CATÓLICA LAW REVIEW

Liberal Trade and President Trump: Never the Twain Shall Meet

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SUMMARY

For helpful discussions we are indebted to Doug Irwin and André Sapir.

I. The World Before the Return of President Donald Trump to the White House

The election of President Donald Trump to the United States presidency in 2015 served as a wake-up call – a warning that the international trade order unfortunately failed to heed. The then-prevailing free trade system implemented by the golden generation of post-World War II statesmen and their allies was viewed with scepticism, if not contempt, by the incoming U.S. President. During the first Trump administration, the world trading community was directly affected by a host of his initiatives:

- Tariffs imposed against China that were followed by the so-called Phase One Agreement[1] – an ode to managed trade and hence a clear-cut violation of the World Trade Organization (WTO) contract in its entirety – and subsequently, additional tariffs against China for failing to implement the WTO-inconsistent Phase One Agreement;[2]
- Tariffs imposed on all steel and aluminium imports, followed by bilateral negotiations with the few affected parties willing to offer an adequate (in the eyes of the U.S. Administration) *quid pro quo* in return for exoneration from these duties.[3] To accomplish this, President Trump invoked an almost forgotten statute (Section 232 of the Trade Expansion Act of 1962) to impose these tariffs in the name of protecting the United States' national security;[4]
- A consistent undermining of the WTO:
  - The United States blocked each and every (re-)appointment of WTO Appellate Body judges, effectively condemning this judicial body to oblivion.[5] Subsequently, it and a few others practiced "appeals into the void" whereby they would lodge an appeal against WTO panel reports safe in the knowledge that there was no second instance court to adjudicate these appeals. *De facto*, the WTO saw a key function – dispute settlement – reduced to tatters;

1 Simina Mistreanu, *A Timeline of the Tit-for-Tat Tariffs Between China and the U.S. Since 2017*, Time (Feb. 10, 2025), available at <https://time.com/7216481/us-china-tariffs-trade-war-trump-timeline/>.

2 *Ibid.*

3 *See* U.S. Int'l Trade Comm'n, Economic Impact of Section 232 and 301 Tariffs on U.S. Industries, Pub. No. 5405 (Mar. 2023) at 19, available at <https://www.usitc.gov/publications/332/pub5405.pdf>.

4 *Ibid.*

5 Thomas R. Graham, *Farewell Statement to the WTO Dispute Settlement Body*, World Trade Org. (Feb. 24, 2020), available at <https://www.wto.org/english/tratop_e/dispu_e/farwellspeechtgaham_e.htm>.

– Neither did the United States undertake any initiative to revive the waning legislative function of the WTO. The void created by the absence of U.S. leadership has had an immediate impact as no other trading nation has managed to fill it. Additionally, achieving cooperation among the remaining key players has proven to be a formidable challenge.

Were the policies enacted by the first Trump administration effective? Studies have shown that while President Trump's first round of tariffs helped American steel and aluminium producers, they consequently hurt the broader economy due to ensuing increased costs for many other industries, including the auto sector. A study by the U.S. International Trade Commission found that steel and aluminium tariffs imposed by the first Trump administration were successful in encouraging consumers of steel and aluminium to buy more U.S. products, stimulating $2.25 billion of additional revenue from U.S. production of steel and aluminium in 2021.[6] However, these tariffs also increased costs for industries using steel and aluminium to manufacture industrial machinery, automobiles, automobile parts and hand tools. Altogether, industries consuming steel and aluminium as manufacturing inputs saw their production output shrink by $3.48 billion due to higher costs.[7] The negative impact of these tariffs on the broader economy thus more than offset what the steel and aluminium producers had gained. Was then the candle worth the flame?

Regardless, President Trump and his acolytes continued unabated. To fan the flames, the trade policies of the first Trump administration were not reversed by the subsequent Biden Administration, which feared the ensuing political cost if it became a champion of free trade. Against this backdrop, the second Trump administration returned to the White House. Then came April 2, 2025, the "Liberation Day". The Trump Administration imposed unprecedented tariffs on dozens of goods, violating the letter and the spirit of its commitments under the WTO. Adding insult to injury, it further negotiated a few trade deals with its major trading partners which clearly ran afoul of the nondiscrimination obligation, the cornerstone of the WTO edifice. Importantly, the United States emerged as the judge, jury and executioner of all these deals. No such deal was negotiated with China, with which the United States has so far negotiated only a truce. At the same time, the U.S. is actively promoting alliances to reduce its dependency on Chinese raw materials (a key input to its production of semiconductors),

6 U.S. Int'l Trade Comm'n, Economic Impact of Section 232 and 301 Tariffs on U.S. Industries, Pub. No. 5405 (Mar. 2023) at 117, available at <https://www.usitc.gov/publications/332/pub5405.pdf>.

7 *Ibid.*, at 118.

like convening the 2026 Critical Minerals Ministerial, see https://www.state.gov/releases/office-of-the-spokesperson/2026/02/2026-critical-minerals-ministerial.

This essay examines two distinct consequences of the tariff policies enacted during both Trump administrations: first, their adverse effects on free trade, and second, the deeper institutional harm they inflicted on the transnational bodies tasked with upholding its rules and obligations. To provide a roadmap of the following discussion, section II provides a brief description of the various initiatives undertaken during the second Trump administration, while section III explores their consequential trade effects. Section IV examines the institutional damage resulting from these initiatives, and section V recaps our key conclusions.

II. The Second Trump Administration

Upon his return to office, President Trump picked up right where his prior administration had left off. This time around, the new administration has gambled even more on creating uncertainty. Tariffs are routinely announced but not implemented – or implemented at a different level. It has also become commonplace for tariffs to be announced ahead of their scheduled implementation dates while negotiations are initiated in the interim to secure a satisfactory *quid pro quo* – thereby exempting the target country from being subjected to such tariffs. These threatened tariffs are typically inconsistent with international law. At this early stage of the second Trump administration, there is also equal uncertainty regarding the overall attitude of the United States towards the WTO. Let's unpack all of this.

The Trump Administration has paid its arrears to the WTO budget, has appointed a Deputy Director General to the WTO, and a new Ambassador to the WTO. But its attitude towards the WTO during recent years, suggests that it does not wish to pay the requisite cost to revive the waning relevance of the multilateral institution.

i. Tariffs

The second Trump administration lost no time in applying tariffs on U.S. imports. In February 2025, the administration announced a ten-percent tariff on goods originating in China, which went into effect on February 4, 2025 and was later increased to twenty-percent on March 3, 2025.[8] Then on April 2,

8 Simina Mistreanu, *A Timeline of the Tit-for-Tat Tariffs Between China and the U.S. Since 2017*, Time (Feb. 10, 2025), available at <https://time.com/7216481/us-china-tariffs-trade-war-trump-timeline/>.

2025, the administration announced a separate 10% global "reciprocal" tariff on imports from most countries, which went into effect on April 5, 2025.[9] Higher country-specific tariff rates were also announced but were largely paused as the administration pursued negotiations with trading partners. For many trade partners, a flurry of tariffs was announced that were largely meant to provoke negotiation with the targeted countries.

Initially, the Trump Administration had announced that it would impose two sets of tariffs: a ten- to twenty-percent increase in the "most favored nation" (MFN) tariff on U.S. imports,[10] and a separate sixty-percent tariff on goods originating from China.[11] The premise was that these tariffs would finance President Trump's promised tax cuts for U.S. citizens. Of course, if this had indeed been the case the administration should have linked the level of tariffs to the extent of tax reductions. However, such a linkage would have been difficult in practse, as the increased tariffs would have had a direct impact on import volumes, likely resulting in their ensuing revenues not increasing in line with the level of the tariffs imposed. Given this uncertainty, it was quite likely that a general tariff increase would be, at best, one of the components of any Congressional tax and tariff legislation. Eventually, this discussion waned.

Then came the announcement of planned tariffs against the United States' USMCA (United States-Mexico-Canada Agreement) trading partners, Canada and Mexico. The administration announced a twenty-five-percent increase on tariffs on both Mexico and Canada due to their allegedly inadequate policing of the trade of Fentanyl – a synthetic opiate of Chinese origin.[12] Negotiations followed and the imposition was suspended for a month.[13] But with tariffs being a mainstay under the second Trump administration, when one discussion closed another opened. Reciprocal tariffs were the next talk in town. President Trump's next announcement was that he would be implementing reciprocal tariffs to address both the tariff and non-tariff trade barriers of other countries[14] – with-

9 BBC News, *On the first full day of his presidency, Donal trump says he is considering imposing a 10% tariff on imports of Chinese-made goods as soon as February*, BBC (Jan. 21, 2017), available at <https://www.bbc.co.uk/news/live/ce8jy9j91y5t>.

10 CRFB Staff, *Donal Trump's Universal Baseline Tariff*, Comm. For a Responsible Fed. Budget (Sept. 11, 2023), available at <https://www.crfb.org/blogs/donald-trumps-universal-baseline-tariff>.

11 CFRB Staff, *Donald Trump's 60% Tariff on Chinese Imports*, Comm. For a Responsible Fed. Budget (Apr. 10, 2024), available at <https://www.crfb.org/blogs/donald-trumps-60-tariff-chinese-imports>.

12 David Goldman, *Trump ups the ante on tariffs*, CNN (Nov. 25, 2024), available at <https://edition.cnn.com/2024/11/25/politics/trump-tariffs-mexico-canada-china/index.html>.

13 Kevin Halvey, Anne Laurent & Hannah Demissie, *U.S. Pauses Tariffs on Mexico, Canada for a Month*, ABC News (Feb. 3, 2025), available at https://abcnews.go.com/Politics/trump-discuss-tariffs-canadian--mexican-leaders-mexico-readies/story?id=118390520>.

14 Off. of the U.S. Trade Representative, *Reciprocal Tariff Calculations*, available at <https://ustr.gov/issue-areas/reciprocal-tariff-calculations> (last visited Apr. 14, 2025).

out initially naming which countries or which products – as he had found it unacceptable that the United States had low tariffs where others kept theirs at a higher level.[15, 16]

Then on February 10, while flying over the aptly re-named Gulf of "America", President Trump announced tariffs of twenty-five percent for steel and aluminium products produced anywhere around the world, with the possible exception of Australia.[17]

Of course, things did not stop there. The escalation of tariff measures continued, eventually culminating in the previously discussed unveiling of President Trump's reciprocal tariff regime on Liberation Day, which was followed by a further ratcheting up of retaliatory tariffs against China in the ensuing days.

There is doubt as to the legality of all these actions under U.S. law. On the matter of China, rapid executive action is possible based on Section 301 of the U.S. Trade Act of 1974.[18] Alternatively, Congress could act. One bill that has been drafted, the Moolenaar Bill, could strip China of the Permanent Normal Trade Relations (PNTR) status it has enjoyed since 2001.[19] The United States refuses PNTR to Belarus, Cuba, North Korea and Russia.[20] Whereas all PNTR countries export to the United States at the WTO MFN bound rate, which is a simple average of approximately 3.3 percent (with a weighted average of 2.2 percent),[21] separate duties are fixed for those that do not enjoy that status. The consequence for China of the eventual withdrawal of its PNTR status would be that the United States could impose, for example, a one hundred percent duty on a list of specific goods of Chinese origin. Consequently, endorsement

15 Aime Williams *et al.*, *Donald Trump Unveils 'Reciprocal' Tariff Plan to Hit Trade Partners*, Financial Times (Feb. 13, 2025), available at <https://www.ft.com/content/3cc5ecae-0a51-422c-b617-17030b96e506>.

16 White House, *Annex I: Country Reciprocal Tariff, Adjusted*, available at <https://www.whitehouse.gov/wp-content/uploads/2025/04/Annex-I.pdf> (last visited Apr. 14, 2025).

17 Benju Rose, *Trump to Consider Exemption for Australia on Steel, Aluminium Tariffs*, Reuters (Feb. 10, 2025) available at <https://www.reuters.com/markets/commodities/trump-consider-exemption-australia--steel-tariffs-pm-says-2025-02-10/>.

18 *See* Cong. Rsch. Serv., *Section 301 of the Trade Act of 1974*, CRS Report No. IF11346 (last updated May 13, 2024) available at "https://crsreports.congress.gov/product/pdf/IF/IF11346> ("Section 301 provides a statutory means by which the United States may impose trade sanctions on foreign countries that violate U.S. trade agreements or engage in acts that are "unjustifiable" or "unreasonable" and burden U.S. commerce.")

19 Select Comm. on the CCP, *Moolenaar Introduces Legislation to Revoke China's Permanent Normal Trade Relations* (Nov. 14, 2024), available at <https://selectcommitteeontheccp.house.gov/media/press--releases/moolenaar-introduces-legislation-revoke-chinas-permanent-normal-trade>.

20 Covington, *Revocation of Russia's Most-Favored-Nation Trade Status: What Companies Need to Know* (Mar. 18, 2022), available at <https://www.cov.com/-/media/files/corporate/publications/2022/03/revocation-of-russias-most-favored-nation-trade-status-what-companies-need-to-know.pdf>.

21 Available at <https://www.wto.org/english/res_e/statis_e/daily_update_e/tariff_profiles/US_e.pdf and https://ustr.gov/issue-areas/industry-manufacturing/industrial-tariffs>.

of Moolenaar's bill could result in an almost complete decoupling of the United States from China. This has not happened so far, although the U.S. continues to characterize China a non-market economy.

So far, the Trump administration has been utilizing executive orders as a means to rapidly impose tariffs on Chinese imports. Section 232 of the 1962 U.S. Trade Expansion Act has also been invoked yet again for imports on steel and aluminium. In a similar vein, the International Economic Emergency Protection Act (IEEPA) presents a possible avenue to recourse as a means of enacting measures aiming to preserve the economic security of the United States.[22]

With the implementation of Executive Order 14257 on April 2, the United States enacted an across-the-board tariff.[23] However, recent reciprocal tariff exemptions issued for critical minerals and specific tech products[24] suggest that more targeted, product-specific tariffs on other countries remain under consideration. Regarding the baseline tariff, legitimate doubts have been raised about the executive's authority to act unilaterally in imposing the MFN tariff as the U.S. Constitution assigns this competence to Congress. [25] To navigate this constraint, President Trump invoked the 1977 IEEPA to justify the MFN tariff.[26] Yet, as illustrated by the U.S. Supreme Court's rejection of President Truman's attempted seizure of the U.S. steel industry during the Korean War, judicial intervention remains a possibility.[27] President Nixon though, managed to successfully invoke the TWEA (the predecessor of IEEPA) when imposing a unilateral across-the-board tariff surcharge in 1971.[28]

22 The IEEPA was enacted in 1977 and is the successor to the TWEA (Trading with the Enemy Act). While the concept of "economic security" is unknown in the WTO legal order, the U.S. (and others) have been arguing that it is part and parcel of "economic security" embedded in Article XXI of GATT. See Mavroidis (2025).

23 *See* Donald J. Trump, *Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits*, White House (Apr. 2, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/04/regulating-imports-with-a-reciprocal-tariff-to-rectify-trade-practices-that-contribute-to-large-and-persistent-annual-united-states-goods--trade-deficits/>.

24 Donald J. Trump, *Clarification of Exceptions Under Executive Order 14257 of April 2, 2025, as Amended*, White House (Apr. 11, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/04/clarification-of-exceptions-under-executive-order-14257-of-april-2-2025-as-amended/>.

25 Peter E. Harrell, *The Case Against IEEPA Tariffs*, Lawfare (Jan. 31, 2025), available at <https://www.lawfaremedia.org/article/the-case-against-ieepa-tariffs>.

26 To be precise, the U.S. President, as per the Executive Order issued, invoked a series of legislative acts granting the President powers in times of emergency, namely, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), and Section 301 of title 3, United States Code.

27 Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

28 Irwin (2013), pp. 52-53.

U.S. courts will be the ultimate arbiters when it comes to deciding on the legality of President Trump's tariffs. Under the current constellation, some have argued, it is difficult to imagine how the United States Supreme Court as now composed (with a conservative majority including three President Trump appointees) would stand in the way of the new Trump administration – even if the stronger arguments side with entrusting Congress with broad authority to decide on across-the-board tariffs but even if the Supreme Court does rule against the legality of the tariffs under U.S.law, President Trumo has a few other arms at its disposal, e.g, Section 301 if he wants to persist with his tariff policy.

At the moment of writing (February 2026), the U.S. Supreme Court decision on this score was still pending. The primary potential constraint to a broad exercise of tariff authority is the economic impact that such measures might have on inflation and financial markets. The risk of negative impacts might lead some in President Trump's cabinet (*i.e.*, the Treasury) or in Congress to counsel caution and gradualism. In any event, increased tariffs are likely to be accompanied by a process of firm-specific exemptions, thereby increasing the costs of compliance and the opportunities for rent-seeking. The room for favouritism across countries, products and importers will likely be enlarged under the new Trump administration, as was already the case during his first.[29] Nevertheless, from a WTO compliance perspective the rationale for violating tariff commitments is immaterial.

ii. Assessing the International Legality of Tariffs

Articles I and II of the General Agreement on Tariffs and Trade (GATT), which regulates trade in goods among WTO members, provide the benchmark for assessing the international legality of the new tariffs envisaged by the second Trump administration. The imposed baseline tariff of ten percent against Chinese goods is a breach of both Article I and II of the GATT. It constitutes a breach of Article II insofar as the United States has "bound" tariffs – that is, to the extent that it has agreed not to increase tariffs above the bound rate inscribed in its Schedule of Concessions. In fact, the United States has bound practically all of its duties under various Harmonized System (HS)[30] tariff lines. With respect to

29 *See* Fotak *et al*. (2025) (providing an empirical account evidencing favouritism for U.S. companies that had made contributions to the campaign of the first Trump administration).

30 The system of classification of goods that is used uniformly by customs authorities around the world. *See Harmonized System*, Access2markets (n.d.), available at <https://trade.ec.europa.eu/access-to-markets/en/content/harmonised-system-0> (last visited Feb. 26, 2025).

Article I, the discriminatory nature of these tariffs is a clear-cut violation of the obligation to extend MFN treatment to all WTO members.

The rationale for violating WTO tariff commitments – whether out of a desire to address a macro-economic disequilibrium, rebalance the U.S. trade deficit or simply retaliate against China – is not germane to the finding of violations under either Articles I or II of the GATT. An increase in tariffs beyond bound rates constitutes a violation of GATT Article II. If the increase is discriminatory, it also constitutes a violation of Article I. The rationale for violating tariff commitments would, however, become legally relevant (according to consistent WTO case law) if the Trump administration attempts to justify these violations. To justify unilateral tariff increases while respecting WTO rules, the United States could attempt to invoke one of the allowable exceptions embedded in the GATT – Article XII (balance of payments), Article XX (various social preferences)[31] or Article XXI (national security).[32]

Article XII is a remote possibility as in similar cases trading nations simply devalue their currencies. To successfully invoke Article XII the United States would have to show that an increase in tariffs is necessary to reverse a significant decline in its monetary reserves, or to ensure a reasonable rate of increase in its monetary reserves if their current level is very low. This is not plausible for the United States. The International Monetary Fund, from which the United States would likely have to seek a favourable opinion,[33] is very unlikely to support such an interpretation.

The second Trump administration has not yet cited any of the grounds included in Article XX of the GATT either as potential justification – except for the threatened tariffs against its USMCA partners. The administration's current justification for those proposed tariffs is the protection of human health which has been endangered by the increased volumes of Fentanyl coming to the U.S. market. But, as argued above, these tariffs have been partially suspended for the time being.

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31 Article XX lists various economic and non-economic objectives, ranging from health and environmental protection to acquisition of products in short supply locally, that WTO members may invoke to justify violations of the WTO commitments.

32 During the panel proceedings, the United States refused to concede that it had adopted safeguard measures, insisting that its measures were properly characterized as aiming to safeguard its national security. In Mavroidis (2025) *op. cit*., we took distance from this view, see pp. 156 *et seq.*

33 *See* Panel Report, *Dominican Republic – Import and Sale of Cigarettes*, WTO Doc. WT/DS302/R (adopted May 19, 2005) (*showing* that recent WTO panel practice *shows* deference towards the opinion expressed by IMF experts). *Following* the issuance of this report, in DS544, 547, 548, 550, 551, 552, 554, 556, and 564 separate panel reports were issued *following* challenges by various WTO members against the U.S. safeguards on steel products, see Mavroidis (2025) at pp. 146 *et seq*., for a detailed discussion of all these reports.

Finally, following the legal test established in "DS512 Russia-Traffic in Transit", invocation of Article XXI is unlikely to succeed. In that case, the panel report adopted by the WTO Dispute Settlement Body stated that measures aiming to protect national security can be lawfully adopted only during times of war or in a war-like context.[34] This is hardly the case today. In any event, even a broader interpretation of Article XXI could never justify imposing tariffs on all U.S. trading partners.

Consequently, it is hard to see the United States imposing the tariffs announced by President Trump without violating Articles I and II of GATT – or such violations being justified under one of the GATT exceptions.

The U.S. Bill on China's PNTR status suggested that President Trump may seek to increase tariffs in a WTO-lawful way by using GATT Article XXVIII which allows WTO members to renegotiate their MFN tariffs. However, this is not plausible, for three reasons.

First, Article XXVIII requires the United States to maintain a reciprocal level of concessions that is no less favourable to multilateral trade than before the initiation of negotiations under this provision. This is inconsistent with the declared objective of the U.S. administration to raise protection across the board.

Second, President Trump's wish to increase tariffs quickly would be inconsistent with the WTO process required under Article XXVIII. To be compliant with Article XXVIII, the United States would first have to present to the WTO membership the list of tariffs it wants to renegotiate. WTO members with initial negotiating rights (INRs) – i. e., those with which the United States negotiated the MFN tariffs it seeks to increase, would have a seat at the table. Likewise, WTO members with a principal supplying interest (PSI) – i. e., those that now hold a larger market share than INRs in the U.S. market for products subject to MFN tariff renegotiation – would also be included. Negotiations on multiple tariff lines with so many trading partners would require substantial time to complete. In the meantime, the United States would be restricted from increasing its tariffs unilaterally. It would have to wait for the end of negotiation, which will produce either agreement or disagreement among the parties on the new tariffs. In the former case, the United States would be allowed to notify and apply its new MFN tariffs. In the latter case, the United States would be allowed to increase its MFN tariffs as it wishes, while affected WTO members would be entitled to retaliate.

34 In this case, the Dispute Settlement Body held that for a measure to be justified under Article XXI, it must have been adopted during war or war-like circumstances. If that is the case, the Dispute Settlement Body would defer to the exercise of discretion by the intervening state as long as it is minimally satisfactory. What matters therefore is when a measure was adopted and less so what exactly was adopted. Panel Report, *Russia-Traffic in Transit*, WTO Doc. WT/DS512/R (adopted Apr. 26, 2019).

Finally, if the United States were to decide to renegotiate its MFN tariffs using Article XXVIII, it would need to respect GATT Article I and treat all WTO members equally. None, including China, could face a higher tariff in the United States than the MFN tariff. Hence, the Article XXVIII process could be initiated lawfully only with respect to the MFN ten-percent tariff that President Trump wishes to impose.

iii. The Attitude of the Second Trump Administration Towards the WTO

Handley and Limão have re-visited the literature in this respect and provided an authoritative statement regarding the quintessential objective of trade agreements: to provide certainty regarding the course of trade.[35] As trade agreements are enforceable (otherwise why sign them in the first place?), certainty amounts also to legal certainty. This is exactly what the WTO is supposed to provide. And this is what the WTO provided for a number of years, even as it faced hurdles in its struggle to update itself. Then it all ceased abruptly, for the demise of the WTO's dispute settlement regime was not a death by a thousand cuts.[36]

It is certainly the case that the WTO has faced significant issues since its inception, some exogenous and some endogenous. The global financial crisis and the recent COVID-19 pandemic fall under the former. And of course, the WTO has found it hard to tame behind-the-border trade barriers. Addressing similar barriers requires homogeneity across players, as one needs to craft disciplines that go beyond non-discrimination.[37] But the WTO has alarmingly become a vastly heterogenous whole. Alas, heterogeneity of membership and deepening

35 Handley & Limão (2017).

36 While the WTO continues to exist of course, the number of disputes has taken a dramatic slump. From over 25 disputes submitted on an annual basis since 1995 (the advent of the WTO) to only a handful of disputes being submitted since 2019, when the Appellate Body was led to abeyance, and the possibility for appealing into the void and thus depriving panel reports of their legal significance, was open. While some WTO members have bought some insurance policy against this risk by signing to the MPIA (Multi-Party Interim Agreement), the majority of them (and crucially the United States, a frequent target of complaints) have abstained from joining. We discussed all this in Mavroidis (2022).

37 The Agreements on TBT (Technical Barriers to Trade) and SPS (Sanitary and Phyto-Sanitary Measures) are sometimes portrayed as agreements that harmonize behind-the-border regulations. This is wrong. While WTO members must use harmonized international standards when regulating in an area where similar standards exist, the decision to intervene is solely a matter of national sovereignty. These agreements in other words are not positive integration regimes, in the sense that WTO members undertake no obligation to intervene in the first place. The only WTO agreement that is a genuine positive integration agreement is the TRIPs (Trade-Related Intellectual Property Rights), which mandates a minimum protection of intellectual property.

of the integration process (e. g., introducing harmonization and/or recognition in lieu of mere non-discrimination) is a zero-sum game.

To put this in perspective, Portugal's high environmental standards entail that countries which are unable to match them will never be in a position to export their goods there (whenever conformity with environmental standards is a prerequisite for market access). A relatively poorer country with more pressing issues at hand (e. g., food shortages, etc.) is unlikely to expend its limited bandwidth to embark on a negotiation about environmental standards. This is why like-mindedness matters. Unfortunately, this is merely illusory within today's WTO.

Against this background, the WTO was already struggling to regain its relevance. Then came the first Trump administration. Blustein reports that the United States initially threatened to quit the WTO altogether,[38] though it never acted upon this threat. It then single-handedly drove the WTO Appellate Body to extinction, effectively reducing the WTO enforcement apparatus to a toothless operation as far as the United States was concerned. Whereas other WTO members devised solutions to address the risk of "appeals into the void",[39] the United States opportunistically utilized this practice whenever it found it inconvenient to implement a hostile panel ruling.

Deprived of its enforcement powers, the WTO's relevance was waning. An inability to effectively legislate further contributed to its irrelevance.[40] The Biden Administration made no attempt at all to redress this situation before President Trump's subsequent return to office.

At this stage, it is impossible to predict how the next years will unfold for the WTO, unpredictability is by and large President Trump's hallmark. Only one thing is clear: President Trump feels completely unconstrained by the WTO disciplines. His first months in the Presidency are a testimony to this. Whether he will decide to quit the WTO altogether or stay put while pursuing his own agenda remains to be seen. His former trade czar, Bob Lighthizer, had recommended that the United States and like-minded players leave the Geneva house and build a new world trading system.[41] Is this what President Trump is thinking? Given his aversion to do as told he might even prefer to stay put for now, safe in the knowledge that he will not have to implement inconvenient WTO judicial outcomes. Only time will tell. In the meantime, his choices will not be inconsequential. Recently,

38 Blustein (2019).

39 *See* Geneva Trade Platform, *Multi-Party Interim Appeal Arbitration Arrangement (MPIA)*, WTO Plurilaterals, available at <https://wtoplurilaterals.info/plural_initiative/the-mpia/>.

40 *See* generally, Zampetti, Low & Mavroidis (2022).

41 Robert E. Lighthizer, *Want Free Trade? May I Introduce You to the Tariff*, New York Times (Feb. 6, 2025), available at <https://www.nytimes.com/2025/02/06/opinion/tariff-free-trade-new-system.html>.

in December 2025, the United States issued a document stating its views on the reform of the WTO. In WTO Doc. WT/GC/W/984 of December 15, 2025, the United States left no doubt that it saw no future in WTO enforcement of agreed commitments, and that it was arguing for a retreat from the MFN as it now stands, in favour of a conditional MFN. This would mean that trade outcomes should be balanced (reciprocity ex post, and not ex ante) and that MFN should kick in against this background only.

III. The (Trade) Damage

What drives the tariff policies of the second Trump administration? During the first administration, the offered rationale was to affect terms of trade in favour of goods made in the United States. Research by Amiti *et al.* has shown that this was not achieved – costs were passed on to consumers and terms of trade for U.S. goods were not improved.[42] This time, the narrative has changed. On various occasions, President Trump has declared that his tariff increases are a means of relocating industry to within the United States. This is akin to the tariff-jumping investment argument.[43] If tariffs alone could change the patterns of investment, then high-tariff countries would be flooded with capital. Other conditions need to be present. Admittedly the United States offers the attraction of a high-income, vast and competitive market. But even generous subsidies – like those practiced by the Biden Administration[44] – have not had the expected investment-effect so far, even though some success is recorded. What is the basis to conclude that tariffs would succeed where subsidies have only in part succeeded? After all, subsidies address the difference in the regulatory cost between the home country and the United States, whereas tariffs do not.[45]

The Trump administration is clearly targeting trading partners that enjoy the largest trade surplus with the United States: China, the EU, Canada and Mexico.

42 Amiti, Redding & Weinstein (2019).

43 *See* Bhagwati *et al*. (1987), providing a succinct exposition.

44 *See*, e.g., U.S. Dep't of Energy, *Loan Programs Office: Inflation Reduction Act of 2022*, available at <https://www.energy.gov/lpo/inflation-reduction-act-2022> (last visited Apr. 17, 2025).

45 The Executive Order issued by the White House is quite sanguine regarding the potential for tariffs to lure investment. See <https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/>. Nevertheless, this seems a very doubtful proposition. So far, companies that have been "friend-shored", were paid handsome subsidies. Liu and Mozur (2023), having interviewed various CEOs of companies that the United States would have been interested in "friend-shoring", cite concrete evidence to the effect that the difference in regulatory cost is a deterrent, see John Liu & Paul Mozur, *Inside Taiwanese Chip Giant, a U.S. Expansion Stokes Tensions*, New York Times (Feb. 22, 2023).

Irrespective of the merits of the argument that trade deficits matter, it will not be through trade measures that they are reduced. President Trump has backtracked and partially avoided implementing announced tariffs *vis-a-vis* Canada, and Mexico. He consistently allows some breathing space between the announcement and implementation of tariffs to spur negotiations of various deals in the meantime, sometimes with some success – as in the recent negotiation with its USMCA partners – and sometimes without any – as in the Phase One agreement with China. But even when his efforts are crowned with success, the result is not an uptick in U.S. trade.

In the meantime, higher tariffs are unlikely to increase the volumes of sales for U.S. goods. In the past, the increased tariffs on goods of Chinese origin that President Trump enacted during his first administration led to increased imports from Mexico and Vietnam.[46] Consumers will typically switch to the relatively cheaper source of supply and are rarely motivated by patriotic choices when purchasing goods. After all, consumption is chiefly guided by scarcity of monetary resources and the ensuing opportunity cost.

And naturally, higher tariffs, other things equal, increase the inflation rate. None of the above sounds promising, and yet, notwithstanding his prior experiences, President Trump is once more embarking on a new tariff adventure. Conceivably the situation could be much worse this time around if President Trump's tariffs lead to trade wars with the United States' largest trading partners. China has already responded by significantly raising its tariffs.[47] The EU is also ready to react[48] – even though the Trump administration could put a dent in EU unity and fracture the solidarity of its member States if friendly governments, like the Orban and Meloni governments, are exempted from increased tariffs. It remains to be seen if this will be the case. It is possible that the United States may be the one that suffers the most from U.S. tariffs. But even if the trade damage is concentrated in the United States, the institutional damage dealt through the disregard of WTO commitments and disciplines affects international relations. We turn to this issue in what now follows.

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46 Freund *et al*. (2023), pp. 2-3.

47 Keith Bradsher, *China Raises Tariffs on U.S. Goods to 125% as Trade War Escalates*, New York Times (Apr. 11, 2025), available at <https://www.nytimes.com/2025/04/11/business/china-tariffs-125.html>.

48 European Commission, *EU Pauses Countermeasures Against U.S. Tariffs to Allow Space for Negotiations*, European Commission Press Corner (Apr. 13, 2025), available at <https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1058>.

IV. The Institutional Damage

On February 13, 2025, President Trump released a memorandum announcing his intention to impose "reciprocal tariffs" under the Fair and Reciprocal Plan (FRP).[49] The plan does not operate under a reasonable definition of reciprocity, is illegal under WTO law, would damage both the United States and its trading partners and could trigger reactions that would bring an end to the international trading system as we know it. It is not yet clear what measures will be implemented, but the memorandum leaves no doubt as to its rationale – lack of reciprocity as interpreted by the new U.S. administration. The memorandum states that this lack of reciprocity is one source of the United States' large and persistent annual trade deficits in goods.[50]

The basic idea behind the memorandum is that the United States has been subject to various trade practices that it does not employ. The memorandum references a wide range of measures ranging from tariffs to taxes to import volumes which have supposedly caused U.S. trade deficits. Reciprocal tariffs are intended to counteract these measures, eliminating the trade deficit.

There are three problems with this line of argument. First, the U.S. trade deficit has little if anything to do with foreign tariffs or other trade practices that the United States intends to punish – a point repeatedly made by economists since the first Trump administration.[51] Second, the practices that the U.S. administration intends to punish include practices that are non-discriminatory. The memorandum references VAT as an unfair practice, despite the fact that it is an indirect tax applied by over 170 countries. Third, President Trump's understanding of "reciprocity" runs counter to the use of "reciprocity" in any sense of the word, including the sense in which reciprocity has been used in the creation of the international trading system.[52] If applied, it would destroy that system.

Importantly, it is yet more evidence of the "on/off" approach of President Trump to international relations. Like the announced and then withdrawn or suspended tariffs against Canada and Mexico, it fuels trade uncertainty, the very antithesis of the post-World War II international order.

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49 The White House, *Reciprocal Trade and Tariffs*, available at <https://www.whitehouse.gov/articles/2025/02/reciprocal-trade-and-tariffs/> (last visited Apr. 17, 2025).

50 *Ibid.*

51 Gagnon (2017).

52 In the world trading regime, reciprocity has been understood as exhibiting an ex ante function. Negotiating partners agree on a trade deal, and then let the law of comparative advantage decide the trade outcome. While corrective action to avoid social externalities in the form of safeguards is permitted (assuming certain conditions have been met), reciprocity is definitely not conceived as arithmetical equality of trade outcomes (e. g., no trade deficits). Alas, this is how the new Trump Administration understands reciprocity.

The post-World War II liberal international order is largely the work of the United States and its allies. The key intuition behind Kindleberger's Hegemonic Stability Theory is this: the stability of the global system relies on the hegemon who has the incentive to assume the requisite cost to develop and enforce the rules of that system.[53] The United States did not do that during the inter-war period and it, along with the rest of the world, paid the price. Having learned its lesson, the United States did much better the second time around.

President Roosevelt met with Prime Minister Churchill in 1941 aboard the U.S.S. *Augusta* in Placentia Bay, Newfoundland and signed the Atlantic Charter, sowing the first seeds for the post-World War II order. The conferences in San Francisco (UN) and Bretton Woods (World Bank; International Monetary Fund) picked up from where the two statesmen left off, and eventually the new trade order was decided in Geneva, Switzerland (the General Agreement on Tariffs and Trade, GATT) to complement the architecture of the multilateral edifice.

In the following years, this regime served the world well. Sure, there were deviations from the original intentions, but by and large the system functioned. Its success is evidenced in the ever-increasing membership of the international institutions. Alas, membership-heterogeneity has not been easy to manage. Pragmatism helped the UN Security Council overcome tensions but soon cracks became visible. And it was not just the UN that suffered. Ikenberry has provided a close to definitive statement in this respect.[54]

The WTO, the successor to GATT, is already paying the price. But here we have an unlikely culprit. If F. D. Roosevelt and Harry Truman (acting through their committed to free trade secretary, Cordell Hull) were the founders of the world trading system, President Trump can rightfully claim that he is its chief undermining force. Asimov would have seen Roosevelt or Truman as Hari Sheldon, the very skilful scientist trying to protect against all contingencies, and President Trump as the Mule, the force that tried to undo all planning. In Asimov's classic novel, the Mule eventually lost.[55] It remains to be seen if this will be the case in real life.

For one might legitimately wonder what is the value of the WTO if its most important member routinely behaves unconstrained by its disciplines? Think about the story in this paper alone – President Trump's tariffs run afoul of the quintessential WTO obligations, and yet he does not blink. He threatens with more tariffs, removing certainty from international trade relations, the very objective of the GATT/WTO regime.

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53 Kindleberger (1973).

54 *See* Ikenberry (2021) (providing a full account of liberal internationalism's journey from its nineteenth-century roots to today's fractured political moment).

55 Asimov (1951).

The cost of a trade order unconstrained by WTO disciplines is unfathomable. Alas, the attitude of the second Trump administration contributes towards its demise. Over time, duties hit practically all trading nations as already explained. Most recent data suggests that they have been counter-productive: terms of trade did not improve for US goods, as importers aborbed the price hikes; tariff income increased but not the point anticipated by the Trump Administration; and the US deficit shows no signes of being drsatically reduced. If the WTO's dispute settlement regime was undone by a single stroke, the United States tariff policy and overall attitude may lead to the death of the entire WTO institution by a thousand cuts. At this moment in time, there is no apparent heir to the United States hegemony. No others possess the soft power[56] to rally the troops. The WTO is facing what Nye termed the "Kindleberger-trap".[57] The hegemon is gone and the next in line are simply incapable to emulate its leadership. International trade is not conducted in terms of anarchy yet, but it certainly is not orderly anymore.

Worse, as Carvalho *et al.* (2025) have noted, if it is indeed the case that the United States is not a hegemon anymore but more of a *primus inter (quasi) pares*, then no one has the incentive to assume the requisite cost to provide the missing order.[58] We are headed towards unchartered waters, that is, straight into the realm of uncertainty.

Perhaps, Mike Carney, the Canadian Prime Minister, epxressed all this better than anyone when stating in Davos (World Economic Forum, January 2026 meeting) that we are witnessing a retreat from the rules-based system. Smaller players like Canada, he stated, have no option but to look for alliances with others that can best serve their interests by promoting certainty in international relations. After all, certainty is the key reason why enforceable trade agreements are signed in the first place.

V. Concluding Remarks

Within this note, three principal points were advanced. Firstly, that the current U.S. administration has returned to the White House with the same mentality that it held during its first tenure. Though the United States remains the leading nation within the international trade order, its recent behaviour flies in the face of the rule-based framework that order depends upon. Secondly, that this behaviour has led to significant trade losses for both U.S. domestic consumers and

56 Nye (2004).

57 *See* Nye Jr. (2017).

58 Carvalho, Monte & Ornelas (2025).

the global society as a whole. And lastly, and most importantly, that the second Trump administration is about to inflict potentially irremediable damage to the current world trade order. At best, it remains questionable whether and how the global community will endure these challenges.

Abbreviations

EU: European Union
FRP: Fair and Reciprocal Plan
GATT: General Agreement on Tariffs and Trade
HS: Harmonyzed System
IEEPA: International Economic Energy Protection Act
INR: Initial Negotiating Rights
MFN: Most Favoured Nation
MPIA: Multi-Party Interim Agreement
PNTR: Permanent Normal Trade Relations
PSI: Principal Supplying Interest
SPS: Sanitary and Phyto-Sanitary Measures
TBT: Technical Barriers to Trade
TRIPs: Trade-Related Intellectual Property Rights
TWEA: Trading with the Enemy Act
UN: United Nations
US: United States of America
USMCA: United States – Mexico – Canada Agreement
VAT: Value Added Tax
WTO: World Trade Organization

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