

**CHINA-US TRADE WAR AND NATIONAL
SECURITY EXCEPTION: A WORLD
TRADE ORGANISATION PERSPECTIVE**

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Executive Summary

1. Trade disputes between China and the United States flared up in early 2018. On 6 July, the United States slapped 25% tariff on \$34 billion of Chinese goods. China retaliated immediately. On 23 August, the United States imposed another 25% tariff on \$16 billion worth of Chinese goods.
2. Trump signed the \$717 billion National Defence Authorisation Act in Fiscal Year 2019 (NDAA 2019) into law on 13 August 2018. Meanwhile, the US bar against component sale to a Chinese telecom company ZTE led to a milder version of the bar in early June. These are collateral developments of rising US rivalry sentiments against China.
3. The ZTE case and the alleged target of certain sophisticated Chinese technology industry to curb the “Made in China 2025” plan trigger the concern if the United States could invoke security exception clause in the World Trade Organisation (WTO) framework to exonerate itself from the WTO obligation.
4. Article XXI, the Security Exception clause, was drafted in early post-World War II period to be a separate regime from Article XX, the General Exception clause. The chapeau language connoted that exceptions prescribed in Article XXI were intended to be all encompassing and strong in nature.
5. Article XXI was rarely invoked, which suggested the division of labour between the United Nations (UN) and General Agreement on Tariffs and Trade (GATT). UN was in charge of politics-relevant issues and GATT was being kept deficient in dealing with politics-related trade measures. The self-judging language in Article XXI also verifies this contention.
6. The few cases that invoked Article XXI occurred in the early post-World War II period, suggesting that member countries are in favour of upholding the exceptionalism of Article XXI.

7. The GATT panel wavered on its stance in the 1980s when the panel admitted the incongruence of Article XXI to the overall GATT objective. In the WTO era, member states remain reluctant to deal with the compatibility between Article XXI and the WTO framework.
8. The retaining of the security exception clause is reflective of the changing nature of the security issue in the post-Cold War era, from conventional forms of military threats to newly emerged types. The economic concern in the redefinition of national security has had a long history, which led to either specific domestic legislation or a chapter in regional trade agreement.
9. Targeting “Chinese influences”, NDAA 2019 may trigger concerns of nullification-and-impairment complaints and complaint concerning achievement of WTO objectives provided in Article XXIII. While it is difficult to quantify and reify “Chinese influences”, NDAA 2019 is likely to trigger similar domestic legislations.
10. Security exception is unlikely to be eliminated because of the emphasis on the sacrosanctness of state sovereignty. Yet, structural rearrangement is needed.