

WTO Reform: What is the problem and why does it matter?

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Background

- Context:
 - Increasing geopolitical tensions and protectionist pressures impacting trade policies for goods (reshoring; autonomy)
 - Technological change, servicification and shift to digital/data economy
 - Increasing use of trade distorting/restrictive policy measures: “Make it here!” not “made in the world”
 - Reduce carbon footprints – fight climate change
 - Citizens & companies: call for making trade conditional on values
 - Higher rates of growth in emerging economies and rising global trade shares giving rise to calls for greater reciprocity
- China and EU – the world’s top two traders – have made clear they strongly support the rules-based global trading system and oppose unilateralism
- Can they cooperate to revitalize the WTO as a forum for agreeing on trade policy-related rules and the venue where trade disputes are resolved?

WTO: largely missing in action

- Current WTO rules were developed 30+ years ago—need to be updated
- Working practices – and their use by Members – part of the problem
 1. Consensus decision-making
 - Used to constrain regular WTO operation incl. discussion on non-DDA issues
 - Allowed US to block new appointments to the Appellate Body
 2. Special and differential treatment (perceptions of insufficient reciprocity)
- Responses:
 1. Preferential trade agreements (...limited capacity to address systemic problems)
 2. (Aggressive) unilateralism – US targeting China; digital taxes; carbon border offsets...
 3. Shift to plurilateral cooperation in and outside WTO – DEPA; MPIA; JSIs
 4. Call for/launch of WTO reform discussions

Two related challenges for multilateral cooperation

1. Revitalizing the deliberative and rule-making functions of WTO
 - Increasingly a regulatory-cum-tax/subsidy agenda (digital economy; climate change...)
 - Mix of measures that affect competition on markets and policies motivated by values/norms (e.g., privacy; security) and addressing global collective action problems
2. Ensuring that commitments are implemented: effective transparency, consultation, conflict resolution and dispute settlement mechanisms

Four priorities:

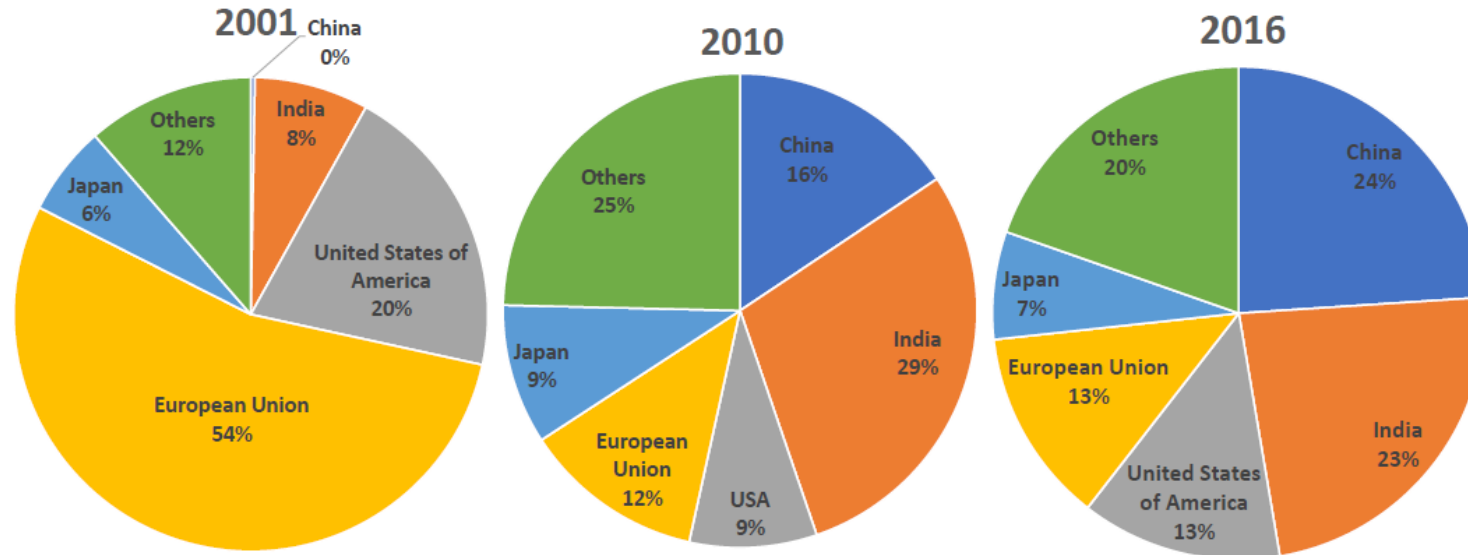
- (i) Revitalizing the “legislative branch” – negotiation function – to address policies on which WTO agreements already exist and “new” areas that are not or only partially covered by WTO rules
 - Clarifying governance framework for open plurilateral agreements
- (ii) Improving trade policy transparency mechanisms
- (iii) Resolving the dispute settlement crisis
- (iv) Differentiating between development status and special & differential treatment

Some premises regarding international cooperation

1. Many legitimate rationales for government intervention to attain economic and noneconomic objectives.
 - The unobservability of goals and the many ways they can be pursued by countries often makes a narrow “hard law” approach inappropriate
 - Attempting to impose changes in national economic systems is bound to fail
2. Bilateral approaches are inherently limited in addressing spillover effects. At a minimum plurilateral approaches will be needed
3. Need to focus on identifying instances where there are potentially serious negative (systemic) spillovers – and the main players implicated
 - Implies a need for more reliance on economic tools and analysis
4. Must encompass issues that matter for a broad cross-section of WTO members

Example of an “old” issue: Agriculture (Lu & Matthews, 2021)

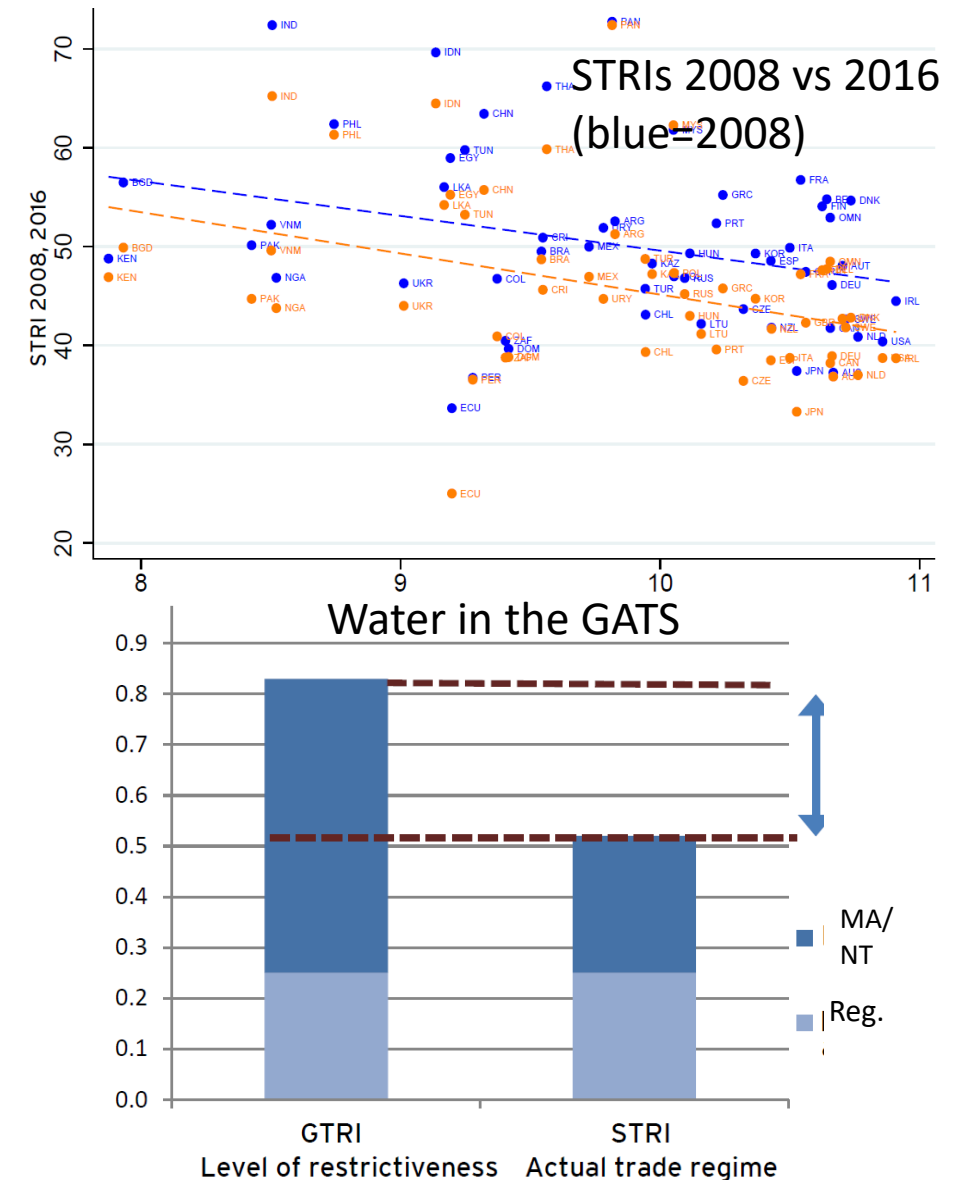
- Increasingly a developing nation agenda— 60% of global food trade in 2018 and rising share of trade-distorting support:



- Does not lend itself to plurilateral approaches—linkages are needed
- Example: strong overlap with climate change agenda
- Rules on support (subsidies) a key source of friction. Revisit methodology to calculate product-specific support to ensure it only captures transfers at above world market prices—a key weakness of current methodology.

New issues: Digital trade, services & investment (Ferracane/Li; Hoekman/Shi; Kurtz/Gong, 2021)

- Summarize history/state of play in WTO. Discussions on e-commerce/services date back to 1990s; investment would be new
- Large outstanding agenda for cooperation—one that matters for business and citizens/consumers as barriers to trade are significant
- PTAs have been main locus for cooperation, not WTO. PTAs, especially RCEP and the CAI – because China is a signatory – offer pointers to what might be feasible
- Common theme of these chapters: all three areas lend themselves to open plurilateral agreements that must include China to be meaningful
- Even if agreement on some matters is not possible, OPAs offer prospect of improved governance of trade and investment by promoting transparency, enhancing predictability (e.g., reducing water in GATS commitments) and supporting regulatory cooperation



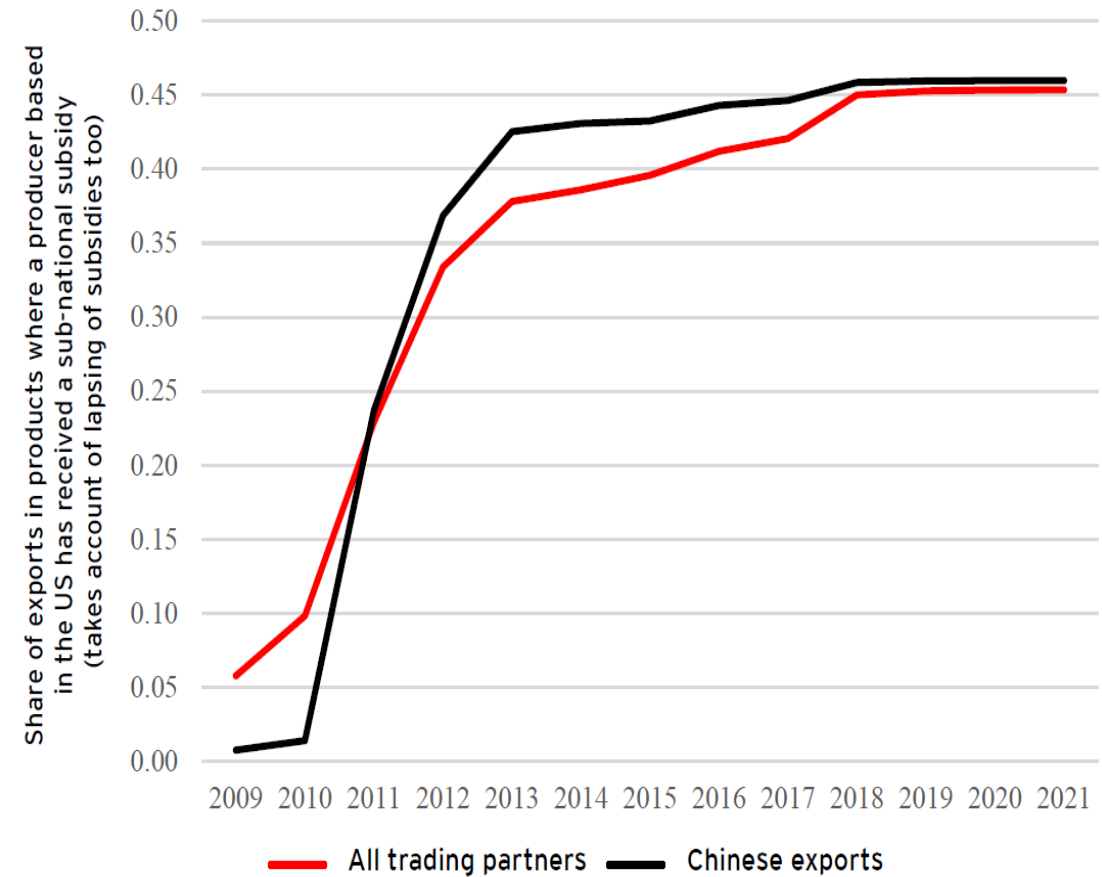
Improving the information base

- One input into a potential foundation for cooperation and legitimation is the creation of commonly agreed forms of information
 - Necessary to build trust and help legitimate reform
 - viz. OECD example of Producer Support Estimates for agriculture
- Efforts to enhance information should be anchored in the WTO and comprise a collective effort in terms of analytical and data inputs from government agencies implementing policies that affect trade / generate potential large spillovers
- Needed: leadership to support collection, sharing and analysis of data and contributing the necessary resources for this effort
 - Focus on new economy: services, digital, platforms
 - Effects on / utility for addressing global externalities (climate change...)

Transparency (Evenett & Kong, 2021)

- Notification performance weak for many WTO members and agreements
- As of April 2021 one third of the membership had yet to submit subsidy notifications for 2015
- Many of the policy areas discussed in Part 2 of the book have a tax/subsidy dimension
- Focus must extend beyond inadequate compliance with notification obligations: measures that may have significant effects do not need to be reported
 - Example: sub-national subsidies. Are significant in China, but also in the US (see graph in panel)
- WTO members should establish a work program to improve domestic transparency of subsidies
- Such information is necessary to improve notifications, as well as analysis of their incidence and spillover effects

Share of exports of products to US affected by US sub-Federal subsidies to local producers



Sources: Global Trade Alert database, data extracted on 29 April 2021.

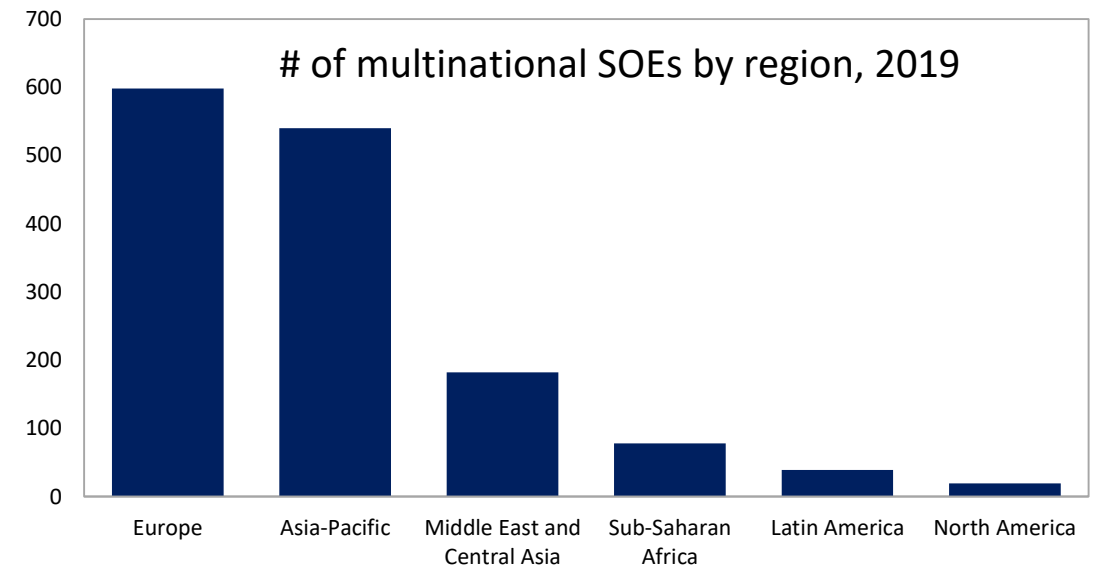
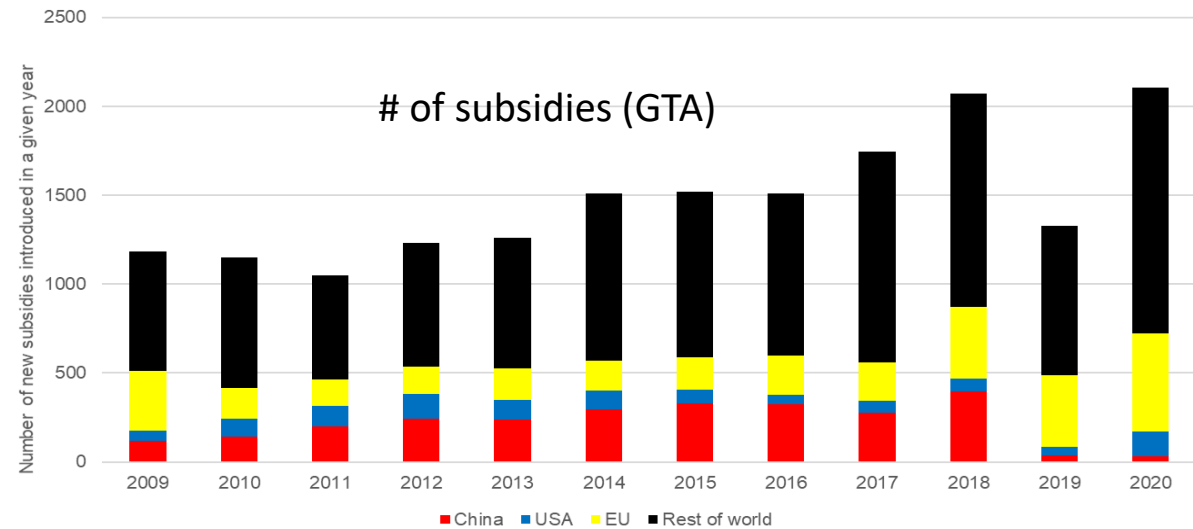
Subsidies and SOEs (Li/Rubini/Liu & Hoekman/Sapir, 2021)

• Subsidies

- Subsidies account for more than half of all trade-impacting policy measures globally
- Start with a concerted effort to compile information and develop a common understanding of where new rules are needed (incl. services) & what types of subsidies should be non-actionable

• SOEs

- Focus on behavior not ownership
- Reflect/build on recent treaties—CPTPP, RCEP, CAI— for possible approaches in WTO. Adoption of the “covered entity” approach used in the CAI could be a potential element
- EU and China – both jurisdictions with SOEs – should take the lead to create a WTO Working Party on SOEs to prepare the ground for a plurilateral negotiation on new rules for SOEs
- Need to start with developing a solid evidence base on competitive spillover effects



Diagnostics: (when) are national policies an international problem?

- Basic theory of economic policy:
 - Production (consumption) tax-cum-subsidies more efficient (less distorting) than tariffs
 - Especially if designed to be general, allowing entry (exit) of more (less) efficient firms
- Are interventions effective? Do they cause large adverse international spillovers?
- Recognize that measuring incidence of spillovers is difficult
 - Negative effects on competitors may be offset by positive welfare effects
 - Take into account market structure and barriers to entry: what matters for welfare is whether markets are contestable
 - Apply basic insights from economics of predation and competition policy
- Calls for more economics, less reliance on “hard” rules
- This especially the case for regulatory, domestic policies

Special and differential treatment (SDT)

- Simple rules of thumb/criteria as proposed by the US are not appropriate even if they were to be accepted
- Not a binary issue: all WTO members get some type of “SDT” in WTO
- To be useful as opposed to divisive, need approaches that are:
 - Enabling, not exempting
 - Dynamic (do not entail permanent differences in obligations)
 - Flexible and customized – one size does not fit all
 - Inclusive – defined jointly through engagement / cooperation
- Focus on substance – what are efficient options given set of feasible policies?
 - Will a (proposed) rule be conducive to attaining national objectives?
 - Is technical assistance needed?
- Elements already in place: Trade Facilitation Agreement approach based on common set of good practices; national determination of priorities; Aid for Trade

Moving forward on SDT (Low, 2021)

- Developing country status is distinct from special and differential treatment (SDT)
- Two types of SDT: regulatory and market access. The former pertain to WTO rules; the latter determine terms of participation in a given market
 - Market access SDT is fully determined by each WTO member—cannot be invoked by a beneficiary
 - Most regulatory SDT is “best endeavors” – less than one-quarter involves ‘flexibility’ that developing countries can invoke
- Main message: scope for opportunistic access to SDT by those developing countries considered undeserving is in fact limited
- Moving forward: launch a work program to establish how much the ‘flexibility’ category of regulatory SDT is actually used
 - This will provide a basis for decisions by individual WTO members to indicate they do not intend to do so in the future

Open plurilateral agreements (OPAs)

- A response to consensus constraint in WTO but also to differences in preferences, priorities and capacities
- Could address market access issues and/or regulatory cooperation
- Nondiscriminatory in the sense of open to any country, ex ante and ex post
- More feasible for policy areas that are regulatory in nature and apply equally to national and foreign firms or products
 - E.g., good regulatory practices or initiatives to lower trade costs for firms
 - But also can span market access-related issues where the “critical mass” needed to permit cooperation is relatively small
- See Hoekman and Mavroidis (*World Trade Review*, 2015); Hoekman and Sabel (*Global Policy*, 2019; 2021)

OPAs not a panacea – but can help break stasis

- Government Procurement Agreement illustrates OPAs may not be easy to expand to additional members
 - How much this matters depends on free-riding/critical mass considerations
- Open processes critical: openness an asset, not a liability
 - Secretariat support; non-parties kept informed
- Must address concerns of non-participating WTO members that:
 - OPAs will be open ex post – e.g., by making this enforceable (also for outsiders)
 - WTO Members needing assistance will be supported – e.g., build on TFA model
- Can help multilateralize regulatory cooperation and equivalence regimes (e.g., EU data adequacy decisions)
- Could also be a way to revisit judicialization of enforcement
 - E.g., duty to explain (require reason-giving); third party review (TFA precedent)

Looking ahead: more variable geometry in the WTO?

- Joint statement initiatives: a positive development given deadlock that prevailed too long
- Basic questions:
 - Can (will) plurilaterals deliver enough to keep the WTO relevant?
 - Can agreements be obtained on matters where there are large spillovers?
 - Can OECD agree with China on subsidies & associated systemic tensions?
 - Can progress be made on climate change related trade policies on a plurilateral basis?
- Near term tests:
 - Progress on “joint statement initiatives” notably E-commerce: given major differences on key policy areas such as data privacy & protection
 - Willingness to engage in substantive deliberations to revamp WTO dispute settlement

Fixing the dispute settlement crisis: key for progress

- Without effective enforcement, little incentive to make market access commitments
- Needed: serious deliberation on what can/should be done, not just to deal with US concerns, but more broadly
- Plurilateral “solutions” are not the answer here
 - EU-led MPIA is an understandable response but what is needed is serious reflection on reform
 - Long-running DSU review and discussion in the DSB makes clear there is substantial room for improvement (panels and AB), but consensus constraint has impeded change
- Implication: large players need to agree to talk seriously and focus on institutional framework for DS. Must include focus on 1st panel stage

Conclusion

- Four priorities on institutional front:
 - Establish a robust enabling environment for OPAs to permit outcomes of JSIs to be incorporated into the WTO – and encourage new ones (e.g., on trade/climate; public health)
 - Resolve the dispute settlement crisis
 - Revisit approaches towards transparency – notably for subsidies and SOEs
 - Address divide on development status & special and differential treatment
- Opportunity for China and the EU to work with like-minded to support work on this
 - China's request to accede to CPTPP; RCEP membership and agreement on CAI suggest there may be more scope to do so than many think
- To build basis for substantive negotiations on policies need informed deliberation
 - Many chapters call for work programs to update information/analysis of spillovers
- Necessary condition for progress is cooperation and agreement among large players
 - Build on trade/investment agreements that address subsidies; SOEs; digital trade matters
- Key question: do Members want to use WTO to help manage geo-political rivalry?

- E-book can be downloaded from: <https://voxeu.org/>
- See also April 2021 special issue of *Global Policy* for complementary research on WTO working practices/reform:

<https://www.globalpolicyjournal.com/journal-issue/special-issue-trade-conflicts-multilateral-cooperation-and-wto-reform>

and

- Hoekman/Wolfe in *China & World Economy* 2021

