

# CHINA'S TARIFF LAW: A NEW ERA OF RECIPROCITY AND GLOBAL TRADE ALIGNMENT

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Chen Zihan

### **Abstract**

*The recent promulgation of the People's Republic of China (PRC) Tariff Law marks a pivotal development in the nation's trade regulatory landscape. This Law not only consolidates and codifies existing tariff measures, including anti-dumping, countervailing, safeguard, and retaliatory tariff mechanisms, but also introduces significant new provisions. This article critically examines two such innovations: first, the empowerment of the State to adopt "corresponding measures" based on the principle of reciprocity against countries or regions failing to honor most-favored-nation (MFN) or preferential tariff commitments under international agreements with China, with an explicit stipulation that such measures will conform to China's international treaty obligations. Second, the Law introduces robust anti-circumvention rules, authorizing tariff adjustments and other measures against actions lacking reasonable commercial purpose that are designed to reduce dutiable amounts by circumventing provisions on tariff classification, rates, or dutiable value. This article analyzes these novel provisions within the broader context of China's evolving trade policy, its international commitments, particularly under the World Trade Organization (WTO), and the shifting dynamics of global trade. It argues that these new instruments enhance China's capacity to safeguard its economic interests and respond to complex trade challenges, while simultaneously underscoring the imperative for careful implementation to ensure consistency with international law and to mitigate potential trade frictions.*

**Keywords:** China Tariff Law, Reciprocity, Anti-Circumvention, Trade Remedies, Most-Favored-Nation (MFN), WTO Law

### **I. INTRODUCTION**

The People's Republic of China (PRC) has recently enacted its first comprehensive Tariff Law<sup>1</sup> which came into effect on December

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<sup>1</sup> Tariff Law (中华人民共和国关税法) [Tariff Law] (promulgated by Standing Comm. Nat'l People's Cong., Apr. 26, 2024, effective Dec. 1, 2024).

1, 2024, a landmark piece of legislation that systematizes and modernizes its customs and trade regulatory framework. This development occurs against a backdrop of increasing global trade complexities, rising protectionist sentiments, and a re-evaluation of trade relationships by major economic powers. For China, a leading global trading nation, the Tariff Law represents a significant step in refining the legal tools available to manage its vast international trade flows and protect its national economic interests.

While the Law serves to consolidate many pre-existing tariff-related rules and practices<sup>2</sup>, its true significance lies in both this codification and the introduction of novel mechanisms. This article focuses on two such critical innovations. The first is a newly articulated provision empowering the state to take “corresponding measures” based on the “principle of reciprocity” against trading partners that fail to fulfill their obligations concerning most-favored-nation (MFN) treatment or tariff preferences under international treaties or agreements concluded or jointly participated in by China. Crucially, the Law mandates that such measures “shall be implemented in a manner consistent with our country’s obligations under relevant international treaties”.<sup>3</sup>

The second key innovation is the introduction of explicit anti-circumvention provisions. The Law stipulates that “for acts that circumvent the relevant provisions of Chapter II (Tax Items and Tariff Rates) and Chapter III (Dutiable Value) of this Law and reduce the amount of tax payable without a reasonable commercial purpose, the state may take anti-circumvention measures such as adjusting tariffs”.<sup>4</sup> This grants customs authorities a potent tool to address sophisticated schemes designed to evade tariff liabilities.

This article aims to analyze these two sets of provisions. It will first briefly contextualize them within the Law’s broader framework, which maintains established trade remedy mechanisms such as anti-dumping (AD), countervailing (CVD), and safeguard measures, as well as retaliatory tariffs. The core of the analysis will then delve into the reciprocity and anti-circumvention clauses, examining their potential scope, legal implications under both domestic and international law (particularly WTO law), and their likely impact on China’s trade policy

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2 See, e.g., Customs Law (中华人民共和国海关法) [Customs Law] (promulgated by Standing Comm. Nat’l People’s Cong., Jan. 22, 1987). See also Regulations on Anti-Dumping (中华人民共和国反倾销条例) [Regulations on Anti-Dumping]; Regulations on Countervailing Measures (中华人民共和国反补贴条例) [Regulations on Countervailing Measures]; Regulations on Safeguards (中华人民共和国保障措施条例) [Regulations on Safeguards].

3 Tariff Law, art. 17.

4 Tariff Law, art. 24.

and international trade relations. The central argument is that these new provisions significantly enhance China's strategic trade toolkit, but their application will require careful navigation to ensure consistency with international law and to avoid exacerbating trade tensions.

## II. CONTINUITY AND CODIFICATION: THE ESTABLISHED FRAMEWORK OF TARIFF MEASURES

The new Tariff Law does not operate in a vacuum. It builds upon decades of practice and a pre-existing, albeit more fragmented, regulatory framework for customs duties and trade remedies. A key function of the Law is to provide a higher-level, unified statutory basis for these established measures.

### A. *Enduring Trade Remedies: AD, CVD, and Safeguards*

The Law explicitly reaffirms China's continued use of internationally recognized trade remedies. It provides for the imposition of anti-dumping duties on dumped imports causing injury to a domestic industry, countervailing duties on subsidized imports causing such injury, and safeguard measures (e.g., tariff increases or quantitative restrictions) in response to surges in imports causing or threatening to cause serious injury to a domestic industry<sup>5</sup>.

These provisions largely codify existing practices that China has actively employed since its accession to the WTO<sup>6</sup>. The maintenance of these tools is unsurprising, as they are standard instruments used by WTO members to address specified forms of injurious or "unfair" trade, and their application is governed by detailed WTO agreements<sup>7</sup>. The Tariff Law now provides a more consolidated statutory anchor for these specific regulations.

Since its accession to the WTO, China has become one of the world's major users of trade remedies, with increasingly mature legislation and practices concerning anti-dumping, countervailing, and safeguard measures. Over the past two decades, China has accumulated rich experience in responding to foreign dumping and

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5 Tariff Law, arts. 35-40. See also Regulations on Anti-Dumping (中华人民共和国反倾销条例) [Regulations on Anti-Dumping]; Regulations on Countervailing Measures (中华人民共和国反补贴条例) [Regulations on Countervailing Measures]; Regulations on Safeguards (中华人民共和国保障措施条例) [Regulations on Safeguards].

6 Working Party Report on the Accession of China, WT/ACC/CHN/49, paras. 159-70 (Nov. 10, 2001); Protocol on the Accession of the People's Republic of China, WT/L/432, §15 (Nov. 23, 2001).

7 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement); Agreement on Subsidies and Countervailing Measures (SCM Agreement); Agreement on Safeguards.

subsidization, and has gradually improved its domestic investigation procedures and adjudication standards to align more closely with WTO rules. For example, in the anti-dumping field, China's Ministry of Commerce (MOFCOM) has established a relatively complete system for case initiation, injury determination, causality analysis, and final rulings<sup>8</sup>. The new Tariff Law consolidates these regulations, which were previously scattered across different statutes, elevating their legal status and authority. This helps to further standardize and transparentize the implementation of trade remedy measures, thereby enhancing the predictability of China's trade policy for both domestic and foreign enterprises.<sup>9</sup> Furthermore, this codification process also reflects China's transformation in the field of trade remedies from a "learner" to a "mature user", with an increasing degree of alignment between its domestic laws and international rules, laying the foundation for addressing more complex international trade disputes in the future.<sup>10</sup>

### ***B. Retaliatory Tariffs: A Codified Response***

Similarly, the Tariff Law continues to authorize the imposition of retaliatory tariffs.<sup>11</sup> This typically refers to tariffs imposed in response to trade measures taken by other countries that are deemed to impair China's rights or economic interests. While the specific conditions for such retaliation are often detailed in separate policy announcements or regulations, the Tariff Law provides a clear legal basis for such actions. This can include retaliation authorized by the WTO Dispute Settlement Body (DSB) or, more controversially, unilateral responses to measures perceived as violating international trade norms or harming China's interests.<sup>12</sup> The codification of this power underscores China's intent to possess a full spectrum of trade policy responses.

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<sup>8</sup> See, e.g., BUREAU OF TRADE REMEDIES AND INVESTIGATIONS, MINISTRY OF COMMERCE OF CHINA (MOFCOM), ANNUAL REPORTS (detailing the initiation, investigation, and adjudication of anti-dumping, countervailing, and safeguard measures).

<sup>9</sup> MINISTRY OF COMMERCE OF CHINA, ANNUAL REPORT ON CHINA'S TRADE REMEDY INVESTIGATIONS 45-48 (2023), [http://english.mofcom.gov.cn/article/zt\\_tradereport/](http://english.mofcom.gov.cn/article/zt_tradereport/), archived at <https://perma.cc/9XK5-2Y7N>.

<sup>10</sup> Julia Ya Qin, WTO-Plus Obligations and Their Implications for the World Trade Organization System, 37 J. WORLD TRADE 483, 499-501 (2003).

<sup>11</sup> Tariff Law, art. 41.

<sup>12</sup> Understanding on Rules and Procedures Governing the Settlement of Disputes, art. 22. See generally JOHN H. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 45-48 (MIT Press 1989); ROBERT E. HUDEC, THE GATT LEGAL SYSTEM AND WORLD TRADE DIPLOMACY (Praeger 1975).

The codification of retaliatory tariffs is an important addition to China's trade policy toolbox, especially in the current context of escalating international trade frictions. Historically, countries have often resorted to retaliatory measures when facing unfair treatment from trading partners. However, under the WTO framework, members are required to resolve trade disputes through the dispute settlement mechanism and can only take retaliatory actions when authorized by the DSB.<sup>13</sup> The explicit provision for retaliatory tariffs in China's Tariff Law can be understood both as a domestic legal confirmation of WTO-authorized retaliation and as potentially reserving space for unilateral retaliatory actions in specific circumstances. The legality of such "unilateral" retaliation is controversial under international law, as it may conflict with Article 23 of the WTO Dispute Settlement Understanding (DSU), which prohibits unilateral determinations and unilateral retaliation.<sup>14</sup> However, some scholars argue that in certain extreme cases, such as when the WTO dispute settlement mechanism is paralyzed due to members blocking the appointment of Appellate Body members, affected parties may need to seek legitimate avenues outside the WTO framework to protect their rights, and in such cases, the principle of countermeasures under the law of state responsibility may provide some theoretical basis.<sup>15</sup> The inclusion of retaliatory tariffs in the Tariff Law indicates that China will be more proactive and flexible in safeguarding its trade interests, but its specific implementation will face strict scrutiny from the international community and may trigger new trade disputes.<sup>16</sup>

### III. THE NEW FRONTIER OF RECIPROCITY: DEFENDING TREATY-BASED BENEFITS

One of the most notable innovations in the Tariff Law is the explicit provision allowing China to take "corresponding measures" based on the "principle of reciprocity" against countries or regions that fail to fulfill their MFN or preferential tariff obligations under

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13 Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) art. 23, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2.

14 PETER VAN DEN BOSSCHE & WERNER ZDOUC, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXT, CASES AND MATERIALS* 860-65 (Cambridge Univ. Press 2017).

15 Joel P. Trachtman, *The Domain of WTO Dispute Resolution*, 40 *HARV. INT'L L.J.* 333 (1999).

16 INTERNATIONAL LAW COMMISSION, *DRAFT ARTICLES ON RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS WITH COMMENTARIES* Art. 22 (2001), [https://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf).

international treaties or agreements with China.

### A. *Dissecting the Reciprocity Clause*

The operative language of Article 17 states: “Where any country or region fails to implement the MFN treatment clauses or preferential tariff clauses in any international treaty or agreement concluded or acceded to by the country or region and the People’s Republic of China, the Customs Tariff Commission of the State Council may offer recommendations on taking the corresponding measures based on the principle of reciprocity, which shall be implemented upon approval by the State Council.”<sup>17</sup>

Several aspects of this provision warrant careful examination:

i. Triggering Condition: The failure of a trading partner to implement MFN or preferential tariff clauses. This points to breaches of specific commitments made to China under bilateral or plurilateral agreements, or potentially broader multilateral agreements where such specific obligations towards China exist.

ii. Permissible Action: “Corresponding measures”. The term is broad and not explicitly limited to tariffs. It could potentially encompass other trade-related actions, though in a “Tariff Law”, the primary expectation would be tariff adjustments.<sup>18</sup>

iii: Guiding Principle: “Principle of reciprocity”. Reciprocity in international trade can have various meanings, from strict mirror-image responses (reciprocity in kind) to broader notions of rebalancing concessions.<sup>19</sup> The Law does not define this further, leaving room for interpretation in practice.

iv: Overarching Constraint: The crucial qualifier that relevant measures will be implemented in a manner consistent with our country’s obligations under relevant international treaties. This serves as a critical legal safeguard, ostensibly tethering the application of such reciprocal measures to China’s existing international commitments, most notably under the WTO agreements.

The introduction of this reciprocity clause is a profoundly significant addition to China’s trade policy toolbox. It transcends the traditional scope of trade remedies, directly addressing situations where trading partners fail to fulfill their international treaty

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<sup>17</sup> Tariff Law, art. 17.

<sup>18</sup> The interpretation of “corresponding measures” would likely be guided by implementing regulations or official interpretations from China’s Ministry of Commerce or Customs Administration.

<sup>19</sup> ROBERT O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* (Princeton Univ. Press 1984). See generally international economic law scholarship discussing reciprocity in trade agreements.

obligations. The application of this “reciprocity” principle carries multiple meanings in international law. It can refer to strict “in-kind reciprocity” (e.g., if you raise tariffs, I raise tariffs by an equivalent amount) or to a broader concept of “balanced reciprocity” (e.g., if you harm my interests, I take other forms of measures to offset the damage).

<sup>20</sup> The Tariff Law does not explicitly define the specific operational methods of the “principle of reciprocity”, which grants China flexibility in practice but may also lead to interpretative uncertainties. For instance, when determining “corresponding measures”, China may consider the extent of the damaged interests, the nature of the trading partner’s actions, and relevant provisions of international law. This flexibility allows China to adopt response strategies that best serve its interests in specific situations, whether through tariff adjustments, non-tariff barriers, or other forms of trade restrictions.

### ***B. Navigating International Legal Obligations: The WTO Dimension***

The qualifier regarding consistency with international treaty obligations is paramount, particularly concerning the WTO’s MFN principle (GATT Article I).<sup>21</sup> If China takes targeted “corresponding measures” against a specific WTO Member for allegedly breaching an MFN or preferential obligation owed to China, it must ensure that its own responsive measures do not violate its MFN obligations towards other WTO Members, unless a valid exception applies.

Potential interpretations and justifications include:

i. **Specific Countermeasures:** The measures could be framed as specific countermeasures under the law of state responsibility, permissible in response to an internationally wrongful act by the other state (i.e., the breach of the treaty obligation).<sup>22</sup> However, the WTO has its own specific system for authorizing retaliation (suspension of concessions) through the DSB, which generally takes precedence for WTO-related disputes.<sup>23</sup>

ii. **Application to Non-WTO Agreements or Specific Treaty Provisions:** The provision might be primarily aimed at breaches of bilateral FTAs or other non-WTO agreements where MFN or preferential tariffs are granted. Even within the WTO context, some

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<sup>20</sup> ANDREAS F. LOWENFELD, *INTERNATIONAL ECONOMIC LAW* 20-25 (Oxford Univ. Press 2008).

<sup>21</sup> General Agreement on Tariffs and Trade 1994, art.I, Apr.15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A.

<sup>22</sup> G.A. Res. 56/83, annex, U.N. Doc. A/RES/56/83 (Dec. 12, 2001) (Articles on Responsibility of States for Internationally Wrongful Acts), arts. 22, 49-54.

<sup>23</sup> DSU arts. 3.7, 22, 23.



agreements or specific provisions might allow for more targeted responses under certain conditions.

iii. “Substantially Equivalent” Response: The “principle of reciprocity” might be interpreted as permitting measures that are “substantially equivalent” to the impairment suffered by China, a concept familiar in trade remedy and dispute contexts.

The explicit reference to conformity with international obligations suggests an awareness of these complexities. However, the determination of “consistency” can itself be a point of contention and potential dispute.<sup>24</sup>

The applicability of this reciprocity clause within the WTO legal framework is its most scrutinized aspect. Article I of the WTO General Agreement on Tariffs and Trade (GATT 1994) explicitly stipulates the Most-Favoured-Nation principle, meaning that any advantage, favour, privilege or immunity granted by any member to any product originating in or destined for any country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other members.<sup>25</sup> This implies that if China’s “corresponding measures” against a trading partner result in its products receiving less favorable tariff treatment than those from other WTO members, such measures might violate GATT Article I. However, WTO law also has exceptions, such as GATT Article XXIV, which permits the establishment of free trade areas or customs unions, allowing members to grant preferential treatment among themselves without extending it to all WTO members.<sup>26</sup> Therefore, if China’s reciprocal measures are directed at a trading partner violating bilateral FTA obligations, and that FTA complies with GATT Article XXIV, the WTO compatibility of such measures might be higher.

More complex is the possibility that this clause could be invoked in response to a trading partner’s violation of non-WTO obligations, or when the WTO dispute settlement mechanism is obstructed or unable to function effectively. In such cases, China might invoke the principle of “state responsibility” under international law, where a state bears international responsibility for its internationally wrongful acts, and the injured state may take countermeasures.<sup>27</sup> However, Article 23 of

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<sup>24</sup> For discussions on the interpretation of “consistency” with WTO law in domestic legislation, see scholarly articles on the WTO-consistency of national trade laws, e.g., in the *J. INT’L ECON. L.* or *WORLD TRADE REV.*

<sup>25</sup> WTO Secretariat, *A HANDBOOK ON THE WTO DISPUTE SETTLEMENT SYSTEM* 15-20 (Cambridge Univ. Press 2004), available at [https://www.wto.org/english/res\\_e/publications\\_e/dispuhandbook17\\_e.htm](https://www.wto.org/english/res_e/publications_e/dispuhandbook17_e.htm) (last visited May 24, 2025).

<sup>26</sup> GATT 1994, art. 24.

<sup>27</sup> JAMES CRAWFORD, *STATE RESPONSIBILITY: THE GENERAL PART* 465-80

the WTO Dispute Settlement Understanding (DSU) explicitly states that members shall not make unilateral determinations of WTO inconsistency and should resolve disputes through the DSU mechanism.<sup>28</sup> This creates a potential conflict: would China's domestically authorized reciprocal measures contradict the WTO's prohibition on unilateralism?

Scholars hold differing views on this. Some argue that DSU Article 23 aims to maintain the stability and predictability of the multilateral trading system, and any unilateral action deviating from this mechanism should be considered a violation of WTO law.<sup>29</sup> Others contend that in certain extreme circumstances, such as when the WTO dispute settlement mechanism is paralyzed due to members blocking the appointment of Appellate Body members, the injured party might need to seek legitimate avenues outside the WTO framework to protect its rights, and in such cases, the principle of countermeasures in the law of state responsibility might provide some theoretical basis. The phrase "consistent with our country's obligations under relevant international treaties" in the Tariff Law indicates that China has considered these complexities during legislation, but its specific interpretation and implementation will remain a focus of international attention and may trigger new legal challenges and disputes.<sup>30</sup>

### C. Strategic Implications

This reciprocity clause provides China with a more formalized domestic legal basis to react to perceived non-compliance by its trading partners. It enhances its leverage in trade negotiations and disputes by signaling a willingness to respond directly. However, its actual invocation will likely be a matter of careful political and economic calculation, weighing the benefits of such action against the risks of escalating trade disputes or facing challenges in international forums.<sup>31</sup>

In the current global trade landscape, where major power competition intensifies and trade frictions become increasingly

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(Cambridge Univ. Press 2013).

<sup>28</sup> DSU art. 23.

<sup>29</sup> Joost Pauwelyn, *The Rule of Law Without the Rule of Lawyers? Why Investment Arbitrators Are from Mars, Trade Adjudicators from Venus*, 109 AM. J. INT'L L. 761, 772-775 (2015).

<sup>30</sup> WTO, *China - Measures Concerning Trade in Services and Goods: Request for Consultations by the United States*, WT/DS611/1 (Oct. 15, 2022), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/611-1.pdf>.

<sup>31</sup> For political economy aspects of trade policy tools, see works on strategic trade policy or the use of economic statecraft, often drawing parallels with the use of tools like U.S. Section 301 investigations, while noting the distinct legal frameworks.

normalized, the strategic implications of China's Tariff Law's reciprocity clause cannot be underestimated. Firstly, it enhances China's bargaining power in bilateral and regional trade negotiations. By explicitly authorizing reciprocal measures in domestic law, China can signal to trading partners that its commitment to treaty obligations is serious, and that non-compliance will face concrete consequences. This may encourage trading partners to fulfill their trade commitments to China more cautiously, thereby elevating China's position in international trade relations. Secondly, this clause provides China with a potential domestic legal basis to respond to non-WTO compliant measures taken by certain countries. For example, if a country imposes discriminatory tariffs on Chinese products without WTO authorization, China can invoke this reciprocity clause to take countermeasures. This gives China more flexible means to respond to "grey area" or trade behaviors that fall outside explicit WTO norms.<sup>32</sup>

However, this strategic flexibility also comes with potential risks. Excessive or improper use of reciprocal measures could be perceived as unilateralism, damaging China's international image as a responsible major power, and potentially triggering strong retaliation from trading partners, leading to an escalation of trade wars.<sup>33</sup> Especially in the context of challenges facing the WTO dispute settlement mechanism, countries are more sensitive to unilateral actions. Therefore, when invoking this clause, China will need to perform precise political and economic calculations, assessing the potential short-term gains against the long-term costs to international relations. Transparentizing its decision-making process and seeking legitimacy within the framework of international law as much as possible will be key to China's successful use of this new tool.<sup>34</sup> Furthermore, the implementation of this clause will also test the capacity of China's domestic administrative departments in interpreting and applying the "principle of reciprocity", ensuring its compliance with international legal principles and avoiding arbitrariness, thereby maintaining the authority and predictability of the law.<sup>35</sup>

#### IV. ENSURING EFFECTIVENESS: THE ANTI-CIRCUMVENTION

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<sup>32</sup> Gregory Shaffer & Henry Gao, *A New Chinese Economic Order?*, 23 J. INT'L ECON. L. 607, 619-623 (2020).

<sup>33</sup> DOUGLAS A. IRWIN, *CLASHING OVER COMMERCE: A HISTORY OF U.S. TRADE POLICY* 600-15 (Univ. of Chicago 2017).

<sup>34</sup> CHAD P. BOWN, *THE 2018 US-CHINA TRADE CONFLICT AFTER 40 YEARS OF SPECIAL PROTECTION* (Peterson Inst. for Int'l Econ. 2019).

<sup>35</sup> Pitman B. Potter, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29 LAW & SOC. INQUIRY 465, 478-480 (2004).

## MECHANISM

The second major innovation is the explicit introduction of anti-circumvention measures to combat the erosion of tariff revenue and the undermining of tariff policy through artificial arrangements.

### A. *Defining and Targeting Circumvention*

The Law targets “acts that circumvent the relevant provisions of Chapter II (Tax Items and Tariff Rates) and Chapter III (Dutiable Value) ... without a reasonable commercial purpose and reduce the amount of tax payable.”<sup>36</sup> The state “may take anti-circumvention measures such as adjusting tariffs.”

Key elements include:

i. Circumvention of Specific Provisions: The conduct must relate to the rules on tariff classification (Chapter II) or the determination of dutiable value (Chapter III). This covers common areas of customs fraud and avoidance, such as misclassifying goods to attract lower tariff rates or undervaluing imports.

ii. Lack of “Reasonable Commercial Purpose”: This is a crucial, albeit potentially subjective, standard. It implies that the primary motivation for the arrangement is tax reduction, rather than genuine commercial considerations. This standard is common in general anti-avoidance rules (GAARs) in direct taxation.<sup>37</sup>

iii. Reduction of Tax Payable: The arrangement must result in a lower tariff liability than would otherwise be due.

iv. Permissible State Action: “Adjusting tariffs” is the primary example, but the phrase “and other anti-circumvention measures” suggests a broader range of potential responses. This could include re-determining the tariff classification, re-assessing the dutiable value, or potentially imposing additional duties or penalties.<sup>38</sup>

The introduction of anti-circumvention clauses is an important step in modernizing China’s customs administration and combating illegal trade activities. With the increasing complexity of global supply chains, the phenomenon of traders circumventing tariff obligations through various means has also grown, which not only leads to national

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<sup>36</sup> Tariff Law, art.47.

<sup>37</sup> ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), BASE EROSION AND PROFIT SHIFTING (BEPS) PROJECT (work on GAARs in tax law). See generally comparative tax law scholarship discussing GAARs in various jurisdictions.

<sup>38</sup> The specific scope of “other anti-circumvention measures” would depend on implementing regulations and administrative practice. Existing customs penalty provisions in the Customs Law of the PRC might also apply in conjunction with these measures.

tax revenue losses but also distorts normal market competition.<sup>39</sup> The law explicitly designates “lack of reasonable commercial purpose” as a key criterion for judging circumvention, which aligns with the internationally adopted “substance over form” principle, aiming to penetrate the surface of transactions to reveal their true economic purpose.<sup>40</sup> The determination of “reasonable commercial purpose” will require customs authorities to conduct a comprehensive review of the transaction’s commercial logic, capital flows, and cargo transportation routes to distinguish between legitimate tax avoidance and illegal circumvention. For example, in terms of tariff classification, some enterprises may make minor modifications to products to reclassify them under lower tariff headings; in terms of dutiable value, they may understate the actual value of imported goods through related party transactions, false declarations, or contract splitting.<sup>41</sup> The new law grants customs the power to adjust tariffs and take other anti-circumvention measures, which will help fill existing legal gaps, improve the effectiveness and deterrence of customs enforcement, and thus better safeguard national tax interests and a fair trade environment.<sup>42</sup>

### ***B. Interpretive Challenges and Implementation***

The concept of “reasonable commercial purpose” will be central to the application of this provision. Customs authorities will need to develop criteria and evidentiary standards to distinguish legitimate commercial arrangements that incidentally result in lower tariffs from artificial schemes designed primarily for tariff avoidance.<sup>43</sup> The burden of proof will also be a critical issue—whether it lies with the customs authority to demonstrate the lack of reasonable commercial purpose or with the importer to prove its existence.

Common circumvention practices that might be targeted include:

i. Transshipment or assembly in a third country: To obscure the true origin of goods or to meet rules of origin for preferential tariffs in

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<sup>39</sup> WORLD CUSTOMS ORGANIZATION, WCO REVENUE PACKAGE 15-20 (WCO 2017).

<sup>40</sup> ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), MODEL TAX CONVENTION ON INCOME AND ON CAPITAL (OECD Publishing, latest ed.).

<sup>41</sup> Relevant regulations and cases on customs valuation and commodity classification published by the General Administration of Customs of China.

<sup>42</sup> Customs Law (中华人民共和国海关法) [Customs Law] (promulgated by Standing Comm. Nat'l People's Cong., Jan. 22, 1987). See generally art. 5 (detailing customs duties and powers), art. 86 (on administrative penalties for customs violations).

<sup>43</sup> Implementing regulations or administrative guidelines from the General Administration of Customs of China would be crucial for providing clarity and ensuring consistent application.

an artificial manner.<sup>44</sup>

ii. Product modification: Minor alterations to a product solely to shift its tariff classification to a lower-duty heading.<sup>45</sup>

iii. Complex invoicing or valuation schemes: Artificial arrangements to understate the transaction value of imported goods.<sup>46</sup>

The implementation of this anti-circumvention clause will face numerous challenges, the most central of which is how to accurately define and determine “lack of reasonable commercial purpose”. Due to the complexity and diversity of commercial activities, distinguishing between legitimate tax avoidance and illegal circumvention often requires professional judgment and detailed evidence. Customs authorities need to formulate detailed implementing rules and administrative guidance, clarifying the criteria for judging “reasonable commercial purpose”, the procedures for identifying circumvention, and the scope of application of anti-circumvention measures.<sup>47</sup> For example, drawing on international experience in the field of anti-tax avoidance, risk assessment models can be established to identify high-risk transaction patterns; at the same time, communication with enterprises and industry associations should be strengthened to enhance the transparency and predictability of the law.<sup>48</sup> Furthermore, the allocation of the burden of proof is crucial for the effective implementation of this clause. Generally, the responsibility for proving the existence of circumvention lies with the customs authorities, but for the proof of “reasonable commercial purpose”, importers may need to provide sufficient commercial reasons and supporting documents.<sup>49</sup> Ensuring due process and providing effective administrative review and judicial review avenues will be key to balancing customs enforcement efficiency and the legitimate rights and interests of enterprises.<sup>50</sup> Otherwise, vague regulations and opaque enforcement may increase enterprises’ compliance costs and uncertainties, and even trigger unnecessary trade frictions.<sup>51</sup>

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44 WORLD CUSTOMS ORGANIZATION, INSTRUMENTS AND GUIDELINES RELATED TO RULES OF ORIGIN AND COMBATING ORIGIN FRAUD.

45 WORLD CUSTOMS ORGANIZATION, HARMONIZED SYSTEM EXPLANATORY NOTES (latest ed.).

46 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement), arts. 1, 17.

47 OECD, TAX POLICY REFORMS 2020 (OECD Publishing).

48 ICC UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS 2019 REVISION: UCP 600.

49 MICHAEL J. TREBILCOCK & ROBERT HOWSE, THE REGULATION OF INTERNATIONAL TRADE 300-15 (Routledge 2017).

50 World Customs Organization, Revised Kyoto Convention (Int’l Convention on the Simplification and Harmonization of Customs Procedures).

51 WORLD CUSTOMS ORGANIZATION, STUDY REPORT ON CUSTOMS

### C. Consistency with International Norms

The introduction of such anti-circumvention measures is generally consistent with international efforts to combat customs fraud and ensure effective revenue collection. The WTO Customs Valuation Agreement, for example, provides tools for customs authorities to challenge declared values if they have reason to doubt their accuracy.<sup>52</sup> Many countries have provisions in their customs laws or tax laws to address similar avoidance behaviors.

The key will be to ensure that these anti-circumvention measures are applied in a transparent, non-discriminatory, and proportionate manner, with adequate due process for affected importers, including rights of review and appeal.<sup>53</sup>

The introduction of anti-circumvention clauses in China's Tariff Law is consistent with international trends in combating trade fraud and upholding fiscal sovereignty. The World Customs Organization (WCO), in its Revised Kyoto Convention and other documents, also emphasizes the importance for customs authorities to combat illicit trade activities while ensuring trade security and facilitation.<sup>54</sup> Many major trading countries, such as the United States, the European Union, and Japan, also include similar anti-circumvention clauses in their customs laws or anti-dumping/countervailing duty laws to address behaviors that circumvent tariffs or trade remedy measures through transshipment, minor product modifications, or changes in production processes.<sup>55</sup> For example, U.S. Customs and Border Protection (CBP) actively investigates and combats circumvention through third-country transshipment, falsified origin certificates, and other means when enforcing anti-dumping and countervailing duties.<sup>56</sup>

However, despite the international legitimacy of anti-circumvention measures, their specific implementation must strictly adhere to international legal principles. Foremost is the principle of transparency, meaning that customs authorities should publicize their

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ENFORCEMENT OF IP RIGHTS 67-69 (2022), <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/ipr/2022/ipr-study-report-2022.pdf>.

<sup>52</sup> Customs Valuation Agreement, arts. 1, 8, 17.

<sup>53</sup> Principles of good governance in customs administration are often articulated in international instruments such as the Revised Kyoto Convention. See WORLD CUSTOMS ORGANIZATION, Revised Kyoto Convention (Int'l Convention on the Simplification and Harmonization of Customs Procedures), 1974, amended 1999.

<sup>54</sup> World Customs Organization, Revised Kyoto Convention (2006).

<sup>55</sup> RAJ BHALA & DAVID A. GANTZ, INTERNATIONAL TRADE LAW: AN INTERDISCIPLINARY NON-WESTERN APPROACH 800-20 (Matthew Bender, Press 2015).

<sup>56</sup> U.S. CUSTOMS & BORDER PROT. (CBP), ENFORCEMENT AND COMPLIANCE ANNUAL REPORT (latest ed.).

standards for applying anti-circumvention measures, procedures, and adjudication results, so that enterprises can understand and comply.<sup>57</sup> Secondly is the principle of non-discrimination, meaning that anti-circumvention measures should not target specific countries or enterprises, but should be based on objective facts and legal provisions. Finally, there is the principle of due process, meaning that affected importers should have full rights to information, defense, and remedies, including the right to administrative review and judicial review of customs decisions.<sup>58</sup> Ensuring the implementation of these principles will help enhance the international credibility of China's anti-circumvention measures, prevent them from being seen as new trade barriers, and thus promote the healthy development of international trade while safeguarding national interests.<sup>59</sup>

## V. BALANCING NATIONAL INTERESTS AND INTERNATIONAL OBLIGATIONS

The new reciprocity and anti-circumvention provisions in China's Tariff Law significantly augment the state's capacity to manage its international trade environment and protect its fiscal and economic interests. They reflect a more assertive stance in responding to perceived unfair trade practices or treaty violations by trading partners and in combating sophisticated tariff evasion schemes.

However, the exercise of these powers carries inherent complexities and potential for friction. The reciprocity clause, despite its qualifier about consistency with international obligations, could be perceived by some trading partners as a tool for unilateral pressure, especially if invoked outside the framework of established multilateral dispute settlement mechanisms. The interpretation and application of "principle of reciprocity" and the determination of "consistency" with international law will be critical.<sup>60</sup>

Similarly, while anti-circumvention measures are legitimate tools, their application requires careful judgment to avoid penalizing legitimate commercial activities. The "reasonable commercial purpose" test, if applied too broadly or without clear guidelines, could create uncertainty for businesses and lead to disputes. Transparency in

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<sup>57</sup> Agreement on Trade Facilitation, art. 1.

<sup>58</sup> DANIEL C. K. CHOW & THOMAS J. SCHOENBAUM, *INTERNATIONAL TRADE LAW: PROBLEMS, CASES, AND MATERIALS* 450-65 (Aspen Publishers 2014).

<sup>59</sup> MITSUO MATSUSHITA, THOMAS J. SCHOENBAUM & PETROS C. MAVROIDIS, *THE WORLD TRADE ORGANIZATION: LAW, PRACTICE, AND POLICY* 500-15 (Oxford Univ. Press 2015).

<sup>60</sup> Such disputes could potentially be brought before the WTO Dispute Settlement Body if a WTO Member believes China's actions violate its WTO obligations.



enforcement and robust review mechanisms will be essential to maintain the legitimacy of these measures.<sup>61</sup>

The statement that reciprocal measures “shall be implemented in a manner consistent with our country’s obligations under relevant international treaties” is a vital textual commitment. The credibility of this commitment will be tested in how these provisions are operationalized through implementing regulations, administrative practice, and, potentially, judicial review.<sup>62</sup>

The balance between national interests and international obligations embodied in China’s new Tariff Law is the most crucial challenge in its future implementation. On the one hand, the law grants China more powerful tools to safeguard its economic sovereignty and respond to external challenges, which aligns with the legitimate needs of a country to protect its interests in a complex international environment.<sup>63</sup> On the other hand, as an important member of the WTO, China also bears the international obligation to maintain the stability and rules-based foundation of the multilateral trading system. The implementation of the reciprocity and anti-circumvention clauses must be conducted under this dual consideration.

In practice, this balance will be reflected at multiple levels. For example, when invoking the reciprocity clause, China needs to carefully assess whether the trading partner’s breach constitutes an internationally wrongful act, and whether the “corresponding measures” taken comply with the principles of proportionality and non-discrimination for countermeasures in international law.<sup>64</sup> Even outside the WTO framework, international law requires that countermeasures must be temporary, reversible, and aimed at inducing the breaching party to resume compliance with international obligations, rather than being punitive.<sup>65</sup> Furthermore, China also needs to consider the chain reactions that its actions might trigger, such as retaliation from trading partners, and the impact on global supply chains and market confidence.<sup>66</sup>

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61 The importance of rule of law principles, including transparency, predictability, and due process, is paramount in the application of discretionary powers by administrative agencies.

62 The role of implementing regulations and judicial review in shaping the application of new laws is a key aspect of China’s evolving legal system.

63 JOSEPH S. NYE JR., *SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS* 100-15 (PublicAffairs 2004).

64 ANTONIO CASSESE, *INTERNATIONAL LAW* 270-85 (Oxford Univ. Press 2005).

65 INTERNATIONAL LAW COMMISSION, *DRAFT ARTICLES ON RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS, WITH COMMENTARIES* 130-45 (2001).

66 Appellate Body Report, *United States - Certain Measures on Steel and Aluminum Products*, WT/DS544/AB/R ¶ 5.89 (Dec. 9, 2022).

For the anti-circumvention clause, the key to balance lies in enforcement transparency and predictability. A vague “reasonable commercial purpose” standard could lead to customs having excessive discretion in enforcement, thereby increasing enterprises’ compliance risks and uncertainties.<sup>67</sup> Therefore, formulating clear and specific implementing rules, clarifying the criteria for identifying circumvention and evidentiary requirements, and establishing efficient and fair administrative review and judicial review mechanisms will be crucial.<sup>68</sup> This will not only help protect the legitimate rights and interests of enterprises but also enhance the international credibility of China’s customs enforcement, preventing it from being accused of being a tool for trade protectionism.<sup>69</sup> Ultimately, the successful implementation of China’s new Tariff Law will depend on its ability to both safeguard national interests and fully respect and fulfill international legal obligations, playing a constructive role in global trade governance.

## VI. CONCLUSION

The promulgation of China’s first comprehensive Tariff Law is a landmark event, signaling a new phase in the development of its trade legal framework. The Law’s consolidation of existing tariff measures provides clarity and a unified statutory basis. More significantly, the introduction of explicit provisions on reciprocity and anti-circumvention equips China with new, potent tools to navigate the complexities of modern international trade.

The reciprocity clause allows China to respond more directly to failures by trading partners to uphold their MFN or preferential tariff commitments, while the anti-circumvention clause strengthens its ability to combat tariff evasion. Both provisions underscore a strategic intent to safeguard national economic interests more assertively.

The critical challenge and area for future observation will be the implementation of these new powers. The explicit commitment to act in accordance with international treaty obligations provides an important legal anchor. However, the broad wording of terms like “corresponding measures”, “principle of reciprocity”, and “reasonable commercial purpose” necessitates clear implementing guidelines and a commitment to transparent, predictable, and fair application. Failure

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67 OECD, *TAX ADMINISTRATION 2020: COMPARATIVE INFORMATION ON OECD AND OTHER ADVANCED AND EMERGING ECONOMIES* (OECD Publishing 2020).

68 WORLD BANK GRP., *DOING BUSINESS REPORT* (published annually).

69 WTO, *TRADE POLICY REVIEW: CHINA* (periodic reports).

to do so could lead to increased trade friction and challenges within international forums like the WTO.

Ultimately, China's new Tariff Law reflects its evolving role as a major global economic power, seeking to refine its legal instruments to match its strategic objectives. The manner in which these new reciprocity and anti-circumvention provisions are wielded will have significant implications not only for China's trade relations but also for the broader landscape of global trade governance. The international community will be watching closely as China translates these statutory powers into practice.

