

RIETI BBL Seminar Handout

“Urgent and Important
: Improving WTO performance by revisiting
working practices”

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Revitalizing the WTO as a Locus for Trade Governance

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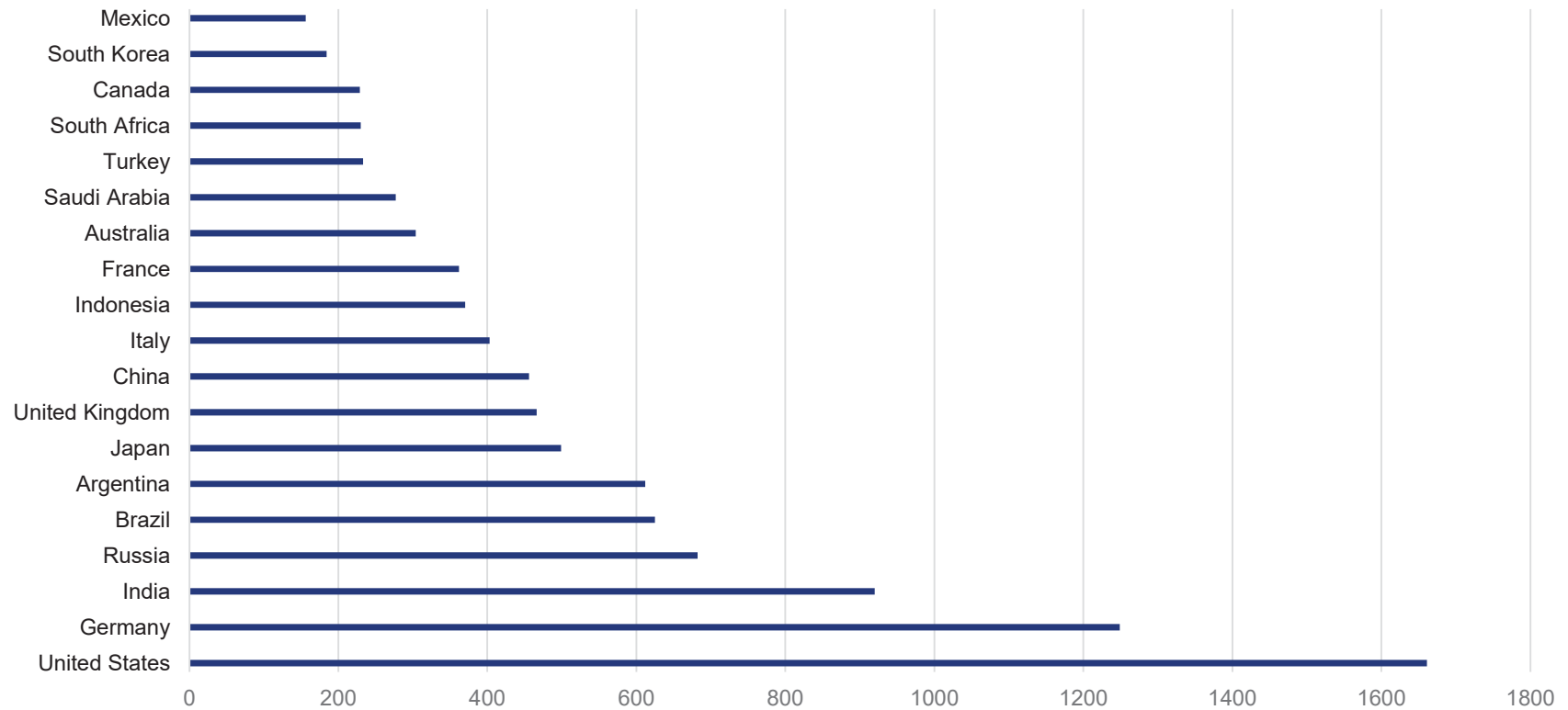


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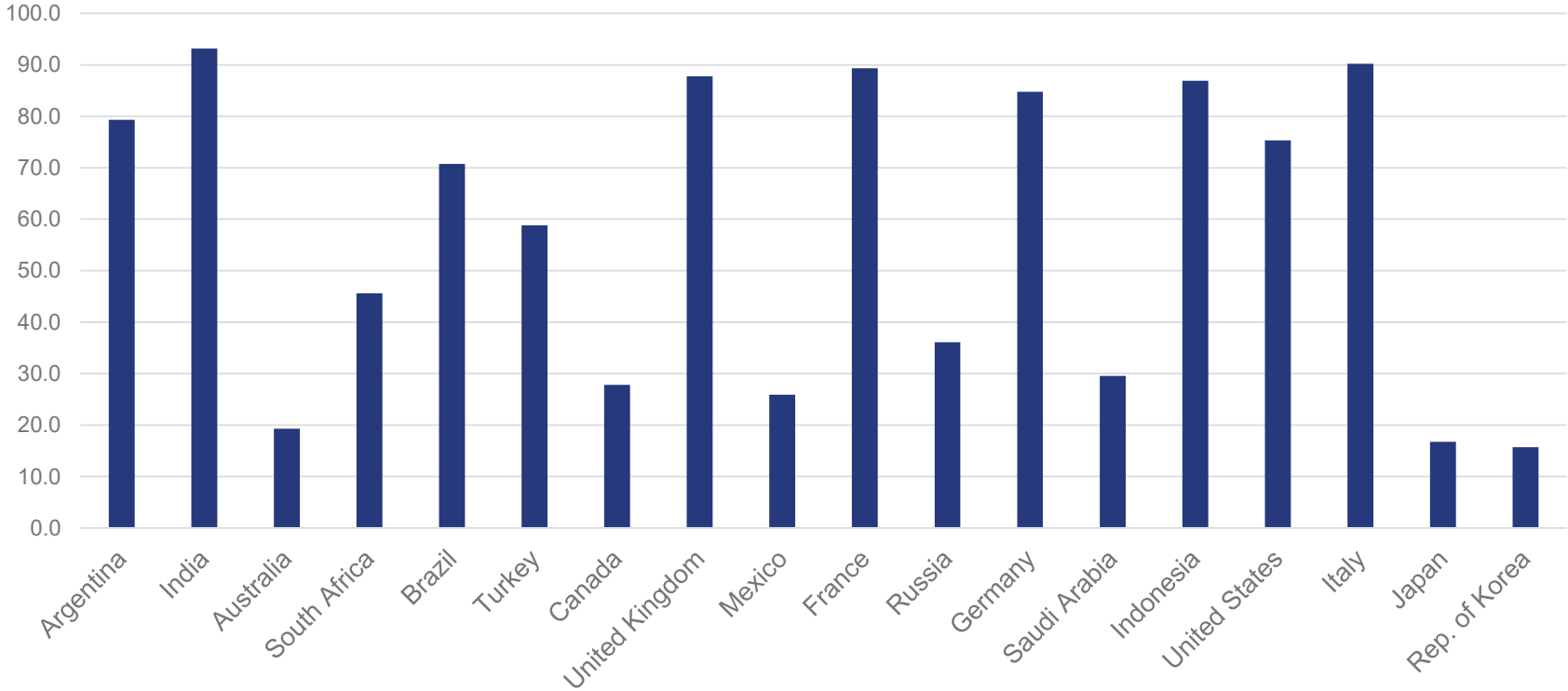
Background

- Increasing use of trade distorting policy measures
 - “Make it here!” (not “in the world”) – Argentina, Brazil, China, India, ... and now US?
- “Rise of the rest”: increasing pressure on relatively unskilled in OECD nations
- Rapid technological change: servicification & growth of the digital economy
 - National security; privacy; consumer protection concerns
- Geopolitical/geo-economic systemic competition/conflict
 - China Inc. – technology transfer/FDI policies; SOEs... not just inward market access
- In sum, more national policies generating (perceived) spillovers that call for multilateral cooperation in the WTO
- WTO: not providing needed forum for cooperation due to working practices
- US: reversion to unilateralism (trade war) and push for WTO reform
 - A repeat of the 1980s scenario that led to shift from GATT to WTO via Uruguay Round?

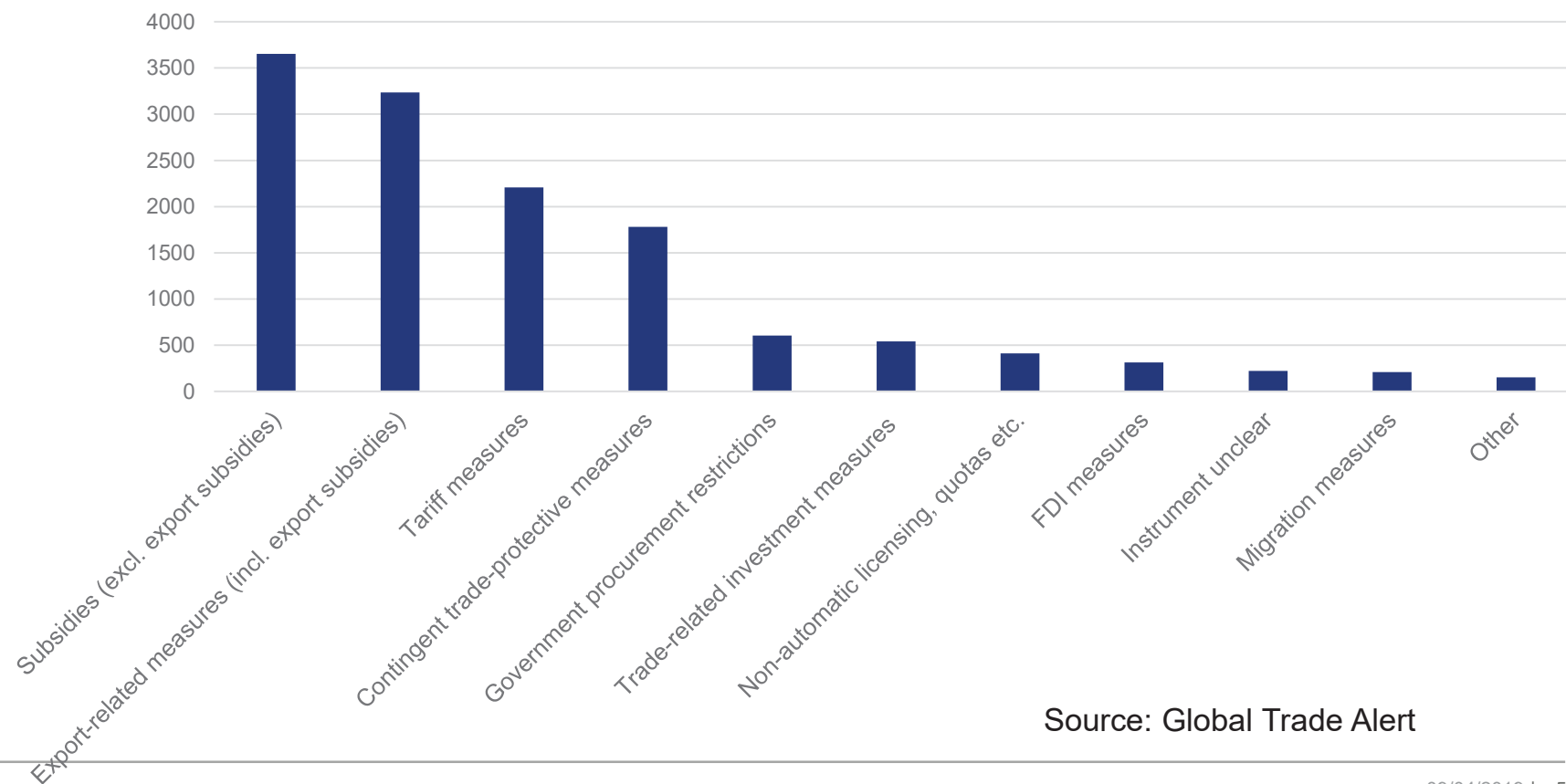
Increasing use of trade-distorting policies (number, 2009-18)



Share of Chinese exports subject to discriminatory trade policies (%)

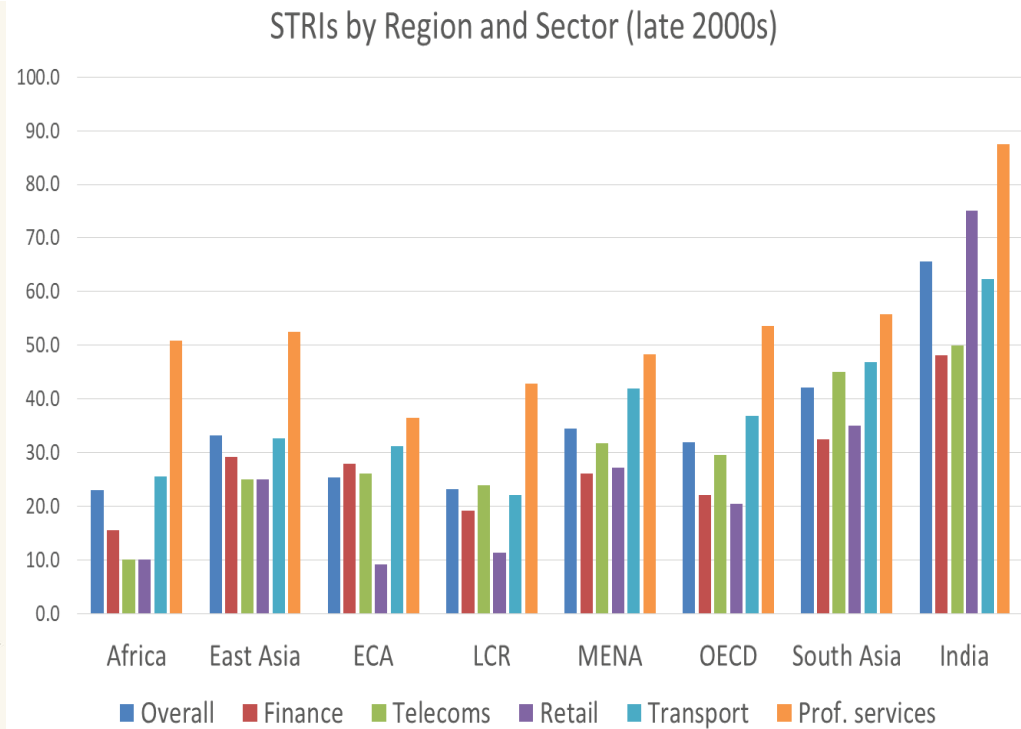
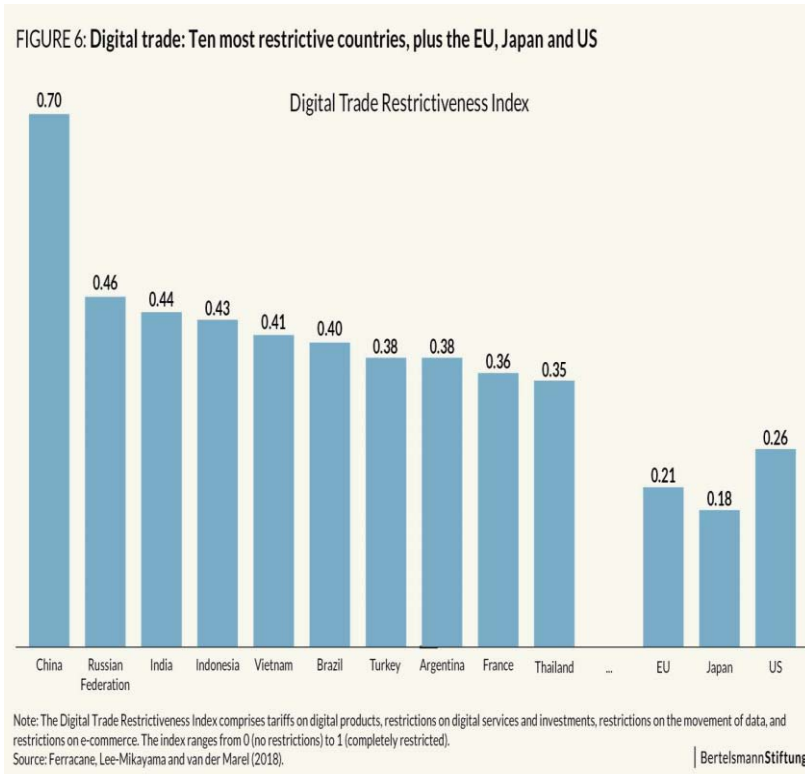


Global use of types of trade-distorting measures, (number, 2009-18)



Source: Global Trade Alert

Digital trade and services trade restrictions



Source: ECIPE and World Bank

WTO rulebook and operation: gaps and design weaknesses

- Little progress in updating rules since 1995 in part due to working practices
 1. Consensus decision-making
 - 2001 Doha agenda used to constrain discussion on new issues
 2. Special and differential treatment: outdated and ineffective.
 - Need to distinguish better between low-income and advanced emerging economies
- Responses
 1. Preferential trade agreements (PTAs). While deep PTAs like CPTPP are positives, most are exclusionary, leading to fragmentation of the trading system, and not address major systemic distortions
 2. More recently, US aggressive unilateralism and decision to block new appointments to the Appellate Body
 3. Push for plurilateral cooperation and WTO reform by groups of WTO members

Addressing trade tensions/updating rules

- Requires major players to negotiate on substantive issues
- Necessary condition: improve organizational performance of WTO so as to:
 - Bolster transparency (monitoring & information on policies/implementation)
 - Use WTO as a venue for deliberation and (re-)negotiation of rules
 - Resolve disagreements on operation of the Appellate Body
- NB: WTO not moribund. Build on the positives:
 - Agreement on Trade Facilitation, ban on agricultural export subsidies, expansion of the Information Technology Agreement...
 - MC11 in Buenos Aires: launch of plurilateral talks on 4 subjects (“joint initiatives”)
- Demonstrates that working practice constraints are not necessarily binding

Establishing an agenda for cooperation / negotiations

- Identify problems & potential solutions to adverse international effects of policies
 - Which policies create the largest negative systemic spillovers?
- Need to expand bi- & trilateral talks between EU/Japan/US to quadrilateral dialogue / negotiation on systemic effects of China's development and growth strategy
 - Seeking to isolate/target China ignores need for balance across issues (reciprocity)
- Many of the issues relating to WTO operation have nothing to do with China
 - E.g. dispute settlement
- Matters critical to other WTO members need to be considered as well
 - Agriculture; fish subsidies; climate-related trade policies, etc.
- Basic question: determine where free riding constraints bind, i.e., what comprises a critical mass for cooperation on policies generating systemically important negative spillovers?

What is systemically important?

- Policies distorting competitive conditions on the global market
- Many (most?) WTO members are systemically small
 - If so, do not need cooperation to span all WTO members
- Problem #1: small(er) group approach implies interests of (self-) excluded may not be addressed
- Problem #2: those that don't join need not apply club rules – free riding concerns
- Shift to single undertaking seen as solution in Uruguay Round
 - Ex post: realization that 'ownership' of some agreements is weak
 - Veto playing and issue linkage illustrate downsides of single undertaking approach
- Determine whether free riding a concern and if so, what constitutes critical mass
 - For regulatory issues may not need large N or issue linkage (package deals)
 - For some competition distorting policies (e.g., subsidies), agreement among the largest players (China, EU, US, Japan) is necessary and may be sufficient

Types of cooperation: market access vs. regulatory policies

	Main issue	Approach	Type of spillover	Characteristics of cooperation	
				MFN (critical mass)	Discriminatory (exclusive club)
Trade agreements: Binding State-to-State multi-issue package deals with fixed terms and binding, self-enforcing dispute resolution	Market access ("terms of trade spillovers")	Cross-issue linkage	Market access effects of discriminatory trade/industrial policies	Multi-issue multilateral agreements (E.g.: Uruguay Round)	Reciprocal PTAs (E.g. CETA, CPTPP, etc.)
		Enforcement linkage	Market access effects of domestic regulatory policies	Single issue, critical mass agreements (CMAs) (e.g. GATS Telecom Reference paper; ITA)	Issue-specific clubs (Art. II.3 WTO Plurilateral Agreements— e.g. GPA)

Type of cooperation	Main issue	Approach	Type of spillover	Characteristics of cooperation	
				MFN (unconditional application)	Open club (conditional application)
Open plurilateral agreement (OPA): Open, non-binding (severable); issue-specific	Regulatory heterogeneity (e.g., product markets; competition policy)	No linkage or "within" issue linkage	Pecuniary or non-pecuniary spillovers	International product or process standards (e.g., Codex Alimentarius) Identification of good regulatory practices (OECD, APEC) WTO Trade Facilitation Agreement	Mutual recognition agreements Regulatory equivalence regimes (BASA; EU adequacy regime (data protection); Exporter commitments to apply importer country standards (EU Forest Law Enforcement, Governance and Trade regime)

Open plurilaterals: small(er) group, issue-specific cooperation

- A response to consensus constraint but also to differences in preferences, priorities and capacities
- Nondiscriminatory (MFN), open to any country, ex ante and ex post
- Plurilateral, ‘smaller-N’ cooperation on rules not new for GATT/WTO
 - E.g., GATS Telecom Reference paper
- 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/operating costs for firms
 - Issues that are separable, i.e., no need for cross-issue linkage
- But also can span market access-related issues where the “critical mass” needed to permit cooperation is relatively small

Not a panacea – but can help revitalize multilateral cooperation

- GPA and Tokyo Round codes illustrate OPAs may not be easy to expand to additional WTO members
 - How much this matters depends on the issue & free-riding/critical mass considerations
- Creating conditions to support gradual multilateralization is important
- Open processes critical: openness an asset, not a liability
 - Secretariat support; non-parties kept informed
- Need to address concerns of non-participating WTO members to provide credible assurance that:
 - OPAs will be open ex post – e.g., by making this enforceable (recourse to DSU)
 - WTO Members needing assistance will be supported by OPA incumbents (build on TFA model)
- Possible role for multilateralization of sectoral regulatory cooperation outside the WTO (e.g., EU-US BASA; EU-China BASA, etc. or pursued in PTAs)

Complement OPAs with reforms to improve operation of the WTO

1. Transparency: revisit status quo rules. What information is needed? Identify approaches to collect needed information most efficiently
 - Greater focus on technical assistance that targets implementation and periodic review
2. Development: revisit SDT. Do agreements embody good practice? Where do current rules constrain a country from adopting them?
3. Enhance support role for the Secretariat & other international organizations
 - Members may not be able to provide the inputs needed for Committees to be more effective
4. More engagement with stakeholders in WTO work
 - Solicit more regular input and feedback from business associations/regulatory bodies
5. Evaluate institutional performance to foster learning & inform review of practices
 - Appellate Body example!

Looking forward

1. OPAs

- Topics: where could they be used? Industrial subsidies & SOEs? Can the big 4 agree?
 - Complement per se rules with procedures to assess effects/spillovers
- OPA governance
 - A code of conduct/reference paper to address worries of opponents
 - Make commitment to openness and multilateralization credible (enforceable)
 - Define role of WTO secretariat vs. Members in creating a platform for multilateralization of plurilaterals

2. WTO reform

- Reconsider judicialization of enforcement—may be less appropriate for some issues than other instruments (e.g., specific trade concerns; peer review; arbitration)
 - Rethink traditional remedy (national trade retaliation) for measures affecting global market
- Focus on the nexus of notifications/transparency & regular Committee work
 - Lessons from product standards area; technologies to generate information (big data)

Additional reading

- The paper on which this presentation is available as a Japan Center for Economic Research working paper at https://www.jcer.or.jp/academic_journal/aepr/index.html#5364
- For more extensive discussion of WTO reform issues, see the report by the High-Level Board of Experts on the Future of Global Trade Governance at <https://www.bertelsmann-stiftung.de/en/publications/publication/did/revitalizing-multilateral-governance-at-the-world-trade-organization/>