
Defining the Boundaries: WTO National Security Exceptions in the US-China Unilateral Trade Sanctions*

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Chinese enterprises, such as Huawei, have been severely affected by sanctions. In 2019, Huawei's inclusion on the Entity List prohibited any foreign company using US technology from supplying it without approval, severely disrupting its global supply chain. This article interprets the national security exceptions (GATT Article XXI) in the US-China trade conflict. Through a doctrinal analysis of key rulings (e.g., Russia – Traffic in Transit), it constructs a three-factor review framework based on essential security interests, necessity, and emergencies in international relations. This framework is then applied to a comparative case study of US and Chinese sanctions practices. The analysis finds that while US extraterritorial sanctions frequently fail the necessity test, China's counter-sanctions align more closely with the exception's traditional scope. The article argues that the proportionality principle is vital to prevent abuse. By applying nascent DSB jurisprudence to a major contemporary dispute, this study provides a balanced framework for assessing the WTO-consistency of sanctions and suggests reinforcing the MPIA to reconcile sovereignty with multilateralism.

Keywords

National Security Exceptions, Unilateral Sanctions, Counter-Sanctions, WTO Dispute Settlement Mechanism

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I. Introduction

Trade measures, particularly sanctions, are among the most disruptive to global commerce.¹ Chinese enterprises, such as Huawei, have been severely affected by sanctions. In 2019, Huawei's inclusion on the Entity List prohibited any foreign company using US technology from supplying it without approval, severely disrupting its global supply chain.² Currently, the Entity List includes 1087 Chinese entities.³

The issue's urgency is underscored by recent WTO disputes, particularly *US-Semiconductors (China)*. In this case, China challenges US extraterritorial export controls, arguing they distort trade and coerce other WTO members, thereby severely disrupting the global semiconductor supply chain.⁴ The US unilateral trade sanctions have evolved into four primary forms: (1) prohibitions on commercial transactions with targeted entities; (2) restrictions on investments in sanctioned targets;⁵ (3) bans on specific imports or exports, exemplified by the Countering Chinese Drones Act that blocks DJI drones;⁶ and (4) prohibitions on third-party re-exports of goods containing the US-origin technology. In response to these challenges to the multilateral trading system, China has established a legal framework for counter-sanctions through five key instruments: the Export Control Law, the Anti-Foreign Sanctions Law, the Unreliable Entity List, the Blocking Statute on Improper Extraterritorial Application of Foreign Laws and the Implementing Rules for the Anti-Foreign Sanctions Law.⁷ Such measures for import and export bans, as well as investment restrictions, aim to counteract unilateral sanctions. This cycle epitomizes the clash between unilateralism and rules-based multilateralism, extending beyond jurisdictional disputes and posing systemic risks to the multilateral trading system. This raises a pivotal

1 31 C.F.R. § 560.204 (2024).

2 US Department of Commerce, Department of Commerce Issues Limited Exemptions on Huawei Products (May 20, 2019), <https://2017-2021.commerce.gov/news/press-releases/2019/05/department-commerce-issues-limited-exemptions-huawei-products.html>.

3 International Trade Administration, Data Visualization, <https://www.trade.gov/data-visualization/csl-search>.

4 WTO, DS615: United States-Measures on Certain Semiconductor and other Products, and Related Services and Technologies, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds615_e.htm.

5 The Iran and Libya Sanctions Act imposed penalties on investments exceeding \$40 million in Iran's petroleum sector. See 31 C.F.R. § 560.207 (2024).

6 *Supra* note 1.

7 Youyou Jiang, *Extraterritorial Application of Countersanction Laws* [论反制裁法的域外效力], 32(1) J. SHANGHAI U. INT'L BUS. & ECON. [上海对外经贸大学学报] 95 (2025).

issue: Can national security exceptions be subjected to judicial review within the WTO framework?⁸

However, the expansive interpretation of “national security” increasingly subordinates multilateral free trade objectives to unilateral agendas.⁹ Conversely, advocates for the multilateral system contend that exceptions may only be invoked in good faith.¹⁰ Although the WTO Dispute Settlement Body (DSB) addressed national security exceptions for the first time in 2020, it left their future interpretation unsettled.¹¹ The inherently indeterminate nature of “national security” as a policy tool risks normalizing exceptions within the WTO, potentially undermining the multilateral system.¹²

Chinese scholars generally affirm the DSB’s authority to adjudicate disputes involving national security exceptions.¹³ They emphasise that while Article XXI of the GATT 1994 permits members to suspend certain WTO obligations to protect essential security interests, such actions must be exercised in good faith.¹⁴ Finally, the WTO members, including China, established the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) under Article 25 of the Dispute Settlement Understanding (DSU), creating an interim arbitration mechanism to preserve the two-tier dispute settlement system.¹⁵ This development highlights the need to clarify how national security exceptions should be interpreted in the context of sanctions and counter-sanctions.

This research aims to provide a theoretical foundation for utilizing the WTO dispute settlement mechanism to address unilateral trade sanctions. To this end, the paper is structured as follows: Part two reviews unilateral sanctions and the crisis of generalisation of the WTO security exceptions. Part three discusses the judicial review of the WTO’s national security exceptions. Part four analyses the interplay of Sino-American practices in the application of the WTO security

8 Raj Bhala, *National Security and International Trade Law: What the GATT Says, and what the United States Does* Symposium on Linkage as Phenomenon: An Interdisciplinary Approach, 19(2) U. PA. J. INT’L L. 263 (1998)

9 Henry Federer, *GATT Article XXI: Trade Sanctions and the Need to Clarify the Security Exceptions*, 3 CAMBRIDGE L. REV. 228 (2018).

10 Jacob Gladysz, *The National Security Exception in WTO Law*, 52(3) GEO. J. INT’L L. 835 (2021).

11 Peter Lindsay, *The Ambiguity of GATT Article XXI: Subtle Success or Rampant Failure*, 52(6) DUKE L. J. 1277 (2003).

12 Kathleen Claussen, *Trade’s Security Exceptionalism*, 72(5) STAN. L. REV. 1097 (2020).

13 WEIDONG CHEN, INTERPRETATION OF WTO EXCEPTIONS [WTO例外条款解读] 358 (2002).

14 Lingli Zheng, *The evolution of US Export Control Law under the perspective of national security and China’s response-Taking the WTO Sino-US export control case as an example* [国家安全视域下美国出口管制法嬗变及中国应对—以WTO中美出口管制案为例], 6 WUHAN U. INT’L L. REV. [武大国际法评论] 137 (2023).

15 Zhenqian Wang, *The Regular Operation of WTO Appellate Arbitration* [论WTO上诉仲裁的常态化运行], 32(2) J. SHANGHAI U. INT’L BUS. & ECON. [上海对外经贸大学学报] 109 (2025).

exception clauses. The conclusion proposes institutional innovations to strike a balance between national security and the multilateral trading system.

II. Impact of Unilateral Trade Sanctions on the WTO

A. The Challenge of the National Security Exception under the WTO System: Russia-Traffic in Transit

The Panel Report of *Russia-Traffic in Transit* (DS512) represents the first major precedent for judicially reviewing the national security exception. However, its deferential standard also avenues for abuse.¹⁶ Russia claimed that the transit restrictions were necessary to protect Russia's essential security interests, invoking Article XXI of GATT as a defence.¹⁷ The Panel's ruling in *Russia-Traffic in Transit* in 2019 constituted a significant advance in the jurisprudence of this security exception. The ruling clarified three important references for the national security exception.

First, Article XXI is not a self-determination clause.¹⁸ Second, the Panel found that the armed conflict between Ukraine and Russia at that time already constituted an Article XXI state of emergency and that Russia could discretionarily take the necessary measures to protect its essential security interests.¹⁹ Finally, members should invoke the provision in good faith.²⁰ The Panel did not directly explain the meaning of national security, but gave members some discretion to interpret as necessary in the context of Article XXI. This renders essential security a potentially open-ended concept.²¹

Russia-Traffic in Transit was the first case that a Panel ruled on the national security exception, affirming that disputes regarding the security exception are justiciable.²² However, the self-judging latitude affirmed by this ruling was soon leveraged by members, most notably the US, to justify more controversial

16 Panel Report, *Russia-Measures Concerning Traffic in Transit*, WTO Doc. WT/DS512/R (adopted Apr. 5, 2019), https://www.wto.org/english/tratop_e/dispu_e/512r_e.pdf?utm_source=chatgpt.com.

17 *Id.* at ¶ 7.29.

18 *Id.* at ¶ 7.58.

19 *Id.* at ¶ 7.63.

20 *Id.* at ¶ 7.34.

21 Gladysz, *supra* note 10.

22 *Id.*

unilateral sanctions. The US has expanded the scope of national security through the CHIPS and Science Act of 2022²³ which introduced unilateral trade sanctions. Section 103 of the Act requires companies which benefit from the US policies to prohibit investments in China and to make choices between the US industry subsidies and Chinese investments.

Accordingly, China filed a complaint with the WTO in 2022, claiming that some provisions of the CHIPS and Science Act restrict the normal commercial activities of enterprises in China, violating the WTO's principle of non-discrimination.²⁴ This type of measure has become a central feature of recent US-China trade tensions, notably embodied in the US export controls on advanced semiconductors. Based on the US past interpretive practices regarding Article XXI, it is highly probable that the US will invoke this provision in the *US-Semiconductors (China)*.²⁵

Thus, while *Russia-Traffic in Transit* established the justiciability of the security exception in theory, its immediate practical effect has been to embolden unilateralism, thereby posing a more profound challenge to the WTO multilateral system.

B. Unilateral Sanctions as Compound Trade Barriers

The core issue with the US unilateral sanctions is that they form a system of compound trade barriers, interlinked and authorized by domestic statutes, posing multidimensional challenges to WTO rules.²⁶ The primary domestic statutes authorizing such barriers are the Trading with the Enemy Act (TWEA) and the International Emergency Economic Powers Act (IEEPA). TWEA gives the President the power to restrict US trade during wartime.²⁷ It is often used as a monetary policy tool to impose sanctions on foreign adversaries, while IEEPA allows the President to declare a national emergency and then issue the presidential orders in peacetime in response to unusual and extraordinary threats.²⁸ IEEPA

23 US Congress, Public Law No: 117-167, <https://www.congress.gov/bill/117th-congress/house-bill/4346>.

24 WTO, *United States-Measures on Certain Semiconductor and Other Products, and Related Services and Technologies-Request for consultations by China*, WTO Docs. G/L/1471, G/TRIMS/D/46, IP/D/44, S/L/438 & WT/DS615/1 (Dec. 15, 2022), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/615-1.pdf&Open=True>.

25 Zheng, *supra* note 14.

26 Youyou Jiang, *On the Extraterritorial Effect of US Secondary Sanctions and Its Regulation Under International Law* [论美国次级制裁的域外效力及国际法规制], 9(3) SUZHOU U. L. REV. [苏州大学学报(法学版)] 75 (2022).

27 50 U.S.C. §4305(b)(1)(B).

28 *Id.* §1701(a).

serves as the primary legal basis for the US sanctions programmes primarily in peacetime.²⁹ Under the presidential orders, the Department of Commerce amended the Export Administration Regulations to restrict import and export transactions of sanctioned targets.³⁰

The US unilateral trade sanctions can be categorized into four types of bans: (1) a ban on commercial transactions; (2) an investment ban; (3) import and export bans; and (4) a re-export ban.³¹ These measures are central to recent US-China trade tensions, as seen in the US export controls on advanced semiconductors challenged by China in *US-Semiconductors (China)*. Given the US's longstanding stance of broadly interpreting its discretion under Article XXI(b), it will probably invoke this provision in its defense. All these four bans are thus categorized as direct barriers, because they directly affect the targets, thereby exerting a coercive long-arm effect on third-country entities.³²

In addition to direct barriers, indirect barriers fall into two categories: global financial bans and origin marking measures. The first is financial bans, which prohibit financial institutions from providing services to sanctioned targets.³³ The Central Bank of Russia (CBR) established the System for Transfer of Financial Messages (SPFS) as an alternative to SWIFT as early as 2014.³⁴ According to Presidential Decree 14,024, any foreign financial institution that joins the SPFS may be subject to sanctions by the US.³⁵ In this regard, the US has imposed a financial ban on Russian banks excluded from the SWIFT system.³⁶

The second is the origin labelling measure, which requires American companies to label the origin of their products. Companies must disclose to the US Securities and Exchange Commission whether the minerals used in their products

29 Stephanie Zable, *What Comes After Tariffs: an IEEPA Primer*, LAWFARE (July 19, 2018), <https://www.lawfaremedia.org/article/what-comes-after-tariffs-ieepa-primer>.

30 Bureau of Industry and Security, Policy Guidance, <https://www.bis.doc.gov/index.php/policy-guidance>.

31 Jiang, *supra* note 26.

32 Xiaomei E, *A Study on the Interpretation and Application of the WTO Security Exception Clause-Taking the Case of Semiconductor Measures between China and the United States as an Example* [WTO安全例外条款解释与适用研究-以中美半导体措施案为例], 6 INT'L L. STUD. [国际法研究] 74 (2024).

33 E.g., Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), introduced by the United States under the Patriot Act, requires US banks to suspend transactions with foreign banks that provide financial services to Iran. See CISADA art. 104, <https://www.congress.gov/111/plaws/publ195/PLAW-111publ195.pdf>.

34 Bank of Russia, Financial Messaging System of the Bank of Russia-SPFS, https://cbr.ru/Content/Document/File/72210/SPFS_25082022_e.pdf.

35 Exec. Order No. 14,024, 86 Fed. Reg. 73 (Apr. 15, 2021).

36 US Department of Treasury, U.S. Treasury Announces Unprecedented & Expansive Sanctions Against Russia, Imposing Swift and Severe Economic Costs (Feb. 24, 2022), <https://home.treasury.gov/news/press-releases/jy0608>.

come from the Democratic Republic of the Congo or adjoining countries.³⁷ When a company is unable to prove whether the minerals originate from the Congo region, it faces cumbersome due diligence requirements and often compelling them to purchasing minerals from other regions. The US domestic policies have frequently drawn criticism for their extensive extraterritorial impacts such as a *de facto* embargo on the entire Congolese mining industry, which can inadvertently stifle economic development in foreign countries.³⁸

Whether direct or indirect, the discriminatory nature of these barriers runs counter to the core principles of the WTO like the MFN principle and the principle of national treatment.³⁹ Commercial transaction bans, investment bans, and import/export bans are often imposed on specific sanctioned targets, thereby violating the principle of national treatment. For example, the US has banned the import and sale of only Chinese DJI drones.⁴⁰ It does not apply the same trade restrictions to drones from other countries. By erecting trade barriers through unilateral trade sanctions, the principle of non-discrimination is compromised.⁴¹ Thus, if members can easily justify their unilateral sanctions under the guise of national security, it would fundamentally erode the cornerstone of the WTO's non-discrimination principles, thereby precipitating a crisis of hollowing out for the multilateral trading system.

C. The Crisis of Generalization of the WTO Security Exception Clause

The inherent drafting deficiencies of Article XXI, combined with the failure of dispute settlement bodies to establish a clear standard of review, risk generalizing the national security exception, thereby endangering the stability of the WTO multilateral system.⁴² These legislative shortcomings were first manifested without an introductory provision in Article XXI of GATT to prevent abuse.⁴³ Secondly, the scope of the authorization is unclear. Article XXI undoubtedly

37 US Congress, Dodd-Frank Wall Street Reform and Consumer Protection Act, <https://www.congress.gov/crs-product/R41350>.

38 Katherine Marter, *Between a Rock and a Hard Place: The Unintended Consequences of the Conflict Minerals Rule*, 24(1) TUL. J. INT'L & COMPAR. L. 291(2015).

39 VANDERBOTH, PRINCIPLES OF WORLD TRADE ORGANISATION LAW (I) 376 (Shang Kuan trans., 2020).

40 Brandon Vigliarolo, *Drone maker DJI sues Pentagon over 'Chinese military company' label*, REGISTER (Oct. 22, 2024), https://www.theregister.com/2024/10/22/dji_sues_dod.

41 Qingjiang Kong, *National Economic Security and the Application of WTO Exception Rules* [国家经济安全与WTO例外规则的应用], 5 SOC. SCI. REV. [社会科学辑刊] 134 (2018).

42 *Id.*

43 VANDERBOTH, *supra* note 39, at 680.

affords members a certain degree of discretion, but it does not clearly outline how to strike a balance between the multilateral trading system and state sovereignty.⁴⁴

Furthermore, traditional methods of treaty interpretation under Article 31 of the Vienna Convention on the Law of Treaties (VCLT), such as text, context, and object and purpose provide little precision for elastic concepts like essential security interests. Concurrently, Article XXI is often treated as self-judging in practice. It means members typically do not seek prior approval from other states for security actions. These two factors—interpretive ambiguity and state autonomy—combine to create a significant loophole in Article XXI that enables its potential abuse.⁴⁵

The Panel in *Russia-Traffic in Transit* failed to establish a clear, generalizable standard of review for subsequent cases. This ambiguity is particularly problematic in cases involving trade sanctions imposed by developed countries on developing countries, where the inherent textual deficiencies of Article XXI invite divergent interpretations.⁴⁶ The judicial review of Article XXI lacks clarity. The earliest may be traced back to the trade sanctions imposed on Argentina by the European Community, Australia and Canada in 1982.⁴⁷ The GATT Council recognised that while trade sanctions can be disruptive to international trade, security exceptions are a safeguard instrument when security reasons are involved.⁴⁸

The GATT Council Decision's Preamble notes that security exceptions constitute both an important element for safeguarding the rights of contracting parties (sovereignty-preserving) and, in certain circumstances, an element of disruption and uncertainty for international trade (trade-disrupting).⁴⁹ In *United States-Trade Measures Affecting Nicaragua*, the Panel did not have the opportunity to interpret Article XXI directly.⁵⁰ Poland emphasised that Article XXI could only be invoked by developed countries and arbitrary actions disproportionately

44 Dan Sarooshi, *Sovereignty, Economic Autonomy, the United States, and the International Trading System: Representations of a Relationship*, 15(4) EUR. J. INT'L L. 651 (2004).

45 Roger Alford, *The Self-Judging WTO Security Exception*, 2011 UTAH L. REV. 697 (2011).

46 GATT Council, *Minutes of Meeting Held in the Centre William Rappard on May 29, 1985*, GATT Doc. C/M/188 (Oct. 24, 1985), at 1-17, <https://gatt-disputes.wto.org/document/c-m-192>.

47 Wanli Zhao, *A Few Questions on the Study of the Isle of Man War* [关于马岛战争研究的几个问题], 32(3) LATIN AM. STUD. [拉丁美洲研究] 58 (2010).

48 GATT Council, *Decision Concerning Article XXI of the General Agreement*, GATT Doc. L/5426 (Dec. 2, 1982), https://www.wto.org/gatt_docs/English/SULPDF/91000212.pdf.

49 WTO, *Decision Concerning Article XXI of the General Agreement*, WTO Doc. L/5426 (adopted Nov. 30, 1982), https://www.wto.org/gatt_docs/English/SULPDF/91000212.pdf.

50 Panel Report, *United States-Trade Measures Affecting Nicaragua*, WTO Doc. L/6053, at ¶ 5.3, https://www.wto.org/english/tratop_e/dispu_e/gatt_e/85embarg.pdf.

harmed developing countries.⁵¹

The controversy in the *Saudi Arabia-IPRs* concerned more non-civilian materials.⁵² This repeated avoidance left the core legal questions surrounding the exception unanswered, further entrenching its status as a hole in the GATT legal framework. The invocation of the national security exception has proliferated in recent years.⁵³ Accordingly, there is a need for a framework to review the WTO's national security exceptions.

III. Judicial Review of the WTO National Security Exception Clause

A. The Starting Point for Judicial Review of the National Security Exception Clause

The WTO Dispute Settlement Body (DSB) has yet to establish clear interpretive standards for the national security exception, necessitating a reconstruction of its judicial review framework. The construction of such a framework for the national security exception must first address two preliminary questions: First, does a Panel have jurisdiction over such disputes? Second, is the nature of such disputes justiciable?

The Panel possesses the requisite jurisdiction to adjudicate disputes arising under Article XXI. If the national security exception is a self-judging clause, then the Panel has no jurisdiction over the disputes.⁵⁴ A finding that Article XXI is not self-judging, however, does not conclude the matter; it only begins the assessment of its justiciability. In this regard, a panel must further assess whether the legal disputes arising from this clause are amenable to judicial

51 GATT Council, *Minutes of Meeting Held in the Centre William Rappard on May 29, 1985*, GATT Doc. C/M/188 (June 28, 1985), at 1-17, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/GG/C/M188.PDF&Open=True>.

52 WTO, *Report of the Working Party on the Accession of the Kingdom of Saudi Arabia to the World Trade Organisation*, WTO Doc. WT/ACC/SAU/61 (Nov. 1, 2005), <https://publicintellgence.net/report-of-the-working-party-on-the-accession-of-the-kingdom-of-saudi-arabia-to-the-world-trade-organization>.

53 Peter Bossche & Sarah Akpofure, *The Use and Abuse of the National Security Exception under Article XXI(b)(iii) of the GATT 1994* 1 (WTI Working Paper No. 03/2020, 2020), https://www.wti.org/media/filer_public/50/57/5057fb22-f949-4920-8bd1-e8ad352d22b2/wti_working_paper_03_2020.pdf.

54 Zhongfa Ma & Zichun Xu, *On the Interpretation Path of WTO Security Exception Clauses and Its Implications for China* [论WTO安全例外条款的解释路径及其对中国的启示], 45(6) INT'L BUS. RES. [国际商务研究] 47 (2024).

resolution. The WTO panels' jurisdiction is rooted in the consent of members, as expressed through their ratification of the WTO Agreement and the Dispute Settlement Understanding (DSU).⁵⁵ This grant of authority necessarily includes the Kompetenz-Kompetenz-the power to determine the scope of their own jurisdiction, including the applicability of exception clauses like Article XXI.⁵⁶ This view diverges from the long-standing US position, which contends that the clause is entirely self-judging based on the phrase "which it considers" in Article XXI. The jurisprudence has evolved to clarify the limits of this interpretation.⁵⁷

The Panel in *Russia-Traffic in Transit* determined that the phrase "which it considers" in Article XXI(b) is limited to a member's determination of its own essential security interests and its assessment of what measures are necessary to protect those interests.⁵⁸ As for the specific situations enumerated in Article XXI(b)(i)-(iii), the subsequent panel report in *US-Origin Marking (Hong Kong, China)* affirmed that the objective existence of these circumstances requires assessment by the panel.⁵⁹ Therefore, the rulings support the view that the WTO dispute settlement mechanisms possess jurisdiction to review the invocation of Article XXI (national security exceptions), specifically pertaining to the objective application of its enumerated conditions and chapeau requirements.

The national security exception is justiciable. In *Russia-Traffic in Transit*, Russia argued that the Panel could not determine: what a member's essential security interests were; what actions were necessary to protect them; what information could be disclosed without violating a member's essential security interests; and whether an emergency existed.⁶⁰ The US claimed that Article XXI is not trade but a political matter which is non-actionable.⁶¹ However, a political motivation does not automatically render a measure non-justiciable. After all, trade sanctions often cloak political issues.⁶² Under Article 1.1 of the DSU, the rules and procedures of

55 The Dispute Settlement Understanding of the Rules and Procedures, art.1.1.1.

56 Appellate Body Report, *United States - Anti-Dumping Act of 1916*, WTO Docs. WT/DS136/AB/R, WT/DS162/AB/R (adopted Aug. 28, 2020), at ¶¶ 30-54, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/136ABR.pdf&Open=True>.

57 E, *supra* note 32.

58 Panel Report, *supra* note 16, at ¶ 7.103.

59 Panel Report, *United States-Origin Marking Requirement*, WTO Doc. WT/DS597/R (adopted Dec. 21, 2022), at ¶¶ 7. 290 & 7. 358. [https://www.worldtradelaw.net/document.php?id=reports/wtopanels/us-originmarking\(panel\).pdf&mode=download](https://www.worldtradelaw.net/document.php?id=reports/wtopanels/us-originmarking(panel).pdf&mode=download).

60 Panel Report, *supra* note 16, at ¶ 7.27.

61 *Id.* at ¶ 7.103.

62 J. Benton Heath, *The New National Security Challenge to the Economic Order*, 129(4) YALE L. J. 1066 (2020).

the DSU apply to disputes covered in Annex 1, including those under the GATT.⁶³ However, the DSU does not have special or additional procedures for the disputes under Article XXI. The Panel in *Russia- Traffic in Transit* demonstrated that Article XXI is not entirely self-judging and that disputes arising from it are justiciable.⁶⁴

B. Principles of Judicial Review of National Security Exceptions

The principle of good faith is fundamental to the judicial review of national security exceptions.⁶⁵ In *US-Shrimp*, the Panel held that the interpretation of the GATT's general exceptions should be guided by the basic principle of good faith embodied in Article 26 (*Pacta Sunt Servanda*) of VCLT,⁶⁶ which is to be applied to the issue of interpreting the WTO disputes.⁶⁷ Additionally, under the WTO jurisprudence, treaties are binding on the parties and members should participate in dispute settlement procedures with good faith.⁶⁸ Under this principle, panels have interpreted Article XXI by considering the three key factors, namely, essential security interests, necessity, and exigencies of the situation in international relations. In applying the good faith principle, panels have developed a tripartite test to review a member's invocation of Article XXI, focusing on: (a) the validity of the claimed essential security interests; (b) the necessity of the measures taken; and (c) the existence of an emergency in international relations.⁶⁹

First, regarding the interpretation of essential security interests, the Panel recalled the history of consultations on Article XXI. Members have the right to act in times of war in their security interests, to determine for themselves the scope of those interests and to decide what their security interests are.⁷⁰ Essential security interests are a more qualified concept than security interests. The basic security interests of a State depend on the specific situation. In this regard, members have a higher degree of discretion in interpreting essential security interests, but are still bound by the principle of good faith. The Panel has the power to

63 The Dispute Settlement Understanding of the Rules and Procedures, art. 1.1.1.

64 Panel Report, *supra* note 16, at ¶ 7.58.

65 Steven Reinhold, *Good Faith in International Law*, 2 UCL J. L. & JURIS. 47 (2013).

66 Appellate Body Report, *United States-Import Prohibition of Certain Shrimp and Shrimp Products-Recourse to Article 21.5 of the DSU by Malaysia*, WTO Doc. WT/DS58/AB/RW (adopted Oct. 22, 2001), at ¶ 7.41. [https://www.worldtradelaw.net/document.php?id=reports/wtoab/us-shrimp\(ab\)\(21.5\).pdf&mode=download](https://www.worldtradelaw.net/document.php?id=reports/wtoab/us-shrimp(ab)(21.5).pdf&mode=download).

67 Panel Report, *supra* note 16, at ¶ 7.59.

68 GRAHAM COOK, A DIGEST OF WTO JURISPRUDENCE ON PUBLIC INTERNATIONAL LAW CONCEPTS AND PRINCIPLES 158 (2015).

69 Daria Boklan & Amrita Bahri, *The First WTO's Ruling on National Security Exception: Balancing Interests or Opening Pandora's Box?*, 19(1) WORLD TRADE REV. 123 (2020).

70 Panel Report, *supra* note 16, at ¶ 7.27.

examine whether a member's articulation of essential security interests meets the minimally satisfactory standard.⁷¹ In *Saudi Arabia-IPRs*, Saudi Arabia argued that essential security interests relate to the basic functions of a state, namely the protection of its territory and its population from external threats and the maintenance of internal law and public order.⁷²

Second, necessity can be interpreted only after a member's articulation of essential security interests meets the a minimally satisfactory standard. The necessity requirement is assessed under a standard of reasonable nexus, examining whether a rational connection exists between the measure and the protected security interest. The reasonable relevance test in Article XXI is a relatively easy standard to meet.⁷³ In the context of international investment arbitration, necessity refers to the measure being the only way to protect national interests.⁷⁴ The Panel should independently and objectively assess the necessity of the measure.

Third, emergencies encompass dangers, conflicts, and situations that require urgent action, as well as those that are highly likely to cause danger or catastrophe in a particular region.⁷⁵ Political or economic differences between members are not sufficient to constitute an international emergency.⁷⁶ Such differences would not be considered an emergency in international relations unless they implicated national defence and military interests or the maintenance of law and public order.⁷⁷

Interpreting Article XXI in light of the good faith doctrine provides a guiding direction for addressing unilateral trade sanctions within the multilateral trading system.⁷⁸ Only by reviewing the national security exception clause through the WTO adjudication mechanism could a balance be struck between the trade interests of other members and the discretionary power of the invoking State. Otherwise, the clause is vulnerable to abuse.⁷⁹ The multilateral trading system aims to strike a balance between national security and the promotion of

71 Dapo Akande & S. Williams, *International Adjudication on National Security Issues: What Role for the WTO?*, 43 VA. J. INT'L L. 392 (2003).

72 Panel Report, *Saudi Arabia-Measures Concerning the Protection of Intellectual Property Rights*, WTO Doc. WT/DS567/R (adopted June 16, 2020), at ¶ 7.280, [https://www.worldtradelaw.net/document.php?id=reports/wtopanels/saudi-arabia-iprights\(panel\).pdf&mode=download](https://www.worldtradelaw.net/document.php?id=reports/wtopanels/saudi-arabia-iprights(panel).pdf&mode=download).

73 Panel Report, *supra* note 16, at ¶ 7.138.

74 Ma & Xu, *supra* note 54.

75 Claussen, *supra* note 12.

76 *Id.*

77 Ying Liu & Lu Zhang, *The Application of GATT Security Exception to the 232 Steel and Aluminum Measures of the United States* [论GATT安全例外对美国232钢铝措施的适用], 35(12) INT'L ECON. & TRADE RES. [国际经贸探索] 102 (2019).

78 Andrew Mitchell, *Good Faith in WTO Dispute Settlement*, 7(2) MELB. J. INT'L L. 339 (2006).

79 PETER BOSSCHE & WERNER ZDOUC, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXT, CASES, AND MATERIALS* 596 (2013).

commercial development, while also protecting the trading system.⁸⁰

C. A Dual Review Method: Integrating Substantive and Procedural Scrutiny

1. Substantive Review

To prevent the abuse of Article XXI, Panels must navigate a delicate balance.⁸¹ This approach does not substitute the Panel's judgment for that of the invoking member, but rather applies a minimal credibility standard. In its substantive review, the Panel only required that the measures implemented by members meet a minimum standard of credibility concerning the proposed essential security interests.⁸² However, substantive review must be applied cautiously, given its potential to interfere with national security policies and the lack of consensus on non-traditional security interests.⁸³ The Panel's substantive standard of review is relatively broad, and further refinement of this standard is needed.

2. Procedural Review

Given the inherent limitations of a purely substantive review, procedural review is essential. It focuses on the procedural propriety of members' invocation of national security exceptions. The principle of good faith requires members not only for the clear explanation of the relationship between security interests and the measures taken, but also procedural transparency and reasonableness.⁸⁴ As Article 26 of VCLT provides that the element of reasonableness must be inherent in the interpretation of the provision, a strict procedural review compels members to act with transparency and rigor, serving as a crucial check against arbitrariness and bad faith.⁸⁵ It complements substantive deference by ensuring that the invocation process itself is sound.

Guided by the principle of good faith, the Panel should adopt a judicial standard of review that combines a liberal substantive review with a strict

80 ALAN ALEXANDROFF & RAJEEV SHARMA, *THE NATIONAL SECURITY PROVISION-GATT ARTICLE XXI, THE WORLD TRADE ORGANISATION: LEGAL, ECONOMIC AND POLITICAL ANALYSIS* 596 (2005).

81 Boklan & Bahri, *supra* note 69.

82 Akande & Williams, *supra* note 71.

83 Emerging national security interests are broader in scope, such as climate change, economic security, and competition between states. See Heath, *supra* note 62, at 1024.

84 Boklan & Bahri, *supra* note 69.

85 Reinhold, *supra* note 65.

procedural review. Such moderate substantive review can preserve the state sovereignty. In contrast, strict procedural review serves to curb the abuse of security exceptions. This integrated dual-review mechanism thus balances the sovereign right to define security interests with the imperative to preserve the multilateral trading system's integrity.

D. The Complementary Role of the Multi-Party Interim Appeal Arrangement

As the WTO Appellate Body was suspended in December 2019, a total of 19 WTO members signed the Multi-Party Interim Appeal Arrangement (MPIA) in 2020. MPIA was set up as an interim arbitration procedure based on Article 25 of the DSU, aiming to preserve the essential appellate function of the multilateral trade system.⁸⁶ It exhibits a hybrid nature, incorporating elements of both litigation and arbitration. As per Article 25 of the DSU, arbitral awards are as binding as Panel reports.⁸⁷ For its participants, the MPIA serves as a vital alternative for resolving disputes during the Appellate Body's hiatus.⁸⁸

Consequently, in adjudicating disputes involving Article XXI, MPIA arbitrators are expected to adhere to the interpretive principles and review standards developed in prior panel jurisprudence. This includes consistent application of the tripartite framework assessing the validity of essential security interests, the necessity of measures, and the existence of an emergency in international relations to prevent abusive invocations of the national security exception.⁸⁹ Although non-MPIA members are not subject to its proceedings, the MPIA's work in clarifying the boundaries of Article XXI contributes to the development of a more predictable and coherent jurisprudence.⁹⁰ This evolving body of interpretation is crucial for safeguarding the integrity of the multilateral trading system against the arbitrary use of national security exceptions.

86 JULIEN CHAISSE, HONG KONG AS AN ACTOR IN INTERNATIONAL ECONOMIC LAW: MULTILATERALISM, BILATERALISM, AND UNILATERALISM 205 (2024).

87 Jingxia Shi, *WTO Multi-party Interim Appellate Arbitration Arrangement: Arbitration-based Appellate Substitution* [WTO《多方临时上诉仲裁安排》：基于仲裁的上诉替代], 42(6) LEGAL STUD. [法学研究] 167-85 (2020).

88 Jiaxiang Hu, *On the Enforceability of the Multi-party Interim Appeal Arbitration Arrangement from the Perspective of WTO Dispute Settlement Procedures* [从WTO争端解决程序看《多方临时上诉仲裁安排》的可执行性], 37(2) INT'L ECON. & TRADE EXPLORATION [国际经贸探索] 99 (2021).

89 Ying Liu, *MPIA: A Test of Rules and Practice for the Reform of the WTO Appellate Review Mechanism* [MPIA: WTO上诉审议机制改革的规则和实践试验], 41(3) L. REV. [法学评论] 174 (2023).

90 Naigen Zhang, *Treaty Interpretation by the Appellate Body: Distinguishing between Precedents and Case Law, with Comments on the Reform of the WTO Dispute Settlement Mechanism* [上诉机构的条约解释判理或先例之辨-兼论WTO争端解决机制改革], 2 INT'L ECON. REV. [国际经济评论] 44 (2019).

IV. Applying the Framework: A Legal Compliance Review of the US and Chinese Practices

The judicial review mechanism under Article XXI of GATT 1994 provides a crucial framework for assessing unilateral trade sanctions against multilateral rules. The landmark *Russia-Traffic in Transit* case established that the security exception is neither entirely self-judging nor non-justiciable, thereby creating a foundation for multilateral legal scrutiny.⁹¹ The Panel in *Russia-Traffic in Transit* developed a tripartite interpretive framework comprising essential security interests, necessity and emergency in international relations, supplemented by the application of the principle of good faith.⁹² This framework provides a methodological basis for evaluating the WTO-compliance of both China's counter-sanctions and the US unilateral trade measures. Within the current WTO system, unilateral sanctions manifest in two distinct forms: proactive extraterritorial sanctions, exemplified by the US measures and counter-sanctions, represented by China's Anti-Foreign Sanctions Law. Both categories must undergo judicial review within the WTO framework to assess their compatibility with multilateral trading orders.

A. The US's Unilateral Sanctions under the Tripartite Framework Scrutiny

A defining feature of US unilateral trade sanctions is extraterritoriality.⁹³ In particular, recent US sanctions targeting Chinese drones and semiconductors, grounded in domestic legislation like the Export Control Reform Act, exemplify these modalities.⁹⁴ While domestically lawful, such measures remain subject to the WTO framework.⁹⁵ The first hurdle is defining an essential security interest, particularly given the tendency to broaden this exception.⁹⁶ The Panel found that

91 Zheng, *supra* note 14.

92 Panel Report, *supra* note 16.

93 George-Dian Balan, *The Latest United States Sanctions against Iran: What Role to the WTO Security Exceptions*, 18(3) J. CONFLICT & SEC. L. 365 (2013).

94 Anyi Sun & Jiexiang Hu, *Extraterritorial Application of U.S. Export Control Legislation and a Review of Its Legitimacy* [美国出口管制立法的域外适用及其正当性检视], 2 J. INT'L ECON. L. [国际经济法学期刊] 49 (2025).

95 Mei Liu, *Limited Governance of WTO Security Exceptions over Unilateral Trade Sanctions: Analysis Based on the Russia-Transit Restrictions Case* [论WTO安全例外对单边贸易制裁的有限治理-基于“俄罗斯过境限制案”的分析], 36(1) INT'L ECON. & TRADE RES. [国际经贸探索] 99 (2020).

96 The United States used Article 21 of the GATT to justify tariffs on steel and aluminium products in a WTO case. See Timothy Meyer, *The Political Economy of WTO Exceptions*, 99(4) WASH. U. L. REV. 1299 (2022).

essential security interests were primarily related to core functions of a state.⁹⁷ The intensity of a trade ban must be proportionate to the threat posed to the invoking member's security interests.⁹⁸ This principle of proportionality finds support in the Panel's approach.

For instance, in *Saudi Arabia-IPRs*, Saudi Arabia argued that the essential functions of the State are involved, namely, the protection of its territory and population from external threats, and the maintenance of domestic law and public order.⁹⁹ Mere economic sanctions that lack a direct link to armed conflict or public order may be found to be an abuse of the national security exception.¹⁰⁰

Even if a genuine security interest is established, the US measures often fail the necessity test. The principle of proportionality could serve as a criterion for measuring the degree of necessity.¹⁰¹ There should be proportionality between the consequences and the purpose of the sanction.¹⁰² The legislative objective must be sufficiently important to justify the restriction of a fundamental right. The means of impairing the right must be necessary to achieve the legitimate aim.¹⁰³ The legislative objective must be sufficiently important; the measures must be rationally connected to that objective; and the impairment of trade rights must be minimal.¹⁰⁴ As regards a trans-export ban, the US believes that a sanctioned country may pose a threat to the US national interests by acquiring specific technology through a third party.¹⁰⁵ The legislative intent of the sanctions was to protect national security of the US, while the implementing measures were to restrict the technology acquisition by third-party countries for resale to sanctioned targets. This means that unilateral trade sanctions are focused on proactively realising a policy objective rather than as the only means of protecting necessary national security interests.

Furthermore, the disproportionate collateral damage on third parties undermines the necessity claim. Secondary sanctions routinely cause significant harm to innocent third-country entities who have no avenue for redress.¹⁰⁶ For

97 Panel Report, *supra* note 16, at ¶ 7.130.

98 Michael Hahn, *Vital Interests and the Law of GATT: An analysis of GATT's Security Exception*, 12(3) MICH. J. INT'L L. 558 (1991).

99 Panel Report, *supra* note 72, at ¶ 7.280.

100 Panel Report, *supra* note 16, at ¶ 7.133.

101 Hahn, *supra* note 98.

102 Balan, *supra* note 93.

103 Stanley Burnton, *Proportionality*, 16(3) JUD. REV. 179 (2011).

104 Paul Craig, *Proportionality, Rationality and Review*, 2010 N.Z. L. REV. 269 (2010).

105 *United States v. Evans*, 667 F. Supp. 974, 980(S.D.N.Y. 1987).

106 Gary Hufbauer & Barbara Oegg, *Targeted Sanctions: A Policy Alternative*, 32(1) L. & POL'Y INT'L BUS. 11 (2000).

example, the US's semiconductor controls in 2022 reportedly resulted in third-party companies incurring millions in losses.¹⁰⁷ The trans-export ban, due to its expansive ripple effect, carries far more than is necessary. The US semiconductor export controls October 2022 serves as a prime example of such a trans-shipment ban, extending its reach to third-country entities and thus raising serious questions of proportionality and necessity under the WTO framework.¹⁰⁸

Finally, the US sanctions frequently struggle to demonstrate an emergency in international relations. As established in *Russia-Traffic in Transit* and *US-Steel and Aluminium*, an emergency typically involves armed conflict or severe international crises – even more than mere political tensions, economic competition, or a policy of containing another state's development.¹⁰⁹ A country's internal declaration of a national emergency under its domestic law cannot be equated with meeting the objective international standard under Article XXI.¹¹⁰ A country that uses unilateral trade sanctions as coercive measures to achieve political ends in times of peace would have practical difficulty in demonstrating that the element of exigency in international relations can be justified.¹¹¹

To summarize, when examined through the framework of essential security interests, necessity, and emergency, the US's unilateral sanctions confront significant, and often insurmountable, hurdles in demonstrating their justifiability under Article XXI. The extraterritoriality and disproportionate economic impact are particularly difficult to reconcile with the narrow confines of the security exception.

B. China's Responsive Counter-Sanctions under the Tripartite Framework Scrutiny

This tripartite framework, when applied to China's responsive measures, reveals a different calculus. In contrast to the expansive US measures, China's counter-

107 Shannon Davis, SEMI Statement on New U.S. Export Control Regulations, Semiconductor Digest (Aug. 24, 2020), <https://www.semiconductor-digest.com/semi-statement-on-new-u-s-export-control-regulations>.

108 The US export controls increase the cost for the PRC's companies to develop advanced AI but not degrading that capacity. See Aaron Dorshow, *The United States' Semiconductor Export Controls at One Year: Is the PRC Racing Forward?*, GEO. SEC. STUD. REV., <https://gssr.georgetown.edu/the-forum/topics/technology/the-united-states-semiconductor-export-controls-at-one-year-is-the-prc-racing-forward>.

109 Panel Report, *supra* note 16, at ¶ 7.71; Panel Report, *United States-Certain Measures on Steel and Aluminium Products*, WTO Doc. WT/DS 544/ R (adopted Dec. 9, 2022), at ¶ 7.137, [https://www.worldtradelaw.net/document.php?id=reports/wtopanels/us-steelaluminum\(panel\)\(china\).pdf&mode=download](https://www.worldtradelaw.net/document.php?id=reports/wtopanels/us-steelaluminum(panel)(china).pdf&mode=download).

110 Reinhold, *supra* note 65.

111 Ying Liu & Huiyu Lin, *Interpretation of "Emergency in International Relations" in GATT Security Exceptions* [GATT安全例外中“国际关系中的紧急情况”解释], 3(4) HUXIANG L. REV. [湖湘法学评论] 139 (2023).

sanctions, as embodied primarily in its Unreliable Entity List (UEL) mechanism, represent a more targeted and defensive approach. Their compatibility with the Article XXI framework must be assessed through the same tripartite lens of essential security interests, necessity, and emergency. China has implemented two primary types of countermeasures: diplomatic sanctions announced by the Ministry of Foreign Affairs and the UEL administered by the Ministry of Commerce.¹¹² As of April 17, 2025, the UEL has been updated through 12 official announcements by the Ministry of Commerce, primarily targeting foreign entities in the defence, unmanned aerial systems, artificial intelligence and biotechnology sectors, with a predominant reference to the US defence contractors. These sectors are directly responsive to the areas targeted by the US sanctions, illustrating the reactive and selective nature of China's measures in the ongoing cycle of trade disputes.

The criteria for including foreign entities on the UEL consist of two categories: one is to endanger China's national sovereignty, security and development interests; the other is to violate standard market transaction principles, discriminating against or severely damaging the legitimate rights and interests of Chinese enterprises, organisations or individuals.¹¹³ Foreign entities typically face four categories of punitive consequences. Entities designated on the List are subject to four categories of measures: (1) restrictions on import and export activities related to China; (2) a prohibition on making new investments within China; (3) entry bans on their senior management personnel; and (4) denial or revocation of work permits, residence, or stay qualifications for said senior management in China.¹¹⁴ The penalties can be broadly categorised into travel bans, import and export bans and investment bans.¹¹⁵

1. Essential Security Interests

Import and export bans are typically implemented in conjunction with the Export Control Law. China has imposed import and export bans on three US arms

112 The UEL is grounded in China's domestic legal framework, including the Foreign Trade Law of the People's Republic of China (amended in 2022) [中华人民共和国对外贸易法2022年修正], Anti-Monopoly Law of the People's Republic of China [中华人民共和国反垄断法], National Security Law of the People's Republic of China [中华人民共和国国家安全法] and relevant regulations.

113 Provisions on the Unreliable Entity List. Order of the Ministry of Commerce of the People's Republic of China, art. 2, https://english.mofcom.gov.cn/Policies/AnnouncementsOrders/art/2020/art_26e3c471536d443c944d60c91baca19a.html.

114 Jiang, *supra* note 7.

115 Travel bans typically refer to prohibiting sanctioned individuals from entering a country. See Earl Maltz, *The Constitution and the Trump Travel Bans*, 22(2) LEWIS & CLARK L. REV. 391(2018).

manufacturers: Lockheed Martin, Space & Security, and Raytheon.¹¹⁶ China's Export Control Law authorizes the national export control administration to impose restrictions on listed importers and end-users, including prohibiting or restricting transactions in controlled items and suspending exports.¹¹⁷ Currently, the Export Control Law also pertains to military items. In the conventional sense, military security falls within the scope of a nation's essential security interests, as defined by traditional frameworks of national security.¹¹⁸ Therefore, both the import and export bans targeting foreign defence enterprises under the UEL comply with the standards for essential security interest elements under the WTO's national security exception review provisions. This focus on defence and critical technology aligns with a narrow interpretation of "essential security interests" endorsed by the WTO panels, which links such interests to a state's core functions, such as protecting its territory and population from external threats.¹¹⁹

Regarding necessity, the UEL's design reflects a calibrated approach. China can argue that its measures satisfy the principle of necessity through their precise targeting of foreign defence enterprises—rather than broad-based embargoes—and their deliberate avoidance of extraterritorial secondary sanctions, thereby minimizing collateral damage.¹²⁰ This sanction model avoids collateral damage and is not enforced through secondary sanctions that would involve third-party entities. Moreover, before the formal implementation of countermeasures, the Ministry of Foreign Affairs had repeatedly expressed opposition to the actions of certain foreign military-industrial entities as all other means had been exhausted. Restricting the entry of executives from certain entities on the UEL is not ordinary immigration control.¹²¹

2. Objective Criteria for Emergency Situations

In the *Russia-Traffic in Transit*, the Panel held that emergencies in international relations should be based on objective facts rather than the subjective judgement

116 PRC Ministry of Foreign Affairs, Counter-sanctions List and Measures [反制裁清单和措施], https://www.mfa.gov.cn/web/wjfb_673085/zfxxgk_674865/gknrlb/fzcqdes.

117 Export Control Law of the People's Republic of China [中华人民共和国出口管制法], art. 18.

118 Claussen, *supra* note 12.

119 Hahn, *supra* note 98.

120 PRC Ministry of Commerce, A spokesperson of the Ministry of Commerce answered questions from reporters on measures related to the unreliable entity list [商务部新闻发言人就不可靠实体清单有关措施答记者问] (Jan. 16, 2025), https://www.mofcom.gov.cn/xwfb/xwfyth/art/2025/art_49ef81bc80aa4ecfb53bbfe3c90ce8f3.html.

121 Lori Damrosch, *The Legitimacy of Economic Sanctions as Countermeasures for Wrongful Acts*, 37(2) BERKELEY J. INT'L L. 249 (2019).

of the invoking member.¹²² The Panel defined emergencies in international relations as armed conflicts, potential armed conflicts, heightened tensions or escalating crises or unstable situations that engulf or surround a nation.¹²³ In the *Saudi Arabia-IPRs*, the Panel directly adopted the review standard established in the *Russia-Traffic in Transit*. In the *US-Origin Marking (Hong Kong, China)*, the Panel ruled that an emergency in international relations could only be deemed as such if it involved essential security interests when determining its existence.¹²⁴ China's position would be that the specific actions of the targeted entities are matters of objective fact. China has repeatedly used the UEL, mainly in connection with national security in the traditional sense.¹²⁵

This preliminary analysis shows that China's responsive counter-sanctions demonstrate a stronger *prima facie* alignment with the tripartite framework under Article XXI than proactive US measures. Their territorial limitation, targeted nature, and traditional security concerns provide a more defensible legal ground under the WTO law.¹²⁶ China has not expansively interpreted the nationality principle. Chinese natural persons, legal entities or other organisations are still obligated to comply with China's counter-sanction laws even when abroad.¹²⁷ China does not prohibit third parties from engaging in transactions with sanctioned targets, and its counter-sanction measures do not involve secondary sanctions.

China has invoked the UEL multiple times, primarily concerning traditional national security not for proactive enforcement. China has imposed responsive sanctions rather than universal sanctions, which are typically and unilaterally initiated. China's countermeasures to safeguard sovereignty and territorial integrity satisfy the three criteria: essential security interests, necessity, and an emergency in international relations.¹²⁸ To some extent, the three review factors are interconnected. The effect of the trade ban is confined to China's territory and does not cause collateral harm to third parties.

3. Dispute Settlement and the WTO Compliance

Although Chinese enterprises have frequently been added to the US government's

¹²² Panel Report, *supra* note 16, at ¶¶ 7.71 & 7.100.

¹²³ *Id.* at ¶ 7.76.

¹²⁴ Liu & Lin, *supra* note 111.

¹²⁵ PRC Ministry of Commerce, Provisions on the Unreliable Entity List, <https://www.mofcom.gov.cn/dl/file/20211203230795.pdf>.

¹²⁶ Xiaolin Li, *WTO Security Exception Clause: Practice Evolution, Path Choice and China's Response* [WTO安全例外条款: 实践演进、路径选择与中国因应], 3 INT'L L. STUD. [国际法研究] 25 (2023).

¹²⁷ Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures, art. 13.

¹²⁸ Zheng, *supra* note 14.

sanctions blacklist, China has not adopted retaliatory measures within the framework of the WTO. China continues to pursue dispute resolution within the WTO framework. In December 2022, it initiated a dispute by challenging *US – Semiconductor (China)*.¹²⁹ In 2025, China also launched another WTO dispute against the US concerning its imposition of an additional 10% tariff on Chinese products.¹³⁰

The DSU stipulates three types of remedies: (1) the offending country's withdrawal or modification of measures inconsistent with WTO law; (2) the victim country's receipt of compensation while awaiting such withdrawal; and (3) the suspension of concessions or other obligations.¹³¹ The latter two remedies are also referred to as retaliation.¹³² The WTO dispute settlement mechanism employs a reverse consensus voting approach, which effectively authorises retaliation, enhancing its enforceability.¹³³ Countries harmed by trade bans can implement retaliatory measures, either within the same sector or through cross-retaliation.¹³⁴ Retaliatory measures do not immediately compensate for the losses suffered by the affected country. Typically, retaliation involves the injured party raising tariffs on goods benefiting the offending country. However, such retaliation also harms the retaliating party itself, as higher tariffs negatively impact domestic consumers.

Moreover, retaliatory measures inherently undermine the multilateral trading system. In light of retaliation's limitations, China's strategy of challenging US measures through WTO disputes—rather than immediate retaliation—underscores a calculated preference for a more effective long-term foundation: using legal adjudication to delegitimize the abuse of security exceptions. Looking ahead, the new foundation for managing US-China trade relations – particularly

129 WTO, *supra* note 4.

130 PRC Ministry of Commerce, A spokesperson for the Ministry of Commerce answered questions on China's complaint against the US tariffs at the WTO [商务部新闻发言人就中方在世贸组织起诉美加征关税措施答记者问], https://wto.mofcom.gov.cn/xwfb/art/2025/art_3dbe0d1292664148b7ef298b5392fa83.html.

131 Article 3.7 of DSU provides that in the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements. Article 22.1 of DSU provides that Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. Article 22.2 of DSU provides that if no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

132 VANDERBOTH, *supra* note 39.

133 Yuqiong Du, *The Implementation of WTO Trade Retaliation Mechanism-From the Perspective of Interest Group Theory* [WTO贸易报复机制的实施—以利益集团理论为视角], 34(1) MOD. L. SCI. [现代法学] 161 (2012).

134 DSU art. 22.3.

under “Trump 2.0” administration predicated on unilateral tariffs – is a shared commitment to contesting disputes within the WTO’s legal architecture rather than abandoning it.¹³⁵

V. Summary and Conclusion

The national security exception has been described as the Achilles’ heel of the international trading system.¹³⁶ This article has demonstrated that the abuse of unilateral trade sanctions poses a systemic risk to the multilateral trading system. The WTO’s security exception under Article XXI of GATT, once considered a self-judging black hole, has been successfully subjected to judicial review through the framework established in *Russia-Traffic in Transit* and subsequent cases. Comprising essential security interests, necessity, and emergency in international relations, and guided by the principle of good faith, this framework provides a crucial tool for distinguishing between legitimate security measures and disguised protectionism.

Applying this framework reveals a stark contrast. Expansive US sanctions are characterized by extraterritoriality, which face significant hurdles in meeting the objective criteria of necessity and emergency. In contrast, China’s counter-sanctions, through instruments like the Unreliable Entity List, are more targeted and territorially confined, presenting a more defensible case under Article XXI.

To curb abuse and restore balance, the MPIA should actively transform the framework from a doctrinal tool into an operational standard by articulating objective thresholds, particularly for defining emergencies in international relations beyond armed conflict. This requires developing procedural guidelines to compel members invoking Article XXI to submit detailed justifications for meaningful scrutiny.

Furthermore, formalizing the MPIA’s role as a standing appellate body is crucial to ensure consistent rulings deter opportunistic invocations of the

135 Caijin Tuo et al., *Trump 2.0’s “Reciprocal Tariff” Policy and Changes in the Global Trade Landscape: The Trade Effect of Tariff Policy Uncertainty* [特朗普2.0 “对等关税” 政策与全球贸易格局变化——关税政策不确定性的贸易效应] 41(5) CONSUMER ECON. [消费经济] 19 (2025).

136 Hannes Schloemann & Stefan Ohlhoff, “Constitutionalization” and Dispute Settlement in the WTO: National Security as an Issue of Competence, 93(2) AM. J. INT’L L. 424 (1999).

security exception.¹³⁷ In the future, the MPIA can evolve into a robust mechanism that credibly reconciles sovereign security interests with the integrity of the multilateral trading system—a vital interest shared by all WTO members.

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¹³⁷ Wang, *supra* note 15.

