

## US “Reciprocal” Tariffs and the WTO

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New York City,

November 10, 2025

In the first nine months of the Second Trump Administration, the United States applied additional tariffs to much<sup>1</sup> of its imports at an average duty rates of 17.9% that had last been applied as far back as 1940. The US began collecting additional duties of about \$30 billion per month more than what it had collected just a few months earlier. Just the tariffs collected under IEEPA, the Trump choice of emergency authority, would bring in well over an additional \$1 trillion over the next ten years.

The Trump Administration took this action in violation of its international obligations under the WTO and GATT. These were not minor alleged infractions, an ill-founded dumping case, or even an aggressive anti-subsidy or a safeguard action. This was a wholesale undeclared renunciation of the rules the United States had led the world to adopt, the very basis for the trading system it had built. How had this dramatic turn of events come about?

The tariff story begins not in recent months, but much earlier. There was a rehearsal of sorts for the imposition in 2025 of a unilateral blanket tariff. In the summer of 1971, President Nixon imposed a 10 percent import surcharge on America’s imports. At the same time, the United

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<sup>1</sup> As calculated by the New York Times, 29% of US imports are currently subject to emergency tariffs, and in addition 10% of imports are subject to designated industry tariffs.

States demanded unilateral trade concessions from its major trading partners: Japan, the European Union and Canada. The surcharge both accompanied and enabled the US ending the convertibility of the dollar into gold, devaluing the US dollar, paving the way for a flexible exchange rate system. It also led ultimately to the US and its trading partners embarking on a multilateral trade negotiation. The ensuing six-year negotiation called the Tokyo Round, named after the place of its founding, resulted in the extension of the global trading rules in 1979 to nontariff barriers. In turn, that led to the GATT's final and grand multilateral negotiation, the Uruguay Round. That negotiation in turn was the precursor of the Uruguay Round (1986-94), that covered services and agriculture and gave birth to a new world trade organization.

A lesson: a crisis properly utilized, with the right policy choices made, can land one in a better place.

But of course, all of this was unknown in 1971. The United States, the hegemon, was in economic trouble, in the throes of a balance of payments crisis. It was fighting an expensive and divisive war in Vietnam, a war that it had not taxed the American people to pay for. The vital force behind the multilateral trading system, founded in 1948 to restore the world economy after the devastation of two world wars, had been supplied by the US, and it appeared to be spent. That was not yet true in the 1970s, but the seeds were there.

US disaffection with the world trading system it had built did not occur suddenly, but built up over time, the product of many forces. It proceeded as Ernest Hemingway wrote in the novel, *The Sun Also Rises*, speaking of bankruptcy: "How did you go bankrupt?" Bill asked. "Two ways," Mike said. "Gradually and then suddenly."

Sam Gibbons, a sensible free trader, at the time Chairman of the once powerful Ways and Means Committee of the House of Representatives, had expressed a similar sentiment. He said that trade problems were like the arrival of a glacier in one respect, one did not wake up one morning and look out your bedroom window and find that a glacier was in your backyard. It built up over time. We are in such a situation now, where the US capacity to lead appears to be at least temporarily exhausted.

One prominent reason the Nixon Surcharge comes to mind now in writing about the Trump tariffs is the Supreme Court oral arguments on November 5<sup>th</sup> about Trump's so-called "Reciprocal

tariffs”. The 1971 surcharge had been upheld in an appellate court case known widely by the name of the plaintiff, *Yoshida*. The YKK zipper company sued the US government to oppose that tariff and recover the extra duties it had paid. It is the closest thing to an apparent direct legal precedent for the question of whether President Trump has authority from Congress to apply broad “Reciprocal” tariffs. Upon investigation, it turned out that Nixon did not invoke the Trading with the Enemy Act, the predecessor of IEEPA, but the Congress in re-enacting the statute for peacetime use, did not know that.

What will the Supreme Court do now?

### **Disenchantment with globalization**

A former European trade negotiator of long and deep experience, recently looked back on the rocky terrain of the world trading system and observed wisely that “with efficiency comes pain. It is inevitable and unavoidable.” Those of us in the trade field knew that opening markets, as Adam Smith had taught three centuries earlier, brought greater efficiency, and this generated greater wealth. It was not the main job of trade negotiators to effectuate the equitable distribution of benefits. That was primarily the responsibility of domestic policy makers. In this task, it is now understood, in most cases, they failed, sometimes spectacularly. Other countries might have done a better job. It is said that Denmark and the Nordic countries have adapted better to the changes wrought by open markets. The United States found the price tag of easing adjustment too great to permit paying to blunt some of the harms cause by trade liberalization and technological change. It failed to prepare its workers and small and medium-sized businesses for the open world trading system it created and the market economy it promoted.

This is not to place the blame wholly on domestic policymakers and exonerate completely the administrators of trade laws and the trading system. Not by any means. Fairness was built into the GATT/WTO. There were tools to deal with some of the disruptions caused by trade. From time-to-time safeguard actions (also known as grants of import relief) were taken. There were antidumping and countervailing duty cases (the latter to offset subsidies and the injury they might cause). Less frequently there were retaliatory cases under section 301 of the Trade Act of 1974 against closed markets abroad or other unfair foreign measures held to be burdening US commerce. There was

even the prospect of invoking a “national emergency” to adjust imports selectively, by product, after serious investigation under section 232 of the Trade Expansion Act of 1962. These tools were applied in varying degrees by Democratic and Republican Administrations, depending on their predilections, but arguably, as a political matter, what they did was not enough. The residual impact of their decisions was to a degree to leave a sense of grievance in local economies, concentrated in locations with plant closures, which were numerous.

There are many opinion polls had historically indicated that Americans value trade and trade agreements, that has begun to shift. When it came to the ballot box in the year 2024, the verdict went to the presidential candidate and his party that offered across-the-board tariffs. That is part of the picture. It is hard to read the election otherwise. Trump won by a narrow margin, 49.8 to 48.3%, but his win could credibly be taken as a mandate for across-the-board tariffs. He clearly and repeatedly promised a 10 to 20% tariff against imports from any source, and 60% against imports from China. (The Brexit vote carried by 52% to 48%. The level of subsequent remorse, does not alter the mandate for the UK’s departure from the European Union.)

By and large, mainline economists do not see much benefit in trade restrictions. The cost per job saved was in each case, when a trade remedy was proposed to slow the growth of imports replacing domestic production, seen as excessive when compared with the economic benefit the national economy would receive. Perhaps this is true. It is in the nature of trade remedy measures that this will always be the case. Those claiming relief under the trade remedy laws, if successful, were held to have “captured” the government. The public debate rarely addresses whether relief was warranted under statutory remedies. The same occurs in the sacred groves of the Olympian heights of the WTO. Majority sentiment among the WTO Members and their resident ambassadors, and findings of dispute settlement panels, have often sided with the opponents of any country’s import restrictive measures. This was natural and should have been expected in an organization that was dedicated to removing trade barriers. Of course, one should have expected to find a built-in bias against their reimposition.

At the same time, in terms of domestic politics, no amount of argument, no recitation of data for and against relief from import competition, could erase the feeling among trade-impacted

industries and agricultural sectors, that the system had not delivered promised relief.<sup>2</sup> This negative sentiment was responsible for the first major step in the US departure from adherence to the trading system it had been instrumental in creating. This was the US’ asphyxiation”, as it was called by a retiring member of the Appellate Body (AB), of the WTO’ primary institutional innovation, the appellate stage of the dispute settlement system that enabled dispute settlement to be “binding” (final). American critics of the system would have called the ending of the AB an assisted suicide rather than murder in the first degree. The Americans held that the trade judges of the Appellate Body and the neutered Dispute Settlement Body to which it facially reported, failed to achieve the correct balance in the system between the continuing drive toward liberalization while being responsive to the political need to aid those harmed by trade.

The debate over the extent and value of trade openness, of globalization, was not just among trade negotiators, trade jurists, and domestic legislators, it was also to be found among trade economists. Speaking at the 300<sup>th</sup> birthday celebration of Adam Smith, I conjured up an image of a great debate taking place at the WTO about whether to place a plaque in his honor on the wall of the entry lobby to the organization’s main building, the Centre William Rappard. While it would be entirely justified, I said that honoring the founder of the idea of the benefits of more open trade would be very controversial.

The high point of the multilateral trading system arguably occurred after the Uruguay Round was completed in 1994 and the WTO was created in 1995. Global leaders including Nelson Mandela, Bill Clinton, and Tony Blair celebrated the 50<sup>th</sup> anniversary of the GATT in 1998 and expressed their hopes and gave their benediction for the future of the new World Trade Organization. It was a high point never to be repeated.

WTO members launched the Doha Development Agenda in 2001 in a surge of common feeling that the forces of anarchy would not prevail after the World Trade Center Towers were taken down by terrorists. However, the momentum that existed in the GATT rounds, from 1948 to 1994, eventually ebbed away, succumbing to the world financial crisis in 2008. The record of the WTO not

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<sup>2</sup> I sometimes wonder what the United Steel Workers (USW) would have felt about US trade policy if successive administrations had found a solution to foreign subsidies and the overcapacity foreign government interventions brought in this product sector. As it stood, Dick Cheney, candidate for Vice President, promised relief from imports in the election campaign, which was jettisoned as soon as convenient, leaving the underlying trade problem unaddressed.

matching that of the GATT for new agreements and trade liberalization was masked for a time by negotiation of the Information Technology Agreement (ITA) in 1997, the Trade Facilitation Agreement in 2013, and the ban on agricultural export subsidies at the Nairobi WTO Ministerial Meeting in 2015, but nothing could obscure the fact that further broad trade liberalization on a fully multilateral basis, and the golden age of global trade rulemaking, was over.

The [Overton window](#) for academe had also begun to shift. Dani Rodrik published his *Has Globalization Gone Too Far?* in 1997. He saw mainly the costs of the trade openness as opposed to its benefits that Adam Smith had long ago championed. Global integration, he said, would worsen inequalities and undermine social cohesion. He argued in *The Globalization Paradox: Democracy and the Future of the World Economy* (2011) that the three goals: globalization, national sovereignty, and democracy, were mutually incompatible; only two of three of these objectives could be chosen successfully. Countries must choose, he held, and global integration was to lose out.

Joseph E. Stiglitz published *Globalization and Its Discontents* in 2002. He argued that the World Bank and the IMF pressed developing countries into austerity and that liberalization too often created great economic hardship. He saw as the beneficiaries Western corporations and banks. He felt that the trading rules fostered this tilt toward capital, to the detriment of developing countries. He added “ It’s true that American workers have been disadvantaged — low-skilled workers in particular have seen their wages reduced, in part because of globalization. . . . We as a country didn’t do what we should have to help workers whom globalization was hurting. . . . American workers had to compete with workers from developing countries. It increased corporate profits even more.”<sup>3</sup>

Another Nobel Prize Winning economist, Paul Krugman, [wrote in 2007](#), “for American workers the story is much less positive. In fact, it’s hard to avoid the conclusion that growing U.S. trade with third world countries reduces the real wages of many and perhaps most workers in this country. And that reality makes the politics of trade very difficult.” And further: “workers with less formal education either see their jobs shipped overseas or find their wages

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<sup>3</sup> Excerpted from [People, Power, and Profits: Progressive Capitalism for an Age of Discontent](#) by Joseph E. Stiglitz. Copyright © 2019 by Joseph E. Stiglitz.

driven down by the ripple effect as other workers with similar qualifications crowd into their industries and look for employment to replace the jobs they lost to foreign competition. And lower prices at Wal-Mart aren't sufficient compensation."

This is not to say that any of these economists favored the Liberation Day -"Reciprocal tariffs," only that the costs of trade were given greater emphasis in their writings than the benefits. If openness had caused problems, at a minimum a different approach would seem to be called for. The spectrum of opinion had shifted to encompass those favoring far less open trade.

Into this economic discussion came Peter Navarro, a Harvard PhD economist, whose prescriptions veered sharply from traditional economic thought. Reciprocity was to be achieved on a line-item basis, product by product, through tariffs imposed by the United States, he said, to match those of other countries. He joined the first Trump administration. His view did not prevail during the time but did with far reaching consequence when Donald Trump returned for his second term as president. During the first administration, the president was content to press China for unilateral concessions in a [Phase One Agreement](#), to rewrite the rules of North American trade, substituting [USMCA](#) for NAFTA, and to apply "national security" based tariffs on imports of [steel and aluminum](#). In USMCA, as compared with NAFTA, the US obtained a tightening of the rules of origin to make Mexico less of a funnel for finishing Chinese goods for the American market, and stripped American corporations locating abroad of the ability to use investor state dispute settlement (ISDS) to favor their investments over local choice of other social objectives that had attendant costs for investors. A less open view for international integration was espoused by both the right, in its new manifestation, Trump and Project 2025, and the left of the political spectrum, as espoused by the progressive wing of the Democratic Party.

The pendulum continued to swing away from the post WWII vision of global openness during the Biden Administration, what had been part of the Washington Consensus. The Biden Democratic Administration continued many of the trade policies of its predecessor, the first Trump Administration, and added substantial subsidies to its policy portfolio through the Inflation Reduction Act and the CHIPS Act. The China tariffs remained. The main trade priority appeared to be the enforcement of [labor](#) commitments called for in USMCA for Mexico, and a hard line on preventing technology transfer to China.

Trade was blamed for most societal ills, particularly the FTAs that the US had entered into. The WTO was something of an afterthought in terms of US policy, although there continued to be active support of a number of ongoing WTO functions, such as accessions, and review of product standards and sanitary and phyto-sanitary regulation. The US would greet WTO initiatives other than the Fish Subsidy negotiations with an attitude of questioning whether the WTO was going astray, doing too much. The US favored the maintenance of the *status quo* on any improvements in the organization or addressing the problems of the dispute settlement system generally.

The absence of US leadership continued. The result was the WTO tended toward multilateral inaction. The lurch toward the left led the organization into a policy *cul de sac* when there was a need to deal with the global COVID-19 pandemic, by concentrating on obtaining a waiver of intellectual property protections (which was criticized as irrelevant but recognized as being politically appealing). In the important area of dealing with the digital economy, the Biden Administration in a policy position *volte-face* abandoned as an objective the free flow of data across borders, which deprived the digital commerce talks of much of their content.

A hallmark of Biden trade policy was to rely on nonbinding agreements in an Indo Pacific Economic Framework (IPEF) of limited durability due to inability or interest in working with Congress, seemingly oblivious to the fact that Congress has the Constitutional responsibility for regulating foreign commerce. Again, ignoring Congress, it entered into a critical minerals agreement with Japan, an agreement that for this reason has no binding provisions, although it did highlight a growing desire for the US to be acquiring greater security in critical minerals.

Industrial policy made a comeback, but with no attempt to square new American priorities with the existing GATT/WTO rules, as major subsidies were provided for semiconductors and green industries, including EVs and large batteries. The Biden Administration did not claim that its measures were consistent with existing WTO rules on subsidies, as it could not legitimately do so. The global trade rules when inconvenient did not seem to matter. Another body blow was dealt to the rule of law for global trade.

Biden in many ways ushered in the second Trump administration, although no credit for the blanket fentanyl trafficking and “reciprocal” tariffs is due to anyone other than President Trump, personally. Nothing in modern world economic history was sufficient preparation for the second

Trump administration's use of tariffs. It was crystal clear that the order of the day was narrowly conceived national self-advancement. Perhaps the conditions were ripe for a move in this direction, but full credit must be given to the influence of a single individual for the scope of the policy change. As Janan Ganesh wrote in the Financial Times, the "Great Man" theory of how a single individual (think Napoleon, for example, or Caesar, can alter for a time, the flow of world history). The theory has made something of a comeback with the second Trump administration. There can be no doubt that without his personal belief in using increased tariffs, the world trading system would not be where it is today – in a condition of continued stress and adrift on a multilateral level, although international cooperation still abounds at a regional level – whether in RCEP, ASEAN, CPTPP, EU-CPTPP discussions, or FIT-P. The degree to which Trump was driven to embrace tariffs by an astute reading of the popular mood in 2024 or something imbedded in his psyche as a result of personal history, the result is the same.

While Project 2025 as written appeared to be split on whether tariffs were a plague or a panacea, Navaro's view (panacea) prevailed. There would be a proliferation of US tariffs. Fairness for the United States could be achieved, it was held, through re-imposition of tariffs under the heading of achieving "reciprocity". The term meant, adding protection through higher tariffs in an attempt to achieve a more positive trade balance for the United States and greater fairness. Trump's deeply ingrained belief in relying on tariffs to cure most ills in international economic exchanges became America's foreign economic policy (and sometimes foreign policy, at least currently, with spikes in tariffs for India over an altercation with Modi, for Brazil due to the US president's concern over the treatment of Bolsonaro, and an unknown source of pique with Canada (was it due to past relations with Prime Minister Trudeau, or its relative weakness and nearness?). What is clear is that the personal priorities of this US president would be all that was needed to direct US policy and trade measures (tariffs) instantly, with other nations and the EU falling into line. As of this moment, with the exception of the defection of the Senate by a bare majority against the emergency tariff on Canada, Brazil and the world generally. The US government would otherwise be unitary when it came to trade policy. Congress and, to date, US law and the courts, would play no role.

## **US abdication and rudderless multilateral drift**

To reprise: America's withdrawal from the role of world economic hegemon began well before the Trump Administration. After the surge in activity in the Tokyo and Uruguay Rounds, and the 50<sup>th</sup> anniversary celebration of the GATT in 1999, American leadership (even in the context of working with others in collective leadership) proved unequal to the tests posed by the 21<sup>st</sup> century. The 132 member WTO that was to grow to 166 members became unwieldy in the absence of the dictates of a small number of actors led by the US and its partner, the EU. The developing world used its growing influence in the main to eschew even eventual acceptance of the full disciplines of the trading system. Until this Fall, China despite its unrivaled manufacturing and trade strength, did not renounce taking special and differential, that is, more favorable treatment than that accorded to others of its heft, a gesture of little substance that came a decade or two too late. Much earlier, during the time of Hu Jintao perhaps, it had begun to change course from an apparent acceptance of allowing market forces to determine competitive outcomes, to opposing any acceptance of the idea that the words "market-oriented" were a necessary qualification for being a member in good standing of the WTO. On top of the state-supported competition from China, it could be argued that the *coup de grace* for broad forward progress of international cooperation in the world trading system may have been the loss of confidence in the benefits of inter-connectedness that stemmed from the Global Financial Crisis. The paradox: interconnectedness through the spread and deepening of global value chains continued apace even while global institutional cooperation stalled.

The attention of the large WTO members turned away from multilateral endeavors. The United States under President Obama opted to devote its trade negotiating energies to the Trans Pacific Partnership, to offset China for geostrategic reasons. The EU decided to devote itself to bilateral and regional deals, perfecting the free trade agreement (FTA) route as an alternative to full most-favored-nation (MFN) treatment. China was self-centered in its drive for industrial success, looking to be superior to all others in crucial industrial sectors. The middle-powers found no leader around which to rally.

The broad under-investment in the multilateral trading system by its members, was evident in the failure to move forward to consider seriously solutions to the most important issues facing the world trading system in recent years -- regarding world health, food security, the digital economy or

the advent of artificial intelligence, nor even industrial policy or resulting overcapacity and geographic concentration. It has been said that the WTO's problems pre-dated the Trump tariffs, and that is entirely correct. The WTO, which is valuable for what it is and what it does, has been trapped in a low energy inertial state. Its executive branch does not have a formal mandate for being involved in setting trade policy and seeks to avoid the appearance and perhaps even the reality of acting in that capacity. The founding members said in 1995 that they would provide a clear statement of the Director-General's role in a form of decision of the General Counsel but never did so. (And given the members predilections at present it is perhaps best that they do not do so now), Without that mandate, the Secretariat has had to support the trading system indirectly, almost surreptitiously, through studies and other low visibility means. It supports the chairs of committees chosen from among the members not always based on those most prepared for their responsibilities.

The Secretariat is there, however, to assure the smooth functioning of the organization. The General Counsel chair is a temporary position, passed on from member to member, which can leave little trace from one caretaker to the next (somewhat like the presidency of the Council of the European Union). Unlike the Fund and the Bank, the WTO has no executive board. With formal governance in the hands of a committee of the whole, as has been true in some Swiss cantons<sup>4</sup>, why would there be any expectation that there would be an ability to accomplish great things?

No agreement can be officially adopted other than by consensus even if not all members wish to participate. The tyranny of the irresponsible nonparticipant veto is perhaps the worst aspect of WTO governance. This has left plurilateral negotiations in a state of limbo, with members fearing to overtly challenge what has become a venerable rule of unanimity for adopting any decision, some important, some routine.

Members can and do fail to pay their dues for over a decade at least in one case and are accorded the same rights of taking the floor as those who pay. Those are extreme cases, but what sort of an organization would tolerate this state of affairs?

Into this parlous condition of governance of the world trading system comes the shock of the

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<sup>4</sup> Two Swiss cantons, Glarus and Appenzell Innerrhoden, still use a form of pure direct democracy called the *Landsgemeinde*, where eligible citizens gather in a public square annually to vote on laws, the cantonal budget, and the election of officials by a show of hands.

US reversal of Cordell Hull's tariff policy of nondiscrimination. For the US today, its existing commitments under prior international agreements appear to be of no concern whatsoever. They are not even referenced in official announcements of new trade measures. On the rubbish heap of its discarded precepts are the principles of contractually bound tariffs and nondiscrimination (most-favored-nation).

Before turning to what is to be done and what happens next, it is worth taking a moment for a clear-eyed damage assessment.

### **Economic effects of the tariff**

While for global trade policy, the US tariffs first registered about a nine on the [Richter Scale](#) of seismic events, early reports indicate that the political and economic effects have been more muted than feared. There may be aftershocks, like the US-China dust-up over each other's export controls, rare earths, high technologies and products incorporating them. But the headline story is a return to a degree of troubled stability. Most of the damage is in the future, lower world growth, less cohesion, and perhaps adverse effects on the Western alliance.

The world economy has turned out to be more resilient than expected. The US tariff shock has not been the equivalent of the subprime mortgage meltdown that shook the world during the Global Financial Crisis. The United States share of world trade is only 13%. There has been no retaliation (outside of China with respect to at least a soybean import embargo and rare earths export controls), and no emulation to date<sup>5</sup>. The US tariff, ignoring the spikes against imports from Brazil, India, Switzerland (!), and Canada outside of the remit of the North American Free Trade (formerly NAFTA, now USMCA) is about 17.9% compared with a pre-existing average rate of just under 3%. Without taking into account the impact of uncertainty, the economic effect is like that of a discriminatory value-added tax (VAT). The EU member state VATs range from 17 to 27%. There is at least a one-time adjustment. The US domestic inflation rate has notched up slowly to 3%. The predicted effect on the exchange rate, namely, dollar appreciation, has not occurred, rather the opposite, so the cost of imports has been magnified by 10% rather than ameliorated. And further

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<sup>5</sup> This could change. Mexico is debating whether to increase its tariffs (except to the US) with WTO bound rates. The US bilateral agreements with Cambodia and Malaysia contain clauses that could be called upon to bring alignment with US trade measures against countries of common concern.

depreciation of the US dollar is anticipated in 2026, all due to other factors than the new tariffs. So far, services trade has largely escaped tariffs (although [port fees](#) as part of China retaliation and presidential threats against foreign made films may change that, after the agreed one year [pause](#)).

The national security tariffs and threats of tariffs continue a steady drumbeat of disconcertedness and disruption. At some point the supply chains cannot absorb the additional tariffs and they are passed on to consumers. The section 232 tariffs began with steel and aluminum, moving downstream to derivative products. Copper was added as well as autos and auto parts. National security investigations under section 232 can and do often lead to high additional tariffs. The targeted products include robotics and industrial machinery, personal protective equipment (PPE), medical consumables, and equipment, semiconductors and semiconductor manufacturing equipment, pharmaceuticals and pharmaceutical ingredients, trucks, processed critical minerals, commercial aircraft and jet engines, softwood lumber, upholstered furniture, kitchen and bathroom cabinets, and polysilicon. Current tariffs and investigations under section 232 cover a large [swath](#) of the world's countries.

Would the Reciprocal Tariffs, the Trafficking Tariffs and multiple section 232 tariffs have taken place without Donald Trump having a second term, bent on retribution? That is highly doubtful, but the system was vulnerable to increasing trade restrictions.

For a current picture of the US tariff scene, one can visit the Peterson Institute website or a variety of others, including the one provided by the [International Nut and Dried Fruit Council](#) part of a new cottage industry of US tariff trackers. Harms extend beyond those in affected sectors. At some point, the cumulative effect of the proliferation of US tariffs will take a toll on the US and world economies.

More difficult to assess in terms of its effects on the world economy are the trade effects of investment. This is particularly true of the splurge into investments in AI. Also unclear in trade effects are US government-encouraged, and bilaterally agreed to a degree, inward foreign direct investment projects, which are anecdotally substantial. Any picture of the world trading system would be incomplete without looking at investment flows.

The Overton Window shifts. In modern world economic history, it shifted in the direction of trade liberalization 80 years ago. The turning point from high tariffs occurred when Franklin Delano

Roosevelt, spurred on by Cordell Hull, pursued an unprecedented global vision of open markets and the freer international exchange of goods as a path to world peace. That policy direction has not been heard from a head of state (or leader of the EU), in recent years, perhaps for a decade or more. As more than an ideal, as an actual practice, it lives in a quiet corner of Geneva in the Trade for Peace Initiative (T4P), aimed primarily, if not solely, for the benefit of the poorest conflict affected nations. Has the Overton Window now shifted again, moving away from openness to international trade and cooperation?

### **Institutional effects on the world trading system**

Multilateralism is not dead. But nor is it vibrantly alive. Countries accounting for the 87% of world trade not involving the United States swear by the World Trade Organization, and most of world trade flows under the system's rules. No country has followed the US lead to ignore the key obligations of the trading system -- bound tariffs and MFN. They ostensibly largely live by their WTO obligations, aside from major deviations in one direction or another (e.g., the EU's penchant for bilateral free trade agreements to multilateral leadership) or another (e.g., China's tied procurement in its Belt and Road initiative, its politically motivated trade coercion measures, and its state-capitalism distortions of commerce.). Believers in the value of the system tend to ignore at times the fact that the system is drifting with respect to its future. They engage in overstatement of tangential but seemingly essential holding actions -- renewal of the e-commerce moratorium at Abu Dhabi or the entry into force of the first half of the [WTO Agreement on Fisheries Subsidies](#) more recently. There is nevertheless reason to hold steadfast to the view that I expressed on the eve of that Ministerial Conference 13 in 2024: "I am fundamentally optimistic about the future of the WTO and the global trading system." The actors in the world economy, those engaged in commerce, the primary actors as viewed by Adam Smith three centuries ago in 1776, are not going to forever allow their governments to sacrifice their striving for efficiency upon which they thrive except as is essential to meet other important additional societal goals.

### **What should the rest do now?**

When the US pulled back, neither the EU nor China stepped forward to lead the international

trading system and events are bearing out that leadership is needed. Can the center lead? At the center are a variety of countries that are largely mid-sized. They are what I have called the “[international progressives](#)”. We shall see how far they can take the system forward. There is, however, at present, stasis at the WTO. Positive activity is to be found at the regional level with negotiations of agreements that build upon and supplement the WTO.

It would be a mistake to wait for formal reforms. Many of my ideas on various WTO reforms were conveyed in my 2023 book on [Revitalizing the World Trading System](#). Since then, little progress has been made on WTO reform. An attempt was made by a Guatemalan official who was promptly [sacked](#) by his government to fill in the less contentious aspects of dispute settlement reform. There is usually and is now an [informal process](#) underway of [gathering ideas](#) for reform. There is no negotiation. That does not mean that progress cannot be made.

To clear the way toward seeing what should be done, first a note on what should not happen: It has been [suggested](#) that perhaps the current membership of the WTO should rid themselves of the United States, which for a time had not paid its dues in two years (but is now no longer in arrears having paid the dues the Biden Administration was preparing to send, but failed in doing so). The US accounts for 11% of the WTO budget, and a shortfall in funding of that size is serious. There is universal repugnance abroad at US failure to adhere to its obligations. Nevertheless, Ambassador Matthew Wilson of the Barbados strenuously put forward the position, at the WTO Public Forum, a view he said that was shared by the other countries of the Caribbean, that they wanted the United States to remain a member of the WTO. For its part, the United States has shown no signs of leaving the WTO during the second Trump Administration. It has allowed the appointment of a US-origin Deputy Director-General, Ms. DJ Nordquist, and sent a new Ambassador to the WTO to Geneva, Joseph Barloon. Both of these individuals are well qualified for their positions and should be able to contribute to the functioning of the organization. Of course, the US Ambassador will reflect the views of his government, but as a Deputy US Trade Representative, is also in a position to weigh in on policy formulation as well as implementation.

It is in the best interests of the US and most of if not all of the other members that the US remain in the organization, assuming its constructive participation. Consider for example, just on the issue of product standards, the systemic risks of a WTO without the United States. Standards could

become major barriers to trade if dominated by large players, China and the EU, without also having the US and someday, India or Nigeria, or Singapore or Switzerland, in the room. A trading system with some major player(s) excluded could produce adherence to standards that might all too readily impede trade, whether for EVs, GMOs (genetically modified organisms) and literally thousands of other products, and ultimately services and products incorporating Artificial Intelligence.

### **Essential institutional changes**

“WTO reform” attempted through formal agreement by all members holds at present little likelihood of success. There is no consensus, even using that term as it is used everywhere outside the WTO (not meaning unanimity), as to which reforms should take place. Take for example, perhaps all but a few members would want to see binding dispute settlement restored, or even the AB put back into place, or at least the Multi-Party Interim Arrangement (MPIA) made a requirement for all but the United States. But that is a very limited view of what is needed and leaves outstanding issues even involving just dispute settlement unresolved.

Tacit assent is a more likely path forward, emulating the pragmatism that saw a GATT Secretariat in place and functioning very well with no formal legal basis for nearly a half century. The question of adding a new agreement to the WTO *acquis* should always be phrased by the General Council chair of the Director-General: “Do you instruct me to withhold Secretariat support from this agreement which I judge is in furtherance of and consisted with the purposes of the WTO?” rather than, “Does every WTO member agree to add this agreement as a formal matter to the list of agreements in Annex 4 of the WTO agreements?” The negative consensus approach, which was so deadly for maintaining the Appellate Body, could usefully be added here in this respect.

What steps should be taken, are in fact essential, for the members to move forward to revitalize their organization? The majority, either by numbers of economies or on a trade-weighted basis, should move forward to put into place, most likely on a *de facto* basis, the following (none may for the present be able to be adopted on a *de jure* basis, that is, formally adopted):

- 1) Transparency –
  - a. The Secretariat should report fully on all measures that affect trade (including

revealing any consideration that countries provide in order to obtain trade concessions, whether in the form of pledged investment or otherwise.)

- b. An emergency Trade Policy Review (TPR) in permanent session should meet to review current trade measures, especially for as long as the US is not acting within acknowledged international rules, and others are dealing with the US bilaterally. Included within this TPR would be any departures from accepted behavior by others, including, for example any trade coercion from China or any other member.

## 2) Negotiations –

- a. The Agreement on Investment Facilitation for Development (IFD) should move from its Joint Statement Initiative (JSI) status to implementation. Members should meet to implement this “*IFD ad interim*” as if it had been made formally part of Annex 4 as an approved plurilateral agreement. It is acknowledged as a normal WTO activity on a plurilateral basis. All should be welcome to sign on to it.
- b. Open Plurilateral agreements in various states of negotiation, from JSIs to structured discussions, through to conclusion and implementation, become the norm, with formal agreements in a WTO annex when possible.

## 3) Dispute settlement

- a. Despite the fact that it was taken by the United States as a provocation rather than a solution, a concerted effort should be undertaken to have as a condition of full active WTO membership agreeing to be a signatory to the MPIA, or an alternative formally agreed method to accept panel decisions as final.
- b. The WTO’s dispute settlement system should render only binding decisions. It should not give advisory opinions.
- c. Those who do not pledge to accept binding outcomes from dispute settlement will be left to exist in a state of nature.

- d. A role is found for the Dispute Settlement Body, its decision-making is largely augmented by a group of (perhaps ten) senior trade negotiators drawn from members, entrusted with carrying out the intent of the negotiators of agreements.
- e. The Secretariat's Director of Legal Services will render advisory opinions on the meaning and applicability of the WTO's trade agreements.

#### 4) Governance

- a. A Board of Executive Directors, numbering between 20 to 24, is to be constituted and shall have the authority of the General Council.
- b. All WTO members are represented, which will require affinity groups of smaller trading members to choose a single representative to serve as their board member, very much like the way the Fund and Bank Boards operate.
- c. The Director General is to chair the Board of Executive Directors or like steering group

#### 5) The Executive

- a. The Director General (DG) is to chair the Board of Executive Directors (ED).
- b. The DG is to recommend agendas for ED meetings.
- c. The DG is to recommend a general plan of activities of the Board of EDs which is to set out the work program of the Organization.
- d. The DG will be advised by a Chief Legal Officer

The GATT era will be taken as an example of operational pragmatism. Progress shall be made on the basis of a critical mass of the willing on any given subject.

### **CONCLUSION**

Continuation of rudderless drift of the world trading system could conceivably be sustained for a number of years. Basic functions of the WTO could continue with no major advances made.

Failures to meet emerging major challenges – the effects of AI on trade, establishing rules for digital trade, failing to prepare for pandemics, not finding the means to reduce food insecurity, can take continue and arguably this is the current path the system is on. But not providing the means to effectuate international cooperation would likely result in very large costs. Autarky is not a practical policy alternative for any WTO member. Rolling up global value chains would be an act against nature and will not occur if those engaged in trade have any say in the kind of trading system they require to perform well.

In devotion to free trade, agreed trade remedies were often seen as captured by individual private interests. But in the absence of letting the trading system be based on the operation of law, capture by private interest has become a real danger on a much larger scale.

Inertia in weak multilateralism rather than devolution into three trading blocs is more likely course.

A concern in recent years was over green subsidies conveying commercial advantage, a concern which was heightened among America's trading partners during the Biden years. The much greater concern may be a country's firms not making it into the AI-driven competition at all, given the trillion-dollar levels of current AI investments.

No one has come up with a system to substitute for the WTO. It rests on twin bases of reliability of member commitments with respect to the imposition of tariffs and other barriers to trade, and nondiscrimination (MFN). It was and must again also provide reciprocity – benefits gained for benefits received. A system based on the strongest taking care of their own needs at the expense of others is neither sustainable nor would it be a system at all.

The US appears to be undecided with respect to its relationship with the WTO. Of course, this can change in an instant with a message sent out over social media. But until that happens, it is incumbent on all those dealing with trade policy to think through how the United States should relate to the multilateral system and how others should do so given its behavior.

The year 2025 was consumed with adjusting to a shock administered by the United States. All need to focus now on what should come next. An *ad hoc* system of bilateral deals has substituted for a significant part of the trading system covered by US trade. *L'état, c'est moi*, national egocentrism, or put another way, power politics, is not workable as a policy solution on a global

scale. If cannot provide an organizing principle for the world economy. Identifying what should occur is a key to the multilateral trading system progressing.