The Crisis in Geneva:

America's experience with WTO trade disputes

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All data is available upon request and partially available at **www.wtodisputedata.com**.

Academic studies using this data include:

Jeffrey Kucik. 2019. “How do prior rulings affect future disputes?” *International Studies Quarterly*. 63 (4): 1122-1132.

Jeffrey Kucik and Lauren Pertiz. *forthcoming*. “How third parties affect compliance with the global trade regime.” *Journal of Politics*.

Jeffrey Kucik and Sergio Puig. 2020. “The cost of precedent in international adjudication.” *University of Arizona Working Paper.*

Stephen Chaudoin, Jeffrey Kucik, and Krzysztof Pelc. 2016. “Do WTO disputes actually increase trade?” *International Studies Quarterly.* 60 (2): 294-306.

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Executive Summary

The World Trade Organization faces an unprecedented crisis. The United States, one of the organization's founding members, now threatens to leave the sysem after years of frustration with dispute settlement process.

Understanding this crisis, and thinking about how to move forward, requires a careful look at the empirical record. This report compiles 25 years of data on the content and consequences of WTO trade disputes.

Key findings include:

- The US has been sued more often (154 occasions) than the EU and China combined.
- America's loss rate in disputes (89 percent) is consistent with the average loss rate for all members (92 percent).
- The Appellate Body relies heavily on legal precedent, making over 5,000 citations to prior rulings in its first 80 reports.
- The Appellate Body follows its own precedent 77 percent of the time, but it extends precedent 10 percent of the time.
- The rise of precedent is correlated with a decline in US compliance rates, from 65 percent before *US - Stainless Steel (Mexico)* to 46 percent after.

Introduction

The World Trade Organization's (WTO) legal backbone was broken on December 11, 2019. The Appellate Body, once seen as a significant step forward in trade law, was left without enough members to hear appeals. This effectively gridlocked the dispute system, and eulogies lamenting the WTO's death followed soon after.

The WTO is certainly no stranger to controversy. However, criticism typically comes from interest groups and activists outside of the organization. This time it's different. The WTO faces a direct challenge from one of its founding members—the United States.

The crisis in Geneva raises fundamental questions. How did we end up with a broken dispute system? What do we lose by having no appeals process? And how might be move forward? Answering these questions requires a close look at the data on trade dipustes.

> ***The WTO now faces a direct challenge from one of its founding members.***

This report compiles 25 years of information on WTO dispute settlement. It leverages original data on the content of WTO rulings, including measures of "legal over-reach" by the Appellate Body. It also examines new data on compliance with Dispute Settlement Body (DSB) decisions.

This report is a non-partisan effort to bring data to bear on common critiques of the WTO dispute process. As such, this report focuses mainly on the United States and its experience in Geneva.

The findings show that the United States faces a tremendous amount of trade litigation. However, the direction of those rulings is consistent with the rest of the WTO membership. At the same time, the content of Appellate Body decisions has become more problematic over time. There is a clear rise in the Appellate Body's reliance on its previous decisions. This form of legal "over-reach" is correlated with a substantial decline in America's compliance with dispute rulings.

None of this is to say that withdrawal from the WTO is the best course of action. There are a variety of reasons to remain optimistic the system can be reformed—and saved.

How many cases are there? And between whom?

The WTO contains one of the international community's most sophisticated dispute systems. Since its inception, members have relied heavily on this system to adjudicate their disagreements.

There have been 595 disputes involving just over 70 of the WTO's 164 members.[1] Unsurprisingly, disputes occur most often between the world's largest markets. About 80 percent of disputes take place between countries who have litigated more than once. The United States and European Union[2] have met on 55 occasions (Table 1). Other frequent pairings including the US and China (39), the US and Canada (28), and the US and South Korea (20).

TABLE 1. TOP 10 LITIGANT PAIRINGS

Members	No. of Disputes	US as Respondent
US - EU	55	35 (64 %)
US - China	39	16 (41 %)
US - Canada	28	20 (71 %)
US - S. Korea	20	15 (75 %)
US - India	19	11 (58 %)
EU - India	18	-
US - Mexico	17	10 (59 %)
EU - China	15	-
EU - Canada	15	-
US - Brazil	15	11 (73 %)

Note: DS1-595. Total number of meetings as either respondent or complianant. Does not include third party participation.

Two patterns are clear. First, disputes typically occur between large markets with the legal and bureaucratic capacity required to defend their interests.[3]

Second, the United States is the most frequent participant—by a wide margin. The US was a respondent on 154 occasions, about one-quarter of all disputes (Table 2). Those 154 disputes are more than the EU (88) and China (44) combined.

TABLE 2. TOP 15 PARTICIPANTS BY TYPE			
Respondent	No. of Cases	Complainant	No. of Cases
US	154	*US*	124
EU	88	*EU*	104
China	44	*Canada*	39
India	32	*Brazil*	33
Canada	23	*Japan*	27
Argentina	22	*Mexico*	25
S. Korea	20	*India*	24
Australia	16	*S. Korea*	23
Japan	16	*China*	22
Brazil	16	*Argentina*	21
Indonesia	15	*Thailand*	11
Mexico	15	*Indonesia*	10
Chile	13	*Chile*	10
Turkey	12	*Guatemala*	9
Russia	8	*New Zealand*	9

Note: DS1-595.

The large number of cases against the United States fuels arguments that America is targeted unfairly. That claim has to be put in perspective. For one thing, the US is also the most frequent complainant, filing requests for consultations on 124 occasions. That is 20 more filings than the EU.

Moreover, the US is one of the world's heaviest users of trade remedies. Trade remedies are among the most commonly disputed areas of the law. Data from Global Trade Alert, which has monitors discriminatory trade policies since 2009, shows that the US is among the world leaders in protection.[4] This includes controversial policies such as anti-dumping (see below).

These policies attract litigation, particularly in light of America's market power. As a leading consumer of global imports, US trade protection has an out-sized effect on the economic welfare of foreign exports. Hence, US barriers are frequently met with legal challenges.

What are disptues about?

Trade disputes involve a tremendous variety of issues and products.

In terms of issues, a majority of disputes cite the General Agreement on Tariffs and Trade (GATT 1994) because those set out the core principles of reciprocity and non-discrimination. From 1995-2015, over 80 percent of disputes cited GATT provisions (Table 3). Half of those cited GATT III (national treatment).

Outside of the GATT, the most commonly disputes areas of trade law are anti-dumping (133 cases), subsidies (130), and agriculture (84). Those issues top the list because they are notoriously controversial areas of the law. Anti-dumping is the most commonly used trade remedy. Subsidies and agriculture, which are often linked, have been a source of lasting disagreement.

TABLE 3. DISPUTED ISSUES

Agreement	No. of Cases
GATT (1994)	491
Anti-dumping	133
Subsidies	130
Agricutlure	84
Safeguards	62
TBTs	55
SPS	49
TRIMS	45
TRIPS	42
Services	30

Most disputes name specific products. These range from steel and sugar to paper and peaches. The value of disputed trade varies widely. The median value of bilateral trade in disputed products is just $60 million.[5] A few disputes involve several billion dollars in trade—but that is the exception. One-fifth of all cases involve less than $4 million worth of bilateral trade.

The median value of a dispute is probably far lower than many people assume. In fact, many disputes involve barely enough trade to justify the costs of litigation.[6] That is because complaints are filed for a number of political—not just economic—reasons.[7]

The US has more at stake, on average. The median amount of trade disputed when the US is a respondent approaches $200 million. However, there are still a lot of "small disputes." Over 10 percent of US disputes involve less than $4 million each.

It is worth noting that about 25 percent of cases are "non-merchandise" disputes. These disputes name policy practices but do not implicate specific products. Those practices may include public procurement rules, taxes, price bands, or any other regulatory measure that may be construed as discriminatory.[8]

How do disputes end?

Getting sued is only part of story. It also matters who wins.

Panel rulings—which the WTO calls "reports"—are issued in only about half of all disputes. A quarter of cases are settled early through mutually agreed solution (MAS) and the remaining disputes are simply dropped.[9]

The WTO actively encourages settlement through the mandatory 60-day consultation period. Unfortunately, researchers cannot observe the contents of mutually agreed solutions. Members are not required to publish the terms of their bargains.[10] However, we can assume the existence of an MAS is *prima facie* evidence the disputants are satisfied.

> ***The loss rate for respondents is 92 percent.***

Rulings receive more attention since they provide determinations of whether violations occurred. And, because reports are public documents, we can observe their contents and consequences directly.

Who wins? The short answer is "always complainants." Respondents lose over 90 percent of panel.[11] Effectively, if a member gets sued, and that case goes to panel, that member is going to lose—at least with regard to some aspect of the dispute (Box 1).

Box 1. Determining losses at the WTO

Losses are calculated by examing the direction of panel decisions on every individual legal claim made in each dispute. "Legal claims" are defined as portions of the GATT/WTO text cited in the dispute. For example, in *US – Gasoline (Brazil)*, Brazil cited GATT (1994) Articles I and III as well as Technical Barriers to Trade Article 2. The panel found in favor of Brazil by ruling that US measures were inconsistent with GATT III:4. Thus, this case is coded as a win for Brazil—and a loss for the US.

This has implications for a common argument in the US. The current White House once noted that America "loses all of [its] disputes."[12] That statement is half right. The US loses panel decisions about 90 percent of the time (Table 4). However, that loss rate is consistent with other members—including the EU and China.

TABLE 4. LOSS RATES BY MEMBER		
Respondent	No. of Rulings Faced	% Rulings Lost
US	77	90
EU	38	97
China	19	88
Canada	14	100
Argentina	10	100
S. Korea	9	89
Indonesia	9	100
India	8	88
Japan	7	86
Australia	5	60

Note: DS1-500. Losses refer to whenever the panel finds against the respondent on at least one legal claim.

Losses are common for a couple of reasons. For one thing, countries chose their battles carefully. Since litigation consumes time and resources, many members cannot afford to file against each instance of discrimination. There were over 10,000 discriminatory policies implemented around the world over the last decade.[13] And there were only 210 disputes over that period. Clearly, members are selecting only those instances in which expending resources is rational —i.e., when they are likely to win.

The other reason respondents lose so often is the striking consistency in DSB decisions. The DSB rarely departs from previous interpreations of the law. That leads us to the heart of the controversy over dispute settlement.

The Content of Rulings

As mentioned, the DSB circulates reports in only half of all disputes. And, when ruling, panels and the Appellate Body (AB) exercise judicial economy, offering findings on only about 40 percent of the claims made in each case.

However, when rulings are made, there is a high level of consistency. From 1995-2015, complainants won panel decisions on GATT (1994) III over 93 percent of the time. More strikingly, complainants have never lost a panel decision—given a decision is made—on over 60 percent of *all claims*.[14]

TABLE 5. LOSS RATES BY AGREEMENT		
Agreement	No. of Panel Decisions	% of Rulings Resp. Lost
GATT (1994)	720	74
Anti-dumping	651	66
Subsidies	292	59
Safeguards	273	60
CVD	156	78

Note: DS1-500. Number of decisions are measured as the number of specific rulings in panel reports. For example, in EC - Seal Products*, the panel made two key decisions relating to TBTs, one in favor of Canada and one in favor of the European Communities. That is counted as 2 decisions and a 50 % loss rate for the respondent on TBTs in this dispute.*

There are a couple of explanations for these patterns. As mentioned, complainants litigate strategically, selecting cases—and legal arguments—that should be more likely to win.

At the same time, all legal bodies, foreign and domestic, have an interest in coherence. Greater coherence should increase the legitimacy of the court. There is also a tradition in legal studies arguing that coherence increases a court's authority.[15]

> ***When panels issue decisions, those decisions exhibit remarkable consistency.***

The DSB is no exception. In fact, international adjudicatory bodies feel these pressures even more than domestic courts. That is because international courts want to appear neutral and untainted by the influence of powerful states. The DSB is designed to provide an impartial reading of the law, insulated from the influences of market power and retaliatory threats against complainants. Certainly, not everyone agrees the system works as designed. However, on paper, it is clear to see why an adjudicatory system would prefer to appear unbiased in its decisions.

International agreements are also "incomplete contracts."[16] There are sources of ambiguity and flexibility in the rules, often included deliberately. Greater coherence in rulings can clarify ambiguities in members' rights and obligations.

The problem is that the DSB's interest in legal coherence has led to heavy reliance on legal precedent.

Precedent at the WTO

The Dispute Settlement Understanding shares at least one trait with many other international legal systems: rulings do not set binding precedent.[17] That is, previous decisions do not have binding force of law in future disputes. Yet, similar to other areas of international law, precedent is widespread.[18] Panels and the Appellate Body regularly cite past decisions when issuing their reports.

From 1995-2015, there were 94 AB reports containing almost 5,600 total references to previous DSB rulings.[19] The vast majority (76 percent) of these references are instances in which the AB simply followed previous decisions (Table 6).

TABLE 6. PRECEDENT TYPES

Type of Application	Share of Applications
Follows	76.2 %
Extends	10.3 %
Narrows	6.7 %
Distinguishes	5.8 %
Mentions	1 %

Note: DS1-420. Applications are measured as instances in which the AB cites previous reports. Citations are then coded for the nature of their application to the dispute at hand.

A certain amount of coherence is to be expected given the DSB's incentives. The political controversy arises when precedent is not just followed, but *extended*.

Extensions occur when the AB applies a previous reading to a different area of the law or when it expands the scope of that prior reading. This is the heart of the concern over "legal over-reach."

A full 10 percent of applications extend previous rulings.

The areas of the law extended most frequently include safeguards, where the AB has extended its previous decisions on 17 percent of the occasions it applies precedent. Safeguards is followed by Services (12 percent), Import Licensing (11), and Anti-dumping (11).

Precedent is a source of controversy. There is no precedent in most areas of international law precisely because governments do not want legal decisions to shape their commitments. States' rights and obligations are supposed to be arrived at through political negotiations. The concern over precedent is precisely that *the DSB makes policy*—rather than just interprets it. That is, a strong norm of precedent may tie members' hands to interpretations of the agreement that are inconsistent with the designers' original intent.

Put more simply, precedent risks changing the rules.

Of course, the AB's application of precedent is just one form of "over-reach." However, it is an important reason why the WTO faces its current crisis.[20]

Do disputes affect trade?

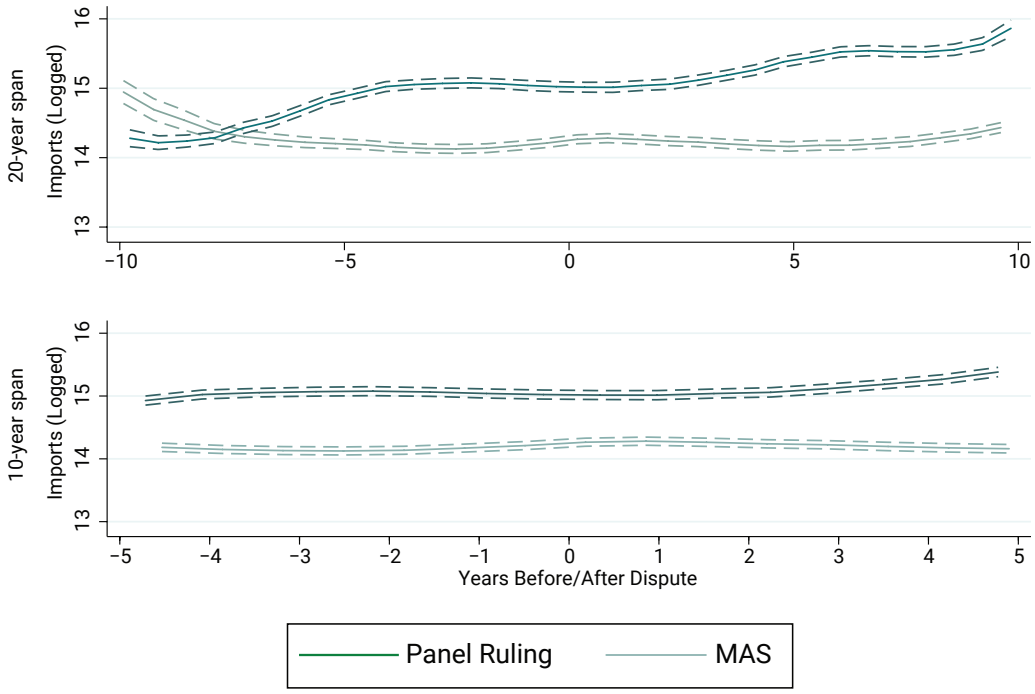
To put the controversy over legl over-reach in perspective, it is worth looking at trade disputes' material and policy consequences.

If dispute settlement works according to plan, states ought to dismantle their "WTO-illegal" policies. Taking down discriminatory policies, in turn, ought to increase trade.

The evidence on trade promotion is mixed. On average, WTO disputes do not increase respondent countries' imports of disputed products (Figure 1).[21] Looking at 10- and 5-year windows of time around the conclusion of disputes, there is no perceptible increase in trade after the process ends—i.e., when trade should recover from entry barriers.

There is some evidence that small segments of the membership benefit under specific circumstances.[22] However, there is little evidence of a broad effect.

FIGURE 1. TRADE IN DIPSUTED PRODUCTS



Note: DS1-400. This figure reports trends in disputed trade around the year a dispute ends (t = 0). It measures average imports into the respondent country, logged to correct for the highly skewed nature of bilateral trade data. The top graph provides 20-year overview while the bottom focuses on 10 years (+/- 5 years around t = 0). There are separate lines for disputes that end in a ruling and those that settle early via MAS. The graphs show that disputes do not lead to a significant boost in trade.

There are a couple of explanations for why we do not see a larger effect on trade. First, it can be difficult to distinguish the impact of trade disputes from natural fluctuations in global trade markets, particularly when barriers vary widely in magnitude.

Second, and perhaps more importantly, countries may simply fail to comply with dispute rulings. If respondents flout the DSB's recommendations, then disputes will not have much effect on trade flows.

Do governments comply with adverse rulings?

Perhaps the best test of international economic law's "strength" is whether legal rulings have a tangible effect on members' trade policies.

Policy reform is not the only way to comply with WTO rulings.[23] However, "compliance" typically evokes images of as bringing domestic practices into conformity with international standards.

Data on compliance is available from 1995-2011 (approximately DS1-415). Over that time, there were rulings issued for 175 disputes. Respondents won on 17 occasions, leaving 158 adverse rulings.[24]

Some of those disputes are tied together, such as the separate filings against Japan on alcoholic beverages by the EU, US, and Canada. Once we group those "duplicate" filings together, there are 123 separate compliance decisions to analyze.

At the time of coding, there was compliance in nearly two-thirds of disputes.

There are a couple of ways to break that number down. While governments often comply, they regularly miss their deadlines. On-time compliance—defined as policy reform by the date agreed to among litigants—occurs only 45 percent of the time.[25]

States delay compliance for numerous reasons. As mentioned, there are often multiple disputes pending on similar issues, including cases outside of the WTO at forums such as the Court of International Trade. At the same time, there are high political costs attached to dismantling protectionist barriers, and governments may drag their feet before bringing measures into conformity.

Compliance rates also vary across members. Only a small subset of WTO members (19) faced an adverse ruling in the sample period. This list is dominated by the US (46 losses) and the EU (19).

TABLE 7. COMPLIANCE BY MEMBER			
Member	No. of Losses	Comply on Time	Comply Ever
US	46	19 (41 %)	27 (59 %)
EU	19	5 (26 %)	9 (47 %)
Canada	9	5 (56 %)	7 (78 %)
Argentina	6	4 (66 %)	5 (83 %)
Mexico	6	3 (50 %)	4 (66 %)
S Korea	5	4 (80 %)	4 (80 %)
China	5	3 (60 %)	3 (60 %)
Japan	4	1 (25 %)	2 (50 %)
Indonesia	4	4 (100 %)	4 (100 %)
India	3	3 (100 %)	3 (100 %)
All Respondents	**123**	**54 (44 %)**	**75 (61 %)**

Note: DS1-415. Compliance is measured as instances in which respondents reformed domestic policies. In the language of the WTO, this is "bringing measures into conformity." The temporal span of the data is limited by the length of time it can take countries to eventually comply.

The US complies at right around the WTO average—60 percent of the time (Table 7). Some countries have better records, such as South Korea (80 percent) and Canada (78). Others have worse records, including Japan (50 percent) and the EU (47 percent). Of course, the US also faces far more decisions than other members.

A variety of political pressures and economic interests shape the compliance decision. For the US, the decision has become increasingly linked to concerns over legal over-reach.

Determinants of Compliance

Members' decisions to adopt panel and AB reports are influenced by numerous factors. At home, governments may face high political costs for rolling back protectionist barriers that benefit organized, influential industries.[26] This will push members toward non-compliance. Or, at least, it may results in delays in the decision to comply.

Abroad, members face reputational costs for violating the law.[27] And, more importantly, they run the risk of trade retaliation.[28] If that retaliation is sufficiently costly, then members may be more likely to comply.

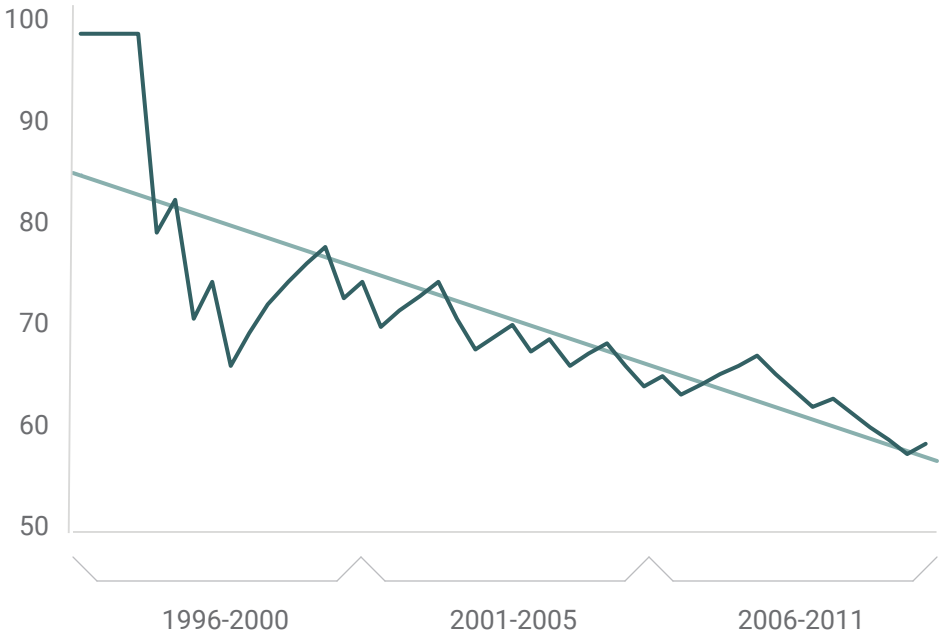
Therefore, governments face competing incentives. What tips the balance toward (non)compliance? One answer leads back to the content of rulings.

This report stressed the reasonably widespread use of precedent in AB decisions, including the *extension* of previous decisions. It also highlighted the mixed rates of compliance across the membership.

Those two things are related—at least in the case of the United States. America's overall compliance rate of 60 percent hides the downward trend over time. The US complied with 78 percent of rulings through the first 5 years of the WTO. However, the compliance rate was only 47 percent from 2006 to 2011, effectingly pulling the overall rate down (Figure 2).[29]

A shift clearly occurred, induced partly by the accumulation of unfavorable decisions. Hence, America's compliance rate fell to just under 60 percent after early years of a near-perfect record.

FIGURE 2. US COMPLIANCE OVER TIME



Note: DS1-415. This figure reports the accumulating percentage of time the US complies with adverse rulings by bringing its measures into conformity. The linear trend lines shows the decline in overall compliance over time.

Spotlight on Anti-dumping

A major reason why the US faces so much litigation is reliance on anti-dumping. Anti-dumping is the most frequently used WTO "escape clause," permitting members to temporarily increase duties on imports sold at below normal market prices.

The US notified 484 anti-dumping measures to the WTO since 1995, placing it second behind only India (703 measures).

Anti-dumping is highly controversial. Economists have cautioned that escape clauses like anti-dumping are, essentially, tariff barriers under a different name.[30] Related, members have regularly alleged that the WTO's flexibility system is abused.

It is no surprise that over one-fifth of all disputes involve anti-dumping. And 56 of those—almost 10 percent of the WTO's entire caseload—target the US.

The US is targeted for several reasons, involving its reliance on "zeroing" —the process US authorities use to calculate duties. The US was sued over zeroing on 16 occasions (and the policy has been implicated in many other cases). It lost on almost every occasion.

These include high-profile disputes such as *US – Stainless Steel (Mexico)* and *US – Zeroing (EC)*.

Anti-dumping disputes are not problematic simply because the US has lost so many cases. Rather, the US has argued repeatedly that its practicies—including zeroing—were agreed to in the Uruguay Round. As a result, the mountain of litigation over anti-dumping, from America's point of view, has been largely erroneous. Hence, growing frustration with the dispute system.

Almost 10 percent of the WTO's entire caseload targets US anti-dumping measures. The US lost on almost every occasion.

TABLE 8. PRECEDENT FACED BY MEMBER			
Member	No. of Total Applications	% Followed	% Extended
Australia	90	71	15
US	2,123	75	12
Canada	259	71	12
Chile	44	67	12
Thailand	85	73	11
India	23	50	11
China	305	82	9
Mexico	88	85	8
EU	626	76	8
Brazil	60	77	7

Note: DS1-420. Applications are individual citations of previous reports in the AB decision for each case. AB reports reference an average of

The drop in US compliance rates is related to the increase in the DSB's use of precedent.

In particular, the US has been subject to a variety of AB rulings that can reasonably be said to extend prior decisions (Table 8). The Office of the United States Trade Representative singled out *US - Stainless Steel (Mexico)* as a significant turning point, where the AB adopted the "cogent reasons" approach. Specifically, the AB would treat prior rulings as authoritative unless there were "cogent" (read: compelling) reasons to change its position. After this ruling, US compliance rates declined markedly.

It has to be stressed again that precedent is not only the form of legal over-reach. Nor is legal over-reach the only source of the current crisis.

However, in a time when international organizations face challenges to their vitality[31], precedent is one important example of a problem that states try to avoid: allowing an international adjudicatory body to (re)shape the delicate bargain struck through political negotiations.

Precedent, to the extent that it represents rulemaking, upsets that balance. One consequence appears to be less compliance.

Conclusions

Just 25 years ago, the WTO, including its system for settling disputes, was regarded as a leap forward in international economic law. Now that system requires reform to stay alive.

This report seeks to inform that conversation by describing important trends in trade litigation. It adopts a non-partisan approach. The point here is to bring data to bear on these issues in an effort to describe America's experience with WTO trade litigation. And to put that experience in context.

The US stands out in a couple of regards. It is targeted far more than any other member, not least because of its heavy use of anti-dumping. This is a source of controversy in its own right. So, too, is the Appellate Body's use of precedent in adjudicating disputes.

From that point of view, it is no wonder, that there has been political backlash against the WTO. However, most of the findings show that America's experience in Geneva is consistent with overall trends. The loss rate (90 percent) is consistent with the overall losses for all respondents (92). In response, US compliance rates (about 60 percent) are consistent with the WTO average.

Before leaping to withdrawal, another word of caution is also required. More work is needed to fully understand the costs and benefits of trade disputes. For example, little is known about the extent to which the threat of trade litigation deters members from erecting new entry barriers. It is also possible that dispute settlement helps *stabilize trade flows* (even if it does not promote new trade).

And none of this says anything about the diplomatic benefits, if any, that accrue from having a centralized global trade regime.

Ultimately, reform looks necessary if there is any hope of restoring widespread faith in the system. That may involve doing away with the appeals process. And, it probably requires a more fundamental reform of WTO rules in other areas outside the purview of this report.

Until then, greater attention must be paid to measuring the costs and benefits of trade agreements and their dispute systems.

Notes

1. To put that number in perspective, the WTO has heard far more cases than the 178 heard by the International Court of Justice. However, it hears far fewer than the European Court of Justice, which saw 848 cases in 2018 alone.

2. This report groups participation by the European Communities and European Union together.

3. In spite of dedicated efforts to assist developing countries, including those by the Advisory Center on WTO Law, participation from poorer members remains rare.

4. GTA citation, plus The US leads the world in trade protection when measured as the number of individual policies implemented. This does not take into account the number of countries targeted or the volumes of trade involved in each measure.

5. Chaudoin, Stephen, Jeffrey Kucik, and Krzysztof Pelc. 2016. "Do WTO disputes actually increase trade?." *International Studies Quarterly*. 60(2): 294-306.

6. Bown, Chad, and Kara Reynolds. 2014. "Trade flows and trade disputes." *World Bank Policy Research Working Paper* No. WPS6979.

7. Davis, Christina. 2012. *Why adjudicate?: enforcing trade rules in the WTO.* Princeton University Press.

8. Disputes over these issues may cite specific products, but do not always do so.

9. Kucik, Jeffrey. 2019. "How Do Prior Rulings Affect Future Disputes?." *International Studies Quarterly*. 63(4): 1122-1132.

10. Kucik, Jeffrey, and Krzysztof Pelc. 2016. "Measuring the cost of privacy: a look at the distributional effects of private bargaining." *British Journal of Political Science*. 46(4): 861-889.

11. Chaudoin, et al., 2016.

12. Keith Johnson. "How Trump may finally kill the WTO." *Foreign Policy*. December 9, 2019.

13. Global Trade Alert, Centre for Economic Policy Research, accessible at: www.globaltradealert.org.

14. Kucik, 2019.

15. E.g. Duxbury, Neil. 2008. *The nature and authority of precedent*. Cambridge University Press, 2008 and Caminker, Evan. 1994. "Why Must Inferior Courts Obey Superior Court Precedents?." *Stanford Law Review*. 817-873.

16. Horn, Henrik, Giovanni Maggi, and Robert W. Staiger. 2010. "Trade agreements as endogenously incomplete contracts." *American Economic Review*. 100(1): 394-419. Koremenos, Barbara, Charles Lipson, and Duncan Snidal. 2001. "The rational design of international institutions." International organization 55(4): 761-799.

17. Pelc, Krzysztof. 2014. "The politics of precedent in international law: A social network application." *American Political Science Review*. 108(3): 547-564.

18. Cohen, Harlan Grant. 2014. "Theorizing Precedent in International Law." *Interpretation in International Law*. Andrea Bianchi, Daniel Peat & Matthew Windsor, eds., Oxford University Press. Steinberg, Richard. 2004. "Judicial lawmaking at the WTO: Discursive, constitutional, and political constraints." *American Journal of International Law*. 98(2): 247-275.

19. Kucik, Jeffrey and Sergio Puig. 2020. "The cost of precedent in international adjudication." *University of Arizona Working Paper*.

20. USTR. 2020. "Report on the Appellate Body of the World Trade Organization." Washington, DC.

21. Chaudoin, et al., 2016.

22. Kucik and Pelc, 2016.

23. Wilson, Bruce. 2007. "Compliance by WTO members with adverse WTO dispute settlement rulings: the record to date." *Journal of International Economic Law*. 10(2): 397-403.

24. Kucik, Jeffrey and Lauren Peritz. *forthcoming.* "How third parties affect compliance with the global trade regime." *The Journal of Politics.* Peritz, Lauren. 2020. "When are international institutions effective? The impact of domestic veto players on compliance with WTO rulings." *International Studies Quarterly*. 64(1): 220-234.

25. Kucik and Puig, 2020.

26. Rickard, Stephanie. 2010. "Democratic differences: Electoral institutions and compliance with GATT/WTO agreements." *European Journal of International Relations*. 16(4): 711-729.

27. E.g. Downs, George, and Michael Jones. 2002. "Reputation, compliance, and international law." *The Journal of Legal Studies* 31.S1: S95-S114.

28. Blonigen, Bruce, and Chad Bown. 2003. "Antidumping and retaliation threats." *Journal of International Economics*. 60(2): 249-273.

29. Kucik, Jeffrey, Lauren Peritz, and Sergio Puig. 2020. "Precedent and the crisis in international economic law." *University of Arizona / University of California, Davis Working Paper*.

30. Prusa, Thomas. 2001. "On the spread and impact of anti-dumping." *Canadian Journal of Economics/Revue canadienne d'économique*. 34(3): 591-611. Finger, Michael and Nellie Artis, eds. 1993. *Antidumping: How it works and who gets hurt*. University of Michigan Press. Zanardi, Maurizio. 2004. "Anti-dumping: What are the Numbers to Discuss at Doha?." *World Economy*. 27(3): 403-433.

31. Gray, Julia. 2018. "Life, death, or zombie? The vitality of international organizations." *International Studies Quarterly*. 62(1): 1-13.

The Crisis in Geneva

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