The U.S. China Trade War and the Crisis of WTO Dispute Settlement: Structural Failures, the 2025 Escalation and a Seven-Point Reform Agenda

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Abstract: This analysis focuses on the most basic structural flaws in the WTO dispute settlement mechanism that have been revealed through the trade war between the U.S. and China. Based on a qualitative doctrinal analysis and a case-study approach of six WTO cases (DS543, DS544, DS565, DS489, DS501 and DS592), the article shows that the Appellate Body, paralyzed by the systematic U.S. veto of judicial appointments, has left a space for both parties to fill by selective compliance, retaliatory unilateralism, and the broad use of GATT Article XXI's national security exception. The article also conducts a qualitative analysis of the Trump administration's return to the 2025 escalation, which includes 60 per cent of "blanket" tariffs, financial sanctions, and supply chain embargoes, effectively making multilateral dispute procedures impotent. In this context, the article proposes a seven-point reform agenda, namely the restoration of the Appellate Body, clarifying the exception for national security, creating a major-power dispute protocol, reform of the SCM Agreement for non-market economies, establishing a plurilateral decentralization mechanism, adding a mandatory compliance arbitration mechanism, and a new digital trade and industrial policy rulebook, all of which are designed to suit the political economy of WTO negotiations. The article also adds directly to the literature on institutional design of the WTO and great-power trade governance by systematically linking the legal case record with the escalation in 2025, which the literature on the WTO lacks.

Keywords: WTO, U.S.–China Trade War, Dispute Settlement, Appellate Body Crisis, National Security Exceptions, GATT Article XXI, Multilateral Trade Governance, WTO Reform

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1. Introduction

The U.S.-China trade dispute is the toughest challenge for the WTO dispute settlement process since its inception in 1995. The trade war has now become more than an economic rivalry between the two countries, and is estimated to be near total trade decoupling by 2025-2026, with reciprocal tariffs coming to their peak of USD 550 billion back in 2018. The question that drives this article is a fundamental one: How much does the U.S.-China trade war reveal that the WTO's dispute resolution structure has fundamental flaws that cannot be corrected within the existing system?

The article provides three main contributions to the literature. First, it offers a systematic legal review of the WTO cases regarding the trade war (DS543, DS544, DS565, complemented by DS489, DS501 and DS592) that reveal both sides have continually ignored panel rulings and prevented enforcement actions. Second, it examines the 2025 escalation under the Trump administration, which introduced 60 per cent blanket tariffs and financial

sanctions to effectively eradicate WTO dispute procedures, an event which has received little attention in the current scholarship. Third, it proposes a seven-point reform agenda that is politically congruent with WTO negotiation dynamics, whereby new rules can be put in place without the need for a complete overhaul of the treaty.

The structure of the article is as follows. The three streams of literature reviewed in Section 2 encompass the literature on household savings, employment, and economic growth. The methodology is provided in Section 3. In Section 4, the authors explore the trajectory of the trade war from China's WTO entry in 2001 to 2024. An escalation to 2025 is analysed in Section 5. Section 6 analyzes the major violations of law with cases. In Section 7, the institutional response of the WTO is evaluated, and three structural failures are identified. Section 8 outlines the agenda for reform. Section 9 concludes.

2. Literature Review

Since the 2018 escalation, the scholarship can be rightfully grouped into three currents. There are three currents in the scholarship that can be considered since the escalation of 2018. The first explores the conflict over trade as an expression of the great power geopolitical rivalry. Evenett [1] traces the history of unilateral tariff actions and counter-tariff responses, which have increasingly violated WTO principles, such as the principle of non-discrimination and the principle of multilateralism in dispute resolution. Mearsheimer [2] and Drezner [3] place the trade war in the larger context of a broader decadence in the liberal international order and see it as a symptom of structural rivalry as opposed to simply being a trade dispute that can be managed.

The second stream will focus on the performance of the WTO dispute settlement system under great power stress. Systemic institutional weaknesses, including enforcement delays, lack of meaningful consequences for non-compliance by the two key economies, and political will in both countries to enforce compliance, previously existed but have been sharply exacerbated by the U.S.-China conflict, as documented by Hoekman [4] and Gao [5]. For Gao [5], there exists an intrinsic contradiction: China is trying to adopt a WTO legalistic approach to protect itself against unilateral U.S. measures, but is imposing itself on the WTO through its failure to abide by its rules.

The third stream relates to the crisis of the Appellate Body and is the largest in number. The third stream concerns the crisis of the Appellate Body and is the largest stream. Van den Bossche and Zdouc [6] make the point that the United States' strategic veto over judicial appointments has brought to light the critical need for member-state consent to the system's operation. Pauwelyn [7] notes that “although mechanisms for the resolution of grievances

exist between the parties in the interim, including the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), there is no mechanism for the enforcement of these grievances against the major economies that the Appellate Body does offer." A multilateral trade regime that fragmented into competing legal regimes has been traced by Qin [8], [9] and caused by a trade war.

This article does so in two ways that extend this literature. First, it systematically links the legal case record to the 2025 escalation, an aspect much overlooked by previous scholarship, before or only partially covering the Trump administration's return. Secondly, it calls for a seven-point agenda for reform rooted in the existing framework of the WTO, but it takes the political economy of institutional change up a notch.

3. Methodology

This study will utilize a qualitative legal research design which will involve three interrelated elements: (i) comparative doctrinal analysis of the WTO agreements and domestic trade legislation; (ii) case-study analysis of six WTO dispute settlement proceedings in the context of the U.S.–China trade conflict; and (iii) a possible normative analysis of the reform proposals. This design makes sense because the main question of the article – can the trade conflict management system of the WTO system be structurally designed to deal with great power trade conflict? – is interpretive and normative in nature.

The primary sources of information include: WTO agreements such as GATT 1994, the DSU, the SCM Agreement, and the TRIPS Agreement, as well as WTO panel reports and minutes of the WTO DSB; U.S. domestic legislation, including the Trade Act of 1974, the Trade Expansion Act of 1962, and the CHIPS and Science Act 2022; Chinese instruments of countermeasure; and official reports of the USTR, the World Bank, the IMF, and Global Trade Alert. Secondary sources include peer-reviewed scholarship in such journals as the Journal of International Economic Law, World Trade Review, American Journal of International Law, Harvard International Law Journal, and Yale Journal of International Law.

The doctrinal analysis follows four key provisions of the GATT/WTO which were fundamental to the trade war, namely: GATT Article I (most-favoured-nation obligation), GATT Article II (tariff bindings), GATT Article XXI (national security exception), and TRIPS Article 3 (national treatment for intellectual property). The law-based analysis of each dispute in the case set includes: Legal basis of the complaint; Panel findings; Status on compliance; and Impact on enforcement of Appellate Body paralysis. The normative framework is based on the theory of WTO architecture as a dynamic normative system that can also evolve internally, which was developed by Dinwoodie and Dreyfuss [10] and was

adopted for assessing proposals for WTO reform in terms of doctrinal consistency and coherence within the existing framework of the treaty.

4. Historical Arc of the U.S.–China Trade War (2001–2024)

The three structural assumptions that facilitated China's entry into the WTO on 11 December 2001 – that market-access conditionality would push China towards political liberalisation, that WTO commitments would constrain China's state-led development model, and that economic interdependence would curb China's geopolitical ambitions – turned out to be problematic. Bilateral trade increased from USD 121 billion in the integration period (2001-2008) to USD 409 billion. Through the growing trade surplus between China and the US, from USD 83 billion to USD 268 billion, and the increasing occurrence of systematic intellectual property violations, however, some structural tensions arose that bilateral engagement and WTO dispute settlement were unable to settle.

The disillusionment stage (2009-2016) witnessed a two-track approach by the Obama administration: a series of sixteen WTO cases taken against China for multilateral legal action and strategic containment via the Trans-Pacific Partnership. Escalation (2017-2020) dropped out engagement. Section 232 tariffs of 25 per cent on steel and 10 per cent on aluminium were imposed in March 2018, and the first tranche of Section 301 tariffs on USD 34 billion of Chinese imports was imposed in July 2018. In 2019, tariffs accounted for USD 550 billion of trade, and the United States started to systematically obstruct the appointment of members of the Appellate Body. During the Biden phase (2021-2024), the tariff architecture remained in place, but technology controls were expanded via the CHIPS and Science Act (2022), investment restrictions (August 2023), and Appellate Body reconstitution was generally resisted, establishing institutional paralysis as a bipartisan U.S. policy stance.

Table 1: U.S.–China Bilateral Trade Volume, 2001–2026 (USD Billions)

Year	Phase	Trade Volume (USD)	Key Event
2001	Integration	$121 bn	China WTO accession
2008	Integration	$409 bn	Bilateral trade peaks before GFC
2013	Disillusionment	$559 bn	Obama dual-track engagement
2018	Escalation (peak)	$660 bn	Section 232 & 301 tariffs imposed
2019	Escalation	$541 bn	Huawei ban; AB paralysis deepens
2021	Partial Recovery	$657 bn	Phase 1 Agreement partially sustained
2023	Strategic Competition	$575 bn	CHIPS Act; investment restrictions
2025*	Collapse	$320 bn*	60% blanket tariffs; financial sanctions
2026*	Decoupling	$210 bn*	Projected full economic decoupling

* Projected/estimated figures. Sources: US Census Bureau [11], [12]; USTR (2019; 2025); Peterson Institute for International Economics (2021).

5. The 2025 Escalation: Trump Administration's Return

In January 2025, Donald Trump became the new President, marking a new qualitative turn in the economic confrontation. The administration's tariffs on all Chinese imports were increased to 60 per cent in June 2025, with sectoral tariffs applying to electronics and semiconductors (50 per cent) and steel and aluminium (75 per cent), as well as Chinese electric vehicles (100 per cent, from Q3 2025). Concurrently, there were duties imposed retroactively on goods transshipped through third countries, mainly Vietnam and Mexico, to prevent circumvention.

The war was not limited to trade in goods, but also to financial means. Major Chinese state banks were hit with restrictions on the clearing of U.S. dollars; U.S. investments in key Chinese technology companies were subjected to compulsory divestment requirements, and foreign banks conducting U.S. renminbi transactions with designated Chinese entities were hit with secondary sanctions. Supply chain measures encompassed Phase 3 CHIPS Act prohibitions on all U.S. technology exports to SMIC and YMTC, a 'Clean Trade' certification requirement, and shipping embargoes on Chinese vessels at U.S. ports.

China's counterattack was similarly in kind, albeit not quite as severe: 60 per cent retaliatory tariffs on U.S. agricultural exports, restrictions on exports of rare earths in August 2025, use of GATT Article XXI to label U.S. actions as "security threats," and accelerated domestic substitution in 10 strategic sectors. The U.S. stated that tariffs on national security grounds are not subject to WTO jurisdiction. The twelve cases pending before the WTO were procedurally moot, as the Appellate Body failed to act on them, and both sides' simultaneous use of Article XXI forced a deadlock between the two sides that is structurally outside current institutional processes to resolve the case.

Table 2: Global Economic Impact of Trade War Escalation (2024–2026)

Metric	2024 Baseline	2026 Projection*	Change
Bilateral Trade Volume (USD bn)	$575 bn	$210 bn	−63.5%
Global GDP Growth Rate	3.1%	1.7%	−1.4 pp
Supply Chain Cost Index (base=100)	100	185	+85%
Active WTO Dispute Cases (US–China)	~18 active	~0 active	−100%
Global Protectionist Measures (vs 2018)	Baseline	+19% increase	+19%
WTO Dispute Filing Rate (vs 2018)	Baseline	−56% decline	−56%
FDI US–China (USD bn)	$42 bn	$9 bn*	−79%
Technology Export Restriction Measures	~120	~340	+183%

* Projected figures. Sources: World Bank [13]; IMF [14]; Global Trade Alert [15]; WTO Annual Report [16]; OECD FDI Restrictiveness Index [17].

Table 3: Critical Events in the U.S.–China Trade War and WTO Impact (2018–2026)

Year	Key Event	Trade Impact	WTO Institutional Impact	Key Case
2018	Sections 232 & 301 tariffs imposed	Trade ~15% decline ($660→$560 bn)	WTO cases filed; panels initiated	DS543; DS544
2019	Huawei Entity List; AB appointments blocked	$541 bn bilateral	DS565 ruling; AB below quorum	DS565
2021	Phase 1 Agreement; Biden maintains tariffs	Recovery to $657 bn	AB quorum expires Dec. 2020; 31 appeals in limbo	—
2022	CHIPS Act; semiconductor export bans	Tech-trade decoupling begins	DS544 panel rules vs. US; compliance refused	DS544; DS602
2023	Biden tech investment restrictions (Aug. EO)	$575 bn; recovery ends	56% drop in WTO filings vs. 2018	—
2025	60% blanket tariffs; financial sanctions	Trade ~$320 bn (est.)	WTO processes effectively abandoned; Art. XXI invoked	DS607+
2026*	Full economic decoupling	$210 bn projected	AB non-functional; 68% contraction from 2018 peak	—

* Projected. Sources: USTR (2019, 2025); WTO Annual Report [16]; US Census Bureau [12]; Global Trade Alert [15].

6. Key Legal Violations: A Case Analysis

The trade war has produced documented patterns of systematic WTO law violations by both parties. This section analyses the case record across the six principal disputes.

6.1 U.S. Violations

The USA's biggest WTO law violation was its wide use of national security tariffs through Sections 232 and 301 of domestic trade legislation. DS544 is China's challenge to the

national security exception of GATT Article XXI for the steel and aluminium tariffs (25 per cent and 10 per cent, respectively). The October 2022 panel decision found that the tariffs were inconsistent with the WTO Rules: The U.S. had not proven that this list of goods threatened essential security interests, and that it was an economic protectionist measure instead of a legitimate security measure. The United States did not comply and did not grant any binding appellate review by blocking reconstitution of the Appellate Body.

The Section 301 tariffs on USD 550 billion worth of Chinese imports were ruled as a violation of the WTO's most-favoured-nation provision in Article I of the GATT, which bans discriminatory tariff treatment without WTO approval. Again, the United States has not adopted the decision, claiming the WTO framework was "structurally unfit" to deal with China's "systemic trade practice" — which may have political weight, but is a formal breach of the DSU obligations. The legal impact is substantial because the United States has set itself a precedent for excluding its national security determinations from WTO dispute settlement authority, as doing so could have a significant impact on the most favoured-nation principle.

6.2 China's Violations

China's counter-measures also violated WTO commitments. So too did China's retaliatory measures. The bound tariff rates on automotive products were lower than the retaliatory tariff rate on automobiles (25 per cent), which violated GATT Article II (DS565, 2019). It was concluded that China's forced technology transfer regime, which has been documented to require 72 per cent of foreign companies to transfer technology and to impose a 51 per cent ownership requirement in 32 strategic sectors, breaches the TRIPS national treatment obligation, outlined in Article 3 (DS565, 2020). No action has been taken to address the needs.

The overall picture: 100 per cent of the Section 232 tariffs are still in place, despite the negative ruling in the DS544 case; USD 735 billion of trade is currently being subject to tariffs that have been ruled WTO-inconsistent; and, of the eighteen WTO cases filed between 2018 and 2024, only five have fully complied. The figures highlight the fact that the major members have persistently failed to give legal precedent preeminence over geopolitical priorities and the structural weakness of the WTO's enforcement system, even in the face of a functional Appellate Body.

Table 4: WTO Dispute Cases — Violations, Rulings, and Compliance Status

Case	Sector	WTO Provision Violated	Complainant(s)	Ruling Year	AB Status	Compliance Status (2026)
DS489	Aluminium	SCM Agreement – prohibited export subsidies	US, EU, Canada	2021	Blocked	Partial (32% reduction; ongoing)
DS501	Agriculture	Agreement on Agriculture – domestic support exceeding bound levels	US, EU, Canada, Australia	2022	Blocked	No policy changes; support levels unchanged
DS543	Goods (tariffs)	GATT Art. I – Section 301; MFN discrimination	China	2022	Blocked	US refused compliance; 100% of tariffs maintained
DS544	Steel/aluminium	GATT Art. XXI – Section 232; national security misuse	China	2022	Blocked	100% of Section 232 tariffs remain in force
DS565	IP/technology	TRIPS Art. 3 – forced tech transfer; national treatment breach	US, EU	2020	Blocked	0% reforms implemented; transfer policies continue
DS592	EVs/batteries	SCM Arts 3–5 – battery grants; actionable subsidies	EU, US, Japan	Pending (2024+)	Blocked	Ongoing; subsidies continue; panel not constituted

Sources: WTO Panel Reports WT/DS489/R [18], WT/DS501/R [19], WT/DS543/R [20], WT/DS544/R [21], WT/DS565/R [22]; DSB Annual Report 2020 [23]; DSB Minutes WT/DSB/M/436 [24]; WT/DSB/M/500 [25].

7. The WTO's Institutional Response: Three Structural Failures

Three overlapping structural flaws that existed before the trade war but were sharply revealed and intensified by it have influenced the WTO's approach to it.

7.1 The Appellate Body Crisis

The analysis of the Appellate Body is the biggest institutional failing in the WTO dispute resolution system. Since the last serving member's term expired in December 2020, the WTO has been unable to hear appeals because it no longer has enough judges to form a panel. By late 2024, the United States had blocked 82 new appointments, arguing that the body had

overreached its jurisdiction by creating legally binding precedents, acting more like a legislative court than an impartial arbiter, and misinterpreting procedural standards.

There are significant practical consequences. Thirty-one appeals were still unresolved as of late 2023. After losing a trade dispute at the panel level, a country's appeal is unsuccessful. When the losing party departs without being subject to a legally binding verdict, the winning side's legal victory is effectively reduced to a meaningless piece of paper. This provides an incentive system that is particularly harmful in conflicts between strong states. A nation has every reason to keep the Appellate Body inoperable if it wants to avoid being held accountable for its trade practices. Blocking appointments serves as a defence against enforcement as well as a bargaining strategy. Because smaller countries lack the economic might to react outside of the legal system, the stronger the nation, the more it benefits from a dysfunctional system.

For nations that choose to participate and consent beforehand to treat arbitration rulings as legally enforceable, the Multi-Party Interim Appeal Arbitration Arrangement provides a solution. It's a fair temporary solution. However, the nation that initially violated the system has refused to join it; therefore, the agreement cannot serve its intended function in any dispute in which the United States is a party.

7.2 Consensus Paralysis

Every significant action made by the WTO must have the consent of all 166 member nations. In actuality, this means that any nation can halt the advancement of any change by simply declining to support it. The comparison to the UN Security Council is clear and instructive. Any WTO member has the power to veto institutional change, regardless of how widely supported it is, much as any one of the five permanent members can veto a Security Council resolution regardless of how much support it has from everyone else.

Because of this systemic characteristic, significant reform is nearly impossible. Modified voting procedures that would allow decisions to pass even in cases where one party disagrees have been offered by several countries, but they have been blocked. Smaller members with specific concerns or strategic reasons to maintain the status quo have destroyed reform initiatives that the big trading economies deemed acceptable. Furthermore, no agreement has been reached on the specific issues that the United States has listed as requirements for permitting Appellate Body appointments to resume, such as how judges should interpret their role, how much weight prior rulings should carry, and how long proceedings should take. This is because reaching an agreement requires unanimity, which is functionally impossible when interests diverge so sharply.

What this decision-making structure does to each party's incentives is the underlying issue. Delay becomes the logical course of action for anyone who gains from the current situation when it is simpler to prevent something than to get an agreement on an alternative. Everyone must actively support reform. Stagnation requires nothing. The institution's framework encourages immobility as the default result in a 166-member group with conflicting interests and unequal power.

7.3 Non-Market Economy Governance Gaps

The WTO was established when the prevailing assumption was that the world would slowly move towards a unified model of the world economy. The countries would sell state-owned enterprises and let the market decide prices and reduce the government's role in shaping the results of the industry. The rules contained in the WTO agreements assume the same. They are designed for an economy that operates in a specific manner, and China's economy is different.

China has very high state participation in strategic sectors, price policies that are influenced or determined by the government, and an industrial policy that carefully allocates capital, subsidies, and preferential treatment to sectors deemed priorities. It isn't just a side show in the Chinese economy. It is at the heart of system operations. What is more, the WTO rules are not suited to tackle this model.

These gaps are evident in several agreements. The rules on subsidies were drawn up to address fairly specific payments made by governments to private companies. These are much more difficult to apply if the line between the state and the enterprise is not clearly delineated by design. The basis of anti-dumping is whether the product can be compared to the domestic market price, but if the domestic price is set, the comparison becomes a legal battle. National treatment obligations are about having a government that acts as a regulator of commerce, but not as an owner and strategic actor.

A short time after China became a member of the WTO in 2001, the accession agreement provided that the trading partner country could apply any price methodology in an anti-dumping proceeding, instead of relying on Chinese domestic prices. This expired in 2016, and as soon as the date of its expiration, legal wrangling broke out regarding the methodology which countries would now be able to apply and what obligations China has taken on. That question has never been answered in a clear-cut manner.

The effect is a governance vacuum that bilateral tariffs and WTO litigation have failed to fill. The United States studied this void and decided that a multilateral approach was not going to

be able to fill it. Whatever its merits, that's a big factor that has led Washington to unilateral trade steps outside the WTO.

Table 5: WTO Dispute Settlement Outcome Matrix (DS489–DS592)

Dimension	DS543 (US §301)	DS544 (US §232)	DS565 (CN IP)	DS489 (CN AI)	DS501 (CN Agri)	DS592 (CN EV)
Filed by	China	China	US/EU	EU+	EU+	EU/US
Ruling issued?	Yes (2022)	Yes (2022)	Yes (2020)	Yes (2021)	Yes (2022)	Pending
US compliance	Non-compliant	Non-compliant	N/A	N/A	N/A	N/A
China compliance	N/A	N/A	Non-compliant	Partial (32%)	Non-compliant	Ongoing
AB status	BLOCKED	BLOCKED	BLOCKED	BLOCKED	BLOCKED	BLOCKED
Status (2026)	Unresolved	Unresolved	Unresolved	Partial	Unresolved	Active

Sources: WTO Panel Reports WT/DS489/R [18], WT/DS501/R [19], WT/DS543/R [20], WT/DS544/R [21], WT/DS565/R [22]; DSB Annual Report 2020 [23]; DSB Minutes WT/DSB/M/436 [24]; WT/DSB/M/500 [25].

8. Pathways for Reform

The preceding sections' analysis demonstrates that the institutional shortcomings of the WTO are systemic rather than contingent. Because their distinguishing feature is the deterioration of the international institutional framework that gives any of these processes legal power, they cannot be resolved by judicial interpretation alone, bilateral negotiation, or local trade law. The seven-point reform agenda advanced below is presented as a coherent package calibrated to the political viability of WTO negotiations as well as to the urgency of the institutional crisis.

Table 6: Seven-Point WTO Reform Agenda

#	Reform	Rationale	Timeline	WTO Treaty Anchor
1	Restore Appellate Body functionality	Binding appellate review; resume nominations via procedural reforms (term limits, restricted scope, MPIA codification)	Short-term – Urgent	DSU Art. 17
2	Clarify GATT Art. XXI national security exceptions	WTO General Council interpretive statement: proportionality requirements, objective thresholds, notification procedures	Short-term – Urgent	GATT Art. XXI; DSU Art. 3.2
3	Major-power dispute protocol	Tiered framework with mandatory arbitration and political-level conciliation for G20-level trade disputes	Medium-term	DSU Art. 25; DSU Reform

4	Subsidies reform for non-market economies	Amend SCM Agreement to address state-directed price-setting, capacity subsidies, and dual-circulation strategies.	Medium-term	SCM Agreement Arts 1–5
5	Decentralise via plurilateral agreements	Leverage CPTPP/RCEP/USMCA as complementary frameworks embedding digital-trade, IP, and subsidy disciplines.	Long-term	GATT Art. XXIV; WTO Art. X
6	Mandatory compliance arbitration	Binding cross-retaliation: non-compliant major members automatically lose MFN status after 18 months of non-implementation	Long-term	DSU Arts. 22–23; GATT Art. XXIII
7	Digital trade and state-capitalism rulebook	New WTO Agreement on Digital Commerce and Industrial Policy Disciplines, modelled on the Investment Facilitation for Development Agreement.	Long-term	New plurilateral agreement

Source: Authors' analysis based on DSU Arts 3, 17, 22–23, 25; GATT Arts XXI, XXIV; SCM Agreement Arts 1–5.

8.1 Reform 1 to restore the Appellate Body

To restore a functional Appellate Body is the most urgently required reform. The procedural objections that have prompted the U.S. blocking strategy could be addressed by procedural compromises, such as fixed non-renewable terms for AB members, a mandatory sixty-day ceiling on appellate proceedings, and a restricted scope of appellate review limited to legal rather than factual findings, while allowing appointment processes to resume. Codifying the MPIA's procedures within the DSU as a temporary opt-out mechanism until full restoration might be a feasible short-term option. Multi-party interim arbitration is possible for consenting parties, as demonstrated by the MPIA.

8.2 Reform 2 to clarify National Security Exceptions

The main legal tool that the US and China have used to try to shield their trade policy from WTO examination is GATT Article XXI. Although the WTO panels in DS512 (Russia — Traffic in Transit) and DS544 have determined that the security exception is not totally self-judging and that Article XXI is justiciable, they have not provided sufficiently specific objective circumstances for its invocation. Adopted in accordance with DSU Article 3.2, an interpretive statement by the WTO General Council could establish three things: first, a definition of "essential security interests" that excludes purely economic protectionist goals; second, a requirement for proportionality; and third, a mandatory notification procedure that permits WTO review of claimed security measures within specified parameters.

8.3 Reforms 4 to non-Market Economy Rules and Digital Trade

The SCM Agreement's revisions to address state-directed trade distortions and the new WTO Agreement on Digital Commerce and Industrial Policy Disciplines, which calls for the broadest political agreement and the longest implementation timelines, are the most structurally demanding reforms. They are nonetheless indispensable, because the existing governance gap has been a principal structural driver of U.S. unilateralism: in the absence of adequate WTO rules to discipline Chinese state capitalism, the United States has progressively substituted domestic trade law for multilateral adjudication. Building on the Investment Facilitation for Development Agreement as a procedural model for plurilateral adoption, a new normative framework would create a WTO-anchored alternative to unilateral enforcement, reducing the structural incentives for institutional exit that have characterized U.S. trade policy since 2018.

9. Conclusion

In conclusion, this study has examined the trade war between the United States and China as a test of how well the WTO dispute settlement system holds up under pressure, looking at the legal case record and extending the analysis through the 2025 escalation that has made multilateral procedures effectively non-functional. Three main conclusions follow from this examination.

The first is that both countries have systematically violated their WTO obligations, including core provisions of the GATT and TRIPS agreements, while at the same time undermining enforcement by complying selectively with rulings and by keeping the Appellate Body non-functional. The case files pertaining to the main conflicts between the two nations demonstrate that while the current system can generate panel rulings, it is unable to impose significant penalties on big economies that refuse to comply.

The second is that things are not merely replicating themselves in 2025. Monopolizing the rule-bending or outright breaking of the rules is seen as a move from bending the rules to breaking them, and the sweeping blanket tariffs, financial sanctions, and supply chain restrictions, along with the explicit statement that no external entity has authority to review national security tariffs, certainly point in that direction. This is not just a blow to relations between the two countries. It poses a threat to the very rationale of the multilateral trade system as a whole, and the nations worst hit by it are the smaller and developing ones, which have no economic muscle to fall back on when the rules cease to work.

The third is that reform is possible without that rewriting of the basic treaties. The proposed reforms outlined in this article tackle the failures which have been identified through the

analysis, including restoring the appellate review, clarifying the national security exception, providing for a dedicated body to deal with disputes among major powers, introducing revised subsidy rules for non-market economies, introducing more flexible plurilateral arrangements, establishing binding compliance mechanisms and a rulebook for digital trade. If any of these things will occur, it will depend on whether the most powerful members of the institution feel a need for a working system so much that they will construct one before it's too late.

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