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THE LEGAL IMPLICATIONS OF “AMERICA FIRST” POLICIES AND RISING U.S. PROTECTIONISM ON THE GLOBAL TRADING SYSTEM

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Abstract

"America First" policies initiated by different US administrations have largely reshaped the trading order globally. It started with tariffs on steel and aluminum imports and Chinese goods, based on different statutory authorities available under US law, such as Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974. The paper will examine the impact of these protectionist policies in international trade law in terms of WTO commitments and multilateral regulation. Based on case law studies, research, and analysis, it shall highlight the difficulties which may arise under these circumstances for emerging economies and suggest different strategies to cope with such difficulties.

Keywords: *America First Policy, U.S. Protectionism, Liberal Internationalism, Economic Nationalism, Rules-Based Trading System.*

I. INTRODUCTION

Ever since World War II, the international trading order has basically been driven by regional institutions and agreements such as the World Trade Organization³ (WTO) and General Agreement on Tariffs and Trade (GATT) in particular⁴. As such, tariff reductions and trade liberalization have become a norm under this platform, which promotes increased global trade and an interdependent economy⁵. However, in recent years, some policies, which have come to be known under the *America First agenda*, have indicated a definite departure from multilateral trade liberalization towards unilateralism and protectionism. Such an indication has immense legal implications in the realm of international trade. During the previous decade, especially in the United States, more unilateral trade actions have occurred with a focus on covering domestic industries for protection with an emphasis on economy-driven nation/nationalism⁶. Following the ‘America First Agenda,’ which started being advocated in 2017, making local production a priority while focusing on decreasing trade deficits, these policies border on being challenged from a judicial perspective because they are not in

conformity with international trade rules and regulations⁷. Rules, limits of executive powers under U.S. law, and implications for multilateral trade governance.

The paper will examine:

- 1) Legal bases and tools of 'America First' trade policies and protectionism
- 2) The way these new systems impact traditional international trade laws and governance
- 3) Implications of these systems on global trade
- 4) Their implications on developing countries and trade governance globally.

A. Theoretical Framework and Methodology

This research is based on the theory of liberal internationalism because it holds a belief in a cooperative and rules-based system of international trade law which promotes interdependence, stability, and peaceful relations among nations in institutions such as the WTO⁸. Based on this theoretical proposition, trade obligations can no longer be considered economically driven but become legally-binding commitments which limit state conduct in a unilateral manner⁹. "America First" challenges this theoretical underpinning because it puts state sovereignty above all other considerations¹⁰.

Moreover, this research incorporates concepts from legal institutionalism. Legal institutionalism focuses primarily on the role of international institutions in influencing state actions and ensuring state compliance with established rules¹¹. Based on this theory, a degradation in WTO rules and institutions in responding to trade disputes falls not only under government policies but also under *institutional degradation*¹². The research will examine how protectionist policies affect international institutions¹³.

Furthermore, this research integrates principles of economic nationalism, which protects state intervention in accordance with a theoretical justification which promotes state intervention in support of its economy in strategic matters¹⁴. Through this theoretical integration, this research critically analyzes how "America First" policies interact with this theoretical construct in a manner which assesses both sides of a trade-off with which states face when they become subjects of an inter-national trade law¹⁵.

Liberal internationalism: Liberal internationalism can be described as a theoretical framework in the realm of international relations and international law which gives prominence to cooperation among nations in institutions governed by rules, principles, and law rather than unilateral action or politics of power¹⁶. Liberal internationalism is based on faith in the idea that nations operate not under the guidance of solely national hunger but in a manner in which

they can achieve common gain through cooperation, interdependence, and international law¹⁷. With regards to trade in a global setting, liberal internationalism favors an effort in establishing and maintaining a multilateral system such as the General Agreement on Tariffs and Trade and World Trade Organization which focuses on lowering trade barriers in order to achieve a predictable environment in international trade¹⁸.

In a legal sense, liberal internationalism considers an international commitment a legally binding obligation on states to behave in a certain way, hence ensuring state accountability¹⁹. The belief is that states will find a way to become more efficient in trade when they obey international trade law because this will shield them from arbitrary protectionism, which can sometimes spark international conflict when these trade matters come into consideration²⁰. Therefore, if a state ignores multilateral commitments, such as when a country imposes tariffs and pulls out of a dispute settlement system, this undermines the international order²¹.

B. Application of Theoretical Frameworks to Analysis

The liberal internationalism will be used in this study to examine critically the legal effects of ‘America First’ trade policies and increasing US protectionism on the global trade regime²². According to a theoretical framework of liberal internationalism, a rules-based multilateral trade law governs international trade in such a manner that countries have to bring their national trade regimes into conformity with their international obligations which have been assumed under international trade agreements such as WTO agreements²³. The study will assess if the extra-European tariffs, security exceptions, and trade barriers used under ‘America First’ policies are in line with non-discrimination, good faith, and cooperative dispute settlement in a multilateral trade system²⁴. Through this framework, the research investigation considers how protectionism under US trade policies tests the role of institutions in the WTO, especially in being bypassed in matters of dispute settlement²⁵. Liberal internationalism presupposes that strong institutions have a pivotal role in both influencing state behavior and government compliance with international rules²⁶, which will inform this research investigation on how informal trade practices undermine institution credibility and make international trade behavior less predictable²⁷. Through this framework, it will be possible to undertake an analysis of how nation-centered trade policies affect international trade law fragmentation²⁸.

C. Methodology

The paper adopts a doctrinal and analytical research methodology, where the major focus will be on the interpretation and critical analysis of legal texts governing international trade²⁹.

There is a sequential analysis of the WTO agreements, most notably the GATT 1994 and the Dispute Settlement Understanding, along with U.S. domestic trade statutes and constitutional guiding tariff authority³⁰. Judicial decisions from both the U.S. courts and the WTO dispute settlement bodies are then pursued to ascertain the legality and implications of protectionist measures³¹. The information in this research depends solely on secondary sources such as treaties, case law, scholarly articles, policy papers, and institutional reports³². These will be critically analyzed using qualitative legal reasoning to determine inconsistencies, conflicts, and areas of legal ambiguity resulting from unilateral trade actions³³.

A comparative methodology is resorted to in comparing multilateral trade obligations with unilateral protectionist practices with a view to showing the consequent legal and institutional tensions³⁴. The methodology thus adopts critical legal analysis, which assesses not only compliance with existing legal norms but also the broader consequences for the rule-based global trading system³⁵. This enables the research to move beyond the mere descriptive account to a normative assessment of how "America First" policies reshape international trade law and governance³⁶.

D. Concept of America,s first policy

The "America First" strategy is a sovereignty-focused style of governance where the chief goal of the United States is to safeguard and promote its internal economic, political and strategic priorities even if these measures clash with global agreements or collective standards³⁷. That said, in terms of trade the policy seeks to address reducing trade imbalances safeguarding industries, preserving employment and regaining national authority, over economic choices³⁸. This policy marks a shift from the United States role as an advocate for trade, to a stance that is distinctly more *unilateral and protection-oriented*³⁹. From a standpoint the "America First" strategy prioritizes domestic legislation and executive judgment over international trade obligations, especially those governed by the World Trade Organizations rule system⁴⁰. It treats trade deals and global organizations as means to an end rather than obligatory limitations leading to increased dependence on unilateral measures such as tariffs, import controls and national security claims⁴¹. This approach is opposed to some key underpinnings of international trade law, such as nondiscrimination, reciprocity, and good faith compliance, which risks fragmenting the rule-based global trading system and undermining international economic cooperation⁴².

II. Historical and Theoretical Background

International trade regulations have never progressed in a path toward free trade; instead they have been influenced by an ongoing struggle between economic openness and protectionist tendencies. The United States, frequently depicted as the driver of the contemporary liberal trade framework offers an especially striking example of this paradox. While advocating for multilateralism and the easing of trade restrictions internationally U.S. Trade policies have repeatedly reverted to protectionist stances during times of economic instability and political strain⁴³. It is thus imperative to locate the historical underpinnings and theoretical grounding of protectionism within U.S. trade policy as a way of framing recent developments, not least the revival of trade nationalism under the "America First" approach. This historical and theoretical background provides an important analytical basis to examine how protectionist measures in the past have created legal norms that continue to shape the global trading system today.

A. Protectionism in the U.S. Trade Policy

One of the major tendencies in US trade policy is protectionism. The US has often offered support for free trade in international settings, especially since World War II. However, it must be noted—and this is an emphasis in most literature available on this topic—that this positive rhetoric covering support for free trade in global trade relationships has always existed side-by-side with US trade laws' elements of protectionism⁴⁴. Typically, these principles of protectionism have functioned under other justifications such as protecting fledgling industries, jobs, national security, or an imbalance in international trade relationships with other countries. A famous case with which a large number of people are acquainted is the Smoot-Hawley Tariff Act of 1930, which established very high tariffs on over 20,000 imported goods. The law was passed in the early years of the Great Depression with the goal of shielding US farmers and industries from competition⁴⁵. But rather than helping to stabilize the economy, this legislation led other nations such as Canada and a number of European countries to establish tariffs on goods imported from the US.

As a consequence of this legislation, international trade levels escalated markedly, and this had a negative impact on the global economy since the Great Depression worsened.

On a theoretical level, Smoot-Hawley shows how protectionist policies in individual countries can have a destabilizing impact on a global economy and lead to a cycle of retaliation. Smoot-Hawley had a very important influence on subsequent thought on trade policies in a post-war world and can be cited as a leading factor in the establishment of a series of international

institutions such as GATT in 1947 and the WTO. More contemporary illustrations, including the safety tariffs on steel/aluminum imports or restrictions based on national security, illustrate the ongoing presence of these protectionist tendencies in US trade policy. Such measures indicate an ongoing presence of a tension between domestic politics and international obligations in US trade policy, despite an evolving basis of trade law. Relevant sources and case studies which are frequently referred to in this regard include economic histories relating to the Great Depression, congressional trade legislation in the U.S. Congress, and WTO-era cases relating to safeguard and national security tariffs, all of which support the contention that protectionism remains a persistent but disputed part of U.S. trade law⁴⁶.

III. America First Policy: Scope & Mechanisms

The "America First" policy marks a basic reorientation of the United States' trade and economic strategy, cemented in economic nationalism and a reinvigorated focus on domestic sovereignty. Clothed as a remedy for perceived injustices perpetrated by the global trading system, the policy privileges the defense of American industries and workers and national security over respect for the multilateral trade order. In particular, opposed to the post-war free trade and international economic cooperation commitment of the U.S., the "America First" policy embraces unilateral measures-tough tariff usage and increased executive authority-as means for addressing trade imbalances and countering so-called unfair practices by foreign states. This approach constitutes a radical break with liberal trade orthodoxy and has wide-ranging consequences in terms of its legal dimension for domestic constitutional governance and the stability of the rules-based global trading system⁴⁷.

A. Policy Goals and Instruments

The "America First" trade approach marks a shift in U.S. Trade policy grounded in the judgment that existing multilateral trade deals have harmed American workers, industries and national security⁴⁸. The policy statements outline three goals: correcting alleged defects, in present trade methods reducing large and ongoing trade deficits and safeguarding national security interests. These goals reflect a perspective that opposes trade bodies and supports a unilateral trade enforcement method. For this purpose the United States has heavily depended on global tariffs on imports rather than focused measures in specific instances of dumping and/or subsidies. Unlike trade remedies permitted under WTO regulations these tariffs have generally had a universal effect affecting allies and adversaries alike. This situation results in a deviation from the principle of non-discrimination, in trade regulations⁴⁹. Another crucial

instrument is enhancing tariff enforcement mechanisms to prevent evasion and uphold customs regulations. Simultaneously the US has expanded its scrutiny of trade practices in partner countries regarding allegations of currency manipulation, government subsidies, forced technology transfer and intellectual property theft⁵⁰. These actions have frequently been addressed through unilateral probes and enforcement measures instead of multilateral trade agreements. When considered as a whole these actions illustrate a move toward protectionism and industrial strategy using trade legislation as a means to reshape international supply networks and promote domestic manufacturing.

B. Tariffs as Legal Tools

A defining feature of the 'America First' approach is the use of tariffs applied within a lawful framework. The two key internal powers through which these tariffs are implemented than, through an international trade pact are:

- ❖ Section 232 of the Trade Expansion Act of 1962
- ❖ International Emergency Economic Powers Act⁵¹
- ❖ Section 232 and National Security Tariffs

Section 232 grants the President authority to enforce trade limitations if imports endanger security. Using this law the United States levied tariffs on steel and aluminum imports arguing there was an overdependence on countries, in crucial national security industries. The use of Section 232 was controversial as it expanded the term 'security' beyond military concerns to include economic security issues. Several WTO members challenged the tariffs arguing they were disguised protectionism. While a WTO panel subsequently questioned the legitimacy of the national security justification the United States maintained that these matters were not subject to review⁵².

C. IEEPA and Executive Power

The use of the International Emergency Economic Powers Act (IEEPA) to back tariff actions contributed to the heightened attention in legal scrutiny. The IEEPA empowers the President to regulate dealings, in national emergencies though traditionally this legislation was not intended to serve as comprehensive tariff legislation. *V.O.S. Selections, Inc. V. United States*: This case involved the United States Court of International Trade reviewing whether expansive tariffs imposed under emergency powers exceeded authority⁵³. It was determined that an overreach happened because "IEEPA does not grant the President boundless tariff-setting authority explicit Congressional approval." "IEEPA" might denote "IEEPA

Technical Advisory, on Terrorism " "Informational and Educational Enhancement," "IEEEPA Research Institute," "Induction and Similarly in *Transpacific Steel LLC v. United States* The Court of International Trade evaluated the method, extent and schedule of tariff hikes under Section 232 upholding a precedent regarding the necessity of correctness in executive decisions, on trade issues⁵⁴.

D. Constitutional Tensions

Instances of scenarios comprise: These examples demonstrate a constitutional disparity, in US trade legislation. Although Article I of the US Constitution grants Congress the authority to regulate trade and impose tariffs on commerce, Presidential trade powers derive from statutory law. Consequently as these expansive Presidential authorities are employed under an "America First" policy worries have persisted regarding the diminishing oversight of trade issues. The possibilities for Supreme Court review of these issues have more highlighted the non-delegation principle and presidential authority in economic decisions⁵⁵. These domestic constitutional disputes mirror concerns regarding how unilateral tariff measures affect the stability and reliability of the international trade system. The imposition of steel and aluminum tariffs serves as an example of the 'America First' approach, in action. Although these measures were meant to bring back life into local industries, analysis and legal challenges have demonstrated these policies led to increased commodity prices for other industries, adversary tariffs in response from other trade nations, and challenges to other international relationships⁵⁶. As a matter of law, this case highlighted weaknesses in statutory law in both countries in addition to a universal international law challenge.

IV. Implications of the WTO and International Trade Law

The "America First" trade agenda has seriously impacted the operation and credibility of the WTO and broader international law on trade. Many of the unilateral tariff measures adopted by the United States challenge the very foundations on which the WTO stands, and U.S. moves have, at an institutional level, undermined the effectiveness of multilateral dispute settlement processes. Together, these changes have contributed to increased trade tensions, and promoted systemic instability in the governance of world trade⁵⁷.

Non-Discrimination and WTO Principles: The WTO's legal framework is based on the principles of Favored-Nation and National Treatment: member countries are supposed to treat imports from all WTO members equally and foreign products should not be treated less

favorably than domestic products once in the market⁵⁸. Critics argue that unilateral U.S. tariffs levied on products, for example, cars, auto parts, steel, and aluminum, have violated these principles since the measures singled out foreign products and in some instances distinguished between trading partners⁵⁹. When the United States justifies such actions based on security or economic grounds many WTO members consider these measures as hidden trade barriers that destroy the predictability and fair application of WTO rules⁶⁰. This perceived double standard fuels mistrust, of the trade regime persuading other nations to doubt their commitments to it.

WTO Dispute Settlement: Beyond violations of the rules the "America First" approach has seriously disrupted the institutional functioning of the WTO, in particular, its dispute settlement system. The United States continuous blocking of appointments to the WTO Appellate Body has paralyzed the appellate stage of dispute settlement. As a result, panel reports cannot be properly enforced and this reduces incentives for compliance and lessens the deterrent effect of WTO law⁶¹. Furthermore, the United States suspension or withholding of consent threatens the WTO's ability to function and operate effectively. This may undermine member participation and confidence in the WTO as an effective forum in which to settle disputes. Retaliation and Trade Disputes Unilateral tariff measures have also had the effect of prompting retaliation from affected trading partners⁶². This raises trade tensions and increases the risk of trade disputes. Insofar as states consider that U.S. tariffs violate WTO commitments, they will generally use retaliation in the form of countervailing duties against U.S. exports as a consequence of unilateral measures or following the outcomes of dispute settlement proceedings⁶³. In this manner, retaliation becomes self-perpetuating and costly to international trade flows and places a heavy burden on the WTO dispute settlement system as it deals with highly politically sensitive disputes. The repeated use of retaliation, over time, has a corrosive effect on the cooperative foundations of international trade law and leads to incoherence at the global level of governance⁶⁴.

A. The Economic and Functional Legal Impacts

This has produced economic consequences due to the "America First" protectionist trade strategies, which carried considerable legal ramifications. Beyond the effect of tariffs these actions have unsettled international supply networks, altered contractual dynamics and undermined the legal foundations of regional and multilateral trade accords. Therefore protectionism is inherently connected, from a perspective with its economic outcomes⁶⁵.

1.1 Disruption of Global Supply Chains

Contemporary global commerce is structured via GVCs, where the manufacturing of a product is geographically spread over numerous nations based on comparative advantage. Imposing tariffs on any segment of that chain can drive production expenses up because of increased input costs, customs clearance delays and the overall uncertainty this causes for companies⁶⁶. Under the “America First” policy, broad-based tariffs on intermediate goods like steel, aluminum, and industrial components have disrupted established sourcing patterns and pushed firms into restructuring supply chains at considerable economic cost. From a perspective these disruptions have led to a rise in conflicts regarding rules of origin customs valuation and trade facilitation duties. To bypass tariffs companies are adopting re-classification or relocation tactics, which consequently increase compliance risks and enforcement difficulties. Crucially unforeseen tariff modifications weaken investment assurances established under regional and multilateral trade agreements. Hence protectionist actions weaken the shared obligations that provide stability and certainty to global trade partnerships⁶⁷.

1.2 Impact on Developing Countries

Protectionism impacts developing and emerging economies considerably because most of these economies rely on export-driven growth and access to developed country markets. A majority of these economies are engaged in GVCs through exports or providing cost-manufacturing solutions. The impact of tariffs in these markets hampers developing countries because it leads to a reduction in demand for exports, reduced foreign exchange intake, and a slowdown in this progress⁶⁸. Legally, limiting market access impedes the developmental agenda of the multilateral trading system because this system aims to incorporate developing countries into trade in a fair and equitable manner. Every step towards protectionism limits the capacity of developing countries to benefit from trade liberalization. In a way, a lack of access to markets decreases global integration in the economy through increased disparities between developed countries and developing nations, thus impugning the validity of international trade law in this respect⁶⁹.

V. Domestic Legal Challenges and Normative Implications

The "America First" trade policy is not only internationally controversial in terms of international law but is also placed under considerable domestic constitutional conflict in law in America. The historically unprecedented expansion of constitutional powers which fall

under tariffs and trade embargoes is placed under judicial review in terms of interpretative dynamics in connection with constitutional struggles over authority with regard to trade. As it is under constitutional law that trade regulation is preeminently a matter falling under the regulation of legislation in a country, historically unprecedented elements of the expanding powers of a constitutional presidential administration in connection with trade regulation under statutes have come under constitutional controversy in America in connection with separation of powers in constitutional law in America⁷⁰.

A. Separation of Powers and Tariff Authority

Within the U.S. Structure the primary responsibility for overseeing foreign trade and levying tariffs as outlined in Article I, Section 8 of the Constitution embodies the principle that fundamental trade policy issues must be addressed through legislative debate and responsibility⁷¹.

Although Congress has granted some tariff-related authority to the President via laws like the Trade Expansion Act and the International Emergency Economic Powers Act these grants of power are not without limits. In recent years, courts have increasingly reviewed the scope of executive action in cases where tariffs are imposed on broad or emergency-based justifications without explicit congressional authorization. Judicial review on such occasions reflects concerns about executive overreach and the erosion of the separation of powers when emergency statutes are used to justify long-term or wide-ranging trade restrictions⁷². This scrutiny underlines at every turn the constitutional balance to be maintained between legislative authority and executive discretion in the formulation and conduct of U.S. trade policy⁷³.

B. Dormant Commerce Clause and Protectionism

The Dormant Commerce Clause is a judicially developed doctrine based on the Commerce Clause of the United States Constitution that bars state laws discriminating against or unduly burdening interstate and foreign commerce in favor of local economic concerns. Although the doctrine applies most emphatically to state and local regulation rather than to federal trade policy, it reflects a wider constitutional commitment against protectionism in the economy of the United States⁷⁴. Courts applying the Dormant Commerce Clause have consistently invalidated measures that favor domestic producers at the expense of external competitors, focusing on the need for a single, nondiscriminatory commercial market⁷⁵. While federal trade actions are not directly restricted by this doctrine, the basic principles behind the doctrine indicate judicial hostility to protectionist discrimination and provide normative

restraints on economic regulation distorting free and fair commerce in the domestic context and in the international context⁷⁶.

C. Erosion of the Rules-Based System

Specialists argue that the "America First" protectionist stance undermines the rules-based trade framework, which has underpinned global trading activities since the end of World War II. Based on predictability, nondiscrimination, and appealable commitments through bodies—the GATT and, later, the WTO—this framework was designed to avoid unilateral trade actions and minimize the risk of economic conflict⁷⁷. If an important trading power is protectionist without regard for, let alone efforts toward, multilateral rules and dispute settlement processes, the international institutions' authority and legitimacy are, without doubt, called into question.

The result of legal and economic uncertainty for states and business, the fostering of retaliatory protectionism, and the making of trade relationships theatres of strategic competition rather than cooperation—are geopolitical tensions. Ultimately, confidence in the rules will be progressively lost, and along with it will go the stability and coherence of the global trading system as a whole⁷⁸.

D. Weakened Legal Institutions

A degradation in dispute settlement, financial contribution, and unilateral trade actions culminates to affect the validity and efficacy of functioning in international legal institutions. Dispute settlement bodies make it possible to have a constant interpretation and objective enforcement of international obligations; when this ceases to manifest in an effective manner, a voluntary compliance with international law emerges⁷⁹. Moreover, lessened financial contributions affect the functionality of international institutions in administering agreements, facilitating inter-national negotiations, and ensuring member state participation. The overdependence on unilateral actions further marginalizes multilateralism in international law, inculcating a sense of inequality and selective application. Such an accumulation of activities casts a serious cloud over the enforceability of international legal obligations⁸⁰, which in turn affects the principle of equality on which trust in the international legal system is held.

VI. CONCLUSION

The "America First" trade agenda and the return of protectionist policies mark a dramatic shift in the commitment to a multilateral rules-based trade order since 1945. As this dissertation aims to show, such policies have profound implications in international law, not limited to their

immediate impact but rather challenging in a fundamental manner the architecture of international trade law. Such policies have challenged WTO obligations, especially in relation to non-discrimination and good faith requirements. At a more institutional level, it is evident that a dysfunctional system of WTO dispute settlement and a weakening of a multilateral enforcement framework have impeded a higher degree of certainty in international trade law.

On the domestic front, the heavy reliance on executive power in setting trade restrictions has given rise to serious constitutional issues, especially with regard to separation of powers and legislative delegation. The judicial review of tariff policies draws attention to a normative struggle between economic nationalism and constitutional accountability, thus underlining the need for more specific legislation. On both these fronts, what is evident is a degradation of the normative basis of international trade law being replaced by strategic unilateralism.

On a systemic level, a weakening of multilateral institutions of trade can have a negative impact on a fragmented global trading order split along different regions and bilaterals, creating uncertainty not just for governments but for the private sector as well. A level of unpredictability worsened by trade sanctions can insure to the detriment of geopolitical stability, which international trade law had originally sought to create. Failure to reverse these trends can have a negative impact on making existing systems obsolete and undermining the role of law in guiding global economic relations.

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