

PHILOSOPHICAL STUDY OF LAW ON INTERNATIONAL ISSUES IN THE IMPLEMENTATION OF ARTICLE XXI OF THE GATT: POLITICAL IMPLICATIONS AND DIPLOMATIC DISPUTES BETWEEN COUNTRIES

ESTUDO FILOSÓFICO DO DIREITO SOBRE QUESTÕES INTERNACIONAIS NA IMPLEMENTAÇÃO DO ARTIGO XXI DO GATT: IMPLICAÇÕES POLÍTICAS E DISPUTAS DIPLOMÁTICAS ENTRE PAÍSES

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Abstract

The General Agreement on Tariffs and Trade (GATT) was established to regulate international trade and ensure fair practices between countries. However, the ambiguity of Article XXI, which allows countries to safeguard their “essential security interests,” has led to its abuse, often for political motives. This study explores the geopolitical implications of Article XXI’s application and the challenges it poses to international trade. It examines cases where countries, particularly the United States and Russia, have invoked this article to implement trade protectionism under the guise of national security. The study argues that the vague terminology in Article XXI, such as “emergency in international relations” and “necessary for the protection of essential security interests,” opens the door for arbitrary use and undermines the spirit of fair trade. The research also highlights the importance of legal philosophy in understanding the balance between a nation’s sovereignty and its obligations under international agreements. It proposes solutions, including the qualification of ambiguous terms, the introduction of clearer guidelines for discretion, and the establishment of an independent monitoring body to ensure transparency. By addressing these issues, the study aims to contribute to a more objective and fair application of security exceptions in international trade law.

Resumo

O Acordo Geral sobre Tarifas e Comércio (GATT) foi estabelecido para regulamentar o comércio internacional e garantir práticas justas entre os países. No entanto, a ambiguidade do Artigo XXI, que permite que os países protejam seus "interesses essenciais de segurança", levou ao seu abuso, frequentemente por motivos políticos. Este estudo explora as implicações geopolíticas da aplicação do Artigo XXI e os desafios que ele impõe ao comércio internacional. Examina casos em que países, particularmente os Estados Unidos e a Rússia, invocaram este artigo para implementar o protecionismo comercial sob a justificativa de segurança nacional. O estudo argumenta que a terminologia vaga do Artigo XXI, como "emergência nas relações internacionais" e "necessário para a proteção dos interesses essenciais de segurança", abre a porta para o uso arbitrário e enfraquece o espírito do comércio justo. A pesquisa também destaca a importância da filosofia jurídica na compreensão do equilíbrio entre a soberania de uma nação e suas obrigações sob acordos internacionais. Propõe soluções, incluindo a qualificação dos termos ambíguos, a introdução de diretrizes mais claras para a descrição e o estabelecimento de um órgão de monitoramento independente para garantir a transparência. Ao abordar essas questões, o estudo visa contribuir para uma aplicação mais objetiva e justa das exceções de segurança no direito do comércio internacional.



Keyword: GATT. Article XXI. National Security. Geopolitical Implications. International Trade.

Palavras-chave: GATT. Artigo XXI. Segurança Nacional. Implicações Geopolíticas. Comércio Internacional.

1 INTRODUCTION

In this world, there are divisions of jurisdiction and territories that have been agreed upon since a region declared that its territory was a special territory belonging to a group of individuals (the people) referred to as a state. George Jellinek stated that a state is a territory that has its own power structure, and that power is limited in accordance with what has been declared or agreed upon by other territories. Building on this definition of a state, Jean Rousseau stated that a state is an association of individuals in a specific territory who share a common goal, which is to protect each other's rights and obligations based on agreements between individuals (Wospakrik, 2025).

As outlined in the definitions of a state, a particular territory can be recognised as a state if it possesses several essential components. Firstly, there must be a group of people, whether a community or citizens, residing within the territory. Secondly, the territory itself must be clearly defined, serving as a distinct area that sets boundaries between different territories or countries. Thirdly, sovereign power is crucial; this means that the group within the territory must have an established structure, hierarchy, or organisation of power, allowing them to govern and make decisions. Lastly, the territory must have the ability to establish relations with other states, which inherently implies that the state is recognised both *de facto* (in practice) and *de jure* (legally) by other states (Rombot & Senewe, 2023; Putri & Purnawati, 2025). These four components are fundamental to the definition of a state, both in theory and in practice.

Referring to the four components of a state above, what is interesting to examine is the last component, namely the ability of a state to build relations or relationships with other states in this modern era. With globalisation making everything easier, relations between countries are an inevitability that cannot be avoided. In reality, many countries are interlinked and interdependent in meeting their needs, such as natural resources, services, and other needs, based on Adam Smith's theory of absolute comparative advantage (Kadir et al., 2025). Referring to this fact, it is clear that countries need a legal framework and an organisation to oversee existing international relations.

The urgency of this *legal framework* and organisation was answered with the establishment of *the General Agreement on Tariffs and Trade* (GATT) as *the legal framework* and *the World Trade Organisation* (WTO) as the international organisation that oversees it (Serlika & Adhitya, 2020). GATT serves as the legal framework for implementing international trade to ensure *fair trade*. At the same time, the WTO acts as an instrument that oversees GATT and other international regulations, expanding the scope of GATT (Priyono, 2012). The regulation currently in use is the GATT 1994, which governs international trade to be conducted fairly based on liberal principles. This study will not discuss the details of the articles in GATT in depth. However, it will focus on one article that, in practice, has caused numerous disputes and polemics regarding its implementation (Guzman & Pauwelyn, 2009). The article in question is Article XXI of GATT, which essentially stipulates that a country may not fulfil its obligations in international trade in order to protect its “essential security” (Anderson, 2016).

In essence, Article XXI of the GATT is intended to provide countries with leeway to refuse to fulfil their obligations to engage in fair free trade with the intention of maintaining national security at a given time. However, in practice, Article XXI is often used for *political* reasons or as a means of protection, allowing a country to avoid trading with other countries. One of the significant powers that frequently uses this “crucial article” is the United States (US), which uses Article XXI for political interests or protection (Ikeda, 2021). Referring to the matters that have been studied, in this case, a study of legal philosophy is needed to return to the basis or fundamentals in determining the ability of a country to intervene in other countries in terms of policy, whether it be legal policy or trade policy (Irawati, Prananingtyas, & Wulan, 2023). Legal philosophy is a branch of ethical philosophy that questions the ethics (morals) in ensuring the coexistence of individuals with one another. Apeldorn states that legal philosophy seeks to answer several questions, such as what is the function of the existence of law, what is the legal basis for legitimising a state, and whether there are natural values in law.

The context of the issues in this study requires a study of legal philosophy to serve as a universal study in a country to be able to determine its own boundaries in carrying out everything, including taking defensive action against other countries in implementing further policies on this matter, which will be discussed further in the discussion chapter. Whether other countries also use this article for *political will* will also be discussed in the discussion chapter. However, one thing is sure: according to the researcher, Article XXI

of the GATT needs to be revised or supplemented with specific qualifications and discretion based on certain benchmarks, so that the connotation or intention of Article XXI of the GATT is not carried out arbitrarily by WTO member states. Therefore, this study aims to identify and analyse the geopolitical implications of Article XXI of the GATT on WTO member countries, and to examine legal philosophy studies as an effort to address international issues in the implementation of Article XXI of the GATT, which is often entangled in politics and its implications for diplomatic disputes between countries.

Before entering into the discussion, it is necessary first to make a comparison with previous studies (*state of the art*) that also discuss solutions to the misuse of Article XXI of the GATT. The first study is by Kentaro Ikeda, entitled “*A Proposed Interpretation of GATT Article XXI (b)(ii) in Light of its Implications for Export Control*”. In this study, Kentaro provides a solution whereby the WTO panel decides on a case concerning Article XXI of the GATT, which in this case focuses on Article XXI (b) (ii) of GATT, where clear qualification is needed regarding several terms in Article XXI (b) (ii), such as the term “*relating to the traffic/such traffic*”, which means something that is “*primarily intended for the prevention/increase of traffic/arms trade traffic*”. Then, the term “*relating to the implements of war*” means “*any product related to or designed for warfare*”, and there are many more terms criticised by Kentaro, which means that the solution offered by Kentaro is to expand the words or terms to avoid vague provisions in Article XXI (b) (ii) of the GATT. He emphasises that the WTO panel must be objective in disputes concerning this article (Ikeda, 2021). The difference between the previous study and the current study is that the previous study focused more on the terminology in Article XXI (b) (ii).

In contrast, this latest study will examine the terminology in Article XXI of the GATT as a whole and analyse it philosophically, and then identify practical legal measures against the existing subjectivity. The previous study is by Alexandr Svetlicinii and Xueji Su, entitled “*The Unsettled Governance of Dual-Use Items under Article XXI (b)(ii) GATT: A New Battleground for WTO Security Exceptions*.” In this study, Svetlicinii and Xueji argue that, in practice, many countries utilise Article XXI of the GATT as a tool for economic protectionism, which sometimes extends beyond weapons to include public or civilian tools. The solution proposed by Svetlicinii and Xueji is to strengthen the position of the WTO Panel in adjudicating and reviewing such cases,

thereby eliminating any hidden political reasons for the application of Article XXI of GATT (Svetlicinii & Su, 2025). The difference between previous studies and the latest study is that previous studies focused more on providing solutions to strengthen the panel in adjudicating disputes involving Article XXI of GATT, so that the panel can conduct more thorough deliberations. In contrast, this latest study will focus more on philosophical aspects of legal philosophy to explain the phenomenon that occurs when a country intervenes, and also provide solutions to the political elements in Article XXI of GATT.

Further research by Chao Wang, entitled "Invocation of National Security Exceptions under GATT Article XXI: Jurisdiction to Review and Standard of Review," essentially shows that Article XXI (b) (iii), according to the panel, is something that must be studied in depth to avoid high subjectivity. On the other hand, this article requires the principle of good faith to reduce self-judging and discretion by the defendant country. The difference between this study and previous studies is that the current study examines the geopolitical implications of Article XXI of the GATT more broadly and also provides a fundamental philosophical study to explain the existing phenomenon and provide practical solutions to the problems of interpreting Article XXI of the GATT. In contrast, previous studies focused only on Article XXI (b) (iii) (Wang, 2019). The following study, entitled "The National Security Exception at the WTO: Should It Just Be a Matter of When Members Can Avail of It? What About How?" by Mona Pinchis-Paulsen, Kamal Saggi, and Petros C. Mavroidis, essentially examines the dynamics of legal resolution by panels in several cases involving the United States, such as the US – Steel and Aluminium Tariffs case. In similar cases, the WTO Panel has its own benchmark in determining what constitutes "essential security," which is not understood by any party. The most effective way to address issues related to Article XXI is through a multilateral negotiation approach involving the disputing countries (Pinchis-Paulsen, Saggi, & Mavroidis, 2024). The difference between previous studies and the latest research lies in their focus. Previous studies concentrated on the dynamics of the case and solutions through multilateral negotiations.

In contrast, the latest research emphasises the study of international legal philosophy that underlies the implementation of intervention by other countries. It also examines the geopolitical impact on the use of Article XXI of the GATT. It provides solutions that differ from those in the previous studies, based on a comprehensive

foundation. The following previous study, entitled "The First WTO's Ruling on National Security Exception: Balancing Interests or Opening Pandora's Box?" by Daria Boklan and Amrita Bahri, states that the proper application of Article XXI of the GATT is in the case of *Russia – Traffic in Transit*, where there were no hidden legal aspects, but rather transparency and accountability were prioritised. However, the use of this article must be maintained to avoid protectionism from other countries that also want to use it (Boklan & Bahri, 2020). The difference between previous and current research lies in the fact that previous research focused on a single case study between Russia and Ukraine, specifically examining barriers to the delivery of goods. In contrast, this latest research will describe many cases from the United States, Russia, and other countries, along with an analysis of legal efforts and philosophical studies to explain the phenomenon of conflict.

Based on the previous research, the researcher has developed his own solution, which, according to the researcher, has not been studied or discussed by other researchers. Here, the researcher will offer several solutions, namely by providing more detailed and specific qualifications regarding Article XXI of the GATT, forming an organisation that cooperates with Non-Governmental Organisations (NGOs) to exercise geopolitical control over affected countries, and discussing the theoretical scope of discretion. These solutions will be discussed further in the next chapter.

2 GEOPOLITICAL IMPLICATIONS OF THE APPLICATION OF ARTICLE XXI OF THE GATT TO WTO MEMBER COUNTRIES

Before analysing the geopolitical implications of implementing Article XXI of the GATT, it is essential to understand the article's contents in detail. Article XXI of the 1994 GATT provides certain exceptions for parties to the agreement, particularly concerning national security. It states that nothing in the GATT agreement should be interpreted as obligating any party to provide information that may go against its national security interests. Furthermore, it allows parties to take actions deemed necessary to protect their essential security interests in several contexts, including trade in nuclear materials, arms, ammunition, and military equipment, as well as goods and services related to military supplies. Additionally, the article permits actions during times of war or other international emergencies. Lastly, it underscores that nothing in the agreement should prevent a party from fulfilling its obligations under the United Nations Charter to maintain

international peace and security. With this foundation, we can now explore the broader geopolitical effects of such provisions.

The WTO drafted Article XXI of the GATT above with the intention of providing member countries with leeway to disregard trade obligations when such disregard or circumvention is "deemed necessary" to maintain *the "essential security"* of the member country concerned (Howse, 2016). When examined in the context of the background to the enactment of this article, it was drafted to provide leeway for countries to protect their national interests by refraining from specific actions in international trade, such as exports or imports (Putra & Dewi, 2022). However, Article XXI of the GATT is often misused by countries as *a means of political will* or protectionism to shield domestic products from imports (Blanco & Pehl, 2020).

An example of the misuse of Article XXI of the GATT can be found in case DS544: *United States - Certain Measures on Steel and Aluminium Products*, which began when the United States (US) imposed a 25% tariff on steel imports and a 10% tariff on aluminium imports, whereas previously both products had tariffs of only 0% to 3% for steel and 0% to 5% for aluminium imports (Panel, 2022). In response, China sued the US on the grounds of inconsistency with several articles regarding *safeguard* measures. In this dispute, the US used Article XXI (b) (iii) of the GATT to counter China's lawsuit by invoking the article's wording "*emergency in international relations*". Furthermore, the US stated that a country can declare an emergency within its own borders based on its own criteria. The US views this as a matter of discretion within a country's jurisdiction, where the country is sovereign and free to declare an "*emergency*" situation. In the context of Article XXI of the GATT, this is referred to as "*self-judging*" (Voon, 2019). In response to this, the WTO panel stated that a country cannot apply *self-judging* independently without apparent limitations and reasons. The WTO also emphasised that the WTO Panel has the authority to assess the *self-judging* carried out by member countries (World Trade Organisation, 2023).

From the DS544 case above, it can be seen that there was arbitrary "exploitation" by the US of the implementation of Article XXI of GATT, which in the future could also be exploited by other countries for political protectionism. This could have widespread implications in the geopolitics of other countries, where Article XXI of GATT, specifically Article XXI (b) (iii) of GATT concerning security interests or "*emergencies in international relations*", could be used to protect domestic companies or domestic

products. The following analysis to be examined is the "*self-judging*" action, which is indeed very synergistic or relevant to the status and components of a country, as described in the introduction. A country with a special territory has sovereignty within that territory. Upon further examination, according to the WTO panel's opinion in *the panel report*, countries are indeed given the space to determine for themselves what constitutes an emergency for their country. They are also given the space to qualify when a particular action can be said to protect *essential security*. Reviewing case DS544, there is no indication from the panel of how a country determines the limits or indicators for actions such as "*emergency in international relations*", "*self-judging*", and "*necessary for the protection of its essential security interests*".

Based on the ambiguities in the above diction or elastic articles, this paper will examine the WTO Panel's considerations in case *DS512: Russia - Measures Concerning Traffic in Transit*. This case occurred during *the timeline* of Russia's annexation of Ukraine. The main issue in this case was when Russia imposed non-tariff barriers in the form of restrictions on the transit of goods through Russian territory to Ukraine, specifically for shipments of weapons destined for Kazakhstan and Kyrgyzstan.

In case DS512, Russia required all international cargo transit from Ukraine to Kazakhstan or Kyrgyzstan by land (i.e., by road and rail) to pass through the Belarus-Russia border, rather than directly through the Ukraine-Russia border. On the other hand, the goods shipped must also use special identification seals and registration cards for drivers (WTO Panel, 2019). Due to these barriers to the transit of goods, Ukraine sued Russia under Article V of the GATT, *which pertains to the freedom of Transit*. In response to the lawsuit, Russia asserted that the measures to restrict transit traffic were based on Article XXI (b) (iii) of the GATT, which states that trade barriers may be imposed due to an "*emergency in international relations*." In this *timeline*, this article was invoked during a conflict or geopolitical-diplomatic dispute related to annexation. In this case, Russia also considers that it has the right to define for itself when the country is in a state of emergency and firmly believes that the country has the *power* to make *its own judgments* in certain circumstances. After following up on the facts of the case, the panel finally decided that Russia won the case with several considerations, namely: first, the panel agreed that the annexation or dispute between Russia and Ukraine since 2014 was categorised as the Crimean crisis and armed conflict and met the definition of "*emergency in international relations*" under Article XXI (b) (iii) GATT; Second, the panel disagreed

with Russia's assertion that it had absolute authority to determine when or under what conditions a country was in a state of emergency or a condition in which a country could invoke Article XXI (b) (iii) of the GATT (World Trade Organisation, 2019).

Another thing that needs to be considered in the DS512 case is that the panel stated that, in addition to Russia's objective of defining the dispute as an "*emergency in international relations*" and a situation in which a country needs to take protective measures to "protect its essential interests", in this case the WTO panel also stated that Russia used the provisions of the article in "good faith" (Shabrina & Putrijanti, 2022). Upon closer examination, the meaning of good faith is actually very subjective, and each assembly or panel member may have a different view. However, what can be noted in this case is that Russia did not base the implementation of this *security exception* arbitrarily or solely for political protectionism, but rather on the state of emergency caused by the ongoing war with Ukraine (Pinchis-Paulsen, 2020). This is where the ambiguity of the term becomes clear, as it can be concluded that one of the indicators of a state of emergency or "*emergency in international relations*" is a geopolitical-diplomatic dispute and/or a situation of war.

After the *real* case examples presented earlier, it is evident that there are still loopholes for "politics" to exploit and subsequently obscure the existing legal certainty. Of course, alternatives or solutions related to this matter are needed, and this will be discussed in more detail in the next sub-chapter.

3 LEGAL PHILOSOPHY STUDY ON INTERNATIONAL ISSUES IN THE IMPLEMENTATION OF ARTICLE XXI OF THE GATT, WHICH IS POLITICAL IN NATURE, AND ITS IMPLICATIONS FOR DIPLOMATIC DISPUTES BETWEEN STATES

Legal philosophy plays a crucial role in addressing the existence of trade disputes between countries. It can be seen that the implementation of Article XXI of the GATT has led to the abuse of the article in legislation for the country's political interests. However, there is no clear evidence as to whether a country actually uses Article for political protection. Given this issue, a philosophical study is needed on the sovereignty of a country to take defensive action in the event of an act by another country, which in this context is related to trade (Muñoz, 2023). Legal philosophy views the state as a

political entity that contains a social contract or agreement between the inhabitants or community within that territory.

Regarding this, Hugo Grotius stated that the state is an autonomous body or entity that has sovereignty within the boundaries of its established territory. Furthermore, Thomas Hobbes stated that the state is a monster, which he called a "leviathan," derived from the collective society that surrenders itself to absolute power to avoid the chaos that exists in nature (*the state of nature*) (Murphy, 2017). Hobbes also stated that the state is an independent entity that bears social rights within it (Tasioulas, 2021).

The perspective outlined by several philosophers, as described above, illustrates that a state is an independent and powerful entity with specific territorial boundaries, enabling it to exercise certain sovereign powers (Schultz, 2024). This means that a state is essentially an independent community; however, this can be countered by a state that binds itself to an international agreement or *consents* to undertake an action on behalf of another state, allowing other states to intervene in the state that has bound itself to the international agreement (Stahn, 2020). However, on the other hand, international agreements can also conflict with a state's sovereignty, so a balance is needed between agreements made between states and the principle of non-intervention in the affairs of other states. Upon deeper examination, the philosophical principles of inter-state agreements for intervention and the principle of sovereignty are two conflicting principles.

There is also a concept in international legal philosophy known as *jus cogens*, or universal norms, which require a state not to commit acts prohibited in many conventions or treaties, such as genocide, slavery, torture, and other acts regulated by international conventions. According to researchers, forms of intervention by one country in another should also be included in the new *jus cogens* norm, unless the country in question chooses not to recognise or apply the norm. The application of universal norms or *jus cogens* to the form of intervention by one country in another is not without reason. It is based on the philosophical principle of the formation of a state entity, where existing definitions show that countries have their own boundaries and privacy to regulate their internal interests. However, this has undoubtedly begun to be set aside, as countries are now increasingly dependent on others, especially in terms of trade. This requires a country to open itself up to other countries in terms of economic and financial matters. This openness is immediately implemented to fulfil the principles of good faith and

transparency in business. Therefore, in practical terms, the WTO, through GATT, provides a clause that balances the principle of state sovereignty with the principle of openness as outlined in GATT, which is why Article XXI exists in GATT (Handayani & Hardiyanti, 2025).

In addition to philosophical studies, practical analyses of the articles and "rubber" diction in Article XXI of GATT are also *urgently* needed, considering that several countries outside the above cases have also begun to utilise these articles for their own political interests. Therefore, the researcher will outline several holistic philosophical and practical solutions that can be immediately implemented by both the WTO Panel and several member countries that have adopted GATT as international trade regulations (Vidigal, 2019). Before discussing the solutions, it is necessary first to understand *the official statement* from the WTO Panel regarding several articles or elastic terms in Article XXI of the GATT.

The official statement from the WTO, as outlined in the "Analytical Index of the GATT: Security Exceptions," clarifies several terms within Article XXI of the GATT, shedding light on the vagueness surrounding these provisions. According to the WTO (2023), these interpretations facilitate an understanding of the application of security exceptions, particularly regarding critical concepts such as "essential security interests," "it considers necessary," and "furnish any information."

Firstly, the term "essential security interests" is explained by the WTO Panel as a provision that grants countries the flexibility to define and respond to situations that threaten their national security. However, it is important to note that countries should not use this provision to protect domestic industries, as emphasised by the WTO Panel (Lee, 2019). This distinction ensures that the article is not misused for economic protectionism.

Secondly, the phrase "it considers necessary" was clarified by the panel to provide countries with the discretion to make their own assessments about the necessity of implementing security measures. In essence, countries are regarded as the "final judges" in determining whether they need to invoke Article XXI of the GATT (Alford, 2011). The WTO Panel also illustrated this interpretation with the example of Ghana, which considered a boycott of Portuguese goods as a "necessary" measure for its security interests. However, the Panel suggested that this assessment was a subjective judgment by Ghana (Ranjan, 2020).

Lastly, the term "furnish any information" refers to the right of member states to withhold information that pertains to national security. The WTO Panel cited the example of the United States, which refused to provide information related to strategic commodities deemed sensitive for security reasons (Malikova, 2021). This interpretation underscores the importance of safeguarding national security interests without external interference.

Reviewing the official statement from the WTO above, we can understand some of the intentions behind the application of specific articles or terms in Article XXI of the GATT. However, according to researchers, the WTO Panel's explanation in this case failed to define specific terms. There are still certain loopholes, such as what constitutes a "subjective" assessment, and the fact that specific terms remain unanswered explicitly, such as "*it considers necessary*", "*emergency in international relations*", "*self-judging*", and "*necessary for the protection of its essential security interests*". Upon further examination, if the panel provides a country with a loophole and allows countries to negotiate diplomatic peace between countries, as in the cases of "*DS526: United Arab Emirates - Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights*" and "*DS567: Saudi Arabia - Measures Concerning the Protection of Intellectual Property Rights*", where the case relates to Article XXI (b) (iii) of the GATT ended with negotiations between Qatar and the United Arab Emirates (UAE), of course, with these negotiations, the law lost its existence because the negotiations were formed based on political elements between the two countries, so there must have been one weaker country that suffered losses due to the greater power of the stronger country (World Trade Organisation, 2022).

4 QUALIFICATION AND VALIDATION OF SEVERAL CLEAR TERMS IN ARTICLE XXI OF THE GATT THROUGH REVISION OR AMENDMENT OF THE 1994 GATT

The qualification and validation of terms such as "*essential security interests*", "*it considers necessary*", "*emergency in international relations*", "*self-judging*", and "*necessary for the protection of its essential security interests*" must be explained clearly. Suppose Article XXI of the GATT is examined in greater depth and correlated with previous cases and rulings. In that case, the use of this article is justified by the WTO

Panel when used in conditions of war or diplomatic conflict that have implications for war in the sense of physical warfare (similar or identical to *military war*). This pattern is clearly demonstrated by Russia's victory over Ukraine in DS512, which used Article XXI (b) (iii) as the basis for Russia's defence against Ukraine's allegations of trade barriers (World Trade Organisation, 2019). This is because when examined using another case, such as DS544 between the US and China, the WTO Panel rejected the US's argument based on Article XXI (b) (iii) because in this case, the US took security measures. After all, its domestic products were under threat (Latifiani et al., 2022). When examined from a broader perspective, the US should be able to utilise the exception clauses in implementing international trade obligations, such as Article VI on *Anti-Dumping and Countervailing Duties*, Article XI on *Safeguards*, and/or Article XVI on *Subsidies*.

The existence of ambiguous diction will have implications for the philosophical basis of a country's actions to maintain its sovereignty. Of course, this also mediates the principle of a country's sovereignty with international agreements that require a country to disclose all information to other countries. Another principle that is certainly necessary in the affirmation of flexible articles is the principle of *good faith*, which requires each country to have good intentions in international trade. On the one hand, a country's sovereignty to maintain its fiscal and monetary capabilities must be respected by other countries. On the other hand, a country's decision to bind itself to an international convention must be complied with, including the element of transparency. With the clarity of the rubber clause XXI of the GATT, the two differing interests mentioned above can be fulfilled.

The review of the WTO Panel's reasoning outlined above creates a solution that directs and affirms that "The unity of Article XXI of the GATT can only be used in the interests of a member state that is pressed into a war conflict and requires certain measures in the form of trade barriers in trade between countries that have diplomatic disputes". With this explanation and confirmation, countries will apply this article in accordance with its scope of application, namely in armed conflicts or *military war disputes*. The above clarification also addresses the ambiguity of articles or diction such as "*essential security interests*", "*self-judging*", "*it considers necessary*", "*emergency in international relations*", and "*necessary for the protection of its essential security interests*". It can minimise the opportunity for a country to use this article for political purposes. Therefore, if a country intends to protect its domestic products, it will seek refuge in other articles

such as the Anti-dumping Article, the Subsidies Article, and the Safeguard Article. With the addition of the above clarification, the use of Article XXI of the GATT becomes more targeted.

5 THE IMPLEMENTATION OF THE OPEN TEXTURE DISCRETION THEORY IS POSSIBLE AND MUST BE BASED ON GATT PROVISIONS AND MUST HAVE A CLEAR BASIS FOR DECISION MAKING

The discretion referred to in this solution encompasses discretion from two perspectives: discretion by the state and discretion by the WTO Panel. Discretion by the state refers to the ability of the state to identify and make decisions based on clear and firm *reasoning*, given that the WTO provides space for a state to be the deciding subject for specific emergencies (urgent circumstances) and can provide protection for national security. Therefore, with the first solution proposed by the researcher, a state can wisely determine when it is experiencing an emergency to enforce Article XXI of the GATT. With apparent limitations, as outlined in the first solution by the researcher, namely in the context of war (which is synonymous with *military conflict between states*), this can serve *as a benchmark* for a country to apply Article XXI of the GATT. This is because if a country is arbitrary or careless in implementing protectionism, which is generally a form of political protectionism, the impact can be geopolitical and extend to other countries. For example, suppose the United States were to restrict imports from Mexico suddenly. In that case, Mexico may divert its exports to other countries, which will likely result in those countries experiencing a surge of imports from Mexico, leading to trade economic problems and *a domino effect* on other countries. Therefore, with a clear benchmark in place, it is hoped that countries will refrain from engaging in political protectionism that could harm other countries.

The second perspective is that of the WTO Panel, whereby, with clear benchmarks as outlined in the first point of the previous solution, the WTO Panel should be prudent in adjudicating a case. H.L.A. Hart, in his ideas, posits that under certain conditions, legal issues may exhibit *open texture*, where *open texture* itself constitutes a legal problem that has not been or is not yet regulated by law (Septian & Abdurahman, 2021). Hart argues that the law has an open dimension and requires creative decisions from judges to resolve such cases, allowing precedents or previous court decisions to serve as a benchmark for

judges when encountering legal deadlocks (Hart, 1994). In response to this, Ronald Dworkin provides specific references to address the *open texture* condition, emphasising that Hart's concept of *open texture* is highly subjective. Dworkin suggests that judges facing legal impasses should apply principles that have been recognised by the law applicable in a particular region (Priyono, 2019).

Based on the two experts above, the researcher intends to combine the two approaches to discretion, namely discretion through the use of previous decisions or precedents (Hart's approach) and discretion based on recognised principles (Dworkin's approach). This will result in systematic discretion, adhering to established principles and previous decisions, so political elements do not influence that discretion. Suppose there is a specific case involving the use of Article XXI of the GATT. In that case, the WTO Panel can refer to case DS521 involving Russia, in which the panel assessed that Russia was honest and truly in a state of *emergency*, thus justifying the application of Article XXI (b) (iii) of GATT, which was used appropriately. In this case, the judges' considerations also focused on the principle of *fair trade*, which allows a country to engage in protectionism in the event of an emergency, such as an armed conflict. In addition, Roscoe Pound also stated that discretion must be exercised by considering values such as *equity*, fairness, wisdom, and sincerity (Yulius, 2019). By combining a discretionary approach with precedent and the principles of GATT 1994, the resulting decision will be fair, objective, and free from political bias.

The solution to establish an organisation here is intended to oversee the implementation of the results of negotiations between the disputing countries. This solution stems from the cases of Qatar and the UAE, as well as recent issues such as Donald Trump's imposition of reciprocal tariffs on several countries, including developing nations like Indonesia, Cambodia, Thailand, Sri Lanka, and many more (Howell, 2025). This was done arbitrarily, and Trump said that these reciprocal tariffs were imposed because his country felt cheated by the high tariffs imposed on the US. When examined interdisciplinarily using economics, even economics is unable to explain, using a theory, what President Trump's intention is. With this in mind, it can be implicitly said that Trump's policy is only based on *political will* and also ignores GATT principles such as *the General System of Preferences* (GSP) to provide exceptional opportunities for developing countries, such as Cambodia, for example, to obtain tariffs that are not too high (Pramono et al., 2025). In this *timeline*, Cambodia remains under the GSP agreement

with the US, and the tariff imposed prior to this policy was 0%. However, after this policy, Cambodia is subject to a 59% tariff (10% base tariff and 49% additional tariff) (Weiss, 2020).

Although the above issues are not related to Article XXI of the GATT regarding *the Security Exception*, the researcher intends to provide an anticipatory solution. If a dispute between countries ends with a negotiated solution, the negotiation should not only benefit one party. However, it should be neutral or benefit both parties to the dispute, because it is not uncommon for large countries with greater political *power* to oppress weaker countries. An example of this is the case of "*DS267: United States - Subsidies on Upland Cotton*", in which, after several dispute settlement mechanisms at the WTO through a panel and also *an appellate body* related to *subsidies* provided by the US, the US and Brazil chose to settle this dispute through negotiations via a *Memorandum of Understanding* (MoU), which ultimately resulted in no retaliatory measures or restrictions from Brazil, but only the acceptance of compensation from the US amounting to 300 million US dollars (World Trade Organisation, 2014). If we examine this case more closely, even though Brazil received compensation in the form of funds from the US, the US was still able to continue *its subsidy* practices indirectly. In the long term, the US emerged victorious from the negotiations, while Brazil secured only short-term funds. Therefore, there is a need for an international institution to oversee the results of negotiations, which are often influenced by political factors, in order to assess the potential negative impacts (Wardana, Rahayu, & Sukirno, 2024). If left unchecked, the impact of this politics will have implications for other countries, not just the countries involved in the dispute (Miglani, 2022).

This solution addresses the same problem as the third solution in this study. The researchers argue that NGOs have the right to monitor the results of negotiations, as in the cases described in the third solution above, which are generally fraught with political elements and contain hidden, harmful elements. NGOs function as social control institutions, which, according to researchers, can be neutral in nature. This is because members within NGOs can come from several countries, allowing the studies and monitoring produced to be neutral.

With the above solutions, researchers hope that every action taken by countries will be objective and uphold the principle of good faith in conducting international trade relations.

6 CONCLUSION

Trade is an aspect that cannot be separated from legal regulations that govern existing legal relationships. Therefore, to govern international trade law, the WTO, through GATT 1994, was established to regulate legal relationships between countries within the World Trade Organisation (WTO), facilitating international trade, and ensuring that trade is conducted based on the principle of *fair trade*. However, in reality, there are political forces that cause a country to engage in arbitrary protectionism, thereby hindering the principles of *fair trade* and the liberal spirit of GATT. After conducting an in-depth study, the crux of the problem stems from the vague wording of Article XXI of GATT on *Security Exceptions*, which has the potential to be abused by some countries with *political will* in each country, such as the wording "*protection of its essential security interests*", "*It considers necessary*", "*emergency in international relations*", "*necessary for the protection of its essential security interests*" and other terms. Given this situation, the researcher concludes that solutions are needed in the form of qualification and validation of several vague terms in Article XXI of the GATT, measured and systematic implementation of discretion, the need to establish an international trade supervisory agency, and opening opportunities for NGOs to monitor and respond to politically charged policies. With these solutions, it is hoped that the use of Article XXI of the GATT will be targeted and will not open up opportunities for political manipulation in its application.

The recommendations put forward by researchers in response to the international challenges surrounding the implementation of the highly political Article XXI of the GATT emphasise several key actions. Firstly, countries must engage in discussions regarding the implementation of their policies to ensure that all trade policies related to security exceptions are executed in good faith, free from political motivations. Secondly, it is crucial to qualify and clarify several terms within Article XXI through a revision or amendment of the 1994 GATT. Another important suggestion is that discretion in the exercise of security exceptions should be based on explicit provisions outlined in the GATT, with decision-making grounded in its principles. This should also incorporate theoretical perspectives on discretion, such as those offered by H.L.A. Hart and Ronald Dworkin.

Furthermore, establishing an independent institution or organisation to monitor the political outcomes of negotiations between conflicting countries is necessary to ensure fairness and transparency. Lastly, creating opportunities for independent non-governmental organisations (NGOs) to examine the geopolitical impacts of diplomatic disputes would foster greater transparency and objectivity in assessing such issues. These recommendations aim to address the political complexities surrounding the application of Article XXI and ensure that international trade remains fair and effective.

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Both authors contributed equally to the development of this article.

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