

TARIFFS, DEALS AND MULTILATERAL IDEALS: CAN THE WORLD TRADE ORGANIZATION SURVIVE?

PETROS C. MAVROIDIS

The second administration of United States President Donald Trump has shaken the foundations of the multilateral trading system by implementing unilateral tariffs on imports from most of its partners, and by signing 'deals' with a few of them. It is impossible to legally reconcile these actions with the letter and spirit of the World Trade Organization (WTO). The fundamental purpose of the WTO is to promote non-discriminatory trade liberalisation, primarily through the most-favoured nation (MFN) principle, while subjecting disputes to compulsory third-party adjudication (CTPA). The high, new US tariffs and so-called deals run afoul of MFN, CTPA and several other WTO legal institutions. The US view under Trump seems to be that legality should not stand in the way of political expediency when it comes to promoting US interests as understood by the current US administration.

This is happening when the policy relevance of the WTO had already been undermined. Geopolitical concerns have turned its traditional consensus-based voting mechanism into a formidable impediment to block its legislative functions. Its adjudicative function has been moribund since 2019, when the first Trump administration took steps to make the WTO Appellate Body largely redundant. While the WTO still has offices in Geneva, the emerging disequilibrium is hardly sustainable. The WTO has been practically reduced to redundancy, at least with respect to influencing relations between the US and each of its partners.

Assuming that current US policy does not change, the relevance of the WTO could wane further. Reviving the multilateral organisation will require a valiant effort from the key stakeholders, and the determination to address issues that the membership has previously avoided. This paper highlights some of them.

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Petros C. Mavroidis (petros.mavroidis@bruegel.org) is a Non-resident Fellow at Bruegel



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1 The lay of the land

‘Unprecedented’ best captures what has happened in United States trade policy since President Donald Trump returned to the White House for a second term. The kick off was ‘Liberation Day’ on 2 April 2025, when President Trump signed Executive Order 14257 ‘Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits’¹. He hoisted a sizeable chart, prepared by Secretary of Commerce Howard Lutnick, and showed the world the new tariffs that the US would apply on imports originating in over 60 countries. In this, the second Trump administration was promising to be different from the first.

Within a couple of days, President Trump, most likely startled by the subsequent losses in the stock-market, announced that he would suspend the application of tariffs for 90 days². At the same time, he announced that he would pursue 90 trade deals in 90 days. Instead of forming a worldwide coalition against President Trump’s initiative – which violated the letter and the spirit of the World Trade Organization and shook the foundations of the multilateral system – nations rushed to the White House to negotiate and conclude these deals. In quick succession the United Kingdom, Vietnam, Indonesia, the Philippines, Japan, Korea and the European Union signed separate deals with the US³, while China agreed to a truce in retaliatory tariffs, which, at the time of writing, has since been extended twice. Those that did not sign deals, either because they did not request one or because President Trump did not seek to negotiate one, had to await their fate. Free-trading nations seemingly forgot the famous quip attributed to Benjamin Franklin: “*We must all hang together, or assuredly we shall all hang separately*”.

Tariffs are President Trump’s favourite policy instrument. On assuming office in his first term, President Trump resuscitated Section 232, an almost forgotten legal instrument. He invoked it to restrict imports of steel products in the name of national security. Section 232 was enacted in 1955 and forms an

¹ This phrase is admirably precise and refreshingly truthful. The US, as we explain later on, is not addressing the trade deficit *per se* through this instrument, but only the trade deficit in the context of goods-trade. The US is, in fact, running a persistent trade surplus in the realm of services trade. Services represent 80 percent of US gross domestic product (GDP). See World Bank, ‘Services, value added (% of GDP) - United States’ <https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS?locations=US>.

² The S&P 500 index of US companies had fallen by 12.1 percent by the time markets closed on 8 April 2025 as investors panicked about tariffs potentially causing a recession in the US. However, it was not just US shares that lost value. In the UK, markets fell by 10.8 percent by 9 April. Simon Evenett and Johannes Fritz astutely observed that the Liberation Day tariffs constituted a shift: the US is not targeting China anymore; is targeting the entire world. See Simon Evenett and Johannes Fritz, ‘US Reciprocal Tariffs: Upending the Global Trade Policy Landscape’, *VoxEU*, 3 April 2025, <https://cepr.org/voxeu/columns/us-reciprocal-tariffs-upending-global-trade-policy-landscape>.

³ At the time of writing, only three of the deals appear on an official US government webpage, namely: White House, 8 May 2025 ‘General Terms for the United States of America and the United Kingdom of Great Britain and Northern Ireland Economic Prosperity Deal’, <https://www.whitehouse.gov/briefings-statements/2025/05/general-terms-for-the-united-states-of-america-and-the-united-kingdom-of-great-britain-and-northern-ireland-economic-prosperity-deal/>; White House, 21 August 2025, ‘Joint Statement on a United States-European Union framework on an agreement on reciprocal, fair and balanced trade’, https://policy.trade.ec.europa.eu/news/joint-statement-united-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21_en; and White House, 22 July 2025, ‘Joint Statement on Framework for United States-Indonesia Agreement on Reciprocal Trade’, <https://www.whitehouse.gov/briefings-statements/2025/07/joint-statement-on-framework-for-united-states-indonesia-agreement-on-reciprocal-trade/>.

integral part of the US Trade Agreements Extensions Act, but had since fallen into disuse⁴. The first Trump administration used it to impose tariffs against a host of nations. Canada, China, the EU, India, Korea, Mexico, Norway, Russia, Switzerland and Turkey responded by filing complaints at the WTO.

The choice of instrument that Trump used was calculated: Section 232 provides the US President with substantial discretion, as Section 232 does not address the effect of imports on the marketplace, but rather their potential unavailability in case of emergency. A flurry of litigation followed at the WTO⁵ and all WTO panels concluded the same thing: US measures were inconsistent with WTO rules. The US circumvented enforcement of these rulings by ‘appealing into the void’⁶. Undeterred by this experience, Trump introduced a new wave of Section 232 investigations on returning to the White House for his second term.

It is unclear what the link is between the Section 232 investigations/tariffs and the Liberation Day tariffs. In principle, these are distinct instruments: the former aims to address critical shortages, whereas the latter is meant to address entirely different policy objectives. The link between the Section 232 investigations and the Liberation Day tariffs became clear when the US administration announced, on 2 August 2025, the actual implementation of the Liberation Day tariffs. Deborah Elms compiled an informative table showing that, with a few exceptions (including Brazil, Brunei and Philippines), the tariffs implemented on 2 August were lower than or equal to the tariffs announced on Liberation Day⁷. Shortly after 2 August, President Trump announced that imports from India would face a 50 percent tariff, instead of the announced 25 percent, because India was buying too much Russian oil⁸. What is too much was never specified. The EU continues to purchase relatively small quantities of Russian oil (purchases should be phased out by 2028) but was spared additional tariffs. China, meanwhile, continues to purchase substantial quantities of Russian oil, but President Trump decided to spare China from any additional tariffs.

The US administration seems determined to enforce the new tariffs and deals that it has signed. While it is very doubtful that it can achieve the stated goals (reduce the deficit, increase tariff income and encourage ‘greenfield’ investment in the US), the data so far points to some encouraging results for the

⁴ Tucker (2022) mentioned that this instrument had been used six times in the past, as US presidents before Donald Trump had acquiesced to only six of 49 petitions. For a full discussion, see Mavroidis (2025).

⁵ See World Trade Organization, ‘DS556 United States — Certain Measures on Steel and Aluminium Products’, 26 January 2023, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds556_e.htm.

⁶ ‘Appeal into the void’ is the consequence of the first Trump administration’s decision to stop renewing the mandate of the WTO Appellate Body members (the second instance court). The Dispute Settlement Understanding (DSU), the agreement organising adjudication within the WTO regime, was not amended, and as a result the Appellate Body continued to exist as a sort of legal fiction. So, a losing party can always appeal a hostile panel report to an Appellate Body that lacks the capacity to adjudicate. During the appeal process, the report does not enjoy any legal status and consequently cannot be enforced. The US appeal into the void did not stop the EU and others from rebalancing their tariffs on steel vis-à-vis the US. President Biden sought a deal with the EU exempting its exports from tariffs for two years in a row. See *Reuters*, ‘Biden extends EU steel, aluminium tariff exemption for 2 years’, 28 December 2022, <https://www.reuters.com/world/us/biden-extends-eu-steel-aluminum-tariff-exemption-2-years-2023-12-28/>.

⁷ Deborah Elms, ‘Napkin deals and trade edicts: The only certainty in global trade is uncertainty’, Hinrich Foundation, 5 August 2025, <https://www.hinrichfoundation.com/research/article/trade-policy/napkin-deals-and-trade-edicts>.

⁸ Chris Kay, Krishn Kaushik and Andres Shipani, ‘Narendra Modi Tells Indian He Will Never Compromise in Face of 50% Tariffs’, *The Financial Times*, 7 August 2025, <https://www.ft.com/content/fa6f6892-f42f-4801-9fe9-6b02d5d69717>.

US administration – enough to present the policy as a success to the American public. President Trump can also count on the absence of domestic political opposition and the acquiescence of the world trading community. Even if the US Supreme Court⁹ rules against the Trump administration's actions, the likeliest scenario is that President Trump will use a different avenue to re-impose tariffs.

The world is now entering a new era in which the US continues to be a member of the WTO while disrespecting its two core features: avoiding trade discrimination and unilaterally increasing protectionism, in this case, its capped level of customs duties (tariffs). What does this mean for the WTO? Can it continue with 'business as usual', or is its effective end drawing near? This is the core question we ask in this paper.

2 The legality of US tariffs

At the time of writing, US tariffs – whether unilateral or the result of deals – share the following features in relation to WTO agreements:

- The WTO has not, so far, been notified of any trade deal or new tariff by the Trump administration. Judging from the information disseminated through the United States Trade Representative (USTR) webpage, all deals and new higher tariffs violate the obligation to notify the WTO (Article X of the GATT) as they fall under measures of 'general application'¹⁰;
- By imposing different levels of tariffs on the same product depending on its origin – either through unilateral increases or following the conclusion of a trade deal – the US also violates its obligation to treat all like goods originating from WTO members on a Most Favoured Nation (MFN) basis (Article I of the GATT);
- By increasing its duties above the level agreed following reciprocal negotiations during the 1986-1993 Uruguay round, the US is violating Article II of the GATT¹¹.

The signed trade deals might vary in content, but all of them share some elements:

⁹ The legality of tariffs has been challenged on constitutional grounds, as we explain later.

¹⁰ Some details about these deals have emerged – even though the WTO continues to be officially unaware of them. It was reported that Japan had 45 days, counting from 2 September 2025 when President Trump formally enacted the terms of the deal, to invest \$550 billion in areas earmarked by the President himself, and revealed details about the splitting of profits between the US and the investor (Japan). See Aime Williams and Leo Lewis, 'Trump to Direct Japan's \$550 billion Investment in US After Deal with Tokyo', *The Financial Times*, 6 September 2025, <https://www.ft.com/content/ba944ada-608d-4265-abef-48939dd56197>. Their story makes claims by developing countries, dating from the 1980s and regarding the direction of investors and distribution of benefits, pale in comparison to the US-Japan deal.

¹¹ It has been hinted that the EU and the US have signed a WTO-consistent FTA. If this were the case, then of course, at least the violation of the MFN would have been 'healed'. But this is hardly the case from a legal point of view. Article XXIV of GATT allows for deviations from the MFN if two or more parties reduce or eliminate their tariff protection. Here we observe the opposite trend. Furthermore, there is nothing like a plan that has been worked out to reduce/eliminate the current tariff protection in the foreseeable future. Hence, this argument should be discarded. See Joost Pauwelyn, 'Wait a minute, did the EU and the US just conclude a free trade agreement in line with WTO rules?' *LinkedIn*, undated, https://www.linkedin.com/posts/joost-pauwelyn-41181042_wait-a-minute-did-the-eu-and-the-us-just-activity-7355676216164507648-m-A/.

- There is practically no *quid pro quo* when the US administration offers a trade deal – other than the US abandoning its unilateral Liberation Day tariffs and occasional, generic announcements about future relations – as it is always the party transacting with the US that commits to a certain behaviour. These deals are termed ‘reciprocal’ only because they reflect President Trump’s belief that the US has not received reciprocity in the past. It is, in other words, pay-back for the perceived, previously unfair treatment¹²;
- They are not formal international agreements. They are not written documents signed by both parties. It is usually the US that informs the public about their content by uploading a summary of the deals concluded on the USTR webpage. At the time of writing, some of the deals have not been published at all¹³;

The US is not prepared to submit itself to WTO adjudication for disputes arising from the implementation of these deals. It purports to resolve them bilaterally, thus violating Article 23.2 of the Dispute Settlement Understanding (DSU), which states that the WTO is the sole and exclusive forum for the resolution of all trade disputes¹⁴.

2.1 US tariffs and WTO law

At the time of writing, China (Dispute Settlements DS633 and DS638), Canada (Dispute Settlements DS634, DS635 and DS637) and more recently Brazil (Dispute Settlement DS640) have challenged the legality of US tariffs under WTO rules. A 25 percent duty is paid on all Canadian goods not complying with the United States-Mexico-Canada Trade Agreement, whereas Brazilian goods are subjected to a 50 percent tariff as a result of President Trump’s displeasure with the legal proceedings against former Brazilian President Jair Bolsonaro¹⁵. Chinese goods are subject to a 30 percent tariff until a permanent

¹² Feaver (2024) formulated in prescient terms his claim that the second Trump administration would keep “*transactionalism*” as the cornerstone of its foreign policy, despite having little to show from its experience during the first administration. See Peter D Feaver, ‘How Trump Will Change the World’, *Foreign Affairs*, 6 November 2024, <https://www.foreignaffairs.com/united-states/how-trump-will-change-world>.

¹³ Except for the three deals published on the USTR webpage (footnote 3), President Trump has further published some features of the deal with Korea via his Truth Social account. See <https://truthsocial.com/@realDonaldTrump/posts/114944494894008041>.

¹⁴ The WTO endorses Compulsory Third-Party Adjudication (CTPA), and it is WTO panels that will be called on to adjudicate all disputes on the subject-matter which comes under the jurisdiction of the WTO. The current USTR, Jamieson Greer, left no doubt that this is not an option for the Trump administration, when stating: “*E Importantly, these commitments are actionable, and the United States will enforce them. Rather than the drawn-out dispute settlement process favored by the old guard of trade bureaucrats, the new US approach is to closely monitor implementation of the deals and swiftly reimpose a higher tariff rate for noncompliance if needed. President Trump uniquely recognizes that the privilege of selling into the world’s most lucrative consumer market is a mighty carrot. And a tariff is a formidable stick.*” See Jamieson Greer, ‘Why We Remade the Global Order’, *New York Times*, 7 August 2025, <https://www.nytimes.com/2025/08/07/opinion/trump-trade-tariffs.html>.

¹⁵ On 11 September 2025, the highest Brazilian Court sentenced Bolsonaro to 27 years in prison for inciting an insurrection against the legitimately elected government of Brazil. At the time of writing, it remains to be seen how the US government will react to the news. See Ana Ionova and Jack Nicas, ‘Bolsonaro Sentenced to 27 Years in Prison for Plotting Coup in Brazil’, *New York Times*, 11 September 2025, <https://www.nytimes.com/2025/09/11/world/americas/bolsonaro-convicted-coup-attempt.html>.

agreement with the US has been negotiated and concluded¹⁶. Canada's complaints concern specific product markets (autos, steel, non-energy goods). China's complaints will *de facto* be on hold until the trade truce ends and might be resurrected afterwards, depending on the outcome of US negotiations. Brazil's is the only complaint that specifically targets the Liberation Day tariffs¹⁷.

There is a question mark as to whether those who made a deal might be pre-empted from challenging the US measures. After all, they negotiated with the US and acquiesced to the measures. Because of this acquiescence, the legal argument goes, a complainant should be 'estopped' from challenging the validity of the deals at the WTO. However, the WTO Appellate Body did not see a case for applying acquiescence or estoppel and has, in fact, ruled against its application in DS265: EC-Export Subsidies on Sugar (Mavroidis, 2022a, pp. 44-48). If this precedent is adhered to in future cases, the EU could turn against the US and challenge the adherence of its recent deal with the US to the relevant WTO rules.

In light of its stated aims¹⁸, could the US justify its measures by invoking the Security Exception (Article XXI) of GATT? No, is the short answer. Article XXI allows WTO members to take "*any action which it considers necessary for the protection of its essential security interests in time of war or other emergency in international relations*".

The law under this provision¹⁹ makes it clear that what matters for a successful invocation of Article XXI is *when* the action is taken. 'Emergency' has been consistently interpreted quite narrowly by WTO panels, shown in the exhaustive survey of case law in Mavroidis (2025), and is confined to war-like situations, or extreme situations such as the disruption of diplomatic relations. In DS597: US-Origin Marking (Hong Kong, China), the panel held that the fact that trade between US and China had shown no signs of breakdown indicated the absence of an emergency (§7.354)²⁰. Here, we are dealing with the exact opposite scenario: trading nations share the negotiating table with the US and peacefully conclude trade deals for the medium to long run.

Nvidia's situation provided additional confirmation that there is no emergency being addressed by these restrictions. Mavroidis (2025a) discussed how former US President Biden kept and strengthened the first Trump administration's restrictions on exports to China, making it practically impossible to export even legacy microchips to China. One might agree or disagree whether the prohibition of such exports serves US national security, but this is precisely what President Trump and

¹⁶ Reportedly, the truce between the US and China was extended for 90 more days, until November 2025. See James Politi and Ryan McMorow, 'Donald Trump Extends Trade War Truce with China', *The Financial Times*, 12 August 2025, <https://www.ft.com/content/82126a13-e66b-4f3b-bb6d-74f165a291d0>.

¹⁷ We would like to underscore here that Brazil is not contesting the legality of a deal under the WTO rules, but simply the legality of higher tariffs.

¹⁸ White House, 'Statement on President Trump's Declaration of a National Emergency' 2 April 2025, <https://ustr.gov/about/policy-offices/press-office/press-releases/2025/april/us-trade-representative-issues-statement-president-trumps-declaration-national-emergency>.

¹⁹ Discussed in detail in Mavroidis (2025).

²⁰ See WTO, 'DS597: United States — Origin Marking Requirement', https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds597_e.htm.

President Biden aimed to safeguard through their measures. The second Trump administration, following heavy lobbying by Nvidia's CEO, allowed the company to export H20s (an elaborate microchip) to China, conditional upon the payment of an export tax of 15 percent, baffling some US security experts along the way²¹. Evidently, President Trump seems to see little threat from China, even when trading in high-tech goods.

In doing so, President Trump was prepared to test the US Constitution. Article 1, Section 9, Clause 5 of the US Constitution (the 'Export Clause') prohibits Congress from laying taxes and duties on articles exported from any state²². The US Supreme Court has interpreted the Export Clause as requiring not simply an omission of a tax upon exported articles, but also a freedom from any tax which directly burdens the process of exporting²³. Nvidia's 15 percent tax would, arguably, contravene this.

Note that President Trump's understanding of the term 'national emergency' is quite liberal, as the number of invocations of Section 232 show. His interpretation notwithstanding, he still allowed the export of an elaborate chip to China, even though he himself had previously labelled China a threat to US national security²⁴. Under the circumstances, it would be very hard indeed to defend the claim that the US measures are necessary to protect national security before a WTO panel.

The only appropriate, available option to justify these US measures is a 'waiver'. A waiver, if granted, would be akin to the WTO membership providing the US with a green light to provisionally waive its obligations under Articles I and II of the GATT. But, as per Article IX of the Agreement establishing the WTO, a waiver is granted only in exceptional circumstances, which must be explicitly stated. What are the exceptional circumstances here? It would be a travesty indeed to equate trade deficits with exceptional circumstances. All members could then sooner or later ask for a similar exception, undoing the entire system of trade liberalisation through waivers. Additionally, a three-quarters majority of the WTO's membership must vote in favour of granting a waiver. In fact, the threshold is even higher in these circumstances: unanimity is required for deviations from MFN. And it is precisely a deviation from MFN that the US would be requesting. How would Brazil or India or any other country that feels unfairly targeted by the US tariffs vote when the occasion arises? Waivers are granted for up to a year, and if a longer period has been agreed, an annual review follows the original waiver. But the US does not want multilateral review of its tariffs and trade deals to begin with.

US Trade Representative Greer made it clear that on trade, the US wants to be judge, jury and executioner, all in one (see footnote 14). At the time of writing, this discussion is hypothetical, as no

²¹ Michael Acton, Tim Bradshaw, Aimee William, James Politi and Demetri Sevastopulo, 'Donald Trump Threatens 100% Tariffs on Chips but with a Carve-Out for Apple', *The Financial Times*, 7 August 2025, <https://www.ft.com/content/4273254b-6e1f-4cb1-bca7-19c7389c719a>.

²² This provision has been consistently interpreted widely; see, for example, *United States v. U.S. Shoe Corp.* 523 U.S. 360 (1998).

²³ *Fairbank v. United States* (1901), 181 U.S. 283, 293; *A.G. Spaulding & Bros. v. Edwards* (1923) 262 U.S. 66, 69, 70.

²⁴ White House, 'Fact Sheet: President Donald J. Trump Takes Action to Address the Threat to National Security from Imports of Copper', 30 July 2025, <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-takes-action-to-address-the-threat-to-national-security-from-imports-of-copper/>.

request for a waiver has been tabled. But Greer's observation holds in more general manner: there is no mention of the WTO in any of the deals that the current US administration has signed.

It is worth noting that, outside of the Trump administration, there are few commentators who believe that the Liberation Day tariffs can be reconciled with the current WTO rules, or could even “*save the WTO*”²⁵. Such claims misconstrue, in our view, the letter and spirit of key WTO institutions overseeing activities such as the re-negotiation of tariff commitments. Even assuming that the US was interested in renegotiating its tariffs – a generous assumption, given that the US has shown no interest in WTO procedures – it would have to request the initiation of a process whereby it would need to consider compensation, usually in the form of lower tariffs. But the US does not seem to be willing to lower the tariff level in any product market.

The Liberation Day tariffs apply to all imports across the board originating in the targeted countries. Article XXVIII of GATT is not constructed to address the circumstances that the world trading community is now facing. Additionally, a renegotiation of tariffs under Article XXVIII leads to new MFN (most-favoured nation) non-discriminatory tariffs, which is precisely what the Trump administration has sought to avoid. Opting for MFN (eg non-discriminatory) tariffs would run afoul of the aims of the Liberation Day tariffs, which is to force bilateral deals and diminish the multilateral regime.

Pauwelyn (2025) argued that the Liberation Day tariffs could be accommodated within the WTO and, in fact, that they could prove to be its saviour by inciting negotiations under Article XXVIII of GATT. We disagree. The Trump administration has thus far demonstrated no willingness to negotiate within the structure of the WTO. Past experience, as noted, also does not support a similar endeavour, as Article XXVIII negotiations are not wholesale negotiations; they are for renegotiating specific tariff lines. Most importantly, this instrument is meant to reestablish reciprocity by realigning tariffs. Reciprocity would be measured using the preexisting tariff levels as benchmark. For instance, if the US wanted to increase protectionist tariffs on textiles from five to 10 percent, it would be called on to reduce its protections in another area for the sake of reciprocity. Of course, the US does not want to realign its tariffs – it wants to increase them without compensating anyone affected.

Nevertheless, the best response to the claim raised by Hervé Jouanjean, Jennifer Hillman and Joost Pauwelyn (see footnote 25) was given by the USTR Jamieson Greer (see footnote 14) after the US-EU Turnberry deal. Paying no heed at all to WTO legal disciplines, he simply asserted that the “*ancient régime*” is obsolete, and pronounced the advent of the new “*fair and balanced*” scheme that the Trump administration is unilaterally attempting to impose. Even if it was to lose before a WTO panel, the US could always circumvent the ruling by appealing into the void. The policy choices of the Trump administration are thus, in recourse and in intent, unconstrained by WTO law.

²⁵ Hervé Jouanjean, Jennifer Hillman and Joost Pauwelyn, ‘How the US Reciprocal Plan Could Save the WTO’, *International Economic Law and Policy Blog*, 24 February 2025, <https://ielp.worldtradelaw.net/2025/02/how-the-us-reciprocal-tariff-plan-could-save-the-wto.html>.

2.2 US tariffs and US law

While some critical voices against the prolific use of Section 232 tariffs have been raised, the Trump administration has not suffered any major domestic pushback against its policies²⁶. Destler (2005) and Mutz (2021) have shown that both major US political parties have been generally aligned on trade policy over the last two to three decades²⁷. Private citizens, nonetheless, have contested the legality of tariffs under US law. Is it then likely that Liberation Day tariffs will soon be a thing of the past after intervention by the US judiciary? We believe not, and here is why.

While WTO law sets the benchmark to judge the legality of President Trump's actions as the international commitments that the US has adopted, under US law it is the doctrine of the separation of powers, embedded in the US Constitution and related documents, that serves as a benchmark. Responding to a complaint lodged against the Liberation Day tariffs, the Court of International Trade (CIT) – a US Federal Court – cast doubt on their legality. In its decision²⁸, the CIT found that President Trump had exceeded his authority when imposing the tariffs to address a national emergency, predicated on the constitutional doctrine of separation of powers. The CIT found that Section 122 of the Trade Act of 1974 limits the President's authority to impose tariffs for the purpose of addressing trade deficits through the International Emergency Economic Powers Act (IEEPA)²⁹. The President thus cannot impose tariffs when invoking the IEEPA. The same court issued an injunction.

The CIT decision was appealed before the CAFC (Court of Appeals for the Federal Circuit). The CAFC confirmed the CIT decision in substance. It found that the President could not have legitimately invoked the IEEPA to impose the Liberation Day tariffs, given that the text of the statute does not grant any power to impose them. It was slightly more nuanced, though: it held that the IEEPA confers powers on the President to regulate trade in times of emergency. Invoking the Yoshida precedent³⁰, the CAFC distinguished the 'Reciprocal' and 'Trafficking and Immigration Tariffs'³¹ from tariffs that were upheld in Yoshida arising under IEEPA's predecessor statute, the Trading with the Enemies Act (TWEA). It found that the more limited tariffs in Yoshida did not exceed the authority granted to President Richard Nixon

²⁶ Most vocal among them, US Senator Jacky Rosen issued a letter arguing that the Section 232 tariffs were running against the interests of US small and medium enterprises; however, no US Senator has defended the global trade order. See Office of Jacky Rosen, 'Rosen Statement on Trump's Cost-Raising Tariffs Going Into Effect', 1 August 2025, <https://www.rosen.senate.gov/2025/08/01/rosen-statement-on-trumps-cost-raising-tariffs-going-into-effect/>.

²⁷ Many of those who do oppose Trump's policies, like Michael Froman, still take issues with the relevance of MFN. See Michael Froman, 'After the Trade War', *Foreign Affairs*, 11 August 2025, <https://www.foreignaffairs.com/united-states/after-trade-war-michael-froman>.

²⁸ The CIT found that both the Liberation Day, as well as the 'trafficking' tariffs (eg the tariffs against Canada, China and Mexico for not effectively addressing the trafficking of opioids), violated US law as the President could not have invoked emergency powers under the International Emergency Economic Powers Act to impose them. See *V.O.S. Selections Inc., v. Donald J. Trump*, 25-1812, https://www.cafc.uscourts.gov/opinions-orders/25-1812.ORDER.5-29-2025_2522636.pdf.

²⁹ IEEPA refers to the International Emergency Economic Powers Act, a 1977 US federal law that authorises the president to regulate economic transactions after declaring a national emergency related to a foreign threat.

³⁰ *Yoshida Int'l v. United States*, 378 F. Supp. 1155, 1175–76 (Cust. Ct. 1974).

³¹ These are the two sets of tariffs imposed by President Trump. The reciprocal tariffs refer to the Liberation Day tariffs, and the court here was using the name that the Trump Administration had officially applied. The 'trafficking' tariffs were a more specific set targeting imports from China, Mexico and Canada because of their alleged roles in facilitating illegal immigration and fentanyl trafficking.

by TWEA. Conversely, the Reciprocal and Trafficking and Immigration Tariffs were unbounded in scope, amount, and duration. In other words, IEEPA may or may not authorise some tariffs, but it definitely does not authorise the Liberation Day tariffs. While both decisions agreed that there must be some limits on any tariffing authority under IEEPA, and that the Liberation Day tariffs did not fall within those limits, the CIT imposed a hard limit by way of the Trade Act, whereas the CAFC identified no principled limit at all. CAFC went on to remand the case back to CIT to decide on whether there was room to call for permanent injunction³².

Neither of the two US courts interpreted the term ‘emergency’. They still both alluded to the possibility that without a review of the President’s understanding of the term, abuses cannot be excluded. So, the two courts on the one underscored the need to interpret the term ‘emergency’ (in order to avoid abuses), but on the other refused to do so themselves. At the moment of writing, the US Supreme Court has agreed to hear the case in November 2025. A decision will realistically not be issued before 2026, and may be delayed until summer 2026. Several questions make it hard to predict its decision: will it base its decision on an interpretation of the term ‘emergency’ (US courts have rarely done this in the past), or will it instead aim to understand whether the IEEPA includes powers to impose tariffs? Or will it do both, providing a comprehensive resolution of the dispute? Will it follow the argument of the CAFC and try to distil whether, in emergency situations, the President can impose some tariffs – but of what magnitude?

Even if the Supreme Court curtails his powers, President Trump could still impose tariffs through different methods, though he might not end up as close to his desired outcome. Section 122 of the Trade Act³³ is the most promising avenue: it allows the President to impose duties of up to 15 percent or quotas for up to 150 days on imports from all countries, or selectively against countries that maintain unjustifiable or unreasonable restrictions on US commerce. If triggered, Trump could then supplement it after the 150-day cutoff with actions under Section 301³⁴. Still, neither of these two acts would guarantee the same horizontal impact of the Liberation Day tariffs if they were upheld under the IEEPA.

³² The CIT could still decide on an injunction, but it is quite doubtful that this will be the case. Between the CIT and CAFC decisions, the US Supreme Court in *CASA v. Trump* [606 U.S. 2025, https://www.supremecourt.gov/opinions/24pdf/24a884_8n59.pdf] made it almost impossible for Federal Courts to issue nation-wide injunction relief. Instead of universal relief, Federal Courts are to provide ‘complete relief’ only to the specific plaintiffs who have standing in the case before them. Thus, they can only address the specific harm suffered by the actual parties to the litigation. Litigants seeking to affect a larger group of people must pursue their claims as a class action under Federal Rule of Civil Procedure 23. Of course, all this might be a pure academic discussion, as the Supreme Court could step in to stay an injunction until it has decided itself in definitive manner. See *CASA v. Trump* [606 US 2025] https://www.supremecourt.gov/opinions/24pdf/24a884_8n59.pdf. Pabis (2025) provided an excellent and succinct account of this litigation.

³³ Section 122 of the Trade Act of 1974 gives the President the authority to impose a temporary tariff of up to 15 percent for up to 150 days to address “*large and serious United States balance-of-payments deficits*”.

³⁴ Section 301 of the Trade Act of 1974 [1974] [Public Law 93-618], <https://www.congress.gov/crs-product/IF11346>.

2.3 Unconstrained (*de facto*) by law

It is not the aim of this paper to delve into why deals were signed³⁵. They are there, and the higher tariffs agreed in these deals are likely to stay for some time, even if the US Supreme Court judges the Trump administration's actions under the IEEPA to be unconstitutional. Our analysis shows that it is unlikely that they will be rolled back for legal reasons. On the other hand, if the higher tariffs and deals do meet the stated objectives – a highly unlikely proposition³⁶ – the Trump administration will still claim victory over the critics and keep them in place: even marginally achieving their stated targets would provide the Trump administration with enough ammunition to present its policies as successful.

The second Trump administration has not, like the first, openly threatened departure from the WTO³⁷, and thus we should be prepared for a world with the WTO and US tariffs simultaneously in place. And more tariffs are on their way. While litigation regarding the legality of Liberation Day tariffs is pending before the Supreme Court, at the time of writing the Trump administration has launched two new Section 232 investigations covering a wide range of products³⁸. Unsurprisingly, most analysts agree that the tariffs are here to stay³⁹. If any confirmation was needed, USTR Greer (2025) stated it in so many words: *"It took over 50 years from that first meeting at Bretton Woods until the creation of the W.T.O. It has been 30 years since. Fewer than 130 days from the beginning of the Trump Round, the Turnberry system is by no means complete, but its construction is well underway E"*.

³⁵ EU trade officials went on record stating that the 'deal' they signed with the US had nothing to do with economics. See Janan Ganesh, 'Europe's Necessary Appeasement of Donald Trump', *The Financial Times*, 24 September 2025, <https://www.ft.com/content/7d4866b6-28a9-4e69-9288-4e970447ffe7>.

³⁶ See Joseph Gagnon, 'Why Higher Tariffs Won't Shrink the Trade Deficit', *Realtime Economics*, 24 February 2025, Peterson Institute for International Economics, <https://www.piie.com/blogs/realtime-economics/2025/why-higher-tariffs-wont-shrink-trade-deficit>.

³⁷ Woodward (2020) included in his account of the Trump Presidency the following dialogue between President Trump and WTO Director-General Roberto Azevêdo (p. 225): *"Roberto, you treat us very badly. The United States is considered this very wealthy place, and China is considered a developing nation, and India's a developing nation. If you're a developing nation, you get things that nobody else will get. We're going to be a developing nation. When Azevedo protested, Trump said 'Here's what I'm doing. I'm pulling out of the World Trade Organization'"*.

³⁸ US Department of Commerce 'Notice of Request for Public Comments on Section 232 National Security Investigation', Docket No. 250924-0160, 26 September 2025, <https://public-inspection.federalregister.gov/2025-18729.pdf>; US Department of Commerce 'Notice of Request for Public Comments on Section 232 National Security Investigation', Docket No. 250924-0161, 26 September 2025, <https://public-inspection.federalregister.gov/2025-18749.pdf>.

³⁹ For example, Harry Murphy Cruise, 'The Future of Trade: Tariffs, Taxes, and Economic Trends', *Oxford Economics Blog*, 5 August 2025, <https://www.oxfordeconomics.com/resource/key-insights-on-trade-tariffs-and-import-taxes/>, and Alan Wolff, 'Are Trump's Tariffs a Path to a New World Trade Order?', *Realtime Economics*, 11 August 2025, Peterson Institute for International Economics, <https://www.piie.com/blogs/realtime-economics/2025/are-trumps-tariffs-path-new-world-trade-order>. They add that President Trump has not established a new trade order but has simply set requirements for dealing with the US.

3 The way forwards (or backwards): preferences and policy options

Nations sign trade agreements to create certainty about the cost of transacting, as Handley and Limão (2017), among others, have argued – not for the opposite purpose. As the Trump administration keeps inventing new reasons to impose additional tariffs, either sector-specific or across the board, uncertainty looms.

European Commission President Ursula von der Leyen hailed the EU's deal with the US, going so far as to state that *"today's deal creates certainty in uncertain times"*⁴⁰. But the EU and the US did not sign a formal, binding, international agreement enumerating the responsibilities of the transacting parties in case of breach. All von der Leyen can count on is the word of President Trump. Experience suggests that new tariffs might be imposed for new reasons (extensive margin), and that the level of tariffs agreed might be increased again if the current measures do not produce the expected effects (intensive margin). Neither of these risks are small. Deficits, for one, might reappear unless the consumption to savings ratio has been addressed. What if the current deals do not, for example, reduce the deficit to the satisfaction of the US? How can anyone, under the circumstances, speak of certainty?

Consider: initially the US imposed higher tariffs to reduce its deficit, to incite investment in the US and to replace tax income. Later tariffs were imposed to address the perceived unfair treatment of the former president of Brazil Jair Bolsonaro, to punish those buying too much oil from Russia, or to threaten punishment for those recognising the Palestinian state. The reasons for imposing tariffs risk being extended further. There are inconsistencies, too: India is being punished for buying Russian oil, but the EU is not; neither the UK nor France were threatened with additional tariffs for recognising a Palestinian state either.

A look into the Trade Policy Uncertainty (TPU) Index is quite telling in this respect⁴¹. More uncertainty should, all things being equal, lead to more trade contraction. Can the WTO still play a role? Adherence to its rules-based system provides certainty in international transactions. Can Trump's 'Turnberry system' do that? Can it prove to be the WTO-ersatz?

⁴⁰ European Commission, 'Statement by President von der Leyen on the deal on tariffs and trade with the United States', 27 July 2025, https://ec.europa.eu/commission/presscorner/detail/de/statement_25_1915.

⁴¹ This Index measures the level of uncertainty surrounding trade policy by tracking the frequency of news articles that mention both 'trade policy' and 'uncertainty' keywords. It was developed by Federal Reserve economists, and helps to gauge the potential impact of trade policy uncertainty on the economy. See Policy Uncertainty website at https://www.policyuncertainty.com/trade_uncertainty.html.

3.1 Tariffs and deals under the WTO's roof: an uneasy relationship (with no end in sight)

As things stand, some WTO members – especially those that have signed trade deals with the US – think that these deals and the WTO can coexist. The same may be true for those that are now facing higher tariffs when exporting to the US, as they have so far not taken action against it. In this scenario, members are likely to tolerate higher tariffs and US-dictated deals for as long as they last, while continuing to go about their other WTO business as usual.

After all, the WTO does not know of *ex-officio* complaints. It operates a decentralised system of enforcement that was put into place with the advent of the DSU. This perspective seems realistic, since the US does not for now question its ongoing participation in the WTO. For some time, it seemed that the Trump administration was wavering on leaving the WTO, though it never formally announced its withdrawal. The appointment in July 2025 of Jennifer D.J. Nordquist⁴² at the WTO to cover the post of Deputy-Director General is evidence that the US administration entertains no thoughts of quitting.

But the current US Administration is not consistent. On 29 August 2025 (just a month after Nordquist's appointment), the US announced that it will stop paying its contributions to the WTO. The WTO annual budget is largely financed from contributions by its members⁴³, calculated based on each member's share of international trade⁴⁴. It is easy to understand why the US' contribution matters, as the US is one of the world's largest exporters. The White House adopted a 'rescission package', stating that it would stop funding some international organisations, including the WTO, *"that do not support major US policies or priorities or have been operating contrary to American interests for many years. This account funded: E \$29 million to the toothless World Trade Organization (WTO), which has for decades aided and abetted global trade cheating by the Chinese Communist party"*⁴⁵.

"Aided and abetted global cheating" are harsh words, indeed. The Trump administration was following in the footsteps of the Biden administration, which had also not paid the annual contribution to the WTO during its final year – though without using similar language⁴⁶. Note that non-payment of dues does

⁴² World Trade Organization news of 28 July 2025, 'DG Okonjo-Iweala appoints new Deputy Director-General', https://www.wto.org/english/news_e/news25_e/ddgno_28jul25_e.htm.

⁴³ The US has also been strengthening its critique of the WTO Secretariat for overstepping its mandate without, however, offering persuasive arguments to substantiate its claims. See James Bacchus, 'Another Misguided US Attack on the WTO', *Cato at Liberty*, 28 March 2025, Cato Institute, <https://www.cato.org/blog/another-misguided-us-attack-world-trade-organization>. See also WTO Doc. G/C/M/150 of 27 January 2025 at pp. 81, <https://tradeconcerns.wto.org/en/stcs/details?imsId=189&domainId=CTG>.

⁴⁴ See the WTO Secretariat Budget for 2025 website: https://www.wto.org/english/thewto_e/secret_e/budget_e.htm.

⁴⁵ White House, 'Historic Pocket Rescission Package Eliminates Woke, Weaponized, and Wasteful Spending', 29 August 2025, <https://www.whitehouse.gov/briefings-statements/2025/08/historic-pocket-rescission-package-eliminates-woke-weaponized-and-wasteful-spending/>.

⁴⁶ There are no provisions in the WTO Financial Regulations (WTO doc. WT/L/156/Rev. 4 of 2 February 2023) to expel members that are in arrears with their payments. Only the Administrative Measures mentioned in Annex B of the quoted document can be applied. The severity of sanctions escalates as they fall further behind with their payments. After the third year that they have been in arrears, members will be designated 'Inactive'. But this does not mean that they cannot vote (and thus block consensus). The most severe penalty is that a defaulting member cannot have its delegates chair WTO committees – hardly a threat for those defaulting. The list of members in arrears is read out at the end of every General Council meeting. It is also reflected in the minutes of the meetings. This is some form of 'name and shame', but it has hardly been effective. The personal engagement by former Directors-General of the WTO, who raised the issue in bilateral meetings

not lead to exclusion⁴⁷. Regardless, a few days after being first issued, the rescission package was revised without much fanfare, this time not listing the WTO among the organisations to which the US would stop paying its agreed contributions⁴⁸. For now, the US is a member of the WTO with no stated intention to withdraw from the organisation.

No one can predict for sure whether the US has definitively decided to turn the page. In fact, while has not threatened withdrawal in the weeks prior to the publication of this paper, it does not behave in WTO-consistent manner either. The continued implementation of its Liberation Day tariffs is the best proof of this. Is it sustainable, though, to continue participating in an organisation in which 165 members respect MFN rules when transacting with each other, but not when transacting with the 166th member (which happens to be the largest one)? For how long can this continue? If WTO members take the view that the present is a mayfly, a temporary aberration, then such an attitude could be justified. But can anyone vouch that the Turnberry system will soon be no more?

We mentioned above the disputes that Brazil, Canada and China have initiated against the US at the WTO. The US, however, does not seem to care much about its WTO obligations at this stage, and one can assume that it will appeal to the void should there be a panel report against it. But this is not the only recourse these countries have. Brazil (or Canada, or China, or anyone who has not made a trade deal with the US) could also initiate a complaint against the EU, UK or anyone who has undertaken WTO-inconsistent commitments⁴⁹. What is the guarantee that Brazil will sit back and accept not only the higher US tariffs, but also the alienation of its MFN rights in the EU market as a result of the EU deal with the US? Recall that those who made deals with the US condoned WTO-noncompliant actions, including by opening their market on non-MFN basis to the US.

In case of a complaint against it, the EU would have the choice to appeal into the void or face countermeasures – assuming that they would prefer not to jeopardise their trade deal with the US. But this choice is not altogether safe, either. Brazil, Canada and China are Multi-Party Interim Appeal Arbitration Arrangement (MPIA) members⁵⁰: their appeals can be hosted outside of the main appeals process. This means that the EU, the UK and other members will have to accept the imposition of

with ministers of defaulting members, is probably the most effective way to persuade a defaulting member to pay up. It is doubtful that this would work in the present circumstances.

⁴⁷ The European Commission has lost no time in proposing the tariff reductions necessary to honour the deal struck with the US. See European Commission press release of 28 August 2025, 'EU proposes tariff reductions to implement EU-US deal', https://ec.europa.eu/commission/presscorner/detail/de/ip_25_1993.

⁴⁸ See White House from 29 August 2025 (footnote 45). See also Olivia Le Poidevin, Andrea Shalal and Emma Farge, 'White House drops World Trade Organization from list of funding cuts', *Reuters*, 4 September 2025, <https://www.reuters.com/world/white-house-drops-world-trade-organization-list-funding-cuts-2025-09-04/>.

⁴⁹ We read, for example, in §1 of the Joint Statement between the US and the EU "[E.] that the European Union intends to eliminate all tariffs on U.S. industrial goods". §4 of the same document refers to rules of origin that the two partners will negotiate to ensure that benefits under their deal will accrue predominantly [*sic*] to the US and the EU. See European Commission, 'Joint Statement on a United States-European Union framework on an agreement on reciprocal, fair and balanced trade', 21 August 2025, https://policy.trade.ec.europa.eu/news/joint-statement-united-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21_en.

⁵⁰ The Multi-Party Interim Appeal Arbitration Arrangement (MPIA) is an agreement among several WTO members to provide an interim appellate mechanism for disputes, as the WTO's Appellate Body is currently unable to function. The MPIA is based on Article 25 of the DSU.

countermeasures against them if they continue to honour their deal with the US. The attitude of those affected by the non-MFN deals is a risk factor for the stability of the current, precarious equilibrium.

Another risk factor is an obstructive attitude on the part of the US. Why would the US allow the value of its current strategy to be eroded by further liberalisation? What would be the interest for the US in standing by and allowing deeper integration across the rest of the world, risking the evisceration of its deals⁵¹? In this vein, one should not discard the fact that it is the US that is judge, jury and executioner of these trade deals. Borrowing from Olson (1993), we could go so far as to state that we are observing the emergence of a 'roving bandit', uninterested in investing in the current regime and quite willing to extract as much value as possible from its partners for as long as it has the power to do so. Being the self-proclaimed judge, jury and executioner of these trade deals, what would stop the US from turning the tables once again in the future if the deals do not yield the expected outcome?

Thus, to guarantee the longevity of the current *status quo*, the WTO membership would need to enforce the deals and simultaneously agree to non-enforcement of their WTO rights, while accepting the exorbitant privilege of the US administration to decide whether the terms of the bargain have been honoured. This would mean that members will not only avoid challenging the US, but also each other, for violating MFN. If challenges do occur, those who will suffer most will be the 'small fish'; that is, the members of MPIA with little bargaining power that will be called to face countermeasures. These members might be eventually called on to accept the imposition of countermeasures against them if they want to continue honouring their 'deal' with the US⁵².

The lack of stability inherent in the current situation was perfectly illustrated in the case of DS641⁵³. China submitted a dispute against Canada because the latter introduced a tariff quota and imposed a surtax on steel products. Arguably, Canada did that to address steel over-capacity. It is quite clear though, that President Trump's aggressive policy on steel (which led to high tariffs on various steel products) exacerbated the problem. Canada, in its attempt to cut its losses, engaged in beggar-thy-neighbour tactics and imposed part of the cost on innocent bystanders, ie its trading partners. China reacted by lodging a dispute. Others might follow.

Finally, even if we assume that somehow everyone will show maximum tolerance, those who still have faith in the WTO's function risk losing interest in the organisation if the current status quo is prolonged. For how much can the WTO achieve under the circumstances, with the US unwilling to support multilateral solutions? How will the WTO legislate non-discriminatory trade liberalisation when one of

⁵¹ Mexico has been weighing the pros and cons of imposing tariffs on non-FTA partners. See David Alire Garcia and Amy Stillman, 'Mexico Weighs Tariffs on China, Others Without Trade Deal (1)', *Daily Tax Report*, 5 September 2025, <https://news.bloombergtax.com/daily-tax-report/mexico-weighs-tariffs-on-china-other-nations-without-trade-deal>. If this happened, then we might be witnessing a domino effect on tariff re-alignment. This sort of behaviour is yet another risk factor casting doubt on the longevity of the current *status quo*.

⁵² The Philippines, for example, applies an MFN rate of 20 percent on motor cars coming under HS 877021010. It imposes a five percent duty on its imports originating in FTAs it has signed with WTO members (WTO Tariff & Trade Data, Integrated Database and Consolidated Tariff Schedules). And it agreed to apply zero percent duty on imports of US motor cars.

⁵³ WTO, 'DS641: Canada — Surtax and Tariff Rate Quotas on Imports of Certain Steel and Aluminium Goods, Including Goods Containing Chinese-Origin Inputs', https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds641_e.htm.

its key members opposes it? And why would 165 trading nations continue to commit to an under-performing institution? Why would they invest in it⁵⁴? WTO DG Okonjo-Iweala put it succinctly in the following terms: “*the status quo is not an option*”⁵⁵.

It is clear that the WTO needs reform. Its foundational documents need rewriting to address issues including the role of the state in the market, the collective effort to address global challenges such as climate change and the continuing quest for development. It needs to address the crisis of the Appellate Body being in abeyance for six years and counting. But it can only do that if its members agree that it is a forum worth investing in. The last thing the WTO needs at this stage is further undermining of its authority. The WTO is one of the last global organisations in which global solutions to global problems should and could be sought. Alas, the very founder of the regime, the US, is turning its back on multilateralism, and there is no obvious substitute for the leadership gap that it is leaving behind.

A genuine ‘Kindleberger trap’ is arising: theorists predict that, in the absence of an engaged hegemon, as Kindleberger (1973) understood the term, none of the three global powers (China, the EU and the US) has the incentive to assume the requisite cost and lead negotiations on the establishment of a new and much-needed international order. Carvalho *et al* (2025), in an excellent study, explained that, at best, each of them would be incentivised to be a free-rider on the others’ efforts.

This is roughly the current situation, with China, the US and the EU being almost equally pre-eminent in the trade sphere. Each of them acting separately risks a hostile reaction by the other two, especially given differences in their worldview on international trade. They face a competitive fringe, in other words.

As per Kindleberger, a hegemon only has the incentive to create a rules-based system; maintaining it in a multipolar world, after the hegemon ceases to enjoy its privileged position, could happen through the concerted efforts of other nations who see it in their interest to continue their cooperation⁵⁶. This much, in the absence of empirical proof so far, could be true in the realm of a real, multipolar world. In the context of the current bipolar (or tripolar) world, though, in which the leading countries all have market power, keeping a rules-based regime afloat can be harder, as each of the leading nations has the power to influence the regime, to some extent, to its advantage. The analysis by Carvalho *et al* (2025) goes against the idea that, even in the absence of a hegemon, a collective hegemony (that is, the idea that two or three states can cooperate to sustain the order that the progressively weakened hegemon has established) is possible. At the very least, Carvalho *et al* (2025) qualify this idea by

⁵⁴ Interestingly, Helpman (2025) noted that trade within the ‘China bloc’ and within the ‘US bloc’ (assuming we can speak of two blocs) is increasing faster than international trade in general.

⁵⁵ Ngozi Okonjo-Iweala, ‘A Stress Test for the WTO’, *The Financial Times*, 4 September 2025, <https://www.ft.com/content/344ef0a3-eb77-4edb-abc0-48b167546f37>.

⁵⁶ Referring here to the work of Keohane (1984) and Snidal (1985).

pointing to the lack of incentives for any of the two or three leading players to invest in keeping (and updating) the existing the regime.

Carvalho *et al* (2025) do not hypothesise about what replaces multilateralism. The re-regionalisation of trade emerges as possibility. So, what are the options if Okonjo-Iweala's statement (see footnote 55) about the non-sustainability of the status quo is proved right? We see two: a return to the spirit of multilateralism as reflected in the WTO of 1995 (or even the GATT as it evolved through the years), or a farewell to multilateralism and the espousal of regionalised trade. These are outlined next.

3.2 Return to multilateralism

A return to the WTO as it was originally planned is possible only if the US decides to forego its new approach to trade deals. Otherwise, it is the US that should walk out – there is no other way. To save the WTO and preserve the spirit of multilateralism, the US and the WTO would have to part ways if the US does not change its attitude⁵⁷. However, this does not seem to be the US's wish. The WTO membership could provoke a 'USexit' by invoking Article 60 of the Vienna Convention on the Law of Treaties, and asking the US to leave the organisation for failing to observe the most fundamental obligations of the organisation⁵⁸. A unanimous decision by the membership on this seems unlikely, as Howse (2025) correctly observed; as a result, this option is a long shot.

Members could attempt a last-ditch negotiation to bring the US back to the multilateral house, and they should be prepared to amend the WTO's rules in order to lure the US back to the spirit of multilateralism. The red line should be the MFN principle. In this context, it would be advisable to distinguish between a short-term agenda that would make it palatable for the US to reverse course and a medium-term agenda that would benefit the institution at large.

The initial agenda should take care of the US's legitimate (or half-legitimate) concerns. The introduction, for example, of flexibility in the current Safeguards Agreement is long overdue, as Sykes (2006) argued⁵⁹. In similar vein, bringing in an antitrust framework for crisis cartels⁶⁰ to address the over-supply of steel products could also go some way in persuading trading nations that the world trading system can still deliver.

⁵⁷ As argued by Anne O. Krueger, 'Trump's Tariffs Chaos Could Reverse 80 Years of Economic Progress', *The Project Syndicate*, 23 April 2025, <https://www.project-syndicate.org/commentary/international-community-must-unite-against-american-protectionism-by-anne-o-krueger-2025-04>; and Kristen Hopewell, 'To Save the Global Economy Kick the US Out of the WTO', *Politico*, 7 July 2025, <https://www.politico.eu/article/to-save-the-global-economy-kick-the-us-out-the-world-trade-organization/>. See also Horn and Mavroidis (2025).

⁵⁸ See the discussion of this provision in Horn and Mavroidis (2025) and Howse (2025).

⁵⁹ The WTO Safeguards Agreement (https://www.wto.org/english/docs_e/legal_e/sg_e.htm) allows signatories to temporarily close their markets when facing unanticipated volumes of imports. Alas, case law has interpreted it in very strict manner, making recourse to this instrument almost impossible. A 'flexibilisation' of the current regime would help address the concern of the US that it should be able to close its market whenever warranted, without being subjected to onerous countermeasures.

⁶⁰ Crisis cartel refers to the collaboration between government and private sector, or even between organisations, during unprecedented conditions (eg an economic crisis) to counter the effect of disruption.

To sweeten the multilateral lure further, the members could mull over the wisdom of Compulsory Third-Party Adjudication (CTPA). The US was behind the idea of amending the GATT and introducing CTPA in the world trading system in the form of Article 23.2 of the DSU, during the Uruguay Round negotiations (1986-1994). Things have changed, and it is unlikely that they will change back, as the US seems to be generally averse to international adjudication. Why not emulate the International Court of Justice regime and provide the members with discretion with respect to accepting CTPA (on reciprocity grounds). This is, of course, a second-best solution, but probably a price worth paying if it proves enough to persuade the US to abandon unilateralism and return to the WTO house⁶¹. In line with Tucker's (2022) apt suggestion, adherence to the WTO should be accompanied by a pledge to never aggress other members. '*Doux commerce*' should find its institutional home by contract, since it could not do so by custom.

The medium-run agenda should aim to update and modernise the WTO. The renegotiation of the WTO Subsidies Agreement should be a priority: as it stands now, this is largely an outdated agreement. It contains no safe havens for subsidies that provide public goods. It is further quite inappropriate for dealing with global value chains. The same could be said about 'economic security', a concept that has emerged as a key concern for many trading nations. The discussion on the link between trade on the one hand, and development and environment on the other, should start in earnest this time. It would be wise in this context to introduce changes in the current regime that would facilitate recourse to variable geometry.

3.3 Farewell to the WTO – in search of new pastures

Commission President Von der Leyen recently called for a rapprochement between the EU and the signatories of Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), with the goal of establishing an international trade framework⁶². While clearly not seen as alternative to the WTO, a rapprochement seems necessary to reinforce the multilateral spirit that the overwhelming majority of trading nations still abide by. Similar thinking has been developing in various circles for some time now, and the Trump administration's tactics have accelerated it.

The WTO has long been in dire straits. The CTPA has been paralysed, but most importantly, its legislative function is moribund. At the current juncture, when the key impediments are internal barriers, like-mindedness is crucial to successful trade integration. Like-mindedness, in turn, is a function of preferences, priorities and the capacity to act. The sub-Saharan Africans might be as concerned as Sweden or Norway about climate change. Their priority, however, is to address malnutrition at home.

⁶¹ Mavroidis (2022a) provided a succinct account of the negotiating history of the DSU, paying particular attention to the role of the US, a catalyst by any reasonable benchmark in this context.

⁶² CPTPP is a free trade agreement between 12 countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United Kingdom and Vietnam. See European Commission press release of 23 June 2025, 'Joint read-out from the meeting between President von der Leyen and Prime Minister Luxon', https://ec.europa.eu/commission/presscorner/detail/en/read_25_1593.

The WTO is no club for like-minded players anymore, and the trading community has painfully realised that heterogeneity and deep integration of their club is a zero-sum game.

The second Trump administration has added a new dimension to this discussion. The country that commentators considered to be a key player in moving trade integration further and faster has, for some time now, decided to disengage from WTO affairs. Those who still believe that they can and should go further and faster in advancing multilateralism could decide to form a new club. The EU-CPTPP rapprochement is an example of this discussion⁶³, and can operate in the background of the WTO. If the WTO falls into complete paralysis because of the attitude of the current US administration, it will be for the EU-CPTPP leaders to decide whether they will attempt to weather the crisis or simply move to new pastures. For now, the thinking in Brussels is that the EU-CPTPP is a complement and not a substitute to the WTO⁶⁴.

Judging by the GATT experience⁶⁵, it is probably wiser to start with the EU-CPTPP structure before opening up to, at the very least, some key G20 members that would like to come aboard. A move along these lines would likely anger the US. The EU-CPTPP forum together represents over 30 percent of global GDP and close to 50 percent of international trade⁶⁶. This fact alone might persuade them to build the alliance that they did not build on 2 April 2025, when the Liberation Day tariffs were announced.

The consensus rule was the key legitimising force in the GATT era. In the current geopolitical situation, it has become hostage to the exercise of veto power. Uninhibited by the shackles of consensus-based rule that apply in the WTO, the leaders of countries that still believe in reciprocity, *ex ante* and not *ex post*, could charge ahead with a new institution. Of course, this could be achieved even while keeping the WTO open for business in Geneva. However, the policy-relevant decisions will have *de facto* migrated elsewhere.

⁶³ But recall that the analysis by Carvalho *et al* (2025) cast doubt on whether an EU-CPTPP coalition would be incentivised to invest in a new global regime. It seems likelier that this will become a 'club' agreement, which willing players might join.

⁶⁴ See Ursula von der Leyen, '2025 State of the Union Address', 10 September 2025, https://ec.europa.eu/commission/presscorner/detail/en/speech_25_2053.

⁶⁵ Irwin *et al* (2008) argued persuasively that the like-mindedness of participants was key to the successful negotiation of a trade-cum-security agreement that probably seemed unattainable a few months before the negotiation had started.

⁶⁶ Calculated using WTO membership fees as a proxy. Using the same calculation methodology, the US represents approximately 11.5 percent of world trade.

4. All is not yet lost (or is it?)

Reinert (2023) warned forcefully about the risks associated with economic nationalism and the ensuing decline of global cooperation. A lack of international cooperation risks negative spillovers beyond international trade. This is certainly a graver risk⁶⁷.

Since the establishment of the multilateral trade order, the big players have largely led by example. Indeed, the success of the regime is largely due to their unwavering support and commitment. The US not only led the effort to found the initial regime but was instrumental in updating and strengthening it. Some eyebrows were raised in 1971 when President Nixon imposed a tariff surcharge, but any parallels with the current situation are misguided. At the time, the US was facing a true emergency as the Bretton Woods system of fixed parities was becoming increasingly untenable. A more suitable comparison would be the extensive recourse by the US to Section 301 during the last years of the Reagan administration, a policy that his successor George H.W. Bush did not halt. Legitimately annoyed with the EU's refusal to adopt a series of GATT panels condemning the Common Agricultural Policy, the US retaliated unilaterally⁶⁸. Nonetheless, legitimate annoyance does not amount *ipso facto* to legality.

The US subsequently used sticks and no carrots asking Brazil, India, Japan and a few other countries to open up their services markets and guarantee a certain level of protection for intellectual property rights. Bhagwati (1990) provided an excellent analysis of the perils of unilateralism, but the US remained tone-deaf. During the Uruguay Round (1986-1994), it equally pursued its agenda to establish a multilateral compulsory third-party adjudication regime. The *quid pro quo* for abandoning unilateralism for the US was the advent of three new WTO Agreements: the General Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Dispute Settlement Understanding. The US, in other words, used its bargaining power to deepen and expand the multilateral trading order.

That was then – it surely is not now. The second Trump administration is using its bargaining power to undo the multilateral trading order as we knew it and to erect new barriers to trade. The MFN is certainly a constraint for players with substantial bargaining power. They cannot profit enough from bargaining power asymmetries, and free-riding can and does occur⁶⁹. But the US leaders in the period

⁶⁷ The unravelling of cooperation does not necessarily entail the elimination of blocs; see Gideon Rachman, 'The relationship between Xi and Putin is built to last', *The Financial Times*, 20 May 2024, <https://www.ft.com/content/6459a746-e11e-4340-9cb5-ae3ebaa23e0e>. Goddard (2025) argued that in President Trump's conception of things, three blocs should emerge out of the destruction of the multilateral order, one led by the US, one by Russia and one by China. It is of course, hard to predict what happens next, but the signals that the current US administration sends to denote its dissatisfaction with the current international order are both loud and clear.

⁶⁸ Mavroidis (2022b) provided the full list of disputes in which the US prevailed, and when faced with intransigence (since the European Economic Community as it was then known refused to adopt the reports), the US had recourse to unilateral retaliation by increasing its duties in a series of products of interest to key European lobbies.

⁶⁹ Bagwell and Staiger (2004) astutely observed that there are mechanisms built into the GATT/WTO legal system which aim to reduce the potential for free-riding, but they also conceded that these mechanisms reduce but do not eliminate free-riding.

immediately following the Second World War had learned the lessons of isolationism, having experienced the consequences of the disastrous Smoot-Hawley Tariff Act. The Roosevelt and Truman administrations were prepared to assume the requisite cost and establish a rules-based system that would provide stability and keep trading nations together.

This is not the case anymore. The second Trump administration is exploiting its power asymmetry to achieve an outcome in the short term that risks upending the order built. There should be no illusion that the collateral damage of the current policies is not limited to fewer trade opportunities for those who face higher tariffs, as well as those who rushed to make a deal with the US. This is a blow to the rules-based system.

Will genuine reform that preserves the spirit of the Bretton Woods institutions ever take place with the US inside the multilateral house? It seems increasingly likely that we are headed towards decoupling and segmented markets. The only unknown is whether the WTO will still be around when and if the spirit for a global accord returns in the key capitals of the world. Our preferred solution would be for a return to the WTO along the lines discussed in section 3.2. Alas, this looks increasingly unrealistic. It seems that the realpolitik choice is between a farewell to the WTO and finding room for the US's new trade deals under its roof. The difference between the two is that the former leads to the WTO's demise in one decisive strike. The latter option is best described as 'Chinese torture or death by a thousand cuts (or deals)'.

Just before this paper was written, President Trump announced a new flurry of duties on pharma products, big trucks, kitchen cabinets and bathroom vanities, all in the name of national security⁷⁰. Nowadays the rest of the world is left to react. The EU first announced that it planned tariffs on Chinese steel imports⁷¹, followed by Taiwan's announcement that it would curb exports of semiconductors to South Africa⁷². Russia announced its decision to block exports of petrol⁷³ and China of electric vehicles⁷⁴. It seems that the world, in the name of geopolitics, has opened the Pandora's Box of trade uncertainty. There is nothing the WTO can do about any of these initiatives, unless its members decide to complain about it. But, so far, none have. The trade order established in 1948 and strengthened in 1995 is being replaced by disorder – a situation in which order has no place at all. Will the 'adults in the

⁷⁰ Ana Swanson, Rebecca Robbins and Peter Eavis, 'Trump Will Slap Tariffs on Imported Drugs, Trucks and Household Furnishings', *New York Times*, 26 September 2025, <https://www.nytimes.com/2025/09/25/business/economy/trump-tariffs-pharmaceuticals-furniture-trucks.html>.

⁷¹ *Reuters*, 'EU plans 25% to 50% tariffs on Chinese steel, related products, Handelsblatt reports', 26 September 2025, <https://www.reuters.com/world/china/eu-plans-tariffs-25-50-chinese-steel-related-products-handelsblatt-reports-2025-09-25/>.

⁷² Debby Wu, Yian Lee, Antony Sguazzin and Loni Prinsloo, 'Taiwan Pauses South African Chip Export Curbs After Two Days', *Bloomberg News*, 25 September 2025, <https://www.bloomberg.com/news/articles/2025-09-25/taiwan-suspends-south-africa-chip-export-curbs-after-two-days>.

⁷³ *Reuters*, 'Russia to partially ban diesel exports, extend gasoline restrictions after Ukrainian drone attacks', 25 September 2025, <https://www.reuters.com/business/energy/russia-plans-partially-ban-diesel-exports-until-end-2025-ifx-reports-2025-09-25/>.

⁷⁴ Danny Lee and Wilfried Eckl-Dorna, 'China Tightens EV Export Rules With Permits Required in 2026', *Bloomberg News*, 26 September 2025, <https://www.bloomberg.com/news/articles/2025-09-26/china-tightens-ev-export-rules-with-permits-required-from-2026>.

room' stand aside alike Nero and watch Rome surrender to the flames, or will they do something about it? It remains to be seen.

In his acceptance speech for the presidential nomination at the Democratic National Convention in 1952 in Chicago, Adlai Stevenson said⁷⁵:

When the tumult and the shouting die, when the bands are gone and the lights are dimmed, there is the stark reality of responsibility.

May this spirit guide the leaders called to decide the future of multilateralism.

⁷⁵ Adlai Stevenson, 'Address Accepting the Presidential Nomination at the Democratic National Convention in Chicago', *The American Presidency Project*, 26 July 1952, <https://www.presidency.ucsb.edu/documents/address-accepting-the-presidential-nomination-the-democratic-national-convention-chicago-0>.

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Bruegel, Rue de la Charité 33, B-1210 Brussels
[+32] 2 227 4210
info@bruegel.org
www.bruegel.org