

## The Reclamation of Dispute Settlement Mechanism in WTO for Sustainability of International Trade (Trade Law vs. Security Law)

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**Abstract:** *The ideology of Bretton Woods for multilateral trading system buried in the USA during the reigns of Trump. He has not only reversed the 80 years' trade rules of the USA but poses a potential threat to Multilateral trade and endangered the WTO mechanism of dispute resolution by delaying the nominations for its Appellate forum. The present study focuses both on the potential crises in international trade and American invocation of excessive tariffs and Anti-Dumping duties in the form of National Security Measures contrary to the provisions of the GATT Agreement. The Security Measures taken by the Trump administration were extraordinary in nature and violated many procedural rules of WTO Trade covenants necessary to be followed before the determination and imposition of counter-vailing and Anti-Dumping duties. The Trump's unilateral approach eroded away the leading role of the USA for accelerating the global trade once it played, which resultantly paved the way for China to take place instead of the USA in international arena to revisit and frame new trade rules for Nations. The article also addresses through empirical analysis that WTO dispute settlement body seems reluctant to take any bold decision against developed economies.*

**Key Words:** Trade Conflicts Tariffs, Dispute Settlement, Anti-Dumping Measures, WTO, International Trade Law

### Introduction

For the last 80 years, the USA has framed and led the global economic order based on Multilateral and sustainable trading rules. Multilateralism, an axiomatic approach towards the accomplishment of free global trade, ensuring equal economic benefits to all, the establishment of the economic rule of law rather than the law itself perceived as governing principles of the system. The idea of multilateralism has given birth to two trade governing and dispute settlement institutions, i.e., GATT and WTO, in order to foster economic growth by generating acceptable trade conditions for competitive corporate markets [Hopewell, 2021]. Much focus was given at the time of coding liberal trade rules rather than on its enforcement and compliance as enforcement was not the concern while drafting the GATT, but the emphasis was laid down on the procedure only under Article xxii and xxiii, and no channelized institution was referred for the redressal of trade disputes [Chatagnier and Lim, 2021]. The USA has always tried to dominate the international trade by putting China under constant trade and

economic threats, as was reflected in the speeches of Trump before taking the charge of Presidential office. He threatened China to stop transferring its trade secrets; otherwise, every legal remedy under USA National law would be availed to counter it [Glauber, 2021]. The USA tried to revisit its Chinese market access by using the dispute settlement channel of WTO. Before Trump, the USA had filed 20 complaints against China in WTO and 12 against the rest of the WTO members [Hoekman and Mavroidis, 2021]. This shows the concentration of the USA to throw away the rules contained in the doctrine of Multilateralism for international economic growth [Bown, 2021].

Trump, before taking charge of the presidency to vilify his future trade intentions against China in speeches he said, "if China does not stop its illegal activities including the theft of USA trade secrets, I will bring into the Presidential authority to redress trade conflicts through the imposition of Tariffs in line with the provisions of section 201 and 301 of the Trade Act of 1974

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and under Section 232 of the Trade Expansion Act of 1962” [Wang et al., 2021]. Section 301 of the Trade Act of 1974 vests powers to the office of the United States Trade Representative (USTR) to investigate foreign trade practices injurious to USA trade rights and recommend actions against those abusive trade behaviours. Prior to the Trump Presidency and since the origin of the World Trade Organization (WTO) in 1995, the USA used Section 301 powers to investigate, build and pursue trade cases before the WTO dispute settlement panel for redressal, but the Trump regime was more eager to take these actions unilaterally rather to make compliance with the implementation provisions of the GATT agreement [Muhammad and Jones, 2021]. In 2021, the present administration of the USA had taken various steps to eliminate certain foreign trade activities that were the subject of section 301 investigations. The Biden Presidency took a number of steps to revisit USA trade actions taken against China [Goldstein and Gulotty, 2021].

The Trumps Unilateral actions under Section 301 have changed the trade history of the USA as the actions were taken under this Section against those countries who imposed trade barriers and blocked their markets for USA exporters, but the same principle has been reversed by the Trump Administration by establishing trade blockades for the Chinese manufacturers and exporters in the USA market. Since the enactment of the Trade Act in 1974, 130 cases under Section 301 had been taken, 35 of which were initiated after the origin of the WTO in 1995. During the Trump Presidency, the United States Trade Representative (USTR) has commenced six investigations against China and the European Union [Lopatin et al., 2021].

During his term, Trump as USA President, initiated 306 counter-vailing and Anti-Dumping duty investigations which is 283% more than the Obama regime. As Stuart S Malawer predicted in 2019 about the Trump's excessive use of Section 232 of the Trade Expansion Act, 1962 in the following manner, which is more valid even today:

*“Active and positive engagement with the global economy, not restrictive actions or tariffs harking back to the beginning of the American republic up through the 1930s, is essential to global trade and domestic economic development. The policies espoused at that time did not lead to greatness but only global warfare. Positive US engagement with the global economy and international political system is essential to American security today.”* [Malawer, 2021].

The greatest recent legal development has taken place in the USA against the trade actions

under the shadow of National security is declared illegal by the International Trade Court of the USA in the case of [Transpacific Steel LLC vs. the US \(2019\)](#). The case has established remarkable history and restricted the exercise of Presidential powers under Section 232 of the Trade Expansion Act 1962. The Court said that a statutory period given in the law was binding if any action was taken contrary to that provision, it would have no legal force. An appeal against the said decision to the US Federal Court was also declined to be premature. The Court ruled that the Tariff restrictions against the Turkish steel producer were subject to the stern time period and that Mr. Trump had acted beyond the reasonable time limits [Smith and Walters, 2019].

The present unprecedented ruling of the International Trade Court of the USA paved the way that even the Presidential actions under the umbrella of National security were subject to judicial review, which started a new debate among the legal scholars as the provision of Section 232 was never interpreted in that manner before that. This was the mandate of the WTO Dispute Settlement Panel to interpret that provision in order to mitigate the trade-related disputes among nations, but that spirit has not been exercised ever, which shakes the very foundations of the idea of multilateralism globally. The judges of the various courts in the USA had expressed their skepticism about the Trump's national security actions imposing tariffs and anti-dumping duties [Silverberg, 2021].

## Emerging Trade Policy Problems and Challenges for Biden Administration

The following trade-related challenges might be faced by the Biden regime in the future:

1. Trump's national security actions, particularly against China, which endangered the previous USA efforts for trade liberalization, need to be addressed lawfully in line U the provisions of the GATT agreement.
2. To restore competitive trade environment universally, specifically after Brexit, by finding new trade partners and economic alliances to remove the apprehension of coming economic suppression.
3. To decide the legality of the Trump's trade actions against China after the phase one agreement in 2020 between China and the USA and lifting Section 232 and 301 sanctions on Chinese goods, investment in the Chinese corporate sector, and protection of the USA patents and intellectual property rights.

4. To revisit the delegated tariff powers to certain authorities in the USA and bring efforts to withdraw such delegated powers back to either the President or any other financial institution.
5. To reframe the trade policies for European Union and the UK to tackle ongoing litigation with the respective countries.
6. To focus on WTO core problems, especially the nominations to the Appellate Body, its proper functioning to ensure the institutional economic integrity.
7. To suggest reforms to resolve Trade-related disputes within the WTO and outside the jurisdiction of the WTO.
8. To address digital, E-Commerce trade, online markets dominance, exploitative economic abuse of big firms, the reclamation of trade rounds within WTO.
9. To rethink the initiatives taken by President Trump to declare certain nations regarding the duty-free tariff treatment under (GSP).
10. Reconsideration of aggressive State measures to treat other sovereign States in accordance with the established international norms, i.e., Cuba (Yigit, 2021).

### WTO and National Security Exception

Article XXI of GATT is very much clear about the application of the national security measures and Article XI about the enforcement of Anti-Dumping and counter-vailing obligations by observing the procedure determined by the said provisions of GATT. Recently the historical development has taken place in the WTO as two cases are pending before the Panel concerning the interpretation and implementation of Article XXI of the GATT. In another case, in September 2020, the WTO Panel issued its report regarding the national security exception under Trips having same theme of GATT Article XXI brought by Qatar against Saudi Arabia, and the Panel ruled that security exception was applicable in favor of Saudi-Arabia (Ma et al., 2021; Boulan, et al. 2021). Prior to that, in 2019, the WTO ruled on the security exception in the case of [Ukraine vs. Russia \(2019\)](#), and Panel held that the security exception is reviewable and applied in favour of Russia (Ray and Miglani, 2021).

### Crises in WTO (Dispute Settlement Mechanism)

For the amicable settlement of the trade related disputes, the (Dispute Settlement Mechanism) DSM was established to enforce the WTO agreements and ensure economic sustainability.

Historically, the trade disputes peaked in 2018 with 39 cases, which is the highest percentage after the birth of WTO, and the story has not ended here; in 2019, another 19 trade disputes were registered in WTO (Allen, 2021). Such unprecedented rise of the trade conflicts put the DSM under pressure, ultimately affecting the global economic growth and endangering the operational work of the WTO. The motive behind the majority of these trade cases was political in nature, as the USA intentionally blocked the appointments to the Appellate Bench of the WTO (Cereffi et al., 2021). The USA had raised certain objections over the mandate and jurisdiction of the Appellate Bench and restricted the ruling authority of the Panel members, which invites escalation of trade conflicts. The USA also criticized the complex time taking process for the resolution of the disputes rather than to bring valuable suggestions for the improvement of the existing rules. The Trump regime, contrary to the multilateral rules, issued the obnoxious report against the Panel Members (Aggarwal and Reddie, 2021).

### Hypothesis

The following hypothesis have been drawn to conduct the statistical analysis for the determination of the economic outcome and its possible effects on growing economies in the future:

1. Do the trade disputes between USA and China affect the global economic development?
2. Does the WTO legacy pose great threat for multilateral trade?
3. Did the security measures override the provisions of the WTO Anti-Dumping Agreement?
4. Have the Chinese legislative measures been in line with the World Trade Organization agreements on Anti-Dumping Duties?

### Results

To test the hypothesis, Statistical Package for Social Sciences (SPSS) was used. Regression Analysis through enter method, Descriptive analysis and Graphs were used to analyse the data. Following are the results of hypothesis testing:

#### Hypothesis 1:

Do the trade disputes between USA and China affect the global economic development?

To test this hypothesis, Regression Analysis through enter method was used. Table 1 shows the results of analysis.

Table 1.

Model Summary					
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	
1	.022 <sup>a</sup>	.000	-.142	.614	

a. Predictors: (Constant), US-China Dispute

ANOVA						
Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	.001	1	.001	.003	.955 <sup>b</sup>
	Residual	2.637	7	.377		
	Total	2.638	8			

a. Dependent Variable: Global GDP

b. Predictors: (Constant), US-China Dispute

Coefficients						
Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	3.161	.363		8.701	.000
	US-China Dispute	.006	.104	.022	.058	.955

a. Dependent Variable: Global GDP

The above tables show the significant value for the Predictor; US and China Dispute, Sig=.955 which is more than 0.05 and determines no effect of predictor on dependent variable; the Global Economic Development.

This indicates that the Trade disputes between USA and China do not have a significant effect on the global economic development.

### Hypothesis 2

Does the WTO legacy pose great threat for multilateral trade?

To test this hypothesis, Regression Analysis through enter method was used. Graph was also drawn to illustrate the effect of WTO legacy on Multilateral Trade over the years. Table 2 shows the effect of WTO legacy on Multilateral Import;

Table 2.

Model Summary					
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	
1	.533 <sup>a</sup>	.284	.194	7.7487	

a. Predictors: (Constant), Trade Years

ANOVA						
Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	190.201	1	190.201	3.168	.113 <sup>b</sup>
	Residual	480.344	8	60.043		
	Total	670.545	9			

a. Dependent Variable: Import

b. Predictors: (Constant), Trade Years

Coefficients						
Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	658.467	364.045		1.809	.108
	Trade Years	-4.812E-8	.000	-.533	-1.780	.113

a. Dependent Variable: Import

The above tables show the significant value for the Predictor; Trade Years of increasing WTO Legacy, Sig=.113 which is more than 0.05 and determines no effect of predictor on dependent variable; Multilateral Import.

This indicates that the WTO legacy does not pose a great threat for multilateral trade.

Table 3 shows the effect of WTO legacy on Multilateral Export.

**Table 3.**

<b>Model Summary</b>						
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate		
1	.532 <sup>a</sup>	.283	.194	7.6174		

a. Predictors: (Constant), Trade Years

b. Dependent Variable: Export

<b>ANOVA</b>						
Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	183.583	1	183.583	3.164	.113 <sup>b</sup>
	Residual	464.202	8	58.025		
	Total	647.785	9			

a. Dependent Variable: Export

b. Predictors: (Constant), Trade Years

<b>Coefficients</b>						
Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	646.796	357.875		1.807	.108
	Trade Years	-4.727E-8	.000	-.532	-1.779	.113

a. Dependent Variable: Export

The above tables show the significant value for the Predictor; Trade Years of increasing WTO Legacy, Sig=.113 which is more than 0.05 and determines no effect of predictor on dependent variable; Multilateral Export.

This indicates that the WTO legacy does not pose a great threat for multilateral trade.

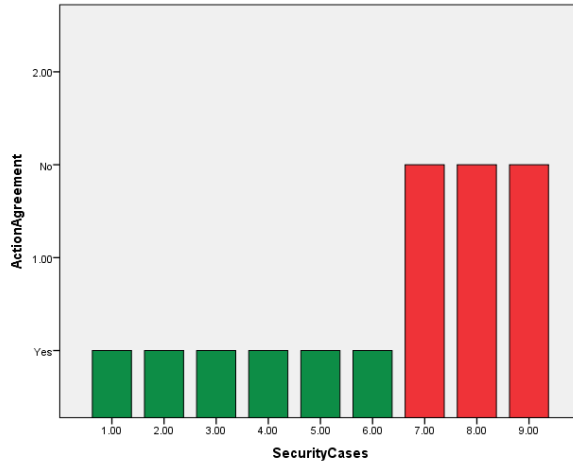
### Hypothesis 3

Did the security measures override the provisions of the WTO Anti-Dumping Agreement?

To test this hypothesis, Histogram was drawn between Security Measures and Articles of WTO Anti-Dumping Agreement.

Following are the Articles mentioned in the Anti-Dumping Agreement (regarding Implementation of Article VI of GATT):

Articles	Title of the Articles
1	Principles
2	Determination of Dumping
3	Determination of Injury
4	Definition of Domestic Industry
5	Initiations and Subsequent Investigation
6	Collection of Evidence
7	Price Undertakings
8	Impositions and Collection of Anti-Dumping Duties
9	Duration and Review of Anti-Dumping Duties and Price Undertakings
10	Judicial Reviews
11	Committee on Anti-Dumping Practices
12	Consultation and Dispute Settlement



Graph 1: shows the results of analysis:

**Graph 1**

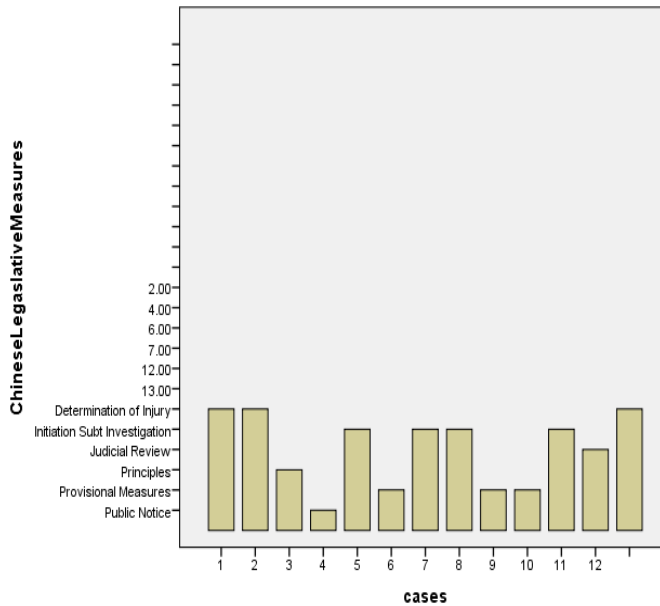
Graph 1 shows that out of 9 cases that were recorded between the years 2001 to 2020 according to the data mentioned in Section 232 Investigations, Overview and Issues for Congress (2021), only three cases were not followed by any presidential actions aligned to the Anti-Dumping Agreement. This indicates that the security

measures do not override the provisions of WTO Anti- Dumping Agreement.

**Hypothesis 4**

Have the Chinese legislative measures been in line with the WTO agreement on Anti-Dumping Duties?

To test this hypothesis, Histogram was drawn between Chinese legislative measures and Articles of WTO Anti-Dumping Agreement.



Graph 2: shows the results of analysis:

## Graph 2

Graph 2 shows that all the Chinese Legislative Measures on Anti-Dumping & Countervailing Duties taken between the years 2002 to 2004 have been aligned with the WTO agreement on Anti-Dumping Duties with aligned Articles from the agreement mentioned in the graph. This indicates that Chinese legislative measures have been in line with the WTO agreement on Anti-Dumping Duties.

## Summary of Findings

- The Trade disputes between USA and China do not have a significant effect on the global economic development.
- The WTO legacy does not pose a great threat for multilateral trade.
- The security measures do not override the provisions of the WTO Anti-Dumping Agreement.
- The Chinese legislative measures have been in line with the WTO agreement on Anti-Dumping Duties.

The pre-pandemic trade era and excessive use of discretionary powers by the President Trump had created grave concerns for the rest of the world because Trump's assault on global trade will take time for abolishment. The USA must avoid such kind of political trade disputes and restore the confidence of the UNO members towards the WTO [Keaten & Wiseman, 2019]. The pandemic has added fuel to the fire and poses a great threat to the nourishment of the multilateralism of international trade. The new Director of the WTO will have to face these controversies. The appointment of Ms. Okonjo as director of WTO sketches the intention of the USA to bring high reforms for the institution. Beyond these political disputes, the nascent threats for the universal trade sustainability are knocking the

door, i.e., the regulation of e-commerce, digital markets, supply chain management during pandemic, etc. The Brexit and the ongoing focus of the developing economies to strengthen regional cooperation will render the WTO to be a white elephant [Malkawi, 2021 & Hoda, 2021].

## Conclusion

It is need of the time to address the National Security claims taken by several jurisdictions to infringe trade liberty, blocked the economic markets and restrict the choice for customers which not only violates the global trade norms but also creates obstacles at the regional level resultantly the less developed economies divert their trade priorities from WTO to local platforms. The USA has not only criticised the evolving role of the WTO but even did not participate in the regional level trade agreements and preferred to lead the world economies unilaterally.

The core and crux of the study is that the world is facing severe crises within the trade organization and the Biden administration should take into consideration the prevailing uncertainty by removing the trade barriers. The mechanism to appoint the WTO dispute settlement members should be revised and roundtable trade negotiations initiated to reform the organization in which the recommendations of the developing economies should be encouraged. The principles contained in the GATT agreement concerning the application and imposition of trade tariffs be complied accordingly to promote the supremacy of the WTO and rulings made by the panel members to dispose of the trade controversies should not be interfered unilaterally. The nascent doctrine of judicial review of trade disputes be negotiated within the organization and its upcoming repercussions on global trade be focused.

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