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Analysis of the Causes of the US Trade War against China and Research on Legal Response Paths

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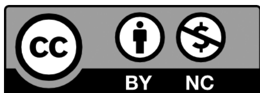
Abstract: In the era of the ebb of globalization and the disorder of rules, the United States has launched a legal confrontation with China under the name of "fair trade", which not only exposes the deep-seated crisis of the multilateral system of the WTO, but also indicates the need for strategic reconstruction of the rule-making power in emerging fields. In the face of the rule hegemony challenges initiated by the United States through domestic law unilateralism, the generalization of security exceptions, industrial subsidies and other means, this article, based on the deconstruction of law, reveals the essence of the "struggle for rule-making power" behind the trade war by dissecting core disputes such as the legal contradictions of the Section 301 investigation, the expansionary interpretation of security exceptions, and the disconnection of industrial subsidy rules. It strives to construct a legal response ranging from WTO litigation strategies to domestic blocking legislation, from corporate compliance guidelines to the reshaping of international rules, providing institutional solutions for curbing the abuse of unilateralist legal tools.

Keywords: International trade disputes; Rule-making power; Legal countermeasures; Multilateral order



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1 Introduction

The trade war between the United States and China, as the most impactful international economic legal event of the 21st century, has transcended the scope of traditional trade disputes and evolved into a game of rule systems against the backdrop of strategic competition among major powers. This systemic confrontation, unilaterally initiated by the United States, not only severely undermines the stability of the global supply chain but also poses a serious challenge to the multilateral trading system with the WTO at its core. In March 2018, the United States initiated an investigation into China's intellectual property protection system under Section 301 of the Trade Act of 1974, thus kicking off the US trade war against China. (Chen, 2024) In July of the same year, the United States imposed punitive tariffs of up to 25% on 550 billion US dollars worth of Chinese goods in three batches. China promptly took reciprocal countermeasures. (CCTV, 2018) The trade conflict initiated by the United States under the guise of forced "technology transfer" and "industrial subsidies" has been escalating over the past five years. More than a thousand enterprises, including Huawei, have been

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included in the Entity list and suffered from technology supply cuts. (China Trade Remedy Information Network, 2023) “Chips and Science Act” Unites Allies to Impose a Blockade on China. (Zhong & Zhu, 2025) The “National Security Exception” imposes global tariffs on steel and aluminum products, and the “Inflation Reduction Act” excludes the new energy vehicle industry chain under the name of climate policy. China’s lawsuit against the US Inflation Reduction Act has been filed with the WTO, which may pave the way for subsequent countermeasures. The trade war has caused three major impacts: First, the global industrial chain has been forced to be restructured, the growth rate of global trade has dropped sharply, and Chinese and American enterprises have cumulatively borne tariff costs of over 100 billion US dollars. Secondly, the multilateral trade governance system has collapsed. The WTO expert group ruled the unilateral tariffs imposed by the United States to violate the most-favored-nation treatment principle (DS543 case), but because of the appellate body lockout execution deadlock; Thirdly, the principle of non-discrimination has been shaken, and the abuse of national security exception clauses has set a dangerous precedent for the “securitization of economic issues” This article, from a legal perspective, by sorting out the evolution of the trade war, analyzing the underlying causes, and deconstructing the core legal disputes, ultimately constructs a multi-level legal response system, aiming to provide legal support for China to safeguard its legitimate rights and interests in international trade.

2 The Evolution Trajectory and Legal Dispute Focus of the US Trade War against China

2.1 The historical context and key events of the US trade war against China

The economic and trade frictions between China and the United States, after two decades of quantitative accumulation, underwent a qualitative upgrade from 2017 to 2020. The process can be divided into three milestone stages. The trade frictions between China and the United States can be traced back to the steel anti-dumping case during the George W. Bush administration and the “anti-dumping and countervailing duty” investigation on photovoltaic products during the Obama era. However, it truly escalated into a full-scale trade war when Trump signed an executive order to launch the “Section 301 investigation” against China in August 2017. (Hoekman & Mavroidis, 2021) The investigation, under the pretext of so-called “forced technology transfer” and “systemic intellectual property infringement”, broke through the multilateral dispute settlement framework of the WTO, revived the long-dormant unilateral sanctions tools of the US domestic law, and upgraded the traditional trade remedies originally limited to specific products to a containment targeting China’s overall economic and trade system. In July 2018, the US imposed a 25% tariff on 34 billion US dollars worth of Chinese goods based on an investigation report, marking the official outbreak of the trade war. (Bartels, 2023) Over the following two years, the tariff list continued to expand to 550 billion US dollars worth of goods. Huawei’s inclusion on the Entity List in 2019 marked the extension of the conflict into the technology sector. (Charnovitz, 2023) The United States passed the Export Control Reform Act, bringing semiconductor manufacturing equipment and other items under control, forcing global enterprises to take sides between the technological systems of China and the United States.

At this stage, the US side simultaneously tightened investment reviews. The Foreign Investment Risk Review Modernization Act listed 14 fields, including biotechnology and artificial intelligence, as “key technologies”, which led to a sharp drop in the transaction volume of Chinese mergers and acquisitions in the US. Since 2020, the reconfiguration

of rules and institutional confrontation have been continuously solidified. The signing of the Phase I Agreement between China and the United States may seem to ease the conflict. Still, in fact, it solidifies the legitimacy of the unilateral sanctions imposed by the United States. The US side maintains all additional tariffs as a guarantee mechanism for fulfilling the agreement, setting a precedent for “coercive contract formation under sanctions”.(Sykes, 2024) In the subsequent legislation of the United States, the Chips and Science Act lured enterprises out of China with a $54 billion subsidy, and the Inflation Reduction Act bound the tax credit for new energy vehicles to the North American supply chain, forming a legal suppression system that combines tariff sanctions, technology blockades, and investment restrictions. The evolution of the trade war has exposed the deep entanglement between law and politics. The United States has framed selected economic competition issues within its national-security legislation, a move that has constrained the practical effectiveness of relevant WTO disciplines.

2.2 The Core Legal Issues of the US Trade War Against China

The profound legal crisis exposed by the US trade war against China originates fundamentally from the United States’ instrumentalization of international legal frameworks. This distorted instrumentalist approach is epitomized in the Phase One Economic and Trade Agreement Between China and the United States: The US leveraged approximately $360 billion in punitive tariffs against Chinese goods as an enforcement mechanism for the agreement, effectively instituting a “gunboat diplomacy” model of treaty formation. Such boundless elasticity in security exceptions is progressively eroding the normative architecture of international trade law. Within this context, four critical legal conflicts have emerged:

2.2.1 The Legal Impasse of Section 301

The US invocation of Section 301 of the Trade Act of 1974 to impose unilateral sanctions constitutes a direct assault on the WTO dispute settlement system. Article 23.1 of the Dispute Settlement Understanding (DSU) explicitly mandates multilateral resolution of trade conflicts. Nevertheless, throughout the DS543 proceedings (China v. US Tariff Measures), the United States persistently implemented tariffs, thereby deliberately subordinating its international treaty commitments to domestic statutory priorities. (Qureshi, 2025) This strategy deliberately paralyzed the WTO’s adjudicative function, creating a precedent for systemic circumvention of multilateral oversight.

2.2.2 Judicial Anarchy in Security Exceptions

The WTO Appellate Body’s ruling in the Russia-Traffic in Transit case (DS512) unequivocally affirmed that GATT Article XXI security exceptions remain bound by the “good faith” interpretive principle.(Pauwelyn, 2019) Yet when the WTO panel ruled against the US in US-Steel and Aluminum Tariffs (DS544) in 2022, Washington rejected compliance by asserting the non-justiciability of national security determinations. This assertion of unfettered self-judgment authority has ignited a regulatory domino effect: The European Union accelerated its Carbon Border Adjustment Mechanism (CBAM) under climate security rationales. At the same time, Japan weaponized economic security exceptions to justify semiconductor export controls. The resulting “broken windows effect” in trade governance is fragmenting the global rules-based order at an accelerating pace.

2.2.3 Regulatory Asymmetry in Industrial Subsidies

The accusations made by the United States against China’s “Made in China 2025” industrial policy have exposed

the institutional lag in implementing the WTO Agreement on Subsidies and Countervailing Measures (SCM). (Allan, 2023) The space for industrial policies in developing countries has been extremely squeezed. The Chips and Science Act authorizes $52.7 billion in subsidies to US semiconductor companies, but it invokes Article 8 of the SCM Agreement for self-exemption. This double standard highlights the hegemonization of the right to interpret the rules

2.2.4 Extraterritorial Overreach in Unilateral Sanctions

The United States has extended its export control on Huawei to third-country products that contain more than 10% US technology, pushing long-arm jurisdiction to the extreme. (Charnovitz, 2021) This kind of extraterritorial jurisdiction based on domestic law not only violates the principle of territorial jurisdiction priority in international law but also erodes the economic sovereignty of other countries. The obligation of sovereign states to protect the property rights of enterprises comes into direct conflict with the extraterritorial jurisdiction of the United States.

3 The Strategic Shift and Institutional Motivations Behind the US Trade War against China

The outbreak of the US trade war against China is by no means an isolated decision. The underlying causes can be explored by delving into the imbalance of the industrial structure and the mechanism for maintaining hegemony. The narrative of attributing structural unemployment to China is actually a political strategy to divert domestic distribution contradictions. By constructing the legitimacy discourse of “unfair trade”, it creates a public opinion foundation for unilateral sanctions.

3.1 The structural background and long-term driving forces of the US trade war against China

What truly triggered the policy shift in the United States was the institutionalized reconstruction of strategic cognition. In 2017, the National Security Strategy Report defined China as a “revisionist country” for the first time, marking the end of the engagement policy. (Qin, 2022) This transformation was foreshadowed at the legislative level.

3.1.1 The legal guise of economic sanctions

The core mechanism of the United States systematically transforming its huge trade deficit problem into legal accusations against China lies in the construction of a closed-loop argumentation chain centered on “compulsory technology transfer”.(Snyder, 2023) This process begins with data grafting, that is, deliberately forcibly associating the provisions on “joint venture requirements” in China’s “Catalogue for the Guidance of Foreign Investment Industries” with the statistical data on the technology spillover rate of US enterprises after joint ventures in China, in an attempt to establish a causal relationship.

3.1.2 Institutional release of hegemonic anxiety

The deep-seated driving force behind the legalization process also stems from the anxiety over American hegemony triggered by the rise of China’s science and technology. This strategic-level unease is also clearly manifested in legislative practice. First, there is the precise positioning of threats. In 2018, the “National Defense Strategy Report”

clearly positioned “the diffusion of technology between China and Russia” as a core threat to the United States’ dominance, and defined cutting-edge fields such as 5G and quantum computing as “strategic high ground” that must be controlled.(Sapolsky, Gholz, & Talmadge, 2008)

3.1.3 The mechanism for transporting political interests

The underlying driving force behind the continuous escalation of trade frictions is also rooted in the unique domestic political ecosystem of the United States and its mechanism for transporting legislative and executive interests. The revolving door effect has served as a catalyst. For instance, there is a thought-provoking connection between the legal background of former US Trade Representative Robert Lighthizer, who represented the steel industry in anti-dumping lawsuits, and the case where his original law firm represented US Steel Corporation in the “anti-dumping and countervailing duties” against China after he took office. (Krebs & Kreps, 2023) Meanwhile, pressure from key constituencies has also been effectively transmitted to the legislative level.

3.2 The Institutional Logic of Selective Judicialism

The ultimate goal of all legal actions is to establish the United States’ absolute monopoly on the interpretation of emerging technology standards. In 2021, the US-EU Trade and Technology Council (TTC) broadly defined “non-market behavior” as “government-guided industrial cooperation”, and upgraded the “mandatory technology transfer” clause targeting China in the Phase I Economic and Trade Agreement between China and the United States in a multilateral manner, profoundly revealing the underlying logic behind the US’s initiation of the trade war. First, through unilateral practices of domestic laws, such as Section 301 investigations, FIRRMA, export control adjustments, and RICO lawsuits, facts and “standards” are created. (Foot & King, 2024) Then, these standards originated from domestic practices in the United States and are embedded into its ally systems, such as the TTC and the “Democratic Technology Alliance”, ultimately forming closed rules. The strategic intention aims to systematically deprive developing countries such as China of their basic rights to participate in rule-making in emerging fields that determine future competitiveness, such as digital trade and artificial intelligence, thereby entrenching asymmetrical influence over the formulation of emerging-technology standards.

4 Historical Implications and Rule Deconstruction of Legal Disputes

4.1 Implications of Institutional crises revealed by historical comparisons

Looking back at the history of China-US economic and trade relations, trade imbalances and intellectual property disputes have always been the triggers of frictions. In the 1990s, the US side repeatedly placed China on the priority watch list under the “Special 301 Section”. In 2012, the photovoltaic anti-dumping and countervailing duties case set a record for the largest trade remedy case value at that time. (Cohen, 2020) Although these conflicts were intense, they were still resolved within the framework of WTO rules, and the two sides managed their differences through dispute settlement mechanisms and bilateral negotiations. However, this round of trade war has shown disruptive characteristics. In terms of scope, it has spread from traditional goods trade to non-trade fields such as investment and mergers and acquisitions, scientific and technological cooperation, and academic exchanges. In terms of legal tools, the shift from

the anti-dumping duties authorized by the WTO to the Section 301 tariffs with a unilateral retaliatory nature(Van den Bossche & Prévost, 2021). Based on theory, the "national security exception" has been distorted from a defensive clause into an offensive weapon.

4.1.1 The conflict between rule equality and power asymmetry

Examining the profound crisis faced by the contemporary international economic and trade legal system, the root cause still lies in the fact that international law itself is difficult to reconcile and deconstruct, and the gap between the formal equality of rules and the asymmetry of substantive power cannot be bridged. The international law system, especially the WTO mechanism, theoretically grants all member states equal rights to rule-making and dispute settlement. This commitment was once the key to attracting many developing countries to integrate into the multilateral system. History has proved that when developing countries successfully use this set of rules to defend their rights and interests, it will instead stimulate the existing hegemonic countries to generate intense institutional anxiety. A typical coping strategy for anxiety is that hegemonic countries, especially the United States, turn to building and relying on unilateral legal mechanisms to reconstruct a power hierarchy order in line with their will, thereby offsetting the loss of their relative advantages within multilateral frameworks. (Mavroidis, 2019) The current systemic technological sanctions imposed by the United States on China are by no means a simple trade dispute, but a strategic action to redraw the "center and periphery" international division of labor system in the global technological field through domestic laws.

4.1.2 The mutual encroachment between legal certainty and exception generalization

The core value of law lies in its predictability and stability. However, international law (such as the GATT/WTO system) has to incorporate necessary security exception provisions (such as Article 21 of GATT) to recognize the sovereign concerns of states in extreme circumstances, thus leading to a mutual attack between legal certainty and the generalization of exception provisions. According to the "normative hierarchy" theory of normative jurist Hans Kelsen, such security exceptions should be strictly limited and rarely cited as "secondary exceptions", and their application should be subject to strict review. However, the ambiguous expression that GATT Article 21 grants member states "it considers necessary" right of self-judgment regarding "fundamental security interests" is like a backdoor reserved for abuse of power. The historical process clearly shows that it is precisely this "self-judgment" attribute that has lured major powers such as the United States to continuously carry out "exception escalation", gradually distorting and inflating the originally marginal and occasional exception provisions into a de facto "Super-norm", whose effectiveness can even undermine core trade principles. This upgrading path is clearly visible: In 2017, the Trump administration imposed tariffs on steel and aluminum products under the name of "Section 232"(Sykes, 2022), with the core argument being to equate "economic security" with "national security", setting a dangerous precedent of abusing security exceptions to address industrial competition issues.

4.2 Rule Deconstruction of Legal Disputes and the Predicament of the WTO

The deep-seated legal contradictions intensified by the trade war have been most clearly and profoundly manifested in the specific cases of the WTO dispute settlement mechanism. Firstly, its discriminatory imposition of tariffs solely on Chinese goods brutally violates the most-favored-nation treatment (MFN) principle established in Article 1 of the GATT. This principle requires equal tariff treatment for "the same products" from different member states, which is the cornerstone of non-discriminatory international trade. Secondly, the United States has taken unilateral retaliatory

measures without exhausting the WTO dispute settlement procedures and without obtaining the authorization of the WTO. This directly violates the mandatory provisions of Article 23 of the Understanding on Rules and Procedures for Dispute Settlement (DSU), which states that "when seeking to correct a violation of obligations, members shall invoke and abide by the rules and procedures of this Understanding." Although the expert group's report lost its enforceability due to the paralysis of the system, its legal reasoning is undoubtedly the most authoritative international legal negation of the unilateralist acts of the United States.

The systemic rule of injustice exposed by the issue of "non-market economy status" (NME). Although Article 15 of the Protocol on the Accession of the People's Republic of China to the WTO clearly stipulates that after 15 years of accession (i.e., December 11, 2016), other members shall cease to use the "surrogate country" pricing method in anti-dumping investigations.(Pauwelyn, 2023) However, major members such as the United States and the European Union blatantly violated this explicit treaty obligation. (Bartels, 2023) The United States, by amending its Tariff Act of 1930, continues to refuse to recognize China's market economy status and stubbornly adopts the "surrogate country" price method to calculate the normal value against China in anti-dumping investigations. The direct consequence of this approach is that Chinese enterprises have long been confronted with significantly higher, systematic and discriminatory anti-dumping duty rates calculated based on unreasonable comparisons. This not only violates the basic principle of international law that treaties must be observed (Pacta Sunt Servanda), but also blatantly tramples on the spirit of non-discrimination and fairness of WTO rules.

5 Legal Implications for the US Trade War against China

The essence of the trade law war is the competition for the dominance of rules under the disorder of global governance. This determines that China's response strategy must go beyond the level of individual case countermeasures and build institutional countermeasures capabilities in three dimensions: rule retention (defensive), rule reconstruction (constructive), and rule substitution (alternative). (Krisch, 2024) When hegemonic countries systematically violate the principle of "pacta sunt servanda", maintaining the multilateral order no longer means passive compliance. Still, it requires reshaping the consensus on rules through active legal practice.

5.1 Domestic law dimension: Constructing sovereign legal countermeasures

The top priority now is to systematically improve the legal countermeasure toolchain and enhance the capacity for precise defense and effective deterrence. The "Measures for Blocking Improper Extraterritorial Application of Foreign Laws and Measures" issued in 2021 serves as a key factor. To fully leverage its effectiveness, it is urgently necessary to formulate detailed implementation rules and operational guidelines, clearly defining the initiation criteria for "improper extraterritorial application", such as setting quantitative or qualitative thresholds for "significant impact", and establishing efficient judicial review and damage compensation relief procedures. Enable the infringed enterprises to effectively safeguard their rights. The equally important Anti-Foreign Sanctions Act, at its core, lies in enhancing the precision and strategic nature of countermeasures. A scientific hierarchical response mechanism should be designed, and differentiated countermeasures should be matched based on the nature, scope and impact of the other party's sanctions, such as restricting the entry of specific individuals, freezing assets, and restricting transactions in specific industries. Ensure that the collateral damage to the domestic economy and people's livelihoods is minimized to the

greatest extent. At the same time, it is necessary to proactively strengthen the legislative reserves that are both offensive and defensive, and pre-set rules and tools for future conflicts. Timely revise trade remedy regulations, such as the anti-Dumping Regulations(Shaffer, 2023), and introduce determination rules and calculation methods that are more in line with the characteristics of the digital economy era and can effectively deal with so-called "new types of subsidies", such as accusations of strategic investment by state-owned capital and large-scale industrial cluster policies. Improve the supporting system of the Export Control Law, dynamically optimize the list of controlled items, especially in the fields of key raw materials, core components and emerging technologies, and form a clear and substantially deterrent reciprocal countermeasure capability.

5.2 International Law Dimension: The Offensive and Defensive Dialectics of the Reconstruction of the Multilateral Order

Adopt a "dual-track approach", that is, while adhering to the existing rules for rights protection, actively participate in the reshaping of future rules. On the track of rights protection, the core lies in maximizing the utilization of existing multilateral platforms to safeguard legitimate rights and interests. For key cases that have been referred to the WTO dispute settlement mechanism, such as China v. the United States Section 301 tariff case (DS543), even in the face of the predicament of the appellate body being shut down, efforts should still be made to promote the completion of the expert panel procedure, accumulate legal achievements and exert political and moral pressure. In areas of common concern, such as the series of cases where multiple countries have filed lawsuits against the United States for steel and aluminum tariffs, we should actively unite with the EU and other affected parties to form a united front, jointly exerting pressure on the US side and amplify the international community's doubts about unilateralism and the abuse of security exceptions. More importantly, it is an innovative attempt to break through the institutional deadlock: exploring the use of alternative mechanisms such as the "Multilateral Interim Appeal Arbitration Arrangement" (MPIA) to provide possible solutions for outstanding appeal cases and maintain some functions of the dispute settlement mechanism. On a more forward-looking track of rule reconstruction, the goal should be set at proactively shaping a fairer international economic and trade rule system that better reflects the interests of emerging economies. Actively participate in the reform process of the WTO.

5.3 Enterprise Compliance Dimension: Micro-Reconstruction of Legal Battles

As the direct recipients at the forefront of trade legal battles, enterprises' compliance capacity building is an indispensable line of defense for the country's overall strategy. The government has the responsibility to develop and regularly release dynamic guidelines on the trade and investment legal environment and sanctions risks of key countries, especially the United States and the European Union. Establish a special fund pool, such as a defense fund for the US "337 investigation", to lower the threshold for small and medium-sized enterprises to deal with high-cost intellectual property litigation. In key and sensitive fields such as semiconductors and biomedicine, leading enterprises should be organized to establish patent sharing pools or joint litigation alliances to enhance their collective ability to resist "long-arm jurisdiction" and malicious litigation. Enterprises themselves need to establish sanctions compliance requirements, set up a real-time updated counterparty screening mechanism, embed it into business processes, and effectively identify and avoid blacklisted entities such as SDN lists. Data compliance is becoming increasingly important in global operations. It is necessary to simultaneously meet the strict requirements of the EU's General Data Protection Regulation (GDPR)

and the provisions of China's Data Security Law and Personal Information Protection Law, and establish a security management system covering the entire data life cycle. When encountering unfair sanctions or restrictive measures, enterprises should be adept at making use of the legal relief channels of the target country itself. For instance, actively challenge the legality, procedural legitimacy or factual errors of sanctions decisions made by administrative agencies such as the Bureau of Industry and Security (BIS) of the Department of Commerce and the Office of Foreign Assets Control (OFAC) of the Department of the Treasury through judicial review procedures of the United States Court of International Trade (CIT) or even the Federal Circuit Court of Appeals (CAFC).

6 Conclusion

The essence of the US trade war against China is an institutional game in which established major powers monopolize the right to interpret rules to curb the rise of emerging forces. The driving force is rooted in the complex interweaving of economic competition anxiety, ideological prejudice and hegemonic defense strategy. At the same time, the weaponization of legal tools marks the systematic subversion of multilateral rules by unilateralism. Historical comparisons reveal that this conflict is not only characterized by an escalation in the scale of tariffs but also presents a dangerous shift in the legal warfare paradigm from "intra-rule games" to "rule-breaking". China's legal response needs to go beyond the case-by-case countermeasure thinking and focus on the trend of changes in the global economic and trade governance system. In the short term, efforts should be made to enhance the extraterritorial application capacity of domestic laws and make good use of the existing WTO mechanisms to safeguard rights. In the medium and long term, it is necessary to deeply participate in the formulation of emerging rules such as the digital economy and green trade, and enhance institutional discourse power through multilateral frameworks such as RCEP and CPTPP. Only in this way can we safeguard the legitimate right to development in the midst of the century-old changes and contribute legal wisdom to the reconstruction of an open and inclusive international economic order.

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