# Trade Law and Economic Security: The Shifting Function of Law in a Geoeconomic Age

*Nadia Garcia-Santaolalla*
Research Fellow, International Economic Law & Policy
Centre for International Law, National University of Singapore

Working Paper (March 2026)

**Abstract**

This Article argues that recent U.S. economic-security practice should be read neither as a wholesale departure from trade law nor as proof that law has become epiphenomenal. The more significant development is a reweighting of legal function under conditions of weakened stabilisation. As negotiated recalibration and authoritative closure become less dependable, trade law persists increasingly as a medium for structured contestation, conditional alignment, and conflict management. Recent U.S. arrangements with Malaysia, Cambodia, El Salvador, Guatemala, and Argentina operate through legal form while attenuating institutional entrenchment: they organise pressure and adjustment through asymmetry, reversibility, and domestic implementation rather than dense reciprocity or strong third-party control. Recent WTO security disputes show the same shift on the adjudicative side. The issue is not whether law remains, but the work it is being asked to do. Under strain, contestation within legal form becomes more, not less, important, because it helps shape the terms on which later settlement becomes possible.

**Keywords:** international trade law; economic security; geoeconomics; economic security agreements; WTO security disputes; legal form; contestation

## I. Introduction: Trade Law After Stabilisation

Recent U.S. economic-security agreements have generated a familiar kind of legal unease. Are these instruments really trade agreements? What kind of obligations do they create? How should they be situated within an international trade order long associated with reciprocity, entrenchment, and adjudication? Are they temporary deviations from inherited forms, or indications of something more consequential? Those questions are understandable. But taken on their own, they risk mislocating the source of difficulty. The contemporary problem is not simply one of legal erosion or exceptionalism. It is a reweighting of legal function: as adaptive channels narrow, law persists, but increasingly as a medium for structured contestation, conditional alignment, and conflict management rather than authoritative settlement.

This Article argues that recent U.S. economic-security practice should not be understood as a wholesale departure from international trade law. The more important development is a shift in the operative balance among law's functions in strategically salient domains. Multilateral trade law has long combined stabilising and contestatory roles, and coercive politics have never been external to it. The earlier GATT/WTO order was not insulated from pressure, hierarchy, or managed bargaining. What distinguished it, in narrower institutional terms, was that legalisation, negotiation, and a broader political settlement worked together closely enough to keep recalibration broadly viable. Conflict could usually be processed through channels that, however unevenly, remained usable and broadly recognised from within the regime.

To describe that earlier configuration as a stabilisation settlement is not to romanticise it. Stabilisation, as the term is used here, never meant equality, consensus, or the absence of coercion. It meant something more limited but more important: that strain could generally be channelled through recognised mechanisms of adjustment without routine contestation of the system's own capacity to adapt. Negotiated recalibration remained a plausible means of rebalancing pressure within the regime. Disputing, whether more diplomatically embedded under the GATT or more judicialised under the WTO, still formed part of a broader settlement in which legal argument, bargaining, and compliance retained enough traction to organise expectations. The earlier order was therefore contingent from the beginning. It mattered not because it eliminated the tension between stability and change, but because it made that tension institutionally manageable. In Lauterpacht's classic formulation, the underlying problem is the "antinomy of change and stability" (Lauterpacht, 2011, p. 256).

That settlement is now under strain. Domestic political realignment in major trading powers has narrowed the range of trade commitments that remain politically sustainable in sectors framed as strategically sensitive. Consensus-bound updating has become more difficult where disagreement is sharpest. And prolonged contestation over appellate authority has weakened confidence that adverse rulings will reliably culminate in adopted and authoritative outcomes. The point is not that the regime has collapsed. It has not. Negotiation continues in some areas, panels still operate, and Members still litigate. But in strategically salient domains the principal adaptive channels through which trade law once absorbed conflict peacefully no longer function with the same reliability. The channels remain, but their traction has weakened.

Once that background is recognised, contemporary economic-security agreements appear in a different light. The bilateral agreements examined most closely here—those with Malaysia, Cambodia, El Salvador, Guatemala, and Argentina[1]—are not well described as isolated anomalies or merely transitional instruments. Nor are they best read through the template of more conventional reciprocal trade or trade-and-investment agreements. Read together, they reveal a modular family of security-conditional agreements. These instruments preserve legal form while attenuating the institutional features associated with thicker reciprocal economic agreements. They are institutionally thin but substantively intrusive. They operate through consultation, domestic-law implementation, easy exit, anti-circumvention logic, and varying forms of security alignment keyed to U.S. priorities. Their asymmetry, reversibility, and negotiated ambiguity are not incidental defects. They are features of legal design through which alignment is pursued under conditions of uneven bargaining power, with the United States retaining broad leverage while partner states preserve bounded and differently structured policy space.

A related, though analytically distinct, development is visible in recent WTO security disputes. Even under acute strain, Members continue to litigate, panels continue to decide, and legal reasoning continues to structure argument (World Trade Organization, 2019, 2020b, 2022a, 2022b). Yet the path from legal determination to authoritative closure has become less dependable. Here too, the point is not that law has disappeared. In politically salient disputes, adjudication still generates doctrine and disciplines argument, but often under conditions in which final judicial settlement is contested, incomplete, or institutionally fragile. The significance of these disputes lies not in proving the desirability of more judicialisation, but in showing that even highly political conflicts continue to be organised through legal form.

These developments are difficult to interpret in part because they are commonly assessed through analytical baselines forged under an earlier settlement. Treaty form is still often associated with dense reciprocity, institutional entrenchment, and durable constraint; adjudication with closure; and legalisation with a relatively stable correspondence between form and function. When contemporary instruments depart from those expectations, they can appear anomalous, deficient, or merely transitional. But the difficulty lies not only in the instruments themselves. It also reflects the continued influence of inherited baselines that no longer map neatly onto legal forms operating under altered institutional conditions. The resulting interpretive lag matters because it can obscure the kinds of legal work contemporary instruments are actually performing and can encourage a broader legal fatalism precisely when clearer diagnosis is most needed.

[1] Hereafter, respectively, the U.S.–Malaysia ART, U.S.–Cambodia ART, U.S.–El Salvador ART, U.S.–Guatemala ART, and U.S.–Argentina ARTI. The first four are agreements on reciprocal trade; the Argentine instrument is an agreement on reciprocal trade and investment.

The claim, then, is not that trade law has ceased to stabilise, nor that contestation is new. It is that, in contemporary economic-security practice, the balance among those functions is shifting because the institutional conditions that once made stabilisation more credible are under strain. The United States is not abandoning trade law so much as using it differently: in strategically salient domains, trade law is increasingly used less to produce durable settlement through dense reciprocal constraint and more to preserve leverage, organise conditional alignment, manage third-country spillovers, and structure ongoing contestation within legal form. That shift should not be mistaken for proof that law no longer matters. If anything, it makes clearer one of law's enduring functions in the governance of cross-border economic relations**:** when stabilisation weakens, legal forms, vocabularies, and forums remain indispensable for challenging, justifying, coordinating, recording, and sometimes partially constraining power.

The argument proceeds in six steps. Part II reconstructs the historically contingent stabilisation settlement that gave multilateral trade law much of its earlier adaptive capacity. Part III explains why negotiated recalibration and authoritative closure now operate with reduced reliability in strategically salient domains. Part IV examines the emerging family of security-conditional agreements and shows how these instruments function as legally embedded but low-entrenchment forms of adjustment. Part V turns to recent WTO security disputes to show how adjudication continues to structure contestation even as closure becomes less dependable. Part VI explains why these developments are often misread through inherited baselines and why that misfit risks encouraging legal fatalism. Part VII concludes by drawing out the broader implication: contemporary strain should not be read as a reason to give up on law, but as a reason to understand more clearly the different work law is now being asked to do.

## II. The Stabilisation Settlement and Its Contingency

### *A. Operative Adaptive Channels*

To say that multilateral trade law once possessed greater stabilising capacity is not to claim that it ever displaced power, eliminated conflict, or generated compliance in any complete sense. The narrower claim is institutional. For a significant period spanning the late GATT and early WTO eras, conflicts generated by trade rivalry could generally be processed through internal pathways that were widely treated as legitimate means of recalibration. Those pathways were unevenly accessible, often hierarchical in operation, and never insulated from coercive bargaining. But they remained sufficiently usable that strain could usually be managed without routine contestation of the regime's own capacity to adapt.

The first of those pathways was negotiated recalibration. Under the GATT, rounds and bargains did more than reduce tariffs. They provided a recognised forum through which Members could revisit balances of concession, absorb distributional pressure, and translate friction into bargaining rather than systemic rupture. Negotiation did not stand apart from power.

It organised it. Reciprocal adjustment, even when heavily shaped by the most powerful actors, still functioned as a plausible internal means of responding to change. The system's stabilising force therefore depended not on harmony, but on the continued availability of negotiated pathways through which conflict could be reworked and reallocated.

The second pathway was closure through disputing, though the character of that closure changed over time. Under the GATT, dispute settlement remained politically embedded and comparatively diplomatic. Finality was weaker, more contingent, and more dependent on negotiated acceptance than later WTO practice. But that did not make it irrelevant. Even a politically embedded dispute process structured expectations about escalation, justification, and response. It supplied a common procedural setting in which disagreements could be articulated and pressure channelled. With the WTO, judicialisation deepened that architecture. Automaticity, adopted reports, and appellate review strengthened the expectation that legal disagreement could culminate in authoritative outcomes. Yet even then, disputing did not become a self-sufficient alternative to politics. It remained interwoven with bargaining, compliance negotiations, and strategic calculation.

What mattered, then, was not adjudication alone, and not negotiation alone. It was the interaction of both within a broader political economy in which major actors still treated the regime's internal pathways as usable mechanisms of adjustment. Trade disputing operated, as Joseph Conti puts it, in an "internationalised legal-diplomatic field," in which law and diplomacy were intertwined rather than opposed (Conti, 2011, p. 143). Legalisation stabilised expectations because it was housed within a wider settlement that made restraint, compromise, and organised response credible enough to matter. The stabilising force of trade law was therefore never autonomous. It depended on a conjunction of legal form, diplomatic practice, and political conditions that made recalibration broadly workable.

Seen in this light, the earlier order was stabilising in a narrower and more institutional sense than many retrospective accounts imply. Stabilisation did not mean that disputes routinely ended in clean finality or that the law operated above politics. It meant that legal and diplomatic procedures remained sufficiently available, and sufficiently recognised, to process conflict from within the system. Strain could generally be channelled into mechanisms of negotiated adjustment, organised disputing, or some combination of the two, rather than routinely displaced into open contestation over the regime's authority or relevance. That was the achievement of the settlement, and it was always contingent.

This also clarifies why the earlier order should be understood as a form of embedded legalism rather than a triumph of law over politics. Legalisation mattered, but it mattered within a field still shaped by diplomacy, reciprocity, and strategic accommodation. The system's authority rested not simply on legal obligation, but on the continued belief that internal pathways of recalibration remained worth using even when outcomes were imperfect. So long as that belief held with sufficient force, the regime could absorb pressure without constant challenge to its own adaptive machinery.

### *B. Coercion Within a Stabilised Institutional Core*

That account becomes misleading if it is mistaken for a story of civility, equality, or consensualism. The earlier trade order was not stabilising because coercion was absent. It was stabilising, to the extent that it was, because coercive politics coexisted with operative adaptive channels. Voluntary export restraints, unilateral pressure, grey-area measures, managed trade, and issue exclusion all formed part of the background against which the regime operated. Powerful states shaped outcomes from within the system and at its margins. Highly sensitive disputes were not always fully absorbed by legal process. None of this should be denied.

But none of it negates the existence of a stabilisation settlement. The relevant contrast is not between a pure past and a coercive present. It is between coercion under conditions in which the regime's principal pathways of recalibration remained broadly usable, and coercion under conditions in which those same pathways now operate with reduced reliability. In the earlier configuration, negotiation still functioned as a recognised route of adjustment, disputing still commonly proceeded within the regime's institutional frame, and the system's core mechanisms were not routinely treated as incapable of absorbing pressure in the domains that mattered most. Coercion could be ugly, asymmetrical, and exclusionary without necessarily displacing confidence in the system's ability to manage conflict.

This is why the earlier order should not be described as either pure diplomacy or triumphant judicialisation. It was a historically specific form of embedded legalism in which law, bargaining, and power were mutually implicated. Legalisation changed the terms on which power was exercised, but it did not eliminate hierarchy or strategic pressure (Conti, 2011). Nor did it require that every dispute be finally and authoritatively settled in order to matter. What it required was something more modest but more durable: that legal and diplomatic procedures remained sufficiently usable to structure response and preserve a common framework of justification.

This point also helps avoid two symmetrical mistakes. The first is nostalgia: the suggestion that GATT/WTO trade law once insulated economic exchange from coercion and has only now been invaded by security and power politics. The second is flattening: the suggestion that because coercion existed before, nothing structurally important has changed. Both are wrong. The earlier settlement was always power-inflected. But it was stabilising in a narrower institutional sense because its principal adaptive channels retained enough traction to make internal adjustment broadly plausible. That is the baseline against which the present moment should be measured.

The importance of that baseline is analytical rather than romantic. Once the earlier order is understood as a contingent configuration in which coercive politics coexisted with operative adaptive channels, the contemporary question changes. The question is no longer whether trade law has suddenly become political. It is how and why those channels have lost traction in strategically salient domains. Framed that way, current developments appear less as the simple disappearance of law than as evidence of a different adaptive condition: one in which legal form persists, but the mechanisms through which it once stabilised conflict no longer operate with the same reliability. That is the problem to which the next Part turns.

## III. Why Stabilising Pathways Narrowed

### *A. Domestic Realignment and the Politics of Reduced Commitment*

If the earlier stabilisation settlement depended on operative adaptive channels, the first question is why those channels became harder to use. The answer does not lie in a single doctrinal controversy or in the conduct of any one state. It lies in a broader reconfiguration of the political conditions under which multilateral trade commitments are made, defended, and sustained. In major trading powers, domestic political realignment has narrowed the range of trade obligations that remain politically acceptable in sectors framed as strategically sensitive. Distributional conflict, technological rivalry, industrial-policy contestation, and security concerns have reworked the coalitions that once supported deeper commitments to multilateral constraint (Blackwill & Harris, 2016; Farrell & Newman, 2019).

The issue, in other words, is not simply that governments now invoke security more often. It is that the domestic politics of trade have changed in ways that make durable commitments politically costlier to conclude and less resilient once in place in precisely those domains where pressure for adjustment is greatest. Commitments concerning subsidies, state involvement in production, strategic supply chains, export controls, investment screening, and technology-related restrictions now sit closer to the centre of domestic political conflict than many traditional market-access questions once did. In such sectors, the costs of legal restraint are more likely to be framed as costs to resilience, autonomy, or national security. That reframing does not eliminate law, but it alters the political conditions under which law can do stabilising work.

This point matters because it prevents an overly internal account of present strain. The narrowing of adaptive channels cannot be explained solely by reference to WTO doctrine or institutional design. It reflects changes in the wider political economy within which those institutions operate. The narrower question here is how recent economic-security agreements and security disputes illuminate a shift in the work legal form performs when stabilising pathways weaken. Once trade commitments become more vulnerable to domestic contestation, especially where they touch strategic production, critical technologies, or dependency on geopolitical rivals, negotiated recalibration loses traction as a politically viable mode of response. What changes is not merely the language through which conflict is expressed, but the political horizon of what kinds of legal adjustment remain available. Whether those pressures are expressed chiefly in the language of security, industrial policy, resilience, or strategic autonomy, the underlying dynamic is the same: the system's adaptive capacity is under strain.[2]

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[2] Recent work on industrial policy and "re-globalization" likewise diagnoses mounting pressure on WTO rules and institutions from the growing priority of domestic imperatives (Zhou & Liu, 2026)

That is why the present argument should not be reduced to securitisation alone. Security is the dominant contemporary vocabulary, but the underlying structural development is broader. The political foundations that once made certain forms of multilateral accommodation plausible have weakened. As those foundations weaken, the adaptive channels of the system remain formally in place, but their practical usability narrows in the areas where pressure is most acute.

### *B. Consensus Rigidity and Blocked Negotiated Recalibration*

The second source of narrowing lies within the structure of multilateral trade law itself. Even where the need for recalibration is widely recognised, formal updating remains difficult in a regime whose most authoritative modes of amendment, clarification, and collective adjustment depend on broad agreement among Members with increasingly divergent priorities. The problem is not simply disagreement as such. It is disagreement concentrated precisely in the domains where adaptation is most needed and where the distributional and strategic stakes are highest.

This matters because negotiated recalibration was one of the principal adaptive channels of the earlier settlement. Under that settlement, bargaining rounds and negotiated accommodations did not resolve all pressures, but they provided a recognised means through which imbalances, new policy demands, and evolving forms of competition could be reabsorbed within the regime. In the present setting, that function has become more difficult to perform. The issues most in need of recalibration are also those least amenable to broad consensus. Members disagree not only about policy substance, but also about the very legitimacy of the instruments now at stake: industrial policy, strategic trade restrictions, state support, economic coercion, resilience measures, and the proper treatment of security-linked actions.

The result is not literal immobility. Negotiation continues in many forms. Members bargain in committees, pursue plurilateral or bilateral understandings, delay conflict, repackage disputes, and experiment with narrower instruments. But the kind of negotiated recalibration that once helped stabilise expectations at the centre of the system no longer functions with the same credibility in strategically salient domains. The distinction is important. A regime can continue to negotiate at the margins while still losing confidence in negotiation as its principal means of peaceful adjustment where the stakes are greatest.[3]

That loss of confidence has practical consequences. Where Members no longer expect formal updating to offer a realistic path for absorbing pressure, they will look elsewhere for legally usable forms of adjustment. Some of those forms will remain multilateral in aspiration; others will be narrower, more selective, and more asymmetrical. But the underlying driver is the same: when negotiated recalibration loses traction, adaptation does not cease. It is redirected.

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[3] Lauterpacht made the point in terms of peaceful change: without effective machinery for modifying the existing legal position, the rule of law comes to be experienced as the perpetuation of an "obnoxious status quo" (Lauterpacht, 2004, p. 9).

### *C. Contestation Over Appellate Authority and Impaired Closure*

The other principal adaptive channel under strain is authoritative closure. Here conceptual precision matters. The point is not that adjudication has ceased to matter, nor that panels no longer decide politically charged cases. The point is that prolonged contestation over appellate authority has weakened the regime's ability to convert legal determination into reliably adopted and authoritative outcomes. That is a different claim, and it is the one relevant here.

That contestation did not arise in a vacuum. It reflects longstanding disagreement over the scope and method of appellate review within a consensus-bound system already struggling to recalibrate underlying rules through negotiation. Concerns about interpretive overreach, the limits of adjudicative authority, and the relationship between adjudication and Member control were never fully absorbed through reform. The eventual suspension of appellate appointments transformed those disagreements into a structural impairment of closure rather than a dispute over doctrine alone (United States Trade Representative, 2020; World Trade Organization, n.d.-a).

The significance of appellate paralysis lies not only in the absence of a functioning appellate tier as such. It lies in the way that absence alters the expected trajectory of dispute settlement. Adverse panel findings can still be produced. Legal argument remains central. Panels continue to interpret texts, discipline claims, and generate reasoned reports. But where appeals can no longer proceed to a functioning appellate instance, the expectation that disputes will culminate in final adopted outcomes no longer operates with the same force. Closure becomes impaired, and with it one of the principal mechanisms through which the system once stabilised conflict.

Members have responded unevenly to that condition. Some participate in interim appellate arrangements, most notably the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), which preserves a temporary appeal path among participating Members through arbitration under Article 25 of the DSU. Others do not. The result is not a uniform substitute for the former appellate structure, but a differentiated landscape in which the consequences of impaired closure vary across the membership (World Trade Organization, n.d.-c). In that setting, contestation extends beyond substantive interpretation to the availability and form of second-tier review itself. Appeals into a non-functioning stage therefore alter litigation and compliance incentives most sharply where no interim review mechanism is available.

That change is more consequential than a technical malfunction. Authoritative closure matters not only because it ends particular disputes, but because it shapes incentives and expectations before disputes arise. It influences how Members assess litigation risk, compliance costs, bargaining leverage, and the likely consequences of losing. Once finality becomes uncertain, the legal system still structures argument, but it does so under altered conditions. Members may litigate for pressure, signalling, clarification, or delay rather than in confident expectation of a final, adopted resolution. The system continues to produce doctrine, but doctrine no longer carries the same stabilising payoff when authoritative closure is uncertain or unavailable.

This does not mean that adjudication has become irrelevant. Nor does it mean that every politically salient dispute should or can be resolved through final judicial settlement. The narrower point is institutional. When contestation over appellate authority becomes prolonged and unresolved, the regime's capacity to rely on authoritative closure as a predictable channel of adjustment is diminished. Adjudication remains one legal form among others, but it operates in a setting where its relationship to final settlement is less secure than before.

### *D. Narrowed Pathways, Not Systemic Collapse*

Taken together, these dynamics narrow the adaptive channels through which multilateral trade law historically absorbed strain. Domestic realignment makes deep commitments harder to negotiate and sustain in strategically sensitive domains. Consensus rigidity makes formal recalibration more difficult where disagreement is sharpest. Impaired closure weakens confidence that disputes will reliably culminate in adopted and authoritative outcomes. The resulting condition is not the product of structure alone nor of agency alone. It reflects the interaction of political choice and institutional design, the effects of which extend beyond any single member. The United States is an especially important driver of the present condition, but it is not the system.

That is the core claim of this Part. It is important to state it in a bounded way. The argument is not that the regime has collapsed, that negotiation has ended, or that adjudication has disappeared. Negotiation continues. Panels still operate. Members still invoke legal claims and legal defences. Nor is the present condition reducible to U.S. action alone, even if U.S. action has been central to it. Domestic political change, consensus rigidity, institutional design, and Member conflict over the proper scope of adjudication have together produced conditions of systemic constraint. The argument is therefore narrower and more consequential: the principal adaptive channels of the stabilisation settlement remain formally present, but in strategically salient domains they have become less dependable as mechanisms of peaceful recalibration.

Framed in this way, the present condition is neither one of continuity without change nor one of simple rupture. It is a condition of weakened stabilisation under regime continuity. Legal form persists. Institutional routines persist. But the reliability of the channels through which the system once processed conflict from within has diminished. That altered condition does not merely create pressure for adaptation in the abstract. It also shifts the legal design incentives facing governments. Where actors still want the coordinating, justificatory, and implementing advantages of legal form, but can no longer rely as confidently on negotiated recalibration or authoritative closure, instruments that preserve discretion, reduce entrenchment, and lower exit costs become more attractive.

The next Part turns to those forms. The claim is not that narrowed pathways mechanically produce a single agreement model, still less that systemic strain displaces state preference or bargaining power. It is that strain changes the legal terms on which preference and bargaining power are exercised. In strategically salient domains, actors remain drawn to legal instruments that can organise alignment, distribute benefits, and support domestic implementation, but are less willing or able to accept dense reciprocity, strong third-party control, or costly lock-in. The recent security-conditional agreements are among the clearest manifestations of that shift.

## IV. A Modular Family of Security-Conditional Agreements

### *A. Shared Architecture: Thinness as Institutional Design*

If the previous Part explains why the principal adaptive channels of the earlier stabilisation settlement now operate with reduced reliability, this Part shows the kind of legal design that becomes especially usable under those conditions. The most revealing evidence is not a single agreement, but a deliberately bounded comparative corpus: the recent U.S. bilateral agreements with Malaysia, Cambodia, El Salvador, Guatemala, and Argentina. This set is used because its members are close enough in structure and function to permit direct comparison across baseline legal context, intensity of security alignment, commercial architecture, and implementation design. Other recent economic-security arrangements, including those with Japan and Australia, belong to the wider landscape but not to the core comparative set used here, because they are more specifically directed to critical-minerals and supply-chain coordination and would broaden the object of comparison at precisely the point where the argument seeks to isolate a more specific legal technique. Read together, the five agreements in the core comparative set are neither identical templates nor isolated improvisations. They are better understood as a modular family of security-conditional agreements.

Their common structure is striking. Each is framed as a formal international agreement. Each is tied to domestic procedures for entry into force. Each treats annexes, schedules, appendices, and related instruments as integral parts of the agreement. Yet none creates the kind of dense institutional architecture associated with thicker reciprocal trade agreements. None relies on neutral third-party dispute settlement as a central mechanism of enforcement. Instead, implementation is mediated through consultation, domestic-law action, regulatory adjustment, and relatively easy exit. In that sense, these instruments are legal in form but weakly entrenched in the way that matters most here: they do not lock the parties into thick reciprocal adjudicative control.

This point requires care because the language of thinness can otherwise mislead. These agreements are not slight. Several are extensive, detailed, and highly intrusive. Some reach well beyond tariffs into digital trade, customs administration, labour, environment, subsidies, state-linked enterprises, strategic trade, and investment-related obligations. Some include detailed schedules, staging categories, tariff-rate quotas, procurement or purchase commitments, and annexed implementation arrangements. What is thin, then, is not subject-matter coverage. It is institutional entrenchment. These agreements are best understood as institutionally thin but substantively intrusive.

The family resemblance is clearest in the way economic-security obligations are organised. Across the corpus, the agreements tie partner-side conduct to U.S. measures, legal designations, or strategic priorities. The United States identifies the relevant third-country risk, export-control concern, sanctions environment, or circumvention problem. The partner is then asked to align, cooperate, restrict, share information, adjust procurement, or otherwise support a broader U.S. economic-security strategy. This is not the reciprocal equilibrium logic associated with classic free trade agreements. It is a different legal technique: one that preserves treaty form while structuring outward alignment around U.S.-defined triggers.

A similar orientation appears in the recurring concern with third-country spillovers. Rules-of-origin provisions, anti-transhipment disciplines, and related anti-circumvention measures are designed to ensure that benefits accrue substantially to the parties rather than to third countries or their nationals. The agreements do not simply liberalise bilateral trade. They also attempt to discipline the triangular effects of wider interdependence. In that respect, they are instruments not only of bilateral exchange, but also of selective geopolitical filtration.

Their asymmetry, reversibility, and negotiated ambiguity should therefore not be treated as accidental defects. They are features of legal design suited to a setting in which legal form remains useful, but dense reciprocal constraint has become harder to negotiate, harder to sustain, and less attractive to accept. The United States retains broad trigger and enforcement leverage, while partner states preserve bounded and differently structured policy space. The agreements are thus not informal substitutes for law. They are legal instruments adapted to a setting in which more stabilising forms of recalibration no longer command the same political or institutional support.

### *B. Patterned Calibration Across the Corpus*

The family resemblance is real, but so is the variation. That variation is not random. It is patterned along several axes, including prior legal baseline, degree of security alignment, commercial architecture, and the surrounding implementation framework. Across the corpus, implementation remains institutionally thin and termination windows remain short enough to preserve reversibility, even though the precise monitoring vehicles vary.

The first axis is the pre-existing legal relationship. El Salvador and Guatemala are best understood as security-regulatory overlays on an existing Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) baseline (U.S.–El Salvador ART, 2026; U.S.–Guatemala ART, 2026). Their new agreements do not displace the earlier free trade framework; they sit alongside it and supplement it. Much of the baseline tariff and market-access structure was therefore already in place. The newer instruments function less as stand-alone trade agreements than as overlays that revise tariff treatment while adding new economic-security, regulatory, and anti-circumvention obligations. Malaysia and Cambodia rest on thinner bilateral baselines. They therefore appear more clearly as stand-alone reciprocal trade agreements, even though they remain institutionally thin (U.S.–Malaysia ART, 2025; U.S.–Cambodia ART, 2025). Argentina differs again. It is structured expressly as an agreement on reciprocal trade and investment and includes bilateral tariff schedules from the outset. The result is a more overtly bilateral and commercially recognisable hybrid.

The second axis is the intensity of security alignment. Here the agreements range from harder-edged to more qualified forms. Malaysia and Guatemala sit near the harder end. Malaysia must adopt or maintain a measure with "equivalent restrictive effect" to relevant U.S. third-country restrictions and must "align with all unilateral export controls in force by the United States" (U.S.–Malaysia ART, 2025, arts. 5.1–5.2).[4] Guatemala is similarly demanding: it requires measures with "equivalent effect" and likewise requires alignment with "all unilateral export controls in force by the United States" (U.S.–Guatemala ART, 2026, arts. 5.1–5.2). El Salvador occupies a middle position. Its economic-security section still ties Salvadoran action to U.S. measures, but it allows El Salvador to adopt measures "deemed appropriate by El Salvador," and in sanctions and export-control cooperation it uses softer formulations such as cooperation and "best efforts" (U.S.–El Salvador ART, 2026, arts. 5.1–5.2). Cambodia is more qualified still. Its text repeatedly preserves Cambodia's "sovereign interests," makes several obligations request-based, and limits export-control alignment to a "case-by-case basis, based on requests from the United States" (U.S.–Cambodia ART, 2025, arts. 5.1–5.2). Argentina is softer in a different register. Its language repeatedly turns on "when appropriate" and on action "consistent with, and permitted by, applicable requirements of its law," while also using a "best efforts" formulation for sanctions and export-control enforcement (U.S.–Argentina ARTI, 2026, arts. 4.1–4.2). What matters analytically is not that all agreements impose the same level of alignment. It is that they share a U.S.-triggered security logic whose intensity is calibrated rather than uniform. That variation is therefore not merely descriptive. It is one of the places where contestation within legal form becomes visible, because it records how far partner states were able to shape the scope and terms of alignment.

The third axis is commercial architecture. Argentina is the most conventionally reciprocal of the set. It includes bilateral tariff schedules, staging categories, and tariff-rate quotas that make it the closest analogue to a recognisable bilateral trade bargain, even as its enforcement structure remains thin (U.S.–Argentina ARTI, 2026, Annex I).[5] Malaysia is commercially

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[4] Malaysia warrants one qualification. Under Article 7.2, the ART would enter into force only after the parties exchanged written notifications certifying completion of their legal procedures, and Article 7.5 provides for termination only by written notification taking effect 180 days later. Public statements in March 2026 became inconsistent, with the agreement alternately treated as no longer applicable and acknowledged as not having been the subject of any formal U.S. notice to Malaysia. For present purposes, the Malaysia text is therefore used primarily as evidence of legal design and of the fragility of operationalization, rather than as a settled example of durable implementation.

[5] At signature, the relevant U.S. baseline was the default additional 10 percent reciprocal duty. The agreement exempts Schedule 2A goods from that duty, gives Schedule 2B goods a zero reciprocal rate, and otherwise leaves up to 10 percent in place, on top of the ordinary U.S. tariff. On Argentina's side, U.S. goods are placed against Argentina's ordinary tariff schedule in force on 30 October 2025 through EIF (duty-free), R2 (2 percent), Z (MFN

elaborate in a different way. Its annexes contain multiple tariff categories alongside broader purchase and investment commitments, producing a more expansive hybrid of market access, commercial inducement, and strategic alignment (U.S.–Malaysia ART, 2025, Annex I; Annex IV; arts. 6.1–6.2).[6] Cambodia is commercially starker. Its tariff structure is simpler and the overall bargain more visibly asymmetrical (U.S.–Cambodia ART, 2025, Annex I).[7] El Salvador and Guatemala again differ because their tariff treatment must be read against the pre-existing CAFTA-DR baseline: the earlier liberalisation remains in place, while the newer agreements layer additional tariff adjustment and regulatory discipline onto it.[8]

A fourth axis concerns implementation and exit. Some agreements create working groups or rely on existing bilateral trade-and-investment bodies to monitor implementation; others remain institutionally thinner and depend more heavily on consultation and domestic-law enforcement. Termination windows also vary, though all are short enough to preserve reversibility. These differences matter because they show that low entrenchment is itself being calibrated. Even within a common family, some agreements are more rapidly adjustable, more overlay-like, or more closely tied to existing institutional frameworks than others.

The patterned variation across the four axes is brought together in Table 1.

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rate unchanged) , and TRQ categories, including an 80,000-metric-ton beef quota for 2026 and a 1,000-metric-ton annual cheese quota.

[6] At signature, the United States maintained a 19 percent reciprocal tariff for Malaysia. The agreement exempts listed Schedule 2 goods from that duty, while other Malaysian goods remain subject to up to 19 percent on top of the ordinary U.S. tariff. On Malaysia's side, U.S. goods are placed against Malaysia's MFN tariff schedule in force on 24 April 2025 through EIF (duty-free from entry into force), E5 and E9 (duty-free in five or nine years), R5, R10, R10A, and R15 (immediate reductions), A/B/C/D (0, 2, 3, and 5 percent retained), Z (MFN rate unchanged), and TRQ categories. The agreement also adds broader commercial commitments, including approximately USD70 billion in Malaysian investment in the United States over ten years and estimated purchases of U.S. semiconductors, aerospace components and equipment, and data-centre equipment worth USD150 billion over five years.

[7] At signature, the relevant U.S. baseline was a 19 percent reciprocal duty. The agreement exempts listed Schedule 2 goods from that duty, while other Cambodian goods remain subject to an additional duty of up to 19 percent, on top of the ordinary U.S. tariff. On Cambodia's side, the schedule uses only two staging categories—A (already duty-free) and EIF (duty-free from entry into force)—against Cambodia's MFN tariff schedule in force on 1 January 2025, and USTR described Cambodia as eliminating tariffs on 100 percent of U.S. products.

[8] El Salvador: At signature, the relevant U.S. baseline was the default additional 10 percent reciprocal duty. The agreement exempts Schedule 1A goods from that duty, gives Schedule 1B goods a zero reciprocal rate, and preserves zero treatment for covered Schedule 2 goods that qualify as originating under CAFTA-DR. Other Salvadoran goods remain subject to up to 10 percent on top of the ordinary U.S. tariff, with CAFTA-DR preferences continuing to apply where relevant. Because the agreement expressly complements CAFTA-DR, the earlier liberalisation remains in place, while the new agreement adds regulatory disciplines on import licensing, technical regulations and conformity assessment, agriculture, and digital trade. Guatemala: At signature, the relevant U.S. baseline was the default additional 10 percent reciprocal duty. The agreement exempts Schedule 1A goods from that duty, gives Schedule 1B goods a zero reciprocal rate, and preserves zero treatment for covered Schedule 2 goods that qualify as originating under CAFTA-DR. Other Guatemalan goods remain subject to up to 10 percent on top of the ordinary U.S. tariff, with CAFTA-DR preferences continuing to apply where relevant. Because the agreement expressly complements CAFTA-DR, the earlier liberalisation remains in place, while the new agreement adds regulatory disciplines on import licensing, technical regulations and conformity assessment, agriculture, and geographical indications.

Table 1. Comparative Features of the Five Security-Conditional Agreements

| Partner | Pre-existing legal baseline | Security alignment | Commercial architecture | Implementation / exit |
|---|---|---|---|---|
| Malaysia | Thinner bilateral baseline | Harder-edged; equivalent restrictive effect and alignment with U.S. export controls | Commercially elaborate hybrid, with multiple tariff categories plus purchase and investment commitments | Institutionally thin in the main text; implementation relies mainly on consultation and domestic-law enforcement; 180-day termination |
| Cambodia | Thinner bilateral baseline | More qualified and request-based; sovereign-interest language; case-by-case alignment | Simpler two-category tariff structure and particularly asymmetric bargain[9] | Institutionally thin in the main text; implementation relies mainly on consultation and domestic-law enforcement; six-month termination |
| El Salvador | Overlay on CAFTA-DR baseline | Intermediate; U.S.-triggered logic softened by action "deemed appropriate" by El Salvador and best-efforts formulations | Existing liberalisation retained; new agreement layers tariff adjustment and regulatory discipline onto the CAFTA-DR baseline | Bilateral Working Group; periodic monitoring; 90-day termination |
| Guatemala | Overlay on CAFTA-DR baseline | Harder-edged; equivalent-effect alignment and alignment with U.S. export controls | Existing liberalisation retained; new agreement layers tariff adjustment and regulatory discipline onto the CAFTA-DR baseline | Bilateral Working Group; periodic monitoring; 90-day termination |
| Argentina | Distinct bilateral | Softer in a different register; | Most conventionally | Implementation routed through the Trade and |

[9] Cambodia largely opens its market to U.S. goods, while the United States still keeps an extra tariff on many Cambodian exports unless they are specifically exempted.

| | | | | |
|---|---|---|---|---|
| | trade-and-investment baseline | "when appropriate," consistency with domestic law, and best efforts | reciprocal; bilateral tariff schedules, staging categories, and tariff-rate quotas | Investment Council under the U.S.-Argentina TIFA; six-month termination |

Taken together, these differences reveal a template-plus-variation technique rather than a single fixed model. Where an older free trade baseline already exists, the new agreement can operate as a security-regulatory overlay. Where the bilateral baseline is thinner, the agreement can function more overtly as a stand-alone reciprocal trade instrument. Where a broader trade-and-investment relationship is politically available, the same general technique can be embedded in a more commercially recognisable structure. And where partner capacity, strategic trust, or geopolitical positioning differs, the degree of retained policy space can be adjusted accordingly.

### *C. What This Family Shows*

Viewed in this comparative light, the significance of the agreements lies not in the oddity of any one text, but in the consolidation of a legal technique. That technique has a stable core: formal agreement form, weak institutional entrenchment, preserved room for asymmetrically distributed discretion, anti-third-country orientation, and security-conditional cooperation keyed to U.S. priorities. But it also has adjustable settings. It can be harder or softer, more reciprocal or more asymmetric, commercially sparse or commercially elaborate, overlaid on older commitments or built on thinner bilateral frameworks. Those adjustments are not merely technical. Across all four axes, they record contestation within legal form: the United States structures the bargain, but partner states also negotiate qualifications, shape implementation, and secure differently bounded policy space.

That is why these instruments should not be dismissed simply because they diverge from thicker free trade agreement templates, nor treated as legally insignificant simply because their operationalization may remain contingent, reversible, or politically fragile. Their divergence from older preferential trade agreements does not strip them of legal significance, and their reliance on ambiguity, reversibility, or broad domestic-law implementation does not make them empty. Their design features are doing real work. They preserve legal form while attenuating the stabilising features associated with thicker reciprocal trade agreements. They allow the United States to externalise strategic priorities, manage third-country spillovers, and package selective commercial inducements without accepting dense reciprocal adjudicative constraint. They allow partner states to secure access, avoid sharper exclusion, and contest the scope of alignment by negotiating bounded and differently structured policy space within that same structure.

The broader implication is that adaptation is no longer proceeding primarily through the classic combination of negotiated multilateral updating and strongly authoritative closure. It is increasingly proceeding through a family of low-entrenchment, security-conditional agreements that remain recognisably legal while doing different work. In this respect, the agreements are not peripheral to the argument of this Article. They are among its clearest empirical manifestations.

This comparative perspective also helps situate the role of contemporary disputes. Once these agreements are understood as patterned legal instruments rather than isolated anomalies, related developments in WTO security litigation become easier to place. The question is no longer whether law remains present. It is how different legal forms—agreements on the one hand, disputing on the other—are being used under conditions in which the older stabilising pathways no longer operate with the same reliability. That is the issue to which the next Part turns.

## V. Security Disputes, Legal Contestation, and the Limits of Closure

This Part is descriptive rather than prescriptive. It does not argue that full adjudication is always the desirable endpoint for security disputes, nor that greater judicialisation would by itself repair the present condition of the trade regime. Its narrower claim is that recent WTO security disputes supply the adjudicative counterpart to the agreements examined in the previous Part. If the agreements show the kind of newer legal form through which adaptation increasingly proceeds, the disputes show how an older legal form continues to operate under the same conditions of strain. Even in this highly sensitive domain, actors continue to turn to legal form and legal argument, and law continues to organise contestation even where closure is contested, incomplete, or institutionally fragile. The disputes do not independently establish the broader argument of this Article, and they are not its principal empirical anchor. What they show, instead, is that the legal handling of security claims has not disappeared. It has changed in function and in expected payoff.

The contemporary sequence begins with *Russia—Measures Concerning Traffic in Transit*. That dispute remains foundational because it provided the basic doctrinal architecture for modern security-exception review. The Panel rejected the strongest version of the view that Article XXI is wholly self-judging, treated the existence of an "emergency in international relations" as subject to objective assessment, and required the invoking Member to articulate its essential security interests with enough clarity to permit a limited good-faith review. At the same time, the Panel preserved substantial deference once those threshold conditions were satisfied. The importance of the case lies not only in the doctrinal framework it produced, but also in the fact that it reached report adoption. In that respect, it stands as the rare recent security dispute in which legal development and formal closure coincided (World Trade Organization, 2019).

The subsequent disputes reveal both continuity and change. *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights* extended the logic of reviewability into the Trade-Related Aspects of Intellectual Property Rights (TRIPS) context. The Panel refused the suggestion that the dispute should be treated as non-justiciable simply because it formed part of a wider political rupture. It proceeded to apply the emerging security-exception framework rather than allowing political salience to displace legal analysis altogether. Yet the dispute did not culminate in an adopted report. Its significance therefore lies less in settled doctrine than in the continued willingness of panels to adjudicate even where respondents and some third parties urged restraint (World Trade Organization, 2020b).[10]

The Section 232 disputes (*United States—Certain Measures on Steel and Aluminium Products*) are even more revealing institutionally. In the disputes challenging the U.S. steel and aluminium measures, Panels again rejected the proposition that Article XXI removes security disputes from adjudication altogether. They addressed the U.S. position on non-justiciability, assessed whether the measures were taken in time of "emergency in international relations," and issued reasoned merits determinations. Yet those reports did not translate into authoritative closure. Appeals were filed into a non-functioning appellate system, and the cases entered a posture in which detailed legal rulings existed without the report adoption and finality that earlier WTO dispute settlement more reliably promised. The point for present purposes is not simply that the United States disagreed with the Panels. It is that the regime proved capable of producing doctrine while proving far less capable of converting that doctrine into settled institutional closure (World Trade Organization, 2022a).

*United States – Origin Marking Requirement* confirms the same pattern in a different factual setting. The Panel again treated Article XXI of the General Agreement on Tariffs and Trade (GATT) as reviewable in its threshold elements and again refused to collapse security invocation into unreviewable discretion. Yet here too the trajectory from report to closure became uncertain once the dispute reached the appellate stage. The result was not legal silence. It was legal determination without dependable finality. That distinction is central. The contemporary security disputes do not show that law has ceased to matter. They show that law increasingly matters in a different register (World Trade Organization, 2022b).

Taken together, these disputes support a narrower proposition than collapse, but a more important one than simple doctrinal novelty. Panels have continued to reject the strongest versions of the wholly self-judging and non-justiciability positions. They have continued to articulate legal tests and to require reason-giving from invoking Members. They have therefore continued to provide a forum in which security claims are contested by complainants and respondents alike, legal categories are preserved, and arguments about the meaning of security provisions and the proper scope of review must still be framed in terms recognisable to the trade regime. But the pattern of outcomes is equally striking: one major adopted report, several disputes terminated or withdrawn, others left in consultations or lapsed, and some of the most consequential panel reports left without adopted closure. In that sense, the disputes reveal a reweighting in adjudication's practical function. It still structures contestation. It does so less reliably through final, adopted settlement.

That point should not be overstated. To say that closure has become less dependable is not to say that adjudication has become irrelevant. Nor is it to insist that every security dispute

[10] Saudi Arabia filed a notice of appeal, Qatar appeared on appeal as appellee, and the parties later suspended further appellate and adoption proceedings following the Al-Ula Declaration (Permanent Mission of the State of Qatar to the United Nations in Geneva, 2020; World Trade Organization, 2020a, n.d.-b).

should culminate in final judicial settlement. The significance of these cases lies elsewhere. They show that even under acute institutional strain and even in disputes framed around vital interests, Members continue to litigate, panels continue to decide, and legal reasoning continues to shape what can plausibly be said and done. Law remains present, but its contribution is less confidently stabilising than before. It disciplines argument, records positions, produces partial clarification, and structures pressure and response, even where it does not yield definitive institutional closure.

That is why the disputes are not a detachable excursus to the broader argument of this Article. The agreements examined in the previous Part show how adaptation is proceeding through newer, lower-entrenchment legal forms. The disputes, by contrast, show how a more established legal form continues to function when the older stabilising pathways of the regime no longer operate with the same reliability. Read together, the two Parts establish a broader point than either could establish alone: the question is not whether law remains present, but how different legal forms are being used when stabilisation weakens and contestation must increasingly be carried within law itself.

## VI. Interpretive Lag and the Continuing Work of Law

### *A. Inherited Baselines and the Persistence of Misfit*

The developments examined in the preceding Parts are often difficult to interpret not only because they are novel in form, but because they are still commonly assessed through baselines formed under an earlier stabilisation settlement. In that earlier setting, treaty form was strongly associated with dense reciprocity, institutional entrenchment, and a relatively stable connection between legalisation and stabilising purpose. Agreements were expected to discipline discretion through mutual commitment; disputing was expected to culminate, more often than not, in authoritative closure; and legal form was often taken to signal a particular combination of reciprocity, predictability, and constraint. Those expectations did not always correspond perfectly to practice, but they nonetheless structured the dominant grammar through which international trade law was understood.

Against that background, contemporary instruments can appear misfitted from the outset. Agreements that preserve legal form while attenuating reciprocity, entrenchment, and third-party adjudication readily appear deficient or incomplete. Security disputes that continue to generate doctrine but do not reliably end in adopted finality can readily be read as signs of institutional dysfunction rather than as evidence of altered legal function. The difficulty, however, lies not only in the contemporary forms themselves. It also lies in the continued application of inherited expectations that no longer map neatly onto the conditions under which trade law now operates.

This is the interpretive problem at the centre of the present moment. It is visible in a recurring repertoire of reactions: doubts about whether these instruments are really trade agreements at all; descriptions of them as anomalous, incomplete, or merely transitional; and a tendency to treat security disputes that generate doctrine without adopted finality as signs of institutional breakdown rather than of altered legal function. The difficulty is not simply that new agreements are unfamiliar or that security disputes are politically contentious. It is that legal forms forged or stabilised under one institutional configuration are now being read through assumptions carried over from another. The resulting misfit can make contemporary developments look more anomalous than they are, and can obscure the legal work those forms are actually performing.

### *B. Why the Misfit Persists*

The persistence of that misfit should not be treated as a matter of simple analytical error. It reflects the way legal fields reproduce expectations through professional training, institutional memory, and role-specific habits of reasoning. International economic law matured during a period in which multilateral negotiation, reciprocity, and adjudication appeared—at least from within the dominant vocabulary of the field—to reinforce one another. It is therefore unsurprising that legal analysis continues to privilege symmetry, institutional density, and closure, even when the instruments now under examination are structured in ways that deliberately attenuate those features.

The point is best understood in depersonalised terms. The difficulty lies not in the failings of particular interpreters, but in the continuing force of analytical baselines formed under earlier institutional conditions. A doctrinal perspective may focus on the meaning of "security," "necessity," or "essential interests" within inherited legal frameworks. An institutional perspective may focus on who decides, through what procedures, and with what opportunities for review or contestation. A strategic perspective may focus on how legal form redistributes leverage, exposure, and room for manoeuvre. Each perspective captures something real. The problem arises when any one of them is treated as exhaustive, or when inherited assumptions about what legal form ought to do are mistaken for neutral descriptors of what legal form in fact does under present conditions.

That is why these reactions persist. They are not random misdescriptions. They follow from measuring contemporary instruments against a model of trade law that presumes dense reciprocity, durable institutional entrenchment, and a close fit between legalisation and stabilisation. Yet the agreements examined here were not designed to satisfy those expectations, and the disputes examined in the previous Part no longer move through institutions able to satisfy them reliably. They preserve legal form while enabling adjustment under conditions in which thicker and more stabilising forms of recalibration are less feasible and less durable.

### *C. From Misreading to Diagnostic Discipline*

If that is right, the appropriate response is not to abandon doctrinal analysis, but to discipline it. Familiar questions about validity, consistency, enforceability, and compliance remain important. But they can misfire when posed in isolation, because they often presuppose institutional capacities or legal functions that are no longer reliably available. The problem posed by contemporary economic-security law is therefore not only doctrinal. It is diagnostic. It requires attention to the conditions under which legal forms are operating and to the changing mix of functions they are being asked to perform.

This diagnostic posture requires at least three distinctions. First, doctrinal, institutional, and strategic questions must be disaggregated rather than collapsed. A given instrument may be doctrinally contestable, institutionally thin, and strategically potent at the same time. Thin agreements illustrate this clearly. They preserve legal obligation and legal grammar while relying heavily on consultation, domestic-law implementation, and exit rather than on neutral adjudicative enforcement. Security disputes illustrate the same point in a different register. They may generate doctrine and require reason-giving even where the system no longer reliably supplies adopted finality.

Second, the presence of discretion must not be conflated with the absence of law. Contemporary economic-security instruments preserve significant discretion, often asymmetrically distributed. But discretion is not equivalent to legal void. Legal systems have always contained spaces of judgment, qualification, and managed flexibility. The real question is not whether discretion exists, but how it is structured, who holds it, how it is justified, and what forms of response or contestation remain available around it.

Third, incomplete stabilisation should not be mistaken for legal irrelevance. Law does not matter only when it conclusively settles conflict. It also matters because pressure on existing rules is one of the ways legal orders are contested and revised. As Goldsmith and Posner observe, states sometimes "bypass conventions and press for new legal changes by violating the old law" (Goldsmith & Posner, 2005, p. 199). De Visscher's warning points in the same direction from a different angle: "[l]aw can progress…only if it does not deceive itself as to the realities it seeks to order" (de Visscher, 1968, p. 102). The point is not to dignify every departure from existing rules as legitimate lawmaking. It is to recognise that legal orders are often challenged from within and against their own terms, and that law remains relevant precisely because those challenges are still framed in relation to obligation, justification, revision, and response. That has long been true of disputing in international trade law. It is also true of the security-conditional agreements examined here. Even where they lack third-party adjudication, they still shape expectations, channel alignment, regulate spillovers, and provide a formal language through which contestation proceeds.

Once those distinctions are kept in view, the contemporary landscape becomes easier to read. The central question is no longer whether law remains present. It is what kinds of legal work different instruments and procedures are now performing in a regime whose classic stabilising pathways have weakened.

### *D. Why This Matters Now*

The broader implication is anti-fatalist. The developments examined in this Article should not be read as proof that international trade law has become irrelevant, nor that legal analysis should withdraw simply because conflict has become sharper and the institutional environment more fragile. They show something more difficult, but also more useful. Under conditions in which negotiated recalibration and authoritative closure no longer operate with their earlier reliability, law persists as a medium through which power is justified, challenged, coordinated, recorded, and sometimes partially constrained.

That claim is not naive. It does not deny coercion, hierarchy, or institutional weakness. Nor does it imply that all politically salient conflicts should be forced into full judicial settlement. It simply rejects the move from legal strain to legal disappearance. If anything, the present moment makes clearer one of law's enduring functions in international economic life: when stabilisation weakens, contestation within legal form becomes more visible and more important.

This is why the interpretive stakes of the argument are larger than classification alone. To misread contemporary instruments as legally insignificant because they do not conform to an earlier stabilisation-oriented model is to risk surrendering precisely the forms through which contestation still occurs. Thin agreements, security disputes, and other low-entrenchment legal techniques may not deliver the kind of stabilising payoff once associated with thicker forms of trade law. But they remain consequential legal forms nonetheless. They continue to organise expectations, shape strategies, and discipline the terms on which contemporary geoeconomic conflict is fought.

The point, then, is not to restore an older legal imaginary by insistence alone, nor to embrace resignation in the face of present strain. It is to understand more clearly the altered conditions under which trade law now operates and the different work it is being asked to do. That is the perspective needed if contemporary legal developments are to be diagnosed with precision rather than dismissed with fatalism.

## VII. Conclusion

The analysis developed here points to a narrower and more consequential diagnosis than the language of rupture suggests. The central development is not the disappearance of trade law, but a change in the conditions under which it can stabilise conflict in strategically salient domains. Negotiation persists, disputing persists, and legal argument remains central. But the channels through which multilateral trade law once absorbed pressure from within now yield less dependable stabilising returns where security, industrial policy, and geopolitical rivalry are most acute.

That altered condition helps explain the newer instruments examined in this Article. Recent U.S. economic-security agreements are not best understood through the template of an older preferential model, nor as merely ad hoc political arrangements. They are lower-entrenchment legal instruments through which adjustment proceeds when dense reciprocity, durable lock-in, and strong third-party control have become costlier to secure and less reliable to preserve. Their combination of formal agreement, domestic implementation, selective alignment, consultation, and reversibility shows a shift in how legal form is being used.

The same shift is visible, in a different register, in the recent WTO security disputes. Even under acute strain, Members still litigate, panels still articulate doctrine, and legal reasoning still shapes the range of legally intelligible positions and available responses. What has become less secure is not the presence of adjudication, but its capacity to deliver consistently adopted finality. In that setting, disputing does more of its work through justification, pressure, partial clarification, and structured contestation than through confidently equilibrium-restoring closure.

Read together, these developments also clarify why contemporary practice is so often misdescribed. Analytical expectations formed under an earlier stabilisation settlement continue to associate treaty form with dense reciprocity and adjudication with closure. When present-day legal forms do not satisfy those expectations, they can appear anomalous, deficient, or merely temporary. But that reaction mistakes a change in legal function for an absence of law.

The implication is deliberately modest, but it carries broader force. The present moment should not be read as proof that international trade law has become irrelevant. Legal weakness is not legal disappearance. Under conditions in which classic stabilising pathways narrow, law remains indispensable less because it guarantees authoritative settlement than because it furnishes the forms, vocabularies, and forums through which power can still be challenged, justified, coordinated, recorded, and sometimes partially constrained. Thin agreements and security disputes matter for that reason. They show that even in a more coercive and rivalry-saturated order, actors continue to seek legal form and continue to fight over legal meaning. Contestation, in that sense, remains one of law’s enduring functions in international economic life.

The conclusion, then, is neither restorationist nor resigned. It is not that the earlier stabilisation settlement can simply be recovered. Nor is it that present strain licenses withdrawal from law. It is that giving up on law precisely when law is under the greatest pressure would misread the work law still performs in organising economic conflict across borders. When stabilisation weakens, contestation within legal form becomes more, not less, important because it helps shape the terms on which later settlement becomes possible.

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