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International Economic Relations in a volatile world

Have “Trump’s Tariffs” destroyed the rules-based multilateral trading system in the WTO?

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Introductory comment

Any analysis of the damage done by the United States under Trump’s second Presidency to the global rule-based order requires some knowledge of the pre-existing system. Historically, the General Agreement on Tariffs and Trade (GATT) is one of the least-understood international agreements, even by most politicians – especially Heads of State and Government - let alone the general public². Hence the focus in these notes on the rules and procedures which led to an unprecedented growth in world trade and investment (even in developing countries) between 1947 and 2020.

Personal comment

Although my academic and professional qualifications were in Scots, English, international and European law, I joined the Commission in 1973 as a (legally-qualified) trade negotiator. My very first experience was working primarily with United States’ colleagues in Geneva for the conclusion of the Multifibres Arrangement, followed by the GATT Tokyo Round Agreements. Despite sometimes fundamental differences in approach, we always found consensus in the end (a consensus which then had to be “sold” to the other 60-70 GATT Contracting Parties, as well as 12 EC Member States). Transatlantic friendships made in those early days -

¹ Barrister, Brick Court Chambers; Avocat Barreau francophone de Bruxelles; former EU official, diplomat and trade negotiator; founding partner, Forrester, Norall and Sutton; former partner White and Case

² Sometimes reference is made to a “trade policy mafia” of officials, usually based in diplomatic Missions in Geneva but also in capitals, who tend to dominate policy and decision-making in WTO matters.

and my commitment to the strongest possible transatlantic relationship – have lasted all my life.³

Background

Following the establishment of the United Nations in 1945, the Bretton Woods “family” (IMF, IBRD and IFC) and the General Agreement on Tariffs and Trade (GATT) were established respectively in 1944 and 1947 to provide a legal and institutional framework for post-War international economic relations. For the last 80 years, these international agreements (the “rules-based multilateral economic order”) have underpinned unprecedented⁴ economic stability and growth. IMF membership has grown from 29 to 190 and the GATT/WTO⁵ from 23 to 166 Member States⁶, covering 98% of world trade. The Organisation for Economic Cooperation and Development (OECD), created in 1961 has expanded from 20 to 38 Member States and complements the work of the Bretton Woods family and the WTO in macroeconomic, social and fiscal policies.

The threat to the international order posed by the second Trump administration.

For 80 years, the United States has been the primary pillar of the post-War international order in the United Nations and its “family” of specialised agencies, the Bretton Woods institutions, the GATT/WTO, the OECD and regional security organisations, especially NATO in the context of the trans-Atlantic alliance. The first and (especially) the second Trump Presidencies have weakened and threaten to destroy this system. “Trump’s tariffs” are the “tip of an iceberg” with the United States reverting to isolationism, confrontation, economic conflict, unilateralism and “America first” policies across-the-board. Sincere cooperation based on good faith⁷ can

³ A few weeks ago I attended the latest meeting of the Transatlantic Law Forum, organised by the Antonin Scalia Law Faculty of George Mason University, at which I was presented with a portrait of Edmund Burke, in recognition of my commitment to transatlantic relations.

⁴ Note the economic, social and political tensions which had led to two World Wars in 20 years between 1914-18 and 1939-45.

⁵ Note that the GATT was transformed into the World Trade Organisation by the Marrakesh Agreements in 1995.

⁶ Formerly Contracting Parties. Note that the EU as well as its 27 Member States are Parties to the WTO Agreement.

⁷ A general principle of public international and EU law.

no longer be assumed in the case of the world's only military and economic superpower.

To date, the United States has: a) withdrawn from the World Health Organisation (WHO); b) withdrawn or withheld funding from the UN Human Rights Commission (UNHRC), United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); c) stymied the dispute settlement system of the WTO by blocking the replacement of judges in the Appellate Body under the Dispute Settlement Understanding (DSU); d) withdrawn from the Joint Comprehensive Plan of Action on Iran's nuclear policy⁸; e) withheld participation in the Kyoto Agreement on Climate Change⁹; f) threatened to withdraw from NATO and g) threatened to withhold funding from the United Nations and other organisations of which the US is a member.¹⁰

The importance of Trump's policy of dismantling the "administrative State", through the activities of the Department for Government Efficiency (DOGE) under Elon Musk, especially the abolition of USAID¹¹ cannot be overlooked in this context, as reinforcing United States' withdrawal from the world (e.g. in Africa), leaving the way open to Chinese or Russian "assistance" to be countered only by the EU and its allies¹².

"Trump's Tariffs"

Most visibly, since his second inauguration, Trump has threatened, imposed, suspended and withdrawn tariffs on a wide range of products from multiple sources, notably China, Canada, the EU and other key trading partners of the United States, but also small, developing countries with high dependence on the United States' market for their exports (e.g.

⁸ Signed by Iran, the UK, China, France, Germany, Russia and the United States.

⁹ United Nations Protocol to the United Nations Convention on Climate Change.

¹⁰ On 4 February 2025, President Trump ordered a review of US participation in and funding of these three UN bodies within 90 days and "within 180 days... a review of all international inter-governmental organisations of which the US is a member and provides any type of funding or support, and all conventions and treaties to which the US is a party, to determine which organisations, conventions or treaties are contrary to the interests of the US and whether such organisations, conventions or treaties can be reformed."

¹¹ The US Agency for International Development.

¹² I refer here principally to Canada and the EU's European allies in EFTA.

Lesotho – textiles). These measures, imposed through Executive Orders¹³, have been taken or threatened in complete disregard for WTO rules (GATT Article I -the MFN clause) and procedures (consultations under GATT Article XXII and the DSU). Now, in July 2025, the WTO continues to function (with the United States as a Member) and the damage to nearly 80 years of progressive liberalisation of international trade may be summarised as follows:

- a) The main negative impact of Trump's policies has been to create unprecedented political, economic and legal uncertainty, through a flagrant disregard (even contempt) for international rules and procedures;
- b) The volumes of trade impacted by the measures actually imposed by "Trump's Tariffs" are less than originally foreseen and international trade in services (accounting for approximately 65% of world trade) is so far unaffected;
- c) The already significant number of bilateral, plurilateral or regional preferential trade arrangements has increased as United States' trading partners urgently seek "deals" with the United States (**note** however that the majority of world trade in goods and services between the United States, Europe and China remain subject, at least in law, to the MFN principle in GATT Article I);
- d) The damage done to the "rules-based multilateral legal order" will be long-term if not irreparable. For the EU in particular, the post-War cooperation with the United States can no longer be taken for granted (in the WTO or indeed in any other organisation), leading to the shaping of "strategic autonomy" policies across-the-board;¹⁴
- e) Retaliation by the United States' trading partners only exacerbates legal uncertainty, especially for traders and customs officials who have to decide on the origin of products subjects to higher tariffs, taking into account criteria such as content and value-added (e.g

¹³ Until July 2025, Trump had signed 170 Executive Orders covering many fields, but many on tariff policy.

¹⁴ Note that Canada, Japan, Australia, New Zealand, ASEAN and many other countries which until now have relied on (and taken for granted) US friendship and support can no longer do so, leading to a re-shaping of the entire post-War global system of international relations, not excluding the United Nations itself.

for products manufactured in China but shipped through “intermediary” countries such as Vietnam, with or without processing, to their ultimate destination).

Other factors which have turned the post-War international system “upside down”.

In my view, these include:

- a) The rising role and influence of the People’s Republic of China (PRC) in military, economic and political terms especially but far from exclusively in the Asia-Pacific region, with – as far trade policy is concerned – its membership of the WTO in 2001¹⁵ being an important milestone;
- b) Russia’s illegal annexation of Crimea in 2014, invasion of Ukraine in 2022 – in flagrant breach of Article 2(4) of the UN Charter¹⁶ – in February 2022 and its neo-imperialist policies towards Western Europe (especially the EU and NATO), targeting in particular former satellites of the USSR, recognised as sovereign States, members of the United Nations, by the Russian Federation;
- c) The economic, monetary, social and health effects of the global COVID pandemic (2019-2022);
- d) The increase in regional conflicts (notably in Africa, the Middle East and Asia¹⁷) leading to unprecedented movements of people, notably towards Western Europe,¹⁸ resulting in serious challenges to ensuring the rule of law as regards their treatment (legal status as refugees or asylum-seekers), as well as the political, economic, social, human rights and security issues arising from mass movements of persons;

¹⁵ Note that although the PRC formally joined the WTO in 2001, “full” membership took place only in 2013 when the unilateral safeguard mechanism which accompanied the PRC’s accession expired.

¹⁶ Any claim by the Russian Federation to be acting in Ukraine on the basis of self-defence under Article 51 of the UN Charter is clearly risible.

¹⁷17 Notably but not exclusively Sudan, Syria, Iraq, Iran, Myanmar, Afghanistan,

¹⁸ I do not exclude the important movement of people from Central and South America (El Salvador, Guatemala, Mexico) towards the Southern border of the United States.

- e) The increasing importance of the “Global South” in international relations generally, their autonomy and non-aligned status¹⁹ and a more dynamic competition between global “powers” such as China, the European Union (EU), Russia and (still to a certain extent) the increasingly isolationist United States for influence in these countries;
- f) The withdrawal of the UK from the EU (“Brexit”) after 47 years and its impact (still being assessed) on the economic strength and security of the Western Alliance,²⁰ taking into account the growing overlap (for example on industrial policy in defence sectors) between EU and NATO law and policy.

The need for a fundamental “re-think” and “re-set” for European²¹ relations with the United States.

For 80 years, Western Europe has taken the US defence and security “umbrella” for granted. Understandable for a short period during European post-War reconstruction and the Cold War, with a Russian nuclear threat. Less so, since the renaissance of China, India, Japan, North and South Korea and ASEAN, with a global shift of attention especially in the United States to the Asia/Pacific region. Irrational (or short-sighted) complacency towards Russian neo-imperialism at least since 2014²². Ignoring (at least for some NATO countries) the “warning signs” of serious mistakes in US foreign policy, starting with Vietnam/Cambodia/Laos but continuing (much more seriously) with Iraq and Afghanistan.²³

¹⁹ “Non-aligned” is probably not the correct term. Rather the Global South countries are adopting foreign policies on a pragmatic basis in accordance (understandably) with their essential “vital interests”.

²⁰ I include Brexit in this list with some hesitation. However, in the light of the worsening situation on the European continent in the face of Russia aggression (not limited to Ukraine) and in the Middle East (historically an area of strong UK interest and influence), the negative impact of the most serious error in UK foreign policy since World War 2 cannot be under-estimated..

²¹ By “European” I mean the EU, the UK and other European States which have traditionally had close (even dependent) relations with the United States (e.g. Norway, Switzerland, Iceland and certain EU applicant States).

²² In my view (but this is not shared by many EU colleagues), The EU could and should have engaged in a more constructive manner, not only with the newly-independent Russian after the collapse of the Soviet Union, COMECON and the Warsaw Pact, but also with Turkey as a vital “bridge” for EU policy towards the Middle East.

²³ I would add the unbalanced United States’ policies in the Middle East; not in supporting Israel’s legitimate right to self-defence, but in failing to adopt a balanced and proportionate approach to the Middle East in general and to the question of Palestine in particular.

Between 1945 and (say) 2000, Europe and the United States (supported by Canada) worked together in the GATT/WTO to liberalise international trade, with striking success, especially lowering tariffs²⁴ and non-tariff barriers (NTBs) such as quotas and conflicting technical regulations. The Uruguay Round, with its unprecedented system of compulsory dispute settlement and new disciplines on trade in services, investments and intellectual property²⁵ (1995) was the high point of this cooperation. Since then, the advent of the PRC and the failure of the Doha Development Round, marked a “sea-change” in the “balance of power” in the WTO in general and between key Members such as the United States, the EU, Japan and China in particular.

Jean Monnet said that European integration would be driven by external threats or crises. The EU has certainly reacted to the Russian invasion of Ukraine and barely disguised threat to the EU and certain Member States. However, the advent of a new and more radical Trump administration is of an entirely different order. It is not clear (yet) how the EU intends to adapt its internal and external policies to meet this unprecedented challenge, given the mutual dependence on the world’s largest bilateral economic relationship, with the colossal vested interests which this entails on both sides of the Atlantic.

Personal note. As indicated above, I recall in particular my friendship with successive United States’ delegations to international trade negotiations in Geneva, starting with USTR Robert Strauss²⁶ and his assistants Dick Rivers and John Greenwald – all sadly no longer with us. We certainly did not agree on everything and there were many hearted discussions both inside the GATT meetings rooms, in our Missions in Geneva, but also in many restaurants in Geneva where key provisions of the MFA and Tokyo Round Agreements were thrashed out – often to the surprise of the 60 or more Delegations who were not included in these informal meetings. It is to be hoped that, at least at a personal level, friendship and a spirit of

²⁴ Making Trump’s “tariff wars” paradoxical.

²⁵ GATS, TRIPS and TRIMS,

²⁶ My own career as a practising lawyer was inspired by Ambassador Strauss’s encouragement over dinner in Geneva in 1977!

cooperation across the Atlantic survive between Commission and USTR trade officials, if not their political leaders..

No way back -need for a new European foreign policy, including trade and economic and monetary policy more generally (“Strategic autonomy” supplemented by strategic partnerships²⁷)

EU-US economic relations are the most important in the world – for goods, services, investments, data flows, movement of persons (business, students, tourists etc.). So, important not to “throw out the baby with the bathwater”. Trade and investments in goods and services do not depend exclusively on legal rules, however, forward planning of trade and investment requires a minimum of political and legal certainty and not blatant disregard and even contempt for the rule of law.²⁸

The priority now must be to preserve existing acquis to the maximum; strengthen and deepen in the mutual interest - but build strategic autonomy, in economy, security and defence. European competitiveness is key (implementation of Letta and Draghi Reports). The EU Single Market project launched in 1985 was aimed principally at giving Europe a single continental market without internal frontiers precisely in order to match US innovation, growth and competitiveness. The fact that the top 7 high tech companies in the world are American is only one indicator of the (relative) failure of the EU’s Single Market Project (notably in services, but also in law enforcement more generally.

Note “Europe” includes the UK, but the UK must now formulate its own policies, including towards the US, but (ideally) with maximum cooperation with the EU. Note however that, as a “third country” the UK is formally excluded from all EU institutions, agencies, bodies, committees, except as may be agreed on an ad hoc basis (e.g. the recent Swiss acceptance of “dynamic alignment” with acceptance of primacy of the EU acquis and the jurisdiction of the CJEU). Despite this self-inflicted exclusion from EU

²⁷ I have in mind third countries such as Canada, Japan, India, Mexico, Turkey, Australia/New Zealand and Nigeria but also smaller countries which provide a “bridge” to strategically important areas such as the Arctic and Antarctic (e.g. Iceland, Norway, Argentina and Chile).

²⁸ The “contagion effect” of the Trump administration’s contempt for the rule of law (internally and in foreign policy) is often ignored, though certainly not in Moscow, Beijing, Teheran and Pyongyang – or even Tel Aviv.

decision-making, it appears that close cooperation exists between EU and UK trade officials, both bilaterally and in Geneva in all WTO-related matters. It is to be hoped that the UK in particular will not fall into the trap of having to choose between alignment with Trump's United States (e.g. on industrial, agricultural or services standards), not least given that the EU remains the UK's most important trading partner. However, to a certain extent, regulatory divergence between the EU and UK is inevitable as each seeks its own bilateral agreements, including with the Trump administration. This will have at least potentially a "knock-on" effect on the UK-EU Trade and Cooperation Agreement (TCA).

GATT/WTO - a unique framework for international trade since 1947

The GATT – an unusual international agreement. Lengthy, verbose, articles covering all aspects of international trade. Historically (and even when the Appellate Body was in operation) economists and trade specialists outnumbered lawyers in Geneva. Overall aim was/is the gradual liberalisation of trade in goods through the reduction of tariffs and the removal on non-tariff barriers or NTBs (e.g. quotas and discriminatory technical barriers), and imposing strict conditions for their reintroduction.

Since 1947 there have been successive "rounds" of multilateral trade negotiations (MTNs). These have all aimed at:

- a) Reducing tariffs and preventing their reintroduction except in accordance with WTO safeguard procedures, on an erga omnes and non-discriminatory basis;
- b) Reducing NTBs, especially quotas and imposing strict, dissuasive conditions for their reintroduction;
- c) Extending the rule of law to areas formerly excluded from GATT principles of non-discrimination (e.g. textiles under the Long-Term Arrangement on Cotton Textiles (1962); the Multifibres Arrangement (1974); bilateral "export moderation" agreements such as those with Japan (1980-1995);
- d) Elaborating rules in specific areas under GATT Articles (e.g. anti-dumping, subsidies and countervailing duties, safeguards,

customs valuation, rules of origin etc.), notably in the Tokyo and Uruguay Rounds²⁹;

- e) Strengthening the dispute settlement system, most remarkably in the Uruguay Round Dispute Settlement Understanding (DSU), which established the Appellate Body (AB), now in limbo as a result of the United States refusing to appoint judges to the Body since 2019;
- f) Expanding the coverage of WTO law to services, trade-related intellectual property and trade-related investment issues.

Note that the DSU is the “high-water-mark” for dispute settlement in international law, combining compulsory dispute settlement (consultations, panels and final decisions by the Appellate Body within strict time limits (18 months from initiation of consultations until final decisions by the AB). Despite the “freezing” of the AB, panels continue to be set up in a number of disputes.

Key principles of the multilateral WTO legal order

Since 1947 the liberalisation of international trade has succeeded (probably beyond the dreams of its founders) because of **the strict application of the most-favoured nation clause (GATT Article 1)**. Tariff “concessions” have been negotiated (in the successive MTNs) on a bilateral basis between the main trading partners in the product(s) in question, with the results (tariff reductions) being applied multilaterally or erga omnes to all WTO Members. **The unilateral and “transactional” approach adopted by the United States in the second Trump Presidency is not only flagrantly illegal under WTO law, but destructive of the rule-based legal order which has broadly³⁰ existed for almost 80 years and which has been the foundation of global prosperity.³¹**

Note that, contrary to the assertion on which United States’ trade policy is based under the Trump administration, **balanced bilateral trade has**

²⁹ Note that these “codes” were a crucial part of the Tokyo Round negotiations in 1979, but were only formally integrated into the body of WTO law in 1994, when accession to the WTO involved acceptance of the WTO “package” as a whole.

³⁰ For important exceptions to this principle see below.

³¹ Note that “global” in this context largely excludes the 55 States in the Africa (now Members of the African Union).

never been the guiding principle of the GATT/WTO. Rather, the economic philosophy which has underpinned the GATT system since 1947 has been that multilateralism is a “rising tide which lifts all boats”.

Apart from WTO rules on dispute settlement in the DSU, the **four main pillars of the GATT/WTO legal order** are:

- a) The **most-favoured nation** (MFN) clause (GATT Article I³²), guaranteeing non-discrimination in trade between Members and third countries;
- b) The principle of **national treatment** in GATT Article III, guaranteeing non-discrimination between nationals of a Member and third countries trading within Members’ jurisdiction (e.g. in fiscal policy);
- c) The principle of **preferential treatment for customs unions and free-trade areas** in GATT Article XXIV established in accordance with the criteria set out in that Article and approved in accordance with WTO procedures;³³
- d) The provision aimed at facilitating **special and differential treatment for developing countries** established in Part IV of the GATT and related WTO instruments.

The tension between trade liberalisation and protectionism has always been present.

In 1962 the United States and European countries³⁴ insisted on special treatment for trade in cotton textiles, with the conclusion of the Long-Term Arrangement on Cotton Textiles (LTACT). By way of derogation from the MFN clause in GATT Article I, this Arrangement allowed unilateral safeguard measures to be applied to a single supplying country. Following the advent of synthetic fibres, the LTACT was replaced in 1974 by the Multifibres

³² Note that the MFN principle is also established in the GATS, TRIPS and TRIMS Agreements.

³³ Note that the proliferation of preferential economic areas, especially in the last 20 years, has meant that the procedure disciplines established under GATT Article XXIV and related WTO instruments have not functioned as intended. The EU for example has never been formally approved by the GATT/WTO, although the existence of the “European Communities” is formally recognised in the WTO Agreement.

³⁴ Note that, in 1962, the EEC comprised 6 Member States and the customs union which is the foundation of the “European Project” was only completed, with the complete abolition of internal tariffs and the establishment of a common external tariff being achieved, in 1968.

Arrangement, which allowed (Article 3) the imposition of unilateral safeguard measures and (Article 4) the negotiation of bilateral agreements limiting exports of textiles and clothing by the establishment of quotas³⁵.

Note that, more importantly, between 1980 and 1995, both the EU and the United States “persuaded” Japan to limit exports of automobiles, electronics and certain machinery products through “voluntary export moderation agreements,³⁶” which – although in contravention of the GATT Articles XI, XIX-XXI on “safeguards” (e.g. quantitative restrictions, tariff increases etc.. to which the MFN clause should apply) - were accepted and applied “to the letter” by Japan³⁷. Such measures were expressly prohibited in the WTO safeguards agreement in 1994.

Power politics has always been a factor in the “rule-based legal order”, even under the GATT/WTO.³⁸

As an EC trade negotiator between 1973 and 1984³⁹ I witnessed at first hand the pressure brought to bear by the EU, first on countries (mainly in Asia, Latin America and, to a lesser extent in Eastern Europe⁴⁰) supplying textiles and clothing to the EU, secondly in the Tokyo Round for robust anti-dumping and subsidies-countervailing duty disciplines and finally on Japan which, at the time, threatened (or was perceived to threaten) to monopolise world trade in automobiles, electronic products and machine tools. Similar pressure was brought to bear on supplying countries for agricultural products, for which “special and differential treatment” has always been provided in international trade law, as well as in EU law.

The implicit (though informally sometimes explicit) threat made by the EC and the United States between 1960 and 1990 was that, unless such

³⁵ See, Sutton, equality and discrimination in international trade in textiles”, London Yearbook of World Affairs, 1978.

³⁶ Sometimes called “weather forecasts”.

³⁷ On relations between the EC and Japan between 1979 and 1984, see Sutton, EC-Japan relations between 1979 and 1985, Oxford Yearbook of International Law, 1985.

³⁸ On the importance of power politics in international relations see Georg Schwarzenberger, Power Politics (1942, as updated in 1967).

³⁹ First in the negotiations for the Multifibres Arrangement (MFA), secondly as a member of the EC Delegation for the Tokyo Round negotiations (1977-79) and thirdly as a diplomat in the European Commission’s Mission in Tokyo (1979-1984).

⁴⁰ I was responsible for the first bilateral trade agreements negotiated by the EC with Hungary, Poland and Romania in 1977.

(unilateral) measures were accepted, the GATT would - to all intents and purposes – cease to exist. **Note** however that despite intense pressure from the United States and the EU, exporting (usually developing) countries steadfastly refused to accept any provision (comparable to MFA Article 3) which would permit unilateral safeguard measures in international trade outside the textiles and clothing sectors.

To a certain extent, the extreme and unpredictable use of power politics by the Trump administration is not without precedent in post-War international trade!

The distinction between “fair and unfair” trade and the use (or abuse) of anti-dumping and anti-subsidy measures

There is an important distinction (not always clearly understood) between measures which importing countries may take to address imports which may be perceived to be unfair, either because of excessive volume or unfairly low prices. Under WTO law, “commercial defence” measures may be taken:

- a) In accordance with GATT Articles XI, XIX-XXI, the WTO safeguards agreement and relevant provisions of the GATS as far as trade in services is concerned, notably as regards market disruption⁴¹. Such measures must be non-discriminatory, covering all third country suppliers of the goods or services in question (**clearly the United States’ unilateral and selective tariff measures do not meet this criterion**);
- b) Against dumped or subsidised imports, which cause or threaten market disruption. Such measures – in contrast to the safeguard measures referred to above (usually taken in the form of quotas) – may be selective, targeting only the companies (in case of dumped imports) or countries (in the case of subsidised exports);
- c) In order to protect national security under GATT Article XXI. **Note** that measures taken under this provision are highly unusual and

⁴¹ Similar terms used in GATT safeguards articles include “material injury” and “serious injury”.

may not be used (as in the case of “Trump’s tariffs”) as a disguised instrument of economic policy.

It is arguable that, because of the strict conditions governing safeguard measures (the MFN, erga omnes, requirement), some WTO Members have made use of anti-dumping and/or anti-subsidy measures as a means of securing more generalised protection against cheaper, voluminous imports than would be possible under “classical” anti-dumping or anti-subsidy measures.⁴²

The importance of international trade in services – not directly affected by “Trump’s Tariffs” and now count for 20% of global trade and around 50% of UK, EU and US trade⁴³.

The Marrakesh Agreement in 1994 transformed the GATT into the WTO and, at the same time, expanded the “rule-based multilateral order” to include services, investments and intellectual property.⁴⁴ The GATS is modelled on the same legal principles as the GATT - essentially the MFN clause with a derogation for preferential agreements and safeguards on an erga omnes basis. “Concessions” on market access for services are set out in Schedules on a country by country basis, in the same way as the GATT contains schedules of tariff concessions for trade in goods. It is fair to say however that the exponential expansion of trade in services in the last 30 years or so, is due essentially to market forces shaped by technology (e.g. communications, digital and transportation) although the GATS legal framework in force since 1995 undoubtedly adds an important legal framework for services trade under the WTO.

Most recently, the de facto abolition (or irrelevance) of physical frontiers, has led to the increasing importance of e-commerce, digital trade and data transfers between WTO Member States.

With WTO membership now at 166 States, finding a broad-based consensus on any issue is increasingly difficult. Most recently, a “coalition

⁴² EU measures against Japan and, more recently, China come to mind in this respect.

⁴³ Note also the increasingly close link between trade in goods and services, especially in high technology sectors.

⁴⁴ Through the General Agreement on Trade in Services (GATS), the Trade-related intellectual property agreement (TRIPS) and the trade-related investment agreement (TRIMS).

of the willing” has led to the conclusion of an understanding on e-commerce signed by more than 90 Members, excluding the United States⁴⁵. This “understanding” aims at facilitating digital trade through (inter alia) electronic signatures and authentication, online consumer protection, data privacy, transparency and open government data. The aim is to incorporate the understanding into WTO law at a future date.

Can the WTO exist without the United States?

The dominance of the United States in international trade generally, but in e-commerce more specifically (with most if not all high tech companies emanating from the United States), clearly diminishes the significance of any WTO agreement which does not include the United States. For the moment however, the US has not withdrawn from the WTO (as it has from the WHO) and there appears to be a consensus amongst most key WTO Members in favour of continuing pragmatic progress in areas where a “coalition of the willing” is achievable, in the hope that over time the United States will realise that its own self-interest requires “America First” to be balanced by constructive engagement and legal certainty in a rule-based international system.

The increasing importance of China and the “Global South” in a WTO system previously dominated by the US and the EU.

Arguably, the accession of China to the WTO in 2001⁴⁶ and the increasing importance of countries such as India, Brazil, Egypt, Mexico, Turkey, the Gulf States, Nigeria and ASEAN renders “consensus-building” more difficult than ever. This only underlines the need for reform of the WTO which in turn highlights the need for clarity and certainty on United States’ active and positive participation in the Organisation. Barring radical change, such a situation appears to be excluded during the second Trump Presidency.

Meanwhile, the reaction of most countries targeted by “Trump’s Tariffs” has been to conclude “exclusive” or reciprocal bilateral agreements with the

⁴⁵ The Joint Statement Initiative on e-commerce signed by 82 Member States.

⁴⁶ Note that other WTO Members benefitted from a derogation until 2013 permitting unilateral safeguards to be imposed against China.

United States, thereby further eroding the MFN principle which is at the heart of the (uniquely successful) GATT/WTO “bilateral/multilateral” system for the liberalisation of world trade.

Against this background, both the UK and the EU need to reinforce their partnerships with key Global South partners, not only in trade matters but also in wider policy areas, such as security, monetary and demographic areas.

An “acid test” for the WTO – MC14 in Cameroon in March 2026.

At the 13th WTO Ministerial meeting in Abu Dhabi in 2024, Governments (including the United States) agreed to hold the next WTO Ministerial meeting in Cameroon in March 2026. Although continuing United States participation in (and financing of) the WTO is a crucial and open question, the broad consensus amongst the 166 WTO Members is that the WTO (perhaps like many other “sectoral” organisations in the UN “family”) cannot continue efficiently and effectively under its current legal framework.

However, many of the proposals for reform would only appear to make it less likely that the Trump administration could support or even remain in a reformed WTO. Currently mooted proposals include: “revitalising” the WTO’s role as a forum for new trade rules (e.g. in digital services); dispute settlement (with or without the Appellate Body)⁴⁷; special and differential treatment for developing countries; the status and role of state-owned companies and state subsidies; e-commerce (incorporating the JSI understanding into the WTO legal order) and investment facilitation.

Concluding thoughts

There are two elements in the title to this presentation. First, I wanted to cover international economic relations, not merely trade. Secondly, I asked whether “Trump’s Tariffs” have destroyed the rules-based multilateral trading system under the WTO.

International economic relations.

⁴⁷ Note that any form of third party dispute settlement would appear to be anathema to the Trump administration.

Until “Trump’s Tariffs”, it was widely thought that successive MTNs had reduced the average tariff rate to around 4% (with exceptions for certain products such as automobiles (10%) and agricultural products). Currency fluctuations (e.g. between the dollar, yen, euro and renminbi) could have more effect on trade than tariffs. This is no longer the case.

Christine Lagarde recently wrote⁴⁸ that:

“We are witnessing a profound shift in the global order: open markets and multilateral rules are fracturing, and even the dominant role of the US dollar, the cornerstone of the system, is no longer certain. Protectionism, zero-sum thinking and bilateral power plays are taking their place.

Uncertainty is harming Europe’s economy which is deeply integrated in the global trading system, with 30 mn jobs at stake. But the shift underway also offers opportunities for Europe to take greater control of its own destiny and for the euro to gain global prominence. At present the euro is the world’s second-most used currency, accounting for 20% of global foreign exchange reserves, compared with 58% for the US dollar.”

So monetary, macro-economic and fiscal policies are inextricably linked to trade policy. The same is the case for environmental and health policies (to name but two). This implies the need for a closer working relationship between relevant international organisations - the WTO, the WHO, the IMF etc., as well as between relevant national and supranational bodies (e.g. the Fed, the ECB, Bank of Japan, Bank of England etc.

Trump’s attacks on “multilateralism” in general are likely to be far more damaging in this context than “Trump’s Tariffs”.

Have “Trump’s Tariffs” destroyed the WTO?

The answer here is “no” or at least “not yet”. The possibility of US withdrawal remains open and a reduced financial contribution by the US is on the cards. In any event:

- a) Is the DSU dead at least as far as the AB is concerned?
- b) Can we rule out US participation in the reform of the WTO including discussions in Cameroon at MC14 in 2026?

⁴⁸ FT June 17, 2025.

- c) If so, is the WTO viable without the US? Surely a regulatory and dispute settlement framework between 165 Member States is better than nothing – not least in order to preserve the economic benefits accumulated since 1947 under the GATT and since 1995 under the WTO?
- d) As the leading “multilateralist”, the EU (as well as other regional trading organisations such as the CPTPP) have a serious interest in preserving the WTO, with the possibility that the US would - sooner or later – realise that it too benefits considerably from the WTO system.

Last word

The foreign relations of the second Trump administration go far beyond trade and the WTO. The implications of US “MAGA” policies extend to security and defence, immigration, macro-economic and monetary policy and perhaps most of all the rule of law, both in domestic affairs and internationally. The UN system is founded on the rule of law, even if enforcement has been a perennial problem. The possibility of “copycat” policies by other States (large and small) risks undermining all the progress made since the cataclysmic conflicts of 1914-18 and 1939-45. Examples of lawless behaviour by States already exist, not least in Ukraine and in the Middle East.

Against this (pessimistic) background, the priority for the EU and other European States including (crucially) the UK, must be:

- a) To preserve to the extent possible the legal, institutional and economic acquis built up over the last 75 years, both in the EU itself and in the UN “family” of international organisations, especially in the GATT/WTO; and
- b) To set an example for the rest of the world as regards respect for the rule of law in EU and international affairs. The initiation of proceedings by the EU against the United States under the WTO DSU on tariffs on cars and car parts is at least a demonstration of EU reliance on agreed WTO rules for dispute resolution, even if -at the same time - the EU is preparing possible counter-measures.

Alastair Sutton, London, 21 July 2025.

MY VIEW single market and Uruguay round high water mark?
Consolidate/reform EU – broadening or deepening.?