DOMESTIC POLITICS AND NON-COMPLIANCE IN THE ANDEAN COMMUNITY

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Abstract

Focusing on the Andean Community, this article examines why some instances of non-compliance escalates to disputes between states and the Andean Court. It argues that domestic societal and state-centered factors motivate such disputes. It focuses on three mechanisms: industry size, veto players, and litigation experience. It contends that when a case involves a large industry or an industry with litigation experience, government is more likely to persist with protection which increases the probability of disputes. It also argues that there is a nonlinear relationship between the number of veto players involved and ACJ disputes. Empirical analysis support these arguments by showing that protection of large industries and past experience increases the likelihood of dispute, while the probability of dispute increases when up to four veto players are involved and then decreases with additional actors. Analysis also finds that the interaction of size and experience has a significant effect on disputes.

Introduction

Since the mid-1980s Latin American countries have experienced two distinct tides of trade policies: the liberalization experienced in the 1990s was followed by increasing trade protection in the new millennium. From 1986 to 1995 for example, average tariff rates fell from approximately 42% to about 12% (Paus, Reinhardt, and Robinson 2003, 1). Similarly, non-tariff barriers also declined drastically across the region (Paus, Reinhardt, and Robinson, 2003). This was accompanied by the revival in 1995 of the Andean Community (AC) which allows for the free movement of goods, services, and factors; common external tariffs; and coordination of macroeconomic policies among member-states. In the 2000s however as the global economic crisis loomed, trade barriers and protectionism began to increase. At the height of the crisis in 2009 for example imports contracted 24.7% in Latin America (Rozemberg and Gaya 2010). During this time not even partners in regional trade agreements were safe from these restrictions. According to Rozemberg and Gaya (2010) “all countries

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in the region with the exception of Colombia imposed restrictions against other Latin American economies” (40).

As these shifts in trade preferences have occurred regional trade organizations like the Andean Community has become crucially important in actively monitoring members to ensure compliance with Community law. In fact, to solidify its revived Community, member-states approved the expansion of the Andean System of Integration to allow for greater monitoring and increased compliance with regional trade law. This monitoring and investigative role at many times puts the AC at odds with member-states whose trade interests from one time to the next may not accord with regional expectations. For this reason, while member-states have been enthusiastic about the greater integration and monitoring that the revived Community fosters, they still find themselves in disagreement with the Andean Secretariat General (SG), the body which monitors compliance and decides whether a case of potential non-compliance goes before the Andean Court of Justice (ACJ) for a judicial ruling. From Colombia’s disagreement with the Secretariat over its imposition of a dumping tax on imported rice in 2003, to Ecuador’s disagreement with the Secretariat over its import restriction on bovine livestock in 2000, disputes between the Secretariat and member-state’s over the appropriate scope and interpretation of Andean trade policies have persisted even in the revived Community.

This incongruity that sometimes emerges in the AC has important implications for the depth of integration. Apart from reducing confidence in cooperation between member-states, such disagreements also have a negative impact on the incentive to pursue broader regional integration across South America (Pena 2012). Beyond trade, concerns about compliance also has broader implication for cooperation on key issues of international interest such as drug trafficking. The AC plays an important role in facilitating coordination with the European Union (EU) in the global drug control effort. Given these important roles, understanding the factors that may constrain member-states’ commitment to this regional organization is extremely relevant. This analysis takes a preliminary step in this direction by asking: What influences whether instances of non-compliance with AC law escalate to formal disputes between states and the ACJ?

I demonstrate that domestic societal and state-centered factors motivate such disputes. Domestic pressure groups like the Beni and Pando Federation of Cattle Breeders in Bolivia that demand protection, on the one hand, and institutional actors that determine and implement trade policies like the Committee for Foreign Trade in Ecuador, on the other hand, both play a central role in explaining the pattern of conflict between member-states and the Community. I suggest that three mechanisms, in part, explain a lack of compliance with the Secretariat’s decisions: domestic industry size, domestic institutional veto players, and past litigation experience. First, I argue that when cases involve protection of large industries that stand to lose from integration, because of the economic and political benefits derived, governments are likely to maintain protectionist policies
that lead to disputes. As it relates to government agencies, I theorize that the number of institutional actors involved in policy-making also influences whether states disagree with the Secretariat’s rulings. Specifically I argue that this relationship is nonlinear; the probability of ACJ disputes increase with an initial rise in the number of veto players but at higher numbers of veto players, the likelihood of an ACJ case either increases at a decreasing rate or diminishes. In addition, with regards to government capacity, I posit that past litigation experience increases a member-state’s capacity to pursue non-compliance disputes in the ACJ.

Empirical analysis of non-compliance rulings issued by the Secretariat from 1995–2007 that could have evolved into disputes before the ACJ support these arguments. Particularly, the results show that states are more likely to dispute non-compliance rulings in the ACJ when the industry subject to the ruling is large and when the state has a history of trade disputes related to the same sector. The article also finds that the interaction between industry size and past disputes has a notably significant effect on disputes such that cases involving large industries which have been the subject of past litigation have a substantially higher likelihood of becoming ACJ disputes. Beyond this, the results also demonstrate that the probability of disputes increases when up to four veto players are included in decision-making, and then decreases with additional actors.

This project goes beyond past studies which have been limited to qualitative analyses of a few key disputes. It employs data on trade policy in the AC to conduct a cross-national statistical analysis of the effects the domestic political environment has on the occurrence of disputes in the ACJ. It is, to the best of my knowledge, the first cross-national analysis of the political causes of conflict over trade policy in the AC. In addition, this research contributes to the literature on endogenous trade policy. Studies on protectionism use domestic politics to explain the demand and supply of trade regulation. Extant studies, however, do not explore the influence that domestic interests and institutional actors have on the disputes that emerge from these protectionist policies. I make this crucial connection by showing that domestic politics does not only influence governments’ decisions to impose regulations that protect the domestic market but it also influences their determination to dispute challenges to such regulations.

Additionally, this study adds to the literature on compliance with international trade law. The few empirical studies that explore compliance in regional trade agreements have primarily focused on the EU and its member-states. This study presents an explanation for non-compliance that puts the spotlight on developing countries. Scholars have shown that developing countries are different from developed ones in a variety of ways that may impact trade policy outcomes. For example, Drazen (2008) shows that voters in developing countries can be more easily manipulated by government, suggesting that trade policies of developing countries should be studied separately from those of developed countries. As
the AC is one of the most institutionalized regional arrangements whose dispute settlement structure closely resembles that of the EU, this analysis would also facilitate useful comparisons.

I begin my analysis by summarizing the dispute settlement process in the AC. I then evaluate the relevant literature on political determinants of trade disputes. Next, I develop the theoretical argument, specify several testable hypotheses, and explain the research design. Finally, I report the results of the econometric analysis and conclude with a discussion of their implications.

Compliance in the Andean Community

The AC is a trade bloc that came into existence in 1969 when the governments of Bolivia, Chile, Colombia, Ecuador, and Peru signed the Cartagena Agreement. Venezuela joined in 1973 and Chile left in 1976. The broad aim of the Community is to promote balanced and harmonious regional economic development. Although the original agreement envisaged the establishment of a customs union by 1980, disagreement among the member-states and economic crises sweeping the region postponed the realization of this objective (Baquero-Herrera 2004). Spurred by the massive liberalizations and free market reforms mandated by international lending institutions, efforts to fully integrate the Community were revived in the early 1990s (Rojas, Calfat and Flores Jr. 2005). In 1995, a customs union with a common external tariff and a free trade area among member-states went into effect. The Community also restructured the supranational institutions governing the Community to allow for more effective monitoring of member-state compliance.

As a customs union, the Community establishes the level of external tariffs, determines safeguards that each member should follow, sets guidelines for taxing goods entering the domestic market, creates regulations concerning sanitary issues, and establishes the rules concerning unfair competition. Concerns over the correct application and compliance with trade rules, such as imposition of a quota by Ecuador in 2006 on pork, are handled by two bodies – the General Secretariat and the Andean Court of Justice (ACJ). In cases of alleged non-compliance with Community norms, a mandatory prejudicial procedure before the General Secretariat must be followed before the case goes to the Court. Figure 1 shows this procedure.

As seen in Figure 1, a case begins when the Secretariat, prompted by its own research or in response to a request by a member-state, investigates some seeming inconsistency between a state’s actions and Community law. If, as a result of the investigation, the Secretariat concludes that the member is not in compliance with AC laws, it sends an observation note specifying why the Secretariat believes the state has failed to comply with Community law, and requesting a response or compliance within sixty days. Upon receipt of the note, the member-states can choose to (1) adjust its actions (2) ignore the Secretariat, or (3) respond and justify its behavior. If a member-state adjusts its actions, the case is closed. If the member-state
If the member-state chooses not to respond or the Secretariat deems the member-state’s response to be unsatisfactory, the Secretariat must issue a report determining whether or not the state’s behavior rises to the level of non-compliance with Community law. If after a non-compliance report is issued the member-state fails to resolve the issue then the Secretariat is responsible for sending the case to the ACJ. It is only when a case is forwarded to the ACJ that one observes a dispute. The referral of a case to the Court is a clear indication that both parties differ on the correct interpretation and application of Community law and require the expertise of the Court to provide a final ruling. I account for the domestic-level factors that lead member-states to maintain policies that are considered incongruent with Community law and results in ACJ disputes.

Table 1 shows the relationship between the non-compliance reports against member-states issued by the Secretariat and the number of these investigations that become disputes in the ACJ. Column 1 and 2 count the number of reports issued to each member-state between 1995–2007. Three member-states, namely Ecuador, Venezuela, and Colombia were issued over 100 non-compliance reports. Of these countries, Ecuador received the
Table 1: Total Non-compliance Rulings and ACJ Cases, 1995–2007

<table>
<thead>
<tr>
<th>Member-states</th>
<th>Total non-compliance rulings received</th>
<th>Percent of non-compliance rulings</th>
<th>Number of non-compliance rulings taken to ACJ</th>
<th>Percent of ACJ cases</th>
<th>Percent of noncompliance rulings issued to member-state that proceed to ACJ</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bolivia</td>
<td>46</td>
<td>8.93</td>
<td>4</td>
<td>4.87</td>
<td>8.7</td>
</tr>
<tr>
<td>Colombia</td>
<td>112</td>
<td>21.75</td>
<td>14</td>
<td>17.07</td>
<td>12.5</td>
</tr>
<tr>
<td>Ecuador</td>
<td>133</td>
<td>25.83</td>
<td>24</td>
<td>29.27</td>
<td>18</td>
</tr>
<tr>
<td>Peru</td>
<td>98</td>
<td>19.03</td>
<td>14</td>
<td>15.85</td>
<td>14.3</td>
</tr>
<tr>
<td>Venezuela</td>
<td>126</td>
<td>24.47</td>
<td>27</td>
<td>32.92</td>
<td>21.4</td>
</tr>
<tr>
<td>Total</td>
<td>515</td>
<td>100</td>
<td>83</td>
<td>100</td>
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</tbody>
</table>
highest number of non-compliance reports, with 133 notes. Following at a close second place was Venezuela, with 126 cases. Colombia stood in third place with 112 non-compliance reports. At the lowest end of the spectrum was Bolivia which accrued the fewest non-compliance concerns.

The 3rd and 4th columns in Table 1 display the number of these non-compliance cases that became disputes in the ACJ. Ecuador followed by Venezuela had the highest number of ACJ cases. Column 5 shows the percentage of each member-state’s non-compliance rulings that became ACJ disputes. It shows that while Venezuela received the second largest number of non-compliance rulings, it allowed the highest percentage of these cases to become ACJ disputes. In general it is not surprising that both Venezuela and Ecuador account for the largest proportion of ACJ cases, given that both countries received the highest number of non-compliance rulings by the Secretariat. The Table also shows that while Peru had fewer non-compliance rulings than Colombia, it allowed the same number of non-compliance cases to go before the ACJ. This translated into a higher percentage of non-compliance rulings becoming ACJ disputes for Peru than for Colombia. In sum, the information presented in this Table leaves us with an interesting puzzle that this article seeks address: What accounts for the variation in non-compliance rulings that become ACJ cases?

It is important to note that while 83 non-compliance reports became ACJ disputes, there are possibly other non-compliance cases that the Secretariat General did not refer to the ACJ for a variety of reasons. In some instances the Secretariat may believe that it lacks sufficient information to present a convincing case to the ACJ. In other cases, given limited investigative resources the Secretariat may forgo persecution of some cases even where non-compliance persists. This is especially likely if the Secretariat suspects that the member-state is not likely to adhere to an unfavorable ruling issued by the ACJ. Beyond this the Secretariat may conclude that despite the persistence of non-compliance by the member-state, the issue is not overly significant and does not cause substantial economic harm to other members-states to warrant an ACJ case. Thus, the data collected represents the universe of potential ACJ cases referred by the Secretariat, not the universe of all potential ACJ cases. Nevertheless, the recorded data are still useful in evaluating the factors that cause a case that has been reviewed by the Secretariat to escalate to a dispute before the ACJ.

The Literature on Trade Disputes

Current empirical studies on the AC do not explain the rationale for disputes that occur between member-states and the Community. The few studies that have focused on the interaction between member-states and the ACJ, evaluate the AC’s effectiveness in providing prejudicial reference rulings to national courts (Alter and Helfer 2009; Alter, Helfer and Guerzovich 2009). These studies, while
valuable, contribute little to a systematic understanding of the domestic realities that influences trade disputes in the AC. The WTO and EU literature on the politics of trade on the other hand, offers a number of theoretical perspectives that could explain the escalation of disputes in the AC. Among these studies, some link societal factors to the decision to dispute, while others focus on state centered explanations.

Some models explaining trade policy have focused on pressure group politics arguing that the decision by government to pursue protection is a function of demands made by domestic groups (Hansen and Prusa 1997; Davis and Shirato 2007; Davis 2012). The literature on society-centered explanations argues that pressure from domestic winners and losers inform trade reforms that lead to disputes (Rogowski 1987). Among these domestic actors, scholars further argue that the affected industries, given that they collaborate closely with government on most adjudication pursued, are highly influential in the decision to advance a dispute (Shaffer 2003). Studies such as Francois and Niels (2004), Hansen and Prusa (1997), and Hathaway (1998) show how industry size influences the state’s preference for trade barriers and disputes. Others like Davis and Shirato (2007) argue and demonstrate that the business environment in which firms operate influences WTO disputes that governments choose to pursue. And yet others like Grossman and Helpman (1994), Hansen and Drope (2004), and Davis (2012) show that significant political contributions by industries impacts the decision to pursue dispute adjudication at the international level to protect these industries.

While the demand side explanations focus on the influence of domestic interests, supply side scholars argue that characteristics of the state or perceptions about its decision-making are crucial in both determining trade policy and resolving disputes that evolve from those policies (Goldstein and Martin 2000; Mansfield et al 2007; Busch 2000). Busch and Reinhardt (2000) argue that perceptions about the complainant state influence whether a dispute is settled early or proceeds to litigation for a panel ruling. Other studies have focused on features of politics within the state. Busch (2000) shows that democracies are less likely to settle WTO disputes during the early stages and more likely to allow them to escalate to the judicial phase. Others go further by delving into the interaction among institutional actors within the state. Haverland (2000), Giuliani (2003), and Steunenberg (2006), all focusing on the EU, argue and demonstrate that the number of domestic institutional actors involved in the transposition of EU directives, influences whether compliance is hindered and transposition of EU law is delayed. Going further, Brewster and Chilton (2013) focusing on the actors within government that determine trade policy in the US, demonstrate that compliance with WTO rulings is a function of whether the executive branch or Congress is responsible for implementing policy. They find that the executive branch is more efficient than Congress in adjusting national policy to comply with WTO rulings.
By focusing on different aspects of the domestic political environment, both societal and statist arguments offer useful insights that help explain the conflicts that emerge between the AC and member-states over trade policy. When it comes to demands made by domestic societal groups, the private sector has been known to play a significant role in framing governments’ strategies as they have access to politicians and the decision-making process. Industries have continuously used their economic power to impact policies related to trade openness. When it serves their interest, business groups have encouraged governments to accelerate the pace of integration, as was the case with increased integration between Colombia and Venezuela in the early 1990s. Expanded trade and investment between Colombia and Venezuela, led by the private sector in the early 1990s, encouraged the governments of both countries to lower tariffs and remove other trade barriers in order to facilitate further economic assimilation. This served as a major catalyst for the revamping of the AC in 1995. In fact, within 5 years from 1987 to 1992, trade between both countries increased from $341 million in 1987 to over $1.085 billion in 1992.8

When these domestic industries stand to lose from integration because of foreign competitors however, they have also been known to lobby government for protection. For example, to appease farmers and producers, who were already suffering significant hardship from 1997–1998 after El Nino ravaged Ecuador’s agricultural economy, the government imposed limits on sugar being imported from Colombia.9 In response to Ecuador’s restriction on sugar from Colombia, the Secretariat issued a non-compliance report demanding they eliminate the quota. The case eventually became a dispute before the ACJ as Ecuador refused to satisfy the Secretariat’s demand.10 This case clearly shows that domestic societal interests have the ability to play a major role in trade policy reform, and the disputes that evolve as a result of these policies.

Institutional factors also play a key role in whether a case becomes a dispute in the ACJ. The number of actors within the executive branch participating in decision-making certainly affects member-states’ responses to the Secretariat’s requests. Depending on the trade policy in question and the sector under consideration, the number of institutional actors varies. The number of actors, however, affects the likelihood of consensus and the timeliness of reform, making some cases more susceptible to protracted disputes. In addition, a member-states’ domestic capacity to undertake a dispute in the ACJ is also dependent on its experience in trade dispute litigation. Recent studies emphasize the importance of learning and experience in shaping states’ decisions to use dispute settlement mechanisms (Simmons and Guzman 2005; Davis and Bermeo 2009). I argue that each of these domestic considerations emphasize different domestic political constraints and opportunities that influence the emergence of cases in the ACJ. In what follows, I explore how societal interests through industry influence on the one hand, and statist factors as a result of veto player influence and institutional capacity on the other hand, contribute to ACJ disputes.
Industry Size

Although trade policy in member-states is officially determined by the executive branch, policy-makers are not immune to public pressure. Domestic societal groups, such as industries, are still able to affect the pattern of government trade policy and the disputes that evolve from these policies in the AC. Governments, for their part, are very selective when deciding which industries to support and which cases to pursue before the ACJ. The cost of litigation, for example, is a key factor influencing a state’s decision to pursue dispute adjudication (Davis and Bermeo 2009; Simmons and Guzman 2005). International trade disputes tend to involve high legal costs that accumulate from hiring expert legal representation and from collecting the information needed to present a case (Reinhardt 2000; Simmons and Guzman 2002). Beyond the direct costs, a government must also consider indirect costs from pursuing an ACJ dispute. Engaging in disputes may damage bilateral relations between countries or decrease public confidence in international dispute settlement because of the damaging rhetoric employed by the disputing governments (Alter 2003). It is for these reasons executives are very cautious in their decision to challenge the Secretariat’s order by allowing a case to be adjudicated by the ACJ.

Governments tend to support protection for and pursue disputes on behalf of industries that contribute significantly to economic stability and welfare. Governments are incentivized not only to implement policies that promote the interest of these industries, but also resist any policy change that has the potential to harm these sectors. Scholars argue that size is a key characteristic of an industry that enables it to contribute substantially to domestic stability, and as a result influence governments’ decisions to pursue favorable trade policies on its behalf (Francois and Niels 2004; Hansen 1990; Hansen and Prusa 1997; Hathaway 1998). Large industries are expected to receive more trade protection than their smaller counterparts. Large industries have the capacity to bear the costs of disputes and because of their domestic relevance, to persuade government to promote their interests (Davis and Shirato 2007).

Two specific size-related factors – industry employment and industry productivity – are particularly influential in this regard. As it relates to employment, scholars argue that comparatively larger industries tend to hold a greater proportion of total national employment and thus a larger proportion of prospective votes (Hathway 1998; Hansen and Prusa 1997). Industries with a large number of employees also have the capacity to mobilize action, such as protests, and influence vote choice, which can bear on political outcomes and economic stability. The impact such large industries can have on economic stability was seen in early 1995 after the Bolivian government eliminated import tariffs on used foreign parts and supplies (Robinson 1995). This was viewed as a threat to the mining industry which extracts and refines metals used in parts production. This decision by government led to demonstrations and strikes by large industries such as the mining industry which paralyzed most economic activity.
in Bolivia (Robinson 1995). Realizing the effect of such protest, the government quickly sought a negotiated solution to the discord. Given this type of effect, politicians have an incentive to meet the demands of large industries because they are aware that trade decisions that negatively impact these industries, and by extension their employees, can undermine efforts to maintain stability and retain political office (Hansen and Prusa 1997).

Similarly, industries that contribute significantly to national revenue and productivity can hold the same political sway, even if they are not large. Industries that extract or utilize a domestically abundant resource, specialize in high yielding crops, or are highly efficient at production of a certain good, tend to make the biggest contribution to the domestic economy. In Ecuador, for example, the petroleum industry is such a sector given that it “accounts for about 50 percent of Ecuador’s export earnings and about one-third of all tax revenues” (U.S. Energy Information Administration, 2014). Given its importance to the state, it plays “a prominent role in the country’s politics and economic welfare” (U.S. Energy Information Administration, 2014). Hence, when the Andean Secretariat issued a non-compliance decision against Ecuador in 2000 because of its protection of its petroleum sector from competition, the Ecuadorian government challenged the Secretariat and allowed the case to go before the ACJ for a final ruling. Crucial industries such as the oil sector in Ecuador promote employment, stability, and growth. Policies that work against the interest of such industries can lead to declining revenue, decreased savings and even recession. For this reason, governments are more likely to challenge attempts by the Secretariat to undertake reform that affects these industries by mounting a legal defense in the ACJ.

H1: Non-compliance decisions from the Andean Secretariat against large industries are more likely to become ACJ disputes.

Veto Players
In Andean member-states, the executive branch plays a central role in developing, and executing trade policies related to regional integration. Within the executive branch, trade reform is developed by institutional actors representing government agencies that are charged with managing policies related to the specific sector under scrutiny. For many member-states, one agency or ministry is responsible for coordinating the negotiation among these institutional actors. In Ecuador, for example, the Committee for Foreign Trade and Investment Council (COMEXI), a branch within the National Secretariat of Planning and Development (Senplades) is responsible for this.11 COMEXI brings together state institutions to address foreign affairs that cover trade related issues. Similarly, in Colombia, the Comité de Asuntos Aduaneros Arancelarios, a branch within the Ministry of Commerce, Industry and Tourism, coordinates with institutional actors from other government agencies to evaluate trade issues and develop trade related policy.
The number of ministries COMEXI and Commite de Asuntos Aduaneros Arancelarios, for example, have to coordinate with, varies from issue to issue depending on both the type of trade policy being evaluated and the product under investigation. Trade issues that are either complex, technical, or affect a number of different sectors tend to require consensus from a number of different institutional actors, compared to issues that are simple or routine. For example, in response to the Secretariat’s claim that Ecuador unfairly restricted importation of bovine meat in the year 2000, COMEXI had to consult the government Ministries of Commerce and Customs, as well as the Ministry of Health given the sanitary issues involved with meat.

Consensus among these institutional actors involved in evaluating a particular policy is required for changes to occur in trade policy. However, because collective approval is required, any institution with formal decision-making powers can act as a veto player possibly blocking or “watering-down” reform. As the number of veto players involved increases, the likelihood of delay in reaching a decision increases, and the possibility of consensus over policy change also decreases. Therefore, in the AC, the degree to which states are able to respond to pressure from the Secretariat varies with the number of veto players participating in decision-making. When very few veto players are involved, states can react more quickly. As the number of veto players involved increases, varied preferences among them are more likely to impede consensus.

I expect, however, that the negative impact of veto players will decline after a reasonable number of actors have been included in decision-making. More precisely, the effect of an ACJ dispute as a result of adding an additional actor is likely to either increase the likelihood of dispute at a decreasing rate or diminish the likelihood of dispute. This is a reasonable expectation as additional actors may mirror the preferences and views of existing actors, and may not constitute an independent veto player. Additional actors, therefore, are likely to reinforce or provide support for the preferences of other actors, leading only to a slight increase in ACJ disputes. By mirroring the preferences of existing veto players, additional actors may also help to create a majority or consensus leading to a negotiated solution with the SG, which in turn decreases the likelihood of an ACJ dispute. In sum, I expect that beyond a reasonable number of veto players, each additional veto player included in decision-making has less and less probability of increasing the likelihood of dispute. I, thus, anticipate a curvilinear relationship between the number institutional actors and the likelihood of ACJ dispute.

H2: The likelihood that a non-compliance decision by the Andean Secretariat becomes an ACJ dispute, initially increases and then decreases the greater the number of institutional actors that must be consulted.
Litigation Experience

The emergence of ACJ disputes also depends on the capacity to litigate. Trade litigation involves certain standardized processes that are, for the most part, similar across cases. According to Davis and Bermeo (2009) these fixed costs include knowledge of the dispute settlement rules and procedures, and the development of an efficient system for collaboration between government and industry in building a convincing case. As such, the information gathered from litigating a few disputes decreases the opportunity cost of coordinating and undertaking future disputes. Davis and Bermeo (2009) argue that experience allows member-states to lower these information costs from one case to the next, thus reducing the “start-up cost for future cases” (1036). Particularly, it becomes easier for states to structure future cases, as they know what type of evidence and arguments might be successful in producing desirable results. In addition, the experience of mounting a trade dispute teaches domestic legal experts how to efficiently and effectively navigate the dispute settlement process. Such states are, thus, likely to develop a more effective capacity to defend cases. In fact, according to Davis and Bermeo (2009) states that have experience with litigating are likely to expand their bureaucracy to “develop a standard operating procedure, regular budget allocation, and organizational capacity” to manage future disputes (1036). Countries with past experience in trade litigation, then, are less likely to be dissuaded from pursuing cases in the ACJ, as their knowledge of and experience with the process can help lower the cost of participating in disputes.

A member-state can acquire experience in numerous ways. States can gain experience from their involvement in disputes with the AC or from disputes in the WTO. First, for Andean member-states the issues that tend to go before the ACJ are similar to those considered by the WTO. Participation in WTO disputes requires similar consultation, research, and coordination between government and industry as regional disputes. Hence, experience with litigation related to a particular issue at the WTO level can provide knowledge that makes litigation of a similar issue at the regional level easier. Secondly, states can gain experience by becoming one of several initiating parties to a dispute. By attaching oneself to a dispute where other countries are also initiators, a country can lower its start-up costs in the future. States can free-ride on the experience and bargaining strategy of more experienced members, facilitating future litigation (Davis and Bermeo 2009). In sum, experience as a party to a dispute related to a particular sector at the regional or multilateral level increases the likelihood that a non-compliance decision by the Secretariat related to that sector will be challenged in the ACJ.

H3: The more experience a member-state has in pursuing trade disputes related to the industry under consideration, the greater the likelihood that a non-compliance decision by the Andean Secretariat will become an ACJ dispute.
Interactive Impact of Size and Experience

While industry size and past experience are expected on their own to have a notable effect on ACJ disputes, I expect their impact on disputes to be even more substantial in cases involving large industries that have been the subject of past litigation. Past experience litigating on behalf of a particular industry, as highlighted earlier reduces the cost of future information gathering and makes coordinating of a legal case easier. When this past litigation occurs on behalf of a large industry that either employs a notable segment of the active labor force or contributes significantly to gross domestic product the likelihood of dispute is expected to be even greater. Such a scenario allows government to increase its chances of gaining political support at a relatively low cost. Resisting the Secretariat allows governments to easily increase support among owners and employees of these large industries without having to expend substantial resources building a legal case, as past investment in litigation would make this easier. This dual benefit facilitates the decision to persist with protectionist policies that lead to ACJ review. In sum, the interactive effect of industry size, and past litigation thus has a significant influence on the occurrence of ACJ disputes.

H4: The likelihood of an ACJ dispute is greatest when a case relates to a large industry that has been the subject of past trade disputes.

Research Design

Dependent variable

To test these hypotheses, I compile a dataset of the non-compliance rulings issued by the Secretariat and trade disputes litigated in the ACJ from 1995–2007. I first record all instances where non-compliance reports related to trade policy and practices were issued by the Secretariat to a member-state. These reports require a member-state to take prompt action to resolve what the Secretariat views as a discrepancy between the member-state’s policy and Community law. The dataset developed contains 515 reports issued to member-states that have the potential of becoming disputes before the ACJ. I, then, identify the cases of non-compliance that became actual disputes in the ACJ. If the member-state fails to resolve the issue after a non-compliance report is issued, the Secretariat may send the case to the ACJ. It is only when a case is forwarded to the ACJ that one observes a dispute, as it is a clear indication that both parties differ on the correct interpretation and application of Community law and requires the expertise of the Court to provide a final ruling. From this set of 515 cases, I identify 83 cases that became actual disputes or those cases that were forwarded to the ACJ for final ruling. In the dataset the dichotomous dependent variable, non-compliance dispute, is coded “1” when cases appear before the ACJ and “0” when cases are not forwarded by the Secretariat. Data for this variable is obtained from the Integrated Database of Trade Disputes for Latin America and the Caribbean (IDATD) and the Andean Community website.
Given the binary dependent variable, I estimate logistic regression models to evaluate the likelihood of ACJ disputes.

Table 2 presents descriptive statistics showing types of trade policies that lead to non-compliance reports and subsequently ACJ disputes. Tariffs and taxes, safeguard measures, and sanitary rules account for the vast majority of non-compliance reports issued by the Secretariat. In fact, tariff and tax policies not only account for the majority of non-compliance cases, they also represent the greatest number of ACJ disputes as well. Tariffs and taxes present some of the most transparent restrictions that can be observed, making it easier for the Secretariat to pursue a non-compliance case against a member-state. Sanitary rules also account for a substantial portion of non-compliance cases and subsequent ACJ disputes. Governments usually believe that their sanitary restrictions for protection of citizens, plants, and animals are justified, making them less willing to appease the Secretariat, which in turn makes ACJ disputes regarding sanitary rules more likely. Unlike tariffs and sanitary rules, safeguards are less likely to advance to a formal dispute. While the 122 non-compliance reports regarding safeguards account for 24% of the Secretariat’s non-compliance reports, they only represent 2.2% of the disputes that appeared before the ACJ. This is not surprising given that safeguards are temporary restrictions on imports that are likely to be phased out before a case reaches the ACJ.

Table 3 and 4 further examines the types of trade policies that become ACJ. Table 3 displays the top three types of trade policies that account for the largest proportion of non-compliance rulings that do not evolve into ACJ cases for each member-state. Table 4 shows the top three types of trade policies that account for ACJ disputes for each member-state. By examining both Tables together, it is clear that in four of the five member-states, taxes account for a large portion of both cases that were not forwarded to the ACJ as well as those that were forwarded to the court for review. This is not surprising given that taxes as shown in Table 2 account for the largest percentage of non-compliance reports issued. Both Tables 3 and 4 also highlight that the Secretariat infrequently pursues disputes related to safeguard measures. Despite the fact that safeguards, as seen in Table 2 accounted for the second largest number of non-compliance reports, Tables 3 and 4 shows that these cases are highly unlikely to evolve into ACJ disputes. Apart from this, Tables 3 and 4 shows that sanitary rules account for a notable portion of non-compliance rulings in Bolivia, Colombia and Venezuela that do not become ACJ disputes, while intellectual property and service rights cases in Colombia and Ecuador account for a noticeable number of disputes that are litigated in the ACJ.

Before discussing the independent variables, it is important to mention that while it would be ideal to develop a dataset with dyadic pairs of states where complainant and respondent states are clearly identified, in this study on the AC such dyadic analysis is not possible given that 60% of the complaints are raised by the General Secretariat and not a
### Table 2: Types of Trade Policies under investigation in the Andean Community

<table>
<thead>
<tr>
<th>Type of policy</th>
<th>Non-compliance report</th>
<th>Percentage Non-compliance Reports</th>
<th>ACJ Disputes</th>
<th>Percentage ACJ Disputes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tariff and taxes</td>
<td>174</td>
<td>34</td>
<td>21</td>
<td>23</td>
</tr>
<tr>
<td>Safeguard</td>
<td>122</td>
<td>24</td>
<td>2</td>
<td>2.2</td>
</tr>
<tr>
<td>Sanitary and Phytosanitary</td>
<td>62</td>
<td>12</td>
<td>17</td>
<td>18.7</td>
</tr>
<tr>
<td>Antidumping</td>
<td>38</td>
<td>7.3</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Licensing and rules of origin</td>
<td>35</td>
<td>6.7</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Government procurement</td>
<td>18</td>
<td>3.5</td>
<td>17</td>
<td>18.7</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>18</td>
<td>3.5</td>
<td>8</td>
<td>8.9</td>
</tr>
<tr>
<td>Other nontariff barriers</td>
<td>48</td>
<td>9.3</td>
<td>16</td>
<td>17.58</td>
</tr>
</tbody>
</table>
Thomas

Table 3: Top Three Types of Trade Rulings against each Member-State that did not become ACJ Disputes

<table>
<thead>
<tr>
<th>Type of Ruling</th>
<th>Bolivia</th>
<th>Colombia</th>
<th>Ecuador</th>
<th>Peru</th>
<th>Venezuela</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes</td>
<td>7</td>
<td>35</td>
<td>47</td>
<td>27</td>
<td>41</td>
</tr>
<tr>
<td>Safeguards</td>
<td>35</td>
<td>17</td>
<td>8</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Sanitary &amp; phytosanitary</td>
<td>4</td>
<td>11</td>
<td></td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Intellectual property rights</td>
<td></td>
<td></td>
<td></td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>Other NTBs</td>
<td>10</td>
<td>8</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 4: Top Three Types of Trade Rulings against each Member-State that become ACJ Disputes

<table>
<thead>
<tr>
<th>Type of Ruling</th>
<th>Bolivia</th>
<th>Colombia</th>
<th>Ecuador</th>
<th>Peru</th>
<th>Venezuela</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes</td>
<td>1</td>
<td>8</td>
<td>6</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Safeguards</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sanitary &amp; phytosanitary</td>
<td>1</td>
<td></td>
<td>2</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Intellectual property rights</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Other NTBs</td>
<td>4</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

member-state. Given this it was not reasonable to formulate a dataset with dyadic pairs of member-state complainants and respondents.

**Key Explanatory Variables**

The main independent variables in this study are industry size, number of institutional veto players, and past litigation experience. All of the independent variables are measured in year \( t-1 \), which reflects the fact that trade policy does not respond immediately to either societal pressures or institutional conditions and helps to address the possibility of endogeneity in the model. To capture the effect industry size has on the likelihood of disputes in the ACJ, I use two variables: *Industry productivity* and *Industry employment*. The first measure of industry size, *Industry productivity*, measures the economic value added of the industry under investigation, as a proportion of GDP. I determine the value added in producer’s prices for goods from the manufacturing sector when a manufacturing industry is under investigation or determine the value of agricultural production for commodities from the agriculture sector when agriculture industries are under investigation, and divide this by GDP. The value added of an industry represents the industry’s contribution to overall GDP. It equals the difference between an industry’s gross output and the cost of its inputs. Data on industry value added in producer’s prices is obtained from the United Nations Industrial Development Organization (UNIDO) Handbook of
Industrial Statistics, 1994–2006. As it relates to agricultural commodities, data on the annual value of agricultural production comes from the Food and Agricultural Organization of the United Nations, 1994–2006. Data on GDP come from the World Bank, World Development Indicators. I expect cases involving domestic industries that contribute substantially to GDP to receive special attention from the government. In particular, the states should be eager to protect such industries by challenging the Secretariat’s order in the ACJ.

For the second measure of industry size, Industry employment, I determine the proportion of the active labor force that is employed in an industry. I identify the number of employees employed in the industry under investigation and divide this by the active labor force in the member-state. I expect that non-compliance reports will be more likely to escalate into ACJ cases when the relevant industry employs a larger proportion of the labor force. Data on industry employment are obtained from the United Nations Industrial Development Organization (UNIDO) Handbook of Industrial Statistics (various years), and the International Labor Office database on Labor Statistics. Data on the active labor force is obtained from the World Bank, World Development Indicators. Although productivity and employment are not unrelated, the correlation matrix showed a correlation of only .1041 suggesting their inclusion in a single model does not introduce significant bias from multicollinearity.

To evaluate the second hypothesis, which posits that more institutional veto players increases the likelihood that a non-compliance case appears before the ACJ, I first identify the number of administrative divisions with formal authority to participate in decision-making related to each non-compliance case. This information comes from the Trade Policy Review Report for each member-state published by the WTO. Every 5 years, the WTO publishes a report summarizing the legal, regulatory, and institutional structure through which all trade decisions are typically made in each country. For example, it indicates that in Bolivia three government ministries – Ministry of Foreign Affairs and Worship, Ministry of Economic Development, and Ministry of Finance are typically involved in every trade decision. In contrast, two government ministries – the Ministry of Foreign Trade, Industry and Tourism, and the Ministry of Finance and Public Credit are typically involved in every trade decision in Colombia. The report further delineates the additional administrative divisions that are consulted for specific sectors or trade policies. In Bolivia for example, the Ministry of Rural and Agricultural Affairs (MACA) is also consulted for trade decisions related to agriculture, livestock or fishery. Furthermore, the National Service for Agricultural Health and Food Safety (SENASAG) is also consulted for trade decisions related to sanitary and health issues, in addition to the agencies mentioned above. I create the variable Veto Player by tabulating the number of administrative units that participate in each trade decision. Given that I expect the relationship between ACJ
disputes and veto players to be nonlinear, I also include Veto Player$^2$ which is the square of the Veto Player variable.

To measure the impact experience with past cases has on the likelihood of an ACJ dispute, I draw upon Davis and Bermeo (2009) who count the number of previous disputes a country participated in over the last decade.\textsuperscript{16} I create the variable Past Cases, which tabulates the number of prior disputes, in either the ACJ or WTO that a country participated in over the last 10 years. This variable only records past cases that were related to the industry being issued a non-compliance report.\textsuperscript{17} I expect countries to have more experience and competency when they have participated in a larger number of previous disputes. This should increase their willingness to challenge the Secretariat’s decision. Data for this variable is obtained from the IDATD and the WTO databases. Finally, as I anticipate conditional relationships between of industry size and past litigation, I create two interactions, Industry Productivity*Past Disputes and Industry Employment*Past Disputes.

**Control Variables**

I also include a number of control variables. The first cluster of controls accounts for the economic conditions in the member-state facing an unfavorable decision from the Secretariat. Foremost, I control for economic crisis, a key factor that affects trade liberalization. Models of free trade in Latin America demonstrate that liberalization is more likely after an economic crisis because political leaders, elites and voters are more willing to bear the austerity needed to achieve economic growth (Haggard and Kaufman 1995). Thus, member-states should be less likely to oppose the Community’s liberalization efforts when experiencing a crisis. Tornell (1998) suggests that a crisis is marked by a decline in GDP per capita by 15 percent or more in a year or an increase in inflation of at least 25 percent for a country with a preexisting inflation rate of at least 40 percent in a year. To generate such an indicator, I employ data from World Bank’s World Development Indicators.

It is also argued that trade liberalization in developing countries is impacted by external pressure due to obligations with international economic institutions like the IMF and the World Bank (Milner and Kubota 2005). Structural adjustment requirements, which are part of loan packages, require states to increase trade, which may reduce the likelihood of disputes over protectionist policies. I include a binary variable that has a value of “1” when a country has IMF or World Bank loan obligations and “0” otherwise. Next, I control for the degree of import penetration. Empirical evidence shows that increased import penetration increases protectionism by governments (Trefler 1993; Kono 2006). Therefore, I measure the change in a country’s imports to GDP ratio over the prior three years, following Kono (2006). Data for this variable comes from the World Bank’s, World Development Indicators. The greater the degree of import penetration, the
more resistant a member-state will be to efforts at liberalization, thus increasing the probability of an ACJ dispute. Finally, I control for the impact exports to the rest of the AC has on ACJ cases. The more a country exports to the ACJ, the more receptive they are to integration and the less likely they are to dispute trade policies of the AC. To measure this, I calculate the member-state’s export to the Andean region divided by its total exports. This data comes from the UNCOMTRADE dataset.

The second cluster of control variables account for the nature of the case under investigation. First, it is plausible that states will behave differently when they are part of a group of states having received the same non-compliance report from the Secretariat. Being one of a group may increase the peer pressure to comply with the Secretariat’s request. Hence, cases involving multiple parties are less likely to become disputes in the ACJ. To measure this, I count the number of other states in the dispute. Additionally, the nature of the trade policy under investigation may also influence whether a dispute in the ACJ occurs. Sensitive cases that focus on policies aimed at protecting consumers are less likely to be resolved with the Secretariat and more likely to become cases with the ACJ (Busch and Reinhardt 2003). Sanitary policies deemed essential to protect citizens’ health fall into this category. Member-states are likely to resist adjusting such policies on the grounds that they protect the nation’s health and well-being. As such, I include a dichotomous variable that takes on the value of “1” when the issue under consideration relates to sanitary policies and “0” otherwise.

Results

The results of the logistic regression estimations are presented in Table 5, where three specifications are reported. Model 1 presents the results for the baseline specification excluding interactions and control variables. Model’s 2 and 3, in addition to incorporating the control variables also includes the two interactions; Model 2 includes the Productivity*Past Dispute interaction while Model 3 contains the Employment*Past Dispute interaction. The statistical analyses in Table 5 are consistent with the theoretical arguments developed, and offer support for the central argument of this article, that domestic considerations in the member-state influences the likelihood that Secretariat decisions will become ACJ cases. Across all Models the results for Industry Productivity are, as expected positive and significant illustrating that governments are more willing to mount legal cases to protect industries that contribute substantially to GDP. While the second measure of industry size, Industry Employment, likewise is positive, it does not yield significant results. These results thus imply that on their own the relative value added of an industry has greater impact on decision-making about ACJ disputes than the number of employees in an industry. Beyond industry size, the impact of veto players, as shown by the variable Veto player yields, as expected positive and significant results. Note that the negative coefficients for the Veto player variable and the
Table 5: Impact Domestic Societal and Statist factors have on ACJ cases

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Model 1 Coefficient (Std Error)</th>
<th>Model 2 Coefficient (Std Error)</th>
<th>Model 3 Coefficient (Std Error)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry Productivity</td>
<td>1.251** (.602)</td>
<td>.795** (.381)</td>
<td>1.05** (.531)</td>
</tr>
<tr>
<td>Industry Employment</td>
<td>.0163 (.0661)</td>
<td>.0131 (.058)</td>
<td>.0129 (.0092)</td>
</tr>
<tr>
<td>Veto Player</td>
<td>−3.05 (2.12)</td>
<td>−2.89 (1.67)</td>
<td>−2.95 (2.64)</td>
</tr>
<tr>
<td>Veto Player$^2$</td>
<td>.733*** (.282)</td>
<td>.692** (.278)</td>
<td>.687** (.275)</td>
</tr>
<tr>
<td>Past experience</td>
<td>.514* (.281)</td>
<td>.489* (.265)</td>
<td>.349* (.180)</td>
</tr>
<tr>
<td>Industry Productivity*Past Dispute</td>
<td>.992*** (.277)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industry Employment*Past Dispute</td>
<td></td>
<td>.0187** (.0092)</td>
<td></td>
</tr>
<tr>
<td>Economic Crisis</td>
<td>−.968 (.679)</td>
<td>.916 (.633)</td>
<td></td>
</tr>
<tr>
<td>IMF/WB loan</td>
<td>−.192** (.089)</td>
<td>.201** (.101)</td>
<td></td>
</tr>
<tr>
<td>$\Delta$ Import penetration</td>
<td>1.24** (.621)</td>
<td>1.29** (.622)</td>
<td></td>
</tr>
<tr>
<td>ln(Export Dependence)</td>
<td>−.045* (.025)</td>
<td>−.044* (.024)</td>
<td></td>
</tr>
<tr>
<td>Multiple parties</td>
<td>−.449 (.411)</td>
<td>−.508 (.396)</td>
<td></td>
</tr>
<tr>
<td>Sanitary/Phytosanitary rules</td>
<td>.813** (.396)</td>
<td>.772* (.407)</td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>−1.85*** (.624)</td>
<td>−1.77*** (.616)</td>
<td>−1.68*** (.612)</td>
</tr>
<tr>
<td>N</td>
<td>515</td>
<td>515</td>
<td>515</td>
</tr>
</tbody>
</table>

Standard errors are in parentheses * < .10, ** < .05, *** < .01.

Positive coefficients on the Veto players$^2$ variable demonstrate support for this non-linear effect of veto players on the likelihood of dispute.

The results in Table 5 also support the notion that past litigation influences the emergence of ACJ cases. The results show that non-compliance cases questioning the policies of industries that have been the subject of dispute litigation in the last five years are more likely to become ACJ cases. These results are significant at the 90% level of significance. This implies that prior experience incentivizes member-states to challenge the
Secretariat through a court case. These results highlight the fact that any experience in dispute litigation related to a particular sector increases a country’s competence and thus their ability and willingness to challenge the General Secretariat in the ACJ. This is supportive of the third hypothesis. I also examine the interactive effect that industry size and past litigation have on disputes. The interaction terms included in Models 2 and 3 are positive, which offers preliminary support for my theoretical expectation.

Among the control variables, import penetration and international loans consistently show statistical significance in Table 5. First, as expected, higher levels of import penetration are associated with ACJ review across all specifications. In light of increases in imports from other states in the AC, governments use the opportunity to take a case to the ACJ to clarify rules and expectations. Beyond this, an IMF or World Bank loan obligation also has a profound impact on whether a country would be receptive to or defiant against liberalization policies of the AC. The results show that a loan agreement as predicted, has a negative and significant impact on the decision to pursue a dispute in the ACJ. One of the central elements of structural adjustment is trade liberalization, which countries are required to facilitate as a condition of receiving a loan. The results show that upon receipt of a loan from the IMF or World Bank, member-states signal their commitment to free trade by adhering to Community trade liberalization expectations, thus avoiding a ruling by the Court of Justice.

Figure 2 graphically illustrates the substantive effect of veto players on ACJ disputes, while Figure 3 below presents the substantive impact of the interaction term, \( \text{Industry Productivity} \times \text{Past Litigation} \). Figure 2 displays...
the predicted probability of ACJ disputes as the number of veto players increase.\textsuperscript{18} It shows that the relationship is not linear, but curvilinear as expected. It shows that if there is 1 veto player the predicted probability of a dispute is about 0.55. When the number of veto players increase from 1 to 2 actors the probability increases to 0.80. And when the number of veto players rise from 2 to 3 the likelihood of dispute further increases to about 0.93. While the probability of a dispute continues to increase at 4 veto players, it does so at a decreasing rate. When over 4 veto players are involved, the probability of a dispute decreases, which is consistent with the expectation of diminishing likelihood of dispute when larger numbers of actors are involved in decision-making. When there are 6 veto players the probability of a dispute is almost the same as when there is 1 veto player. The implication here being that veto players increase the chances of an ACJ dispute up to a certain point after which the impact declines.

Figure 3 shows the impact of the interaction term, \textit{Industry Productivity*Past Litigation}.\textsuperscript{19} Given that I am examining interaction terms in a non-linear model, the coefficient estimate offered in Table 5 cannot on its own provide an adequate understanding of the statistical significance or substantive impact of the interaction term (Ai and Norton 2003). Figure 3 shows the effect the relative size of an industry’s contribution to GDP has on ACJ disputes when there are 0, 2, and 4 past disputes related to that industry. The Figure shows that as the number of past disputes increase, the effect of industry value added on ACJ disputes becomes greater and greater. When, for example, the relative value added of an industry under consideration is 10\% the likelihood of dispute for this industry is only 64\% if there were no past trade disputes involving this industry. The probability
of dispute increases to 71% when there are 2 past disputes and then 79% when there are 4 past disputes involving industries that account for 10% of domestic value added. This pattern of increasing likelihood of dispute persists at all levels of industry productivity, as the number of past litigation increases from 0 to 4 previous investigations.

I present the Receiver Operator Characteristic (ROC) curve in Figure 4 to show the extent to which the model developed in this paper fits the data in the aggregate. The ROC curve is a useful way to present model fit for binary dependent variables. It is a plot of the relationship between the rate of false positives (defined here as the number of incorrectly predicted ACJ disputes divided by the total number of cases where ACJ disputes did not occur) and the rate of true positives (defined here as the number of correctly predicted ACJ disputes divided by the total number of cases where ACJ dispute did occur) over the entire range of possible thresholds. The better the model performs at classifying positive and negative outcomes the greater the area under the curve. This area underneath the ROC curve is used to generate a single statistic that summarizes the model’s overall predictive power. The area under the curve reported in Figure 4 is .8221 which represents a good fitting model with good predictive power. On the whole it does a reasonably good job of predicting the occurrence of ACJ disputes. It possesses good discriminatory ability as the true-positive rate (sensitivity) is well above average and the false-positive rate (1 – Specificity) is relatively low.
A Few Illustrative Examples

The following examples further illustrate the impact domestic considerations have on the occurrence of ACJ disputes. The case of Ecuador and its restriction on petroleum imports demonstrate the impact industry size has on disputes, while the cases of Venezuela’s persistence with tariff on imported vegetable oil and Peru’s unwillingness to adjust its taxes on agricultural products both further exemplify the impact past disputes have on the likelihood of ACJ litigation.²¹

Ecuador’s dispute with the General Secretariat over its use of safeguards that limited the import of petroleum from the Community is illustrative of the impact that the relative value added of an industry has on a state’s decision to advance a dispute. Using Executive Decree 3303, the Government of Ecuador, imposed a variable tariff on all imports of fuel derivatives, including those from other member-states of the Community. Recognizing that imposing such a tariff was likely to violate Community law, the SG investigated and concluded that the imposition of this tariff was a levy contrary to the subregional trade liberalization program. Citing Article 4 of the provisions of the Cartagena Agreement, the SG argued that the liberalization program requires member-states to eliminate levies and restrictions of all kinds on the importation of products originating in the territory of any member-state. They thus requested that Ecuador adjust this tariff.

For Ecuador the oil sector is a key contributor to its economy. The country is highly dependent on petroleum as more than half of the country’s export earnings and at least one-third of tax revenue come from oil. Oil rents also on average account for 20% of Ecuador’s GDP.²² The revenue of the petroleum sector and the stability of this sector is therefore of importance to the government. In the case of Executive Decree 3303 Ecuador resisted the Secretariat’s demands and maintained the protection. In fact, Ecuador justified this tariff by arguing that it was a safeguard given Ecuador’s large external debt, its bank bailout, the decline of its international monetary reserve, and the phenomenon of El Niño, all of which have forced the State to take measures to obtain more resources in order to avoid complete economic collapse.²³ Given that oil was a major segment of national revenue and the national budget, the government sought to expand national revenue by increasing domestic demand for oil and its derivatives, and discouraging consumption of foreign oil and oil derivatives. Ecuador remained defiant despite numerous attempts at compromise and negotiation by the SG. Unable to get Ecuador to adjust its protection of the petroleum industry the case was eventually taken to the ACJ on November 29, 2000. The ACJ ruled against Ecuador concluding that they needed to remove their domestic laws that related to imports of petroleum and fuel derivatives originating in other AC member-states.

Beyond industry size, past litigation also impact the pursuit of disputes. The following two cases illustrate this relationship. The initiation of an ACJ case in response to Venezuela’s restriction on vegetable oil
imports in 2006 is illustrative of the impact that experience in a particular area can have on dispute occurrence. In 2004 the SG investigated the safeguard measures imposed by Venezuela on the imports of vegetable oil and oil products originating in Colombia and Peru. The SG concluded that Venezuela was in violation of AC law and demanded that Venezuela eliminate the safeguards, as shown in SG-IN-192. Venezuela failed to oblige the Secretariat’s demands which led to an ACJ case, TJCA 97-AI-05, being filed against them. Given this, it was not surprising that when Venezuela in 2006 when faced with a new non-compliance ruling from the DG related to the treatment of imported vegetable oil, again resisted compliance. This led to another ACJ case, TJCA-AI-007.24 The resistance in 2006 benefited from the experience of investigating the previous case of non-compliance, where Venezuela presented its case before the ACJ, negotiated with the Secretariat, and developed expertise on the issues related to the import of cooking oil.

Similarly the ACJ dispute brought against Peru over its policies related to agricultural and farming products in 2003 is also representative of the effect experience can have on the likelihood of litigation. Peru was involved as a third party in a WTO case that commenced in the year 2000 focusing on the price band system and safeguard measures imposed on agricultural goods being imported by Chile. In this case the WTO Panel provided a mixed ruling wherein it concluded, on the one hand, that Chile was inconsistent in numerous pricing and safeguard policies but that the plaintiffs, on the other hand, failed to prove all aspects of their case because they lacked crucial information that may have been used by Chile to create certain aspects of its safeguard policies. It was, therefore, no surprise that after being a third party to the litigation of this dispute, Peru, when faced with its own non-compliance case over agricultural and farming products allowed it to go before the ACJ in 2003. In this case the SG argued that Peru violated Community law by applying specific duties classified as taxes on the importation of various agricultural products. Similar to Chile, Peru resisted demands for change justifying their controls as necessary support for domestic agriculture. This resistance eventually led to the ACJ case of 2003 which came on the heels of the WTOs case in which Peru was a third party participant.

Conclusion

This article accounts for the decision to pursue dispute settlement in regional agreements today. Using the Andean Community, I demonstrate that domestic societal and statist factors have a crucial impact on disputes in the ACJ. I show that appeals of non-compliance decisions by the Andean Secretariat are more likely, the larger the industry under consideration and the more experience a country has in mounting international trade disputes. I also find that the interaction between these two variables has a notably significant effect on the probability of a dispute. In particular, I show that cases involving large industries that have been the subject
of past litigation have substantially significant likelihood of becoming an ACJ dispute. At the same time I also demonstrate that there is a non-linear relationship between the number of institutional veto players and the likelihood of disputes. Specifically the probability of disputes increases with up to four veto players and then decreases with additional actors. From the argument and evidence presented, a number of implications concerning trade dispute initiation can be drawn.

First, the article engages the discussion concerning the entanglement of domestic politics and international affairs by expanding our understanding of the ways in which domestic factors are used in decision-making by states that are parties to international agreements. In past research, analyses have tended to focus on how domestic factors, or a combination of domestic and international factors, constrain or empower leaders in their negotiation of international cooperative agreements (Chiou 2010; Mansfield and Milner 2012). This article expands upon past research by demonstrating that even after these cooperative arrangements have been institutionalized, internal considerations remain useful tools for analyzing decision-making. The findings demonstrate that member-states evaluate the impact that two contrasting factors at the domestic level have on states when they are deciding on whether to use the dispute settlement mechanism embedded in these international agreements to settle disputes. Specifically, the findings show that, in considering the use of the ACJ to settle disputes, countries incorporate both the impact on domestic societal groups and the role of political institutions into their decision.

Second, similar to studies like Koh 1997 and Checkel 1999, which analyze the rationalist perspective on non-compliance with international law, the results of this study show that member-states are likely to resist demands by the Secretariat and seek final review from the ACJ when cases involve politically relevant domestic industries. It confirms that states are indeed rational actors that make the choice to comply and implement or defy the Secretariat’s decision based on their cost-benefit calculations. I show that importance of the domestic industries in terms of significant national revenue sources influences the cost-benefit calculation of member-states considering a dispute. When a case involves a wealthier industry, which contributes substantially to GDP and by extension economic stability, member-states are likely to resist the Secretariat’s demands and seek a final ruling in the ACJ.

Beyond this, the findings also accords with past studies which have evaluated the impact divisions within government has on the formation of trade agreements, trade policy making in the US, and military action (Sherman 2002; Huth and Allee 2003; Howell and Pevehouse 2005). Similar to these studies I find that more domestic veto players to be consulted inhibit change, making compliance and collaboration much less likely. The results of this paper demonstrate that this problem is not just restricted to developed countries but also affects cooperation between developing countries. It, thus, indicates that future studies on international economic and security cooperation would do well to incorporate domestic
constraints into their analysis as it has the potential to be a key determinant of cooperation.

Finally, this study expands our understanding of the interaction between developing countries and international dispute settlement mechanisms. Past studies have focused on the hurdles to effective use of dispute settlement mechanisms by developing countries (Busch and Reinhardt 2003). This study explores another aspect of this relationship by analyzing the factors that motivate developing countries to defy regional institutions and actively pursue disputes to protect their trade policies. We see that similar to their developed counterparts, developing countries like the Andean member-states are significantly influenced by demand and supply-side factors at the domestic level. This finding further shows how for developing countries domestic politics is intertwined with economic decisions that have important international repercussions.

End Notes

1 Andean Court of Justice is the judicial body that settles disputes in the AC.
2 Information on the joint effort between the EU and the AC to control the production and trade of illicit drugs can be found on the AC website at http://eeas.europa.eu/andean/rsp/07_13_en.pdf.
4 Decision 425 of the Andean Council of Foreign Ministers.
6 Data for this variable is obtained from the Integrated Database of Trade Disputes for Latin America and the Caribbean (IDATD) available at http://idatd.eclac.cl/controversias/index_en.jsp.
7 Note that there may be cases of noncompliance that may not have been investigated by the Secretariat. This study would not be able to capture and include these instances of non-compliance in the dataset. Hence, the dataset developed includes cases that were actually investigated and ruled as non-compliance by the Secretariat.
8 Data on trade between Colombia and Venezuela was obtained from www.uncomtrade.org.
9 Data on sugar production in the Andean Community is obtained from the Food and Agricultural Organization of the United Nations, which can be found at http://www.fao.org/statistics/en/. Data on sugar export from Colombia was obtained from UN Comtrade Database, which can be found at www.uncomtrade.org.
11 Secretaria Nacional de Planificacion y Desarrollo (Senplades).
12 In the Integrated Database of Trade Disputes for Latin America and the Caribbean (IDATD) from which this data is drawn, cases which appear
more than once on the Andean Community website are only entered once in this database.

13 The IDATD database is available at http://idatd.eclac.cl/controversias/index_en.jsp; The Andean Community noncompliance cases are available at http://www.comunidadandina.org/.

14 Author’s tabulation from the Integrated Database of Trade Disputes for Latin America and the Caribbean (IDATD) dataset.

15 SENASAG is a decentralized agency of MACA that administers the agricultural health regime.

16 This measure developed by Davis and Bermeo (2009) is utilized in other studies such as Davis (2012) to evaluate the impact of past litigation.

17 Note that a country can participate in a dispute either as a complainant, respondent or third party. Each of these forms of participation allows a member-state to expand their expertise, experience, and competency.

18 Figure 2 is derived from Model 2 in Table 5, as this Model is most representative of the relationships evaluated in this paper.

19 Figure 3 is based on Model 2 in Table 5, as this Model is most representative of the relationships evaluated in this paper.

20 The ROC curve is presented for Model 2 in Table 5 as this Model is most representative of the relationships evaluated in this paper.

21 Details on these cases can be found on the Andean Community website at http://www.comunidadandina.org/.

22 Information obtained from the US Energy Information Administration and can be found at http://www.eia.gov/countries/cab.cfm?fips. Data obtained from the World Bank.

23 Information obtained from the summary of the ACJ Proceedings brought by the SG.

24 For the noncompliance case initiated by the Secretariat refer to SG-IN-203.

25 See Treib (2008) for a summary of the impact domestic factors have on EU compliance.

References


Food and Agricultural Organization. FAOSTAT database. Available at http://faostat.fao.org/


International Labor Organization. LABORSTA Internet. Available at https://www.google.com/?gws_rd=ssl#q=international+labor+organization+labor+statistics


