

The Crisis of U.S. Tariffs and Its Settlement Mechanisms within the Framework of the World Trade Organization

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Abstract:

The World Trade Organization is facing one of the most difficult challenges that could lead to its solution in the future, if it does not improve its handling of the customs duties imposed by the United States of America unilaterally on imports from many countries on April 2nd, 2025, ranging between 10% and 145%.

Among the common mechanisms that the World Trade Organization can resort to in resolving trade disputes between America and these countries, especially China, is the use of amicable methods stipulated in the memorandum of understanding on the rules and procedures governing disputes in the organization; which include consultation, good offices, conciliation, and mediation. It can also resort to arbitration as an alternative means of settling the existing dispute, given its effectiveness at resolving this type of dispute within the organization over the years.

Keywords: Customs duties; Protection; Good offices; arbitration.

1- Introduction:

States have endeavoured, since the 1940s, to regulate international trade. These efforts culminated in the adoption of the General Agreement on Tariffs and Trade on 19 May 1948, as a prelude to the establishment of a global trade organization tasked with liberalizing international trade and removing restrictions that may be imposed thereon.

Fifty (50) years after the adoption of GATT, the World Trade Organization was established in 1995. The Organization commenced its operations on 1 January 1995 pursuant to the Marrakesh Agreement Establishing the World Trade Organization, replacing the GATT 1948 framework. Its provisions became fully effective for developing countries in 2005. Notwithstanding, the WTO has faced numerous challenges in implementing its core principles, including the liberalization of international trade through the prohibition of quantitative restrictions in trade among Members, the application of the principle of non-discrimination in international trade relations, and the adoption of reciprocal tariff reduction commitments, whether direct or indirect.

Among the most significant challenges confronting the Organization are the unilateral retaliatory tariffs imposed by the United States of America on numerous countries worldwide. This development has prompted many WTO Members to call for profound and comprehensive institutional reforms.

In addressing the crisis of U.S. tariffs and the avenues for resolving it within the WTO framework, the following research question may be formulated:

Despite the abundance of legal scholarship addressing tariffs and trade wars _particularly in the context of policies pursued under the administration of Donald Trump_ such studies have predominantly focused on economic analysis or general descriptive accounts of their repercussions,

without sufficiently engaging in a rigorous legal assessment of their compatibility with the fundamental principles of the multilateral trading system.

To what extent can the World Trade Organization provide effective legal solutions to the issue of unilateral tariffs imposed by the United States on its Members, particularly in light of the paralysis of the Appellate Body since 2019?

Accordingly, this study adopts a legal-analytical approach to examine the lawfulness of U.S. protectionist tariffs and their conformity with WTO principles. It further explores the mechanisms available to the WTO to address the tariff crisis, with particular emphasis on amicable and arbitral dispute settlement methods in light of the continued dysfunction of the Appellate Body, as well as the United States' reliance on national security justifications for the imposition of such measures.

This research is structured into two parts: the first addresses the inconsistency of U.S. tariffs with most principles of international trade, while the second examines the mechanisms that the Organization may adopt to protect its Members from such measures.

2- Inconsistency of U.S. Tariffs with the Principles of the World Trade Organization and Their Repercussions on International Trade

The World Trade Organization is the competent international organization responsible for administering global trade among States¹. Its primary mandate is to ensure that trade flows as smoothly, predictably, and freely as possible, while providing protection to all its Members, whether exporters or importers².

Within this framework, the WTO promotes a new global order characterized by full commercial competition under open borders, thereby transforming the world into a single market in which all States compete³.

However, on 2 April 2025, the President of the United States, Donald Trump, announced one of the most extensive tariff campaigns affecting the global economy. Tariffs were imposed on more than 200 countries worldwide, including WTO Members such as China, Japan, France, and Germany, at rates ranging from 10% to 145%⁴. This measure was justified on the basis of the principle of reciprocity in trade relations with countries imposing high tariffs on U.S. goods, with the aim of rebuilding the U.S. economy and restoring national and economic security⁵.

This prompted several countries, notably China, to file a complaint before the WTO on 9 April 2025 against U.S. tariffs on its exports, as stated in its Ministry of Foreign Affairs' communiqué. China, being among the most affected States _with tariffs reaching 145%_ argued that such measures violate several principles enshrined in the international agreements underpinning the WTO⁶.

In this regard, China requested consultations within the WTO framework with the United States concerning these tariffs, alleging their inconsistency with U.S. obligations under the General Agreement on Tariffs and Trade. The WTO considers that such consultations may provide the parties with an opportunity to reach a mutually satisfactory solution without resorting to litigation. Should no settlement be reached within sixty (60) days from the date of the consultations, the matter may be referred to a dispute settlement panel⁷.

Section I: Inconsistency of U.S. Tariffs with WTO Principles

Many States have considered the imposition by the United States of tariffs on imports to be inconsistent with the fundamental principles of the WTO.

A) subtitle: Inconsistency of U.S. Tariffs with WTO Principles

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1- The Principle of Trade Liberalization and Reduction of Restrictions

The principle of international trade liberalization constitutes one of the core objectives pursued by the WTO, while taking into account the specific conditions of developing and least-developed countries⁸. It aims at raising living standards, achieving full employment, ensuring sustained growth in real income, increasing production, and expanding trade in goods and services in a manner that ensures optimal use of global resources in accordance with development objectives⁹.

In this context, WTO Members undertake to eliminate or reduce non-tariff barriers through negotiations conducted on the basis of reciprocity¹⁰, meaning that concessions offered by one State are conditional upon obtaining equivalent concessions from others, thereby ensuring a balance of benefits.

In the past, the WTO ruled that tariffs imposed on steel and aluminum by President Donald Trump in 2018 _pursuant to Section 232 of the Trade Expansion Act of 1962, which authorizes the President to impose tariffs on imports threatening U.S. national security_ were inconsistent with Article XXI of the GATT¹¹.

2- The Principle of Progressive Tariff Reduction and Binding Commitments

Tariffs and other border measures constitute a significant obstacle to the free flow of international trade. Accordingly, the WTO has consistently sought to reduce such barriers progressively through successive multilateral agreements¹², beginning with GATT and culminating in the Uruguay Round Agreements, which provided for substantial tariff reductions, in some cases leading to their elimination, and their binding at levels that Members are not permitted to exceed¹³.

3- Principle of Non-Discrimination among WTO Members

The principle of non-discrimination requires that no Member State grant preferential treatment to one State over others¹⁴. All Members must enjoy equal conditions of competition in international markets, such that any trade advantage granted to one State must be extended to all other Members, even in the absence of a specific request¹⁵.

This principle has been violated by the United States through the imposition of differentiated tariff rates among countries without providing objective and reasonable justification.

4- The Principle of Transparency

The principle of transparency entails reliance on previously agreed tariff schedules among WTO Members and the provision of sufficient information to investors, exporters, and importers, enabling them to anticipate States' trade policies. Tariffs must therefore be bound and published in each Member's schedule of commitments¹⁶.

In compliance with this principle, WTO Members are required to consult and negotiate tariff measures within the WTO framework, which serves to harmonize positions and resolve disputes arising from trade policies. The WTO remains the sole institution mandated to oversee and regulate international trade policy mechanisms in accordance with the agreements and their annexes, with the objective of ensuring coherence in global economic policymaking¹⁷.

Nevertheless, WTO Members have criticized the United States for imposing tariffs unilaterally. U.S. customs authorities began collecting a 10% tariff on various countries on 5 April 2025, with the apparent aim of compelling negotiations. Indeed, several countries _including Japan,

Bangladesh, Cambodia, the United Kingdom, Vietnam, India, Taiwan, and European Union Member States_ expressed willingness to negotiate trade arrangements with the White House¹⁸, leading to a temporary suspension of most tariffs for ninety (90) days.

B) subtitle: Repercussions of U.S. Tariffs on International Trade

The comprehensive tariffs imposed by the U.S. President on imports from most countries have generated a shock that has disrupted both the global economy and international trade. The most significant repercussions are outlined below.

1- Economic Disruptions and Trade Slowdown

Countries exporting to the United States and relying on it as a primary market have been severely affected by these tariffs, which constitute a persistent challenge to their economies.

For instance, imports from Mexico _accounting for approximately 16% of total U.S. trade in 2024_ were subjected to an additional 25% tariff, as was the case for Canada, the second-largest trading partner (14%). Chinese exports to the United States reached USD 426.9 billion in 2024 and were subjected to tariffs of 34%, in addition to a pre-existing 20%, subsequently rising to 145%. Similarly, the European Union was subjected to tariffs of 20%¹⁹.

2- Rising Inflation and Global Economic Slowdown

The trade war and tariff policies pursued under President Donald Trump are not recent developments. On 22 March 2018, he announced the imposition of tariffs on Chinese goods worth USD 50 billion under Section 301 of the U.S. Trade Act of 1974, aimed at compelling China to alter what the United States described as unfair trade practices²⁰.

These measures negatively affected global markets and economic growth, leading to declines in U.S., European, and Asian financial markets, as well as reduced growth rates in international trade. The International Monetary Fund previously identified the U.S.-China trade war as a major factor contributing to the slowdown in global economic growth²¹.

3- Crisis of Confidence in the Trading System with the United States

Despite calls from certain European and Asian countries for de-escalation regarding U.S. tariffs _particularly as Washington indicated that over 50 countries sought to initiate trade negotiations and expressed willingness to make concessions_ the frustration and dissatisfaction with U.S. policy reached unprecedented levels. The sudden and comprehensive nature of these tariffs gave them a retaliatory character, extending even to traditional U.S. allies with whom free trade agreements exist, such as the United Kingdom, Canada, and Singapore.

As a result, several States announced their intention to reassess bilateral trade agreements with the United States and to explore alternative avenues to enhance their economic security independently. The current situation thus transcends a mere tariff dispute and signals a broader reconfiguration of trade relations between numerous countries and Washington²².

Section II: Mechanisms Adopted by the World Trade Organization to Protect Its Members from U.S. Tariffs

Attempts to apply the rules governing international trade may give rise to disputes among States, given the multiplicity of international agreements regulating trade relations²³. Each State tends to interpret such agreements in light of its own interests. In this context, the United States relied on Section 232 of the Trade Expansion Act to justify the imposition of protectionist tariffs on imported products, broadly interpreting the concept of “national security” to encompass not only military threats but also the fragility of industrial infrastructure and the decline of domestic production. This approach has been subject to significant criticism²⁴.

Within this framework, the World Trade Organization (WTO) may resort to amicable and arbitral mechanisms to settle disputes arising among its Members, particularly in light of the current paralysis of its Appellate Body²⁵.

A) subtitle: Amicable Means of Dispute Settlement

Pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), the WTO has adopted several amicable mechanisms that have proven effective in resolving numerous disputes among its Members.

1- Consultations

The DSU provides for consultations as a primary mechanism for resolving trade disputes between WTO Members. Article 4(1) emphasizes the necessity of engaging in consultations with a view to reaching an amicable settlement²⁶.

WTO Members undertake, in the context of dispute resolution, to examine in good faith any request for consultations submitted by another Member alleging a violation of WTO principles, particularly those relating to trade liberalization.

Numerous disputes have been resolved through consultations. For instance, the dispute concerning taxes imposed by South Korea on imported alcoholic beverages from European Union countries _products that strongly competed with domestic goods_ was addressed through consultations. The EU requested consultations on 2 April 1997 under Article 4 of the DSU, and the Korean government responded affirmatively within five days. Consultations commenced twenty-three days later in Geneva, Switzerland²⁷.

In our view, consultations are unlikely to effectively halt the tariff war between the United States and China, particularly due to the recurrent unilateral conduct of the United States _under the administration of President Donald Trump_ which often appears to disregard WTO obligations in matters relating to tariffs.

2- Good Offices, Conciliation, and Mediation

Article 5 of the DSU provides that “good offices, conciliation, and mediation may be requested at any time by any party to a dispute²⁸.”

First: Good Offices

Good offices involve the intervention of a third party _whether a WTO Member, an individual, or an international organization_ accepted by the disputing parties, with the aim of facilitating dialogue and encouraging negotiations. The third party does not participate in the negotiations nor propose solutions²⁹.

Recourse to good offices within the WTO framework is voluntary and governed by principles of public international law. It serves to pave the way for parties to better understand the dispute and potentially reach a mutually acceptable solution³⁰.

Given its voluntary nature, disputing parties may bypass this mechanism and proceed directly to request the establishment of a panel, provided that the Dispute Settlement Body (DSB) is notified of any agreed solutions to safeguard Members’ rights and obligations³¹.

Second: Mediation

Mediation is an amicable process whereby a third party actively participates in negotiations and may propose solutions to resolve the dispute. Unlike good offices, the mediator engages directly in discussions and may suggest appropriate outcomes³².

However, the mediator's proposals are non-binding, and the parties remain free to accept or reject them, regardless of whether mediation was initiated at their request or on the mediator's own initiative³³.

Third: Conciliation

According to Article 1(3) of the UNCITRAL Model Law, conciliation is a process whereby parties request a third party or a panel to assist them in reaching an amicable settlement of a dispute arising from a contractual or related relationship³⁴.

Conciliation involves submitting the dispute to an individual or a commission tasked with examining its causes and proposing solutions. These proposals take the form of recommendations and are not legally binding. Some scholars consider conciliation a modern form of mediation, situated between mediation and judicial settlement³⁵.

In sum, good offices, mediation, and conciliation are amicable procedures based on third-party intervention to facilitate agreement between disputing States. However, their effectiveness remains limited in the current context, particularly in disputes involving the United States and China, due to political considerations and the perceived disregard of WTO rules by the United States³⁶.

B) subtitle: Arbitration as an Alternative Means of Dispute Settlement within the WTO

Arbitration constitutes one of the most effective alternative dispute resolution mechanisms within the WTO framework. It offers a structured process governed by clear rules, ensuring the protection of parties' rights with greater efficiency in terms of time and cost compared to judicial proceedings.

1- Definition of Arbitration in the WTO Context

Neither the WTO Agreement nor its annexed agreements provide a specific definition of arbitration, suggesting that its meaning aligns with that established in public international law³⁷.

Legal doctrine generally defines international commercial arbitration as an agreement between parties to a legal relationship _whether contractual or otherwise_ to submit existing or potential disputes to arbitrators chosen by them, in accordance with specific procedural rules³⁸.

2- Forms of Arbitration within the WTO Framework

The DSU distinguishes between two types of arbitration:

First: Expedited Arbitration (Article 25 DSU)

Article 25 provides for expedited arbitration as a flexible and efficient mechanism for resolving clearly defined disputes. Its effectiveness lies in the prior agreement of parties on procedural rules³⁹.

Conditions for its use include:

- Precise determination of the subject matter of the dispute;
- Explicit consent of the parties to comply with the arbitral award;
- Notification of WTO Members prior to the commencement of proceedings;
- Communication of the arbitral award to the DSB for monitoring implementation⁴⁰.

In practice, however, States have shown reluctance to resort to expedited arbitration, preferring instead to submit disputes to the DSB⁴¹.

Second: Panel Arbitration (Articles 6–16 DSU)

This form involves the establishment of panels upon request by the complaining party, provided that the request includes:

- Evidence of prior consultations;

- Identification of contested measures;
- A brief summary of the legal basis of the complaint⁴².

Panels are composed of three to five independent experts with recognized expertise in international trade⁴³, appointed by the WTO Secretariat. Parties have limited discretion in selecting panelists, and in exceptional cases, the WTO Director-General may appoint them⁴⁴.

In our view, the WTO is currently unable to compel the United States to submit to arbitration in disputes concerning tariffs, particularly given its influence within the Organization, its obstruction of the Appellate Body, and its reliance on national security justifications under Section 232 of the Trade Expansion Act.

Nevertheless, economic pressures have, in practice, forced the United States to engage in negotiations outside the WTO framework. Significant losses in financial markets and a sharp decline in stock indices have prompted reconsideration of tariff policies.

This is further evidenced by the substantial trade deficit incurred by the U.S. economy _amounting to approximately USD 1.2 trillion with China alone_ which led to negotiations held in Geneva on 12 May 2025, culminating in a mutual reduction of tariffs by 115%⁴⁵.

Conclusion:

The policies recently pursued by the United States of America _primarily consisting in the unilateral imposition of tariffs on a wide range of countries_ have significantly affected international trade and have entrenched the United States' breach of its obligations toward the World Trade Organization (WTO) as one of its Members. Accordingly, the following conclusions may be drawn:

- U.S. tariffs are in clear contradiction with the fundamental principles of the WTO, as they restrict and disrupt the free flow of international trade;
- The WTO has failed to effectively address the unilateral U.S. decision to raise tariffs, thereby highlighting its growing weakness in resolving trade disputes;
- The credibility of the WTO, as a global institution capable of regulating international trade in a fair and equitable manner, has declined;
- There is an absence of an effective dispute settlement system, particularly in light of the reluctance of major economies to comply with WTO decisions, as evidenced by their unilateral imposition of tariffs and avoidance of WTO mechanisms for dispute resolution;
- The dominance of the United States, along with a group of major industrialized countries, over the Organization's decision-making processes.

Furthermore, the study advances a set of recommendations deemed necessary to enhance the role of the WTO in the settlement of trade disputes:

- The need to undertake urgent and in-depth reforms of the WTO's operational framework in order to adapt to the evolving dynamics of the global trading system, including the establishment of an effective mechanism compelling States to resolve their trade disputes within the WTO _first through amicable and arbitral means, and subsequently through judicial procedures_ and to comply with the resulting decisions;
- The establishment of a permanent supervisory body tasked with monitoring the implementation of agreed trade obligations within the WTO on a regular basis, through the adoption of an additional protocol to the Marrakesh Agreement establishing the Organization;
- The activation of effective enforcement mechanisms within the WTO to compel major powers to fulfill their trade obligations;

- The restoration and strengthening of the Appellate Body within the WTO, granting it broader authority in interpreting legal provisions and issuing opinions that may further develop the rules of multilateral agreements;

- The necessity for both the United States of America and China to act with restraint and to seek solutions to their escalating trade dispute in accordance with WTO principles, in order to avert a potential global financial crisis.

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