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Reforming GATT 1994 Article XXI: Towards Greater Transparency and Institutional Efficiency

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Abstract. This paper looks at problems with Article XXI(b) of GATT 1994. Nowadays, several countries use the concept of " national security exception" to take some actions that might break GATT rules when they believe the actions they take are protecting their " essential security interests." By analyzing the cases *United States — Trade Measures Affecting Nicaragua and Saudi Arabia — Measures Concerning the Protection of Intellectual Property Rights (DS567)*, this paper finds some main problems of this Article: first, the words "essential security interests" are not clearly defined, and second, there are no clear rules on how and when countries can use this exception. This paper will use ideas from liberal institutionalism and realism, and suggest solutions like making the process more open and clarifying what "essential security interests" means in order to balance countries' rights and the need to keep the WTO system fair and effective.

Keywords: GATT XXI, essential security interests, National Security Exception, United States — Trade Measures Affecting Nicaragua, Saudi Arabia — Measures Concerning the Protection of Intellectual Property Rights (DS567)

1. Introduction

The World Trade Organization (WTO) is important for solving international trade disputes. The General Agreement on Tariffs and Trade (GATT 1994) [1] is the main set of rules for WTO trade in goods. Article XXI(b) of GATT says that if a country thinks its "essential security interests" are in danger, it can take any steps it sees as necessary. This is called the "national security exception."

Now, many countries use GATT 1994 Article XXI(b) [1] to protect their own interests. But this rule is not very clear. What does "essential security" really mean? How should we define it? How can we know if a country's security is truly at risk?

By studying the case United States — Trade Measures Affecting Nicaragua [2], we see that the WTO Dispute Settlement Understanding (DSU) has trouble dealing with national security cases. It is hard to respect countries' security needs while also stopping them from misusing this rule.

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2. Literature review

2.1. The meaning of "essential security interests" is very unclear

Some experts say there is no exact definition. Mona Pinchis-Paulsen [3] notes that the security exception in GATT Article XXI(b) [1] is often understood in a very broad way. It can include things like economic sanctions, anti-terrorism steps, and other actions taken for security. She warns that because these actions are often secret and treated as special, they reduce openness and make it hard for the WTO to judge them fairly.

2.2. The WTO Dispute Settlement Understanding (DSU) also has issues

Some experts say the DSU lacks clear standards to decide if a country's "essential security interests" are truly threatened. To respect member countries' rights, the DSU is often cautious and does not strictly check if a country's reason for using the "national security exception" is strong enough.

Colin Luckie [4] argues that countries usually think they have the right to decide for themselves when their essential security interests are threatened and what steps to take. Because of this, after a country uses Article XXI, it often believes that DSU panels cannot review or question its decision.

2.3. Existing reform ideas

Many experts have suggested some ways to improve GATT Article XXI.

Mona Pinchis-Paulsen [5] proposes several steps. Firstly, the WTO notification system should be made stronger so that countries must report when and why they use the national security exception. Second, there should be a place where countries can talk and share views on security issues. Third, the concept "essential security interests" should not be treated as one broad idea. Instead, it should be broken into parts, like goals, methods, and types. This would let experts focus on the real situation and decide if a country's use of the exception is reasonable. Finally, she calls for more openness and accountability.

Colin Luckie [6] also has ideas. He says that even though many countries think using Article XXI(b) [1] is their own choice, the WTO should still keep the right for experts to review these decisions. He also says Article XXI should have clearer rules about when the WTO can review a case.

3. Research questions and methods

3.1. This study answers the following questions

1. What specific problems exist in the framework of GATT Article XXI?

2. How can the trade system stop misuse of the national security exception without taking away countries' rightful powers?

3. What practical changes could make the WTO dispute system better at handling these exceptions?

3.2. Research methods

1. Case Analysis: This study will look closely at the dispute "United States — Trade Measures Affecting Nicaragua [2]" to find and explain the specific legal and system weaknesses in how GATT

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Article XXI is used.

2. Theory Use: By using theories of international relations (like liberal institutionalism and realism) and looking at how international groups work, the research will make concrete and useful reform ideas for the WTO system.

4. Case analysis

The following are two typical cases that used the national security exception. They show some weaknesses of GATT XXI(b).

4.1. United States — trade measures affecting Nicaragua

In 1985, the United States imposed a full trade embargo on Nicaragua. The US said this was due to national security concerns and the political situation in Central America at that time. The US government believed Nicaragua's actions and alliances threatened its essential security interests. Therefore, the US invoked GATT Article XXI(b) [1]. This provision allows members to take measures they consider necessary to protect their national security.

Later, Nicaragua filed a complaint under the GATT dispute settlement system. It claimed the embargo violated US obligations under GATT [1]. A panel was established to handle the case. However, the panel encountered a key problem: did it have the authority to review whether the US use of the national security exception was valid? After careful consideration, the panel concluded it could not review whether the US determination of a security threat was reasonable. Instead, the panel did very little: it merely noted that the US had invoked Article XXI(b) and refused to rule on whether the measure complied with GATT rules.

This case shows that before the WTO established its new dispute settlement mechanism in 1995, GATT's scope of review was very limited. The panel's decision not to examine the substance of the US security claim meant the embargo measures were effectively beyond GATT's reach. This outcome highlights the tension between two needs: respecting national sovereignty and maintaining the multilateral trading system.

4.2. Case analysis: Saudi Arabia — measures concerning the protection of intellectual property rights (DS567)

In 2017, Saudi Arabia and several other countries cut off diplomatic and economic relations with Qatar. Following this, Qatar filed a complaint at the WTO. It claimed Saudi Arabia failed to protect Qatari intellectual property rights. Specifically, it pointed to the unauthorized broadcasting of Qatari sports channels.

Saudi Arabia defended itself by invoking the national security exception. It referred to Article 73(b)(iii) of the TRIPS Agreement [7], which is linked to GATT's security clause [1]. Saudi Arabia argued that the crisis with Qatar was an "emergency in international relations." It stated it could therefore take any action it considered necessary to protect its essential security interests [7], including stopping the enforcement of IP rights for Qatari works.

The WTO panel then conducted a review. This was significant because it was one of the first times a panel clearly asserted its authority to review such national security claims [7]. The panel agreed that the situation qualified as an "emergency in international relations."

However, the panel found that Saudi Arabia's actions went too far. It ruled that completely denying judicial procedures for IP enforcement was not necessary to protect Saudi Arabia's security

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interests [7]. The panel emphasized that even during a crisis, the TRIPS Agreement requires members to maintain basic judicial and administrative processes for IP rights.

This case is important for two main reasons. First, it confirms that WTO panels can review whether a situation is truly a security emergency and whether the measures taken are proportionate [7]. This challenges the idea that national security is solely for a country to decide without any oversight. Second, it makes clear that invoking national security does not allow a country to ignore all its WTO obligations. The measures must still meet the minimum procedural standards of the agreements. This case thus finds a middle ground, respecting national sovereignty while preventing misuse of the security exception.

4.3. Problems shown

This case shows that GATT XXI(b) [1] has three main weaknesses:

1. There is no clear standard to judge if a country's essential security interests are harmed.
2. The process for using and reviewing the rule is not open enough. When a country uses Article XXI(b) [1], it does not have to give enough explanation, like why it used the rule or why it thinks its security interests were harmed. Also, when expert groups look at these cases, the process is not open.
3. There is no supervision before or after.

For these reasons, future improvements to Article XXI(b) [1] should focus on these areas.

5. Theoretical framework

For Article XXI, the biggest argument is whether to support individual countries' claims or to focus on the power of international institutions.

This paper will use two main International Relations theories to find a solution that balances countries' rights with the need to keep the WTO system strong and fair.

5.1. Liberal institutionalism

Liberal institutionalism argues that international cooperation needs clear and predictable rules. When WTO procedures are transparent, members are more likely to comply with agreements. They feel more secure about their interests being protected. Clear rules also create trust - every member receives equal treatment.

For instance, if the WTO provides specific guidelines for applying national security exceptions [1], countries would have more confidence in the system. They would trust that the rule won't be abused. This approach leads to more efficient dispute resolution and strengthens the WTO's credibility.

5.2. Realism

Realism says national security is a core interest for every country. It is closely linked to sovereignty. From this view, states often do not want to limit their power. They do not want outside groups to define their "essential security interests." Security matters are too sensitive for international bodies to judge completely.

This means any plan to clarify Article XXI must still respect a nation's right to decide its own threats. The WTO can offer general guidance. It can encourage transparency [3]. But it cannot replace the judgment of sovereign states.

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Realism reminds us that reform needs a careful balance. It should prevent abuse of the security exception. But it must not force countries to give up their sovereignty over security.

Together, these two views suggest that a good reform plan should meet both needs. The DSU should set clear and trustworthy standards for reviewing cases, while also respecting countries' rights to protect their security [6]. Countries should have enough room to explain why they feel threatened, but there must also be ways to stop misuse of Article XXI [1].

6. Reform suggestions

Considering the problems with GATT XXI [1] mentioned before — no clear judging standard, not enough openness in the process, no supervision — this paper lists several ideas that both respect countries' needs and make trade rules more predictable and trustworthy.

6.1. Clarify the meaning of "essential security interests"

This paper suggests that WTO member countries should hold a special meeting under the WTO framework to discuss and clarify the meaning of "essential security interests [1]." Rather than giving one fixed definition, members could agree on a set of guiding principles and examples that illustrate what situations may qualify as essential security concerns. For instance, they might list issues such as armed conflicts, serious threats to public safety, or large-scale cyberattacks as possible grounds for invoking Article XXI [1].

In addition, members could work together to establish basic judging standards for when the national security exception can be used [5, 6]. These standards should not interfere with a country's sovereign right to decide its own security needs, but can provide a common reference point. This would make WTO dispute settlement more predictable and fair, while still respecting the sensitive nature of national security decisions..

6.2. Increase openness

6.2.1. Countries should be required to give clear written reasons and evidence when using Article XXI of GATT 1994. The DSU could ask countries to submit a written application that includes several specific parts

First, the application should explain why they think their essential security interests are threatened. For example, the country needs to describe the possible influences on its defense industry, key energy supplies, border security, or other important areas related to national security. This explanation should be specific, not just a general claim of a "security threat."

Second, the country should write about how long the measure will last and explain why the measure is needed. The countries could refer to domestic laws, providing safety reports, or other relevant evidence that shows the measure is suitable and done in good faith.

Asking countries to submit written reasons would not take away the country's right to protect its security, but it would improve openness and let the WTO and other countries understand the situation better. This way is helpful for reducing unnecessary disputes and ensuring Article XXI is not used to hide countries' trade protectionism.

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6.2.2. Create a notice and review system

A formal notice and review system could be set up within the WTO to handle cases where countries use Article XXI [1]. The goal of setting up this system is to give a clear and organized platform for openness and talk among countries.

Under this system, any country that uses Article XXI [1] would have to submit a notice explaining the reasons for its action. This notice should include the goal of the measure, the specific security concerns, the range of the measure, and how long it will last. This information would help other countries understand the situation better and avoid unnecessary guesses or misunderstandings.

After getting the notice, the WTO could hold a special committee meeting — for example, under the current Council for Trade in Goods — where countries can discuss the measure. Other countries could ask questions, get explanations, and state their concerns. Although the committee would not have the power to reject a country's security decision (to respect national power), it could encourage international communication and suggest ways to reduce trade harm or ensure the measure is suitable.

This system would build trust, reduce the risk of misusing Article XXI [1], and help balance a country's right to protect its security with the stability of the trade system.

6.3. Clarify the legal meaning of " essential security interests"

To reduce disputes and stop misuse of Article XXI [1], the WTO could work with its members to clarify the meaning of "essential security interests." This clarification can provide a common understanding that supports fairness and openness.

One possible way is to create a three-step analysis:

1. First, to check if the country's decision that to quote Article XXI is reasonable. The WTO should judge if their measure and claimed security threat have necessary connections.

2. If their purpose is reasonable, the WTO should judge if the measure is suitable and within a reasonable range. For example, the measures that a country takes should not be too broad or last much longer than needed to address the security risk.

3. Finally, the WTO could check if there are signs of misuse, such as using Article XXI to hide economic protectionism or discrimination. If there are strong signs of misuse, the WTO could suggest talks or changes to reduce harm to the trade system.

7. Conclusion

GATT Article XXI, the national security exception, is important for all countries. On one side, it lets countries react to real security threats and emergencies. On the other side, it must not be misused for unfair trade protection. Based on this paper's discussion, the main problems with the current use of the security exception include unclear meaning, limited review, and process weaknesses.

This paper suggests several practical reforms: First, improve openness by requiring countries to give written explanations and formal notices when using Article XXI. Second, clarify what "essential security interests" means and use the idea of suitability to ensure measures are proper and limited. Third, make dispute settlement stronger by creating an early review panel and thinking about a more organized, step-by-step review process to stop misuse while respecting national power.

Future studies could look at whether these reforms can really be done within the WTO, whether countries are willing to cooperate, and, most importantly, how the security exception can keep

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protecting real national security needs without harming the trade system — especially during times of tension between big countries.

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