

SYMPOSIUM ON GREGORY SHAFFER, “GOVERNING THE INTERFACE OF U.S.-CHINA TRADE RELATIONS”

BEYOND U.S.-CHINA RIVALRY: RULE BREAKING, ECONOMIC COERCION, AND THE WEAPONIZATION OF TRADE

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Growing U.S.-China rivalry undoubtedly poses a profound threat to the multilateral trading system. In “Governing the Interface of U.S.-China Trade Relations,”¹ Gregory Shaffer provides a highly nuanced and balanced analysis of the nature of this threat and potential solutions to address it. Yet managing trade conflict between the United States and China is, I argue, only one of the twin challenges currently facing the multilateral trading system. The other is how to rein in growing economic coercion and the arbitrary abuse of power by dominant states in the system. The United States and China have each become highly disruptive forces in the liberal trading order—not simply because of their bilateral trade relations but also, and just as importantly, because of their behavior toward the rest of the world. Both of these countries have increasingly turned away from trade multilateralism and toward aggressive unilateralism and the raw use of coercive power in their dealings with other states. It is this flagrant disregard for the rule of law on the part of the system’s two dominant powers that has thrown the World Trade Organization (WTO) into crisis and ultimately poses the greatest threat to the global trade regime.

The Crisis in the Multilateral Trading System

Shaffer offers a compelling analysis of the contemporary U.S.-China trade conflict, the threat that it poses to the trading system, and how it could potentially be managed through pragmatic reforms. He characterizes the central challenge facing the WTO as how to manage the growing clash between the United States and China. The United States increasingly views China’s model of state capitalism—centered on a highly interventionist state actively engaged in industrial policy to foster economic development and boost the competitiveness of national firms and industries—as a threat to its economic primacy and national security. For Shaffer, the key question is what scope there should be for state intervention under WTO rules. He rejects widespread calls for stricter rules to clamp down on China’s interventionist state—in other words, reforms to make the WTO, and China, more neo-liberal. Instead, Shaffer calls for greater national policy space, both for states to pursue industrial policy and to use defensive measures to protect themselves from the “externalities” of others’ policies, through the use of domestic safeguards on economic, national security, and social policy grounds. This is intended as a middle ground, allowing scope both for China’s developmentalist policies and for the United States to protect itself from the adverse effects of those policies.

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¹ Gregory Shaffer, *Governing the Interface of U.S.-China Trade Relations*, 115 AJIL 622 (2021).

Shaffer thus defines the central problem facing the trade regime through a relatively narrow lens of U.S.-China trade relations and rivalry. Yet there are, of course, 162 other members of the WTO. If we broaden out to consider the perspective of the rest of the world, the core threat to the trade regime looks somewhat different. For many countries, their chief concern is widespread and growing rule-breaking by both the United States and China—not only in their dealings with each other, but also with the rest of the world. In recent years, the world’s two largest economic powers have each been blatantly violating the rules and principles of the multilateral trading system by weaponizing trade as an instrument of economic coercion against other states. The United States’ trade aggression has been targeted at an extraordinarily lengthy list of countries—not just China.² And China’s trade aggression has similarly targeted a growing list of states.³ An acute focus solely on U.S.-China trade conflict therefore risks obscuring other recent dynamics that pose as great, if not an even greater, threat to the multilateral trading system.

American Economic Coercion

The United States has not only abandoned its traditional leadership role in the multilateral trading system but, beginning under former President Trump, has launched an unprecedented assault on the very system it had once created and led. Discarding any commitment to multilateral cooperation or respect for the rule of law, the United States has openly embraced the raw use of coercive power in trade. While this included launching a trade war with China, it also went far beyond U.S.-China trade relations.

Under the Trump administration, the United States arbitrarily imposed tariffs not just on China but on *all* of the United States’ major trading partners. Invoking Section 232 of the U.S. Trade Act,⁴ the United States imposed tariffs on \$45 billion of steel and aluminium imports, purportedly on the grounds of “national security,” affecting a lengthy list of countries, including those in the European Union, Japan, South Korea, Canada, Mexico, Brazil, India, Australia, Turkey, Argentina, South Africa, and many others.⁵ The United States also threatened to impose tariffs on \$200 billion worth of imported cars, trucks, and auto parts on similar grounds,⁶ which would have hit a similarly diverse array of countries, and initiated five additional Section 232 investigations.⁷

Furthermore, the United States has revived Section 301—which enables it to unilaterally take retaliatory action against any country deemed to “unjustifiably” restrict or burden U.S. commerce—as a cornerstone of its trade strategy.⁸ Widely reviled by its trading partners, the sweeping, unilateral nature of Section 301 means it can be used as a blunt instrument of economic coercion. Under Trump, the United States invoked Section 301 to launch its trade war with China, imposing tariffs on \$370 billion of goods imported from China and threatening further tariffs on all Chinese imports.⁹ But the United States’ renewed use of Section 301 has not been limited to China—over the past three years, the United States has launched Section 301 investigations against many other countries,

² RACHEL F. FEFER, [SECTION 232 OF THE TRADE EXPANSION ACT OF 1962](#), CONG. RES. SERV. (2021); ANDRES B. SCHWARZENBERG, [SECTION 301 OF THE TRADE ACT OF 1974](#), CONG. RES. SERV. (2022).

³ Bonnie Glaser, [Time for Collective Pushback Against China’s Economic Coercion](#), CTR. STRATEGIC & INT’L STUD. GLOB. FORECAST (Jan. 13, 2021).

⁴ Simon Lester & Huan Zhu, [Closing Pandora’s Box: The Growing Abuse of the National Security Rationale for Restricting Trade](#), CATO INST. (June 25, 2019).

⁵ [Id.](#)

⁶ [Id.](#)

⁷ FEFER, *supra* note 2.

⁸ SCHWARZENBERG, *supra* note 2.

⁹ [Id.](#)

including Austria, Brazil, the Czech Republic, France, India, Indonesia, Italy, Spain, Turkey, the United Kingdom, and Vietnam.¹⁰

The Trump administration also used the threat and imposition of tariffs, along with the threat of withdrawing from bilateral and regional free trade agreements, to compel other states to renegotiate those agreements and make one-sided concessions to the United States. This included threatening to withdraw from the North American Free Trade Agreement—the United States’ largest trade agreement, on which Canada and Mexico rely for 77 percent and 81 percent of their exports, respectively¹¹—as a tactic to force the two countries to renegotiate the agreement and concede to new U.S. demands. The Trump administration used similar tactics to force South Korea to renegotiate the U.S.-Korea Free Trade Agreement and used the withdrawal of Generalized System of Preferences access to force India to negotiate bilaterally on a series of U.S. market access demands.¹² The United States also used the threat of tariffs as a source of leverage to extract non-trade-related concessions from other states, such as Mexico, which it forced to aggressively crack down on Central American migrants transiting through the country.¹³

Moreover, under the Trump administration, the United States began blocking all appointments to the WTO Appellate Body, thereby throwing its dispute settlement mechanism into jeopardy.¹⁴ The dispute settlement mechanism is a fundamental pillar of the rules-based multilateral trading system: it is essential to enforcing global trade rules and providing a peaceful means of resolving trade disputes among states. Yet the U.S. blockage has left the Appellate Body with no judges (“members”) to adjudicate disputes, making it possible for states to block the adoption of WTO panel rulings. Without a functional dispute settlement system to ensure the WTO’s rules are enforced, the entire system of multilateral trade rules is in danger of unraveling.

Many had hoped that the Biden administration would swiftly and definitively repudiate Trump’s trade policies. Instead, however, despite President Biden’s professed commitment to multilateralism and international cooperation, there has been remarkably little change in U.S. trade policy under his administration. The United States continues to block Appellate Body appointments. The Biden administration has maintained many of Trump’s tariffs, as well as the practice of using those tariffs to force other states into bilateral negotiations with the United States, and continues to wield the threat of Section 301 as a tool to strongarm other states.¹⁵

In short, focusing solely on the U.S.-China trade war fails to capture the breadth of American trade aggression and rule-breaking in recent years—which has gone far beyond just China. And such behavior cannot be attributed simply to the idiosyncrasies of the Trump administration. Not only did the United States’ turn away from the WTO begin prior to Trump,¹⁶ but its rule-breaking and attack on the system have persisted under President Biden and show no signs of abating.

Chinese Economic Coercion

Since President Xi Jinping’s headline-grabbing speech at the 2017 World Economic Forum in Davos at the start of the Trump administration, China has attempted to present itself as a champion of the liberal trading order,

¹⁰ *Id.*

¹¹ [World Integrated Trade Solution data, 2019.](#)

¹² [Trump to End Trade Privileges for India on June 5](#), REUTERS (May 31, 2019).

¹³ Makini Brice, [Trump Threatens More Tariffs on Mexico Over Part of Immigration Deal](#), REUTERS (June 10, 2019).

¹⁴ GREGORY SHAFFER, [EMERGING POWERS AND THE WORLD TRADING SYSTEM: THE PAST AND FUTURE OF INTERNATIONAL ECONOMIC LAW](#) (2021).

¹⁵ [FEFER](#), *supra* note 2; [SCHWARZENBERG](#), *supra* note 2.

¹⁶ Kristen Hopewell, [Trump & Trade: The Crisis in the Multilateral Trading System](#), 26 NEW POL. ECON. 271 (2021).

seeking to uphold free trade and economic globalization in the face of the U.S. threat.¹⁷ Chinese officials have positioned the country as a “defender” of the rules-based multilateral trading system, asserting that China has taken a “stand for multilateralism and free trade and called on the international community to maintain the multilateral trading system and oppose unilateralism and protectionism.”¹⁸

However, if we separate Beijing’s rhetoric from the reality of its behavior, China too has shown a flagrant disregard for the rule of law in trade. It has been weaponizing trade as an instrument of economic coercion against weaker states, in blatant violation of the rules and principles of the multilateral trading system. A growing list of countries around the world has been targeted by China’s trade aggression. Recently, for example, China blocked imports of Canadian pork, beef, soybeans, and canola—and arbitrarily imprisoned two Canadian citizens—in retaliation for the country’s participation in the extradition of a Huawei executive to face fraud charges in the United States.¹⁹ Beijing’s trade restrictions cost Canada \$4 billion in lost exports.²⁰

China has similarly blocked imports from Australia in retaliation for its calls for an independent inquiry into the origins of the COVID-19 pandemic as well as Canberra’s complaints about Chinese Communist Party interference in Australia’s domestic politics. As Australia’s largest trading partner, and the destination for nearly 40 percent of its exports, China’s import curbs—which target an extraordinarily broad list of agricultural and mining products—are intended to inflict maximum economic pain on Australia’s core export sectors.²¹

Beijing has used the threat and imposition of trade restrictions to punish over a dozen other countries for various perceived affronts, including Japan, South Korea, New Zealand, Norway, Sweden, the Philippines, Taiwan, Mongolia, and the United Kingdom.²² Although China’s actions clearly violate the rules and principles of the multilateral trading system, WTO rules have proven entirely inadequate to prevent this behavior. Increasingly, both China and the United States simply ignore the rules.

What is more, although many of the countries targeted by China are key American allies, they have received little in the way of concrete or meaningful support from the United States. As Bonnie Glaser aptly puts it, “targeted countries have at most received rhetorical support . . . and even that has been feeble.”²³ These countries have found themselves largely alone in seeking to stand up to the world’s second largest economic power, with their isolation only heightening their vulnerability. Ironically, while the United States wages its trade war with China, it has abandoned its closest allies to be victimized by China’s trade aggression and subject to overt threats and intimidation. Despite the U.S. preoccupation with China’s industrial policy and its interventionist state, it has largely turned a blind eye to its economic coercion and the effects on U.S. allies. And, indeed, rather than helping to defend its allies from Chinese trade aggression, the United States has done just the opposite: America’s closest allies—including the European Union, Japan, South Korea, Canada, and Australia—have been among the primary targets of its own trade aggression.

Defining the Threat to the Trade Regime

The core principle of the WTO is that trade should be governed by the rule of law, rather than the raw use of power. However, for both the United States and China, their approach to trade increasingly appears to be driven by

¹⁷ Kristen Hopewell, *When the Hegemon Goes Rogue: Leadership Amid the U.S. Assault on the Liberal Trading Order*, 97 INT’L AFF. 1025 (2021).

¹⁸ Hannah Monicken, *China Trumpets Claims of WTO Leadership in 2019*, INSIDE U.S. TRADE (Jan. 6, 2020).

¹⁹ Kristen Hopewell, *CPTPP Members Must Be Wary of China’s Attempt to Join Trade Pact*, NIKKEI ASIA (Oct. 21 2021).

²⁰ [Glaser](#), *supra* note 3.

²¹ [Hopewell](#), *supra* note 19.

²² [Glaser](#), *supra* note 3.

²³ *Id.*

Thucydides' maxim that "the strong do what they will and the weak do what they must."²⁴ The basic precondition for the WTO to function is that states are actually willing to be bound by the rule of law in trade. Yet that no longer appears to be the case for either the United States or China. Both have embraced aggressive unilateralism, using their economic might to bully other states.

The two dominant powers in the multilateral trading system—the United States and China—are now both effectively behaving as rogue states in the system. If powerful states refuse to abide by global trade rules, and openly violate the rules when it serves their interests to do so, the rules themselves risk becoming meaningless. The trade regime is thus at a critical juncture, facing the danger of a descent into lawlessness, where the rules cease to have any meaning and are no longer able to constrain state behavior. For most states, the key question is whether global trade rules and their enforcement can be strengthened to rein in the behavior of dominant states and prevent aggressive unilateralism and the arbitrary abuse of power.

In the United States, the debate about the contemporary crisis in the trading system has been overwhelmingly focused on China's trade policies and, as Shaffer details, specifically whether WTO rules can or should be tightened to better restrict China's use of industrial policy and its heavily interventionist state. But this is not the sole, or even necessarily the most important, challenge currently facing the system. Instead, for many states, (1) it is China's use of economic coercion, not its industrial policy, that is the far more immediate and acute threat; and (2) the threat of aggressive unilateralism and economic coercion comes from the United States as much as—if not, in some cases, more than—China.

Where Do We Go from Here?

The historical record suggests that crises can operate as turning points, opening up possibilities for dramatic reforms and changes. We have seen this before in the multilateral trading system. The liberal trading order experienced a similar crisis in the 1980s, when a rising wave of protectionism threatened to pull the trade regime apart and cause the system to collapse. Instead, however, what occurred was just opposite—from the turmoil of the 1980s ultimately grew the Uruguay Round and the creation of the WTO, representing a dramatic expansion and deepening of the rules-based multilateral trading system.²⁵

Amid the current crisis, it is clear that the trade regime is once again on a precipice. The question is whether the system will collapse, or whether we will see a deepening and expansion of the system, a strengthening of the rules and their enforcement, and a renewed commitment to a rules-based trading order.

The WTO's existing rules and enforcement mechanism have proven ineffective to stop growing economic coercion by both the United States and China. Among other factors, the WTO dispute settlement mechanism is far too slow and cumbersome, and its limited remedies are not sufficient to deter rule-breaking by powerful states. The system is thus badly in need of reform. What are needed are not stricter rules to constrain the role of the state in the economy—what Shaffer rightly rejects as "rule-based neoliberalism"—but mechanisms to prevent the weaponization of trade and the use of economic coercion.

This could include making enforcement faster and more effective—by streamlining and accelerating the WTO dispute process, providing a rapid response mechanism to address rule-violations and impose penalties more swiftly, or enabling the use of temporary injunctions to halt damaging behavior while cases are being decided. It could also involve instituting stronger penalties for rule violation, including: allowing retroactive remedies; redefining "proportionate retaliation" to account for asymmetries in economic might between countries; enabling more-than-proportionate retaliation in cases of blatant economic coercion as a stronger deterrent against

²⁴ GERRY SIMPSON, [GREAT POWERS AND OUTLAW STATES: UNEQUAL SOVEREIGNS IN THE INTERNATIONAL LEGAL ORDER](#) (2004).

²⁵ NITSAN CHOREV, [REMAKING U.S. TRADE POLICY: FROM PROTECTIONISM TO GLOBALIZATION](#) (2008).

rule-breaking; and potentially creating mechanisms for coordinated retaliation—i.e., states allying together in the economic equivalent of a mutual defense pact—in which states agree to jointly retaliate against any country that engages in economic coercion.

This is a pivotal moment for the multilateral trading system, in which either the system is reformed to strengthen its rules or risks collapsing altogether. Salvaging the rules-based trading order will require institutional innovation and creative reforms directed not only at managing the effects of U.S.-China rivalry but also addressing the effects of their policies on the rest of the world.