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The Limits of Security Exceptions in the World Trade Organisation System

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Abstract

For years, World Trade Organization (WTO) Members avoided invoking the security exception, leaving unresolved tensions between its self-judging nature and the compulsory jurisdiction of WTO panels. However, in 2017 and 2018, several panels were established after respondents justified measures as essential for national security. The rise in economic sanctions has heightened the importance of WTO security exceptions, which permit otherwise WTO-inconsistent measures like discriminatory tariffs. The broad scope of the national security exception in Article XXI of the GATT poses challenges due to potential abuse. Through a detailed analysis of the legal framework and standards of proof, this article explores the limits of this exception and proposes reforms to balance national security and free trade. It finds that while necessary, the exception's misuse of protectionism threatens global trade stability. The study calls for more explicit guidelines, transparency, and robust dispute resolution to prevent abuse.

Keywords: GATT Article XXI; Trade Dispute Mechanisms; National Security Measures; Economic Protectionism; International Trade Governance.

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1. Introduction

The World Trade Organization (WTO) operates on a foundation of established rules (Amin, R 2022). Member states can only invoke specific exceptions outlined within the system, and any measures taken under these exceptions must adhere to strict conditions and are ultimately subject to legal scrutiny. However, one exception, the national security clause enshrined in Article XXI of the General Agreement on Tariffs and Trade (GATT), has always held a unique position – an "exception among exceptions." Historically, the WTO Dispute Settlement Body has never ruled on the validity of actions taken under this clause (Amin and et al,2024). This has been attributed to a combination of WTO member restraint and fortunate circumstances, preventing definitive rulings on the meaning and scope of the national security exception. However, this delicate balance has recently been shattered. Trade disputes involving the United States, the United Arab Emirates, and Russia have all invoked the security exception, breaking with the established culture of restraint. This raises a critical question: to what extent is the national security exception "self-judging?"

While the WTO system emphasises rules-based trade, the recent disputes highlight the potential for abuse within the national security exception. This has placed the WTO at a crossroads, with its very existence potentially threatened. The recent Russia – Measures Concerning Traffic in Transit (DS512) decision, while specific to the case at hand, has opened the door for WTO members to cite national security as a justification for exemption from global trade rules. However, this exemption is not absolute. For it to be valid, the measures taken must be demonstrably linked to "essential security interests" that are fundamental to the state's functioning. The specific interests at stake will vary depending on the situation, but the principle remains that such measures are ultimately subject to legal review. Moving forward, it is crucial for WTO members to collaborate and find solutions to the escalating challenges facing the international trading system. The "self-judging" nature of the national security exception needs to be addressed, and a balance must be struck between national security concerns and the principles of free trade. Only then can the WTO maintain its role as a stable and predictable platform for global trade.

2. Methodology

The methodology for this research on "The Limits of Security Exceptions in the World Trade Organisation System" involved a comprehensive literature review (Koolaee and et al,2023) and content analysis of articles, journals, and books (Lachica,2020; Abdullah and et al,2024) to gather foundational understanding and identify critical debates. This was followed by a detailed legal analysis of Article XXI of the GATT and relevant case law (Bagheri and et al,2021; Althabhawi,2013). Doctrinal research explored theoretical underpinnings (Ahmadian,2023), such as sovereignty and the balance of power, while a comparative analysis (Alabdalrahman,2023; Bahrami and Gadai,2024) examined national practices and international standards (Althabhawi,2023). The findings were synthesisede to identify patterns and propose recommendations for reform (Salawati,2011). This multi-faceted approach ensures a thorough examination of security exceptions within the WTO system, balancing national security concerns with global trade principles.

3. Understanding Security Exceptions in the WTO System

Article XXI of the General Agreement on Tariffs and Trade (GATT) 1994 provides important exceptions for national security reasons. It specifies that countries are not obligated to disclose any information they believe would compromise their essential security interests. Additionally, it permits countries to take necessary actions to protect their essential security interests, particularly in matters related to fissionable materials, arms, ammunition, and other war supplies, as well as during war or other international emergencies. Furthermore, it allows countries to take action following their obligations under the United Nations Charter to maintain international peace and security.

The security exceptions in WTO agreements allow members to suspend trade obligations for legitimate security threats. However, concerns exist over whether these exceptions are self-judging and subject to political misuse, potentially undermining fundamental WTO principles like 'Most Favoured Nation' and 'National Treatment.' Alternatively, these exceptions may represent limited, lawful departures from trade obligations, subject to review, emphasising the importance of rules, accountability, and transparency. The interpretation of these exceptions is crucial to the WTO's broader goal of economic integration.

The text explains the tension between traditional state sovereignty and the obligations of international legal regimes like the WTO. Sovereignty is traditionally linked to a state's control over its borders and national security decisions. However, when states joined the WTO, they voluntarily accepted its rules and agreed to have their compliance with trade obligations reviewed by WTO dispute resolution panels. This acceptance shifted some decision-making authority from individual states to the WTO, altering their rights and responsibilities in the international arena.

Since panels often rule on highly contentious domestic issues, the WTO risks undermining its institutional legitimacy if its decision-making power remains unchecked. This situation creates an inherent tension between the decision-making authority of member states and the limitations imposed by international law under the WTO. If members surrendered their sovereignty without receiving reciprocal benefits, it could lead to a sovereignty crisis, highlighting the democratic paradox of globalisation. To address this issue, WTO members have explicitly included security exceptions in the WTO Agreements, allowing them to deviate from their obligations when national security is at risk. These exceptions enable members to retain some autonomy over decisions in sensitive policy areas, thereby balancing their sovereignty with the need for institutional integrity. By incorporating security exceptions, WTO Agreements acknowledge the paramount importance of security, as without it, a state lacks sovereignty, and its very existence is threatened. This negotiated inclusion honours traditional state sovereignty and recognises member autonomy over sensitive domestic political arrangements.

Realism, the dominant theory in international relations, is closely linked to national security issues and the operation of security exceptions. Realism posits that global politics is a power struggle where state power matters more than law. It views political issues by the intensity with which they are linked to the state, with national security taking precedence over international law. Alexander Hamilton emphasised that "self-preservation is the first duty of a nation." In the lawless international sphere, where no overarching authority exists, security issues must be determined solely by the sovereign state (Hamilton,1787). Self-preservation is the first duty of a nation.) Thus, WTO members have the authority to define their "essential security interests" as an expression of their sovereignty. For WTO members,

security exceptions serve as an essential escape mechanism or safety valve when their existence is threatened.

Within the framework of the WTO, security exceptions act as practical tools that navigate the complex intersection between the WTO's legal authority and the sovereignty of its member states. These exceptions serve a dual political purpose. Firstly, they reassure states that their security interests can take precedence over trade obligations, consistent with the Realist perspective that security is a matter for the state to determine. Secondly, they offer an institutional justification that allows the WTO to balance member sovereignty with its authority. This dual function helps states join the WTO regime with confidence that their critical security interests are safeguarded. Therefore, security exceptions act as a release valve, enabling the completion of agreements while still obliging members to adhere to their WTO commitments. In practice, the WTO limits its decision-making power, allowing states to retain significant political authority within the framework of the institution's rules.

By including security exceptions, states are incentivised to join the WTO, thus reinforcing its legitimacy through negotiation. However, upon joining an agreement, each member's sovereignty is immediately constrained. Despite their initial belief in retaining sovereignty, members find it challenging to do so because of the WTO's legal framework, which restricts their autonomy. The invocation of security exceptions presents a dilemma: they can be perceived as self-judging release valves or as justiciable, limited means of avoiding trade obligations.

4. The Evolution of Security Exceptions

The evolution of security exceptions within the WTO framework reflects a shift from broad, self-judging discretion towards a more scrutinised and balanced approach. Initially, Article XXI of the General Agreement on Tariffs and Trade (GATT) 1994 was interpreted as granting member countries almost unfettered authority to determine what constitutes their essential security interests. This self-judging nature meant countries could invoke security exceptions without significant external review, allowing considerable flexibility in response to perceived threats. However, this interpretation faced challenges as countries began to invoke these exceptions in ways that appeared to circumvent trade obligations for economic or political gain rather than genuine security concerns.

The landmark case of Russia – Measures Concerning Traffic in Transit (DS512) marked a significant turning point. Ukraine challenged Russia's limitations on goods travelling through their territory to other countries. While these restrictions violated free transit principles under WTO rules, Russia invoked Article XXI, claiming their actions were essential for national security due to tensions with Ukraine. Russia argued they had the sole right to determine the necessity of these measures. However, the WTO panel disagreed. They asserted their authority to review Russia's actions. They clarified that "emergencies in international relations" encompass situations like armed conflict and heightened tensions – circumstances demonstrably present in the case of Russia and Ukraine. The WTO dispute settlement panel, in this case, clarified that while members have substantial discretion, their invocation of Article XXI is subject to a degree of review to prevent abuse. The panel introduced a two-step review process: first, it assesses whether the circumstances justifying the security exception, such as war or other international emergencies, objectively exist. Second, it evaluates whether the measures taken are necessary and proportionate to the security concerns cited. This ruling underscored that while national security is paramount, invoking security exceptions must not undermine the fundamental WTO principles of non-discrimination and transparency.

The panel also clarified that a country's discretion in defining security interests isn't absolute. Measures taken must be genuinely connected to the security concerns and implemented in good faith. Ultimately, the panel ruled in Russia's favour, acknowledging the emergency and its connection to their security interests. This landmark case represents the first WTO panel interpretation of Article XXI. It establishes a crucial balance: countries can invoke security exceptions, but these claims are subject to objective scrutiny to prevent abuse. The decision sets a precedent for future WTO disputes involving security exceptions, including those against the US's Section 232 measures. While the Appellate Body's review is pending, this case signifies a shift towards a more nuanced approach, ensuring both national security considerations and the integrity of the global trading system are addressed (Baccus,2022).

Through these cases and evolving jurisprudence, the WTO has sought to balance allowing member states to protect their essential security interests

and preventing the misuse of security exceptions to evade trade obligations. This evolution reflects a more nuanced approach that respects nations' legitimate security concerns while upholding the integrity and fairness of the global trading system.

5. The Legal Framework of Security Exceptions

The World Trade Organization (WTO) framework, while promoting free trade, recognises the necessity for temporary deviations in exceptional circumstances. Under Article XXI of the General Agreement on Tariffs and Trade (GATT) 1994, member states can prioritise national security interests, which may lead to suspending certain trade obligations. However, this provision raises concerns about the potential misuse of the security exception to justify protectionist measures. Excessive reliance on this exception could undermine fundamental WTO principles, such as Most-Favoured-Nation (MFN) and National Treatment, which ensure non-discrimination between trading partners and equal treatment of domestic and imported goods. Thus, the security exception could become a means of circumventing trade liberalisation commitments (WTO, GATT,1994).

An alternative interpretation views security exceptions as a controlled mechanism for addressing genuine security threats within the WTO framework. This perspective emphasises the role of established rules, transparent procedures, and accountability through dispute settlement bodies. It argues that security exceptions are not self-judging and that member states' actions can be reviewed. This interpretation suggests that maintaining a clear and balanced understanding of security exceptions is crucial for the WTO to effectively promote global economic integration and uphold the benefits of free trade.

To understand the legal framework of security exceptions, we must examine how WTO dispute settlement bodies interpret them. This includes exploring whether WTO security exceptions serve as political excuses or genuine legal doctrines within the concepts of sovereignty, security exceptions, and the realist perspective. Traditional sovereignty is tied to the inviolability of state borders and decisions regarding national security interests within a state's domestic sphere. Sovereignty signifies a state's liberty and the allocation of decision-making power. There is a tension between adhering to international legal doctrines and prioritising domestic interests over international obligations. The authority of international legal regimes to make decisions hinges on a state's willingness to be bound by them. When WTO members

accepted the WTO Agreements and their associated obligations, they exercised their free will. States also consented to have dispute resolution panels review the legality of their compliance with trade obligations, transferring decision-making authority from the state to the WTO. This shift fundamentally altered each state's rights and responsibilities systematically, affecting their external arrangements (Baccus,2022).

While fostering a rule-based trading system, the World Trade Organization (WTO)'s dispute settlement mechanism presents a potential challenge to its institutional legitimacy. The ability of WTO panels to adjudicate highly contentious domestic issues raises concerns about unchecked power and potential destabilisation. This creates an inherent tension between member states' authority to make domestic policy decisions and the limitations of WTO law. Unfettered power concentrated in the WTO could lead to a "democratic paradox of globalisation," where member states relinquish sovereignty without receiving commensurate benefits. To mitigate this risk and maintain a balance between state sovereignty and institutional integrity, WTO agreements explicitly acknowledge security exceptions. These exceptions allow member states to deviate from their WTO obligations when national security is threatened. Security exceptions in WTO agreements recognise the importance of national security. A state's ability to function and maintain its sovereignty hinges fundamentally on its security. These exceptions acknowledge the existence of sensitive domestic political arrangements and allow member states some degree of autonomy in these areas. In essence, the WTO negotiates a balance between its goals of fostering economic integration and the importance of national security for its member states (Baccus,2022).

The dominant theory in international relations, realism, emphasises power struggles and national security as paramount concerns. This perspective aligns with the existence of security exceptions within WTO agreements. Security exceptions allow countries to prioritise national security above trade obligations, reflecting the realist view that states define their security interests. Some argue these exceptions are problematic. They can be used to justify protectionist trade policies without resolving tensions between national sovereignty and the WTO's authority. However, others see them as a pragmatic compromise. Security exceptions reassure countries that their core security needs come first, encouraging them to join the WTO. They

also act as a "safety valve" for states facing threats, allowing them to deviate from WTO rules temporarily. This approach appears to limit the WTO's power while preserving the political clout of member states. However, the initial appeal of retaining sovereignty can be challenged by the WTO's legal framework and its restrictions. The question remains: are security exceptions a free pass for countries, or can they be reviewed and potentially limited by the WTO? This unresolved issue highlights the ongoing tension between national security concerns and the WTO's goal of a rule-based trading system (Baccus,2022).

6. Limits of Security Exceptions

6-1.Ambiguity and Vagueness in the Language of Article XXI

The WTO's national security exception, as outlined in Article XXI of the GATT, has traditionally been considered a "black hole" in WTO law due to its broad and self-judging nature. However, recent disputes, particularly involving the United States' Section 232 tariffs on steel and aluminium, have brought attention to potential limits on applying this exception due to the ambiguity and vagueness in the language of Article XXI. First is a reasonable faith requirement; there is an implicit requirement that measures taken under the national security exception must be taken in good faith and not as a disguised protectionist measure. Next is non-discrimination; while the national security exception allows for discrimination between countries, it should not be used as a protectionist pretext. The measures should be non-arbitrary and not disguised with restrictions on international trade. Third is proportionality, whereas the measures taken should be proportionate to the security threat being addressed. They should not be more restrictive than necessary to achieve the security objective. Moving on to the fourth, transparency. There is an increasing expectation for transparency in applying the national security exception.

Members are encouraged to provide detailed explanations and justifications for their measures. Lastly is judicial review. While Article XXI is generally considered self-judging, recent disputes have raised questions about how well WTO panels can review national security measures. Some argue that there should be some form of limited judicial review to ensure that the exception is not being abused. Overall, while the national security exception provides a broad scope for members to take measures in the interest of their security, some potential limits and constraints should be considered to prevent its abuse for protectionist purposes (Claussen,2020).

6-2.Conflict between Security Exceptions and other WTO Obligations

The challenges posed by the national security exception to the World Trade Organization (WTO) dispute settlement system and the ability of countries to invoke national security to justify trade measures without The WTO dispute settlement system is crucial for enforcing WTO rules and resolving trade disputes between member countries. The system has been highly successful in the past, but the national security exception now threatens its effectiveness. Firstly, the conflict occurred when the United States was a major player in blocking the appointment of new judges to the WTO's Appellate Body, which effectively halted the dispute settlement process. This is mainly due to concerns that the Appellate Body has overstepped its authority and infringed on the US's ability to use trade remedies and address unfair trade practices. Secondly, the national security exception allows countries to take trade actions that would otherwise violate WTO rules without any meaningful review or challenge. This creates a significant loophole that can be exploited by countries to protect domestic industries or pursue other political agendas. Thus, a potential solution would allow countries to take national security actions without facing legal challenges but also provide other countries with the ability to take measures to restore the balance of trade concessions. This could involve, for example, allowing countries to impose retaliatory tariffs or suspend other trade benefits in response to national security measures they deem unfair or excessive meaningful review undermines the WTO's core principles and dispute settlement process (Balan,2018).

Therefore, there is a need to find a solution that addresses the national security exception in a way that preserves the WTO's core principles and restores the effectiveness of its dispute settlement system. This is critical to maintaining a stable and predictable trading environment for all WTO members.

6-3.Implications for Predictability and Stability in the International Trading System

The concept of congressional delegations is to grant the President the authority to establish trade policy. While some delegations empower the pursuit of free trade goals, others create exceptions that prioritise national security concerns. The national security exception creates a unique situation where the US government holds significant power to restrict trade in the

national security interest. This exceptionalism, while potentially necessary for safeguarding national interests, presents a mixed bag of implications. On the one hand, it allows the government to take swift action to address critical security threats. However, the potential for abuse and the lack of clear guidelines for invoking the exception can create significant challenges for international trade. Apart from that, the national security exception injects uncertainty and unpredictability into the global trading system. This uncertainty stems from the subjective nature of what constitutes a legitimate national security threat and the limited ability to challenge the government's invocation of the exception. Additionally, the potential for the exception to be exploited for protectionist purposes or other political agendas can further erode trust and stability within the international trading system (Balan, 2018).

Overall, a more nuanced understanding of the national security exception and its implications for international trade is needed. Thus, striking a balance between national security concerns and the principle of free trade is crucial for maintaining a predictable and stable global trading environment.

7. The Definition and Functions of the Standard of Review in the WTO

7-1.The Definition and Functions of the Standard of Review in the WTO

The standard of review is a fundamental aspect of the World Trade Organization (WTO) dispute settlement system. It determines the extent to which a WTO Panel can replace the judgement of national authorities imposing trade remedy measures with its own. Essentially, it defines the level of control that WTO Panels have over Members' rights to enforce trade remedies, influencing the interpretation and application of legal rules, the establishment of facts, and the evaluation of these facts under the relevant legal framework.

The standard of review can be categorised into three primary approaches. The first approach is the de novo review, where the WTO Panel reassesses the issues entirely independently of the findings of the national authorities. This means the Panel examines the facts and legal determinations from scratch, allowing it to form its judgement without being influenced by the national authorities' conclusions. This approach ensures a thorough and impartial review. Still, it can significantly undermine the authority and expertise of national bodies, as seen in cases like US – Hot-Rolled Steel (WTO Appellate Body Report, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R).

Conversely, under the total deference approach, the panel accepts the findings of national authorities, provided that specific procedural requirements are met. In this scenario, the Panel exercises minimal interference with the national determinations, respecting the decisions made by the national authorities as long as they adhere to the prescribed procedures. This approach upholds the sovereignty of national bodies but may lead to inconsistencies in the application of trade remedy measures, as highlighted in cases like Japan – Alcoholic Beverages II. (WTO Appellate Body Report, Japan – Taxes on Alcoholic Beverages, WT/DS8/AB/R).

Between these two extremes lies the intermediate or deferential review. This approach allows the WTO Panel to accept the national authorities' determinations if specific substantive conditions are fulfilled. These conditions can vary, leading to multiple types of intermediate review standards. This balanced approach aims to respect national authorities' expertise while ensuring their decisions comply with WTO rules and standards. An example of this is seen in the US – Wool Shirts and Blouses case (WTO Appellate Body Report, United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India, WT/DS33/AB/R), where the Panel used a standard of reasonableness to review the determinations of national authorities.

The standard of review serves several critical functions within the WTO dispute settlement system. It maintains a balance between respecting national sovereignty and ensuring compliance with international trade rules. By promoting consistency and predictability in the dispute resolution process, a well-defined standard of review helps maintain fairness and impartiality. Additionally, it provides a framework for panels to evaluate member states' measures, ensuring decisions are based on objective criteria rather than subjective judgments. This guidance is crucial for maintaining the integrity and reliability of the WTO's dispute resolution process. Moreover, by establishing clear criteria for review, it aids in the efficient resolution of disputes, reducing ambiguity and enhancing the WTO's credibility as a fair arbiter in trade conflicts.

7-2.The Analytical Structure of the Standard of Review under the WTO Jurisprudence

As the General Agreement on Tariffs and Trade (GATT) system evolved and became more legalised, the concept of the standard of review gained

prominence. This concept serves as a crucial balance between national sovereignty and the rules-based system of the GATT/WTO. Initially, the GATT contained no explicit provisions regarding the standard of review, and only a few panel decisions addressed this issue. However, this changed significantly during the Uruguay Round negotiations.

The Uruguay Round saw intense debates over the appropriate standard of review in WTO law, highlighting its political implications and the national economic interests at stake. Various concepts were proposed, with one of the most explicit being the "reasonableness standard," strongly supported by the United States. This approach advocated for constraints on WTO panels, requiring them to defer to national government decisions as long as these decisions were reasonably interpreted and adhered to the agreements. Proponents argued that this standard would respect national sovereignty by allowing governments flexibility in their interpretations (Jackson,1996).

However, many other nations opposed the reasonableness standard. They argued that it would overly restrict panels and undermine the consistency of GATT/WTO law by granting national administrations too much discretion in fulfilling their international obligations. This opposition prevented a resolution during the negotiations, leaving the standard of review largely undefined in the WTO Agreements. The only explicit provision is in Article 17.6 of the Anti-Dumping Agreement (ADA), which prescribes a particular deferential standard of review for anti-dumping procedures (WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994).

In 1996, Professor John H. Jackson suggested that Article 3.2 of the Dispute Settlement Understanding (DSU) could serve as a legal basis for a general standard of review in WTO law. However, when the Appellate Body addressed this issue in the Hormones case, it referred instead to Article 11 of the DSU, illustrating the ambiguity within WTO provisions. (WTO Appellate Body Report, EC Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R) This divergence in interpretation, even among leading scholars and the Appellate Body highlights the lack of clarity regarding the standard of review. Since the WTO Agreements did not definitively resolve the standard of review, this task has fallen to judicial lawmaking. The Appellate Body's first landmark decision and subsequent cases have played a significant role in shaping this aspect of WTO jurisprudence.

The terminology and concept of the standard of review first gained prominence in late GATT jurisprudence and during the Uruguay Round negotiations. During these discussions, the United States consistently pushed for a deferential standard of review to limit the scope of panel reviews of national authorities' determinations. This debate underscored the ongoing tension between maintaining national sovereignty and ensuring a consistent, rules-based international trading system.

7-3.The Standard of Review of the National Security Exception

The national security exception in Article XXI of the GATT poses challenges to the standard of review, as it grants member states broad discretion in taking measures for their security. The review standard involves assessing whether these measures aim to protect essential security interests and comply with Article XXI's conditions, including evaluating their necessity and proportionality. When reviewing a member’s invocation of Article XXI(b)(iii), the standard of review focuses on two elements: whether the action is deemed necessary for security and whether it is taken during a war or international emergency, with the burden of proof on the invoking party.

The necessity element in Article XXI of the GATT requires that measures taken by a member state be essential for protecting security interests. This involves two key analyses: first, whether less trade-restrictive alternatives could achieve the same security goals, and second, whether the measures are proportionate to the security threat, ensuring that the trade impact is not excessive relative to the security interests. Panels should not conduct a de novo review. Still, they should verify that the member state has formally considered the measure necessary, assessing the existence and adequacy of the state's explanation for its actions.

Despite the high level of deference given to WTO Members in invoking the security exception under Article XXI, this deference is not absolute. Members must provide a sufficient explanation showing that they genuinely considered the measure's necessity. While the panel does not conduct an independent necessity test, it reviews the explanation to ensure compliance with Article XXI(b). Panels can reject explanations that lack substance or suggest abuse of discretion. Thus, although Members have significant discretion, their determinations are subject to meaningful judicial review to prevent misuse of the security exception.

WTO jurisprudence does not set a universal threshold for judicial intervention, requiring different standards of review based on the discretion afforded to Members. For the national security exception, a lenient "abuse of discretion" standard is appropriate. This allows broad Member discretion, provided that decisions are made in good faith. If a panel finds that a member is abusing this discretion, such as using a security measure for commercial reasons, the measure cannot be justified under the security exception.

The threshold of judicial review for the necessary element in WTO security measures determines the level of scrutiny panels that apply. A high threshold implies a more respectful approach, allowing member states broad discretion in defining necessary security measures, especially in sensitive national security areas. Conversely, a lower threshold demands stricter scrutiny, requiring detailed justifications to prevent abuse of the security exception.

For the timing element, which assesses if a measure is taken during a time of war or international emergency, a de novo review is appropriate. This objective review contrasts with the more deferential "abuse of discretion" standard applied to the necessity element. Together, these approaches ensure that the security exception is used legitimately, safeguarding against misuse while recognizing genuine security concerns during emergencies.

The standard of review within the WTO system is a critical mechanism for balancing national sovereignty with the need for compliance with international trade rules. In the context of security exceptions under Article XXI GATT, it ensures that measures taken for national security are genuinely necessary and proportionate. By providing a structured approach to evaluating these measures, the standard of review helps maintain the integrity of the WTO's dispute resolution process, ensuring fairness, impartiality, and effective dispute resolution.

The standard of review impacts international trade by influencing the balance between national and international authorities and the consistency of trade remedies. A stringent review ensures uniform application of WTO rules, promoting fairness and preventing protectionism, but may restrict national authorities from addressing domestic issues. Conversely, a more deferential review offers national flexibility but risks inconsistencies in applying WTO rules (Bhala,2003).

In conclusion, the standard of review in WTO law remains a complex and

evolving issue. While initial efforts to define it during the Uruguay Round were inconclusive, subsequent judicial interpretations have continued to shape its application. The balance between deference to national authorities and the need for consistent application of WTO rules remains a central challenge in the global trading system. The choice of standard affects not only the legal outcomes of specific disputes but also the broader dynamics of global trade governance, balancing the need for consistent rule enforcement with respect for national sovereignty.

8. The WTO Member's Discretion under Article XXI B) GATT

Article XXI of the GATT allows WTO members to restrict trade for "essential" security interests, a provision echoed in other WTO agreements. Historically, members have invoked this exception sparingly to balance national security and trade obligations. However, in recent years, trade restrictions based on national security have increased and are now subject to more litigation within the WTO. This trend could challenge the WTO's dispute settlement system and potentially destabilise the broader rules-based international trading system. (Petersmann,2018).

The chapeau of the general exceptions in WTO agreements sets the conditions for applying measures adopted for legitimate objectives, ensuring they do not result in arbitrary or unjustifiable discrimination or disguised restrictions (Joseph Wells,2014) on trade (Bartels,2015). It focuses on preventing abuse by regulating how measures are applied rather than their content. In contrast, the subparagraphs detail specific objectives like protecting public morals or conserving resources, with conditions tailored to each objective, ensuring the measures align with the intended purpose and are necessary or related to the aim.

The key differences between the chapeau and subparagraphs in WTO agreements lie in their focus and scope. The chapeau ensures that measures adopted under the exceptions are applied relatively, preventing arbitrary or unjustifiable discrimination or disguised trade restrictions. In contrast, the subparagraphs define permissible measures based on specific objectives like protecting public morals or conserving resources, outlining the conditions under which these measures are justified (Riffel,2018).

The chapeau addresses potential discrimination by employing economic and policy tests to assess whether measures disproportionately affect certain countries. It also examines the rationale behind discrimination, ensuring it is

logically connected to the measure's objective. The burden of proof initially lies with the complainant to show the measure's necessity and identify less discriminatory alternatives (Bartels,2015).

In WTO dispute settlements, the standard of review refers to the degree of scrutiny applied when reviewing national measures for compliance with WTO obligations. It balances power between international adjudicators and national authorities, determining how much deference is given to national decisions (Pauwelyn,2019). This nuanced approach is essential for maintaining the integrity of WTO agreements and ensuring that national measures do not unfairly discriminate or restrict trade more than necessary.

The WTO Appellate Body has established a structured approach to determining the appropriate standard of review in cases involving national security matters. This process includes:

- Object of Review Analysis: Panels first determine whether de novo review should be excluded.
- Formal and Substantive Review: If de novo review is excluded, the panel then conducts both a formal and a substantive review.

Despite legitimate concerns about how the WTO handles national security issues, it's argued that pressuring members to adopt an incorrect interpretation of Article XXI to resolve disputes is not advisable. Such an approach lacks support from the text, context, and history of Article XXI and could lead to members avoiding their WTO responsibilities by claiming national security concerns. Instead, members should focus on solutions that align with existing GATT Article XXI provisions or consider revisions that reflect a balanced approach.

9. Reform Proposals and Future Directions

The evolving WTO jurisprudence on security exceptions has led to several reform proposals aimed at balancing national security concerns with trade obligations:

- **Clearer Guidelines:** Establish precise criteria for what constitutes "essential security interests" and what circumstances they can be invoked to provide predictability and prevent misuse for protectionist purposes.
- **Enhanced Transparency and Accountability:** Members must offer detailed explanations and evidence when invoking security exceptions. This will enable better scrutiny and assessment of legitimacy, reducing

potential abuse.

- **Strengthened Dispute Settlement:** Improve the handling of security exception cases by ensuring that panels have the necessary expertise and authority. Consider creating a specialised body within the WTO to focus on security exceptions, providing expert review while respecting national security sensitivities.

Future directions include:

- **Fostering International Cooperation:** Promote dialogue and collaboration on security issues to find non-trade restrictive solutions, enhancing global stability.
- **Integrating with Other Legal Frameworks:** Align security exception rules with frameworks like the UN Charter to ensure consistency with international security and peacekeeping objectives.

In conclusion, a multifaceted strategy that includes more precise guidelines, enhanced transparency, robust dispute resolution, international cooperation, and alignment with other legal frameworks is essential for reforming the WTO's approach to security exceptions. This approach balances national security protection with free and fair-trade principles, ensuring a robust and equitable global trading system.

10. Conclusion

To conclude, Article XXI of the GATT, which provides for national security exceptions, has been a complex and contentious aspect of the WTO system. While it acknowledges the necessity for states to safeguard their essential security interests, its broad application and potential for misuse present significant challenges. Understanding the limits of this exception is crucial for maintaining a balanced and predictable international trading environment.

The evolution of security exceptions highlights the tension between national sovereignty and WTO obligations. The legal framework, particularly Article XXI(b), delineates the scope of this exception. Analysing standards of proof and review reveals how measures under this clause are scrutinised, and understanding the WTO's approach to these standards is essential for assessing their validity.

Reform proposals and future directions should focus on refining this exception to prevent abuse while ensuring it serves its intended purpose. This involves establishing precise guidelines, enhancing transparency,

strengthening dispute-resolution mechanisms, and fostering international cooperation. Recognising the broader implications for global relations, it is vital to address the potential misuse of the national security exception, which could undermine trust and stability.

A comprehensive, collaborative approach is necessary to balance national security concerns with the principles of free trade. By ensuring the rigorous application of legal standards and engaging in ongoing dialogue, the WTO can uphold its role as a stable and reliable platform for global trade, promoting a more peaceful and prosperous international trading environment.

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