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THE DOMESTIC POLITICAL-ECONOMY OF THE WTO CRISIS: LESSONS FOR PRESERVING MULTILATERALISM

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ABSTRACT

A major contributor to the crisis at the World Trade Organization (WTO) is the decline in support for multilateralism in the United States. Three key problems with WTO design precipitated the decline. First, incomplete rules related to trade remedies are interpreted by the WTO's Appellate Body (AB) in ways that conflict with a narrow set of sensitive US domestic priorities. Second, existing WTO rules do not sufficiently account for non-market economies, such as China. Third, remediation of these problems is infeasible due to consensus-based decision-making in the WTO. These problems represent more fundamental challenges induced by increased economic integration—loss of sovereignty and erosion of democracy. To alleviate these problems in multilateral agreements we suggest: 1) a narrow solution that carves out a special process for handling trade remedy disputes; 2) a broad solution that relaxes the requirement of consensus for WTO reform, adopting some form of supermajority voting or a sunset clause; 3) the reform of domestic consensus-building institutions within the US that directly address the political-economy sources of voter discontent.

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1 Introduction

The multilateral institutions that have sustained global economic cooperation since 1944 are under threat. The World Trade Organization (WTO) is in danger of losing legitimacy as its dispute settlement system no longer operates and important member countries move down the path of unilateralism and economic nationalism. The International Monetary Fund (IMF) and the World Bank have been weakened by divisions among members over governance and conditionality, leading China to launch its own global institutions, including the Asian Infrastructure Investment Bank (AIIB). Despite admonitions that global peace and prosperity are at risk, scholars of international organization have yet to arrive at a consensus on responding to the mounting challenges that face the multilateral economic order.[1] In this paper, we focus on one international institution—the WTO—and explore the deep causes of its crisis. Acknowledging that the United States has historically played a major role in WTO leadership, we focus on causes stemming from the US's domestic political-economy environment. This analysis is based on a cumulation of research findings, including some original work of our own.

In December 2019, the US rendered the WTO's Appellate Body (AB) inoperable by blocking the appointment of new judges and allowing the number of judges to dwindle to fewer than three. Approval of new judges is done by consensus and thus any member can block the process. When the US did so repeatedly, it crippled the WTO's dispute settlement mechanism (DSM).[2] The DSM was the primary innovation over the WTO's successor agreement, the General Agreement on Tariffs and Trade (GATT), signed in 1947. While 2019 marked the final demise of the DSM, trouble began in 2011 when the US blocked the appointment of an AB judge for the first time. This marked an increase in politicization of AB judge appointments, with several more candidates subsequently losing US support because of unfavorable positions towards the US (Shaffer et al., 2016). Notably, this politicization occurred across US presidential administrations and across political parties. After the 2020 election, the Biden Administration continued to block the appointment of new AB judges on the grounds that the US has long-standing, bipartisan "systemic concerns" with the AB.[3] We identify the main complaints leading to the US

[1]While no consensus exists, other authors, (e.g., Bown and Keynes, 2020), have written about the challenges to the WTO's Appellate Body, and there have been statements made by past WTO officials, (e.g., "DDG Wolff outlines possible responses to calls for WTO reform", WTO (2021) `https://www.wto.org/english/news_e/news21_e/ddgaw_13jan21_e.htm`).

[2]Disputes that reach the AB will remain unresolved until the AB is reformed or WTO members find other ways to settle trade disputes (Payosova et al., 2018). As of the date of this paper, there are 24 disputes stuck in legal limbo at the AB stage, several of them involving the US. See `https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm`.

[3]See Statements by the United States at the Meeting of the WTO Dispute Settlement Body

abandonment of the WTO-AB.

In 2018, the US imposed $50 billion of new tariffs on steel and aluminum imports on national security grounds, claiming that the action did not require WTO review or approval (Bown, 2019). Side-stepping the WTO was rooted in a belief that the AB continually overstepped its authority, a complaint known as "judicial overreach" (USTR, 2018; Payosova et al., 2018). Throughout its existence, the AB had significant discretion in interpreting the WTO agreements because the original rules, written in 1995, did not fully account for controversial areas, such as anti-dumping duties, countervailing duties, and safeguards, which are known collectively as "trade remedies". These trade remedy decisions have had a disproportionately negative impact on manufacturing in the US and the steel industry in particular. The US view was that the interpretation of the vague or incomplete rules was unfavorable to the US, and these interpretations had become enshrined as "precedent". As can be expected, the consensus rule-making process of the WTO did not allow a revision or update of these rules. Any update would have satisfied the US at the expense of at least one other WTO member. The complaint of judicial overreach is therefore a *symptom* of the failure of members to update the process of handling trade remedies, and this failure is in turn due to the status quo bias of the consensus decision-making procedures in the WTO.

Just as the crisis over the appointment of Appellate Body judges is a symptom of the failure to modernize WTO agreements related to trade remedies, the ongoing US-China trade war is symptomatic of the failure of WTO reform. In 2018, the US imposed tariffs on $250 billion of Chinese imports in retaliation against complaints of intellectual property theft and other non-market consistent actions, without going through the WTO's dispute resolution process. While this unilateral action contravened WTO rules that require a member to win a dispute before acting against another member (and then, within strict limits, and only if the member refuses to change its policies), the US claimed that it had run out of WTO-consistent options. Problems with Appellate Body overreach were only a part of the reason for the action (USTR, 2018). WTO rules written in 1994 were predicated on major trading partners being market economies. The admission of China into the WTO in 2001 came with the expectation that China's economy would continue on a market-oriented path, but this did not happen. The consequence was that WTO dispute settlement rules and institutions did not have the capacity to accommodate China's practices. Once again, consensus rule-making of the WTO is implicated—rules cannot be updated to reign in major trading partners with non-market economies if these same partners are members of the WTO.

Geneva, May 28, 2021, p. 12. Available at https://geneva.usmission.gov/2021/06/02/statements-by-the-united-states-at-the-may-28-2021-dsb-meeting/

While AB rulings on trade remedies affected US workers and employers in import-competing firms, unfair Chinese trade practices, such as intellectual property theft, export restrictions, and market access barriers, hit US export interests hard. Consistent with the arguments in Bowen, Broz, and Rosendorff (2021), the result is a strong coalition of both import-competing and export-oriented industries pushing back against the WTO for its failure to address China's non-market interventions.

These problems, and the broader nationalist backlash against multilateralism, can be understood by considering Dani Rodrik's "trilemma of the world economy" (Rodrik, 2000). The essence of the trilemma is that complete international economic integration, national sovereignty and democracy cannot coexist. Any one must come at the expense of the other two. The WTO agreement increased US integration with the world economy, but the consequence was an erosion of sovereignty and democracy.

Two forms of delegation may be to blame: one international and one domestic. We posit that in the US, the delegation of control to a supranational group of judges (the AB) constituted a loss of sovereignty that contributed to the political backlash. In support of this argument, Bowen, Broz, and Muendler (2021) show that AB rulings had a causal impact on US presidential elections. Support for Donald Trump (who ran on an anti-trade platform) in the 2016 election was higher relative to Mitt Romney (a traditional conservative) in 2012 in US counties where local employment was more exposed to adverse Appellate Body rulings. On the other hand, by law, the US Congress sets US trade policy objectives and defines the boundaries of executive branch action on multilateralism. The Reciprocal Trade Agreements Act of 1934 (RTAA) delegated some of this authority to the president to negotiate bilateral and reciprocal trade agreements. Further authority was delegated to the president under "fast track" legislation, beginning with the Trade Act of 1974. Future extensions of this authority allowed the creation of the WTO in 1994. Consistent with the strain on democracy caused by integration, the extension authorizing the WTO expired one day after the signing of the Marrakesh Agreement—the final agreement establishing the WTO.[4] The most recent fast track legislation, "Trade Promotion Authority (TPA)", expired July 1, 2021. The possibility of future fast track legislation hangs in limbo, shrinking the chances of any action on multilateralism by the United States in the near future.

If multilateralism has eroded democracy, then one of the most pressing challenges for research in international political economy is to understand the role of domestic institutions in supporting a rules-based multilateral trading system. As a start, we identify five US trade poli-

[4]See U.S. Government Publishing Office. "H.R.5110, https://www.govinfo.gov/content/pkg/BILLS-103hr5110enr/pdf/BILLS-103hr5110enr.pdf."

cymaking institutions that affect domestic support for multilateralism—*Delegation*, *Notification and Consultation*, *Compensation*, *Reciprocity* and *Escape Clauses*.

Delegation of trade policy authority to the president facilitates efficient trade agreements because presidents, being elected by a nationwide constituency, internalize the aggregate national gains from trade. But the aggregate gains obscure the acute suffering of a relatively small number of workers and communities decimated by international trade, as shown in research on the "China shock" (Autor et al., 2016; Acemoglu et al., 2016). The reason policy responses to these distributional effects took so long to surface remains an open question (Broz, Frieden, and Weymouth, 2021), but we make small progress here. Our analysis suggests that congressional delegation of trade policy authority to the president has resulted in a loss of representation for the workers and the communities harmed by trade, whose preferences may not have received sufficient attention as multilateralism unfolded.

We argue that this loss of representation can be mitigated by other domestic institutions. *Notification and Consultation* procedures compel the president to notify and consult with private-sector stakeholders when negotiating trade agreements. *Compensation* paid to workers and firms harmed by trade agreements can also be an important tool for alleviating the pain to those displaced by trade agreements, if designed correctly. While compensation is thought of narrowly in current discussion (for example, as Trade Adjustment Assistance), historically, the complete social welfare system has been used to support open markets and is an integral component of this institution.[5]

Reciprocity is required by Congress for the president to negotiate trade agreements that elicit reciprocal tariff reductions from other countries. This incentivizes US exporting firms to support the multilateral trading system and helps create a domestic coalition for its support. Bowen, Broz, and Rosendorff (2021) provide evidence that *Reciprocity* and *Compensation* contribute to support for multilateralism, looking at three eras of US Trade Policy. The era of *Reciprocity with Redistribution* (1932-2015) saw the rise of the welfare state in the US as well as the expansion and deepening of reciprocal trade agreements.

Finally, *Escape Clauses* in trade agreements allow temporary suspensions of obligations to assist industries facing import competition breathing space to make necessary adjustments. While a significant body of research establishes the importance of escape as a necessary "safety valve" to mitigate against unexpected effects of trade, the aforementioned domestic institutions merit further inquiry.[6]

[5]See Hornbeck (2013) and Bowen, Broz, and Rosendorff (2021).

[6]See, for example, Kravis (1954); Rosendorff and Milner (2001); Bowen (2015); Pelc (2016); Beshkar and Bond (2016); Bagwell and Staiger (2016).

The three solutions we propose address issues of sovereignty and democracy with reform to both the WTO and domestic institutions. First, the difficulty with trade remedies at the WTO suggests that a wholesale reform of the Appellate Body may not be necessary. Rather a narrow solution focused only on trade remedy cases, or going even narrower to address specific domestic interests, such as steel, can be a path to a solution. Such a solution can involve further flexibility in WTO agreements for trade remedies or specific industries, or a special Appellate Body process dedicated only to these cases. Second, the consensus rule prevents any reform of the WTO that allows adjustment to changing needs and conditions of individual countries. Research by Anesi and Bowen (2021) suggests that a super-majority excluding even a *single* member is sufficient to introduce reform where consensus cannot. The first two proposals address US sovereignty concerns by allowing more control to respond to domestic interests. Finally, reform of domestic consensus-building institutions can alleviate the need to resort to trade remedies. In particular, a deeper and broader *Notification and Consultation* process can highlight the significant distress of specific communities and industries before they become a significant problem for the international institution. Once identified, *Compensation* institutions (including all forms of social welfare, workforce training etc) can be adequately designed and targeted to restore workers and communities. In short, restoration of multilateralism requires deep reform in *both* international and domestic institutions.

The remainder of the paper proceeds as follows. In Section 2, we describe the institutional details of the WTO dispute settlement mechanism and its crisis. Section 3 diagnoses the core complaints of the US leading to the crisis. Section 4 shows how Rodrik's "Trilemma of the Global Economy" can serve as a heuristic for analyzing the deeper threats leading to these complaints. Section 5 focuses on the US Congress and the domestic trade policy institutions it uses to build domestic support for multilateralism. Section 6 proposes solutions to the WTO crisis in light of its symptoms and fundamental causes. Section 7 identifies a research agenda to further understand threats to multilateralism using the WTO example as a guide. Section 8 concludes.

2 Demise of the WTO's Dispute Settlement Mechanism

The WTO's dispute settlement process begins when a member mounts a *Complaint* against another member for violating WTO rules. The parties then enter a *Consultations* phase where they try to negotiate a mutually acceptable resolution of their dispute. About 60% of all disputes are settled via consultations—an obvious benefit since this avoids costly litigation, and a significant achievement of the WTO's DSM. In the roughly 40% of cases that remain unresolved, the

dispute goes to a *Panel of Inquiry*, where independent experts, who can't be from a country involved in the dispute, review evidence and then issue a ruling. If either side disagrees with the panel's ruling, they can request *Appellate Review*. Each appeal is heard by three members of a seven-member Appellate Body, who are randomly assigned to appeals.[7] Members of the AB have four-year terms and broadly represent the range of WTO members. The ruling they issue can uphold, modify or reverse a panel's findings; these AB reports are final and can only be blocked if all WTO members vote against them (as with panel rulings). The next phase involves implementation of the Appellate Body Report, which aims to bring the "losing" side's policies into conformity. The AB monitors and reviews compliance and, in the event of non-compliance, allows the complainant to impose retaliatory tariffs against the respondent that has failed to implement.

The role of the AB is arguably the main innovation of the dispute settlement mechanism at the WTO over its predecessor, the GATT, and serves as the final stage of arbitration. The AB can recommend that a country bring its policies or measures into conformity and, if a reasonable time period for implementation passes, authorize retaliation. In principle, the Dispute Settlement Body (DSB), to which all 164 WTO Members belong, can formally abandon an AB ruling but consensus is required, including from all complainants and the respondent in a dispute. In other words, once an AB recommendation has been made, the status quo outcome is implementation unless all WTO members agree to overturn the recommendation. Not surprisingly, no AB decision has been overturned by the DSB since the WTO's inception in 1995. Hence, the Appellate Body has extraordinary power to interpret and enforce WTO rules.

In the 2016 presidential campaign, candidate Donald Trump described the WTO as a "disaster" and threatened to pull the US out of the organization.[8] Once elected, President Trump continued blocking the appointment of new Appellate Body members. As of December 2019, the Appellate Body has not had enough members to hear appeals. The absence of the Appellate Body means that members can now block dispute settlement proceedings by appealing panel reports "into the void." WTO panels will continue to function as normal. But if either party to a dispute requests an appeal, the panel's report cannot be adopted, and the dispute will hang in legal limbo, effectively providing the loser with a veto. This rolls back dispute settlement to the era of the GATT, when any member could block a panel ruling by refusing to consent to it.

[7] Rule 6 of the working procedures for appellate review stipulates that "The Members [judges] 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." See `https://www.wto.org/english/res_e/publications_e/ai17_e/wpar_rul6_oth.pdf`.

[8] *Meet the Press*, July 24, 2016, available at `https://www.nbcnews.com/meet-the-press/meet-press-july-24-2016-n615706`.

3 Diagnosing the problem

Before digging deeper into the long-standing issues, we first assess the rhetorical claim that the WTO is unfair to the US. Figure 1 reports the "win-loss" record of the US in WTO disputes between 1995 and 2016, as reported by the US Trade Representative (USTR).[9] Over this period, the US was the complainant in 108 disputes, and it lost on the core issues only four times (4%), while winning on the core issues 46 times (42%) in litigation, and resolving to its satisfaction in consultations 29 times (27%). If we consider only the 79 US complaints that were completed by the end of 2015, the US has prevailed (in litigation and in consultations) 75 times (95%) in the disputes it mounts.

By contrast, when the US is the respondent, it loses most of the time. The US was the respondent in 124 disputes to the end of 2015, and 97 of these disputes had worked their way through the dispute settlement process. Of these 97 completed disputes, the US lost on the core issues 57 times (59%). So, it is inaccurate to say that the WTO is unfair to the US. By the USTR's own scorekeeping, the US almost always wins the cases it brings against other WTO members, but it loses most of the cases that other members bring against it. So, by blocking the dispute settlement process, the US is imposing costs on itself—a credible signal of the importance it places on the disputes it *loses* as a respondent.

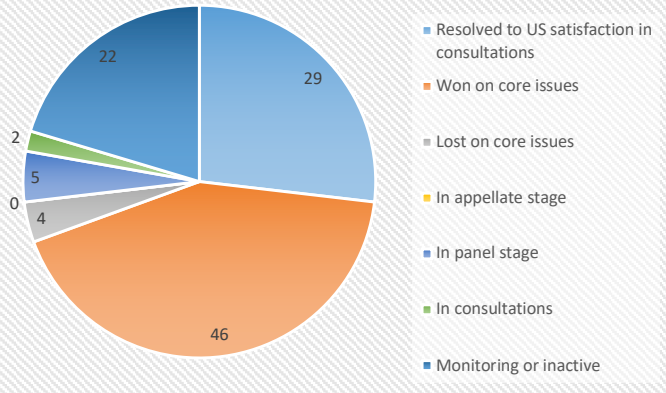
3.1 Trade Remedies, Zeroing and Judicial Overreach

The US grievance against the WTO is about the trade disputes that it loses in adjudication. Here, we identify the specific types of dispute losses that have generated US opposition.

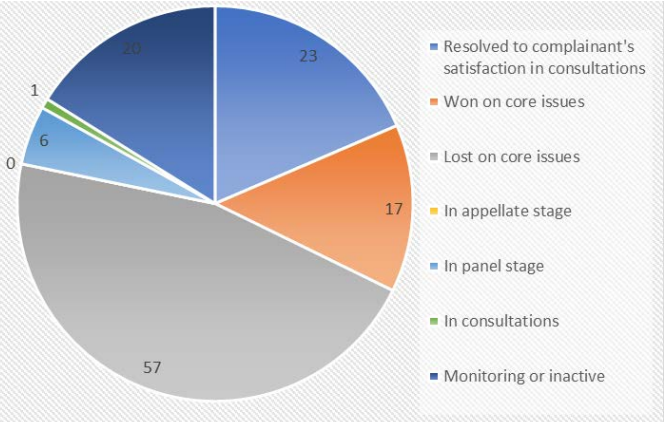
In most of the cases where the US is the respondent, "trade remedies" are involved (Bown and Keynes, 2020; Schott and Jung, 2019). Trade remedies are WTO-legal domestic policy tools that allow governments to impose tariffs on imports that are causing material injury to a domestic industry. They include anti-dumping and countervailing duties, and safeguards. They provide an element of flexibility in trade agreements and serve as an "escape clause" so that members can be responsive to important constituencies when they need to be, without abrogating their overall commitment to trade liberalization (Rosendorff and Milner, 2001; Pelc, 2016).

Table 1 shows the number and shares of WTO disputes that involve trade remedies when the US is the respondent, when the US is the complainant, and for the universe of disputes. Trade remedies are involved in over half (53%) of all disputes where the US is the respondent, but

[9] Compiled from data provided by the USTR's "Snapshot of WTO Cases Involving the US." December 9, 2015. https://ustr.gov/issue-areas/enforcement/overview-dispute-settlement-matters



(a) US as Complainant



(b) US as Respondent

Figure 1: US "Win-Loss" Record in WTO Disputes, 1995-2016
Source: Compiled from USTR (2015)

only 19% of the disputes where the US is the complainant, and 34% of disputes involving other WTO members.[10] US trade remedies are controversial and make up the majority of complaints brought against the US, and a disproportionately high fraction relative to all other countries and disputes.

The US acknowledges that trade remedies underlie its debilitating actions toward the AB. In 2017, the USTR announced that "defending US national sovereignty over trade policy" and "strictly enforcing US trade laws" are its top two trade policy priorities.[11] The concern with national sovereignty refers specifically to AB rulings on zeroing.[12] Zeroing involves the method

[10]Bown and Keynes (2020) found that 65% of the complaints brought against the US involved trade remedies. Their data set covers a slightly different time period from Hoekman et al. (2016). We have chosen to use the somewhat more conservative count of trade-remedies that appear in Hoekman et al. (2016).

[11]President's Trade Policy Agenda of 2017, pp. 2-3.

[12]According to Thomas Prusa, "zeroing is the single biggest reason behind the US's current position toward

Table 1: **WTO Disputes by Type and Member**

	Type of Dispute		
	Trade Remedies	Other Agreements	*Total*
US Respondent	67 (53%)	59 (47%)	126
US Complainant	20 (19%)	85 (81%)	105
Other Complainants/Respondents	95 (34%)	181 (66%)	276
Total	182 (36%)	325 (64%)	507

Source: WTO Dispute Settlement Database (2016 version) by Hoekman et al. (2016),
Note: "Trade Remedies" include all disputes where Anti-Dumping (AD), Countervailing Duties (CVD), or Safeguards (SG) are indicated in the Hoekman et al. (2016) data set.

that US administrative authorities use to calculate anti-dumping duties, which is to assign a "zero" to all instances in which the export price of a product crossing a US port is higher than its price in the source country. Dumping is defined as selling a product abroad for less than its price in the source country on average, so zeroing tilts the odds towards finding evidence of dumping and results in higher AD duties when it does. Zeroing therefore effectively increases US trade barriers. The US uses zeroing on all its anti-dumping determinations, so US trade protection is higher than it would otherwise be. According to (Bown and Prusa, 2011, 360), '[w]ere the US to stop zeroing, perhaps as much as half of all US anti-dumping measures would be removed and the duties in the other cases would fall significantly." For this reason, other WTO members that export to the US have repeatedly challenged the US for zeroing.

The US position is that, since there is no explicit prohibition against zeroing, AB rulings against the practice are examples of judicial overreach that infringe on US sovereignty (USTR, 2020).[13] The administration's priority on "enforcing US trade law" refers to trade remedies: "Trade remedies are a foundation to the implementation of the WTO agreement . . . [I]t is critical that WTO members fully recognize their centrality to the international trading system."[14]

The US has long insisted on its right to use trade remedies when it negotiates trade agree-

slowing AB decisions." Quoted in Chad P. Bown and Soumaya Keynes (2018): "Zeroing: The Biggest WTO Threat You've Never Heard Of," Trade Talks podcast Episode 45, July 2. This US frustration has been voiced for years, but it took on greater urgency after China entered the WTO in 2001, as noted in the President's Trade Policy Agenda of 2017, prepared by the office of the USTR, available at `ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2017/2017-trade-policy-agenda-and-2016`.

[13]Stephen Vaughn, former general counsel to the USTR, presents a clear statement of the Trump administration's trade policy agenda in Chad P. Bown and Soumaya Keynes (2018): "Trade Policy Under Trump," Trade Talks podcast Episode 111, November 25. See also Rushford (2018).

[14]President's Trade Policy Agenda of 2017, pp. 2-3.

ments with other nations. In the Uruguay Round negotiations, the US fought to insulate trade remedies from challenges by the WTO's Dispute Settlement Body (DSB), obtaining a standard of review (Article 17.6) that imposed constraints on the DSB's ability to override member governments' interpretations of the facts in trade remedy cases. During negotiations, the US also successfully prevented a strict prohibition of zeroing, but the resulting compromise was vague, and left the door open to many subsequent WTO disputes. This illustrates the deeper problem of the failure of members to clarify existing rules. This, in turn, is a result of the consensus rule which would require all 164 WTO members to agree to any change.

The Biden administration has not lifted the block on the AB since taking office, underscoring that this is not a partisan issue. In parallel, proposed legislation intended to address competition from China has included additions to trade remedies laws.[15]

3.2 China and non-market economies

Trade remedies—and the esoteric issue of zeroing—appear to be an important reason why the US has crippled the WTO, but this frustration has been around for years. It took on greater urgency after China entered the WTO in 2001, as noted in the *President's Trade Policy Agenda of 2017*. The link to trade remedies is that, previously, the US had designated China a "non-market economy," which allowed it to use alternative methodologies—not reliant on data provided by China—to assess its countervailing and anti-dumping duties. These alternative methodologies are the equivalent of zeroing: they allowed the US higher protection against imports from China. But in 2011, the Appellate Body reversed an earlier panel ruling that supported the US position that Chinese state-owned enterprises are "public bodies" that potentially provide subsidies to downstream Chinese firms (Stewart and Drake, 2017). The decision alarmed US trade officials because they wanted to use countervailing duties to defend against subsidized imports from China (USTR, 2020, 2018). The Appellate Body ruled that majority government ownership alone was insufficient to establish that such firms operated like government entities and thus were capable of conferring subsidies.

The conflict between China and the US has played out at the WTO, where disputes involving the two nations are far more likely than with other nations. Table 2 reveals that the US has been responsible for half of all complaints mounted against China's trade practices, whereas the US has been the target of 69% of China's complaints. Overall, 55% of China's trade disputes (as

[15] See "H.R. 4521, The America COMPETES Act of 2022, Factsheet. `https://www.speaker.gov/sites/speaker.house.gov/files/America%20COMPETES%20Act%20of%202022%20HR%204521.pdf`. Should the AB (or a reformed AB) be restored, it will likely have to contend with *more* desire for flexibility from the US.

both respondent and complainant) have been with the United States. The two nations are at loggerheads over trade.

Table 2: **WTO Disputes involving the US and China**

	Party to Dispute		
	US	Other Countries	*Total*
China Respondent	17 (50%)	17 (50%)	34
China Complainant	9 (69%)	4 (31%)	13
Total	26 (55%)	21 (45%)	47

Source: WTO Dispute Settlement Database (2016 version) by Hoekman et al. (2016).

The concern about non-market economies also shows up in the *types* of disputes that China is involved in. The US and other nations accuse China of using extensive government *subsidies* to promote advanced technology industries such as robotics and clean energy as well as mature industries like steel and aluminum. Another charge is that China imposes *export restrictions* on rare earths and other minerals like coke and bauxite to give China's downstream producers a competitive edge by decreasing their input costs.[16]

Table 3 shows the number and share of WTO disputes that involve subsidies and export restrictions when China is the respondent, the complainant, and for the universe of disputes. Subsidies are involved in 25% of all disputes where China is the respondent, but none of the disputes where China is the complainant, and just 9% of disputes involving other WTO members. China's subsidies are controversial and make up a substantial portion of the complaints brought against China, and a high fraction relative to all other countries and disputes.

The same holds for China's use of export restrictions. Export restrictions on minerals are involved in 16% of the disputes where China is the respondent, but none of the disputes where China is the complainant, and just one dispute (0.2%) involving all other WTO members. When China uses export bans and quotas to nurture homegrown production of new technologies, and to support its steel and aluminum producers, other members mount WTO complaints. Outside of China, export restrictions have not been an issue. As with subsidies, this is another distinguishing feature of China's participation in the WTO that sets it apart from members with market economies.

[16]China is the world's leading producer of rare earths, tungsten and molybdenum, and its exports bans and quotas harm workers and firms in other nations that manufacture downstream products, including electric car batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum and chemicals.

Table 3: **Type of WTO Disputes Involving China**

	Type of Dispute			
	Subsidies	Export Restrictions	Other Issues	*Total*
China Respondent	9 (25%)	6 (16%)	21 (58%)	36
China Complainant	0 (0%)	0 (0%)	13 (100%)	13
Other Complainants/Respondents	42 (9%)	1 (0.2%)	415 (91%)	458
Total	51 (10%)	7	449 (90%)	507

Source: WTO Dispute Settlement Database (2016 version) by Hoekman et al. (2016),
Note: "Subsidies" include all disputes categorized as involving subsidies in the Hoekman et al. (2016) data set.

The difficulty with addressing non-market economies is another example of the incompleteness of the rules that lie behind the US attack on the WTO. The rules were not designed to address the pervasive use of export subsidies by state-capitalist governments. So, on the one hand, the US charges the Appellate Body with judicial "overreach" for constraining US discretion on trade remedies—a grievance that intensified with the China Shock. On the other hand, the US charges WTO members with "underreach" for failing to agree on new rules regarding state-capitalist members like China.

Conceptually, the WTO agreement of 1995 is an incomplete contract that bound negotiated tariffs and quotas but left significant discretion over trade remedies to national governments (see, for example, Horn et al., 2010). The contract was incomplete for two reasons: First, at the time the WTO agreements were negotiated, members could not agree on how much discretion they should have with respect to trade remedies, so these provisions were vaguely worded. For its part, the US explicitly refused to agree to negotiating proposals that would have prohibited zeroing. The resulting vagueness left room for the WTO adjudicating bodies to determine the actual degree of discretion, which is why the US is at loggerheads with the Appellate Body today. Second, the agreement was incomplete because it did not (and could not) anticipate the full effect of China's entry into the WTO in 2001, and the subsequent import surge that decimated manufacturing industries and local labor markets in the US (Autor et al., 2016; Acemoglu et al., 2016). Moreover, when entry was negotiated, the continuation of non-market practices that led to the surge was unforeseen, so the WTO agreement was largely silent on these matters.

The stalemate over the appointment of new judges to the Appellate Body and the trade war that followed are symptoms of deeper problems in the international economic order. We assess these deeper problems next.

4 Analyzing threats to multilateralism

Two decades ago, economist Dani Rodrik recognized that *international economic integration* and *national sovereignty* are two elements of an irreconcilable "political trilemma of the world economy" (Rodrik, 2000, 180). By "international economic integration" Rodrik was referring to reductions in national barriers to trade and capital flows, and the international rules and institutions that help countries sustain these reductions (for example, the WTO). By "sovereignty" he refers to the independent authority of states to make and administer laws within their territories. The third element of the trilemma is *democracy*, which Rodrik referred to as "mass politics." Mass politics directs attention to democratic political systems in which the franchise is unrestricted, societal actors are highly mobilized, and politicians and political institutions are responsive to mobilized groups (Rodrik, 2000, 180-81). According to Rodrik, governments can combine any two of these three elements but can never have all three simultaneously. For example, when nation-states pursue deep international economic integration, they face a trade-off—they can retain their national sovereignty and make the pursuit of global economic integration their overriding policy objective, but this choice is incompatible with mass politics because democracies must be responsive to pressures from the workers and the firms that are harmed by globalization. The other alternative is for nation-states to pool their sovereignty in a "global federation" that tailors mass politics to the needs of global markets. With this choice, as approximated in the Eurozone, mass politics is retained at the level of the federation, but the powers of nation-states are severely circumscribed by supranational rules and authorities.

Rather than viewing the trilemma as a stark choice of only two elements and none of the third, it is useful to consider that any nation can maintain some *degree* of integration, sovereignty and democracy and thus trade-offs occur along some continuum between the three. In geometric terms, full integration, complete sovereignty and direct democracy would appear as the vertices of a triangle, but there exist possibilities that fall anywhere within the triangle, giving some weight (but not full weight) to all three elements. This allows us to conceptualize the reform of international institutions as a movement that seeks to *re-weight* the elements of the trilemma.

Figure 2 presents a stylized version of the trilemma weights for the US, the European Union, and China at various points in time. The box on the right identifies three *institutional* developments that altered the weights of the elements in the trilemma, and the arrows suggest the direction of the change in weights implied by these institutional developments.

The Single European Act of 1986 (SEA)—which combined comprehensive liberalization of the European market with institutional reforms to streamline decision-making, such as qualified

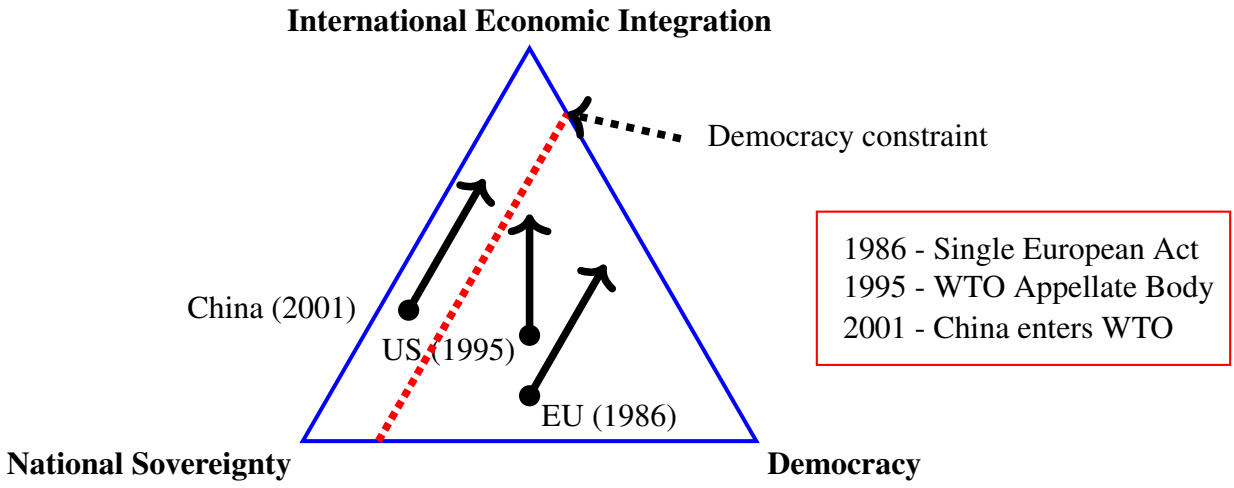


Figure 2: Global Institutions, Rodrik's "Trilemma", and the Democracy Constraint

majority voting—accelerated economic integration and shifted sovereignty from nation-states to European decision-making institutions (Moravcsik, 1991). As noted in Figure 2 by the trajectory of the EU arrow, the SEA increased the weight on economic integration, decreased national sovereignty, but retained democracy at the European level. European countries have been traditionally more comfortable with delegating rule-making to supranational organizations, thus this move came with minimal opposition.

For the US, the Uruguay Round Agreement extended trade liberalization to new areas and established the WTO in 1995. These changes contributed to a substantial increase in US integration with the world economy, as illustrated in the figure. But deeper integration came at the cost of a moderate loss of sovereignty (through the establishment of Appellate Body) and, a loss of democracy (by inadequately allowing responses to losers of integration). Consequently, US politicians faced a backlash from voters and organized groups that were harmed by global integration. This is denoted by the US arrow approaching the "democracy constraint" in Figure 2.

In contrast to the US, where low-skilled workers and protectionists mounted challenges to global economic integration (Broz et al., 2021), and western Europe, where populists attacked the EU for eroding the power of nation-states (Norris and Inglehart, 2019), China saw little domestic reaction to its embrace of globalization after it entered the WTO in 2001. As Figure 2 illustrates, China is less constrained by "mass politics" due to its single-party authoritarian political system than is the US and the EU. For example, there was hardly any domestic backlash to the sweeping commitments China made to open its economy in negotiations with the US over WTO membership. There were, however, concerns that rising unemployment in sectors that

shrank due to international competition might trigger greater government repression (Halverson, 2004).

In summary, there is a limit to how far governments can move toward this node of the trilemma without triggering a political backlash, but this limit depends on the extent of "mass politics" in each country. As nations engage in even deeper forms of economic integration beyond trade—to finance, and domestic regulations of various kinds—the likelihood that exposed citizens and groups of any country will mobilize against integration increases. The political backlash and economic nationalism emerging in the United States, and, increasingly in European and Latin American democracies, are, to some extent, the outcomes of this mobilization of mass politics.

4.1 The Sovereignty Backlash

In the context of the WTO crisis, the concern with "national sovereignty" refers specifically to Appellate Body rulings on zeroing (Rushford, 2018). The US vigorously defends its use of trade remedies and zeroing, which are embedded in US law, and zeroing dominates the USTR's 2020 *Report on the Appellate Body of the World Trade Organization*, where it is mentioned 95 times (USTR, 2020).

Bowen, Broz, and Muendler (2021) found a causal link between Appellate Body rulings and US elections. Exploiting the random assignment of AB judges to disputes to construct an instrumental variable that predicts WTO-AB ruling, they find that voters in US counties more exposed to adverse WTO-AB rulings were significantly more likely to vote for the Republican candidate in the 2016 US presidential election than for the Republican candidate in 2012. These findings support the view that WTO-AB rulings are salient for US domestic politics and have contributed to a backlash from voters in counties exposed to adverse WTO-AB rulings.

Anecdotally, there is evidence that voters in specific US localities receive persistent negative information about the WTO from industry executives, union leaders, and members of Congress. Following an AB ruling that required the US to remove safeguards of imported steel in 2003, John Walker, former Chief Executive Officer of Weirton Steel of West Virginia stated that "the WTO has never ruled in favor of the US, and we don't expect they ever will."[17] Mark Glyptis, former President of Weirton Steel's Independent Steelworkers Union, advocated for withdrawal from the WTO in the same year, while Senator Robert Byrd (D-WV) described the WTO as a "renegade" organization.[18]

[17]Charleston Gazette, July 12, 2003, *"W.Va. steel furious with WTO, Tariffs that protect US industry violate rules, group says"*.

[18]Charleston Gazette, November 11, 2003, *"WTO rules against US steel tariffs Industry, union, lawmakers say*

4.2 Democracy and the role of Congress

Rodrik (2011, 252) noted that the major defect of the multilateral trade regime is its "lack of widespread support among ordinary people." But few scholars have linked WTO reform to *domestic* political institutions. This is surprising because with every expansion of the multilateral trading order, the US Congress has established domestic institutional procedures for the purpose of maintaining public support for free trade. This point is often neglected in research on trade politics, which tends to focus on the winners and losers of trade rather than on the rules that Congress imposes to structure how trade policy is conducted.[19]

While US presidents have taken the lead in negotiating trade agreements in recent decades, scholars have acknowledged that legislative changes by Congress helped paved the way for multilateralism. Most research has focused on the Reciprocal Trade Agreements Act of 1934 (RTAA).[20] With this landmark legislation, Congress delegated (within strict limits) its constitutional authority to set trade policy to the executive branch, and required the president to negotiate reciprocal (equal in value) tariff-reducing trade agreements with other nations.[21] But RTAA is one of many legislative actions by Congress that have paved the way for the implementation of trade agreements. In fact, Congress has remained deeply involved in US trade leadership, repeatedly modifying the terms of its delegation to the president and adding new procedures to the trade policymaking framework. These institutions affect levels of support and opposition to US trade leadership among various domestic constituencies. Thus, Congress has a direct role in creating institutions that facilitate multilateralism by building consensus, its role has varied over time. Understanding and reforming these institutions is an important component of restoring support for multilateralism. We discuss these institutions in greater detail in the next section.

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ruling reflects EU bias".

[19] Previous research has linked support for free trade and international organizations within the US to constituencies that gain from globalization (Milner and Tingley, 2011; Broz and Hawes, 2006). By contrast, legislators representing decaying manufacturing regions with import-competing industries in their districts tend to vote against free trade agreements (Feigenbaum and Hall, 2015).

[20] See, for example, Bailey et al. (1997), Gilligan (1997), Lohmann and O'Halloran (1997), Irwin and Kroszner (1999), and Karol (2000).

[21] Fast Track was enacted under the Trade Act of 1974. It was used to pass the Tokyo Round Agreements Act of 1979 (P.L. 96-39), which implemented agreements negotiated under the General Agreement on Tariffs and Trade (GATT), the predecessor to WTO. Fast Track has been renewed five times—1979, 1988, 1993, 2002, and 2015—and was renamed Trade Promotion Authority in 2002. But similar institutions, described below, go back to the RTAA.

5 Domestic Consensus-Building Institutions

For more than a century, the US Congress has used its constitutional authority over trade policy to establish procedures that build domestic consensus for multilateralism. We break these institutions up into five categories: (1) Delegation; (2) Reciprocity; (3) The Escape Clause; (4) Notification and Consultation; and (5) Compensation.

Delegation Delegation increases domestic support for tariff-cutting trade agreements because the president is elected by a nationwide constituency and therefore considers the aggregate societal benefits of freer trade. By contrast, members of the House and Senate are beholden to organized interest groups located in their subnational districts and they do not internalize the costs of protectionism on other districts. Because presidents internalize these costs, they have incentives to move trade policy toward the societal optimum *even if voters/consumers are not organized and lobbying for free trade*. Delegation leads to what has been called "Presidential Liberalism" (Lohmann and O'Halloran, 1997; Bailey et al., 1997; Gilligan, 1997; Karol, 2000). Delegation also facilitates global leadership because it allows the US to speak with a single voice in trade negotiations with other nations.[22]

Reciprocity "Reciprocity" refers to the procedural requirement that the president negotiates trade agreements that elicit reciprocal (equivalent in value) tariff reductions from other countries. Before reciprocity, Congress set tariffs unilaterally and export interests did not have strong incentives to organize to influence trade policy. Import-competing producers were the main mobilized lobby group on trade legislation because they reaped concentrated benefits from high tariffs while the costs were dispersed (Irwin, 2017, 432). Although exporters have a general preference for lower domestic tariffs, the cost to an exporter of a particular tariff is small, so exporters did not organize in opposition to protectionism. However, by institutionalizing reciprocity into the policymaking process, exporters had a concentrated stake in tariff-reducing trade agreements and this shifted the political balance of power toward export interests: "By directly tying lower foreign tariffs to lower domestic tariffs, the RTAA fostered the development of exporters as an organized group opposed to high tariffs and supporting international trade agreements" (Irwin, 2017, 432).[23]

After World War II, the US "multilaterlized" the reciprocal method of generating support

[22]The bilateral tariff-reducing agreements that the president negotiated under RTAA went into effect without obtaining Congressional approval, but the RTAA itself required renewal every 1 to 4 years. This renewal feature ensured that presidents remained attentive to Congressional political imperatives.

[23]For evidence, see Bailey et al. (1997) and Irwin and Kroszner (1999).

for trade agreements by incorporating it into the GATT (Irwin, 2017, 455-508). Reciprocity remains the cornerstone of multilateral trade cooperation today. In the WTO, just as with the RTAA, countries negotiate bilaterally on a product-by-product basis with the principal supplier of the product in question. Then they generalize the resulting reciprocal tariff cuts to other members via the most-favored nation clause (MFN).

Escape Clause The escape clause refers to trade remedies that permit temporary tariffs on imports that are deemed to be unfairly traded and cause, or threaten to cause, serious injury to a domestic industry. Escape clauses exist to reduce political opposition to trade agreements; they provide domestic industries with a form of "insurance" if they are unduly harmed by liberalization. The escape clause has a long history in US law and has evolve significantly since it was first included in the US-Mexican Trade Agreement of 1943 (Jackson, 1997, 179). In 1947, during negotiations on the GATT, President Truman signed an executive order requiring an escape clause to be included in every agreement negotiated under RTAA authority. In the RTAA Extension Act of 1951, Congress itself mandated that all new trade agreements must include the escape clause. The same year, the escape clause text from US law was incorporated into the GATT, as Article XIX, suggesting that the GATT escape clause was a "direct descendant of the US-Mexican Trade Agreement of 1943."[24]. Over the years, Congress has added new features to the US escape clause, and these changes have helped to neutralize opposition to the trade agreements program.(Bagwell and Staiger, 1990; Rosendorff and Milner, 2001)

Notification and Consultation Another means of assuaging opponents is to institutionalize notification and consultation procedures to ensure that Congress and the private sector play a greater role in shaping trade agreements before they go into effect.[25] While the escape clause applies to industries that have already been exposed to tariff cuts, notification and consultation procedures serve to prevent bargains from taking place that would expose sensitive industries to greater import competition. Since the Trade Act of 1974, Congress has required the executive branch to consult with Congress and private-sector stakeholders prior to and during trade negotiations, as well as upon signing trade agreements.

To ensure that interest groups have a role in trade negotiations, the Trade Act of 1974 set up a three-tiered system of private-sector consultation. At the top of the system is the 30-member Advisory Committee for Trade Policy and Negotiations (ACTPN) consisting of presidentially-

[24]Ibid

[25]Notification and consultation requirements also help build support for trade agreements by giving export interests the ability to influence trade negotiations.

appointed representatives from a broad range of US industries and labor groups.[26] The second tier is composed of advisory committees in specific policy areas: Agriculture, Labor, Trade and Environment, Intergovernmental Policy, and Africa. The third tier consists of 17 sector-specific committees to provide policy advice—one agricultural and 16 industrial sectors. In addition to consultations with the advisory committees, the USTR solicits the views of private actors through Federal Register notices and hearings. These procedures allow trade negotiators to learn which industries are too sensitive to expose to reciprocal tariff reductions; they also allow exporters and global corporations to convey their priorities to US trade negotiators. In combination, consultation and notification requirements facilitate coalition-building on international trade agreements.

Compensation The final institution that ameliorates opposition to trade agreements is compensation. The argument for compensation is that economic policies like free trade improve social welfare but also have significant distributional effects. In such circumstances, a Pareto improvement is possible if the winners from free trade can compensate the losers, leaving both winners and losers better off. In the US, there has been a long-standing effort to use compensation to reduce opposition to trade agreements. The Trade Expansion Act of 1962 established "adjustment assistance" and placed the program under the authority on the Tariff Commission (Alden, 2017). The program redistributed the gains from trade as compensation to trade-displaced workers, in the form of extended unemployment benefits and retraining and relocation assistance. The Trade Act of 1974 renamed the program "Trade Adjustment Assistance" (TAA), expanded its benefits, and placed it under the Department of Labor, to increase the number of accepted claims.[27]

Since 1974, expansions and extensions of TAA have been a regular feature of the renewal of TPA, to appease opposition to trade agreements. As part of the 2002 TPA reauthorization, Congress enlarged the scope of TAA benefits. In 2009 and 2011 Congress again expanded TAA, allowing benefits to service-sector workers for the first time. For decades trade agreements (TPA) and trade adjustment assistance (TAA) were a package deal. But in the 2015, the deal fell apart as organized labor turned against the TPA-TAA package.[28] Labor's position on trade agreements had hardened after imports from China began decimating local labor markets in the US (Autor et al., 2016).

[26]For the current membership, see https://ustr.gov/about-us/advisory-committees/advisory-committee-trade-policy-and-negotiations-actpn

[27]Ibid, 120.

[28]Russell Berman, "A Big Win for Big Labor," *The Atlantic*, June 12, 2015. Available at https://www.theatlantic.com/politics/archive/2015/06/a-big-win-for-big-labor/395699

But the focus on trade-related compensation is too narrow. The rise of the welfare state in the 1930s, and its expansion in the 1960s and 1970s to include unemployment insurance, social security, a health insurance system, and a public education system were crucial to the persistence of reciprocal free trade in the post-war era (Bowen, Broz, and Rosendorff, 2021). This is consistent with the literature emphasizing that trade openness must be combined with a generous social safety net to be politically sustainable. Political scientist John Ruggie coined the phrase "embedded liberalism" to describe the post-war combination of social transfers and globalization Ruggie (1982), and this was confirmed empirically by Cameron (1978). In economics, Dani Rodrik has been a leading voice calling attention to the political importance of social transfers in sustaining free trade (Rodrik, 1997, 2011).

We summarize the domestic consensus-building institutions in Table 4.

I. Delegation	Congress transfers authority to make trade agreements to the president. Since presidents are elected by a nationwide constituency, they are more likely to support free trade agreements than legislators.
II. Reciprocity	Congress requires the president to negotiate trade agreements that elicit reciprocal (equivalent in value) tariff reductions from other countries. Reciprocity incentivizes U.S. exporting firms to support free trade agreements.
III. Escape Clause	Congress requires a mechanism by which the nation can temporarily suspend or modify its obligations in trade agreements when a domestic industry is "materially injured" by import competition. The escape clause reduces opposition to trade agreements from organized protectionist interest groups.
IV. Notification and Consultation	Congress requires the president to notify and consult with legislators and private-sector stakeholders when negotiating trade agreements, reducing opposition to trade agreements.
V. Compensation	Congress redistributes the gains from trade as compensation to trade-displaced workers, reducing opposition to trade agreements.

Table 4: US Consensus-Building Institutions

US Consensus-building institutions over time

We analyzed congressional trade legislation from the 1890s to the present for evidence of change in these institutions. We also developed a methodology for coding the intensity of these changes. Figure 3 displays how each of the five leadership institutions have varied in intensity

from 1890 to 2020.[29] The data are drawn from the wording of specific US trade laws or the GATT/WTO resolutions, which means that it follows a narrow definition of "compensation" where transfers are related to trade adjustment assistance only.

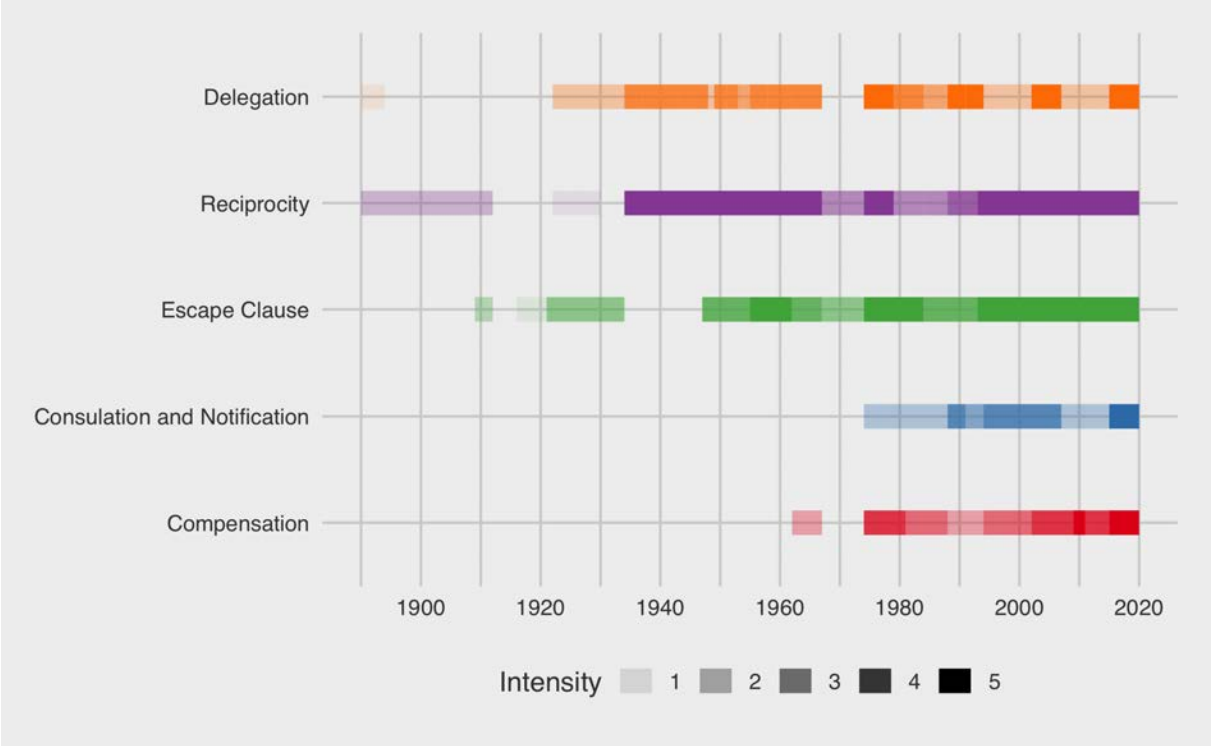

Figure 3: US Consensus-Building Institutions, 1890-2020

Sources: US trade laws; laws establishing US participation in the GATT, WTO, and other trade agreements. *Notes*: Intensity is defined over a five-point scale from 1 (least intense) to 5 (most intense). During periods where we found no evidence of the existence of an institution, the interval is left empty. The scale for each consensus institution is calculated relative to the extremes in the set of cases over the time period, rather than from an objective rubric.

[29]Intensity here is defined over a five-point scale from 1 (least intense) to 5 (most intense). During time periods where we could find no evidence of the existence of an institution, the interval is left empty. The scale for each consensus institution is calculated relative to the extremes in the set of cases over the time period, rather than from an objective rubric. For example, the lowest level of Delegation occurs during the McKinley Tariff of 1890 so the time period for which it was active is coded as 1. This tariff was the first to include provisions which provided the president some leeway in negotiating trade deals, but the ultimate trade authority remained with Congress. On the high end of the Delegation spectrum is the Trade Act of 1974 which established the "Fast Track Authority." This may have increased the president's power to pursue an independent trade agenda and therefore we code it as a 5 to signify this maximum intensity. Irwin (2017) and Baldwin (2012) served as broader references to get a sense for how these leadership institutions changed over time.

As seen in Figure 3, the Escape Clause has grown in intensity in recent years, just as the Appellate Body has come under fire for limiting its use. While the US Congress has been seeking more flexibility to escape from its WTO obligations, the Appellate Body has been moving in the opposite direction. This has brought the sovereignty constraint to a head.

Figure 3 also reveals that the institutions of Delegation have been weakening or episodic in recent years, which may be a consequence of the limitations on the Escape Clause and the other consensus-building institutions. In the absence of sufficient flexibility (and/or Compensation), the Congress is restricting the power of the president to negotiate trade agreements with other nations, thereby moderating the extent of globalization.

Delegation, reciprocity, the escape clause, notification and consultation, and compensation are the underlying sources of US global leadership. While reciprocity and the escape clause are inventions of Congress, they have been incorporated into the multilateral trading system and thereby help other nations generate internal support for trade cooperation as well.

6 Implications for the WTO crisis

Solutions have been proposed to address threats to multilateralism—from investing in education, to reducing inequality, to providing a guaranteed minimum income to all citizens. But few solutions have been directed toward the domestic and international institutions that sustain global economic cooperation, and the core challenges they face. As discussed above, these are threats to sovereignty and democracy. Using language that echoes Rodrik's trilemma, the US asserts that "defending US national sovereignty over trade policy" and "strictly enforcing US trade laws" are its priorities (USTR, 2017).

Solutions will thus involve institutional changes that 1) address WTO rules that prevent countries from pursuing domestic priorities; 2) relax the democracy constraint; or 3) moderate the move towards integration. If the degree of democracy is kept above the "democracy constraint," then a moderate form of economic integration should be politically and socially sustainable. In other words, it may be possible to redesign global institutions with *intermediate* solutions that address the limited and specific grievances of their opponents. For example, US grievances are not with the entire institution of the WTO, but rather, with the practice of zeroing as described in Section 3.1, and the difficulty in addressing the non-market practices of China as described in Section 3.2.

We suggest three solutions in this section. The first two address sovereignty concerns, while the third addresses the erosion of democracy. The implication is a moderation of economic integration.

Solution 1: Appropriate Flexibility

Rodrik (2011, 252-59) proposed reforming the multilateral trade regime to provide nations with more policy space to accomplish their domestic objectives. This is broadly what recent US administrations hope to accomplish by pressing the case for more flexibility on trade remedies. By blocking appointments to the Appellate Body, the US signaled that reform on trade remedies are critical to US support of the WTO. In terms of Rodrik's "trilemma," the US wants more room to opt out of its obligations, expanding its policy space to accomplish domestic objectives.

The political feasibility of increasing flexibility as a solution to the crisis rests on other members seeing that it is not worth sacrificing the whole system because of inadequate attention to US domestic priorities. Other members might be open to solutions that address specific US concerns about trade remedies—including conceding on the zeroing issue—if this is enough to ensure continued US participation and good behavior in the WTO. Some other members purportedly share the US concern about judicial overreach, so a coalition may help advance the agenda. In principle, a targeted solution to the crisis is possible, given the outsized concern the US places on trade remedies.

One possibility is that disputes involving trade remedies could be handled differently than other disputes. For example, trade remedies disputes could be resolved by non-adjudicative process, or by a temporary moratorium on appeals of trade remedy panel reports. Since the U.S grievance is about Appellate Body rulings that overturn panel findings on remedies, a temporary moratorium might not be enough to induce US agreement. In that event, members could amend the rules to make panel decisions on trade remedy matters final, thereby eliminating the threat of judicial overreach on these cases. A promising solution may be one that creates "A Separate System for Trade Remedies" (Hillman, 2018, 4).[30] Along the same lines, members could agree to a non-consensus based AB process for trade remedies.

Solution 2: Addressing the Consensus Rule

Current WTO decision-making rules make it difficult to achieve systematic WTO reform. The "overreach" complaint targets the adjudication wing of the WTO, which operates by reverse consensus rule. This means that all 164 WTO members must agree in order to block a panel or Appellate Body ruling. This rule gives the adjudication wing of the WTO extraordinary power—it is the source of US frustrations with the Appellate Body. The "underreach" complaint targets the negotiating wing of WTO, which operates by normal consensus: to go into effect, new agreements or modification of existing rules must obtain the support of all 164 members.

[30] See Hillman (2018) for other targeted solutions on trade remedies.

The consensus rule hamstrings efforts to modernize the rules, address unforeseen contingencies, and resolve conflicts.

Consensus rules in both wings of the WTO complicate the process of resolving the crisis because they inherently favor the status quo because any single member country can hold up any change that is not in their favor. The Appellate Body wants members to clarify existing voids and address new issues but feels compelled to exercise its powers when negotiations stall, inducing charges of judicial overreach.

WTO experts have been proposing reforms since the founding of the institution.[31] But there is little agreement on what can or should be done to get past the prolonged impasse in negotiations. One proposal is to permit agreements between some, but not all, members (Lawrence, 2006; Levy, 2006). These are known as *pluraliteral agreements*. These agreements would allow a subsets of countries to negotiate terms to the exclusion of other countries. However, if these terms are not Free Trade Agreements (reducing all trade barriers), they will likely violate existing WTO principles of most favored nation (MFN) or non-discrimination.

Another proposal is to relax the requirement of consensus, adopting some form super-majority voting. Voting on some issues is already allowed in WTO rules, but has never been used in practice (Ehlermann and Ehring, 2005). Anesi and Bowen (2021) show that even minor moves away from unanimity, such as a super majority rule that excludes a random *single* member, can facilitate reform. Anesi and Bowen (2021) also show that any rule with veto players can create problems with efficient institutional reform efforts, casting doubt on voting rules such as used in the United Nations (UN).

One way to avoid the tyranny of any country (or group of countries) blocking reform is to allow a sunset clause in agreements. By allowing a sunset clause, renegotiation of an agreement is possible because the default becomes "no agreement" at the expiration date. In other words, the status quo is no agreement, which is unfavorable to all countries relative to a modified agreement. Countries wishing to re-engage must come to the bargaining table and accept any modifications that other countries require for the agreement to remain in effect. The recently signed US Canada Mexico Free Trade Agreement (USMCA), successor to the North American Free Trade Agreement (NAFTA) includes such a clause. The USMCA is regarded as a blueprint for future trade agreements, and this feature may be an important part of allowing reform when needed. One drawback of a sunset clause is the increased uncertainty that it generates. If there is a possibility that a part of an agreement is not renewed, it will disincentivize investment from business and undermine the increased integration the WTO was intended to promote.

[31] See (Hoekman, 2012) for a review and synthesis.

Solution 3: Reforming Institutions to build Domestic Consensus

Section 4.2 suggests that leadership from Congress is the place to look for understanding the direction that trade remedies reform might take. Congressional proposals on trade remedies have occurred frequently over the years, largely in response to industry concerns that remedy procedures are not meeting their needs. Usually, these proposals aim to amend the criteria for determining injury to make it more likely that determinations will be made in favor of the petitioning industry.[32]

Understanding why the import-competing beneficiaries of trade remedies are now so influential that the US is willing to mount an existential challenge to the WTO is crucial. The lobbies that back trade remedies—notably, the steel industry—have had disproportionate influence over US trade policy in the past (Blustein, 2009, 114-17). What has changed? The work of Autor et al. (2016) provides guidance by measuring the impact of the increase in imports from China on exposed industries. Their work shows that manufacturing industries, and steel in particular, were disproportionately affected. That trade generates winners and losers is not surprising; however, the *magnitude* of the losses to a narrow set of industries has not been salient until now. While the amount of trade implicated is probably insignificant, trade remedies are of great political importance in the US. This combination of high political salience in the US and low economic impact suggests that a solution to the crisis is possible.

We return to the domestic institutions previously identified that can build consensus for multilateralism—*Delegation*, *Escape*, *Notification and Consultation*, *Reciprocity* and *Compensation*. As Figure 3 shows, all five institutions have changed in many ways since their genesis and their reform is essential in maintaining support for multilateralism. Bowen, Broz, and Rosendorff (2021) suggest a link between the decline in support for multilateralism and slower growth of *Compensation* institutions. Thus, one possible solution lies in increasing social transfers in various forms, for example, health care, social insurance, or other transfers. How to target these institutions is an outstanding question, and one which can be addressed by expansions of the *Notification and Consultation* institutions, which have only been introduced recently. Reform of these institutions can mitigate the need for *Escape*, and, in particular, the use of zeroing in calculating trade remedies. As Figure 3 indicates, institutions of *Escape* have ramped up in recent times, and this has led to much of the increase in conflict over trade remedies in the WTO. The weakening of institutions of *Delegation* as shown in Figure 3 can be understood as a consequence of the limitations of the other institutions. Adequate support for and the ability to

[32] See, for example, H.R.2523—The American Trade Enforcement Effectiveness Act—was supported by 46 co-sponsors in the 114th Congress (2015-2016) and incorporated into H.R.644, the Trade Facilitation and Trade Enforcement Act of 2015 (Public Law No: 114-125).

address WTO reform begins with reform of *Escape*, *Notification and Consultation*, *Reciprocity* and *Compensation* institutions.

7 Future Research in Restoring Multilateralism

We step back from the WTO crisis and outline a broader research agenda for contributing to the reform and improvement of global institutions. The research agenda is guided by three themes: threats, solutions, and leadership. *Threats* refer to the underlying cause of a crisis in a global institution, not symptoms like refusing to allow the appointment of Appellate Body judges. *Solutions* refers to institutional reforms required to address threats to global institutions, and *Leadership* addresses the challenge of coordinating efforts to supply international institutions that have public good characteristics.

While there are detailed literatures on domestic trade politics and on the multilateralism, they remain, for the most part, separate literatures. Scholars of trade policy explore how interest group and voter pressures are aggregated through domestic political institutions to shape trade policy outcomes (Grossman and Helpman, 1994; Rodrik, 1995). But they neglect how multilateral commitments and dispute settlement processes constrain these outcomes. For their part, experts on multilateralism explore interactions and among member states but neglect how those interactions are shaped and constrained by domestic political pressures within member countries.

This is an instance of the level-of-analysis problem in research on international institutions. Researchers use "tractability" as the justification to focus on one level of analysis to the exclusion of the other, which makes sense from a research design perspective. We submit, however, that responding to current threats to global economic institutions requires scholars to bring the two levels into a common analytical framework. To continue to do otherwise is to risk irrelevance. We suggest three approaches for connecting multilateral institutions to domestic politics: (1) the interest group approach, (2) the electoral approach, and (3) the congressional institutions approach.

7.1 The Interest Group Approach

The interest group approach is the mainstay of political economy research on redistributive trade policy, so we begin with it. The central insight of the interest group literature is that the relative political influence of the winners and losers of trade protection largely determines trade policy outcomes (see Rodrik (1995) for a review). Interest group influence can take the form of

campaign contributions, lobbying, or votes. If the beneficiaries of trade protection can organize to generate these resources more efficiently than the losers, then trade policy will be biased in their favor. Theoretical research supports the finding that the protection received by an industry is higher when it is organized—a function of the number and concentration of firms in the industry—and when its output is high relative to competing imports (Grossman and Helpman, 1994).

The challenge for the interest group approach literature is to explain what has changed. Are existing users of trade remedies applying more influence than they used to, or are opponents of trade remedies applying less countervailing pressure? Have new industries joined the fray and put their resources behind trade remedies? More fundamentally, what was the underlying shock that upset the domestic political balance on remedies? Did the rush of imports from China cause the relative influence of the domestic trade remedy lobby to increase?

These questions are answerable. Data are available to identify which industries utilize trade remedies and which industries do not, and how the distribution of industries changes over time (Bown, 2011). Granular data on campaign contributions and lobbying expenditures are readily available to measure the relative political influence of pro- and anti-remedy interest groups in the US.[33] Members of Congress make observable choices—co-sponsorship of proposals, roll-call voting on final passage—that indicate their support or opposition to trade remedies. And legislative proposals in the US Congress to amend US trade remedy statutes provide opportunities to evaluate the interest group politics of trade remedies at the congressional level.[34]

7.2 The Electoral Approach

The electoral approach links international trade to election outcomes in the US and Europe (Autor et al., 2017, 2020; Feigenbaum and Hall, 2015; Colantone and Stanig, 2018a,b; Becker et al., 2017; Malgouyres, 2017). While establishes that voters in areas harmed by imports from China were more likely to vote for Donald Trump, right-wing extremist parties in Europe, and Brexit, the WTO is a *distinct and separate influence* on US voting for candidates that are skeptical about multilateralism. This is shown in Bowen, Broz, and Muendler (2021), but more scholarship on the connection between international organizations and domestic politics can help advance our understanding of multilateralism.

[33]The Center for Responsive Politics at https://www.opensecrets.org/ provides campaign contributions data. See (Kim, 2018) and (Bonica, 2016) for lobbying data.

[34]See, for example, (Cooper, 2002).

7.3 The Congressional Institutions Approach

We also recommend that scholars move beyond the RTAA to study all the institutional procedures that Congress uses to build and sustain consensus for international trade agreements. Just as scholarship on economic nationalism has largely ignored the WTO and other international organizations, research on leadership tends to downplay the role of Congress. This is an important omission since Congress has the constitutional authority to set US trade policy objectives and procedures, while the president is limited to carrying out the will of Congress. We need to understand the forces that drive change in these institutions because US trade institutions directly influence US leadership at the global level. Given the paucity of existing research on these institutions, this is the most challenging part of the research agenda. In terms of the current WTO crisis, it is also the most pressing since, absent a domestic consensus, the U.S cannot provide leadership on reforming the WTO.

The next step is to develop hypotheses about the relationships between these consensus-building institutions. Congress has the prerogative to establish trade policymaking procedures that generate support and reduce opposition to US leadership of the multilateral trading system. But we don't know how these institutions relate to one another, or the particular combination of institutions that best supports US global leadership. Bowen, Broz, and Rosendorff (2021) suggest that Reciprocity and Compensation are complements: in order for a free trade political party to gain the acquiescence of a protectionist party for reciprocal trade agreements, it must provide sufficient transfers to the protectionists. In this paper, we have suggested that the institutions that reduce opposition to multilateral trade agreements are substitutes: opposition can be reduced by expanding the Escape Clause, enhancing Consultation and Notification, or increasing Compensation. Research on these institutional relationships and combinations is critical to understanding US leadership of the rules-based multilateral order.

8 Conclusions

Multilateralism is a global public good, which means it is faced with free-riding problems both within and among countries. In the past, the US government provided global leadership, and this leadership was sustained by a broad consensus within the US in support of an open world economy (Ruggie, 1982). Problems of international organization require actors willing to expend resources advancing solutions. US leadership is required in reforming multilateral institutions and this paper suggests a framework for this reform.

What we observed about the WTO crisis is that the threat underlying US rhetoric and actions

is the failure of the members to fill in gaps in the WTO agreement, especially in the area of trade remedies and non-market economies. This failure has led the Appellate Body to overreach its judicial mandate and infringe on US sovereignty by ruling against methods the US uses to calculate anti-dumping, countervailing duty, and safeguard duties on imports from China and other nations. In short, the WTO crisis is centered on vagueness in the rules and the willingness of the US to bring dispute settlement to a halt.

The purpose of an initial diagnosis is to establish a relationship between the underlying threat and its outward expression as a current crisis. We analyze the deeper causes of US discontent with the WTO, not the symptoms or expressions of those problems. Dani Rodrik's "trilemma" provides an analytical framework for identifying the underlying threats to multilateralism, as well as the outward manifestation of these threats. The key insight is that economic integration, national sovereignty, and democracy are not attainable simultaneously. The root of the current crisis is that the US has ceded too much sovereignty to global institutions and run up against the democracy constraint.

Having identified core threats with the aid of Rodrik's heuristic we identified five domestic consensus-building institutions to address the threats; two that generate support (delegation and reciprocity), and three that reduce opposition (the escape clause, notification and consultation, and compensation). Over time, Congress has repeatedly changed these institutions, both individually and in combination, and they are fundamental to understanding how to reform domestic institutions to restore the erosion of democracy. Academics and practitioners should give more attention to US trade policy institutions since reform of the WTO is likely contingent on reform of US institutions.

We identify three solutions to the crisis: appropriate flexibility, addressing the consensus rule, and reforming domestic consensus-building institutions. The first two address sovereignty issues, while the third addresses the erosion of democracy. If keeping the US in the WTO and restoring the dispute settlement mechanism are more valuable to other members than conceding to the US on remedies, then there is room for a narrow solution that carves out a special process for handling trade remedy disputes. Research shows that even minor moves away from consensus, such as super majority rules that excludes a random *single* member, can facilitate reform. Another approach is to allow a sunset provision, as in USMCA. Finally, trade remedies are politically important to the US, but they don't have economic significance relative to what is at stake. There is room to trade off some domestic efficiency with enhanced compensation and consultation, to gain broader support for multilateralism. This can also remove some pressure on WTO reforms related to trade remedies.

We then outlined a research plan to explain why the the US feels so strongly about trade

remedies. We argued that answering this question requires examining the impact of WTO actions on politics within the US. In other words, we advocate scholarship on the WTO crisis that crosses the international and the domestic levels of analysis.

The approach taken to analyze the WTO crisis can be applied to other issues of global cooperation—diagnosing deep problems, identifying solutions and leadership required to make reform. For example, the willingness of the US to assume the mantle of global leadership on climate change reflects, in part, domestic political priorities that need to be identified and analyzed. Solutions tailored to these priorities can then be assessed on their merits and in terms of their political feasibility. Scholars can contribute by examining how Congress, and the structure of climate change policymaking, relates to global leadership. As with international trade, US leadership efforts on climate change are undertaken under laws approved by Congress. While climate change amelioration improves aggregate social welfare, it also imposes costs on certain industries, occupations, and regions. Climate change touches on a wide array of interests, as with trade. The stakes vary from industry to industry and region to region, but an effective solution requires a balancing of those interests, which typically is achieved through the legislative process. The structure of the five trade institutions we identified might hold lessons for how to build and sustain domestic support for US climate leadership.

Finally, throughout this essay we have implicitly assumed that the WTO *should* be saved. What makes it worth saving? Recent research provides a powerful economic rationale for the WTO: the *predictability of trade policy* that has resulted from members' commitment not to increase tariffs above their bound rates. Policy uncertainty is a top constraint on doing business. It leads investors and businesses to delay investments and other trading decisions. To illustrate the value of the WTO, Handley and Limão (2017) show that China's WTO accession reduced uncertainty about US trade policy and was responsible for over one-third of the growth in China's exports to the US between 2000 and 2005. While this reduced US manufacturing sales and employment by about one percent, it also lowered prices and increased consumer welfare in the US. These results illustrate the WTO's broader relevance in reducing trade policy uncertainty and promoting prosperity. While any trade agreement can have the same predictability effect, no agreement is as extensive in membership and breadth of issues covered as the WTO. Furthermore, many of the WTO agreements function seamlessly, such as trade facilitation and trade monitoring, and it is not until they are gone that they will be missed. If multilateralism is the aim, there is not much sense reinventing the WTO.

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