
Legitimacy Chains: Legitimation of Compliance with International Courts Across Social Fields

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Political and legal globalization brings into question how to best conceptualize legitimacy and authority in the context of a plurality of potential audiences with distinct standards for evaluating legitimacy. This article proposes *legitimacy chains*, or the articulation of justifications linked through competitive processes of social evaluation across distinct social fields, as a concept for theorizing supranational authority. The concept is developed through an analysis of World Trade Organization (WTO) disputes over *zeroing*, a method for calculating import dumping. The article focuses on how the legitimacy work of various interlocutors enabled compliance despite contested legal validity claims, ultimately enhancing the authority of the WTO as final arbiter of legitimate trade practices.

How should legitimacy and authority be conceptualized in the context of global governance, where a growing number of sites for supranational decision-making face a plurality of audiences in multiple social fields, each with potentially distinct standards for evaluating legitimacy? This article proposes *legitimacy chains* to explain how authority is negotiated between states and supranational decision makers, such as international courts. A legitimacy chain refers to the articulation of justifications that become linked through competitive processes of evaluation across social fields. Different fields require distinct forms of justification to make a valid claim. For instance, a judicial decision's legitimacy is assessed in terms of criteria for legal validity based on "valued" legal knowledge, procedures, practices, and career paths that are constitutive of legal expertise (Bourdieu 1986). However, for

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international courts, compliance is generally¹ a political decision and therefore involves framing legitimacy claims in terms relevant to state power. This requires interlocutors to broker legitimacy claims between fields. Their relative capacities to do such brokering shapes the degree to which legitimacy claims oriented to distinctive social fields are linked into legitimacy chains that can become the basis of legitimate domination over broad, differentiated social spaces.

I develop the concept of legitimacy chains through a series of disputes related to *zeroing*, a method used by governments for calculating when imports are being sold at less than fair market value or *dumped*. In addition to numerous cases in U.S. Federal Courts, the European Court of Justice, and NAFTA tribunals, zeroing has been at issue in 18 disputes initiated at the World Trade Organization (WTO), comprising a fifth of the overall caseload for the WTO's Appellate Body between 1998 and 2011 (Bown and Prusa 2011). These WTO rulings have been characterized as the "Epicenter of the Revolution" (Cho 2010: 629), "tantamount to 'Constitutional Lawmaking'" developed "under the subterfuge of textual ambiguity of the relevant WTO norms" (Ibid.:624). The United States unsuccessfully defended its use of zeroing and then complied with WTO rulings, despite organized efforts to de-legitimize them by powerful industries and in the absence of significant coercion.² The case of zeroing thus poses the question of *how* the Appellate Body constructs and justifies international legal obligations and *how* compliance occurs without the threat of coercive force. These questions can be addressed through the concept of legitimacy chains, which shows how legitimacy is asserted, validated, and brokered between international courts, national governments, and domestic courts.

The zeroing disputes provide an important empirical context to formulate the concept of legitimacy chains, because those disputes involve three neatly distinguishable social fields (international trade law, U.S. politics, and U.S. legal system) and well-institutionalized interlocutors. Choosing a case with these characteristics enables identification of the key dynamics of legitimacy chains and provides insights into how they may differ or fail under different conditions. For instance, the successful construction of a legitimacy chain is likely to vary when distinctions between fields are murkier; when

¹ This is not always the case, as in "monist" legal systems where international legal obligations are embedded in domestic law.

² Two of the proceedings advanced to the stage of arbitration over retaliation, suggesting the role of threatened economic coercion on American decisionmaking. The magnitude of retaliatory tariffs was never established, as arbitration was discontinued by agreement of the parties, but it was likely to be small (Bown and Prusa 2011).

enclaves at the intersection of fields are less clear or nonexistent; or when the role of interlocutor is not deeply institutionalized. This opens a set of empirical questions to ask about other legitimacy chains: how is the institutional responsibility for a response organized? To what degree are the actors responsible for compliance shielded from or vulnerable to pressure from specific organized interest groups? Or, to what degree does the formal process of compliance require engaging with multiple and diverse veto actors? These disputes are also important in substantive terms, as they involved the United States, which has a reputation both for resisting international dictates and for unilateral approaches to trade policy. It also involved powerful interest groups with deep ties to both major American political parties. Zeroing, thus, had the markings of a “hard case” for compliance. How the dispute settlement body handled zeroing, specifically in terms of disciplining what American trade partners saw as aggressive unilateral trade protection, was a critical test of the WTO system.

To characterize the zeroing legitimacy chain, I rely on data capturing rationales about legitimate action, including interviews with practitioners, treaty texts, WTO decisions, Congressional hearings, and Executive Branch documents. These data document competing justifications offered by the WTO, two Presidential administrations, and industry groups about the legitimacy of WTO rulings and compliance. This is not data about motivations to comply, rather how the decision to do so was evaluated and justified. The first link of the zeroing legitimacy chain is the WTO legal field and the standards for legitimate action that shape how the Appellate Body makes and justifies its decisions, particularly its reliance on formalism to overcome interpretive gaps between WTO agreements and the practice of zeroing. Compliance resulted from the translation of these legitimacy claims into the legitimacy vernacular of U.S. politics, the second link in the chain. Finally, as the U.S. government defended the policy changes enacted to comply with the WTO rulings, the effort to legitimize anti-zeroing jurisprudence shifted to the third link in the legitimacy chain, the U.S. domestic legal field.

In the end, the prohibition on zeroing reshaped the economic significance of U.S. territorial borders, making it more difficult for the United States to protect domestic industries. This shift in sovereignty did not result from a rational contract, strong-armed compliance, or consensus building. Nor did it result from any inherent sense of fairness about zeroing, an issue central to the dispute in the first place. Rather, it occurred through the forging of legitimacy chains, a competitive process of brokering legitimacy claims across multiple fields with distinctly

different legitimacy vernaculars. Before introducing zeroing and how the Appellate Body's decisions were justified and then brokered into U.S. politics and law, I demonstrate how the concept of legitimacy chains moves beyond prior conceptualizations of legitimacy and authority in global affairs.

Legitimacy Chains and Authority

Legitimacy is an important power resource for international courts. Yet, prominent approaches to understanding the authority of international law and processes of legal legitimation place undo emphasis either on the objective character of legal text, in the case of legal formalism, or on assumptions about consensual values, such as in the case of epistemic or legitimacy communities. The aim of this section is to formulate legitimacy chains as a social, rather than textual, process of evaluation that crosses social fields defined by competition rather than consensus. Showing how legitimacy chains operate as a resource for supranational authority requires unpacking the concept of legitimacy and its relationship to authority before turning to the field dynamics of legitimation and the work of brokering legitimacy claims between them.

Legitimacy is about following rules. An actor is considered legitimate to the degree that they follow certain rules justified in terms of standards rooted in beliefs, values, knowledge, and expectations. Legitimation involves a claims-maker asserting legitimacy to audiences that evaluate the consistency of the claim with social rules for legitimate action. A successful legitimacy claim resonates with established rules for legitimate action, where *resonate* means that the claim is deemed equivalent to the legitimacy rule. The emphasis on evaluation diverges from how Weber characterized the acceptance of a legitimacy claim in terms of subjective belief (Weber 1978: 33). Beetham instead argues that a "power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs" (1991: 11). Understanding legitimation as evaluation means that obedience can occur for a variety of motives. What matters is that these various reasons constitute grounds for the judgment that the legitimacy claim is equivalent to rules for legitimate action. Actions that acknowledge validity, regardless of the motive, reinforce the legitimacy of power (Beetham 1991).³

³ Self-interest is compatible with legitimation. Suchman (1995: 578) describes several varieties of pragmatic legitimacy, which centers on the self-interested calculations of a relevant audience.

Obedience consecrates the authority of those in power claiming legitimacy. As such, processes of legitimation are central to global governance. How supranational institutions seek and manage legitimacy shapes the character of the power they wield.

Authority is a variety of power oriented towards securing the *right* to rule that includes justification for voluntary obedience. Legitimate—rule-bound and justified—acts of power are the distinctive characteristics of authority compared to other forms of power. Some, however, argue for a sharp distinction between authority and legitimacy when theorizing supranational authority, and are concerned that treating authority as legitimate power obscures illegitimate authority and nonauthoritative legitimacy (Alter, Helfer, and Madsen 2015; Koppell 2008; Peters and Schaffer 2013; Zurn, Martin, and Matthias 2012). Koppell (2008), for instance, argues that authority properly understood is “institutionalized power” that is potentially, but not necessarily, an object of legitimation (also Peters and Schaffer 2013). This conceptualization risks conflating different varieties of power. Understanding supranational authority requires concepts that distinguish between (1) delegated power, the “functional competence” of being tasked to perform a role, (2) power derived from coercive resources and the more general ability to carry out one’s will despite the resistance of others (*macht*) (see Weber 1978: 53), and (3) power derived from voluntary consent (*herrschaft*). Each of these kinds of power can be institutionalized; treating each as authority blurs differences between them.

Conceiving of authority as legitimate power provides greater precision in understanding whether and how international institutions wield power of their own, particularly in the absence of coercive capacities. A failure of legitimation would mean the inapplicability of the concept of authority, but not—if the institution still exercises power—tyranny, domination, imperialism, or merely power wielded through delegation. A legitimacy deficit arises when legitimacy claims fail for some but not all relevant audiences, leading to weak, tenuous, or constrained authority. Legitimate power is authority; illegitimate power is tyranny or illegitimate domination.

Applying these concepts in supranational contexts requires unpacking the process of legitimation, how it can succeed or fail, and the character of the audiences involved. The concept of legitimacy chains conceives legitimation as referencing multiple rules of legitimate action, as contested and power-laden, and as occurring through the work of institutionally situated interlocutors vernacularizing legitimacy claims to suit different audiences (Levitt and Merry 2009). Conceptualizing processes of legitimation between social fields as contested and contingent cultural work is

the signature contribution of the concept of legitimacy chains, and this contrasts with prior conceptualizations of legitimation, including the notions of epistemic communities, interpretive communities, legitimacy communities, as well as the theory of legal legitimacy embedded in legal formalism, to which I turn next.

The Legal Formalist Theory of Legitimacy

The reason for beginning with legal formalism is that, as described below, formalism ostensibly characterizes the institutional dynamics of decisionmaking and legitimation in the WTO legal field. The legal formalist approach contends that specific rules are written so as to allow decisions to be derived from them without controversy, so long as they are applied to readily ascertainable facts. Deductive logic is used to derive decisions from authoritative legal sources in a manner imagined comparable to a mathematical proof (Holmes 1997; Posner 1986). This approach to legal reason presumes systems of law are gapless in their coverage, unambiguous, and internally rational where specific rights and obligations can be derived from higher order principles. The legitimacy of a judge then requires that legal decisions be justified in rational and deductive terms derived from legal texts and other authoritative legal sources.

Beginning with the twentieth century American Legal Realist attack on formalism (e.g., Holmes 1997), later radicalized by Critical Legal Studies (e.g., Unger 1983), the indeterminacy of law in judicial practice became a central problem of legal philosophy. At its core, the indeterminacy thesis argues that a given set of facts and relevant laws cannot exclusively determine the outcomes of judicial decisions. For realists, judges decide cases based on facts, regardless of whether they are legally relevant. Legal justification and invocation of sources of law are post hoc rationalizations of decisions incorporating extra-legal considerations (Leiter 2005: 50).

The indeterminacy thesis suggests that the meaning of the law does not reside in legal texts waiting to be clarified by judges. Rather, judges bridge a “phronetic gap” between understanding the law, which relies on extralegal and contextual factors, and application to one instance of the infinite variety of human situations (Taylor 1993: 57). Often the meaning of the rules is not questioned, but when a dispute arises, the “open-textured” character of the law resurfaces (Hart 2012: 128). Legal actors compete to take “control of the legal text” and monopolize its meaning (Bourdieu 1986: 818). Legal rules are always at risk of being misunderstood; jurists fix the meaning of rules for specific instances, and in so doing make law.

In reaching beyond doctrinal sources or ruling when there is less than determinative law, judges risk de-legitimation under the charge of usurping the power of lawmaking. The indeterminacy thesis suggests that because judges construct meaning when bridging the phronetic gap, they must legitimize those constructions with justification suited to particular audiences. This raises the question of why jurists pay attention to doctrinal sources of law if they are merely post hoc rationalizations for judges' own practical judgment. These questions point beyond legal texts to the social bases of the legitimacy standards, which have often been construed as a community.

Claims-Makers and Audience as Community

Haas (1997: 3) defined an epistemic community as a "network of professionals with expertise and competence in a particular domain," possessing an authoritative claim on knowledge. Such communities hold a "shared belief or faith in the verity and the applicability of particular forms of knowledge or specific truths" (1997: 3, fn 4). Epistemic communities are "thought collectives" with shared ways of knowing and patterns of reasoning that serve as standards for evaluating legitimacy claims. Similarly, Fish (1989) conceives interpretive communities as the source of rules for legitimate action against which legitimacy claims can be evaluated. Like epistemic communities, standards for legitimacy are defined by a single, collective point of view that enrolls particular individuals, against which the correctness of judicial decisions can be evaluated. For instance, in the context of law, legitimate legal meaning is found not in the text but in the "community enterprise," which is "not so much a group of individuals who shared a point of view, but a point of view or way of organizing experience that shared individuals" in that their categories of understanding are a collective production and "community property" (Ibid.: 141). Fish writes: "A fully situated member of an interpretive community, be it literary or legal, ... naturally look[s] at the objects of the communities' concerns with eyes already informed by community imperatives, urgencies, and goals" (Ibid.:303). This is a rejection of formalism in that "one cannot then ground the difference between literary and legal interpretation in the different kinds of texts they address, because the textual differences are themselves constituted by already differing interpretive strategies, and not the other way round" (Ibid.: 304). Interpretive communities constrain judicial action by serving as a check against invalid interpretations or unacceptable practices, such as failing to cite relevant doctrinal sources. This is why judges pay attention to doctrinal sources of law given the indeterminacy of legal texts. The audiences for judicial rulings

function as a “legitimacy community” (Black 2008). Together, the concepts of epistemic, interpretive, and legitimacy communities posit an intersubjectively unified audience defining social rules against which legitimacy claims are reflexively aimed. Successful legitimacy claims resonate with the community’s common understanding of what constitutes legitimate practice.

Field Dynamics of Legitimation

The concepts of epistemic and interpretive communities were developed to account for how elite, professionalized actors determine legitimate action by controlling knowledge. Epistemic community is explicit in this regard, because it limits applicability of the concept to coherently organized elite networks. The idea of community in each of these formulations, however, presumes consensus around the rules for legitimate action. Common definitions of community, such as group identity, shared territory, or consensus over values, misrepresent the degree of unity and agreement circulating among actors within an audience for legitimacy claims. Instead of a community, audiences for legitimacy claims are structured at the level of social fields. Fields, such as for state power or international law, are socially constructed arenas of action, where interaction is oriented towards shaping the “purpose of the field, relationships to others in the field (including who has power and why), and the rules governing legitimate action in the field” (Fligstein and McAdams 2012: 9). There are at least five implications resulting from conceptualizing audiences as structured by fields, which gives form to the concept of legitimacy chains. These include: (1) rules for legitimate action are contested rather than consensual; (2) the dynamics of contestation, including the boundaries of fields and the intersections between them, are institutional achievements; (3) structural spaces, or enclaves, at the intersection of fields create the role of interlocutor; but (4) within those spaces interlocutors exercise agency; and (5) standards for legitimate action are supported by constituencies bearing valorized forms of knowledge and experience. In the remainder of this section, I discuss each of these in greater detail.

Struggles Over Rules for Legitimate Action

Social fields are structured by competition over dominant and insurgent values, norms, beliefs, as well as various kinds of resources, material, and symbolic. This means that particular vernaculars of legitimacy are internally contested within a field. While there may be basic consensus about category distinctions, such as legal/illegal in the juridical field or the importance of the “national interest” in politics, there is ongoing contestation over

how such distinctions should be applied, and variation in status and resources associated with the positions taken in those debates (Bourdieu 1986; Bourdieu and Wacquant 1992; Dezalay and Garth 1996). It is not only a matter of the resonance between a legitimacy claim and rule for legitimate action, but also, simultaneously, *dissensus* over those rules and competition to define them that structure positions within an audience. Dominant rules for legitimacy are socio-political achievements subject to contestation. There is, thus, a double legitimacy game in any social field: the evaluation of legitimacy claim and contestation to define the rules against which a legitimacy claim may be checked.

Institutional Dynamics

Fields are symbolic spaces with their own “rules of the game.” Those rules are institutional achievements⁴ subject to destabilization. Rules for legitimate action, as *rules* (formal or informal) and thus objects of “knowledge” institutionalized as the typical way of doing things, are the contingent outcome of struggles to define the situation. The success of a legitimacy claim depends in part on its continuity with past claims on the definition of the situation, while its acceptance conditions the prospects of future claims. As such, there is no assumption of transcendent or static value, something implied by the community metaphor. Whether the relevant legitimacy vernacular values universalism or particularism, democracy rather than patrimonialism, legal validity more than political expedience, is irrelevant to the mechanism of competitive evaluation for empirically describing how the work of legitimation takes place.

Linked Legitimation

The proliferation of social fields characteristic of modernity requires a conceptualization of legitimacy that can account for when and how fields are connected (Fligstein and McAdam 2012). Fields are discreet zones of social action, but they can be linked through “enclaves” of semantic meaning and practice that allow interlocutors to occupy positions within multiple fields and translate legitimacy claims from one field to another (Berger and Luckmann 1980: 38). In the case of zeroing, as described below, executive branch agencies were legal actors before the WTO and also political actors seeking compliance by the U.S. government. They were the primary interlocutors between the international

⁴ I refer to institutions in the sociological sense of “reciprocal typifications” (Berger and Luckmann 1980: 54) generative of a variety of social rules, including but not limited to formal organizations.

legal field and the field of U.S. state power. The success or failure of interlocutors in vernacularizing legitimacy claims from other social fields depends in the first place on the institutional construction of each field and their position within each. Variation between legitimacy chains is likely to be heavily influenced by the character of this structural space.

Articulating Equivalence Through Legitimacy Work

Due to the centrality of disagreement in defining rules of legitimate action, asserting a credible legitimacy claim does not require convincing every audience or audience member that particular decisions are accurate. Rather, legitimacy claims must resonate well enough with the standards of legitimacy, often at potentially varying levels of abstraction. As such, successful legitimacy claims will tend to be polysemic: a legitimacy claim is more likely to be successful when it offers multiple grounds for obedience, some of which may resonate for a particular audience while others may not. Interlocutors articulate equivalences between the legitimacy claim and the rule for legitimate action, simultaneously subverting differences (see LaClau and Mouffe 1985: 128). This is creative work requiring practical judgment in the context of uncertainty (Emirbayer and Mische 1998). While the role of interlocutor is defined through relationships between social fields, the success or failure of a legitimacy chain also depends on the judgment and choices of interlocutors as they engage in legitimacy work, as well as the semantic character of the claim itself in relation to multiple social fields. Each of these—field level contestation over standards for legitimate action, the institutionalization of prior political struggles that shape the social space of the interlocutor, the exercise of agency and judgment in the brokering of legitimacy claims, and symbolic character of legitimacy chains themselves—shape the discursive opportunity structures encountered in the legitimacy work of interlocutors (Ferree 2003).

Embodied Legitimacy Standards

The legitimacy vernacular of a social field corresponds to actors' dispositions in a field (Bourdieu and Wacquant 1992). Actors are socialized through institutionally defined fields of action. This includes taking particular roles, occupying offices and organizations with particular capacities and resources, and claiming particular modes of knowledge. Each of these shape commitments to particular standards of legitimacy. What it means to possess legal "judgment" is the capacity to engage in practices valued in the legal field, which is derived from experience and socialization. Legitimacy standards are thus premised on (1) consonance

between valorized practices, norms, and knowledge that are the social foundations and embodiment of rules for legitimate action, on the one hand, and on the other (2) the experiences, expertise, careers, and offices of successful actors in the field, whose assessment of legitimacy claims carry significant weight. In the case of law, juridical practice and technique are the very substance of legal knowledge, expertise, training, and practice, including the construction of legal institutions (Bourdieu 1986: 820). Similarly, policy makers build careers investing in the practices of statecraft, the appropriate knowledge, and social capital. In each field, “correct” or “important” knowledge and practice is consonant with rules for legitimate action. Successful legitimacy claims thus have a constituency supporting and defending them as the basis of careers, status, and sense of self. Such constituencies are not restricted to the victors in particular struggles over particular legitimacy claims, but also include those actors with any investment in the ongoing reproduction of the field in general.

In sum, unlike formalism, standards of legitimacy are extralegal social constructions. Unlike the community metaphor, a legitimacy chain emphasizes competition and disagreement within and across social fields, rather than consensus. The concept of a legitimacy chain frames the processes of legitimation as contingent; that is, as constructed, disaggregated, competitive, vulnerable to failure, and occurring over time and social space. Unlike the community metaphor, legitimacy chains cross multiple social fields and can be linked into webs of justification, a “chain link fence” of legitimation. At the same time, the idea of a legitimacy chain sensitizes empirical analysis to the possibility of weak or broken links, which would hinder broad legitimation. Furthermore, the concept suggests the possibility of de-legitimacy chains, where the same structural conditions produce competing efforts to deny legitimacy claims and redefine dominant rules for legitimate action. In the context of supranational legal authority, (de)legitimacy chains link the global and national into recursive cycles of lawmaking, and constitute the means through which adaptation and resistance within those cycles are articulated and justified (Halliday and Carruthers 2007; Shaffer 2012). Ultimately, whether and how the global and national may be linked, across multiple fields with distinct audiences and contested standards of legitimacy, is an empirical question. This is the task of the following section, in which I employ the concept of legitimacy chains to analyze the process by which the WTO’s judicial construction of legal obligations related to zeroing was brokered into U.S. policy and then the U.S. legal field.

Figure 1 illustrates the structure of legitimacy chains in the context of the zeroing disputes. There are three linked social

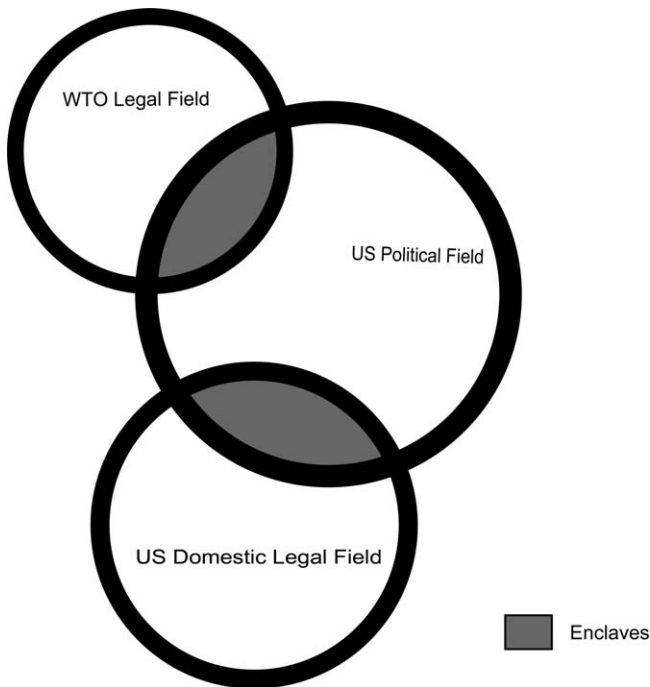


Figure 1. Legitimacy Chain for Zeroing Cases.

fields, each with distinctive standards of legitimacy, linked by enclaves, or spaces where interlocutors broker legitimacy claims between fields. Legal counsel from the U.S. Trade Representative's (USTR) office and the Department of Commerce (hereafter: Commerce) were the interlocutors that managed the WTO legal cases, consulted with Congress, and defended U.S. policy in federal court. Each of these interlocutors built careers based on specialized expertise relevant to the international legal field and the field of U.S. state power. In this case, they were strategically positioned to translate the ruling into legitimacy terms valued by politicians and then into the terms of U.S. domestic law, thus, forming the legitimacy chain that ultimately resulted in compliance. This translation invoked standards of legal validity, but also economic and political justifications, and it occurred even as the legal validity of the rulings became suspect, as is not unusual when on the losing side of a legal decision.

Institutional Dynamics of the WTO Legal Field

The institutional construction of the WTO legal field shapes the processes by which the Appellate Body makes and justifies its

decision. Between 1986 and 1994, the Uruguay Round of negotiations between members of the General Agreement on Tariffs and Trade (GATT) produced the agreement establishing the WTO. The WTO superseded the GATT, incorporating many of its rules and adding additional agreements. Unlike the GATT, the WTO is a permanent organization created to administer rules, facilitate negotiations, and settle disputes. The WTO is noted for its comprehensive membership, accounting for nearly all of world gross domestic product, and for the juridification of its dispute settlement mechanism.

The WTO's Dispute Settlement Understanding (DSU) established the structure and mandate of the dispute system. The system is composed of an ad hoc panel as court of first instance and a standing Appellate Body. The Dispute Settlement Body politically sanctions rulings through an adoption process that makes them binding on disputing parties. Under the GATT system, a ruling's adoption required consensus among signatory countries; the WTO reversed this and requires a consensus to reject rulings. The greater automaticity of the adoption process was a prominent argument in favor of the WTO system during the Uruguay Round negotiations, because it prevents members from blocking unfavorable decisions, thus, contributing to the harmonization of trade practices with WTO rules. The agreement nonetheless provides Members a mechanism for correcting undesirable or unwarranted interpretations by dispute panels or the Appellate Body, as Member countries retain "exclusive authority to adopt interpretations of this Agreement and of the Multilateral Agreements" (Agreement Establishing the WTO Article IX.2; see also DSU Article 3.9). In practice, however, Members have never produced an "authoritative interpretation" or deployed the amendment procedure provided in the WTO agreements (Ehlermann and Ehring 2005). As a result, there is almost no legislative oversight of the interpretations of the law proffered by the Appellate Body, and its decisions are effectively final.⁵

The DSU provides the following mandate for dispute settlement panels and the Appellate Body:

[T]o *clarify* the existing provisions of those agreements in accordance with customary rules of interpretation of public

⁵ This is not to say that Member complaints about legal developments go unheeded. Members have influenced the dispute settlement system without recourse to formal mechanisms of political oversight. For instance, despite winning in *Australia-Automotive Leather II*, the United States rejected the panel's recommendation that Australia provide retrospective remedies. No subsequent decision has as recommended retrospective remedies.

international law. *Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements* (Article 3.2 WTO DSU; emphasis added).

This conception of legal reasoning presupposes that objective rights and obligations reside in the text of the agreements. The task of clarification is simply to interpret the texts' objective meaning and apply it to specific facts of a dispute, thus avoiding the introduction of bias, ideology, or politics, and open-ended debate (Picciotto 2005; Unger 1983). The "force" of WTO law is rooted in the commitments made by signatories to the specific text of the WTO agreements. Accordingly, the operable theory of legitimacy is formalist and objectivist, emphasizing consistency between judicial determinations and political decisions previously encoded in the WTO agreements. Given this institutional context, WTO jurists couch decisions in the language, style, and epistemological assumptions of legal formalism, which presents law as neutral, objective, and universal (Bourdieu 1986: 819–821; Picciotto 2005). This legitimacy strategy is aimed at trade practitioners who demand this style of judicial reasoning and practice that re-validates the credibility of the international trade law field. But, as demonstrated in the following sections, this style of justification requires brokering and translation if it is to be carried into other social fields that possess different legitimacy vernaculars.

Zeroing

Dumping refers to the sale of goods in export markets for less than in the home market, creating a competitive advantage over domestic producers of similar goods. Governments are permitted under WTO rules to police dumping and take corrective actions. Antidumping investigations in the United States are conducted by Commerce on petition by a domestic industry. If Commerce finds evidence of dumping, it issues an antidumping order establishing a duty on imports of the dumped good, to be collected by the U.S. Customs and Border Protection agency. The duty amount counteracts the effects of dumping on domestic producers. Duties expire after 5 years unless a "sunset review" determines that the removal would injure domestic producers. Commerce also conducts administrative reviews of antidumping orders between initial investigations and sunset reviews.

Determining whether goods have been dumped requires a comparison of the Export Price (EP, the price of the good in the U.S. market) with the Normal Value (NV, the price of the good

in the exporter's home country or in sale to a third country).⁶ For example, for the sale of a foreign good, commerce subtracts the price of that good in U.S. markets (EP) from the price of the good in the producer's home market (NV). A "positive margin" indicates that the price charged in the U.S. market is less than the price of the good in the producer's home market. Considered in isolation, a sale with a positive margin would be considered "dumped." A negative margin is the opposite—the price of the good in U.S. markets is greater than in the producer's home market.

However, many sales of foreign goods involve multiple transactions, which requires aggregation. *Zeroing* is a method for summing individual sales to the level of a product. It involves setting negative margins (all "nondumped" transactions) to zero before calculating the overall dumping margin for a product, which is then based solely on any positive margins. Table 1 provides an illustrative example involving four variants of the same product. For instance, "warm water shrimp," which was the subject of a WTO dispute between the United States and Ecuador over zeroing (DS335), is composed of a number of distinct sub-product types, including canned, frozen, prepared in a marinade or spice, and specific species of shrimp and prawns. Calculating an overall dumping margin for warm water shrimp requires summing dumping margins for each transaction across each sub-type.

Row 1 of Table 1 indicates a sub-product type with a positive margin (column F). Row 2 shows a sub-product type with a negative margin. The method of zeroing is evident in column G: the negative margin of sub-product type 2 is "zeroed." The effect of zeroing appears in the row for overall dumping margins. When each margin for each sub-type is added to form the overall product margin, the result is \$50 after zeroing (column G), compared to a method that allows negative margins to "offset" positive ones (column F). If the offsets were permitted, then there would be no dumping and no duty. But the zeroing method results in a duty of 12.5 percent, which is the dumping margin after zeroing divided by the total value of the imports ($50/400 = 12.5$ percent).

The debate over zeroing concerned the definition of dumping and its fairness to involved actors: does dumping occur at the level of the transaction, the sub-product, the product, or the exporting firm? These questions had significant political economic implications, as zeroing allowed the United States to impose higher tariffs on imports, thereby creating a competitive advantage for trade sensitive U.S. producers. The WTO rulings

⁶ There are different ways of conducting comparisons. The discussion illustrates a weighted average to weighted average comparison, which is most common.

Table 1. Zeroing Example

A	B	C	D	E	F	G	H
Product Sub-type	US Price (\$EP)	Home Market (\$NV)	Unit Margin	Quantity (Q)	Total Margins Before Zeroing (\$EP-\$NV)	Total Margins After Zeroing	Total Value (Q × \$EP)
1	0.50	1.00	0.50	100	50.00	50.00	50.00
2	1.50	1.00	-0.50	100	-50.00	0.00	150.00
3	1.00	1.00	0.0	100	0.00	0.00	100.00
4	1.00	1.00	0.0	100	0.00	0.00	100.00
			Overall dumping margin		0.00	50.00	
						Total value	400.00
						Dumping percentage (based on zeroing)	12.5%

sparked political mobilization by large corporations, industry associations, and labor unions, all of which sought to influence policy makers on the question of compliance. Opponents of zeroing argued that the method inflates dumping margins, distorts competition, and protects inefficient industries, thus constituting “unfair trade.” Exporters should be given credit for each transaction where the foreign good is sold at a price higher than the domestic good, in part because it is unreasonable for exporters to fine-tune their pricing practices for each transaction (*United States – Softwood Lumber V* (DS264), para 9.19-21). These opponents included foreign firms and governments but also lobbying groups for American industries. For example, the Consuming Industries Trade Action Coalition (CITAC) and the Alliance for Free Choice & Jobs in Flooring (AFCJF), among others, opposed zeroing because of their trade reliance on other countries. These opponents argued that by including only positive margins in the overall product margin and ignoring negative ones, higher duties are placed on imports, which raises prices for consumers and for industries relying on imports, and thus undermines their global competitiveness. According to these groups, both positive and negative margins should be averaged in calculating dumping margins for products.

In contrast, supporters compared the elimination of zeroing to letting a speeding driver go without citation because they were driving under the speed limit on other stretches of road (Stewart 1993: 1540). Just because some product sub-types enter the market fairly does not mean that steps should not be taken to counteract the effects of those that do not. Allowing negative margins to offset positive margins masks unfair trade; zeroing detects each dumped transaction. The United States took this position in the WTO disputes, along with steel and lumber producers, related industry associations and lobbying groups, and labor unions, such as United Steelworkers and the AFL-CIO.

The GATT and the WTO agreements do not mention any explicit reference to zeroing. A GATT-era panel ruling, *EC-Audio Cassettes*, found nothing in the Tokyo Round Codes to prevent it, although this decision proved controversial and was not adopted. The controversy continued through Uruguay Round negotiations, where negotiators failed to address the issue directly (Cho 2010). The WTO Anti-dumping Agreement did introduce a new standard of review for dumping disputes modeled on the *Chevron* doctrine (*Chevron U.S.A. v. NRDC* 1984) developed by U.S. Federal Courts, which explicitly acknowledges its indeterminacy and defers to national governments should ambiguities arise:

Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations (Anti-Dumping Agreement Article 17.6.ii).

The First Link: Justification of Anti-Zeroing Jurisprudence by the WTO Appellate Body

The dominant standard of legitimacy in the WTO legal field requires formalist justifications of decisions.⁷ WTO disputes over zeroing took the form of a narrow textualism rooted in the formalist presupposition that the “real” meaning of the agreement existed in the text. Article 2.4.2 of the Anti-dumping Agreement requires dumping to be measured through a “fair comparison.” Gary Horlick,⁸ author of that phrase, reported that he was trying to eliminate “all tilts” (2009: 162), including zeroing; the indeterminacy of “fairness” was intentional, designed to prevent as of yet unimagined methods for protecting domestic producers. But whether the text actually eliminates zeroing or if that was the intent of the state signatories to the agreement (rather than an individual lawyer representing commercial clients who made suggestions to the negotiating teams) was not clear.⁹ While there is disagreement among practitioners over the degree of indeterminacy in WTO rules, the Anti-dumping Agreement is broadly acknowledged as containing ambiguities,¹⁰ and the indeterminacy of the text kept reappearing in legal procedures. This section illustrates competing textualist legitimacy claims about zeroing and how the Appellate Body justified its prohibition of zeroing,

⁷ For a full review of antidumping jurisprudence see Cho (2010, 2012).

⁸ Horlick, a prominent international trade lawyer, received his JD from Yale Law School and has worked for government and as a private trade lawyer. At the time of his suggestion, he was working for the Emergency Committee for American Trade, which included internationally-oriented companies such as Cargill, Caterpillar, IBM, Hewlett-Packard, 3M, and Phillip Morris (Horlick 2009).

⁹ Japan, an opponent of zeroing, argued that the absence of direct mention of zeroing in the Uruguay Round documents merely indicates that the negotiators thought that the Agreement prohibited the practice (See DS322AB/R para.130). Horlick's interpretation of “fair comparison” confirms this view. But, he also argues that the drafting history of the Agreement is indeterminate: “there is no agreed on ‘drafting’ history for the Uruguay Round agreements. This is particularly true for the Anti-dumping Agreement” (Horlick 2009: 161), which he described as “badly drafted” and inviting disputes (US S. Hrg. 106-629). In contrast, Stewart argues that the drafting of the agreement reflects a compromise permissive of zeroing (1993: 1543).

¹⁰ One practitioner described it this way: “there are some cases, especially in the trade remedy area; there I can understand why, especially if you have spoken to my American colleagues, they would say there's uncertainty” (Interview with Canadian Official, Geneva, 3 April 2006).

but also the limitations of textualist justifications in achieving legitimacy.

The Appellate Body (hereafter: AB) established the basic features of its textual justification for prohibiting zeroing in *EC-Bed Linens*, the first WTO case to consider the issue. Dumping margins are to be calculated for the “product as a whole” and not for sub-product categories. This phrase is not found in the agreement, but was derived from its definition of dumping that refers to the word *product*.¹¹ Moreover, zeroing is unacceptable because of the requirement to use “all comparable export transactions” (Anti-Dumping Agreement Article 2.4.2), including negative margins, when calculating sub-product margins. Finally, in a subsequent dispute the AB determined that the Anti-dumping Agreement is not ambiguous, is internally coherent, and does not permit zeroing (*US-Stainless Steel (Mexico)*, DS344AB/R).

Such justifications failed to settle the matter. Not only did the United States, led by the USTR and Commerce, assert alternative accounts of the rules, but also in two subsequent disputes, panels rejected the AB’s justifications and offered their own textualist justifications. These panels weakened the AB’s “product as a whole” jurisprudence, relying instead on textualist arguments about the placement of the word *investigation* in the agreement’s text to allow zeroing under certain circumstances.¹² Most dramatically, in *US-Stainless Steel (Mexico)* the panel not only offered an alternative interpretation of the agreement’s text, but also charged that the AB had overstepped its mandate to clarify obligations by producing decisions unwarranted by a literal reading of the text. The indeterminacy of the text and the limitations of AB’s efforts to valorize its legitimacy through textualism were on full display.

In reversing the panel and reasserting the prohibition on zeroing, the AB chastised the panel for ignoring its earlier rulings. The AB insisted that the panel was “misguided” (*US-Stainless Steel (Mexico)* DS344AB/R para. 161-2) in citing rulings that had been overturned, but did not declare that the panel had failed to discharge its duties, as Mexico had requested. It also reasserted the binding character of AB decisions on all parties and their status as *de facto* precedent.¹³ These constitute claims

¹¹ “[A] *product* is to be considered as being dumped” (Article 2.1 Anti-dumping Agreement; emphasis added).

¹² The panel in *US-Zeroing (EC)* interpreted the placement of the word *investigation* in the agreement text as indicating that zeroing was permissible in administrative reviews.

¹³ The United States vigorously rejected this and challenged the legitimacy of the AB explicitly: “[T]reat[ing] DSB rulings as fully binding and definitive, even in a situation where experts have openly and cogently disagreed, would only undermine the legitimacy of the system” (United States’ appellee’s submission, WT/DS344, para 11, fn 9).

about legitimate legal practice. The next panel to evaluate U.S. zeroing noted that it was “inclined to agree” (*US-Continued Zeroing* DS350/R para 7.162) with the U.S. position and the reasoning established by the Panel in *US-Stainless Steel (Mexico)* that allowed zeroing in periodic reviews. Nonetheless, even though the panel rationalized the opposite conclusion, it ruled against the United States.

The AB’s legitimation strategy reined in panelists. Through formalist assumptions and style, and seizing its authority as an appellate court, the AB claimed de facto precedential power despite the absence of a rule of *stare decisis* in the DSU or international law in general. This was aimed directly at trade practitioners. More importantly, despite criticism, other WTO Members seized the new jurisprudence as the basis of new WTO challenges to American dumping determinations (Bhala and Gantz 2010). One practitioner described the attack on U.S. zeroing by the EC and Canada (countries with histories of using zeroing) as “if we can’t use it, you can’t use it either,”¹⁴ a viewpoint that accepts the ruling as valid¹⁵ but does not evaluate the legitimacy of the textualist justifications asserted by the AB. The rulings served as a resource in interstate competitions over trade; at the same time, the AB’s justifications failed to fully settle the issue, as new disputes were initiated and charges of judicial overreach circulated among U.S. policy makers and scholars and practitioners in the WTO legal field.

Nonetheless, the United States did largely comply, and eventually abandoned zeroing in initial investigations in 2006 and recalculated the margins on a number of different dumping orders for European and Japanese exporters. In disputes brought by Korea in 2009 (*US-Zeroing*) and China in 2011 (*US-Shrimp and Sawblades*), the United States did not contest the factual evidence, but acknowledged the applicability of earlier AB decisions, and implemented changes that complied with those earlier rulings. In 2012, the Commerce eliminated zeroing in administrative reviews (periodic, new shipper, and sunset) (Department of Commerce 2012). A European Commission working paper described the policy change as a “great step forward” because it “removes zeroing from the ‘normal’ calculation of dumping in reviews, which determine about 90 percent of the amount of anti-dumping duty actually collected” (European Commission 2013: 3). U.S. compliance was halting and incomplete¹⁶

¹⁴ Interview with Legal Counsel, WTO Secretariat, Geneva. 4 May 2004.

¹⁵ *Valid* in the sense of shaping incentives for action (see Weber 1978: 33).

¹⁶ Zeroing disputes concerning targeted dumping remained unresolved.

in contrast to Europe, which dropped the practice after losing a single dispute. Nonetheless, it has taken efforts to comply in the context of vocal domestic opposition. How this happened depended on a legitimacy chain forged between the WTO legal field and U.S. politics.

Linking Legitimacy Chains: Translation into the U.S. Political Field

How did the AB's legitimacy claims based on dense textualist "clarifications" translate into compliance—a political decision—particularly when policy makers in Congress and in two different administrations were overtly dissatisfied with the rulings? Indeed, the United States was so displeased with the zeroing rulings that it sought, unsuccessfully, to forge a de-legitimacy chain. It did so through charges of judicial activism, and by blocking the reappointment of Jennifer Hillman—the sole American on the Appellate Body during many of the high-profile decisions—for failure to rein in the court, as well as generally signaling dissatisfaction with the rulings. West Virginia Senator Robert C. Byrd, who favored trade protection for the steel industry, framed the question of compliance explicitly, citing USTR submissions to WTO proceedings:

The WTO Appellate Body for several years now has been engaged in improperly expanding its mandate ... One of the most egregious of these decisions has been issued against the US antidumping duty practice called 'zeroing.' ... Why would the United States implement Appellate Body reports that it admits are 'deeply flawed' and 'devoid of legal merit'? (U.S. Senate Committee on Appropriations 1 March 2007, S. Hrg. 110–329).

The answer is the work of USTR and Commerce in translating the policy change into the legitimacy vernacular of the U.S. government.

Institutional Dynamics of the U.S. Political Field

Just as the institutional construction of the WTO legal field shaped the manner of making legitimacy claims about trade practices, the institutional allocation of capacities and responsibilities in the U.S. government empowered interlocutors to do the legitimacy work of seeking compliance. In the U.S. government, different actors and agencies have the legal authority to act on

different kinds of trade issues. The primary actors are the President, the Executive Branch agencies (in particular USTR and Commerce), and Congress. In principle, Congress could respond to any WTO ruling with statute. But only some issues require Congressional action. Commerce has significant discretion in interpreting statute and has generally done so in ways that favor U.S. producers seeking trade relief (Blustein 2009). However, the zeroing rulings resulted in Commerce changing its practices in ways that went against those interests.

The process of complying with WTO rulings related to anti-dumping is stipulated in the Uruguay Round Agreement Act, which implemented the WTO agreements in U.S. law. The USTR is required to formulate a plan for compliance, consult with relevant Congressional committees, instruct Commerce to propose the rule, seek public comments, and ultimately implement the rule. These steps are significant because it means that executive agencies must consult with Congress, but compliance can occur without Congressional action.

How responsibility to comply is institutionalized, the degree to which it is vulnerable to or shielded from particular interests, and the number of “veto points” condition the possibilities of successfully forging legitimacy chains (Tsebelis 2002). The executive branch is more likely to comply with WTO rulings because it is directly responsible for foreign policy and is judged more directly for its success compared to Congress (Brewster and Chilton 2014; also Goldstein 1996). The President and executive agencies also have fewer veto points in making decisions about compliance compared to Congress, where legislative action is difficult, and requires expenditure of political capital to form coalitions among many veto actors.

This institutional design of political control over antidumping and other trade remedies was the result of political struggles between domestically oriented firms and those with international accumulation strategies. Choev (2007) details how beginning in the 1970s unfavorable trade relationships in service to bolstering the Western Alliance became increasingly unacceptable for American exporters who mobilized to shift discretion over trade policy away from Congress. Through a series of legislative acts, most notably the Trade Act of 1974 and subsequent amendments, important areas of trade policy were shifted to executive branch agencies such as USTR and became subject to judicial review. These institutional constructs take advantage of what Goldstein (1996) labels the “asymmetry” of organized producer and consumer groups to insulate decisions about trade from popular and regional politics. Congressional representatives are more likely to be sensitive to producer groups in their districts hurt by imports.

Presidents are more autonomous, able to trade among constituents and to construct the “national interest” on internationalist terms (Goldstein 1996: 548–549). When the WTO ruled on zeroing, it triggered competition in the U.S. political field, in which various actors seized on those rulings as a resource in the struggle over defining and justifying the legitimate course of action. However, that competition was shaped by the relative capabilities of actors as institutionalized in the U.S. political field.

Compliance: Articulating Equivalence Between WTO Rulings and the National Interest

As Commerce moved to implement new rules eliminating zeroing in initial investigations, Representative Charles Rangel and Senator Max Baucus wrote a letter advocating for delaying implementation. They quoted the USTR’s communications to the WTO, criticizing the *US-Zeroing* (EC) decision and challenged the credibility of the AB:

The perception that the dispute settlement system is operating so as to add to or diminish rights and obligations actually agreed to by Members ... is highly corrosive to the credibility [of the WTO dispute settlement system] (Baucus and Rangel 2007).

The letter revealed the disjuncture between standards of legal and political legitimacy. While the rulings had been accepted within the WTO legal field as valid, it was less than clear that it would translate into compliance. The letter sought a delay, to which USTR and Commerce agreed, to allow Congress time to “consider the issue.” Rangel subsequently held a hearing and issued a nonbinding advisory urging against compliance (IUST 2007; see also U.S. House Committee on Ways and Means, Serial 110–4). The nonbinding character of the letter reflects the institutional construction of discretion over compliance, and the difficulty of mobilizing Congressional action on the matter. The views of industry were split, with domestic manufacturers such as steel taking a hard line against compliance. The statement of John Council,¹⁷ President of the Council Tool Company, is illustrative of the view of import-sensitive industries:

Congress should vigorously oppose the Commerce Department’s decision to end its longstanding practice of “zeroing,”

¹⁷ He has spent his professional life at Council Tools, a family owned business.

which will eviscerate the principal tool available to US manufactures and producers to combat unfair trade practices (U.S. House Committee on Ways and Means 31 January 2007, Serial 110-4).

In contrast, importing industries insisted on compliance because zeroing inflates consumer prices on imported goods (IUST 2007). The WTO rulings aligned importing industries with foreign governments and their exporters that used the dispute settlement system to challenge U.S. policy, and who now threatened to impose retaliatory tariffs (Robertson 2009). These competing views show how the national economic interest is not static, but the object of struggle between industry groups and their supporters in Congress, and how standards for legitimacy over compliance with the WTO rulings were subject to contestation.

The Bush Administration argued that the jurisprudential developments were flawed, but that the United States must comply nonetheless. Carlos Gutierrez, former CEO of the Kellogg Company and then Secretary of the Department of Commerce,¹⁸ expressed this view before Congress:

We agree that the Appellate Body's recent findings on zeroing in reviews are very troubling, however, we also place significant importance on respecting the dispute settlement system and addressing the findings, whether we agree with them or not, through the appropriate mechanisms ... [W]e will continue to use the [Doha Round] Rules negotiations as a forum to educate other Members on the troubling implications of the Appellate Body reports (US Senate Committee on Appropriations, 1 March 2007, S. Hrg. 110-329).

The perceived illegitimacy of the WTO rulings is translated as a matter of "respect" for the rules in general, "whether we agree with them or not." And the appropriate means of addressing the issue is through the WTO Doha round negotiating group on Rules. This argument appears repeatedly in the statements of the USTR and Commerce before Congress, aimed at justifying compliance. When testifying before the House subcommittee on trade, Deputy U.S. Trade Representative Peter Allgeier,¹⁹ who

¹⁸ Gutierrez is currently a cochair of the Albright Stonebridge Group, which advises multinational firms, banks, and other organizations on market-entry and regulatory regimes, government relations, investment assistance, and dispute resolution.

¹⁹ At the end of the Bush administration, Allgeier became president of C&M International, a consultancy assisting multinationals with lobbying of governments.

later became U.S. Ambassador to the WTO and then a consultant for multinational firms on trade issues, responded to a question about what trade would be like if the United States were not a part of the WTO:

[T]he rule of the jungle would govern trade ... A world where the United States steps away from rules based, global trading system would be a world where international trade would be an additional source of strategic conflict rather than serving as a force for cooperation and strengthened ties among countries (U.S. House of Representative's Ways and Means Committee 17 May 2005, Serial 109-33).

Similarly, Christopher Padilla, who later became a Vice President of Governmental and Regulatory Affairs at IBM,²⁰ emphasized how the U.S. benefits from participation in the WTO when he testified before the Senate Finance Committee during his confirmation as Undersecretary of the International Trade Administration:

While we have a number of very troubling decisions, including the one I was involved with, the zeroing decision ... [w]e also, I think, have to place very significant importance on respecting the dispute settlement system. And whether we agree with particular decisions or not, there is value in this system, and I believe it serves the interests of the United States (US Senate Committee on Finance 1 November 2007, S. Hrg. 110-858).

In explaining why the United States must comply with zeroing decisions, various interlocutors subordinated the question of legal validity—"whether we agree ... or not"—to a rational calculation of benefits from a rule-bound system. In its letter to Congress announcing the proposed rule change to eliminate zeroing, the USTR presented compliance with the WTO as a matter of legal obligation under U.S. federal law (Kirk 2011). In response, the House Committee on Ways and Means issued its own letter acknowledging the "importance of implementing WTO Decisions" but nonetheless expressing "concern" in part over the activism of the Appellate Body, but also the continuing ability of the United States to use the dispute system to enforce WTO obligations on other trading partners (Levin et al. 2011). This

²⁰ Padilla previously worked as an Assistant US Trade Representative. In his position at IBM, he lobbied for new services negotiations at the WTO.

sentiment is reflected in U.S. Trade Representative Ronald Kirk's statement announcing the elimination of zeroing in administrative reviews:

[T]he resolution of these longstanding disputes promotes our ability to focus on the Administration's priority of enforcing US rights under our trade agreements to ensure a level playing field for American farmers, workers and businesses (USTR 2012).

Kirk, a lawyer and former mayor of Dallas, TX, later became co-chair of the international trade practice of the Washington D.C. law firm Gibson Dunn. He argued that compliance with the zeroing rulings is necessary for using the dispute system as an offensive instrument for American interests. The utility of the dispute system in enabling the United States to secure "fair trade" by policing its trading partners is a point of emphasis in almost all USTR testimony before Congress. U.S. compliance maintains the rules and the United States retains the credibility to use them against trading partners. "Whether we agree or not," a statement acknowledging the effective or de facto right of the AB to make such decisions, is joined with arguments about American interests in the transnational legal order for trade. This justification for compliance takes a strikingly rationalist tone, linking the value of law to the pursuit of national self-interest in internationalist terms. This internationalism reflects the insulation of USTR from the influence of local and regional economic interests that are directly tied to the success of specific trade-sensitive industries. It also reflects these interlocutors' investments in internationalist careers—a stark contrast to the local and regional embeddedness of those opposing compliance, such as labor or steel, including their supporters in Congress. The success of the USTR and Commerce in securing compliance reflects not only their legitimacy work—specific choices about how to draw equivalences between the WTO rulings and an internationalist conception of the national interest—but also the asymmetric institutionalization of policy discretion in the USTR that largely avoided veto actors in Congress, who wrote letters of disapproval rather than statutes blocking implementation.

The rules governing legitimate action relevant to U.S. policy-making are different from those in the WTO legal field. Where the AB is concerned with formulating textualist decisions consonant with the legal formalism dominant in the international trade law field, the details of legal legitimacy are less relevant to the political choice about compliance. Here, the value of law in

general, as opposed to the specific formulations of meaning asserted by the Appellate Body, becomes important in instrumental terms. The unfavorable rulings set in motion a competitive process of reconstructing the national interest, where compliance depended on the legitimacy work of interlocutors justifying the equivalence between the national interest and compliance in the name of fair trade. The results ultimately undermined trade-sensitive domestic producers and advanced the interests of importing industries, while conferring legitimacy on the AB's right to rule. Yet, even the policy change by the U.S. government required legitimation, which is the third link in the chain of legitimacy: translating compliance into the domestic legal field by referencing standards of legitimacy informed by domestic rules for precedent and standards of review.

The Third Link: Articulating Equivalence Between WTO Jurisprudence and U.S. Law

Having implemented new rules for antidumping, the U.S. government defended the policy change in U.S. Federal Court. Again, USTR and Commerce were the primary interlocutors. In its response to public comments about the proposed rule to eliminate zeroing in administrative reviews, Commerce cited its statutory authority to eliminate zeroing and rejected the argument that abandoning zeroing would weaken protections for domestic producers. This latter argument had been the position taken by the United States before the WTO and by Congress in their opposition to compliance. Specifically, Commerce asserted that it has the statutory authority to change dumping methods, that it did so as a result of the adverse WTO rulings, but that adopting WTO-consistent rules nevertheless allows it to effectively counteract dumping:

[Federal] courts have held, in more than thirty cases, that while zeroing is a reasonable interpretation of the statute, it is a reasonable interpretation of an ambiguous provision of the statute. [This] ... means that it is within the Department's discretion to alter or abandon its zeroing methodology upon providing a reasoned explanation ... the Department disagrees with those comments that suggest it is not capturing 100 percent of the dumping. The Department will capture 100 percent of the dumping that is determined to exist pursuant to this methodology (Department of Commerce 2012: 18–29).

In Federal Court, steel manufacturers argued that the elimination of zeroing in initial investigations violated U.S. statute and

that, by extension, complying with the WTO was a violation of U.S. law. This hinged on the indeterminacy of the word *exceeds* in U.S. statute, which defines a dumping margin as occurring only when the normal price exceeds the export price (19 USC. § 1677(35)(A)). When it does not, as in the case of negative margins, there is no dumping. Steel manufacturers argued that U.S. statute is unambiguous, mandates the use of zeroing, and that earlier Federal Court decisions to the contrary were incorrect:

Nucor notes that the term “exceeds” ... is not ambiguous, that lexicographical sources confirm that it is not ambiguous, and that the *Timken*²¹ court’s decision was logically flawed (*US Steel Corp. v. United States* 2010: 14).

The U.S. government, represented in court by trial attorneys for the Department of Justice and Commerce, disagreed and argued that previous rulings correctly identified the indeterminacy of the word *exceeds* and were appropriately deferential to Commerce in allowing it to exercise authority where Congress had been ambiguous. The U.S. government argued that eliminating zeroing made calculating dumping “arguably more fair than it was under the old methodology of zeroing” (*US Steel Corp. v. United States* 2009: 21). Here and in Commerce’s explanation of the rule change, the arguments about fairness are reversed from those made by Commerce and USTR to Congress and the WTO. The U.S. government now took the same position as the Appellate Body: zeroing must be eliminated to secure a “fair comparison.” Confronted by domestic producers, the U.S. government pointed to the requirements of U.S. statute, now harmonized with WTO law, as the grounds for legitimate action. The chain of legitimation was complete and the meaning of WTO rules fixed, at least for the time being, with U.S. policy made equivalent to the Appellate Body’s determination of relevant obligations.

Discussion and Conclusion

In linking justifications for compliance across three social fields, interlocutors socialized the U.S. government into international legal norms articulated by the WTO Appellate Body. American politicians still had to decide to comply. However, that choice

²¹ *Timken Co. v. United States* (2004). The ruling determined that zeroing was permissible as a reasonable interpretation of U.S. law under the Chevron Doctrine.

was shaped by legitimation of the prohibition on zeroing in the WTO legal field, as translated by interlocutors to politicians concerned for their own legitimacy, and made noncompliance appear impractical, expensive, and illegitimate. Compliance conferred legitimacy on the Appellate Body's right to decide the matter.

Legitimacy claims are translated and retranslated to reference different legitimacy vernaculars by amplifying or diminishing different meanings associated with them. In the first link of the zeroing legitimacy chain, the AB employed a textualist style as a claim on legal legitimacy. In the second link, textualism was subordinated to justifications rooted in general legal values, as different political and economic interests competed to define the national interest. Justifications in the third link returned to claims about legal validity and the authority of executive agencies over statutory interpretation. Each link was forged through intense competition to define a particular definition of dumping as fair and to reject alternative interpretations.

In each link, the dominant rule for legitimacy constrained the kinds of equivalences interlocutors could draw between the Appellate Body's definition of legal obligations and legitimate action. For instance, arguments about the legal validity of the WTO decisions made little sense when the dominant standard for legitimate action was the national interest. Within such constraints, interlocutors drew on the substance of their particular knowledge, expertise, training, careers, and practice, and made choices about how to best frame justifications for action. Interlocutors from USTR and Commerce held deep investments in specialized forms of knowledge, and their careers reflect the rules for legitimate action circulating in each field: mastery of legal knowledge relevant for competing over the legal validity of WTO rules, as well as the expertise and social capital necessary for policymaking. Those careers embody the dominant rules of legitimate action relevant to each social field. In contrast, John Council, the President of a family-owned tool manufacturer sensitive to imports, is emblematic of an alternative career trajectory linked to a subordinated claim on the national interest.

The concept of legitimacy chains focuses on the nexus between national and supranational decisionmaking. It trains attention on how authority is restructured, recursively and over time, under conditions of globalization through processes of legitimation (or potentially, de-legitimation). The legitimation of such decisionmaking confronts a plurality of audiences in multiple social fields, with potentially distinct standards for legitimacy. While other structures are imaginable, in the case of zeroing, the legitimacy chain was concatenated: justifications were addressed first and formally to legal delegations and relevant agencies in

government, and then interlocutors translated them to Congress, and then to the domestic judiciary. In the U.S. political field, business interests formed an important part of the audience along with policy makers, while the broader public was largely absent in this case. In contrast to the concept of epistemic or interpretive communities, legitimacy chains could accommodate additional links, such as social fields for popular politics and social movements.

Indeed, the structure and dynamics of legitimacy chains can be expected to vary. For other trade issues—or even beyond trade, where supranational actors articulate legitimacy claims in support of a norm or obligation—the dynamics of legitimacy chains may shift in a number of ways: different fields have different rules for legitimate action; the institutional enclave for interlocutors may be more or less well-defined; the character, capacity, and efficacy of interlocutors may vary; or the veto points they must confront may vary in terms of the collective action problems they present. Interlocutors may exist in weak positions, perhaps outside of the state altogether in advocacy groups or social movements, or not exist at all. Different issues may also bring different or competing interlocutors and audiences into debates over compliance. In this regard, the case of zeroing demonstrates the privileged position of the USTR as interlocutor situated both in the international and domestic legal and political fields, allowing it to pursue compliance with relatively few veto points. What successful legitimacy chains will have in common is the existence of interlocutors with valorized positions in each relevant field, who are able to do the work of brokering legitimacy claims.

Whether and how legitimacy chains are successfully forged are empirical questions. The concept provides leverage on the social and political construction of transnational legal orders, and how international legal norms are constructed, conveyed, transformed, or resisted in their encounter with national legal and political orders (Shaffer 2012). As noted by many critics of the zeroing decision, the rulings have implications for the allocation of sovereign powers. Through chains of legitimation, WTO jurists redefined the permeability of territorial borders. And in so doing, the WTO strengthened its authority over the meaning of the rules for international trade. This is evident in its ability to define in increasingly precise terms how states may legitimately control their national markets. It is also evident in the difficulty experienced by the United States in validating alternative interpretations of WTO obligations. The linking of national and transnational legal and political orders through processes of legitimation is reshaping the economic significance of territorial

borders, the fortunes of industries, the dynamics of democratic politics, and most broadly, the allocation of sovereign power. In this way, the concept of legitimacy chains provides tools for better understanding the emergence of supranational authority through legitimacy work inside and through national governments.

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