

## **TRUMP'S TARIFF WAR VERSUS THE WTO'S MULTILATERAL TRADING SYSTEM: TOWARDS GLOBAL LAWLESSNESS?**

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### **ABSTRACT**

The World Trade Organisation's multilateral trading system has been pivotal to the development of stable, fair, and robust international trade, free from discrimination and protectionism. However, the protectionist policies advanced under Trump's "America First" agenda, particularly the imposition of unilateral tariffs, threaten to dismantle this carefully constructed global framework. The world has witnessed an alarming economic confrontation between the United States and China, the two economic powerhouses, marked by dramatic tariff escalations reaching as high as 145% and 125%, respectively. The ripple effects have been profound: global trade volumes have contracted, supply chains have been severely disrupted, and global value chains have undergone a rapid and inefficient realignment, resulting in a less transparent and more fragmented international trade system. This study aims to assess the extent of damage inflicted on the WTO's multilateral trading system. Adopting a primarily doctrinal legal methodology, the research critically examines relevant WTO Agreements alongside decisions of the WTO Panels and Appellate Body that have been compromised by the tariff war. A supplementary quantitative analysis compares the WTO-bound tariff rates with those imposed by the Trump administration. The findings indicate that the United States' unilateral tariff hikes constitute clear violations of core WTO commitments—most notably, the prohibition against exceeding bound tariffs (capped at 3.4% for the U.S.) and non-discrimination enshrined in the most-favoured-nation (MFN) principle. This tariff conflict has severely undermined the WTO's rules-based system, posing the risk of a descent into trade anarchy and economic

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dominance by powerful States. The paper concludes with recommendations aimed at mitigating the damage and restoring the integrity of the multilateral trading framework.

**Key Words:** Tariff War, Bound Tariff, WTO, Most-Favoured-Nation Principle, Rules-Based Trading System.

## **PERANG TARIFF TRUMP VERSUS SISTEM PERDAGANGAN MULTILATERAL WTO: MENUJU KE ARAH ANARKI GLOBAL**

### **ABSTRAK**

Sistem perdagangan multilateral Pertubuhan Perdagangan Dunia (WTO) telah memainkan peranan penting dalam membangunkan perdagangan antarabangsa yang stabil, adil, dan kukuh, bebas daripada diskriminasi serta proteksionisme. Namun, dasar proteksionis yang diketengahkan di bawah agenda “America First” oleh Trump, khususnya melalui pengenaan tarif unilateral, mengancam untuk meruntuhkan kerangka global yang telah dibina dengan teliti ini. Dunia telah menyaksikan konfrontasi ekonomi yang membimbangkan antara Amerika Syarikat dan China-dua kuasa besar ekonomi- yang dicirikan dengan peningkatan tarif dramatik sehingga mencecah 145% dan 125%. Kesan berantai amat ketara: jumlah perdagangan global menyusut, rantaian bekalan terganggu secara serius, dan rantaian nilai global mengalami penyusunan semula yang pantas tetapi tidak efisien, se kali gus menghasilkan sistem perdagangan antarabangsa yang lebih terpecah-pecah dan kurang telus. Kajian ini bertujuan menilai sejauh mana kerosakan yang menimpa sistem perdagangan multilateral WTO. Dengan menggunakan metodologi undang-undang doktrinal sebagai pendekatan utama, penyelidikan ini meneliti secara kritis Perjanjian-perjanjian WTO yang relevan, di samping keputusan Panel dan Badan Rayuan WTO yang terjejas akibat perang tarif ini. Analisis kuantitatif tambahan turut membandingkan kadar tarif terikat WTO dengan kadar tarif yang dikenakan oleh pentadbiran Trump. Hasil kajian menunjukkan bahawa peningkatan tarif unilateral oleh Amerika Syarikat merupakan pelanggaran jelas terhadap komitmen teras WTO- khususnya larangan melebihi kadar tarif terikat (dihadkan pada 3.4% bagi A.S.) dan prinsip tidak diskriminasi yang terkandung dalam prinsip negara paling digemari (most-favoured-nation, MFN). Konflik tarif ini telah menjejaskan dengan serius sistem perdagangan berasaskan peraturan WTO, serta membawa risiko ke arah anarki perdagangan dan dominasi ekonomi oleh negara-negara berkuasa. Kertas kerja ini diakhiri dengan

cadangan bagi mengurangi kerusakan serta memulihkan integriti kerangka perdagangan multilateral.

**Kata Kunci:** Perang Tarif, Tarif Terikat, WTO, Prinsip Negara Paling Digemari, Sistem Perdagangan Berasaskan Peraturan.

## INTRODUCTION

History tends to repeat itself. Today's situation reminds us of the protectionist measures adopted in the United States' Smoot-Hawley Tariff Act of 1930. It imposed increased tariffs on over 20,000 imported products to protect American industries from foreign competition during the early stages of the Great Depression, which began in October 1929.<sup>1</sup> Despite warnings from leading economists, the Act was passed to boost domestic employment and manufacturing. However, instead of alleviating the crisis, it worsened the economic downturn as trade partners retaliated with their own tariffs, causing a sharp decline in U.S. exports and global trade.<sup>2</sup> Today, economists and historians largely view the Act as a significant policy failure and a warning against protectionist strategies in contemporary economic policy discussions.<sup>3</sup>

In response to the hard lessons of the 1930s Great Depression, the General Agreement on Tariffs and Trade (GATT) was adopted in Geneva on 30 October 1947. GATT 1947 remained in effect until 1 January 1995, when it was succeeded by the World Trade Organisation (WTO), created on 15 April 1994 as part of the Uruguay Round Agreements in Marrakesh. As stated in its preamble, the main objective of GATT is the "substantial reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international

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<sup>1</sup>Kris James Mitchener, Kevin Hjortshøj O'Rourke, and Kirsten Wandschneider, "The Smoot-Hawley Trade War," *The Economic Journal* (Oxford University Press), 132(647) (2022): 2500-2533, at 2503.

<sup>2</sup>Nicholas Crafts and Peter Fearon, "Lessons from the 1930s Great Depression," *Oxford Review of Economic Policy*, 26(3) (2010) 285-317.

<sup>3</sup>Robert Whaples, "Where Is There Consensus Among American Economic Historians? The Results of a Survey on Forty Propositions," *The Journal of Economic History* (Cambridge: Cambridge University Press), 55(1) (1995): 139-154, at 151.

commerce.”<sup>4</sup> The two institutions are successful in reducing tariffs. The tariff rates among major GATT members dropped from approximately 22% in 1947 to around 5% at the end of the Uruguay Round in 1999. Many experts credit this reduction to the efforts of GATT and the WTO.<sup>5</sup>

Currently, the WTO comprises 166 member states, accounting for over 98% of global trade. Its foundational principles include non-discrimination, the promotion of free trade through the reduction of trade barriers, and the assurance of stability and predictability via binding commitments.<sup>6</sup> By lessening trade barriers such as tariffs, the WTO enhances economic growth and alleviates poverty. The WTO’s rules-based system is designed to ensure equitable growth, particularly for developing countries aiming to integrate more fully into the global economy. Since becoming members of the WTO, developing countries have experienced noticeable economic progress. They exemplify the positive impact of the WTO on economic development. In China’s case, its rapid economic expansion and emergence as the world’s second-largest economy only occurred after it acceded to the WTO.

The United States took a vital part in the formation of both GATT and the WTO, a multilateral trade body based on a rules-oriented approach. However, shifts in U.S. trade policy, particularly during President Trump’s administration, have reintroduced protectionist policies reminiscent of the Smoot-Hawley era, which aggravated the Great Depression.<sup>7</sup> In 2025, the imposition of exceptionally high tariffs by the U.S.—significantly exceeding its WTO-bound commitments—has triggered global alarm, shaken financial markets, and raised fears of an impending economic recession potentially more severe than that of the 1930s.

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<sup>4</sup>*Preamble*, General Agreement on Tariffs and Trade, adopted on April 15, 1994 (Hereinafter GATT 1994), 1867 UNTS, 187.

<sup>5</sup>Judith L. Goldstein, Douglas Rivers, and Michael Tomz, “Institutions in International Relations: Understanding the Effects of the GATT and the WTO on World Trade,” *International Organization*, Cambridge University Press, 61(1) (2007), 37-67.

<sup>6</sup>Abdul Ghafur Hamid @ Khin Maung Sein, “The Law of the World Trade Organization: An Analysis from an International Law Perspective,” *Asian Journal of International Law*, 1(1) (2006): 1-24, at 3.

<sup>7</sup>Jagdish Bhagwati, *Protectionism* (Cambridge: The MIT Press, 1988) 36.

As economist Paul Samuelson aptly observed, “the ghost of Smoot-Hawley seems to haunt President Trump.”<sup>8</sup> Numerous analysts have drawn direct parallels between the trade conflicts of the 1930s and current developments, warning that unchecked protectionist actions similar to those of Trump could lead to dire economic consequences.

Trump has justified the imposition of higher tariffs by citing chronic U.S. trade deficits with various partners and invoking national security concerns to protect industries like steel and aluminum. Although he frequently refers to “reciprocal tariffs,” in practice, these measures have been unilaterally imposed without mutual agreement. This study aims to assess the extent to which Trump’s tariff policies have undermined the multilateral trading system governed by the WTO.

Following the introductory discussion, the paper examines the vast and damaging consequences of Trump’s tariff policies. The third section addresses how the tariff conflict disrupts the WTO’s system of bound tariffs—outcomes of years of meticulous negotiations among member states. The subsequent section investigates the legal challenges posed against Trump’s tariff increases within WTO Panels, as well as the enforcement issues arising from the current dysfunction of the WTO Appellate Body. The paper concludes with research findings and offers recommendations for mitigating the damage caused by these developments.

## RESEARCH METHODOLOGY

This study adopts the “doctrinal research” approach, a method commonly employed in legal scholarship. Doctrinal research is generally understood as “research that systematically sets out the rules governing a specific area of law, examines the interrelationship of those rules, highlights areas of complexity, and, at times, anticipates future developments.”<sup>9</sup> This method draws on legal texts, judicial decisions at both the international and national levels, international treaties, national laws and regulations, and other primary and

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<sup>8</sup>Robert J. Samuelson, “The ghost of Smoot-Hawley seems to haunt Trump”, *Washington Post*, June 27, 2018.

<sup>9</sup>Terry Hutchinson and Nigel Duncan, “Defining and Describing What We Do: Doctrinal Legal Research”, *Deakin Law Review*, 17(1) (2012): 83-119.

secondary materials to interpret and clarify the law. The research extensively analyzes primary legal texts, including the Marrakesh Agreement Establishing the WTO Articles II, III, and IX, GATT 1994, the Executive Orders of the President of the United States relating to the imposition of heightened reciprocal tariffs, judgments of the International Court of Justice, and decisions of the WTO Panels and Appellate Body. Secondary sources, including scholarly works, journal articles, reputable periodicals, credible online resources, and legal databases such as LexisNexis and HeinOnline, are also consulted when relevant.

In addition, a limited quantitative comparison is undertaken between the tariff rates committed by the US under WTO rules and the much higher unilateral rates it has imposed on its trading partners.

## **MEGA-SCALE AND DEVASTATING EFFECTS OF TRUMP'S TARIFF WAR**

Even during his first presidential term (2017–2021), President Trump initiated an economic policy grounded in the “America First” ideology. This approach led to the imposition of tariffs on a broad array of goods and the renegotiation of multiple bilateral and multilateral trade agreements.<sup>10</sup> Trump’s tariff conflict is a contentious and multifaceted issue marked by numerous developments and complexities.

### **First Round of Tariff Increases**

Throughout his first term, the international community observed a series of abrupt and unilateral tariff hikes. A notable instance occurred on 8 March 2018, when Trump issued two proclamations altering import regulations into the United States: (a) Presidential Proclamation 9705 concerning steel imports<sup>11</sup> and (b) Presidential Proclamation

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<sup>10</sup>Simone Zambelli, “Trump’s tariffs on steel and aluminum: an updated overview,” *Export Planning*, June 30, 2025, accessed July 1, 2025, <https://www.exportplanning.com/en/magazine/article/2025/06/30/trumps-tariffs-on-steel-and-aluminum-an-updated-overview/>.

<sup>11</sup>President of the United States of America, Presidential Proclamation 9705 of 8 March 2018, “Adjusting Import of Steel into the United States.”

9704 regarding aluminum imports.<sup>12</sup> These measures introduced additional import duties of 25% on certain steel products and 10% on certain aluminum products from all countries, though temporary exemptions were granted for Canada and Mexico.

Several WTO members contested these tariff hikes through the WTO dispute settlement system. The ensuing Panel reports concluded that the U.S. measures breached key obligations under the WTO Agreement, specifically those related to most-favored-nation (MFN) treatment and bound tariff commitments.<sup>13</sup>

## **Second Round of Tariff Increases**

On 2 April 2025, President Trump, invoking Executive Order 14257, declared sweeping new tariffs against global trade partners, justifying the action by declaring a “national emergency” linked to perceived unfair foreign trade practices. These new measures included a universal “minimum base tariff” of 10% on all imported products, thereby delivering on one of his major campaign pledges. Additionally, the order introduced even higher reciprocal tariffs aimed at the United States’ major trading partners. Among these, China was hit particularly hard, with Trump imposing an extra 34% tariff on top of an existing 20% tariff established through two earlier rounds earlier in the year.<sup>14</sup>

The following table, excerpted from Annex I of Executive Order 14257 dated 2 April 2025, shows the tariff rates unilaterally determined by the U.S. for selected countries’ exports. When compared to the U.S.’s 3.4% bound tariff under the WTO Agreement—which represents the maximum legal tariff level the U.S. is permitted to apply—it becomes immediately evident how dramatically the so-called reciprocal tariffs introduced under this Executive Order exceed the WTO-sanctioned limits.

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<sup>12</sup>President of the United States of America, Presidential Proclamation 9704 of 8 March 2018, “Adjusting Import of Aluminium into the United States.”

<sup>13</sup>See below, the section on “Challenging Trump’s Tariff War before the WTO Dispute Settlement Mechanism.”

<sup>14</sup>President of the United States of America, Executive Order 14257 of 2 April 2025, “Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent United States Goods Trade Deficits.”

Table 1: Tariff rates of selected countries under Executive Order 14257 of 2 April 2025

Country	Reciprocal Tariff, Adjusted (in percentage)
Bangladesh	37
Cambodia	49
China	34
European Union	20
India	26
Indonesia	32
Japan	24
Laos	48
Malaysia	24
South Korea	25
Thailand	36
Vietnam	46

Source: ANNEX I of Executive Order 14257 of 2 April 2025

The financial markets responded quickly and unfavourably, prompting President Trump to introduce certain sector-specific exemptions and delay the implementation of the reciprocal tariffs by 90 days. These tariffs are expected to slow down both U.S. and global economic growth and contribute to rising inflation across multiple economies, depending on the nature and extent of retaliatory actions by affected countries. Such retaliatory measures amplify the economic harm and drive inflation higher in both the United States and the countries enacting counter-tariffs. Contrary to the belief that these tariffs would revive American industry, they have instead disproportionately harmed the U.S. agriculture and durable goods manufacturing sectors through production losses, job cuts, and rising prices.<sup>15</sup>

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<sup>15</sup>Warwick J. McKibbin, Marcus Noland, and Geoffrey Shuetrim, “The global economic effects of Trump’s 2025 tariffs,” *Peterson Institute for International Economics (PIIE)*, Working Paper WP 25-13, 25 June 2025.

A particularly unexpected consequence of the April 2 tariff announcement was the market's response. The U.S. dollar depreciated immediately, falling by 5 percent against most major global currencies between April 2 and May 10. This depreciation indicates a growing global perception of increased risk associated with holding U.S. assets, reflected in a higher risk premium demanded by investors. This shift in sentiment exacerbates U.S. employment and income losses as foreign capital moves to other economies. Conversely, other nations benefit from increased capital inflows, leading to lower interest rates, heightened investment, and partial insulation from the impact of U.S. tariffs. Furthermore, the U.S. tariff policies have redirected Chinese exports—particularly manufactured goods—away from the American market toward other destinations, especially affecting developing Asian economies.<sup>16</sup>

### **Escalating Tariff Conflict Between the U.S. and China**

The United States and China are currently embroiled in an intensifying retaliatory tariff conflict, which began with President Trump's assertive trade policies on what he called "Liberation Day." On April 8, President Trump issued an executive order raising the tariff rate on Chinese imports from 34% to 84%, culminating in a final rate of 104%. These heightened tariffs, along with other country-specific rates, took effect on April 9.<sup>17</sup>

In response, on April 9, China's Ministry of Finance announced that tariffs on U.S. goods would rise to 84%, effective April 10.<sup>18</sup> That same day, President Trump declared an increase in U.S. tariffs on Chinese imports to 125%, adding to the existing 20% duty, resulting in a minimum cumulative rate of 145% on all Chinese exports to the U.S. beginning April 10. This move came just hours after China matched the U.S.'s earlier 50% tariff increase with a similar countermeasure.<sup>19</sup>

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<sup>16</sup> McKibbin, "The global economic effects".

<sup>17</sup> President of the United States of America, Executive Order of 8 April 2025, Amending Executive Order 14257 of 2 April 2025, to be effective on 9 April 2025.

<sup>18</sup> Official Announcement of the Ministry of Finance of the People's Republic of China, 9 April 2025.

<sup>19</sup> President of the United States of America, Executive Order of 9 April 2025 "Modifying Reciprocal Tariff Rates Reflecting Trading Partner Retaliation and Alignment."

While similar reciprocal tariffs on other countries were scheduled to come into force on April 10, a 90-day extension was granted—excluding China.<sup>20</sup> During this period, a flat 10% tariff increase would still apply to all trading partners except Mexico, Canada, and China, the latter of which remains subject to special tariffs.

On April 11, in retaliation, China's State Council Tariff Commission announced that tariffs on U.S. goods would increase from 84% to 125% effective April 12, matching the U.S.'s newly implemented 145% tariff on Chinese goods. The Commission also remarked that, given the high tariff burden, U.S. exports to China were no longer viable, and further tariff increases from the U.S. would not be matched.<sup>21</sup> Nevertheless, Foreign Ministry spokesperson Li Jian emphasised China's readiness to continue resisting if tensions escalate, while expressing hope for dialogue grounded in mutual respect.<sup>22</sup>

These tariff escalations are expected to significantly disrupt international trade flows and generate uncertainty for exporters on both sides. Due to their scale, the tariffs are likely to affect macroeconomic indicators, alter global trade patterns, and reshape global value chains. World trade volumes are projected to shrink by 5.5% to 8.5% compared to pre-tariff conditions.<sup>23</sup> Trade between the U.S. and China may see a near-total collapse. The realignment of global production chains resulting from these developments could also reduce trade efficiency and transparency.<sup>24</sup> Although diplomatic engagement remains minimal, the possibility of a negotiated trade agreement has not been entirely ruled out. In an effort to ease tensions, the U.S. and China reached an agreement on May 12 during talks in Geneva to significantly reduce the excessive tariffs they had imposed on each other—145% on

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<sup>20</sup>Arendse Huld, "Trump Raises Tariffs on China to 145% – Overview and Trade Implications," *China Briefing*, April 11, 2025.

<sup>21</sup>The official announcement made by China's State Council Tariff Commission, the Ministry of Finance of the People's Republic of China on 11 April 2025.

<sup>22</sup>Arendse Huld, "Trump Raises Tariffs on China to 145%."

<sup>23</sup>Francesco Paolo Conteduca, et.al, "Roaring tariffs: The global impact of the 2025 US trade war," *Centre for Economic and Policy Research (CEPR)*, 6 May 2025.

<sup>24</sup>Conteduca, "Roaring tariffs".

Chinese goods and 125% on U.S. goods.<sup>25</sup> Both sides agreed to resume dialogue: U.S. tariffs were reduced to 30%, and China's to 10%.<sup>26</sup> Following additional negotiations in London on June 11, China agreed to loosen restrictions on U.S. industries seeking access to rare earths and magnets. In exchange, the United States agreed to halt efforts to revoke student visas for Chinese nationals studying at American universities.<sup>27</sup>

### **Announcement of New Tariffs**

On July 7, 2025, President Trump escalated pressure on U.S. trade partners by sending formal letters to leaders of several nations, notifying them of newly imposed tariff rates. Simultaneously, he signed an executive order extending the implementation date for all “reciprocal” tariffs—except those targeting China—to August 1.<sup>28</sup> Japan and South Korea were among the first to receive such notifications. Both are set to face 25% tariffs starting August 1, though both countries expressed a willingness to continue trade discussions with the United States. Japan, in particular, signaled ongoing efforts toward a bilateral agreement. Similar communications were sent to Malaysia, Myanmar, Laos, South Africa, and Kazakhstan, indicating tariff rates reaching up to 40%. Additional letters were delivered to Tunisia, Bosnia and Herzegovina, Indonesia, Bangladesh, Serbia, Cambodia, and Thailand, totaling 14 countries contacted on July 7. In each case, Trump warned that any retaliatory tariffs would result in even higher U.S. tariff rates.<sup>29</sup>

This announcement preceded the July 9 deadline for affected countries to either reach agreements with the U.S. or face heightened tariffs. That date marks the conclusion of the 90-day suspension of the reciprocal tariffs, which began in April. Since then, a baseline 10%

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<sup>25</sup>Jamey Keaton, et al, “US and China reach a deal to slash sky-high tariffs for now, with a 90-day pause,” *AP News*, May 12, 2025.

<sup>26</sup>Paul Wiseman, “US, China announce a trade agreement — again. Here's what it means,” *AP News*, June 28, 2025.

<sup>27</sup> Wiseman, “US, China”.

<sup>28</sup>Elisabeth Buchwald and John Liu, “Trump announces new tariffs of up to 40% on a growing number of countries,” *CNN News*, Tuesday, July 8, 2025.

<sup>29</sup> Buchwald, “Trump announces”.

tariff has been in effect for the impacted countries.

The possibility of further tariff hikes could lead to increased prices for U.S. consumers. Major imports from Japan and South Korea—such as automobiles, auto parts, semiconductors, pharmaceuticals, and machinery—could become more expensive. While other countries may export less to the U.S., they still represent key sources of specific goods.<sup>30</sup>

For example, South Africa, which is now subject to a 30% tariff, was the leading supplier of platinum to the United States last year, accounting for nearly half of its imports. Malaysia—facing a 25% tariff, slightly higher than the 24% announced in April—ranked as the second-largest semiconductor exporter to the U.S., with sales totaling USD18 billion. Bangladesh, Indonesia, and Cambodia are also key exporters of clothing and accessories. In a letter to Cambodia's prime minister, Trump indicated a new 36% tariff rate, a decrease of 13 percentage points compared to the rate in April.<sup>31</sup>

The market responded negatively to the tariff news. Stock values dropped, particularly among automakers heavily invested in operations across Japan and South Korea. Major Japanese auto companies saw significant declines in their U.S.-listed shares: Toyota fell by 4%, Nissan by 7.16%, and Honda by 3.86%.<sup>32</sup>

### **Imposing a 25% Tariff on Malaysia**

On July 7, 2025, President Trump announced a 25% tariff on all Malaysian imports to the United States, set to take effect on August 1. He defended the decision by highlighting Malaysia's use of tariffs, non-tariff measures, and other trade barriers, asserting that ongoing trade imbalances jeopardise U.S. economic and national security interests. He also pointed to unequal trade practices between the two countries and proposed that Malaysia could sidestep the tariff by encouraging companies to relocate manufacturing operations to the United States.<sup>33</sup>

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<sup>30</sup> Buchwald.

<sup>31</sup> Buchwald.

<sup>32</sup> Buchwald.

<sup>33</sup>“Trump slaps 25pc tariff on Malaysian goods, tells country to ‘build in America,’” *Malay Mail*, Tuesday 8 July 2025.

In response, Malaysia's Ministry of Investment, Trade, and Industry (MITI) issued a statement on July 8, 2025, describing such unilateral actions as harmful to businesses, supply chains, and investment flows in both countries. Nonetheless, Malaysia reaffirmed its commitment to pursuing a fair and win-win trade agreement with the U.S., despite the new tariffs.<sup>34</sup>

### **Threat of a 30% Tariff on the European Union**

President Trump has also imposed a 30% tariff on goods from the European Union, effective August 1, 2025. In response, EU trade ministers convened on July 14, 2025, and unanimously condemned the measure as "completely unacceptable."<sup>35</sup> They indicated that they are preparing countermeasures. As the U.S.'s largest trading partner and the world's most significant trade bloc, the EU engaged in trade with the U.S. worth €1.7 trillion (\$2 trillion) in 2024.<sup>36</sup> The imposition of retaliatory tariffs by the EU could potentially trigger another major trade war—this time between the U.S. and the EU—in addition to the ongoing conflict with China. Although negotiations continue, one EU diplomat warned, "We don't want a trade war, but we don't know if the US will leave us a choice."<sup>37</sup>

### **TARIFF WAR: PUTTING AN END TO BOUND TARIFFS UNDER THE WTO?**

The Great Depression and the consequential Second World War serve as a powerful reminder of the dangers of protectionist policies. The United States' enactment of the Smoot-Hawley tariffs, coupled with retaliatory measures by other countries, nearly brought international

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<sup>34</sup>"Malaysia pledges continued trade talks with US despite 25% tariff," *Free Malaysia Today (FMT)*, Tuesday, 8 July 2025.

<sup>35</sup>Sam McNeil, "EU trade ministers plan countermeasures to Trump's 'unacceptable' 30% tariffs," *Associated Press (AP) News*, 18 July 2025.

<sup>36</sup>Angela Charlton, "The EU is delaying retaliatory tariffs on US goods in hopes of reaching a deal by Aug. 1," *Associated Press (AP) News*, 14 July 2025.

<sup>37</sup>"Trump tariffs live updates: Trump pushes for higher EU tariffs as Aug. 1 barrage looms," *Yahoo Finance*, 20 July 2025.

trade to a standstill.<sup>38</sup> These measures were instrumental in triggering the global economic collapse—an upheaval that ultimately paved the way for the unprecedented destruction and staggering human toll of World War II.

In response to the economic harm caused by protectionism and tariff disputes before World War II, 23 nations—spearheaded by the United States—formed the General Agreement on Tariffs and Trade (GATT) in 1947. This agreement established a platform for countries to conduct multilateral trade negotiations, to reduce trade barriers, and enhance global commerce. Over the years, GATT, and from 1995 onward, the WTO, has overseen a steady decline in import tariffs and quotas. This led to the creation of country-specific tariff commitments, legally binding measures that prevent member nations from arbitrarily increasing tariffs beyond the agreed limits.<sup>39</sup>

Under Article XXVIII bis of GATT, member states have participated in numerous rounds of multilateral tariff negotiations grounded in reciprocity since 1947. The goal has been to lower import tariffs and fix them at mutually agreed levels, ensuring countries do not independently exceed these caps. These negotiations have resulted in significant tariff reductions: 36% in the initial rounds (1948–1962), 37% in the Kennedy Round (1964–1967), 33% in the Tokyo Round (1973–1979), and 38% during the Uruguay Round (1986–1994).<sup>40</sup>

### **Bound Tariffs: Establishing Maximum Tariff Levels for WTO Members**

All 166 current WTO members have committed to maximum tariff levels—referred to as “bound tariffs”—for imports of industrial and

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<sup>38</sup>Nicholas Crafts and Peter Fearon, “Lessons from the 1930s Great Depression,” *Oxford Review of Economic Policy*, 26(3) (2010): 285–317, at 302. See also Douglas A. Irwin, “The Smoot-Hawley Tariff: A Quantitative Assessment,” *The Review of Economics and Statistics*, The MIT Press, 80(2) (1998): 326–334, at 363.

<sup>39</sup>“Understanding import tariffs under WTO law,” European Parliament, *Parliamentary Research Services*, March 21, 2025, accessed May 24, 2025, <https://epthinktank.eu/2025/03/21/understanding-import-tariffs-under-wto-law/>.

<sup>40</sup>Carole Murray, et.al (eds.) *Schmitthoff’s Export Trade: The Law and Practice of International Trade*, 12<sup>th</sup> ed. (Sweet & Maxwell, 2012), 945.

agricultural products, based on the Harmonised Commodity Description and Coding System (HS) of the World Customs Organisation. Under Article II of the GATT, these maximum tariffs are outlined in each member's "schedule of concessions," annexed to the revised GATT 1994, which forms part of the Marrakesh Agreement establishing the WTO.<sup>41</sup>

Each WTO member has agreed to a ceiling tariff for every product it trades. While these bound tariffs may be lowered, members are not permitted to raise them above the agreed limit without breaching WTO law. The purpose of these ceilings is to ensure that members do not revert to protectionist policies, thereby supporting the broader goal of long-term tariff reduction. If a member wishes to raise a bound tariff above the established ceiling, it must initiate multilateral negotiations under Article XXVIII of GATT to adjust previous concessions granted under the principle of reciprocity. Nonetheless, Article XVIII of GATT allows developing countries greater leeway to raise their bound tariffs for development purposes.<sup>42</sup>

Most WTO members apply tariffs that are lower than their bound rates. These lower rates are known as "applied tariffs," and they often coincide with most-favoured-nation (MFN) tariffs, unless exceptions are invoked under Article XXIV of GATT.<sup>43</sup>

### **The MFN Principle and Its Role in Tariff Commitments**

The most-favoured-nation (MFN) principle is central to global trade relations. It mandates that a country must offer the same advantageous trade terms to all its trading partners, ensuring non-discriminatory treatment. This principle is rooted in the concept of equal treatment and has been a cornerstone of international trade for centuries. The MFN clause requires that any favourable treatment extended to one country must automatically be extended to all other WTO members or participants in a free trade agreement. In practical terms, this obliges members to apply identical tariffs and quotas to all trading partners,

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<sup>41</sup>Mitsuo Matsushita, Thomas J. Schoenbaum, Petros C. Mavroidis, and Michael Hahn, *The World Trade Organization: Law, Practice, and Policy*, 3<sup>rd</sup>. ed. (Oxford; Oxford University Press, 2015), 260.

<sup>42</sup> Matsushita, *The World Trade Organization*, 260-261.

<sup>43</sup>Ray A. August; Don Mayer; Michael Bixby, *International Business Law, Texts, Cases, and Readings*, 6<sup>th</sup>. ed. (Pearson, 2012) 376.

thereby creating a level playing field where smaller economies are not disadvantaged in markets dominated by larger countries.<sup>44</sup>

Within the framework of the WTO Agreements, the MFN principle is foundational. Article I.1 of GATT formally enshrines this principle, stipulating that “any advantage granted by one contracting party must be extended immediately and unconditionally to all others.”<sup>45</sup> This provision requires WTO members to apply their GATT-bound import tariffs equally to all fellow members—an obligation often described as *erga omnes*.

GATT thus distinguishes between two categories of tariffs: bound tariffs and applied MFN tariffs. A bound tariff defines the upper limit of the MFN tariff that can be applied to a particular product. Due to significant variation in tariff structures across WTO members, multilateral rounds of tariff reduction have not led to harmonised rates. Formerly developing countries, in particular, continue to enjoy significant flexibility between their bound and MFN applied tariffs.

Table 2 – Selected WTO members’ bound, and MFN applied, tariffs by category of goods in 2024

Countries	All goods		Agricultural goods		Non-Agricultural goods	
	Bound tariff	MFN applied	Bound tariff	MFN applied	Bound tariff	MFN applied
Brazil	31.4	12.0	35.4	9.0	30.8	12.5
Canada	6.6	3.8	15.8	15.1	5.1	2.0
China	10.0	7.5	15.7	14.0	9.1	6.5
EU	5.0	5.0	11.0	10.5	3.9	4.1
India	50.8	16.2	113.1	36.7	36.0	13.0
Japan	3.9	3.7	13.4	11.9	2.4	2.4
Malaysia	20.8	5.5	52.0	7.0	15.0	5.3

<sup>44</sup>Mitsuo Matsushita, et al, *The World Trade Organization: Law, Practice, and Policy*, at 205-06.

<sup>45</sup>Article I.1, General Agreement on Tariffs and Trade, 1994.

Mexico	36.2	7.4	45.0	11.4	34.8	6.8
United Kingdom	5.0	3.7	10.7	8.8	4.1	2.9
United States	3.4	3.3	4.7	5.0	3.2	3.1

Source: World Tariff Profile 2024<sup>46</sup>

### Permissible Exceptions for Raising Tariffs Above Bound Rates

Despite the general prohibition, certain exceptions allow WTO members to raise tariffs beyond their bound limits. Article VI of GATT provides for such exceptions in cases involving “*trade remedies*,” including anti-dumping and countervailing measures. These measures temporarily suspend concessions or obligations when another WTO member violates WTO law.<sup>47</sup>

Another exception is outlined in Article XXI of GATT, which permits a member to raise tariffs in order to protect its “*essential security interests*.”<sup>48</sup> Historically, WTO members seldom invoked this provision. However, the United States made extensive use of this security exception during its first round of tariff increases in 2017–2018 and again in the second round in 2025. The U.S. not only invoked national security grounds but also asserted that only its own government has the authority to determine whether a situation qualifies under this exception, claiming such matters are not subject to WTO Panel or judicial review. These positions are pivotal in evaluating the legality of the U.S. tariff strategy under international law, particularly within the framework of WTO legal obligations.

## CHALLENGING TRUMP'S TARIFF INCREASES BEFORE THE WTO DISPUTE SETTLEMENT MECHANISM

The Dispute Settlement Mechanism (DSM) of the WTO plays a crucial role in ensuring stability and predictability within the multilateral

<sup>46</sup>World Tariff Profile 2024, <https://unctad.org/publication/world-tariff-profiles-2024>.

<sup>47</sup>Article VI, General Agreement on Tariffs and Trade, 1994.

<sup>48</sup>Article XXI, General Agreement on Tariffs and Trade, 1994.

trading system. Its primary objective is to guarantee that members comply with the WTO Agreements.<sup>49</sup> Before Trump's tariff war, the unilateral tariff hikes were relatively rare. However, whenever there was a rise in import duty beyond the bound tariff, the DSB impartially dealt with it and decided that it was a clear violation of the WTO rules.

In the *Argentina – Footwear case*,<sup>50</sup> for example, Argentina imposed safeguard measures on imports of footwear, raising tariffs beyond its bound rates. The EC argued that Argentina failed to demonstrate increased imports might cause “serious injury” and did not follow procedural requirements under the Agreement on Safeguards. The panel found Argentina's measures inconsistent with WTO rules and recommended their withdrawal.

In the *Egypt – Steel Rebar case*,<sup>51</sup> Egypt imposed anti-dumping duties on steel rebar from Turkey, allegedly exceeding its bound tariff rates. Turkey challenged the methodology and procedural fairness of Egypt's investigation. The panel ruled that Egypt's measures violated the Anti-Dumping Agreement and recommended compliance.

In the *China – Auto parts case*,<sup>52</sup> China applied higher tariffs on imported auto parts if they were not assembled into complete vehicles locally. This practice effectively imposed duties beyond China's bound rates. The Appellate Body ruled that China's measures violated GATT Article II and recommended their removal. Likewise, in the *Ukraine – Passenger cars case*,<sup>53</sup> Ukraine imposed safeguard duties on passenger cars, raising tariffs above its bound levels. Japan argued that Ukraine failed to demonstrate “serious injury.” The panel sided with Japan, finding Ukraine's measures inconsistent with WTO rules.

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<sup>49</sup>Understanding on Rules and Procedures Governing the Settlement of Disputes: “Dispute Settlement Understanding” (DSU), Article 3(2).

<sup>50</sup>*Argentina – Safeguard Measures on Footwear (Complaint by EU)*, Report of the Panel, WT/DS121/R, 12 January 2000.

<sup>51</sup>*Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey (Complaint by Turkey)*, Report of the Panel, WT/DS 211, 1 October 2002.

<sup>52</sup>*China – Measures Affecting Imports of Automobile Parts (Complaint by EC, US, Canada)*, Report of the Appellate Body, WT/DS 339/AB/R, WT/DS 340/AB/R, WT/DS 342/AB/R, 15 December 2008. 2009.

<sup>53</sup>*Ukraine – Definitive Safeguard Measures on Certain Passenger Cars (Complaint by Japan)*, Report of the Panel, WT/DS 468/R, 26 June 2015.

These cases illustrate that WTO members have faced scrutiny for breaching their bound tariff commitments, often under the guise of safeguards or anti-dumping measures. The DSB has consistently ruled that tariff hikes beyond bound tariffs are illegal and blatant violations of WTO rules unless justified by the recognised exceptions.

### **US Exceeding Bound Tariffs and Invoking the Security Exception**

In 2018, tensions emerged between the United States and nine WTO members following the imposition of universal tariffs on aluminium and steel under Section 232 of the 1962 Trade Expansion Act, with the US invoking the security exception in its defense.<sup>54</sup> Five of these disputes were resolved through mutual agreement. However, in cases involving China, Switzerland, Norway, and Turkey, dispute settlement Panels were formed, and their findings were eventually published. The case involving China provides a striking example.

#### ***United States – Steel and Aluminium Products (China v. US)***

In the case of the *United States - Certain Measures on Steel and Aluminium Products*,<sup>55</sup> China requested the establishment of a Panel on 18 October 2018, which was formed on 21 November 2018. Due to delays caused by the COVID-19 pandemic, the Panel's report was only circulated on 9 December 2022. The Panel concluded that the increased tariffs on steel and aluminium violated Article II:1 of the GATT 1994 by exceeding the US's bound tariff commitments listed in its WTO Schedule of Concessions. Additionally, the exemptions granted to specific countries breached the most-favoured-nation (MFN) obligation under Article I:1 of the GATT 1994.

The United States relied on Article XXI(b) of GATT 1994—the “Security Exceptions”—arguing that the measures were “necessary for the protection of its essential security interests.” The US further asserted that these actions were taken during a “time of war or other

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<sup>54</sup>Chad P. Bown, “Trump's steel and aluminum tariffs are cascading out of control,” *Peterson Institute for International Economics*, February 4, 2020.

<sup>55</sup>*United States - Certain Measures on Steel and Aluminium Products (complaint by China)*, Report of the Panel, WT/DS544/R, 9 December 2022.

emergency in international relations,” as specified in Article XXI(b)(iii).

The Panel interpreted “emergency in international relations” under Article XXI(b)(iii) as referring to serious international tensions or situations of significant gravity affecting global relations. After reviewing the evidence and arguments, the Panel concluded that the US measures were not taken during such an emergency. Therefore, the US could not justify its actions under Article XXI(b)(iii), and the measures remained inconsistent with GATT 1994.<sup>56</sup> The WTO Panel made similar conclusions in the disputes involving Norway,<sup>57</sup> Switzerland,<sup>58</sup> and Turkey,<sup>59</sup> all of which confirmed that the US had breached WTO rules and could not rely on the security exception as justification. Following the release of these Panel reports, the US Trade Representative issued a statement asserting that national security matters should not be subject to WTO review and that the organisation lacks the authority to question a member’s determination of threats to its security.<sup>60</sup> However, this stance violates the legal norm of *jura novit curia* (the judge knows the law).

### ***Jura Novit Curia: A Fundamental Principle in International Adjudication***

The Latin maxim *jura novit curia* affirms the judiciary’s traditional responsibility to know and apply the law, distinguishing the judge’s role from that of the parties, who must present and prove the facts. As such, this principle is recognised as a core feature of international judicial administration.<sup>61</sup>

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<sup>56</sup>*United States - Certain Measures on Steel*.

<sup>57</sup>*United States - Certain Measures on Steel and Aluminium Products (complaint by Norway)*, Report of the Panel, WT/DS552/R, 9 December 2022.

<sup>58</sup>*United States - Certain Measures on Steel and Aluminium Products (complaint by Switzerland)*, Report of the Panel, WT/DS556/R, 9 December 2022.

<sup>59</sup>*United States - Certain Measures on Steel and Aluminium Products (complaint by Turkey)*, Report of the Panel, WT/DS564/R, 9 December 2022.

<sup>60</sup>Statement by USTR Spokesperson Adam Hodge, December 09, 2022.

<sup>61</sup>Luigi Fumagalli, “Jura Novit Curia,” Oxford Public International Law, *Max Planck Encyclopedias of International Law [MPIL]*, (November 2018).

This section explores the application of *jura novit curia* in the jurisprudence of the Permanent Court of International Justice (PCIJ), the International Court of Justice (ICJ), and the WTO Appellate Body.<sup>62</sup> Under this principle, a court may reach its legal conclusions independently, without being bound by the legal arguments of the parties. One of the earliest expressions of the principle can be found in the *Lotus case*, where the PCIJ observed that the court must independently determine which rules of international law apply in any given dispute.<sup>63</sup>

In the *Chorzów Factory* case, the PCIJ emphasised that it was not confined to the parties' legal interpretations and must be free to reach its own conclusions.<sup>64</sup> Similarly, in the *Free Zones of Upper Savoy and the District of Gex* case, the PCIJ underlined that the Court must interpret the law independently and is not bound by the legal arguments of either party.<sup>65</sup>

The ICJ has followed the PCIJ's jurisprudence. In the *Fisheries Jurisdiction* case, it affirmed that as an international judicial body, the Court shall take judicial notice of international law independently, and no party is required to prove the existence or applicability of international legal rules."<sup>66</sup>

In *Obligation to Negotiate Access to the Pacific Ocean*, Judge Cançado Trindade explicitly affirmed this view, stating that the Court's role is to declare what the law is, independent of the parties' interpretations.<sup>67</sup>

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<sup>62</sup>It is also applied in international human rights tribunals. See Dinah Shelton, "Jura Novit Curia in International Human Rights Tribunals," in eds. Nerina Boschiero, et al, *International Courts and the Development of International Law* (Springer, 2013) 189-211.

<sup>63</sup>*The Case of the S.S. Lotus* (France v Turkey) (1927) PCIJ (Ser. A) No. 10, 31.

<sup>64</sup>*Interpretation of Judgments Nos. 7 and 8 (The Chorzow Factory)* (Germany v Finland) (1927) PCIJ (Ser. A) No. 13, 16 December 1927.

<sup>65</sup>*The Free Zones of Upper Savoy and the District of Gex* (France v Switzerland) (1932) PCIJ (Ser. A/B), No. 46, 138.

<sup>66</sup>*Fisheries Jurisdiction (United Kingdom v. Zeeland)*, Merits, Judgment, ICJ Reports 1974, 3, at para 17.

<sup>67</sup>*Obligation to Negotiate Access to the Pacific Ocean* (Bolivia v Chile), Preliminary Objection, ICJ Reports 2015, 592, Separate Opinion of Judge Cançado Trindade, para 25.

The World Trade Organisation's dispute resolution system similarly upholds the doctrine of *jura novit curia*. In the case of *EC – Tariff Preferences*, the Appellate Body emphasised that the European Communities were not obligated to offer a legal interpretation of a provision within the Enabling Clause.<sup>68</sup> Likewise, in *EC and Certain Member States – Large Civil Aircraft*, the Appellate Body held that under the principle of *jura novit curia*, the United States was not required to present the 'correct' interpretation of Article 3.1(b), nor did its challenge to the Panel's interpretation fall outside the scope of appellate review simply because it offered a particular view on what the interpretation should be."<sup>69</sup>

It follows that the United States' argument—that it alone can determine whether an act falls under the security exception—is incompatible with the *jura novit curia* principle. The WTO Panel has already concluded that the US's tariff increases exceeded its bound rates, the selective exemptions violated the MFN principle, and the security exception defense was not applicable.

### ***The US Appeals to a Non-Functional Appellate Body***

Despite being fully aware of the WTO Appellate Body's paralysis—a result of the US itself blocking new appointments—the US chose to appeal the Panel decisions on 26 January 2023. As the Appellate Body no longer exists, these appeals are effectively stalled, and the winning parties cannot implement or enforce the Panel's decisions.

### **WTO Appellate Body Crisis and the Breakdown of Enforcement**

The top authority in the WTO's Dispute Settlement Mechanism is the Dispute Settlement Body (DSB), made up of all WTO members and equivalent in function to the General Council. The DSB is responsible for adopting Panel and Appellate Body reports.<sup>70</sup>

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<sup>68</sup>*European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*, Report of the Appellate Body, WT/DS246/AB/R, 7 April 2004.

<sup>69</sup>*EC and Certain Member States – Measures Affecting Trade in Large Civil Aircraft*, Recourse to Article 21.5 of the DSU by the United States, Report of the Appellate Body, WT/DS316/AB/RW, 15 May 2018.

<sup>70</sup>Marrakesh Agreement Establishing the World Trade Organization (1994), Article IV. 1-3.

Once consultations<sup>71</sup> are complete, the dispute process follows two stages: first, a Panel is formed (typically with three members) to issue a report within nine months. If either party appeals, the other must await the Appellate Body's ruling before enforcement of the Panel's findings can proceed.<sup>72</sup> The standing Appellate Body, comprised of seven members appointed by the DSB, hears appeals in benches of three. Their term is four years, renewable once. "The Appellate Body may uphold, reverse, or modify the legal findings of the Panel."<sup>73</sup>

DSB decisions are generally made by consensus<sup>74</sup>—meaning that if even one member objects, no decision is adopted. This process enabled the United States to block Appellate Body appointments as early as 2016. By 2019, all members' terms had expired, and no new appointments could be made due to continued US obstruction.<sup>75</sup> The root cause of this is the US's unhappiness with the DSB. For instance, Malaysia, India, Pakistan, and Thailand jointly brought a legal action against the US in 1995 on the issue of shrimp and shrimp products.<sup>76</sup> The WTO Panel decided against the US. It was a win for powerless developing countries and a loss for the US. This is one example of the US's failure before the DSB, affecting its pride as a superpower.<sup>77</sup>

The WTO Dispute Settlement System—often praised as the "jewel in the crown" of the organisation—is now in serious jeopardy, despite its high level of usage among international adjudication systems. While Panels continue to function, the collapse of the Appellate Body has led to numerous unresolved appeals. The crisis,

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<sup>71</sup>WTO, Dispute Settlement Understanding (DSU), Article 4.

<sup>72</sup>WTO, (DSU) Articles 6-8, 16.

<sup>73</sup>DSU, Article 17.

<sup>74</sup>Marrakesh Agreement Establishing the World Trade Organization (1994), Article IX.1.

<sup>75</sup>Aditya Rathore and Ashutosh Bajpai, "The WTO Appellate Body crisis: How do we get here and what lies ahead," *Jurist*, 14 April 2020.

<sup>76</sup>*United States – Import Prohibition of Certain Shrimp and Shrimp Products*. WT/DS58, complainants: India, Malaysia, Pakistan, and Thailand. Panel Report May 15, 1998, Appellate Body Report October 12, 1998. It was found that the US import ban on shrimp and Shrimp products was inconsistent with GATT Article XI and not justified under Article XX.

<sup>77</sup>Datuk Ahmad Terrirudin Mohd Salleh "Beyond Prosecution: The Attorney General's Advisory Odyssey" *IJUM Law Journal*, 32(1): (2024):1-26, at 13.

driven by the protectionist policies of President Trump's administration, has undermined the effectiveness of the DSM.<sup>78</sup>

The deadlock in the appeals process threatens the stability of the global trade framework, as any member unhappy with a Panel ruling can obstruct its implementation simply by appealing, knowing that the Appellate Body is unable to proceed with the review. Consequently, the decision remains unenforceable, and the DSB cannot approve it. This dysfunction risks encouraging members to ignore their trade obligations under WTO rules, undermining the system's credibility and reliability.

## FINDINGS AND RECOMMENDATIONS

Following the end of World War II, the United States was the champion of the free market economy. It was one of the founders of GATT 1947 and led the establishment of the multilateral trading system. The US played a major role in forming the World Trade Organisation in 1995, and safeguarded the principle of non-discrimination, the foundation stone of the WTO. Nonetheless, the recent activities of the US demonstrate a shift in the policy from free trade to protectionism. This is evident in the US's opposition to the WTO dispute settlement system, the suspension of financial assistance to the WTO, and the current tariff hikes. These are primarily due to Trump's avowed policies of "America first and make America strong again."<sup>79</sup>

Scholars remind the world about the looming economic recession. The consequences of Trump's tariff war will be unprecedented, and it "sent shockwaves through financial markets, wiping out trillions of dollars in stock market value, and shaken investors' confidence in US assets, including the dollar, as a safe haven."<sup>80</sup>

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<sup>78</sup>Nimisha Thomas, "The WTO Appellate Body deadlock and the way ahead," *Berkley Journal of International Law (BJIL)*, Oct 8, 2021.

<sup>79</sup>Kalim Saddiqui, "Returning to Protectionism: The Shift in United States Trade Policy," *The World Financial Review*, May 12, 2025. Retrieved from <https://worldfinancialreview.com/returning-to-protectionism-the-shift-in-united-states-trade-policy/>

<sup>80</sup>Hari Kishan, "Risk of global economic recession surges on US tariff shockwaves: Reuters poll," *Reuters*, April 29, 2025.

Trump's recent tariff hikes, pronounced against several trading partners, clearly breach core principles of the WTO, the rules-based multilateral trading system, and lead toward arbitrary and discriminatory trade relations. It may ultimately destroy the WTO. It may lead to a lawless international community, hegemonised by powerful States where might is right. It would probably bring the world back to the dark age of protectionism, reminiscent of the Great Depression of the 1930s.

Many States are scratching their heads to conceive the best way of responding to Trump's tariff war. On the part of the US, as an economic powerhouse, it would prefer bilateral and one-on-one negotiations. However, for the US's trading partners, it is recommended that they be careful in making bilateral deals with the US without safeguards like the most-favoured-nation privilege and non-tariff commitments.<sup>81</sup>

Trump's other strategy is to warn trading partners not to retaliate and threaten them with higher tariffs if they retaliate. China indeed retaliated against the US tariff hike of up to 145%. This is due to two reasons. First, China's economic power is second only to the US. Secondly, China controls 90% of the world's production of rare earth, a valuable and strategic mineral indispensable for modern technologies. China has a bargaining chip against the US. For most developing countries, however, retaliation could not be an option. India and Brazil are the hardest hit by the tariff war. They are members of BRICS, a powerful organisation of emerging economies, and are on the brink of retaliating against the US. If it happened, it might divide the world into two rival economic blocs, and trade wars may escalate. It is, therefore, not a good sign for the stability of the world economy.

The best way to save the world from economic disaster is to fortify the key principles of the multilateral trading system and to revive and revitalise the WTO. The WTO is a rules-based organisation, empowering fair and non-discriminatory trade relations, guaranteed by

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<sup>81</sup>Leo Lewis, "WTO chief warns US bilateral tariff deals could put trade principles at risk," *Financial Times*, May 15, 2025. Retrieved from [https://www.ft.com/content/7cbb5b9a-97d7-4c2b-8a20-28cf96d6644b?utm\\_source=chatgpt.com](https://www.ft.com/content/7cbb5b9a-97d7-4c2b-8a20-28cf96d6644b?utm_source=chatgpt.com).

a law-based dispute resolution mechanism.<sup>82</sup>

Reforming the WTO, therefore, must begin with revitalising the dispute settlement mechanism, with a functional appellate process, and ensuring the original two-tiered adjudicative system.<sup>83</sup> Pending the possible change of policy of the US, all other WTO members must work together for a successful reformation process. The following interim solutions should be considered.

One such solution is to use Article 25 of the Dispute Settlement Understanding (DSU). This Article allows parties “to settle disputes through arbitration, provided they mutually agree.” Utilising this provision, the European Union and 18 other WTO members informed the organisation on April 30, 2020, of the creation of the “Multiparty Interim Appeal Arbitration Arrangement (MPIA),” designed to operate until the Appellate Body resumes functioning. Under the MPIA, participating States agree to enter into an arbitration agreement that allows for appellate reviews of panel decisions, effectively replacing the role of the Appellate Body. This system preserves core features of WTO dispute resolution, including its binding nature and two-tier structure. However, the initiative faces limitations: only 18 countries, plus the EU, have joined. Some other WTO members hesitate to participate, fearing they may provoke US retaliation.

Tackling the root cause once and for all is a more permanent solution to the crisis. According to Article 17 of the DSU, “a standing Appellate Body shall be established by the DSB.” Under Article 2(4), “decisions taken by the DSB must be made through consensus.” Footnote 1 to Article 2(4) defines “consensus as being achieved if no WTO Member, present at the meeting when the decision is taken, formally objects.” It means that if one member objects, there can be no decision by consensus. Although consensus has its advantages, it poses a significant risk of stalemate.<sup>84</sup> Consensus decision-making is the root

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<sup>82</sup>Bernard M Hoekman and Petros C Mavroidis, “To AB or Not to AB? Dispute Settlement in WTO Reform” *Journal of International Economic Law*, 23(3) (September 2020): 1–20.

<sup>83</sup>Anwarul Hoda, “WTO Appellate Body in Crisis: The Way Forward”, *Indian Council for Research on International Economic Relations (ICRIER)*, January 2021.

<sup>84</sup>Claus-Dieter Ehlermann and Lothar Ehring, “Decision-Making in the World Trade Organization: Is the Consensus Practice of the World Trade

cause of why the US can single-handedly block appointments to AB. How can we avoid consensus decision-making?

To break the deadlock, it has been suggested that AB members be appointed by the Ministerial Conference rather than the DSB. The WTO Agreement (Article IX.1) empowers the Ministerial Conference: "where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting." Hence, WTO members could advocate for the Ministerial Conference to handle appointments of the AB members via voting, bypassing the need for consensus in the DSB.<sup>85</sup>

Although theoretically it is possible, how about the actual practice? Sovereignty is dear to all States. The overwhelming State practice, therefore, is against voting and in favour of consensus. This is confirmed by one commentator that "members can only get the WTO off the rocks if they can find a consensus on consensus."<sup>86</sup>

## CONCLUSION

The US commits a 3.4% bound tariff under the WTO Agreement. The recent tariff hikes are many times higher than that. It violated two fundamental rules of the WTO: the MFN principle and the obligation not to exceed the bound tariff. Some members brought legal actions against the US before the WTO Panels. However, Panel decisions could not be enforced due to the collapse of the Appellate Body. Those States that were severely affected by the US tariff hikes did not have any legal remedies. Prime Minister Lawrence Wong of Singapore observed, "The era of rules-based globalisation and free trade is over... We are entering a new phase in global affairs, one that is more arbitrary, protectionist, and dangerous."<sup>87</sup>

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Organization Adequate for Making, Revising, and Implementing Rules on International Trade?" *Journal of International Economic Law*, 8 (1) (March 2005): 51–75.

<sup>85</sup>Daria Boklan and Amrita Bahr, "The WTO's Collapsing Judicial and Legislative Wings: Is 'Consensus' the Real Elephant in the Room?" *Global Trade and Customs Journal*, 17(2) (2022): 81–90.

<sup>86</sup>Robert Wolfe and Peter Ungphakorn, "On the Rocks: The WTO's Member-Driven, Consensus Decision-Making," *Trade, Law and Development*, 16(2) (2025): 1-23.

<sup>87</sup>"Singapore PM's Stunning Speech in Parliament," 8 April 2025.

Can we conclude that the previously thriving multilateral trading system is heading towards global lawlessness or anarchy? Indeed, Trump's tariff war has seriously shaken the foundations of the WTO. To save the WTO, all the members must be committed to the fundamental principles of non-discrimination, fair trade, and multilateral dialogue rather than bilateral deals. The WTO needs to be reformed. Concerted efforts of like-minded States may revitalise the WTO and maintain the rules-based multilateral trading system.

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