

Informing WTO Reform: Practitioner Perspectives from China, the EU, and the U.S.*

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Abstract: Although rarely expressed explicitly, the impetus for WTO reform discussions largely stems from the tension between the United States and China and the impact of China on the trading system. In this paper we discuss the elements of the WTO reform agenda with a focus on the three major powers. We do so by drawing on the recent literature analyzing the operation of the WTO and potential reform of working practices and responses to an expert survey, using the latter to assess the prospects for – and the shape of – a WTO reform and negotiation package that China might support.

Keywords: trade conflict, trade agreements, plurilateral cooperation, WTO, China, US

JEL codes: F13, F15, F53

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Introduction

After 25 years both the rules and working practices of the World Trade Organization (WTO) undoubtedly need renovation,¹ but the impetus for current talk of “WTO reform” largely stems from the tension between the United States and China. When people identify the aspects of the WTO that need reform—the negotiation function to update rules and address new issues, the operation of dispute settlement procedures, mechanisms to ensure transparency of applied trade policies—a concern with the impact of China on the trading system is often in the background (Faizel Ismail, 2020, 82).

The initial positive perceptions regarding China’s reintegration into the world trade order have transformed into acrimony (Winters, 2021; Mavroidis and Sapir, 2021). The U.S. especially has raised a series of complaints before the WTO, mostly dealing with the role of the state in the workings of the economy, compounded with unhappiness with Appellate Body rulings on disputes centering on U.S. antidumping actions against imports and specific features of China’s trade regime. Lurking behind the U.S. push for WTO reform is its frustration that integration into the trading system has not changed China into a liberal market economy.

In this paper we discuss elements of the WTO reform agenda through the lens of positions that have been taken by the three major trading powers. Our interest is to shed some light on areas of alignment, or absence of alignment, across these three players on the main subjects associated with reform debates, including WTO working practices, notably consensus and special and differential treatment (SDT) for developing countries, transparency of trade policy, deliberation in committees and other WTO bodies, and dispute settlement procedures. We do not discuss all these areas in depth but refer the reader to the recent literature on this subject.² We draw throughout on an original survey of the expert trade policy community conducted in June 2020 (Fiorini et al. 2021). The survey suggests that respondents from the EU and the U.S. are broadly aligned on the WTO reform agenda, while respondents from China often diverge in the priorities accorded to these subjects.

Our premise is that reforming WTO is a necessary condition for the organization to be a more salient forum for the large economies to address trade tensions, which in turn would help to resolve the problems of the WTO. The paper is organized as follows. As the roots of the China-U.S. trade conflicts lie outside the domain of the WTO, we start in Section 1 with a brief discussion of the systemic context of “WTO reform” and the question whether China’s economic system is incompatible with a rules-based multilateral trade order. Section 2 introduces the survey data and the methods used in the rest of the paper. Section 3 turns to the problem of revitalizing the negotiation function of the WTO, noting that current plurilateral negotiations among groups of WTO members are a response to the problems created by the WTO consensus working practice. In section 4 we argue that the approach to recognizing

¹ Structural weaknesses and gaps in WTO rules were evident right from the start. Over 20 years ago Ostry (1999), one of the architects of the WTO, already provided a compelling case for institutional reform.

² Recent research on WTO reform includes Bronckers (2020), Charnovitz (2020), Evenett and Baldwin (2020), Fitzgerald (2020), as well as a Bertelsmann Stiftung-supported project focusing on specific reform priorities and options. See <https://globalgovernanceprogramme.eui.eu/research-project/revitalizing-multilateral-governance-at-the-wto-2-0/>.

economic development differences has been an important negotiation obstacle. Improved transparency is a key area of WTO reform as a common understanding of prevailing policies is a necessary condition for cooperation, the focus of Section 5. Section 6 considers reforms to WTO working practices to enhance the use of WTO bodies for joint deliberation on the operation of the WTO. Section 7 turns to dispute settlement and the Appellate Body crisis. Section 8 discusses implications of our analysis – and the survey results – for fostering cooperation between the three major trade powers in the WTO. Section 9 concludes.

1. China and the liberal trade order

Many of the WTO's problems are due to a general malaise in multilateralism and to structural changes in the world economy. Power matters, it has shifted, and the system has not caught up. Whether or not the United States ever was a "hegemon" (Snidal, 1985), it manifestly is not one now. It is uncomfortable in this new situation and is especially uncomfortable with the rise of China. One might normally expect a rising power to respond to shifting power by demanding institutional change (Goddard, 2020), but it is not clear that that is what China wants in the WTO (Johnston, 2019). Indeed, some scholars think the challenge of rising powers in the WTO is not to its institutional arrangements but to the dominance of the U.S. (Hopewell, 2016). On the other hand, sometimes it is the established or declining power that seeks institutional change (Kruck and Zangl, 2020, 13), which may be a better description of what we observe.

Generations of Atlanticism, that is, of shared elite perceptions, helped underpin the post-World War II order. Nothing comparable exists for the emerging 21st century order. Every round of multilateral trade negotiation under the GATT, including the Uruguay Round, only crystallized when the U.S. and Europe had reached a basic accommodation, which then provided the parameters for the rest of the bargains. The EU and the U.S. still disagree about many things, notably how to pursue regulatory cooperation and the role of the Appellate Body but solving their outstanding conflicts will not remove the central blockage in the WTO.

The U.S. and China have not developed a trans-Pacific accommodation comparable to the one painstakingly established across the Atlantic. That accommodation will require a recognition by both parties that China now has a leadership role in global governance. China's institutional role is not yet commensurate with its weight in the world economy. China has indicated it will accept reforms that make the WTO better for all Members, but not ones that challenge its identity as a developing country, that deny it scope for how it organizes its economy, and that fail to recognize its status as a major power (Murray, 2018), a contradictory duality in the image it seeks to project to the world, and its own citizens (Pu, 2019, 10).

The paradox of postwar order was that it encompassed commitments to free trade abroad and the administrative state at home (Ruggie, 1982). This paradox has made practical people uncomfortable for a long time whether they favour one arm or the other; the rise of China just makes their discomfort worse. Can the WTO as a normative framework survive if powerful members, the U.S. and China, have such divergent conceptions of the role of the state in the economy? The U.S. government has a significant role in the economy from welfare spending through regulation to supporting R&D in key sectors and incentivizing investment through subsidies and public procurement. China does too. Although the instruments differ, all WTO Members defend their right to manage their economies in their own way.

At its core, the compromise of embedded liberalism was about reconciling domestic differences within a liberal trade order. If a leading state is not liberal, does the compromise of embedded liberalism break down? That is the real question that the U.S. asks in a document tabled at the WTO in July 2018 on the importance of market-oriented conditions (WTO, 2018). This submission recalled the expectation that when China joined the WTO it would continue the transition to an economy based upon open, market-oriented policies. Instead, China's "state-led, trade-disruptive economic model ... imposes substantial costs on and presents severe challenges to WTO Members." Among its specific complaints the U.S. asserted that China's opaque system makes it hard for Members to assess China's compliance with its WTO obligations, notably because of inadequate subsidies notifications.³

These types of concerns were already in evidence during the China's accession negotiations and made that process long and difficult. The Accession Protocol contains various measures permitting Members to observe implementation of negotiated domestic reforms and apply measures to address potential competitive distortions during a 15-year transition period. This framework faced new pressures as provisions of China's accession protocol came to an end (Lang, 2019, 719). The concerns regarding China's economic model were reflected in unilateral actions and international initiatives that excluded China.

The U.S. has repeatedly raised concerns on which it thinks WTO reform depends, even going so far as to submit a draft resolution proposing that the General Council express its serious concerns with non-market-oriented policies and practices "that have resulted in damage to the world trading system and lead to severe overcapacity, create unfair competitive conditions for workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade (WTO, 2020a)." China, in a paper submitted in 2019 indicated that it supports WTO reform if core values of the multilateral trading system such as non-discrimination and openness, safeguards for the development interests of developing Members, and decision-making by consensus are preserved. China made clear in its paper (WTO, 2019c) that it sees the U.S. as the problem, with proposals on:

- Breaking the Impasse of the Appointment Process of Appellate Body member
- Tightening Disciplines to Curb the Abuse of National Security Exception
- Tightening Disciplines to Curb Unilateral Measures Inconsistent with WTO Rules

The suggestions on improving trade remedies rules similarly target areas where developed countries could be said to have abused the existing rules, for example on price comparison in anti-dumping proceedings, or subsidy identification, and calculation of benefits conferred. In response, China consistently makes the obvious and valid point that the market is not given free rein in OECD countries.⁴

³ Before China joined the WTO, analysts worried that it would be unable to meet transparency requirements due to domestic politics, institutional capacity and the nature of the legal system. Although reforms occurred after 2001, not necessarily because of the WTO (Du and Kong, 2020, 905), issues with regulatory transparency, notification of subsidies and implementation of reforms at sub-central government levels persist.

⁴ Jesse Kreier, a former WTO official, commented on a November 2020 affirmative preliminary determination regarding alleged dumping of wine from Australia, in which the Chinese determination discusses Australian market conditions in detail, and based upon the facts available finds the existence of "non-market conditions" including supportive measures through inter alia R&D funds and investment subsidies. These findings parallel findings of government intervention in the U.S. energy market. See China - Preliminary AD Determination on Australian Wine Posted on IELP by Jesse Kreier on December 02, 2020 Co-authored with Sandeep Chandy.

The EU is sympathetic to the U.S. analysis but tellingly did not co-sponsor the proposed WTO General Council resolution. At an event celebrating the 25th anniversary of the organization (Monnicken, 2020), EU Director-General for Trade Sabine Weyand remarked that “the WTO is not the place to drive systems change. It’s not about regime change. This is about dealing with the consequences of certain economic systems and to make sure that these are being dealt with in a manner that everyone can live with. And that requires compromise on all sides.” The EU prefers to focus on concrete spillovers of non-market practices that would be susceptible to action in the WTO.

2. Data and methods

Our discussion of perspectives on the WTO reform agenda in China, the EU and the U.S. draws on the results of an original survey of trade experts (Fiorini et al. 2021). The survey instrument includes questions on different challenges confronting the WTO and collects information on the priorities accorded to each by members of WTO delegations, government officials dealing with the WTO and other stakeholders.

The survey instrument

The survey ran between June 5-21, 2020 using an online survey platform. Data were collected through June 24. The questionnaire was sent by email to all WTO delegations and distributed through e-mail and social media channels to trade practitioners using a contact list developed by the Global Economics program of the EUI Robert Schuman Centre for Advanced Studies. Recipients were requested to forward the survey to others in their networks working on trade and WTO matters.⁵

Responses to all questions used a 5-point scale, with values from 1 to 5. The value 1 corresponds to the response ‘very low’ (or ‘strongly disagree’), the value 2 to ‘low’ (‘disagree’), 3 to ‘neutral’, 4 to ‘high’ (‘agree’) and 5 to ‘very high’ (‘strongly agree’). Respondents were asked to indicate their professional affiliation (more than one allowed) and the nationality of their company, organization, or institution.⁶ A total of 1,092 people opened the survey; 75% (819) responded to at least one question. Around 800 responses were received for most of the questions (the lowest number of respondents for a question is 733; the highest 807). Government officials (including the EU) represent the second largest category of respondents (24.6%) after academia (25.1%); followed by the private sector (companies and business associations) (19%); staff of international organizations (18%) and NGOs, labor unions, think tanks (11% of the sample).⁷

The geographic distribution of respondents covers 104 WTO members. One third of respondents were female. Of the 616 respondents that specified the nationality of their employer, 37% were in Europe, 20% in North America, 18% in Asia, 12% in Africa, and 11% in Latin America and the Caribbean. Fiorini et al. (2021) report further details on the survey structure, the empirical population of respondents as well as descriptive statistics on all answers. For the analysis that follows, we extract the results for respondents who identified the nationality of their organization as China, the EU or the U.S. The resulting sample consists of 215 respondents from the EU, 85 from the U.S. and 18 from China. We recognize that the small number of respondents from China makes robust inference

⁵ The sampling frame is not designed to ensure respondents will be representative of the WTO stakeholder community and no claim to this effect is made.

⁶ Survey responses are anonymous. The software used makes it impossible for the researchers to identify respondents. Any question could be left unanswered.

⁷ Retirees were asked to indicate their professional affiliation during their last working position.

impossible, but we have some confidence that results are nonetheless informative because of the design of the sampling frame: respondents are experts, i.e., the responses reflect the views of sophisticated members of the Chinese trade policy community.

Empirical analysis

We use two analytical instruments to characterize the revealed preferences of respondents in China, the U.S. and the EU on key elements of the WTO reform agenda. The first instrument is a discrete choice model to estimate alignment or nonalignment of revealed preferences between two groups of respondents on a given issue. More precisely, we take responses to a specific issue (e.g., ‘What priority do you assign to providing support for plurilateral agreements?’) as the dependent variable y of an ordered probit model with a unique regressor consisting of a dichotomous variable identifying the two groups whose revealed preferences on that issue we want to compare.

The latent variable model is specified as: $y^* = \beta D + e$, where the dependent variable is given by the answers to a specific question, with values ranging from 1 (very low/strongly disagree) to 5 (very high/strongly agree). The regressor of interest is a dummy variable D taking value 1 if the respondent belongs to the group of interest (e.g., China) and 0 if she belongs to the respective baseline group (e.g., U.S.). The latter becomes the baseline group for the comparisons we discuss below. The latent variable y^* can be interpreted as the continuous utility from priority being assigned to the issue specified in the specific survey question. The error term e is assumed to be normal, i.e., $e|D$ is distributed as Normal (0,1).

The sign of $\hat{\beta}$ estimated through the ordered probit model using the observed categorical variable y can be interpreted in terms of the conditional expectation of the associated unobservable latent variable (y^* , the continuous utility) that is of interest for the analysis.⁸ The point estimate indicates whether belonging to a given group is associated with smaller utility (if negative) or higher utility (if positive) from priority being assigned to the issue in the question, relatively to the baseline group. In the discussion that follows point estimates are presented graphically together with their respective 95% confidence intervals. If the confidence interval lies completely to the left or completely to the right of the vertical line at 0, the association entailed in the point estimate is statistically significant.

The second empirical instrument used to characterize survey responses is a rank correlation analysis. Individual issue areas are clustered according to themes of interest (e.g., questions pertaining to improving WTO transparency) and for each group of respondents the issues within a cluster are ranked in terms of the total scores assigned by a respondent’s group. We then estimate the Spearman Rho correlation coefficient⁹ between group-specific rankings for each cluster of issues. These correlations provide empirical evidence on whether the preferences of two groups of respondents reveal alignment (positive correlations), are uncorrelated (correlations close to 0), or nonalignment (negative correlations) in rankings of relevant issues.

⁸ Estimation of each discrete choice model is done by clustering standard errors at the level of the unique bivariate regressor.

⁹ Spearman’s rho is a nonparametric method for measuring the correlation between two variables using rank order information for each variable. It ranges between -1 and 1. The higher the number the more similar is the rank ordering.

3. Plurilateral negotiations as a response to the consensus problem

The accession of China at the 2001 Doha ministerial occurred in tandem with the launch of the ill-fated Doha Round at the same ministerial. The backward-looking Doha Round agenda prioritizing tariffs on manufacturing and agricultural support policies became increasingly disconnected from 21st century priorities as the negotiations dragged on eventually became deadlocked. One result was that policies affecting the digital economy, and cross-border data flows, foreign investment, among others, were neglected because a consensus could not be achieved to address issues that were not part of the Doha agenda. Another implication of the deadlock was that the WTO did not play a role as a forum for deliberation on policy differences that gave rise to trade tensions between the US and China, notably the use of industrial subsidies and the activities of SOEs.

In 2017 many countries decided to shift gears and move away from negotiations including all WTO Members and the working practice of consensus decision-making by launching plurilateral talks. Underlying the interest in plurilaterals are the trade tensions resulting from the rapid growth in exports of emerging economies. That tension has been growing for decades. The Uruguay Round single undertaking, which forced all developing countries, and all those who subsequently acceded to the WTO, to accept the whole set of agreements exacerbated the problem. The move to plurilaterals is only a partial solution to the difficulty of concluding negotiations by consensus. Each negotiation can only be concluded if a critical mass of Members participates. Plurilateral approaches therefore are not a panacea, but they offer a mechanism for large trade powers to cooperate without engaging in negotiations with all WTO members (Hoekman and Sabel, 2021).

The so-called “joint statement initiatives” that are now being pursued in the WTO on a plurilateral basis span e-commerce, domestic regulation of services, investment facilitation, and measures to enhance the ability of micro and small and medium enterprises (MSMEs) to utilize the opportunities offered by the rules-based trading system. These initiatives include a cross-section of the WTO membership. The e-commerce JSI talks involve 80+ WTO Members and focus on a mix of trade restrictive policies such as regulation of cross-border data flows and data localization requirements and digital trade facilitation – issues like electronic signatures, e-invoicing, electronic payment for cross-border transactions, and consumer protection.¹⁰ Talks on services domestic regulation span 60+ WTO Members and center on matters associated with authorization and certification of foreign services providers with the aim to reduce the trade-impeding effects of domestic regulation. The MSME and investment facilitation groups differ from the other two JSIs in addressing matters that are not covered in existing WTO agreements. The talks on MSMEs involve some 90 WTO members; those on investment facilitation over 100 members.¹¹ China was an initiating co-sponsor of three of the four JSI groups and joined the fourth group – on e-commerce – soon after deliberations commenced. The EU also participates in all four groups, while the U.S. only participates in one JSI, on e-commerce. Although the Trump Administration chose to join only one of these initiatives, this decision may be revisited by the Biden Administration.

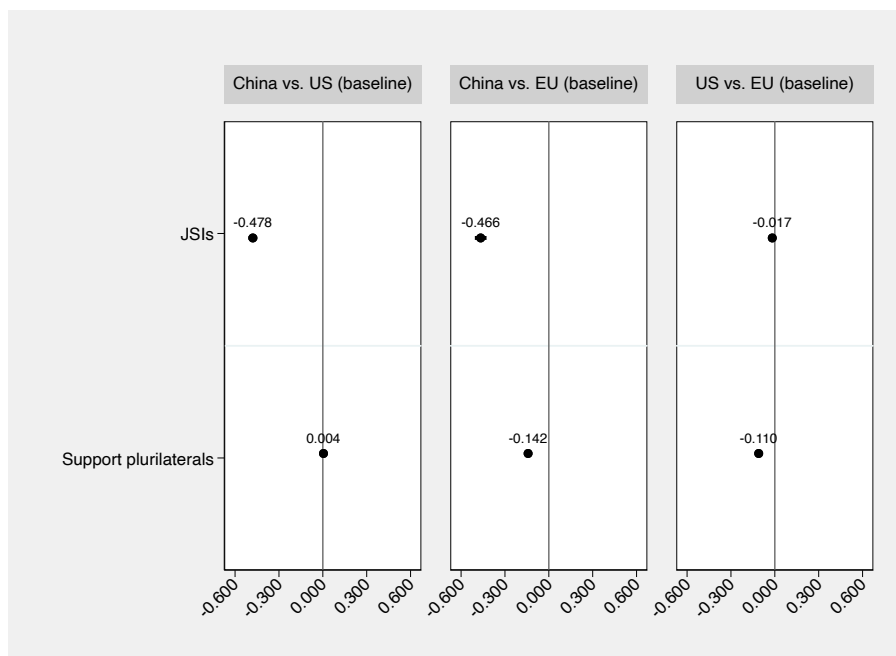
Figure 1 suggests that U.S. survey respondents are closely aligned with EU respondents on the priority they assign to JSIs. The estimates plotted in Figure 1 come from the discrete choice model analysis described in Section 2 to compare responses by European, American and Chinese respondents, respectively. For each of the three comparisons reported in Figure 1

¹⁰ For a summary of the issues that have been tabled by different participants, see Y. Ismail (2020).

¹¹ https://www.wto.org/english/news_e/news19_e/infac_05nov19_e.htm. See Baliño et al. (2020).

(and the other graphs in subsequent sections) point estimates to the right (left) of the 0 line reveal higher (lower) utility for the group of respondents of interest with respect to the baseline group. The distance from the line suggests the degree of alignment (divergence) on the priority respondents assign to the issue addressed by a survey question.

Figure 1: Plurilateral negotiations as a response to the consensus problem



The point estimates and associated confidence intervals reported in Figure 1 show that both EU and American respondents to the survey get far more utility from (attach greater priority to) concluding the JSI talks than Chinese respondents do. At the same time Figure 1 also shows that Chinese and U.S. respondents are aligned on the question of whether WTO members (and thus the Secretariat) should provide support for plurilateral agreements. EU respondents are slightly less supportive than the U.S. and China on this second question, but the differences are much smaller than for the question on successful conclusion of the extant JSIs. The survey responses suggest that Chinese respondents are less supportive than those from the EU and the U.S. but are not opposed to the principle of pursuing plurilateral agreements in the WTO.¹²

4. Special and differential treatment as a negotiation obstacle

The prospects for plurilateral initiatives to attract wide membership, and for agreement to be possible between the EU, U.S. and China will depend importantly on whether emerging economies insist on being accorded special and differential treatment and more generally on whether and how such agreements address development differences. SDT for developing countries has become part of WTO theology, to the point that it was baked in to the 2001 Doha Development Agenda. In practice it does not matter if small developing countries are permitted to provide less than full reciprocity in a negotiation, but unwillingness of larger developing countries matters to major exporting nations. This has long been a bone of contention in the WTO (Hoekman, 2012) but has become a rising source of division in the WTO because of the economic success of large emerging economies.

¹² This conclusion is consistent with the finding discussed in section 8 that when it comes to launching talks on new issues (other than the 2017 JSIs), U.S. and Chinese respondents are aligned.

A lengthy document submitted by the U.S. to the WTO General Council early in 2019 (WTO, 2019b) provides a great deal of data, and commentary on WTO decisions, to argue that self-declared developing country status no longer makes sense and undermines new negotiations. In May and November 2019, the U.S. submitted a proposal for a decision on “Procedures to Strengthen the Negotiating Function of the WTO” with criteria for assessing which countries will not avail themselves of SDT in WTO negotiations (WTO, 2019d). The U.S. asked for this item to be placed on the agenda of one General Council meeting after another in 2019 and 2020, with some support from other Members but unrelenting opposition from China and most developing countries.

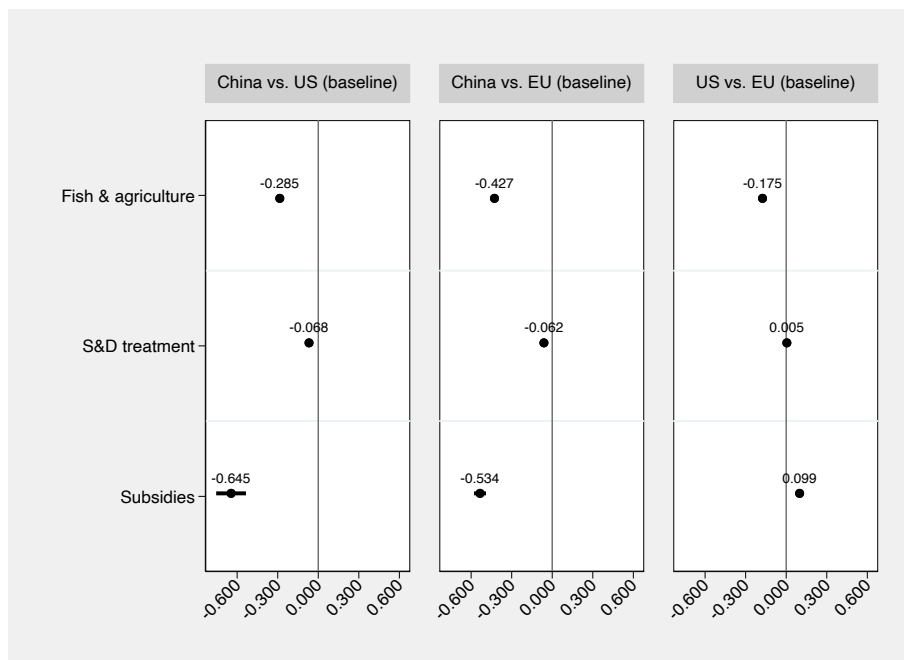
At the July 2020 meeting of the General Council the representative of China, echoing the introduction and much of the argumentation of WTO (2019a) said that in an international organization with developed and developing Members, non-reciprocity was a means and a principle to realise equity. He argued that reclassification of WTO members was not a way out. Rather than revisiting the current practice of self-designation of developing country status, he suggested those in a position to do so be encouraged to make a greater contribution to the best of their capabilities, which China was willing to do (WTO, 2020d). The EU has suggested flexibilities be made available to those Members who actually need them to enable them to fully benefit from their membership in the organization, an approach advocated by former WTO officials (Low, Mamdouh and Rogerson, 2019, 5). This approach has long been advocated by some scholars as a more effective means of ensuring specific capability gaps be identified and addressed.¹³

Survey respondents from China, the EU and the U.S. are close to each other in the utility they would receive from resolving differences on SDT (Figure 2) but, surprisingly, in results not shown here, all three sets of respondents accord significantly less weight to such a resolution than respondents located in other WTO Members. A possible reason is a recognition that these three major traders will need to negotiate rules that apply equally to each of them, with specific commitments and exceptions agreed on an issue-specific basis.

Addressing the spillover effects of subsidies is an example where this applies. WTO subsidy rules are intertwined with SDT reflecting a presumption that subsidies can play an important role in fostering economic development. This is demonstrated in the ongoing negotiations on fisheries subsidies. Launched in 2001, these talks have yet to be concluded, missing the latest deadline of end-2020. There are many reasons for the failure, but SDT was a factor. China’s position is ambiguous. Echoing Annex D paragraph 9 of the 2005 Hong Kong ministerial declaration (WTO 2005), China supports disciplines that prohibit fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU-fishing, while “recognizing that appropriate and effective SDT for developing country Members and least developed country Members should be an integral part of the negotiations” (WTO, 2019f).

¹³ See, e.g., the review of proposals made during the GATT and WTO period by Hoekman (2012).

Figure 2: Dealing with traditional problems



Another proposal by the U.S. and others (WTO, 2019e) includes a sliding scale of commitments that differentiates members by proportion of marine capture production would provide all Members with differentiated levels of commitment, meeting developing countries' substantive needs for flexibility if not their political need to maintain SDT as a fixture of all WTO agreements. In contrast, an Indian proposal on subsidies for fishing in a country's exclusive economic zone that contribute to overcapacity (WTO, 2020e) would significantly limit China's access to SDT because of a provision restricting this to developing countries with per capita incomes below US\$ 5,000.

Figure 2 makes clear that Chinese respondents to the survey get much less utility than those from the EU and the U.S. from addressing this subject, although the EU and the U.S. are also not aligned. The same is true for addressing the negative international spillovers of industrial subsidies, which play a major role in the trade tensions between the U.S. and China. Respondents are even further apart on the utility (priority) of revisiting rules on industrial subsidies than they are on fish subsidies. A possible reason is that subsidies can help to address market failures and therefore might have a good economic development rationale despite giving rise to potential negative cross-border competitive spillovers. As discussed at greater length in Hoekman and Nelson (2020), this is not simply a 'China issue'. Subsidies of one type or another constitute the great majority of trade interventions imposed since 2009. To address these tensions, it is necessary to have a good understanding of the use and incidence of subsidies.

Governments can see distortions that look like they were caused by industrial subsidies offered by other countries, but they lack the data to illuminate that state support. Rather than engage in discussions at the WTO, the trade ministers of the U.S., Japan, and the EU launched a trilateral process motivated by "concern with the non-market-oriented policies of third countries and [...] actions being taken and possible measures that could be undertaken in the near future." In a May 2018 statement Trilateral ministers endorsed a joint scoping paper defining the basis for the development of stronger rules on industrial subsidies and state-owned enterprises (SOEs). They also mentioned technology transfer and non-

compliance by some governments with their WTO transparency obligations (USTR 2018a). These themes recurred when the Trilateral ministers met again in September 2018 (USTR 2018b) when they also “called on advanced WTO Members claiming developing country status to undertake full commitments in ongoing and future WTO negotiations.”

The Trilateral approach pursued by the EU, Japan and the U.S. led to circular discussions in the WTO Subsidies and Countervailing Measures (SCM) committee. For example, in October 2020, according to a Geneva trade official, each of the three expressed their joint concern about the role of state subsidies in contributing to excess production capacity in sectors such as semiconductors, steel, aluminium and others. The U.S. and the EU raised concerns with China's lack of information regarding subsidy programs referred to in official communications. China replied that MOFCOM publishes large amounts of information in its trade and economic gazettes as well on its website and that its national enquiry point fulfils China's WTO transparency obligation. The U.S. responded it had searched the MOFCOM Official Gazette but was unable to find the information it sought.

Survey respondents from China are far apart from those in the U.S. and EU on the priority attached to negotiating stronger rules on industrial subsidies, while the latter two groups are much more aligned. But a revamped subsidy regime requires participation of all three major trading powers. The rules must be seen to support the generalized gains from open trade and global production, not an attempt to isolate or ‘reform’ China. At the same time, China should accept that it has a leading role to play in the regime. In the short term, agreement on binding rules is unlikely to be possible. Work on developing more informal discipline on subsidies based on information, dialogue and peer review may be more feasible.

This applies as much SOEs, another focal point of Trilateral concern, as it does to subsidies. WTO members do not necessarily know enough about SOEs, including in China, to be sure whether there is a systemic problem, and hence what ought to be done.¹⁴ The absence of specific WTO disciplines on SOEs, including the absence of a definition, leads to the non-existence of transparency requirements about who they are and what they do. On any definition, OECD countries also have many SOEs. Multilateral consensus on new rules might prove elusive, but if all the players involved knew more, and had a space to discuss what they know, they might be able to use the neutral ground provided by the WTO to discuss how to attenuate competitive spillovers caused by SOEs and subsidies more broadly.

The Appellate Body seems to think that, in the terms of the Agreement on Subsidies and Countervailing Measures (ASCM), a body exercising ‘governmental authority’ can be identified by what it does, not by who owns it. The distinction may matter in the case of an SOE providing a subsidy but does not help in assessing other ways in which SOEs might affect the commercial interests of foreign firms. Moreover, without more information on the universe of SOEs, and what they do, the distinction has little operational utility, although the fact of the false distinction contributed to American unhappiness with the Appellate Body and its jurisprudence (Ahn, 2021).

Mavroidis and Sapir (2021) argue that a more appropriate path to addressing concerns about the competitive spillovers of the operation of SOEs is through reform of the ASCM. The behavior of SOEs in the EU is subject to integrated state aid and competition law disciplines that apply to all firms, whatever their ownership structure. Adopting a similar approach in the

¹⁴ For a more extended discussion, see Wolfe (2017).

WTO may be more feasible and more effective than seeking to discipline the use of SOEs. Here again a necessary condition for cooperation is a common understanding of the extent and spillover effects of contested practices. As noted by Hoekman and Nelson (2020), calling for a work program on subsidies may be criticized as kicking the can down the road. It is not. WTO members simply do not have enough information to develop a common understanding of where new rules are needed and the form they should take. That problem goes beyond subsidies.

5. Improving transparency is central to WTO reform

Transparency of actor behavior and expectations is a core requirement of international regimes. This objective requires high quality information (Wolfe, 2018). The WTO agreements have dozens of formal notification obligations; compliance varies by committee and by Member. One-time obligations to notify existing legislation can be simpler than ad hoc ex ante notifications of new regulations, which in turn are often easier to prepare than regular ex post notifications of subsidies. In the current context, only some of the COVID-19-related measures reported to the WTO are “notifications”. The WTO website lists regular (required) notifications with a COVID-19 connection, voluntary reporting of COVID-19-related measures, responses to Secretariat requests for information and the Secretariat’s own information derived from web scraping and news reports.¹⁵ There are problems with all these sources of WTO information.

Inadequate notification of trade policies is an old issue, but its inclusion on the “WTO reform” agenda only began at the 2017 Ministerial Conference when Robert Lighthizer, then the United States Trade Representative, said that “it is impossible to negotiate new rules when many of the current ones are not being followed. (USTR, 2017).” The U.S. tabled a detailed proposal that reviewed how compliance with notification obligations under the Trade in Goods agreements is unsatisfactory. The U.S. proposal included punishment for Members who are behind in their notifications (WTO, 2017). A revised version of that proposal (WTO, 2020b), with several co-sponsors, including the EU, suggests consideration of both systemic and specific improvements that can help Members improve compliance with notification obligations.

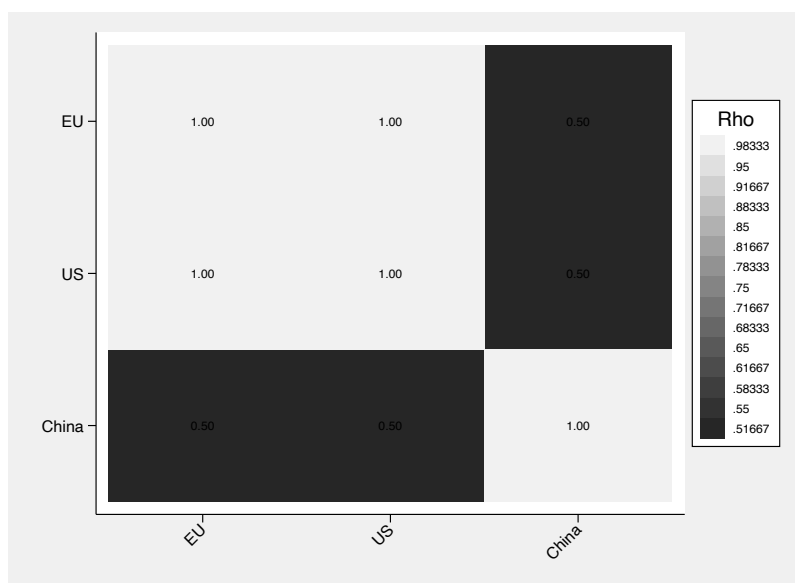
Although uneven compliance with notification requirements of WTO Agreements is generally recognized, there is no consensus on a diagnosis. Some of the problems with notifications may be due to conscious unwillingness to provide the information, or a general lack of transparency in China’s governing institutions, but threats to identify the Chinese ambassador as a “Member with notification delay” when offered the floor in the General Council (WTO, 2020b) will not help address the matter. Some of the problems may have little to do with the Ministry of Commerce in Beijing let alone the delegation in Geneva since more powerful domestic ministries may not see the benefits to themselves in preparing the information (Gao, 2018). This applies a fortiori to countries that have weaker institutional capacity than China. If the problem is a lack of capacity, then technical assistance may be needed. If the real difficulty is outdated and overly complex notification requirements, a thorough review is warranted. Only if the reason for a poor notification record is bad faith would penalties as suggested by the U.S. be appropriate. What is clear is that China, along with most developing countries, will never join a consensus on the U.S. proposal as it stands.

¹⁵ https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm

The periodic monitoring reports prepared by the Secretariat ought to be able to provide information that supplements notifications. The reports aim to enhance transparency of trade policy developments, consistent with the mandate of the Trade Policy Review Mechanism to aid in understanding Members' trade policy but not to assess compliance with formal obligations. The reports therefore do not cover “subsidies”, which are defined for legal purposes in Article 1.1 of the ASCM, but the reports should in principle cover the full extent of the “general economic support” provided by governments. They do not. The reports originally captured responses to the 2008 financial crisis when just knowing the facts helped countries avoid an over-reaction. Central to coverage of general economic support, which goes beyond formal notifications, are responses to periodic questionnaires issued by the WTO Director-General (DG). The overall response is weak, and the response on general economic support is dismal. For the most recent report, 67 WTO Members and one Observer volunteered information on 638 COVID-19-related general economic support measures. The EU did so; the U.S. and China did not. The U.S. is less cooperative than China or the EU with the trade monitoring exercise, neither responding to the DG’s questionnaire nor verifying information the Secretariat found in other places (WTO, 2020c, Appendix 1).

Figure 3 reports the results from the rank correlation analysis described in Section 2 above. It consists of a heatmap of the Spearman rho coefficients for each relevant pair of survey respondent groups computed on the cluster of questions pertaining to notification and monitoring. EU and U.S. respondents are perfectly aligned with each other in identifying the most pressing issues when it comes to improving transparency, while Chinese respondents expressed different priorities.

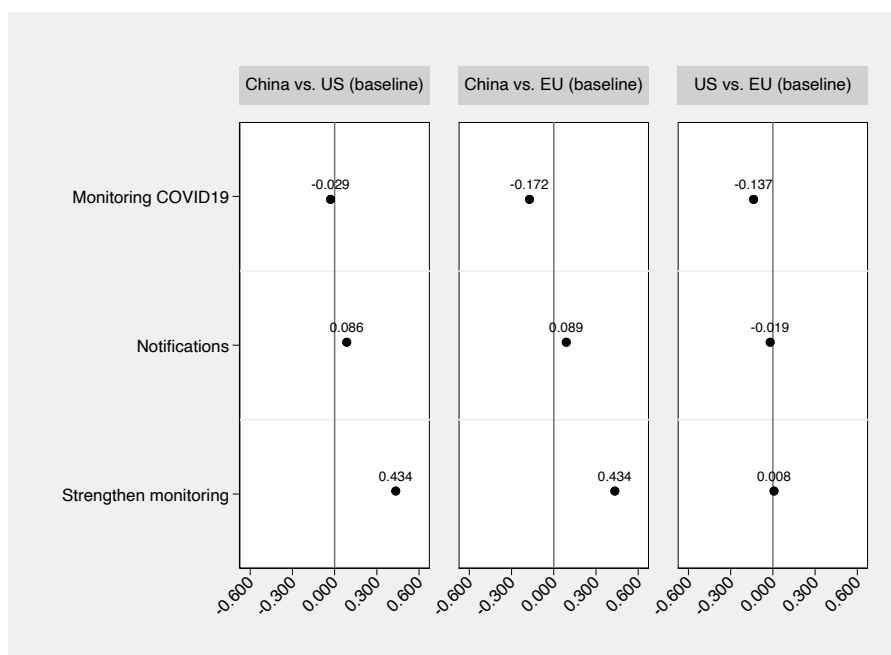
Figure 3: How important is improving WTO transparency?



Interestingly, the results of the discrete choice analysis plotted in Figure 4 suggest that differences in the rank ordering of transparency-related issues observed in Figure 3 are associated with a stronger preferences of Chinese survey respondents from improving transparency than U.S and EU respondents. EU respondents to the survey get more utility on COVID-19 monitoring than those from China or the U.S. (Figure 4). However, Chinese respondents get much more utility from strengthening regular monitoring than the EU and the U.S. This is observed both for a question on the priority accorded to improving compliance with notification obligations, and much greater utility associated with strengthening

monitoring of trade policies. While the small sample size precludes inference, this result suggests transparency may be an area of reform where there may be scope for convergence.

Figure 4: Improving transparency is central to WTO reform



6. Improving the operation of WTO deliberative bodies

WTO committees and councils are first deliberative bodies for discussing emerging issues and addressing trade concerns without recourse to the dispute settlement system. Or at least they should be (Wolfe, 2020). The most effective WTO bodies in addressing trade concerns are the Technical Barriers to Trade Committee and the Sanitary and Phytosanitary Measures Committee. Members raise “specific trade concerns” (STCs) to seek clarification, including of already adopted measures, and discussion can lead to modification or even withdrawal of a measure that has adverse consequences for trading partners. Discussion of trade concerns is increasing in other bodies. Since 1995, close to 6000 questions (much like an STC) have been raised in connection with individual notifications under the Committee on Agriculture (CoA) review process. Between mid-October 2014 and mid-October 2019 1,158 issues and concerns were raised in 129 formal meetings of 17 WTO committees and councils, other than SPS, TBT and CoA (WTO, 2020c). These numbers dwarf the number of formal disputes.

A handful of large traders make most frequent use of procedures to raise trade concerns, notably the U.S. and the EU. China is now number 5 on the list of users and is the target of more trade concerns than any country after India (WTO, 2020c). We see this pattern in questions raised about the response to COVID-19 during the second half of 2020. In the Council for Trade in Services, China accused India of taking a series of discriminatory, and restrictive measures. In the CoA Canada questioned the U.S. on a possible US\$14 billion Coronavirus Food Assistance Program payment while Australia, EU, India, New Zealand and Paraguay questioned China’s COVID-related border control measures. In the SPS committee Canada, supported by Australia, Brazil, Mexico, Paraguay, the UK and the U.S., raised concerns regarding China’s suspension of imports from facilities where cases of COVID-19 are reported. Still, the procedures could be more extensively used, and participation could be enhanced.

One suggestion to this effect is to establish guidelines for all WTO bodies. Tabled by the EU and supported by 19 other Members, including China, this proposal (WTO document WT/GC/W/777/Rev.5, which we refer to as ‘777’ in what follows) aims to make better use of the possibility offered by WTO Council and committee meetings to discuss and resolve concerns with trade-related measures by equipping them with horizontal procedural guidelines (WTO, 2020f). At the July 2019 meeting of the General Council the co-sponsors stressed that the point of improving the discussion of STCs is to avoid escalation to the dispute settlement system. China shared that objective in its remarks to the Council, but China has resisted some aspects of 777. This is consistent with survey results presented in Section 7 below that reveal Chinese respondents get considerably less utility than respondents in the U.S. and the EU from using WTO bodies to defuse potential disputes by raising STCs.

The 777 proposal begins with clarifying timelines for convening documents and other meeting arrangements, which are important for making efficient use of committee time. China shared that objective in its own reform paper (WTO, 2019c). The 777 proposal encourages submission of written questions and answers, which would enhance transparency for other Members, or firms, having the same concern. Although the U.S. was cool to the 777 proposal for obscure reasons, it made a similar proposal in the SCM Committee for ensuring timely written responses to questions posed by Members on the subsidy programs of other Members (WTO, 2020g). China has resisted every time the item comes up, arguing that the ASCM does not require members to submit responses to such questions in writing, nor to provide them within a specific time-period, and that setting deadlines as proposed by the U.S. would impose substantial new notification obligations on WTO members and cause difficulties for developing countries in particular.

Enhancing opportunities for dialogue

Policy dialogue in WTO bodies is important to consider what works well under agreements, what is not working, and what should be next on the agenda. Committees also need to hear from stakeholders who use their agreements, including regulators, other international organizations, and the private sector.

The heatmap in Figure 5 shows little correlation on relative priorities accorded to enhancing engagement with capitals and stakeholders by respondents to our survey. The heatmap pertains to a cluster of deliberation-related reform options presented in the survey: (i) deepening engagement with stakeholders, specifically through so-called thematic sessions of WTO bodies; (ii) allowing binding decisions to be made in virtual meetings; (iii) making virtual meetings and video conferencing standard options; and (iv) delivering WTO technical assistance and training online and through video conferencing. The latter three options are all mechanisms to facilitate engagement with and input by officials and stakeholders in capitals; the first is a mechanism for delegations in Geneva to interact with colleagues based in capitals, including other ministries and sectoral regulators, the private sector and other international organizations.

Survey responses reveal that Chinese and U.S. respondents get more utility than EU respondents from greater engagement with stakeholders in WTO bodies (Figure 6). One instrument for such engagement are meetings that are sponsored by or associated with a WTO body in some way, but that are not part of its formal meetings and thus permit (in principle) participation by stakeholders. The WTO held over 100 such “thematic sessions” from 2017 through 2019. Wolfe (2021) reviews the use of thematic sessions by WTO bodies,

finding that many did not hold any such meetings, and revealing substantial variation in how thematic meetings with stakeholders are organized, how themes are chosen, who speaks, the degree of transparency, and funding. Over 40% of speakers in the events analyzed are either Geneva-based delegates or WTO officials, or come from other international organizations. Barely a third of capital-based speakers came from non-G20 Members, and only half the sessions had speakers from non-G20 countries. China was relatively well represented, with 9 Geneva-based Chinese government officials and 15 capital-based officials speaking in thematic sessions during the 2017-19 period, along with 7 business and 2 academic participants.

Figure 5: How important is deepening engagement with capitals and stakeholders?

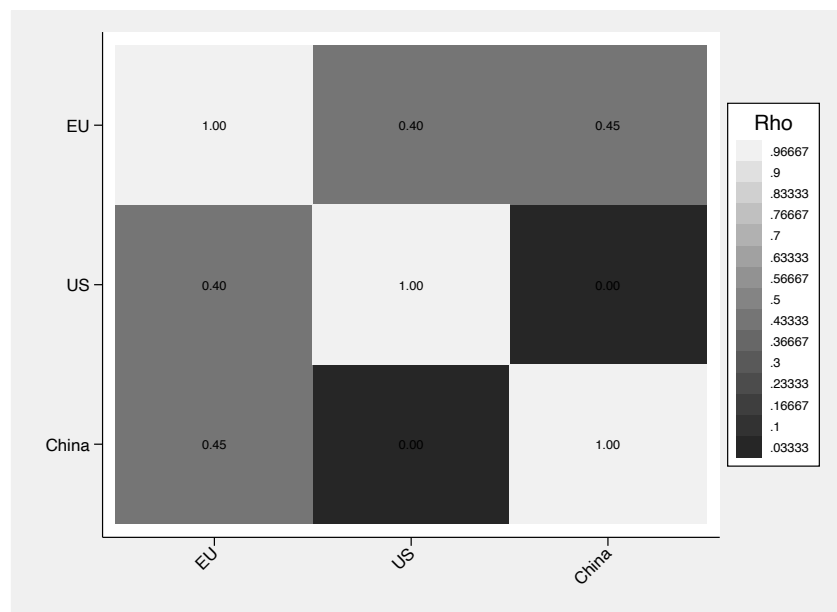
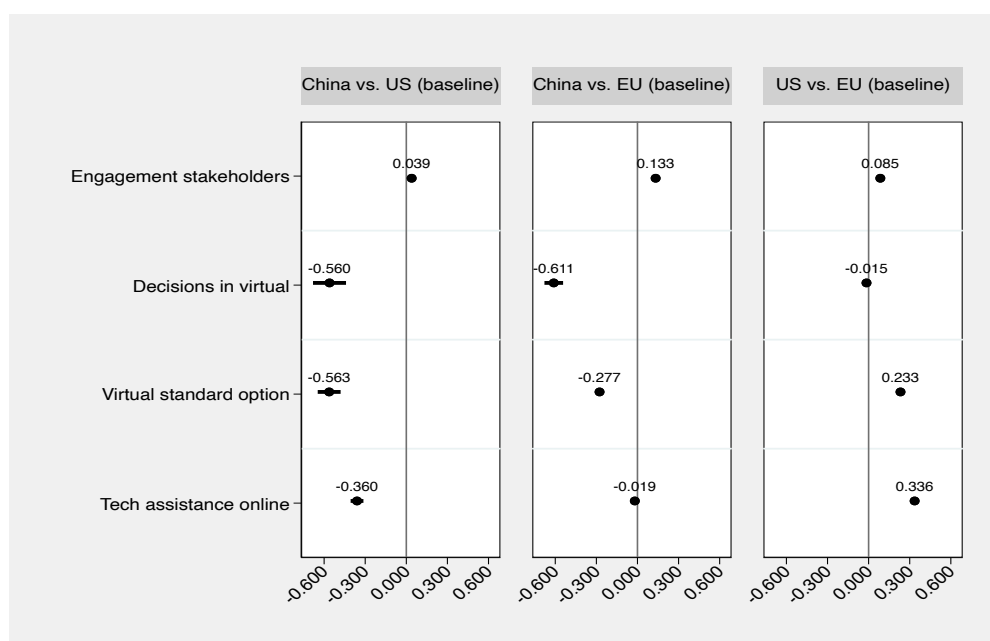


Figure 6: How important is deepening engagement with capitals and stakeholders?



The use of thematic sessions could be improved if every committee organizes discussion of the systemic issues posed by the operation of regional trade agreements in their respective policy areas, mitigating the absence of horizontal discussion of systemic issues in the Committee on Regional Trade Agreements. For example, the recently concluded Regional Comprehensive Economic Partnership (RCEP) has relatively few WTO-plus or WTO-extra provisions, and often relies on the WTO framework and notifications. Other WTO Members might want to use an informal thematic session to assess how much China has willingly accepted a WTO framework in RCEP, putting into perspective claims that China's system is incompatible with the WTO. A similar discussion of the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP) which includes provisions on SOEs and to which Vietnam is a signatory could help clarify whether such types of disciplines might be feasible to consider in the WTO. Such discussions are particularly important in light of the fact that regional trade agreements often have only limited provisions on the use of subsidies reflecting free rider concerns. Such matters call for deliberation and dialogue. Thematic sessions offer a means to WTO Members to do so.

Taking the WTO online

There are lessons for the reform of WTO working practices in how members managed to carry on talking through the pandemic.¹⁶ It may be some time before regular meetings can resume, but when they do members should institutionalize some pandemic-related innovations. Beyond practical teething difficulties, adapting the WTO's work to a virtual world posed some special challenges. Ensuring that all of the WTO's diverse members can participate while maintaining an agreed balance of rights and obligations within a reciprocal framework is complicated. Activities centered on learning, deliberation, and transparency have proven more straightforward than negotiating and agreeing to binding commitments.

While it is reasonable to assume that greater inclusion through involvement from capitals would help to reduce contrasts in the capacity of different members to participate fully in the WTO's regular business, an important caveat is in order. There is a risk of an aggravated marginalization of some developing countries on account of inadequate connectivity and/or the need for more training for operating in a more virtual environment. Support for a hybrid meeting model is likely to increase if these challenges are addressed.

Reliance on hybrid meeting arrangements involving capitals will not necessarily sit well with Geneva ambassadors, who may fear an erosion of their influence and functions. This concern is also reflected in our survey of the trade community, which reveals support for an intensified use of videoconferencing in the daily operations of the WTO, but a significant contrast between Geneva-based respondents and others in respect of taking binding decisions in a virtual meeting: Geneva-based respondents were less supportive than other government officials (Low and Wolfe, 2020). Figure 6 shows that U.S. and EU respondents are aligned in the priority (utility) attached to making more use of virtual meetings and allowing binding decisions in them, whereas respondents from China are considerably less keen.

7. Dispute settlement and the Appellate Body crisis

A central dimension of the 'value proposition' offered by the WTO is independent, third-party adjudication of trade disputes reflected in the principle of de-politicized conflict resolution (Hoekman and Mavroidis, 2020). An effective dispute settlement mechanism is critical for existing WTO agreements to remain meaningful, and for the negotiation of new

¹⁶ This discussion is based on Low and Wolfe (2020).

agreements. The different pillars of the WTO are interdependent. Resolving the Appellate Body crisis and bolstering the dispute settlement function is critical for the continued relevance of the WTO.

The Trump Administration brought fewer cases against China than would appear warranted by the work the U.S. did to document objectionable Chinese policies – e.g., the 2018 Section 301 USTR report. This may in part reflect a perception that matters objected to are not amenable to WTO disputes. The U.S. has been critical of the system, alleging that the Appellate Body has too frequently overstepped its mandate. The Appellate Body ceased operations in December 2019 because of U.S. refusal to agree to appoint new Appellate Body members and/or re-appoint incumbents. Resolution of the crisis requires reform of how the system works. U.S. concerns are long-standing, and the U.S. is not alone in at least some of its concerns (Fiorini et al, 2020). By the end of 2020, sixteen appeals were pending before the dysfunctional Appellate Body and only five new cases had been filed, the lowest for any of the WTO’s 25 years. If appeal “into the void” remains possible, issued panel reports will have no legal value, unless the disputing parties forego their right to appeal, and accept the panel report as the final word in their dispute. The interim Multi-Party Interim Appeal Arbitration Arrangement (MPIA), which includes the EU and China, provides a short-term alternative but is not a solution.

The heat map in Figure 7 shows a striking degree of correlation on assigning priority to this cluster of issues across the respondents to our survey. Respondents from all three trade powers are of the view that re-establishing an operational dispute resolution system is a top priority. Figure 8 shows that Chinese respondents to the survey get more utility than the EU and U.S. respondents from making the Appellate Body operational again and from considering reforms to dispute settlement processes more broadly.

Figure 7: How important is improving WTO conflict management and decision-making?

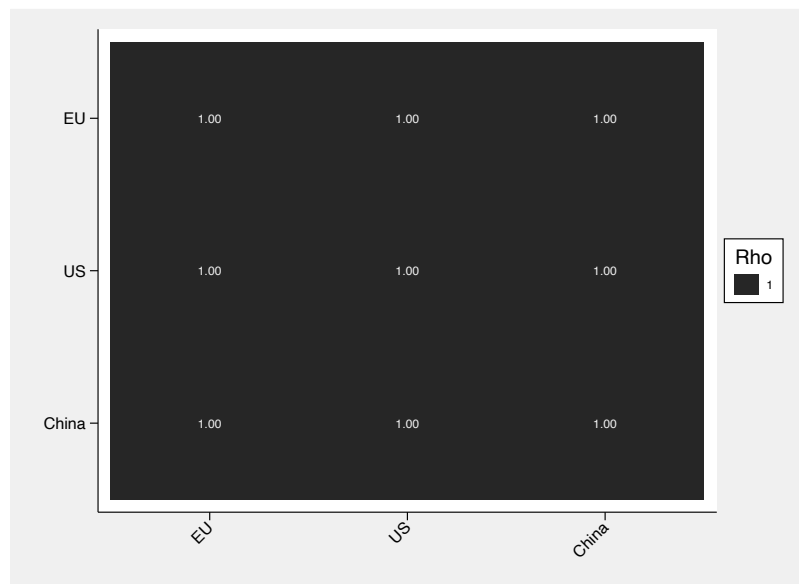
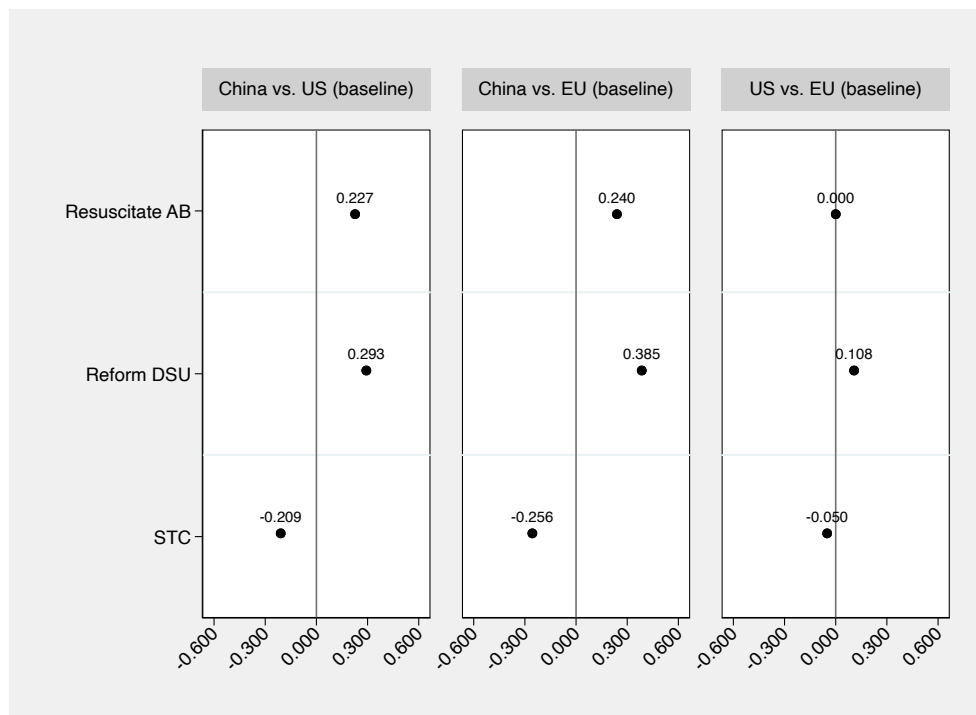


Figure 8: Dispute settlement and conflict resolution



We speculate that China values a functioning system that gives them some protection from the U.S., or at least some recourse if the U.S. does act unilaterally. China is not a player in the Appellate Body debate, although it is much closer to the EU position than to the U.S. This is reflected in China’s decision to join the MPIA to assure the possibility to continue to appeal panel reports in disputes among signatories. Having invested considerable effort in developing trade law expertise in government and academia, China became a sophisticated user of dispute settlement to push back on U.S. and EU use of trade remedy law (Shaffer and Gao, 2018). Although China lost many of the cases brought against it, Appellate Body rulings on key matters such as what constitutes a public body under the ASCM fuelled U.S. frustration (Ahn, 2021). The U.S. would see no point in any kind of WTO reform that did not address this problem. Equally, the U.S. would see no point in any new agreements aimed at Chinese practices if dispute settlement remains slow and ineffective. All three of the major trade powers have an incentive to make dispute settlement operational again. Of the three players the survey suggests Chinese respondents place even greater priority on addressing the crisis in dispute settlement than EU and U.S. respondents, suggesting not only that this is an area where convergence should be possible, but that it may be one that could be linked to an issue that is less of a priority for China than it is for the EU and/or the U.S.

8. Implications for future cooperation

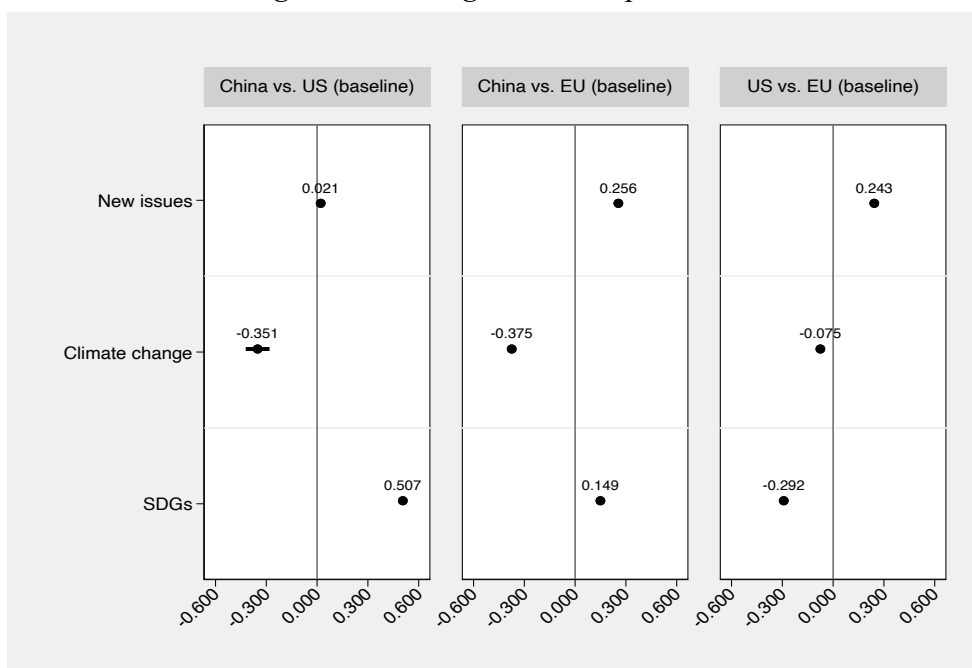
WTO members face many problems that call for cooperation. Prominent items include ensuring a consistent response to global public health crises, resolution of conflicts regarding the use of industrial-cum-tax-subsidy policies, taxation of digital services, regulation of data privacy and cross-border data flows, and the appropriate role of trade policy in reducing the carbon intensity of economic activity. Revisiting the terms of engagement with China is a necessary condition for revitalizing the WTO as a forum to address these matters and to sustain an open world economy. Reflecting on the priorities of our respondents suggests that

compromise will be needed all around on the design of a negotiating agenda or set of issues to be considered.

Recall that Figure 2 shows that respondents from China are far apart from those in the U.S. and EU on negotiating stronger rules on industrial subsidies, while the latter two groups are close to agreement with each other. But a revamped subsidy regime requires participation of the U.S., the EU, and China. This suggests that the Trilateral approach that has been a focus of EU-Japan-U.S. deliberations is a dead end unless it is expanded into a plurilateral discussion and negotiation that includes China. The same applies to issues such as clarifying the role of trade policy in tackling climate change and promoting the sustainable development goals (SDGs). Figure 9 reveals alignment among Chinese and American respondents on the value of adding new issues to the agenda, but otherwise divergence between Chinese respondents and those from the EU and the U.S. Chinese respondents attach less importance to the question of how trade policy should be used to address climate change and put greater weight on the question of using trade to attain the sustainable development goals.

The Doha Round deadlock means plurilateral initiatives and agreements are likely to be the main path for negotiations to address the spillovers of domestic economic policies. Plurilateral agreements permit countries to refrain from engaging in new rule-making efforts allowing those who participate to overcome the perceived failures of consensus and the single undertaking, but without China they will not succeed for lack of critical mass. The views of the expert respondents from China, the EU and the U.S. to our survey reveals substantial differences in views on the relative importance of many areas of international trade policy and potential cooperation. This suggests getting to yes will not be easy. But the survey results also provide hints regarding the potential for package deals and the issue linkages that will be needed to get to yes, as well as issues where domain-specific plurilateral agreements may be feasible. How the three could conclude a package of reforms given the potential for obstruction by some other WTO Members should be a major focus of the policy officials and advisors tasked with the design of trade strategy in the three major trade powers.

Figure 9: Dealing with novel problems



9. Concluding remarks

The approach of the Trump Administration – relying on unilateral trade actions that were not sanctioned by the WTO to change the best alternative to negotiated agreement (BATNA) for China by a huge increase in tariffs and insisting on bilateral negotiations – did little if anything to address core differences between the two countries (Economist, 2020). The EU also adopted stronger measures, including the White Paper on industrial subsidies (European Commission, 2020b) which ratchets up the EU’s ability to act against subsidies, and greater willingness to restrict the ability of Chinese firms to bid on public procurement and screen inward investment (European Commission, 2019). Nevertheless, the EU has been more balanced. The EU sees China as a negotiating partner for cooperation, an economic competitor, and a systemic rival (European Commission, 2020a). The successful conclusion of the bilateral Comprehensive Agreement on Investment between China and the EU at the end of 2020 is an illustration that cooperation is feasible. This is also illustrated in the extensive sector- and issue-specific bilateral dialogues between China and the EU (Hu and Pelkmans, 2020).

Chinese officials in Geneva profess support for WTO reform, but demand respect and non-discrimination, which leads to an insistence on maintaining China’s status as a “developing country”. China does not accept being asked to do things that OECD countries do not ask of themselves and does not want to be treated differently from other developing countries. But China is a very large economy, a very large trader and more prosperous than many other developing countries. It cannot expect to be treated differently to other signatories of any new agreements. China will need some political cover to allow it to maintain support for the principle while accepting a pragmatic approach in new negotiations.

The revealed preference of many WTO members has been to pursue regional trade agreements. Absent a willingness to negotiate clear multilateral or plurilateral rules of engagement by the major players the prospects are for greater economic decoupling, reflected in deepening regional trade blocs and unilateral policies targeting competition from China. What is often not realized is that regional agreements like CPTPP and RCEP rely on an operational WTO regime, because such agreements rely to a significant extent on rules, such as on subsidies and trade remedies, that are supplied multilaterally. None of the bilateral or regional agreements has strong institutional arrangements in practice, whatever is put on paper. This might not impede successful implementation of their market access provisions but may reduce the effectiveness of new rules and can be fatal for regulatory cooperation.

Any outcome in international negotiations depends on how negotiators understand their interests and the interests of their partners. Our survey of the trade policy community provides some insight into the views of expert stakeholders who can be presumed to be part of the epistemic community of negotiators in the three major trade powers. Their views are likely to influence the positions adopted by their governments. The survey responses reveal substantial alignment between EU and U.S. respondents’ views, but substantially less alignment with those of respondents in China. That said, there are areas where respondents from China, the EU and the U.S. are close to each other in the utility they would receive from resolving differences. An important finding from the survey is that one such issue is SDT.

WTO transparency and accountability mechanisms are likely to remain the most useful for the trading system, which is why reform in this area is so important. The U.S. would see no point in any kind of WTO reform that did not address the enforcement problem. Respondents from all three powers place great weight on resolving the dispute settlement crisis, with

China-based respondents indicating that this is a particularly urgent priority. The survey also reveals a striking degree of correlation among respondents from all three major trade powers on assigning a high priority to the cluster of transparency-related issues. Everybody would benefit from knowing more about each other's trade policies. The fact that Chinese respondents to our survey get much more utility from strengthening regular monitoring than the EU and the U.S., and they get slightly more utility than the U.S and the EU from improving compliance with notification obligations suggests collaborative solutions are possible.

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