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**Dispute Settlement in World Politics:
States, Supranational Prosecutors, and Compliance**

James McCall Smith

Covington & Burling LLP

jmsjay@gmail.com

Jonas Tallberg

Stockholm University

jonas.tallberg@statsvet.su.se

Abstract

This article addresses one prominent expression of the interplay between politics and law in international cooperation: the dynamics of bargaining in the settling of compliance disputes. Our central argument is that the formal structure of dispute settlement systematically shapes the likelihood and terms of negotiated compliance settlements. We introduce an ideal type distinction between interstate dispute settlement, where the authority to sue states for non-compliance resides exclusively with states, and supranational dispute settlement, where this authority is partly or entirely delegated to a commission or secretariat with a prosecutorial function. We hypothesize that systems relying on supranational prosecution are more effective in addressing non-compliance, and more likely to mediate the impact of power asymmetries on dispute settlement outcomes, compared to systems relying on state-initiated complaints only. We find support for this proposition in a comparison of dispute settlement and compliance bargaining in the WTO and the EU.

Introduction^{*}

In recent years, students of international cooperation have turned their attention to the legalization of world politics, seeking to better understand the proliferation of binding international treaties, the delegation of dispute settlement powers to international legal bodies, and the dynamics of compliance with international law. Although some international relations scholars have sought to evoke long-standing debates about the primacy of power versus rules, conceiving of the two as dichotomous alternatives, most researchers in the field today recognize the complex interplay between politics and law, calling for more nuanced and conditional generalizations (e.g., Goldstein et al. 2000; Finnemore and Toope 2001; Raustiala and Slaughter 2002; Reus-Smit 2004; Zürn and Joerges 2005).

This article addresses one prominent expression of this interplay: the dynamics of bargaining in the settling of compliance disputes in international cooperation. States bargain for settlement at multiple stages of international dispute resolution: as a way of avoiding recourse to formal non-compliance procedures; once proceedings have been initiated in an attempt to preclude adjudication; and in the aftermath of international legal rulings. Bargaining over the terms and obligations of international treaties constitutes a natural and perhaps necessary component of the increasingly legalized procedures of international dispute settlement.

In this article, we explore how the institutional design of dispute settlement affects the patterns and outcomes of compliance bargaining in international cooperation. We introduce a distinction between two ideal types of third-party dispute resolution: interstate dispute

^{*} James McCall Smith is an attorney at Covington & Burling LLP. Jonas Tallberg is Associate Professor of Political Science, Stockholm University. Earlier versions of this manuscript were presented at meetings of the American Political Science Association and the International Studies Association, as well as at seminars at Princeton University and Stockholm University. For excellent comments and suggestions for improvement, we would in particular like to thank Kenneth Abbott, Karen Alter, Robert Keohane, Ronald Mitchell, Andrew Moravcsik, John Odell, Bernhard Zangl, and Michael Zürn.

settlement, where the authority to sue states for non-compliance resides exclusively with states, and supranational dispute settlement, where this authority is partly or entirely delegated to a commission or secretariat with a prosecutorial function. Our central theoretical argument is that the formal structure of dispute settlement systematically shapes the likelihood and terms of negotiated compliance settlements. All other things equal, systems relying on supranational prosecution of infringement cases are more effective in addressing non-compliance, and more likely to mediate the impact of power asymmetries on dispute settlement outcomes, compared to systems relying on state-initiated complaints only.

We test this hypothesis through a comparison of dispute settlement and compliance bargaining in the World Trade Organization (WTO) and the European Union (EU). Out of the population of international organizations, these are the ones—interstate and supranational—best suited for comparison. The two organizations display a set of contextual similarities: both regulate international trade, offer highly developed institutional frameworks, and present memberships that vary in terms of relative power. Moreover, both organizations offer active dispute settlement systems on which reliable statistics are widely available. Most importantly, however, this selection allows us to hold broadly constant the institutional design features highlighted in the literature on legalization as we assess the impact of their divergent rules governing standing. Both the WTO and the EU offer permanent legal bodies with a high degree of independence, compulsory jurisdiction, the right to issue binding rulings, and access to sanctions—and thus are generally described as highly legalized in an international comparative perspective. However, the two organizations vary along the interstate-supranational dimension in terms of access rules. In the WTO, only member governments have standing to file cases, and interstate bargaining dominates at all stages of the dispute-resolution procedure. In the EU, by contrast, the European Commission has been delegated

the authority to prosecute infringements, and bargaining over compliance takes place between the Commission and the offending member state.

Drawing on primary and secondary sources, we present empirical evidence on the initiation, settlement, and outcomes of compliance disputes in the WTO and the EU. The findings broadly conform to our expectations.

In the WTO, compliance bargaining is pervasive at all stages of the dispute-resolution procedure, but particularly effective in producing settlements before panel rulings. Interstate power asymmetries significantly shape the process and outcomes of compliance bargaining. The empirical pattern of initiation demonstrates that states of relatively greater market size and institutional capacity are more likely to launch non-compliance suits, whereas developing countries are restrained in the filing of complaints because of resource constraints. Once a case has been initiated, powerful complainants, with advantages in institutional capacity and retaliatory leverage, are more likely to achieve favorable outcomes in negotiated settlements. By the same token, powerful defendants can delay or resist making concessions more effectively than developing countries during the compliance bargaining that follows WTO rulings.

In the EU, compliance bargaining plays an equally prominent role in the resolution of infringement disputes. Yet the delegation of prosecutorial powers to the supranational Commission yields a system that is even more effective in raising and settling cases of non-compliance. Furthermore, this act of delegation mediates the effect of power asymmetries on bargaining outcomes. Whereas the member states with relatively greater economic and political weight carry most influence in the adoption of EU rules, there is no empirical evidence to suggest that power differentials influence outcomes in the post-agreement phase. The Commission does not discriminate between the member states in the prosecution of

infringement cases, and empirical patterns of initiation and settlement cut across traditional power dimensions.

The article proceeds in four steps. In the next section, we outline the theoretical argument, explaining why the institutional design of dispute settlement should affect the patterns and outcomes of compliance bargaining. In the third section, we present the WTO and EU cases, describing the design of dispute settlement in these organizations, and summarizing evidence on the initiation and settlement of non-compliance cases. In this section, we also address three alternative explanations privileging norms, power differentials, and extant institutional variation, respectively. The final section summarizes the results of the comparison and relates the findings to the broader population of cases with supranational prosecutors.

The Argument

Our premise is that even in highly legalized systems for dispute resolution, conflicts regarding compliance with treaty commitments are solved primarily through bargaining rather than through adjudication or arbitration alone. The likely outcomes of compliance bargaining, however, depend heavily on the institutional design of the dispute settlement system. This section outlines our argument in two steps. We first elaborate on the basic distinction between interstate and supranational dispute settlement, then we identify the likely effects of these alternative institutional designs on the patterns and outcomes of compliance bargaining.

The Design of Dispute Settlement: Interstate vs. Supranational

The most distinctive characteristic of the legalization of world politics is probably the growing tendency for states to delegate powers of dispute settlement to third-party tribunals charged with applying regime rules. Yet, across international organizations, there is

considerable variation in the design of these mechanisms of dispute settlement. In recent years, international relations theorists have offered a multitude of typologies aimed at capturing essential dimensions of variation in the institutional design of dispute settlement (Yarbrough and Yarbrough 1997; Keohane et al. 2000; Alter 2002; Author). The most central among these dimensions are access (who enjoys standing), independence (how judges or panelists are appointed), jurisdiction (compulsory or not), “bindingness” (extent to which rulings create legal obligations), and remedies (whether sanctions are available).

Like other institutionalists, we hypothesize that variation in the design of dispute settlement mechanisms shapes the effectiveness and impact of these institutions. Moving beyond the stage of categorization, we isolate the implications of variation in access rules or legal standing, holding other dimensions of institutional design constant at a high level of legalization. Our emphasis on access rules is not unique. In fact, a prominent line of research on legalization theorizes the implications of states granting private parties the right to raise cases (Helfer and Slaughter 1997; Keohane et al. 2000; Alter 2002).

Our contribution is to trace the implications of legal standing for a third category of actors: supranational prosecutors. More specifically, we differentiate between two ideal types of dispute settlement: *interstate* and *supranational*. In interstate dispute settlement, the authority to sue states for non-compliance resides exclusively with states. In supranational dispute settlement, by contrast, this authority is partly or entirely delegated to a commission or secretariat with a prosecutorial function. This distinction has analytical affinities with the differentiation in comparative law between private interest and public interest models, where only the latter include community institutions with the authority to initiate proceedings in order to protect common goals and interests (Abbott 1992). Table 1 provides an overview of interstate and supranational dispute settlement in world politics.

[Table 1: Interstate and supranational dispute settlement in world politics]

Our central claim is that the empowerment of supranational prosecutors fundamentally shapes the dynamics and outcomes of dispute settlement. All other things equal, systems relying on supranational prosecution of infringement cases are likely to be more effective in addressing non-compliance, and more likely to mediate the impact of power asymmetries on dispute settlement outcomes, than systems relying on state-initiated complaints exclusively.

This essential difference in the institutional design of dispute settlement systems shapes outcomes through its effects on compliance bargaining—processes of post-agreement bargaining over the terms and obligations of international treaties (Author). Typically, we witness compliance bargaining at three stages of international dispute settlement: (1) before the initiation of a formal non-compliance proceeding, for purposes of reaching an early settlement; (2) within the formal framework of the dispute settlement procedure, in an attempt to preclude adjudication; and (3) in the aftermath of a legal ruling, as a way of reaching agreement on implementation and avoiding sanctions. Bargaining in this context should be understood in broad terms, involving not only direct, verbal communication, but also indirect and non-verbal communication between the parties (Schelling 1960, p. 21).

We hypothesize that the patterns and outcomes of compliance bargaining will be systematically shaped by the institutional design of dispute resolution. In this respect, our argument shares analytical affinities with Robert Mnookin and Louis Kornhauser's (1979) classic contribution on bargaining in the shadow of the law, where they showed how the rules and procedures used in court for adjudicating divorce disputes affected the bargaining process outside of court, creating bargaining resources for the parties. Specifically, we expect the involvement of supranational prosecutors to generate higher overall levels of compliance and

to mediate the effects of asymmetries in power resources that typically characterize interstate bargaining.

In this context, we define power in terms of market size and institutional capacity. Market size is the customary conceptualization of power in international economic negotiations, on the assumption that states with relatively larger economies tend to be less dependent on trade and thus better able to wield (as complainants) or resist (as defendants) threats of market closure (see, e.g., Odell 2000; Steinberg 2002; Drezner 2007, pp. 32-35). Within highly legalized dispute settlement systems, like the WTO and the EU, a second dimension of power is also salient: the institutional capacity to identify treaty violations, marshal supporting evidence, and advance persuasive legal arguments in a formal adversarial process where expertise is prized and litigation costs may be substantial (see, e.g., Guzman and Simmons 2005; Shaffer 2003).

We submit that the delegation of enforcement authority to a supranational prosecutor fundamentally reconfigures the negotiation dyad, compared to interstate bargaining, by introducing a complainant with an entirely different set of preferences and resources (see also Alter 2002).

Interstate dispute settlement provides exclusive access to complainants whose principals are domestic electorates, whose preferences may fall short of full compliance, who have good reason to fear retaliation by defendants, and who enjoy varying capabilities and resources. Governments are first and foremost responsible to national electorates, and must take domestic political interests and constraints into consideration when deciding whether to initiate and pursue complaints for unlawful trade action. State complaints are particularly likely in areas with a concentration of injured and vocal firms, and against markets of large size and economic importance. Because these criteria are not always met, governments may prefer to retain the discretion not to file formal complaints (Sykes 2005, pp. 347-51). States

may prefer to abstain from pursuing cases for fear of giving international legal bodies opportunities to establish far-reaching precedents, expand the judicial order in question, and limit states' future room for maneuver. The initiation of a non-compliance case exposes the complainant to potential retaliation by the defendant. At a minimum, a complaint may be interpreted as a hostile act, impeding efforts at cooperation in other areas. States with large and diversified markets should be relatively less constrained by the threat of retaliatory action, compared to states of limited market size, given their greater capacity to sustain the costs of sanctions. By the same token, states possessing limited administrative capacity and legal expertise should be relatively less inclined to engage in costly litigation. Even when they do file, states' motives may involve considerations other than improving treaty compliance, such as political signaling to domestic audiences or *quid pro quo* withdrawals of suits filed against them. In sum, interstate dispute settlement is driven by the political preferences of states with unequal endowments in terms of market size and institutional resources.

Supranational dispute settlement, by contrast, offers access to complainants whose principals are the collective of member states, whose preferences are full compliance with regime rules, who have limited reasons to fear retaliatory measures, and who mobilize a constant level of resources in every case. Supranational prosecutors have been empowered to raise cases because states want them to help enforce compliance. Pursuing violations is their job, and while states may be unhappy when suits are brought against them, they usually do not retaliate against a supranational prosecutor for fulfilling its given mandate. Maintaining credibility and autonomy vis-à-vis the collective of state principals is important for supranational prosecutors. As a result, they are anxious to be perceived as impartial, likely to treat the parties in a uniform way, and unlikely to be guided by political concerns other than the advancement of the international legal order they serve. To the extent that supranational prosecutors selectively pursue violations because of resource constraints, they are likely to

pick cases for their political and legal impact, not least their capacity to establish important precedents. Supranational prosecutors generally develop highly specialized legal expertise that can be brought to bear on potential cases. In dispute settlement systems granting access to both supranational prosecutors and states, national governments are likely to let the supranational prosecutor take the lead, thus escaping the threat of retaliation and incurring no litigation costs. In sum, supranational dispute settlement is driven by the enforcement agenda of independent prosecutors to whom states have given a mandate to promote compliance and the resources to do so effectively.

Hypotheses and Expectations

Below, we offer a schematic comparison of the implications of this variation in the institutional structure of compliance bargaining. We argue that supranational dispute settlement, relative to interstate dispute settlement, should lead to (1) more frequent initiation of cases when treaty violations occur, (2) less bias in the initiation and settlement of cases, and (3) better compliance with treaty provisions. Each of the stages at which compliance bargaining takes place—before formal initiation, during the dispute settlement process, and after a legal ruling—offers observable implications of our claims. We summarize our expectations by stage below.

In terms of the *initiation* of non-compliance cases, we would expect states with relatively larger markets or institutional capacities to initiate cases more often than those with fewer economic and political resources. We also expect states to engage in tit-for-tat filings, retaliating against governments that initiate disputes by lodging complaints against them in turn. By contrast, we would expect supranational prosecutors to be more inclined to raise cases than states. We also would expect supranational prosecutors, when selecting which cases to file, not to discriminate across states on the basis of political or economic power.

During dispute settlement proceedings but *prior to a legal ruling*, we would expect states with greater retaliatory leverage and institutional capacity to be more likely to reach negotiated settlements that are favorable to their demands as complainants, securing concessions that may not be of value to third parties. By contrast, we expect supranational prosecutors to be relatively more effective than states at compelling defendants to accept settlements that respect regime rules. We would also expect supranational prosecutors engaged in settlement negotiations at this stage not to discriminate between states based on economic or political power.

After a legal ruling has been issued, during *post-ruling negotiations*, we would expect states with relatively greater market size and retaliatory leverage to be more likely to reach settlements that are favorable to their demands as complainants. We would also expect states with greater market size and lower vulnerability to sanctions to be better able to resist or delay compliance as defendants. By contrast, we would expect supranational prosecutors to be more inclined than states to reach settlements that respect regime rules. We also would expect supranational prosecutors engaged in settlement talks or threatening punitive measures to be less likely than states to discriminate on the basis of economic or political power.

Taken together, our expectations suggest that the institutional form of compliance bargaining systematically affects dispute settlement outcomes, both in terms of the level of compliance and the distribution of gains between the parties. In particular, systems that rely on supranational prosecutors are more likely to resolve cases in line with treaty commitments. The outcomes in such systems are also more likely to be neutral to power disparities than in systems where compliance bargaining is strictly interstate.

Dispute Settlement in the WTO and the EU

In an international comparative perspective, the dispute settlement systems of the WTO and the EU are situated at one end of a continuum (Yarbrough and Yarbrough 1997; Keohane et al. 2000; Alter 2002; Author). Both are typically classified as highly legalized, because of their commonalities on four of the five central dimensions of dispute settlement design: a high degree of independence from the member states, compulsory jurisdiction, the right to issue binding rulings, and access to sanctions. The two organizations, however, differ on the fifth and final dimension—legal standing—where the WTO is an interstate system while the EU is supranational. In this section, we demonstrate how this difference in institutional design generates variation in the patterns and outcomes of compliance bargaining.

In the WTO, only member governments have standing to file cases, and interstate bargaining therefore predominates at all stages of the dispute settlement process. With governments controlling the initiation and ultimate disposition of all cases, bargaining in the WTO becomes less effective in inducing compliance and more open to the influence of power asymmetries. In the EU, by contrast, the member governments have chosen to delegate prosecutorial powers to the European Commission, which monitors and enforces state compliance. The granting of legal standing to the Commission has produced a supranational structure of bargaining that is more effective in ending violations and that helps mediate the effects of power differentials on dispute settlement.

While we claim that institutional design best accounts for the variation in dispute settlement patterns of the WTO and the EU, we recognize that between the two organizations there are other differences, which suggest alternative explanations. The EU is often seen as a more developed norm community than the WTO and other international organizations, which might explain why EU states to a greater extent abstain from wielding power and seek to settle non-compliance charges. In addition, the membership of the WTO is relatively more

heterogeneous than that of the EU, which might explain the greater impact of power differentials in the global trade regime. Finally, there is some additional institutional variation between the WTO and the EU in access rules and the nature of sanctions that might account for the greater effectiveness of the EU dispute settlement system. We later explain why these alternative interpretations do not undermine our argument, but may play a secondary role in accounting for the observed patterns.

The Design of Dispute Settlement in the WTO and the EU

The dispute settlement system of the global trade regime stems from 1995, when the WTO replaced the General Agreement on Tariffs and Trade (GATT). While the GATT dispute settlement system was known as diplomatic and power-oriented, because it gave defendant states the right to veto the adoption of panel reports and the authorization of sanctions, the Dispute Settlement Understanding (DSU) of the WTO was a distinct step in the direction of legalism. Notably, it guaranteed the right to a binding panel ruling; created a standing Appellate Body to review panel decisions; specified deadlines for compliance with adopted rulings; and, if compliance did not occur on time, made automatic the authorization of bilateral sanctions up to the level of economic injuries sustained by the complainant.

The WTO dispute settlement procedure consists of multiple stages at which conflicts may be resolved. Disputes begin when a complainant files a formal request for consultations with a defendant. Other countries with some commercial or systemic stake in the dispute can seek to join the case by reserving rights as interested third parties. If bilateral consultations fail to resolve the issue, the complainant can request the formation of an arbitral panel to rule on alleged violations of WTO rules. Once a panel report is issued, either side may refer it to the Appellate Body. Panel and appellate rulings are then adopted automatically by the Dispute Settlement Body (DSB)—at which point, presuming a ruling of violation, the reasonable time

period for compliance begins. If timely compliance does not occur, the complainant has the right to impose retaliatory sanctions up to the level that benefits promised to it have been nullified or impaired by the defendant.

Compliance bargaining takes place throughout the formal dispute settlement process. The most intense and often productive negotiations take place before a ruling on the basic issue of violation (Busch and Reinhardt 2002, 2003b). Yet compliance bargaining in the WTO continues long after the initial rulings enter into force. Disputing governments often continue to litigate the length of the reasonable time period for implementation; whether a replacement measure is consistent with WTO rules; and the appropriate level of retaliatory sanctions. While the DSU aims to insulate the legal process from political dynamics, the dispute settlement system, at its core, remains focused on the resolution of bilateral disputes to the satisfaction of the contending states. In the words of former WTO Director-General Michael Moore (2000), settlement remains the “key principle” in a system whose purpose is to “maintain the delicate balance of international rights and obligations.”

Ultimately, the authority to define compliance in the WTO rests with the disputing member states, not the Appellate Body or the DSB, even after a ruling of violation has been adopted. WTO decisions do not specify exactly how compliance should be achieved. Moreover, although the DSU expresses a preference for full implementation, it also allows for compensation as a second-best outcome. Finally, disputing governments are free to reach settlements that tolerate ongoing violations of WTO rules even after formally binding panel and appellate rulings have entered into force. If in agreement, disputants have the right to request that the issue of implementation be removed from the agenda of the DSB without disclosing the specific terms of their settlement, which may or may not conform to WTO rules.

WTO member states vary tremendously in both market size and institutional capacity. And apart from these power asymmetries, the preferences of individual governments regarding compliance vary substantially, given that case-specific political considerations strongly influence decisions to file (Davis 2008). All of this means that management of compliance disputes in the WTO lies in the hands of member states with unequal power and preferences that often fall short of ensuring full compliance.

With some modifications, the dispute settlement system of the EU stems from the 1950s. The founding treaties provide for two alternative ways of settling compliance disputes at the centralized EU level.¹ On the one hand, member states may sue each other for non-compliance and have the cases decided by the European Court of Justice (ECJ). On the other hand, they may leave the task of ensuring compliance to the Commission, which enjoys independent authority to initiate infringement proceedings and ultimately refer non-compliance cases to the ECJ. Whereas the institutional design thus provides for both interstate and supranational dispute settlement, the historical record demonstrates an overwhelming preference on the part of member states to let the Commission take the lead. While the Commission has initiated more than 25,000 cases over a fifty-year period, member states have brought less than a handful. Supranational dispute settlement saves the member states the costs of litigation, eliminates the risk of retaliation, satisfies the preference for diplomatic courtesy, and offers the kind of legitimacy that flows from cases having been initiated by an institution representative of the whole (Pescatore 1974; Audretsch 1986; Author).

The EU dispute settlement procedure, too, consists of consecutive stages where conflicts may be resolved. It begins with the Commission informally notifying a member state of a suspected infringement. If the case is not solved through this communication, the

¹ In addition, the EU provides for decentralized enforcement through individuals protecting their rights in national courts charged with applying EU law and with an obligation to refer legally unclear cases to the ECJ for a preliminary ruling. See, e.g., Burley and Mattli (1993) and Alter (2000).

Commission formally initiates an infringement proceeding by sending a “letter of formal notice,” informing the member state of its substantive grounds for complaint. The second formal stage consists of the Commission giving a “reasoned opinion,” developing the legal arguments of the case. If the member state persists in its actions, the case is subsequently referred to ECJ for a decision. To the extent that a state continues its violation even after an ECJ ruling, the Commission since 1993 has been able to initiate a sanctioning proceeding, which offers the possibility of imposing fines. These monetary penalties, which are set at punitive levels, are proposed by the Commission and decided by the ECJ.

Compliance bargaining takes place at all stages of the EU dispute settlement procedures. In letters and meetings, the Commission attempts to persuade member states to comply by explaining their violations under EU law, by communicating the threat that the Commission may bring the case to the next step in the procedure, and by reminding states that economic sanctions may be imposed if they fail to comply with ECJ judgments. The member states, for their part, attempt to explain to the Commission the political, economic, social, or administrative reasons behind the measures under review. They may also present alternative interpretations, suggest compromise solutions, or signal their intention to let a case run its course. Since the late 1980s, compliance bargaining has become institutionalized through the practice of regular review meetings between the Commission and individual member states, designed to arrive at amicable solutions to non-compliance cases. As the Commission itself has reported, its “main form of dispute settlement . . . is negotiation, and litigation is simply a part, sometimes inevitable but nevertheless generally a minor part, of this process” (Snyder 1993, p. 30).

Unlike in the WTO, the authority to define compliance in the EU does not rest with the member states, but with the Commission as supranational prosecutor, sometimes acting in tandem with the ECJ. The Commission enjoys full discretion with regard to whether to initiate

proceedings, what time limits to impose on governments before a case is moved to the next stage in the procedure, and what state measures justify closing a case. This unilateral control grants the Commission a strong hand in compliance bargaining, enabling it to threaten further legal moves, and ultimately sanctions, if states do not budge. Obviously, the credibility of these threats is contingent on the ECJ sharing the Commission's legal interpretations. As we shall see, it almost always does.

While the Commission in the early years of European integration was sensitive to the political reactions that infringement suits might elicit, it shed these concerns in the late 1970s (Author). Infringement proceedings were made automatic on the finding of non-compliance, and the enforcement procedures thus stripped of their earlier political stigma. This policy has been in place for three decades, and the overwhelming numbers of cases initiated each year speak to the absence of fears of political retaliation. Member governments, for their part, appear to recognize that a strong supranational prosecutor is in their long-term interest, even if they dislike being charged with non-compliance on occasion. Despite several opportunities, no attempt has been made in the EU's rounds of treaty revision over the years to repeal or reduce the Commission's prosecutorial powers. All of this means that compliance disputes in the EU are controlled by a supranational prosecutor that brings considerable institutional resources to the table and holds a strong and consistent preference in favor of compliance.

Interstate Dispute Resolution in the WTO: The Empirical Record

After more than a decade of operation, the dispute settlement system of the WTO has generated a case record that permits us to summarize and assess patterns of compliance bargaining. The evidence demonstrates that dispute settlement in the WTO is heavily shaped by the political incentives and constraints of the member states that control the process from beginning to end. While states are more likely to bring non-compliance cases in the present,

more legalized system than in the GATT, enduring asymmetries in market size and institutional capacity influence the decisions of states to initiate or to participate in disputes. Fundamental inequalities across states in retaliatory leverage and legal expertise also affect their ability to forge favorable settlements as complainants and to resist or delay compliance as defendants.

At first glance, the expectation that legalization would reduce the effects of power has been borne out in several respects. Developing countries have utilized the WTO system more frequently than GATT, participating to an extent at least comparable to, and perhaps slightly greater than, what their shares of world trade would predict (Bown 2004a, p. 64; Horn et al. 1999; Guzman and Simmons 2005). As complainants, developing countries have been equally as effective at securing rulings of violation from WTO panels, often filing cases against more powerful defendants despite the potential for retaliation (Busch and Reinhardt 2003a, p. 732; Guzman and Simmons 2005). But these encouraging findings are offset by other evidence, revealing the ways in which international power asymmetries continue to influence compliance bargaining in the WTO. We survey this evidence across three stages of the dispute settlement process: initiation, early settlement, and post-ruling settlements.

In terms of the *initiation* of disputes, although disputes are far more numerous than under GATT, the total remains low in comparison with the EU, especially given the number of WTO member states. In the first nine years, there were 352 cases among 148 WTO members (Guzman and Simmons 2005). In terms of the distribution of filings, the simplest approach is to count, across income levels, the number of cases initiated by different groups of countries. The majority of filings (217 of 352) have come from the small set of 21 high-income, developed countries (Guzman and Simmons 2005). The remaining cases are spread across developing countries, with fewer cases filed by those with lower per capita income. Using three broad groups of WTO member states—industrialized (29), developing (74), and

least developed (31)—Table 2 identifies each group’s share of bilateral disputes, as complainant and respondent, from 1995 until October 25, 2006. The pattern is striking: industrialized states have filed two-thirds of all WTO complaints, the bulk of which target other industrialized states. A handful of developing countries—led by those with prior experience in the system, either as complainants or defendants, and thus lower information barriers—account for the bulk of filings within that grouping (Davis and Bermeo 2008). Most developing countries and nearly all least developed countries have never initiated a WTO dispute.

[Table 2: Percentage of bilateral WTO disputes, January 1995 – October 25, 2006]

A small number of high-income countries thus utilize the WTO system far more frequently than their more numerous and poorer counterparts, yet the italicized totals also reveal a rough symmetry within each category between cases filed and defended. While it is difficult to determine whether larger, richer countries file more complaints because of purely economic interests or political power, evidence suggests that aspects of power shape participation in distinct ways (Horn et al. 1999). Certain WTO cases involve measures that affect multiple governments. Decisions to join as complainant or third party positively correlate with the capacity to retaliate against the defendant (based on the defendant’s bilateral trade dependence) and the ability to bear the costs of litigation (based on GDP) (Bown 2005a, 2005b). Relative power and institutional capacity thus shape the decisions of member states to enforce their rights.

Aspects of power also affect the selection of defendants in WTO disputes. In particular, the lower the GDP of the complainant, given a decision to file, the higher the GDP of the defendant (Guzman and Simmons 2005). This pattern reflects fundamental inequalities

in institutional capacity. With only scarce administrative resources and legal expertise, developing countries tend to file only cases with the highest expected value: namely, those against their largest export markets, which are developed countries. The corollary is that large, rich countries may also be targeting smaller, poorer countries. Under the more legalistic WTO, wealthy countries have filed far more frequently against developing countries than they did under GATT, with developing countries going from 8 per cent of the defendant pool under GATT to 37 per cent in the WTO (Busch and Reinhardt 2003a, p. 730). Controlling for market power and trade dependence, developing countries were one-third less likely to file complaints against developed states—and up to five times more likely to be filed against—in the early years of the WTO than under GATT from 1989 to 1994 (Reinhardt 2000, p. 19).

With regard to the *early settlement* of WTO disputes, a majority of cases are resolved or abandoned prior to a panel ruling. Table 3 summarizes the record of early settlement or termination in the WTO Dispute Settlement Database, a World Bank study that includes 351 disputes from the system's first decade. By far the most complaints, almost half (45 percent), are resolved or withdrawn during the consultations phase, prior to any request for a third-party panel ruling. Another sixth settle after the panel request but before a panel is established (11 percent); after panel composition but before any ruling (4 percent); or after the ruling but before its adoption and entry into force (1 percent). This record suggests how important the process of compliance bargaining can be during consultations.

[Table 3: WTO disputes settled or dropped by stage in the procedures, January 1995 – December 2006]

Developed countries have proven far more able than developing countries to obtain full concessions during early settlement negotiations. Part of the explanation rests with the

limited legal and administrative capacities of poor states (Busch and Reinhardt 2003a, p. 720). This capacity differential is not as obvious during appearances before panels (poor states often hire experienced private counsel) as during the earliest stages of planning, even before a consultation request, when the level of development shapes a state's "capacity for recognizing, and aggressively pursuing, legal opportunities" (Busch and Reinhardt 2003a, p. 720). Public-private partnerships in the US and EU—where the private sector bears substantial costs in identifying, lobbying for, and supporting cases to remove trade barriers abroad—place developing countries at a clear disadvantage in the WTO system (Shaffer 2003, pp. 156-62).

Moreover, asymmetries in market power influence the division of gains in early settlements. In disputes from 1973 to 1998, traditional power measures, such as the defendant's level of dependence on exports to the complainant, had a significant impact on the successful economic resolution of disputes, measured in terms of subsequent market liberalization (Bown 2004b). Developing country complainants have been more effective at opening markets in the WTO than in GATT because of strategic decisions to target defendants that are more susceptible to retaliation threats (Bown 2004a, p. 61). Studies reveal a direct link between the capacity of a complainant to threaten credible, costly sanctions and the extent of market liberalization by the defendant. Similarly, illegal forms of protection are more likely to be imposed against countries with limited retaliatory ability (Bown 2005a).

In terms of *post-ruling settlements*, powerful defendants are more likely to successfully delay or avoid making concessions than developing countries. The post-ruling phase of WTO dispute settlement does not always produce timely and effective implementation for three reasons. First, compliance reviews under the DSU and *ad hoc* procedural agreements between disputants routinely extend the deadline for implementation and delay the imposition of sanctions well beyond the strict timetable that governs the prior

stages of WTO disputes. As Table 4 reveals, appeals are routine among disputes that produce panel rulings (71 percent), and requests for additional compliance panels, after the reasonable time period for implementation has expired, are far from rare (16 percent). Among 30 disputes that reached the Appellate Body in its first seven years, there were only four cases of protracted non-compliance (Author). But in more than one quarter of the successfully resolved cases (7 of 26), compliance did not occur within the reasonable period agreed upon by the disputants or determined by an arbitrator. The average delay in those seven cases (more than 10 months) was significant, especially when added to the already generous implementation period of up to 15 months. Not surprisingly, the majority of these eleven failed or delayed cases were against the US or the EU. And this count does not include cases in which complainants voluntarily agreed to extend the time period for implementation or to delay the onset of sanctions—an act of generosity, or expediency, most likely to be extended to powerful defendants such as the US or the EU.

[Table 4: Implementation in WTO disputes with adopted rulings, January 1995 – December 2006]

Second, despite occasional requests for authority to retaliate, sanctions remain a limited and rarely utilized tool for inducing compliance. Stark imbalances in the capacity to impose and withstand retaliation imply basic asymmetries in the capacity of WTO member states to enforce their rights after obtaining a favorable legal result. Table 4 reveals that in 15 percent of disputes with adopted rulings, complainants at least formally requested the authority to “suspend benefits.” Only very rarely, however, did these complainants impose sanctions—and in certain cases of actual retaliation, such as US sanctions against EU restrictions on hormone-treated beef, settlements proved no easier to achieve.

Third and finally, disputing governments are free in practice to reach settlements contrary to WTO rules even after a binding ruling has been adopted. Among Appellate Body cases, at least two and perhaps three settlements delayed or denied full implementation of DSB recommendations (Author). The most significant example is *EC – Bananas*, in which the US and then Ecuador agreed to a deal in which the EU increased access for their producers or traders during its gradual transition toward a WTO-compliant regime. The tariff-only scheme that was to constitute full compliance was not in place until 2006, more than eight years after the ruling of violation entered into force—and Latin banana producers challenged it, too, for failing to preserve their market access (Author). The cases of *Turkey – Textiles* and *Thailand – Iron & Steel* constitute additional examples of settlements being resolved and removed from the DSB agenda short of full compliance (WTO 2001, 2002).

In sum, interstate dispute resolution in the WTO is more effective in raising and settling cases than under GATT, but remains influenced and limited by power asymmetries between member states in terms of market size and institutional capacity.

Supranational Dispute Resolution in the EU: The Empirical Record

Evidence from several decades of dispute settlement in the EU suggests that the supranational design of this system produces distinct patterns of compliance bargaining. First, this system is extremely effective in settling cases of non-compliance (Author). The stages of the infringement and sanctioning procedures function as an enforcement ladder that progressively increases the pressure and costs of non-compliance, thereby encouraging governments to find bargaining solutions acceptable to the Commission. Second, it mediates the influence of power asymmetries on outcomes. Whereas member states with advantages in power resources carry disproportionate influence in the adoption of EU rules, there is no

empirical evidence to suggest that such power differentials remain important in the post-agreement phase, where interpretations of these rules are established.

The effectiveness of the EU's supranational dispute settlement system results in sharp decreases in non-compliance cases from one stage of the enforcement procedures to the next. Many cases are resolved through pre-proceeding settlements even before initiation of the formal non-compliance procedure. As in other systems of dispute resolution, cases that do not involve formal complaints are relatively less well documented. Yet in recent years, the Commission has begun to report aggregate annual figures on "suspected infringements," of which there are approximately 2,000 to 2,500 a year. When these figures are compared to the yearly number of formally initiated infringement proceedings, we find that approximately half of all suspected infringements are resolved at the informal stage.

With regard to the formal *initiation* of non-compliance proceedings, the Commission each year launches a staggering number of 1,000 to 1,500 infringement suits against EU member states. Studies of compliance and enforcement in the EU find no evidence that the Commission is systematically discriminating among member states in the initiation of infringement proceedings (Mendrinou 1996; Börzel et al. 2007; Author). Rather, cross-national patterns in the initiation of proceedings are interpreted as evidence of variation in national rates of compliance. Data on the initiation of infringement proceedings for the period 1978-2005, reported in Table 5, demonstrate that Denmark has been least often targeted by the Commission, followed by the Netherlands, Luxembourg, the United Kingdom, Ireland, Sweden, Germany, and Belgium. Above the EU average, we find Spain, Austria, Finland, France, Greece, Portugal and Italy. One of the robust findings of research on EU compliance is the absence of a correlation with traditional measures of power, such as market size and voting weight in the Council of Ministers. Germany, France, and the United Kingdom are not

less likely to be targeted in infringement proceedings just because they wield considerable power in pre-agreement negotiations.

[Table 5: Cases per EU member state by stage in the infringement procedure, 1978-2005]

Interaction between the Commission and member states within the infringement procedure makes *early settlements* the most common form of dispute resolution in the EU. Among infringement cases initiated by the Commission between 1978 and 2005, only 38 percent reached the second stage of the procedure, and only 12 percent were referred to the ECJ for a decision, as demonstrated by Table 5. In its own words, the Commission (1996, p. 9) “endeavours to make the fullest use of the pre-litigation stage of the infringement proceedings to persuade the offending Member State to remedy its deficiency or to negotiate a settlement.” As evidenced by the data, this strategy has proven remarkably effective in solving non-compliance cases.

All member states display the same preference for backing down or finding amicable solutions at the early stages of the infringement procedure. Yet, as illustrated by Table 5, member states vary as to when they tend to settle cases. Some, in particular Denmark, Finland, and Sweden, but also the UK and the Netherlands, go to great lengths to close cases as early as possible in the procedure. Others, notably Italy, but also Belgium, Greece and France, tend to resist settlement and end up having a higher share of cases referred to the ECJ. Germany, Austria, and Ireland represent the average EU profile. Again, these settlement patterns do not conform to variation in power capabilities. Whether one expects member states with greater power resources to be relatively less likely to have their cases referred to the later stages of the procedure (because of Commission leniency), or relatively more likely

to resist Commission pressure (because of their capacity to sustain sanctions), these expectations are not borne out by the data.

Once a case has been referred to the ECJ, the room for bargaining is significantly reduced. It is not uncommon, however, that member states get cold feet when faced with the prospect of an adverse judgment. The possibility is very real: about 90 percent of rulings in infringement cases favor the Commission (Audretsch 1986; European Commission 1996).

Moving to the stage of *post-ruling outcomes*, there is evidence that sanctioning proceedings are highly effective in resolving cases against states that persist in their violations after adverse ECJ rulings. Moreover, the initiation of such proceedings remains unbiased with respect to differences in state power. After having gained the power to propose economic sanctions against states in 1993, the Commission made use of this tool for the first time in 1997. From 1997 to 2005, it proposed penalties in 39 cases, the amounts ranging from 3,600 to 316,500 euro per day (European Commission 2006, annex, p. 7). Irrespective of relative power capabilities, member states have been quick to back down in the face of threatened sanctions. In only three cases during this period, involving Greece, Spain, and France, were the Commission and the ECJ actually forced to impose the proposed penalties in order to achieve compliance. A breakdown of the 39 cases by member state shows that France, Italy, and Germany have been subject to sanctions proposals most frequently, demonstrating the lack of acquiescence to great power interests on the part of the Commission.

[Table 6: EU infringement cases closed in 2005 by stage in the procedures]

Table 6 provides a summarizing snapshot of the effects of compliance bargaining within the framework of the EU's infringement and sanctioning procedures. The table expresses the percentage of the total number of cases closed in 2005 that were solved at each

stage in the enforcement procedures. Of 3,213 cases closed, approximately 33 percent were solved through pre-proceeding settlements, 62 percent through pre-ruling settlements, and 5 percent through post-rulings settlements. In conclusion, supranational dispute settlement in the EU provides a form of compliance bargaining that is exceedingly effective in addressing state violations and that mediates the impact of interstate power asymmetries on outcomes.

To summarize the comparison, the contrast between the interstate WTO and supranational EU is stark at each stage of compliance bargaining. In terms of initiation, the Commission files far more complaints than do WTO member states—at least twenty-five times as many annually—even though the EU has far fewer members than the WTO. Pre-ruling settlements are common in both systems, but more common in the EU: the Commission refers only 12 percent of its cases to the ECJ, while roughly 40 percent of WTO disputes lead to a panel ruling. Crucially, there is no evidence that the Commission initiates or settles cases based on the political or economic heft of the defendant among EU members. In the WTO, by contrast, market size and institutional capacity influence both the initiation of suits (with powerful states filing more cases against a broader array of defendants) and the distribution of gains in negotiated settlements (with powerful states obtaining greater concessions). Finally, in post-ruling bargaining, the Commission's ability to threaten fines since 1993 has ensured compliance even in difficult cases, again without respect to the defendant's relative size. Yet in the WTO, defendants—in particular, powerful members such as the US and EU—have delayed compliance in a number of disputes, some of which remained unresolved even after complainants threatened or imposed retaliatory sanctions.

Alternative Explanations

The WTO–EU comparison provides empirical support for our argument that interstate and supranational dispute resolution systems generate varying patterns of compliance

bargaining with distinct implications for outcomes. Yet we recognize that there are differences between the two organizations other than institutional variation in access rules. Below, we address the three most prominent alternative explanations and explain why none fundamentally undermines our account.

The first alternative explanation, informed by constructivism, emphasizes the distinct character of the EU as a norm community with shared values and a collective identity, when compared to other international organizations (Börzel 2003, pp. 201-202; Checkel 2005). According to this argument, it is not the delegation of prosecutorial powers to the Commission that mediates the influence of power differentials and generates high levels of compliance, but institutionalized norms of legitimate and appropriate behavior in the EU. The absence of a power-related pattern in the EU would thus be best explained by norms proscribing power wielding in the legal process, whereas the high level of rule adherence would constitute the product of an unusually strong compliance pull (Franck 1990).

We do not rule out the influence of norms in compliance bargaining. Yet we have reason to believe that such factors play a secondary role in explaining the observed outcomes in the EU. The existence of a specific *interstate* enforcement system for the EU's economic and monetary union (EMU) enables a controlled comparison, offering a unique chance to assess this alternative explanation. In the stability pact of the EMU, it is the member governments in the Council that decide on warnings and sanctions, whereas the Commission's role is restricted to the monitoring of economic performance and the issuing of recommendations to the Council. While we would expect compliance bargaining under the EMU's interstate regime to be relatively less effective in achieving rule adherence and relatively more influenced by power asymmetries than the EU's supranational system, constructivists would expect governments socialized through compliance norms to behave similarly in both settings.

Evidence on the operation of the stability pact since its establishment in 1997 reveals markedly different patterns of compliance bargaining, lending support to our argument (see, e.g., CEPS 2004; Calmfors 2005). Unlike the Commission in the supranational system, the Council has been very reluctant to use formal measures to address non-compliance with the stability pact. Moreover, relative power differentials have influenced the pact's operation and effects. The member states have been notoriously hesitant to use formal enforcement weapons against one another, particularly so with regard to France and Germany. In fact, successful attempts by these two major powers to obtain special treatment eventually led the Commission to sue the Council before the ECJ for violations of the EU treaties. In the end, the stability pact was watered down in 2005 to accommodate the Council's lenient approach to France and Germany.

The second alternative explanation, informed by realism, emphasizes that power differentials in the WTO are relatively greater than in the EU. According to this explanation, it is unsurprising that power differentials appear not to influence compliance bargaining in the EU, given that it includes a group of relatively homogenous industrialized countries. In the more heterogeneous WTO, by contrast, there is extensive variation in power capabilities between wealthy states with large markets and small developing countries. According to this realist account, it is this difference between the WTO and the EU, rather than variation in the institutional design of their dispute settlement systems, that explains the observed patterns in compliance bargaining.

Recognizing that power differentials in the WTO exceed those in the EU, we do not believe that this difference in scale merits attention or weakens our account. To begin with, power differentials in Europe historically have been sufficient to shape pre-decisional bargaining. Studies of treaty negotiations and legislative politics in the EU demonstrate that France, Germany, and the UK tend to exercise greater influence on distributive outcomes than

small or medium-sized EU powers (e.g., Moravcsik 1998; Thomson et al. 2006; Author). There is no a priori reason to believe that power differentials would not affect compliance bargaining in post-decisional negotiations as well.

Moreover, by considering a sub-sample of WTO compliance disputes involving industrialized countries, we can control for the greater differences in power capabilities among WTO members overall. We find that, even in this subset of industrialized WTO members, differentials in power resources influence initiation and settlement patterns. Compared to other industrialized states, the US and the EU file considerably more complaints; target each other, smaller industrialized states, and developing countries in more equal proportions; and participate more frequently in disputes as third parties (Horn and Mavroidis 2008b at Table 2a; Bown 2005a at Table 2; Author). In terms of outcomes, the US and EU have generally enjoyed success in cases against smaller industrialized countries, requesting sanctions only twice, and have primarily encountered obstacles in certain high-profile cases against each other.² As defendants, they have been relatively less eager to enter into settlements, and therefore the target of several sanctions requests by other industrialized countries (Horn and Mavroidis 2008a).

The third alternative explanation, informed by institutionalism, suggests that differences in compliance bargaining between the WTO and the EU may reflect institutional variation other than interstate versus supranational access rules. First, although both dispute settlement systems provide for sanctions against non-complying states, sanctions in the EU consist of punitive economic fines, whereas sanctions in the WTO are merely compensatory and require complainants to bear the costs of raising trade barriers. The deterrent design of sanctions in the EU could thus present an additional explanation for the greater capacity of its dispute settlement system to induce compliance and mediate power differentials. Second, alongside

² The US requested sanctions in Canada–Dairy (DS 103) and Japan–Apples (DS 245); see Horn and Mavroidis 2008a. Busch and Reinhardt (2003b, pp. 161-71) have surveyed several high-profile US-EU disputes.

its supranational enforcement system, the EU operates a transnational legal system, through which individuals may defend their rights under EU law in domestic courts (see, e.g., Burley and Mattli 1993; Alter 2000). The existence of this parallel system could increase the incentives of states to settle allegations of non-compliance by the Commission, since infringements otherwise may become subject to legal action in national courts.

We recognize that these additional institutional differences contribute to making the EU dispute settlement system stronger than the WTO system, and thus may help shape the observed patterns in compliance bargaining. However, for several reasons, we consider these differences to be potential biases reinforcing the basic pattern, rather than the primary sources of this pattern. For one thing, the EU introduced its system of punitive fines only in 1993 and began to use it in 1997. Beforehand, the Commission could not threaten economic sanctions in any form and thus possessed less deterrent authority than disputing parties in the WTO. Still, the evidence demonstrates that the Commission, even before the mid-1990s, was effective and evenhanded in raising cases, settling disputes, and achieving compliance (Audretsch 1986; Snyder 1993; Mendrinou 1996). The introduction of sanctions mainly contributed to reducing the time-lag in member state adjustment to adverse ECJ rulings at the final stage of the dispute settlement procedure (Author). It is more difficult to assess the impact on supranational dispute settlement of individuals' enforcement options in domestic courts. That said, the two systems are better described as parallel than interlinked. For instance, negotiated settlements between the Commission and member governments do not restrict the possibilities for individuals to pursue outstanding complaints through domestic courts. Finally, as we discuss in the conclusion, other dispute settlement systems with supranational prosecutors display similar patterns to those observed in the EU, but do not possess deterrent economic sanctions or parallel legal enforcement through national courts.

Conclusion

In this article, we have developed a distinction between interstate and supranational systems of dispute settlement and advanced an argument about the effects of institutional design on treaty compliance. More specifically, we hypothesized that systems relying on supranational prosecution of cases are more effective in addressing non-compliance, and more likely to mediate the impact of power asymmetries on outcomes, than systems relying only on state-initiated complaints. We explored these hypotheses through a comparison between the WTO and the EU, which allowed us to assess the impact of variation in access rules while holding other dimensions of institutional design broadly constant. The comparison underscored fundamental differences between interstate and supranational dispute settlement.

First, evidence on the initiation and termination of cases in the WTO and the EU suggests that interstate dispute settlement is less effective in producing compliance than supranational dispute settlement.³ Dispute resolution is less effective in the WTO, partly because states are more reluctant to raise cases, and partly because states are more reluctant to seek amicable solutions among themselves. WTO member states have to think twice about initiating cases, both because of litigation costs and because of the risk of retaliatory action by the defendant. By contrast, the EU Commission has a mandate to pursue infringements and the resources to do so effectively. Likewise, once cases are underway, the Commission is relatively more effective in achieving settlements, and less willing to agree to solutions that tolerate violations of regime rules, than member states in the WTO.

Second, the evidence from the WTO and the EU suggests that interstate dispute resolution leaves considerably greater scope for power asymmetries to influence outcomes than supranational dispute settlement. Whereas the market size and institutional capacity of

³ See also Zürn and Joerges (2005), who compare the capacity of the WTO, the EU, and the German federal state to generate compliance, and systematically find the EU more effective than the WTO.

the disputants markedly shape the process and outcomes of dispute settlement in the WTO, the impact of power differentials is mediated or even neutralized in the EU through the delegation of prosecutorial authority to the Commission. In the WTO, states of greater relative power are more likely to initiate complaints, more likely to achieve favorable outcomes in settlements before panel rulings, and more able as defendants to resist making concessions after adverse rulings. In the EU, by contrast, patterns of initiation and settlement cut across traditional power dimensions. States of greater relative power are neither more nor less likely to be targeted by the Commission or to have their cases resolved through amicable agreements.

The WTO-EU comparison testifies to the merits of supranational dispute settlement. Yet how common are supranational prosecutors, and to what extent have the dynamics observed in the EU been reproduced elsewhere? In addition to the EU, there are four cases where international commissions or secretariats have been delegated the power to pursue infringement cases: the Surveillance Authority of the European Free Trade Association (EFTA), the General Secretariat of the Andean Community, the Inter-American Commission on Human Rights, and the European Commission of Human Rights.⁴ While the operation of these systems generally is less well documented, the evidence permits preliminary conclusions.

Overall, the experiences of these trade and human rights regimes underscore our conclusions from the EU case. Commissions and secretariats vested with prosecutorial powers have played a key role in establishing, expanding, and safeguarding the international legal systems they serve. Most notably, supranational prosecutors have raised impressive numbers

⁴ For an inventory of international courts, including those equipped with supranational prosecutors, see Alter (2006). The two human rights commissions differ slightly in design from the prosecutors in the trade regimes because, rather than initiating infringement suits independently, they screen and pursue cases brought by individuals against states. But this difference in design should not be exaggerated: even the European Commission bases most of its infringement suits on complaints from private parties.

of infringement cases against parties suspected of non-compliance, whereas states generally have refrained from using the legal standing they enjoy to sue each other. Empowered to pursue violations, sheltered from the threat of retaliation, and capable of drawing on specialized legal expertise, these commissions and secretariats have not refrained from pursuing infringements detected either through complaints or their own inquiries. Whereas compliance bargaining has helped to close cases, supranational litigation activity has also had the knock-on effect of helping international courts build dockets of cases to establish legal precedent.

The EFTA Surveillance Authority was explicitly modeled on the European Commission's prosecutorial function, and the patterns of dispute settlement in EFTA bear a close resemblance to those in the EU (EFTA Surveillance Authority 2004; Sverdrup 2004). While initiating a substantial number of infringement proceedings yearly—on average more than twenty per member state—the Surveillance Authority manages to close an overwhelming majority through settlement bargaining. As a result, only eleven cases reached the EFTA Court in the period 1994 to 2004. During the same time span, not a single case was brought by one member state against another.

The dispute settlement system of the Andean Community, too, was heavily inspired by the European legal order, and its General Secretariat shares the European Commission's authority to raise infringement suits against member states. The available data on the operation of this system from 1985 to 2004 indicate that the General Secretariat is more than ten times more likely to bring infringement cases to the Andean Court of Justice than the member states are to bring suits against each other (Alter 2007). Moreover, the General Secretariat has independently issued a large number of binding decisions on state compliance beyond the cases brought to the ACJ.

The Inter-American Commission on Human Rights has since the 1960s examined complaints, pursued cases, carried out on-site visits, and published country reports pertaining to human rights violations. The number of complaints lodged with the Commission has increased gradually since its establishment, reaching a level of 1,300 complaints annually in recent years, most of which are deemed admissible (Inter-American Commission on Human Rights 2006). The Commission explicitly attempts to close cases through friendly settlements, and only a small portion of all cases is eventually referred to the Inter-American Court of Human Rights. The distribution of cases across signatories gives no indication of more powerful states, such as Brazil and Argentina, being targeted less diligently by the Commission.

Finally, the European Commission of Human Rights functioned between 1955 and 1997 as prosecutor on behalf of individuals whose rights potentially had been violated by a signatory to the European Convention on Human Rights. Evidence from this system reveals continuously increasing numbers of complaints being lodged with the Commission, a notable portion of the admissible claims being closed through amicable settlements, and very few cases brought by member states against each other (Helfer and Slaughter 1997; European Court of Human Rights 1998; Cichowski 2006). Furthermore, the data show that complaints against relatively more powerful member states were not less likely to be referred to the European Court of Human Rights or more likely to be decided in the state's favor.

This brief overview of other instances of supranational dispute settlement suggests that the distinct effects of this design extend beyond the EU. Yet this record does not indicate that the adoption of a supranational design will automatically generate the outcomes we have observed in these trade and human rights regimes. The effects of institutional design have a temporal dimension that should not be neglected. As the EU and other cases illustrate, supranational prosecutors tend to utilize the powers they enjoy only gradually, as they shed

the fear of political retaliation from states, begin to attract non-compliance complaints, and emerge as powerful defenders of the legal order they serve. Nor should our results be taken as an indication that supranational dispute settlement is likely to become more prominent in world politics. Indeed, perhaps anticipating the patterns we have examined, GATT signatories in the 1960s flatly rejected a proposal by certain developing countries to establish an expert prosecutor for the international trade regime (Dam 1970, pp. 372-73). Accordingly, we expect states in general, and relatively more powerful states in particular, to think twice before adopting this design, precisely because of the constraints imposed by supranational prosecutors, whose even-handed and often aggressive pursuit of state non-compliance reduces the impact of power differentials on distributive outcomes.

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TABLE 1. *Interstate and supranational dispute settlement in world politics*

	Interstate	Supranational
Litigants	States	Commissions/ Secretariats
Examples	WTO, NAFTA, ICJ, ITLOS, OAPEC	EU, EFTA, AC, ECHR, IACHR

Note: Andean Community (AC), European Court of Human Rights (ECHR), European Free Trade Association (EFTA), European Union (EU), Inter-American Court of Human Rights (IACHR), International Court of Justice (ICJ), International Tribunal for the Law of the Seas (ITLOS), Judicial Tribunal for the Organization of Arab Petroleum-Exporting Countries (OAPEC), North American Free Trade Area (NAFTA), World Trade Organization (WTO).

TABLE 2. *Percentage of bilateral WTO disputes, January 1995 – October 25, 2006*

Respondent

<i>Complainant</i>	Industrialized (29 countries)	Developing (74 countries)	Least Developed (31 countries)	TOTALS
Industrialized	46	20	0	66
Developing	27	6	0	33
Least Developed	1	0.1	0	1
TOTALS	74	26	0	100

Source: Mavroidis and Horn, 2008b at Table 2b.

TABLE 3. *WTO disputes settled or dropped by stage in the procedures, January 1995 – December 2006*

Stage	Number	Percentage
Before panel request	158	45%
Before panel establishment	38	11%
Before panel ruling	15	4%
Before panel report adoption	4	1%
TOTAL DROPPED / SETTLED	215	61%
TOTAL DISPUTES	351	100%

Source: Horn and Mavroidis 2008a.

TABLE 4. *Implementation in WTO disputes with adopted rulings, January 1995 – December 2006*

Event	Number	Percentage
Panel report appealed	92	71%
Compliance panel requested	21	16%
Suspension of benefits requested	19	15%
Total disputes with adopted rulings	130	100%

Source: Horn and Mavroidis 2008a.

TABLE 5. *Cases per EU member state by stage in the infringement procedure, 1978-2005*

State	Formal notice (FN)		Reasoned opinion (RO)		Referral (REF)	
	Total	Yearly average	Total	RO/FN	Total	REF/FN
Austria	852	77.5	317	37.2 %	89	10.4 %
Belgium	1,839	65.7	838	45.6 %	299	16.3 %
Denmark	1,012	36.1	145	14.3 %	33	3.3 %
Germany	1,786	63.8	695	38.9 %	208	11.6 %
Greece	2,098	83.9	944	45.0 %	290	13.8 %
Finland	867	78.8	138	15.9 %	32	3.7 %
France	2,210	78.9	961	43.5 %	343	15.5 %
Ireland	1,514	54.1	573	37.8 %	173	11.4 %
Italy	2,575	92.0	1,354	52.6 %	519	20.2 %
Luxembourg	1,413	50.5	586	41.5 %	204	14.4 %
Netherlands	1,334	84.2	410	30.7 %	117	8.8 %
Portugal	1,683	84.2	699	41.5 %	103	6.1 %
Spain	1,447	72.4	503	34.8 %	141	9.7 %
Sweden	633	57.5	124	19.6 %	28	4.4 %
UK	1,497	53.5	455	30.4 %	109	7.3 %
EU 15	23,763	66.4	9,082	38.2 %	2,810	11.8 %

Source: European Commission annual monitoring reports.

TABLE 6. *EU infringement cases closed in 2005 by stage in the procedures*

Stage	Number	Percentage
Before formal notice	1054	32.8 %
Before reasoned opinion	1576	49.1 %
Before ECJ referral	308	9.6 %
Before ECJ judgment	120	3.7 %
Before second formal notice	110	3.4 %
Before second reasoned opinion	27	0.8 %
Before second ECJ referral	14	0.4 %
Before ECJ sanctioning judgment	3	0.1 %
After ECJ sanctioning judgment	1	0.1 %
TOTAL	3,213	100.0 %

Source: European Commission 2006.