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LEGAL SANCTITY OF TARIFFS UNDER COMPARATIVE AND INTERNATIONAL LAW

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Abstract

Tariffs remain one of the most legally significant instruments of state control over cross-border commerce. Although modern trade discourse often characterizes tariffs as economically distortive or politically regressive, positive law does not treat them as inherently illegitimate. On the contrary, tariffs occupy a recognized position within domestic constitutional orders, statutory customs frameworks, and international trade law. This article examines the legal sanctity of tariffs under comparative and international law and argues that tariffs derive legitimacy not from unrestricted sovereignty, but from lawful authority exercised within a layered normative framework. At the domestic level, tariff power must be traceable to constitutional allocation, statutory delegation, or treaty-based institutional competence. At the international level, tariffs must conform to multilateral disciplines, especially bound-rate commitments and non-discrimination norms under the GATT/WTO framework, unless justified through recognized exceptions or trade-remedy regimes. Through a comparative analysis of the United States, the European Union, and India, this article demonstrates that distinct legal systems validate tariff power through different institutional pathways while reaching a common conclusion: tariffs are legitimate when imposed through law. The article also examines anti-dumping duties, safeguard measures, national security-based trade restrictions, and trade restrictions linked to the United Nations Charter. It concludes that the true legal sanctity of tariffs lies in their character as rule-governed instruments of public authority.

Keywords – Tariffs; Comparative Law; International Trade Law; WTO; Sovereignty

I. INTRODUCTION

Tariffs are among the oldest juridical instruments through which political communities regulate entry into the national market. Historically, they were imposed to raise revenue, discipline external commerce, and protect domestic production. In the contemporary world, tariffs continue to serve those functions, but they have also acquired new importance as instruments of industrial policy, strategic retaliation, national security, and geopolitical bargaining. Yet public debate often obscures a basic legal truth: tariffs are not inherently unlawful. Their legal character depends not on their popularity in economic discourse, but on the source, scope, procedure, and justification of the authority under which they are imposed.[60]

This article argues that tariffs possess legal sanctity when they satisfy four cumulative conditions. First, the measure must emanate from a legally competent authority. Second, the tariff must rest upon a valid constitutional, statutory, or treaty-based source of domestic legality. Third, the

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[60] U.S. Const. art. I, § 8 cl. 1, cl. 3. The constitutional text itself links duties and foreign commerce to the enumerated powers of Congress.

measure must conform to applicable international obligations, especially under the multilateral trade regime. Fourth, if it departs from ordinary tariff discipline, that departure must be grounded in a recognized exception, remedial framework, or public-order norm.[61] Legal sanctity, therefore, does not mean unreviewable sovereignty. It means authority recognized and bounded by law.

The issue belongs squarely within comparative and international law because tariffs are shaped by two overlapping normative orders. Comparative law reveals how different constitutional and institutional systems vest tariff authority. International law then disciplines or authorizes the exercise of that authority through treaties, exceptions, and collective-security norms. A serious legal account of tariffs must therefore move beyond simplistic binaries between free trade and protectionism. The real question is not whether tariffs exist, but when they are lawful.

II. TARIFFS AS A LAWFUL LEGAL CATEGORY

A tariff is, in formal legal terms, a customs duty imposed on goods crossing the border into a jurisdiction. What gives tariffs their distinctive juridical character is that the modern international trade regime accepts them as lawful in principle. The post-war multilateral order did not abolish tariffs. Rather, it sought to tame them by making them transparent, schedulable, negotiable, and reviewable.[62] GATT 1994 preserves tariffs as recognized border measures but disciplines them through commitments not to exceed scheduled ordinary customs duties and through norms of non-discriminatory treatment.[63]

This structure matters conceptually. If international law considered tariffs inherently illegitimate, it would prohibit them entirely. Instead, it regulates them. That is because tariffs are comparatively legible instruments of restriction. Unlike covert barriers or opaque administrative discrimination, tariffs can be quantified, published, and tested against treaty commitments. Their legal sanctity is therefore partly tied to their transparency. Law prefers explicit public measures that can be scrutinized to hidden forms of protection that evade review.[64]

Accordingly, tariffs remain part of the ordinary vocabulary of lawful state action. Their legality is not presumed away merely because they restrain trade. What law asks is whether the tariff has been imposed by proper authority and within the permissible normative structure.

III. Comparative Domestic Foundations of Tariff Authority

United States

In the United States, tariff authority is constitutionally grounded. Article I, Section 8 empowers Congress to lay and collect "Taxes, Duties, Imposts and Excises" and separately to regulate commerce with foreign nations.[65] This text establishes that tariff power belongs, in principle, to the legislative branch. Even where Congress delegates operational powers to the executive under

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[61] See GATT 1994 art. II; Agreement on Safeguards arts. 2-4; Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 arts. 1-3.

[62] GATT 1994 pmbl. & art. II; see also WTO, The General Agreement on Tariffs and Trade (GATT 1947 and 1994), https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm.

[63] GATT 1994 art. II. Article II is the central legal source for tariff bindings and scheduled concessions.

[64] Id. The scheduling logic of Article II and the broader architecture of reciprocal concessions are built around visible tariff commitments rather than undisclosed barriers.

[65] U.S. Const. art. I, § 8 cl. 1, cl. 3.

trade statutes, the underlying legitimacy of tariff action continues to derive from this constitutional allocation.[66]

The American position is important because it illustrates that tariffs are not constitutionally suspect as such. They are embedded in the constitutional structure itself. Disputes may arise about overbroad delegation, improper executive invocation, or the policy rationality of a particular tariff measure, but those are disputes about the exercise of tariff power, not about its existence. The power itself is constitutionally recognized.

European Union

The European Union structures tariff authority differently. Article 207 of the Treaty on the Functioning of the European Union provides that the common commercial policy shall be based on uniform principles, including with respect to tariff rates and trade-protective measures in cases such as dumping and subsidies.[67] This means tariff-setting in the EU is embedded in the Union's common commercial policy rather than left to the independent external commercial policy of each member state.

The EU model demonstrates that tariff sanctity can arise through pooled authority. Tariffs need not be validated only by classic national constitutional clauses. They may also derive legitimacy from a supranational legal order constituted by treaty. Here, the Union treaty framework itself is the source of legal competence.[68]

India

In India, tariff authority is statutorily anchored in the Customs Tariff Act, 1975. The India Code version of the Act identifies the operative scheme by which duties specified in the Schedules are levied.[69] This reflects the classic parliamentary-fiscal model in which customs duties are imposed through legislative enactment and implemented through the customs administration.

India's framework shows that tariff legality may rest on clear legislative architecture rather than on a single dramatic constitutional formula. The key is that the tariff must be traceable to lawful public authority. Comparative analysis across the United States, the European Union, and India reveals a common proposition despite institutional variation: tariffs are legitimate when imposed through recognized law-making power.

IV. TARIFFS UNDER GATT AND WTO LAW

International trade law does not abolish tariff power. It disciplines it. The GATT/WTO system accepts tariffs as lawful border measures while constraining their excess and discriminatory use. GATT 1994 Article II embodies the tariff-binding structure through which members undertake not to impose ordinary customs duties above the rates recorded in their schedules. This makes tariffs lawful in principle but unlawful when imposed in excess of binding commitments absent a recognized justification.

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[66] See generally Article I Section 8, Constitution Annotated, Library of Congress, https://constitution.congress.gov/browse/article-1/section-8/ (describing the taxing and foreign commerce powers vested in Congress).

[67] TFEU art. 207(1).

[68] Id. art. 207(2)-(4). The treaty text places commercial policy, including tariff changes, within the Union's decision-making framework.

[69] Customs Tariff Act, 1975 § 2, India Code, https://www.indiacode.nic.in/handle/123456789/8774.

This architecture reflects a deeper normative compromise. States did not surrender all border-fiscal power when they joined the multilateral trade order. Rather, they converted the use of tariffs into a rule-bound framework of reciprocal commitments. Tariffs remained part of state sovereignty, but sovereignty became juridified through consent to schedules, transparency, and review.[70]

The legal implication is profound. A tariff may be perfectly valid under domestic law and yet inconsistent with international obligations if it exceeds a bound rate or violates non-discrimination norms. The WTO dispute-settlement system further underscores that such conflicts are to be addressed through institutional dispute resolution rather than unilateral legal self-certification.[71] Conversely, a tariff may be controversial in economic discourse but entirely lawful if it remains within treaty commitments. Legal sanctity, therefore, is layered. It requires compatibility between domestic competence and international discipline.

V. TRADE REMEDIES AS LAWFUL EXCEPTIONAL TARIFFS

One of the strongest proofs that tariffs are not inherently unlawful under international law is that WTO law expressly authorizes certain special duties. The Agreement on Implementation of Article VI of GATT 1994 and the related WTO anti-dumping notification architecture recognize anti-dumping duties as lawful responses under specified conditions.[72] Likewise, the Agreement on Safeguards and its notification framework recognize that members may adopt safeguard measures when the treaty criteria are met.[73]

This has major doctrinal significance. Anti-dumping duties and safeguard measures are not tolerated breaches of trade law. They are treaty-created categories of lawful response. Their existence confirms that the multilateral order does not regard higher duties as illegal in every circumstance. It accepts that certain market disruptions, unfair pricing claims, or sudden import surges may justify exceptional measures, provided the legal framework is respected.

Yet the sanctity of such tariffs depends upon procedure as much as substance. A state cannot merely label a measure "anti-dumping" or "safeguard" and thereby insulate it from challenge. The legal frameworks require investigations, findings, and notifications. The decisive point is that exceptional tariffs are lawful when imposed through law, not when asserted through political declaration alone.[74]

VI. EXCEPTIONS, PUBLIC POLICY, AND NATIONAL SECURITY

The multilateral trade regime is not founded solely upon commercial liberalization. WTO structures recognize that public morals, health, conservation, and security may justify restrictions

[70] See WTO, The General Agreement on Tariffs and Trade (GATT 1947 and 1994), https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm.

[71] Understanding on Rules and Procedures Governing the Settlement of Disputes arts. 3, 23, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization Annex 2, https://www.learning.wto.org/pluginfile.php/118/mod_data/content/454/22FB9209-E95B-4677-A238-3E8DC421A31D.pdf.

[72] Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 arts. 1-3.

[73] Agreement on Safeguards arts. 2-4.

[74] See Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 arts. 5-6, 12; Agreement on Safeguards arts. 3, 12. Both agreements condition legality on procedural observance, including investigation and notification.

in legally cognizable circumstances.75 National security is especially important in the tariff context. Modern states increasingly invoke security when imposing trade restrictions on sensitive goods, strategic sectors, or politically adversarial states. From a legal standpoint, the question is not whether security can ever matter. It plainly can. The real question is whether the invocation of security is situated within a recognized legal framework and defended through a legally supportable rationale rather than through a purely rhetorical appeal to sovereignty.76

This demonstrates that tariff legality is not exhausted by bound rates and tariff schedules. The law of tariffs exists within a broader public order. Trade is not the only value that law protects. But the availability of public policy or security-based justification does not eliminate legal scrutiny. Rather, it changes the terms of scrutiny from ordinary tariff compliance to exception-based legality.

VII. TARIFFS, SANCTIONS, AND THE UNITED NATIONS CHARTER

A distinct source of authority for trade-restrictive measures arises under the United Nations Charter. Article 41 empowers the Security Council to decide on measures not involving the use of armed force, including economic measures and interruption of economic relations.[77] Where trade restrictions are implemented pursuant to Security Council authority, their legal foundation lies in the collective-security framework rather than in the ordinary law of reciprocal tariff concessions.[78]

This matters because it shows that the legality of tariffs and tariff-like trade restrictions cannot always be judged solely through WTO logic. International law contains multiple normative orders. A measure that restricts trade may nevertheless possess legal sanctity if grounded in the collective-security architecture of the Charter. The comparative and international lawyer must therefore distinguish between ordinary commercial tariffs, trade remedies, unilateral sanctions, and Security Council-authorized economic measures. These are not identical categories even if their economic effect may overlap.

VIII. SOVEREIGNTY AND SELF-LIMITATION

The jurisprudential core of tariff law lies in the relationship between sovereignty and self-limitation. Tariffs are a classic manifestation of territorial and fiscal authority. A state regulates what enters its market and on what fiscal terms. Yet modern legal systems have voluntarily disciplined this authority through treaties, schedules, institutional procedures, and adjudicative review.[79] The broader law of treaties also reinforces this proposition through pacta sunt servanda

75 See GATT 1994 arts. XX, XXI. These provisions preserve space for public policy and security-based departures from ordinary trade disciplines.

76 Id. art. XXI. The existence of a security exception does not erase legal analysis; it identifies a distinct legal basis for justification.

[77] U.N. Charter art. 41.

[78] See U.N., Repertory of Practice of United Nations Organs, Chapter VII, Article 41, https://legal.un.org/repertory/art41.shtml (describing economic measures and interruption of economic relations as measures under Article 41).

[79] U.S. Const. art. I, § 8; GATT 1994 art. II; TFEU art. 207.

and ordinary treaty-interpretation rules, both of which matter when tariff commitments are interpreted and applied.[80]

This does not amount to the disappearance of sovereignty. It amounts to sovereignty structured by law. Tariffs are not sanctified because they are beyond challenge. They are sanctified because law continues to recognize them while controlling the terms of their use. That is why tariffs remain central to comparative and international law: they are one of the clearest examples of public power that is both sovereign in origin and juridified in operation.

IX. CONCLUSION

The legal sanctity of tariffs under comparative and international law lies in their status as lawful but conditioned instruments of public authority. Domestic legal systems authorize tariffs through constitutional text, supranational treaty competence, or statute. International law does not prohibit tariffs as such; it disciplines them through bindings, transparency, and non-discrimination, while also permitting certain exceptional tariff measures through trade remedies, public policy exceptions, security frameworks, and collective-security mechanisms.[81]

Tariffs should therefore not be dismissed as inherently unlawful or treated as unrestricted sovereign weapons. Their legality depends on source, procedure, conformity, and justification. Where these elements converge, tariffs possess genuine legal sanctity. Where they do not, tariff action becomes vulnerable to challenge. The sound legal conclusion is balanced: tariffs remain legitimate tools of governance, but only when exercised through law.

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[80] Vienna Convention on the Law of Treaties arts. 26, 31, May 23, 1969, 1155 U.N.T.S. 331, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

[81] GATT 1994 art. II; Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on Safeguards; U.N. Charter art. 41.