

## *Original Paper*

# “Trump Tariffs”: To Establish an American-Style Multilateralism Model?

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### ***Abstract***

*One of the goals of the world trade organization is to ensure free and fair trade around the world. Bound tariff rate and most-favored-nation treatment are two basic principles in WTO law, which should be applied and observed among WTO members. The implementation of “trump tariffs” has resulted in a “trade war between China and other countries”, which undoubtedly constitutes a violation of WTO principles, including violation of bound tariff rates and most-favored-nation treatment. At present, the United States is still one of the major setters of the world’s rules, and its every measure has an impact on the whole world. In addition to opposition from around the world, the trump administration’s move to impose tariffs has been criticized by most local economists and lawyers. To achieve fair and free trade, the trump administration should end the implementation of trump tariffs and fulfill its obligations in global multilateral trade and the WTO.*

### ***Keywords***

*Trump tariffs, bound tariff rates, most-favored-nation treatment*

### **1. Introduction**

In January 2018, Donald Trump imposed tariffs on solar panels of 30 percent and washing machines of 50 percent. Then later, he imposed tariffs on steel of 25 percent and aluminum of 10 percent from most countries all around the world. And also on July 6, the Trump administration imposed a tariff of 25% on 800 types of commodities imported from China which is worth 50 billion dollars. All these measures Donald Trump has taken during his presidency regarding tariffs are called “Trump Tariffs”. In this article, we will mainly focus on the tariffs on steel and aluminum and find whether these tariffs constitute a violation of WTO rules.

In response to the tariff measures on steel and aluminum, many countries implemented retaliatory tariffs on American commodities. Canada imposed its retaliatory tariffs on July 1, 2018 firstly. Immediately after, China implemented tariffs equal to the 34 billion dollars tariff imposed by America on American goods. European Union imposed tariffs on 180 categories of goods, over 3 billion dollars of American commodities for retaliation. And also, Mexico implemented retaliatory tariffs which entered into effect on June 5 on 3 billion dollars of American commodities. Although the 25% steel tariff is applied to countries all around the world, there are still four countries which have negotiated a permanent exemption from the steel tariff with the Trump administration successfully. They are South Korea, Argentina, Australia and Brazil. There is no doubt that “Trump Tariffs” has a profound and comprehensive influence on international trade, also on WTO law.

Many countries have already submitted their challenges to the tariffs before WTO, including Canada and the EU. They take stock in that what the U.S. has done is a violation of its WTO obligations. They complain America has promised to limit its tariffs on steel to 0 percent and to limit its tariffs on aluminum to between 0 and 6 percent on average. Secondly, they complain that the tariffs on steel and aluminum imposed by the U.S. have been applied to most countries in the world but not to four countries we mentioned above. We can summarize that the “Trump Tariffs” may have violated two fundamental principles in WTO law: one is “bound tariff rate” and the other is “Most Favored Nation” (MFN) treatment.

## **2. Bound Tariff Rate**

The WTO applies itself to the removal or reduction of trade barriers. One of the most important trade barriers is tariff. Bound rate is the maximum rate of tariff that can be imposed by the importing country on an imported commodity. It is the MFN tariff rate rooting in negotiations under the GATT and is generated as a whole to become a country’s schedule of concessions to other WTO members. And no member country can raise its tariffs above the bound rate it has committed, that is to say, tariff rates actually applied must be lower than the bound rate. If a member raises its tariff rate higher than the bound rate it committed, other countries which are disadvantageously affected can seek remedy from the WTO and obtain the right to retaliate or to receive compensation.

So there is another tariff rate called applied rate which is different from bound rate. The bound rate regulated in the schedule of concessions is the rate promised by WTO members that they will never exceed the tariff ceiling. The applied rate is the rate regulated in tariff schedules of each country and also, actually applied. There are various applied tariff rates imposed by countries all around the world. These rates vary from country to country and commodity to commodity. The principle of bound tariff rate is regulated in Article II of the GATT.

There is a three-step test to see whether a tariff measure imposed is inconsistent with WTO bound rate principle. First, whether the treatment given to the commodities regarding the dispute is regulated in the schedule of concessions; Second, whether the treatment given to the commodities regarding the

dispute is related to the measures taken by the respondent country; and Third, whether these measures give rise to less favorable treatment of the commodities regarding the dispute than the respondent country committed in the schedule of concessions and particularly, whether these measures give rise to the imposition of tariffs on the commodities regarding the dispute in excess of the respondent country promised in the schedule of concessions. In short, if the tariff rate applied by the country is higher than the rate regulated in the schedule, there is a violation of the bound tariff rate principle and definitely it can constitute a violation of WTO Law.

Just as we mentioned above, the tariff on steel of 25 percent and aluminum of 10 percent imposed by the Trump administration have been applied to most countries in the world. But previously, America promised to impose restrictions on its tariffs on steel and aluminum to a reasonable level. There is no doubt the implementation of “Trump Tariffs” on steel and aluminum is a violation of bound rate principle.

### 3. MFN Treatment

The “Most-Favored-Nation” (MFN) principle has been called the “cornerstone” principle of GATT for many years. The clause of it has also been included in the GATT, which prohibits discrimination among WTO members in regards to tariffs and other charges as well as domestic taxes.

MFN treatment which has been a fundamental pillar of trade policy has a long history. Although the word first appeared in the seventeenth century, it can be traced back to the twelfth century. America included the MFN treatment clause in its 1778 treaty with France. From then on, the MFN treatment clause was included continually in various treaties in the following centuries. And finally, after the Second World War, the clause of MFN treatment was regulated in the GATT, which became a general principle in a number of multilateral trade agreements.

In WTO, if a member country accords the most favorable treatment to the product of the third country at the time of importation or exportation, the member country should accord the most favorable treatment to the like product of other member countries immediately and unconditionally. The requirements above regulated in GATT Article I is MFN treatment. Under the MFN treatment obligation in WTO law, if country A which is a WTO member has an agreement with country B, which need not necessarily be a WTO member, to reduce the tariff on product C, the same tariff should be applied to all other WTO members on like product of product C immediately and unconditionally. In a word, if a member accords favorable treatment to a country in regards to a particular issue, it must give all other members the same treatment in regards to the same issue.

The question is how we can identify a conduct implemented by a country constitutes a violation of MFN treatment. Like the standard of the bound tariff rate, there are three steps to identify whether it constitutes a violation. First, whether there is an advantage, favor, or privilege and so on. Second, whether the advantage is offered to all like products of other members. Third, whether the advantage is offered immediately and unconditionally. If a conduct implemented by a country is inconsistent with

the requirements above, it constitutes a violation of MFN treatment.

Coming back to the Trump tariffs, we can see the Trump administration imposed tariffs on steel of 25 percent and aluminum of 10 percent from most countries, including Canada, European Union, Mexico, China and so on. Only four countries in the world are exempted from these tariff measures. They are South Korea, Argentina, Australia and Brazil. So many countries have already challenged to the tariffs before WTO with arguments that America has violated WTO fundamental rules, such as MFN treatment. We can see, in accordance with the standard we mentioned, there definitely exists an advantage that four countries are exempted from the tariff policies on steel permanently. And of course, the advantage is not offered to all like products (steel and aluminum) of other countries in the world axiomatically including these countries which are WTO members. Let alone the third step, whether the advantage is offered immediately and unconditionally. So we can draw the conclusion that the imposition of “Trump Tariffs” on steel and aluminum by the U.S. constitutes a violation of “Most Favored Nation” (MFN) treatment in WTO rules.

#### **4. Conclusion**

Bound tariff rate and MFN treatment which are two fundamental principles in WTO law should be applied and observed among WTO members. Indeed, one purpose of the WTO is to ensure the free trade and fair trade all around the world. Through making schedule of concessions to identify the bound tariff rate, encouraging member countries to negotiate with each other to realize mutual beneficial tariff reductions, heartening members to accord most-favored-nation treatment to each other to ensure the fair trade and eliminate trade barriers, WTO devotes itself to establishing the energetic multilateral trading system and making it fair and free. With the increasingly rapid economic globalization and urbanization, WTO plays a significant role in the economic harmonization and integration.

The imposition of “Trump Tariffs”, not only on steel and aluminum but on solar panels and washing machines and also on Chinese products, which has already given rise to the “China-United States trade war”, has definitely constituted a violation of WTO principles, including the violation of bound tariff rate and MFN treatment. At present, the United States is still one of the main constitutors of the world’s rules, and its every measure has an impact on the whole world. In the field of multilateral trade, on the one hand, through the tax reduction policies implemented by the Trump administration, the goods of the United States can be exported to other countries at a relatively low price, which will have adverse impacts on the domestic economy of other countries; on the other hand, if America imports products from other countries with a high tariff, the commodities from these countries will suffer a huge loss in American market. And also, automatically, countries like China will impose higher retaliatory tariffs on imports from the United States. If so, it could give rise to global trade wars. Such a situation is definitely harmful to the fair and free trade all around the world.

Besides the opposition from all around the world, the actions of tariffs imposed by the Trump administration were also criticized by most native economists and lawyers. For the purpose of realizing fair and free trade, the Trump administration should terminate the implementation of the “Trump Tariffs” and perform its obligations properly in multilateral trade all around the world and also, in WTO.

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