

## **Legal Analysis of WTO Dispute Settlement Mechanism Application in US 19% Tariff Case Against Indonesia for Trade Justice**

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### **Abstract**

This research stems from the reciprocal and protectionist policy of increased import tariffs by the United States, which disrupts free trade that has been functioning properly and creates injustice in international trade. Especially toward Indonesia, which was also affected by this policy, where the 19% reciprocal agreement with the United States still resulted in violations of international law, as determined by the WTO. Regarding this, this study aims to provide a legal analysis of the importance of the potential application of WTO dispute resolution to the United States' 19% tariff policy in its reciprocal agreement with Indonesia in order to achieve justice in the international trading system. This research uses a normative legal research method by examining international regulations (protocols) implemented by the WTO to ensure dispute resolution and the conduct of international trade processes. The results of this study indicate that the 19% import tariff policy by the United States through its reciprocal agreement with Indonesia still violates import tariffs, the principle of good faith, and international trade monopolies. Therefore, Indonesia has the potential to resolve the dispute at the WTO by challenging the 19% tariff policy. This research recommends that a country, particularly Indonesia in this case, pursue formal dispute resolution within the WTO, including retaliation, as well as diplomatic approaches to find common ground (a win-win solution) for both parties.

## **1. Introduction**

A state is one of the organizational entities that consists of the social groups living within it. As a social entity or human organization that regulates the order and safety of the community within it. The state plays an important role in the survival of the people within it.<sup>1</sup> In this regard, the state plays an important role in meeting all the life needs of the people within it, including by establishing international relations (both bilateral and multilateral) with other countries to meet domestic needs. The state's proficiency in conducting international relations has a significant impact on the sustainability of both the state itself and other countries, necessitating specific regulations to manage and control these relationships to prevent mutual harm.<sup>2</sup> In this regard, conducting international relations, including international trade, requires international regulations that can be adopted by two or more countries with different jurisdictional backgrounds or purposes for engaging in international relations, such as international trade.

<sup>1</sup> David Doresta Wijaya and Nurul Mubin, "Teori Kedaulatan Negara," *WISSEN : Jurnal Ilmu Sosial Dan Humaniora* 2, no. 4 (August 20, 2024): 114–21, <https://doi.org/10.62383/wissen.v2i4.332>.

<sup>2</sup> Salim Siregar et al., "Eksistensi Hukum Internasional Dalam Sistem Perundang-Undangan Nasional Indonesia," *Innovative: Journal Of Social Science Research* 4, no. 4 (2024): 2852–68, <https://jinnovative.org/index.php/Innovative/article/view/12770>.

In international law itself, various mechanisms are implemented to consider the rights and circumstances of a state involved in international relations, including the establishment of international organizations related to trade that bring together member states from all over the world to conduct international trade. The World Trade Organization (WTO) is a global trade organization that aims to facilitate free and fair trade among member countries. The proliferation of free trade between countries necessitates an international platform for nations to facilitate these relationships, including resolving disputes.<sup>3</sup> International organizations with various conventions or regulations within them serve as a platform for member states to conduct international relations, including being a reference for dispute resolution.

In today's era of globalization, relations between countries are becoming increasingly strong, especially in conducting trade activities. The framework of international free trade brings about many significant impacts on the global economy. Free trade allows countries engaged in trade to have freedom of action.<sup>4</sup> Therefore, international trade-related organizations such as the WTO are working to act as trade barriers in order to create a free trade climate for member countries that is fair and considers international legal morals such as humanitarian issues (human trafficking), the environment (climate change), and various other economic policies.<sup>5</sup> WTO member countries like Indonesia and the United States also have the same obligation, which is to comply with the free trade standard regulations set by the WTO. As WTO member countries, both Indonesia and the United States have quite strategic trade relations in terms of both value and market access. In addition, the United States is also a trading partner for Indonesia, especially for manufactured products, textiles, and various agricultural commodities.

Essentially, WTO membership governs international relations multilaterally among its members. However, since the second term of President Donald J. Trump's administration, the United States has made changes to its economic policy by aggressively implementing bilateral international trade relations, which is quite contrary to the general principles of the WTO (India Times, 2025).<sup>6</sup> This policy is considered detrimental to many countries around the world due to the tariff provisions imposed by the United States. This policy of raising tariffs (reciprocal tariffs) against the United States' trading partners promotes the "America First" agenda.<sup>7</sup> This policy is a form of high import tariff increases on products from trading partners,

<sup>3</sup> Addnan Nur Nasution et al., "Trending : Jurnal Manajemen Dan Ekonomi Volume 3 Nomor 2, Tahun 2025 Peran Organisasi Perdagangan Dunia (WTO) Dalam Menjaga Keseimbangan Ekonomi Indonesia," *Jurnal Manajemen Dan Ekonomi* 3, no. 2 (2022): 13–22.

<sup>4</sup> Anisa Dwi Murti, Hafivah Sheviyani, and Hany Sekar Desiree, "As-Syirkah : Islamic Economics & Finacial Journal," *As-Syirkah: Islamic Economics & Finacial Journal* 2, no. 2 (2023): 153–61, <https://doi.org/10.56672/assyirkah.v3i2.153>.

<sup>5</sup> Muhammad Wendra and Andri Sutrisno, "Legal Protection of Refugee Children Viewed from the United Nations High Commissioner for Refugees (Case Study of Human Rights of Children in Palestine)," *Reformasi Hukum* 28, no. 3 (2023): 281–94, <https://doi.org/https://doi.org/10.46257/jrh.v28i3.1080>.

<sup>6</sup> India Times, "US Tariffs Have Violated WTO Norms: Experts," *The Economic Times*, 2025, <https://economictimes.indiatimes.com/News/International/Global-Trends/Us-Tariffs-Have-ViolatedWto-Norms-Experts/ArticleShow/119951739.Cms.>

<sup>7</sup> Federal Register, "Reciprocal Trade and Tariffs," *Federal Register*, February 19, 2025, <https://www.federalregister.gov/Documents/2025/02/19/2025-02872/Reciprocal-Trade-and-Tariffs.>

including Indonesia. The purpose of these import tariff increases is to revive the domestic manufacturing sector in the United States itself. However, this policy raises issues that not only affect trading partner countries but also impact the global trading system that has been built on the principles of global market liberalization and openness. Additionally, this policy also has implications for international legal consequences, particularly within the WTO framework. This reciprocal tariff policy significantly impacts developing countries like Indonesia.

As a result of these high import tariffs, the competitiveness of a country's products can be reduced. This policy will only benefit developed countries or those with large-scale economic capabilities. Developing countries or other countries with small economies will not have the opportunity due to the imposition of high import tariffs, while the imported products cannot offset the cost of these tariffs. Such practices are clearly prohibited in the WTO because they are considered unfair trade practices that can disrupt healthy competition in the international trading system.<sup>8</sup> Although the United States' policy of increasing import tariffs is being implemented bilaterally, it will have a multilateral impact on its various trading partner countries and will affect the global economic climate.

Reciprocal tariff policies violate international legal provisions within the WTO. These violations relate to bound tariffs as stipulated in Article 2 of the General Agreement on Tariffs and Trade (GATT) 1994, violations of the non-discrimination principle (Most-Favoured-Nation/MFN) as stipulated in Article 1 of GATT 1994, and violations of Article 21 of GATT 1994 regarding national security justifications, claiming that these tariff policies are necessary for national security, even tho this claim is inconsistent with the original purpose of the article, which states that national security is only invoked in extraordinary emergency situations.

As one of the developing countries with significant access to global markets, Indonesia has an interest in maintaining international market stability, particularly with trading partners like the United States. However, since the United States' policy of increasing import tariffs, which initially started at 32% and then decreased to 19% thru a reciprocal agreement or Joint Statement on Framework for United States-Indonesia Agreement on Reciprocal Trade, has caused serious problems for trade relations between the two countries. As a result of this policy, Indonesia could potentially suffer significant economic losses, especially in the export sector, which is one of the backbones of the national economy. In response to this, Indonesia agreed with the United States to engage in reciprocal cooperation thru the Joint Statement on the Framework for the United States-Indonesia Agreement on Reciprocal Trade. However, the trade agreement remained a trade monopoly of the United States against Indonesia.<sup>9</sup>

In this case, as a WTO member country with policies that contradict WTO principles and cause problems, the United States can be subject to dispute resolution by countries experiencing economic monopolies by the United States. This policy implemented by the United States is not merely an economic policy, but also one that can influence the structural

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<sup>8</sup> Muhammad Sood, Mahmuluddin, and Zulkarnaen, "Pengaturan Antidumping Dalam Perdagangan Internasional Dalam Rangka Melindungi Produk Industri Dalam Negeri," *Jurnal Kompilasi Hukum* 9, no. 1 (2024): 1–15, <https://doi.org/https://doi.org/10.29303/jkh.v9i1.159>.

<sup>9</sup> Andri Sutrisno, "Implikasi Hukum Kebijakan Tarif Era Trump Terhadap Indonesia: Reposisi Tugas Pemerintah Dalam Pelayanan Publik," *Iblam Law Review* 5, no. 2 (2025): 69–77, <https://doi.org/10.52249/ilr.v5i2.612>.

framework of international law.<sup>10</sup> As a WTO member country, every nation, including the United States and Indonesia, is bound by the provisions (agreements) of multilateral trade within the WTO, including upholding its principles. This policy can be considered a violation of the principles contained in the WTO, which could also lead to legal conflicts in the global arena.

Indonesia, in this case, acting as one of the international subjects and also a sovereign state, certainly has goals in conducting international trade relations. The prosecution against the United States' tariff policy is based on Indonesia's authority as a sovereign nation and on the principle of state sovereignty. Regarding this principle, Indonesia, as stated in Article 1 Paragraph (2) of the 1945 Constitution, which according to this article means that all foreign policy must be based on the will of the people and the Constitution, resulting in international relations products, including conducting international trade based on national goals. Furthermore, regarding the case of import tariff policies based on the principle of state sovereignty, Indonesia holds an important position in the economic field, especially in exporting products from Indonesian soil. This is in accordance with the provisions of Article 33 of the 1945 Constitution, which states that the purpose of implementing exports is to meet the needs of the country, economic independence, and the prosperity of the people (the state), and not the interests of other parties or countries. Another article related to this principle is the rule of law possessed by international legal subjects such as Indonesia. Article 1 Paragraph (3) of the 1945 Constitution states that Indonesia is a state of law that also has legal sovereignty, including ensuring legal certainty regarding the prosecution carried out at the WTO for the case of the tariff increase policy implemented by the United States.<sup>11</sup>

Therefore, Indonesia, as a WTO member state and a subject of international law, has the right to object to policies deemed to violate these principles of international law thru the WTO dispute settlement mechanism known as the Dispute Settlement Understanding. This dispute settlement instrument is an important tool for resolving this conflict fairly, bindingly, and transparently within the framework of international trade law.<sup>12</sup> Therefore, this research aims to provide a legal analysis and the potential application of WTO dispute resolution for the United States' tariff increase policy thru a reciprocal agreement with Indonesia called the Joint Statement on Framework for United States-Indonesia Agreement on Reciprocal Trade.

The abuse of state power in implementing reciprocal policies toward international trade, leading to various actions that violate WTO provisions and particularly disrupt free trade, can be reviewed and examined using the Foreign Policy Countries Theory. This can happen because the state is considered a social group with rational attitudes, just as the state has similarities to society or individual members of society. This theory assumes that the state can engage in foreign relations or foreign policy actions just as individual members of society

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<sup>10</sup> Reza Suriansha, "Dampak Tarif Impor Trump Terhadap Harga Pedagangan Internasional," *Journal of Economics and Business UBS* 14, no. 3 (2025): 239–48, <https://doi.org/10.52644/joeb.v14i3.2646>.

<sup>11</sup> Zainudin Hasan et al., "Konstitusi Sebagai Dasar Hukum Dalam Pembangunan Sistem Hukum Nasional," *JIMA: Jurnal Ilmiah Mahasiswa Research Findings, Literature Review, and Systematic Review* 2, no. 1 (2024): 44–54, <https://doi.org/https://doi.org/10.31539/jima.v2i1.745>.

<sup>12</sup> Rima Diah Pramudyawati, "Retaliasi Sebagai Opsi Alat Penegakan Hukum Penyelesaian Sengketa Perdagangan Internasional Akibat Krisis Di Badan Banding World Trade Organization," *Unes Law Review* 6, no. 3 (2024): 8394–8411, <https://doi.org/https://doi.org/10.31933/unesrev.v6i3.1748>.



within it do when socializing with other societies. The state is considered an individual that can conduct relations with other states in the same way that individuals do. This includes negotiating, international relations, and making decisions in their own self-interest. This theory was introduced by Graham T. Allison because he assumed that states can be considered individuals, actors, or agents who, in their relations with other states or internationally, strive to maximize their goals in international relations.<sup>13</sup> This view focuses on the pattern of international relations in decision-making, which is based on the interests of the countries involved in international relations.

Legal certainty is also an important consensus regarding the implementation of legal instruments, especially international law, in regulating and controlling various policies that cross national borders. Legal certainty is an important reference for legal protection and the fulfillment of rights and obligations for a country in entering into agreements and conducting prosecutions. According to Gustav Radbruch, legal certainty provides an opportunity for parties to pursue legal action for injustice or discrepancies in actions taken by another party against them as legal subjects.<sup>14</sup> In this case, Indonesia, as a country, also holds the same position as a subject of international law in pursuing claims against other parties, such as the United States, regarding the reciprocal agreement on these protectionist policies thru the Dispute Settlement Understanding (WTO dispute resolution rules).

Previous research, such as "*Penyelesaian Sengketa Dagang Internasional Atas Kebijakan Report Palm Oil Oleh Uni Eropa Terhadap Indonesia Ditinjau Dari World Trade Organization*" (Intan et al., 2022)<sup>15</sup>, shows that resolving disputes thru the WTO's Dispute Settlement Understanding is an important reference in international law regarding the resolution of global trade disputes and plays a significant role in reducing international trade monopolies by a single country. Although the action did not have a significant impact or effect on the country taking the action or violating WTO provisions, it did provide the complaining country with the minimal possible effect to engage in further legal or bilateral dialog with the country being complained against within the Dispute Settlement Understanding. Research on "*Upaya Penerapan Retaliasi Dalam Penyelesaian Sengketa perdagangan Internasional Melalui World Trade Organization (WTO)*" (Puspita, 2017)<sup>16</sup> presents the potential for pursuing or resolving disputes within the WTO, namely the potential for retaliation, which aims to restore balance (rebalancing) rather than simply punish. The study mentions that the potential for dispute resolution in the WTO can

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<sup>13</sup> Sulistia Wargi, "Kebijakan Luar Negeri Indonesia Di Era Jokowi Melalui Diplomasi Ekonomi Dalam Upaya Untuk Menguasai Pasar Halal Dunia," *Indonesian Journal of International Relations* 5, no. 2 (2021): 320–41, <https://doi.org/10.32787/ijir.v5i2.228>.

<sup>14</sup> Dino Rizka Afdhali and Taufiqurrohman Syahuri, "Idealitas Penegakkan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum," *Collegium Studiosum Journal* 6, no. 2 (2023): 2023, <https://doi.org/https://doi.org/10.56301/csj.v6i2.1078>.

<sup>15</sup> Luh Intan Purnama Dewi, I Made Yudana, and Dewa Gede Sudika Mangku, "Penyelesaian Sengketa Dagang Internasional Atas Kebijakan Report Palm Oil Oleh Uni Eropa Terhadap Indonesia Ditinjau Dari World Trade Organization," *Jurnal Komunitas Yustisia* 5, no. 2 (2022): 102–19, <https://doi.org/10.23887/jatayu.v5i2.51453>.

<sup>16</sup> Lona Puspita, "Upaya Penerapan Retaliasi Dalam Penyelesaian Sengketa Perdagangan Internasional Melalui World Trade Organization (WTO)," *Jurnal Normative* 5, no. 2 (2017): 53–63, <https://ojs.unitas-pdg.ac.id/index.php/normatif/article/view/228/113>.

also lead to potential retaliation. And research by (Solikhin, 2023)<sup>17</sup> on “*Sistem Penyelesaian Sengketa Dagang Internasional dalam Kerangka WTO: Mekanisme, Efektivitas Pelaksanaan Putusan dan Tindakan Retaliasi sebagai Upaya Pemulihan Hak*” only shows a general analysis of dispute settlement within the WTO and how the dispute settlement process is implemented. This research specifically examines the 19% tariff policy implemented thru the reciprocal agreement between the United States and Indonesia. The previous research only focused on formal compliance with WTO regulations, without examining the aspect of fairness for developing countries like Indonesia, especially regarding protectionist bilateral agreements that create injustice within the scope and legal framework of international trade, as well as violations of the legal interests of trading partner countries affected by such policies, particularly Indonesia. Therefore, this study also aims to discuss how the legal balance of the United States' 19% tariff policy toward Indonesia in the Joint Statement relates to the provisions of GATT 1994 and WTO principles, and how the legal potential is in applying the WTO dispute settlement mechanism to this tariff policy.

## 2. Methods

The research method used in this study is normative legal research, which is a legal research method used to analyze and understand various legal regulations, including various rules or provisions in international law conventions adopted by the WTO, such as the General Agreement on Tariffs and Trade (GATT) 1994, the Vienna Convention on the Law of Treaties (VCLT), dispute settlement provisions within the WTO such as the Understanding on Rules and Procedures Governing the Settlement of Disputes or the Dispute Settlement Understanding (DSU), as well as the reciprocal agreement between Indonesia and the United States thru the Joint Statement on Framework for United States–Indonesia Agreement on Reciprocal Trade. The normative research method focuses solely on the study of law that is normative in nature, which in this study includes regulations or provisions in international law related to the research, legal documents, and other legal literature, such as reliable scientific works. Therefore, in conducting this research, a descriptive approach is also used in presenting the data and performing the analysis. This research also obtained data through a literature study reviewed from various library sources or studies in the form of articles, journals, books, and other written information, intending to strengthen the data in outlining the arguments in this research.

The approach used in this study is a statute approach, which involves examining regulations or laws related to the issue being discussed, such as regulations or principles adopted within the WTO. Additionally, another approach used is a conceptual approach (conceptual approach) which involves studying various perspectives or concepts related to the issue being discussed. The conceptual approach is used to refine the application of theories, principles, and concepts in resolving issues surrounding international trade violations, such as the WTO's response to the United States' tariff increase policy, including the use of free trade principles, anti-discrimination in international trade, the principle of state sovereignty,

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<sup>17</sup> Riyadus Solikhin, “Sistem Penyelesaian Sengketa Dagang Internasional Dalam Kerangka WTO: Mekanisme, Efektivitas Pelaksanaan Putusan Dan Tindakan Retaliasi Sebagai Upaya Pemulihan Hak,” *Padjadjaran Law Review* 11, no. 1 (2023): 116–29, <https://doi.org/10.56895/plr.v11i1.1237>.

and violations of international law by WTO members who implement policies that violate WTO principles, such as the principle of good faith and international trade monopolies.<sup>18</sup>

### 3. Results and Discussion

#### 3.1. Reassessing the United States' 19% Tariff Policy on Indonesia: Legal Consistency and Trade Justice under GATT 1994 and WTO Principles

The tariff policy implemented by the United States is not only diplomatically applicable between the two countries, namely the United States and its trading partners. This policy also affects many countries around the world, especially the United States' trading partners. Therefore, although the policy is implemented bilaterally, it has a multilateral impression. The multilateral nature of the policy can be seen from the fact that the tariffs imposed by the United States on almost all countries affected by the import tariff increase are applied in the same manner.<sup>19</sup>

The General Agreement on Tariffs and Trade (GATT) was established as a regulator of international trade, particularly in free trade, to ensure that such trade activities not only run smoothly and well but are also mutually beneficial and equitable. The formation of GATT is intended as a subsidiary agreement on international trade, subject to international law and trade-related international organizations such as the WTO. Its formation aims to eliminate tariff barriers that are perceived as detrimental to parties engaged in free trade.<sup>20</sup> The United States' reduction of tariffs on Indonesian goods from 32% to 19% through a reciprocal agreement in the Joint Statement on Framework for United States-Indonesia Agreement on Reciprocal Trade raises serious concerns about how trade policy aligns with multilateral obligations under GATT 1994 and the WTO's international trade legal framework.

US tariff policies toward Indonesia have caused many disputes, especially domestically. The 19% tariff policy for Indonesia, which has been lowered from the original 32%, is a diplomatic struggle that is still quite detrimental to Indonesia. This can happen because the agreement in the reciprocal treaty between Indonesia and the United States is considered detrimental to Indonesia itself. This is because the agreement stipulates that Indonesia must accept a tariff of 19% for its products entering the United States market, while the United States will not be charged any tariffs by Indonesia for 99% of its products. Additionally, the agreement stipulates that Indonesia is required to purchase various products from the United States, remove restrictions on access to industrial export commodities such as critical minerals to the United States, and that Indonesia must transfer the personal data of Indonesian citizens to the United States.<sup>21</sup>

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<sup>18</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, 3rd ed. (Jakarta: Kencana Prenada Media Group, 2007).

<sup>19</sup> Putu George and Matthew Simbolon, "Hasil Review Trade Policy Review Body WTO Sebagai Unilateral Act of an International Organization General Council, Dispute Settlement Body (DSB), Dan Trade Policy Review Body Article IV Paragraph 4 WTO" 6, no. 2 (2023): 3-6, <https://doi.org/https://doi.org/10.26623/julr.v6i2.6981>.

<sup>20</sup> A.D. Agung Sulisty, "Keutamaan World Trade Organization Atas Regional Trade Agreements Dalam Perdagangan Internasional," *Justitia et Pax* 37, no. 2 (2021): 215-34, <https://doi.org/10.24002/jep.v37i2.4381>.

<sup>21</sup> The White House, "JOINT STATEMENT ON FRAMEWORK FOR UNITED STATES-INDONESIA AGREEMENT ON RECIPROCAL TRADE," July 22, 2025, <https://www.whitehouse.gov/briefingsstatements/2025/07/joint-statement-on-framework-for-united-states-indonesia-agreement-onreciprocal-trade/>.

The reciprocal tariffs, as stated in the joint statement between Indonesia and the United States, are considered to cause more harm to Indonesia, especially within the inherent framework of the WTO and international trade justice, both substantively, correctively, and procedurally. This 19% tariff policy is legally consistent with both the General Agreement on Tariffs and Trade (GATT) and WTO principles, as stated in:

1. Article 1 of GATT 1994 Regarding the Principle of Non-Discrimination or Most-Favoured-Nation (MFN) when viewed from the formal framework of Free Trade Areas (FTAs). This principle qualifies against the United States' policy regarding tariff measures. Essentially, the FTA framework provides space for diplomacy and bilateralism in free trade within the WTO. Parties are considered to be complying with the WTO based on mutual agreement within the FTA framework, as stipulated in Article XXIV of GATT 1994. The principle in an FTA allows each WTO member to engage in international trade cooperation with member countries based on their respective policies and obligations, as outlined in the agreed-upon joint statement.<sup>22</sup> Regarding this, the United States' tariff policy toward Indonesia meets the requirements as outlined in the WTO principles for this FTA. Therefore, the United States' tariff policy of 19% imposed on Indonesia can meet the principle of non-discrimination because this tariff policy only applies to Indonesia and the United States thru reciprocal trade agreed upon by both countries.<sup>23</sup>

This reciprocal nature became a commitment or foundation, indicating that from the beginning, Indonesia accepted the agreed-upon form of the treaty. Therefore, under international law, this activity does not constitute a violation within the WTO because it is part of a legitimate bilateral agreement as stipulated in Article 24 of GATT 1994. However, when viewed in the form of a third-party state (Non-Violation Nullification or Impairment), the reciprocal tariff policy implemented by the United States can also violate the anti-discrimination principle in GATT, even tho the import tariff reduction agreement is conducted bilaterally, because some countries receive slightly lower import tariffs compared to others (third-party countries). This inconsistency could trigger a lawsuit by a third-party state that feels it is being treated differently from other states in a discriminatory manner thru bound tariff policies.<sup>24</sup> The practical implication is that if the United States grants preferential tariffs to certain countries for similar products, then Indonesia is entitled to the same treatment, except for valid exceptions. This raises the question of whether there is a clear quantitative definition of what percentage of trade is considered substantially fair. The practical implications for the value of justice in international trade law

<sup>22</sup> Thierry Mayer, Hillel Rapoport, and Camilo Umana Dajud, "Free Trade Agreements and the Movement of Business People," *Journal of Economic Geography* 25, no. 1 (2025): 93–126, <https://doi.org/https://doi.org/10.1093/jeg/lbae046>.

<sup>23</sup> Fika Aulia Anfasa, "Resiprositas Indonesia Dan Australia Dalam Kerja Sama Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) Periode Tahun 2020-2021," *Bussiness Law Binus* 7, no. 2 (2023): 33–48, <https://doi.org/https://doi.org/10.20527/ecoplan.v6i1.622>.

<sup>24</sup> Dony Yusra Pebrianto, "Implikasi Prinsip Most Favoured Nation Terhadap Pengaturan Tarif Impor Di Indonesia," *Wajah Hukum* 2, no. 1 (2018): 29, <https://doi.org/10.33087/wjh.v2i1.25>.



indicate Indonesia's weak bargaining position as a form of procedural justice in relation to the reciprocal agreement.

2. Article 2 of GATT 1994 Regarding Tariff Bindings. Under the provisions of Article 2 of GATT 1994, each country has a bound tariff within the WTO to ensure that no WTO member violates or disrupts free trade because protectionist tariff policies can harm many parties. The 19% tariff policy against Indonesia is technically for some products (see table below) and does not violate the provisions of Article 2 of the GATT, which is adopted in the WTO regarding bound tariffs. In the basic rules of the WTO itself, a country is not allowed to apply tariffs higher than the bound tariff limit they have agreed upon (Yohana, 2025).<sup>25</sup> Additionally, there are exceptions to this if both countries agree to implement the agreed-upon tariff, as the 19% tariff policy for Indonesia is still within permissible limits when compared to the provisions outlined in Article 24 of the GATT 1994 FTA principles. The 19% tariff imposed on Indonesia by the United States, as stipulated in Article 2 of GATT 1994, is still within permissible limits when referring to the principles of an FTA. However, there is potential for normative violations under WTO provisions and violations of economic substantive justice for some Indonesian products. This 19% tariff policy is highly dependent on the specific type of product affected by the tariff increase, thus violating the bound tariffs determined within the WTO. Therefore, it requires specific calculations and divisions to ensure that this 19% tariff policy either violates or complies with the provisions of Article 2 of GATT 1994. Therefore, an analysis by product category is needed to ensure that the bound tariff is not violated.

**Table 1:** Analysis of US Bound Tariffs in the WTO Schedule for Indonesia.

Product Category	HS Code	Bound Rate USA (%)	Status regarding the 19% tariff	Indonesia's Export Value	Description
<b>Textiles &amp; Ready-to-Wear</b>					
Cotton thread	5205.11	8-12%	Violation	\$245M	Action is needed
Shirt	6205.20	20-32%	Suitable	\$1.2B	No action needed
Cotton woven fabric	5208.11	10-15%	Violation	\$892M	Action is needed
T-shirt	6109.10	16-25%	Suitable	\$756M	No action needed
<b>Footwear &amp; Fashion Accessories</b>					
Leather shoes	6403.51	8-20%	Suitable	\$567M	No action needed
Sports shoes	6404.11	15-35%	Suitable	\$1.1B	No action needed
Sandal	6402.91	15-25%	Suitable	\$289M	No action needed

<sup>25</sup> Yohana Yohana, "Legalitas Tarif Retaliasi Tiongkok Dalam Perang Dagang Terhadap Amerika Serikat," *Innovative: Journal Of Social Science Research* 5, no. 3 (2025): 6485-98, <https://doi.org/10.31004/innovative.v5i3.19861>.

Bags & wallets	4202.22	10-20%	Suitable	\$234M	No action needed
Jewelry	7117.19	5-15%	Violation	\$234M	Action is needed
Watch	9102.21	8-18%	Violation	\$67M	Action is needed

#### Furniture & Wood Crafts

Table	9403.60	0-8%	Violation	\$456M	Action is needed
Chairs & Sofas	9401.61	0-8%	Violation	\$623M	Action is needed
Wardrobes & Cabinets	9403.50	0-8%	Violation	\$367M	Action is needed
Bamboo Crafts	4602.12	3-12%	Violation	\$89M	Action is needed

#### Processed Products & Chemicals

Cosmetics/Skincare	3304.99	0-15%	Violation	\$189M	Action is needed
Rubber Products	4016.99	2-12%	Violation	\$345M	Action is needed

Source: USA Schedule on WTO <sup>26 27 25 28</sup>

Although the policy is consistent with bound tariffs for some products as stipulated in Article 2 of GATT 1994, it also violates the same provision for other products. Based on the product data in the WTO-US schedule, as shown in the table above, the 19% policy on Indonesian import tariffs by the United States creates a structural product gap that disadvantages developing countries like Indonesia. This is because the agreement on the joint statement is a bilateral waiver of Article 24 of GATT 1994 for tariff-free regulation, but the agreement is one-sided and detrimental to Indonesia.

- Regarding transparency as stated in Article 20 of GATT 1994 concerning the joint statement in the Joint Statement on the Framework for the United States-Indonesia Agreement on Reciprocal Trade, this policy has met the transparency requirements of the agreement, especially since the substance of the reciprocal agreement states that the agreement is subject to WTO prohibitions on trade in environmentally damaging products. One of the provisions of the reciprocal agreement states that both countries agree to conduct international trade under WTO regulations, particularly regarding trade products that violate international environmental law. The WTO also adopted provisions related to the prohibition of environmentally damaging trade products. This is in accordance with the provisions of Article 20 of GATT regarding General Exceptions, such as the protection of life in Article 20(b)

<sup>26</sup> WTO, *World Tariff Profiles 2024*, WTO ILibrary, 2nd ed. (Geneva: WTO, UNCTAD, ITC, 2024), <https://www.wto-ilibrary.org/content/books/9789287076519>.

<sup>27</sup> Trade.gov, "Understanding HS Codes and the Schedule B," International Trade Administration, 2021, <https://www.trade.gov/harmonized-system-hs-codes>. <sup>25</sup> WTO, "Get Tariff Data," World Trade Organization, 2025, [https://www.wto.org/English/Tratop\\_e/Tariffs\\_e/Tariff\\_data\\_e.Htm](https://www.wto.org/English/Tratop_e/Tariffs_e/Tariff_data_e.Htm).

<sup>28</sup> Seair Exim Solutions, "HS Code List of Indonesia," 2008, <https://www.seair.co.in/HsCodes/Indonesia.Aspix>.

and the conservation of natural resources in Article 20(g). In the reciprocal agreement between the United States and Indonesia, there is a similar provision regarding environmental protection that reads:

*"Indonesia commits to adopt and maintain high levels of environmental protection and to effectively enforce its environmental laws, including by taking measures to improve forest sector governance and combat trade in illegally harvested forest products; encourage a more resource efficient economy; accept and fully implement the WTO Agreement on Fisheries Subsidies; and combat illegal, unreported, and unregulated fishing and illegal wildlife trade."*

Transparency in this case is only intended to meet the formal elements of the WTO, but trade justice is questionable due to the imbalance, especially for Indonesia, which faces a 19% tariff on major exports like textiles and furniture, while the US gains tariff-free access, potentially weakening Indonesia's domestic industry and trade deficit. This raises fairness issues for developing countries, where Indonesia's concessions (such as mandatory purchases of chemical products) are more burdensome than the benefits gained from a reciprocal agreement that is supposed to be balanced for all parties.

The impact is that the joint statement violates the legal provisions within the WTO, ultimately leading to a breach of bound tariffs as outlined in Article 2 of GATT 1994. The United States unilaterally raised tariffs, which were implemented outside of WTO regulations. This policy violates the principle of Good Faith as stated in Article 26 of the Vienna Convention on the Law of Treaties (VCLT), which also affects the agreement's principles regarding Indonesia, as stated in the Joint Statement on the Framework for the United States–Indonesia Agreement on Reciprocal Trade, which is biased against Indonesia.<sup>29</sup> This situation impacts Indonesia's national security, relating to the country's goals and the sovereignty of managing natural resources as stipulated in Article 33 of the 1945 Constitution, which serves as the constitutional foundation and direction for national policy goals.

The US's violation of bound tariffs on Indonesian labor-intensive products, as stated in the joint statement, goes beyond a technical WTO violation and touches upon deep social justice dimensions because it attacks the livelihoods of millions of workers and SMEs in developing countries like Indonesia. This situation represents a spatial imbalance in international relations, which is skewed when developed countries like the United States implement reciprocal policies that only benefit one side. This policy exacerbates global inequality, with developing countries like Indonesia bearing a disproportionate burden that threatens the social and economic rights of workers in the furniture and footwear sectors reliant on US exports.

Violation of Article 2 of GATT is not merely a legal issue, but a threat to the right to decent work as stated in ILO Convention No. 122.<sup>30</sup> This can happen because a decline in labor-

<sup>29</sup> Rizky Satria Dimlana et al., "Implikasi Perjanjian Perdagangan Bebas Terhadap Prinsip-Prinsip Hukum Perdata Internasional: Analisis Mendalam Tentang Pada Pemberlakuan Penyelesaian Sengketa Internasional," *Jaksa: Jurnal Kajian Ilmu Hukum Dan Politik* 2, no. 2 (2024): 138–52, <https://doi.org/https://doi.org/10.51903/jaksa.v2i2.1652>.

<sup>30</sup> Zahra Yusifli and Colin Fenwick, "Workers Rights and Human Rights: Toward a New Fundamental Principle?," in *Globalisation and Labour Standards*, ed. Kimberly A. Elliott (Elgar Online, 2022), 107–25, <https://doi.org/https://doi.org/10.4337/9781788977371>.

intensive exports leads to job losses for workers and weakens domestic wealth redistribution, thus disrupting national security for developing countries with weak bargaining power. The principle of fairness in the WTO (Enabling Clause) failed to be upheld, as reciprocal tariffs ignored the asymmetry of bargaining power, forcing Indonesia to make concessions on US purchases that actually channeled implicit subsidies to US corporations, rather than protecting workers.<sup>31</sup> This dimension of social justice demands a holistic interpretation of the WTO that integrates human rights. Academically, this case strengthens the argument for WTO reform to make the principle of social justice the main criterion, not just economic efficiency based on freedom of contract in international trade as stated in Article 24 of GATT 1994 regarding FTAs. This represents a protectionist policy loophole for global north countries, which have a stronger bargaining position than global south countries, resulting in an international trade monopoly that impacts social, economic, and development injustice for developing countries.

Referring to the protectionist policies implemented by the United States, both specifically for Indonesia and generally toward WTO members or its trading partner countries, these policies must essentially adhere to the values of justice upheld in international law. Developing countries like Indonesia have the Right to Development, which was officially recognized in the 1986 UN Declaration on the Right to Development. This right affirms that development is not merely economic growth (GDP), but a comprehensive process encompassing economic, social, cultural, and political dimensions thru international trade.<sup>32</sup> Therefore, in international law, social justice is realized thru the state's obligation to fulfill the basic rights of its citizens, as stipulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Therefore, it demands that the global financial and trading system not only benefit large capital owners (the Global North), but also provide space for the Global South to catch up and meet its domestic needs and rights as a state party to trade agreements.

In this case, another critical dimension views the violation of Bound Tariffs merely as a technical breach of trade law, which, as in the WTO, is a form of reductionism that ignores the sociological realities in developing countries. In WTO law, bound tariffs are the maximum import duties a country has promised. Exceeding this limit is considered a violation of Article 2 of GATT. However, if the affected product is labor-intensive as shown in the table above, the legal dimension can shift from a mere tariff dispute to an issue of social justice and economic human rights.

Labor-intensive products are sectors that absorb a large number of low-skilled workers. In the Global South, this sector is not just a trade commodity, but an instrument for wealth distribution. When a developing country raises tariffs above WTO limits to protect its textile industry, the WTO views this as a market distortion.<sup>33</sup> However, from a social justice

<sup>31</sup> Bayu Krisnamurti and Dinda Ayu Hapsari, "Global Economic Inequality: A Review of International Law on the Mechanism and Fairness of Free Trade Regulation," *Responsive Law Journal* 1, no. 2 (2024): 15–20, <https://doi.org/10.59923/rj.v1i2.267>.

<sup>32</sup> Clara Weinhardt and Till Schöfer, "Differential Treatment for Developing Countries in the WTO: The Unmaking of the North–South Distinction in a Multipolar World," *Third World Quarterly* 43, no. 1 (2022): 74–93, <https://doi.org/10.1080/01436597.2021.1992271>.

<sup>33</sup> Irene Menéndez González, Erica Owen, and Stefanie Walter, "Low-Skill Products by High-Skill Workers: The Distributive Effects of Trade in Emerging and Developing Countries," *Comparative Political Studies* 56, no. 11 (January 20, 2023): 1724–59, <https://doi.org/10.1177/00104140231152800>.



perspective, this is an effort to prevent mass unemployment and systemic poverty in a developing country. The same assumption suggests that maintaining tariffs on labor-intensive products is one way developing countries can ensure that economic growth is not only enjoyed by the capital-owning elite, but also by laborers and factory workers.

In this case, tension arises between Corrective Justice (addressing inequality) and the Rule of Law (predictability), which is upheld by the WTO. The WTO demands stable bound tariffs so that global companies have certainty. If trade tariffs fluctuate, it will be hindered. This standard of "certainty" often benefits multinational corporations from developed countries, while ignoring the vulnerability of workers in developing countries. Tariff violations on export products are an emergency response to the surge in imports that threatens the livelihoods of millions of people. Here, the values of humanity and justice should take precedence over the value of certainty in commercial contracts. Including toward Indonesia thru a reciprocal agreement, this shows that some of the agreement's contents are detrimental to Indonesia because it has a weak bargaining position as a country in the Global South. Indonesia's position as a recipient of tariff policy reductions is only 19%, while the United States enjoys tariff-free imports from Indonesia at 99%. Indonesia is required to purchase various American products at high prices, remove restrictions on access to industrial export commodities such as critical minerals to the United States, and transfer the personal data of Indonesian citizens to the United States. This imbalance in bargaining power is one of the reasons for Indonesia's weak deduction and position regarding the US import tariff increase policy, and it shows that the policy does not have a balanced point of convergence with normative compliance within the WTO and violates global justice values.

### **3.2. The Role of WTO Dispute Settlement Mechanisms in Addressing the United States' Tariff Policy**

The 19% tariff policy imposed by the United States on Indonesia, which was later formalized in the reciprocal agreement "Joint Statement on Framework for United States-Indonesia Agreement on Reciprocal Trade," demonstrates a significant change in US import tariff policy, from the initial 32% to 19%. This tariff increase policy has become an international issue, considering it was implemented by raising import tariffs above the tariff limits or bound tariffs set by the United States in the WTO. This tariff protectionism policy is considered to violate many provisions of international trade law, which has historically adhered to the principle of free trade.<sup>34</sup> The policy game played by the United States is considered detrimental to many WTO member countries, especially its own trading partners. As is known, the United States currently holds the largest trading power in the world. The policies implemented could disrupt the flow of international trade, potentially violating international law and leading to international trade monopolies that could create an unfair free trade environment among developing countries.<sup>35</sup>

<sup>34</sup> Khairani Alawiyah Matondang et al., "Pengaruh Kebijakan Proteksionisme Terhadap Hubungan Dagang Antar Negara," *Journal Of Social Science Research* 4, no. 3 (2024): 4742-55, <https://doi.org/https://doi.org/10.31004/innovative.v4i3.10847>.

<sup>35</sup> Egi Naufal Daffa Zaki et al., "Perdagangan Internasional," *Merdeka Indonesia Jurnal International* 4, no. February (2024): 4-6, <https://doi.org/https://doi.org/10.69796/miji.v4i2.203>.

This protectionist policy, which leads to trade monopolies thru bilateral agreements, not only emphasizes violations that can be deduced as a mere numerical breach, but also represents a disregard for the moral foundations of international law, eroding trust and deterring developing countries from engaging in international trade. Unbalanced trade distribution not only results in formal WTO violations but also undermines social, economic, and national development dimensions of justice. Furthermore, it narrows global trade differentiation because tariff violations leading to trade monopolies and unfair free trade by economically powerful countries erode trust in the multilateral trading system, thereby deterring exporters from developing countries.

Regarding Indonesia itself, the 19% tariff policy is considered detrimental to Indonesia's market share and revenue, as well as leading to a monopoly in international trade. Despite being reduced from the original 32% policy, this import tariff reduction does not directly or indirectly violate the provisions or principles of the WTO. This 19% tariff policy has implications for international trade monopolies carried out by the United States.<sup>36</sup> This can happen because the 19% tariff policy thru the reciprocal agreement between the two countries contains many unfavorable aspects for Indonesia, leaving no room for it to re-position its bargaining power on an equal footing. The content of the Joint Statement on the Framework for a United States-Indonesia Agreement on Reciprocal Trade itself reveals Indonesia's position as the recipient of a reduction in protectionist tariff policies of only 19%, while the United States enjoys an import tariff position from Indonesia of 99%. This tariff imbalance is one of the weaknesses in Indonesia's deduction and position regarding the United States' policy of increasing import tariffs. Additionally, another point that is quite detrimental to Indonesia from the contents of the agreement states that Indonesia must purchase various United States products at a high value, remove restrictions on access to export commodities from industries such as critical minerals to the United States, and Indonesia must transfer the personal data of Indonesian citizens to the United States. This provision suggests Indonesia's position as a country that is 'more submissive' to this policy and the US economic market. Another factor that certainly constitutes a pattern of trade monopoly is the 19% tariff reduction, which only impacts a small portion of Indonesian export products. The rest of the 19% tariff reduction is still above the bound tariff for some labor-intensive products, making the 19% reduction meaningless because the tariff value is still higher than the bound tariff previously imposed by the United States. This situation presents an opportunity for Indonesia to implement international trade dispute resolution mechanisms at the WTO because the tariff policy still has the potential to violate normative provisions within the WTO and cause injustice for Global South countries like Indonesia.

In asymmetrical trade negotiations, developing countries like Indonesia have significantly weaker bargaining power. Bound tariffs serve as a "legal shield" protecting them from the protectionist ambitions of major countries. Bound tariffs ensure that market access is not used as a tool for political blackmail by developed countries. Violating this limit means undermining the only protection mechanism for developing countries within the WTO ecosystem.

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<sup>36</sup> Zaki et al.

The potential for dispute resolution within the WTO or the potential lawsuits that Indonesia could pursue encompasses many aspects, including the 19% tariff's non-compliance with WTO regulations for several labor-intensive products, international trade monopolies, and the United States' violation of the good faith principle in the reciprocal agreement or joint statement. This ultimately leads to systemic injustice for the trading positions of developing countries like Indonesia. Regarding this, the potential for dispute resolution that Indonesia can implement includes filing a dispute resolution claim with the Dispute Settlement Body (DSB). As a WTO member, each member is required to resolve disputes thru this institution, which is the authority handling disputes, forming panels, overseeing the implementation of decisions/recommendations, and taking retaliatory action. This dispute resolution procedure is outlined in the Understanding on Rules and Procedures Governing the Settlement of Disputes, or Dispute Settlement Understanding (DSU).<sup>37</sup>

1. Potential dispute resolution mechanisms for bound tariff violations in the DSU.

In the policy of reducing tariffs by 19% from the original 32% thru a reciprocal agreement between Indonesia and the United States, there is still potential for bound tariff violations for some labor-intensive products. Article 2 of GATT 1994, which regulates bound tariffs, is not merely a technical instrument, but rather a global social contract that guaranties stability for the most vulnerable parties in the multilateral trading system, such as countries in the global south, including Indonesia. This indicates that although the reduction in tariffs to 19% does not guaranty structural justice for Indonesia, this rate is still quite high for bound tariffs on some of Indonesia's labor-intensive products. When the United States raised tariffs above the WTO limits by opening up free trade negotiations (Article 24 of GATT 1994) that were heavily biased against Indonesia, they not only violated or followed WTO rules, but also destroyed the investment calculations of developing countries. Exporters in the Global South, such as Indonesia, have often invested significant capital to meet specific product standards set by Global North countries based on the assumption of low tariffs.<sup>38</sup> Developing countries do not have sufficient economic buffers to absorb shocks from sudden tariff changes, so fixed tariff bindings as stipulated in Article 2 of GATT 1994 are a guaranty of fairness for developing countries with weak bargaining positions. Therefore, a violation of Article 2 of GATT 1994 is a direct attack on the economic stability of a country with low fiscal capacity. In this case, the violation found in the 19% tariff policy is a tariff policy above the previously bound rate. The United States' violation of Article 2 of GATT 1994 has caused far greater systemic damage to Indonesia. In this case, Indonesia can certainly file a dispute settlement claim regarding the violation of Article 2 of GATT 1994 on schedules of concessions, following the dispute settlement procedures within the WTO, namely thru the Dispute Settlement Understanding (DSU).

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<sup>37</sup> Gina Nafsah Savira, "Kesesuaian Prinsip Retaliasi Dalam Kasus Perang Perdagangan Antara Amerika Serikat Dan Tiongkok," *Belli Ac Pacis* 8, no. 2 (2023): 97, <https://doi.org/10.20961/belli.v8i2.74498>.

<sup>38</sup> Margaretha Lasni Rhussary, Yuliana Anur, and Ririn Efanía Girsang, "Efek Tarif Trump Terhadap Rantai Pasok Global Dan Kinerja Ekspor Negara Berkembang," *CENDIKIA: Jurnal Pendidikan Dan Pengajaran* 14, no. 1 (2025): 1-12.

The Joint Statement forced Indonesia to commit to eliminating digital trade barriers, supporting an unconditional permanent e-commerce moratorium, and providing access to personal data transfers to the US. This was a "forced concession" under the threat of high tariffs, a practice that contradicts the principle of good faith negotiation in the WTO.<sup>39</sup> Although the WTO does not explicitly prohibit bilateral agreements, agreements resulting from the threat of unilateral tariffs can be considered a nullification and impairment of benefits as per Article 23 of GATT 1994, which qualifies for submission to the DSU. Then, retaliation (Article 22 of the DSU) is the final stage where the party held accountable fails to implement the decision based on the DSB ruling. Retaliation is carried out thru bilateral or two-way diplomacy as the final step to reach a specific mutual agreement agreed upon by both parties, as the principle of retaliation itself is to restore balance (rebalancing) and not merely punish. Retaliation opens opportunities for a renewed joint statement between Indonesia and the United States under the WTO mandate.

2. Potential for dispute resolution regarding International Trade Monopolies.

The 19% tariff agreement between Indonesia and the United States, as stated in the Joint Statement on the Framework for the United States–Indonesia Agreement on Reciprocal Trade, reveals several potential trade monopolies against Indonesia due to the agreement's content, which is quite detrimental to Indonesia. For example, the policy of reducing tariffs by 19% for Indonesia while the United States gains an import tariff position of 99% from Indonesia, Indonesia must purchase various American products at high prices, restrictions on access to export commodities from industries such as critical minerals to the United States must be removed, and Indonesia must transfer the personal data of Indonesian citizens to the United States. Dispute resolution for international trade monopolies can also be done thru the DSU under Article 17 of GATT 1994 on State Trading Enterprises (STEs). This provision covers Indonesia's potential as a plaintiff in international trade monopoly lawsuits. Although the reciprocal agreement does not explicitly indicate a monopoly on trade products, the pattern of the agreement is detrimental or burdensome to one party, such as Indonesia. The potential for resolving the monopoly dispute regarding the reciprocal agreement can be done within the WTO thru stages similar to those in bound tariff dispute resolution, such as pre-panel (consultation), panel establishment and process, and decision implementation.

3. Potential for dispute resolution regarding the principle of Good Faith in the WTO.

The principle of good faith itself refers to the policy implemented by the United States, which has the potential to disrupt the free trade climate that has been functioning properly until now. The principle of good faith in WTO law is not merely a moral aspiration, but a binding legal norm rooted in Article 26 of the Vienna Convention on the Law of Treaties, which is interpreted as *pacta sunt servanda*, meaning that every valid treaty is binding on the parties and must be performed in good faith. In the WTO,

<sup>39</sup> Judith Goldstein and Alan Sykes, "The Perils of Institutional Rigidity, or How the WTO Helped to Sow the Seeds of Trump," *World Trade Review* 24, no. 4 (2025): 481–88, <https://doi.org/10.1017/S1474745625101018>.



the principle of good faith has its own substance; for example, countries must not use the rights granted by the WTO agreement in a way that undermines the objectives of the multilateral trading system. This is known as the doctrine of *abus de droit* or abuse of rights.<sup>40</sup> A country cannot avoid its WTO obligations thru technical loopholes or interpretations that contradict the object and purpose of the agreement. Good faith requires states to cooperate constructively in resolving disputes and implementing rules, not systematic obstruction. The United States must act in a predictable and non-arbitrary manner, allowing other countries like Indonesia to adjust their economic policies.

This policy is considered to violate the principle of good faith because the US tariff policy was also implemented without approval or thru the WTO's multilateral agenda. Good faith as an instrument in combating power asymmetry in the global trading system makes the principle of good faith extremely critical. Without strict enforcement of good faith, powerful states can act arbitrarily, such as using formal compliance (meeting the letter of the law) while violating substantive compliance (the spirit of the law), manipulating ambiguities in joint statement texts for unilateral gain, and claiming exceptions that do not actually meet objective qualifications within the WTO/GATT.

Although the United States argued that the tariff policy was necessary for national security, as per the provisions of Article 21 of the 1994 GATT regarding national security justifications. However, this claim does not align with the original purpose of the article, which states that national security is only carried out in extraordinary emergency situations. The United States frames its protectionist actions as a form of national security protection. In fact, Article 21(b) of GATT 1994 provides an exception for countries to take necessary measures to protect "essential security interests" under three specific conditions: (i) relating to fissionable materials; (ii) relating to the traffic in arms, ammunition, and implements of war; and (iii) taken in time of war or other emergency in international relations. If there are no strict limitations on the use of national security, this will only become a protectionist framework for developed countries. Therefore, claiming national security without clear objectives reduces and erodes the trust of developing countries in the multilateral trading system, especially when it harms developing countries like Indonesia.

The principle of good faith is a fundamental norm or principle that underpins the entire WTO legal system. This principle influences anti-monopoly trade activities and serves as the foundation for fair and orderly free trade. This principle is recognized in WTO jurisprudence; the WTO Appellate Body affirms that according to the provisions of Article 26 VCLT, every treaty in force is binding on the parties to it and must be performed in good faith. This principle serves as the basis for integration in international agreements and relations, including international trade.

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<sup>40</sup> Luca Pantaleo, "Abuse of Law in Municipal Legal Orders and International Law: An Overview BT - Abuse of Law in the European Union: The Rise of a Special General Principle," in *Abuse of Law in the European Union*, ed. Luca Pantaleo (The Hague: T.M.C. Asser Press, 2025), 9-33, [https://doi.org/10.1007/978-94-6265-731-1\\_2](https://doi.org/10.1007/978-94-6265-731-1_2).

The US policy of a 19% tariff, down from the original 32%, has had a significant negative impact on Indonesia. This is because this 19% tariff policy, as per the reciprocal agreement between Indonesia and the United States regarding several labor-intensive products, is still above the bound tariff and applied tariff that it should be. Additionally, the reciprocal agreement indicates that Indonesia's power as a state engaged in international trade cooperation is in a weak position. This can happen because some substances in the agreement are more beneficial to the United States, such as a 19% tariff reduction from 32%, while the United States gains an import tariff position of 99% from Indonesia. Additionally, another point that is quite detrimental to Indonesia from the contents of the agreement is that Indonesia must purchase various American products at high values, eliminate restrictions on access to export commodities from industries such as critical minerals to the United States, and Indonesia must transfer the personal data of Indonesian citizens to the United States.

Therefore, justice in international trade cannot be separated from the principle of substantive economic sovereignty, which encompasses three fundamental pillars: data sovereignty as a new economic resource, sovereignty over natural resources as development assets, and the right to national economic independence. In the context of the digital economy regarding the joint statement, citizens' personal and economic data are strategic assets equivalent to natural resources. Personal data generates economic value, forms competitive advantages, and determines a country's position in the global digital value chain. When Indonesia is forced to open data access without restrictions thru joint statements resulting from tariff pressure, it's not just about free trade, but the transfer of economic value from a country with a large population (and therefore abundant data) to global technology corporations with processing and monetization capacity. Similarly, the sovereignty over natural resources and national economic independence, as stated in the principle of permanent sovereignty over natural resources recognized in UN Resolution 1803 (XVII) of 1962, affirms that states have the right to manage, regulate, and derive maximum benefit from their natural wealth for the sake of economic independence and national development.<sup>41</sup> A right that is often eroded by trade agreements that require extractive liberalization without considering the needs of domestic industrialization or the fair distribution of benefits to the people.

These dimensions of sovereignty are a manifestation of constitutional economic justice as mandated by the Indonesian constitution and developing countries in general. When the US-Indonesia joint statement forces liberalization that eliminates policy space to protect strategic industries, regulate data flows for public interest, or manage resource extraction for national economic structural transformation, what happens is not only a violation of the dimension of justice as intended. However, it is also a violation of the principle of state sovereignty in international law, which limits international or external powers from interfering in specific domains that belong to Indonesia, such as personal data, access to mineral resources, and economic independence, which must be managed by the state itself.

#### 4. Conclusions

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<sup>41</sup> Natalia Yeti Puspita, Elizabeth Nadeak, and Aloysius Deno Hervino, "Justifikasi Penerapan Prinsip Permanent Sovereignty Over Natural Resources Dalam Perdagangan Internasional," *Jurnal Komunitas Yustisia* 5, no. 3 (2022): 504–25, <https://doi.org/10.23887/jatayu.v5i3.56398>.

The US policy of raising tariffs on its trading partners has sparked public debate and condemnation, particularly from the trading partners affected by the policy. This is because the policy is a protectionist one, which is prohibited under the concept of commercial law or international trade because it disrupts free trade, which has been adopted by countries around the world with good faith and various other international trade principles within the WTO. Indonesia, as one of the United States' trading partners and a member of the WTO, is also affected by the United States' protectionist tariff policy. The 32% tariff increase prompted Indonesia to take swift action by engaging in diplomatic relations (bilateral agreements) thru the Joint Statement on Framework for United States-Indonesia Agreement on Reciprocal Trade, which resulted in a tariff reduction from the initial 32% to 19%. However, this tariff reduction did not bring opportunities for Indonesia in the international market; instead, it became a monopoly agreement. Therefore, the appropriateness of the 19% tariff policy can be reviewed against its compliance with the bound tariff standard (Article 2 of GATT 1994) for several labor-intensive products, meeting the standard against the principle of nondiscrimination (MFN) because the policy applies not only to Indonesia but also to all of the United States' trading partners, is reciprocal, and is a bilateral agreement (Article 24 of GATT 1994), as well as transparency in the implementation of the agreement based on the principle of trade toward sustainable environmental protection within the WTO. Although it meets several requirements regarding the provisions and principles within the WTO, the 19% tariff policy thru the reciprocal agreement between Indonesia and the United States still poses the potential for disputes that can be submitted by Indonesia to the WTO thru the Dispute Settlement Body (DSB). These inconsistencies include violations of Article 2 of GATT 1994 regarding bound tariffs, where many labor-intensive Indonesian products do not comply with the 19% tariff; trade monopolies that cause unfair trade for Indonesia; and violations of the principle of good faith adopted by the WTO from the Vienna Convention on the Law of Treaties (VCLT). Therefore, Indonesia can file a lawsuit against these violations as stipulated in the Dispute Settlement Understanding (DSU) through the DSB. This aims to open up opportunities for changes to the reciprocal agreement, both in the form of legal dispute resolution thru the DSB and retaliation by both parties.

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