

INTRODUCTION

Special Issue: The Resurgence of the State as an Economic Actor—International Trade Law and State Intervention in the Economy in the Covid Era

Economic Interventionism and International Trade Law in the Covid Era

Leonardo Borlini¹

¹Bocconi University, Milan, Italy

Corresponding author: leonardo.borlini@unibocconi.it

(Received 05 February 2023; accepted 05 February 2023)

Abstract

Economic interventionism in the form of subsidization and operation of state-owned enterprises (SOEs) is today among the main frontlines of international trade conflicts. Along with trade restrictions and new legislation designed to impact cross-border investment, mergers, and acquisitions, the use of subsidies and countervailing measures by governments and trade-distorting effects of SOEs have lately caused harsh controversies within and outside the World Trade Organization (WTO) between its members. Going forward, there are reasons to expect these tensions to intensify rather than diminish in number and importance. This Special Issue aims at examining the development of international trade rules regulating state interventionism against the background of the Covid-19 global pandemic and present shifts in global geopolitics and the economy. This introduction, in presenting the state of the art on the questions tackled by this Special Issue and highlighting its contribution to existing literature on the topic, offers different considerations aimed at bringing together various trends emerging from the Articles contained in this Special Issue. It also explores avenues for further research and reflection.

Keywords: Covid; International Trade Law; Economic Interventionism; state-owned enterprises (SOEs); subsidization

A. Introduction

Economic interventionism in the form of subsidization and operation of state-owned enterprises (SOEs) is today among the main frontlines of international trade conflicts.¹ Along with trade restrictions and new legislation designed to impact cross-border investment, mergers, and acquisitions, the use of subsidies and countervailing measures by governments and trade-distorting effects of SOEs have lately caused harsh controversies within and outside the World Trade Organization (WTO) between its members. Going forward, there are reasons to expect these tensions to intensify rather than diminish in number and importance. First, China's phenomenal globalization success is due as much to its economic liberalization, as it is to the regime's

¹As it is known, government intervention in the economy refers to the government's deliberate actions to directly or indirectly influence resource allocation and market mechanisms. Subsidies to manufacturers and services providers and the state ownership/control of enterprises are the main forms of direct intervention of the government in the market place. For a systemic analysis of state interventionism in contemporary systems see STEVEN ROSEFELDE, *COMPARATIVE ECONOMIC SYSTEMS: CULTURE, WEALTH, AND POWER IN THE 21ST CENTURY* (2015).

“unorthodox and creative industrial policies”,² including its pervasive utilization of subsidies through complex and opaque networks of government agencies, SOEs, the Communist Party, and informal networks between the same Party, the state and the private sector, often reproduced in one form or another at the subnational level.³ It is commonly expected that the role of Chinese SOEs and subsidization in international markets will be a central and debated focus of future WTO negotiations on new substantive rules.⁴ Second, the US, China and, although to a lesser extent, the EU and its members have been attempting to obtain preeminence (or at least competitive advantages) in emerging high-tech sectors such as renewable energy, robotics, artificial intelligence, quantum computing and semiconductors, or to redress a “rival” country’s supremacy in broadly defined strategic sectors. A telling case is “China’s dominance in rare earth minerals through US Government policies designed to promote a countervailing sector in the United States or elsewhere.”⁵ Third, and relatedly, the use of economic statecraft as a tool for strategic competition between countries is not limited to the three world’s largest traders.⁶ Nor has been the commitment to developing industrial plans to reshore supply chains in the wake of the coronavirus pandemic.⁷ Finally, the Covid-19 global pandemic and its economic and social fallout demonstrate the key role of the state in crisis management, as well as the importance of policy space in the use of subsidies as a tool to address market failures and fundamental societal goals, such as are today climate change mitigation and green transition. At the same time, decades of negotiation to reform the General Agreement on Tariffs and Trade (GATT)⁸/WTO system to address subsidies “have never produced the sort of uniform, scheduled rules that apply to tariff.”⁹ In its place, WTO members were only able to develop rules to demarcate between tolerable and intolerable subsidization, and regulate self-help against such subsidies that are presumed or proved to be impermissible. Moreover, as Mavroidis & Sapir and Borlini illustrate elsewhere in this Special Issue, the GATT *acquis* is arguably of limited use in addressing the negative spillover effects on trade from government influence on SOEs.

This Special Issue aims at examining the development of international trade rules regulating state interventionism against the background of the Covid-19 global pandemic and present shifts in global geopolitics and the economy. Its point of departure is, first, the observation that existing multilateral trade rules are not suitable to ease conflicts caused by the resurgence of the State as an economic actor. Second, the Covid-19 pandemic has challenged deep-structural aspects of the organization of the world, including dependence on global supply chains where bottlenecks may preclude ready access to essential inputs (e.g., medicines), and established relationships between society and government by inducing many states across the world to support or bail out enterprises or sectors facing financial distress. Third, underlying the path of enquiry is the reflection that deciding on the international trade rules that govern the forms of direct state intervention under discussion raises “fundamental questions concerning the nature and degree of government involvement in commercial affairs and the right of other governments to inquire

²Dani Rodrik, *The Double Standard of America’s China Trade Policy*, Project Syndicate, (May 10, 2018), <https://www.project-syndicate.org/commentary/american-trade-policy-double-standard-by-dani-rodrik-2018-05>.

³Mark Wu, *The “China Inc” Challenge to Global Trade Governance*, 57 HARV. J. INT’L L 261 (2016).

⁴See JAMES BACCHUS, *TRADE LINKS. NEW RULES FOR A NEW WORLD*, 164 (2022).

⁵Michael Trebilcock, *Brief Reflections on the Subsidies Imbroglia in International Trade Law*, 23 J. WORLD TRADE 165, at 166 (2022).

⁶As extensively illustrated by DAVID A. BALDWIN, *ECONOMIC STATECRAFT: NEW EDITION* (2020), economic statecraft means the use of economic tools by countries to pursue foreign policy goals. Lending, foreign assistance and aid, economic sanctions, trade agreement and policies governing the international flow of capital can be used as foreign policy tools and are considered the most common forms of economic statecraft. For an insightful account of trade implications of economic statecraft today see Vinod K. Aggarwal & Andrew W. Reddie, *Economic Statecraft in 21st Century: Implications for the Future of the Global Trade Regime*, 20(2) WORLD TRADE REV. 137, [offering case studies that examine the use of economic statecraft, including subsidization, in the United States, China, India, Japan, and South Korea].

⁷See *infra* § B.

⁸General Agreement on Tariffs and Trade (1947), 55 U.N.T.S. 194.

⁹Robert Gulotty, *WTO Subsidy Disciplines* 21(3) WORLD TRADE REV. 330, at 330 (2022).

into that involvement”¹⁰ Forth, the tensions that now exist regarding the future design of subsidies and SOEs treaty regulation are grafted in, and necessarily interact with the decline of the multilateral trading system.

The modification of rules on subsidies and state enterprises is present in virtually all WTO reform proposals,¹¹ although diverse and sometimes conflicting approaches arise particularly regarding the rules on SOEs, the enlargement of the category of prohibited subsidies to make the needed transition to a decarbonized economy, and the introduction of new institutional arrangements for enforcing GATT/WTO subsidies rules. This Special Issue takes stock of such diversity. Yet, it does not aim to provide an all-encompassing assessment of the different reorganization projects of WTO rules regulating subsidies and state enterprises. Rather, it aims to go beyond the specific position of WTO members, as reflected in single reform proposals, and tackle fundamental and systemic problems in the international trade regulation of state intervention in the economy. Towards this, this Special Issue first situates the tensions regarding the future design of subsidies and SOEs treaty regulation in the context of the current systemic challenges to the multilateral trading system and the related increasing politicization of trade relations (Sacerdoti & Borlini). It then asks how international lawyers should think about the battle for the state in the context of present geopolitical shifts, changes in global economy, and environmental concerns (Orford); and discusses extant multilateral trade rules and relevant caselaw on subsidies and state enterprises to dissect their enduring problems and emerging deficiencies, and, hence, lay the ground for investigating the direction taken by future possible reforms (Borlini). Furthermore, this Special Issue contributes to the debate on what trade rules may be needed to counteract trade distortions caused by subsidies and state enterprises by unpacking the black box of China’s state capitalism (Du); investigating the use and regulation of state interventionism and economic statecraft in present developments of trade policies in the USA (Schoenbaum), the EU (Boschiero and Silingardi), and Japan (Iino); and exploring the trade law and geopolitical implications of establishing special economic zones (SEZs)—often assimilated with a category of subsidies—in African countries (Simo). These latter contributions, albeit country/region-specific, are used to draw some overarching conclusions on the enduring challenges to the international trade disciplines of state intervention in the market and possible patterns in future international economic governance. Finally, this Special Issue ventures even more decisively into the normative account to address the question of how the WTO should deal with the heterogeneity of economic models—or varieties of capitalism—as a matter of reorientation of current caselaw, amendment of existing rules, or introduction of new ones (Mavroidis & Sapir). In tackling this central question, it offers new reflections on how to integrate international trade law and competition law to tackle SOEs unfair competitive practices in international markets

¹⁰Richard R. Rivers & John D. Greenwald, *The Negotiation of a Code on Subsidies and Countervailing Measures: Bridging Fundamental Policy Differences* 11 LAW & POL’Y INT’L BUS. 1447, at 1448 (1979).

¹¹See, among other proposals, European Commission, Concept Paper on WTO Modernization, (Sept. 18, 2018), https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5786; USTR Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan and the European Union, (May 31, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/may/joint-statement-trilateral-meeting>; WTO General Council, General Council - Strengthening and modernizing the WTO : Discussion Paper - Communication from Canada, JOB/GC/2018 (Sept. 24, 2018); China, *Record of the Press Conference on the Eighth WTO Trade Policy Review, State Council Information Office*, (28 Oct., 2021), <http://www.scio.gov.cn/xwfbh/xwfbh/wqfbh/44687/47307/index.htm#top>; European Commission, Reforming the WTO: Towards a Sustainable and Effective Multilateral Trading System, COM(2021) 66 final ANNEX, (Feb. 2, 2021). Furthermore, the EU and the US made a clear commitment at their June 2021 summit to reform the WTO to make it fit for the reality of the 2020s and beyond, stating that they will work together cooperatively to: “(. . .) Seek to update the WTO rulebook with more effective disciplines on industrial subsidies, unfair behavior of state-owned enterprises, and other trade and market distorting practices (. . .)”. European Commission, EU-US Relations. EU-US Cooperation on Reforming the World Trade System (2021), https://trade.ec.europa.eu/doclib/docs/2021/june/tradoc_159643.pdf. More recently, the WTO in cooperation with the IMF and the OECD is undertaking studies on different types of subsidies ahead of rulemaking. See IMF, OECD & WTO, *Subsidies, Trade, and International Cooperation. Prepared by staff of IMF, OECD, World Bank, and WTO*, (April 2022).

(Matsushita), and address trade-and-competition (or hybrid public/private) restraints falling in the space between the separate silos of trade law and competition law (Fox).

This introduction, in presenting the state of the art on the questions tackled by this Special Issue and highlighting its contribution to existing literature on the topic, offers some observations aimed at bringing together various trends emerging from the Articles contained in this Special Issue. It also explores avenues for further research and reflection.

B. The Resurgence of the State as an Economic Actor and International Trade Law – Inherent Problems and Emerging Issues

More adaptive interpretations of existing multilateral rules on subsidies along with the formulation of additional rules to limit market distortions of both subsidies and SOEs are among the core issues addressed by the bulk of recent proposals on WTO reform. Similarly, new provisions on these matters are featured as key innovations in contemporary bilateral, plurilateral, and regional (or mega-regional) trade agreements concluded by trading powers, middle-income and developing countries alike.¹² Yet, the formulation of new international trade rules to control the negative spill-overs from subsidies and government influence on SOEs affecting firms from other countries is an extremely complex normative exercise. A part of the reasons is exquisitely technical: the definition itself and measurement of subsidies turn out to be extraordinarily complex. The same holds true for the definition of SOEs and the assessment of government influence on their activities. Beyond that, the question is indisputably political: with subsidies and SOEs, what is ultimately involved is a confrontation between different ideological, political, and social conceptions of the role of state intervention in the economy. Subsidies and SOEs have indeed an inherently ambivalent nature. They can distort market functioning and introduce inefficiencies at various levels. But they can also correct market failures, and pursue a variety of public goals and distributive objectives.¹³

This quality has been particularly evident with the COVID-19 health crisis and its aftermath. The coronavirus global pandemic has accelerated and focused attention on contemporary shifts in the global economy, while creating challenges of its own. It has highlighted the interconnected nature of economies, which rely on stable and predictable international rules and resilient transportation channels. It has raised questions regarding the right policy mix in terms of diversification of domestic and external sources of supply and the build-up of strategic production capacities and reserves. Also, it has shown the importance of expanding production of health products in a crisis situation and the need for cooperation to ensure equitable access for the more vulnerable populations. More importantly for the purposes of the present enquiry, it has led to a significant increase in government spending needed to rescue healthy companies and protect jobs, which may not be sustainable in the long run. The pandemic has unfolded into an unparalleled global economic crisis. The sudden reduction in economic activity has put severe stress on businesses and on employment, requiring swift and strong government actions. Hence, governments have granted various forms of short-term subsidization (immediate fiscal impulse; deferrals; other liquidity provisions and guarantees; etc.) to halt the economic slide, keep markets and the economy functioning, and safeguard the physical and economic health and wellbeing of individuals around the world.¹⁴ SOEs, too, have contributed to stimulus

¹²See Luca Rubini, *Subsidies*, and Luca Rubini & Tiffany Wang, *State-Owned Enterprises*, in HANDBOOK OF DEEP TRADE AGREEMENTS (Aaditya Mattoo, Nadia Rocha & Michele Ruta eds., 2020), 429–461, and 465–503.

¹³For example, governments often create SOEs to meet specific goals and mandates, such as the provision of water, electricity, or transportation routes that the private sector would not find profitable.

¹⁴See, *ex multis*, IMF, *Fiscal Monitor. Policies to Support People During the Covid Pandemic. April 2020* (2020), Chapters 1–3; IMF, *Fiscal Monitor. Policies for the Recovery. October 2020* (2020), Chapter 1. For a tracker of such policy actions grouped by country see International Monetary Fund (IMF), *Policy Responses to Covid 19*, <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19>. The World Bank publishes a similar tracker focused on subsidies. See World Bank Group, *Tracker of Subsidies and State Aid to Mitigate the Covid-19 Effects*, <https://dataviz.worldbank.org/views/AID-COVID19/Overview?>

worldwide.¹⁵ Several governments have instructed their infrastructure SOEs to deliver public goods and services more widely and equitably among the population—not only to minimize the pandemic’s impact but also to address the economic downturn.¹⁶ Moreover, as supply chains were interrupted or export bans for key goods were in place, some governments have engaged SOEs to provide medical products or services.¹⁷ Others, such as in Brazil, Canada, Germany, and India instructed their public banks to help alleviate the impact of the pandemic.¹⁸ While the immediate crisis has since been overcome, states now need to ensure that the recovery delivers an *economy* that is *more resilient, inclusive and sustainable*, and in particular, that is *climate friendly*. Heightening the challenge, many governments are seeking to accomplish these goals at a time of a ratcheting up of their own debt ratios, which in some cases were already dangerously high.¹⁹ Well-designed state interventions today will contribute to shape better lives tomorrow.²⁰

Other fundamental developments are emerging regarding the strategic use of subsidies and state enterprise in the aftermath of the Covid-19 crisis. To start with, governments have been vastly subsidizing private and public entities in order to advance research and development of technologies addressing the novel Coronavirus diseases and other infections.²¹ Furthermore, COVID-19 has created uncertainty about the future of free trade and, in particular, sparked a rethinking of global value chains,²² and the world largest economies’ governments are using or planning to use subsidies and regulation to ensure that jobs and production remain within their state territories, as well as to re-shore production and value chains in the post-Covid-19.²³ Noticeably, the US government and the Chinese government have been committing substantial public resources to attempting to achieve preeminence in emerging high-tech sectors such as renewable energy,

[embed=y&isGuestRedirectFromVizportal=y&:display_count=n&:showAppBanner=false&:origin=viz_share_link&:showVizHome=n#2](#). See also OECD, *Tackling Coronavirus (Covid-19), Contributing to a Global Effort*, <https://www.oecd.org/coronavirus/policy-responses>.

¹⁵See, among others, IMF, *State-owned Enterprises in the Time of Covid 19*, (May 7, 2020), <https://blogs.imf.org/2020/05/07/state-owned-enterprises-in-the-time-of-covid-19/>.

¹⁶Cristine Z. Qiang & Georgiana Pop, *State-Owned Enterprises and Covid 19* (June 28, 2020), <https://blogs.worldbank.org/psd/state-owned-enterprises-and-covid-19>.

¹⁷For example, Indonesia asked its state-owned aircraft manufacturer to produce ventilator prototypes. China, provided corporate income tax and value-added tax incentives to companies engaged in producing medical supplies while also turning its SOEs to the masks manufacturing.

¹⁸IMF, *supra* note 15.

¹⁹OECD, *COVID-19 Responses: Shaping Government Interventions for a Faster and More Resilient Economic Recovery*, Statement from the OECD Secretary General (Jun. 8, 2020).

²⁰IMF, FISCAL MONITOR. A FAIR SHOT. APRIL 2021 (2021), 13–18.

²¹The EU has been supporting research and innovation projects and initiatives to tackle the spread of coronavirus and preparedness for other outbreaks. European Commission, *Corona Virus Research and Innovation*, https://ec.europa.eu/info/research-and-innovation/research-area/health-research-and-innovation/coronavirus-research-and-innovation_en.

²²Beata Javorcik, *Global Supply Chain Will Not Be the Same in the Post-Covid-19 World*, in *COVID-19 AND TRADE POLICY: WHY TURNING INWARD WON’T WORK* 111 (Richard E. Baldwin and Simon J. Evenett eds., 2020).

²³Japan has launched in both 2020 and 2021 a *Program for Promoting Investment in Japan to Strengthen Supply Chains* in the context of the METI’s Support Measures for Companies Concerning the Impacts of the Novel Coronavirus Disease, https://www.meti.go.jp/english/press/2021/0702_003.html. Among others, the US and EU too are developing plans to reshore supply chains. See, respectively, The White House, *FACT SHEET: CHIPS and Science Act Will Lower Costs, Create Jobs, Strengthen Supply Chains, and Counter China*, 9 August 2022, at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/09/fact-sheet-chips-and-science-act-will-lower-costs-create-jobs-strengthen-supply-chains-and-counter-china/>; and European Parliament, Directorate-General for External Policies Policy Department, *Post-Covid-19 Value Chains: Options for Reshoring Production Back to Europe in a Globalized Economy*, EP/EXPO/INTA/FWC/2019-01/LOT5/RJ/07 EN March 2021. For a recent and informed assessment of such a strategy see, Alexander Sandkamp, *Reshoring by Decree? The Effects of Decoupling Europe from Global Value Chains*, 57(6) *INTERECONOMICS. REVIEW OF EUROPEAN ECONOMIC POLICY* 359 (2022).

robotics, artificial intelligence, quantum computing and semiconductors.²⁴ Finally, central to state reinvigorated policies on climate change is the shift to renewable energy, and key in sustainable energy transition are subsidy and incentive schemes.²⁵ By keeping investing in both renewables and fossil-fuel-based electricity generation, SOEs remain strategic too.²⁶ It is hoped that the US, China, the EU and other major economies will work together in areas of common interest like climate change. However, the kinds of government–firm relations resulting from the interventionist measures described are increasingly contested and deemed to affect economic and geostrategic competition.²⁷

Against the background, the configuration, interpretation and application of international trade rules will play a central role for three main reasons. The first and most obvious is that such rules constitute the main *external constraint* on the interventionist measure under discussion. Second, the design and structure of global trade governance, to which international rules on subsidies and SOEs contribute, entails shaping the *state itself* to achieve desired forms of governance (i.e., regulation and administration of life) *within states*. Particularly, despite the basic understanding of ownership neutrality of multilateral trade rules, the WTO subsidies regime is based on assumptions that are not shared by all members.²⁸ Third, the recent controversies among major trade powers, intensified by the global pandemic, are not a temporary incident, but rather an outgrowth of a long-brewing tension within the multilateral trade system.²⁹ This is essentially a problem of interface between economic models, viz. a problem in international trade caused by differences in economic systems or differences in operations of enterprises among economic systems.³⁰ International economic legal institutions need interface mechanisms to “allow different economic systems to trade together

²⁴Trebilcock, *supra* note 5, 165. Not surprisingly, and despite the semi-paralysis of the WTO Dispute Settlement System, new disputes have not been long to arise out these strategic policies. In December 2022, China requested WTO dispute consultations with the United States, challenging US export control and related measures with respect to certain advanced computing semiconductor chips and manufacturing products, supercomputer items, as well as related technologies and services, destined for or otherwise related to China. The request was circulated to WTO members on 15 December 2022. See WTO, *United States – Measures on Certain Semiconductor and Other Products, and Related Services and Technologies Request for Consultations by China*, WT/DS615/1.

²⁵See, e.g., European Council, *Conclusions on the MFF and Next Generation EU, COVID-19, Climate change, Security and External Relations* Brussels, EUCO 22/20 CO EUR 17 CONCL 8 (Dec. 11, 2020); METI, *Green Growth Strategy through Achieving Carbon Neutrality in 2050*, (June 18, 2021), https://www.meti.go.jp/english/press/2021/0618_002.html. The US administration is finalizing a tax plan to replace U.S. fossil fuel subsidies with clean energy incentives. See *The Biden Plan for a Clean Energy Revolution and Environmental Justice*, <https://joebiden.com/climate-plan/>. At the same time, the US administration is expanding and leveraging free trade agreements to ease green transition. On occasion, it does so by means of statutes that are at variance with WTO law and have received considerable foreign objections. Steve Charnovitz, *Expanding US Free Trade Agreements in Pursuit of Clean Energy and Trade Justice*, IELP BLOG (Jan. 22, 2023), <https://ielp.worldtradelaw.net/2023/01/expanding-us-free-trade-agreements-in-pursuit-of-clean-energy-and-trade-justice.html>. According to experts, China’s Covid-19 stimulus measures are more targeted at investing in carbon-heavy infrastructure for economic stability. However, the pandemic has not stopped Beijing’s policy machinery for more sustainability and a greener economy. Beijing’s strategic bet for its sustainable future is on achieving state-guided and funded technological breakthroughs in. Anna Holzmann & Nis Grünberg, “Greening” China: An analysis of Beijing’s Sustainable Development Strategies (Jan. 7, 2021), <https://merics.org/en/report/greening-china-analysis-beijings-sustainable-development-strategies>. On the role of state incentives and public aid in the context of green transition see, among others, Dani Rodrik, *Green Industrial Policy*, 30(3) OXFORD REVIEW OF ECONOMIC POLICY 469 (2014).

²⁶Andrew Prag, Dirk Röttgers & Ivo Scherrer, *State-Owned Enterprises and the Low-Carbon Transition*, OECD Environment Working Papers, No. 129, (2018).

²⁷Aggarwal & Reddie, *supra* note 6, 137–144. See also *Joe Biden is Determined that China Should Not Displace America*, THE ECONOMIST (July 17, 2021).

²⁸PETROS MAVROIDIS & ANDRÉ SAPIR, *China and the WTO: Why Multilateralism Still Matters* (2021), Chapter 5.

²⁹Ernst-Ulrich Petersmann, *The Law of Political Economy: Transformation in the Function of Law; Ordo-Liberalism, Law and the Rule of Economics*, 24(1) J. INT. ECON. LAW 221 (2021).

³⁰Ru Ding, *Interface 2.0 in Rules on State-Owned Enterprises: A Comparative Institutional Approach*, 23(3) J. INT’L ECON. L. 637 (2020). The “interface” notion in international economic law was first suggested by the late professor John H. Jackson in 1978. The concept was originally mentioned in a conference held at the Airlie House on July 21st and 22nd, 1978 under the sponsorship of the Departments of State and the Treasury of the United States. DON WALLACE, INTERFACE ONE. CONFERENCE

harmoniously.”³¹ International trade rules regulating subsidies and SOEs are a central piece of the interface mechanism designed to ensure smooth trading relationships. Yet, the current legal framework is inadequate to ease, let alone solve, conflicts caused by the resurgence of the state as an economic actor. There is a growing perception that WTO law is neither conceptually coherent nor practically effective in tackling heterodox institutional forms like China’s state capitalism, the strategic use of subsidies for geopolitical purposes or newly relevant foreign subsidies³² (i.e., financial contributions granted to an entity by a government other than that of the country where the receiving entity is established). Even more essentially, absent reforms, multilateral trade rules will not measure up to the challenges states have to address in the post-Covid-19 world. Suffice here to recall that extant WTO disciplines do not apply to subsidies related to trade in services, and, since the provisions of the WTO Agreement on Subsidies and Countervailing Measures (ASCM)³³ on the so-called “green light” (permitted) subsidies expired in 2000, there is no multilateral discipline allowing the use of industrial subsidies for research and development, compliance with environmental regulations and assistance to disadvantaged regions.

C. The Extent of the Investigation So Far and the Special Issue

Existing literature analyses international trade rules on economic interventionism and prospects of reform primarily by focusing on two broad themes. Both are premised on the idea that, in an interdependent world, addressing the negative externalities of subsidies and SOEs while maintaining their market correcting function and policy space for development is imperative from a sustainable development perspective. A first area of scholarship assesses the adequacy of existing international subsidy disciplines and suggests possible areas and ways for reform.³⁴ Moving from a different perspective, a second stream of works posits that the competition of liberal capitalism and state capitalism, championed respectively by the USA and China, will shape the future of the global economy. Hence, their main focus is on the conceptual and practical challenges that China’s unique development model, controversially termed “Beijing consensus”, “authoritarian capitalism” or “China, Inc.”, poses to multilateral trade rules.³⁵ The global picture emerging is

PROCEEDINGS ON THE APPLICATION OF U.S. ANTIDUMPING AND COUNTERVAILING DUTY LAWS TO IMPORTS FROM STATE-CONTROLLED ECONOMIES AND STATE-OWNED ENTERPRISES (1980).

³¹JOHN. H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS*, 248 (2nd ed., 1997).

³²Victor Crochet & Marcus Gustafsson, *Lawful Remedy or Illegal Response? Resolving the Issue of Foreign Subsidization Under WTO Law*, 20(3) *WORLD TRADE REV.* 343, at 343 (2021).

³³Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14. [Not reproduced in I.L.M.].

³⁴See further Thomas Cottier, *Renewable Energy and WTO Law: More Policy Space or Enhanced Disciplines?* 5(1) *RENEW. ENERGY LAW POLICY* 40 (2014) 40; Gary Horlick & Peggy A. Clarke, *Rethinking Subsidy Disciplines for the Future: Policy Options for Reform* 20(3) *J. INT. ECON. LAW* 673 (2017); Jennifer A. Hillman & Chad P. Bown, *WTO’ing Resolution to the China Subsidy Problem*, 22(4) *J. INT. ECON. LAW* 557 (2019); Siqi Li & Xinquan Tu, *Reforming WTO Subsidy Rules: Past Experiences and Prospects* 54(6) *J. WORLD TRADE* 853 (2020); Trebilcock, *supra* note 5, 165.

³⁵This literature primarily focuses on the treatment of SOEs. There are three main positions on the formulation of new WTO rules on SOEs in existing literature. The first approach takes the SOE chapters in recent plurilateral and bilateral trade treaties as a model. According to Mavroidis & Sapir, *supra* note 28, Chapters 2 and 6, a clarification of the WTO rules on SOEs inspired by existing regulatory solutions at the plurilateral level would address the current concerns. Similarly, Wu, *supra* note 3, 316, notes that rules on SOEs of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpp/index.aspx?lang=eng were drafted with Chinese SOEs in mind, and could be a useful to address the non-commercial activities of Chinese SOEs. The second approach can be described as an improved-CPTPP approach. Mitsuo Matsushita & C.L. Lim *Taming Leviathan as Merchant: Lingerin Questions about the Practical Application of Trans-Pacific Partnership’s State-Owned Enterprises Rules* 19(3) *WORLD TRADE REV.* 402 (2020) 402–423 suggest that the future SOEs rules should allow enough flexibility for SOEs that deal with market failures situations and provide public goods. The third approach challenges the solidness of amendments to WTO rules based on the CPTPP’s chapter on SOEs. Robert Howse, *Making the WTO*

that of an exceptionally complex regulatory problem that, while present since nearly the inception of the GATT/WTO system, and lately developed as one of its existential challenges, has not yet been fully explored and coherently systematized. This Special Issue further reflects on ways to overcome the current challenges of, and seeks to prompt further research on, global governance of state interventionism, by complementing the existing investigation from six distinct perspectives.

First, it addresses the systemic problems and implications that trade regulation of state interventionism poses to the multilateral trading system in a critical moment of its existence, with the WTO facing numerous challenges “that are more profound than at any time in its seven-decade history.”³⁶ While some recent studies have explored the issue of subsidies and SOEs as one of the most impactful among the contemporary challenges to the WTO,³⁷ there is certainly scope to explore further such a systemic issue, both from the point of view of the decline of the WTO and the concomitant increasing politicization of international trade relations, as well as from the point of view of the relation between this moment of rapid change in geopolitics and the varied causes that attacks on international economic law are serving, particularly in terms of projects of remaking the state. To that end, one of the contributions to this Special Issue, by Sacerdoti and Borlini, contextualizes the prospect of reforming trade rules on state interventionism within the broader setting of the growing political interferences with international trade flows caused by the launching of activist industrial policies in powerful WTO members and recent trade-restrictive measures based on geopolitical decisions that disregard international commitments. Furthermore, the article by Orford seeks to make sense of the current shifting politics, its conditions, and its stakes by sketching three key moments in the battle for the state at the WTO—the initial negotiation of the General Agreement on Tariffs and Trade (GATT);³⁸ the creation of the new WTO in 1995 as a result of the Uruguay Round of multilateral negotiations and the central role of the US in that ambitious project; and the moment following the gradual realization that China’s rise would pose a significant challenge to US economic dominance.

Second, this Special Issue brings to the fore and explores the relation between the tensions that now exist regarding the future design of subsidies and SOEs treaty regulation, and the present geopolitical changes, modifications in global economy, and environmental concerns. While multilateral regulation of state interventionism is featured by long debated problems, certain deficiencies of a system of rules that is primarily designed to prevent the nullification and impairment of tariff commitments are emerging as critical in the aftermath of the coronavirus pandemic, and, particularly, in consideration of the climate change shock and the related environmental concerns. Accordingly, this Special Issue aims to advance the investigation of why and how international trade rules on subsidies and state enterprises should be conditioned on the underlying problems or (economic and non-economic) objectives governments aim to solve or achieve.

Third, this Special Issue bridges a gap in the present literature by discussing advocated reforms of multilateral rules on subsidies and SOEs taking into consideration some of the largest economies’ trade and industrial policies as emerging in the aftermath of the Covid-19 pandemic and in

(Not So) Great Again: The Case Against Responding to the Trump Trade Agenda Through Reform of WTO Rules on Subsidies and State Enterprises 23(2) J. INT. ECON. LAW 371 (2020), maintains that by and large the proposed changes would add incoherence to existing WTO rules. Leonardo Borlini, *When the Leviathan goes to the market: A critical evaluation of the rules governing state-owned enterprises in trade agreements*, 22 35 LEIDEN J. INT’L. 313, 327–334 (2020) contends that the extensive carveouts and exceptions contained in free trade agreements designated by experts as models for WTO reforms render the rules less effective to address the trade-distorting effects of SOEs. At the same time, he critically analyzes these agreements’ new rules on non-subsidies measures and SOEs, arguing *inter alia* that some of them are featured by an ideological bias against state entities (versus private-owned enterprises), and that developing countries should not be deprived of using SOEs as a way of improving social welfare.

³⁶Patrick Low, *The WTO in Crisis: Closing the Gap between Conversation and Action or Shutting Down the Conversation?*, 21 WORLD TRADE REV. 274, at 274 (2022).

³⁷See, among others, Bernard Hoekman & Douglas Nelson, *Rethinking International Subsidies Rules*, 43(12) THE WORLD ECONOMY 3104–3112 (2020); Gulotty, *supra* note 9, 330–340; and, Low, *supra* note 36, 287–88.

³⁸General Agreement on Tariffs and Trade (1947), 55 U.N.T.S. 194.

contemporary free trade agreements (FTAs). Thus, it examines contemporary reliance to, and attempts to regulate via trade rules state interventionism and economic statecraft in the US, EU, China, and Japan. These case studies are added to the fast-growing literature on the so-called “weaponization” of international trade by states³⁹—a process accelerated in response to the Russian invasion of Ukraine. These case studies are representative of both the increasing use of economic tools for the pursuit of strategic geopolitical aims, and, symmetrically, the attempts to contain/regulate their negative spill-overs on trade through approaches such as unilateralism, bilateral deals, and regional and mega-regional agreements that bypass the multilateral trading system. In this context, this Special Issue aims to uncover, through these case studies, possible general patterns in future international trade governance and, particularly, in future regulation of economic interventionism.

Fourth, regarding China’s position in particular, this Special Issue reacts to the literature that shows deep anxiety over the rise of its state capitalism in the global economy. The message is a simple one: diagnosis should precede prescription. The existing scholarship’s technical focus eludes fundamental questions, such as how state capitalism works in China and how it is embedded in and defined by China’s historical, economic, political, and cultural context. Moreover, the existing scholarship tends to perceive China’s state capitalism as static. This has lost sight of the new waves of reforms, such as mixed ownership and other corporate governance reforms in Chinese SOEs, under the leader Xi Jinping. Therefore, this Special Issue contributes to the debate of what trade rules may be needed to address China’s state capitalism by unpacking the “black box” of China’s state capitalism: how is this model embedded in China’s political, economic, and cultural context? What are the key actors and mechanisms through which the model is operationalized? What are the pros and cons of the model? How has the model evolved in view of the recent wave of reforms in the “Xi Jinping era”? Precisely how does this model disrupt international economic relations?

Fifth, this Special Issue addresses the challenges for international economic governance of SEZs as a new instrument of national industrial policies that is expected to spearhead post-Covid-19 economic recovery, especially in developing countries. In a period of growing unilateralism and the return of the State as an economic actor, this Special Issue seeks to tackle the rise of SEZ laws and regulations in the Global South, with a particular focus on Africa.

Sixth, this Special Issue adds to the existing knowledge on trade regulation of state enterprises more generally, which so far has predominantly focused on the design and architecture of new trade rules on subsidies to the state sector and the regulation of non-subsidies measures to address the negative spillover effects on trade from government influence on SOEs. This Special Issue adds the competition aspect to the existing normative analysis by examining how international trade rules and the application of domestic competition laws can interact with each other in a multi-level system so that their regulatory effects on the conduct of SOEs would be more effective and, at the same time, not ideologically biased against these entities. This is an important contribution to our understanding of the regulatory challenges arising from state interventionism because of the particular implications of the integration between international trade rules and antitrust laws. Relatedly, this Special Issue addresses a companion problem; one that produces high prices that typically result from state intervention that creates or bolsters market power or prevents its erosion, and materializes in the form of abuses that are not traceable to the state or a state entity as the single actor, but that comprise an interaction between powerful private vested interests and the state.

³⁹See generally Tania Voon, *The Security Exception in WTO Law: Entering a New Era*, 113 AJIL UNBOUND 45, 45 (2019); J Benton Heath, *The New National Security Challenge to the Economic Order*, 129 YALE L. J. 79 (2020); Yong-Shik Lee, *Weaponizing International Trade in Political Disputes: Issues under International Economic Law and Systemic Risks*, 56 J. WORLD TRADE 405 (2022).

D. This Special Issue in Further Detail: Common Themes and Key Issues

Following this introduction, the contributions are grouped into three themes. The first is about the relations that exist between the crisis of the multilateral trading system, the current shifts in geopolitics, and international regulation of state interventionism. Its main goal is to explore what a study of international trade rules and institutions dealing with the material question of regulating prominent forms of state intervention in the market can tell us about the nature of global governance of the economy and its stakes in the post-pandemic world. The second features contributions that examine the current trends in the trade and industrial policies of the US, China, the EU, Japan, and countries in the Global South, pointing to their different approaches, and considering emerging similarities regarding the strategic resort and, at the same time, the regulation of state interventionism in the aftermath of Covid-19. The third looks specifically at the overarching normative question of how global trade rules should deal with the heterogeneity of economic models as a matter of reorientation of the caselaw, amendment of the existing rules, and introduction of new ones.

In line with this structure, this Special Issue starts with the Article by Sacerdoti and Borlini on the interactions between the current politicization of trade relations, the crisis of the multilateral trading system, and the regulation of state interventionism. The recent decline of the WTO as an institutional form of multilateral cooperation driven by the “depoliticization” of trade relations, and based on non-discrimination, reduction of borders and internal barriers (deregulation), and fair competition, is influenced by the concomitant political interference with trade flows that stems “from the launching of industrial policy programs by several economies”, including “the EU and the US”,⁴⁰ and “the increased recourse to trade restrictive measures based on political decisions directly interfering with international trade flows at the cost of disregarding international commitments.”⁴¹ The Authors further explore the US disengagement with multilateral trade rules,⁴² the causes and implication of the DSS semi-paralysis, and recent oscillations in the position of the EU—the world’s largest trading bloc, by many viewed as the last big defender of rules-based open trade—towards the multilateral trading system. While “[the] need for a WTO modernization is undisputed”, the issue “get[s] definitely more complicated when one considers the scope and complexity of the reforms at stake, as well as the political obstacles and legal challenges to a successful modification of the existing legal framework.”⁴³ Despite a few tangible results delivered by the biennial Ministerial Meeting (MC12), held in Geneva in June 2022, Sacerdoti and Borlini argue that several systemic challenges to the multilateral legal system have remained unaddressed or, at best, left on the table for future negotiations. These include needed modifications on the trade rules on subsidies and state enterprises in GATT/WTO that are not adequate to the new geopolitical and economic context.

Orford, in her contribution, investigates the present shifting in geopolitics, its conditions, and its stakes in terms of implications on the limits of government intervention in the market, ‘by sketching three key moments in the battle for the state at the WTO’:⁴⁴ the GATT era, with the negotiation and functioning of the GATT 1947 featured by a persistent struggle between the GATT Contracting Parties “over what counted as ‘normal’ forms of states and markets”;⁴⁵ the phase following

⁴⁰Giorgio Sacerdoti & Leonardo Borlini, *Systemic Changes in the Politicization of the International Trade Relations and the Decline of the Multilateral Trading System*, in this Issue.

⁴¹*Id.*

⁴²For a critical comment on a very recent instance of such disengagement see James Bacchus, *Echoing Trump, Biden Embraces International Trade Lawlessness*, CATO INSTITUTE BLOG HOME, 12 December 2022, [discussing the negative US reaction to the long-awaited decision WTO DSS in disputes brought by China, Norway, Switzerland, and Turkey challenging the 25 percent tariffs on steel imports and the 10 percent tariffs on aluminum imports that former President Donald Trump imposed in 2018, on supposed national security grounds, under Section of the Trade Expansion Act of 1962.]

⁴³Sacerdoti & Borlini, *supra* note 40.

⁴⁴Anne Orford, *How to Think about the Battle for the State at the WTO*, in this Issue.

⁴⁵*Id.*

“the end of the Cold War and the break-up of the Soviet Union in the 1990s”, when “the project of remaking the state significantly accelerated” and “the ‘WTO agreements operated to make a particular vision of relations between state and market appear normal’;⁴⁶ the present moment in the battle at the WTO, where, as a consequence of the realization that the rise of China poses a significant challenge to US economic dominance, it is primarily the US that ‘now calls into question the trade law system it created, while emerging economies that long criticized that system for its bias in favor of US interests defend it’.⁴⁷ Orford concludes by suggesting that, in considering the battle for the state in that context, international law scholars that engage with international economic law “pay attention to the new form that the battle for the state is taking, rather than assume that inherited critiques from earlier eras can mechanically be applied in the current situation.”⁴⁸

Conceived as complementary to the first two contributions, a third article, by Borlini, discusses existing WTO rules on subsidies and state enterprises, relevant caselaw and reform prospects in light of the geopolitical developments and changes in the global economy emerging in the aftermath of the Covid-19 pandemic. The approach taken by the Article is openly analytical, the “ultimate goal” being “to unravel and dissect the enduring problems and emerging deficiencies of extant multilateral trade rules, and, hence, lay the ground to investigate the direction taken by future possible reforms.”⁴⁹ Specifically, Borlini critically analyzes present WTO rules on industrial subsidies, focusing *inter alia* on the new problems raised by activist industrial policies pursued by global trading powers, foreign subsidization and the climate change shock. He then shifts attention to the application of WTO rules on subsidies to the state sector, and the increasing demands for new international trade rules on non-subsidies measures to address the negative spillover effects on trade from government influence on SOEs. With respect to each matter, the Author first clarifies “the terms of the problem in relation to existing WTO rules and caselaw”, and next examines “the question of how, and to what extent, “deeper” [free trade agreements]—those that experts designate as models for WTO reforms on the matter—establish new rules that permit to adequately address the trade concerns raised by SOEs’ commercial and financial activities.”⁵⁰ Based on this multi-layered analysis, Borlini concludes by examining prospects of reform of WTO rules on state interventionism.

Next, the Special Issue turns to its second main theme, which is about the current developments of state interventionism and its regulation in major trading powers and in the Global South. The Biden Administration’s trade policy is the focus of the following Article by Schoenbaum, who discusses seven prominent elements of that policy, including “buy American” rules; the enduring disengagement with the WTO; the strategic use of tariffs; the battle for technology primacy; the conclusion of alternative free trade agreements (FTAs); and the positions towards Russia and China. The Author argues that while “President Biden has made a clean break from Trump policies in many areas, this is not the case when it comes to international trade”,⁵¹ an area where “[r]egretfully Biden has chosen to keep in place most of the failed trade policies of his predecessor, the Trump tariffs and the China trade war.”⁵² Schoenbaum concludes that “[i]t is not too late to shift ground”,⁵³ and suggests urgent reforms in the area of subsidies, SOEs, and forced technology transfers that the Biden administration should prioritize at the WTO through a plurilateral trade agreements, and/or through FTAs.

⁴⁶*Id.*

⁴⁷GREGORY SHAFFER, EMERGING POWERS AND THE WORLD TRADING SYSTEM: THE PAST AND FUTURE OF INTERNATIONAL ECONOMIC LAW xiii (2021).

⁴⁸Orford, *supra* note 44.

⁴⁹Leonardo Borlini, *The Covid 19 Exogenous Shock and the Crafting of New Multilateral Trade Rules on Subsidies and State Enterprises in the Post-Pandemic World*, in this Issue.

⁵⁰*Id.*

⁵¹Thomas J. Schoenbaum, *The Biden Administration’s Trade Policy: Promise and Reality*, in this Issue.

⁵²*Id.*

⁵³*Id.*

The next article by Ming Du moves from the consideration that “[t]here is a growing perception that the current international trade rules are neither conceptually coherent nor practically effective in tackling China’s state capitalism.”⁵⁴ Du observes that “[t]his perception has not only led to the emergence of new trade rules in regional trade agreements, but also culminated in the US- China trade war, only further aggravated by the Covid-19 pandemic.”⁵⁵ Against this backdrop, the Author adds a key contribution to the debate of what trade rules may be needed to counteract China’s state capitalism by unpacking the black box of China’s state capitalism and illustrating its distinctive features. Based on this novel and insightful analysis of the nature of China’s state capitalism, Du assesses current trade rules taken to counteract this heterodox form of capitalism, in particular the new rules in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP),⁵⁶ and explains why they are unlikely to be successful.

This Special Issue then explores “the main legal and policy issues that are likely to determine the development of the EU’s trade policy concerning rules on state intervention in the market.”⁵⁷ These issues are analyzed by Boschiero and Silingardi within the context of the new trade strategy entitled “An Open, Sustainable and Assertive Trade Policy” set out by the European Commission in February 2021, at the core of which stands the concept of strategic autonomy. The focus of the analysis offered by the Article is on key elements of the current EU competition and trade policies and normative initiatives, namely: the relaxation of the State aid regime under Articles 107 and 108 TFEU “to give Member States more flexibility in supporting their economies and strengthen EU industrial policy”; the prospect of EU proposals “resulting in any substantial change to international trade law on subsidies and SOEs” at the multilateral level; a “horizontal investigation into the relevant trade rules promoted by the EU in its most recent practice of FTAs; and, finally, the EU pursuing stronger protection of its companies with its recently announced new regulation on foreign subsidies, on the basis of which the European Commission can investigate foreign subsidies and impose remedies.”⁵⁸ Unilateral, bilateral and multilateral approaches inherent to these policies are strictly intertwined, and reveal a significant change in contemporary EU trade policy objectives in relation to the role of the state in the market.

The next contribution adds the regulation of subsidies through FTAs to the picture: the potentials, limitations and implications of disciplining subsidies through FTAs, “using Japan’s FTAs as a case study”, is the focus of Iino’s article.⁵⁹ The Article draws primarily on previous literature on public aid regulation in EU FTAs and the related practice of other WTO members to then identify the distinct WTO-plus elements of Japan’s FTAs subsidy rules, and discuss their main regulatory and policy implications. Japan’s subsidy discipline through FTAs is gradually moving in the direction of consolidation and sophistication, while including novel elements, and bringing them to the Asia-Pacific region. In her analysis, Iino argues that FTAs are “serving as laboratories for new attempts to fill gaps in WTO rules, and subsidy-related provisions in those FTAs provide a minimum line of how far countries can agree.”⁶⁰ Accordingly, she offers reflections on the future prospect for new approaches to trade regulation of subsidies.

⁵⁴Ming Du, *Unpacking the Black Box of China’s State Capitalism*, in this Issue.

⁵⁵*Id.*

⁵⁶Comprehensive and Progressive Agreement for *Trans-Pacific Partnership* (CPTPP; signed in Santiago, Chile, on 8 March 2018. The TPP-11 is a separate treaty that incorporates, by reference, the provisions of the original *Trans-Pacific Partnership* (TPP), defunct after the United States withdrew its signature, (www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/index.aspx?lang=eng).

⁵⁷Nerina Boschiero & Stefano Silingardi, *The EU Trade Agenda—Rules on State Intervention in the Market*, in this Issue.

⁵⁸*Id.*

⁵⁹Iino, *Disciplining Subsidies Through Free Trade Agreements (FTAs): Emerging Developments in Japan’s FTAs and Their Implications*, in this Issue.

⁶⁰*Id.*

Simo's article shifts the focus to the Global South. Specifically, his contribution to the Special Issue first scrutinizes the reasons for the establishment of SEZs in developing countries. It then assesses the economic measures chosen to promote such instruments and their policy implications, while exploring "the international ramifications in these respective regions and broadly on the global plane, notably at the WTO."⁶¹ Against this backdrop, Simo notes that "[w]ith the entry into force of the African Continental Free Trade Area (AfCFTA) Agreement, African countries face challenges of multi-layered SEZ governance".⁶² Hence, the Author addresses such challenges. In that regard, Simo notes that "SEZs are often assimilated with a category of subsidies and are discriminatory trade measures".⁶³ Accordingly, the core part of his contribution to the Special Issue investigates the extent to which current trade rules at multilateral and regional levels address these controversial aspects of SEZs.

As observed above, in its third theme, this Special Issue considers more closely the overarching question of how global trade rules should deal with the heterogeneity of economic models by means of reorientation of caselaw, changes in existing WTO rules, and crafting of new ones. Here, Mavroidis and Sapir, in their article, consider China's centrality in today's world economy, and investigate how to repair and improve its relationship with the WTO. The Authors illustrate why China's participation in this organization "has been a rollercoaster of milestones and frictions", but, at the same time, make very clear that the same country "has emerged as a leading trading nation, which has contributed to the expansion of world trade."⁶⁴ Noting that some of its trading partners "and most vocally the US, complain that China has reached its new status by eluding its WTO commitments", the Article goes through the US reactions against China under President Trump that almost brought "the WTO (but not China!) to its knees."⁶⁵ Mavroidis and Sapir agree with other scholars and experts in condemning these actions.⁶⁶ However, they submit that, like unilateral actions, staying idle—a position voiced, for example, by Dani Rodrik⁶⁷—is no solution to the China-issue and that other strategies, such as addressing it through bilateral deals, are no solution either. In their view, "the only viable solution for the WTO system requires adding new disciplines to the existing multilateral rules"⁶⁸ regarding, in particular, the conduct of SOEs and transfer of technology as a pre-condition for market access by foreign investors. Therefore, Mavroidis and Sapir advance two proposals for WTO reforms and explain their contents. Also, in concluding the Article, they discuss the *Realpolitik* reasons why both the US, other WTO members, and China should consider introducing such amendments to existing WTO law.

The potential of integrating international trade rules and competition law is assessed against the specific challenges of government influence on SOEs in the next article of this Special Issue by Matsushita.⁶⁹ The Article makes an innovative attempt to investigate the cross-section between the control of SOEs under trade agreements (especially the CPTPP) and the regulation of their activities by competition law enforced in 130 countries in the world. Chapter 17 of CPTPP is taken as a paradigmatic case study because it obligates the eleven contracting parties of CPTPP to secure that SOEs under their respective jurisdictions would not engage in abusive conduct. This treaty imposes

⁶¹Regis Y. Simo, *Special Economic Zones in an Era of Multilateralism Decadence and Struggles for Post-Pandemic Economic Recovery: Perspectives from the Global South*, in this Issue.

⁶²*Id.*

⁶³*Id.*

⁶⁴Petros C. Mavroidis & André Sapir, *China in the WTO Twenty Years On: How to Mend a Broken Relationship?*, in this Issue.

⁶⁵*Id.*

⁶⁶*Id.*

⁶⁷Dani Rodrik, *supra* note 2, *The Double Standard of America's China Trade Policy*, Project Syndicate, 10 May 2018, <https://www.project-syndicate.org/commentary/american-trade-policy-double-standard-by-dani-rodrik-2018-05>.

⁶⁸Mavroidis & Sapir, *supra* note 64.

⁶⁹Mitsuo Matsushita, *Interplay of Competition Law and Free Trade Agreements in Regulating State-Owned Enterprises*, in this Issue.

on the governments of contracting parties the duty to supervise their SOEs so that they would not engage in abusive practices and activities activities. Yet, from the standpoint of competition law, there are certain weak points in the provisions of Chapter 17 of CPTPP, ranging from the very definition of SOEs to the problems of applying competition rules to SOEs due to the act of state doctrine, which prohibits the application of competition law to any conduct which is an implementation of government policies. After analyzing the inter-relationship between the control of SOEs under CPTPP and the regulation of competition on them, Matsushita suggests that the OECD or the International Competition Network (ICN) should formulate specific guidelines to clarify the meaning of act of state doctrine and that FTAs such as CPTPP should cooperate so that a comprehensive set of rules will emerge and result in a more effective regulation of SOEs conduct.⁷⁰

This Special Issue concludes with a contribution from Fox on “the trade and competition blind spot, giving particular regard to state and hybrid restraints.”⁷¹ As Fox explains, the Article has two major subjects. First, competition law and policy on its own bottom. About this, Fox argues that while “[c]ooperation among national competition law agencies can bridge some of the gap in world coherence”,⁷² it mostly overlooks state and hybrid restraints. The second subject of the Article is trade and competition. In relation to this subject, Fox argues that “[i]ntertwined trade-and-competition restraints are mostly below the radar screen of enforcement against harmful economic restraints.”⁷³ The Article exposes the reality that neither international trade rules governing the state and its SOEs nor competition rules address the problem. Rather, the actors, public and private, play off one system against the other (trade rules against competition rules). Therefore, Fox investigates a way forward.

E. Avenues for Further Research and Reflection

The Articles in this Special Issue have sought to grapple with the different challenges arising from the regulation of prominent forms of state interventionism through international trade rules. While state interventionism and related activist industrial policies are again a salient feature of the global economy, the phenomenon and its trade regulation still deserve further attention and scholarly analysis from at least three perspectives.

First, the question of whether the multilateral trading system will be able, on the one hand, to ensure the promotion of liberal market values, typically regarded as an important objective of the GATT/WTO membership, and, on the other, to preserve “institutional diversity and the capacity for institutional innovation, against which it has always been balanced”⁷⁴ is far from settled. As some of the contributors to this Special issue argue, incoherent rules and unbalanced scale of regulation of state interventionism may excessively disincentivize institutional variety and experimentation, and make it more difficult for WTO members to engage in industrial policies that are needed (or considered as such) to deal with the economic consequences of the COVID-19 pandemic; support needed changes in the real economy and address the climate change shock. Besides, the modification of existing multilateral disciplines on subsidies and state enterprises is ultimately more than a legal problem: the trade-and-competition issues produced by such

⁷⁰*Id.*

⁷¹Eleanor Fox, *Blind Spot: Trade and Competition Law-The Space between the Silos*, in this Issue.

Id.

⁷²*Id.*

⁷³*Id.*

⁷⁴Andrew Lang, *Heterodox Markets and ‘Market Distortions’ in the Global Trading System*, 22(4) J. INT. ECON. LAW 680, 687 (2019).

instruments have systemic roots; among the most important, a government's conception of its role in the economy. In this respect, several questions that would merit further exploration include the following: Given the emergence of new forms of capitalism, of which China's hybrid market economy is the most remarkable case, is there a need to revisit "the existing settlement regarding the legitimate boundaries of institutional diversity" in the global trading system by means of new approaches to the interpretation and application of key concepts that have been incorporated in the GATT/WTO law "to help draw these boundaries"⁷⁵? Is a sound and balanced reform of rules on state interventionism—which marks a prominent aspect of WTO members' institutional diversity—feasible at the multilateral level, at least in the form of plurilateral trade agreements? Specifically, is convergence on modifications of rules on subsidies and state enterprises a pipe dream in today's world, given that the underlying interests of key members diverge dramatically?⁷⁶ Assuming instead that an effective reform on multilateral rules on subsidies and state enterprises is possible through appropriate amendments of existing WTO multilateral treaties—this being, among others, the position voiced by Mavroidis and Sapir in their Article—how would that reform be inserted in, and interact with a broader modernization project addressing other systemic challenges that permeate and debilitate several aspects of the workings of the WTO, including "the capacity to negotiate, enforce disciplines, monitor policies and ensure transparency"⁷⁷?

Second, and linked to the first point, there is a potential to explore whether disciplines on subsidies and state enterprises incorporated in recent bilateral, regional and megaregional trade agreements will inspire and facilitate the adoption of new rules at the multilateral level. Or, rather, whether the rules established by contemporary FTAs concluded outside the WTO will refrain WTO members from entering in extenuating multilateral negotiations on such intricate subjects where they have already achieved acceptable forms of regulation at the preferential level. To some extent, the exposition of the chapters on subsidies and state enterprises of several FTAs in comparison with existing WTO rules indicates that major trading powers, such as the EU and the USA, have significantly extended and refined the regulation of the trade-and-competition problems surrounding prominent forms of state interventionism through the radial patterns of their FTAs. Readers might be aware, of course, of the main scholarly positions about this venue. Authors like Goldstein, Irwin and Sykes view these trade agreements as ways to increasingly bypass the WTO in a way that challenges a core principle of the multilateral trading system—non-discrimination through the most favored nation rule.⁷⁸ Others claim that the scholarly concentration on WTO agreements has led to underestimating "the variable texture of the global trade agreement fabric", which also features in "innovative alternatives to regulate and manage the cross-border movement of goods and services."⁷⁹ In particular, the Articles by Boschiero & Silingardi, Mitsushita, Mavroidis and Sapir, and Iino in this Special Issue illustrate how disciplines on state interventionism through new generation agreements are moving towards the direction of consolidation and sophistication, and argue that these agreements offer important space for experimentation to improve multilateral trade rules. However, this Special Issue invites further reflection and investigation on the actual synergies between those disciplines and possible reforms

⁷⁵*Ibid.*, at 687, [who specifically analyzes the concept of market distortion and argues "for an approach to the interpretation and application of this concept, which proceeds from an understanding of the institutionally embedded character of markets", explaining that this takes the form of "a messy and evolving set of legal techniques that, in the best case, will form the legal basis of a practical and justifiable approach to the frictions caused by institutional diversity", (*ibid.*, at 719)].

⁷⁶Skeptical claims of this kind are made, among others, by Trebilcock, *supra* note 5, 166–168, and Gulotty, *supra* note 9, 330, [who goes on to assert that challenges in facing cooperation on subsidies suggest limits to the ability for a "rule-based approach" to handle substantial changes in the multilateral trading system as a whole].

⁷⁷Low, *supra* note 36, at 274.

⁷⁸See generally Judith L. Goldstein, Douglas A. Irwin & Alain Sykes *20th Anniversary Issue* 21(3) *WORLD TRADE REV.* 269 (2022).

⁷⁹Kathleen Cluassen, *Next Generation Agreements and the WTO* 21(3) *WORLD TRADE REV.* 380 (2022).

at the WTO level; the ways to accommodate the new generation agreements' rules on state interventionism within the WTO; and the potentials to overcome some of their acknowledged flaws (especially the lack of enforceability), which would perhaps increase the chances of those agreements to compete with, instead of complementing or facilitating the reform of WTO rules.

Last, the contribution by Simo in particular raises the important question as to whether further research might be needed to unravel points of convergence and, even more importantly, divergence in terms of trade regulation on state interventionism between developed and developing members of the WTO. Granted, WTO law and FTAs provide some flexibility in the use of public aid for developing country-members in recognition of the important role that subsidies can play in their economic development programs. Still the question arises whether, in a period of growing unilateralism and strategic competition, the interests of the Global South to a specific relation between the state and the market ends up with being necessarily marginalized and compressed into some of the positions advanced by the most influential trading powers within the WTO. Further, the same course might also materialize outside that organization by means of existing trading relations and other trade agreements concluded by industrialized states with developing countries.

Acknowledgements. This project has its origins in the workshop “Trade rules and State Intervention in the Economy in the Covid Era” that was convened by the editor at the Legal Department of University Bocconi (2021). The editor would like to express his gratitude to the GLJ editorial team for assistance throughout the different stages of the process and, in particular, Prof. Matthias Goldmann, Dr. Klaas Eller and Dr. Regis Simo, who read all the Articles after the completion of my review. Their suggestions to the authors have been invaluable.

Competing interests. None

Funding statement. No specific funding