

RECIPROCAL DUTIES OF USA: IS IT CONSISTENT WITH DOMESTIC AND INTERNATIONAL LAW?

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ABSTRACT

The President of the USA, Mr. Donald J. Trump, in his second term, announced additional tariffs as 'reciprocal tariffs' to many countries starting April 2025. The reason cited was the growing trade imbalance for the USA. This paper examines international trade law, with particular emphasis on the binding commitments of the United States of America (USA) under the World Trade Organization (WTO) framework vis-à-vis the reciprocal duties. It focuses on three key actions undertaken by the United States: (a) the imposition of tariffs on steel and aluminium imports pursuant to Section 232 of the Trade

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Expansion Act of 1962, which authorises the U.S. executive to restrict imports considered a threat to national security; (b) reciprocal tariffs imposed under the International Emergency Economic Powers Act (IEEPA) and (c) additional duties on Canada and Mexico despite having a free trade agreement under the United States-Mexico-Canada Agreement (USMCA). The paper finds that the USA's actions are inconsistent with its international commitments in the WTO. This paper also evaluates if the US President has powers under IEEPA to impose reciprocal tariffs, an issue which is being discussed in the US Supreme Court now.

Keywords: *Reciprocal tariffs, Section 232, International Emergency Economic Powers Act (IEEPA), USMCA, GATT, WTO dispute settlement, national security exception, trade policy, multilateral trading system.*

I. INTRODUCTION

In his second term, which began in January 2025, President Donald Trump took several measures under the “America First Trade Policy”.¹ He announced the use of reciprocal tariffs beginning in April 2025, citing national emergencies under the International Emergency Economic Powers Act (IEEPA).² This turn marked a significant escalation from the tariff actions undertaken during his first term, making a shift from product-specific and country-specific duties to a quasi-universal additional charge on imports, signalling a systemic reorientation of US trade policy away from multilateralism and toward managed bilateralism.³ The policy introduced a 10% baseline tariff on nearly all imports, with additional country-specific tariffs based on bilateral trade deficits.⁴ These measures aimed to counter what Trump described as unfair trade practices and persistent U.S. trade deficits. The tariffs excluded certain goods like pharmaceuticals and semiconductors, but covered a wide range of imports, significantly impacting global supply chains. Trump later modified the scope of

¹ The White House, ‘America First Trade Policy’ (Presidential Action, 20 January 2025) <<https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/>> accessed 10 December 2025; Chad P Bown, ‘The US-China Trade War and the “America First” Trade Policy’ (Peterson Institute for International Economics Policy Brief, 2025).

² Executive Order 14257, ‘Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits’ (2 April 2025).

³ Chad P Bown, ‘The 2018 US-China Trade Conflict after Forty Years of Special Protection’ (Peterson Institute for International Economics Working Paper 19-10, 2019).

⁴ *Executive Order 14257* (n 2).

these tariffs through executive orders, adjusting exemptions and establishing frameworks for future trade deals.

From the perspective of WTO law, such a deficit-linked reciprocal tariff regime sits uneasily with the fundamental disciplines of bound tariffs and most-favoured-nation (MFN) treatment under the GATT 1994, because it conditions market access on a bilateral metric rather than on non-discriminatory product-based commitments scheduled in the US Schedule of Concessions.⁵ At the same time, the use of IEEPA and national emergency declarations as the principal domestic legal basis raises questions about the separation of powers in US constitutional law, given that the Constitution allocates primary authority over foreign commerce to Congress and not to the President, an issue already noted in scholarship concerning Trump's earlier tariff initiatives under Section 232.⁶

These unilateral restrictive measures undertaken by the U.S. have initiated a global debate on whether the action taken by Trump is in accordance with the USA's binding commitments in the WTO and whether the President of the USA has the authority to issue such an Executive Order (EO) under IEEPA. Trading partners have criticised the measures as a form of unilateralism reminiscent of the pre-WTO

⁵ General Agreement on Tariffs and Trade 1994 (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 187 arts I, II.

⁶ Brendan McGarry and others, 'The International Emergency Economic Powers Act (IEEPA)' (Congressional Research Service Report R45618, 29 January 2024).

era, arguing that they undermine the rules-based dispute settlement system by substituting ad hoc bilateral pressure for multilateral adjudication.⁷ The legality of these tariffs, both under Section 232 and IEEPA, has been challenged in the WTO; whereas the reciprocal tariffs imposed under IEEPA are challenged in the US courts. Currently, the U.S. Supreme Court is hearing arguments in November 2025 on whether Trump exceeded his authority under IEEPA. These domestic proceedings echo earlier litigation over national security tariffs, in which federal courts showed considerable deference to the political branches, but they now arise in a context where the scale and design of the reciprocal tariff regime make the alleged delegation of power even more constitutionally salient.⁸ The imposition of reciprocal tariffs on Canada and Mexico, despite having an FTA under the United States-Mexico-Canada Agreement (USMCA), is also questionable as under Article XXIV of GATT (WTO), a free trade agreement needs to fulfil condition of duty-free trade on substantially all trade. By targeting USMCA partners, the United States not only risks violating its multilateral obligations but also tests the integrity of its own preferential trade architecture, since the core rationale of an FTA is to provide greater certainty and security of access than is available under the baseline WTO rules.⁹ The USA has justified its actions by invoking the emergency and national security exceptions, positioning them as

⁷ Julia Ya Qin, 'WTO Reform: Multilateral Control over Unilateral Retaliation – Lessons from the US–China Trade War' (2020) 12 Trade L & Dev 45.

⁸ *Congressional Research Service* (n 6) 15–18.

⁹ US–Mexico–Canada Agreement (signed 30 November 2018, entered into force 1 July 2020) art 2.4; GATT 1994 (n 5) art XXIV.

measures necessary for safeguarding its essential security interests. However, recent WTO jurisprudence on the security exception has narrowed the space for members to invoke national security in purely economic disputes, suggesting that a broad reliance on this clause to defend reciprocal tariffs may face significant legal obstacles.¹⁰

The paper analyses the following in this regard:

US MEASURE	IMPACT	COUNTRIES AFFECTED	LEGAL PROVISIONS EXAMINED
President Proclamation -Aluminium and Steel (Section 232)	Global tariffs on aluminium and steel	Globally (with some exceptions)	GATT 1994
Executive Order dated 2 April 2025- Reciprocal Duties under IEEPA	Imposition of reciprocal duties- different duties to different countries	Around 60-70 Countries	GATT 1994

¹⁰ Tania Voon, 'The Security Exception in WTO Law: Entering a New Era' (2019) 113 AJIL Unbound 45.

Executive Order- Duties on Canada and Mexico (USMCA partners)	Duties on Canada and Mexico	Canada and Mexico	GATT 1994 and USMCA provisions
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The paper first examines provisions of Section 232 and the IEEPA provisions and the powers of the U.S. President. The next section examines the domestic legal discussion being held on the President's power under IEEPA. The next section examines the compatibility of reciprocal tariffs under Section 232 and IEEPA under the lens of the USA's WTO obligations, especially to examine if these actions under reciprocal tariffs are consistent with the USA's obligations under the WTO or not.

II. IMPOSITION OF ADDITIONAL TARIFFS

SECTION 232 OF THE TRADE EXPANSION ACT, 1962

In February 2025, the US invoked Section 232 of the Trade Expansion Act, 1962, to impose additional tariffs on steel and aluminium imports. It allows the President to impose restrictions on imports of goods or enter into negotiations with trading partners if the U.S. Secretary of

Commerce determines, following an investigation, that the quantity or other circumstance of those imports “threaten to impair” U.S. national security.¹¹ Section 232 was originally conceived as a narrowly tailored instrument to protect critical defence-related industries, but in recent years it has been repurposed as a more general trade policy tool, prompting significant concern in the literature about its compatibility with both the US constitutional allocation of powers and multilateral trade rules.¹² On February 10, 2025, the Presidential Proclamation 10895 was issued, which imposed a 25% tariff on aluminium, citing national security concerns.¹³ Further, Proclamation 10896 imposed a 25% tariff on iron and steel for similar reasons.¹⁴ A few months later, on 3rd June 2025, through another proclamation, the tariffs on aluminium and iron and steel were increased to 50%, based on the continued threat posed due to the import surges to U.S. defence-related industrial capability.¹⁵ The escalation to 50 per cent ad valorem is particularly striking when viewed against the United States’ bound tariff commitments under its GATT 1994 Schedule, which for most steel and aluminium products are in the single-digit or low double-digit

¹¹ Trade Expansion Act, 1962 (19 USC of 1862) s 232.

¹² Gary Clyde Hufbauer and Euijin Jung, ‘Steel and Aluminum Tariffs: Section 232 or Bust?’ (2018) Peterson Institute for International Economics Policy Brief PB18-7.

¹³ Proclamation 10895, ‘Adjusting Imports of Aluminium into the United States’ 90 Fed Reg 9807 (18 February 2025).

¹⁴ Proclamation 10896, ‘Adjusting Imports of Steel into the United States’ 90 Fed Reg 9817 (18 February 2025).

¹⁵ Proclamation 10947, ‘Adjusting Imports of Aluminium and Steel into the United States’ 90 Fed Reg 24199 (9 June 2025).

range, thereby raising a prima facie issue of violation of Article II.¹⁶ It may be worthwhile to note that there was no new investigation

conducted before the issuance of Proclamation 10895 on February 10, 2025, rather the proclamation built on the original 2018 investigation by the Department of Commerce. The 2025 proclamation noted that the initial tariff of 10% ad valorem was not high enough to address the threatened impairment to the USA's national security posed by aluminium imports and U.S. primary aluminium production decreased by 30% from 2020 to 2024 and the smelter capacity utilization was only 52% in 2024, while the global capacity continued to increase. It also noted that the imports increased from countries that were excluded from the tariff regime of 2018. Yet, as commentators have pointed out, economic indicators such as excess global capacity and declining domestic output, while politically salient, do not automatically translate into a threat to "essential security interests" in the sense used in GATT Article XXI, especially where alternative policy instruments less disruptive to trade are available.¹⁷

More than ten cases were filed in the WTO dispute settlement mechanism by countries against US Proclamation 9704 of 2018 (steel-focused, though often bundled with aluminium), the most important of

¹⁶ General Agreement on Tariffs and Trade 1994 (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 187 arts II:1(a)-(b).

¹⁷ Tania Voon, 'The Security Exception in WTO Law: Entering a New Era' (2019) 113 AJIL Unbound 45, 49–50.

which was DS 544, where China was the complainant. The WTO panel found that the tariffs imposed by the USA were inconsistent with GATT I:1 and II:1. No “emergency in international relations” under GATT XXI(b)(iii), so the exception does not justify measures and also the safeguards rules are inapplicable. The US appealed on January 26, 2023 (issues of law on XXI review). The appeal is pending due to an Appellate Body vacancy and there has been no compliance or resolution. Because the appeal is effectively into the void in the absence of a functioning Appellate Body, the reports have not been adopted, but they nonetheless carry considerable persuasive authority and have already influenced academic and policy debates on the permissible scope of security-motivated tariffs.¹⁸ China retaliated with duties on \$3B US goods (e.g., soybeans). These retaliatory measures, though formally justified as rebalancing or countermeasures, further illustrate the systemic risks created when one member deploys Section 232 tariffs outside multilateral procedures, inviting others to respond unilaterally rather than through the WTO dispute settlement system.¹⁹

A. IEEPA: Power of the US President

By way of EO-14257 dated 2nd April 2025, President Trump announced across-the-board tariffs on imports into the US using the

¹⁸ Dapo Akande and others, ‘The National Security Exception in WTO Law after Russia – Traffic in Transit and US – Steel and Aluminium’ (2023) 52(1) *Geo J Int’l L* 1.

¹⁹ Julia Ya Qin, ‘WTO Reform: Multilateral Control over Unilateral Retaliation – Lessons from the US–China Trade War’ (2020) 12 *Trade L & Dev* 45.

powers given to him under Section 1701²⁰ of the International Emergency Economic Powers Act, 1977 (“IEEPA”) and the National Emergencies Act, 1976 (“NEA”). Unlike earlier uses of IEEPA, which predominantly targeted specific foreign persons or sectors through asset freezes and financial sanctions, EO-14257 deployed these emergency authorities to redesign the general tariff structure, thereby pushing IEEPA into the core domain of trade policy.²¹ Section 1701 of IEEPA authorises the President to use the powers given to him under Section 1702 to deal with “an unusual and extraordinary threat to the national security, foreign policy or economy of the United States.”²² These powers can only be used for the specific threat declared and cannot be applied to new threats without a fresh declaration. The section ties directly to Section 1702, emphasizing that emergencies must be explicitly declared under IEEPA for its provisions to apply. Section 1702 prescribes the specific economic authorities granted to the President during a declared national emergency under 1701 and to be implemented via regulations, licenses, instructions or other means. These powers are broad but subject to exceptions.

²⁰ Executive Order 14257 (n 2).

²¹ International Emergency Economic Powers Act, 1977 50 USC §§ 1701–1702; Congressional Research Service, ‘The International Emergency Economic Powers Act (IEEPA)’ (CRS Report R45618, 29 January 2024).

²² *ibid.*

BOX: SECTIONS 1701 AND 1702 OF IEEPA***1701: Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities***

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

1702: Presidential authorities***(a) In general***

(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and.

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such

hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and

discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) Exceptions to grant of authority

The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3)the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 4604 of this title, or under section 4605 of this title to the extent that such controls promote the non-proliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18; or

(4)any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including non-scheduled air, sea, or land voyages.

(c)Classified information

In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in

camera. This subsection does not confer or imply any right to judicial review.

*Source: <https://www.law.cornell.edu/uscode/text/50/1701>;
<https://www.law.cornell.edu/uscode/text/50/1702>*

IEEPA was initially used to impose sanctions in response to terrorism, cybercrime and human rights abuses amongst others. IEEPA was used after the 9/11 attack (2011), for cyber threats (2010), Russia (after the 2014 invasion of Crimea), etc. However, it was for the first time that President Trump used IEEPA for imposing tariffs.

a) Domestic court cases

A group of small U.S. importers, along with twelve U.S. states, filed lawsuits challenging the legality of the reciprocal tariffs imposed by President Donald Trump through executive orders under the International Emergency Economic Powers Act (IEEPA). These tariffs were introduced after a national emergency was declared on the grounds of persistent trade deficits and applied to imports from nearly all major U.S. trading partners, with rates ranging from 10% to as high as 50%. The lead plaintiffs included V.O.S. Selections, Inc., a New York-based wine importer; Terry Precision Cycling LLC, which sells women's cycling apparel; FishUSA Inc., a sport-fishing equipment importer; Plastic Services and Products, LLC, an importer of ABS resins; and MicroKits LLC, which imports electronic components.

They were joined by twelve U.S. states, including Oregon, New York and Illinois.

The plaintiffs argued that while the IEEPA permits the President to regulate international economic transactions during a national emergency, it does not authorise the imposition of tariffs. Since tariffs are a form of taxation, they fall squarely within Congress's exclusive powers under Article I of the U.S. Constitution. The lawsuits further maintained that long-standing trade imbalances cannot reasonably be characterised as the kind of "unusual and extraordinary threat" required to invoke emergency powers under the IEEPA.

Keeping in view such unilateral measures by the U.S., a three-judge panel of the Court of International Trade, in the case of *V.O.S. Selections, Inc. v. United States* has held that IEEPA does not authorise such tariff measures, emphasising that basing sweeping economic policy on emergency powers without congressional sanction runs contrary to the Act's intent.²³ In doctrinal terms, the judgment situates IEEPA within a tradition of "sanctions statutes" aimed at targeted coercive measures and rejects the view that it silently transfers Congress's core tariff-making power to the Executive.²⁴ Similarly, a District Court in *Learning Resources, Inc. v. Trump* found that IEEPA

²³ *V.O.S. Selections, Inc. v. United States*, (2025) 138 Ct. Intl. Trade.

²⁴ Congressional Research Service, 'The International Emergency Economic Powers Act (IEEPA)' (CRS Report R45618, 29 January 2024).

does not confer unilateral tariff-making authority, paving the way for broader constitutional debate.²⁵

IEEPA further provides that these authorities “may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose”.²⁶ The lower court concluded that IEEPA, which gives the President the authority to “*regulate.....importation*” was not meant to be a broad expansion of authority to set tariffs. Hence, the court declared those tariffs illegal and barred them from being implemented. Both lower courts read this language as a functional limit, holding that long-standing trade deficits do not qualify as the kind of sudden external peril that Congress had in mind when it enacted the statute.²⁷ The Trump administration further appealed to the U.S. Court of Appeals for the Federal Circuit. On August 29, 2025, the court ruled that the President had “no legal right to impose sweeping tariffs” or to invoke national emergencies as a justification. Following its ruling on August 29, 2025, the U.S. Court of Appeals for the Federal Circuit issued an order withholding the issuance of its mandate until October 14, 2025.²⁸ Until the issuance of the mandate, the United States Court of International Trade was directed to take no further action in the matter. In effect, while the

²⁵ *Learning Resources, Inc. v. Trump*, D.D.C. (2025).

²⁶ *International Emergency Economic Powers Act 1977*, 50 USC § 1701 (2018).

²⁷ CRS, ‘The International Emergency Economic Powers Act (IEEPA)’ (n 21).

²⁸ *V.O.S. Selections, Inc. v. Trump*, Case: 25-1812, Order at 3 (Fed. Cir. Aug. 29, 2025).

Federal Circuit affirmed that the President lacked authority under IEEPA to impose sweeping tariffs, the enforceability of that decision remains suspended, pending possible review by the Supreme Court. Following the decision, President Trump issued a statement on the social media platform *Truth Social*, declaring: “*ALL TARIFFS ARE STILL IN EFFECT! Today, a highly partisan Appeals Court incorrectly said that our Tariffs should be removed, but they know the United States of America will win in the end. If these Tariffs ever went away, it would be a total disaster for the Country. It would make us financially weak, and we have to be strong.*”²⁹

In sum, both the Court of International Trade and the Federal Circuit Court of Appeals rejected the United States’ plea under IEEPA, stating that the executive cannot deploy emergency powers to bypass Congress in setting tariffs. The recent ruling of the U.S. Court of Appeals has declared the reciprocal tariffs imposed under the IEEPA unauthorised, emphasising the fact that the statute does not provide the President with rights to impose tariffs in this regard. The emerging line of cases therefore reinforces the broader separation-of-powers principle that major redistributions of regulatory authority in the trade field must rest on clear congressional authorization rather than on open-ended

²⁹ Donald J Trump, ‘ALL TARIFFS ARE STILL IN EFFECT! Today a Highly Partisan Appeals Court incorrectly said that our Tariffs should be removed...’ (Truth Social, 29 August 2025) <https://truthsocial.com/@realDonaldTrump/posts/115114339832960282> accessed 10 December 2025.

emergency clauses.³⁰ It is to be noted that even if the ruling of the court challenges the measures currently, these tariffs do not seem to disappear soon, as the U.S. has several other provisions such as Sections 122, 201, 232, 301 and 338. Among these, Sections 232 (for national security reasons) and 301 (for unfair trade practices) are the strongest in favour of the U.S. For businesses operating internationally, this is a major challenge because such uncertainty makes it difficult for companies to plan their investments and trade plans in the long term, altogether making the U.S. trade policy extremely unpredictable.

The U.S. Supreme Court started hearing the case in November 2025. The arguments focus on the presidential authority under the IEEPA, discussing whether the Act permits the imposition of tariffs. The case originates from the imposition of “reciprocal tariffs” on trading partners, citing national emergencies related to drug trafficking and trade imbalances. The administration argued that tariffs are regulatory tools within the President’s discretion under IEEPA’s mandate to “regulate importation,” while challengers, including states and small businesses, contended that tariffs are a form of taxation, constitutionally reserved for Congress. They emphasized that IEEPA does not mention tariffs and that its historical use has been limited to sanctions, not duties. During the hearing, several justices expressed scepticism about the administration’s interpretation. Chief Justice

³⁰ CRS, ‘The International Emergency Economic Powers Act (IEEPA)’ (CRS Report R45618, 29 January 2024); *West Virginia v Environmental Protection Agency* (2022) 597 US 5.

Roberts and Justice Kagan highlighted the constitutional requirement for Congressional authorization of taxes, while Justice Barrett questioned the historical basis for equating “regulate importation” with tariff authority. Justice Jackson noted that IEEPA was designed to constrain, not expand, executive power. The case also invoked the Major Questions Doctrine and the Non-delegation Doctrine, raising concerns about the breadth of authority delegated to the President. Economically, the tariffs have generated \$88 billion in revenue but are estimated to cost households \$1,000–\$1,300 annually. A ruling is expected by the end of 2025 and could significantly reshape the balance of power between Congress and the Executive in trade and emergency economic policy.

B. Reciprocal tariffs under USMCA

The North American Free Trade Agreement (NAFTA), which came into force in 1994, was a landmark trade pact between the United States, Canada and Mexico aimed at eliminating tariffs and fostering economic integration across North America. Over time, however, concerns emerged regarding labour standards, environmental protections and the shifting dynamics of global trade. In response, the three countries renegotiated the agreement, resulting in the United States-Mexico-Canada Agreement (USMCA), which replaced NAFTA on July 1, 2020. USMCA modernized provisions on digital trade, intellectual property and automotive rules of origin, while introducing stronger labour and environmental commitments. Though it retained the core principles of tariff-free trade for qualifying goods, USMCA

introduced mechanisms to ensure fairer competition and more balanced trade relationships among the member countries. The primary objective of the USMCA was to enhance tariff-free trade between these three countries and to strengthen the strong economic cooperation.³¹

USMCA faced a challenge due to the imposition of additional tariffs on Canada and Mexico by the US under Section 232 of the Trade Expansion Act of 1962 and the International Emergency Economic Powers Act (IEEPA), thereby stating national security reasons as the key aspect of such tariff imposition. These measures revived debates from the NAFTA era about whether security-based trade restrictions between close economic partners undermine the very rationale of deep regional integration.³² The imposition of reciprocal tariffs by the United States on imports from Canada and Mexico under IEEPA has raised questions about their compatibility with the USMCA. The initial imposition of additional tariffs applied broadly and the duties were charged even on originating goods, but were quickly adjusted through executive order to exclude all USMCA-compliant goods, thereby maintaining compliance with Article 2.4 and preserving the integrity of the agreement's tariff commitments.³³ Under Article 2.4 of the United States-Mexico-Canada Agreement (USMCA), the three member

³¹ Agreement between the United States of America, the United Mexican States and Canada (signed 30 November 2018, entered into force 1 July 2020) (USMCA).

³² Simon Lester and Inu Manak, '*Security Exceptions and Regional Trade Agreements*' (2020) 21 *Journal of International Economic Law* 123.

³³ Executive Order 14257 (n 2).

countries i.e., the United States, Canada, and Mexico are prohibited from adopting new customs duties or increasing existing ones on goods that qualify as originating under the agreement. Originating goods are those that meet the specific rules of origin outlined in Chapter 4, which typically require a minimum level of regional value content or substantial transformation within North America. This provision ensures that qualifying goods continue to benefit from preferential tariff treatment and are shielded from unilateral tariff increases. In conclusion, the U.S. reciprocal tariffs under IEEPA are procedurally not inconsistent with USMCA obligations, as they do not affect goods that meet the agreement's origin requirements. This distinction ensures that the integrity of the trade agreement remains intact.

III. RECIPROCAL DUTIES UNDER SECTION 232 AND IEEPA AND THE USA'S OBLIGATIONS UNDER WTO

WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT) have consistently aimed to promote a stable, transparent, predictable and non-discriminatory global trading system. The United States was previously a key player in formulating this framework, but recent actions, particularly the imposition of reciprocal tariffs under Executive Order 14257, dated 9 April 2025, has raised questions about its commitments to the WTO/GATT rules. These concerns are sharpened by the fact that the United States has also blocked appointments to the WTO Appellate Body, thereby weakening the very enforcement mechanism that was designed to police departures from core disciplines such as bound tariffs and most-favoured-nation

treatment.³⁴ Article XXI of GATT introduces a Security Exception clause (invoked by the United States), permitting members to invoke national security concerns to justify measures that would otherwise contravene WTO obligations. Critics suggest that the reciprocal tariffs were aimed at shielding U.S. industry from market pressures, not addressing a real emergency in international relations, and thus fall outside the intended scope of GATT Article XXI. Various provisions of the GATT, which are stated to be violated in this case, are examined below:

ARTICLE I-MOST-FAVOURED NATION TREATMENT

Article I of the GATT establishes the MFN principle requiring that any trade advantage, such as reduced tariffs granted by one WTO member to another, must be extended immediately and unconditionally to all other WTO members.³⁵ Under this provision, members must accord “*any advantage, favour, privilege or immunity*” granted to imports from one country “*immediately and unconditionally*” to like products originating in all other WTO Members.³⁶ This foundational rule is designed to prevent discriminatory treatment among trading partners. The imposition of reciprocal tariffs, however, involves applying higher

³⁴ Tania Voon, ‘The Security Exception in WTO Law: Entering a New Era’ (2019) 113 AJIL Unbound 45.

³⁵ General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) 55 UNTS 194, art I (GATT 1994).

³⁶ World Trade Organization (WTO). 1994. *General Agreement on Tariffs and Trade 1994 (GATT 1994)*.

duties to imports from selected countries while maintaining lower rates for others, which directly contravenes the MFN principle. For instance, when the United States imposed a 44% tariff on goods from Sri Lanka while charging only 26% on similar goods from India, it breached its WTO obligations under GATT.³⁷ Such selective tariff measures undermine the non-discrimination principle. This issue has been at the heart of many disputes brought before the WTO dispute settlement system, including those challenging earlier U.S. tariffs on steel and aluminium, where panels found that the selective imposition of duties was inconsistent with MFN treatment.³⁸ China has already responded by initiating proceedings at the WTO dispute settlement body and imposing counter-tariffs on U.S. goods. Similarly, India has notified the WTO of its intent to seek authorization for retaliatory tariffs against the United States.³⁹

In a United States–Denial of Most-Favoured-Nation Treatment as to Non-Rubber Footwear from Brazil (GD/233), Brazil complained that the U.S. applied different countervailing duty laws to imports from Brazil compared to other countries, allegedly violating the MFN

³⁷ Executive Order 14257 (n 2).

³⁸ *European Communities-Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R.

³⁹ Government of India, WTO Notification G/SG/N/12/IND/28 (4 July 2025); Ahmed, Aftab and Aditi Shah, 'India Proposes Retaliatory Duties at WTO Against U.S. Tariffs on Autos' Reuters (New Delhi, 4 July 2025) <https://www.reuters.com/world/india/india-proposes-retaliatory-duties-wto-against-us-tariffs-autos-2025-07-04/> accessed 10 December 2025.

obligation under GATT Article I:1.⁴⁰ The panel found that the U.S. treatment of Brazilian footwear was inconsistent with Article I, as it failed to extend the same favourable treatment accorded to other countries.⁴¹ In another case, Spain – Tariff Treatment of Unroasted Coffee (BISD 28S/102), Brazil complained that Spain applied different tariff rates to various types of unroasted coffee beans depending on their origin, which Brazil argued violated the MFN principle under GATT Article I.⁴² The panel concluded that the coffee varieties were “like products” and that Spain’s discriminatory tariff treatment violated Article I:1 by not extending equal treatment to all WTO members.⁴³ Spain was found to be in breach of its MFN obligations.⁴⁴

ARTICLE II - SCHEDULES OF CONCESSIONS

The U.S., like any other member of the WTO, has committed to certain tariff levels in its GATT schedule, these reciprocal tariffs, as additional tariff constitute a breach of its GATT Article II commitments.⁴⁵ For example, the U.S. had initially committed to keep a 5% tariff on steel, but it later raised it to 25% on its own without renegotiating its

⁴⁰ Panel Report, *United States – Denial of Most-Favoured-Nation Treatment as to Non-Rubber Footwear from Brazil* (19 June 1992) GATT Doc BISD 39S/128, para 6.1.

⁴¹ *ibid* para 6.10.

⁴² Panel Report, *Spain – Tariff Treatment of Unroasted Coffee* (11 June 1981) GATT Doc BISD 28S/102, para 3.1.

⁴³ *ibid* para 4.9.

⁴⁴ *ibid* para 5.1.

⁴⁵ GATT 1994 (n 5) art II.

agreements.⁴⁶ Instead of arising through multilateral negotiation, such tariffs are often imposed unilaterally, weakening the system of tariff commitments and predictability that GATT Article II was originally designed to safeguard. Past WTO panel rulings, including those involving U.S. steel tariffs, have affirmed that going beyond agreed tariff commitments on a unilateral basis constitutes a breach of a country's WTO obligations.⁴⁷

WTO disputes have dealt with Article II of GATT. In one case, where China imposed additional charges on imported auto parts if they were not assembled into complete vehicles in China, treated them as complete vehicles for import duties. In DS 339, 340 and 342, the WTO panel found that this practice violated GATT Article II:1(b) as the duties exceeded China's bound tariff rates for auto parts.⁴⁸ In another case, the U.S. provided that importers of shrimp from Thailand and India need to post enhanced bonds, which were challenged as an additional charge not listed in the U.S. Schedule of Concessions. The Appellate Body (DS 345) ruled that the enhanced bond requirement constituted an "other duty or charge" under GATT Article II:1(b) and violated WTO rules because it was not properly recorded in the U.S.

⁴⁶ Panel Report, *United States – Certain Measures on Steel and Aluminium Products* (9 December 2022) WT/DS544/R, para 7.112.

⁴⁷ World Trade Organization (WTO). 2022. *United States-Certain Measures on Steel and Aluminium Products: Report of the Panel*. WT/DS544/R, adopted 9 December 2022.

⁴⁸ Panel Report, *China – Measures Affecting Imports of Automobile Parts* (18 July 2008) WT/DS339/R, WT/DS340/R, WT/DS342/R, para 7.217.

Schedule.⁴⁹ The U.S. was found in violation and asked to revise its bond directive.⁵⁰

ARTICLE III - NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

By invoking Section 232, the United States imposed new tariffs on steel and aluminium in 2025 and sought to defend them under GATT Article XXI. These measures, however, have also been questioned for their compatibility with the National Treatment requirement contained in Article III of the GATT 1994.⁵¹ By subjecting imported steel and aluminium to tariffs of 25% to 50% while domestic “like” products remained unaffected, the United States altered the competitive conditions in favour of its own industry. WTO jurisprudence has repeatedly confirmed that even if measures are formally applied at the border, their economic effect can breach national treatment where imported products are treated less favourably than domestic ones.⁵² In *Japan-Alcoholic Beverages II*, the Appellate Body emphasised that the key question is whether imported goods are given “less favourable treatment” in terms of competitive opportunities.⁵³ Similarly, in *Korea-*

⁴⁹ Appellate Body Report, *United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties* (1 August 2008) WT/DS345/AB/R, para 173.

⁵⁰ *ibid* para 181.

⁵¹ GATT 1994 (n 5) art III.

⁵² Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef* (10 January 2001) WT/DS161/AB/R, WT/DS169/AB/R, para 135.

⁵³ World Trade Organization (WTO). 1996. *Japan-Taxes on Alcoholic Beverages: Report of the Appellate Body*. WT/DS8/AB/R, adopted 1 November 1996.

Alcoholic Beverages case, the Appellate Body underscored that any measure which modifies conditions of competition to the detriment of imports violates Article III:4.⁵⁴ The U.S. appeal to Article XXI cannot hide the fact that Section 232 tariffs are intended to protect domestic producers rather than to address actual security concerns when viewed in the context of WTO jurisprudence. The United States is using Article XXI in a way that goes beyond what it was meant to do. It considers global overcapacity and surplus trade security threats, which goes against the national treatment discipline that is nevertheless essential to the GATT framework. This makes it challenging to articulate the difference between standard economic management and serious international emergencies.

ARTICLE XI - GENERAL ELIMINATION OF QUANTITATIVE RESTRICTIONS

The implementation of Section 232 measures depicts attributes that are similar to quantitative restrictions prohibited by Article XI:1 of the GATT 1994,⁵⁵ even though they were announced as additional duties on steel and aluminium products. The sharp increase in tariffs effectively closed off significant portions of the U.S. market, leading

⁵⁴ World Trade Organization (WTO). 1999. *Korea-Taxes on Alcoholic Beverages: Report of the Appellate Body*. WT/DS75/AB/R, adopted 17 February 1999.

⁵⁵ World Trade Organization (WTO). 1994. *General Agreement on Tariffs and Trade 1994 (GATT 1994)*.

to sharp volume declines in targeted imports.⁵⁶ This restrictive effect was reinforced by the United States' reliance on negotiated "arrangements" with certain trading partners such as Brazil, Argentina and Korea, where exemptions from tariffs were conditioned upon strict quantitative limits on exports.⁵⁷ In this way, Section 232 blurred the line between tariffs and quotas, replacing scheduled tariff concessions with discretionary, country-specific import ceilings. By structuring the measure in this manner, the United States not only departed from its bound tariff commitments under Article II of the GATT 1994 but also reintroduced quantitative restrictions in a manner inconsistent with the core market-access disciplines of the multilateral trading system.⁵⁸

ARTICLE XXI - SECURITY EXCEPTIONS

Article XXI of GATT deals with security exceptions to trading obligations, mainly consisting of measures imposing disclosure requirements, security interests of a WTO Member country, etc. This article prescribes that national security will prevail upon the trade policies. This article thus provides the flexibility to WTO members to violate their binding commitments in cases of national security.

⁵⁶ World Trade Organization (WTO). 2022. *United States-Certain Measures on Steel and Aluminium Products: Report of the Panel (China)*. WT/DS544/R, circulated 9 December 2022.

⁵⁷ U.S. Trade Representative (USTR). 2018. *Proclamation 9740: Adjusting Imports of Steel into the United States; and Proclamation 9759: Adjusting Imports of Steel into the United States*.

⁵⁸ World Trade Organization (WTO). 1994. *General Agreement on Tariffs and Trade 1994* (GATT 1994).

Article XXI of the GATT states that:

Nothing in this Agreement shall be construed,

- a. to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or*
- b. to prevent any contracting party from taking any action, which it considers necessary for the protection of its essential security interests*
 - (i) relating to fissionable materials or the materials from which they are derived;*
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;*
 - (iii) taken in time of war or other emergency in international relations; or*
- c. to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.*⁵⁹

A legal debate has been raised time and again over the issue of whether this clause is *self-judging* in nature, i.e., whether a country can unilaterally determine what measures qualify as a security interest for its nation. In early WTO practice, Article XXI, GATT was seen as

⁵⁹ World Trade Organization (WTO). 1994. *General Agreement on Tariffs and Trade 1994* (GATT 1994).

largely non-justiciable; however, this thought has changed over time, with key rulings in 2019 and 2022, where WTO panels examined whether such measures could be reviewed under the dispute settlement system.

The first WTO Jurisprudence on Article XXI came in the case of Russia – *Measures Concerning Traffic in Transit* case in 2016(WT/DS512), where Russia imposed restrictions on the transit of goods from Ukraine through Russian territory to third countries (Kazakhstan, Kyrgyz Republic) after the 2014 Crimea crisis. Ukraine claimed these measures violated GATT Articles V and X (freedom of transit and transparency obligations). Russia invoked Article XXI(b)(iii) (national security exception), arguing the measures were necessary to protect its essential security interests during an “emergency in international relations” (Crimea crisis). Russia claimed Article XXI is self-judging, meaning WTO panels cannot review such measures. The panel ruled that Article XXI is not totally self-judging and that the WTO panels have jurisdiction to review whether conditions for invoking Article XXI are met⁶⁰. The phrase “emergency in international relations” refers to armed conflict or heightened tension between states, not economic disputes. The panel found Russia acted during such an emergency and in good faith, so its measures were justified under Article XXI. This case set a precedent for later disputes, including U.S.–steel/aluminium

⁶⁰ World Trade Organization (WTO). 2019. *Russia-Measures Concerning Traffic in Transit: Report of the Panel*. WT/DS512/R, adopted 26 April 2019; see also Tania Voon, *Can International Trade Law Recover? The Security Exception in WTO Law: Entering a New Era*, 113 AJIL Unbound 45, 45–50 (2019).

tariffs and the Saudi Arabia–IPR case. The panel held that any such invocation of national security or emergency concerns by a member must meet certain objective conditions, including the existence of a genuine emergency in international relations.⁶¹

In 2018, the United States imposed additional tariffs on steel (25%) and aluminium (10%) under Section 232 of the Trade Expansion Act, citing national security concerns. China challenged these measures at the WTO (DS544), arguing they violated U.S. obligations under the General Agreement on Tariffs and Trade (GATT) 1994.⁶² The WTO panel examined the U.S.–China disputes over steel and aluminium tariffs, WTO panel clarified the interpretation of Article XXI of GATT, which provides a national security exception.⁶³ The WTO panel in its finding in December 2022, observed that the U.S. tariffs breached core GATT provisions and that Article XXI is not entirely self-judging. While members may define their essential security interests, the invocation of this exception is subject to objective review. The panel emphasized that an “emergency in international relations” refers to situations such as armed conflict or severe international crises, not general economic or trade concerns. Consequently, the U.S. failed to demonstrate that its tariffs were imposed during such an emergency.

⁶¹ Bown, C. P. (2020). *US-China Trade War and the Limits of WTO Law*. Peterson Institute for International Economics.

⁶² Request for Consultations by China, *United States – Certain Measures on Steel and Aluminium Products* (5 April 2018) WT/DS544/1.

⁶³ Panel Report, *United States – Certain Measures on Steel and Aluminium Products* (n 46).

These rulings have significant legal and policy implications. Legally, they establish that Article XXI is reviewable and limit the scope for invoking national security exceptions, reinforcing that economic concerns alone do not qualify. Policy-wise, the decisions strengthen the rules-based trading system but raise enforcement challenges, given the U.S. rejection of the findings and the current paralysis of the Appellate Body. For WTO members, including India, the rulings underscore the need for careful justification of security-related trade measures and adherence to dispute settlement procedures. They also signal potential pressure for WTO reform to address security exceptions and restore the dispute settlement mechanism. These developments will likely influence future trade disputes, particularly in sectors such as technology and critical minerals, where national security arguments are increasingly invoked.

IV. CONCLUSION

This paper demonstrates that the United States' recent reciprocal tariffs raise serious legal concerns, especially under the international trade rules. While Section 232 acts as a domestic tool, its use goes far beyond what the WTO permits. The tariffs imposed under Section 232 clearly breach key GATT rules on MFN treatment, bound tariff commitments and the prohibition on quantitative restrictions and they do not meet the strict conditions for using the national-security exception in Article XXI. The tariffs imposed under IEEPA face even deeper issues. U.S. courts have ruled that IEEPA does not give the President the power to

impose tariffs and these measures also violate the United States' WTO obligations. The reciprocal tariffs, therefore, lack a lawful basis both domestically and internationally. Though the Supreme Court hearing is going on, the authors feel that the action of the USA's President on reciprocal duties under IEEPA will be declared illegal and likely to be quashed. Overall, the United States' unilateral actions under Section 232 and IEEPA show a growing gap between U.S. trade policy and the rules of the WTO system. Together, these measures reflect a sharp departure from the rules-based multilateral trading system. It is a saddening situation to note that it was the USA which pushed for a rule based transparent and predictable multilateral trading system a few decades ago and the same rules are being demolished by the USA.