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A COMPARISON OF DISPUTE SETTLEMENT UNDER

GATT AND THE WTO

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Abstract

By analysing disputes between the US and the EU under GATT and the WTO respectively, the paper demonstrates that the judicialization (or legalization) of international dispute settlement procedures (IDSPs) can contribute to states' compliance with (these) dispute settlement mechanisms. The paper compares four sets of pairwise similar disputes which the US had with the EU: the so-called Domestic International Sales Corporations (DISC) case (which arose under GATT) and the Foreign Sales Corporations case (which was settled through WTO procedures), the Steel case (GATT) and the Patents case (WTO), the two Hormones cases under GATT and the WTO respectively, and the Citrus case (GATT) and the Bananas case (WTO). In each of the four comparisons the US acted more in accordance with the judicial WTO dispute settlement procedures than with the diplomatic GATT procedures. We can therefore say that contrary to realist assumptions, the judicialization of IDSPs can contribute to their effectiveness. However, contrary to idealist assumptions the effectiveness of IDSPs does not automatically follow from their judicialization. Yet, as assumed by institutionalists, judicialized IDSPs are better than diplomatic IDSPs in sustaining states' compliance with these procedures precisely *because* of their normative and strategic effects.

INTRODUCTION¹

The rule of law is one of the crucial attributes of modern statehood. Yet, until recently even OECD states were only *internally* bound by domestic law, while *externally* state sovereignty implied that they were not likewise bound by international law. While

internally the judiciary provides the institutional safeguard that persuades state actors to comply with domestic legal obligations, until recently there was no parallel international judiciary to ensure that state actors complied with their external legal obligations. There are indications today, however, that increasingly, due to the emergence of issue area-specific international judiciaries, the domestic rule of law is complemented by an international rule of law.²

In fact, judicialized international dispute settlement procedures (IDSPs), designed to adjudicate whether state actors comply with their international commitments, are on the rise (Romano 1999). Recently, an International Criminal Court was created to pass sentence on war crimes. The authority of the European Court of Justice as well as the European Court of Human Rights was strengthened. An International Tribunal for the Law of the Sea has been established. Many international environmental regimes, such as the ozone regime and the climate regime, now dispose of quasi-judicial non-compliance procedures. And with the creation of the World Trade Organization (WTO) the diplomatic dispute settlement procedures of the General Agreement on Tariffs and Trade (GATT) were replaced by a judicial dispute settlement system (Keohane et al. 2000; Zangl and Zürn 2004a).

The rise of judicial IDSPs – or even courts – might be seen as one indication of an emerging international rule of law. At least, traditional *idealists* always claimed that with increasing complex interdependence the judicialization of IDSPs would almost automatically lead to an international rule of law (Clark and Sohn 1966; Zimmern 1936; Woolf 1916). Like many constructivists today, they claim that the use of legal language by state representatives within the context of IDSPs underscores their public commitment to fundamental legal principles such as the comparable treatment of comparable breaches of international law (Finnemore 1996; Risse 2000;

Kratochwil 1989; Chayes and Chayes 1995). Moreover, as these legal principles are institutionalized in judicialized IDSPs to a greater degree than in diplomatic IDSPs, constructivists may argue that it is particularly difficult for state representatives to justify their behaviour to the public if they disregard these procedures. This is to be expected especially in established democracies in which state representatives are likely to confront a general public that has internalized these fundamental legal principles (Koh 1997).

Realists, by contrast, have always argued that IDSPs cannot ensure an international rule of law. Being sceptical about the effectiveness of international law in general, they maintain that irrespective of whether IDSPs are judicial or diplomatic, powerful states can always act as they please, while less powerful states have to suffer what they must (Morgenthau 1948, 1951; Carr 1946). Like today's neorealists, most traditional realists argue that state representatives only use the language of international law as a rhetorical device to justify their behaviour, which is in actual fact only motivated by the desire to serve their respective national interests and enhance their nations' power position (Goldsmith and Posner 2005:167-184). Consequently, attempts to settle international disputes are mainly determined by states' national interests and their relative power capabilities (Garrett et al. 1998). Only if states' interests converge, and if states are equally powerful so that they can enforce the law against each other, might disputes be settled through IDSPs (Morgenthau 1948). If, however, interests diverge, or if a less powerful state tries to enforce the law against a more powerful state, efforts to solve a dispute by legal means through an IDSP are likely to fail. In any case, when it comes to dispute settlement, no matter whether the procedures are diplomatic or judicialized, IDSPs are

considered to be epiphenomena of states' interests and the underlying power constellations (Goldsmith and Posner 2005, Mearsheimer 2004-2005).

Like realists and idealists, *institutionalists* consider it a crucial empirical and theoretical question whether – and if so under what circumstances – the judicialization of dispute settlement *procedures* contributes to a corresponding dispute settlement *practice* and consequently to the emergence of an international rule of law. Unlike realists, however, they see this as a real possibility, and, unlike idealists they do not expect it to happen almost automatically. Most institutionalists, be they of a more rationalist or constructivist orientation, would subscribe to the conjecture that, *ceteris paribus* – at least within the OECD world –, the judicialization of dispute settlement procedures encourages through various mechanisms the judicialization of dispute settlement practices and, hence, an emergent international rule of law.³

Assuming that the judicialization of dispute settlement is one important aspect of an international rule of law, I aim to evaluate this conjecture and identify the mechanisms which might give judicialized IDSPs a more pronounced impact on states' dispute settlement than diplomatic IDSPs. To this end I will compare US dispute settlement behaviour in the context of the judicialized WTO procedures with its behaviour in similar disputes under the diplomatic GATT system. By doing so I also aim to contribute to the debate as to whether the judicialization of GATT/WTO dispute settlement procedures through the reforms made in 1994 had an effect on states' dispute settlement behaviour (Goldstein and Martin 2000). While many observers, inspired by idealist thinking, claim that the judicialization of GATT/WTO procedures has brought about their increasing use and acceptance (Petersmann 1997; Jackson 1997), others with a more realist leaning argue that the judicialization of

these procedures did not have any significant effect on states' behaviour (Goldsmith and Posner 2005:135-162; Posner and Yoo 2005).⁴

Before engaging in this debate, I will first elaborate on the institutionalist conjecture by indicating why judicial IDSPs might be better equipped to manage the settlement of disputes between states than diplomatic IDSPs. In a second step I shall briefly describe the judicialization process of GATT/WTO dispute settlement procedures over the past two decades. In a third step I shall then conduct the above-mentioned comparison of US dispute settlement behaviour under GATT and the WTO respectively. The comparison reveals that the US was more willing to act in accordance with the agreed WTO procedures than with GATT procedures. After considering two alternative explanations, the paper concludes with an overall evaluation of the institutionalist conjecture and some general remarks on the emergence of an international rule of law.

1. THE INSTITUTIONALIST CONJECTURE

The conjecture that the judicialization of international dispute settlement *procedures* encourages corresponding settlement *practices* rests on the institutionalist assumption that the effects of international institutions depend – among other things – on their design.⁵ Thus, institutions with a judicial IDSP, such as the European human rights regime which, through the European Court of Human Rights, tries to ensure the impartial treatment of alleged breaches of international law, can be distinguished from institutions with diplomatic IDSPs, for example the UN Human Rights Council, which cannot be seen as an institutional attempt to ensure the comparable treatment of comparable breaches of international law. The degree of judicialization of a given IDSP, hence, can be measured on a gradual scale from purely diplomatic to judicial in

terms of four criteria (see table 1).⁶ These are: its political independence (standing court or political body), legal mandate (legal reasoning or political mediation), decision-making authority (compulsory or case-by-case jurisdiction) and its authority to sanction (authority to mandate sanctions or no authority to sanction).⁷

Table 1: Gradual Scale Ranging from Diplomatic to Judicial IDSP

<p>Political Independence (Third party's composition)</p>	<p>↑ <i>Diplomatic procedure: politically dependent</i></p> <ul style="list-style-type: none"> • Representatives of the parties involved • Representatives of third parties • Experts acting in their individual capacity • Standing body of independent judges <p>↓ <i>Judicial procedure: politically independent</i></p>
<p>Legal Mandate (Third party's task)</p>	<p>↑ <i>Diplomatic procedure: political mandate</i></p> <ul style="list-style-type: none"> • Procedure culminates in a political decision • Non-binding procedure culminates in a legal decision • Binding proceeding culminates in a judicial recommendation • Binding proceeding culminates in a legal decision <p>↓ <i>judicial procedure: judicial mandate</i></p>
<p>Authority to Decide (Third party's decision-making authority)</p>	<p>↑ <i>Diplomatic procedure: case-by-case jurisdiction</i></p> <ul style="list-style-type: none"> • Procedure <i>and</i> ruling can be blocked by parties involved • Procedure <i>or</i> ruling can be blocked by parties involved • Procedure and/or ruling can only be blocked by majority decision • Neither procedure nor ruling can be blocked <p>↓ <i>judicial procedure: compulsory jurisdiction</i></p>
<p>Authority to Sanction (Third party's authority to sanction)</p>	<p>↑ <i>diplomatic procedure: limited authority to sanction</i></p> <ul style="list-style-type: none"> • No regulation on sanctions • Sanctions can be authorized, but also blocked by defendant • Sanctions can be authorized • Sanctions can be mandated <p>↓ <i>judicial procedure: authority to sanction</i></p>

From an institutionalist point of view, the judicialization of a given IDSP strengthens its effectiveness, *because* judicialized IDSPs are better than diplomatic IDSPs at activating their normative and strategic, their constraining and enabling effects. Combining these effects (see table 2) institutionalists with a more rational⁸ and more constructivist stance⁹ generally agree that, in principle, four causal mechanisms can be distinguished:

- IDSPs can have an effect because states feel *normatively compelled* to respect them. Thus, IDSPs can rely on a normative compliance pull of their own (Franck 1990). They might be internalized by states to the point that following them becomes an aim in itself. Hence, disregarding or manipulating them is not even taken into consideration; following the procedures is then taken for granted (Koh 1997).
- IDSPs might be effective because disregarding them can, through shaming, undermine a state's *reputation* as a reliable member of the international community. A

bad reputation may not only inhibit any future cooperation with that state within the same institution (Keohane 1984); it may even undermine its recognition as an equal member of the international community. Hence, states are prepared to follow IDSPs to prevent losing their status as an equal member of the international community (Hurrell 1993; Chayes and Chayes 1995).

- IDSPs might have an impact because states are interested in upholding the *credibility of the procedures*. States may be particularly willing to follow procedures if they consider them to be serving their own interests. They will understand that disregarding procedures can undermine an IDSP's credibility and possibly lead to its breakdown. Hence, states follow agreed IDSPs out of concern for the consequences of disregarding behaviour for the procedures as such (Zürn 2005; Cronin 2001).
- The influence of IDSPs may also stem from their authority to *impose sanctions* against those states found to be violating their international commitments (Underdal 1998). By authorizing sanctions, IDSPs are in a position to coordinate the sanctions of affected states and thereby making them more effective (Downs et al. 1996; Keohane 1984). Moreover, authorized sanctions might be more effective because, as opposed to non-authorized sanctions, states that incur these sanctions can hardly justify any retaliation against sanctioning states (Zangl 2006).

Table 2: International Dispute Settlement Procedures: Four Causal Mechanisms

	Constraining Effect	Enabling Effect
Normative Effect	States are constrained by their own normative <i>commitment</i> to the IDSP	IDSPs can help states to undermine the <i>reputation</i> of non-compliant states through shaming
Strategic Effect	States are constrained by their own interest in the IDSP's <i>credibility</i>	IDSPs can help states to increase the costs of other states' non-compliance by authorizing <i>sanctions</i>

To clarify why judicial IDSPs might be better in activating these causal mechanisms than diplomatic IDSPs institutionalists point to two reasons:

(1) Institutionalists of a more constructivist orientation may argue that judicial IDSPs may be perceived as being *more legitimate* than diplomatic IDSPs because they institutionalize the principle of impartial treatment of alleged breaches of international law. This can, according to constructivist institutionalism, enhance the normative effects IDSPs may have: on the one hand the perceived legitimacy of IDSPs may support the awareness in states and societies that they are normatively committed to respect these procedures, because disregarding them cannot be justified on the grounds of a lack of legitimacy; on the other hand, the perceived legitimacy of IDSPs may also reinforce the awareness of states and societies that any breach of the respective procedures will undermine their reputation as law-abiding members of the international community, because it will provoke more normative indignation than disregarding an IDSP that is considered to be less legitimate.

(2) Institutionalists of a rationalist orientation can argue that judicial IDSPs are generally perceived to be *more reliable* than diplomatic IDSPs because they are better equipped to effectively deal with (or deter) breaches of international law (Abbott and Snidal 2000, Goldstein and Martin 2000). This can enhance the strategic effects that IDSPs may have: on the one hand the perceived reliability of IDSPs may remind states and societies that it can be in their own interest to follow these procedures in order to preserve the IDSPs' credibility; on the other hand the perceived reliability of IDSPs may make threats of binding convictions and of authorized sanctions more convincing. This can encourage states to follow the procedures when dealing with alleged breaches of international law by other states and to comply with procedures when accused by others of violating international law.

To evaluate the institutionalist conjecture the behaviour that states may apply in each of the four phases any dispute might pass through – the complaints,

adjudication, implementation, and the enforcement phase – is distinguished into four types: (1) States may strictly *follow* the relevant procedures and show willingness to settle disputes in the manner envisaged by the relevant IDSP; (2) states may *avoid* the application of the relevant IDSP and seek a negotiated settlement, but without violating the provisions of the procedures; (3) states may choose to use the relevant IDSP but at the same time seek to *manipulate* their implementation by, for instance, exploiting procedural loopholes; (4) states may also choose to *disregard* the relevant IDSP by violating agreed dispute settlement provisions. The institutionalist conjecture is supported if the judicialization of a given IDSP leads to a relative decline in disregarding or manipulating behaviour while dispute settlement behaviour that follows the relevant procedures increases (Helmedach et al. 2006; Zangl 2006).

2. THE JUDICIALIZATION OF DISPUTE SETTLEMENT PROCEDURES UNDER GATT/WTO

To evaluate the institutionalist conjecture, and the four causal mechanisms it builds on, I have chosen the GATT/WTO dispute settlement system, because it has undergone a remarkable process of judicialization over the past two decades and thus allows within the same issue area a comparison of states' actual dispute settlement.

This process of judicialization already manifests itself through the increasing *political independence* of GATT/WTO dispute settlement procedures.¹⁰ It was rather restricted during the 1980s and early 1990s when so-called GATT panels made up of three or five panelists were assigned the task of drawing up reports in which they decided whether states had violated their obligations (Petersmann 1997). Although the panelists acted in their individual capacities, the fact that the disputing states had to agree on the panelists militated against their independence (Jackson 1997). During the

1990s, however, after the establishment of the WTO, the political independence of the procedure was consolidated. While no changes were made to the composition of the panels, a remarkably independent Appellate Body was established to revise panel reports in appeal cases, thereby diffusing its independence across the entire dispute settlement system. Unlike the panels, the Appellate Body is composed of independent legal experts, i.e. judges. Moreover, rather than being selected by the disputing states, the seven judges of the Appellate Body are elected to deal with all disputes arising during their four-year term (Petersmann 1997:177-198; Stone Sweet 1997).

The judicialization of the GATT/WTO dispute settlement procedures is also characterized by an increasingly *legal mandate* (Jackson 1997; Waincymer 2002:75). Through the early 1980s the task of the GATT panels was mainly to stipulate in their panel reports solutions on which the disputing parties could agree. Panel reports were thus the result of political negotiations and mediation rather than of legal reasoning. This was only changed with the introduction of the WTO. Under the WTO dispute settlement procedures, panels are now forced to base their reports on legal reasoning, because otherwise they run the risk of being modified by the Appellate Body.

The judicialization of the GATT/WTO dispute settlement procedures is also indicated by their increasing *authority to decide*.¹¹ In the early 1980s, the establishment of a panel to adjudicate in a dispute required a unanimous GATT Council decision (Hudec 1993). It was thus even possible for the defendant state to block the establishment of a panel. This changed in the late 1980s, when complainants were given the right to have their allegations heard by a panel (Petersmann 1997:66-91). Yet the adoption of panel reports required the consensus of the GATT Council, which meant that defendants could still block any decision made against them (Jackson 1997; Hudec 1993). This changed in the mid-1990s when the WTO came

into existence. The newly established Dispute Settlement Body (DSB), which took over the tasks of the old GATT Council, almost automatically approves panel and Appellate Body reports. As it may reject these reports only by consensus defendants can no longer block the procedure, thus the DSB now exercises compulsory jurisdiction (Jackson 1997:107-137; Rosendorf 2005:391; Petersmann 1997:177-198).

Another aspect of the judicialization of the GATT/WTO dispute settlement system is the enhanced *authority to sanction*.¹² Under GATT, decisions to authorize sanctions required the consensus of the GATT Council. They could therefore even be blocked by defendants whose non-compliance was criticized by an adopted panel report (Jackson 1997; Rosendorf 2005:391). Under the WTO procedures, by contrast, decisions to authorize aggrieved states to employ sanctions can be made without the consent of the defendant state. If a defendant does not comply with a WTO ruling – and is not prepared to offer adequate compensation – the complainant can request the Dispute Settlement Body to authorize sanctions. This authorization is then automatically granted, unless the DSB unanimously decides otherwise. The defendant can merely invoke the dispute settlement panel to decide on the amount of sanctions.

In sum, the degree of judicialization of the dispute settlement procedures under the GATT/WTO trade regime has been remarkably enhanced.

3. THE JUDICIALIZATION OF US DISPUTE SETTLEMENT BEHAVIOUR UNDER GATT/WTO

To evaluate the institutionalist conjecture I shall now compare US behaviour in pairwise similar disputes it had with the EU/EC under the GATT and WTO dispute settlement systems. The aim of the comparison is not to demonstrate that the institutionalist conjecture offers the best explanation possible for the behaviour of the

US, but to show that the judicialization of GATT/WTO procedures has affected the way the US deals with the EU. The four pairs of cases chosen for comparison are the so-called DISC and FSC case, the Patent and Steel case, the first and the second Hormones case, and finally the Citrus and Bananas case. The reasons for this particular choice are as follows. First, the focus on the US was chosen because if the judicialization of GATT/WTO procedures can impact the behaviour of the most powerful state one can assume that it will have similar effects on the behaviour of less powerful states as well (hard-case design). Second, the focus on disputes with the EU only was chosen to rule out the possibility that differences in US behaviour were due to differences pertaining to the party with which it had the dispute (similar-case design). Admittedly, it would have been preferable to focus on a less powerful contender than the EU to test whether the judicialization of GATT/WTO procedures has an effect on US behaviour towards both powerful and less powerful disputants. The focus on the EU certainly limits the ability to generalize from these disputes among powerful actors to disputes between powerful and less powerful countries, but the EU is the only contender with whom the US had disputes that allowed pairwise comparisons of similar cases.¹³ Third, pairwise similar disputes were selected to keep the matter of dispute constant, thereby controlling for confounding factors. This helps, in particular, to rule out the possibility that differences in behaviour were caused by differences in the matters of dispute (most-similar case design).¹⁴ Fourth, I selected not only disputes in which the EU complained under GATT/WTO law about US non-compliance, but also disputes in which the US also complained about EU non-compliance. This was imperative in order to get an adequate picture of US dispute settlement behaviour, as its behaviour may vary depending on its role (Zangl 2006).

3.1. Comparing the DISC and the FSC Case

For the purposes of a most-similar case design the so-called DISC and FSC cases can be considered ideal for evaluating the institutionalist conjecture, as they both concerned EU/EC allegations that the US government provided US companies with export subsidies through tax preferences for so-called Domestic International Sales Corporations (DISCs) and Foreign Sales Corporations (FSC) respectively.

The DISC Case

The DISC case emerged in 1971, when the US administration announced preferential tax treatment for DISCs (Parent 1989:93-101; Hufbauer 2002:1-3). DISCs were subsidiaries of US companies that, on paper, managed the export business for their parent company (Parent 1989:39-44). The US claimed that preferential treatment for DISCs was compatible with GATT, because it offset the competitive disadvantage US export companies suffered due to the fundamental differences between the American tax system's principle of global taxation, and the principle of territorial taxation of most European tax systems (Hudec 1993:59-62). The EU (then the EC), however, complained that preferential treatment for DISCs constituted an export subsidy that was illegal under GATT because it provided export-specific tax exemptions (Jackson 1978:766; Parent 1989:53-53).

From early on in the *complaints phase* the US tried to *avoid* the invocation of the GATT dispute settlement procedures by the EU (Hudec 1993:66-68; Jackson 1978:761). The Nixon administration considered the GATT regulations too vague for any decision to be made under GATT. The US saw the dispute as a political rather than a legal issue and was therefore only prepared to seek a negotiated settlement. To force the EU to accept negotiations the US announced that if it insisted on dispute

settlement under GATT, it would initiate GATT proceedings against the tax laws of various EU countries (Hudec 1993:68). Indeed, when the EU requested consultations under GATT, the US, in a retaliatory move, demanded consultations over the French, Belgian and Dutch tax regulations (New York Times 27.02.1973).

In May 1973, as the consultations failed, the DISC case entered the *adjudication phase* (New York Times 30.05.1973). Now strictly *following* the dispute settlement procedures, both the EU and the US requested GATT panels and abstained from blocking their establishment (Parent 1989:51-52). Thus, by July 1973 the GATT Council was able to agree on panels to deal with the American and the three European tax systems. Their actual establishment was actually deferred until February 1976 due to procedural conflicts, but they were able to work properly after that date (Parent 1989:762-763; Hudec 1993:69-71). In their reports of November 1976 they not only criticized the DISC scheme of the US for being incompatible with GATT, but also various tax provisions of the three EU states (GATT L/4422).

To *avoid* the report becoming binding the US announced in December 1976 that it would block the panel report criticizing its DISC scheme unless the EU was prepared to accept the panel reports criticizing their tax systems. (New York Times 06.11.1976; The Economist 20.11.1976). It emerged, however, that almost all GATT states were in favour of rejecting the panel report criticizing the EU but supported the adoption of the panel report criticizing the US. While the former was considered to be legally wrong, the latter was held to be legally correct. Nevertheless, in the face of an overwhelming majority of GATT Council members the Carter administration blocked the adoption of the panel report for more than five years (Hudec 1993:82-88).

Only in December 1981, after realizing that the blockage of the report had damaged its reputation and thus impeded its struggle against other states' subsidies

under GATT, was the US finally prepared to *follow* GATT procedures (Wall Street Journal 10.12.1981). The Reagan administration had to concede that when confronted with their complaints about subsidies, the accused states always justified their defiance by pointing at the US blockage of the panel report in the DISC case. To overcome the humiliation of being so discredited, the administration finally accepted the Council's adoption of the aforementioned reports on the understanding that the European tax systems – but not the American – would be rehabilitated as compatible with the GATT (Parent 1989:122-123; Hudec 1993:92).

The dispute now moved on to the *implementation phase*. In December 1981, despite having accepted the adoption of the panel reports the Reagan administration openly refused to comply with the report that criticized the US (New York Times 22.07.1982). *Manipulating* the understanding among GATT members, the US claimed that the aforementioned GATT Council resolution not only rehabilitated the European but also the American tax system (Hudec 1993:92-94; Parent 1989:123). In response almost all GATT members supported council resolutions that shamed the US for its open defiance of an adopted panel report (Financial Times 11.05.1982). Moreover, this defiance proved to damage the US reputation anew, and considerably impeded the Reagan administration's struggle against GATT-defiant subsidies of other states (Financial Times 28.07.1982).¹⁵ In July 1982 the US therefore announced that it was now willing to *follow* the panel report (New York Times 28.07.1982). In 1983, after extensive deliberations between the administration and Congress, the US finally abandoned the DISC scheme, and substituted it with preferential tax status for so-called Foreign Sales Corporations, or FSCs. Since FSCs, in contrast to DISCs, had to be located abroad – in tax havens like the Virgin Islands – in order to enjoy the said

preferential tax treatment, they were considered to be GATT compatible (Hufbauer 2002). For the time being, the DISC dispute came to an end (Parent 1989:124-125).

The FSC Case

In 1997, after having accepted it for more than a decade, the EU complained that the FSC scheme was not compatible with WTO law, thereby triggering the FSC dispute (Langbein 2000:547; Hufbauer 2002). The EU argued that the scheme granted US exports certain exemptions from otherwise due tax payments (WT/DS108/1; WT/DS108/2). The EU complained in particular that the exemptions were granted only for the export of commodities produced in the US, and not for all commodities of the respective company regardless of where they were produced (Murphy 2000:531-533). The US, however, defended the FSC scheme on the grounds that it was merely rebalancing the advantages European companies reaped from tax systems, which were based on the principle of territorial rather than global taxation (WT/DS108/5).

Throughout the *complaints phase* the US tried to *avoid* the invocation of the WTO procedure by the EU. Admittedly, it accepted its duty to engage in consultations. In fact, in 1997 and 1998 EU and US delegations met three times for consultations (Journal of Commerce 08.04.1998). To prevent the EU from requesting a panel, however, the Clinton administration threatened to retaliate with similar demands for panels to deal with the allegedly deviant tax systems of some EU states. The US wanted to solve the dispute by negotiation with the EU rather than under the WTO dispute settlement system (Journal of Commerce 08.01.1999, 05.08.1999).

Nevertheless, the EU insisted on a WTO panel (WT/DS108/2). The FSC case moved on to the *adjudication phase*, in which the US strictly *followed* the designated procedures (Brumbaugh 2002:3; Langbein 2000:548). The US and the EU agreed on

the composition of a panel, which was then established in November 1998. The panel report of October 1999 stated that the preferential tax treatment for FSCs provided export subsidies that were illegal under WTO law (WT/DS108/R). The US appealed, but in its report of February 2000 the Appellate Body also requested the US to bring its tax laws in conformity with WTO law (WT/DS108/AB/R).

Though critical of the report, the US continued to *follow* the WTO dispute settlement procedures in the *implementation phase*. In fact, obviously feeling normatively committed to WTO procedures, the Clinton administration did not even consider defying the WTO reports, and accepted the demand for the FSC scheme to be repealed without hesitation (Financial Times 25.02.2000). It explained, however, that it intended to adjust US tax law in such a way that the tax burden would not increase for companies that had hitherto enjoyed the advantages of the FSC scheme (Washington Post 25.02.2000; New York Times 03.05.2000). Underlining the US' commitment to the WTO, Deputy Secretary of Finance Stuart Eizenstaat explained: "In general it is the intention of the US to implement the recommendations and rulings of the WTO in a manner that respects our WTO obligations while protecting the interests of US companies and workers" (quoted in Murphy 2000:533).

In fact, in November 2000, under pressure from the Clinton administration,¹⁶ US Congress replaced the FSC scheme with a so-called Extraterritorial Income (ETI) scheme, which provided preferential tax rates for both export and non-export earnings from the foreign activities of US companies (Charnovitz 2002:619; Hufbauer 2002:6). Again, the EU claimed that the ETI scheme failed to comply with WTO law (Financial Times 02.09.2000), but the US, having repealed its FSC scheme in good faith, maintained that the ETI regime was WTO-compatible (Murphy 2000:533-534; Brumbaugh 2002:3). The panel and the Appellate Body had to convene once again,

and concluded in their reports of August 2001 and January 2002 that the ETI scheme was not in accordance with WTO law (WT/DS108/ RW; WT/DS108/AB/RW). Once more the US was obliged to revise its tax legislation (Brumbaugh 2002).

As the US could hardly change its tax legislation immediately, the dispute entered the *enforcement phase* during which the US continued to *follow* the WTO dispute settlement provisions. As compensation for the damages it had sustained from the ETI scheme, the EU requested the WTO to approve sanctions of approximately 4 billion US Dollars (WT/DS108/ARB). Partly due to this credible threat of authorized sanctions but also partly due to its normative commitment towards WTO dispute settlement provisions the Bush administration consented to request Congress again to revise the US tax legislation (Financial Times 26.01.2002).¹⁷ The administration emphasized that the US should not undermine the credibility of WTO, which generally served its interests.¹⁸ Under the pressure of gradually increasing EU sanctions, the Bush administration vigorously tried to push a WTO-compliant solution through Congress (Financial Times 03.10.2003). This was only deferred over and over again because Congress could not agree on how best to adjust the ETI scheme (Washington Post 31.08.2002, 06.07.2003). Eventually, in October 2004, Congress finally adopted a modified ETI scheme, thus bringing the dispute with the EU to an end (Financial Times 05.10.2004, 16.12.2004).

Comparing the DISC and FSC Case

Overall, the comparison of US dispute settlement behaviour in the DISC and FSC cases backs the institutionalist conjecture. While switching back and forth between avoiding, following and manipulating the diplomatic GATT dispute settlement procedures in the DISC case, the US proved to be prepared, after initial attempts to

avoid the invocation of the WTO had failed, to strictly follow the judicialized WTO dispute settlement system. Moreover, as the DISC case shows, the GATT procedures only took effect because the US had learned that blocking and disregarding the panel report undermined its reputation, thereby impeding its attempts to negotiate for stricter GATT rules on subsidies. In the FSC case, by comparison, the WTO procedures also had an impact because, firstly, both the Clinton and the Bush administration felt normatively committed to comply with WTO dispute settlement provisions, and secondly they were concerned about the credibility of the WTO dispute settlement system. Moreover, the threat of sanctions authorized by the WTO obviously encouraged it to comply with WTO rulings.

What is more, not only did US behaviour, but also EU behaviour differ in both cases, so that the way in which the two superpowers of international trade handled the disputes differed considerably. While the DISC case was mainly dealt with outside of the GATT procedures, the FSC case was mainly handled within the WTO system.

3.2. Comparing the Patents and the Steel Case

To the extent that in both the Patents and the Steel case the EU accused the US of illegal retaliation against allegedly unfair trading practices of their GATT/WTO partners, these cases lend themselves well to a pairwise comparison in the context of a most-similar case design for judging the institutionalist conjecture.

The Patents Case

The Patents case emerged in 1986 as a result of US provisions that allowed US companies suffering from patent infringements on products of non-US origin to invoke not only ordinary courts, as was permissible with products of US origin, but

also a so-called International Trade Commission (ITC), which was accountable to the US administration (Hudec 1993:220; Dinan 1991). The EU complained that the ITC procedure was illegal under GATT because it discriminated against non-US companies that were accused of violating US patents (L/6439, 36S/ 345). The US, while agreeing that the ITC procedures differed from ordinary court procedures, denied that it was discriminatory (Duvall 1990; Abbott 1990).

Faced with such accusations the US, during the *complaints phase*, strictly followed GATT dispute settlement provisions, and accepted the EU's request for formal consultations. In fact, the Reagan administration was in favour of consultations because it thought that these would further the GATT Uruguay Round negotiations over the protection of intellectual property rights which it so strongly supported. The US hoped that by offering to repeal the ITC procedures it might get something in return from the EU. The EU, however, insisted that the US adjust its ITC procedures not as a result of ongoing GATT negotiations, but as a precondition for successful negotiations over intellectual property rights (Journal of Commerce 20.02.1987).

As there was obviously no common ground on which the two sides could meet the dispute entered the *adjudication phase*, and in March 1987 the EU requested a GATT panel (L/6439, 36S/ 345). Strictly following GATT provisions, the US refrained from obstructing the panel (Hudec 1993:547). In line with the EU's position, the panel, which was then established in October 1987, concluded that with its ITC procedure the US unduly discriminated between violations of US patents by products of US and non-US origin (Duvall 1990). Its report requested the US "to bring its procedures applied in patent infringement cases bearing on imported products into conformity with its obligations under the General Agreement" (L/6439, 36S/ 345).

In an effort to *avoid* the report becoming binding, the US blocked its adoption at eight consecutive GATT Council meetings (Hudec 1993:221, 548). Like the Reagan administration, the new Bush administration hoped that the ITC procedure could be used as a bargaining tool in the intellectual property rights negotiations at the GATT Uruguay Round (Financial Times 12.10.1989; Journal of Commerce 08.11.1989). Deputy USTR Rufus Xerxa underlined that only with an effective international procedure in place was the US prepared to renounce its ITC procedures and accept the panel report (Journal of Commerce 06.11.1989). However, blocking the report turned out to be self-defeating (Hudec 1993:221). Later, even USTR Carla Hills had to admit that the obstruction of the panel report and consequent loss of reputation for the US had become a liability rather than a bargaining tool.¹⁹ Indeed, the EU was not alone in shaming the US and declaring that US compliance with the panel report was a precondition for successful GATT negotiations on intellectual property rights (The Economist 20.05.1989; Financial Times 08.11.1989). Finally, in November 1989, in an effort to save these negotiations the US agreed to accept the panel report (Journal of Commerce 08.11.1989, 09.11.1989). Former USTR F. Holmer explained why his successors were now willing to *follow* GATT procedures: “They never were going to be successful in the Uruguay Round, particularly in the intellectual property negotiations, if they continued to block that panel report. It was having a very negative impact on the negotiations” (New York Times 13.11.1989).

Yet during the *implementation phase* the US openly *disregarded* the GATT dispute settlement system (Hudec 1993:548; Dinan 1991). The Bush administration declared that any US statute changes would have to wait until the GATT Uruguay Round was successfully concluded (The Economist 21.04.1990; Financial Times 08.11.1989). The US even continued to ignore the panel report in the light of further

delays in the conclusion of the Uruguay Round beyond 1990, and in the meantime even refused to apply existing ITC provisions in line with GATT provisions (Journal of Commerce 27.06.1990, 13.03.1991). This time, attempts to shame the US and undermine its reputation as a reliable GATT partner failed. Only five years later, with the conclusion of the Uruguay Round, was the US finally prepared to adjust its ITC procedures to meet its GATT obligations and thus to bring the patents case to an end.

The Steel Case

The origins of the Steel case went back to tariffs introduced by the US in March 2002 in response to a sudden surge of steel imports due to the Asian Crisis in 1997 and 1998, as a result of which European steel exports were redirected from Asian to American markets (Financial Times 06.03.2002; The Economist 09.03.2002). The Bush administration considered these tariffs to be WTO-compatible, because they were to provide temporary relief from international competition, so that the steel industry could undergo a restructuring program (WT/DS258/R). The EU, however, criticized the steel tariffs as an open violation of WTO law (WT/DS248/1), and underlined that US steel imports increased after the Asian Crisis in 1997 and 1998 only and have declined ever since (New York Times 06.03.2002).

The *complaints phase* began in March 2002, immediately after the increase of the tariffs had been declared, when the EU invoked the WTO dispute settlement procedure (WT/DS248/12). Although it was determined to implement the intended tariffs, the US *followed* the WTO dispute settlement provisions and accepted the EU request for consultations, which were held in April 2002 (WT/DS248/11).

As the consultations failed, the dispute entered the *adjudication phase* during which the US continued to *follow* the WTO procedures (WT/DS248/12), neither

disregarding nor trying to manipulate them. Yet, the Bush administration continued to argue in favour of the tariffs while at the same time granting exemptions from the steel tariffs for a variety of specific steel products. Nevertheless the panel concluded in its report of July 2003 that the steel tariffs were illegal under WTO law, and in its report of November 2003 the Appellate Body, which was then invoked by the US, agreed. Both reports criticized that, the US had failed to demonstrate a causal link between rising steel imports and the crisis of its steel industry, and both reports demanded that the US repeal its steel tariffs (WT/DS248/R; WT/DS248/AB/R).

Although it criticized the reports, the Bush administration announced that the US was willing to *follow* the WTO reports in the *implementation phase* (New York Times 06.12.2003). While, admittedly, it did not mention the sanctions threatened by the EU, pointing instead at the successful restructuring of the American steel industry,²⁰ it was nevertheless obvious that the administration complied because it feared WTO authorized sanctions. It was hardly by chance that it announced this decision, in December 2003, less than a week before the EU was able to apply sanctions of about 2.2 billion US dollars. In the US the prospect of sanctions weakened those who had argued in favour of steel tariffs, while strengthening those who had always been against them (Washington Post 05.12.2003; The Economist 06.12.2003). For example, Senator Lamar Alexander declared, in face of the sanctions: “Because of the WTO ruling continuing the tariff will destroy thousands more of our (...) jobs. President Bush’s honest effort to save steel jobs is now backfiring and hurting American workers” (New York Times 12.11.2003).

In addition, concerns about the US’ reputation and about the WTO’s credibility had also won the administration as well as Congress over in favour of complying with the WTO reports (New York Times 11.11.2003; Financial Times

05.12.2003).²¹ Senator Charles E. Grassley, for instance, maintained: “Although I may not agree with every decision at the WTO, it’s important that we comply when decisions go against us. Complying with our WTO obligations is an important sign of American leadership” (Washington Post 11.11.2003).

Comparing the Patent and Steel Case

Overall, the comparison of US dispute settlement behaviour in the Patents and the Steel case supports the institutionalist conjecture. While in the Patent case its strategy fluctuated between following, avoiding and disregarding the diplomatic GATT dispute settlement mechanism, in the Steel case the US strictly followed the judicial WTO procedures. Moreover, as the Patent case confirms, the GATT procedures only had an impact on the US when its deviant behaviour discredited its reputation to such a degree that it jeopardized its negotiations over intellectual property rights protection in the GATT Uruguay Round. The Steel case shows us that the WTO procedures also had an impact because the Bush administration as well as Congress feared authorized sanctions and were concerned about the US’ reputation and the WTO’s credibility.

In addition, not only the US but also the EU behaved differently in the two cases. Thus, while the Patent case, after a good start, was then mainly dealt with and finally solved outside of GATT procedures, the Steel case was settled entirely within the WTO. Both parties evidently likened GATT reports to political bargaining chips, while they accepted that the WTO reports have to be treated as binding rulings.

3.3. Comparing the Hormones Cases

The so-called Hormones cases under GATT and WTO are singularly appropriate for investigating the institutionalist conjecture within a most similar case design. The

cases are similar because in both of them the US objected to the EU ban on beef from livestock treated with certain growth hormones. Moreover, in both cases the US had considerable incentives to take the law into its own hands, because the EU refused to lift its ban which defied GATT/WTO regulations.

The First Hormones Case

When the first Hormones case was sparked off in 1985 the EU claimed that its ban was justified because the growth hormones in question were suspected of enhancing the risk of cancer in humans. The US, however, criticized the ban as illegal under GATT because, as they asserted, there was no evidence that meat produced with the said hormones increased the risk of cancer (New York Times 28.12.1988). The US complained that the ban was an arbitrary measure to protect European beef producers from American meat production (Decker 2002:150).

From early on in the *complaints phase* the US *disregarded* the GATT dispute settlement mechanism (Hudec 1993:545; Meng 1990:824). Then, in March 1987, the US requested consultations with the EU under the GATT agreement on Technical Barriers to Trade (TBT/Spec/18). Even before consultations took place, however, and without any GATT authorization, the US threatened to employ sanctions if the EU went ahead with its ban (Financial Times 31.12.1985, 23.11.1987). In fact, under heavy pressure from Congress the Reagan administration even prepared a list of EU products the US was willing to sanction (New York Times 27.11.1987).

At all events the GATT consultations failed, and in June 1987 the Hormones case entered the *adjudication phase*. The US now requested a dispute settlement panel to be established under the TBT agreement rather than GATT, because the former provided panels of independent experts, while the latter appointed panels of state

representatives (Hudec 1993:545; Meng 1990:824). From the European point of view, however, the TBT agreement was not applicable to the Hormones case (Financial Times 21.12.1988). Yet, the EU offered to accept a GATT panel to decide on the applicability of the TBT agreement (New York Times 01.01.1989). Although this was explicitly provided under the TBT agreement, the US rejected the GATT panel and insisted instead on an expert panel under the TBT agreement (Financial Times 23.09.1987, 14.10.1987). This was turned down by the EU, and thus in September 1987, in open *disregard* of GATT dispute settlement procedures, the Reagan administration began preparing sanctions (Hudec 1993:225-226; Decker 2002:150).

The Hormones dispute now moved on to the *implementation phase*. Finally, in December 1987, in *disregard* of the GATT dispute settlement system, the Reagan administration decided to employ sanctions (Hudec 1993:225-226; Meng 1990:824-825). It prepared a list of products to be sanctioned should the EU ban go into force.²² As attempts to come to an amicable solution failed, the dispute threatened to escalate (Decker 2002:150). The EU announced that it was prepared to retaliate against US sanctions, to which the Reagan administration threatened with counter-retaliation (Financial Times 21.11.1988; Washington Post 13.12.1988).

The Hormones case entered the *enforcement phase* when the EU ban went into force in January 1989. Still *disregarding* GATT provisions, the US immediately responded with unauthorized sanctions (Hudec 1993:225-226; USTR 2002:13). Moreover, the US blocked the EU request for a GATT panel to deal with American sanctions (Financial Times 09.02.1989). The US claimed that sanctions were justified because of the inadequate dispute settlement procedures under GATT, which in their view gave the EU the opportunity to arbitrarily block its request for a panel.²³ In actual fact, the US had never requested a GATT panel (Hudec 1993:574, 249; Meng

1990:833-835). In any case, US sanctions were not conducive to an amicable solution of the dispute (Financial Times 10.08.1989). The US and the EU merely agreed on partial solutions which led to a gradual reduction of US sanctions (Hudec 1993:229).

The Second Hormones Case

In 1995, with the new WTO procedures in place, the US again complained about the EU ban on hormones-treated beef. This time, however, from early on in the *complaints phase*, the US was prepared to strictly *follow* the WTO procedure. In contrast to the earlier Hormones case, the US refrained from threatening non-authorized sanctions. Instead, it announced that it would invoke the WTO if the EU did not give up its ban immediately. In fact, in January 1996, after attempts to come to an amicable solution failed, the US requested WTO consultations (WT/DS26/1).

After the failure of WTO consultations the dispute entered the *adjudication phase* (Ahearn 2002:27). In April 1996 the US, still *following* the dispute settlement procedures to the letter, requested the establishment of a panel (WT/DS26/6). The Clinton administration underlined that it was seeking authorization for sanctions from the WTO to force the EU to give up its ban. USTR Charlene Barshefsky even declared that she considered authorized sanctions as the *only* means of asserting US rights in the face of EU non-compliance (Financial Times 04.02.1999). To ensure that the EU could not turn the tables she even decided that the US would retract the sanctions the US had been employing since the first Hormones dispute (New York Times 06.07.1996; Journal of Commerce 16.07.1996). She explained: “As the United States now had effective multilateral procedures to address the matter of the EC’s restrictions on imports of U.S. meat (...) the USTR (...) determined that it was in the interest of the United States to terminate (...) the increased duties” (USTR 2002:13).

In their reports of August 1997 and February 1998 the panel as well as the Appellate Body agreed that the ban was illegal, because the EU had failed to provide scientific evidence that beef treated with the hormones in question posed any risk for consumers (WT/DS26/R/USA; WT/DS26/AB/R). And USTR Charlene Barshefsky claimed victory: “This is a sign that the WTO dispute settlement system can handle complex and difficult disputes where a WTO member attempts to justify trade barriers by thinly disguising them as health measures” (Financial Times 19.08.1997).

The Hormones dispute now entered the *implementation phase* during which disagreement arose over the interpretation of the WTO reports. The US insisted that the required the EU to end its ban immediately (New York Times 14.03.1998; Financial Times 13.02.1998). The EU however, argued that the WTO reports had not criticized the ban itself, but merely the lack of scientific evidence. The EU demanded the right to uphold its ban for 15 months while seeking scientific evidence to justify the ban (Financial Times 13.02.1998; New York Times 14.03.1998). In fact, a panel, invoked by the US, gave the EU until May 1999 to come into compliance with the WTO reports (WT/DS26/15). Unlike during the first Hormones case, the US now continued to *follow* the WTO procedures and did not resort to unilateral sanctions the very moment that WTO procedures did not produce the desired results. The fact that the administration as well as Congress did not even consider unilateral sanctions might even be seen as an – albeit indirect – indication of their normative commitment towards the WTO procedures (Wall Street Journal 23.03.1999).

As the EU decided in May 1999 that it would uphold its ban, the dispute entered the *enforcement phase*. The EU argued that scientific evidence was in preparation which indicated that the said hormones posed a serious risk for human consumption (Financial Times 04.05.1999, 05.05.1999, 20.05.1999). The US,

however, accusing the EU of undermining the credibility of the WTO system, was no longer willing to wait for the EU to produce sound scientific evidence (Financial Times 15.05.1999; New York Times 23.03.1999). In May 1999, in accordance with the dispute settlement provisions, the Clinton administration requested the WTO to authorize sanctions (WT/DS26/19).²⁴ This was, however, deferred when the EU requested a further WTO panel to decide on the amount of sanctions (WT/DS26/20). Again, the US assented, and when the decision was made was even prepared to reduce sanctions, as required, from 220 to 116 million US dollars (Decker 2002:152). The US was anxious to ensure that the EU could not turn the tables and shame it for violating WTO procedures (Financial Times 17.05.1999, 27.07.1999). Moreover, the US urged the EU to comply with the reports to preserve the WTO's credibility.²⁵ The EU, however, merely accepted the sanctions employed by the US without retaliation, but until today has neither lifted the ban nor provided scientific evidence for its justification (New York Times 25.05.2000).

Comparing the Hormones Cases

The comparison of the US' behaviour in the two Hormones cases under GATT and WTO bears out the institutionalist conjecture. While constantly disregarding the diplomatic GATT procedures during the first case, the US was willing to follow the judicial WTO dispute settlement provisions to the letter in the second case. As the first Hormones case reveals, the GATT dispute settlement proceedings had hardly any effect on US behaviour. As soon as the procedure did not deliver the desired results, because the EU refused the required TBT panel, the US decided to take the law into its own hands. In the second Hormones case, by contrast, the US strictly followed the WTO procedures although it did not bring the desired results either. In particular, the

dispute settlement proceedings did not authorize the amount of sanctions requested by the US, and (therefore) failed to ensure EU compliance with the panel report. The US was obviously prepared to follow the WTO procedure because it perceived it to allow both effective shaming and authorized sanctions. At the same time it followed the procedures to pre-empt being shamed by the EU for disregarding its WTO obligations and the EU requesting authorized sanctions instead. In addition, normative commitments towards the WTO seemed to have had an impact on US behaviour too.

Moreover, in the Hormones cases not only the US, but also the EU acted more in accordance with the dispute settlement procedures under the WTO than under GATT. Certainly, in both cases the EU upheld its ban on hormone-treated beef in defiance of the respective rulings. This may suggest that its normative commitment to GATT/WTO procedures was rather weak. Remarkably, however, in the second Hormones case the EU accepted the sanctions the US was authorized to employ without any threat of retaliation. Therefore the manner in which the two superpowers of international trade dealt with the dispute changed considerably. While in the first case, under GATT, their behaviour threatened to lead to a spiral of unauthorized sanctions, retaliation and counter-retaliation, the second case was contained within the framework of the WTO dispute settlement system.

3.4. Comparing the Citrus and Bananas Cases

In terms of case similarity, the Citrus case under GATT and the Bananas case under the WTO fulfil the criteria for evaluating the institutionalist conjecture, inasmuch as in both cases the US complained that the EU's preferential treatment of agricultural products from former European colonies discriminated against products from the US.

The Citrus Case

Since the 1960s, the EU (then the EC) held trade agreements with states around the Mediterranean rim that gave their products preferential access to its market (Hudec 1993:157-161). In 1976, the US, although in principle accepting the preferential treatment of developing countries, criticized specifically the agreements for citrus products. The US claimed that these agreements were illegal under GATT because they unduly discriminated against US products. The EU, which saw these allegations as an attempt to undermine its trade agreements with Mediterranean countries, argued that the preferences for citrus products from these countries were compatible with GATT, which explicitly allows preferential treatment for developing countries.

During the early *complaints phase* the US *avoided* dealing with the dispute under the GATT procedures. The US rather tried to reach a negotiated settlement with the EU, first between 1976 and 1978 outside of GATT, then between 1979 and 1982 in the context of the GATT Tokyo Round. Only in June 1982, after these attempts failed, did the US invoke GATT procedures. Now *following* the dispute settlement provisions, the US requested formal consultations (Hudec 1993:158). Consultations followed, but the US and the EU were unable to find a solution for the Citrus case (Wall Street Journal 21.04.1982; Financial Times 22.04.1982).

The dispute thus entered the *adjudication phase*, and the US requested a GATT panel (L/5337). The Reagan administration *followed* GATT dispute settlement provisions, although the EU blocked the establishment of a panel until October 1983 (Hudec 1993:159; USTR 2002:2). In its report of December 1984 the panel concluded that the preferential treatment of citrus products from developing countries – while not a violation of GATT obligations – nullified privileges the EU had already granted to the US (Hudec 1993:159; Petersmann 1997:160-164). The panel thus neither

concluded with the US that the preferential treatment itself was a violation of GATT, nor did it accept the EU argument that the preferential treatment was entirely compatible with the provisions of the GATT. The EU was merely requested to reduce tariffs for two citrus products, i.e. oranges and lemons (L/5776). Although the US had not achieved its original objective, the administration supported the approval of the panel report (New York Times 18.02.1985).

The EU, by contrast, blocked the adoption of the report by the GATT Council (Hudec 1993:504) when the dispute proceeded to the *implementation phase*. The US administration therefore declared that it now considered the dispute settlement process under GATT terminated (C/M/190). Due to the EU's obstruction of the panel report, the US claimed the right to employ sanctions without GATT approval (Financial Times 20.05.1985, 20.06.1985). *Disregarding* GATT dispute settlement provisions, the US indeed prepared a list of sanctions it was willing to employ (USTR 2002:2), while the EU declared that it would not hesitate to retaliate against non-authorized US sanctions (Financial Times 20.06.1985; Los Angeles Times 20.06.1985).

Now entering the *enforcement phase*, however, the US continued to *disregard* the GATT dispute settlement provisions. Without obtaining GATT approval it increased tariffs for European pasta (Washington Post 21.06.1985). The Reagan administration claimed that this was justified because the GATT dispute settlement system was unreliable (Hudec 1993:160).²⁶ The sanctions, however, only aggravated the dispute, because the EU retaliated, again without GATT approval, by increasing tariffs on American citrus and walnuts (Financial Times 28.06.1985). The European Commission considered its retaliatory sanctions justified because of the US' defiance of the GATT ban on non-authorized sanctions (New York Times 21.06.1985).

To prevent the dispute from escalating further – both parties were meanwhile threatening to retaliate against each other’s retaliation – the US and the EU tried to reach a *negotiated* settlement. In June 1985 they agreed on a “ceasefire,” temporarily lifting their respective sanctions (Financial Times 11.07.1985, 13.07.1985). But both parties reinstated their sanctions when the ceasefire ended in October 1985 (New York Times 01.11.1985). During the summer of 1986 the dispute seemed to be getting out of control, with both the US and the EU threatening to step up their retaliatory measures (Financial Times 06.08.1986). Only the prospect that the Citrus dispute might jeopardize the GATT Uruguay Round brought the US and the EU back to the negotiation table (Wall Street Journal 11.08.1986). In August 1986, after tough negotiations, they finally agreed that the EU had to reduce its tariffs on citrus to below the level prior to the dispute, while the US accepted the preferential treatment of Mediterranean countries (Financial Times 11.08.1986; Economist 16.08.1986). After more than ten years the dispute was finally over (New York Times 11.08.1986).

The Bananas Case

The EU Bananas Directive of 1993, which provided preferential access to European markets for bananas from certain developing countries, especially from the Caribbean, triggered the Bananas dispute with the US (Hanrahan 2002:66; Cadot and Webber 2001:3-6). The US complained that the Bananas regime was not compatible with WTO law because it not only provided preferential treatment to developing countries, but also privileged European marketing companies, which mainly traded with bananas from the Caribbean, and discriminated against American companies – such as Chiquita and Dole – that marketed bananas from Latin America (Tangermann 2003). The EU argued, however, that its bananas regime was compatible with WTO law

because it was merely designed to privilege bananas from Caribbean countries without giving any advantage to European marketing companies over their American competitors (Josling 2003:178-182).

Early on in the *complaints phase*, the US tried to *avoid* a formal WTO procedure and persuade the EU to modify its bananas regime before it came into force. But since the bananas regime had been highly contested within the EU, it was unable to agree on a regime that would satisfy US demands. In September 1995, in a move to force the EU to give in, the US administration, *following* WTO procedures, requested formal consultations with the EU (WT/DS16/1; WT/DS27/1). As USTR Micky Kantor explained, fear of being put to shame and losing its reputation prevented the US from threatening with unauthorized sanctions: “If we had gone with unilateral sanctions, all we would have done was raise the ire of all the other WTO members, including the member states in the EU who favoured our position” (quoted from Stovall and Hathaway 2003:155-156).

Since the US and the EU failed to solve it through consultations, however, the dispute then entered the *adjudication phase* (Josling 2003:176-177). Consistently *following* WTO procedures, the US asked for a panel to decide on the EU bananas regime (WT/DS27/6). The panel as well as the Appellate Body concluded in their reports of May 1997 and September 1997 respectively that the EU bananas regime was not compatible with WTO law (WT/DS27/R/USA; WT/DS27/AB/R). The reports accepted the preferential treatment of bananas from Caribbean countries, but criticized the fact that the EU import quotas and import licences unduly discriminated against American marketing companies (Josling 2003:178-182, Hanrahan 2002:66).

In the implementation *phase*, still *following* WTO procedures, the Clinton administration accepted a WTO panel decision allowing the EU not only until August

1998, as demanded by the US, but until January 1999 to adjust its banana regime (WT/DS27/16; WT/DS27/15). The EU declared that it was willing to repeal its bananas regime by then (Josling 2003:183-185). When, however, in July 1998 it became clear that the EU would only agree on cosmetic changes to its bananas regime, the US began to *manipulate* the WTO procedure. If the EU did not come up with a substantively revised bananas regime, the Clinton administration warned, the US would request sanctions without involving another WTO panel to decide on the modified bananas regime (Financial Times 24.07.1998). Although the WTO provisions did not explicitly require the US to invoke another panel to decide on the modified regime, implicitly it was clearly not for the US to decide whether the modified regime complied with WTO law. It had to invoke another WTO panel to decide on the EU bananas regime before requiring sanctions which the WTO was bound to approve (Josling 2003:186; Cadot and Webber 2001:30; Hanrahan 2002:67).

In March 1999, now entering the *enforcement phase*, the Clinton administration imposed non-authorized sanctions of 520 m. US dollars against the EU (Josling 2003:187-189; Cadot and Webber 2001:33). However, it did not actually collect these sanctions, but merely required importers to post bonds which would cover the sanctions if authorized by the WTO, thus *manipulating* rather than disregarding the WTO procedures (Washington Post 04.03.1999; Journal of Commerce 05.03.1999).²⁷ Through these bonds, the US wanted to reserve the right to collect sanctions retroactively (Washington Post 09.03.1999). Its reluctance to openly disregard the dispute settlement provisions can be seen as an indication – albeit indirect – of its normative commitment to the WTO procedures. At all events, when a WTO panel finally concluded in April 1999 that the modified EU bananas regime still failed to comply with earlier WTO reports, the US reverted to *following* the WTO

procedures (WT/DS27/RW/EEC). Although the panel merely authorized sanctions amounting to 191 m. US dollars, rather than 520 m. US dollars as it had demanded, the US was prepared to reduce its sanctions accordingly (WT/DS27/ARB). Moreover, the US also complied with a further panel report stipulating that it may not employ sanctions retroactively, and refrained from using the posted bonds (Hanrahan 2002:67; Josling 2003:187-189).²⁸ Nevertheless, even with authorized sanctions in place it took another two years before the EU and the US could agree on a WTO-compliant regime for the importation of bananas.

Comparing the Citrus and Bananas Case

Overall, the comparison of US behaviour in the Citrus case under GATT and the bananas case under the WTO sustains the institutionalist conjecture. Admittedly, in both cases, the US was only prepared to follow GATT/WTO procedures after attempting to avoid a formal dispute settlement procedure. However, while it clearly violated GATT provisions in the Citrus case, later on in the Bananas dispute the US abstained from openly disregarding WTO procedures. While in the citrus case the GATT procedures hardly had any effect on US behaviour, the WTO procedures in the bananas case had at least some impact. As in the second Hormones case, the US was willing to go by the WTO procedure in the Bananas case because it perceived it as an effective instrument for shaming the EU and getting sanctions authorized. Moreover, it refrained from openly disregarding procedures, even when they did not deliver the desired results, in order to avoid being put to shame for disregarding its WTO obligations, and to pre-empt European sanctions authorized by the WTO. In addition, the normative commitment toward the WTO also seems to have played a role.

Furthermore, not only the US, but also the EU conformed to the WTO dispute settlement procedures in the Bananas case more than in the Citrus case under GATT. Admittedly, the EU manipulated and disregarded both GATT and WTO procedures. But in the Bananas case, in contrast to the Citrus case, it did not dare to retaliate against US sanctions. The fact that US sanctions were authorized forbade the EU from employing any retaliatory measures. Therefore, the manner in which the US and the EU handled the dispute differed considerably. While the Citrus case – like the Hormones case under GATT – threatened to escalate into an exchange of sanctions, retaliation and counter-retaliation, the Bananas case – like the Hormones case under the WTO – was largely contained within the WTO dispute settlement system.

4. EXPLAINING THE JUDICIALIZATION OF US DISPUTE SETTLEMENT BEHAVIOUR

The institutionalist conjecture is clearly underpinned by the pairwise comparisons described above. In each pair of cases the US acted – no matter whether as complainant or as defendant – more in accordance with the judicial WTO dispute settlement procedures than with the diplomatic GATT procedures. Moreover, looking beyond the pairwise comparisons, the institutionalist conjecture even fares well in a comparison of all the eight disputes. While the US openly disregarded the relevant procedures – at least temporarily – in all but one of the four GATT cases, it did not do so in any of the four WTO cases. And while in two of the four WTO cases the US strictly followed the procedures throughout the whole dispute, it did not do so once out of the four GATT cases. Remarkably, in each of the four WTO cases the US behaved more compliantly than in any single GATT case. When the cases are ranked according to the degree to which US behaviour conformed to the relevant procedures

the first three positions are clearly taken by WTO cases, i.e. the Steel, the second Hormones, and the FSC case. The next two positions are then held by the “worst” (in terms of compliance) WTO and the “best” GATT cases, i.e. the Bananas and the DISC cases. The last three positions are occupied by GATT cases, namely the Patents, the Citrus and the first Hormones cases.

Table 3: US Behaviour in Disputes with the EU

	Complaints	Adjudication	Implementation	Enforcement
DISC (GATT)	Avoiding	Following Avoiding	Manipulating Following	NA
FSC (WTO)	Avoiding	Following	Following	Following
Patents (GATT)	Following	Following Avoiding	Disregarding Following	NA
Steel (WTO)	Following	Following	Following	NA
Hormones (GATT)	Disregarding	Disregarding	Disregarding	Disregarding
Hormones (WTO)	Following	Following	Following	Following
Citrus (GATT)	Avoiding Following	Following	Disregarding	Disregarding
Bananas (WTO)	Avoiding Following	Following	Following Manipulating	Manipulating Following

Moreover, the eight cases also support the institutionalist conjecture that the judicial IDSPs are better than diplomatic IDSPs at activating the above-specified causal mechanisms through which these procedures can become effective (see Table 2). The cases demonstrate that where the diplomatic GATT procedures were at all effective, this could be attributed to one mechanism, namely that of shaming and the potential loss of reputation. This mechanism was most obvious in the DISC and the Patents case, when the US, after a long history of disregarding, avoiding and manipulating procedures, started to follow procedures to avoid loss of reputation which might have jeopardized its leadership role in the Uruguay Round. In the DISC case the US realized that disregarding the procedure undermined its attempts to negotiate stricter rules for subsidies, and in the Patents case the US had to learn that

disrespect for the procedures undermined its attempts to obtain an agreement on intellectual property rights. Hence, when they had to give reasons for US compliance with GATT procedures, reputational concerns were US representatives' main justification.

The WTO procedure, by contrast, was not only able to rely on reputational concerns, but also on the other three mechanisms specified above. For example in the steel case – though less in the FSC case – it is obvious that the Bush administration was prepared to remove its steel taxes because of the sanctions the EU was authorized to employ. In the Hormones, the Bananas and the FSC cases US representatives made clear that they were willing to follow procedures because they respected their normative commitment towards the WTO. And in all four WTO cases US representatives explicitly underlined that they complied with the procedures in order not to undermine the credibility of the WTO. Thus, when urged to justify US compliance they now not only referred to US reputation, but also to sanctions authorized by the WTO, to the credibility of the WTO and to US normative commitments, thereby indicating that these mechanisms now played a role too. This supports the assumption that the judicialized WTO procedures are more effective in activating these mechanisms, thus pointing to how the judicialization of GATT procedures contributed to the shift in US behaviour.

Moreover, the institutionalist conjecture is also strengthened by the fact that not only the US, but also the EU was more compliant under the WTO. Certainly, the EU was less compliant than the US. In the Hormones and in the Bananas case at least, though not in the FSC and the Steel case, the EU openly disregarded the WTO procedures. However, in a comparison between EU behaviour under GATT and under the WTO one can still maintain that it is more compliant under the judicialized WTO

procedures than it had been under the diplomatic GATT mechanisms. Most importantly, the dispute settlement practices between the EU and the US have certainly changed. As the cases show, the risk of an escalation of unauthorized sanctions, retaliation and counter-retaliation, that characterized dispute settlement under GATT, has been substantially mitigated by the WTO procedures.

To be sure, this is not to argue that the judicialization of GATT/WTO dispute settlement procedures offers the best possible explanation for the judicialization of US dispute settlement behaviour. There may be better explanations for this! I would maintain, however, that the judicialization of GATT/WTO procedures *contributed* to the shift in US behaviour. To make that claim convincing, one has to demonstrate that alternative explanations fail to come to terms with this shift in US behaviour. Two alternative explanations seem to be of particular relevance (Zangl 2006:246-254):

(1) According to Realism, the distribution of power between disputing states is crucial for understanding their dispute settlement behaviour (Morgenthau 1948; Mearsheimer 2004-2005; Garrett et al. 1998; Goldsmith and Posner 2005). A shift in the power distribution between the US and the EU, hence, might provide an alternative explanation. However, while US behaviour in its disputes with the EU was more in compliance with the dispute settlement procedures under the WTO than under the old GATT, the distribution of power between the two superpowers of international trade has hardly changed at all. If we take their respective GDPs as an indication of their trading power, we can see that with minor fluctuations the ratio of their GDPs stayed almost constant between 1975 and 2000, with the US GDP around 10 per cent higher than that of the EU. Hence, the shift in US dispute settlement behaviour cannot be explained by a corresponding shift in the distribution of power. However, continuing along the Realist line of argument, one could still claim that the

GATT/WTO procedures only work for disputes between roughly equally powerful actors such as the US and the EU, while it is less likely that procedures are respected in disputes between powerful and much less powerful states (Shaffer 2003, Guzman and Simmons 2005). As the above case studies only focus on disputes between the US and the EU, this claim can neither be proved nor rebutted. It is, however, supported by the fact that the ability to apply painful sanctions against each other certainly contributed to US and EU compliance with GATT/WTO procedures. The distribution of power thus seems to be important for states' dispute settlement behaviour under GATT/WTO. However, this does not allow the conclusion that the judicialization of GATT/WTO procedures has no effect on states' dispute settlement behaviour. Rather, it suggests the qualification that the effect might well be limited to disputes among roughly equally powerful actors such as the US and the EU.²⁹

(2) Inspired by Idealist thinking, many claim that state leaders' fundamental foreign policy beliefs are, among other things, crucial to understanding states' dispute settlement behaviour (Goldstein and Keohane 1993; Holsti and Rosenau 1986). Thus, a shift in the fundamental foreign policy beliefs of US presidents could provide an alternative explanation for changes in US dispute settlement behaviour. US presidents with multilateralist belief systems might be more willing to settle disputes with the EU in line with the relevant GATT/WTO procedures than US presidents with belief systems of a unilateralist tendency. If Richard Nixon, Gerald Ford, Ronald Reagan and George Bush jun. are defined as unilateralists, and Jimmie Carter, George Bush sen. and Bill Clinton as multilateralists, this could explain differences in US behaviour under GATT and WTO respectively: 21 dispute years of the selected GATT disputes fall under unilateralist presidents (mainly Reagan) and only 17 dispute years under multilateralist presidents; under the WTO, by contrast, only 4 dispute

years fall under unilateralist presidencies whereas 16 dispute years fall under multilateralist presidencies (mainly Clinton). However, US presidents' belief systems can hardly explain all the differences in US behaviour under GATT and the WTO. Most notably, under the presidency of George Bush jun. the US' behaviour in the Bananas, Steel and FSC disputes was more compliant with WTO procedures than during Jimmie Carter's presidency, when the US disregarded GATT procedures in both the Citrus and the DISC cases. Nevertheless, the foreign policy beliefs of its presidents are important for our understanding of US dispute settlement behaviour under GATT/WTO. However, this should not bring us to conclude that the judicialization of GATT/WTO procedures does not matter for states' dispute settlement behaviour. Hence, we must add the qualification that its impact might depend among other things on the foreign policy beliefs of state leaders.

It can hardly be denied that realist and idealist explanations offer important factors for any explanation of US/EU dispute settlement behaviour, or that they add important qualifications to the institutionalist conjecture. The same might also be said of liberal explanations focussing on domestic interest groups (Goldstein and Martin 2000, Rosendorf 2005). In the above disputes, domestic interest groups and domestic politics were extremely important. But as this holds true for both GATT and the WTO alike, this can hardly offer an explanation for the *shift* in US behaviour. What rather might explain this shift is the fact that, due to the judicialization of GATT/WTO procedures, US domestic GATT/WTO dispute settlement politics increasingly takes place in the shadow of law.³⁰ In any case, liberal as well as realist and idealist explanations do not explain the shift in US dispute settlement behaviour to a degree that would lead us to suspect that its correlation with the judicialization of GATT/WTO dispute settlement procedures is spurious. Rather, the fact that these

alternative explanations fail to explain the shift in US dispute settlement behaviour satisfactorily may give us some confidence that, albeit with qualifications, the institutionalist conjecture holds true.

At all events, the fact that the judicialization of WTO dispute settlement procedures has contributed to the judicialization of US dispute settlement behaviour, naturally, does not prove that the rule of law has already emerged within the WTO. The fact that in some of the above cases the US and especially the EU did not comply with WTO procedures serves as a reminder of this. Yet, not only procedures, but also the corresponding dispute settlement practices are judicialized to a greater degree today under the WTO than under the old GATT. One can therefore claim that in the GATT/WTO context an international rule of law is gradually emerging. Hence, contrary to realist thinking, an international rule of law seems to be possible, at least in economic institutions such as GATT/WTO and at least among equally powerful actors such as the US and the EU. However, unlike early idealism, we should be cautious in seeing this as an indication that the rule of law follows almost automatically from the establishment of judicialized dispute settlement procedures.

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² For a discussion on the international rule of law see Watts (1993, 2000), Tamanaha (2004), Brownlie (1998).

³ See Stone Sweet (2000), Helfer and Slaughter (1998, 2005), McCall Smith (2000), Keohane et al. (2000), Alter (2001, 2006), Zangl and Zürn (2004a, 2004b), Zürn and Joerges (2005), Zangl (2001, 2006). For a critique of the institutionalist conjecture see Posner and Yoo (2005).

⁴ Among other things idealists can point to the remarkable increase in disputes that were brought to the attention of the GATT/WTO dispute settlement system as well as improved compliance with its decisions (Iida 2004, Leitner and Lester 2005; Busch et al. 2005). Some of them also claim that the WTO procedures offer better chances of success not only for developed but for developing countries too (Kuruvila 1997). Realists, however, can argue among other things that the increase in GATT/WTO dispute settlement is mainly due to increasing trade, a larger GATT/WTO membership and broader GATT/WTO coverage. They question whether compliance has really improved (Busch and Reinhardt 2002, 2003a, 2003b). They also argue that while GATT/WTO proceedings might work for powerful, developed countries they do not help less powerful, developing countries which sometimes cannot even afford to invoke them (Guzman and Simmons 2005, Shaffer 2003, Michalopoulos 2001).

⁵ For the impact of their design on international institutions’ effectiveness see Haas et al. (1993), Chayes and Chayes (1995), Underdal (1998), Victor et al. (1998), Brown Weiss and Jacobson (1998), Miles et al. (2001), Koremenos et al. (2001).

⁶ For a set of criteria to define such a gradual scale see Yarbrough and Yarbrough (1997), Helfer and Slaughter (1998), McCall Smith (2000), Keohane et al. (2000), Zangl (2001).

⁷ With regard to a given procedure both the process of judicialization and the status as judicialized can be evaluated on the basis of these criteria (see Table 1). Judicialization means that a procedure has changed to the effect that it scores higher with regard to at least one of these criteria without scoring lower on other criteria. And a procedure can be seen as judicial if it scores high (or very high) with regard to all four criteria, hence not scoring low (or very low) with regard to a single criterion.

⁸ See e.g. Keohane (1984), Zürn (1992), Martin (1992) and Scharpf (1997).

⁹ See e.g. Wendt (1999), Katzenstein (1996), Risse (2000), Finnemore (1996), Klotz (1995).

¹⁰ For criteria to distinguish different degrees of political independence of IDSPs see Helmedach et al. (2006), Keohane et al. (2000), Helfer and Slaughter (1998:353-355).

¹¹ For a discussion of criteria for distinguishing different degrees of authority to decide IDSPs might have see Helmedach et al. (2006), McCall Smith (2000:139-140), Zangl and Zürn (2004a:27).

¹² For criteria for differentiating between different degrees of IDSP's authority to sanction, see for instance Morgenthau (1948), Yarbrough and Yarbrough (1997), Zangl and Zürn (2004a:28-32).

¹³ This "lack of cases" reflects the general marginalization of developing countries in GATT/WTO dispute settlement and suggests that the judicialization of states' dispute settlement behavior posited here could be a process taking place exclusively among developed countries (Guzman and Simmons 2005, Shaffer 2003, Michalopoulos 2001, Bush and Reinhardt 2003a).

¹⁴ The Hormones cases and the DISC and FSC cases are actually disputes over the same issues, which is an advantage in terms of case similarity. The drawback is that the initial GATT dispute might have already addressed some of the issues under contention so that it was easier for the WTO to deal with and the comparisons might therefore have a built-in bias in favour of the institutionalist juncture. This can be at least partially offset by the fact that the other two pairwise similar disputes are not over the same issues. This holds true for the Patents and Steel cases and also for the Citrus and Bananas cases, albeit to a lesser extent.

¹⁵ Secretary of Finance Donald T. Regan declared: "A general consensus has developed among GATT member countries that the DISC is inconsistent with the GATT and that the US should bring its tax practices into compliance with these rules. The administration believes that the US should respect the GATT consensus and attempt to comply with it" (Washington Post 09.12.1982).

¹⁶ Deputy Finance Secretary Stuart Eizenstaat underlined: “We cannot emphasize strongly enough how critical it is that Congress (acts) as expeditiously as possible” (Financial Times 02.10.2000).

¹⁷ In the face of the WTO’s approval of sanctions USTR Robert Zoellick declared: “I believe today’s findings will ultimately be rendered moot by US compliance with the WTO’s recommendations and rulings in this dispute” (Washington Post 31.08.2002).

¹⁸ USTR Robert Zoellick underlined: “The United States respects its WTO obligations, which serve America’s interests, and we intend to continue to seek to cooperate with the EU in order to manage and resolve this dispute” (Washington Post 15.01.2002).

¹⁹ Members of the US delegation for the GATT negotiations on intellectual property rights objected: “How do we go on the offensive when we won’t own up on the panel reports? Do we want to use the GATT as a sword or as a shield? If we use it as a shield, we gum up the whole works” (Journal of Commerce 16.10.1989).

²⁰ The President explained: “I took action to give the industry a chance to adjust to the surge in foreign imports (...). These safeguard measures have now achieved their purpose, and as result of changed economic circumstances it is time to lift them” (Washington Post 05.12.2003).

²¹ An adviser of President George W. Bush explained the US decision: “Defiance had real costs. (...). It was going to cost us credibility around the world” (New York Times 05.12.2003).

²² The Reagan administration underlined: “We’re prepared with a retaliatory package if (...) U.S. beef imports into the E.C. are being interrupted” (New York Times 25.12.1987).

²³ USTR Clayton Yeutter claimed: “We have tried repeatedly to bring this issue to a scientific disputes settlement, under the GATT, in order to have it resolved. Our European counterparts have consistently blocked our efforts” (Financial Times 28.12.1988).

²⁴ The US administration nevertheless emphasized that employing sanctions was not its preferred option: “We would still prefer to resolve this long-standing trade dispute in a way that provides access for US meat in the European market” (Financial Times 15.5.1999).

²⁵ For example, USTR Charlene Barshefsky said: “I would urge the EU to reconsider its damaging actions and to demonstrate a real commitment to a rules-based multilateral trading system” (Financial Times 13.07.1999).

²⁶ US President Reagan explained: “The EEC (...) has been unwilling to accept either the panel’s findings or recommendations and has effectively prevented a resolution of this issue in the GATT. (...)

The EEC's unwillingness to implement the panel's finding (...) requires us to re-balance the level of concessions" (Public Papers of the President 20.06.1985).

²⁷ USTR Charlene Barshefsky explained: "The United States has simply preserved its ability to increase duties as of March 3 depending on the outcome of the arbitration decision" (Journal of Commerce 09.03.1999).

²⁸ USTR Charlene Barshefsky underlined: "We view this as a major victory for the WTO dispute settlement system. This demonstrates that there are time limits that must be respected and if countries don't come into compliance at the end of a reasonable time period, they have to pay the price" (Washington Post 07.04.1999).

²⁹ The marginalization of developing countries and the fact that the bulk of disputes involves developed countries might even indicate that GATT/WTO procedures only work among powerful actors (Guzman and Simmons 2005; Shaffer 2003; Bush and Reinhardt 2003a).

³⁰ Elsewhere I have demonstrated that US domestic interest groups take the commitments under WTO more serious than under GATT; they care more about WTO credibility than with regard to GATT; and compared to GATT they are also more aware of sanctions authorized by the WTO (Zangl 2006).