

Balancing Law and Politics: Judicial Incentives in WTO Dispute Settlement

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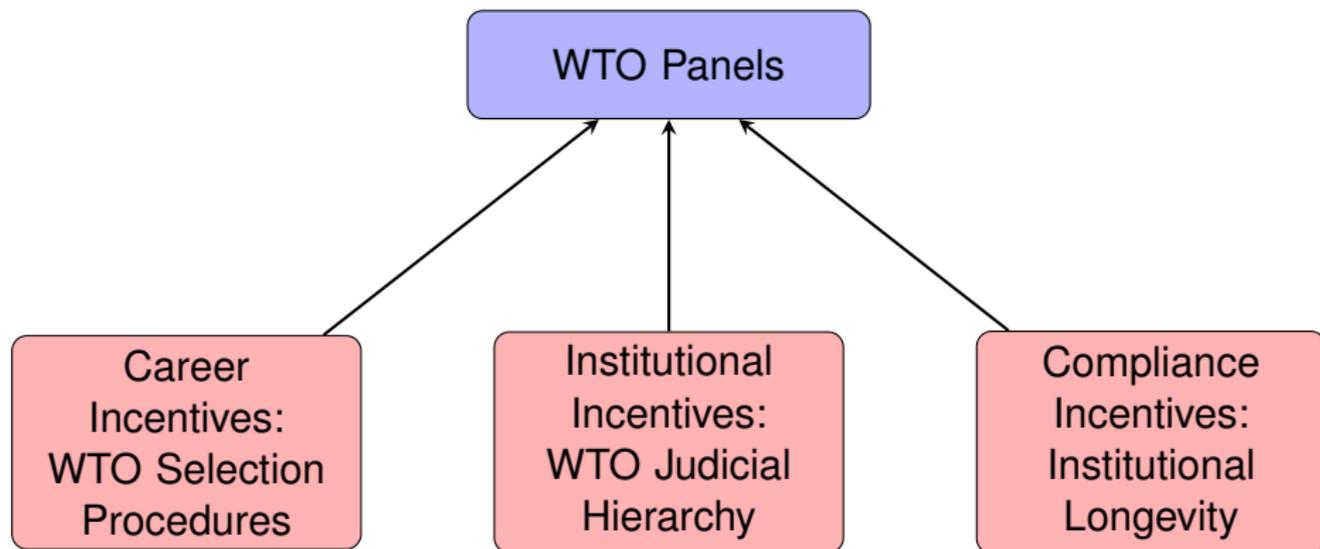
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Motivation

- The international system is increasingly legalized.
- International arbitrators face specific incentives when rendering decisions.
- Do WTO panels engage in strategic decision-making?
- **Our Argument:** WTO panelists respond to individual-level incentives by moderating the losses of powerful countries.

Theory of Judicial Incentives



Theory: Career Incentives

WTO Panelist Selection Procedures:

- WTO experience is valuable for professional advancement.
- Parties to dispute influence the selection of panelists.
- US and EU are parties in 86 percent of disputes in dataset.

Bottom line: Panelists whose views conflict strongly with US and EU are unlikely to get reappointed.

Theory: Institutional Incentives

WTO Judicial Hierarchy:

- WTO panels make decisions in shadow of Appellate Body (AB).
- Appeals to the AB are automatically granted.
- US and EU influence nomination and reappointment of AB members.

Bottom line: Panelists don't want decisions to be overturned on appeal and so anticipate AB incentives.

Theory: Compliance Incentives

Institutional Longevity

- Member state compliance affects the long-term viability of an institution.
- Panelists care about institutional longevity.
- Powerful states (US and EU) have greatest ability not to comply.

Bottom line: Panelists improve prospects for institutional longevity by increasing compliance by powerful countries.

Connecting Theory to Empirics

- Why focus on judicial economy?
 - Occurs when a panel opts not to rule on certain legal arguments raised by the complainant.
 - Allows panelists to engage in strategic decision-making.
- Reasons for judicial economy:
 - Efficiency
 - Concerns about precedent and overreach (Busch & Pelc 2010)
 - **Flexibility for losing party**

Hypothesis

Panelists are most likely to moderate costs of losing when they rule *against* powerful members, specifically the US and the EU.

Data and Methods

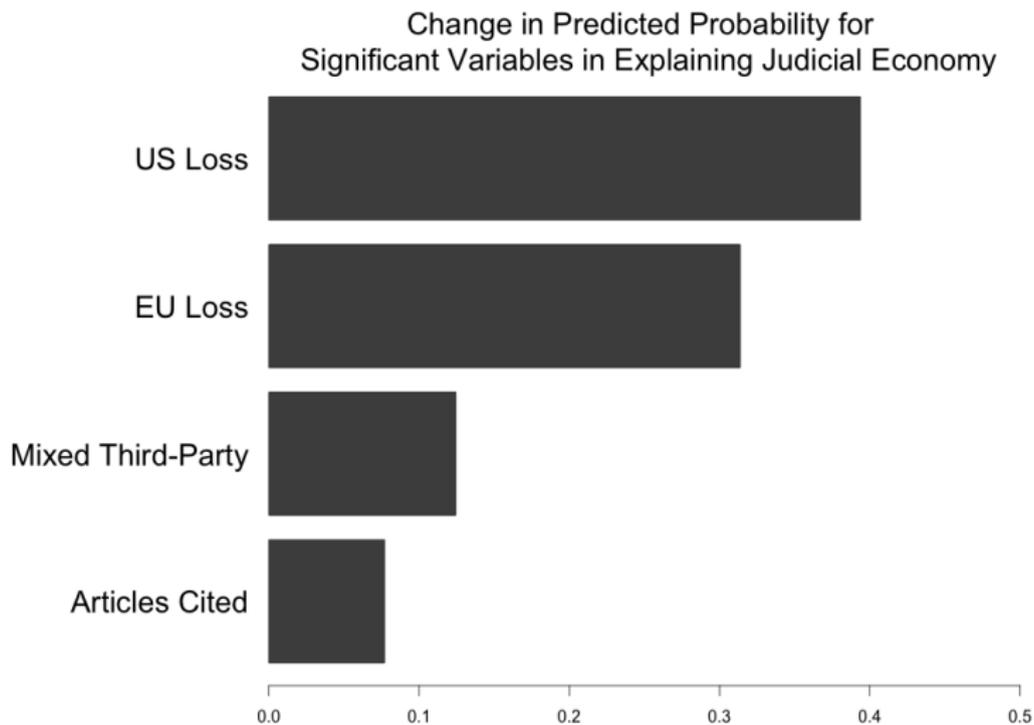
- Data set: 104 cases (1995 to 2005)
 - Only includes disputes that reach full panel process
 - Includes data from Busch and Pelc (2010), Horn and Mavroidis (2011), and several new variables
- Approach: Bayesian logistic regression
 - Results robust to standard logit and rare events logit models

Results I

DV: Judicial Economy	
US Loss	1.407** (0.641)
EU Loss	1.713** (0.854)
Number of Articles Cited	0.859*** (0.309)
Mixed Third-Party Submission	1.000*** (0.340)
Pro-Defendant Third Party	-0.089 (0.091)
Pro-Complainant Third Party	0.052 (0.084)
Health and Safety Standards	1.006 (0.913)
US Complainant	-0.606 (0.624)
EU Complainant	-0.527 (0.545)

Significance: *p<0.1, **p<0.05, ***p<0.01

Results II



Conclusion

- WTO panelists balance legal considerations with career, institutional, and compliance incentives.
- Strategic decision-making affects the content, not the direction, of judgments.
- Panels may facilitate long-term viability of institution by reducing compliance costs for US and EU.