

# **Trade Law in an Era of Geopolitical Rivalry: National Security, the Dilemma for Middle Powers, and the Future of the WTO**

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## INTRODUCTION

International trade law has become increasingly affected by growing geopolitical tensions and the United States' turn towards an "America First" trade policy. These national security and nationalism trends are altering the contours of global commerce and adding uncertainty about the trajectory of interstate trade relationships. Not only are major trading powers—the United States, the European Union, and China—reconsidering their trade policies, but many smaller nations that depend on trade for their security and prosperity are searching for new routes to establish stable trade networks. The future and purpose of the World Trade Organization (WTO) are also being reconsidered as the institution faces significant challenges in its mission to maintain negotiated tariff levels, resolve disputes, and foster new agreements.

This Essay takes stock of the current moment in international trade law when the path ahead seems uncertain. To do so this Essay addresses four questions: (1) How have the growing geopolitical tensions and use of national security exceptions changed trade law?; (2) Are the Trump Administration's trade policies, particularly in his second term, based on traditional national security concerns or a more leverage-based, extractive model?; (3) What is the role for middle powers in a less institutionalized, more power-based international system?; and (4) How can the WTO repurpose itself to aid middle powers who want and need a global trade institution?

### I. HOW HAVE GROWING GEOPOLITICAL TENSIONS CHANGED TRADE LAW?

Without question, rising geopolitical tensions have reshaped international trade law by shifting its focus from economic liberalization toward strategic competition and national security. During the post-Cold War period, global trade rules were understood to be part of an international order that would provide a stable and predictable legal system, in turn promoting market integration between states and economic growth. However, the intensifying rivalry between superpowers, particularly between the United States and China, has undermined this legal order. As Petros Mavroidis has highlighted, this geopolitical tension has upended trade relations far more than past military rivalries because the adversaries are so economically integrated.<sup>1</sup> As he puts it, "this time is different" from the Cold War when the United States and the Soviet Union had minimal trade relations. Instead, China and the United States are both core members

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<sup>1</sup> PETROS C. MAVROIDIS, INDUSTRIAL POLICY, NATIONAL SECURITY, AND THE PERILOUS PLIGHT OF THE WTO (2025).

of the global economic order, so fights between them shake the foundation of the system.<sup>2</sup>

A central manifestation of this shift is the growing use of trade measures—such as tariffs, export controls, and industrial policy—as tools of national security strategy.<sup>3</sup> In recent years, states have increasingly justified trade restrictions not only on traditional defense grounds but also on broader concerns such as technological leadership, supply chain resilience, public health emergencies, and climate security.<sup>4</sup> This expansion of security rationales reflects a broader change in how governments conceptualize economic and trade policy, with commercial competitiveness and technological advancement now treated as core components of national security.

The U.S.-China competition over semiconductor policy illustrates how national security considerations are reshaping trade policy. Increasingly, the United States government views maintaining an edge over China in semiconductor development not only as a key commercial concern but also as a national security concern, adopting a strategy that sought to maintain “as large of a lead as possible” in technology over geopolitical rivals.<sup>5</sup> Consequently, the U.S. government under the Biden Administration began to impose a series of measures to prevent trade in semiconductors with China. First, the Biden administration established export controls on the sale of advanced semiconductors to China and extended these restrictions to other nations, including Japan and the Netherlands.<sup>6</sup> Second, through the CHIPS Act, the government approved over \$52 billion in subsidies to domestic corporations to strengthen research and development, as well as improve domestic semiconductor production capacity.<sup>7</sup> Third, it enacted an “outbound investment screening” rule to prevent American investment in the Chinese chip industry.<sup>8</sup> All these measures were designed to limit

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2 *Id.* at x–xi.

3 Harlan Grant Cohen, *Toward Best Practices for Trade-Security Measures*, 27 J. INT’L ECON. L. 93 (2024).

4 Daniel W. Drezner, *How Everything Became National Security*, FOREIGN AFFS. (Aug. 12, 2024), <https://www.foreignaffairs.com/united-states/how-everything-became-national-security-drezner> [<https://perma.cc/89G8-NE9F>].

5 *Remarks by National Security Advisor Jake Sullivan at Special Competitive Studies Project Global Emerging Technologies Summit*, THE WHITE HOUSE (Sep. 16, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/16/remarks-by-national-security-advisor-jake-sullivan-at-the-special-competitive-studies-project-global-emerging-technologies-summit> [<https://perma.cc/E8AJ-L5XX>].

6 For a discussion of these restrictions as well as the extension of the restrictions to other nations, see Rachel Brewster, *A New Global Corporate Regulatory Power?: Market Entry as the Basis for Prescriptive Jurisdiction*, 2023 U. CHI. LEGAL F. 59 (2023).

7 Chad P. Bown & Dan Wang, *Semiconductors and Modern Industrial Policy*, 38 J. ECON. PERSPS. 81, 96–100 (2024).

8 Alan Rappoport, *U.S. Moves Ahead With Plan to Restrict Chinese Technology Investments*, N.Y. TIMES (June 21, 2024), <https://www.nytimes.com/2024/06/21/us/politics/us-china-technology-investments-janet-yellen.html> [<https://perma.cc/DD5R-3CGD>].

China's access to advanced chips and other advanced computing or AI technology. As these policies demonstrate, greater geopolitical tensions have transformed the semiconductor industry from a relatively open one to an area of intense regulation and competitive subsidization.

The semiconductor example is not an outlier. China has also been using national security related to Taiwan as a rationale for trade actions. For instance, when governments take actions that Beijing views as legitimizing Taiwanese sovereignty, China has responded by leveraging its market power to impose trade barriers.<sup>9</sup> One notable instance occurred in 2021 when Lithuania allowed Taiwan to open a representative office in Vilnius under the name "Taiwan Representative Office," which China interpreted as implying recognition of Taiwan.<sup>10</sup> In response, China de facto blocked Lithuanian imports and pressured multinational companies to remove Lithuanian components from their supply chains, extending the pressure to firms across the European Union that relied on Lithuanian inputs.<sup>11</sup> The European Union viewed this action as economic coercion and a violation of WTO trade rules.<sup>12</sup>

National security developments are also transforming how states interact in WTO dispute settlement. The WTO's legal framework contains an exception for measures taken to protect national security. Specifically, Article XXI of the General Agreement on Tariffs and Trade (GATT) allows members to undertake actions that breach GATT rules when "it considers [the measure] necessary for the protection of its essential security interests" and the measure is "taken in time of war or other emergency in international relations."<sup>13</sup>

Historically, WTO members showed considerable restraint in not invoking this exception, reflecting a shared understanding that overuse could undermine the multilateral trading system. But as geopolitical tensions rise, some WTO members are increasingly invoking the national security clause to justify trade restrictions. While many states, including the United States and Russia, assert that Article XXI is self-judging and thus beyond the jurisdiction of the WTO's Dispute Settlement Understanding

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<sup>9</sup> Kristen Hopewell, *Beyond U.S.-China Rivalry: Rule Breaking, Economic Coercion, and the Weaponization of Trade*, 116 AJIL UNBOUND 58, 61 (2022); see also Matthew Reynolds & Matthew P. Goodman, *China's Economic Coercion: Lessons from Lithuania*, CTR. FOR STRATEGIC & INT'L STUD. (May 6, 2022), <https://www.csis.org/analysis/chinas-economic-coercion-lessons-lithuania> [https://perma.cc/DU85-PCQS].

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Emily Benson, *What Are the Trade Contours of the European Union's Anti-Coercion Instrument?*, CTR. FOR STRATEGIC & INT'L STUD. (Apr. 21, 2022), <https://www.csis.org/analysis/what-are-trade-contours-european-unions-anti-coercion-instrument> [https://perma.cc/Z78B-AWBK].

<sup>13</sup> General Agreement on Tariffs and Trade, art. XXI(b)(iii), Oct. 30, 1947, 55 U.N.T.S. 194 [https://perma.cc/2T2A-CQQN]. The TRIPS, GATS, and GPA agreements also have a national security exception in their text

(DSU), WTO panels have determined they have the authority to adjudicate the clause's application. The use of Article XXI is now common, with the United States, Russia, and Saudi Arabia all claiming the national security exception as respondent states.<sup>14</sup>

Complicating the WTO's discipline on the use of Article XXI is the current crisis at the WTO Appellate Body. Under the first Trump administration, the United States started blocking the appointment or reappointment of individuals to the Appellate Body.<sup>15</sup> By December 2019, the Appellate Body had only one member, less than the quorum of three required for the Appellate Body to issue a report.<sup>16</sup> As a consequence, the appellate function of the WTO's DSU was essentially shut down.<sup>17</sup> This impacts all WTO litigation because members are entitled to an appeal from panel decisions. Losing parties in WTO litigation can now "appeal into the void" and thereby indefinitely delay litigation, effectively ending the legal case.<sup>18</sup> As a result, the DSU cannot constrain states' use of Article XXI to justify their measures. Panel decisions that reject the respondent state's reliance on Article XXI can be appealed into the void and thereby blocked.<sup>19</sup>

In short, rising geopolitical tensions are transforming international trade law. International trade law now faces greater challenges as states deploy tools such as export controls, subsidies, and trade restrictions while more frequently invoking WTO security exceptions in a weakened multilateral enforcement environment.

## II. ARE THE TRUMP ADMINISTRATION'S TRADE POLICIES BASED ON NATIONAL SECURITY?

In his second term (Trump 2.0), President Trump has engaged in a wholesale redesign of American trade policy.<sup>20</sup> This policy has targeted allies and adversaries, arguably coming down harder on America's historic

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14 See Panel Report, *Russia - Measures Concerning Traffic in Transit*, WTO Doc. WT/DS512/R (adopted Apr. 26, 2019) [<https://perma.cc/2JRQ-K3N9>]; Panel Report, *United States - Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS544/R (adopted Dec. 9, 2022) [<https://perma.cc/3V2N-GGW8>]; Panel Report, *Saudi Arabia - Measures Concerning the Protection of Intellectual Property Rights*, WTO Doc. WT/DS567/R (adopted June 16, 2020) [<https://perma.cc/AUM2-P45B>].

15 Rachel Brewster, *The Trump Administration and the Future of the WTO*, 44 YALE J. INT'L L. ONLINE 6, 8 (2018).

16 *Id.*

17 Stratos Pahis, *An Autopsy of the Appellate Body: International Legal Theory on the Demise of the Rule of Law at the WTO*, 47 U. PA. J. INT'L L. 226, 241 (2025).

18 *Id.*

19 A subset of WTO members created a shadow Appellate Body through the Multiparty Interim Appeal Arbitration Agreement (MPIA). For a discussion of the MPIA, see *id.* at 241-43; Joost Pauwelyn, *The WTO's Multi-Party Interim Appeal Arbitration Arrangement (MPIA): What's New?*, 22 WORLD TRADE REV. 693 (2023).

20 Jeffrey L. Dunoff & Mark A. Pollack, *The Trump Administration's Trade Policy and the International Trading System*, 119 AM. J. INT'L L. 680, 697 (2025).

military partners more than other states. This section first describes the Trump 2.0 trade strategy and next discusses how this strategy is not driven by traditional security concerns. This section then explores how Trump 2.0's trade policy is a nationalist form of economic coercion that can be described as "predatory hegemony." This section concludes by discussing how this policy is not limited to interstate negotiations but has also been used with private corporations, both foreign and domestic.

#### *A. Trump 2.0's Trade Strategy*

The second Trump administration has placed tariffs at the center of its "America First Trade Policy," dramatically expanding the use of statutory authorities to raise import duties.<sup>21</sup> A key innovation was the use of the International Emergency Economic Powers Act (IEEPA) to impose sweeping tariffs on imports from nearly every country, often at extremely high rates. The administration justified these tariffs through a mix of economic rationales ("reciprocal" tariffs were tied to the United States' persistent trade deficits) and non-economic goals ("fentanyl" tariffs based on narcotics trafficking, other tariffs to deter the purchase of Venezuelan or Russian oil).<sup>22</sup> By 2025, these measures had pushed the average weighted U.S. tariff rate to roughly 23 percent—about ten times higher than a year earlier.<sup>23</sup> In parallel, the administration continued to rely on Section 232, which authorizes tariffs when imports threaten national security.<sup>24</sup> Section 232 measures targeted sectors such as steel, aluminum, automobiles, and automotive parts, with the rationale that excessive dependence on foreign supply could undermine domestic industrial capacity essential for defense and economic resilience.<sup>25</sup> The administration also continued to rely on Section 301, using tariffs and other trade restrictions on China.<sup>26</sup>

Alongside these tariffs, the administration pursued negotiations with countries affected by the IEEPA measures in an effort to secure concessions in exchange for relief from the most severe tariff rates. The administration sought agreements that required partner states to accept higher U.S. tariff levels, reduce their own tariffs and other barriers to U.S. exports, and commit to substantial economic concessions such as investment targets or purchase commitments benefiting the United States.<sup>27</sup> These arrangements included commitments to large-scale foreign investment in the United

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21 Julian Arato, Kathleen Claussen, & Timothy Meyer, *The "America First Trade Policy" in Practice*, 119 AM. J. INT'L L. 668 (2025).

22 Dunoff & Pollack, *supra* note 20, at 681-92.

23 Arato, Claussen & Meyer, *supra* note 21, at 668.

24 Dunoff & Pollack, *supra* note 20, at 688-89.

25 Arato, Claussen & Meyer, *supra* note 21, at 671-72.

26 *Id.* at 672.

27 Dunoff & Pollack, *supra* note 20, at 694-96.

States—for example, a Japanese commitment to have their firms invest \$550 billion.<sup>28</sup> By mid-2025, the administration had announced agreements or frameworks with several countries and regions, including the United Kingdom, the European Union, Indonesia, Japan, and Vietnam.<sup>29</sup> Although many of these deals were announced as “trade agreements,” they are non-binding, reflecting the administration’s strategy of continuing to leverage tariffs to extract concessions from trading partners.<sup>30</sup>

These new American policies unambiguously violate WTO trade rules. The higher tariffs breach the United States’ bound tariff rates, and our differential tariff treatment of WTO members violates the WTO’s non-discriminatory most-favored-nation principle. In addition, the United States is requiring that other states violate most-favored-nation rules in our non-binding agreements by requiring them to offer American exports lower tariff rates.<sup>31</sup> Given the crisis in WTO dispute settlement, only three WTO members (Brazil, Canada, and China) have initiated legal proceedings at the WTO.<sup>32</sup> In each case, the United States has invoked Article XXI, arguing that the national security exception applies.<sup>33</sup> WTO panels are unlikely to find that Article XXI applies to these cases, and the United States is expected to “appeal into the void.”

*B. Trump 2.0’s Actions Are Not Motivated by Traditional National Security Concerns*

Most traditional approaches to national security emphasize that strong economic ties among allies reinforce military and political partnerships by increasing interdependence and shared prosperity. By promoting trade, investment, and integrated supply chains among friendly states, governments can strengthen alliances, align strategic interests, and reduce incentives for conflict within the alliance network. Yet an intriguing aspect of the second Trump Administration’s policies is their attack on American NATO allies and Pacific military partners. Instead of shielding our traditional security partners from higher tariffs, Trump 2.0 included these countries in his barrage of new tariffs and demands for investment in the United States.<sup>34</sup> Our allies, particularly NATO members, view the Trump Administration’s policies as eroding the foundations of the transatlantic partnerships that were built on shared democratic values, the rule of law,

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28 River Akira Davis & Ana Swanson, *Trump Hails Japan’s First Batch of U.S. Investments*, N.Y. TIMES (Feb. 17, 2026), <https://www.nytimes.com/2026/02/17/business/japan-trump-investments.html> [<https://perma.cc/R9XZ-GSCA>].

29 Dunoff & Pollack, *supra* note 20, at 694.

30 *Id.* at 696.

31 *Id.* at 697-98.

32 *Id.* at 696.

33 *Id.*

34 *Id.* at 682–87.

and multilateral cooperation after World War II.<sup>35</sup> As a result, many European observers believe these policies undermine collective security and the institutions that support it, prompting calls within Europe for greater strategic autonomy and a reassessment of reliance on the United States.<sup>36</sup>

Additionally, Trump is far more transactional with geopolitical rivals like China. For instance, Trump 2.0 has eschewed the Biden administration's national security framing of sales of advanced chips to China in two main ways. First, Trump 2.0 has scaled back support for the CHIPS Act subsidies and its efforts to build more domestic semiconductor production capacity. Indeed, Intel had to agree to transfer 10% of its equity to the government to receive the \$8.9 billion in subsidies authorized by statute.<sup>37</sup> Second, Trump 2.0 has put the sale of advanced chips to China on the bargaining table. The administration has used this possibility of sales as leverage in negotiations with domestic companies—aiming to take 25% of all Nvidia's revenue from sales to China<sup>38</sup>—as well as in trade talks with the Chinese government.<sup>39</sup>

### C. *Trump 2.0 Policies as Predatory Hegemony*

Instead of being based on traditional national security concerns or mutual economic gain, Trump 2.0's trade policy is one that emphasizes one-side economic dominance over trading partners. Stephen Walt describes this strategy as “predatory hegemony,” where one state leverages its structural advantages to extract asymmetric concessions and displays of deference from both allies and adversaries, treating international economic relations largely as zero-sum transactions.<sup>40</sup> This concept captures key features of the Trump administration's trade policy, which has relied heavily on tariffs and tariff threats to pressure partners into accepting one-sided agreements, including demands that countries reduce barriers to U.S. exports, tolerate higher U.S. tariff levels, or commit to large-scale investment in the United

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<sup>35</sup> Anne van Aaken, *From Cooperation to Anomie and Transaction in the Transatlantic Relationship? A View from Europe on the Trump Administration 2.0*, 119 AM. J. INT'L L. 723, 723–26 (2025).

<sup>36</sup> *Id.* at 729–30.

<sup>37</sup> Robbie Whelan et al., *Inside Intel's Tricky Dance with Trump*, WALL ST. J. (Aug. 24, 2025), <https://www.wsj.com/tech/inside-intels-tricky-dance-with-trump-c03f729c> [<https://perma.cc/YGG4-TLTH>].

<sup>38</sup> Tripp Mickle & Ana Swanson, *Trump Clears Sale of More Powerful Nvidia A.I. Chips to China*, N.Y. TIMES (Dec. 8, 2025), <https://www.nytimes.com/2025/12/08/business/trump-nvidia-chips-china.html> [<https://perma.cc/C4LV-4X8J>].

<sup>39</sup> Ana Swanson & Tripp Mickle, *As Trump Weighs Sale of Advanced A.I. Chips to China, Critics Sound Alarm*, N.Y. TIMES (Oct. 29, 2025), <https://www.nytimes.com/2025/10/29/us/politics/trump-china-nvidia-chips-sales.html> [<https://perma.cc/4J7Q-URPY>].

<sup>40</sup> Stephen M. Walt, *The Predatory Hegemon: How Trump Wields American Power*, FOREIGN AFFS. (Feb. 3, 2026), <https://www.foreignaffairs.com/united-states/predatory-hegemon-walt> [<https://perma.cc/VZJ9-7ZD7>].

States.<sup>41</sup> It also applies to Trump 2.0's use of tariffs in foreign policy, such as threats against Brazil or Colombia.<sup>42</sup> While states may relent in the short term, this approach ultimately risks undermining the cooperative foundations of the postwar trading system by encouraging U.S. partners to diversify their economic relationships, pursue alternative trade agreements, and reduce their reliance on access to the U.S. market.

Although the Supreme Court's decision in *Learning Resources, Inc. v. Trump* invalidated the administration's reliance on IEEPA-imposed tariffs,<sup>43</sup> the ruling is unlikely to meaningfully constrain the executive's broader use of tariffs. As Lawrence Liu explains, the President retains access to a wide array of alternative statutory authorities—including Section 232 national security tariffs, Section 301 retaliatory tariffs, safeguards under Section 201, antidumping and countervailing duties, and other trade statutes—that can support significant trade restrictions even in the absence of IEEPA.<sup>44</sup> As a result, the Court's decision may shift the legal basis and procedural pathways for new tariffs, but it is unlikely to substantially reduce the availability of tariffs as a central instrument of U.S. trade policy.<sup>45</sup>

Trump 2.0's extractive use of government power is not limited to its dealings with foreign countries. The administration has also used similar tactics to coerce private firms into providing the government with revenue, firm equity, or corporate control. In addition to the 25% tax on Nvidia's Chinese sales and the 10% equity stake in Intel, Trump 2.0 has used inbound investment screening laws to demand a veto (“golden share”) over corporate decision-making to approve Nippon Steel's acquisition of U.S. Steel.<sup>46</sup>

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41 See *infra* Section II.A.

42 Edward Wong and Zolan Kanno-Youngs, *Trump Wields Tariffs as a Force in Diplomacy, to Questionable Effect*, N.Y. TIMES (Aug. 11, 2025), <https://www.nytimes.com/2025/08/11/us/politics/trump-tariffs-russia.html> [<https://perma.cc/UDK2-NAUV>].

43 *Learning Resources, Inc. v. Trump*, 146 S.Ct. 628 (2026).

44 Lawrence J. Liu, *No More IEEPA Tariffs? The Legal Bases of an Alternative Regime*, 110 MINN. L. REV. HEADNOTES (forthcoming 2026) (discussing how many tariffs are not solely the product of executive decision-making but the result of sustained engagement by organized private interests through administration action).

45 Indeed, Trump 2.0 has already replaced many IEEPA tariffs with a temporary, global 10% tariff (based on Section 122 authorization) and has begun a Section 301 investigation to reimpose larger and more permanent tariffs on sixteen trading partners. See Ana Swanson & Lararo Gamio, *The Unexpected Winners From Trump's New Global Tariff*, N.Y. TIMES (Mar. 2, 2026), <https://www.nytimes.com/2026/03/02/us/politics/trump-tariffs-winners-losers.html> [<https://perma.cc/QX2A-FAE5>] (discussing Section 122); Ana Swanson & Tyler Pager, *U.S. Accuses 16 Trading Partners of Unfair Practices and Opens Investigation*, N.Y. TIMES (Mar. 11, 2026), <https://www.nytimes.com/2026/03/11/business/economy/trump-trade-investigations-tariffs.html> [<https://perma.cc/XF2Y-8GZ9>] (discussing the Section 301 investigation).

46 Ana Swanson & Lauren Hirsch, *“Golden Share” in U.S. Steel Gives Trump Extraordinary Control*, N.Y. TIMES (June 15, 2025), <https://www.nytimes.com/2025/06/15/us/politics/golden-share-us-steel-nippon-trump.html> [<https://perma.cc/8TK6-CV9K>]. The golden share gives the administration veto power over most of Nippon Steel's business planning for U.S. Steel. Inbound investment screening in the United States is controlled by the Committee for Foreign Investment in the United States (CFIUS), which is under the control of the executive. For a description of CFIUS, see Cathleen D. Cimino-Isaacs

More recently, the administration has designated Anthropic a “supply chain risk” after it refused some Pentagon demands on the use of Anthropic’s AI tools.<sup>47</sup> The administration claims that this designation prevents any American military contractors from conducting “any commercial activity” with Anthropic.<sup>48</sup> These measures demonstrate a similar predatory approach towards private actors, where the government uses its public power to extort revenue or control from firms.

### III. THE STRATEGIES FOR MIDDLE POWERS IN A LEVERAGE-BASED SYSTEM

As the United States adopts a more predatory hegemony approach, middle powers (members of the G20, BRICS, and beyond) face a growing dilemma as the international economic system shifts from one grounded in rules and institutions to one based on power politics. For decades, countries such as Canada, Australia, and South Korea prospered under a rules-based trading order that promised predictable access to markets and some protection from the unilateral power of larger states. As that system weakens, these states must navigate a world in which great powers increasingly weaponize tariffs and other economic measures as tools of geopolitical pressure. In a recent address at Davos, Canadian Prime Minister Mark Carney describes this moment as a “rupture in the world order” rather than a gradual transition, arguing that the “pleasant fiction” of a rules-based order has given way to a harsher reality in which economic integration itself can become a source of vulnerability.<sup>49</sup> In this environment, middle powers risk being squeezed between dominant states that possess the market size and political leverage to dictate terms, leaving smaller economies to compete for favor or accept disadvantageous bargains.<sup>50</sup>

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& Karen M. Sutter, CONG. RSCH. SERV., IF10177, *Committee on Foreign Investment in the United States (CFIUS)* (updated May 29, 2025).

47 Cade Metz, *A Guide to the Pentagon’s Dance With Anthropic and OpenAI*, N.Y. TIMES (Mar. 7, 2026), <https://www.nytimes.com/2026/03/07/technology/anthropic-openai-pentagon-dario-amodei-sam-altman.html> [<https://perma.cc/C7SU-52LD>].

48 *Id.* Anthropic is suing the U.S. government to contest this designation. Sheera Frenkel, *Anthropic Sues Pentagon Over ‘Supply Chain Risk’ Label*, N.Y. TIMES (Mar. 9, 2026), <https://www.nytimes.com/2026/03/09/technology/anthropic-defense-artificial-intelligence-lawsuit.html> [<https://perma.cc/68WG-9WMA>]. Legal scholars argue that the government’s legal position is weak, both because this statute can probably not be used against an American corporation and because it cannot be used to prevent third parties from engaging in “any commercial activity” instead of just the contractors’ work for the government. See Michael Endrias & Alan Z. Rozenshtein, *Pentagon’s Anthropic Designation Won’t Survive First Contact with the Legal System*, LAWFARE (Mar. 2, 2026), <https://www.lawfaremedia.org/article/pentagon-s-anthropic-designation-won-t-survive-first-contact-with-legal-system> [<https://perma.cc/BN7Q-3YV4>].

49 Mark Carney, Prime Minister of Can., *Principled and Pragmatic: Canada’s Path*, Address at the World Economic Forum Annual Meeting (Jan. 20, 2026), <https://www.pm.gc.ca/en/news/speeches/2026/01/20/principled-and-pragmatic-canadas-path-prime-minister-carney-addresses> [<https://perma.cc/9MV4-R6K9>].

50 *Id.*

Carney argues that middle powers cannot be passively accommodated or willing to retreat into isolation. Instead, he calls for a strategy of “value-based realism.”<sup>51</sup> This approach begins with strengthening domestic resilience—through policies that expand domestic investment, develop critical sectors, and reduce strategic dependence on vulnerable supply chains.<sup>52</sup> At the same time, middle powers should diversify their external relationships and build coalitions with like-minded partners to reduce the leverage of any single hegemon. As Carney states, “[I]f we’re not at the table, we’re on the menu.”<sup>53</sup>

In trade policy, this could involve negotiating new regional or plurilateral trade agreements, linking existing trading blocs, forming buyers’ clubs for strategic resources, or coordinating supply-chain policies.<sup>54</sup> By building overlapping networks of economic and security cooperation, middle powers can regain a measure of autonomy and influence—even in a world increasingly power-based, not rules-based.

#### IV. THE FUTURE OF THE WTO AND THE NEEDS OF MIDDLE POWERS

The WTO, as an institution, is in crisis. The WTO has many functions, but its primary three are: (1) maintaining market access to the world’s largest markets through tariff binding and the most-favored-nation principle, (2) adjudicating trade disputes, and (3) serving as a negotiating forum for new agreements. Currently, the WTO is unable to perform any of these functions. This section addresses the crisis at the WTO and then examines how reform proposals could be developed to meet the needs of middle-power states, which rely most on global institutions to provide a secure framework for trade relationships.

##### *A. The Crisis at the WTO*

Traditionally, states have sought membership in the WTO because it provides a stable and predictable structure for global trade. WTO Members agree to maintain their tariffs below the bound rates negotiated in previous trade rounds. Members also commit to offering non-discriminatory access to their markets through the most-favored-nation principle.<sup>55</sup> Together, these principles allow WTO members access to the world’s largest markets (the United States, the European Union, and China) on a predictable basis.

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> This principle has various exceptions, the most important being Article XXIV, allowing the formation of free trade areas and customs unions.

Trump 2.0's extensive use of IEEPA, Section 232, and Section 301 tariffs have upended access to the American market.<sup>56</sup> Now, WTO members face dramatically higher tariffs to enter the U.S. market and face very different tariff levels. The United States is not alone in restricting access to its market. China is also using tariffs as a form of economic statecraft to address national security or foreign policy goals.<sup>57</sup> In addition, China is adopting both informal and formal mechanisms to restrict market access for private companies.<sup>58</sup> These developments, together with the collapse of the DSU's Appellate Body, have undermined the WTO's ability to provide a stable and predictable structure for global trade relations.

Finally, the WTO has not been effective as a negotiating forum for new agreements. The WTO's increasing size (now at 166 countries) and consensus rules make it difficult for countries to conclude new agreements.<sup>59</sup> The Doha Development Agenda, launched in 2001, has failed to produce an agreement.<sup>60</sup> As a result, many states have sought to create plurilateral agreements—treaty rules that would bind the subset of states that agree to the specific policy commitments embodied in the agreement—but even these have failed to reach consensus. For example, 125 states have agreed to the Investment Facilitation for Development (IFD) Agreement, which aims to streamline and increase the transparency of foreign investment rules.<sup>61</sup> However, some emerging markets, particularly India, have objected to the agreement being incorporated into WTO rules and have blocked its conclusion under WTO auspices.<sup>62</sup> The result is a dramatic increase in preferential trade agreements (such as the USMCA or the Trans-Pacific Partnership) that allow smaller groups of states to agree to deeper trade integration outside of the WTO framework.<sup>63</sup>

### B. WTO Reform

This may be the moment to reconsider the WTO's purpose. If the institution cannot constrain large market states, provide consistent

<sup>56</sup> See *infra* Section II.A.

<sup>57</sup> See *infra* Section I.

<sup>58</sup> See Ji Li, *Superpower Legal Rivalry and the Global Compliance Dilemma*, 45 U. PA. J. INT'L L. 891 (2024); Weijia Rao, *Signaling Through National Security Lawmaking*, 59 U.C. DAVIS L. REV. 797 (2025).

<sup>59</sup> Inu Manak, *How India Disrupts and Navigates the WTO*, COUNCIL ON FOREIGN RELATIONS (Feb. 10, 2025), <https://www.cfr.org/articles/how-india-disrupts-and-navigates-wto> [https://perma.cc/6CH7-S4NT].

<sup>60</sup> Bernard Hoekman & Charles Sabel, *Open Plurilateral Agreements, International Regulatory Cooperation and the WTO*, 10 GLOBAL POL'Y 297, 305 (2019).

<sup>61</sup> Manak, *supra* note 59.

<sup>62</sup> *Id.*

<sup>63</sup> Chad P. Bown, *Mega-Regional Trade Agreements and the Future of the WTO*, COUNCIL ON FOREIGN RELATIONS, 2 (Sept. 2016), <https://www.piie.com/sites/default/files/documents/bown201609cfr.pdf> [https://perma.cc/X4AD-PD9W].

adjudication of disputes, or conclude new agreements, what goals should the organization set as it considers reforms to increase its relevance? One goal could be to bring large market members, such as the United States and China, back into the fold. To do so, WTO Members may consider weakening some WTO commitments to make the costs of compliance lower. Proposals in this vein include allowing WTO members to opt out of DSU adjudication or loosening subsidy rules to permit more interventionist industrial policies.<sup>64</sup> However, given the extremes of Trump 2.0's trade policies, it is unclear whether loosening trade rules will convince the administration to re-engage multilateral processes or abide by trade rules.

A different goal is to preserve a set of robust and binding rules for middle power states that remain interested in preserving a rule-based trading system among themselves. For these states, preserving the status quo between themselves is important to their expected export revenue and economic growth. This is particularly true if the United States and China continue to restrict access to their markets. These states are likely to prefer to maintain the WTO substantive rules on subsidies, trade remedies, and other areas. Given that middle powers will have fewer resources to pour into subsidy programs, they are likely to want to uphold WTO constraints. Similarly, they are likely to be supportive of the WTO limits on the application of domestic trade remedies, such as anti-dumping, countervailing duties, and safeguards that could raise duties on their exports. In addition, this group generally favors mandatory WTO dispute settlement as a mechanism to require rule-of-law, rather than power-based, resolution of trade tensions.

Middle powers may also favor reforms to the invocation of the Article XXI national security exception. As geopolitical rivalries grow, more WTO members may seek to use Article XXI as a blanket justification for a host of WTO-breaching trade policies. Currently, Article XXI is an all-or-nothing proposition. If it applies, the exception exempts any WTO breach regardless of its economic impact. If it doesn't apply, the exception offers no protection for the breach. Given that national security claims are rarely so clear-cut, many scholars argue that the WTO should revise its approach. Petros Mavroidis argues that the WTO should establish a national security committee that turns this more into a consultative and technical analysis.<sup>65</sup> The committee could meet with interested parties to discuss how well the breaching trade measures align with the state's national security concerns. This approach would give states more policy leeway to craft measures that addressed national security concerns, but would require states to engage in a multilateral review process and possibly revise their measures

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<sup>64</sup> See, e.g., MAVROIDIS, *supra* note 1 (discussing both proposals).

<sup>65</sup> *Id.* at 258-68.

as a result. Harlen Cohen argues that the WTO could support the use of “best practices” in national security.<sup>66</sup> This would involve the development of soft law practices that require states to be transparent with their measures, commit to processes for imposing national security measures, set expectations regarding the means-ends proportionality for such measures, and engage in harm minimization to third parties.<sup>67</sup>

Even with reforms, the WTO is likely to have a diminished global role. The era where trade rules were a robust constraint on larger and smaller market states alike appears to be over. Instead, the international trade system will almost certainly be more power-based, with both the United States and China disregarding trade rules for important industries and with regard to certain partners. The critical question is how much of the WTO can remain relevant—either providing rules, offering dispute settlement, or serving as a negotiating forum. Here, the WTO may play a smaller yet important role for middle- and smaller-market states seeking to preserve the legal basis of their trade relations with one another.

#### CONCLUSION

The current moment in international trade law reflects a profound transformation from a rules-based order toward one increasingly shaped by geopolitical rivalry and economic power. Rising tensions between major powers, particularly the United States and China, have expanded the role of national security in trade policy and weakened the institutions designed to manage global commerce. The Trump Administration’s second-term trade strategy further accelerates this shift by deploying tariffs and economic pressure not primarily to address traditional security threats but to extract concessions from both allies and adversaries, reflecting a broader strategy of predatory hegemony. In this environment, middle powers face the challenge of navigating a less predictable system while seeking to preserve stable trade relationships through diversification, coalition-building, and renewed institutional cooperation. Although the World Trade Organization may no longer function as the central enforcer of global trade rules, it can still serve a meaningful role for states that continue to value predictable legal frameworks.

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<sup>66</sup> Cohen, *supra* note 3, at 98-102.

<sup>67</sup> *Id.* at 104-10.