

REGIONAL FOCUS & CONTROVERSIES

Historical and Strategic Concern over the US-China Trade War: Will They Be within the WTO?

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The trade war between the US and China in the Trump era has become a momentous event in the world economy. It is necessary to see how trade relations between them have played out within the WTO from a historical perspective. Since the Opium Wars, both economic and political concerns have changed the relationship between these two countries. The escalation from a trade conflict to trade war shows the rivalry between the US and China for hegemony in the twenty-first century's regional and world politics. The economic, technological, and manufacturing competition that is a part of hegemonic rivalry is not totally new; this is borne out by the history of the US-China economic relations. The escalation of this 'trade war' now has spill-over effects on other countries, being beyond the normative framework of the WTO. There is an impasse in this ongoing saga, but the silver lining is that there will be a re-construction of the multilateral trading system.

Keywords

US-China Trade War, US-China Trade Relations, Trump Administration, WTO

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1. Introduction

National security grounds can and have enabled the US politicians to galvanize public support for actions leading to trade wars. In the same vein, the mantra of ‘unfair trade’ has similar populist characteristics to the national security narrative of the American society. Such campaign is finally getting along with efforts to deconstruct the world trading order for trade wars outside the World Trade Organization (“WTO”), especially crippling its Appellate Body. Yet, clarity is needed in the concept of ‘national security’ as much as in the notion of what is ‘unfair.’ Moreover, both need the rule of international law in their invocation and application. The national security justification for departures from international obligations and the deconstruction of the existing world trading order in the name of fairness through a trade war are essentially straining the application of the law, the rule of law, and established international systems of deliberation.¹

The contemporary focus in the Trump administration has been on trade wars against China. From a historical perspective, however, trade wars are not a new phenomenon as shown at the Opium Wars. Indeed, there is a fair amount of focus on trade practices in the realm of trade wars. The subject has been considered from different perspectives such as international commercial negotiations, diplomacy, economic analysis, and political economy. In particular, there have been case studies of so-called ‘trade wars’ as between certain countries, and on certain goods or systemic issues including ‘bra wars,’ ‘banana wars,’ ‘patent wars,’ and ‘currency wars.’ Some of these are actually trade skirmishes short of trade wars. Importantly, the focus is not generally normative. Moreover, a significant amount of the analysis is at least a decade old.

Fundamental questions in a discourse on trade wars are as follows: When does a trade dispute become a trade war?; What is a trade war (in contrast to a trade dispute)?; Is a trade war to be understood in terms of the value of the international trade involved?; Is it to be understood with reference to the kind of trading nations implicated, along with the consequential spill-over effects on the trade of other countries and the world economy?; Or is it to be understood with reference to violations of the world trade disciplines under the WTO, and/or under other international law disciplines? From a normative perspective, the challenge of trade wars is to determine how best to avert and manage them.

¹ For details on the concept of ‘national security’ in the US trade practices, see S. Malawer, *Trump’s Tariff Wars and National Security: A Political and Historical Perspective*, 4 CHINA & WTO REV. 351-61 (2018).

A trade war is not a trade dispute. A trade dispute is specific; it is one that is amenable to being justiciable under an agreed normative framework—very likely under the WTO. A trade war may well have its origins in a trade dispute, but will play out both within and outside the WTO. A trade war within the WTO could involve one or a series of disputes featuring ‘violations’ of the WTO agreements but conducted within the framework of the WTO dispute settlement system. A trade war outside the WTO, however, involves a general disregard of the existing normative framework, with a ‘gloves off’ approach to achieving certain policy goals. As such, it can be purely bilateral, but where it undermines the international trading order and the economic interests of a wider circle of countries involving counter-responses, the trade war can become a “world trade war.” Where this trade war is “likely to endanger the maintenance of international peace and security” or becomes a “threat to the peace, breach of the peace, or act of aggression,” it could in principle be of interest to the UN Security Council.² In the circumstances, the nature of a trade war has significance, albeit in extreme circumstances, with respect to the normative framework within which it needs to be deliberated upon.

Against this background, this research will address how trade relations between the US and China have played out within the WTO, including the current trade war between the two, from a historical perspective. This paper is composed of five parts including Introduction and Conclusion. Part two will discuss the history of the US-China trade relations. Part three will examine the US-China trade relations within the WTO. Part four will explore current impasse between the US and China with regard to President Trump’s tariffs impositions.

2. The US-China Trade Relations in a Historical Context³

A. *The First Opium War: Opening the Door of China*⁴

Based on their reciprocal demands for each other’s comparative advantage products,

² U.N. Charter art. 34 & ch. VII.

³ For specific timeline, see Staff reporter, *U.S.-China Trade Timeline: 1784-2008*, STRATFOR, Dec. 12, 2007, available at <https://worldview.stratfor.com/article/us-china-trade-timeline-1784-2008>; Council on Foreign Relations, *U.S. Relations with China*, available at <https://www.cfr.org/timeline/us-relations-china> (all last visited on Oct. 25, 2018).

⁴ For details on the Opium War and the Treaty of Wangxia, see US Department of State, *The Opening to China Part I: The First Opium War, the United States and the Treaty of Wangxia, 1839-1844* (Jan. 20, 2009), available at <https://2001-2009.state.gov/r/pa/ho/time/dwe/82011.htm> (last visited on Oct. 20, 2018).

trade between the US and China (The then Qing dynasty) began as early as 1784. Despite China's resistance to foreign ideas at the time, and with only one Chinese port open for trade,⁵ the then Chinese approach to trade was likened to "the neoclassical ideal of a market economy."⁶ Unfortunately for the Americans, however, the trade balance was not in their favor, given the American demand for Chinese products.⁷ In response to this undesirable trade deficit, American traders adopted a strategy of smuggling opium into the Chinese market - an approach already adopted by the British.⁸ Although this had tragic social consequences, it was effective in addressing the respective trade deficits. In response, China outlawed the smoking of opium.⁹ The trade barrier against imported opium raised tensions—especially between China and Britain, which led to the First Opium War in 1839.¹⁰ This war was not only the consequence of trade relations between China and the Western powers, but also the beginning of their rivalry in international trade.

Later, in 1844, China, as the defeated state, was forced to open its ports by signing the Treaty of Wangxia¹¹ with the US, along with the Treaty of Nanjing in 1842.¹² The treaty opened the Chinese market but in a non-reciprocal manner.¹³ However, this did not result in any significant rise in the US exports to China.¹⁴ Be that as it may, in this era of Western exploitation, China was an object for competition among the Western

⁵ J. Hayes, The Opium wars in China, Asia Pacific Curriculum, available at <https://asiapacificcurriculum.ca/learning-module/opium-wars-china> (last visited on Oct. 25, 2018).

⁶ K. POMERANZ, THE GREAT DIVERGENCE: CHINA, EUROPE, AND THE MAKING OF THE MODERN WORLD ECONOMY 70 (2001). See also P. Chan, *China's Approaches to International Law since the Opium War*, 27 LEIDEN J. INT'L L. 863 (2014).

⁷ US Department of State, *supra* note 4.

⁸ *Id.*

⁹ Hayes, *supra* note 5.

¹⁰ *Id.*

¹¹ For the full text of this treaty, see The USC US-China Institute, Treaty of Wangxia (Treaty of Wang-hsia), May 18, 1844, available at <https://china.usc.edu/treaty-wangxia-treaty-wang-hsia-may-18-1844> (last visited on Oct. 24, 2018).

¹² "The 1842 Treaty of Nanking permitted foreigners to trade with the Chinese in five ports and stipulated a general 5% ad valorem tariff on almost all goods leaving and entering China." See K. Mitchener & Se Yan, *Globalization, Trade, and Wages: What Does History Tell Us About China?*, 55 INT'L ECON. REV. 135 (2014).

¹³ S. Lanman, *How the Opium Wars Shaped China's Approach to Trump's Trade Threats*, BLOOMBERG, May 31, 2018, available at <https://www.bloomberg.com/news/articles/2018-05-31/how-the-opium-wars-shaped-china-s-approach-to-trump-s-trade-threats>. See also *The Opium Wars Still Shape China's View of the West*, ECONOMIST, Dec. 19, 2017, available at <https://www.economist.com/christmas-specials/2017/12/19/the-opium-wars-still-shape-chinas-view-of-the-west> (all last visited on Oct. 25, 2018).

¹⁴ "Through the period of the Open Door policy, the United States never obtained the markets about which late-nineteenth-century politicians and businessmen dreamed. Between 1899 and 1931 exports to China never exceeded 4 percent of the value of America's total annual exports and more often hovered around 1 percent. Nor did the Open Door policy discourage other powers from grabbing new chunks of Chinese territory or excluding American trade." See *Open Door Policy*, ENCYCLOPAEDIA OF NEW AMERICAN NATION, available at <http://www.americanforeignrelations.com/O-W/Open-Door-Policy.html> (last visited on Oct. 25, 2018).

powers,¹⁵ rather than an equal competitor in international trade. This engendered a victim mentality, which informed China's determination to recover its greatness, by recapturing the moment before this indignity.¹⁶

B. The Period of Transition in China and the US-China Confrontation

Along with the Chinese revolutionary movement and the rivalry with Japan, in the 1930s, the US policy shifted from passive to active involvement in China's political transition.¹⁷ The US then believed that its active aid and support for Chiang Kai-shek's Nationalist government would establish a long-term alliance with China, along with a "democratic capitalist model."¹⁸ The US military and financial aid was also aimed at capturing 'reconstruction work' and trade with post-war China,¹⁹ whose trade growth was faster than the world average.²⁰ China was still an attractive market for the US with its abundant resources and comparative advantage in unskilled manufacturing even during the war.²¹ In this regard, Chinese Nationalists had chosen the capital-abundant US as a partner that was able to support sufficient loans. Although the US efforts failed due to the Communist victory in the Chinese Civil War, there was some mutual benefit to cooperation, in recognition of the potential trade partnership in the near future. China was not yet a 'rival' for the US, which only held Japan and Russia in check for political reasons.

After the establishment of the People's Republic of China by the Communist Party in 1949, China and the US was in a state of confrontation for more than two decades. Despite the potential gains from trade partnership, both clashed each other in the Korean War for their ideological and strategic differences, which led

¹⁵ E.g., the US has initiated the "Open door policy" in 1899 and 1900, which was the statement of principles for the protection of equal privileges among countries trading with China and in support of Chinese territorial and administrative integrity. For details, see, *Open Door policy: United States-China [1899, 1900]*, BRITANNICA, available at <https://www.britannica.com/event/Open-Door-policy> (last visited on Oct. 25, 2018).

¹⁶ *Id.*

¹⁷ Hsiao-ting Lin, *Reassessing Wartime US-China Relations: Leadership, Foreign Aid, and Domestic Politics, 1937-1945*, 16 NIDS MIL. HIST. STUD. ANN. 117 (2013). See also S. Tiezzi, *When the US and China Were Allies*, DIPLOMAT, Aug. 21, 2015, available at <https://thediplomat.com/2015/08/when-the-us-and-china-were-allies> (last visited on Oct. 25, 2018)

¹⁸ Lin, *supra* note 17.

¹⁹ *Id.* at 121.

²⁰ "China's trade growth was faster than the world average in the first three decades of the 20th century: Its share of world trade increased from 1.5% around 1898 to 3.44% by 1928. By the early 20th century, the Chinese economy was exploiting its comparative advantage in unskilled manufactures. Indicative of this growth was trade in cotton textiles, which became one of the fastest growing industries over the subsequent decades." See Mitchener & Yan, *supra* note 12, at 135.

²¹ *Id.*

all US-China trade to be cut off.²² Moreover, the continued sense of sympathy and friendship between the US and its ideological supporter Chiang Kai-shek naturally led to the US support for Taiwan. Since then, the US has not only frozen Chinese assets in the US, but also tried to isolate China from other Asian countries such as Japan, South Korea, and the Philippines under the ‘containment policy’ along the defense alliances.²³ In response, China forfeited the assets of American enterprises in its territory, discouraging further business in China.²⁴ It also tried to undermine the cooperation between the US and other allies, namely Taiwan, struggling to pull itself out from its diplomatic isolation. It was a ‘Cold War’ in Asia between the US and China, in both political and economic terms. However, unlike the ‘trade war’ of today, the driving force of this war was mainly ideological rather than economic.²⁵

Since 1971, the US has changed its political focus and chosen China as a strategic partner to stand against the common enemy, the Soviet Union, rather than clinging to the old friendship with Taiwan.²⁶ Along with the “open door policy of China” by the new leader Deng Xiaoping, which gave priority to the nation’s economic development, the US was encouraged to draw China into the worldwide system of capitalism.²⁷ After the Shanghai Communiqué, which kicked off the reestablishment of formal diplomatic relations between the two states, the first Special Economic Zones opened up in China, offering preferential treatment for the US and foreign investors in 1980.²⁸ In addition, China joined the International Monetary Fund (“IMF”) and the World Bank, the two major international bodies of the world capitalist economy.²⁹ Until the Tiananmen Square incident in 1989, US-China cooperation

²² R. Cooper, *China and International Economic Organizations*, in *U.S.-CHINA ECONOMIC RELATIONS: PRESENT AND FUTURE* 310 (R. Holton & Wang Xi eds., 1989).

²³ *Id.* For details, see Eric Y.J. Lee, *Trans-Pacific Partnership (TPP) as a US Strategic Alliance Initiative under the G2 System: Legal and Political Implications*, 8 *J. EAST ASIA & INT’L L.* 326-30 (2015).

²⁴ Kailai Huang, *American Business and the China Trade Embargo in the 1950s*, 19 *ESSAYS IN ECON. & BUS. HIST.* 34 (2001), available at <http://www.ebhsoc.org/journal/index.php/journal/article/view/131/126> (last visited on Oct. 24, 2018).

²⁵ Indeed, “Ideological differences played a fairly important role in the once antagonistic relationship between China and the United States.” See Zhongyun Zi, *A Multidimensional Approach to Sino-U.S. Relations*, in Holton & Xi, *supra* note 22.

²⁶ Dong Wang, *China’s Trade Relations with the United States in Perspective*, *JCCA* 166 (2010).

²⁷ Jizian Wu & Shaoyun Tang, *China’s Open-Door Policy and Trade Problems with the United States*, in Holton & Xi, *supra* note 22, at 123.

²⁸ A. Fenwick, *Evaluating China’s Special Economic Zones*, 2 *BERKELEY J. INT’L L.* 376-9 (1984).

²⁹ The People’s Republic of China (PRC) did not join the IMF and the World Bank until April 1980. Prior to that, Taiwan had maintained the seat in these two financial institutions under the name of the Republic of China. Taiwan originally joined the IBRD on December 27, 1945. See Bretton Woods Project, *China and the World Bank - Bretton Woods Project* (Sept. 14, 2011), available at <https://www.brettonwoodsproject.org/2011/09/art-568894> (last visited on Oct. 25, 2018).

seemed to be a success.

While the reforms of the 1980s in China led to a market economy enabling rapid economic development, the Communist Party faced a challenge to its legitimacy. Chinese protests in Tiananmen Square reflected anxieties about inflation, limited preparedness for the new economy, and restrictions on political participation.³⁰ However, this attempt at democracy was frustrated by bloody suppression, which was condemned by the international community. Again, ideological differences were involved in the US-China relations. What the US had pursued as the justification of its hegemonism was not only the free market economy, but also democracy and respect for human rights. The broad sanctions that the US, presenting itself as the guardian of democracy, imposed on China eventually broke the tie between the two and aggravated their trade relations.³¹ This collision showed the impact of political leverage in trade relations.

C. Beginning of the Rivalry in Trade Relations

In the 1990s, political tensions between the US and China seemed to have continued despite the collapse of their common enemy, the Soviet Union.³² However, the US and China entered a new phase in their relationship based on interdependence. Although the two were no longer supportive allies, changes in domestic circumstances and world politics led to a more engaged climate for US-China relations. However, this engagement was underpinned by mutual distrust and rivalry. For example, China strongly criticized the US invasion of Iraq, showing its uneasiness about American hegemonism.³³

Indeed, the sense of ‘rivalry’ has raised concerns in both countries about the prospects of another Cold War, in which the US would contain China’s increasing influence and power for its own strategic interests. Against China’s rapid growth, which has been achieved by massive economic reforms in the early 1990s, the so-

³⁰ For details on the Tiananmen protests, see L. Herxhkovitz, *Tiananmen Square and the Politics of Place*, 12 POLITICAL GEOGRAPHY 395-420 (1993).

³¹ The Tiananmen Square sanctions included a continuance of the suspension of overseas private investment corporation financing and the US opposition to multilateral efforts to liberalize the application of export controls that limited goods or technology to China, etc. See D. Rennack, *China: Economic Sanctions*, CRS REP. 5 (Feb. 1, 2006), available at file:///C:/Users/user/AppData/Local/Microsoft/Windows/INetCache/IE/4HUAGB07/RL31910.pdf (last visited on Oct. 20, 2018).

³² J. Yu-shek Cheng, *China’s Foreign Policy in the Mid-1990s* 4 (CAPS Working Paper Series, 1995), available at file:///C:/Users/user/AppData/Local/Microsoft/Windows/INetCache/IE/7VJQZEFJ/Chinas%20foreign%20policy%20in%20the%20mid-1990s.pdf (last visited on Oct. 20, 2018).

³³ For details on China’s diplomatic positions in this period, see Hwei-Ling Hwo, *Patterns of Behaviour in China’s Foreign Policy: The Gulf Crisis and Beyond*, 32 ASIAN SURV. 263-76 (1992).

called ‘China threat’ became an issue in the US.³⁴ The lack of confidence and trust between the two also spilled over into bilateral and multilateral issues affecting their trade relations. When Taiwan’s President Lee Teng-hui visited the US in 1995, China cancelled a number of trade agreements and exchanges with the US.³⁵ Furthermore, the US’ concerns about China’s approach to nuclear non-proliferation and the continued human rights issues in Hong Kong were ongoing sources of disagreement. Unfortunately, none of these issues could easily be resolved, and they were indeed likely to lead to further disputes.

Trade was important for the two countries. For China, the US market was critical enough never to be given up.³⁶ In order to preserve its most-favored-nation (“MFN”) status, China had to accord “a number of concessions to the US demands in the fields of trade, weapons non-proliferation, and human rights.”³⁷ The Clinton Administration’s attempt in 1993 to link MFN to human rights protection in China is a good example.³⁸ For the US, China became a large and growing export market, even though numerous trade and investment barriers remained.³⁹ Besides, while intellectual property rights (“IPR”) were and continued to be an issue between the two in the 1990s, the US failed to make good at the time on its threats to impose sanctions on China for its poor level of IPR protection.⁴⁰ It seems that the “highly complementary trade relations between the two” prevented the escalation of IPR disputes.⁴¹

³⁴ For details on ‘China threat,’ see Dong Chen, *Who Threatens Whom? The ‘Chinese Threat’ and the Bush Doctrine*, 7 J. EAST ASIA & INT’L L. 31-49 (2014); D. Roy, *The “China Threat” Issue: Major Arguments*, 36 ASIAN SURV. 759-71 (1996).

³⁵ B. Gellman, *U.S. and China Nearly Came to Blows in ‘96*, WASH. POST, June 21, 1998, available at https://www.washingtonpost.com/archive/politics/1998/06/21/us-and-china-nearly-came-to-blows-in-96/926d105f-1fd8-404c-9995-90984f86a613/?noredirect=on&utm_term=.1c2f255a7190 (last visited on Oct. 25, 2018).

³⁶ “In 1992 China enjoyed a global trade surplus of \$6 billion, despite a 26% increase in imports. The surplus was made possible only by a surge in exports to the United States, whose trade imbalance with China increased from \$12.7 billion in 1991 to \$18.3 billion in 1992.” See Xiaoxiong Yi, *China’s U.S. Policy Conundrum in the 1990s: Balancing Autonomy and Interdependence*, 34 ASIAN SURV. 676 (1994).

³⁷ *Id.* at 677.

³⁸ S. Desai, *Trade with China: Human Rights and MFN*, 1 HUM. RTS. BRIEF (1994).

³⁹ W. Morrison, *China’s Economic Rise: History, Trends, Challenges, and Implications for the United States*, CRS Rep. RL33534 1 (Feb. 5, 2018), available at <file:///C:/Users/user/AppData/Local/Microsoft/Windows/INetCache/IE/3ILT3G2Q/RL33534.pdf> (last visited on Oct. 20, 2018).

⁴⁰ K. ZENG, TRADE THREATS, TRADE WARS: BARGAINING, RETALIATION, AND AMERICAN COERCIVE DIPLOMACY 169-70 (2004). For details on the US-China IPR Disputes in the 1990s, see L. Fojtíková, *China’s Intellectual Property Rights Commitments in the WTO: Legal and Economic Implications*, 4 CHINA & WTO REV. 7-34 (2018); Yinan Wang, *Handling the U.S.-China Intellectual Property Rights Dispute-The Role of WTO’s Dispute Settlement System* 63-81 (2012) (unpublished Ph.D. dissertation, Miami Univ.) (on file with author).

⁴¹ *Id.*

Thus, despite their mutual distrust, the two have never wanted a break in their relations. For the US, it is more persuasive to stabilize East Asia under international norms along with having non-hostile relations with China, now a major regional power.⁴² Along with their ‘engagement policy’ toward China, the American leadership has continued to “balance the various domestic interests and ideologies into a pragmatic and feasible policy.”⁴³ Meanwhile, China also has chosen to improve ties with the US together with other Asian neighbors based on a realistic evaluation of the circumstances.⁴⁴ Despite its ‘anti-hegemonism,’ China’s US policy has been flexible and patient, given the costs of resuming confrontation with the US.⁴⁵ For all its long history of ideological confrontation, China has in some respects perceived the US as a model for its economic modernization.⁴⁶ China’s desire to enter the WTO, led by its rival, the US, was an evidence of this ambivalence.

3. Account of the US-China Trade Relations within the WTO

A. China’s Accession to the WTO with the US Support

In March 1996, Chinese Premier Li Peng reiterated the need for mutual cooperation between China and the WTO. He observed:

Work together to counter trade protectionism, eliminate trade discrimination, oppose imposition of trade sanctions and promote trade development. [The] WTO ought to be a truly universal and open organization. However, it will be incomplete without the participation of China, a country with about one fifth of [the] world’s population.⁴⁷

⁴² T. Christensen, *Fostering Stability or Creating a Monster? The Rise of China and U.S. Policy toward East Asia*, 31 INT’L SECURITY 96-9 (2006).

⁴³ T. Watanabe, *US Engagement Policy toward China: Realism, Liberalism, and Pragmatism*, 2 J. CONTEMP. EAST ASIA STUD. 4-6 (2013).

⁴⁴ Yi, *supra* note 36, at 679-80.

⁴⁵ “In late September 1993, Jiang Zemin, in a meeting with Chinese military leaders, reportedly revealed a new internal policy line on the U.S. called the Four Noes: China does not want confrontation with the United States; China will not provoke confrontation with the United States; China will not avoid confrontation with the United States if the latter wants it; and China does not fear confrontation with the United States.” *See id.* at 688.

⁴⁶ *Id.* at 678.

⁴⁷ A. Kanungo, *China’s Process of Accession to WTO: Obstacles and Challenges* 17 (FREIT Working Paper, 2009), available at <http://www.freit.org/WorkingPapers/Papers/TradePolicyMultilateral/FREIT510.pdf> (last visited on Oct. 25, 2018).

After its internal reforms, China made efforts to establish good relations with important partners, including the US, so as not to be isolated. On December 11, 2001, China acceded to the WTO after 15 years' intense negotiations. It was the monumental date for China to integrate into the global economy.⁴⁸ In fact, it was the US effort that brought this gigantic economy to the negotiating table.⁴⁹ Overcoming previously negative attitudes that led the US to impose tough conditions for China's entry into the WTO,⁵⁰ the US-China bilateral agreement in 1999 triggered to conclude other bilateral agreements, with the EU and nearly 40 other WTO members.⁵¹ Indeed, the US could expect much from China's accession.⁵² Following its accession, all the legal obligations applicable to the WTO Members would apply to China.⁵³ Especially considering China's controlled economy with subsidies for state-owned enterprises, the WTO disciplines would ensure the elimination of the very Chinese wall of trade barriers. The IPR protection in China was another motivation for the US support after its IPR concerns in the 1990s.

On the other hand, China as an export-oriented economy was looking forward to opening up other export markets.⁵⁴ By joining the WTO, China could guarantee more stable trade relations with other members including the US.⁵⁵ Regarding China's access to foreign capital markets, it would be able to assure foreign investors that China would make decisions in accordance with internationally accepted rules.⁵⁶ The WTO's newly established dispute settlement system was another motivation for China. Besides, China's accession to the WTO symbolized an "implicit lift in its international status," as it represented a breakthrough in its isolation, following the Tiananmen incident of 1989.⁵⁷

Today, US-China economic relations are under the WTO multilateral rule-based regime.⁵⁸ Trade and to some extent investment issues are no longer bilateral. Lawrence Lau maintained:

⁴⁸ For details on China's accession to the WTO, see WTO, China and the WTO, available at https://www.wto.org/english/thewto_e/countries_e/china_e.htm (last visited on Oct. 25, 2018).

⁴⁹ E. Ersoy, *The US Strategy of China under the Bush Administration (2001-2006)*, 3 REV. INT'L L. & POL. 151 (2007).

⁵⁰ Kanungo, *supra* note 47, at 16.

⁵¹ J. To, *US Trade Deal Opens China to WTO*, INT'L FIN. L. REV. 9 (1999).

⁵² F. Abbott, *China's Accession to the WTO*, 3 ASIL INSIGHTS, available at <https://www.asil.org/insights/volume/3/issue/1/chinas-accession-wto> (last visited on Oct. 25, 2018).

⁵³ J. Hsiung, *The aftermath of China's accession to the World Trade Organization*, 8:1 INDEP. REV. 89-90 (2003).

⁵⁴ Abbott, *supra* note 52.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Hsiung, *supra* note 53, at 95.

⁵⁸ *Id.* at 96-7.

Short of a war that is devastating to both the U.S. and China, it is unlikely that China's steady rise, backed by its economic strength, can be permanently blocked [by the United States] ... it is in the interest of the United States for China to become a peaceful, secure, (international) law-abiding, and contributing member of the international community; ... to become an open market for US goods and services, a safe and profitable destination for US investments, and in time a source of potential investment funds for the United States.⁵⁹

A focus on their self-interests brought "both constructive engagement and cooperation as practical alternatives to containment."⁶⁰ Despite the condition attached to China that it transition from its "Non-Market Economy ("NME")" status,⁶¹ the two powers have come under the same system, pursuing a global agenda in international trade.

B. Disputes between the US and China in the WTO

Both the US and China have "actively and aggressively used the litigation process as a means for confronting" each other and "for both domestic and foreign policy purposes."⁶² China stayed relatively quiet in the initial years due to its "non-litigious legal traditions,"⁶³ lack of internal legal capacity,⁶⁴ and limitations imposed in China's accession protocol.⁶⁵ Since 2006, however, China's official stance has begun to change with its proclamation that it would use the WTO's dispute settlement body ("DSB") for the proper resolution of trade disputes.⁶⁶

A pattern of "active and aggressive utilization" of DSB litigation by both China and the US emerged.⁶⁷ For instance, China used the dispute settlement system once in the first five years and seven times in the subsequent six years. This statistical

⁵⁹ L. Lau, *China's Economy and Implications for U.S. Policy*, in U.S.-CHINA RELATIONS: FOURTH CONFERENCE 17 (D. Clark ed., 2002).

⁶⁰ *Id.*

⁶¹ Yong-Shik Lee, *Should China be Granted Market Economy Status?: In View of Recent Development*, 3 CHINA & WTO REV. 319-41 (2017). See also R. Pan, *China's WTO Membership and the Non-Market Economy Status: Discrimination and Impediment to China's Foreign Trade*, 24 J. CONTEMP. CHINA 742-57 (2015).

⁶² S. Malawer, *United States-China WTO Litigation (2001-2010)*, 28 VA. L. 47 (2010).

⁶³ Z. Wei, *An Empirical Study of China's Participation in the WTO Dispute Settlement Mechanism: 2001-2010*, 4 L. & DEV. REV. 231(2011).

⁶⁴ X. Li, *Understanding China's Behavioral Change in the WTO Dispute Settlement System: Power, Capacity, and Normative Constraints in Trade Adjudication*, 52 ASIAN SURV. 1111 (2012).

⁶⁵ K. Castel-Fordor, *Providing A Release Valve: The U.S.-China Experience with the WTO Dispute Settlement System*, 64 CASE WESTERN RES. L. REV. 211-2 (2013).

⁶⁶ *Id.*

⁶⁷ *Id.*

variation in the number of initiated WTO cases shows a shift in both countries' strategies for resolving trade disputes.⁶⁸ This phenomenon became both a positive and negative development for the international trading system. While contributing to the development of a rule-oriented dispute settlement system, it has also laid the seeds for the international legal disputes to eventually transform into a 'trade war.'

Overall, the US claims against China mainly targeted Chinese industrial policy dominated by state-owned enterprises. Since its WTO accession, China has been the target of 42 WTO disputes initiated by its trading partners, with the US accounting for the majority of these cases.⁶⁹ Various industrial sectors have been challenged, such as semiconductors, auto parts, and, more recently, wind power equipment, renewable energy, and access to natural resources.⁷⁰ The claims relate to IPR, trading rights, distribution services, and grants and loans.

More particularly, in the majority of cases, the US has challenged China's subsidies that enabled advantageous competition for Chinese exports in the US domestic market.⁷¹ To open up the Chinese market, the US also has challenged China's use of trade remedies against the US exports⁷² and other trade barriers, such as tariff-rate quotas and internal taxes.⁷³ Meanwhile, in accordance with the expansion of market liberalization through the WTO, the restriction in the services market in China has also been an important issue for the US exporters having a comparative advantage in this sector.⁷⁴ Furthermore, due to the American dependency on China's abundant natural resources, China's limitation on the exportation of raw materials was another sensitive issue that led to the WTO disputes.⁷⁵ Again, the US has continued to challenge China's low level of IPR protection through the WTO dispute settlement procedures.⁷⁶ In sum, the DSB has been a forum for the US to pursue its market-oriented approach while involving China in the US-led global market liberalization.

⁶⁸ *Id.*

⁶⁹ According to the data in 2018, the US has been as a complainant against China in 22 Cases. See WTO, Disputes by Member, available at https://www.wto.org/english/tratop_e/dispu_e/dispu_maps_e.htm?country_selected=CHN&sense=e (last visited on Oct. 25, 2018).

⁷⁰ K. Zeng, *China, America and the WTO*, DIPLOMAT, Feb. 7, 2013, available at <https://thediplomat.com/2013/02/china-america-and-the-wto> (last visited on Oct. 25, 2018).

⁷¹ Specific WTO disputes were as follow: DS 309, DS 340, DS 358, DS 387, DS 419, DS 450, DS 489, DS 511, and DS 519.

⁷² DS 414, DS 427, DS 440.

⁷³ DS 501, DS 507.

⁷⁴ DS 363, DS 373, DS 413.

⁷⁵ DS 394, DS 431, DS508.

⁷⁶ DS 362, DS542.

China's claims against the US measures⁷⁷ have mostly related to the American use of trade remedies, such as antidumping and countervailing duties, hampering China's exports.⁷⁸ Sanitary and phytosanitary ("SPS") measures have also been challenged by China, although thus far only once.⁷⁹ China has tried to show both its legal acumen and willingness to engage in international organizations as a form of soft power.⁸⁰ Thus, even though it cannot match the advanced level of market liberalization in the US, China has tried to base its claims strictly on the WTO agreements, showing also its willingness to comply with DSB rulings.

Whether the aggressive litigation between the two has contributed to the ongoing 'trade war' is perhaps debatable,⁸¹ although the rise in protectionist measures between the two and the proliferation of trade conflicts could be regarded as symptomatic of a trade war.⁸² However, this phenomenon can be also interpreted as a period leading to a more 'efficient' rule-based dispute resolution system under the WTO attuned to the demands of the world's major trading nations. Regardless of any view on this phenomenon, it is obvious that the US and China have become two global economic rivals, fighting for pre-eminence in international trade.

4. Current Impasse

A. The US Measures against Chinese Exports under the Trump Administration

In November 2016, the Trump Administration launched itself with the slogan of "Make America Great Again!"⁸³ In this regard, three recurring themes have been emphasized by President Trump regarding his administration's trade policy: "(1) the importance of trade balances including bilateral trade balances; (2)

⁷⁷ According to the data in 2018, China has complained against the US in 12 cases. Recent two cases are still on-going, which are related to the Trump administration's measures against China. See WTO, *supra* note 69.

⁷⁸ Specific WTO disputes are listed as follow: DS 252, DS 368, DS 379, DS 399, DS 422, DS 437, DS 449, DS 471 & DS 515.

⁷⁹ DS 392.

⁸⁰ Manjiao Chi, *China's Participation in WTO Dispute Settlement over the Past Decade: Experiences and Impacts*, 15 J. INT'L ECON. L. 48 (2012).

⁸¹ Castel-Fordor, *supra* note 65, at 213.

⁸² *Id.* at 214.

⁸³ Staff reporter, *Donald Trump's Presidential Announcement Speech*, TIME, June 16, 2015, available at <http://time.com/3923128/donald-trump-announcement-speech> (last visited on Oct. 25, 2018).

currency manipulation to gain unfair advantage in trade; and (3) ‘disastrous’ trade agreements.⁸⁴ As a result, the US withdrew from the Trans-Pacific Partnership (“TPP”) and began to renegotiate the North American Free Trade Agreement (“NAFTA”) and the Korea-United States Free Trade Agreement (“KORUS FTA”).⁸⁵ Such actions have underlined President Trump’s criticism of some major trading partners including China for alleged ‘unfair trade’ practices that widened the US trade deficit and decreased employment.⁸⁶

China has been accused mainly of currency manipulation, illegal subsidies, and breach of IPR, although other concerns have also been expressed since its accession to the WTO in 2001.⁸⁷ Thus, China was classified as a NME, which allowed rather elastic procedures in antidumping and countervailing investigations by the US.⁸⁸ As the NME status was to end in December 2016, according to the Accession Protocol, China insisted it be recognized as a market economy to escape from those disadvantages.⁸⁹ However, responding to its domestic constituency, the Trump Administration formally opposed giving China market economy status at the WTO, while keeping high antidumping and countervailing duties against a flood of Chinese imports.⁹⁰ Moreover, even as a third party in disputes, the US has blamed the pervasive role of the Chinese government in the Chinese economy.⁹¹

Not directly targeting but including Chinese imports, the US safeguard measures have also had an impact upon Chinese exports. Furthermore, by applying Section 201 of the Trade Act of 1974,⁹² the US imposed additional tariffs not only on imported Chinese large residential washers, but also on solar cells and modules.⁹³ Although a

⁸⁴ M. Noland, *US Trade Policy in the Trump Administration*, 13 *ASIAN ECON. POL’Y REV.* 262-3 (2018).

⁸⁵ *Id.*

⁸⁶ Y. Yoon et al, *Trump Administration’s Trade policy Toward China*, 8 *WORLD ECON. BRIEF* 1 (2018).

⁸⁷ *Id.*

⁸⁸ Noland, *supra* note 84, at 268.

⁸⁹ *Id.*

⁹⁰ D. Lawder, *U.S. formally opposes China market economy status at WTO*, *REUTERS*, Dec. 1, 2017, available at <https://www.reuters.com/article/us-usa-china-trade-wto/u-s-formally-opposes-china-market-economy-status-at-wto-idUSKBN1DU2VH> (last visited on Oct. 25, 2018).

⁹¹ *Id.* For detail on China-EU WTO dispute, see WTO, *DS516: European Union - Measures Related to Price Comparison Methodologies*, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds516_e.htm (last visited on Oct. 25, 2018).

⁹² Section 201 has incorporated the WTO rules under the Agreement on Safeguards and General Agreement on Tariffs and Trade (“GATT”) 1994 Article XIX. For details, see USITC, *Understanding Safeguard Investigations*, available at https://www.usitc.gov/press_room/us_safeguard.htm (last visited on Oct. 25, 2018).

⁹³ USTR, *Section 201 Cases: Imported Large Residential Washing Machines and Imported Solar Cells and Modules*, available at <https://ustr.gov/sites/default/files/files/Press/fs/201%20Cases%20Fact%20Sheet.pdf> (last visited on Oct. 25, 2018).

global safeguard measure is to be applied regardless of the origins of the goods under the WTO disciplines, China has been a main target, as Chinese imports of both kinds of products have been continually increasing.⁹⁴ The measures were in addition to the already-taken antidumping and countervailing measures against Chinese imports.

The Trump Administration even extended the scope of its policy measures against Chinese imports. In January 2018, based on Section 232 of the Trade Expansion Act of 1962,⁹⁵ the US Department of Commerce submitted its investigation report to the White House concluding that steel and aluminum products mainly from China are threatening the national security and internal economy of the US.⁹⁶ In March, President Trump announced the imposition of additional tariffs on all the imported steel and aluminum products from all exporters.⁹⁷ Although the basis of this measure was to protect the US domestic steel industry, defeated by a rapid increase in imports, the main target was to defend against China's overcapacity, which is likely to dominate the US market.⁹⁸ Intentionally giving a broad interpretation of Section 232(d), which also mentions a threat to the internal economy in regard to security issues,⁹⁹ the Trump Administration imposed import restrictions targeting Chinese imports as a threat to national security.

As a national security related issue, IPR protection was another concern of the US because it was a critical source of the American economic growth and global competitiveness.¹⁰⁰ In response to China's unfair trade practices related to the forced transfer of the US technology and intellectual property, President Trump directed

⁹⁴ *Id.*

⁹⁵ According to this 'Section 232,' Department of Commerce has the authority to investigate on the imported products which may influence the national security. Based on the result of this investigation, the President has the discretion to take import restriction measure on those products if there seems to be any threat or damage to the national security.

⁹⁶ US Department of Commerce, Secretary Ross Releases Steel and Aluminium 232 Reports in Coordination with White House (Feb. 16, 2018), available at <https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination> (last visited on Oct. 25, 2018).

⁹⁷ See Presidential proclamations adjusting imports of steel and aluminium into the United States, Issued on March 8, 2018. (Proclamations 9704 and 9705), available at <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states> (last visited on Oct. 25, 2018).

⁹⁸ US Department of Commerce, The Effect of Imports of Steel on the National Security 51 (Jan. 11, 2018). See also US Department of Commerce, The Effect of Imports of Aluminium on the National Security 2-4 (Jan. 17, 2018).

⁹⁹ Section 232 (d) of Trade Expansion Act of 1962 states: "In the administration of this section, the Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security."

¹⁰⁰ Noland, *supra* note 84, at 268.

the United States Trade Representative (“USTR”) to launch an investigation under Section 301 of the Trade Act of 1974 (hereinafter Section 301) into any of China’s laws, policies, practices, or actions.¹⁰¹ The US has simultaneously submitted its claim against China regarding IPR protection in the WTO.¹⁰² However, Section 301, which authorizes the President to take retaliation to obtain the removal of any act, policy, or practice of a foreign government that is “unjustified, unreasonable, or discriminatory,” enables immediate retaliatory action without waiting for the result of the WTO dispute.¹⁰³ Here, any ‘unreasonable’ act, policy, or practice includes any denial of fair and equitable provision of adequate and effective protection of IPR.¹⁰⁴ Unlike other protectionist measures that have been applied to all the imports regardless of their origins, this measure has specifically targeted China.

In April 2018, the US announced to impose tariffs on approximately USD 50 billion worth of Chinese imports throughout the machinery, mechanical appliances, and electrical equipment sectors.¹⁰⁵ Since then, despite China’s threat of retaliation against the auto, aircraft, and agriculture sectors, the US has continued to pursue additional imposition of tariffs on almost USD 50 billion worth of Chinese products, which are mainly intermediate inputs or capital equipment.¹⁰⁶ In June, against China’s

¹⁰¹ USTR, Findings of the Investigation into China’s Acts, Policies, and Practices related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974, at 4 (Mar. 22, 2018), available at <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF> (last visited on Oct. 25, 2018).

¹⁰² See Request for Consultations, China - Certain Measures Concerning the Protection of Intellectual Property Rights, (received on Mar. 23, 2018). See also WTO, *DS542: China - Certain Measures Concerning the Protection of Intellectual Property Rights*, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds542_e.htm (last visited on Oct. 25, 2018).

¹⁰³ Section 301 of the U.S. Trade Act of 1974 states: “(b) Discretionary Action. If the Trade Representative determines under section 2414(a)(1) of this title that—(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and (2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c), subject to the specific direction, if any, of the President regarding any such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice. Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.” See 19 U.S. Code § 2411 - Actions by United States Trade Representative.

¹⁰⁴ Section 301 (d): Definitions and Special Rules. For purposes of this subchapter: (3) (B) Acts, policies, and practices that are unreasonable include, but are not limited to, any act, policy, or practice, ... which - (i) denies fair and equitable - ... (II) provision of adequate and effective protection of intellectual property rights notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 3511(d)(15) of this title, ...”

¹⁰⁵ USTR, Under Section 301 Action, USTR Releases Proposed Tariff List on Chinese Products available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/april/under-section-301-action-ustr> (last visited on Aug. 28, 2018).

¹⁰⁶ W. Morrison, *Enforcing U.S. Trade Laws: Section 301 and China*, CRS Rep.: In Focus (Sept. 25, 2018), available at <https://fas.org/sgp/crs/row/IF10708.pdf>. See also C. BOWN & M. KOLB, PETERSON INSTITUTE FOR INTERNATIONAL

immediate threat of retaliation, President Trump has threatened another USD 200 billion in tariffs, if China retaliates again.¹⁰⁷ However, it has only provoked China to threaten to add duties of 5 to 25 percent on USD 60 billion worth of the US goods in August 2018.¹⁰⁸ On August 7, 2018, the Trump Administration released a revision to the second phase of its USD 50 billion list, announcing that USD 16 billion worth of imports from China would be subject to a higher 25 percent tariff rate.¹⁰⁹ While all those threats have become real, it is highly possible that the US will impose additional tariffs, and China's retaliation is likely to intensify the trade war.

B. China's Counterattack and the US Response: Global Trade War?

In response to the Trump Administration's trade measures, China has shown its willingness to retaliate. Especially reproaching the US for its 'completely unacceptable' Section 301 tariffs, China has imposed massive retaliatory tariffs on the US imports in the Chinese market, which would be of the same scale and strength.¹¹⁰ Against the US threat of tariff imposition in April, China immediately set out its list of 25 percent retaliatory tariffs on USD 50 billion worth of the US imports such as soybeans and cars.¹¹¹ When the US released a revised list of products in June, China also issued an updated USD 50 billion retaliation list, to include agricultural and other chemical products.¹¹² Later, after the actual imposition of USD 34 billion in tariffs by both countries on July 6, 2018, China announced a 25 percent charge on USD 16 billion worth of the American goods, after the US released a finalized list of USD 16 billion worth of Chinese goods that would be hit with tariffs.¹¹³ This tit-for-tat strategy has escalated the trade friction with each other as the US has cross-retaliated with additional tariffs.¹¹⁴ This state of affairs has generated much concern over a 'trade war,' escalating tensions and involving other states.

ECONOMICS, *Trumps' Trade War Timeline: An Up-to-Date Guide* 6-9 (2018), available at <https://piie.com/blogs/trade-investment-policy-watch/trump-trade-war-china-date-guide> (all last visited on Oct. 25, 2018).

¹⁰⁷ Bown & Kolb, *id.* 106.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ L. Wei, 'Shocked' by Latest U.S. Tariff Plan, Beijing Seeks Retaliatory Action, WALL ST. J., July 11, 2018, available at <https://www.wsj.com/articles/shocked-by-latest-u-s-tariffs-beijing-seeks-retaliatory-action-1531313522?ns=prod/accounts-wsj> (last visited on Oct. 25, 2018).

¹¹¹ Bown & Kolb, *supra* note 106.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ For details on the time line of this tit-for-tat strategy of China and the escalation of the US-China tariffs battle, see A. da Costa, *The Early Victims of Trumps' Trade War*, BBC NEWS, Aug. 5, 2018, available at <https://www.bbc.co.uk/news/business-45028014> (last visited on Oct. 25, 2018).

However, it must be noted that China's response is not based on the same strategy pursued by the Trump Administration. Although President Xi Jinping also has pushed ahead with "Made in China 2025"¹¹⁵ in fulfilment of his ambition to "Make China Great Again,"¹¹⁶ Xi's China has pursued a policy opposite from that of Trump.¹¹⁷ Unlike the US, which has withdrawn from international responsibilities and agreements, China has invested in overseas initiatives such as foreign aid and investment, overseas security, and education, which had built the US global influence in the past.¹¹⁸ The "Belt and Road Initiative"-China's massive connectivity project and Xi's flagship foreign policy - shows China's willingness to cooperate with regional partners.¹¹⁹

China has also tried to make good use of the multilateral trade regime by submitting claims in the WTO. It challenged the Section 301 measure in the WTO DSB,¹²⁰ taking its own unilateral retaliations at the same time. The US tariff measures on Chinese goods have not been authorized by a decision of the WTO DSB. Moreover, China claims that these measures are inconsistent with the MFN principles stated in Article I of GATT 1994.¹²¹ The US also has made MFN claims against China's retaliatory tariff measures in the WTO,¹²² which was responded by China against the additional US tariff measures with another claim.¹²³ China has also challenged the US in the WTO with respect to its Section 232 measure, insisting that this measure is a mere safeguard measure inconsistent with the WTO Agreement on Safeguards and

¹¹⁵ "Made in China 2025" is a strategic plan of China issued by Chinese Premier Li Keqiang and his cabinet in May 2015. The goals of "Made in China 2025" include increasing the Chinese-domestic content of core materials to 40% by 2020 and 70% by 2025. See *Xi Pushes ahead with 'Made in China 2025' policy*, ASIA TIMES, May 29, 2018, available at <http://www.atimes.com/article/xi-pushes-ahead-with-made-in-china-2025-policy> (last visited on Oct. 25, 2018).

¹¹⁶ See *Xi Jinping sets out plans to make China great again*, CONVERSATION, Oct. 21, 2017, available at <http://theconversation.com/xi-jinping-sets-out-plans-to-make-china-great-again-86022> (last visited on Oct. 25, 2018).

¹¹⁷ A. Nordin & M. Weissman, *How Trump is Making China Great Again*, OUPblog, Mar. 18, 2018, available at <https://blog.oup.com/2018/03/trump-china-rise-president-xi> (last visited on Oct. 25, 2018).

¹¹⁸ *Id.*

¹¹⁹ *Id.* For details, see Yucong Wang, *Indirect Expropriation and One Belt One Road Initiative: A Pivotal Issue for the Implementation of China's Refreshed Strategy for Foreign Investment*, 3 CHINA & WTO REV. 121-43 (2017); Zewei Yang, *Building the 21st Century Maritime Silk Road: Its Impact on the Peaceful Use of the South China Sea*, 2 CHINA & WTO REV. 85-103 (2016).

¹²⁰ For details, see WTO, *DS543: United States - Tariff Measures on Certain Goods from China*, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds543_e.htm (last visited on Oct. 25, 2018).

¹²¹ *Id.*

¹²² For details, see WTO, *DS558: China - Additional Duties on Certain Products from the United States*, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds558_e.htm (last visited on Oct. 25, 2018).

¹²³ For details, see WTO, *DS565: United States - Tariff Measures on Certain Goods from China II*, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds565_e.htm (last visited on Oct. 25, 2018).

it should not be seen as a security exception.¹²⁴ While the first step of consultations is being taken in the WTO dispute settlement process, the final outcomes of these rule-based disputes are as yet unclear-particularly given the US vetoing of appointments in the WTO.

5. Conclusion

As is evident from the unfolding series of events, China is resisting the Trump Administration's unprecedented retaliatory trade policy toward it. The trade conflict between the two countries has escalated into a 'trade war' with spill-over effects on other countries beyond the normative framework of the WTO. This trade war is not just aimed at creating a more favorable trade balance for the US. Underlying it are fundamentally different approaches to the market and their coexistence through the multilateral trading system. There are also signs of economic, technological, and production competition that partakes of hegemonic rivalry. Such signs are not totally new, but borne out by the history of the US-China economic relations. Given the impasse in this ongoing saga, the silver lining has to be that there will be a reconstruction of the multilateral trading system.

¹²⁴ For details, see WTO, *DS544: United States - Certain Measures on Steel and Aluminium Products*, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm (last visited on Oct. 25, 2018).

