Fear of Crowds in World Trade Organization Disputes: Why Don't More Countries Participate?

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The participation deficit in global governance is usually blamed on power politics; we argue it may actually reflect strategic behavior by excluded countries themselves. In the World Trade Organization, member-states affected by a trade dispute can join litigation as "third parties" to gain access to otherwise private negotiations. In spite of its considerable benefit and negligible cost, third-party participation remains rare. Countries often stay out even when they have a material interest at stake. Why is this? We argue that because the presence of third parties decreases the odds of a settlement and increases the odds of litigation, strategic states may choose to stay out to avoid acting as involuntary spoilers. All states benefit from a swift resolution to trade disputes, so the benefit of participation decreases as more states join a case. We test our model by examining each country's decision to participate or not in every WTO dispute since 1995. The findings support our theory: states shy away from joining when it is too crowded.

Nobody goes there anymore; it's too crowded.
—Yogi Berra

International organizations and multilateral negotiations aspire to egalitarian decision making among sovereigns, yet small states are often excluded from participation. Some organizations explicitly give powerful states more influence, such as the UN Security Council (Johns 2007). Others have formal rules that offer a voice to small countries, such as consensus decision making in the International Monetary Fund. Yet these rules often mask informal norms that allow powerful countries to set the agenda and push for their preferred outcome, especially when stakes are high (Stone 2011; Vreeland 2007). Similarly, many multilateral negotiations are criticized for being controlled by developed countries. In a 2003 report on trade and environmental negotiations, the Overseas Development Institute expressed the views of many when it asked are developing countries "[v]ictims or [p]articipants"? The implicit assumption, there and elsewhere, is that nonparticipants in the international system are victims.

The participation deficit in international organizations is often chalked up to power politics. In this view, nonparticipation might result from powerful states seeking to control outcomes by shutting small countries out (Kahler 1992). More benignly, some have argued that the difficulty of decision making within any group grows in proportion to its size (Johns and Pelc 2014; Keohane and Nye 2001; Martin 1992). If so, there may be increasing willingness to delegate to subgroups as the size of the institution increases. Others claim that international organizations suffer from a trade-off: as an institution grows larger, the depth of cooperation decreases because the institution must satisfy those states least willing to cooperate (Downs, Rocke, and Barsoom 1998; Gilligan and Johns 2012). While power politics and coercion might keep weak states from participating, constraints on participation may nevertheless be necessary to promote effective decision making and deep cooperation.

We argue that an additional factor may be at work: staying out may be individually rational even in the absence of constraints on participation. Most political rhetoric trumpets the cost of exclusion, but we contend that within international

organizations and multilateral negotiations, exclusionary decision making may be caused by rational decisions by states not to participate rather than coercion or formal constraints. Weak states may recognize that their presence makes cooperation more difficult and voluntarily choose to be excluded.

One of the institutions most heavily criticized for exclusionary decision making is the World Trade Organization (WTO). The WTO has been described as a "country club" of wealthy countries that excludes poor countries from decision making. Under the WTO's "green room" model, rich countries reach a private consensus among themselves and present their decisions to the remainder of the membership for an up or down vote.[1] The WTO's dispute settlement system, in particular, is often singled out by critics for its lack of transparency and limited participation by poor countries (Smythe and Smith 2006).

The WTO's institutional design provides us with a unique means of assessing whether states strategically choose not to participate. In response to its perceived democratic deficit, the WTO has actively promoted third-party participation in trade disputes. Third parties are countries other than the litigants that are allowed into the room during otherwise private negotiations between complainant and defendant countries. Third-party participation is cheap but valuable: it allows countries to guard their interests during negotiations and to voice their views during litigation, without paying the cost of initiating a dispute and becoming a complainant.

Third-party participation in the WTO encapsulates many of the broader concerns about multilateralism. As is true in many international organizations, given the widely extolled benefits of participation and its low cost, it is surprising how few countries actually join WTO disputes. The average case in our sample draws under four third parties. Legal scholars have manifested their surprise at this low level of third-party participation (e.g., Horlick 1998, 690). In fact, if we account for countries' economic interests in each trade dispute, we would expect each case to draw an average of over 14 countries.[2]

Consider this typical dispute. In March 2002, Brazil challenged the excise tax that Florida imposed on a range of processed orange and grapefruit products. Four countries joined as third parties—an average rate of participation. More interesting were the countries that chose not to join: some, such as Thailand and Argentina, exported more of the relevant products to the United States than the average exports of the four countries that did join as third parties. And other nonparticipants, such as the Philippines, exported more than all of the third parties. Why did a country like the Philippines, with a large stake in the dispute and sufficient legal capacity to be itself both a complainant and a defendant in other WTO disputes, decide not to join this case as a third party? As we show, the average dispute features a striking number of such "missing participants."

Regardless of whether the litigants reach a settlement, countries are better off participating than staying out, all else equal. Except that "all else" is not equal: one of the most robust findings concerning WTO disputes is that third-party participation sharply reduces the odds of settlement.[3] As a result, countries may choose not to participate because doing so risks making a settlement less likely. Overall, three factors affect participation decisions. First, third parties receive *private benefits*: being present during negotiations ensures that a state is not cut out of a private deal between the litigants. Second, all affected states receive *public benefits* when litigants reach an early settlement and the defendant complies swiftly, reducing barriers for all exporters. Finally, third parties benefit from the ability to *voice* their concerns if the case goes to litigation.

These incentives, combined with the way in which the presence of more third parties makes settlement less likely, produce interdependence in state decision making. If no other state becomes a third party, then a settlement is likely and an affected state has a strong incentive to join the case, receiving both private and public benefits. However, as more states become third parties, litigation grows more likely: participants are unlikely to receive private benefits, and all states lose the public benefit of a swift settlement. With each additional third party, the expected benefit of participation decreases, while the odds of a drawn-out dispute increase. The result is that each individual state becomes less likely to join, even if no formal barrier blocks its participation.

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1. For example, Bolivia, Cuba, Ecuador, and Nicaragua recently complained that "the WTO has become an organization that is not led by its Members, in which decision-making . . . is not governed by consensus, and negotiation meetings are not open to participation by all Members" (WTO WT/MIN(11)/W/4, December 2011).

2. We generate this figure using trade flows for the products at issue in every WTO dispute, as discussed below.

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3. Anecdotal evidence for the effect of third parties on the odds of settlement has long existed (Davey and Porges 1998) and is even reflected in WTO training modules, which mention, e.g., how the absence of third parties "may be attractive for a complainant who intends to work towards a mutually agreed solution with the respondent without interference from other Members" (WTO 2004, 46). The third-party effect was then empirically borne out in Busch and Reinhardt (2006) and further replicated in Johns and Pelc (2014). In all cases, the more third parties are in the room, the lower the odds of early settlement.

THIRD-PARTY PARTICIPATION IN WTO DISPUTE SETTLEMENT
Overview

WTO dispute settlement is decentralized. Individual states must themselves challenge any perceived violations that harm their interests. The institution merely provides information about its members' behavior and adjudicates the legality of their policies when called on to do so (Johns 2012; Johns and Rosendorff 2009). As such, the good functioning of the WTO requires its members to make decisions about whether to file a dispute, become a third party to another member's dispute, or refrain from involvement altogether.

Once a case is filed, every member must decide how to respond. The question most countries face is whether to join as a third party. Article 10 of the Dispute Settlement Understanding (DSU) reads that "any Member having a substantial interest in a matter before a panel . . . shall have an opportunity to be heard by the panel and to make written submissions to the panel."[4] However, third parties almost always join before a panel is created, during otherwise private consultations.[5] Third parties can be pro-complainant, pro-defendant, or mixed in their policy preferences, but we focus on pro-complainant third parties because the vast majority of third parties whose partisanship we observe—over 70% in our sample—are pro-complainant.[6] This is in keeping with the literature, which has generally treated third parties as pro-complainant (Bown 2005; Elsig and Stucki 2011).

Consultations are private negotiations among the complainant, defendant, and third parties, nominally aimed at reaching a "mutually agreeable solution." The WTO explicitly encourages such settlement as its preferred alternative to litigation (DSU, art. 3.7, 22.1). The litigants also have reason to prefer private settlements: they allow the defendant to avoid the normative impact of an adverse ruling and the litigants to reach an agreement away from domestic interest group pressure. About 63% of the disputes in our sample never proceed to a panel ruling. In the remaining cases, when states cannot reach a settlement during consultations, the complainant requests a panel and litigation begins.

Private benefits, public benefits, and voice

An affected state is best off when it receives *private benefits* from a quick settlement. Private negotiations allow the complainant and the defendant to reach a deal that provides private benefits to the litigants, leaving out other members. To be sure, WTO rules prohibit such "discriminatory settlements."[7] Yet the private nature of settlements makes these rules difficult to enforce (Nakagawa 2007). The WTO itself is well aware of this. One of its own training modules mentions "the danger that the parties to a dispute might be tempted to settle on terms that are detrimental to a third Member not involved in the dispute" (WTO 2004, 93).[8] Third parties thus perform an unintended enforcement function by limiting discriminatory settlements (Kucik and Pelc 2013). Assessing the pervasiveness of discriminatory settlements is tricky, precisely because these remain private. While litigants have to notify the membership if they have reached a settlement to resolve the dispute, these notifications contain little to no information about the nature of the deal.[9] In fact, this is often cited as the reason for which litigants prefer to settle in the first place. Yet it is telling that we observe discriminatory settlements even in publicly notified solutions.

For a stark example of how defendants can offer private benefits to the complainant and third parties, consider the recent deal in the *United States–Cotton* dispute, which was initiated by Brazil against US cotton subsidies. Instead of removing its subsidies, the United States pledged $147.3 million a year to the Brazilian Cotton Institute, a fund for "technical assistance" to foreign farmers. Brazil had full discretion over how to allocate this money. In exchange, Brazil suspended its case. There was little disagreement about what this deal amounted to. As US Congressman Jeff Flake of Arizona stated, "Because our subsidies violate WTO rules, we're now

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4. Only member governments can be third parties. Private parties can submit amicus curiae briefs, yet these are often disregarded by panels and do not allow private parties to observe bargaining or litigation. Defendants can block third-party participation but almost never do so, with only a handful of blocks by the defendant in the first years of the WTO (Davey and Porges 1998). This is easily explained. If a defendant blocks a potential third party, then this state can file its own parallel case, raising the defendant's costs. This risk is explicitly stated in DSU art. 4.11: "If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations."

5. Busch and Reinhardt (2006) count only five instances in which a country joined at the panel stage and not at the start of consultations.

6. This proportion can be observed by looking to the content of third-party submissions, which we code for every dispute.

7. DSU art. 3.5 requires that all mutually agreeable solutions "shall be consistent with [WTO] agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements."

8. Kucik and Pelc (2013) show that complainants gain significantly more than the membership when they settle with the defendant prior to a ruling, but this advantage disappears entirely after a ruling.

9. The very first dispute filed at the WTO, brought by Singapore against Malaysia, was criticized for leading to an undisclosed settlement. As the chairman of the Dispute Settlement Body (DSB) stated, "'it was important that . . . Members considered the need to register formally not only the initiation of disputes but also the settlement and resolution thereof'. *This precedent had not been followed*" (DSB minutes from April 24, 1996, WTO Document: WT/DSB/M/15; emphasis added).

paying millions to subsidize Brazilian agriculture."[10] The *United States–Cotton* case shows that litigants can sometimes skirt rules that explicitly prohibit discriminatory settlements, even in well-publicized disputes, and provide private benefits to the countries in the room. In this case, the disputants were two large economies and the third parties were poor African and South American cotton producers. Despite their small size, the third parties benefited from the settlement. Brazil announced in late 2012 that institute funds would be given to developing countries, with an emphasis on the African countries that were third parties in the case.[11] The first recipient of institute funds was Paraguay, another third party in the case (*Commodities Control* 2014). Settlements such as the cotton agreement are likely only the tip of the iceberg: collusion is easier when it can be done behind closed doors. Access to negotiations means that countries can deter discriminatory settlements and avoid being left out of an eventual deal. By becoming third parties, even poor states can receive private benefits that are not extended to the full membership. We further verify this premise in our empirics.

The second-best outcome for a state is when it receives the *public benefit* flowing from swift compliance through a settlement. All WTO members benefit when a dispute is resolved by the defendant swiftly bringing a trade measure into conformity. Suppose that a defendant agrees to reduce the steel tariff that a complainant country is challenging. In the absence of discriminatory deals, all WTO steel exporters will benefit from the same reduced tariff under most favored nation (MFN) rules. This is why scholars refer to dispute initiation as a public good: the complainant is alone in incurring the costs of initiation, but all countries exporting the same product stand to gain, regardless of whether they participated as third parties (Bown 2009).

For example, in 2002, the United States challenged Japanese regulations that limited apple imports to prevent the spread of fire blight, a fruit disease. The ruling found that Japan lacked "sufficient scientific evidence" that fire blight could be transmitted by mature apples. Across-the-board bans were therefore more restrictive than necessary to assure food safety. One apple producer claimed that New Zealand was going to "piggyback" on Japanese compliance (*Sydney Morning Herald* 2003). The New Zealand media soon announced that "following a [WTO ruling] that

commercially-traded apples did not transmit [fire blight] . . . it appeared possible to negotiate new and more favourable access conditions for New Zealand apples" (*Scoop* 2005). The resulting benefit to New Zealand was clear. When the dispute concluded in 2005, New Zealand shipped barely any apples to Japan. In 2008, it exported 21,865 kilograms. That number more than doubled two years later and then tripled again the following year (data from UN Comtrade). The ruling benefited all apple exporters.

Because all affected states receive a public benefit when a case is resolved, an affected state is usually better off if a case is resolved quickly through settlement than if a case is prolonged through litigation, even if the affected state does not receive private benefits from the settlement. That is, sitting out of successful negotiations is preferable to participating in failed negotiations. Affected states also care about how fast compliance occurs. This timing can vary wildly, from months to years, and it can represent the difference between an exporting firm surviving and not surviving. The WTO legal texts themselves repeatedly emphasize the importance of swift resolution, stressing "prompt settlement" and "prompt compliance." As with all courts, both international and domestic, swift resolution occurs when the litigants avoid a legal ruling and reach an early settlement.

If a dispute goes to litigation and produces a ruling, defendants tend to "dig in their heels" and delay compliance (Busch and Reinhardt 2003, 720). Once a defendant weathers the condemnation of an unfavorable ruling, it has little incentive to comply swiftly (Busch and Reinhardt 2001). Disputes that proceed to litigation produce compliance nearly two years later than those disputes in which a settlement is reached, if compliance results at all, which existing work suggests becomes less likely.[12] Affected states thus have mixed incentives: while a state can receive private benefits from being in the room when a case settles, it does so at the risk of increasing the likelihood of litigation (Busch and Reinhardt 2006; Davey and Porges 1998; Johns and Pelc 2014), thereby delaying compliance. Since an affected state is best off when a case is settled quickly, participation opens the door to possible private benefits at the cost of possible delayed compliance.

Finally, if a case goes to litigation, participants benefit from the ability to *voice* their interests. While WTO third parties are overwhelmingly pro-complainant, their ideal policy outcomes need not match those of the complainant. In the public realm of litigation, third parties often make arguments and voice opinions that differ from those of the complainant. While a WTO panel is not required to rule on third-party arguments,

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10. *Congressional Record*, April 21, 2010, H2702.

11. See "$20 Million Project Aims to Transfer Brazilian Know-How in Support of Cotton Farmers" (October 17, 2012; http://www.fao.org/news/story/en/item/162607/icode; accessed March 17, 2013). See also "Semi-annual Report Brazilian Cotton Institute, January through June 2011" (http://www-iba.br.com/eng/pdfs/Semi-Annual%20Report.pdf; accessed September 9, 2015).

12. This descriptive statistic does not account for how disputes that settle may well differ from those that do not.

their written and oral statements are recorded in the panel report and frequently mentioned in subsequent discussions (Lester 2011). A state therefore benefits from being able to voice its opinions during litigation.

The combination of private benefits and voice suggests that states should always join cases that affect their trade interests: if a case settles, third parties receive private benefits; and if a case does not settle, third parties can voice their preferences to judges. However, by joining a case, a third party reduces the likelihood of settlement, thereby delaying compliance and reducing the public benefit of swift compliance. This trade-off is what drives countries' choice to join or not.

Alternative explanations

A growing literature examines why countries file disputes (Bown 2005, 2009; Busch and Reinhardt 2003; Davis and Bermeo 2009). Controlling for legal merit, a state is more likely to initiate a case when it has more dispute settlement experience, a larger economy, more trade at stake, and greater retaliatory capacity against the defendant. Conversely, a state is less likely to initiate a case if it is economically dependent on or has a preferential trade agreement with the defendant.

Existing explanations of third-party participation emerge from these earlier arguments about who initiates disputes. Just as states are less likely to file a dispute if they are vulnerable to retaliation by the defendant, scholars have argued that states are less likely to become third parties if they fear angering the defendant (Bown 2005; Elsig and Stucki 2011). These arguments are highly plausible. Yet they ignore the distinguishing feature of third parties: they are allowed into otherwise private negotiations without bearing any litigation costs. Our theory hinges on this distinction. Moreover, if nonparticipation is motivated by fear of retaliation, then we should see bandwagoning rather than fear of crowds. When a state fears a powerful defendant, the retaliation cost of participation should decrease as more countries become third parties. There should be "strength in numbers." As a result, each country's likelihood of joining should increase in the number of other countries that join. This directly contradicts our theory, allowing us to evaluate these competing hypotheses in our empirical analysis.

THEORY
Strategic incentives

Rather than imposing a specific game form, we begin with a more general framework and consider each affected state's preferences over its own actions and the possible outcomes of a trade dispute. Each state must decide whether to join the case as a third party, and each dispute can end in either litigation or settlement. On the basis of our reasoning above, we assume that each state's preference ordering over (action, outcome) pairs is

$$(\text{Don't Join, Litigation}) \prec (\text{Join, Litigation})$$
$$\prec (\text{Don't Join, Settlement}) \prec (\text{Join, Settlement}) \quad (1)$$

Of course, players are unlikely to perfectly anticipate the precise terms of litigation and settlement. For example, a state may be uncertain about whether the complainant will prevail at litigation, and it may not know ex ante the precise terms of future settlements. Each state's preferences over (action, outcome) pairs are therefore based on expectations about the possible consequences of litigation and settlement. We need not consider every scenario that can result from litigation and settlement; we need to assume only that in expectation, states prefer settlements to litigation.

We let $\tau_i > 0$ denote the trade stake of each state i. A state's least-preferred outcome is litigation. If state i does not join a case that goes to litigation, it receives expected payoff $L(\tau_i)$, which is increasing in τ_i. If state i instead joins such a case, it can voice its concerns and thereby increase its expected payoff to $L(\tau_i) + v\tau_i$, where $v > 0$. A state's most-preferred outcome is for the dispute to be resolved via settlement. If state i does not join a case that settles, it receives an expected payoff of $R(\tau_i)$, which is also increasing in τ_i. If state i instead joins such a case, it gains access to private benefits and thereby increases its expected payoff to $R(\tau_i) + b\tau_i$, where $b > 0$. These payoff functions represent state i's preference ordering if $L(\tau_i) + v\tau_i < R(\tau_i)$. A simple comparison of these alternatives suggests that state i should always join the case, thereby gaining access to voice and private benefits. However, the picture changes if we take into account the impact of state i's action on the outcome of the dispute.

Suppose that $s(n)$ denotes the probability of settlement when n states join the dispute as third parties. If state i believes that n other states will join, then its expected utility functions are

$$EU_i(\text{Don't Join}|n, \tau_i) = s(n)R(\tau_i) + [1 - s(n)]L(\tau_i),$$
$$EU_i(\text{Join}|n, \tau_i) = s(n+1)[R(\tau_i) + b\tau_i]$$
$$+ [1 - s(n+1)][L(\tau_i) + v(\tau_i)].$$

Because third parties hinder settlement and make litigation more likely (see fn. 3), we assume that $s(n+1) < s(n)$; that is, as more states join, the likelihood of settlement decreases. These expected utility functions illustrate the central dilemma for affected states: while joining a case creates access to private benefits and voice, it does so at the expense of reducing the probability of settlement (its most-preferred outcome) and increasing the probability of litigation (its least-preferred outcome). When a state decides whether to participate, it must balance its individual incentives against the collective outcome.

Fear of crowds

We begin by examining the impact of a state's trade stake. If the trade stake is small, the private benefit payoff ($b\tau_i$) and the voice payoff ($v\tau_i$) are relatively small compared to the risk of increasing the probability of litigation. As the trade stake increases, the private benefit and voice payoffs increase and the state is more tempted to become a third party. This ensures the following:

Proposition 1. As a state's own trade stake increases, its expected benefit from participation increases.

This result is shown graphically in the top portion of figure 1. The horizontal axis shows an affected state's trade stake, while the vertical axis shows its benefit of participation. As the upward-sloping lines show, this expected benefit is always increasing in the state's trade stake, regardless of the number of other third parties.

We can now address our key question: if participation is relatively costless and allows states to receive private benefits and to voice their interests, why don't more WTO members become third parties? The key assumption that drives our argument is that third parties decrease the probability of settlement.[13] If third parties do not affect bargaining, then a state could join a dispute without changing the probability of litigation. If the dispute settles, the state prefers receiving a private benefit to being left out. If the dispute goes to litigation, the state prefers voicing its interests to remaining silent. So if participation does not change the likelihood of litigation, then every affected state should participate by joining the dispute as a third party. However, because third parties do change bargaining outcomes, there is an implicit strategic cost of participation: by entering the room as a third party, a state makes it more difficult for disputants to settle. Third parties become spoilers during trade consultations.

The decision about whether to join a dispute is thus inherently strategic. If there are no other third parties, the dispute is likely to settle. So if a state becomes a third party, it is very likely to receive private benefits. In contrast, if there are many other third parties, the dispute is unlikely to settle. By being a third party, it can voice its interests during litigation, but it is unlikely to receive private benefits. When private benefits are large, the expected benefit of participation decreases in the number of other third parties, as shown in figure 1.
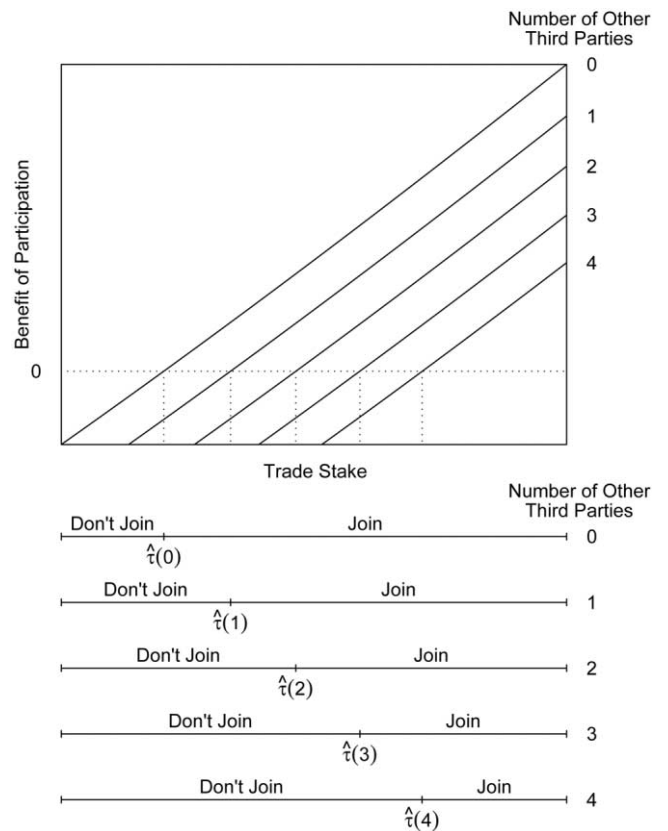

Figure 1. Fear of crowds

Proposition 2. As the number of other third parties increases, a state's expected benefit from participation decreases.

To understand the intuition driving this result, imagine a player that cares a lot about private benefits is trying to decide whether to join the case. Suppose this player is indifferent about whether to join when n other states have already joined the case; that is, the player's expected benefit from gaining access to private benefits and voice is equal to the player's expected cost of possibly losing the public benefits that come from settlement. If an additional state joins the case (increasing the number of other participants from n to $n + 1$), settlement becomes less likely, regardless of our player's decision. So our player's expected benefit of joining the case decreases because it is less likely to receive private benefits if it joins the case. Even if the marginal impact of each additional participant on the likelihood of settlement is small, the benefit of participation decreases as long as the payoff from the private benefit is relatively large.[14]

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13. As shown in Johns and Pelc (2014), we can easily write more detailed bargaining games that support this assumption.

14. Alternatively, if the voice payoff is sufficiently large, then increasing the number of players, thereby making litigation more likely, would make joining the case more desirable.

We can also examine the minimum trade stake at which a state wants to participate. As shown in the bottom portion of figure 1, there is always a trade stake threshold, $\hat{\tau}(n)$, that makes a state indifferent between joining and not joining. If a state's trade stake is smaller than this threshold, it will not participate; but if its trade stake is larger, it will participate.

Suppose once again that our hypothetical player is indifferent about whether to join when n other states have already joined the case. By proposition 2, if another country joins the case (increasing the number of other third parties from n to $n + 1$), the marginal benefit of participation decreases. This would ensure that our hypothetical player is no longer indifferent: it strictly prefers to not participate. Proposition 1 showed that the expected benefit from participation increases when a player's trade stake increases. So in order for our hypothetical player to remain indifferent when the number of other third parties increases from n to $n + 1$, it must have more trade at stake in the dispute. Therefore, the trade stake threshold grows larger as more states join the case ($\hat{\tau}(n) < \hat{\tau}(n + 1)$), as shown in figure 2A.

Corollary 1. As the number of other third parties increases, the trade stake threshold—the value at which a state is indifferent between participating and not participating—increases.

In addition to showing that states fear crowds in dispute settlement, our model generates two more empirical implications. First, corollary 1 shows that as the number of other third parties increases, each player's trade stake threshold increases. That is, a state must have more at stake to enter a crowded room. This leads to our model's first implication: cases that attract more third parties should, on average, have higher third-party trade stakes. A second implication of our argument is that countries should rush to join disputes that affect their interests. While we have not explicitly modeled timing decisions above, our key argument is that states want to be in the room during dispute settlement, provided that the room is not too crowded. This suggests that states should race to join a dispute in order to get the expected benefit of participation before the room gets too crowded. We assess the plausibility of both of these implications below.

Extensions

Our analysis above is a highly general one. We focus on the strategic incentives of WTO members rather than imposing assumptions about how states decide whether to join a case. We use this approach for two important reasons. First, there is no WTO requirement that states must simultaneously decide whether to join, and there is no predesignated first mover.
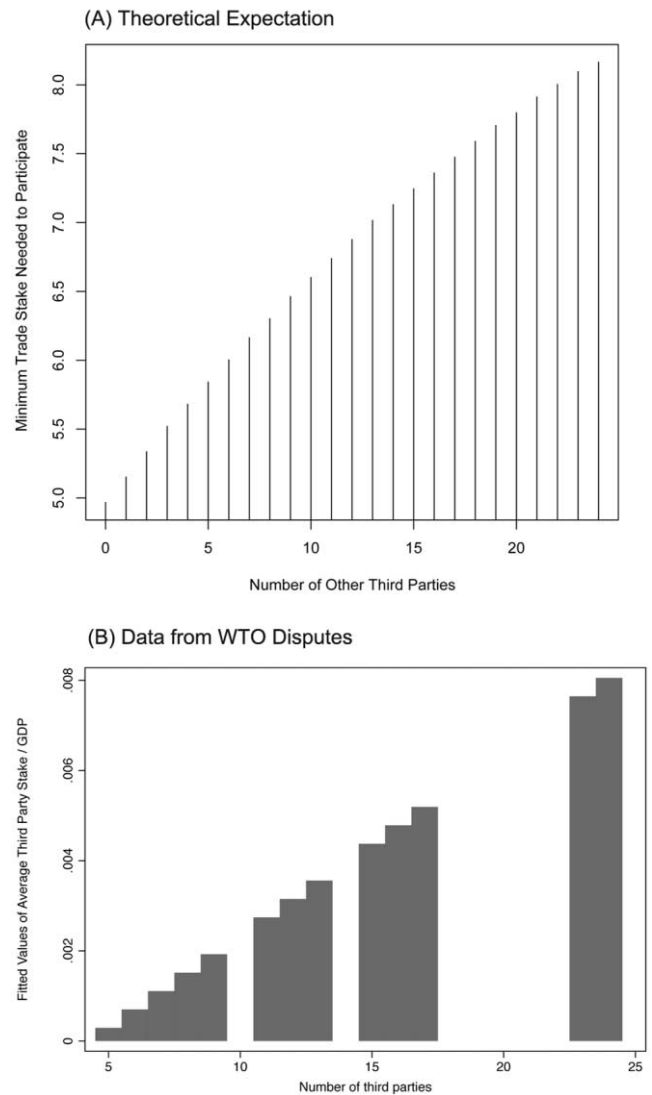

Figure 2. Average trade stake of third parties: *A*, theoretical expectation; *B*, data from WTO disputes.

After a case is filed, WTO members can file for third-party status immediately, but they can also wait and see how others behave. Second, given the underlying strategic incentives of wanting to be in the room but only if it is not too crowded, any theoretical predictions of which specific countries join a case are driven largely by assumptions about the order in which players move. One might imagine that some states can mobilize more quickly, regardless of the size of their trade stake. Past experience as a complainant or third party in a given legal issue, a leaner bureaucracy, or fewer veto players may all facilitate rapid decision making. We attempt to control for such factors in our empirical analysis. However, our aim is to explain why states choose not to participate. We remain agnostic about which countries are likely to move most quickly.

Our argument is robust to state- and case-specific utility functions.[15] That is, the preferences of states can be affected by factors beyond just their trade stake. For example, we might imagine that some states are more patient than others and, hence, more willing to tolerate the delay that comes with litigation than states that are less patient. Alternatively, we might imagine that states face more pressure to resolve certain types of cases, such as agricultural subsidies, more quickly than other types of cases, such as intellectual property disputes. This would ensure that the preference for settlement over litigation would be stronger for some cases than for others. Similarly, some types of cases may be more or less likely to yield private benefits because of the nature of the trade policy or the complainant's cost of compliance. All of our formal results continue to hold under these scenarios provided that the preference ordering in equation (1) holds. We are agnostic about what state- and case-specific factors might affect the relative strength of state preferences, but we are careful in our empirical analysis to control for many such factors.

One key assumption in our model is that participation is costless. We make this assumption because it sets the highest possible bar for the theory given our research question. But all of our results still hold if there are small entry costs to participation or small litigation costs for third parties. Additionally, as discussed below, complainants can influence how difficult it is for states to become third parties (Johns and Pelc 2014). It is relatively easy for affected states to become third parties to cases filed under General Agreement on Tariffs and Trade (GATT) article XXII:1 but more difficult for cases filed under GATT article XXIII:1. We can alter our model by adding an entry cost that is higher for an article XXIII case than for an article XXII case. States are less likely to join when the entry cost is higher, but all of our results still hold. We control for this distinction in our empirical analysis.

Another assumption of our model is that the private benefit is relatively large. As we show in appendix A, if we instead assume that private benefits are small but the voice benefit is large, we reach the opposite conclusion: players will bandwagon. This logic works as follows. If no other states become third parties, the case is likely to settle and a third party cannot voice its interests. But if many other states become third parties, the case is more likely to go to litigation and a third party is more likely to receive the voice payoff. So if the voice benefit is large, a state is more likely to join as the number of other third parties increases.

In practice, we expect that bandwagoning occurs when the complainant finds it politically or economically unfeasible to buy off its trade partners through private benefits. In such a case, the primary benefit of the dispute settlement process is that it allows states to publicly voice their opposition to the complainant's trade policy. Bandwagoning seems apparent in some disputes, such as *United States–Steel Safeguards*, where the defendant, for domestic political reasons, was unlikely to back down and negotiate a settlement. Members nonetheless rushed to join the case, with Brazil, Canada, China, Cuba, Japan, Korea, New Zealand, Norway, Switzerland, Taiwan, Thailand, Turkey, and Venezuela immediately joining as third parties. These third parties were very vocal in arguing that the United States' action was impermissible. Though highly salient, such cases are rare. The WTO's primary objective is settlement rather than some form of shaming. Obtaining private benefits is thus the preferred outcome of most complainants. Voice provides only modest rewards when private benefits cannot be secured and a case goes to litigation. Most cases are thus likely to conform to the fear of crowds logic rather than bandwagoning.

Because our model is compatible with both dynamics, our empirical tests face a high bar. We cannot categorize every dispute by whether private benefits or voice was dominant. Note that all disputes in our sample are merchandise disputes, meaning that they concern quantifiable stakes. Such cases are likely to allow for the capture of private benefits, though there are surely some merchandise cases that hinge, instead, on expressing voice, as per the possible example of *United States–Steel Safeguards*. If anything, our empirical tests are thus biased against the effect that we are trying to identify. If we observe fear of crowds in our aggregate data, then the impact of crowds for cases that do match our assumptions can be said to be even larger.

EMPIRICS

The strategic interdependence of participation decisions we posit makes it difficult to test the argument directly. Standard statistical models assume independent observations. In response, we provide a range of approaches to assess the explanatory power of our argument. Using our novel measure of state-level trade stakes, we examine three types of empirical evidence. First, using descriptive statistics, we consider the relationship between the number of third parties and the average trade stake of third parties, as per corollary 1, and we use timing decisions to see whether countries rush to join disputes, as our argument should imply. Second, we use ordinary least squares (OLS) regression to show that participation as a third party provides sizable economic benefits. Finally, we identify the fear of crowds effect using a two-stage

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15. Appendix B, available online, includes the formal analysis for all of the extensions discussed here.

least squares (2SLS) model. While each piece of evidence is not, by itself, a definitive test of our theory, the combination of these different types of evidence provides compelling aggregate support for the argument.

Measuring trade stakes

For each dispute, we collect the amount of bilateral trade at stake, which we measure as the level of exports for the product at issue, from each country to the defendant's market. We take the products at issue in each dispute from the Horn and Mavroidis (2011) data set, hosted by the World Bank.[16] Some disputes cover a single product, while others cover more than 20. These products also vary in their level of disaggregation, from two-digit Harmonized System (HS) products (for disputes challenging a broad barrier) to 10-digit HS products (for disputes challenging a narrower one). We translate these into a series of six-digit products for every dispute, for example, by listing all the six-digit products that fall under a two-digit product. For each of these products, we gather data for each member's trade into the defendant's market. In doing so, we rely on the Comtrade database, accessed through the World Integrated Trade Solution.

Using these exports data, we construct our *Trade Stake* variable, which we define as the absolute logged amount of exports at stake for each state in the year prior to the dispute's initiation. The result is to our knowledge the most complete data set of countries' interests in trade disputes throughout the WTO era. In relying on trade data for the identification of our main model, we set aside all nonmerchandise disputes, which challenge a piece of domestic legislation or regulation, such as intellectual property laws, rather than a barrier over a specific product. These cases make up about a fifth of WTO cases. We remove these cases since we cannot assess a country's ex ante stake in a nonmerchandise dispute, in the way that we can when disputes involve identifiable products. We are left with 321 WTO disputes for which we have trade data on disputed products.

Average trade stake of third parties and the rush to join

We begin by assessing the plausibility of our arguments using descriptive statistics from our data set. We examine the implications of our theoretical argument for the average trade stake of third parties and the timing of decisions to participation in dispute settlement.

If our theory is correct, we should observe that as the number of other third parties increases, the average trade stake of third parties should also increase. This is a counterintuitive expectation. Because a larger trade stake increases the expected benefit of participation (proposition 1), decision-theoretic logic suggests that countries with the most at stake should also be most likely to join. Under this logic, increasing the number of third parties should reduce the average trade stake because, all else equal, more third parties indicates that countries with relatively little trade at stake are choosing to participate.

However, if states face strategic interdependence—that is, if the decision of each state affects the decisions of others—then incentives are different. As stated above in corollary 1, if countries fear crowds in dispute settlement, then increasing the number of third parties should make every other state less likely to join. To overcome this negative effect, a state must have a relatively high trade stake to be willing to enter an already-crowded room. So the average trade stake should increase as more states join the dispute. The data appear to support this counterintuitive expectation: the bivariate correlation between the average stake of third parties in a dispute and their total number is .6. If we regress the stake on the number of third parties and plot the fitted values, we get figure 2B, which closely matches our theoretical expectations. In sum, the relationship between average stake and the number of third parties is strongly positive, which serves as preliminary evidence of our theory's plausibility.

A second implication of our argument is that countries should rush to join disputes. Decision-theoretic logic does not provide any clear expectations about how quickly states will join disputes. While states benefit from participation, the dispute settlement process is a relatively long and drawn-out process. Indeed, the average dispute took 146 days to proceed to litigation (as proxied by the request for a panel or a mutually agreed solution), looking only at those disputes that did lead to a panel. For the rest, negotiations are far more drawn out. Existing theory has little to say about when third parties should join during this period.

However, if states do care about the participation decisions of other states, then incentives change. Our theoretical model does not explicitly address timing, but our argument is built on two premises: that countries benefit from participating and that third parties hinder settlement.[17] The combination of these premises suggests that states want to join cases, but only if there are not too many other third parties. This suggests that there should be a rush to join: countries want to enter the room before it becomes full. Do the data bear this out? Is there a rush to join?

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16. We update this data set ourselves to the present day using WTO requests for consultations posted by complainants, which contain a mention of the precise product(s) at issue (WTO Dispute Settlement Database, http://go.worldbank.org/X5EZPHXJY0; accessed September 9, 2015).

17. For the first, see fn. 3; we validate the second below.

To find out, we code the day on which each third party joined the consultations in every dispute in our sample. These dates are available in the WTO documents through which countries request to participate.[18] A visual representation of these data is presented in figure 3. Every country's decision to participate appears as a circle. To offer a reference in time, we indicate the conclusion of consultations (either because of a request for a panel or because of a mutually agreed settlement) with an x.

A look at figure 3 supports the notion of a rush to get in the room. The first third party joins an average of 14 days after the initiation of a dispute, likely reflecting the required bureaucratic process in the home country. Then, the average period between two consecutive third parties joining is less than two days. Overall, countries' decisions to join are highly clustered in time. Moreover, we might expect that the more countries have a stake in the dispute, the greater will be the rush to join. This, too, is borne out. The more countries have a substantive stake in the dispute (coded as more than 0.1% of GDP in trade at stake in the year prior to the dispute), the more clustered in time third-party decisions become: knowing that others are more likely to join, states appear more eager to join before others do.[19] This highly statistically significant relationship holds when we control for the total final number of third parties.[20] In short, we do observe a rush to join, which increases when countries expect that others may have an interest in doing the same.

Participation has its benefits

Next, we use a series of OLS estimations to assess a primary assumption of our model. Our theory implicitly assumes that third parties, on average, fare better than nonparticipants. We argue that all interested states can receive public benefits, but only participants can receive additional private benefits. Nonlitigants do not stay out because they think that in so doing they will fare better than third parties. Rather, they decide not to join because they think that their participation will change bargaining outcomes such that even as a third party, they would emerge at a net loss.

Because participation decisions are endogenous, these OLS estimations cannot test our full argument, but they remain an important exercise. Our theoretical arguments are built on the
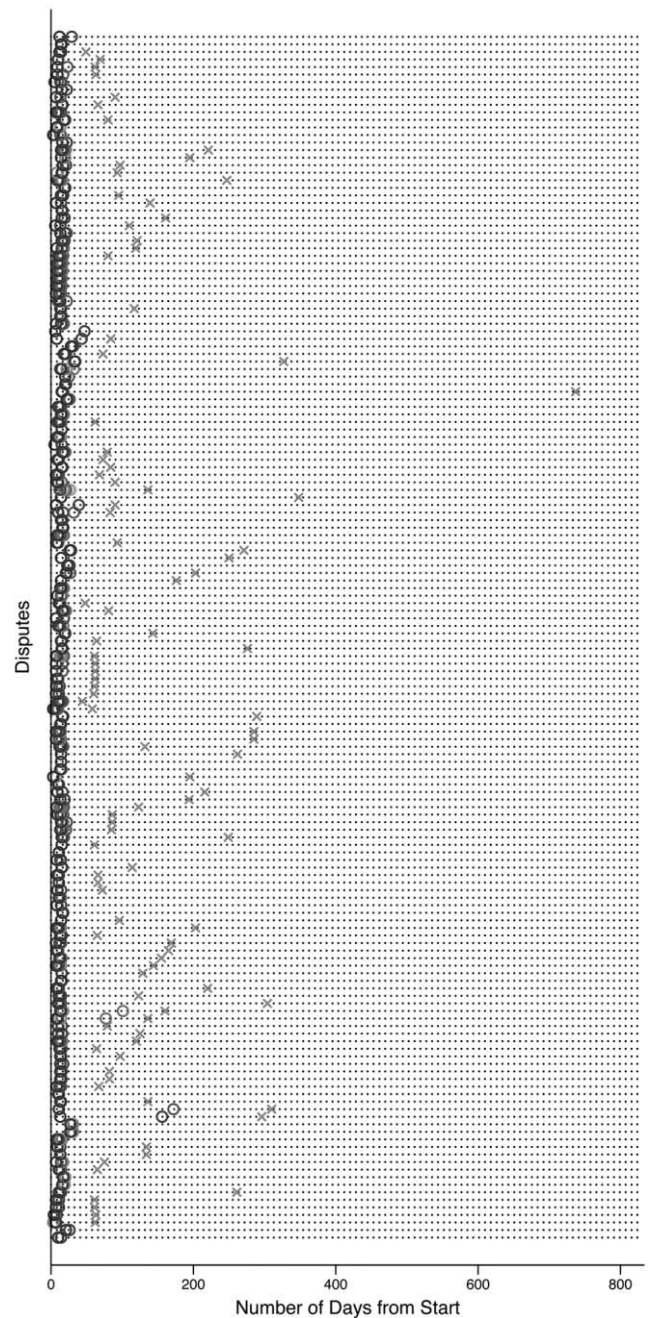

Figure 3. Timing of participation decision

premise that participation has benefits and that in equilibrium participants receive those benefits. Therefore, evidence that participation is valuable is consistent with our argument about endogenous decision making. After all, it would be difficult to believe our argument if there were no discernible benefit from participation or if participation came at a net cost to third parties.

To assess our initial premise, we examine trade in the disputed products in the wake of the dispute. These trade flows should capture both the public and private benefits from dis-

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18. Third parties nearly always stay on during litigation if the case proceeds to a panel.

19. We operationalize clustering in time as the average delay between two third parties joining, for those disputes that count more than one third party.

20. Results are not shown to save space; regression tables are available from the authors.

pute settlement. We consider the change in these exports for third-party countries in comparison to all nonparticipating members, controlling for trade flows prior to the dispute's initiation. We effectively ask, how much does participating as a third party increase your access to the defendant's market (relative to nonparticipation)?

Our unit of observation is the country-product-year. Our sample consists of the trade flows of all countries other than the complainant and defendant in a given dispute for all available years after the end of that dispute. The last year of a dispute corresponds to the last formal WTO event. If a settlement is reached short of a panel report, then the dispute ends at the formal announcement of the mutually agreeable solution. Our dependent variable in this first set of estimations is every country's logged level of exports into the defendant's market for the products at issue. On the right-hand side, we include what amounts to a lagged dependent variable: the logged amount of exports into the defendant market in the year prior to the dispute.

We are interested in the sign of the coefficient for the third-party indicator. If third parties gain more access than nonparticipants, controlling for trade flows prior to the dispute, we expect this coefficient to be positive. In addition, we control for the market size of the complainant and defendant. We also include an indicator of whether the dispute reached a panel ruling, which could indicate the sensitivity of the dispute (more sensitive cases are less likely to settle). Finally, we include a total count of third parties, which proxies for all the concerns cited above: more third parties may mean that fewer concessions by the defendant are forthcoming. We begin by running a panel regression with dispute-level fixed effects and robust standard errors clustered on the dispute.

The results are shown in table 1. Throughout, the estimations show results from an OLS regression with robust standard errors clustered on the common dispute. In the first two columns, the dependent variable is the logged level of exports to the defendant. The first estimation (col. 1) shows a sparse model with dispute-level fixed effects that controls only for *Exports Predispute*, corresponding to the level of exports at $t - 1$, which amounts to a lagged dependent variable, and the defendant's logged GDP. The second estimation (col. 2) substitutes the dispute fixed effects for defendant fixed effects as a means of accounting for unobservable features of the defendant that may affect compliance. We also add the log of the complainant's market size, a dummy indicating whether the dispute reached a ruling, and a count of the number of pro-complainant third parties in the dispute. In both the first and second estimations, third parties see higher levels of trade following a dispute, controlling for the level of trade prior to the dispute.

Table 1. Benefit of Participation on Exports

Variable	Exports Logged (1)	Exports Logged (2)	Exports Growth (3)
Third party	.41**	.32*	.43**
	(.14)	(.15)	(.15)
Exports predispute	.87**	.89**	−.13**
	(.02)	(.01)	(.02)
Log defendant GDP	1.86**	1.44**	2.01**
	(.29)	(.29)	(.29)
Log complainant GDP		.03	−.18
		(.04)	(.15)
Panel ruling		.03	
		(.18)	
Third parties count		−.06+	
		(.03)	
Intercept	−51.81**	−40.74**	−50.79**
	(8.34)	(8.55)	(8.80)
Observations	23,847	23,646	23,646
R^2	.78	.76	.16
F	1,037.36	908.30	18.37

Note. Fixed effects on dispute estimation of export levels are in col. 1, fixed effects on defendant estimation of export levels in col. 2, and fixed effects on dispute estimation of export growth in col. 3. All include robust standard errors (in parentheses) clustered on dispute.
+ Significant at the 10% level.
* Significant at the 5% level.
** Significant at the 1% level.

In our third estimation (col. 3), we shift our focus to the growth of exports rather than their levels. We calculate growth in trade flows as the percentage difference between the year prior to the dispute and the year under examination, for all years following the end of the dispute. We still control for the level of trade prior to the dispute and for the market size of both the complainant and the defendant. Here too, looking at export growth, rather than levels, third parties appear to fare better than nonparticipants. The negative coefficient on exports prior to the dispute is likely because of the smaller relative increases in trade growth. In sum, third parties appear to do systematically better than nonparticipants, even when controlling for everyone's exports prior to the dispute. If third-party status pays off so clearly, then why do more countries not join?

Fear of crowds

This is our main question: why don't more countries join WTO dispute settlement as third parties? Our argument is based on strategic interdependence. This poses an empirical challenge because every country's decision hinges on that of all others, making identification difficult. We expect that the total number of third parties will affect each country's deci-

sion, which will, in turn, affect the total number of third parties.

To address this problem, we employ a 2SLS estimation at the dispute-country level.[21] To identify the model, we require a variable that affects our explanatory variable (the number of other countries that became third parties) but does not directly affect our dependent variable (whether the country under observation joined as a third party to the dispute). We rely on our theoretical argument to select an appropriate variable. Recall that a key result from the model is that as a state's own trade stake (τ_i) increases, its benefit from participation increases (proposition 1). However, each state's participation decision is not directly affected by the trade stake of other countries (τ_j). The trade stake of other countries matters only to the extent that it shapes a player's belief about how other countries will behave. Therefore, the trade stake of other countries is a suitable instrument from a theoretical perspective: it directly affects the decisions of other states but does not directly affect the decision of the state that is the unit of observation. We therefore identify the model using the world's combined trade stake in the dispute at issue, excluding the country under examination. Specifically, we code this variable, which we call rest-of-the-world (ROW) stake, by summing the exports from all states to the defendant, leaving out the state under examination, in the year prior to the start of the dispute.

ROW stake is a powerful predictor of our endogenized variable, that is, the number of states (other than the state under observation) that eventually join as third parties. By comparison, the variable is actually slightly negatively correlated with the odds of the country under observation joining as a third party. We also run a series of Kleibergen-Paap tests for weak identification, which further increases our confidence that the model is identified. Most importantly, theory offers support for the exogeneity of the variable for our purposes. There is no viable rationale for thinking that a given country's participation as a third party would be directly affected by the ROW stake in the trade at issue. Indeed, when we regress our instrument on the other exogenous variables, the partial residuals are uncorrelated with the decision to join as a third party, offering support for the variable's exogeneity. And while there is reason to believe that "all trade is correlated" in the contemporary globalized economy, since we are looking at specific product categories, the stake of one

country in a particular industry is unlikely to be systematically correlated with that of another country.

We add a set of other variables to account for alternative explanations for the third-party participation. We begin by accounting for what may be the most salient explanation for participation: legal capacity. Scholars have claimed that beyond income and material concerns such as the fear of retaliation, countries do not participate because they lack the requisite know-how and bureaucratic apparatus (Busch, Reinhardt, and Shaffer 2009; Davis and Bermeo 2009; Guzman and Simmons 2005). Indeed, we have been assuming that third-party participation is costless: third parties need not make any statements, they technically require only a single representative in the room, and they have no further obligations within litigation. Yet perhaps assessing the benefit of joining is, in and of itself, a function of legal capacity. As per the literature, the best proxy for such capacity is prior experience. We code two variables to capture such experience: *Complainant Experience*, which is the number of disputes a country has filed as a complainant prior to the dispute's initiation, and *Third-Party Experience*, which corresponds to the number of times the country under observation has participated as a third party before the dispute at hand.

The advantage of including both variables at once is that it allows us to see whether the effect of experience is specific to the institutional role played. Moreover, controlling for complainant experience, the number of times a state has been a third party also taps the notion that some countries may emerge as focal third-party players that others expect to participate often. We would expect such countries to participate disproportionately more than their income or past experience as litigants would lead one to believe. For similar reasons, we include countries' *Income* as a rough measure for capacity, which we code as the log of a country's GDP per capita, in the year prior to the dispute's initiation.

Next, and to test the beliefs of Elsig and Stucki (2011) against our own, we create a variable, *Aid Dependence*, coded as the log of total aid in constant dollars from the defendant to the country in the year prior to a dispute's initiation. If countries fear losing aid support by joining cases against donor countries, this variable should be negatively related to the odds of joining. In our robustness checks we also verify the effect of both retaliatory capacity (Bown 2009) and retaliation exposure of states. The first is coded as every defendant's total exports to every state's markets, in the year prior to the dispute's initiation. If we suspect that retaliatory capacity emboldens countries to join disputes, then we would expect it to be positively signed. The second is its opposite: it is coded as the state's total exports to the defendant's market. If this taps vulnerability to subsequent reprisals, which would scare countries away from joining, it should be negatively signed.

21. We rely on the 2SLS estimator implemented through the Stata user-written command *ivreg2* (Baum, Schaffer, and Stillman 2010). This estimator is best suited for our application (Angrist and Pischke 2009). For comparison, we rerun our instrumental variable analysis with a maximum likelihood estimator, implemented through the Stata command *ivprobit*. The findings hold perfectly, yet the estimator is ill adapted to our discrete endogenous regressor. For this reason, we present the 2SLS estimator results.

We also control for a number of dispute-specific features that may influence countries' choice to join the dispute as third parties. Our first variable in this respect indicates whether the complainant filed under GATT article XXII:1 or under article XXIII:1. This is a procedural choice that makes it easier or harder for third parties to join. As a WTO training module puts it, "the choice between Articles XXII:1 and XXIII:1 of GATT 1994 is a strategic one, depending on whether the complainant wants to make it possible for other Members to participate" (WTO 2004, 45). Our variable *Article XXII* is coded as 1 if the complainant promoted third parties through article XXII and 0 if it sought to limit third-party participation through article XXIII. We expect it to be positively related to the odds of participation.

We also add a variable to reflect the extent to which the dispute is likely to be of interest to all WTO members, beyond the bilateral trade volume at stake, by looking at the type of alleged discrimination. The simplest way to do this is to distinguish bilateral from multilateral disputes. We draw on Bown (2004) to construct this variable, which we call *Multilateral Issue*, and which roughly reflects national treatment violations versus MFN violations. National treatment cases are coded 1, for multilateral: if domestic producers are favored over exporters, this is likely to affect all exporters. MFN cases, where one country claims to receive less favorable treatment than another exporter, are coded 0, for bilateral.[22] This single variable is better suited for our purpose than the alternative, which would be to include dummies for all agreements (e.g., antidumping, procurement, agriculture, etc.), since these can entail either multilateral or bilateral concerns.[23] Though non-merchandise cases do not enter our sample, the majority of these, which concern domestic legislation and intellectual property rights, would fall under the multilateral category.

Our results are shown in table 2, where we begin in column 1 with a parsimonious estimation. We include only the *Trade Stake* of the country under observation in the dispute on the right-hand side. In column 2, we add a number of controls: *Article XXII*, the *Log Income* of the country under observation, a country's third-party and complainant *Experience*, and whether the legal issue at hand is multilateral in nature. In column 3, we add a variable that tests the argument in Elsig and Stucki

(2011) about aid dependence, coded as the bilateral aid the state receives from the respondent.

Finally, in column 4, we take a closer look at the issue of partisanship. While our theory treats all third parties as favoring the complainant, our empirical analysis up to this point considers all third parties irrespective of their partisanship. The reasons are, first, that a supermajority of third parties are indeed pro-complainant and, second, that there is an unavoidable informational problem: since we can observe third parties' partisanship only when third parties submit written or oral statements that are recorded in the panel report, we have little to go on in the case of disputes that do not result in a ruling. We thus collect the available data on third-party partisanship by coding all available submissions, which we classify as pro-complainant, pro-defendant, or mixed (Busch and Pelc 2010). Pro-complainant third parties make up 78% of all third parties. We rerun our main estimation using the odds of being a pro-complainant third party as our dependent variable. The results, which naturally entail a smaller sample, now limited to disputes in which we can observe partisanship, are shown in the last column of table 2.

The findings provide consistent support for the fear of crowds hypothesis. Across all model specifications, the greater the number of other WTO members that join as third parties, the lower the likelihood that the country under observation will join. This effect is substantively strong. In the first specification, if we hold all control variables at their mean, adding a single other third party makes the country under observation 8% less likely to join. Third parties fear crowds, and they behave accordingly.

The more countries have at stake in terms of trade flows, the more likely they are to join: *Log Trade Stake* is significant and positive throughout. Additionally, and as expected, if the complainant promotes third parties by filing under article XXII, this considerably increases the likelihood of a given country joining as a third party. Multilateral issues are more likely to see a given country joining: with all variables at their means and all else equal, multilateral legal issues make the country under observation more than four times more likely to join. As for *Aid Dependence*, it falls short of statistical or substantive significance. While there is little doubt that aid plays a real role in specific cases, as detailed in Elsig and Stucki (2011), on average, it does not seem to be a driver in members' decision to participate. Similarly, wealth does not appear to bear a strong relationship to the likelihood of joining.

The experience variables prove interesting. While past experience in dispute initiation has strictly no effect on the odds of joining the dispute, past experience in third-party participation has a strong, positive effect, controlling for a country's wealth. The reason could be that the legal capacity called on for third-party participation is developed only by having played

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22. Similarly, all antidumping (AD) cases, except for those that allege an improper application of the AD code, are coded as bilateral, since antidumping is a targeted policy. Safeguards cases, on the other hand, unless they regard the application of safeguards in a way that would have systemic implications, are coded as multilateral, since they are applied in an MFN fashion.

23. For example, while subsidy cases are multilateral, some are inherently bilateral. Thus we treat the two disputes involving large civil aircraft as bilateral, since they concern a duopoly.

Table 2. Fear of Crowds: Instrumental Variable Model of Participation

	(1)	(2)	(3)	(4)
Number of third parties	−.23***	−.08**	−.08**	
	(.06)	(.03)	(.03)	
Number of pro-complainant third parties				−.04*
				(.02)
Log trade stake	.05***	.01***	.01***	.01**
	(.01)	(.00)	(.00)	(.00)
Log income		−.01	−.01	.00
		(.01)	(.01)	(.01)
Log third-party experience		.12***	.13***	.12***
		(.02)	(.02)	(.02)
Log complainant experience		.04	.04	−.02
		(.02)	(.02)	(.02)
Multilateral legal issue		.15***	.15***	.08***
		(.04)	(.04)	(.02)
Article XXII		.26***	.26**	.11*
		(.08)	(.08)	(.04)
Aid dependence			.00	.01
			(.01)	(.01)
Constant	.57***	−.02	−.16	−.42
	(.15)	(.10)	(.25)	(.21)
Observations	2,735	2,462	2,462	1,197

Note. 2SLS estimator. Number of third parties excludes country under observation and is endogenized in a first-stage equation using rest-of-the-world trade stake as an instrument. Robust standard errors are in parentheses.
* $p < .05$.
** $p < .01$.
*** $p < .001$.

this specific role in the past. A more likely explanation is that some countries emerge as focal third-party participants, and countries expect them to join most disputes. These countries participate disproportionately more than their interest in the dispute or their wealth would lead us to expect.

Finally, in column 4, we ensure that the results hold when we consider pro-complainant third parties only, on both sides of the equation. The result is a reduced sample, now limited to those disputes that produced a panel ruling. Yet here too, a significant negative relationship between the odds of joining and the number of other third parties remains.

We end by running a series of robustness checks to ensure that our findings are not sensitive to estimation decisions.[24] First, we verify whether one possible alternative explanation is supported. We add a measure of the retaliatory capacity (Bown 2009) and retaliation exposure of states. These variables measure both sides of the total trade relationship between each WTO member and the defendant in each dispute. Across all estimations, retaliatory capacity is significant and positive, while retaliation exposure shows no effect. In other words,

states appear to be emboldened by the ability to sanction trade but undeterred by the risk of having their own trade sanctioned. Importantly, these variables have no effect on our main result: WTO members fear crowds.

We also control for another proxy of the stake in the dispute, coded as the change in bilateral trade between each state and the defendant in the three years prior to the dispute. This is demanding of our data and reduces our sample somewhat. The variable is negatively signed and positive, meaning that the more bilateral trade a state has lost in the three years prior to the dispute, the more likely it is to join. The main results remain unchanged. We also add a China indicator, given the literature on how China especially uses third-party status as a means of learning. The dummy is positively signed but is significant only at the 10% level and does not affect our key results.

CONCLUSION

We began this article with Yogi Berra's well-known quip about Ruggeri's restaurant in St. Louis being so crowded that "no one goes there anymore." The phrase is a riff on the common idea that trendy venues lose their appeal if they become too well known and thus too crowded. Suppose Ruggeri, the owner of

24. These robustness checks are available on request.

the restaurant, is aware of this dynamic but enjoys eating at his own restaurant. His position is analogous to that of a WTO member deciding whether to join a dispute. All things equal, Ruggeri wants to eat at his restaurant, but this increases the number of patrons and hurts the restaurant's reputation for being overcrowded. If this bad reputation endures, the restaurant will lose its trendy image and regular customers, hurting business in the long run. On a busy night, Ruggeri may choose not to eat to avoid overcrowding. His concern for the restaurant's profitability will trump his desire for a good meal.

Similar dynamics appear to be at work in WTO dispute settlement. Third-party participation is widely seen as beneficial for the WTO as a whole: it increases transparency, allows developing countries to acquire legal capacity, and informally enforces WTO rules by decreasing the likelihood of discriminatory settlements. Participation appears equally beneficial for third parties themselves: they can extract private benefits from settlements and voice their interests during litigation without paying the high cost of being a complainant. Yet negotiations grow more complicated and more prone to posturing by the litigants as more parties join. We argue that much as in the case of Ruggeri's, participation is strategically interdependent. The decision to participate raises the total number of third parties, which lowers the likelihood of early settlement. So as more states become third parties, the benefit of participation decreases and each state becomes less likely to join, to avoid acting as an involuntary spoiler.

We rely on a range of empirical evidence to test different parts of our argument. First, we provide descriptive statistics from a novel data set to provide preliminary support for two implications of our theory, relating to the average stake of third parties in a dispute, and the timing of participation. Second, we use OLS regressions to demonstrate that third parties do fare better on average than nonparticipants in their subsequent exports into the defendant's market. Finally, we use a 2SLS estimator to model the interdependence in each country's decision to participate or not in every WTO dispute since 1995.

Alternative explanations obtain less support. There are undoubtedly cases in which an affected state does not join because it is dependent on aid from the defendant, but these concerns do not appear dominant on average. Previous third-party experience, which may indicate legal capacity or status as a focal participant, has a positive effect, while previous complainant experience does not. The most persistent determinant of (non)participation appears to be who else is in the room. The greater the number of other third parties, the less likely a given country is to join. The empirical findings thus support our theoretical argument: states fear crowds in WTO disputes.

More broadly, our strategic logic can help us understand why actors may decide not to participate in other international organizations and negotiations, even if participants are better off, on average, than nonparticipants. We expect that our strategic logic will be most relevant when delayed decision making is most costly. In the case of the WTO, the average dispute covers US\$740 million in bilateral trade (Bown and Reynolds 2015). Similar incentives are present in financial crises and humanitarian interventions. When countries must respond to currency crises, sovereign defaults, and human rights violations, all states in the international system pay an opportunity cost if broad participation delays a cooperative solution that is better than the status quo. We thus expect that states should be more willing to not participate, and exclusionary decision making should be more acceptable, when time is of the essence.

Our findings also suggest that second-best participation solutions—such as the current version of the WTO "green room" model or committee- or club-based decision making—may enjoy greater tacit acceptance than is commonly believed. Criticism of exclusionary international organizations, especially from small and poor states, may thus partly amount to political theater for the sake of domestic audiences. All things equal, every country would prefer to be in the room, but it may strategically exercise restraint and stay out to prevent overcrowding.

APPENDIX A

There is a set of N affected states. Each player $i \in N$ has a trade stake $\tau_i > 0$. Let $s(n)$ denote the probability of settlement if n states join as third parties. Assume $s(n + 1) < s(n)$ for every value of n. To simplify our analysis, assume that $s(n)$ is not a function of τ_i, and define ρ as the difference between settlement for nonparticipants and litigation for participants, that is, $\rho \equiv R(\tau_i) - [L(\tau_i) + v(\tau_i)] > 0$. Interested readers can extend the logic below to derive necessary conditions for our equilibrium when there are more general forms of $\rho(\tau_i)$ and $s(n, \tau_i)$. Such an extension is contained in appendix B, available online.

Proof of Proposition 1

Let $\hat{n}$ denote the number of other countries that join as third parties. Then player $i \in N$ has the expected utility functions

$$EU_i(\text{Join}|\hat{n}, \tau_i) = s(\hat{n} + 1)[L(\tau_i) + v\tau_i + \rho + b\tau_i]$$
$$+ [1 - s(\hat{n} + 1)][L(\tau_i) + v\tau_i],$$
$$EU_i(\text{Don't Join}|\hat{n}, \tau_i) = s(\hat{n})[L(\tau_i) + v\tau_i + \rho]$$
$$+ [1 - s(\hat{n})]L(\tau_i).$$

The benefit of joining when $\hat{n}$ other countries join is thus

$$\Delta(\hat{n}, \tau_i) \equiv v\tau_i + s(\hat{n} + 1)(\rho + b\tau_i) - s(\hat{n})(v\tau_i + \rho).$$

Then

$$\frac{\partial \Delta(\hat{n}, \tau_i)}{\partial \tau_i} = [1 - s(\hat{n})]v + s(\hat{n}+1)b > 0,$$

$$\lim_{\tau_i \to 0} \Delta(\hat{n}, \tau_i) = [s(\hat{n}+1) - s(\hat{n})]\rho < 0,$$

$$\lim_{\tau_i \to \infty} \Delta(\hat{n}, \tau_i) = \lim_{\tau_i \to \infty} \left\{ [1 - s(\hat{n})]v\tau_i + s(\hat{n}+1)b\tau_i \right\} > 0.$$

By the intermediate value theorem, each $\hat{n}$ has a unique cut point $\hat{\tau}(\hat{n}) > 0$ such that $\Delta(\hat{n}, \hat{\tau}(\hat{n})) = 0$. So $\Delta(\hat{n}, \tau_i) < 0$ for all $\tau_i < \hat{\tau}(\hat{n})$ and $\Delta(\hat{n}, \tau_i) > 0$ for all $\tau_i > \hat{\tau}(\hat{n})$. QED

Proof of Proposition 2

Note that the probability that i joins is $\Pr(\hat{\tau}(\hat{n}) \le \tau_i)$. So the probability of joining is decreasing in the number of other third parties iff $\hat{\tau}(\hat{n}) < \hat{\tau}(\hat{n}+1)$. Define the following difference function:

$$\Psi(\hat{n}, \tau_i) \equiv \Delta(\hat{n}, \tau_i) - \Delta(\hat{n}+1, \tau_i)$$
$$= [s(\hat{n}+1) - s(\hat{n}+2)](\rho + b\tau_i)$$
$$- [s(\hat{n}) - s(\hat{n}+1)](v\tau_i + \rho).$$

Note that $\Psi(\hat{n}, \tau_i) > 0$ when b is relatively large. Note also that $\Psi(\hat{n}, \tau_i) < 0$ when v is relatively large. QED

Proof of Corollary 1

This is implied by $\hat{\tau}_i(\hat{n}) < \hat{\tau}_i(\hat{n}+1)$ for each i and $\hat{n}$. QED

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