

Toxic Unilateralism:
How the EU's Unilateral Trade-Related Measures Drive Polarization in
Global Trade Relations
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I. Introduction

In the international economic order, understood as the set of global institutions and rules that govern economic relations between polities¹,² two emerging trends can be observed. First, the implementation of trade and, to some extent, investment policies seems to have become increasingly unilateral in recent years, especially on the part of the European Union (“EU”) and the United States (“US”).³ The EU, for example, “has significantly expanded its unilateral trade and investment policy toolbox.”⁴ These unilateral tools tend to be used to promote certain non-trade objectives and/or advance a certain strategic agenda. They often seek to protect national and economic security, to mitigate climate change, or to safeguard certain social values.⁵ While these measures serve important purposes, their use is likely to affect international trade. The unilateral trade-related measures in question do not only cover instruments adopted on the basis of the EU’s trade competence under Art 207 TFEU. The term also covers instruments adopted solely on the basis of other EU competences, such as the EU’s competence in the field of the environment, because the measures are capable of having a significant effect on trade. This trend suggests that the major trading powers are increasingly acting outside the cooperative, multilateral framework they have created.⁶

Second, polarization appears to be increasing both nationally and globally. At the national level, political polarization (i.e., the divergence of political attitudes towards ideological extremes⁷) is associated with the rise of a form of populism⁸ characterized by strong nationalism (i.e., a strong negative reaction to the cultural, economic, and

¹ The term “polity” is used in a geopolitical sense. It refers to nation-states and supranational entities.

² Susskind and Vines, ‘Global Economic Order and Global Economic Governance’ (2024) *Oxf Rev Econ Policy* 189 (191).

³ For a discussion of US unilateralism, see Chow, ‘United States Unilateralism and the World Trade Organization’ (2019) *BU Int’l LJ* 1 (11 ff).

⁴ Verellen and Hofer, ‘The Unilateral Turn in EU Trade and Investment Policy’ (2023) *Eur Foreign Aff Rev* 1 (1).

⁵ Altenmüller, ‘Bilateralism and Unilateralism: The Future of International Trade Relations?’ (2018) *Glob Trade Cust J* 62 (64).

⁶ Vidigal, ‘The Unilateralization of Trade Governance: Constructive, Reconstructive, and Deconstructive Unilateralism’ (2023) *LIEI* 1 (1) (observing the “normalization of unilateral action as a tool, used openly in pursuit of any of a range of policy objectives, by WTO Members with significant market power to reshape their trade relations”).

⁷ ‘Polarization’ (Cambridge Dictionary) <<https://dictionary.cambridge.org/dictionary/english/polarization>> accessed 2 February 2025.

⁸ Munro, ‘Populism’, *Encyclopædia Britannica* (2024) <<https://www.britannica.com/topic/populism>> accessed 2 February 2025 1 September 2024.

legal effects of global integration⁹).¹⁰ Domestic political polarization may often spill over into a polity's external action.¹¹ Failure to advance a polity's interests in bilateral or multilateral settings can lead to the adoption of unilateral measures and withdrawal from international cooperation.¹²

At the international level, polarization, especially in the global economy, is not a new phenomenon. According to Amin, international polarization has gone through several evolutionary stages in the history of the capitalist system. Today, international polarization can no longer be understood as a simple economic division between industrialized centers and non-industrialized peripheries, or between the Global South and the Global North. Instead, global polarization has social, legal, and political dimensions.¹³ In the context of international trade relations, international polarization refers to the drifting apart of distinct economic blocs with contrasting ideologies and associated policies such as free trade versus protectionism and internationalism versus nationalism.¹⁴

This article argues that the current generation of unilateral trade-related measures, such as those adopted by the EU, may have polarizing and thus “toxic” features. More specifically, they may be both a driver of and a response to the polarization of global trade relations. It demonstrates that unilateral trade-related measures are not only adopted in response to the growing tensions and divisions in global trade relations, as is often claimed by policymakers. Rather, unilateral trade-related measures may themselves be a driver of international polarization and fragmentation. This article seeks to promote a better understanding of the underlying, self-reinforcing dynamics that can lead to a downward spiral of polarization. It analyzes two EU legislative acts that allow for the adoption of unilateral trade-related measures, namely the Carbon-

⁹ Kohn, Nationalism, *Encyclopedia Britannica* (2024) <<https://www.britannica.com/topic/nationalism>> accessed 2 February 2025.

¹⁰ Shen and Shang, ‘Conceptualizing Unilateralism, Fragmentationism and Statism in a Populism Context: A Rise of Populist International Law?’ (2020) *Braz.J Int’l L* 162 (183).

¹¹ Obstfeld, ‘Economic Multilateralism 80 years after Bretton Woods’ (2024) *Ox Rev Econ Policy* 307 (324) (observing that “[d]omestic political division pose a distinct challenge to multilateralism, though these stresses often reflect geopolitics and, in turn, can incentivize political leaders to act in ways that exacerbate geopolitical divides”).

¹² Shen and Shang, (2020) *Braz.J Int’l L* 162 (164).

¹³ Amin, ‘The Future of Global Polarization’ (1994) *Review (Fernand Braudel Center)* 337 (339).

¹⁴ Finance & Development Podcast, ‘Shifting Geopolitical Tectonic Plates’ (June 2022) Comments by Gourinchas, IMF Chief Economist, <<https://www.imf.org/en/Publications/fandd/issues/2022/06/shifting-geopolitical-tectonic-plates-straight-talk>> accessed 2 February 2025.

Border Adjustment Mechanism (“CBAM”)¹⁵ and the Anti-Coercion Instrument (“ACI”).¹⁶ These two case studies illustrate how unilateral trade-related measures, often motivated by strategic considerations, can antagonize actors in the international economic order, creating the risk of a “policy-driven reversal of economic integration”¹⁷ or “geoeconomic fragmentation.”¹⁸

This article is organized as follows: Section II defines and distinguishes between the terms “international polarization”, “polarity”, and “geoeconomic fragmentation”. It also clarifies the terms “multilateralism”, “bilateralism”, and “unilateralism”. It then provides a narrative history of the rise and fall of the bipolar international economic order. It then offers a *tour d’horizon* of the current challenges facing the multilateral trading system under the auspices of the World Trade Organization (“WTO”). Section II concludes with some evidence of incipient multipolarity and fragmentation in the international economic order. Section III then examines the role of unilateral trade-related measures as a driver of and response to the polarization of international trade relations. It also examines the recent shift towards unilateralism in EU trade policy. Subsequently, the section presents two case studies to illustrate the dynamic between unilateral trade-related measures and polarization. Section IV provides a cautionary tale about the vicious dynamics of tit-for-tat unilateralism in a narrative history of the 1920s and 1930s. Section V serves a conclusion and summarizes the arguments made in Sections II through IV.

II. A Multipolar International (Economic) Order in the Making?

A. Key Terms

1. International Polarization, Polarity, and Geoeconomic Fragmentation

In the social sciences in general, “polarization” describes the *process* of dividing a group or society into distinct groups with little in common. In political science,

¹⁵ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism [2023] OJ L 130/52; EU legislation can be accessed via <https://eur-lex.europa.eu>.

¹⁶ Regulation (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 [2023] OJ L 2675/1; EU legislation can be accessed via <https://eur-lex.europa.eu>.

¹⁷ IMF, ‘Geoeconomic Fragmentation and the Future of Multilateralism’, Staff Discussion Notes No. 2023/001 (January 2023) 4, <<https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2023/01/11/Geo-Economic-Fragmentation-and-the-Future-of-Multilateralism-527266>> accessed 2 February 2025.

¹⁸ IMF, ‘Geoeconomic Fragmentation and the Future of Multilateralism’ (January 2023) 4.

polarization typically refers to the divergence of political attitudes towards ideological extremes.¹⁹ For the purposes of this article, “polarization” refers to the growing divisions and contrasts in trade policies, economic alliances, standards, and outcomes between polities. Such polarization can lead to increased geoeconomic fragmentation. “Geoeconomic fragmentation” describes the abandonment of the cooperative approach rooted in the multilateral trading system in favor of more regional and bloc-based bilateral and unilateral policies. It is accompanied by greater trade restrictions and a retreat from international commitments.²⁰

In contrast, “polarity” describes a *state* in which groups or opinions are divided into distinct and often conflicting positions. For the purposes of this article, the term “polarity” will be used in accordance with its meaning in international relations theory. International polarity refers to the distribution of power among states in the international system by describing the number or hierarchy of dominant powers or “poles” that exist and shape the global order.²¹ The term serves as an analytical tool to describe the state and evolution of an international order.²² It is common to distinguish between three types of polarity: Unipolarity, where there is a dominant superpower; bipolarity, where there are two states of roughly equal power; and multipolarity, where power is more diffusely distributed among several states.²³ While easily described, the polarity of international systems is hard to measure. Relying on single military or economic indicators can be misleading. One of these indicators may point to the rise of a polity’s power, while another may point to its decline.²⁴

Understanding the nature of polarity in the international system is essential because it determines the strategies and policies that polities choose to manage their interactions (i.e., unilateral, bilateral, or multilateral), including their external trade

¹⁹ De Keersmaecker, *Polarity, Balance of Power and International Relations Theory: Post-Cold War and the 19th Century Compared* (Cham, 2017) 15 f.

²⁰ WTO, ‘World Trade Report 2023 – Re-Globalization for a Secure, Inclusive and Sustainable Future’ (2023) 22, <https://www.wto.org/english/res_e/booksp_e/wtr23_e/wtr23_e.pdf> accessed 2 February 2025, 22.

²¹ Diesing and Snyder, *Conflict Among Nations: Bargaining, Decision Making, and System Structure in International Crises* (Princeton, 1977) 419 f.

²² Graeger, Heurlin, Waever, and Wivel, ‘Introduction: Understanding Polarity in Theory and History’ in Graeger, Heurlin, Waever and Wivel (eds.), *Polarity in International Relations* (Cham, 2022) 1 (2) (observing that “polarity remains a valuable analytical lens if we are to understand the characteristics of a particular international order [including the present], how it changes, and what these changes imply for states, societies and human beings”).

²³ De Keersmaecker, *Polarity, Balance of Power and International Relations Theory* 14.

²⁴ Ashford and Cooper, ‘Yes, the World Is Multipolar’ (*Foreign Policy*, 5 October 2023) <<https://foreignpolicy.com/2023/10/05/usa-china-multipolar-bipolar-unipolar/>> accessed 2 February 2025.

relations. The number of poles in the international system affects the structure and purpose of State action and, most importantly, its effectiveness.²⁵ In addition, notions of polarity are commonly associated with different levels of risk.²⁶ It is generally assumed that unipolarity and bipolarity lead to greater stability, peace, and security, whereas multipolarity is associated with fragmentation, regionalization, and volatility.²⁷ However, there are also examples of (relatively) stable multipolarity like the Concert of Europe (also referred to as the Concert of the Great Powers), which lasted from 1815 to 1914. After the Napoleonic Wars, the Congress of Vienna established a balance of power among the major European powers, namely Austria, Prussia, Russia, Great Britain, and, later, France. This multipolar order was characterized by attempts to institutionalize greater cooperation, collective decision-making, and more peaceful dispute resolution. Although there were localized conflicts, the system ensured relative stability in Europe for nearly a century, with no continent-wide wars until the outbreak of World War I.²⁸

2. Bilateralism, Multilateralism, and Unilateralism²⁹

Bilateralism refers to the consensual cooperation between two polities, as opposed to action by a single polity or joint action by more than two polities.³⁰ In International Economic Law, bilateralism takes “the form of free trade agreements and other bilateral, regional and interregional trade agreements for economic integration.”³¹ These free trade agreements facilitate economic integration between selected members. They institutionalize incentives to privilege trade between their parties, which may marginalize third countries.³²

²⁵ Bekkevold, ‘No, the World Is Not Multipolar’ (*Foreign Policy*, 22 September 2023) <<https://foreignpolicy.com/2023/09/22/multipolar-world-bipolar-power-geopolitics-business-strategy-china-united-states-india/>> accessed 2 February 2025.

²⁶ Ashford and Cooper, ‘Multipolar’ (*Foreign Policy*, 5 October 2023).

²⁷ Bekkevold, ‘Not Multipolar’ (*Foreign Policy*, 22 September 2023).

²⁸ Mueller, Rauch and Wurm, ‘Introduction: Risks of Great Power Conflict in the 21st Century’ in Mueller and Rauch (eds.), *Great Power Multilateralism and the Prevention of War* (Abingdon, 2018) 1 (9).

²⁹ In WTO law, there are also “plurilateral” agreements. While multilateral agreements require all WTO Members to join, plurilateral agreements imply a choice to join. They are not discussed in this article.

³⁰ Taylan, ‘Unilateralism in the European Union’, in Santagostino (ed.), *The Single European Market and Trade Policy* (Cambridge, 2017) 197 (200).

³¹ Altenmöller, ‘Bilateralism and Unilateralism: The Future of International Trade Relations?’ (2018) *Glob Trade Cust J* 62 (62).

³² Altenmöller, (2018) *Glob Trade Cust J* 62 (62 f).

In purely nominal terms, multilateralism refers to “the practice of co-ordinating national policies in groups of three or more states.”³³ Beyond this purely quantitative aspect, multilateralism is recognized to have a qualitative element that distinguishes it from other forms of cooperation between polities. According to Ruggie, “multilateralism is an institutional form which coordinates relations among three or more states on the basis of ‘generalized’ principles of conduct – that is, principles that prescribe appropriate behavior for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence.”³⁴

Unilateralism refers to actions taken by polities without recourse to explicit international negotiations or the consent of other polities. Unilateralism often involves polities using their economic and/or political power to pursue their policy objectives.³⁵ For example, the EU imposes tariffs and trade defense measures on the basis of WTO law and adopts export restrictions or trade sanctions following authorization by the WTO Dispute Settlement Body.³⁶ While in principle uncontroversial in the absence of external effects, unilateral action in the international arena can affect the sovereignty, territory, and jurisdiction of other polities.³⁷

B. Rise and Fall of the Bipolar International Economic Order

The modern international economic order, consisting of the United Nations (“UN”) and the Bretton Woods institutions (i.e., the International Monetary Fund, the World Bank, and the General Agreement on Tariffs and Trade of 1947), was formally established at the Bretton Woods Conference in 1944.³⁸ Its establishment was effectively shaped by the US and its allies.³⁹ This historical point is a good

³³ Keohane, ‘Multilateralism: An Agenda for Research’ (1989) *Int’l J* 731 (731).

³⁴ Ruggie, ‘Multilateralism: The Anatomy of an Institution’ (1992) *International Organization* 561 (571).

³⁵ Steinbach, ‘The EU’s Turn to “Strategic Autonomy”: Leeway for Policy Action and Points of Conflict’ (2023) *EJIL* 973 (988 f).

³⁶ Hervé, ‘L’unilatéralisme Européen Comme Outil de Régulation Des Échanges Internationaux: Un Mal Nécessaire Dans Un Système Multilatéral En Voie d’effondrement’ (28 March 2022) Schuman Papers No. 626, 4 <<https://www.robert-schuman.eu/en/european-issues/626-european-unilateralism-as-a-tool-for-regulating-international-trade-a-necessary-evil-in-a-collapsing-multilateral-system>> accessed 2 February 2025.

³⁷ Sands, ‘“Unilateralism”, Values, and International Law’ (2000) *EJIL* 291 (291 f).

³⁸ Susskind and Vines, (2024) *Oxf Rev Econ Policy* 189 (191 f).

³⁹ Paikin, ‘Multipolar Competition and the Rules-Based Order: Probing the Limits of EU Foreign and Security Policy in the South China Sea’ (2024) *Int Spect* 161 (163). But see Kahler, ‘Global Governance in the Twenty-First Century: End of the Bretton Woods Moment?’, in Egan, Raube, Wouters

launching pad for the discussion that follows, as the *status quo ante* was less structured and characterized by a mix of mercantilism, classical liberalism, colonial systems, and ad hoc arrangements. After the end of the bipolar Cold War period, in which power oscillated between the US and the Soviet Union, it was clear that the pre-1945 multipolar order would not return and that a unipolar order had emerged with “a single pole of world power that consists of the United States at the apex of the industrial West.”⁴⁰

At the time of the creation of the WTO in 1995, the world trading system was dominated by the then European Communities and the US. The WTO was created on 1 January 1995 as a result of the Uruguay Round of trade negotiations⁴¹ to supersede the GATT of 1947, which had served as the de facto international organization since 1947. Para. 4 of the Preamble to the Agreement Establishing the World Trade Organization (“WTO Agreement”)⁴² created a new international organization to administer “an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations.” The WTO Agreement itself does not contain any substantive provisions. Trade policy commitments are contained in the agreements annexed to the WTO Agreement.

Paras. 1 and 2 of the Preamble set out the main objectives of the WTO. The main objectives are to raise standards of living, to ensure full employment, to expand production and trade in goods and services, to enable optimum utilization of the world’s resources, to protect and preserve the environment, and to ensure that developing countries, and in particular the least-developed countries, receive a share of international trade which will contribute adequately to their economic

and Chaisse (eds.), *Contestation and Polarization in Global Governance* (Cheltenham, 2023) 17 (25) (arguing that “the history of those international norms and institutions confirms the existence of a broader and more diverse coalition of support”).

⁴⁰ Krauthammer, ‘The Unipolar Moment’ (1990) *Foreign Aff* 23 (24). See also Afilalo, ‘Not in My Backyard: Power and Protectionism in the US Trade Policy’ (2002) *NYUJILP* 749 (750).

⁴¹ Trade negotiations at the WTO are typically conducted in rounds, which are structured, multilateral discussions aimed at progressively liberalizing trade and addressing trade-related issues. Over the course of several years, trade rounds bring together several countries to negotiate a wide range of trade issues. Trade rounds involve all WTO Members. Consensus of all participating members is required for agreements and Members must accept the entire package of agreements (so-called “single undertaking”). For more details on the negotiating procedures and their guiding principles, see Wolfe, ‘The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor’ (2009) *JIEL* 835.

⁴² Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994); WTO legislation can be accessed via https://www.wto.org/english/docs_e/legal_e/legal_e.htm.

development. Para. 3 of the Preamble states that the means to achieve these objectives are “reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.” Art III of the WTO Agreement defines five functions of the WTO. The WTO is to implement the agreements under the WTO umbrella, to serve as a negotiating forum, to administer the arrangements for the settlement of disputes, to review trade policies, and to promote coherence in global economic policymaking through cooperation with the IMF and the World Bank.

The successful conclusion of the Uruguay Round marked the peak of the WTO’s influence. At that time, the European Communities and the US had the power to set the agenda of the multilateral trading system and to promote their own interests.⁴³ This led to several important achievements, including the establishment of a more institutionalized dispute settlement procedure, the development of trade remedy rules, and the inclusion of robust protection for intellectual property rights.⁴⁴

Within two decades, however, this bipolar order began to crumble, and the threat of diffusion and realignment of geopolitical power loomed large over the global trading system.⁴⁵ The globalization of trade relations allowed certain economies to catch up and industrialize rapidly, ultimately contributing to the rebalancing of global power. Brazil, Russia, India, China, and South Africa (commonly referred to as the “BRICS”) emerged as disruptive forces, some of them successfully using their economic power as leverage in the WTO’s decision-making bodies.⁴⁶

In addition, old and new trading powers began to gather their allies and engage in several competing trade negotiations covering different parts of the world. US-led initiatives include the Transatlantic Trade and Investment Partnership, which was effectively abandoned with the withdrawal of the US, and the Indo-Pacific Economic Framework, which compensated for the decision of the US not to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.⁴⁷ Meanwhile, the Association of Southeast Asian Nations successfully concluded the Regional Comprehensive Economic Partnership, a free trade agreement among the

⁴³ Evenett, ‘EU Commercial Policy in a Multipolar Trading System’ (2007) *Inter econ* 143 (145).

⁴⁴ Thomas, ‘Trade and Development in an Era of Multipolarity and Reterritorialization’ (2018) *IJIL Online* 77 (80).

⁴⁵ Evenett, (2007) *Inter econ* 143 (145).

⁴⁶ Thomas, (2018) *IJIL Online* 77 (80); Kahler, ‘Global Governance’, 17 (27).

⁴⁷ MacIsaac and Duclos, ‘Trade and Conflict: Trends in Economic Nationalism, Unilateralism and Protectionism’ (2020) *CFPJ* 1 (2); Kahler, ‘Global Governance’, 17 (29).

Asia-Pacific countries of Australia, Brunei, Cambodia, China, Indonesia, Japan, South Korea, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand, and Vietnam.⁴⁸

The relative longevity of the WTO's multilateral trading system was largely facilitated by the perception in Washington that it served US economic and security interests and was therefore worth preserving. However, this consensus has now dissipated, largely as the result of the perception that the WTO rules are unfairly favorable to China.⁴⁹ For example, the principle of special and differential treatment grants developing country members exemptions from liberalization commitments, flexibility in implementation, preferential market access, or financial assistance. China, which joined the WTO in 2001, self-declared itself as a developing country member in order to benefit from the international trading system's flexibilities. This is in line with WTO rules that allow Members to "self-identify" as developing countries. As there are no rules on graduation, developing countries can retain their status and benefits unless renegotiated. China's status was challenged by the US at the political level in 2019. The US also sought to initiate a reform process to end the practice of self-declaration.⁵⁰

Overall, given China's role in world trade, it could be argued that a multipolar international economic order is emerging.⁵¹ The world's largest economies have entered into strategic competition and the two former poles of the multilateral trading system have dramatically shifted their trade policies. The EU and the US have increasingly resorted to the adoption of unilateral trade measures, sometimes neglecting or circumventing international trade rules.⁵² Anti-globalism, economic nationalism, and trade protectionism are on the rise around the world.⁵³

⁴⁸ Thomas, (2018) *IJIL Online* 77 (80).

⁴⁹ Ikenson, 'Strategic Reglobalization: How Great Power Rivalry is Impacting the Multilateral Trading System', in Wang and Miao (eds.), *Enhancing Global Governance in a Fragmented World* (Singapore, 2024) 53 (54).

⁵⁰ Sacerdoti and Borlini, 'Systemic Changes in the Politicization of the International Trade Relations and the Decline of the Multilateral Trading System' (2023) *GLJ* 17 (26); Weinhardt and Petry, 'Contesting China's Developing Country Status: Geoeconomics and the Public-Private Divide in Global Economic Governance' (2024) *Chin J Int Politics* 48 (65 f).

⁵¹ Graeger, Heurlin, Waever, and Wivel, 'Introduction', 1 (9).

⁵² Ikenson, 'Strategic Reglobalization', 53 (63 f).

⁵³ Van den Bossche and Zdouc, *The Law and Policy of the World Trade Organization*, 5th edn. (Cambridge, 2022) 4.

C. Challenges for the Multilateral Trading System

Beyond the challenge to Western hegemony, there are several contemporary challenges facing the international trading system. With the multilateral trading system in deep crisis, the question is whether there is still a viable forum for global governance to enable the international community to address some of these challenges. These challenges are outlined in turn below.

1. Concerns of Overdependence on Foreign Suppliers and the Return of Isolationism

Growing uncertainty due to shifting coalitions and the resurgence of great power rivalry is exacerbated by a series of economic shocks that have severely disrupted global supply chains. Starting with the 2008-09 financial crisis, the COVID-19 pandemic, and now Russia's war of aggression against Ukraine, economies have been made painfully aware of their strategic dependence on foreign raw materials, intermediate inputs, energy, and technology.⁵⁴ For example, the shortages of medicines, critical medical supplies, and other products in the wake of the COVID-19 pandemic have highlighted the pitfalls of globalized value chains.⁵⁵

In response to this geopolitical and geoeconomic climate change, governments around the world are taking steps to increase the autonomy and resilience of supply chains through “de-coupling” (i.e., separating economies from each other), “de-risking” (i.e., managing interdependence),⁵⁶ and “friend-shoring” (i.e., moving supply chains to countries that are perceived as allies).⁵⁷

For example, the EU has taken initiatives to increase domestic capacity, diversify supply, and to reinvigorate the reform of the multilateral trading system.⁵⁸ As stated in the European Commission's 2020 Trade Policy Review, “strengthening the resilience and sustainability of the EU economy, and its supply chains is a pillar of

⁵⁴ Giovannetti, Marvasi and Ricchiuti, ‘The Future of Global Value Chains and International Trade: An EU Perspective’ (2023) *ItEJ* 851 (853).

⁵⁵ Leino, ‘Walking on Eggshells: The Twin Transition and Europe's Quest to de-Risk from China’ (2023) *European View* 196 (196 f).

⁵⁶ Giovannetti, Marvasi and Ricchiuti, (2023) *ItEJ* 851 (856) (noting that the “idea of decoupling and derisking implies an attempt to rebalance the geographical composition of trade and GVCs”).

⁵⁷ Maihold, ‘A New Geopolitics of Supply Chains: The Rise of Friend-Shoring’ (2022) SWP Comment 45/2022.

⁵⁸ European Commission, ‘Critical Raw Materials Resilience: Charting a Path Towards Greater Security and Sustainability’ (Communication) COM (2020) 474 final, 6.

the European Union's drive towards open strategic autonomy (OSA)."⁵⁹ Initiatives to implement this policy mix and to secure access to strategic raw materials for EU industry include the European Raw Materials Alliance, the Minerals Security Partnership, and the formation of strategic alliances with non-EU countries.⁶⁰

To date, the EU has established strategic partnerships with Argentina, Australia, Canada, Chile, the Democratic Republic of Congo, Greenland, Kazakhstan, Namibia, Norway, Rwanda, Serbia, Ukraine, and Zambia.⁶¹ In addition, the EU, the US, and other Minerals Security Partnership partners,⁶² joined by Kazakhstan, Namibia, Ukraine, and Uzbekistan, announced the launch of the Minerals Security Partnership Forum on 5 April 2024. The forum will serve as a new platform for cooperation on critical minerals.⁶³

It is true that many of these unilateral measures reflect necessary efforts to enhance economic security and resilience. This is done by reducing or eliminating overdependence on perceived unreliable foreign suppliers, especially from authoritarian states, by bringing production home, by moving to just-in-time production, and by stockpiling critical goods. At the same time, they risk driving a reversal of global economic integration. The negative consequences of such a reversal would be multifold, including an increase in overall economic costs, a reduction in market efficiency, and strained international relations.

2. Climate change and environmental degradation

Global trade integration is a double-edged sword, with both positive and negative environmental and climate change impacts. On the one hand, global trade can have a negative impact on the environment, for example through the overexploitation of scarce resources, increased greenhouse gas emissions and the pollution of air, land, and water. Furthermore, globalized value chains mean greater distances between

⁵⁹ European Commission, 'Trade Policy Review - An Open, Sustainable and Assertive Trade Policy' (Communication) COM (2021) 66 final, 6.

⁶⁰ European Commission, 'Critical Raw Materials Resilience: Charting a Path Towards Greater Security and Sustainability' (Communication) COM (2020) 474 final, 7.

⁶¹ European Commission, 'Raw materials diplomacy' (2024), <https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/raw-materials-diplomacy_en> accessed 2 February 2025.

⁶² The current Minerals Security Partnership partners are Australia, Canada, Estonia, Finland, France, Germany, India, Italy, Japan, Norway, the Republic of Korea, Sweden, the United Kingdom, the US and the EU.

⁶³ European Commission, 'EU and international partners agree to expand cooperation on critical raw materials' (5 April 2024) <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1807> accessed 2 February 2025.

production and consumption, which in turn results in more transport. Globalization can also lead to a regulatory race to the bottom, as producers tend to relocate to economies where environmental and labor standards, and therefore production costs, are lower.⁶⁴

On the other hand, the higher incomes associated with greater trade integration empower individuals to demand higher environmental standards and to pressure governments to adopt stronger climate regulations and to allocate more resources to environmental protection. Global trade can also contribute to the transfer of cleaner and lower-emission technologies, goods, services, capital equipment, and know-how between polities. As a result, trade can enable the latter to take more effective climate action.⁶⁵ International trade also has the potential to increase investment and innovation in lower-carbon technologies by, *inter alia*, facilitating the exchange of knowledge across borders and encouraging higher environmental standards. In addition, international trade can reduce the carbon intensity of economic activity by shifting production to more productive and cleaner economic actors, as firms engaged in international trade are said to be more competitive and energy efficient than their domestic counterparts.⁶⁶

3. Continuing Inequality

In the last decades of the twentieth century, the world economy experienced not only an increase in global trade, but also a rise in income inequality, particularly within polities (e.g., between regions). The persistent gap in terms of economic prosperity between the Global North and the Global South suggests that the *potential* of international trade to contribute to economic growth and wealth creation has not (yet) been fully realized in practice.⁶⁷ While a significant number of larger and fast-growing emerging economies have caught up and started to converge with advanced

⁶⁴ For a discussion of this claim, see Trebilcock, 'Critiquing the Critics of Economic Globalization' (2004) *J Int'l L & Int'l Rel* 213 (227 f).

⁶⁵ In the context of climate justice, however, it is important to acknowledge the historical and structural inequalities between the Global North and South. The Global North has been the main contributor to cumulative greenhouse gas emissions, while the Global South bears a disproportionate burden of climate impacts such as extreme weather events and loss of livelihoods. In addition, colonial legacies and power imbalances continue to shape global trade and technology transfer, raising concerns about equity and agency for the Global South. For a discussion on the historical emissions responsibility of the Global North and the climate vulnerabilities faced by the Global South, see IPCC, 'Climate Change 2023 Synthesis Report' (2023) <https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf> accessed 2 February 2025.

⁶⁶ Van den Bossche, 'WTO Law as a Constraint on Domestic Environmental Policy: An Overview', in Delimatsis and Reins (eds.), *Trade and Environmental Law* (Cheltenham, 2021) 25 (26).

⁶⁷ Van den Bossche and Zdouc, *The Law and Policy of the World Trade Organization* 26 f.

economies, there is still significant economic marginalization, especially of smaller emerging economies.⁶⁸

At the same time, these dynamics are taking place in the context of a changing global economic order. The rise of the Global South, particularly China, and its increasing economic and political influence have contributed to a shift toward a more multipolar – or even bipolar – global economy. This shift poses challenges for the Global North as its relative economic power declines. In some cases, the trend toward unilateralism in international trade policy can be seen as a reaction to these changes. A failure by the Global North to fully recognize and engage with the emerging roles and interests of the Global South risks further marginalizing the latter’s influence on the global stage and undermining the multilateral cooperation that is critical to addressing common challenges such as economic inequality and climate change.⁶⁹

4. Rise of Populism and Trade-Sceptic Narratives

Criticism of globalization is not a new phenomenon.⁷⁰ The current geopolitical climate of rising inflation, supply chain disruptions, and resulting social stress is giving globalization sceptics a new moment. Given that the theory of comparative advantage is not necessarily intuitive and the fact that it is difficult for individuals to objectively measure the benefits of free trade, populist narratives tend to fall on fertile ground.⁷¹ As a result, it has been easy to argue that globalization makes economies weak, vulnerable, and over-exposed to risk.⁷² While greater economic integration has the potential to provide economies with access to resources, investment, and technologies that are essential for tackling global challenges such as income inequality and climate change, critics point out that globalization can contribute to the siphoning

⁶⁸ Thomas, (2018) *YJIL Online* 77 (79).

⁶⁹ For a discussion of the geopolitical and economic implications of multipolarity and the rise of emerging economies, see Milanovic, *Global Inequality: A New Approach for the Age of Globalization* (Cambridge, 2016).

⁷⁰ Dias Simões, ‘Keep on Trading in the Free World’, in Egan, Raube, Wouters and Chaisse (eds.), *Contestation and Polarization in Global Governance* (Cheltenham, 2023) 283 (283) (observing that the public disquiet about globalization is “not unprecedented”).

⁷¹ Goldstein and Gulotty, ‘The Globalisation Crisis: Populism and the Rise of an Anti-Trade Coalition’ (2019) *Eur Rev Int’l Stud* 57 (65); Van den Bossche and Zdouc, *The Law and Policy of the World Trade Organization* 4.

⁷² Harris, ‘America, Europe and the Necessary Geopolitics of Trade’ (2016) *Survival* 63 (66) (observing that “[g]rowing proportions of Americans and Europeans no longer believe these institutions to be consistent with national interests”).

off of technologies and the loss of technological advantage.⁷³ In a worldwide backlash against open markets, globalization sceptics argue that global integration, rather than enhancing peace and security, is actually responsible for increasing strategic rivalry and cementing the position of authoritarian regimes.⁷⁴

Some go so far as to suggest that the international community should abandon the idea of open markets altogether and take steps to reverse globalization (so-called “de-globalization”). These calls are reminiscent of similar calls in the 1930s.⁷⁵ Political leaders are being urged to “near-shore” or “friend-shore”, to form trade alliances between “friendly” and “like-minded” States, and to adopt unilateral trade-related measures, sometimes at odds with the WTO disciplines.⁷⁶

D. Evidence of Multipolarity and Fragmentation

Commentators note that “trade relations between the world’s two trading superpowers, the US and China, have largely moved outside of the existing institutions of multilateral oversight.”⁷⁷ The WTO provides evidence that world trade is increasingly being reoriented along geopolitical lines based on an examination of trade patterns within and between hypothetical “blocs” using foreign policy similarity indices. A key finding is that since the start of Russia’s war of aggression against Ukraine, trade between these blocs has grown on average by 4-6 % less than trade within them.⁷⁸ For example, since July 2018, trade in goods between the US and China has grown more slowly than each economy’s trade with other trading partners.⁷⁹ This suggests that “geopolitical distance” (i.e., voting differences in the UN General Assembly) is affecting trade relations.⁸⁰

⁷³ Sayegh, ‘Protecting Intellectual Property in a Borderless World’, *Forbes* (New York, 6 February 2024) <<https://www.forbes.com/sites/emilsayegh/2024/02/06/protecting-intellectual-property-in-a-borderless-world/>> accessed 2 February 2025.

⁷⁴ For a discussion of this claim, see Trebilcock, (2004) *J Int’l L & Int’l Rel* 213 (233).

⁷⁵ Van Bergeijk, *Deglobalization 2.0* (Cheltenham, 2019) 1.

⁷⁶ For a discussion of this new rhetoric, see Farrell and Newman, ‘The New Economic Security State: How De-Risking Will Remake Geopolitics’ (2023) *Foreign Aff* 106 (108 ff).

⁷⁷ Sott and Wilkinson, ‘Reglobalizing Trade: Progressive Global Governance in an Age of Uncertainty’ (2021) *Globalizations* 55 (67).

⁷⁸ WTO, ‘World Trade Report 2023’ (2023) 9.

⁷⁹ WTO, ‘World Trade Report 2023’ (2023) 32.

⁸⁰ Blanga-Gubbay and Rubínová, ‘Is the Global Economy Fragmenting?’ (WTO Staff Working Paper ERSD-2023-10, 30 November 2023) <https://www.wto.org/english/res_e/reser_e/ersd202310_e.pdf> accessed 2 February 2025, 3.

Similar trends can be observed for foreign direct investment. Investment flows to and from emerging and industrialized economies are lower the greater the geopolitical distance. The responsiveness to geopolitical distance is stronger in the 2018-2021 period than in the 2009-2018 period, and it is also more pronounced in sectors that are considered strategic.⁸¹

III. The Role of Unilateral Trade-Related Measures in Fueling Polarization

A. Unilateral Trade-Related Measures in the EU's Trade Policy

The EU has historically used a combination of bilateral, multilateral, and unilateral approaches to trade policy implementation. However, commentators have observed that the EU tends to prioritize certain approaches over others, depending on the prevailing geoeconomic and geopolitical climate.⁸² It appears that the EU's policy preferences have undergone at least two significant shifts in the recent past. In the second half of the 20th century, the EU's approach to managing its international trade relations was predominantly multilateral. In particular, the EU has used the rules-based multilateral trading system of the WTO for trade negotiations, dispute settlement, and reform initiatives.⁸³ The EU Treaties and various policy documents establish a "legal default of multilateralism and openness."⁸⁴ Art 21(1) TEU⁸⁵ states that the EU's external action "shall promote multilateral solutions to common problems (...)." Pursuant to Art 21(2)(g), the EU shall "promote an international system based on stronger multilateral cooperation and good global governance." In addition, Art 3(5) TEU states that the EU "shall contribute to (...) the strict observance and the development of international law (...)."

The collapse of the Doha Round of multilateral trade negotiations in November 2011 marked the first significant policy shift.⁸⁶ A number of WTO Members, including the

⁸¹ IMF, 'World Economic Outlook' (April 2023) <<https://www.imf.org/en/Publications/WEO/Issues/2023/04/11/world-economic-outlook-april-2023>> accessed 2 February 2025, 96.

⁸² Taylan, 'Unilateralism' 197 (204).

⁸³ Note that there is a need to differentiate between bilateral, multilateral, and unilateral practices, on the one hand, and regimes and organizations, on the other. See Renard, 'Partnerships for Effective Multilateralism? Assessing the Compatibility between EU Bilateralism, (Inter-)Regionalism and Multilateralism' (2016) *CRIA* 18 (22).

⁸⁴ Steinbach, (2023) *EJIL* 973 (973).

⁸⁵ Consolidated version of the Treaty on European Union [2012] OJ C326/13.

⁸⁶ The Doha Round of trade negotiations is the most recent round of trade negotiations among WTO Members. Often referred to as the Doha Development Agenda, the round places a strong emphasis on increasing trade opportunities for developing countries. It was officially launched at the Fourth WTO Ministerial Conference in Doha, Qatar, in November 2011. The mandate for negotiations

EU, sought to refocus their attention on bilateralism in order to compensate for the waning appetite for multilateralism.⁸⁷ The EU presented its strategic reorientation as a means to facilitate further multilateral trade liberalization in the future,⁸⁸ even though bilateral free trade agreements had become the dominant tool for managing trade relations.⁸⁹

Since around 2016, there have been signs of a further policy shift towards greater unilateralism. This is evidenced by the enactment of various trade instruments that allow for the adoption of unilateral trade measures.⁹⁰ This policy shift has been driven by a confluence of internal and external factors. First, the EU's bilateral trade agenda has witnessed sluggish progress over the past decade, with the failure of the Transatlantic Trade and Investment Partnership negotiations being described as a "tipping point."⁹¹ While the EU and Mexico recently agreed on the terms of a free trade agreement that has been decades in the making, the agreement is expected to face an uphill battle for approval by EU Member States before it can go into effect.⁹² Second, the EU's 2021 Trade Policy Review identifies several contemporary challenges related to economic transformation, including the Green Deal and the Digital Strategy, as well as geopolitical instability.⁹³ To address these challenges, the EU has adopted the doctrine of Open Strategic Autonomy, which can be defined as "a decisive shift towards unilateralism to protect EU values and economic policy

included issues such as agriculture, services, and intellectual property, as well as items from previous discussions. Technically, the Doha round is still ongoing but has been declared "dead" by many commentators. For more details on the Doha round, see WTO, 'The Doha Round' (2024) <https://www.wto.org/english/tratop_e/dda_e/dda_e.htm> accessed 2 February 2025.

⁸⁷ Weiß, 'EU Multilateral Trade Policy in a Changing, Multipolar World: The Way Forward', Furculita (ed.) in *Global Politics and EU Trade Policy* (Cham, 2020) 17 (17 f).

⁸⁸ De Ville, Happersberger and Kalimo, 'The Unilateral Turn in EU Trade Policy? The Origins and Characteristics of the EU's New Trade Instruments' (2023) *Eur Foreign Aff Rev* 15 (16).

⁸⁹ Keukeleire and Delreux, *The Foreign Policy of the European Union*, 3rd edn. (London, 2022) 218.

⁹⁰ Hoffmeister, 'Strategic Autonomy in the European Union's External Relations Law' (2023) *CMLR* 667 (699) (observing that "strategic autonomy in the EU's external relations is pushing the EU towards more autonomous trade and foreign policy measures [...]").

⁹¹ Aarup, 'Europe's Glory Days of Trade Deals Are over' (*Politico*, 30 August 2021).

⁹² Gijls, 'As Trump returns, the EU rediscovers the art of the trade deal' (*Politico*, 27 January 2025) <<https://www.politico.eu/article/donald-trump-eu-trade-deals-tariffs-ursula-von-der-leyen-maros-sef-covic/>> accessed 2 February 2025.

⁹³ European Commission, 'Trade Policy Review – An Open, Sustainable and Assertive Trade Policy' (Communication) COM (2021) 66 final, 1.

priorities, while consciously externalizing those values and policy preferences through trade agreements and the WTO.”⁹⁴

B. Unilateral Trade-Related Measures: Symptom or Disease?

Unilateralism may entail strategic advantages for the State taking action but may also be harmful to a unified and cooperative international economic order. This is not to promote a view of the multilateral trading system that rejects unilateralism altogether, whether on economic, legal, or political grounds. Rather, it is to show how certain types of unilateral trade-related measures are particularly conducive to polarization and geoeconomic fragmentation. This article argues that the likelihood of a divisive effect is particularly pronounced when WTO Members resort to what Vidigal terms “reconstructive” and “deconstructive” unilateralism. “Reconstructive” unilateralism is a means of reshaping the rules of the multilateral trading system in order to achieve certain identifiable, legitimate objectives while formally respecting its core principles, such as non-discrimination. Such measures may be compatible with WTO law as long as they meet the requirements of the built-in flexibilities of the WTO agreements.⁹⁵ “Deconstructive” unilateralism is manifestly inconsistent with the core principles of the WTO system, in particular the principle of non-discrimination. Such measures are either “self-preferential” or serve purely geo-economic purposes and therefore cannot be justified. WTO Members are thus attempting to “replace the rules-based international trade with trade relations guided by Members’ momentary perception of their immediate interest.”⁹⁶

Policy-driven geoeconomic fragmentation creates a chicken-and-egg situation: Is the adoption of unilateral trade-related measures the symptom of an already polarized international economic order or is it, in fact, the actual disease leading to increasing polarization? It is almost impossible to determine the direction of causality. Rather, there seems to be a negative feedback loop and a self-reinforcing cycle. Rising polarization can trigger unilateral trade-related measures, which in turn deepen polarization. The longer this cycle continues, the more entrenched the antagonistic positions become and the harder it is to restore a cooperative, rules-based order.⁹⁷

⁹⁴ Draper and Langhammer, ‘The Future of EU Trade Policy and Strategies in a Militarized Environment’, in Pehnelt (ed.), *Fragen unserer Zeit: Festschrift für Andreas Freytag zum 60. Geburtstag* (Berlin, 2022) 77 (79).

⁹⁵ Vidigal, (2023) *LIEI* 1 (3 ff).

⁹⁶ Vidigal, (2023) *LIEI* 1 (6 ff).

⁹⁷ Sacerdoti and Borlini, (2023) *GLJ* 17 (43) (observing that “the politicization of trade relations has been and is a decisive factor in the progressive shrinking of the WTO. Yet, the causal direction goes

As divisions and contrasts in trade policies and standards grow, the interests of economies or groups of economies may drift further apart. For example, the Global South may have different priorities from the Global North in WTO trade negotiations when it comes to the practice of granting government subsidies. The resulting failure to negotiate mutually acceptable multilateral solutions may lead countries to abandon the multilateral institutions and to pursue their policy interests unilaterally. As the divisions and contrasts between different trading blocs and alliances grow, policymakers are increasingly likely to see trade as a tool to exert influence or to punish rivals. Unilateral trade measures can be a bargaining chip or a tool to protect national interests.⁹⁸

The increasing adoption of unilateral trade-related measures can have far-reaching factual and legal implications in an international economic order on the verge of multipolarity. From a factual perspective, the tendency to use unilateral trade-related measures can either create or exacerbate existing geoeconomic fragmentation. First, it can lead to a realignment of trading partnerships. More specifically, unilateral trade-related measures may alienate conventional allies and motivate affected polities to either seek new trade alliances or strengthen existing ones, thereby further fueling polarization.⁹⁹ Polarization may manifest as an erosion of mutual trust and an increase in regionalism, as evidenced by the conclusion of regional trade agreements.¹⁰⁰

Second, geoeconomic fragmentation can provoke unilateral retaliation from the affected polities, a dynamic that can lead to trade wars. This “tit-for-tat” dynamic can be detrimental to the global economy. This is because trade wars can lead to a reduction in the volume of international trade.¹⁰¹ As a result, global economic growth may stall, with knock-on effects on employment and investment around the world. In this context, developing economies may be disproportionately affected by

both ways: Much of the current politicization of trade flows is explained by the limits of the current rules-based system to handle systemic challenges to the multilateral trading system.”).

⁹⁸ Chow, (2019) *BU Int'l LJ* 1 (26 ff) (discussing how trade sanctions may form part of a negotiation tactic).

⁹⁹ Odermatt, ‘Convergence Through EU Unilateralism’, in Fahey (ed.), *Framing Convergence with the Global Legal Order: The EU and the World* (Oxford, 2023) 49 (57) (observing that unilateralism “risks antagonising other states and organisations”).

¹⁰⁰ Altenmöller, (2018) *Glob Trade Cust J* 62 (64).

¹⁰¹ Chow, (2019) *BU Int'l LJ* 1 (21) (warning of the escalation of trade disputes); Sacerdoti and Borlini, (2023) *GLJ* 17 (23) (observing that “[u]nilateral restrictions [...] have led to similar counter-restrictions often frustrating the aims pursued by the countries enacting them”).

unilateral trade-related measures (e.g., through to higher market access barriers) and may ultimately end up marginalized.¹⁰²

From a legal perspective, “toxic unilateralism” may collide with international (trade and investment) law. This could lead to further erosion of the authority and effectiveness of multilateral institutions. If the adoption of unilateral trade-related measures in violation of WTO rules is normalized, WTO Members may eventually conclude that substantive compliance is optional. Resorting to unilateral action rather than seeking multilateral solutions may thus increase the frequency of trade disputes.¹⁰³ In short, the increased use of unilateral trade-related measures can lead to the normalization of protectionism and power-based interactions. In such an environment, the appetite for concerted efforts to address global challenges diminishes and mistrust between policymakers increases.¹⁰⁴

C. Case Studies

The following case studies seek to illustrate how the adoption of certain unilateral trade-related EU measures, often guided by strategic considerations, may be both a driver of and a response to the growing polarization and fragmentation of the global economic order. Put differently, the section seeks to show why the CBAM and the ACI could be considered sources of policy-driven geoeconomic fragmentation.

1. The EU’s Carbon-Border Adjustment Mechanism

The CBAM, which entered into application in its transitional phase on 1 October 2023, addresses the gap between the EU’s ambitious climate policies and the less stringent measures of many international partners.¹⁰⁵ The CBAM aims to prevent carbon leakage, reduce global carbon emissions in line with the objectives of the Paris Agreement,¹⁰⁶ and protect the EU’s competitiveness.¹⁰⁷ Carbon leakage occurs when EU producers relocate to countries with no or low carbon pricing, or when customers

¹⁰² Ossa, ‘The Costs of a Trade War’, in Crowley (ed.), *Trade War: The Clash of Economic Systems Endangering Global Prosperity* (London, 2019) 45 (47 ff); Zhou, ‘In Defence of the WTO: Why Do We Need a Multilateral Trading System?’ (2020) *LIEI* 9 (10) (observing that unilateralism may “have destructive effects on not only individual economies but also the world economy as a whole”).

¹⁰³ Odermatt, ‘Convergence Through EU Unilateralism’, 49 (56 ff).

¹⁰⁴ Chow, (2019) *BU Int’l LJ* 1 (30); Zhou, (2020) *LIEI* 9 (10).

¹⁰⁵ CBAM, Recital 9.

¹⁰⁶ Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, T.I.A.S. No. 16-1104; the Paris Agreement can be accessed via https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

¹⁰⁷ CBAM, Art 1(1).

choose to buy goods from producers in such countries.¹⁰⁸ The CBAM will eventually require companies accessing the EU's internal market to pay for the carbon costs associated with the production of high-emission goods in countries with less stringent climate policies.¹⁰⁹ Exemptions apply to countries that are either part of or linked to the EU Emissions Trading System ("ETS"), where the carbon price has been paid.¹¹⁰ The CBAM uses the previous week's average EU carbon price set by the ETS, which provides a market for emission allowances. The ETS operates on a "cap and trade" basis (i.e., there is a limit on the total amount of greenhouse gas emissions that can be emitted by installations and operators within the scope of the scheme). Companies must buy allowances on the carbon market or through ETS auctions for every ton of carbon they emit. They can also trade allowances. Manufacturers in energy-intensive sectors are allocated free allowances to prevent them from moving carbon-intensive production abroad to avoid the EU's strict emissions standards. The cap will be reduced annually, and the distribution of free ETS allowances will be phased out and eventually eliminated.¹¹¹ Default values apply in the absence of reliable data for imported products.¹¹² Deductions are made for companies or sectors in non-EU countries with lower emissions or subject to a similar carbon pricing system.¹¹³

The CBAM provides an effective illustration of the aforementioned chicken-and-egg situation: Although the CBAM may incentivize global climate policy convergence and mitigate carbon leakage, countries that export carbon-intensive goods to the EU — especially developing and least developed countries — may see the CBAM as a protectionist measure that unfairly targets their industries. This could lead to retaliatory trade measures and increase global trade tensions. In addition, the CBAM could exacerbate the already existing North-South divide. Developing and least-developed countries, which often lack the resources to implement stringent climate policies, may perceive the CBAM as an imposition by the Global North that hinders their economic development. As a result, the existing tensions between industrialized and emerging economies, particularly in climate negotiations, could be further exacerbated. Finally, the CBAM could pressure other polities to adopt similar carbon pricing mechanisms to avoid the risk of losing access to the EU's internal market. While this could strengthen global action on climate change, it could also create

¹⁰⁸ CBAM, Recital 9.

¹⁰⁹ CBAM, Art 22 and Recital 15.

¹¹⁰ CBAM, Art 2(4) and (6), and point 1 of Annex III.

¹¹¹ CBAM, Art 21.

¹¹² CBAM, Art 7.

¹¹³ CBAM, Art 9.

friction with polities that are either unwilling or unable to implement such measures, further polarizing the international community.

2. The EU's Anti-Coercion Instrument

The adoption of the ACI addresses two key challenges: First, the ACI addresses the challenge faced by EU Member States in countering economic coercion from third countries that fall within the exclusive competence of the EU. In such cases, only the EU can act. Second, the ACI addresses the lack of authority of EU Member States to counter economic coercion specifically directed against the EU.¹¹⁴ It was developed in response to the growing number of cases of interference by China and the increasing use of extraterritorial and secondary sanctions by the US.¹¹⁵ In accordance with Art 2(1) ACI, economic coercion is defined as the application or threat of application of a measure by a third country “*affecting trade or investment* to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State, thereby interfering with the legitimate sovereign choices of the Union or a Member State” (emphasis added). Art 2(2) ACI lists five criteria for determining the existence of economic coercion.

The ACI functions primarily as a deterrent mechanism through a multi-step process.¹¹⁶ The first step is to determine the existence of economic coercion. If coercion is found, the European Commission may request the third country to cease the coercion.¹¹⁷ If this request proves ineffective, the European Commission will make further efforts to resolve the dispute through cooperative engagement.¹¹⁸ If these attempts prove unsuccessful, the European Commission may, as a last resort, take “response measures” if it deems it necessary to protect the interests of the EU and the Member State.¹¹⁹ Response measures, which are listed in Annex I, include the imposition of tariffs, restrictions on trade in services and trade-related aspects of intellectual property rights, and restrictions on access to foreign direct investment and government procurement.

¹¹⁴ ACI, Recital 10.

¹¹⁵ Ruys and Rodríguez Silvestre, ‘Economic Statecraft: A Closer Look Inside the European Union’s Expanding Toolbox’ (2023) *GaJ Int’l & Compar L* 647 (662).

¹¹⁶ Olsthoorn, ‘The EU’s Anti-Coercion Instrument: A Return of Unlawful Unilateral Trade Counter-measures in Disguise?’ (2024) *LIEI* 47 (51).

¹¹⁷ ACI, Art 5(1), (9), and (10).

¹¹⁸ ACI, Art 7.

¹¹⁹ ACI, Art 8(1).

The EU contends that, in the absence of an explicit prohibition of economic coercion in the WTO regime, the ACI is governed exclusively by the customary international law on countermeasures, as articulated in the Draft Articles on the Responsibility of States for Internationally Wrongful Acts¹²⁰.¹²¹ The European Commission argues that the ACI does not address violations of WTO law or of free trade agreements, but rather violations of international law in general. This line of argument is based on the assumption that economic coercion violates the principle of non-intervention under customary international law.¹²² While this article does not address the question of the compatibility of the ACI with customary international law, it is important to note that the principle of non-intervention does not appear to grant States (and international organizations) an independent right not to be subject to economic coercion.¹²³ While this article does not address the question of the compatibility of the ACI with WTO law, it is important to note that there are at least two scenarios where the ACI intersects with the WTO regime.¹²⁴

The ACI is another example of the chicken-and-egg situation described above: Although framed as a means of defending economic sovereignty and promoting rules-based international trade, the ACI can be seen as a source of policy-driven geoeconomic fragmentation. It was adopted in response to practices perceived as coercive, such as trade restrictions, boycotts, or other measures of economic pressure by third countries in order to force the EU or its Member States to change their policies or positions. By enabling the EU to take response measures, the ACI risks exacerbating tensions with major trading powers such as China or Russia. They may perceive the ACI as an instrument of economic warfare. This could lead to an escalation of tit-for-tat measures, eventually leading to a reduction in economic cooperation and a possible bifurcation of international trade, with some countries aligning more closely with the EU and others with alternative trading powers.

In addition, the ACI creates friction with the WTO dispute settlement system. In theory, the WTO provides mechanisms to prevent unilateral action through its rules and dispute settlement system. However, the effectiveness of the dispute settlement system has been called into question, particularly in recent years with the demise of

¹²⁰ Draft Articles on the Responsibility of International Organizations, with Commentaries, 2001, 140 U.N. Doc. A/CN.4/SER/A/2011/Add.1.

¹²¹ ACI, Recital 12 and 13.

¹²² ACI, Recital 15.

¹²³ For a discussion of this issue, see Ruys and Rodríguez Silvestre, (2023) *GaJ Int'l & Compar L* 647 (663 ff).

¹²⁴ For a discussion of these two scenarios, see Ruys and Rodríguez Silvestre, (2023) *GaJ Int'l & Compar L* 647 (654); Olsthoorn, (2024) *LIEI* 47 (69).

the WTO Appellate Body. While WTO rules discourage unilateral action, the effectiveness of these rules depends on the willingness of WTO Members to comply with rulings. Politics often conduct a cost-benefit analysis, weighing the risks of backlash or international condemnation against the potential gains. If they perceive multilateral channels as slow or ineffective, or if compliance through the WTO process is perceived as less advantageous, they may resort to unilateral measures such as those facilitated by the ACI.¹²⁵

IV. The Rerun of an Old Show: Lessons from the 1920s and 1930s

With economic recessions, pandemics, and wars, the 2020s look like a repeat of the 1920s and 1930s. The uncanny parallels between the first two decades of the last century and current dynamics offer an opportunity to learn some valuable lessons from the past. The experience of the 1920s and 1930s suggests that a retreat from global integration and a return to inward-looking policies may be misguided. Instead of adopting unilateral approaches, the international community would be well advised to keep exploring multilateral solutions in order to address the key challenges facing today's global economic order, namely security and resilience, wealth and income distribution, and climate change.¹²⁶ Subsection A examines the reasons and dynamics behind the decline of the first wave of global integration. Subsection B introduces the idea of re-globalization as a possible approach to counter the fragmentation of the current multilateral trading system.

A. A Cautionary Tale

The first wave of global integration in the late 19th and early 20th centuries was characterized by unprecedented levels of international trade, capital flows, and migration. It was fueled by a reduction in transportation costs due to technological advances, on the one hand, and the removal of tariff barriers on the other. It became easier to transport raw materials, which could then be traded for manufactured goods.¹²⁷ The production of raw materials at that time was labor and capital intensive.

¹²⁵ For a discussion of the reasons why politics resort to unilateral action, see Sands, (2000) *EJIL* 291.

¹²⁶ Zhou, (2020) *LIEI* 9 (40) (observing that “[t]he current crisis in the multilateral trading system has reminded us of the US’s resort to protectionism and unilateralism in the 1920s and early 1930s in response to enormous pressure from domestic farmers, which led to the rise of trade barriers and protectionist sentiment worldwide, severe contraction of world trade and deterioration in trade relations”).

¹²⁷ Meissner, *One From the Many: The Global Economy Since 1850* (Oxford, 2024) 30 f.

The increasing demand for labor led to mass migration, and the increasing demand for capital contributed to the internationalization of capital markets.¹²⁸

The outbreak of World War I heralded the reversal of economic integration and the beginning of a retreat into nationalism. What followed was a thirty-year period of “de-globalization”. The appetite for trade liberalization and economic integration had waned, and economies around the world imposed trade restrictions such as tariffs, quotas, and border controls. Sporadic attempts to get back on track and promote a more open trading environment resembled a wild goose chase. These efforts were ultimately derailed by the Great Depression of 1929. States became more isolationist, leading to global fragmentation and antagonism between rival trading blocs.¹²⁹ The volume of world trade, measured in inflation-adjusted 1913 US dollars, shrank from approximately \$29,500 million in 1929 to about \$21,500 million in 1913 US dollars in 1932.¹³⁰

At the heart of this three-decade long reign of isolationism and unilateral national action was a vicious circle: Economies found themselves at an impasse, unable to find cooperative solutions. As a result, States took measures to protect their national industries, jobs, and markets without taking externalities into account. This led to a tit-for-tat dynamic of protectionist policies, beggar-thy-neighbor currency devaluations, and win-lose economic nationalism. This toxic dynamic fueled economic instability, conflict, and recession, ultimately creating a fragile geopolitical climate that contributed to the outbreak of World War II.¹³¹

The end of World War II marked the beginning of the second wave of globalization. Unlike the first wave of globalization, the second wave was to be orchestrated in the global economic interest. It is true that post-World War II conditions bore similarities to the post-World War I period, including volatility, economic difficulties, and the need for extensive reconstruction. However, several critical factors had changed by the mid-20th century. First, the consequences of protectionism, economic nationalism, and the fragmented international system of the 1920s and 1930s were fresh in the minds of policymakers.¹³² Second, unlike the punitive reparations

¹²⁸ Meissner, *One From the Many* 58 f.

¹²⁹ Meissner, *One From the Many* 118 f.

¹³⁰ WTO, ‘World Trade Report’ (2023) 17.

¹³¹ Chow, (2019) *BU Int’l LJ* 1 (3 f).

¹³² Nottage, ‘Trade in War’s Darkest Hour: Churchill and Roosevelt’s Daring 1941 Atlantic Meeting that Linked Global Economic Cooperation to Lasting Peace and Security’ (2018) *VUWLR* 595 (597 f).

imposed on Germany in the aftermath of World War I,¹³³ the Marshall Plan injected substantial resources into Europe, allowing for rapid reconstruction and reintegration into the world economy.¹³⁴ Third, there was a shift in economic thinking. Economic policy in the post-World War II period was shaped by Keynesian ideas, which encouraged government intervention and international cooperation to stabilize economies and promote economic growth. The interwar period, by contrast, had been dominated by austerity approaches.¹³⁵ Fourth, the threat of the Cold War motivated Western nations to cooperate economically and politically.¹³⁶ Fifth, the primarily Western-centric trade networks of the pre-World War II era were being dismantled as a result of decolonialization and the integration of newly independent nations into the global economy. Finally, the US was the dominant economic power at the time and thus had the economic clout to be the “patron” of a new international economic system. The US saw this as an opportunity to promote open markets and free trade in order to spread capitalist ideology.¹³⁷ The US thus took on a leading role in shaping the value system and institutional architecture of the new economic order. This is in stark contrast to the original isolationist attitude of the US and its preoccupation with its national interests, which contributed to the fragility of the international system in the first place during the interwar period.¹³⁸

¹³³ Note that the Treaty of Versailles (signed in 1919) and other peace treaties imposed reparations primarily on Germany, with different obligations assigned to the other Central Powers, Austria-Hungary, Bulgaria, and the Ottoman Empire. For more information, see ‘German Reparations and Military Limitations’ *Encyclopedia Britannica* (21 October 2024) <<https://www.britannica.com/event/Treaty-of-Versailles-1919/German-reparations-and-military-limitations>> accessed 2 February 2025.

¹³⁴ Santana, ‘70th Anniversary of the GATT: Stalin, the Marshall Plan, and the Provisional Application of the GATT 1947’ (2017) *TL & D* 1 (4) (observing that “[r]establishing the World’s financial order, promoting economic reconstruction, and encouraging open markets became a priority after World War II.”).

¹³⁵ United States Department of State, ‘Bretton Woods-GATT, 1941-1947’, <<https://history.state.gov/milestones/1937-1945/bretton-woods>> accessed 2 February 2025.

¹³⁶ Santana, (2017) *TL & D* 1 (11) (observing that the so-called “Truman doctrine” was developed as a countermeasure to the growing influence of the Soviet Union and with a view to containing communism. A key part of this doctrine was the European Recovery Program, which would assist in the reconstruction of all European countries willing to participate. The program became known as the “Marshall Plan” in honor of General George C. Marshall, who at the time served as Secretary of State.).

¹³⁷ Afilalo, (2002) *NYU JILP* 749 (757 f); Layne, ‘This Time It’s Real: The End of Unipolarity and the *Pax Americana*’ (2012) *ISQ* 1 (8) (observing that “[h]egemonic stability theory holds that an open international economic system requires a single hegemonic power to perform critical, military and economic tasks”); Ikenson, ‘Strategic Reglobalization’ 53 (54).

¹³⁸ Ikenberry, ‘The End of Liberal International Order?’ (2018) *Int Aff* 7 (14).

The post-war system was based on the idea that greater economic integration would promote global economic growth and prosperity, thereby reducing the likelihood of armed conflict.¹³⁹ This new trade framework emphasized openness, inclusiveness, and multilateralism to prevent a recurrence of the interwar protectionist spiral that had contributed to the outbreak of World War II. Central to this system was the promotion of rules-based trade rather than power-based trade, which ensured that protectionist tendencies were contained and peaceful relations between States were maintained.¹⁴⁰ It also sought to balance trade liberalization with domestic priorities, such as combating job displacement, protecting public health, and safeguarding national security, thereby making economic globalization more equitable.¹⁴¹ This new order was supported by an institutional structure that included three newly created international economic organizations: the International Monetary Fund, the World Bank, and the GATT of 1947, which functioned as a *de facto* international organization.¹⁴²

B. Towards a More Inclusive Global Trading Architecture

The discussion in Section III suggests that the multilateral trading system is on a slippery slope towards greater fragmentation and polarization.¹⁴³ The experience of the 1920s and 1930s provides a cautionary tale of how polarization and the resulting geoeconomic fragmentation can render the international community incapable of dealing collectively with global challenges. This period of time shows that trade, financial stability, and global cooperation are interlinked. The following four lessons are the most valuable from this time period. First, protectionist policies, especially during economic downturns, can exacerbate rather than resolve crises. Second, a well-functioning multilateral trading system is key to resolving disputes and coordinating policies. Third, excessive economic nationalism and isolation can lead

¹³⁹ Sacerdoti and Borlini, (2023) *GLJ* 17 (22); Capie, Hamilton-Hart and Young, ‘The Economics-Security Nexus in the US-China Trade Conflict Decoupling Dilemmas’ (2020) *Policy Quarterly* 27 (27 f) (observing that “[l]iberal analyses suggested a positive relationship between economic interdependence and reduced interstate security conflict”).

¹⁴⁰ Van den Bossche and Zdouc, *The Law and Policy of the World Trade Organization* 87 f.

¹⁴¹ Ruggie, ‘International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order’ (1982) *International Organization* 379 (393) (observing that “unlike the economic nationalism of the thirties, it would be multilateral in character; unlike the liberalism of the gold standard and free trade, its multilateralism would be predicated upon domestic interventionism”).

¹⁴² Van den Bossche and Prévost, *Essentials of WTO Law*, 2nd edn. (Cambridge, 2021) 11 f.

¹⁴³ Scott and Wilkinson, ‘Reglobalizing Trade: Progressive Global Governance in an Age of Uncertainty’ (2021) *Globalizations* 55 (66).

to fragmentation. Finally, ensuring that the benefits of trade and economic growth are broadly shared is essential for political stability.

The proposed course of action would be to invest more, not less, in multilateral institutions with the idea of “re-globalization” in mind. The concept is based on the recognition “that retreat and reflection within national borders cannot solve (...) global problems (...).”¹⁴⁴ According to Bishop and Payne, “re-globalization” is about finding ways in which globalization “should, and could, be better organized, managed, democratized and reoriented to serving society.”¹⁴⁵ The concept is about “re-doing globalization better”¹⁴⁶ by structuring it around “post-neoliberal” values.¹⁴⁷

A re-globalization program for the governance of international trade and trade-related challenges, with the WTO at its core, would consist of a short-term and a long-term agenda. In the short term, immediate action is needed to break the current deadlock. Commentators suggest changing the way WTO negotiations are organized. The “single undertaking” approach to broad-based negotiating rounds is impractical and leads to asymmetric outcomes. Instead, the WTO could conduct ongoing negotiations on specific sectors, which could then form the basis for self-sustaining agreements.¹⁴⁸ Moreover, the GATT 1947 was negotiated as an international agreement on the rights and obligations of *States* and *customs territories*. This system addresses the needs of States rather than people and liberalizes trade for its own sake. This state-centric approach has proven to be inappropriate as a means of pursuing non-economic and social objectives. If the multilateral trading system is to provide economic opportunities to a wider constituency and to help address climate change and inequality, it will need to engage different non-State actors, such as trade unions, non-governmental organizations, and civil society groups. The WTO could build on the already existing infrastructure of its Public Forum.¹⁴⁹

In the long run, more far-reaching and ambitious reforms, which may seem illusory in the current context, are needed. First, the global trading system needs to become more diverse. Greater diversification in terms of actors and areas can make the system more resilient in times of crisis. Second, in order to reduce the negative impact

¹⁴⁴ Gruber, Kofler and Benedikter, ‘Introduction’, in Benedikter, Gruber and Kofler (eds.), *Re-Globalization* (New York, 2022) 1 (2).

¹⁴⁵ Bishop and Payne, ‘The Political Economies of Different Globalizations: Theorizing Reglobalization’ (2021) *Globalizations* 1 (4).

¹⁴⁶ Bishop and Payne, (2021) *Globalizations* 1 (13).

¹⁴⁷ Bishop and Payne, (2021) *Globalizations* 1 (4).

¹⁴⁸ Scott and Wilkinson, (2021) *Globalizations* 55 (59 f).

¹⁴⁹ Scott and Wilkinson, (2021) *Globalizations* 55 (61 f).

of trade restrictions in times of crisis, it is necessary to strengthen cooperation within the WTO, for example, with regards to food supply.¹⁵⁰ Third, in order to discourage WTO Members from taking unilateral trade-related measures — particularly security-based trade restrictions — it would be advisable to create forums within the WTO framework for cooperation on emerging security concerns.¹⁵¹

V. Conclusion

The point of this article is not to suggest that multilateralism is by default and in all circumstances a superior approach to the conduct of foreign trade policy. Providing development assistance, for example, is a unilateral action. But multilateralism has many advantages, especially when it comes to delivering global goods and addressing global challenges such as supply chain disruptions, climate change and environmental degradation, persistent inequality, and geopolitical tensions. Multilateral rules provide greater certainty and predictability and can therefore contribute to overall stability.¹⁵²

Deadlock at the multilateral level and the need to act quickly to avert immediate damage can sometimes justify the adoption of unilateral trade-related measures. While unilateralism offers a quick fix and may promote some convergence at the global level, it is often only a temporary solution. It lacks the inclusiveness needed to provide a lasting and sustainable solution to global challenges. Unilateral action can pit economies against each other, undermine the functioning and effectiveness of multilateral institutions, and trigger unilateral responses, creating a destructive dynamic. In choosing the unilateral path, States must be aware of the polarizing effects of their unilateral policies, especially at a time when the multilateral trading system is being challenged.¹⁵³

The two case studies presented above illustrate how perceived responses to a polarized international economic order can create and entrench divisions, particularly between the EU and those polities that feel negatively affected. This is because unilateral action creates a *fait accompli*: it seeks to set the agenda and “impose” norms. Yet some of the most pressing global challenges require multilateral

¹⁵⁰ WTO, ‘World Trade Report’ (2023) 57 ff.

¹⁵¹ For a discussion of existing proposals for addressing the link between trade and security, see Pinchis-Paulsen, ‘Let’s Agree to Disagree: A Strategy for Trade-Security’ (2022) *JIEL* 527 (541 ff).

¹⁵² Odermatt, ‘Convergence Through EU Unilateralism’, 49 (52).

¹⁵³ Odermatt, ‘Convergence Through EU Unilateralism’, 49 (57).

solutions that have global legitimacy.¹⁵⁴ In this context, rather than reverting to unilateralism – which threatens to thwart coordinated action to address common challenges – the answer may be to invest more, not less, in multilateralism, and to do it better. Such efforts could be centered on the WTO and its existing infrastructure, especially since “the WTO dispute settlement system remains the only worldwide, multilevel, compulsory jurisdiction for impartial, independent third-party adjudication of international disputes.”¹⁵⁵ The 1930s provide a cautionary tale of a world without a rules-based international trading system.¹⁵⁶ As Petersmann aptly observes, “[t]he self-limitation of our freedom of action by rules and the self-imposition of institutional constraints (...) are rational responses designed to protect us against future risks of our own passions and imperfect rationality.”¹⁵⁷

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¹⁵⁴ Shen and Shang, (2020) *Braz J Int'l L* 162 (165).

¹⁵⁵ Petersmann, ‘The 2018 Trade Wars as a Threat to the World Trading System and Constitutional Democracies’ (2018) *TL & D* 179 (181).

¹⁵⁶ Zhou, (2020) *LIET* 9 (42).

¹⁵⁷ Petersmann, ‘How to Constitutionalize International Law and Foreign Policy for the Benefit of Civil Society?’ (1998) *Mich J Int Law* 1 (1).

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