

The Legal Complications of Tariff Circumvention Towards International Trade Principles

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Abstract

This study analyzes the impacts of tariff circumvention on WTO principles and seeks to identify an effective legal response. It examines how greenwashing and transshipment interact with core WTO norms and identifies root causes for why current rules and agreements inadequately address this phenomenon. Employing a doctrinal method grounded in the WTO framework and related jurisprudence, the research finds that the misapplication of the rules of origin, most-favoured-nation (MFN) treatment, and substantial transformation enables circumvention of tariff regimes by reducing or avoiding duties. This misuse undermines the foundational purpose of these principles and creates a precedent for their exploitation. To formulate an effective response to tariff circumvention, the study argues for clear and robust clarification of product identity and the substantial transformation threshold. It also highlights the importance of harmonized categorization and precise definitions within legal instruments to support current and future policy objectives.

INTRODUCTION

Tariff are taxes imposed on imported goods to generate government revenue, protect domestic industries, and respond to unfair trade practices. They may take the form of fixed duties, ad valorem duties based on product value, or other variations. Depending on their purpose, tariffs are commonly classified as protective, revenue, anti-dumping, or retaliatory tariffs. While tariffs are legitimate trade policy instruments, excessive tariff measures can increase costs for businesses and consumers, disrupt supply chains, and provoke retaliatory actions from trading partners.

The financial burden created by tariffs often encourages companies to seek methods of reducing or avoiding their impact. One common approach is tariff circumvention, which involves altering the apparent origin, classification, or value of goods to obtain lower duties or avoid trade restrictions. Such practices may be carried out by individual firms or through networks of intermediaries engaged in transshipment and indirect trade arrangements.¹ Tariff circumvention is frequently associated with “tariff engineering,” whereby businesses modify aspects of a product or its documentation to qualify for more favorable tariff treatment. While some forms of tariff engineering are lawful, others raise significant legal concerns, particularly when they involve the misclassification of goods, false declarations of value, or misrepresentation of a product’s country of origin. These practices create challenges for customs authorities and undermine the integrity of international trade regulations.²

These higher prices and taxes may encourage the companies to instead develop ways to mitigate or even circumvent the effects of the tariffs. The motivation to circumvent tariffs can be attributed to numerous factors that a company’s decision-making. Companies generally will seek ways to minimize unnecessary cost.³ This mindset is especially true within situation in which, due to the non-discrimination principle, countries are punishing products based on its country of origin through the use of preferential treatments to certain countries, that isn’t willing to create any trade agreements to mitigate the applied trade barriers.⁴

¹ Channabasavaiah.H.M., “ Tariffs – An Overview An Overview Tariffs: Meaning, Definition, Objectives and Classification. Tariffs: Meaning, Definition”, *International Journal of Research and Analytical Review (IJRAR)*, Volume 12, issue 3, (2025) 760-764

² Michael Kern, “The Cyclical Peril of Aggressive Tariff Strategies”, *KY.L.J (Kentucky Law Journal)*, Volume 113. (2024), 1-2

³ Jaya Wen, Ebehi Iyoha, et.al. “Research : the Costs of Circumventing Tariffs”, (Harvard Business Review), 2025

⁴ Pravin Krishna, “Preferential Trade Agreements and the World Trade System: A Multilateralist View”, *NBER Chapters, in: Globalization in an Age of Crisis: Multilateral Economic Cooperation in the Twenty-First Century*. (2013) 131-160

A significant aspect of tariff circumvention involves the falsification or manipulation of documents, particularly those relating to a product's origin and classification. The Certificate of Origin (C/O), which identifies the economic nationality of a product, plays a crucial role in determining applicable duties and eligibility for preferential treatment under trade agreements. Misrepresenting information contained in these documents can distort customs assessments and improperly grant benefits that would otherwise be unavailable.

Transshipment is often used in tariff circumvention schemes. Although transshipment is a legitimate logistical process involving the transfer of goods through an intermediary country, it can be abused to disguise the true origin of products. In some cases, goods are routed through third countries and accompanied by misleading documentation. In others, minor processing activities are performed and then presented as substantial enough to justify a change in origin. These practices exploit ambiguities in international rules governing origin determination.⁵

In such situations, companies may develop an intention to circumventing the applicable tariffs. These acts of circumvention may be conducted as the action of a single independent company, or a chain of multiple companies that decided to collaborate on such schemes for their own benefit. In particular, the usage of intermediaries that specializes in processing and distribution of indirect trades, through actions utilizing entrepôts and transshipment.⁶ Within the frame of this research, the specific form of tariffs that is mitigated or circumvented that will be discussed are tariffs that depends on the countries in which the product originated, the *Ad Valorem* tariffs. The methods by which companies engage in tariff circumvention can generally be grouped through the term "tariff engineering" in which certain methods are applied to the product to either avoid or be affected by lower tariffs. These methods are lobbying for exemptions of the tariffs itself, shifting of the production and sourcing location, and reclassification and redesign of the product itself.⁷

Three major legal issues contribute to the persistence of tariff circumvention. First, the principle of substantial transformation lacks uniform interpretation across jurisdictions, creating uncertainty regarding when a product acquires a new origin. Second, suppliers and intermediaries may misrepresent origin information or provide falsified

⁵ Jean-François Hennart and Alain Verbeke "Actionable and enduring implications of Oliver Williamson's transaction cost theory." (*Journal of International Business Studies*). 53 (2022) 1557-1575

⁶ Raymond Fisman, Peter Moustakierski and Shang-Jin Wei. "Outsourcing Tariff Evasion: A New Explanation for Entrepôt Trade." *The Review of Economics and Statistics*, 90(3) (2008), 587-592.

⁷ Rachel Treisman, *A look at some of the creative ways companies try to dodge high tariffs*, 17 September 2025 <https://www.npr.org/2025/03/07/nx-s1-5318785/tariff-dodging-companies-exemptions-engineering>

documentation for commercial gain. Third, legitimate business decisions such as supply-chain relocation may resemble circumvention strategies, making it difficult for regulators to distinguish lawful conduct from unlawful avoidance.

The legal implications of tariff circumvention extend beyond customs violations and directly affect fundamental principles of international trade law. One of the most important principles is the Rules of Origin, which determine the nationality of goods and the tariff treatment they receive. Circumvention practices that misrepresent origin undermine the effectiveness of both preferential and non-preferential rules of origin and distort the allocation of trade benefits and restrictions.⁸

Tariff circumvention also challenges the principle of substantial transformation, which serves as the primary mechanism for determining origin when production involves multiple countries. Because international trade rules do not establish a universally harmonized standard for substantial transformation, businesses may exploit regulatory differences to justify questionable origin claims. This creates legal uncertainty and inconsistent enforcement among trading partners. Another affected principle is the Most-Favoured Nation (MFN) principle under the WTO framework. The MFN principle requires members to provide equal treatment to all trading partners unless a recognized exception applies. Circumvention schemes that conceal a product's true origin allow goods to obtain benefits or avoid restrictions that would not otherwise apply, thereby undermining the principle of non-discrimination in international trade.⁹

Furthermore, tariff circumvention weakens the effectiveness of WTO-authorized trade remedies, including anti-dumping duties, countervailing duties, and safeguard measures. These remedies are intended to address unfair trade practices and protect domestic industries. When companies evade such measures through false origin claims or deceptive transshipment practices, the objectives of these legal mechanisms are frustrated, reducing their effectiveness and legitimacy.¹⁰

Despite the existence of WTO rules, trade agreements, and domestic customs regulations, tariff circumvention remains a persistent challenge. The increasing complexity of global supply chains has made it significantly more difficult for customs authorities to accurately determine the true origin, value, and classification of goods. Modern production processes frequently involve multiple countries, with raw materials,

⁸ Xi Tian, "Trade Frauds, Tariff Evasion and Deep Regional Trade Agreements)", *Nanjing Agricultural University*, (2025)

⁹ Paola Conconi, Manuel García-Santana, Laura Puccio, and Roberto Venturini, "From Final Goods to Inputs: The Protectionist Effect of Rules of Origin", *American Economic Review*, Vol 108(8) (2018), 2335-2365

¹⁰ Brooks E. Allen and Michael E. Leiter, "New AD/CVD Regulations Continue US Crackdown on Tariff Evasion", *Skadden Publication*, (2021) 1-3

components, and assembly activities distributed across different jurisdictions. This fragmentation creates opportunities for businesses to exploit gaps and inconsistencies in origin determination rules, particularly when products undergo processing in intermediary countries before reaching their final destination.¹¹ A major challenge arises from the lack of harmonization in the application of the substantial transformation principle. Although this principle serves as the primary mechanism for determining origin when production occurs in multiple countries, different jurisdictions often apply different tests and thresholds to determine whether a product has acquired a new nationality. As a result, an activity considered sufficient to confer origin in one country may be deemed inadequate in another. These inconsistencies create legal uncertainty for businesses and enforcement authorities alike, while simultaneously providing opportunities for companies to structure transactions in a manner that takes advantage of more favorable interpretations of origin rules.¹² Enforcement efforts are further complicated by the difficulty of distinguishing legitimate business decisions from deliberate acts of tariff circumvention. Businesses frequently relocate production facilities, diversify suppliers, or restructure supply chains for commercially valid reasons, including cost reduction, risk management, and market access. However, similar actions may also be undertaken primarily to avoid tariffs or trade remedies. Consequently, regulators must determine not only whether a change in production or sourcing has occurred, but also whether that change reflects genuine economic activity or merely serves as a mechanism to conceal the true origin of goods. Establishing such intent often requires extensive investigations and access to information that may be dispersed across multiple jurisdictions.¹³

The legal response to tariff circumvention is itself constrained by competing policy considerations. Excessively aggressive enforcement measures risk interfering with legitimate trade and investment activities, particularly where businesses have genuine economic reasons for restructuring their supply chains. Conversely, insufficient enforcement may encourage further circumvention and weaken the credibility of trade

¹¹ Philippe Heeren, Michael Lowell, Justin Angotti, Lizbeth Rodriguez-Johnson, Kirsten Lowell and Courtney E. Fisher, *Tariff mitigation through alternative sourcing: Navigating customs country of origin compliance risks*, 19 September 2025 <https://www.tradecomplianceresourcehub.com/2025/03/25/tariff-mitigation-through-alternative-sourcing-navigating-customs-country-of-origin-compliance-risks/>

¹² Sumarwanto, Evada Rustina, et.al. 'Certificate of Origin Management in Supporting the Export Process: A Qualitative Descriptive Analysis on Marine Cargo Expeditions.' *Ilomata International Journal of Management*. Volume 5, (2024). 637-648.

¹³ Kneppelhout, *Transshipment in transportation: legal aspects and practical considerations*, 16 November 2025 <https://kneppelhout.com/news/transshipment-in-transportation-legal-aspects-and-practical-considerations/> accessed

regulations. Policymakers therefore face the difficult task of designing legal frameworks that effectively deter abuse while preserving the flexibility necessary for lawful commercial activities in a globalized economy.¹⁴ Consequently, tariff circumvention continues to test the effectiveness of international trade law and highlights the limitations of existing regulatory frameworks. The issue demonstrates that the challenge is not merely the existence of legal rules, but also their consistent interpretation, implementation, and enforcement across different jurisdictions. As global trade networks become increasingly interconnected, addressing tariff circumvention will require greater international cooperation, improved transparency in supply chains, stronger verification mechanisms, and a more harmonized approach to origin determination. Without such developments, tariff circumvention is likely to remain a significant obstacle to the effective realization of international trade principles and the objectives they seek to protect.¹⁵

This research will tackle on the tariff circumvention method related to the third method, in which the classification or the nature of the product itself is not presented properly. The previously mentioned method of changing the location of the processing and/or sourcing of the product, and the reclassification will also play a huge part of the narrative discussed within this research. All of these aspects culminate and resulted in a phenomenon in which tariff circumvention is done through the combined usage of greenwashing and transshipment.¹⁶ By examining how these practices interact with international trade principles, the research seeks to evaluate their legal implications and the challenges they pose to the international trading system.

All of these actions are supposed to follow restrictions and principles set out by global trade organizations. However, such actions are still capable of being carried out by businesses and companies and continue to cause losses to nations around the world. Thus, this research deemed fitting to ask: How do these actions impact the trade principles established by the WTO? What are the legal complexities that hinder efforts to tackle tariff circumvention?

¹⁴ Thomas E. Johnson and Donna L. Bade, "Export/Import Procedures And Documentation Revised And Updated Fourth Edition", *American Management Association*, (2010)

¹⁵ Amie Chang, John Auerbach, and Jean Chow-Callam, (2025), *Trade Compliance in the Crosshairs: Managing Tariff Risk in Trump's Trade War 2.0*, 20 November 2025 <https://nardelloandco.com/our-insights/article/trade-compliance-in-the-crosshairs/>

¹⁶ International Chamber of Commerce, *Certificates of Origin* 21 July 2025 <https://iccwbo.org/business-solutions/certificates-of-origin/>

Literature Review

Previous studies have extensively examined tariff circumvention as a consequence of increasing trade restrictions and the expansion of global value chains. Research by Vermulst and Waer (1996) highlighted that tariff circumvention frequently emerges when firms restructure production and distribution networks to avoid anti-dumping duties and other trade barriers. Similarly, Horlick and Shea (2002) argued that the absence of a comprehensive WTO anti-circumvention regime has encouraged WTO Members to adopt divergent domestic approaches, resulting in legal uncertainty and inconsistent enforcement. Other scholars have focused on the role of rules of origin and substantial transformation in determining the economic nationality of goods. LaNasa (1995) emphasized that rules of origin are essential for maintaining the integrity of preferential and non-preferential trade regimes but remain vulnerable to manipulation due to the lack of harmonized international standards. Likewise, Krishna and Krueger (1995) noted that varying national interpretations of substantial transformation create opportunities for firms to relocate limited production activities to third countries in order to alter the legal origin of products.

More recent literature has examined tariff circumvention within the context of global value chains and geopolitical trade disputes. Bown (2020) observed that escalating tariff measures, particularly between major trading powers, have incentivized firms to reroute trade flows and reorganize production networks through intermediary countries. However, most existing studies primarily focus on economic consequences and policy implications. Relatively limited attention has been devoted to the legal implications of tariff circumvention for WTO principles, particularly the interaction between rules of origin, substantial transformation, most-favoured-nation treatment, and trade remedies. This article seeks to address that gap by providing a legal analysis of how tariff circumvention affects the coherence and effectiveness of fundamental WTO trade principles.

his research employs the rule-based international trade framework as the primary theoretical perspective. The WTO system is founded upon the principle that international trade should be governed by transparent, predictable, and non-discriminatory legal rules rather than unilateral economic power. Within this framework, legal instruments such as the rules of origin, the substantial transformation doctrine, the most-favoured-nation principle, and trade remedies function as mechanisms to preserve fairness and certainty in international commerce.

In addition, this study draws upon compliance theory in international law, which examines the factors influencing adherence to international legal obligations. According

to this perspective, states and private actors may engage in conduct that formally complies with legal requirements while undermining the underlying objectives of the legal regime. In the context of tariff circumvention, practices such as origin misrepresentation and strategic transshipment illustrate how actors may exploit legal ambiguities within origin rules and trade-remedy frameworks to avoid trade restrictions without necessarily violating explicit WTO provisions. By combining these theoretical perspectives, this research analyzes tariff circumvention not merely as a customs or trade-enforcement issue, but as a challenge to the effectiveness and legitimacy of the rule-based multilateral trading system. The framework enables an assessment of whether existing WTO principles remain capable of regulating increasingly complex global production networks and whether further legal harmonization is required to preserve the integrity of international trade law.

METHODS

This research is a normative legal study with analytical and exploratory purposes. The primary legal materials consist of international trade agreements, WTO legal instruments, national customs regulations, and legal principles related to tariff circumvention. The research employs a statute approach to examine the applicable legal framework, a conceptual approach to analyze principles such as Rules of Origin, Most-Favoured Nation (MFN), and substantial transformation, and a case approach through relevant WTO dispute settlement reports and trade-related decisions.

The study relies on primary legal materials in the form of treaties, regulations, and official legal documents, supported by secondary legal materials including books, journal articles, and previous research on international trade law and tariff circumvention. Tertiary legal materials, such as legal dictionaries and reference materials, are used to clarify legal concepts and terminology. Legal materials are analyzed using qualitative juridical analysis. The research applies techniques of collection, classification, and systematization of legal materials, followed by deductive analysis from general principles of international trade law to the specific issue of tariff circumvention through transshipment and misrepresentation of origin. To interpret the applicable legal provisions, this research utilizes grammatical, systematic, and teleological interpretation. Where relevant, comparative interpretation is also employed to examine differences in the application of rules of origin and substantial transformation across jurisdictions. Through these approaches and methods, the research aims to provide a critical analysis of the international trade legal framework and assess its effectiveness in addressing tariff

circumvention while maintaining consistency with the fundamental principles of international trade law.¹⁷

RESULT AND DISCUSSION

1. Impact of the Trade Circumvention Actions Towards the Trade Principles

Tariff circumvention through transshipment, false declarations of origin, and the strategic use of third-country assembly operations poses significant challenges to several fundamental principles of the multilateral trading system. The principles most directly affected are the rules of origin, substantial transformation, most-favoured-nation (MFN) treatment, and WTO trade remedies. While firms may restructure supply chains for legitimate commercial reasons, practices specifically designed to conceal the true origin of goods undermine the integrity of these legal principles and create uncertainty in international trade governance.¹⁸

The reason the act of tariff circumvention through the use of greenwashing and transshipment is a breach of international law principles can be divided into several aspects. Generally, it can be attributed to how it is achieved. The existing legal structure must be shaped to act around or against it, giving distinction to criminal action, legally sound but ethically grey and exploitative usage of the system, and genuine strategic business actions. While the laws of the nations may punish directly illegal actions such as fraud, there is still flexibility within the system that creates enough loopholes to undermine certain aspects of international law.¹⁹

These actions have their own direct effect towards the international trade principles mentioned, with the principles having personalized impacts such as:

a. The Rules of Origin

The rules of origin constitute the principle most directly affected by tariff circumvention. Their primary function is to determine the economic nationality of goods and ensure that preferential treatment is granted only to products genuinely originating from eligible countries. When exporters engage in origin misrepresentation or route products through intermediary countries solely to alter their declared origin, the fundamental purpose of origin rules is compromised.

¹⁷ SK Bose and Versha Vahini, "Research Methods and Legal Writing: A Handbook for LL.M and Ph.D Scholars". (*Mind Your Law*,) (2023) 31-44

¹⁸ Ian Allen, "The War on Trade: Applying the WTO Security Exceptions to Economic Security Measures", *Northwestern Journal of International Law & Business*, Volume 45 (2025) 157-212.

¹⁹ Tsvety, *Can You Bypass Tariffs 101? A Legal, Economic, and Ethical Examination* 21 November 2025 <https://thelawtoknow.com/2025/05/22/bypass-tariffs/>

The importance of origin determination has been repeatedly emphasized within WTO jurisprudence. In the dispute between United States – Rules of Origin for Textiles and Apparel Products, the panel highlighted that origin rules play a critical role in ensuring predictability and transparency in international trade. Although the dispute did not directly concern tariff circumvention, it demonstrated the legal significance attached to accurate origin determination within the WTO framework.²⁰ Excessively restrictive responses by importing countries may also create legal concerns. When governments tighten origin requirements beyond internationally accepted standards in order to combat circumvention, rules of origin risk being transformed from neutral administrative instruments into protectionist trade barriers. Such developments undermine the balance originally intended by the WTO Agreement on Rules of Origin.

b. Substantial Transformation

The principle of substantial transformation serves as the primary legal mechanism for determining whether processing conducted in a third country is sufficient to confer a new origin. Traditionally, substantial transformation is assessed by examining whether the processing results in a new name, character, or use of the product. There are concerns by both parties of exporters and importers in the treatment of the substantial transformation rule, saying that products that have been conforming to the substantial transformation principle and the rules of origin should not give rise to concerns of circumvention. It is also worth noting that anti-dumping and countervailing measures cannot achieve elimination on the injury suffered by domestic industry due to dumping and subsidized imported products.²¹

Based on the methods implemented, it gives insight into the core issues that lies within the principle of substantial transformation, the difficulty in proving the baseline and certainty of enough substantial transformation to happen to the product to legitimately adopt the new nationality. This uncertainty and historical unreliability is setting nations to create dangerous precedents on the usage of the rules of origin on expanding methods of anti-dumping and countervailing measures beyond what is allowed by the WTO rules to satisfy their national interest.²²

This problem is particularly significant because WTO law does not provide a universally applicable threshold for determining substantial transformation. As a result,

²⁰ J.H.H. Weiler, Sungjoon Cho and Isabel Feichtner. "International and Regional Trade Law: The Law of the World Trade Organization. Unit VII: Technical Barriers to Trade (TBT)." (2011)

²¹ Doris Lin, Alvin Chen, and Kelly Chiu, *Circumvention Concerns May not be Eliminated by Compliance with Rules of Origin*, 22 November 2025 <https://www.leeandli.com/EN/Newsletters/6472.htm>

²² Craig A. Lewis and Ruoweng Liu, "WILL THE REAL COUNTRY OF ORIGIN PLEASE STAND UP?*", *Tulane Journal of International and Comparative Law*, Volume 21(2), (2013) 1-33

states have developed divergent national approaches, generating legal uncertainty and increasing compliance costs for businesses engaged in legitimate supply-chain restructuring. The absence of harmonized standards creates opportunities for both circumvention and inconsistent enforcement.²³

c. Most Favoured Nation Treatment

The most favoured nation is based on non-discrimination and fairness, however the impact of this phenomenon is two-sided, with undermining to the application of this principle applicable to the parties committing the tariff circumvention, but also to the nation that imposes the tariffs in the first place. Although exceptions such as the security exception exists, repeated imposition of similar origin related tariff amounts to abuse of the security exceptions.²⁴

Another huge impact of the implementation of tariffs that targets a product's nationality, is the following reciprocal countermeasures done by the affected nations, unrelated to the actions of the affected companies. The odds of reciprocal measures are even enhanced when the implementation was done by a unilateral trade decision. All this proliferation of tariffs and restriction, accompanied by the existence of regional trade agreements will instead further fuel the motivation for the affected companies to take advantage of preferential treatments to gain equal treatment and retain their standing in their established markets.²⁵

Correlating to the act of trade circumvention through the usage of greenwashing and transshipment, the act of creating multiple unfavorable preferences to product's origin has instead pushed companies and any other financial forces to reshape their process in response to discrimination caused by the origin-centered tariffs. This reshaping pushed them to utilize any venues that give access to normal or even preferential treatments to their products to avoid or mitigate damages caused by the discrimination, in a convoluted way surmised as a way of defending their right against discrimination caused by the implementation of a tariff that pushes the extend of abuse the most-favored nation principle allow.

d. Trade Remedies

The available trade remedies within the WTO framework of anti-dumping duties, countervailing duties, and safeguard measures are heavily deemed as insufficient,

²³ WTO, *WTO IN BRIEF*, 22 November 2025
https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm

²⁴ *Op Cit*, Ian Allen

²⁵ Guang Ma and Hong Wu, "The Proliferation of Unilateral Trade Measures and the Crisis of the Multilateral Trading System", *Journal of International Dispute Settlement*, Volume 16(3) (2025), 1-26

incompatible, or inadequate in dealing with tariff circumvention, especially when it utilizes greenwashing and transshipment, as this process usually also involves “screwdriver” plants within the intermediary nations. Although negotiations on the problem of circumvention of anti-dumping duties were part of the implementation of Article VI of GATT 1994, there has never been any officially published agreement on specific text regarding it, from its definition, methods, or even proper guidelines for solutions.²⁶ This created a vacuum in which the current trade remedies can be deemed inadequate or incompatible against trade practices formed and aimed at defeating the very purpose of these remedies. Despite such situation, no negotiation round has yet resulted in any tangible results or drafts that directly aimed to tackle tariff circumvention directly and efficiently. Despite efforts from the early GATT dispute settlement challenges through the Uruguay Round, the WTO's Informal Group on Anti-Circumvention and further Rules negotiations such as the Doha Round, members of the WTO have been unable to agree on what constitutes circumvention and adopt rules governing the use of anti-circumvention measures, leaving possible tools of dealing with tariff circumvention purely through available remedies.²⁷

The absence of any WTO rules that expressly allowed anti-circumvention measures, has left high chances for legal challenges towards the implementation of any anti-circumvention instrument, mainly due to the common result of application of high import tariffs to the suspected nations. This instead just shifted the global chain of the product and motivates the creation of new foreign “screwdriver” plants to continue the work held by the previous suppliers. All of this is attributed to how anti-circumvention methods mainly focuses on changes in the trade patterns and economic justification instead of focusing on the dumping and injury caused in a throughout and global scale. Furthermore, when the methods and remedies applied are continue to be imposed and increased in its usage, it will start to affect legitimate foreign direct investments (FDI), and any other normal supply chain restructuring. This issue is further elevated due to the incapability of international trade organizations and the nations to properly agree on the

²⁶ Seref Coskun, Jesse Kreier, and Hiromi Yano, “Anti-Circumvention in the Multilateral System: Plus ça Change”, *Global Trade and Customs Journal*, Volume 11, (11/12), (2016) 461-472

²⁷ Lucia Ostoni, “Anti-Dumping Circumvention in the EU and the US: Is There a Future For Multilateral Provisions Under the WTO? Future For Multilateral Provisions Under the WTO”, *Fordham Journal of Corporate & Financial Law*, Volume 10(2), (2005) 407-438

correct method in managing the phenomenon, showing signs of incompatibility within the relations between nations and the intermediary between them.²⁸

WTO jurisprudence further illustrates the limits imposed on unilateral trade-remedy measures. In disputes such as United States – Anti-Dumping and Countervailing Duties (China) and United States – Stainless Steel (Mexico), panels and the Appellate Body emphasized the importance of strict adherence to WTO procedural and substantive requirements when imposing trade remedies. These decisions suggest that anti-circumvention measures lacking clear legal foundations may be vulnerable to challenge within the WTO dispute settlement system. Accordingly, the absence of internationally agreed anti-circumvention disciplines remains one of the most significant weaknesses in contemporary trade governance. While states seek to prevent abuse of trade remedies, excessive or poorly designed anti-circumvention measures risk disrupting legitimate investment, global value chains, and lawful trade flows.²⁹

The act of tariff circumvention, through use of greenwashing and transshipment, is a significant threat to the credibility and standing of long, established trade principle set by the WTO and practiced globally by nations. It has abused the usage of the rules of origin, highlights the shortcomings available within the substantial transformation principle, directly take advantage of established trade relation allowed by the most favored principle, and is done in a way that has developed a practical resistance towards commonly available trade remedies that have been rendered ineffective in truly eliminating or managing it.

2. The Legal Complexities to Tackle Tariff Circumventions

The reasoning for the difficulty of tackling this phenomenon is varied but correlates to each other within the process of tariff circumvention. The main issues are the falsification of the goods itself regarding its origin, the parties involved such as the companies, third parties, and the respective individual nations with their own sovereignty. There's further issues in the form of assembly plants that may either serve lawful assembly purposes or act as the minimal or fraudulent "screwdriver plants", leading to a huge issue in separating genuine business strategic actions, and deliberate trade circumvention actions.

²⁸ Victor Crochet and Weihuan Zhou, "Preventing The Anti-Circumvention Instrument From undermining Development through Investment", *Cambridge University Press, International & Comparative Law Quarterly*, Volume 72(3), (2023), 601-634

²⁹ Joris Cornelis, "Anti-Circumvention: A Comparison", *Global Trade and Customs Journal*, Volume 11(11/12), (2016), 542-558

Regardless of its technicality on legality, the key challenge on stopping tariff circumvention at the customs level would be checking compliances that cannot be done by simply physically inspecting the goods. These processes, named non-product-related-process or production methods (NPR-PPM) cannot be physically detected. Despite such weakness, it does not constitute a reason to create entire trade barriers against it. It is physically improbable to be able to check a product's origin or if it was a result of illegal means, simply from physical interaction with the product, giving heavy burden to the administrative process in deciding on the nature of the goods itself.³⁰

The implementation of administration regarding a product's compliance with international trade principles will be especially hard for the rules of origin and substantial transformation. Due to the lack of concrete guidelines and definitions offered by the WTO, nations have to individually interpret crucial elements of the principles and rule, leading to varieties of interpretation and management on how to approach tariff circumvention, falsification of documents, and handling of transshipment to not lead to tariff circumvention.³¹

A hard to tackle issue in handling tariff circumvention is the involvement of the third party. Entrepôts or any services dealing in the transport or rerouting of goods may have personal motivation to take advantage of high tariffs and restrictions applied to nations and their companies, with huge possible involvement in circumvention actions and motivation.³² However, these actions are incapable of being solved directly by international law without any major changes to the existing framework and responsibilities for these services belongs to the corresponding nation.

A certain issue is apparent within the implementation of the substantial transformation principle. The core of the substantial transformation principle is based on the existence of manufacturing or processing that has resulted in the creation of a new article of trade that resulted in a new name, character, or usage that was different from its ingredient or material and components. However there still exists nations in which within its application, apply subjective bases on its definition such as giving definition on the "essential" component needed addition of "sufficient" working or processes without providing concrete and standardized limits and criteria, giving rise to vague and arguable definition on what constitutes a substantial transformation on the product.³³

³⁰ Joost Pauwelyn, "Twenty-first century customs fraud: how to effectively enforce EU sustainability requirements on imports", *Journal of International Economic Law*, Volume 27(2) (2024) 203-222

³¹ *Op Cit*, Seref Coskun

³² Raymond Fisman, Peter Moustakerski and Shang-Jin Wei, "Outsourcing tariff evasion: A new explanation for entrepôt trade." *The Review of Economics and Statistics*, Volume 90(3), (2008) 587-592.

³³ *Op Cit*, Peterson, J. M.

This issue is separate from the existence of “screwdriver” plants. Intermediary facilities within a nation that is commonly used in enacting the transshipment and greenwashing tariff circumvention method.³⁴ Screwdriver plants are very shallow and low-cost form of foreign investment where they are simple assembly operations set up to finish products with very minimal processing, technology, or value added. These facilities are used to satisfy the rules of origin and substantial transformation on its most minimal requirement to jump any restrictions and quotas by claiming the product has underwent substantial transformation from the minor assembly. Although a form of investment, these plants offer very few local benefits since it will utilize minimal employment and weak reliance or connection with domestic suppliers and businesses.³⁵

In relation to the process of checking the product, the lack of procedure and comprehensive rules given by international bodies has caused certain tariff circumvention regulation to ignore the principle of substantial transformation, with implications that a product that has been substantially transformed on its physical characteristic and did not merely undergo minor changes, will still be at risk of being deemed as a circumvention effort and will be charged with the applicable anti-dumping or countervailing duties without exclusion, all due to the fact that the product utilizes a relocated factories residing in a third country.³⁶

These elements lead to one of the biggest obstacles in addressing tariff circumvention which has been addressed previously within this research, which is the separation between genuine trade business actions and deliberate acts of trade circumvention or trade engineering. Without a fine threshold of separation, any further restrictions on imported goods will continue to harm both the intended targets and also innocent businesses indiscriminately without further advancement in existing principles and policies.

International trade policies are still developing concrete remedies for tariff circumvention, although the results on the implementation of these solutions are still rather mixed. These solutions focuses on tacking certain main parts of the issue, with enhancement on the detection of tariff circumvention, although not completely immune to substitution or alternative methods. Another solution is the reduction of the

³⁴ *Op Cit*, Seref Coskun

³⁵ Michael J. Trebilcock and Robert Howse. “The regulation of international trade : second edition”. Routledge. (2005) 334-367

³⁶ Jung-Jung Fan and Dorris Lin, *Moving Production to Third Countries May Give Rise to Anti-Circumvention Investigations*, 22 November 2025 <https://www.lexology.com/library/detail.aspx?g=de03f9a8-fd0f-49ac-b706-e33fcfe5b032> accessed

complexity of existing customs procedure, which is quite efficient on methods reliant on using false reports.³⁷

When nations try to impose any form of tariffs or restrictions, the companies and firms will try to adapt to it as best as they can, which leads to the aforementioned means of transshipping the product or rerouting of their products through third parties. In this scenario, it is better to use much more precise attacks instead of an across the board measures that may resulted in an overreaction of the damages and instead disrupts legitimate economic activity. Using more precise accountability, ownership-based approach will have a better, more pinpoint effectiveness in stopping the activity of products that is circumventing tariffs. The absence of comprehensive WTO disciplines on anti-circumvention measures has encouraged states to develop their own domestic enforcement mechanisms. These include customs fraud investigations, anti-evasion proceedings, and enhanced origin verification systems. While such initiatives may improve enforcement, they also contribute to regulatory fragmentation and increase the risk of inconsistent treatment across jurisdictions. Ultimately, the greatest legal challenge lies in maintaining an appropriate balance between preventing circumvention and preserving legitimate trade. Overly broad enforcement measures risk penalizing lawful supply-chain restructuring and foreign investment, whereas weak enforcement encourages continued exploitation of origin rules. Effective regulation therefore requires clearer international standards, greater cooperation among customs authorities, and a more coherent WTO framework capable of distinguishing genuine commercial activity from deliberate tariff circumvention.³⁸

All of these issues illustrate the reasons as to why a perfect solution for tariff circumvention is needed to be developed. However, these hurdles also show why the development of the solution is a difficult process that requires careful balancing of interests in order not to unjustly harm any party in the process aside from those who wish to commit tariff circumvention and undermine the principles of international trade law as it was set by the WTO.

CONCLUSIONS

This study finds that tariff circumvention through transshipment, origin misrepresentation, and the strategic use of third-country assembly operations poses significant challenges to the integrity of the international trading system. Such practices

³⁷ Cosimo Beverelli and Rohit Ticku, "Reducing tariff evasion: The role of trade facilitation", *Journal of Comparative Economics*, Volume 50(2), (2022), 1-47

³⁸ *Op Cit*, Jaya Wen, Ebehi Iyoha, et.al.

undermine the effectiveness of the rules of origin, expose the limitations of the substantial transformation doctrine, and reduce the effectiveness of WTO trade remedies. At the same time, the absence of a comprehensive WTO framework governing tariff circumvention has resulted in fragmented national approaches, creating legal uncertainty for governments, customs authorities, and businesses operating within global value chains.

The study further demonstrates that one of the principal legal difficulties lies in distinguishing legitimate supply-chain restructuring from deliberate circumvention. The lack of harmonized standards for determining substantial transformation and origin conferral allows opportunities for abuse while simultaneously increasing the risk of overly restrictive enforcement measures. Consequently, existing mechanisms are often insufficient to address sophisticated forms of tariff circumvention without adversely affecting lawful trade and investment activities.

To address these challenges, WTO Members should pursue the development of a multilateral anti-circumvention framework that provides a clear definition of tariff circumvention, harmonizes origin determination standards, and establishes objective enforcement criteria. In addition, greater customs cooperation, information-sharing mechanisms, and digital origin-verification systems should be strengthened to improve enforcement effectiveness while preserving legal certainty. Such reforms are necessary to ensure that international trade law remains capable of protecting the principles of transparency, non-discrimination, and fair competition in an increasingly complex global trading environment.

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