



WEAPONIZATION OF CUSTOMS DUTIES: THE US–CHINA TRADE WAR

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ABSTRACT

This paper examines how the United States and China have deployed customs tariffs as political instruments during the recent trade conflict, focusing on legal constraints under WTO law. It analyses the WTO's basic tariff obligations (most-favoured-nation and tariff bindings) and exceptions (GATT Articles XX and XXI), and reviews key dispute settlement rulings. We detail the U.S. Trade Act's Section 301 framework, through which the U.S. imposed unilateral tariffs on Chinese imports, and China's retaliatory duties and domestic counter-measures rules. The analysis shows that WTO panels found both sides' tariffs inconsistent with GATT obligations (breaching Articles I and II)³⁸. The cases highlight the limits of WTO law: U.S. justifications under Article XX(a) ("public morals") were rejected, and while the U.S. cited the security exception (Article XXI) for steel tariffs, WTO panels have largely refused to accept such broad defences. China's introduction of anti-sanctions and countermeasures laws underscores its turn to extrajudicial tools. These developments strain the multilateral dispute system and raise acute rule-of-law concerns in global trade.

Keywords: US–China trade war, Customs tariffs, WTO law, GATT obligations, Most-Favoured-Nation (MFN), Tariff bindings, GATT Article XX, GATT Article XXI, Public morals exception, National security exception, Section 301 (U.S. Trade Act), Retaliatory duties, China countermeasures law, Anti-sanctions measures, WTO dispute settlement, Rule of law in global trade

GRASP - EDUCATE - EVOLVE

WTO Tariff Commitments and Exceptions

Under the General Agreement on Tariffs and Trade (GATT 1994), WTO Members assume clear obligations regarding customs duties. **Article I:1 (Most-Favoured-Nation)** mandates that any advantage, favour, or privilege granted to a product from one Member must be *unconditionally* extended to “like products” of all other Members. In practice, this bars Member-specific tariffs and requires a single tariff schedule for all WTO trading partners³⁹. **Article II:1 (Tariff Bindings)** obligates each Member to impose no higher an import duty than the bound rates listed in its schedule of concessions. It prohibits any “ordinary customs duties” or other import charges above the bound levels (Article II:1(b)), and likewise prohibits treatment of any imports less favourable than that in the schedule (Article II:1(a)). Thus, an MFN breach (differential tariff) necessarily violates the Member’s tariff bindings⁴⁰.

These obligations leave little room for discretionary retaliation outside WTO procedures. The WTO Dispute Settlement Understanding (DSU) precludes unilateral actions: Article 23.1 of the DSU grants the right to complain of a violation **only** through the agreed dispute process, not by self-help. Hence, under WTO law a member may not simply impose punitive tariffs without either prior negotiation or a WTO ruling. Indeed, a WTO panel in the US–China case emphasized that “*there is no express authorisation in the WTO Agreement for Members to impose additional duties against another Member’s products other than through the dispute settlement mechanism*”⁴¹.

Like most trade agreements, GATT does provide exceptions. **Article XX** lists public policy exceptions (e.g. health, environment, morals),

which can justify measures that would otherwise breach Article I or II, provided they meet the chapeau conditions and necessity tests. **Article XXI** (the “security exception”) allows measures “which it considers necessary for the protection of its essential security interests” in war or emergencies. Notably, Article XXI is self-judging (the Member “*considers*” measures necessary), but panels have ruled that Article XXI is not entirely beyond WTO review. In practice, Members invoking Article XX or XXI must still satisfy panel scrutiny (as in earlier steel tariff disputes^{42,43}). We discuss below how the US and China invoked these exceptions in their tariff confrontations.

U.S. Section 301: Domestic Trade Enforcement

The U.S. weaponization of tariffs grew out of domestic trade law, chiefly Section 301 of the 1974 Trade Act (19 U.S.C. § 2411). Section 301 authorizes the U.S. Trade Representative (USTR) to investigate foreign laws or practices deemed “unjustifiable” or “unreasonable,” especially those infringing U.S. trade rights. An act is “unjustifiable” if it is “in violation of, or inconsistent with, the international legal rights of the United States,” including denial of national or MFN treatment or inadequate intellectual property protection⁴⁴. Upon finding such conduct (often defined in a Section 301 report), the USTR may impose “such trade actions as may be appropriate,” including raising tariffs or trade restrictions, after consulting Congress.

Importantly, after the 1994 WTO agreements, Section 301 was amended to require that the U.S. first seek relief through WTO dispute settlement. Congress limited Section 301 to *unremedied* situations. If WTO procedures yield no satisfactory outcome within a reasonable time, the USTR can resort to Section 301

³⁹ https://www.wto.org/english/tratop_e/dispu_e/dispu_e/543r_e.pdf#:~:text=7,that%20the%20measures%20are%20inconsistent

⁴⁰ https://www.wto.org/english/tratop_e/dispu_e/dispu_e/543r_e.pdf#:~:text=7,that%20the%20measures%20are%20inconsistent

⁴¹ <https://www.asil.org/insights/volume/24/issue/26/no-unilateral-action%E2%80%94wto-panel-ruled-us-section-301-tariffs-chinese#:~:text=Most,Tariff%20Increases>

⁴² https://www.southcentre.int/wp-content/uploads/2025/02/SV282_250213.pdf#:~:text=World%20Trade%20Organization%20,expansions%E2%80%94targeting%20oil%20and%20gas%2C%20pharmaceuticals

⁴³ <https://www.fordhamilj.org/ilionline/ge9pzg88g43k5mb-g85bt-c9htn-scyz8-xjdm8-5ikm8-lrvtr>

⁴⁴ <https://www.law.cornell.edu/uscode/text/19/2411#:~:text=An%20act%2C%20policy%2C%20or%20practice,rights%20of%20the%20United%20States>



sanctions. In practice, however, the Trump Administration largely bypassed this sequence in 2018. Citing Section 301 findings that China engaged in coerced technology transfer and IP violations, the USTR imposed *outright* tariffs on hundreds of billions of dollars of Chinese imports without obtaining a WTO ruling first. For example, on July 6, 2018, the U.S. announced 25% duties on Chinese goods worth \$34 billion, and by late 2018 had levied duties on nearly \$200 billion of imports⁴⁵. These unilateral actions triggered massive friction and WTO complaints.

While Section 301 is a domestic power, its exercise is constrained by international obligations. In particular, unilaterally raising tariffs beyond one's schedule violates Articles I and II unless justified by an accepted exception. Thus, applying Section 301 tariffs without WTO authorization essentially conflicts with WTO law. Indeed, the *WTO panel in DS543* found that U.S. Section 301 tariffs breached the U.S. MFN and tariff-binding obligations. We examine that case next.

WTO Dispute: U.S. Tariffs on China (DS543)

Background: On April 4, 2018, China requested WTO consultations over the U.S. Section 301 tariffs on Chinese goods (Challenge = DS543). China argued that the additional duties (25% on Lists 1 and 2, and 10%-25% on List 3) were *prima facie* inconsistent with Articles I:1 and II:1, and that no WTO exception applied. The U.S. defended the measures as lawful responses to China's unfair practices.

Panel Findings (Sept. 15, 2020): The panel overwhelmingly sided with China's claims. It found that the challenged U.S. tariffs "apply only to products from China" and therefore violate GATT Article I:1's MFN principle. The panel also agreed that the duties exceeded the U.S. bound tariff rates, violating Article II:1(b) (and thus also Article II:1(a)). The panel noted that China had established a *prima facie* case on both counts, and that the U.S. had not rebutted it. In sum, the

panel **concluded that the measures at issue were "prima facie inconsistent" with GATT Art. I:1 and Art. II:1(a)-(b)**⁴⁶.

U.S. justifications. The U.S. offered two main defences. First, it argued that WTO dispute settlement is useless because China "misuse[s]" the system, and that its tariffs addressed Chinese policies (especially forced technology transfer) that threaten U.S. national security or public morals^{47,48}. Second, the U.S. invoked the GATT Article XX(a) exception, claiming the tariffs were aimed at protecting U.S. "public morals" by discouraging industrial policies it viewed as "state-sanctioned theft" of technology. The U.S. notably did **not** invoke Article XXI (security) in this case.

The panel flatly rejected the U.S. defences. It held the Section 301 tariffs could not be justified under Article XX(a). The panel emphasized that a measure's alleged moral objective must be directly linked to the products taxed, which the U.S. had not shown. The panel found that the duties were not "*designed to protect*" public morals (e.g. IP rights) as required under Article XX(a), and that the U.S. had not demonstrated how higher duties on certain imports advanced any concrete moral policy. Accordingly, the panel "*reject[ed] the U.S.'s 'public morals' justification*". On the procedural point, the panel also declined the U.S. suggestion that WTO panels should defer if Members claim parallel bilateral "solutions". It noted that allowing unilateral measures outside DSU would undermine the WTO system.

Thus, the DS543 panel unanimously found the U.S. Section 301 tariffs illegal under WTO law. It recommended that the U.S. bring its measures into conformity with WTO obligations. (The panel report has no binding effect because the

⁴⁵ <https://www.asil.org/insights/volume/24/issue/26/no-unilateral-action%E2%80%94wto-panel-ruled-us-section-301-tariffs-chinese#:~:text=Most,Tariff%20Increases>

⁴⁶ https://www.wto.org/english/tratop_e/dispu_e/558r_e.pdf#:~:text=7,beause%2C%20with%20respect%20to%20customs

⁴⁷ <https://ustr.gov/sites/default/files/enforcement/DS/US.Sub1.%28DS543%29.fin.%28public%29.pdf#:~:text=measures%20at%20issue%20in%20this,Accordingly%2C%20for%20this>

⁴⁸ <https://www.asil.org/insights/volume/24/issue/26/no-unilateral-action%E2%80%94wto-panel-ruled-us-section-301-tariffs-chinese#:~:text=The%20Panel%20rejected%20the%20U,>

AB is disabled, but the findings stand as official legal rulings.)

Chinese Retaliation and Legal Framework

Faced with U.S. tariffs, China imposed its own tariffs on American goods (e.g. soybeans, automobiles, chemicals) of broadly comparable total value. These measures were taken pursuant to administrative decisions (e.g. by China's Customs Tariff Commission) and were promptly challenged by the U.S. at the WTO (DS558). Even before WTO cases, China signalled its willingness to use broad countermeasures: in early 2021, China's Commerce Ministry promulgated rules allowing counteraction to "unjustified extra-territorial" foreign laws⁴⁹. These MOFCOM Rules provide that China "may take necessary countermeasures based on actual circumstances and needs" against foreign trade actions deemed unlawful⁵⁰. In 2021, China also passed an Anti-Foreign-Sanctions Law, empowering it to blacklist foreign individuals and entities who implement discriminatory measures and to ban or restrict those actors from imports/exports⁵¹. In practice, these instruments give China legal cover for a range of retaliatory steps beyond WTO procedure. For example, Reuters reported that China's anti-sanctions rules would allow Beijing to "ban or restrict" foreign individuals or firms from importing or exporting relevant goods as a countermeasure to tariffs. These developments illustrate China's turn to unilateral legislative tools – paralleling U.S. Section 301 – to enforce its trade interests.

Nonetheless, as a WTO Member China remains bound by its own GATT commitments. When China levied duties in response to the U.S. tariffs, it risked the same Article I and II breaches as the

U.S. did. Indeed, China's retaliatory tariffs were generally non-MFN (targeting U.S. origin products) and often exceeded China's bound rates. Thus, China's measures were prima facie WTO-inconsistent unless justified. In its defence, China claimed that its measures were authorized under Article XIX of GATT (safeguards) or Article 8.2 of the Safeguards Agreement, arguing they were "safeguard" responses to a threat of injury. The U.S. countered that China's tariffs were in fact simply retaliation for U.S. measures, not bona fide safeguards, and thus violated GATT.

WTO Dispute: China's Tariffs on the U.S. (DS558)

Background: The U.S. requested consultations on March 5, 2018, challenging China's retaliatory duties on U.S. exports (DS558). The legal issues mirrored DS543: China's measures were argued to breach GATT Articles I and II, with China invoking various justifications (self-judging invocation of a safeguard, or other clauses) to avoid finding violation.

Panel Findings (Aug. 16, 2023): The panel again ruled against the retaliatory tariffs. Critically, the panel agreed with the U.S. that China's duties were "ordinary customs duties" applied in excess of its bound tariff levels. It found that for 123 tariff lines affected, the duties exceeded China's scheduled rates, thereby breaching Article II:1(b) and (a). The panel also concluded that China's extra duties "accord[ed] imports from [the United States] less favourable treatment" than that in its Schedule, confirming a violation of Article II:1(a) as well. Finally, the panel held that China's taxes were clearly discriminatory by origin, and thus inconsistent with Article I:1. In sum, the panel **found China's retaliatory tariffs unlawful under WTO law** – violation of GATT Articles I:1 and II:1(a)–(b).

The panel's reasoning depended on treating China's duties as regular tariffs, not invoking any valid exception. China had argued that Article 8.2 of the Safeguards Agreement (which permits limited retaliation when a safeguard measure is in force) applied to the U.S. tariffs,

⁴⁹ https://english.mofcom.gov.cn/Policies/GeneralPolicies/art/2021/art_98677d0ed28b41b9adef27b00e9d001.html#:~:text=Article%2012%20In%20response%20to,on%20actual%20circumstances%20and%20needs

⁵⁰ https://english.mofcom.gov.cn/Policies/GeneralPolicies/art/2021/art_98677d0ed28b41b9adef27b00e9d001.html#:~:text=Article%2012%20In%20response%20to,on%20actual%20circumstances%20and%20needs

⁵¹ <https://www.reuters.com/world/china/china-rolls-out-new-rules-step-up-countermeasures-foreign-sanctions-2025-03-24/#:~:text=The%20regulations%20also%20stipulate%20what,of%20related%20goods%20and%20technologies>

but the panel disagreed. The panel determined that the U.S. Section 232 measures (steel and aluminium tariffs) were “sought, taken, or maintained ... pursuant to a provision of GATT 1994 other than Article XIX” – namely Article XXI (security) – so the Safeguards provisions did not cover them. Because China’s actions were not a legitimate safeguard response, they had no legal authorization. Thus, the panel rejected China’s claim that its duties were allowable, and ruled them inconsistent with China’s WTO obligations.

This outcome is perhaps counterintuitive: it effectively lets the U.S. steel/aluminium tariffs (the “Section 232 measures”) stand. By treating them as covered by the security exception, the panel concluded China could not lawfully retaliate under WTO rules. In the panel’s words, because the U.S. measures were taken under Article XXI, “China was not permitted to impose” duties in response⁵². In practical terms, the panel sided with the U.S. on the merits of the security claim (though ironically it found against the U.S. under Art. I and II in DS543).

It bears noting that these panel reports are “adopted” even without an Appellate Body. WTO practice thus far has been that if the losing party appeals, the panel report is frozen (no AB), leaving its recommendations in limbo. In DS558, China appealed, so the panel findings await a final outcome. In DS543, the U.S. appealed (though no AB), and China sought retaliation authorization. Notably, the WTO’s Dispute Settlement Body has since authorized China to impose countermeasures in DS543 up to a specified dollar level (over \$7.5 billion) given the U.S.’s non-compliance. This illustrates the eventual WTO remedy: if a ruling goes unheeded, the successful party may suspend concessions (i.e. impose retaliatory duties) approved by the membership.

Legal Analysis and Implications

Multilateralism vs. Unilateralism: Both the U.S. and China turned to unilateral tariffs to pursue

non-trade goals. The U.S. linked tariffs to alleged unfair IP/technology practices, migration enforcement, and national security, often outside any WTO mandate. China likewise targeted its Western rival. These actions stress-test WTO law: panels have consistently reaffirmed that customs duties must comply with the GATT’s general obligations. As one WTO analyst noted, the U.S. tariff escalation represented a “broader pattern” where trade tools are “repurposed to secure geopolitical objectives,” signalling a shift toward economic coercion even against allies^{53,54}. However, WTO panels have insisted that existing rules still apply.

The cases illustrate that **seeking political aims through tariffs is not sheltered from law**. The GATT does not have a “general exceptions” clause for economic coercion per se. The U.S. tried to shoehorn its tariffs into Article XX(a), but panels found the link to “public morals” too tenuous⁵⁵. Likewise, China attempted to frame its duties as safeguards, but panels found no lawful basis under WTO rules⁵⁶. In both disputes, the unauthorized duties were essentially illegal under the strict terms of the GATT.

Security Exception Controversy: A pivotal question is the role of Article XXI. The U.S. maintained that the Section 232 duties respond to a genuine national security threat, invoking Article XXI (“essential security interests”). WTO panels have been reluctant to reject Article XXI outright, but they have insisted that invoking it is not a pure free card. In the steel/aluminium disputes, panels found the U.S. did *not* meet the narrow circumstances of war or crisis required by Article XXI⁵⁷. Here in DS558, the panel

⁵³ https://www.southcentre.int/wp-content/uploads/2025/02/SV282_250213.pdf#:~:text=trade%20and%20economic%20considerations,interests%20rather

⁵⁴ https://www.southcentre.int/wp-content/uploads/2025/02/SV282_250213.pdf#:~:text=trade%20policy%20has%20been%20weaponised,concessions%20rather%20than%20purely%20commercial

⁵⁵ <https://www.asil.org/insights/volume/24/issue/26/no-unilateral-action%E2%80%94wto-panel-ruled-us-section-301-tariffs-chinese#:~:text=The%20Panel%20rejected%20the%20U,>

⁵⁶ https://www.wto.org/english/tratop_e/dispu_e/558r_e.pdf#:~:text=match%20at%201.5012%20i,on%20123%20tariff%20lines%20in

⁵⁷ https://www.southcentre.int/wp-content/uploads/2025/02/SV282_250213.pdf#:~:text=World%20Trade%2

⁵² <https://www.fordhamilj.org/iljonline/ge9pze88g43k5mb-g85bt-c9htn-szy8-xjdm8-5jkm8-lrwtr>



essentially accepted the U.S. argument that Article XXI applies to Section 232. It ruled that because the U.S. measures fell under Article XXI, the Safeguards Agreement did not cover them, and thus China could not respond with duties. This is a unique outcome: it means the U.S. tariffs were effectively excused by Article XXI (though the panel did not expressly rule on their consistency under XXI), while China's measures were struck down.

This approach has drawn criticism. Many WTO jurists believe Article XXI should not be a *carte blanche*. Indeed, the DS558 panel's interpretation (as summarized in commentary) suggests that adopting a security rationale places the measure outside WTO law altogether, preventing third-party claims⁵⁸. Others warn that leaving Article XXI "self-judging" could swallow the WTO: if every Member invokes security, dispute settlement is moot. The Fordham analysis notes the tension: with appeals unavailable, the status of these tariffs remains unsettled, but they *could* carve out a broad exception from scrutiny [fordhamilj.org/southcentre.int](https://fordhamilj.org/southcentre/int). Some have proposed clarifying negotiations on Article XXI to balance national security concerns with enforcement of obligations. Absent such reform, major powers may effectively sidestep rules by branding measures as security.

National Enforcement vs. Global Rule of Law:

The trade war underscores a collision between unilateral enforcement and the multilateral rule-of-law ideal. The U.S. Congress and executive insisted they must have strong tools (like Section 301) to counter breaches, but WTO law offers a different remedy path. China likewise now enacts its own statutes (anti-sanctions, countermeasures rules) to combat what it sees as unwarranted U.S. aggression. Both sides thus rely on domestic law and power politics as supplements to (or substitutes for) the WTO framework.

This trend is worrying for global trade governance. WTO dispute settlement was founded on the expectation that Members would obey panel rulings and honour commitments. Yet in 2025, as the Fordham commentator observes, both the U.S. and China have appealed adverse panel findings into a legal void – the Appellate Body has no quorum – leaving their obligations ambiguous. Meanwhile, both sides threaten new tariffs on political issues (migration, technology, etc.), often before or instead of exhausting WTO channels. A South Centre analysis warns that *"trade policy has been weaponised to address non-economic issues,"* like migration and drug policy. Notably, the Colombia example (Trump's tariffs to pressure Colombia on immigration) shows tariffs used purely as leverage⁵⁹.

The cumulative effect is a fragmentation of the trade system. WTO Panel rulings become aspirational rather than binding. As Hsu warns, this leaves unresolved legal claims festering. Each side may claim the other is violating WTO law, yet enforcement depends on fragile diplomacy or retaliatory brinkmanship. The question of "who is violating WTO law more" becomes academic if neither party submits to the rules. The WTO's inability to discipline non-complying members (exacerbated by the Appellate Body crisis) undermines the rule of law in trade. In this environment, the original goal of multilateral liberalization is threatened; the House of WTO law itself risks being "burned down" by great-power politics.

Conclusion

The U.S.–China trade war vividly illustrates how customs duties can become political weapons and how WTO law grapples with that challenge. Both countries have exceeded their tariff commitments in pursuit of broader goals, prompting WTO adjudication that, at least on paper, strictly enforces legal limits. The U.S. Section 301 measures and China's retaliatory

⁵⁸ <https://www.fordhamilj.org/iljonline/ge9pze88g43k5mb-g85bt-c9htn-szy8-xjdm8-5jkm8-lrwtr>

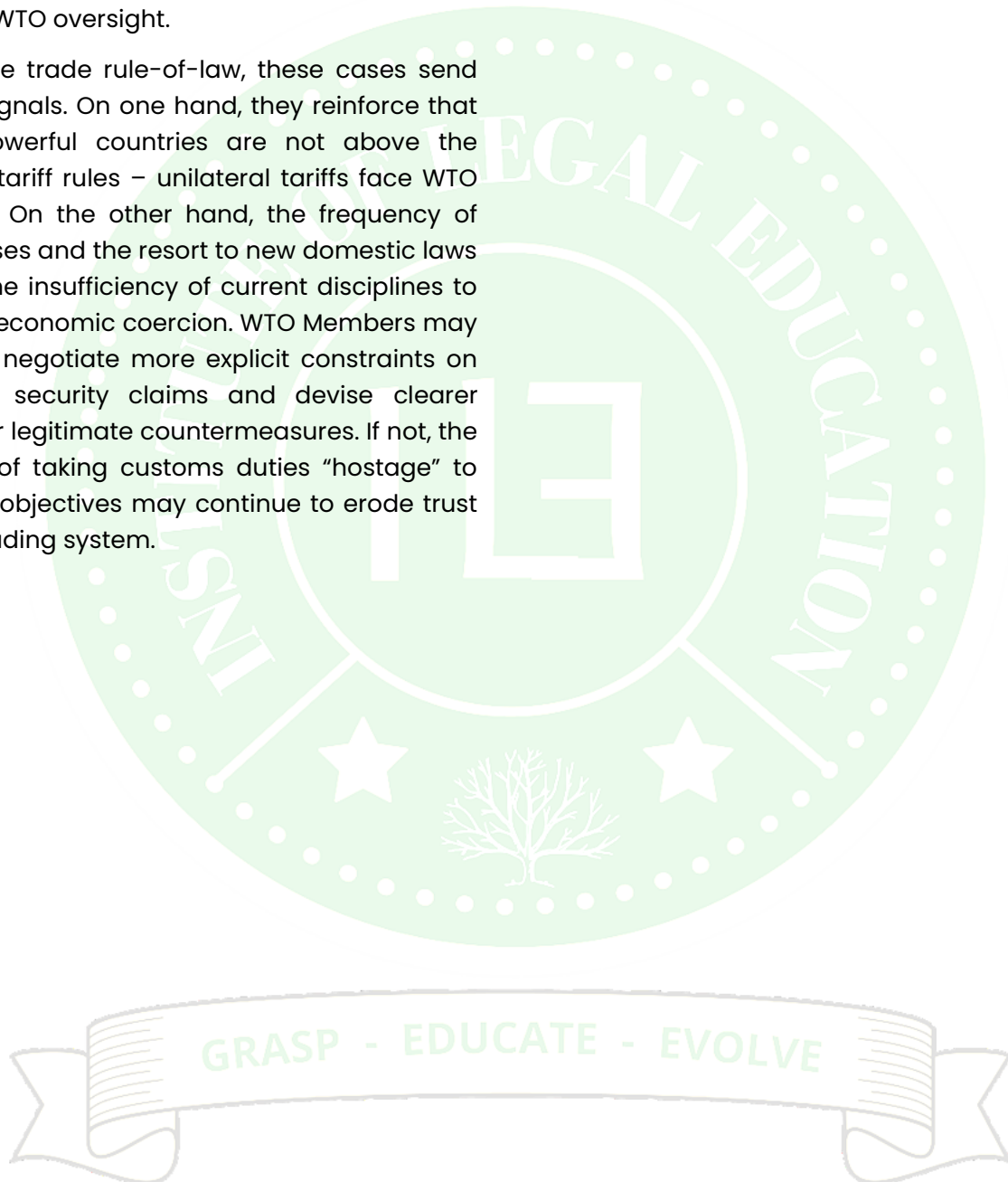
⁵⁹ https://www.southcentre.int/wp-content/uploads/2025/02/SV282_250213.pdf#:~:text=stage%3A%20the%20%E2%80%9Cwildcard%E2%80%9D%20phase,%E2%80%9Cagreed%20o%20all%20oP%20President

⁵⁹ https://www.southcentre.int/wp-content/uploads/2025/02/SV282_250213.pdf#:~:text=stage%3A%20the%20%E2%80%9Cwildcard%E2%80%9D%20phase,%E2%80%9Cagreed%20o%20all%20oP%20President



duties were found prima facie incompatible with GATT Articles I and II⁶⁰. Neither side's justifications (security, public morals, emergency) passed WTO muster. However, the practical enforcement of these legal findings is uncertain. With appeals stalled, and each side prepared to flout rulings, the dispute hints at a permissive tolerance for "weaponized" tariffs outside WTO oversight.

For future trade rule-of-law, these cases send mixed signals. On one hand, they reinforce that even powerful countries are not above the binding tariff rules – unilateral tariffs face WTO scrutiny. On the other hand, the frequency of such cases and the resort to new domestic laws reveal the insufficiency of current disciplines to contain economic coercion. WTO Members may need to negotiate more explicit constraints on national security claims and devise clearer paths for legitimate countermeasures. If not, the pattern of taking customs duties "hostage" to political objectives may continue to erode trust in the trading system.



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https://www.wto.org/english/tratop_e/dispu_e/558r_e.pdf#:~:text=7,beacuse%2C%20with%20respect%20to%20customs