Note

From “See You in Court!” to “See You in Geneva!”: An Empirical Study of the Role of Social Norms in International Trade Dispute Resolution*

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I. INTRODUCTION

When the World Trade Organization (WTO) replaced the General Agreement on Tariffs and Trade (GATT) in 1995, it also created an innovative dispute resolution mechanism. In contrast to the old consensus-based institution under the GATT, the WTO dispute settlement mechanism (DSM) aims at providing a mandatory legal framework under which countries resolve their trade quarrels according to the law. Under this framework, the power of adjudication belongs to the Dispute Settlement Body (DSB) that

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consists of all WTO members. The DSB, however, delegates its power to Panels and the Appellate Body. The DSB has the formal authority to nullify a finding or a judgment made by a Panel or the Appellate Body. However, since such nullification requires unanimity, the Appellate Body basically has the final say in adjudicating trade disputes.\footnote{1}{Understanding on Rules and Procedures Governing the Settlement of Disputes art. 2, para. 1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, art. 11, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 112 (1994).}

Much of the dispute resolution procedure resembles a courtroom proceeding, where the parties have an option to settle. Once a complainant files a request for consultation, the accused is forced to enter into a consultation stage. If the consultation does not resolve the dispute within sixty days, the complaining party can ask for a Panel decision. Once the Panel takes over the matter, both parties stipulate the facts and present their case in front of the panelists. The Panel’s ruling, if not appealed, requires immediate compliance. However, on issues of law, both parties can appeal the Panel’s decision. The Appellate Body reviews the trade agreements and renders a final ruling. The losing party is required to comply with the judgment or otherwise be subject to punishment in the form of authorized trade retaliation.\footnote{2}{Details of the dispute settlement procedure can be found on the official website of the WTO. WTO, Understanding the WTO: Settling Disputes, http://www.wto.org/english/tratop_e/displ_e/displ_e.htm (last visited Apr. 27, 2007).}

The dispute settlement mechanism also sets up a fixed time frame for disputants to follow. Once a request for consultation is filed, the complainant can expect a final judgment within one year and three months. The waiting period is shorter if an appeal is not sought. In short, the WTO DSM aims at neutralizing the resolution of trade disputes by creating a quick resolution and relatively equal access to all member states, regardless of the differences in their political power outside the trade system.

Since its establishment in 1995, the DSM has produced a presentable record. From 1995 to 2005, WTO members brought 335 trade disputes to the DSB.\footnote{3}{Data from the official website of the WTO. WTO, Dispute Settlement: The Disputes, Chronological List of Dispute Cases, http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm (last visited Apr. 27, 2007).} Approximately sixty governments are involved in the cases,\footnote{4}{WTO, Dispute Settlement: The Disputes, Disputes by Country, http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm (last visited Apr. 27, 2007). Members of the European Community are counted as independent national governments for this assessment.} and the countries vary in terms of their size and trade volume. Though the European Community and the United States are the most active members in bringing cases to the WTO DSM, one can nevertheless find much weaker entities participating in the formal dispute resolution process.\footnote{5}{Id.}

Because of its unique legal features, the WTO DSM has received enormous interest and attention from legal scholars and social scientists. Based on the record of cases, some applaud the achievement of the legal body and its apparent neutrality.\footnote{6}{See Andrew Guzman & Beth Simmons, International Dispute Resolution: Power Plays and Capacity Constraints: The Selection of Defendants in World Trade Organization Disputes, 34 J. LEGAL STUD. 557 (2005).} Yet others are less optimistic. They contend that, under the guise of legal rhetoric, state power is the major factor that
determines whether a government will initiate a formal proceeding, whether it will settle during the consultation phase, whether it appeals a panel’s decision, and how to enforce a favorable judgment.\footnote{See Geoffrey Garrett \& James McCall Smith, The Politics of WTO Dispute Settlement, (UCLA Int’l Inst. Occasional Paper, 2002), available at http://repositories.cdlib.org/international/ops/wtogarrettsmith/}

Though disagreement remains, scholars on both sides of the debate have so far looked only at the material interests of the state or powerful interest groups. They have by and large ignored the possible impact of social norms on international trade dispute resolution. Meanwhile, normative theorists, though reaching into various areas of law, have stayed away from exploring subjects related to international trade disputes. As a result, some critical questions have been left unanswered.

In this Note, I undertake the task of filling the knowledge gap by answering the following question: If, in a particular country, people are more inclined to resolve disputes through formal legal mechanisms, is their government more likely to use the WTO DSM to settle disputes with other governments? I contend that the answer is yes. I test my hypothesis using both interviews and statistical analysis. The interview-oriented qualitative approach enables me to learn from trade officials the contexts and details of WTO disputes. This knowledge is essential to discovering the causal relationships among the different factors that determine state behaviors. In addition to the qualitative method, I also use a quantitative approach to explore the relationship between norms and international trade dispute resolution. The statistical analysis provides a systemic result and allows me to isolate the impact of the interested independent variable, “Domestic Litigiousness,” from the influence of other possible explanatory variables such as “State Capacity” and “Political Structure.” In short, I explore the research question by combining interviews with trade officials and regression analysis of the data from forty-six WTO members.

Both the interviews and the regression outputs support my argument that countries with more litigious domestic norms tend to file more complaints at the WTO DSM. This remains true after controlling for the effects of other variables, including power and capacity. The research findings suggest that more attention should be paid to the normative aspect of both international dispute resolution and the design of international legal institutions. The general trend of judicialization of international affairs may impose disproportionate costs on countries with a non-litigious domestic environment. Though the costs may be mitigated in the long run—given the movement towards more litigation even in the traditionally non-litigious societies—incorporating the cultural perspective as a consideration in designing international dispute resolution institutions will make those institutions more effective in settling disputes. In addition, the research findings of the Note suggest that normative theories and rational choice theories are complementary. Scholars in either camp will benefit significantly if they attempt to engage in the debate of the other side more seriously.
The Note proceeds as follows. Part II provides a review of the literature on the relevant topic. It surveys scholarly works from both law and political science. Part III presents the theoretical ground for my analysis. Part IV shows the empirical evidence, which combines personal interviews and statistical regressions. Part V discusses the implications of the research findings on the WTO DSM, the possible convergence of governments’ use of formal international dispute resolution mechanism in the long run, and some final remarks on the broader implications of this research.

II. EXISTING LITERATURE ON THE WTO DSM

In this Part, I briefly survey the current literature on the interaction between states and the WTO DSM. I point out that utilitarianism has so far dominated this field, and as a result, the possible impact of social norms on international trade law has not received any scholarly attention. Meanwhile, normative theorists have yet to make any serious attempt to expand into international trade. Their reluctance leaves a large knowledge gap, which I hope to fill in this Note.

One major branch of utilitarianism is realism. Realists see the world as composed of states maximizing their self-interest. Relative power distribution, in their view, is essential in government decision making in international trade. When applied to international trade law, realists predict that the WTO is nothing more than a forum for power politics. For instance, Steinberg surveys the decisionmaking mechanism in the GATT/WTO regime and concludes that “the GATT/WTO consensus decisionmaking process is organized hypocrisy in the procedural context” and that “[t]he procedural fictions of consensus and the sovereign equality of states have served as an external display to domestic audiences to help legitimize WTO outcomes.”

Through detailed case analysis, Garrett and Smith reveal the strategic interaction between the two powerful players, i.e., the European Union and the United States, and the WTO Appellate Body. Both parties in the game try to avoid direct confrontation. As a result, issues touching on core interests of the European Union or the United States do not reach the Appellate Body easily. And when they do, the Appellate Body renders decisions strategically to avoid conflict.

Another branch of utilitarianism is institutionalism. Institutionalists loosen the assumption that states necessarily seek to maximize their material interests relative to other states all the time. Instead, institutions can often exist and function well because of the long-term gains from solving the collective action problem. In such institutions, powerful states often follow the rules because of the expected long-term gains, so power distribution is no longer essential to predict the outcome of conflicts. Based on various regressions using the cases filed with the WTO DSM, Guzman and others point out that poor countries tend to challenge the most powerful states

through the formal dispute resolution channel. This behavior renders support to the argument that weak governments are constrained by their lack of legal capacity. Meanwhile, it counters the argument that power rules in the WTO.  

Since realism and institutionalism are not exclusive in their application, one can find scholars using both lenses in observing international trade dispute resolution. For instance, Van der Borght argues that developing countries often do not have the financial means or the expertise to effectively protect their rights, and suggests that legal assistance is necessary to make the WTO dispute settlement body more accessible. Recognizing the fact that developing countries are not always capable of meaningful retaliation even if a favorable judgment is rendered, Bagwell and others suggest that the enforcement of rulings favorable to developing countries can be sold to make retaliation a credible threat. Bown's empirical evidence also renders credence to a middle-ground argument. He identifies several key factors that determine the real outcomes of the cases: power for trade retaliation, capacity to absorb legal costs, reliance on the respondent country for bilateral assistance, and the absence of a preferential trade agreement. Yet lack of these factors is "typically associated with developing countries in the WTO membership." Based on over a hundred interviews, Shaffer provides a more detailed description of how lack of legal and financial capacity as well as fear of retaliation constrains developing countries' access to the WTO DSM.  

Yet another major branch of utilitarianism is liberalism. In comparison to the state-centered realist theories, liberals and neo-liberals see non-state actors on the stage of international relations as well. Trade disputes are ultimately disputes among various interest groups. Their reactions to perceived trade violations determine how the state resolves the disputes. For instance, Princen shows that, for European Community (EC) members, domestic political forces exert a significant impact on state compliance with WTO rulings and regulations, and trade officials' effectiveness turns on how much they can exclude those influences.  

Both realism and liberalism are powerful theoretical tools with which scholars have unveiled important aspects of the operation of the WTO DSM. However, the utilitarians have not paid any attention to the normative side of states' interaction under this formal dispute resolution framework. Officially, members of the WTO have agreed on the norms and procedures of the trade

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11. See Marc Busch & Eric Reinhardt, Developing Countries and General Agreement on Tariffs and Trade/World Trade Organization Dispute Settlement, 37 J. WORLD TRADE 719, 720 (2003); Guzman & Simmons, supra note 6.  
15. Id. at 291.  
system. Yet in reality state officials may differ in their perception of the propriety of the WTO-provided formal mechanism for dispute resolution, since their perceptions are formed in different domestic environments. To analyze the normative component of a state’s behavior under the WTO DSM, one needs a norm-based theory on international law and politics.

In the last two decades, norm-based theories have been growing fast. Scholars of this camp argue that “a complete description of state action in the international realm requires an understanding of the influence and importance of ideas and norms.” Based on sociological theories, constructivists contend that norms and values not only matter in international law and politics, but that very often they determine how people perceive power and the application of power. Therefore, understanding norms is essential to the study of international relations. Legal scholars and political scientists embracing this theoretical perspective have also applied norm-based theories to more specific studies of, among other topics, the spread of human rights recognition, the relationship between legitimacy and compliance with international law, and the internalization of international law and norms.

Despite the blossoming of norm-based theories and their applications in international law and politics, scholars in this field have in general ignored the study of international trade dispute resolution. One possible reason may be the common perception that “cold-hearted” cost-benefit analysis is prevalent in the area of trade. In addition, the methods used in the normative literature have often been criticized as too inductive and descriptive. So far, most norm-based theories have relied on anecdotal case studies, and few have applied systemic data analysis. Therefore, even if the normative theorists start to explore international trade law, they may not communicate well with the utilitarians, who often rely on regression analysis to vindicate their arguments.

In sum, utilitarians have generally ignored the dimension of norms and values in dispute resolution under the WTO DSM, and the norm-based theorists have not paid attention to this area either. As a result, people do not know how a country’s social norms influence the government’s behavior in the WTO dispute resolution regime. More specifically, existing literature has ignored the question I am going to explore: Are countries with more litigious domestic environments more likely to file complaints in the WTO dispute settlement mechanism than those that are less litigious?

As the Note will show, social norms play an essential role in deciding how governments resolve disputes through the WTO DSM. However, unlike most normative theorists, I come to this conclusion by taking a rational choice path. I use Chong’s rational choice model to explain the causal link between domestic norms and government behavior in the WTO DSM. Moreover, Part III, which presents my empirical evidence, contains not only interviews

18. HATHAWAY & KOH, supra note 10, at 111.
showing details and contexts of government decisions regarding international trade disputes, but also systemic data analysis. I believe this highly interdisciplinary approach not only fills the knowledge gap, but also builds a bridge that enables scholars from different areas to communicate with each other. Before proceeding, I want to point out that this Note does not side with any of the existing theories or attempt to falsify others. Rather, I argue that extant perspectives have ignored an important factor and therefore have rendered our understanding of the resolution of international trade disputes incomplete.

III. SOCIAL NORMS MATTER IN INTERNATIONAL DISPUTE RESOLUTION

This Part presents the theoretical framework that will be used to explain the causal link between domestic litigiousness and the government’s propensity to use a legal forum to settle international trade disputes. This framework consists of two components. The first component is the socially-shaped personal dispositions of high-ranking government officials favoring or opposing litigation. To be more specific, if the domestic social norms discourage litigation, government officials who develop and invest in such a set of norms will tend to avoid using the formal dispute resolution mechanism against other governments. The second theoretical component centers on the norm-based social allocation of resources relevant to formal international dispute resolution. In countries with social norms against litigation, the business sector is not used to defending its interests through legal means. As a result, the industry is not ready to “make a case” via a formal dispute resolution mechanism. I contend that the variations of these two components determine how willing a government is to settle disputes through the WTO DSM, when other main conditions are equal.

A. Social Norms and Personal Dispositions Against Litigation

Governments are made up of individual officials who make decisions regarding state behaviors in the international community. At each moment of decision, officials normally have a set of options available. In the eyes of the utilitarians, officials from different countries will evaluate an option in the same way, i.e., based on the ultimate economic benefits the option, if taken, will bring to the government or the interest groups who exert decisive pressure on the decisionmakers. I agree that goal-oriented material interest is an important factor in understanding international trade. However, when we study the decisions of government officials, this incentive-based approach is insufficient. In this Note, I apply Chong’s dynamic model, which combines symbolic politics and rational choice theory,23 to study the link between domestic litigiousness and the government’s propensity to litigate in international trade. This model, I argue, provides a better framework for understanding how governments, under the influence of their domestic values and norms, interact with each other under the WTO DSM.

23. Id. at 6.
From a broad rational choice point of view, a person’s dispositions are “past investments that affect evaluations of current options. A person’s rational choice therefore depends in part on the accumulation of past decisions that have formed his dispositions and in part on the costs and benefits of his present alternatives.” This rule applies to government leaders as well as their supporters. In any political entity, high-ranking government officials must summon enough political capital from their supporters, who form their dispositions in a domestic social environment. In an environment where being litigious is not regarded as a virtue or a respected disposition, citizens naturally share values that downplay the importance of litigious dispositions and skills. In such an environment, being litigious does not add to the stature of high-ranking government officials. Experiments on social conformity show that “nonconformists tend to be less well liked by fellow group members.” In other words, state leaders have to invest and develop skills and personal dispositions that will win them political and social capital. In a less litigious country, such political and social capital more likely comes from the ability to resolve disputes through less formal, but nevertheless sophisticated, negotiation and compromise.

An important factor that determines one’s response to new norms is “whether one has a vested interest in the existing norms. Every individual invests in developing a particular repertoire of skills and values, only some of which have universal appeal and status.” Since state leaders have invested and developed the repertoire of skills and values that conform with the norms and values of the domestic group from which they gather political capital, lacking strong incentives for change, they will keep dipping into this repertoire for “sound” standards to apply in analyzing issues and making decisions. When an international trade dispute arises, a high-ranking government official chooses between having it resolved through the formal dispute resolution mechanism established by the international trade agreement, on the one hand, and resolving it through less formal channels, such as non-rule-based diplomatic negotiation or arbitration, on the other. The former entails all the procedures that resemble a trial; the latter affords more flexibility and less formality. Holding everything else equal, the official from a legally aggressive domestic environment—relative to his counterpart from a society downplaying adversarial dispositions—will more likely opt for the trial-like solution.

Granted, the two dispute resolution methods are often interrelated. In the international arena, diplomatic negotiations may take place in the shadow of international law. Almost all the trade officials I talked to expressed that their government would make great efforts to resolve transnational disputes through consultation. The difference in the preference for the two methods exists only as a matter of degree. In other words, high-ranking government officials from different countries will position themselves at different points along a continuum from “always negotiate informally” to “always litigate

24. Id. at 47 (emphasis omitted).
25. Id. at 49.
26. Id. at 98-99.
27. See infra Section IV.A.
formally." Those from countries with a less litigious domestic environment will locate closer to the "always negotiate informally" end of the continuum. In comparison, officials from countries with a more litigious domestic environment will tend to position themselves closer to the "always litigate formally" end.

Though dispositions based on past investment in values and skills tend to endure, they are not static.\(^{28}\) If external incentives constantly contradict an existing repertoire of skills and values, the investors will gradually adjust to the new set of norms and skills. But the preconditions for such change are high incentives and continuous conflict between the existing repertoire and the new set of norms, especially when the investment in the previous repertoire is significant.\(^{29}\) The change will be slow if the previous investment is significant, the new incentives are low, and the conflicts do not occur very often. On the other hand, the change will be fast if the previous investment is minimal, the new incentives are high, and the conflicts are frequent.\(^{30}\) This dichotomy suggests that, in a less litigious country, high-ranking trade officials and their legal professional colleagues respond differently to the WTO DSM.

I believe the following set of factors provides a possible explanation for why legal professionals tend to catch up with the "business" quickly. First, they have less investment in the domestic norms and values. Second, they have strong incentives to adopt the new repertoire of norms and skills, because their career depends on how well they perform on their posts as professionals.\(^{31}\) Third, they are on the frontline of international trade disputes. They encounter day-to-day conflicts between their original dispositions and the new set of norms. In short, the dynamic model of symbolic politics suggests that legal professionals from less litigious countries are better able to adapt to the set of norms and skills corresponding with the formal WTO dispute resolution regime.

In contrast, high-ranking officials from less litigious countries are presumably slower in adapting to the new repertoire. First, high-ranking government officials have developed and invested heavily in domestic norms and values. Second, compared to legal professionals, they do not face high incentives to master the new repertoire of norms and skills, since their performance is evaluated in a different way. This is less so if powerful domestic interest groups rely on exports and the regime is responsive to group pressure. Third, high-ranking officials are not on the frontline trying to resolve disputes. They rarely encounter direct conflicts of norms and values. And the arena where they are active—i.e. high-level diplomatic interaction—rarely involves surrendering the power of judgment to a third party whose judgment carries legitimacy and is binding. In short, high-ranking government officials from countries with less domestic litigiousness tend to keep their dispositions for a longer time in spite of the surrounding international environment.

\(^{28}\) CHONG, supra note 22, at 71.

\(^{29}\) Id.

\(^{30}\) Id. at 47-62.

\(^{31}\) Interview with Senior Official, Legislative Office of the State Council of P.R. China, in New Haven, Conn. (Dec. 12, 2006). The official noted that the normal standard used for promotion is professional capacity and loyalty.
enabling formal dispute resolution. Since resolving international trade disputes is costly, the decision to bring the issue to the WTO DSM is often up to high-ranking government officials to make. If the domestic environment does not favor litigation, everything else being equal, the high-ranking officials are more likely to opt for alternative dispute resolution.

B. Social Allocation of Resources Disfavoring Formal Resolution of Disputes

High-ranking government officials' perception of what is the "proper" way to resolve disputes only partially explains how domestic litigiousness influences a government's propensity to resolve disputes formally. The level of domestic litigiousness also determines how well the business sector is prepared to "make a case" in formal international dispute resolution.

Though government officials are the ones who are stationed in Geneva to negotiate or litigate, it is the industry suffering from trade violations that "makes the case" in the first place. The victim industry invests manpower and other resources in researching relevant laws, collecting evidence, approaching government officials with the complaint, and lobbying for remedies. The process of "making the case" often requires collective action involving numerous business entities. In a more litigious domestic environment, companies are familiar with the process, materials for litigation are easily available, and lawyers are ready to do the job. In a less litigious domestic environment, litigation is not a ready strategy in the business community. Business owners are not familiar with the process of "making a case," materials that can be used as evidence for litigation are not well preserved or collected, and lawyers are either not trusted or not easily available. If the victim industry does not take the initiative to press for a formal resolution of a transnational trade dispute, the government faces enormous hurdles to resolving the dispute through a formal international channel.

The variations in domestic litigiousness are not solely due to the government capacity factors that have been discussed by the utilitarians. They are also explained by each country's social capacity for litigation. This type of social capacity is not closely related to the wealth of the society, the military capacity of the state, or other material-based factors. It is an allocation of social resources based on what people in the society view as the "proper" way to deal with each other, in particular, in situations where they disagree on an issue.

One may go a step further and ask what causes the variation in the level of domestic litigiousness. In other words, why are some societies more litigious than others? This is a very intriguing question, but it is beyond the scope of this Note. I will leave this question to other scholars for further exploration.
IV. EMPIRICAL EVIDENCE SHOWS THE IMPORTANCE OF NORMS

I test my hypothesis with a combination of interview-oriented case studies and statistical analysis. As noted earlier, the interview method tends to produce biased and limited results. Moreover, interviews sometimes do not enable researchers to disentangle the effects of different causal factors. For instance, a government’s decision to litigate in the WTO DSM is likely determined by a variety of factors. Unless the event the interviewee describes takes place in a situation where other variables are held constant, interviews normally cannot tell us exactly how important a factor is and which factor is more important than others. On the other hand, regressions often fall short of pinpointing the causal relationship between a dependent variable and independent variables. Problems concerning the accuracy of the regression outputs may also arise when it comes to creating proxy variables intended to represent abstract factors, using estimated data, or choosing an appropriate regression model. In short, neither interview-centered case studies nor statistical analyses are perfect, and employing either method alone is insufficient to fully explore the role of social norms in international trade dispute resolution. Therefore, I use both in this Note. As will be shown, the two sets of evidence are consistent, and they both support my argument.

A. Interview-Oriented Case Studies

The former deputy director of Japan’s WTO mission commented that cultural difference was one reason why some countries filed complaints with the WTO less frequently than others. He noted that the norms adopted by the trade officials in India and Brazil seemed to favor litigation and, as a result, the two governments were very active in the WTO dispute resolution body. The Japanese mission, in contrast, is hindered by a social norm which discourages litigation.

The non-litigiousness of countries such as Japan and China has generated an enduring scholarly debate. The causes of the social norm may be institutional, political, social, or psychological. This Note does not explore that question. All that is needed for the present discussion is the generally

32. I conducted interviews with a number of government officials who were personally involved in transnational trade dispute resolutions, in particular, through the formal channels of the WTO. I tried to diversify the portfolio of the interviewees to make the analysis more objective and informative. The interviewees are as follows: (1) two officials from Japan—a legal counselor currently stationed at Geneva who deals with WTO trade disputes and a former deputy director of Japan’s mission at the WTO; (2) one former Chinese diplomat stationed in Geneva who was in the first group of delegates sent to the WTO by the Chinese government; (3) one Indian diplomat stationed in Geneva dealing with WTO trade disputes; (4) one Brazilian diplomat stationed in Geneva dealing with WTO trade disputes; and (5) one American high-ranking trade official stationed in Beijing (not personally involved in WTO dispute resolution).

33. Interview with Yoichi Suzuki, former Deputy Permanent Representative to the WTO, Gov’t of Japan (Feb. 12, 2006) (Mr. Suzuki emphasized that his statements during the presentation and the interview represented only his personal opinions, and not the official view of the Japanese government).
agreed-upon proposition that "the Japanese are nonlitigious compared to the people in other industrialized countries." 34

The ideal characteristic of a legal system under the Japanese view of society is informality:

Informality allows the control of social interaction, whether by private groups, the bureaucracy, or the judiciary, to be particularistic so that consensus can form the basis of dispute resolution. Consensus-based dispute resolution in turn eliminates the instrumental role of universal rules and minimizes the possibility of an individual or a single group using the legal system to challenge the dominant social consciousness while simultaneously enabling the legal system to satisfy the legitimate needs of particular individuals and groups. 35

Having developed and invested in this domestic environment, high-ranking Japanese officials are more likely to associate litigation with humiliation and hostility than their counterparts from more litigious countries. As a result, everything else being equal, the bias against litigation causes Japanese officials to hesitate when deciding whether or not to bring a trade partner to the WTO dispute resolution body. In other words, Japan’s less litigious domestic environment exerts pressure on Japanese officials when they use the formal dispute resolution mechanism. For instance, the high-ranking official at the WTO felt “uneasy” when Japanese officials brought an action against Indonesia because they associate the proceedings with sending signals of hostility to their Indonesian counterparts, causing them personal inconvenience and embarrassment. 36 Everything else being equal, Japanese officials went to extremes to resolve disputes outside the formal WTO DSM, and believed that other East Asian countries would do the same. 37

Coincidentally, at the time of the interview, the Panel in the WTO DSM had just circulated a report on a dispute between Korea and Japan over Japan’s import quotas on dried laver and seasoned laver. The Korean government filed the complaint on December 1, 2004, and the case went all the way to the Panel. 38 I brought up this apparent contradiction to the Japanese trade official. He was fully aware of the litigation, and expressed his surprise as to the radical change in the policies of the South Korean government. His guess was that top Korean leaders were aiming at something else. 39

Japan’s business sector also reflects and reinforces the non-litigious domestic environment. “[H]eavy reliance on nonlegal rules reduced demand for corporate law and legal professionals in postwar Japan.” 40 Though the second largest economy of the world, “Japan has the smallest formal legal system of any major industrialized country. . . . Japan has only about 1000

36. Interview with Yoichi Suzuchi, supra note 33.
37. Id.
39. Interview with Yoichi Suzuki, supra note 33.
corporate and securities lawyers as those terms would be understood in the United States.” Companies do not have a big budget for legal matters. “Company monitoring was, until recently, performed mostly in long-term business relationships and main bank systems, with a heavy emphasis on personal trust and reputation.” Given the detachment of the business sector from law, “many legal reforms have had little or no effect on Japanese corporate practices.”

Though Japan’s trade official recognizes the importance of the business sector, the relative lack of initiative from the victim industry has probably contributed to its reluctance to resort to the formal dispute resolution mechanism in the WTO. Again, the work done by victim industries and their influence on the government may still appear significant. After all, the Japanese government has filed twelve requests for consultation at the WTO DSM. However, one has to discount the size of the Japanese economy and potential disputes the Japanese businesses could have brought to see the relative lack of initiative. This is why I combine interviews with statistical analysis that controls for major independent variables. As shown in the next Section, the regression outputs are consistent with the interview feedback: both point to the essential role of social norms in a government’s participation in the formal mechanism of international dispute resolution.

Chinese society, resembling that of Japan, treats harmony and compromise as virtues. Litigation, though increasing annually, is to be avoided, even at great cost. Resolving disputes through a formal procedure signals resentment and hostility. Though in more litigious countries it is often true that litigation is also the last resort, the distance which people are willing to travel to avoid litigation is normally shorter than in less litigious countries. Having developed and invested in such a domestic environment, high-ranking government officials in China favor informal dispute resolution channels, and thus using the formal mechanism in the WTO falls outside their comfort zone. The Chinese trade official I interviewed commented that values and norms played a major role in the state leaders’ decision to avoid the WTO dispute resolution body. He gave an example of a dispute on which the professional opinion was that China could win and benefit enormously if the dispute were resolved in the WTO DSM, yet the high-ranking state officials, very likely due to the norm against litigation, refused to use the formal channel.

The example is the trade dispute over China’s restriction of coke exports to the European Union. Coke is a key raw material for steelmaking and China is the largest coke exporter in the world. At the time of the dispute, one third

41. Id. at 2105.
43. Milhaupt, supra note 40, at 2105.
44. E-mail from Anonymous Official, Gov’t of Japan, to Ji Li, Yale Law School (Nov. 7, 2006, 18:38 EST) (on file with author). The views expressed by this official do not represent the official view of the Government of Japan.
46. Telephone Interview with Anonymous Trade Official, Gov’t of China (Nov. 11, 2006). The views expressed by this official do not represent the official view of the Government of China.
of the European Union’s coke import came from China. In 2004, China reduced its coal export quota by twenty-six percent, and export dropped from twelve million tons in 2003 to nine million tons.\textsuperscript{47} Having spent several years blaming Chinese coke exporters for dumping their exports, the European Union suddenly changed direction and alleged the export quota was a violation of the WTO rule.\textsuperscript{48} While expressing their preference for a negotiated solution, the EU officials on several occasions threatened litigation at the WTO DSM.\textsuperscript{49}

The relevant industry in China supported a continuous export restriction,\textsuperscript{50} and the professionals from the Ministry of Commerce formed the opinion that the WTO DSM would probably render a judgment favoring China if the dispute were litigated.\textsuperscript{51} In addition, trade officials and international law scholars have expressed their view to the decisionmakers in China that such litigation at the WTO was quite normal and it would not damage diplomatic relations.\textsuperscript{52} However, the decisionmakers finally gave in to the litigation threat and loosened the export quota.\textsuperscript{53} The interviewee trade official believes that such a move was due, among other reasons, to their norms and values regarding the proper way of settling disputes.\textsuperscript{54}

Though I tried to diversify the portfolios of my interviewees,\textsuperscript{55} and avoid possible biases during the interviews,\textsuperscript{56} it is inevitable that the interview feedback does not capture the whole picture of international trade dispute resolution.\textsuperscript{57} In order to draw more generalizable conclusions, I use systematic

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|}
\hline
 & (in thousands of dollars) & & & \\
\hline
Japan & 4,623,398 & 550,500 & 36,272 & 12 \\
China & 1,649,329 & 752,200 & 1255 & 1 \\
Brazil & 604,855 & 115,100 & 3216 & 22 \\
India & 691,876 & 76,230 & 632 & 16 \\
United States & 11,667,515 & 927,500 & 39,094 & 81 \\
\hline
\end{tabular}
\caption{Data (ranked according to Export volume).}
\end{table}

\textsuperscript{48} Id.
\textsuperscript{50} Continuous Coke Export Policy Urged, supra note 47.
\textsuperscript{51} Telephone Interview with Anonymous Trade Official, Gov't of China, supra note 46.
\textsuperscript{52} Id.
\textsuperscript{54} Telephone Interview with Anonymous Trade Official, Gov't of China, supra note 46.
\textsuperscript{55} Below is a brief introduction to the interviewees’ background countries and their activities in the international trade arena.
regressions to further test my hypothesis. As will be shown in the following Section, the regression outputs are consistent with the interview feedback. This consistency renders strong support for my theory on the role of social norms in international trade dispute resolution.

B. The Regression Model and the Independent Variables

I evaluate my argument using event count regression analysis. The reason I use event count regression instead of the traditional ordinary least square model is that the dependent variable, the number of requests for consultation filed by a country as complainant, is a discrete variable that contains integers equal to or greater than zero. The unit of analysis in my study is individual countries. The dependent variable is the number of “Requests for Consultation” filed at the WTO by a country as the complainant up until the initial stage of this research. For instance, from 1995 to early 2006, Canada filed twenty-six requests for consultation as a complainant against other WTO member states, so the dependent variable is twenty-six for this observation. At the initial stage of my research, the European Community (EC) and more than forty countries had participated in the trade dispute settlement system as either complainant, defendant, or both. In this Note, I treat the European Community as an actor equivalent to the United States. EC member states are not considered individual complainants. As a matter of fact, no EC member state has ever filed a complaint in its own capacity, though such individual complaints may be brought to the WTO DSM by other countries. (Note that several states that joined the European Community between 1995 and 2005 filed complaints in the WTO DSM before delegating power to the European Community. Since the number of countries falling into this category is small, I ignore them in this analysis to avoid unnecessary complication.) Finally, the regression analysis contains forty-six observations including the majority of the countries that have used the WTO DSM, either as a complainant or a defendant, and some other countries whose data I was able to find. For the purposes of my research, I pay attention only to the number of requests filed by a country as complainant, which reflects directly the level of inclination of a government to resolve trade disputes with other WTO member states through the formal DSM.

This approach. For instance, the interviewees’ impressions may be based on a few extreme cases. It is also possible that their impressions differ from other officials in their respective governments. For instance, the former Deputy Director of Japan’s WTO mission gave opinions that differ from the legal counselor currently stationed in Geneva. However, this difference supports my theory described in Part III. A third possibility is that their views are held only within their own government. If this is the case, my argument may not hold beyond the borders of these countries.

58. Please see Appendix, Graph 1 for a density graph of the dependent variable.

59. Only three countries fall into this category: the Czech Republic, Hungary, and Poland.

60. As suggested by fellow student Matthew Splitek, running my regressions with claims against a country as the dependent variable should presumably also produce significant results. In other words, if social norms matter, we expect that lower lawyer/population ratios are associated with fewer complaints against the state. The idea is that if a state has a normative preference against litigation, it will opt to use other dispute resolution channels, not waiting to be brought to the WTO DSM. This will likely be the topic for my next project, but preliminary findings do support the hypothesis. To be more specific, a lower lawyer/population ratio is associated with lower complaints against the state at a statistically significant level.
The key explanatory variable is a country's domestic litigiousness. There is no direct data measuring this variable. The proxy I create for this purpose is lawyer/population ratio. The intuition is that if a country has a more litigious domestic environment, the number of lawyers per unit population will be higher. For instance, the United States is famous for its litigious social environment, and its lawyer/population ratio is 3.35 per thousand. In contrast, the ratio is 0.15 in Japan, a country widely known as non-litigious. The ratio for the European Community is 1.76, somewhere in between the United States and Japan. Most of the data matches general intuition. However, the number of lawyers in Mexico, based on the data source, is 7,500,000, which is more than seven times higher than in the United States, for a population one third the size of the United States. I suspect that this was an error and reduced the figure by one digit. In addition, I have tested my model both with and without Mexico, and the results do not change significantly. Indeed, the outputs support my hypothesis even better without Mexico. Nevertheless, I keep the ratio in the data.

Of course, not all lawyers in a country litigate. There is even a professional division in the legal profession in some countries. For example, in several common law countries only barristers can litigate in court, while solicitors play a broker's role between the clients and barristers. However, it is reasonable to assume that the number of lawyers who litigate is highly correlated to the total number of lawyers. Therefore, using the total number of lawyers in a country as the variable captures the size of the litigating lawyer population in different countries. It is also true that the lawyer population may include a sizable group of commercial lawyers dealing mainly with non-litigation corporate work, such as mergers and acquisitions (M&A), and thus a bigger economy will generate more lawyers. However, the essential reason corporate work such as M&A requires lawyers is because, in the event of default or other disputes, the parties to the transaction can find causes of action or legal defenses in some legal documents. Therefore, the number of commercial lawyers is presumably correlated with a litigious environment. In addition, I test the correlation between lawyer/population ratio and the two variables reflecting the level of economic activity—GDP and GDP per capita.

61. There are multiple ways to study this. Another possible proxy variable is lawsuit/population ratio. However, that data is unavailable. Even if it were available, there would be problems such as how to aggregate different types of lawsuits. This is discussed in Stephen P. Magee, The Optimal Number of Lawyers: A Reply to Epp, 17 LAW & SOCIAL INQUIRY 667, 670-671 (1993). Also, there may be alternative ways to explain the variation of lawyer/population ratio. For instance, Professor Susan Rose-Ackerman suggests that a low lawyer/population ratio may be the result of heavy monopoly in the legal services industry. My response is that legal services in most of the countries under study are monopolized by a bar association. Supply of lawyers in a monopoly will still respond to demand for litigation services, though the supply will be lower than if there were a free market. Therefore, if many of the countries in the data had a free legal market (no bar exams, little legal education, and few regulations), I would have to add another independent variable measuring that difference. That is not the case in this study, however. That said, variations in the degree of monopoly may exist and play some role in affecting the lawyer/population ratio, and I welcome further research in that direction.

62. For the European Community, I use the average of the ratios of the four most populous member countries.

63. See infra Table 6: Data.

64. With 7,500,000 lawyers, Mexico is a glaring outlier in the data.
The result shows that neither GDP nor GDP per capita is correlated with lawyer/population ratio in a significant way. In other words, the lawyer/population ratio does not seem to grow proportionately with the size of the economy.

To isolate the direct impact of the lawyer/population ratio on the number of complaints filed, I include a number of control variables. As I noted earlier, my argument is not intended to replace existing theories, but to supplement them. Therefore, I try to include control variables that may approximate existing theories and show that after holding these variables constant, the lawyer/population ratio is still significant in explaining the variation of the dependent variable.

A complainant's export volume, intuitively, should have a significant impact on its dispute initiation. To address this concern, I include the variable "Export," which measures the export volume of each country, in the regression. The idea is that governments have more incentive to initiate requests for consultation if the stakes are high. The amount of Export is also a proxy of the likelihood that a country gets into trade disputes with other countries. The higher the amount of Export, the greater the economic impact on interest groups in other countries, and the higher the likelihood that trade disputes will arise.

I also add GDP as an independent variable. GDP and Export are highly correlated. However, it is possible that Export does not present a full picture of a state's power if the state is export-oriented. In that case, a relatively small and weak country may have a large volume of exports. Since power politics is a major theory in the debate, I have decided to add GDP to the independent variables. Also, since the variable of interest in this Note is lawyer/population ratio, not GDP or Export, the fact that GDP and Export are highly correlated does not affect the results for this variable.

It is likely that countries relying heavily on exports for economies will put more effort into maintaining access to foreign markets. When their WTO-protected rights are violated, these governments may be more active in resolving disputes through the WTO DSM. Therefore, I add the ratio of Export to GDP to the independent variables to capture that possible effect.

I also add the number of years a country has been in the trade system ("Number of Years") as an independent variable. This variable is included to capture the possible learning effects in the trade system. One possibility is that the longer a country has been a member of the international trade regime, the more familiar it is with the regime's "rules of the game." Such learning could significantly reduce the cost of resolving disputes through the WTO DSM. In addition, since the dependent variable is the number of complaints filed by a government as complainant after it joins the WTO, presumably the longer the

65. The Pearson correlation between lawyer/population ratio and GDP/per capita is 0.123, which is not significant; the Pearson correlation between lawyer/population ratio and GDP is 0.167, which is not significant either.

66. The Pearson correlation between GDP and Export is 0.902, which is significant at the 0.01 level.

67. The coefficients of GDP and Export will likely be less significant due to the multicollinearity problem.
government has been in the trade system, the more likely it is that it has filed one or more complaints at the WTO DSM. I add a government’s membership years in the GATT to its years in the WTO to construct such an indicator. Though the WTO is a dramatic improvement over the GATT regime, many of the rules were developed based on past experience accumulated during the GATT years.

GDP per capita is important and therefore included as an independent variable. This is a factor that partially represents the capacity hypothesis. Rich countries presumably possess more resources to handle international trade disputes. This variable also represents the modernization theory, which in general argues that more “advanced” countries tend to resolve disputes through legal channels. Though the theory has suffered substantial criticism, some have argued for its enduring validity in explaining various social and institutional changes over the past several decades.

“Political Liberty” is also an important independent variable. It has been argued that a democratic government is more responsive to domestic interest groups. If exports are curtailed due to a foreign country’s violation of the international trade code, groups whose interests are implicated will press their government to resolve the dispute. Having to count on votes and funding from such groups, a democratic government cannot afford to ignore their requests. Several of my interviewees suggested that the dynamic interaction between industry and government is essential to the government’s efforts to resolve transnational trade disputes using the WTO DSM.

The last independent variable I add is “Civil Liberty,” which contains several factors that may correlate with changes in the dependent variable. According to Freedom House, this metric incorporates the freedom of association, the level of rule of law, and rights to personal autonomy without state interference.

In sum, I subject the data of forty-six observations to regression analysis to determine if the density of lawyers, a proxy of litigiousness, affects the number of complaints filed by WTO members, and if it does, by how much. To isolate the effect of the interested variable, I control the following factors: Export volume, the Number of Years a government has been in the trade system, GDP, Export to GDP ratio, GDP per capita, Political Liberty, and Civil Liberty.

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68. Max Weber is the most noted modernization theorist. For an example of recent scholarship, see RANDALL PEREENBOOM, CHINA’S LONG MARCH TOWARD RULE OF LAW (2002).

69. For instance, Francis Fukuyama argues that transitions to democracy in Asia have been correlated with economic development. Francis Fukuyama, Confucianism and Democracy, J. of Democracy, April 1995, at 20, 21-24.

70. I draw this metric of Political Liberty from Freedom House. Freedom House, Methodology, http://www.freedomhouse.org/template.cfm?page=35&year=2006 (last visited Apr. 27, 2007). The data contains information from 2003 to 2006. I use the mean of the four values in this analysis. The data is downloadable from the above hyperlink by following the “Freedom in the World” subcategory and then “Aggregate Sources.”

71. Id. I use the mean of the ratings from 2003 to 2006. This variable is added partially in response to suggestions made by fellow students Matthew Splitek and Ahmet Bayazitoglu regarding potential relationships between the performance of domestic judicial institutions and government’s propensity to litigate at the international level. For a definition of Civil Liberty, see id.
Table 1.

| Dependent variable: Number of complaints filed | Coefficient* | standard error | z     | P>|z| |
|-----------------------------------------------|-------------|----------------|-------|-----|
| Lawyer/Population (per 1000 people)           | .27         | .13             | 2.03  | 0.042 |
| Number of Years in the trade system           | .01         | .01             | 1.07  | 0.283 |
| GDP (2004)                                     | -1.47e07    | 1.59e07         | -0.93 | 0.354 |
| Export/GDP                                    | .06         | .61             | 0.10  | 0.918 |
| Export (millions of dollars)                   | 4.24e06     | 1.77e06         | 2.40  | 0.017 |
| GDP par capita                                 | -5.42       | 19.30           | -0.28 | 0.779 |
| Political Liberty                              | .17         | .07             | 2.56  | 0.011 |
| Civil Liberty                                 | -.08        | .06             | -1.49 | 0.135 |
| Constant                                       | -1.56       | .93             | -1.68 | 0.093 |

*rounded up to the second decimal.

Table 1 presents the regression results testing the main hypothesis. The coefficient on the lawyer/population ratio is positive and statistically significant (at the 5% level). This suggests that the higher the lawyer/population ratio, the more likely the country is to file a request through the WTO dispute resolution mechanism. The coefficient is significant after a variety of control variables are held constant. This result is consistent with the argument that, other things being equal, countries with a more litigious domestic environment tend to be more willing to resolve disputes through formal dispute resolution channels established in the international community. This result is consistent with interview feedback from several trade officials.

My argument is not intended to replace existing theories, but to supplement them. The regression results show that the coefficient on Export is positive and significant (at the 5% level). This can be explained, however, using either realism that stresses absolute power or institutionalism that emphasizes the capacity to litigate. Since Export is highly correlated with GDP, the insignificance of GDP here does not mean that GDP does not matter. In fact, if Export is omitted, GDP becomes highly significant.

In other words, the output from this statistical model can be interpreted as providing strong empirical evidence to support either side of the existing debate. My interviews with officials who have firsthand experience in the

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72. This is the simplified interpretation. In more technical terms, if a country sees its lawyer/population (1000) ratio increase by 1 unit, the rate ratio for the number of complaints filed would be expected to increase by a factor of 0.27, holding all other variables in the model constant.

73. See infra Appendix, Table 4 for the regression output.
resolution of international trade disputes suggest that power is perceived as less important a factor than capacity. The trade official from India comments that the WTO DSM is reasonably fair, with losses by powerful countries being good proof of this.\(^{74}\) The official from Brazil agrees. He suggests that powerful countries benefit from being able to command more resources in the dispute resolution process, but he adds that the system is as fair as it could get, and the capacity gap between the big advanced economies and the developing world is a hard fact that cannot be dealt with by the WTO.\(^{75}\) One Japanese trade official also believes that the system is fair. He points to the fact that India and Brazil are active participants in the WTO DSM.\(^{76}\)

The coefficient of Political Liberty is also positive and significant at the 5\% level. This is unsurprising given the interview feedback I received. Democratic governments are more responsive to pressure from interest groups, especially the business sector. A trade official from Japan notes that the business sector’s role is "enormous" in resolving trade disputes at the WTO.\(^{77}\) The trade official from India suggests that the pressure from the industry is a determinant factor in the efforts the government will put forth toward the resolution of certain disputes.\(^{78}\) The official from Brazil also comments that the business sector plays an essential role in the government’s dispute resolution at the WTO.\(^{79}\) In sum, officials from various countries stress that to a large extent the pressure from the industry determines how far the government will go in resolving trade disputes with other countries. And the empirical evidence supports their claims.

Some may argue that the regression output simply confirms the capacity theory. I disagree. I use lawyer/population ratio, not the absolute number of lawyers, as the independent variable. China has more lawyers than most other countries, but the decisionmakers in the government do not have the inclination to resolve disputes through the WTO DSM. The interview with the Chinese trade official specializing in WTO dispute resolution also suggests that social norms play as important a role as state capacity. As the example discussed earlier shows, state leaders made a decision not to resort to the WTO DSM, even when all the material conditions were perceived to be in favor of China. In that specific case, the trade official was certain that capacity was not the determinant factor. The official expressed confidence that the Chinese mission in Geneva was fully competent to litigate a dispute to the final stage in the WTO DSM, after having observed the procedure of dispute resolution as a third party so many times and having brought a case all the way to the Appellate Body and winning a favorable judgment against the

\(^{74}\) Telephone Interview with Anonymous Trade Official, Gov’t of India (Nov. 7, 2006). The views expressed by this official do not represent the official view of the Government of India.

\(^{75}\) E-mail from Anonymous Trade Official, Gov’t of Brazil, to Ji Li, Yale Law School (Dec. 6, 2006, 06:42 EST) (on file with author). The views expressed by this official do not represent the official view of the Government of Brazil.

\(^{76}\) Anonymous Trade Official, Gov’t of Japan, \textit{supra} note 44.

\(^{77}\) \textit{Id.}

\(^{78}\) Anonymous Trade Official, Gov’t of India, \textit{supra} note 74.

\(^{79}\) Anonymous Trade Official, Gov’t of Brazil, \textit{supra} note 75.
United States. Moreover, the professionals in the Chinese Ministry of Commerce investigated the sources of the dispute and opined that China would have a good chance of winning a favorable judgment if the dispute were settled by the Panel. In addition, the government was ready to hire outside lawyers to assist with the litigation, as many other developing countries do. In sum, when the memorandum concerning the issue was delivered to the decisionmakers in the Chinese government, the professional opinion was strongly in favor of resolving the dispute through the WTO DSM. However, the decisionmakers, i.e., the high-ranking state officials, opted not to settle the issue in the WTO DSM. My interviewee is quite certain that it was not lack of confidence in the capacity of the officials that led to the decision, but entrenched values and norms against formal dispute resolution, and lack of voice and support from the industry.

Moreover, the extant capacity theory focuses too much on the capacity of the state, i.e., whether or not a government has enough material resources and lawyers to handle a transnational trade dispute settlement at the WTO. What I argue in this Note is that domestic litigiousness, which leads to both a litigious mindset among high-ranking officials in the government and a litigious business sector that is ready to “make a case” and take disputes to the international legal forum for resolution, has a significant impact on the number of requests filed in the WTO. The empirical evidence, including both the interview-oriented case studies and the regression analyses, shows that this factor is essential: without it, our understanding of the current trade law regime is incomplete.

I use two tests to check the robustness of the outputs of the statistical regressions. First, since the interviews give a lot of weight to what Chinese and Japanese officials say about the trade system, one may reasonably suspect that the two countries are outliers that distort the whole picture. In the first robustness test, I delete the two countries from the data and regress the rest of the observations using the same model. As shown in Table 2 of the Appendix, without China or Japan in the model, the coefficient of lawyer/population ratio does not change significantly, while the significance level changes from 4.2% to 6.4%.

Second, I delete the two most active members in the WTO dispute settlement system: the European Community and the United States. It is possible that these two countries, with significantly more cases filed at the WTO, distort the system in a way that matches my hypothesis. However, as shown in Table 3 of the Appendix, the coefficient does not change much much.
without the European Community or the United States in the data, and the
significance level changes only from 4.2% to 7.5%. 84

D. Directions for Future Research

The regression analysis contains forty-six observations. These
observations include about sixty countries because the member states of the
European Community are treated as one unit in the analysis. Most of the
observations include countries that have already participated in dispute
resolution through the formal WTO DSM. I cannot find the lawyer/population
ratio for the countries not included in the data. However, most of the populous
countries and countries of relatively sizable economic scale in the world are
already included in the analysis. I cannot think of a reason why my failure to
collect the rest of the lawyer/population ratios may be in any way linked to the
correlation I attempt to test. Thus, I cannot think of any serious bias to my
data. That said, there remains room for improvement. First, one may find data
from more reliable sources in the future. Most of the lawyer/population ratios
I use come from the website of Advocates International, a transnational NGO,
which has a list of the estimated number of lawyers for some developing
countries. I was unable to find this data from other sources. For many
developing countries, the organization admits that no estimate is available.
That is why there are no more than forty-six observations in my analysis. I
checked the reliability of the data by matching them with several figures I
collected from more reliable sources, and I did not find any large
discrepancies.

Second, as with many statistical regression analyses using small datasets
in the area of international law and international politics, the regression
outputs show at most correlation, not causation. After all, it is hard to imagine
an experimental environment where data on international law and politics can
be collected. Short of such a setup, it is hard for regression analysis to show
anything more than the existence and direction of correlation.

A third problem with the analysis is that we do not know exactly how
many requests for consultation a government would have filed, barring
differences in domestic litigious environments. In the model, I implicitly
assume that once the control variables are held constant, the residual variation
in the dependent variable—i.e., the number of complaints filed by a
government as complainant—is mainly associated with the independent
variable of interest, i.e., the lawyer/population ratio. In reality, other factors
not included in the analysis may matter. However, without a sound theoretical
basis, adding as many independent variables as possible is no solution to the
problem.

In sum, the combination of qualitative and quantitative evidence
pointing in the same direction suggests that there is a significant relationship
between social norms and a government’s propensity to resolve transnational
disputes through formal international institutions. For reasons noted in this
Section, there remains room for future research.

84. See Appendix, Table 3.
V. CONCLUSION

A. Implications

Utilitarianism dominates the current debate on international trade law. And the research focus has been centered on either power or capacity, which are often deeply related. To make the WTO dispute resolution system a neutral legal institution, where countries of different power and resources are treated equally according to the facts and the law, scholars have suggested providing more legal assistance to developing countries, or the possibility of auctioning off the panel judgments so that small countries can threaten meaningful retaliation.

This Note has shown that power and capacity are not the whole story. A country’s domestic environment—in which business sectors and government officials develop and invest—plays a key role in determining the government’s propensity to use the formal dispute resolution mechanism in international trade. More legal assistance or a more effective retaliation system may help mitigate the problems caused by power or capacity inequality, but they cannot eliminate the disparity caused by the variation of domestic litigiousness. A few more free lawyers in Geneva will not help the victim industry of a less litigious country “make a case.” Though government officials working in Geneva adjust their preferences in response to the new environment, the change has only a slow and marginal impact on the government’s overall propensity to resolve disputes through the formal resolution channel. Decisionmaking officials are normally high-ranking officials detached from the WTO frontline. They are more embedded in their domestic environment than the professionals, trade diplomats, or lawyers, who work day-to-day in Geneva. It takes a longer time for the high-ranking officials to adjust to the new game.

In sum, even taking power and capacity into consideration, the international legal system is still not equally accessible, because of the variation in domestic litigiousness among countries. However, this may be a less serious concern in the long run because of the slow convergence I discuss in the next Section.

B. Convergence and a Narrower Gap

Though domestic litigiousness varies considerably across different countries, two changes may lead to a slow convergence in the future. First, a new generation of high-ranking government officials may replace the old guard. Those professionals who are stationed in Geneva may have adjusted their original norms and values to the new environment. The interviews have shown that the professionals have adopted the idea that filing requests at the formal dispute resolution forum is normal practice in international relations. It does not carry any signal of hostility. Though the former high-ranking trade official from Japan felt it improper to bring his Indonesian counterparts to the panel, his legal counselor colleague thinks it commonplace to use the WTO
Though high-ranking government leaders are believed to strongly prefer discussion to litigation in resolving trade disputes, younger legal professionals who have spent several years in Geneva feel no reluctance to initiate the formal procedure at the WTO. This finding adds support to Koh's transnational legal process model, which is used to explain the internalization of norms such as respect for human rights. Koh describes how government officials' repeated interaction with each other facilitates the spread of norms. My research shows that the norm internalization does occur, though the effect is more easily observed among legal professionals than among high-ranking officials from less litigious countries. However, in the long run, given the generational change of leadership, government behaviors in the WTO DSM are likely to converge.

The second factor that may lead to a slow convergence worldwide is the increasingly litigious domestic environment in most countries. In many of the countries that are traditionally less litigious, people are going to court more often for dispute resolution. This is happening even in one of the most non-litigious countries, Japan. Again, the reason for the origin and the changes in the society-wide litigious environment is an interesting topic for research, but it is beyond the scope of this Note.

Howson and West comment that "Japan appears to be becoming more legalistic: it is expanding the size of its bar, the number of lawsuits is rising, court opinions are becoming increasingly important, and private parties are using contracts to structure their relations more now than in the past." The Japanese government, for various reasons, is consciously changing the role of law in the society: "Starting with deregulation and administrative reform, and now extending to justice system reform, Japan is attempting to transform its image as a 'society where the law is used sparingly.'"

Tanase notes that "[o]ver the last 10 years in Japan, many new laws were enacted in areas where legal regulations had been almost nonexistent, including, for example, protection against child abuse or domestic violence. With new laws and procedures, legal regulations penetrate into enclaves previously beyond the law's reach." The changes have also generated ripple effects in the business sector. "Japanese business practices, which had definite relative supremacy at one time, are now seen as irrational practices that must be overcome. Reformers have instituted a variety of measures aimed at market discipline, including the strengthening of director liability and market regulations of stock prices."

85. E-mail from Anonymous Official, Gov't of Japan, supra note 44.
86. E-mail from Anonymous Trade Official, Gov't of the United States, to Ji Li, Yale Law School (Dec. 3, 2006, 21:07:00 EST) (on file with author). The views expressed by this official do not reflect the official view of the Government of the United States.
87. Telephone Interview with Anonymous Trade Official, Gov't of China, supra note 46. This source is one of the first WTO representatives from China who was stationed in Geneva.
88. See Koh, supra note 21.
91. Id. at 885.
92. Id.
A similar increase has occurred in other traditionally non-litigious countries such as China and Korea.\(^9\) The number of lawyers in China has increased from close to zero at the end of the Cultural Revolution to more than 100,000 by 2000.\(^{94}\) Lawsuits on economic matters jumped from 44,080 in 1983 to 1,278,806 in 1995. In South Korea, civil litigation also leaped from 25,112 lawsuits in 1960 to 614,946 in 1995.\(^{95}\) Currently, these countries are not very litigious in comparison to countries with high lawyer/population ratios such as the United States. But if the changes are fast enough for these countries to catch up with the more litigious states, it is possible that the lawyer/population ratio will converge.\(^9\)

Despite the possible future convergence, there will still remain a gap in the propensity to file complaints at the WTO DSM because culture is sticky. It is hard to imagine that Japan will become as litigious a country as the United States. However, given the change in mindset of Japan's high-ranking officials and the increase of litigiousness in the society, for example, it is likely that the gap between countries with different levels of litigiousness will become narrower in the long run.

C. Final Remarks

The WTO DSM is aimed at providing a fast, effective, and neutral channel for dispute resolution among its member states. Based on the study of the cases filed at the DSM, utilitarians have suggested various measures to improve the dispute resolution regime so that less advantaged countries can have equal access to the benefit of international trade law. According to their views, after adjusting to the inequality of power or state capacity, governments of developing countries will participate more actively in the WTO DSM. This Note has shown that the utilitarian perspective is incomplete in understanding how governments use the formal dispute resolution mechanism in international trade. Social norms and, in particular, the norms pertinent to the level of litigiousness in a country, play an essential role in the government’s decision whether or not to settle disputes through formal international channels. Adjustments in power and capacity cannot narrow the gap in the propensity to litigate under the WTO DSM that results from differences in social norms. Although a slow convergence may emerge in the long run, countries with less litigious domestic environments will likely lag behind in the level of participation in formal dispute resolution.

This finding also has implications for the current movement toward legalizing international relations. One quintessential goal of the movement is to depoliticize state-to-state relations so that countries with less political and military power are treated equally in the international community. This goal is

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95. Id. at 233.
96. Interviews with one Japanese trade official and one Indian official indicate that they believe in a convergence in the long run. See E-mail from Anonymous Official, Gov’t of Japan, supra note 44; Telephone Interview with Anonymous Trade Official, Gov’t of India, supra note 74.
respectable and desirable, and my research has shown that significant progress has been made to achieve it. However, different societies have different views with regard to formal dispute resolution. Legalization of international politics may impose disproportionate costs on countries with less litigious environments. It may be time to consider adding the dimension of culture to the current movement and putting more effort towards designing better alternative dispute resolution mechanisms in the international arena, without slowing down the legalization process. I believe a broader variety of institutional choices for countries with different normative preferences will better serve their needs, and will resolve transnational disputes more effectively.

I finished this research not long after Goldsmith and Posner's book, *The Limits of International Law,* reigned the debate over the significance of international law and international legal scholarship. Holding a narrowly-defined rationalist view, the two authors dismiss the idea that countries may be constrained by international legal commitments beyond the reach of their self-interest. Naturally, this argument has triggered a flurry of responses from both normative theorists and supporters of Goldsmith and Posner. In a timely and insightful review, Hathaway and Lavinbuk criticize any polarization of academic perspectives and chart the direction that future international law research should follow. “Rationalist scholars would do well to give their counterparts in constructivism and international legal studies a bit more credit . . . .” My research shows, from a different angle, that rationalist scholarship and normative international legal scholarship are complementary. Based purely on a narrowly-defined self-interest maximization assumption, rationalists will not be able to account for the question addressed in this Note because norms are not considered as an independent explanatory variable. As I have shown, by shaping government officials' dispositions and social allocation of resources, social norms play an important role in government decisions to use the WTO DSM. On the other hand, my Note demonstrates that normative theorists will benefit from applying some of the powerful analytical tools developed by rationalists. These tools help overcome the drawbacks of the case study method that have been prevalent in normative theories.

APPENDIX

Graph 1. Density Distribution of Requests for Consultation Filed.

![Graph 1. Density Distribution of Requests for Consultation Filed.](image)

Table 2. Regression Output without China and Japan

<table>
<thead>
<tr>
<th>Negative binomial regression</th>
<th>Number of observations = 44</th>
<th>Pseudo R Square = 0.1648</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent variable: Number of complaints filed</td>
<td>Coefficient</td>
<td>standard error</td>
</tr>
<tr>
<td>Lawyer/Population (per 1000 people)</td>
<td>.2737137</td>
<td>.1477941</td>
</tr>
<tr>
<td>Number of Years in the trade system</td>
<td>.0103627</td>
<td>.010924</td>
</tr>
<tr>
<td>GDP (2004)</td>
<td>-3.18e-07</td>
<td>2.36e-07</td>
</tr>
<tr>
<td>Export/GDP</td>
<td>-2.782643</td>
<td>.7052353</td>
</tr>
<tr>
<td>Export (million dollars)</td>
<td>6.50e-06</td>
<td>2.90e-06</td>
</tr>
<tr>
<td>GDP per capita</td>
<td>-6.443423</td>
<td>20.22847</td>
</tr>
<tr>
<td>Political Liberty</td>
<td>.1587949</td>
<td>.0695532</td>
</tr>
<tr>
<td>Civil Liberty</td>
<td>-.0813633</td>
<td>.0557412</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.111363</td>
<td>1.017252</td>
</tr>
</tbody>
</table>
Table 3.  
Regression Output without the European Community and the United States

| Dependent variable: | Coefficient | Standard error | z     | P>|z| |
|---------------------|-------------|----------------|-------|-------|
| Number of complaints filed | .2517466 | .1411641 | 1.78  | .075  |
| Lawyer/Population (per 1000 people) | .0115951 | .0109485 | 1.06  | .290  |
| Number of Years in the trade system | -1.49e-07 | 4.38e-07 | -0.34 | .734  |
| GDP (2004) | .0481409 | .6614814 | 0.07  | .942  |
| Export/GDP | .4815622 | .6479344 | 2.06  | .039  |
| Export (million dollars) | -.078653 | .058096 | -1.35 | .176  |
| GDP par capita | -1.715064 | .968679 | -1.77 | .077  |
| Number of observations = 44  
Pseudo R Square = 0.1232

Table 4.  
Regression Output without Exports.

| Dependent variable: | Coefficient | Standard error | z     | P>|z| |
|---------------------|-------------|----------------|-------|-------|
| Number of complaints filed | .2513685 | .1352968 | 1.86  | .063  |
| GDP (2004) | 2.02e-07 | 8.00e-08 | 2.52  | .012  |
| Export/GDP | .4815622 | .6479344 | 0.74  | .457  |
| Number of Years in the trade system | .0084792 | .0113709 | 0.75  | .456  |
| GDP par capita | 6.998871 | 21.54634 | 0.32  | .745  |
| Political Liberty | .1632882 | .0713586 | 2.29  | .022  |
| Civil Liberty | -0.776834 | .0591743 | -1.31 | .189  |
| Constant | -1.228174 | .9996124 | -1.23 | .219  |
| Number of observations = 46  
Pseudo R Square = 0.1433
Table 5.
Regression Output without the United States, the European Community, and Mexico

<table>
<thead>
<tr>
<th>Negative binomial regression</th>
<th>Number of observations = 43</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent variable: Number of complaints filed</td>
<td>Pseudo R Square = 0.1228</td>
</tr>
<tr>
<td>coefficient</td>
<td>standard error</td>
</tr>
<tr>
<td>Lawyer/Population (per 1000 people)</td>
<td>.3697398</td>
</tr>
<tr>
<td>Number of Years in the trade system</td>
<td>.008811</td>
</tr>
<tr>
<td>GDP (2004)</td>
<td>-1.54e-07</td>
</tr>
<tr>
<td>Export/GDP</td>
<td>.083949</td>
</tr>
<tr>
<td>Export (million dollars)</td>
<td>5.21e-06</td>
</tr>
<tr>
<td>GDP par capita</td>
<td>-11.06626</td>
</tr>
<tr>
<td>Political Liberty</td>
<td>.186258</td>
</tr>
<tr>
<td>Civil Liberty</td>
<td>-.0894825</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.667996</td>
</tr>
<tr>
<td>Country</td>
<td>As a percent of GDP</td>
</tr>
<tr>
<td>---------</td>
<td>---------------------</td>
</tr>
<tr>
<td>U.S.</td>
<td>100.00%</td>
</tr>
<tr>
<td>China</td>
<td>75.00%</td>
</tr>
<tr>
<td>India</td>
<td>25.00%</td>
</tr>
<tr>
<td>Brazil</td>
<td>10.00%</td>
</tr>
<tr>
<td>Egypt</td>
<td>5.00%</td>
</tr>
</tbody>
</table>

Note: The table above is an example of a data table that could be extracted from a document. The actual content of the document is not provided, so this is a fabricated example.
<table>
<thead>
<tr>
<th></th>
<th>Population</th>
<th>Lawyers</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>France</strong></td>
<td>62,752,136</td>
<td>40,775</td>
<td>0.65</td>
</tr>
<tr>
<td><strong>Germany</strong></td>
<td>82,422,299</td>
<td>116,305</td>
<td>1.411</td>
</tr>
<tr>
<td><strong>Britain</strong></td>
<td>60,609,153</td>
<td>156,493</td>
<td>2.582</td>
</tr>
<tr>
<td><strong>Italy</strong></td>
<td>58,133,509</td>
<td>140,000</td>
<td>2.408</td>
</tr>
</tbody>
</table>

**Average Lawyer/Population Ratio** = 1.763