From: <itj@tamiu.edu>
To: Christina Fattore
CC: itj@tamiu.edu
Date: 7/16/2013 6:27 PM

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Dear Dr Fattore:

Ref: The Influence of Legal Capacity on WTO Dispute Duration

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Sincerely,
Dr Sagafi-nejad
Editor in Chief, The International Trade Journal
taqi.sagafi@tamiu.edu, itj@tamiu.edu
The Influence of Legal Capacity on WTO Dispute Duration

Abstract: WTO dispute settlement has evolved away from the concise process originally imagined to one where panels languish for years. This is to the detriment of lesser-developed states that do not have the resources that allow for access. In this paper, I perform a multivariate analysis to explore the relationship between a state’s legal capacity and the length of trade disputes. Controlling for selection bias, I find that the legal capacity of both the involved parties contributes to longer disputes. The relaxed time expectations in this process favors the inclusion of developed states and excludes those without the resources necessary to carry out what has become the normal dispute process.

Introduction

Dispute resolution has been an important facet of global trade relations in the post-World War II era. While the GATT provided a forum for its members, the World Trade Organization’s (WTO) dispute settlement mechanism (DSM) strongly emphasizes the rule of law as a way to monitor trade relations. Member states observe one another’s commitment and adherence to WTO agreements. When a state acts in a manner that moves away from the goals of the WTO, the role of the DSM is to analyze information provided to them by other states in a systematic way to decide whether a state’s behavior was indeed in violation, and, if so, pressure violating states to comply with WTO rules once again, with the possibility of retaliation for non-compliance. Without the DSM, enforcement would be left solely to the member states, which would result in a weak global trade regime.

While dispute resolution provides an arena for states to peacefully determine and correct trade actions that fall outside of WTO agreements, it also provides other benefits to its members. The greater emphasis on the rule of law, transparency, and legalism provides states with the assurance that the DSM is the only forum in which
to handle trade disagreements. From the beginning, member states are aware of the manner in which the process unfolded (the opportunities for a negotiated settlement prior to a panel decision, and, if dissatisfied, an appeal), as well as how much time is allotted for the various stages. The WTO stylized this process as being succinct, taking up a short amount of time in order to facilitate a return to normal trade relations after a dispute, which supports the organization’s ultimate goal.

Considering the strict timeline of the DSM process, it should be surprising that the average dispute takes close to three and a half years to resolve. The WTO itself describes the process as speedy: a dispute without an appeal that is not settled before the DSM makes a report lasts about one year. With an appeal, the dispute can last up to a year and three months (WTO 2011). The data show that this is not reality. The lengthy duration of WTO disputes reduces its ability to promote the rule of law. Clearly, if the WTO is unable to get the DSM back on track regarding timeliness, its inefficiency will push member states away from utilizing it, undermining the organization’s strength and ability to act as the enforcement mechanism of the global trading system.¹

Recently, Kennedy (2011) examined why WTO panels are taking longer than initially expected. As the years since the 1995 creation of the DSM passed, the length of panels continued to increase exponentially. He claims that this is mainly due to administrative issues, such as scheduling conflicts for panelists and other participating parties, the complex scope of many of the issues brought before the

¹ This paper is solely focused on global trade disputes pursued within the WTO. At the WTO level, states who are members of a common regional trade agreement (RTAs) very rarely file complaints against one another. Therefore, any discussion of RTAs is excluded from this analysis.
DSM, the questioning and scheduling of experts, and finally, the writing of the panel
decision, its translation, and eventual distribution. Kennedy explains that the
timeframe included in the Dispute Settlement Understanding was irrational from
the start.

In this paper, I propose that the structure of the DSM itself and the cost of
participation in the WTO contribute to lengthier disputes. The strengthening of the
WTO and creation of a permanent DSM forced member states to develop a
permanent legal team that would deal with any issues that would arise in Geneva,
particularly regarding dispute behavior. While the necessity of a permanent team at
WTO headquarters is a new feature of the post-1995 reform, not all states have the
ability to fill that void. In fact, states with lower legal capacity (defined as a state’s
ability “to monitor and enforce rights and obligations” (Busch et al 2009, 560)) lack
the ability to observe other states’ trade behavior or to build a case in order to bring
a complaint against another state. While a legal capacity deficiency precludes
certain states from initiating disputes, an abundance leads other states to engage in
lengthy ones. I propose that legal capacity affects a state’s ability to build a strong,
compelling case in their own favor, which complicates the more simplistic
expectations of the DSM process that was originally put forth by the WTO in 1995.

In order to investigate the effects of legal capacity on dispute length, I
perform a multivariate analysis that allows me to consider possible selection bias
that may arise when testing for dispute duration without allowing for what
contributes to initial panel formation. The results support my hypothesis that states
with greater legal capacity engage in lengthy disputes, mainly due to their ability to
draw on resources that will support their case (through expert witnesses, complicated arguments, and other aspects that support the state's interest albeit at the expense of the DSM timeframe). Since the DSM continues to relax its expectations to support longer disputes (and, in turn, favor states with the ability to fund longer disputes), this shows an inherent bias in an organization that promotes a level playing field for the global trading system.

**Legal Capacity and WTO Dispute Resolution**

A state's legal capacity is the gateway to understanding its participation in the DSM and the WTO in a greater perspective. As mentioned earlier, legal capacity refers to a state's ability "to monitor and enforce rights and obligations" within the WTO context (Busch et al 2009, 560). It encompasses the ability to staff a permanent delegation in Geneva, especially one that has been trained to deal with the highly judicialized dispute system. I expect legal capacity to affect a state's ability to build a strong case as well as participate in what has become the norm in the DSM: long, drawn out disputes, filled with outside experts and an excess of supporting material. Since states with lesser legal capacity are unable to utilize such resources, I hold the expectation that they will attempt to settle early when they are involved in a WTO case. Therefore, states with greater legal capacity are involved in disputes with longer durations. By reviewing the effect legal capacity has on state behavior at each of the stages pertaining to dispute resolution, a better understanding will evolve as to how it also affects the length of these disputes.

The disputes considered in this paper begin when a formal complaint is filed by a state, a defendant identified, and consultations requested (similar to that in
Hudec 1993). Not surprisingly, states with higher levels of legal capacity are also more likely to be involved in a dispute, as either the complainant or the defendant. Simmons and Guzman (2005) find that states with a lower legal capacity only file complaints when they are certain that they can win. Also, states with a lower legal capacity seem to be more willing to settle a dispute if they are the defendant so they do not become involved in a longer dispute which will be costly (Bown 2005).

Bown (2005, 2009) finds that states lacking the resources that comprise legal capacity self-select out of DSM complaint involvement. While technical assistance is provided by the WTO to these states in order to promote full participation (Shaffer 2006), it does not fill the knowledge and resource void that defines the developing world’s experience within the DSM (Lacarte-Muro and Gappah 2000). Lesser-developed countries lack the political and economic capacity to act as a “watchdog” over their trading partners, and, therefore, they are more selective about the complaints they choose to file (Simmons and Guzman 2005). In fact, many prefer to join already existing complaints as third parties in order to pursue their trade policy agendas (Busch and Reinhardt 2009; Busch et al 2009).

Third parties joining a dispute also lessen the probability of a negotiated resolution and seem to lengthen the dispute itself. States acting as third parties join a dispute in order to represent their own interests, but also to act as a watchdog for all states who are involved in the trade of a specific good (Bagwell and Staiger 2002). Disputes involving third parties are less likely to be resolved prior to the formation of a panel and they often lead to a panel ruling, rather than being settled among the primary parties (Busch and Reinhardt 2006). The addition of multiple
third parties to a dispute also decreases the probability of a dispute being settled outside of the panel ruling, since disputes are generally more difficult to resolve as the number of actors involved increases.

After a complaint has been filed, the next step in WTO dispute settlement is the consultation stage, where the complainant and defendant attempt to negotiate a settlement. If they are unable to do so in sixty days, the complainant can request a panel to be appointed to hear the case. Busch and Reinhardt (2001, 2003) claim that early settlement prior to the request for a panel results is mutually beneficial to the parties when compared to a decision made by a panel. A panel ruling favors one side over the other, where a negotiated settlement is more likely to bring about an equal distribution of concessions. Therefore, it seems as though the optimal mutual outcome for a dispute is negotiated settlement prior to panel formation. Democratic dyads are more likely to settle a pre-panel dispute but are not any more likely to resolve their dispute through negotiations post-panel formation (Busch 2000).

Administrative issues mainly affect panel duration, which includes scheduling conflicts for panelists and other participating parties, the complex scope of many of the issues brought before the DSM, the questioning and scheduling of experts, and finally, the writing of the panel decision, its translation, and eventual distribution (Kennedy 2011). It seems that the original time guidelines put forth by the WTO in 1995 was never meant to shape the reality of the DSM. Just as though the DSM was created to be a universal body, rather than one that appears exclusionary, the original Dispute Settlement Understanding was written to reflect a fair system that was available and accessible to all. However, as time progressed
and disputes (and their panels) became more complicated than originally imagined, it is clear that the DSM evolved away from the 1995 conception and into the reality shaped by those states that were utilizing this forum: namely, states with higher legal capacity.

States with higher legal capacity are involved in a number of different disputes at once, which leads to scheduling issues. Table 1 illustrates how overloaded certain states are regarding dispute participation, either as a complainant or defendant. If the same states are involved in an overwhelming number of disputes, it will be hard to schedule and proceed quickly through all the cases. Also, states with higher levels of legal capacity will take advantage of this scenario in order to build a strong, detailed case filled with expert witnesses that will support their side of the dispute. This adds another level of complexity regarding scheduling and keeping disputes to their proper pre-determined length.

States with higher levels of legal capacity are in the unique situation to influence the flexibility of WTO dispute timeframes.

[Insert Table 1 here]

In this democratic institution, it would be unfair if states were unable to build cases and present evidence to support themselves. However, states with lower legal capacity find themselves in a bind, in that, not only are they unable to pursue many cases as a complainant in the DSM (due to their inability to build a case) but also they lack the resources to present a complex case. Without the WTO stepping in to hold states to the original timeframe presented in the 1995 Dispute Settlement Understanding, states with greater resources will continue to take advantage of this
flexibility for their own benefit. If the WTO were to enforce the original dispute
timeframe, states with lower levels of legal capacity may be able to engage more
fully in the dispute resolution process, since this could “reduce litigation costs ... by
shortening case duration” (Grinols and Perrelli 2006, 617). If this relationship
between legal capacity and dispute duration is indirectly excluding a large number
of WTO members from fully accessing and participating in the DSM, it is worth
adequately testing this theory. If this test illustrates that higher levels of legal
capacity for both the complainant and defendant contributes to longer dispute
lengths, it should behoove the WTO to enforce to the original 1995 guidelines, which
may lead to greater accessibility of the DSM for all member states, not just those that
can participate in lengthy, costly disputes.

*Hypothesis 1: A defendant with high levels of legal capacity will contribute to longer panel duration.*

*Hypothesis 2: A complainant with high levels of legal capacity will contribute to longer panel duration.*

**Data and Methods**

While Kennedy (2011) is a qualitative analysis of dispute duration, I take an
empirical approach to not only test his assumptions along with my own hypotheses.
Since both variables of interest are easily quantifiable (dispute duration as well as
legal capacity in terms of being able to finance a dispute), this is the appropriate
approach for this test. Also, because states self-select into disputes by filing
complaints, this sample is non-random. I control for this by utilizing a two-stage
duration model created by Boehmke et al (2006). Therefore, by using the error
term in the first stage of this model to estimate the duration model, I am able to avoid biased results.

In order to explore WTO dispute duration, I consider all complaints filed in the DSM between January 1, 1995 and December 31, 2006. Disputes that have multiple parties that either act as defendants or complainants are disaggregated into separate disputes (similar to Hudec 1993 and Busch and Reinhardt 2006). For instance, Dispute 234 involves the United States (US) as a defendant and both Canada and Mexico as complainants. I treat this as two separate disputes: one involving the US and Canada and another involving the US and Mexico. Similarly, disputes involving the European Union (EU) are broken down into dyads involving the individual member states of the EU. Therefore, a dispute involving the EU and the US would be treated as a dispute involving the US and the UK, the US and Ireland, the US and Spain, and so on.

A dyadic approach allows for a better understanding relating to the influence of legal capacity on dispute duration, since most of these observations include one defendant and one complainant. Less than 17 percent of the dyads in this sample are a part of a multiparty dispute. Since most disputes involve only a pair of states, the disaggregation of those few disputes that involve multiple parties will allow for the testing of my theory in an environment that more closely reflects the reality of the DSM structure (in that it is mainly dyadic disputes). However, in order to account for any possible bias, I include a control variable for those disputes.

To measure the length of disputes, I use the total number of days that a dispute endures from the original date when a complaint was filed. In order to do
this, I use the information provided by the WTO on their chronological list of dispute cases. This website provides the dates for the initial complaint (also known as the “request for consultations”), as well as successive steps (panel formation, panel decision, appeal, etc.) and the final settlement date of the dispute, if available. If a dispute is ongoing, the duration variable was given an arbitrary end date, and therefore, is right-censored. The other issue regarding dispute length is that there are some dyads that experience more than one dispute in a given year. In that case, I use the data from the first dispute filed in a given year for that dyad.

My hypotheses focus on the role of legal capacity on the dispute duration. This is coded using the log of the state in question’s GDP per capita. While Busch et al (2009) have composed a superior measure of legal capacity, the measure is not available for use due to the confidentiality of the respondents’ answers to their survey. Therefore, I utilize GDP per capita as a proxy value for legal capacity, which has been used quite often in the literature (see Bown 2005; Besson and Mehdí 2004). Wealthier states have more resources available to them to expend within the DSM, whereas lesser-developed countries do not have expendable resources. Also, many lesser-developed countries do not have a permanent delegation in Geneva, or, if they do, they do not have a very large one that would allow them to employ staff with particular legal experience to navigate the DSM. The expectation is that a defendant with higher levels of legal capacity will be more likely to have

2 While legal capacity has been measured in different ways, such as bureaucratic quality, this is not an appropriate proxy for my particular study. Because I am interested in testing the effects of the cost of dispute settlement on which states pursue this means to solve their trade disputes, GDP per capita is a more appropriate proxy.
longer disputes given their involvement in multiple cases simultaneously and their ability to bring in experts and present complex cases to support themselves. Therefore, *Legal Capacity* is expected to have a negative effect on the dispute's hazard rate (meaning that it contributes to a lengthier dispute). The GDP per capita is measured in current US dollars (prior to the logarithmic change) and is taken from the Penn World Table (Heston et al 2006). I use the logarithmic change in order to control any possible issues with heteroskedasticity.

I also include a number of control variables in the duration model, mainly from Kennedy (2011). He explained that, as time progressed in the lifetime of the WTO, disputes seemed to get longer as well. *Years since 1995* is a count variable and is expected to have a negative effect on the hazard rate of WTO disputes. The complexity of the issue at hand also is expected to contribute to longer disputes. *Complex issue* is a dichotomous variable coded 1 if a dispute is related to trade discrimination, agriculture, or is considered to be politically sensitive (relating to national security, environmental regulations, sanitary/photosanitary regulations, and/or cultural protection). This operationalization is borrowed from Busch and Reinhardt (2006). Finally, in order to account for “high profile” cases, I include two dummy variables signifying the participation of either the US or an EU state in the dispute.³

The influence of third parties is also an important facet of dispute duration.

Third parties are expected to add to the length of a dispute since they are interested

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³ While it could be argued that different states should be included in the conceptualization of “high profile” cases, both Busch and Reinhardt (2006) and Kennedy (2011) identify the US and the EU as the most high profile disputants. This is supported by Table 1.
in a solution that will benefit their policy position as well, not only that of the complainant. *Third parties* should have a positive effect on the dependent variable. This dichotomous variable is coded 0 if the dispute has no third parties involved, and 1 if there are 1 or more third parties. Another variable, *Multiple party dispute*, accounts for disputes where there are more than one complainant. It too is a dichotomous variable. These variables are coded using data from the WTO website.

Therefore, the complete duration model is the following:

\[
\text{Dispute duration} = f (\text{Complainant Legal Capacity, Defendant Legal Capacity, Complex Issue, Third Parties, Multiple party dispute, Years since 1995, Dyad with EU member, Dyad with US})
\]

While I am primarily interested in the effect of legal capacity on the duration of a trade dispute, it is impossible to observe dispute length without a dyad self-selecting into a trade dispute. Ignoring the influence of this selection of why certain states file disputes could lead to biased results when considering the length of the resulting dispute, and therefore, biased conclusions about dispute duration. In order to account for this possible bias, I utilize an estimator developed by Boehmke et al (2006) in which the effects of non-random sample selection are considered. The full information maximum likelihood estimator simultaneously considers both the selection model and duration model, alleviating the possibility of selection bias in the results because it “estimates the correlation between the error terms in the two equations, allowing the researcher to correct and test for the presence of nonrandom sample selection” (Boehmke et al 2006: 1131). The sample used for this analysis is indeed nonrandom. States self-select into disputes by filing complaints
against their trade partners. One could argue that even defendants “self-select” into disputes because they choose to ignore WTO rules.

The selection model considers all possible dyadic combinations of WTO members, from 1995 to 2006. The previous literature found that states were more satisfied with the results that emerged from disputes that were settled in the consultation stage. My expectation is that, if a settlement is not reached and a panel is formed, the dispute can become protracted. Therefore, the dependent variable for my selection model is Panel Established. This variable is coded 0 if a dyad never reaches the panel stage, and 1 if a panel is established. It is coded using data from the WTO website. Figure 1 illustrates that most disputes that are filed in the WTO eventually move onto the panel stage. Very rarely are these disputes settled prior to the formation of a panel.

[Insert Figure 1 here]

The control variables for this selection stage are drawn from the literature relating to dispute initiation. Democratic dyads are more likely to be involved in disputes as well, and they are more likely to pursue disputes past the consultation stage (Reinhardt 1999). This variable is coded 0 if a dyad does not contain any democratic states, and 1 if there is at least one democratic state. This variable is coded using the Polity IV dataset (Marshall and Jaggers 2007). I also include a control relating to Bilateral trade. I expect that disputing dyads with high levels of Bilateral trade will be more likely to experience a dispute that moves to the panel stage, as there is more opportunity for them for a disagreement to arise. This variable is coded as the log of dyadic bilateral trade, using the Correlates of War
bilateral trade dataset (Barbieri et al 2008). Finally, many of the same controls are used from the duration model: *Multiple parties, Third parties, Dyad with EU member, Dyad with US, and Complex issue*. Much in the same way that they contribute to a dispute becoming lengthy, I expect that it will push a complaint into the panel stage.

Therefore, the selection model is the following:

\[
Panel\ established = f (Democratic\ dyad, \ Bilateral\ trade, \ Multiple\ party\ dispute, \ Third\ parties, \ Complex\ issue, \ Dyad\ with\ EU\ member, \ Dyad\ with\ US)
\]

**Results**

The results for the full selection model as well as a separate naïve survival model (for the duration equation) are presented in Table 2. This discussion will focus on the duration model that controls for dyads “selecting” into the panel stage. [Insert Table 2 here]

The hypotheses presented earlier in this paper focus on the effects of legal capacity on the duration of a WTO dispute, with the expectation that states with higher levels of legal capacity are better equipped to engage in lengthier disputes, with the ideal resolution resulting in their favor. Both coefficients for the legal capacity variables are negative, which means that they both decrease the hazard rate. In other words, legal capacity contributes to longer dispute length in that it decreases the possibility of a dispute ending. In investigating the substantive effects, there is a slight difference in the way these two variables affect the hazard rate. A defendant’s legal capacity has a slightly larger substantive impact on the dispute’s hazard rate than the initiator’s legal capacity.
To get a closer look at the substantive effects of changes in a complainant’s and defendant’s legal capacity, Figure 2 illustrates how the hazard rate changes as a state’s legal capacity increases (while holding all other variables at their mean or mode). For both the complainant and the defendant, the overall effect is negative. That is, a state’s legal capacity increases, the hazard rate decreases, leading to longer disputes. Figure 2 shows that the defendant state’s legal capacity has a greater substantive effect on the dispute’s hazard rate. In fact, a dispute’s hazard rate decreases by 40.8% as a defendant’s legal capacity increases from its possible minimum to its maximum, where as it only decreases by about 31% when a complainant’s legal capacity changes in the same manner. This means that as a defendant and complainant’s legal capacity increases, they have a higher chance of engaging in a longer dispute. It is logical that a defendant’s legal capacity would have a more substantive effect on the hazard rate of a dispute. Once a complaint is filed, the burden of proof is upon the defendant to present a case that they did not break WTO rules or agreements. Therefore, the more resources that are available to a defendant state, the more likely the dyad is to experience a longer dispute. States with a lower legal capacity are unable to utilize such resources, and therefore, their panels have shorter durations than panels involving parties with higher legal capacity and greater resources to commit to panels.

[Insert Figure 2 here]

The dyadic focus of this study lends itself to examining the two legal capacity variables simultaneously. A dyad with a complainant and defendant with lower levels of legal capacity (measured as one standard deviation below the mean) has a
hazard rate that is 21.4% higher than a dyad with a complainant and defendant with maximum levels of legal capacity (measured as the maximum value for both complainant and defendant variables). A dyad with a complainant and defendant with average levels of legal capacity has a hazard rate that is 14.4% lower than that of a dyad where both states have a lower legal capacity. Another interesting observation about the observations tested by the duration model is that the average logged value for the GDP per capita variable is not far from the maximum value. That is, the average for the complainant’s GDP per capita (log) is 9.378 while the maximum is 10.815, which is very similar to the defendant’s mean (9.534) and maximum (10.675). While the values for both variables range from 0 to their respective maximum values, it is obvious that the duration sample is focused on states that have high values of legal capacity. This, too, illustrates the inherent bias in the DSM structure, as states with high levels of legal capacity dominate both the complainant and defendant roles.

Kennedy’s (2011) variables also prove to be influential on this duration model. Complex issues contributed to a lower hazard rate (and, therefore, a longer duration). A more complex issue (such as agriculture or sanitary measures) at the center of a panel decreased the panel’s hazard rate by 0.62 units than a more routine issue such as breaking a WTO rule or anti-dumping regulations. The situation where the EU was a party to the panel (as either the complainant or the defendant) also contributed to a decreased hazard rate, although this variable was statistically insignificant.
Two of Kennedy’s variables resulted in the opposite direction from what was originally predicted. When the US is a party to the panel, the hazard rate actually increases, meaning disputes are shorter in duration when the US is involved when compared to when the US is not involved. While this variable too is statistically significant, its effects must be considered. Since the US mostly appears in this selection stage as part of a dyad with the EU states, we can consider their effects in tandem. If both actors are a part of a panel, then their substantive effect on the panel’s hazard rate is extremely close to zero (the EU variable’s coefficient is -0.1611 and the US variable’s coefficient is 0.1676). Since it is rare to find the US in this selection stage without the EU being its panel disputant, it is important to consider them together. Therefore, they cancel each other’s effects on the panel’s hazard rate.

The other of Kennedy’s variables to generate a result in the opposite manner of what was predicted is the Years since 1995 variable. Kennedy (2011) expected that, as time passed, panels would drag on, and not be as efficient as they were in the beginning days of the WTO. So, a panel in 2005 is expected to have a longer duration than a panel in 1995. In this test, the coefficient for the Years Since 1995 variable was positive and statistically significant. This means that disputes that occur in the later years of the WTO’s existence increases a panel’s hazard rate. While Kennedy gives a fine explanation about expecting a backlog of panels to increase their duration, I also suspect that many major players in the WTO have learned how to work the system, and, as time passes, they are able to achieve shorter panel durations.
The final two controls focused on the composition of the disputants: whether there were multiple complainants or third parties involved. Busch and Reinhart (2006) find that third parties make it more difficult for a negotiated settlement to be reached in the consultation stage. Therefore, I expected that third parties would also negatively impact the hazard rate of a panel’s duration. While the coefficient was statistically insignificant, it did appear in the predicted direction, with a negative effect on the hazard rate. Multiple parties also tend to complicate manners, and, in this model, also contributed to longer panel durations.

In the selection stage, all the variables were in the predicted direction (in that they contributed positively to a panel being formed), except for the variable for Multiple Parties. While it is statistically insignificant, the coefficient itself is close to zero (-0.0058), which minimizes the substantive impact that it could have on the probability of a panel being formed. Interestingly, the Third Party Involvement variable is not only statistically significant, but also has a large substantive effect on the panel establishment. Therefore, it does uphold Busch and Reinhardt’s expectation of third party involvement lessening the probability of a negotiated settlement in the consultation phase.

**Conclusion**

This paper extended the conventional knowledge relating to the duration of WTO panels. Previous literature focused on what contributed to the filing of a complaint in the WTO system, or what negatively affected the possibility of a negotiated settlement prior to the establishment of a panel. Kennedy (2011) claimed that the length of panel resolution was affecting the efficiency of the WTO
dispute settlement mechanism. He put forth that the characteristics of the dispute as well as various institutional issues were holding up what should have been an otherwise speedy process, as originally promised in 1995.

However, it is hard to imagine that legal capacity could affect so many aspects of dispute initiation and not expect it to have a similar impact on panel duration. Legal capacity is key to understanding a state's status in the highly legalistic environment of the WTO. States with low legal capacity are not able to defend their interests properly by bringing complaints against states that are not following the rules set forth by the WTO. In turn, the lack of resources contributes to a shorter panel duration when a complaint is filed against them. States with higher legal capacity need time to assemble a proper case and hire experts to help support their interests. Also, their involvement with a high number of simultaneous cases proves to be a difficult challenge for scheduling purposes.

The tests that are presented here support Kennedy's understanding of what contributes to longer WTO panels, and, in turn, my conclusions are similar to his. If WTO panels continue down the path of inefficiency, states will be less likely to turn to this dispute resolution body for a solution, which could take years to reach and may not be in their favor. In 1995, the WTO put forth a stringent timetable for all consultations, panels, and appeals related to a complaint. The WTO itself should recommit itself to those guidelines. Kennedy (2011: 253) also claims that "...Members also have their part to play in anticipating undue delays... in their capacity as parties to disputes." This clearly refers to the uneven playing field in the WTO. By committing to the original timeline, the WTO could reduce the advantage
given to wealthier states, that use the laxness of the DSU in order to gather resources to support their interests. Instead, the WTO should support a fairer panel process that would not allow a more wealthy state to take advantage of the permissiveness that has governed the DSU timeline over the past sixteen years.
Bibliography


Table 1: States with Highest Number of Dispute Involvement, 1995-2006

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Disputes as Complainant</th>
<th>Number of Disputes as Defendant</th>
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<tr>
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<td>84</td>
<td>96</td>
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<td>European Union</td>
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<tr>
<td>Chile</td>
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<td>12</td>
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Source: WTO 2011
Figure 1: Dyadic Disputes by Stage, Yearly Percentages 1995-2006

Source: WTO 2011
<table>
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<th>Selection</th>
<th>Naive Duration Model</th>
<th>Duration Model with Selection Stage</th>
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<tr>
<td>Democratic Dyad</td>
<td>β (robust st. err)</td>
<td>β (robust st. err)</td>
</tr>
<tr>
<td>Log (Bilateral Tradei$_j$)</td>
<td></td>
<td>0.1317 (0.0390)**</td>
</tr>
<tr>
<td>Multiple party dispute</td>
<td></td>
<td>0.0754 (0.0080)**</td>
</tr>
<tr>
<td>Third parties</td>
<td></td>
<td>-0.0058 (0.1407)</td>
</tr>
<tr>
<td>Dyad with EU member</td>
<td></td>
<td>1.5621 (0.0730)**</td>
</tr>
<tr>
<td>Dyad with US</td>
<td></td>
<td>0.4930 (0.0478)**</td>
</tr>
<tr>
<td>Complex issue</td>
<td></td>
<td>0.4890 (0.0659)**</td>
</tr>
<tr>
<td>Constant</td>
<td></td>
<td>2.0264 (0.1203)**</td>
</tr>
<tr>
<td></td>
<td></td>
<td>-2.5126 (0.0579)**</td>
</tr>
<tr>
<td>Duration</td>
<td>Complainant Legal Capacity</td>
<td>-0.0588 (0.0245)**</td>
</tr>
<tr>
<td></td>
<td>Defendant Legal Capacity</td>
<td>-0.0204 (0.0619)</td>
</tr>
<tr>
<td></td>
<td>Complex Issue</td>
<td>-0.5105 (0.1098)**</td>
</tr>
<tr>
<td></td>
<td>Years Since 1995</td>
<td>0.1193 (0.0140)**</td>
</tr>
<tr>
<td></td>
<td>Dyad with EU member</td>
<td>-0.8458 (0.1366)**</td>
</tr>
<tr>
<td></td>
<td>Dyad with US</td>
<td>-0.7626 (0.1492)**</td>
</tr>
<tr>
<td></td>
<td>Third parties</td>
<td>-0.3088 (0.0998)**</td>
</tr>
<tr>
<td></td>
<td>Multiple party dispute</td>
<td>-0.1029 (0.1594)</td>
</tr>
<tr>
<td></td>
<td>Constant</td>
<td>-6.4145 (0.6298)**</td>
</tr>
</tbody>
</table>

|                           |                       | 0.0864 (0.0189)**                   |
|                           |                       | -0.3702 (0.0774)**                  |
|                           |                       | -0.4782 (0.0616)**                  |
|                           |                       | 0.0629 (0.0086)**                   |
|                           |                       | -0.1611 (0.1045)                    |
|                           |                       | 0.1676 (0.1026)                     |
|                           |                       | -0.0860 (0.0561)                    |
|                           |                       | -0.2188 (0.0571)**                  |
|                           |                       | -2.7227 (0.7848)**                  |

N = 688

24844 (uncensored obs=688)
Figure 2: Changes in the Hazard Rate for Complainant and Defendant States, 1995-2006