# Security Exception Clauses in Post-Globalization —A Study of the GATT/WTO Regime in Historical Perspective*

ABE Yoshinori

***Professor, Faculty of Law, Gakushuin University***

## Abstract

This paper looks back historically at the General Agreement on Tariffs and Trade (GATT) /World Trade Organization (WTO) system and examines the position and role of the security exception clause, which has been the focus of much attention in recent years. The GATT period coincided with the Cold War era, when the Soviet Union (USSR) and China were not GATT contracting parties, and trade restrictive measures against the USSR and China were outside the scope of the GATT law. Therefore, there was little need to justify export restrictions in the context of geopolitical conflicts under the security exception clause. In addition, since the GATT dispute settlement procedure adopted the consensus approach, the interpretation and application of the security exception clause was unlikely to be challenged before a panel, and the function that the clause had to fulfill in the GATT regime was relatively small. In the period of globalization when the WTO was established, China and Russia also joined the WTO. However, after the end of the Cold War, export control measures such as the Coordinating Committee for Multilateral Export Controls (COCOM) regulations were no longer in place, so there was no need to justify such measures by the security exception clauses. In the post-globalization period, however, the conflict between liberal and democratic economies and state-controlled and authoritarian economies became apparent within the WTO system, and the relationship between trade restriction measures taken against the background of geopolitical conflict and security exception clauses became the focus of attention. In addition, since the WTO dispute settlement procedure adopts a negative consensus approach, the use of the security exception clause has been judicially reviewed by panels. However, the US has taken the position that the security exception clause is self-judging in nature and is trying to ensure the freedom of its own national security policy.

Keywords: GATT WTO security exception clause geopolitical conflict
JEL Classification: F13, K33

* This article is based on a study first published in the Financial Review No. 155 pp. 80-104, Yoshinori Abe, Security Exception Clauses in Post-Globalization: A Study of the GATT/WTO Regime in Historical Perspective written in Japanese.

# I. Introduction

In recent years, geopolitical conflicts such as Russia's aggression against Ukraine and the escalation of the US-China confrontation have become more apparent, and trade restrictive measures have increased against this backdrop. Since March 2022, economic sanctions have been imposed on Russia by Japan, the US, and the EU, and the US has also introduced export control measures against China, including export regulations on advanced and core technologies and related products. In relation to the World Trade Organization (WTO) Agreements, such measures may be problematic in terms of consistency with the Most-Favoured-Nation Treatment (MFN) principle and the prohibition of quantitative restrictions, though they may be justified as trade restriction measures on the grounds of security through security exception clauses such as General Agreement on Tariffs and Trade (GATT) Article XXI.[1] In addition, since various economic security policies have recently been adopted, the security exception clauses are often the focus in considering the relationship between these policies and the WTO Agreements.

On the other hand, the security exception clause was first judicially interpreted and applied by the panel in *Russia – Traffic in Transit* Panel Report in 2019. GATT Article XXI is the "most sensitive"[2] clause that has gone unmentioned for many years since the GATT was drafted in 1947. How did it come to attract attention in recent years? What are the roles and challenges of the security exception clause, which has suddenly become judicially interpreted and applied in a certain sense in the more than 70-year history of the GATT/WTO regime? With this in mind, this paper will look back historically at the GATT/WTO system and explore how the security exception clause has been positioned. In doing so, since security issues are closely related to international politics and geopolitical conflicts, the political and geopolitical circumstances surrounding the GATT/WTO system will also be taken into consideration. Specifically, the history of the GATT/WTO system will be analyzed by dividing it into three periods: the GATT period, which roughly coincides with the Cold War period; the globalization period of about 20 years since the establishment of the WTO; and the post-glo-

---

[1] GATT Article XXI is the following article.
Nothing in this Agreement shall be construed
(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
(i) relating to fissionable materials or the materials from which they are derived;
(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
(iii) taken in time of war or other emergency in international relations; or
(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

[2] Jackson (1969), p. 748.

balization period, which began with Russia's annexation of Crimea and was marked by the return of geopolitical conflict. By examining these three periods, we will clarify the role played or expected to be played by the security exception clauses in each period and their position in the free trade regime. We will also discuss the challenges of the security exception clauses in the present day.[3]

## II. GATT and the Security Exception Clause during the Cold War

### *II-1. The GATT System and Geopolitical Conflict*

The GATT system, the predecessor of the current WTO system, was originally based on GATT, which was concluded as a temporary trade agreement in the process of establishing the International Trade Organization (ITO) after World War II. The ITO was an international organization that was to be established under the ITO Charter negotiated at the United Nations Conference on Trade and Employment between 1946 and 1948. Although the United States led the initiative to establish the ITO, the ITO was envisioned as a universal international organization with the participation of UN member states, as evidenced by the fact that the ITO Charter was negotiated at a conference sponsored by the United Nations.

The GATT, on the other hand, was an agreement reached by the 23 countries that participated in the 1947 Geneva Conference, where the ITO Charter was drafted, in order to legally consolidate the results of the concurrent negotiations on tariff reductions. The USSR was not a participant in these negotiations.[4] On January 1, 1948, a protocol provisionally applying the GATT was signed by nine countries, including the United States and the United Kingdom, and the provisional application of the GATT began.[5] The ITO Charter was then adopted at the UN Conference on Trade and Employment (commonly known as the Havana Conference) in March 1948, and was submitted to ratification procedures by each country. However, opposition to ratification of the ITO Charter grew stronger in the United States, which had led the negotiations, and eventually in December 1950 the President of the United States announced his intention not to seek Congressional approval. This ended the possibility of the ITO Charter entering into force.[6]

While the ITO, thus conceived as a universal international organization, failed to materialize, and the United States, the United Kingdom, and other countries began to apply the

[3] Security exception clauses are also inserted in FTAs and international investment agreements, but their significance will be discussed in a separate paper.

[4] Takano and Tsutsui (1965), p. 127.

[5] For reasons such as the relationship with the ITO Charter, which was under negotiation at the time, the GATT took the form of provisional application, see Nakagawa et al. (2019) pp. 25-26 for details on this point.

[6] Takano and Tsutsui (1965), p. 132; Nakagawa et al. (2019), p. 26.

GATT provisionally, the USSR established the Council for Mutual Economic Assistance, commonly known as the Council for Mutual Economic Assistance (COMECON), in January 1949. The COMECON was an economic cooperation mechanism between the USSR and socialist countries, mainly Eastern European countries. The original members were the USSR, Czechoslovakia, Hungary, Bulgaria, Poland, and Romania, with Albania and East Germany joining somewhat later.[7] Thus, under the geopolitical structure of the US-Soviet confrontation during the Cold War, a bifurcation of the trade order was established: the GATT system for the Western countries and the COMECON system for the Eastern countries. Therefore, there was basically a decoupling between the two opposing sides, and trade issues between the US and the USSR never became legal issues under the GATT. For example, in November 1949, Western countries established the Coordinating Committee for Multilateral Export Control (COCOM), which created a COCOM list of strategic goods and advanced technologies and imposed export controls on the USSR and other communist countries.[8] The export control measures taken by the US against the USSR, if subject to the GATT, could be problematic in relation to the GATT Article XI which prohibits quantitative restrictions and Article XXI providing security exception, but since the USSR was not a GATT contacting party, this could not be a GATT dispute between the US and the USSR. China (People's Republic of China) had been an observer of the COMECON, but became disconnected from it due to the Sino-Soviet conflict. Rather China focused on economic relations with Western countries, especially after the introduction of the reform and open-door policy in 1978. During the Cold War, China never joined the GATT[9] and trade issues arising from geopolitical conflicts between Western countries and China never became legal issues under the GATT.[10]

However, there was some possibility of trade disputes arising from geopolitical conflicts within the GATT. For example, Czechoslovakia became an original member of the GATT when it was a non-communist country, but after the coup d'etat in February 1948, it became a communist country. This brought about a possibility of a trade dispute arising within the GATT against the background of an East-West conflict. In fact, with regard to the US export control measures against Czechoslovakia, which were also related to COCOM, application of the security exception clause became an issue, as will be discussed below. Nicaragua became a signatory to the GATT in 1950, and although it had a pro-US administration at the time, a

---

[7] Nonomura (1975), p. 7.

[8] Yokokawa (1987), pp. 4-8.

[9] The ROC had joined the GATT in 1948, but in 1950, the ROC government withdrew from the GATT due to the need to freely raise tariffs to finance war expenditures (Uchida & Hori (1959), p. 18). The government of the People's Republic of China took the position that this notice of withdrawal was invalid and applied for restoration of its status as a GATT signatory in 1986, but the Tiananmen Square incident in 1989 changed the situation dramatically, and RRC's entry into the GATT was never realized (supervised by the Ministry of Economy, Trade and Industry; Araki and Nishi (2003), p. 16).

[10] In relations with China, Western countries established an Export Control Commission to China in 1952 to regulate exports, but the Commission was effectively abolished in 1957 and integrated into COCOM (Yokokawa (1987), p. 5).

socialist revolution took place in 1979, which subsequently led to disputes with the US over the application of the security exception clause. However, these disputes were, so to speak, between peripheral communist/socialist countries and the US, and there was no possibility of a direct trade dispute between the US and the USSR or between the US and China within the GATT.

## *II-2. Security Exception Clause in the GATT Period*

### II-2-1. Dispute Settlement Procedures in the GATT Period

Next, we will examine cases in which security exception clauses became an issue during the GATT period, but as a prerequisite, we would like to give an overview of the dispute settlement procedures during the GATT period. This is because the GATT dispute settlement procedures were considerably different from the current WTO dispute settlement procedures, which have been judicialized.

First of all, Article XXIII of the GATT provides for dispute settlement procedures. Paragraph 1 of Article XXIII provides for consultations between the disputing parties, and paragraph 2 of Article XXIII stipulates that if the consultations under paragraph 1 are unsuccessful, the dispute may be referred to the "CONTRACTING PARTIES." However, the article only provides that "The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate." Thus, Article XXIII does not specify detailed procedures. This is a significant difference from the WTO dispute settlement procedures based on the Dispute Settlement Understanding of the WTO Agreements.

In the early stages of the GATT period, disputes were handled by the CONTRACTING PARTIES itself or by working groups, and from 1952 onward, establishing "a panel" became commonplace.[11] The CONTRACTING PARTIES was an organization composed of representatives of all the parties to the GATT, which included representatives of the disputing parties too. The Working Party was composed of representatives of several countries selected from the CONTRACTING PARTIES, which also included the disputing parties.[12] This method of dispute resolution was a rather diplomatic procedure, as no third-party experts were assigned to hear the case, and although neutral countries were included, it was basically a negotiating

[11] Iwasawa (1995), pp. 18-19.

[12] For example, in *Brazil - Inland Tax* (GATT/CP.3/42; BISDII/181), for which a Working Party report was issued in 1949, the Working Party was composed of six countries: the Republic of China, the United Kingdom, the United States, and Cuba, in addition to France as the petitioner and Brazil as the respondent ( GATT/CP.3/SR.10, p.3).

forum for the disputing parties.[13]

Dispute resolution by panels began in 1952, when the Chairman of the CONTRACTING PARTIES proposed that a single panel be established to handle complaints because of several disputes referred to the CONTRACTING PARTIES.[14] This panel consisted of representatives from six countries - Australia, Cuba, Canada, Finland, Ceylon, and the Netherlands[15] and did not include representatives of the disputing parties.[16] The panel process subsequently became commonplace, and in 1979 the CONTRACTING PARTIES adopted the "Understanding on Reporting, Consultation, Dispute Settlement and Monitoring," which clearly stated the panel procedure. The GATT panel procedure is the prototype of the WTO dispute settlement procedure, but differs significantly in that the former used a consensus approach to the establishment of panels and the adoption of panel reports,[17] while the latter uses a negative consensus approach. In the GATT, the CONTRACTING PARTIES or the Council[18] decided the establishment of a panel and adopted its report by consensus, so that if even one member of the CONTRACTING PARTIES or the Council objected, the establishment of the panel and the adoption of its report would not be possible. Therefore, if the respondent opposed the establishment of the panel or if the losing party to the dispute objected to the adoption of the panel report, a consensus could not be formed and the panel could not be established, nor could the report be adopted. In contrast, the WTO adopted a negative consensus approach in which the establishment of a panel or the adoption of its report is approved unless all members oppose the establishment of the panel or the adoption of the report.[19] Since it is not usually possible for a complainant requesting the establishment of a panel to object to the establishment of a panel, and it is not approximately possible for a party to a dispute who has won a case to oppose the adoption of a panel report,[20] the introduction of the negative consensus approach is considered to have automated and judicialized the panel procedure. Thus, panel procedures during the GATT period differed significantly from the judicialized WTO dispute settlement procedures. This means that there was no guarantee that a panel would be established for ev-

---

[13] Iwasawa (1995), pp. 18-19.

[14] Iwasawa (1995), p. 19.

[15] SR.7/7, p. 7.

[16] Disputes referred to this panel were *Belgium - Family Allowances* (Complainants -Norway and Denmark) (SR.7/11, p. 9. The panel report appears in BISD1S/59.); and *Greece – Import Duties* (Complainant - the United Kingdom) (SR.7/9, p. 4. The panel report is contained in BISD1S/51); *Germany - Sardines* (Complainant - Norway) (SR.7/7, p. 8. The panel report is contained in BISD1S/53); and *Greece - Import Tax* (Complainant - France) (SR.7/8, p. 9. The panel report is contained in BISD1S/48).

[17] Iwasawa (1995) 92-93, pp. 130-131.

[18] The GATT Council was established by a decision of the CONTRACTING PARTIES in 1960, and was supposed to be composed of all parties wishing to become members of the Council, but eventually more than two-thirds of all parties became members (Iwasawa (1995), p. 7).

[19] Articles 6(1) and 16(4) of the Dispute Settlement Understanding.

[20] Since a party to the dispute may appeal the panel report to the Appellate Body (Article 16(4) of the Dispute Settlement Understanding), the panel report will not be adopted at that time if an appeal is filed. However, upon issuance of the Appellate Body report, the Appellate Body report (and the panel report as amended by the Appellate Body) will be adopted by negative consensus.

ery GATT dispute, and there was a considerable possibility that a panel report would not be adopted.

### II-2-2. Some Cases Concerning Security Exception Clauses in the GATT Period

During the GATT period, the only two cases in which any decision was made by the GATT dispute settlement body regarding the security exception clause were *United States - Restrictions on Exports to Czechoslovakia* and *United States - Trade Measures affecting Nicaragua*.[21]

#### (1) *United States - Restrictions on Exports to Czechoslovakia*

This case involves a petition by Czechoslovakia under Article XXIII of the GATT regarding export restrictions imposed by the US on Czechoslovakia beginning in 1948 in accordance with the Marshall Plan.[22] In Czechoslovakia, after the surrender of Nazi Germany, the government-in-exile in London returned home and established the Government of the Czechoslovak Republic, which had also participated in the tariff negotiations when the GATT was drafted in 1947, and had notified the CONTRACTING PARTIES of its intention to apply the GATT provisionally on March 16, 1948.[23] However, at the same time, in February 1948, a coup d'etat occurred in Czechoslovakia. While, before the coup, a coalition government had been formed between a non-Communist party and the Communist Party, the non-Communist party broke away and a government led by the Communist Party was formed. In response, the US worked with Western countries to tighten export approvals for Czechoslovakia.[24] The present case was an early dispute which had not yet been handled by a panel procedure, and the hearing was held in a plenary session of the CONTRACTING PARTIES.

At the Meeting of the CONTRACTING PARTIES, Czechoslovakia argued that US export approvals were discriminatory and therefore violated the MFN principle of GATT Article I.[25] The US, on the other hand, countered that only a small number of items are subject to export approval and that it is not trying to justify everything by GATT Article XXI.[26] Taking into account the opinions of the other members of the Group of States Parties, the Chairperson of the CONTRACTING PARTIES summarized the discussion as whether the US had failed to fulfill its obligations under the GATT in implementing export approvals, taking into account GATT Article 1 and GATT Article XXI, and decided to table the issue.[27] As a result, one

---

[21] Cases that were not decided by judicial bodies include the case concerning import restriction measures against Argentina taken by the EEC and its member countries during the Falklands War. See, Sakai (2023), pp.91-95.
[22] GATT/CP.3/33.
[23] GATT/1/31, p. 1. The actual provisional application was from April 20, 1948.
[24] See also Alford (2011), pp. 708-711 for the history of this case.
[25] GATT/CP.3/33, p. 8.
[26] GATT/CP.3/38; GATT/CP.3/SR.22, p. 8.
[27] GATT/CP.3/SR.22, p. 9.

country (Czechoslovakia) said that the US had failed to fulfill its obligations, 17 countries said that the US had not failed to fulfill its obligations, 3 countries abstained, and 2 countries were absent.[28] Therefore the CONTRACTING PARTIES decided to dismiss Czechoslovakia's complaint.[29]

Thus, it is clear that at the CONTRACTING PARTIES meeting that considered the case, discussions were held regarding the invocation of GATT Article XXI by the US, and when the CONTRACTING PARTIES made its final decision, the vote was based on the assumption that GATT Article XXI had been invoked, but in the discussions at the meeting of the CONTRACTING PARTIES, it was not clear which provisions of GATT Article XXI had been invoked.[30] Based on the US representative's remarks,[31] it can be inferred that he had GATT Article XXI(b)(ii) in mind,[32] but neither the US representative nor the Chairperson of the CONTRACTING PARTIES clarified this point. In view of the history and content of the CONTRACTING PARTIES decision, it is difficult to say that GATT Article XXI was judicially interpreted and applied in this case, and it would be more appropriate to understand it as a political and diplomatic decision made by the representatives of each country. Procedurally, too, this case was not a case in which a working group or a panel was established, but rather a case that was considered until the very end by the CONTRACTING PARTIES itself, which is quite different in nature from the judicial process in WTO dispute settlement procedures.

(2) *United States - Trade Measures affecting Nicaragua*

In this case, Nicaragua filed a complaint with the GATT dispute settlement procedure regarding the US embargo against Nicaragua (total ban on imports and exports) in 1985. As mentioned above, Nicaragua had been a contracting party of the GATT since 1950, and a pro-US administration had been in power since then. However, an armed revolution by the Sandinista National Liberation Front in 1979 led to the creation of an anti-US socialist government. The US intervened in Nicaragua by supporting the anti-government Contras, and in 1985 it also imposed an embargo against Nicaragua.

Nicaragua requested the establishment of a panel at the July 1985 GATT Council meet-

---

[28] GATT/CP.3/SR.22, p.9.

[29] It should be noted that although the CONTRACTING PARTIES decision in this case is sometimes explained as stating that “each country has the right of last resort on questions relating to its own security” or that “every country is the judge of last resort on questions relating to its own security” (see, for example, Van den Bossche and Zdouc (2022), p. 673), the equivalent statement was made by Mr. Shackle, the representative of the United Kingdom to the CONTRACTING PARTIES (“every country must have the last resort on questions relating to its own security”). (GATT/CP.3/SR.22, p. 7). Therefore, it should be noted that this statement was neither the opinion of the CONTRACTING PARTTIES as a whole nor the reason for the CONTRACTING PARTTIES' decision.

[30] Hahn (1991), p. 569, fn. 56.

[31] The term “military establishment” appears in the statement of the US representative (Ibid., p. 3).

[32] Hahn (1991), p. 569, fn. 56.

ing, but the United States opposed it.[33] At the Council meeting in October of the same year, the US agreed to the establishment of the panel on the condition that the panel would neither consider nor make a decision on the US application of GATT Article XXI(b)(iii).[34] In other words, although the Panel was established in this case, the interpretation and application of the security exception clause was not included in its terms of reference from the outset.[35] Therefore, in its report, the panel concluded that it was not permitted to determine the validity of the US's invocation of GATT Article XXI(b)(iii) and therefore could not determine whether the US was complying with its obligations under the GATT.[36]

Thus, the Panel made no decision on the US application of GATT Article XXI(b)(iii) and did not interpret or apply that provision. The reason for this result is that, as discussed earlier, the GATT dispute settlement procedure adopts a consensus approach, and the establishment of a panel requires a unanimous decision by the GATT Council. In other words, in order for the panel to be established in this case, it was necessary for the Council to reach a consensus, including the consent of the respondent country, the United States, and the panel had no choice but to fulfill its duties under the condition that the United States would consent (the panel would not consider GATT Article XXI(b)(iii)). This indicates that although the panel as a dispute resolution method was established during the GATT period, judicial review could be avoided in cases where the application of the interpretation of the security exception clause was at issue, based on the judgment of the invoking state.[37]

### II-2-3. Sub-summaries

As discussed above, it can be said that during the GATT period, the nature of the GATT regime made it difficult to judicially interpret and apply the security exception clause. First, the GATT regime was a free trade system centered on the Western countries, so the USSR and China were not contracting parties of the GATT in the first place. Therefore, even if the US took measures to restrict trade with the USSR or China, such as the COCOM regulations, they could not be disputes between the US and the USSR or between the US and China under the GATT law. Second, it can be pointed out that the GATT dispute settlement procedure was a political and diplomatic decision-making process by the CONTRACTING PARTIES in the early years, and that even after the panel system was established, the consensus approach was adopted, so that disputes were generally handled without judicial interpretation and application of the security exception clause. Although there was a possibility that some of the GATT

[33] L/6053, para. 1.2.
[34] L/6053, para. 1.3.
[35] Ibid. para. 1.4.
[36] Ibid. para. 5.3.
[37] On the same case, see also Whitt (1987), pp. 622-625.

contracting parties might become communist or socialist states, and in such cases, there was a risk that trade disputes could arise within the GATT against the backdrop of the Cold War, in *United States - Restrictions on Exports to Czechoslovakia*, the political and diplomatic process of a vote at the meeting of the CONTRACTING PARTIES was used to resolve the case. In *United States - Trade Measures affecting Nicaragua*, the Panel did not interpret GATT Article XXI(b)(iii) because the US limited the Panel's terms of reference.

Another reason why there were few cases in which security exception clauses became an issue during the GATT period may be that it was unnecessary to use security exception clauses for protectionist purposes that were not for security reasons. For example, in the case of Sweden's introduction of an import quota system for certain types of footwear for the entire world, Sweden argued that maintaining domestic production of footwear was in its own security interest,[38] but this was nothing more than a protectionist trade measure to protect its domestic industry under the guise of security. This is considered to be an abuse of the security exception clause, as in the recent case of the US restrictions on imports of steel and aluminum products.[39] However, during the GATT period, with the exception of this Swedish case, there are no cases that can be considered as equivalent to abuse of the security exception clause. This may have something to do with the fact that there was in fact considerable room for other protectionist trade measures under the GATT regime. In other words, since so-called "gray measures" such as voluntary export controls were permitted during the GATT period, it was sufficient to encourage the other country to take voluntary export control measures in order to protect its domestic industry from imports of the other countries' products, without having to resort to the security exception clause. In addition, since the GATT rules for trade remedy measures, such as antidumping measures, were loose, they were often used as a means of protecting the industries of the home country.

For these reasons, the "burden" of the security exception clause itself was not heavy during the GATT period, and there was relatively little need to require the clause to deal with the relationship between trade and security as a function of the clause, so it can be said that the security exception clause was not strictly interpreted and applied, and the "burden" of the security exception clause was not so heavy.

[38] L/4250, para. 4.
[39] Sakai (2023), p. 92.

## III. The WTO and the Security Exception Clause in the Era of Globalization

### *III-1. End of the Cold War, Resolution of Geopolitical Conflicts, and Establishment and Development of the WTO*

The WTO was established in 1995 as a result of the Uruguay Round, the GATT's multilateral trade negotiations held from 1986 to 1994. After five rounds of tariff reduction negotiations, the Kennedy Round (1964-67) and the Tokyo Round (1973-79), the GATT gradually developed trade rules, including rules on non-tariff barriers and improved dispute settlement procedures, in addition to negotiations on tariff reductions.[40] Against this backdrop, the GATT Ministerial Conference held in Punta del Este, Uruguay, in September 1986 decided to launch the Uruguay Round. The Uruguay Round, like the Tokyo Round, was characterized by the fact that, in addition to tariff reductions, emphasis was placed on the discipline of non-tariff barriers in the negotiations, and new areas of negotiation included the establishment of rules for trade in services and the international protection of intellectual property rights. Also on the agenda was the strengthening of GATT's functions as an international organization, including dispute settlement procedures. As a result of these ambitious negotiations in many areas, there were times of deadlock, but ultimately a final agreement was reached at the Ministerial Conference in Marrakech, Morocco, in April 1994, and the WTO Agreement was adopted as the outcome of the Uruguay Round.[41]

The above series of developments from the Uruguay Round to the establishment of the WTO coincided with the end of the Cold War and the progress of globalization. In 1985 Mikhail Gorbachev become General Secretary of the Communist Party in the USSR and move to improve relations with Western countries, and the December 1989 Malta meeting saw the US and USSR's leaders declared the end of the Cold War.[42] Then, at the end of 1991, the USSR collapsed, splitting into Russia and the former constituent states of the USSR, which had long been a unipole in the geopolitical conflict. In addition, the former communist countries of Eastern Europe and the former members of the USSR shifted to market economies, and free-market principles prevailed. Such a move has been described as "the end of history" as a triumph of democracy and free-market capitalism.[43] The conclusion of the Uruguay Round and the establishment of the WTO were among those that reflected this.[44]

As globalization deepened, the WTO membership also expanded: when the WTO was

[40] Chikushi (1994), pp. 4-14.
[41] Chikushi (1994) pp. 25-51.
[42] Fujiwara (1998), p. 290.
[43] Fukuyama (2020). In this context, it is also noted that the US softened its stance of prioritizing security concerns over economic goals in the Uruguay Round negotiations after the end of the Cold War (Lowenfeld (2008), p. 68.).
[44] Yamamoto and Toritani (2023), pp. 19-21.

launched in 1995, there were 128 original members, but by 2016 that number had increased to 164.[45] And of these, the most significant impact on the WTO regime was the accession of China and Russia. China applied to join the WTO in December 1995[46] and became the 143rd WTO member on December 11, 2001.[47] Russia also applied for membership to the GATT in 1993, and a Working Group to examine accession under the GATT was established, but by decision of the WTO General Council on January 31, 1995, the Working Group was transferred to a Working Group under Article XII of the Agreement Establishing the WTO. After 31 Working Group meetings, Russia became the 156th member of the WTO on August 22, 2012,[48] and these negotiations for Russia's accession were the longest of all WTO accession negotiations.[49] Thus, the WTO has been transformed into a global free trade regime in both name and substance, incorporating both the former communist countries, which had been at odds with the capitalist camp led by the United States during the Cold War.[50]

## *III-2. Security Exception Clauses in the Era of Globalization*

What was the position of the security exception clause in the WTO, which became a global free trade regime after the geopolitical conflict of the Cold War was resolved? This point needs to be considered from the perspective of comparison with the GATT period, taking into account the characteristics of the WTO dispute settlement procedures and the main security issues in the period of globalization.

### III-2-1. Characteristics of WTO Dispute Settlement Procedures

WTO dispute settlement procedures are provided for in the Dispute Settlement Understanding in Annex 2 of the WTO Agreement, and embody the strengthening of the dispute settlement function, which was one of the central issues in the Uruguay Round. The most significant feature of the WTO dispute settlement procedures is the judicialization through the adoption of the negative consensus approach at each stage of the procedures, which differs significantly from the GATT dispute settlement procedures, which adopted the consensus approach.

#### (1) Automated Establishment of Panels and Their Terms of Reference

One of the important procedural stages at which the negative consensus approach was ad-

[45] https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm
[46] WT/ACC/CHN/1, p. 1.
[47] https://www.wto.org/english/thewto_e/acc_e/a1_chine_e.htm
[48] https://www.wto.org/english/thewto_e/acc_e/a1_russie_e.htm
[49] Medvedkov and Lyakishev (2015), p. 528.
[50] See Onishi (2023), p. 61, for an article that points to the inclusion of China and Russia within the WTO regime as an effect of the single-line development model that “economic growth always leads to democratization.”

opted is the stage of deciding on the establishment of a panel, as mentioned in II-2-1 above. If the dispute cannot be resolved through consultations, the complainant may request the establishment of a panel after 60 days have elapsed from the date of the request for consultations (Article 4(7) of the on the Dispute Settlement Understanding). The establishment of a panel is addressed to the Dispute Settlement Body (DSB), which is composed of representatives of all member states, and Article 6(1) of the Dispute Settlement Agreement provides that "If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel." The provision states that since it is almost impossible for all member states, including the complainant requesting the establishment of a panel, to agree to "not establish a panel" (negative consensus), the panel will be established at the second meeting of the dispute settlement body at the latest after the request for the establishment of the panel.[51]

Article 7(1) of the Dispute Settlement Understanding provides that the panel shall consider the matter in the light of the relevant provisions of the WTO Agreement cited by the dispute parties "unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel." The relevant provisions of the WTO Agreement cited by the disputing Party here are the articles listed in the complainant's request to establish a panel, which the respondent is alleged to have violated, and which will delineate the panel's jurisdiction *ratione materiae*.[52] Namely, since it is essentially the complainant that decides on the matters referred to the panel, and to change them, the complainant and the respondent must agree otherwise, the right to amend the matters referred is not reserved as a condition for the respondent's consent to the establishment of the panel, as it was during the GATT period.[53] Therefore, as in *United States - Trade Measures affecting Nicaragua*, it would not be permissible in WTO dispute settlement procedures for a respondent to request, as a condition for agreeing to the establishment of a panel, that the application of the interpretation of the security exception clause be excluded from the terms of reference.

(2) Automation of the Adoption of Panel and Appellate Body Reports

The negative consensus approach is also employed with respect to the adoption of Panel and Appellate Body reports. Article 16(4) of the Dispute Settlement Understanding provides that "Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB

[51] In practice, the respondent often opposes the establishment of a panel at the first Dispute Settlement Body meeting, so a panel is usually established at the second Dispute Settlement Body meeting.

[52] Abe (2019a), p. 16.

[53] Such automation of panel establishment was one of the US arguments in the Uruguay Round (Iwasawa (1995), pp. 93-94).

of its decision to appeal or the DSB decides by consensus not to adopt the report." In other words, in principle, the panel report is adopted by the DSB, and the panel report is not adopted only when it is appealed to the Appellate Body or when a negative consensus is reached not to adopt it. Normally, a negative consensus is highly unlikely, since the winning party to the dispute is unlikely to oppose adoption. On the other hand, not only the losing party to the dispute but also the winning party to the dispute may appeal to the Appellate Body if it is dissatisfied with any part of the panel report. However, even if an appeal is filed with the Appellate Body, the Appellate Body report will ultimately be adopted by negative consensus. Article 17(14) of the Dispute Settlement Understanding provides that "An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members." This means that it is almost impossible to envision a situation in which any Appellate Body report (and the panel report as modified by the Appellate Body report) would not be adopted. Thus, even if a party to a dispute is dissatisfied with the contents of a panel or Appellate Body report, it cannot block the adoption of the report and pursue the political or diplomatic handling of the dispute in the DSB. This, compared to the GATT dispute settlement procedure, where the adoption of the panel was by consensus in the Council, has considerably narrowed the room for non-judicial treatment of disputes.

### III-2-2. Security Issues in the Era of Globalization

#### (1) Dissolution of the COCOM and Formation of the Wassenaar Arrangement

During the Cold War, military relations between the West and the East, centered on the US-Soviet rivalry, were the most significant security issue. For this reason, the United States and other Western countries prevented the transfer of strategic materials and technology to the USSR and China through the COCOM. With the end of the Cold War, however, export control measures toward Russia and China underwent major changes. First, the non-communization of the USSR and Eastern European countries made it less meaningful to keep the COCOM in existence, and as of March 31, 1994, the COCOM was dissolved.[54]

The prevention of the transfer of military-related materials and technology, which had been the responsibility of the COCOM, was succeeded by the Wassenaar Arrangement, which was established in April 1996, and Russia was to participate in the Wassenaar Arrangement. This was reportedly because the US, in particular, feared the proliferation of Russian conventional weapons-related materials and technology to "rogue states" and terrorism-sponsoring states.[55] The COCOM was thus transformed into the Wassenaar Arrangement, changing its

[54] Taue and Morimoto (2008), pp. 68-69; Yamamoto (2012), p. 105.
[55] Yamamoto (2012), pp. 108-110.

nature from an export control regime for communist states to a nonproliferation regime for "peripheral states" and placing it in the international export control regime alongside the Nuclear Suppliers Group and the Australian Group, among others.[56] Because such an international export control regime involves trade restrictive measures, its relationship to the trade liberalization rules and security exception clauses under the WTO Agreement is potentially problematic. However, since such regimes no longer primarily target Russia and China, even if Russia and China had joined the WTO, the relationship with the WTO rules would have been basically unproblematic.

(2) Export Control based on the UN Security Council resolutions

Another problematic security situation in the era of globalization is the generalization of measures against terrorist groups and rogue states based on UN Security Council resolutions. Since the September 11 attacks, the threat to US security has been perceived to be anti-American terrorist groups more than any other major power. Countries other than the US have also come to consider terrorism a serious security issue.[57] Therefore, in order to prevent and curb the activities of terrorist groups, the UN Security Council adopted Resolution 1540 and other resolutions. Resolution 1540 requires UN member states to adopt and enforce effective measures to prevent the proliferation of weapons of mass destruction and their means of delivery to non-state actors, thus requiring states to take export control measures through their own export control systems.[58] Such export restriction measures may be problematic in relation to WTO rules, including the security exception clause, but are unlikely to result in trade disputes among major powers, and even if they do, the provisions of the security exception clause that justify trade restriction measures based on Security Council resolutions would apply. For example, GATT Article XXI(c) provides that "any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security" is justified, and trade restrictive measures taken based on Security Council resolutions, which are obligatory under Article 25 of the UN Charter, would fall under this provision.

As a so-called rogue state, the Security Council has also adopted a number of resolutions against North Korea. For example, Resolution 1718 banned exports to North Korea of weapons of mass destruction and large conventional weapons and related goods and luxuries, and Resolution 1874 imposed an embargo on almost all weapons and related goods.[59] However, since North Korea is not a member of the WTO, such economic sanctions are not a matter of WTO law in the first place, so there is no relationship with the security exception clause.

[56] Taue and Morimoto (2008), pp. 69-70.
[57] Taue and Morimoto (2008), pp. 13-14.
[58] Asada (2012) pp. 129-130.
[59] Asada (2012), pp. 139-142.

Thus, it can be said that the security environment during the period of globalization made it less likely that the interpretation and application of the security exception clause would be an issue under WTO law.

(3) *United States — The Cuban Liberty and Democratic Solidarity Act*

In the WTO during the period of globalization, *United States — The Cuban Liberty and Democratic Solidarity Act* is often discussed as related to the security exception clause. This case was a dispute between the EU and the US over the Cuban Liberty and Democratic Solidarity Act (the so-called Helms-Burton Act), which was passed by the US in 1996 to strengthen sanctions against Cuba. The EU requested consultations with the US on March 3, 1996,[60] but the dispute was not resolved. The EU then requested the establishment of a panel.[61] The Helms-Burton Act provided, among other things, the allowing of former owners of assets seized by the Cuban government to bring an action for damages in the US against those who traded in those assets.[62] The EU claimed that the measure violated the MFN (Article II) and National Treatment (Article XVII) principles of the General Agreement on Trade in Services (GATS).[63] The EU also claimed that the extraterritorial application of the Cuban Assets Control Regulations (CACR) of 1962, which were applied under the Helms-Burton Act and prohibited trade between the EU and Cuba, was inconsistent with GATT Article XI.[64]

In response, the US, at the Dispute Settlement Body meeting that considered the EU's request to establish a panel, insisted that the EU reconsider bringing the case to the dispute settlement procedure because of its relevance to diplomatic and security issues.[65] It should be noted, however, that while the US has indicated that it believes the case is not suitable for panel procedure because of its relevance to security issues, it has not explicitly invoked security exception clauses such as GATT Article XXI or GATS Article XIV bis, at least in official forums.[66] And although a panel was established in this case because of the negative consensus approach, a “mutually agreed solution” between the US and the EU was reached outside of the panel process[67] and the panel was dissolved pursuant to Article 12(12) of the Dispute Settlement Understanding.[68]

Thus, the case was resolved without the security exception clause being explicitly in-

[60] WT/DS38/1.
[61] WT/DS38/2.
[62] Yamaoka (2000), p. 31.
[63] WT/DS38/2, pp. 1-2.
[64] WT/DS38/2, pp. 1-2.
[65] WT/DSB/M/24, p. 7.
[66] Although some articles argue that the US invoked GATT Article XXI at the October 16, 1996 Dispute Settlement Body meeting, there is no record, at least in the minutes of that meeting (WT/DSB/M/24), that the US invoked GATT Article XXI.
[67] WT/DS38/5.
[68] WT/DS38/6.

terpreted and applied. One possible reason for this is that the essence of the issue was not a security confrontation between the US and the EU. The US was in conflict with Cuba over a security issue, and the issue between the US and the EU was concerning the so-called secondary sanctions measures. Therefore, there was little need to deal seriously with the interpretation and application of the security exception clause between the US and the EU, two major powers that share liberal economics and democracy as common values.

### *III-3. Sub-summaries*

As discussed above, in the WTO during the period of globalization, the geopolitical conflicts between major powers, as in the Cold War period, had been resolved, and the structure of the WTO was such that the interpretation and application of the security exception clause was less likely to become an issue. Although the accession of China and Russia to the WTO had the potential to incorporate the former communist powers into the WTO regime, which could have triggered security-related trade disputes with the United States and other Western countries, such concerns did not materialize due to the state of international politics at the time. The main security issue during the period of globalization was dealing with terrorist groups, which were non-state actors and rogue states, and the permanent members of the UN Security Council were able to act in unison on these issues to a certain extent. Therefore, economic sanctions against terrorist groups and rogue states were determined by Security Council resolutions, and it was relatively clear that they were justified under the security exception clause in relation to WTO law. Furthermore, since rogue states such as North Korea were not WTO members in the first place, there was little likelihood that the interpretation and application of the security exception clause would become a problem in the handling of specific disputes.

On the other hand, since the WTO dispute settlement procedure adopted a negative consensus approach, it was fully expected that if a dispute involving the interpretation and application of the security exception clause was referred to the panel, the panel would automatically be established and the panel would have to interpret and apply the clause, unlike in the GATT period. In *United States — The Cuban Liberty and Democratic Solidarity Act*, there was a good chance that such a situation would have arisen, but the US and the EU basically shared security interests, and a diplomatic settlement was reached between the parties to the dispute. Another reason why there were few cases in which the use of the security exception clause became an issue during the period of globalization may be that there were no cases of protectionist abuse of the clause. During this period, there was a consensus among WTO members that the protection of their domestic industries was basically achieved through WTO-consistent application of trade remedy measures such as antidumping, countervailing

duties, and safeguard measures. The US also had such a trade policy and did not use the security exception clause to protect its own industries. However, the US became increasingly dissatisfied with the WTO dispute settlement, in which its trade remedy measures found to be inconsistent with the WTO Agreements, and became particularly critical of the Appellate Body's interpretation of the Anti-Dumping Agreement, the Subsidies Agreement, and the Safeguard Agreement. This dissatisfaction in the US may be considered to have led to later attempts to use the security exception clause in a protectionist trade manner.

## IV. Security Exception Clauses in the Post-Globalization Era

### *IV-1. Resurgence of Geopolitical Conflicts and Their Internalization in the WTO*

#### IV-1-1. Russian Annexation of Crimea and Aggression against Ukraine

There are several schools of thought on the transition from globalization to post-globalization,[69] but one significant event was Russia's illegal annexation of Crimea at the end of February 2014, when pro-Russian President Yanukovych was ousted and a pro-Western interim government was formed in Ukraine. Russian special forces invaded Crimea and took over key locations. A referendum was then held to determine whether Crimea should be incorporated into Russia, with the majority of the votes in favor of incorporation. In response, the Crimean parliament passed a resolution on March 17 of the same year calling for the incorporation of Crimea into Russia under the name of the "Republic of Crimea" as a sovereign state independent of Ukraine. Russia then unilaterally recognized the "Republic of Crimea" as a state and concluded an incorporation treaty with the Republic on March 18.[70] The annexation was a unilateral change in the status quo that was clearly illegal under international law, as Russia's armed intervention violated the principle of the prohibition of the use of force.[71] Western countries and Japan strongly condemned it and drastically changed their security perceptions of Russia. For example, after the end of the Cold War, the US deployed many of its forces in the Middle East under the slogan "War on Terrorism," but following Russia's annexation of Crimea, it began to realign its forces in the European region. European countries also requested the presence of US forces, and it can be said that North Atlantic Treaty Organization (NATO) countries have again recognized Russia as a realistic threat since the Cold War period.[72]

From the WTO perspective, as noted above, Russia was admitted to the WTO in 2012

[69] Shibasaki (2022), pp. 208-209.
[70] On the history of the annexation of Crimea, Hirose (2014), pp. 45-46.
[71] For an evaluation of the Crimea incorporation under international law, see Nakatani (2014), pp. 130-135.
[72] Fukuda (2017), pp. 62-76.

and was inside the free trade regime since then, but Russia annexed Crimea shortly after that. If Russia had annexed Crimea before its WTO membership was approved, it probably would not have been allowed to join the WTO. Unfortunately, in fact, the WTO has encompassed a serious geopolitical conflict between democracies such as Japan, the US, and Europe and Russia. Russia continued its military intervention in eastern Ukraine and finally launched a full-scale invasion of the country in February 2022. In response, Japan, the US, the EU, and other countries imposed economic sanctions against Russia, including an export ban on items subject to the international export control regime, goods that may contribute to strengthening military capabilities, as well as those that contribute to strengthening industrial infrastructure, and luxuries. Furthermore, they withdrew their MFN treatment for Russia. The content of these economic sanctions is similar to the COCOM regulations in the Cold War period, but since the USSR was not a GATT member during the GATT period, the measures against the USSR were outside the framework of the GATT law. In contrast, the current measures against Russia are potentially problematic in relation to WTO law, including the security exception clause, because Russia is a member of the WTO.[73] Such a situation, in which trade restrictive measures between major powers related to security within a free trade regime become legal issues, is a situation that did not exist during the GATT period or the globalization period.

### IV-1-2. US-China Conflict

China's economy grew rapidly and its national power increased after joining the WTO in 2001, but when Xi Jinping became General Secretary of the Communist Party in November 2012 and President in March 2013, he adopted the slogan of "the great revival of the Chinese nation." One of the means to achieve this goal is the "military-civilian fusion" policy. The military-civilian fusion policy is a measure to develop dual-use goods and technologies for both military and civilian purposes by shifting them in both directions between the military industry and the private sector.[74] Through this, China is said to be aiming to have a military as powerful as that of the United States.[75] Such moves by China have led to a major shift in US export control policy toward China. US dual-use item restrictions with China were substantially eased during the Clinton administration, and the Obama administration adopted a policy of easing export controls in general, not just with China. However, the Trump administration enacted the Export Control Reform Act (ECRA) in 2018. Under the Act, the US tightened export controls on advanced/core technologies and goods to China, even for civilian use, and significantly expanded China's military end-user controls.[76]

---

[73] On economic sanctions against Russia, Nakatani (2022), pp. 114-119; Ito (2022), pp. 25-33.
[74] Noritake (2021), p. 225.
[75] Ono (2021), p. 49.
[76] Ono (2021), pp. 48-50.

Subsequently, the US continued to strengthen its export control measures toward China, particularly in October 2022, when it revised the Export Administration Regulations (EAR) and introduced a broad export ban on semiconductor manufacturing equipment and supercomputer-related items and technologies, among other measures.[77] China strongly opposed this, and in December 2022, requested consultations with the US based on Article 4 of the Dispute Settlement Understanding, claiming that the said measures violated the WTO Agreement.[78] In its request for consultations, China claimed that the US export control measures on semiconductor manufacturing equipment and supercomputer-related items were inconsistent with GATT Article I and XI.[79] In response, the US argues that under security exception clauses such as GATT Article XXI, WTO members have the authority to determine for themselves the measures they deem necessary to protect their essential security interests, and that the export control measures that China was requesting consultations on were not allowed to be reviewed by the WTO dispute settlement system and may not be resolved by the WTO.[80] Although the case is still at the consultation stage as of this writing, and China has not requested the establishment of a panel, the fact that a security-related trade restrictive measure based on a geopolitical conflict between the US and China has been brought to the dispute settlement procedure is a situation that did not occur during the GATT and globalization periods.

## *IV-2. Security Exception Clauses in the Post-Globalization Era*

### IV-2-1. Suspension of the Functioning of the WTO Appellate Body

In considering the position and role of the security exception clause in the post-globalization period, it is necessary to take into account the issue of the cessation of the functions of the Appellate Body. Formally, nothing has changed in the WTO dispute settlement system from the globalization period to the post-globalization period. However, since the end of 2019, the Appellate Body has ceased to function because it has not been able to secure the necessary three or more Appellate Body members for its hearings (there are currently no Appellate Body members in office), and in effect, only the panel procedure, the first instance stage, is now functioning. The cessation of the functioning of the Appellate Body was triggered in 2017 when the United States blocked the process of appointing a new Appellate Body member to replace the outgoing Appellate Body member, taking issue with paragraph 15 of the Appellate Body Review Procedure, which allowed outgoing Appellate Body mem-

[77] CISTEC Secretariat (2022), pp. 2-5.
[78] WT/DS615/1.
[79] WT/DS615/1, paras. 33-40.
[80] WT/DS615/7.

bers to continue to serve on Appellate Body hearings after their terms expired.[81] The US has since extended its criticism of the Appellate Body to matters other than paragraph 15 of the Appellate Body Review Procedures, taking the position that the Appellate Body has overstepped its mandate and engaged in excessive judicial activity (the so-called "overreach" criticism), which needs to be corrected.[82] Informal meetings on reforming the WTO dispute settlement system are currently continuing, facilitated by the Guatemalan Ambassador in Geneva,[83] but the gap between the US and other WTO members is wide and there appears to be no prospect of agreement.

Such suspension of the functioning of the Appellate Body has also affected the actual dispute resolution. As mentioned above, Article 16(4) of the Dispute Settlement Understanding provides for the choice of adopting the issued panel report by negative consensus or appealing to the Appellate Body. So if one party to the dispute chooses to appeal, the panel report is not adopted and the case moves to appellate review procedure. However, since the Appellate Body has now ceased to function, the proceedings do not proceed with the case that has been appealed, and the hearing of the case comes to a halt. This situation is called an "appeal into the void." If the respondent that lost its case at the panel stage is dissatisfied, the panel report is not adopted and the Appellate Body cannot hear the case if an appeal into the void is filed. Then only the unadopted panel report remains and the respondent is left without correcting its measures. In such a case, it is virtually possible for the respondent to leave the matter unresolved. In response to this situation, the EU took the lead in establishing the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). If a party to a dispute that is between WTO Members participating in the MPIA wishes to appeal a panel report, the panel proceeding will be suspended before the panel report is adopted[84] and arbitration under Article 25 of the Dispute Settlement Understanding will be substituted as the appeal procedure.[85] Such MPIA arbitral awards are legally binding on the disputing parties pursuant to Article 25(3) of the Dispute Settlement Understanding. Therefore, for disputes between WTO members participating in the MPIA, the dispute resolution process will not be halted midway by an appeal into the void. Therefore, export control issues with China, for example, may be subject to judicial dispute settlement under the WTO dispute settlement procedures with respect to Japan and the EU. On the other hand, the US does not participate in the MPIA, and if its export control measures with China are found to be in violation of the WTO Agreement at the panel stage, it could file an appeal into the void to stop the dispute resolution process.

---

[81] Abe (2019b), pp. 286-287.

[82] For US criticism of the Appellate Body, See, Abe and Sekine (2019), pp. 387-393.

[83] https://www.wto.org/english/news_e/news23_e/dsb_31mar23_e.htm

[84] Article 12(12) of the Dispute Settlement Understanding provides that "the Subcommittee may, at any time upon the request of the Petitioning State, suspend its consideration for a period not exceeding twelve months." It provides that.

[85] JOB/DSB/1/Add.12

### IV-2-2. Examples of Disputes Related to the Security Exception Clause

While as noted above, in December 2022, China requested consultations under the WTO dispute settlement procedure regarding US export control measures related to semiconductors, there have been several other dispute cases related to the security exception clause in the post-globalization period, and panel reports have already been issued. These cases are discussed here.

#### (1) *Russia - Measures Concerning Traffic in Transit* [86]

This case involves a dispute over trade restrictions on transit transport taken by Russia against Ukraine after its annexation of Crimea. Ukraine, for example, transported its export goods to Kazakhstan by road or rail through the territory of Russia, but Russia restricted these transit shipments. Ukraine filed a complaint with the panel in 2017, claiming that such measures violated GATT Article V, which provides for freedom of transit transport.[87] In response, Russia argued that the case fell under a "time of war or other emergency of international relations" under GATT Article XXI(b)(iii), and that the panel lacked jurisdiction because Russia invoked that provision in support of its case.[88]

The panel held that although the chapeau of GATT Article XXI(b) contains the self-judging phrase "which it considers necessary", this phrase does not extend to subparagraphs, including (iii), and therefore, the issue of whether GATT Article XXI(b)(iii) is applicable or not is not entirely self-judging in nature.[89] The panel therefore held that even if Russia had invoked Article XXI(b)(iii), the panel would still have jurisdiction.[90]

The panel then concluded that the applicability of subparagraph (iii) is to be determined by the usual standard of review (objective assessment), and that, on the other hand, since the chapeau of paragraph (b) contains the phrase "which it considers necessary", the discretion of the invoking party is respected in determining the applicability of the requirements of the chapeau. However, at the same time, it is also subject to examination based on the principle of good faith.[91] In examining the requirements of the chapeau, first, whether the essential security interests have been articulated is considered.[92] The level of articulation required is lower if the urgency of the emergency in question is high, and vice versa.[93] Second, the measure in question must meet "a minimum requirement of plausibility" with respect to its relation-

---

[86] For the panel report in this case, see also Horimi (2019), pp. 338-350; Weiß, (2020), pp. 834-836
[87] WT/DS512/3.
[88] WT/DS512/R, paras. 7.27-7.30.
[89] WT/DS512/R, para. 7.101.
[90] WT/DS512/R, paras. 7.102-7.104.
[91] WT/DS512/R, paras. 7.131-7.132, 7.138.
[92] *Ibid*. para. 7.134.
[93] *Ibid*. para. 7.135.

ship to the security interest in question. The measure must not be "so remote or unrelated to" the emergency in question. The panel stated that this requirement is satisfied if the measures and the emergency in question are not "so remote from or unrelated to each other."[94] Based on these criteria, the panel concluded that Russia's measures constituted "measures taken in time of war or other emergency of international relations," and that the measures were not "so remote from or unrelated to" the emergency in question, and that Russia satisfied the requirements of GATT Article XXI(b)(iii).[95]

The panel thus was the first to apply judicial interpretation to the GATT/WTO security exception clause. The panel's conclusion that it has jurisdiction over the interpretation and application of the security exception clause and that it may conduct some judicial review has given the security exception clause an important function in the post-globalization era.[96]

(2) *Saudi Arabia - Measures concerning the Protection of Intellectual Property Rights*

This case concerns the deterioration of international relations between Qatar and other Gulf states, known as the Qatar crisis, which began in June 2017. Saudi Arabia and the UAE have taken measures against Qatar, including announcing the severance of diplomatic relations, banning Qatari nationals from entering the country, and prohibiting Qatari aircraft and ships from entering the territory. As part of such measures against Qatar, Saudi Arabia prevented Qatari companies from providing intellectual property protection in civil courts in Saudi Arabia. Saudi Arabia also intentionally failed to bring criminal prosecutions against those who infringed on the intellectual property of Qatari companies. Qatar complained to the Panel that the Saudi obstruction in civil proceedings and inaction in criminal proceedings violated Articles 41 and 61 of the Trade Related-Aspects of Intellectual Property Rights (TRIPS) Agreement.[97] Saudi Arabia responded by invoking Article 73(b)(iii) of the TRIPS Agreement, arguing that the case was justified because it constituted "measures taken in time of war or other emergency of international relations."[98]

The panel found that the language of Article 73(b)(iii) of the TRIPS Agreement is identical to that of Article XXI(b)(iii) of the GATT, and that the parties to the dispute agree with the interpretation of Article XXI(b)(iii) of the GATT by the panel in *Russia - Measures Concerning Traffic in Transit*. The present panel held that the interpretation by the panel in *Russia - Measures Concerning Traffic in Transit* would also be applied to Article 73(b)(iii) of the

[94] *Ibid*., paras. 7.138-7.139.

[95] *Ibid*., paras. 7.140-7.149.

[96] Vidigal (2019), p. 218 argues that the interpretation given by the panel in this case as strictly limiting the self-judging element of GATT Article XXI(b). On the other hand, Lapa (2020), pp. 25-26, considers that the panel's interpretation gives considerable discretion to the invoking state.

[97] WT/DS567/3.

[98] WT/DS567/R, paras. 7.232-7.234.

TRIPS Agreement for determination.[99] The panel then found that the Qatar crisis constituted a "time of war or other emergency in international relations" because of the breakdown of diplomatic and economic relations[100] and that protecting the country from terrorism and other threats, as claimed by Saudi Arabia, amounted to essential security interest.[101] The Panel then concluded that Saudi Arabia's obstruction of access to the civil trial was justified by Article 73(b)(iii) of the TRIPS Agreement because it was not "so remote or unrelated" to the emergency at issue.[102] However, the Panel found that the failure to bring a criminal prosecution was not justified by Article 73(b)(iii) of the TRIPS Agreement because it was "so remote or unrelated" to the emergency at issue.[103]

Thus, the panel in this case made its decision following the interpretation of the security exception clause as indicated by the panel in *Russia - Measures Concerning Traffic in Transit*, and neither Qatar, the complainant, nor Saudi Arabia, the respondent, objected to the judicial dispute resolution by the Panel in this way. This may indicate that it is possible in certain cases for a panel to handle disputes among WTO members through the panel's interpretation and application of security exception clauses. On the other hand, the Qatar crisis was resolved diplomatically in January 2021, mediated by Kuwait and the United States, and Qatar eventually agreed to terminate the panel proceedings in this case and informed the dispute settlement body that it would not seek adoption of the panel report.[104]

(3) *United States - Certain Measures on Steel and Aluminum Products*

The case was brought before the panel by China,[105] Norway,[106] Switzerland,[107] Turkey,[108] and other countries,[109] regarding the additional tariffs imposed by the United States on imports of steel and aluminum products in 2018 under Section 232 of the Trade Expansion Act of 1962. The complainants claimed that the additional duties violated the tariff concession obligation under GATT Article II(1)(b) and the MFN principle under GATT Article I(1), but the United States invoked GATT Article XXI(b) and held that the additional duties were justified.

---

[99] WT/DS567/R, paras. 7.241-7.243.
[100] WT/DS567/R, paras. 7.258-7.263.
[101] WT/DS567/R, para. 7.282.
[102] WT/DS567/R, para. 7.288.
[103] WT/DS567/R, para. 7.293.
[104] WT/DS567/11.
[105] WT/DS544/8.
[106] WT/DS552/10.
[107] WT/DS556/15.
[108] WT/DS564/15.
[109] In addition, India, Russia, and the EU also filed complaints, but the panel reports on the Indian and Russian complaints have not yet been issued. The EU also terminated the panel proceedings with the US on January 17, 2022 (WT/DS548/20), stating that it would instead refer the case to arbitration under Article 25 of the Dispute Settlement Understanding, and immediately stayed such arbitration proceedings (WT/DS548/19).

The US argued that the Panel's jurisdiction was not denied by the US's invocation of GATT Article XXI(b), but that since the provision was self-judging in nature, the panel would simply affirm the US's invocation of GATT Article XXI(b) as it stood.[110] In response, the panel interpreted the phrase "which it considers necessary" in the chapeau of GATT XXI(b) as not pertinent to the subparagraph[111] and concluded that the circumstances of the case did not constitute a "time of war or other emergency of international relations" under subparagraph (iii).[112]

Thus, the panel in this case did not interpret the chapeau of paragraph(b), because the applicability of Article XXI(b)(iii) of the GATT can be objectively examined by the panel and the US measure did not fall under that subparagraph in the first place. Since the US has targeted not only China but also the EU, Norway, Switzerland, and Japan for additional tariffs, it is difficult to say that the measures taken by the US were truly taken for security reasons, and in fact, they were intended to protect US domestic industries. Such measures should have been taken as safeguard measures under the WTO Agreement on Safeguards, but the requirements for triggering safeguard measures in the Agreement have been strictly interpreted by the Appellate Body in past cases, and the hurdles for justifying such measures as safeguard measures are high. In fact, in a case brought by the EU and Japan in 2002 regarding safeguard measures taken by the US against steel products, the Appellate Body found that the US had violated the Safeguard Agreement.[113] The US Trump administration may in effect have attempted to justify measures aimed at protecting domestic industry on the grounds of security, but the panel in this case denied that the security exception clause could be interpreted that broadly. However, the US has not changed its position since the Biden administration came to power that GATT Article XXI(b) is a self-judging clause and that the panel can only approve an invocation by the respondent country. Therefore, the US filed an appeal into the void when the panel report was issued.[114] This shows that the US has remained consistent, despite the change of administrations, in its refusal to accept that judicial review by the Panel/Appellate Body would extend to the invocation of its security exception clause.

(4) *United States - Origin Marking Requirement*

This case relates to the fact that in August 2020 the US mandated under the Tariff Act of 1930 that imported products of Hong Kong origin must be labeled "China" as the origin. Hong Kong filed a complaint with the panel, claiming that the measure violated, among oth-

[110] WT/DS544/R, para. 7.105.
[111] WT/DS544/R, paras. 7.108-128.
[112] WT/DS544/R, paras. 7.129-149.
[113] WT/DS248, 249, 251, 252, 253, 254, 258, 259/AB/R.
[114] WT/DS544/14; WT/DS552/16; WT/DS556/21; WT/DS564/21.

ers, GATT Article IX(1), which stipulates the MFN principle regarding origin marking.[115] In response, the US attempted to justify the measure by invoking GATT Article XXI(b)(iii). As in *United States - Certain Measures on Steel and Aluminum Products*, the US argued that GATT Article XXI(b) is self-judging, and therefore the panel could only find that the US had invoked GATT Article XXI(b) and report it to the Dispute Settlement Body.[116] On the other hand, the US also argued that China's application of the National Security Law to Hong Kong violated Hong Kong's democracy and human rights and that this was a threat to US security.[117]

In response, the panel held, as did the panel in *United States - Certain Measures on Steel and Aluminum Products*, that GATT Article XXI(b) is not a wholly self-judging provision and that the applicability of the subparagraphs is subject to panel review.[118] The panel then found that the US measure violated GATT Article IX(1)[119] and that the situation in Hong Kong, as alleged by the US, could be relevant in "time of war or other emergency of international relations" under subparagraph (iii), and considered whether the requirements of that provision were met.[120] The panel found that, although the situation in Hong Kong affected international relations between Hong Kong/China and other WTO members, the trade relations between the United States and Hong Kong/China remained largely the same as before and economic relations were maintained. Therefore, the panel concluded that the requirements of GATT Article XXI(b)(iii) were not met because the situation in the present case did not rise to the level of an "emergency" referred to in subparagraph (iii).[121]

Thus, the panel in this case rejected the US argument, conducted a judicial review of the security exception clause, and held that whether the situation at issue constituted a wartime or other emergency of international relations was essentially a question of the level of vehemence. Such a decisional framework is similar to that of the panel in *Russia - Measures Concerning Traffic in Transit* and the panel in *Saudi Arabia - Measures concerning the Protection of Intellectual Property Rights*. If the US had escalated the situation to the level of severing economic relations with Hong Kong or severing diplomatic relations with China, subparagraph (iii) would have been applicable. The panel also stated that it did not deny the possibility that protecting values such as human rights and democracy could be of essential security

[115] WT/DS597/5. In addition, Hong Kong also claimed violations of GATT Article I(1), Article 2 of the Agreement on Rules of Origin and Article 2.1 of the TBT Agreement, which establish the MFN principle, but the panel exercised judicial economy and avoided making findings on these claims (WT/DS597/R, para. 7.368).

[116] WT/DS597/R, paras. 7.17-7.18.

[117] WT/DS597/R, paras. 7.254.

[118] WT/DS597/R, para. 7.185.

[119] WT/DS597/R, para. 7.252.

[120] WT/DS597/R, paras. 7.258-7.260.

[121] WT/DS597/R, paras. 353-7.360.

interest.[122] This could be understood as suggesting that the security exception clause could be used to protect human rights and democracy.[123]

The US filed an appeal into the void in this case as well, claiming that GATT Article XXI(b) is a self-judging clause.[124] The suppression of human rights in Hong Kong has aspects similar to the Tiananmen Square incident, but China was not a GATT contracting party at the time of the Tiananmen Square incident, and the US had no problem under GATT law in strengthening export controls to China at that time. The US refusal to allow judicial review of the security exception clause, and the fact that it is filing appeals into the void while leaving the Appellate Body inoperative, may be seen as an attempt to bring its relationship with China closer to the situation during the GATT period.

### *IV-3. Sub-summaries*

In the post-globalization era, geopolitical conflicts between the United States/the European Union/Japan and Russia/China have emerged. This can be seen as a conflict between liberal /democratic economies and state-controlled/authoritarian economies, which is a re-emergence of the East-West conflict of the Cold War era. From the perspective of international economic law, the East-West conflict during the GATT period was basically outside the framework of GATT law, while under the current WTO system, the conflict between liberal/democratic countries and state-controlled/authoritarian countries has been internalized into the system and is within the framework of WTO law. Therefore, it can be said that the structure of the WTO is such that various issues can easily be brought under the security exception clause, since the relationship with WTO law of trade restriction measures taken between the two camps based on political and military reasons can potentially always be legal issues. In addition, since the WTO dispute settlement procedure uses a negative consensus approach, the possibility that the invocation of the security exception clause will be subject to judicial review is also much higher.

Under these circumstances, panels that have heard cases involving the interpretation of security exception clauses have held that security exception clauses are not self-judging and are subject to some degree of objective judicial review, a position supported by many WTO members, including the EU. If the security exception clause were completely self-judging, it could lead to protectionist abuses, so the interpretation that the panel has given has a certain rationality. On the other hand, the US has maintained its position that the security ex-

[122] WT/DS597/R, para. 7.359.

[123] However, see Chaisse and Olaoye (2023), p. 491, for the view that the panel imposes a high hurdle for such invocation. See also Kawase (2023), p. 168, for a discussion of the "securitization" of human rights issues by the US.

[124] WT/DS597/9.

ception clause is self-judging, and is trying to ensure that it can always justify, for example, export controls on China and Russia, even in a WTO regime that encompasses geopolitical conflicts.[125] Even if such a US position is not recognized by the panel, the US may also be considered to have effectively secured its freedom to invoke the security exception clause by filing an appeal into the void, thereby creating a situation in which the panel's determination that the use of its own security exception clause is not permissible is not final.

## V. Conclusion

This paper has looked back historically at the GATT/WTO system and examined the position and role of the security exception clause. The GATT period coincided with the Cold War era, and since the USSR and China were not members of the GATT, trade restrictive measures against the USSR and China were outside the GATT law. Therefore, there was little need to justify export restrictions based on geopolitical conflicts under GATT Article XXI. The GATT dispute settlement procedure was based on the consensus approach, so there was little possibility that the interpretation of the security exception clause would be challenged before a panel, and the function that the clause had to play in the GATT regime was relatively small. China and Russia joined the WTO, and trade relations with China and Russia came within the framework of WTO law, but after the end of the Cold War, geopolitical conflicts between the major powers were basically resolved, and export control measures such as the COCOM regulations were no longer in place, so the security exception clause was no longer needed as a justification. In the post-globalization period, however, the conflict between liberal/democratic economies and state-controlled/authoritarian economies became apparent within the WTO system, and the relationship between trade restrictive measures and security exception clauses against the background of geopolitical conflict came into focus. In addition, since the WTO dispute settlement procedure adopts a negative consensus approach, it is more likely than in the GATT period that the interpretation and application of the security exception clause will be reviewed by a panel. The current situation is the first time in the history of the GATT/WTO system that a geopolitical conflict between major powers has been entangled within the system, and in this sense, the operation of the security exception clause is currently facing the most difficult period in its history.

---

[125] The US also argues that the security exception clauses such as GATT Article XXI are entirely self-judging in nature and that the measures taken by the invoking country do not constitute a violation of the WTO Agreements, and that the WTO members affected by such measures can file a non-violation claim (GATT Article 23(1)(b) and DSU Article 26), and the matter should be dealt with through such procedures (WT/DS597/R, para. 7.17, fn. 59). A non-violation claim is to be balanced against the interests nullified or impared by the measure in question, although the respondent is not obliged to withdraw the measure in question even if the claim is allowed (Article 26(1)(b) of the DSU). While such an argument is not supported by the panel or other Members, it is interesting from the standpoint that the GATT/WTO regime is of a nature to balance the interests among Members through the concept of “nullification or infringement.”

The relationship between the structure of the GATT/WTO system, the situation of geopolitical conflicts, and the position and role of the security exception clause can be viewed from the perspective of "universalization" and "partialization" of the international trade legal order. Historically, the international trade legal order has gone through waves of "universalization," in which certain common rules were established among countries participating in international trade, and "partialization," in which some countries formed groups and formulated their own rules but lacked a common legal foundation among the groups. After World War II, the establishment of the ITO was envisioned with the US taking the lead in preventing the bloc economies. This was an idealistic attempt to "universalize" the international trade regime. In the end, however, the ITO failed, and the GATT system was established in the Western countries, while the economic bloc led by the USSR was created in the Eastern countries. Thus, the international trade regime was "partialized." After the end of the Cold War, the WTO was established, and China and Russia also joined the WTO, making the WTO system "universal." Today, however, the reemergence of geopolitical conflicts has led to the introduction of numerous trade restrictive measures among the major powers, and it can be said that "partialization" within the WTO system is underway.[126]

The US position that the security exception clause is of a self-judging nature, coupled with the fact that it keeps the Appellate Body in a state of inactivity, could be considered to create a "partialization" within the WTO, at least in relation to China and Russia, similar to the GATT period during the Cold War.[127] In contrast, the EU and Japan take the position that security exception clauses are not completely self-judging and participate in the MPIA, so it can be said that they do not want to "partialize" the WTO regime as much as the US does.[128] In this connection, the EU, Japan, and other countries that are friends and allies of the US have taken the position that the security exception clause is subject to a certain level of judicial review, but have also taken trade restriction measures, including export controls, against Russia and China in coordination with the US. If the US were to further strengthen its export controls on China in the future and demand the implementation of similar measures, there will arise the question of whether the EU and Japan would be able to justify such measures through the strict interpretations and application of GATT Article XXI, GATS Article XIV bis. Since China, the EU, and Japan are participants in the MPIA, even if the EU and Japan are sued by China and the panel fails to find justification under the security exception clause, there is no way left to effectively stop the adoption of the panel report through an appeal into

[126] Abe (2022), pp. 100-101.

[127] Note that Voon (2019), pp. 47-48, points out that the US may withdraw from the WTO if the panel takes the position that it will objectively review the support for the security exception clause.

[128] This may reflect the difference in positions in economic policy toward China as expressed in terms such as "decoupling" and "de-risking."

the void, as in the case of the US, which would place them in a difficult legal situation. In the most difficult situation in the history of the GATT/WTO system of geopolitical conflicts between major powers within the system, it can be said that the test is whether judicial interpretation and application of the security exception clause will contribute to resolving the dispute involving security issues.[129]

## References

[In Japanese]

Asada, M. (2012), "Export Control based on Security Council Resolutions," in Masahiko Asada (ed.), Export Control: System and Practice, Yushindo

Abe, Y.(2019a), "Request for Establishment of Panel and Preliminary Defense in WTO Dispute Settlement Procedures," in Y. Abe and T. Sekine (eds.), Legal Issues in International Trade Dispute Settlement, Shinzansha, pp. 15-45

Abe, Y. (2019b), "Various Issues Surrounding Paragraph 15 of the WTO Appellate Body Review Procedures," in Y. Abe and T. Sekine (eds.), Legal Issues in International Trade Disputes Settlement, Shinzansha, pp. 285-308

Abe, Y. (2022), "The Future of International Trade Law and Order in the Post-COVID-19," Journal of International Law, No. 10

Abe, Y. (2024), "Security Exception Clauses in Post-Globalization: A Study of the GATT/WTO Regime in Historical Perspective," Financial Review, Volume 155, pp. 80-104

Abe, Y. and T. Sekine (2019), "WTO Appellate Body Crisis and Reform Proposals by WTO Members," in Y. Abe and T. Sekine (eds.), Legal Issues in International Trade Disputes Settlement, Shinzansha, pp. 387-405

Chikushi, K. (1994), "Uruguay Round - From GATT to WTO" Japan Tariff Association

CISTEC Secretariat (2022), "US Introduces Unprecedented and Significantly Stronger Semiconductor and Supercomputer-Related Export Restrictions to China - Some Call it a Shift in Longstanding US Policy toward China and Export Control Policy," CISTEC Journal, No. 202

Fujiwara, K. (1998) "The End of the Cold War: From Peace by Consensus to Peace by Power," Institute of Social Science, University of Tokyo (ed.), 20th Century System 6 Function and Transformation, University of Tokyo Press,

Fukuda, T. (2017), "Trends in the Realignment of US Forces in Europe since the 2000s: Focusing on the Strengthening of the Regime after Russia's Annexation of Crimea," Reference,

[129] Sakai (2023), p. 134, states that while the possibility of judicial decisions by panels and other bodies remains, the WTO's political bodies, such as the General Council, should support dispute settlement through interest coordination and standards formation.

No. 803.

Fukuyama F. (2020), The End of History (translated and commented by Shoichi Watabe), Mikasa Shobo, new edition

Horimi, H. (2019), "Security Exception Clause and Limitations of Dispute Resolution: From the Viewpoint of Judicial Decision Conformity," in Y. Abe and T. Sekine (eds.), Legal Issues in International Trade Dispute Resolution, Shinzansha, pp. 335-360

Hirose, Y. (2014), "A Matter of Time: Russia's Annexation of Crimea: Russian Logic and International Law," Law School, No. 406.

Ito, K. (2022) "Economic Sanctions against Russia and International Law", International Affairs, No. 710

Iwasawa, Y. (1995), WTO Dispute Settlement, Sanseido

Kazeki, J. (2016), "Trade and Security: The Rule of Law from a Practitioner's Perspective," Journal of International Law, 4.

Kawase, T. (2023), "Trade and Security: Proximity, Friction and Changing Relationships," Final Report of the Economic and Security Linkages Study Group <https://www.jiia.or.jp/pdf/research/R04_ Economic_Security/01-12.pdf>

Ministry of Economy, Trade and Industry (2003), " Complete Translation of China's WTO Accession Documents," Sososha

Nakagawa, J. et al. (2019), International Economic Law (3rd Edition), Yuhikaku

Nakatani, K. (2014), "Russia's Crimean Annexation and International Law", Ronkyu Juristo, No. 9.

Nakatani, K. (2022) "Economic Sanctions against Russia: Russia's Invasion of Ukraine: An International Law Perspective," Jurist, No. 1575.

Nonomura, K. (1975), The COMECON System: A Study of Socialist International Economic Cooperation, Iwanami Shoten

Noritake, M. (2021), "Policy Recommendations to Address Four Policy Tools Driving China's Military-Civilian Fusion: From Testimony on "US Investment in China's Capital Markets and Military Industrial Complex"", CISTEC Journal, No. 194

Onishi, S. (2023), "The Tension between Economic Security and International Economic Law: The End of Regime Separation?", Trade and Tariffs, Vol. 71, No. 8

Ono J. (2021), "US Export Control Policy toward China: Emerging Technologies and Economic Security," International Security, Vol. 49, No. 1

Sakai, H. (2023), "The Reviewability and Significance of the 'Security Exception' under the GATT/WTO Regime," Aspects of Domestic and International Legal Issues Related to Securing Energy Resources: Report of the International Issues Study Group on Securing Energy Resources for Fiscal 2015-2016. Japan Institute of Energy Law

Shibasaki, A. (2022), "'Post-Globalization' International Political Philosophy: Interdisciplinary

Issues of Time and Space in Global Relations," in M. Iwasaki (ed.), Post-Globalization and the Future of Politics, Nakanishiya Shuppan

Takano, Y. and W. Tsutsui (1965), International Economic Organization Law, University of Tokyo Press

Tagami, H. and M. Morimoto (2008), "Export Control Theory: Risk Management and Compliance for International Security," Shinzansha

Uchida, H. and T. Hori (1959), GATT - Analysis and Prospects, Japan Tariff Association

Yamaoka, K. (2000) "US Economic Sanctions against Cuba: Focusing on Discussions within the US Government since the Passage of the Helms-Burton Act", Asian Economy, Vol. 41, No. 9

Yamamoto K. and I. Toriya (eds.) (2023), The World Economy (2nd ed.), Minerva Shobo

Yamamoto, T. (2012) "Export Control of Conventional Weapons", in M. Asada (ed.), Export Control - System and Practice -, Yushindo

Yokokawa, S. (1987), "The Current Status and Issues of the Cocom System," Jurist, No. 895.

[English]

Alford, R. P. (2011), "The Self-Judging WTO Security Exception," Utah Law Review, vol. 2011, no. 3, 2011, pp. 697-760

Chaisse, J. and Olaoye, K. F. (2023), "United States-Origin Marking Requirement, WT/DS597/R". *American Journal of International Law*, Vol. 117, pp. 488-493

Hahn, M. J. (1991), "Vital Interests and the Law of GATT: An Analysis of GATT's Security Exception", *Michigan Journal of International Law*, Vol. 12, pp. 558-620

Jackson, J. H. (1969), *World Trade and the Law of GATT*, The Michie Company

Lapa, V. (2020), "The WTO Panel Report in Russia - Traffic in Transit: Cutting the Gordian Knot of the GATT Security Exception ?", <http://www.qil-qdi.org/wp-content/uploads/2020/05/02_WTO-Security-exceptions_LAPA_FIN.pdf>

Lowenfeld, A. F. (2008), *International Economic Law 2nd edition*, Oxford University Press

Medvedkov, M. and Lyakishev, D. (2015), "The 2012 WTO Accession of Russia: Negotiating Experience - Challenges, Opportunities and Post- Accession Approaches", in Uri Dadush and Chiedu Osakwe eds., *WTO Accessions and Trade Multilateralism: Case Studies and Lessons from the WTO at Twenty* Cambridge University Press

Van den Bossche, P. and Zdouc, W., (2022), *The Law and Policy of the World Trade Organization: Text, Cases and Materials 5th edition*, Cambridge University Cambridge University Press

Vidigal, G. (2019), "WTO Adjudication and the Security Exception: Something Old, Something New, Something Borrowed - or Something Blue?", *Legal Issues of Economic Integration*, Vol. 46, pp. 203-224

Voon, T. (2019), "The Security Exception in WTO Law: Entering a New Era", AJIL Unbound, Vol. 113, pp. 45-50

Weiß, W. (2020) "Adjudicating Security Exceptions in WTO Law: Methodical and Procedural Preliminaries", Journal of World Trade, Vol. 54, pp. 829-852

Whitt, R. S. (1987), "The Politics of Procedure: An Examination of the GATT Dispute Settlement Panel and the Article XXI Defense in the Context of the US Embargo of Nicaragua", *Law & Policy in International Business*, Vol. 19, pp. 603-631.

## GATT/WTO Cases

[GATT]

United States - Restrictions on Exports to Czechoslovakia, BISDII/28, Adopted on 8 June 1949

United States - Trade Measures affecting Nicaragua, L/6053, Panel Report Circulated on 13 October 1986

[WTO]

Russia - Measures Concerning Traffic in Transit, WT/DS512/R, Panel Report Adopted on 26 April 2019

Saudi Arabia - Measures concerning the Protection of Intellectual Property Rights, WT/DS567/R, Panel Report Circulated on 16 June 2020

United States - Certain Measures on Steel and Aluminium Products, WT/DS544/R, Panel Report Circulated on 9 December 2022

United States - Origin Marking Requirement, WT/DS597/R, Panel Report Circulated on 21 December 2022