

Speech

TARIFF-LINKED INVESTMENT POLICY: TRUMP'S CHALLENGE TO THE INTERNATIONAL INVESTMENT ORDER

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Thank you, Professor Alex Yueh-ping Yang, for the warm introduction. I also wish to thank the Chinese Arbitration Association, Taipei (hereinafter “CAA”) and the Asian Center for WTO and International Health Law and Policy of NTU College of Law (ACWH) for including me in this annual arbitration and mediation conference, which I had the privilege of co-initiating with the CAA eighteen years ago. I would also like to wish the CAA a happy 70th anniversary.

President Trump’s trade-related policies have far-reaching implications across multiple domains, including international trade and investment, global politics and economics, and the domestic political and economic landscapes in the United States and in its trading partners.

One of the most pressing challenges for international legal community today is how to understand, evaluate, and respond to these policies in a coherent and principle-based¹ manner.

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¹ Here, I use the term “principle-based” not to refer to any specific investment standard of treatment, such as fair and equitable treatment, non-discrimination, or protection against expropriation, but rather to suggest that certain underlying principles can be distilled from common practice and widely

In the field of international investment, it is particularly important to perceive the profound impact of President Trump's tariff-based trade strategy on the international investment order, to recognize the evolving investment landscape shaped by these tariff-linked measures, and to explore possible pathways to maintain the stability and predictability of global investment relations.

My talk today begins with a brief overview of President Trump's tariff policies, followed by examining various aspects and implications his tariff-linked investment approach. We will look together at what developments we may anticipate in the near future, and how the international investment community should respond.

I. TRUMP'S TARIFF MEASURES

Let me start briefly by explaining Trump's tariff-based trade measures.

President Trump is well known for his distinctive approach to trade and tariff policy. He has consistently emphasized his determination to use high tariffs on foreign countries as a means of advancing a wide range of domestic and international policies and political objectives. Since the beginning of his second term, he has relied heavily on tariffs as a central instrument of leverage to pursue both his domestic and international agendas.

He has a famous saying that "the word *tariff* is the most beautiful word to me in the dictionary,"² despite the fact that many American economists and political opponents strongly dispute both his reasoning and his conclusions.

His tariff measures are designed to target a broad array of countries for diverse economic, political, and strategic purposes. Given both the economic and political power of the United States and President Trump's deeply held convictions about tariffs, it is difficult to interpret his tariff policies solely through the traditional lens of rights and obligations under international treaties. A broader analytical perspective is required to fully understand their implications for global trade and investment.

respected norms. I will elaborate on this point in the later parts of this talk.

² In a rally of October 2024 before President Trump got elected the second time, he said: "To me, the world's most beautiful word in the dictionary is tariffs. It's my favorite word. It needs a public relations firm . . . If I'm going to be president of this country, I'm going to put a 100, 200, 2,000% tariff." He made similar statement again at a rally just hours after his inauguration in January 2025. See Tina Sfondeles, *Trump Comes to Chicago to Insist Tariff is 'World's Most Beautiful Word' — and Jan. 6 Was 'Love and Peace'*, NPR ILL. (Oct. 16, 2024, 9:57 AM CDT), <https://www.nprillinois.org/government-politics/2024-10-16/trump-comes-to-chicago-to-insist-tariff-is-worlds-most-beautiful-word-and-jan-6-was-love-and-peace>; Rachel Treisman, *Word of the Week: Trump Calls Tariffs 'the Most Beautiful Word.' Here's Its History*, KALW PUB. MEDIA (Apr. 9, 2025, 5:00 AM ET), <https://www.npr.org/2025/04/09/nx-s1-5355661/tariffs-history-meaning>.

II. TSMC AS AN EXAMPLE FOR TRUMP'S TARIFF-LINKED INVESTMENT COMPULSION

In examining President Trump's tariff measures to induce investments, I use the term "tariff-linked investment compulsive policies/measures" to describe the strategic deployment of tariffs to influence foreign direct investment (FDI) decisions. A striking example is the case of Taiwan Semiconductor Manufacturing Company (hereinafter "TSMC"), which illustrates how President Trump leveraged tariffs to "forcefully induce" a major foreign company to invest heavily in the United States, and how the Taiwanese government was effectively compelled to cooperate.

The semiconductor sector, particularly TSMC, lies at the heart of global high-tech supply chains. As the world's largest chip manufacturer, TSMC produces more than 90% of most advanced chips used in critical products ranging from smartphones and electric vehicles to defense and artificial intelligence systems. Its fabrication capacity in Taiwan forms an indispensable node in the global semiconductor ecosystem. Because of this pivotal role, any relocation or restructuring of TSMC's production has far-reaching consequences for Taiwan and the rest of the world, and for both the global economy and technological security.³

President Trump repeatedly threatened to impose tariffs of up to 100% on imported semiconductors, explicitly linking potential tariff relief to commitments by TSMC and other foreign chipmakers to build fabrication plants on U.S. soil. He has publicly indicated to TSMC that "All I did is say if you don't build your plant here, you're going to pay a big tax — 25 %, maybe 50 %, maybe 75 %, maybe 100%."⁴ This captured the essence of tariff-leveraged investment measures.

Faced with sustained political and economic pressure, TSMC announced in March 2025 an additional 100 billion US Dollars investment to expand its existing project in Arizona.⁵

³ See, e.g., Financial Content, *TSMC: The Unseen Architect of the AI Revolution and Global Tech Dominance*, FIN. CONTENT (Oct. 4, 2025, 2:28 PM EDT), <https://markets.financialcontent.com/wral/article/tokenring-2025-10-4-tsmc-the-unseen-architect-of-the-ai-revolution-and-global-tech-dominance>, which indicates: "TSMC manufactures over half of all semiconductors globally and an astonishing 90 % of the world's most sophisticated chips."

⁴ President Trump's words are cited by some reports. See Jacob Fox, *Trump Gave Global Chipmaking Leader TSMC an Offer It Could not Refuse: 'All I Did Is Say If You Don't Build Your Plant Here You're Gonna Pay a Big Tax... 25, Maybe 50, Maybe 75, Maybe 100%'*, PCGAMER (Apr. 9, 2025), <https://www.pcgamer.com/hardware/processors/trump-gave-global-chipmaking-leader-tsmc-an-offer-it-could-not-refuse-all-i-did-is-say-if-you-dont-build-your-plant-here-youre-gonna-pay-a-big-tax-25-maybe-50-maybe-75-maybe-100-percent/>.

⁵ Taiwan Semiconductor Manufacturing Company [hereinafter TSMC] Press Release indicating that the company was planning to "increase U.S. investment in advanced semiconductor manufacturing by \$100 billion with three new fabs, two advanced packaging facilities and an R&D center added to U.S. plans." See TSMC, *TSMC Intends to Expand Its Investment in the United States to US\$165*

For President Trump, “It’s a matter of national security.” For Taiwan, the investment might not have been fully aligned with its own interest, yet government quickly announced its support for the project following the White House press conference, even though, procedurally, this overseas investment would still need to undergo a review process in accordance with Taiwanese law.⁶ There was no obvious economic or political advantage for Taiwan in supporting such a massive investment by its strategically important company to the United States. At that stage, it appeared that Taiwan had no alternative but to declare that it will grant its approval to support the investment.

Later on, the semiconductor investment also became an important topic of the tariff negotiations later conducted between the governments of Taiwan and the United States to address the high tariffs (the “reciprocal tariffs”) imposed by the Trump Administration.⁷

For TSMC, the investment was widely interpreted as a response to tariff-linked investment compulsion, rather than a voluntary, market-driven business decision.⁸ In practice, this move effectively relocated a critical segment of the global semiconductor supply chain to the United States. It demonstrates how tariff-linked compulsive investment measures can reshape global investment patterns and compel the cooperation of even close partners and allies.

III. THE TARGETED COMPANIES AND TARGETED COUNTRIES

Under President Trump’s tariff-linked investment measures, both foreign companies and foreign governments have become direct or indirect targets.

At the immediate and operational level, the pressure to invest in the United States is directed toward foreign manufacturers of strategic or technological importance. Under the condition of the United States’ measures, a firm’s so-called “decision” to invest is less a product of voluntary market calculation than a response to economic compulsion. These companies altered their investment behavior not in pursuit of comparative

Billion to Power the Future of AI, TSMC (Mar. 4, 2025), <https://pr.tsmc.com/english/news/3210>.

⁶ David Shepardson & Steve Holland, *Trump and TSMC Announce \$100 Billion Plan to Build Five New US Factories*, REUTERS (Mar. 4, 2025, 3:25 PM GMT+8), <https://www.reuters.com/technology/tsmc-ceo-meet-with-trump-tout-investment-plans-2025-03-03/>.

⁷ Reuters, *Taiwan Says It Has Concluded First ‘Substantive’ Tariff Talks with US*, REUTERS (May 3, 2025, 10:02 PM GMT+8), <https://www.reuters.com/world/asia-pacific/taiwan-says-it-has-concluded-first-substantive-tariff-talks-with-us-2025-05-03/>.

⁸ See Shepardson & Holland, *supra* note 6. United States Commerce Secretary Howard Lutnick said TSMC and other companies were investing in the United States as they sought to avoid Trump’s new tariffs.

advantage or efficiency, but in reaction to politically imposed constraints designed to align private capital with U.S. industrial and geopolitical objectives.

At a broader geopolitical level, these measures also function as indirect compulsion against foreign governments. By targeting leading export-oriented enterprises which are often regarded as national champions of their home countries (such as TSMC being deemed by Taiwanese as the “sacred mountain that protects the nation”),⁹ the U.S. exerts pressure on the governments of its trading partners to adjust their economic and diplomatic positions. The result is a “new dynamic” in which the boundary between commercial pressure and diplomatic compulsion becomes increasingly blurred. This reinforces the perception that tariffs are now being instrumentalized rather than serving as a traditional economic tool of generating government revenue and protecting domestic industries.¹⁰

IV. REASONS AND ALLEGED JUSTIFICATIONS FOR TARIFF-LINKED INVESTMENT MEASURES

President Trump’s adoption of tariff-linked investment measures stems from his long-standing belief that the United States has been economically disadvantaged by persistent trade deficits, hollowed-out manufacturing, and foreign companies exploiting U.S. market access without investing domestically.

President Trump offered several justifications for these measures. First, he framed tariffs as tools for pursuing a vision of an economically self-sufficient United States and industrial revitalization by bringing manufacturing back to American soil, reducing reliance on foreign production, and reclaiming economic independence. His vision relies partly on aggressive tariffs.¹¹

Second, he emphasized fairness and reciprocity, by arguing that U.S. exporters faced disadvantages because other countries imposed higher barriers or required local investment, while the U.S. remained open. In his words, “On Trade, I have decided, for purposes of Fairness, that I will charge a RECIPROCAL Tariff meaning, whatever Countries charge the United

⁹ Wang Chih-chien, *TSMC Is Undoubtedly Taiwanese*, *TAIPEI TIMES* (Nov. 13, 2024), <https://www.taipeitimes.com/News/editorials/archives/2024/11/13/2003826804>, noting that TSMC has been dubbed Taiwan’s “sacred mountain” safeguarding the nation.

¹⁰ Pierre Lemieux, *Patriotism as Stealing from Each Other*, *CATO INST.*, <https://www.cato.org/regulation/winter-2017-2018/clashing-over-commerce>.

¹¹ BER Staff, *The Tariff Paradox: Trump’s Vision for Reshoring and the AI Contradiction*, *BERKELEY ECON. REV.* (Oct. 1, 2025), <https://econreview.studentorg.berkeley.edu/the-tariff-paradox-trumps-vision-for-reshoring-and-the-ai-contradiction/>.

States of America, we will charge them - No more, no less!”¹²

Third, President Trump connected his tariff-investment strategy to national security and economic sovereignty. He asserted that certain industries, such as semiconductors and pharmaceuticals, were vital to America’s strategic autonomy. Ensuring domestic production in these sectors was therefore presented not merely as an economic necessity but as a security imperative.¹³

Finally, President Trump often described tariffs and investment conditions as negotiating leverage. They served not only as measures to protect the United States, but as instruments of pressure.¹⁴

V. WHY MIGHT TARIFF-LINKED INVESTMENT MEASURES BE CONSIDERED QUESTIONABLY COMPULSIVE?

The “tariff-linked” investment approach (conditioning tariff relief or market access on a company’s decision to invest in the United States) can be considered compulsive for several interrelated legal, economic, and political reasons:

A. Investors’ “Choice” Is Distorted by Threats, Not by Market Logic

Trump’s measures are often imposed or threatened selectively, depending on whether firms agreed to invest or relocate production within the United States. Firms were pressured to act not on the basis of business efficiency or competitiveness but on the desire to avoid punitive tariffs. A foreign company’s “choice” to invest in the U.S. under such pressure was distortedly made under the threat of tariffs (economic harm), not market strategy.

¹² Donald J. Trump (@realDonaldTrump), X (Feb. 18, 2025, 3:35 AM), <https://x.com/realDonaldTrump/status/1891572283161944433?lang=en>.

¹³ See 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 (Apr. 2, 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/>.

¹⁴ *Trump’s Use of Tariffs for Foreign Policy Leverage*, SILOBREAKER (Sep. 9, 2025), <https://www.silobreaker.com/blog/cyber-threats/trumps-use-of-tariffs-for-foreign-policy-leverage/#:~:text=The%20Trump%20administration%20has%20asserted,security%2C%20diplomacy%20and%20geopolitical%20coercion.>

B. State Power Overrides Private Autonomy

Traditional investment policy usually relies on “positive inducement”, such as subsidies, tax benefits, infrastructure support, and the improvement of investment environment. However, tariff-linked investment threats rely on “negative inducements”. The imbalance of power between a sovereign state and private corporations amplifies the compulsive effect. Affected firms are effectively placed in a “comply or pay” dilemma: They either invest as the state demands or suffer commercial punishment.

C. The Compulsion Is Reinforced by the Use of Allegedly Unjustifiable Tariffs

The compulsive nature of such measures is further intensified by the fact that the tariffs themselves are often legally or economically questionable. Many of the tariffs imposed by the Trump Administration were allegedly justified on grounds such as “national security” or “unfair trade practices”, but in many cases, no concrete evidence of security threat or legally justifiable unfair practices existed. Linking investment conditions to such questionable measures transforms them from trade remedies into instruments of economic compulsion. This undermines both the fairness and predictability of international economic relations.

VI. WHY “COMPULSION” MATTERS: SYSTEMIC AND LEGAL IMPLICATIONS

The compulsive nature of President Trump’s tariff-linked investment strategy raises serious concerns for the international investment community, as the legitimacy of the measures is questionable and their effects undermine the rule-based investment environment, where predictability and voluntariness have long formed the foundation of the global investment order. This shift erodes trust among states and firms, as investment decisions become hostage to the discretionary exercise of the United States’ power rather than grounded in transparent legal norms. At a systemic level, such compulsion blurs the boundary between legitimate industrial policy and economic intimidation.

From a legal perspective, these measures threaten the integrity of international investment order. Tariffs were originally designed to protect domestic producers and generate revenue, as mentioned above, within the limits set by a country’s treaty commitments. While tariffs can legitimately influence investors’ allocation of production across jurisdictions, they were

never designed to serve as instruments to compel specific investment choices.

Although these measures might not constitute a breach of any specific investment treaty term, conditioning tariff relief on making inward investment in the United States arguably violates the most-favored-nation principle and tariff-binding obligations under the General Agreement on Tariffs and Trade (GATT) of the World Trade Organization (WTO), while also chilling the rights of foreign investors protected under bilateral and regional investment treaties.¹⁵

More broadly, under such compulsive investment policies, investors are less likely to rely on procedural safeguards, such as due process, available under domestic law or treaty provisions when difficulties arise during their investment operations. Moreover, they may be discouraged from pursuing dispute settlement procedures against the U.S. government, given the pressure exerted from the very outset of their investment decision.

At the geopolitical level, tariff-linked compulsion reconfigures power relations between the United States and its trading partners. In the long run, this erodes the credibility of U.S. commitments to open markets and lawful conduct, inviting both strategic backlash and alternative institutional arrangements outside the U.S.-led order. The concern, therefore, is not merely about immediate market distortion, but about the normative corrosion of a rule-based international economic system.

VII. WHAT KIND OF INTERNATIONAL INVESTMENT ORDER ARE FACING CHALLENGES?

The international investment order now under pressure from Trump's tariff-linked investment measures is the rule-based investment order.

A. Core Features of Rule-Based International Investment Order

Global investment relations have long been governed by a network of treaties and agreements that establish clear rules for cross-border investment. The following principles are underlying presumption of these treaties:

1. Business autonomy: Under the system of investment treaties, investments can only be "attracted" by market forces. This implies that

¹⁵ Roberto Castro de Figueiredo, *Trump's Reciprocal Tariff Policy, Multinationals, and Investment Treaties*, KLUWER ARB. BLOG (Sep. 19, 2025), <https://legalblogs.wolterskluwer.com/arbitration-blog/trumps-reciprocal-tariff-policy-multinationals-and-investment-treaties/>. This article discusses that the Reciprocal Tariff Policy raises issues concerning possible violations of the General Agreement on Tariffs and Trade and the question about whether the United States is in breach of investment treaties.

- they should not be compelled and must enjoy business autonomy.
2. Predictability: The fundamental purpose of investment treaties is to ensure that they can rely on stable rules. This implies that they should be protected under both domestic law and international treaties to guarantee predictability.
 3. Legal security: Under the system of investment treaties, investors' rights must be safeguarded, and their grievances addressed and resolved through neutral mechanisms. This implies legal security for the protection of their investments.
 4. State self-restraint: Under the investment treaties, states commit to providing fair market access and upholding certain standards of treatment. This implies that states will refrain from arbitrary unilateral action and comply with their treaty obligations.

B. Nature of the Challenge

When a state conditions market access or tariff relief on a company's decision to relocate or expand domestically, investors are deprived of their fundamental business autonomy. Such compulsive measures directly compromise predictability, erode legal security, and violate the principle of state self-restraint that underpins the international investment system. By subordinating investment decisions to political or strategic imperatives rather than market forces, states blur the line between legitimate industrial policy and arbitrary interference. It creates uncertainty for investors and destabilizing established norms.

In this context, the current wave of tariff-linked investment measures adopted by President Trump poses a profound challenge to the foundations of the rules-based international investment order. Over time, this reverses decades of efforts to shield investment from the pressures of great-power politics and threatens both the integrity and the credibility of the global investment framework.

VIII. COULD THIS BECOME A WIDESPREAD PHENOMENON AS A NEW INTERNATIONAL INVESTMENT ORDER?

Although one might logically worry that tariff-linked investment measures could be emulated by other states, the reality is that no other country in the world possesses geopolitical influence and a market of comparable scale that could serve as economic leverage similar to that of the United States. As a result, no other state is capable of compelling major foreign enterprises to invest through such direct and forceful means. At best,

other countries can only adopt softer or more indirect mechanisms to pursue similar objectives. It is therefore reasonable to assume that President Trump's tariff-linked investment measures are unlikely to become globally widespread. In this sense, the existing international investment order will not be entirely overturned: the "whole world minus one" will continue to adhere to the traditional principles of investment.

In this context, what emerges is not a complete replacement of the existing international investment order, but rather a "bifurcated order". In other words, the traditional investment principles of investor autonomy continue to govern most of the world, while the United States uniquely and strategically uses tariff-linked practices that condition investment flows on national industrial or geopolitical objectives.

IX. HOW SHOULD THE INTERNATIONAL INVESTMENT COMMUNITY RESPOND?

The international investment community now faces the challenge of safeguarding the rule-based investment order while adapting to the realities of compulsive economic statecraft. The purpose of this talk is not to condemn the use of tariff-linked investment measures, but rather to consider how the community can respond and navigate these circumstances effectively.

A. Reaffirming and Strengthening Confidence in the Existing System

To address these challenges, the international community should collectively reaffirm and strengthen confidence in the existing international investment order. A clear and united commitment by other major economies to the rule-based principle can reassure global investors that compulsive linkage policies remain exceptions rather than the norm. In this regard, multilateral and plurilateral platforms can play a constructive role by restating the rule-based principle in updated statements or guidelines, thereby reducing uncertainty and countering the perception that global investment rules are fragmenting. Such coordinated reassurance would also help discourage smaller economies from imitating compulsive models under the mistaken belief that this represents a new global trend.

B. Improving the Domestic and Regional Investment Environment

Countries should continue enhancing their domestic and regional investment environments to make voluntary cross-border investment more attractive and resilient.

Measures such as streamlining regulatory procedures, strengthening investor-state dispute resolution mechanisms, promoting sustainable investment incentives, and ensuring fair competition policies can all strengthen investor confidence. By doing so, governments in other countries can mitigate the adverse effects of compulsive investment policies to show that rule-based markets remain the most reliable and appealing destinations for global capital. Hopefully, over time, the credibility of open markets and transparent legal systems can serve as an effective counterbalance to tariff-leveraged investment policies and demonstrate that openness, rather than compulsion, provides the most durable foundation for prosperity.

C. Anticipating Developments and Safeguarding Dispute Settlement

The persistence of tariff-linked investment measures will likely depend on U.S. domestic politics. Even if future administrations choose to moderate such measures, an immediate reversal of existing tariff policies is unlikely. Consequently, the international investment community must anticipate a period of uncertainty, during which political discretion continues to influence investment decisions. This environment may also affect international arbitration: as investments increasingly arise under compulsive or politically influenced conditions, the jurisdictional and substantive interpretation of investment treaties may evolve. This will test arbitral tribunals' capacity to balance state prerogatives against investor protection.

D. Pathways to Stability and Predictability

Possible measures to safeguard the stability and predictability of global investment relations include enhancing treaty language on non-compulsive treatment, clarifying the distinction between legitimate industrial policy and compulsive investment inducement, and reinforcing procedural safeguards that ensure investors' access to neutral fora.

Looking ahead, future treaty negotiators may consider incorporating clear legal provisions in investment treaties to protect investors' decision-making autonomy and to prohibit host states from employing tariff-leveraged

compulsive investment measures.

X. CONCLUDING REMARKS

In conclusion, the emergence of tariff-linked investment measures under the Trump administration represents more than a mere policy innovation; it constitutes a challenge to the existing international investment order. While such tariff-leveraged investment practices have not overturned the investment system as a whole, they have exposed its structural vulnerabilities.

The current landscape can be understood as a “bifurcated investment order”, in which one major power relies on compulsive economic instruments to redirect global capital flows, while most other economies continue to adhere to the principles of voluntarism and investor autonomy.

Whether this asymmetry remains an isolated phenomenon or evolves into a broader template for state-led investment control will depend on how other nations respond. The preservation of a rules-based investment environment depends on reaffirming that investment decisions should be guided by market logic and legitimate regulatory objectives, not by compulsion disguised as industrial policy.

The international community cannot change President Trump’s logic or approach. What the rest of the world can do is to manage what lies within its control, i.e. to strengthen the rule-based order, uphold confidence in fair and voluntary investment relations, and make open, predictable markets more appealing alternatives to compulsive.

At this stage, the key question is whether the international investment community and other states can prove that confidence, cooperation, and a credible legal order remain more effective drivers of investment than short-term political pressure or strategic manipulation. If the current rule-based investment regime can adapt to address tariff-leveraged investment practices without compromising its core principles, it will not only withstand this challenge but emerge stronger and more resilient in an era of growing geopolitical competition.

Thank you very much for your attention.