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SPECIAL SECTION

UNILATERAL TARIFFS AND LEGAL ADAPTATION: THE VIETNAM - U.S. TRADE DEAL IN FRAGMENTED TRADE GOVERNANCE

Abstract

Tariffs have re-emerged as strategic instruments of economic statecraft, reflecting a shift in global trade governance where power and security increasingly shape market relations. The 2025 Vietnam-U.S. tariff deal exemplifies this transformation: introduced under the International Emergency Economic Powers Act (IEEPA), it marked the first time emergency powers were used to impose unilateral, partner-specific tariffs outside traditional sanctions. While protectionism and WTO paralysis have been widely studied, little attention has been given to how unilateral tariff measures reshape global value chains and generate legal and institutional forms of adaptation. This paper fills that gap by examining the Vietnam-U.S. tariff episode as a model for understanding how unilateral tariffs trigger legal and institutional adaptation across multiple levels in the emerging trade order. Using a qualitative legal and policy analysis, the study assesses the legal foundation of the IEEPA-based tariff regime, its WTO compatibility, and Vietnam's adaptive measures in regulatory transparency, industrial localisation, and contractual adjustment. The analysis finds that transshipment disputes expose the fragility of non-harmonised rules of origin, retaliation has shifted from collective, rule-based enforcement to unilateral discretion, and innovation emerges as one mechanism within broader processes of legal and institutional adaptation for sustaining participation in global markets. The paper concludes that when formal trade enforcement collapses, smaller economies can maintain credibility and bargaining power not through retaliation, but by enhancing transparency, clarifying origin rules, and embedding flexibility in trade and investment contracts, thereby turning compliance into a strategic form of adaptation.

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1 Introduction

The resurgence of tariff measures in the mid-2020s marks a decisive turning point in the reconfiguration of global trade governance.¹ Once considered relics of pre-WTO protectionism, tariffs have re-emerged as strategic tools of statecraft, deployed not only to address trade imbalances but also to assert economic sovereignty and advance geopolitical objectives.² This shift reflects a more profound transition in the post-pandemic order, where national security and industrial policy increasingly shape trade behaviour. As a result, tariffs have transformed from fiscal measures into strategic tools that connect legal, political, and industrial dimensions of international trade.³

The 2025 Vietnam-U.S. tariff deal represents a critical inflexion point within this evolving landscape. Unlike earlier unilateral tariff episodes grounded in trade remedies or WTO-consistent safeguard mechanisms,⁴ the measures were introduced under the U.S. International Emergency Economic Powers Act (IEEPA), marking the first use of emergency economic powers to impose partner-specific tariffs against a non-sanctioned trading partner. The dual-rate regime of 20 and 40 percent imposed on Vietnamese exports exemplifies a broader pattern of widespread, discretionary tariff action associated with the “Trump 2.0” phase of U.S. trade policy, in which emergency authority substitutes for multilateral discipline.⁵ Vietnam’s position within global value chains, as both a manufacturing hub and a re-export platform, made it particularly vulnerable to the United

¹ Faisal Islam, ‘Trump Tariffs: This Is the Biggest Change to Global Trade in 100 Years’ (*BBC News*, 3 April 2025) <<https://www.bbc.co.uk/news/articles/cly1j2v4klzo>> accessed 15 August 2025.

² Reuven S Avi-Yonah et al, ‘From Relic to Relevance: The Resurgence of Tariffs’ (2025) 4-5 *University of Michigan Law School, Law & Economics Working Papers* 290 40.

³ Sophia Miller, ‘Tariffs, Trade Wars, and Supply Chain Diversification Strategies’ (*Global Trade Magazine*, 11 June 2025) <<https://www.globaltrademag.com/tariffs-trade-wars-and-supply-chain-diversification-strategies/>> accessed 15 August 2025.

⁴ Ammar Zafar, ‘Protectionism, Power, and the Erosion of WTO Discipline: Legal and Economic Lessons from the Trade Wars’ (2025) 12 *Social Sciences & Humanities Open* 1, 3 <<https://doi.org/10.1016/j.ssaho.2025.101983>> accessed 17 August 2025.

⁵ Rajan Sudesh Ratna, Selim Raihan and Prabir De, *Reciprocal Tariffs under Trump 2.0: Strategy for Resilience for South and South-West Asia* (UN ESCAP South and South-West Asia Office 2025) 8.



States' (U.S.) claims of transshipment and deficit-driven reciprocity.⁶ The case, therefore, provides a concrete example of how the return of tariff politics intersects with supply-chain interdependence and legal ambiguity.

Despite extensive scholarship on unilateral tariffs, including perennial trade remedies and the 2018-19 U.S.-China tariff escalation, existing studies have focused mainly on macroeconomic impacts,⁷ retaliation dynamics,⁸ or systemic WTO erosion,⁹ with limited attention to how emergency-based, partner-specific tariffs reshape global value chains and generate legal and institutional forms of adaptation. In particular, the literature has yet to examine how smaller, trade-dependent economies respond when unilateral measures operate outside established enforcement frameworks and formal dispute settlement mechanisms lose traction. This paper addresses that gap by examining the 2025 Vietnam-U.S. tariff episode as a model for understanding how unilateral tariffs trigger legal and institutional adaptation across regulatory, industrial, and contractual domains, revealing a broader transformation in global trade governance—from predictable, rule-based coordination to fragmented systems characterised by discretion, adaptation, and compliance-oriented strategy.

Methodologically, this study employs a qualitative, multi-level analysis integrating legal interpretation, institutional comparison, and policy assessment. It situates the U.S. tariff actions within their statutory framework under IEEPA, evaluates their compatibility with WTO obligations, and traces Vietnam's adaptation through regulatory transparency, industrial localisation, and contractual adjustment. This approach forms the basis for the paper's structure: Section 1 introduces the design and legal foundation of the Vietnam-U.S. tariff regime; Section 2 assesses its WTO compatibility and the systemic risks associated with unilateral tariff enforcement; Section 3 examines legal and institutional adaptation within global value chains; and Section 4 discusses broader implications for trade governance and reform pathways.

2 The Vietnam-U.S. Tariff Deal: Design, Legal Basis, and Unilateral Logic

2.1 Design and Scope of the 2025 Tariff Measures

The 2025 Vietnam-U.S. tariff measures, announced in the presidential proclamation on further modifying the reciprocal tariff rates on July 31, 2025, introduced a two-tier tariff

⁶ Arendse Huld, 'The Impact of Tariffs on Vietnamese Exports: US-Vietnam Trade Relations under Trump 2.0' (*Vietnam Briefing News*, 26 August 2025) <<https://www.vietnam-briefing.com/news/us-vietnam-trade-relations-trump-impact-tariff-vietnamese-exports.html/>> accessed 10 October 2025.

⁷ Joost Pauwelyn, 'How the US Reciprocal Tariff Plan May Save the Global Trading System' (2025) 24(4) *World Trade Review* 509, 513 <<https://doi.org/10.1017/S1474745625101055>> accessed 15 September 2025.

⁸ Davin Chor and Bingjing Li, 'Illuminating the Effects of the US-China Tariff War on China's Economy' (2024) 150 *Journal of International Economics* 1, 2-3 <<https://doi.org/10.1016/j.jinteco.2024.103926>> accessed 17 September 2025.

⁹ Jennifer Hillman, 'A Reset of the World Trade Organization's Appellate Body' (*Council on Foreign Relations*, January 2020) <<https://www.cfr.org/report/reset-world-trade-organizations-appellate-body>> accessed 15 August 2025.

regime that substantially altered the tariff landscape for Vietnamese exports. The July measures were broad in scope but not uniform in application. In principle, products listed under the relevant harmonised tariff schedule of the United States (HTSUS) headings were subject to an additional duty of twenty percent (20%) above the prevailing most-favoured-nation (MFN) rates in column 1 (general).¹⁰ However, this baseline application was qualified by transitional exemptions, shipment cut-off dates, and subsequent negotiated adjustments, resulting in differentiated tariff exposure across product categories rather than a single uniform treatment.

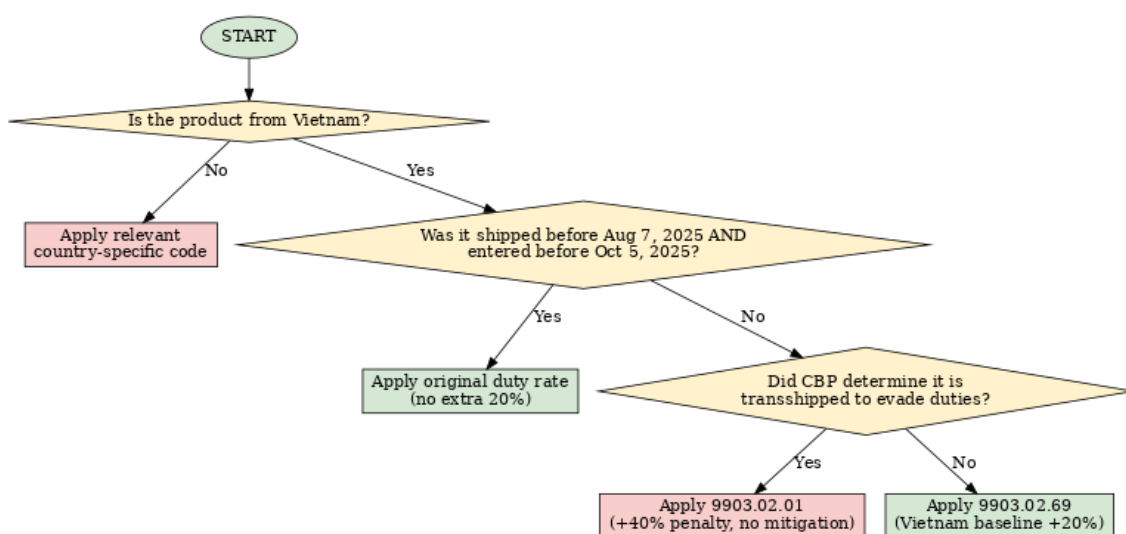


Figure 1. Tariff determination process under the 2025 U.S.-Vietnam Trade Adjustment Order.¹¹

A higher surcharge of forty per cent (40%) points is imposed where goods are deemed by U.S. Customs and Border Protection (CBP) to be of third-country origin, a provision clearly aimed at transshipment practices, particularly those alleged to involve token or minimal transformation of Chinese-origin goods in Vietnam before re-export to the U.S.¹² The operative scope of these measures is defined in Annex II to the proclamation, which enumerates a wide range of HSUS headings covering multiple industrial and consumer

¹⁰ US, Executive Order No 14326, Further Modifying the Reciprocal Tariff Rates, Annex II, s 4 (31 July 2025) <<https://www.whitehouse.gov/presidential-actions/2025/07/further-modifying-the-reciprocal-tariff-rates/>> accessed 19 March 2026 Annex I.

¹¹ Figure 1 illustrates the operational logic of tariff application under the 2025 Vietnam-U.S. tariff regime. “CBP” refers to U.S. Customs and Border Protection. HTSUS codes 9903.02.01 and 9903.02.69 correspond to additional duties of 40% and 20%, respectively. The flowchart reflects the sequential assessment of origin, shipment timing, and CBP determinations regarding transshipment.

¹² US, Executive Order No 14326, Further Modifying the Reciprocal Tariff Rates, Annex II, s 4 (31 July 2025) <<https://www.whitehouse.gov/presidential-actions/2025/07/further-modifying-the-reciprocal-tariff-rates/>> accessed 19 March 2026 Annex II).



sectors. While the coverage is extensive, not all listed products were affected equally in practice, as the effective tariff burden depended on origin determinations, shipment timing, and CBP verification outcomes.

Subsequent developments further qualified the scope of the July 2025 tariff regime. In October 2025, the U.S. and Viet Nam announced a Framework for an Agreement on Reciprocal, Fair, and Balanced Trade, signalling a negotiated adjustment to the initial unilateral measures. Under this framework, the U.S. committed to maintaining the baseline 20% reciprocal tariff on Vietnamese-origin goods while identifying a subset of products listed in Annex III to Executive Order 14346 as eligible for a zero-percent tariff rate.¹³ While the framework did not displace the original IEEPA-based tariff authority, it introduced selective exemptions and differentiated treatment across product categories, reinforcing the view that the effective tariff burden varied by sector, timing, and political alignment rather than applying uniformly to all Vietnamese exports.

In 2024, the U.S. accounted for 29.5% of Vietnam's total merchandise exports, valued at USD 119.46 billion.¹⁴ Table 1 summarises Vietnam's major export categories to the U.S. market and their relative exposure to U.S. demand. The sectors with the most significant export value - namely wood and wood products; toys, sports equipment, and parts; plastic products; apparel and textiles; and bags, suitcases, hats, and umbrellas¹⁵ - are all explicitly or implicitly included in Annexe II, making them focal points of the tariff regime. The degree of exposure nevertheless varies across categories due to negotiated carve-outs, transitional exemptions, and differing origin determinations.

¹³ The White House, 'Joint Statement on United States-Vietnam Framework for an Agreement on Reciprocal, Fair, and Balanced Trade' (*The White House Washington*, 26 October 2025) <<https://www.whitehouse.gov/briefings-statements/2025/10/joint-statement-on-united-states-vietnam-framework-for-an-agreement-on-reciprocal-fair-and-balanced-trade/>> accessed 2 November 2025.

¹⁴ Vietnam Customs, 'Preliminary Assessment of Vietnam International Merchandise Trade Performance in Whole Year of 2024' (*Vietnam Customs Statistics*, 24 January 2025) <[https://www.customs.gov.vn/index.jsp?pagelId=2281&aid=209418&cid=4208#:~:text=In%20whole%20year%20of%202024%2C%20Vietnam's%20trade%2Din,to%20US%20dollars%20380.76%20billion](https://www.customs.gov.vn/index.jsp?pagelId=2281&aid=209418&cid=4208#:~:text=In%20whole%20year%20of%202024%2C%20Vietnam's%20trade%2Din,to%20US%20dollars%20380.76%20billion>)> accessed 17 August 2025.

¹⁵ WTO-VCCI, 'US Countervailing Tariffs and Vietnamese Enterprises' Responses' (Workshop Report 18 April 2025, Vietnam Chamber of Commerce and Industry (VCCI)) presented by Dau Anh Tuan, Deputy Secretary-General and Head of Legal Department, compiled from Vietnam Customs data.

	Categorie	Value to the US (Billion Dollars)	Percent
1	Wood and wood products	9.06	55.6%
2	Toys, sports equipment, and parts	1.78	47.4%
3	Plastic products	3.08	45.8%
4	Apparel and textiles	16.15	43.6%
5	Bags, suitcases, hats, umbrellas	1.80	42.4%
6	Machinery, equipment, and other spare parts	22.05	42.3%
7	Footwear	8.28	36.2%
8	Cashew	1.15	26.6%
9	Computers, electronic devices, phones, and components	33.03	26.1%
10	Vehicles and spare parts	3.27	21.7%

Table 1. Vietnam’s Major Export Categories to the United States (2024).¹⁶

Preliminary estimates suggest that Vietnam’s total export exposure to the U.S. market amounts to approximately 12% of GDP. A 20% tariff surcharge—assuming an elasticity of demand near unity—could place around 2.5% of national output at risk.¹⁷ This level of exposure highlights Vietnam’s dependence on the U.S. market and the potential scale of economic disruption under the new tariff regime. Understanding how such extensive measures could be imposed requires examining the domestic legal authorities that empower the U.S. executive, which are discussed in the next section through the IEEPA and related executive orders.

2.2 U.S. Legal Basis: IEEPA and Executive Orders

The U.S. legal foundation for the 2025 tariff measures lies primarily in the *International Emergency Economic Powers Act* (IEEPA), codified at 50 U.S.C. § 1701 et seq. Under IEEPA, the President may, upon declaring a national emergency in response to an “*unusual and extraordinary threat*” originating outside the U.S., regulate or prohibit a wide range of economic transactions.¹⁸ Although IEEPA has often been employed to freeze assets or

¹⁶ Table 1 reports the ten largest Vietnamese export categories to the United States in 2024, ranked by export value. “Percent” indicates the share of each product category’s total exports that are destined for the U.S. market, reflecting sector-specific dependence on U.S. demand rather than tariff rates.

Source: Vietnam Chamber of Commerce and Industry (VCCI), compiled from data of the General Department of Vietnam Customs.

¹⁷ Deepali Bhargava, ‘Assessing the Impact of the US-Vietnam Trade Deal’ (*ING Think*, 3 July 2025) <<https://think.ing.com/articles/assessing-the-impact-of-the-us-vietnam-trade-deal/>> accessed 20 August 2025.

¹⁸ 50 USC §1701.



restrict financial dealings, its scope extends to import restrictions when tied to a declared emergency.¹⁹

The use of such emergency economic powers has historical antecedents. In 1971, for instance, President Nixon relied on Section 5(b) of the *Trading with the Enemy Act* (TWEA), the statutory predecessor to IEEPA, to declare a national emergency and impose a 10% ad valorem surcharge on all dutiable imports in response to a balance-of-payments crisis.²⁰ Similarly, in 1980, President Carter invoked IEEPA to block the importation of Iranian goods during the hostage crisis.²¹ These precedents demonstrate that emergency economic powers have long encompassed financial sanctions and trade-restrictive measures directly affecting imports.

In this instance, the President invoked IEEPA through Executive Order 14257, issued on April 2, 2025, which formally declared a national emergency in relation to large and persistent U.S. goods trade deficits, attributed to non-reciprocal tariff rates, non-tariff barriers, and foreign economic policies that suppressed wages and consumption, thereby undermining U.S. manufacturing, supply chains, and the defence-industrial base.²² This order established the statutory link between the declared emergency and the imposition of tariff measures. A subsequent instrument, Executive Order 14266, issued on April 9, 2025, operationalised and modified the tariff framework established under Executive Order 14257 by:²³

- Suspending country-specific ad valorem rates in Annexe I of EO 14257 for 90 days (except for China) and replacing them with a uniform 10% duty on imports from those trading partners;
- Raising the duty on Chinese imports under HTSUS heading 9903.01.63 from 84% to 125%, effective April 10, 2025;
- Amending multiple HTSUS headings and notes to reflect these changes, including suspending duties in headings 9903.01.43-9903.01.62 and 9903.01.64-9903.01.76 for 90 days;

¹⁹ Christopher T Zirpoli, 'Legal Authority for the President to Impose Tariffs under the International Emergency Economic Powers Act (IEEPA)' (*Congressional Research Service*, 7 April 2025) 2 <<https://www.congress.gov/crs-product/LSB11281>> accessed 17 September 2025.

²⁰ Inu Manak and Helena Kopans-Johnson, 'Tariffs on Trading Partners: Can the President Actually Do That?' (*Council on Foreign Relations*, February 2025) <<https://www.cfr.org/report/tariffs-trading-partners-can-president-actually-do>> accessed 21 August 2025.

²¹ Christopher A Casey and Jennifer K Elsea, 'The International Emergency Economic Powers Act: Origins, Evolution, and Use' (*Congressional Research Service*, 1 September 2024) 6, 18 <https://www.congress.gov/crs_external_products/R/PDF/R45618/R45618.16.pdf> accessed 10 October 2025.

²² US, Executive Order No 14257, Regulating Imports With a Reciprocal Tariff To Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits, 90 FR 15041 (7 April 2025) <<https://www.federalregister.gov/documents/2025/04/07/2025-06063/regulating-imports-with-a-reciprocal-tariff-to-rectify-trade-practices>> accessed 19 March 2026.

²³ US, Executive Order No 14266, Modifying Reciprocal Tariff Rates to Reflect Trading Partner Retaliation and Alignment, 90 FR 15625 (15 April 2025) <<https://www.federalregister.gov/documents/2025/04/15/2025-06462/modifying-reciprocal-tariff-rates-to-reflect-trading-partner-retaliation-and-alignment>> accessed 19 March 2026.

- Introducing further tariff increases on low-value imports, including raising postal duties per item from \$75 to \$100 (effective May 2, 2025) and from \$150 to \$200 (effective June 1, 2025); and
- Delegating implementation responsibilities to the Secretary of Commerce, the Secretary of Homeland Security, and the U.S. Trade Representative (USTR), in consultation with other senior officials, to adopt regulations and take all necessary actions under IEEPA.

The IEEPA operates through a two-step process: first, the President declares a national emergency,²⁴ and second, federal agencies implement and enforce these measures. Under Executive Order 14257, authority was delegated to the Secretary of Commerce, the Secretary of Homeland Security, and the USTR, in consultation with other senior officials, to take the necessary regulatory and administrative actions.²⁵ This pathway differs from tariff actions under Section 301 of the *Trade Act of 1974*, which require a formal investigation by the USTR and findings of unfair trade practices.²⁶ By contrast, IEEPA provides a more direct executive route that bypasses the investigative phase, but only if a prior declaration of a national emergency has been made.

Although IEEPA confers sweeping authority, its use is subject to the National Emergencies Act (NEA) framework.²⁷ Tariff measures imposed under IEEPA remain precarious unless actively maintained, because the NEA imposes three critical constraints. First, emergency declarations automatically expire one year after issuance, unless the President publishes a renewal notice in the Federal Register. Second, Congress must convene every six months during a declared emergency to consider whether to terminate it. Third, Congress retains the power to end an emergency declaration through a concurrent resolution, also known as a legislative veto, which does not require presidential approval.²⁸ These procedural limits underscore that IEEPA tariffs are not self-sustaining but depend on continuing executive and political support.

That fragility becomes even more pronounced in the 2025 case, where IEEPA was deployed in a legally unprecedented manner. No prior administration had used IEEPA to impose across-the-board tariffs.²⁹ Nixon's 1971 surcharge rested on the TWEA, while

²⁴ Jennifer K Elsea, 'Enforcement of Economic Sanctions: An Overview' (*Congressional Research Service*, 18 March 2024). <<https://www.congress.gov/crs-product/IF12063>> accessed 5 August 2025.

²⁵ US, Executive Order No 14326, Further Modifying the Reciprocal Tariff Rates, Annex II, s 4 (31 July 2025) <<https://www.whitehouse.gov/presidential-actions/2025/07/further-modifying-the-reciprocal-tariff-rates/>> accessed 19 March 2026.

²⁶ Danielle M Trachtenberg, 'Section 301 of the Trade Act of 1974' (*Congressional Research Service*, 30 July 2025) <<https://www.congress.gov/crs-product/IF11346>> accessed 15 October 2025.

²⁷ Christopher A Casey, 'The International Emergency Economic Powers Act (IEEPA), the National Emergencies Act (NEA), and Tariffs: Historical Background and Key Issues' (*Congressional Research Service*, 7 April 2025) 1 <<https://www.congress.gov/crs-product/IN11129>> accessed 15 October 2025.

²⁸ Rachel Riegelhaupt, 'Manufactured Emergencies: The Crisis at the Core of the National Emergencies Act' (2020) 23 New York University Journal of Legislation and Public Policy 277 <<https://nyujlpp.org/wp-content/uploads/2021/07/JLPP-23.1-Riegelhaupt-Final.pdf>> accessed 17 September 2025.

²⁹ Christopher T Zirpoli, 'Congressional and Presidential Authority to Impose Import Tariffs' (*Congressional Research Service*, 23 April 2025) 20 <<https://www.congress.gov/crs-product/R48435>> accessed 20 September 2025.



Carter's 1980 actions were narrowly targeted against Iran. The U.S.-Vietnam measures, therefore, represent a novel deployment of IEEPA as a general tariff instrument. This unprecedented use has already triggered judicial scrutiny. In May 2025, the U.S. Court of International Trade (CIT) held in *V.O.S. Selections v. United States* that the 2025 IEEPA tariffs exceeded the statutory authority conferred by IEEPA. However, the Federal Circuit promptly stayed the CIT's injunction, allowing the tariff regime to remain in force pending appeal.³⁰ The decision has therefore not suspended the tariffs in practice. Still, it has cast significant legal doubt over their validity, underscoring the contested legal basis of employing emergency economic powers for reciprocal tariff structures rather than the more traditional use for targeted sanctions.

2.3 Economic and Political Logic of Targeting Vietnam

The decision to single out Vietnam is not reducible to tariff schedules alone; it reflects a convergence of measurable trade frictions and highly strategic political calculations in Washington. On the economic side, two stylised facts made Vietnam an easy target in 2024-2025. First, Vietnam's MFN applied tariff profile, when measured in the way trade economists actually compare regimes, is meaningfully higher than that of the U.S. According to Reuters, the WTO's tariff profile reports a trade-weighted MFN average for Vietnam of about 5.1%, compared to the U.S.'s 2.2%.³¹ This disparity allowed U.S. officials to frame Vietnam as benefiting disproportionately from access to the American market while maintaining higher barriers of its own, which, in turn, provided grounds for the U.S. to significantly increase effective tariff rates on Vietnamese goods.³²

Second, the U.S. had already established a record of unilateral scrutiny of non-tariff measures vis-à-vis Vietnam. In January 2021, the USTR, completing a Section 301 inquiry, concluded that Vietnam's acts, policies, and practices contributing to the undervaluation of its currency - including excessive government intervention in foreign-exchange markets and related measures - were "*unreasonable*" within the meaning of Section 301 of the Trade Act and imposed burdens on U.S. commerce.³³ Although the State Bank of Vietnam (SBV) pledged in a 2021 agreement with the U.S. Treasury not to pursue currency

³⁰ Samuel Streicher and Andrew Babbitt, 'Court of International Trade's Flawed Ruling on Trump's Tariffs' (*Just Security*, 14 July 2025) <<https://www.justsecurity.org/116792/international-trade-court-flawed-ruling-tariffs/>> accessed 1 September 2025.

³¹ Vietnam Chamber of Commerce and Industry (VCCI), 'The Impact of Tariffs on Vietnamese Exports: US-Vietnam Trade Relations under Trump 2.0' (*Center for WTO and International Trade - VCCI*, 26 March 2025) <<https://wtocenter.vn/chuyen-de/27448-the-impact-of-tariffs-on-vietnamese-exports-us-vietnam-trade-relations-under-trump-20>> accessed 2 September 2025.

³² Huld (n 6).

³³ Office of the United States Trade Representative, Report on Vietnam's Acts, Policies, and Practices Related to Currency Valuation, Prepared in the Investigation under Section 301 of the Trade Act of 1974 (*Executive Office of the President*, 15 January 2021) 20.

devaluation to avoid sanctions,³⁴ the Section 301 finding left a record that future administrations could readily revive. A parallel Section 301 probe into timber imports told the same story. Initiated in October 2020, it alleged that Vietnam was “*using illegal timber in wood products exported to the U.S. market,*” which “*harms the environment and is unfair to U.S. workers and businesses who follow the rules by using legally harvested timber.*”³⁵ The case concluded with a bilateral legality-assurance agreement, rather than penalties, leaving another “*actionable*” file on record.³⁶ These dormant cases ensured that Vietnam remained on Washington’s radar despite immediate trade measures.

Structural trade dynamics further heightened Vietnam’s vulnerability. Following the 2018 supply-chain reconfiguration, a *China+1* relocation wave into Vietnam was triggered,³⁷ as the country heavily relies on raw materials and intermediary goods from China, its largest trading partner and top import source, for the production and assembly of final goods destined for the U.S. market.³⁸ By 2024, an estimated 19% of Vietnam’s exports to the U.S. were expected to originate from China.³⁹ Yet Washington, focusing narrowly on the bilateral trade balance, interpreted Vietnam and other countries’ swelling surplus as evidence of “*unfair trade*” that disadvantaged the U.S., regardless of the embedded Chinese content.⁴⁰ The 2025 “*reciprocal*” tariff formula made that logic explicit: it simply divided the U.S. trade deficit with a partner country by the total value of U.S. imports from that country, with a minimum rate of 10%.⁴¹ Under this calculation, Vietnam was assigned an initial tariff of 46% - far above what any MFN comparison would suggest - before negotiations explored a reduction. Critics argued that the administration overestimated the tariffs needed to address trade imbalances by applying a “*one size fits*

³⁴ David Lawder and Lisa Lambert, ‘Vietnam Pledges Not to Devalue Currency in Agreement with US Treasury’ (*Reuters Finance*, 19 July 2021) <<https://www.reuters.com/business/finance/us-vietnam-reach-agreement-currency-treasury-2021-07-19/>> accessed 5 September 2025.

³⁵ United States Trade Representative, ‘USTR Initiates Vietnam Section 301 Investigation’ (*Office of the United States Trade Representative*, 2 October 2020) <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/october/ustr-initiates-vietnam-section-301-investigation>> accessed 29 August 2025.

³⁶ United States Trade Representative, ‘USTR Announces Agreement between the United States and Vietnam to Resolve Timber Section 301 Investigation’ (*Office of the United States Trade Representative*, 1 October 2021) <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/ustr-announces-agreement-between-united-states-and-vietnam-resolve-timber-section-301-investigation>> accessed 29 August 2025.

³⁷ Nguyen Thi Thanh Mai and Pham Thi Phuong, ‘Production Relocation of Multinational Companies from China and Chances for Vietnam’ (2020) 36(5) *Economics and Business* 21, 22-30 <<https://js.vnu.edu.vn/EAB/article/view/4458>> accessed 10 September 2025.

³⁸ Hoang Thi Ha, ‘Vietnam Navigates Trump’s Trade Headwinds: Making Virtue Out of Necessity’ (2025) 26 *ISEAS-Yusof Ishak Institute Perspective* 4 <<https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2025-26-vietnam-navigates-trumps-trade-headwinds-making-virtue-out-of-necessity-by-hoang-thi-ha/>> accessed 10 September 2025.

³⁹ Christine Peltier, ‘Vietnam: Economic Success Threatened by Trump 2.0?’ (*BNP Paribas Economic Research*, 4 February 2025) <<https://economic-research.bnpparibas.com/html/en-US/Vietnam-Economic-success-threatened-Trump-2-0-2/11/2025,51314>> accessed 20 September 2025.

⁴⁰ Peter Hooper, ‘Tariffs and the US Trade Deficit: Where Are We Headed?’ (*Deutsche Bank Research Institute*, 19 May 2025) 2, 23. <<https://www.dbresearch.com/PROD/RI-PROD/PDFVIEWER.calias?pdfViewerPdfUrl=PROD0000000000588982&rwnode=REPORT>> accessed 20 September 2025.

⁴¹ Stéfane Marion and Matthieu Arseneau, ‘US: What’s the Formula for Calculating Reciprocal Tariffs?’ *National Bank of Canada Economic Analysis* (3 April 2025) <<https://www.nbc.ca/content/dam/bnc/taux-analyses/analyse-eco/hot-charts/hot-charts-250403.pdf>> accessed 20 September 2025.



all” formula across all partners, ignoring how different products and supply conditions shape the actual impact of tariffs.⁴²

Political considerations reinforced these economic motives. First, because the tariffs were tied directly to trade deficits, U.S. politicians could present them as restoring “fairness” in trade while signalling support for workers and industries in key manufacturing states.⁴³ Second, great-power rivalry made Vietnam a proxy arena for signalling:⁴⁴ By targeting a Southeast Asian economy tied to Chinese supply chains, Washington warned that “backdoor” routing of Chinese goods would also face tariffs, without directly escalating duties on China.⁴⁵ Third, the tariffs served as leverage in bargaining. U.S. officials indicated that reductions would depend on Vietnamese concessions, including stronger enforcement of intellectual property rights, measures to curb transshipment through more explicit rules of origin, and preferential market access for U.S. exports.⁴⁶ For example, Vietnam will grant zero tariffs on U.S. imports and provide preferential access for certain American goods, such as large-engine automobiles.⁴⁷ By mid-2025, negotiations centred on lowering Vietnam’s initial 46% rate to approximately 20% on key product lines, underscoring that the measure served as leverage rather than a fixed endpoint.

Vietnam was targeted because it sat at the intersection of a defensible-sounding reciprocity claim, a documented history of U.S. investigations, and the domestic politics of deficits. While WTO data showed an MFN average of only 5.1%, the administration’s deficit-based formula inflated the number to 46%, aligning with a political narrative of “unfairness.” Assuming exemptions are removed, the deal raises the effective tariff rate on Vietnam from 11.7% to 20%, based on 2024 trade volumes.⁴⁸ The data illustrate that Vietnam became the main test case for Trump’s reciprocal tariff plan.

⁴² Robert Z Lawrence, “Reciprocal” Tariffs: What Are They Really For? (Peterson Institute for International Economics, August 2025) 4 <<https://www.piie.com/publications/policy-briefs/2025/reciprocal-tariffs-what-are-they-really>> accessed 21 September 2025.

⁴³ The White House, ‘Fact Sheet: President Donald J Trump Declares National Emergency to Increase Our Competitive Edge, Protect Our Sovereignty, and Strengthen Our National and Economic Security’ (The White House Washington, 2 April 2025) <<https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/>> accessed 5 September 2025.

⁴⁴ Nguyen Than, ‘Great Power Rivalry Is Not So Great: Vietnam’s Diplomacy as a Guide’ (Spheres of Influence, 15 April 2025) <<http://spheresofinfluence.ca/great-power-rivalry-is-not-so-great-vietnams-diplomacy-as-a-guide/>> accessed 10 September 2025.

⁴⁵ Bloomberg News, ‘Trump’s Vietnam Deal Shows China Tariffs Won’t Fall Much Further’ (Bloomberg, 3 July 2025) <<https://www.bloomberg.com/news/articles/2025-07-03/trump-s-vietnam-deal-shows-china-tariffs-won-t-fall-much-further>> accessed 11 September 2025.

⁴⁶ Phelim Kine and others, ‘US and Vietnam Reach Initial Tariff Deal’ (Politico, 2 July 2025) <<https://www.politico.com/news/2025/07/02/u-s-and-vietnam-have-reached-loose-framework-for-further-trade-talks-00437236>> accessed 13 September 2025.

⁴⁷ Estelle Xiao, ‘Vietnam-US Trade Deal 2025: Impacts and Strategic Responses’ (Vietnam Briefing News, 7 July 2025) <<https://www.vietnam-briefing.com/news/vietnam-us-trade-deal-2025-summary-impacts-and-strategic-responses.html/>> accessed 14 September 2025.

⁴⁸ JP Morgan Global Research, ‘US Tariffs: What’s the Impact on Global Trade and the Economy?’ (JP Morgan Global Research, 29 January 2026) <<https://www.jpmorgan.com/insights/global-research/current-events/us-tariffs>> accessed 20 February 2025.

3 WTO Constraints on Unilateral Tariffs: Non-Discrimination and Rules of Origin

3.1 Non-Discrimination, Transparency, and Rules of Origin

The 2025 U.S.-Vietnam tariff deal raises fundamental questions about compatibility with core obligations under the GATT 1994. While the early section has demonstrated that the measures rest on a contested but plausible domestic legal basis under the IEEPA and subsequent executive orders, their consistency with the multilateral trading system is far more doubtful. Assessing this requires turning to the foundational disciplines of GATT: the non-discrimination obligation of most-favoured-nation treatment under Article I:1, the related requirements of national treatment and transparency under Articles III and X, and the narrow exceptions that permit deviation, most notably the security clause of Article XXI and the safeguard provisions of Article XIX.

3.1.1 Most-Favoured-Nation Obligation (Article I:1 GATT)

The cornerstone of the WTO legal order is the commitment that members will not discriminate against their trading partners (the MFN Principle).⁴⁹ Article I:1 of GATT requires that any advantage granted to the products of one member be extended immediately and unconditionally to like products of all other members.⁵⁰ This obligation emerged in reaction to the fragmented tariff arrangements of the pre-GATT era, when discriminatory practices destabilised global trade.⁵¹ At the same time, the system recognises limited exceptions. These include (1) free trade agreements (FTAs), which allow members to grant preferential treatment to each other, and (2) special preference schemes such as the Generalized System of Preferences (GSP), under which certain economies provide reduced tariffs or free duty on most manufactured goods and certain agricultural products from a list of beneficiaries determined by each preference-granting country.⁵²

The reciprocal tariff system introduced by the U.S. in 2025 directly challenges this principle. Instead of applying a single MFN rate bound in its WTO schedule, Washington

⁴⁹ World Trade Organization (WTO), 'Understanding the WTO: Basics Principles of the Trading System' (World Trade Organization undated) <https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm> accessed 4 September 2025.

⁵⁰ Friedl Weiss and Silke Steiner, 'Goods, Free Circulation Of' *Max Planck Encyclopedias of International Law* (2011) para 22 <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1528>> accessed 19 March 2026.

⁵¹ Tomasz Gonciarz and Thomas Verbeet, 'Significance of Most-Favoured-Nation Terms in Global Trade: A Comprehensive Analysis' (15 January 2025) World Trade Organization, Economic Research and Statistics Division Staff Working Paper ERSD-2025-02, 7. <https://www.wto.org/english/res_e/reser_e/ersd202502_e.htm> accessed 10 September 2025.

⁵² Yingxin Du and others, 'Does the Generalized System of Preferences Promote Peace in Fragile Economies?' in Patrick Low, Amanda Miashiro, Roberta Piermartini and Mustapha Sadni Jallab (eds), *Trade for Peace: Pathways to Sustainable Trade and Peace* (World Trade Organization 2024) 127.



assigned different tariff levels to each trading partner, based on the size of the bilateral trade deficit.⁵³ For Vietnam, this translated into a negotiated 20% surcharge on all exports to the U.S. and an even higher 40% surcharge on goods classified by U.S. Customs as transshipped through Vietnam. In the April 2, 2025, “*Liberation Day*” announcement, the U.S. raised China’s surcharge to 145%, while other countries were allocated rates ranging from 10 to 50% depending on their trade balance with Washington.⁵⁴ In effect, the U.S. replaced the MFN principle with a patchwork of country-specific duties.

The discriminatory nature of this design becomes clear when considering like products exported by different members. Indonesia’s textile industry has welcomed the U.S. decision to lower additional import tariffs on Indonesian textile products to 19%, while Vietnam and Bangladesh face higher tariffs of around 20% and 35%, respectively.⁵⁵ The decisive factor is not the product’s nature but the exporter’s nationality and the political calculus of U.S. deficit accounting.⁵⁶ This is precisely the origin-based differentiation that WTO panels and the Appellate Body (AB) have consistently condemned. In *EC-Tariff Preferences*, the AB held that although developed countries may extend special treatment to developing countries under the Enabling Clause, such treatment must be available to all similarly situated beneficiaries. A member cannot selectively grant tariff advantages to some developing countries while excluding others with comparable needs.⁵⁷ In the *US-Shrimp*, the AB ruled that the U.S. import ban constituted arbitrary and unjustifiable discrimination under the Article XX chapeau. Although the formal finding rested on Article XX, its reasoning has been widely understood as reinforcing the MFN principle in Article I:1, since it implied that trade measures must be applied without discriminatory distinctions among members.⁵⁸ By analogy, conditioning tariffs on the country’s bilateral trade balance equally undermines the non-discrimination obligation in Article I:1 of GATT.⁵⁹

⁵³ Ronald B Davies, ‘Deriving the Trump Tariffs’ (April 2025) Rethink GSC Working Paper 2 <<https://rethink-gsc.eu/deriving-the-trump-tariffs/>> accessed 11 September 2025.

⁵⁴ Martin Beck, ‘US Tariffs: Background, Perspectives and Impact on the UK’ (*UK Parliament - House of Lords Library*, 14 April 2025) <<https://lordslibrary.parliament.uk/trump-and-us-tariffs-what-might-the-impact-be-on-the-uk/>> accessed 10 September 2025.

⁵⁵ Erfan Maruf, ‘US Tariff Cut Gives Indonesia Edge over Vietnam, Bangladesh in Textile Exports’ (*Jakarta Globe*, 16 July 2025) <<https://jakartaglobe.id/business/us-tariff-cut-gives-indonesia-edge-over-vietnam-bangladesh-in-textile-exports>> accessed 12 September 2025.

⁵⁶ Council on Foreign Relations (CFR) Editors, ‘The US Trade Deficit: How Much Does It Matter?’ (*Council on Foreign Relations*, 23 April 2025) <<https://www.cfr.org/backgrounders/us-trade-deficit-how-much-does-it-matter>> accessed 12 September 2025.

⁵⁷ Kevin Moss, ‘The Consequences of the WTO Appellate Body Decision in *EC-Tariff Preferences* for the African Growth Opportunity Act and Sub-Saharan Africa’ (2006) 38(3) *New York University Journal of International Law and Politics* 665 <<https://nyujilp.org/wp-content/uploads/2013/02/38.3-Moss.pdf>> accessed 15 September 2025.

⁵⁸ Donald McRae, ‘MFN in the GATT and the WTO’ (2012) 7(1) *Asian Journal of WTO & International Health Law and Policy* 1.

⁵⁹ Richard Baldwin and Giorgio Barba Navaretti, ‘US Misuse of Tariff Reciprocity and What the World Should Do about It’ (*Centre for Economic Policy Research - CEPR*, 10 April 2025) <<https://cepr.org/voxeu/columns/us-misuse-tariff-reciprocity-and-what-world-should-do-about-it>> accessed 12 September 2025.

The Vietnam deal is especially illustrative because of its two-tier structure - the baseline 20% surcharge breaches MFN by assigning a rate unique to Vietnam. The additional 40% surcharge applied to goods deemed to originate elsewhere but transshipped through Vietnam magnifies the violation by penalising products not based on their characteristics, but solely on the route they take through a particular member's territory.⁶⁰ Under WTO law, distinctions based on transport routes or intermediate processing have never been accepted as a basis for differential treatment.⁶¹ Here, the measure imposes additional duties on goods routed through Vietnam that would not apply if the same goods were exported directly from their country of origin, which is incompatible with the unconditional extension of advantages required by Article I:1.

In sum, the reciprocal tariff system and the Vietnam deal constitute a systemic breach of MFN. Rather than treating like products equally, irrespective of origin, the U.S. has reintroduced a discriminatory framework in which tariff levels depend on the exporting country and even on the path goods take through global supply chains. This strikes at the very foundation of the multilateral trading system.

3.1.2 Transparency, Predictability, and Parallels to National Treatment (Articles III and X GATT)

The most immediate concern raised by the 2025 surcharges under the WTO is Article X, which requires that all trade measures be published promptly and administered uniformly, impartially, and reasonably. The U.S. regime falls short of this standard. Implemented through presidential proclamations and executive orders, the surcharges were embedded in annexes and cross-references,⁶² making it difficult for traders to determine the applicable rates with certainty. This lack of clarity undermines the predictability that Article X is designed to guarantee.

The problem is magnified by the 40% surcharge on “*transshipped*” goods, which was introduced without clear criteria for what constitutes minimal processing.⁶³ In practice, businesses must assume that U.S. Customs and Border Protection (CBP) will apply its existing country-of-origin marking and substantial transformation rules. These rules, however, were initially designed for consumer disclosure and the prevention of

⁶⁰ Adam M Smith and others, ‘US Tariff Policy in Flux: July Executive Actions Add Clarity and Complexity’ (*Gibson Dunn*, 5 August 2025) 4 <<https://www.gibsondunn.com/us-tariff-policy-in-flux-july-executive-actions-add-clarity-and-complexity/>> accessed 13 September 2025.

⁶¹ Carolin Eve Bolhöfer, ‘Trade Facilitation WTO Law and Its Revision to Facilitate Global Trade in Goods’ (2008) 2(1) *World Customs Journal* 31 <<https://doi.org/10.55596/001c.91317>> accessed 15 September 2025.

⁶² Keigh E Hammond and William F Burkhart, ‘Presidential 2025 Tariff Actions: Timeline and Status’ (*Congressional Research Service*, 22 August 2025) 2-3 <<https://www.congress.gov/crs-product/R48549>> accessed 15 September 2025.

⁶³ Vu Nguyen Hanh, ‘US Tariffs on Vietnamese Exports: Analysing the New Framework’ (*Vietnam Briefing News*, 1 August 2025) <<https://www.vietnam-briefing.com/news/new-tariffs-on-vietnamese-exports-analyzing-the-new-tariff-framework.html/>> accessed 14 September 2025.



deception⁶⁴ rather than for imposing punitive tariffs. The absence of transparent and predictable criteria creates uncertainty for traders and exposes them to arbitrary enforcement. WTO jurisprudence shows that the U.S. has been repeatedly censured under Article X for similar practices. In *US-Underwear*, the AB held that Article X:2 prohibits the enforcement of unpublished trade measures, finding a violation where Washington backdated a quota to 27 March before its official publication on 21 April, thereby enforcing the measure retroactively.⁶⁵ In the *US shrimp case*, the administration of Section 609 was found to be inconsistent with Article X:3 because its certification processes were opaque, provided no formal notice or reasons for denial, and offered no review or appeal, thereby depriving exporting Members of fundamental fairness and due process.⁶⁶ These rulings establish that discretionary enforcement without transparent criteria is incompatible with Article X. The U.S. surcharge regime reflects precisely these defects.

Although the 2025 surcharges are formally border measures, their economic impact closely resembles the protectionist effects that Article III was designed to prevent. In *Japan-Taxes on Alcoholic Beverages*, the AB emphasised that the purpose of Article III is to ensure that internal measures do not afford protection to domestic production and that imported products enjoy equal competitive opportunities.⁶⁷ The design of the 2025 surcharges, which has the practical effect of shielding U.S. industries such as textiles, footwear, and furniture,⁶⁸ reflects this same concern. Even if tariffs are governed by Articles I and II rather than Article III, the surcharges distort competitive conditions to the detriment of imported goods, thereby undermining the internal protectionism that Article III was meant to prohibit.

3.1.3 Rules of Origin and Transshipment Ambiguity

While the previous section introduced rules of origin concerning transparency under Article X, this subsection examines their substantive content and the unsettled doctrine of ‘*substantial transformation*.’ At the WTO level, non-preferential rules of origin determine when a product is considered domestic or foreign for tariff and other trade

⁶⁴ John M Peterson, ‘Substantial Transformation: The Worst Rule for Determining Origin of Goods - Except for All the Rest’ (2023) 56(4) *Vanderbilt Law Review* 1075 <<https://scholarship.law.vanderbilt.edu/vjtl/vol56/iss4/3/>> accessed 17 September 2025.

⁶⁵ Appellate Body Report, United States - Restrictions on Imports of Cotton and Man-Made Fibre Underwear (8 November 1996) WT/DS24/R, para 7.69.

⁶⁶ Joel P Trachtman, ‘Introduction to the Shrimp-Turtle Case: Brief Summary and Analysis of the WTO Panel and Appellate Body Decisions’ (*Institute for International Law and Justice, New York University School of Law*, undated) para 46 <<https://www.iilj.org/wp-content/uploads/2016/08/Trachtman-Introduction-to-the-Shrimp-Turtle-Case.pdf>> accessed 18 September 2025.

⁶⁷ Appellate Body Report, Japan - Taxes on Alcoholic Beverages (1 November 1996) WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, 16.

⁶⁸ Warwick McKibbin and Geoffrey Shuetrim, ‘The US Revenue Implications of President Trump’s 2025 Tariffs’, PIIE Briefing 25-2 (*Peterson Institute for International Economics*, April 2025) 3 <<https://www.piie.com/publications/piie-briefings/2025/us-revenue-implications-president-trumps-2025-tariffs>> accessed 20 October 2025.

measures.⁶⁹ The accepted benchmark is that origin shifts only if processing in a second country produces a new and distinct article with a different name, character, or use; by contrast, minimal or routine processing that leaves the product's identity intact does not confer a new origin.⁷⁰ The difficulty lies in measuring this transformation. Because there is no harmonised international standard, WTO members rely on different tests: some adopt tariff-shift rules, others require a minimum level of value-added, and others apply broader judgments of whether a good's 'essential character' has changed.⁷¹

This divergence is illustrated by the case of a Chilean typewriter producer that faces four different origin rules depending on the market of export: a 50% import content ceiling in the European Union (EU), a change of subheading in the U.S., either a change of heading or a value-content test in Korea, and a 60% regional value-content requirement in Mercosur.⁷² Thus, the same production process may establish a new origin in one jurisdiction but not another, leaving traders uncertain about how their products will be classified in the other jurisdiction. Unfortunately, the deeper systemic weakness is that non-preferential ROO have never been harmonised at the WTO despite decades of negotiation.⁷³ WTO Members can currently set their own non-preferential rules of origin, provided they abide by the binding principles and standards of the WTO Agreement on Rules of Origin (ARO).⁷⁴

The uncertainty over origin rules is especially acute for global value chain economies like Vietnam, where final exports often incorporate high levels of Chinese intermediate inputs. A circuit board assembled in Hanoi from Chinese components may or may not be classified as 'Vietnamese' depending on how substantial transformation is interpreted. This indeterminacy undermines the predictability of the multilateral system. By stretching the doctrine of substantial transformation, members can transform neutral classification rules into protectionist tools,⁷⁵ eroding MFN and destabilising supply chains.

The Vietnam-U.S. tariff deal exemplifies this risk. Its centrepiece is a 40% surcharge on goods deemed of '*third-country origin*,' targeting Chinese inputs re-exported through

⁶⁹ Antoni Estevadeordal and Kati Suominen, 'Rules of Origin in the World Trading System' (*Seminar on Regional Trade Agreements and the WTO, Centre William Rappard - World Trade Organization*, 14 November 2003) 2 <https://www.wto.org/english/tratop_e/region_e/sem_nov03_e/estevadeordal_paper_e.pdf> accessed 21 October 2025.

⁷⁰ Liana Wong, 'International Trade: Rules of Origin' (*Congressional Research Service*, 3 March 2020) <<https://www.congress.gov/crs-product/RL34524>> accessed 15 October 2025.

⁷¹ Peterson (n 64).

⁷² Antoni Estevadeordal, Kati Suominen and others 'Rules of Origin in Preferential Trading Arrangements: Is All Well with the Spaghetti Bowl in the Americas?' (2005) 5(2) *Economía* 85 <<https://www.jstor.org/stable/20065477?seq=1>> accessed 11 October 2025.

⁷³ Talia Einhorn, 'Customs Law, International', *Max Planck Encyclopedias of International Law* (2014) para 80 <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1023>> accessed 19 March 2026.

⁷⁴ Kazuyo Aoki and others, 'Interactions between Goods and Services in International Trade: Implications for Customs Valuation and Rules of Origin' (2023) 274 *OECD Trade Policy Papers* 11 <<https://doi.org/10.1787/e4c86fdd-en>> accessed 20 October 2025.

⁷⁵ Brian R Staples, 'Rules of Origin and Origin Procedures Applicable to Exports from Least Developed Countries' (*United Nations Conference on Trade and Development - UNCTAD*, 2011) 3.



Vietnam.⁷⁶ With no published criteria, the measure relies entirely on the vague substantial transformation test, leaving firms uncertain whether assembly or finishing suffices to establish Vietnamese origin.⁷⁷ While U.S. officials accused Vietnam of diverting as much as one-third of its exports from China, detailed studies suggest the share is closer to 7-16%.⁷⁸ Yet this narrower slice still covers strategic sectors, such as electronics, textiles and footwear, furniture, and agriculture, that account for more than 80% of Vietnam's exports to the U.S.⁷⁹ As a *China+1* hub, even modest exposure in these industries reverberates across supply chains, forcing firms to either reconfigure their sourcing or absorb prohibitive duties.

From the ARO's perspective, these origin-related features raise serious compliance concerns. Article 2 of the ARO Transitional Rules requires that non-preferential rules of origin be applied in a neutral, transparent, and non-discriminatory manner, and explicitly prohibits their use as instruments to pursue trade policy objectives.⁸⁰ The Vietnam-U.S. tariff regime arguably strains these obligations in two respects. First, by tying tariff liability to discretionary and unpublished determinations of substantial transformation, the measure undermines the principle of predictability and risks de facto discrimination between like products originating from different supply chains. Second, the use of origin determinations to impose punitive tariffs on goods incorporating inputs from a particular third country suggests that rules of origin are being deployed as a trade instrument rather than as a neutral classification tool, contrary to Article 2(b) of the ARO. While WTO Members retain some discretion due to the lack of harmonised non-preferential rules of origin, the Vietnam-U.S. case illustrates how this discretion may be stretched beyond acceptable limits, potentially conflicting with the binding disciplines of the ARO Transitional Rules.

The WTO concern is not only opacity but also the manipulation of doctrinal ambiguity. A circuit board assembled in Vietnam may be treated as Vietnamese in one jurisdiction and Chinese in another. By tying tariff liability to discretionary origin rulings, the U.S. creates de facto origin-based discrimination, undermining MFN. The systemic risk is that other members may follow suit. For example, the EU and United Kingdom (UK) could impose additional duties on iron and steel products processed in third countries that

⁷⁶ Miranda Jeyaretnam, 'What to Know about "Transshipping" and US Trade Deals' (*Time*, 4 July 2025) <<https://time.com/7300087/trump-us-vietnam-trade-deal-china-transshipments/>> accessed 20 September 2025.

⁷⁷ Estelle Xiao (n 47).

⁷⁸ Jonathan Head, 'Trump's Tariffs Are a Huge Blow to Vietnam's Economic Ambitions' (*BBC News*, 9 April 2025) <<https://www.bbc.com/news/articles/crm332189djo>> accessed 20 September 2025.

⁷⁹ Nguyen Huu Loi, 'Vietnam at a Crossroads: Responding to the 2025 US Tariff Shock with Strategic Resilience' (*Modern Diplomacy*, 15 April 2025) <<https://moderndiplomacy.eu/2025/04/15/vietnam-at-a-crossroads-responding-to-the-2025-u-s-tariff-shock-with-strategic-resilience/>> accessed 21 September 2025.

⁸⁰ Moshe Hirsch, 'Rules of Origin' *Max Planck Encyclopedias of International Law* (2009) paras 11-13 <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1903>> accessed 19 March 2026.

incorporate Russian inputs,⁸¹ or the U.S. could intensify scrutiny of Mexican autos with Chinese components under the USMCA rules of origin (United States-Mexico-Canada Agreement) under the Biden Administration.⁸² If such practices spread, rules of origin risk becoming a new frontier of disguised retaliation rather than a neutral instrument of trade governance.

3.2 WTO Exceptions and the Risks of Retaliation

3.2.1 Security and Safeguard Defences under GATT

The U.S. may seek to justify its actions under the exceptions to GATT obligations. Two are most relevant: the security exception in Article XXI and the safeguard mechanism in Article XIX.

The security exception in Article XXI of GATT permits members to take measures necessary to protect their security interests, including those relating to arms or taken “*in time of war or other emergency in international relations.*” Although the provision is drafted in highly discretionary terms, recent WTO jurisprudence has clarified that it is not entirely self-judging.⁸³ In *Russia-Traffic in Transit*, the panel held that a member must demonstrate a plausible link between the measure and the protection of its essential security interests during a genuine international crisis.⁸⁴ Panel in *Saudi Arabia-IPR* reinforced this interpretation, concluding that purely economic concerns do not qualify as an “*emergency in international relations.*”⁸⁵ Against this backdrop, the U.S. executive orders declaring a “*national emergency*” based on trade deficits and supply chain vulnerabilities⁸⁶ fall well short of the required threshold. Without armed conflict or a comparable geopolitical crisis, it is doubtful that the U.S. surcharges could be sustained under Article XXI. From Vietnam’s perspective, allowing an “*economic security*” justification would set a dangerous precedent, enabling unilateral retaliation outside the

⁸¹ Vassilis Akritidis and others, ‘New EU/UK Restrictions on Russian-Origin Iron and Steel Products’ (*International Trade Law - Crowell*, 29 September 2023) <<https://www.cmtradelaw.com/2023/09/new-eu-uk-restrictions-on-russian-origin-iron-and-steel-products/>> accessed 25 September 2025.

⁸² David A Gantz, ‘The China Challenge: Excluding Mexican/Chinese EVs from the United States’ (2024) 40(1) *American University International Law Review* 94 <<https://digitalcommons.wcl.american.edu/auilr/vol40/iss1/4>> accessed 10 October 2025.

⁸³ Stephen Kho and others, ‘The Conundrum of the Essential Security Exception: Can the WTO Resolve the GATT Article XXI Crisis and Save the Dispute Settlement Mechanism?’ (2024) 40(1) *American University International Law Review* 131 <<https://digitalcommons.wcl.american.edu/auilr/vol40/iss1/5>> accessed 20 October 2025.

⁸⁴ Daria Boklan and Amrita Bahri, ‘The First WTO’s Ruling on National Security Exception: Balancing Interests or Opening Pandora’s Box?’ (2020) 19(1) *World Trade Review* 127 <doi:10.1017/S1474745619000430> accessed 20 October 2025.

⁸⁵ Weihuan Zhou and others, ‘Trade vs Security: Recent Developments of Global Trade Rules and China’s Policy and Regulatory Responses from Defensive to Proactive’ (2022) 22(2) *World Trade Review* 6 <<https://doi.org/10.1017/S147474562200026X>> accessed 20 September 2025.

⁸⁶ Samuel de Lemos Peixoto and others, ‘US Tariffs: Economic, Financial and Monetary Repercussions’ (*Economic Governance and EMU Scrutiny Unit (EGOV) - European Parliament*, 2025) 5-6 <[https://www.europarl.europa.eu/thinktank/en/document/ECTI_IDA\(2025\)764382](https://www.europarl.europa.eu/thinktank/en/document/ECTI_IDA(2025)764382)> accessed 25 September 2025.



Dispute Settlement Understanding (DSU) framework and undermining the multilateral trading system's collective nature.

Alternatively, the U.S. might argue that the surcharges qualify as safeguard measures under Article XIX of GATT, which permits members to impose temporary restrictions in response to an unforeseen surge of imports that causes or threatens serious injury to domestic industries.⁸⁷ However, the 2025 tariffs were never notified as safeguards. They were not accompanied by the mandatory procedures under the WTO Safeguards Agreement, including an investigation of injury, a demonstration of unforeseen developments, and the allocation of compensatory concessions. WTO jurisprudence in *Argentina-Footwear (EC)* and *US-Steel Safeguards* has been strict in requiring full procedural compliance, striking down measures where members failed to demonstrate both an import surge and serious injury.⁸⁸ From Vietnam's perspective, its increased exports to the U.S. market in 2025 reflected long-term structural strategies - diversifying markets, leveraging free trade agreements, and strengthening domestic capabilities⁸⁹ - rather than a sudden or unforeseen surge. The absence of a proper investigation or notification alone would therefore render any defence of necessity untenable.

3.2.2 Retaliation beyond WTO Rules: Systemic Risks for Vietnam

As the Section above demonstrated, the U.S. tariffs cannot be credibly justified under GATT's security exception or safeguard provisions. This leaves them without a valid legal basis in WTO law. For Vietnam, the primary systemic risk does not arise from reciprocal retaliation by other economies, but from the exercise of unilateral tariff power by the United States itself and the precedent such action establishes. Once a measure falls outside WTO defences, disputes can no longer proceed through the DSU's normal pathway of adjudication and authorised retaliation. Instead, enforcement shifts toward discretionary, power-based unilateralism, exposing smaller economies to asymmetric pressure without effective legal recourse.⁹⁰

⁸⁷ World Trade Organization (WTO), 'Trade Topics - Safeguards Gateway' (*World Trade Organization*, undated) <https://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm> accessed 10 September 2025.

⁸⁸ Appellate Body Report, 'Argentina - Safeguard Measures on Imports of Footwear' (14 December 1999) WT/DS121/AB/R, para 98. Appellate Body Report, 'United States - Definitive Safeguard Measures on Imports of Certain Steel Products' (10 November 2003) WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, para 330.

⁸⁹ Sophie Dao, 'Vietnam's Export Surge in 2025: A Bright Outlook for Global Markets' (*Vietnam Insider*, 13 May 2025) <<https://vietnaminsiders.com/vietnams-export-surge-in-2025-a-bright-outlook-for-global-markets/>> accessed 22 September 2025.

⁹⁰ Julia Ya Qin, 'WTO Reform: Multilateral Control over Unilateral Retaliation - Lessons from the US-China Trade War' (2020) 12(2) Trade, Law and Development 469 <https://www.tradelawdevelopment.com/_files/ugd/9e8518_4cebeb25db934f87a2c3be3d71209017.pdf> accessed 22 September 2025.



treated as suspect intermediates due to concerns that Vietnam might serve as a transit point for Chinese goods entering the U.S. market.⁹⁹ At the same time, value-chain risks intensified: when major economies escalated retaliatory measures against each other, input-output linkages were disrupted, as seen in the U.S.-China tariff war,¹⁰⁰ raising compliance costs for Vietnam-based assemblers integrated into these chains.¹⁰¹ Vietnam's inability to retaliate reflects not passivity but structural asymmetry: as a smaller, trade-dependent economy, it lacked the capacity to offset unilateral pressure through countermeasures. Instead, Vietnam pursued negotiation and adaptation, seeking tariff delays through diplomatic engagement and committing to transparency and compliance reforms to mitigate exposure to discretionary enforcement.¹⁰²

The Vietnam-U.S. deal thus illustrates how unilateral tariffs, rather than reciprocal retaliation, generate the most immediate systemic risks for smaller economies. The central challenge is not retaliation spirals, but asymmetric power exercised outside WTO rules. This dynamic explains why Vietnam's response relied on negotiation and legal-institutional adaptation rather than countermeasures. Having established how unilateral enforcement reshapes the risk environment, the following section examines how such pressures drive adaptive strategies within global value chains.

4 Legal and Institutional Adaptation in Global Value Chains: Macro - Micro Pathways

4.1 Macro-Level Adaptation: Policy and Industrial Responses

4.1.1 Policy and Institutional Responses

Vietnam's first line of adaptation to the July 2025 U.S. tariff measures has been at the policy and legal level. Rather than resorting to retaliation, Hanoi adopted a dual strategy of lawful compliance and calibrated diplomacy, combining economic concessions with transparency and cooperative signalling.¹⁰³ This approach was exemplified by *Decree*

⁹⁹ Binh Thi Thanh Dang and others, 'The Impact of the US-China Trade War on Vietnamese Exports to the US: A Quantitative Study Using DiD Approach' (2024) 12(4) *Journal of Trade Science* 315 <<https://doi.org/10.1108/JTS-02-2024-0007>> accessed 03 October 2025.

¹⁰⁰ Davin Chor and Bingjing Li, 'Illuminating the Effects of the US-China Tariff War on China's Economy' (2024) 150 *Journal of International Economics* 2 <<https://doi.org/10.1016/j.jinteco.2024.103926>> accessed 05 October 2025.

¹⁰¹ PwC Vietnam, 'US Tariff Policies: Impact and Pathways for Vietnam's Manufacturing Businesses' (*PwC Vietnam*, June 2025) 2 <<https://www.pwc.com/vn/en/publications/2025/us-tariff-policies.pdf>> accessed 5 October 2025.

¹⁰² Sasha Lee, 'Vietnam's Approach to US Tariffs and Economic Ties with China' (*Asia Pacific Foundation of Canada*, 16 May 2025) <<https://www.asiapacific.ca/publication/walking-trade-tightrope-vietnams-approach-us-tariffs>> accessed 25 September 2025.

¹⁰³ Do Khuong Manh Linh, 'Trump's Tariff Turbulence Is Reshaping Vietnam's Trade Future' (*East Asia Forum*, 23 June 2025) <<https://eastasiaforum.org/2025/06/23/trumps-tariff-turbulence-is-reshaping-vietnams-trade-future/>> accessed 28 September 2025.

73/2025/ND-CP,¹⁰⁴ issued in the first quarter of 2025, which reduced MFN tariffs on high-demand imports, including automobiles, selected agricultural products, and wood products.¹⁰⁵ Adopted months before Washington's tariff announcement, the decree reflected a broader shift in Vietnam's trade policy strategy: by lowering duties to support domestic industries while simultaneously reinforcing bilateral ties with the U.S.,¹⁰⁶ Vietnam turned compliance into a proactive instrument of economic diplomacy. A further step was taken with *Decree 259/2025/ND-CP*,¹⁰⁷ promulgated on October 10, 2025, establishing Vietnam's first comprehensive legal framework for the export, re-export, temporary import, transit, transshipment, and cross-border movement of strategic trade goods.¹⁰⁸ By codifying oversight mechanisms in these areas, the new decree enhances transparency, strengthens control over origin verification, and directly addresses U.S. concerns regarding third-country processing and transshipment.

At the same time, Vietnam undertook a comprehensive review of its tariff and tax structure, covering import duties, value-added tax, special consumption taxes, and environmental taxes. The Ministry of Finance and the Ministry of Industry and Trade (MOIT) shared the findings with the U.S. Trade Representative, showing that most American exports faced import duties of only 0-15%, far below the 46% level cited by U.S. policymakers.¹⁰⁹ By pre-emptively clarifying the actual tax burden, Vietnam positioned itself as a transparent and rule-abiding actor, countering narratives of unfair protectionism and mitigating the risk of escalation.

Vietnam has also strengthened its legal framework for ROO and certificates of origin (C/O). Since 2020, the MOIT has issued regulatory documents clarifying the procedures for Certificate of Origin (C/O) issuance, with preferential certificates projected to increase by approximately 20% annually.¹¹⁰ In April 2025, these initiatives were acknowledged at the WTO Committee on Rules of Origin, where member states recognised Vietnam's reforms as consistent with multilateral standards.¹¹¹ By institutionalising and expanding

¹⁰⁴ Viet Nam, *Decree 73/2025/ND-CP Amending Preferential Import Duty Rates in the Preferential Import Tariff Schedule under Decree 26/2023/ND-CP*.

¹⁰⁵ VTC News, 'Ministry of Finance: Most US Goods Exported to Vietnam Are Subject to a Tax of about 15%' (*Vietnam.vn*, 3 April 2025) <<https://www.vietnam.vn/en/bo-tai-chinh-phan-lon-cac-mat-hang-my-xuat-sang-viet-nam-chiu-thue-khoang-15>> accessed 29 September 2025.

¹⁰⁶ Sudhanshu Singh, 'Vietnam Reduces MFN Tariffs on Strategic Imports: Decree 73' (*Vietnam Briefing News*, 16 April 2025) <<https://www.vietnam-briefing.com/news/vietnam-reduces-mfn-tariffs-strategic-imports-decree-73.html/>> accessed 28 September 2025.

¹⁰⁷ Viet Nam, *Decree 259/2025/ND-CP on Strategic Trade Control*.

¹⁰⁸ Vu Nguyen Hanh, 'US Transshipment Scrutiny: Origin Compliance for Vietnam-Based Firms' (*Vietnam Briefing News*, 15 October 2025) <<https://www.vietnam-briefing.com/news/transshipment-origin-risks-vietnam-based-businesses-stay-compliant-2025.html/>> accessed 20 October 2025.

¹⁰⁹ Nguyen Huu Loi (n 79).

¹¹⁰ VOV, 'Utilisation Rate of Preferential C/O under FTAs Increases Sharply' (*VOV - Voice of Vietnam*, 30 December 2024) <<https://english.vov.vn/en/economy/utilization-rate-of-preferential-co-under-ftas-increases-sharply-post1145503.vov>> accessed 28 September 2025.

¹¹¹ Vu Nguyen Hanh, 'An Introduction to Rules of Origin for Vietnamese Exports' (*China Briefing News*, 21 April 2025) <<https://www.vietnam-briefing.com/news/introduction-rules-origin-vietnam-based-production.html/>> accessed 30 September 2025.



its C/O framework, Vietnam reduces the likelihood that U.S. Customs will classify exports as “*third-country origin*” and subject them to the punitive 40% surcharge.

Although such measures might be interpreted as defensive concessions to preserve market access, their broader significance lies in how they recast compliance as a policy innovation rooted in proactive diplomacy and institutional strengthening. Decrees 73, 259 were anticipatory rather than reactive, signalling transparency before the U.S. tariffs were formally imposed.¹¹² Similarly, the steady expansion of C/O regulations reflects a long-term institutional investment that enhances Vietnam’s credibility within global trade governance.¹¹³ These initiatives demonstrate that compliance is not merely a reactive coping mechanism but a deliberate strategy that transforms legal obligations into tools of economic statecraft.

4.1.2 Industrial and Supply-Chain Reorganisation

The July 2025 Vietnam-U.S. tariff deal has elevated compliance to a matter of survival for exporters. By imposing a 20% surcharge on Vietnamese-origin goods and a 40% surcharge on products classified as “*third-country origin*,” the measure effectively links market access to the degree of foreign content embedded in exports.¹¹⁴ In response, Vietnam has complemented its legal and policy adjustments with broader strategies for industrial upgrading and support for industry development. These initiatives aim to reduce dependence on imported inputs, particularly from China, and enhance Vietnam’s resilience within global value chains.¹¹⁵

Vietnam’s attractiveness as a production hub has already been reinforced by foreign direct investment (FDI) from partners, with Singapore as Vietnam’s leading source of FDI, followed by South Korea, China, Hong Kong (China), Japan, and others.¹¹⁶ A notable example is SpaceX’s decision to relocate its Starlink satellite system components from Taiwan to Vietnam in 2025, a move designed to avoid geopolitical complications while capitalising on Vietnam’s lower labour costs and improving its industrial base.¹¹⁷ Such

¹¹² Vietnam News Agency (VNA), ‘Vietnam Cuts Import Taxes on Key Goods ahead of US Tariff Announcement’ (*VietnamPlus*, 2 April 2025) <<https://en.vietnamplus.vn/vietnam-cuts-import-taxes-on-key-goods-ahead-of-us-tariff-announcement-post312690.vnp>> accessed 01 October 2025.

¹¹³ Vietnam News, ‘VN Tightens C/O Regulations to Boost Global Trade Credibility’ (*Vietnam News*, 23 April 2025) <<https://vietnamnews.vn/economy/1716329/vn-tightens-c-o-regulations-to-boost-global-trade-credibility.html>> accessed 17 October 2025.

¹¹⁴ Michael Wan, ‘Vietnam and US Tariffs - The Devil Is in the Details’ (*MUFG Research*, 3 July 2025) <<https://www.mufgresearch.com/fx/vietnam-and-us-tariffs-the-devil-is-in-the-details-3-july-2025/>> accessed 2 October 2025.

¹¹⁵ Luc Can, ‘Upgrading Vietnam’s Participation in the Global Value Chains’ (2022) *Southeast Asian Affairs* 395 <<https://www.jstor.org/stable/27206758>> accessed 10 October 2025.

¹¹⁶ Bao Linh, ‘FDI Attraction Situation in Vietnam and Vietnam’s Overseas Investment in 2024’ (*Ministry of Planning and Investment*, January 2025) <<https://www.mpi.gov.vn/en/Pages/2025-1-14/FDI-attraction-situation-in-Vietnam-and-Vietnam-s-ehsopf.aspx>> accessed 03 October 2025.

¹¹⁷ Ignacio M García-Galán, ‘Vietnam in the Trump 2.0 Era: Between Armed Cooperation and the Tariff Increase’ (2025) *Opinion Paper* (Instituto Español de Estudios Estratégicos).

cases illustrate that tariff disruptions and regional tensions are simultaneously creating opportunities for Vietnam to consolidate its role as a manufacturing hub for high-tech components.

Domestic industrial policy complements these developments. The MOIT of Vietnam focuses on strengthening support industries to reduce reliance on imported materials and ensure long-term industrial sustainability in key sectors.¹¹⁸ For example, the Strategy for the Development of the Textile, Garment, and Footwear Industry to 2030, with a Vision to 2035, and the Sustainable Growth Program for 2021-2030 explicitly target the increased localisation of fabric production, dyeing, and other upstream processes.¹¹⁹ According to the Vietnam Textile and Apparel Association (VITAS), the localisation rate in textiles and garments is expected to reach 45-50% by 2025, marking a significant increase from past levels of dependency.¹²⁰ By nurturing support industries, Vietnam aims to reduce vulnerability to tariff shocks that penalise reliance on foreign content, while deeper integration through trade agreements such as CPTPP and RCEP provides the external markets needed to absorb these upgraded outputs and diversify risks.¹²¹

These measures also align with Vietnam's broader industrial strategy of moving from original equipment manufacturing (OEM) toward original design and brand manufacturing (ODM/OBM).¹²² By investing in downstream industries, upgrading technological capacity, and fostering national brands, Vietnam seeks to transition from being a low-cost assembler to a higher-value participant in global production networks by 2045.¹²³ Tariff disruptions thus act as a catalyst, accelerating reforms already part of Vietnam's long-term development agenda.

The character of these initiatives raises the question of whether they should be regarded as reactive coping or genuine innovation. While some elements, such as the rapid push to localise fabric production, can be directly linked to immediate tariff pressures.¹²⁴

<https://www.defensa.gob.es/documents/2073105/2320887/vietnam_en_la_era_trump_2.0_2025_dieeee30_eng.pdf/c20ff983-4d9a-1a83-6205-3dd9b9c6be06?t=1745829148634> accessed 10 October 2025.

¹¹⁸ Hoan Quang Truong, 'Vietnam's Response to the Trump 2.0 Era' (2022) Visiting Scholars' Opinion Paper (KIEP Visiting Scholars Program) 117.

¹¹⁹ Tran Tuan Anh, 'Vietnam's Recovery and Development of New Supply Chains and Value Chains during and after COVID-19' (*Communist Review*, 2021) <https://en.tapchicongsan.org.vn/web/english/mega-story/-/-/asset_publisher/lc29ulxCb05g/content/vietnam-s-recovery-and-development-of-new-supply-chains-and-value-chains-during-and-after-covid-19> accessed 20 November 2025.

¹²⁰ Nguyen Quynh Hoa, 'Vietnam's Strategic Approach to US Tariffs: Supporting Industries in Focus' (*Vietnam Briefing News*, 22 July 2025) <<https://www.vietnam-briefing.com/news/vietnams-strategic-response-to-us-tariffs-supporting-industries-in-focus.html/>> accessed 05 October 2025.

¹²¹ Lorenzo Rotunno and Michele Ruta, 'Trade Partners' Responses to US Tariffs' (July 2025) IMF Working Papers 147 3 <<https://www.imf.org/en/publications/wp/issues/2025/07/18/trade-partners-responses-to-us-tariffs-568632>> accessed 10 October 2025.

¹²² Phi Nhat, 'Vietnam's Manufacturing Targets Breakthroughs in Global Value Chains' (*Hanoitimes - Economic and Urban Newspaper*, July 2025) <<https://hanoitimes.vn/vietnam-s-manufacturing-targets-breakthroughs-in-global-value-chains.784539.html>> accessed 05 October 2025.

¹²³ Andrea Coppola and others, 'Viet Nam 2045: Trading Up in a Changing World - Pathways to a High-Income Future' (World Bank 2024) 22 <<https://www.worldbank.org/en/country/vietnam/publication/viet-nam-2045-trading-up-in-a-changing-world>> accessed 10 October 2025.

¹²⁴ Nguyen Quynh Hoa (n 120).



The majority represent structural innovations: policies and investments designed to fundamentally alter Vietnam's industrial profile. Industrial upgrading embeds long-term capacity building, unlike short-term compliance or temporary supply-chain adjustments.¹²⁵ In this sense, tariffs act less as the cause of policy change and more as a catalyst accelerating Vietnam's ongoing modernisation.

4.2 Micro-Level Adaptation: Firm Strategy and Contractual Innovation

4.2.1 Strategic and Managerial Adjustment by Firms

Firm-level adaptation to U.S. tariff measures in 2025 illustrates the most immediate and diverse layer of Vietnam's innovation in global value chain adjustment. Because many businesses are exposed through direct exports and as suppliers within broader networks, the scope of impact has been extensive. A June 2025 PwC pulse survey found that 78% of Vietnam-based respondents were in the manufacturing sector, with one-third exporting directly to the U.S. and the remainder supplying exporters to the U.S. Among these firms, 86% expressed grave concern about tariff-related disruptions, most prominently rising costs, declining demand, and competitive erosion from untariffed rivals.¹²⁶

The survey results reveal a wide range of responses. 44% of firms reported diversifying sourcing away from China, reflecting deliberate efforts to reconfigure input networks. 40% introduced automation and process streamlining to offset cost inflation through productivity gains. Beyond procurement and production, 41% explored entry into markets outside the US to diversify risk. Notably, 34% of manufacturers were actively renegotiating supplier contracts to share or offset tariff costs, and another 25% planned to adjust final prices to reflect increased duties.¹²⁷ A complementary United Overseas Bank (UOB) Vietnam business outlook survey confirms this dual trajectory: in the short term, firms called for immediate financial assistance (73%) and targeted subsidies or tax relief (65%), while in the longer term, 62% emphasised the need for structural measures such as new trade agreements and support for supply-chain relocation.¹²⁸

These patterns highlight the blurred boundary between reactive coping and genuine innovation. Renegotiating supplier contracts or adjusting prices represents defensive tactics designed to cushion immediate shocks,¹²⁹ whereas automation (including blockchain, artificial intelligence, and regulatory technologies), market substitution, and

¹²⁵ Xu Jingzhi, 'Beyond FDI: Vietnam's Moment for Tech Upgrading' (*Fulcrum Analysis on Southeast Asia*, 8 July 2025) <<https://fulcrum.sg/beyond-fdi-vietnams-moment-for-tech-upgrading/>> accessed 07 October 2025.

¹²⁶ PwC (n 101).

¹²⁷ Estelle Xiao (n 47).

¹²⁸ Vietnam News Agency (VNA), 'Vietnamese Businesses Respond to US Tariffs: UOB' (*VietnamPlus*, 26 June 2025) <<https://en.vietnamplus.vn/vietnamese-businesses-respond-to-us-tariffs-uob-post322698.vnp>> accessed 7 October 2025.

¹²⁹ Jeffrey Haushalter, 'From Penalty to Playbook: Making Tariffs Work for You' (*Supply Chain Management Review*, July 2025) <<https://www.scmr.com/article/making-trump-tariffs-work-for-you>> accessed 08 October 2025.

supply-chain reconfiguration signal a more proactive transition toward innovation-led resilience.¹³⁰ Yet, as OECD analyses caution, these same measures may increase operational complexity and coordination costs, meaning that adaptation does not automatically translate into greater resilience.¹³¹ The evolution from coping to innovation is thus path-dependent: short-term improvisation can mature into long-term transformation if firms institutionalise lessons from crisis management.

At this microeconomic level, the distinction between coping and innovation is inherently fluid. Defensive measures and transformative initiatives often coexist, forming an iterative process in which crisis responses gradually evolve into new operating norms. In this sense, firms act as the primary laboratories where global trade shocks are translated into concrete managerial and contractual practices that redefine Vietnam's position within global value chains.

Vietnam's adaptation strategy can be conceptualised as a hybrid of "Red Ocean" and "Blue Ocean" approaches.¹³² In the short term, Red Ocean tactics - compliance concessions, tariff negotiations, and cost adjustments - are necessary to defend market share in hostile environments such as the U.S. market. Over the longer term, Blue Ocean initiatives - industrial upgrading, brand development, market diversification, and technological investment - create new competitive space and reduce structural dependency.¹³³ This hybrid model captures the multi-layered nature of Vietnam's micro-level response: balancing immediate survival with deliberate movement toward innovation-led transformation, and laying the groundwork for contractual adaptation as a complementary form of resilience.

4.2.2 Contractual Innovation and Legal Adaptation

The Trump-era tariffs exposed the contractual fragility of global production networks. Sudden 20-40% cost surges rendered many export contracts between Vietnamese suppliers and U.S. buyers commercially unsustainable. Traditional doctrines, such as force majeure, impossibility, frustration, or termination, offered little help.¹³⁴ Force majeure applies only when performance becomes objectively impossible;¹³⁵ while impossibility and

¹³⁰ Chunyang Wei and Qinjie Shen, 'USA Tariff Turmoil and Strategic Dilemmas 2025: Reshaping Business Model Innovation in China-ASEAN Trade - Evidence from Vietnamese Industries' (2025) 8(5) *Journal of Economics, Finance and Management Studies* 2826 <<https://doi.org/10.47191/jefms/v8-i5-28>> accessed 15 October 2025.

¹³¹ Organisation for Economic Co-operation and Development (OECD), *OECD Supply Chain Resilience Review: Navigating Risks* (OECD Publishing 2025) 101.

¹³² The Strategy Institute, 'Understanding the Red Ocean vs Blue Ocean Strategies' (The Strategy Institute 2023) <<https://www.thestrategyinstitute.org/insights/understanding-the-red-ocean-vs-blue-ocean-strategies>> accessed 10 October 2025.

¹³³ Nguyen Huu Loi (n 79).

¹³⁴ Debevoise & Plimpton, 'The US Tariff Turmoil: Navigating the Potential Sources of Risk' (Debevoise & Plimpton, 13 August 2025) 5-7 <<https://www.debevoise.com/insights/publications/2025/06/the-us-tariff-turmoil-navigating-the-potential>> accessed 20 October 2025.

¹³⁵ Joseph Perillo, 'Force Majeure and Hardship under the UNIDROIT Principles of International Commercial Contracts' (1997) 5 *Fordham Law Archive of Scholarship and History* 15



frustration of purpose excuse performance only when the contractual foundation collapses entirely, that is, when the event destroys the obligor's principal purpose or the essential performance element.¹³⁶ Termination for an indefinite period can limit financial loss but effectively bring the cooperative relationship between the parties to an end.¹³⁷ These mechanisms thus function as exit routes, not adaptation tools. Tariff shocks also altered bargaining power within supply chains, as suppliers and buyers renegotiated prices to rebalance their contractual positions, further exposing the limits of static contractual frameworks.¹³⁸ The tariff shock, therefore, demanded a different response that preserved the contract rather than extinguished it.

Hardship and renegotiation emerged as the most innovative legal response to tariff shocks. The tariffs were unforeseen and beyond the affected party's control, fundamentally altering the contractual balance by increasing the cost of performance. These circumstances satisfy the classical hardship conditions under the UNIDROIT Principles of International Commercial Contracts (PICC). Articles 6.2.2 and 6.2.3 define hardship as an unforeseeable post-contractual event that makes performance excessively onerous, entitling the disadvantaged party to request renegotiation¹³⁹ and allowing a tribunal to adapt or terminate the contract if negotiations fail.¹⁴⁰ Article 5.1.7 further enables prices to be determined by reference to external factors, such as published indices, market quotations, or commodity exchange data, creating a dynamic pricing mechanism that automatically adjusts to regulatory changes, including new tariffs. Such commercial adjustments mirror the mechanisms recognised in international contract law for managing unforeseen economic disruptions.¹⁴¹

Under the CISG, no specific provision explicitly assigns responsibility for import taxes to either the seller or the buyer; such allocation is usually determined by the parties' agreement or trade usages, including Incoterms. The Convention also lacks an explicit hardship rule,¹⁴² but arbitral and judicial practice has progressively bridged this gap.

<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1782&context=faculty_scholarship> accessed 16 October 2025.

¹³⁶ Vernon Valentine Palmer, 'Excused Performances: Force Majeure, Impracticability, and Frustration of Contracts' (2022) 70 American Journal of Comparative Law 75 <<https://doi.org/10.1093/ajcl/avac017>> accessed 20 October 2025.

¹³⁷ Christine Chappuis, 'Is There a Life after the End of the Contract?' (2020) 1(1) Transnational Commercial Law Review 106 <<https://doi.org/10.26494/TCLR120202100-115>> accessed 20 October 2025.

¹³⁸ Gene M Grossman and Elhanan Helpman, 'When Tariffs Disrupt Global Supply Chains' (2020) *National Bureau of Economic Research Working Paper* 27722, 4 <https://www.nber.org/system/files/working_papers/w27722/w27722.pdf> accessed 18 October 2025.

¹³⁹ Santamarina y Steta SC - Roberto Fernandez del Valle Mittenzwey, 'The Hardship Doctrine in Commercial Contracts: A Legal Tool for Navigating Economic Uncertainty in Mexico' (*Lexology*, 4 June 2025) <<https://www.lexology.com/library/detail.aspx?g=f52fc4ad-dde2-40a7-989c-0fd12313ad77>> accessed 10 October 2025.

¹⁴⁰ UNIDROIT Principles of International Commercial Contracts 2016 arts 6.2.3(3)-6.2.3(4).

¹⁴¹ Ahmad Hussein Alsharqawi and others, 'Hardship in International Commercial Contracts: A Comparative Analysis of the Rules of Non-Legislative Codification' (2025) 5(3) *Journal of Lifestyle and SDGs Review* 2 <<https://doi.org/10.47172/2965-730X.SDGsReview.v5.n03.pe04125>> accessed 20 October 2025.

¹⁴² Flavio Peter and others, 'The Impact of US Tariffs on International Sales Contracts' (*Peter & Kim Global Disputes Lawyers*, 2025) 3, 5 <https://peterandkim.com/uploads/2025/04/Peter-Kim-Insights_Impact-of-US-tariffs-on-International-Sales-Contracts.pdf> accessed 15 October 2025.

Article 79 exempts a party from liability for non-performance caused by an unforeseeable and unavoidable impediment beyond its control. While traditionally confined to physical or legal impossibility, decisions such as *Scaфом International v. Lorraine Tubes* have interpreted economic hardship as an “*impediment*” or have filled the Convention’s silence through Article 7(2)¹⁴³ by drawing on UNIDROIT Principles 6.2.2-6.2.3 as general principles of international commercial law. This convergence enables tribunals to treat tariff-induced cost increases as grounds for renegotiation or adaptation, aligning the CISG’s application with modern hardship logic.

Vietnamese exporters and multinational buyers have operationalised these doctrines through concrete renegotiation strategies. In the footwear industry, Vietnam’s largest export category, global brands such as Nike and Adidas, which source roughly 50% and 39% of their production from Vietnam, respectively, have entered new rounds of negotiation with local suppliers to determine how additional duties will be distributed along the supply chain.¹⁴⁴ A central contractual question arising from these negotiations is whether multinational buyers will absorb part of the tariff costs or pass them on to consumers, a decision that directly affects both supply-chain equity and retail pricing structures.¹⁴⁵ Analysts estimated that a 20% surcharge on a US\$95 pair of shoes could raise the retail price by about US\$15,¹⁴⁶ illustrating how cost-sharing arrangements embedded in renegotiated contracts transmit regulatory shocks through the entire value chain.

Similar dynamics appeared across other export sectors. According to PwC Vietnam’s 2025 survey, about one-third of manufacturers renegotiated supplier terms to redistribute tariff costs, while another quarter adjusted final prices to reflect increased duties.¹⁴⁷ In response, new contracts began incorporating tariff-trigger clauses, price-adjustment rights in quotation updates, and customs-indexed pricing.¹⁴⁸ These contractual innovations converted ad-hoc crisis measures into standardised legal practices and demonstrate how hardship logic operates in reality: unforeseen tariffs prompted a recalibration of prices and obligations rather than contractual breakdown, aligning market behaviour with the adaptive mechanisms envisioned in the UNIDROIT framework and establishing renegotiation as both a survival tool and a mechanism of institutional adaptation.

¹⁴³ Tian Shou Dai, ‘A Case Analysis of *Scaфом International BV v Lorraine Tubes SAS*: The Application of Article 79 of the United Nations Convention on International Sale of Goods’ (2016) 1 *Perth International Law Journal* 132.

¹⁴⁴ Natalia Petrova, ‘How US Tariffs Will Impact Footwear Prices and Consumer Choices in 2025’ (*Firework*, 2025) <<https://firework.com/blog/how-us-tariffs-affect-footwear-industry>> accessed 12 October 2025.

¹⁴⁵ Brand Wagon, ‘From China to Vietnam - and Back? Nike’s Struggle with Tariff Wars’ (*The Financial Express*, 4 April 2025) <<https://www.financialexpress.com/business/brandwagon-from-china-to-vietnamand-back-nikes-struggle-with-tariff-wars-3798743/>> accessed 13 October 2025.

¹⁴⁶ Victor Hale, ‘Nike’s Pricing Power Post-Vietnam Trade Deal: A Catalyst for Margin Expansion and Investor Opportunity’ (*Ainvest*, July 2025) <<https://www.ainvest.com/news/nike-s-pricing-power-post-vietnam-trade-deal-a-catalyst-for-margin-expansion-and-investor-opportunity-2507101074b303e97ece6fe5/>> accessed 13 October 2025.

¹⁴⁷ Estelle Xiao (n 47).

¹⁴⁸ Gregory Husisian and others, ‘Managing Import and Tariff Risks during a Trade War’ (*Foley & Lardner LLP Attorneys*, 2025) 15 <<https://www.foley.com/wp-content/uploads/2025/02/2025-02-Managing-Import-and-Tariff-Risks-White-Paper-g-Husisian.pdf>> accessed 20 October 2025.



In doctrinal terms, hardship shifts the function of contract law from enforcement to governance. Rather than punishing non-performance, it provides a structured dialogue that reallocates risk and preserves cooperation. This transformation illustrates a deeper legal adaptation within global value chains: private actors internalise volatility by embedding regulatory resilience into their agreements. Vietnamese exporters' adoption of tariff-linked renegotiation clauses exemplifies how innovation in contract drafting mirrors policy adaptation at the state level, completing the continuum from macro to micro adaptation analysed in this chapter.

5 Implications and Lessons: Legal and Institutional Adaptation in an Era of Fragmented Trade Governance

5.1 WTO-Level Implications: Restoring Multilateral Relevance through Procedural Adaptation

The U.S. tariff confrontation illustrates how the weakening of multilateral enforcement has reopened space for unilateralism.¹⁴⁹ The 2025 surcharges, imposed under the IEEPA rather than the Trade Act of 1974, converted domestic political pressure into legally uncertain, partner-specific tariffs that bypassed the MFN discipline of the GATT 1994. This approach is not new: it echoes Washington's earlier strategy of disabling the WTO AB in 2019, when the U.S. blocked new appointments to prevent rulings that limited its policy autonomy.¹⁵⁰ That paralysis weakened the dispute-settlement system, undermining confidence in multilateral enforcement and prompting many members to turn to bilateral or regional arrangements such as the Multi-Party Interim Appeal Arrangement as temporary substitutes.¹⁵¹ Both episodes reveal a consistent pattern - by constraining the WTO's authority, the US increases its room to negotiate or retaliate on a bilateral basis, where its economic leverage is most significant. The Vietnam-U.S. tariff confrontation highlights three institutional weaknesses in the WTO framework that necessitate corresponding procedural reforms.

First, MFN erosion now occurs through functional circumvention: governments calibrate tariffs by partner, invoking reciprocity or economic-security rhetoric.¹⁵² Because GATT

¹⁴⁹ Zhong Sheng, 'US Tariff Abuse: Self-Inflicted Sabotage of Multilateral Trading System' (*People's Daily Online*, 17 April 2025) <<https://en.people.cn/n3/2025/0417/c98649-20303853.html>> accessed 15 October 2025.

¹⁵⁰ Sijuola Atanda-Lawal, 'World Trade Organization (WTO) Dispute Settlement Crisis (DSC): Legal Implications and Reform Proposals' (June 2025) 148 *Journal of Law, Policy and Globalization* 61 <<https://doi.org/10.7176/JLPG/148-06>> accessed 25 October 2025.

¹⁵¹ Kristen Hopewell, 'Unravelling of the Trade Legal Order: Enforcement, Defection and the Crisis of the WTO Dispute Settlement System' (2025) 101(3) *International Affairs* 1104 <<https://doi.org/10.1093/ia/iaaf055>> accessed 25 October 2025.

¹⁵² Roberto Castro de Figueiredo, 'Trump's Reciprocal Tariff Policy, Multinationals, and Investment Treaties' (*Kluwer Arbitration Blog*, 19 September 2025) <<https://legalblogs.wolterskluwer.com/arbitration-blog/trumps-reciprocal-tariff-policy-multinationals-and-investment-treaties/>> accessed 15 October 2025.

contains no procedural safeguard against such discrimination, enforcement depends on an appellate review that no longer functions.¹⁵³ In this vacuum, MFN compliance becomes a matter of political discretion rather than legal discipline. A credible response must therefore introduce procedural control before partner-specific tariffs take effect.

Members adopting such surcharges should be required to notify the WTO Secretariat and affected partners within thirty days, explaining the measure's scope and justification, and to suspend its implementation for sixty days pending consultation in the Goods Council or General Council. During this period, a small facilitator panel comprising Secretariat staff and representatives of the concerned parties could issue a brief, public assessment of whether the measure appears consistent with MFN principles.

This design mirrors the transparency and consultation procedures already in place in other parts of the GATT: the balance-of-payments mechanism under Article XII, which requires notification and periodic review when members restrict imports for macroeconomic reasons, and the safeguard process under Article XIX, which mandates investigation and consultation before emergency protection is imposed.¹⁵⁴ Adapting those procedural models to MFN enforcement would not alter substantive rights. Still, it would restore collective visibility and political impact to unilateral action, making partner-specific tariffs transparent, reviewable, and far less likely to escalate into entrenched discrimination.

Second, ambiguity in the ROO has become a convenient vehicle for disguised protectionism. The U.S.' 40% "*transshipment surcharge*" on goods of presumed third-country origin highlights the vulnerability of global value-chain economies, such as Vietnam, to discretionary origin rulings.¹⁵⁵ Decades of stalemate in non-preferential ROO negotiations have left members free to define "*substantial transformation*" unilaterally. For instance, the U.S. applies a principle whereby origin is attributed to the country where the product was last substantially transformed into a "*new and distinct*" article of commerce.¹⁵⁶

The underlying problem is institutional: The Harmonisation Work Program (HWP), launched to develop a single set of non-preferential ROO "*equally for all purposes*," achieved significant technical progress but failed politically.¹⁵⁷ The Technical Committee

¹⁵³ Alan WM Wolff, 'The WTO at 30: The Return of Higher Tariffs' (*Peterson Institute for International Economics*, 9 April 2025) <<https://www.piie.com/commentary/speeches-papers/2025/wto-30-return-higher-tariffs>> accessed 15 October 2025.

¹⁵⁴ Jörg Philipp Terhechte, 'Non-Tariff Barriers to Trade' *Max Planck Encyclopedias of International Law* (2014) para 21 <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e2062>> accessed 28 October 2025.

¹⁵⁵ Thien Luong, 'Vietnam's FDI Firms Caught in Trump's Transshipment Crossfire' (*Asia Times*, August 2025) <<https://asiatimes.com/2025/08/vietnams-fdi-firms-caught-in-trumps-transshipment-crossfire/>> accessed 16 October 2025.

¹⁵⁶ Liana Wong (n 70).

¹⁵⁷ Bernard Hoekman and Stefano Inama, 'Harmonisation of Rules of Origin: An Agenda for Plurilateral Cooperation?' (2018) 22(1) *East Asian Economic Review* 7 <<https://doi.org/10.11644/KIEP.EAER.2018.22.1.336>> accessed 20 October 2025.



on Rules of Origin (TCRO) completed its work in May 1999 and transmitted 486 open issues to the WTO Committee on Rules of Origin (CRO). By July 2002, members had resolved approximately 72% of those issues, while disagreement over the remaining items prevented final adoption.¹⁵⁸ The result was a technically advanced but politically incomplete draft, reflecting broad convergence among members on the principles and methodology of origin determination.

The WTO could repurpose this completed portion of the HWP as a soft reference benchmark rather than a binding code. The CRO could adopt non-binding “*Reference Guidelines*” based on the consensus reached on the settled issues, providing members with a procedural framework for notification and transparency. Members would retain full autonomy, but when notifying their national ROO regimes under Article 5 of the Agreement on Rules of Origin, they would be required to identify and justify any deviation from these reference elements. The Secretariat could then issue an annual transparency report that compares national practices and encourages voluntary alignment.

This framework would operate as a form of non-legal soft law, a committee-based “*soft rule*” similar to the Information Technology Agreement or ministerial best-practice decisions, which are politically authoritative yet legally non-binding.¹⁵⁹ Its supporting instruments, such as Secretariat reports and peer-review summaries, would produce secondary soft-law effects, gradually guiding members’ behaviour and providing panels with interpretative context under Article 31(3)(c) of the Vienna Convention.¹⁶⁰ By converting the HWP’s technical clarity into a soft-law coordination mechanism, this reform could enhance predictability in global value-chain governance while preserving each member’s regulatory autonomy.

Third, the DSU lacks an interface for preventive management of unilateral retaliation.¹⁶¹ Its procedural architecture presumes completed or formally adopted measures and adversarial claims: A panel may be established only after consultations have failed and the contested measure has taken effect.¹⁶² As a result, the system reacts to trade conflicts rather than containing them, leaving no forum for members to address actions that are merely threatened but already destabilising supply chains. Although Article 5 of the DSU empowers the WTO Director-General to offer good offices, conciliation, and mediation, this authority has been used only sporadically and always ad

¹⁵⁸ World Customs Organization (WCO), *Rules of Origin Handbook* 2.

¹⁵⁹ Mary E Footer, ‘The (Re)Turn to “Soft Law” in Reconciling the Antinomies in WTO Law’ (2010) 11(2) Melbourne Journal of International Law 241.

¹⁶⁰ Sarah Thin, ‘Playing Fast and Loose with Article 31(3)(c) VCLT: Lessons on Systemic Integration from the ITLOS Climate Change Opinion’ (2025) 72(1) Netherlands International Law Review 34 <<https://doi.org/10.1007/s40802-025-00274-y>> accessed 20 October 2025.

¹⁶¹ Rachel Brewster, ‘Shadow Unilateralism: Enforcing International Trade Law at the WTO Anniversary Contributions - International Economic Law’ (2009) 30(4) University of Pennsylvania Journal of International Law 1135.

¹⁶² Markus Wagner, ‘Panel: Dispute Settlement System of the World Trade Organization (WTO)’ *Max Planck Encyclopedias of International Law* (2020) para 10 <<https://doi.org/10.1093/law-mpeipro/e3242.013.3242>> accessed 15 October 2025.

hoc, dependent on the parties' consent.¹⁶³ Institutionalising this latent function could introduce an essential preventive layer into WTO dispute management.

A standing *Early-Warning and Good-Offices Facility* could operate under Article 5 of the DSU, allowing confidential consultations when proposed measures risk escalating into retaliation. Acting through the Director-General, the Facility would invite the concerned members to a brief, private exchange and issue a rapid, non-binding advisory note outlining possible WTO implications. Light in form but strong in signalling, such notes would help members clarify or adjust policies before formal litigation begins. Because participation would remain voluntary and confidential, it would not constrain sovereignty, yet it would lower the political incentives for unilateral escalation. In this way, the mechanism would transform the Director-General's underused good offices function into a permanent preventive-diplomacy instrument, enhancing the WTO's ability to manage disputes early while preserving the existing adjudicatory balance.

Together, these three reforms create a continuous early-intervention system. The MFN notification-and-standstill mechanism ensures transparency before tariffs are imposed, the ROO soft reference benchmark promotes consistency in origin rules, and the Early Warning and Good Offices Facility enables quiet mediation once tensions emerge. Aligned across policy, regulatory, and dispute stages, they build layered transparency that strengthens WTO stability without changing its core treaties.

5.2 National-Level Implications: Compliance as Strategy in Asymmetric Trade Relations

5.2.1 From Fast Response to Long-Term Resilience: Policy Lessons for Government Adaptation

Vietnam's response to the 2025 tariff confrontation with the U.S. demonstrates how a middle-income economy can employ rapid negotiation and procedural agility to mitigate asymmetric trade pressure. Within weeks of Washington's announcement of a 46% reciprocal tariff, Hanoi concluded a revised agreement that lowered the rate to 20%. This swift outcome reflected exceptional coordination across ministries and an ability to translate compliance into negotiation leverage. According to Dragon Capital, the settlement enhanced Vietnam's regional competitiveness by reducing tariff exposure to levels nearly as low as those of regional peers, reinforcing investor confidence and averting potential GDP losses.¹⁶⁴

Yet, beneath this success lies a deeper structural limitation. Vietnam's actions in 2025 primarily served as a crisis-management strategy to resolve a bilateral dispute rather than as an engine of long-term transformation. The regulatory reforms introduced through Decrees 73/2025 and 259/2025, and the new certificate-of-origin procedures, were

¹⁶³ Aoife O'Donoghue, 'Good Offices: Grasping the Place of Law in Conflict' (2014) 34(3) Legal Studies 474.

¹⁶⁴ Vu Nguyen Hanh (n 63).



reactive, designed to address the immediate tariff threat from the U.S. Once the dispute de-escalated, these mechanisms lost momentum. The episode reveals that while rapid compliance can secure short-term stability and maintain market access, it does not automatically strengthen a country's industrial foundations or reduce strategic dependency.

A comparable trajectory can be observed in Thailand. Facing similar tariff pressure, Bangkok achieved a more favourable outcome by successfully negotiating a reduction in the U.S. reciprocal tariff from 36% to 19%. This agreement was secured through a series of regulatory commitments, most notably the strengthening of rules-of-origin enforcement and the centralisation of certificate-of-origin issuance under the Department of Foreign Trade to prevent false origin claims.¹⁶⁵ Thailand's response is quite similar to Vietnam's. Both countries reacted quickly and eased U.S. tariff pressure through stricter rules of origin and negotiations. However, these actions primarily addressed the immediate issue with the U.S., and it remains unclear whether they will yield lasting benefits for long-term industrial development.

Vietnam and comparable economies must pursue two complementary strategies to move from fast response to long-term resilience. *First*, governments must continue the process of localisation in key industries, especially those most exposed to rules-of-origin disputes such as textiles, electronics, and machinery. Developing upstream capacity in fabric production, semiconductor packaging, and mechanical components can gradually reduce reliance on Chinese inputs and lower vulnerability to external tariff shocks. However, localisation should be strategically targeted rather than universal. Concentrating resources and technology transfer in a few critical value-chain segments can yield faster outcomes and generate spillover effects across related industries. For instance, investments in domestic textile-dyeing and finishing enhance proof of origin and improve environmental standards and industrial upgrading. Over time, such targeted localisation transforms compliance measures from defensive reactions into productive drivers of competitiveness.

Second, in the short to medium term, export diversification is essential for Vietnam and other economies that rely heavily on the U.S. as a key destination for their goods. The U.S. remained Vietnam's single largest export market, accounting for roughly one-third of total export revenue in the first half of 2025. At the same time, shipments to China, the EU, and regional neighbours also increased, supported by Vietnam's growing network of FTAs.¹⁶⁶ This experience is shared across the region: economies such as Thailand, Malaysia, and Indonesia have utilised similar trade agreements, including the CPTPP, RCEP, and bilateral pacts with the EU, to expand exports to alternative markets and

¹⁶⁵ Nation Thailand, 'How Team Thailand Secured 19% Reciprocal Tariff Deal with US' (*Nation Thailand*, 10 August 2025) <<https://www.nationthailand.com/business/economy/40053826>> accessed 20 October 2025.

¹⁶⁶ ARC Group, 'Vietnam Economic Update Report, Q2 2025' (ARC Group 2025) <<https://arc-group.com/report/vietnam-economic-update-report-q2-2025/>> accessed 28 October 2025.

mitigate exposure to fluctuations in U.S. demand. These agreements provide institutional stability and open access to diversified consumer bases, allowing smaller economies to sustain export growth even amid great-power trade tensions.

5.2.2 From Reactive Adjustment to Sustainable Innovation: Firm-Level Lessons

Vietnamese enterprises responded to the 2025 tariff confrontation with notable speed and flexibility. A KPMG survey showed that manufacturers rapidly diversified their input sources, adopted limited automation to offset cost inflation, and renegotiated supply contracts to share tariff burdens.¹⁶⁷ These swift adjustments helped maintain production continuity, preserve employment, and reassure global buyers that Vietnam remained a reliable manufacturing base despite trade turbulence. Their actions demonstrate that private firms can act as primary stabilisers during external shocks, protecting value-chain operations even when macro-level uncertainty is high.

Yet this reactive agility alone does not ensure resilience. Most firms treated the tariff shock as a temporary disruption rather than an opportunity to redesign management systems or upgrade capabilities. Once market conditions stabilised, many reverted to pre-crisis routines. This pattern reflects a broader regional tendency to resort to short-term coping mechanisms rather than engage in institutional learning. Sustainable competitiveness, however, depends on transforming reactive behaviour into structured systems for continuous improvement. The *United Kingdom's Amber Book* provides an instructive illustration: it codifies how government departments respond to crises through coordinated procedures and post-event learning to strengthen institutional readiness.¹⁶⁸ The same logic can be applied at the corporate level - firms, industry associations, and trade chambers can document lessons from trade disruptions, develop shared guidelines, and integrate those practices into routine management. In this way, crisis experience becomes organisational knowledge rather than temporary improvisation.

A second lesson concerns the fragmented and unequal nature of legal adaptation. During the 2025 tariff period, hardship and renegotiation clauses appeared in contracts between large exporters and multinational buyers, aligning commercial practice with the UNIDROIT Principles and CISG jurisprudence. However, most small and medium-sized enterprises (SMEs) lacked the legal capacity or bargaining power to adopt similar mechanisms. Without structured support, SMEs remain vulnerable to contractual rigidity during external shocks.

In this context, external support and standardised legal tools are essential. International organisations have already developed relevant frameworks. The World Bank's Public-Private Partnership (PPP) Resource Centre offers a comprehensive Force

¹⁶⁷ KPMG, 'Supply Chains under Pressure: Strategies for a Shifting Tariff Landscape' (KPMG, May 2025) <<https://kpmg.com/us/en/articles/2025/supply-chains-under-pressure.html>> accessed 20 October 2025.

¹⁶⁸ UK Cabinet Office, *The Amber Book: Managing Crisis in Central Government* (version 3 2025) para 1.1.



Majeure Clauses Checklist and Sample Wording, including provisions for hardship-like circumstances in infrastructure and procurement contracts,¹⁶⁹ which serves as a practical guide for balancing risks during disruption. Similarly, the International Chamber of Commerce (ICC) has developed two balanced Force Majeure Clauses, the Long Form and Short Form,¹⁷⁰ which are now widely adopted and referenced by governments, including those of the EU and the UN, as neutral contractual templates. These instruments illustrate how global institutions can democratise access to adaptive contracting. For Vietnam and comparable economies, integrating such standard clauses into trade-promotion frameworks or national export templates would allow SMEs to embed legal resilience within their operations without incurring prohibitive costs for individual legal drafting.

Vietnam's 2025 experience thus reveals both the promise and the limitation of firm-level adaptability under asymmetric trade pressure. Quick managerial and contractual reactions prevented disruption, but their impact remains transient without supportive institutions and long-term learning frameworks. The broader regional lesson parallels that at the governmental level: speed must evolve into strategy. For smaller economies, converting crisis improvisation into structured innovation, through systematic knowledge sharing, state-assisted legal infrastructure, and continuous upgrading, offers the most durable path toward resilience in global value chains.

6 Conclusion

This study analysed the 2025 Vietnam-U.S. tariff confrontation as a model for understanding how transshipment, retaliation, and innovation interact in today's shifting trade order. The dual-rate tariff regime introduced under the IEEPA was not merely a fiscal measure but a strategic device that blurred legal and political boundaries. By targeting both Vietnamese-origin goods and those suspected of third-country origin, it turned rules of origin into instruments of control and revived unilateral retaliation as a policy tool. Within this environment, Vietnam's adaptive response, which combines regulatory transparency, industrial upgrading, and contractual adjustment, illustrates how smaller economies can transform vulnerability into strategic resilience.

Viewed more broadly, the case reveals how trade governance evolves under multilateral erosion. Transshipment disputes underscore the instability of non-harmonised rules of origin, where ambiguity enables states to extend their economic jurisdiction beyond their borders. Tariff retaliation demonstrates how reciprocity, once a cooperative principle, is now used to justify unilateral action. Yet amid these disruptions, innovation emerges as a stabilising force. State-level reforms, localisation policies, and the spread of hardship and

¹⁶⁹ World Bank, *PPP in Infrastructure Resource Center for Contracts, Laws and Regulations (PPPIRC): Force Majeure Clauses Checklist and Sample Wording* (2008).

¹⁷⁰ International Chamber of Commerce (ICC), *ICC Force Majeure Clause ("Clause") (Long Form - Short Form)* (2020).

renegotiation clauses show that resilience now depends on legal and institutional flexibility rather than rigid adherence to WTO norms.

The implications extend beyond Vietnam. The weakening of WTO enforcement underscores the need for procedural reform, particularly in areas such as transparency in partner-specific tariffs, coordination on rules of origin, and the establishment of early-warning mechanisms to prevent escalation. For middle-power and developing economies, the lesson is that resilience stems from adaptability: transparency, diversified trade structures, and innovation-oriented governance can more effectively offset asymmetries than confrontation.

Any conclusion must remain provisional, as the tariff regime only took effect in July 2025 and its economic and legal effects are still unfolding. Much of Vietnam's response remains strategic intent rather than enforceable practice, and long-term outcomes will require empirical validation. Still, the early evidence captures a structural transformation: transshipment has become a proxy for regulatory reach, retaliation a sign of weakened multilateralism, and innovation the key mechanism of adaptation. Vietnam's experience, viewed as a model, illustrates a broader shift in global trade governance from fixed, rule-based systems toward more flexible and transparent forms of negotiation and adaptation.