Partners in Compliance:
The Domestic Political Cover of WTO Rulings

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Abstract

The concept of compliance has long preoccupied scholars of legal institutions, law, and courts. In contrast to studies that focus on a government’s (dis)incentives to comply with a judicial ruling, this article approaches the question of compliance in terms of the strategies courts have to foster timely implementation. Employing original measures of dispute judgments and compliance outcomes, this article argues that the adjudicative bodies of the World Trade Organization (WTO) use the content of their rulings to ease the domestic political costs of trade policy changes, thereby acting as ‘partners in compliance’ with a government’s executive branch. Yet the extent to which these strategies successfully facilitate swifter implementation is conditional on the domestic politics of compliance. The political cover provided within adverse rulings has no observable impact on the fact or timing of compliance for disputes that can be implemented through executive action alone. However, relatively greater validation of a trade measure does increase the probability of compliance and swifter implementation when legislative action is required. This suggests that the WTO’s quasi-judicial bodies at times successfully facilitate compliance through the content of their rulings, with the goal of improving the effectiveness and legitimacy of the dispute settlement system.
1 Introduction

The concept of compliance is central to the study of any legal institution. Nowhere is this more apparent than in the context of international institutions, although disagreement persists over the definition, measurement, and utility of compliance in understanding international law’s impact. Despite ongoing debate over whether and how to study international legal compliance, it continues to dominate existing scholarship and proves to be particularly important for research on international courts. Judges, other legal actors, and regime architects all view abiding by the prescriptions of judicial bodies—especially international ones—as central to the rule of law and a system’s legitimacy. For this reason, scholars and regime actors consider the dynamics motivating adherence to international rulings to be inherently important, even if the relationship between compliance and a regime’s effectiveness remains uncertain.

In step with a spectacular growth over the past century in the number of transnational judicial and quasi-judicial bodies, a growing body of scholarship seeks to identify the conditions under which governments implement their rulings. Empirical studies tend to emphasize the structure of the underlying regime and the external or domestic costs incurred by continued non-compliance. A few have also begun to explore the role of remedy design features and the ability of courts to foster compliance constituencies. Similar to these latter efforts, this article approaches the question of why and when states implement international rulings from the perspective of compliance and implementation.

1 Downs, Rocke and Barsoom 1996; Chayes and Chayes 1993; Howse and Teitel 2010; Kapiszewski and Taylor 2013; Kingsbury 1998; Martin 2012.
3 Kapiszewski and Taylor 2013; Shany 2012.
4 I define judgment compliance as when a state or other actor takes or refrains from taking actions as required by a court ruling. Implementation refers to the process and steps undertaken domestically that lead to state-level compliance with the ruling (Huneeus 2014).
tive of the judicial bodies themselves and the strategies courts employ to encourage prompt compliance.

International judicial bodies sometimes purposefully conform their rulings to the expressed preferences of member states, especially politically or economically influential ones. The adjudicative bodies of the World Trade Organization (WTO) in particular often respond to shifts in their support among the broader membership. They also pay attention to the system’s compliance record as a proxy for the regime’s effectiveness and their degree of political support. The WTO’s Dispute Settlement Mechanism (DSM) responds to such shifts and simultaneously preempts lengthy delays in implementation by, among other strategies, facilitating compliance through the content of their rulings. Judgments that find fewer aspects of a trade measure in breach of WTO law or that make liberal use of judicial economy impose relatively fewer implementation costs on defendant states. Not only do mixed rulings require less extensive reforms from the losing party, discrete findings that a state did not violate WTO rules provide government officials with one specific type of domestic political cover to implement the adverse findings. On average then, we would expect greater validation of domestic laws to reduce the time it takes a government to comply with a WTO ruling.

This article evaluates this expectation. The following section develops the argument that the WTO’s quasi-judicial bodies (the Appellate Body and dispute panels, which together comprise the DSM) attempt to use the content of their rulings to ease the domestic political costs of incredibly charged policy changes, thereby acting as ‘partners in compliance’ with a government’s executive branch. It argues further that the extent to which these strategies successfully facilitate swifter implementation

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is very much conditional on the domestic politics of second-order compliance. Section 3 describes the empirical strategy adopted to assess this argument and Section 4 discusses the results of a number of statistical analyses.

I find that the extent of legal validation—one of many types of political cover judicial rulings can provide—within a WTO ruling has no observable impact on the fact or timing of compliance for disputes that require a government to enact new administrative regulations or that can be implemented through executive action alone. In contrast, validating some elements of a domestic trade measure increases the probability of compliance and swifter implementation when legislative action is required. This suggests that the WTO’s quasi-judicial bodies successfully attempt to foster compliance through the content of their rulings, with the goal of improving the effectiveness of and institutional support for the dispute settlement system. Section 5 further illustrates how executive officials leverage legal accommodation within a WTO ruling by tracing Canada’s domestic implementation of two adverse decisions on its patent regime. The final section concludes.

2 Why Comply?

Assessments of compliance with WTO rulings tend to be fairly positive, with existing studies emphasizing the pressures on or incentives for breaching states to conform to international rules. Although overall rates of compliance are high, the same country-dyads resolve some of their trade disputes quickly yet fail to resolve others for decades. This suggests that the timing of resolution cannot be explained by state-level characteristics (such as a country’s political system or economic power) alone. Some studies do look to factors that vary across disputes and tend to focus on the problem structure
of the disputed issue-area or the domestic politics of compliance. Very little attention is paid to dispute-varying strategies adopted by the WTO’s adjudicators to facilitate resolution. This is surprising given that theories of international judicial behavior often claim that judges seek to encourage compliance with their rulings, in order to increase support for their exercise of authority and help secure voluntary compliance in the future.\footnote{Carrubba, Gabel and Hankla 2008; Gibson and Caldeira 1995} The questions of what—if any—strategies WTO adjudicators employ to facilitate compliance and whether these strategies foster speedier dispute resolution remain under-explored within the literature.

With the notable exception of Rachel Brewster’s and Adam Chilton’s study of the United States, existing studies also tend to overlook how various domestic actors respond to WTO rulings.\footnote{Brewster and Chilton 2014} As they argue, this supply-side of compliance is equally important given that government institutions possess different policy preferences, face different demands, and encounter different obstacles when it comes to free trade and trade policy reform.\footnote{Brewster and Chilton 2014: 217-8.} There are thus strong reasons to expect that the government institution responsible for implementation of a WTO ruling will influence the type and speed of compliance achieved.

This article combines these two observations and advances the argument that international judicial actors can facilitate swifter compliance with their rulings by providing a type of political cover to domestic actors within their rulings, but that this matters more for some types of trade measures than for others. Specifically, legal validation of some but not all aspects of a trade measure is useful for the executive branch when legislative action is needed to conform domestic measures to WTO rules. However, when the executive branch is able to implement a WTO ruling alone—encountering relatively fewer hurdles domestically—the extent of validation provided
does not significantly affect the probability or speed of compliance.

2.1 Validation as Political Cover

Governments often prefer to resolve their disputes through a legally binding settlement rather than bilateral negotiations, and tend to delegate dispute resolution to an international body when they can use its involvement to push through unpopular domestic reforms. International legal rulings provide a form of ‘political cover’ for government officials to counter—or at the very least claim that their hands are tied in the face of—domestic political opposition to a controversial policy change.\(^\text{12}\) A government’s executive—with the primarily responsibility for trade policy and cooperation—can face sizable domestic costs or electoral sanctions if it negotiates controversial trade concessions. When the same concessions are ceded in order to comply with a WTO ruling, the executive can claim that the decision was mandated by a judicial authority, which other political actors and domestic groups may view as relatively more ‘legitimate’ even if unpopular.\(^\text{13}\) In fact, some studies have found that governments resort to WTO dispute settlement in cases that involve significant political costs or mobilized sectors demanding greater protection, implying that executives often seek out this type of political cover.\(^\text{14}\)

International legal rulings all provide some degree of domestic cover in that they are issued by a judicial body and are legally binding. Yet not all rulings are equal in this respect because courts can signal different levels of support for a trade policy through the specificity and nature of the remedy prescribed, or the actions a government must take in order to comply with a judgment.\(^\text{15}\) This article focuses on the

\(^\text{12}\) Allee and Huth 2006; Shaffer and Ginsburg 2012; Simmons 2002; Vreeland 2003.

\(^\text{13}\) Allee and Huth 2006: 224.

\(^\text{14}\) Davis 2009, 2012; Shaffer and Ginsburg 2012.

\(^\text{15}\) Hawkins and Jacoby 2010; Staton and Vanberg 2008.
extent of validation within a mixed ruling, which represents a form of legal accommodation that provides one type of political cover. The type, nature and quantity of breach and no breach findings within a mixed ruling differentially impact the politics of compliance. Broad and costly rulings that require extensive changes in a domestic legal system should, on average, take longer to implement and face more domestic roadblocks than narrow rulings requiring low-cost or superficial changes.16

While the nature and extent of reform required will depend largely on the strength of the legal case, the DSM does have some discretion in deciding where on the broad-narrow spectrum to place a ruling. WTO dispute panels and to a lesser extent the Appellate Body use the content of their rulings—through discrete findings that validate aspects of a trade measure or policy—to respond to shifts in their underlying political support among the wider membership. These non-breach findings provide the losing government—and the executive branch in particular—with additional ammunition to overcome domestic political opposition. They do so by allowing the executive to point to reforms it is not obligated to make—because it had vigorously defended the interests of the affected industry—while simultaneously claiming that it has no choice but to make the unpopular concessions required to comply with the WTO ruling.

In practice, governments officials quite frequently use these non-breach findings as evidence that the WTO’s DSM has validated some elements of their trade policy or litigation efforts. It is not uncommon to see both parties to a dispute claim that they ‘won’ the case, despite the fact that the respondent government must still reform some aspect(s) of its trade laws. Take, for example, the protracted and complex dispute between the European Union (EU) and the United States (U.S.) over support provided to the domestic civilian aircraft industry (specifically Airbus in the EU and Boeing

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16 Helfer 2014, Huneeus 2014
In October 2004, immediately following its withdrawal from a bilateral agreement on support for aircraft producers, the U.S. challenged within the WTO all EU support provided to Airbus since the late 1980s. In response, the EU brought a parallel WTO challenge against support for Boeing provided by American federal, state, and local authorities.\(^\text{17}\)

In the Boeing case, the WTO ruled that some of the assistance provided by the Department of Defense and state governments were trade-distorting subsidies that had adversely affected sales of some lines of Airbus aircrafts. While it did not agree with all of the EU’s claims, it did rule that many of the subsidies violated WTO rules and the European Commission welcomed the decision as a victory.\(^\text{18}\) Yet the United States Trade Representative (USTR) also called the ruling a “tremendous victory for American manufacturers and workers,” one which “demonstrates the Obama Administration’s commitment to ensuring a level playing field for Americans” because the WTO had rejected claims that it was providing ‘massive trade-distorting subsidies’ to Boeing.\(^\text{19}\) Both parties claimed that they had prevailed in the dispute, while simultaneously affirming their commitment to implement the WTO’s adverse findings.


\(^{18}\)The Commission publicly characterized the ruling as a confirmation that billions of dollars in U.S. subsidies granted to Boeing are illegal under WTO rules, requiring the U.S. to withdraw its subsidies or remove their adverse effects. European Commission, “WTO confirms Boeing received billions in illegal subsidies from United States,” Press Release, 12 March 2012. Available at: [http://europa.eu/rapid/press-release_IP-12-238_en.htm](http://europa.eu/rapid/press-release_IP-12-238_en.htm).

2.2 The Conditional Utility of Validation

Ensuring compliance with a WTO ruling often falls to a number of domestic actor(s), each with their own decision-making procedures, levels of engagement in foreign affairs, and constituencies. Which actor(s) have the authority and ability to implement a WTO ruling varies across the policies at issue and the institutional system of the respondent government, but defines the boundaries of what could feasibly constitute ‘prompt compliance.’\textsuperscript{20} The two primary actors within the realm of trade are the executive branch (and various administrative agencies, regulatory bodies, or departments therein) and the legislature, although the judiciary and subnational political entities in federal systems (and the EU) sometimes play critical roles.

In the U.S., for example, legislative action is required to cure statutes found in breach of WTO rules, while the USTR and relevant agencies must consult with the appropriate congressional committees and follow other mandated steps in order to modify or rescind an administrative agency regulation or practice. In contrast, the Department of Commerce and U.S. International Trade Commission are solely responsible for implementing decisions on trade remedies (safeguards, antidumping, and countervailing duty proceedings).\textsuperscript{21}

Theories of ‘veto players’ suggest that the speed and success of policy making across a wide range of issue areas depends on the number of actors whose consent is needed to implement a change.\textsuperscript{22} This implies that compliance with adverse rulings should be highest where the executive branch has greater unilateral discretion to enact trade policy reforms. Executive agencies tend to have greater capacities

\textsuperscript{20} Goldstein and Steinberg 2008.


to act quickly to implement adverse decisions, partly because they face fewer veto points. In addition, executive or administrative bodies—particularly those tasked exclusively with matters of international trade—have greater incentives to maintain positive foreign relations, while legislators—particularly those within relatively democratic systems—tend to cater to the preferences and interests of their constituents, which may push toward greater protectionism in some areas. Take, for example, the dispute between Japan and the U.S. over the latter’s anti-dumping measure on hot-rolled steel products. In 2002, the Department of Commerce issued a new final determination and the International Trade Commission definitively terminated the measure in 2010, five years after the implementation deadline. However, the dispute remains ongoing because the WTO ruling also requires amendment of the U.S. Tariff Act, which Congress has yet to act on even though the executive continues to affirm its support for legislative action.

WTO adjudicators—and Appellate Body members in particular—are aware that the legislative process works more slowly than other methods of domestic policymaking, as indicated by the factors upon which arbitrators rely when determining the period of compliance time to give a government. A number of these arbitrations explicitly note that “implementation achieved through administrative processes generally requires less time than implementing legislation” because “legislative action generally requires the participation of additional institutions (typically at least the Legislative Branch)—likely to have slower, more deliberative processes—possibly in

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25 WTO arbitrators appointed to determine a reasonable period of time (RPT) for compliance (typically an Appellate Body member) take into account whether curing the violation will require legislative action, as this will likely necessitate a longer period of time.
conjunction with the Executive Branch as well).”

The domestic cover provided by greater validation is not useful for all types of trade measures, in that its utility is conditional on the domestic political actors responsible for enacting reforms. The executive—or the department responsible for international trade—does not always or necessarily benefit from greater legal validation to push through changes completely within its discretion. Firstly, the general public likely pays less attention to steps taken to cure an executive agency’s investigation or determination and thus political cover proves less useful in such instances, although there are notable exceptions. For example, when subsidies or anti-dumping duties involve an industry with particularly strong lobbying power or relate to a politically salient sector, public coverage of the WTO’s ruling can be extensive.

Secondly, given that implementation can often be achieved within one ministry, department or agency, the number of discrete elements of the regulation or practice in need of reform should not have a discernible effect on the timing of compliance. On the other hand, when the executive must work through and with the legislature to implement a ruling, each deficient element of a trade measure (often contained within more than one law) is subject to the more deliberative legislative process. For these reasons, each discrete non-breach finding—particularly if a government must enact difficult or controversial reforms—provides the executive branch with something to waive before domestic audiences and legislators as evidence that they vigorously defended domestic interests and indeed even prevailed on some issues.

To summarize, validation within a WTO ruling should be useful for the executive

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26 Award of the Arbitrator, European Communities—Customs Classification of Frozen Boneless Chicken Cuts (Article 21.3(c) Arbitration), WT/DS269/13, WT286/15, 20 February 2006, para. 67.

27 For example, there has been considerable coverage of the U.S. trade conflict with China over solar equipment and the Department of Commerce’s imposition of antidumping duties, given extensive disagreement over the benefits of manufacturing solar panels domestically. See Diane Cardwell, “U.S. Imposes Steep Tariffs on Chinese Solar Panels,” The New York Times, 16 December 2014.
when legislative action is needed to bring domestic measures in line with international trade law. It should be less useful when the executive can bring the country into compliance unilaterally. Greater validation of a trade measure should increase the probability and speed of compliance when the executive must work with and through the legislature to reform impugned laws. The following section briefly describes the compliance phase of dispute settlement within the WTO before outlining the data and methods used to evaluate these expectations.

3 Empirical Strategy: Data

Are governments more likely to comply with a WTO ruling and cure breaches faster when fewer elements of a law or regulatory mechanism require reform? Does validation of some aspects of a trade measure matter equally for all types of policy reforms? This section addresses these questions by first describing the measures used to proxy the outcomes of interest—dispute resolution and time-to-compliance—before providing a descriptive overview of the article’s key explanatory variable—political cover.

3.1 Compliance Outcomes

The compliance phase of the WTO’s dispute resolution process begins immediately following the circulation and adoption by the Dispute Settlement Body (DSB) of a ruling. Within thirty days, the losing government must report to the DSB on whether it intends to implement the ruling and the actions it has taken to comply. In many disputes, immediate compliance (within the thirty day period) is impracticable given that implementation may require extensive restructuring of a regulatory system or the
passage of controversial legislation.\(^{28}\) For this reason, a government often is afforded a reasonable period of time (RPT) to enact the necessary reforms.

The Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU) provides a number of alternative methods to determine the RPT, though it encourages and parties appear to prefer negotiation, with mutual agreement reached for more than half of the disputes (67.6%). If the parties cannot reach agreement on the RPT, the time frame is determined through binding arbitration, which has occurred in twenty-seven disputes (24.3\%).\(^{29}\) An Appellate Body member is typically appointed as the arbitrator, with nearly three-quarters of RPT arbitrations decided by a sitting member and the remainder decided by a member who had just finished his/her term.\(^{30}\) In terms of length of the RPT, it varies only slightly across types of disputes and methods of determination.\(^{31}\) The average RPT determined by arbitrators stands at 11.38 months, which is slightly higher than the average negotiated RPT (10.74 months).\(^{32}\)

A losing party is considered in ‘breach’ of its WTO obligations and liable to

\(^{28}\)Governments have notified implementation within thirty days of report adoption in a mere fourteen disputes (11.2\%). The following analysis covers 141 total disputes, with the unit of analysis at the dispute- and not report-level to avoid artificially inflating the data by counting all disputing dyads. Although disputes are initiated by different parties at different times, the timeline applies uniformly to all disputing parties once it moves to the compliance stage.

\(^{29}\)In nine disputes, parties relied on the RPT stipulated by the panel, as provided for within the Agreement on Subsidies and Countervailing Measures (SCM). See SCM, Article 4.7. The RPT can also be the time proposed by the respondent government, if approved by the DSB, although this option has never been used successfully. See DSU, Article 21.

\(^{30}\)One arbitrator is appointed by agreement within ten days; if parties are unable to agree, one is appointed by the WTO Director General, which has occurred in nearly 45% of the cases submitted for RPT arbitration.

\(^{31}\)For the nine SCM disputes, panels consistently have specified an RPT of either three or six months, with one exception. Panel Report, *United States—Tax Treatment for “Foreign Sales Corporations”,* WT/DS108/R, 8 October 1999.

\(^{32}\)While the DSU provides a guideline of fifteen months for an arbitrated RPT, this has been treated as the maximum period and not the default. There are three notable outliers in terms of average RPT, due to subsequent agreements to extend the compliance deadline. In *US—Hot Rolled Steel*, the final period was 47.27 months (nearly four years); 41.9 months in *US—Section 211 Appropriations Act*; and 40.33 months in *EC—Biotech Products.*
be subject to retaliatory concessions \textit{only} if it fails to comply before the expiration of the RPT. Notably, governments can claim (by notifying the DSB) that they are in compliance with a ruling after making minimal—and perhaps insufficient—reforms to the challenged policy or measure. The increasing tendency of governments to do so—either strategically or due to ambiguity concerning what implementation requires—has led to a rise in so-called ‘compliance proceedings,’ initiated by complainant governments to challenge alleged implementation. Compliance proceedings effectively delay resolution of the dispute for several years, with some even suggesting that governments use deficient implementation to extend the time during which they can retain WTO-inconsistent measures without the added costs of authorized trade retaliation.\textsuperscript{33} Compliance proceedings have been initiated for nearly a quarter (23.2\%) of disputes requiring implementation, a little over half of which were subsequently appealed. Not surprisingly then, these disputes take on average twice as many days to reach resolution compared to those for which compliance panels are not requested.

Assessments of compliance with WTO rulings tend to be fairly positive, particularly when this record is compared to other state-to-state dispute settlement systems.\textsuperscript{34} Yet if one examines the quality and timing of dispute resolution, the record becomes a bit murkier. As discussed previously, the compliance phase can take up to several years and involve various proceedings still considered part of the dispute settlement process. More critically, the parties can negotiate a resolution to the dispute at any point during these proceedings in order to achieve partial—but still acceptable—compliance. In other words, WTO disputes can and often are concluded in ways that do not always result in the offending measure being withdrawn. While recognizing

\textsuperscript{33}Brewster 2011; Horlick and Coleman 2007.  
\textsuperscript{34}Davey 2009; Ginsburg and McAdams 2004.
that this may problematize the concept of second-order compliance within the WTO, this article focuses on two outcome variables of interest related to the broader concept of dispute resolution. The first is whether the dispute is considered resolved by the parties involved—effectively removed from the DSB’s agenda—or whether it is considered ongoing. The second consists of the amount of time (in days) it takes for the dispute to be considered resolved (time-to-compliance).

Within the first category of dispute outcomes (resolved), ‘compliance’ is achieved when a government notifies the WTO that it has fully implemented a ruling and this is not contested by the complaining party.\textsuperscript{35} While public notification of implementation by the losing party—and implicit or even explicit acquiescence by the winning party—does not always capture perfect compliance with a judgment, it does provide a close approximation given the winning party’s incentives to see full compliance following a lengthy and costly litigation. A little more than half of the WTO empaneled disputes between 1995 and 2014 have been resolved through compliance (Table 1).

\begin{table}[h]
\centering
\begin{tabular}{llr}
\hline
Outcome Type & \% Non-Compliant Disputes & Average Time of Non-Compliance (days) \\
\hline
Compliance (implicit or explicit acceptance) & 55.2 & 387.2 \\
Mutually Acceptable Solution & 20.8 & 1452 \\
Ongoing & 23.2 & 2459 \\
New Dispute & 0.8 & 904 \\
\hline
\end{tabular}
\caption{Status of WTO Disputes, as of December 31, 2014. Figures calculated using only those disputes for which implementation was required (n=125).}
\end{table}

\textsuperscript{35} A dispute is coded as resulting in compliance when the government notifies full implementation of the ruling, which is not challenged or questioned by the complaining state(s) within the DSB meeting during which implementation is notified or any subsequent DSB meetings (up to December 2014), and/or when implementation is not challenged subsequently through compliance proceedings. In a few cases following notification of implementation, the complaining party expressed dissatisfaction during a DSB meeting with the steps taken but did not subsequently insist on DSB surveillance or initiate compliance proceedings. While these cases represent a form of accepted breach, they are still coded as ongoing given that compliance proceedings can and may be initiated at any point in time.
This type of outcome differs from a Mutually Accepted Solution (MAS), which nonetheless indicates that the dispute has been resolved in that all parties found the negotiated solution acceptable. However, quite frequently the agreed-upon solution does not conform fully to the WTO ruling. The agreement reached in October 2014 between the United States and Brazil to terminate their decade-long dispute over American subsidies to domestic cotton growers is a good example. Although the U.S. modified the previous subsidy program within the 2014 Farm Bill, it did not eliminate support to cotton farmers and instead agreed to make a one-time contribution of $300 million to the Brazil Cotton Institute and provide other technical assistance and capacity building activities.

Parties reached a MAS in slightly less than a quarter of all disputes, roughly the same number of disputes that were ongoing by the end of 2014 (Table I). Disputes coded as ongoing may also fall into one of a number of categories: under surveillance within the DSB, in the compliance proceeding or retaliatory concessions phases, or subject to continuing bilateral negotiations.

Out of the 125 disputes requiring compliance, nearly a quarter (twenty-nine disputes in total) remain ongoing or unresolved as of December 2014. In other words, over three quarters of disputes submitted to the WTO’s adjudicative bodies have been resolved in a manner mutually satisfying to all parties. Notably, the percentage of disputes considered ongoing in a given year has not fluctuated considerably since 2002, despite the fact that the total number of empaneled disputes has steadily increased over time (see Figure I).

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36 Mutually agreed solutions likely represent instances in which the WTO ruling facilitated dispute resolution by changing the bargaining dynamics, positions, or information asymmetries within subsequent negotiations (Ginsburg and McAdams 2004).

The second type of outcome—time-to-compliance—is equally important in terms of the quality of implementation and the discriminatory effects of continued breach. TIME-TO-COMPLIANCE is calculated as the number of days from the date of final report adoption to the date a dispute is coded as RESOLVED. Although the interim review phase at the panel stage and appellate proceedings both provide some indication of potential reforms, it is not until the final ruling is circulated that ‘official notice’ of the steps needed to bring delinquent measures into compliance with WTO obligations begins. Date of resolution is based on the date provided by the losing government in its compliance report, when notifying implementation or a MAS. In cases where compliance is contested, the compliance date is coded as the date of final and unchallenged notification of implementation. A dispute is considered ongoing and coded as right-censored if compliance was not established by December 31, 2014.

For resolved disputes, TIME-TO-COMPLIANCE has ranged from as few as twenty-
seven days to as long as 15.2 years in the case of the EC—Bananas III dispute, with the average closer to two years (679 days). Notably, the average time-to-compliance for disputes ultimately resolved through mutual agreement is nearly four times as long as that for those concluded through implementation of the WTO ruling (Table 1). Trade conflicts ending in MAS include some of the WTO’s most intractable cases, such as the above-mentioned Bananas dispute and the challenge to the EU’s import restrictions on hormone-treated beef. The longest unresolved dispute—United States—Section 110(5) of US Copyright Act—has been ongoing for 14.6 years and under DSB surveillance since 2004, although the average for ongoing disputes by the end of 2014 is less than half that (6.5 years). Mean time-to-compliance remained fairly constant for disputes resolved during the first decade of the system’s operation, but increased noticeably when parties to the EC—Hormones dispute reached a MAS in 2009, and again in 2012 with settlement of the Bananas dispute.

3.2 Political Cover and Legal Validation

All adverse WTO rulings provide the executive with the political cover of a binding legal judgment issued by a third-party. Yet rulings vary in the extent to which they provide discrete elements of a trade measure with legal validation, in that the DSM upholds parts of the challenged measure as conforming to a country’s trade obligations. The degree of validation afforded within a ruling is measured by first coding each discrete finding for whether or not it found a violation of WTO rules.

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39 The parties notified a temporary MAS in 2009 (extended in 2013) that suspended retaliatory tariffs in exchange for duty-free import quotas for high-quality beef.
41 Each explicit exercise of judicial economy is also coded and counted as a non-breach finding in separate analyses not reported. When a panel exercises judicial economy it refrains from making a finding, which could provide another type of political cover. However, the judicial economy doctrine
A dispute’s **LEGAL VALIDATION** score measures the proportion of total findings that held that a government’s trade laws or practices do not violate WTO law. For those disputes that reached the Appellate Body, the ultimate decision (violation or non-breach) is coded for each panel finding appealed. For each panel finding not raised on appeal, the panel’s ruling stands and is combined with those appealed. The **LEGAL VALIDATION** variable thus represents the ultimate ruling on the dispute—by how much or how little a government ‘lost’ the case. Given that only 64% of disputes have reached the Appellate Body (which can only consider issues of law) and that parties rarely appeal every panel finding, it is not surprising that the average validation afforded overall and by the panel alone does not differ significantly over the years. As seen within Figure 2, the sharp drop in legal validation in 2010 is partly attributable to the fact that a mere five reports were issued that year, two of which found against the U.S. for all claims related to its practice of zeroing in anti-dumping investigations.

Notably the panel and/or Appellate Body found the defending country in breach of its trade obligations for every single claim raised in thirty-four disputes, with **LEGAL VALIDATION** receiving a score of zero. The strength of the legal case supporting each claim and the extent to which the challenged law clearly violated the rules cited likely explain the outcome for a number of these disputes. Moreover, twenty of these were decided within the first five years of the WTO’s existence (pre-2001). During the early years of the new dispute settlement system, parties raised fewer claims and cited fewer agreement provisions within their complaints. Over the years, and particularly for

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42 Anti-dumping authorities calculate the margin of dumping for a product by computing the difference between normal value and export price for each model or type of a particular product, and aggregate the results. ‘Zeroing’ refers to the practice of omitting the calculations where export price was higher than normal value, thus inflating dumping margins. See infra Section 4.2.
disputes involving trade remedy proceedings, governments have raised more discrete claims and cited more treaty provisions within their challenges. In addition, nearly half of these disputes involved national treatment or quantitative restriction claims under the General Agreement on Tariffs and Trade (GATT), which typically entail fewer total findings compared to those implicating trade remedies.

In these slam dunk cases, no validation can be given without inciting charges of blatant bias. Moreover, no legal validation needs to be given as these disputes likely represent those cases where the executive allowed the dispute to reach the panel stage due to strong domestic pressures against making voluntary concessions. The average time-to-compliance for these disputes is less than two years, nearly half as long as the average for disputes that validated some aspects of the challenged law or policy. In fact, save in two instances these disputes are coded as resolved, suggesting that the executive was looking for the political cover of an adverse legal ruling to implement

\[\text{No validation was provided in two ongoing disputes—EC—Export Subsidies on Sugar and US—Shrimp and Sawblades—although the former remains in a continuing state of accepted breach.}\]
trade reforms. For these reasons, I expect the factors that influence compliance in these cases to differ from those present in cases where some legal validation is given, however little.

3.3 Research Design

To evaluate the impact of a ruling’s validation on the likelihood and speed of compliance, I rely on the measure described in Section 3.2. Because I expect this type of cover to be more useful for disputes that require legislative action, I interact validation with a binary variable indicating whether at least one of the measures found incompatible with WTO rules requires action by the legislature to bring it into compliance (legislation). As discussed previously, ‘slam dunk’ cases are distinct in terms of the legal strength of claims and compliance dynamics. To account for this, I include a dummy variable for whether any (greater than zero) validation was provided within the final ruling (any validation). I also separately estimate the impact of validation on the subset of non-compliant disputes that resulted in at least one non-breach finding, excluding those for which validation equals zero.

In order to adjust for confounders, I include a number of variables likely to influence overall levels of validation in addition to the probability and timing of compliance. The most obvious potential confounder is the strength and market size of the parties to the dispute. Previous studies on the WTO have found that economically powerful countries are better able to use the dispute settlement system to their ad-

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44 A dispute is coded as requiring legislative action when a report’s Conclusions section rules against at least one aspect of a trade measure that was enacted by a country’s legislature. This is determined by examining the report’s description of challenged measure(s), and then identifying those aspects of a measure that the panel and/or Appellate Body found to violate WTO rules. For challenges against EU trade measures, a dispute is coded as requiring legislative action only when approval by the European Parliament is required. In unreported analyses, I recode disputes necessitating the opinion of the European Parliament on new regulations as requiring legislative action.
with wealth providing a rough proxy for legal capacity as well.\textsuperscript{45} Dispute panels also tend to reject a higher percentage of claims brought against wealthier defendants within ultimately adverse rulings\textsuperscript{46} Yet wealthier governments may also be less willing to comply (quickly), particularly if the complaining party is a much smaller economy, as the threat of retaliation will not be seen as particularly detrimental for large economies. To capture the economic strength of each party, I include separate measures for the GDP per capita (logged) of the respondent and complainant(s) at the time the ruling was issued (\textsc{respondent gdp} and \textsc{complainant gdp}).\textsuperscript{48}

I also account for disputes in which either the U.S. or the EU were the respondent (\textsc{us/eu respondent}). We would expect the DSM to afford the two most frequent users of the system with the largest shares of world trade greater validation given that their support is critical to the system’s operation.\textsuperscript{49} As frequent traders, we might expect these two countries to be particularly invested in the continued effectiveness of the WTO and its dispute settlement system, and thus they may be relatively more incentivized to promptly implement its rulings. Given their frequent use of the system, prompt implementation may be relatively easier (in terms of capacity and experience). Yet each is party to a number of disputes that have dragged on for years, which suggests that even after controlling for wealth, they may be \textit{less} incentivized to promptly comply given that their market size makes efficient breach of WTO rules more palatable and less costly.

\textsuperscript{45} Busch and Reinhardt \textit{2003a} Davis and Bermeo \textit{2009} Guzman and Simmons \textit{2002} 2005

\textsuperscript{46} Though see Busch, Reinhardt and Shaffer \textit{2009}

\textsuperscript{47} Creamer \textit{2015}

\textsuperscript{48} Data for GDP per capita was obtained from the World Bank’s World Development Indicators database, available at: \url{wdi.worldbank.org}. For disputes involving multiple complainants, this variable measures the sum of all individual complainants’ GDPs per capita. Disputes involving multiple complainants include those for which a number of countries filed a request for consultations together (and thus were assigned the same DS number) as well as those consolidated (with different DS numbers assigned). For disputes involving the European Union, this variable sums the GDP per capita for all EU member states.

\textsuperscript{49} Elsig and Pollack \textit{2012} Steinberg \textit{2004}
In terms of dispute-level confounders, I include an indicator variable for whether the dispute reached the Appellate Body (appealed), as members of the Appellate Body have tended to engage in more searching review of government’s trade measures than panelists. In addition, a ruling issued by the Appellate Body may exert slightly greater compliance pressures on government officials given that it emanates from an independent, standing, ‘court-like’ body as opposed to ad hoc panels.

The issue area of a dispute likely influences both a ruling’s degree of validation and the probability of compliance. To account for this, I include an indicator variable for rulings under one or more politically sensitive agreements. The WTO’s judicial bodies tend to reject fewer claims under these agreements. Additionally, these agreements seek to regulate internal policies traditionally viewed as core elements of domestic sovereignty and sectors with strong domestic interest groups lobbying for continued protectionism, both of which should make prompt compliance significantly more difficult. I similarly include an indicator variable for disputes involving trade remedies. Trade remedy cases often involve complex protectionist measures, in contrast to the all-or-nothing character of tariffs or quotas and may require extra domestic effort and time to reform. Moreover, trade remedy cases often entail more total findings than non-trade remedy cases and typically challenge a national-level quasi-judicial proceeding such as an administrative agency’s investigation into whether certain facts exist (i.e. dumping, subsidization, or injury to a

\[50\] Politically sensitive agreement disputes are coded as those rulings containing findings under one or more of the following agreements: the Agreement on Agriculture (AA), the Agreement on Textiles and Clothing (ATC), or the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS).

\[51\] Creamer 2015

\[52\] Davis 2003; Eagleton-Pierce 2013; Guzman 2004; Letsas 2006; Shany 2006

\[53\] Trade remedy disputes are coded as those for which a finding was made within the final report under the Agreement on Subsidies and Countervailing Measures (SCM), the Anti-Dumping Agreement (ADA), or the Agreement on Safeguards (SA).

\[54\] Guzman and Simmons 2002
specific industry).

4 Results

4.1 Discussion

A number of factors likely influence the probability that a WTO dispute will be satisfactorily resolved. I have argued above that resolution is more likely when the DSM validates more aspects of a trade measure but that this matters more for cases necessitating statutory reforms. If this is true, the probability of resolution should increase along with greater validation for those disputes that require legislative action. To evaluate this expectation, I first model the relationship between validation—conditional on legislative action—and the probability of compliance with a logistic regression, using the binary outcome variable of resolved dispute. I include all potential confounders discussed in Section 3.3. As seen within Figure 3, the marginal effect of validation on the probability of compliance is slightly higher for cases that involve legislative action than for those that can be implemented via executive or administrative action alone.

To be sure, the greater likelihood of compliance is small and only reaches significance for the sample of rulings that provided any—even if minimal—support for some aspects of a trade policy (i.e. excluding those for which legal validation equals zero. See Figure 4). In other words, conditional on at least one non-breach finding, greater validation is associated with a slight increase in the probability of dispute resolution when compliance requires legislative action (see Table A2 for regression tables).

To estimate the impact of validation—conditional on legislative action—on the
total number of days until compliance, I use an event history model, specifically a Cox proportional hazards model for duration outcomes.\footnote{The Cox proportional hazards model is a semi-parametric model that permits evaluation of the influence of a variable of interest on the rate of a particular event happening. It easily handles censoring in the outcome variable, of which there is a non-negligible amount in WTO dispute compliance\cite{box2004}. Of the 125 Non-Compliant Disputes, twenty-nine are ongoing and considered censored observations as of December 31, 2014.} Validation—interacted with legislative involvement—is assumed to influence compliance through the hazard rate—the instantaneous probability that resolution occurs given that it has not yet occurred. The estimated coefficients are interpretable as hazard ratios, or the proportional increase or decrease in the hazard rate in response to a one unit change in the covariate. All models include robust standard errors, clustered on the respondent country.

Figure\textsuperscript{5} depicts the simulated marginal effects of validation on time-to-compliance for disputes curable through executive action alone and those requiring legislative action.\footnote{On the utility of post-estimation simulation techniques to estimate the uncertainty of quantities of interest, in this case the marginal effect of interaction terms, see \cite{king2004}} The figure plots the quantity of interest (the marginal effect) as well as its
visually-weighted probability distribution, with darker points representing areas of the distribution with higher probability. The edges of the distribution reflect the central 95% confidence interval. Where both the upper and lower bounds of the confidence interval fall above (or below) the zero line, validation has a statistically significant marginal effect on time-to-compliance. The marginal effects are interpretable as hazard ratios, with values greater than one representing increases in the hazard rate, or the tendency for compliance to occur. Conversely, values less than one represent decreases in the tendency for compliance to occur.

When controlling for any validation, a 1% increase in validation is associated with a slightly shorter period of time-to-compliance when the dispute requires legislative action (Figure 5). This marginal effect is slightly stronger when conditioning on some (greater than zero) validation being afforded (Figure 6). While this relationship is substantively small for both dispute samples, it should be noted that it reflects a simulated marginal effects were calculated and plotted using the simPH package in R [Gandrud 2014].
Figure 5: Simulated marginal effect of validation on time-to-compliance.
The marginal effect reported is the hazard ratio, or the increase in instantaneous probability of compliance as validation increases by one percent. Hazard ratios greater than one correspond to an increase in the tendency for compliance to occur. The visually-weighted probability distribution, with darker points representing areas of the distribution with higher probability, reflect the central 95% confidence interval. See Table A3 for standard regression results.

mere one-unit (one percent) increase in the proportion of non-breach findings, with the difference in validation between ordered disputes usually consisting of around a 3% increase.\footnote{For example, the smallest percentage of non-breach findings in a dispute necessitating legislative action (aside from zero) was 11.8\% (Thailand—Cigarettes (Philippines)), with the next highest coded as 15\% of total findings. Although the final adverse rulings in the first dispute were made largely against executive agency actions in assessing customs valuation and imposing taxes, implementation of the ruling still required changes in, \textit{inter alia}, Thailand’s Revenue Code and Tobacco Act. See Thailand—Customs and Fiscal Measures on Cigarettes from the Philippines, WT/DS371/AB/R, 17 June 2011.} While a number of factors likely facilitate prompt implementation of WTO rulings, these findings do suggest that the degree of validation provided executives who need to work through the legislature is an important one.
Figure 6: Simulated marginal effect of validation on time-to-compliance.
The marginal effect reported is the hazard ratio, or the increase in instantaneous probability of
compliance as validation increases by one percent. Hazard ratios greater than one correspond to an
increase in the tendency for compliance to occur. The visually-weighted probability distribution,
with darker points representing areas of the distribution with higher probability, reflect the central
95% confidence interval. See Table A3 for standard regression results.

4.2 Robustness Checks

Given the small number of empaneled WTO disputes, the above analyses included
only the most obvious confounders. To ensure that the small but statistically sig-
nificant relationship found between validation and time-to-compliance is not driven
solely by model specification, this section considers a number of checks and alternative
variables.

First, a number of studies on WTO dispute settlement control for the parties’
relative power in place of or in addition to absolute economic power.Replacing
GDP per capita with a measure of the complainant country’s retaliatory power (the
difference between the complainant’s and respondent’s GDP per capita) does not alter
the estimated marginal effect of legal validation on time-to-compliance. Similarly,

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58Brewster 2013  Elsig and Stucki 2012  Guzman and Simmons 2002
controlling for trade dependency in addition to GDP per capita does not significantly change results.\footnote{Trade dependency is proxied with the logged value of respondent’s exports to the complainant state(s). Data for Export Trade Value (in thousands of USD) was obtained from the World Bank’s World Integrated Trade Solution database, available at: \url{wits.worldbank.org}}

Second, we might expect wealthier countries to possess greater regulatory capacity, which would facilitate swifter compliance. Moreover, WTO adjudicators are likely aware of the capacity of governments to implement efficiently their rulings. Replacing the respondent’s wealth with direct measures of government effectiveness and regulatory quality increases slightly the positive marginal effect of validation on time-to-compliance and the relationship remains significant.\footnote{Data for regulatory quality and government effectiveness obtained from the World Bank’s Worldwide Governance Indicators (WGI) project. Government effectiveness measures perceptions of, \textit{inter alia}, the quality of policy formulation and implementation. Regulatory quality captures citizens’ perceptions of the government’s ability to formulate and implement policies that promote private sector development. Data and detailed description of the coding and aggregation methodology can be found at: \url{www.govindicators.org}}

Third, disputes that involve more than one complaining party may put greater pressure on the respondent state to comply in addition to the pressure exerted by their combined wealth and retaliatory capacity. While a greater number of complainants may increase the external pressures to comply, it could also make dispute resolution more difficult to achieve since the losing party must take compliance steps that satisfy more than one country. Similarly, some studies have found that high levels of third party participation signal the preferences and concern of the broader membership and thus may influence both the bargaining dynamics between disputing parties and the legal ruling itself. However, including an indicator for whether the dispute involved more than one complainant or controlling for the number of third parties to a dispute does not alter significantly the main findings.

Fourth, again in terms of dispute-level characteristics, it may be more appropriate to proxy disputes concerning particularly sensitive sectors with a direct measure of
the good or industry implicated. Existing studies have found that the agricultural sector is very effective at organizing politically, in order to lobby for protectionism and publicize a dispute.\textsuperscript{61} The DSM could afford disputes involving agriculture greater validation in order to help overcome domestic opposition to freer trade. Simultaneously, agricultural disputes may also tend to last longer than manufacturing disputes, due to higher compliance obstacles. To this end, I replace \textsc{politically sensitive agreements} with an indicator variable for whether the dispute involved the agricultural sector.\textsuperscript{62} When I re-estimate the models, the substantive value and significance of the marginal effect of legal validation remains largely unchanged.

Fifth, the line of zeroing cases against the United States following the Appellate Body’s ruling in \textit{United States—Softwood Lumber V} have proven particularly intractable and controversial.\textsuperscript{63} Four of these nine disputes ruled against the U.S. on all claims (no validation),\textsuperscript{64} and none of the judgments required legislative action to cure the violation. The unique nature of this line of cases may be driving the estimated marginal effect of legal validation. While the U.S. complied with a few of the zeroing rulings relatively quickly, others remain unresolved to date due to American recalcitrance to abandon the methodology. To address this concern, I re-estimate all models excluding the nine zeroing disputes against the U.S. following \textit{United States—Softwood Lumber V}. Doing so slightly increases the size and significance of the relationship between legal validation and speed of compliance.

\textsuperscript{61} Bernauer 2003; Davis 2003; Davis and Shirato 2007; Eagleton-Pierce 2013.

\textsuperscript{62} This is coded based on the product or industry at issue identified by the WTO and whether it qualifies for coverage under the WTO’s Agriculture Agreement (Annex 1). This definition excludes, for instance, fish and forestry products, but includes various degrees of processing for different commodities.


\textsuperscript{64} In five of these zeroing cases, the U.S. did not contest the claims or present counter-arguments. The jurisprudence became so settled around the use of zeroing in anti-dumping investigations that, absent counter-arguments by the U.S., panels only needed to decide whether the complaining party had provided sufficient evidence to demonstrate that the U.S. had zeroed in that particular instance.
Sixth, this article has adopted a binary conceptualization of veto point in order to evaluate whether legal validation is more useful when trade policy reforms require legislative action. In doing so, it has assumed that legislatures are equally as significant a check across different separation of powers systems. Yet a number of studies emphasize that presidential systems, as compared to parliamentary or hybrid ones, create different behavioral incentives for actors in each branch. In particular, policy change is expected to be slower and less decisive under presidentialism than other systems, all else being equal.\textsuperscript{65} Within parliamentary or even hybrid systems, greater policy branch coordination may make it easier for the executive to achieve statutory reforms to implement a WTO ruling. Controlling for whether a government is a presidential system, however, does not change the marginal effect of validation on time-to-compliance. Similarly, directly controlling for the number of checks or veto players does not eliminate and in fact slightly increases validation’s relationship with time-to-compliance for disputes requiring legislative action.\textsuperscript{66}

Finally, the findings could be sensitive to the coding of \textsc{time-to-compliance}. As discussed in Section 3.1, it is only after the RPT expires that the additional pressures of DSB surveillance, compliance proceedings, and the looming threat of retaliation begin, factors that may alter the dynamics of compliance. To ensure that results are not driven by the few disputes that never reach the ‘in breach’ stage, I re-calculate \textsc{time-to-compliance} as the number of days from the date of RPT expiration. Replacing the outcome variable with this alternative coding slightly reduces the sample size but does not significantly alter the marginal effect of validation on time-to-compliance, conditional on at least one non-breach finding (Table A3, model (4) and Figure A1).

\textsuperscript{65}Cheibub, Przeworski and Saiegh 2004; Cox and McCubbins 2001.
\textsuperscript{66}Data for Political Checks was obtained from the World Banks’s Database of Political Institutions Beck et al. 2001.
5 The Political Cover of Validation and Patents

Do executive officials actually use the validation provided by mixed WTO rulings to push through controversial legislative reforms? This section illustrates this logic by tracing implementation within the Parliament of Canada of two adverse rulings on intellectual property and patents. Intellectual property rights continue to be a controversial topic within the WTO, particularly regarding patents on pharmaceutical drugs and the ability of generic drug manufacturers to provide low-cost alternatives to name-brand medications. In fact, the only treaty amendment agreed upon by WTO members concerned licensing exceptions for generic drugs.\(^{67}\)

Since the WTO’s inception, ten disputes concerning patents have been initiated although only three reached the panel stage. The U.S. and the EU separately brought two of these against Canada in 1999, challenging different aspects of its patent regime in an effort to push the federal government to increase protection provided brand-name drug companies. Both cases drew considerable public attention and sparked exceptional outrage, with some arguing that the WTO was permitting multinational pharmaceutical companies to take policy making authority away from Canadians and their government. Implementation of the adverse findings of both disputes occurred simultaneously through legislative amendment, although the executive initially brought Canada into temporary compliance with the EU’s challenge through regulatory action.

The EU’s challenge focused on two provisions within Canada’s Patent Act concerning stockpiling and regulatory review exceptions.\(^{68}\) Canadian government officials

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67This amendment was adopted in 2005 but is not currently in effect, with two thirds of the WTO membership yet to formally deposit their instrument of acceptance. General Council, *Amendment of the TRIPS Agreement: Decision of 6 December 2005* (8 December 2005) WT/L/641.

68Prior to a patent’s expiration, generic drug manufacturers were permitted to undertake research and development and go through the regulatory process of approval (the ‘regulatory review exception’), ensuring that the development regulatory approval process (which could take anywhere from
were understandably concerned, as the provisions were important ones and they had accepted the WTO Agreement with the understanding that the regulatory review exception in particular was consistent with TRIPs. Before the dispute panel, Canada conceded that the exceptions violated WTO rules but argued that they fell within the scope of permissible ‘limited exceptions’ to exclusive patent rights.

The outcome of the dispute was by no means certain, and the panel leveraged its interpretative discretion to afford the Canadian government some leeway in determining how best to manage its patent regime. Moreover, the panel’s legal analysis in finding that the regulatory review exception fell within the purview of the limitations clause but that the stockpiling provision did not is a bit difficult to reconcile. The panel found that the stockpiling measure was not limited because it did not impose restrictions on the quantity produced or stockpiled, which abrogated the rights to make or use the product exclusively during the last six months of the patent term. In contrast, the panel ruled that the regulatory process exception did qualify as limited because it was ‘narrowly bounded,’ even though the approval process may require substantial amounts of test production. In the panel’s view, this exception did not curtail the patent owner’s exclusive right to make or use the product so long as this production is solely for regulatory purposes. It assumed, then, that no commercial use would be made of these final (test) products, unlike those produced under the stockpiling provision.

three to six-and-a-half years) was completed during the patent term. Generic companies were also allowed to manufacture and stockpile products six months before patent expiration (the ‘stockpiling exception’). Panel Report, *Canada—Patent Protection of Pharmaceutical Products*, WT/DS114/R, 7 April 2000, paras. 7.1-7.10.


While Canada was “disappointed” that the stockpiling provision had been found in breach of its WTO obligations, government officials saw the decision as a victory, with the Minister of International Trade, the president of the Canadian Drug Manufacturers Association, and some generic drug manufacturers expressing both relief and satisfaction with the ruling. It provided the Canadian government with the political cover needed domestically to remove the stockpiling provision because it could retain the regulatory process exception, which federal officials and the Canadian generic drug industry saw as the more important of the two challenged provisions. The executive initially repealed the underlying manufacturing and storage regulations and later amended the Patent Act to achieve full compliance when it implemented the ruling on the second patent dispute.

The central issue of this second challenge to Canada’s patent law concerned the applicability of the TRIPs Agreement to patents awarded prior to 1989, under the old patent regime. Canada’s law clearly violated its WTO obligations because pre-1989 patents were not guaranteed the full twenty years of protection as required by TRIPs. The DSM was asked to rule on one claim—whether the patent term extension should be retroactive—and on this single issue it afforded Canada with no validation. The only type of political cover it provided was that of an adverse ruling by a legal body, which allowed the government to claim its hands were tied.

Despite the fact that its position within the dispute was not strong and it was

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71 Statement by the representative of Canada, Dispute Settlement Body, Minutes of Meeting held on 25 April 2000, WT/DSB/M/79, para. 13.
74 Regulations Repealing the Manufacturing and Storage of Patented Medicines Regulations, SOR/00-373 (28 September 2000).
unlikely to prevail against the U.S., the government vigorously defended the law, forcing the dispute’s empanelment and ultimately appealing the panel’s adverse decision. It was easier for Canadian executive officials to litigate a conclusion to the dispute than to voluntarily concede an issue about which the public was so concerned and legislators so divisive. It also made economic sense to litigate for as long as possible so that more American patents would expire before a ruling was issued. For example, Briston-Myers Squibb’s patent on the cholesterol-lowering drug Pravachol expired in July 2000. Extending its patent for the full twenty-year term represented a $110 million benefit for the U.S.-based drug company. The panel’s adverse ruling was issued on 5 May 2000, with Canada’s decision to file an appeal effectively ensuring that this patent would expire prior to the dispute’s conclusion.

As a result of this ruling and in response to the prior decision on the stockpiling provision, Canada swiftly adopted an Act to Amend the Patent Act. In introducing the bill, the Minister of Industry explicitly acknowledged that it had one purpose: “to bring Canada’s Patent Act into compliance with two rulings of the World Trade Organization.” He pointed to the DSM’s validation of the regulatory review exception as critical to Canada’s patent regime and its balance between global patent standards and the needs of consumers, industry, and innovators. He further reassured members of Parliament that the discrete amendments—removing the stockpiling provision and making retroactive the twenty-year patent term—would not affect this balance.

While the proposed legislative amendments were narrow, the underlying issue was contentious with both Senate and House committees hearing testimony from nearly

twenty individuals or organizations. In the House debates, a member of the New Democratic Party criticized the bill as a “loss of democracy through the WTO” and presented to them as if the government did not have a choice “because the WTO is forcing us to do this,” a sentiment echoed by a few other members as well. Others stressed that Canada “may not like all the decisions coming out of the WTO but there is no question that overall we benefit from the stability and clarity the organization provides to world trade.”\footnote{Debates of the House of Commons (Edited Hansard), 37th Parliament, 1st Session, Number 072 (5 June 2001).}

Many more echoed the view expressed by the leader of the opposition during the Senate debate, that the amendments needed “little discussion as they are the result of the fact that the World Trade Organization has upheld the challenges to certain features of our Patent Act.”\footnote{Debates of the Senate (Hansard), 1st Session, 37th Parliament, Volume 139, Issue 30 (1 May 2001).} The bill moved swiftly through the Canadian parliament, taking a little over five months for adoption, with a number of parliamentarians and the Ministry of Industry emphasizing that it dealt solely with implementing Canada’s WTO obligations and nothing more. In pushing for its timely passage, officials from the Ministry of Industry repeatedly stressed that the WTO had validated the regulatory review exception and that this represented a critical victory for the country’s patent regime.

6 Conclusion

Studies abound on the politics of trade conflicts in terms of the decision to initiate a dispute and their outcomes, but we know much less about the politics underlying the compliance stage of a legalized dispute settlement process. The few existing studies tend to emphasize rational incentives to abide by rulings or the exogenous costs of
non-compliance, approaching the issue from the perspective of the complier. This article flipped this perspective in order to shed light on the strategies available to the actors mandating compliance. In particular, it emphasized one way in which an international court can encourage prompt implementation of adverse rulings: by providing the executive—within and through its legal ruling—the political cover of legal validation to enact domestic reforms. In doing so, this article fills a surprising gap in the extant literature on the WTO, which has paid little attention to the ways in which the Organization’s quasi-judicial bodies seek to facilitate compliance with adopted reports.

Judges seek to avoid blatant acts of non-compliance with their rulings because such acts erode a court’s authority and may further contribute to public criticism and declining levels of institutional support. The WTO’s adjudicative bodies have at times provided governments with greater validation in response to shifts in their broader institutional support. Increased criticism by the membership can and under certain conditions does act as a type of political constraint on the WTO’s exercise of authority.\(^{80}\) Dispute panelists and to a limited extent Appellate Body members respond in this way out of concern that dips in their political capital might encourage or provide justifications for prolonged and willful noncompliance. In this way, members of the WTO’s quasi-judicial body are effectively engaging in ‘court-building,’ similar to many national high courts during their formative years.

International courts can facilitate compliance with their rulings by providing a number of types of political cover to domestic actors. To a certain extent, all adverse legal decisions allow a government actor to claim that their hands are tied. In contrast to existing studies that have focused on whether such rulings uniformly facilitate dispute settlement, this article has argued that international judicial bodies

\(^{80}\) Creamer 2015

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can provide different levels of domestic cover by validating certain aspects of a challenged law. One way in which the WTO does so is through discrete—but politically useful—non-breach findings within an ultimately adverse ruling. Of course, there are a number of instances in which the legal or factual basis for a claim raised was so blatantly lacking that the DSM had no choice but to rule that there was no breach of WTO law. Conversely in other instances, a trade measure so clearly violated WTO rules that the DSM could not and did not need to afford the defending government any legal validation. As discussed above, compliance with these slam dunk cases is surprisingly quick, arguably because they represent disputes the executive allowed to reach the panel stage due to its unwillingness to be seen as making voluntary concessions. For the vast majority of cases, however, the DSM possesses considerable discretion to decide where on the broad-narrow spectrum to place a ruling.

This article has provided evidence suggesting that the political cover of legal validation matters more for some types of trade measures than for others. Specifically, it found that greater validation is useful for the executive branch when legislative action is needed to conform trade measures to WTO rules and is correlated with swifter compliance in these instances. However, when the executive branch is able to implement a WTO ruling unilaterally—encountering relatively fewer hurdles domestically—the extent of validation provided has no discernible influence on the probability or speed of compliance. To a certain extent this is not surprising, given that existing studies tend to emphasize the efficiency of executive policy making and the relatively lumbering albeit deliberative nature of legislative policy making. Yet this article provides new insight into whether and how international institutions and law impact the domestic level by identifying the conditions under which national authorities more readily ‘take up’ their international trade obligations and alter domestic policies.

This article’s findings have broader implications in that they suggest that national
authorities may be able to adopt strategies during the implementation phase of dispute settlement to limit the reach of WTO rulings while still effectively resolving the dispute. Although the DSM can suggest ways to implement a decision, national officials possess absolute discretion in deciding how to respond to the ruling. This provides domestic political elites with the ability to limit the potential reach and minimize the effect of an adverse decision. Because the primary purpose of the WTO’s dispute settlement system is to mitigate trade conflicts, this article focused on resolution of the dispute as the outcome of interest which tells us little about the extent to which WTO rulings have a significant policy impact domestically.

While this article uncovered important insights regarding how different national authorities influence the probability and speed of dispute resolution, a pressing line for further inquiry is whether legislatures and executives adopt different strategies to mitigate a ruling’s impact. For example, a government can alter formal or technical aspects of a trade measure without changing the underlying policy objective, thereby complying with the letter but not necessarily the spirit of WTO law. Or it can decide to pay some penalty to the winning party in order maintain one or more of the WTO-inconsistent aspects of the measure, as typically occurs when a dispute is resolved through a mutually acceptable solution. The extent to which executives and legislatures are able to adopt these different strategies is critical to future understanding of the conditions under which international trade rules significantly impact the substance and quality of domestic policies.
## Appendix

Table A1: Summary Statistics

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<th>Non-Compliant Disputes (n=125)</th>
<th>Mean</th>
<th>St. Dev.</th>
<th>Min</th>
<th>Max</th>
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<tr>
<td>VALIDATION</td>
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<td>31.705</td>
<td>0.000</td>
<td>97.561</td>
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<td>LEGISLATION</td>
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<td>0.492</td>
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<td>ANY VALIDATION</td>
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<td>0.447</td>
<td>0</td>
<td>1</td>
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<tr>
<td>RESPONDENT GDP</td>
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<td>1.738</td>
<td>6.018</td>
<td>13.774</td>
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<td>COMPLAINANT GDP</td>
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<td>8.775</td>
<td>6.018</td>
<td>78.543</td>
</tr>
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<td>US-EU RESPONDENT</td>
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<td>1</td>
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<td>1</td>
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<td>TRADE REMEDIES</td>
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<td>0.501</td>
<td>0</td>
<td>1</td>
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<tr>
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<td>1</td>
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<td>0.424</td>
<td>0</td>
<td>1</td>
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</tbody>
</table>
Table A2: Logistic odds regression, with dispute status (resolved) as the dependent variable. Robust standard errors in parentheses. Model 1 includes all disputes for which implementation required following adoption of report—the non-compliant disputes. Model 2 includes the subset of non-compliant disputes for which some (greater than 0) legal validation was provided within the final ruling. Model 3 includes the subset of non-compliant disputes that reached the ‘in breach’ stage (implementation not satisfactorily achieved by expiry of the RPT). Model 4 includes the subset of these in-breach disputes for which some (greater than 0) legal validation was given.
<table>
<thead>
<tr>
<th>Time-to-compliance:</th>
<th>Non-Compliant Days</th>
<th>In-Breach Days</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td><strong>VALIDATION (%)</strong></td>
<td>0.007 (0.006)</td>
<td>0.011 (0.008)</td>
</tr>
<tr>
<td><strong>LEGISLATION</strong></td>
<td>−0.691** (0.335)</td>
<td>−1.189* (0.737)</td>
</tr>
<tr>
<td><strong>VALIDATION X LEGISLATION</strong></td>
<td>0.010** (0.007)</td>
<td>0.017** (0.012)</td>
</tr>
<tr>
<td><strong>ANY VALIDATION</strong></td>
<td>−1.473*** (0.395)</td>
<td>−1.307*** (0.428)</td>
</tr>
<tr>
<td><strong>RESPONDENT GDP (per capita, logged)</strong></td>
<td>−0.124* (0.099)</td>
<td>−0.103 (0.128)</td>
</tr>
<tr>
<td><strong>COMPLAINANT GDP (per capita, logged)</strong></td>
<td>0.031 (0.016)</td>
<td>0.050*** (0.018)</td>
</tr>
<tr>
<td><strong>US-EU RESPONDENT</strong></td>
<td>−0.635*** (0.341)</td>
<td>−0.743*** (0.419)</td>
</tr>
<tr>
<td><strong>APPEALED</strong></td>
<td>−0.191 (0.234)</td>
<td>−0.241 (0.280)</td>
</tr>
<tr>
<td><strong>POLITICALLY SENSITIVE AGREEMENTS</strong></td>
<td>0.027 (0.347)</td>
<td>0.887** (0.543)</td>
</tr>
<tr>
<td><strong>TRADE REMEDIES</strong></td>
<td>0.320* (0.250)</td>
<td>0.432* (0.305)</td>
</tr>
<tr>
<td><strong>Observations</strong></td>
<td>125</td>
<td>91</td>
</tr>
<tr>
<td><strong>R^2</strong></td>
<td>0.237</td>
<td>0.222</td>
</tr>
</tbody>
</table>

**Note:** *p<0.1; **p<0.05; ***p<0.01

**Table A3:** Cox proportional hazards model, with time-to-compliance as the dependent variable. Logged odds coefficient values reported, with robust standard errors, clustered on respondent country, in parentheses. Model 1 includes all disputes for which implementation required following adoption of report—the non-compliant disputes. Model 2 includes the subset of non-compliant disputes for which some (greater than 0) legal validation was provided within the final ruling. Model 3 includes the subset of non-compliant disputes that reached the ‘in breach’ stage (implementation not satisfactorily achieved by expiry of the RPT). Model 4 includes the subset of these in-breach disputes for which some (greater than 0) legal validation was given.
Figure A1: Simulated marginal effect of validation on time-to-compliance
Sample only includes the subset of non-compliant disputes that reached the ‘in breach’ stage (implementation not satisfactorily achieved by expiry of the RPT). See Table A3 Models (3) and (4), for standard regression results.
References


König, Thomas, George Tsebelis and Marc Debus, eds. 2010. *Reform Processes*


