

The role of China for trade Liberalization and competition policy after WTO accession; National Security vs. Anti-Dumping agreement, What ailing the WTO?

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Abstract

The operation of World Trade Organization (WTO) remained suspended and revived several times over the past few decades. The mandate was given to World Trade Organization (WTO) to ensure economic efficiency in international trade while allowing for the optimal use of world's resources in line with the objective of sustainable development, to establish reciprocal and mutually advantageous arrangements in order to substantially re-duce the unjustified tariff's and other trade frictions and abolishment of discriminatory conduct in global trade by accelerating the multilateral trading systems. For seven decades the safeguard measures in Multilateral Trading Phase (MTP) remain stagnant before being incorporated in 1994. However, alleged security instances already prevail in many other (WTO) provisions, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Agreement on safeguards. The excessive application of article XXI (a)(i) of GATT posing explosive trade disputes including Violative tariff's fixed by the United States and like trade limitations inflicted by Russia and the United Arab Emirates (UAE)challenged the statutory framework and existence of the World Trade Organization. It has raised a question that how these "parturient trade constraints" under the umbrella of security exceptions be interpreted or imposed? Either these are self-judging, binding through judicial precedent, or institutional interpretation? The members of WTO shall take this as a matter of grave concern in order to rejuvenate the escalating challenges to international trade and to reinstate the equitable competitive business atmosphere for all entrants globally. The WTO being symbolic international trade institution shall have to make speaking ruling on the scope, meaning and application of these security exceptions. The protectionist tariffs recommended by the International Trade Commission (ITC) and Commerce Department of United States are not in line with the spirit of GATT, Anti-Dumping Agreement and Agreement on Safeguards. The World Trade Organization (WTO) will have to take serious initiatives for international regulation of Anti- Dumping Measures.

Keywords: WTO, Anti-Dumping Measure, International Trade, Security Exceptions, Tariffs.

Introduction

The World Trade Organization (WTO) is known as the platform for member States to negotiate and settle their trade disputes. The Organization has prudent system of trade rules for member States to initiate consultations with each other concerning their trade tensions to resolve amicably and play their pivotal role in liberalizing the international trade. The policy makers agitated the crucial role of WTO for political and economic conflicts associated with the emerging Chinese exports and market access. The birth of WTO in 1995 can be traced back through series of trade consultations under GATT which was initiated in 1948.

The early GATT trade rounds had focused on the reduction of Tariff measures. Then, the Kennedy Round (the Sixth Trade Negotiation Round under GATT from 1964-1967) had shifted the traditional approach to address the trade disputes by inculcating the anti-dumping measures and to tackle trade argufy other than the form of tariffs. The President Kennedy had promulgated the famous US Trade Expansion Act, 1962 which empowered the then US Government to negotiate tariff cuts up to 50% and paved the way that talks to take place. The Tokyo round further took a broader approach then Kennedy round to remove trade barriers but usually talks failed and resulted in the Uruguay Round which gave birth to WTO.

The last quarter of the previous decade unveil the explosive trade conflicts of recent economic phase. In the beginning of 2018, the United States invoked several investigations under Section 232 of the Trade Expansion Act 1962. Under the said section of (TEA) the President is empowered to impose new tariffs to Aluminum, Steel, Automobiles and certain other goods the import of which likely to threat the national security which started USA trade conflicts with many jurisdictions including China. The global overcapacity in Aluminum and Steel production leading by China as the largest Steel exporter has been top agenda in both USA legislative houses.

Three major concerns according to United States compelled them to increase trade tariffs on Chinese products and review the industrial policy with its trade partners and they are, (a) the threat that China's huge trade surplus was depressing job creation in the United States, (b) the threat that China was using unlawful and unjust methods to obtain United States Technology, (c) the threat that China aims to destabilize the United States security and its global standing (Liu et al., 2018). The escalation of trade tension between China and U.S.A mitigates the gross domestic product growth (GDP) 1.40 Percent and 1.35 Percent respectively (Itakura et al., 2020). The imposition of extensive tariffs was the bi-lateral attempt to cause potential harm to Chinese economy and injuring the international economic growth (Steinbock et al., 2018). This was nationalist American approach to stamp down the China's economic strategy (Lai et al., 2019).

It's not only a trade matter between China- USA but also the European leaders are enchanted with post Brexit effects and grappling with the ultimate potential harm of China- USA trade dispute to multilateral trade (Plummer et al., 2019). The unprecedented use of tariffs questioned the role of many world institutions and trade organizations that the zealous efforts made since the last seven decades for the harmonization, liberalization, and settlement of dispute mechanism under one flag be overruled by any member of WTO unilaterally (Prud'homme et al., 2019). The idea of free-trade has taken its last breath after the failure of the Doha Development Agenda (DDA) in 2015 and was buried in Nairobi after declaration (Bown et al., 2021). The myth that the concept of "Forced Technology Transfer" undermines the WTO rules if yes then which platform will have to determine this frontier (Qin et al., 2019).

The concentration of the universal economies towards regional level trade covenants and blocking the market access by imposing unjustified tariffs endangers the doctrine of multilateral trade. These unjustified tariffs are discriminatory, Ultra Vires and would lead to explosive economic recession, press the global trade relations into competing blocks. The GATT and WTO have provided various principles to international trade but the full compliance with the agreed provisions of all trade rounds and policy decisions has not been attracted yet. Although an attempt was made to negotiate new rules in order to bring concrete changes concerning multilateral trading through the Doha round in 2001, Dramatically, failed and the effort was derailed in 2015. The WTO panels and legislative bodies have drafted, ruled, and settled various trade disputes but it is still apparent on the face of the record that the key factors further require the clarifications of certain provisions of GATT and WTO agreements within the administrative body of WTO. The break-down of the legislative functions of the WTO and floating economic interests drive the major economic players and countries to shift their consultative priorities at the regional level.

The leading economies of world have shifted trade emphasis towards intensive regional trade agreements. The emersion of three phases of dialogues i.e., the Trans- Pacific partnership (TPP) accord between Japan, Australia, Mexico, Canada and USA the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and USA, and China's quest of Regional Comprehensive Economic Partnership (RECP) in the form of Belt and Road initiative (BRI) Are evident examples of strengthening regional trade (Bown et al., 2019). As Covid-19 has aggressively shrunk the global economic growth and if the trade issue between China-USA remained unsolved, the world would face ever worst economic lesson (Carlsson-Szlezaket al., 2020). It is necessary to promptly reform the WTO by reducing the barriers which China along with other developing economies are facing to export their products in global market (Ciuriak et al., 2019).

Absence of credible venue to mediate trade disputes would aggravate the already pregnant situation (Caporal et al., 2018). New challenges are taking place as new digital economies are building and China, USA, European Union and Australia are using domestic legislations and policies to reap data- based economies of scale and scope and WTO should frame common mechanism among their approaches to govern trade in data and settlement of disputes (Aaronson et al., 2018). The Organization statues curtails the ability of the member states to set tariffs freely but WTO trade agreements lacked consensual rules on the applicability of Anti-dumping measures except to illustrate so-called basic guidelines in order to govern the mechanism of determination, investigation and application of Anti-dumping duties (WTO, 1994). The WTO members failed to adopt the common principle before applying the Anti-dumping duties as security measures (Van Bael & Bellis, 2011). The major difference can be seen in the present Anti-dumping regime associated with USA and other WTO members using different methodologies to ascertain the question of normal value (Brandt et al., 2017). Many WTO member states have enacted Anti-dumping rules by giving their trade allies the status of Most Favored Nation (MFN), Market Economy Status (MES) simultaneously declaring China as Non-Market Economy (NME). The normal value for the market economy status countries has ascertained on the principle of domestic prices of exporter's country market while for imports from non-market economy status countries normal value can be determined on prices assumed by exporters applicable in other jurisdictions or third country (GATT, 1994).

The China becomes the member of WTO On 10 November, 2001 through China's Accession Protocol to WTO which was the benchmark effort of WTO and its members for trade liberalizing which guarantees voluminous business, trade rights to China i.e. under article 3, Non-discriminatory behavior, article 4, compliance with the WTO rules in special trade arrangements, article 5, right to liberalize China's trade, article 8, import and export licensing, article 9, Price Controls, article 10, Subsidies, article 11, Taxes and Charges levied on imports and exports, article 13, Technical Barrier to Trade and most important article 15,A(i)(ii).B,C, and D on price comparability in determining subsidies and dumping. Article 16, which deals with the Transnational Product specific safeguard mechanism. The research addresses article 3,9,15 and 16 specifically with unprecedented increase of Anti-dumping duties on Chinese exports either the same has been imposed with the spirit of the GATT, WTO, AD agreements, rules, procedures in determining the normal value, market disruption, security threat, Casual link between dumped imports, material injury, provisional measures, and its effects on the GDP growth of both countries.

The Beginning of Trade Friction Between China-USA

In April, 2017 two Presidential directives ordered the U.S Commerce department to sum up the self-conducted investigations impairing the National Security by imports of steel and Aluminum products (DCPD, 2017). Following the Presidential Direction the U.S Commerce Department commenced its investigations and held public hearings. In addition to the hearings, only U.S Steel producers submitted their concerns and supported the measures to mitigate steel imports while the other stakeholders including automakers and users opposed subsequent tariffs on imports of Aluminum and Steel. The Aluminum industry of United States held differing views on aluminum tariffs and majority opposed it (CRS.....). All stakeholders (except U.S Steel producers) suggests to sought a moderate approach and to take controlled action to counter unfair trade practices and the issue of overcapacity while others pressed the necessity to elaborate "National Security" broadly for protectionist purposes (U.S. Trade, 2017).

On January 11 and 12, 2018 The Commerce department had submitted its final findings and recommendations to the President with the conclusion that the imports of certain steel (U.S., 2018a) and Aluminum products (U.S., 2018b) causing threat to the National security of USA. The Commerce department in the present investigation has derived the same definition of national security which was taken in the investigation of Iron ore and Semi- finished Steel in 2001(U.S., 2001). The Commerce department further recommended the President to impose targeted tariffs and to fix imports level of these products through tariffs. On March 8, 2018 President Trump after the final recommendations of the Commerce department imposed 25% tariffs on Steel and 10% tariffs on Aluminum products on U.S imports mainly from China with effect from March 23, 2018 (P.P., 2018). The tariffs on Steel and Aluminum were to be imposed in addition to already placed anti-dumping and countervailing duties.

Trump Administration and Investigations U/S 232 of Trade Expansion Act, 1962

The Trump regime conducted various investigations U/S 232 OF The Trade Expansion Act, 1962, Taking the cognizance of national security issue under section 232 investigations were initiated in the Trump era. From 1962 to 2020 total 34 investigations have been conducted by the Commerce department in 16 cases the Commerce department concluded that there is no threat from the targeted imports to the national security, in 14 cases the Commerce department determined that the targeted imports threatened to impair the national security, two investigations were terminated and two are still under the course of investigation. From 14 cases which were

subject to national security The President took action nine times and against 5 cases no action had been taken. The President last acted under section 232 in 1986 in which the President inked export limitation agreements with exporters (U.S., 1986).

It has been revealed that all Presidential actions under section 232 of TEA, has been taken prior to the establishment of WTO and the General Agreement on Tariffs and Trade (GATT), WTO agreement on Safeguard and agreement on implementation of article VI of the GATT, 1994 (The Anti-Dumping agreement) prohibits the unilateral action of WTO member countries to impose tariffs and Anti-Dumping (AD) and Countervailing duties contrary to the spirit of these agreements. The recent wave of investigations under section 232 of TEA 1962, impeded the growth of global trade and supersede the basic principles i.e. normal value, causal link, material injury, and procedural mechanism to resolve the trade frictions among WTO members contained by these agreements. The following are the investigations initiated under the Trump administration covering the imports.

1. Steel and Aluminum, initiated April 20, 2017 (U.S., 2017a).
2. Steel and Aluminum, initiated April 27, 2017 (U.S., 2017b).
3. Automobile parts, conducted May 23, 2018 (U.S, 2018c).
4. Uranium Ore and other products, started July 18. 2018 (U.S, 2018d).
5. Titanium Sponge, commenced March 4, 2019 (U.S, 2019).
6. Transformers and related grain-oriented electrical steel parts. begin May 4, 2020 (U.S, 2020a).
7. Mobile Cranes, conducted May 6, 2020 (U.S, 2020b).
8. Vanadium, commenced June 3, 2020 (U.S, 2020c).

Additional Tariffs U/S 301 of the Trade Act 1974 by Trump Regime

The Section 301 of the Trade Act 1974 has been applied first time by the United States for imposition of additional tariffs on metal products i.e. steel and Aluminum. In August 2017, President Trump instructed the Trade Representatives of the United States to commence investigations against the so-called unfair trade conduct of China U/S 301 of the Trade Act of 1974. On March 22, 2018 the United States Trade Representative (USTR) announced its final recommendations to take action against the Chinese products. The Trump proposed 25% additional tariffs on Chinese products which cover the list of 1333 items including electronic, transportation, and mechanical appliances. Moreover, these additional tariffs would also be applied to the same steel and Aluminum products which were already subject to Section 232 tariffs. In response to the counter-tariffs measures of China the President Trump demanded another investigation U/S 301 of the Trade Act of 1974. Exports from China to the United States have been a prime target of Anti-Dumping duties since its WTO accession. After China's accession to the WTO, until 2016, trade frictions between the two countries took place within the frameworks that had been established by China's accession protocols and WTO rules. These disputes were negotiated and settled using bilateral dialogues, diplomatic channels, the dispute settlement understanding rules of WTO, and national trade remedies.

Principle of Double Jeopardy in International Trade

After China's accession to WTO and until 2017 the United States had investigated 130 Anti-Dumping and 70 countervailing duty cases involving imports from China and resultantly imposed 103 and 56 restrictions on Chinese imports respectively. The United States imports from China consistently remain under Anti-Dumping and countervailing duties from 1980 to 2018 and also subject to other special and safeguard tariffs announced by the United States. But

the question arises why the Trump administration suddenly invoked the National Security exception provisions which becomes the bone of contention between two economies and escalated the trade war unprecedentedly.

The main United States industry covered by the anti-dumping and countervailing duties subject to heavy tariffs from 2007 and 2017 were the Metals i.e. Steel and Aluminum. The special tariffs and safeguard measures were taken to protect the United States steel industry only after China's becoming the largest producer of steel globally.

It is worth noting that when i-e Steel and Aluminum were already under heavy United States tariffs duties would it be fair to invoke further safeguard measures to restrict imports from China involving same subject matter. Does any relevant provisions prevails in the GATT, the safeguard and countervailing agreements if yes why has not been agitated by the interesting parties and if no such provisions contained such agreements than the failure to address the matter is apparent. The principal of "Double Jeopardy" be applied in the present case against firms being legal person and the WTO need to address this matter if think it appropriate.

Substantive Rules for Determination of Anti-Dumping Measures

The Agreement on implementation of Article vi of the GATT, 1994 (the Anti-dumping agreement) provides the primary guidelines for Anti-Dumping measures for the WTO members that an imported product is "dumped" and that there is a casual link between dumped imports and material injury to the domestic industry. Non-compliance with the substantive as well as procedural rules of Anti-dumping Agreement could be agitated be-fore dispute settlement committee and will be the ground for cancellation of measures al-ready taken.

Article 1 of the Anti-dumping agreement restrict the ability of WTO member state to impose the measures unless the determination of casual link between dumped imports and material injury is established in accordance with the provisions of the Anti-dumping agreement. This principle lacked the recent investigations initiated by US Commerce department because they have taken cognizance under section 232 of the Trade Expansion Act 1962 rather than to make compliance with this article for the initiation of investigation and determination. Article 2 defines that the Dumping shall be measured on the footing of fair comparison between normal value and export price while article 3 contain rules for the determination of injury that must be based on objective examination of concrete evidence of volume and price of dumped imports. The significant provision "Cumulative evaluation" under the same article can also be taken by the authorities that the dumping margin of each country is not DE MINIMIS. Article 5.8 provides that investigations should be promptly terminated if the Dumping margin is DE MINIMIS. This principle is also thrown away in almost all 232 investigations under Trump regime.

Article 5 establishes the conditions for the conduct of investigation that should be initiated in the form of written request by or on behalf of the domestic industry. In eight investigations commenced by the commerce department from 2017 to 2020 four were self initiated which means there was no written request from the domestic industry and proceedings were held SUO MOTO violating the provisions of this article. Presidential action is subject to affirmative findings from the Commerce department under section 232 but in one investigation (Uranium Ore and related products, initiated in 2018) the findings were affirmative but the President did not concur with the findings of the Commerce department. In addition, in other

three investigations the President Trump concurred with the findings of the Commerce department.

Article 7 sets forth the rules of provisional measures and WTO members are not allowed to apply the said rules within the period of 60 days after the beginning of an investigation. Furthermore, article 7 requires that before the application of provisional measures the authorities shall have to determine the injury, affirmative dumping and causality between the two which is mandatory requirement. Article 9 of the Anti-dumping agreement relates to the doctrine of “lesser duty rule”. Which means that the infliction of anti- dumping duty is optional even if all the conditions for the infliction have been met the concerned authorities impose lesser level of the duties than the dumping margin. But the principle of imposition of lesser duty rule has been overruled by the Presidential actions. Article 11 deals with the necessity, duration, review and continuation of the Anti-Dumping measures. The US panels on trade interpreted all these provisions keeping in mind their trade benefit rather in accordance with its applicable spirit and these interpretations seems dominant over the rulings made by the WTO panels.

Article 16 establishes the Committee on anti-dumping conducts and required the member states to notify all the preliminary and final actions taken on anti-dumping measures. Article 18 requires members to make laws in line with the provisions of the Anti-dumping agreement and to notify their Anti-dumping rules and regulations to the committee. The President Trump bifurcated these provisions in his proclamation of protectionist tariffs.

Characteristics of Dumping and Determination of Material Injury, Normal Value

According to the Agreement on implementation of article VI of the GATT 1994, dumping means the introduction of a new product into the trade market of another country at less than its normal value. The normal value is generally determined with the comparable prices of the like product when destined for consumption in the market of export or third country. But this principle is inappropriate to determine normal value of product because there are certain factors which shall be elaborated i.e. when there are no sales of the same product in the exporting country market, whether sales in the exporting country market are made in the ordinary course of business, volume of sales, the Agreement is silence about the determination which kind of third country is appropriate, how the value would be determined in case of market economy and non-market economies. Moreover, the de-termination is made after due process of investigation in line with the Agreement keeping in view the following characteristics, (A) that dumping is occurring, (B) that the domestic market is suffering material injury, (C) and there is a necessary link between the two. If the procedure has not been observed as contained the Agreement the WTO panel shall declare the anti-dumping measures as Void ab initio. The Agreement provides the nature of injury, (i) material injury to domestic industry. (ii) Threat of material injury to domestic industry. (iii) Material retardation of the establishment of domestic industry, but the agreement remain silent that how the evaluation of material retardation of the establishment of domestic industry be determined?

The significance of Kennedy and Tokyo round and parting the way by USA.

From 1948 to 1994 the GATT has brought remarkable reforms for the international trade and commerce. The functional capacity of the GATT was limited but its achievements in promoting the global trade are incontestable. All the contracting parties to GATT have discussed in length the Codes of Anti-dumping tariffs but the major step was taken in the Kennedy Round in 1967 and subsequently in the Tokyo Round in 1980 which provided much guidance about the injury, dumping margin, investigative methodology but the USA never signed both the historic

trade rounds and only 30 countries were bound to make compliance with the Code. Almost in all trade rounds except Kennedy and Tokyo no devoted attempt has been made to discuss the flaws in order to implement and lessen the concerns of the WTO members about the impositions of Anti-dumping duties. Tokyo round took a broader look at trade principles than its predecessor. More than one hundred countries participated and a series of covenants were concluded on numerous non-tariff barriers but were signed by few participants. However talks failed and result the Uruguay round. The Doha and Nairobi rounds also focused on the agricultural subsidies tradition-ally without any mandatory outcomes. Developed economies declined the spirit of Uruguay round to developing economies. The stagnant approach of WTO members to foster export competition and determination of anti-dumping measures under GATT rules drive the least developed economies to shift their economic interest at regional and local level which would questioned the supervisory role of WTO in the near future. Before Trump administration the trade disputes between China-USA and between China-European Un-ion were amicably resolved under the dispute settlement understanding (DSU) even after non granting the status of market economy to China. The lack of sequential agendas in WTO trade rounds and time killing activities fractured the organizational framework of the WTO.

Table 1. US-CHINA TRADE DISPUTES IN WTO FROM 2010 TO 2021.

r. #	Year	Compl ainant	Respo ndent	Date of consultation requested	Subject of dispute	Current status
	010	USA	CHIN A	15- 09-2010	Measures against electronic payment services	Implemen tation notified by respondent.
	010	USA	CHIN A	15- 10-2010	Anti- dumping measures on grain oriented electrical steel from the USA.	Implemen tation notified by the respondent.
	010	USA	CHIN A	22- 12- 2010.	Certain Measures on wind power equipment.	In consultations
	011	CHIN A	USA	28- 02- 2011.	Anti- dumping duties on Chinese shrimp, & diamond	Implemen tation notified by the respondent.

					exports.		
	011	USA	A	CHIN	20-09-2011.	Anti-dumping and countervailing duties on United States broiler products.	No compliance with the proceedings.
	012	USA	A	CHIN	13-03-2012	Measures concerning the exports of rare earths, tungsten, and molybdenum.	Implementation notified by the respondent.
	012	A	CHIN	USA	25-05-2012	Certain anti-dumping measures on Chinese products.	Request for authorization to retaliate is pending.
	012	USA	A	CHIN	5-07-2012	AD and CVD duties on Automobiles from the United States.	Reports of the WTO panel adopted no further action required.
	012	A	CHIN	USA	17-09-2012	CVD and AD measures on certain products from China.	Reports of WTO panel adopted.
0	012	USA	A	CHIN	17-09-2012	AD & CVD On Automobile industry.	In consultations.
1	013	A	CHIN	USA	3-12-2013	Application of anti-dumping proceedings against China.	Request for authorization to retaliate is pending.
2	015	USA	A	CHIN	11-02-2015	Measures concerning common service	The composition of panel body is

					platforms activities.	pending.	
3	015	USA	A	CHIN	8-12-2015	AD & CV measures concerning the production of local aircrafts.	In consultations.
4	016	USA	A	CHIN	13-07-2016	Tariffs on certain Raw materials.	The composition of panel body is pending.
5	016	USA	A	CHIN	13-09-2016	Domestic support for agricultural products.	Compliance proceedings ongoing.
6	016	A	CHIN	USA	12-12-2016	Tariffs rate and price comparison mechanisms.	In consultations.
7	016	USA	A	CHIN	15-12-2016	Application of certain tariffs on agricultural products.	Compliance proceedings ongoing.
8	017	USA	A	CHIN	12-01-2017	Subsidies to Aluminium producers.	In consultations
9	018	USA	A	CHIN	23-03-2018	measures on the protection of intellectual property rights.	Panel composed.
0	018	A	CHIN	USA	4-04-2018	Tariffs on certain Chinese goods.	WTO panel report is under the process of appeal.
1	018	A	CHIN	USA	5-04-2018	Anti-dumping & additional tariffs	Panel composed.

					on Steel and Aluminium products.	
2	018	USA	CHIN	16-07-2018	Addition of duties on USA products.	Panel composed.
3	018	CHIN	USA	14-08-2018.	Application of safeguard tariffs on imports of crystalline silicon photovoltaic products.	Panel composed.
4	018	CHIN	USA	14-08-2018.	measures related to the renewable energy.	In consultations.
5	018	CHIN	USA	23-08-2018.	Tariff measures on Chinese goods phase(ii).	In consultations.
6	019	CHIN	USA	2-09-2019.	Tariff measures on Chinese goods phase(iii).	In consultations.
7	020	HONG KONG CHINA	USA	30-10-2020.	Origin marking requirements.	In consultations.

In Table 1 we have analyzed the data of trade disputes between China -USA from 2010 to 2021 and observed that in majority of the cases the procedural as well as substantive rules as guaranteed GATT, and Anti-dumping agreement has not been observed which is a stigma on the face of the WTO's operational mechanism and lead the organization to-towards the state of failure if considered.

The data in Table.1 illustrates that from 2010 to 2021 a total 27 trade disputes were initiated between China-USA and out of these 27 cases in the last 11 years only 11 trade disputes were decided by the WTO and in 6 cases the compliance with the reports of the WTO Panel has been made and in 2 cases the requests are pending from the defendant side for authorization to retaliate and in 3 cases the compliance proceedings are under the process. Since the last one

decade 9 cases are in consultations and no further development has been made yet, furthermore in 7 cases panel has been established but not composed yet. This shows the lack of operational activity of WTO and paralyzed the growth of international commerce and trade.

Table 2. China – European Union (EU) disputes in WTO from 2010 to 2021.

Sr. #	Year	Complainant	Respondent	Date of consultation requested	Subject of dispute	Current status
1	2010	CHINA	EUROPEAN UNION(EU)	4-02- 2010	AD/CVD on Chinese footwear Goods.	Panel reports adopted by the Respondent.
2	2010	EUROPEAN UNION	CHINA	7-05- 2010	Provisional AD duties on European Iron and steel fasteners.	In consultations
3	2011	EUROPEAN UNION	CHINA	25-07- 2011.	Application of Anti-dumping duties on X-Ray security inspection equipment from the European Union.	Implementation notified by the respondent.
4	2012	EUROPEAN UNION	CHINA	13-03- 2012	Measures related to the exportation of rare Earths, tungsten, and molybdenum.	Implementation notified by the respondent.
5	2012	CHINA	EUROPEAN UNION(EU)	5-11- 2012.	Certain measures affecting the renewable energy generation sector.	In consultations
6	2013	EUROPEAN UNION	CHINA	13-06- 2013	Measures imposing Anti-dumping duties on High performance	WTO PANEL Reports adopted

					stainless steel seamless tubes (HP-SSST) from the EU.	
7	2015	CHINA	EUROPEAN UNION	8-04- 2015	Measures affecting tariff concessions on certain poultry meat products.	Settled as mutually agreed solution.
8	2016	EUROPEAN UNION	CHINA	19-07- 2016.	AD & CVD On the exports of certain Raw materials.	The composition of Panel Body is pending.
9	2016	CHINA	EUROPEAN UNION(EU)	12-12- 2016.	Measures related to Price comparison methodologies.	Authority for panel lapsed.
10	2018	EUROPEAN UNION	CHINA	1-06- 2018.	Certain measures on the transfer of Technology.	In consultations.

The data in Table 2 shed light on the trade disputes between China and European Union (EU) from 2010 to 2021 in which only 10 disputes were registered with WTO and out of ten 5 cases were decided by WTO (compliance has been made by defendant party), three cases are in consultations, in one case the panel has been established but not yet composed and in one case the authority for the establishment of the panel has been lapsed.

Table 3. China-Canada Trade Disputes after Chinese WTO Accession

Sr. #	Year	Complainant	Respondent	Date of consultation requested	Subject of dispute	Current status
1	2006	CANADA	CHINA	13-04-2006	AD duties hitting the importation of Automobile parts.	Respondent adopted the reports.
2	2008	CANADA	CHINA	20-	AD	Withdraw

				06-2008	measures on financial services	n as mutually agreed.
3	2014	CHINESE TAIPI	CANADA	25-06-2014	Anti-dumping measures on carbon steel imports	Reports adopted with recommendations to bring measures into conformity.
4	2014	CANADA	CHINA	15-10-2014	AD duties on cellulose pulp imports	Respondent notified the implementation.
5	2019	CANADA	CHINA	09-09-2019	AD Tariffs on the imports of canola seed	In consultations

Table 3 argues that after China's WTO accession only five trade disputes were agitated between China and CANADA within the framework of the Organization and out of these five proceedings three cases were decided by the WTO Panel and implementation had been made accordingly by the respondent party. One case was settled mutually between the parties as was withdrawn by the complainant. One case is still under the process of consultations.

Table 4. Chinese Legislative Measures on Antidumping & Countervailing Duties

Sr. #	Name of Legislation	Date of Commencement
1	Foreign Trade Law of the People's Republic of China	7-1-2004
2	Anti-Dumping Regulations of the People's Republic of China	1-1-2002
3	Countervailing Duty Regulations of the People's Republic of China	1-1-2002
4	Safeguard Regulations of the People's Republic of China	1-1-2002
5	Provisional Rules on initiation of Antidumping investigations	13-3-2002
6	Provisional Rules on Antidumping investigations by Questionnaire	15-4—2002
7	Provisional Rules on Hearings in Antidumping investigations	Not exactly known

8	Provisional Rules on Sampling in Antidumping investigations	15-4—2002
9	Provisional Rules on information Disclosure in Antidumping investigations	15-4-2002
10	Provisional Rules on interim Review of Dumping and Dumping Margins	15-4-2002
11	Rules on information Access and Disclosure in industry injury investigations	
12	Rules on Antidumping industry injury investigations and determinations.	15-1-2003

Table. 4 states that after accession to WTO the China has drafted various legislative Codes in accordance with The Agreement on implementation of Article vi of the GATT, 1994 (the Anti-dumping agreement) and other relevant statutes of the WTO. The data has proved that Chinese firms have faced discriminatory treatment in USA, EUROPE and Canada as compare to Brazil, Argentina, Australia and Mexico who have been given un-conditional and unlawful tariff exemptions by the developed economies in contravention with the WTO statutory rules which impeded the international trading system.

Frequent use of Anti-Dumping Measures against Chinese Exports prior and after WTO accession. The WTO was established to redress the socio-economic and political economic conflicts³⁴ (Bown, 2010). The most of US anti-dumping duties has been imposed on non-targeted markets (Bown, 2006). The literature has revealed the fact that four developed and six developing economies consistently targeting the Chinese exports since 1995 to 2017 by initiating and imposing Anti-dumping measures on Chinese metal and chemical products (Bown, 2005). It is worth noting that all the ten countries have interpreted the an-ti-dumping statutes by themselves rather to take guidance from the WTO panels. Moreo-ver, the measures taken by these economies are two times higher than the required dump-ing margin. The method to determine material injury, dumping margin and causality varies from country to country. The China was not a frequent litigant in WTO after accession but confronted later with WTO members mainly those who have declined Market Econ-omy Status (MES) to China after 2001.

Is the Security Exception Self-Judging?

The United States view that once the security exception has been invoked by the WTO member than WTO Panel has no jurisdiction to take cognizance of the matter and make no findings (T.P. E.S.U.S.A., 2018). The United States extreme view sees the invocation of security exception as ‘Non-Justiciable’. Roger Alford states that the security exception should be invoked rarely, wisely, And in good faith (Alford et al., 2011). The United States argues that, i. national security issues are political concerns out of the jurisdiction of WTO review and dispute settlement provisions (See, 2018). ii. once the WTO has taken cogni-zance of the matter under article XXI, this would be marked as ultra vires (U.S., 2018e).. The WTO shall have to give definite rulings not only on the circumstances in which these exceptions be invoked but also to determine the mechanism that how the normal value, dumping margin, and material injury be construed against the economies having Non-Market Economy Status (NMES) and having Market Economy Status (MES).

WTO statutory implications

GATT/WTO dispute settlement procedures seems inappropriate to prevent members from violating the agreement (Bown, 2002). Article XXI of the GATT, 1994 Permits the WTO members to take measures concerning “essential security interests”. only if all the measures have been adopted in line with the rules and obligations of the WTO Statutes i-e the Anti-dumping and countervailing agreement, the Agreement on Safeguards etc. But the members cannot impose measures proportionally following the WTO rules for National Security and imposed the Anti-dumping duties and additional tariffs by invoking their domestic statutes. The WTO partners like China, India, Turkey and Qatar have challenged the recent U.S Tariffs by alleging that they overrule GATT Article 1, which binds WTO partners to treat the goods of one country no less favorable than another WTO partner. Under Article 2 of the GATT which restricts the liability of WTO partners from placing tariffs on goods above the upper limit to which they agreed. The WTO and its members shall revisit the operational framework of the WTO and the aftermath of the United States unilateral actions on the multilateral trading systems and undermining the WTO rules. The Trump’s unilateral actions seems self- destructive for capitalist economy (Bown, 2019) as predicted by Schumpeter. The US tariffs strategy may result the further frustration for the WTO and invoke institutional crises (Bown, 2019).

Recommendations and finding a way forward

From 1947 to 2015 only 10 Trade Rounds has been conducted to address the trade tensions among WTO members and in all rounds no concrete outcomes surfaced except to engage and propose suggestions. Firstly, the traditional concept to conduct ministerial meetings and its findings which has brought nothing until now be set aside and new committee on the dispute settlement involving security measures be established in order to address the current trade disputes involving threat to national security. The self-judging security formula as suggests by Roger Alford be used very wisely, rarely and in good faith because if this practice continues every WTO member can invoke this exception justly or unjustly. The WTO shall have to manage the trade rounds after every five years regularly as new trade challenges surfaced due to the technological advancement and fierce competition in the economic market. Secondly, the WTO could frame the consultation period between the litigants even if no outcome has made within the given statutory period the WTO panel proceed the matter accordingly and the panel must not be lapsed due to wastage of time as happened in a trade dispute in 2016 between China and Euro-pean Union. Thirdly, the WTO members revisit the appointment procedure of the members of Appellate Body rather than to solely given the authority to any specific state to make appointments and affect the proceedings of ordinary course as witnessed few cases.

Fourthly, the WTO can explicitly determine in the case of Chinese exports to USA,EU and Canada the mechanism for the determination of normal value, dumping margin, and injury to domestic industry because the United States, European Union, and Canada have their own different methodologies to determine these principles before imposing An-ti-Dumping measures on Chinese products. Furthermore, all these three countries have not given the Market Economy Status (MES) to China but are signatory of GATT and various other international treaties to liberalize trade the WTO could address the principles of market economy and non-market economy in broader context for uninterrupted trade growth. Fifthly, since the last one decade the WTO panel had not decided any trade dis-pute of developed economies boldly which proved the nature of their influential character on WTO that kind of practice be abolished for the survival of the Organization. Sixthly, if the litigants are not interested to settle their trade dispute with the WTO instead to over-rule the procedural and substantive norms of the Organization than they

may avail mutu-ally agreed solution among themselves outside the body of the WTO and let the Organi-zation to perform its given mandate for harmonization and liberalization of universal trade and preserve the glory of the WTO. Seventhly, the USA should appoint the members of WTO Appellate body to reconstruct its confidence on multilateral trade rather to act as stumbling block. Eighthly, the USA can avoid the confrontation by invoking the national security provisions specifically against one country while exempting others arbitrarily on the same trade infringement because this will become the business practice in the near fu-ture and fractured the frame of multilateral trade. Ninthly, the permanent and non- per-manent members of the UN Security Council be increased to enlighten the leadership of the less developed economies to perform constructively for liberal trade and vanish the social disparity. Lastly, leading economies can provide the market access to all third world countries by promulgating new trade agreements as the structure and concept of economic markets have been changed due to technological advancement.

conclusion

The recent wave of protectionist tariffs imposed by the United States under Section 232 of the Trade Expansion Act 1962 and additional tariffs under section 301 of the Trade Act 1974 are not in line with the WTO Agreement on Safeguards. The United States has invoked the security provisions under the Trade Expansion and Trade Act of 1962 and 1974 respectively rather than to invoke under United States safeguard laws and justifying these security exceptions under article xxi of GATT rather than the Agreement on safeguards. The article examined the trade disputes of China with the USA and the European Union after Chinese accession to WTO and shed light on the operational activity of the WTO Panels constituted for the settlement of these trade disputes. It has also been noted that the discriminatory trade conduct and the imposition of Anti-dumping and counter-vailing duties particularly against Chinese export products paved the way for economic recession globally and obviate the multilateral trading system for which the WTO was given birth. The failure of the Doha and Nairobi trade rounds finally brings the Organiza-tion to the state of no return and drive the attention of other leading economies to shift their economic interest at the regional level by establishing new economic blocks. The ar-ticle has analyzed the potential threat to multilateral trade in the form of settlement of disputes under the WTO panel, compliance with the decisions made by the WTO panel, and the timeline for the establishment of Panel Body and the conduct of proceedings. The Appellate Bench of the WTO trade dispute panel was quenched and ultimately crushed the dispute settlement theory within the body of WTO. The United States has taken up the New Keynesian Model to reduce imports dependency may have the short run effects on its economy. The lack to constitute the panels promptly and the pending consultations between the litigants over a long period attract the maxim “justice delayed justice denied”.

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Conflict Of Interest

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Under WTO legislation, member states can impose antidumping duties (temporary tariffs) on particular imports that are sold at less than the "normal value," which is usually the product's price in an exporter's domestic market (Van Bael & Bellis, 2011). Other trade defence instruments include anti-subsidy as well as safeguard measures.