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## 11. MFN AND THE THIRD-PARTY ECONOMIC INTERESTS OF DEVELOPING COUNTRIES IN GATT/WTO DISPUTE SETTLEMENT

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## A. INTRODUCTION

There is clear evidence that developing countries have been increasing their participation in the world trading system and also the dispute settlement processes of the GATT/WTO. There have already been more disputes with developing country complainants and respondents initiated since the WTO's 1995 inception than there were during the entire 1947–1994 GATT period. Some of this increase merely reflects the growth of developing country membership; nevertheless, the increase in complainant activity is consistent with the idea that some barriers to the initiation of disputes have been reduced. Furthermore, the increase in respondent activity suggests that some developing countries have increased their market-access commitments to a level that trading partners increasingly find such commitments valuable enough to spend resources to defend them.

Equally and increasingly important to any developing countries' economic success achieved by acting as complainants in WTO disputes in order to enforce their export market access may be the *indirect* impact of the dispute settlement process on their trading interests. Given the recent growth in imports and exports to and from developing countries, an increase in the frequency of DSU litigation activity over products in which developing countries trade implies that they are increasingly affected by the outcome of *other* countries' disputes in which they are neither complainant nor respondent. For every two-country (complainant/respondent) WTO dispute, there may be dozens of developing countries which also trade in the disputed product and which are thus potentially affected by the dispute's economic resolution. Despite the potential for this impact to be quite important economically and politically, there is relatively little in the formal research literature examining this complex issue.<sup>1</sup> This chapter

1. There is some related work in the formal empirical research literature on the DSU. An empirical examination of determinants of third-country exporters' decisions of whether to formally participate in disputes related to their market-access interest is CP Bown, 'Participation in WTO Dispute Settlement: Complainants, Interested Parties and Free Riders' (2005) 19 *WB Econ Rev* 287. The empirical analysis below examining whether the outcome of economically successful bilateral disputes is also extended to third-country exports relies heavily on CP Bown, 'Trade Policy under the GATT/WTO: Empirical Evidence of the Equal Treatment Rule' (2004) 37 *Can JEcon* 678. Finally, other authors analyze the impact of third parties on the formal DSU process itself, presenting evidence that allowing (or even encouraging) the formal role of third parties is not costless, as third parties are empirically associated with disputes that are less likely to be settled early and more likely to proceed to a panel ruling—see ML Busch and E Reinhardt, 'Three's a Crowd: Third Parties and WTO Dispute Settlement' (2006) 58 *W Pol* 446, as well as ML Busch and E Reinhardt, 'With a Little Help From Our Friends? Developing Country Complaints and Third Party Participation' in Chapter 10 of this collection. The main difference in the respective approaches is that the analysis here focuses on *economic* outcomes as measured via trade flows.

focuses on this indirect or 'third-party' interest of developing countries in WTO trade disputes over market access.

A contributing explanation for the lack of research on third-party performance in formal dispute settlement is that there is no 'one-size-fits-all' metric for assessment. How a dispute's 'successful' resolution is likely to affect economically third countries depends on a number of interrelated factors, even abstracting from the important political question of whether respondents actually comply with DSU rulings. For example, is the third country an exporter or importer of the product at issue in the dispute? Are the complainant and/or respondent countries 'large' in the sense that their changes in market access will have externality implications via changes in world prices? Is the market access issue under dispute one of import or export policy? If export policy, is it excessive export restriction or promotion (eg, subsidies)? If import policy, was the GATT/WTO violation applied on a discriminatory (leading to implicit preferences for some third countries) or nondiscriminatory basis? Given the possibility of such divergent economic interests, the first task of this chapter is to clarify and categorize the various potential third-party interests that a developing country could expect to face in a trade dispute.<sup>2</sup>

The *EC–Sugar Regime* case is a particularly illustrative example of a WTO dispute in which the legal-economic resolution is expected to create divergent economic effects on many developing countries that are neither the complainant nor respondent but which face an economic interest in the dispute as a third party.<sup>3</sup> If a large economy like the EC complies with the WTO legal ruling by reducing its domestic support for sugar, economic theory predicts a resulting increase in the world price of sugar, allowing for enhanced exports for developing countries that are competitive exporters in the global marketplace. On the other hand, the same withdrawal of the European supply of sugar from global markets and increase in world price is likely to *reduce* imports and welfare of some net sugar importing countries as the losses to adversely affected consumers (eg, food processors) are not sufficiently offset by gains to any domestic producers. Finally, part of the EC's WTO-inconsistent policy in this dispute involved an additional scheme of preferential import market access to sugar producers in African, Caribbean, and Pacific (ACP) countries. Such WTO members have a third-party interest because they are likely to face a reduction in exports via the loss of discriminatory access to the EC market.

The first task of this chapter is thus to characterize and categorize the variety of economic interests facing developing countries in different types of trade disputes.

2. We do not address the issue of WTO members formally intervening in a dispute if they do not have a trading interest in the product under dispute.

3. *EC–Sugar Regime* combine the disputes brought by Australia (WT/DS265), Brazil (WT/DS266), and Thailand (WT/DS283). For a discussion of the economics in the dispute, see BM Hoekman and R Howse, 'EC Sugar' (2008) 7 *WT Rev* 149.

We turn to the predictions of basic economic theory under the assumption of large countries disputing over the use of commercial policies that, because of the WTO dispute settlement process, are in the process of being restored to MFN treatment. We use this framework to identify third-party concerns and expected changes in market access resulting from respondent compliance to challenges to various types of WTO-inconsistent policies.<sup>4</sup> As suggested by reference to even just one dispute, ie, *EC-Sugar Regime*, in some instances a developing country's overall third-party interest derives from expected net gains from the dispute's resolution, and in others its interest derives from expected net losses. We examine these issues and the *within*-country distributional consequences as well.

After we characterize the many economic reasons why WTO members may have a third-party interest in a trade dispute, we introduce a data-driven analysis and examine one class of trade disputes and developing countries with a particular third-party perspective. This analysis builds upon the more formal framework focusing specifically on trade disputes alleging that the respondent has implemented too little market access (ie, failed to sufficiently liberalize imports) relative to its GATT/WTO commitments.<sup>5</sup> We identify in the data a set of interested developing third countries that all export the disputed product to the respondent, like the complainant in the dispute. We then analyze these countries' economic performance to examine whether there is evidence of respondent countries abiding by MFN in this one particular class of trade disputes.

Why begin an analysis of developing countries as third parties via such an empirical exercise? First, many of the disputes involving excessive import protection relate to sectors in which developing countries have a substantial exporting interest (eg, agriculture, textiles), even when a developing country is not a complainant or respondent in the dispute. Furthermore, there are theoretical arguments that the dispute settlement process is biased both toward and against the interests of developing countries. The claims that the GATT/WTO reliance on retaliation threats to balance concessions, the concerns for extra-WTO retaliation via withdrawn preferential access or bilateral assistance, and the need for a country to have substantial resources and legal capacity to operate effectively within the dispute settlement process suggest that the process is biased against developing country interests.<sup>6</sup> On the other hand, there are many areas of the

4. For an economic analysis of the role of the WTO and its principles for affecting market access, see K Bagwell and RW Staiger, *The Economics of the World Trading System* (2002).

5. See CP Bown, 'Trade Policy under the GATT/WTO: Empirical Evidence of the Equal Treatment Rule' (2004) 37 *Can JEcon* 678.

6. In addition to the research described in fn 1, see also CP Bown, 'Developing Countries as Plaintiffs and Defendants in GATT/WTO Trade Disputes' (2004) 27 *W Econ* 59; CP Bown, 'On the Economic Success of GATT/WTO Dispute Settlement' (2004) 86 *Rev Econ Stats* 811; CP Bown, 'Trade Remedies and World Trade Organization

DSU that explicitly require disputing parties to give special consideration to the interests of developing countries.<sup>7</sup> Article 21:2 states that '(p)articular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement'. Given theoretical arguments of bias both against and in favor of developing countries, ultimately the question of any bias is an empirical one.<sup>8</sup>

While this chapter only begins to analyze developing country third-party interests in WTO dispute settlement, there are a number of arguments to suggest that there are policy implications requiring a focus of substantial additional research. First, economists have argued that there are fundamental, efficiency-enhancing properties to trade agreements having an MFN rule.<sup>9</sup> Thus, from an institutional perspective, it is important to begin to empirically evaluate whether countries are abiding by MFN under the WTO in dispute settlement in practice, or whether it is being ignored here just like in many other areas of the agreement.

Second, from a policy perspective, an emerging area of research has called into question the ability of developing countries to sufficiently engage in the WTO's resource-intensive dispute settlement system—either as complainants

Dispute Settlement: Why Are So Few Challenged?' (2005) 34 *J Leg Stu* 515; CP Bown and BM Hoekman, 'WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector' (2005) 8 *JIEL* 861; CP Bown and BM Hoekman, 'Developing Countries and Enforcement of Trade Agreements: Why Dispute Settlement Is Not Enough' (2008) 42 *JWT* 177; H Horn, PC Mavroidis and H Nordström, 'Is the Use of the WTO Dispute Settlement System Biased?' in PC Mavroidis and A Sykes (eds), *The WTO and International Trade Law/Dispute Settlement* (2005); G Shaffer and H Nordström, 'Access to Justice in the World Trade Organization: The Case for a Small Claims Procedure?' (forthcoming); WT Rev, ML Busch and E Reinhardt 'Developing Countries and GATT/WTO Dispute Settlement', (2003) 37 *JWT* 719; and G Shaffer, 'The Challenges of WTO Law: Strategies for Developing Country Adaptation', (2006) 5 *WT Rev* 177. The underlying data on GATT trade disputes that is the focus of a number of these earlier chapters derives, in part, from the substantial data collection efforts of RE Hudec, *Enforcing International Trade Law: The Evolution of the Modern GATT Legal System* (1991).

7. See DSU Articles 3:12; 4:10; 8:10; 12:10 and 11; 21:7 and 8; 24; and 27:2 in addition to Article 21:2. For a discussion on the various rules on special and differential treatment afforded to developing countries under the DSU, see ME Footer, 'Developing Country Practice in the Matter of WTO Dispute Settlement' (2001) 35 *JWT* 55.

8. We do not intend to compare and contrast the performance of developing countries versus industrialized countries. Our focus is whether developing countries are receiving more or less trade than they should expect to receive, given the relevant rules (eg, MFN) of the GATT/WTO system. For example, we address the following empirical question for a certain class of trade disputes: Given that the complainant in the average successful bilateral dispute increases disputed sector exports to the respondent by 36 percent, how large is the average increase in developing third-country exports in the disputed sector to the respondent? Is this consistent with expectations of a functioning MFN rule?

9. See K Bagwell and RW Staiger, *The Economics of the World Trading System* (2002).

or respondents. Our analysis raises an additional potential concern. Whenever a complainant/respondent trade dispute introduces substantial economic 'shocks' into third countries—eg, induced by changes in world prices caused by a change in market access resulting from the resolution of the dispute—the existence of such international externalities suggests a role for enhancing institutional transparency beyond what is solely in the interest of the two disputing (complainant/respondent) parties. Regardless of whether the dispute's resolution imposes on the third country a positive (increased exports or imports) or negative (decreased exports or imports) externality, there may be an efficiency rationale for enhancing the transparency of dispute resolution to allow those affected in third countries as much time as possible to both economically and politically adjust to the new conditions and implications for market access. We return to a discussion of this issue in the conclusion.

The rest of this chapter proceeds as follows. Section B documents the various economic reasons why a country may have an economic third-party interest in a formal GATT/WTO dispute. In Section C we take a sample of data of disputes involving allegations of excessive import protection, and we provide an economic assessment of the developing, third-country liberalization gains associated with bilateral, complainant liberalization gains from the respondent. Section D then concludes.

## B. ECONOMIC REASONS FOR THIRD-PARTY INTEREST

In this section we review the primary economic reasons why a country has a third-party interest in a GATT/WTO trade dispute. The basic third-party interests are easiest to understand if we first identify the types of underlying bilateral (complainant/respondent) trade disputes that we have in mind.<sup>10</sup> To focus on third-party economic interests, we characterize a trade dispute as falling into one of three basic categories: (1) allegations of excessive import protection of a product by the respondent through tariff or nontariff measures; (2) allegations of excessive export promotion of a product by the respondent, typically due to domestic support policies such as subsidies; and (3) allegations of excessive export restrictions by the respondent. Within each class of disputes, there is the potential for multiple third-party interests and perspectives for a given

10. We omit from the analysis more general disputes that focus on a country's overall treatment of exports or imports and where the allegation is not product- or industry-specific. For example, we do not consider disputes such as *US—The Cuban Liberty and Democratic Solidarity Act* (DS38); *US—Tax Treatment for "Foreign Sales Corporations"* (DS108); and *US—Sections 301-310 of the Trade Act of 1974* (DS152). We also do not consider cases where a third country may be interested in a dispute for legal or systemic reasons, eg, because it has a policy in place similar to the respondent policy under investigation.

developing country. We detail each category of dispute and each third-party perspective explicitly below and with reference to Figures 1 through 3. In these figures 'R' represents the respondent, 'C' represents the complainant, 'T' represents the interested third country, and, where necessary, 'ROW' represents the rest of the world, for a typical dispute.

We focus on the perspective of the third country, its economic interests within a particular category of disputes, and how this relates to the economic success of the dispute settlement process. Before we move on to our formal analysis, it is important to define what we mean by the economic interests of a given country or the economic success of the dispute settlement process. With respect to a country's economic interests, we appeal to the results of standard economic models of international trade and compare policies (and the economic outcomes of the dispute settlement process) based on how they affect a country's overall national welfare.<sup>11</sup> Within our discussion of the economic interests of a country, we will, however, explicitly consider the income redistribution that accompanies a particular trade policy change. This also allows us to understand the motivations of a country that is influenced not only by the concern for maximizing national welfare but which is also confronted with domestic sectors or interest groups with a particularly strong political presence.

For the purpose of this chapter, we define an 'economically successful' outcome to a trade dispute as the respondent removing any policies that affect trade in a way that is inconsistent with its GATT/WTO obligations. We thus focus here on the ability of the process to eliminate policies that either explicitly violate GATT/WTO rules or nullify and impair the benefits that trading partners expect to receive through concessions negotiated with the respondent in an earlier negotiating round. The primary implication of our narrow definition of an economically successful outcome is that we treat the negotiated market-access concessions as a (nonrenegotiable) standard. This is not an innocuous implication, as one could well argue that a dispute that concludes with countries renegotiating and balancing concessions (eg, through complainant retaliation) may be 'legally successful' because it led to the resolution of a dispute in accordance with GATT/WTO rules and the respondent 'compensating' the complainant, even though the market-access standard was not met. We do not treat such an outcome as an economic success because it did not lead to the respondent satisfying its market-access obligations and liberalizing trade.<sup>12</sup>

11. Formally, our basic perspective is to treat the third country as a small price-taking country, trading in perfectly competitive markets. The respondent and complainant countries are assumed 'large' so that their market-access policy changes affect world prices and impose externalities on our third countries of interest.

12. While our approach is primarily motivated for reasons of data availability, it may also be motivated from the perspective of economic efficiency. An outcome that results in the respondent failing to liberalize and the complainant retaliating introduces inefficiencies

Furthermore, with regard to our empirical assessment in Section C, it is important to note that we do not have comprehensive data on trade policy adjustments. Therefore, our empirical approach is to *infer* whether a particular respondent policy has been changed in accordance with its GATT/WTO obligations. To do this, we use trade data to assess whether trade flows in the disputed sector are being affected in a way that is consistent with the policy's change. Furthermore, given that we also do not have data on the size of the negotiated concession, we also not comment on whether a country is fully compliant with its obligations. Rather, as an initial investigation into this question, we limit ourselves to a discussion of whether the respondent's trade in the disputed sector is moving (increasing or decreasing) in the direction that we expect, given the nature of the allegation, the country's obligations, and the rules of the GATT/WTO system. We also compare the sizes of these trade flows for complainant countries versus interested third countries.<sup>13</sup>

#### i. Disputes Alleging Respondent Engaged in Excessive Import Protection

First consider Figure 1, which illustrates a typical dispute alleging that the respondent has provided excessive protection and limited market access to imports, relative to its GATT/WTO commitments. In such a dispute, an interested third country may also be an exporter of the disputed product to the respondent (case a), or it may be an importer of the disputed product like the respondent (case b).

**Third-country exporters of the disputed product** Look at Figure 1a, where the third country also exports the product that the respondent has been accused of restricting. Suppose further that the respondent country's violation leading to the trade dispute was a discriminatory policy which favored one set of third-country exporters at the expense of the complainant country and another potential set of third-country exporters. An example would be the *EC-Banana Regime* dispute, where the claim was that exporters from the African, Caribbean, and Pacific (ACP) countries received preferential access to the EC market at the expense of complainant countries such as Ecuador, Guatemala, Honduras, Mexico, and the United States.<sup>14</sup> The EC was also accused of giving Costa Rica,

into the system, relative to the liberal trade outcome without retaliation. In order to assess the economic success of a dispute that ended with a rebalancing of concessions, we would also require information on how the third countries would be affected (if at all) by the complainant's implementation of retaliation.

13. A more rigorous analysis would also control for other factors likely to affect product-level trade flows such as other demand determinants, cost shocks, etc. See Bown (n 5 above).

14. *EC-Banana Regime* refers to disputes DS27; Panama later joined the dispute as a complainant (DS105) after its 1997 accession to the WTO. ACP countries that formally intervened as third parties in this dispute included Belize, Cameroon, Côte d'Ivoire,

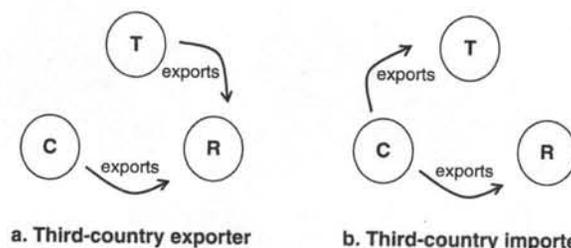


FIGURE 1. THIRD-COUNTRY INTERESTS IN TRADE DISPUTES INVOLVING AN ALLEGATION OF EXCESSIVE IMPORT PROTECTION BY THE RESPONDENT

Colombia, Venezuela, and Nicaragua preferential access to its import market through the 1994 Framework Agreement that settled an earlier GATT dispute involving bananas in which these countries were complainants. Nevertheless, in *EC-Banana Regime* there were likely other interested third countries who were not given preferential access to the EC market and thus find themselves facing circumstance similar to the complainants in the case. In an analysis of the 6-digit data (HS category 080300) of other countries that export bananas to the EC, Brazil fits the profile of such a third-country banana exporter.<sup>15</sup>

Therefore, in Figure 1a, there are potentially two distinct sets of third-country exporting interests—exporting countries that benefited from any initial discrimination by the respondent and exporting countries that were harmed (like the complainants) by the initial restrictive trade policy, whether it was discriminatory or applied on an MFN basis. We expect an EC policy change that complies with the GATT/WTO MFN principle and the dispute settlement panel's ruling in this dispute to have opposing economic impacts on the two different sets of third-country exporters. Banana exports to the EC from the ACP third countries should fall if those producers were not as competitive as the complainant and other third-country banana exporters. On the other hand, banana exports to the EC from other (non-ACP, non-Framework Agreement) third-country exporters, such as Brazil, should rise. Therefore, predicting whether a third country's exports should rise or fall with a dispute's bilaterally successful outcome and the respondent implementing its market-access commitments in a means consistent with the MFN rule requires prior knowledge of whether a given interested third country was a beneficiary or a victim of the respondent's initial discriminatory trade policy.

Dominica, the Dominican Republic, Ghana, Grenada, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Senegal, and Suriname.

15. While Brazil may not be a substantial supplier of bananas, the value of its banana exports to the EC in 1999 was higher than that of Ghana, an ACP country that formally intervened as an interested third party in the dispute.

**Third-country importers of the disputed product** Next consider Figure 1b, where the third country is now an import market that is also served by the complainant, as opposed to a rival exporter. In this case, the excessive protection by the respondent may be *deflecting* exports from the complainant toward the third country's market.<sup>16</sup> On economic welfare grounds, such a policy improves the welfare of the third country's consumers through access to lower prices and more products. However, the trade deflection-induced increase in third-country imports resulting from the respondent's protection may be detrimental to a particularly sensitive and politically powerful domestic industry that competes with the diverted products. Nevertheless, the policy is likely to make the third country's national welfare higher, even if the third country is also a producer of the product, as the gains to consumers in this case typically outweigh the economic losses to import-competing producers.

This is one potential concern of the *US-Steel Safeguards* dispute brought to the DSU after United States imposition of temporary import restrictions on steel in March 2002.<sup>17</sup> In these disputes, a steel-importing third country may be concerned that the steel exports deflected from the US market due to the safeguard measure will end up in its import market, thus hurting the third country's domestic steel producers.<sup>18</sup> However, if a third country were concerned only with its economic interests as measured through overall national welfare, such an importing country would enjoy net benefits from the deflected, cheaper steel. We would then expect it to be dissatisfied with any resolution to the bilateral dispute which restored complainant exports to the respondent and thus reduced the flows of deflected steel that the third country had previously enjoyed. Thus, whether a third-country net importer of steel prefers an outcome where the respondent liberalizes as opposed to not liberalizing is determined by the political significance of the third country's domestic, import-competing (steel) industry

16. See CP Bown and MA Crowley, 'Trade Deflection and Trade Depression' (2007) 72 *J Int'l Econ* 176.

17. *US-Definitive Safeguard Measures on Imports of Certain Steel Products* cases (DS248, DS249, DS251, DS252, DS253, DS254, DS258, DS259, hereafter *US-Steel Safeguards*). Complainants were the European Communities, Japan, Korea, China, Switzerland, Norway, New Zealand, and Brazil, respectively.

18. One response to the US steel safeguards measure imposed in March 2002 was a "policy surge" as other WTO Members imposed new safeguard measures of their own on imports of steel. Between March 2002 and October 2003 Chile, China, Czech Republic, the European Communities, Hungary, Poland, and Venezuela applied at least provisional safeguard measures on imports of steel, while Bulgaria and Canada initiated safeguard investigations that did not result in the imposition of definitive measures on steel. Presumably these actions were designed to do more than simply retaliate against the United States, but also to halt the surge in steel imports deflected from the US market through a resort to similar acts of temporary protection.

relative to the weight that the country places on the larger consumer gains that would be enjoyed through access to imports of cheaper steel.

## ii. Disputes Alleging Respondent Engaged in Excessive Export Promotion

Figure 2 details a second set of disputes, where the allegation is that the respondent's policy has excessively promoted exports, usually through a subsidy that is inconsistent with its GATT/WTO obligations. For simplicity, we have illustrated the complainant as a rival exporting country that also exports the same products to the rest of the world (ROW).<sup>19</sup>

**Third-country exporters of the disputed product** Consider Figure 2, where the third country is also a rival exporter of the same product as the respondent. Here the third country aligns itself with the interests of the complainant—it would also like to see the subsidy to the respondent's exporters dismantled, thus decreasing the artificial competitive advantage of the respondent's exporters relative to its own. An example of this would be a third-country exporter in the cases brought by the Brazil against alleged US subsidies of cotton, ie, *US-Upland Cotton* (DS267). Benin, a developing country with substantial exporting interests in the cotton products that were allegedly subsidized by the US government, formally intervened in this case as an interested third party, presumably to represent the concerns of its cotton exporters that compete with US products on the world market.

**Third-country importers of the disputed product** Next consider Figure 2b, where the third country is now a consumer/importer of the exports that are being subsidized by the respondent, rather than a rival exporter. Much like the results in Figure 1a, a standard economic analysis reveals that, when measured in terms of overall national welfare, the third country actually benefits from the excessive trade that results from the respondent's policy. The third country's consumers have greater access to cheap imports that have been subsidized by the respondent, and therefore the third country prefers that the respondent *not* be forced to remove its export promoting policy.<sup>20</sup>

An example of such a dispute is *EC-Measures Affecting the Exportation of Processed Cheese* (DS104), where the United States accused the EC of offering

19. Alternatively, the complainant could be an importing country with a politically powerful domestic industry competing with the respondent's subsidized exporters. The implications of our analysis on the typical third country would be unchanged. We represent the complainant as a rival exporter because a dispute is its only legal recourse, whereas an importing country could also levy a countervailing duty against the respondent's exporters as an alternative means of addressing the subsidy.

20. For an economic interpretation of the agricultural subsidies restrictions under the GATT/WTO and the prisoner's dilemma problem, see K Bagwell and RW Staiger, 'Strategic Trade, Competitive Industries and Agricultural Trade Disputes' (2001) 13 *Econ & Pol* 113.

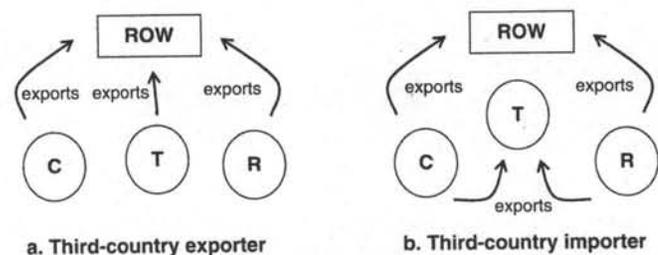


FIGURE 2. THIRD-COUNTRY INTERESTS IN TRADE DISPUTES INVOLVING AN ALLEGATION OF EXCESSIVE EXPORT PROMOTION BY THE RESPONDENT

export subsidies to producers of processed cheeses in violation of provisions of the Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures. Japan, which is primarily a consumer/importer of processed cheeses, formally intervened in the case as an interested third party, noting that EC exports accounted for roughly 77 percent of the Japanese total processed cheese import market.<sup>21</sup> While there have been relatively few trade disputes concerning excessive export promotion when compared to the number of disputes alleging excessive import protection, there are likely to be many more of these cases in the future if agriculture and fisheries subsidies become subject to greater WTO discipline. An important area for future research is the economic impact of the reduction of export promotion policies on agricultural consuming/importing countries, including many such developing countries in Africa.

### iii. Disputes Alleging Respondent Engaged in Excessive Export Restrictions

Next is Figure 3, which illustrates a final category of trade disputes in which countries interfere with GATT/WTO rules and their obligations by excessively restricting exports. The complainant country in this scenario is an importing country, and the respondent is an exporter.

**Third-country exporters of the disputed product** In Figure 3a, the third country is an exporter of the disputed product, similar to the respondent in the case. While such disputes are fairly infrequent, two examples include *Pakistan—Export Measures Affecting Hides and Skins* (DS107) and *India—Measures Affecting Export of Certain Commodities* (DS120). In both cases, the EC accused the respondent of inducing a shortage by restricting exports of certain raw hides and skins. A third country that also produced and exported the kinds of hides and skins that had been restricted by these two countries would benefit from any respondent

21. On the other hand, Australia and Canada, two other countries with substantial exporting interests in processed cheeses and thus aligned with the US complainant's export interests, also formally intervened in this particular dispute as interested third parties. They would fit the third-country profile of Figure 2a.

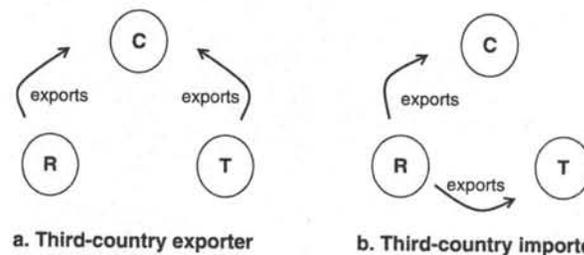


FIGURE 3. THIRD-COUNTRY INTERESTS IN TRADE DISPUTES INVOLVING AN ALLEGATION OF EXCESSIVE EXPORT RESTRICTIONS BY THE RESPONDENT

policies that restricted exports, as this restriction increases the scarcity value of the third-country exporter's product as well. While no third countries formally intervened in these particular disputes, those that also had substantial exports of raw hides and skins of bovine and equine animals (HS category 4101) to the EC in 1997 included developing countries such as South Africa, Brazil, and Venezuela.

**Third-country importers of the disputed product** Finally, consider Figure 3b, where the third country is now an importer of the product that the respondent is restricting. Take again as our example the Pakistan or India disputes discussed in the last section. A third country that was an importer of raw hides and skins as opposed to an exporter would find itself aligned with the EC's interests. An outcome to the dispute that led to the end of respondent export restrictions would allow for a more plentiful and cheaper supply of raw hides and skins, thus benefiting the third country's consumers of the product as well as those consumers in the EC.

### C. EMPIRICAL ANALYSIS: IMPORT LIBERALIZATION AND THE IMPACT ON DEVELOPING THIRD-COUNTRY EXPORTERS

As we have suggested in Section B, the interests of the third country in trade disputes—ie, whether it faces a positive or negative economic shock overall, as well as distributional implications *within* the third country—depend both on the nature of the disputed policy and the importing or exporting role of the third country. In this section of the chapter, we focus on a set of disputes with the structure of Figure 1a, ie, where the third country exports the same product as the complainant in a dispute over allegations of excessive import protection.

A relatively neglected area of research is an empirical assessment of whether the DSU process is having an economic impact on third countries—and in particular, developing countries—that coincides with the basic predictions of the last section. Ultimately this research must begin to examine the distributional

consequences of DSU-induced shocks within these third countries. Nevertheless, as a first pass at the data, we examine the economic resolution of such disputes by focusing on the impact of the dispute's negotiated outcome via the trade flows from developing third-country exporters.

#### i. Formal Third Party Interventions vs. Implicitly Interested Third Parties

For the purpose of our empirical exercise, it is important to clarify exactly what we mean by third parties in these disputes. First, the indirect impact on a developing country's trade can be made 'explicit' when that country formally notifies the GATT/WTO of its desire to intervene as an interested third party in a formal dispute.<sup>22</sup> However, in order to get a true gauge of the indirect impact of dispute settlement negotiations on third countries, it is also important to analyze the impact on 'implicitly' affected countries that are concerned due to a trading interest in the products at issue in the disputed sector. The identity of implicitly affected countries that do not formally intervene can thus only be obtained by analyzing the respondent and complainant country's trade in the case's disputed sector. In this section we provide a brief discussion of some data on the frequency with which developing countries are explicitly and implicitly interested as third parties in formal trade disputes.

Table 1 illustrates examples of trade disputes over the 1990–1998 period in which large numbers of developing countries have signaled their *explicit* interest by formally intervening in a trade dispute. Not surprisingly, the *EC–Banana Regime* disputes involved many explicitly interested developing third countries, in addition to the substantial number of developing country complainants. There are many other examples in Table 1 of disputes in which numerous developing countries intervened as third parties, including the *US–Shrimp* (DS58, DS61) dispute, which also had multiple (India, Malaysia, Pakistan, Thailand, and the Philippines) developing country complainants.

Nevertheless, Table 2 presents data on a sample of formal disputes with large numbers of *implicitly* interested developing third countries, ie, ones that also export the disputed product to the respondent country. Such countries are thus likely to have their own trade affected by the dispute's resolution if the respondent applies the equal treatment (MFN) rule when it liberalizes imports as a result of dispute settlement negotiations. A comparison of Tables 1 and 2 yields results that are not surprising: large numbers of explicitly and implicitly interested developing third countries tend to be associated with disputes where the respondent has a large import market (eg, United States, EC) and the disputed

22. For example, a WTO Member country is permitted to intervene formally as a third party under Article 10 of the DSU when it has a 'substantial interest' in the dispute's proceedings. For the 1995–1998 period, developing countries comprised more than one-third of all formal third-party interventions to the DSU. Data compiled by the author and obtained from trade dispute documents obtained from the WTO's Web site, [www.wto.org](http://www.wto.org).

TABLE 1. GATT/WTO TRADE DISPUTES WITH LARGE NUMBERS OF DEVELOPING COUNTRIES INTERVENING AS INTERESTED THIRD PARTIES, 1990–1998

Dispute Name (WTO Number or GATT Year)	Number of Formally Intervening, Developing Third Countries
<i>EC–Banana Regime</i> (DS27)	24
<i>EC–Banana Regime</i> (GATT 1991)	17
<i>US–Tuna I</i> (GATT 1990)	13
<i>US–Shrimp</i> (DS58, DS61)	8
<i>US–Section 301-310 of 1974 Trade Act</i> (DS152)	8
<i>Canada–Patent Protection of Pharmaceuticals</i> (DS114)	7
<i>Turkey–Textiles</i> (DS29)	6
<i>US–Textiles</i> (DS151)	6
<i>US–Tuna II</i> (GATT 1992)	5
<i>EC–Coffee</i> (DS154)	4
<i>Argentina–Footwear Safeguards</i> (DS121)	4

Source: Estimates compiled by the author from dispute settlement documents available from the WTO's Web site, <http://www.wto.org/>.

product is a traditional developing country export (eg, agriculture, textiles, and other primary commodities).

In the next section we present a more extensive analysis of the economic data associated with developing third-country exporters in these GATT/WTO disputes in order to investigate their economic performance.

#### ii. Data Analysis—the Underlying 'Bilateral' Trade Dispute

For our data-driven analysis, we consider a set of 88 bilateral (complainant/respondent) GATT/WTO trade disputes initiated and completed between 1990–1998 in which the respondent was legitimately accused of offering too little import market access to the complainant.<sup>23</sup> The typical dispute thus fits the profile of Figure 1a. Our first step is to aggregate multiple complainant disputes or simultaneous disputes involving a common respondent and disputed product and different complainants. As we are interested in the perspective of third-country exporters

23. Information on trade disputes is derived from WTO, Analytical Index: Guide to GATT Law and Practice, Vols. 1 and 2 (1995); and WTO, Panel Reports under the MTN Agreements and Arrangements (Tokyo Round Codes) of 1979, (1997) on file with the author. See also the WTO's on-line source Web site, [www.wto.org](http://www.wto.org). A case is subsequently 'legitimate' for the purpose of our empirical exercise if it was reported that the respondent made a policy change relating to the dispute or the panel requested the respondent to bring its policies into conformity with GATT/WTO rules.

TABLE 2. EXAMPLES OF GATT/WTO TRADE DISPUTES WITH LARGE NUMBERS OF IMPLICITLY\* INTERESTED DEVELOPING THIRD COUNTRIES\*\* IN A SAMPLE OF CASES INITIATED AND COMPLETED BETWEEN 1990–1998

Dispute Name (WTO number or GATT year)	Number of Implicitly Interested, Developing Third Countries
<i>EC–Oilseeds</i> (GATT 1993)	80
<i>US–Cotton and Man-Made Underwear</i> (DS24)	54
<i>EC–Unbleached Cotton Fabrics</i> (DS140)	50
<i>EC–Wood of Conifers</i> (DS137)	42
<i>US–Woven Wool Shirts and Blouses</i> (DS33)	43
<i>US–Women's and Girls' Wool Coats</i> (DS32)	43
<i>Japan–Leather</i> (DS147)	34
<i>US–Alcoholic and Malt Beverages</i> (GATT 1991)	31
<i>US–Tobacco</i> (GATT 1993)	28
<i>US–Textiles and Apparel Products</i> (DS85)	26
<i>EC–Grains</i> (DS13)	25
<i>EC–Banana Regime</i> (GATT 1992)	24
<i>US–Shrimp</i> (DS58, DS61)	24

Notes: \* Implicitly interested third country is revealed by the UNCTAD/TRAINS data as also sending the disputed HS 6-digit exports to the respondent country during the period of the dispute. \*\*Includes both GATT contracting parties, WTO members and noncontracting parties and nonmembers.

to the respondent in the disputed sector, this aggregation technique ensures that we do not have redundant third-country observations in the data. This approach leaves us with a set of 52 underlying cases to which we refer as 'bilateral' disputes, where the economic performance of the representative complainant in our data is based on the aggregate performance of the underlying complainants in any common disputes.<sup>24</sup>

We focus on the developing third country's exports of the disputed product to the respondent. In particular, we ask whether the economic success of bilateral (complainant/respondent) liberalization at the conclusion of dispute settlement negotiations is associated with respondent liberalization of disputed sector imports from developing third-country exporters. Specifically, we consider the growth in third-country exports to the respondent between the year of the dispute's initiation and one year after the dispute's resolution. We define the year of

24. For example, we aggregate the complainants of the *US–Shrimp* disputes (DS58 and DS61), and bilateral performance of the complainant would be the overall growth in US imports of shrimp from India, Malaysia, Thailand, Pakistan, and the Philippines.

the dispute's resolution to be the last year that there was correspondence between either the GATT/WTO and the complainant or respondent regarding the case.

**The importance of the discriminatory nature of the initial allegation** Another important question in the 52 bilateral disputes is the nature of the initial allegation made against the respondent in the underlying case. In our sample of disputes, 14 were claims of illicit use of antidumping or countervailing measures (AD/CVM) which discriminate only against the country facing the measure, ie, the complainant in the dispute. Another 17 cases (or in 31 of the disputes in total) alleged discrimination through some violation of Article I, ie, where it was possible for the discrimination to negatively affect additional (third) countries beyond the complainant(s) in the dispute.

These distinctions are important, given that the GATT/WTO dispute resolution process is subject to the MFN principle. In disputes where the respondent has been accused of discrimination across trading partners, we not only expect to observe less frequent and smaller liberalization extended to third countries, but third countries may face a reduction in exports as their implicit preferential access is removed.

**Trade liberalization and economic success in the bilateral disputes** In much of the data analysis that follows, we also limit ourselves to a further subset of bilateral disputes that we have described as being 'economically successful', from the bilateral (complainant/respondent) perspective, where our measure of bilateral success is an increase in the complainant country's exports of the disputed product to the respondent. One motive for narrowing the focus to this subset of disputes is that a respondent may be more likely to follow the MFN rule and extend liberalization to third-country exporters given that it liberalizes with respect to the complainant.

How many of these 52 disputes are bilaterally successful in terms of our economic definition? In the sample of 52 disputes, 26 result in the complainant increasing its exports to the respondent, while in 26 cases complainant exports fail to increase. Of the 26 disputes that the trade data determine to have been bilaterally successful, 5 involved claims of illicit AD/CVM and 13 involved some claim of discrimination through an Article I violation. We would thus expect to find less liberalization extended to third-country exporters in these cases, relative to the disputes where there was no initial allegation of discrimination. We investigate this question below. Finally, of the 26 disputes that the trade data determine to have been bilaterally unsuccessful, 9 involved claims of illicit AD/CVM while 18 involved some claim of discrimination through an Article I violation.

### iii. Identifying the Developing Third-Country Exporters in the Trade Dispute

It is important to reiterate that, in analyzing the economic performance of developing third-country exporters, we do not restrict ourselves to consideration of only those developing third countries that formally intervene in the dispute settlement process. Rather, we analyze the trade impact on all developing

third countries that the data reveal as having a trading interest in the disputed sector of the respondent—both the countries that explicitly intervene and the countries that are only implicitly revealed through an analysis of the trade data.<sup>25</sup> In fact, one empirical question that we are interested in is whether developing third-country exporters that explicitly reveal themselves by formally intervening in the dispute settlement proceedings are more successful, in terms of the trade liberalization gains, than are third countries that are only implicitly revealed by the data.

How many implicitly interested third countries are there in one of these disputes? In 7 of the 52 bilateral disputes, there are no developing third-country exporters of the disputed product to the respondent country. In the 45 bilateral disputes with at least one developing third-country exporter, the average number of implicitly interested developing third countries at the time of the dispute is 19.07, the median is 14, and the high is 80.

#### iv. The Economic Performance of Developing Third-Country Exporters

How many developing third countries also increase exports? How do developing third-country exporters perform in bilaterally successful GATT/WTO trade disputes? Do their exports of the disputed product to the respondent increase when exports from the complainant increase? Consider the data presented in the top half of Table 3, where from our subsample of 26 bilaterally successful cases, we are able to identify 449 implicitly interested developing third countries that also export the disputed product to the respondent. Our first result is that, of these 449 third-country exporters, 293 countries (or 65 percent) also saw their exports to the respondent increase.

Recall from our discussion of Figure 1a, however, that if the respondent's initial violation was discriminatory in nature, then we should not necessarily expect exports from all third countries to increase when exports from the complainant increase, given that some third countries actually benefited (through an 'artificial' increase in their exports) from the initial act of discrimination. We thus expect a larger percentage of implicitly interested third countries' exports to rise in the disputes where the initial violation by the respondent was nondiscriminatory in nature.

It is difficult to judge the severity of the initial discrimination merely by investigating the allegation presented in the case. Nevertheless, we attempt to address the issue here by using two different criterion to characterize the initial violations

25. Note that we use the HS 6-digit import data available from UNCTAD/TRAINS, the most disaggregated data available for the countries and years needed for the empirical analysis. This data is often more aggregated than the products at issue in the dispute, which may be defined at even the 10-digit level—thus we do introduce some amount of measurement error by having to resort to UNCTAD data, which are more aggregated but also more comprehensive in terms of country coverage.

TABLE 3. DEVELOPING COUNTRY PERFORMANCE AS IMPLICITLY INTERESTED THIRD PARTIES IN A SAMPLE OF GATT/WTO TRADE DISPUTES INITIATED AND COMPLETED BETWEEN 1990–1998\*

	Overall	Observations Resulting in Increased Third-country Exports	Observations Not Resulting in Increased Third-country Exports
Total observations derived from bilaterally <u>successful</u> ** complainant/respondent negotiations	449	293	156
Observations where initial complainant allegation did <u>not</u> include AD/CVM by the respondent	417	278	139
Observations where initial complainant allegation did <u>not</u> include violation of Article I	292	198	94
Observations where third country has explicitly intervened in the dispute	9	6	3
Total observations derived from bilaterally <u>unsuccessful</u> ** complainant/respondent negotiations	225	94	131
Observations where initial complainant allegation did <u>not</u> include AD/CVM by the respondent	146	73	73
Observations where initial complainant allegation did <u>not</u> include violation of Article I	68	34	34
Observations where third country has explicitly intervened in the dispute	17	8	9

Notes: Estimates compiled by the author.

\* Only includes third countries that are GATT contracting parties or WTO Members at the time of the dispute. \*\* Successful indicates a case that led to bilateral trade liberalization gains in the 6-digit HS product under dispute extended from the respondent to the complainant.

and whether they were discriminatory versus nondiscriminatory. First, we use only those observations where allegations did *not* involve the respondent discriminating by imposing an AD/CVM against the complainant. In the cases that fall into this (non-AD/CVM violation) *nondiscrimination* category, 278 out of 417 (67 percent) developing third-country observations showed an increase in exports. While not shown in the table, this implies that, of the remaining 32 developing third-country observations involving an initial respondent discriminating through violation of the rules on AD/CVM, only 15 (47 percent) developing third countries saw their exports increase with the complainant. This is evidence that liberalization is extended to more countries in disputes where the initial violation is nondiscriminatory as opposed to discriminatory. Furthermore, this is consistent with respondents following the principle of equity embodied in the MFN rule.

However, respondent country violations could involve discrimination through means other than the imposition of AD/CVM. Thus, as a second method of characterization, we include a broader set of discriminatory violations, including both AD/CVM violations and other complainant allegations that the respondent has violated Article I.<sup>26</sup> In the third row of Table 3 we consider the performance of developing third countries in the alternative (non-Article I violation) *nondiscrimination* category. Here we find that 198 of the 292 (68 percent) implicitly interested developing third-country exporters saw their exports increase.<sup>27</sup> This too is higher than the ratio of the comparison category of third-country observations derived from discriminatory, Article I violations. Only 95 out of 157 (61 percent) implicitly interested developing third-country exporters saw their exports increase in the discriminatory cases. This provides additional, albeit slightly weaker evidence that respondents are following the MFN rule toward exports from developing third countries.

Finally, in the fourth row of data on the top half of Table 3, we present information on the export performance of developing third countries that intervene formally by identifying themselves to the GATT/WTO as an explicitly interested third party. Of the nine countries that intervened formally, six of them showed an increase in exports to the respondent's disputed market. As this ratio is quite similar to the third-country success ratios presented in the other rows, it does not appear from this presentation of the data that a third country that intervenes formally is any more likely to have its exports to the respondent increase than would a third-country exporter that did not intervene formally. Consider next the

26. For example, if it were in our dataset, the *EC-Bananas III* dispute would fall into this second, broader category of discrimination through an Article I violation, but it would not fall into the first category since it was not an AD/CVM violation.

27. We have also broken down the results illustrated in Table 3 by GATT era and WTO era disputes, and there is little difference across institutional time periods. Thus to conserve space, we omit that comparison here.

graphic evidence of Figure 4, in which we break down the developing third-country exporters by region. Our results appear fairly consistent across regions of the world as well—the evidence is that roughly two out of three developing third-country exporters also see their exports to the respondent country increase when complainant country exports to the respondent increase.

One additional check on our results can be made by appealing to the lower half of Table 3. There we document the export performance of developing third countries in disputes that were not bilaterally successful, ie, that did not result in the respondent increasing imports from the complainant country. In the *nondiscrimination* subsample of observations, we again use our two categories and present results in the second and third rows of the lower half of the table. In each *nondiscrimination* subsample, exactly one-half of the implicitly interested developing third countries see exports increase: 73 out of 146 for the non-AD/CVM violations and 34 out of 68 for the non-Article I violations. These 50 percent ratios are much better than the success ratios of third-country exporters in the corresponding disputes involving discrimination allegations: only 21 out of 79 (27 percent) AD/CVM violation observations were successful; and 60 out of 157 (38 percent) Article I violation observations were successful. Again, as we would expect, more developing third-country exporters receive liberalization in disputes where the initial violation was not discriminatory relative to the discrimination disputes.

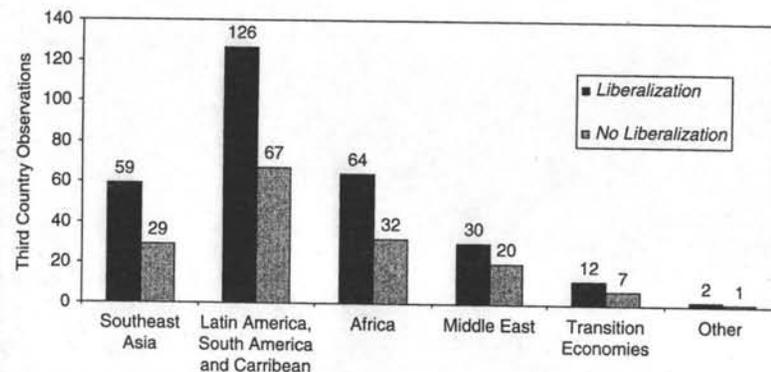


FIGURE 4. DEVELOPING THIRD-COUNTRY\* PERFORMANCE IN A SAMPLE OF 26 GATT/WTO TRADE DISPUTES THAT WERE BILATERALLY SUCCESSFUL,\*\* 1990–1998

\* Only includes third countries that are GATT contracting parties or WTO members at the time of the dispute.

\*\* Bilateral success is defined as the complainant receiving a positive increase in HS 6-digit imports in the respondent's disputed sector between the year of the beginning of the dispute and one year after the dispute's conclusion.

Source: Estimates compiled by the author.

How large are the increases in developing third-country exports? In the previous section, we documented evidence that when complainant exports of the disputed product increase, the exports of roughly two out of three implicitly affected developing third countries increase as well. The follow-up to this question is: how large are the developing third-country gains from trade liberalization? While two-thirds of developing third countries are also increasing their exports to the respondent, are those increases small relative to what the complainant in the dispute is receiving?

To address this question, we turn to the results presented in the first two columns of Table 4. We compare statistics on the size of the increase in exports experienced by developing third-country exporters, relative to the complainant exporter, in the subsample of bilaterally successful cases. If we look at the average for the entire subsample, presented in the first row, the complainant increases exports at a substantially higher average rate than do developing third-country exporters (36 percent versus 28 percent). However, once we separate the observations based on the discriminatory nature of the initial respondent violation, the numbers for developing third countries appear much better. If

TABLE 4. DEVELOPING COUNTRY PERFORMANCE AS IMPLICITLY INTERESTED THIRD COUNTRIES IN A SAMPLE OF BILATERALLY SUCCESSFUL\* GATT/WTO TRADE DISPUTES, 1990-1998

	Mean (median) respondent import growth from the complainant in the disputed sector . . .	Mean (median) respondent import growth from the implicitly interested developing third country in the disputed sector . . .		
		Overall	GATT/WTO Members only	GATT/WTO non-Members only
. . . in all such disputes	36.3% (28.8%)	28.0% (26.8%)	27.4% (27.8%)	30.6% (25.1%)
. . . in non-Article I allegation disputes only	39.7% (38.0%)	37.6% (30.7%)	36.6% (32.2%)	41.9% (29.7%)
. . . in Article I allegation disputes only	32.8% (21.7%)	11.5% (17.9%)	10.3% (15.2%)	15.2% (22.9%)
. . . in non-AD/CVM violation disputes only	33.4% (21.7%)	29.3% (28.6%)	29.4% (29.3%)	29.1% (24.8%)
. . . in AD/CVM violation disputes only	48.2%** (37.0%)	10.0% (7.2%)	1.5% (-10.2%)	64.2%** (67.3%)

Notes: \* Successful indicates a case that led to bilateral trade liberalization gains in the 6-digit HS product under dispute extended from the respondent to the complainant.

\*\* Data based on only 5 observations.

Source: Estimates compiled by the author.

nondiscrimination is characterized as the respondent not violating the rules on AD/CVM, the average increase in exports is still larger for the complainant, but the difference across the two groups is now much smaller (33 percent versus 29 percent). This is also the case if the nondiscrimination is measured as not violating Article I (40 percent versus 38 percent).

Perhaps most striking are the cases that did allege some degree of discrimination on the part of the respondent in the initial dispute. We do not expect to observe a substantial increase in developing third-country exports in these disputes, given that the initial GATT/WTO violation may have either directly benefited them or at least not harmed them. Indeed, we would not be surprised to observe a decline in third-country exports in such cases as implicit preferences are removed. As expected, in both categories of discriminatory disputes, the average increase in exports by the developing third-country exporter is substantially smaller than the average increase for the complainant: 10 percent versus 48 percent for the AD/CVM violations and 12 percent versus 33 percent for the more general Article I violations.

Does being a GATT/WTO member matter for MFN in this setting? A final question that we consider is whether there is evidence that, by itself, membership in the GATT/WTO system matters for this context.<sup>28</sup> Do developing countries that are members of the GATT/WTO system experience better third-country export performance than developing country nonmembers in the outcome of dispute settlement negotiations? Is there any evidence from this sample of data that respondent countries discriminate between members and nonmembers?

We address these questions by comparing the data in the last two columns of Table 4. If respondents were systematically favoring developing country exporters that were GATT/WTO members to the detriment of nonmembers, we would expect all of the statistics in the third column of data for the GATT/WTO members to be larger than for the non-Member data in the fourth column. Clearly there is no systematic evidence that this has been the case. If anything, non-Members may be experiencing a slightly larger increase in exports to the respondent on average than are GATT/WTO members.<sup>29</sup>

#### v. Summary and Interpretation of Empirical Results

At a broad level, we present evidence from a particular class of trade disputes that MFN under the dispute settlement provisions of the GATT/WTO is working as expected. In trade disputes where the respondent's initial GATT/WTO-inconsistent policy was discriminatory, we expect fewer third countries to

28. For ease of exposition, we refer to countries as being 'Members' of the GATT, even though they were technically 'Contracting Parties'.

29. We do not put too much faith in the size (64 percent and 67 percent) of the non-Member export growth results for the AD/CVM violation disputes presented in the very last row in Table 4, as the statistics were derived from only 5 observations.

receive liberalization, relative to disputes where the initial allegation was that the respondent imposed a 'nondiscriminatory' policy of import protection in violation of its GATT/WTO obligations. The expected pattern has been documented in Table 3. Furthermore, in trade disputes where the respondent discriminated initially, we expect developing third-country exporters to receive less additional import market access, relative to disputes where the initial allegation was that the respondent imposed a 'nondiscriminatory' policy of import protection that violated its GATT/WTO obligations. This has been documented in Table 4.

Our results are particularly important given the concerns raised by the theoretical research of other economists.<sup>30</sup> Other economists have argued that in multilateral trade agreements, subsets of countries have an incentive to form coalitions and renegotiate terms of market access to their own benefit but at the expense of third countries that are not party to the negotiations. They term this the problem of 'bilateral opportunism', but they also use economic theory to show how the GATT/WTO rules of reciprocity, MFN, and the ability of third countries to file future nonviolation complaints can help to control this problem.

As this applies to our setting, one might fear that bilateral dispute settlement negotiations between the respondent and complainant could lead to bilaterally opportunistic or discriminatory behavior. The dispute settlement negotiations could facilitate a collusive outcome, where the respondent provides the complainant with increased market access at the expense of all other developing third-country exporters, whose own trade would fall. We find no evidence of bilaterally opportunistic or discriminatory behavior against developing third countries in this sample of data on the trading outcomes of dispute settlement negotiations.<sup>31</sup>

#### D. CONCLUSIONS, EXTENSIONS, AND POLICY IMPLICATIONS

In this chapter, we have reviewed the different externality explanations for why a developing country has a third-party economic interest in a formal GATT/WTO trade dispute over market access. We then focused on a particular class of trade disputes, those in which the respondent was alleged to have offered excessive import protection relative to its GATT/WTO market-access commitments. Within a sample of this class of disputes taking place over the 1990–1998 period, we investigated a dataset of developing countries that we define as being implicitly

30. See K Bagwell and RW Staiger 'Multilateral Trade Negotiations, Bilateral Opportunism and the Rules of GATT/WTO' (2004) 63 J Int'l Econ 1.

31. The empirical results reported here are also consistent with Bown (n 5 above), which uses a larger sample of developing and nondeveloping third-country data and controls for other factors that may affect the respondent's disputed sector import growth using formal econometric techniques.

interested as a third party through their own exports interests to the respondent country in the disputed sector. Finally, in assessing disputes in which the initial respondent violation was nondiscriminatory, we present some evidence that liberalization gains extended to the complainant have also been extended to third-country exporters, which is consistent with a functioning principle of equity embodied in the MFN rule. In disputes that conclude with the complainant receiving an increase in market access to the respondent, roughly two out of three developing third countries also see their exports to the respondent increase, and the average rate of increase of these exports is only slightly less than the average increase experienced by the complainant. While the empirical analysis presented here focuses only on a comparison of averages and counts of data, it is consistent with more formal econometric results reported in other research.<sup>32</sup>

We should also note some additional caveats to our conclusions. First, the brief empirical analysis also concentrates on a fairly short-run economic result. It may take longer than simply one year after the dispute's conclusion for the full trade liberalization gains of all cases to materialize. This may understate our results, for example, if market-access gains to third-country exporters follow subsequent to trade liberalization gains that are extended to complainants. Second, we consider a fairly limited number of disputes and only a certain class of GATT/WTO violations. While a starting part, this analysis is but a starting point for an area that requires much more systematic empirical analysis.

Not only is it important to obtain a better understanding of the economic impact of the GATT/WTO dispute settlement process on developing country interests in cases in which they are complainants and respondents, but it is increasingly critical to analyze the externality impact of *others'* disputes on developing country economic interests as third parties. We have identified various ways in which the economic interests of developing third countries are affected, depending on the nature of the dispute and their importing or exporting role. Future research should address the other classes of disputes from the third-party perspective that we have identified in Figures 1 through 3, in order to get a truer assessment of the overall economic impact of the dispute settlement process. Finally, it would also be of great interest to have a deeper sense of what is happening *within* these developing third countries beyond what is simply happening to trade flows. What are the distribution consequences of these—sometimes positive, sometimes negative—externalities? How are production, employment, wages, and the distribution of income being affected?

Finally, from a policy perspective, we once again highlight the critical need for transparency when it comes to formal DSU litigation activity. Our breakdown of the varied third party interests in Section B reveals a complex web of externalities being imposed on the nonprimary (ie, noncomplainant/nonrespondent) litigants

32. Bown (n 5 above).

in trade dispute activity. For example, *realizing* the positive externality of enhanced, nondiscriminatory market access that results from a trade dispute may require industries undertake substantial new investment. On the other hand, for the third countries that face a negative externality, their governments may need new domestic policies so as to enhance the facilitation of resources out of a shrinking industry (the result of preference erosion) and into newly expanding sectors elsewhere in the economy. Finally, for disputes in which there are significant negative externality losers at the country-wide level, there may be equity arguments for compensation to the losers via some sort of international transfer. At a minimum, transparency in the DSU process can enhance the likelihood that national governments implement the necessary *complementary* policies to best respond to the externalities generated by the outcomes of trade disputes.