaranteed market access variable is puzzling, especially in light of the statistical significance of the respondent RTA membership variable. Essentially, these results tell us that RTA membership does affect the outcomes of disputes, but not through the means initially theorize, through an advantage in guaranteed market access.

The legal-based hypothesis has also been rejected. Cases that were ruled for in favor of the complainant did not result in a statistically significant effect on outcomes. Rulings in favor of the respondent did have a statistically significant effect on outcomes; however, substantively, this result does not give much insight into the dispute process. The statistical significance of this variable simply tells us that when the complainant's claims are unsubstantiated, the complainant state is not able to induce concessions from the respondent state.

When looking at the analysis as a whole, evidence has been presented that gives credence to the claim that power-based politics still remain in the GATT/WTO regime, even after its 1995 renovation. The presence of power-based politics has been proven by showing that factors outside of the WTO dispute settlement process have a statistically

significant effect on WTO dispute outcomes and by showing that key factors inside the dispute process have an insignificant effect on dispute outcomes.

Even though outside influences have been shown to effect dispute outcomes, labeling the WTO dispute process a purely power-based enterprise would not be completely accurate and an unfair judgment of the system. After all, the market size of each individual state in the dispute was shown to insignificantly affect outcomes. Moreover, at the same time, politically sensitive cases did have a statistically significant negative effect on outcomes. These two results could be interpreted together to mean that regardless of a state's individual economic power, if a case is important enough to a particular state, the state will be able to resist giving in to rulings issued by the DSB and countermeasures applied by the complainant state.

Table 3: Probit Regression Results

Concessions	Coefficient	Standard Error	90% Confidence Interval	
Comparative State GDP	.1778618	.534328	-.7010296	1.056753
Complainant RTA Membership	.3970655	.4876747	-.4050879	1.199219
Respondent RTA Membership	-.7577939*	.4349902	-1.473289	-.0422988
RTA Guaranteed Market Access	-.5158669	.5229375	-1.376023	.3442887
EC Involved	.512585	.3626937	-.0839931	1.109163
Politically Sensitive Case	-.8351509*	.3620126	-1.430609	-.2396931
Agriculture Dispute	.3136695	.3363244	-.2395349	.866874
Ruling for Complainant	.1352174	.3455848	-.433219	.7036538
Ruling for Defendant	-1.163819*	.5117835	-2.005628	-.3220102
Constant	1.141225	.5526641	.232173	2.050276

* Denotes variables that are statistically significant at the .1 level
Number of Observations = 120
Pseudo R2 = .1877

CHAPTER 7: CONCLUSION

Jacob Viner (1950) was one of the first scholars to weigh in on the effects that RTAs can have on trade. Viner (1950) came to the conclusion that depending on the specific circumstances surrounding each RTA, some RTAs may lead to trade creation[22] and others to trade diversion.[23] Consequently, RTAs may have positive and negative effects on trade.

RTAs may also have varying effects on the multilateral trading system in general. Bhagwati (1994) argued the case for an "our market is large enough" syndrome that could impede the progression of MTNs. States could find themselves in what they feel is an adequate trading situation through RTA membership. These states would not be willing to concede any ground during MTNs, possibly stalling the process. Proponents of RTAs claim that by working with a smaller number of states at the regional level, a greater level of integration will occur that will be able to be expanded to the international level.

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[22] For examples of positive effects from RTAs, including trade creation, see footnotes 3 and 4.

[23] Negative effects of RTA membership include the trade-diverting effect, which could potentially result in sub-optimal welfare for all states, even those states not involved in the RTA, and loss of tariff revenue (Fernandez & Portes, 1998). Trade diversion happens when two or more trading countries form some sort of RTA and leave another trading partner out of the agreement (Lazer, 1999). Trade access will be diverted away from the left-out country and to countries within the new agreement (Lazer, 1999).

The trade-diverting effect of RTAs can cause demand for products within the agreement to be artificially high (Fernandez & Portes, 1998). States in the agreements will therefore be paying higher prices for goods than they would if they had bought from third parties outside the agreement. Switching from "trade with a relatively lower-cost producer to trade with a higher-cost producer… would potentially decrease welfare for all" (Fernandez & Portez, 1998, 200). Also, by lowering tariffs to trading partners, states in RTAs will suffer a loss of tariff revenue (Fernandez & Portes, 1998). Moreover, RTAs will harm states outside of the agreement by causing a decrease in the demand for the products produced by those states (Fernandez & Portes, 1998).

Like the debate on the effects of RTAs on world trade, the effects of RTAs on the WTO dispute settlement process are still uncertain. On the whole, the dispute process appears to remain influenced by outside factors during the 1995-1998 period, but for reasons different from the GATT era. RTA membership seems to be influencing the nature of the modern dispute process as opposed to individual state power as in the pre-WTO period. RTAs appear to be influencing dispute outcomes, primarily through the RTA membership of the respondent in a dispute, but the mechanisms driving their impact remain mysterious. In fact, RTAs could be providing smaller economy states the bargaining power to even the playing fields and stand up to larger states. Finding the exact advantages of RTA membership is an excellent goal for future research.

An alternative explanation of the effects of RTA membership could be found in some sort of threshold argument. For instance, the results of this analysis show that the relative market access of states in a dispute is not what is driving the bargaining benefits behind RTA membership for respondents. Instead, future research could test to see if there is a critical threshold that once reached gives all RTA members equal defensive benefits from their membership. The critical threshold would probably be different for each state depending on the size of each state's economy. In other words, small economy states would have a smaller threshold then large economy states.

Future research could also take into account the stakes involved in each dispute. Cases where a powerful respondent state could only have to concede to a relatively insignificant amount of concessions in an unimportant industry should be treated differently than cases that involve the opposite. The research could also be broadened to include GATT era cases in order to establish a benchmark to compare WTO cases to.

One almost certainty is that the RTA phenomenon is not going to end soon. In fact, the opposite is most likely true. RTAs will continue to proliferate and remain players on the international level long into the future for a variety of economic and political purposes.

REFERENCES

Barfield, C. E. (2001). *Free Trade, Sovereignty, Democracy*. Washington, D.C.: AEI Press.

Bhagwati, J. (1994). Regionalism and Multilateralism: an Overview. In R. Garnaut and P. Drysdale (Ed.), *Asia Pacific Regionalism: Readings in International Economic Relations* (pp. 145-165). Pymble, Australia: Harper Educational Publishing, 145-165.

Bhagwati, J., Greenway, D., & Panagariya, A. (1998). Trading Preferentially: Theory and Policy. *Economic Journal*, 108, 1128-1148.

Bown, Chad P. (2004). Developing Countries as Plaintiffs and Defendants in GATT/WTO Trade Disputes. *The World Economy*, 27, 59-80.

Busch, Marc L. (2000). Democracy, Consultation, and the Paneling of Disputes under GATT. *Journal of Conflict Resolution*, 44, 425-446.

Das, Dilip K. (2004). *Regionalism in Global Trade*. Northampton: Edward Elgar Publishing.

Fernandez, R., & Portes, J. (1998). Returns to Regionalism: An Analysis of Nontraditional Gains from Regional Trade Agreements. *World Bank Economic Review*, 12, 197-220.

Haus, L. (1991). *International Organization*, 45, 163-182.

Hudec, R. E. (1993). *Enforcing International Trade Law: The Evolution of the Modern GATT Legal System*. Salem: Butterworth Legal Publishers.

Jackson, J. H. (2000). The Role and Effectiveness of the WTO Dispute Settlement Mechanism. *Brookings Trade Forum, 179-236.*

Keohane, R. O. (2005). *After Hegemony: Cooperation and Discord in the World Political Economy*. 1st Princeton Classic Edition. Princeton: Princeton University Press.

Kim, C. H. (1999). The WTO Dispute Settlement Process: A Primer. *Journal of International Economic Law*, 457-476.

Lazer, D. (1999). The Free Trade Epidemic of the 1860s and Other Outbreaks of Economic Discrimination. *World Politics*, 51, 447-483.

Mansfield, E. D. (1998). The Proliferation of Preferential Trading Arrangements. *Journal of Conflict Resolution*, 42, 523-543.

Mansfield, E. D., & Reinhardt, E. (2003). Multilateral Determinants of Regionalism: The Effects of GATT/WTO on the Formation of Preferential Trading Arrangements. *International Organization*, 57, 829-862.

Mansfield, E. D., & Milner, H. V. (1999). The New Wave of Regionalism. *International Organization*, 53, 589-627.

Mavroidis, P. C. (2000). Remedies in the WTO Legal System: Between a Rock and a Hard Place. *European Journal of International Law*, 11, 763-813.

Morgan, C. T. (1994). *Untying the Knot of War*. Ann Arbor: University of Michigan Press.

Palmeter, D., & Mavroidis, P. C. (1999). *Dispute Settlement in the World Trade Organization*. Boston: Kluwer Law International.

Perroni, C., & Whalley, J. (2000). The New Regionalism: Trade Liberalization or Insurance? *Canadian Journal of Economics*, 33, 1-24.

Reinhardt, E. (2001). Adjudication without Enforcement in GATT Disputes. *Journal of Conflict Resolution*, 45, 174-195.

Reinhardt, E. (2000). Aggressive Multilateralism: The Determinants of GATT/WTO Dispute Initiation, 1948-1998. Unpublished Manuscript: http://user.service.emory.edu/~erein/.

Viner, J. (1950). *The Customs Union Issue*. New York: Carnegie Endowment for International Peace.

Wagner, R. H. (1999). Bargaining and Conflict Management. Unpublished manuscript: http://www.ruf.rice.edu/~stoll/irmeth.htm.

WTO. (2006). wto.org.

Yeung, M. T., Perdikis, N., & Kerr, W. A. (1999). *Regional Trading Blocs in the Global Economy: The EU and ASEAN*. Northampton: Edward Elgar Publishing.

APPENDIX A: RTAs USED IN THE ANALYSIS

RTA	Acronym	Members (1995-1998)	Type of RTA
Central American Common Market	CACM	Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua	Customs Union
Andean Community	CAN	Bolivia, Colombia, Ecuador, Peru, Venezuela	Customs Union
Central European Free Trade Agreement	CEFTA	Bulgaria (1998), Czech Republic, Hungary, Poland, Romania (1997), Slovakia, Slovenia (1996)	Free Trade Agreement
Closer Trade Relations Trade Agreement	CER	Australia, New Zealand	Free Trade Agreement
European Community	EC	Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom	Customs Union
European Free Trade Association	EFTA	Iceland, Liechtenstein*, Norway, Switzerland	Free Trade Agreement
Southern Common Market	MERCOSUR	Argentina, Brazil, Paraguay, Uruguay	Customs Union
North American Free Trade Agreement	NAFTA	Canada, Mexico, United States	Free Trade Agreement

*Liechtenstein was not listed on the IMF website. Therefore, its GDP was not added to EFTA's RTA GDP
Note: Additional RTAs may have qualified for this analysis. However, some RTAs were not included because none of their members were involved in a dispute during the period studied.

APPENDIX B: DISPUTE INFORMATION

Complainant	Respondent	Year	Ruling	Concessions
Singapore	Malaysia	1995	No ruling	Concessions
United States	Korea, Republic of	1995	No ruling	No concessions
Brazil	United States	1995	Ruling for Complainant	Concessions
United States	Korea, Republic of	1995	No ruling	Concessions
Japan	United States	1995	No ruling	Concessions
Canada	European Community	1995	No ruling	Concessions
European Community	Japan	1995	Ruling for Complainant	Concessions
Canada	European Community	1995	No ruling	Concessions
Canada	Japan	1995	Ruling for Complainant	Concessions
United States	Japan	1995	Ruling for Complainant	Concessions
Peru	European Community	1995	No ruling	Concessions
United States	European Community	1995	No ruling	Concessions
Chile	European Community	1995	No ruling	Concessions
Canada	Korea, Republic of	1995	No ruling	Concessions
Philippines	Brazil	1995	Ruling for Defendant	No concessions
Mexico	Venezuela	1995	No ruling	Concessions
Costa Rica	United States	1995	Ruling for Complainant	Concessions
United States	European Community	1996	Ruling for Complainant	No concessions
Honduras	European Community	1996	Ruling for Complainant	Concessions
United States	European Community	1996	Ruling for Complainant	Concessions
Guatemala	European Community	1996	Ruling for Complainant	Concessions
Mexico	European Community	1996	Ruling for Complainant	Concessions
Ecuador	European Community	1996	Ruling for Complainant	Concessions
United States	Japan	1996	No ruling	Concessions
Hong Kong	Turkey	1996	No ruling	No concessions
Sri Lanka	Brazil	1996	No ruling	No concessions
United States	Canada	1996	Ruling for Complainant	Concessions
India	United States	1996	No ruling	Concessions
India	United States	1996	Ruling for Complainant	Concessions
India	Turkey	1996	Ruling for Complainant	Concessions
Thailand	Hungary	1996	No ruling	Concessions
New Zealand	Hungary	1996	No ruling	Concessions
United States	Hungary	1996	No ruling	Concessions
Australia	Hungary	1996	No ruling	Concessions
Argentina	Hungary	1996	No ruling	Concessions
Canada	Hungary	1996	No ruling	Concessions
United States	Pakistan	1996	No ruling	Concessions
United States	Portugal	1996	No ruling	Concessions
European Community	United States	1996	No ruling	Concessions
European Community	United States	1996	No ruling	Concessions

European Community	Korea, Republic of	1996	No ruling	Concessions
United States	Korea, Republic of	1996	No ruling	Concessions
European Community	Japan	1996	No ruling	Concessions
United States	Turkey	1996	No ruling	Concessions
United States	Japan	1996	Ruling for Defendant	No concessions
United States	Japan	1996	No ruling	Concessions
Canada	Brazil	1996	Ruling for Complainant	No concessions
Thailand	Turkey	1996	No ruling	No concessions
Canada	European Community	1996	Ruling for Complainant	No concessions
Mexico	United States	1996	No ruling	Concessions
United States	India	1996	Ruling for Complainant	Concessions
European Community	Indonesia	1996	Mixed Ruling	Concessions
Japan	Indonesia	1996	Mixed Ruling	Concessions
United States	Argentina	1996	Ruling for Complainant	Concessions
United States	Australia	1996	No ruling	No concessions
Pakistan	United States	1996	Mixed Ruling	Concessions
India	United States	1996	Mixed Ruling	No concessions
Malaysia	United States	1996	Mixed Ruling	No concessions
Thailand	United States	1996	Mixed Ruling	Concessions
United States	Indonesia	1996	Mixed Ruling	Concessions
Mexico	Guatemala	1996	Ruling for Defendant	No concessions
Philippines	United States	1996	No ruling	No concessions
United States	European Community	1996	Ruling for Defendant	Concessions
European Community	United States	1996	No ruling	Concessions
United States	United Kingdom	1997	Ruling for Defendant	Concessions
United States	Ireland	1997	Ruling for Defendant	Concessions
Brazil	European Community	1997	Mixed Ruling	Concessions
New Zealand	European Community	1997	No ruling	Concessions
European Community	Japan	1997	No ruling	Concessions
United States	Philippines	1997	No ruling	Concessions
European Community	Korea, Republic of	1997	Ruling for Complainant	Concessions
United States	Japan	1997	Ruling for Complainant	Concessions
Colombia	United States	1997	No ruling	Concessions
European Community	India	1997	Ruling for Complainant	Concessions
United States	Belgium	1997	No ruling	Concessions
United States	Ireland	1997	No ruling	Concessions
United States	Denmark	1997	No ruling	Concessions
United States	Korea, Republic of	1997	Ruling for Complainant	Concessions
European Community	United States	1997	No ruling	No concessions
United States	Sweden	1997	No ruling	Concessions
European Community	United States	1997	No ruling	Concessions
Korea, Republic of	United States	1997	No ruling	Concessions
United States	India	1997	Ruling for Complainant	Concessions
Australia	India	1997	No ruling	Concessions
Canada	India	1997	No ruling	Concessions
New Zealand	India	1997	No ruling	Concessions
Switerland	India	1997	No ruling	Concessions
European Community	India	1997	No ruling	Concessions

Chile	United States	1997	No ruling	Concessions
European Community	Korea, Republic of	1997	Mixed Ruling	Concessions
Korea, Republic of	United States	1997	Ruling for Complainant	Concessions
European Community	United States	1997	No ruling	Concessions
United States	European Community	1997	No ruling	Concessions
Panama	European Community	1997	No ruling	Concessions
European Community	United States	1997	Ruling for Complainant	No concessions
United States	Chile	1997	No ruling	Concessions
European Community	Chile	1997	Ruling for Complainant	Concessions
Argentina	United States	1997	No ruling	No concessions
Brazil	Peru	1997	No ruling	Concessions
United States	European Community	1998	No ruling	Concessions
European Community	United States	1998	No ruling	No concessions
Switzerland	Australia	1998	No ruling	Concessions
Poland	Thailand	1998	Ruling for Complainant	No concessions
Indonesia	Argentina	1998	No ruling	Concessions
United States	European Community	1998	No ruling	Concessions
United States	Greece	1998	No ruling	Concessions
United States	Australia	1998	Ruling for Complainant	Concessions
United States	Belgium	1998	No ruling	No concessions
United States	Netherlands	1998	No ruling	No concessions
United States	Greece	1998	No ruling	No concessions
United States	Ireland	1998	No ruling	No concessions
United States	France	1998	No ruling	No concessions
United States	Mexico	1998	Ruling for Complainant	Concessions
Canada	European Community	1998	Ruling for Defendant	No concessions
European Community	United States	1998	Ruling for Complainant	Concessions
European Community	United States	1998	Ruling for Complainant	Concessions
European Community	India	1998	Ruling for Complainant	Concessions
European Community	United States	1998	No ruling	Concessions
European Community	United States	1998	Ruling for Defendant	No concessions
European Community	Argentina	1998	Ruling for Complainant	Concessions