TRANSNATIONAL BUSINESS LAW JOURNAL
Volume 6, Number 1, February 2025
P-ISSN: 2722-1105 E-ISSN: 2747-0210
DOI: https://doi.org/10.24198/transbuslj.v6i1.2362 Publication Date: 28 February 2025
Publisher: Transnational Business Law Depaertment, Faculty of Law Universitas Padjadjaran

The U.S Tariff Measures 2025 and the Consistency Under the WTO Legal Frameworks: The Future of Multilateral Trade?

Markus Andre Mefiboset Simbolon*

ABSTRACT

On 2 April 2025, the United States implemented an additional tariff measure on all products exported to its market, sparking significant contention among World Trade Organization (WTO) members. Introduced through a State Declaration of National Emergency and Executive Order 14257, the measure established a Reciprocal Tariff system, purportedly aimed at rebalancing the United States' position within the multilateral trading system under the justification of national security. Nevertheless, serious concerns have arisen regarding the measure's consistency with established international trade obligations. This article employs a normative juridical research method to examine its conformity with WTO law, with particular reference to the General Agreement on Tariffs and Trade (GATT) 1994. The analysis finds that the Reciprocal Tariff Measure breaches several GATT provisions covering the most favored nations principle, bound tariff commitment, and potentially the enabling clause under GATT. Further, the reliance on the national security exception under Article XXI does not meet the requisite legal thresholds. If upheld, such measures may undermine the integrity of the multilateral trading system and disrupt global trade governance.

Keywords: multilateral trade; the world trade organization; U.S Tariff Measures 2025.

I. INTRODUCTION

On 2 April 2025, the United States of America imposed a new tariff burden for all countries who want to export their products to the U.S. The new tariff was imposed by President Donald J Trump through the Fact Sheet declaring the status of national emergency in the U.S to protect their national economic stability[1] and followed by the Executive Order Number 14257 as the main regulation imposing tariff for all foreign products exported to the U.S market.[2] The implementation of the present measures is further referred to as the U.S Reciprocal Tariff Measure.[3]

The present U.S Reciprocal Tariff Measures has widely affected all member states of the WTO and all states globally. Under the present measures, all foreign products from any state would be subject to additional tariff burden charged unilaterally and predetermined by the US. This tariff imposition is covered under two mechanisms covering a 10% *ad valorem duty* for all foreign products and nationality based tariff rates imposition range from 23-90% depending on their national origin.[4]

* Faculty of Law, Padjadjaran University. Jl. Ir. Soekarno KM. 21, Jatinangor, Kab. Sumedang, Indonesia, email: markus21001@mail.unpad.ac.id

[1] 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*, April 2, 2025, accessed April 20, 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/

[2] Donald J. Trump, Executive Order 14257 of April 2, 2025: Regulating Imports With a Reciprocal Tariff To Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits, Federal Register 90, no. 65 (April 7, 2025), pages 15041–15060.

[3] World Trade Organization. "United States Requests WTO Consultations with China over Alleged Subsidies." WTO News, April 8, 2025. Accessed April 25, 2025. https://www.wto.org/english/news_e/news25_e/dsrfc_08apr25_e.htm.

[4] Trump, Executive Order, page 15045.

For instance, the United States has calculated that Indonesian tariffs for U.S made products in the Indonesian market overall are at 64% after combined with non-tariff barriers calculation.[5] With additional adjustment, the U.S imposed a total additional tariff of 32% for all Indonesian products,[6] whereas illustrated a half adjustment from the unilateral calculation which applied vis-a-vis for other states as well.[7]

These tariff measures were part of additional tariff duties, meaning that after the U.S Reciprocal Tariff measures entered into force, all foreign products would be charged with the additional tariff combined with their current present applied tariff rates which resulted in a huge burden for all exported to the U.S domestic market and increased all the products prices for consumers.

The U.S further claimed that such measures are in reciprocal basis which means that the additional tariffs imposed by the United States are based on a self-assessed calculation of the treatment received by U.S. made products in the territory of the exporting state, under the principle of mutual treatment. The calculation used by the U.S covered both tariff and non-trade barriers being imposed by U.S made products in the same other state. The U.S stated that they have calculated all trade barriers existing for the U.S products including the tariff barriers and any non-tariff barriers from one state to produce the number of additional rates imposed on the same states with additional discount.[8] Due to this consideration, the U.S introduced the present reciprocal tariff measures that has been entered into force on 9 April 2025.[9] President Donald J Trump further emphasized that such measures are essential in accordance with the national security interest to rebuild the economic position of the U.S.[10]

However, the reasoning to protect the national security interest does not solely justify the act of the state to act inconsistent with their obligation under the multilateral trade agreements, especially under the scope of the World Trade Organization ("WTO"). The WTO has established several agreed mechanisms for states to impose barriers on multilateral trade accompanied with preliminary obligations covered under the General Agreement on Tariff and Trade ("GATT").[11] This mechanism applied to ensure that no member state would act unilaterally to impose an unnecessary burden on international trade.[12] Under the present measures which applied a new burden for all member states who intend to export their products to the U.S globally, there are discussions among members of the WTO stating that such measures have disrupted multilateral trade stability and violated the GATT as the core instrument of the WTO which called for an examination of such measures consistency with the existing multilateral trade agreement.[13]

Following this issue, the current study aims to provide a legal analysis of the U.S Reciprocal Tariff Measures imposed by the U.S since 2 April 2025 and in comparison with the currently established multilateral trade agreements and the resolutions available under the forum of the WTO.

---

[5] The White House, Annex I: Summary of Tariff Modifications and Justifications, April 2025, accessed April 6, 2025, https://www.whitehouse.gov/wp-content/uploads/2025/04/AnnexI.pdf.
[6] Trump, Executive Order, page 15049.
[7] ibid.
[8] White House, *Fact Sheet: Trump Declares National Emergency*, April 2, 2025.
[9] World Trade Organization ("**WTO**"), "Dispute Settlement Body Agrees to Panel Establishment in DS457: Peru — Additional Duty on Imports of Certain Agricultural Products," *World Trade Organization*, 8 April 2025, accessed 27 April 2025, https://www.wto.org/english/news_e/news25_e/dsrfc_08apr25_e.htm.
[10] White House, *Fact Sheet: Trump Declares National Emergency*, April 2, 2025.
[11] WTO, The General Agreement on Tariffs and Trade.
[12] WTO. (1998). *European Communities – Measures affecting the importation of certain poultry products* (Appellate Body Report, WT/DS69/AB/R). https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds69_e.htm, para 145.
[13] World Trade Organization. "United States Requests WTO Consultations with China over Alleged Subsidies." WTO News, April 8, 2025. Accessed April 25, 2025. https://www.wto.org/english/news_e/news25_e/dsrfc_08apr25_e.htm.

II. RESEARCH METHOD

The present study uses normative judicial methods using secondary based data focusing on the interpretation and application of international legal norms under the World Trade Organization (WTO) legal framework, particularly the General Agreement on Tariffs and Trade 1994 (GATT 1994). The research examines the legal consistency of the U.S. Reciprocal Tariff Measures of 2025 by comparing them with WTO member obligations regarding tariff commitments, the most-favoured-nation (MFN) principle, and exceptions related to national security under Article XXI of GATT 1994.

III. DISCUSSION AND RESULTS

3.1 Definitions of Tariff and the Regulation under Multilateral Trade Agreements

A tariff is a tax or duty imposed by an authorized government for the transfer of goods, including export or import session in multilateral trade. Although tariff yet has a concrete definition on multilateral trade agreements under the WTO, it has been recognized as an obligation imposed on products imported from other state territory similarly with custom duty[14] as affirmed on *EC – Poultry* dispute.[15]

Under the current practices, there existed three methods to impose tariffs on multilateral trade. First, it is charged based on the value of a product's price by percentage (Ad Valorem Tariffs), second it is based on the number of products being imported in quantitative calculations (specific tariffs), and lastly under the combination of both methods (compound tariffs).[16] For illustration based on real samples, the use of tariffs are found in the U.S. tariff schedule for footwear products imported from countries like Indonesia. Under the US Harmonized Tariff Schedule subheading 6402.91.40, the United States per period 2025 imposes a tariff of 90 cents per pair plus 37.5% of the value on certain waterproof footwear with outer soles and uppers of rubber or plastics.[17] This tariff structure includes a specific duty of $0.90 per pair (based on quantity), and an ad valorem component: 37.5% of the customs value (based on price), which demonstrates how tariff can be used by the contracting state government by either one or more method combinations.

Tariff is commonly used by states as a government policy' tools subject to the national law for the trade ecosystem existing under their territory such as maintaining the number of export-import or a protection tools for the domestic industries and others. Through the establishment of tariff measures, a contracting state could protect their domestic industry by discouraging the use of foreign products with an additional obligation which increases the products' prices and affecting their competitive conditions in the market or simply to gain additional state revenue from those additional prices, demonstrating a crucial function on multilateral trade.

In acknowledgement of cruciality and the impact of tariff on the ecosystem of multilateral trade, the international community has agreed to establish general rules on the General Agreement on Tariff and Trade under the WTO to reduce trade barriers and avoid the abuse of tariff, supporting the sustainability and equality of multilateral trade among states.[18]

---

[14] Matsushita, Mitsuo, Thomas J. Schoenbaum, Petros C. Mavroidis, and Michael Hahn, The World Trade Organization: Law, Practice, and Policy, 3rd ed., Oxford University Press, Oxford, 2015, p 219.
[15] EC—Poultry (Appellate Body), para. 145:
[16] Matsushita et al., *The World Trade Organization*, page 220.
[17] United States International Trade Commission (USITC), *Harmonized Tariff Schedule of the United States (2025) Revision 10*, HTS Subheading 6402.91.40, https://hts.usitc.gov/current.
[18] WTO, The General Agreement on Tariff and Trade ("**GATT**")

3.2 General Regulation on Tariff under the World Trade Organization

As an international organization specialized to handle the matters of international or multilateral trade among states[19] with main purpose to promote multilateral trade,[20] the WTO by the GATT as its primary law has set core principles applicable to tariffs, particularly through the most favoured nations as part of the non-discrimination principle,[21] maximum bound tariff bindings,[22] and reciprocality.[23]

a. Most Favoured Nations Principle on Tariffs

Most-Favoured-Nation (MFN) treatment is part of the non-discrimination principle under the WTO.[24] This principle ensures that no measures are taken by WTO members in a discriminatory manner toward products originating from the territory of other states, which are crucial to the development of economic trade.[25] Such principle are covered under Article I of the GATT which stipulates that "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."[26] The present article ensures that any measures provided to a certain state shall be equally applied vis-a-vis to other contracting states as well. Throughout the application of this article, WTO members have agreed that all products from any originating state shall be treated equally in order to maintain the stability of the multilateral trade ecosystem. Therefore, any measures taken to provide unconditional and exclusive advantages toward products from any particular originating state shall be deemed a violation of the GATT.[27]

This article becomes even more specific as it explicitly prohibits any exclusive special treatment granted to a certain state, including tariff reductions, unless justified by other provisions such as those under a free trade agreement or a preferential scheme for developing countries. This was further reiterated by the WTO panel in *EC – Preferences*, which ruled that tariff preferences given to products from specific contracting states and not accessible to other states as well constituted a violation of the MFN principle under Article I of the GATT.[28] As part of the WTO annexes,[29] this principle serves as a binding commitment from all WTO members to maintain the sustainability of multilateral trade.

b. The Obligation to set maximum Commitment Tariff Schedule or Bound Tariff

Bound tariff commitment or tariff schedule concession are one of main principles under the WTO that all members must pre-determined their limit on applied tariff for products under their jurisdiction. This obligation is covered under Article II1(a) of the GATT which stipulated

[19] Ade Maman Suherman, *Hukum Perdagangan Internasional: Lembaga Penyelesaian Sengketa WTO dan Negara Berkembang* (Jakarta: Sinar Grafika, 2022), page 16.
[20] GATT, page 1.
[21] GATT, Article I
[22] GATT, Article II
[23] WTO, Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries ("**Enabling Clause**")
[24] Richard Baldwin, "The World Trade Organization and the Future of Multilateralism", Journal of Economic Perspectives 30, no. 1 (2016): 95–116, pages 97-98.
[25] Narlikar, Amrita, Martin Daunton, and Robert M. Stern (eds.), The Oxford Handbook on The World Trade Organization, Oxford University Press, Oxford, 2012, p 843.
[26] Petros C. Mavroidis, The Sources of WTO Law and Their Interpretation: Is the New Ok, Ok? (Cheltenham: Edward Elgar Publishing, 2022), pages 10-12.
[27] Petros C. Mavroidis, The Regulation of multilateral trade, Volume 2: The WTO Agreements on Trade in Goods (Cambridge, MA: The MIT Press, 2016). Page 21.
[28] WTO, Panel Report: European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries (EC – Preferences), WT/DS246/R, 20 April 2004, paras 7.48-7.54.
[29] WTO, Annex 1A: Multilateral Agreements on Trade in Goods, in Marrakesh Agreement Establishing the World Trade Organization, 1994; WTO, Marrakesh Agreement Establishing the World Trade Organization, Article 2.1, 1994.

that "Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement."[30]

The WTO members are required to declare their commitment in tariff through determining their maximum rates of tariff that could be imposed by states for products imported to their territory. The predetermined commitment of tariffs rates then would be submitted to the WTO databases known as Consolidated Tariff Schedule ("CTS") and accessible to other WTO members. acting as limitation for the state party to ensure that future tariffs on products imported to their territory would not exceed such rates.

Through the bound tariff obligation, all member states are able to ensure predictability of tariff by other states for long term exports-imports. Notably, there existed 166 WTO member states as of 2025. Through setting a bound tariff commitment, any member state has determined the conditions for multilateral trade subject to their market, which is accessible for all members and acting as a basis for other members to interact with. However, any violation by applied tariff exceeding the bound tariff may change the whole circumstance of international trade and may cause hardship[31] or force majeure[32] due to the unpredictable nature from such a measure. Thus, illustrating the importance of WTO members to comply with bound tariff rules.

These schedules, legally binding under international law, prohibit Members from applying tariffs above their committed ceiling levels. State may flexible in applied tariff below that determined commitment,[33] yet any unreasonable tariff application beyond the bound tariff rate constitutes a violation unless the Member engages in renegotiation under Article XXVIII of GATT 1994 which enlightens the commitment of the WTO to ensure sustainability of multilateral trade.

c. Concept of Non-Reciprocal for Tariff (Enabling Clause)

The WTO has maintained the concept of non reciprocal manner towards the developing state In terms of tariff measure.[34] The concept itself has been further recognized as the 'enabling clause' as the annexes 1A of the WTO Agreements[35] which stipulated that "Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties."[36] This conceptual framework derive from WTO members commitment on Tokyo Round Decision which stated that "The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove

---

[30] GATT, Article II.

[31] International Institute for the Unification of Private Law (UNIDROIT). (2016). UNIDROIT principles of international commercial contracts 2016 (Arts. 6.2.1–6.2.2). UNIDROIT; International Institute for the Unification of Private Law (UNIDROIT), UNIDROIT Principles of International Commercial Contracts 2016 – With Official Commentary (Rome: UNIDROIT, 2016), 219–226. "UNIDROIT recognizes that a sudden and unforeseeable change in national regulation may constitute hardship, thereby allowing the affected party to seek adaptation or even termination of the contract under Articles 6.2.1 and 6.2.2"; and Fabio Bortolotti and Dorothy Ufot (eds.), Hardship and Force Majeure in International Commercial Contracts: Dealing with Unforeseen Events in a Changing World, Kluwer Law International B.V., 2019, pages 1-2.

[32] UNIDROIT, *Principles of International Commercial Contracts 2016*, Art. 7.1.7.; Bortolotti and Ufot, *Hardship and Force Majeure*, p. 3.

[33] Beshkar, Mostafa, Eric W. Bond, and Youngwoo Rho, "Tariff Binding and Overhang: Theory and Evidence," Journal of International Economics, Vol. 97, 2015, page 2.

[34] Florian Freund, "Reciprocal Tariff Reductions Under Asymmetric Bargaining Power," *The World Economy*, Vol. 40, No. 6, 2017, page 979.

[35] WTO, *Legal Texts: The WTO Agreements*, accessed April 29, 2025, https://www.wto.org/english/docs_e/legal_e/legal_e.htm. Annexes 1A.

[36] Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries ("Enabling Clause"), Decision of 28 November 1979, L/4903, in BISD 26S/203, Article 1.

tariffs and other barriers to the trade of developing countries…Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries..”[37] Thus led to the establishment of the enabling clause.

This enabling clause acts as the legal basis for preferential trade treatment among the WTO members to provide special or different treatment for the developing and least-developed states under the framework of WTO.[38] It operates as a lawful exceptional clause from the Most Favored Nation principle, permitting schemes like Generalized System of Preferences and regional developing-country agreements[39] to developing and least developed states[40] as it is essential in their current circumstances.[41]

3.3 Consistency Analysis of the United States' 2025 Reciprocal Tariff Measures with WTO Obligations

Given there existed notion to compared the current implementation of the U.S Reciprocal Tariff Measures toward the tariff regulation under the General Agreement on Tariff and Trade as the main instrument on tariff under the WTO, the present comparison would provide legal analysis on such measure consistencies assessment, us rationale for exemption, and in addition including WTO Respond toward such measures.

a. Analysis of the U.S Reciprocal Tariff Measures Consistencies with the GATT

1) Assessment of Bound Tariff Commitment

Article II of the GATT ensures that no applied tariff being imposed by WTO members exceeds their bound tariff commitment.[42] Notably, the US has maintained 0% tariff rates of bound tariff for 46% categories of products exported to the U.S which illustrated the strong commitment for reducing tariff barriers under the WTO.[43] For instance, among others, the maximum rate for tobacco products on the categories of “*Leaf tobacco, the product of two or more countries or dependencies, when mixed or packed together*” were set at 0% rates.[44]

Yet, the new tariff rates impose minimum 10% additional rates and additional adjusted tariff rates according to the origin state of the tobacco products. This would affect the competitive conditions of such products in the U.S market as the prices would be more expensive than the domestic products from the U.S and modify the competitive conditions unilaterally for U.S consumers that are unforeseeable for the exporters. The same circumstances applied for the rest 46.5% of products protected by the bound commitment of the US which would be imposed additional tariff after the US reciprocal tariff measure entered into force. This has undermined the purpose of Article II in ensuring predictability of tariff and reducing barriers in multilateral trade. As the present measures have established

[37] WTO, Analytical Index: Article XXVIII bis, pages 987-988; Autar Krishen Koul, *Guide to the WTO and GATT: Economics, Law and Politics*, 6th ed., Springer/Satyam Law International, Singapore/New Delhi, 2018, p 641.
[38] Bagwell, Kyle, Chad P. Bown, and Robert W. Staiger, “Is the WTO Passé?” Journal of Economic Literature, Vol. 54, No. 4, 2016, page 1130.
[39] Kim, Jong Bum, and Li Yoo, “Tariff Flexibility Amid Formation of Preferential Trade Agreements: WTO Law vs. PTA Law,” World Trade Review, Vol. 22, 2023, page 686.
[40] Enabling Clause, Articles I,II.
[41] Banga, Rashmi, WTO Moratorium on Customs Duties on Electronic Transmissions: How Much Tariff Revenue Have Developing Countries Lost?, Research Paper No. 157, South Centre, Geneva, 2022, page 15.
[42] GATT, Article II
[43] WTO, *United States of America: Tariff Profile*, accessed April 25, 2025, https://ttd.wto.org/en/profiles/united-states-of-america.
[44] WTO, *Consolidated Tariff Schedule of the United States: Chapter 24 – Tobacco and Manufactured Tobacco Substitutes*, accessed April 25, 2025, https://ttd.wto.org/en/data/cts/united-states-of-america/part1-section1a/?tableFilters[hs_code][chapter]=24.

a new burden tariff for all products exported to the U.S and exceed their own commitment of bound tariff, it does constitute violation toward Article II of the GATT for all zero percent committed bound tariff products entering U.S jurisdiction.

2) Analysis of the Most Favoured Nations Treatment under the U.S Reciprocal Tariff Measures

Article I of the GATT 1994 stipulates that "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties" acted as the fundamental principle under the WTO known as the general most favored nations.[45]

The implementation of this article obliged all the WTO members to ensure equal treatment towards any other contracting party unless for exceptional cases ruled under GATT. This principle is known as the unconditional most favoured nations clause to ensure there are no discriminations of treatment under the GATT among contracting states.

According to the US Reciprocal Tariff Measure on Annex I,[46] the U.S imposes reciprocal tariff measures based on reciprocal and mutual treatment towards all states. However, it uses different methods of calculation to calculate amounts of tariff percentage for the Republic of China, Canada, and Mexico. This has resulted in higher tariff rates and higher burden of trade especially for these 3 mentioned states. Although being an additional burden for any other countries, these three states have been a special subject of disadvantage on the UTRM. Due to the special case, it has caused a contravention with the Article I of the GATT which upholding the most favoured nations principle.

3) Analysis of the Reciprocality for the Developing States under the U.S Reciprocal Tariff Measures

The Implementation of the U.S Reciprocal Tariff Measures does not violate the principle of reciprocality covered by the enabling clause of the WTO Agreement per se. The enabling clause under the WTO Agreement currently serves limited to the right of member states to grant special treatment toward developing states of least developed states due to their economic condition. Nevertheless, it does not provide any specific legal obligation for any member state to provide such advantages.

Although it might be argued that the non reciprocity principle between developed and developing state form an obligation under the Customary International Law as it has fulfilled the elements of state practice through the implementation of such measures in numerous states including the European Union[47], Japan[48], and Canada[49], further it fulfilled the *opinio juris* elements as evidenced by the notion brought under the GATT negotiations that developed states must not expect the same reciprocality on tariff from the developing state.[50] It does not constitute a formal obligation under the forum of the WTO, thus unable to argue before the WTO Dispute Settlement Body which limited to covered disputes arise under the treaty based obligation which refer to the multilateral trade agreement under the annexes of the WTO, unless the parties agree to pursue another alternative Dispute Settlement Forum.

---

[45] GATT, Article I

[46] Trump, Executive Order, page 15049.

[47] European Union. (2012). Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences. Official Journal of the European Union, L 303/1.

[48] Government of Japan. (2023). Generalized System of Preferences for Developing Countries. Ministry of Foreign Affairs.

[49] Government of Canada, *General Preferential Tariff (GPT)*, Global Affairs Canada (2023)

[50] WTO, Analytical Index: Article XXVIII bis, pages 987-988.

Consequently, the U.S were consistent with the WTO in term of the reciprocality nature of their reciprocal tariff measures, yet it shall be taken into account that It's crucial for developed states to balance their trade policies with a commitment to equitable and inclusive economic development, respecting both the letter to fully supported the objective of the WTO in maintaining effective trade ecosystem for developed and developing states as well.

b. The U.S *rationale* for the Reciprocal Tariff Measures

To put on the rationale of such unilateral action, according to the US, the measures taken to implement the U.S Reciprocal Tariff Measures and the implementation of the Executive Order (EO) as the practical rules stems from long-standing concerns that many foreign countries impose significantly higher tariffs on U.S. exports than the U.S. imposes on their imports. This was seen as unfair and damaging to the U.S. economy. The U.S claimed that "Reciprocal tariffs are calculated as the tariff rate necessary to balance bilateral trade deficits between the U.S. and each of our trading partners". Further, it has been claimed that the U.S has been keeping relatively low tariffs amounts under the rules of the WTO and various Free Trade Agreements. Yet, many trading partners continue to maintain higher tariffs or non-tariff barriers that may prevail, among others may refer such as competition policies, product standards, regulatory regimes, investment codes, environmental policies, and labor standards[51] that creates a disadvantageous trade environment to the U.S.[52]

This consistent conduct is deemed as a huge threat for the U.S and requires immediate action to protect the domestic U.S market. Hence, the U.S has declared a status of economic emergency by 2 April 2025 and followed by reciprocal tariff measures to protect the national economy. However, although the rationale of the UTRM is to protect the national security for the United States, it cannot automatically negate the responsibility from the U.S to ensure such policies are in compliance with the WTO legal frameworks, namely the General Agreement on Tariff and Trade 1994.

c. Respond from the WTO and Procedural Mechanism for Dispute Settlement

The potential violations of the GATT, as explained previously, align with the WTO's response to the U.S. Reciprocal Tariff Measures, which has expressed significant concern over the escalating U.S. tariffs announced in early 2025. In its April 2025 trade outlook, the World Trade Organization warned that recent U.S. measures risk undermining multilateral trade stability. The WTO Director-General cautioned that such unilateral actions could lead to a 1% decline in global merchandise trade, underscoring the importance of multilateral dialogue and adherence to established trade rules. Further, in order to maintain the consistency of multilateral trade agreements, the WTO has established procedural rules for members to address any differential views or disputes arising under the WTO framework.[53]

---

[51] Cheong, Juyoung, Do Won Kwak, and Kam Ki Tang, "The Trade Effects of Tariffs and Non-Tariff Changes of Preferential Trade Agreements," Economic Modelling, 2017, page 2; de Melo, Jaime, and Alessandro Nicita (eds.), *Non-Tariff Measures: Economic Assessment and Policy Options for Development*, UNCTAD/DITC/TAB/2017/2, United Nations Conference on Trade and Development, Geneva, 2018, page 5.

[52] White House, *Fact Sheet: Trump Declares National Emergency*, April 2, 2025.

[53] Chad P. Bown, "Mega-Regional Trade Agreements and the Future of the WTO", *Global Policy* 8, no. 1 (2017): 107–112, https://doi.org/10.1111/1758-5899.12391., pages 107-108.

3.4 Dispute proceedings by the WTO members

a. Official Request for Consultation from China

The Republic of China ("China") has raised an official complaint, requesting for consultation in the matters of U.S Reciprocal Tariff Measure per 4 April 2025. The complaint has been submitted to the WTO Dispute Settlement Body and circulated to the WTO members on 8 April 2025 with dispute number WT/DS638/1. The procedures of complaint by China are aligned with Article 4.4 of the WTO Dispute Settlement Understanding which holds that when there exists any dispute between WTO members, the request for consultation shall be submitted to the WTO DSB and relevant councils with the basis for the request of consultation.

Under the consultation, China maintained the measures from the United States are inconsistent with several provisions of the GATT 1994 especially the implementation of Article I and II of the GATT 1994. As the member of the WTO, China claimed the implementation of the U.S RTM violates Article I of the GATT under reasoning that it has "fail to extend immediately and unconditionally to products originating in China an advantage, favour, privilege or immunity granted by the United States with respect to customs duties and charges of any kind imposed on or in connection with the importation of products originating in the territory of other Members."

This formal consultation highlighted the different treatment from the U.S toward products originating from China that imposed higher tariff calculation from other members of the WTO and therefore violates the most favoured nations principle. Furthermore, China also claimed that the U.S TRM violates Article II of the GATT which stipulated that the imposition of tariff may not exceed the maximum bound tariffs commitment submitted to the WTO. Aligned with the previous analysis, China maintains that the U.S has breached their commitment on bound tariff by imposing higher tariff more than the maximum bound tariff which violates Article II of the GATT.

b. Defence under National Emergency Situations

Following such consultation raised from China at the WTO Forum, the U.S might argue that the measures taken to implement the U.S TRM are based on emergency situations as being declared by 2 April 2025 and covered by Article XXI (ii)(b) of the GATT as an exceptional provision from GATT. This argumentation has been used by the US on the precedents dispute against Switzerland and against China previously.[54] Thus should be covered under the exceptional clause on Article XXI of the GATT and consistent with the WTO Legal Frameworks as being justified.

However, such exceptional emergency situations are not subject to unilateral determination and require a broader scope to be invoked which is not solely based on a state view. The textual basis of Article XXI of the GATT stipulates that "Nothing in this Agreement shall be construed to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests:

[54] WTO,, *United States – Certain Measures on Steel and Aluminium Products: Report of the Panel*, WT/DS544/R, circulated 9 December 2022.

1. relating to fissionable materials or the materials from which they are derived;
2. relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
3. taken in time of war or other emergency in international relations; or to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security."[55]

The exceptional reason for national security purposes indeed could be argued as reason falls under paragraph b point (iii) focussing on emergency situations on international relations. However, the WTO has maintained a different perspective concerning the implementation of exceptional clauses for the matters of national security. The matters covered by the Article XXI (ii)(b) indeed covered emergency situations, yet also cumulatively require the existence of "international relations" to be invoked. The article aims to exclude WTO members from GATT application in case there are global emergency situations occurring surrounding the state, which are not solely a domestic matter. In the *Russia – Traffic in Transit* dispute, the WTO held that the existence of a national security emergency under Article XXI is subject to limited review. In that precedent case, the WTO Panel stated that the implementation of national security exceptions covered under Article XXI b(iii) of the GATT strictly limited to situations of war or emergency in international relations engulfing or surrounding a state further requires circumstances more serious than domestic matters.[56] The same panel stipulated that emergency situations from domestic matters are not sufficient to constitute the element of "international relations" that are unable to be exempt from any state measure from GATT-violation.[57] While in this present case, the matters occurring in the U.S were only limited to domestic matters and not occurred in any international relation, thus unable to justify any GATT-violation.

c. Study Case of Precedent dispute under the WTO

The inconsistencies issue from the U.S through the implementation of the U.S Reciprocal tariff Measures are not entirely a new issue. The similar issue has been disputed since 2018 until 2023 by the Republic of China concerning the implementation of the Certain Measures on Steel and Aluminium Products registered with Dispute Number 544 on the WTO where U.S impose products for all steel and aluminum products globally under national security reasons.[58]

On DS544, China argues that such implementations are conducted with several exceptions claimed to be only provided for developing states yet included few developed states and excluded several developing states as well which were being unreasonable and violates Article I of the GATT while also violates the Article II of the GATT since the amounts of tariff has exceeded the US' bound tariff commitment under the WTO.

Responding to this claim, the U.S argues that such measures should be exempt under the reason for national security purposes similar to the current reciprocal tariff measures.[59] However, the WTO finds that there exists no evidence of national emergency in international relations situations which can be imposed by the U.S to justify their action as the national

[55] Article XXI of the GATT
[56] WTO, *Russia – Measures Concerning Traffic in Transit*, Panel Report, WT/DS512/R, 5 April 2019, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm. para. 7.72.; World Trade Organization, Analytical Index of Article XXI GATT: DS Reports, para 33, page 11.
[57] Ibid.
[58] WTO, United States – Certain Measures on Steel and Aluminium Products: Report of the Panel, WT/DS544/R, circulated 9 December 2022, paras. 7.1–7.20.
[59] Ibid.

security reason that was claimed by the U.S were solely limited to domestic circumstance and thus unable to fulfil the element of 'international relations'. Consequently, the WTO Panel ruled that such measures are inconsistent with the GATT.

Similar to the current situations where the U.S impose the reciprocal tariff measure globally toward all states, the current US circumstances have yet fulfilled the elements of emergency situation in international relations to be covered under GATT exception on Article XXVIII, thus constitute a GATT-violation.

3.5 Potential Outcome of the U.S Reciprocal Tariff Measure (Preliminary Assessment on the Current Dispute)

Due to the controversial nature of the U.S. Reciprocal Tariff Measures and concerns among WTO Members, questions arise regarding possible outcomes if such measures are formally challenged under the WTO dispute settlement system. This section offers a preliminary analysis of potential enforcement outcomes in the U.S. Reciprocal Tariff Measures disputes.

In case that the WTO rules in favor of the complaining party and finds the U.S. measures inconsistent with the GATT and other relevant multilateral trade agreements, the U.S. would be obligated to bring its measures into conformity with the violated agreements by appropriate means, such as adjustment or nullification. The U.S. would retain the right to raise further issues or request consultations regarding enforcement if it faces challenges in complying. Moreover, any act of noncompliance risks the potential suspension of U.S. membership rights under the WTO. However, this scenario assumes normal circumstances. The current dysfunction of the WTO Appellate Body ("AB") due to the failure to appoint new members permits disputing parties to block the adoption of Panel decisions by filing an appeal, creating legal uncertainty regarding enforcement.[60] This situation highlights the need for alternative dispute settlement methods where appeals are stalled.

Other than the present AB's dysfunction issue, the WTO retains authority to address disputes through consultation and panel proceedings. Parties may also resort to alternative means such as good offices, mediation, negotiation, arbitration, or any mutually acceptable solutions consistent with the objectives of the relevant agreements.[61] Such alternative mechanisms must be notified to the WTO Dispute Settlement Body (DSB) to maintain transparency and allow for preliminary objections by other members, thereby preserving the WTO's ability to resolve disputes.

3.6 Alternative measures to impose tariff in accordance with the WTO Law

Given the difficulty in the current circumstances faced by the US, in case that the U.S remains intact to protect their national economic security by imposing the US reciprocal tariff measures, it shall be conducted through the lawful means under the WTO by increasing their bound tariff commitment. A WTO Member is indeed strictly prohibited from imposing tariffs exceeding its own committed maximum bound tariff concessions.[62] However, in cases where the U.S remains intent to impose their reciprocal tariff measures for all foreign products which exceed their bound tariff commitment, the U.S must first amend their bound tariff commitment in order to avoid violation toward Article II of the GATT. Article XXVII of the GATT allowed a WTO member to modify their bound tariff commitment

[60] World Trade Organization. *Dispute Settlement: Appellate Body*. Accessed April 20, 2025. https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm.; Hoekman, Bernard, and Petros C. Mavroidis, "WTO Reform: Back to the Past to Build for the Future," Global Policy, Vol. 12, Suppl. 3, 2021, page 33.

[61] Article 5 of the WTO DSU; Xiao, Bing, Yue Peng, and Wenjie Yu, The Practice of WTO Dispute Settlement: A Perspective with China's Characteristic, Springer, Singapore, 2024, p 13.

[62] GATT, Article II

under the WTO.[63] This tariff modification comes with a condition that such modification must be negotiated with the affected members and may include an offer of compensation for such adjustment to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations.[64] Any modification on bound tariff commitment would automatically change the competitive conditions for the impugned products in the market, therefore it is mandatory for the contracting parties to enter into negotiation with all relevant contracting parties, members of the WTO to ensure that the adjustment on the multilateral trade. In case that during the phase of negotiation, all parties are unable to reach an agreement on the adjustment including any compensation or even on this scenario such negotiation never been conducted, state parties who affected from the modification are allowed to impose a counter measure or adjustment on their own which is deemed necessary in response to such bound tariff adjustment as a lawful retaliation.[65]

These procedures applied to ensure that affected members may negotiate and withdraw substantially equivalent concessions if no agreement is reached.[66] This prevents unilateral modifications aimed at suppressing other states' exports, balancing national flexibility with the preservation of negotiated trade benefits. Therefore, if the U.S. intends to impose tariff measures exceeding its bound rates, as with the U.S. Reciprocal Tariff Measures, it must first amend its bound tariff commitments to avoid GATT violation.

a. How the U.S Reciprocal Tariff Measures affect the multilateral trade

The global application of the U.S. Reciprocal Tariff Measures carries significant consequences for multilateral trade and developing countries, including Indonesia as a key U.S. trading partner in Southeast Asia. At the multilateral level, the measures risk triggering retaliatory actions among WTO members, as illustrated by countermeasures already imposed by China, the European Union, and Canada. This pattern of reciprocal tariff hikes raises the cost of commodities, contradicting the WTO's objective of reducing trade barriers and escalating tensions into a potential multilateral trade war.

Developing countries are particularly vulnerable. Under WTO practice, the distinction between developed and developing states is based on self-declaration and reflects economic disparities.[67] Historically, many now-developed nations including the United States, Japan, and South Korea had previously relied on tariffs during their industrialization.[68] Imposing reciprocal tariffs on developing states disregards these historical realities and places undue economic burdens on countries still nurturing their domestic industries.

Indonesia exemplifies these challenges. As a U.S. trading partner, Indonesia exports key commodities such as footwear, machinery, and textiles.[69] Before the new measures, Indonesian footwear products already faced U.S. tariff rates ranging between 20% and 48%, with an

[63] GATT, Article XXVIII
[64] Article XXVIII (2) of the GATT; and Chad P. Bown, *Modern Industrial Policy and the WTO*, Working Paper 23-15 (Washington, DC: Peterson Institute for International Economics, 2023), page 6.
[65] Chad P. Bown, *Modern Industrial Policy and the WTO*, Working Paper 23-15 (Washington, DC: Peterson Institute for International Economics, 2023), forthcoming in *Annual Review of Economics*, page 6.
[66] GATT, Article XXVIII
[67] WTO, *Who are the developing countries in the WTO?*. accessed in April 28, 2025, https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm
[68] Chang, Ha-Joon, Why Developing Countries Need Tariffs? How WTO NAMA Negotiations Could Deny Developing Countries' Right to a Future, South Centre, Geneva, 2005, p 34–46.
[69] BPS Statistics Indonesia, *Exports and Imports of Indonesia, October 2024*, Official Statistics News No. 84/11/Th. XXVII (Jakarta: BPS, 15 November 2024).

average bound rate of 37.5% under WTO commitments.[70] The imposition of an additional 42% tariff under the U.S. Reciprocal Tariff Measures significantly exceeds these expectations, undermining the principle of tariff predictability under Article II of GATT 1994. Consequently, Indonesia's export sector suffers unpredictable and excessive burdens, highlighting the broader inconsistency of the U.S. measures with WTO rules and their disruptive impact on the multilateral trade system.

IV. CONCLUSION

A WTO state member may indeed impose a measure in order to protect their national security, yet such measures must be in accordance with the established multilateral trade agreements. The implementation of the U.S. Reciprocal Tariff Measures under Executive Order 14257 in 2025 represents a significant shift in U.S. trade policy, introducing a system of unilaterally determined tariffs on imported goods based on reciprocal treatment. However, such measures have several inconsistencies with the established trade agreement under the General Agreement on Tariff and Trade (GATT). This research study found that the US Reciprocal Tariff Measures has violated the Article I of the GATT by undermining the Most-Favoured-Nation principle through discriminatory tariff rates based on country of origin. Furthermore, the same measures have violated Article II of the GATT by imposing tariffs exceeding the U.S.'s bound commitments for certain product categories. Although the U.S. attempts to invoke Article XXI national security exceptions, WTO precedent limits such justification to emergencies in international relations, which the current measures fail to demonstrate. The impact of the UTRM extends globally, risking a multilateral trade war and disproportionately harming developing countries like Indonesia, which face increased barriers to market access. Moreover, with the WTO Appellate Body in crisis, the ability to enforce dispute rulings remains uncertain, highlighting the fragility of the current multilateral trade system. Ultimately, the unilateral nature of the U.S. tariff measures threatens the stability and legitimacy of the WTO-based trading order. Without adherence to established multilateral norms and cooperative reform efforts, the future of global trade governance may face further erosion.

REFERENCES

Books

Adolf, Huala. Hukum Perdagangan Internasional. Jakarta: Rajawali Press, 2014.

Autar Krishen Koul, *Guide to the WTO and GATT: Economics, Law and Politics*, 6th ed., Springer/Satyam Law International, Singapore/New Delhi, 2018.

Chang, Ha-Joon, Why Developing Countries Need Tariffs? How WTO NAMA Negotiations Could Deny Developing Countries' Right to a Future, South Centre, Geneva, 2005.

Fabio Bortolotti and Dorothy Ufot (eds.), *Hardship and Force Majeure in International Commercial Contracts: Dealing with Unforeseen Events in a Changing World*, Kluwer Law International B.V., 2019.

Matsushita, Mitsuo, Thomas J. Schoenbaum, Petros C. Mavroidis, and Michael Hahn, The World Trade Organization: Law, Practice, and Policy, 3rd ed., Oxford University Press, Oxford, 2015.

Narlikar, Amrita, Martin Daunton, and Robert M. Stern (eds.), The Oxford Handbook on The World Trade Organization, Oxford University Press, Oxford, 2012.

Sundaram, Jae, WTO Law and Policy: A Political Economy Approach, Routledge, Abingdon, 2022.

[70] United States International Trade Commission, *Harmonized Tariff Schedule of the United States Revision 8 (2025): Annotated for Statistical Reporting Purposes*, Chapter 64, *Footwear, Gaiters and the Like* (Washington, DC: USITC, 2025).

Xiao, Bing, Yue Peng, and Wenjie Yu, The Practice of WTO Dispute Settlement: A Perspective with China's Characteristic, Springer, Singapore, 2024

Journals

Bagwell, Kyle, Chad P. Bown, and Robert W. Staiger, "Is the WTO Passé?" *Journal of Economic Literature*, Vol. 54, No. 4, 2016, https://doi.org/10.1257/jel.20151192.

Banga, Rashmi, "WTO Moratorium on Customs Duties on Electronic Transmissions: How Much Tariff Revenue Have Developing Countries Lost?", *Research Paper* No. 157, South Centre, Geneva, 2022, https://hdl.handle.net/10419/270382.

Beshkar, Mostafa, Eric W. Bond, and Youngwoo Rho, "Tariff Binding and Overhang: Theory and Evidence," *Journal of International Economics*, Vol. 97, 2015. https://doi.org/10.1016/j.jinteco.2015.04.004.

Cheong, Juyoung, Do Won Kwak, and Kam Ki Tang, "The Trade Effects of Tariffs and Non-Tariff Changes of Preferential Trade Agreements," *Economic Modelling*, 2017, https://doi.org/10.1016/j.econmod.2017.08.011.

Florian Freund, "Reciprocal Tariff Reductions Under Asymmetric Bargaining Power," *The World Economy*, Vol. 40, No. 6, 2017.https://doi.org/10.1111/twec.12481.

Hoekman, Bernard, and Petros C. Mavroidis, "WTO Reform: Back to the Past to Build for the Future," *Global Policy*, Vol. 12, Suppl. 3, 2021. https://doi.org/10.1111/1758-5899.12924.

Kim, Jong Bum, and Li Yoo, "Tariff Flexibility Amid Formation of Preferential Trade Agreements: WTO Law vs. PTA Law," *World Trade Review*, Vol. 22, 2023. https://doi.org/10.1017/S1474745623000277.

Paola Conconi and Carlo Perroni, "Special and Differential Treatment of Developing Countries in the WTO," *World Trade Review*, Vol. 14, No. 1, 2015. https://doi.org/10.1017/S147474561400041X.

Utomo, Setyo, "Indonesia's Interests in the World Trade Organization and the Appellate Body Impasse: Questioning the Existence of Special and Differential Treatment," *YURIDIKA*, 2023, https://doi.org/10.20473/ydk.v38i1.38933.

Electronic Citation

BPS Statistics Indonesia, "Exports and Imports of Indonesia", October 2024, Official Statistics News No. 84/11/Th. XXVII (Jakarta: BPS, 15 November 2024).

de Melo, Jaime, and Alessandro Nicita (eds.), *Non-Tariff Measures: Economic Assessment and Policy Options for Development*, UNCTAD/DITC/TAB/2017/2, United Nations Conference on Trade and Development, Geneva, 2018.

Donald J. Trump, Executive Order 14257 of April 2, 2025: Regulating Imports With a Reciprocal Tariff To Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits, *Federal Register*, Vol. 90, No. 65, April 7, 2025.

European Union, Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 Applying a Scheme of Generalized Tariff Preferences, Official Journal of the European Union, L 303/1, 2012.

Government of Canada, General Preferential Tariff (GPT), Global Affairs Canada, 2023.

Government of Japan, Generalized System of Preferences for Developing Countries, Ministry of Foreign Affairs of Japan, 2023.

World Trade Organization, Dispute Settlement Understanding.

World Trade Organization, Dispute Settlement: Appellate Body, accessed April 20, 2025, https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm.

World Trade Organization, Panel Report: European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries (EC – Preferences), WT/DS246/R, April 20, 2004.

World Trade Organization, World Tariff Profiles 2024, WTO Publications, Geneva, 2024.

World Trade Organization, "United States Requests WTO Consultations with China over Alleged Subsidies," WTO News, April 8, 2025, https://www.wto.org/english/news_e/news25_e/dsrfc_08apr25_e.htm.

European Union. (2012). *Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences*. *Official Journal of the European Union, L 303/1*.

Government of Canada. (2023). *General Preferential Tariff (GPT)*. Global Affairs Canada.

Government of Japan. (2023). *Generalized System of Preferences for Developing Countries*. Ministry of Foreign Affairs.

UNIDROIT. (2016). *Principles of international commercial contracts* (2016 ed.).

United States International Trade Commission. (2025). *Harmonized Tariff Schedule of the United States (Revision 10)*. https://hts.usitc.gov/current

United States International Trade Commission, Harmonized Tariff Schedule of the United States Revision 8 (2025): Annotated for Statistical Reporting Purposes, Chapter 64, Footwear, Gaiters and the Like (Washington, DC: USITC, 2025).

White House. (2025, April 2). *Fact sheet: President Donald J. Trump declares national emergency to increase our competitive edge*. https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge

Trump, D. J. (2025). *Executive Order 14257 of April 2, 2025: Regulating imports with a reciprocal tariff to rectify trade practices that contribute to large and persistent annual United States goods trade deficits*. *Federal Register, 90*(65), 15041–15060.