How Does Early Settlement Work at the WTO?

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International cooperation takes a variety of forms, and one of them is to reach a mutually agreeable solution in the face of differing interests. In the case of trade disputes filed at the WTO, a mutually agreeable solution can be obtained at any stage of a dispute, but the most frequent is what is generally called “early settlement”: settlement before going to a dispute panel for adjudication. As Abbott et al. (2000) argue, three criteria of “legalization” are precision, obligation, and third-party delegation. When the General Agreement on Tariffs and Trade (GATT) was upgraded to become the World Trade Organization (WTO) in 1995, one of the most important aspects was the strengthening of the panel process. During the GATT period, panels – ad hoc committees of three experts from non-party countries – were often formed, but dispute parties often blocked their proceedings – especially the adoption of their reports. Now under the WTO dispute settlement system, panel reports are almost automatically adopted. Thus, their adjudication is far more binding than that during the GATT period.

Paradoxically, however, legalization does not necessarily entail that all disputes are resolved “legally.” “Settlement out of court” or “early settlement” is always a possibility, and theoretically speaking, an increase in legalization may well entail more frequent recourse to early settlement. The GATT/WTO dispute system is no exception to this rule, and even today, about more than half of the disputes filed at the WTO end in early settlement.1 Therefore, it is important to know what influences early settlement: under what conditions will early settlement be more or less likely?

After the WTO was formed, Japan became more aggressive in seeking legal rulings, at least compared with the previous GATT period. However, out of 19 disputes to which Japan has been a party, nine of them ended in early settlement. They are listed in Table 1. Why did Japan not seek legal rulings on these cases while it was eager to get the WTO to rule on other cases? This paper attempts to answer this question by examining the WTO disputes in which Japan has been involved. Since the number of cases is relatively small, we will not undertake a statistical analysis. Instead, we shall take what might be called a comparative case-study method or focused comparison.

[Insert Table 1]

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1 Busch and Reinhardt (2000: p.161) report that 55 percent of GATT/WTO disputes end at the consultation stage, and another 8 percent end during the panel proceedings before the rulings.
Theory of Early Settlement

Theoretically, the analysis of early settlement serves at least two purposes. The first purpose is to identify factors that make some cases less amenable to easy resolution. The second and less obvious purpose is to identify indirectly any selection bias in WTO dispute settlement. From theoretical inference, we know that cases that are brought to the WTO are not quite “representative” of all trade disputes. However, the nature of that representational bias is not clear. Although this bias can never be satisfactorily identified, it is possible to assume that factors that induce a certain class of cases to be litigated at the WTO are similar, or at least indirectly related, to the factors that prevent early settlement at the WTO. Thus, identifying factors that prevent early settlement would give us important clues about the selection bias in WTO dispute settlement.

So far, a number of hypotheses regarding early settlement have been proposed. The first hypothesis is an extension of what is generally known as the Priest–Klein hypothesis. Priest and Klein (1984), in analyzing domestic civil suits in the United States, posited that only the cases whose verdicts are highly uncertain appear in court – so much so that the probability of winning for either side is close to fifty–fifty. Hence, the Priest–Klein hypothesis is also called the “50 percent rule.” While this theory is not specifically about early settlement at the WTO, it might be relevant to it as well. The reason why the 50 percent rule applies is that plaintiffs would concede out of court if the defendant verdict were likely and vice versa. The same logic may apply to the class of cases that are on the WTO agenda as well. After mandatory bilateral consultations, the parties may acquire more information about the case and hence more accurate forecast of how the WTO panel (or the Appellate Body) will eventually rule on the case. Then, the party whose chances of winning are low may decide to settle without going to the panel stage.

According to this theory, only those cases whose merit is not exceedingly strong or not exceedingly weak will go to trial. It is hard to test this hypothesis because the parties to WTO disputes rarely reveal their perceptions about winning. At least in public, all the parties, both complainants and defendants, tend to argue that they have a good chance of winning. On the other hand, for those cases on which the WTO panels and the Appellate Body have ruled, we have ex post “estimates” of relative merit, but that does not explain why the losing parties could not settle out of court. For those cases that ended in early settlement, it is even harder to have an objective measurement of relative merit.
Japan’s “early settlements” where the complainants had a strong case were *Brazil – Autos* and *US – Government Procurement*, but only the former ended in an outcome predicted by the theory: the defendant conceded by offering a compromise to the complainants. The only case with weak merits was the pork safeguard case, where the safeguard was expressly permitted by the Agriculture Agreement. There was no indication that Japan did not satisfy all the requirements for invoking the clause (Art. 5.4). In this case, the EU did not pursue the case further than consultation and the safeguard eventually expired. The outcome is consistent with the theory. Apart from these cases, the Priest–Klein hypothesis is not particularly useful in explaining why the other cases ended in early settlement.

According to Busch and Reinhardt (2000), it is not just the uncertainty about the direction of rulings, as hypothesized by Priest and Klein, but also the post-ruling consequences that sway some parties to settle early. They built their arguments on the formal model of Reinhardt (2001), which suggests that the uncertainty of whether the complainant might retaliate in the face of non-compliance with an adverse ruling gives the defendant incentives to concede during consultation. Busch and Reinhardt (2000: p.166) say that “what is surprising is not that the twin levers of the legal norm and the threat of sanctions combine to elicit cooperation from defendants, but that they do so disproportionately in the form of early settlement”. However, they did not provide a direct test of this hypothesis.

The Busch–Reinhardt hypothesis is not very useful empirically, because there is no good evidence about what the parties thought about the post-ruling consequences. In most of the cases examined here, the parties were very eager to find settlement without going to a panel, and therefore, they did not seem to think through what might happen after the rulings.

Based on the assumption that the parties are likely to settle out of court as long as a mutually agreeable solution is available, Guzman and Simmons (2002), hypothesized that the reason why they may not be able to settle hinges on the nature of the measure at issue. In particular, they hypothesized that when the measure at issue is “lumpy” or “indivisible”, early settlement is difficult. Furthermore, they hypothesized that health and safety regulations, import/export bans, the absence of required laws (under trade-related intellectual property rights (TRIPs)) and product classification issues are less divisible than tariffs and quantitative restrictions and thus less amenable to early settlement (p.
The Guzman–Simmons hypothesis may explain why the two SPS cases, varietal testing and fireblight, ended up in panel proceedings. Other cases that went to panels did not concern the class of “indivisible” issues that they enumerated. Japan’s out-of-court settlement cases did not belong to any of these “indivisible” classes of disputes. In that weak sense, the hypothesis is supported. Overall, this hypothesis does not seem particularly useful either.

My preferred explanation is that of domestic constraints (Iida, 2003). As with Guzman and Simmons, I assume that if possible, the negotiators prefer to settle out of court instead of going to panel proceedings. However, in some cases, domestic constraints are so severe that there is no “wiggle room” for the negotiators. Therefore, they would try to delay offering compromises, but the domestic forces in the complaining state pressure their negotiator to proceed to a panel if no compromise can be found at the consultation stage.

It is important to note that domestic constraints exist on both sides of the game; interest groups (as well as public opinion) exert pressure on their government to keep on pushing unless the defendant state offers genuine and generous concessions; interest groups (and public opinion) in the defending state pressure their government to resist as much as possible. When domestic constraints are severe, it is not the negotiator’s perception (as posited in the Priest–Klein model or the Reinhardt model), but the perception of the powerful domestic actors as to the direction of the rulings and the post-ruling outcome that are determinative of the actions of their governments.

The weakness of this domestic constraint explanation is that a variety of constraints exist, and their severity varies from country to country. It is generally agreed that the size of the affected industries, their political clout (how well they are represented by their politicians), and the imminence of elections that are key factors in democracies. In non-democracies, more personal factors (such as how well the concerned industries are connected to the people in power) may be more important. Many of these factors are invisible and hard to quantify. At least, the following conditions seem to apply to defendants:

1) Legislation vs. administrative action: WTO members are represented by
their executive branch of government. Thus, the government has more control over its own administrative action than revising or repealing existing legislation on the statute books.

2) Presidential vs. parliamentary system: A majority government in a parliamentary system has greater ease revising or repealing law than a president in a system with an independent legislative branch, as in the United States.

3) Key legislators: Not all legislators are born equal. Some are more powerful than others are. When there is a key legislator, such as a chairman of a legislative committee or cabinet minister, whose districts are particularly affected by the issue, it is more difficult to take a corrective measure.

4) Independent agency: When the measure in question is within the jurisdiction of an administrative agency such as the US International Trade Commission (USITC) or the Japan Fair Trade Commission (JFTC), the government may not be able to dictate a certain course of action.

5) Federal vs. unitary: A federal government, such as the United States, has difficulty correcting action or law at the local or state level than a unitary government such as Japan.

6) Electoral concerns: When elections are close, governments and politicians find it hard to implement a measure that could hurt specific sectors of the economy.

7) Industries in dire straits: When economic difficulties afflict an industry that is particularly affected or protected by the measure at issue, it is hard to take away that protection.

Sometimes, complainants are domestically constrained to pursue WTO disputes until the end (that is, all the way to Appellate Body rulings if defendant does not concede), and again, the desiderata seem to be the following:

1) If the complaining industry or firms seek legal rulings (rather than just
settlement), primarily for future cases. Legal rulings are useful not only for compliance by the specific defendant in question but also for the deterrence of future violations by other countries.

2) If the industry in the complainant country is divided within, and cannot agree on accepting compromises offered by the defendant. Such lack of coordination could also affect the relationship between the industry and the government.

The economic condition of the affected industry, on the other hand, may cut both ways and may not provide a specific hypothesis in an unambiguous manner: if the industry in the complainant state is in severe economic difficulty, any quick settlement may be better than long legal proceedings; on the other hand, economic difficulties may induce a complainant state to pursue a clear-cut, once-and-for-all type solution that can be obtained after a WTO ruling.

It can be shown (Table 2) that domestic constraints were strong in most of the Japanese cases that went to legal proceedings at the WTO. In all of the cases, the affected (protected) industries in the defendant countries were very well organized and/or well represented by their legislators. Domestic constraints were strong in both complainant and defendant countries. On the other hand, Table 3 shows that these domestic constraints were either weak or moderate at best in defendant and complainant countries in early settlement cases. This is consistent with my domestic constraint hypothesis. The only obvious anomaly was the auto talks case, where domestic constraints were strong on both sides. The auto industry was powerful in both the complaining and defendant countries and they had a strong interest in intransigence. However, the Japanese auto industry caved in to the threat of US retaliation. Therefore, the US threat is enough to explain this outcome, while the slight flexibility shown by the US may have been due to the Japanese WTO strategy to contest the legitimacy of US sanctions. Leather is another possible anomaly, but EU flexibility can be explained either by their perception of a lack of legal merit, or their perception about the relative strength of the Japanese constraint.

[Insert Tables 2 and 3 about here]

Testing the Existing Theories

a. Priest–Klein
The Priest–Klein hypothesis posits that only cases for which rulings are uncertain are adjudicated by court; otherwise, the party with low chances of prevailing would settle “out of court”. This hypothesis can in principle be tested, but in practice, such tests are hard to execute satisfactorily. The analyst must be able to determine the merits of the cases independent of actual rulings, and that analysis requires a tremendous amount of legal knowledge about WTO law. Therefore, we must confine our analyses to a few cases for which rulings were relatively predictable.

Brazil

Brazil’s auto regime was perhaps one of such cases. Brazil’s imposition of quotas on auto imports in the early stage of its balance-of-payments crisis was perhaps too hasty, and also the incentives for investment that it instituted were clearly in contravention of the agreement on trade-related investment measures (TRIMS) as well as the most-favored-nation (MFN) clause. Fearing a complete defeat at the panel, Brazil was very willing to offer compromises to Japan, leading to an early settlement without escalating to adjudication.

Brazil had opened its auto markets to imports in 1991, and in late 1994, imports began to increase dramatically. Therefore, fearing a balance of payments crisis like the one that Mexico had just suffered, Brazil raised auto tariffs twice in February and again in March 1995, and finally on June 13, imposed a quota of 330,000 units for auto imports for the rest of the year. At the WTO, exporting nations sharply attacked Brazil’s new auto policy. Brazil tried to justify its quotas on the ground of balance of payments problems. In October, the WTO told Brazil to end its quotas, and the Ministry of Industry and Trade announced that it would lift its auto quotas, but considered alternative measures to cut trade deficits in autos. Although the June measure had comprised investment incentives to entice foreign direct investment in auto production in Brazil, the details had not been worked out. In December, Brazil introduced several measures: Foreign car markers would be entitled to lower tariffs for their exports to Brazil if they had plants in Brazil, met a local content requirement of more than 60 percent and exported some of their local output. With high tariffs, Japanese auto exports to Brazil dropped precipitously, from 30,000 units in the first half of 1995 to only 700 in the second half.

Japan’s Minister of International Trade and Industry, Shumpei Tsukahara criticized
Brazil’s December measures when his counterpart visited Tokyo in March 1996. Around the same time, the Japanese government started thinking about challenging Brazil at the WTO. At the WTO’s balance of payments committee meeting in May, Brazil asked Tokyo not to file a complaint, saying that it would soon change its policy. However, talks in June and early July did not produce satisfactory progress, and finally on July 30, Japan filed a complaint against Brazil’s auto policy, alleging violations of Articles I (MFN) and III (national treatment) of the GATT as well as Article 2 of the TRIMs among others. On August 9, the United States also filed a complaint on the same measure, alleging the same violations as in Japan’s request for consultations. During the WTO consultations, however, Brazil offered a compromise: Brazil would give a new annual quota of 23,750 units eligible for preferential 35 percent tariffs (the regular auto tariffs had been raised to 70 percent in March 1995). That amount was more or less the same as Japan had exported to the country in 1993 and 1994. In advance of Prime Minister’s scheduled visit to Brazil in late August, Japan’s stance began to soften. Although, during his visit Prime Minister Hashimoto said that Brazil’s latest measure of new annual quotas were not consistent with WTO rules; Japan relented and did not pursue this dispute further.

Brazil’s policy was a typical investment promotion measures with local contents requirements, which were known to be GATT-inconsistent. Thus, Brazil knew full well that it would lose when the dispute reached a panel stage. Thus, it was more than willing to offer a compromise. Thus, this case seems to be consistent with the story of the Priest–Klein hypothesis with the defending side admitting defeat early on. An interesting aspect of this dispute was that the compromise proposal that Brazil offered to Japan was probably WTO-inconsistent was well. That is one limitation of the WTO dispute settlement system as well as that of early settlement itself: there is no guarantee of complete compliance with the rules.

Pork

The pork safeguard was another case, which is consistent with the Priest–Klein hypothesis. In that case, Japan’s special safeguard on pork imports, which the EU challenged at the WTO, appeared to be consistent with the provisions of the Agreement

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2 *Brazil – Certain Auto Investment Measures – Request for Consultations by Japan*, WT/DS51/1 (6 August 1996)
on Agriculture. Therefore, the EU’s negotiating stance was weak, and it eventually dropped the case. Such an outcome is consistent with the Priest–Klein hypothesis.

After the entry of force of the WTO Agreement on Agriculture, Japan instituted a system of special safeguards on pork imports: it would raise its minimum import price by 24 percent if quarterly imports exceeded the latest three-year average. This was consistent with the provisions of Article 5.4, which allowed the members to levy additional duty not exceeding a third of the regular tariff when imports exceeded a certain trigger levels, which varied with the share of imports at the time. The reference period (the quarter in this case) could be set by members depending on the nature of the products concerned (Art. 5.6). Thus, at least on paper, the Japanese system seemed to be consistent with these provisions of special safeguards for agricultural products.

Nevertheless, how the system worked was inconvenient for the exporting nations. Because the demand for pork in Japanese markets was brisk, exporters rushed to fill the “quota” (i.e., the trigger level) early on in the year, until the safeguard was triggered. Then the imports were shut down by the safeguard for the remainder of the year. Japan imposed the safeguard first in November 1995, and for the second time in July 1996 (through the end of March 1997). European (mostly Danish) pork was particularly hard hit by the additional duties on pork because its exports were frozen while the competitors (Taiwan and the US) could export fresh pork, which sold well with higher price tags. Because of the safeguard limits the Danish share of the Japanese market dropped from 26.5 percent in the 1994–95 fiscal year to 19.2 percent in FY 1996.

Frustrated by the Japanese safeguards, the EU filed a complaint against Japan with the WTO on January 15, 1997. The EU considered that the Japanese safeguard measures adversely affected pork meat imports from the European Communities and “appeared” to be inconsistent with Japanese obligations under Articles I, X, and XIII of the GATT. No provisions of the Agreement on Agriculture had been mentioned in the European request. As Japan readied itself for consultations in Geneva, the EU sources said that neither the EU nor Japan wished to urge the WTO to set up a dispute settlement panel on the issue and intended to reach a settlement in bilateral discussions. This showed that the EU was

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not interested in obtaining a legal ruling on this issue; all it wanted to do was to get Japan to sit on the negotiating table. While Japan and the EU were consulting, Japan decided to continue the safeguard for another quarter through the end of June 1997. Imports did not surge when the Japanese safeguard expired in July and the EU lost interest in the case.

The pork safeguard case shows that WTO members sometimes use the dispute settlement system not necessarily to obtain legal clarity on certain issues, but to show its political resolve or convey a message. Filing a dispute does not necessarily mean that the complaint is confident of obtaining a legal victory; instead, it may be only interested in getting the attention of a negotiating partner. In such a case, early settlement is most likely, although the result may not be satisfactory from the complainant’s point of view.

b. Guzman/Simmons

Guzman and Simmons argue that when the issue is “indivisible”, transaction costs will be high, leading to a difficulty in obtaining early settlement. Therefore, such disputes with “indivisible” issues are likely to escalate to a panel stage in WTO dispute settlement. The catch to this hypothesis is how to operationalize this concept of “indivisibility.” They give an illustrative list, according to which only three cases related to Japan belong to this “indivisible” category: coddling moth, fireblight, and sound recordings. The former two concerned the agreement on sanitary and phytosanitary measures (SPS) and the last concerned the agreement on TRIPs. On the surface, the former two cases match their prediction; they were supposedly “indivisible” and hence likely to escalate. Indeed, both of them reached the panel stage. Both of them also encountered enormous difficulties in implementation. However, a closer examination reveals that neither of them was actually “indivisible”; various “divisible” solutions were possible, and they were on the negotiating table. However, the United States insisted on a black-and-white solution, making it seem like an indivisible issue. These two cases show that negotiator strategies affect the shape of the issue space: the issue is not intrinsically divisible or indivisible.

The third case involved an intellectual property, which is, according to Guzman and Simmons, an “indivisible” issue, especially, when there is no prior legislation to assure intellectual property rights. Although Japan had had neighboring rights legislation, the issue was whether to backdate the neighboring rights (copyrights of music performers) or not: there was no intermediate solution. However, the outcome was contrary to the Guzman–Simmons hypothesis: early settlement. Thus, this is an anomaly to their
hypothesis. In the following, we will briefly review these three cases.

Coddling moth

The coddling moth case was the first SPS dispute that Japan encountered. When Japan opened its fruit markets, it instituted a number of quarantine requirements on exporting nations, and one of them was to require laboratory tests on the extermination of the coddling moth whenever an additional “variety” of fruit was approved for import. Methyl bromide, a pesticide, would be applied in a gas chamber with fruits with 40,000 coddling moths inside, and if all of the pests were killed, that variety would be approved. This had to be replicated each time the exporter wanted to export a new “variety” even if the test had been done on the same fruit (say, apple) before. The United States, wanting to export more varieties of apples than initially approved, argued that this “varietal testing” requirement lacked scientific basis, and filed a complaint on April 7, 1997 against Japan at the WTO. During consultations which extended over half a year, Japan, while still insisting on varietal testing, offered various compromise proposals, for instance, reducing the number of moths used in the lab test. However, the United States did not accept a midpoint solution. The US stance was that once a fruit product was approved, any other variety of the same fruit product should be approved without additional test data. Therefore, it was the US negotiating strategy that determined the shape of the “issue space” and not its intrinsic nature.

The dispute therefore escalated to the panel stage. The panel ruled that the Japanese measure lacked scientific evidence and therefore in contravention of Article 2.2 of the SPS Agreement (WTO, 1998a). Interestingly, while the panel rejected the Japanese measure, it did not agree with the US position either, saying: “The United States posits testing by product as a reasonable alternative” but the Panel was not “convinced that there is sufficient evidence before us to find that testing by product would achieve Japan’s appropriate level of protection for any of the products at issue”. (para. 8.84). In other words, the panel’s view was that an intermediate measure between both extremes – i.e., the US position and the Japanese measure – was possible and desirable. Japan appealed the panel, but the Appellate Body upheld the panel (WTO, 1999). Accordingly, Japan and the United States eventually agreed on such an intermediate solution.

Fireblight
Another quarantine measure that the United States contested was the Japanese requirements to prevent the spread of the fireblight disease to Japan. Fireblight affects apples and other fruits, and originated in the Hudson River region. It had already spread to many other countries, but not to Japan. According to an agreement between Japan and the United States in 1994, the United States could only export apples grown in designated orchards in Washington and Oregon states, and the fireblight-free orchards had to be surrounded with 500-meter buffer zones and had to be inspected three times a year. The United States increasingly felt that these requirements were too onerous, and finally on March 1, 2002, the United States filed a complaint with the WTO.

The United States position gradually solidified into an extreme stance: the United States only exports “mature, symptomless” apples and there is no scientific evidence that the disease is transmitted through the export of such “mature, symptomless” apples. During the pre-filing and post-filing talks, Japan offered compromise proposals such as reducing the size of the buffer zone, but the United States rejected all the proposals. In other words, in the US view, all the other requirements such as the buffer zones and inspections (other than that of the final export products) were unnecessary. Such an argument was unacceptable to Japan, leading to a failure to reach a compromise during consultations. The subsequent outcome of the dispute followed that of the coddling moth. In July 2003, the panel ruled in favor of the United States (WTO, 2003a); however, as in the previous dispute, the scientific experts with whom the panel consulted were also uncomfortable with the US position. Japan appealed the panel ruling, but the Appellate Body upheld the panel (WTO, 2003b). Japan agreed to bring the measure into conformity with WTO rules by the end of June 2004, when it announced new measures, which reduced the size of the buffer zones and orchard inspections. However, these “compromise” measures were unacceptable, and the United States asked the panel to review the new Japanese measure under Art. 21.5 of the Dispute Settlement Understanding (DSU). The dispute continues at the time of writing.

Sound recordings

Another possible “indivisible” issue is that of property rights on sound recordings in Japan. This dispute arose when the TRIPs entered into force in January 1996. The USTR had suspected that Japan had not abided by the TRIPS provision that all works, as long as their copyrights had not expired in their home country, should be protected for 50 years, and placed Japan on the Special 301 watch list. The Japanese statute had been last revised
in 1971, and the Japanese insisted that they would accept the 50-year obligation only for works produced in 1971 and after. On February 6, 1996, the USTR requested consultation with Japan regarding neighboring rights (copyrights for performers) protection. On the same day, the EU also requested that Japan grant performers and record producers 50-year intellectual property rights and joined the US–Japan consultation on February 22. Although Japan argued that a deal had been struck during the Uruguay Round that it did not have to amend IPR protection before 1971, it showed reconciliation in the face of a united front by the EU and the US. On February 26, Prime Minister Hashimoto announced at a news conference that Japan would revise its copyright law to extend protection to sound recordings dating back to 1946 instead of 1971. In late December, an amendment to the Copyright Protection Law passed the Diet.

In this case, the independent variable perfectly fits the Guzman–Simmons definition of indivisibility. There was no question that Japan’s choice was an either/or situation: it would have to extend the copyright protection to 1946 or leave it applying to works produced in or after 1971. In the face of such a stark choice, an early settlement may be difficult, according to their hypothesis. However, the case was settled easily. What explains early settlement in this case? First, Japan may have perceived that it would have no chance of winning if the case had gone to the panel. If this were true, this case could be explained by the Priest–Klein hypothesis. Second, the case involved a small counterfeit industry in Japan. It had no political representation in the ruling coalition, and hence, it could be sacrificed easily in the name of international cooperation with the US and the EU, both of which were important partners at the WTO. Another domestic-level explanation was that the matter was under the jurisdiction of the Cultural Affairs Agency, a small agency with very few strong political allies in Kasumigaseki or Nagatacho. Again, such a political pigmy could not wield much power to resist political pressure for change.

Thus, the existing theories of early settlement do not seem to account for much of the variation in the early settlement/paneling outcomes in the disputes in which Japan has been involved. Hence, as an alternative, we will turn to the domestic constraints hypothesis.

**Testing Domestic Constraints Hypotheses**

a. Legislative constraints
One of the most obvious domestic constraints is that of a legislature. Simply put, the government is likely to agree to an early settlement if the change needed can be done only by the executive branch. On the other hand, if the needed change involves some legislative action, be it an amendment or the passing of a new law, early settlement is less likely. The reasoning is similar to that of Guzman and Simmons. Transaction costs of legislative change will be much higher than those of an executive action. Thus, the defending government may not find it worth its while to pay such high transaction costs unless the case got more serious than a simple “request” for consultation by another WTO member.

Table 4 shows a simple breakdown of cases. Only three out of eight cases that would have required legislative change ended in early settlement while over half of the cases (six out of 11) that would have required a legislative change were settled early. However, this table is somewhat misleading. The actual settlement of US – Government Procurement was nothing but early. It is categorized here as “early” settlement only because it was not paneled. Also, Japan – Distribution was actually paneled as part of Japan – Film. Thus, only one out of eight cases that required legislative change was settled early in a genuine sense.

[Insert Table 4 about here]

1916 Act

Let us examine one of legislative cases to illustrate the logic of the difficulty involved in such disputes. The Anti-Dumping Act of 1916 of the United States was one of the oldest antidumping statutes in the world, and it had some antiquated features such as criminal procedure and treble damages. It had been rarely used, but remained on the statute books. It was suddenly revived in the late 1990s, when several US steel makers filed civil suits under the Act: Geneva Steel of Utah against Thyssen Steel, a US subsidiary of a German steel maker and Wheeling-Pittsburgh Steel against several Japanese steel makers and trading companies. These suits were subsequently settled, but the European steel industry group (Eurofer) filed a complaint against the Act under the new Trade Barrier Regulation in 1997, according to which the European Commission would be obliged to litigate the

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6 Its domestic counterpart legislation was the Robinson–Patman Act, which prohibited price discrimination. Today’s main antidumping statute is that of 1921, which was incorporated into the Tariff Act of 1930.
case at the WTO. The Japanese steel industry also pressured the government to bring it to the WTO. This was a relatively technical case, and it was not entirely clear if the Act was in violation of the GATT or the Agreement on Antidumping. This legal ambiguity may have been one reason why early settlement was not possible. More importantly, the repeal of the Act required legislative action by the Congress, and the Clinton administration was not ready to put political capital into such a minor issue when the Congress was increasingly hostile toward the administration.

Both the panel considering the EU complaint and that for the Japanese complaint ruled against the United States (WTO, 2000a, 2000b). The reason was that neither the GATT nor the Antidumping Agreement permitted “specific action against dumping” other than antidumping duties and price undertakings. Since the 1916 Act permitted the court to impose treble damages in case of affirmative rulings, such a measure would be contradictory to the US obligation. The US appeal in both cases was handled by the Appellate Body at the same time, and the Appellate Body affirmed the panels’ adverse rulings (WTO, 2000c). In September 2000, the Dispute Settlement Body (DSB) adopted both the panel and appellate reports.

The legislative constraint is clearly seen in the subsequent development. To comply with the adverse rulings, on July 23, 2001 the US administration submitted draft legislation to the Congress that would repeal the 1916 Act and terminate all pending actions under the Act. However, the Congress failed to repeal the Act by December 20, a deadline that the parties extended from the original July deadline. Since the US failed to repeal the Act, the EU and Japan asked the DSB to authorize them to adopt “mirror legislation” in retaliation. Upon US objection, the matter was put to arbitration under Article 22.6 of the Dispute Settlement Understanding (DSU). Nevertheless, since there was some positive development in Congress, the EU and Japan asked the arbitrators to suspend the proceedings. In 2003, the Congressional leaders struggled to repeal the Act, but to no avail. Therefore, the EU (without Japan) revived the arbitration proceedings, and the Arbitrator approved EU retaliation in February 2004 on the condition that the EU’s retaliation does not exceed the sum of court awards and settlements that were publicly known (WTO, 2004). But since the restrictions put on retaliation were strict, the EU is yet to retaliate, giving the US Congress no incentive to progress any repeal of the Act.

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7 Recourse by the European Communities to Article 22.2 of the DSU, WT/DS136/15 (11 January 2002); Recourse by Japan to Article 22.2 of the DSU, WT/DS162/18 (10 January 2002).
A cautionary note is in order here. Not every case that involves legislation goes to a panel. Indeed, if the relevant statute leaves room for discretion, early settlement is possible, for two different reasons. First, if the executive branch has room for discretion, it may avert escalation of the dispute by using that discretion. For instance, in the Helms–Burton case, early settlement was possible because the administration could promise to the EU that it would not go after European firms even if they dealt in properties confiscated by Castro. Similarly, in the case against the carousel legislation, the Clinton administration (as well as the Bush administration) decided to refrain from changing the products on the retaliation list. The second reason is entirely opposite. In GATT/WTO jurisprudence, only statutes that “mandate” WTO-inconsistent action could be challenged “as such” (without actual application of the statute). Thus, seeing little chance of winning, the complainant may not escalate the dispute to the panel stage when such statues are involved.

b. Presidential vs. parliamentary systems

Not all legislatures are born equal, and hence, the preceding hypothesis on the legislative constraint needs to be nuanced by the degree of independence of the legislature from the executive branch. Presidential systems tend to have more independent legislatures than parliamentary systems. In addition, under parliamentary systems, the legislature may be more independent when the government is ruled by a minority coalition. Under presidential systems, divided government (the two branches controlled by different parties) may entail greater legislative independence.

It is thus no coincidence that the only “relevant” early settlement case involving legislative change was Japan – Sound Recordings. Hashimoto, who took over the prime ministership from Murayama in January 1996, held a (precarious) majority coalition in both houses. As long as the bureaucracy went along with it, passing an amendment bill was not so difficult for the government. Also, it is no coincidence that all disputes that required legislative change and could not be settled were against the United States.

c. Key legislators

However, even in a presidential system with an independent legislature, leadership at the legislature also matters. If the Congressional leaders are from the same party as the president and are cooperative in pushing bills through Congress, early settlement may be
possible. On the other hand, if the Congressional leaders are not inclined to cooperate, no settlement is possible. In such a situation, implementation after an adverse ruling is also difficult. The Byrd Amendment case illustrates such a situation very well.

Byrd

Senator Robert Byrd (D-WV) is one of the most senior politicians in Washington\(^8\) and is highly regarded by his peers in Congress. Also, he knows legislative rules inside out. Nevertheless, it was no small feat that he could manage to attach an amendment that every trade policy expert had opposed and get it enacted without encountering a presidential veto. The idea of the Byrd Amendment – that of distributing the antidumping duties and countervailing duties to the petitioners and other firms in favor of the original antidumping/countervailing duties petitions, was not new. Senator Byrd himself had introduced similar bills in 1999. The Byrd Amendment passed the Senate floor on October 18, 2000, during the waning days of the Clinton administration. Japan, the EU and Canada urged President Clinton to veto the bill, but it was attached to an agricultural appropriations bill and could not be vetoed because the presidential election was days away. Thus, it was signed into law on October 28.

As soon as the Amendment was enacted, the EU and Japan took joint leadership to gather support from other WTO members to oppose the law – formerly known as the Continued Dumping and Subsidy Offset Act (CDSOA). On December 21, the EU and Japan, together with Australia, Brazil, Chile, India, Indonesia, South Korea, and Thailand filed a joint complaint against the CDSOA with the WTO. Brazil and Canada later joined the case, expanding the number of co-complainants to an unprecedented 11. The new Bush administration was in no mood to introduce a repeal bill, and consultations produced no results. Thus, the EU and Japan with the original seven other complaints requested the establishment of a panel on July 12, 2001, closely followed by Canada and Mexico. In 2002, the Panel ruled against the United States (WTO, 2002), and the United States appealed the panel ruling. The Appellate Body modified some of the panel findings, but it ruled that the Byrd law was inconsistent with the Agreement on Antidumping as well as the SCM Agreement (WTO, 2003c). In the wake of the adverse ruling, the Bush administration called for the repeal of the Byrd law in its budget proposal for FY 2004.

\(^8\) According to his homepage, he was born on November 20, 1917 (he is 86 years old as of this writing) and was first elected to the Senate in 1958. [http://byrd.senate.gov/byrd_bio/byrd_bio.html](http://byrd.senate.gov/byrd_bio/byrd_bio.html)
Senator Byrd managed to get support of 69 other senators to co-sign a letter to President Bush in an attempt to maintain the law, as is. “Its continued operation is critical to preserve jobs that will otherwise be lost as a result of illegal dumping or unfair subsidies and to maintain the competitiveness of American industry”, the senators said in their letter. Instead, the Senate urged the Bush administration to wriggle out of this dispute through negotiations.\(^9\) The United States was given until December 27, 2003 to repeal the law, but Congress did not act. Therefore, eight of the co-complaints started procedure for arbitration for the size of retaliation, and the arbitration is still ongoing at the time of writing.\(^10\) The strong resistance from Congress is in stark contrast with the earnest efforts of Congressional leaders to repeal the FSC/ETI in the wake of another adverse ruling against Foreign Sales Corporations at the WTO.\(^11\)

d. Independent agency

Not only legislatures but also some administrative agencies are highly independent of both the executive and legislature by design. In such a case, a dispute involving measures by such independent agencies may be less amenable to early settlement. The logic is the same as the case of independent legislatures.

Film

One of the high-profile disputes that Japan had to fight at the WTO was on film. Kodak and its lawyers were convinced that Fuji Photo Film was using various anticompetitive measures to keep Kodak film out of the Japanese markets. Also, they suspected that the Japanese government was an accomplice in this. After government toleration of private anti-competitive practice was included as one of the offending measures under Section 301 in the Omnibus Trade and Competitiveness Act, Kodak thought it could use this provision against Japan, and filed a complaint under Section 301 in May 1995. Upon receiving the complaint, the USTR asked Japan’s Ministry of International Trade and Industry (MITI) for consultation, but MITI refused, saying that the matter was within the

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\(^9\) Accordingly, the United States made a proposal in April 2004 to reinterpret the AD Agreement so that measures like the Byrd law would be WTO-compatible.

\(^10\) The arbitration was due out by early June, but the report was delayed due to technical difficulties.

\(^11\) Therefore, Senate Finance Committee Chairman Charles Grassley (R-IA) admitted that complying the WTO decision against the Byrd law was more difficult than adhering to another WTO decision against the FSC. “Grassley Sees Byrd Repeal AS Tougher than Passing FSC Fix in Congress”, Inside U.S. Trade, January 31, 2003.
jurisdiction of the Japan Fair Trade Commission (JFTC), a *de jure* independent agency. This strategy of MITI to refuse negotiations with the USTR became known as *Monzenbarai* (denial of entry at the gate). MITI also told Kodak to go directly to JFTC, but suspecting that JFTC was just a pawn of MITI, Kodak hesitated.\(^\text{12}\) It is hard to determine how much independence that JFTC truly enjoyed, but nevertheless, it was important for MITI to maintain the stance that its independence had to be respected. Indeed, Japan was trying to make JFTC more independent at that time. For the USTR, the only way to make Japan sit at the negotiating table was to file a complaint at the WTO. MITI also encouraged the USTR to take the WTO route, but Kodak, or at least, its CEO George Fisher, was against the WTO strategy. The USTR decided to take the dispute to the WTO in June 1996. The key element of the US filing was a non-violation complaint – i.e., although the Japanese measures were GATT-compliant, they nullified or impaired the benefits that the United States reasonably expected to receive from Japanese tariff concessions. The USTR knew that it was difficult to prevail under such a complaint. The panel ruled in favor of Japan (WTO, 1998b), and the United States decided not to appeal. The independence (or least the pretence that it was independent) of the JFTC was one of the reasons why early settlement was impossible in this case. On the other hand, Kodak believed that MITI was fully in control and that putting maximum pressure on MITI was a winning strategy.

e. Federal vs. unitary systems

Another aspect that injects a degree of independence is that of federalism. Under federal systems, local governments are more autonomous from the central government than under unitary systems, and if the measures at issue involve sub-national government units, the disputes may be less amenable to early settlement for the same reasons as above. Most directly affected by this constraint is the Agreement on Government Procurement, which governs not only government procurement policies of the central government, but also those of sub-national governments.

*Burma*

As already mentioned, *US – Government Procurement* was categorized as “early” settlement, but the settlement was anything but “early”, and the reason was precisely

\(^{12}\) However, Kodak eventually filed a complaint with the JFTC in August 1996, but the JFTC did not rule against Fuji.
because of the independence of state governments in the United States. If it was not escalated into panel adjudication, it was only because of fortuitous circumstances.

On January 25, 1996, Massachusetts Governor William F. Weld signed into law legislation barring state contracts with companies that did business in military-ruled Burma (currently known as Myanmar). Although the Clinton administration promised to take a tough policy stance toward the military junta in Myanmar, which repressed the democracy movement of Aung San Suu Kyi, it was yet to take specific economic sanctions. This was the first anti-Burma economic sanctions law at the state level although several cities had passed similar bills by this time. After entry of force of this law, several major US companies pulled out of Burma, citing the Massachusetts law as a reason. Both European and Japanese companies were also affected by this law, and they started complaining to the State Department by 1997, saying that the law was in contravention to the US commitments made in the WTO Agreement on Government Procurement (GPA). It turns out that the Massachusetts state legislature, as well as the governor, were both unaware that the GPA covered their state. “I had no idea we were party to the Government Procurement (Agreement)” said Representative Byron Rushing, who was one of the original cosponsors of the Burma law. US businesses also began to mobilize against the law, forming a coalition named USA-Engage, comprising more than 500 companies and trade associations. On the other hand, not to be outbid by state and local governments, the Clinton administration finally banned new US investment in Burma in April 1997, basing the policy on the law that the Congress had passed in the previous year. (This would later become the reason why the courts ruled the Massachusetts law unconstitutional.)

Given the anti-Burma stance of the Clinton administration, it is no surprise that the talks between the administration and the EU showed no progress, although the administration said that it was negotiating with the Massachusetts legislature to repeal the law. Undeterred by challenges from the EU and Japan, another Massachusetts legislator introduced a “selective purchasing” bill, this time against Indonesia. The EU and Japan opposed the Indonesia bill as well. Finally on June 20, 1997, the EU filed a complaint against the US with the WTO. About a month later, Japan followed suit. Infuriated by

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13 *The Economist*, February 8, 1997, p. 32.
the European and Japanese challenges against the Burma law, the Massachusetts legislature stopped considering an amendment that might have made the law consistent with the GPA. Throughout 1997, consultations between the EU and Japan on one hand, and the United States on the other, continued but showed no progress. However, the complainants were not quick to go to a panel. One reason was that it was rumored that US businesses were about to challenge the Burma law in court. Indeed, the National Foreign Trade Council (NFTC) filed suit in federal court in Boston in April 1998. Thus, the EU and Japan decided to let this court battle run its course before challenging the statute at the WTO. In November, the Federal District Court struck down the Massachusetts law as unconstitutional. The Massachusetts government appealed the ruling, and the case sent all the way up to the Supreme Court, which affirmed the lower court rulings in June 2000. The court rejected the Burma law because Congress had passed a similar federal law giving the president power to impose sanctions on Myanmar. This federal law had “preempted” the state measure, according to the US constitutional doctrine.

This case clearly demonstrates the political independence of sub-national governments renders early settlement of disputes difficult. It would have escalated all the way up to WTO panels if it were not for domestic suits on the same statute, which was eventually ruled null and void by the Supreme Court of the United States.

f. Electoral constraints

None of these constraints are real constraints, in the sense that they are merely “friction” costs. However, for politicians, the real cost of agreeing to a settlement in a trade dispute is most likely an electoral retribution. The affected industries may well punish the government either by withholding campaign contributions or by mobilizing their members and employees to vote against the ruling coalition. Thus, compared with domestic “transactions costs” that the above constraints entail, these are the “price” of the bargain. Thus, the higher the likely the electoral costs of settlement, the less likely early settlement will be. Also, the memory of electorates is usually relatively short. Politicians are rarely punished for their previous actions undertaken several years beforehand. Thus, the more imminent the election is, the less likely early settlement is.\(^{16}\)

\(^{16}\) Of course, the defending government also has to take into account the likely electoral costs of withdrawing the offending measure after an adverse ruling. Therefore, the calculation of the electoral costs of early settlement is relative to the costs of post-ruling compliance. However, the cost of post-ruling implementation is discounted first because the WTO panel process could take up to a year and half (if appealed) and even three years until implementation if a maximum reasonable period of
Electoral concerns were one of the several reasons why Japan could not settle early in the liquor tax dispute with the EU and the United States. Japan had experienced a previous dispute on the same issue during the latter days of the GATT and had lost. Japan implemented the GATT ruling in 1989, rectifying some of the most egregious tax discriminations against imported liquors. However, the EU continued to argue that there was a vast degree of tax discrimination and was ready to file a complaint as soon as the WTO was set up. Japan’s Ministry of Finance was fully aware that Japan would lose if the dispute went to a panel. Thus, the Priest–Klein hypothesis would predict that Japan would settle early. To the contrary, the MOF was not able to offer any compromise. A MOF official explained the reason: “We are not thinking of lowering taxes on alcoholic beverages. [Regarding possible tax hikes on shochu, a Japanese domestic liquor product], since we have the upper-house election in the summer and a snap [lower-house] election is possible any time, no tax increase is feasible.” On June 22, 1995, the EU sued Japan at the WTO, and the United States and Canada later joined the dispute as co-complainants. The Panel ruled in favor of the complainants (WTO, 1996a), and was upheld by the Appellate Body (WTO, 1996b). Japan showed a proposal to amend the liquor tax law over the next five years, and the EU accepted it, but the United States and Canada rejected the proposal. Japan was given a maximum 15-month reasonable period for implementation, but even with that time frame, it had difficulty satisfying the US and Canada. The United States hinted at possible retaliation at the DSB meeting in November 1997. Finally, Japan offered to accelerate the implementation and gave tariff reductions on whiskey as compensation for delay. Although the shochu industry was small, it was concentrated in Kagoshima and Kumamoto, and the politicians from these regions were powerful in the ruling Liberal Democratic Party. Thus, the MOF had to exhaust all possible procedure before it could persuade the LDP to increase taxes on shochu (and to cut taxes on whiskey).

Industry in dire straits

Similar to electoral concerns is the state of the affected industry in the defending state. Early settlement usually requires a compromise solution, some costs of which have to be shouldered by the affected industries. However, when the affected industries are in dire

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straits, no government may be able to impose such costs on them. Electoral as well as economic consequences may be disproportionate to the benefits of keeping friendly trade relations with the trading partners.

Steel safeguard

The steel safeguard case was a dispute in which early settlement could have been possible, but settlement was very difficult because of the financial difficulties of steel firms in the United States. The global steel industry had been suffering from perennial supply gluts since the collapse of the military in the former Soviet Union, a situation further aggravated by the Asian financial crisis. European firms had weathered the downturn in the industry through mega mergers and acquisitions, with resulting restructuring, but because of what is known as the "legacy costs" (pension costs for retirees in the wake of major firings in the 1980s and 1990s), mergers and acquisitions in the US steel industry had been delayed. In addition, the US steel industry was in crisis: by April 2001, 18 steel makers were under bankruptcy protection. Thus, in order to give the steel industry room for respite and restructuring, the Bush administration decided to self-initiate the Section 201 escape clause or safeguards in WTO jargon. After the ITC report in December 2001, the Bush administration announced that it would launch safeguards on 16 categories of steel products in March 2002. As soon as the safeguards were put into place, the EU, Japan, Korea and five others challenged the US measures as inconsistent with the GATT and the Safeguard Agreement. Using a special provision for safeguards, the EU and Japan prepared for retaliation without a WTO ruling. Under the threat of retaliation by the EU and Japan, the Department of Commerce excluded many European and Japanese steel products from the safeguards in the summer. However, these concessions came a little too late. The DSB had already established a panel on June 3 upon receiving the second EU request, and the panel proceedings started in the fall. In July 2003, the Panel ruled against the United States (WTO, 2003d), followed by another adverse ruling by the Appellate Body in November (WTO, 2003e). The EU threatened to retaliate to the tune of US$2.2 billion five days after the adoption of the Panel and Appellate Body reports. Japan made a similar threat. The Bush administration announced on December 4, 2003 that it would lift the safeguards although USTR Zoellick denied that the threat of retaliation was the cause of this decision. Instead, he stressed changed economic circumstances. Due to the economic boom in China, steel imports into the United States were declining and steel

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prices were on the rise; providing a favorable environment for struggling steel companies. Economic conditions are certainly an important determinant of the course of WTO disputes.

h. Constraints on complainant

The effects of constraints on the complainant side are more complex. On the one hand, strong constraints to push for a favorable solution to the dispute certainly escalate the dispute, making early settlement difficult. On the other hand, strong constraints on the complainant side also mean that they are desperate for solutions (e.g., when the affected industry is in financial difficulties). Thus, in such a case, they may be more inclined to early settlement, because legal adjudication is time-consuming.

The Fuji-Kodak case is an example, where the constraints on the complainant side made early settlement difficult if not impossible. Since I have analyzed this case in detail elsewhere (Iida, 2003), the case analysis will not be repeated here. In that case, the intransigence of Kodak, in part because of its economic difficulties, left the United States few options except for the panel process at the WTO.

There are two anomalies to the hypothesis that strong constraints on both sides make early settlement extremely difficult: the auto talks case and the leather case. Despite the fact that domestic constraints were very severe on both sides, early settlement was possible. Therefore, a few explanations may be necessary.

In the auto talks case of 1995, the United States was determined to retaliate under Section 301 against Japan for the barriers in the Japanese auto and auto parts markets. For its part, Japan took the case to the WTO to complain about the inconsistency of the US threat of retaliation with its obligation under the DSU. The auto industries on both sides seemed resolved enough to endure any downside risk. In the end, both sides compromised without going to a panel; the United States accepted cosmetic compromise proposals from Japan. Why? First, in 1995, there were no elections in the United States, and the 1996 elections were still a long way away. Thus, the government could be slightly more relaxed about policies that may antagonize the auto industry. Also, several transnational contacts were made before settlement, providing more information about the resolve of both sides at the last minute. Last but not least, although it was clear by then that the Section 301 retaliation would be WTO-inconsistent, jurisprudence was not established.
and there were slight chances that Japan might lose at the panel. Therefore, the threat of US retaliation was effective to some extent.

Leather is another possible anomaly to the domestic constraints hypothesis. The European industry’s complaint had been investigated by the European Commission under the Trade Barrier Regulation procedure, and the Commission had determined that it had a solid case against Japan. By then, “domestic” constraints were strong on the European side. Also, domestic constraints in Japan were strong because of the political sensitiveness of the leather industry, which is concentrated in socially disadvantaged localities (i.e., Dowa districts). Japan had received several legal challenges on leather during the GATT, and each time it had settled. Thus, the Europeans would have imagined that Japan would offer a settlement in this case as well. But the Japanese were unexpectedly intransigent, offering no compromises. The EU was on the offensive on leather not only against Japan, but also globally in 1998. They were considering WTO complaints against India, Pakistan, and Argentina. Thus, the EU may have had a motive to seek a legal ruling to establish a precedent. But the European Commission was not about to request a panel, and it settled only with a promise by Japan that leather would be discussed as part of the multilateral negotiations which were expected to be started by the Ministerial Conference at Seattle in November/December 1999. The reason seems to be that the European industry did not want a panel on this case, and it only wanted settlement.19 Thus, my measurement of “strong” constraints may be misleading in this case; as long as the affected industry on the complaining side is only interested in early settlement, it is possible where strong constraints exist on both sides.

Conclusions

This paper has argued that domestic constraints are the key to understanding litigation behavior at the WTO: strong domestic constraints on the defendant side (and to a lesser extent on the complainant side as well) lead to escalation of disputes to the panel/appeal process; otherwise, disputes will end in early settlement. As these cases show, domestic constraints are quite varied and differ from country to country. Thus, in-depth knowledge of the case as well as that of the political institutions and process of litigant states are required. Thus, to show at least first-cut plausibility of hypotheses, I have detailed the

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cases in which Japan has been involved. Nevertheless, this is not to deny that this hypothesis could be quantitatively tested. But that is left for future research.
Table 1: List of early settlement cases

<table>
<thead>
<tr>
<th>Japan as a complainant</th>
<th>Case</th>
<th>DS #</th>
<th>Year filed</th>
<th>Co-complainants</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>US – Autos</td>
<td>5</td>
<td>1995</td>
<td>N/A</td>
<td></td>
<td>Compromise</td>
</tr>
<tr>
<td>Brazil – Autos</td>
<td>52</td>
<td>1996</td>
<td>EU</td>
<td></td>
<td>Brazil bought off the complainants</td>
</tr>
<tr>
<td>US – Government</td>
<td>88/95</td>
<td>1997</td>
<td>EU</td>
<td></td>
<td>Ruled in US federal court</td>
</tr>
<tr>
<td>procurement (Burma Act)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Japan as Defendant</td>
<td>Case</td>
<td>DS#</td>
<td>Year filed</td>
<td>Complainant(s)</td>
<td>Outcome</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>15</td>
<td>1995</td>
<td>EU</td>
<td></td>
<td>EU did not pursue further</td>
</tr>
<tr>
<td>(mobile phones)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sound recordings</td>
<td>28/42</td>
<td>1996</td>
<td>US/EU</td>
<td></td>
<td>Japan revised the law</td>
</tr>
<tr>
<td>Distribution (Daitenho)</td>
<td>45</td>
<td>1996</td>
<td>US</td>
<td></td>
<td>US did not pursue further; Japan</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>eventually repealed the law</td>
</tr>
<tr>
<td>Pork safeguard</td>
<td>66</td>
<td>1997</td>
<td>EU</td>
<td></td>
<td>Safeguard expired</td>
</tr>
<tr>
<td>Navigation satellite</td>
<td>73</td>
<td>1997</td>
<td>EU</td>
<td></td>
<td>Compromise</td>
</tr>
<tr>
<td>Leather</td>
<td>147</td>
<td>1998</td>
<td>EU</td>
<td></td>
<td>EU did not pursue further</td>
</tr>
</tbody>
</table>
Table 2: Cases with rulings

<table>
<thead>
<tr>
<th>Case</th>
<th>Constraints in complainant</th>
<th>Constraints in defendant</th>
<th>Consistency with hypothesis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liquor tax</td>
<td>Strong (UK Scotch industry well connected and powerful; interested in deterrence of other countries)</td>
<td>Strong (shochu industry well connected; key legislator in Japan)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Film</td>
<td>Strong (Kodak well represented in Congress)</td>
<td>Strong (Fuji powerful; FTC independent)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Strong (Toyota powerful and well connected)</td>
<td>Strong (Tommy Suharto connected with the regime)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Canada</td>
<td>Strong (Toyota powerful and well connected)</td>
<td>Strong (Big Three and unions resistant to change)</td>
<td>Consistent</td>
</tr>
<tr>
<td>1916 Act</td>
<td>Strong (steel industry well represented)</td>
<td>Strong (legislation rather than administrative action)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Byrd Amendment</td>
<td>Strong (steel industry)</td>
<td>Strong (legislation rather than administrative action; election close at the time of legislation)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Hot-rolled steel</td>
<td>Strong (steel industry)</td>
<td>Strong (ITC independent; steel industry and union very well represented; steel industry in crisis)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Sunset review</td>
<td>Strong (steel industry)</td>
<td>Strong (steel industry in crisis)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Varietal testing</td>
<td>Strong (apple industry well represented)</td>
<td>Strong (apple industry well represented)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Fireblight</td>
<td>Strong (apple industry well represented)</td>
<td>Strong (apple industry well represented)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Case</td>
<td>Constraints in complainant</td>
<td>Constraints in defendant</td>
<td>Consistency with hypothesis</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Auto talks</td>
<td>Strong (auto industry powerful)</td>
<td>Strong (auto industry powerful)</td>
<td>Inconsistent</td>
</tr>
<tr>
<td>Brazil</td>
<td>Moderate (Toyota well presented, but Brazil not as important yet)</td>
<td>Weak (auto industry not powerful yet; mostly due to economic crisis)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Myanmar</td>
<td>Weak (industry mostly interested in expansion to other states/targets)</td>
<td>Strong (Massachusetts independent from the federal government)</td>
<td>N/A</td>
</tr>
<tr>
<td>Mobile phones</td>
<td>Weak (mobile phones only represented by Nokia and Finland)</td>
<td>Weak (mobile phones still new and not well represented)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Sound recordings (Daitenho)</td>
<td>Strong (music industry big in EU and US and powerful)</td>
<td>Weak (the copy CD industry small and powerless)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Pork</td>
<td>Weak (only Denmark involved)</td>
<td>Strong (agriculture well represented)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Satellite</td>
<td>Weak (navigation satellite still in developmental stage; only interested in preventing future discrimination)</td>
<td>Weak (technology already dependent on US)</td>
<td>Consistent</td>
</tr>
<tr>
<td>Leather</td>
<td>Strong (Cotance well organized; interested in deterrence of other countries)</td>
<td>Strong (leather special industry in Japan)</td>
<td>Inconsistent</td>
</tr>
</tbody>
</table>
### Table 4: Legislative Constraints

<table>
<thead>
<tr>
<th>Outcomes</th>
<th>Did the resolution of the case require legislative change?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Early settlement</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>(US- Government Procurement, Japan- Sound Recordings, Japan – Distribution)</td>
</tr>
<tr>
<td>6</td>
<td>(US- Autos, Brazil-Autos, Japan- Pork, Japan – Mobile Phone, Japan – Navigation Satellite, Japan – Leather)</td>
</tr>
<tr>
<td>Paneling</td>
<td>5</td>
</tr>
<tr>
<td>5</td>
<td>(Indonesia – Autos, Canada – Autos, US – Sunset Review, Japan – Varietal, Japan – Fireblight)</td>
</tr>
</tbody>
</table>
References


