



THE NATIONAL SECURITY EXCEPTION IN WTO LAW: THE IMPLICATIONS OF THE US-ISREAL-IRAN CONFLICT

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Abstract

The national security exception under Article XXI of the General Agreement on Tariffs and Trade, 1994 constitutes a significant qualification to the obligations of members of the World Trade Organization. While the provision permitted states to adopt measures necessary for the protection of essential security interests, its broad wording has generated considerable debate regarding its scope and potential misuse. Recent tensions involving the United States, Israel, and Iran have intensified concerns over the increasing use of trade restrictions and economic sanctions justified on national security grounds. This article examined the legal framework governing the national security exception and analyses its interpretation in contemporary WTO jurisprudence. Particular attention is given to the decisions in Russia – Measures Concerning Traffic in Transit and Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights, which clarified that Article XXI is not entirely self-judging and remains subject to legal scrutiny. The article argued that although the exception served as an important safeguard for state security, its application must be constrained by principles of good faith and accountability. It concluded that a balanced interpretation of Article XXI is essential to preserving national security interests and the integrity of the multilateral trading system.

Keywords: National Security Exception; Article XXI GATT 1994; World Trade Organization; Economic Sanctions; US–Israel–Iran Conflict.

1.0 Introduction

The contemporary international trading system is premised on the rule-based framework established under the World Trade Organization (WTO). The system seeks to promote predictability, non-discrimination, and the orderly conduct of international trade relations. The central plank to this framework is the principle that member states are firstly bound by their treaty obligations. Secondly, that trade disputes should be resolved through institutionalised adjudicatory mechanisms rather than unilateral measures. Nonetheless, the WTO legal regime recognises that states may, in exceptional circumstances, depart from their trade obligations where fundamental national interests are at stake. One of the most controversial manifestations of this flexibility is the national security exception contained in Article XXI of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

Article XXI permits WTO members to adopt measures that would otherwise be inconsistent with their treaty commitments where such measures are considered necessary for the protection of their “essential security interests,” particularly in relation to arms trafficking, measures taken in time of war,



or other emergencies in international relations¹. For decades, this provision remained largely untested within the multilateral dispute settlement system because many states maintained that the clause was self-judging, meaning that a member invoking the exception possessed unfettered discretion to determine when its security interests justified trade restrictions². This interpretation raised profound concerns about the potential abuse of the exception, as an overly broad reading of Article XXI could undermine the stability and enforceability of the entire WTO legal order.

Recent developments in WTO jurisprudence, however, have begun to clarify the legal contours of the national security exception. The landmark panel decision in *Russia – Measures Concerning Traffic in Transit* marked the first comprehensive judicial interpretation of Article XXI, rejecting the notion that the provision is entirely self-judging while affirming that its invocation remains subject to limited review by WTO dispute settlement bodies³. The panel held that although members retain considerable discretion in defining their essential security interests, the existence of a “war or other emergency in international relations” constitutes an objective condition that must be demonstrated. Subsequent cases, including *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights* and the disputes concerning the United States’ national security tariffs on steel and aluminum, have further reinforced the principle that the national security exception cannot be invoked in bad faith or as a disguised restriction on international trade⁴.

These developments are particularly significant in the context of contemporary geopolitical tensions, where security considerations increasingly intersect with international trade policy. The ongoing strategic confrontation involving the United States, Israel, and Iran, particularly in relation to concerns over Iran’s nuclear programme and regional security dynamics, illustrates the growing entanglement between trade measures and national security justifications. Economic sanctions, export controls, and other restrictive trade measures adopted in response to perceived security threats may have significant implications for the rights and obligations of WTO members. In such circumstances, the invocation of national security exceptions raises complex questions regarding the balance between state sovereignty in matters of security and the integrity of the multilateral trading system.

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¹ General Agreement on Tariffs and Trade 1994, art XXI, Marrakesh Agreement Establishing the World Trade Organization, 1867 UNTS 187.

² Roger P Alford, ‘The Self-Judging WTO Security Exception’ (2011) 2011 Utah Law Review 697.

³ *Russia – Measures Concerning Traffic in Transit* (Report of the Panel) WTO Doc WT/DS512/R (adopted 26 April 2019) paras 7.59–7.102.

⁴ *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights* (Report of the Panel) WTO Doc WT/DS567/R (adopted 16 June 2020) paras 7.240–7.299; *United States – Certain Measures on Steel and Aluminum Products* (Report of the Panel) WTO Doc WT/DS544/R and related disputes (9 December 2022).



2.0 The Conceptual and Legal Foundations of the National Security Exception in WTO Law

The concept of national security occupies a central yet contested position within international law and international economic relations. Traditionally, national security has been understood as the protection of a state's territorial integrity, political independence, and sovereign authority against external threats⁵. However, contemporary scholarship recognises that national security has evolved into a broader and more flexible concept encompassing economic stability, technological protection, energy security, and the safeguarding of critical infrastructure⁶. In the context of international trade law, this expanded understanding of security has increasingly influenced the adoption of trade-restrictive measures justified on national security grounds.

Within the framework of the World Trade Organization, the tension between economic liberalisation and national security is particularly pronounced. The WTO system is designed to promote trade openness and prevent unilateral protectionist measures. Yet it simultaneously acknowledges that member states cannot be expected to sacrifice their essential security interests in the pursuit of economic integration. Consequently, WTO agreements incorporate carefully drafted exceptions that allow members to deviate from their obligations under specific circumstances⁷.

Among these exceptions, the national security clause in Article XXI of the General Agreement on Tariffs and Trade 1994 represents one of the most controversial provisions in the multilateral trading system. The provision reflects the recognition by the original contracting parties of the GATT that issues relating to national security are inherently sensitive and closely linked to state sovereignty. As such, the clause grants member states a certain degree of discretion in determining the measures necessary for the protection of their essential security interests⁸.

3.0 The Legal Structure of Article XXI GATT

Article XXI of the GATT provides that nothing in the agreement shall be construed to prevent a member from taking measures which it considers necessary for the protection of its essential security interests. The provision identifies three broad categories of situations in which such measures may be adopted. These include measures relating to the trafficking of arms and military materials, measures taken in time of war or other emergencies in international relations, and measures implemented in fulfilment of obligations under the United Nations Charter for the maintenance of international peace and security⁹.

⁵ Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era* (2nd edn, Lynne Rienner 1991) 18.

⁶ Daniel Drezner, 'The Hidden Hand of Economic Coercion' (2003) 57(3) *International Organization* 643.

⁷ Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization* (4th edn, Cambridge University Press 2017) 598.

⁸ John H Jackson, *World Trade and the Law of GATT* (Bobbs-Merrill 1969) 748.

⁹ GATT 1994 art XXI.



The wording of Article XXI particularly the phrase “which it considers necessary” gave rise to a long-standing debate as to whether the provision is self-judging, meaning that the invoking state has the exclusive authority to determine when the exception applies. For decades, many WTO members avoided challenging national security measures through dispute settlement because of the concern that adjudication of such issues could intrude into sensitive political and security domains¹⁰. As a result, the national security exception remained largely unexplored within the jurisprudence of the multilateral trading system for much of the GATT and early WTO era.

4.0 The Emergence of WTO Jurisprudence on the Security Exception

The legal landscape began to change with the landmark decision in *Russia – Measures Concerning Traffic in Transit*, where a WTO panel was called upon to interpret Article XXI for the first time in a comprehensive manner. The dispute arose from trade restrictions imposed by Russia on Ukrainian goods following the deterioration of diplomatic relations between the two states. In its report, the panel rejected the argument that Article XXI is entirely self-judging, holding instead that the invocation of the provision is subject to limited objective review by WTO adjudicatory bodies¹¹.

The panel clarified that while WTO members retain a margin of appreciation in defining their essential security interests, the existence of a “war or other emergency in international relations” constitutes an objective requirement that must be established. Furthermore, the panel emphasised that the invocation of the national security exception must be exercised in good faith, consistent with the general principles of treaty interpretation under the Vienna Convention on the Law of Treaties¹².

Subsequent WTO disputes have reinforced this interpretative approach. In *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights*, the panel reaffirmed that Article XXI cannot be invoked as a blanket justification for measures that lack a genuine connection to an international security emergency¹³. Similarly, the disputes concerning the United States’ tariffs on steel and aluminum imposed on national security grounds have further intensified debates over the scope and limits of the exception within the WTO system¹⁴.

5.0 Relevance of the National Security Exception to Contemporary Geopolitical Conflicts

The growing prominence of the national security exception reflects the increasing securitisation of international trade relations. Geopolitical rivalries, technological competition, and regional conflicts have encouraged states to adopt trade measures justified by security considerations. These

¹⁰ Roger P Alford – The Self-Judging WTO Security Exception (n 2) 697.

¹¹ *Russia – Traffic in Transit* (n 3) Paras 7.59–7.102.

¹² Vienna Convention on the Law of Treaties 1969, art 31.

¹³ *Saudi Arabia – IPR* (n 4) Paras 7.240 – 7.299.

¹⁴ *United States – Certain Measures on Steel and Aluminum Products* (Panel Reports) WTO Docs WT/DS544/R, WT/DS548/R, WT/DS550/R, WT/DS551/R and WT/DS556/R (circulated 9 December 2022).



developments have raised concerns that the broad invocation of national security may erode the rule-based discipline of the WTO system and encourage unilateralism in international economic relations.

The strategic tensions involving the United States, Israel, and Iran provide a particularly illustrative example of this dynamic. Measures such as economic sanctions, export restrictions on sensitive technologies, and limitations on trade with entities associated with Iran's nuclear programme may implicate WTO obligations while simultaneously being justified on national security grounds. The legal and institutional implications of such measures therefore raise fundamental questions about the future role of the WTO in regulating trade disputes that intersect with international security concerns.

Understanding the conceptual and legal foundations of the national security exception is therefore essential for evaluating how WTO law responds to the intersection between trade governance and geopolitical conflict. This foundation provides the basis for analysing the implications of the United States–Israel–Iran tensions within the broader framework of WTO dispute settlement and international economic law.

6.0 Historical Evolution of the National Security Exception in the Multilateral Trading System

The national security exception in contemporary international trade law originates from the provisions of the General Agreement on Tariffs and Trade 1947 (GATT 1947), which was negotiated in the aftermath of the Second World War as part of the broader effort to establish a stable and rules-based international economic order. The architects of the post-war trading system recognised that while trade liberalisation was essential for economic recovery and global stability, states could not be expected to compromise their essential security interests in the pursuit of economic cooperation. Consequently, the drafters of the GATT incorporated a security exception designed to preserve the sovereign prerogative of states to adopt trade-restrictive measures in situations implicating national defence and international security¹⁵.

The origins of the security exception can be traced to the negotiations surrounding the proposed International Trade Organization (ITO) under the Havana Charter of 1948. Although the ITO ultimately failed to enter into force, the security exception provisions contained in the Havana Charter were largely replicated in Article XXI of the GATT¹⁶. The inclusion of this provision reflected a pragmatic compromise between the commitment to trade liberalisation and the recognition that national security considerations remain central to state sovereignty.

During the drafting process, negotiators deliberately adopted language that provided a degree of flexibility for states invoking the exception. In particular, the phrase “which it considers necessary for

¹⁵ John H Jackson (n 8) 748.

¹⁶ Douglas A Irwin, Petros C Mavroidis and Alan O Sykes, *The Genesis of the GATT* (Cambridge University Press 2008) 147.



the protection of its essential security interests” was inserted to accommodate the sensitivity of security-related decisions and to avoid subjecting such matters to intrusive international adjudication¹⁷. However, this wording also created ambiguity regarding the extent to which the invocation of the exception would be subject to legal scrutiny within the multilateral trading system.

Early State Practice under the GATT

Despite the existence of the security exception within the GATT framework, the provision was invoked only sparingly during the early decades of the multilateral trading system. Most contracting parties were reluctant to challenge security-related trade measures through dispute settlement because of the potential diplomatic and political implications of adjudicating sensitive national security issues¹⁸.

One of the earliest instances in which Article XXI was raised occurred during the dispute concerning trade restrictions imposed by the United States against Nicaragua in the 1980s. In that case, Nicaragua challenged a trade embargo imposed by the United States, arguing that the measures violated GATT obligations relating to non-discrimination and market access. The United States invoked Article XXI, contending that the embargo was necessary to protect its essential security interests¹⁹. Although the dispute panel was established under the GATT framework, the proceedings did not produce a definitive interpretation of the security exception, largely because the United States maintained that the provision was entirely self-judging and therefore outside the jurisdiction of the panel²⁰.

Another notable instance involved trade restrictions adopted by Sweden on footwear imports in the 1970s, which were justified on national security grounds due to concerns about maintaining domestic production capacity for military purposes. While the matter was discussed within the GATT Council, it was ultimately resolved through diplomatic consultation rather than formal adjudication²¹. These early episodes illustrate the reluctance of states to engage in legal scrutiny of national security measures and reinforced the perception that Article XXI functioned as a political safeguard rather than a justiciable legal provision.

7.0 Transition from the GATT to the WTO Legal Order

The establishment of the World Trade Organization in 1995 marked a significant transformation in the institutional structure and legal character of the multilateral trading system. Unlike the GATT, which operated largely as a provisional agreement with relatively weak dispute settlement procedures, the

¹⁷ Peter Van den Bossche and Werner Zdouc (n 7) 598.

¹⁸ Raj Bhala, *Modern GATT Law: A Treatise on the General Agreement on Tariffs and Trade* (Sweet & Maxwell 2005) 1405.

¹⁹ United States – Trade Measures Affecting Nicaragua (GATT Panel Report, unadopted, 1986).

²⁰ Roger P Alford – The Self-Judging WTO Security Exception (n 2) 697.

²¹ GATT Council, ‘Swedish Import Restrictions on Certain Footwear’ GATT Doc L/4250 (1975).



WTO introduced a more formalised and legally binding dispute settlement system under the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

The DSU strengthened the enforceability of WTO obligations by establishing a quasi-judicial dispute settlement mechanism involving panels and an appellate review process²². This institutional development raised important questions about the status of the national security exception within the WTO legal order. While Article XXI was carried forward into the General Agreement on Tariffs and Trade 1994 without substantive modification, the existence of a more robust dispute settlement system created the possibility that the invocation of the security exception could eventually become subject to legal interpretation by WTO adjudicatory bodies.

Nevertheless, for more than two decades following the creation of the WTO, Article XXI remained largely dormant within the dispute settlement system. Many members continued to assume that the provision was self-judging and therefore beyond the scope of judicial review²³. As a result, disputes involving national security measures were often managed through diplomatic negotiation or avoided entirely within the WTO framework.

8.0 The Re-emergence of the National Security Exception in Contemporary Trade Disputes

The relative dormancy of the national security exception began to change in the late 2010s as geopolitical tensions increasingly intersected with international trade policy. The first major turning point occurred with the dispute in Russia – Measures Concerning Traffic in Transit, where a WTO panel was required to determine whether it possessed jurisdiction to review the invocation of Article XXI²⁴.

In its landmark ruling, the panel rejected the argument that the national security exception is entirely self-judging. Instead, it held that while states retain discretion in determining their essential security interests, the invocation of Article XXI must satisfy certain objective conditions that can be examined by WTO dispute settlement bodies²⁵. This decision represented a significant shift in the legal understanding of the security exception, establishing that the provision operates within the broader framework of WTO law rather than entirely outside it.

Subsequent disputes have further reinforced the growing relevance of the national security exception in international trade law. In Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights, the panel confirmed that the existence of an emergency in international relations must

²² Understanding on Rules and Procedures Governing the Settlement of Disputes (1994) Marrakesh Agreement Establishing the World Trade Organization, Annex 2.

²³ Joost Pauwelyn, 'The WTO Security Exception: A Shield or a Sword?' (2019) 26 *Journal of International Economic Law* 1.

²⁴ Russia – Traffic in Transit (n 3).

²⁵ *ibid* Paras 7.59–7.102.



be demonstrated before Article XXI can be invoked²⁶. Similarly, the disputes concerning the United States' tariffs on steel and aluminum imposed on national security grounds have intensified debates about the potential misuse of the exception as a justification for protectionist trade measures²⁷.

These developments illustrate the evolving role of the national security exception within the multilateral trading system. What was once considered a rarely invoked and largely political provision has now become a central issue in contemporary WTO jurisprudence. The increasing intersection between geopolitical conflict and international trade policy has therefore elevated the importance of understanding the legal boundaries of Article XXI.

The historical evolution of the national security exception thus reveals a gradual shift from political discretion toward legal scrutiny within the WTO dispute settlement framework. This transformation provides the necessary context for analysing how current geopolitical tensions such as those involving the United States, Israel, and Iran may test the limits of the national security exception and shape the future trajectory of WTO law.

9.0 The Textual Structure of Article XXI

The national security exception in the multilateral trading system is codified in Article XXI of the General Agreement on Tariffs and Trade 1994 (GATT 1994). The provision establishes that nothing in the agreement shall be construed to prevent a member from taking measures which it considers necessary for the protection of its essential security interests²⁸. The article contains three principal subparagraphs identifying circumstances under which such measures may be adopted:

measures relating to fissionable materials or materials used in nuclear production;

measures relating to the traffic in arms, ammunition, and implements of war, including measures taken to supply military establishments; and measures taken in time of war or other emergency in international relations²⁹.

In addition, Article XXI(c) allows members to adopt measures in pursuance of obligations under the United Nations Charter for the maintenance of international peace and security³⁰. These provisions collectively reflect the recognition that the preservation of national and international security may, in certain circumstances, justify departures from otherwise binding trade obligations.

However, the drafting of Article XXI also created interpretative ambiguity. The phrase "which it considers necessary" suggests that the determination of necessity lies with the invoking state. At the

²⁶ Saudi Arabia – IPR (n 4) Paras 7.240–7.299.

²⁷ US – Steel and Aluminum Products (n 14).

²⁸ GATT 1994 (n 1) art XXI, WTO Agreement art IX.

²⁹ *ibid* art XXI(b).

³⁰ *ibid* art XXI(c).



same time, the provision is situated within a treaty governed by international law and subject to dispute settlement procedures. This tension has given rise to a long-standing debate regarding the extent to which the invocation of Article XXI is subject to judicial review within the World Trade Organization dispute settlement system³¹.

10.0 The Debate on the Self-Judging Nature of the Security Exception

For many years, a dominant view among several states was that Article XXI constituted a self-judging clause, meaning that the determination of whether a measure was necessary for the protection of essential security interests rested exclusively with the invoking member³². This interpretation was grounded primarily in the textual formulation of the provision, particularly the wording “which it considers necessary,” which appeared to grant members broad discretion in assessing their own security needs.

Supporters of this interpretation also relied on historical negotiating records of the GATT, which suggested that the drafters intended to avoid subjecting national security decisions to international adjudication³³. Given the sensitivity of security matters, it was widely believed that WTO panels lacked the institutional competence to evaluate the legitimacy of national security claims. Consequently, members often refrained from challenging security-related measures within the dispute settlement framework.

Nevertheless, a growing body of scholarly commentary questioned the plausibility of a fully self-judging interpretation. Critics argued that allowing states to invoke Article XXI without any form of legal scrutiny would undermine the rule-based character of the multilateral trading system and create opportunities for disguised protectionism³⁴. As a result, many scholars advocated a more balanced approach in which WTO adjudicatory bodies would exercise limited review to ensure that the exception is not abused.

11.0 Judicial Interpretation in Russia – Measures Concerning Traffic in Transit

The debate surrounding the self-judging nature of Article XXI was decisively addressed in the landmark dispute *Russia – Measures Concerning Traffic in Transit*, which marked the first comprehensive interpretation of the national security exception by a WTO panel³⁵.

The dispute arose after Russia imposed restrictions on the transit of goods from Ukraine through its territory following the deterioration of diplomatic relations between the two states. Ukraine challenged

³¹ Peter Van den Bossche and Werner Zdouc (n 7) 598–601.

³² Roger P Alford – *The Self-Judging WTO Security Exception* (n 2) 697.

³³ John H Jackson (n 8) 748–749.

³⁴ Joost Pauwelyn, ‘The WTO Security Exception: A Shield or a Sword?’ (2019) 26 *Journal of International Economic Law* 1.

³⁵ *Russia – Traffic in Transit* (n 3).



these restrictions as inconsistent with obligations under GATT relating to freedom of transit. In response, Russia invoked Article XXI(b)(iii), arguing that the measures were necessary for the protection of its essential security interests during an emergency in international relations.

In its report, the panel rejected Russia's argument that Article XXI is entirely self-judging and therefore outside the jurisdiction of WTO dispute settlement bodies. Instead, the panel held that while the provision grants members a margin of discretion, the invocation of the security exception is not immune from review³⁶. Applying the rules of treaty interpretation contained in the Vienna Convention on the Law of Treaties, the panel concluded that certain elements of Article XXI particularly the existence of a "war or other emergency in international relations" constitute objective conditions that can be examined by adjudicators³⁷.

The panel further clarified that an "emergency in international relations" refers to a situation of armed conflict, latent armed conflict, or heightened tension between states that gives rise to defence or military interests³⁸. While the panel acknowledged that members possess discretion in defining their essential security interests, it emphasised that the invocation of Article XXI must be undertaken in good faith and cannot serve as a pretext for circumventing WTO obligations.³⁹

Subsequent Jurisprudence and the Consolidation of Legal Principles

Following the decision in *Russia – Traffic in Transit*, subsequent WTO disputes have further elaborated the scope of the national security exception. In *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights*, the panel addressed the invocation of Article 73 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which mirrors the language of Article XXI GATT⁴⁰.

The dispute arose from allegations that Saudi Arabia failed to protect intellectual property rights associated with broadcasting services owned by Qatari entities. Saudi Arabia invoked the security exception, arguing that the measures were justified due to the severance of diplomatic relations with Qatar and the broader regional security crisis.

In its report, the panel reaffirmed the interpretative approach adopted in *Russia – Traffic in Transit*. It held that the existence of an emergency in international relations must be objectively demonstrated and that the invocation of the security exception must bear a plausible relationship to the protection of

³⁶ *ibid* Paras 7.59–7.63.

³⁷ VCLT (n 12) art 31.

³⁸ *Russia – Traffic in Transit* (n 3) Paras 7.74–7.76.

³⁹ *ibid* Paras 7.101–7.103.

⁴⁰ Agreement on Trade-Related Aspects of Intellectual Property Rights 1994, art 73.



essential security interests⁴¹. The panel also emphasised that WTO members remain bound by the principle of good faith in exercising their rights under the treaty.

Another significant development emerged from disputes concerning tariffs imposed by the United States on steel and aluminum imports under Section 232 of the US Trade Expansion Act. Several WTO members challenged these measures as inconsistent with WTO obligations, while the United States argued that they were justified under Article XXI(b) on national security grounds. In a series of panel reports issued in 2022, WTO panels rejected the US defence and held that the measures did not satisfy the conditions of Article XXI⁴².

These decisions represent a significant evolution in WTO jurisprudence, demonstrating that the national security exception is not a legal “black hole” beyond the reach of adjudication. Rather, it operates as a narrowly circumscribed exception subject to limited judicial scrutiny.

Emerging Principles Governing the Security Exception

The jurisprudence emerging from WTO dispute settlement reveals several key principles governing the interpretation and application of Article XXI.

First, the national security exception is not entirely self-judging. While members retain discretion in determining their essential security interests, the invocation of the exception remains subject to review by WTO adjudicatory bodies⁴³.

Second, the existence of a war or emergency in international relations constitutes an objective jurisdictional requirement that must be demonstrated before the exception can be invoked⁴⁴.

Third, the invocation of the exception must comply with the principle of good faith, which forms a fundamental rule of treaty interpretation under international law⁴⁵.

Finally, the measure adopted must bear a plausible relationship to the protection of the invoking member’s essential security interests⁴⁶.

Together, these principles reflect an attempt by WTO panels to strike a delicate balance between two competing imperatives: the need to preserve the sovereign authority of states in matters of national security and the need to safeguard the integrity of the multilateral trading system from abuse.

⁴¹ Saudi Arabia – IPR (n 4) Paras 7.240–7.299.

⁴² US – Steel and Aluminum Products (n 14).

⁴³ Russia – Traffic in Transit (n 3) Para 7.63.

⁴⁴ *ibid* Paras 7.74–7.76.

⁴⁵ VCLT (n 12) art 26.

⁴⁶ Saudi Arabia – IPR (n 4) Para 7.290.



The clarification of these interpretative principles provides a crucial foundation for analysing the implications of contemporary geopolitical conflicts such as the tensions involving the United States, Israel, and Iran within the framework of WTO law.

12.0 The National Security Exception and Contemporary Geopolitical Conflicts: Implications of the United States–Israel–Iran Tensions

The increasing interaction between geopolitical conflict and international economic relations has significantly reshaped the application of the national security exception within the multilateral trading system. While the legal framework of the World Trade Organization (WTO) was designed primarily to regulate commercial relations among states, contemporary global politics demonstrates that trade policy is frequently employed as an instrument of strategic and security policy⁴⁷. In this context, economic sanctions, export restrictions, and financial controls have become central tools through which states seek to advance national security objectives.

The tensions involving the United States, Israel, and Iran represent a particularly significant example of this phenomenon. Concerns surrounding Iran's nuclear programme, regional military influence, and strategic rivalry with both the United States and Israel have generated a complex network of economic restrictions and sanctions that affect international trade flows⁴⁸. These measures raise important legal questions regarding the compatibility of security-related trade restrictions with WTO obligations and the potential invocation of the national security exception under Article XXI of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

13.0 Economic Sanctions and Trade Restrictions in the US–Iran Relationship

Economic sanctions have long served as a central component of the United States' strategy towards Iran. These measures intensified following concerns regarding Iran's nuclear development programme and its alleged support for armed groups in the Middle East⁴⁹. The United States has imposed a wide range of restrictions targeting Iranian financial institutions, energy exports, and technology transfers, many of which have significant implications for international trade.

Although some of these measures have been implemented pursuant to resolutions adopted by the United Nations Security Council, others represent unilateral trade restrictions adopted by the United States under its domestic legal framework⁵⁰. From the perspective of WTO law, such measures may raise questions regarding compliance with obligations relating to non-discrimination, market access, and the prohibition of quantitative restrictions⁵¹.

⁴⁷ Peter Van den Bossche and Werner Zdouc (n 7) 601.

⁴⁸ Daniel H Joyner, *Iran's Nuclear Program and International Law* (Oxford University Press 2016) 3–7.

⁴⁹ Suzanne Maloney, *Iran's Political Economy since the Revolution* (Cambridge University Press 2015) 353.

⁵⁰ Charter of the United Nations 1945, arts 39–41.

⁵¹ GATT 1994 arts I, XI and XIII.



In principle, a WTO member adopting trade restrictions against another member may seek to justify such measures under Article XXI(b)(iii) of the GATT on the grounds that they are necessary for the protection of essential security interests during a war or other emergency in international relations. However, the jurisprudence emerging from WTO dispute settlement indicates that the invocation of this exception is subject to certain legal conditions, including the requirement that the measures bear a plausible relationship to the protection of security interests and that they be adopted in good faith⁵².

14.0 The Strategic Role of Israel in the Regional Security Context

The security dynamics of the Middle East further complicate the interaction between trade measures and national security considerations. The longstanding rivalry between Israel and Iran, particularly in relation to Iran's nuclear ambitions and its regional alliances, has contributed to heightened geopolitical tensions that often influence the economic policies of allied states⁵³.

Although Israel is not a direct party to many trade disputes involving Iran within the WTO framework, its strategic partnership with the United States plays a significant role in shaping the broader regional security environment. Cooperation between the two states in areas such as intelligence, defence technology, and sanctions enforcement has reinforced the use of economic restrictions as a tool of collective security policy⁵⁴.

These developments illustrate how trade-related measures adopted by one state may have broader implications for international trade governance when they are embedded within complex geopolitical alliances. The possibility that such measures could be justified under the national security exception underscores the importance of clearly defined legal standards within the WTO system.

15.0 WTO Law and the Challenge of Security-Driven Trade Measures

The tensions involving the United States, Israel, and Iran highlight a broader structural challenge for the WTO: how to reconcile the rule-based discipline of international trade law with the sovereign prerogative of states to protect their security interests. The jurisprudence emerging from Russia – Measures Concerning Traffic in Transit demonstrates that the WTO dispute settlement system is willing to exercise limited review over the invocation of the national security exception⁵⁵.

However, disputes involving major geopolitical conflicts present unique institutional challenges. States may be reluctant to submit security-related measures to adjudication due to concerns regarding sovereignty and the sensitivity of national defence policies. Furthermore, the enforcement of WTO

⁵² Russia – Traffic in Transit (n 3) Paras 7.59–7.102.

⁵³ Trita Parsi, *Treacherous Alliance: The Secret Dealings of Israel, Iran and the United States* (Yale University Press 2007) 12.

⁵⁴ Kenneth Katzman, *Iran Sanctions* (Congressional Research Service Report, 2023) 5–10.

⁵⁵ Russia – Traffic in Transit (n 3) Paras 7.74–7.76.



rulings in cases involving national security measures may be complicated by the political realities of international relations⁵⁶.

In the context of the United States–Israel–Iran tensions, these challenges are particularly evident. Economic sanctions targeting Iran often involve complex legal justifications grounded in national security considerations, counter-proliferation policies, and international security cooperation. The application of WTO rules to such measures therefore requires a careful balance between legal accountability and respect for legitimate security concerns.

16.0 Critical Evaluation of the National Security Exception in WTO Law

The national security exception embodied in Article XXI of the General Agreement on Tariffs and Trade 1994 (GATT 1994) represents one of the most complex and controversial provisions within the legal framework of the World Trade Organization (WTO). On the one hand, the exception reflects the fundamental principle that states cannot be compelled to sacrifice their essential security interests in pursuit of economic cooperation. On the other hand, the broad wording of Article XXI raises the possibility that states may invoke national security as a pretext for protectionist trade measures⁵⁷.

The challenge for the WTO system therefore lies in reconciling two competing objectives: preserving the sovereign authority of states to protect their national security while maintaining the rule-based discipline of the multilateral trading system⁵⁸. If the security exception is interpreted too broadly, it risks undermining the predictability and stability that constitute the foundation of the WTO regime. Conversely, an overly restrictive interpretation may constrain the legitimate capacity of states to respond to genuine security threats.

The jurisprudence emerging from WTO dispute settlement suggests that adjudicatory bodies have attempted to strike a delicate balance between these competing considerations. By recognising that Article XXI is not entirely self-judging while simultaneously acknowledging the discretion of states in defining their security interests, WTO panels have developed an interpretative approach that seeks to safeguard both legal accountability and state sovereignty⁵⁹.

One of the most significant criticisms of the national security exception concerns the potential for abuse. Because the concept of national security is inherently broad and politically sensitive, it can easily be invoked to justify measures that are motivated primarily by economic protectionism rather than genuine security concerns⁶⁰. Scholars have warned that the increasing use of security-related trade

⁵⁶ Joost Pauwelyn (n 23) 1.

⁵⁷ Peter Van den Bossche and Werner Zdouc (n 7) 598–601.

⁵⁸ John H Jackson (n 8) 748.

⁵⁹ Russia – Traffic in Transit (n 3) Paras 7.59–7.63.

⁶⁰ Raj Bhala, Modern GATT Law (n 18) 1405.



restrictions may lead to the gradual erosion of the multilateral trading system. If states begin to rely extensively on the national security exception to justify trade barriers, the core principles of non-discrimination and trade liberalisation embodied in WTO agreements could be severely weakened⁶¹.

The controversy surrounding the tariffs imposed by the United States on steel and aluminum imports illustrates this risk. These measures were adopted pursuant to domestic legislation on the grounds that imports threatened the national security of the United States. However, several WTO members challenged the measures, arguing that they were essentially protectionist policies aimed at shielding domestic industries from foreign competition⁶². In its reports on these disputes, WTO panels concluded that the United States had failed to demonstrate that the measures satisfied the conditions of Article XXI(b)(iii), particularly the requirement that they be taken in time of war or other emergency in international relations⁶³. These developments underscore the importance of maintaining effective legal constraints on the invocation of the national security exception. Without such constraints, the exception could become a loophole that allows states to circumvent their WTO obligations with minimal accountability.

17.0 Institutional Limitations of WTO Adjudication in Security Matters

Despite the growing body of jurisprudence on Article XXI, the capacity of the WTO dispute settlement system to adjudicate national security disputes remains subject to significant institutional limitations. Questions relating to national defence, military strategy, and geopolitical conflict often involve highly sensitive information that governments may be unwilling to disclose in an international adjudicatory forum⁶⁴.

Moreover, WTO panels and the Appellate Body were designed primarily to resolve trade disputes rather than to assess complex questions of international security. As a result, adjudicators may face difficulties in evaluating the legitimacy of security-based trade measures, particularly when such measures are embedded within broader geopolitical conflicts⁶⁵.

These challenges raise broader questions about the institutional competence of the WTO in addressing disputes that involve the intersection of trade and national security. Some scholars have argued that excessive judicial scrutiny of security-related measures may risk encroaching upon the sovereign prerogatives of states and politicising the dispute settlement system⁶⁶. Others contend that failing to

⁶¹ Joost Pauwelyn (n 23) 1.

⁶² US – Steel and Aluminum Products (n 14).

⁶³ *ibid* Paras 7.130–7.145.

⁶⁴ Robert D Blackwill and Jennifer M Harris, *War by Other Means: Geoeconomics and Statecraft* (Harvard University Press 2016) 45.

⁶⁵ Claus-Dieter Ehlermann and Lothar Ehring, 'Decision-Making in the World Trade Organization' (2005) 8 *Journal of International Economic Law* 51.

⁶⁶ Roger P Alford – The Self-Judging WTO Security Exception (n 2) 697.



exercise meaningful oversight would undermine the credibility of WTO law and encourage unilateralism in international trade relations⁶⁷.

18.0 The Emerging Doctrine of Good Faith and Objective Review

In response to these challenges, WTO jurisprudence has increasingly emphasised the role of good faith and objective review as guiding principles in the interpretation of the national security exception. In the landmark dispute *Russia – Measures Concerning Traffic in Transit*, the panel held that while members possess discretion in defining their essential security interests, the invocation of Article XXI must be undertaken in good faith and within the limits established by international law⁶⁸.

The panel further clarified that the existence of a “war or other emergency in international relations” constitutes an objective condition that can be examined by WTO adjudicators⁶⁹. This approach ensures that the security exception cannot be invoked arbitrarily while still allowing states a reasonable margin of appreciation in determining how to respond to security threats.

The same reasoning was subsequently reaffirmed in *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights*, where the panel emphasised that the invocation of the security exception must bear a plausible relationship to the protection of essential security interests⁷⁰. These decisions collectively establish an emerging doctrine in WTO jurisprudence that seeks to balance deference to state sovereignty with the need for legal discipline.

19.0 Lessons for WTO Law from the United States–Israel–Iran Conflict

The Increasing Securitisation of International Trade

The geopolitical tensions involving the United States, Israel, and Iran highlight a broader transformation in international economic relations: the growing securitisation of trade policy.

Traditionally, the legal framework of the World Trade Organization (WTO) was designed to regulate commercial interactions among states on the basis of economic principles such as non-discrimination, market access, and transparency⁷¹. However, contemporary geopolitical rivalries increasingly demonstrate that trade policy is often deployed as a strategic instrument of foreign and security policy.

Economic sanctions, export controls, and restrictions on strategic technologies have become central tools through which states seek to influence the behaviour of rival governments⁷². The conflict dynamics involving Iran particularly in relation to concerns about its nuclear programme and regional

⁶⁷ Joost Pauwelyn (n 23) 1.

⁶⁸ *Russia – Traffic in Transit* (n 3) Paras 7.101–7.103.

⁶⁹ *ibid* Paras 7.74–7.76.

⁷⁰ *Saudi Arabia – IPR* (n 4) Paras 7.240–7.299.

⁷¹ Peter Van den Bossche and Werner Zdouc (n 7) 1–3.

⁷² Robert D Blackwill and Jennifer M Harris (n 65) 21.



security activities illustrate how trade restrictions may be justified primarily on national security grounds rather than purely economic considerations.

20.0 Recommendations for Reforming the Application of the National Security Exception in WTO Law

One of the principal challenges associated with the national security exception under Article XXI of the General Agreement on Tariffs and Trade 1994 (GATT 1994) lies in the ambiguity surrounding its scope and application. The wording of the provision particularly the phrase “which it considers necessary for the protection of its essential security interests” has historically created uncertainty regarding the extent of discretion available to members of the World Trade Organization (WTO)⁷³.

Although recent jurisprudence has clarified that the security exception is not entirely self-judging, the absence of detailed interpretative guidance continues to generate legal uncertainty⁷⁴. To address this challenge, WTO members should consider adopting authoritative interpretative guidelines that clarify the circumstances under which Article XXI may be invoked. Such guidelines could specify the types of situations that constitute a “war or other emergency in international relations” and outline the factors that panels may consider in determining whether a measure is genuinely related to the protection of essential security interests. The adoption of such interpretative guidance would enhance legal predictability while preserving the flexibility necessary for states to respond to genuine security threats.

Strengthening the Role of Good Faith in the Invocation of the Security Exception

A second important reform concerns the strengthening of the principle of good faith in the application of the national security exception. Under general principles of international law, treaty obligations must be performed in good faith, as reflected in Article 26 of the Vienna Convention on the Law of Treaties⁷⁵. This principle also plays a central role in the jurisprudence of WTO dispute settlement bodies when interpreting exceptions to treaty obligations.

In *Russia – Measures Concerning Traffic in Transit*, the WTO panel emphasised that the invocation of Article XXI must be exercised in good faith and cannot serve as a pretext for circumventing WTO obligations⁷⁶. This principle should be further developed through the jurisprudence of WTO adjudicatory bodies and through interpretative guidance adopted by WTO members. Strengthening the role of good faith would help ensure that the national security exception is used only in circumstances

⁷³ GATT 1994 art XXI, WTO Agreement art IX.

⁷⁴ *Russia – Traffic in Transit* (n 3) Paras 7.59–7.63.

⁷⁵ VCLT (n 12) art 26.

⁷⁶ *Russia – Traffic in Transit* (n 3) Paras 7.101–7.103.



where genuine security concerns are present. It would also discourage the misuse of security justifications as a means of advancing protectionist trade policies.

Enhancing Transparency in Security-Related Trade Measures

Another important reform concerns the need for greater transparency in the adoption of security-related trade measures. Many national security measures adopted by states are implemented through domestic legislation or executive actions that are not always accompanied by clear explanations of their objectives or legal basis⁷⁷.

Greater transparency could be achieved through enhanced notification requirements within the WTO framework. Members invoking Article XXI should be encouraged to provide detailed explanations of the security concerns that justify the adoption of trade-restrictive measures, while respecting the confidentiality of sensitive information where necessary.

Such transparency would promote greater trust among WTO members and facilitate constructive dialogue regarding the legitimacy of security-related trade measures. It would also enable dispute settlement bodies to better assess the legal validity of measures adopted under the national security exception.

Promoting Dialogue Between Trade and Security Institutions

The tensions between trade liberalisation and national security concerns also highlight the need for greater coordination between international trade institutions and organisations responsible for maintaining international peace and security. In particular, measures adopted pursuant to resolutions of the United Nations Security Council often involve trade restrictions that may affect the rights and obligations of WTO members⁷⁸.

Enhanced institutional dialogue between the WTO and relevant international security institutions could help ensure greater coherence between trade governance and international security policy. Such coordination may also assist in clarifying the legal status of trade measures adopted in response to collective security decisions. Although the WTO is not a security organisation, its rules inevitably intersect with the broader architecture of global governance. Developing mechanisms for dialogue between trade and security institutions would therefore contribute to a more coherent and effective international legal system.

Preserving the Integrity of the Multilateral Trading System

Ultimately, the most important objective of any reform effort should be the preservation of the integrity of the multilateral trading system. The rules governing international trade are founded on principles of

⁷⁷ Joost Pauwelyn (n 23) 1.

⁷⁸ United Nations Security Council, Charter of the United Nations 1945, arts 39–41.



non-discrimination, predictability, and the peaceful settlement of disputes⁷⁹.⁷ Excessive reliance on national security justifications risks undermining these principles and weakening the credibility of the WTO legal order.

At the same time, the WTO must recognise that national security concerns are an inherent aspect of international relations and cannot be entirely excluded from trade governance. The challenge is therefore to maintain a balanced approach that respects both the sovereign rights of states and the collective interest in maintaining a stable and predictable trading system.

The reforms proposed in this section clarifying the scope of Article XXI, strengthening the principle of good faith, enhancing transparency, and promoting institutional dialogue represent important steps toward achieving this balance. By adopting such measures, WTO members can ensure that the national security exception remains a necessary safeguard rather than a source of systemic instability within the multilateral trading system.

21.0 Conclusion

The national security exception remains one of the most complex and contested provisions within the legal framework of the World Trade Organization (WTO). While the rules of the multilateral trading system seek to promote trade liberalisation, predictability, and non-discrimination, they also recognise that states retain the sovereign right to safeguard their essential security interests. This delicate balance is reflected in Article XXI of the General Agreement on Tariffs and Trade 1994 (GATT 1994), which permits members to adopt trade-restrictive measures in circumstances involving national security concerns⁸⁰.

Historically, the interpretation of the national security exception generated significant uncertainty, particularly with respect to whether the provision was entirely self-judging. For many decades, WTO members were reluctant to challenge security-related measures through dispute settlement, largely due to the political sensitivity surrounding national security issues. However, the jurisprudence emerging from WTO panels especially in *Russia – Measures Concerning Traffic in Transit* has clarified that the invocation of Article XXI is not beyond legal scrutiny⁸¹. While members retain discretion in defining their essential security interests, the existence of a “war or other emergency in international relations” constitutes an objective condition that may be examined by WTO adjudicators⁸².

The geopolitical tensions involving the United States, Israel, and Iran illustrate the increasing intersection between international trade governance and global security dynamics. Measures such as

⁷⁹ Peter Van den Bossche and Werner Zdouc (n 7) 1–3.

⁸⁰ GATT 1994 art XXI, WTO Agreement art IX.

⁸¹ *Russia – Traffic in Transit* (n 3) Paras 7.59–7.63.

⁸² *ibid* 7.74–7.76.



economic sanctions, export restrictions, and other trade-related controls adopted in response to security threats highlight the growing use of economic instruments as tools of strategic policy. These developments raise important questions regarding the compatibility of security-driven trade measures with WTO obligations and the potential risks that the broad invocation of national security may pose to the stability of the multilateral trading system.

This article has demonstrated that the national security exception serves an essential function within the WTO legal order by allowing states to respond to genuine security emergencies. At the same time, the broad language of Article XXI creates the potential for misuse if adequate legal constraints are not maintained. The jurisprudence of WTO dispute settlement bodies has therefore played a crucial role in establishing interpretative principles such as the requirement of good faith and the need for a plausible relationship between the measure adopted and the protection of essential security interests that help prevent the abuse of the exception⁸³.

Nevertheless, the increasing securitisation of international trade relations suggests that the challenges associated with the national security exception are likely to intensify in the future. As geopolitical rivalries deepen and economic statecraft becomes a more prominent feature of international relations, states may increasingly rely on security justifications to defend restrictive trade measures. The experience of the United States–Israel–Iran tensions therefore underscore the importance of maintaining a balanced and principled interpretation of Article XXI.

Ultimately, the continued legitimacy and effectiveness of the WTO system will depend on the ability of its members and adjudicatory bodies to manage the complex relationship between national security and international trade obligations. By clarifying the legal boundaries of the national security exception while respecting the sovereign rights of states, the WTO can preserve the integrity of the rule-based trading system while accommodating the realities of an evolving geopolitical landscape.

⁸³ Saudi Arabia – IPR (n 4) Paras 7.240–7.299.