LOOKING OUTSIDE OR LOOKING INSIDE?: THE EFFECTS OF TRADE BUREAUCRACY DESIGN ON TRADE DISPUTE BEHAVIOR

Jung Hyun Han & RyuGyung Park*

ABSTRACT

How do different bureaucratic designs affect international trade dispute patterns in the World Trade Organization (WTO)? While previous research has explored various determinants of trade policies and the role of bureaucracy in policy formulations, the effects of the bureaucratic structure of trade agencies on formal trade litigations have not yet been addressed. We hypothesize that when the commerce and industry ministry (hereinafter "CI ministry") oversees trade policies, it pursues more aggressive trade dispute strategies, compared to when the foreign affairs ministry (hereinafter "FA ministry") is in charge. Meanwhile, we expect independent trade agencies to behave similarly as foreign affairs ministries in terms of trade dispute strategies. We examine the trade disputes raised between G20 countries and test the effect of trade bureaucracy structure on the level of aggressiveness pursued by the complainant country. Our results show that when the CI ministry oversees trade policies, trade disputes are more likely to be extended to a higher level of conflict resolution. FA ministry and an independent agency do not show any statistical difference.

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KEYWORDS: *bureaucracy, institutional design, trade agency, trade disputes, World Trade Organization (WTO)*

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I. INTRODUCTION

While the trade bureaucracy does not have any legislative or executive power, the design of trade bureaucracy is an important policy choice. Different countries choose different formats of trade agencies. Some, like the United States (hereinafter "US") and the European Union (hereinafter "EU") have opted to create a separate and independent trade agency, while others delegate the authority to oversee trade policies to either the foreign affairs ministry (hereinafter "FA ministry") or the commerce and industry ministry (hereinafter "CI ministry"). A number of countries—Australia, Argentina, Indonesia, and Turkey, to name just a few—have experienced a change in the bureaucratic design of the trade agency, and for some, such as South Korea and Canada, the issue of how to structure the trade agency regularly becomes a topic of debate.[1]

Such prolonged debates centering trade agencies demonstrate the importance of their bureaucratic structure. The bureaucratic structure of trade agency reflects the overall attitude towards trade policies of a country.[2] National governments have to make a strategic choice of whether to establish an independent trade agency. If they choose to not establish a separate

[1] Woo Jang, *87% of Firms Argue the Trade Should Be Under the Ministry of Industry Rather Than the Ministry of Foreign Affairs*, DIGITAL TIMES (Mar. 23, 2022), http://www.dt.co.kr/contents.html?article_no=2022032302109932064003&ref=naver; André Mercier, *Commercial Diplomacy in Advanced Industrial States: Canada, the UK, and the US*, *in* DISCUSSION PAPERS IN DIPLOMACY 1, 12 (2007).

[2] *See generally* Bernard Hoekman & Robert Wolfe, *The Geneva Effect: Where Officials Sit Influences Where They Stand on WTO Priorities*, 30(6) REV. INT'L POL. ECON. 2382 (2023).

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institution, they still have to choose which ministry will be in charge of the overall goals and execution of trade policy. Since international trade is closely related to both foreign and industrial policies, countries have either the CI ministry or the FA ministry overlook the trade policies. On the one hand, the FA ministry can coordinate trade policies in conjunction with broader foreign policy goals, and link trade with non-trade issues such as security, diplomacy, and foreign aid. In other words, trade policies work as a subset of foreign policies. On the other hand, the CI ministry can optimize trade policies in terms of a country's industrial policy goals. In this case, trade policies are largely regarded as a type of economic and industrial policy. Thus, choosing which ministry to be at the end of the decision-making process of trade policies is a highly strategic choice of a national government, through which we can infer its views of international trade and policy objectives.

Whether such political choices of bureaucratic structures matter in the real-world setting is an empirical question. In this paper, we focus on the effects of bureaucratic structure of trade agencies—whether they are independent or overseen by a CI or FA ministry—on the level of aggressiveness in international trade disputes. The organizational choice of trade bureaucracy affects not only the overall direction of trade policies, but also a country's behavior in trade disputes. The reason is that different areas of ministries not only have different policy objectives and bureaucratic culture, but also different expertise area and levels of autonomy from domestic and foreign pressures. We hypothesize that when a CI ministry oversees trade policies, a country will pursue "aggressive" dispute settlement strategies. We define aggressiveness in a dispute as "the willingness to dedicate as many resources needed in a litigation, proceeding to a higher stage of dispute settlement (i.e. the Appellate Body review, compliance proceedings, and even retaliation process)". Given a higher domestic interest group pressure on CI ministries, compared to FA ministries or independent trade agencies, we expect the CI ministries to be more persistent in the dispute settlement process. In return, we expect both FA ministries and independent trade agencies to show less aggressive dispute settlement behavior and end trade disputes at an earlier stage.

To test our hypothesis, we conduct a quantitative analysis using an original dataset, based on the World Trade Organization (hereinafter "WTO") Trade Policy Review Mechanism documents. We limit the scope of our study to all trade disputes between G20 countries from 1995 to 2020 to minimize the risk of having differences between developed and developing countries be major confounding variables (i.e. development stages, size of economies, or resources for the bureaucrats). We run ordered logit models with the level of aggressiveness as our dependent variable. Our results suggest that the bureaucratic design of trade agency matters for how aggressively a country

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pursues trade disputes. We find evidence that suggests having the CI ministry to be in charge of trade disputes leads to more aggressive trade dispute policies.

Our study contributes to the rich literature on international trade dispute process. While there have been a number of studies in the past that look at the determinants of trade disputes at the WTO—such as the influence of interest groups,[3] and the effects of legal capacity on trade disputes[4]—little sheds light on the impact of bureaucratic design on trade dispute behavior. Contrary to existing literature that predominantly focuses on WTO dispute initiation, our primary interest lies in dispute aggressiveness, which we measure by examining the stage at which a WTO trade dispute is resolved. While the initiation of a WTO litigation signals a trade bureaucrat's willingness to secure trade benefits, it inadequately represents the various facets of WTO disputes. Dispute resolution at the WTO encompasses several stages, including consultations preceding panel proceedings, the actual panel proceedings, appeals, and subsequent retaliation and remedies. Parties involved may opt to withdraw from proceedings midway at their discretion. Additionally, countries utilize the WTO not solely for formal dispute initiation but also to address economic harm by ensuring compliance of violating countries with international trade laws. Hence, our analysis aims to encompass all stages of WTO litigation.

The remainders of this study are as follows. First, we give an overview of the previous literature on determinants of the WTO adjudication process and trade bureaucracy. Second, we propose our theory on trade agencies and their effect on a higher level of dispute resolution, which reflects a country's willingness to aggressively pursue its interest by participating in the dispute resolution process. Third, we present our quantitative research design and results. We conclude with a discussion on the limitations of this project and suggestions for future ones.

II. POLITICAL ECONOMY OF WTO ADJUDICATION

Rich literature has explored what determines states' decision to participate in the WTO disputes and which cases are brought to the WTO court. Significant political economy studies have emphasized that the demand for dispute participation arises from domestic political pressure.

[3] Chad P. Bown, *Participation in WTO Dispute Settlement: Complainants, Interested Parties and Free Riders*, 19(2) WORLD BANK ECON. REV. 287, 309 (2005); Stephen Chaudoin, *Audience Features and the Strategic Timing of Trade Disputes*, 68(4) INT'L ORG. 877, 885 (2014).

[4] Cristina Fattore, *Interest Group Influence on WTO Dispute Behaviour: A Test of State Commitment*, 46(6) J. WORLD TRADE 1261, 1263 (2012); Andrew T. Guzman & Beth A. Simmons, *Power Plays and Capacity Constraints: The Selection of Defendants in WTO Disputes*, 34(2) J. LEGAL STUD. 557, 559 (2005).

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Gregory Shaffer finds that firms' lobbying effort are designed to mobilize a political coalition to pressure the United States Trade Representative (hereinafter "USTR") to adjust its priorities and to keep track on the dispute resolution process.[5] Jong Hee Ryu and Randall Stone also support Shaffer's argument by finding that a principal-agent relationship between multinational companies and the USTR make political contributions to induce the USTR to file a WTO dispute.[6] Christina Davis also finds that powerful industries, measured by political contributions, are more likely to have trade barriers challenged at the WTO.[7] Different from political lobbying by the firms, some research finds that firms lobbying is effective because firms provide government agents with credible information.[8] For example, Ryan Brutger finds that firms signal information about the strength and value of potential cases, and the government selects cases based on firms' signals.[9]

Significant research has focused on the role of international relations in a government's decision on whether to file a formal complaint at the WTO. Henrik Horn and Petros Mavroidis note that additional factors are often given causal weight in determining how states calculate the cost-benefit trade-off of WTO dispute settlement.[10] One particular factor that has been examined in some detail is how political and power relations between potential disputants affect the probability that a dispute is initiated. Research by Andrew Guzman and Beth Simmons find that while politically weak countries refrain from filing complaints against politically powerful countries for fear of costly retaliation, low-income states tend to complain about behavior by high-income states because the latter offers a higher expected return that can offset resource cost putting in the initiation of disputes.[11] Chad Bown finds a country's retaliatory capacity is an important determinant of whether to formally engage in the trade dispute.[12] Moreover, a country may even choose the timing of raising a dispute dependent on the

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[5] GREGORY SHAFFER, DEFENDING INTERESTS: PUBLIC—PRIVATE PARTNERSHIPS IN WTO LITIGATION 31-50 (2003).
[6] Jong Hee Ryu & Randall W. Stone, *Plaintiffs by Proxy: A Firm-Level Approach to WTO Dispute Resolution*, 13 REV. INT'L ORGS. 273, 303 (2018).
[7] CHRISTINA L. DAVIS, WHY ADJUDICATE? ENFORCING TRADE RULES IN THE WTO 21 (2012).
[8] David Austen-Smith, *Information and Influence: Lobbying for Agendas and Votes*, 37(3) AM. J. POL. SCI. 799, 800 (1993); Keith E. Schnakenberg, *Informational Lobbying and Legislative Voting*, 61(1) AM. J. POL. SCI. 129, 130 (2017); *see generally* HELEN V. MILNER, INTERESTS, INSTITUTIONS, AND INFORMATION: DOMESTIC POLITICS AND INTERNATIONAL RELATIONS (1997); Ryan Brutger, *Litigation for Sale: Private Firms and WTO Dispute Escalation*, 118(3) AM. POL. SCI. REV. 1204 (2024).
[9] Brutger, *supra* note 8, at 1204.
[10] Henrik Horn & Petros C. Mavroidis, *A Survey of Literature on the WTO Dispute Settlement System* (Ctr. for Econ. & Pol'y Rsch., Discussion Paper No. 6020, 16, 2011).
[11] Guzman & Simmons, *supra* note 4, at 570.
[12] Bown, *supra* note 3, at 308.

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domestic political situation of the partner country.[13]

In addition to the dispute initiation, some scholars have explored the escalation and aggressiveness of trade dispute at the WTO. Christina Fattore finds that interest group politics influence how aggressively states pursue their interests in trade disputes: she finds that complainant states are more likely to be pressured by their interest groups to pursue a favorable outcome rather than settle or accept an earlier decision.[14] Ryu and Stone find that firms lobby not only to have government agents to initiate the WTO litigation, but also to secure their trade market more aggressively.[15] They find that once a dispute begins, firms increase their political activity in order to keep USTR on track of WTO disputes. Taking a step further from having disputes to effect change in policies, or compliance, Lauren Peritz looks at how the domestic veto players affect compliance with the WTO rulings and finds that the presence of veto players makes compliance less likely in the respondent country.[16]

What has been overlooked in the past studies is the importance of the bureaucracies. There have been some studies that look at the general government structure's effect on trade policies. For example, Wolfgang Mayer argues that political institutions affect the level of tariffs via majority voting: "in the special case of majority voting with no voting costs, it is the median factor owner's optimal tariff rate that will be chosen to become the actual tariff rate".[17] Judith Goldstein finds that the institutional designs of the US government have played a pivotal role in the formation of protectionist measures, mediating demands from social groups and international constraints.[18] However, these studies neglect the more active role of bureaucracies, and how the design of trade bureaucracy can affect trade policies. Despite the increased role of the private sector in WTO litigation, governments are still the sole legal entity eligible for filing cases at the WTO. Furthermore, states do not always operate as a rational and unitary actor.[19] Trade bureaucrats' decision making is crucial whether to initiate and proceed further in the WTO litigation as they still retain control over the gatekeeping process. We aim to fill in this gap in the literature and discuss the importance of bureaucracies in the next section.

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[13] Chaudoin, *supra* note 3, at 905.
[14] Fattore, *supra* note 4, at 1273.
[15] Ryu & Stone, *supra* note 6, at 301.
[16] Lauren Peritz, *When Are International Institutions Effective? The Impact of Domestic Veto Players on Compliance with WTO Rulings*, 64(1) INT'L STUD. Q. 220, 220 (2020).
[17] Wolfgang Mayer, *Endogenous Tariff Formation*, 74(5) AM. ECON. REV. 970, 971 (1984).
[18] Judith Goldstein, *Ideas, Institutions, and American Trade Policy*, 42(1) INT'L ORG. 179, 189 (1988).
[19] Graham T. Allison, *Conceptual Models and the Cuban Missile Crisis*, 63(3) AM. POL. SCI. REV. 689, 707 (1969).

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III. BUREAUCRATIC DESIGN AND TRADE DISPUTES

Many researchers have pointed out the importance of bureaucracy in a state's agenda-setting, decision-making, and policy implementation. As "Miles' Law" aptly puts it, "decision-making depends on where one sits in the state apparatus."[20] Because an individual government bureaucracy can have its own goals and discretions, its interest and beliefs affect the policy directions and strategies. For instance, Hoekman and Wolfe find discrepancies in policy priorities and perspectives on WTO reform between delegates at the WTO and bureaucrats in national capitals, driven by varying degrees of autonomy from their home countries and levels of expertise, which are influenced by distinct geographic contexts.[21]

The bureaucratic design literature offers some key concepts that are useful to discuss the roles of bureaucracy in trade disputes. First, the independence and autonomy of an agency are crucial factors in the quality of policy. Autonomy refers to a range of independent actions available to actors[22] and the capacity to develop independent preferences.[23] While autonomy is one of the key factors for successful policy implementation of agencies, too much autonomy could lead to moral hazards, especially when the objectives of the agency do not perfectly align with those of the policy decision-makers.[24] Conventionally, independence is considered to "improve the credibility of policymaking by insulating it from short-term politics and providing technical expertise".[25] Furthermore, having an independent agency can serve as a credible commitment.[26] When an independent trade agency has only a limited amount of autonomy, a country can use it as a negotiating strategy in trade agreement negotiations by tying down its hands.[27]

Autonomy and independence have been used to advocate for independent trade agencies. For example, the USTR was created under the

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[20] Rufus E. Miles, Jr., *The Origin and Meaning of Miles' Law*, 38(5) PUB. ADMIN. REV. 399, 399 (1978).
[21] Hoekman & Wolfe, *supra* note 2, at 2387.
[22] Eugene Heldt, *Regaining Control of Errant Agents? Agency Slack at the European Commission and the World Health Organization*, 52(4) COOP. & CONFLICT 469, 473 (2017).
[23] Michael W. Bauer & Jörn Ege, *A Matter of Will and Action: The Bureaucratic Autonomy of International Public Administrations*, *in* INTERNATIONAL BUREAUCRACY: CHALLENGES AND LESSONS FOR PUBLIC ADMINISTRATION RESEARCH 13, 23 (2017).
[24] *See generally* Sean Gailmard & John W. Patty, *Formal Models of Bureaucracy*, 15 ANN. REV. POL. SCI. 353 (2012).
[25] Martino Maggetti, *De Facto Independence After Delegation: A Fuzzy-Set Analysis*, 1(4) REGUL. & GOVERNANCE 271, 271 (2007).
[26] Manuel P. Teodoro & Michael A. Pitcher, *Contingent Technocracy: Bureaucratic Independence in Developing Countries*, 37(4) J. PUB. POL'Y 401, 403 (2017).
[27] *See generally* Robert D. Putnam, *Diplomacy and Domestic Politics: The Logic of Two-Level Games*, 42 INT'L ORG. 427 (1988).

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Trade Expansion Act of 1962, aiming to find a balance between the foreign policy objectives and domestic political objectives in the US. However, it should be noted that trade bureaucrats under other ministries also exercise a varying level of independence and autonomy, and that even independent trade agencies feel pressure from elected officials.[28] Furthermore, sometimes, too much autonomy for one bureaucratic agency may be undesirable since it could undermine a harmonious policy at a national level. In 1987, Australia, which then had a separate Department of Trade, merged it with their Department of Foreign Affairs to create today's Department of Foreign Affairs and Trade, in order to curb the autonomy of an independent trade ministry.[29]

Second, expertise and capacity of the bureaucrats also determine the shape and success of international trade litigation. Expertise refers to the specialist knowledge of the government agency regarding the issue area, and capacity refers to the ability of successfully implementing a policy.[30] Expertise and capacity are one of the main reasons for which elected policymakers delegate authority to agencies—professional bureaucrats can acquire a greater amount of information. However, expertise is not automatically generated, and is often specific to policy area.[31] In other words, past experiences shape expertise of bureaucrats and thereby policy outcomes. This implies that those who prioritize diplomatic and security relations (e.g. FA ministries) and those who prioritize economic interests (e.g. CI ministries) will generate different types of expertise when it comes to international trade. For example, Milan Daku and Kryzysztof Pelc use text analysis of country submissions and WTO panel and AB reports and find that prior legal experience plays a critical factor in shaping the WTO's jurisprudence.[32] Furthermore, the authors find that the panelists rely more on the disputing parties' submissions when the issues raised are novel. Their study suggests that it is important to develop legal principles based on past experiences and expertise to effectively persuade the WTO Dispute Settlement Body (hereinafter "DSB"). Third-party participation is another way of accumulating more legal expertise in the WTO.[33] While expertise is usually

[28] William E. Kovacic & Marc Winerman, *The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness*, 100(5) IOWA L. REV. 2085, 2100 (2015).
[29] Philip Flood, *DFAT Amalgamation: Thirty Years Since the Drama*, AUSTL. INST. OF INT'L AFF. (July 24, 2017), https://www.internationalaffairs.org.au/australianoutlook/dfat-amalgamation-30-years-on/.
[30] Gailmard & Patty, *supra* note 24, at 373.
[31] Sean Gailmard & John W. Patty, *Slackers and Zealots: Civil Service, Policy Discretion, and Bureaucratic Expertise*, 51(4) AM. J. POL. SCI. 873, 886 (2007).
[32] Milan Daku & Krzysztof J. Pelc, *Who Holds Influence over WTO Jurisprudence?*, 20(2) J. INT'L ECON. L. 233, 254 (2017).
[33] *See generally* Marc L. Busch & Eric Reinhardt, *Three's a Crowd: Third Parties and WTO Dispute Settlement*, 58(3) WORLD POL. 446 (2006). Leslie Johns & Krzysztof J. Pelc, *Who Gets to Be in the*

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discussed in relation to making the optimal policy choices, capacity is usually discussed in terms of policy implementation. For example, the legal capacity of the disputing parties is an important factor in how trade litigations evolve.[34]

Some scholars have highlighted the role of bureaucratic culture in formulating trade policies. Bureaucratic culture encompasses "attitudes",[35] "rituals and beliefs",[36] "formal and informal rules",[37] and "standard operating procedures and institutionalized routines of problem-solving".[38] Bureaucratic culture shapes how organizations interpret external demands and determine the responses they will implement.[39] Written rules and routines, which form part of an organization's mandate and legal provisions, directly guide bureaucratic actions.[40] Consequently, staff in bureaucratic organizations are often trained and expected to respond according to the organization's cultural norms, rather than the specific requirements of each situation.[41] This implies that those who have a culture of favoring diplomatic coordination and maintaining cordial relations (e.g., FA ministries) and those inclined to pursue material interests (e.g., CI ministries) are likely to show different responses to trade disputes. For instance, the so-called "Confucian" Asian bureaucratic culture affects the reluctance of Asian countries to invoke the WTO panel process, compared to Western countries.[42]

Figure 1 below illustrates the diverse trade bureaucratic structures among G20 countries. While some nations have maintained the same lead ministry responsible for trade policy since their inception, others have experienced changes in the ministry overseeing trade policy. Notably, Argentina, China, Indonesia, Japan, South Korea, and Turkey fall into this category. For instance, South Korea transitioned its trade jurisdiction from

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Room? Manipulating Participation in WTO Disputes, 68(3) INT'L ORG. 663, 665 (2014).

[34] *See generally* Fattore, *supra* note 4; Guzman & Simmons, *supra* note 4; Bown, *supra* note 3; CHAD P. BOWN, SELF-ENFORCING TRADE: DEVELOPING COUNTRIES AND WTO DISPUTE SETTLEMENT (2009); Busch & Reinhardt, *supra* note 33; Marc L. Busch et al., *Does Legal Capacity Matter? A Survey of WTO Members*, 8(4) WORLD TRADE REV. 559 (2009).

[35] Bessma Momani, *Limits on Streamlining Fund Conditionality: The International Monetary Fund's Organizational Culture*, 8 J. INT'L REL. & DEV. 142, 147 (2005).

[36] Michael Barnett & Martha Finnemore, *The Politics, Power, and Pathologies of International Organizations*, 53(4) INT'L ORG. 699, 719 (1999).

[37] Susanne Lütz et al., *Accountants, Europeanists and Monetary Guardians: Bureaucratic Cultures and Conflicts in IMF-EU Lending Programs*, 26(6) REV. INT'L POL. ECON. 1187, 1190 (2019).

[38] CATHERINE WEAVER, HYPOCRISY TRAP: THE WORLD BANK AND THE POVERTY OF REFORM 37 (2008).

[39] *See* MICHAEL BARNETT & MARTHA FINNEMORE, RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS 9 (2004).

[40] Lütz et al., *supra* note 37, at 1190.

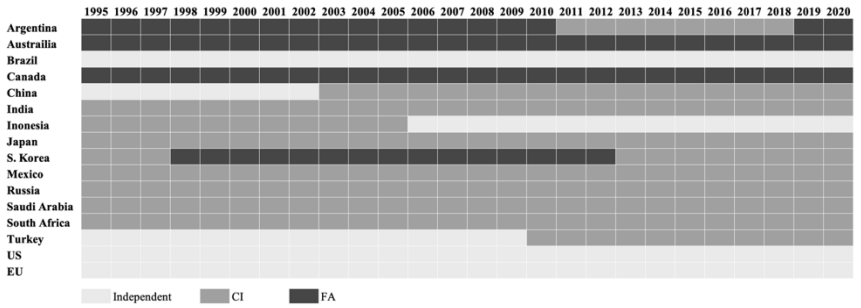
[41] JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT 110 (1980).

[42] *See generally* Shen-Yi Peng, *The WTO Legalistic Approach and East Asia: From the Legal Culture Perspective*, 1(2) ASIAN-PAC. L. & POL'Y J. 78 (2000).

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the CI ministry to the FA ministry in response to heightened multilateralism in the late 1990s.

FIGURE 1: Variation of Trade Agencies Across G20 Countries over Time

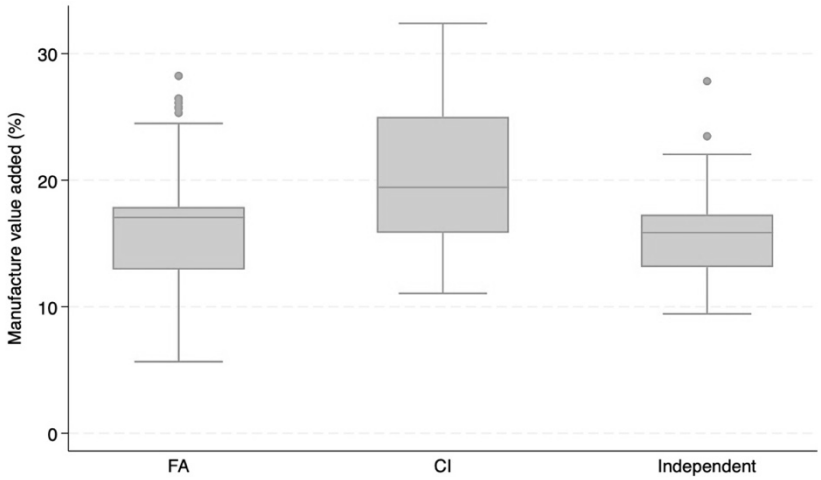


The variation in trade bureaucracy among G20 countries provides evidence that governments tend to assign trade policy responsibilities to ministries best suited for the task, considering their economic structure and national interests. Countries with a large manufacturing sector, such as Japan, China, and Mexico, often have the CI ministry oversee trade (Figure 2). In contrast, countries aiming to align trade policies with diplomatic goals often have the FA ministry oversee trade. For example, Canada merged the Trade Commissioner Service (TCS) and the Department of External Affairs to create the Department of Foreign Affairs and International Trade (DFAIT), recognizing the need to integrate trade and other economic interests into foreign policy.[43]

[43] Mercier, *supra* note 1, at 11-12.

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FIGURE 2: Tendency of Economic Structure by Trade Bureaucracy Type in G20 Countries



Based on the real-world evidence, we infer that countries strategically choose their trade agency to best respond to their socioeconomic needs and international context, safeguarding political and economic interests. Therefore, we anticipate that governments' strategic choice of trade agency would influence states' dispute behavior at the WTO. How different types of trade agencies lead to different dispute strategies is a key empirical question to explore.

IV. THEORETICAL FRAMEWORK AND HYPOTHESIS

In this section, we present our theory on how the bureaucratic design translates into the preferences of trade agencies with respect to aggressiveness during trade disputes. The key element that we center our theory on is whether the trade agency is overseen by either the CI ministry or the FA ministry or is an independent trade agency.

Before we move on to the specifics of our theory, a clarification on what we mean by "aggressiveness" in a trade dispute is warranted. By "aggressiveness" we refer to a bureaucrat's "willingness to move on to a higher level of trade dispute settlement procedures". The reason is that proceeding from a consultation to the panel stage, from establishment of a panel to an appellate body review, and from an appellate body review to request for authorization of retaliation all require extra dedication, personnel, and time. Although the level of burden from moving to a higher level of dispute resolution may not increase in a linear way, this definition reflects

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the fact that the main goal of a trade litigation lies in bringing a trade partner's measure in compliance with the WTO agreements. In other words, we focus on the trade bureaucrats' willingness to move forward with a costly litigation process as a complainant.

A. Commerce and Industry-Led (CI) Ministry

The central goal of a CI ministry is to promote a country's economic growth and protect its domestic industries. Such objectives shape the bureaucratic culture within the CI ministry, influencing how bureaucrats respond to external demands. For example, the Indian Department of Commerce under Ministry of Commerce and Industry, which oversees trade policies of India, states its long-term vision as "to make India a major player in world trade and assume a role of leadership in international trade organizations commensurate with India's growing importance."[44] Similarly, Ministry of Economy, Trade and Industry of Mexico states that it pursues "sustained economic growth and accelerate job creation".[45] These missions lead bureaucrats in CI ministries to view trade policy as a tool to achieve economic growth, prioritize the economic interests of domestic industries during trade disputes, and foster close relationships with domestic firms and industries. For a CI ministry, actively engaging in WTO adjudication is the best way to build a reputation as a guardian of domestic industry economic interests. Furthermore, the close relationship with business firms gives an informational benefit to the CI ministries, which could prompt them to pursue more aggressive conflict resolutions. Throughout WTO litigation proceedings, firms play crucial roles in fact-finding, funding research, and undertaking litigation tasks, thereby signaling the strength and significance of potential trade dispute.[46] This close rapport can streamline the government's handling of WTO litigation by facilitating easier access to case information from these firms.

On the other hand, the close connection between domestic producers and CI ministries means that the CI ministries are more susceptible to domestic interest group pressures, especially compared to an FA ministry. In other words, as the ministry in charge of economic development and protection of domestic firms and industries' interests, a CI ministry has a narrower client group—domestic producers—to satisfy, compared to an FA ministry. As a

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[44] *Department Setup and Function*, MINISTRY OF COM. & INDUS., DEP'T OF COM. (Jan. 2, 2024), https://commerce.gov.in/about-us/department-of-commerce/department-setup-and-function/.

[45] *In Order to Further Productivity and Competitiveness the Ministry of Economy Works to Achieve Sustained Economic Growth and Accelerate Job Creation,* SECRETARÍA DE ECONOMÍA [SEC'Y OF ECON.] (Jan. 11, 2016), https://www.gob.mx/se/acciones-y-programas/industry.

[46] *See generally* Brutger, *supra* note 8.

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result, when it comes to trade dispute resolution, a CI ministry' autonomy to choose whether to initiate litigations at the WTO and how far in the dispute resolution process they should go is more limited than that of an FA ministry or an independent agency.

Domestic interest groups and firms lobby to push trade officials to file a litigation at the WTO, to safeguard their economic interests and secure compliance with international trade laws by their trade partner countries.[47] Rather than seeking an early settlement of a dispute, firms seek to create favorable market condition, and to ensure that their damages from the other countries violations are satisfactorily remedied and that the same violations do not recur.[48] As this aligns with the CI ministries' policy goals and expertise, CI officials have an incentive to pursue aggressive dispute resolution to achieve these goals. In fact, previous research has shown that when the respondent's disputed market is important, the CI ministry of the complainant would be more likely to aggressively participate in the proceedings.[49]

There is some anecdotal evidence for the view that countries assign trade to CI ministries so that it could focus on sheltering economic interests of the country in the global market. For instance, South Korea, where the FA ministry has overseen trade policies since 1988, changed its trade bureaucratic structure in 2013 to establish a Ministry of Trade, Industry, and Energy. This move was rooted in the understanding that the FA ministry lacked insight into the specific needs of domestic industries. The realignment was assessed to indicate that combining industrial policy and trade promotion under one ministry could more effectively benefit Korea's manufacturing sector.[50] Another example is Argentina. Although traditionally and currently having the FA ministry (Ministry of Foreign Affairs, International Trade and Worship) oversee the trade sector, Argentina created a Foreign Trade Secretariat under the Ministry of the Economy and Public Finance (its CI ministry) to pursue "an ambitious and active trade promotion policy".[51]

In addition to the pressure from domestic interest groups and bureaucratic culture, a CI ministry has other political reasons to pursue more

[47] *See generally Brutger*, *supra* note 8; Christina L. Davis & Yuki Shirato, *Firms, Governments, and WTO Adjudication: Japan's Selection of WTO Disputes*, 59(2) WORLD POL. 274 (2007); Kishore Gawande et al., *Lobbying Competition over Trade Policy*, 53(1) INT'L ECON. REV. 115 (2012); Ryu & Stone, *supra* note 6.
[48] Ryu & Stone, *supra* note 6, at 278.
[49] Bown, *supra* note 3, at 289.
[50] MIN GYO KOO, THE POLITICAL ECONOMY AND LAW OF INTERNATIONAL TRADE: BETWEEN FREE TRADE IDEALS AND MERCANTILIST BIAS 486 (2d ed. 2021).
[51] Trade Policy Review Body, *Trade Policy Review Reported by Argentina*, at 13, WTO Doc. WT/TPR/G/277 (Feb. 13, 2013).

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aggressive trade dispute at the WTO. Unlike the FA ministries, for whom even a favorable WTO ruling may appear costly (since a formal litigation itself could be seen as a failure in diplomatic efforts), CI ministries have incentives to use WTO rulings to satisfy their domestic clients even when they do not think they have a high probability of winning the dispute. Exhausting all the options, going as far as an appellate body review, which is time-consuming and costly, can work as a strong signal to the domestic producers that the government is willing to fight for their interests.[52] The credible threat to resort to and the actual use of WTO litigation may increase the possibility of negotiation and cooperation with the violating trading partners when they consider official trade litigation as a costly option.[53] Even when the outcome is unfavorable, a CI ministry can blame the WTO (or even the FA ministry) and get credit for courageously standing up for the national interests. Therefore, we expect trade disputes to reach a higher level of resolution when a CI ministry oversees trade policies for the complainant country.

B. Foreign Affairs-Led (FA) Ministry

Compared to CI ministries, FA ministries generally pursue broader policy goals, encompassing trade benefits along with fostering overall relationships with trade partners and enhancing international reputation. Indeed, FA ministries responsible for trade tend to prioritize goals at the international level. For instance, Australia's Department of Foreign Affairs and Trade (DFAT) articulates its mission as collaborating with international partners to address global challenges, expand trade and investment opportunities, uphold international regulations, maintain regional stability, and support Australians abroad.[54] The emphasis on broader international policy areas means that FA ministries lack specific client groups to cater to, as the benefits of their policies are not narrowly targeted and indirect. This is one reason why FA ministries experience relatively less pressure from domestic firms and industries.

While an FA ministry is free from the domestic interest group pressure, it is bounded by diplomatic concerns and the international structural constraints. Trade policy is also an important subset of foreign policy,[55] as the international trade is an integral part and a reflection of the international

[52] Fattore, *supra* note 14, at 1276.
[53] *See generally* Arlo Poletti et al., *Cooperation in the Shadow of WTO Law: Why Litigate When You Can Negotiate*, 14(S1) WORLD TRADE REV. 33 (2015).
[54] *Department of Foreign Affairs and Trade*, AUSTRALIAN GOV'T, DEP'T OF FOREIGN AFF. & TRADE, https://www.dfat.gov.au (last visited Aug. 25, 2024).
[55] Richard N. Cooper, *Trade Policy Is Foreign Policy*, 9 F. POL'Y 18, 29 (1972).

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structure. For an FA ministry, formal trade litigation is a costly option, because it involves not only the risk of losing the litigation, but also souring relations with partner countries even if it wins the dispute on hand. Therefore, if the diplomatic externalities of a case are too high, the government may choose not to bring the case. For instance, despite China's discriminatory economic sanctions against Korean products after the US deployment of Terminal High Altitude Area Defense (THAAD) in Korea, Korea never filed an official request for consultation with China.[56] Many suspect that South Korea did not want to risk further upsetting China, a critical regional hegemon and an important trade partner. Only a small number of disputes—when the disputing parties are already in deep diplomatic conflicts such as South Korea and Japan—are considered as a diplomatic victory.[57] If the trade partner is politically influential in terms of the regional security and/or developmental loans, an FA ministry will be particularly hesitant to bring the case to the DSB.[58] Thus, an FA ministry is more likely to be cautious in deciding whether they will formally complain or not.

An FA ministry has more expertise and capacity in alternative ways to address a conflict, outside a formal litigation process. It is worth noting that diplomacy does not end with litigation.[59] Even when a dispute is officially filed at the WTO, diplomats continue their efforts behind the scenes to find a mutually agreeable solution, which is why we see a number of disputes terminate in the pre-panel stage instead of going through formal litigation processes. Diplomatic methods of dispute resolution allow the bureaucrats to be more flexible in ways of dealing with the situation, including linking trade and non-trade issues for a wider set of agreeable win-sets.[60] Thus, FA ministries typically operate with a degree of secrecy and isolation, often prioritizing tasks unrelated to supporting domestic industries and firms.

In addition, the bureaucratic culture of FA ministries may make their bureaucrats more cautious about raising formal trade disputes. Compared to the bureaucrats in CI ministries, those in FA ministries lack connections with domestic industries, tend to evaluate their leverage from a power perspective, and are trained to maintain the status quo rather than being radical. These institutionalized routines of problem-solving may make them more cautious

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[56] *Seoul Dismisses Idea of Petitioning WTO over China's THAAD Retaliation*, YONHAP NEWS AGENCY (Sept. 14, 2017, 3:59 PM), https://en.yna.co.kr/view/AEN20170914007500315.

[57] South Korea won an appeal regarding the WTO's decision on Korea's import bans and other measures on certain Japanese food products (*see generally* Appellate Body Report, *Korea — Import Bans, and Testing and Certification Requirements for Radionuclides*, WTO Doc. WT/DS495/AB/R (adopted Apr. 26, 2019)). The DSB result was widely considered as a victory in Korea.

[58] *Trade Policy Review Body*, *supra* note 51, at 13.

[59] KAREN ALTER, THE NEW TERRAIN OF INTERNATIONAL LAW: COURTS, POLITICS, RIGHTS, xvi-xviii (2014); Julia Gray & Philip Potter, *Diplomacy and Settlement of International Trade Disputes*, 64(7-8) J. CONFLICT RESOL. 1358, 1360 (2020).

[60] *See generally* Putnam, *supra* note 27.

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about the aftermath of WTO litigation and the escalation of trade disputes. For FA ministries, winning a trade dispute is not just about economic gains; it also involves political considerations and reputation. This complexity makes it difficult for FA ministries to accurately assess the political aftermath of trade disputes, even when they win WTO litigation Additionally, unlike CI ministries, which aim to establish a reputation for protecting industry interests, FA ministries are concerned that legal actions might signal to third parties how the country handles trade disputes. This could create an unnecessarily aggressive image, potentially harming other aspects of relations with third parties. Therefore, FA ministries are more cautious and prefer not to appear aggressive.

Even after a dispute has been formally raised, when the complainant country has the FA leading trade sector, we expect the likelihood of reaching a high level of resolution stage, such as the retaliation process, to be low. The reason is that since a higher level of resolution can result in greater spillover effects of souring the relations,[61] the foreign affairs ministry people would be reluctant to escalate the trade dispute so far. Furthermore, as mentioned earlier, FA ministries tend to be better equipped with their expertise in other mechanisms to solve the dispute, which would increase the likelihood of terminating a trade dispute early. Therefore, we expect trade disputes end at earlier stages, such as before the panel composition, when the FA ministry is leading the trade sector.

C. Independent Trade Ministry[62]

As a specialized entity, an independent trade agency possesses focused knowledge and expertise dedicated to trade policy formulation, negotiation, and implementation. Countries establish single-purpose organizations to cultivate specialized expertise in areas not typically found within the core administration.[63] This expertise often encompasses a deep understanding of international trade laws, economic principles, market dynamics, and geopolitical considerations. Independent trade agencies are therefore less reliant on firms and industries for information and fact-finding during the WTO litigation processes. As a consequence, independent trade agencies are also more shielded from interest group pressures, which mitigates domestic producers' rent-seeking behavior.

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[61] *See generally* Cooper, *supra* note 55.

[62] In the real world, independent trade institutions go by various names, such as Ministry of Trade (e.g., Brazil, Indonesia, and Türkiye), Trade Representatives (e.g., USTR), and Trade Commission (e.g., European Commission for Trade). In this research, we opt to use "ministry" for consistency with the other independent variables.

[63] KOEN VERHOEST ET AL., GOVERNMENT AGENCIES: PRACTICES AND LESSONS FROM 30 COUNTRIES 416 (2012).

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Specialization in trade allows independent trade agencies to take a more holistic approach instead of focusing on protecting domestic industries from import competition. The reason is that independent trade agencies address a variety of issues, including but not limited to import management, export promotion, licensing, negotiation, and litigations. In contrast, as mentioned earlier, CI ministries often prioritize the development and protection of domestic industries, which may sometimes conflict with broader trade liberalization objectives. Consequently, trade disputes addressed within industry ministries may be skewed towards protectionism or sectoral interests, potentially hindering overall economic efficiency and international competitiveness. In this vein, many express alarm that the Department of Commerce (CI ministry equivalent in the US) has taken a more active role in leading the US trade policies, limiting the role of the independent trade agency, the USTR.[64] The USTR addresses a comprehensive list of issues pertaining to international trade, including negotiations affecting both the imports and exports. Meanwhile, the mission of the Department of Commerce is to "create conditions for economic growth and opportunity for all communities."[65] Such a domestic-focused goal inevitably leads to prioritizing domestic producers, who have to compete with the importing goods. Thus, when the voice of the Department of Commerce becomes louder, the US trade policies have become more protectionist—a potential trigger for future trade disputes.

Independent agencies are also tasked with navigating a complex relationship among various stakeholders. On the one hand, independent agencies are usually less targeted by domestic interest groups, compared to CI ministries.[66] On the other hand, independent agencies are still subject to a various group of political actors. Independent agencies are also pressured by elected officials.[67] Specialized institutions are expected to coordinate and integrate expertise and information dispersed across ministries.[68] Furthermore, in many cases, independent agencies are established to strike a balance among domestic stakeholders regarding trade policies. The USTR, which was established to facilitate communication between the Congress and the President on trade matters, is a good example. Involvement of multiple actors, each with their own policy goals and objectives, can lead to

[64] Edward Alden, *Why the U.S. Trade Office No Longer Runs Trade, Council on Foreign Relations*, COUNCIL ON FOREIGN REL. (Mar. 20, 2023, 10:29 AM), https://www.cfr.org/article/why-us-trade-office-no-longer-runs-trade.
[65] *About Commerce*, U.S. DEP'T OF COM., https://www.commerce.gov/about (last visited Aug. 25, 2024).
[66] DIANA M. STANESCU, THE BUREAUCRATIC POLITICS OF FOREIGN ECONOMIC POLICYMAKING 16 (2020).
[67] Kovacic & Winerman, *supra* note 28, at 2091.
[68] VERHOEST ET AL., *supra* note 63, at 416.

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confusion and inefficiency in policy implementation, including an unassertive stance in international litigations.[69] Thus, although shielded from domestic interest group pressure, independent trade agencies are also subject to other political constraints, which make them hesitant to pursue an aggressive trade dispute strategy. Therefore, we expect to see similar trade dispute patterns from an independent trade agency to those of an FA ministry.

D. Hypotheses

In summary, we expect to see different patterns of trade disputes at the WTO's DSB, depending on which sector of the government oversees trade policies. Given their distinct levels of autonomy and expertise, the CI ministries are inherently inclined to prioritize domestic concerns ("looking inside"), whereas the FA ministry is more likely to consider broader international factors ("looking outside").[70] FA ministries, whose policy objectives are more diverse but loosely linked, serve clients facing more diffused costs and benefits affording them greater autonomy to pursue their organizational interests. Furthermore, their expertise and bureaucratic culture center around diplomatic relations and negotiations, suggesting that trade bureaucrats under FA ministries are likely to proceed cautiously in pursuing trade disputes. Conversely, CI ministries are more constrained by their principal, namely domestic producers, and thus have limited autonomy. Moreover, they have fewer channels for engagement with foreign governments, and their expertise primarily centers on economics. Consequently, trade bureaucrats under CI ministries are expected to employ the WTO DSB more aggressively to safeguard the economic interests of domestic industries. Independent trade agencies, however, tend to operate with a high degree of autonomy from pressure exerted by interest groups, similar to FA ministries. Additionally, their role in coordinating multiple political and administrative actors may lead to an inefficient decision-making process, resulting in less aggressive pursuit of trade disputes. Therefore, we anticipate similar behavior from independent trade agencies and FA ministries. Thus, we propose the following two hypotheses:

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[69] TERRY MOE, THE POLITICS OF BUREAUCRATIC STRUCTURE, IN CAN THE GOVERNMENT GOVERN? 267 (John E. Chubb & Paul E. Peterson eds., 1989); DAVID E. LEWIS, PRESIDENTS AND THE POLITICS OF AGENCY DESIGN: POLITICAL INSULATION IN THE UNITED STATES GOVERNMENT BUREAUCRACY 1946-97 (2004); Daniel A. Farber & Anne Joseph O'Connell, *The Lost World of Administrative Law*, 92 TEX. L. REV. 1137, 1155 (2014).

[70] Vinícius R. Vieira, *Domestic Institutional Design and the National Interest in Trade Negotiations*, 10-14 (Am. Pol. Sci. Ass'n, 2021).

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H1: When the industrial ministry oversees trade policy, the complainant country will be more likely to pursue aggressive trade dispute strategies than when the foreign affairs ministry is in charge.

H2: Independent trade agencies will show a similar level of aggressiveness in trade disputes as when the foreign affairs ministry oversees trade policy.

V. RESEARCH DESIGN

To test our theory, we conduct a quantitative analysis using the WTO disputes between G20 countries from 1995 to 2020. We focus on the Members of G20, in order to minimize the risk of country differences driving the dispute patterns. The Members of G20 represent more than 80% of the global GDP and 75% of international trade. It is logical to limit the scope of our study to those countries that are highly engaged in international trade. Furthermore, out of 598 disputes raised at the WTO DSB during 1995-2020, 416 concern disputes between G20 countries, which is 70% of all disputes. Meanwhile, because the individual countries in the EU do not pursue separate trade policies, we do not look at them separately.

TABLE 1: WTO Dispute Outcomes by Category

Level of Aggressiveness	Complainants' Bureaucracy Type			Total
	0 (FA)	1 (CI)	2 (Independent)	
1	20	35	97	152
2	24	34	63	121
3	11	23	60	94
4	12	17	20	49
Total	67	109	240	416

We operationalize aggressiveness of a dispute in terms of the stage at which a dispute is resolved at the WTO. A dispute concluded before the panel stage through a mutual agreement (coded as 1) signifies the least aggressiveness, as the parties involved opt for a cooperative resolution without advancing into formal litigation. This indicates a preference for negotiation and compromise, reflecting a strategic choice to maintain

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amicable relations and minimize confrontation. Meanwhile, when disputes proceed to the panel stage (coded as 2), we regard it as an increase in the level of aggressiveness. The reason is that it indicates that the parties are unable to resolve their differences through bilateral negotiations and thus require formal adjudication. The aggressiveness further escalates if the case is appealed (coded as 3), demonstrating a willingness to challenge the panel's decision and engage in extended legal proceedings. The highest level of aggressiveness is observed when a complainant requests authorization for retaliation (coded as 4), indicating a breakdown in compliance and the pursuit of restorative measures against the non-complying party. This escalation from negotiation to litigation and ultimately to retaliation authorization reflects the intensifying strategic resolve and adversarial stance of the disputants in defending their trade interests. Based on this operationalization, we run ordered logit analyses with the level of aggressiveness as our dependent variable. We use the WTO website's description of each dispute to see the status of each dispute as of January 2023.

The main explanatory variable of interest is the bureaucracy type of trade ministry. Drawing from the information we gathered from a variety of sources (the WTO's DSU documents, Trade Policy Reviews (TPRs), and Ministerial conference records), we create a categorical variable to represent bureaucracy types. We put the trade agency under the FA ministry as our baseline and compare it to CI ministry led trade bureaucracy and independent trade agencies. According to our hypotheses, we expect the coefficients for CI-led agency to be positive, and the independent agency to be insignificant. Our main estimation model for the hypotheses is as follows:

$$\ln\left(\frac{\pi_i}{1-\pi_i}\right) = \beta_0 + \beta_1 BureaucracyType_i + \beta_2 \ln GDPpc_i + \beta_3 PriorParticipation_i + \beta_4 Polity_i + \beta_5 ManufactureVA_i + \beta_6 \text{Primary}VA_i + \beta_7 TradeShare_i$$

$$(where\ \pi_i = \Pr(Y = 1))$$

Our unit of analysis is the bilateral trade dispute between G20 Member states. If a complainant (A) has raised a dispute against two countries (B and C), we record it as both A-B and A-C disputes. As a result, we have 416 observations based on 406 disputes.

Table 1 shows the distribution of our data by the level of aggressiveness and bureaucracy types.

We include a number of economic control variables based on the previous WTO dispute literature. First, log GDP per capita is used to control

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the economic size of trading countries, as many previous studies predicted as one of the ma determinants of WTO dispute participation.[71] Second, trade share of GDP (trade volume/GDP) reflects how essential trade is to the given country. Third, we include the shares of the manufacturing and primary industry in a country's total industry in terms of value-added (manufacture VA and primary VA) as proxies for pressure from industry-related interest groups that a state would face. As manufacturing and agriculture are one of the most frequently contested issue areas in DSB, we expect that a higher share of manufacturing and primary industry in a given state will make the government act more aggressively in dispute resolution. Data for all the economic variables are from the World Bank World Development Index (WDI).[72]

We also include the number of prior disputes to control the effects the state's legal capacity and the interests in the international trade regime. Following the previous literature[73], we differentiate participation as a complainant and as a respondent. We expect that states with higher levels of legal capacity also have the resources necessary to pursue a favorable dispute outcome in the DSB, and therefore will be more likely to take a higher level of aggressiveness through the DSB procedures. We include polity score (ranging from +10, strongly democratic, to –10, strongly autocratic) from the Polity V dataset of the Polity Project conducted by the Center for Systemic Peace.[74] Table 2 presents the summary statistics of the variables. Lastly, we include year to control the year-specific events, such as the effectiveness of WTO that was started to be questioned in the later 2000's.

[71] *See generally* Bown, *supra* note 3; Fabien Besson & Racem Behdi, *Is WTO Dispute Settlement System Biased Against Developing Countries? An Empirical Analysis*, ECOMOD (2004), https://ecomod.net/sites/default/files/document-conference/ecomod2004/199.pdf.

[72] *World Development Indicators*, THE WORLD BANK, https://datatopics.worldbank.org/world-development-indicators/ (last visited Aug. 25, 2024).

[73] *See generally* Christina L. Davis & Sarah Blodgett Bermeo, *Who Files? Developing Country Participation in GATT/WTO Adjudication*, 71(3) J. POL. 1033 (2009).

[74] *The Polity Project*, CTR FOR SYS. PEACE, https://www.systemicpeace.org/polityproject.html (last visited Aug. 25, 2024).

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TABLE 2: Summary Statistics

Variable	Obs.	Mean	Std. dev	Min	Max
Level of Aggressiveness	416	1.95	1.03	1	4
Bureaucracy Type	416	0.58	0.75	0	2
GDP Per Capita (logged)	416	9.67	1.17	5.99	11.08
Prior Dispute	416	34.28	33.68	0	123
Polity	416	8.19	3.86	-7	10
Manufacture VA	416	17.04	4.94	5.64	32.38
Primary VA	416	4.39	5.18	0.91	25.41
Trade Share	416	61	21.79	16.43	105.56
Year	416	2005	-	1995	2020

VI. ESTIMATION RESULTS

TABLE 3 presents the results for our main ordered logit model, which provide supporting evidence for our expectations. The likelihood ratio chi-square of 22.27 with a p-value of 0.0081 tells us that our model as a whole is statistically significant. Our hypotheses focus on the effect of trade agency type on a trade dispute's progression as the level of resolution. The expectation is that the dispute outcomes change depending on which ministry takes the lead of trade policy. According to Hypothesis 1, countries with the CI ministry in charge of trade are more likely to pursue aggressive dispute strategies to protect their domestic industries, compared to those with the FA ministry in charge of trade. Thus, the positive coefficient for the CI ministries for higher level of trade dispute resolutions is in support of our Hypothesis 1. Hypothesis 2 predicts that we will not detect any statistically significant difference between FA ministries and independent trade agencies. Although for different reasons, we expect that both an independent trade agency and an FA ministry are likely to be more cautious and less assertive

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during trade disputes. Therefore, a statistically significant coefficient for the FA ministries and independent trade agencies is in line with our Hypothesis 2.

TABLE 3: Ordered Logistic Regression Results

VARIABLES	Coefficient	Robust Std. err.	95% conf. interval	
CI-led (Type=1)	0.631**	0.324	0.051	1.321
Independent (Type=2)	0.181	0.377	-0.550	0.921
GDP Per Capita (logged)	-0.110	0.444	-0.611	0.480
Prior Participation as Complainant	0.011**	0.005	0.000	0.022
Prior Participation as Respondent	0.005**	0.002	0.000	0.011
Polity	0.062*	0.034	-0.012	0.124
Manufacture VA	0.056*	0.030	-0.007	0.109
Primary VA	-0.050	0.066	-0.154	0.070
Trade Share	-0.006	0.005	-0.016	0.004
Year	0.009	0.017	-0.0247	0.044
/cut1	20.08	33.54	-4.349	6.167
/cut2	21.05	33.55	-3.387	7.141
/cut3	22.47	33.67	-1.969	8.568
# of observations	416			

Robust standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

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To further explore the nexus between the level of dispute resolution and a complainant's trade agency design, we present the marginal effects of the variables in Table 4. The first row shows that when the complainant's trade bureaucracy is under the CI ministry, the probability of the disputes being resolved in the pre-panel stage decreases by 15.3%p compared to when it is under the FA ministry. In contrast, the likelihood of advancing into the next stage—panel procedure, appellate body process, and retaliation—increases 1.2%p, 7.8%p, and 6.3%p, respectively. All estimates are statistically significant at the 1% and 5% confidence levels. This means that countries with the CI ministry leading trade pursue more aggressive trade dispute resolutions than ones leading with the FA ministry. Thus, Hypothesis 1 is fully supported by our empirical test.

Our result indicates that CI ministries prefer adjudication over diplomatic pre-panel consultations. This may be because a government can promote its efforts to secure the interests of domestic industries by resorting to litigation, which is more costly but also more visible to the public. Furthermore, if the decisions of the panel and appellate body are favorable to the domestic industries, the complainant government can expect more political support from its public. This finding is not surprising. Previous literature has found that when it comes to trade policy implementation, a government is responsive to the pressure from industry-related interest groups in order to satisfy certain industries, and in turn, garner their political support.[75] In the same vein, a country where the CI ministry is leading trade policy may be more susceptible to these pressures than one where an independent trade agency is responsible for trade policy formulation.

TABLE 4: The Marginal Effect of Trade Agency Design on WTO Dispute Patterns

Explanatory Variables	Dependent Variables	dy/dx	Std. Err.	P>|z|
Complaint	(FA-led trade agency= base line)			
CI (Type=1)	Pre-panel consultation stage	-0.153**	(0.080)	0.029
	Panel established	0.012*	(0.008)	0.154
	Appealed	0.078**	(0.041)	0.032
	Permission/arbitration to retaliate	0.063*	(0.037)	0.056

[75] *See generally* Fattore, *supra* note 4; Gene M. Grossman & Elhanan Helpman, *Protection for Sale*, 84(4) AM. ECON. REV. 833 (1994); STEPHEN P. MAGEE ET AL., BLACK HOLE TARIFFS AND ENDOGENOUS POLICY THEORY: POLITICAL ECONOMY IN GENERAL EQUILIBRIUM 183 (1989).

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Explanatory Variables	Dependent Variables	dy/dx	Std. Err.	P>|z|
Independent (Type=2)	Pre-panel consultation stage	-0.045	(0.093)	0.620
	Panel established	0.008	(0.015)	0586
	Appealed	0.023	(0.047)	0.624
	Permission/arbitration to retaliate	0.015	(0.032)	0.635
GDP Per Capita (logged)	Pre-panel consultation stage	0.028	(0.072)	0.814
	Panel established	-0.003	(0.009)	0.814
	Appealed	-0.014	(0.037)	0.814
	Permission/arbitration to retaliate	-0.009	(0.026)	0.815
Prior Participation as Complainant	Pre-panel consultation stage	-0.002**	(0.001)	0.032
	Panel established	0.000*	(0.000)	0.094
	Appealed	0.001**	(0.001)	0.036
	Permission/arbitration to retaliate	0.001**	(0.000)	0.037
Prior Participation as Respondent	Pre-panel consultation stage	-0.003**	(0.001)	0.020
	Panel established	0.001*	(0.000)	0.079
	Appealed	0.001**	(0.000)	0.023
	Permission/arbitration to retaliate	0.001**	(0.000)	0.024
Polity	Pre-panel consultation stage	-0.015*	(0.009)	0.108
	Panel established	0.002	(0.001)	0.163
	Appealed	0.008*	(0.004)	0.114
	Permission/arbitration to retaliate	0.006*	(0.003)	0.114
Manufacture VA	Pre-panel consultation stage	-0.014*	(0.008)	0.090
	Panel established	0.002	(0.001)	0.149
	Appealed	0.007*	(0.004)	0.095
	Permission/arbitration to retaliate	0.005*	(0.003)	0.095
Primary VA	Pre-panel consultation stage	0.013	(0.014)	0.465
	Panel established	-0.001	(0.002)	0.474
	Appealed	-0.006	(0.007)	0.467

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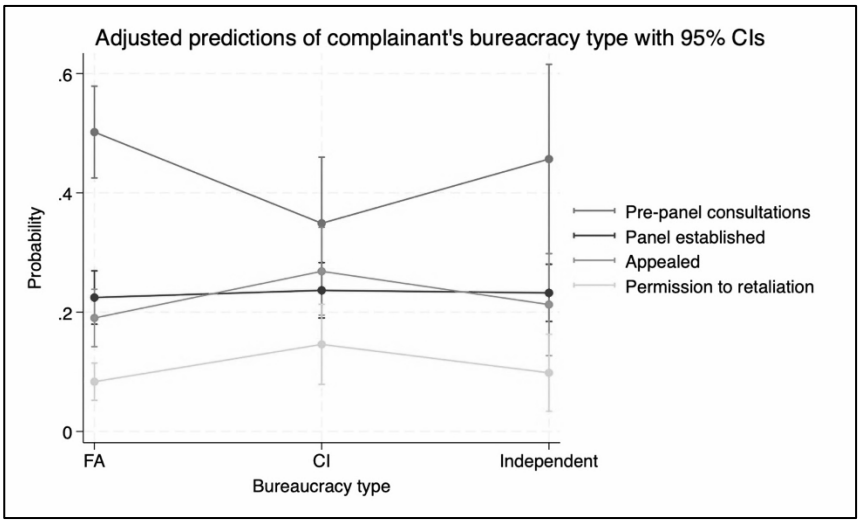
Explanatory Variables	Dependent Variables	dy/dx	Std. Err.	P>|z|
Primary VA	Permission/arbitration to retaliate	-0.004	(0.005)	0.467
Trade Share	Pre-panel consultation stage	0.002	(0.001)	0.235
	Panel established	-0.000	(0.000)	0.272
	Appealed	-0.000	(0.001)	0.240
	Permission/arbitration to retaliate	-0.001	(0.000)	0.240
Year	Pre-panel consultation stage	-0.002	(0.004)	
	Panel established	0.000	(0.001)	
	Appealed	0.001	(0.002)	
	Permission/arbitration to retaliate	0.001	(0.001)	

Note: dy/dx for factor levels is the discrete change from the base level.
*p<0.1, **p<0.05, ***p<0.01

FIGURE 3 shows that when the FA ministries are in charge of trade policy, the probability that disputing countries reach a mutually satisfactory agreement at the pre-panel consultation is higher, compared to the case where a CI ministry is responsible for the trade policy. In contrast, the likelihood that the FA ministry proceeds into the higher resolution stages is lower, compared to a CI ministry-led trade agency. This result suggests that trade agencies under FA ministries prefer diplomatic bilateral solutions over formal litigation processes even though the issue is officially raised at the WTO DSB.

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FIGURE 3: The Impact of Bureaucratic Design on the Level of Dispute Resolution



Hypothesis 2 is also supported by the estimation result: The estimates of the coefficients for an independent trade agency are not statistically different from zero. This means that independent trade agencies do not show any statistically significant differences from FA ministries in terms of trade dispute behavior. This is in line with our explanation that although independent agencies are less targeted by domestic interest group pressures, they are bounded by other political constraints, leading to less aggressive trade dispute behaviors.

Meanwhile, the coefficients for the control variables show mixed results. On the one hand, GDP per capita (logged), primary VA, and trade share are statistically insignificant, which is different from the previous findings. On the other hand, prior participation as complainant, prior participation as respondent, and polity appear to be statistically significant. This is in line with our explanation that although independent agencies are less targeted by domestic interest group pressures, they are bound by other political constraints, leading to less aggressive trade dispute behaviors. It is also logical that a higher polity score leads to a more aggressive dispute pattern, as democracies are more responsive to interest group pressures. Meanwhile, manufacture VA is partly statistically significant. Our results show that countries whose economies are dependent on manufacturing are less likely to withdraw the litigation at the pre-panel stage while they are more active to appeal and retaliate against their misbehaving trade partners to protect their domestic industries and economic interests. This is in line with many

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previous studies that confirm the influence of special interest groups on trade policy formulation.[76] Table 5 presents the summary of key findings from our main analysis.

TABLE 5: Summary of Key Findings

Bureaucracy Type		Level of aggressiveness			
		Pre-panel consultations	Panel established	Appealed	Retaliation
CI	→	-15.3%p	+1.2%p	+7.8%p	+6.3%p
Independent	→	-	-	-	-

We conduct a series of robustness checks to show that our main results hold across different model specifications. We add a variety of different control variables, following previous studies and test different models.

TABLE 6 shows the results of our robustness checks. Our original model outcome is provided in Model (1) for comparisons. Our key findings—that the CI ministry-led trade bureaucrats pursue more aggressive trade dispute resolution compared to FA ministry-led trade bureaucrats or independent agencies—seem robust.

First, to account for the bilateral character of a trade dispute, we include variables regarding respondents in a given dispute: respondents' trade bureaucracy type, GDP per capita (logged), polity score, manufacture VA, primary VA, and trade share. The result is shown in Model (2). Some of the respondent-related variables are statistically significant, and the positive coefficient for the CI ministry is still statistically significant at p value of 0.05.

Models (3) and (4) use the model specifications suggested in Fattore (2012), which examines the relationship between interest group pressures on trade dispute resolution. In Model (3) we control for the US involvement (US dummy) and EU involvement (EU dummy) to avoid having the two actors drive the results. These dummy variables take on the value of 1 when the complainant is either the US or the EU respectively, and 0 otherwise. Only the US dummy shows a statistically negative relationship with the aggressiveness of the dispute. Given the economic and geo-political importance of the US, we suspect that the respondent countries avoid

[76] *See generally* Fattore, *supra* note 4; Grossman & Helpman, *supra* note 75. Magee et al., *supra* note 75, at 183.

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aggressive trade disputes against the US.

Model (4) includes complex issue and third-party involvement dummies. Complex issue dummy refers to whether a dispute addresses multiple issues. Because Fattore's replication data is not available, we code the variable as 1 when a dispute addresses multiple separate agreements, and 0 otherwise. For example, if a dispute addresses GATT 1994-related issues and technical barriers to trade together, the case is considered complex. The complex issue dummy does not provide statistically significant results, which means that whether a dispute address multiple issues does not affect the level of dispute resolution. Third party participation dummy is another dichotomous measure regarding whether the dispute involves third parties. The third-party involvement dummy provides strong and significant results. This may be because the participation of third parties plays a role as implicit support for the complainant and peer pressure to the respondent, leading to the easy establishment of a panel. In addition, we controlled for the duration of dispute, or the total number of days from the date of consultation request to the end of the dispute, to account for cases where the aggressiveness appears as delayed process. However, the duration does not appear to be statistically significant. Model (5) includes all the control variables from Fattore (2012) and controls regarding the respondent.

Across all five models, the CI ministry shows a positive and statistically significant effect on the aggressiveness of a dispute resolution process. Thus, we are confident that our main results hold regardless of the set of controls, and that when CI ministries are in charge of trade, there is a higher likelihood of reaching a higher level of trade dispute resolution at the WTO.

TABLE 6: Robustness Check Results

	VARIABLES	(1)	(2)	(3)	(4)	(5)
Complainant	CI-led (Type =1)	0.631**	0.694**	0.561*	0.663*	0.747*
		(0.324)	(0.334)	(0.395)	(0.428)	(0.576)
	Independent (Type=2)	0.181	0.211	0.248	-0.237	0.194
		(0.377)	(0.395)	(0.651)	(0.514)	(1.074)
	GDP Per Capita (logged)	-0.110	-0.138	0.0494	-0.346	-0.386
		(0.333)	(0.358)	(0.388)	(0.431)	(0.584)
	Prior Disputes (as a complainant)	0.0111**	0.0125**	0.0204***	0.00984*	0.0149
		(0.00515)	(0.00550)	(0.00734)	(0.00597)	(0.00972)

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	Prior Disputes (as a respondent)	0.00554**	0.00317	0.00623**	0.00212	0.000375
		(0.00250)	(0.00383)	(0.00253)	(0.00289)	(0.00508)
	Polity	0.0620*	0.0625*	0.0533	0.0396	0.0505
		(0.0344)	(0.0346)	(0.0377)	(0.0352)	(0.0446)
	Manufacture VA	0.0555*	0.0569*	0.0608*	0.0315	0.0517
		(0.0303)	(0.0306)	(0.0332)	(0.0319)	(0.0404)
	Primary VA	-0.0503	-0.0614	-0.0299	-0.0940	-0.108
		(0.0668)	(0.0699)	(0.0720)	(0.0882)	(0.107)
	Trade Share	-0.00666	-0.00704	-0.0178*	-0.00455	-0.0214
		(0.00526)	(0.00548)	(0.0105)	(0.00613)	(0.0164)
	Year	0.00977	-0.000152	-0.00638	-0.0249	-0.00560
		(0.0173)	(0.0224)	(0.0273)	(0.0198)	(0.0445)
Respondent	CI(Type =1)		0.00611			-0.327
			(0.410)			(0.541)
	Independent (Type=2)		-0.0871			-0.934*
			(0.381)			(0.478)
	GDP per capita (logged)		0.168			-0.257
			(0.267)			(0.406)
	Polity		-0.0527			-0.0127
			(0.0322)			(0.0445)
	Manufacture VA		-0.0653**			-0.0405
			(0.0297)			(0.0382)
	Primary VA		0.0186			-0.0360
			(0.0510)			(0.0803)
	Trade Share		0.00515			0.00395
			(0.00579)			(0.00772)
	US Dummy			-1.150*		-0.558
				(0.783)		(1.161)
	EU Dummy			-0.110		0.628
				(0.747)		(1.229)
	Third Party Participation				5.403***	5.530***
					(0.856)	(0.922)
	Complex Issue Dummy				0.167	0.172
					(0.252)	(0.254)
	Dispute Duration (days)				-7.47e-06	-1.51e-05

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				(9.78e-05)	(0.00010)
/cut1	20.08	0.243	-11.12	-48.65	-13.93
	(33.54)	(43.47)	(52.71)	(38.22)	(85.65)
/cut2	21.05	1.221	-10.14	-46.99	-12.20
	(33.55)	(43.48)	(52.72)	(38.20)	(85.65)
/cut3	22.47	2.649	-8.704	-45.33	-10.50
	(33.57)	(43.48)	(52.73)	(38.19)	(85.64)
Observations	416	416	416	416	416

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

VII. EVIDENCE OF BEHAVIORAL DIFFERENCE ACROSS TRADE AGENCIES

To provide further evidence on the effects of different bureaucratic structure of trade agencies on the patterns of dispute resolution at the WTO, we conducted a series of interviews with prominent South Korean trade experts, including academics and former trade bureaucrats (e.g., Trade Commission of Korea). We selected South Korea as a case study because it has experienced both the CI ministry (2013-present) and the FA ministry (1998-2013) overseeing the trade sector. Moreover, South Korea is an active participant at the WTO dispute settlement process, with a prolonged history of grappling with recurring trade issues (such as zeroing) with the same trade partner (the US). Therefore, we deemed it suitable to demonstrate the impact of bureaucratic changes while holding other factors constant. All interviewees possess extensive experience in WTO trade disputes and have provided counsel on national trade policies. These interviews were designed to validate the underlying mechanism of our theory by elucidating how different types of trade bureaucracy influence states' behavior in disputes at the WTO.

Interviews with experts revealed that the CI ministry and the FA ministry prioritize different factors when deciding to bring cases to the WTO. Experts outlined several key considerations influencing the government's decision to file a WTO complaint, regardless of whether it falls under the jurisdiction of the CI or FA ministry. These factors include the overall relationship with the other country, the financial burden of filing, the level of commitment from the representative, the willingness of involved firms to litigate, the likelihood of obtaining redress for the affected industry, and the domestic industrial and

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political climate. However, experts also noted a nuanced perspective, suggesting that when the CI ministry was in charge, there was a greater emphasis on the value of the disputed market and the domestic industrial and political climate. In general, the FA ministry is more concerned with maintaining relationships and potential alliances with the disputing parties. As a result, one interviewee mentioned, when the FA ministry was in charge, filing a complaint against powerful allies such as the US was exercised with caution, due to its involvement in diplomatic relations and state-level issues.

A Trade Commissions expert gave us one detailed anecdote demonstrating how South Korea's Ministry of Foreign Affairs and Trade (hereinafter "MOFAT") has carefully considered bilateral relations in the WTO disputes. During the dispute with the US in *United States — Anti-Dumping measures on Stainless Steel Plate in Coils and Stainless-Steel Sheet and Strip from Korea* (DS179), the MOFAT refrained from raising a complaint about zeroing *per se*, despite the issue's sensitivity.[77] This reluctance was due to the absence of prior zeroing cases, which put pressure on Korea to set a precedent. Interestingly, the first case on zeroing, *EC — Bed Linen* (DS141), coincided with this period, prompting Korea to participate as a third party. Consequently, Korea chose to directly challenge US zeroing policies only after accumulating sufficient case law. Subsequently, in *United States — Use of Zeroing in Anti-Dumping Measures Involving Products from Korea* (DS402), Korea filed a complaint against the US. However, a compromise was reached between South Korea and the US, leading to the early closure of the case.

On the contrary, Korea aggressively pursued dispute resolution for a similar matter when the Ministry of Trade, Industry and Energy (hereinafter "MOTIE") was in charge, which led to *US — Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea* (hereinafter "DS464"), an anti-dumping case concerning washing machines. South Korea was even granted the right to retaliate against the US. A former MOTIE official emphasized the significance of DS464, noting that it effectively nullified US zeroing measures and solidified the WTO's stance against such practices. He also underscored the broader implications of the

[77] In its responses to questions from the Panel regarding Korea's claim that the use of multiple averages based on sub-periods is inconsistent with Article 2.4.2 of the Anti-Dumping Practices Agreement, Korea acknowledged the association between multiple averages based on sub-periods and zeroing. Korea stated that "to the extent that 'zeroing' was an integral part of the 'multiple averaging' methodology, it is properly within the Panel's terms of reference." Despite this acknowledgment, Korea also expressed a cautious approach, suggesting that "it clearly is possible for the Panel to address the issue of multiple averaging without addressing the issue of zeroing *per se*." Report of the Panel, *US — Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip From Korea*, at 124-25, WTO Doc. WT/DS179/R (adopted Feb. 1, 2001).

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victory, stating that it not only removed barriers for washing machine exports affected by zeroing but also addressed a major obstacle for Korean industries exporting to the US. Furthermore, he highlighted how the victory set a precedent for Korea's commitment to challenging unfair import restrictions through WTO mechanisms, crucial for maintaining stable trade relations in the future.

Expert opinion diverged regarding the reason for which South Korea had not implemented retaliation despite the WTO's approval in DS464, which highlights expertise in different backgrounds can lead to contrasting views on the same case. On the one hand, officials from the Ministry of Industry contended that Korea chose not to retaliate because major companies like Samsung and LG had shifted their production bases overseas. They argued that, even if retaliation were pursued, the benefits to the domestic economy would have been marginal, as exports would not have improved. On the other hand, officials from the Ministry of Foreign Affairs believed that Korea refrained from retaliation due to the anticipated strong reaction from the US government and concerns about the bilateral relationship. These differing perspectives underscore the different levels of independence and policy priorities involved in various trade bureaucracies when pursuing trade disputes and their resolution, which is also in line with our quantitative analysis results.

VIII. DISCUSSION

This study aims to bridge the international political economy literature on international trade disputes and the national bureaucratic politics literature. While there have been a number of studies from the international organization perspective on the trade disputes that take place at the WTO, they often neglect the importance of national trade bureaucracies in international litigations. We also expand the scope of research to encompass the various termination stages of a formal litigation—going beyond the initiation stage, which had been at the center of previous research. Thus, this study contributes to a deeper understanding of how the bureaucratic designs affect the outcomes of international trade disputes.

We find that the institutional setup of trade bureaucracy affects the pattern of WTO disputes. Our analysis shows that having a trade agency under a CI ministry leads to more aggressive forms of trade dispute resolution than having it under an FA ministry or as an independent agency. Interviews with trade experts and former trade bureaucrats also provide further evidence that different ministries emphasize different aspects in trade disputes. Our results suggest that CI ministries tend to "look inside", concerned with domestic producers and industries, while FA ministries tend to "look outside", which is the expected outcome based on their different

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expertise.

It is important to recognize some inherent limitations of our research design. First, our way of categorizing bureaucracy design is coarse. Instead of our categorical measure that looks at which ministry has the overseeing power of trade, one could try to measure the level of expertise and autonomy of trade bureaucrats in a more detailed way. Second, there is the endogeneity and selection bias problems. Although we try to control for the different economic states, our models do not address when does a country decide to bring an issue at the WTO. Our findings only speak to the level of aggression once a trade dispute has been raised at the WTO. It is also possible that countries that pursue more aggressive trade policies tend to have their CI ministry oversee trade policies. We try to address this problem through our case study of South Korea, but one could envision other statistical tests to explore a country's decision of trade bureaucracy design as the main dependent variable. Even in our quantitative analysis, we have relatively few cases with the FA ministry leading the trade sector in the dataset. One could expand the scope and see the underlying factors that go into the decisions of countries on their ministry structures.

In conclusion, as our study provides the first-cut evidence on how bureaucratic design could affect the outcomes of international trade disputes, we hope that future studies continue to explore the relationship in a more detailed and nuanced way. Having more fine-grained measurements and taking different research designs could expand on our findings. Another possible future study is to focus on the indirect effects of bureaucracy, exploring the moderating and mediating effects of bureaucracy design on the relationship between domestic and foreign pressure and trade disputes. Furthermore, although we focus on trade agencies and trade disputes, the overall implications could be applied and verified in other issue areas such as international investment disputes. Thus, our study paves way towards a sequence of future research that could enhance our understanding of the role of bureaucratic design in international settings. We hope that future studies will follow to further explore the values of bureaucracy designs.

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