World Trade Review (2021), **20**, 556–565
doi:10.1017/S1474745621000215

ORIGINAL ARTICLE

How Do You Solve a Problem Like Maria? *US – Countervailing Measures (China) (21.5)*

Douglas Nelson*

Murphy Institute & Department of Economics, Tulane University, New Orleans
*Corresponding author: Email: dnelson@tulane.edu

(Received 17 March 2021; accepted 17 March 2021; first published online 29 June 2021)

Abstract
The rise of China as a genuine world power, economically and militarily, constitutes the gravest challenge faced by the liberal international order constructed in the aftermath of the Great Depression and the Second World War. A major source of strain in the trade relations between China and the other core members of the liberal world trading system is its extensive use of state-owned enterprises as an instrument of general (domestic) economic policy. This paper builds on Ruggie's theory of embedded liberalism and the theory of economic policy to characterize the political and economic difficulties and opportunities in moving toward a new regime for dealing with subsidies. The conclusion sketches some goals such a regime should seek to embody.

Keywords: China; subsidies; state-owned enterprises; embedded liberalism

The rise of China as a genuine world power, economically and militarily, constitutes the gravest challenge faced by the liberal international order constructed in the aftermath of the Great Depression and the Second World War. With all due respect to the important work done by the International Monetary Fund and the World Bank, the institutional and normative core of that order is the set of liberal trade rules, what Mavroidis and Sapir (2021) call the 'liberal understanding' embodied in the World Trade Organization. As Mavroidis and Sapir discuss at length, China is not an obvious candidate for membership in such an organization (see also, Wu, 2016). And yet, the WTO and the penumbra of agreements that are organized, one way or another, relative to the WTO are the best bet we have for avoiding a general systemic breakdown. China has benefitted from the liberal order and has proven a willing participant in that order. However, any hope that China would be magically transformed into a capitalist democracy, at least over any predictable time horizon, is surely forlorn.

This is not the place to rehearse the debates among international relations scholars over realism v. liberalism, but it is worth noting that hegemonic stability theory and the theory of hegemonic transition only refer to the distribution of power in the system, not to similarities or differences in social, political, and economic systems. This provides some room for hope given the extent to which the post-War liberal order has easily survived the relative decline of US power and the rise of Germany, Japan, and the EU. Ruggie's (1982) classic embedded liberalism paper stresses the simultaneous roles of 'power and purpose'. Purpose, here, is not the same thing as commitment to common domestic regimes. Ruggie's core point is that for a system based on common purpose to work, it must allow the domestic regimes of the members in order to function. Thus, as the varieties of the capitalism school (e.g. Hall and Soskice, 2001) suggest, the post-War order has relatively easily accommodated very different approaches to democratic capitalism. In this paper, I will argue that the role of subsidies and state owned (or invested)

enterprises (SOEs from now on) constitutes a fundamental source of strain in the system that will ultimately require forging an understanding between China and the other core members of the liberal trading system rooted in such a common purpose. The Appellate Body's most recent attempt to deal with these issues, in *US–Countervailing Measures (China) (21.5)*[1], provides an excellent opportunity to reflect on these issues.

1. Background and Current Disposition

On 25 May 2012, China requested consultation with the US with respect to the methodology the US used to apply countervailing duties (CVDs) to a wide range of products it imported from China. Specifically, the main issue had to do with the way the US calculated the subsidy margin relative to a market benchmark (see Mavroidis and Sapir, 2021, pp. 81–88 for a clear description of the legal issues). According to Article I of the Agreement on Subsidies and Countervailing Measures (ASCM), a subsidy: 'shall be deemed to exist if there is a financial contribution by a government or any public body within the territory of a member'. In its original complaint, China asserted that the US administering authority, the Department of Commerce (USDOC), instead of determining whether an entity is acting in a market-consistent way, simply asserted that ownership by the state identified that entity as a 'public body'. The Dispute Settlement Body (DSB) issued a panel report on 14 July 2014. Both countries appealed parts of the Appellate Body (AB) decision. The AB decision (18 December 2014) agreed with the US that, in principle, rejection of domestic prices is acceptable. However, they also ruled that, in the particular cases, the US had failed to present a clear justification for its decision. That is, there is no per se justification for rejecting national prices based on a generalized claim that Chinese markets are distorted by the presence of SOEs. Consequently, while on the merits, the AB saw nothing wrong with discarding Chinese prices when calculating the amount of benefit bestowed through a subsidy, siding with prior case law, it also held that the WTO member proceeding in this way must explain why this action is lawful.

As a result of this decision, the US Department of Commerce (USDOC) revised the CVD determinations but maintained the duties in place. Because a key issue here is whether SOEs are 'public bodies', as part of this process, the USDOC issued a 'Public Bodies Memorandum' covering the cases at issue and to act as prospective guidance in future cases. Specifically, this asserts that, for the purposes of CVD determinations, the USDOC will treat

- 'Governmental function' based on the constitution of the Peoples' Republic of China;
- 'Meaningful control' will be based on indicia of control; and
- For the specific cases, finds all entities remain 'public bodies'.

China then filed a compliance dispute with respect to this US activity.[2] The DSB findings were a mixed bag for both the US and China. Thus, both appealed certain results to the AB, which produced a report on 16 July 2019. From the perspective of this paper, the most interesting issue has to do with the treatment of 'public bodies' in WTO jurisprudence. Specifically, contra China the AB ruled that an entity can be found to be a public body as long as there is evidence of a close relationship between that entity and the state.[3] Additionally, evidence of close links did not have to be predicated on observation/monitoring of actual conduct. It sufficed that links had been

[1]Appellate Body Report, *United States – Countervailing Duty Measures on Certain Products from China* (*US–Countervailing Measures (China)*), WT/DS437.

[2]The addition of new, explicit criteria was not a new strategy. The USDOC had done this before. The question in this case was not whether the US had applied the same criteria consistently, but whether its criteria applied in this case were WTO-consistent.

[3]Another key aspect of the case was whether, or not, the USDOC could reject national prices when calculating the subsidy margin. Somewhat bizarrely, the AB determined that the US had successfully defended the claim that the Chinese domestic

https://doi.org/10.1017/S1474745621000215 Published online by Cambridge University Press

established, and if they were sufficiently serious, then the SOE would be equated to a public body. Alas, the AB did not elaborate much on the criteria that could be usefully employed in this context. It failed to provide even a basic indicative list that would help avoid type II errors in the future.

This is a striking result as previous decisions had ruled that there had to be evidence of control related to the relevant conduct (essentially the Chinese argument). In fact, in previous cases, the AB had ruled that even 100% government ownership did not create a presumption that the relevant agent was a public body (see the discussion of public bodies in Spearot and Ahn, 2016, pp. 361–363). At the end of the day, neither the US nor China was pleased with the outcome.

The issue of subsidies, and political economic structures more generally, is an issue of first-rate importance for the WTO generally, but it is particularly important for a country like China for which SOEs, and active intervention in the market by state and Party, is an essential part of standard operating procedure. In the following section, we argue that the current WTO regime is not effectively constituted to permit a country like China to pursue its distinctive approach to markets and politics. Following that, we turn to a brief discussion of the complexities associated with subsidy rules in general and with particular reference to China.

2. Embedded Liberalism with a Non-Liberal Key Player

Faced with the manifest failures of the classic liberal regime, both domestically and internationally, in the inter-War years, the governments of the core countries (all democratic capitalist political economies) began to experiment with more active intervention in the economy.[4] These experiments involved some mix of what we now call Keynesian macroeconomic policy, substantial welfare state expenditure, active participation of unions in private and public decision-making, and increasingly active competition policy. Because of the very different experiences of the late-nineteenth/early-twentieth centuries, and the differing circumstances in those early post-War years, these countries developed very different political economic systems (again, see Hall and Soskice, 2001). The US was committed to creating an international order of democratic capitalist nations as a bulwark against the Soviet Union and as a foundation for peace in Western Europe (Gaddis, 2005; McKenzie, 2020). This required both a commitment to broadly liberal norms (Mavroidis and Sapir's 'liberal understanding'), but sufficient policy space for each national variety of capitalism to pursue its distinctive national goals with its distinctive instruments. It is not clear to me that the International Trade Organization (ITO), at that time, could have supported both a liberal understanding and very different national policy commitments. By contrast, the GATT was able to do just that. In particular, with its key focus on border measures, the GATT, and for that matter the WTO, involves a minimal level of reduction in domestic policy space for its members.[5]

Since the completion of the Uruguay Round and the creation of the WTO, the system has experienced major shocks. In particular, the emergence of complex value chain production as a major driver of world trade and the rise of China as an economic and political power seem

market was sufficiently distorted to require using prices from a third country, but ended up rejecting the US duties because it had not shown how the distortions it accepted rendered third country prices necessary.

[4]Andrew Shonfield's (1965) classic *Modern Capitalism* provides an excellent contemporary view of the mind-set of this era. Eichengreen (2007) presents an up-to-date analysis that is completely consistent with Shonfield's analysis. To get an idea of just how radical these arrangements were relative to the earlier period, it is interesting to read Part III of Schumpeter's (1942/1975) *Capitalism, Socialism and Democracy*, 'Can Socialism Work?', and realize that what he means by 'socialism' is the same thing that Shonfield and Eichengreen describe as developing in the early post-War years.

[5]And of course, the GATT was signed by twenty-three like-minded countries. Unlike the signatories of the Havana Charter, the original twenty-three were certainly at different level of development, but none qualified as a 'socialist' economy. With variations for sure, they were all market economics, where the role of the state was limited. When the US for example, wanted to subsidize its farm sector, it requested a waiver (1955) from the membership

https://doi.org/10.1017/S1474745621000215 Published online by Cambridge University Press

problematic. Among other impacts, globally sourced production requires more than reduction in barriers at the border. Firms require the kind of stable production environment that they came to expect in domestic regimes. That is, they require predictability and broadly market conforming policies. At the same time, while the GATT has been able to accommodate small non-market economies in the past, China is very different. First, China is not small, it is a major trading nation and a major beneficiary of the (embedded) liberal trading system. Second, China is manifestly a non-market economy and a non-democratic political system in which the state and the Communist Party are actively involved in the economy at every level. Third, China's huge domestic market makes it a target for production aimed at serving that market and, given a presence in the Chinese market, an attractive location from which to source components and final goods as part of a global value chain.

For some analysts, these differences with respect to the existing core members of the international liberal economic order mean that China cannot be incorporated as a member of good standing in the system. The idea is that there can be no agreement on common purpose between countries due to these differences. The fallacy of this reasoning is that the common purpose relates to the international regime itself. And here there is no reason why the current core (i.e. US, EU, Japan, Canada, Australia) and China cannot find an understanding of common purpose. That said, the differences we have just mentioned makes it clear that such a regime will lead to a marginal adjustment in the current rules. This is a very real challenge, but it is not clear to me that it is a bigger challenge than many of the changes the liberal system has already absorbed.

We have just argued that the framers of the post-War order were dealing with radically new domestic political-economic environments that differed quite widely from the initial members of the GATT.[6] Part of the story is that the US, as hegemon, pushed for a new order primarily for geo-strategic reasons. But this would not have succeeded without a broadly common sense of purpose, beyond agreement on Cold War geopolitical goals, and this sense of purpose was quite dramatically different from the classic liberal order based on minimal intervention and automaticity in macroeconomic adjustment. In particular, in addition to liberal norms like liberalization and non-discrimination, sovereignty norms were also built into the system via such norms as the right to pursue safeguards (broadly construed) and the use of a principle supplier rule and reciprocity in negotiation (part of what Krugman called the mercantilist method for pursuing liberalization, Krugman, 1991). The end of the cold war and the decline in hegemonic capacity of the US meant some renegotiation, but the foundational commitment to national sovereignty, with wide variance in (broadly capitalist) economic structures, has continued more-or-less unbroken until 2016.

China is neither a democracy, nor a capitalist economy, but the government (and the Communist Party) must still seek political legitimation, in part by delivering strong economic performance. In fact, given the lack of input legitimacy (elections, free lobbying, free press, open public discourse, etc.), the reliance on economic performance (output legitimacy) is rendered all the more important. While certainly not fully capitalist, China's very strong economic performance over decades is underwritten by very widespread use of markets, and that orientation to markets can only be called capitalist.[7] As a result, China's growth has relied on international trade, on essentially liberal terms. While this certainly does not mean that China will soon, or ever, be a capitalist democracy (like the US or Sweden), it does mean that China needs a robust global market and the right to access that market on the same terms as the capitalist democracies do. That is, it seems quite plausible that China would be supportive of a liberal

[6]As we noted in footnote 3, as far as Schumpeter was concerned, the GATT (and now the WTO) is already an agreement among socialist nations.

[7]This is true in much the same way as trade along the silk road during the thirteenth and fourteenth centuries proceeded under fully capitalist principles, but in a world that was in no way capitalist at either end of that trade route.

https://doi.org/10.1017/S1474745621000215 Published online by Cambridge University Press

trade regime that works for China and its other trade partners. Ruggie's work on the early post-War years (to the early 1980s), would seem to suggest that such a regime must, minimally, find a way to deal with SOEs and the subsidies (explicit and implicit) associated with them.

The ASCM seems to provide a framework for dealing with subsidies among capitalist democracies (though conflicts over Airbus and Boeing suggest this is a less than perfect framework), but, as the case considered in this paper suggests, it is a framework that does not really work for China. A first step toward thinking about what a sensible subsidy policy would be is one consistent with the needs of the core economies of the international liberal system.

3. Subsidies, Spillovers, and Trade

It should be clear that all governments have many policy goals that can be best addressed by some kind of subsidy, e.g.: environment; education; regional development; income distribution. Most of these policies involve perfectly legitimate application of government resources and are not intended to interfere with trade or, at a minimum with the same implication for the analysis of this paper, have purely domestic intent.[8] By 'legitimate' we should understand not just that they are widely understood to be 'acceptable' policies, but that the pursuit of such policies are essential to the legitimation of the relevant national (or subnational) governments. With the exception of explicit export subsidies, already banned in the ASCM, there are good economic reasons for rational governments to prefer the use of subsidies in the pursuit of those objectives.[9]

Standard general equilibrium reasoning tells us that significant policies (whether the target of the policy is domestic or international) will likely have international spillovers. If there are not significant international spillovers, there is no reason for WTO involvement regardless of what the program involves. This, of course, makes agreement on how to measure spillovers an issue of first-rate importance. Hoekman and Nelson (2020) argue that this is an area where collective effort by all the core nations of the trade regime, very much including China, would benefit from collective capacity building.

We now consider three barriers to systematic formal (i.e. black letter) subsidy rules that derive from the economics of subsidies. Unlike the border measures, neither the meaning of policy, nor the full nature of spillovers, nor the mechanisms generating policy are clear. We consider each in turn.

'Purpose' is always a tricky business, and careful reading of history and chapeau language gets us only just so far. As we have already noted, the environment of world trade has changed dramatically since 1947, and even since 1994. For the purposes of this paper, it is not clear what such information would mean to China, other than as an indicator of what worked in a different era. There was a time when 'liberal understanding' was primarily an understanding that the government should avoid intervention in the market. This goes back at least to the great thinkers of the English and Scottish Enlightenment and was the dominant understanding from then and through the inter-War years. We have already seen that there is no current government, nor any serious political party, that would agree with that definition. The GATT/WTOs attempt to balance interdependence and sovereignty is an international reflection of this reality. The 'liberal understanding' now involves a commitment to broadly market conforming institutions and policies aimed at managing the relationship between an economy that runs on broadly traditional liberal terms and

[8]Of course, some of these policies can be hidden protection. I would argue, contra a widespread belief among trade economists that this is pretty rare. The application of game theoretic reasoning in presenting such cases is almost always presented without any systematic supporting data and is more an attempt to move policy discourse from the domain of domestic economic policy to the domain of trade policy. With the exception of a brief vogue for strategic trade policy (resting almost exclusively on the Boeing–Airbus example), I cannot think of any compelling cases.

[9]This is one of the many useful messages from the theory of economic policy. Hoekman and Nelson (2020) provide a brief overview of this theory as it applies to subsidies. For a more developed analysis of the theory of economic policy as it applies trade policy, see: Corden (1997); or Bhagwati et al. (1998).

https://doi.org/10.1017/S1474745621000215 Published online by Cambridge University Press

a democratic civil society that finds many outcomes and policies associated with traditional liberalism problematic. The fundamental problem with China is that this is in no way a reasonable characterization of its political economy. At the gross level, this might not be much of a problem. We have already argued that the central role of economic performance of the output legitimacy of the state and Party make China a potentially reasonable partner in the traditional GATT/WTO system. But it is precisely this difference that makes finding common ground on domestic policies with significant international spillovers much more difficult.

We have already seen that border policies, e.g. tariffs, quotas, etc., are easy to measure and mean pretty much the same thing regardless of domestic political arrangements.[10] Subsidies in support of domestic policies are a very different thing. In one country, a subsidy to green energy may be an environmental policy with an element of regional development; in another, it may be environmental policy with an element of income distribution (or industrial policy, or national security policy …). This is already a very difficult problem for countries that share some version of the modern 'liberal understanding'. The standard analysis of the theory of economic policy assumes that this meaning is embedded in an objective function whose meaning is clear to all participants, and, as has already been noted a couple of times, this is a reasonable assumption for the case of border measures. Even among democratic capitalist political economies, this can be difficult. It is widely argued that differences in attitudes toward risk across national civil societies lead to states reflecting those preferences – science-based presumption versus precautionary principle.[11] However, when it comes to the role of SOEs and subsidies, the conflict becomes more pointed. There are numerous SOEs in major sectors of the US and European economies: e.g. health, education, power generation. There is no doubt that these interventions distort prices and outputs away from those expected under *laissez faire* conditions, domestically as well as internationally. That is what they are for, and the theory of economic policy provides an analytical structure for understanding and guiding those policies. However, these all clearly derive from domestic priorities and are widely understood to be legitimate applications of state capacity.[12]

The Chinese case is very different. The relationship of the state and the Party to both the economy and civil society have evolved far from the disastrous forms of the Great Leap Forward and the Cultural Revolution, but this is more in the nature of a disembedding of the economy in ways that retain the fundamentally socialist commitments in the economy and the authoritarian structures of politics. The state and the Party in China assert a formal directive/guardianship role that extends to every level and sector of the economy that is fundamentally inconsistent with even a broad reading of the embedded liberal understanding of a capitalist political economy (Wu, 2016). Subsidies and SOEs play an essential role in this structure. Unlike the Chinese case, SOEs in the US and EU (which are limited by purpose in any event) cannot coordinate (there is no US or EU SASAC) and must observe domestic antitrust. There is no finessing this fact: asking the Chinese state to give up this structure is tantamount to asking China to become a completely different kind of political economy. Fundamental notions of sovereignty that underlie the current international system in general, and the WTO in particular, simply rule this out. If it were not clear for the system without China, the addition of China makes such a formal, or black letter law, approach to the issue of subsidies far too inflexible to be practical. Unfortunately, China's status as a rising geopolitical power makes a 'diplomatic' approach risky as every conflict over subsidy policy becomes embedded in broader geopolitical issues.

[10]Petros Mavroidis raises an interesting counterexample in border tax adjustments in support of an environmental policy. The tricky issue here is that the political economic meaning of the border measure becomes obscure via its link to a domestic policy. Relative my later argument, it will generally be the case that these measures emerge from the politics of environmental policy and not the politics of trade policy.

[11]Consistent with my emphasis on the way attitudes change over time, Vogel (2012, pp. 31–34) describes how the US and Europe switch on the relative emphasis on precautionary principle in policy.

[12]Again, the economics and politics of these will differ wildly among democratic capitalist political economies and, given the pattern of spillover and/or the relationship to WTO law, can still produce sharp conflicts.

https://doi.org/10.1017/S1474745621000215 Published online by Cambridge University Press

In addition to lack of clarity on meaning of a policy – e.g. trade v. domestic, first-best v. second best – measuring and evaluating spillovers in many of these domestic cases is very difficult. For most border measures, the effects are almost fully price carried.[13] This makes measurement, and thus comparison, relatively easy and, thus, aids negotiation and adjudication. Domestic policies may have substantial non-price elements (e.g. political, social, …) and these are unlikely to be comparable across countries even if relatively well-specified policy disputes.[14] Even for a country as different as China, both it and its trading partners can negotiate/adjudicate relatively clearly about border effects; but when it comes to tracing domestic effects, the price-carried information may be deeply misleading about both the intent and the impact of policy.

Closely related to the previous point is that border measures are usually generated from political processes and institutions whose sole purpose is to generate those border measures (and other trade-related policies). These institutions are filled with people who deal with very similar problems, often in direct interaction with people doing the same job for other governments. This is certainly not the case for domestic policies. First, legislatures are much more likely to play a major role in domestic policy making and, as Shepsle (1992) pointed out years ago, 'Congress is a they, not an it', so Congressional intent is a deeply problematic concept. Even in the bureaucracy, the processes and structures that generate, say, an environmental policy are likely to be very different across countries. This, of course, is partly to blame for the different meanings of domestic policy across countries, but it also makes attributing intent much more difficult in general. The fact that democratic capitalist institutions are relatively open may not go far in assessment of intent. That is, people with very different skill-sets, knowledge, and political influence will be determining these policies and that will make finding common ground problematic. The Chinese political system, in part simply because it is not democratic, is not open in the way that those of the other core members of the trading system are. That renders this problem even more severe.

4. So How Do We Solve a Problem Like Maria?

It should be clear by this point that 'Maria' is not China, it is the constitution of a relatively liberal set of rules that support trade among countries that are heterogeneous in their domestic arrangements. China, as we noted earlier in this paper, renders this problem more difficult via its size, its domestic political economy, and its attractiveness as a commercial partner. It is my opinion that none of these are problems that need to be fixed. They are facts about our current international commercial environment. Treating China as a problem is a barrier to finding a solution, not a useful definition of the situation. Thus, given the case that provided the occasion for this paper, we are particularly interested in rules and institutions related to domestic subsidies that have significant international spillovers. The emphasis on SOEs reminds us that subsidy policy is difficult in part as a result of differences in political economic structures across members of the WTO. While a substantial part of this paper has sought to identify some of the key elements of these differences, it has also sought to argue that the benefits to the framers of the WTO, and the ASCM, of finding a way to incorporate China as core member of a reorganized system for dealing with subsidies, are large, as they are for China. This seems to suggest that there is at least some hope for progress in this important area.

It seems that there are at least three elements that any 'solution' should embody: incrementalism (particularly, capacity building via epistemic community); avoiding both too much formalism (black letter law) and too much 'diplomacy' (power politics); and multilateralism. Bernard

[13]This, of course, is the core of the currently dominant approach by economists to the WTO (Bagwell and Staiger, 2002).

[14]As a technical matter, if we know the objective function of the policymaker and the structure of the underlying political-economy, we can solve for shadow prices. Unfortunately, this requires knowledge so inaccessible as to render this fact little more than a curiosity from a practical point of view.

https://doi.org/10.1017/S1474745621000215 Published online by Cambridge University Press

Hoekman and I (2020) have written recently about the first two, and Mavroidis and Sapir (2021) have recently emphasized multilateralism, so I will only comment briefly on each.

By 'incrementalism' I very much do not refer to the structure of rules. *US–Countervailing Measures (China)* tried to reassure Members that its interpretation of ASCM still provides plenty of flexibility to apply CVD measures against Chinese firms, but, as we have already seen, this decision left none of the parties happy. The implication of the previous two sections is that the rules on subsidies require a fundamental rethinking. No one is going to be satisfied with incremental evolution of future jurisprudence – subsidies have become increasingly important[15] and the burden of the previous section is that political and economic differences among members will render that approach deeply unsatisfactory. The question is: How we can move toward that fundamental rethinking? Bernard Hoekman and I (2020) have argued that a useful first step would be to start developing the sort epistemic community that exists in competition policy (Eisner, 1991; Wilks, 2005). This would be a group of people that shared a common set of values, causal beliefs, and facts about the world, and criteria for evaluating those facts (Haas, 1992). They would be people with legal and economic expertise as well as sophistication about policy context. One place to start would be a common program developing a body of applied theory and data specifically on the subject of comparison of domestic subsidy regimes and the magnitude and form of spillovers from those regimes (Hoekman and Nelson, 2020). An essential part of such a system would be a strengthened system of subsidies notification.

The second desideratum is finding a way to avoid both the Scylla of too much formalism and the Charybdis of too much 'Diplomacy'. The goal here is to find an institutional framework that takes advantage of, and encourages, the emergent epistemic community. I have no strategy for achieving this goal, but I do have a suggestion: the treatment of specific trade concerns in the Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) subcommittees. Careful studies of these mechanisms suggest that they provide organized, but informal, conflict resolution (Karttunen, 2020; Horn et al., 2013). While SPS and TBT are manifestly less fraught policy areas than subsidies, for all the reasons developed above, with a moderate amount of good will and a recognition of the mutual benefit from avoiding Scylla and Charybdis, this seems a plausible (if perhaps excessively hopeful) direction for development.

As an example of the sort of thing that might be embodied in such a system is an attempt to recover some of the content of the non-actionable subsidy category that was included in the original ASCM. The idea was that subsidies supporting regional policy, environmental policy, and research and development policy would be non-actionable, but this part of the agreement (Article 8) expired in 2000. Part of the problem was the attempt to fix in law the non-actionable status of such subsidies. As part of the approach sketched here, we might imagine an attempt to agree on 'presumption boxes'. That is, participants in such a system might agree that regional policy, environmental policy, and research and development policy (as well as others) are in a green box. Unlike the ASCM, the participants only agree on a presumption that these are politically and economically legitimate, and that presumption can be overturned for a variety of reasons. That is, the process of informal conflict resolution would start from this presumption and proceed to a discussion on the basis of that presumption. Allocation of a subsidy to a red box would create a presumption that that subsidy is illegitimate, but that presumption could also be overturned via argument about economic and/or political need.[16] Allocation to the amber box would imply

[15]See the data in any of the last issues of Simon Evenett's Global Trade Alert, available at www.globaltradealert.org.

[16]The idea is that the measures that are adopted with the intention of distorting trade will be presumed to be inconsistent with WTO law (red box). Measures adopted as part of programs recognized by the agreement to be part of the legitimate policy interests of a government are presumed to be consistent with WTO law and non-actionable (green box). Measures adopted that are not clearly linked to legitimate policy interests or are unnecessarily trade distorting, but not adopted explicitly to distort trade, would be open to negotiation (amber box). This approach is obviously related to the Agriculture Agreement, under which domestic support is divided into three boxes with similar intent.

https://doi.org/10.1017/S1474745621000215 Published online by Cambridge University Press

no presumption. Unlike black letter law, this does not involve fixed categories; unlike 'diplomacy', it provides structure and predictability.

Finally, the goal should be to approach a multilateral regime for subsidies. Such a regime requires, at an absolute minimum, participation of the US, the EU, and China, but the ultimate goal would be broad-based participation by trading nations. The continuing failure of the Doha round, and the manifest current significance of the subsidy policy, should make clear that this is not an argument for constitutional reform of the WTO, nor is it an argument for a full-blown attempt to negotiate a new multilateral regime. Instead, a plausible way forward (again, hopefully) is via some form of plurilateral agreement as permitted under Article II.3 of the agreement establishing the WTO (Hoekman and Mavroidis, 2015; Hoekman and Sabel, 2019). On the one hand, by keeping such a structure inside the WTO, as are the specific trade concerns considered above, the system would have access to expertise and institutional support at the WTO. On the other hand, subsidies, as described above, would seem to be more complex than the usual cases considered for this application and it may prove difficult to achieve consensus on such an agreement. Thus, ultimately, arranging this sort of structure outside the WTO might become necessary. If that is the case, it would be important to permit easy access via adopting whatever norms and rules define the epistemic community around the subsidy issue.

Without going full 'Cordell Hull' and asserting that trade is a ('the'?) foundation of peace, it does seem worthwhile to note that a liberal international political economy has the outstanding virtue relative to any known other arrangement of powers, that it can accommodate a rising power without systemic collapse (into war at the limit). The GATT/WTO system has weathered a number of such systemic changes. Liberal domestic political economies permit peaceful transfers of power. It would be a shame and a scandal for the original core to allow Mavroidis and Sapir's liberal understanding to collapse at just the moment when it can provide its greatest service to the international system.

Acknowledgements. I have benefitted from extensive discussions on the material here with Mark Wu, Bernard Hoekman, and Petros Mavroidis.

References

Bagwell, K. and R.W. Staiger (2002) *The Economics of the World Trading System*. Cambridge. MA: MIT Press.

Bhagwati, J.N., A. Panagariya, and T.N. Srinivasan (1998) *Lectures on International Trade*. 2nd edn. Cambridge, MA: MIT Press.

Corden, W.M. (1997) *Trade Policy and Economic Welfare*. Oxford: Oxford University Pres.

Eichengreen, B.J. (2007) *The European Economy Since 1945: Coordinated Capitalism and Beyond, The Princeton Economic History of the Western World*. Princeton, NJ: Princeton University Press.

Eisner, M.A. (1991) *Antitrust and the Triumph of Economics: Institutions, Expertise, and Policy Change*. Chapel Hill: University of North Carolina Press.

Gaddis, J.L. (2005) *Strategies of Containment: A Critical Appraisal of American National Security Policy During the Cold War*. Rev. and expanded edn. New York: Oxford University Press.

Haas, P.M. (1992) 'Introduction: Epistemic Communities and International Policy Coordination', *International Organization* 46(01), 1–35.

Hall, P.A. and D.W. Soskice (2001) *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. New York: Oxford University Press.

Hoekman, B.M. and P.C. Mavroidis (2015) 'Embracing Diversity: Plurilateral Agreements and the Trading System', *World Trade Review* 14(1), 101–116.

Hoekman, B.M. and D.R. Nelson (2020) 'Rethinking International Subsidy Rules', *World Economy* 43(12), 3104–3132.

Hoekman, B.M. and C. Sabel (2019) 'Open Plurilateral Agreements, International Regulatory Cooperation and the WTO', *Global Policy* 10(3), 297–312.

Horn, H., P.C. Mavroidis, and E.N. Wijkström (2013) 'In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees', *Journal of World Trade* 47(4), 729–759.

Karttunen, M.B. (2020) *Transparency in the WTO SPS and TBT Agreements: The Real Jewel in the Crown*. Cambridge, UK: Cambridge University Press.

Krugman, P. (1991) 'The move toward free trade zones', *Federal Reserve Bank of Kansas City Economic Review* 76(6), 5–25.

Mavroidis, P.C. and Á Sapir (2021) *China and the WTO: Why Multilateralism Still Matters*. Princeton: Princeton University Press.
McKenzie, F. (2020) *GATT and Global Order in the Postwar Era*. New York: Cambridge University Press.
Ruggie, J.G. (1982) 'International Regimes, Transactions, and Change: Embedded Liberalism in the Post-War Economic Order', *International Organization* 36(2), 379–415.
Schumpeter, J.A. (1942/1975). *Capitalism, Socialism, and Democracy*, 3rd edn, Harper Colophon Books. New York: Harper & Row.
Shepsle, K.A. (1992) 'Congress is a "They," not an "It": Legislative Intent as Oxymoron', *International Review of Law and Economics* 12(2), 239–256.
Shonfield, A. (1965) *Modern Capitalism: The Changing Balance of Public and Private Power*. London: Oxford University Press.
Spearot, A. and D. Ahn (2016) 'US-Carbon Steel (India): Multi-Product Firms and the Cumulation of Products', *World Trade Review* 15(2), 351–373.
Vogel, D. (2012) *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States*. Princeton, N.J.: Princeton University Press.
Wilks, S. (2005) 'Agency Escape: Decentralization or Dominance of the European Commission in the Modernization of Competition Policy?', *Governance-an International Journal of Policy and Administration* 18(3), 431–452.
Wu, M. (2016) 'The China, Inc. Challenge to Global Trade Governance', *Harvard International Law Journal* 57(2), 261–324.

Cite this article: Nelson D (2021). How Do You Solve a Problem Like Maria? *US – Countervailing Measures (China) (21.5). World Trade Review* **20**, 556–565. https://doi.org/10.1017/S1474745621000215