DOES THE WTO WORSEN TRADE DISPUTES?: EVIDENCE FROM US CASES

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Abstract

A major achievement of the World Trade Organization (WTO) is its enhanced dispute settlement mechanism that formalizes and facilitates the settlement of contentious trade disputes. The United States, long-time user of its Section 301 ("Unfair Trade") trade dispute law, was a supporter of establishing stronger WTO disciplines and is a major user of the WTO dispute settlement process. US data suggests that the WTO increases the probability of government-initiated cases and lengthens cases begun under WTO auspices by about 10 percent (2 1/2 months). The WTO effects, however, are numerically smaller than the influence of domestic political factors. Cases that went to WTO panels—while lasting longer than other cases—nevertheless required an average of 16 fewer months than those that went to GATT panels. The WTO also appears to have reduced the probability of business-initiated trade disputes.

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DOES THE WTO WORSEN TRADE DISPUTES?

The US Congress identified the establishment of a system of effective and expeditious dispute resolution as its first principle negotiating objective in the Uruguay round of trade negotiations that began in Punte del Este, Uruguary in September 1986 and ended in Geneva, Switzerland in December 1993. Along with the United States, signatories to the General Agreement on Tariffs and Trade (GATT) sought to clarify mechanisms that would allow arbitration by neutral countries to the dispute, enforce timetables for completion of the dispute process, and ensure that defendant countries could not block the dispute settlement process or ignore panel decisions. Negotiators sought a range of objectives to accomplish these goals, including greater discipline on the ability of large trading participants such as the United States or the European Union to ignore international decisions on their trade actions[1]. However, a simpler, more streamlined, and less burdensome mechanism for settling trade disputes might have the paradoxical effect of *increasing* trade disputes at the same time that it decreased processing time by lowering the tangible and intangible costs to a complainant. This paper examines this hypothesis by considering the impact of the World Trade Organization (WTO) on the trade disputes of the United States, a major trading country, a strong supporter of the WTO and one of the major users of the dispute settlement mechanism.

I. Dispute Settlement in Theory

The General Agreement on Tariffs and Trade has always endorsed dispute settlement as one of its principle tenets. There is a strong contrast, however, between GATT and WTO dispute settlement mechanisms.

A. The GATT Process

Consultation and dispute settlement under GATT were governed by Articles XXII and XXIII, respectively. In many ways the articles were an *encouragement* to dispute settlement rather than an actual mechanism to achieve it. Indeed, the belief that GATT provisions were too weak was the rationale for their revision in WTO.

[1]Prior to establishment of the World Trade Organization (WTO), it was not uncommon for the United States to be in technical violation of its GATT obligations through application of its Section 301 "Unfair Trade" law dating to the Trade Act of 1974.

The language of Section XXII.1 sets the tone early in the two articles by urging that the contracting parties "shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation." Article XXII.2 permited contracting parties to consult with noninvolved countries "in respect of any matter for which it has not been possible to find a satisfactory solution through consultation." Failure to reach agreement was dealt with in Article XXIII, titled *Nullification and Impairment*. Article XXIII, paragraph 1 provided for "written representations or proposals" to the other contracting party. Failing resolution, paragraph 2 provided for appeal to the GATT at large:

> The Contracting Parties shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate....If the Contracting Parties consider that the circumstances are serious enough to justify such action, they may authorize a contacting party or parties to suspend the application to any other contracting party or parties of such concession or other obligation under this Agreement as they determine to be appropriate in the circumstances.

The country having concessions withdrawn under Article XXIII.2 was free to withdraw from the Agreement if it chose by giving notice no later than sixty days from the date of suspension.

In essence, the provisions suggested bilateral negotiations, followed by the solicitation of an opinion from the other contracting parties if no resolution was reached. In subsequent practice the GATT council regularized recommendations of the contracting parties by establishing panels, generally consisting of three experts from countries without a direct interest in the matter, and having their reports adopted by the GATT. From 1947 to the early 1990s over 100 such panels were established.

Since panel reports were adopted by concensus their adoption could be blocked by the losing country. Even the formation of a panel itself could be blocked, as, for example, the European Union did for the Third Country Meat Directive case in October 1987 and at other times.[2] Presuming a panel was formed and its report adopted, GATT sanctioned the injured party seeking authorization to take retaliatory action. In only one case was such retaliation authorized, though countries like the United States took retaliatory action under its Section 301 trade laws. The fact that retaliatory action was authorized only once was more an indication

[2]The problem of blocked formation of panels was treated in the Uruguay Round Mid-Term Review Ministerial Meeting held in Montreal in December 1988. New rules were adopted that included greater automaticity in the establishment of and composition of panels so that these decisions would no longer depend on the consent of the parties to the dispute. WTO rules described below incorporated these changes.

of the ineffectiveness of the process than a statement of GATT's success. In fact, the force of GATT operated primarily through public pressure and the credibility of a country in the trading system if it flaunted rules too flagrantly or too often.

B. The WTO Process

The World Trade Organization differs from GATT in important ways including that the WTO is a permanent institution with its own secretariat, it applies to goods trade, services trade, and trade-related intellectual property. It has a dispute settlement system that is better defined, faster, and automatic. The main changes to the dispute settlement mechanism involve the strict time limits for each part of the process, the guaranteed right to a panel, and the legitimization of retaliatory actions in the event that a violating party does not accede to a panel's decision.

In contrast to GATT Articles XXII and XXIII which covered less than two pages, the WTO Dispute Settlement Understanding (DSU) consists of 43 pages and over 11,700 words that describe in detail each step of the process. Dispute settlement in the WTO consists of six main components: Consultation, establishment of panels, panel examinations, appeals and adoption of panel reports, implementation, retaliation and arbitration. The Dispute Settlement Body (DSB) of the WTO exercises the authority of the General Council and the councils and committees of the covered agreements relevant to the dispute.

WTO members are required to enter into talks within 30 days of a consultation request from another member. If after 60 days of consultation, there is no resolution reached, the complaining party may request the establishment of a panel.[3] The panel must be established no later than the meeting of the DSB following the request. The composition of the panel will be selected within 20 days of its establishment.[4] Panels consist of three well-qualified persons with the appropriate background and experience from countries that are not party to the dispute.

Panels have six months to complete their work, normally including two meetings with the parties and one meeting with third parties. During deliberations the panel may appeal to an Expert Review Group. Once its deliberations are completed, panel reports are adopted by the DSB within 60 days of their issuance, unless the DSB decides by consensus not to adopt or one of the parties notifies the DSB of its intention to appeal the report.

Appelate review is an innovation of the WTO dispute settlement process. Appeals are

[3]If consultation was refused the complaining party may immediately request a panel.

[4]Ten days more may be allowed if the WTO Director General is asked to pick the panel by one of the parties. 20 days may also be allowed to settle differences over the terms of reference to apply to the panel. The total time could, therefore, be up to 50 days in these cases.

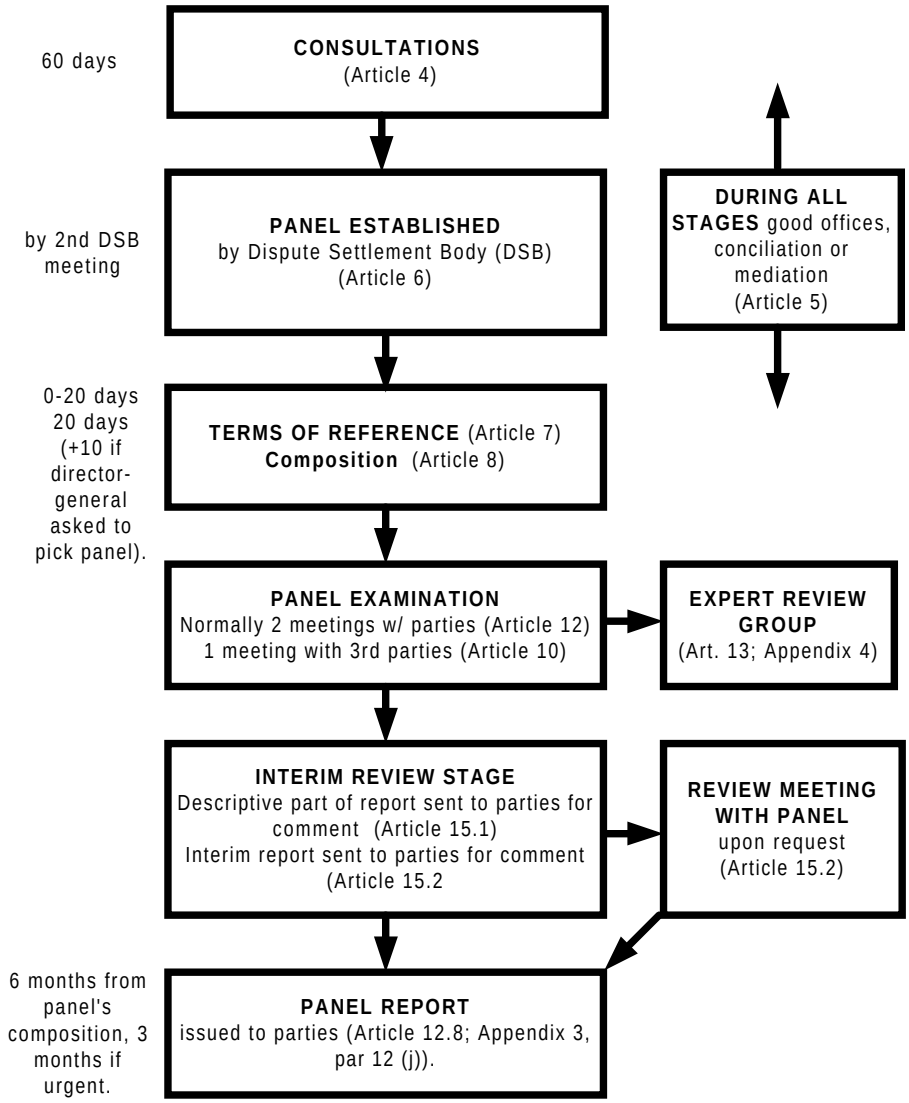


Figure 1: WTO Dispute Settlement: Consultation to Panel Report

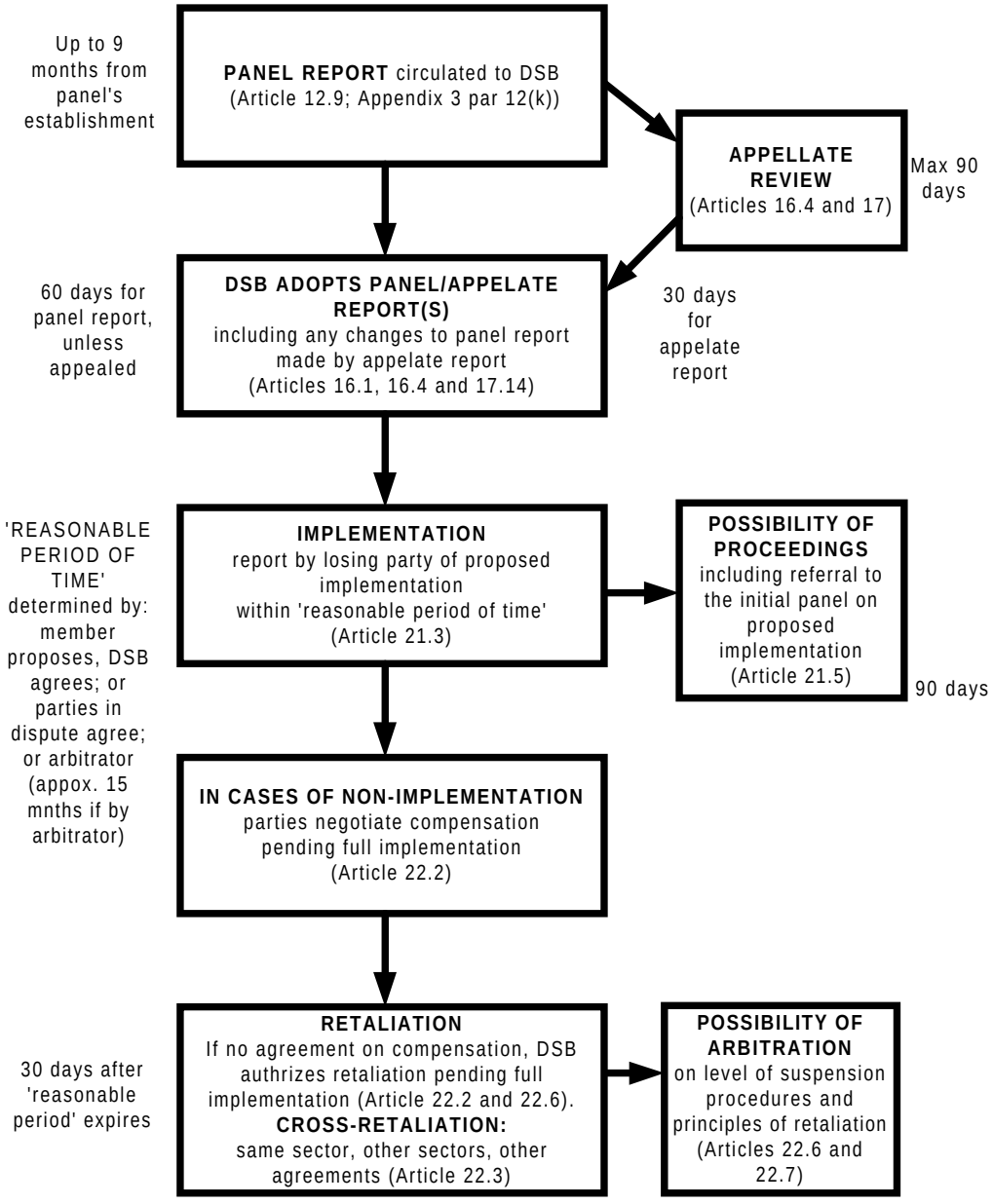


Figure 2: WTO Dispute Settlement: Appelate Process to Retaliation

limited to issues of law and its interpretation by the panel. The standing Appelate Body, made up of seven individuals who serve staggered 4 year terms, has 60 days from the time of request to consider the appeal.[5] Three members of the Appellate Body serve on a given case. The Appellate Body report goes to the DSB for adoption within 30 days and unconditional acceptance by the parties, unless the DSB decides by consensus not to adopt the Appelate Body report. Article 20 of the Understanding on Rules and procedures Governing the Settlement of Disputes reads

> Unless otherwise agreed to by the parties to the dispute, the period from the date of establishment of the panel by the DSB until the date the DSB considers the panel or appellate report for adoption shall as a general rule not exceed nine months where the panel report is not appealed or 12 months where the report is appealed.

Once a panel report is adopted, the offending country has 30 days to report its intentions about implementation. Including the 60 days of consultation, the total elapsed time for a dispute is therefore normally 12 months, fifteen if the panel report is appealed. The offender has a "reasonable period of time" to comply with the DSB findings. "Reasonable" times are those proposed by the member and agreed to by the DSB, or mutually agreed to by the parties within 45 days of the adoption of the recommendations and rulings, or in the absence of the above, a period of time determined through binding arbitration within 90 days after the date of adoption. Arbitration guidelines are that implementation should not exceed 15 months from the date of adoption of a panel or Appellate Body report. The WTO dispute settlement understanding provides for the DSB to monitor ultimate implementation.

If implementation is infeasible, the offending party is enjoined to negotiate a mutually acceptable compensation (normally the lowering of duties on an alternate list of goods). If no agreement is reached within 20 days in cases where there is noncompliance or non-implementation, rules are set out for the suspension of WTO concessions to the offender. When a complainant has requested DSB authorization to suspend concessions or other obligations to the offender, the authorization will be granted within 30 days. Disagreement over the level of suspension may be referred to arbitration. When possible, suspensions should be in the same sector involved in the dispute, but when this is not practical suspension of other concessions may be made. The WTO affirms the principle that members should not make unilateral determinations of violations or suspensions, but use the dispute settlement rules and procedures of the WTO.

As the preceding summary shows, the entire dispute settlement process—from first complaint to implementation or suspension of concessions—is carefully described in legal detail and all

[5]This may be extended to no more than 90 days in exceptional cases if the Appelate Body requests it of the DSB in writing.

Period Name	Period	Last Panel Adoption	Period Length (Yrs)	Panel Reports Adopted	Reports Adopted per Year
Pre-Sec 301	1 Jan.'48-31 Dec.'75	20-Jul-73	27	27	1.0
Post-Sec 301	1 Jan.'75-31 Dec.'85	18-Jul-85	11	31	2.8
Uruguay Round	1 Jan.'86-31 Dec.'94	4-Oct-94	9	43	4.8
WTO (Completed Panels)	1 Jan.'53-31 Dec.'99	31-Jul-99	4.58	22	4.8
WTO (Still-Active Panels)	1 Jan.'95-31 Dec.'99	31-Jul-99	2.33	22	9.4

Table 1: WTO and GATT Dispute Settlement Panels

eventualities allowed for. Holding fixed a case's complexities, clearer rules should reduce the time needed to resolve the dispute. At the same time, better-defined settlement rules may cause more cases to be filed, as well as encourage more difficult cases to be filed. If the latter occurs, the combined effect of the WTO dispute settlement mechanism could be to increase the average length of case. Which influence predominates is an empirical question.

II. Disputes in Practice

From its 1 January 1995 inception to August 1999, the WTO received 178 consultation requests under its dispute settlement provisions representing 137 distinct matters. 22 cases were completed under the panel process, 29 cases were open, 22 panels were active, and 37 cases were otherwise settled or inactive. Looking just at cases resulting in panels (completed and active), this represented 9.6 panels per year over the WTO's first 4.6 years. The rate of panel completion for the same period was 4.8 per year.

How does this experience compare to GATT? Table 1 compares the number of WTO cases to prior periods. In the 47 years from the beginning of GATT on 1 January 1948 to the end of 1994, there were 101 panel reports adopted, or an average of 2.1 per year. Comparing this to the WTO rate of 9.6 panels per year does not tell the whole story, however, because the experience under GATT was not uniform. Table 1 divides the GATT period into three parts. The *Pre-Section-301* period runs from 1948 to passage of the US Trade Act in 1974,[6] the *Post-Section-301* period covers 1975-1985, and the *Uruguay Round* period runs from 1986 until the

[6]This act created the US Section 301 trade law.

starting date for the WTO. The WTO period runs from 1 January 1995 to the present.

When viewed sequentially, there is a clear trend to increased use of the panel process that is continued in the WTO. In the pre-Section-301 period, there were a total of 27 panel reports adopted, or an average of 1 per year.[7] In the post-Section-301 period, in contrast, there were 31, or 2.8 per year. The trend increased to 43 panels during the Uruguay Round period, or 4.77 per year.[8] The 4.8 per year completion rate of WTO panels is therefore comparable to the experience of the most recent Uruquay Round period of GATT. Considering the WTO's large number of still-active cases, however, the possibility that the WTO has encouraged a further increase beyond the GATT level cannot be ruled out.

III. The U.S. in GATT and WTO Disputes

Table 2 displays the participation of the United States in the panel process, both of GATT and the WTO. In the pre-Section-301 era, the United States was complainant in 4 of 27 cases, or 14.8 percent. The United States was the defendant in 5, or 18.5 percent. Combining both roles, it was part of 9 cases or 33.3 percent. In contrast, in the post-Section-301 era the US was complainant in 13 of 31 cases (41.9 percent) and defendant in another 6 cases (19.4 percent) for a total of 19 cases—61.3 percent of the total. The trend to increasing US presence in dispute settlement continued during the Uruguay Round period when the US was complainant in 13 of 43 cases (30.2 percent) and defendant in 17 cases (39.5 percent), for a combined total of 69.8 percent of all cases.

In the WTO era the United States was complainant in 54.5 percent of completed cases[9]. Since the US was the defendant in another 22.7 percent of the adopted panel reports[10], the United States was party to fully 77.3 percent of the completed WTO cases![11]

We therefore see a trend, continued under the WTO, to greater use of dispute settlement proceedings. With its litigious leanings as regards international trade, the United States plays a large and growing role in the dispute settlement process, especially as complainant. For this reason, as well as good documentation of its activities, it is an ideal candidate to study the impact of WTO on dispute settlement.

[7] No panel reports were adopted in 1974.

[8] No panel reports were adopted in 1986 or 1987. The rate per year if these years are omitted is 6.1.

[9] 12 of 22 cases.

[10] 5 of 22.

[11] At the time of writing, the US role in still-active cases—complainant in 22.7 percent of cases and defendant in 40.9 percent—was lower, but still 63.6 percent.

Period Name	Period	Last Panel Adoption	Total Reports	US-Complainant # Cases (per Yr.)	US-Defendant # Cases (per Yr.)	US-Complainant % of All Cases	US-Defendant % of All Cases
Pre-Sec 301	1 Jan.'48-31 Dec.'75	20-Jul-73	27	4 (0.1)	5 (0.2)	14.8%	18.5%
Post-Sec 301	1 Jan.'75-31 Dec.'85	18-Jul-85	31	13 (1.2)	6 (0.5)	41.9%	19.4%
Uruguay Round	1 Jan.'86-31 Dec.'94	4-Oct-94	43	13 (1.4)	17 (1.9)	30.2%	39.5%
WTO (Completed Panels)	1 Jan.'95-31 Dec.'99	31-Jul-99	22	12 (2.6)	5 (1.1)	54.5%	22.7%
GATT (Totals)	1 Jan.'48-31 Dec.'94	31-Dec-94	101	30 (0.6)	29.7%	28 (0.6)	27.7%
WTO (Still-Active Panels)	1 Jan.'95-31 Dec.'99	31-Jul-99	22	5 (2.5)	22.7%	9 (3.9)	40.9%

Table 2: Probability of Business-Initiation of Section 301 Cases

IV. U.S. Dispute History

Figure 3 shows the number of U.S. Section 301 cases initiated by year for the 25 years between 1975 and 1999. New cases average 3 per year, but have been as high as 9 per year on three occasions. Compared to the early 1980s, there is an apparent downward trend to fewer cases in the 1990s. Initiations also appear to follow an irregular cyclic pattern with periods of sparse initiations alternating with periods of high initiations. The years 1981-83, 1988-89, and 1996 stand out as years in which 7 or more cases were initiated. 1978, 1980, 1984, 1992-93, and 1999 are years for which initiations fell to two or fewer. What explains this pattern? One possible connection is to the presidential cycle. There seems to be a tendency to more initiations in years in the first part of a new president's term than at the end. In 1988 and 1996 the same party retained the White House and initiations remained high. On the other hand, 1980, 1984, and 1993 are all last years of a presidential term for which fewer initiations occurred.

The Section 301 caseload provides another measure of activity. Figure 4 reports the average number of active cases in six-month intervals. Greater caseload results both from more cases initiated and from longer periods for which cases are open once they are begun. The 1980s appear to be more active than the 1970s or 1990s, with the most active periods occuring in the middle of the first Reagan presidency, 1982-3, and the middle of the Bush presidency, 1989-90. The 1990s are the least active period, followed by the 1970s. Notice that the caseload has tended in most periods to fluctuate between 5 and 14. In only two periods, 1982:II-1993:II and 1989II-1990I was the caseload higher than 15 cases. Apart from the initial start-up of Section 301, caseload has remained above 5 except for the first two years of the Clinton presidency and the six months preceding.

Before 1985, all cases were initiated by petitions of private businesses. Figure 5 divides case initiations into business-initiated (those brought by private business firms) and government-initiated cases (those initiated by the USTR). The business-initiated cases follow a cyclic declining trend from its 1981 high onward. For example, from 1975 through 1980, the average number of business-initiated cases was 3.7 per year. This rose to 7.7 per year in the following three years, followed by 1.7 in 1984-86. Between 1987-1990 the average rose to 3.7, before falling further to 1.2 per year thereafter.

The low number of business-initiated cases in the period 1989-1999 is counterbalanced by the *high* number of government-initiated cases. Business-initiated cases average fewer than 1.5 per year in 1989-99 (compared to the 1975-99 average of 4.8.) In contrast, government-initiated cases average 3 per year for 1989-99. The pattern of self-initiated cases shows relatively quite years of one initiation interspersed with years of 4 to 8 government-initiations. Overall, government-initiated cases constituted more than two-thirds of cases between 1989-99. If initiations are

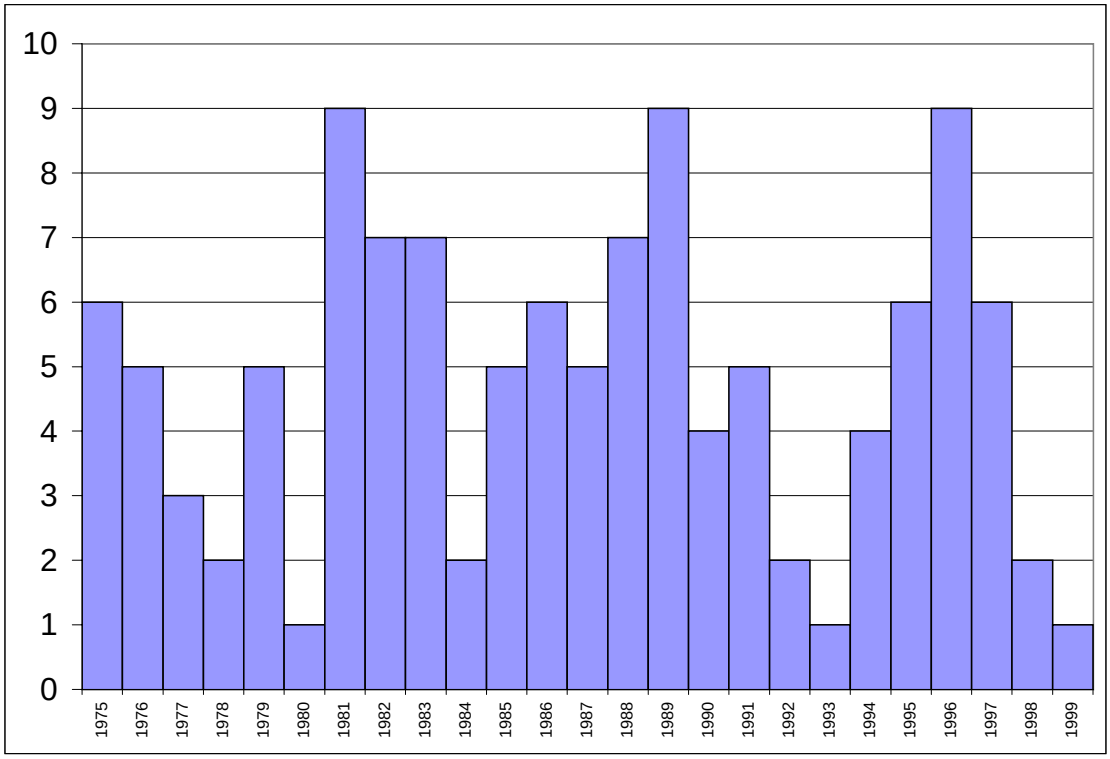


Figure 3: Number of Case Initiations by Year

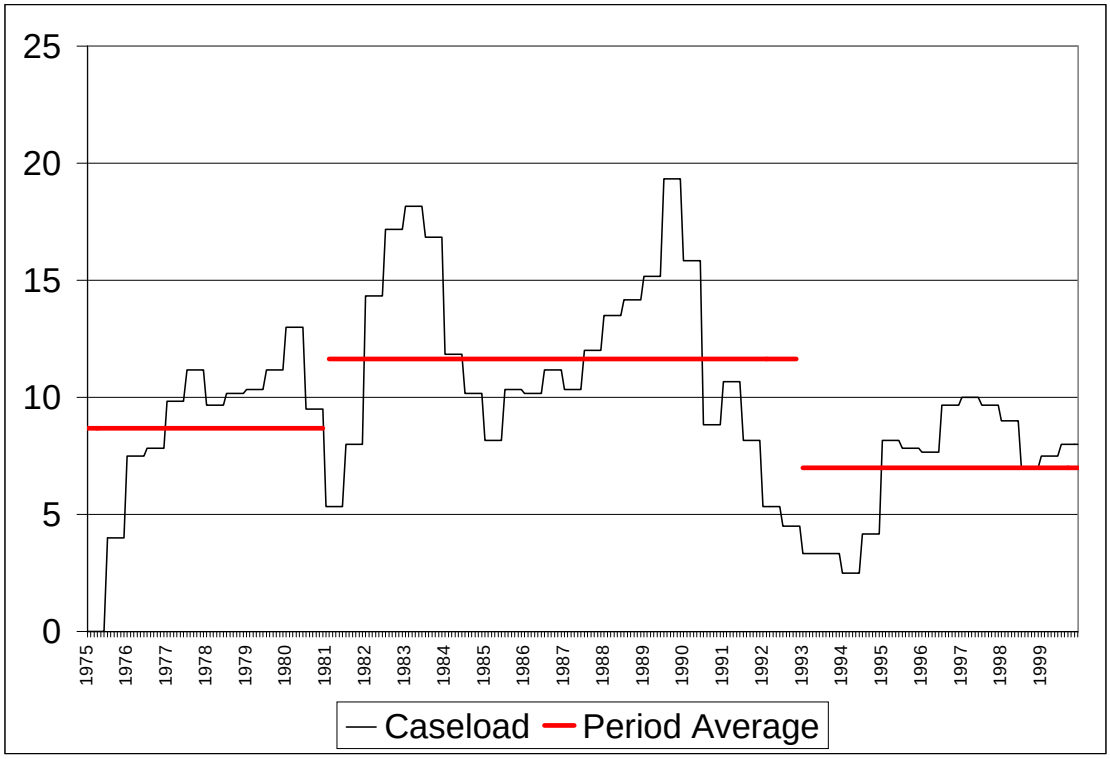


Figure 4: Six-Month and Period Caseload Averages

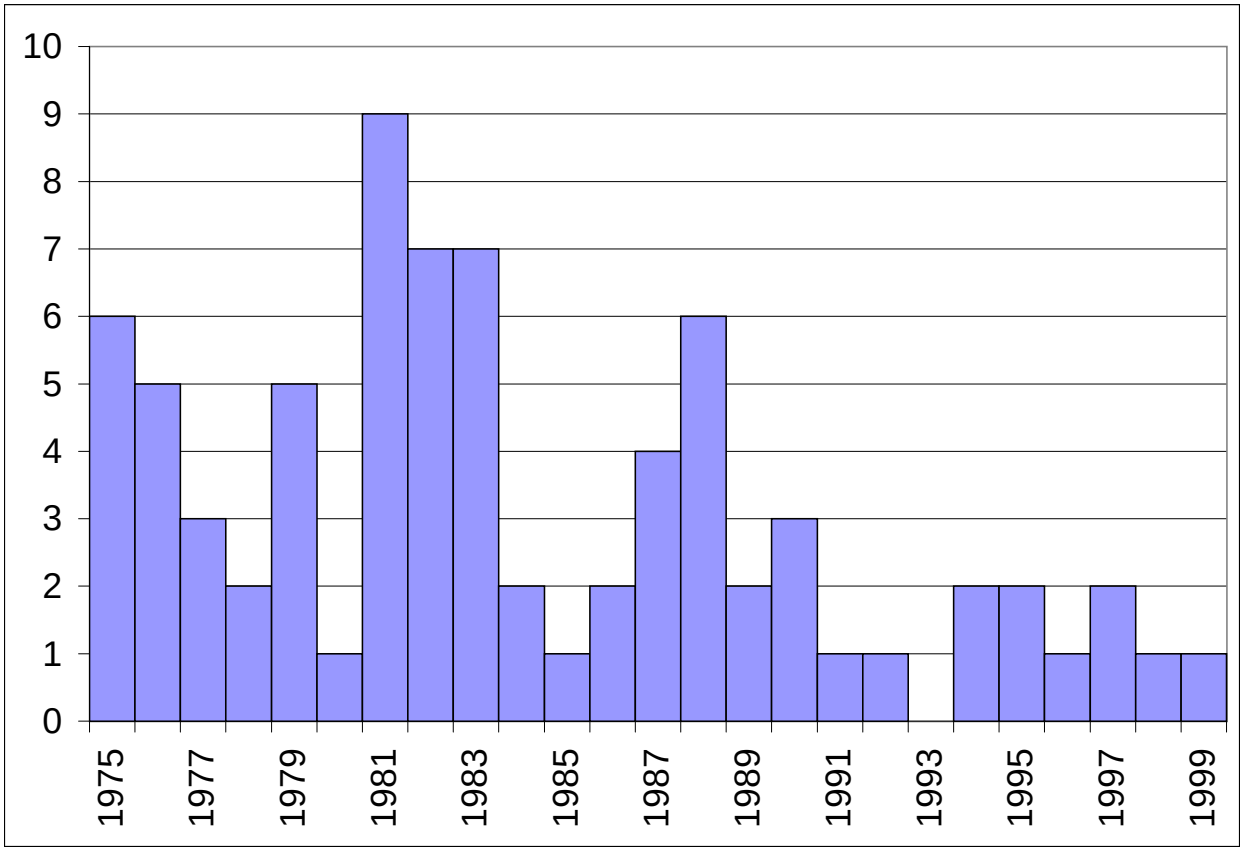


Figure 5: a. Business-Initiated Cases

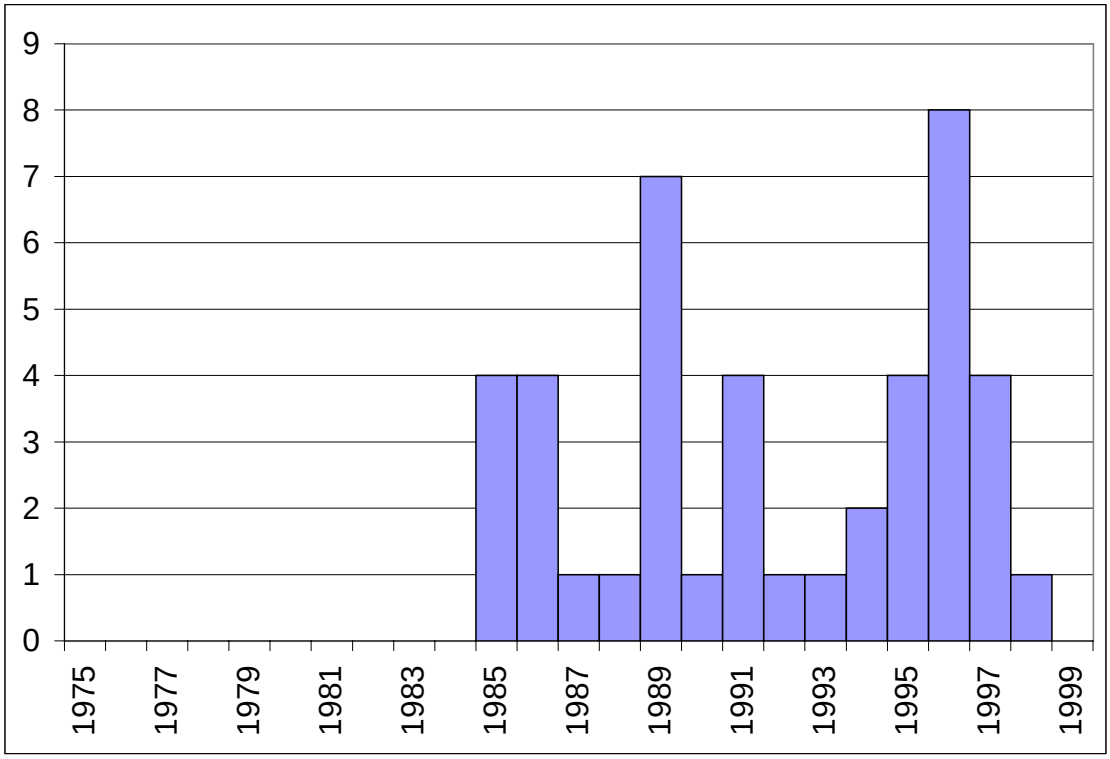
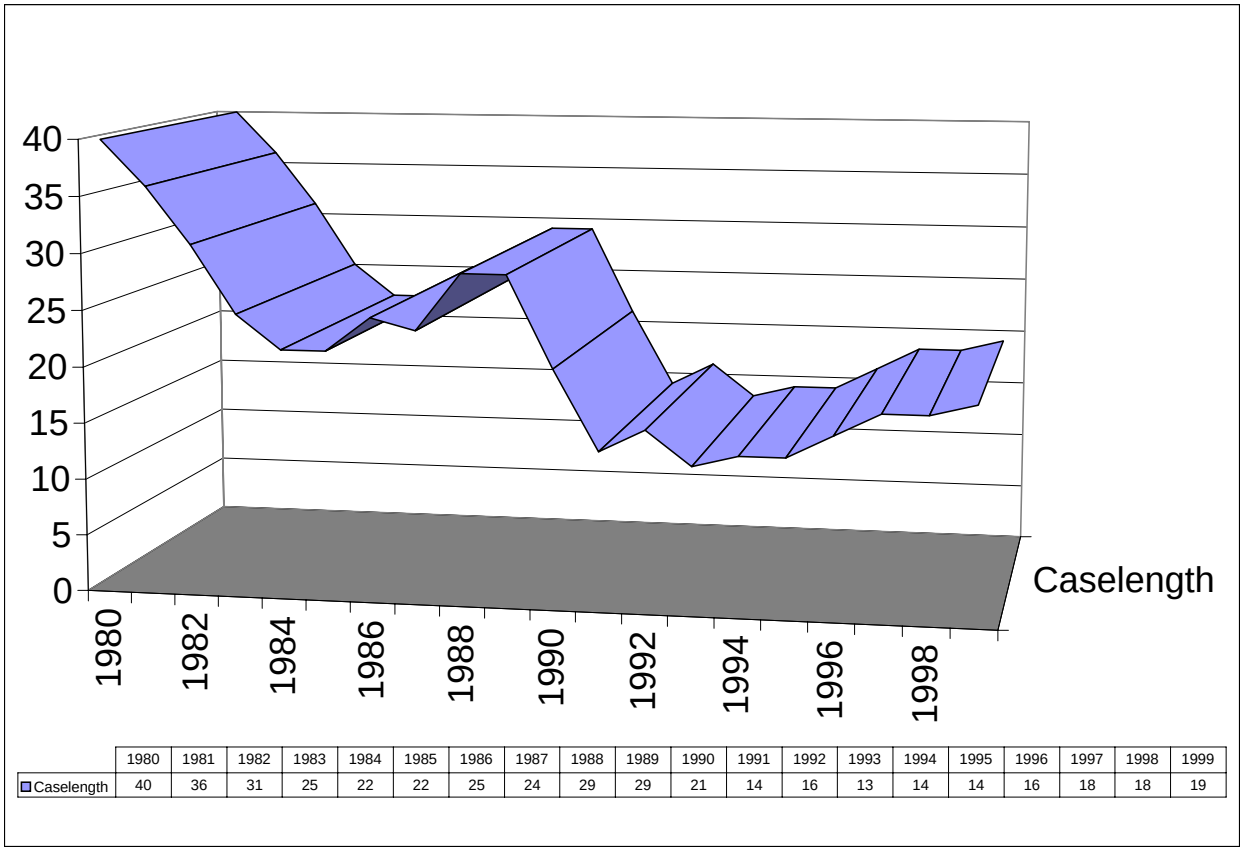


Figure 5: b. Government-Initiated Cases



	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Caselength	40	36	31	25	22	22	25	24	29	29	21	14	16	13	14	14	16	18	18	19

Figure 6: Average Case Length of Cases Initiated in the Previous 5 Years

susceptible to political influences, this should be evident in different causal explanations between government-initiated and business-initiated cases.

Finally, Figure 6 shows average case length in months for the preceding five years from 1980 to 1999. For initiations begun between 1975 and the end of 1980, the average case length was 40 months. This dropped to 22 months for the five years preceding 1984 and 1985, after which case length began rising to a peak of 29 for cases begun in the five years preceding the end of 1988 and 1989. By 1993 the average case length had fallen to 13 months, after which it began rising again. For cases begun since January 1, 1995, the average case length has been 19 months. The post-WTO period, therefore, seems to exhibit a tendency to longer caselenth compared to the recent past, but still below the average length of cases initiated in the early 1990s.

V. Influences on Case Initiation and Length

The WTO shift to more detailed dispute settlement rules and procedures helps to expedite cases, but might also encourage more numerous and more contentious cases. By reducing the uncertainties and vagaries of the adjudication process the effective cost of a case to the complainant is reduced. The number of cases and their length are also likely to be influenced by the trade sentiment within a country as well as elements of the world trade climate. We briefly review a number of these influences before turning to the data.

A. The Uruguay Round

Relatively early in the negotiating process, the mid-term Ministerial meeting of the Uruguay Round addressed the issue of dispute settlement by setting new guidelines to be followed until the final recommendations were completed. It is reasonable that this strengthening of dispute procedures might be reflected both in the number of cases and time to settlement, just as the operational beginning of the WTO itself would. In addition, increased awareness of trade issues caused by the Uruguay Round might have an effect. On one hand, countries might be more willing to bring cases knowing that the greater emphasis on dispute settlement would weaken the resolve of the offending country to persist in the face of heightened world attention. On the other hand, heightened awareness from the ongoing round, the desire of a country to bargain on issues of special concern to it from a position of strength, and the belief that offenses would be more quickly noted and responded to, might lead countries to exhibit more care that their trade practices were in accord with international obligations. For the period of the round, fewer infractions would mean fewer cases brought. In the United States the Uruguay Round caused a number of disputes to be deferred in view of the negotiations in the round. *Ceterus paribus,* this would mean that the length of time a case would be handled under its Section 301 provisions would be shortened, but, if the type of cases brought changed because of the round—for example more complicated or more contentious ones—it might mean an increase in length of case. It is an empirical matter which effects predominate—those that lead to more cases or fewer, and those that lead to longer adjudication or those that lead to shorter. Either way, both parameters might be affected by the negotiations of the Uruguay Round.

B. The WTO

Negotiations can be costly and their expected returns correspondingly low. Moving to a system with clear mechanisms for pursuing disputes, providing an unbiased independent panel to arbitrate them, and giving a timetable for resolution, raises the returns to bringing a dispute

of given merit. Cases that might not have been brought because they were too small (low payoff to winning), might be worth pursing in the WTO regime. If contentiousness is positively related to the amount of trade at stake, the effect of the WTO should be to increase the number of cases brought but to decrease the time it takes to complete panel work. We might also predict more cases if the WTO causes countries to bring cases where the complainant's arguments are less strong or have less obvious merit because the process is less onerous, and therefore less costly, to them. It is unclear, however, that such cases would necessarily be harder to settle by an expert panel.

A second effect is the distinction between the effect that the WTO has on government-initiated trade cases and ones initiated by a private businesses. In the United States this is an important distinction because domestic trade laws allow individual firms to initiate cases that the government then "prosecutes." The WTO is probably a greater encouragement to government-initiated cases than ones from the private sector, however, because of the greater awareness of the WTO mechanisms by a government body compared to an individual firm. A second reason is that US law requires that recourse to WTO dispute settlement be availed of first in cases involving a trade agreement, prior to taking other actions.

C. Country Effects

Pursuing an international trade dispute is a highly political issue in many countries. In the United States adjustments to Section 301, the governing body of law, plays a role in the way cases are treated. These changes should affect the number of cases, the type of cases, and the way cases are pursued. The latter two effects, in turn, could influence the length of typical adjudication. Other influences include the American election cycle, the appointment of new US Trade Representatives (USTR), and what country or countries the dispute is against.

1. The Omnibus Trade and Competitiveness Act of 1988

Section 301 of US trade law (the "Unfair Trade" staute) provides the authority to enforce US rights under trade agreements and to respond to objectinable foreign trade practices. The actions covered are divided into two broad classes, those that deal with abrogation of US rights under any trade agreement including practices injurious to US trade that are inconsistent with any trade agreement, and other acts or policies that are unjustifiable, unreasonable, or discriminatory and burden or restrict US trade. A "discriminatory" practice is one that denies national or most-favored-nation treatment to US goods, services or investment. An "unjustifiable" practice is one that is inconsistent with the international legal rights of the US such as right of establishment or

protection of intellectural property rights. "Unreasonable" refers to practices which, while not violating US international legal rights are unfair and inequitable. In practice the term "trade agreement" refers to the WTO or to bilateral Friendship, Commerce and Navigation treaties. Responses to such practices included "all appropriate and feasible action." For example, in addition to treaty procedures that might apply, remedies could include withdrawal of trade concessions and/or the imposition of duties or other import restrictions. Actions could be taken on a nondiscrimatory basis or solely against the foreign country involved. Goods or sectors selected for action such as 100 percent duties may or may not have been involved in the act or practice being objected to.

The Omnibus Trade and Competitiveness Act of 1988 significantly expanded the scope and changed the practice of Section 301.[12] The changes seemed designed to encourage an increase in the number of cases and to increase the likelihood of finding "unfairness" once a case was brought. Once unfairness was found, the Omnibus Act made action less discretionary. For example, the 1988 act mandated for the first time the designation of and initiation of cases against "priority" countries and practices. "Special 301" refered to 1988 amendments to Section 301 that created special procedures to deal with intellectual property rights cases (later expanded in 1994 to include denial of market access to US products protected by trademarks, trade secrets, copyrights, and patents or process patents). Once the USTR identified a priority foreign country (within 30 days of providing the annual report estimating the barriers to foreign market access) the USTR was directed to initiate a 301 investigation with respect to the relevant acts. "Super 301" referred to investigations of trade-distorting practices and countries identified in reports to Congress in 1989 and 1990 and in later sections of the law revised in 1995 that mandated identification of priority countries. If the USTR determined that US rights under a trade agreement were being denied or if the foreign practices were undustifiable and restricted or burdened US commerce mandatory retaliation was required.[13] The bill also expanded the description of practices that are considered actionable. For example, even if a practice is not in violation of any international trade agreement it was actionable if it denied fair market opportunities including the toleration of systematic anticompetitive activities that restricting the purchasing of US goods. Export targeting defined as coordinated actions bestowed on a specific enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise was also made an actionable practice. Denial of worker rights became a

[12]See Grinols 1989 for a detailed discussion of the dispute-encouraging features of the Omnibus Trade and Competitiveness Act of 1988.

[13]There was an exception to mandatory action if the US received an unfavorable panel report under GATT/WTO.

unreasonable and therefore actionable practice, as did toleration of cartels.

Once an unfair case was initiated it had to be determined if the practice warranted a response. Until 1988 the unfairness of a foreign trading practice was determined by the President with the advice of the interagency committee charged with the ovesight of Section 301. A number of changes to process encouraged finding unfairness, the most important of which was the transfer of Presidential authority to the US Trade Representative. Presumably the USTR is more susceptible to congressional and public pressures than the President. The USTR was also mandated to provide an opportunity for private views before any unfairness determination was made. Other changes included requirements for the USTR to consult in various ways with Congress in "a clear attempt by Congress," in one senator's words, "to usurp executive authority to conduct our foreign trade policy in much the same manner as Congress has regularly sought to usurp the President's authority to conduct foreign policy." In summary, the transfer of Presidential power to the USTR to determine unfairness; the transfer of Presidential authority to the USTR to choose action in response to foreign trade practices; the mandatory initiation of cases; the addition of actionable practices; requirements for ongoing Congressional consultations and requirements for private party views before the unfairness decision and the decision of what action will be taken all tend to move in the direction of greater use of Section 301.

2. The US Trade Representative

The US Trade Representative (USTR) is a cabinet-level post. During periods of particular trade turmoil, as in the mid to late 1980s the position is even more politically sensitive. Since the Reagan presidency at least, the office of the trade representative typically has been a prominent and publicly visible post. Average tenure of the USTRs since 1975 has been slightly longer than 3 years. It is possible that the USTR is more active in his or her first year of office, and less active in the last. The number of cases brought during these periods may therefore differ from other years.

3. Opposing Country

Countries trade in different commodities, are of different size and economic importance, and, like people, have different personalities. Negotiating with some is easier that negotiating with others. Forces at work include the relative bargaining power of the two nations. If only because of relative economic size and the differing importance of trade to a country's welfare, disputes with large countries might be longer than ones with countries more dependent on US trade that are more willing to accede readily. Regions of the globe might engage in different type of trade and therefore be party to different types of practices, leading their cases to differ in statistically

significant ways.

VI. Econometric Results: Initiation of Cases

In the 25 years since 1975 there have been 119 Section 301 cases. The unconditional probability that a case will be initiated in a given month, therefore, is a bit greater than one in three. However, we expect that different political circumstances, trade conditions, and changes in international agreements lead to different probabilities. To test for different influences, data were collected on all Section 301 cases pursued by the United States since the beginning of the statute. Month of initiation and month of last action were recorded as reported in the USTR's officially maintained list "Section 301 Table of Cases." Countries against which disputes were brought were noted and grouped geographically as follows: Canada, Latin America (including Mexico), European Union, non-European-Union Europe, Japan, Taiwan and Korea, and the rest of the world. The groupings were arranged partly to reflect relative trading importance to the US, but also to test prevailing views. Taiwan and Korea, for example, have sometimes been asserted to be countries with whom disputes are less lengthy because of the increased leverage that the importance of US trade to each country gives to the United States.

Other relevant factors were whether the case was begun in the first or last 12 months of a USTR's term of office,[14] whether the case was started in a presidential election year, in the first year of a presidential term, whether the case was initiated before or after passage of the Omnibus Trade and Compeitiveness Act of 1988, what the caseload was at the time of initiation, whether the caseload exceeded 14, whether the caseload was below 5, how many cases had been self-initiated by the USTR in the previous 12 months, and how many cases had been initiated by private businesses in the previous 12 months. To account for external influences variables were created to show whether the case was initiated during the period of Uruguay Round negotiations (expected to shorten cases both because countries would have their trade personnel stretched thinner and because greater country interaction would serve to lessen tensions), after the WTO began operating, and whether a panel was formed (either GATT or WTO) for the disute.

We expect that different factors will determine the probability of a government-inititiated Section 301 case compared to a business-initiated Section 301 case. To allow for these differences we separated cases according to the type of initiation. We hypothesize a political model of dispute initiation overlaid on the backdrop of external provocation. If trade infractions are common and continual, then the decision to engage in a case depends on conditions relating

[14]In the case of Reuben Askew, time in office was 18 months. The first 12 months were counted as start-of-term months, and the remaining 6 months as end-of-term.

both to the international rules and to internal conditions. The characteristics of a given month determine the probability that a case will be initiated during that month. For example, we expect there to be a greater probability that a case will be brought in the first 12 months of a new USTR's term than if the same conditions applied during the last 12 months of a USTR's term. However, there is no certainty that a case will be brought or not brought, even in the most favorable or unfavorable of circumstances. We therefore apply a probit model to the data. Each month of the sample between 1975 and the present is an observation.[15] If disputes arise solely due to external provocation, however, and these are uncorrelated with internal political conditions (it is hard to imagine that provocations would follow a regular election cycle, for example, or that foreign nations would wait for the first year of USTR appointment to violate their trade obligations), then the estimated coefficients from a Probit model should show no systematic connection between variables relating to internal political conditions and the bringing of Section 301 cases.

A. Government-Initiated Cases

What variables raise the probability of a government-initiated Section 301 case? Table 3 reports the results of 7 models. Twelve explanatory variables in addition to the constant are listed on the left-hand column of the table. Except for the constant term, the Probit coefficients are listed in probability contribution form with the P-values reported underneath. The results of alternative functional forms are reported across the columns. For example, in Model 1 the coefficient in the upper left hand corner reports that the probability of a Section 301 case being brought was higher by 18.5 percentage points after the Omnibus Trade and Competitiveness Act of 1988 had been passed than before.[16]

Continuing to focus on Model 1, the probability that a case would be brought was higher by 10.2 percentage points in the first twelve months of a new USTR's term of office than at other times. This finding is consistent with our political hypothesis.

It is possible that the likelihood of a case also would be higher in the first year of a new presidential term (which would often coincide with a new USTR appointment), but the evidence points to the first year of the USTR's term and not the president's as the relevant factor. Models 5 and 7 specifically test for the effect of the president's first year and find the coefficients to be statistically insignificant. The absolute affect is estimated to be only 2.4 percent or 1.1 percent,

[15] On the few occasions where more than one case was initiated by the USTR in a given month, we recorded each initiation as a separate observation.

[16] That is, if the probability were .325, then passage of the Omnibus Trade and Competitiveness Act would raise the probability to .5, or one chance in two.

RHS Variable	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7
Omnibus	18.5%	18.5%	15.4%	20.4%	18.0%	17.7%	18.0%
	0.000	0.000	0.006	0.000	0.000	0.000	0.000
USTR 1st 12 Mos	10.2%	10.1%	10.3%	10.7%	8.7%	9.8%	9.8%
	0.005	0.012	0.005	0.003	0.048	0.008	0.049
Active cases over 14	-4.0%	-4.0%	-4.1%	-5.4%	-4.1%	-4.0%	-5.8%
	0.098	0.099	0.092	0.121	0.092	0.127	0.094
WTO	1.2%	1.2%	4.7%	-0.8%	1.4%	0.7%	-0.4%
	0.749	0.776	0.469	0.849	0.719	0.876	0.930
USTR Last 12 Mos		-0.2%					3.7%
		0.955					0.478
Uruguary Round			3.8%				3.7%
			0.495				0.478
Active Cases				0.2%			0.7%
				0.803			0.452
Active Cases under 5				-1.2%			-1.2%
				0.569			0.571
Presidential 1st Year					2.4%		1.1%
					0.590		0.785
Presidential Election Year					-0.4%		-2.1%
					0.929		0.610
Cases Self-initiated in Last 12 Mos						0.2%	-0.1%
						0.827	0.884
Cases Privately Initiated in Last 12 Mos						-0.2%	-1.4%
						0.814	0.249
Constant	-1.953	-1.948	-1.989	-2.071	-1.955	-1.912	-2.190
	0.000	0.231	0.000	0.001	0.000	0.000	0.001

= Significant at 5 percent level or better
= Significant at 12 percent level or better

Table 3: Probability of Government-Initiation of Section 301 Cases. (Coefficients in Monthly probability. P-values reported below.)

depending on which model one selects.

Model 1, the preferred model, also indicates that a large number of active cases has a dampening affect on the probability that a new case will be self-initiated. According to Model 1, the probability of a new case being initiated falls by over 4 percentage points per case when the caseload is over 14. The highest six-month average caseload was 19.

Although the estimated coefficient for months after formation of the World Trade Organization are positive in all but two of the models, the existence of the WTO does not seem to greatly increase the probablility of a case being government-initiated. The absolute effect is about 1.4 percent or smaller in all but one model and none are statistically significant at the 5 or 10 percent levels. According to the data, the passage of the Omibus Trade and Competiveness Act had far more to do with causing an increase in cases than the WTO.

The remaining variables generally enter with signs that agree with intuition, but are not statistically significant. For example, the probability of government-initiation of a case in the last 12 months of a USTR's term might be expected to be lower. This is what the coefficient in Model 2 says, but the estimate is statistically too small to be significant. The Uruguay Round tended to increase the number of self-initiations, but not enough to reach statistical significance. At the same time, we know that it caused the USTR to postpone consideration of some cases according the the table of cases so it would not be surprising if other cases had been postponed in anticipation of negotiating advances. Neither the number of active cases nor the number of active cases below 5 seemed to have much influence on the probability that the USTR would bring a case. Presidential election years (the last year of a presidential term) tended to dampen the probability of cases being brought, but not sufficiently to reach statistical significance. Increases in the number of business-initiated cases, as expected, tended to reduce the probability of a new USTR-initiated case between .2 and 1.4 percentage points depending on whether Model 6 or 7's coefficient is used. Government-initiated cases in the last 12 months have an effect so close to zero that the estimates are of opposite signs in Models 6 and 7.

B. Business-Initiated Cases

Table 4 reports the same information applied to business-initiated cases as contained in Table 3. There the similarities end. Even though both tables use the same explanatory variables to explain case initiations, the data indicate that they affect the probability of a case very differently. For example, the Omnibus Trade and Competitiveness Act of 1988 has a *dampening* effect on business-initiated cases of about 20 percentage points. One explanation is that the underlying number of trade provocations declined after 1988 and that this trend would have occurred without passage of the act. However, another explanation is that the increased activity

of the USTR *independently* of private business had a dampening effect on the desire for private firms to bring cases. There are various explanations of this result. For example, it is possible that the USTR—being more pre-occupied with self-initiated cases—tacitly discouraged private firms in their efforts to direct new cases to the USTR. Alternately, the government-initiated cases may have substituted for cases that businesses would have initiated.

Interestingly, the next most significant variables are both political-cycle variables: The first year of a presidential term and election years (the last year of a presidential term). Apparently there is a tendency for businesses to postpone or delay initiation of a case in the last year of a presidential term in favor of the middle of a term. According to Model 1, the probability that a case is initiated in the last year of a presidential term is lower by 8 percentage points. During the *first* year of a new presidential term, the probability of a business-initiated cases is also lower (by 8.5 percentage points). The last year of a term might be avoided because of the obvious possibility of a change in administration and the lesser attention that the case would be given. The first year of a presidential term is often a time of intense activity focused on a myriad of new administration objectives. A trade case might be given less attention than if it were brought at another time. Similarly, a USTR might not have been appointed or have been recently appointed. Waiting a little would allow better attention to be paid to whatever was brought.

It is interesting that the existence of the WTO seems to have a lessening effect on the bringing of business-initiated cases (unlike government-initiated cases which were little affected). According to the estimates, the probability of a business-initiated case declined 4.6 percentage points (Model 1) and perhaps as much as 6.1 percentage points (Model 3) due to the existence of the WTO. More time will be needed before this relationship can be confirmed, however, since none of the WTO coefficients are statistically significant compared to zero.

The other variables, some of which were significant in explaining self-initiated cases such as whether the number of active cases exceeded 14 and whether it is in the first 12 months of a USTR's term, are not important to explaining the probability of business initiations.

VII. Econometric Results: Length of Cases

The length of time needed to resolve a trade dispute is one measure of the contentiousness or severity of the dispute. It is also a measure of the disparity of the relative bargaining power of the two disputants. Equal bargaining power is likely to lead to longer disputes whereas unequal

RHS Variable	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Omnibus	-20.4%	-20.1%	-20.6%	-19.4%	-23.2%	-23.7%
	0.000	0.000	0.000	0.002	0.002	0.003
Presidential 1st Year	-8.5%	-9.9%	-9.1%	-7.2%	-8.3%	-10.7%
	0.109	0.114	0.089	0.189	0.115	0.104
Presidential Election Year	-8.0%	-9.3%	-7.8%	-8.1%	-8.3%	-12.1%
	0.131	0.092	0.15	0.125	0.118	0.039
WTO	-4.6%	-3.4%	-6.1%	-4.8%	-1.2%	0.7%
	0.545	0.665	0.454	0.542	0.902	0.952
USTR 1st 12 Mos		4.1%				9.8%
		0.528				0.194
USTR Last 12 Mos		4.7%				7.9%
		0.464				0.258
Active Cases			-1.1%			-2.5%
			0.421			0.087
Active cases over 14			2.8%			2.8%
			0.366			0.381
Active Cases under 5			-2.1%			-3.6%
			0.442			0.209
Cases Self-initiated in Last 12 Mos				0.6%		1.1%
				0.671		0.456
Cases Privately Initiated in Last 12 Mos				1.0%		2.5%
				0.266		0.055
Uruguary Round					4.4%	10.6%
					0.539	0.208
Constant	-0.30064	-0.37452	0.085586	-0.46716	-0.31994	-0.70062
	0.012	0.013	0.867	0.014	0.01	0.009

= Significant at 5 percent level or better
= Significant at 12 percent level or better

Table 4: Probability of Business-Initiation of Section 301 Cases. (Coefficients in Monthly probability. P-values reported below.)

bargaining power should result in shorter disputes.[17]

Table 5 reports the regression coefficients for case length in months as a function of 19 right-hand-side variables. The constant term in column 1 (Model 1) shows that the duration of the average case was 27.8 months or just over two years. Whether a case required more or less time depends on the other factors. Three of the country variables clearly have an important influence. Cases against the European union, for example, are longer by 8.9 months. This coefficient is relatively stable across the different models, never falling below 8.3 or rising above 9.7. Interestingly, cases against non-European Union countries in Europe are shorter than the average case by 9.7 months. Cases against Taiwan or Korea are shorter by 9.8 months. The other country variables (Canada, Japan, Latin America) are statistically insignificant and do not to have as large an effect (see Model 2). For example, cases against Japan tend to be shorter by a month and a half, cases against Canada are longer by 1.7 months, and cases against Latin American countries tend to be about 3.2 months longer.

The regression indicates that a number of political variables are important to caselength. Government-initiated cases average 7.5 months longer than other cases, and cases that were taken to GATT panels were a full 21.2 months longer. In comparison, cases that went to WTO panels were only 4.9 months longer. The WTO coefficient is significantly different that the GATT coefficient at the 11 percent level.

As expected, cases begun during the Uruguay Round tended to be shorter. The coefficient shows they are 19.7 months shorter which is statistically significant at the 1 percent level. As already discussed, both the stretching of negotiating resources and the tendency to defer consideration of matters that were being discussed in the Uruguay Round are explanations that are consistent with this finding. Cases that began after January 1995 (first month of WTO operation) tended to be longer by 2.4 months.

Caselength seems to be little affected by the remaining variables. Whether the case was initiated in the first or last 12 months of a USTR's term, for example, seems not to matter to length of the case. Neither does caseload at the time of initiation affect average caselength, though we note that signs of the estimated coefficients (Model 4) are both negative suggesting that high caseloads may move the USTR in a more accomodating direction.

[17]Larger countries have more personnel and resources to devote to disputes. This is also evident in trade negotiations. During the Uruguay Round large country delegations often numbered in the dozens while delegations of small countries may have been as few as one.

Independent Variable	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7
European Union	8.886	9.754	9.125	8.349	8.569	9.157	8.801
Case	0.046	0.105	0.042	0.070	0.054	0.043	0.169
Non-EU Europe	-9.765	-8.634	-10.601	-9.175	-9.997	-10.428	-10.546
Case	0.131	0.275	0.106	0.165	0.122	0.115	0.216
Taiwan-Korea	-9.837	-8.928	-8.886	-9.258	-11.572	-9.560	–10.259
Case	0.076	0.198	0.119	0.103	0.044	0.089	0.199
Self-Initiated	7.482	7.881	6.321	7.229	8.663	6.697	7.568
Case	0.099	0.090	0.181	0.116	0.062	0.160	0.137
Urguay Round	-19.736	-19.522	-18.359	-19.552	-14.415	-19.397	-11.089
in Operation	0.000	0.000	0.000	0.000	0.025	0.000	0.139
GATT Panel	21.240	21.967	20.827	21.255	20.222	20.808	19.782
	0.000	0.000	0.000	0.000	0.000	0.000	0.001
WTO	2.448	1.799	2.491	1.921	4.517	2.224	3.884
in Operation	0.670	0.762	0.666	0.743	0.451	0.701	0.556
WTO Panel	4.938	5.584	4.191	4.991	4.527	5.853	5.384
	0.570	0.531	0.633	0.569	0.602	0.523	0.580
Canada		1.708					2.150
Case		0.818					0.785
Japan		-1.513					-1.960
Case		0.819					0.787
Latin America		3.168					1.250
Case		0.641					0.865
USTR-1st			3.888				3.754
12 Mo.			0.370				0.476
USTR-Last			0.251				1.102
12 Mo.			0.958				0.837
Caseload				-0.194			-0.342
				0.751			0.613
Caseload				-0.354			0.650
Over 14				0.882			0.811
Omnibus Trade and							
Competitiveness					-8.424		-10.519
Act Passed					0.239		0.205
Initiated in						2.602	2.320
Presidentail 1st Yr.						0.558	0.679
Initiated in							
Presidential						0.390	-0.423
Election Yr.						0.935	0.936
Constant	27.810	26.653	25.876	29.919	28.289	27.135	28.422
	0.000	0.000	0.000	0.000	0.000	0.000	0.002

Table 5: Case Length

VIII. Summary and Evaluative Discussion

The results of the present investigation are encouraging. In spite of the potential difficulties attendant with coaxing trade-dispute data to reveal the effects of trade agreements and political considerations on the probability of case initiation and length, the investigation found a number of regularities. The World Trade Organization appears to have a positive effect on increasing the probability of government-initiated trade dispute cases, but has the reverse affect on business-initiated cases. The effects are small enough (probability of a government-initiated case in a given month is 1.2 percent higher in the WTO regime, and 4.6 percent lower for business-initiated cases), however, that they are not statistically significant. The WTO effects are numerically smaller than the influence of domestic political factors.

The effect of the WTO on case length is a second measure of WTO influence. Cases begun under WTO auspices tended to last about 10 percent (2 1/2 months) longer. Cases handled by WTO panels tend to be 5 months longer than other cases (about 20 percent longer). The latter effect, however, should be compared to GATT panel cases which tended to exceed the length of other cases by 21 months. Thus, WTO panels appear to be more efficient—as they were designed to be—than GATT panels.

A host of political variables—particularly passage of the Omnibus Trade and Competitiveness Act of 1988, first year of a presidential term, election years, and the number of active cases over 14—were particularly potent in explaining the initiation and length of cases. The Omnibus Trade and Competitiveness Act increased the probability of a government-initiated case in any month by just under 20 percentage points. The USTR first year in office increased the probability of government-initiated cased by about 10 percentage points. Presidential first years and election years reduced the probability of business-initiated cases by about 8.5 and 8 percentage points, respectively. Other political variables generally had signs that agreed with intuition, but were statistically insignificant, likely due to the fact that the WTO has not been in operation for many years and we still have relatively little experience with it. What we have to date is promising, however. The political implications of trade disputes will no doubt provide fertile ground for future investigations for many years.

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