

RESPONDING TO TRUMP’S TARIFFS: BETWEEN SAFEGUARDS, NATIONAL SECURITY AND ECONOMIC COERCION

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Abstract: Trump is weaponizing tariffs under varying motivations. Tariffs on steel and aluminium aim to strengthen its domestic industry. For some States individually targeted, Trump highlights United States trade deficits, so a “rebalance” would be needed. For others, however, there are political motivations. Brazil stands out with 50% tariffs² and an explicit interference with its internal affairs. In this scenario, the legal ways for States responding to these tariffs also vary. This article seeks to explore how States can respond to Trump’s tariffs, in light of the World Trade Organization (“WTO”) system and public international law. Three venues are examined. First, by suspending concessions or other obligations on the basis of Article 8 of the WTO Agreement on Safeguards. Second, by challenging the tariffs before the WTO Dispute Settlement Body (“DSB”). Third, by adopting unilateral countermeasures outside the WTO system, notably in the case of economic coercion.

Keywords: International Trade Law. Tariffs. Countermeasures. Safeguards. National Security. Economic coercion.

Resumo: Trump está utilizando tarifas como “armas” sob várias motivações. Tarifas sobre aço e alumínio visam fortalecer a indústria doméstica. Para alguns Estados visados individualmente, Trump destaca déficits comerciais dos Estados Unidos, de modo que um “rebalanceamento” seria necessário. Para outros, contudo, há motivações políticas. O Brasil destaca-se com tarifas de 50% e uma interferência explícita nos seus assuntos internos. Neste cenário, os meios legais para os Estados responderem às tarifas do Trump também variam. Este artigo visa a explorar como os Estados podem responder às tarifas do Trump à luz do sistema da Organização Mundial do Comércio (“OMC”) e do direito internacional público. Três meios são explorados. Primeiro, suspender concessões ou outras obrigações com base no Artigo 8 do Acordo sobre Salvaguardas da OMC. Segundo, contestar as tarifas perante o Órgão

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² This article was written in September 2025.

de Resolução de Controvérsias (“ORC”) da OMC. Terceiro, adotar contramedidas unilaterais fora do sistema da OMC, notoriamente no caso de coerção econômica.

Palavras-chave: Direito internacional do comércio. Tarifas. Contramedidas. Salvaguardas. Segurança nacional. Coerção econômica.

1. Introduction

Due in part to the dysfunction of the WTO Appellate Body, the international trade order faces a systematic crisis³. This is reflected in the weaponization of trade measures, which can be defined as adopting illegal trade restrictive measures for political purposes⁴, or exploiting economic vulnerabilities and asymmetries to change the behaviour of another country, including in its political domain⁵. These measures are *inter alia discriminatory tariffs under alleged national security concerns*⁶, now being catalysed following the re-election of Donald Trump, increasingly weaponizing trade measures via economic coercion⁷.

³ HOPEWELL, Kristen. **Unravelling of the trade legal order: enforcement, defection and the crisis of the WTO dispute settlement system**. *International Affairs*, v. 101(3), 2025. Available in: <https://doi.org/10.1093/ia/iaaf055>. Access on Aug. 2, 2025. pp. 1116-1117; BOSSCHE, Peter V. **The Demise of the WTO Appellate Body: Lessons for Governance of International Adjudication?** WTI Working Paper No. 02/2021, 2021. Available in: <https://www.wti.org/research/publications/1333/the-demise-of-the-wto-appellate-body-lessons-for-governance-of-international-adjudication/>. Access on Aug. 2, 2025. pp. 2-7.

⁴ MA, Guang; WU, Hong. **Weaponization of Trade Measures and Countermeasures**. *Journal of World Trade*, v. 59(5), 2025. Available in: https://www.researchgate.net/publication/391841145_Weaponization_of_Trade_Measures_and_Countermeasures. Access on Aug. 2, 2025. p. 8.

⁵ JAEGER, Markus et al. **The Weaponization of Trade: A study of modern trade conflicts from the mid-1900s to present**. *Columbia School of International and Public Affairs, Capstone Report*, 2020. Available in: <https://www.sipa.columbia.edu/sipa-education/capstone-workshops/weaponization-trade>. Access on Aug. 2, 2025. pp. 7-9.

⁶ MA, Guang; WU, Hong. **Weaponization of Trade Measures and Countermeasures**. *Journal of World Trade*, v. 59(5), 2025. Available in: https://www.researchgate.net/publication/391841145_Weaponization_of_Trade_Measures_and_Countermeasures. Access on Aug. 2, 2025. pp. 2-4.

⁷ HOPEWELL, Kristen. **Unravelling of the trade legal order: enforcement, defection and the crisis of the WTO dispute settlement system**. *International Affairs*, v. 101(3), 2025. Available in: <https://doi.org/10.1093/ia/iaaf055>. Access

At the time of this writing, Donald Trump implemented additional tariffs of at least 10% worldwide, with more than 25 States being targeted with more than 15% tariffs. Some notable examples are Brazil and India with 50%, Switzerland with 39%, Canada with 35%, China with 30%, and Mexico with 25%⁸.

Trump's tariffs vary in scope, targets and motivations. The examples of Switzerland, Japan and South Korea are those in which Trump points to trade deficits, so that additional tariffs would "rebalance unfair trade relations"⁹. However, the underlying motivation is not always commercial in nature but also related to internal and external affairs of the target States. Brazil was targeted with 50% tariffs (and a parallel Section 301 investigation) under the demand to cease the trial against the former Brazilian President Jair Bolsonaro for an attempted *coup, as well as the efforts of the Brazilian Supreme Court to increase the liability of social media companies in Brazil*¹⁰. India, in turn, was targeted with additional 25% tariffs (totalizing 50%) because of its foreign policy of buying oil from Russia¹¹.

In addition to individual tariffs, Trump also increased the general tariffs on steel and aluminium products based on alleged national

on Aug. 2, 2025. p. 1116.

⁸ This counting of States and the list of tariffs were made based on BBC's compilation of all tariffs, as of 15 August 2025. BBC. **See the Trump tariffs list by country**, 2025. Available in: <https://www.bbc.com/news/articles/c5ypxnnyg7jo>. Access on Aug. 15, 2025.

⁹ FINANCIAL TIMES. **Switzerland in 'shock' at 39% US tariff blow**, 2025. Available in: <https://www.ft.com/content/e64f4ef0-0f98-4a8b-8840-459fd6f2dc28>. Access on Aug. 16, 2025. See also the letters sent from Donald Trumo to Japan and South Korea: CNBC. **Trump announces steep tariffs on 14 countries starting Aug. 1**, 2025. Available in: <https://www.cnbc.com/2025/07/07/trump-tariffs-trade-letters-japan.html?msocid=175039f1f112660c05862c7ef0e96783>. Access on Aug. 16, 2025.

¹⁰ PEREIRA, Luíza L. S. **Trump's "Tarifaço" Against Brazil: a Breach of the Non-Intervention Rule**. EJIL:Talk! Blog of the European Journal of International Law, 2025. Available in: <https://www.ejiltalk.org/trumps-tarifaco-against-brazil-a-breach-of-the-non-intervention-rule/>. Access on Aug. 17, 2025.

¹¹ THE WHITE HOUSE. **Fact Sheet: President Donald J. Trump Addresses Threats to the United States by the Government of the Russian Federation**, 2025. Available in: <https://www.whitehouse.gov/fact-sheets/2025/08/fact-sheet-president-donald-j-trump-addresses-threats-to-the-united-states-by-the-government-of-the-russian-federation/>. Access on Aug. 17, 2025.

security concerns of Section 232 from 25% to 50%¹². Section 232 was also invoked to implement 25% tariffs on automobiles and their parts¹³. These tariffs, in turn, are general, and their motivation (further than allegations of national security) is the strengthening of the United States' ("US") industries¹⁴.

If the tariffs are varied, so are the reactions. Some States responded by announcing that they would be suspending concessions or other obligations on the basis of the WTO Agreement on Safeguards, thereby retaliating with similar discriminatory tariffs. Others preferred to initiate a dispute settlement procedure before the WTO DSB. Finally, in the exceptional case of Brazil (and allegedly China), even unilateral countermeasures outside the WTO system were considered.

This article seeks to explore these different responses adopted by States, their scope, legal basis and limitations. As a general remark, this article seeks to explore *legal ways for States to respond to Trump's tariffs, not political or diplomatic ones. Some States reached the so-called "deals" with Donald Trump, thereby limiting their tariffs. For the purposes of this article, I shall only examine the legal basis for different responses adopted, not exploring political or diplomatic venues.*

In section (2), I will address the States that are currently responding on the basis of the WTO Agreement on Safeguards and the US response to them before the WTO Committee on Safeguards. In section (3), I will address the States that are currently challenging Trump's tariffs before the WTO DSB, the allegations being invoked, and examine the probable defense of the US that the tariffs were adopted as national security exceptions under the General Agreement on Tariffs and Trade of 1994 ("GATT 1994").

¹² THE WHITE HOUSE. **Fact Sheet: President Donald J. Trump Increases Section 232 Tariffs on Steel and Aluminum, 2025.** Available in: <https://www.whitehouse.gov/fact-sheets/2025/06/fact-sheet-president-donald-j-trump-increases-section-232-tariffs-on-steel-and-aluminum/>. Access on Aug. 16, 2025.

¹³ US FEDERAL REGISTER. **Adjusting Imports of Automobiles and Automobile Parts Into the United States.** Available in: <https://www.federalregister.gov/documents/2025/04/03/2025-05930/adjusting-imports-of-automobiles-and-automobile-parts-into-the-united-states>. Access on Aug. 17, 2025.

¹⁴ THE WHITE HOUSE. **Fact Sheet: President Donald J. Trump Increases Section 232 Tariffs on Steel and Aluminum, 2025.** Available in: <https://www.whitehouse.gov/fact-sheets/2025/06/fact-sheet-president-donald-j-trump-increases-section-232-tariffs-on-steel-and-aluminum/>. Access on Aug. 16, 2025.

In section (4), I will address the example of Brazil, which raised the possibility of adopting unilateral countermeasures outside the WTO system, notably in light of the Brazilian Commercial Reciprocity Law. I will examine the possibility of invoking unilateral countermeasures against “economic coercion”, which is, at first glance, incompatible with Article 23 of the WTO Dispute Settlement Understanding (“DSU”). In section (5), I conclude with the overall assessment of the three legal ways examined in this article, identifying their scopes, limitations and key differences.

2. Suspending concessions or other obligations under the Agreement on Safeguards

In April 2025, the European Union (“EU”) notified the suspension of concessions or other obligations based on Article 8(2) of the Agreement on Safeguards, taken as a response to Section 232 tariffs imposed on steel and aluminium products¹⁵. According to the EU, “[n]otwithstanding the United States’ characterisation of these measures as security measures, they objectively are safeguard measures”. As such, the EU announced that the suspension of concessions or other obligations would take the form of additional 25% import tariffs on some products originating in the US, whose impact would be calculated as equivalent to Section 232 tariffs.

¹⁵ EUROPEAN UNION. Council for Trade in Goods - Committee on Safeguards - **Immediate notification under article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of proposed suspension of concessions and other obligations referred to in paragraph 2 of article 8 of the[...]s - European Union – Supplement, 2025** (G/L/1237/Suppl.2; G/L/1356/Suppl.2; G/SG/N/12/EU/1/Suppl.2; G/SG/N/12/EU/2/Suppl.2.). Available in: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/L/1237S2.pdf&Open=True>. Access on Aug. 16, 2025; EUROPEAN UNION. Council for Trade in Goods - Committee on Safeguards - **Immediate notification under article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of proposed suspension of concessions and other obligations referred to in paragraph 2 of article 8 of the[...]s - European Union – Supplement, 2025**. (G/L/1237/Suppl.1; G/L/1356/Suppl.1; G/SG/N/12/EU/1/Suppl.1; G/SG/N/12/EU/2/Suppl.1.). Available in: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/L/1237S1.pdf&Open=True>. Access on Aug. 15, 2025.

In May 2025, this same approach was undertaken by the United Kingdom¹⁶, India¹⁷, and Japan (the latter also including the tariffs on automobiles and their parts)¹⁸. In response, the US contested the United

¹⁶ UNITED KINGDOM. Council for Trade in Goods - Committee on Safeguards - **Immediate notification under article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of proposed suspension of concessions and other obligations referred to in paragraph 2 of article 8 of the[...]on Safeguards - United Kingdom, 2025 (G/L/1570; G/SG/N/12/GBR/1.)** Available in: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/L/1570.pdf&Open=True>. Access on Aug. 15, 2025.

¹⁷ INDIA. Council for Trade in Goods - Committee on Safeguards - **Immediate notification under article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of proposed suspension of concessions and other obligations referred to in paragraph 2 of article 8 of the Agreement on Safeguards – India, 2025 (G/L/1571; G/SG/N/12/IND/5.).** Available in: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/L/1571.pdf&Open=True>. Access on Aug. 15, 2025.

¹⁸ JAPAN. Council for Trade in Goods - Committee on Safeguards - **Notification under article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods of proposed suspension of concessions and other obligations referred to in paragraph 2 of article 8 of the Agreement on Safeguards – Japan, 2025 (G/L/1572; G/SG/N/12/JPN/5).** Available in: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/L/1572.pdf&Open=True>. Access on Aug. 15, 2025.

Kingdom¹⁹, Japan²⁰, India²¹ and the EU²² with the same letter: Section 232 tariffs were not adopted as safeguard measures, but as national security exceptions based on Article XXI of the GATT 1994 – consequently, these States are not entitled to suspend concessions or other obligations under the Agreement on Safeguards.

This is not a new discussion. This same pattern already happened back in 2018 when Section 232 tariffs were imposed by the US, which resulted in many procedures before the WTO DSB. In *US – Certain Measures on Steel and Aluminium Products (DS556)*, the Panel clearly stated that Section 232 tariffs were “sought, taken and maintained” on the basis of Article XXI of the GATT 1994, and not on the basis of the Agreement on Safeguards²³. This same reasoning was adopted in other

¹⁹ UNITED STATES. Council for Trade in Goods - Committee on Safeguards - **Communication from the United States in response to the United Kingdom's notification proposing to suspend concessions under article 8.2 of the Agreement on Safeguards, 2025 (G/C/W/863; G/SG/316.)**. Available in: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/C/W863.pdf&Open=True>. Access on Aug. 15, 2025.

²⁰ UNITED STATES. Council for Trade in Goods - Committee on Safeguards - **Communication from the United States in response to Japan's notification proposing to suspend concessions under article 8.2 of the Agreement on Safeguards - United States, 2025 (G/C/W/864; G/SG/317.)**. Available in: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/C/W864.pdf&Open=True>. Access on Aug. 15, 2025.

²¹ UNITED STATES. Council for Trade in Goods - Committee on Safeguards - **Communication from the United States in response to India's notification proposing to suspend concessions under article 8.2 of the Agreement on Safeguards - United States (G/C/W/866; G/SG/320)**. Available in: docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/C/W866.pdf&Open=True. Access on Aug. 15, 2025.

²² UNITED STATES. Council for Trade in Goods - Committee on Safeguards - **Communication from the United States in response to the European Union's notification proposing to suspend concessions under article 8.2 of the Agreement on Safeguards - United States (G/C/W/865; G/SG/319.)**. Available in: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/G/C/W865.pdf&Open=True>. Access on Aug. 15, 2025.

²³ WTO. **US – Certain Measures on Steel and Aluminium Products (DS556). Report of the Panel, 2022**. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds556_e.htm. Access on Aug. 16, 2025. para. 7.118.

reports concerning Section 232 tariffs, but none of them entered into force because the US appealed into the void²⁴.

Indeed, even the US itself initiated a dispute against China's retaliatory tariffs adopted on the basis of Article 8(2) of the Agreement on Safeguards. In *China — Additional Duties on Certain Products from the United States (DS558)*, the Panel concluded that China's retaliatory tariffs violated the GATT 1994 since they could not be taken as the suspension of concessions or other obligations under the Agreement on Safeguards²⁵. In this case, it was China who appealed into the void, so this report is not legally binding either. The US also initiated a dispute against Türkiye and the Panel decided in the same manner: Article 8(2) was not available to Türkiye as a response to Section 232 tariffs and, as such, the retaliatory additional tariffs violated the GATT 1994²⁶. Türkiye also appealed into the void.

As such, even though none of the reports was adopted and became legally binding upon the parties to the dispute, their reasoning is coherent, and it is a strong indication that responding to Section 232 tariffs via the Agreement on Safeguards is not a legally sound option. Nevertheless, this seems to be (once more) the option taken by some States following Trump's re-election.

This option, as noted, is limited in scope: it only focuses on Section 232 tariffs (adopted generally on certain products), not being used in response to individual tariffs against target States, such as those adopted under Section 301 or the International Emergency Economic Powers Act ("IEEPA"). Moreover, despite the apparent illegality of this pathway,

²⁴ WTO. **US – Certain Measures on Steel and Aluminium Products (DS564). Report of the Panel**, 2022. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds564_e.htm. Access on Aug. 16, 2025; WTO. **US – Certain Measures on Steel and Aluminium Products (DS552). Report of the Panel**, 2022. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds552_e.htm. Access on Aug. 16, 2025; WTO. **US – Certain Measures on Steel and Aluminium Products (DS544). Report of the Panel**, 2022. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm. Access on Aug. 16, 2025.

²⁵ WTO. **China — Additional Duties on Certain Products from the United States (DS558). Report of the Panel**, 2023. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds558_e.htm. Access on Aug. 16, 2025. para. 7.119.

²⁶ WTO. **Turkey — Additional Duties on Certain Products from the United States (DS561). Report of the Panel**, 2023. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds561_e.htm. Access on Aug. 16, 2025. paras. 7.81 and 8.1.

it is still tied with the WTO system as whole: States attempt to frame their responses on the basis of the WTO-covered agreements, with due notifications to the WTO Council of Trade in Goods. Finally, the alleged suspension of concessions or other obligations under the Agreement on Safeguards also provides a legal basis for unilateral retaliation, which is not a viable option if Section 232 tariffs are contested on the basis of the GATT 1994 before the WTO DSB, as better described in next section (3).

3. Initiating a dispute settlement procedure

Another pathway taken by some States was initiating a dispute settlement procedure before the DSB against the US. In February 2025, China requested consultations with the US alleging that the additional tariffs on certain products from China, taken as a “national emergency” under the IEEPA, violated the GATT 1994²⁷.

In March and April 2025, Canada followed a similar path to challenge the 25% and 10% additional tariffs imposed against Canadian exports²⁸, as well as the Section 232 tariffs on steel and aluminium²⁹ and automobiles and their parts³⁰. In August 2025, Brazil also requested consultations with the US, alleging that the Section 301 investigation and the additional 50% tariffs violated both the GATT 1994 and the WTO DSU³¹.

Similar to the suspension of concessions or other obligations under the Agreement on Safeguards, this pathway was also explored before in

²⁷ WTO. **US – Additional Tariff Measures on Goods from China (DS633)**. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds633_e.htm. Access on Aug. 16, 2025.

²⁸ WTO. **US – Additional Import Duties on Goods from Canada (DS634)**. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds634_e.htm. Access on Aug. 16, 2025.

²⁹ WTO. **US – Additional Import Duties on Steel and Aluminium Articles from Canada (DS635)** https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds635_e.htm. Access on Aug. 16, 2025.

³⁰ WTO. **US – Additional Duties on Imports of Automobiles and Automobile Parts from Canada (DS637)** https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds637_e.htm. Access on Aug. 16, 2025.

³¹ WTO. **US – Tariff measures on goods from Brazil (DS640)**. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds640_e.htm. Access on Aug. 16, 2025.

the same disputes contesting Section 232 tariffs. This is because, besides examining whether Section 232 tariffs were safeguards (as claimed by the target States), the Panels also examined whether they fulfilled the requirement for a national security exception under Article XXI of the GATT 1994 (as claimed by the US). This discussion evokes a more complex analysis of the thresholds for national security exceptions under Article XXI of the GATT 1994, which was already subject to extensive literature review³².

Article XXI of the GATT 1994 provides that:

Nothing in this Agreement shall be construed (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests (iii) taken in time of war or other emergency in international relations.

The US claims this provision to be self-judging, so that no jurisdictional control could be exercised after its invocation³³. Nevertheless, this interpretation has already been rejected by Panels

³² The literature points to States' growing reliance on the national security exception and its systematic risks to the international trade order. This exception (once rarely used) has been particularly invoked by the United States. Due to its "amorphous" concept, it is stretched to protect domestic industries rather than genuine security concerns. Even so, the Panels that addressed such claims have emphasized that this provision is not self-judging, and the literature highlights the need to limit this provision to preserve its legitimacy against misuse. See e.g. PRAZERES, Tatiana. **Trade and National Security: Rising Risks for the WTO**. *World Trade Review*, v. 19(1), 2020. Available in: <https://doi.org/10.1017/S1474745619000417>. Access on Aug. 4, 2024; BOSSCHE, Peter V.; AKPOFURE, Sarah. **The Use and Abuse of the National Security Exception under Article XXI(b)(iii) of the GATT 1994**. WTI Working Paper No. 03/2020, 2020. Available in: <https://www.wti.org/research/publications/1299/the-use-and-abuse-of-the-national-security-exception-under-article-xxibiii-of-the-gatt-1994/>. Access on Aug. 4, 2024; PINCHIS-PAULSEN, Mona; SAGGI, Kamal; MAVROIDIS, Petros C. **The National Security Exception at the WTO: Should It Just Be a Matter of When Members Can Avail of It? What About How?** *World Trade Review*, v. 23(3), 2024. Available in: <https://doi.org/10.1017/S1474745624000065>. Access on: Aug. 5, 2025.

³³ WTO. **US – Certain Measures on Steel and Aluminium Products (DS556)**. Report of the Panel, 2022. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds556_e.htm. Access on Aug. 16, 2025. para. 7.123.

in different disputes³⁴, including those targeting Section 232 tariffs. In *US — Certain Measures on Steel and Aluminium Products (DS556)*, the Panel concluded that the US failed to demonstrate that the overcapacity and excessive production of steel and aluminium products constituted “an emergency in international relations”, so that violations to the GATT 1994 could not be justified under Article XXI³⁵.

Therefore, the initiation of a dispute settlement procedure covers a broader range of measures to be contested: not only Section 232 tariffs can be challenged, but also the individual discriminatory tariffs being imposed by the US.

Also, the probable outcome of this pathway is more positive. As seen above, the suspension of concessions or other obligations under the Agreement on Safeguards has been consistently rejected by the Panels (although their reports were not adopted). Conversely, the US has failed to justify its Section 232 tariffs as a national security exception before the DSB (and there is no distinguishing factor to deviate that conclusion in favour of the US).

Nevertheless, there is one crucial difference between the suspension of concessions or other obligations under the Agreement on Safeguards, on the one hand, and the initiation of a dispute settlement procedure, on the other hand: the possibility of adopting retaliatory tariffs unilaterally. Article 8(2) of the Agreement on Safeguards allows for States to adopt them. Conversely, Article 23 of the WTO DSU explicitly prohibits States from unilaterally addressing WTO breaches. In practice, this renders States unable to respond to Trump's tariffs because, first, the Panel report takes some time to be published, and second, the US can simply appeal into the void.

Article 23 of the WTO DSU establishes a special regime, contracting out from general rules on State responsibility based on customary international law. Contrary to the general permission on

³⁴ WTO. **Russia – Measures Concerning Traffic in Transit (DS512). Report of the Panel**, 2019. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm. Access on Aug. 12, 2025. 7.5.3-5; WTO. **Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights, Report of the Panel**, 2020. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds567_e.htm. Access on Aug. 12, 2024. 7.4.

³⁵ WTO. **US – Certain Measures on Steel and Aluminium Products (DS556). Report of the Panel**, 2022. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds556_e.htm. Access on Aug. 16, 2025. para. 7.165-6.

unilateral countermeasures, what is better explored below in section (4), Article 23 prohibits WTO Members from unilaterally determining whether other WTO Members violated their WTO obligations, also forbidding unilateral retaliation: WTO Members must await the final decision of the Panel or Appellate Body and, if the responsible State fails to comply with the recommendation, the DSB can authorize the injured State to suspend concessions or other obligations under the covered agreements³⁶.

This special regime enshrines the primacy of the multilateral trade system over unilateralism and self-help and, accordingly, obliges WTO Members to seek to redress WTO breaches (only) within the institutional framework of the WTO itself³⁷. Nevertheless, this institutional framework is currently not suitable: because of the paralysis of the Appellate Body, WTO Members are unable to resolve their disputes³⁸.

For instance, disputes initiated against Section 232 tariffs in 2018 only reached final reports of the Panel in 2022 and, even so, the US appealed into the void, impeding their adoption. This deadlock scenario means that, even if a dispute settlement procedure is initiated, States are not allowed to adopt any retaliatory measures against the US that

³⁶ The DSU establishes a detailed step-by-step procedure in Articles 19 to 23. After the report is adopted by the Panel or the Appellate Body (in case of appeal), the responsible WTO Member is granted a “reasonable period of time” to comply with the recommendations. Also, there is an additional procedure to review disagreements on the compliance of the recommendations by the responsible WTO Member. Only then, if the responsible WTO Member does not offer a compensation, absent agreement, the complainant may request the authorization of the DSB to suspend concessions or other obligations.

³⁷ WTO. **Canada — Export Credits and Loan Guarantees for Regional Aircraft (Article 22.6 – Canada) (DS222). Report of the Panel**, 2002. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds222_e.htm. Access on Aug. 18, 2025. para. 3.98; WTO. **US – Import Measures on Certain Products from the European Communities (DS165). Report of the Panel**, 2000. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds165_e.htm. Access on Aug. 18, 2025. paras. 6.19-6.20; WTO. **US – Import Measures on Certain Products from the European Communities (DS165), Report of the Appellate Body**, 2000. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds165_e.htm. Access on Aug. 18, 2025. para. 111.

³⁸ MA, Guang; WU, Hong. **Weaponization of Trade Measures and Countermeasures. Journal of World Trade**, v. 59(5), 2025. Available in: https://www.researchgate.net/publication/391841145_Weaponization_of_Trade_Measures_and_Countermeasures. Access on Aug. 2, 2025. p. 10.

might impact their WTO obligations. If so, as adjudicated in *China — Additional Duties on Certain Products from the United States (DS558)*, the retaliating State would incur its own responsibility of infringing WTO obligations³⁹.

4. Adopting unilateral countermeasures outside the WTO system

Another (and final) pathway identified is the adoption of unilateral countermeasures outside the WTO system. This option was considered by some States targeted with Trump's tariffs, mainly Brazil⁴⁰ and the EU⁴¹. Allegedly, one State that adopted this venue would be China, which referred to "basic principles of international law" when retaliating against the US, but the lack of sufficient development hinders any definitive conclusion⁴². This option, contrary to both sections (2) and (3), escapes from the WTO institutional framework.

As summarized above, the WTO DSU sets a special regime prohibiting unilateral countermeasures. This *lex specialis contracts out from the general rules on State responsibility based on customary international law, which generally allows States to adopt unilateral countermeasures*⁴³. However, despite substantial controversies in this

³⁹ WTO. *China — Additional Duties on Certain Products from the United States (DS558)*. Report of the Panel, 2023. Available in: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds558_e.htm. Access on Aug. 16, 2025. para. 7.119.

⁴⁰ See the announcement of the Brazilian Presidency that "any unilateral tariff increase" would be responded in accordance with the Brazilian Commercial Reciprocity Law: BRAZILIAN PRESIDENCY. **Press Release of July 9, 2025**. Available in: <https://www.gov.br/planalto/pt-br/acompanhe-o-planalto/noticias/2025/07/nota-a-imprensa-1>. Access on Aug. 11, 2025.

⁴¹ REUTERS. **EU's 'nuclear option' of moves against Trump tariff threat, 2025**. Available in: <https://www.reuters.com/markets/europe/eus-nuclear-option-moves-against-trump-tariff-threat-2025-07-21/>. Access on Aug. 11, 2025.

⁴² MINISTRY OF FINANCE OF THE PEOPLE'S REPUBLIC OF CHINA. **Announcement of the Tariff Commission of the State Council on the imposition of tariffs on imported goods originating in the United States, 2025**. Available in: https://gss.mof.gov.cn/gzdt/zhengcefabu/202504/t20250404_3961451.htm. Access on Aug. 11, 2025; TIETJE, Christian; YUN, Zheng. **Legality in Times of Illegality: China and EU's Path in How to React to Trump's Tariff Sword. Policy Papers on Transnational Economic Law No. 66, 2025**. Available in: <https://opendata.uni-halle.de/bitstream/1981185920/120765/1/PolicyPaperNo.66.pdf>. Access on Aug. 11, 2025. p. 4.

⁴³ ILC. **Draft articles on Responsibility of States for Internationally Wrongful**

regard⁴⁴, the scope of this *lex specialis* arguably only encompasses violations to WTO obligations: if an injured State wishes to redress a WTO breach, it cannot adopt unilateral countermeasures based on customary international law; but if an injured State wishes to redress a non-WTO breach, it can rely on unilateral countermeasures (even if they impact WTO obligations)⁴⁵.

As argued by Azaria and Ventouratou, Article 23 of the DSU only sets this special regime for WTO breaches, so that non-WTO breaches can still be counteracted by injured States on the basis of customary

Acts, with commentaries, 2001. Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. Access on Aug. 18, 2025. Chapter II, Commentary 9, Article 50, Commentary 10.

⁴⁴ Based on the report of the Appellate Body in *Mexico – Soft Drinks*, Olsthoorn highlights that, until a future ruling on the contrary, its findings would prevail against the possibility of States invoking countermeasures based on customary international law before the WTO DSB, in sum, because alleged breaches of international law outside the WTO-covered agreements cannot be adjudicated by the DSB. OLSTHOORN, Kornel. **The EU's Anti-coercion Instrument: A Return of Unlawful Unilateral Trade Countermeasures in Disguise? Legal Issues of Economic Integration**, v. 51(1), 2024. Available in: <https://kluwerlawonline.com/journalIssue/Legal+Issues+of+Economic+Integration/51.1/20544>. Access on Aug. 20, 2025. pp. 73-76.

⁴⁵ Azaria and Ventouratou argue that the findings of the Appellate Body in *Mexico – Soft Drinks* should be surpassed. They highlight that the interpretation of Article 23 of the DSU leads to the conclusion that this *lex specialis* shall not affect States' ability to resort to unilateral countermeasures against non-WTO breaches. Moreover, presuming this in the absence of an explicit derogation would be incompatible with the rules on the interpretation of international treaties (by default, general rules apply, and can only be "contracted out" explicitly). See in: AZARIA, Danae. **Trade Countermeasures for Breaches of International Law Outside the WTO. International & Comparative Law Quarterly**, v. 71(2), 2022. Available in: <https://doi.org/10.1017/S0020589322000057>. Access on Aug. 20, 2025; VENTOURATOU, Anna. **Justifying Trade Sanctions: Exceptions and Defences under WTO Law. Cornell International Law Journal**, v. 57 (forthcoming), 2024. Available in: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5027333. Access on Aug. 20, 2025. Moreover, Wu also supports this conclusion by briefly asserting that, otherwise, WTO law would be placed "above" other international law rules that are binding on States. See in: MA, Guang; WU, Hong. **Weaponization of Trade Measures and Countermeasures. Journal of World Trade**, v. 59(5), 2025. Available in: https://www.researchgate.net/publication/391841145_Weaponization_of_Trade_Measures_and_Countermeasures. Access on Aug. 2, 2025. pp. 16-17.

international law (unilaterally)⁴⁶. To this end, however, it must be proven that Trump's tariffs violated not only the GATT 1994, but also another obligation that is not covered by the WTO agreements. This concurrent violation of WTO and non-WTO obligations is arguably the case of Trump's tariffs that amount to "economic coercion" interfering with States' sovereign affairs.

The most notable example are the 50% tariffs imposed on Brazil. Accordingly, the Brazilian Government even raised the possibility of adopting unilateral countermeasures based on the Brazilian Commercial Reciprocity Law ("CRL"), adopted in April 2025⁴⁷. The Brazilian CRL is applicable when States⁴⁸:

(...) interfere with Brazil's legitimate and sovereign choices, seeking to prevent or obtain the cessation, modification or adoption of a specific act or practices in Brazil, through the application or threat of unilateral commercial, financial or investment measures. (free translation)

If this threshold is met, the Brazilian Presidency is entitled to counteract *inter alia* with the imposition of tariffs on imports of goods or services, as well as the suspension of concessions or other obligations related to intellectual property rights⁴⁹. It is worth noting the Brazilian CRL is not an isolated legislation: it is very similar to the EU Anti-

⁴⁶ AZARIA, Danae. **Trade Countermeasures for Breaches of International Law Outside the WTO**. *International & Comparative Law Quarterly*, v. 71(2), 2022. Available in: <https://doi.org/10.1017/S0020589322000057>. Access on Aug. 20, 2025. pp. 411-417, 420, 423; VENTOURATOU, Anna. **Justifying Trade Sanctions: Exceptions and Defences under WTO Law**. *Cornell International Law Journal*, v. 57 (forthcoming), 2024. Available in: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5027333. Access on Aug. 20, 2025. pp. 59-69.

⁴⁷ BRAZILIAN PRESIDENCY. **Press Release of 9 July 2025**. Available in: <https://www.gov.br/planalto/pt-br/acompanhe-o-planalto/noticias/2025/07/nota-a-imprensa-1>. Access on Aug. 4, 2025.

⁴⁸ BRAZIL. **Law No. 15.122 from 11 April 2025**. Available in: <https://www.in.gov.br/en/web/dou/-/lei-n-15.122-de-11-de-abril-de-2025-623734149>. Access on Aug. 18, 2025. Article 2, Item I.

⁴⁹ BRAZIL. **Law No. 15.122 from 11 April 2025**. Available in: <https://www.in.gov.br/en/web/dou/-/lei-n-15.122-de-11-de-abril-de-2025-623734149>. Access on Aug. 18, 2025. Article 3, Paragraph 1, Items I and II.

Coercion Instrument from 2023, a framework for the EU to unilaterally respond against economic coercion from other States⁵⁰.

This threshold seems to be the exact case of Trump's tariffs. In July 2025, Trump published an informal letter announcing 50% tariffs against Brazil, as summarized by Pereira, with a political aim rather than a commercial one: first, requesting the termination of a judicial prosecution of former President Jair Bolsonaro, currently under trial for an attempted *coup*; *second, demanding the halt of efforts from the Brazilian Government and Judiciary to regulate the responsibility of social media companies providing their services in Brazil*⁵¹.

After this announcement, before the WTO General Council, the Brazilian representative affirmed that “beyond the wholesale violations of international trade rules – and even more concerning –, we are now witnessing an extremely dangerous shift towards the use of tariffs as a tool in attempts to interfere in the domestic affairs of third countries”⁵². In August 2025, the 50% tariffs entered into force based on the IEEPA with several exceptions⁵³.

Pereira and Amaral correctly point out that such tariffs resulted in a violation of the non-intervention principle under customary international

⁵⁰ The EU Anti-Coercion Instrument explicitly mentions countermeasures based on customary international law as its normative basis. See in: EUROPEAN UNION. **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**. Available in: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202302675. Access on Aug. 18, 2025. Recital 13.

⁵¹ PEREIRA, Luíza L. S. **Trump's “Tarifaço” Against Brazil: a Breach of the Non-Intervention Rule**. EJIL:Talk! Blog of the European Journal of International Law, 2025. Available in: <https://www.ejiltalk.org/trumps-tarifaco-against-brazil-a-breach-of-the-non-intervention-rule/>. Access on Aug. 17, 2025.

⁵² BRAZILIAN MINISTRY OF FOREIGN AFFAIRS. **Press Release of 23 July 2025**. Available in: https://www.gov.br/mre/pt-br/canais_atendimento/imprensa/notas-a-imprensa/participacao-do-brasil-na-reuniao-do-conselho-geral-da-omc. Access on Aug. 18, 2025.

⁵³ THE WHITE HOUSE. **Fact Sheet: President Donald J. Trump Addresses Threats to the United States from the Government of Brazil**, 2025. Available in: <https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-addresses-threats-to-the-united-states-from-the-government-of-brazil/>. Access on Aug. 18, 2025.

law⁵⁴, which is the non-WTO breach in question. As defined by the International Court of Justice (“ICJ”) in *Nicaragua v. United States*, *under customary international law, a prohibited intervention is defined by two cumulative elements: (i) an interference with States’ internal or external affairs, what is also known as States’ sovereign affairs or domaine réservé; and (ii) coercion, which is the very essence of prohibited intervention*⁵⁵.

Undoubtedly, domestic judicial procedures against Brazilian nationals fall within Brazil’s sovereign affairs⁵⁶. The requirement of coercion, however, is not straightforward. In *Nicaragua v. United States*, the ICJ examined whether some economic measures imposed by the US violated the non-intervention principle, including the cessation of economic aid, a 90% reduction on sugar quota imports from Nicaragua, and a trade embargo, concluding that it could not see those measures “on the economic plane as is here complained” as a violation of the non-intervention principle⁵⁷. Arguably, as pointed out by Olsthoorn,

⁵⁴ PEREIRA, Luíza L. S. **Trump’s “Tarifaço” Against Brazil: a Breach of the Non-Intervention Rule**. EJIL:Talk! Blog of the European Journal of International Law, 2025. Available in: <https://www.ejiltalk.org/trumps-tarifaco-against-brazil-a-breach-of-the-non-intervention-rule/>. Access on Aug. 17, 2025; AMARAL, Alberto do. **A proibição da intervenção internacional e o caso dos EUA no Brasil**. Jornal da USP, 2025. Available in: <https://jornal.usp.br/radio-usp/a-proibicao-da-intervencao-internacional-e-o-caso-dos-eua-no-brasil/>. Access on Aug. 19, 2025.

⁵⁵ ICJ. **Military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America), 1986 Judgment**. Available in: <https://icj-cij.org/case/70/judgments>. Access on Aug. 20, 2025. para. 205.

⁵⁶ The scope of States’ reserved domain is not entirely clear under public international law. In 1923, the Permanent Court of International Justice (“PCIJ”) defined this scope based on “matters not, in principle, regulated by international law”. This *ex negativo* approach suggests a dynamic concept that changes (and shrinks) following the proliferation and expansion of international law. Even so, as suggested by Ziegler, the exercise of jurisdiction over its own nationals still falls within States’ reserved domain (despite inroads of human rights law on the matter). See in: PCIJ. **Nationality decrees issued in Tunis and Morocco, 1923 Advisory Opinion**. Available in: <https://icj-cij.org/pcij-series-b>. Access on Aug. 20, 2025. pp. 23-24; ZIEGLER, Katja S. **Domaine réservé**. Max Planck encyclopedia of public international law, 2013. Available in: <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1398>. Access on Aug. 20, 2025. para. 5.

⁵⁷ ICJ. **Military and paramilitary activities in and against Nicaragua (Nicaragua**

the economic measures were “quite severe in nature”, so that the ICJ established a high threshold for economic coercion under customary international law⁵⁸.

Nevertheless, the Brazilian example (although less severe in the economic plane), has a strict connection with coercion as extortion. As explained by Milanovic, this is the method in which a coercing State inflicts a harm on the coerced State and then offers to alleviate in return for concessions that fall within its sovereign affairs⁵⁹. This is a clear example of the “subjugation of another State’s will”, more likely to result in a violation of the non-intervention principle⁶⁰. Therefore, the Brazilian example is not limited to the “economic plane”, but it is strictly connected with the extortion being imposed over Brazil’s sovereign affairs, what, as argued by Pereira and Amaral, results in a violation of the non-intervention principle⁶¹.

v. United States of America), 1986 Judgment. Available in: <https://icj-cij.org/case/70/judgments>. Access on Aug. 20, 2025. paras. 244-5.

⁵⁸ OLSTHOORN, Kornel. **The EU’s anti-coercion instrument: A return of unlawful unilateral trade countermeasures in disguise? Legal Issues of Economic Integration**, v. 51(1), 2024. Available in: <https://doi.org/10.54648/leie2024003>. Access on Aug. 20, 2025. p. 64.

⁵⁹ MILANOVIC, Marko. **Revisiting Coercion as an Element of Prohibited Intervention in International Law**. *American Journal of International Law*, Cambridge, v. 117(4), 2023. Available in: <https://doi.org/10.1017/ajil.2023.40>. Access on Aug. 20, 2025. pp. 628, 630-631; HELAL, Mohamed. S. **On Coercion in International Law**. *New York University Journal of International Law and Politics*, 52(1), 2019. Available in: <https://www.nyujilp.org/wp-content/uploads/2020/01/NYI101.pdf>. Access on Aug. 20, 2025. p. 107.

⁶⁰ JAMNEJAD, Maziar; WOOD, Michael. **The Principle of Non-intervention**. *Leiden Journal of International Law*, v. 22(2), 2009. Available in: <https://doi.org/10.1017/S0922156509005858>. Access on Aug. 20, 2025. p. 371. This is also found in the Friendly Relations Declaration adopted by the United Nations General Assembly in 1971 as “the subordination of the exercise of its sovereign rights”, including the use of economic measures to this end. See in: UNITED NATIONS GENERAL ASSEMBLY. **Declaration on principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations (A/RES/2625(XXV))**, 1971. Available in: <https://digitallibrary.un.org/record/202170?v=pdf>. Access on Aug. 20, 2025. p. 123.

⁶¹ PEREIRA, Luíza L. S. **Trump’s “Tarifaço” Against Brazil: a Breach of the Non-Intervention Rule**. *EJIL:Talk! Blog of the European Journal of International Law*, 2025. Available in: <https://www.ejiltalk.org/trumps-tarifaco->

As such, Trump's tariffs against Brazil are not only a WTO breach, but also a non-WTO breach of the non-intervention principle, an obligation based on customary international law. This concurrent violation extrapolates the scope of Article 23 of the WTO DSU, which arguably only encompasses States seeking to redress WTO breaches and, as such, Brazil would be entitled to resort to unilateral countermeasures based on the general rules on State responsibility.

These rules were codified by the International Law Commission ("ILC") in the Articles on the Responsibility of States for Internationally Wrongful Acts ("ARSIWA"). As summarized by the ILC, countermeasures are part of a "decentralized system" in which injured States "may seek to vindicate their rights and to restore the legal relationship with the responsible State which has been ruptured by the internationally wrongful act"⁶².

Under Article 22 of the ARSIWA, countermeasures are described as a circumstance precluding wrongfulness, meaning that they are a justification or excuse for the non-performance of international obligations⁶³. It is a form of self-help according to which injured States can adopt *a priori* illegal acts "in order to induce" the responsible State to comply with its obligations under international law⁶⁴. Even if

[against-brazil-a-breach-of-the-non-intervention-rule/](#). Access on Aug. 17, 2025; AMARAL, Alberto do. **A proibição da intervenção internacional e o caso dos EUA no Brasil**. Jornal da USP, 2025. Available in: <https://jornal.usp.br/radio-usp/a-proibicao-da-intervencao-internacional-e-o-caso-dos-eua-no-brasil/>. Access on Aug. 19, 2025.

⁶² ILC. **Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries**, 2001. Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. Access on Aug. 18, 2025. Chapter II, Commentary 1.

⁶³ ILC. **Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries**, 2001. Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. Access on Aug. 18, 2025. Chapter V, Commentary 2.

⁶⁴ ILC. **Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries**, 2001. Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. Access on Aug. 18, 2025. Article 49(1), Commentary 1 and Chapter II, Commentary 2. The legality of countermeasures also depends on many other conditions and limitations described by the ILC, notably: (i) being temporarily limited to the previous internationally wrongful act; (ii) being proportionate to the injury suffered; (iii) not affecting a

countermeasures presuppose a previous violation of international law by another State, this is unilaterally determined by the (self-claimed) injured State⁶⁵.

Therefore, this third and final legal pathway has a similar advantage to the suspension of concessions or other obligations under the Agreement on Safeguards: it also permits States to respond unilaterally to Trump's tariffs – although from outside the WTO system. Its scope, however, is different and more limited: it only encompasses tariffs that also result in a violation of a non-WTO obligation, notably the case of economic coercion and the principle of non-intervention. This would be more akin to the tariffs being imposed due to political motivations rather than mere commercial deficits of the US.

5. Conclusion

The three legal ways for responding to Trump's tariffs vary in scope, legal basis and also whether they allow unilateral retaliation.

The first one, suspending concessions or other obligations based on the Agreement on Safeguards, is tied to the WTO system, allows for unilateral retaliation, but is limited in scope, only encompassing Section 232 tariffs, and its legal foundation is dubious (not to say clearly unfounded in light of the Panels' reports).

The second one, initiating a dispute settlement procedure, is still tied to the WTO system, its legal foundation is well-settled (as the US probably would be unable to justify the measures as national security exceptions), but, conversely, it does not allow for unilateral retaliation – on the contrary, the paralysis of the Appellate Body and the prohibition on unilateral countermeasures by the DSU create a deadlock scenario.

series of obligations owned by States under international law, such as the prohibition on the use of force, *jus cogens*, *human rights and humanitarian obligations*, as well as obligations related to dispute settlement procedures. See in: ILC. **Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries**, 2001. Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. Access on Aug. 18, 2025. Articles 49-51.

⁶⁵ As such, the self-claimed injured State acts at its own risk of incurring own responsibility in case of incorrect assessment. See in: ILC. **Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries**, 2001. Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. Access on Aug. 18, 2025. Article 49, Commentary 3.

The third and final one, adopting unilateral countermeasures based on customary international law, is the only that moves away from the WTO system. It allows for unilateral countermeasures and has a very limited scope, only covering tariffs that also result in a non-WTO breach, notably the case of economic coercion. Its legal foundation is not straightforward: the scope of Article 23 of the DSU is not entirely clear, but it arguably only covers WTO breaches. As such, when responding to concurrent non-WTO and WTO breaches, States would be entitled to adopt unilateral countermeasures without violating the WTO rules.

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