

A Review of WTO Dysfunction under Power Politics: U.S. Evasion Strategies and Institutional Outlook

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Abstract

In the context of increasing geopolitical competition and proliferation of security-driven trade barriers as well as growing industrial policy-driven activities by governments, the WTO has experienced systemic breakdown in negotiations, surveillance, and adjudication, the most significant of which is the absence of a functioning quorum in the Appellate Body since December 2019. It is a review that explores how power politics has allowed the U.S. strategies to circumvent, interrupt, selectively apply, or move WTO disciplines, and evaluates what it means for the future life of the institution and reform path. The analysis reveals four strategy clusters that are interrelated: appointment blockades and procedural incapacitation of the formal settlement of disputes, use of unilateral tariffs and enforcement tools outside the multilateral structures, trade policy securitisation with exception-based protection against multilateral inspection, and the strategic shift of forums to preferential, plurilateral and coalition-based rule-making. These methods overlap with the existing institutional design holes and changing internal political balances to increase institutional stresses on the system. The paper presents a conditional institutional perspective when viewed through the prism of the power-strategy-institutional effect analysis: managed legal pluralism is more feasible than quick full recovery, but the threat of systemic fragmentation is likely to become a deep division unless the member states re-engage the adjudicatory, negotiating and political oversight capabilities of the body.

Keywords

World Trade Organization, power politics, institutional evasion, Appellate Body crisis, U.S. trade policy

1. Introduction

There is a fundamental institutional dilemma in the world multilateral trading system. Being one of the main architects of the WTO binding dispute-resolution process, the US used the WTO consensus rule to veto the appointment of the Appellate Body members, thereby setting off a lengthy adjudication crisis. This collapse is not merely a case of procedural malfunctioning but is also one of the visible manifestations of the larger institutional decay that can be seen in the intractable deadlock in negotiating the Doha Round, the deterioration of compliance with the notification obligation, proliferation of unenforceable appeals into the void, unilateral trade measures pursuant to Section 232 and 301, and the return of large-scale industrial policy to the major economies. This shifting environment makes such examination of WTO dysfunction a practical activity.

Recent research does not consider the issue as a mere appellate procedure defect but as a systemic political-order issue [1-3]. In order to set definite analytical borders, this paper will use the concept of WTO dysfunction as a long-term reduction of organizational performance in four interrelated activities, namely negotiation, monitoring, adjudication, and compliance assurance, which are evaluated individually to prevent the institution-wide mandate being confused with the sole dispute resolution role played by the institution. Institutional evasion of the U.S. is defined as a visible state action avoiding, disabling, selective use, or diversion of multilateral rule restrictions, yet maintaining access to the benefits of WTO membership based on national interests. The framework acknowledges the possibility of coexistence between legitimate legal criticism of appellate practice and strategic considerations of power dynamics and does not present these concepts as mutually exclusive.

The analysis is based on four interwoven research questions. The first one explores what has been presented in the existing literature regarding the correlation between the changing material power, the U.S. domestic political coalitions, and the decline of the WTO institution since 2016. The second is a mapping of the identified U.S. institutional evasion strategies, their underlying legal and political mechanisms, and the institutional outcomes they produce. The third is the identification of areas of similarity and difference in the legal-institutionalist, realist IPE and domestic-political explanatory traditions. The fourth is assessing which reform options are able to be institutionalized and politically viable and acceptable in distribution. The available literature on the demise of the WTO institution is scattered along various lines of investigation. Most of them are restricted in their focus on either the Appellate Body crisis or unilateral trade actions only. These changes are seldom related to a larger trend in US strategy, or to more fundamental transformations in the international balance of power and domestic politics. Such siloing leaves some critical questions unaddressed. It does not reveal how other forms of evasion support each other in reality, and does not give a coherent structure to evaluate the long-term institutional consequences. The systematic review fills these gaps by incorporating scattered research results into a unified causal model. It builds upon empirical, doctrinal, and political economy materials to cover the entire range of U.S. institutional evasion and its system implications. The analysis makes four central contributions to the literature. Firstly, it outlines a systematic evidence map of the relevant sources published since 2016. Secondly, four different clusters of evasion strategies are identified and classified based on their own legal instruments and institutional effects. Thirdly, three levels of theoretical synthesis are used to combine the views of legal-institutionalists, realist IPE, and domestic politics to expound the change in institutions through various layers of analysis. Fourthly, three possible institutional paths (restoration, managed pluralism, and fragmentation) are compared with four common standards (legality, inclusiveness, enforceability, and political feasibility).

2. Theoretical Background

The paper does not depend on just one theoretical paradigm but combines four complementary schools of scholars in order to develop a multi-layered analytical viewpoint in analyzing WTO institutional dysfunction. The systematic review is based on four intersecting theoretical traditions to contextualize the dysfunctionality in the WTO and evasion mechanisms in the US within a wider intellectual discourse on institutional development, power politics, and domestic-international relations. Rational institutionalism offers an underlying explanation of how governments come up with binding multilateral trade regulations to minimise transaction costs, address information asymmetry, and curb the threat of reciprocal retaliation, with a major focus on the fact that long-term compliance requires continual evaluations of the net expected benefits. The hegemonic institutionalism builds upon such reasoning by noting that a hegemon would be more than willing to accept formal restrictions when it determines the initial rule architecture, but is likely to resist the exercise of adjudicatory authority as interpretative results restrict the policy space of the former or reallocate comparative gains to the detriment of the latter. This perspective suggests that lower relative gains and higher internal adjustment expenses raise the likelihood of selective compliance, deployment of vetoes, and various types of exit-like activities that do not go as far as formal withdrawal of the institution.

Realistic international political economy together with analysis of weaponized interdependence and geoeconomics redefines trade policy tools as the instruments of strategic competition instead of completely cooperative government mechanisms. The US has specific structural benefits that include its large market size, its control over core technologies, its access to the world financial markets, and its position at the center of a global trade network, which are advantages that most WTO members do not have. Such resources provide the

state with credible outside options other than the multilateral rules, and power politics undermines both the practical attractiveness and the normative legitimacy of multilateral trade restrictions on the US [3,4].

Historical institutionalism adds time and structure by introducing the ideas of path dependence and institutional drift, which show that a rule intended to be implemented in one political situation might produce unexpected structural consequences when circumstances change. The WTO consensus rule, as another example, has been developed initially to ensure the sovereignty of members, but is now being cemented as a powerful veto point in the age of increasing geopolitical polarization. Daßler's theory of negative institutional power can be used to explain why a dissatisfied state with strong blocking power may seek radical contestation within institutions instead of leaving them [5].

Conclusively, the two-level games model is a bridge between international institutional behavior and domestic political realignment, which follows the ways in which domestic distributive conflicts impact a state's stance on multilateral governance. The weakening of export-oriented backing of WTO leadership, increased focus on China in elections, the displacement of workers, and the powers of executives over trade become politically rewarding [1]. Taken together, all these views cover systemic, institutional, and domestic levels of analysis, thus forming a theoretical basis to synthesize conflicting explanations and plot convergences between opposing versions of the decline of the WTO institution. Based on this multi-level theoretical framework, this article also elaborates on a power-strategy-institutional effect analysis framework. The framework is a part of the current literature synthesis, strategy identification, and institutional viewpoint evaluation, which is a coherent logical line of the entire research.

3. Literature Review

3.1 From Appellate Dissatisfaction to Procedural Disablement

There is a considerable amount of literature that portrays WTO institutional dysfunction mainly in terms of the ongoing dispute regarding the Appellate Body. This discussion is fueled by two opposing analytical views, with an ever-growing research agenda on institutional reform. A group of people supports the essence of the criticism of the United States and acknowledges the real problems in the appellate jurisprudence and procedure. Another group agrees with the argument of selective reform, but sees the U.S. blocking approach as being out of proportion and systematically damaging. The United States has raised a list of particular complaints about the Appellate Body. The list includes failure to meet the 90-day deadline to appeal and retired members hearing cases under Rule 15, as well as superfluous factual findings, quasi-precedential use of past judgments, and interpretations of trade remedies that have been said to extend the obligations negotiated by members outside their intentions. Legal scholarship does not entirely ignore such concerns. Cottier, in turn, contends that the appellate review must be adjusted to give more respect to the decisions of panels [6]. Miranda and Sánchez point out some weaknesses in the jurisprudence that compromised the political sustainability of the institution [7]. Shaffer et al. had previously described the authority of the Appellate Body as broad but vulnerable because it relied upon the ongoing tolerance of member states [8].

A second line of research offers a contrasting assessment. Scholars in this group acknowledge the need for procedural improvement but view the U.S. response as overly disruptive. By withholding consensus on new appointments, the United States has stripped the Appellate Body of a working quorum without formally exiting the Dispute Settlement Understanding. Creamer describes how the WTO's "crown jewel" has become a source of institutional vulnerability [9]. Pauwelyn shows that the collapse of appellate review allows losing parties to leave panel reports in legal limbo via "appeals into the void" [10]. Lehne concludes that U.S. objections provide no adequate legal basis for blocking all appointments [11]. Fiorini et al. further demonstrate, using survey evidence from trade policy professionals, that dissatisfaction with specific practices does not translate into broad support for abolishing two-tier adjudication [12]. In view of this impasse, reform-oriented research has progressed beyond the dichotomy of returning to the original Appellate Body or completely abandoning adjudication. Hoekman and Mavroidis propose rebalancing the powers between panels, appellate review and control by member states [13]. Cottier puts more emphasis on panels and the WTO Secretariat [6]. Vidigal lists multilateral, bilateral and plurilateral workarounds, including no appeal agreements and DSU Article 25 arbitration [14]. The interim measures, including MPIA, maintain partial adjudication, but they are not binding

on non-members nor provide universal coverage. Pan reconsiders the appointment-related institutional law and considers how the consensus deadlock can be bypassed [15].

3.2 Unilateral Enforcement, Trade Securitization and the Domestic Political Foundations of Policy Continuity

The Appellate Body crisis is merely one aspect of a larger transition between rule-based reciprocity and geoeconomic bargaining in the governance of world trade. Not just the appellate procedure but this change also changes the way in which states apply key trade policy mechanisms. Roberts et al. characterize a new geoeconomic order where tariffs, investment controls, subsidies, technology constraints, and market access act as levers to achieve strategic state interests [4]. In such a context, U.S. use of Sections 232 and 301 moves the focus of dispute settlement off the multilateral judicial process onto the bilateral negotiation process through asymmetric economic pressure. The US therefore maintains all the advantages of the multilateral system but substitutes it with unilateral influence whenever multilateral guidelines are perceived as too sluggish, unpredictable, or prohibitive. This institutional shift is reinforced by the increasing integration of trade and national security. The use of national security as justification has grown well outside the area of steel and aluminium tariffs to include export control, investment screening, control over critical technologies, supply chain resiliency policies and industrial support. Pinchis-Paulsen contends that WTO participants ought to discuss trade-security measures via regular notification, discussion and examination instead of waiting until disputes are escalated to be resolved in court cases [16]. Highlighting an underlying quandary: The WTO law officially accepts the security exception, but to treat all security claims as purely self-judging would enable states to exclude increasingly large areas of economic policymaking from legal examination. The recent political-economy literature also warns against treating this change as an anomaly of one presidential administration. The authors Goldstein and Gulotty point to the weakening of the U.S. domestic consensus that once supported multilateral trade leadership and observe that the policymakers did not create resilient buffers against domestic adjustment costs even with the benefits to the export sector of the postwar system, which made multilateral commitments vulnerable to political backlash [1]. Also, Dür and Invernizzi record significant consistency in protectionism and discrimination in US trade policy after the first Trump administration [17].

3.3 Forum Shifting, Institutional Adaptation, and the Reassessment of Hegemonic Leadership

Another thread of literature is concerned with the ways in which member states react to the institutional paralysis by moving trade governance in the direction of preferential agreements, plurilateral projects, technology coalitions as well as supply-chain partnerships. Such a change has actual structural implications: it may undermine the principle of most-favored-nation treatment, leave out countries that do not have much negotiating power, and discourage efforts to achieve multilateral agreement in Geneva. In his view, Vidigal sees the alternatives to the Appellate Body post as a mixture of hegemonic, fragmented, and networked authority, instead of a total loss of law [14]. The MPIA is the embodiment of this adaptive reasoning: member states continue to have a functioning appellate review mechanism but do not restore universal coverage, nor are they bound by the United States, which is not a participant. The present corpus of work also goes against the old belief that institutional survival depends solely on hegemonic leadership. Howse points to the fact that the WTO has had a historically pluralist legal structure, and that the future does not necessarily have to be based on one model of the domestic political economy [2]. The middle-power projects demonstrate that core selected functions may be maintained by other members in the absence of U.S. support, i.e., U.S. actions are more appropriately characterised as partial and functional disengagement rather than total abandonment.

3.4 Complementary Theoretical Accounts of U.S. Institutional Evasion Strategies

The reviewed literature shows three separate explanatory traditions that can explain the ways of U.S. institutional evasion strategies, based on different levels of analysis. Legal-institutionalist explanations are concerned with mandate ambiguity, the precedent of jurisprudence, procedural delay, and lack of an operational member-driven mechanism to address disputable interpretations. The realist and international political economy approaches highlight the importance of material resources: market presence, technology leadership, financial leverage, and alliance systems offer the US more powerful external possibilities and a

higher capability to incur reputational penalties. Historically institutionalist work observes that the consensus rule, which was initially created in order to ensure sovereign autonomy, turns into a systemic veto when a disappointed nation has large amounts of negative institutional power [5]. The domestic-politics literature explains the timing and longevity of unilateralism in relation to electoral coalitions, policy adjustment failures, the power of the executive to trade, and bipartisanship competition in regard to China [1]. The said views are not contradictory but complementary. Institutional flaws define the objects of U.S. discontent; material resources provide the ability to disable or override regulations, and internal politics determine the possibility of such policies being politically viable. Hopewell thus rejects the rigid dichotomy of status quo and revisionist powers by noting that a country can defend rules that benefit it and attempt to alter those regulations that restrict its policy independence [3].

3.5 Research Trends, Unresolved Problems, and the Review's Contribution

This type of scholarly inquiry has now gone out of the confines of a strict focus on an Appellate Body-centered discussion to include larger concepts of economic security governance, industrial policy, weaponized interdependence, institutional contestation, and regime complexity. Increased focus is also placed on the role of middle powers and the disproportionate impact of institutional breakdown on emerging markets. In spite of such improvements, major research gaps can be identified. Institutional evasion is not often operationalised with observable indicators, comparative cross-administration studies are scarce, and it is uncommon to observe a link between post-2019 dispute trends and ensuing compliance or trade results. There is little evidence about whether alternative arrangements can enhance the accessibility of development members or simply establish a two-tier system. These gaps are remedied in this review by incorporating four avoidance tactics into a common power-strategy-institutional-effect model that allows not only evaluating institutional survival, but also determining which functions survive, who benefits, and how the capacity to enforce is allocated.

4. Discussion & Synthesis

Based upon the comprehensive literature that has been reviewed, this paper will be able to summarize four related types of U.S. institutional avoidance that can occur through different legal and political processes and produce disparate results in multilateral trade regulation. Procedural disablement is carried out by preventing the appointment of the Appellate Body and filing appeals to the void (against negative panel resolutions) and therefore undermines the credibility of binding decisions and reduces incentives to follow dispute rulings. Unilateral substitution uses statutory instruments like Sections 232 and 301, combined with tariff pressure and negotiated trades, moving dispute settlement away from the multilateral system of law toward bargaining where there is an imbalance of market power. Securitized insulation uses the concept of national security to justify technology and supply-chain regulation, increasing the scope of domestic policy and protecting controversial actions against thorough multilateral examination. Redirecting the rules-making and enforcement to preferential agreements, strategic clubs and plurilateral arrangements (forum shifting) may bring the same flexibility, but at the expense of breaking down universal disciplines and making weaker members less retaliatory or negotiable.

In the literature, areas of agreement are alongside areas of unresolved interpretive disputes, which impact on both diagnosis of a crisis and policy recommendations. The majority of scholars agree that the crisis cannot be solved through technical appellate measures, and that there is no explanation of institutional deadlock without American blocking power. It is also widely agreed that prior to 2019 there was no viable political solution in place to resolve a disputed jurisprudence. However, the extent to which judicial overreach had occurred remains a matter of controversy among doctrinal legal writers. IPE researchers are divided on whether U.S. behavior is an attempt to protect the status quo or an intentional pursuit of revisionism. Rather than accepting this strict dichotomy, empirical data can explain issue-specific reasoning: governments will protect the rules that keep them in benefit but repeal restrictions that undermine policy autonomy [3].

A causal synthesis also indicates that the choice of strategy depends upon the range of external opportunities available to a state. Extreme market power has space to be substituted unilaterally; formal veto powers have the ability to obstruct internally; close alliances reduce the cost of changing forums; and security framing minimizes reputational costs of deviating from multilateral norms.

The given structure allows the research to support three feasible institutional paths. The restoration option could restart Appellate Body appointments, clarify DSU rules, and enhance member-driven political control, offering the highest universality and legal predictability, but it has to be based on a domestic and geopolitical compromise between the US, which does not have much evidence to back this up. The second scenario of controlled legal pluralism would be the integration of WTO panels and Article 25 arbitration, MPIA, bilateral agreements, and issue-specific plurilateral mechanisms; it can be regarded as the most likely medium-term result. The core functions will be maintained without unanimity, but the danger of unequal access to the law will remain. Competitive fragmentation would see unilateral actions and competing blocs becoming predominant in governance as the WTO would continue to exist as a place of notification, deliberation, and minor dispute management. Such a course becomes more probable with the escalation of rivalry that imposes the greatest expenses on predictability and members incapable of making other arrangements.

The synthesis provides focused design principles and testable propositions that will be useful in directing future reform and research. The reforms initiated by institutions ought to reconnect the process of adjudication with member-led interpretation, restrict the use of appeals to critical issues of the dispute, enhance timely and transparent processes, and still have an enforceable security claim review but do not require sensitive intelligence disclosure. There are three testable patterns that will become the focus of future investigations: the countries with more negative institutional power will opt to obstruct internally rather than exit; security and strategic sector conflicts will be more likely to skip full implementation; and the weaker members will experience a higher rate of enforcement losses in a fragmented system of governance.

5. Conclusion

The systematic review shows that the current failure in the World Trade Organization does not emanate from a particular procedural weakness but rather from the combined efforts of inherent institutional veto points, the changing domestic political alliances in the United States, and a wider geoeconomic shift in which the great powers value policy autonomy and strategic leverage more than a universal multilateral legal restriction. Through the combination of four previously isolated threads of literature on procedural disablement, unilateral enforcement, trade securitization, and forum shifting, the review places U.S. institutional behavior as a varied investment in partially reversible, function-specific avoidance behaviors instead of a simple exit from the multilateral trading system. The analytical framework goes further than black-and-white accounts of support or abandonment to reflect the measured, issue-related nature of US participation in the WTO. The analysis presents a balanced judgment: The U.S. legal critiques of appellate practice and institutional architecture may be taken seriously, but the fact that such issues were presented in an obstructive and unilateral manner has created externalities within the system, which mostly affect the member states that do not have enough capability to respond to them or create other forums of governance. In the future, it is not likely that the WTO will see a restoration of its institutional system before 2019 unless there is a consensus among the big economies. Although managed legal pluralism can provide a viable direction to avoid the total systemic collapse, its legitimacy is based on having clear accession, capacity assistance to developing members, improved transparency, and a credible path back to universal coverage. Finally, the future stability of the WTO is more dependent on reconstructing a workable equilibrium between the legal adjudicator, negotiated rule-making, and political responsibility of the members than on recreating the old design of the WTO.

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