THE PURSUIT OF DISPUTES IN REGIONAL INTEGRATION AGREEMENTS

A Dissertation in
Political Science

by
Martha S. Thomas

© 2010 Martha S. Thomas

Submitted in Partial Fulfillment
of the Requirements
for the Degree of

Doctor of Philosophy

August 2010
This dissertation of Martha S. Thomas was reviewed and approved* by the following:

Douglas Lemke  
Associate Professor of Political Science  
Dissertation Advisor  
Chair of Committee

Quan Li  
Professor and Director of the Program on International Conflict and Cooperation

D. Scott Bennett  
Distinguished Professor of Political Science  
Head of the Political Science Department

Lee Ann Banaszak  
Associate Professor

Andrés Rodríguez-Clare  
Professor of Economics

*Signatures are on file in the Graduate School
Abstract

What factors influence the pursuit of disputes through the dispute settlement mechanism of Regional Integration Agreements (RIAs)? Over the last few decades RIAs have increased in size, number, as well as degree of integration. One of the results of this expansion is that a majority of world trade is now structured by these institutional arrangements making the analysis of compliance and disputes within RIAs both timely and pertinent. Studies that have empirically evaluated the dispute record of actors within RIAs have focused primarily on disputes in the European Union (EU). While insightful the findings of these studies cannot be extended to all RIAs given the variations that exist across RIAs and the depth of integration unique to the EU. Given that, in this dissertation I expand the analysis of noncompliance by assessing the factors that influence disputes in three distinct RIAs: the North American Free Trade Agreement (NAFTA), the Andean Community (AC), and the European Union (EU).

With respect to NAFTA I show how perceptions about legal strength influences an industries decision to initiate a dispute through NAFTA Chapter 19 appealing the ruling made against them in a member state. I argue that this perception is influenced by the two main criteria established by NAFTA for review of rulings: (1) whether the agency making the AD/CVD decision went outside of its legal boundaries, and (2) whether there were errors in facts or calculation when that decision was made. Using original data on potential and actual disputes initiated through NAFTA Chapter 19 I find support for this argument.

With respect to the AC I show how domestic political incentives to renege on international commitment as well as institutional constraints influences a leaders decision to challenge the General Secretariat and take a case before the Andean Court of Justice (ACJ) for final review. I argue that leaders are more likely to take disputes before the ACJ the closer the time to the next election, the
greater the number of veto players and the greater the degree of polarization in the legislature. Analysis using an original dataset finds support for the argument related to elections and polarization.

In the EU I analyzed the factors that cause disputes over implementation of directives. Here I shifted my analysis away from aggregate level factors, which has been the focus of much past research to incorporate individual level explanations that highlight the attributes of the directive to be implemented. My rationale for focusing on individual level characteristics stem from interviews I conducted with both country representatives and European Commission officials. I focused on two directive attributes emphasized during interviews: complexity and controversy surrounding a directive. I argued that the greater the degree of complexity of a directive the greater the likelihood of dispute. I also posited that the greater the level of controversy surrounding a directive the greater the likelihood of dispute. Using an original dataset on all EU directives I find that complexity of a directive but not controversy among states over the directive increases the likelihood of disputes. Apart from attributes of directives I also used this original dataset to evaluate the effect three domestic factors – veto points, bureaucratic efficiency, and time to election – have on implementation disputes. I find that more inefficient bureaucracies and upcoming elections increase the likelihood of disputes over transposition.

In general, the argument and findings throughout this dissertation document an important link between domestic politics and the international political economy. Across all RIAs domestic constraints play some role in the decision making concerning dispute. Furthermore this dissertation offers important lessons concerning international cooperation in general and noncompliance in particular. It shows that the decision to pursue an international dispute is non random. These decisions are actually systematic and well thought out indicating that leaders and industries think and behave like rational actors when contemplating noncompliance with international expectations.
TABLE OF CONTENTS

LIST OF TABLES.............................................................................................................vii
LIST OF FIGURES.............................................................................................................ix

Chapter 1 Disputes in Regional Integration Agreements .............................................1
   A Note on Disputes and Cooperation in RIAs ............................................................6
   Summary of Chapters ..................................................................................................8
   The Datasets ..............................................................................................................11
   Domestic Politics and International Cooperation .......................................................13
   References for Chapter 1 ............................................................................................15

Chapter 2 The Logic of Dispute Initiation in NAFTA Chapter 19.............................18
   Dispute Settlement in NAFTA ....................................................................................21
   NAFTA Chapter 19 in the Literature ........................................................................28
   A Theory of Dispute Initiation ...................................................................................31
      Concerns about Legal Boundaries .........................................................................32
      Concerns over Errors in Facts and Calculations ....................................................36
      Control Variables ..................................................................................................38
   Research Design .......................................................................................................39
   Statistical Estimator .................................................................................................40
   Dependent Variables ...............................................................................................41
   Main Explanatory Variables ......................................................................................42
      Control Variables ..................................................................................................43
   Results: The Influence of Legal Strength on Dispute Initiation ................................45
   Conclusion ...............................................................................................................48
   References for Chapter 2 ............................................................................................51

Chapter 3 Political Incentives and the Decision to Pursue Disputes in the Andean Community........................................................67
   The Andean Community ............................................................................................72
   The Andean Community in the Literature .................................................................81
   Domestic Politics and Noncompliance in the Andean Community .........................86
      Political Costs and Benefits of Disputes ................................................................88
      Electoral Politics ....................................................................................................90
      Veto points ...........................................................................................................92
      Polarization .........................................................................................................94
LIST OF TABLES

Table 1.1: Summary of Chapters ................................................................. 17

Table 2.1: Chapter 19 Disputes Initiated by Country ............................................. 57

Table 2.2: Complainants and Defendants by Country ........................................... 58

Table 2.3: Determinants of AD or CVD decision .................................................. 59

Table 2.4: The Impact of Industry size on the Decision to Take a Possible Dispute 
Before the NAFTA ...................................................................................... 60

Table 2.5: The Impact of the number of countries being investigated on the decision 
to take dispute before NAFTA Chapter 19 .................................................... 61

Table 2.6: The Impact of the number of countries being investigated on the decision 
to take dispute before NAFTA Chapter 19 .................................................... 62

Table 3.1: Total Noncompliance Rulings and ACJ Cases, 1995-2007 ...................... 112

Table 3.2: Determinants of a state’s decision to pursue noncompliance action 
before the ACJ ........................................................................................... 113

Table 3.3: The Impact that Time to the Next Election has on the likelihood of 
ACJ review ............................................................................................... 114

Table 3.4: The impact that polarization has on the likelihood of ACJ review .............. 115

Table 4.1: Questions about Aggregate level explanations ..................................... 187

Table 4.2: Questions about Directive Attributes .................................................. 188

Table 4.3: Reasons for the Occurrence of Disputes over Implementation in the EU, 
1983-1996 ................................................................................................... 189

Table 4.4: Reasons for Disputes over Non-Implementation in the EU, 1983-1996 ........ 190

Table 4.5: Reasons for Disputes over Improper -Implementation in the EU, 1983-1996 .......... 191

Table 4.6: Reasons for Disputes over Improper –Application in the EU, 1983-1996 ........ 192

Table 4.7: The Impact Time for transposition and Time to election has on the 
likelihood of dispute ................................................................................. 193
Table 4.8: Impact Bureaucratic Efficiency has on the likelihood of dispute in the EU ............194
Table 5.1: Factors that Influence Disputes across RIAs ..................................................217
LIST OF FIGURES

Figure 2.1: The two stage decision process under NAFTA Chapter 19 ........................................63
Figure 2.2: Chapter 19 Disputes, 1994 – 2006 .................................................................64
Figure 2.3: U.S. Disputes, 1994-2006 ........................................................................65
Figure 2.4: Canada Disputes, 1994-2006 .......................................................................65
Figure 2.5: Mexico Disputes, 1994-2006 ..........................................................................65
Figure 2.6: Most popular products disputed ...................................................................66
Figure 3.1: Procedure for cases of Non-compliance with Community Law......................116
Figure 3.2: Non-compliance Rulings by Secretariat .......................................................117
Figure 3.3: Bolivia, noncompliance rulings by Secretariat .............................................118
Figure 3.4: Colombia, noncompliance rulings by Secretariat .........................................118
Figure 3.5: Ecuador, noncompliance rulings by Secretariat ...........................................118
Figure 3.6: Peru, noncompliance rulings by Secretariat ..................................................118
Figure 3.7: Venezuela, noncompliance rulings by Secretariat .......................................118
Figure 3.8: Predicted Probability of the Effect time to next election has on likelihood of ACJ review .................................................................119
Figure 3.9: Predicted Probability that polarization has on the decision to allow ACJ review ...........................................................................................................120
Figure 4.1: The Infringement Proceedings and Its Different Stages ...............................195
Figure 4.2: Impact of Agenda Control on Marginal Cost of Bills ..................................196
Figure 4.3: Total number of disputes over implementation in the EU between 1983 – 1996 ........................................................................................................197
Figure 4.4: Percentage of Reasoned Opinion per member state, 1983-1996 ..................198
Figure 4.5: Total number of non- implementation (nmn), improper - implementation (nmi) and improper-application (npi) disputes in the EU, 1983 – 1996 .........................................................199
ACKNOWLEDGMENTS

First I would like to thank the members of my dissertation committee: Quan Li, Douglas Lemke, Scott Bennett, LeeAnn Banaszak and Andres Clare-Rodriguez for their comments, suggestions, and guidance. I would like to especially thank Quan Li who had unwavering faith in my abilities, supported this research endeavor, constantly pushed me beyond my own expectations, and encouraged my growth as a scholar in countless ways. I would also like to extend my appreciation to Douglas Lemke whose feedback, professional guidance, and enthusiasm made the dissertation process an enjoyable one. To Scott Bennett and Lee Ann Banaszak, thank you for your encouragement and in-depth feedback. I am also grateful to the following persons for their professional support and significant contribution to my graduate education: Donna Bahry, Gretchen Casper, Wartyna Davis, Errol Henderson, Marie Hojnacki, Arnold Lewis, Kathy Powers, and Stephanie Rickard.

Beyond faculty I would like to thank two of my graduate school friends, Kanisha Bond and Jakana Thomas, who made my time at Penn State both enjoyable and intellectually stimulating. Special thanks for discussing this project with me and providing useful feedback on various chapters. I am also grateful to several other graduate students for their suggestions and encouragement. Thanks to Shaun Bevan, Ben Bagozzi, Ekrem Karakoc, Jon Moody, and Gretchen Schrock-Jacobson.

This project would not have been completed without the generous support of the Political Science Department and the College of Liberal Arts at Penn State as well as the hard work of my undergraduate research assistants: Benjamin Brody, Lydia Caparosa, Abbey Erdlen, Jillian Kinn, Shereef Muhamed, Anastasia Savchenko, Ethan Smith, Kristian Soltes, Curtis Swantiak, Maria Williams, and Nicole Zinni. These students took great pride in assisting in extensive data collection and worked tirelessly at the 11th hour to make completion of this project a reality.

To Emil whose unwavering faith in my abilities made it possible for me to get through the tough times, I am forever grateful. Thank you for your patience and emotional support throughout my years of graduate school. Most importantly, I would like to extend my sincere gratitude to my mother, Margaret Thomas, and my father, Cyril Thomas. You both endowed me with high educational aspirations and have given me confidence, faith, and assurance. My achievements are a direct result of your unconditional love and support. And finally, I am grateful and thankful to my sisters, Rebekah and Rachel, and my brother Aaron for supporting me in countless ways through all my years of education and directly contributing to the completion of my doctoral studies. I love you all.
CHAPTER 1

DISPUTES IN REGIONAL INTEGRATION AGREEMENTS

Since the 1980s the world has witnessed a massive proliferation of Regional Integration Agreements (RIAs).\(^1\) Over 300 new arrangements covering trade in goods or services for example, have been notified to the WTO since its inception in 1995.\(^2\) In North America, Canada, Mexico, and the United States formed the North American Free Trade Agreement (NAFTA) and have begun to expand the many benefits of NAFTA to Central America. Further to the south, countries in South America formed a new regional agreement, Mercado Común del Sur (MERCUSOR), and have made great strides in reviving an old one, the Andean Community (AC). And in Asia, several new free trade areas such as the South Asian Association for Regional Cooperation have been created.

In analyzing the proliferation of RIAs, scholarship on regionalism has primarily focused on two big debates. The first debate has sought to explain the rapid growth in RIAs, while the second debate has focused on whether regionalism can help or hinder the multilateral trading system (Baldwin 1997; Bhagwati and Panagariya 1996; Ethier 1998; Frankel 1997; Ghosh and Yamarik 2004; Krugman 1991; Kruger 1995; Mansfield and Reinhardt 2003; Mansfield, Milner and Pevehouse 2008). Apart from these two debates, recent scholarship has begun to look inside regional institutions and draw out specific institutional features that influence the likelihood and level of cooperation among member states (Rosendorff and Milner 2001; Smith 2000).

---

\(^1\) Regional Integration Agreements are cooperative arrangement between countries to pursue market liberalizations that at a minimum requires a reduction in internal trade barriers (Schiff and Winters, 2003).

\(^2\) Information obtained from the official website of the WTO at http://www.wto.org/english/tratop_e/region_e/regfac_e.htm (Accessed May 2010).
Smith (2000) makes a significant contribution in this regard by investigating the conditions under which member states adopt legalistic mechanisms for resolving disputes and enforcing compliance in regional trade accords. He argues that in drafting governance structures for international trade, political leaders weigh the benefits of improved treaty compliance against the costs of diminished policy discretion, in determining the level of legalism they prefer in regional trade pacts. After surveying the structure of 62 trade agreements Smith (2000) concludes that legalistic dispute settlement mechanisms that coerce greater compliance in regional trade pacts are more likely where asymmetry among members is low or integration is high.

Rosendorff and Milner (2001) also make a notable contribution by analyzing the impact escape clauses have on the likelihood of durable and stable cooperative international regimes. They argue that by permitting countries to temporarily deviate from their obligations in periods of excessive and unexpected political pressure, international institutions make agreements easier to reach and ensure that long term cooperation among member states is achieved.

While insightful these studies only analyze the type of institutional structures that are likely to encourage cooperation. They do not go beyond to evaluate the extent to which cooperation is actually achieved. Assessing the compliance record of actors in RIAs is salient for several reasons. Foremost RIAs have become the most popular forum through which global trade occurs. Yeung, Perdikis, and Kerr (1999) claim that over 65% of world trade is governed by the rules and regulations of regional arrangements. Given this it is important to analyze how effective these institutions are in inducing and maintaining cooperation.

Beyond this, analyzing the record of cooperation and/or disputes in RIAs is useful since RIAs have become increasingly attractive as a venue for dispute settlement. Some scholars have argued that the effectiveness of enforcement, the speed of dispute settlement and the flexibility of
regional agreements has made RIAs a popular forum for dispute settlement (Pekkanen, Solis, and Katada 2007). Whichever the reasons for the popularity of dispute settlement mechanisms in RIAs it is important to decipher when and under what circumstances members are actually more likely to utilize these mechanisms because of issues related to compliance. And finally analyzing disputes in RIAs is important because it allows us to test predictions about cooperation and compliance made in past studies. Through testing we can draw more accurate conclusions about regional cooperation that can be used by policy practitioners to improve the effectiveness of new and existing regional arrangements.

The only group of studies that specifically and systematically account for compliance in regional agreements have focused on dispute settlement in the European Union (EU). In general these studies have offered two competing explanations for compliance problems: the enforcement hypothesis and the management thesis. The enforcement explanation argues that transposition problems are deliberate and is influenced by the domestic costs and benefits of adaptation and the costs of compliance (Egeberg 1999; Falkner et al 2005; Mastenbroek 2003). The management explanation in contrast argues that compliance is influenced by uncontrollable factors such as insufficient state capacity or ambiguous norms (Borzel et al 2007; Mbaye 2001; Lampinen and Uusikyla 1998). These two explanations focus on aggregate or country level characteristics and develop hypotheses that are tested using aggregate level data. Empirical analysis of both the management and enforcement hypothesis has produced inconsistent and contradictory results. Some studies have found support for the management hypothesis, others have found support for some elements of the enforcement hypothesis and yet others have found some degree of support for both theories. In sum these studies have provided useful insights into the factors that actually promote or hinder regional cooperation.
The problem however is that the findings of these studies cannot be easily extended to all other RIAs given the variations that exist across RIAs and the high level of integration unique to the EU. Given that, in this dissertation I expand the analysis of noncompliance by assessing the factors that influence noncompliance and disputes in three distinct RIAs. I ask: What factors influence the pursuit of disputes through the regional dispute settlement mechanism of RIAs? To answer this question I analyze disputes in NAFTA, the Andean Community (AC), and the European Union (EU).

In analyzing the decision to pursue disputes in these regional institutions I explore the complex principal–agent relationship that evolves when states delegate some of their power and autonomy over economic policy to a supranational third party. In terms of RIAs, member states act as principals in that they establish regional bodies which perform the duties of agents in monitoring, enforcing, and centralizing their behavior. By analyzing the relationship and interaction between principals and agents this dissertation allows me to explore the conditions under which principals or those who have standing as principals choose to maximize their interest by either rejecting the rulings made by some regional agents (the Andean Secretariat for example in Chapter 3) or utilizing the arbitration expertise of other regional agents (the Chapter 19 binational Panel for example in Chapter 2) to obtain a desired outcome. This not only presents the complex relationship that principals and agents have in each RIA, but it also demonstrates when and why one should expect a challenge to the actions and decisions of regional agents.

Exploring the principal-agent relationship that leads to disputes in NAFTA, the AC, and the EU is most appropriate because these organizations reflect interesting variations in the nature, degree of integration, and institutional design among RIAs. These three RIAs have significant
variations that allow me to capture and present the behavior of actors in different types of regional systems.

Foremost is the fact that NAFTA, the AC, and the EU represent three different types of RIAs. NAFTA is a Free Trade Area (FTA) which means that it is the least integrated of the three RIAs. As an FTA NAFTA aims to reduce tariff barriers and specifically eliminate tariff barriers. The AC on the other hand is a customs union which means that it is comparatively more integrated in that it has no internal barriers to trade among member states to the agreement and has a common trade policy towards goods and services coming from third countries. And finally, the EU is a common market which makes it the most integrated since it coordinates foreign and judicial policy, in addition to economic policy among member states. By focusing on these three agreements I analyze the pursuit of disputes under varying degrees of regional obligation and integration. In doing so I capture, highlight and pinpoint the differing factors that influence the pursuit of disputes under varying degrees of commitment.

By focusing on these arrangements I also capture behavior within RIAs whose members are at different stages of economic development. In the case of the EU I capture behavior of members who are all developed countries. With the AC I present the decision to engage in noncompliance of developing countries. While in the case of NAFTA I capture the decision-making of actors who belong to both developed (U.S. and Canada) and developing (Mexico) countries. This variation allows me to pinpoint the similarities and/or differences that dominate the behavior of developed and developing countries and actors within those countries.

And the focus on these institutional arrangements exemplifies the decision and behavior of different actors in the dispute settlement process. In the cases of both the AC and the EU I analyze the decision to engage in noncompliance by member states while in the case of NAFTA I analyze
the decision by firms and industries to pursue disputes against member states. With the AC because
the initial ruling issued by the Andean Secretariat is made against member states, I focus on member
states reaction and decision to engage in noncompliance. Similarly in the EU because the
responsibility of implementation lies with the government of member states and the ruling of
noncompliance by the Secretariat is made against member states I focus on member state’s decisions
to pursue or settle disputes. And under NAFTA Chapter 19 however because the actors that are
directly affected by trade restrictions are allowed to appeal those rulings, I analyze the decision by
non-state actors to pursue disputes through the regional DSM.

Given these interesting variations, I analyze the factors that increase the likelihood of
disputes in NAFTA, the AC and the EU. To do this I focus on how the specific structure of
dispute settlement, the expectations about compliance specific to each RIA and the motivations of
actors in each regional arrangement influences the decision to engage in noncompliance through the
pursuit of disputes. Thus each Chapter of this dissertation presents an explanation disputes that for
the most part is specific to that regional structure and explains the relationship between the principal
and agent in that regional arrangement.

A note on disputes and cooperation in RIAs:

In this project a dispute occurs when an actor in a regional agreement does not comply with
or incorporate a ruling or decision made by a body that has authority and standing in the regional
organization but instead allows the ruling or decision to evolve into a case to be settled by the
regional dispute settlement system. Disputes arise for different reasons: (1) because of conflict of
interest, and (2) because of conflict of opinion/interpretation.
Disputes because of conflict of interest usually arise when member states or those who have standing in the RIA disagrees with a ruling or expectation and decides to challenge this ruling at the regional level. Actors may disagree with new rules because it is incompatible with existing domestic law or norms. When this is the case they may be more apt to resist implementation and adaptation which then leads to disputes at the regional level. Beyond this actors may believe that the new law is simply not good policy and does not serve the best interest of themselves and the wider regional community. When this is the case the actor may choose to challenge the law in the hope that they succeed in setting a new president that better serves the interest of themselves and the larger regional community. Furthermore actors may disagree with the new rules because it is too costly to implement and/or maintain. Sometimes new rules may be particularly costly if its implementation decreases the long term economic strength of a country or industry. When this is the case, actors would be inclined to challenge the rule in the hope of obtaining a favorable outcome that secures their economic well-being. Whichever the reason, disputes because of conflict of interest tend to be deliberate and intentional.

Besides conflict of interest, disputes may also be caused by contested interpretations of what the law or ruling actually requires the state or actor to do. Due to the many arenas and actors that tend to be involved in the decision-making process, and to the ensuring variety of different views which have to be taken on board in the course of that process, rules and rulings may often be loosely worded in order to accommodate differences in the decision-making, implementation and adjustment process in member states. This legal ambiguity often leads to different interpretations on what the law/ruling requires and how the law/ruling should be implemented and administered. Differing interpretations may be equally plausible given the lack of clarity of the law to be administered. Thus the dispute that arises in this instance may be intended to clarify the law so that it can then be properly administered.
These two types of disputes tend to have different effects on cooperation. In the first case disputes arise because actors deliberately engage in noncompliance or non-cooperation. In the second scenario disputes may arise not because of deliberate noncompliance but because of ambiguity that may be interpreted as lack of cooperation. Thus the occurrence of a dispute may not always mean or indicate actual or true lack of cooperation on the part of members. While I acknowledge this distinction between these two types of disputes and understand that not all disputes are the result of intentional noncompliance, for this project I treat conflict of interest and conflict of opinion as the same due to crude data. To decipher disputes according to their type and their effect on overall cooperation would require me to use output from government and industry decisions such as transcripts to separate disputes in each RIA according to their type. Such an endeavor is beyond the scope of this project.

**Summary of Chapters**

Table 1.1 provides a summary of the three substantives chapters in the dissertation. This table outlines the dependent variable in each chapter, identifies the actors involved in the decision making in each RIA, and summarizes the main findings of the project.

<Insert Table 1.1>

In chapter 2, as can be seen in table 1.1, I focus on disputes in NAFTA and analyze the conditions under which industries in member states choose to appeal antidumping or countervailing duty (AD/CVD) rulings made by government agencies in another member state, through the Chapter 19 dispute resolution mechanism. I argue that one of the most important factors that
influence an industry’s decision to initiate a dispute is its perception about the legal strength of its case. This perception is influenced by the two main criteria established by NAFTA for review of AD and CVD decisions: (1) whether the agency making the AD/CVD decision went outside of its legal boundaries, and (2) whether there were errors in facts or calculation when that decision was made. I posit that in considering these two factors industries analyze whether political pressures beyond the scope of domestic law, such as political contributions and electoral support, influenced the AD/CVD ruling against them. Using original data on potential and actual disputes initiated through NAFTA Chapter 19 I find support for this argument.

In Chapter 3 I focus on the AC where disputes arise when member states refuse to comply with the General Secretariat. In focusing on the AC I shift my analysis away from dispute settlement in a Free Trade Area to dispute settlement in a Customs Union. I also move away from focusing on behavior of non-state actors in a mix of developed and developing countries to focus on the behavior of national leaders in a group of developing countries.

Here I ask: Why do member states to the AC choose to comply with the ruling of the General Secretariat in some cases but decides to challenge the General Secretariat ruling through the Andean Court of Justice (ACJ) in other trade disputes? I argue that one of the primary determinants of a state’s decision to pursue a dispute through the ACJ is the political benefits this decision provides. Leaders will engage in noncompliance and allow disputes to be arbitrated by the ACJ because of (1) domestic political incentives to renege on international commitment, and (2) institutional constraints on the leader.

With respect to incentives I hypothesize that the domestic political incentive to defy a ruling by the Andean Secretariat is greatest the closer the time to the next election. With respect to institutional constraints I develop two hypotheses. I first hypothesize that leaders will be most likely
to take cases before the ACJ the greater the degree of veto player restraint on the executive. Then focusing specifically on ideological divisions in the legislative branch I further posit that the higher the degree of polarization in the domestic legislature the greater the likelihood of dispute. Empirical tests using an original dataset finds support for the argument related to elections and polarization.

In Chapter 4 I shift my analysis away from the AC to the EU. Here instead of analyzing the decision rationale of developing countries I assess the motivation to dispute among developed countries. By focusing on the EU I also shift my analysis to focus on disputes in one of the most economically, politically and socially integrated regional agreements. Further an analysis of the EU allows me to offer new explanations for noncompliance previously unexplored by past EU studies. And finally studying the EU allows me to shed more light on how disputes emerge in the regional arrangement that is viewed as an archetype for many RIAs that are contemplating expansion and further integration.

With respect to the EU I argue that in addition to domestic constraints related to capacity and timing, one of the most crucial determinants of noncompliance is the characteristic of the EU directive to be implemented. My rationale for focusing on individual level characteristics stems from interviews I conducted with both country representatives and European Commission officials. These interviews highlighted the fact that individual level explanations for dispute over implementation were not only very important but were not considered in past EU compliance studies.

Two specific individual characteristics emphasized in the interviews were the degree of complexity of directives and the degree of controversy surrounding a directive. I theorize about and analyze the impact these two characteristics, complexity and controversy, have on the likelihood of dispute. With respect to complexity I argue that the greater the degree of complexity of a directive the greater the likelihood of dispute. With respect to controversy I posit that the greater the level of
controversy surrounding a directive the greater the likelihood of dispute. In my analysis I find that complexity of a directive but not controversy among states over the directive increases the likelihood of noncompliance in transposition.

The Datasets

This dissertation makes an important contribution by building original datasets to analyze disputes in each RIA. I engaged in extensive data collection and built for each RIA a database that included both the universe of possible cases that could have become disputes as well as the actual cases that evolved into disputes. This was necessary to avoid selecting on the dependent variable and to ensure that the appropriate sample of cases from which disputes can be drawn was accounted for an included in the analysis. These datasets are a key cornerstone of my project since no one has ever collected comprehensive dataset for these RIAs that account for the instances in which disputes could have but did not occur.

In the case of NAFTA where I analyze the reasons why firms and industries appeal AD/CVD rulings through Chapter 19 dispute settlement, I first I identify all the petitions made by industries in the three NAFTA member state for AD/CVD protection from imports of another. From these cases, I then identify the instances in which a positive AD or CVD ruling was issued, and duties imposed on imports from another NAFTA member state. Based on this I then identify the instances of dispute when an industry (or group of firms) in another NAFTA member state that is the recipient of an AD/CVD order challenges the decision by filing a dispute through NAFTA Chapter 19.

For the AC where I analyze whether or not a member-state decides to comply with the Secretariat’s ruling or chooses to bring the dispute to the ACJ I begin by identifying all the
noncompliance rulings issued by the Secretariat against a member state. This accounts for all the possible disputes that could have occurred. Then I focus on and identify the cases of interest, the select instances in which leaders decide to challenge the ruling of the Secretariat by allowing a dispute to go before the ACJ for final ruling.

And in the case of the EU in focusing on noncompliance during implementation of directives I build an expansive dataset that goes beyond previous EU studies which have tended to focus on directive implementation in either a few countries or a few EU policy sectors. Here using the Annual Reports on Monitoring the Application of Community Law for the period 1983 to 1996 and (2) the Official Journal of the European Union. I pinpoint all the directives to be implemented by member states during the period 1983 to 1996 in all 14 policy areas of the EU. This forms the universe of possible disputes. From this I then identified which directives were effectively implemented by member states and which were not. For the directives that had implementation problems I then identified and recorded whether a dispute over implementation was initiated. That is to say I identified whether a reasoned opinion was sent to the member state.

For those cases where a dispute was initiated I then recorded the reason for dispute as identified in the Annual Reports. Based on the Annual Report, there were three possible reasons for disputes— (1) directive implementation was not notified, (2) directives are not properly implemented, and (3) directives were not properly applied. After identifying the reason for dispute I then identified the stage reached in the dispute settlement process for each of these disputes. That is to say I identify whether the case was settled after a reasoned opinion or whether the case was not resolved and was referred to the Court of Justice. Beyond this I further recorded whether a judgment was made by the Court and the date of the judgment. This dataset allows me to distinguish the characteristics of cases that are settled early and cases that are left unresolved. On the whole the scope and quality of all three datasets allow me to improve upon and extend existing research on
compliance in regional agreements.

**Domestic Politics and International Cooperation**

The analysis in this dissertation draws out the interaction between domestic politics and the international political economy. Studies by Putnam 1988; Iida 1993; Milner and Rosendorff 1996; and Milner and Rosendorff 1997 have highlighted the undeniable impact the domestic arena has on international affairs. These studies showed that domestic legislative constraints impact international negotiation and the likelihood that a state would enter into an international agreement. Putnam argued that the outcomes of international negotiations are determined by decision makers' efforts to reconcile the competing political demands of the international arena and critical domestic constituents. Specifically, the ability to reach an agreement with another state is contingent on a leader's ability to craft a proposal that is not only acceptable to the opposing government but can also be ratified domestically. Milner and Rosendorff (1997) furthered this analysis by showing that upcoming elections under divided government decreases the likelihood of ratification of trade agreements because of the uncertainty connected with elections.

Here I go beyond the negotiation and ratification of agreements to analyze interactions once these agreements have gone into effect. I demonstrate that domestic interests, capacity, and constraints play key roles in determining compliance in RIAs. In so doing I show especially in Chapter 2 and 3 that many of the same domestic factors that constrict a state when negotiating entry such as impending elections continue to dominate their willingness to fulfill or adhere too many of

---

3 Rickard (2009) is an exception to past studies. She sought to analyze the compliance behavior of democracies in the GATT/WTO. She found that countries with majoritarian electoral rules and/or single-member districts are more likely to violate GATT/WTO rules than those with proportional electoral rules and/or multi-member districts. While insightful I do not focus on the type of electoral for the following reasons: (1) member states of the AC all have proportional representation systems; (2) experts I interviewed about disputes in the EU indicated that electoral systems does influence disputes within the EU. In my study I offer other domestic explanations for disputes that explain the dynamic of relations in each particular RIA.
the obligations of an agreement once they are party to that arrangement. Thus while the effect of domestic politics has been studied before, this dissertation makes an interesting contribution by systematically examining how domestic politics shapes international compliance decisions in three RIAs.
REFERENCES FOR CHAPTER 1


Table 1.1: Summary of Chapters

<table>
<thead>
<tr>
<th>Regional Integration Agreement</th>
<th>Dependent Variable</th>
<th>Focus</th>
<th>Actors</th>
<th>Sample</th>
<th>Main findings</th>
</tr>
</thead>
</table>
| North American Free Trade Agreement Chapter 19      | Whether an appeal is initiated in NAFTA | Dispute initiation    | Private sector vs. Gov’t agency | 1994 - 2006 | (1) Domestic politics influences the decision to initiate  
(a) Industry size  
(b) PAC contribution  
(2) Errors in fact and calculation when initial decision was made influences the decision to initiate  
(a) number of countries  
(b) method of calculating injury |
| Andean Community (Chapter 3)                        | Whether the executive complies with the General Secretariat | Compliance/ noncompliance | Executive in member state vs. RIA | 1995 - 2007 | (1) Domestic political incentives and institutional constraints influences the decision to comply  
(a) Elections  
(b) Polarization |
| European Union (Chapter 4)                          | Whether the member state complies with the European Commission | Compliance/ noncompliance | Member state vs. RIA | 1983 - 1996 | (1) Attributes of the directive influences dispute over compliance  
(a) Complexity of directive  
(2) Domestic factors influences dispute over compliance  
(a) Elections  
(b) bureaucratic efficiency |
CHAPTER 2

THE LOGIC OF DISPUTE INITIATION IN NAFTA CHAPTER 19

INTRODUCTION

In 2003, the U.S. Wheat Growers Association petitioned the U.S. International Trade Commission to provide them with dumping protection from imported red durum wheat from Canada. Upon investigation of the compliant the Commission issued an affirmative dumping order against Canadian wheat. In response to this antidumping order the Canadian Wheat Board, on November 24, 2004 initiated a dispute through the North American Free Trade Agreement (NAFTA) Chapter 19 Dispute Settlement Mechanism (DSM) appealing the ruling (USA-CDA-2004-1904-06).4

Also in 2003, the U.S. International Trade Commission investigated a dumping claim against Canadian chicken producers. Similar to the case with wheat, the Commission concluded that kosher chicken was being dumped on the U.S. market. As a result they issued a dumping order of 2.3% on the value of kosher chicken being imported from Canada. But quite unlike the response of the Canadian Wheat Board, the Canadian chicken farmers did not appeal the ruling to NAFTA (US-ITC- Investigation number 731-TA-1062).5

Why did the Canadian chicken industry accept the order issued by the U.S. Trade Commission while the wheat industry appealed the dumping ruling against it through NAFTA? More broadly, what factors influence industries to initiate disputes in NAFTA Chapter 19 appealing

---

antidumping and countervailing duty (AD/CVD) rulings made by government agencies in another member state.\(^6\)

In this chapter I use NAFTA as the forum to analyze why industries in one country initiate disputes at the regional level appealing the decision of government agencies in another country. I argue that one of the most important factors that influences an industry’s decision to pursue a dispute is its perception about the legal strength of its case. This perception is influenced by the two main criteria established by NAFTA for review of AD and CVD decisions: (1) whether the agency that imposed the AD/CVD ruling went outside of its legal boundaries and authority in making an affirmative decision, or (2) whether there were errors in facts or calculations when that positive AD/CVD decision was made.

In focusing on concerns about overextension of legal boundaries, I show that industries consider whether domestic political pressures outside of the scope of domestic law related to trade practices, such as political contributions and electoral support, unfairly influenced the AD/CVD ruling and weakened the legitimacy of the decision. To analyze this argument I use a heckman-probit specification to show that the domestic political importance of an industry does not only influence the initial AD/CVD decision made by a government agency in one country, but also influences the subsequent appeal of that decision by industries in another country. Focusing on errors in facts or calculation I then demonstrate how the procedure used to reach a positive AD/CVD decision influences appeals. Here I show how the method of calculation used by domestic authorities and the number of countries included in the AD/CVD complaint impacts whether or not a case goes before the Chapter 19 binational panel.

\(^6\)In NAFTA Chapter 19, non-state actors affected by a ruling made in one member state, can initiate a dispute appealing that decision to an ad hoc binational panel which makes a determination on whether the national law was properly applied when the ruling was made. I focus on the decision of industries and industry groups.
Analyzing the decision to initiate NAFTA Chapter 19 disputes is important for several reasons. Foremost, NAFTA's dispute settlement system has become the standard that many other RIAs have sought to replicate (Koesrianti 2005). NAFTA has been praised for its highly specialized dispute settlement bodies and the high level of legalism used for enforcement and compliance. Given this, it is useful to analyze how disputes emerge in NAFTA and whether the structure of the dispute settlement mechanism has any influence on the decision to dispute. This information would be useful to other new and evolving RIAs as they institutionalize their dispute resolution system.

Secondly, this analysis allows me to focus on industry and/or industry group behavior rather than state behavior. In NAFTA Chapter 19, unlike in many regional agreements, non-state actors affected by a ruling made in one member state, can initiate a dispute at the regional level appealing that decision. Focusing on industries allows me to dissect and explore the behavior of groups most directly affected by AD/CVD decisions.

Third by demonstrating that the criteria established by NAFTA for dispute settlement influences the decision to initiate a dispute, this chapter shows how international institution design matters and how it affects the choices and behavior of actors ex-ante. At the same time, this chapter also illustrates the importance of domestic politics to both domestic and international actors. In particular it shows that the domestic political importance of an industry in the issuing state does not only influence the decision to impose a positive AD/CVD ruling but also influences the likelihood that a negatively affected industry in a counterpart member state will appeal this ruling.

Moreover, this study goes beyond extant literature to develop a comprehensive explanation for the decision to pursue dispute resolution. Apart from descriptive case studies analyzing a few of the prominent disputes that have arisen, existing studies on Chapter 19 have tended to focus on evaluating its effect on domestic AD/CVD activities (Blonigen 2005; Goldstein 1996; Jones 2000). Here scholars have focused on explaining state behavior before the opportunity for a dispute arises,
while neglecting the question of why and under what conditions parties are likely to take disputes before the Chapter 19 DSM. The question of dispute initiation in NAFTA is an important one because it allows for a direct analysis of the extent to which Chapter 19 is seen as useful and beneficial to NAFTA parties.

My study is unique in that I compile original data on all potential (affirmative AD/CVD decisions) and actual disputes that were taken before the NAFTA Chapter 19 DSM. This new dataset serves as the cornerstone of my study as no one has been able to compile data on both the potential appeals that could have been taken before NAFTA and the actual appeals that actually became NAFTA disputes. The dataset begins by identifying the 249 AD/CVD rulings that could have been appealed through NAFTA and then identifies the 114 rulings that actually became Chapter 19 disputes. On the whole, the scope and quality of this new dataset gives me the ability to go beyond existing analyzes.

The next section of the chapter justifies why I focus on the Chapter 19 dispute resolution mechanism, describes the Chapter 19 dispute process and provides summary statistics of the disputes that have been initiated through NAFTA Chapter 19. The third section reviews the past studies done on NAFTA Chapter 19. After this I develop my theoretical argument and specify several hypotheses about dispute initiation. Section five explains the method of analysis and the sixth section presents the results. Section seven concludes.

**DISPUTE SETTLEMENT IN NAFTA**

Drawing on the 1989 Canada-United States Free Trade Agreement (CUSFTA), NAFTA extended dispute settlement provisions to a broader range of disputes. The DSMs which emerged
were either expanded versions of those of CUSFTA - such as Chapter 18 of CUSFTA which became Chapter 20 of NAFTA, or new forms of dispute settlement which did not appear in CUSFTA -such as Chapter 11 of NAFTA (Folsom 1999). Thus, NAFTA is an atypical agreement in that it has several specialized DSMs instead of just one general DSM as is typically the case with most regional trade agreements (Smith 2000). The principal dispute mechanisms of NAFTA are contained within Chapters 11, 14, 19, and 20.7

**Why Focus on Chapter 19**

I focus on Chapter 19 because it deals directly with trade disputes, has one of the most formal mechanisms to process disputes in NAFTA, and has realized the most number of disputes since the inception of NAFTA. Foremost, the process of dispute resolution in Chapter 19 is more formal than in some of the other DSMs. Under Chapter 19 for example, there is a clear process and timeline for filing disputes, selecting a binational panel, reviewing dispute claims and making decisions. Under another DSM like Chapter 11 for example, the process is not very clear or as formal.

In addition to formality, Chapter 19 rulings are more binding than that of other DSMs. For example, in Chapter 19 domestic tribunals must adjust their AD/CVD rulings based on the decision of the binational panel. In other DSMs like that of Chapter 20, the rulings are not necessarily binding and are generally viewed as recommendations.

Beyond this, NAFTA Chapter 19 is the DSM that deals most directly and consistently with trade related concerns, which is the focus of this chapter. Chapter 19 deals specifically with AD and

---

7 Chapter 11 is designed to resolve investor-state disputes over foreign investments; Chapter 14 creates special provisions for handling disputes in the financial sector via the Chapter 20 dispute settlement process; Chapter 19 establishes a review mechanism to determine whether final antidumping and countervailing duty decisions made in domestic tribunals are consistent with national laws; and Chapter 20 allows for government-to-government consultation, at the ministerial level, to resolve high-level disputes generally related to the interpretation or application of NAFTA law (Folsom 1998).
CVD rulings, permitting parties to appeal unfavorable orders brought by one NAFTA member against imports from another to a special binational panel.

And finally, focusing on Chapter 19 is most appropriate because it has experienced the most number of disputes since the inception of NAFTA. As of 2006 one hundred and fourteen (114) requests for panel review of AD and CVD rulings have been filed through Chapter 19 by industries and/or industry groups in member states appealing the decision of AD/CVD rulings. This is compared to the forty-seven (47) disputes filed under Chapter 11, ten (10) under Chapter 20, and zero (0) under Chapter 14 as of 2004 (Hufbauer, Jones and Schott 2004).

The two stage decision process

< Insert Figure 2.1 >

Dispute initiation under NAFTA Chapter 19 is the result of a two stage decision process. In the first stage the domestic trade tribunal in state A decides whether or not to issue an AD or CVD ruling. In the second stage the industry or actors in the NAFTA member state (say state B) that are negatively affected by the AD or CVD ruling decides whether or not to seek panel review of that ruling. Figure 2.1 illustrates the process that evolves into disputes under NAFTA Chapter 19 DSM.

The process usually begins when a domestic petitioner (normally industries) files a petition with an agency requesting trade protection in the form of AD or CV duty. In the United States, two agencies are involved in the AD or CVD decision making process – they are the International Trade Commission (ITC) and the Department of Commerce (DOC). In Canada two agencies are also involved in this process – they are Canada Border Services Agency (CBSA) and Canada International Trade Tribunal (CITT). And, in Mexico, one agency, the Secretaría de Comercio y
Fomento Industrial (SECOFI) is responsible for both decisions.

Once a petition for protection is received the above named authorities investigate the petition. There are many common features with the application of AD/CVD protection across the three NAFTA member states, primarily because negotiations surrounding the implementation of NAFTA led to major reforms in Mexican AD/CVD statutes and procedures to make them very similar to US and Canadian AD/CVD procedures.\(^8\) For antidumping cases, the authorities determine whether an imported product is being sold below its normal market value or below its cost of production. For countervailing duty, the domestic authority seeks to determine whether certain types of subsidies are being provided to a foreign producer by its government. In both cases duties can be imposed only when the investigating authority has found that dumped or subsidized imports are causing or threaten to cause material injury to the domestic industry (Orme 1996).

As can be seen in Figure 2.1, if there is a negative decision, no AD or CV duties are imposed on the foreign firm or industry. If there is a positive decision and evidence of material injury is found, the authorities impose duties to remedy for the “unfair” imports. This means that additional costs will be imposed on exports from the industry or firms that have been deemed to be in violation of acceptable trade practices.

When there is a positive decision, the party who has been ruled against (it is an industry or group of firms) chooses whether or not to appeal the decision. This leads us to the second stage in Figure 2.1. If the industry chooses to appeal they can do so through the NAFTA Chapter 19 DSM.\(^9\) Here the ruling is appealed to a five member bi-national review panel which is charged with establishing whether the national law in the country that issued the ruling was properly and fairly

---

\(^8\) Most of the reforms were to add much-needed “due process” features to the Mexican procedures, including abolition of provisional duties before preliminary decisions, full participation by involved parties in administration process, timely notifications of decisions, and the right to immediate appeals (Giesze 1994; Pippin 1999).

\(^9\) Keep in mind that in the second stage the state issuing the AD/CVD order becomes the defendant, while the state who was the recipient of the AD/CVD ruling becomes the plaintiff.
applied (Hornbeck 2004). It is this decision to initiate dispute resolution that is of primary interest in this paper.

The panel must respect the national law of the country of the agency whose decision is being appealed and can only affirm agency decisions or remand (return) them with specific instructions to revise them. The panel is responsible for determining whether the agency (1) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction; or (2) made an error in the application of law, fact, or calculation (Folsom 1999).

The two stages in Figure 2.1 are important in the decision making concerning dispute initiation. As can be seen above, the possibility of a dispute begins with the decision of a domestic trade tribunal. This is because dispute initiation under Chapter 19 is dependent upon the results from the application of the domestic law of the party whose agency’s determination is being challenged.

Given that NAFTA review panels are responsible for determining the extent to which the domestic laws of the country making an AD/CVD decision was appropriately applied, it is only natural that an industry contemplating a dispute determine the potential strength of their case by analyzing the domestic conditions in the counterpart state that may have influenced the AD/CVD decision in the first stage. A key focus in this chapter will be to show that politically relevant factors that are likely to lead to an AD or CVD decision in the first place, impacts the decision to initiate a dispute under NAFTA Chapter 19 in turn. To this end, the visual depiction of the AD/CVD trade dispute process in Figure 2.1 serves as a valuable guide for the development of important testable hypotheses.

**Summary of Chapter 19 Disputes**

Chapter 19 procedures have been used extensively since the inception of NAFTA. A total
of 114 disputes have been filed as of 2006 by industries appealing an AD/CVD order made by another member state.

< Insert Figure 2.2 >

Figure 2.2 shows the number of disputes initiated per year from 1994 to 2006. Overall there appears to be no yearly trend in dispute initiation. In fact the number of disputes initiated from year to year fluctuated over the time period. The most number of disputes, 20, were initiated in 2000, while the fewest disputes, 1, was initiated in 2004.

< Insert Figures 2.3 through 2.5 >

In Figure’s 2.3 through 2.5 we see the pattern of dispute initiation for actors in each member state throughout the 12 year period. Here we see that dispute initiation for each country mirrors the yearly fluctuation seen in Figure 2.2. Compared to Mexico and Canada, the U.S. on average tended to have the fewest number of disputes per year. In fact it was the only country that had numerous years (3 years) with no disputes being initiated through Chapter 19. While Mexico had the most number of disputes (8 disputes in 1998) in any one year, Canada continuously outdid its counterparts with 6 years of having the most number of disputes initiated. In general though, there were no obvious patterns of dispute initiation among and between the states over the 12 year period.

< Insert Table 2.1 >
Table 2.1 shows the number of cases filed by industries or industry groups in each country during this 12 year period. As can be seen, industries in Canada initiated the most disputes, having filed some 8 more disputes than industries in Mexico, and 19 more than U.S. industries. The large number of disputes filed by industries in Mexico and Canada is somewhat expected given that many NAFTA observers predicted that these industries would have taken advantage of Chapter 19 to appeal what they termed, “unfair AD rulings” instituted by the regional leader, the United States (Orme 1996; Czinkota and Kotabe 1997).

< Insert Table 2.2 >

Table 2.2 provides an overview of NAFTA Chapter 19 dispute initiators (complainants) and respondents (defendants) by country. The table shows that the United States was the respondent in an overwhelming majority of disputes (79 disputes), while Mexico and Canada were respondents in only a few disputes (16 and 19 disputes respectively). Of note is the fact that even though the United States initiated the fewest number of disputes they were the respondent in the most number of disputes. The table also shows Mexico and Canada had very few disputes between each other. In total Mexico initiated only 3 disputes against Canada, and Canada initiated only 4 disputes against Mexico.

< Insert Figure 2.6 >

Figure 2.6 shows that steel and steel products have been the most popular products disputed in NAFTA Chapter 19. These products account for 32% of all Chapter 19 disputes initiated. Many of these steel disputes concern processed steel products such as steel strips, steel tins and bolts.
This is not surprising given the increased emphasis the United States has placed in recent years on protecting its steel industry from outside competitors. Alongside steel, construction material account for the second largest number of disputes. Many of these disputes have evolved into bitter prolonged battles between industries and governments in opposing NAFTA member states.

**NAFTA CHAPTER 19 IN THE LITERATURE**

In political science the literature on NAFTA disputes have generally been focused on either (1) predicting the extent to which the DSMs influence domestic strategic behavior, or (2) providing in-depth analyzes of some of the most prominent and contentious disputes that have arisen thus far.

**Chapter 19's influence on domestic AD/CVD judgments:**

In general, studies analyzing the effect NAFTA DSM structure has on member state behavior have concluded that the NAFTA structure will encourage greater compliance and subsequently deeper integration (Goldstein 1996; Morales 1999; Rugman and Anderson 1997). However among these scholars, two contrasting explanations have been offered on how compliance will be achieved. On the one hand some argue that the DSMs will encourage compliance because they constrain domestic policy and domestic political behavior (Goldstein 1996). On the other hand some argue that NAFTA encourages compliance because its DSMs do not interfere with the domestic trade laws of its member states (Morales 1999).

Focusing on the United States, Goldstein (1996) argues that NAFTA dispute settlement panels, through a series of panel decisions, established a precedent for bureaucrats to follow by repeatedly requesting that the US modify AD/CVD decisions that it ruled to be unjustified. As a
result of this, the US bureaucrats “got the message” and sent forward fewer AD/CVD cases and even reduced the number of positive rulings against products from member states. According to Goldstein, given that the bureaucrats adopted a more pro-trade stance as a result of the binational panels, Congress found it easier to support and adhere to the expectations of the binational panels because they saw these panels as a convenient shield from powerful interests. As a result Goldstein concludes that the structure of and the jurisdiction afforded to binational panels have led to a partial reinterpretation of US levied AD and CVD orders and thus the opportunity for greater cooperation.

Unlike Goldstein (1996) who gives significant power to NAFTA panels, scholars like Morales (1999) argue that NAFTA arbitrage panels do not have as much power as domestic tribunals have when making decisions. According to her these NAFTA panels are severely restrained by the normative frame mandated by Chapter 19. They are not entitled to judge or change the domestic legislation of the non-complying country, but only to review whether AD or CVD final determinations were enacted in compliance with domestic legislation. It is because of this limited power, she says, that countries feel less threatened by the international arbitration process and thus would be more likely to comply with its rulings. Morales (1999) incorporate a few disputes that were arbitrated by bi-national panels to demonstrate this point.

These studies only focus on the effect Chapter 19 has on AD/CVD rulings. While insightful, this focus does not allow us to analyze the extent to which and under what conditions the DSM itself is utilized to resolve disputes. This is an important question since the DSM is a forum created specifically for unsatisfied parties to seek review of AD/CVD rulings. Given this, I go beyond past research and focus on the opposite direction of the causal arrows. That is to say, I focus on the effect AD/CVD rulings have on dispute initiation through Chapter 19.
Case Studies:

Apart from the above discourse, some studies also analyze one or a few prominent disputes that have been brought before a NAFTA binational panel (Davey 1996; Villanueva and Serna 2003; Gagne 2002). In general, these studies have attempted to understand why certain disputes have prolonged in NAFTA without any foreseeable resolution. One dispute that has been extensively analyzed by numerous scholars is the lumber dispute between Canada and the US in which the US seeks protection from Canadian subsidized lumber exports. Other popular disputes that have been evaluated are the cement and steel disputes.

While insightful, one limitation is endemic to all of this scholarship on NAFTA disputes. Thus far, scholars have focused almost exclusively on state and industry behavior both before the opportunity for a dispute arises and after a dispute has been taken before NAFTA, while neglecting the important decision to take the dispute before NAFTA. In other words political science research on NAFTA disputes have failed to systematically and empirically explore why and under what conditions some industries take disputes to NAFTA once an AD/CVD decision has been made while others do not. This chapter seeks to fill this gap by theorizing about and empirically analyzing the decision to initiate a dispute through NAFTA Chapter 19. In what follows I present a theoretical framework for analyzing the decision to appeal affirmative AD and CVD rulings to the NAFTA Chapter 19 DSM.

---

10 Folsom (1998) is unique in that he summarizes all disputes brought before NAFTA Chapter 19 during the years 1994 to 1998. He however does not provide any hypotheses about the causal process that lead to disputes.

11 Allee (2004) has analyzed the factors that influence dispute initiation in the GATT/WTO. I go beyond this contribution by focusing on (1) the regional rather than the multilateral level and (2) by analyzing industry decision to initiate disputes rather than state decision to initiate disputes.
A THEORY OF DISPUTE INITIATION

The first step in thinking about the decision to take disputes before NAFTA is to identify actors who are responsible for making that decision. As noted earlier in my description of the Chapter 19 dispute settlement process, disputes are brought before the NAFTA tribunal primarily by industries (or a group of firms) in one NAFTA member state who have been subjected to AD or CVD costs by another NAFTA member state. Given this, the theory building process will focus on the rationale of industries who have incurred AD or CVD orders. I posit that the decision of an industry to file a dispute under NAFTA Chapter 19 is influenced by two groups of factors: (1) the perceived legal strength of a case, and (2) the costs and benefits of the dispute. In developing my argument I primarily focus on and theorize about the legal strength of the case since it allows me to illustrate how domestic politics influences the decision to pursue Chapter 19 disputes. I incorporate the costs and benefits contemplated by an industry as control variables in my analysis.

The Perceived Legal Strength of the Case:

One of the most important factors that influence any actor to initiate legal proceedings is the perceived probability of winning the dispute. All formally derived models of domestic legal outcomes highlight the merits of each side's case as a primary determinant of the outcome of disputes (Hughes and Snyder 1995; Kessler, Meites and Miller 1996; Posner 1973). Beyond this, considerable expenses are usually expended pursuing a legal battle. The costs accrue from hiring expert representation and from collecting the necessary information to mount a convincing legal case. Given this, an industry is more likely to take before the binational panel those cases that it believes it has a high probability of winning. An industry’s perception about its chances of winning
is significantly influenced by the standard of review set out in NAFTA Chapter 19 to evaluate the complaint and render a decision.

Under NAFTA Chapter 19 two factors are analyzed by the review panel: (1) whether or not the authority making the AD/CVD decision was influenced by factors beyond the scope of the legislative power provided to it, and (2) whether or not there were errors in fact or calculation.\(^\text{12}\) I argue that industries base the legal strength of their case and thus their decision to seek dispute resolution on these two factors – concerns about overextension of legal boundaries and the probability of errors.

**Concerns about legal boundaries**

The purpose of reviewing the limits of the power given to government agencies is to ensure that, in coming to a certain decision, an administrative agency acted within the parameters of its empowering legislation. In the case of AD rulings the goal is to ensure that only factors related to price or cost of production were incorporated into the dumping determination. In the case of CVD rulings the goal is to ensure that subsidization and its injury effect is the prime factor used to substantiate a countervailing duty ruling. Given this, the prospective plaintiff industry is more likely to initiate a dispute if they perceive that irrelevant non-price or non-subsidy specific factors were taken into account. This is because under Chapter 19 the inappropriate application of the law bolsters their case for a reversal. Thus, any industry considering an appeal looks for evidence that may point to over extension or neglect of jurisdictional authority when making the decision concerning dispute initiation. I focus on how the political importance of the protected industry and the timing of the AD/CVD petition may influence an affected party’s perception on whether the domestic agency overstepped its legal boundaries. In what follow I analyze the effect (1) industry

size, (2) industry contribution, and timing of petition has on the decision to initiate disputes in NAFTA Chapter 19

(i) Industry size

One hypothesis in the literature concerns the impact of industry size on trade protection. Large industries are expected to receive more trade protection than their smaller counterparts (Francois and Niels 2004; Hansen 1990; Hansen and Prusa 1997; Hathaway 1998). Scholars argue that comparatively larger industries hold a larger proportion of the total national employment and thus a larger portion of the prospective votes (Hansen and Prusa 1997; Hathway 1998). Politicians have an incentive to meet the demands of large industries because they are aware that trade decisions that negatively impact these industries and by extension their employees can undermine efforts to retain political office (Finger, Hall, and Nelson 1982; Hansen and Prusa 1997; Lavergne 1983; Pincus 1975). Through empirical testing scholars have found significant support for this argument that the larger the industry the greater the likelihood of AD or CVD protection.

Extending this hypothesis, I argue that the larger the size of the protected industry in State A, the greater the probability that the industry subjected to an AD/CVD order in State B will initiate a dispute. Actors considering an appeal know that large industries are politically important groups that can influence AD/CVD decisions. At the same time they know that industry size, specifically in the case of large industries, is not a relevant factor that domestic authorities should take into account. This is because large industries unlike their smaller counterparts tend not to need special trade protection because of their size. Given this, industries contemplating an appeal associate the protection of large industries with political motivations rather than legal obligation. As a result negatively affected industries are more willing to initiate a dispute the greater the size of the protected industry. Given this, I hypothesize the following:
H1: All else equal, industries in NAFTA member states (say state B) that have been subject to AD or CVD orders are more likely to initiate a dispute when the industry being protected in a counterpart member state (say state A) through the AD or CVD order is a large industry.

(ii) Political Contribution

In addition to size, past research has shown that campaign contributions also affect pressure group influence on trade policy. Focusing on the United States, Hansen and Prusa (1996) hypothesize and demonstrate that industries which contribute to the campaigns of members of the oversight committee (the Committee responsible for monitoring the trade bureaucracies) have a greater likelihood of obtaining their preferred trade policy. In particular, Hansen and Prusa showed that the larger an industry’s contribution to the campaign of oversight committee members, the more favorable the outcome of their trade petitions.

Building upon this scholarship and focusing on the United States, I argue that the greater the campaign contribution made by an industry that received protection the greater the likelihood of dispute initiation under Chapter 19. The greater the contribution from the protected industry the greater the perception that the tribunal went beyond its boundaries to allow non-relevant factors such as monetary benefits to influence its decision. In this situation, negatively affected industries are likely to launch an appeal through NAFTA charging inappropriate application of domestic law. This provides us with the following hypothesis:

H2: All else equal, industries in NAFTA member states (say state B) that have been subject to AD or CVD orders are more likely to initiate a dispute the larger the PAC contribution made by the industry being protected in a counterpart member state (say state A).

(iii) Elections

Performance of the economy in general and the associated well-being of constituents in particular have been highlighted in the economic voting literature to be a major determinant of
voting decisions (vote choice) at election time (Alesina et al 1993; Bailey, Goldstein and Weingast 1997; McGillivray 1997; Persson and Tabellini 1990; Scheve 2004). These scholars argue that voters engage in rational-retrospective voting by evaluating the past performance of the candidates when casting their vote. In these studies it is argued and shown that poor economic performance and declining economic well-being decreases the incumbent’s electoral fortunes. This is especially true for open economies such as the member states of NAFTA. Given this, leaders in NAFTA member states have an incentive to signal to voters that they are interested in and constantly seeking their economic well-being.

To achieve this leaders utilize economic policy including trade policy to obtain an electoral advantage. With respect to trade policy the adjustment tends to be protectionist in nature because protectionist interests tend to be better able to overcome the free rider problem, tend to be more influential in the policy making process, and tend to be more willing to punish incumbents for poor economic performance (Grossman and Helpman 1994). These protections as elections approach do not only influence the vote choice of real economic losers, but also impact the voting behavior of potential losers as well. Given this, it is expected that the likelihood of AD/CVD protection would increase as the next election draws near.

Extending this hypothesis, I argue that the closer the time to the next election in the state issuing the AD/CVD protection, the greater the probability that the industry subject to the AD/CVD order in member state B would initiate a dispute appealing the ruling. This is because actors considering an appeal know that governments would have an incentive around election time to pressure bureaucrats to return favorable rulings to domestic industries irrespective of whether these rulings are justified or not. Given this, firms and industries contemplating an appeal would associate protection around election time with political motivations rather than legal obligation. As
a result they would be more likely and willing to challenge AD/CVD orders issued around the time of election in a counterpart member state.

This provides us with the following hypothesis:

**H3:** All else equal, industries in NAFTA member states (say state B) that have been subject to AD or CVD orders are more likely to initiate a dispute if the AD/CVD order against them was made close to the time of the general election in the counterpart member state (say state A).

### Concerns over Errors in Fact and Calculation

In addition to concerns over jurisdiction, the Chapter 19 review panel also analyzes whether there were errors made by the domestic authority in fact or calculation associated with the AD/CVD ruling. Here the panel seeks to determine if the judgment made by the domestic tribunal can be substantiated by evidence or if the calculations used are accurate. I focus on two factors that can influence an industry's decision on whether errors in fact or calculation played a role in the AD/CVD ruling. These are (1) the method of calculation used, and (2) the number of countries that were party to the ruling.

**(iv) Method of calculation**

In general, one of three methods can be used to calculate dumping or injury. The first method is based on the price in the exporter's domestic market. The second uses the price charged by the exporter in another country. And the third alternative constructs a value based on the best available information – the combination of the exporter's production costs, other expenses and normal profit margins for example. Of these three methods the first and second, both of which uses actual prices, are relatively accurate while the third method introduces the opportunity for significant inaccuracies in the calculation of injury.
I argue that when a constructed value is used, the likelihood of dispute on the part of a negatively affected industry increases. A constructed value creates the opportunity for errors in accuracy because the secondary sources used may not be reliable. It also creates the opportunity for errors since the prices are constructed by the investigating agency. In addition, a constructed value provides the opportunity for capricious factors to be included to justify dumping and injury. In fact past studies have found that constructed values are more likely to lead to affirmative dumping determinations (Allee 2004; Baldwin and Moore 1991; Lindsey 1999). Given this, negatively affected industries are likely to perceive a greater opportunity to demonstrate questionable or error prone calculations when the ruling was made using prices that were constructed. As a result I hypothesis:

**H4:** All else equal, when a constructed value is used in making AD/CVD determinations, negatively affected industries are more likely to initiate disputes appealing that ruling.

**(v) Number of countries investigated**

Often times when an industry petitions the domestic authority, they request protection not just from one country but from a number of countries. When this occurs, the investigating authority is allowed to cumulate imports from all the countries involved. This makes it easier for the investigating authority to find a country guilty of dumping or subsidization. In addition, the more countries included in the petition the greater the opportunity to attribute specific facts associated with one particular state to other states being investigated. Given this, industries negatively affected by an AD/CVD ruling where there are a number of other respondent states, may reasonably assume that errors or mix-ups were made in the calculation of injury for their specific industry because of the number of different countries that are being investigated in the AD/CVD case. Thus they are more likely to file a dispute requesting review of the finding associated with their industry. As such I hypothesize that:

**H5:** All else equal, as the number of respondent states to an AD/CVD petition increases, the greater the likelihood that affected industries in NAFTA member states would initiate
disputes appealing the AD/CVD ruling.

Control variables

In addition to the perceived legal strength of a case, industries whose goods and services have become subject to AD/CVD orders also take into consideration the costs and benefits of a dispute. I include one measure of potential economic costs – dependence, and one measure of potential benefit from dispute – precedent.

Dependence: A potentially important expected cost to industries, relate to the potential future costs of publicizing a grievance with a particularly important respondent country. For some industries the protected market may be a major importer of their good or service. In other words these industries may be dependent on the market that issued an AD/CVD order against them. When this is the case industries may be reluctant to initiate a formal dispute because of the possible future repercussions to their trading relationship. Given this the plaintiff industry may be less willing to initiate a formal appeal of an AD or CVD order. They may opt to use an informal means of resolving disagreements. Thus the greater the degree of reliance on the protected market, the less the likelihood of dispute initiation.

Precedent: A disputed market may be important when the exporter has a sizable share in the protected market. A sizable share means that the exporters’ good or service accounts for a large and significant portion of the total supply of this product in the importer’s country. When this is the case the exporter usually has some power and influence in the protected market. Because of the dependence on exports from the foreign industry, a dispute appealing AD/CVD rulings may encourage the authorities in the protected market to reduce the AD/CVD order, increase the depth of liberalization or guarantee that future disruptions are minimized. This gives the exporter with a
sizable share in the protected market an incentive to challenge AD/CVD orders. Given this, the greater the sizable share of the protected market, the greater the likelihood of dispute initiation under NAFTA Chapter 19.

**Additional Control Variables**

Finally I include a few additional variables that are likely to have an influence on the decision to initiate a dispute. These variables may be of substantive interest to others, but for the purpose of my analysis they are control variables.

**Previous dispute:** Here I argue that industries are more likely to believe that they have a strong case if the issue has been disputed in the past. This is because a previous dispute over the same product may suggest that the state issuing the AD/CVD order may be continuously targeting them by issuing an unsubstantiated ruling. Thus affected industries are more likely to dispute such rulings.

**Material injury:** Once a positive ruling for dumping or subsidization is made, the domestic authority imposes a duty on all relevant imports commensurate with the level of injury caused to domestic firms. The higher the duty, the greater the level of injury caused. I expect higher duties to attract more appeals. Higher duties make it easier to find and/or claim that some facts used by the investigating authority have been exaggerated or misinterpreted. This makes it easier to request that the duty be at least lowered to a more reasonable or justifiable level.

**RESEARCH DESIGN**

Before presenting and discussing the findings from the empirical tests, it is useful to discuss details regarding features of the econometric model, the units of observation, and rules of coding the
dependent and independent variables.

**Statistical Estimator:**

Given the structure of the NAFTA Chapter 19 dispute system, the set of possible AD/CVD decisions negatively affected industries consider challenging before the NAFTA Chapter 19 tribunal is potentially non-random. This is because the decision to dispute an AD/CVD ruling through NAFTA is dependent upon the initial decision on the part of the domestic tribunal to implement a trade barrier in the first place. Given that an initial decision is thought to affect a subsequent decision and given that my theory postulates that some factors that influenced the AD/CVD decision also influences the decision to appeal, I use the heckman-probit specification. The heckman-probit specification addresses the sample selection issue by modeling the “selection” and “outcome” decisions jointly using a bivariate normal distribution to capture the possible correlation in the disturbances across the two equations (Greene 2000; Dublin and Rivers 1989; Heckman 1979). In this paper the heckman model will analyze the impact domestic politics has on a member state’s initial decision to issue affirmative AD/CVD rulings and then and affected industry’s subsequent decision to pursue a NAFTA dispute.

Given that I am using a heckman model I specify a selection equation for the initial decision to issue an AD/CVD order and an outcome equation for the subsequent decision to appeal that order through NAFTA. The outcome equation, which addresses the question of interest in this paper, is based on the hypotheses developed in the theoretical section of this paper. The selection equation incorporates the industry specific political factors discussed in the theoretical section as well as a few

---

13 For my purposes, the selection portion of the model analyzes the impact the political importance of an industry has on the initial AD/CVD decision. The outcome portion of the model analyzes the impact information from the domestic tribunal’s initial decision to impose AD or CVD protection in the estimation of the negatively affected industries decision to initiate a dispute.
macroeconomic variables that past research has shown to be important determinants of AD/CVD rulings (Knetter and Prusa 2003). The hypotheses for and expected direction of the variables included in the selection model are summarized in Table 2.3.

< Insert Table 2.3 >

**Dependent variables:**

Given that the decision to initiate a dispute is dependent on a positive AD/CVD order, I must operationalize two dependent variables. The first dependent variable is whether the domestic authority issued a positive AD/CVD ruling; the second is whether the positive AD/CVD ruling led to a NAFTA dispute appealing the ruling.

For the first variable I identify all the petitions made by industries in the three NAFTA member state for AD/CVD protection from imports of another. The primary source for this data is the WTO Semi-Annual Country Reports and the Global Antidumping Database by Bown (2007). Here I identify a total of 249 petitions made by industries in the three member states for AD or CVD protection from imports of another member state. Of these 249 petitions, 68 were filed by Canadian industries, 77 were filed by industries in Mexico, and 104 petitions were filed by American industries. From these cases, I then identify the instances in which a positive AD or CVD ruling was issued, and duties imposed on imports from another NAFTA member state.

For the second dependent variable I then identify the cases of interest to this paper. I identify the 114 instances in which an industry (or group of firms) in another NAFTA member state that is the recipient of an AD/CVD order challenges the decision by filing a dispute through

---

14 For a more detailed discussion of the macroeconomic variables that impact AD/CVD decisions refer to Knetter and Prusa (2003).

15 It is important to note that because the chapter focuses on NAFTA disputes, I narrow my focus to only AD/CVD petitions where at least one of the countries targeted was a NAFTA member state.
NAFTA Chapter 19. Data on these cases were obtained using reports from the NAFTA Secretariat available at http://www.nafta-sec-alaena.org/english/index.htm and http://www.siec.oas.org/dispute/nafdisc.asp.

Main explanatory variables

My argument suggests that perceptions about legal strength, based on the politically relevant characteristics of the industry that received AD/CVD protection and the manner in which the AD/CVD decision was reached influences the decision to pursue appeals. In what follows I operationalize each of the hypotheses.

Industry size: My first independent variable analyzes whether protection of large industries increases the likelihood of disputes by an affected industry in another member state. To test this hypothesis I use a proxy for the size of an industry, which is industry employment in the year prior to the AD/CVD decision. I expect that the more employees an industry has, the greater the likelihood of NAFTA disputes. Data on industry employment is taken from the Handbook of North American Industry and the OECD. The data collected is at the three–digit SIC level by year.

PAC contributions: The second variable analyzes whether PAC contributions increase both the probability of a favorable AD or CVD ruling and the probability of NAFTA dispute initiation as well. Due to lack of reliable data for Canada and Mexico, this variable will only be tested for NAFTA disputes brought against U.S. AD or CVD rulings. I follow Hansen and Prusa (1996) in constructing this variable. I focus on and cumulate PAC contributions to members of the oversight committee in the two years prior to the AD/CVD decision. PAC contributions to oversight committee members were constructed using the Federal Election Commission’s publicly available
Campaign Expenditures in the United States Reports on Financial Activity (RFA) data.

**Elections:** This variable analyzes whether elections increases the probability of a favorable AD or CVD ruling and the probability of NAFTA dispute initiation as well. Here I use a dummy variable equal to 1 in an election year and zero (0) otherwise. Data for this variable comes from Nohlen (2005) and Adam Carr’s Election Archive.

**Method of calculating injury:** The next indicator measures whether the use of a constructed value in making injury determinations increases the probability of disputes. To test this I include a variable equal to 1 if the investigating authority used a constructed value in any part of their calculation, and zero (0) otherwise. Data for this variable is obtained from the WTO Semi-Annual Country Reports.

**Number of countries in AD/CVD petition:** The fourth variable indicates whether dispute initiation is more likely the greater the number of countries that were investigated in an AD/CVD petition. To measure this I tabulate the number of countries that are party to every AD/CVD petition made in a NAFTA member state using data from the WTO Semi-Annual Country Reports.

**Control variables:**

**Cost:** The fifth variable focuses on the indirect cost of disputes by analyzing whether greater dependency on the protected market decreases the likelihood of a dispute appealing an AD/CVD ruling. To measure this variable I determine the percentage of the affected industries total exports that go to the protected market in the year the AD/CVD decision was made. For robustness I also use data from the year the dispute was initiated in NAFTA. In most instances NAFTA disputes were initiated in the year following the AD/CVD decision. I expect that the greater the percentage of exports that goes to the protected market the less the likelihood of a NAFTA dispute. Data for this variable comes from the UNCOMTRADE dataset.
**Benefit:** The next variable indicates whether exporters with a greater share of the protected market are more likely to dispute AD/CVD orders against them because of the benefits to them and because of their power in that market. To measure this I divide the total industry sales in the protected market by total exports from the prospective plaintiff market to determine the proportion of the market that is controlled by the prospective plaintiff in the year the AD/CVD decision was made.\(^\text{16}\) For robustness I also use data from the year the dispute was initiated in NAFTA. In most instances NAFTA disputes were initiated in the year following the AD/CVD decision. I expect that the greater the value of imports from other NAFTA member states relative to total industry sales in the protected market, the greater the likelihood of dispute initiation. Data for this variable was obtained from the Handbook of North American Industry and UNCOMTRADE dataset.

**Previous dispute:** With respect to previous disputes, I assess whether a previous dispute over the same issue increases the probability of initiation. I code a dummy variable equal to 1 if there was a previous dispute over the same issue (issues are coded at the SIC 3-digit level), and zero (0) otherwise. I measure this using data from the NAFTA Secretariat at [http://www.nafta-sec-alena.org/english/index.htm](http://www.nafta-sec-alena.org/english/index.htm).

**Material injury:** With respect to the level of material injury, I analyze whether higher duties are more likely to result in disputes through NAFTA. Data on the duties imposed is obtained from the WTO Semi-Annual Country Reports and Bown (2007).

**The Selection equation:** The measurement and sources used to collect data for the variables representing the political importance of an industry – size and political contribution – are the same as used for the outcome equation. And, data for the macroeconomic variables – GDP growth and the exchange rate - that are likely to influence AD/CVD decisions are obtained from the IMF.

\(^{16}\) I use the measure of industry sales in the protected market instead of the more accurate measure of industry production because comprehensive data for production could not be obtained.
International Financial Statistics. Data is collected for the year prior to the AD/CVD ruling.

RESULTS: THE INFLUENCE OF LEGAL STRENGTH ON DISPUTE INITIATION

Table 2.4 presents the heckman-probit results. Model 1 is estimated for the full dataset of all three countries but excludes the control variables as well as the effect of PAC contributions since data for this variable could only be obtained for the U.S. Model 2 adds the control variables to the estimation. And, model 3 provides results for the U.S. only and incorporates the effect of industry PAC contributions which was missing in Model 1 and 2.

< Insert Table 2.4 >

In general, the empirical results provide support for the central argument of this paper. It shows that the perceived legal strength of a case influences whether an industry appeals AD/CVD rulings to the Chapter 19 DSM. The results show that the variables representing concerns over jurisdiction and perceived errors in facts and calculations both influence the decision to commence disputes. Of the two variables representing jurisdiction - industry size and campaign contribution - I find that both influences the probability of trade protection and the likelihood that this protection would be appealed through Chapter 19.

Across all three models I find that, all else equal, disputes are more likely when the benefactor of AD/CVD protection is a large industry in a member state. This finding is significant at conventional levels across all three models. The substantive impact that the size of the protected industry has on the likelihood of disputes is notable in Table 2.5. It shows that as the percentage of
the national workforce employed by protected industries increase the probability of dispute also increases. In Table 2.5, when the AD/CVD protection is given to an industry that employs 1% of the workforce, the predicted probability of a Chapter 19 dispute is only 2.3%. When the percentage of the national workforce employed in the protected industry increases to 4.9% the probability of a dispute doubles. And, when the industry protected by the AD/CVD order accounts for 10.9% of the national workforce disputes are more than 4 times as likely to be taken before Chapter 19.

< Insert Table 2.5 >

The next industry specific hypothesis which concerns PAC contributions, and was tested for the U.S. only, is supported through empirical testing. The results in Table 2.4 show that the greater the PAC contribution by a U.S. industry that received trade protection, the greater the likelihood that a negatively affected industry in Mexico or Canada would appeal this protection order. The sign and significance of the results did not change when I focused on contributions in the year prior to the AD/CVD decision instead of contributions two years prior to I believe that this is an important finding, suggesting that PAC contributions not only alter policy outcomes at home but also influence decisions of affected parties abroad. In sum, the results discussed thus far shows that prospective complainants understand domestic politics in the prospective respondent state and are likely to incorporate it into their decision concerning dispute initiation.

With respect to elections, while the results across all models are in the expected direction, they are statistically insignificant. Specifically, the positive results indicate that as predicted, disputes in NAFTA are more likely when an affirmative AD/CVD ruling was issued in an election year. The lack of significance of this result may be due to the fact that a dummy variable was used to account for elections. A measure of elections that goes beyond a dummy variable to capture the months or days to the next election may allow me to capture more precisely the impact elections has on
disputes in NAFTA.

In Table 2.4 we see that across all models, the two hypotheses that analyze the impact potential errors have on the probability of disputes are supported. I find that, all else equal, when a constructed value is used the likelihood of a dispute increases. This finding is significant at the 95% confidence level in all models. The hypothesis concerning the number of countries in an AD/CVD petition is also in the expected direction and significant. Here, as the number of countries investigated in an AD/CVD petition increases, the likelihood of dispute also increases. This finding is significant at conventional levels in all three models. The substantive impact of this finding is shown by the predicted probabilities in Table 2.6. Here we see that as the number of countries being investigated increase from 1 to 5, the likelihood of disputes also increase from 4.87% to 7.39%. And when the number of countries increases to 10 the probability rises to 11.6%.

< Insert Table 2.6 >

In general, the above results demonstrate that industries are more likely to initiate a dispute when they have concerns about the appropriate application of domestic law and the accuracy of the AD/CVD ruling. It also shows that industries consider the factors that will be salient to a Chapter 19 panel before deciding whether or not they should initiate a dispute. The legal strength of their case is thus a priority in their decision.

Among the control variables, the results in Table 2.4 shows support for the two hypotheses developed concerning the effect costs and benefits have on the decision to commence an appeal. The result concerning market dependence as expected is negative and significant at conventional levels. The direction and significant of the results remain the same when the alternative measure is used. This demonstrates that reliance matters. More specifically it shows that industry’s whose
revenue depends significantly on the disputed market, are less likely to dispute an AD/CVD decision. This result is important because it demonstrates that industries consider the future impact disputes can have on their relations with important trading partners. Industries are less likely to initiate disputes with those respondents who are valuable to their survival.

Model 1 and 2 in Table 2.4 also shows statistically significant support for the argument that the greater the control over the protected market the greater the likelihood of disputes. This finding demonstrates that the greater the control over the supply of goods to the protected market the more eager an industry to challenge a ruling. With respect to the level of duties imposed, the results confirm my expectations that the higher the duties imposed the greater the likelihood of dispute. As can be seen from Table 2.4 these results are significant across all models. The results also show that the greater the number of previous disputes and the greater the level of material injury both increase the likelihood of a Chapter 19 dispute appealing an AD/CVD ruling. And finally with respect to the selection equation, all of the four variables analyzed are in the expected direction and significant at conventional levels.

**CONCLUSION**

This chapter analyzed the previously unaddressed question of why industries take some AD/CVD appeals before NAFTA but not others. I argue and demonstrate that the legal strength of an appeal determines whether an industry commences a dispute through NAFTA Chapter 19. I document a link between the standard of review that would be used by the Chapter 19 binational review panel and the decision to appeal an AD/CVD order. Here questionable application of the law and concerns over the facts and calculations used to make the AD/CVD ruling increases the likelihood that a NAFTA dispute will be commenced.
My argument and findings complement previous studies done on dispute initiation in the GATT/WTO which shows that legal strength as well as economic rationale influences dispute decisions of states (Allee 2004). Beyond this, it demonstrates an important link between domestic politics and international institutions by showing that domestic politics in the state issuing the AD/CVD ruling influences whether or not a negatively affected party in a counterpart state utilizes Chapter 19 to appeal that ruling. By focusing on the domestic arena I contribute to the growing literature that seeks to open up the ‘black-box’ of domestic politics.

In addition, the argument and findings show how the design of international trade institutions influences and structures the decisions of non-state actors’ ex-ante. That is to say this chapter demonstrates that the institutionalized process for dispute resolution in NAFTA influences which AD/CVD rulings are selected for appeal and which are not. And finally, this paper shows that industries are rational actors who engage in a cost-benefit analysis before commencing a dispute. They are more likely to initiate disputes when the benefits are high and the costs are low.

From this chapter and its findings numerous avenues for future research emerge. For one it would be interesting to expand beyond NAFTA Chapter 19 to analyze the rationale for dispute in other NAFTA dispute resolution systems. Doing this would allow me to determine whether the decisions to pursue disputes in other specialized NAFTA Chapters are the same political and economic motivations as under NAFTA Chapter 19. Of particular interest would be a comparison between disputes in Chapter 19 and Chapter 20. This is because while Chapter 19 deals with appeals from industries and industry groups, Chapter 20 arbitrates complaints from the three member states. Thus, comparing state and non-state behavior within the same RIA would further our understanding of how disputes evolve and the extent to which political and economic motivations dominate decision making. And secondly, expanding this research agenda to analyze not just the decision to initiate disputes but the outcomes of disputes would be very useful. Such a comprehensive research
agenda would allow scholars to determine whether the variables initially thought to impact the decision to commence dispute proceedings are the ones that lead to successful and favorable dispute outcomes.
REFERENCES FOR CHAPTER 2


Reinhardt, Eric. 2000b. “To GATT or Not to GATT: Which Trade Disputes Does the U.S. Litigate, 1975 -1999?” Unpublished Manuscript, Emory University, 


Schiff, Maurice, and Alan Winters. 2003. Regional Integration and Development. DC: World Bank and Oxford University Press.


Statistics Canada.(Various years). Annual Industry Statistics, adaptation from CANSIM. 


U.S. Bureau of the Census Sources. Various years. “Current Industrial Reports.” Retrieved from, 


Table 2.1: Chapter 19 Disputes Initiated by Country

<table>
<thead>
<tr>
<th>Country</th>
<th>Disputes Initiated</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>47</td>
<td>41.2%</td>
</tr>
<tr>
<td>Mexico</td>
<td>39</td>
<td>34.2%</td>
</tr>
<tr>
<td>United States</td>
<td>28</td>
<td>24.6%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>114</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>


Note that “Country” here refers to the home country of the industry or industry group that files a dispute through NAFTA Chapter 19.
Table 2.2: Complainants and Defendants by Country

<table>
<thead>
<tr>
<th>Complainant/Plaintiff</th>
<th>Canada</th>
<th>Mexico</th>
<th>United States</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>0</td>
<td>4</td>
<td>43</td>
<td>47</td>
</tr>
<tr>
<td>Mexico</td>
<td>3</td>
<td>0</td>
<td>36</td>
<td>39</td>
</tr>
<tr>
<td>United States</td>
<td>16</td>
<td>12</td>
<td>0</td>
<td>28</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>19</strong></td>
<td><strong>16</strong></td>
<td><strong>79</strong></td>
<td><strong>114</strong></td>
</tr>
</tbody>
</table>

Table 2.3: Determinants of AD or CVD decision

<table>
<thead>
<tr>
<th>Hypothesis</th>
<th>Hypothesized Impact on affirmative AD or CVD decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Importance of Industry</td>
<td></td>
</tr>
<tr>
<td>Industry size</td>
<td>+</td>
</tr>
<tr>
<td>Industry PAC contribution</td>
<td>+</td>
</tr>
<tr>
<td>Election year</td>
<td>+</td>
</tr>
<tr>
<td>Macroeconomic factors</td>
<td></td>
</tr>
<tr>
<td>Real GDP growth</td>
<td>-</td>
</tr>
<tr>
<td>Real exchange rate</td>
<td>+</td>
</tr>
</tbody>
</table>
Table 2.4: Heckman Probit Model of Decision to take Dispute before the NAFTA Dispute Resolution Mechanism

<table>
<thead>
<tr>
<th>Outcome Equation: Industry P's decision to seek NAFTA dispute Resolution</th>
<th>(1) Coefficient (Std Error)</th>
<th>(2) Coefficient (Std Error)</th>
<th>(3) Coefficient (Std Error)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Perceived strength of case</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industry size</td>
<td>1.05** (.485)</td>
<td>1.26** (.520)</td>
<td>1.522** (.69)</td>
</tr>
<tr>
<td>Industry PAC contribution</td>
<td></td>
<td></td>
<td>4.59** (2.11)</td>
</tr>
<tr>
<td>Election year</td>
<td>1.51 (1.03)</td>
<td>1.47 (1.01)</td>
<td>1.16 (.77)</td>
</tr>
<tr>
<td>Method of calculating injury</td>
<td>2.63** (1.08)</td>
<td>2.72*** (.76)</td>
<td>3.41*** (1.02)</td>
</tr>
<tr>
<td>Number of countries in AD/CVD petition</td>
<td>1.90*** (.54)</td>
<td>1.83*** (.546)</td>
<td>.974*** (.107)</td>
</tr>
<tr>
<td><strong>Control Variables: Cost and Benefit of Dispute</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industry dependence</td>
<td>-1.390** (.65)</td>
<td>-1.727* (.437)</td>
<td></td>
</tr>
<tr>
<td>Share of protected market</td>
<td></td>
<td>1.341* (.74)</td>
<td>1.333** (.60)</td>
</tr>
<tr>
<td><strong>Additional Control Variables</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Previous dispute</td>
<td>4.135*** (1.34)</td>
<td>4.848*** (1.67)</td>
<td></td>
</tr>
<tr>
<td>Duty imposed</td>
<td>2.019** (.91)</td>
<td>3.294*** (1.37)</td>
<td></td>
</tr>
<tr>
<td><strong>Selection Equation: State D's Decision to Impose AD/CVD Protection on industry P</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industry Size</td>
<td>.31* (.16)</td>
<td>.19* (.10)</td>
<td>.42* (.23)</td>
</tr>
<tr>
<td>Industry PAC contribution</td>
<td></td>
<td></td>
<td>2.76*** (.50)</td>
</tr>
<tr>
<td>Election year</td>
<td>1.11 (.78)</td>
<td>.991 (.62)</td>
<td>1.03 (.73)</td>
</tr>
<tr>
<td>GDP</td>
<td>1.86** (.77)</td>
<td>1.18* (.67)</td>
<td>2.75** (1.23)</td>
</tr>
<tr>
<td>Exchange rate</td>
<td>5.96*** (.77)</td>
<td>4.23*** (.66)</td>
<td>6.10*** (.61)</td>
</tr>
<tr>
<td><strong>Total observations</strong></td>
<td>249</td>
<td>249</td>
<td>104</td>
</tr>
</tbody>
</table>

Robust Standard Errors in Parentheses
*<.10, **<.05, ***<.01
Table 2.5: The Impact of Industry size on the Decision to Take a Possible Dispute Before the NAFTA

<table>
<thead>
<tr>
<th>Percentage of Labor Force Employed in relevant industry</th>
<th>1%</th>
<th>5%</th>
<th>10%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Predicted Probability that dispute will be taken to NAFTA</td>
<td>2.1%</td>
<td>4.9%</td>
<td>10.9%</td>
</tr>
</tbody>
</table>

Note: All other variables are held at median values. The percentages above illustrate the predicted probability of a NAFTA dispute, conditional on the fact that the potential respondent state has imposed AD or CVD protection.
Table 2.6: The Impact of the number of countries being investigated on the decision to take dispute before NAFTA Chapter 19

<table>
<thead>
<tr>
<th>Number of countries being investigated</th>
<th>1 country</th>
<th>5 countries</th>
<th>10 countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Predicted probability of Chapter 19 dispute</td>
<td>4.87%</td>
<td>7.39%</td>
<td>11.6%</td>
</tr>
</tbody>
</table>

Note: All other variables are held at median values. The percentages above illustrate the predicted probability of a NAFTA dispute, conditional on the fact that the potential respondent state has imposed AD or CVD protection.
Figure 2.1: The two stage decision process under NAFTA Chapter 19

Domestic industry in State A petitions for AD/CVD protection

Trade tribunal in State A makes decision on AD/CVD petition

Negative AD/CVD ruling
Positive AD/CVD ruling

Industry in state D does not initiate NAFTA dispute against State A
Industry in state D decides to initiate NAFTA dispute against State A
Figure 2.2: Chapter 19 Disputes, 1994 – 2006
Figure 2.3: U.S. Disputes, 1994-2006

Figure 2.4: Canada Disputes, 1994-2006

Figure 2.5: Mexico Disputes, 1994-2006
FIGURE 2.6: Most popular products disputed

CHAPTER 3

POLITICAL INCENTIVES AND THE DECISION TO PURSUE DISPUTES IN THE ANDEAN COMMUNITY

INTRODUCTION

In Chapter 2 I analyzed the factors that influence industries to initiate disputes in NAFTA Chapter 19 appealing AD/CVD rulings made by government agencies in another member state. I argued that one of the most important factors that influence an industry’s decision to initiate a dispute is its perception about the legal strength of its case. This perception is influenced by the two main criteria established by NAFTA for review of AD and CVD decisions: (1) whether the agency making the AD/CVD decision went outside of its legal boundaries, and (2) whether there were errors in facts or calculation when that decision was made. I posited that in considering these two factors industries analyze whether political pressures beyond the scope of domestic law, such as political contributions and electoral support, influenced the AD/CVD ruling against them. Using original data on potential and actual disputes initiated through NAFTA Chapter 19 I found support for this argument.

Analyzing disputes in NAFTA Chapter 19 allowed me to focus on the decision rationale of non-state actors. The theoretical and empirical orientation of the chapter showed how international institution design matters and how it affects the choices and behavior of non-state actors ex-ante. At the same time, I also illustrated the importance of domestic politics to both domestic and international actors. In particular the argument and results showed that the domestic political
importance of an industry in the issuing state does not only influence the decision to impose a positive AD/CVD ruling but also influences the likelihood that a negatively affected industry in a counterpart member state will appeal this ruling.

In this Chapter I analyze the decision to pursue disputes in another RIA – the Andean Community (AC). In focusing on the AC I shift my analysis away from dispute settlement in a Free Trade Area to focus on dispute settlement in a Customs Union. I also move away from focusing on behavior of non-state actors in a mix of developed and developing countries to focus on the behavior of national leaders in a group of developing countries.

In the AC three parties can be involved in the dispute process: a member state, the General Secretariat and the Andean Court of Justice (ACJ). The General Secretariat is charged with monitoring and ensuring that member states conform to Community Law. If after investigating member state activities the Secretariat believes a member is in violation of Community law it issues a noncompliance ruling to the member state. At this point the member state has a choice: it can adjust its policies or engage in noncompliance. When the latter occurs, a dispute evolves and the member state is taken before the ACJ. Two noncompliance cases that evolved between Colombia and the AC in 1999 illustrate this interaction and decision making.

On July 22nd, 1999, the General Secretariat of the Andean Community (AC) commenced an investigation of Colombia’s tariff policies on cars being imported from Bolivia. The Secretariat, upon investigation, concluded that Colombia was in breach of the Communities rules and norms with respect to tariff on goods from the sub-region. An observation note detailing the violation and demanding a response or corrective measures was sent to Colombia on December 21th 1999. Colombia appealed the decision on February 23rd 2000. After further review of the case, the Secretariat again concluded that Colombia was in breach of Community norms and rules. A noncompliance report detailing this conclusion and demanding that corrective measures be
implemented in order to put an end to the breach was sent to Colombia on April 2nd 2000. Despite this ruling, Colombia continued to apply the tariff. As a result of its refusal to comply, the case was taken before the Andean Court of Justice (ACJ) for final arbitration and ruling.\footnote{Case 53-AI-2000, ACJ, retrieved on February 15th 2009 from http://www.comunidadandina.org/canprocedimientosinternet/ListaExpedientes11.aspx?CodProc=7&TipoProc="T"}

In the same year 1999, the Secretariat pursued another investigation against Colombia. In this case the Secretariat based on its self monitoring commenced an investigation of Colombia’s sanitary and phytosanitary rules on the import of bovine meat from Ecuador.\footnote{Colombia suspended importation of bovine meat from Ecuador because of fear concerning foot and mouth disease. Retrieved on February 15th 2009 from http://idatd.eclac.cl/controversias/can.htm?perform=buscar.} After investigation, the Secretariat concluded that Colombia was in violation of Community law and requested a response or conformity. Within 30 days of the observation note detailing the violation, Colombia reported to the Secretariat that it had implemented corrective measures to conform to Community regulation.\footnote{Information obtained from the “Status of the Foot-And-Mouth Disease Control Programs South America Report 2001” available at bvs1.panaftosa.org.br/local/File/textoc/Sit2001ing.pdf (Accessed May 2010).}

Why would Colombia comply with the Secretariat’s ruling on bovine meat but not with the ruling concerning cars? In this chapter I focus on this issue by asking: Why do member states of the Andean Community allow some noncompliance rulings by the General Secretariat to go before the Andean Court of Justice for final ruling? Put another way under what circumstances do member states choose to engage in noncompliance and allow a case to go before the Andean Court of Justice for final review?

I argue that one of the most important determinants of a state’s decision to pursue a dispute through the ACJ is the political benefits this decision provides. At the broadest level, I assert that leaders desire both domestic stability and re-election in the next political cycle. As a result the decision concerning disputes will mirror these incentives. Given this, member states will selectively choose to allow the ACJ to rule on cases where the domestic political cost of independently
eliminating the trade protection on their own is significantly high. In other words, the executive will allow the ACJ to rule on a case rather than voluntarily comply with the Secretariat’s orders, when voluntary compliance clearly puts their political survival and their ability to maintain political stability in jeopardy. The rationale for this decision is influenced by (1) the domestic political incentives leaders have to renege on international commitment for electoral gains, and (2) the institutional constraints on the leader.

With respect to incentives I hypothesize that the domestic political incentive to defy a ruling by the Andean Secretariat is greatest the closer the time to the next Presidential election. With respect to institutional constraints I develop two hypotheses. I first hypothesize that leaders will most likely take cases before the ACJ the greater the degree of veto player restraint on the executive. Then focusing specifically on ideological divisions in the legislative branch I further posit that the higher the degree of polarization in the domestic legislature the greater the likelihood of dispute. To empirically analyze these hypotheses I utilize a logit specification and find support for the arguments related to upcoming elections and higher degrees of polarization.

This study makes an important contribution to the literature on the interaction of domestic politics and the international political economy. By focusing on how domestic interests and institutions influence the likelihood of international cooperation this chapter extends the work of scholars like Putnam (1988) and Milner and Rosendorff (1997). While these works focus on how domestic legislative constraints impact international negotiation and the likelihood that a state would enter into an international agreement, this chapter goes beyond to analyze how domestic interests and constraints influence compliance with an international agreement in which a state is already a member. I show that many of the same domestic factors that constrict a state when negotiating entry continues to constrain their ability to fulfill many of the obligations and once they are party to that agreement.
Secondly this study adds to the literature on compliance with international law. Past studies explaining compliance with the rulings of international regimes have focused on cases in the GATT/WTO or the European Union (Hudec 1993; Busch 2000; Busch and Reinhardt 2000; 2001; 2002; 2006; Falkner et al 2004; Mbaye 2001; Mastenbroek 2003). In studies on the multilateral GATT/WTO the emphasis has tended to be on exploring the probability of compliance with a ruling rather than explaining the reasons for compliance or noncompliance with that ruling (Hudec 1993; Busch 2000; Busch and Reinhardt 2000; 2001; 2002; 2006). Studies on the EU have gone beyond to theoretically and empirically analyze the rationale for non compliance with the rulings of the EU Commission and the European Court of Justice (Falkner et al 2004; Mastenbroek 2003; Mbaye 2001). In analyzing the domestic factors that influence noncompliance, EU studies have primarily focused on the effect bureaucratic efficiency, public opinion, and veto players have on the decision to comply. I add to this analysis by illustrating when leaders in the AC deliberately choose noncompliance with international obligations because of domestic political incentives. By exploring the impact elections and legislative polarization have on the decision to comply I go beyond studies of noncompliance in the EU and add to our understanding of the factors that influence the decision to comply.

Analyzing dispute settlement in the AC is also pertinent given the rise in prominence of RIAs today. Since the 1980s the world has witnessed a massive proliferation of RIAs. In fact over 300 RIAs have been notified to the WTO since its inception in 1995. Virtually all of these agreements contain some form of dispute settlement mechanism (DSM) that is tailored to meet the needs and concerns of the member states. In the case of the AC when the Community was revamped in the early 1990s significant effort was invested into making compliance and the dispute

---

21 WTO, Regional Trade Agreements, [http://www.wto.org/english/tratop_e/region_e/region_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm) (last visited October 10, 2009). Note that RIAs include bilateral agreements, Free Trade Areas, Customs Unions, and Monetary Unions.
settlement system a cornerstone of this new regional structure. Thus analyzing noncompliance in
the AC over the last decade will allow us pinpoint the factors that continue to make compliance with
the Community a problem.

Apart from this, studying the AC is interesting because it is one of only a few Regional
Integration Agreements (RIAs) that actively engages in self monitoring of member compliance in a
wide range of issue areas ranging from antidumping determination to intellectual property actions
(Tussie 2003).22 Most RIAs tend to depend on complaints made by other member states; and those
that engage in self monitoring only do so for a few select issue areas. Given this, focusing on the
AC allows us to assess the impact regional self monitoring has on the emergence and evolution of
disputes.

The next section of this paper provides a brief summary of the AC, describes the dispute
settlement procedure within the Community, and provides summary statistics of the cases that have
arisen in the Community. The third section summarizes the relevant literature on the decision to
seek legal adjudication in the AC, highlighting the lack of focus on the use of the ACJ for
noncompliance appeals. The fourth section introduces my argument about the political tradeoffs a
state considers when contemplating appealing to the ACJ. The fifth section presents the research
design and the sixth section presents the empirical results. Section seven concludes.

THE ANDEAN COMMUNITY

The AC is a South American trade bloc that came into existence with the signing of the
Cartagena Agreement in 1969. The Community originally included Bolivia, Chile, Colombia,

22 The breadth of issues covered by the AC is rivaled only by the European Union and the World Trade Organization.
Ecuador and Peru.\textsuperscript{23} Venezuela joined in 1973 and Chile withdrew in 1976 (O’Keefe 1996). The broad aim of the Community was to promote balanced and harmonious regional economic development. To this end the Community sought to create a customs union that would liberalize internal trade and set up a common external tariff (O’Keefe 1996). Although the original Cartegena agreement envisaged the establishment of a customs union by 1980, disagreement among the member states and economic crises that swept through the region delayed this objective (Baquero-Herrera 2004). By the early 1990s, spurred on by the massive liberalizations and free market reforms mandated by the IMF and World Bank, efforts to fully integrate the Community were revived (Rojas, Calfat, Flores Jr. 2005). \textsuperscript{24} And in 1995, a customs union with a common external tariff was enforced and a free trade area among member states went into effect.\textsuperscript{25} As a result the Andean Community is now one of the most institutionalized regional agreements among developing countries.

As a customs union, the regional authority has significant control and decision making power in creating the rules and regulations related to most aspects of trade both within the community and between member states and third countries. For example, as a collective body the community establishes the level of external tariffs, determine safeguards that each member should appropriately follow, set out guidelines for taxing goods entering the domestic market, create the regulations concerning sanitary and phytosanitary issues, and establish the rules concerning unfair competition. In other words, for Andean member countries most trade regulations are not determined by domestic agencies but by the regional authority.

\textsuperscript{24} As a condition of obtaining loans and funds from international lenders such as the IMF and World Bank, member states of the Community were required to engage in significant trade liberalization.
\textsuperscript{25} Peru has been allowed some exceptions where they are allowed to implement gradual liberalizations (Baquero-Herrera 2004).
The Community has allowed a few exceptions. Individual countries are allowed to diverge from the common external tariff in certain products, while sectoral exemptions are determined by the implementation of special regimes in the agriculture and automotive sectors (Baquero-Herrera 2004). Many of these exemptions and diversions are in the process of being phased out, and this will enhance the ability of the Community to operate as a fully functioning customs union.

To manage, and monitor this customs union, the AC has established several institutional structures. These include the Andean Presidential Council (the highest level-body of the Community that issues guidelines about different spheres of Andean integration), the General Secretariat (the executive organ of the Community), the Andean Community Commission (the main policy-making body of the Community), and the Andean Court of Justice (the judicial body of the Andean Community). In this study I am specifically interested in analyzing the activities of the two bodies that deal with noncompliance against member states – the General Secretariat and the ACJ. I seek to understand when and why member states will not comply with rulings of noncompliance by the General Secretariat and allow these cases to be reviewed by the Court of Justice. Before developing my theory though I will provide a brief summary of the functions and activities of these two bodies.

The General Secretariat

The main functions of the General Secretariat are (1) to ensure respect for the Community legal order governing the issues provided for in the Cartegena Agreement, such as specific requirements relating to origin, determination of restrictions and duties tariff deferrals, safeguards, dumping, subsidies, and trade competition in accordance with the provision 425; (2) to use its dispute-settling power in matters delegated to it by the Commission of the AC or the Andean

Council of Foreign Ministers, which may be of a normative or administrative character; and (3) to apply the rules relating to the pre-judicial phase of actions for non-compliance. These functions and responsibilities give the Secretariat the power to regulate the activities of member states and when necessary request that member states adjust their behavior to conform with the AC rules. When the Secretariat is unsuccessful at encouraging conformity they usually refer cases to the ACJ for final review.

The Andean Court of Justice

The Court of Justice of the AC is its judicial body. It was created as the Court of Justice of the Cartagena Agreement. The Trujillo Act modified it into the Court of Justice of the AC. The structure of the ACJ is similar to other regionally-based international courts. The Court consists of one judge from each AC country elected for six years with one possible re-election.

The mission of the Court is to ensure the respect of Community law, settle disputes arising from it, and consistently interpret it. It has jurisdiction over cases involving (1) non-compliance, (2) nullification, and (3) pre-trial interpretation. Actions to declare noncompliance is used to rule on members’ compliance with the obligation of the agreement. Nullity action is used to modify rules and regulation of the community itself. And prejudgment interpretation occurs when the ACJ gives advice on the interpretation of Andean Law to national judges and domestic courts (Echavarrí and Gamboa 2004; O’Keefe 1996; Tussie 2000). I am interested in the first of these three responsibilities. Specifically I analyze the factors that lead member states to allow some claims of non-compliance to go before the Court of Justice. In what follows I will describe the process for non-compliance cases in the AC. As will be seen in Figure 3.1 noncompliance cases are linked by

---

the activities of both the Court of Justice and the Secretariat both of whom work together to increase application of Community law among members.

< Insert Figure 3.1 >

Figure 3.1 above shows the administrative procedure all allegations of noncompliance with Community law must go through before getting to the ACJ. In cases of alleged non-compliance with AC norms, a mandatory administrative procedure before the General Secretariat must be followed before a case goes to the Court.29

A case begins when the General Secretariat, prompted by its own research or in response to a request by a member state investigates some alleged or seeming inconsistency between a state’s actions and Community law. If as a result of the investigation the Secretariat concludes that the member is not in compliance with AC laws, it sends an observation note to the member state. An observation note details possible non-compliance by specifying the factors that led the Secretariat to presume that the state has failed to comply with the obligations of Community law, and requests a response or compliance which cannot be more than sixty days from the date of issuance.

Upon receipt of the note the member state can make one of three choices: (1) it can choose to adjust its actions; (2) it can choose not to respond; (3) it can choose to respond by justifying its behavior. If the member state chooses to adjust its policies or actions in accordance with the Secretariat the case is closed. If the member state chooses not to respond then the Secretariat issues a non-compliance report requiring prompt action.30 If the member state chooses to justify its actions then the Secretariat will further review the case incorporating this new information and will make a decision. The Secretariat may either reverses its ruling if the member state provided

29 Decision 425 of the Andean Council of Foreign Ministers.
sufficient justification, or upholds its initial ruling and issue a noncompliance report to the member state. The non-compliance report is issued when the Secretariat is still convinced (in spite of the member’s justification) that the member’s action contravenes Community law.

The state in receipt of the ‘non-compliance report’ then has a choice to modify its behavior or persist with its actions. If it modifies its behavior the case ends. But, if it chooses to persist with its actions the Secretariat takes the case before the ACJ which hears arguments from both sides and then makes a ruling. If the ACJ rules against the member state but the member choose not to comply with the ACJ then the offended member state that has been persistently harmed by the protectionist behavior of the non-compliant member is allowed to impose retaliatory measures.

In this chapter, I am interested in understanding the reasons why member states engage in noncompliance and allow some claims of non-compliance to be taken before the Court for a formal ruling. I argue that members are more likely to take before the Court those cases where there is significant political benefit to be derived from dispute. Before developing this theoretical argument I first present summary statistics of the decisions of noncompliance issued by the General Secretariat and the number of these decisions that became ACJ cases.

**Summary of Andean Community Non-Compliance Cases**

< Insert Figure 3.2 >

---

31 The report may be appealed to both the General Secretariat and the Court, but meanwhile compliance is required.  
32 I focus on noncompliance behavior because explaining dissident behavior is more theoretically interesting to both member states of the Andean Community and Andean Community officials since this would likely increase their ability to generate greater compliance in the future. Further as would be seen in table 1 which shows an 82% compliance rate, member states have a inherent inclination to comply with Secretariat’s ruling and as such compliance does not present a theoretically interesting analysis. Beyond this we can decipher that when the factors that lead to noncompliance are satisfied compliance will occur.
Figure 3.2 displays the annual noncompliance rulings issued by the Secretariat to member states in each year from 1995 to 2007. Non-compliance rulings have been issued fairly regularly by the Secretariat. A total of 452 cases have been filed as of 2007. In general Figure 3.2 shows that the noncompliance rulings followed cyclical trends where periods of increase in noncompliance rulings were followed by periods of decline. Initially, from 1995 through 1999 the number of annual noncompliance rulings by the Secretariat steadily increased, starting at 26 in 1995 and more than doubling to 66 by 1999. This period of increase was followed in 2000 through 2002, by a period of decline in the number of noncompliance rulings issued by the Secretariat. Then in 2003 the Secretariat issued the largest number of noncompliance rulings (69 noncompliance rulings) for the entire time period under analysis in this paper. This was followed by an overall decline in rulings issued, culminating in 2007 with the smallest number of rulings (13 noncompliance rulings) ever issued in a single year by the Secretariat.

< Insert Figures 3.3 to 3.7 >

Figures 3.3 through 3.7 presents the trend for each country. Figure 3.3 presents the noncompliance rulings issued against Bolivia. It shows that until 2003, there were constant fluctuations in the number of noncompliance rulings issued against Bolivia. Then, in 2003, Bolivia saw a sharp increase in the number of noncompliance rulings against them. In fact in 2003 Bolivia

---

33 My analysis starts in 1995 because the Common External Tariff was approved in 1994 thus allowing for the full establishment of a customs union.
experienced a 175% increase in rulings against it. This in turn was followed by a gradual decrease for the remainder of the time period under analysis.

Figure 3.4 represents the noncompliance rulings against Colombia. In comparative terms the flow of violations issued against Colombia looks relatively similar to Bolivia’s pattern of violations over the time period. Here we see that a gradual increase in the number of noncompliance rulings against Colombia until 2001 was followed by a 50% decline in rulings in 2002. Then in 2003, we saw a drastic increase in the number of rulings which was followed in 2004 through 2007 with a constant decrease in the number of rulings of violation.

With respect to Ecuador, shown in Figure 3.5, there is very little fluctuation in the number of violations issued by the Secretariat. In general the number of violations issued annually tended to remain around the 8 to 11 range. The only notable change took place between 1998 and 2000, when the number of violations issued, first increased from 15 in 1998 to 27 in 1999, and then promptly fell back to 15 in 2000. As can be seen in Figure’s 3.6 and 3.7, both Peru and Venezuela had relatively similar patterns of violations. Both countries tended to experience continuous fluctuations in the noncompliance rulings over the time period. In general there were no obvious patterns of noncompliance rulings against Peru and Venezuela over the 11 year period.

Table 3.1 shows the relationship between non-compliance rulings described above and ACJ cases. The first two columns in Table 3.1 cumulate the annual noncompliance rulings provided in Figures 3.3 through 3.7. It identifies the total number of violations issued to each member state for
the period 1995 through 2007. Three of the five member states were found to be in noncompliance more than 100 times – these were Ecuador, Venezuela, and Colombia. Of these countries Ecuador had the most number of violations receiving 118 noncompliance notes from the Secretariat. Following at a close second was Venezuela which was sent noncompliance notes in 109 cases. Colombia stood at third place with 99 noncompliance rulings. At the lower end of the violation spectrum was Peru and Bolivia, with Bolivia accruing the fewest number of violations.

The 3rd and 4th column in Table 3.1 displays the number of noncompliance rulings (displayed in Columns 1 above) that became disputes in the ACJ. In absolute terms Venezuela and Ecuador allowed the most number of cases to go before the ACJ, with Venezuela leading the way with 32.92% of the cases. This is not surprising given that both countries were the recipient of the most number of noncompliance rulings by the Secretariat. Bolivia, which had the fewest number of violations against it, also had the fewest number of cases go before the ACJ.

A comparison between columns 1 and 3 shows that of the 452 noncompliance rulings issued by the Secretariat, 82 of these cases became disputes in the ACJ. This indicates that on the whole, in the predominant number of instances (82% of cases), member states conform to the Secretariat and settle cases without going to judicial arbitration. By comparing columns 1 and 3 it can be seen that Bolivia. From column 5 it can be derived that Among the member states Bolivia. This ratio (82% compliance : 18% noncompliance) indicates that the decision to allow cases to go before the Court is actually not random but instead is rather purposive, deliberate and well thought out. Member states send cases to the ACJ when they believe they do not have any other alternative. The theoretical argument developed and results presented in this chapter will illustrate that ‘clear-cut’ political motivations influence the decision to pursue a judicial resolution.

The final column (column 5), shows the percentage of noncompliance rulings issued that became disputes in the ACJ. Just like in the case of non-compliance ruling (column 1) Venezuela
and Ecuador led the way with the highest percentage of noncompliance rulings that were sent to the ACJ. And again, Bolivia who had the fewest noncompliance rulings and the fewest number of cases before the ACJ, also had the smallest percentage of violations taken before the ACJ.

THE ANDEAN COMMUNITY IN THE LITERATURE

Two groups of literature – that on disputes in the AC and compliance with multilateral trading rules inform this research agenda. In what follows, I summarize the main questions and arguments analyzed in these two literatures with a view to acknowledging the limitations of research done on disputes in the AC and highlighting the theoretical insights gained from scholarship on the multilateral system that would be applied to this project.

The Literature on Andean Dispute Settlement

In political science the literature on disputes in the AC has generally focused on either (1) summarizing the functions of the Court, or (2) analyzing the regional Court’s role in providing national courts with prejudicial interpretation for domestic cases.

The Functions of the Court

This group of studies has generally been undertaken by legal scholars who seek to either outline the current dispute settlement process of the AC or compare the Andean dispute settlement mechanism to that of other regional trade agreements (Alter and Helfer 2010). The former tends to provide in-depth descriptions of the three types of available procedures – nullity action, action to declare noncompliance, and prejudgment interpretation - for settlement of disputes used by the Andean Court (Arcila 2005). The latter group of studies have compared the Andean system of
justice to other regional dispute mechanisms especially that of the European Union. Here scholars show how the AC Court of Justice mirrors that of the European Union in terms of the reasons for their creation, the political and legal context in which they operate, and their usage (Keener 1987; Lemmo and Alejandra 2002; Alter and Helfer 2010). These studies conclude that despite the obvious differences in the political and economic situation in both regions, the AC by copying the design of the ECJ have been able to enjoy a comparative level of success in many areas of dispute resolution.

While insightful these studies have been limited to describing the structure of the Community. They fail to go beyond to provide a comprehensive analysis of the disputes that have emerged under each type of procedure. As such these studies do not connect the intended goal of the system with the actual use of the system. Studying the actual cases that have gone before the Court of Justice is useful because it allows us to identify and theorize about systematic trends in case selection.

**Prejudicial Rulings**

The second group of studies improve upon the first by empirically analyzing the Community’s effectiveness in providing prejudicial reference rulings to national courts with respect to issues related to intellectual property rights (Alter and Helfer 2009; Helfer, Alter and Guerzovich 2009). These studies focus on two issues: (1) documenting litigation trends and (2) analyzing changes in administrative agency decisions in drawing conclusions about the success of the pre-litigation system.

With respect to litigation trends, studies document a steady increase in referrals of intellectual property cases to the ACJ for advisement. According to these studies, this trend stems

---

34 These studies include descriptions of a few of the cases that have gone before the Court. These cases are generally used to provide context and are by no means a comprehensive assessment of actual disputes.
from a growing demand for trademarks and patents protection in the Community and the lack of adequate domestic legal precedent over the issue (Alter and Helfer 2009; Helfer, Alter and Guerzovich 2009).

With respect to the second issue of whether Andean litigation has contributed to effective application of Andean rules by domestic agencies, the results are mixed. Scholars point out that while on the one hand national judges and agency officials habitually comply with preliminary rulings, the rulings on the other hand tend to be highly repetitive which increases frustration among domestic judges because it provides no new information about how the tribunal applied Andean rules to the facts of the case at hand (Alter and Helfer 2009; Helfer, Alter and Guerzovich 2009).

This second group of studies is definitely a step in the right direction. However the focus on prejudicial rulings does not allow us to fully analyze the struggle a leader goes through when seeking to provide benefits to constituents. This is because with prejudicial rulings member states requests advice from the ACJ that they are not required to follow, while with noncompliance rulings the ACJ makes judgments that must be complied with by member states. Given this, by analyzing the decision to seek ACJ review of noncompliance rulings I will be able to focus attention on one of the most critical decisions of member states (whether or not to allow the ACJ to rule on an issue) when it comes to Andean activity and one of the most critical activities of the ACJ.

**Compliance with International Trade Agreements**

While scholarship on the AC does not offer significant insight into why member states choose compliance in some instances but not others, research on compliance in the EU and GATT/WTO, which has flourished over the years, offer some useful explanations that informs this research agenda. I draw heavily from this literature to develop the theoretical argument in this chapter. This literature primarily analyzes the conditions under which a state is more or less likely to
comply with the rules and provisions of the multilateral arrangement in which it is a member. Scholars have argued that both international and domestic factors influence compliance.

With respect to the former, scholars assert that factors in the international environment, namely, reputation costs, the compliance record of neighboring countries, the relative power of member states and the substantive rules of the trading agreement influence compliance decisions. In the case of international reputation, Simmons and Martin (2002) and Simmons (2000) argue that because market pressures increases the need for governments to demonstrate a reputation for openness and predictability, it increases the probability that states would adhere to agreements that promote openness. According to them, making a legal commitment to an international institution that promotes openness raises the market’s expectation that a country would follow the rules to which it has committed. Given this, they conclude that the legal commitment to the international community influences state’s even in difficult conditions, to follow the rules. Apart from ones reputation, Simmons (2000) argues that the compliance record of neighboring governments also influences a state’s decision to comply with international arrangements. According to her, the more ‘like’ competitors are willing to comply, the greater the pressure for any one country to comply.35

In addition to ones reputation and the compliance record of neighboring states, some scholars assert that the relative power of member states influences their decision to comply with an international trading agreement. In the case of the EU, Borzel et al (2007) argues that the possible imposition of sanctions and other costs make states that are most sensitive to the economic and political implications of infringement more likely to comply. As such powerful states are likely to infringe on European law more often than weaker states since they are less sensitive to the costs imposed by sanctions (Borzel et al 2007).

35 Like competitors refers to states that share similar characteristics such as belonging to the same geographical region.
Beyond international factors some studies assert that the domestic political environment influences compliance with international trading arrangements. Two arguments have been provided. One the one hand some argue that domestic institutions influences state compliance, while on the other hand some studies assert that macroeconomic conditions influences compliance (Goldstein and Martin 2000; Goldstein 1998; Kaeding 2006; Lampinen and Uusikyla 1998; Mansfield, Milner and Rosendorff, 2002; Mbaye 2001;).

Busch and Reinhardt (2002) and Mansfield, Milner and Rosendorff (2002) argue that domestic regime type influences compliance. Mansfield, Milner and Rosendorff (2002) argue that because voters have a greater impact on the tenure of leaders in democracies, democratically elected governments find international trade agreements more appealing because it offers them a credible means by which to signal to voters their policy choices and avoid being punished for adverse economic outcomes that are beyond their control. Non-democracies they argue face fewer worries about re-election and thus would have less incentive to commit themselves to trade agreements. Busch and Reinhardt (2002) challenge this view by demonstrating that counter to conventional wisdom democracies are less likely to comply with GATT/WTO rulings. This is because once the GATT/WTO has openly thrown the gauntlet it is harder for a government that is sensitive to public opinion to cave in.

Some scholars go beyond the broad regime-type argument to focus on the specific characteristics of political institutions that make compliance more or less likely. Here two institutional characteristics have been analyzed – government capacity and executive autonomy. Those who focus on government capacity argue that small public sectors, inefficient bureaucracies, and systemic corruption tend to produce higher levels of noncompliance (Lampinen and Uusikyla 1998; Knill 1998). Those who focus on autonomy purport that governments that have to satisfy
many veto players tend to be more indecisive, have greater difficulty adapting to international law, and more likely to engage in noncompliance (Falkner et al 2004; Haverland 2000)

While some studies focus on domestic institutions others emphasize the role of groups within society. Such explanations view trade policy as the outcome of demands made by interest groups (Dai 2005; Goldstein and Martin 2000). These studies conclude that in democracies whether or not a state complies with an international agreement depends upon the preferences of the electorally significant and better-informed groups.

In this chapter I incorporate key elements of this literature on compliance in regional and multilateral trading agreements into my argument and hypotheses. Specifically I analyze how domestic political institutions and the domestic political environment influences compliance in the AC. By focusing on these arguments I provide a test for several of the arguments developed by past studies. I also include control variables to account for international factors such as economic dependence. I argue that a leader’s decision about compliance is influenced by: (1) the domestic political incentives leaders have to renege on international commitment for electoral gains, and (2) the institutional constraints on the leader.

DOMESTIC POLITICS AND NONCOMPLIANCE IN THE ANDEAN COMMUNITY

The decision making actor

The first step in thinking about the decision to seek dispute resolution through the ACJ is to identify the actors who are responsible for making that decision. As noted earlier in my description of the dispute process, disputes are only brought before the ACJ when a member state purposely and blatantly fails to take steps to comply with the non-compliance report of the Andean Secretariat
(see Figure 3.1). While disputes are forwarded to the ACJ by the Secretariat, it is clear that the decision to allow a case to go before the Court in effect is made by the member state that chooses not to address the issue in a timely manner or in a manner satisfactory to the Secretariat. Now within member states the decision to allow a case to go before the ACJ is made by those at the top of the executive branch, namely the President, often in conjunction with cabinet and other trade-ministry officials. Given this, the theory building process will analyze why leaders in member states allow some rulings of non-compliance by the Secretariat to be taken before the Court of Justice but not others.

I posit that the decision of a leader to allow a dispute to go before the ACJ is influenced by two groups of factors: (1) the domestic political gains from allowing ACJ review, and (2) the economic costs and benefits of dispute. In developing my argument I primarily focus on and theorize about the impact domestic politics has on the decision to allow ACJ review. I incorporate the economic costs and benefits as control variables in my analysis.

Based on the endogenous tariff literature it can be inferred that one of the primary considerations for elected officials in Andean member states is the amount of net political gains they will receive from defying the Andean Secretariat and allowing a dispute to go before the ACJ for final review. For leaders when the net political benefits from defiance outweigh the cost of compliance they will be more likely to persist with their behavior rather than resolve the dispute. This political benefit usually derives from the degree of electoral, monetary, and other types of support leader’s would obtain from groups and societal interests who are benefited by continued
For leaders in Andean member states, when these gains are sufficiently high and beneficial to their political survival they will be more likely seek ACJ review.

**The political costs and benefits of dispute**

The cases of noncompliance that the Andean Secretariat investigates usually question the applicability of trade protection policies that one member state imposed on the imports of another. Given its status as a customs union, member states for the most part are supposed to eliminate all trade protections against others in the arrangement. However trade protections can provide significant welfare benefits to domestic interests and industries and these groups in turn can repay leaders by providing numerous political benefits. As it relates to protection certain industries tend to benefit the most. One such benefactor is import-competing industries (Matschke 2008). These industries sell their goods to the domestic market only and thus compete against foreign importers. Liberalization tends to hurt them because of their lower economies of scale. Protection allows these industries to have more power and control over the domestic market by decreasing the competitive edge of the foreign suppliers.

Another type of industry that derives benefits from protection is infant industries. Competition from imported goods being sold at lower prices in the domestic market usually impairs the growth of infant industries and eventually forces them out of business. To avoid this, government, especially those in developing nations such as the AC may levy tariffs on imported goods (Mobarak and Purbasari 2005). This increases the prices of imported goods and creates a market for domestically produced goods, while protecting those industries from being forced out by more competitive pricing. This has the added effect of allowing developing countries to shift from agricultural products to finished goods.

---

Keep in mind that, as a Customs Union the Community promotes free movement of goods and services between members. So disputes that arise would focus on attempts by member states to restrict this freedom.
When government uses protection to support industries such as import competing industries and infant industries it not only benefits the owners of these industries but also protects employees as well. When industries suffer because of competition from importers they usually cut back on operating expenses by firing workers or shifting production abroad in an attempt to remain competitive. This usually means higher unemployment and an increasingly unhappy electorate due to trade related job loss. By protecting these industries, government also protects the jobs of those employed and the income of many households.

Given this, an office seeking executive knows that by providing protection, it has the potential to derive significant political advantages that increases its chances of survival. For leaders the political benefits include both monetary gains and electoral support. Given these numerous benefits from protection the executive usually faces a dilemma: on the one hand it has an international commitment to trade liberalization while on the other hand it desires to provide benefits to domestic constituents. This decision dilemma is especially acute when a member state receives a noncompliance report from the Secretariat.

Member states will selectively choose to allow the ACJ to rule on cases where the domestic political cost of independently eliminating the trade protection on their own is significantly high. In other words, the executive will allow the ACJ to rule on a case rather than voluntarily comply with the Secretariat's orders, when voluntary compliance clearly puts their political survival and their ability to maintain political stability in jeopardy. The rationale for this decision is influenced by (1) the domestic political incentives leaders have to renege on international commitment for electoral gains, and (2) the number of veto-players or executive constraints on the leader.
**Electoral Politics:**

Performance of the economy in general and the associated well-being of constituents in particular have been highlighted in the economic voting literature to be a major determinant of voting decisions (vote choice) at election time (Alesina et al 1993; Bailey, Goldstein and Weingast 1997; McGillivray 1997; Persson and Tabellini 1990; Scheve 2004). These scholars argue that voters engage in rational-retrospective voting by evaluating the past performance of the candidates when casting their vote. In these studies it is argued and shown that poor economic performance and declining economic well-being decreases the incumbent’s electoral fortunes. This is especially true for open economies such as the member states of the AC.

Greater trade openness improves voters’ ability to gauge the competence of government policies for the economy (Scheve 2004). Scheve (2004) uses a formal decision model and complementary empirical findings to demonstrate this notion. Scheve argues that this connection is the result of a two-part process. In the first place, economic openness reduces the volatility of national growth rates. As a result of this, and as a result of the increased information available to constituents in more integrated economies, voters weigh economic performance more heavily in more open economies. They are generally more likely to use economic performance to assign clear responsibility for growth or decline when casting their ballots. The result of this openness therefore is a strengthened connection between economic performance and incumbent fortune. Given this, leaders in Andean member states have an incentive to signal to voters that they are interested in and constantly seeking their economic well-being.

To achieve this leaders utilize economic policy including trade policy to obtain an electoral advantage. With respect to trade policy the adjustment tends to be protectionist in nature because protectionist interests tend to be better able to overcome the free rider problem, tend to be more
influential in the policy making process, and tend to be more willing to punish incumbents for poor economic performance (Grossman and Helpman 1994). Groups that benefit from trade protection include import-competing industries and employees of those industries. This premise is consistent with many extant analyses of trade policy and accords with various accounts of economic reform in Latin America (Hillman 1982; Magee, Brock and Young 1989; Tussie 2003). Tussie for example, showed how reformers in the Ecuadorian government enacted significant protectionist policies in the hope that it would bolster their prospects of winning re-election.

These protections as elections approach do not only influence the vote choice of real economic losers, but also impact the voting behavior of potential losers as well. As expected, protection just before election would allow those industries and voters that are real economic losers as a result of liberalization (such as owners and employees in import competing industries) to enjoy some economic relief that could influence their voting behavior. Beyond real economic losers however, trade protection can also have a similar influence on the voting behavior of those who have difficulty determining whether they are winners or losers as a result of liberalization (Fernandez and Rodrik 1990). In light of liberalization there is always some group of voters who have difficulty determining whether the gains they obtain as a result of liberalization outweigh the associated costs. These voters are usually assuaged by protectionist policies that seem to temper and manage the pace of liberalization.

In the AC, the pressure from domestic interests and the potential political costs to leaders from not providing this protection is expected to be the same as would be experienced by any democratically elected government. Hence governments’ in Andean member states have a significant incentive to maintain, rather than reduce, trade protection as elections draw near.

By not complying with the demands of the Secretariat and allowing cases to be taken to Court, leaders are able to delay any reversal of protectionist policies until after the Presidential
election. Given that it takes some time for a case to be scheduled before the Court and for both sides to develop their arguments to be presented, there is a high probability that that the time lapse between the Secretariats decision and the Court ruling may cover the Presidential election period. The additional time is politically advantageous to leaders because it will allow them to continue to pursue protectionist policies that will provide real or assumed benefits to voters who will take this into account when casting their votes.

**H1: All else equal, the closer the time to the next Presidential election, the greater the likelihood that states will refuse to comply with the Secretariat ruling and bring disputes to the ACJ.**

**Veto players**

Apart from the desire for electoral gains, leaders may engage in noncompliance and send cases to the ACJ because of domestic institutional constraints. Domestic political institutions such as competing branches of government and coalitions within these branches filter societal demand and play a crucial role in setting policy. As a result leaders are aware that even if they want to comply with the ruling of the Secretariat, support from these independent partisan and institutional actors (veto points) is necessary. Thus their final policy outcome must lie within a range of policies that satisfies all veto points.

Crucial in this regard is the number of independent partisan and institutional actors that a leader must satisfy to make policy (Henisz 2000; Henisz and Mansfield 2006; Tsebelis 2002). “To the extent that the preferences of the actors with veto powers differ, institutional structures with more veto points limit the range of feasible trade policy choices” (Henisz and Mansfield 2006, 196). Thus as the number of veto players increases a leaders’ ability to pursue policy adjustment decreases because the probability that at least one of these veto players would not agree with the policy change
increases. Lohmann and O’Halloran (1994) and Henisz and Mansfield (2006) both emphasize this argument in their analysis of the relationship between veto players and trade policy. Lohmann and O’Halloran (1994) show that in the United States divided government impedes trade liberalization while unified government promotes liberalization. Henisz and Mansfield (2006) in analyzing trade policy in 176 countries also find that more veto points decreases the likelihood of trade liberalization.

In the AC I expect veto players to have a significant influence on compliance. The member states of the AC all have proportional representation electoral systems and independent executive and legislative branches. Thus their electoral formula awards seats to parties in proportion to their vote shares. This translates into lower barriers to entry for new parties catering to specific groups of voters and as a result it tends to generate a larger number of parties in the legislature (Lijphart 1999, Scartascini and Crain 2002). In fact, the fewest number of parties in the legislature at any one time in any member state was 7 in Bolivia from June 1997 to June 2002. As a result fragmentation as represented by dispersion of power among several parties in the legislature pervades politics in the Andean region. The independence of the executive and legislative branches increases the opportunity for different branches of government to be dominated by different parties. This in fact is not uncommon in the Andean region since the large number of parties elected to the legislature tends to lead to legislative coalitions which then results in an executive that represents only a small portion of the coalition in the legislature.

This fragmentation presents tradeoffs in the political system between representation and governance. On the one hand, to better represent voter’s needs, a large number of parties would be

---

37 For a summary of cross-national studies that show the effect number of veto players have on policy change (not specifically trade policy only) see Henisz and Mansfield 2006, 7.
38 While the specific thresholds for representation and the rules governing party lists may differ across member states, at the broadest level they all share a similar electoral formula (Nolan 2005).
better. However this fragmentation can be dangerous for government, and increase the probability of gridlock since each party or political cleavage represents a different subset of the population and share some portion of the power to make and approve policy. In a multiparty system no party would derive political mileage from supporting the executive’s efforts to eliminate protection in compliance with the Andean Secretariat. In fact parties are more likely to gain support of core constituencies by opposing the elimination of protections that were targeted to specific groups in society. And they can gain even greater mileage by placing the blame for these unfavorable policy adjustments on the executive (if the executive is of a different party).

Given this, as veto points increase, the probability that the executive would face opposition to compliance with the Secretariat’s ruling increases. This is because there are a larger number of parties with some degree of power whose interest and target constituency may differ from that of the executive, leading to an increased likelihood that trade policy adjustment would not occur. But beyond this they are more likely to threaten the stability of coalitions among parties in the legislature by defecting from coalitions in order to signal their opposition to compliance with the Secretariat’s ruling. Thus, as the size of the legislature increases it would be more difficult for the executive to implement the Secretariat’s ruling.

**H2:** All else equal, the greater the number of veto points in a member state, the greater the likelihood of noncompliance with the Secretariat’s ruling leading to a dispute in the ACJ.

**Polarization**

The problem of rising polarization, which refers to the position of each party on the ideological left-right spectrum, also leads the executive to be wary of adjusting trade policy without an ACJ ruling. Profound differences in ideology and interests can lead to gridlock over policy

---

39 Keep in mind as mentioned earlier that it is the executive that makes the decision about compliance with Andean rulings.
change, discord in coalition stability, and blame-passing (Eduardo and Olivera 2003). Gridlock occurs because parties with very distinct ideologies may not be able or to find a policy compromise that reflects their beliefs. Instability may result if cleavages or coalitions which comprise of a number of parties with different views and beliefs take different positions on how the government should deal with noncompliance rulings from the Andean Secretariat. In the AC where each legislature usually has several parties, the opportunity for this type of ideological gridlock and disagreement is real. The executive will face the same problems as under a system with numerous veto points.

H3: All else equal, the greater the degree of polarization in the legislature the greater the likelihood of noncompliance with the Secretariat’s ruling leading to a dispute in the ACJ.

RESEARCH DESIGN

To test the hypotheses developed, I construct a dataset of disputes that contains potential and actual ACJ cases for the time period 1995 to 2007. For this dataset I first record all the decisions of noncompliance issued by the General Secretariat. To do this I identify when a ruling of noncompliance was sent to a member state by the Secretariat. This comprises the universe of potential ACJ disputes that leaders can decide to settle or allow to be taken before the ACJ. From this original set of cases, I then identify those cases that were not resolved and eventually were referred to the Court of Justice for final ruling. The dataset contains the 452 noncompliance reports that were issued by the Secretariat declaring a member-state to be in noncompliance. From these 452 reports, I then identified the 82 cases that went before the ACJ.

My unit of observation is the decision of noncompliance issued by the General Secretariat to a member state. Recall that before a case goes before the Court of Justice it is first reviewed by the
Secretariat. If the Secretariat concludes that there has been a violation it issues an observation note requesting compliance within 60 days. It is only if a member state fails to comply or respond to the Secretariat that the case is taken before the Court of Justice for final ruling. Keep in mind that I am interested in analyzing which decisions of non-compliance by the General Secretariat (represented by the observation notes sent to the member state) is brought before the ACJ for a final ruling. Thus, the universe of cases in my dataset are all the decisions of noncompliance by the General Secretariat because it is from this universe that disputes that are reviewed by the Court emerge.

**Dependent variable: Dispute in Court**

Conceptually, the dependent variable is whether or not a member-state decides to comply with the Secretariat’s ruling or chooses to bring the dispute to the ACJ. This measure is compatible with my central research question: What factors influence parties to not comply with the Secretariat’s ruling but continue the dispute through the ACJ? A dispute is operationalized as any case of noncompliance that is not settled with the Secretariat but is taken before the Court of Justice for a final ruling. Thus the dependent variable is dichotomous with a “1” representing those cases that went before the ACJ and a “0” representing those cases that were settled with the Secretariat before the opportunity for ACJ arbitration took place. The data for this variable is obtained from the Integrated Database of Trade Disputes for Latin America and the Caribbean. Descriptive statistics for the dependent variable can be found in Figures 3.2 through 3.7 and table 1 above.

**Independent variables:**

**Time to next election:** I argue that the closer the time to the next Presidential election the greater the likelihood of noncompliance and a final review by the ACJ. For this variable I subtract the
number of months from initiation of a case until the next Presidential election. I first determined when a case was initiated by the Secretariat using the Integrated Database of Trade Disputes for Latin America and the Caribbean. I then identified the time of the next presidential election in the member state under investigation using Nohlen (2005) and Adam Carr’s Election Archives.

**Veto players:** I argue that increasing veto players increase the likelihood of noncompliance and ACJ review. The veto player variable is measured using the Political Constraints Index (POLCON) developed by Henisz 2006. This measure incorporates the structure of a country’s political institutions and the extent of partisan heterogeneity within and across these institutions in a single index. This measure first identifies the number of independent branches of government with veto player power over policy (executive and legislative chambers). Then it is modified to account for the extent of alignment across branches of government. The measure is then further modified to capture heterogeneity within each legislative branch. The resulting measure takes on a value that ranges from 0 (least constrained) to 1 (most constrained). I expect the likelihood of ACJ view to increase as the degree of constraint on the executive increases.

**Polarization:** Here I predict that the likelihood of ACJ review will increase the higher the degree of polarization. I measure polarization as the dispersion of the voters away from the relative center. I use a measure utilized by Eduardo and Olivera (2004) in their analysis of party systems in Latin America. I summarize the left-right index along a range from Left -100 to Right 100 (or -1 to 1). This index assumes that parties on center-left are half-away than parties on the left, and that parties on the center-right are half-away from parties on the right. The mean position in the left-right spectrum is measured as $1\times(\% \text{ votes for parties in the right}) + 0.5\times(\% \text{ votes for parties in the center-right}) -0.5\times(\% \text{ votes for parties in the center-left}) -1\times(\% \text{ votes for parties in the left})$. For this measure

---

40 Data and codebook are available from [http://www-management.wharton.upenn.edu/henisz/POLCON/ContactInfo.html](http://www-management.wharton.upenn.edu/henisz/POLCON/ContactInfo.html) (Accessed May 2010).
“a minimum of zero is reached when all the votes are in one ideological block, and 100, when half of the votes are in each of the left-right extreme” (Eduardo and Olivera 2003, 6-7). This variable was constructed using Beck, Clarke, Groff, Keefer, and Walsh 2001; Nohlen 2005; and Adam Carr’s Election Archives. For each country and each election I was able to determine the party positions for at least the four largest parties in the legislature. I expect the likelihood of ACJ review to increase as polarization increases.

**A note on the measures for Veto points and Polarization:**

Keep in mind that polarization and veto points measure different things. Veto points measures the concentration or dispersion of power in the legislature and the concentration and dispersion of power between the executive and the legislative branch. Polarization on the other hand measures the concentration or dispersion of ideological views in the legislature by focusing on the ideological position of groups in the legislature taking into account the share of votes received by each group in the same election.\(^{41}\)

**Control Variables**

**Past disputes:** This variable measures the idea that government’s willingness to allow disputes to be taken before the Court of Justice is dependent on the number of times they have received a noncompliance ruling over the same object and subject in the past.\(^{42}\) As the number of rulings of noncompliance on the same object and subject against a member increases, the member is more likely to take the case before the ACJ for legal arbitration. Leaders may view the constant focus and judgment on one particular issue area as a continuous attempt to weaken their position and policies. As a result leaders may conclude that it is not so much the legality of the case that matters to the rest

---

\(^{41}\) The correlation between these two variables is .09

\(^{42}\) The subject refers to the type of trade violation that is under scrutiny; The object of a dispute refers to the particular product or service that is associated with the dispute case.
of the Community but that they may have become an easy target. To reduce the likelihood of the same dispute recurring in the future leaders may be more inclined to seek resolution of the issue through the ACJ.

Given this I argue that a recurring dispute will have a positive impact on the decision to pursue a case in the Court of Justice.\textsuperscript{43} I measure this variable by identifying the number of times in the past two years a country had been ruled in violation of Community law as it relates to the same subject and object. Data for this variable is obtained from the official website of the AC and the Integrated Database of Trade Disputes for Latin America and the Caribbean.

**GDP:** Economic decline such as decreasing GDP may lead states to enact policies and provide incentives such as subsidies, safeguards and tariffs that boast domestic industries. Leaders have an incentive to defend these policies by engaging in noncompliance and pursuing disputes through the ACJ, not because they deem them to be justifiable, but because prolonging these policies by appealing them through the ACJ may provide the economy and domestic industries with additional time to recover. Here I hypothesize that the larger the increase in the respondent’s GDP, the less the likelihood that an ACJ ruling will be sought. For this variable, I calculate the difference in GDP between year $t-2$ and year $t-1$. GDP is in constant 2000 U.S. dollars. Data for this variable is obtained from the IMF Statistical Yearbook.

**Imports:** I expect a respondent country, subject to a ruling of violation by the Secretariat to seek ACJ review the larger its imports from the negatively affected member state. This is because the respondent state has a larger capacity to retaliate through the withdrawal of trade concessions, as measured by the reliance on their market for trade. I measure this variable with annual bilateral import data obtained from UNCOMTRADE. Imports is measured as the change in imports

\textsuperscript{43}While I posit that the recurrence of a dispute influences whether it will be pursued in the Court of Justice, I am unsure if recurrence will make a dispute more or less likely to be taken to the Court of Justice. I have created arguments for both cases.
between year t-2 and year t-1.

**Estimator:** The goal of this chapter is to assess why a country chooses to pursue some cases of noncompliance before the ACJ but not others. Since the dependent variable is dichotomous logit is used.

**RESULTS AND DISCUSSION**

Table 3.2 presents the logit results using ACJ disputes as the dependent variable. Model 1 is estimated with the baseline specification: elections, fragmentation, and polarization. Model 2 is the full model with all the independent variables, the interaction, and the control variables.

< Insert Table 3.2 >

In general my overall expectation that domestic politics influences a leader’s decision to allow ACJ review receives statistically significant support. Specifically I find significant support for the hypotheses related to elections and polarization. With respect to elections, across all models I find that, all else equal, as the time between the noncompliance ruling and the next Presidential election increases, the likelihood of ACJ review decreases. This therefore means that the closer the time to the next Presidential elections the greater the likelihood of ACJ review. This finding is significant at the 99% level across all models.
The substantive impact that the time to the next Presidential election has on the likelihood of ACJ review is notable in Table 3.3. It shows that as the time to the next Presidential election declines the probability of ACJ review increases. In Table 3.3, when time to the next Presidential election decreases from 30 months to 20 months the likelihood of ACJ review increases from 12.43% to 15.56%. A further decrease in time to election from 20 months to 10 months leads to an additional increase in the predicted probability of an ACJ review from 15.56% to 17.75%. And, when the time to election decreases from 10 months to 5 months the probability of ACJ review further increases from 17.75% to 20.19%. These results further confirm the expectation as Presidential elections draw near the likelihood of ACJ review increases.

< Insert Table 3.3 >

Figure 3.8 also demonstrates this relationship between Presidential elections and ACJ cases. It shows that there is a steady decrease in ACJ review the further away the time to the next Presidential election. The graph shows that when elections are imminent the likelihood of ACJ review is at an all time high at 22%. From this point there is a slow but steady decline in the probability of ACJ dispute as the time to election increases from 0 to 20 months. And as the months increase from 20 to 40 months there is a noticeably rapid decline in the probability of ACJ review from 15.56% to 9.8%.

< Insert Figure 3.8 >
As it relates to the specific constraints on the legislature, I find support for the hypothesis related to polarization in the legislature. Table 3.2 shows that as polarization in the legislature increases the likelihood of ACJ review also increases. This finding is significant at the 95% level across both models. This positive effect is consistent with previous studies on party ideology in Latin America (Rosas 2005). It suggests that legislatures in AC member states are clearly organized along ideological lines to the extent that ideology is a powerful indicator of their distinct stance and difference on issues that confront them. The results specifically demonstrate that as ideological differences in the legislature increases, the leader has an incentive to avoid punishment and blame from that cleavage or political parties that holds a different ideological view by allowing the ACJ to make the final ruling.

< Insert Table 3.4 >

The substantive impact that polarization has on ACJ review is further illustrated by Table 3.4 and Figure 3.9. Overall both diagrams show that as polarization in the legislature increases the probability of ACJ review also increases. Table 3.4 shows that as the degree of polarization increases from 15% to 30% the likelihood of ACJ review increases by 3.13% from 13.25% to 16.38%. And, when polarization doubles from 30% to 60%, the likelihood of ACJ review increases even further by 5.32% from 16.38% to 21.7%.

< Insert Figure 3.9 >
Figure 3.9 also provides a more detailed view of the probability of ACJ review. It shows that initially at the lowest levels of polarization between 1 and 10%, there is a slight decrease in the likelihood of ACJ review. However as polarization increases beyond 10% there is a steady and continuous increase in the likelihood of ACJ review. This steady increase confirms the hypothesis that larger differences in the ideologies of parties in the legislature increases the likelihood that those with different ideological views will blame the executive, which in turn will turn increases the prospects that leader’s will allow the ACJ to take the blame for the final decision of trade policy.

Unlike the outcome for polarization the variable measuring the impact of veto points did not receive support through empirical analysis. In both models in Table 3.2 there is a negative relationship between veto points and the likelihood of ACJ review. This negative relationship is insignificant in both models. These results show that disparity between the executive and the legislature and disparity within the legislature provides no guarantee that those with some degree of veto power have the capacity to possibly impact policy making. This could be due to the number of seats that are actually held by many parties in the legislature of Andean member states. In AC member states the legislature tends to be dominated by two or three large parties with several small parties holding one or a few seats that may have little impact on their effective ability to influence decisions. And as such, even when the number of parties is increasing, the seats held by new parties are so small that these parties do not have a meaningful impact on government decision-making concerning compliance with the Andean Secretariat.

In general this difference in significance between polarization and veto point may be viewed as a reflection of the character of the legislature of member states in the AC. For many of the member states the parties that garnered the majority of the votes in elections were on the extremes
of the left-right ideological spectrum and as a result led to high levels of polarization. At the same time, though many parties won seats in government, only a few of these parties (on average 3 parties) were able to garner a substantial number of seats, making the competition in the legislature based on seats very minimal. As such fragmentation did not play a significant role in influencing policy positions.

Table 3.2 shows that among the control variables both the import and past dispute variable have the expected positive effect on the dependent variable. Increased imports increases the probability that a state will perceive a high threat and persist with its trade protection policies thus leading to an ACJ case. Similarly past dispute on the same issue increases the likelihood that a state would use the ACJ to make a final ruling on the ongoing rivalry. The results for both imports and past disputes are statistically significant at conventional levels across all models. The last control variable, GDP, while it has the expected negative effect on ACJ review it is not significant in any of the models.

CONCLUSION

This chapter addressed the puzzle of why member states of the AC take some noncompliance rulings by the Secretariat before the ACJ for further review. I introduced a new argument and data to show the importance of political considerations in this decision making. I argued that a leaders’ decision about noncompliance is influenced by (1) the domestic political incentives to renege on international commitment, and (2) the degree of institutional constraints on the leader.

With respect to incentives I hypothesize that the domestic political incentive to defy a ruling by the Andean Secretariat is greatest the closer the time to the next election. With respect to
institutional constraints I develop two hypotheses. I first hypothesize that leaders will be most likely to take cases before the ACJ the greater the degree of veto player restraint on the executive. Then focusing specifically on ideological divisions in the legislative branch I further posit that the higher the degree of polarization in the domestic legislature the greater the likelihood of dispute. Through empirical analysis I demonstrated that increasing polarization and impending elections both increase the likelihood of ACJ review. These results confirm my expectation that leaders are concerned with their political survival and as such are willing to defy the Secretariat for political

The overall argument of this chapter emphasizes a direct link between domestic politics and the international political economy. By focusing on noncompliance in the AC I demonstrate that domestic political constraints and incentives have a direct impact on a leaders’ decision to comply with and fulfill the obligations of international trade agreements. In so doing this chapter goes beyond much past research in this area which has either analyzed the impact of domestic politics on the negotiation of international agreements or has reversed the focus to analyze the impact international agreements have on domestic institutions and interests. The argument and findings of this chapter expands our understanding of the many and varied ways in which domestic factors influence international outcomes. It emphasizes an undeniable interconnection between the domestic and international political economy.

In addition, this study makes an important contribution to the literature on compliance with international law. Just like many studies related to disputes in the EU, this study confirms that the decision to engage in noncompliance can be deliberate and based on domestic political incentives. However unlike studies on the EU which advocate the importance of factors such as public opinion and bureaucratic efficiency this study goes beyond to demonstrate the importance of other domestic factors like impending elections and ideological polarization. In so doing I offer new explanations for noncompliance with international agreements.
From this paper and its findings numerous avenues for future research emerge. For one, these results could help construct more accurate models of leaders’ decisions when it comes to the use of international arbitration to settle disagreements. This chapter provides a preliminary answer to the question of trade dispute pursuit at the regional level. A more comprehensive analysis of executive rationale may be derived by analyzing executive decision concerning disputes in other RIAs. Of particular interest would be a comparison with RIAs that have much more clearly delineated standards for review.

And secondly, expanding this research agenda to analyze not just the decision to initiate disputes but the outcomes of disputes would be very useful. Such a comprehensive research agenda would allow scholars to determine whether the variables initially thought to impact the decision to commence dispute proceedings are the ones that lead to successful and favorable dispute outcomes.
REFERENCES FOR CHAPTER 3


Table 3.1: Total Noncompliance Rulings and ACJ Cases, 1995-2007

<table>
<thead>
<tr>
<th>Member state</th>
<th>Total noncompliance rulings received (1)</th>
<th>Percent of noncompliance rulings (2)</th>
<th>Number of noncompliance rulings taken to ACJ (3)</th>
<th>Percent of ACJ cases (4)</th>
<th>Percentage of noncompliance rulings against member-state that became ACJ disputes (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bolivia</td>
<td>40</td>
<td>8.85</td>
<td>4</td>
<td>4.87</td>
<td>10</td>
</tr>
<tr>
<td>Colombia</td>
<td>99</td>
<td>21.9</td>
<td>14</td>
<td>17.07</td>
<td>14.14</td>
</tr>
<tr>
<td>Ecuador</td>
<td>118</td>
<td>26.11</td>
<td>24</td>
<td>29.27</td>
<td>20.34</td>
</tr>
<tr>
<td>Peru</td>
<td>86</td>
<td>19.03</td>
<td>13</td>
<td>15.85</td>
<td>15.12</td>
</tr>
<tr>
<td>Venezuela</td>
<td>109</td>
<td>24.11</td>
<td>27</td>
<td>32.92</td>
<td>24.77</td>
</tr>
<tr>
<td>Total</td>
<td>452</td>
<td>100</td>
<td>82</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>
Table 3.2: Determinants of a state’s decision to pursue noncompliance action before the ACJ

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Coefficient</td>
<td>Coefficient</td>
</tr>
<tr>
<td></td>
<td>(Std Error)</td>
<td>(Std Error)</td>
</tr>
<tr>
<td><strong>Key Independent Variables</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elections</td>
<td>-.0179***</td>
<td>-.0166***</td>
</tr>
<tr>
<td></td>
<td>(.005)</td>
<td>(.0047)</td>
</tr>
<tr>
<td>Veto Players</td>
<td>-.462</td>
<td>-.301</td>
</tr>
<tr>
<td></td>
<td>(.653)</td>
<td>(.283)</td>
</tr>
<tr>
<td>Polarization</td>
<td>.0310**</td>
<td>.0256**</td>
</tr>
<tr>
<td></td>
<td>(.015)</td>
<td>(.013)</td>
</tr>
<tr>
<td><strong>Control Variables</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GDP</td>
<td></td>
<td>-2.05</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1.72)</td>
</tr>
<tr>
<td>Imports</td>
<td></td>
<td>2.19 **</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1.11)</td>
</tr>
<tr>
<td>Past Dispute</td>
<td></td>
<td>.613***</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.185)</td>
</tr>
<tr>
<td>Total Observations</td>
<td>452</td>
<td>452</td>
</tr>
</tbody>
</table>

Robust Standard Errors in parentheses
* <.10    ** <.05    *** < .001
Table 3.3: The Impact that Time to the Next Election has on the likelihood of ACJ review

<table>
<thead>
<tr>
<th>Time to Next Election</th>
<th>30 months</th>
<th>20 months</th>
<th>10 months</th>
<th>5 months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Predicted Probability that dispute will be taken to the ACJ</td>
<td>12.43%</td>
<td>15.56%</td>
<td>17.75%</td>
<td>20.19%</td>
</tr>
</tbody>
</table>

Note: All other variables are held at median values. The percentages above illustrate the predicted probability of a ACJ case, conditional on the fact that the General Secretariat has issued a noncompliance ruling.
Table 3.4: The impact that polarization has on the likelihood of ACJ review

<table>
<thead>
<tr>
<th>Polarization</th>
<th>15%</th>
<th>30%</th>
<th>60%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Predicted Probability that Dispute will be taken to the ACJ</td>
<td>13.25%</td>
<td>16.38%</td>
<td>21.7%</td>
</tr>
</tbody>
</table>

Note: All other variables are held at median values. The percentages above illustrate the predicted probability of an ACJ case, conditional on the fact that the General Secretariat has issued a noncompliance ruling.
Figure 3.1: Procedure for cases of Non-compliance with Community Law

1. Secretariat sends observation note to member states
   - Member does not respond
   - Member justifies actions
   - Member adjusts policies

2. Secretariat maintains its decision
   - Secretariat sends report of non-compliance
     - Member persists with behavior
     - Member adjusts behavior

3. Secretariat reverses its decision
   - DISPUTE
     - Case is taken to Andean Court of Justice
       - ACJ rules in favor of Commission
       - ACJ rules in favor of member state

4. Member complies
   - Member does not comply
     - Commission allows member states affected by noncompliance to impose retaliatory measures
Figure 3.2: Non-compliance Rulings by Secretariat
Figure 3.3: Bolivia, noncompliance rulings by Secretariat

Figure 3.4: Colombia, noncompliance rulings by Secretariat

Figure 3.5: Ecuador, noncompliance rulings by Secretariat

Figure 3.6: Peru, noncompliance rulings by Secretariat

Figure 3.7: Venezuela, noncompliance rulings by Secretariat
Figure 3.8: Predicted Probability of the Effect time to next election has on likelihood of ACJ review
Figure 3.9: Predicted Probability that polarization has on the decision to allow ACJ review
CHAPTER 4

THE RATIONALE FOR DISPUTES OVER DIRECTIVE IMPLEMENTATION IN THE EUROPEAN UNION

INTRODUCTION

In Chapter 3 I analyzed why member states to the AC allow some disagreements to become disputes that go before the ACJ. I show how leaders make tradeoffs in order to ensure political survival and domestic political stability. I argued that one of the primary determinants of a state’s decision to pursue a dispute through the ACJ is the political benefits this decision provides. I showed how leaders allow disputes to be arbitrated by the ACJ when the domestic political cost of complying with the Secretariat is high. I argued and demonstrated through my empirical analysis that leaders are more likely to defy the Secretariat and allow cases to go before the ACJ the closer the time to the next election and the greater the degree of polarization in the legislature.

The argument and results in Chapter 3 show that a leaders’ decision concerning international cooperation is inherently connected to their domestic survival. In the face of international law and under international pressure the domestic political climate still dominates the decision making of leaders.

In Chapter 4 I shift my analysis away from the AC to the EU. Here instead of analyzing the decision rationale of developing countries I assess the motivation to dispute among developed countries. By focusing on the EU I also shift my analysis to focus on disputes in the most integrated regional structure. And by studying the EU I shed some light on how disputes emerge in the expansion and further integration.
EU directives account for about 80% of Community laws, making them a crucial part of the European integration process (Dinan, 2000, 421; Mastenbroek, 2003, 372). Though countries typically enjoy a directive implementation rate over 90%, there are variations in the directives that have transposition problems that make the study of noncompliance salient to understanding EU integration.

In accounting for noncompliance, extant literature has tended to focus almost exclusively on aggregate level explanations such as veto players, bureaucratic efficiency, and political power (Borzel et al 2007; Mbaye 2001; Lampinen and Uusikyla 1998). These studies assume that characteristics of members predispose them to noncompliance irrespective of the type of directive to be implemented. To overcome this shortcoming I bring the directive to the fore by incorporating the attributes of the directive to be transposed into the analysis of noncompliance. I ask: What causes disputes over implementation of directives in the European Union?

My rationale for focusing on individual level characteristics stem from interviews I conducted with both country representatives and European Commission officials. Two characteristics emphasized in these interviews as crucial determinants of noncompliance were, the degree of complexity of directives and the degree of controversy among member states surrounding a directive. Given this I theorize about the impact these two characteristics have on the likelihood of dispute. I argue that the greater the degree of complexity of a directive the greater the likelihood of dispute. I also posit that the greater the level of controversy surrounding a directive the greater the likelihood of dispute. In my analysis I find that complexity not controversy increases the likelihood of noncompliance in transposition.

To test these arguments I go beyond past empirical analyses which have primarily utilized aggregate level data. I build an original dataset that contain the universe of directives that were approved by the European Union for implementation by member states during the years 1983 to
By compiling a dataset of all directives I avoid selecting on the dependent variable and account for the appropriate reference group from which disputes may be drawn. This new dataset serves as the cornerstone of my study as no one has been able to compile data on both the directives that could have become disputes (potential disputes) and the actual cases that became disputes in the European Union. The dataset begins by identifying all the directives to be implemented by member states between 1983 and 1996. I then determine which countries properly implemented these directives and which did not. Focusing on those cases of implementation problems I then identified whether the issue was resolved after an Article 169 letter was sent or after a reasoned opinion was sent. For those disputes where a reasoned opinion was sent I then determine whether it became a Court of Justice case and if so whether and when there was a judgment and the nature of the judgment. On the whole, the scope and quality of this new dataset gives me the ability to go beyond existing analyzes. This dataset allows me to test these new arguments concerning the attributes of directives and re-test some old explanations that were evaluated using aggregate level data in past research.

This study is important for several reasons. As discussed above the theory goes beyond past research to highlight the important impact the character of the individual directive has on the likelihood of dispute. This emphasis brings to light the effect the directive development process and the requirements of the directive have on member states willingness and ability to implement. It broadens our understanding of disputes in the EU by shifting the argument away from focusing on

---

44 Kaeding (2007), Mastenbroek (2003); and Konig et al (2008) are exceptions. Though it should be noted that these studies still contained significant limitations. Mastenbroek focused on the Netherlands only; Kaeding focused on transposition directives only; and Konig et al (2008) focused on agriculture, common rules, and internal market policies only. Thus these studies are still limited in scope and sectors analyzed.

45 In the European Union as well as in the scholarship on the EU the standard is to view a Article letter 169 as a pre-dispute communication between the Commission and the member state. It is generally agreed that the reasoned opinion is the first stage in the dispute process.
aggregate level factors and shows that the most comprehensive understanding of disputes could only be derived by focusing on each directive and its attendant complications.

Beyond this, the study makes a strictly empirical contribution to the literature on EU dispute settlement. By building a dataset that identifies, accounts for, and analyzes the likelihood of dispute related to each directive to be implemented this study presents us with the opportunity to examine trends at the individual rather than the aggregate level.

Furthermore, the theoretical argument and findings derived allows me to draw out the implications of international institutions and cooperation theory in IR theory. For one, it allows me to draw conclusions about the prevailing conception of the autonomy and influence of international institutions. My study shows that while the EU has a significant influence on member states, challenges still exist. My study shows that when there are challenges with implementation, these challenges are dictated less by the political structure within or power position of member states but more by the individual characteristic of the directive to be implemented.

The next section of the chapter provides a brief history of the European Union and explains the law making and dispute settlement process. The third section reviews the past studies done on disputes in the EU and highlights the shortcomings of both theoretical arguments and empirical analyses conducted in the past. After this I develop my theoretical argument by first presenting the findings of my interviews and then specifying several hypotheses about the likelihood of dispute over implementation of directives. Section five provides the research design and summary statistics. The sixth section presents the results. Section seven concludes.
OVERVIEW OF THE EUROPEAN UNION

Brief History of the European Union

On April 18th 1951 six Western European states signed the Treaty establishing the European Coal and Steel Community (ECSC). The intention of this Community was to allow choices regarding the flow and trading of such commodities to more easily take place under a general governing body. This proved to be so successful that the states set up the European Atomic Energy Community and the European Economic Community on March 25th 1957. By 1970 these three Communities merged into a single European Community with a customs union that had common external tariffs. In 1974 the European Council was established, and in 1979 citizens were allowed for the first time to elect their members to the European Parliament directly, thus increasing the influence of the European Parliament. On July 1st 1987 the Single European Act that allows for free movement of people, goods, capital and services went into effect (enters into force). By this time membership increased to 12 members – three were added during the 1970s - the United Kingdom, Ireland, and Denmark, and three were added during the 1980s – Greece, Spain, and Portugal.

The 1990s was the decade of treaties. The Single Market which was initiated in 1987 was completed in 1993, and the Maastricht Treaty and Treaty of Amsterdam were established in 1992 and 1999 respectively. In the first decade of the new century four key events then dominates the activities and evolution of the European Union. First on January 1st 2002 the euro notes and coins entered into circulation between member states. Second, 10 new countries joined the European Union. Thirdly, the Nice Treaty entered into force on 2nd February 2003. The Nice Treaty reformed the decision-making of the EU, extended Qualified Majority Voting (QMV) in

46 The six states are: Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, and the Netherlands.
the European Council and removed national vetoes from thirty-nine areas. And finally, in December 2009 the Lisbon Treaty, which among other things created the EU Presidency, came into force.47

**Law-making in the European Union**

Law-making in the EU is usually now the result of interaction between the “institutional triangle” of Parliament, the Council, and the Commission (Raworth 2001).

**The Commission:** The European Commission is the main administrative driving force of the EU. The President and other members of the Commission are appointed by the member states after they have been approved by the Parliament. The Commission is the only body that can initiate draft legislation by presenting legislative proposals to Parliament and Council. It is also responsible for implementing these legislations (directives, regulations, decisions), budgets and programmes adopted by the Parliament and Council. Beyond this the Commission is also the guardian of the Treaties and of the “acquis communautaire” (i.e. all the Community’s legislation) in that it can prosecute when proper legislation procedures are not followed (Moussis 2007, 44–52).

**The Council of the European Union:** The Council of the EU is the major legislative and executive body of the EU and as such serves as its main decision-making body. The Council has six key responsibilities. Foremost it is responsible for passing European laws, jointly with the European Parliament in many policy areas. It also coordinates the broad economic policies of the member states. Furthermore the Council is responsible for concluding international agreements between the EU and other countries or international organizations. Moreover it approves the EU’s budget,

---

47 A detailed summary of the development of the European Union can be found in Moussis 2007 and Folsom 2005.
jointly with the European Parliament. In addition, the Council develops the EU’s Common Foreign and Security Policy (CFSP), based on guidelines set by the European Council. And finally the Council co-ordinates co-operation between the national courts and police forces in criminal matters (Raworth 2001, 65).

**The Parliament:** The European Parliament (EP) is elected by the citizens of the European Union to represent their interests. Its origins go back to the 1950s and the founding treaties, and since 1979 its members have been directly elected by the people they represent. Parliament has three main roles: Foremost they participate in the process of passing European laws jointly with the Council in many policy areas. Secondly, Parliament exercises democratic supervision over the other EU institutions, and in particular the Commission. And finally Parliament has the power of the purse. Parliament shares with the Council authority over the EU budget and can therefore influence EU spending. At the end of the procedure, it adopts or rejects the budget in its entirety (Raworth 2001).

**Methods of Law-making in the European Union**

Most EU laws are made according to the consultation, co-operation or co-decision making procedures (Hix 1999; Folsom 2005). With the consultation procedure, the simplest of the three decision making systems, most power is given to the Council, while in the two other procedures some power and influence in decision making is given to both Parliament and the Commission even though the ultimate decision for approval of a law rests with the Council. Under the consultation procedure, after receiving a proposal from the Commission the Council allows the European Parliament to give a non-binding opinion on the proposal which the Council may or may not take into consideration when voting. Under this method of decision making the European Parliament does not play a decisive role.
Under co-decision however much more power is given to parliament who has a more active role in amending and approving the legislation. In this situation, the Commission makes a proposal to both the European Parliament and the Council. Parliament is allowed to give its opinion which is sent to the Council. The opinion may approve the current proposal or it may recommend amendments. If Parliament approved the proposal the Council can follow suite and do the same. If Parliament recommended amendments the Council can approve the amendments and the legislation then becomes law.

If on the other hand the Council does not fully agree with Parliament it can establish a common position on the proposal. This common position is then examined by Parliament who may approve the position and then the proposal becomes law, may reject the position in which case the proposal does not become law, or Parliament may propose amendments to the position. If the latter occurs the amendments are sent to the Commission which then gives its opinion. The amendments along with the opinion of the Commission is then sent to the Council. The Council may approve the amendments in which case the proposal becomes law. Or, the Council may not approve the amendments at which point a Conciliation Committee is convened in an attempt to reach an agreement between Parliament and the Council. If the Committee reaches an agreement then the proposal becomes law. On the other hand if the Committee is unsuccessful the proposal is not adopted.

While much power rests with parliament and the Council under the co-decision procedure, with the cooperation procedure all three bodies have an active and meaningful role in creating and approving legislation. Here the legislative process starts when the Commission sends a proposal to Parliament for its opinion. Parliament sends its recommendations back to the Commission who amends the proposal based on Parliaments views. The amended proposal is then sent to the

---

48 This is different from under consultation where the Commission sends the proposal to only the Council who then shares it with Parliament.
Council which may approve the document in its current form or may establish the Council's Common position on how the proposal may be adjusted. The proposal is then sent to Parliament for a second reading.

Parliament may reject the position, approve the position or suggest amendments. If Parliament rejects the position and the Council still wants to adopt the legislation they can do so by unanimous voting. If Parliament approves the position the Council can then vote based on qualified majority voting and allow the proposal to become law. And if Parliament suggests amendments they are sent to the Commission which re-examines the proposal. The Commission may then reject or accept the amendments. If the Commission rejects the amendments the Council may still vote on the proposal and it may become law if they obtain a qualified majority. If the Commission accepts the amendment the Council without making changes may vote on it in which case it can become law based on a qualified majority. Or alternatively if the Commission accepts the amendments the Council may adjust the proposal and then vote on it.

Legal Instruments of the European Union

The EU has three types of instruments that it can utilize to carry out its tasks under the Treaty establishing the European Community with due respect for subsidiarity principle. These legal instruments are: regulations, directives and decisions.

---

49 The Treaty of the European Union (Maastricht 1993) and to a lesser extent the Single European Act (1987) formalized “subsidiarity” and “proportionality” principles. The Amsterdam Treaty of 1999 added a Protocol on the application of the principles of subsidiarity and proportionality. These much debated principles hold that the region can act in areas where it does not exclusively have power only if the member states cannot sufficiently achieve the objectives, i.e. “by reason of scale or effects [the] proposed action [can] be better achieved by the Community” (subsidiarity principle). Subsidiarity is a kind of “states’ rights” amendment intended to limit the growth of regional government in Europe (Folsom 2005).
**Regulations:** Regulations are the most direct form of EU law – as soon as they are passed, they have binding legal force throughout every Member State, on a par with national laws. National governments do not have to take action themselves to implement EU regulations. Regulations are passed either jointly by the EU Council and European Parliament, or by the Commission alone. The Legal basis for the enactment of regulations is Article 288 of the Treaty on European Union (formerly Article 249 TEC). Regulations are different from directives which are addressed to national authorities, who must then take action to make them part of national law, and decisions, which apply in specific cases only, involving particular authorities or individuals (Raworth 2001).

**Decisions:** Decisions are EU laws relating to specific cases. They require authorities and individuals in member states to either do something or stop doing something, and can also confer rights on them. Decisions tend to be addressed to specific parties and are fully binding.

**Directives:** Directives lay down certain end results that must be achieved in every member state without dictating the means of achieving that result. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so. Directives are used to bring different national laws into line with each other, and are particularly common in matters affecting the operation of the single market. Directives only take effect when they are embodied in national legislation. Member states are given transposition deadlines by which they must introduce their own deadlines. This is usually between 6 months and 3 years. The more controversial the policy, the longer the likely allotment of time (Folsom 2005, 39).

**Why Focus on Directives**

I focus on the implementation of directives because they cover most community legislation and are not directly applicable at the national level both of which create more opportunities for disagreement and noncompliance. Foremost, directives make the possibility of infringement
proceedings and disputes more likely. With directives unlike with regulations and decisions, member states not only have to implement directives directly but also are required to do so before the deadline specified by each directive. This creates significant opportunities for disagreement among domestic actors or between the member state and the Commission concerning implementation and application. The existence of a deadline further complicates compliance because member states may not be able to implement directives within the specified deadline which leads to the initiation of infringement proceedings against a member state.

In addition because monitoring the implementation of directives falls primarily to the Commission and subsequently the Court and because this process of monitoring is assisted by a transposition deadline, it makes the process of identifying noncompliance much easier and more uniform. And finally, focusing on directives is most appropriate because most EU legislation are created in the form of directives. In fact about 81% of all Community legislation are directives (Dinan 2000; Mastenbroek 2003).

Noncompliance in the Implementation of EU Directives

It falls to the Commission to monitor the transposal of Community law, where necessary, monitor the compatibility with Community law of the national provisions transposing that law, and monitor the proper application of Community law by various bodies in the Member States. When necessary the Commission initiates infringement proceedings against member states when it (the Commission) believes that the member state has failed to properly implement EU law.50

< Insert Figure 4.1 >

50 Infringements in this chapter refer to the initiation proceedings by the Commission against member states for failure to implement or failure to implement correctly a particular directive. As such, infringements are the Commission’s actions in response to the cases of non-compliance it detects.
Figure 4.1 shows the process that is pursued once an infringement in transposition has been detected. The first two stages are informal, called the administrative stage and the remaining stages are official, called the judicial stage. If a member state did not communicate its transposition of an EU directive or if the transposition that has been pursued does not satisfy the EU requirements, the Commission sends a formal letter of notice, also called a 169 letter, to the member. This formal letter from the Commission delimits the subject-matter and invites the member state to submit observations. Member states have between one and two months time to respond. Unlike their name suggests Formal Letters are not part of the official proceedings. The Commission considers them as preliminary stages, which serves the purpose of information and consultation, which afford a member state the opportunity to regularize its position rather than bringing it to account (Moussis 2007). Consequently, formal letters are only made official, if they refer to cases where member states have not communicated the transposition of Directives within the given time-limit non-transposition and the Commission automatically open proceedings.

The member state (1) can choose not to respond to the Commission’s letter, (2) can choose to respond justifying its actions and behavior or (3) can choose to adjust its policies to reflect the objectives of the European Union. If the member state does the latter and the Commission is satisfied then the proceedings end. However, if the member state either does not respond or its response is deemed unsatisfactory, the Commission sends a reasoned opinion. The reasoned opinion is the first official stage in the infringement and judicial proceedings. When a member state chooses not to adjust its behavior in the initial reconciliation stage the Commission views this as an infringement and commences official judicial proceedings. The Commission sets out the justification for commencing legal proceedings. It gives a detailed account of how it thinks Community law has been infringed by the member state (specifying which laws has been infringed)
and it provides a time-limit, within which it expects the matter to be rectified. The member usually has a one month time period to respond. In this chapter I am interested in the second stage. I am interested in understanding why member states allow judicial proceedings to be initiated concerning directives implemented.

Upon receipt of the reasoned opinion the member state again has a choice. It can choose not to respond and/or persist with its behavior, or it can choose to align its policies to meet the requirements of the EU. If the member state adequately adjusts its policies infringement proceedings against them end. If the member on the other hand does not adjust its policies the Commission then reserves the right to refer the member to the European Court of Justice. The ECJ Referral is the last means to which the Commission can resort in cases of persistent non-compliance. Before bringing a case to the Court the Commission usually attempts to find some last minute solutions in bilateral negotiation with the member state.

The ECJ acts as the ultimate adjudicator between the Commission and member states. First, it verifies whether a member states actually violated European law as claimed by the Commission. Second it examines whether the European legal act under consideration requires the measures demanded by the Commission. And finally, the Court decides whether to dismiss or grant the legal action of the Commission. If member states refuse to comply with an ECJ judgment, the Commission may open new proceedings for post-litigation non-compliance (Article 228 EC, ex-Article 171). Since 1996, it can ask the ECJ to impose financial penalties, either in the form of a lump sum or a daily fine, which is calculated according to the scope and duration of the infringement as well as the capabilities of the member states.
EU NONCOMPLIANCE IN THE LITERATURE

Reasons for Noncompliance and Escalation

Since the mid 1980s scholars of the European Union have sought to explore the factors that lead to noncompliance with and non-implementation of EU directives. When addressing this question students of Europeanization have employed a variety of theories and perspectives. Regardless of theoretical approaches, at least, two key factors have risen as crucial explanations for the level of implementation or noncompliance in the European Union: The domestic management capacity and the European enforcement capacity.\(^{51}\)

The Management Approach

The management approach purports that a state’s ability to comply with and implement EU law is involuntary. According to these studies even if states would like to comply with European law they are prevented from doing so if the very preconditions necessary for compliance are absent. Scholars have identified two sources of involuntary noncompliance: insufficient state capacity and ambiguity.

With respect to state capacity, two differing explanations exist. One group of studies argues that government capacity determines compliance while another group argues that it is government autonomy that influences compliance. Those who focus on government capacity argue that small public sectors, inefficient bureaucracies and systemic corruption tend to produce higher levels of noncompliance. Administrators may be prevented from implementing EU law because of a lack of government resources such as limited funding or limited technical expertise (Lampinene and Uusikyla 1998; Knill 1998).

\(^{51}\) Much past studies has focused on analyzing why member states choose not to comply with EU directives. While this does not specifically address the question of interest in this chapter, the explanations are relevant because noncompliance and the pursuit of disputes tend to work in tandem with each other.
Yet, others purport that even if a state has sufficient resources, its administration may still have difficulty in compliance because of bureaucratic inefficiency. Member states that have difficulties in pooling these resources because they are dispersed among various public agencies and levels of government will tend to experience higher levels of infringements (Mbaye 2001; Larrue and Chabson 1998; Egeberg 1999; Kaeding 2006). Directives often touch on the jurisdiction of several ministries requiring them to work together. This may result in problems of coordination and conflict of opinions, which then leads to delayed implementation (Mastenbroek, 2003). Beyond this corruption in the public sector and in the administration have also been argued to produce non-compliance (Mastenbroek 2003). Systemic requirements of side-payments and patronage positions produce systems in which tasks are accomplished only when bureaucrats have a personal incentive to get things done. The result of this corruption tends to be delayed implementation and noncompliance.

While studies on government capacity emphasize resource constraints and corruption, studies focusing on government authority highlight the nature of the domestic institutional structure. These studies purport that characteristics of the domestic political structure also impacts a state’s capacity to implement effectively (Haverland 2000; Mbaye 2001; Borzel et al 2007). Governments that must satisfy many coalition partners and other veto players tend to act less decisively and less efficiently. A case study by Haverland (2000) suggests that veto players shape both the speed and the quality of implementation of EU law, regardless of whether those policies provide a good fit between the national and the supranational law. Veto players in large numbers lead to both a lower quality and a slower speed of implementation because of the greater number of checks and balances that a law must pass through before being adopted. Scholars like Lampinen and Uusikyla (1998) build upon this veto player argument by adding the degree of corporatism to the analysis. They argue that “higher levels of corporatism reduces the number of veto players by increasing the
stability and the degree of institutionalization of policy networks at the national level and set more rigid rules for inter-organizational bargaining” (Lampinen and Uusikyla, 1998, 239). This increases cooperation between government and other interests in society and leads to greater compliance with EU law.

Analysis of these ‘state-based arguments’ have been rather inconclusive. Some find support for the theory that the number of veto players have a significant impact on legal compliance (Lampinene and Uusikyla 1998; Giuliani 2003; Linos 2007) others do not (Mbaye 2001; Borghetto, Franchino, and Giannetti 2006). Some find support for the corporatism argument (Falkner 1998) others do not (Mbaye 2001; Lampinen and Uusikyla, 1998). The only factor that seems to find support in most analysis is the administrative capabilities hypothesis (Mbaye 2001; Kaeding 2006; Stermenberg and Rhinard 2008; Thomson et al 2007).

Beyond state capacity, managerial theorists also suggest that noncompliance may be due to the legal quality of EU directives (Dimitrakopoulos 2001; Weiler 1988). Due to the magnitude of actors and arenas involved in creating EU directives, treaty language may not be clear about what the rules require and how these rules should be implemented by member states. EU policies are often open for interpretation which leads to a wide range within which member states may reasonably adopt policy positions as to the meaning of EU policies and the expectations concerning implementation (Chayes and Chayes 1995, 11; Falkner et al 2005, 13). This legal ambiguity may lead to uncertainty in choosing a policy strategy or may lead to contested interpretations about what EU law actually expects member states to do that might only be settled through infringement proceedings. Thus scholars like Falkner et al (2004), conclude that the overall impact of these

---

52 Note that ambiguity in the legal text as emphasized by past research is distinct from complexity of the legal text, which is one of the main pillars of my argument. Ambiguous directives may be technical or simple. What makes them ambiguous is the lack of clarity in the legal text concerning what should be done and how it should be accomplished. As a result this ambiguity may cause noncompliance by member states who have difficulty understanding what needs to be done. Complex directives on the other hand are those that specifically and clearly deal with technical issues that propose in-depth changes to the policies in member states. In this case the EU anticipates that these directives are going
interpretation problems is an increase in the likelihood of noncompliance. In general analysis of this argument has demonstrated support for the notion that ambiguity increases infringements and noncompliance. One limitation of these analysis however may stem from the fact that they are primarily based on case studies which tend to be chosen to substantiate the theory developed (Falkner et al 2005).

The Enforcement Approach

These studies argue that a state’s decision about compliance with EU law tends to be conscious and deliberate. Scholars stressing problems of voluntary non-compliance argue that the willingness of states to comply with international commitments depends on the domestic costs and benefits of adaptation and the costs of defiance. Where the costs outweigh the benefits, states will try to evade these burdens by noncompliance. According to them, states may choose noncompliance as a bargaining strategy, because of the lack of bargaining power, or because of public opinion.

One variant of the enforcement approach analyzes the effect bargaining power at the negotiation stage has on a state’s decision to comply. According to these studies, the decision to comply begins during the negotiation stage in the European Union. These studies argue that based on the structure of the EU during negotiation in the Council of Ministers and the EU parliament powerful states with more voting power and more assertive influence will be able to negotiate rules that are closer to their ideal point while less powerful states tend to be left with policies that are further away and not comparatively representative of their preference (Aguilar-Fernandez 1994).
Given this, powerful states will be likely to comply more often since implementation would be closer to their ideal point and would be easier to accomplish. These studies therefore expect less powerful states to have difficulty implementing either because of incompatibility between the policy and their preferred outcome or because of attempts to protest what they view as an unfair decision (Falkner et al 2005).

Another variant of the enforcement approach focuses on the impact of a member’s power of recalcitrance on their decision to comply. Here it is argued that the possible imposition of sanctions and other costs make states that are most sensitive to the economic and political implications of infringement to be more likely to comply. As such powerful states are likely to infringe on European law more often than weaker states since they are less sensitive to the costs imposed by sanctions. At the same time less powerful states are more sensitive to external enforcement constrains and thus are less likely to infringe on EU legal acts, hence the smaller their number of infringements or instances of noncompliance (Borzel et al 2007).

The evidence from the EU provides support for both arguments presented above. In discussing numerous case studies on social policy, Falkner et al (2005) provides evidence of this. Empirical analysis by Borzel et al (2007) using the political weight in the Council of Ministers provides support for this hypothesis. Member states like France, Italy or Germany that have more Council votes tend to violate European law more frequently than member states with lower voting power such as Denmark.

One key point of clarification concerning these two arguments must be addressed here. The two above stated arguments are indeed in contrast with each other and indeed have both found support using European Union cases. It is important to note that the two group of scholars who advocate these differing arguments do not view them as competing but rather advocate them as complementary to each other since the arguments and the evidence focus on different stages of the
policy implementation process. In the first instance the argument by Falkner et al (2005) focuses on implementation of directives that have just been voted on and handed down by the EU, while Borzel et al (2007) uses a dataset that has all cases on noncompliance irrespective of whether it is a new directive or a longstanding directive that has been infringed upon by a member state. Thus Borzel et al’s (2007) theory and analysis speak to a broader spectrum of member state considerations than does Falkner et al’s (2007) rationale.

Another variant of the enforcement approach focuses on public opinion. Here it is argued that the public’s attitude towards and support for the EU influences the type and extent of policies carried out (Borzel 2007; Mbaye 2001; Lampinen and Uusikyla, 1998). Since politicians often make policy choices that promote their re-election, they argue that the lower the overall mass support for the country’s membership in the EU the higher the probability that the member state will face difficulty implementing policies (Lampinen and Uusikyla, 1998). With this in mind domestic leaders may choose not to implement policies or may choose not to fully or completely implement policies that may cause them to be punished in the next electoral cycle (may be harmful to their political survival). Quantitative analysis of this argument has produced mixed results (Mbaye 2001; Borzel et al 2007).

The Missing Link in the Management and Enforcement Approach

The two theoretical approaches discussed above have definitely advanced our understanding of the factors that influence dispute and noncompliance within the European Union. Despite their contribution both sets of studies suffer from a key shortcoming that limits their explanatory power. Both approaches develop and test aggregate level hypotheses that emphasize characteristics of the
member states that make them more or less able and willing to implement directives. These theories do not incorporate or account for individual level explanations that vary from directive to directive that may account for why member states will be more or less likely to implement certain directives. Put another way, the variables emphasized in past studies definitely tell us which countries are more or less likely or capable of compliance but they do not tell us which directives these countries will be more or less willing to comply with. On their own, many of these state level variables tend not to vary greatly overtime thus limiting our ability to understand why the same member state would be willing and able to effectively implement certain directives but not others.

For example, during the 10 years from 1990 to 2000, the number of veto players in the United Kingdom has remained relatively stagnant/constant but they have varied significantly on their willingness to implement some directives but not others. To take the extra step and account for why country’s would have variation in their implementation record across directives, research must develop and test hypotheses that demonstrate that how variation in the degree of technicality, controversy and opposition to each directive impacts the likelihood of compliance. In this study I do just that: I analyze why characteristics of the individual directive does influence the likelihood of noncompliance. To provide a more comprehensive explanation of disputes I also combine the individual and aggregate level explanations to show how and when the institutional structure of member states combined with the nature of the directive to be implemented determine noncompliance. This perspective was emphasized during interviews with country representatives and commission employees.

Now, it is important to note that a few studies have sought to analyze the impact the characteristic of the directive has on noncompliance. These studies include Falkner et al 2005; Kaeding 2007; Mastenbroek 2003; and Konig et al 2007. While insightful all of these studies still

53 State level characteristics such as veto players and administrative capacity.
contain significant constraints primarily related to the limited number of sectors and member states analyzed. These limitations which would be highlighted in the section below restrict the generalizability of the findings and thus exemplify the need for the comprehensive analysis done in this study.

The Use of Data in Analyzing Noncompliance and Infringement

Studies on infringement and noncompliance utilize both qualitative and quantitative methodological approaches. Early compliance studies employed extensive case studies because of inadequate data. These studies tended to develop their own assessment criteria by collecting information through laborious field research on selected countries (Knill 1997; 1998; Duina 1997). While these studies had the advantage of providing in-depth interpretation of the political and policy process, they lacked generalizability across countries, policies and time.

Recognizing this limitation scholars began to pursue quantitative studies that used statistical data from the Annual Reports on Monitoring the Application of Community Law (Borzel 2006; Linos 2007; Mendrinou 1996; Snyder 1993). These annual reports contain information on the legal action the Commission brought against member states since 1978. They provide an annual report of the 169 letters, reasoned opinion or ECJ referrals made by the Commission against each member state. Based on this two types of quantitative analyzes emerged from use of this data. One group of studies base their analysis of noncompliance on the number of infringement proceedings pursued against member states by the Commission and Court of Justice irrespective of whether that proceeding was initiated because of non-implementation of new directives or because of infringement/noncompliance of existing directives (Mbaye 2001; Brozel 2001). While these studies were an improvement on case study research, these studies are not without problems. The problems are generally associated with the use of data on infringements of existing directives.
For one, there are good reasons to question whether infringement proceedings because of seeming inconsistency with existing directives qualify as a valid and reliable indicator of compliance failure. After all the infringement proceeding seeks to determine whether or not a state is adequately adhering to EU policy and no final decision on infringement can be reached until the ECJ rules on a case.

Secondly, there is no way to determine whether the number of infringements being investigated by the Commission represent the universe of compliance failure on all existing EU law. For reasons of limited resources the Commission depends on member states and private individuals to detect and report possible non-compliance. It heavily depends on the member states reporting back on their implementation activities, on costly and time consuming consultancy reports, and on information from citizens, (public) interest groups and companies. Also for reasons of limited resources the Commission is not capable of legally pursuing all instances of alleged non-compliance with EU law. The Commission has considerable discretion in deciding whether and when to open proceedings. Given the above, it is clear that studies which use data on the infringement of existing EU directives suffer from possible selection bias.

Recognizing this problem some studies use data that solely focuses on infringement proceedings that arise because of non-implementation of new directives. This focus avoids or overcomes the problem of selection bias because the universe of directives that are not implemented by member states are known and reported in each annual report. In fact the shares of transposed directives against all applicable directives at a certain period of time are regularly reported in the Commissions Annual Report on Monitoring the Application of Community Law.

Studies that use this transposition data usually collect this data in one of two ways. Some studies use an annual count of the directives that have not been implemented by each member state and the stage of infringement proceedings that these non-implementation cases have reached. In
using only the annual count which provides one number for non-implementation these studies cannot account for factors that may vary from directive to directive. It does not distinguish one directive from the other and as such it only offers general/broad based explanations and negates a host of directive specific explanations (factors specific to the implementation of each directive) that may best explain noncompliance.

A second set of studies fix this problem by building datasets that account for implementation or non-implementation of each directive by each country. But these studies only collect data and analyze noncompliance for a few countries or a few sectors or a limited time period. Mastenbroek (2003) for example constructed a data base containing all EC directives enacted from 1995 to 1998 for the Netherlands. For all 229 directives she consulted overviews by the Ministry of Foreign Affairs, a list of measures notified to the Commission by the Dutch government and a data base compiled by the TMC Asser Institute (Mastenbroek, 2003) to gather information on the Dutch transposing measures. Kaeding (2006) draws on this example by compiling a dataset on transposition of transportation directives for all member states for the period 1957 to 2004. And Konig et al (2003) builds a dataset on non-implementation of agriculture, common rules, and internal market policies for the period 1986 to 2002. Each of these datasets allows us to develop significant insights into transposition noncompliance. However each has some limitations that restrict their generalizability. Mastenbroek (2003) only focuses on one country - the Netherlands; Kaeding 2006 only focuses on one sector - transportation transpositions - and negates transposition in other sectors; Konig et al (2003) only focuses on 3 sectors and negates transposition in the 11 other sectors; and Falkner et al (2005) only focused on the implementation and compliance record for 6 social policy directives.

In this present study I build upon these contributions by constructing a dataset that accounts for implementation or non-implementation of each directive created by the European Union for the
period 1983 to 1998. To my knowledge this is the most comprehensive and expansive dataset of transposition of EU directives compiled to date. This expansive dataset allows me to test the extent to which characteristics of the directive to be implemented and the nation state to implement it determines the likelihood of noncompliance. This dataset improves upon past research by accounting for each directive approved by the EU during 1983 to 1996 thus increasing generalizability of the findings. In addition to this dataset the hypotheses developed in this chapter will be informed by in-depth interviews with country representatives and Commission officials.

**HYPOTHESIS DEVELOPMENT**

To inform my theory development on the causes of disputes over implementation of EU directives I conducted in-person interviews in Brussels, Belgium with legal experts on EU dispute settlement. I interviewed practitioners, legal representatives, and experts that represent both sides in the EU dispute process. On the one hand to gain a better perspective of why member states become involved in disputes over implementation I interviewed 22 legal representatives from 19 member states. These representatives work on behalf of and represent the interest of their country when disputes over implementation arise in the European Union. Simultaneously to gain a more comprehensive understanding of why and how the Commission pursues implementation disputes, what they believe are the main causes of implementation problems among member states, and how member states differ in terms of likelihood of disputes, I interviewed 15 Commission officials representing 8 sectors in the European Union.

These interviews were motivated by several factors. Foremost was the desire to gain the perspective of the practitioners directly involved in monitoring implementation or representing one of the parties when problems over implementation arises. This wealth of practical knowledge in my
view adds significantly to the theory building process. Secondly I viewed these interviews as especially crucial given the inconsistent result of past research. The contradictory findings indicated that past studies did not have a comprehensive understanding of all the issues and factors that affect implementation of EU directives. Through these interviews I hoped that a better understand the shortcomings of past research would emerge and new insights not previously explored by studies would be highlighted. And finally, these interviews were motivated by an interest in understanding the relations with and relationship between a strong consolidated supranational organization like the EU and its member states.

The benefits of these interviews were many. Foremost these interviews allowed me to pool the perspective offered by both sides in the dispute process. Given that the motivations for disputes may differ from state to state and between states and the Commission, understanding the rationale of both sides was extremely beneficial to building a comprehensive theory about disputes. Secondly, these interviews allowed me to use expert opinion to develop new explanations for disputes. The interviews highlighted the need to focus more on the individual directive to be implemented. Interviews also emphasized unexplored reasons for disputes such as upcoming elections. And thirdly these interviews were beneficial because they enabled me to theoretically reconcile the seeming inconsistencies of past research by identifying the conditions under which aggregate level variables are more or less likely to impact disputes.

The interviews were based on a questionnaire with both closed and open-ended questions. The questions were divided into three broad categories: (1) the historical record on implementation disputes and dispute resolution (2) the reasons for implementation problems or alternatively the reasons for compliance, and (3) predictions about the future of dispute settlement in the EU.

The results of these interviews form the basis of my theory and empirical analysis. Tables 4.1 and 4.2 summarize the responses to several of the standard questions, separating them based on
the type of respondent. While my interviews included a wide spectrum of questions, the summary focuses primarily on the questions that form the basis of my hypotheses. Please note that the cumulation of the detailed answers provided for the open ended questions are not included here but would be interspersed throughout my theory.

The interviews provided the following details. Foremost, the characteristics of the directive to be implemented play an important role in whether or not a dispute arises over implementation. In short, the likelihood of disputes over implementation varies from directive to directive. The interviews indicated that the characteristics of directives that seemed to be important determinants of disputes include: the requirements of the directives, the costliness of the directive, and the degree of controversy associated with a directive.

Questions 10, 11 and 12, in Table 4.2 show that both country representatives and Commission officials believe that the more technical directives are more likely to lead to disputes. Questions 13 and 14 show that both country representatives and Commission officials believed that the cost of implementation and maintenance has an important influence on the occurrence of dispute. Further question 16 shows that Commission officials and country representative believe that the level of support for a directive at the supranational level was a good predictor of whether disputes would arise. In fact many believed that countries that disapproved of a directive during voting in the EU Council of Ministers are more likely to have disputes about implementation. And finally, most of the respondents did not believe that some EU policy sectors are more prone to disputes than others (Question 15). Many of the respondents emphasized that dissecting and analyzing dispute along sector lines would most likely be a fruitless endeavor.

The responses provide mixed conclusions about the impact domestic institutions have on the likelihood of disputes. As shown by the responses above, practitioners of EU law do not believe

---

54 Appendix A provides details about the interviews conducted and the respondents.
that the domestic institutional variables emphasized by past research have a crucial impact on the likelihood of disputes. According to the experts interviewed, veto players, political parties, and electoral systems on their own do not seem to have a crucial influence on the likelihood of implementation disputes (Question 1, 2, and 4). The only factor that seemed to have a significant impact on disputes is bureaucratic efficiency (Question 3). During the interviews the respondents elaborated that the extent to which domestic institutional factors matter is dependent on the type of directives to be implemented.

With respect to international factors those interviewed believed that international relations did not have a significant influence on disputes (Question 7, 8 and 9). The relative power of member states and the benefits member states receive from the EU were not viewed as crucial determinants of disputes.

In general three key theoretical insights were gained from these interviews: (1) Individual level explanations are very important. That is to say the individual characteristic of directives influences disputes. Two of the specific individual characteristics that were emphasized across several interviews – the degree of complexity of directives (Q 10, 11, and 12); and the degree of controversy associated with/surrounding a directive (Q 16); (ii) aggregate level explanations on their own are not sufficient to understand why disputes occur (Q 1, 2, 4); (ii) aggregate level explanations beyond structural factors (eg-veto players; bureaucratic capacity which has been the emphasis of past research) are also important. Key for many interviewees was the practical issue of time to election in member states and its impact on the likelihood of implementation and a resulting dispute (Q 6). These insights form the basis of the theory and hypotheses generated.
THEORY

Individual Level Characteristics

Directives differ in many ways. Directives differ with respect to the results to be achieved, the level of detail and even the time given for transposition. For some directives the goal is to make only procedural changes to national legislation without impacting the practical operation of the domestic legislature. For others the goal is to make comprehensive changes that are both procedural and practical, to domestic legislation. Directives also differ in the level of detail. Some directives may indicate the results to be achieved but leave to the national authorities the choice of form and method of implementation.

For example, directive 89/662/EEC which outlines health and safety checks to be conducted on animals moving from one member state to the other, specifies the checks that should be conducted but leave to the discretion of each member state the manner in which these checks would be done.55 Others specify both the objectives and clearly delineate the means by which implementation should occur. For example the Council directive 2001/20/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use, not only specifies the scientific goals that should guide the decision to conduct clinical trials on human subject, but also provides very detailed standards and procedures that should be applied when conducting these trials.56

---


Directives also differ in the time to transposition. For some directives the EU gives very short transposition timelines such as 6 months, while for others the EU allows substantially longer periods for implementation such as 2 years. In January 1993 for example the Council approved two directives. The first directive 1993/0001\(^{57}\) related to sampling of soil for experiments, while the second directive 1993/0010\(^{58}\) related to materials made of regenerated cellulose film. In the first case a short implementation period of 6 months was afforded while in the latter case 2 years was provided for the adjustment of policies concerning the production of material related to regenerated cellulose film that would come in contact with foodstuff. In sum, I argue that it is these differences in the content, character, implementation process, and expectations related directives that make directives more or less likely to result in disputes. In what follows I focus on two characteristics of directives: (1) the degree complexity of directives, and (2) the degree of controversy over directives among member states, and specify hypotheses about their likelihood of making disputes over implementation more or less likely.

**Complexity of Directives**

Complex directives usually ask for implementation of very prescriptive, detailed, and technical EU requirements that do not only require the transposition of rules (the recognition of to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use.” [http://eur-lex.europa.eu/Result.do?T1=V1&T2=2001&T3=0020&RechType=RECH_naturel&Submit=Search](http://eur-lex.europa.eu/Result.do?T1=V1&T2=2001&T3=0020&RechType=RECH_naturel&Submit=Search) (Accessed May 2010).


qualification) but may also call for active and expensive steps to be taken for complete implementation (Ciavarini Azzi, 2000, 56). These directives either demand regulatory and practical changes that affect several sectors in a member state or require in-depth/comprehensive changes to the policies and practices in one particular sector or area at the domestic level. For those directives that are broad in scope and require changes across several sectors they require coordination among and between and changes within and across various domestic agencies.

For example the Council directive 91/0689/EEC established rules on the disposal of dangerous wastes including but not limited to toxic, oxidizing, highly flammable, corrosive, and infectious waste. The broad scope of substances covered by this directive required coordination across various government bureaucracies including the agriculture, environment, and security agencies in several member states. Similarly directives that are very detailed and specify comprehensive changes (a comprehensive overhaul) to one policy area requires significant planning, coordination, and effort in implementation. Whichever the reason, higher legal complexity increases the number and depth of both regulatory adjustments and changes in administrative practices and routines at the domestic level.

Now, the more complex the directive in question, the more we should expect problems with the formal transposition as well as the practical application of EU law in the member states. There are several reasons for this expectation. For one, with highly technical directives, some member states that lack expertise and proper guidance may be confused about proper/appropriate interpretation and implementation of directives (Falkner et al 2005). Under these circumstances they are more likely to mis-implement directives which lead to disputes. In addition to confusion,
the scope and depth of technical legislation increases the chances that member states may have varying opinions on how to effectively and efficiently implement parts of or the entire directive. These varying interpretations may lead to cases of alleged mis-application which will result in the initiation of noncompliance proceedings.

Second, transposition of complex directives may be costly and this may contribute to delays or non-transposition. Member states may either incur actual costs when implementing directives or may anticipate economic losses (negative costs) as a result of the implementation of directives. For complex directives these two types of costs tend to be higher. The actual costs of implementation accrue from the resources, expertise, and coordination needed to implement a directive. Because of the high level of technicality in complex directives they tend to require significant dedication of resources and coordination of expertise from many sectors, which increases the opportunity for inefficiencies, and leads to higher costs of transposition and costly delays in transposition. In addition to this, technical directives, especially those that either overhaul an economically important sector in the economy, or those that change the regulations and practices in several sectors, may cause the state to incur additional costs or losses beyond the implementation period which decreases their economic advantage, revenue, and profitability. Whichever the reason for complexity I anticipate that increasing technicality increases the probability of disputes.

H1a: All else equal, the more complex the directive the greater the likelihood of disputes over implementation.

I expect increasingly complex directives to result in both disputes over non-implementation, because of allegations of improper implementation and improper application. This is because complexity as discussed above affects both your ability to implement, the manner in which you implement and the directive.
H1b: All else equal, the more complex the directive the greater the likelihood of disputes because of non-implementation.

H1c: All else equal, the more complex the directive the greater the likelihood of dispute because of alleged improper implementation.

H1d: All else equal, the more complex the directive the greater the likelihood of dispute because of improper application.

Controversy over Directives among Member States

The degree of consensus or opposition among country representatives during the negotiation and bargaining stage at the European Union level significantly influences the likelihood that member states would end up in a dispute over implementation of the directive (Falkner et al 2005). During the legislative making process member state representatives in the European Council and in the European Parliament usually present their position on the policy being negotiated. The negotiation stage at times may be very contentious as each country fights for their interest to be represented within the directive. During these negotiations member states through their representatives usually present their recommendations, suggestions, and oppositions to the proposed directives. Member states may oppose the directive and subsequently recommend adjustments because their country has different policy preferences from the majority.

Variation in preferences between governments in specific cases may be due to several factors including but not limited to ideological or economic reasons. In the case of ideology for example, some member states may be opposed to a directive because it does not complement the political goals of the government in power in their country at the moment. With respect to their economic

---

60 Falkner et al (2005) argues that active opposition is one of the four key reasons for noncompliance. Their discussion of active opposition analyzes the effect political, administrative, and societal opposition has on the decision to engage in noncompliance. Their argument is based only on the discussion of member state experiences in negotiating and implementing six social policy directives. Thus their discussion is only limited to one policy area and a few directives in that policy area.
position, some member states may find certain directives too costly to implement or too costly to maintain over time.

In an effort to gain majority support for a directive the European Council and Parliament may go through several rounds of negotiation and amendments. Eventually though directives are decided on. The decision can be made in one of two ways - through unanimity or majority voting. The Council does not vote in the formal sense of raising hands or stating positions (Westlake 1995, 87). A proposal can be adopted with a single sentence from the Chairperson when he or she knows that there is unanimity in the Council. If the Council is not unanimous, the Chairperson still knows the Member States' positions. If he or she decides that enough Member States are on broad, the proposal is accepted and those opposing or abstaining from the decision can record their views officially. Most of the proposals tabled in the Council are adopted either unanimously or by qualified majority. When the decision rule is unanimity, abstentions are not counted as 'no' votes. This means that decisions can be made with few countries actually voting for the proposal, if none of the countries actively opposes it. The opposite is true for qualified majority voting. Because 62 or more votes are needed to form the winning majority, abstentions have the same effect as 'no' votes in practice.

According to Mattila and Lane (2001) actual voting in the Council is rather rare. According to them, during the period from 1994 to 1998, one or more Council members voted against the majority or abstained from voting in only 16 to 25 percent of the decisions. The relatively small share of contested decisions probably means that Council members do not necessarily want to record their dissent officially. As a consequence, one can assume that the observed number of contested decisions is really a downward biased estimate of the true amount of dissent in the Council.
If member states were unsuccessful in registering their opposition at the supranational level, they may show opposition to a directive during the implementation stage by engaging in opposition through the back door. Member states for example may oppose directives due to the wish to still protect old national patterns (Falkner et al 2005, 6). According to several of the legal representatives interviewed for this project, this was a key reason for opposition. For some countries maintaining the integrity of their domestic law and the founding principles of their society is paramount, to the extent that directives must be translated through and be compatible within the framework of their Constitution in order to implemented. According to experts, when incompatibility with the framework and guiding principles of domestic law exists, disputes over the manner and degree of implementation is more likely. Whichever the reason, directives that faced opposition at the negotiation and EU approval phase is more likely to be the subject of non-compliance disputes.

H2a: All else equal, as opposition to a directive increases among member states the likelihood of a dispute because of implementation problems increases.

I expect controversial directives to result in non-implementation, improper application, or improper implementation. This is because member states may choose to oppose implementation in varying degrees. Some may resist implementation altogether, others may implement according to their own interpretation, and yet others may choose to apply the directive differently from that of their own established criteria. Given this, I hypothesize that:

H2b: All else equal, as opposition to a directive increases among member states the likelihood of a dispute because of non-implementation increases.

H2c: All else equal, as opposition to a directive increases among member states the likelihood of a dispute because of improper-implementation increases.

H2d: All else equal, as opposition to a directive increases among member states the likelihood of a dispute because of improper application increases.
Domestic Political Constraints

As summarized in the literature review above, many of the past studies on EU implementation have emphasized the importance domestic capacity has on the likelihood of directive implementation. The experts I interviewed highlighted the importance of some domestic factors, specifically administrative capacity and elections but downplayed the impact of others such as electoral system and party in power. In this section I (1) revisit some of the hypotheses of past research which argue that domestic political constraints influence noncompliance by employing a new more comprehensive dataset, and (2) go beyond these structural arguments to offer a new domestic explanation for noncompliance previously unexplored by past scholarship.

Some of the institutional constraints explored by extant literature, such as bureaucratic efficiency, have found overwhelming support through empirical analyses. Others, such as veto players, have found mixed support in past studies. To obtain these results past research has tended to use two types of datasets: they have either focused on the absolute number of infringements per member state or policy sector or they have analyzed the likelihood of noncompliance irrespective of whether the infringement proceeding was due to compliance problems with a new or existing directive.

The problem with the first type of data according to Borzel et al (2004) is that it can lead to problems of time trends and structural breaks. The problem with the second type of data is that there is no way to account for the entire universe of compliance failures on all existing EU laws. Given these issues I re-evaluate these institution-based hypotheses using a new dataset that overcomes several of the limitations in past research. The database which my study draws upon comprises the entire universe of potential and actual noncompliance cases over transposition because it only focuses on disputes because of non-implementation of new directives only.
Now, in addition to re-evaluating these arguments using new data, I also analyze the impact impending elections have on the likelihood of noncompliance. Past studies, in emphasizing the impact of domestic institutions have neglected the importance of non-structural constraints. During interviews several experts indicated that factors beyond the institutions of government in member states also tend to influence the likelihood of effective implementation. According to them in focusing on the aggregate level, past research has tended to emphasize institutional constraints as the primary determinant of disputes and noncompliance. During my interviews experts proffered that other aggregate level factors - specifically upcoming elections - also influences implementation. Given this I also develop and test hypotheses related to the impact of impending elections on noncompliance. In what follows I hypothesize about three domestic political factors: veto players, administrative constraints, and national elections.

**Veto Players**

Scholars like Haverland (2000) and Borzel et al (2007) suggest that governments with many veto players have an increased likelihood of noncompliance. This is because with many veto points and coalition partners there is an increased probability directives to be implemented may go against the interest of at least one or a few key actors whose approval and support is needed for implementation. Beyond this, noncompliance may be more likely because governments will not act decisively and efficiently since veto players in large numbers lead to both a lower quality and slower speed of implementation. Coalition politics and partners and structural checks and balances therefore prevent legislatures from implementing supranational laws.

**H3a:** All else equal, as the number of institutional and coalitional veto players increases, the likelihood of disputes over implementation also increases.
H3b: All else equal, as the number of institutional and coalitional veto players increases, the likelihood of disputes over non-implementation also increases.

H3c: All else equal, as the number of institutional and coalitional veto players increases, the likelihood of disputes over improper implementation also increases.

H3d: All else equal, as the number of institutional and coalitional veto players increases, the likelihood of disputes over improper application also increases.

**Administrative Inefficiency**

According to scholars like Laminen and Uusikyla (1998), Pridham (1994), and Mbaye (2001) structural restraints such poverty, government inefficiency, and corruption, tends to increase the likelihood of disputes over implementation. In short these limitations produce conditions in which management of implementation is problematic. States with small public sectors, inefficient bureaucracies, and systematic corruption should produce higher level of noncompliance. In some states administrators may be constrained in implementing EU law by a lack of governmental resources. In other member states they may be constrained by structural inefficiencies in the bureaucracy. And yet in others corruption in the public sector and in the administration can create non-compliance. All of these factors lead to an increased likelihood of noncompliance. I expect inefficiency to negatively impact the likelihood of implementation as well as the proper implementation and application of directives. Thus I hypothesis the following:

H4a: All else equal, as administrative constraints increase the likelihood of disputes concerning implementation also increases.

H4b: All else equal, administrative constraints increase the likelihood of disputes because of non-implementation.

H4c: All else equal, administrative constraints increase the likelihood of disputes because of improper implementation.

H4d: All else equal, administrative constraints increase the likelihood of disputes because of improper application.
Elections

The timing of transposition within the domestic policy cycle may play a crucial role in whether disputes arise concerning compliance and implementation. When adopted by the EU, directives give member states a timeline for implementation of the intended outcome. Occasionally the laws of a member state may already comply with this outcome and the state involved would only be required to keep their laws in place. But more commonly member states are required to make changes to their laws — commonly referred to as transposition - in order for the directive to be implemented correctly. When this is necessary, legislation must usually be introduced in the domestic legislature for government approval. Where the directive falls in the legislative cycle significantly influences whether the member state would transpose the directive or incur a dispute over noncompliance.

Now each member state has its own electoral cycle stretching from the start to the end of the legislative term. Along this continuum of time, the marginal cost of producing additional government bills varies such that the closer the time to the next election the greater the marginal cost of producing additional government bills and vice versa.

< Insert Figure 4.2 >

Figure 4.2 shows the marginal cost of introducing bills in the legislature over time. During the early stages of the legislative term the marginal cost of introducing bills is low and constant, with no significant changes. This can be the case for both beneficial and unfavorable directives. For directives that benefit the domestic community implementation earlier in the electoral cycle allows
more time for the gains from implementation to be realized and appreciated by constituents. This is especially useful for those who are skeptical about the benefits of the directive.

Implementation earlier in the cycle gives skeptics the time needed to monitor and appreciate the profitable impact of the directive and ultimately alter their view about its benefits to themselves and the community. In general the implementation of beneficial directives earlier in the electoral cycle, allows the community to experience and enjoy the benefits from implementation, which increases the likelihood of favorable political gains for the government.

Implementation earlier in the electoral cycle is also politically advantageous when a directive is not beneficial to the domestic community. Some directives cause government to incur significant costs, eliminates a long-standing tradition, or restricts the profitability of economic activity. When directives have such negative impact domestically constituents would be more inclined to blame and punish the government for its implementation. Early implementation increases the chances that constituents would forget about the negative impact of directives and not incorporate them in their voting calculus at election.

However during the later stages of the legislative term as the time to the next election draws near, the marginal cost of introducing bills from the EU steadily increases demonstrating that fewer bills are likely to be introduced the closer to the time of the next election. This is expected to be the same irrespective of the number of veto players in the legislature even in legislatures that a monopolist. Even for monopolists legislature the marginal costs of producing additional laws, cannot be modeled as a remaining constant over time, but are bound to rise as the legislative term progresses.

The rise in marginal costs as elections approach usually results from a number of factors. For one, members may find it politically disadvantageous to support legislation that can be leveraged (used) by the opposition during election campaign to influence the vote of the populous. This is
especially the case when the EU directive has a negative impact or is unfavorable to the domestic community. Secondly closer to election time, members of the legislature may prefer to concentrate on passing/implementing domestic legislation that were based on promises to their constituents or addresses some pressing domestic issue that can influence the election outcome. In other words, legislatures would prefer to pass legislation that originates domestically instead of supranational legislation that originates regionally.

And thirdly, members of the legislature may prefer to concentrate on their re-election campaign rather than work on passing directives, which may not have a positive impact on their ability to gain re-election. Several legal representatives interviewed echoed this sentiment. Some even indicated that legislatures usually stop engaging in normal operations up to six months prior to the next election. According to them, members of the legislature find it more profitable to spend the time leading up to elections campaigning in the domestic community, rather than trying to pass legislation imposed by the supranational organization which may be against the interest of most voters because of costs and restrictions that it may impose on the domestic community.

In sum, in the large majority of political systems pending bills lapse at the end of the session or legislative term. As a result they must be reintroduced all the way back at the start of the next legislative obstacle course (Olson 1980, 350). In the next legislature there is no guarantee that these bills would be the first or earliest to be debated and voted on since they must compete with domestic legislation that reflects the campaign promises of the incoming government. Thus there may be significant delays in the transposition of directives and this delay because of elections may result in disputes.

H5a: All else equal, the closer the time of the next election in a member state from the date a directive went into effect the greater the likelihood of a noncompliance dispute.
Based on the discussion above, I expect disputes to arise because of non-implementation since as elections draw near states would neglect to enact or approve legislation. I do not expect a significant number of disputes to arise because of improper implementation or improper application. Since I anticipate that member states would simply not attempt to implement the opportunity for concerns about how this implementation occurred and whether the directive once implemented is being appropriately applied and adhered to in the domestic would not even arise.

H5b: All else equal, the closer the time of the next election in a member state from the date a directive went into effect the greater the likelihood of dispute because of non-implementation.

H5c: All else equal, the closer the time of the next election in a member state from the date a directive went into effect the less the likelihood of dispute because of improper implementation.

H5d: All else equal, the closer the time of the next election in a member state from the date a directive went into effect the less the likelihood of dispute because of improper application.

RESEARCH DESIGN AND SUMMARY STATISTICS

The unit of analysis for this study is the individual directive to be implemented per member state in the EU. Analysis of this unit necessitated that I build an original dataset containing the universe of directives approved by the EU for implementation by member states. Data on each directive to be implemented was obtained from (1) the Annual Reports on Monitoring the Application of Community Law for the period 1983 to 1996 and (2) the Official Journal of the European Union. Now, this dataset and my analysis focuses on directives approved for implementation during the years 1983 to 1996. The start date of 1983 reflects the first year that the
Commission began publishing details about the directives to be implemented and the status of implementation in each member state in its Annual Report. The spatial domain included the 12 member states that were members of the EU at some point during the 14 years of analysis. They are – Belgium, Germany, Greece, Italy, Ireland, United Kingdom, France, Portugal, Spain, Denmark, Luxembourg, and Netherlands.

To build this dataset I first identify all the directives with an implementation deadline in the European Union between 1983 and 1996. This forms the universe of possible disputes. I then identified which directives were effectively implemented by member states and which were not. For the directives that had implementation problems I then identified and recorded whether a dispute over implementation was initiated. That is to say I identified whether a reasoned opinion was sent to the member state.\textsuperscript{61} For those cases where a dispute was initiated I then recorded the reason for dispute as identified in the Annual Reports. Based on the Annual Report, there were three possible reasons for disputes – (1) directive implementation was not notified, (2) directives are not properly implemented, and (3) directives were not properly applied. After identifying the reason for dispute I then identified the stage reached in the dispute settlement process for each of these disputes. That is to say I identify whether the case was settled after a reasoned opinion or whether the case was not resolved and was referred to the Court of Justice. Beyond this I further recorded whether a judgment was made by the Court and the date of the judgment. In total, my dataset contains 1989 directives. For each directive I record the activities associated with each member state as a separate line of data. My empirical results present the findings associated with 19345 observations.

\textsuperscript{61} For a thorough explanation of why a reasoned opinion signals the decision to initiate and pursue a dispute in the EU please refer to the discussion in figure 4.1 above. Recall that the first stage – Article 116 is the information seeking stage where the Commission is gathering information and/or allowing the member state to implement the directive. The second stage – the reasoned opinion signals the initiation of disputes when it has been decided that the member state does not want to comply with the EU.
Dependent Variable

There are four dependent variables: (1) The first dependent variable identifies whether or not a dispute because of an implementation problem occurred. This variable is a dummy variable, where “1” equals dispute and “0” equals no dispute. A dispute is recorded once there is an implementation problem irrespective of whether this dispute occurred because of non-implementation, improper implementation or improper application. As mentioned earlier a dispute occurs when a reasoned opinion is sent to a member state. Data for this variable comes from (i) the Annual Reports on Monitoring the Application of Community Law for the period 1983 to 1996 and (ii) the Official Journal of the European Union

I then categorized these disputes based on their classification by the European Union. According to the EU a dispute can fall into 1 of 3 categories – non-implementation; improper implementation; improper application. This allows me to develop three additional dependent variables:

(2) **Non-implementation** – This variable identifies whether a dispute occurred because of non-notification of a directive to be implemented. This variable is a dummy variable where “1” equals non-implementation and “0” equals no dispute. Data for this variable comes from (i) the Annual Reports on Monitoring the Application of Community Law for the period 1983 to 1996 and (ii) the Official Journal of the European Union.

(3) **Improper implementation** – This variable identifies whether a dispute occurred because a directive was not properly implemented into law. In this case an attempt was made to implement but the implementation did not adequately conform to EU requirements. This variable is a dummy variable where “1” equals improper implementation and “0” equals no dispute. Data for this
variable comes from (i) the Annual Reports on Monitoring the Application of Community Law for the period 1983 to 1996 and (ii) the Official Journal of the European Union.

(4) **Improper application** - This variable identifies whether a dispute occurred because a directive was not properly applied in the domestic arena once it has been implemented into law. This variable is a dummy variable where “1” equals improper application and “0” equals no dispute. Data for this variable comes from (i) the Annual Reports on Monitoring the Application of Community Law for the period 1983 to 1996 and (ii) the Official Journal of the European Union.

### Summary Statistics

< Insert Figure 4.3 >

Figure 4.3 shows the trend of disputes initiated during the period 1983 to 1996. The time trend shows a steady rise in the number of disputes from 1983 to 1990. This is followed by a small decrease in 1991 and then a rapid rise in disputes from 1992 to 1994. Several factors account for this sharp rise in the number of disputes in the early 1990s. For one both the Commission and the ECJ pursued a more aggressive enforcement policy in the early 1990s in order to ensure the effective implementation of the Internal Market Program (Tallberg 1999). Second, the Southern enlargement in the first half of the 1980s (Greece 1981; Spain 1986; Portugal 1986) led to a significant increase in infringement proceedings opened once the “period of grace”, which the Commission grants to new member states, had elapsed (Borzel, Hofmann, and Sprungk, 2004).
Figure 4.4 shows the individual rankings of each member state with respect to the percentage of noncompliance cases that arose. As can be seen Denmark and the Netherlands incurred the lowest percentage of disputes cases respectively, while Italy, Portugal and Greece incurred the highest percentage of disputes during the time period. A careful review of the dataset shows that the percentage of disputes incurred by these three latter countries does not vary significantly across the time period. In fact on average these countries tended to rank extremely high in disputes initiated from year to year. Of significance is the large number of disputes incurred by Portugal. Portugal only entered the EU in 1986 (three years after 1983 the year the dataset started for all other member states except Spain and Portugal) but had the third highest percentage of disputes among the 12 member states. In general, the pattern of dispute seen in Figure 4.4 reflects the insights obtained during my interviews. As expected some of the member states that were smaller in size tended to be more efficient at implementing –ie- Denmark. Also, as expected based on the responses from my interviews, regional economic leaders like the United Kingdom and Germany tend to have consistently strong implementation records.

Figure 4.5 separates the disputes by types and shows the trend over time. Most of the disputes arose because of non-implementation. These types of disputes account for about 77% of all disputes, while disputes because of improper implementation and application accounted for approximately 6% and 17% respectively. Non-implementation disputes clearly dominate the dispute
settlement process. This points to the fact that when a dispute arises it is probably because member states either made a deliberate decision not to implement a directive or member states were simply incapable of transposing the directive. Of note is the fact that the time trend associated with non-implementation disputes (in Figure 4.5) replicates closely the dispute trend associated with total disputes as shown in Figure 4.3 indicating that disputes because of non-implementation may be the driving force behind the noncompliance we see in the EU.

**Methodology**

The goal of this chapter is to assess why some directives to be implemented become disputes in the European Union. Since the dependent variable is dichotomous (dispute or no dispute/ compliance or noncompliance) logit is used.

**Independent Variables**

**Complexity:**

Scholars of compliance have argued and shown that for highly detailed and complex directives, which are claimed to be transposed slowly the EU grants more time for transposition than fairly straightforward directives (Ciavarini Azzi, 2000, 56; Mastenbroek, 2003, 376; Kaeding, 2005, 10). The deadline reflects the complexity of the directive in terms of the work that needs to be done by the member state. Thus, the greater the degree of complexity of a directive the greater the time given for transposition. Given this, I measure complexity using the proxy, deadline for transposition. I expect longer deadlines to increase the probability of non-compliance dispute.

Now in the absolute sense, more time usually makes it easier to implement. However with respect to the EU the deadline given is relative to the amount of time needed to implement. So in
fact longer times indicates that anticipation that more time is needed to implement and by extension the probability of more problems with complex implementation.

Now I acknowledge that this is an imperfect measure of complexity and a much more direct measure that creates a scale of complexity by going through the requirements of each directive is the best and most accurate measure. However given limited resources and the magnitude of the data collected thus far for the dependent variable (and the magnitude of directives passed) this direct measure of complexity would form part of a future project.

Controversy:

I expect directives that faced more opposition during the negotiation stage at the supranational level to be more likely to result in noncompliance disputes. To measure this variable I use the Council vote that decides whether the final proposal is adopted or rejected. Now depending on the decision-making procedure, the Council may vote several times during the process that leads to an adoption of a proposal (refer to decision making methods above – maybe summarize them in one line). For example in the cooperation and co-decision procedures, the Council may vote on a common position before the proposal the European Parliament for further deliberation. The empirical data in this analysis includes only one vote for each decision. This is the last possible vote – that is, the vote in which the Council decides whether the final proposal is adopted or rejected.

Now the dataset also includes all possible roll calls within the first pillar, whether the decision in question needs to be decided by simple majority, qualified majority or unanimously. The reports by the Council Secretariat do not classify cases according to the voting rule, and separating the cases on the basis of the information given in the report is very difficult. Unfortunately this makes it impossible to differentiate between abstentions that occurred when the decision rule was unanimity and when qualified majority voting was used. As mentioned earlier abstentions under the
under the unanimity rule do not block the decision making whereas abstentions count effectively as ‘no’ votes under qualified majority voting. Thus by subtracting the votes for a directive from the roll call I obtain a value for the abstention to a directive and thus a measure of the degree of opposition to the directive.

Data on the voting record of the Council of Minister’s decisions is collected from the annexes of the Annual Review of the Council’s Work compiled by the General Secretariat of the Council of the European Union. These annexes list all decisions made by the Council and, if voting occurred, the countries that opposed the decisions and the countries that abstained from voting. The reports from 1993 onwards are available for public use. The reports from 1993 to 1998 are not published but they are public records available by request from the Council Secretariat. Given this data limitation my analysis would focus on the voting pattern in the EU Council from 1993 to 1996 only.

Veto Players:

To measure veto players I use Tsebelis’s scale of veto points to test my argument (Tsebelis 2001). This has been the standard measure used by many past scholars. I expect disputes to be more likely at higher veto points.

Administrative Inefficiency:

To measure bureaucratic inefficiency, I adjust a measure used by Mbaye (2001). This measure is an index that captures bureaucratic efficacy using data in “Civil Service in the Europe of the Fifteen: Current Situation and Prospects”, by Astrid et al 1996. The measure employs three factors equally weighted at 1. These three factors that are incorporated into the measure capture (1) whether there is a lack of structural efficiency in bureaucratic performance, (2) whether there is a
lack of opportunity for permanent tenure of bureaucrats and (3) whether the bureaucracy fails to engage in competitive employment practices to attract the best applicants. A member state is given a value of 1 for each factor in which it has a known deficiency such that a member state that has a poor track record in two areas is given a value of 2. Among the countries analyzed Denmark and the Netherlands have the lowest level of inefficiency, while the UK, Spain, and Italy have the highest level of inefficiency.

Elections:

Here I measured the time to elections from the date the directive went into effect in the EU. For this measure, I calculated the number of days to the next general election from the date the directive went into effect. Data for the date of effect were obtained from the Annual Report on Compliance of Member States, and dates for the election in member states were obtained from the Caravan (2000).

Control Variables

**Gross domestic Product (GDP)** - is a proxy for economic power (Moravcsik 1998, Steinberg 2002). It accounts for the wealth of a country and thus its sensitivity towards material costs of financial penalties or the withholding of EU subsidies. All else equal, as GDP increases I expect an increase in the likelihood of infringements because member states are better able to cover material costs of a dispute. GDP data comes from the World Bank, World Development Indicators. I measure GDP in thousands constant 2000 US dollars. I lag the measures by one year since I anticipate that changes in the previous year will influence decision making in the coming year.
EU vote – Scholars such as Borzel et al 2004 argue that politically powerful member states who have more votes in the EU Council of Ministers can more frequently be expected to refrain from effectively implementing “inconvenient rules.” Given this I expect that more politically powerful states would be more likely to have disputes over implementation. Data for voting power in the EU comes from the website www.europa.com.

GDP per capita – this variable accounts for the relative wealth of a country. It controls for the hypothesis that wealthier countries are more developed and more effective and thus able to transpose more. I expect that all else equal, the higher the GDP per capita the less the likelihood of disputes concerning implementation. GDP per capita data comes from the World Bank, World Development Indicators. I measure GDP per capita in thousands constant 2000 US dollars. I lag the measures by one year since I anticipate that changes in the previous year will influence decision making in the coming year.

EU Support – Lampinen and Uusikyla (1998) assert that it is easier to implement EU law in countries where public support for the EU is high. They argue that “since politicians often make policy choices that promote re-election, it can be assumed that the lower the overall mass support for the country’s membership in the EU, the higher the probability that a member state will face difficulties in implementing European policies (Lampinen and Uusikyla, 1998, 265). Given this I argue that all else equal, the greater the support for EU membership the less the likelihood of disputes related to implementation. Data on public support for the EU (in %) come from Eurobarometer surveys. The data is a yearly figure for member states and are found in the summary Eurobarometer file titled European Communities Studies, 1970-1992 (Inglehart et al 1994). For the
additional years of 1993-1996 data is obtained from the Inter-University Consortium for Political and Social Research.  

RESULTS AND DISCUSSION

< Insert Table 4.3 >

Table 4.3 presents the results for all disputes initiated irrespective of the type of dispute. The first model presents the results for the main independent variables only. The second model includes the control variables. The third model account for the time period prior to the inception of the Maastricht treaty. The fourth model accounts for the post-Maastricht era. I separated the pre and post Maastricht treaty era to account for the change toward increase policy control by the EU in the post-Maastricht era. It is important to note that the hypotheses related to “opposition” is only measured for the post-Maastricht era because the EU only provided data on votes in the EU Council from 1993 onwards. These results allow me to empirically analyze the following hypotheses: H1a; H2a; H3a; H4a; and H5a. As can be seen in Table 4.3 the first variable complexity is positive and significant at conventional levels across all models. These results confirm that the more complex the directive the greater the likelihood of a dispute. This result provides support for H1a.

With respect to opposition to a directive the results are positive but insignificant. The positive sign indicates that the results are in the expected direction. It tells us that the greater the opposition and controversy surrounding a directive in the EU Council, the greater the likelihood

---

63 Data was retrieved from the following website: [http://www.icpsr.umich.edu/icpsrweb/ICPSR/ssvd/index.jsp](http://www.icpsr.umich.edu/icpsrweb/ICPSR/ssvd/index.jsp) (Accessed May 2010).
problems with implementation would follow. The statistical insignificant of the result however means that this conclusion is not supported at conventional levels. This insignificance could be due to the limited number of years for which this variable was analyzed (3 years). The three year time period in the post-Maastricht era may not provide sufficient variation to allow for robust conclusions concerning the relationship between opposition during negotiation and noncompliance during implementation. While I am encouraged by the positive relationship reported in my results, future expansions of my dataset beyond 1996 and subsequent analysis using this expanded dataset may be able to provide more robust and conclusive findings that bear out the true effect that controversy and opposition has on the likelihood of disputes.

With respect to elections the results are in the expected direction and significant at the 99% level across all models. The results across all models are negative which means that as the distance between the date a directive went into effect and the date of the next election increases, the likelihood of noncompliance disputes decreases. From these results we can therefore conclude that the closer the time to the next election from the date the directive went into effect, the greater the likelihood of a dispute. This result supports the opinions concerning elections that were emphasized by both country representatives and commission officials who viewed the timing of elections as a key determinant of whether disputes arise. Overall, this finding provides support for H5a.

The variable related to veto players does not obtain empirical support in any of the models above. In fact quite contrary to my hypothesis, the variable is negative and insignificant across all models. This indicates that increasing checks and balances in the domestic arena do not pose significant problems to implementation and compliance. This is not surprising given the mixed results obtained in past research in which some scholars like Mbaye (2001) and Falkner et al (2006) similarly find that increasing veto players had a negative influence on the occurrence of noncompliance.
With respect to bureaucratic inefficiency, the results across all models are positive and significant. This indicates that at higher levels of inefficiency dispute over implementation is more likely. From this it can be concluded that states which restrict opportunities for the most qualified candidates and states that lack structural efficiency in bureaucratic problems are more likely to incur compliance problems. This result is supported across past studies and across the interviews conducted with Commission employees and country representatives.

Among the control variables the results for GDP, EU vote (political power), and EU support are in the expected direction and statistically significant. This means that the greater the economic strength of a member state the greater the likelihood that a dispute would arise concerning implementation. With respect to political power, the significant results indicate that member states that have greater voting power has an increased likelihood of incurring implementation disputes. And the variable for EU support demonstrates that favorable public opinion of the EU is associated with a decreased likelihood of dispute.

< Insert Table 4.4 through 4.6 >

Table’s 4.4 through 4.6 provide the results based on the type of dispute. In Table 4.4 I present the probability of dispute due to non-implementation. In Table 4.5 I report the probability of noncompliance disputes because of improper implementation. And in Table 4.6 I report the probability of disputes because of improper application of EU directives. The table 4.4 provides the results for the following hypotheses: H1b, H2b, H3b, H4b, and H5b. In table 4.5 I provide results for H1c, H2c, H3c, H4c, and H5c. In table 4.6 I provide results for H1d, H2d, H3d, H4d and H5d.
In general Table 4.4 shows that the results obtained for disputes because of non-implementation mirrors the general pattern reported in Table 4.3. The results for disputes because of improper implementation (Table 4.5) and improper application (Table 4.6) both share a similar pattern but do not mirror the results associated with total disputes that are reported in Table 4.3. One key reason for this difference could be the fact that most disputes are generally associated with issues related to non-implementation, as can be seen in Figure 4.5.

With respect to complexity the results in Tables 4.4, 4.5, and 4.6 shows that directives that are more difficult to implement are more likely to lead to all three types of disputes. The results are statistically significant at the 99% confidence level across all three types of dispute cases and across all models. The positive results obtained for all three types of disputes indicate that when member states face a difficult or technical directive they may choose to deliberately not implement it, they may attempt to implement it but may be unsuccessful because of the unanticipated complexity, or they may choose to implement it based on their own interpretation and this interpretation may differ from that of the EU. When any of these events occur, the results show that disputes are more likely. These results provide support for H1b; H1c; and H1d.

Similar to the results in Table 4.3, the results related to the degree of opposition surrounding a directive in the EU is insignificant across all the types of disputes. I anticipated that opposition to directives at the supranational level would increase the likelihood disputes because of non-implementation, improper implementation and improper application. Tables 4.4, 4.5, and 4.6 show that across all dispute types there is a positive but insignificant relationship with opposition to a directive. As I mentioned earlier when discussing the results for opposition in Table 4.3, this could be due to the limited time frame used in the analysis. The European Union only approved public access to the vote’s case for each directive in the EU Council in 1993. Given that the temporal domain of my dataset ends in 1996 I only captured voting in the EU for 3 years. Future analysis of
this variable would use an expanded dataset that goes beyond 1996 to capture more years in the post-Maastricht era.

Now with respect to elections, I find support for the hypothesis related to non-implementation only. I do not find support for the hypotheses related to improper implementation and improper application. In table 4.4, the results show that directives that have to be implemented closer to election time are more likely to be associated with non-implementation disputes. Here the results are significant at the 99% confidence level. The results are insignificant for disputes that occur because of improper implementation or improper application. Now recall from Figure 4.5 that non-implementation accounts for about 77% of all disputes, which may explain why when it is used as a dependent variable it captures a trend similar to that presented in Table 4.3, where total disputes are used as the dependent variable. This may not be the case for dispute cases that occur because of improper implementation and improper application because these cases may be more sporadic. In general this result indicates that around election time government tend to be less willing or capable of enacting directives and it is this non-implementation that leads to disputes.

With respect to veto players the results are mixed. On the one hand I find that increasing veto players increase the likelihood of disputes because of improper implementation. This result is significant in the full model and the pre-Maastricht model only and not in the post-Maastricht era model specification. On the other hand I find that increasing veto players does not increase the likelihood of disputes because of non-implementation or improper application. The findings might suggest that member states will attempt to implement a directive irrespective of the number of veto players that may be involved in the process. How this implementation occurs however is affected by the number of veto players, such that more veto players may result in implementation that reflects and assuage the preferences of some of the veto players rather than the recommendations of the European Union.
The result for bureaucratic inefficiency is strongest for disputes related to non-implementation (see Table 4.4). Here the results are positive and statistically significant at the 99% confidence level. Thus as expected I conclude that more inefficient bureaucracies are more likely to incur disputes due to allegations of non-implementation. This provides support for H4b. In the case of disputes because of improper implementation (Table 4.5), the results are statistically significant in the full model and in the pre-Maastricht era, but not significant in the post-Maastricht treaty era. This result provides partial support for H4c. And with dispute cases because of improper application, the results are insignificant across all model specifications (Table 4.6). One the one hand these results seem to be suggesting that administrative capacity primarily affects a member state’s ability to implement but does not affect their ability to apply an EU directive that has been successfully implemented. It could also be that we do not observe cases of improper application because those directives that might have had the propensity to be mis-applied because of administrative inefficiency get caught-up in disputes related to implementation problems in the first place and as such never get the opportunity to be misapplied.

**Predicted Probabilities**

Three particular factors: complexity, elections, and bureaucratic efficiency received consistent support throughout my empirical analysis. The substantive impact of the results presented above can be seen through the predicted probabilities below.

< Insert Table 4.7 >
The results presented in table 4.3 and 4.4 demonstrate that directives which are given more time for implementation because of its complexity, are more likely to lead to disputes. The substantive impact of this finding can be seen in Table 4.7. When the time to transposition is 6 months, usually because the directive to be implemented is simple and straightforward, the probability of dispute is only 5.71%. When time given for transposition doubles to 12 months, the likelihood of dispute increases to 6.9%. And when time given increases to 24 months, usually because the directive requires significant changes to be made in order for implementation to occur, then the likelihood of disputes jump to 10.54%.

With respect to upcoming elections the results presented in Table 4.3 and 4.6 above demonstrate that directives that have an implementation deadline close to election time are more prone to be involved in disputes. The substantive impact of this finding can be seen in Table 4.7. As can be seen when the time to election decreases from 24 to 12 months the likelihood of dispute increases by 2.17%. When the time to election decreases even further from 12 to 6 months the probability of dispute increases by 4.24% from 10.51% to 14.75%.

< Insert Table 4.8 >

The results presented in Table 4.5 and 4.6 demonstrate that more efficient bureaucracies are less likely to have disputes over implementation of directives. The substantive impact of this finding can be seen in Table 4.8. Member states that are efficient represented by “1”, have only a 5.36% chance of having a dispute over implementation. However for member states with less efficient bureaucracies, represented by “2”, the probability of dispute is higher at 11.14%. And finally for member states with inefficient bureaucracies the likelihood of dispute increases by 4.26% from 11.14% to 15.66%.
CONCLUSION

In this chapter I analyzed the conditions under which disputes over implementation of directives are more likely to occur in the EU. Utilizing an original dataset that includes the universe of directives to be implemented by member states during the period 1983-1996 I test existing arguments related to noncompliance but more importantly introduce new arguments based on interviews I conducted at the European Union in Brussels, Belgium. These interviews highlighted the effect directive attributes have on the likelihood of implementation problems. Based on these interviews I focused on two attributes of a directive: the degree of technicality and the degree of controversy among member states concerning the directive. I argued that complex and controversial directives are more likely to lead to disputes over implementation.

With respect to existing explanation I re-evaluate the effect domestic constraints have on the decision to implement. Here I theorized that at higher levels of bureaucratic inefficiency directives are more likely to result in disputes over implementation. Focusing on veto players I also hypothesized that increasing number of veto players makes it even more difficult to implement complex and controversial directives. Beyond that I argued that the timing of elections also has a significant influence on disputes such that disputes are more likely when the deadline for implementation of a directive is close to the time of the next general election. In my empirical analysis I find support for the hypotheses related to complexity, elections, and bureaucratic inefficiency.

This study departed from previous studies on the EU by identifying and accounting for the characteristics of the directives. In so doing the study highlights the need for a more nuanced conception of the rationale for disputes. Beyond the broad focus on member state’s strategic
decision based on structural constraints, the findings offered by this chapter indicates that more attention should be paid to the types of directives that are to be implemented in member states.

Several implications can be drawn from this study. For one, despite the fact that the focus of much compliance literature has been the EU governments’ control over the Commission and the Court, and the effectiveness of supranational institutions the process depicted here still has unstructured indications bearing on the compliance debate. The results lend partial support to both the management and enforcement schools of thought. On the one hand the extensive support obtained for the bureaucratic efficiency variable indicates that member states may not have significant control over which directives result in implementation disputes and which do not since disputes are influenced by the member state’s capability to implement. While, on the other hand, the support provided by the election variable indicates that government make a deliberate decision not to implement when they believe it will jeopardize their survival. While this latter finding provides support for the enforcement school, the rationale that underscores the relationship between elections and disputes is different from that of past research. Here the decision to allow a dispute is influenced by domestic political survival not by international power politics.

Beyond that, this study presents important findings that could be useful to other RIAs contemplating integration similar to that of the EU. Foremost, the findings tell us that RIAs that intend to increase its policy influence over member states should pay special attention to the timing of their directives/policies. Timing of policies may pose problems for member states especially around election time and this may lead to unnecessary and unwanted disputes. The implications for other RIAs of the importance of political constraints are also crucial. Based on the results RIAs seeking to invest in expansion and increased integration should pay particular attention to the bureaucracies of their member states with the goal of imploring members to bolster the efficiency of their bureaucracy. Furthermore this study calls attention to the need for RIAs (not just the EU but
all RIAs) to create clear and concise directives that can be streamlined into the domestic structure of member states without significant difficulties and delays.

This chapter has only presented a first cut at a comprehensive quantitative explanation for noncompliance in directive implementation. From this chapter and its findings, numerous avenues for future expansions and research projects emerge. Of paramount importance is the expansion of the dataset beyond 1996. This expansion would allow me to present a more complete understanding of implementation in the post-Maastricht era. Since the increase in control afforded by the Maastricht Treaty increased the breadth and depth of directives to be implemented I anticipate new and previously unexplored trends would be identified using this expanded dataset. In addition, this expansion would allow me to incorporate the implementation record of the newer member states in the EU. It would be interesting to see if these member states conform to the general trends and patterns that have been found among the old members or if a new and unique trend emerges with respect to directive implementation for these newer member states.

Beyond this, the findings suggest going a step further and creating specific theories for the three types of noncompliance disputes that evolve in the EU. This study developed hypotheses related to transposition problems in general and then tested them across the three different types of transposition problems that can occur. The results obtained from a basic separation of noncompliance cases by type (table 4.6) suggests that the theory developed best explains problems related to non-implementation. This is not surprising given that a majority of the cases that go before the EU is due to non-implementation. However this suggests that future research should theorize more specifically about the distinguishing characteristics that make disputes over improper implementation and disputes over improper application more likely. These two types of disputes account for less than 30% of all dispute cases and as a result their impact seems to be dwarfed by
the dispute cases associated with non-implementation. Given this a more careful theoretical and empirical analysis that specifically focuses on improper application and implementation is warranted.

And finally future research endeavors should seek to provide a more comprehensive account of the dispute settlement process. This chapter provided an introductory analysis of the reasons for the occurrence of disputes in the EU. Future extensions would follow the trajectory of a dispute from initiation to termination or judgment to decipher the reasons for continuation and/or termination of disputes in the EU. Here by focusing on each individual directive and I would follow cases from initiation to termination to determine if the factors that influenced initiation also influenced the termination of the dispute as well.
REFERENCES FOR CHAPTER 4


Table 4.1: Questions about Aggregate level explanations

<table>
<thead>
<tr>
<th>Questions</th>
<th>Country Representatives</th>
<th>Commission Officials</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>1. Is the number of veto players one of the most crucial</td>
<td>0</td>
<td>22</td>
<td>4</td>
</tr>
<tr>
<td>determinants of disputes over implementation?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Is the type of electoral system a significant determinant of</td>
<td>0</td>
<td>22</td>
<td>0</td>
</tr>
<tr>
<td>whether implementation disputes are likely to occur?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Does the degree of domestic bureaucratic efficiency influence the</td>
<td>15</td>
<td>7</td>
<td>15</td>
</tr>
<tr>
<td>likelihood of disputes?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Does the party in power influence the likelihood of disputes?</td>
<td>3</td>
<td>19</td>
<td>5</td>
</tr>
<tr>
<td>5. Is the likelihood of disputes over implementation correlated with the</td>
<td>8</td>
<td>14</td>
<td>12</td>
</tr>
<tr>
<td>level of domestic support for the EU?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. What other domestic factors influence the likelihood of disputes?</td>
<td>15</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>I have provided the most popular response to this question.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) National Elections</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Is the likelihood of implementation problems influenced by the relative</td>
<td>6</td>
<td>16</td>
<td>3</td>
</tr>
<tr>
<td>power of a member state?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Are more powerful member states more likely to have disputes over</td>
<td>6</td>
<td>16</td>
<td>3</td>
</tr>
<tr>
<td>implementation?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Is there a correlation between EU funding to member states and disputes</td>
<td>0</td>
<td>22</td>
<td>3</td>
</tr>
<tr>
<td>related to implementation of EU policies?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 4.2: Questions about Directive Attributes

<table>
<thead>
<tr>
<th>Questions</th>
<th>Country Representatives</th>
<th>Commission Officials</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>10. On average are more technical directives more difficult to implement?</td>
<td>19</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>11. On average are more technical directives implemented at a slower rate?</td>
<td>20</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>12. Are more technical directives more likely to (be the subject of disputes over implementation) lead to disputes concerning implementation?</td>
<td>20</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>13. Are directives that are more costly to implementation more likely to lead to disputes over implementation? *</td>
<td>12</td>
<td>10</td>
<td>N/A</td>
</tr>
<tr>
<td>14. Are directives that are more costly to maintain more likely to be the subject of disputes over implementation?</td>
<td>8</td>
<td>14</td>
<td>N/A</td>
</tr>
<tr>
<td>15. Are some EU policy sectors systematically more likely to incur disputes over implementation? **</td>
<td>9</td>
<td>13</td>
<td>N/A</td>
</tr>
<tr>
<td>16. Are directives which were opposed during negotiation and voting in the EU Council more likely to be the subject of implementation disputes?</td>
<td>16</td>
<td>6</td>
<td>10</td>
</tr>
</tbody>
</table>

*Commission employees have limited knowledge of costs.

**The Commission officials interviewed represented specific sectors in the European Union, and as such it was not possible for them to compare performance across sectors given their extensive/expert knowledge of one specific sector. Among those who answered yes, the two most popular responses were: Taxation and the environment respectively.
Table 4.3: Reasons for the Occurrence of Disputes over Implementation in the EU, 1983-1996

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Complexity</td>
<td>.003 ** (.0013)</td>
<td>.001** (.0005)</td>
<td>.003** (.0014)</td>
<td>.001** (.0005)</td>
</tr>
<tr>
<td>Controversy</td>
<td></td>
<td></td>
<td></td>
<td>2.474 (2.078)</td>
</tr>
<tr>
<td>Elections</td>
<td>-.0002*** (.00006)</td>
<td>-.0003*** (.00007)</td>
<td>-.0002 *** (.00007)</td>
<td>-.0004*** (.00008)</td>
</tr>
<tr>
<td>Veto players</td>
<td>-6.273 (5.905)</td>
<td>-6.891 (5.983)</td>
<td>-6.271 (6.101)</td>
<td>-7.320 (5.521)</td>
</tr>
<tr>
<td>Bureaucratic inefficiency</td>
<td>.255 *** (.025)</td>
<td>.267 *** (.0274)</td>
<td>.277 *** (.025)</td>
<td>.239 *** (.024)</td>
</tr>
<tr>
<td>Control Variables</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GDP</td>
<td></td>
<td>1.468 *** (.427)</td>
<td>1.599 *** (.325)</td>
<td>1.444 *** (.357)</td>
</tr>
<tr>
<td>Political Power</td>
<td></td>
<td>.0099 * (.006)</td>
<td>.008 ** (.003)</td>
<td>.021 *** (.007)</td>
</tr>
<tr>
<td>GDP per capita</td>
<td></td>
<td>1.390 (959)</td>
<td>1.382 (902)</td>
<td>1.391 (956)</td>
</tr>
<tr>
<td>EU support</td>
<td></td>
<td>-.021 ** (.009)</td>
<td>-.020 ** (.008)</td>
<td>-.0006 *** (.0002)</td>
</tr>
</tbody>
</table>

N  19345  19345  17286  2059

Robust Standard Errors in parentheses
* <.10  ** <.05  *** < .001
Table 4.4: Reasons for Disputes over Non-Implementation in the EU, 1983-1996

<table>
<thead>
<tr>
<th>Variable</th>
<th>Full Model (Model 1)</th>
<th>1983-1992 (Model 2)</th>
<th>1993-1996 (Model 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complexity</td>
<td>.003*** (.001)</td>
<td>.004*** (.001)</td>
<td>.001*** (.0002)</td>
</tr>
<tr>
<td>Opposition</td>
<td></td>
<td></td>
<td>2.690 (2.574)</td>
</tr>
<tr>
<td>Elections</td>
<td>-.0005*** (.00001)</td>
<td>-.0002 *** (.00009)</td>
<td>-.0006 *** (.00008)</td>
</tr>
<tr>
<td>Veto players</td>
<td>-5.772 (4.93)</td>
<td>-5.04 (4.23)</td>
<td>-6.301 (5.03)</td>
</tr>
<tr>
<td>Bureaucratic</td>
<td>.298*** (.034)</td>
<td>.231 *** (.037)</td>
<td>.5403 *** (.133)</td>
</tr>
<tr>
<td>efficiency</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GDP</td>
<td>1.14 ** (.512)</td>
<td>1.31 ** (.560)</td>
<td>.949 * (.573)</td>
</tr>
<tr>
<td>Political Power</td>
<td>.0113*** (.002)</td>
<td>.0117** (.005)</td>
<td>.0118** (.005)</td>
</tr>
<tr>
<td>GDP per capita</td>
<td>1.759 (1.103)</td>
<td>1.736 (1.084)</td>
<td>1.225 (.963)</td>
</tr>
<tr>
<td>EU support</td>
<td>1.672 *** (.532)</td>
<td>1.601*** (.534)</td>
<td>1.719 * (.890)</td>
</tr>
</tbody>
</table>

N 19345 17286 2059

Robust Standard Errors in parentheses
* <.10  ** <.05  *** < .001
Table 4.5: Reasons for Disputes over Improper implementation in the EU, 1983-1996

<table>
<thead>
<tr>
<th>Variable</th>
<th>Full Model (Model 1)</th>
<th>1983-1992 (Model 2)</th>
<th>1993-1996 (Model 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complexity</td>
<td>.0001*** (.00001)</td>
<td>.0001 *** (.00005)</td>
<td>.002 *** (.0003)</td>
</tr>
<tr>
<td>Opposition</td>
<td></td>
<td></td>
<td>4.04 (4.11)</td>
</tr>
<tr>
<td>Elections</td>
<td>-.0007 (.002)</td>
<td>-.0003 (.001)</td>
<td>-.004 (.003)</td>
</tr>
<tr>
<td>Veto players</td>
<td>1.11* (.672)</td>
<td>1.104 ** (.549)</td>
<td>1.47 (.980)</td>
</tr>
<tr>
<td>Bureaucratic efficiency</td>
<td>.130* (.086)</td>
<td>.165 * (.0995)</td>
<td>.1009 (.0526)</td>
</tr>
<tr>
<td>GDP</td>
<td>3.21 (2.26)</td>
<td>3.38 (2.35)</td>
<td>2.75 (2.01)</td>
</tr>
<tr>
<td>Political Power</td>
<td>.0513 ** (.0179)</td>
<td>.065 ** (.0202)</td>
<td>.0191 (.0201)</td>
</tr>
<tr>
<td>GDP per capita</td>
<td>3.072 (2.970)</td>
<td>2.991 (2.881)</td>
<td>1.902 (1.645)</td>
</tr>
<tr>
<td>EU support</td>
<td>1.271* (.713)</td>
<td>.753 * (.451)</td>
<td>1.001 (.809)</td>
</tr>
</tbody>
</table>

N = 19345 17286 2059

Robust Standard Errors in parentheses

* <.10  ** < .05  *** < .001
Table 4.6: Reasons for Disputes over Improper –application in the EU, 1983-1996

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Model 1)</td>
<td>(Model 2)</td>
<td>(Model 3)</td>
</tr>
<tr>
<td>Complexity</td>
<td>.0001 ***</td>
<td>.0003 ***</td>
<td>.0027 ***</td>
</tr>
<tr>
<td></td>
<td>(.00003)</td>
<td>(.00002)</td>
<td>(.0006)</td>
</tr>
<tr>
<td>Opposition</td>
<td></td>
<td>3.09</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2.88)</td>
<td></td>
</tr>
<tr>
<td>Elections</td>
<td>-.0004</td>
<td>-.0004</td>
<td>-.001</td>
</tr>
<tr>
<td></td>
<td>(.0031)</td>
<td>(.0003)</td>
<td>(.004)</td>
</tr>
<tr>
<td>Veto players</td>
<td>-.813</td>
<td>-.801</td>
<td>-1.826</td>
</tr>
<tr>
<td></td>
<td>(.789)</td>
<td>(.782)</td>
<td>(1.601)</td>
</tr>
<tr>
<td>Bureaucratic efficiency</td>
<td>.098</td>
<td>.1644</td>
<td>.2236</td>
</tr>
<tr>
<td></td>
<td>(.091)</td>
<td>(.106)</td>
<td>(.163)</td>
</tr>
<tr>
<td>GDP</td>
<td>2.11**</td>
<td>2.10 **</td>
<td>2.07</td>
</tr>
<tr>
<td></td>
<td>(1.003)</td>
<td>(1.001)</td>
<td>(1.63)</td>
</tr>
<tr>
<td>Political Power</td>
<td>.115 **</td>
<td>.1399</td>
<td>.0192</td>
</tr>
<tr>
<td></td>
<td>(.0579)</td>
<td>(.0881)</td>
<td>(.0404)</td>
</tr>
<tr>
<td>GDP per capita</td>
<td>1.084</td>
<td>1.077</td>
<td>1.18</td>
</tr>
<tr>
<td></td>
<td>(.732)</td>
<td>(.731)</td>
<td>(1.01)</td>
</tr>
<tr>
<td>EU support</td>
<td>.947</td>
<td>.802</td>
<td>.389</td>
</tr>
<tr>
<td></td>
<td>(.617)</td>
<td>(.625)</td>
<td>(.337)</td>
</tr>
</tbody>
</table>

N: 19345  17286  2059
Robust Standard Errors in parentheses
* < .10   ** < .05   *** < .001
Table 4.7: The Impact Time for transposition and Time to election has on the likelihood of dispute

<table>
<thead>
<tr>
<th>Time</th>
<th>Effect time for transposition has on predicted probability of dispute</th>
<th>Impact time to next election from date directive went into effect has on predicted probability of dispute</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 months</td>
<td>5.71%</td>
<td>14.75%</td>
</tr>
<tr>
<td>12 months</td>
<td>6.90%</td>
<td>10.51%</td>
</tr>
<tr>
<td>24 months</td>
<td>10.54%</td>
<td>8.34%</td>
</tr>
</tbody>
</table>

Note: All other variables are held at median values. Estimated using Table 4.1, model (2).
Table 4.8: Impact Bureaucratic Efficiency has on the likelihood of dispute in the EU

<table>
<thead>
<tr>
<th>Bureaucratic Efficiency</th>
<th>Predicted Probability that dispute will occur</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>15.66%</td>
</tr>
<tr>
<td>2</td>
<td>11.14%</td>
</tr>
<tr>
<td>1</td>
<td>5.36%</td>
</tr>
</tbody>
</table>

Note: All other variables are held at median values. Estimated using Table 4.1, model (2).
Figure 4.1: The Infringement Proceedings and Its Different Stages

Informal Phase

Suspected Infringements
Complaint; Commission’s own initiatives; petitions; parliamentary questions

Formal Letter

Member conforms; Commission is satisfied with explanation
Member does not respond; does not conform; Commission not satisfied with response

DISPUTE

Reasoned Opinion

Member conforms
Member does not conform
Refer to the ECJ

Judicial Phase

Member complies
Member does not comply
Commission requests financial penalties

ECJ rules in favor of Commission
ECJ rules in favor of member state
Figure 4.2: Marginal Cost of Bills over Legislative Cycle

Number of bills passed as legislative session progresses

Source: Doring and Hallerberg, 2004, 145.
Figure 4.3: Total number of disputes over implementation in the EU between 1983 – 1996
In order to compare the member states, which differ in their years of membership, I standardized their scores. First I divided the number of Reasoned Opinions of the different member states by their years of membership. Second, I added up these average scores and made the sum equal 100 percent. Then I calculated the percentage of the average scores.
Figure 4.5: Total number of disputes over non-implementation (nmn), improper implementation (npi) and improper application (npa) in the EU between 1983 – 1996
Chapter 5

Disputes in Regional Integration Agreements: What do we know and where do we go from here

The goal of this dissertation was to explore why actors in RIAs choose to engage in noncompliance by allowing disputes to be arbitrated through the regional DSM. To do this I analyze the distinct pattern of disputes in three RIAs – NAFTA, the AC, and the EU. I examined how disputes evolve in each institution, theorized about the factors that influence this decision in each RIA, and utilized original datasets to analyze their effect on noncompliance. In this final chapter, I summarize the major findings of the dissertation and give thoughts about future research.

Dispute Initiation in NAFTA Chapter 19

In Chapter 2 I focused on disputes in NAFTA by analyzing the decision-making of industries and firms by contemplating the use of Chapter 19 for dispute settlement. As explained in Chapter 2 one of the most important factors that influence an industry’s decision to initiate a dispute is its perception about the legal strength of its case. This perception is influenced by the two main criteria established by NAFTA for review of AD and CVD decisions: (1) whether the agency that imposed the AD/CVD ruling went outside of its legal boundaries and authority in making an affirmative decision, or (2) whether there were errors in facts or calculations when that positive AD/CVD decision was made. With respect to overextension of legal boundaries, I argued that industries consider whether domestic political pressures outside of the scope of domestic law related to trade practices, such as political contributions and electoral support, unfairly influenced the AD/CVD ruling and weakened the legitimacy of the decision. Given this, I argued industries are
more likely to dispute an AD/CVD ruling made against them through Chapter 19 when they believe that politically relevant industries and political contributions influenced the initial ruling.

With respect to errors in fact and calculation, I argued that actors are more likely to pursue disputes when they believe that the method of calculation used or the number of other countries included in the AD/CVD decision influenced an unfavorable ruling against them. Through the use of a heckman-probit specification I find that questions about the legality of AD/CVD rulings as well as concerns about the calculation of a ruling both influence industries and firms to pursue disputes via NAFTA.

**Political Incentives and the Decision to Pursue Disputes in the Andean Community**

In Chapter 3 I ask: Why do member states of the AC allow some noncompliance rulings to go before the ACJ for final review but not others? In focusing on the AC I shifted my analysis away from dispute settlement in a Free Trade Area to focus on dispute settlement in a Customs Union. I also moved away from focusing on behavior of non-state actors to focus on the decision states. And in analyzing the AC I assessed the constraints that influence the decision of leaders in developing countries.

I showed that one of the most important determinants of a state’s decision to pursue a dispute through the ACJ is the political benefits this decision provides. At the broadest level, I asserted that leaders desire both domestic stability and re-election in the next political cycle. As a result the decision concerning disputes will mirror these incentives. Given this, member states I posit, will selectively choose to allow the ACJ to rule on cases where the domestic political cost of independently eliminating the trade protection on their own is significantly high. In other words, the executive will allow the ACJ to rule on a case rather than voluntarily comply with the
Secretariat’s orders, when voluntary compliance clearly puts their political survival and their ability to maintain political stability in jeopardy. I argued that the rationale for this decision is influenced by (1) the domestic political incentives leaders have to renege on international commitment for electoral gains, and (2) the institutional constraints on the leader.

With respect to incentives I posited that the domestic political incentive to defy a ruling by the Andean Secretariat is greatest the closer the time to the next election. With respect to institutional constraints I developed two hypotheses. I first argued that leaders will be most likely to take cases before the ACJ the greater the degree of veto player restraint on the executive. Then focusing specifically on ideological divisions in the legislative branch I argued that the higher the degree of polarization in the domestic legislature the greater the likelihood of dispute.

To empirically analyze these hypotheses I utilized logit and found support for the arguments related to elections and polarization. I found that leaders are more likely to defy the Andean Secretariat and allow a case to go before the ACJ the closer the time to the next election and the greater the degree of polarization in the legislature.

**The Rationale for Disputes over Directive Implementation in the European Union**

In Chapter 4 I shifted my analysis away from the AC to the EU. Here instead of analyzing the decision rationale of developing countries I assess the motivation by developed countries to not comply with supranational obligations. By focusing on the EU I also shifted my analysis to focus on disputes in the most integrated regional agreement. And by studying the EU I shed some light on how disputes emerge in the regional arrangement that is viewed as an archetype for many RIAs that are contemplating expansion and further integration.
In this chapter I analyzed the conditions under which disputes over implementation of directives are more likely to occur in the EU. Utilizing an original dataset that includes the universe of directives to be implemented by member states during the period 1983-1996 I tested existing arguments related to noncompliance but more importantly introduce new arguments based on interviews I conducted at the European Union in Brussels, Belgium. Based on these interviews I developed new explanations that focus on the attributes of directives. I argued that complex and controversial directives are more likely to lead to disputes over implementation.

With respect to existing explanations I re-evaluated the effect domestic constraints have on the decision to implement. Here I theorized that at higher levels of bureaucratic inefficiency directives are more likely to result in disputes over implementation. Focusing on veto players I also hypothesized that increasing number of veto players makes it even more difficult to implement complex and controversial directives. Beyond that I argued that the timing of elections also has a significant influence on disputes such that disputes are more likely when the deadline for implementation of a directive is close to the time of the next general election. In my empirical analysis I found support for the hypotheses related to complexity, elections, and bureaucratic inefficiency.

This study departed from previous studies on the EU by identifying and accounting for the characteristics of the directives. In so doing the study highlighted the need for a more nuanced conception of the rationale for disputes. Beyond the broad focus on member states strategic decision based on structural constraints, the findings offered by this chapter indicated that more attention should be paid to the types of directives that are to be implemented in member states.
General Findings

I started this dissertation with the question: What leads to disputes in RIAs? From the arguments and findings throughout this dissertation, it is clear that no single theory can be used to fully explain why disputes arise across all RIAs. Each RIA has a structure, a set of obligations, and incentive for dispute settlement that is unique to that regional arrangement. At the same time the group of countries and actors comprising each RIA also has a set of attributes, expectations, and constraints that presents unique challenges to cooperation in each regional agreement. In general though, it can be concluded that the arguments and findings provided in each chapter of the dissertation illustrate that three types of factors influences disputes across RIAs. These three factors are: domestic politics, technical/legal issues, and macroeconomic considerations. Table 5.1 shows how the each of these factors play a key role in structuring decision-making about dispute and noncompliance.

With respect to the domestic politics, the argument and findings throughout this dissertation document an important link between domestic politics and the international political economy. Across all chapters we see that irrespective of the type of regional arrangement, domestic constraints do play some role in the decision making concerning noncompliance and dispute in particular and international affairs in general.

Chapter's 3 and 4 shows that a leader's domestic political environment influences whether or not she will comply with international expectations or engage in noncompliance and allow a regional dispute to evolve. In both chapters the variables related to elections and veto points have the same effect. In the first instance the results show that increasing veto points does not increase the likelihood of noncompliance in the AC and the EU. This suggests that irrespective of the level of development of member states and irrespective of the type of regional arrangement, domestic
checks and balances do not seem to cause implementation problems. In the case of elections on the other hand the results show that in both the AC and the EU upcoming elections is associated with increased likelihood of disputes because of noncompliance. Apart from elections, the results in chapter 3 and 4 show that other domestic political factors also influence noncompliance. In chapter 3 it is the degree of polarization, and in chapter 4 it is bureaucratic capacity.

This overall finding of a relationship between domestic politics and regional compliance disputes extends the work of scholars like Putnam 1988; Iida 1993; Milner and Rosendorff 1996 who have long maintained that domestic politics does influence the likelihood of international cooperation. According to them domestic legislative and societal constraints decreases the impact of international negotiation and the likelihood that a state would enter into an international economic cooperation. My dissertation extends these contributions by showing how domestic politics continues to influence cooperation after an economic agreement has been achieved.

In Chapter 2 I expose an endogenous relationship between domestic politics and international institutions, where on the one hand domestic politics influences the decision to utilize international institutions while on the other hand international institutions influence domestic political behavior. Similar to the cases of the AC and the EU, in Chapter 2 I show how a government’s desire to satisfy politically relevant sectors in society influences whether industries will appeal to NAFTA for review of an unfavorable ruling.

As seen in table 5.1 technical/legal issues were also key influences on the decision to engage in noncompliance and allow for dispute initiation. In the case of NAFTA the high level of legalism of the dispute settlement mechanism definitely dictates and plays a key role in the decision to pursue disagreements through NAFTA. As can be seen from the results in Chapter 2 the institutionalized process for dispute settlement dictates which rulings industries bring before Chapter 19 for review.
Here two specific legal issues play a deciding role: the otherwise not in accordance with the law standard of review, and the substantial evidence standard of review. In the case of the former we observe that actors will employ unconventional methods of determining legality (domestic political preferences of an industry) in the absence of direct observation. In the case of the latter criteria we observe that technicality in that both the method of calculation used to make AD/CVD rulings and the number of countries investigated in the initial AD/CVD petition are key factors in the dispute decision. This focus on the validity of decision making in the first stage by actors contemplating dispute in the second stage points to the systematic nature of dispute decisions and implies that the observance of dispute under NAFTA and in other RIAs that have in common a highly legalized system is not random but well thought out.

Chapter 4 which focuses on the EU further exemplifies the effect of legality by drawing out the impact the legal attributes of a directive has on noncompliance. Chapter 4 shows that actors incorporate information about the technical attributes and expectations of directives in their decision rationale concerning implementation and compliance. In particular complex and technical directives usually leads to decreased likelihood of implementation and compliance because of significant demands placed on those charged with responsibility for implementing.

Based on the cases of both NAFTA and the EU we observe that actors draw on the legal/technical character of a decision as well as on the manner in which the decision was made in determining how to respond. This is an important contribution given that past research has tended not to focus on the decisions or cases themselves but has tended to analyze the character of the actor making that decision. In general this conclusion demonstrates that international legal rules matter and that concerns about legality does have a major impact on which cases are brought up for review and which are not.
Apart from domestic politics and legality, the findings across each RIA also points to the impact macroeconomic factors have on noncompliance and dispute. These economic variables were included as controls in each analysis. The findings show that three macroeconomic factors played an influential role in the decision to dispute. They are: gross domestic product, import dependence and market share. These findings lend support to the economic scholarship which has emphasized that macroeconomic factors do have a significant effect on cooperation in the international arena.

**Broad Implications**

These overall findings offer some insights into two groups of studies that relate international economic relations to domestic politics. The first set of studies analyzes the impact domestic forces have on RIA membership, while the second group of studies analyzes the domestic sources of foreign policy. In what follows I first exemplify the relationship and implications my findings have for studies on RIA membership and then I discuss the relationship between my arguments and those associated with domestic theories of foreign policy.

*The effect of domestic forces on RIA membership and subsequent compliance*

Recent research analyzing the effect domestic constraints have on membership in RIAs has produced mixed results. On the one hand studies focusing on the domestic commitment problem associated with the free movement of capital across sectors have argued that government would be more likely to enter into regional agreements to insulate themselves from domestic pressures (Maggi and Rodriguez-Clare 1998; 2007). On the other hand studies focusing on veto players suggest that countries with more veto points are less likely to forge international agreements because of domestic groups with diverse preferences and the ability to block policy initiatives (Mansfield, Milner and
Pevehouse 2004; Milner 1997; Milner and Rosendorff 1996). In general these studies show that domestic constraints influence the decision to enter into an agreement. My dissertation extends these contributions by showing how domestic politics continues to influence cooperation after an economic agreement has been achieved. The findings of my dissertation however reverse the implications that could be drawn from these two groups of studies concerning compliance once an actor has joined an agreement.

Specifically, I demonstrate that domestic constraints related to upcoming elections and domestic industry preferences (especially in the case of NAFTA) increases the likelihood that concerns over noncompliance and disputes over rules and regulations would arise once an agreement has gone into effect. My findings offer empirical evidence that reverses the implications that we would have drawn from these earlier studies which argue that on negotiation and membership in regional agreements. From these earlier studies we could have concluded that domestic politics would play a minimal role in a government’s ability to comply with an ongoing agreement since the government entered into the agreement to restrict the influence the domestic audience has on policy making concerning liberalization and globalization. The findings of my study show just the opposite. I show domestic constraints (outside of veto points) continue to influence actors by limiting their ability and willingness to comply regional expectations. Thus membership in an agreement does not free actors from domestic societal constraints as implied by past research. The implication therefore is that while societal constraints increase an actor's willingness to enter into an agreement it then entraps him/her by decreasing his/her ability to comply with all of the expectations and rulings associated with that regional arrangement. In sum, domestic constraints act as a double-edged sword in that it increases the likelihood of initial commitment to international institutional cooperation but then restricts the degree to which actors can actually fulfill that obligation to comply and cooperate once they are part of that international agreement.

208
With respect to the second group of studies which focus on the effect of veto points a similar conclusion can be drawn. Recent research suggests that countries with more veto players are less likely to cooperate. From this finding it can be inferred that if these countries become part of a regional agreement the diversity of domestic groups with the ability to block policy initiatives would decrease their ability to comply with regional obligations and increase compliance problems. My research however finds the opposite. I find that increasing veto points does not decrease but actually increases the likelihood of compliance, although this result is not significant. This result implies that veto points acts as a double-edged sword in that it decreases the likelihood of initial commitment to institutional cooperation but then increases the likelihood of cooperation if the member-state succeeds in

**Domestic Sources of Foreign Policy Decision**

Current domestic explanations for foreign policy have focused on the impact domestic politics have on cooperation in numerous forms of multilateral alliances including but not limited to military, economic, and human rights alliances (Evans, Jacobson, and Putnam 1993; Putnam 1988; Iida 1993). These studies have shown that domestic sources of foreign policy can be divided into two subcategories, according to the source of domestic policy. First, “society-centered” domestic theories stress pressure from domestic social groups through legislatures, interest groups, elections and public opinion. Second, “state-centered” domestic theories locate the sources of foreign policy behavior within the administrative and decision-making apparatus of the executive branch of the state.

In general the findings of my study related to regional economic integration coincide with and lends support to these studies on the domestic sources of foreign policy. My findings show that elements of both the society-centered and the state-centered explanation. Society centered
explanations are evident in the decision to dispute in NAFTA and in the decision to engage in noncompliance in both the AC and the EU. In NAFTA the political importance of an industry definitely influences the dispute decision at the regional level. In addition to industry relevance across all three RIAs we observe that appeasing societal interest closer to election time also impacts the disputes.

Beyond society centered explanations, the results also illustrate that like in the case of multilateral alliances foreign policy decisions concerning regional cooperation is also impacted by state-centered explanation. In the case of the EU the institutionalized administrative apparatus has a consistently significant effect on implementation and the emergence of disputes. While, in the case of the Andean Community we see that the characteristics of legislative polarization, a function of their legislative structure, influences disputes. In general the results show that the same broad sets of factors that seem to affect foreign policy decisions in military, human rights and other alliances also affects decision making concerning regional economic arrangements.

**The Broader Implications Concerning International Cooperation**

Apart from documenting a relationship between domestic politics and international organizations, this dissertation offers important lessons concerning international cooperation in general and noncompliance in particular. The data across all chapters show that across RIAs cooperation and compliance with international rules is the norm. The EU boasts a 92% implementation rate while the AC has an equally impressive 82% compliance rate. This indicates that actors do have a real interest in meeting and adhering to the obligations of international agreements. This provides support to those who purport that international institutions for the most part are effective in inducing and maintaining cooperation.
At the same time though, the findings obtained suggest a broader implication which stems from the fact that actors engage in noncompliance in rare circumstances. In general the analysis shows that when actors decide to defy international expectations it is for clear, systematic, specific, well-timed, and non-random reasons. This indicates that actors think and behave in a rational manner when it comes to international compliance or dispute. In the AC for example leaders’ decision concerning noncompliance is based on a cost-benefit analysis where the costs and benefits are related to the political environment. Where the political costs are high and benefits minimal leaders opt to defy international expectations and take disputes before the ACJ for final review.

This systematic behavior on the part of actors makes the analysis of these rare instances of noncompliance even more crucial to understanding how full cooperation can be achieved in these international institutions. In this regard such a conclusion should be incorporated into future research on how these disputes are ultimately resolved.

**Future Research**

At the broad level this dissertation showed an important and previously uncovered link between elections and regional noncompliance. Across all chapters upcoming elections increased the likelihood of disputes.\(^{64}\) This result demonstrated that political survival and the resulting need to satisfy domestic constituents dominates the decision of leaders in RIAs. Future research would do well to further dissect and disentangle the impact upcoming elections have on RIAs in general.

With respect to NAFTA, the analysis of dispute initiation in Chapter 19 provides numerous avenues for future research. It would be interesting to expand beyond NAFTA Chapter 19 to analyze the rationale for dispute in other NAFTA dispute resolution systems. Doing this would

---

\(^{64}\) In the case of NAFTA, while the results were positive it was not significant. This could be due to the crude measure for elections used for NAFTA member states.
allow me to determine whether the decisions to pursue disputes in other specialized NAFTA Chapters are motivated by the same political and economic issues as under NAFTA Chapter 19. Of particular interest would be a comparison between disputes in Chapter 19 and Chapter 20. This is because while Chapter 19 deals with appeals from industries and industry groups, Chapter 20 arbitrates complaints from the three member states. Thus, comparing state and non-state behavior within the same RIA would further our understanding of how disputes evolve and the extent to which political and economic motivations dominate decision making of different actors.

And secondly, expanding this research agenda to analyze not just the decision to initiate disputes but the outcomes of disputes would be very useful. Such a comprehensive research agenda would allow me to determine whether the variables initially thought to impact the decision to commence dispute proceedings are also related to favorable Chapter 19 rulings.

Beyond this, the analysis associated with disputes under NAFTA Chapter 19 suggests that future research should cast a broader net to capture and account for cross-border domestic factors that may have a crucial influence on the decision concerning compliance or dispute. Under NAFTA it is not domestic politics in one’s own country but rather domestic politics in a counterpart member state that influences the decision to pursue disputes. Previous studies like Putnam (1988), Milner and Rosendorff (1996), and Milner and Rosendorff (1997) have tended to restrict their analysis to the effect one’s own domestic political environment has on international cooperation. On its own, this is an important finding since it provides the basic rationale and motivation for future research to explore how domestic politics in other nation-states influence international compliance and cooperation.

The results related to the AC also provided numerous additional avenues for future research. For one, these results could help construct more accurate models of leaders’ decisions when it
comes to the use of international arbitration to settle disagreements. This chapter provides a preliminary answer to the question of trade dispute pursuit at the regional level. A more comprehensive analysis of executive rationale may be derived by analyzing executive decision concerning disputes in other RIAs. Of particular interest would be a comparison with RIAs that have much more clearly delineated standards for review.

And secondly, expanding this research agenda to analyze not just the decision to initiate disputes but the outcomes of disputes would be very useful. Such a comprehensive research agenda would allow scholars to determine whether the variables initially thought to impact the decision to commence dispute proceedings are the ones that lead to successful and favorable dispute outcomes.

This dissertation provided the first comprehensive study on the pursuit of disputes in both NAFTA Chapter 19 and the AC. For both cases I primarily focused on aggregate level factors. For example in NAFTA I analyzed the effect of politically relevant industries while in the AC I evaluate the impact of polarization. While insightful this type of analysis suffers from the same limitations as past EU studies which only focused on country level factors. In future research related to NAFTA Chapter 19 and the AC I would dissect the universe of possible and actual disputes to account for the characteristics of cases and policies that make them more or less likely to lead to disputes.

Beyond NAFTA and the AC this dissertation provides significant opportunities for future research concerning the EU. Of paramount importance for future research is the expansion of the EU dataset beyond 1996. This expansion would allow me to present a more comprehensive understanding of implementation in the post-Maastricht era. Since the increase in control afforded by the Maastricht Treaty increased the breadth and depth of directives to be implemented I anticipate new and previously unexplored trends would be identified using this expanded dataset. In addition, this expansion would allow me to incorporate the implementation record of the newer member states in the EU. It would be interesting to see if these member states conform to the
general trends and patterns that have been found among the old members or if a new and unique trend emerges with respect to directive implementation for these newer member states.

Beyond this, the findings on the EU suggest going a step further and creating specific theories for the three types of noncompliance disputes that evolve in the EU. This study developed hypotheses related to transposition problems in general and then tested them across the three different types of transposition problems that can occur. The results obtained from a basic separation of noncompliance cases by type (Table 4.6) suggests that the theory developed best explains problems related to non-implementation. This is not surprising given that a majority of the cases that go before the EU is due to non-implementation. However this suggests that future research theorize more specifically about the distinguishing characteristics that make disputes over improper implementation and disputes over improper application more likely. These two types of disputes account for less than 30% of all dispute cases and as a result their impact seems to be dwarfed by the dispute cases associated with non-implementation. Given this a more careful theoretical and empirical analysis that specifically focuses on improper application and implementation is warranted.

Furthermore in future research on the EU I will continue to disaggregate the impact directive attributes have on implementation. I will create a more direct measure of complexity by ranking the EU requirements and expectations of each directive to be implemented. I will also develop a more comprehensive measure of opposition by incorporating the opposition to a directive among domestic elites and constituents as an important part of a revised indicator. Beyond this in future research I will create a measure to capture the actual costs of implementation in order to make projections about the likelihood that directives would be implemented. In my interviews with Commission officials and legal experts the cost of implementation was highlighted as a key reason for noncompliance. A measure that captures the costs of directives would allow me to analyze
whether or not officials and experts are correct in their opinion that cost matters.

Finally, it is my intention in future research to utilize the findings of this dissertation to further dissect the rationale for disputes in each of the RIAs analyzed. The initial analysis in this dissertation shows that the decision to dispute is tied up in both domestic obligation and international expectations. In future research I hope to further disentangle the reasons for noncompliance by taking a more careful look at the actual cases that evolve into disputes. It is my hope that interviews with regional practitioners and legal experts in these organizations shed additional light on dispute activities. In addition to this it is my goal in future research to extend this analysis beyond these three arrangements to evaluate disputes in other RIAs such as ASEAN, SADC and MERCUSOR.
REFERENCES FOR CHAPTER 5


TABLE 5.1: Factors that influence disputes across RIAs

<table>
<thead>
<tr>
<th>Factors that influence disputes</th>
<th>Main findings</th>
</tr>
</thead>
</table>
| Domestic Factors              | Domestic political incentives and institutional constraints influences the decision to comply  
(1) State-centered domestic factors:  
(a) Elections  
(b) Polarization  
(c) Bureaucratic efficiency  
(2) Society-centered domestic explanations  
(a) Industry size  
(b) Industry PAC contribution |
| Legal/technical factors       | (3) Standard of review used to evaluate complaints influences the decision to dispute rulings:  
(a) criteria used to make initial ruling  
(b) evidence used to make initiate ruling  
(4) Technical attributes and legal requirements of the directive influences dispute over compliance  
(b) Complexity of directive |
| Macroeconomic factors         | Macroeconomic conditions influences noncompliance and subsequent disputes  
(c) Gross Domestic Product  
(d) Import dependence  
(e) Economic control of disputed market |
APPENDIX

DETAILS OF INTERVIEWS CONDUCTED IN BELGIUM

To assist in developing theoretical explanations for disputes in the European Union I conducted in-person interviews in Belgium during the fall of 2009.

I conducted interviews with two groups:

(1) Employees of the European Commission

(2) Legal Representatives from member states.

EMPLOYEES OF THE EUROPEAN COMMISSION

In sum I interviewed 15 Commission employees who worked in 8 of the policy sectors over which the EU Commission has jurisdiction. Those interviewed were directly involved in either developing directives, monitoring implementation and general compliance with EU laws or working with member states and the ECJ to resolve disputes that arise because of noncompliance. All of those interviewed were decision makers. Some of them were involved in developing or revising the wording of directives; some travelled to member states to meet with government representatives concerning proper implementation and application of EU law and to observe the practice of EU law; and some served as liaisons between the Commission and the ECJ.

LEGAL REPRESENTATIVES FROM MEMBER STATES

I interviewed 22 legal representatives from 19 member states to the EU. All member states have legal representatives who serve as part of their delegation to the EU. These legal representatives are lawyers who have expertise in both the laws of the EU as well as the laws of their specific member state. They work on behalf of and with their government to guide the overall implementation of EU laws and to represent their government before the Commission or the ECJ when issues of compliance and application arise.
SAMPLING TECHNIQUE

I utilized snowball sampling to refine my instrument. For the initial set of employees and representatives interviewed (the first 5 employees and the first 5 legal representatives from member states), I used an instrument that I developed based on the factors that I believed were either intuitively related to the occurrence of disputes in the EU or would allow me to identify new explanations for disputes and dispute settlement that I previously did not consider. These interviews enabled me to refine my questions while still allowing the interviewee to offer unique explanations for compliance problems.
QUESTIONS TO COUNTRY REPRESENTATIVES USED IN INITIAL INTERVIEWS:

(All questions were open-ended and respondents were allowed to go in as much depth as they deemed necessary to adequately answer the questions. It was my intention to tape all interviews. However anonymity was a crucial concern for my respondents and as a result I was granted the interviews on the condition that I would not tape the responses. During interviews the responses were typed.)

1. Do you think infringement by member states is intentional or unintentional?
   - If intentional why?
   - If unintentional briefly explain what uncontrollable factors limit member states willingness to comply with EU law?

2. Generally, what types of factors, issues, or constraints tend to cause your member state to violate EU law or have problems implementing EU law?

3. Based on your experience, do domestic or international factors most influence violations or implementation problems?
   - If domestic factors, respondent identifies and discusses the top three issues
   - If international factors, respondent identifies and discusses the top three issues
   - If both, respondent identifies and discusses the top three issues

4. Respondents who focused on domestic factors in previous question were then asked: In your view are these domestic factors related to the political climate in your country, the economic climate in your country or the societal interests in your country?

5. Respondents who focused more on international factors in previous section were then asked: In your opinion

6. A member-state can infringe upon existing EU law or fail to properly implement and apply new EU laws. Which of these do you think poses the greatest noncompliance problem for member states? Why?

7. Are there different factors that motivate non-implementation and mis-implementation of directives? Explain.
8. Once a member state receives a letter of reasoned opinion, why based on your experience as a country representative, do you think some countries do not rectify the problem, but instead allows it to go before the Court of Justice? Explain.

9. Based on your experience, does domestic politics (veto players; the judiciary; lobbying) influence a member state’s decision to allow some reasoned opinions to be taken to the Court of Justice for ruling?
   ○ If yes, please indicate what domestic political factors are influential.

10. Based on your experience, does international politics influence a member state’s decision to allow some reasoned opinions to be taken to the Court of Justice for ruling?
    ○ If yes, please indicate what international political factors are influential.

11. Based on your experience, in what way does economics (domestic and international economic factors) influence a member state’s decision to allow some reasoned opinions to be taken to the Court of Justice for ruling?
    ○ If yes, please indicate what economic factors are influential.

12. Focusing on national implementation only, which sector has the most difficulty complying with EU laws?

13. Do you think the European Commission can do more to increase compliance with laws? Please explain?

14. Do you think that the member state you represent(ed) is doing enough to ensure that they comply with EU laws? Please explain.

15. What steps have your country taken in the recent past to ensure better compliance?
QUESTIONS TO COMMISSION EMPLOYEES USED IN INITIAL INTERVIEWS:

(All questions were open-ended and respondents were allowed to go in as much depth as they deemed necessary to adequately answer the questions. It was my intention to tape all interviews. However anonymity was a crucial concern for my respondents and as a result I was granted the interviews on the condition that I would not tape the responses. During interviews the responses were typed.)

1. What department in the European Commission do you work for?

2. What are some of your key responsibilities and duties?

3. Do you believe that your responsibilities allow you to be actively involved in either the directive development, directive implementation or directive enforcement process?

4. Based on your experience which member states (member countries) are the most common violators of European Union trade laws? Why do you think these member states are common violators?

5. Please outline the procedure or process used by the European Commission to determine whether a member state is violating trade laws?

6. Does this process vary based on the country being investigated or the policy being investigated? If so please explain?

7. How often is this process reviewed and updated? In what ways has the process been updated or improved in the last few years?

8. Is it common for investigations of potential violations to evolve into official trade disputes? In your view what is the ratio of investigations that become disputes?

9. Do you think infringement by member states is intentional or unintentional?
   a. If intentional why?
   b. If unintentional briefly explain what uncontrollable factors limit member states willingness/or ability to comply with EU law?

10. Generally, what types of factors, issues, or constraints tend to cause violations of EU law?

11. Based on your experience, do domestic or international factors most influence violations or implementation problems?
If domestic factors, respondent identifies and discusses the top three issues
If international factors, respondent identifies and discusses the top three issues
If both, respondent identifies and discusses the top three issues

12. Respondents who focused on domestic factors in previous question were then asked: In your view are these domestic factors related to the political climate in a country, the economic climate in a country or the societal interests in a country?

13. Respondents who focused more on international factors in previous section were then asked: In your opinion are these factors related to relative economic power in the EU, relative voting power in the EU, or reflect ongoing strife between the member state and the EU?

14. A member-state can infringe upon existing EU law or fail to properly implement and apply new EU laws. Which of these do you think poses the greatest noncompliance problem for member states? Why?

15. Are there different factors that motivate non-implementation and mis-implementation of directives? Explain.

16. In your expert opinion do you think the EU demands too much, too little or just enough from member states with respect to the directives that they must implement and the practices that they must adhere too?

17. In your opinion:
   a. Which types of EU directives are easy to implement?
   b. Which require some investment on the part of most member states?
   c. And which require significant investment on the part of member states?

18. What types of investments does the Commission assume member states have generally made in order to adequately implement laws?

19. Once a member state receives a letter of reasoned opinion, why based on your experience as a country representative, do you think some countries do not rectify the problem, but instead allows it to go before the Court of Justice? Explain.
20. Based on your experience, does domestic politics (veto players; the judiciary; lobbying) influence a member state’s decision to allow some reasoned opinions to be taken to the Court of Justice for ruling?
   a. If yes, please indicate what domestic political factors are influential.

21. Based on your experience, does international politics influence a member state’s decision to allow some reasoned opinions to be taken to the Court of Justice for ruling?
   a. If yes, please indicate what international political factors are influential.

22. Based on your experience, in what way does economics (domestic and international economic factors) influence a member state’s decision to allow some reasoned opinions to be taken to the Court of Justice for ruling?
   o If yes, please indicate what economic factors are influential.

23. What tactics does the European Commission use to encourage compliance with EU laws?

24. In your view, have the means used to encourage compliance been effective? If yes, why are they effective? If not, what can be done to increase effectiveness?
Refined Interview Questions to Country Representatives

1. Do you think infringement by member states is intentional or unintentional?
   o If intentional why?
   o If unintentional briefly explain what uncontrollable factors limit member states willingness to comply with EU law?

2. Domestically do you think domestic political or economic factors most influence the compliance/implementation decision?

3. (a) Focusing on political factors, do you think the type of party in power influences how and whether directives are implemented and applied? Explain your answer.

   (b) For those who answered yes to 3 (a) : Under which type of party do you think implementation of EU directives would be highest? (i) left (ii) center (iii) right

4. Do you think that the type of electoral system influences how and whether directives are implemented and applied? Explain your answer.

5. Do you think that it is harder to implement and apply directives under coalition governments? Explain your answer.

6. Do you think the number of veto points in a country that has some degree of control over the implementation and application of law has an impact on a member state’s ability to implement and apply a directive? Explain your answer.

7. (a) Do you think that the bureaucracy of a member state significantly influences implementation and application? Explain your answer. If yes, explain the characteristics of a bureaucracy that makes it more or less capable of implementation and application.

8. Does societal interests (preferences of voters, industries, and key interest groups) influence whether and or how directives are implemented or applied?

9. In your country can you identify the three most important industries? (whether or not you believe they have some influence on the decision to comply with EU directives or not).

10. Do you think that some member state’s have more efficient bureaucracies than others?

11. On a scale from 1 to 10 where would you rank the bureaucratic efficiency of your country compared to that of other member states?
12. Do you believe that your country’s size (population) compared to the rest of the EU impacts implementation and application?

13. Do you think that voting power in the EU influences the implementation record of your country? Explain your answer?

14. Do you believe that relative economic power influences the implementation of directives? Explain your answer.

15. Do you believe that economically powerful member states are more prone to implementation problems? Explain your answer.

16. For your country which of the following to you think poses the greatest problem: (i) implementation, (ii) proper implementation, or (iii) proper application of directives.

17. Based on the answer provided in Question 18 above do you believe that your country mirrors the rest of the EU community?


19. Are powerful member states more likely to have disputes over implementation?

20. Is there a correlation between EU funding to member state and disputes related to implementation of EU policies?

21. On average are more technical directives more difficult to implement?

22. On average are more technical directives implemented at a slower rate?

23. Does your country find it more difficult to implement more technical directives? Put another way: Are more technical directives more likely to (be the subject of disputes over implementation) lead to disputes concerning implementation?

24. Are directives that are more costly to implementation more likely to lead to disputes over implementation?

25. Does dispute among country representatives during implementation occur (i) very frequently (ii) frequently, or (iii) rarely during negotiation in the EU Council?

26. What types of costs are considered when implementing directives?

27. Are some EU policy sectors systematically more likely to incur disputes over implementation?
28. Are directives which were opposed during negotiation and voting in the EU Council more likely to be the subject of implementation disputes?

29. What types of directives are more likely to be opposed during negotiation?
Refined Questions to Commission Officials

1. What department in the European Commission do you work for?

2. What are some of your key responsibilities and duties?

3. Do you believe that your responsibilities allow you to be actively involved in either the directive development, directive implementation or directive enforcement process?

4. Do you think domestic political or economic factors most influence the compliance/implementation decision?

5. (a) Focusing on political factors, do you think the type of party in power influences how and whether directives are implemented and applied? Explain your answer.

   (b) For those who answered yes to 3 (a): Under which type of party do you think implementation of EU directives would be highest? (i) left (ii) center (iii) right

6. Do you think that the type of electoral system influences how and whether directives are implemented and applied? Explain your answer.

7. Do you think that it is harder to implement and apply directives under coalition governments? Explain your answer.

8. Do you think the number of veto points in a country that has some degree of control over the implementation and application of law has an impact on a member state’s ability to implement and apply a directive? Explain your answer.

9. (a) Do you think that the bureaucracy of a member state significantly influences implementation and application? Explain your answer. If yes, explain the characteristics of a bureaucracy that makes it more or less capable of implementation and application.

10. Do you believe that societal interests (preferences of voters, industries, and key interest groups) influence implementation and/or application of directives?

11. Do you think that some member state’s have more efficient bureaucracies than others? violators of European Union trade laws?

12. Does country size (population which then determines voting power) impacts implementation and application? Explain your answer?

13. Do you believe that relative economic power influences the implementation of directives? Explain your answer.
14. Do you believe that economically powerful member states are more prone to implementation problems? Explain your answer.


16. Do you believe ambiguity increases the likelihood of implementation problems?

17. Are powerful member states more likely to have disputes over implementation?

18. Is there a correlation between EU funding to member state and disputes related to implementation of EU policies?

19. On average are more technical directives more difficult to implement?

20. On average are more technical directives implemented at a slower rate?

21. Are more technical directives more likely to (be the subject of disputes over implementation) lead to disputes concerning implementation?

22. Are directives that are more costly to implementation more likely to lead to disputes over implementation?

23. Does dispute among country representatives during implementation occur (i) very frequently (ii) frequently, or (iii) rarely during negotiation in the EU Council?

24. What types of costs are considered when implementing directives?

25. Are some EU policy sectors systematically more likely to incur disputes over implementation? If yes, which sectors?

26. Are directives which were opposed during negotiation and voting in the EU Council more likely to be the subject of implementation disputes?

27. What types of directives are more likely to be opposed during negotiation?
Dear xxxx:

I am writing to request an interview with you in connection with research that I am conducting that examines how disputes emerge, evolve, and are settled within the European Union. My research is intended to help social scientists better understand when and why disputes over the implementation and practice of EU law occurs and evolve between member state, the European Commission, and the European Court of Justice. Specifically through these interviews social scientists would better understand how the European Commission monitors member states and handles disputes that emerge.

I am a fifth year graduate student in the Political Science Ph.D. program at The Pennsylvania State University and I am interested in conducting research on the pursuit of trade disputes in the European Union. The primary purpose of the interview I am requesting is to ask questions about (1) how the European Commission makes decisions about which disputes to pursue; (2) the process these disputes go through before they are settled; and the tactics used by the European Commission to reduce the number of disputes and encourage compliance. The answers you give in the interview will be completely confidential; I will not identify you or attribute any quotations to you unless you give me prior approval. I expect the interview to take about one hour. I will be using the information you provide to prepare manuscripts read by those with a serious professional interest in political science.

Your participation in this study is completely voluntary. If you agree to an interview, you may decline to answer specific questions or withdraw your participation at any time. You must be 18 years of age to participate in this research. I will be audio-taping this interview and the recording will be kept in a locked drawer in my office desk at all times. My academic advisor, Douglas Lemke, and I will be the only ones with access to this recording and the tape will be destroyed by July of 2010 after I have transcribed the relevant information. The transcriptions will be kept for three years, per federal regulations, and as such will be destroyed in December of 2012. Please print a copy of this informed consent form for your records. If you agree to an interview it is considered consent to participate in my research project.

I will email and/or call your office soon to see if a meeting will be possible. You can contact me, the principal investigator (Martha Thomas) by phone 347-546-0845, or by email at mst170@psu.edu or by office mail at 314 Pond Lab, Department of Political Science, University Park, PA 16802. You can also contact my advisor Douglas Lemke, by phone at 814-863-0816 or by email at
dwl14@psu.edu or by office mail at 205 Pond Lab, Department of Political Science, University Park, PA 16802 with any question you may have.

Thank you for your time, and I look forward to talking with you.

Sincerely,

Martha Thomas
Ph.D. Candidate
The Pennsylvania State University
Department of Political Science
University Park, PA, 16802.
Dear xxxx:

I am writing to request an interview with you in connection with research that I am conducting that examines how disputes emerge, evolve, and are settled within the European Union. My research is intended to help social scientists better understand when and why disputes over the implementation and practice of EU law occurs and evolve between member state, the European Commission and the European Court of Justice.

I am a fifth year graduate student in the Political Science Ph.D. program at The Pennsylvania State University and I am interested in conducting research on the pursuit of disputes in the European Union. The primary purpose of the interview I am requesting is to ask questions about (1) the implementation and application record of member states with respect to EU law; (2) the issues that arise in implementing and adhering to EU laws that make member states more or less susceptible to disputes; (3) the process these disputes go through before they are settled; and (4) the reasons why disputes between the Commission and the member state sometimes evolve into ECJ cases; and (5) the tactics being used by the member states to reduce the number of disputes and improve or maintain compliance. The answers you give in the interview will be completely confidential; I will not identify you or attribute any quotations to you unless you give me prior approval. I expect the interview to take about one hour. I will be using the information you provide to prepare manuscripts read by those with a serious professional interest in political science.

Your participation in this study is completely voluntary. If you agree to an interview, you may decline to answer specific questions or withdraw your participation at any time. You must be 18 years of age to participate in this research. I will be audio-taping this interview and the recording will be kept in a locked drawer in my office desk at all times. My academic advisor, Douglas Lemke, and I will be the only ones with access to this recording and the tape will be destroyed by July of 2010 after I have transcribed the relevant information. The transcriptions will be kept for three years, per federal regulations, and as such will be destroyed in December of 2012. Please print a copy of this informed consent form for your records. If you agree to an interview it is considered consent to participate in my research project.

I will email and/or call your office soon to see if a meeting will be possible. You can contact me, the principal investigator (Martha Thomas) by phone 347-546-0845, or by email at mst170@psu.edu or by office mail at 314 Pond Lab, Department of Political Science, University Park, PA 16802. You can also contact my advisor Douglas Lemke, by phone at 814-863-0816 or by email at...
dwl14@psu.edu or by office mail at 205 Pond Lab, Department of Political Science, University Park, PA 16802 with any question you may have.

Thank you for your time, and I look forward to talking with you.

Sincerely,

Martha Thomas
Ph.D. Candidate
The Pennsylvania State University
Department of Political Science
University Park, PA, 16802.
Martha S. Thomas

VITA

ACADEMIC EMPLOYMENT
Assistant Professor of Political Science, University of Vermont (2010-present)

EDUCATION
M.A. in International Public Policy, William Paterson University (2005)
B.A. in Economics, St. Francis College (2003)

PUBLICATION

GRANTS AND AWARDS
Harold F. Martin Graduate Assistant Outstanding Teaching Award, Penn State (2010)
Dissertation Enhancement Award, The College of Liberal Arts, Penn State (2009)
Robert S. Friedman Award for Excellence in Teaching, Department of Political Science, Penn State (2009)
Program in Empirical International Relations Pre-Doctoral Teaching Fellowship, Department of Political Science, Penn State (2008-2009)
Miller Graduate Research Award, Department of Political Science, Penn State (2008)
Best M.A. Essay, Department of Political Science, William Paterson University (2005)
Full Academic Scholarship, St. Francis College (2000 – 2003)