

Building World Trade Resilience In a Time of Uncertainty

Remarks

Alan Wm. Wolff

Senior Fellow

Peterson Institute for International Economics

WEF Chief Legal Officer Community

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The current state of international trade relations

13% of world trade, that part that the United States accounts for, is now characterized by substantial **uncertainty**. The threat level for engaging in trade with the United States is very high. This is true for any individual company. Ask Apple or Huawei. For many small businesses, it is also very high. Profit margins may not permit survival in the face of new tariffs. For entire large industries serving the US market, the level of uncertainty is high. Ask the automobile companies with factories in Germany, Korea, Japan and Canada. The current generally applicable US tariff on imports from China is 49%. What that rate will be in month, or a year is unknown. Most recently, the US has threatened imports from the European Union with an additional 50% tariff. Tariffs may be raised by sector as well. At risk are US imports of automobiles, semiconductors, smart phones, copper, critical minerals, lumber, pharmaceuticals, and other sectors which may be added to the list at any time.

The uncertainties have a limit, however. The risk for trade with the US is only medium, not high, because the financial markets will not tolerate all of the threatened tariffs being imposed together. Therefore, the worst probably will not happen, not to all US trade, and not at the levels announced on April 2nd. This is small solace. For the businesses, industries and countries under threat, instead rather than certainty, what is of offer from the US is not a return to adherence to the rules of the world trading system, but an invitation to play Russian Roulette.

If there is consistency, it is worth remembering that Mr. Trump ran for president on the promise of tariffs worldwide of 10% and a 60% level for China. This seems to be the direction that policy is now tending.

Having agency

The challenge for international business is to make this situation somewhat better. Trading partners are trying to negotiate with the United States government but there is no complete assurance that any negotiated outcome will hold firm. A priority for international companies should be **bolstering the rule of law**. For a firm, including very small firms, paying the new “Liberation Day” tariff creates with it the right to contest the tariff’s validity in an American court of law. Litigation will provide an answer to the question “Does the President of the United States have the authority to impose across-the-board tariffs?” Several cases are pending and deserve your attention. They rely on case law dating back to 1971 and President Nixon’s 10% import surcharge ([Yoshida International](#) vs. US) and the current authority, the International Economic Emergency Powers Act ([IEEPA](#)). The issues raised are clear. The outcome remains to be seen. The courts could find that the bulk of the tariff actions taken are not within the President’s authority.

The second way to respond to the current uncertainty is to expand the 87% of world trade that is not currently accounted for by the United States. One idea that Sweden has now put forward, and several of my colleagues have urged, is to see a link-up between **the Trans Pacific Partnership (CPTPP) countries and the European Union**. Ottawa and dozen countries it has worked with in the Ottawa Group may usefully join. The effort, if undertaken, and I believe it will be, should go beyond trade liberalization through the lowering tariffs, which are for most participants, already low, and proceed with crafting new rules. There are many subjects that cry out for new trade rules, including – dealing with climate change and future pandemics, regulating subsidies, defining more clearly what can be done in the name of national security, and recognizing that over-dependence on too narrow a base of foreign sources for supplies of critical goods is no longer acceptable.

China, for its part, will have to decide whether it can and will live with and implement the principle that competitive **outcomes in international trade are to be determined primarily by market forces and not government intervention**. In addition, the question remains whether China will promote domestic consumption and de-emphasize export led growth, removing another major element of instability in world trade.

Linking up with RCEP, ASEAN and the African Continental Free Trade Agreement (AfCFTA) is at some point is a possibility. Regional agreements and sectoral agreements like the Digital Economic Partnership Agreement can be laboratories for eventual incorporation of solutions for global application in rules applicable to world trade through the World Trade Organization (WTO).

Rule of law at the WTO

Promoting the rule of law for world trade is primarily a task for the WTO rather than regional agreements. It needs strengthening in several respects:

- To be effective, **the WTO must provide full transparency**, so that all know what barriers to trade exist, what deals are cut and whether they are at some other party's expense.
- Negotiations among like-minded countries must be allowed to take place at the WTO and **WTO members that choose to do so must be able to adopt agreements that will be administered at the WTO** open to those who are able and wish to participate.
- **Binding dispute settlement must once again be provided.** This will only be possible if the members retain the ability to set new rules and modify past ones. In other words, there cannot be binding dispute settlement without a living system of negotiated rules.
- As the WTO was not created by constitutional convention, **the WTO's structure as an institution** needs to be addressed. The role of the International Monetary Fund's Managing Director and the World Bank's President, and how the members organize themselves, offer important lessons in how to structure governance in an international economic institution. I would also propose that the WTO have its own **chief legal officer**, dealing with the trading systems rules. (Its current General Counsel exists for administrative purposes only.)

Can business make a difference?

80 years ago, an international trade contract was adopted, the General Agreement on Tariffs and Trade (GATT), but a true international trade organization (ITO) was rejected by the US Congress because American business feared, probably correctly, that it would be too intrusive. Its successor, the WTO was founded thirty years ago. As currently constituted, it is not up to the task of assuring open, rules-based trade global trade. Major international businesses, advised by counsel, those who participate in this group, drawing on its intellectual capital and having politically relevant resources, can greatly improve the resilience of the international trading system through suggesting improvements in the WTO's institutional structure and its rules.

International business can play a major role in achieving the goal of strengthening an effective rules-based international trading system.

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