

BOFAXE

Trump's Mar-a-Lago Accord Explained

And why the WTO Cannot Do Anything About it

— The global reserve currency is weakening, US stock prices have fallen dramatically, and global growth is slowing significantly. The reason for this is the new US trade strategy: imposing high tariffs on as many imported products as possible. There is much speculation as to the exact reason for this seemingly reckless tariff policy. While some believe Trump is simply incapable of understanding that the tariffs will primarily harm the US and its own population, experts recognize a well-thought-out plan: Trump's policies could serve to weaken the chronically strong US dollar. Once the US dollar is weakened, US exports become cheaper, and the US can reduce its enormous trade deficit which – for Donald Trump – has always been a symbol of the US losing power. In fact, there is even a name for this plan: the *Mar-a-Lago Accord*, named after Donald Trump's residence. This post explains why Trump cannot directly devalue the US dollar, how he is taking the detour via trade policy, and identifies three reasons for the World Trade Organization's (WTO) inaction.

How do Exchange Rates Work?

To identify potential exchange rate manipulation, it is necessary to have at least a basic understanding of the economic mechanisms of exchange rates and different currencies. Exchange rates are the most important indicator in international trade. They determine the prices of goods exported to other currency zones. If the domestic currency is strong compared to other currencies – such as the US dollar – exports are expensive because the other country must use more of its own currency to purchase the goods, while imports are correspondingly cheap. On the other hand, if the domestic currency is weak, imports become expensive and exports cheap (cf. this graphic). This almost inevitably leads to countries with strong currencies generally having a trade deficit, i.e., importing more than they export. The US has the world's largest trade deficit, importing a net \$900 billion more in goods and services than it exported last year. This is also seen by some economists as the source of the US' enormous national debt, which – without the US dollar's hegemony – would likely have already led to national bankruptcy.

For a long time, as an expression of state financial sovereignty, states were allowed to determine the value of their currency by issuing it through their central banks at a rate of their own choosing. That caused an international devaluation spiral in order to keep own exports cheap and the domestic economy competitive. It was only the IMF agreement of 1944 that created the Bretton Woods system with its fixed exchange rates. The US dollar, e.g., was originally pegged to the price of gold: one US dollar guaranteed 0.88671g of gold. Even after the *de facto* dissolution of the gold standard in 1971 (the reason being that there simply wasn't enough gold left, as the volume of dollars had increased so sharply), Art. IV (1) (iii) of the IMF Agreement states that exchange rate manipulation aimed at maintaining an unfair competitive advantage must be avoided. Accordingly, the United States is prevented from autonomously devaluing the dollar, for example, by the US central bank (Federal Reserve, called FED) selling US dollars on a large scale.

Exchange Rate Policy Under the Guise of Trade Policy

The US dollar is chronically (too) strong, and the US has no direct influence, so the trade deficit is unlikely to decrease without intervention. The assumption of many economic experts that the US is using its tariff policy for currency manipulation is thus plausible.

But isn't there an international agreement that regulates how tariffs may be used? Isn't there even an international organization founded to regulate global trade? To provide a platform for the amicable settlement of trade disputes and to prevent trade from being misused for other purposes?

VERANTWORTUNG: Die BOFAXE werden vom Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht der Ruhr-Universität Bochum herausgegeben: IFHV, Massenbergstraße 11, 44787 Bochum, Tel.: +49 (0)234/32-27366, Fax: +49 (0)234/32-14208, Web: <http://www.ruhr-uni-bochum.de/ifhv/>. Bei Interesse am Bezug der BOFAXE wenden Sie sich bitte an: ifhv-publications@rub.de. **FÜR DEN INHALT SIND DIE JEWEILIGEN AUTORINNEN UND AUTOREN ALLEIN VERANTWORTLICH.**

Die BOFAXE erscheinen auch auf dem [Völkerrechtsblog](#) und unterfallen der [Creative Commons BY SA 4.0](#) Lizenz.

BOFAXE

Trump's Mar-a-Lago Accord Explained

And why the WTO Cannot Do Anything About it

The WTO System

In fact, both exist: Immediately after World War II, the General Agreement on Tariffs and Trade (GATT) was concluded to promote free trade and largely eliminate tariffs. The ideological core of the agreement is the Most-Favoured-Nation-Treatment (MFN-Treatment) in Art. 1 (1) GATT, which obliges any concession granted to a GATT country to be granted "immediately and unconditionally" to all other GATT countries and is supposed to prevent states from imposing varying (and therefore discriminatory) tariffs. In 1994, the GATT was further tightened and amended by a Dispute Settlement Understanding (DSU). The old procedure for sanctioning violations of the GATT was based on non-binding consultations between members and panel reports from experts. These had to be adopted unanimously (positive consensus) so that economic countermeasures could be taken. This ineffective system was now to be improved through fundamental changes. For this purpose, the World Trade Organization was founded as a supervisory body under Art. 1 of the Marrakesh Agreement. In addition, Art. 2 (1) DSU established the Dispute Settlement Body (DSB), consisting of representatives from all member states. If the panel finds a violation of GATT, the DSB can authorize the complaining country to take countermeasures by accepting the panel's rulings, Art. 16 (4) (1) DSU. Parties to the dispute may appeal the panel's ruling to the WTO Appellate Body; the appeal effectively suspends the effect of the ruling, which "shall not be considered for adoption by the DSB until after completion of the appeal", Art. 16 (4) DSU. Generally, decisions of the panel and the Appellate Body are legally binding unless the DSB unanimously rejects them, Art. 17 (14) DSU (negative consensus). All this apparently has not stopped the US from enforcing its wild west trade policy. Essentially, there are three reasons for this.

a) Blockade of the Appellate Body

Since 2017, the US has blocked the appointment of new members to the Appellate Body, which has led to its incapacity to work since 2019. It is unable to conduct hearings and therefore cannot make binding decisions. This also precludes the other party from being authorized to impose countermeasures as the panels decisions are not legally binding if they are appealed. The GATT has been effectively suspended. Interestingly, not only Trump blocked the appointment of new members during his first term, but also President Biden. The reason for the blockade is that in previous decisions, the Appellate Body was accused by the US of overstepping its competencies and thus violating US sovereignty. The US has repeatedly referred to Art. XXI GATT in its trade policy, which permits trade restrictions in the interests of national security (e.g. here). In the US' view, this is not subject to judicial review; the Appellate Body disagreed. As a result, the last two presidents – with different rhetoric – withdrew cooperation from the WTO. The US therefore do not need to fear economic countermeasures from other states, which likely impacts its current policies. Given that the WTO system is a self-contained regime (as acknowledged, i.a., by the ILC, see here, p. 140), nothing different follows from the general rules of international law, cf. Art. 55 ARSIWA.

b) The GATT is a Patchwork Agreement

Furthermore, by its very nature, GATT is not a comprehensive agreement. It contains numerous exceptions, particularly in favor of free trade zones, Art. XXIV (5) GATT. There, only the rules of the respective free trade zone apply, not those of the GATT.

VERANTWORTUNG: Die BOFAXE werden vom Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht der Ruhr-Universität Bochum herausgegeben: IFHV, Massenbergsstraße 11, 44787 Bochum, Tel.: +49 (0)234/32-27366, Fax: +49 (0)234/32-14208, Web: <http://www.ruhr-uni-bochum.de/ifhv/>. Bei Interesse am Bezug der BOFAXE wenden Sie sich bitte an: ifhv-publications@rub.de. **FÜR DEN INHALT SIND DIE JEWEILIGEN AUTORINNEN UND AUTOREN ALLEIN VERANTWORTLICH.**

Die BOFAXE erscheinen auch auf dem Völkerrechtsblog und unterfallen der Creative Commons BY SA 4.0 Lizenz.

BOFAXE

Trump's Mar-a-Lago Accord Explained

And why the WTO Cannot Do Anything About it

The US maintains free trade agreements with approximately 20 countries, including Mexico and Canada (USMCA), as well as Australia and many Central American countries. This means that especially Art. I (1) GATT, the MFN-Treatment, does not apply within these trade zones, which allows for different tariff rates. Violations of the rules of their own free trade agreements cannot be invoked under the GATT, and the sanctions provided by the agreements themselves are often even less effective than those of the GATT.

c) From Multilateralism to Bilateralism

Finally, the factual reasons for the failure of the GATT must not be ignored. As the world's largest economic power, the US has options that are beyond legal control. The number of complaints would likely be small even if the Appellate Body were capable of acting. Even before the blockade, the US sought to achieve its goals through bilateral negotiations rather than by implementing the rulings of the Appellate Body. This is demonstrated, e.g., by the trade agreement signed between China and the US in 2020. After failing to comply with the rules of GATT several times in the years before (cf. here, here and here), the US offered China bilateral negotiations instead of implementing the panel's ruling. In 2019, the US signed a trade deal with Japan which grants lower tariffs for both parties but obviously violates Art. I (1) GATT since it does not cover "substantially all the trade" as required in Art. XXIV (8) (b) (Chowdhry et al, p. 2). One year before, South Korea agreed to reduce its steel exports to the US by at least 30% to avoid being subject to high tariffs. While the US justifies its actions on the basis of national security, this is arguably not compatible with GATT (Herrmann/Glöckle, p. 18). Following the latest tariff increase, the US and China agreed on cancelling some tariffs and suspending others for 90 days, starting on May 14. Already this brief overview demonstrates how the US uses its economic and political power to undermine the multilateral trading system through bilateral agreements.

Conclusion

Existing legal means are insufficient to contain the world's largest trading power. Attempts to further develop the WTO system, for example by creating a Multi-party interim appeal arbitration arrangement (MPIA), have so far been unsuccessful. This post cannot offer a solution to the dysfunctionality of the global trading system either. A small hope remains: Perhaps the US has overstepped the mark this time. The planned trade agreements between China, Japan, and South Korea – formerly states hostile to one another – are a direct response to Trump's tariff policy. And an expression of a changing global trade structure in which the US may be losing power. In order to avoid an erosion of international (trade) law, we should hope for that.