SELF-HELP BY STATUTE: BRAZIL'S ECONOMIC RECIPROCITY LAW AND THE UNMAKING OF MULTILATERAL DISCIPLINE

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Abstract: Brazil's Economic Reciprocity Law (Law 15,122/2025) authorises the federal government to adopt trade, investment and intellectual property countermeasures against States whose unilateral acts are deemed to harm Brazilian interests, without awaiting any ruling or authorisation from the World Trade Organization. This article argues that the statute is best understood as the terminus of a fifteen-year progression (from Law 12,270/2010, through Provisional Measure 1,098/2022, to the 2025 law) by which Brazilian retaliation has been progressively detached from the multilateral system that was once its precondition. Measured against the discipline against self-help in Article 23 of the Dispute Settlement Understanding, the law occupies an uncomfortable position: in the category of cases where it plainly engages benefits owed under WTO agreements, it codifies the very unilateralism that Article 23 was written to prevent; its broadest triggers leave the determination of wrongfulness to Brazil alone; and its most legally exposed remedy, the suspension of intellectual property rights, lawful when authorised by the system, becomes a source of legal exposure when self-administered. The deeper difficulty is strategic rather than doctrinal: by normalising the unilateral countermeasure, a middle power whose protection rests on the strength of rules erodes the very discipline that shields it.

Keywords: Economic Reciprocity Law; WTO; Article 23 DSU; self-help; countermeasures; multilateral trading system.

Resumo: A Lei da Reciprocidade Econômica (Lei 15.122/2025) autoriza o governo federal a adotar contramedidas comerciais, de investimento e de propriedade intelectual contra Estados cujos atos unilaterais sejam considerados lesivos aos interesses brasileiros, sem aguardar decisão ou autorização da Organização Mundial do Comércio. Este artigo sustenta que a lei se compreende melhor como o ponto final de uma progressão de quinze anos (da Lei 12.270/2010, passando pela Medida Provisória 1.098/2022, até a lei de 2025) pela qual a retaliação

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brasileira se desvinculou progressivamente do sistema multilateral que era outrora sua condição de exercício. Medida em face da vedação à autotutela do art. 23 do Entendimento sobre Solução de Controvérsias, a lei ocupa posição desconfortável: na categoria de casos em que envolve claramente benefícios assegurados por acordos da OMC, codifica o próprio unilateralismo que o art. 23 pretendeu evitar; seus gatilhos mais amplos deixam a determinação da ilicitude a cargo exclusivo do Brasil; e seu remédio mais característico, a suspensão de direitos de propriedade intelectual, lícito quando autorizado pelo sistema, torna-se fonte de exposição jurídica quando autoadministrado. A dificuldade mais profunda é estratégica, e não dogmática: ao normalizar a contramedida unilateral, uma potência média cuja proteção repousa na força das regras corrói justamente a disciplina que a protege.

Palavras-chave: Lei da Reciprocidade Econômica; OMC; art. 23 do ESC; autotutela; contramedidas; sistema multilateral de comércio.

1. Introduction

For decades, the multilateral trading system has rested on a promise that no Member would take the law into its own hands. That promise is now being tested not by argument but by tariffs. In July 2025, the United States announced a fifty per cent duty on Brazilian goods, driven more by political grievance than by trade arithmetic, and brought it into force in August through a stacking of executive orders. Brazil reacted on two fronts at once. It requested consultations at the World Trade Organization (WTO), invoking the very dispute settlement mechanism that years of deadlock had left half-paralysed; and, in parallel, it prepared to deploy a domestic instrument of its own making – the Economic Reciprocity Law – which authorises the federal government to retaliate without waiting for an authorization by the WTO Dispute Settlement Body.

That simultaneity is the point of departure for this article. The Reciprocity Law[2] was enacted in April 2025, before the American tariff even materialised, and its reach extends well beyond the raising of import duties: it contemplates the suspension of concessions, of investment-related obligations and of intellectual property rights held by foreign nationals. It is, in substance, a statutory authorisation for trade self-help

[2] Law No. 15,122 of 14 April 2025 (Lei da Reciprocidade Econômica), regulated by Decree No. 12,551/2025.

– a standing power to determine, at home, that another State has acted unfairly, and to respond in kind, on terms defined unilaterally.

Therein lies a tension that the urgency of the moment has tended to obscure. The multilateral system rests on a foundational renunciation, codified in Article 23 of the Dispute Settlement Understanding (DSU): a Member that considers itself wronged may not be the judge of its own cause, nor the executor of its own sentence.[3] Redress must be sought through the system, and retaliation may follow only once the system has authorised it. The constraint of self-help is not an incidental feature of WTO law but one of its load-bearing walls – and, as this article will argue, the wall that most directly protects States that cannot rely on the sheer weight of their markets.

The question this article poses is therefore the following: in equipping itself with a domestic power to retaliate outside the multilateral framework, has Brazil defended its legitimate interests, or has it begun to dismantle the very discipline on which a middle power most depends? The argument advanced here is that the two are not mutually exclusive, and that this is precisely the difficulty. The Reciprocity Law is an understandable, even legitimate, response to a system in crisis; yet it normalises the unilateralism that Brazil has historically opposed, and in doing so weakens the position of a country whose protection has always rested on the strength of rules rather than the strength of markets.

The claim is developed in five steps. Section 2 situates the Reciprocity Law within the geoeconomic turn of recent years and the paralysis of the WTO's Appellate Body, which together explain the drift of States towards self-help. Section 3 establishes the legal yardstick of the analysis: the limitation of unilateral countermeasures under Article 23 of the DSU, and the rationale that ties that restriction to the protection of weaker economies. Section 4 traces the construction of Brazil's own arsenal of self-help, from Law 12,270/2010, through Provisional Measure 1,098/2022, to the Reciprocity Law and its implementing decree – a progression that this article reads as a gradual departure from the multilateral fold. Section 5 subjects the Reciprocity Law to scrutiny along three axes: its compatibility with Article 23, the breadth and indeterminacy of its triggers, and the limits that the TRIPS Agreement places on the suspension of intellectual property rights. Section 6 turns

[3] Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Annex 2 to the Marrakesh Agreement Establishing the World Trade Organization, art. 23. In Brazil, promulgated by Decree No. 1,355/1994.

to the paradox at the heart of the statute – a middle power eroding the discipline that shields it – and to the systemic cost that this entails. A brief conclusion gathers the argument and points to the paths that remain open, from the interim arbitration arrangement to coalition-building among like-minded States.

2. Geoeconomics and the Crisis of the Multilateral System

The Reciprocity Law did not emerge in a vacuum. It is a national response to a transformation in the way States now pursue economic advantage – a transformation usually captured by the term geoeconomics: the use of economic instruments, from tariffs to investment screening to export controls, in the service of strategic and political ends rather than of commercial efficiency.[4] Where trade policy once aspired, at least in principle, to mutual gain, it is increasingly wielded as a weapon – a means of coercion, signalling and punishment among States. The American tariff on Brazilian goods is a textbook illustration: its stated grounds were not the correction of a trade imbalance but a catalogue of political grievances, and its instrument was the raising of duties to a level designed to inflict pain.

There is an older name for the logic at work here. In the nineteenth and early twentieth centuries, the great powers practised what came to be called gunboat diplomacy: the threat or use of force, typically naval, to bend a weaker nation to the will of a stronger one.[5] The gunboat has since given way to the tariff, and the harbour blockade to the executive order, but the grammar is unchanged. A fifty per cent duty announced by letter, justified by displeasure with a foreign court's rulings, is a gunboat by other means: coercion exercised by the powerful against the less powerful, on terms the latter cannot dictate. The geoeconomic turn is, in this sense, the return of an old temptation in a new currency.

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[4] On the concept, see BLACKWILL, Robert D.; HARRIS, Jennifer M. War by Other Means: Geoeconomics and Statecraft. Cambridge, MA: Harvard University Press, 2016.

[5] On gunboat diplomacy as the coercive use of (chiefly naval) force by a stronger power against a weaker one, see CABLE, James. Gunboat Diplomacy. London: Chatto & Windus, 1971.

2.1. From Power to Rules – and Back

The multilateral trading system was built to extinguish precisely that temptation. In the account made canonical by John Jackson, the General Agreement on Tariffs and Trade and, later, the World Trade Organization marked a passage from power-oriented to rule-oriented diplomacy: a deliberate effort to replace the raw bargaining of relative strength with a common body of rules, binding on great and small alike.[6] Under a power-oriented order, the outcome of a trade dispute tracks the balance of economic might; under a rule-oriented one, it tracks the better legal argument. For the smaller and middle-sized economies, the difference is not academic - it is the difference between being heard and being overruled. The system's promise to them was that, within its walls, a tariff could be challenged by law rather than answered by a counter-tariff.

That promise depended on enforcement, and it is enforcement that has now faltered. Since 11 December 2019, the WTO's Appellate Body has been unable to function: the United States, objecting to what it regards as judicial overreach, has blocked the appointment of new members, and a proposal to restart the selection process – supported by 130 members – had by May 2026 been vetoed ninety-seven times.[7] A Member condemned by a panel may now appeal into the void, suspending the dispute indefinitely, because there is no body to hear the appeal. The adjudicative heart of the system still beats – panels are constituted, cases are brought, and in 2025 Members filed more new disputes than in any year since the impasse began – but its capacity to deliver final, enforceable rulings has been gravely impaired.

The consequence is a system caught between two orders. The rules remain on the books, and most Members continue to invoke them; yet the mechanism that once gave those rules teeth is half-disabled, and the Fourteenth Ministerial Conference, held in Yaoundé in March

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[6] JACKSON, John H. The World Trading System: Law and Policy of International Economic Relations. 2nd ed. Cambridge, MA: MIT Press, 1997. The contrast between power-oriented and rule-oriented diplomacy is developed throughout Jackson's work.

[7] The Appellate Body ceased to function on 11 December 2019, when the terms of its last sitting members expired and the United States continued to block new appointments. By May 2026, the proposal to launch the selection process, supported by 130 members, had been blocked for the 97th time.

2026, closed without agreement on its restoration.[8] Into that gap steps the temptation the system was meant to suppress. When the rule-oriented path is obstructed, the power-oriented one beckons – and States that can muster economic force are drawn to use it, while States that cannot are left to choose between submission and self-help. It is in this interval, between a discipline that no longer fully functions and a discipline not yet restored, that Brazil's Reciprocity Law must be understood. The sections that follow examine, first, the rule that such self-help displaces, and then the law through which Brazil has chosen to embrace it.

3. Self-Help and Its Discipline within WTO Dispute Settlement

If, as the previous section argued, the multilateral system's defining achievement was the passage from a power-oriented to a rule-oriented order, that achievement had to be given legal form. A general preference for law over force protects no one unless some specific provision constrains the State's recourse to unilateral action when the law proves inconvenient. In the architecture of the WTO, that provision is Article 23 of the DSU - though, as this section will show, the precise reach of the constraint it imposes on self-help is itself a matter of debate. This section sets out the rule and the scope of the discipline it is understood to contain, for it is against this yardstick, contested as it is, that the Reciprocity Law will later be measured.

3.1. Article 23 and the Exclusivity of the Multilateral Forum

Article 23, tellingly entitled "Strengthening of the Multilateral System", reserves to the WTO's dispute settlement body two operations that a State minded to retaliate would otherwise perform for itself: the finding that a violation has occurred, and the authorisation of any response to it. Its first two paragraphs provide:[9]

> "Article 23: Strengthening of the Multilateral System. 1. When Members seek the redress of a violation of obligations or other

[8] At MC14, held in Yaoundé, Cameroon, in March 2026, members failed to agree on institutional reform, including the restoration of the Appellate Body; consultations were deferred to the period following the Conference.

[9] Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Annex 2 to the Marrakesh Agreement Establishing the World Trade Organization, art. 23. In Brazil, promulgated by Decree No. 1,355/1994.

> nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding. 2. In such cases, Members shall: (a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding […]."[10]

Two commands are at work, and they close off self-help at its two natural points of entry. The first paragraph governs the process: a Member seeking redress must take it through the system and abide by the system's rules, not around them. The second governs the outcome: a Member may not pronounce, on its own authority, that another has broken the rules; that determination belongs to the panel and, where invoked, the Appellate Body, acting through the Dispute Settlement Body. The diagnosis and the remedy are thus both withdrawn from the aggrieved State's own hands. The arrangement is analogous, in this respect, to a rule familiar to any lawyer trained in the civil-law tradition: it constrains the creditor from seizing the debtor's goods to satisfy himself, directing him instead to the court and the bailiff. The rule does not concern the existence of the debt itself, but the manner in which it may be collected.

3.2. Authorised Retaliation versus Unilateral Self-Help

It would be a mistake to read Article 23 as constraint on retaliation as such. The system does permit a Member to suspend concessions against another; what it withholds is the right to do so unilaterally. The line between the permitted and the forbidden runs not through the act of retaliating but through the route that leads to it. Authorised retaliation follows a finding by a panel or the Appellate Body, depends upon authorisation by the Dispute Settlement Body, and is held to a measure of proportionality, the suspension being required to match the level of nullification or impairment suffered. Unilateral self-help, by contrast, is what occurs when a State itself determines that another has acted

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[10] Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), art. 23.1–23.2. The provision is reproduced in its authentic English text; in Brazil, the Agreement was promulgated by Decree No. 1,355/1994.

unfairly, fixes the measure it considers warranted, and applies it, without passing through any stage of the multilateral process.[11]

This distinction is not merely taxonomic; it is the blade with which Section 5 will dissect the Reciprocity Law. The cross-retaliation that Brazil obtained against the United States in *US – Upland Cotton*[12] — extending, notably, to the suspension of intellectual property rights and services — is the very type of the authorised remedy: it was the fruit of a ruling and an authorisation, the system's own answer to the asymmetry of economic power.[13] Such relief is exceptional. Article 22.3 of the DSU[14] establishes a sequencing principle: the complaining party must first seek suspension in the same sector as the violation, and may resort to a different sector, or to a different agreement altogether, only where suspension in the original sector would not be "practicable or effective." Authorisations of this kind remain rare, granted also, for instance, in *EC – Bananas III*[15] and *US – Gambling*[16], precisely because the arbitrators must find that retaliation confined to goods would be commercially meaningless given the disparity in economic weight between the parties — as they did when accepting Brazil's argument that suspension limited to trade in goods would carry no real weight against a market the size of

[11] See PAUWELYN, Joost. Enforcement and Countermeasures in the WTO: Rules Are Rules - Toward a More Collective Approach. American Journal of International Law, v. 94, n. 2, p. 335-347, 2000.

[12] ORGANIZAÇÃO MUNDIAL DO COMÉRCIO. United States – Subsidies on Upland Cotton. Recourse to Article 22.6 of the DSU by the United States: Decision by the Arbitrator. WT/DS267/ARB/1, 31 ago. 2009.

[13] ARBIX, Daniel do Amaral; ÁRABE NETO, Abrão. Retaliação cruzada em propriedade intelectual: alternativa para uma atuação mais eficaz dos países em desenvolvimento no sistema de solução de controvérsias da OMC. Revista da Faculdade de Direito da Universidade de São Paulo, v. 103, p. 737-777, 2008.

[14] ORGANIZAÇÃO MUNDIAL DO COMÉRCIO. Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), art. 22.3. Anexo 2 do Acordo Constitutivo da OMC, 1994.

[15] ORGANIZAÇÃO MUNDIAL DO COMÉRCIO. European Communities – Regime for the Importation, Sale and Distribution of Bananas. Recourse to Article 22.6 of the DSU by the European Communities: Decision by the Arbitrators. WT/DS27/ARB/ECU, 24 mar. 2000.

[16] ORGANIZAÇÃO MUNDIAL DO COMÉRCIO. United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services. Recourse to Article 22.6 of the DSU by the United States: Decision by the Arbitrator. WT/DS285/ARB, 21 dez. 2007.

the United States. The question that Section 5 must confront is whether the Reciprocity Law, which authorises countermeasures upon a domestic judgment of unfairness and without ruling, authorisation or the discipline of proportionality, falls on the same side of the line – or on the other.

4. The Construction of Brazil's Arsenal of Self-Help

Brazil's Reciprocity Law is not a sudden departure but the last station on a line the country has been laying for fifteen years. Three instruments mark the route – Law 12,270/2010, the amendment introduced by Provisional Measure 1,098/2022, and Law 15,122/2025 – and read in sequence they tell a single story: the slow loosening of the tie between Brazilian retaliation and the multilateral system that was once its precondition. What begins as a power exercised strictly within the system, and only upon its authorisation, ends as a power the State confers upon itself. The progression is worth tracing with some care, for the persuasiveness of the argument that follows depends on seeing that each instrument moved the anchor a little further out, and that the cumulative distance is greater than any single step would suggest.

4.1. Law 12,270/2010: Retaliation within the System

The first instrument was the child of a victory, and the victory deserves to be recalled, because it is the source of everything that follows. In 2002 Brazil brought a complaint against subsidies that the United States granted to its upland cotton producers, in what became one of the most consequential disputes in the WTO's history.[17] Brazil prevailed before the panel, before the Appellate Body, and again in the compliance proceedings, the Appellate Body confirming in June 2008 that the United States had still not brought its programmes into conformity. There followed the decisive step. In August 2009 the arbitrators authorised Brazil to take countermeasures of up the sum of USD 829 million, and – this was the innovation that would echo for years – they accepted that a portion of that figure, up to roughly USD 268 million, could be applied as cross-retaliation outside the goods sector: in the suspension of obligations under the TRIPS Agreement,

[17] United States - Subsidies on Upland Cotton, WT/DS267. The dispute was initiated by Brazil in 2002; the original panel and Appellate Body reports were followed by compliance proceedings under Article 21.5 of the DSU, the Appellate Body upholding the compliance panel on 2 June 2008.

that is, against United States copyrights and patents.[18] For a developing economy facing the largest market in the world, the significance was immediate. Conventional retaliation in goods would have hurt Brazilian importers as much as American exporters; the threat to suspend intellectual property protection, by contrast, struck at interests the United States valued highly while costing Brazil comparatively little. It was leverage that the asymmetry of markets would never have furnished on its own – leverage manufactured by the rules.

The sequel confirmed the point. Brazil announced, in December 2009, that it would begin to apply the authorised retaliation in April 2010; faced with that prospect, the United States came to the table, and in June 2010 the two States concluded a framework agreement that suspended the retaliation in exchange for changes to the American programmes and a transitional fund for Brazilian cotton growers.[19] The countermeasures, in the end, were never imposed. They did not need to be: their authorisation, conferred by the system, was itself enough to move the most powerful trading nation in the world. This is the rule-oriented order of Section 2 in its most favourable light – a middle power obtaining, through law, a result that force alone would have denied it.

It was against this background that Law 12,270/2010 was enacted[20]. Its function was not to create a power to retaliate but to organise the exercise of one already granted: it laid down the domestic procedure – the competent authorities, the criteria, the safeguards – by which Brazil would give effect to a suspension that the WTO had authorised. Its defining feature, for the purposes of this article, lies in what it took for granted. The statute presupposed a definitive ruling adopted by the

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[18] Decisions by the Arbitrator, WT/DS267/ARB/1 and WT/DS267/ARB/2, circulated on 31 August 2009. The arbitrators authorised countermeasures of up to USD 829.3 million (on 2008 data), of which up to USD 268.3 million could take the form of cross-retaliation outside the goods sector, namely under the TRIPS Agreement and the GATS, pursuant to Article 22.3(c) of the DSU.

[19] Framework for a Mutually Agreed Solution to the Cotton Dispute (WT/DS267), concluded by Brazil and the United States on 17 June 2010, following a preliminary memorandum of understanding of April 2010.

[20] Originating as Provisional Measure (Medida Provisória) No. 482 of 10 February 2010, issued by the Executive and converted, after passage through Congress, into Law No. 12,270 of 24 June 2010, the statute responded directly to the compliance impasse in United States – Upland Cotton (WT/DS267), supplying the domestic procedure through which Brazil could exercise the cross-retaliation the WTO had authorised.

Dispute Settlement Body and an authorisation obtained through the system; it was, in substance, an instrument of enforcement of WTO decisions, not a licence for self-help. In the vocabulary of Section 3, it operated wholly on the lawful side of the line: retaliation as the system's own remedy, exercised with the system's permission, and measured by the system's standard of proportionality.

4.2. Provisional Measure 1,098/2022: The First Step Outward

The second instrument was the child of a deadlock. By the early 2020s, the paralysis of the Appellate Body had opened a structural loophole, and it is essential to see precisely how it worked, because the 2022 reform is unintelligible without it.[21] Under the DSU, a panel report is not adopted if it is appealed; adoption is suspended until the Appellate Body rules (DSU, art. 16.4). Once the Appellate Body ceased to function, however, an appeal could be lodged with a body incapable of hearing it – an "appeal into the void" – with the result that a Member which had lost before a panel could indefinitely postpone the consequences of its defeat simply by appealing into a vacuum. For a complainant such as Brazil, a hard-won panel victory could thus be rendered inert, not by any flaw in its case, but by the adversary's exploitation of a broken mechanism.

Provisional Measure 1,098/2022, later converted into Law 14,353/2022, was Brazil's answer to that manoeuvre. It amended the 2010 statute to authorise the suspension of concessions, including, once again, the suspension of intellectual property rights, in precisely the situation of an appeal into the void.[22] The novelty was genuine and should not be understated: for the first time, Brazil would retaliate without the definitive ruling that the 2010 law had required, acting in the face of a dispute that the system could no longer bring to a close. And yet the step outward was a carefully bounded one. The power did not float free of the multilateral system; it remained tethered to a concrete WTO dispute in which Brazil was the complainant and had already prevailed before a panel. It was triggered only by the respondent's evasive appeal, and only after a notice period had run.[23] The retaliation, in other words, was still a

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[21] On the paralysis of the Appellate Body since 11 December 2019, see Section 2 above.

[22] Provisional Measure No. 1,098 of 26 January 2022, converted into Law No. 14,353 of 26 May 2022, amending Law No. 12,270/2010.

[23] The conditions were cumulative: that the targeted Member, as respondent in a

response to conduct that the system itself had begun to condemn, a self-help remedy for the failure of the system's own enforcement, but one confined to cases the system had already adjudicated in Brazil's favour. The anchor had been let out; it had not been cut. One might describe the 2022 reform as self-help by necessity: a measured response to a defect in the machinery, rather than a repudiation of the machinery itself.

4.3. The Reciprocity Law: Self-Help by Statute

The third instrument cuts the anchor. Law 15,122/2025 detaches the power to retaliate from the WTO altogether: it is triggered neither by a ruling, as in 2010, nor by an evasive appeal within a Brazilian dispute, as in 2022, but by Brazil's own unilateral determination that another State has acted against it. The statute identifies three situations in which countermeasures become available, and their breadth is the measure of the change. Countermeasures may be taken where unilateral acts of another country interfere with Brazil's legitimate and sovereign decisions through the imposition or threat of commercial, financial or investment measures; where they violate international trade agreements by denying or impairing benefits owed to Brazil; or where they impose environmental requirements more stringent than those of Brazilian law, resulting in discriminatory treatment.[24] Only the second of these is tethered, even loosely, to the breach of a trade agreement; the first and the third invite Brazil to sit in judgment on the legitimacy of another State's commercial, financial and even environmental policies, on criteria of its own devising.

The responses the law makes available match the reach of the earlier statutes and extend it. They comprise the imposition of customs duties on goods or services from the offending country; the suspension of intellectual property rights, exercised through the very machinery of Law 12,270/2010, now expressly incorporated by reference; and the suspension of other concessions or obligations under any trade agreement to which Brazil is a party.[25] Procedurally, the regulating

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dispute brought by Brazil, had appealed a panel report which could not be reviewed by reason of the Appellate Body's paralysis (or whose adoption was thereby blocked), and that a period of sixty days had elapsed since Brazil's notification of its intention to suspend concessions or other obligations.

[24] Law No. 15,122 of 11 April 2025, art. 2, I to III; regulated by Decree No. 12,551 of 14 July 2025.

[25] Law No. 15,122/2025, art. 3, § 1, I to III. The suspension of intellectual property

decree establishes two tracks. Ordinary countermeasures are preceded by a public consultation and deliberated within CAMEX; provisional countermeasures, reserved for exceptional cases, are deliberated by a newly created Interministerial Committee, drawing together the Ministry of Development, Industry, Trade and Services and the Ministries of Finance and Foreign Affairs alongside *Casa Civil*.[26] These procedural safeguards are not trivial, and the analysis in Section 5 will give them their due weight. But they are domestic safeguards, internal to the Brazilian executive; they discipline how Brazil decides to retaliate, not whether the multilateral system has authorised it to do so. The decisive change wrought by the 2025 law lies precisely there. For the first time, both the finding of wrongdoing and the choice of remedy rest entirely with Brazil, made at home and in advance of – or wholly apart from – any multilateral process at all.

Set side by side, the three instruments describe a single trajectory with unusual clarity. The 2010 law retaliated upon the system's authorisation; the 2022 law retaliated within a system whose machinery had jammed, but only in disputes the system had already resolved in Brazil's favour; the 2025 law retaliates upon a judgment that is Brazil's alone. Each instrument was, in its own context, a reasonable response to the difficulty immediately before it – a victory to be enforced, a loophole to be closed, a coercive tariff to be answered – and it is precisely the reasonableness of each step that makes the cumulative drift so easy to overlook. Taken one at a time, the three look like prudent adaptations. Taken together, they trace the passage of a country from the enforcement of rules to the exercise of force; from the rule-oriented order it once embodied back towards the power-oriented one the multilateral system was built to escape. Whether the terminus of that passage can be reconciled with Article 23 of the DSU – and if it can, at what cost to Brazil's own position – is the question to which the next section turns.

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rights is to be exercised under the terms of Articles 2 to 8 of Law No. 12,270/2010, expressly incorporated by reference.

[26] Decree No. 12,551/2025 distinguishes ordinary countermeasures, preceded by a public consultation of up to thirty days and deliberated within CAMEX (GECEX), from provisional countermeasures, adopted on an exceptional basis and deliberated by the Interministerial Committee on Negotiation and Economic and Commercial Countermeasures, chaired by the Ministry of Development, Industry, Trade and Services and composed of representatives of the Casa Civil and of the Ministries of Finance and Foreign Affairs.

5. The Reciprocity Law under Scrutiny

The previous section left the Reciprocity Law at the end of a trajectory, detached from the multilateral trading system and resting on Brazil's own determination of wrongdoing. It remains to test that terminus against the yardstick set out in Section 3. The examination proceeds along three axes, in descending order of generality: the law's compatibility with the discipline against self-help in Article 23 of the DSU; the breadth and indeterminacy of the triggers that set its machinery in motion; and the particular difficulties raised by its most legally exposed remedy, the suspension of intellectual property rights, under the TRIPS Agreement. None of the three, it will be argued, condemns the statute outright; but together they locate it, uncomfortably, on the wrong side of a line the system was built to hold.

5.1. Compatibility with Article 23 of the DSU

The most direct objection is also the one that most closely resembles a known precedent. In *US – Section 301 Trade Act*, the European Communities challenged a United States statute that empowered the Trade Representative to determine, on its own authority and within fixed time limits, that a foreign practice was unfair, and to retaliate accordingly.[27] The parallel with the Brazilian law is close enough to be uncomfortable: both are domestic statutes that vest in the executive a standing power to find another State's conduct wrongful and to respond with countermeasures. The Panel's analysis of that statute is therefore directly instructive. It held that legislation which reserves to a Member the right to do something Article 23 forbids – to make a unilateral determination of inconsistency before the multilateral procedures have run their course – is itself capable of breaching Article 23.2(a), read together with Article 23.1, and that the statute was saved from a finding of inconsistency only by the formal undertakings the United States gave as to how the discretion would be exercised.[28] The lesson for the

[27] Panel Report, United States - Sections 301–310 of the Trade Act of 1974, WT/DS152/R, adopted 27 January 2000.

[28] Panel Report, US - Section 301 Trade Act, WT/DS152/R, paras. 7.35-7.46. The Panel found that legislation reserving to the executive the right to make unilateral determinations of inconsistency before the exhaustion of DSU procedures was, in principle, capable of breaching Article 23, the prima facie inconsistency being cured only by the United States' undertakings as to how the discretion would be exercised.

Brazilian statute is twofold. A law need not be applied to offend Article 23; the mere reservation of the restricted power may suffice. And what rescued the American statute – binding undertakings to exercise the discretion consistently with the DSU – is precisely what the Reciprocity Law, which contemplates determinations and countermeasures wholly outside the WTO framework, does not provide.

Against this, the most serious line of defence is the one already flagged in Section 3: that Article 23 governs only the pursuit of redress for violations of the covered agreements, and not every trade measure a State may take. The point is real, and it cuts in Brazil's favour with respect to some of the law's triggers. Where the Reciprocity Law responds to conduct that falls outside the WTO agreements altogether – a coercive tariff imposed for political reasons, say, of the kind the United States itself has deployed – the resulting countermeasure may lie beyond the reach of Article 23, for the same reason that the United States' own unilateral tariffs have escaped censure under that provision.[29] Yet the defence, on inspection, protects less of the statute than it appears to. Article 23.1 is not exhausted by the specific restrictions of Article 23.2; its general obligation attaches whenever a Member seeks redress of a violation of the covered agreements.[30] And the second of the law's triggers does exactly that: it authorises countermeasures where another State violates trade agreements by denying benefits owed to Brazil – which is to say, in the very situation Article 23 reserves to the multilateral process. For that category of case, the escape route closes: the law authorises Brazil to determine a violation of WTO benefits and to retaliate, without ruling or authorisation, in plain tension with the article. The unilateralism the law shares with Section 301 is, in this respect, not cured but codified.

5.2. The Breadth of the Triggers and the Risk of Discretion

If the first axis concerns whether the law may be used consistently with Article 23, the second concerns how widely it may be used at all.

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[29] On the limits of Article 23 to measures concerning the covered agreements, see the Panel Report in US - Section 301 Trade Act, and, for contemporary difficulty, the debate surrounding the absence of an Article 23 claim in US - Tariff Measures (DS543).

[30] Appellate Body Report, US - Certain EC Products, WT/DS165/AB/R, para. 111; and Analytical Index, DSU, Article 23. The scope of Article 23.1 is not exhausted by the specific restrictions enumerated in Article 23.2.

Two of the statute's three triggers are drawn in terms whose breadth is difficult to reconcile with the discipline the system presupposes. The first authorises countermeasures against unilateral acts that interfere with Brazil's "legitimate and sovereign decisions" through commercial, financial or investment pressure; the third, against the imposition of environmental requirements "more stringent" than those of Brazilian law.[31] Neither criterion offers a measurable threshold. What counts as interference with a sovereign decision, or as an environmental requirement too stringent to tolerate, is left to the determination of the very authority that will impose the countermeasure. The breadth is not a drafting accident; it is the mechanism by which the law converts a wide range of foreign policies into occasions for retaliation, on a judgment that is Brazil's alone to make.

The environmental trigger repays particular attention, because it reveals the law's reach most starkly and because its target is unmistakable. A power to retaliate against trading partners whose environmental requirements exceed Brazil's own is, in the present conjuncture, a power aimed at instruments such as the European Union's carbon border adjustment mechanism and its regulation on deforestation-free products. Whatever the merits of Brazil's objections to those measures – and they are not frivolous – the response the law authorises is troubling in form: it makes Brazil the unilateral judge of how stringent another jurisdiction's environmental law may legitimately be, and converts that judgment into a trade sanction. A criterion of this kind does not sit comfortably even within the autonomy the WTO leaves to national regulators; deployed as a trigger for countermeasures, it embodies precisely the self-help the system forbids, dressed in the language of reciprocity. The indeterminacy compounds the difficulty identified in 5.1: a vague trigger and a unilateral remedy, together, leave the discipline of proportionality – the requirement that a response match the injury – without any external point of reference at all.

5.3. The Suspension of Intellectual Property Rights and the Limits of TRIPS

This section examines only one of the three countermeasures the Reciprocity Law makes available – the suspension of intellectual property rights – and the omission of the other two deserves a word of

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[31] Law No. 15,122/2025, art. 2, I and III.

justification. Import restrictions and the suspension of ordinary trade concessions, the more conventional instruments the law also authorises, raise the same Article 23 and proportionality difficulties already traced in 5.1 and 5.2, but they engage only the WTO's own framework, where the covered agreements supply both the substantive standard and, through Article 22, the machinery for authorising a response. The suspension of intellectual property rights is different in kind: it activates a second, freestanding treaty regime – TRIPS, and beyond it the Berne and Paris Conventions – whose disciplines were not written with unilateral suspension in mind and offer no comparable safety valve. That additional layer of exposure, on top of the Article 23 problem common to all three instruments, is what justifies treating this remedy separately and at greater length.

By incorporating the machinery of Law 12,270/2010, the Reciprocity Law makes the suspension of foreign intellectual property rights – the cross-retaliation pioneered in the cotton dispute – available as a response to its own, unilaterally determined triggers. Here the irony noted earlier becomes acute. Suspension of TRIPS obligations as a form of cross-retaliation is not, in itself, alien to WTO law: arbitrators authorised it for Ecuador against the European Communities and for Antigua against the United States, and the cotton arbitration authorised it for Brazil.[32] But in every one of those cases the suspension was authorised by the system, following a ruling and within a quantified ceiling. The Reciprocity Law proposes to deploy the same instrument on Brazil's own authority. The tool is the same; the legal foundation is its opposite.

Even setting the question of authorisation aside, the suspension of intellectual property rights is encumbered with difficulties that the literature has examined at length and that a statute authorising it cannot wish away. The remedy raises hard problems of scope – which right-holders, over which territory, for how long; of quantification – how to value the obligations suspended so as to respect any ceiling of proportionality; and of the justiciable nature of the rights affected, since suspending protection invites litigation by the private parties

[32] Decisions by the Arbitrator, EC - Bananas III (Ecuador) (Article 22.6), WT/DS27/ARB/ECU, and US - Gambling (Article 22.6), WT/DS285/ARB. In the latter, Antigua and Barbuda obtained authorisation to suspend TRIPS obligations vis-à-vis the United States to an annual value of USD 21 million.

whose patents or copyrights are at stake.[33] Beyond these lies a problem the unilateral setting makes especially sharp. The protection of intellectual property is owed not only under the TRIPS Agreement but under conventions administered outside the WTO – the Berne and Paris Conventions chief among them – which contain no equivalent authorisation to suspend protection by way of countermeasure.[34] Where a suspension is authorised within the WTO system, it carries the system's justification with it; stripped of that authorisation, a unilateral suspension of intellectual property rights risks standing in breach not only of TRIPS but of Brazil's other international commitments, with no multilateral finding to vindicate it. The remedy that once gave Brazil leverage within the rules becomes, outside them, a fresh source of legal exposure.

None of the three axes, taken alone, warrants the conclusion that the Reciprocity Law is wholly unlawful, and the analysis has been careful to register the room the system leaves for measures directed at conduct beyond its reach. But the cumulative picture is unfavourable. In the one category where the law plainly engages WTO benefits, it codifies the very unilateralism Article 23 condemns; its broadest triggers leave the determination of wrongdoing, and with it the discipline of proportionality, to Brazil alone; and its most legally exposed remedy, lawful when authorised, becomes a liability when self-administered. The law is not a frontal repudiation of the multilateral system. It is something subtler and, for that reason, more corrosive: an instrument that remains formally poised on the threshold of legality while leaning, at every point of contact, towards the side the system was designed to foreclose.

6. The Brazilian Paradox and the Systemic Cost

The analysis so far has been doctrinal; the difficulty it uncovers is, in the end, strategic. The objection to the Reciprocity Law is not merely that it sits awkwardly with Article 23, but that it does so to Brazil's own disadvantage – that the country has armed itself with a weapon whose

[33] On these difficulties, see ABBOTT, Frederick M. Cross-Retaliation in TRIPS: Options for Developing Countries. Geneva: ICTSD, 2009; and the discussion of cross-agreement retaliation in World Trade Review, v. 7, n. 3, p. 511-545, 2008.

[34] The suspension of intellectual property rights also engages obligations under the Berne and Paris Conventions, administered by WIPO, whose disciplines do not contain the same authorisation for suspension by way of countermeasure - a source of potential conflict where the suspension is not itself authorised within the WTO framework.

general use it has every reason to fear. This is the paradox at the heart of the statute, and it is worth stating plainly.

Section 2 described that substitution as the passage from a power-oriented to a rule-oriented order; Section 4 showed that Brazil was once among its principal beneficiaries, extracting from the cotton dispute a result that the balance of economic might would never have yielded. A country so placed has a systemic interest – not an altruistic but a self-interested one – in the integrity of the limitation on self-help. Every weakening of that limitation licenses the powerful to do, at large, what their power already enables; and the powerful have far more occasion, and far more capacity, to take the law into their own hands than a country in Brazil's position ever will.

Seen in this light, the Reciprocity Law is an instrument turned, in part, against its own author. By normalising the unilateral determination of unfairness and the unauthorised countermeasure, Brazil lends legitimacy to precisely the logic by which it is most easily victimised. The fifty per cent tariff that occasioned the law was itself an exercise of that logic – a gunboat in economic dress, the strong setting the terms and the less strong left to absorb them. To answer it in kind, by statute, is to concede the terrain: to accept that trade disputes are to be settled by the relative capacity to inflict harm rather than by the rules, and thereby to surrender the one advantage that the rule-oriented order conferred on the weaker party.

The cost, then, is not measured only in the law's uncertain compatibility with a particular article of the DSU. It is measured in the slow erosion of a discipline whose chief beneficiaries are States like Brazil. Self-help, once it becomes an accepted feature of the landscape, does not distribute its advantages evenly: it favours those who can hurt the most. A multilateral system in which every Member reserves the right to be the judge of its own cause is not a more equal system but a more hierarchical one, in which formal symmetry – everyone may retaliate – masks a profound asymmetry of effect. In contributing to that outcome, even modestly, even understandably, Brazil acts against the very interest the system was built to serve on its behalf. The reasonableness of each step in the law's construction, traced in Section 4, does not redeem the destination; it only makes the loss harder to see.

7. Conclusion

This article set out to ask whether, in equipping itself with a domestic power to retaliate outside the multilateral framework, Brazil had defended its legitimate interests or begun to dismantle the discipline on which a middle power most depends. The answer it has reached is that the two are not alternatives. The Reciprocity Law is an intelligible response to a system in crisis, and several of its impulses are entirely legitimate; yet its design carries it across a line that Brazil, of all States, has the strongest reason to keep intact. Traced through its three statutory generations, Brazilian retaliation has moved from the enforcement of an authorised ruling, through a bounded response to a jammed mechanism, to a standing power exercised on Brazil's own determination of wrongfulness – a power that, in the one category where it plainly engages WTO benefits, codifies the unilateralism Article 23 was written to prevent, and that elsewhere leaves both the finding of injury and the measure of the response to Brazil alone.

The deeper difficulty is not doctrinal but strategic, and it bears restating. A middle power's protection lies in rules that bind the strong, not in a capacity to match them blow for blow. By lending its own legitimacy to the unilateral countermeasure, Brazil strengthens the very logic by which it is most readily coerced – the logic of which the tariff that provoked the law was itself an instance. The symmetry the law appears to offer, in which Brazil may now answer force with force, is largely an illusion: in a world where each State is judge in its own cause, advantage runs to whoever can inflict the greater harm, and that is rarely the middle power.

None of this counsels passivity in the face of unilateral coercion. The argument is rather that the alternatives better serve Brazil's long-term interest than self-help does. Within the system, the interim appeal arrangement offers a means of bringing disputes to a binding close notwithstanding the paralysis of the Appellate Body, and Brazil's continued investment in it, and in the wider project of restoring the dispute settlement system, defends the asset on which its trade diplomacy has always depended.[35] Beyond it, coalitions of like-minded States, many of them middle powers with the same structural stake in the rules, offer a collective answer to unilateralism that does not require each of them

[35] Multi-Party Interim Appeal Arbitration Arrangement (MPIA), established in 2020 under Article 25 of the DSU as an interim mechanism for the resolution of appeals pending the restoration of the Appellate Body. Brazil is among its participants.

to imitate it. These paths are slower and less satisfying than a counter-tariff announced by decree. But they are the paths of a country whose strength has always lain in the rule rather than in the cannon – and it is that strength, not the temptation to set it aside, that the present moment calls upon Brazil to defend.

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