

The international trading system post Trump, a proposal for discussion¹

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It is not too early to start delineating the international trading system required after Donald Trump. His second turn at the White House and the Executive Order of “liberation day” on April 2nd represent the most significant challenge the World Trade Organization (WTO) has encountered since the beginning of its original version as the General Agreement on Tariffs and Trade (GATT) in 1947.

The actions by the US president break not only with the order established under WTO, its most basic principles and with the many free trade agreements the US has entered into, but also with its own legal domestic obligations. The identity of the rule breaker adds to the gravity of the breach: the US had been the main engine in favor of international commercial integration after World War II, not only to establish a system consistent with its ambitious economic agenda, but also to promote a global model of behavior where rules are meant to be respected, with equality before the law, and in a forum where every member is treated with dignity.

In time, WTO became the most successful institution within the United Nations family, until it lost that distinction the last few years due to misgivings and questioning of several features of its architecture and functioning: one, the need for consensus decision making in its General Council that gave undue influence to member countries bent on obstructive views for greater opening. Two, the evident abuse of the “special and differential treatment” behind which some important players, China, India, Brazil, South Africa and others, have hidden so as not to comply with the main WTO disciplines, even though they could hardly qualify as mere emergent or disadvantaged. Three, the disruptive role of China’s government and Communist Party ownership and financial backing for many exporting firms that impact global market conditions, often through unfair trading practices. Fourth, disagreements on the functioning of the dispute resolution system and the ulterior blocking of panelist selection, mostly by the US. Fifth, the political inability within the US to continue exercising leadership and offering meaningful

¹ A version of this article first appeared as an op-ed column in [El Universal](#) in Mexico City.

concessions.² Sixth, the push towards convergence of technical standards and regulations that is perceived as an affront to sovereignty.

As Madelaine Albright would have it, on international trade matters the US indeed was an indispensable country. Significant progress in global opening was achieved thanks to its vision and leadership. Initially, through a series of negotiating [rounds](#) that ended up reducing its average most favored nation (MFN) duty to a simple average of 3.3 percent and a weighted average of only 2.2 before the Trump administration. The negotiation rounds were successful thanks to the strong and strategic commitment of the US, Europe, Japan, Canada, Australia and other large economies and, in time, they laid the foundations for a non-discriminating rules-based system based on national and MFN [treatments](#).

Later, through bilateral and regional agreements with more ambitious disciplines and sectorial coverage—the most important and influential the North American Free Trade Agreement (NAFTA) with Canada and Mexico—and through its role as the main promoter of China's accession to WTO concluded in 2001 after a long and protracted negotiation process.³

NAFTA took the rules-based model even further and became revolutionary: for the first time it comprised two very dynamic and economic successful countries, Canada and the US, and a developing one with extended poverty levels, Mexico. Moreover, the agreement abandoned the idea of a “special and differential treatment” by being symmetric with the same rights and obligations for the three parties, it achieved practically universal coverage in goods, including agriculture for the first time, and in services and investment as the opening was carried out, for the first time also, based on negative lists and with a ratchet clause that incorporates in the agreement opening measures the parties implement unilaterally in the future.

The successful negotiation and approval process of NAFTA would lead to the conclusion of the Uruguay Round and the establishment of WTO, would promote competitive liberalization among many countries and pave the way for China's accession to WTO.

By the end of this intense and long negotiation process the US would be politically exhausted, unable to offer subsequent concessions negotiations, incapable of marshaling a free trade coalition in its own congress and without political leaders willing to take the risk of encouraging further opening. Contrary to what most think, the main reason behind the exhaustion lay not in the alleged harm by trade opening in several regions of the country, nor in its deindustrialization, but in the

² See the survey of [expert](#) opinion on the need to reform WTO and the main concerns on its structure and functioning.

³ See, [China en la OMC](#), Espejo para México, in Foreign Affairs en Español, 2002.

fact that the political forces in favor of an offensive commercial agenda lost weight in the balance of power, while the groups behind defensive commercial policies became emboldened.

Once the main objectives pursued by promoters of free trade were attained, by clinching key bilateral agreements, consolidating WTO, successfully avoiding the political expensive yearly congressional vote to extend MFN treatment to China, having preferential access to industrial and agricultural exports in relevant markets, the US private sector and the globalizing bureaucracy were left with no incentives to keep pedaling the trade bicycle. Interest and glamour were lost for the offensive trade agenda among the main lobbying groups, think tanks and bureaucracy in Washington, while unions, protectionist sectors (steel, textiles and others) and some environmental groups took advantage of having the field for themselves to promote their interests and win a debate where they were the sole voices.

The Obama administration saw the last attempt to rescue an offensive trade agenda. Reluctantly, President Obama ended up leading the negotiation for the transpacific agreement responding to export agricultural interests, to the geopolitical pivoting towards Asia and the establishment of trade rules more ambitious than those of WTO for the region, and with the aim that one day they might have applied also to China. But without any meaningful concession other than less strict, compared to NAFTA, rules of origin for autos but stricter than what Japan insisted upon. The first trade decision of President Trump in his initial arrival at the White House was not to submit the transpacific agreement for congressional approval, endorsing the groups in favor of a defensive trade agenda. Nevertheless, the remaining countries did go ahead and implemented the Comprehensive and Progressive Transpacific Partnership (CPTTP) that entered into force at the end of 2018 without its main promoter.

President Biden erroneously opted for not reengaging CPTTP given the importance of Midwest states in the electoral college hoping that this would improve the prospects for Democrats in swing states. The electoral results of 2024 show the strategy did not work as Trump won all the swing states, while, at the same time, it left the US with only defensive tools to deal with China.

In this manner, the US ended without an offensive trade agenda, with no instruments to move the needle and without an internal political coalition as platform to argue for more and no less trade. With an exception: the US, Mexico, Canada Agreement (USMCA).

Trump's threat during the 2016 campaign to invoke NAFTA's Article 2205⁴ and his attempt to exit it once in the White House had an unexpected effect: a broad coalition of interests in favor of preserving NAFTA, resulting in a renegotiation that marginally modified the treaty, but which attained overwhelming Democratic and Republican majorities in Congress to approve USMCA.

President Trump's current tariff offensive should have a similar effect among interest groups, end and intermediate consumers, investors, service providers, exporters, and states benefiting from foreign trade, spurring an exploration of how to rebuild an offensive trade agenda. However, these groups will not mobilize without something to defend.

Unlike the process that led to the creation of the USMCA, the changes will have to be substantive, not marginal. Even if the US Supreme Court eventually rules against the use of the IEEPA (International Economic Emergency Powers Act) for the generalized implementation of tariffs, it's reasonable to assume the U.S. will not revert to the average 3.3 percent MFN tariff levels and that a deep reform of the WTO or an agreement among leading trading powers on fundamental trade disciplines is necessary. The need for reform existed even before hurricane Donald.

The number of trade violations by the United States, as well as by China, the European Union, and other actors that have retaliated without clear authorization, is so significant that a sort of re-foundation of the international trade system is required, even though much of the previous system is worth rescuing.

To renew an offensive trade agenda, whether within the WTO or without it via an expanded CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership), for example, a group of nations would need to propose a vision for action. There's no reason not to begin the thinking process now, nearly four years before Trump's term ends. On the contrary, the only way to awaken and unite the diffuse support that naturally exists for trade openness is through concrete proposals. Underestimating the potential of this discussion would repeat the same mistake that led to the current scenario: allowing anti-trade factions to monopolize public discourse.

A proposal could consider the following elements as starting points:

⁴ **Article 2205: Withdrawal**

A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Parties. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

- 1) Allow a certain flexibility in the current MFN treatment to replace it with a scheme that rewards relatively low tariffs while reducing the dispersion of consolidated duties. These tariffs would be higher than the current ones but within reasonable limits and less dispersion. For example, a maximum consolidated rate of 10 percent for industrial products, 15 percent maximum for a few sectors with apparent overcapacity (e.g., steel) and agricultural goods, and a weighted average applied duty of less than 5 percent. Economies offering MFN tariffs under this scheme could benefit from additional rights, as exemplified below.

Flexibility would allow for non-discriminatory tariff increases for justified reasons, without violating commitments or engaging in complex litigation, in cases of significant shifts in productive capacity. A limited gap between applied and consolidated tariffs is useful for addressing changes in circumstances with high short-term costs. This is also preferable to illegal increases in tariffs justified by national security excuses or retaliation without an appropriate ruling.

- 2) Eliminate special and differential treatment.
- 3) Allow plurilateral negotiations under the condition that they do not imply less market openness to non-participating economies, to reduce the abuse of consensus-based decision-making that multilateral negotiations entail.
- 4) Since changes to the MFN scheme would encourage free trade agreement negotiations, it becomes necessary to strengthen Article XXIV of the GATT to ensure that exceptions to national treatment and MFN minimize trade diversion. This can be achieved by expanding the coverage of “substantially all the trade” and requiring participating economies to adopt tariffs as described in point 1).
- 5) For economies with import duties consistent with 1), allow the coordination of dumping and subsidy investigations against countries that systematically engage in these practices. Of course, countervailing duties could be challenged under the dispute resolution system.
- 6) Establish that economies below a modest threshold in terms of their share of exports in countries investigating dumping or subsidy cases may not be subject to countervailing duties.
- 7) Establish that firms exceeding a relevant market share threshold cannot benefit from countervailing duties for dumping or subsidies if their size implies excessive market power.
- 8) Create a permanent, professional, and neutral dispute resolution body with no appeals and with arbitrators appointed for a period of ten years based on merit. For countries repeatedly found in violation of disciplines and with a certain number of adverse arbitration rulings, other members may deny MFN treatment until compliance with the rulings is ensured.

Establish a maximum retaliation level (double average consolidated duties, for example) and require that its adoption follow the same internal procedures used for trade agreement approvals. This ensures decisions are not solely in the hands of executive branches, allows for a deliberation period, and it enhances the reliability of countries with effective checks and balances systems as trade partners.

- 9) Establish that economies choosing tariffs higher than those described in point 1) would not be entitled to early compensation in the case of certain potential violations, but they would have to wait for an arbitration ruling granting them retaliation rights.
- 10) Promote the possible recognition of multiple, alternative, technical standards and regulations in every country, subject to non-discrimination and non-capriciousness, to move away from the apparent imposition of a sole model that many resent.

Discussing proposals to reform the international trade system will contribute to restoring momentum for openness and a rule-based yet fairer system. Such reforms aim to address the main criticisms of the previous system, as well as respond to the disruptions caused by Donald Trump and the lack of trade leadership in the United States. There is no need to involve all economies to move the discussion forward, but rather a critical mass of important actors, forming a coalition of trade promoters. Canada and Mexico could be good candidates to initiate this discussion.

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