

The World Trade Organization Dispute Resolution Process: Power Politics or Leveling the Playing Field?

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ABSTRACT

Significant scholarly focus has been placed on the World Trade Organization Dispute Resolution Body (DSB), in the context of relations between powerful and weak states. Some authors suggest that the dispute procedures help to ‘level’ the playing field between member states. Through the DSB, weak states are given a voice in international trade issues. Others however argue that the DSB does not alleviate existing inequalities inherent in international trade. Much of the empirical evidence that frames the debate thus far focuses on whether state power factors into access to the DSB procedures. Less has been written however on the relationship between state power and actual formal DSB outcomes. This paper seeks to fill this gap by examining DSB rulings in the context of trade power of countries participating in disputes. I show that there is a statistically significant bias between trade power and outcome at the DSB. Thus, in terms of trade power, the DSB does not help to ‘level’ the playing field between powerful and weak states.

Introduction

The Uruguay round of trade talks between members of the General Agreement of Tariffs and Trade (GATT) ended in 1994 after years of intense negotiations. The result was a complete overhaul of the existing GATT framework, and the adoption of new international trade regulations with a new name – The World Trade Organization (WTO). One of the most significant revisions to the old GATT regulations was the strengthening of the existing dispute settlement procedures. The revised procedures are overseen by the Dispute Settlement Body (DSB) and now constitute an elaborate, multi-step process designed, on paper anyway, to settle trade disputes between member countries in a fair and timely fashion. WTO officials call the DSB “the central pillar of the multilateral trading system”, touting that the revised procedures underscore the rule of law, and makes the trading system more secure and predictable.¹ Since the 1994 overhaul, 322 cases have been brought before the DSB. The majority of cases are settled during the informal negotiation phase (the first phase of the process – designed to allow countries to attempt to reach a solution through negotiation). Approximately one third however reach the formal dispute resolution process that includes a binding Panel and Appeals process.

The dispute procedures have been the subject of scholarly focus and debate. Significant attention has been placed on whether the procedures help alleviate power inequalities between member states or whether the procedures simply reflect power politics already inherent in the international trade system. Many have argued that the dispute settlement mechanisms, steeped in politics and power under the old GATT regime, became grounded in legalized rules and procedures that have made the DSB fair – regardless of state power. In other words, the new procedures have helped to ‘level the playing field’ amongst member countries. Other scholars

¹ This statement comes from a brochure entitled ‘Understanding the WTO’. It is available online at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm

however have argued that the DSB process is still biased in favor of powerful member countries and hence in many ways, reflect the existing power inequalities amongst member countries in terms of trade.

This paper begins by presenting a sampling of the existing arguments that frame this debate. I do so through the theoretical lenses of neo-institutionalism and realism. Much of the debate however has been framed around access to the procedures, (whether weak countries utilize the procedures at the same rate as powerful countries for example). Less has been written on actual DSB rulings and their implications for this debate. In this paper, I attempt to fill this gap by showing that rulings statistically favor more powerful countries. In other words, even if the revised procedures have helped weak countries gain better ‘access’ to the DSB, they face a statistically significant lower chance of actually winning a case than do more powerful countries. Thus I show that, in terms of rulings, power politics still factor into the supposedly ‘legalized’ dispute procedures.

Two brief conceptual clarifications are necessary at this point. First, traditional IR debates that deal with similar topics have been framed around ‘powerful’ verses ‘weak’ countries. However weak member countries have overwhelmingly been absent from the dispute resolution procedures. Hoekman and Mavroidis note that least developed member countries have not been before the DSB at all (Hoekman and Mavroidis 2001, 131) Thus it is not possible to examine DSB outcomes in this manner, (raising immediate questions regarding correlations between state power and the DSB). I propose that the next most fruitful line of research is to examine rulings in the context of ‘more powerful’ and ‘less powerful’ member countries. This method is not ideal, however I argue that if a bias can be found in the context of discrepancies between the powers of disputing parties, the bias would only grow greater if the power disparity

between DSB participants were to increase. Second, the concept of a ‘weak’ state and a ‘developing’ state seems to be conflated in much of the literature dealing with the WTO dispute process. The actual legal text of the WTO uses the term ‘developing’ to refer to states that deserve special concessions as they move through the dispute process. Thus for the purposes of this paper, I use the term ‘developing’ to refer to states that are weak in order to remain consistent with WTO legal text.

The paper proceeds as follows. I begin by briefly outline the WTO dispute resolution procedures. I then summarize the existing arguments regarding the DSB and power politics. I go on to present the methodology and results of the paper. I conclude with a discussion of the results, arguing that power politics are still a significant part of the WTO dispute resolution procedures.

The WTO Dispute Settlement Procedures

The legal text of the WTO dispute settlement process is outlined in Annex II of the WTO rules and regulations.² The document sets out specific procedures for settling trade disputes among member countries, with timeframes for each step in the dispute settlement process. Annex II gives authority to oversee the dispute settlement process to the DSB. The DSB oversees a process that involves four key stages. Preference is given to disputes that can be settled through consultation and mediation. Thus the first stage consists of a consultation phase, where parties are given 60 days to attempt to settle the dispute amicably. As noted above, two thirds of all disputes are settled during this stage.³ If parties cannot come to a mutually agreeable solution to their dispute, they move on to the panel stage. This process typically takes approximately 6 months. In this stage, the DSB establishes a formal panel to hear the case.

² The full legalized text can be viewed online at the official WTO website. Please go to: http://www.wto.org/english/docs_e/legal_e/legal_e.htm#dispute

³ Based on the data I gathered

Panel members consist of ‘qualified’ governmental and/or non-governmental individuals whose home countries are not involved in the case. The secretariat composes any given panel from a running list of individuals deemed qualified to oversee and rule on disputes.

The panel stage resembles a typical court case, where parties submit their cases in writing; and arguments are made in front of the panel. Rebuttals are made, experts are called and the panel writes a final report that determines whether the defendant violated the WTO rules. The Panel findings can only be rejected by a consensus of all 146 member states – thus its conclusions are virtually impossible to overturn. If there is no consensus to reject or if no parties appeal the decision, the report becomes a ruling within 60 days. However, Panel reports are appealed in approximately two thirds of all cases that make it past the consultation phase.⁴ The Appellate Body – a seven-member committee that have 4-year terms, hears the appeal. The Appellate body has the legal mandate to uphold, modify, or reverse the panel findings. The appeals process should not last longer than 60 days and cannot go beyond 90 days. As with the panel report, rejection of the Appellate body ruling is only possible by consensus of member countries. The final step is the implementation phase. If a country is found to be in violation of WTO rules, the offending country must either bring its domestic policies into line with WTO regulations, or negotiate compensation to the harmed party. If this doesn’t happen, trade sanctions may be imposed.

Existing Scholarly Arguments

The Dispute Procedures ‘Level’ the Playing Field

The argument that the dispute procedures help to level the playing field between weak and powerful states can be framed through the theory of neo-institutionalism. At the risk of oversimplifying a complex theoretical framework, the neo-institutionalist argument revolves

⁴ Based on the data I gathered

around some key premises. Neo-institutionalists accept traditional realist assertions that power and competing interests among states are endemic to international relations (Keohane 1998, 86). However, a central hypothesis of the neo-institutionalist argument is that international organizations (IOs) can foster cooperation amongst states and smooth out discrepancies between powerful and weak states. They do so, for example, by inducing an element of reciprocity. In terms of the WTO disputes, there are incentives for governments to live up to the agreed upon procedures. Doing so will help ensure that other states will return the favor in the future. The general conformity to rules increases the predictability of state behavior, thereby making overall cooperation more feasible. To the neo-institutionalist, weak states are especially privy to the benefits that come with IO membership. Keohane and Nye suggest that, “[i]nternational organizations are frequently congenial institutions for weak states” (Keohane and Nye 2001, 31). The DSB, for example, gives weak states a voice – one with teeth, in an international arena dominated by state power.

Kim Van der Borghht notes that “[t]he DSU [dispute settlement understanding] changed the nature of the dispute settlement process from a diplomatic to a legalized process and from a power-based to a rule-based procedure” (Van der Borghht 1999, 2). Many scholars have argued that this legalization of the dispute proceedings has in fact made the WTO a ‘congenial institution’ for developing states. Julio Lacarte-Murio and Petina Gapah for example note that the procedures are based on the principle that any member can challenge another member. Developing member states are theoretically on equal footing with powerful ones. Specifically discussing the effectiveness of the appellate body process for weak countries, they note that:

The Appellate Body is an integral part of a rules based, ‘judicialized’ dispute settlement mechanism, which ensures transparency and predictability. This system works to the advantage of all members, but it especially gives security to the weaker members who often, in the past, lacked the political or economic clout to enforce their rights and to

protect their interests. In the WTO, *right*, preserves over *might* (Lacarte-Muro and Gappah 2000, 401)

A read through the rules and regulations pertaining to the DSB as set out in Annex II do reveal procedures that would give developing countries a voice when it comes to resolving trade disputes. For example, dispute outcomes are binding – powerful countries cannot block them. As well, any member country now has a legal right to the establishment of a panel if the dispute is not resolved during the more informal consultation phase. In fact, under Annex II, developing countries even get concessions that are not available to powerful members. For example, Article 24 states that, at the request of the developing country, the DSB can actually provide resources to the country, with the aim of helping to resolve the dispute. Article 12.10 of the DSU states that parties can extend otherwise rigid time periods in place for dispute settlement when a developing country is involved. Article 4.10 calls for special attention to be given to the “particular problems and interests of developing country Members”. As well, under Article 8.10, developing countries have the right to ensure that at least one panel member is from a developing country.

The DSB has had some overall success with regards to developing countries. In terms of general usage, the new dispute settlement procedures seem to be quite popular. For example, there have been over 3 times more consultations on a per annum basis annually than under the old GATT procedures (Hoekman and Mavroidis 2001, 131). This increase in utilization indicates that member countries seem to recognize the importance and legitimacy of the DSB. This is helpful for developing countries, given the legal nature of the procedures. Further, developing countries seem to frequent the procedures more than under the former procedures. Keisuke Lida, notes that developing countries have become more aggressive in utilizing the DSB. He found that in 2000, 51% of cases and in 2001 71% of cases filed with the DSB came

from developing countries and only 37% were filed against developing countries (Lida 2004, 219).

These findings however do not tell the whole story. The dispute procedures are being used more significantly more frequently than under the old GATT framework, and developing countries do constitute a notable proportion of this increase. However, this does not mean that everyone is getting a fair shake in terms of formal outcomes. The fact that developing countries on the whole are using the procedures more often does not indicate they are actually winning cases more often. In other words, equal access to the system might not translate to a 'level' playing field.

The DSB Reflects the Power Politics of International Relations

Realist theory underpins the arguments of those who suggest that power politics still factor significantly into the DSB processes. Though realists see states as the most powerful and significant actors in international relations, many do see a role for international institutions. Within the realist framework however, IOs (and their various functions) are merely tools that powerful states have at their disposal to further power gains in the international arena. IOs will thus inevitably reflect power distributions among states. John Mearsheimer summarizes a realist perspective of IOs: “[r]ealists maintain that institutions are basically a reflection of the distribution of power in the world. They are based on the self-interested calculations of the great powers, and they have no independent effect on state behavior”(Mearsheimer 2001, 13). Further, he argues that, “[t]he most powerful states in the system create and shape institutions so that they can maintain their share of world power, or even increase it. In this view, institutions are essentially arenas for acting out power relationships”(Mearsheimer 2001, 13).

Many scholars adopt various strands of realism to examine power politics within the WTO. Often research takes the form of comparing what is on paper, in terms of regulations, to what really takes place at the WTO. For example, proponents of the WTO often note the legally grounded consensus approach to policy formation - where every country has an equal vote. However, as Walden Bello notes that, under the GATT, there had not been an actual vote since 1959. Within the WTO framework, Many argue that ‘consensus’ is actually a process where the “big trading countries impose their consensus on the less powerful countries” (Bello 2003, 1).

Many argue that power politics have spilled into the supposedly ‘legalized’ and ‘rules based’ dispute settlement procedures. One must be suspicious for example of the informal and highly confidential consultation phase – the first stage of the dispute process where countries are encouraged to negotiate settlements to their disputes. Unfortunately, any documentation produced during this phase, including consultation outcomes, are not public record and thus any empirical review is not possible. However the negotiation process during the last few rounds of trade talks provides a window into how negotiations probably work during the consultation phase of the dispute settlement procedures. For example, it is well known that much of the negotiations take place during so called ‘green room discussions’. Such discussions are typically exclusionary – attendance is by invitation only (Jawara and Kwa 2004, 19). In Seattle, between 20 and 30 countries were involved (effectively leaving out approximately 100 countries). In Doha, the draft declaration for the Ministerial meeting was written among an inner circle of approximately 25 participants (Bello 2003, 3). Developing countries are sometimes allowed into these meetings, however there are instances where they are greatly outnumbered in terms of participants, are often not allowed to speak. In one instance, the Zimbabwean minister had to sit on the floor of one meeting because he had managed to sneak into the room (Jawara and Kwa

2004, 105). If developing countries do not have an effective voice in WTO negotiations, one must wonder about their power in the consultation phase of dispute resolution.

Although many have argued that developing countries have become more aggressive in utilizing the DSB procedures, their overall use is small when compared to their membership numbers. Many researchers have noted the exceedingly small number of developing countries that have appeared before the WTO. This is especially troubling given that 70% of member countries are considered 'developing' or 'in transition' (Brown 2004, 59). Several reasons have been attributed to this discrepancy. Jose Luis Perez Gabilondo suggests that perhaps the reason that developing countries have not utilized the DSB to a great extent reflects the lack of human resources and administrative structures necessary to detect infractions of the overwhelmingly complex WTO trade laws (Gabilondo 2001, 285). Even if a developing country is able to find a violation however, they still face the overwhelming cost of bringing a case to trial. Bernard Hoekman and Petros Mavroidis note that developing countries are at a probable disadvantage because of the scarcity of resources and expertise (Hoekman and Mavroidis 2001, 135).

Specifically, they argue that powerful countries are:

well equipped with legal talent, are well briefed by export interests, and have a worldwide network of commercial and diplomatic representation that feeds their systems with relevant data. Developing countries in contrast have limited national expertise available and find it difficult to collect the type of information that is required to bring or defend WTO cases. The cost of bringing cases to the WTO is substantial and prevents many developing countries from using the system to their full advantage (Hoekman and Mavroidis 2001, 136)

Hoekman and Mavroidis also argue that developing countries might fear retaliation, whether it be through counter claims, or consequences in non-trade areas, such as aid flows. And developing countries are themselves not really in a position to retaliate if a more powerful country does not abide by a ruling. Developing countries are not really a credible threat because

raising import barriers as a retaliatory measure will certainly come at a greater harm to them than the target infracting country (Hoekman and Mavroidis 2001, 134-135).

Again, the power politics argument has focused on either access to the procedures, or speculation as to how power might factor in. Much has been written in this regard. The next section outlines how I add to this debate by placing it in the context of actual DSB outcomes and state power.

Methodology

Data was collected on the outcomes of all 80 dispute resolution cases brought before a Panel from the time the DSB began ruling on cases in 1996 until the end of 2003.⁵ Data from 2004 cases were not collected because the measures I have used to examine the relationship between DSB outcomes and state power were not yet available at the time this research was conducted. As well, cases that were resolved during the consultation phase of the dispute resolution process were not included in the empirical evidence because the scope of this paper is focusing on formal outcomes at the DSB, instead of the results of the more informal consultation phase.

Information gathered for each case included the complainant, the defendant, and the Panel outcome (violation or no violation). In cases where violations occurred, the Panel often found that the defendant violated some, but not all of the trade rules outlined by the complainant. For the purposes of this paper, it was determined that if the defendant violated any aspect of WTO law, such that they had to bring existing domestic trade policy into conformity the law, the

⁵ Some of the data was gathered from an existing table compiled by James Smith. He documented Panel outcomes that had been subsequently appealed to the Appellate Body. This table can be found in James Smith "Inequality in international trade? Developing countries and institutional change in WTO dispute settlement" in *Review of International Political Economy*, 11:3, August 2004, 542-273. Any outcomes that did not go to appeal, and all cases in 2003 were coded directly from the panel and Appellate body reports that can be found online at http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm

defendant was coded as being in violation, (even if they were not found in violation of all aspects of the case).

If the case was appealed, the subsequent ruling of the Appellate body was also coded. Article 17.9 of Annex II gives the Appellate body the legal mandate to a) uphold, b) modify, or c) reverse the legal findings and conclusions of the Panel.⁶ Appellate decisions that ‘upheld’ the Panel ruling were coded as per the original panel ruling. Appellate decisions that were ‘upheld on a modified basis’ were coded in favor of the original winner in the Panel process because the essence of the original decision was retained. In other words, if the Panel found the defendant in violation, the Appellate body would maintain this decision, however would change aspects of the violation. For example, in *Turkey – Restrictions on Imports of Textile and Clothing Products* (1999), the Appellate body found that the Panel focused on the wrong Articles when finding that Turkey’s import restrictions were in violation of WTO trade regulations. The Appellate body however upheld the original violation, albeit under different aspects of WTO law. In 20 cases the Appellate reversed some aspects of the Panel ruling and upheld other aspects of the same ruling. In other words, the Appellate body ‘partially reversed’ the original Panel ruling. In these instances, the details of the cases were reviewed to determine the significance of the partial reversal. In 19 of the 20 cases, it was determined that the defendant was still in breach of WTO rules such that changes to their domestic trade policy were necessary conform with WTO regulations.⁷ Sixty-six cases were placed into the category of ‘violation’ - decisions in favor of the complainant. These included the following: a) 18 cases that were decided in favor of the

⁶ The appellate body sometimes also ‘rejects’ or ‘declines to rule’ on aspects of the Panel ruling. However in these instances, the original panel ruling is not affected, and thus was not addressed in this paper

⁷ However, in *European Community - Measures Affecting the Importation of Certain Poultry Products*, brought by Brazil in 1998, the Panel found in favor of the EC for all but one of the charges from Brazil. The Appellate body in turn reversed the violation brought by the Panel, thus finding in favor of the EC. (The Appellate body found a new violation but it was deemed insignificant). For this case, the ruling was re-coded in favor of the defendant (the EC).

complainant at the panel body and not appealed, b) 21 cases that were decided in favor of the complainant at the panel body and upheld on appeal, c) 8 cases that were decided in favor of the complainant and upheld on a modified basis at appeal, d) 19 cases that were decided in favor of the complainant and was partially reversed on appeal.

Fourteen cases were placed into the category of ‘no violation’ – decisions in favor of the defendant. These included the following: a) 6 cases that were decided in favor of the defendant at the panel body and not appealed, b) 2 cases that were decided in favor of the defendant at the panel body and upheld on appeal, c) 3 cases that were decided in favor of the defendant at the panel body and upheld on a modified basis at appeal, d) 2 cases that were decided in favor of the complainant at the panel body and was reversed on appeal, and e) 1 case that was decided in favor of the complainant that was partially reversed on appeal.

To examine the participant’s power as a trading partner at the WTO, the measures ‘total imports of goods and services’ and ‘total exports of goods and services’ were also coded.⁸ These measures were used because, logically, a country’s power as an exporter and importer would determine their power as a trading partner in the WTO. GDP and GDP per capita data, traditional measures of domestic economic power, are not as relevant for this paper because in some instances WTO member countries have relatively low GDP and/or GDP per capita numbers, yet high import and export data, (for example, in terms of defendants, India had the lowest GDP per capita overall, yet reached as high as 9th out of 16 defendants in terms of total imports, since the DSB began hearing cases). Import and export data was gathered for the year of the final decision, either the year of the panel outcome if the case was not appealed or the year

⁸ To collect Import data, I used the measure - Imports of Goods and Services – (Constant 2000 US). To collect export data, I used the measure - Exports of Goods and Services – (Constant 2000 US). This data was collected from the World Bank Development Indicators Database which is available online at: <http://devdata.worldbank.org.lp.hscl.ufl.edu/dataonline/>.

of the Appellate body decision if the case went to appeal. In addition, the income group classification of the DSB participants was also gathered. Income group classification is the World Bank's main criterion for classifying domestic economies and thus is a good measure to see which countries are participating in DSB processes in terms of overall economic power. The Income Group Classification is divided into the following categories: a) High Income, b) Upper Middle, c) Lower Middle, and d) Low Income.⁹

In 17 of the 80 cases (21%), multiple complainants were involved. In these cases, the trade data of the most powerful complainant was used in the analysis. The data of the most powerful complainant was used because of my interest in disparities between complainants and defendants in terms of trade power. When there are multiple complainants on a case, presumably all of the complainants benefit from the resources that the most powerful of them bring to the process.

Results

Analysis focused on 2 issues, 1) describing characteristics of the complainants and defendants and comparing their relative trade power, and 2) examining whether disparities in power are associated with the outcomes of the dispute resolution process.

Characteristics of Complainants and Defendants

First I examined who the complainants and defendants were in terms of power. It is notable that 146 countries are members of the WTO, yet all 80 cases examined were brought by only 26 of those countries. In other words, only 18% of WTO members have participated in DSB proceedings. Of these 26 countries, 59% of the time the complainant was the United States, Canada, or the European Union, (other complainants included Brazil, Japan, India, and

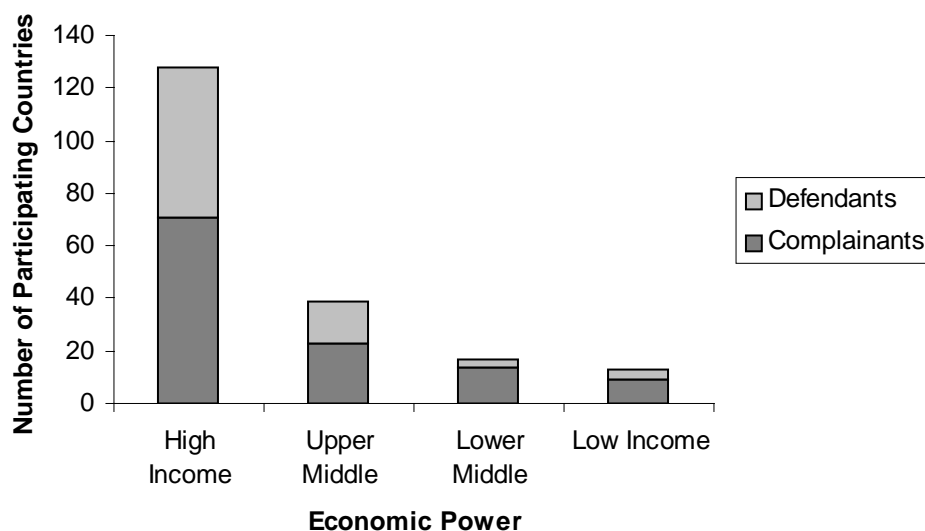
⁹ Income Group Classification is based on GNI per Capita (Atlas Method) and the World Bank categorizes countries as follows: Low Income (\$765 and below), Lower Middle (\$766-\$3035), Upper Middle (\$3036-9385), and High Income (\$9386 and above)

Korea, among others). The same countries that appear regularly as complainants were also defendants much of the time. The United States, Canada, and the European Union were defendants in 61% of cases. Clearly these three members figure prominently in the WTO dispute process. It should not be assumed however, that the WTO dispute resolution process consists entirely of the United States, Canada, and the European Union arguing with one another, although these cases did account for 22 out of the 80 cases examined.

It is also interesting to note the trends pertaining to DSB participation in terms of overall economic power. Figure one shows the economic disparities in terms of countries that have participated in DSB proceedings, (using the World Bank income group classification). Clearly, the more economically powerful you are, the greater chance you will participate in the WTO dispute resolution processes.

Figure 1

Countries participating in Panel and Appellate Procedures in terms of Economic Power.



Next I examined the mean import and export data of complainants and defendants in the 80 cases. The findings are shown in Table 1. A paired sample t-test revealed that on average,

the differences in import and export measures between complainants and defendants are not statistically significant at the $<.05$ level. At first glance, therefore, it does not appear that there are large differences between the complainants and defendants overall in terms of trading power.

Table 1

Import and Export Power of Complainants and Defendants

	Complainant	Defendant	T Test
Imports of Goods and Services			
Mean	1015744921704	851384841225	.231
SD	915350715670.6	745890291195.7	
Exports of Goods and Services			
Mean	959094842490.7	719851016525	.071
SD	892115147061.8	662013891582.9	

It is deceiving to consider only the average import and export measures of complainants and defendants, however. Doing so tells us little about how the trading powers of countries are *paired* in dispute cases. To see how the trading powers of countries are paired, I examined the discrepancy between the complainant and defendant trade power measures. For import power, in 41% of the cases ($n = 33$) the complainant had a lower import measure than the defendant. In the remaining 59% of cases ($n = 47$) the complainant had a higher import measure than the defendant. For export power, in 40% of the cases ($n=32$) the complainant had a lower export

measure than the defendant. In the remaining 60% of (n=48) the complainant had a higher export measure than the defendant.

Analysis of Rulings

To see whether the trading power of complainants and defendants effect the rulings, I estimated two chi-square test to examine whether they were associated with the import and export powers of the defendants. The import and export power measures yielded the same results and thus have been represented in the Table 2 as ‘trade power’. The findings were significant. As can be seen in Table 2, fewer cases were found in favor of the defendant when the defendant was less powerful than the complainant in terms of trade. These findings indicate complainants and defendants have a greater chance at winning at the DSB if they are more powerful.

Table 2

Outcome Broken Down by Discrepancy in Complainant and Defendant’s ‘trade’ power

Trade Power	Defendant Loses	Defendant Wins
Defendant more powerful	22 33%	10 71%
Defendant less powerful	44 66%	4 29%
	66 100%	14 100%

$$\chi^2 (1, 80) = 6.984, p = 0.008$$

The first result of interest in table 2 is that the defendant usually loses at the DSB. In fact, out of the 80 cases coded into the dataset, the defendant lost 66 (82%) of these cases. However, the results presented in table 1 reveal that when the defendants win their case, 71%

of time they are more powerful than the complainant. The power discrepancy is further supported by the fact that defendants lose a disproportionate amount of the time (66%) when they are less powerful.

Discussion

Many authors have shown how developing countries use the DSB dispute procedures disproportionately less than developed countries. The first set of findings in this paper support the existing data on the DSB and weak countries. The trends in figure 1 show that there is a high discrepancy in terms of participation at the DSB and income group. As well, it is notable that The United States, The European Union, and Canada comprise 59% of all complainants and 61% of all defendants. Thus, in terms of overall usage, the DSB is primarily a tool for the powerful. However Table 1 shows that there are no significant discrepancies between complainants and defendants in terms of import or export power. This indicates that powerful countries are not using the formal dispute process to directly exploit developing countries (or vice versa). Given that two thirds of cases are settled before the formal Panel/Appellate process however, this finding does not mean that powerful countries are not exploiting developing countries over all – simply that they are not using the formal parts of the DSB process to do so.

Some authors have suggested that developing countries need to be empowered to gain better access to the dispute process – providing financial resources to build a case for example. However this research suggests that this won't solve the problem. The findings in this paper show a discrepancy in rulings at the DSB in terms of state power. Less powerful countries have won cases as complainants ($n = 22$) and as defendants ($n = 4$). Nonetheless, trade power is significantly associated with rulings at the DSB. Specifically, when a defendant is less powerful

than the complainant they are significantly less likely to win the panel or appellate body ruling. When defendants are more powerful than complainants, however, they are more likely to win their cases. Thus, even if developing countries are given incentives to utilize the DSB process, they typically will lose the case anyway. Therefore, given the findings in this paper, there is little incentive for developing countries to allow a case to go all the way to the formal Panel and Appellate Body phase.

The DSB thus disproportionately favors more powerful countries in many respects. The biased negotiation process at the last few rounds of trade talks gives an indication of how developing countries probably fair in the similarly structured consultation phase of the dispute procedures. It is also primarily powerful countries that bring cases in front of the formal Panel/Appellate process. Finally this paper has shown that there are biases in rulings with regards to state power. Such bias would probably increase if developing countries came up against developed ones more often at the dispute procedures. This paper thus lends weight to the existing evidence that power politics are a factor in the WTO dispute process.

Conclusion

The findings in this paper leads to further questions for research. I have shown that there is bias in rulings with regards to state power. However, it is notable that less powerful countries have won cases. An interesting line of research would be to examine whether developing countries simply win 'symbolic' cases. Perhaps more powerful countries lose cases that are unimportant to them to give a sense of legitimacy to the dispute resolution process. Research would have to be conducted to examine the economic impact of cases where powerful countries lost. It would also be interesting to examine whether powerful member countries make the necessary policy changes, upon losing at the DSB.

Although, on paper, the legal nature of the DSB mandates that developing and powerful countries be on an equal footing with regards to the settlement of disputes. This paper, and others, has shown that WTO disputes are still steeped in power politics. Changes in the regulatory framework of the system might be a necessary first step to alleviate the power discrepancy. For example the confidential consultation phase should be eliminated. At least then, disputes would become more transparent. However such steps would not eliminate the discrepancy between state power and rulings. Power politics seem to be at play at the WTO dispute resolution process.

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