

IMPARTIALITY IN INTERNATIONAL COURTS
EVIDENCE FROM A NATURAL EXPERIMENT AT THE WTO

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Research Question

- How do **states** design & interact with **international organizations & law** to promote cooperation?

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- How do **states** design & interact with **international organizations & law** to promote cooperation?

- To what extent are **international courts/judges impartial**?

Approach & Answer

- Research design: **natural experiment** in the WTO
 - ▶ *Context*: **Appellate Body** panel composition
 - ▶ *Treatment*: **nationality** of judges
 - ▶ *Affinity* → **shared nationality**

- There is **national bias** at the WTO Appellate Body
- and it is driven by the **US**

Motivation & Contribution

- **International law** is one of the cornerstones of the international system

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- Delegation and **impartiality**: mixed evidence
 - ▶ International courts/judges have **autonomy**
 - ▶ **Governments** can **influence** them...
 - ▶ ...but not all: **powerful countries** —particularly the **US**

Motivation & Contribution

- **International law** is one of the cornerstones of the international system
- Delegation and **impartiality**: mixed evidence
 - ▶ International courts/judges have **autonomy**
 - ▶ **Governments** can **influence** them...
 - ▶ ...but not all: **powerful countries** —particularly the **US**
- Focus: **WTO Appellate Body** & US Foreign Policy

WTO's Dispute Settlement & the AB

- Bilateral consultations → Panel → Appellate Body (AB)
- Standing membership of 7 judges → 3 for appeal
- Independence & impartiality are enshrined

WT/AB/WP/6/2

The Members constituting a division shall be selected on the basis of rotation, while taking into account the principles of random selection, unpredictability and opportunity for all Members to serve regardless of their national origin.

Data

- 566 disputes → 148 reports → 1,611 claims (Jan 1995 - Oct 2018)
 - ▶ % Accepted: 21.35
 - ▶ % Rejected: 61.33
 - ▶ % Judicial Economy: 17.32
 - ▶ AD, GATT, DSU, SCM, other
 - ▶ Number of claims, Third parties, Appellant and Appellee experience
- 27 AB judges
 - ▶ Age, Gender, Experience, Public Service, Education; from 15 countries (EU as one)
- Appellants/Appellees: 34 countries (EU as one)

AB rulings with US as Appellant, by presence of US judge

Outcome	No US Judge	US Judge	Total
% Accepted (N)	13.51 (30)	31.82 (84)	23.46 (114)
% Rejected (N)	80.18 (178)	44.11 (127)	62.76 (305)
% Judicial Economy (N)	6.31 (14)	20.08 (53)	13.79 (67)

Baseline Empirical Strategy

$$\text{AB Accepts Appeal}_{c,d,A,a,t} = \beta \text{Appellant Affinity Index}_{d,A,a,t} + \phi \mathbf{X}_{c,d,t} + \alpha_A + \delta_t + \epsilon_{c,d,A,a,t}$$

Appellant Affinity Index

- 1 if a judge only shares Appellant's nationality
- -1 if a judge only shares Appellee's nationality
- 0 otherwise (includes no affinity and both)

Controls

- Judges averaged at dispute-level
- "Treatment"-by-(standardized)-covariate interactions

Effect of AB panel sharing country on AB appeal acceptance rates

	AB accepts claim of appellant				
	(1)	(2)	(3)	(4)	(5)
Appellant Affinity Index	0.105*** (0.036)	0.123*** (0.036)	0.123*** (0.030)	0.099*** (0.036)	0.084** (0.036)
Observations	1,332	1,332	1,332	1,332	1,332
Unique Disputes	111	111	111	111	111
Outcome mean	0.26	0.26	0.26	0.26	0.26
Outcome range	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}
Judges controls		✓	✓	✓	✓
Dispute controls			✓	✓	✓
Year Fixed-effects				✓	✓
Appellant Fixed-effects					✓

OLS estimates. Clustered standard errors at the unique-dispute level in parentheses.

Mechanisms: US influence

- US leverage its position at IOs to achieve its policy goals
- At WTO: leader in litigation + influence language and meaning of rules
- Pressuring & blocking (re)appointments of AB judges

Effect of AB panel sharing country on AB appeal acceptance rates

	AB accepts claim of appellant				
	(1)	(2)	(3)	(4)	(5)
Appellant Affinity Index	0.036 (0.046)	0.062 (0.039)	0.010 (0.047)	-0.003 (0.059)	-0.008 (0.055)
× US Appellant	0.162** (0.071)	0.163** (0.079)	0.301*** (0.113)	0.262** (0.111)	0.234** (0.109)
Observations	1,332	1,332	1,332	1,332	1,332
Outcome mean	0.26	0.26	0.26	0.26	0.26
Outcome range	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}
Judges controls		✓	✓	✓	✓
Dispute controls			✓	✓	✓
Year Fixed-effects				✓	✓
Appellant Fixed-effects					✓

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Alternative Explanations

- Broader “North vs South” taste-based bias

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- Broader “North vs South” taste-based bias
- (No European Union bias)
- Developed Country Affinity Panel
 - ▶ Majority of panel is a developed country national (~ 60% of claims)
- Developed Country Appellant
 - ▶ ~ 70% of claims. (Early OECD members)

Effect of AB panel sharing country development status on AB appeal acceptance rates

	AB accepts claim of appellant				
	(1)	(2)	(3)	(4)	(5)
Devt. Country Affinity Panel	0.073 (0.210)	0.072 (0.244)	0.083 (0.294)	0.022 (0.290)	-0.691* (0.351)
× Devt. Country Appellant	-0.150 (0.280)	-0.134 (0.329)	-0.195 (0.335)	-0.519 (0.344)	0.162 (0.198)
Observations	513	513	513	513	513
Unique Disputes	48	48	48	48	48
Outcome mean	0.24	0.24	0.24	0.24	0.24
Outcome range	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}
Judges controls		✓	✓	✓	✓
Dispute controls			✓	✓	✓
Year Fixed-effects				✓	✓
Appellant Fixed-effects					✓

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Alternative Explanations

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- **Socialization** to US Education/Law
- *Two tests:*
 - (1) Replace Affinity: **Majority** of Panel **US Educated**
 - (2) Repeat **excluding US judges**

Effect of majority of AB panel being educated in the US: *Full Sample*

	AB accepts claim of appellant				
	(1)	(2)	(3)	(4)	(5)
Maj. Panel US Educated	0.000 (0.059)	0.029 (0.070)	-0.159** (0.075)	-0.067 (0.087)	0.011 (0.084)
× US Appellant	-0.403 (0.306)	-0.327 (0.370)	-0.268 (0.343)	-0.187 (0.351)	-0.509* (0.265)
Observations	1,332	1,332	1,332	1,332	1,332
Unique Disputes	111	111	111	111	111
Outcome mean	0.26	0.26	0.26	0.26	0.26
Outcome range	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}
Judges controls		✓	✓	✓	✓
Dispute controls			✓	✓	✓
Year Fixed-effects				✓	✓
Appellant Fixed-effects					✓

OLS estimates. Clustered standard errors at the unique-dispute level in parentheses.

Effect of majority of AB panel being educated in the US: *Excluding US Judges*

	AB accepts claim of appellant				
	(1)	(2)	(3)	(4)	(5)
Maj. Panel US Educated	-0.068 (0.104)	-0.109 (0.103)	-0.375*** (0.125)	-0.258 (0.176)	-0.284 (0.192)
× US Appellant	-0.374 (0.390)	-0.587 (0.440)	-0.071 (0.400)	0.285 (0.426)	-0.641* (0.340)
Observations	687	687	687	687	687
Unique Disputes	67	67	67	67	67
Outcome mean	0.24	0.24	0.24	0.24	0.24
Outcome range	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}
Judges controls		✓	✓	✓	✓
Dispute controls			✓	✓	✓
Year Fixed-effects				✓	✓
Appellant Fixed-effects					✓

OLS estimates. Clustered standard errors at the unique-dispute level in parentheses.

Testing Additional Implications: Foreign Aid

- Is the US trying to exert influence?
- *Corollaries:*
 - (1) PE of Aid: US aid increase to countries w/AB judge
 - (2) Placebo test with European Union aid

Developing countries, 1995-2016:

$$\text{Aid}_{it} = \beta \text{WTO AB Judge}_{it} + \phi \mathbf{X}_{it} + \alpha_i + \delta_t + \epsilon_{it}$$

AB Country Presence and Foreign Aid

	Net US Bilateral Aid		Net EU Bilateral Aid	
	(1)	(2)	(3)	(4)
WTO AB Judge	0.618** (0.254)	0.667** (0.258)	0.069 (0.133)	0.049 (0.124)
Observations	2,609	2,053	2,892	2,223
Countries	144	118	149	119
R^2	0.84	0.82	0.78	0.76
Controls		✓		✓
Country FE	✓	✓	✓	✓
Year FE	✓	✓	✓	✓

OLS estimates. Clustered standard errors at the unique-dispute level in parentheses.

Discussion & Next Steps

- US is winning, **but disrupting** it
- **EU** doesn't seem to drive influence
- **Affinity as a continuum** rather than binary
- Words matter: Analyzing **content**

Main take away

- There is **national bias** in the WTO's Appellate Body
 - ▶ Driven by the **US**
 - ▶ **not** explained by **developing status** or **socialization**
 - ▶ can affect broader US foreign policy (ie, **aid**)

Main take away

- There is **national bias** in the WTO's Appellate Body
 - ▶ Driven by the **US**
 - ▶ **not** explained by **developing status** or **socialization**
 - ▶ can affect broader US foreign policy (ie, **aid**)
- **Challenges** the impartiality and independence of international law/IOs
- Adds to policy debates about **modification** of WTO DS
- Emphasizes the importance of **bureaucrats** for international politics

Thank you!

Identification Assumption: Balance Tests

	Panel Affinity with Appellant							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Female Judge in Panel	-0.051 (0.118)							-0.062 (0.131)
Avg. Judge Age		-0.001 (0.010)						-0.008 (0.010)
Avg. Judge Experience			0.053* (0.030)					0.056* (0.029)
Maj. US Educated				0.228** (0.105)				0.176 (0.118)
Former Amb. in Panel					-0.131 (0.102)			-0.074 (0.109)
Total number of claims						0.001 (0.008)		-0.001 (0.007)
Number of third parties							-0.003 (0.011)	-0.009 (0.011)
Observations	137	137	137	137	137	137	137	137
Outcome mean	0.44	0.44	0.44	0.44	0.44	0.44	0.44	0.44
Outcome range	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}

OLS estimates. Clustered standard errors at the unique-dispute level in parentheses.

Effect of AB country affinity on AB appeal acceptance rates

	AB accepts claim of appellant				
	(1)	(2)	(3)	(4)	(5)
Appellant Affinity	0.161*** (0.059)	0.239*** (0.072)	0.230*** (0.068)	0.159** (0.077)	0.226** (0.105)
Appellee Affinity	-0.039 (0.057)	-0.017 (0.057)	-0.005 (0.058)	-0.057 (0.053)	-0.010 (0.056)
Appellant × Appellee Aff.	-0.230*** (0.081)	-0.200** (0.097)	-0.360 (0.284)	-0.678** (0.278)	-0.425 (0.292)
Observations	1,332	1,332	1,332	1,332	1,332
Unique Disputes	111	111	111	111	111
Outcome mean	0.26	0.26	0.26	0.26	0.26
Outcome range	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}
Judges controls		✓	✓	✓	✓
Dispute controls			✓	✓	✓
Year Fixed-effects				✓	✓
Appellant Fixed-effects					✓

OLS estimates. Clustered standard errors at the unique-dispute level in parentheses

Effect of AB panel sharing country on AB appeal acceptance rates

	AB accepts claim of appellant				
	(1)	(2)	(3)	(4)	(5)
Appellant Affinity Index	0.041 (0.065)	0.065 (0.059)	0.020 (0.085)	0.015 (0.098)	-0.087 (0.095)
× US Appellant	0.157* (0.085)	0.149 (0.092)	0.277* (0.147)	0.235* (0.142)	0.327** (0.145)
× EU Appellant	0.021 (0.095)	0.030 (0.098)	0.002 (0.127)	0.023 (0.131)	0.128 (0.134)
Observations	1,332	1,332	1,332	1,332	1,332
Unique Disputes	111	111	111	111	111
Outcome mean	0.26	0.26	0.26	0.26	0.26
Outcome range	{0,1}	{0,1}	{0,1}	{0,1}	{0,1}
Judges controls		✓	✓	✓	✓
Dispute controls			✓	✓	✓
Year Fixed-effects				✓	✓
Appellant Fixed-effects					✓

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Summary Statistics

Variable	Mean	Std. Dev.	Min.	Max.	N
AB accepts appellant claim	0.258	0.438	0	1	1332
AB accepts appellant claim (w/JE)	0.214	0.41	0	1	1611
Appellant Affinity Index	0.02	0.65	-1	1	1611
Appellant Affinity	0.325	0.468	0	1	1611
Appellee Affinity	0.305	0.46	0	1	1611
US Appellant	0.302	0.459	0	1	1611
EU Appellant	0.246	0.431	0	1	1611
Developed Country Affinity Panel	0.598	0.491	0	1	1611
Developed Country Appellant	0.714	0.452	0	1	1611
US judge in panel	0.518	0.5	0	1	1611
Avg. Judge Age	64.188	4.702	53	76.333	1611
Avg. Judge Experience	3.301	1.401	0.192	6.844	1611
Female Judge in Panel	0.253	0.435	0	1	1611
Majority of Panel Educated in US	0.816	0.387	0	1	1611
Former Ambassador Judge in Panel	0.397	0.489	0	1	1611
Total number of claims	18.08	12.933	1	58	1611
Number of third parties	9.57	6.404	0	24	1611
Appellant Experience	11.232	10.828	1	52	1611
Appellee Experience	12.267	12.903	1	52	1611
AD claim	0.197	0.398	0	1	1611
DSU claim	0.142	0.349	0	1	1611
GATT claim	0.164	0.371	0	1	1611
SCM claim	0.117	0.322	0	1	1611