

**Aggressive Multilateralism:  
The Determinants of GATT/WTO Dispute Initiation, 1948-1998**

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### Abstract

Why do states initiate trade disputes under the General Agreement on Tariffs and Trade (GATT) or its successor, the World Trade Organization (WTO)? Existing studies suggest that democracies should experience fewer trade conflicts. Other works contend that the initiation of disputes itself constitutes proof of the efficacy of the trade regime, and that changes in that regime account for the rising number of trade complaints in recent years. This paper, in contrast, argues that democracies experience more trade conflicts, not less, and that changes in the multilateral trade institution have had little impact. Multivariate analysis of dispute initiation within GATT/WTO directed dyads from 1948 through 1998 supports my arguments and contradicts the prevailing explanations.

“Whoever speaks of dispute settlement in GATT must start from nearly nothing.”  
— Pescatore (1993, 27)

## 1. Introduction

Freer trade is breaking out all over. Yet states are increasingly pursuing high-stakes trade conflicts to ensure their fair share of the gains from this brave new liberalized world. In the 1980s, observers like Jagdish Bhagwati (1990) decried the so-called “aggressive unilateralism” of the United States, which acted outside the multilateral system to leverage trade concessions “at the point of a gun.” Today’s incipient trade wars, in contrast, are most often initiated *within* the multilateral context of the World Trade Organization (WTO). For instance, since 1988, more disputes (317) have been initiated under the General Agreement on Tariffs and Trade (GATT)<sup>1</sup> and WTO than in the first 40 years of GATT’s existence combined (286). Today’s WTO processes over 40 new disputes each year. Many of these conflicts target hundreds of millions of dollars of potential annual trade. Some erupt into lasting trade wars; many more reach liberalizing conclusions, but only after years of costly delay. What explains the explosive growth in “aggressive multilateralism” (Bayard and Elliott 1994, 345)? Why do states initiate trade disputes under GATT or the WTO?

As the epigraph suggests, we know little about the political economy of GATT/WTO dispute resolution. A number of perspectives offer insights, however. One theory suggests that democracies should be less likely to participate in trade disputes, either in general or specifically with other democracies. Alternatively, democratic dyads might be more likely to take their disputes to GATT/WTO, because doing so is consistent with the rule of law and democratic norms. Others argue that improvements in the efficiency of the GATT/WTO dispute settlement

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<sup>1</sup>The WTO took over GATT’s functions completely at the start of 1996 after a year of co-existence.

regime should increase states' willingness to raise trade conflicts in this forum. These latter two perspectives imply that the rise in GATT/WTO disputes may not be all bad—that indeed it may signal the increasing strength of the trading system.

This paper puts forth a different explanation. The key point is that GATT/WTO disputes represent *prima facie* conflicts of interest. Far from being signals of success, they mark potential challenges to the system. Hence the term “aggressive multilateralism.” States initiate these trade disputes as a response to increasing domestic political pressures for protection and for “fair trade” in export markets. Accordingly, rising trade dependence should make dispute initiation more likely. Democracies should be *more* likely to initiate disputes, not because they prefer to follow international law, but because they are necessarily more responsive to domestic pressures from both import-competing firms as well as exporters locked out of protected foreign markets. Democracies should also be more frequent targets, because they may maintain more objectionable trade policies in the first place (*ceteris paribus*), due to their disproportionate representation of producers over consumers. Furthermore, changes in the dispute settlement regime have not been sufficient to affect state behavior. Like the GATT, the WTO still lacks enforcement power. And it has imposed many new transaction costs in dispute litigation, even while removing others. Hence we can expect it to be no more efficient or successful in processing disputes, which should translate into little effect on dispute initiation as well. The rise in GATT/WTO disputes can thus be explained more by the *failure* of the regime than by its success.

In this paper I conduct the first large-scale, multivariate tests of competing hypotheses about GATT/WTO dispute initiation. Drawing on the complete set of GATT and WTO members from 1948 through 1998, I construct a database of all member directed-dyad years (329,194

observations) and combine that with a comprehensive new list of 603 GATT and WTO disputes. Statistical analysis reveals a number of surprising results. Specifically, the probability of dispute initiation between any two countries has *not* risen over time, nor under the WTO regime, *ceteris paribus*. The growth in disputes is instead just a function of the rise in GATT/WTO membership and increasing trade dependence. In addition, democracies are significantly more likely to initiate disputes and to be targeted as well, even controlling for dispute *outcomes*. When it comes to trade disputes, there is no “democratic peace.” These findings are consistent with my argument. Dispute initiation is also more likely (a) in retaliation for a prior dispute, (b) against states previously targeted by others, (c) between allies, and (d) between recent opponents in a militarized interstate dispute (MID). Taken together, these results undermine the view that GATT/WTO dispute initiation signals a growing confidence in the regime or a commitment to democratic norms.

Section 2 below introduces GATT and WTO dispute procedures and justifies the characterization of these disputes as “aggressive multilateralism.” Section 3 presents a number of competing hypotheses on trade dispute initiation and elaborates my argument. Section 4 describes the research design, section 5 characterizes the results, and section 6 concludes with some implications.

## **2. Background to GATT/WTO Trade Disputes**

### *2.1. Dispute Procedures*

The GATT agreement of 1947 did not specify procedures by which states might raise and conduct disputes over implementation of the accord. However, a rather regularized system evolved. The typical dispute begins when a complainant state identifies objectionable trade practices of a defendant state. The complainant then files notice with GATT and requests formal

bilateral consultations with the defendant. If negotiations remain unproductive after a period of months if not years, the complainant may request the formation of a panel of experts to rule on the matter. The panel investigates and issues its ruling, usually within a year or so. The ruling is legally valid only after all GATT members, or Contracting Parties (CPs), formally adopt it. Key features of this procedure are that (a) defendants may settle at any time, (b) the decision to form a panel, the selection of panel members, and the final adoption of panel reports are all subject to unilateral veto by the defendant, and (c) the complainant state may of course retaliate unilaterally at any time, though without legal authority to do so unless the CPs unanimously approve such action *ex ante* (Davey 1993, 65-69; Pescatore 1993). What is most important is that GATT and the WTO entirely lack enforcement power: they have “no jailhouse, no bail bondsmen, no blue helmets, no truncheons or tear gas” (Bello 1996, 417). Whether sanctions for noncompliance are implemented is up to individual member states themselves (generally a costly proposition). The GATT and WTO are thus “courts without bailiffs.”

Over time this dispute settlement regime changed. For example, in the 1950s, 1966, and 1979, GATT formalized the process and wrote in special access for developing countries, changes which observers claim were rather inconsequential (Davey 1993, 66; Petersmann 1994, 1187-1188; WTO 1995, 632-636, 641-642, 721-724, 755, 759, 765-766). In 1989, GATT established tighter norms on acceptable use of the unilateral veto, accelerated some procedures, and increased technical assistance for less developed countries interested in filing complaints (Davey 1993, 67; WTO 1995, 638-641). And, most significantly, the Uruguay Round created a wholly new regime, the WTO’s Dispute Settlement Understanding (DSU), which, starting in 1995, removed the unilateral veto on all aspects of dispute settlement, introduced a formal

appellate procedure, and further tightened the timeframe for dispute action (Petersmann 1994, 1193-1194; Jackson, Davey, and Sykes 1995, 366-390).

## 2.2. *The Significance of GATT/WTO Trade Disputes*

The filing of a GATT/WTO dispute is often said to represent an inherently cooperative act, proof itself of the success of the institution. No one argues this more than WTO Director-General Renato Ruggiero, who has said, “this system’s enhanced effectiveness has shown in a greatly increased use by Members” (Ruggiero 1998a). Virtually all observers agree. As one recently wrote, “The growing number of cases brought to the WTO...is seen as a sign of growing confidence among its 132 members that they can get justice from the [WTO dispute procedures]”<sup>2</sup> (see also Hudec 1993, 290; Jackson 1998, 59-60).

Nevertheless, this assumption is deeply flawed. First, increasing litigation in domestic civil courts is almost always seen as costly and inefficient (e.g., Cooter and Rubinfeld 1989, 1068); why should GATT litigation be different? Second, many studies (e.g., Maoz and Russett 1993) identify military conflict using the mere initiation of MIDs, regardless of their outcomes; studies of trade conflict deserve the same latitude. Third, GATT disputes involve a *prima facie* conflict of interest, i.e., a policy preferred by the defendant but opposed by the complainant. Further, in the vast majority of cases, the offending measure is inconsistent with GATT. We know this is true since the court’s bias is heavily to the plaintiff in adjudicated cases,<sup>3</sup> and cases settled *before* rulings are issued exhibit significantly more concessions by the defendant and, hence, probably reflect even clearer legal violations (Reinhardt 1998, 5). Thus disputes are a rough indicator of levels of cheating, not of cooperation. Fourth, implicit in many disputes is a threat of unilateral

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<sup>2</sup>*Journal of Commerce*, 5 November 1998, 4A.

<sup>3</sup>The ratio between rulings substantially for the plaintiff and those substantially for the defendant was about 3.6 to 1 for cases begun before 1994 (Reinhardt 1998, 5).

retaliation by the complainant. Credible or not, this possibility of extra-legal vigilantism during GATT disputes demonstrates that the use of the GATT system is a bargaining tool and not an end in itself.

Fifth, the majority of disputes end with no or partial concessions, even after rulings against the defendant (Reinhardt 1998, 5). For instance, four separate sets of complaints have been filed over the European Union (EU)'s<sup>4</sup> banana import regime, yielding three GATT/WTO rulings, but seven years later the EU still has not effectively liberalized the policy (Petersmann 1997, 207-209; WTO 1998a, 8-9). Such noncompliance is not surprising since “the sheriff is asleep at the saloon” (Bhagwati 1991, 55), i.e., GATT and the WTO lack enforcement power. In addition, many disputes which *are* settled cooperatively go through very conflictual stages and involve long, costly delays.<sup>5</sup> Many disputes are refiled years later due to the failure of the defendant to implement the initial agreement. Sixth, the initiation of a GATT/WTO dispute has non-negligible inherent costs, regardless of ultimate outcome. These include immediate negative trade effects<sup>6</sup> and transaction costs of litigation, such as the precious time of understaffed trade negotiators (Sevilla 1998, 9). For all these reasons, the initiation of GATT/WTO disputes is intrinsically an indicator of conflict, not cooperation. “Aggressive multilateralism” should thus be an apt characterization.

### **3. Why States Initiate GATT/WTO Trade Disputes**

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<sup>4</sup>In this paper, “EU” refers to both the EU and its predecessor organization, the European Communities (EC).

<sup>5</sup>The 1982-1987 US-EU value-added tax dispute, the 1986-1990 EU-US customs user fee case, and the 1988-1992 US-EU oilseeds subsidy conflict are just a few examples (Hudec 1993, 505-506, 537-538, 558-561).

<sup>6</sup>A trade complaint raises uncertainty about future prices and hence in the short term may reduce orders. Quantitative analyses of the consequences of the related phenomenon of antidumping (AD) investigations (not duties imposed) have shown such a depressing effect on bilateral trade (Prusa 1997, 199).



This section identifies and critiques two potential explanations of dispute initiation, and it offers new hypotheses in their place.

### 3.1. *Democracy, Domestic Pressures, and Trade Conflicts*

A number of studies have suggested ways in which democracy might affect the propensity towards international cooperation. Gaubatz (1996) argues that democracies are more likely to cooperate (which in this context means freer trade policy) with other states due to their transparency, which minimizes fears of cheating. Verdier (1994, 293-294) hypothesizes likewise, but for the reason that democracy empowers voters over business interests and thus pushes policy towards the national interest, greater free trade. Partial empirical support for the hypothesis that democracy makes a country cooperate more on economic issues is provided in Remmer (1998, 40-41). Simmons (1994, 197-198, 200-201), however, finds that democracies in the interwar period were more likely to *raise* tariffs, not lower them. Empirically speaking, the jury is thus still out on the monadic effect of democracy on trade cooperation.

A larger number of works have proposed not that democracies cooperate more overall (i.e., monadically) but rather that they do so only with other democracies (dyadically). For instance, Mansfield, Milner, and Rosendorff (1998) contend that democratic dyads are more likely to conclude freer trade agreements than dyads of dissimilar regimes, because of the credible exit threats which democracies possess by virtue of their need for domestic ratification of agreements.<sup>7</sup> Dixon and Moon (1993, 10-11) reason that any two nations with similar regime types (democratic or not) should be more likely to trade more freely with each other, since such

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<sup>7</sup>Without applying the hypothesis to trade in particular, McGillivray and Smith (1998) argue similarly that pairs of democracies are more likely to cooperate because of joint credible threats of removal from office of leaders that fail to abide by international commitments. Likewise, Leeds (1998) contends that democratic dyads cooperate more than mixed dyads because, among

similarity reduces political conflict and increases familiarity with each other's business practices, hence facilitating exchange.<sup>8</sup> In keeping with these arguments, Bliss and Russett (1998) and Morrow, Siverson, and Tabares (1998) demonstrate empirically that pairs of democratic states trade significantly more than other dyads. However, Remmer (1998, 40-41) and Mansfield and Bronson (1997b, 197) find that democratic dyads do *not* cooperate more (defining cooperation using treaty counts and trade flows, respectively). Definitive empirical conclusions about this dyadic hypothesis are thus unavailable at present.

These works speak more to trade flows than to trade policy or, further yet, dispute initiation. However, the inferences for disputes seem straightforward. By the logic of these studies, democracies, whether alone or in pairs, should experience less conflict over trade. If the monadic version is correct, democracies should initiate fewer disputes and be targeted by others less frequently as well. If the dyadic version is true, democracies should be less disputatious only with each other.

Dixon (1993, 1994) and Raymond (1994) make very different predictions. The idea is that democracies extend their domestic principles of "bounded competition" and the rule of law to international conflicts with like regimes. Democratic dyads thus may experience just as many conflicts of interest, but they deal with them in very different ways, by disproportionately referring those disputes to conflict management institutions like those of the GATT/WTO.<sup>9</sup> The outcomes of such referred disputes among democratic dyads are accordingly expected to be

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other reasons, democracies experience greater audience costs for abrogating international commitments.

<sup>8</sup>Verdier (1998) argues in contrast that similar regimes cooperate *less* on trade, at least when most trade is not intra-industry. He assumes that regime type determines which factor dominates policy. If that is true, because (from Heckscher-Ohlin) trade should occur more between countries with different relatively abundant factors, it follows that freer trade should occur between countries with different regime types.

significantly more cooperative, a hypothesis empirically validated by Dixon (1994) but disconfirmed by Raymond (1996).

The existing literature on democracy and (trade) cooperation thus suffers from two limitations. First, theories based on similar assumptions about the distinguishing features of democracy generate contradictory predictions about trade disputes. Second, no one strand of the literature has received consistent empirical support.

Perhaps this is because the literature has neglected features of democracies that would make them *more*, not less, susceptible to trade conflict. A distinguishing characteristic of democracy is its relative sensitivity to mobilized political pressure. For well-known reasons, such mobilization in trade politics occurs more among producers than consumers. Producers are more able both to articulate their common interests and to resolve the collective action problems of mobilizing because they constitute smaller groups, they have more at stake as individuals than consumers, and they tend to be more geographically concentrated. In addition, once mobilized, producers have better access to politicians in democracies through campaign finance and government and public lobbying instruments. Many consumers fail to exercise their main tool of influence, the vote. Even when they do vote, trade is more often than not low on the list of priorities guiding their decision, and politicians know this. If anything, the electoral incentive may induce further bias, since imminent elections may cause politicians to buy greater support from producers (Searight and Way 1997). For these reasons, democracy disproportionately favors business (Lindblom 1977, 170-200). Of course, this is a simplistic view. Democracies vary in the extent

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<sup>9</sup>Hudec (1993, 288) makes a similar argument.

to which they are open to interest group pressure. The point is just that democracies overall may be more beholden to such interests than non-democracies.<sup>10</sup>

What are the implications of producer bias for trade disputes? The first concerns the tendency to initiate disputes. Both import-competing and export-dependent producers should support the initiation of disputes against partners maintaining interventionist trade measures (import restrictions or export promotion).<sup>11</sup> Export-dependent firms (or relatively abundant factors) stand to gain if the partner frees up its home market or reduces export subsidies increasing competition in third-party markets. Import-competing firms (or relatively scarce factors) likewise expect to benefit if the partner reduces export subsidies or trade barriers which are used to generate economies of scale for foreign competitors. And import-competing firms of course gain if the partner fails to concede and the home country retaliates with protection of its own. If we assume, as argued above, that democracies respond more readily to demands from producers, then what follows is that

*H1. Democracies are more likely to initiate trade disputes, ceteris paribus.*

The targets of such disputes will be those states which maintain more interventionist trade practices. Democracies, I argue, will disproportionately do so, again because they set policy more in line with producer preferences. It is well established, of course, that import-competing

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<sup>10</sup>Verdier (1994, 17) argues in contrast that democracies are *less* sensitive to pressure groups, since a winning coalition must be larger under democracy, and building a large coalition is harder for concentrated interests. However, what Verdier (1994, 293-294) means by this is that democracy tends to organize interests along factor rather than sector lines. But different factors, no less than different sectors in the alternative model, will have competing preferences regarding free trade, so Verdier's contention is indeterminate regarding the policy ultimately pursued. If anything, *relatively scarce* (and hence protectionist) factors will tend to exhibit the small numbers, geographic concentration, and greater intensity of individual stakes that increase mobilizational capacity and, accordingly, political influence.

<sup>11</sup>Equivalently, both relatively scarce and abundant factors should prefer the initiation of trade disputes against such partners.

firms prefer protection. But export-dependent or multinational firms (i.e., “internationalized” ones) are often said to prefer freer trade, due to the tendency of protection to evoke retaliation and increase costs and competition abroad and at home (Milner 1988, 21-24). However, retaliation cannot be assumed (Busch 1999, 8) and indeed has been extraordinarily infrequent in GATT/WTO disputes (Jackson 1998, 95). Moreover, there is no reason why internationalized firms would not prefer subsidies even if they oppose import barriers; existing theory is indeterminate in this regard (Rodrik 1994, 1476-1478).<sup>12</sup> Democracies should be more likely to accede to such pressures from both import-competing and internationalized producers for some kind of interventionist trade-related policy. In addition, for these same reasons we should expect democracies to cheat on existing liberalizing commitments more frequently,<sup>13</sup> since removing protection or subsidies should be more politically difficult in such regimes. And even when a democracy has succeeded in removing trade barriers, it may be more likely than a non-democracy to create new ones (e.g., in the form of unfair trade actions) in response to producer pressure following economic downturns. If democracies are more likely to maintain or impose interventionist trade policies, an admittedly controversial position, then

*H2. Democracies are more likely to be targeted in trade disputes, ceteris paribus.*

Outside of regime type, we can point to a number of other domestic factors that should increase a state’s tendency to participate in trade disputes. In particular, higher trade levels can be expected to raise the salience of conflicts of interest on trade policy, increase the threat to

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<sup>12</sup>Subsidies would raise the real purchasing power of foreign consumers, increase the firm’s ability to compete in foreign markets, and leave unaffected the firm’s domestic market share with respect to non-exporting firms in that industry, all in sharp contrast to the effects of import barriers.

<sup>13</sup>E.g., by substituting non-tariff barriers for proscribed tariffs.

import-competing firms, and boost the desire for a more level playing field abroad on the part of exporters (Elliott and Richardson 1997, 228-229; Noland 1997, 372). Hence,

*H3. Higher levels of bilateral trade raise a state's probability of initiating a dispute against its partner.*

*H4. Higher levels of bilateral trade raise a state's probability of being targeted in a dispute initiated by its partner.*

### 3.2. *Dispute Settlement Regime Change*

A second perspective on the initiation of trade disputes concerns the evolution of the dispute settlement regime itself, especially the transition to the WTO. For instance, Sevilla's elegantly argued study—the only political science work yet on GATT/WTO dispute initiation—maintains that the change to the WTO should increase the filing of complaints (1998, 8-10). The multiple opportunities for defendants to veto dispute proceedings under GATT, in particular, made litigation under the old regime more costly, more uncertain, and less rewarding. A variant of this logic is provided by Hudec (1993, 288), writing before the establishment of the WTO, who reasons that the probability of dispute initiation could be expected to rise following each one of the smaller regime improvements noted earlier, especially that in 1989. In addition, Sevilla (1998, 7, 11) contends that initiation of certain categories of disputes should be especially more likely under the WTO. In particular, small or less developed states should initiate more disputes under the WTO than under GATT, since such states are more deterred by high transaction costs per dispute, and since those costs have arguably decreased under the WTO. As WTO Director-General Ruggiero (1998b) says, “many more of these cases are being brought [under the WTO] by developing countries, underlining their growing faith in the system” (see also Petersmann 1997, 202-205). Also, large or developed states are likely to be more frequent targets under

GATT than under the WTO, since higher opportunity costs per dispute under GATT meant target selection had to more closely reflect prioritization based on market size.

However sound the reasoning behind these arguments, the assumption that the WTO lowers transaction costs in disputes is problematic. The fundamentals have not changed. Just like GATT, the WTO has no autonomous enforcement: “while [states] can no longer block the adoption [of a panel report], they can decide not to implement it and dare smaller countries to retaliate” (Vermulst and Driessen 1995, 147). Use of the unilateral veto for delay purposes was relatively rare under GATT in any case (Davey 1993, 67; Petersmann 1994, 1194).

Of course, the WTO does indeed remove some barriers to litigating, notably the defendant veto, but it also erects an entire array of auxiliary procedures between the issuance of an initial ruling and the ultimate legal disposition of a case. Such procedures include a new possibility for appeal, a recommended 15-month grace period before compliance is expected, and then mandated negotiations potentially followed by arbitration over compensation if the defendant still fails to comply. The procedure thus adds up to *29 months* to the time period the plaintiff must wait before retaliating for a defendant’s noncompliance, on top of what was required in the GATT system.

Further, WTO rules especially encourage the addition of third parties to complaints, thereby adding to the costs of transacting any one dispute (Vermulst and Driessen 1995, 144-148; Jackson 1998, 96-97).<sup>14</sup> Article 15 of the DSU also adds a private report review stage which states have used frequently for selective leaks. Even WTO director Ruggiero has repeatedly noted the problems introduced by this rule change: “The creation of these first mis-impressions by selective leaks is highly undesirable because the mis-impressions are unlikely to be

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<sup>14</sup>These provisions are contained in articles 17, 21:3(c), 22, and 10 of the DSU, respectively.

correctable later. Moreover, leaks reduce the likelihood of a mutually agreeable solution....” (Ruggiero 1998c). The DSU does not allow for remand from the Appellate Body to the initial panel, and hence the capacity of the Appellate Body (with just 3-4 staff lawyers in addition to the 3 detailed judges) to process cases expeditiously may be heavily strained (Petersmann 1997, 201; Jackson 1998, 80, 94). And the DSU explicitly states that “non-violation” cases of nullification or impairment of treaty obligations do not require the withdrawal of the offending measure (Jackson 1998, 88, 92-93). Yet such cases under GATT could and often did result in rulings necessitating removal of the disputed policy (Hudec 1993, 246-247, 269; WTO 1995, 657-662). Finally, the WTO binds plaintiffs by strictly capping the quantities involved in potential retaliation and by ruling out retroactive compensation (Jackson 1998, 97).

These facts lead me to adopt a very controversial view, namely, that the WTO is designed more to tie the hands of complainants than to make compliance by defendants more likely (Roessler, Schwartz, and Sykes 1999; Komuro 1995, 41). GATT’s success, if any, was arguably due to the twin threats of definitive normative (not legal) condemnation of misbehavior and unilateral retaliation from complainants (Reinhardt 1998, 24). As noted above, the WTO has diluted its ability to make a single-shot normative statement on the issue. And it has many more provisions limiting retaliation by complainants. These are precisely the problems the European Union has exploited in dragging out its compliance with rulings on its banana import regime, for instance.<sup>15</sup> By raising many new barriers to effective dispute resolution while simultaneously lowering old ones, the WTO can be expected to have little net impact on the overall probability of dispute initiation, at least compared to the post-1989 GATT system.

*H5. Dispute initiation is not more likely overall under the WTO than under late-era GATT.*

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<sup>15</sup>*Journal of Commerce*, 21 December 1998, 7A.



The rise in aggressive multilateralism is thus a function more of growing membership and increased trade dependence than of dispute settlement regime changes.

This perspective yields some additional hypotheses. In particular, even under the WTO, most less developed countries (LDCs) remain unable to mount WTO legal complaints, which are by necessity extraordinarily complex. The WTO has nominally increased technical assistance but in practice rules out assistance to all members who fail to pay their dues, i.e., precisely those states who need technical assistance the most (Michalopoulos 1998). A revealing case is India, presumably one of the LDCs best prepared to prosecute WTO disputes, which still has no permanent trade representative's office and selects dispute negotiators on an ad hoc basis.<sup>16</sup> That the WTO has significantly increased the number and complexity of covered issues is validated by the comments of some observers who argue that even the WTO itself may lack the institutional capacity to process many more disputes at any one time (Jackson 1998, 73-74, 92-94). Hence I hypothesize that

*H6. LDCs are less likely to initiate disputes under the WTO than under GATT.*

Two other institutionalist arguments about dispute initiation emerge from the literature.<sup>17</sup> As noted above, most legal scholars infer the success of GATT/WTO from rising numbers of disputes (Hudec 1993, 290; Jackson 1998, 59-60; Petersmann 1994, 1205). A straightforward inference from this claim is that past "successes," defined in terms of extent of concessions by

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<sup>16</sup>At least as of late 1997. *India Today*, 10 November 1997, 52.

<sup>17</sup>Could the explosive growth in disputes be a function of the simple expansion of legal scope, across sectors and types of trade barriers, of the GATT agreement? The answer is probably no. From its inception, GATT permitted complaints about policies and sectors not addressed by the 1947 agreement, through the mechanism of Article XXIII's very permissive "nullification or impairment" clause (WTO 1995, 653-671). Disputes have occurred from the outset on the so-called "new protectionism," or non-tariff barriers and subsidies; such conflicts are not new to the WTO, and hence the legal expansion of GATT in this regard is probably not responsible for the growth in disputes over time.

defendants in keeping with complainants' demands, should increase the probability of the initiation of new disputes. In addition, Sevilla (1998, 9) also predicts that, since "the opportunity costs of pursuing other complaints" are high, there should be negative correlation between the number of a state's recent or ongoing disputes and its new filings in a given year.

I disagree. Seen as "aggressive multilateralism," disputes are more likely to follow past *failures* rather than successes (Petersmann 1997, 206). And regardless of outcome, dispute initiation should experience positive, not negative, feedback, for two reasons. First, states use the GATT/WTO system as a bargaining chip. Just as in the domestic civil litigation context, defendants can be expected to file countersuits. For example, in 1988 the US initiated a case against Canada's ice cream and yogurt restrictions, and Canada retaliated by filing a complaint of its own on the US's parallel policy (Hudec 1993, 575). Thus I hypothesize that

*H7. A country previously targeted by its partner will be more likely to initiate a new dispute against that partner.*

Second, disputes encourage further disputes because of fears of trade diversion (Bhagwati 1991, 55). For instance, the United States initiated a case against Korea's beef import quota in 1988. Australia and New Zealand were concerned that Korea would leave its global import quota the same and simply raise the US share. To force Korea to raise their own quota blocks in addition to those of the US, they filed their own complaints against Korea. For the same reason, New Zealand and the US joined Chile's initial complaint in 1988 against the EU's restrictions on apple imports (Hudec 1993, 242-244). States bandwagon against defendants to prevent discriminatory settlements. Hence I predict that

*H8. A country will be more likely to initiate a dispute against its partner the more that partner has been targeted recently in disputes raised by other states.*

## 4. Research Design

This paper tests its (enumerated) hypotheses as well competing arguments quantitatively, using a comprehensive list of GATT/WTO members and disputes from January 1, 1948 through December 31, 1998. The main analysis involves multivariate regressions of dispute initiation, but I estimate an auxiliary model of dispute outcomes to assess alternative interpretations of the initiation results.

### 4.1. *Unit of Observation*

The database consists of all directed dyad years among GATT/WTO members in this time period.<sup>18</sup> That is, it includes all permutations of country  $i$  (the potential initiator) and country  $j$  (defendant) in year  $t$ . A country is counted for a given year if it was a member at any point during that year. Because EU members have negotiated as a unit on most external trade disputes since 1958 (Hayes 1993, 11-15), the EU is included as a member as well (in addition to its constituent states, although intra-EU dyads of members and the EU itself are deleted). The result is a database of 329,194 directed dyad years.<sup>19</sup>

### 4.2. *Dispute Initiation*

I construct an exhaustive new list of all (603) trade disputes filed under GATT or the WTO, from their inception through the end of 1998. The unit of analysis is a dyadic dispute.<sup>20</sup> A “dispute” is defined as a complaint officially filed under GATT/WTO by at least one member state against at least one other member state, concerning a trade practice identified as objectionable by the complainant. (See appendix for data sources.) All disputations (by the

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<sup>18</sup>Sources for membership dates include WTO (1996b, 203-204); GATT (1990, 139); WTO (1998b); Jackson (1969, 898-900); and WTO (1996a).

<sup>19</sup>A list of GATT/WTO members with their dates of accession (and withdrawal, if appropriate), can be found at <http://userwww.service.emory.edu/~erein/research/#initiation>, along with all other data used in this paper.

above definition) Article XXII consultations and all Article XXIII cases are counted.<sup>21</sup> The dummy variable  $Dispute_{ijt}$  equals 1 if state  $i$  initiated at least one such complaint against state  $j$  in year  $t$  (0 otherwise).

Certain alternative explanations of the initiation results can only be falsified by examining dispute outcomes as well. Accordingly, I code disputes as ending with negligible, partial, or full trade concessions, in line with the complainant's demands (Reinhardt 1996, 169-173), following Hudec's (1993, 589) coding of each case. The variable *Concessions* equals 1 if no liberalization occurred, 2 if partial relaxation of the disputed policy was implemented, and 3 for full concessions.<sup>22</sup> (See appendix.)

#### 4.3. *Explanatory Variables*

*Democracy.* Each state's *Democracy* value is its Polity III (Jagers and Gurr 1995; Bennett and Stam 1999) democracy minus autocracy level, consistent with standard practice. The variable *Joint Democracy* is coded as the minimum *Democracy* value in the dyad (Bliss and Russett 1998, 1133).

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<sup>20</sup>Hence a complaint with, e.g., three plaintiffs and one defendant constitutes three "disputes."

<sup>21</sup>As Pescatore (1993, 1) states, "Dispute settlement takes place under two Articles of the General Agreement [XXII and XXIII]" (see also Vermulst and Driessen 1995, 131). Many Article XXII cases became Article XXIII disputes (these are not double-counted); others were dropped, either because the case had little legal merit, the defendant settled, or the complainant did not wish to pursue a complaint against an intransigent defendant. Such dropped cases *are* counted in my database. The WTO merges all cases which would have fallen under either GATT 1947 article (XXII and XXIII) into a common procedure under the Dispute Settlement Understanding, Article 3 of which begins, "Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of GATT 1947...."

<sup>22</sup>This variable is coded only for 256 of 435 GATT disputes (and none of the WTO cases), given the limits of Hudec's (1993) coverage.

*Dispute Settlement Regime.* The dummy variables *WTO* and *GATT1989* are 1 inclusively for all years [1995,1998] and [1989,1993], respectively, reflecting the dispute settlement regimes in place in those periods; 0 otherwise.<sup>23</sup>

*Countersuit.* This variable is 1 if the defendant in the current directed dyad initiated a dispute against the complainant side in the previous year; 0 otherwise.

*Bandwagon.* This variable counts the number of disputes initiated the previous year by all states against the current observation's defendant.

*Alliance.* A number of studies have demonstrated that allies trade more (Gowa and Mansfield 1993; Mansfield and Bronson 1997a, 1997b), although some recent works have questioned the robustness of this relationship (Morrow, Siverson, and Tabares 1998; Bliss and Russett 1998). Controlling for trade levels, allies should participate in fewer trade disputes. Accordingly, I include the variable *Alliance*, coded as 1 for each pair of states having an alliance of any type; 0 otherwise (Small and Singer 1982).

*MID.* If indeed trade follows the flag (Pollins 1989; Gowa and Mansfield 1993; Mansfield and Bronson 1997a, 1997b; but see Morrow, Siverson, and Tabares 1998; Bliss and Russett 1998), then enemies should experience more trade disputes, again controlling for trade levels. I address this dynamic by including the variable *MID*, defined as 1 if the pair of states were participants in opposite sides of any militarized interstate dispute (new or ongoing) in that year; 0 otherwise (Gochman and Maoz 1984; Bennett and Stam 1999).

*LDCs.* Each state is coded as a less developed country (i.e., *LDC* equals one; 0 otherwise) if it has officially identified itself as such to GATT/WTO (WTO 1996c, 1997a, 1997b). LDCs may be less likely to initiate disputes since they are less involved in the GATT system (Hudec 1993,

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<sup>23</sup>*GATT1989* ends in 1993 as opposed to 1994 because states ceased their use of the system in

295). They may also be less frequent targets, since larger states have been willing to exclude LDCs from many of GATT's more politically costly provisions (Sykes 1992, 301-302, 310). In addition, I interact *LDC* with *WTO* for both complainant and defendant states in order to test predictions about the conditional effect of changes in the regime.

*GDP Ratio.* *GDP Ratio* is the complainant state's gross domestic product (GDP) over the sum of the two state's GDPs, both expressed in current United States dollars. This variable is critical as a control, although its direction of effect is ambiguous. On one hand, larger states may be more desirable targets from the standpoint of market opportunities (Sevilla 1998; Hudec 1993, 198; Noland 1997, 370, 374, 376). On the other, larger states may concede less than smaller ones, due to asymmetries in dependence and power, so states should be more likely to initiate when *GDP Ratio* is in their favor (Hudec 1993, 315-317; Sykes 1992, 294). Probably due to this contradiction, evidence on this variable's effects is mostly null (Hudec 1993, 321; Reinhardt 1996, 193; Elliott and Richardson 1997, 232, 235; Noland 1997, 383).

*Trade Dependence.* *Trade Dependence* for each country is the sum of imports from and exports to the partner country, divided by gross domestic product (GDP), all measured using current US dollars.

*Trade Surplus.* *Trade Surplus* is a state's exports to the world minus imports from the world, all divided by GDP, expressed in current US dollars. Trade deficits are associated with decreased competitiveness and hence should cause domestic pressures for protection and dispute initiation (Takacs 1981, 689-690; Hansen and Park 1995, 197; Noland 1997, 366, 374-375). A state's overall surplus, likewise, may be an indicator of protectionism (or devaluation) and

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anticipation of its imminent replacement by the WTO.

should accordingly increase the likelihood of being targeted (Sykes 1992, 287, 309-310; Elliott and Richardson 1997, 228-229; Noland 1997, 370, 376).

*Year.* *Year* is included to capture any secular trend in the probability of dispute initiation.

*EU.* Whether a state is a member of the EU is indicated by *EU* (1 if so, 0 otherwise). This variable is included as a control and is expected to yield a negative coefficient both for complainants and targets (Hudec 1993, 299). EU members generally initiate their complaints versus outsiders through the EU rather than singly, and because the EU directs most external trade policy, disputes from outsiders are mostly raised against the EU as a whole.

*Past Concessions.* The variable *Concessions*, discussed above, is averaged across all disputes initiated in a given year, and then lagged three years, to yield *Past Concessions*, which aims to capture the level of overall success associated with the GATT dispute process over time. If the optimists about GATT/WTO are correct, *Past Concessions* should increase the probability of dispute initiation in the present. This variable is missing for the majority of the observations in the dataset, so it is used only for sensitivity testing.

#### 4.4. *Statistical Models*

The paper estimates four different models with dispute initiation as the dependent variable. Data on all variables are not available for the entire population. Model I includes as regressors the national security and democracy variables in addition to the trade flow and GDP indicators, but it is accordingly limited to years before 1994, dropping 56 percent of the cases, including all those from the WTO period. Listwise deletion of observations with missing data on any variable may result in a biased sample. Hence, rather than draw inferences purely from model I, I remove sets of regressors limiting the sample. Model II drops the national security variables, utilizing 49 percent of the population. Model III and model IV drop the democracy and then the economic

regressors (using 66 and 100 percent of the population, respectively); however, they include enough WTO-era observations to merit the inclusion of the dispute settlement regime variables. We can expect significant autocorrelation in dispute initiation, so I estimate all four models using a generalized estimating equation (GEE) specification of a probit equation with first-order autocorrelation (AR1).<sup>24</sup> I also estimate a follow-up ordered probit model of the outcomes of a limited set of disputes with model I's set of regressors, using disputes themselves as the unit of observation.

The initiation models in Table 2 report robust standard errors clustered on the directed dyad. All variables except *GATT1989*, *WTO*, *EU1*, *EU2*, *LDC1*, and *LDC2* are lagged by one year. Descriptive statistics are listed in Table 1.

## 5. Results

The results strongly support my hypotheses and disconfirm the competing arguments. Estimates of the four initiation models are shown in Table 2.<sup>25</sup> Overall, the models fit the data adequately.<sup>26</sup> Collinearity does not pose problems.<sup>27</sup>

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<sup>24</sup>I used the *xtgee* command in Stata 5.0, with *family(bin)*, *link(probit)*, *corr(ar1)*, *robust*, and *force* as options.

<sup>25</sup>GEE coefficient and variance estimates are consistent regardless of the particular form of time dependence assumed, when robust standard errors are calculated (Fitzmaurice, Laird, and Rotnitzky 1993, 287). Thus, not surprisingly, Table 2's results do not change if AR lag lengths of 3 or 5 are assumed instead, or if the errors are assumed to be independent. First-order autocorrelation in models I-IV is estimated to be 0.019, 0.074, 0.074, and 0.070, respectively.

<sup>26</sup>In the quasi-maximum likelihood framework of GEE, the usual likelihood-based goodness of fit statistics do not apply, but the Wald test statistics reported at the bottom of Table 2 indicate that the explanatory variables as a group have substantial predictive power.

<sup>27</sup>In Models I and II, the three democracy variables exhibit collinearity  $R^2$ s (i.e., when regressed on all other explanatory variables) of around 0.75, and *GDP Ratio* and the *LDC* dummies, around 0.5; the rest, below 0.3. This imposes little burden on the monadic democracy measures, since they turn up significant regardless. In Models III and IV, the only variables with potentially problematic collinearity are *YEAR* (0.55), *WTO* (around 0.85), and the two *WTO* interaction terms with the *LDC*s (around 0.75). Again, since *WTO* and the interaction terms are significant regardless, this collinearity does not inhibit inference.



First consider the effect of democracy. The findings in models I and II are quite striking, especially since they control for relative size (*GDP Ratio*) and trade dependence, among other things. The more democratic a state, the more it will initiate disputes, and the more it will be targeted, regardless of its partner's regime type. Pairs of democracies are significantly less likely to participate in disputes, but this only partially reduces what would otherwise be a democratic "doubling effect" towards disputatiousness.<sup>28</sup> If either state is democratic, disputes are vastly more likely, but both being democratic does not increase the probability of disputes greatly beyond that. Note that democracy's substantive impact is extraordinarily high (higher than any other variable in model I, in fact). Specifically, holding all other variables at their sample means in model I, if the potential defendant state has the minimum *Democracy* value (-10) and the other moves from the minimum to the maximum (10), the probability of dispute initiation increases by a factor of 36.2 billion. If then we move the defendant's *Democracy* value from -10 to 10, dispute initiation becomes 4.1 times even more likely. Since democratic dyads are more prone to conduct disputes than mixed or (especially) non-democratic dyads, there is clearly no "democratic peace" over trade disputes.<sup>29</sup> This finding supports my hypothesis and contradicts the competitors.

Of course, as Dixon (1994) argues, democracies may participate in a legal dispute settlement system like GATT's more frequently precisely because they are able to use it to conclude their disputes more cooperatively. However, this interpretation is false in the GATT/WTO context. As Table 3 indicates, disputes involving a democracy as either plaintiff or defendant are

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<sup>28</sup>*Joint Democracy*'s borderline significance is probably due to its high collinearity with the two monadic terms.

<sup>29</sup>This finding survives if we remove from models I and II all dyads including Japan, the EU, and the US on either side, so it is not an artifact of unique features of the "economic great powers."

significantly *less* likely to end cooperatively (again with no “doubling effect”), even controlling for alternative predictors of dispute outcomes.

Next consider the role of trade dependence. Consistent with my hypotheses, a state is more likely to initiate disputes and to be targeted as well when a high proportion of its GDP derives from imports and exports with its partner. This is true even when one factors in the role of relative GDP size and LDC status. Bilateral trade dependence can increase the probability of initiation (or being targeted) by up to 4954 (510) times in model II, holding other variables at their sample means.

What about the impact of changes in the dispute settlement regime? Coefficients for *GATT1989* and *WTO* are positive and significant in models III and IV. Compared to the earlier regime, the post-1989 GATT system increased the probability of dispute initiation by a factor of 3.4, controlling for other variables. The WTO, however, has not made initiation more likely overall than under the post-1989 GATT rules: a Wald test reveals no significant difference between the coefficients of the two dummy variables.<sup>30</sup> This upholds my argument. Quite surprisingly, and counter to the claims of Ruggiero, Jackson, and others, there has thus been no explosive growth in disputatiousness under the WTO. The WTO has, however, raised the probability that disputes will be filed *against* LDCs (by a factor of 12.6 on average in model IV), while notably *lowering* the prospects for initiation *by* LDCs (by a factor of 6.2).<sup>31</sup> The latter is consistent with my hypothesis and inconsistent with that of Sevilla and Ruggiero. Far from becoming more avid users of the system, LDCs are instead increasingly *locked out* of it, while simultaneously getting slammed with ever-increasing litigation from the developed states.

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<sup>30</sup>  $\chi^2(1) = 1.35$  and  $2.77$ , yielding  $p = 0.25$  and  $0.10$ , for models III and IV, respectively.

There are a number of other interesting results. Just as I predicted, *Countersuit* and *Bandwagon* significantly raise the likelihood of initiation in all four models. Being targeted by a partner in the previous year increases a state's chances of filing a new dispute against that partner by up to 51 times (in model IV, holding other variables constant). Each dispute filed against a state multiplies the probability of *each partner* targeting that state the next year by up to 1.3. Also, if we add the variable *Past Concessions* to the initiation models, it significantly *decreases* the likelihood of dispute initiation.<sup>32</sup> When added, a variable counting the number of disputes a state initiated in the previous year, contrary to Sevilla's prediction, possesses a positive coefficient in all four models. And if we look at the entire population (in model IV), the secular trend is to decrease the probability of any two countries experiencing a GATT/WTO dispute. Thus, not only has there *not* been an increase in individual disputatiousness over time or under the WTO, the failure of past disputes to end with concessions actually makes new complaints more, not less, likely. These two points contradict the optimistic interpretation of Ruggiero, Jackson, and others of the overall growth in numbers of disputes.

Model I shows that the dictates of national security influence the emergence of trade conflicts, though not exactly as the literature would predict. A prior militarized conflict increases the probability of initiation of a GATT/WTO complaint by up to 4 times. However, a state is 9 times more likely to file a dispute against an ally than a non-allied partner. Thus both allies *and* enemies experience more trade conflicts, as compared to neutral parties.<sup>33</sup>

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<sup>31</sup>In models III and IV, if we add a dummy variable that is 1 only for WTO-era observations between two LDCs, its coefficient is not statistically significant. The WTO does not increase the probability of disputes between LDCs.

<sup>32</sup>For instance, its coefficient is  $-0.117$  ( $p = 0.023$ ) if added to model I and is negative in all the other models as well (but not significant in model IV).

<sup>33</sup>Incidentally, these results stand even if we exclude all directed dyads with Japan, the EU, or the US on either side.

Surprisingly, relative state size (*GDP Ratio*) has no significant impact on the probability of dispute initiation (though Table 3 reveals that larger states are able to induce more concessions from smaller defendants). The larger a state's global trade surplus, the more likely it is to be targeted, which is consistent with Elliott and Richardson (1997, 228-229) and Noland (1997, 370, 376). Inexplicably, however, states with larger global surpluses tend to initiate more disputes themselves, which does not mesh with the common view that trade deficits increase political pressures for "fair" trade. LDCs and EU members (but not the EU itself) are significantly less likely to file GATT/WTO complaints and to be targeted as well.

## **6. Implications**

What do these results say about the links between democracy, dispute settlement regime change, and trade conflicts?

### *6.1. Democracies Are More Disputatious*

The evidence strongly supports my argument that democracies are more subject to producer pressure than non-democracies. Seeking support from domestic import-competing and export-dependent producers, a democracy is more likely to push for "fair" trade and a level playing field abroad by filing complaints with GATT/WTO. Democracies are also more susceptible at the margin to domestic pressures for interventionist trade policy at home, and they may maintain greater absolute levels of protection or subsidies as well, compared to non-democracies.<sup>34</sup> This explains why democracies are targeted more in trade disputes.

My results thus disconfirm many extant propositions about democracies and trade. Contrary to others' claims, democracies are not more peaceful overall when it comes to trade disputes. And pairs of democracies, in particular, do not experience fewer trade conflicts, or resolve those

conflicts more cooperatively, than mixed or non-democratic pairs. Moreover, increased disputatiousness is not an artifact of higher trade dependence among democracies, since we have controlled for that variable.<sup>35</sup> Naturally, the phenomenon at issue—GATT/WTO disputes—is somewhat distinct from the broader question of trade cooperation. But my results do seem to undermine the view, for instance, that democracies trade more because economic actors within them fear fewer political disruptions of exchange (Morrow, Siverson, and Tabares 1998, 659; Dixon and Moon 1993). These disputes, after all, are much more closely tied to the calculations of market actors than are foreign policy conflicts on remoter issues.

A special variant of the democratic peace proposition suggests that democratic dyads should be more likely to participate in GATT/WTO complaints, because they prefer to abide by legal rules and thus are more able to resolve their conflicts peacefully (Dixon 1993, 1994; Raymond 1994). This idea implies that democratic pairs may experience no more underlying conflicts than non-democratic pairs, but that they disproportionately deal with those conflicts through adjudication. This interpretation turns out to be wrong in the GATT/WTO case, for two reasons. First, democratic dyads are significantly less likely to conclude their disputes cooperatively, i.e., with trade concessions, than non-democratic dyads. They take more conflicts to GATT but disproportionately fail to liberalize in disputes before GATT, which is consistent with Raymond's (1996) evidence from non-trade conflicts.<sup>36</sup> Second, regardless of their outcomes, complaints are much less likely between two democracies than we would expect if we summed

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<sup>34</sup>Of course, I do not observe underlying levels of trade intervention in this paper, but the ultimate effect—being targeted in trade disputes—is at least consistent with this argument.

<sup>35</sup>And in fact democratic dyads exhibit no greater bilateral trade dependence in this sample. Specifically, *Joint Democracy* has a null or negative effect if *Trade Dependence* (side *i* and *j*) is regressed on it, the two *Democracy* variables, *GDP Ratio*, and the *LDC* dummies.

<sup>36</sup>Here lies a puzzle: why would democracies be targeted more if plaintiffs know democracies will be less likely to concede? There is apparently no selection effect at work.

the individual *Democracy* coefficients, due to the negative impact of *Joint Democracy*. That is, the *dyadic* tendency of democracies is to diminish, not increase, the probability of initiation which would otherwise occur. Thus, Dixon's hypothesis that the shared norms of democracies increase the chances of using a forum like GATT/WTO is falsified in this context.

## 6.2. *Flaws in the WTO Dispute Settlement Regime*

My results reveal cracks in the case for the WTO's dispute settlement system. The facts are as follows:

- The WTO has not made dispute initiation more likely overall, compared to the immediately previous system under GATT.
- Past successes of the system in eliciting concessions from defendants do not make new complaints more likely; rather, past *failures* do.
- Complaints beget complaints, regardless of outcome. States use the GATT/WTO like any other litigation system, filing countersuits and bandwagoning against defendants to prevent discriminatory settlements with the initial plaintiff.
- Far from lowering the bar for LDCs, the WTO has increased it. LDCs are less likely to initiate disputes than ever before, yet they are the subject of an increasing number of complaints from advanced industrial nations.

These facts are consistent with my controversial interpretation of the WTO. The Dispute Settlement Understanding has not changed the key characteristic of the system, its lack of enforcement power. Moreover, although it has removed a defendant's veto over various stages of GATT action, it has also imposed an array of new obstacles to the rapid and definitive legal processing of a complaint. GATT, in contrast, was at least able to issue a reasonably speedy and unassailable normative condemnation of the defendant (in the form of a panel ruling), even if

that judgment was not always given legal force (because of the threat of a veto). The DSU moreover is just as concerned with “defendants’ rights” as with those of the plaintiff. The DSU restricts further the legitimacy of unilateral retaliation by complainants. But a system that lacks enforcement power can only induce compliance by combining the (admittedly small) value of normative condemnation with the threat of retaliation by plaintiffs (Reinhardt 1998). This explains why the 1989 GATT reforms induced more conflicts than the prior regime, even though the WTO has not. The 1989 rules failed to remove the veto, but they accelerated proceedings and clarified norms guiding the use of the system. Pescatore (1993, 28) was right to say,

Though I hope fervently that the Uruguay Round will end in success, as a lawyer I would say that even if it ended in a stalemate this would be no catastrophe for dispute settlement, if only the *status quo* attained at mid-term [the 1989 change] is maintained.

In many ways, then, the WTO constitutes a lateral if not a backwards step in trade dispute settlement.

My findings point to the flimsy basis for the spin by WTO advocates such as WTO Director-General Renato Ruggiero. Such proponents claim, for instance, that the explosive growth in disputes reflects “enhanced effectiveness” or “growing confidence” in the WTO system. In fact, however, there has been no increase in individual states’ propensity to file disputes over time. Disputes occur today disproportionately because of the failure of the regime to facilitate successful resolution of previous complaints. LDCs do not use the system more frequently now. Indeed, they do so significantly less, probably because of the higher transaction costs they face in managing extremely complex and time-consuming litigation and in researching the economics of specific affected industries. In general, I argue we must interpret GATT/WTO conflicts as instances of conflict rather than of cooperation—as “aggressive multilateralism” instead of *prima facie* evidence of the robustness of the trading system. Because such disputes are in large part

the consequence of rising trade, the irony is that the WTO, perhaps the most liberalizing agreement in history, may soon face the distressing possibility of being overwhelmed by a flood of disputes it has indirectly created.

## **7. Conclusion**

This paper began with a puzzle: what explains the dramatic growth in “aggressive multilateralism”? Empirical analysis provides an answer to that question. The rise in disputes is most of all a product of ballooning membership in GATT/WTO. Individual states have if anything become less likely to initiate trade conflicts over time. Increasing dependence on foreign trade raises the stakes in leveling the playing field, which motivates states to lodge disputes against their partners. Rising levels of democracy make states more vulnerable to domestic pressures for “fair” trade, expressed as trade complaints. And positive feedback in disputatiousness, in the form of countersuits and bandwagoning against defendants, adds to the dynamic. These are the explanations for the explosive increase in GATT/WTO disputes. The WTO regime itself is probably not responsible for the increase, in contrast to the claims of its public advocates.

The paper also aims to contribute to the separate literature on the democratic peace by identifying at least one issue-area, trade, on which democracies may have greater tendencies to conflict than non-democracies. Democracies are especially susceptible to pressure from interests that benefit from provoking trade conflicts. In this respect, GATT/WTO disputes share some of the same causes as, e.g., section 301 complaints and antidumping/countervailing duty actions, or other kinds of policies, like inflationary spending in the political business cycle or diversionary military adventurism.



Of course, we still have much to learn about the causes (and outcomes) of GATT/WTO trade disputes. For instance, this paper could not speak to the question of why a country would file a complaint with GATT/WTO as opposed to conducting negotiations bilaterally, because large-scale data is not yet available on cases not filed under GATT/WTO. This paper also lacks information on characteristics that vary *within* democracies (as opposed to the larger distinction of regime type), such as the timing of elections, electoral rules, parliamentarism or presidentialism, extent of divided government, and so forth. Such institutions mediate the exposure of leaders to particularistic domestic pressures and thus should condition democracy's effect on dispute initiation. Finally, the paper's results raise unanswered questions about the relationship between the filing of disputes and their outcomes. To what extent do states factor in likely outcomes when they initiate trade conflicts? Answers to these and other questions must await future research.

## **Appendix: Data Sources**

### *Disputes*

The list of cases was drawn from Hudec (1993), *GATT Activities* (various years), *GATT Focus*, WTO (1995, 620, 623-628, 772-787), and WTO (1999) (see also Reinhardt 1996, 168-169). A complaint is counted as distinct from a related complaint if it is separately filed and reported as such by GATT/WTO. The outcome variable, *Concessions*, is measured following Hudec (1993, 417-608), supplemented with information from issues of *GATT Activities* and *GATT Focus*, with reference to the policies in place the day each dispute was filed.

### *Explanatory Variables*

GDP data are from the following sources, in order of preference: (a) the Organization for Economic Cooperation and Development (OECD)'s official records, as provided in machine-readable form through the electronic service Datastream; (b) World Bank (1997); (c) International Monetary Fund (1998b); (d) United Nations (various years), United Nations Statistical Office (1965), United Nations Economic Commission for Africa (various years), and United Nations Economic Commission for Latin America (1983). If GDP in current US\$ was not available, GDP in national currency units was used and converted using the annual average market exchange rate from the same data source. GNP or national income data were used in a few cases for which GDP was not available. The exact IMF time series codes used for each country are listed at <http://userwww.service.emory.edu/~erein/research/#initiation>.

Imports and exports in current US\$ are obtained from the International Monetary Fund (1998a). These data are directed, i.e., they reflect the potential complainant state's records rather than those of the potential defendant. When data going one direction was missing but data going the opposite direction was not, I filled in missing values by multiplying the other side's bilateral

exports by 1.1 and dividing the other side's bilateral imports by 1.1, following standard IMF practices (Bliss and Russett 1998, 1133). Since Belgium and Luxembourg's trade data are aggregated by the IMF, for the purposes of *Trade Dependence* and *Trade Surplus* those two countries' values are identical (and the denominator is the sum of their GDPs).

The European Union requires special treatment for a number of the variables. For the EU, *Democracy* is calculated as its members' maximum Polity III democracy value minus its members minimum Polity III autocracy value. For *GDP Ratio*, *Trade Dependence*, and *Trade Surplus*, GDP figures used are the sum of the EU members' GDPs, and imports and exports are the sum of the EU members' imports and exports with the relevant external partner (intra-EU trade is not counted). *Alliance* and *MID* are 1 if at least one EU member had an alliance or MID with the partner country. The EU's *LDC* value is zero.

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**Table 1. Descriptive Statistics**

	<b>Model I</b>		<b>Model IV</b>	
<i>Dispute<sub>ijt</sub></i>	0.0023±0.048	0–1	0.0015±0.039	0–1
<i>Bandwagon<sub>j,t-1</sub></i>	0.167±0.875	0–18	0.150±0.914	0–1
<i>Countersuit<sub>ji,t-1</sub></i>	0.002±0.046	0–1	0.001±0.038	0–1
<i>Democracy<sub>i,t-1</sub></i>	2.74±7.83	-10–10	—	—
<i>Democracy<sub>j,t-1</sub></i>	2.74±7.83	-10–10	—	—
<i>Joint Democracy<sub>ij,t-1</sub></i>	-1.59±7.36	-10–10	—	—
<i>GATT1989<sub>t</sub></i>	—	—	0.162±0.369	0–1
<i>WTO<sub>t</sub></i>	—	—	0.202±0.401	0–1
<i>WTO<sub>t</sub>*LDC<sub>i</sub></i>	—	—	0.155±0.362	0–1
<i>WTO<sub>t</sub>*LDC<sub>j</sub></i>	—	—	0.155±0.362	0–1
<i>Alliance<sub>ij,t-1</sub></i>	0.084±0.277	0–1	—	—
<i>MID<sub>ij,t-1</sub></i>	0.009±0.095	0–1	—	—
<i>GDP Ratio<sub>ij,t-1</sub></i>	0.5±0.38	~0–~1	—	—
<i>Trade Dependence<sub>ij,t-1</sub></i>	0.009±0.035	0–3.46	—	—
<i>Trade Dependence<sub>ji,t-1</sub></i>	0.009±0.035	0–1.24	—	—
<i>Trade Surplus<sub>i,t-1</sub></i>	-0.035±0.104	-2.5–0.7	—	—
<i>Trade Surplus<sub>j,t-1</sub></i>	-0.035±0.104	-2.5–0.7	—	—
<i>EU<sub>it</sub></i>	0.133±0.340	0–1	0.095±0.293	0–1
<i>EU<sub>jt</sub></i>	0.133±0.340	0–1	0.095±0.293	0–1
<i>LDC<sub>it</sub></i>	0.602±0.489	0–1	0.705±0.456	0–1
<i>LDC<sub>jt</sub></i>	0.602±0.489	0–1	0.705±0.456	0–1
<i>Year<sub>t</sub></i>	1979±9.96	1949–1993	1983±11.39	1948–1998
No. of observations	145,176		329,194	



**Table 2. Four GEE AR(1) Probit Models of GATT/WTO Dispute Initiation, 1948-1998**

$\text{Pr ob}(Dispute_{ijt} = 1)$	<b>Model I</b>	<b>Model II</b>	<b>Model III</b>	<b>Model IV</b>
Constant	-14.063* (5.716)	-9.387 (4.964)	5.934 (6.026)	9.811 (5.844)
<i>Bandwagon</i> <sub><i>j,t-1</i></sub>	0.090** (0.008)	0.050** (0.007)	0.059** (0.007)	0.069** (0.006)
<i>Countersuit</i> <sub><i>ji,t-1</i></sub>	1.070** (0.101)	1.115** (0.110)	1.169** (0.113)	1.249** (0.121)
<i>Democracy</i> <sub><i>i,t-1</i></sub>	0.222* (0.097)	0.118* (0.051)	—	—
<i>Democracy</i> <sub><i>j,t-1</i></sub>	0.212* (0.097)	0.113* (0.049)	—	—
<i>Joint Democracy</i> <sub><i>ij,t-1</i></sub>	-0.192* (0.098)	-0.085 (0.051)	—	—
<i>GATT1989</i> <sub><i>i</i></sub>	—	—	0.301** (0.063)	0.340** (0.063)
<i>WTO</i> <sub><i>i</i></sub>	—	—	0.397** (0.099)	0.469** (0.094)
<i>WTO</i> <sub><i>i</i></sub> * <i>LDC</i> <sub><i>i</i></sub>	—	—	-0.170 (0.089)	-0.234** (0.081)
<i>WTO</i> <sub><i>i</i></sub> * <i>LDC</i> <sub><i>j</i></sub>	—	—	0.449** (0.095)	0.348** (0.085)
<i>Alliance</i> <sub><i>ij,t-1</i></sub>	0.536** (0.081)	—	—	—
<i>MID</i> <sub><i>ij,t-1</i></sub>	0.345** (0.127)	—	—	—

(continued)

(continued)

	<b>Model I</b>	<b>Model II</b>	<b>Model III</b>	<b>Model IV</b>
<i>GDP Ratio</i> <sub>ij,t-1</sub>	0.067 (0.112)	-0.031 (0.110)	0.126 (0.094)	—
<i>Trade Dependence</i> <sub>ij,t-1</sub>	0.482 (0.482)	1.129** (0.301)	0.670** (0.205)	—
<i>Trade Dependence</i> <sub>ji,t-1</sub>	1.203** (0.361)	1.708** (0.307)	0.872** (0.187)	—
<i>Trade Surplus</i> <sub>i,t-1</sub>	0.534 (0.444)	0.539** (0.195)	0.317** (0.080)	—
<i>Trade Surplus</i> <sub>j,t-1</sub>	1.386** (0.281)	1.015** (0.172)	0.448** (0.056)	—
<i>EU</i> <sub>it</sub>	-1.022** (0.153)	-0.946** (0.135)	-1.102** (0.134)	-1.060** (0.136)
<i>EU</i> <sub>jt</sub>	-0.430** (0.085)	-0.466** (0.086)	-0.431** (0.081)	-0.390** (0.078)
<i>LDC</i> <sub>it</sub>	-0.137 (0.078)	-0.292** (0.072)	-0.566** (0.070)	-0.619** (0.063)
<i>LDC</i> <sub>jt</sub>	-0.675** (0.100)	-0.726** (0.091)	-1.032** (0.088)	-0.968** (0.075)
<i>Year</i> <sub>t</sub>	0.005 (0.003)	0.003 (0.002)	-0.004 (0.003)	-0.006* (0.003)
No. of observations	145,176	162,024	218,439	328,884
$\chi^2$	(17) 607.0**	(15) 478.7**	(16) 735.0**	(11) 782.2**

\*  $p < 0.05$ , \*\*  $p < 0.01$ . Robust SEs clustered on directed-dyads in parentheses. 2-tailed tests of significance used for all variables.

**Table 3. Determinants of Concessions in GATT Dispute Outcomes, 1948-1993**

<i>Concessions</i> <sub>ijt</sub>	Model Estimates		Descriptive Statistics
	Coefficient	Robust SE	2.04±0.85, 1–3
<i>Bandwagon</i> <sub>j,t-1</sub>	0.018	0.045	2.22±2.58, 0–11
<i>Countersuit</i> <sub>ji,t-1</sub>	-0.058	0.222	0.23±0.42, 0–1
<i>Democracy</i> <sub>i,t-1</sub>	-1.027**	0.244	8.16±4.59, -8–10
<i>Democracy</i> <sub>j,t-1</sub>	-0.877**	0.230	9.28±2.46, -6–10
<i>Joint Democracy</i> <sub>ij,t-1</sub>	1.068**	0.241	7.46±4.95, -8–10
<i>Alliance</i> <sub>ij,t-1</sub>	-0.174	0.205	0.58±0.49, 0–1
<i>MID</i> <sub>ij,t-1</sub>	0.021	0.360	0.05±0.22, 0–1
<i>GDP Ratio</i> <sub>ij,t-1</sub>	0.759*	0.352	0.41±0.36, ~0–~1
<i>Trade Dependence</i> <sub>ij,t-1</sub>	2.647	1.370	0.05±0.08, 0–0.35
<i>Trade Dependence</i> <sub>ji,t-1</sub>	0.902	1.352	0.03±0.06, 0–0.44
<i>Trade Surplus</i> <sub>i,t-1</sub>	1.165	0.942	-0.02±0.09, -1.19–0.10
<i>Trade Surplus</i> <sub>j,t-1</sub>	-4.206	3.233	-0.01±0.03, -0.14–0.09
<i>EU</i> <sub>it</sub>	0.021	0.709	0.01±0.09, 0–1
<i>EU</i> <sub>jt</sub>	-0.592*	0.286	0.08±0.27, 0–1
<i>LDC</i> <sub>it</sub>	-0.241	0.305	0.24±0.43, 0–1
<i>LDC</i> <sub>jt</sub>	2.494**	0.510	0.08±0.27, 0–1
<i>Year</i> <sub>t</sub>	-0.021*	0.009	1977±12.9, 1949–1993
Intercept 1	-49.173**	18.324	—
Intercept 2	-48.360**	18.315	—
No. of observations	233	Pseudo-R <sup>2</sup>	0.104
Correctly predicted	50.2%	(38.2% with no covariates)	

\*  $p < 0.05$ , \*\*  $p < 0.01$ . 2-tailed tests of significance used for all variables.