
AN INTERNATIONAL LAW ANALYSIS OF UNILATERAL TRADE MEASURES UNDER THE WTO FRAMEWORK

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ABSTRACT

The emergence of tariff wars has significantly challenged the effectiveness of the rules-based international trading system established under the World Trade Organization (WTO). While tariffs have historically served as legitimate instruments of fiscal policy and industrial protection, their increasing use as tools of geopolitical and economic coercion has generated serious concerns regarding compliance with international trade law. The United States–China trade conflict, alongside similar unilateral trade measures adopted by several major economies, has reignited debates concerning the balance between state sovereignty, national security, and multilateral legal obligations. This paper critically examines the legality of contemporary tariff wars through the framework of the General Agreement on Tariffs and Trade (GATT) 1994 and the WTO Agreements. It analyses the evolution of tariff regulation, the legal principles governing customs duties, the implications of unilateral trade measures, and the institutional challenges confronting the WTO dispute settlement system. The paper argues that although international trade law provides a comprehensive legal framework regulating tariffs, its effectiveness has been undermined by economic nationalism, geopolitical rivalry, and institutional paralysis within the WTO. It concludes that meaningful reform of the WTO dispute settlement mechanism, coupled with greater clarity regarding national security exceptions and emerging forms of international commerce, is essential for preserving a stable and predictable multilateral trading system.

Keywords: International Trade Law, WTO, GATT 1994, Tariff Wars, Economic Nationalism, National Security, Multilateralism.

Introduction

International trade has long served as one of the principal drivers of global economic development and interstate cooperation. Since the conclusion of the Second World War, the international community has sought to regulate commercial relations through legal rules designed to reduce protectionism, encourage market access, and prevent economic disputes from escalating into political conflict. The creation of the General Agreement on Tariffs and Trade (GATT) in 1947, followed by the establishment of the World Trade Organization (WTO) in 1995, marked a significant transition from power-based trade diplomacy to a rules-based multilateral legal order.

Tariffs have traditionally been regarded as legitimate instruments of economic policy. Governments have used customs duties to generate public revenue, protect domestic industries, promote industrialization, and respond to unfair trade practices. However, excessive reliance upon unilateral tariff measures has frequently resulted in retaliatory actions, disruption of global supply chains, and deterioration of international economic relations. The protectionist policies adopted during the Great Depression remain a classic illustration of how uncontrolled tariff escalation may contribute to global economic instability.¹

The contemporary resurgence of tariff wars, particularly between the United States and China, has once again brought these concerns to the forefront of international trade law. Beginning in 2018, both countries imposed successive rounds of tariffs affecting hundreds of billions of dollars in international trade. These measures were justified on grounds including intellectual property protection, technological competition, national security, and industrial policy. Nevertheless, they also raised significant legal questions concerning the compatibility of unilateral tariffs with the obligations contained in GATT 1994 and the WTO Agreements.²

The increasing invocation of national security exceptions under Article XXI of GATT has further complicated the relationship between state sovereignty and multilateral legal commitments. Simultaneously, the paralysis of the WTO Appellate Body has weakened the effectiveness of international dispute settlement, encouraging States to rely increasingly upon unilateral economic measures rather than institutional adjudication.

¹ General Agreement on Tariffs and Trade , Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

² Marrakesh Agreement Establishing the World Trade Organization , Apr. 15, 1994, 1867 U.N.T.S. 154.

Against this backdrop, this paper examines the legality of contemporary tariff wars under international law. It analyses the historical evolution of tariff regulation, the legal framework established by the WTO, the United States–China tariff conflict as a case study, and the broader institutional challenges confronting the rules-based trading system. The paper further proposes reforms aimed at strengthening multilateral trade governance while accommodating legitimate national security concerns.

CHAPTER I

Evolution of Tariff Regulation under International Trade Law

Tariffs represent one of the oldest instruments of governmental economic regulation. Historically, sovereign States imposed customs duties primarily to generate revenue and protect domestic industries from foreign competition. During the nineteenth century, tariffs became central components of national economic policy, particularly among industrializing nations seeking to develop domestic manufacturing capacity. Although States possessed unrestricted authority to determine tariff levels under the traditional doctrine of sovereignty, the absence of international legal disciplines frequently resulted in discriminatory trade practices and retaliatory economic measures.

The shortcomings of unrestricted protectionism became particularly evident during the Great Depression. The enactment of the Smoot–Hawley Tariff Act of 1930 by the United States substantially increased customs duties on imported goods. Similar protectionist measures were subsequently adopted by numerous trading partners, triggering retaliatory tariffs that contributed to a sharp contraction in global trade. The resulting economic instability highlighted the need for an international legal framework capable of regulating tariff policies through cooperative rather than unilateral mechanisms.³

Following the Second World War, efforts to reconstruct the international economic order culminated in the adoption of the General Agreement on Tariffs and Trade (GATT) in 1947. Although originally conceived as an interim arrangement pending the establishment of the International Trade Organization, GATT emerged as the principal multilateral treaty governing international trade for nearly five decades. Its primary objective was to reduce tariff barriers, eliminate discriminatory trade practices, and promote international economic cooperation

³ John H. Jackson, *The World Trading System* 15–18 (2d ed. 1997).

through legally binding commitments.⁴

The Uruguay Round negotiations (1986–1994) significantly expanded the scope of international trade regulation. Beyond tariff reduction, negotiations addressed intellectual property, services, agriculture, subsidies, safeguards, and dispute settlement. These negotiations culminated in the establishment of the World Trade Organization (WTO) in 1995, transforming international trade regulation into a comprehensive institutional legal system supported by compulsory dispute settlement and binding adjudication. Unlike GATT, the WTO possesses a permanent institutional framework responsible for administering multilateral trade agreements and supervising compliance with treaty obligations.

The evolution of tariff regulation therefore reflects a gradual transition from unrestricted economic sovereignty towards legally regulated multilateral cooperation. Nevertheless, contemporary tariff wars demonstrate that the balance between national interests and international legal obligations remains an ongoing challenge. The following chapter examines the legal principles governing tariffs under the WTO framework and evaluates the extent to which unilateral trade measures remain compatible with international law.⁵

CHAPTER II

Legal Framework Governing Tariffs under WTO Law

The legal regulation of tariffs constitutes one of the central objectives of the World Trade Organization (WTO). Established through the Marrakesh Agreement of 1994, the WTO provides a comprehensive framework designed to promote free and predictable international trade while balancing the sovereign rights of States to regulate their domestic economies. Although Member States retain the authority to impose customs duties, such measures are subject to legally binding obligations intended to prevent discrimination, arbitrary protectionism, and unnecessary restrictions on international commerce.⁶

The cornerstone of the WTO tariff regime is the **Most-Favoured-Nation (MFN) principle**, embodied in Article I of the General Agreement on Tariffs and Trade (GATT) 1994. The MFN

⁴ Douglas A. Irwin, *Peddling Protectionism: Smoot-Hawley and the Great Depression* 3–20 (2011).

⁵ General Agreement on Tariffs and Trade art. I, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

⁶ Peter Van den Bossche & Werner Zdouc, *The Law and Policy of the World Trade Organization* 323–30 (4th ed. 2017).

principle requires every WTO Member to extend any tariff concession or trade advantage granted to one Member immediately and unconditionally to all other Members. This obligation prevents discriminatory treatment among trading partners and ensures equality within the multilateral trading system. Without the MFN principle, international trade would be fragmented into preferential political alliances, thereby undermining the objective of non-discriminatory market access.⁷

Recognising that exceptional circumstances may justify temporary departures from ordinary trade obligations, the WTO legal framework incorporates several narrowly tailored exceptions. Article XIX of GATT, together with the Agreement on Safeguards, permits Members to impose temporary import restrictions where unforeseen increases in imports cause serious injury to domestic producers. Safeguard measures, however, are subject to strict procedural requirements, including objective investigations, transparency obligations, and proportionality. These conditions ensure that safeguards remain emergency responses rather than permanent instruments of protectionism.⁸

One of the most debated provisions of GATT is **Article XXI**, commonly referred to as the **National Security Exception**. The provision permits Members to adopt measures necessary for the protection of essential security interests relating to arms traffic, wartime emergencies, or other situations affecting international relations. Historically, Article XXI was invoked sparingly. In recent years, however, States have increasingly relied upon national security to justify tariffs affecting products such as steel, aluminium, semiconductors, and advanced technologies. This development has generated considerable debate regarding the extent to which Article XXI is subject to judicial review and whether its broad invocation threatens the integrity of the multilateral trading system.⁹

Nevertheless, recent institutional developments have weakened the effectiveness of WTO dispute settlement. The inability to appoint new Appellate Body members has resulted in a significant enforcement gap, allowing adverse panel reports to remain unresolved through appeals filed into the institutional vacuum. Consequently, the effectiveness of WTO law increasingly depends upon political willingness rather than judicial enforcement, encouraging

⁷ Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154.

⁸ Agreement on Safeguards arts. 2–5, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A.

⁹ General Agreement on Tariffs and Trade art. XXI, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

States to rely upon unilateral tariff measures in pursuit of strategic economic objectives.¹⁰

CHAPTER III

The United States–China Trade War: A Legal Analysis under WTO Law

The trade conflict between the United States and China represents the most significant challenge to the multilateral trading system since the establishment of the World Trade Organization. Commencing in 2018, the dispute rapidly evolved from disagreements concerning intellectual property and technology transfer into a prolonged tariff war affecting hundreds of billions of dollars in international trade. Unlike traditional trade disputes resolved through WTO procedures, the conflict was characterised by unilateral tariff measures and reciprocal retaliation, raising important questions regarding the continued effectiveness of international trade law.¹¹

The dispute originated with an investigation conducted by the United States Trade Representative under **Section 301 of the Trade Act of 1974**. The investigation concluded that China's practices concerning technology transfer, intellectual property protection, and industrial subsidies adversely affected American commercial interests. Based on these findings, the United States imposed additional tariffs on a broad range of Chinese imports. The tariffs extended well beyond previously negotiated WTO commitments and affected sectors including electronics, machinery, steel, chemicals, and consumer goods.¹²

From the perspective of international trade law, these measures immediately attracted criticism for their apparent inconsistency with **Articles I and II of GATT 1994**. By imposing additional duties exclusively upon products originating from China, the United States departed from the **Most-Favoured-Nation principle**, which requires equal tariff treatment for all WTO Members. Furthermore, where the tariffs exceeded the United States' bound tariff commitments, questions arose regarding compliance with Article II, which prohibits Members from imposing customs duties above negotiated ceiling rates except under recognised legal exceptions.¹³

¹⁰ Agreement on Safeguards arts. 2–5, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A.

¹¹ Chad P. Bown, US–China Trade War Tariffs: An Up-to-Date Chart, Peterson Inst. for Int'l Econ.

¹² Trade Act of 1974, Pub. L. No. 93-618, 301, 88 Stat. 1978 (1975).

¹³ General Agreement on Tariffs and Trade arts. I–II, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194.

The legal implications of the dispute became evident in **United States—Tariff Measures on Certain Goods from China (WT/DS543)**. The WTO Panel concluded that the additional tariffs imposed by the United States were inconsistent with Articles I and II of GATT and could not be justified under the legal arguments advanced by the United States. The Panel emphasised that WTO Members are required to resolve trade disagreements through the dispute settlement procedures established under the Understanding on Rules and Procedures Governing the Settlement of Disputes rather than through unilateral trade sanctions.¹⁴

The dispute also reignited debate regarding the scope of the **national security exception** under Article XXI of GATT. Although the United States argued that certain tariff measures were justified by national security concerns, critics contended that an expansive interpretation of Article XXI would permit Members to evade ordinary trade obligations whenever economic or political considerations arose. The WTO Panel in **Russia—Measures Concerning Traffic in Transit** subsequently clarified that Article XXI is not entirely self-judging and remains subject to objective legal review, thereby reinforcing the principle that treaty exceptions must be interpreted consistently with international law.¹⁵

Beyond its immediate legal consequences, the tariff war generated significant economic repercussions. Global supply chains experienced substantial disruption as multinational corporations relocated production facilities to avoid increased customs duties. Developing countries such as India, Vietnam, and Mexico experienced increased investment opportunities resulting from supply chain diversification, while export-oriented industries simultaneously faced uncertainty arising from prolonged trade tensions. These developments demonstrated that bilateral tariff disputes produce consequences extending far beyond the parties directly involved.¹⁶

CHAPTER IV

Institutional Challenges to the WTO and the Future of the Rules-Based Trading System

The United States–China trade war exposed not only substantive disputes over tariffs but also structural weaknesses within the World Trade Organization (WTO). Although the WTO

¹⁴ United States—Tariff Measures on Certain Goods from China, WT/DS543/R (Sept. 15, 2020).

¹⁵ Panel Report, Russia—Measures Concerning Traffic in Transit, WT/DS512/R (Apr. 26, 2019)

¹⁶ Chad P. Bown, US–China Trade War Tariffs: An Up-to-Date Chart, Peterson Inst. for Int'l Econ.

remains the cornerstone of international trade law, contemporary geopolitical developments have increasingly tested its ability to regulate trade disputes through a rules-based framework. The proliferation of unilateral tariff measures, the growing reliance on national security justifications, and the weakening of the dispute settlement mechanism have collectively undermined confidence in the multilateral trading system.

A major institutional challenge is the **paralysis of the WTO Appellate Body**. Since December 2019, the Appellate Body has been unable to function because vacancies have not been filled. Consequently, parties dissatisfied with panel reports can appeal "into the void," preventing the adoption of final decisions. This has significantly reduced the enforceability of WTO obligations and encouraged States to rely upon unilateral trade measures rather than multilateral adjudication. The absence of a functioning appellate mechanism weakens legal certainty and erodes confidence in the WTO as the principal forum for resolving international trade disputes.¹⁷

Another challenge concerns the **expanding scope of the national security exception** under Article XXI of GATT 1994. Traditionally, the provision was interpreted narrowly and invoked only in exceptional circumstances involving armed conflict or serious threats to national security. However, recent trade disputes demonstrate a broader interpretation that includes economic security, technological competition, critical minerals, and supply chain resilience. While States undoubtedly possess the sovereign right to protect essential security interests, an unrestricted interpretation of Article XXI risks allowing Members to evade ordinary WTO obligations whenever politically convenient. Such an approach threatens the integrity of the multilateral trading system by transforming an exceptional provision into a general justification for protectionist measures.¹⁸

The emergence of the **digital economy** further illustrates the limitations of existing WTO agreements. The GATT framework was negotiated primarily to regulate trade in physical goods. Contemporary international commerce, however, increasingly involves cross-border data flows, cloud computing, digital services, and artificial intelligence. Existing WTO rules provide limited guidance regarding these emerging sectors, allowing States to adopt divergent regulatory approaches that may produce effects comparable to traditional tariff barriers. The

¹⁷ Peter Van den Bossche & Werner Zdouc, *The Law and Policy of the World Trade Organization* 175–81 (4th ed. 2017).

¹⁸ Panel Report, *Russia—Measures Concerning Traffic in Transit*, WT/DS512/R (Apr. 26, 2019).

absence of comprehensive multilateral disciplines governing digital trade increases legal uncertainty and may encourage further unilateral trade restrictions.¹⁹

CHAPTER V

Reforming the WTO Legal Framework: Recommendations and the Way Forward

The growing prevalence of unilateral tariff measures demonstrates the need for institutional and substantive reforms within the WTO framework. While the principles underlying the General Agreement on Tariffs and Trade (GATT) remain relevant, contemporary economic realities require a more adaptable legal system capable of balancing sovereign interests with multilateral obligations.

The foremost priority is the restoration of the **WTO Appellate Body**. A credible appellate mechanism is essential to maintaining consistency in treaty interpretation and ensuring the effective enforcement of WTO obligations. Members should work towards resolving the institutional deadlock by establishing a transparent and independent appointment process while preserving judicial independence. Without a functioning appellate mechanism, the effectiveness of WTO dispute settlement will continue to diminish.²⁰

Secondly, **Article XXI of GATT should be clarified** through an authoritative interpretative understanding adopted by WTO Members. Such clarification should distinguish genuine national security concerns from economic protectionism while preserving judicial review to prevent abuse. This would enable States to safeguard essential security interests without undermining the multilateral legal order.

Finally, WTO Members must reaffirm their collective commitment to resolving trade disputes through law rather than unilateral economic coercion. The long-term legitimacy of international trade law depends not only upon comprehensive legal rules but also upon sustained political support for multilateral institutions. A renewed commitment to cooperation, transparency, and judicial dispute settlement will be essential if the WTO is to remain the principal institution governing international commerce in the twenty-first century.

¹⁹ Joost Pauwelyn, *The Role of Public International Law in the WTO*, 95 *Am. J. Int'l L.* 535, 540–48 (2001).

²⁰ Robert Howse, *The World Trade Organization Twenty Years On*, 27 *Eur. J. Int'l L.* 9, 22–30 (2016).

CONCLUSION

The evolution of international trade law reflects a continuous effort to replace economic confrontation with legal cooperation. The establishment of GATT in 1947 and the WTO in 1995 created a comprehensive legal framework intended to regulate tariffs through negotiated commitments, non-discrimination, and compulsory dispute settlement. These principles contributed significantly to the expansion of international commerce and the stability of the global economy.

This paper has argued that the principal weakness of the contemporary international trading system lies not in the absence of legal norms but in declining institutional confidence. Restoring the effectiveness of the WTO requires reforms to dispute settlement, clarification of treaty exceptions, and adaptation to emerging challenges such as digital commerce and environmental sustainability. Such reforms would strengthen the ability of international trade law to regulate future tariff disputes while preserving the balance between sovereign regulatory autonomy and multilateral legal obligations.²¹

Ultimately, the legitimacy of the international trading system depends upon the willingness of States to recognize that stable economic relations are best achieved through law rather than unilateral economic power. Strengthening the WTO and reaffirming the principles of multilateral cooperation remain essential for ensuring that international trade continues to promote peace, prosperity, and sustainable global development.

²¹ Vienna Convention on the Law of Treaties arts. 31–32, May 23, 1969, 1155 U.N.T.S. 331.

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