

SPECIAL ISSUE ARTICLE

Recalibration, Shielding and Containment: How the World Trading System De-risks from China and the United States

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Abstract

The two economic superpowers operate increasingly outside WTO norms. China's reliance on non-market practices challenges the competitive equality among WTO members, while the US, under a second Trump administration, has unilaterally raised tariffs in defiance of multilateral rules. This essay examines how the rest of the world is de-risking from the two rogue superpowers while shoring up trade multilateralism. It identifies three interlinked strategies: (1) *recalibration* – reducing trade dependency through targeted trade remedies against China and narrow bilateral agreements with the US; (2) *shielding* – collective and unilateral responses to economic coercion of both superpowers; and (3) *containment* – preventing illegality from spreading to the rest of the world. Together, these modes of governance not only mitigate systemic spillovers from rule-breaking but also help rebalance global trade by addressing structural imbalances in Chinese overproduction and US overconsumption. In doing so, the rest of the world may lay the groundwork for a renewed and more resilient multilateral trading system.

Keywords: WTO; de-risking; multilateralism; Trump; tariff

1. Introduction

Trade multilateralism has a problem. The world's largest importer, the United States, and the world's largest exporter, China, are operating outside the rules that govern multilateral trade. China is employing non-market practices that subvert global trading rules and that have fueled an export-oriented production overcapacity that threatens deindustrialization abroad.¹ The United States during President Trump's second term has unilaterally barricaded its lucrative consumer market behind tariff walls in clear breach of World Trade Organization (WTO) commitments to tilt the terms of trade in its favor.²

Meanwhile, the rest of the world (ROW) appears broadly committed to fair and rules-bound trade. Small- and medium-sized trading nations continue to benefit from enforceable multilateral trade commitments to keep markets open, predictable, and non-discriminatory. The challenge for the ROW consists of preserving the multilateral trading system amongst

¹P.C. Mavroidis and A. Sapir (2021) *China and the WTO: Why Multilateralism Still Matters*. Princeton University Press.

²A.Wm. Wolff (2025) 'America's Decision to Tax Trade', Peterson Institute for International Economics, 16 May 2025, www.piie.com/blogs/realtime-economics/2025/americas-decision-tax-trade (accessed 26 May 2025).

themselves while developing pathways to de-risk trade relations with the two rogue economic superpowers.³

This paper – part descriptive, part suggestive – attempts to systematize the emerging trade governance architecture that structures how the ROW is beginning to navigate this tension. It argues that the ROW is de-risking trade relations with China and the US through (1) bilateral recalibration of trade dependencies, (2) partly unilateral, partly collective shielding against weaponized trade dominance, and (3) collective efforts to contain WTO illegality.

First, the ROW is recalibrating their trade relations to reduce overexposure to imports from China and to exports to the United States. On the import side, the ROW is enacting unprecedented trade remedy duties to reduce competitive pressures from Chinese export overcapacity and non-market practices. On the export side, faced with tariff walls and an unpredictable US that employs an all-sticks-no-carrots approach to negotiations, countries are striking limited-scope bilateral trade agreements that seek to preserve access to the US consumer market while making few real concessions. This path of a simultaneous de-risking from both China and the US will require the ROW to bend WTO rules without breaking them. It also offers little scope for alliance-building among the ROW as countries vary in their trade exposure to, and security relations with, China and the US.

Second, the ROW is exploring ways to shield against common threats emanating from the abuse of trade dominance by the US and China. The US is exploiting access to its dominant consumer market to force unrelated policy changes on trading partners (think of the US ‘fentanyl’ tariffs on Canada and Mexico). Meanwhile, China is using its production dominance to exert pressure on foreign countries (think of export controls on critical minerals). In response, countries are dusting off decades-old concepts of anti-economic-coercion principles grounded in public international law. Common threats from both the US and China are more likely to allow for coalition-building as the ROW seeks to shield and scale markets to counter abusive trade practices. In the process, we may be seeing the rise of new trade clubs as collective efforts to preserve policy autonomy and to dull the force of market superpowers.

Third, the ROW is collectively seeking to contain non-compliance with multilateral trade rules. Indonesia’s 2020 Nickel export ban⁴ and Canada’s 2024 electric vehicle tariffs⁵ show that trade rules are not as salient in the ROW as they used to be. The fallout from the China–US trade disruption heightens tensions in the ROW as trade is rerouted.⁶ More exporters compete over fewer global import markets, even as countries seek to diversify their trade relations. Affirmation of trade rules by the ROW, stricter rules of origin controls to combat tariff circumvention, and temporary waivers to offset pressures or to legalize minor illegalities emerge as crucial tools to mitigate those spillover risks. ROW may also seize the opportunity to make targeted reforms to trade rules.

If successful, the ROW’s emerging de-risking governance of recalibration, shielding, and containment may help preserve and strengthen multilateral rules. These governance modes may help alleviate structural imbalances marked by China’s overproduction and America’s overconsumption

³ As Snidal notes in his critique of hegemonic stability theory, ‘Secondary powers will be willing to participate in collective action provided that they have incentives to avoid the collapse of the regime – which follows both from his assumption that they benefit from it and from the observation that they are sufficiently powerful to have an impact on it.’ D. Snidal (1985) ‘The Limits of Hegemonic Stability Theory’, *International Organization* 39, 579, 612.

⁴ D. Guberman, S. Schreiber, and A. Perry (2024) ‘Export Restrictions on Minerals and Metals: Indonesia’s Export Ban of Nickel’, USITC Working Paper ICA-104, February 2024, www.usitc.gov/publications/332/working_papers/ermm_indonesia_export_ban_of_nickel.pdf (accessed 26 May 2025).

⁵ Department of Finance Canada (2024) ‘Surtax on Chinese-made Electric Vehicles’, 26 August 2024, www.canada.ca/en/department-finance/news/2024/08/surtax-on-chinese-made-electric-vehicles.html (accessed 26 May 2025).

⁶ W. Alschner (2025) ‘US Tariffs Are about to Trigger the Greatest Trade Diversion the World Has Ever Seen’, *The Conversation*, 21 May 2025, <https://theconversation.com/u-s-tariffs-are-about-to-trigger-the-greatest-trade-diversion-the-world-has-ever-seen-254049> (accessed 26 May 2025).

that contribute to today's crisis.⁷ By curbing Chinese exports, the ROW incentivizes and further accelerates efforts by China to consume more at home. Conversely, by partially accepting the forced import substitution in the United States and allowing the country to export more, the ROW can assist the US in better managing its trade deficit. The ROW's de-risking governance, enhanced by reforms of the WTO, may thus pave the way for an eventual return of China and the US into the multilateral system.

2. Recalibration: Accommodating a Bilateral Trade Reset with China and the United States

China and the United States pose very different challenges to their trading partners. China's industrial overcapacity and non-market practices produce excessive exports that risk flooding foreign markets, undercutting local competition, and threatening deindustrialization.⁸ Much of the ROW has been using trade defense measures to bilaterally recalibrate trade to stem the flows of Chinese imports. Meanwhile, in early 2025, the US has unilaterally limited access to its market via a range of tariffs to force a reset of the terms of trade. The ROW is thus forced to recalibrate trade by renegotiating market access with the US. While painful in the short term, the recalibration of trade with China and the US can help alleviate structural imbalances related to Chinese overproduction and US overconsumption in the long run.

2.1 Robust Trade Defenses: Importing Less from China

China has an industrial overcapacity problem: it is manufacturing significantly more than it consumes, which results in excessive exports.⁹ While China possesses a vast and highly dynamic economy with world-class scientists and entrepreneurs, its increasing dominance in industry after industry is attributed not only to comparative advantage, but to WTO-incompatible non-market practices that allow the state to heavily intervene and steer the economy.¹⁰ This state–market fusion, fuel by unprecedented and strategic public spending as part of the Made in China 2025 industrial policy, has enabled China to become the 'factory of the world', including in future growth areas, such as clean tech.¹¹ The country is projected to increase its share of global manufacturing to 45% by 2030, a rapid increase from around 6% in 2000.¹² China's state-sponsored manufacturing dominance now threatens the industrial base in the ROW by undermining the equality of competitive opportunities that WTO rules protect.

The ROW has begun to recalibrate its trade with China by reducing exposure to Chinese exports, especially in sensitive sectors and future growth technologies. China is by far the most important target for trade defense measures. According to the WTO Trade Remedies Portal, in May 2025 33.6%

⁷ M. Pettis and E. Hogan (2024) 'Trade Intervention for Freer Trade', Carnegie Endowment for International Peace, 3 October 2024, <https://carnegieendowment.org/research/2024/10/trade-intervention-for-freer-trade> (accessed 26 May 2025).

⁸ J. Gunter, A. Brown, F. Chimits, A. Hmaidi, A. Vasselier, and M.J. Zenglein, 'Beyond Overcapacity: Chinese-Style Modernization and the Clash of Economic Models', MERICS, 1 April 2025, <https://merics.org/en/report/beyond-overcapacity-chinese-style-modernization-and-clash-economic-models> (accessed 26 May 2025).

⁹ N. Smith, 'Why Is China Producing so Many Export Goods, Anyway?', Noahpinion, 17 May 2024, www.noahpinion.blog/p/why-is-china-producing-so-many-export (accessed 26 May 2025).

¹⁰ B. Naughton (2021) 'The Rise of China's Industrial Policy, 1978 to 2020', Academic Network of Latin America and the Caribbean on China, <https://ucigcc.org/publication/the-rise-of-chinas-industrial-policy-1978-to-2020/> (accessed 26 May 2025).

¹¹ C. Boullenois, M. Black, and D.H. Rosen (2025) 'Was Made in China 2025 Successful?', Rhodium Group, 5 May 2025, <https://rhg.com/wp-content/uploads/2025/05/Was-MIC25-Successful.pdf> (accessed 26 May 2025).

¹² United Nations Industrial Development Organization (UNIDO) (2024) 'The Future of Industrialization: Building Future-ready Industries to Turn Challenges into Sustainable Solutions', www.unido.org/sites/default/files/unido-publications/2024-11/The%20Future%20of%20Industrialization%20-%20Building%20Future-ready%20Industries%20to%20Turn%20Challenges%20into%20Sustainable%20Solutions.pdf (accessed 26 May 2025).

of anti-dumping duties and 48.1% of countervailing duties in force targeted China.¹³ Based on data from the Global Trade Alert, 675 individual trade remedy measures in force are directed against China.¹⁴ Although the United States is, by far, the most frequent source of such duties against China, top-10 users also include the EU, India, Argentina, Canada, Turkey, Mexico, and Brazil. The *Financial Times* reported that in 2024 a record number of trade remedy cases had been filed against China, with 'more than half of the trade cases ... initiated by developing countries'.¹⁵ In short, there is a growing trend of countries curbing Chinese exports through trade remedies.

At the same time, responses differ across states. Countries without import-competing industries can benefit from China's export glut. Think of cheap solar panels that accelerate the energy transition in Africa or the Gulf countries. Moreover, states in South-East Asia benefit from Chinese economic expansion, including foreign investment, by being deeply integrated into Chinese supply chains, but also compete with Chinese products. Meanwhile, the once dominant Western manufacturing is at risk of being displaced by high quality, but low-cost Chinese rivals. The unevenness in their exposure to Chinese overcapacity limits the scope for coalition-building and favors bilateral recalibration, primarily through unilateral defensive measures.

Such recalibration measures tend to differ between developed and developing states though. While Western states tend to impose both anti-subsidy and anti-dumping duties, emerging economies resort almost exclusively to anti-dumping duties.¹⁶ Moreover, developed states tend to have low tariff-bindings, forcing them to resort to trade defenses. By contrast, many emerging markets maintain applied tariff rates below their bound rates. For example, Brazil is set to increase its tariff rate on electric vehicles (EVs) from 10% in early 2024 to its bound rate of 35% by July 2026.¹⁷ Although those tariffs are applied on all countries, i.e. on a most-favoured-nation (MFN) basis, they de facto target Chinese electric vehicle (EV) exports that have surged in recent years.

A key question is whether trade remedies will be sufficient to recalibrate trade flows to mitigate the deindustrialization risks posed by an influx of Chinese exports. After a series of unsuccessful challenges before the WTO, the United States effectively stopped bringing cases against China at the WTO and, by the first Trump administration, the US pivoted towards unilateral, WTO-illegal tariffs to reset relations.¹⁸ In August 2024, Canada followed the US in imposing a WTO-inconsistent 100% surtax on Chinese electric vehicles, eschewing the WTO-consistent path of the EU, which had earlier announced countervailing duties on Chinese EVs.¹⁹

To preserve the integrity of the multilateral trading system, the ROW should forgo that road of illegality and, to manage the pressure from excessive Chinese exports, instead squeeze all available flexibility out of WTO trade remedy rules. One way to bend WTO rules without breaking them is to revitalize the use of targeted safeguards.²⁰ Although the China-specific safeguard mechanism allowed under WTO Chinese Accession Protocol lapsed in 2013, WTO members can still engineer targeted

¹³World Trade Organization, 'Trade Remedies Data Portal', <https://trade-remedies.wto.org/en> (accessed 26 May 2025).

¹⁴Global Trade Alert, 'Trade Remedies', www.globaltradealert.org/ (accessed 26 May 2025).

¹⁵*Financial Times* (2025) China's Export Boom Sparks Record Number of Trade Challenges', 24 April 2025, www.ft.com/content/c4bce44e-9c66-4d74-bebd-0f35f0ea007f (accessed 26 May 2025).

¹⁶See data from notes 14 and 15 above.

¹⁷*Reuters*, 'Brazil Imports of Chinese Electric Vehicles Surge Ahead of New Tariff', 5 April 2024, www.reuters.com/business/autos-transportation/brazil-imports-chinese-electric-vehicles-surge-ahead-new-tariff-2024-04-05/ (accessed 26 May 2025).

¹⁸S. Charnovitz (2020) 'Grading Trump's China Trade Strategy', in M. Bungenberg et al. (eds), *European Yearbook of International Economic Law 2019*. Springer International Publishing, https://doi.org/10.1007/8165_2019_41 (accessed 26 May 2025).

¹⁹N. Lamp and W. Alschner (2025) 'Why Is Canada Eyeing the Nuclear Option for Tariffs on Chinese Electric Vehicles?', *The Globe and Mail*, 24 May 2025, www.theglobeandmail.com/business/commentary/article-why-is-canada-eyeing-the-nuclear-option-for-tariffs-on-chinese/ (accessed 26 May 2025).

²⁰Another option would be to agree on voluntary export restraints, but those are prohibited by Article 11(1)(b) of the Safeguards Agreement.

safeguards. By excluding free trade agreement (FTA) partners from safeguards investigations, for example, WTO members can impose safeguards only on non-FTA members, which, in practice, can come close to a China-specific safeguard.²¹

Moreover, the absence of the Appellate Body can embolden state agencies and WTO panels to reconsider trade remedy interpretations previously set aside. Prior interpretations at times heavily constrained the use of safeguards (e.g. through strict conditions of ‘unforeseen developments’), anti-dumping duties (e.g. through prohibiting ‘zeroing’) and countervailing duties (e.g. by a narrow reading of what counts as subsidy-giving ‘public body’).²² As Alan Sykes and Judith Goldstein argue in this Special Issue, these interpretive constraints deprived the US of the tools to effectively counteract Chinese export surges through WTO-legal means and pushed the US into illegality. A more flexible reading of WTO trade remedy rules can provide countries with the policy space they need to recalibrate trade relations with China.

Ultimately, these actions may benefit China, too. The country has long struggled to shift from an export-led growth model to growth fueled by domestic consumption.²³ The imposition of market barriers by the ROW creates new incentives to pursue that transition with vigor.

2.2 Asymmetric Trade Deals: Allowing the United States to Export More

The volley of WTO-inconsistent tariffs imposed by the United States on the ROW since the start of President Trump’s second term aims to reduce US merchandise trade deficits by resetting the terms of trade. The United States accounts for over 15% of global imports, well ahead of other major economies.²⁴ In the eyes of the current US administration, America overconsumes and underproduces.²⁵ While observers may quibble with that diagnosis and the administration’s choice of remedies, it is the path that the US administration is pursuing. The ROW must manage the forced reset of the terms of trade and mitigate its negative consequences.

In theory, there are different legal avenues available to structure the terms-of-trade reset with the United States. Joost Pauwelyn suggests in this Special Symposium that US unilateralism could be channelled into a multilateral process for the renegotiation of tariff bindings under Article XXVIII of the GATT. However, at present, the ROW seems unenthusiastic about broader multilateral tariff renegotiations. Meanwhile, the Trump administration clearly prefers bilateral trade deals. Plus, partner countries, given varied economic and security ties with the US, also differ in their exposure to the US trade reset, further complicating more collective responses.

Bilateral free trade agreements that enshrine mutual tariff reductions are explicitly allowed under GATT Article XXIV. However, under Trump, the United States is pursuing asymmetric deals. Rather than offering new liberalization, the US is asking for more market access abroad in exchange for taking back some of the additional tariffs it imposed or threatened to impose. Partner countries are thus asked to make concessions only to be worse off compared to the market access they enjoyed before Trump entered office.

²¹ Won-Mog Choi (2011) ‘FTAs and Safeguard Norms: Their Variation and Compatibility’, *Asian Journal of WTO & International Health Law and Policy* 6, 81.

²² These concerns have repeatedly been raised by the United States. See Office of the United States Trade Representative (2020) ‘Report on the Appellate Body of the World Trade Organization’, February 2020, https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf (accessed 26 May 2025).

²³ C. Boullenois, L. Wright, A. Feng, C.A. Jordan, and L. Gormley (2025) ‘How Can China Boost Consumption?’, Rhodium Group, 10 February 2025, <https://rhg.com/research/how-can-china-boost-consumption/> (accessed 26 May 2025).

²⁴ *Financial Times*, ‘Trump Discovers the US Is no Longer Indispensable’, 24 April 2025, www.ft.com/content/c2ebc194-790f-4b9c-a1d9-3e0840f0ee38 (accessed 26 May 2025).

²⁵ According to Treasury Secretary, S. Bessent, ‘The US is looking to rebalance to more manufacturing, the identity of that would be less consumption’, quoted in: C. Edwards (2025), ‘Opportunity for Big US–China Trade Deal, Says Bessent’, BBC News, 23 April 2025, www.bbc.com/news/articles/clywg25ykqno (accessed 26 May 2025).

This all-sticks-no-carrots approach creates few incentives for market opening on the part of partner countries. They will be prone to opting for token concessions instead. The net effect of such asymmetric, skinny deals is thus likely to be a marginal increase in US exports and a reduction of US-bound goods, given that some tariff barriers, including a 10% universal tariff, are likely to remain in place.²⁶ Even so, if these deals (together with other domestic policies the administration is pursuing) reduce the country's structural trade deficit, they can, in the long term, help create a more positive narrative around the benefits of trade in the US and motivate the country's eventual reintegration into the rules-based system.

In the short term, however, bilateral deals to recalibrate trade with a rogue US become problematic for the broader multilateral trading system on at least three accounts. First, they risk normalizing illegality by accepting the imposition and maintenance of WTO-inconsistent tariffs. Second, deals that provide preferential market access to the US violate the MFN principle and cannot be saved by GATT Article XXIV unless they liberalize 'substantially all trade' as per paragraph 8(b). Third, deals may involve erecting trade barriers against third states, specifically China, which is contrary to GATT Article XXIV:5(b).

The first such trade deal negotiated with the UK exemplifies these three concerns.²⁷ The deal accepts the US 10% baseline reciprocal tariff, which violates US bound tariff rates. The deal also provides preferential access to US ethanol exports without extending the same benefit to all other WTO members in violation of MFN.²⁸ Finally, the deal, although murky on details, seems to exempt the UK from US tariffs on steel and aluminum imposed on national security in exchange for concerted action against China.²⁹ The question thus arises how countries can mitigate the damage of US tariffs and retain market access without throwing multilateral trade rules under the bus.

A couple of ways exist for the ROW to bend trade rules without breaking them as countries seek to accommodate the US' forced trade reset. First, countries can call a spade a spade and challenge the US tariffs before the WTO. Aside from recognizing the initial violation, such an opening move helps frame subsequent negotiations in dispute settlement terms as efforts find 'a solution mutually acceptable to the parties to a dispute and consistent with the covered agreements', which per DSU Article 3.7 is the preferred outcome of WTO dispute settlement.

In the past, such mutually agreed solutions (MAS) were the framework for creative arrangements.³⁰ The US and Canada set up an entire agreement with bespoke dispute settlement as part of its 2006 settlement of softwood lumber litigation.³¹ The EU and US accommodated differences over hormone-treated beef by opening EU markets to more hormone-free US beef. From bananas all the way to Trump's first steel and aluminum tariffs, MAS provided the framework to settle otherwise intractable disputes. While these settlements need to be 'consistent with' WTO law, as per DSU Article 3.5, unregulated interim settlements and lax transparency requirements combine to give

²⁶A. Friedman (2025) 'Trump's 10 Percent Baseline Tariffs Are Here to Stay, Hassett says', *Politico*, 10 April 2025, www.politico.com/news/2025/04/10/trump-baseline-tariffs-staying-033077 (accessed 26 May 2025).

²⁷At the point of writing, only the 'General Terms' of the agreement have been released: www.whitehouse.gov/briefings-statements/2025/05/general-terms-for-the-united-states-of-america-and-the-united-kingdom-of-great-britain-and-northern-ireland-economic-prosperity-deal/ (accessed 26 May 2025).

²⁸S. Lester (2025) 'The 'General Terms' of the US-UK Trade Deal', *International Economic Law and Policy Blog*, 12 May 2025, <https://ielp.worldtradelaw.net/2025/05/the-general-terms-of-the-us-uk-trade-deal.html> (accessed 26 May 2025).

²⁹'US-UK trade deal squeezes China supply chains', *Financial Times*, 12 May 2025, www.ft.com/content/3eb31alc-a19e-480b-a970-2629c714363c (accessed 26 May 2025).

³⁰W. Alschner (2014), 'Amicable Settlements of WTO Disputes: Bilateral Solutions in a Multilateral System', *World Trade Review* 13, 65.

³¹L. Guglya (2011) 'The Interplay of International Dispute Resolution Mechanisms: The Softwood Lumber Controversy', *Journal of International Dispute Settlement* 2, 175.

parties leeway to bend rules to find mutually accommodating outcomes.³² Unless third party interests are directly infringed, WTO members have shown significant deference to MAS content.

As of May 2025, however, only China and Canada had formally requested consultations over US tariffs. Countries may hold back given that some of the tariffs have been paused for 90-days. Some states may also be concerned that a WTO-complaint may draw criticism or retribution from the US, or they may dismiss the prospect of dispute settlement given that any panel report could be appealed into the void, or they may simply signal their preference for negotiation over litigation. Those latter worries, however, create a false dichotomy. The DSU is about finding negotiated solutions, too, but such negotiations take place in the shadow of the law embedded in a multilateral process and start from the premise of an alleged WTO-inconsistent act. Countries thus stand to benefit from structuring their negotiations through dispute settlement. By launching a WTO dispute, they would also avoid acquiescing to illegality.

Given the precedent set by the UK, however, some countries will negotiate with the US outside dispute settlement parameters to ultimately justify a trade deal with the US under GATT Article XXIV. These countries may frame the negotiations as ‘interim agreements’ on a path towards a fully compliant GATT Article XXIV deal.³³ Even then, partners should strive to avoid erecting barriers on third countries to avoid a legal challenge.³⁴ Any concerted trade action thus would have to be accommodated by other exceptions, such as national security (GATT Article XXI) or public policy (GATT Article XX), or take place outside of the realm of trade, e.g. on investment screening. In sum, countries have some margins to bend the rules in asymmetric negotiations with the US but should make every effort to not break them.

3. Shielding: Deterring and Defending against Abusive Trade Practices

Although China and the US are on opposite ends of global trade patterns, they both use their market dominance to weaponize trade.³⁵ The United States weaponizes access to its large consumer market to force other countries to clamp down on fentanyl trafficking,³⁶ to accept deportees,³⁷ or to refrain from buying Venezuelan oil.³⁸ China has repeatedly leveraged its chokehold over critical mineral exports, including against Japan in 2010 over a territorial dispute.³⁹

To preserve their trade and policy autonomy, the ROW is incentivized to explore tools, both unilateral and collective, to defend against such weaponization of market power. Whereas trade recalibration is primarily bilateral, given the varied interest in partner countries and distinct challenges posed by the US and China, the ROW shares a common interest to defend against abusive practices. Collective action may be more

³² Alschner, *supra* n. 28.

³³ On interim FTAs, see generally, L. Bartels (2009) ‘Interim Agreements’ under Article XXIV GATT’, *World Trade Review* 8, 339; K. Rice (2010) ‘Interim or Waived?: The Future of the US–Japan and Phase One Trade Agreements Notes’, *New York University Journal of International Law and Politics* 54, 623.

³⁴ China is a member of the Multi-Party Interim Appeal (MPIA) arbitration mechanism and could therefore bring cases against other MPIA members, which could not be blocked through an appeal into the void.

³⁵ H. Farrell and A.L. Newman (2019) ‘Weaponized Interdependence: How Global Economic Networks Shape State Coercion’, *International Security* 44, 42.

³⁶ The White House (2025) ‘Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China’, 1 February 2025, www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-imposes-tariffs-on-imports-from-canada-mexico-and-china/ (accessed 26 May 2025).

³⁷ I. Wells and M. Cursino (2025) ‘Trump Imposes 25% Tariffs on Colombia as Deported Migrant Flights Blocked’, BBC News, 26 January 2025, www.bbc.com/news/articles/cdxny0lnyepo (accessed 26 May 2025).

³⁸ The White House (2025) ‘Imposing Tariffs on Countries Importing Venezuelan Oil’, Executive Order 14245, 24 March 2025, www.whitehouse.gov/presidential-actions/2025/03/imposing-tariffs-on-countries-importing-venezuelan-oil/ (accessed 26 May 2025).

³⁹ S. Evenett and J. Fritz, ‘Revisiting the China–Japan Rare Earths Dispute of 2010’, VoxEU, 19 July 2023, <https://cepr.org/voxeu/columns/revisiting-china-japan-rare-earths-dispute-2010> (accessed 26 May 2025).

effective in deterring economic coercion and helps to scale ROW markets as counterweights to the production superpower of China and the consumption superpower of the US.⁴⁰

The first such emerging shield relates to legal strategies to counteract economic coercion. International controversies over the use of economic force by the then superpowers date back to the cold war and resulted in the 1970 UN Declaration on Friendly Relations, which restated the customary law non-intervention principle as prohibiting ‘the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights’.

More recently, the EU developed a formal legal basis to counteract economic coercion: the anti-coercion instrument (ACI).⁴¹ Deliberations on the instrument began in response to economic unilateralism from the first Trump administration. Subsequently, Chinese economic coercion, which targeted Australia with sweeping trade restrictions following its call for a COVID-19 inquiry, and Lithuania with a trade blockade and supply chain pressure after it deepened ties with Taiwan, further illustrated the need for such a mechanism.⁴²

The EU’s anti-coercion instrument, adopted in 2024, allows the EU to respond to economic coercion in varied ways from the imposition of tariffs to the suspension of intellectual property rights. By making the threat of a robust EU countermeasure credible, it also seeks to deter economic coercion in the first place. While the instrument is the first of its kind and has yet to be used, its grounding in customary international law means that other countries, at least under international law, have a legal basis to respond to economic coercion, too. Growing interest in the mechanism may mean that other states may adopt similar domestic rules to enact unilateral ACIs or consider coordinated responses to economic coercion.

Aside from responding to immediate abuses of market dominance, the ROW also shares an interest in preventing or dulling the effect of abusive market practices, by creating common standards or coalitions that help shield the markets of the ROW. Level-playing-field rules, for example, constitute one such pathway. Such rules have historically been inserted into North–South agreements, such as bilateral investment treaties with developing countries to prevent a race to the bottom by lowering standards to attract investment.⁴³ More recently, level playing field rules have become North–North concerns, too. Fears over UK deregulation led to dedicated level-playing-field provisions in the UK–EU Trade and Cooperation Agreement.⁴⁴

Similarly, China overproduces, and America overconsumes, at least in part, because of externalities, such as environmental harm or deregulation, that are not adequately priced in. Possible responses include the formation of high-standard ‘clubs’ that erect barriers against non-conforming countries and liberalize trade within them.⁴⁵ Level-playing-field provisions can also be enshrined in agree-

⁴⁰For an elaboration of what such a collective action may look like, see M. Paulson and D. Ciuriak (2025) ‘Collective Economic Security’, International Economic Law and Policy Blog, 22 April 2025, <https://ielp.worldtradelaw.net/2025/04/collective-economic-security.html> (accessed 26 May 2025).

⁴¹Regulation (EU) ‘2023/2675 of the European Parliament and of the Council of 22 November 2023 on the Protection of the Union and Its Member States from Economic Coercion by Third Countries’, PE/34/2023/REV/1, European Union, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202302675 (accessed 26 May 2025).

⁴²K. Olsthoorn (2024) ‘The EU’s Anti-Coercion Instrument: A Return of Unlawful Unilateral Trade Countermeasures in Disguise?’, *Legal Issues of Economic Integration* 51, 47.

⁴³A.D. Mitchell and J. Munro (2023), ‘An International Law Principle of Non-Regression from Environmental Protections’, *International & Comparative Law Quarterly* 72, 35.

⁴⁴European Parliamentary Research Service (2021), ‘The Level Playing-Field for Labour and Environment’. In EU–UK Relations (Briefing), [www.europarl.europa.eu/RegData/etudes/BRIE/2021/690576/EPRS_BRI\(2021\)690576_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690576/EPRS_BRI(2021)690576_EN.pdf) (accessed 26 May 2025).

⁴⁵On such trade clubs, see generally, G. Vidigal and I. Venzke (2022) ‘Of False Conflicts and Real Challenges: Trade Agreements, Climate Clubs, and Border Adjustments’, *American Journal of International Law* 116, Unbound 202. G.C. Leonelli

ments with China or the US. Think of the EU–China Comprehensive Agreement on Investment, which included level-playing-field disciplines to counteract unfair Chinese trade practices.⁴⁶ Finally, trade restrictions, including carbon border adjustment levies, can also help level the playing field vis-à-vis both China and the US. While the devil is always in the detail, the WTO Agreements, especially its public policy exceptions, can, in principle, justify level-playing-field arrangements as WTO consistent.

4. Containment: Preventing Illegality from Spilling into the ROW

As ROW countries accommodate and respond to the rogue behavior by China and the United States, they also strive to prevent illegality from spreading. The multilateral trading order will be at a precipice if the ROW responds to illegality through illegality or uses the rule-flouting behavior of the superpowers as an excuse to erect non-conforming policies amongst themselves. Only if illegality can be contained will a rules-based trading order survive.

The ROW's commitment to rules-based trade is put to the test as countries compete over a smaller global market in the wake of US tariffs.⁴⁷ The de-facto trade embargo between China and the United States after each imposed tariff above 100% in early April 2025 diverted Chinese goods to other markets, prompting fears of dumping, job displacement, and massive tariff circumvention.⁴⁸ While a truce between the two in May 2025 provided temporary relief, the episode underscored that trade competition has intensified in the ROW at a time when countries seek to diversify their trade away from the US and are already struggling to cope with Chinese overcapacity.

The second-order effects of Trump's protectionism and China's mercantilism therefore pose the potentially greatest threat to global trading rules. During the 1930s, trade did not collapse because of the US Smoot–Hawley tariffs or because European states retaliated against US tariffs. It collapsed because European states erected trade barriers vis-à-vis each other (the famous 'beggar-thy-neighbour' policies) as they competed over a smaller global market and increasingly ceded to protectionist pressures.⁴⁹ The ROW must be attentive to the same risks today. Encouragingly, alternative responses are emerging to prevent illegality from spreading.

First, many countries have affirmed their commitment to rules-based trade in recent weeks. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) countries and the EU are exploring a 'structured co-operation' to prevent the spread of protectionism.⁵⁰ Similarly,

(2022) 'Carbon Border Measures, Environmental Effectiveness and WTO Law Compatibility: Is There a Way Forward for the Steel and Aluminium Climate Club?', *World Trade Review* 21, 619.

⁴⁶ European Commission, 'EU–China Comprehensive Agreement on Investment', EU Directorate-General for Trade, 30 December 2020, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/china/eu-china-agreement_en (accessed 26 May 2025).

⁴⁷ W. Alschner (2025) 'US Tariffs Are about to Trigger the Greatest Trade Diversion the World Has Ever Seen', *The Conversation* (21 May 2025), <https://theconversation.com/u-s-tariffs-are-about-to-trigger-the-greatest-trade-diversion-the-world-has-ever-seen-254049> (accessed 26 May 2025).

⁴⁸ 'US trade war could divert Chinese goods to European markets' (France 24, 12 April 2025), www.france24.com/en/europe/20250412-us-trade-war-could-divert-chinese-goods-european-markets-trump-tariffs (accessed 26 May 2025). C. Shepherd, L. Kuo, and Pei-Lin Wu, 'Chinese Exports, Aided by Tariff Dodging, Defy Trump's Trade Pressure', *The Washington Post*, 9 May 2025, www.washingtonpost.com/world/2025/05/09/trump-trade-pressure-china-exports/ (accessed 26 May 2025). M. Postelnyak, 'Businesses Are Rushing to Reroute Goods to Canada in a Move that Might Backfire', *The Globe and Mail*, 12 April 2025, www.theglobeandmail.com/investing/personal-finance/article-businesses-are-rushing-to-reroute-goods-to-canada-in-a-move-that-might/ (accessed 26 May 2025).

⁴⁹ World Trade Organization, 'Trade, Finance and Financial Crises', Special Studies No. 3, 1998, www.wto.org/english/res_e/booksp_e/special_study_3_e.pdf (accessed 26 May 2025), pp. 31–32.

⁵⁰ *Financial Times*, 'EU Eyes Closer Ties to Transpacific Bloc as Trump Jolts Trade Order' 5 May 2025, www.ft.com/content/b31826-012d-4bb1-a6eb-d6cc0d4ef39f (accessed 26 May 2025).

ASEAN countries ‘reaffirm[ed their] support for a predictable, transparent, free, fair, inclusive, sustainable, and rules-based multilateral trading system with the World Trade Organization (WTO) at its core.’⁵¹ Other regional groupings, such as the Asia-Pacific Economic Cooperation (APEC) trade ministers⁵² and the African Union, have issued similar statements shoring up the multilateral trading system.⁵³ At least on paper, ROW seem committed to contain illegality and not repeat the mistakes of the 1930s that plunged the world into economic depression.

Second, so far, attempts to divide the ROW into geoeconomic blocks that would pit a US-led coalition against a China-led coalition have been largely unsuccessful. US Treasury Secretary Bessent suggested that countries could benefit from lower US if they committed to joint action against Chinese mercantilism,⁵⁴ a move that has been fiercely opposed by Beijing.⁵⁵ Most ROW countries have little interest in choosing sides. Anti-China components of the UK–US deal appear marginal. Moreover, US tariffs against close allies have alienated many other traditional partners. Canada, which mirrored US tariffs on Chinese steel, aluminum, and electric vehicles in 2024, now considers its trade dependence on the United States as a risk to its national sovereignty.⁵⁶ Finally, South-East Asian states, which benefitted greatly from Chinese growth, have tightened rules-of-origin controls to clamp down on tariff circumvention by Chinese sellers to avoid being dragged into the US–China confrontation.⁵⁷ In short, the risk of global trade splintering into blocks, much talked about during the Biden administration, seems considerably less likely today.⁵⁸ That, concomitantly, reduces the risk of illegality spreading from the two rogue superpowers.

Third, targeted reforms to the rules-based trading system can further help contain illegality. Importantly, the ROW calls for reaffirming the central role of the WTO typically also press for the organization’s reform.⁵⁹ The temporary de facto exit of the US from the system can provide the space for small- and medium-sized countries to work on adjusting the WTO rulebook. To be sure, the informal consensus-rule, which would require assent by China and the US to any amendments, makes wholesale reform impossible. Yet, the ROW could consider departing from the consensus rule when it comes to waivers provided for in Article IX of the Marrakech Agreement, which can be adopted by a three-quarter majority. Such waivers could temporarily sanction illegality, if the need arises, thus avoiding open illegality, and could pave the way for subsequent reforms, by, say, allowing for green subsidies or performance requirements linked to green technology. Eventually, if

⁵¹ ASEAN Economic Ministers ‘Joint Statement on the Introduction of Unilateral Tariffs of the United States,’ 10 April 2025, <https://asean.org/wp-content/uploads/2025/04/04-Special-AEM-Joint-Statement-Unilateral-Tariffs-Adopted.pdf> (accessed 26 May 2025).

⁵² Asia-Pacific Economic Cooperation (APEC), ‘APEC Ministers Responsible for Trade Joint Statement 2024,’ 18 May 2024, www.apec.org/meeting-papers/sectoral-ministerial-meetings/trade/apec-ministers-responsible-for-trade-joint-statement-2024 (accessed 26 May 2025).

⁵³ European Commission, ‘Joint Communiqué: 3rd EU–AU Ministerial Meeting, 21 May 2025, 22 May 2025,’ https://north-africa-middle-east-gulf.ec.europa.eu/news/joint-communique-3rd-eu-au-ministerial-meeting-21-may-2025-2025-05-22_en (accessed 26 May 2025).

⁵⁴ *Bloomberg News*, ‘US Looks to Box In China by Recruiting other Trading Partners,’ 16 April 2025, www.bloomberg.com/news/articles/2025-04-16/us-looks-to-box-in-china-by-recruiting-other-trading-partners (accessed 26 May 2025).

⁵⁵ L. Lee and L. Chen, ‘China Warns Countries against Striking Trade Deals with US at Its Expense,’ *Reuters*, 21 April 2025, www.reuters.com/world/china-opposes-any-deals-between-us-other-nations-its-expense-2025-04-21/ (accessed 26 May 2025).

⁵⁶ In late April 2025, Canadian Prime Minister, Mark Carney, stated that ‘Our old relationship with the United States, a relationship based on steadily increasing integration, is over,’ L. Cecco, ‘Carney Gave a Eulogy for Canada’s Old Relationship with the US. Now He Must Redefine It,’ *The Guardian*, 29 April 2025, www.theguardian.com/world/2025/apr/29/mark-carney-us-canada-relations (accessed 26 May 2025).

⁵⁷ *Financial Times*, ‘Chinese Exporters “Wash” Products in Third Countries to Avoid Donald Trump’s Tariffs,’ 6 May 2025, www.ft.com/content/147fddbb-7031-4347-9251-4425614e138d (accessed 26 May 2025).

⁵⁸ On the risks and consequences of fragmentation, see World Trade Organization, ‘World Trade Report 2023: Reglobalization for a Secure, Inclusive and Sustainable Future,’ WTO, January 2024, www.wto.org/english/res_e/publications_e/wtr23_e.htm (accessed 26 May 2025).

⁵⁹ See notes 50–53.

done right, such reforms may allow for a return of the US and China into the rules-based trading system.

In sum, we may be at the cusp of a new order. Both China and the United States – for different reasons and to differing degrees – act outside the rules of the WTO. It is now for the ROW to preserve the multilateral trading system while managing the two rogue superpowers. The triad of (1) (mostly bilateral) recalibration of trade flows, (2) (possibly collective) shielding against weaponized trade dominance, and (3) (collective) containment of illegality form the governance pillars on which this transition order may come to rest.