

The Analysis of the WTO National Security Exception Balance Mechanism

Lingli Zheng, Ye Xu*

Abstract: The “national security exception” arises in the context of the conflict between sovereignty and trade values, and has been widely invoked in recent years. In order to resolve the current dilemma of its application, the Panel attempted to create a balancing mechanism. The Panel Report on DS556: *United States — Certain Measures on Steel and Aluminum Products* is an example of the balancing mechanism of the national security exception in action, and helps alleviate the sharp political contradictions between the values of free trade and national security. Due to the broad interpretations of “essential security interests” and interference from political factors, it is vital to build a perfect balancing mechanism for the application of the WTO national security exception, and re-interpret the national security exception from the perspectives of overall balance, article balance and practice balance. China should also promote multilateral negotiations and actively safeguard its own security interests.

Keywords: National Security Exception, Balancing Mechanism, Essential Security Interests, Section 232 Investigation on the Effect of Imports of Steel on US National Security, Pan-security

I. EVOLUTION AND CHALLENGES OF THE WTO NATIONAL SECURITY EXCEPTION CLAUSE

A. The Origin and Development of the WTO National Security Exception Clause

Since the creation of the “National Security Exception” in the General

* Lingli Zheng, Associate Professor, School of Law, Nanjing Normal University; Researcher of the China Institute of Rule of Law Modernization. Email: 01203@njnu.edu.cn.

Ye Xu, MD. Candidate, School of Law, Nanjing Normal University; The Johns Hopkins University-Nanjing University Center for Chinese and American Studies.

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Agreement on Tariffs and Trade (GATT)'s Article XXI, *mala fide* trade and industrial policy actions, taken under the cover of the national security exception to free trade commitments, have been proliferating globally. Being unchecked, these actions are likely to undermine the multilateral trading system. The increasing reliance of WTO members on the national security exception clause indicates that the WTO is facing profound changes in the area of trade and security. In the history of international trade, there has always been a looming value conflict between free trade and national sovereignty. As reflected in the “theory of relative sovereignty”, sovereignty has both free and restrictive factors. Therefore, in the process of drafting the text of the GATT, in order to build a bridge between trade and politics, and to properly deal with matters related to sovereignty and trade, the national security exception came into being which, at its core, balances members’ sovereign right to protect their basic security with the maintenance of free and open international trade.¹

This exception was originally proposed by the United States and stemmed from its “dominant” international position in the 1940s by virtue of its political and military strength. The United States felt a great need for ensuring its own national security in the emerging international political and economic order after the end of the Second World War. It emphasized that the world had entered an era in which it could promote liberal international trade and establish a new international order. Finally, after gradual development, this exception was incorporated into the official text of the GATT. Therefore, the origin and final form of the national security exception clause stems not only from the consideration of economic development through free trade, but also from a strong atmosphere of geopolitical and security competition.²

However, a review of the history of invoking of the national security exception shows that, out of caution and in order to avoid disrupting the balance between trade and sovereignty, there are not many instances of invoking of the national security exception, which can thus be called the

1 Xiaoling Li, WTO Security Exception Clause: Practical Evolution, Path Selection and China's Response, *International Law Studies*, No. 3, 2023, p. 40.

2 Zhao Sun, Returning to a Power-oriented International Trade Order in the Context of Security Competition, *Wuhan University International Law Review*, No. 4, 2020, p. 131.

“stagnant exception”. Even after the 2019 WTO Panel ruling that was the first to interpret GATT’s Article XXI, the national security exception provisions under the GATT and other WTO agreements largely remained unexplored territory. Since this exception is always closely related to a particularly urgent and core national interest, such as war, members do not invoke this “nuclear option” usually or as a matter of routine. Some famous cases mentioning the national security exception include L/6053: *United States — Trade Measures Affecting Nicaragua*, and DS38: *United States — The Cuban Liberty and Democratic Solidarity*. However, in these cases, the Panel did not interpret the broadly worded national security exception clause, nor did it produce effective substantive judgments.

In addition to the GATT, the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), other multilateral agreements have also included national security exceptions, and many regional and bilateral trade agreements have also formulated their own security exception clauses modelled after the GATT national security exception clause. Most of the specific provisions of these agreements are derived from the GATT’s “mother Article”,³ Article XXI, but they set high standards and new rules on non-traditional security issues such as data flows, cybersecurity, intellectual property protection and environmental protection standards.⁴ Regulations restricting trade and investment in the name of national security also appear in the domestic laws of various countries, which shows that concerns about national security run through the international trade systems. National security exception allows for measures to be taken to ensure national security while exempting a party from obligations in the normal course of events. In essence, it shows respect for national sovereignty and members’ right of self-protection, and allows members to safeguard their national security in the manner that they see fit while halting implementation of the usual obligations stipulated by the WTO.

3 Jingdong Liu, An Analysis on the Application Boundary and Development Trend of the “National Security” Clause – From the Perspective of International Trade and Investment Rules, *Law Journal*, No. 2, 2023, p. 128.

4 Lijuan Zhang and Ruonan Guo, An Analysis of the “National Security Exception” Clause in International Trade Rules, *International Forum*, No. 3, 2020, p. 71.

B. Challenges to the Application of the WTO National Security Exception Clause

In recent years, due to the dramatic changes in the international arena, the application of national security exception has exploded. In the DS512: *Russian Federation — Measures Concerning Traffic in Transit*,⁵ the Panel for the first time clarified its own review powers, clarified the standard for review of various legal elements in the security exception clause, and explained the ambiguous words in the national security exception clause in detail. DS567: *Saudi Arabia, Kingdom of — Measures concerning the Protection of Intellectual Property Rights*, DS544: *United States — Certain Measures on Steel and Aluminium Products (China)*, DS547: *United States — Certain Measures on Steel and Aluminium Products (India)*, DS548: *United States — Certain Measures on Steel and Aluminium Products (EU)*, DS550: *United States — Certain Measures on Steel and Aluminium Products (Canada)*, DS551: *United States — Certain Measures on Steel and Aluminium Products (Mexico)*, DS552: *United States — Certain Measures on Steel and Aluminium Products (Norway)*, DS556: *United States — Certain Measures on Steel and Aluminium Products (Switzerland)*, DS564: *United States — Certain Measures on Steel and Aluminium Products (Turkey)*, and DS597: *United States — Origin Marking Requirement*, etc., have all further explained the national security exception. But it also raises the dilemma that the national security exception may be unbalanced, and there are many challenges in the application of the provision.

Firstly, the WTO panel has clarified some key issues in the application of the national security exception clause, including the jurisdiction of the Dispute Settlement Body, the definition of “emergency in international relations” and the definition of “essential security interests”. However, dealing with the impact of non-traditional security threats using the national security exception clause and establishing a limit to what can be considered a “necessity” are still unclear points, and members have room to expand the scope of the article

⁵ *Russian Federation – Measures Concerning Traffic in Transit*, WT/DS512, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm (Last Visited on July 1, 2023).

beyond its just or intended use.⁶ Moreover, emerging security threats, such as data security, network security and terrorism, make it possible to abuse the national security exception clause. In the context of increasing geo-political competition, especially the argument that “economic security is national security”, international trade is no longer seen as just buying and selling of goods and services across borders, and “business and security issues are increasingly blurred”.⁷ With the deepening of international economic and trade cooperation, and the gradual weakening of traditional national security measures, international entities that were originally opposed to each other in the Cold War have become competitors again in the multilateral trading system. As a result, the boundary between global economic order and the concept of national security has become increasingly blurred, and the shortcomings of the security exception clause have been catalyzed by the complex relationship between trade and national security among countries.⁸ If the security exception clause is allowed to be expanded beyond its intended scope and purpose, there may be a danger that sovereign countries will deploy trade protectionist measures at any time without being held accountable, and global economic rules and national security will continue to be entangled and overlapped.⁹

Secondly, the overuse, and even abuse, of the national security exception clause is also a bad tendency at present. Looking back at the development process of the national security exception, the “security dilemma” may explain the fundamental contradiction inherent in the national security exception: each country not only needs to protect its national security through various security measures, but also hopes that other countries will not seek exemptions from obligations under international economic rules on the ground of threat to

6 Libai Ding and Zhe Chen, On the Regulation of WTO's Application to the Expansion of the Security Exception Clause, *Journal of Xiamen University (Philosophy and Social Sciences Edition)*, No. 2, 2020, p. 134.

7 *Supra* n. 1, p. 34. Quoted from James Bacchus, “The Black Hole of National Security: Striking the Right Balance for the National Security Exception in International Trade”, *CATO Policy Analysis*, No. 936, November 9, 2022, <https://www.cato.org/sites/cato.org/files/2022-11/policy-analysis-936.pdf> (Last Visited on July 1, 2020).

8 Xuanyu Shang, Study on the Applicability of GATT Article 21, *Journal of International Economic Law*, No. 2, 2022, p. 47.

9 Wei Shen, The Security Dilemma of International Economic Law – Based on the Perspective of Game Theory, *Contemporary Law*, No. 1, 2023, p. 36.

national security. At the same time, only when a country continuously takes various measures to enhance its security does it feel more secure. Moreover, restrictions on trade or investment on the pretext of “national security” create insecurities that make other countries more inclined to impose trade restrictions as well. Thus, the abuse of the national security exception is bound to increase uncertainty within the international trading environment and shake the rules-based multilateral trading system.¹⁰ This “permanent state” of security exception may become the “Achilles heel” of the WTO multilateral trading system.¹¹

Finally, the existing adverse factors in international politics continue to affect the operation of the WTO. Some scholars believe that the application of the “national security exception” clause will be even more political in the future.¹² Some countries insist on linking economic or trade issues to national security and try to use conceptual and regulatory ambiguity to obtain exemptions from performance of their respective WTO obligations. These countries have changed their major policy stance, significantly strengthening the function of “national security” in legislation and practice, combining economic interests, industrial interests, technical leadership, and other traditionally market-competitive matters with national security, and even deeming the invocation of national security a “cost-optimized” option for deviating from treaty commitments or taking special regulatory measures.¹³ For example, as suited to its domestic priorities, the United States regularly abuses the national security exception in its foreign economic and trade dealings, unilaterally imposing tariffs on the imported products of other WTO members, or blocking the products or investments of enterprises from other countries,¹⁴ and even

10 Guijun Lin and Tatiana Prazeres, The Impact of National Security Issues on International Trade Policy and the Direction of Reform, *International Trade Issues*, No. 1, 2021, p. 3.

11 Mengsha Yang, The Functional Evolution of Security Exception Clauses and Judicial Review Standards: From the Perspective of Supply Chain Security, *Tribune of Political Science and Law*, No. 4, 2023, p. 162.

12 *Supra* n. 3, p. 136.

13 Yong Liang and Zhijie Peng, Empirical Evolution of the WTO Security Exceptions Clause and China's Discourse, In: Lei Zhang and Xiaowen Tan (eds.), *A Chinese Perspective on WTO Reform*, Springer, Singapore, 2023, pp. 139-169.

14 Naigen Zhang, Security Exception Clause and Its Interpretation in International Economic and Trade Treaties, *Rule of Law Research*, No. 1, 2021, p. 134.

weaponizing its economic policies. For example, there are two bad trends in the course of actual application of the national security exception clause: the implementation of economic sanctions for security purposes, and the provision of specific subsidies to relevant domestic industries,¹⁵ making it particularly difficult to protect the multilateral trading order against the background of great power competition.

Narratives centered on security issues have become the main means for the United States and other western countries to shape and spread public opinions against China. The US is constantly restricting, or even banning, the normal business activities of Chinese companies in the US on the grounds of “national security” or “international emergency”. The trend of invoking the national security exception more routinely, rather than as a matter of the last resort, is increasingly obvious, which poses new challenges to the stability of the international order, the development of the global economy, and the prospects of China’s further development in all spheres of the international arena.¹⁶ This phenomenon indirectly reflects that the geopolitical game has been transferred to the field of international economic organizations which has, in turn, intensified the trend of countries or economies using economic measures to solve security or diplomatic problems, with the characteristics of power orientation under the hegemony of great powers.¹⁷ And the consequences of the continued suspension of the WTO appellate mechanism are still unclear. All these factors pose great challenges to the rules-based international order.

II. THE GERMINATION OF THE WTO NATIONAL SECURITY EXCEPTION BALANCE MECHANISM

A series of challenges in the application of the national security exception clause make the application of this clause and its consequences more uncertain.

¹⁵ Ying Liu and Lu Zhang, On the Application of the GATT Security Exception to the US 232 Steel and Aluminum Measures, *International Economic and Trade Exploration*, No. 12, 2019, p. 108.

¹⁶ Yizhou Han, “Structural Challenges” of International Rules: A Case Study of Exceptions in Trade Agreements, *Contemporary Law*, No. 4, 2021, p. 150.

¹⁷ *Supra* n. 2, p. 145.

In order to maintain smooth operation when this exception is invoked, the DSB has, in fact, been trying to establish a balancing mechanism for the national security exception in the reports of its decisions.

A. The Specific Connotation of the WTO National Security Exception Balance Mechanism

To be sure, it is universally accepted that the benefits of free trade should, at some point, give way to the need to protect territorial integrity, sovereignty and security. However, such concessions must not be open-ended and unlimited. Striking the right balance between designing exceptions that tame uncertainty and minimizing the risk of their abuse is a “structural challenge” in treaty design. It is clear that this “structural challenge” has not yet been properly addressed.

The review by the WTO Dispute Settlement Body of the national security exception claimed by some countries has been questioned over the boundary. Questions emerged as to whether or not the DSB has the authority to review the claims made under the national security exception clause, the standard by which the same is to be judged, and the scope of the review. The review report of the Panel does not fully clarify the difficulties of the instances when the national security exception is invoked in a way such as to meet the interests of all members. At the same time, by conflating trade with security, the US has not only aggravated Sino-US economic and trade frictions, but also the existing crisis of the WTO and shaken the rules-based multilateral trading system. Considering the unique political nature and sensitivity of the national security exception, allowing its abuse will inevitably cause member countries to deviate from crucial obligations under trade agreements, thus causing great damage to the multilateral trading system.

Therefore, there is an urgent need to study the balancing mechanism within the WTO national security exception. This mechanism for balance can be understood in the following manners.

Firstly, in the overall two-tier structure of the balance of the exception clause, the drafters employed a very delicate balancing mechanism in designing

the national security exception clause in multilateral trade agreements. For example, the national security exception in Article XXI of GATT 1994, is designed to balance the negative impact of the security exception on free trade with essential security interests so as to prevent its possible abuse by members. Under the restraint of the two-tier balancing mechanism,¹⁸ the dynamic balance between trade and sovereignty can be maintained to a great extent.

Secondly, there is a balance between precision and ambiguity in the phrasing of the national security exception clause. It is necessary for the WTO to tread a fine line between deterrence of violation and charges that it is riding roughshod over states' national security concerns, concerns that often lie at the heart of a nation's conceptions of sovereignty.¹⁹ On the one hand, if the explanation is too detailed, it may excessively invade the scope of other countries' sovereignty; on the other hand, it should not be explained too vaguely, otherwise it will make it difficult to maintain the international trading system.²⁰ Under this delicate balance, although the national security exception gives members the right to deploy some core measures, it also limits this discretion in the text of the article, in order to ensure that the article can only be applied as intended by the framers.

Thirdly, there is a balance between flexibility and stringency in the review of the exception clause. The WTO national security exception clause strikes a balance between the flexibility needed for sovereign states to be able to safeguard their particular security interests and judicial review to prevent abuse of the clause. Excessive flexibility would lead to the security exception being abused for the purposes of trade protectionism, making it an escape clause by means of which members can circumvent all WTO obligations. Meanwhile, excessively strict standards of judicial review are not conducive to meeting the constantly evolving needs of national security establishments, especially in the

18 Yong Liang, On the Security Exception Rebalancing in the International Trade System, *Law Science*, No. 2, 2020, p. 148.

19 Jacob Gladysz, The National Security Exception in WTO Law: Emerging Jurisprudence and Future Direction, *Georgetown Journal of International Law*, Vol. 52, No. 3, 2021, pp. 835-861.

20 Yue Peng, Security Exception in the Sino-US Trade War, *Journal of Wuhan University (Philosophy and Social Sciences Edition)*, No. 1, 2019, p. 166.

face of emerging threats, resulting in the risk of sovereign countries opting out of the WTO system.²¹

B. Effectiveness of the WTO National Security Exception Balance Mechanism

In order to further clarify its complex development, this paper will take up DS556 as an example to discuss the emergence of the balance mechanism in the current national security exception clause.

DS556 resulted from the Section 232 Investigation on the Effect of Imports of Steel on US National Security (Section 232 Investigation) launched by the United States based on Section 232 of the Trade Expansion Act of 1962, which subsequently imposed discriminatory tariff measures on Switzerland. Switzerland argued that the action violated the relevant obligations of the United States under the WTO, while the United States defended itself on the basis of the GATT's national security exception provision, contained in Article XXI(b), arguing that its action fell squarely in the category of "any action it considers necessary to protect its essential security interests". The United States further argued that its measures had been "taken in the event of war or other exigencies of international relations" as provided under Article XXI(b)(iii).

1. Jurisdictional Issues

The Panel first dealt with the difference of interpretation between the two parties as to the extent to which the provisions of Article XXI(b) of the GATT allow a member's invocation of that provision to be reviewed in the DSU procedure. After analyzing the history of negotiations and intended purpose of this article, the Panel held that it did not believe that Article XXI(b) of GATT is "self-judgment" or "non-adjudicable", as argued by the United States, nor did it believe that this article contains a "relative single clause" that fully reserves the conditions and circumstances of each sub-paragraph to the judgment of the invoking member.

Compared with the two previous cases decided by the DSB, namely DS512

²¹ *Supra* n. 11, p. 163.

and DS567, DS566 still finds a way of combining subjectivity and objectivity when confirming the jurisdiction of the Panel, which is basically no different from the discussion in the previous two cases. First, it adopted an objective approach to the interpretation of sub-paragraph (iii), since it was considered that the words “it considers” in the opening paragraph should not be understood in conjunction with the circumstances specified in that sub-paragraph. Second, the Panel adopted a subjective approach to the interpretation of the opening section, and stated that the words “it considers” should be read together with the words “essential security interests” and “necessary”. Supported by the text, context, objectives, and other relevant material, and in accordance with the rules of interpretation set forth in Article 31(1) of the Vienna Convention on the Law of Treaties, the Panel established a national security exception to jurisdiction, denied the plea by the United States for full discretion, and created a balance by an appropriate grant of partial self-determination to members under paragraph b(iii).

In view of this conclusion, and in accordance with the relevant requirements of the DSU, having established its jurisdiction, the Panel went on to recognize and respect the discretion of a member in taking “any action which it deems necessary to protect its essential security interests”. However, the discretion of the Panel which has the authority to review members’ invocation of this exception needs to be established. Therefore, the Panel turned to assessing whether the United States’ invocation of Article XXI(b) of the GATT in respect of the relevant measures specifically met the requirements.²² It follows that invoking the national security exception is clearly adjudicable before the courts. The invoking party’s claim to being the sole competent judge of whether or not it can take security exception measures has been held to be arbitrary. Several existing cases, which have cited various interpretation methods, and the history of contracting and other factors, combined with the current situation of multilateral trade and national security emergencies in the world from time to time, all culminate in holding that domestic measures

²² Panel Report on *United States – Certain Measures on Steel and Aluminium Products*, WT/DS556/R, Adopted on December 9, 2022, para. 7.136.

should be adjudicable, that is, should be subject to DSB review.²³ Therefore, with regard to the claim regarding the “self-adjudicatory” nature of the national security exception in the international trading system, it is now well settled that the relevant dispute settlement panels or arbitral tribunals have jurisdiction based on the practices in various trade disputes.²⁴

2. Interpretation of Key Words

The specific review mainly focuses on the key words “essential security interests” and “emergency in international relations”.

The first part deals with the interpretation of the words “essential security interests”. According to the report of the Panel in this case, on the premise of observing the “principle of good faith”,²⁵ members enjoy certain discretion in defining their own essential security interests. It requires only that the connection between the specific context in which measures are taken and the purpose of protecting essential security interests is not so remote as to be entirely implausible, and that the general approach to scrutiny is relaxed.²⁶ This approach is similar to that in DS512. That case held that “essential security interests” should in principle be defined by the members themselves, but should be limited by the “principle of good faith”, that is, members have discretion, but they should show that the measures they took have a minimum degree of connection with the protection of their interests.

Second, with regard to the idea of an “emergency in international relations”, the Panel considered that “emergencies in international relations” under Article XXI(b)(iii) are situations of a certain gravity and international tensions of critical or serious importance in terms of their impact on international relations. “War” means “hostile contention by means of armed

²³ Wei Li, The Application of WTO Security Exception Clause under the New Security Situation, *Journal of China University of Political Science and Law*, No. 3, 2015, p. 102.

²⁴ *Supra* n. 14, p. 138.

²⁵ Appellate Body Report on *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, Adopted on October 12, 1998, para. 159.

²⁶ Jianli Liu, Shizun Zhou and Mingxin Liu, A Study on the 232 Steel and Aluminum Tariffs of the United States, *International and Comparative Law Review*, No. 00, 2022, p. 245.

forces, carried on between nations, states, or rulers, or between parties in the same nation or state; the employment of armed forces against a foreign power, or against an opposing party in the state”.²⁷ The Panel held that “war” provides the immediate context for its interpretation of “emergency”, meaning that an “emergency in international relations” must be as serious as a “war”, or at least as serious in terms of its impact on international relations. After reviewing the relevant evidence presented in the dispute, the Panel did not find that the situation described by the United States had given rise to a level of tension that constituted an “emergency in international relations”.²⁸

3. Analysis of the Balance Mechanism in DS556

DS556 was another chance for the Panel to interpret the national security exception. In fact, this case, like several case reports published since 2019, reflects the Panel’s attempt to balance interests under the WTO’s national security exception.

Before the DS556 case, the Panel focused more on the definition of “essential security interests” in order to create reasonable limitations to the national security exception. Thus, it sought to answer the question of whether the measures taken by the member involved preservation of “essential security interests”. The invoking member sought to clarify before the Panel the essential security interests that its measures were meant to protect, as an essential function of the state, in order to convince the Panel that it was not simply resorting to the exception to circumvent their WTO obligations, either by labelling as “essential security interests” economic interests that they agreed to pursue and promote in accordance with WTO rules or by claiming that measures unrelated or remotely related to the security interests it declares to be protecting are measures taken “for the protection of” these interests.²⁹ But in DS556, the Panel focused more on the keyword “emergency in international

²⁷ Panel Report on *United States – Certain Measures on Steel and Aluminum Products*, WT/DS556/ R, Adopted on December 9, 2022, para. 7.156.

²⁸ *Ibid.*, para. 7.166.

²⁹ Geraldo Vidigal, *WTO Adjudication and the Security Exception: Something Old, Something New, Something Borrowed – Something Blue?* *Legal Issues of Economic Integration*, Vol. 46, No. 3, 2019, pp. 203-224.

relations”.

The Panel considered that the closer the emergency in international relations was to war or armed conflict, the more necessary the measures would be to protect essential security interests. The further the Panel considered the claimed emergency to be from recognized examples of emergencies in international relations, the more precisely the State needed to define its essential security interests and the threats thereto. Situations of armed conflict, or of the breakdown of law and order in a state, are provided as prototypical emergencies in international relations that would require a lesser degree of specificity from the invoking state.³⁰ Ultimately, the failure to establish that its actions were necessary to protect its essential security interests denies the party the right to invocation of exceptions on the ground of emergency in international relations. This leads to the dismissal of the claim to the right to invocation of the national security exception.

The Panel avoided the question of whether “essential security interests” were at stake, and instead established an inter-dependent relationship among the three factors of “essential security interests”, “necessity”, and “emergency in international relations”. The following principle was formulated: the closer the emergency in international relations is to war or armed conflict, the more necessary the relevant measures are to protect essential security interests. Therefore, it is not necessary to define whether the other two factors are valid, but only to judge whether the national security exception refers to an event of grave seriousness in international relations. This article believes that by taking this roundabout route, the Panel limited the scope of its objective review only to the interpretation of the relatively easy phrase “emergency in international relations”, thereby avoiding a clear judgment on whether the Section 232 Investigation involved the “essential security interests” of the United States.

Such an approach marked the beginning of the development of the balance mechanism of the national security exception. In order to analyze whether the Section 232 investigation in the DS556 case involved “essential security

30 Tomas Baecke, A Possible Second Ruling on the National Security Exception under the GATT: Maintaining a Delicate Balance? *New York University Journal of International Law and Politics*, Vol. 54, No. 2, 2022, pp. 699-710.

interests”, it is necessary to first point out that the Section 232 Investigation linked economic welfare and a specific industry with future defense needs. Section 232 Investigation tried to simply pack trade restrictions, that help domestic industries recover, into a bag called “national defense interests”. However, the industrial and economic welfare referred to does not meet the requirements of the so-called “essential security interests”. Section 232 Investigation by the Trump administration was essentially an attempt to protect industries in the garb of national security. That can be seen in the survey’s focus on the economics of steel and aluminum, as well as the emphasis President Trump placed on the industry in various speeches.³¹ The history of the WTO is replete with such examples. There are ample examples in GATT/WTO history that provide some parallels to the US claiming national security grounds for careful, calibrated restrictions on imports of steel, aluminum, composite materials, rare earth metals, pharmaceutical ingredients, semiconductor chips, and personal protective equipment on the grounds of national security.³² But a Panel ruling directly on “essential security interests” could have political ramifications. For example, the United States may continue to paralyze the DSB of the WTO, or withdraw from the WTO altogether. Therefore, setting a high standard of proof only for “emergencies in international relations” is obviously a relatively conciliatory and balanced approach.

III. THE OPERATIONAL ANALYSIS OF THE WTO NATIONAL SECURITY EXCEPTION BALANCE MECHANISM

A. The Background of the Operation of the WTO National Security Exception Balance Mechanism

National security touches upon the core elements and functions of a state, but

³¹ Simon Lester and Huan Zhu, *Closing Pandora’s Box: The Growing Abuse of the National Security Rationale for Restricting Trade*, *CATO Institute Policy Analysis*, Vol. 874, 2019, p. 5.

³² Justin Hughes, *Fitting China-US Trade into WTO Trade Law: National Security and Non-violation Mechanisms*, *Michigan State Law Review*, Vol. 319, 2022, pp. 319-386.

the dangers of abusing the national security exception are also clear, especially in the current era of economic nationalism, anti-globalism and populist unilateralism. Because the vague concept of a “national security interest” allows for deviations from complex legal obligations, the exception on the said ground is attractive to states seeking to circumvent treaty obligations, and abuse of the national security exception is rife. The security exception clause should, thus, find a balance between the conflicting values of protecting security interests and the free trade.³³

However, there are differences among nations in the understanding of the connotation and scope of the national security exception clause, especially when the national centripetal force decreases. Based on the considerations of sovereign interests, governments tend to argue for greater discretion for taking actions as they see fit, arguing that placing undue barriers against them puts the nation at risk by undermining its ability to effectively protect its national security. Changes in countries’ understanding and cognition of security exception clauses has not only converted the nature of such a clause from a “passive defense” clause to an “active” or even “aggressive” clause but also shifted its main application scenarios from preventing actual risks to preventing potential risks, showing a kind of precautionalism.³⁴ Since national security itself is a highly flexible concept, countries are reluctant to submit their right of determination, of whether it is a matter affecting their “essential security interest”, to a third party or organization. Moreover, in practice, the scope of national security has expanded from traditional security needs to non-traditional security needs, which makes the application of the national security exception vaguer and more uncertain, and more likely to lead to imbalance in its application among nations.

Especially in the current climate of Sino-US trade conflict, the rapid rise of China and its close economic interdependence with the US, as a nearly equal competitor whose ideology and model are contrary to US values and strategic interests, the idea of invoking national security exception has created

33 Jaemin Lee, A Blind Side of Security Exceptions: New Legal Complexities of the “Refusal to Furnish Information” Clause, *Journal of Korean Law*, Vol. 20, No. 1, 2021, pp. 173-216.

34 *Supra* n. 13.

unprecedented challenges. In addition to the steel and aluminum tariffs mentioned above for the purpose of rescuing its declining manufacturing industry,³⁵ the US, in its 2022 Indo-Pacific strategy, also proposed the establishment of “a free and open Indo-Pacific region”³⁶ as it sees no reason to help its main competitor compete and should continue to deny China the access to cutting-edge technology.³⁷ The return of a great power and its manifestation in the field of technology have caused the United States to re-focus on how it can maintain its technological superiority. The Biden administration has sought to “maintain the greatest possible lead in key technologies”. The Biden administration’s 2022 imposition of sweeping export controls on China’s advanced computing and semiconductor manufacturing equipment reflects this shift.³⁸ At the same time, the United States is also trying to use the Indo-Pacific Economic Framework for Prosperity (IPEF) to build a De-Sinicization supply chain of key technologies and material such as semiconductors and chips.³⁹ In this context, the chips dispute between China and the United States submitted to the WTO Panel for trial also involves the application of the national security exception. Without the existence of a balancing mechanism, the United States will expand the interpretation of the provisions of the clause and have it used at its own will and direction, which will intensify the political tension between the two countries.

The existence of the interest balance mechanism of national security exception is likely to help ease the sharp political conflicts between the two countries. The “strategic ambiguity” interpretation adopted by the Panel is, in fact, a special strategy to reconcile interests very subtly. Considering the

35 The White House, The Indo-Pacific Strategy of the United States, Washington DC, February, 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-strategy.pdf> (Last Visited on January 23, 2024).

36 *Ibid.*

37 Kurt M. Campbell and Jake Sullivan, Competition without Catastrophe: How America Can Both Challenge and Coexist with China, *Foreign Affairs*, Vol. 98, No. 5, 2019, pp. 96-110.

38 Sophie Charlotte Fischer, Silicon Curtain: America’s Quest for Allied Export Controls against China, In: Brian G. Carlson and Oliver Thränert (eds.), *Strategic Trends, 2023: Key Developments in Global Affairs*, Zurich: Center for Security Studies, ETH Zürich, 2023, pp. 39-62.

39 *Ibid.*

sensitivity of national security issues, countries must be endowed with some discretionary political power, but whether purely subjective or purely objective methods are adopted,⁴⁰ it may lead to the weakening of the multilateral trading system. The basis of this approach is the jurisprudence of the International Court of Justice, which confirms that a legal issue can have both political and legal aspects. This balance can only be achieved if the measure is reviewable by the WTO adjudication mechanism. The absence of such a mechanism leaves the provision “open to abuse without remedy”, and the discretion afforded by this provision should be balanced against the trade interests of other WTO members. If it shows that the national security exception is, in fact, a “no-death gold medal” that all countries can use at will, the overall predictability and enforcement capacity of the multilateral trading system will be undermined.

Therefore, it is necessary to strike a balance between a government protecting the country’s national security and not obstructing trade liberalization.⁴¹ On the one hand is the broad discretion left to members invoking the national security exception, and on the other is the need to avoid the abuse of that exception. For example, the Panel ruled that “emergencies in international relations” must be as important as “war” and that political or economic conflicts were not covered by the national security exception unless the interests that arise from a situation of war in subparagraph (iii) itself are “all defence and military interests, as well as maintenance of law and public order interests”.⁴² It is through these balanced approaches that a line between trade and politics can be drawn and the national security exception can truly work and fulfill its intended purpose.

B. The Current Operation of the WTO National Security Exception Balance Mechanism Is Insufficient

However, reviewing the current equilibrium mechanism in the application and

⁴⁰ *Supra* n. 19.

⁴¹ Daria Boklan and Amrita Bahri, The First WTO’s Ruling on National Security Exception: Balancing Interests or Opening Pandora’s Box? *World Trade Review*, Vol. 19, No. 1, 2020, pp. 123-136.

⁴² Peter Van den Bossche and Sarah Akpofure, *The Use and Abuse of the National Security Exception under Article XXI (b)(iii) of the GATT 1994: A New Global Economic Order*, Brill Nijhoff, 2021, pp. 121-168.

interpretation of the national security exception in the WTO, it is obvious that there are still many defects and deficiencies. In the context of the intensifying game between great powers, the clause has been generalized and even abused, becoming an excuse for unilateral and protectionist trade policies. The balance between the multilateral trade order and national security interests has been seriously disrupted. DS556 represents the side effects of this imbalance, and the current national security balance mechanism does not respond well to it.

Firstly, when addressing “essential security interests”, in order to check the abuse of the WTO’s provision on national security exception, it is necessary but difficult to define the concept in light of non-traditional security threats. In the previous case, the panels extended a similarly forgiving deference with respect to the fit between proffered interests and chosen actions, requiring only that actions taken are “not implausible” given the stated security interests.⁴³ However, the evasive approach adopted by the Panel, which is typical of DS556 of the United States, that is, avoiding directly defining the connotations of “essential security interests”, does not objectively fulfill the goodwill standard previously proposed by the Panel. In other words, this case continues the WTO Dispute Settlement Body’s attempt to maintain a delicate balance between trade and political interests, but it does not fully implement the good faith standard proposed in the previous two cases, and avoids a judgment on “essential security interests” and “necessity”, thus failing to formulate a coherent or fixed standard for review. To some extent, it increases the uncertainty under the multilateral rules, which has an impact on the national security exception balance mechanism.

Secondly, the provisions on the right to self-determination and the ambiguity in the text in the current WTO national security exception balance mechanism can easily lead to the expansion of the clause’s boundary. Some scholars have pointed out that the abuse of the national security rationale by the United States has damaged the prospect of international cooperation, due to the widespread suspicion that countries cry wolf even when their national security is not actually threatened. What is clear is that a US failure to strike the right balance for its export control policy would result in it being ineffective

⁴³ *Supra* n. 19.

at addressing national security risks, costly for the economy, and problematic for trade and diplomatic relations.⁴⁴ In view, especially, of the different understandings of the keywords “emergency in international relations” among various countries, the imbalance in the application of this clause among nations has become aggravated, and there is no perfect balance between precision and ambiguity, and flexibility and strictness, as intended. In the above cases, there is still a phenomenon whereby some of the keywords are emphasized in the interpretation, which helps avoid political conflicts, but also deviates from the original intention of the article, which is the focus for improvement when it comes to the further construction of the balance mechanism.

Finally, the frequent invocation of the WTO national security exception also reflects the current trend of convergence and collision between politics and trade, which should not continue. As a platform for resolving trade disputes, the WTO does not avoid trade conflicts tinged with politics, but there are many cases where the national security exception is used as a defense. The Dispute Settlement Body under the WTO will inevitably invade the field that should be subject to national self-determination and even self-regulation, undermine the political sovereignty of each country, and even aggravate the crisis within the WTO. Therefore, there is much lack in the national security exception balancing mechanism. The frequent filing of claims for exemption in the name of the defense of national security reflects the serious absence of alternative measures and deficiencies in the procedure for review of invoking of the national security exception clause.

IV. THE CONCRETE CONSTRUCT OF THE WTO NATIONAL SECURITY EXCEPTION BALANCE MECHANISM AND CHINA’S RESPONSE

A. The Direction of Evolution of the WTO National Security Exception Balance Mechanism

Combined with the current situation of the balance mechanism in the

⁴⁴ Chad P. Bown, *Export Controls: America’s Other National Security Threat*, *Duke Journal of Comparative and International Law*, Vol. 30, No. 2, 2020, pp. 283-308.

application and interpretation of the WTO national security exception, the following analysis will explain how to build a more perfect balance mechanism for the WTO national security exception from three perspectives: overall balance, balance of provisions and balance of practice.

1. Overall Balance

The construction of the overall balance should be carried out around the “two-level equilibrium model” mentioned above. According to this model of interpretation, Article XXI was designed to use the security exception clause as the first balance for the negative effects of trade liberalization. “Essential security interests” as the second balance can be abused. In fact, this concept can be used as the general principle for the operation of the national security exception balance mechanism. On the one hand, for the purpose of balancing the conflict of interests between trade liberalization and national security, the specific operation and implementation of the national security exception clause during practical application and interpretation should focus on this center. On the other hand, the definition of “essential security interests” is crucial, and the WTO should adhere to its role as a “gatekeeper” of quasi-judicial institutions, and must not expand security issues in general to the level of national security, which is liable to cause members to deviate from their multilateral obligations.

In this regard, it should be recognized that in the new international background, non-traditional security issues should be considered to be included in the scope of “essential security interests” addressed by the WTO security exception and, accordingly, WTO members should be allowed to use this clause depending on the context. However, there must be limits to such an extension. In the process of assessing the threats to essential security interests, the country’s “good faith” is an important criterion, and it is important to verify the nature and hidden rationale of the action in question.⁴⁵ Under the requirement of good faith, a State invoking Article XXI must demonstrate that it genuinely believes that the restrictions adopted will protect its essential security interests and that it genuinely believes that they are proportionate. The requirement of

⁴⁵ *Supra* n. 33.

“good faith” brings in some level of objectiveness and subjects this provision to a certain level of judicial review.⁴⁶ This approach is a new development of the national security exception balance mechanism which restricts the discretion of members on specific matters in both directions. Some scholars also opine that non-traditional security matters, such as the economic security, can be protected differently so as to check the possible abuse of the security exceptions. This is also a feasible way to deal with the pan-security concept proposed by the United States and other countries.

2. The Balance of Provisions

The balance of provisions is the specific criterion for the operation of the national security exception balance mechanism. Navigating the jurisprudential ambiguity of the national security exception will be a key task for the WTO as the collision between national security and trade interests and freedom shows no signs of abating. This bifurcated approach leaves open a zone of ambiguity in three key requirements of the “formal” approach: (i) the articulation of essential security interests, (ii) good faith, and (iii) the fit between stated means and accomplished ends.⁴⁷ This stems not only from the nature of national security as a highly abstract but self-evident ambiguous symbol but also from the consideration that each and every country strives to balance trade openness and its essential interests.⁴⁸ The simultaneous introduction of ambiguity in the terms of the treaty was specifically designed to allow states to respond to emergencies and hostile actions by other states. They seem well placed to imply that accession to a treaty without such an explicit exception is almost a non-event because the state in question would retain virtually unlimited discretion to comply or not comply with its terms.⁴⁹ Therefore, in order to create a balance in the provisions, it is necessary to gradually achieve a flexibility of application

⁴⁶ *Supra* n. 41.

⁴⁷ *Supra* n. 19.

⁴⁸ *Supra* n. 13.

⁴⁹ Susan Rose-Ackerman and Benjamin Billa, Treaties and National Security, *New York University Journal of International Law and Politics*, Vol. 40, 2007, p. 437.

apart from the ambiguity of terms. However, it is also necessary to find a balance or measure that ensures that sufficient resilience and adaptability are maintained in practical applications while avoiding excessive uncertainty or abuse. While granting a State a reasonable right to self-determination so that it can reasonably define the threats to its own security, it is also necessary to give full play to the role of the “ballast stone” of objective requirements, that is, the security exception should only be allowed to be claimed in case of a real emergency in international relations.⁵⁰

In this regard, a base line for the application of national security exception should be established and the connotation of security should be expanded appropriately. To be specific, various measures should be set up to prevent the national security exception clause from being abused by members, and the nature of the security exception clause as an “exceptional provision” should be clarified and emphasized, so that the abuse of the clause on the grounds of threat to “national security” will not benefit any country. In addition, the interpretation of keywords such as “essential security interests” and “emergency in international relations” should be limited, the interpretation of some keywords should not be emphasized, and the article should be interpreted as a whole. At the same time, this “constructive ambiguity” in international law can also be used on the text to reconcile the different views of members at the highest level and to try to maintain flexibility for legal practice and subsequent development.

3. The Balance of Practice

To achieve balance in practice, members should refrain from invoking the national security exception on the basis of recognizing the limited nature of the rule. Considering the sensitivity of the national security exception and the dilemma of the WTO, a better solution is to refrain from invoking the exception as much as possible, and to initiate alternative lawsuits, such as safeguard measures and non-violation of Article XXIII of the DSU, as well as take other

⁵⁰ *Supra* n. 11, p. 168.

countermeasures on the premise of legality.⁵¹ This may address members' actions that are technically legal but contrary to the legitimate expectations of other members. There is a stable consensus within the US government that non-violation complaints remain a remedy if a country believes another country's national security decisions have harmed its trade interests.

In other words, if the United States were to prevail in a national security exception claim, China itself could have recourse to "re-balance" its own tariff concessions to the United States under GATT Article XXIII(b). In short, this could be a means of engaging WTO mechanisms to normalize some trade disengagement between the two economies,⁵² and opening the Pandora's box of national security should be avoided as much as possible. It is also important to recognize that the non-violation complaint is a specialized relief mechanism aimed at re-establishing balance and cannot replace the violation complaint.⁵³ More importantly, members should realize that due to the unclear rules and the resulting uncertainty of WTO Panel rulings, the threat of bringing the matter before a WTO panel strengthens the ability of members to check any abusive uses of Article XXI.⁵⁴ In this case, it would be a pragmatic choice for the disputing members to follow the "principle of good faith", try to avoid the escalation of trade disputes and pragmatically seek bilateral solutions while actively exploring the improvement of existing rules.⁵⁵

B. China's Response to the Establishment of the WTO National Security Exception Balance Mechanism

The WTO national security exception is also an extremely important part of China's foreign trade relations. Whether as the invoking party or the target party, China proposes seeking win-win balance. In the following discussion,

51 Csongor Istavan Nagy, A Re-conceptualization of WTO Law's Security Exceptions: Squaring the Circle and Judicializing National Security, *Journal of International Economic Law*, Vol. 24, No. 2, 2021, pp. 49-59.

52 *Supra* n. 32.

53 *Supra* n. 1.

54 Peter Lindsay, The Ambiguity of GATT Article XXI: Subtle Success or Rampant Failure, *Duke Law Journal*, Vol. 52, 2003, pp. 1277-1313.

55 Mosheng An, Analysis of WTO Security Exception Clause, *International Trade Issues*, No. 3, 2013, p. 130.

this article will try to outline a future path in view of China's interests from the perspective of the balance mechanism.

1. Response to the Overall Balance: Using Both Dispute Settlement and Multilateral Negotiations

The purpose of the overall balance in the national security exception clause is to balance two competing interests and clarify the boundaries for the application of the exception clause. This process requires negotiated reforms at the multilateral level, in addition to resorting to dispute settlement mechanisms. Some scholars believe that the twenty-first-century expansion of national security policy undermines existing models for separating security measures from ordinary economic regulation. What is needed, it argues, is a new model for reintegrating the economic order with the national security state.⁵⁶ In the current WTO regime, building an effective international governance system may be possible. After all, no country alone can deal with the challenges posed by non-traditional security threats to the international economy and trade order. This may only be achieved in the future through international cooperation and an effective international governance system.⁵⁷

In order to protect the national security interests, China should attach great importance to the study of treaty design, and retain the discretion on important and sensitive issues by designing exceptions reasonably or putting forward reservations.⁵⁸ China should use free trade agreements and other mechanisms to explain the national security exception balance mechanism to the international community with the vision of a shared future for mankind as the guiding value.⁵⁹ By making full use of free trade agreements and other mechanisms, and taking the concept of a community with a shared future for mankind as the value orientation, China can explain and construct an exceptional balance

⁵⁶ J. Benton Heath, *The New National Security Challenge to the Economic Order*, *Yale Law Journal*, Vol. 129, No. 4, 2020, pp. 1020-1099.

⁵⁷ *Supra* n. 4, p. 79.

⁵⁸ *Supra* n. 16.

⁵⁹ *Supra* n. 11, p. 169.

mechanism of national security exception. China should, for the purpose of balancing the international economic and trade rule system, seek consensus with other trading partners, jointly promote the construction of the new national security exception rule, and popularize it through multilateral and regional trade agreements, in order to form a trade system that is more in line with the changes in the current international situation.⁶⁰

2. Response to the Balance of Provisions: Paying Attention to the Constraints of Objective Conditions in the Provisions

The balance of the provisions of national security exception, while giving a certain degree of freedom to members, also takes the objective review requirement as a “safety valve” for the invocation of the national security exception, avoiding politicizing economic and trade issues. After the Panel report of DS597: *United States — Origin Marking Requirement* was submitted to the DSB, the Secretary for Commerce and Economic Development, Mr Algernon Yau, said, “The revised origin marking requirement is politically motivated and a vain attempt to interfere with Hong Kong’s internal affairs through weaponising trade. The US’ despicable intent and ulterior motives will neither stand nor be accepted by the international community. Not only is the requirement imposed on Hong Kong products by the US unwarranted, it also seriously violates WTO rules. It completely disregards the rules-based multilateral trading system and irresponsibly infringes on Hong Kong’s rights as a member of the WTO. The HKSAR Government strongly condemns such a measure”. As for China, when other countries take controversial measures beyond the scope of objective requirements, trying to forcibly resort to the so-called national security exception clause, and we are faced with the challenge of power politics,⁶¹ China should firmly use the national security exception balance mechanism as a solution. In particular, when interpreting the objective

60 Cong Feng, Xicang Chen and Xiaoli Shi, Application and Development of GATT Security Exception Clause, *International Trade*, No. 1, 2021, p. 89.

61 Hong Kong Government Responds to WTO Ruling that US Labeling Rules on Hong Kong Are Illegal, <https://www.163.com/dy/article/HP6H7DUV051481US.html> (Last Visited on August 26, 2023).

element “emergency in international relations”, it is necessary to ensure that the original intention of the exception is met, i.e., a genuine situation of the same gravity as “war”. A case in point is the US restrictive measures of steel and aluminum based on Section 232 under the Trade Expansion Act of 1962,⁶² which conflates US economic welfare with national security. The US Department of Commerce has greatly weakened the core defense demand factor of Section 232, overemphasized the impact of steel imports on the domestic steel economy, and improperly equated national security with industrial interests.⁶³ The economic welfare of the nation embraces a variety of concerns viz., “the impact of foreign competition on the economic welfare of domestic industry” and the “economic welfare of individual domestic industries,” including “any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports ...”.⁶⁴ The national security exception proposed by the United States is obviously beyond the scope of objective requirements. At the same time, for the measures taken by China in order to protect its “essential security interests”, and in situations of “emergency in international relations”, China should also actively take the defense of national security exception and interpret the national security exception balancing mechanism in a manner so as to safeguard our legitimate and reasonable trade interests.

3. Response to the Balance of Practice: Need for Strict Standards for Invoking the National Security Exception

In order to bring balance to the practice of making claims under the national security exception, the clause should be regarded as a defensive one, and the risk of abusing the national security exception should be drastically reduced by the use of strict standards and promoting the improvement of the invocation procedure. Some scholars have also proposed that the security exception clause

⁶² Trade Expansion Act of 1962, Public Law 87-794, 76 Stat. 872 (1962).

⁶³ *Supra* n. 26, p. 265.

⁶⁴ Asif H. Qureshi, A Public International Law Perspective of Section 232 of the US Trade Expansion Act, *Kansas Journal of Law and Public Policy*, Vol. 30, No. 3, Summer, 2021, pp. 433-452.

should be interpreted in good faith, and the requirements for invoking the security exception clause to start the procedure should be refined and clarified, so as to curb the possible abuse of the security exception.⁶⁵ China can improve the elements of the procedure for invoking national security exception by tightening the notification procedure and prescribing an initial burden of proof for the invoking party.

It is undeniable that in the tide of anti-globalization, international cooperation has declined, national security has been ever more broadly defined, and unilateral economic sanctions have been frequently imposed. On the issue of the security exception, it is clearly unrealistic to expect a return to the self-restraint of the early GATT era, or the first two decades of the WTO.⁶⁶ However, for China, due to the paralysis of the Appellate Body and the immaturity of the existing exploration of Multi-party Interim Appeal Arbitration Arrangement (MPIA), more disputes will mean more legal costs. Therefore, China should continue to exercise self-restraint and invoke the security exception as a last defense in its toolkit.

V. CONCLUSION

Reviewing the background and development history of the national security exception, it is clear that the sensitive issue of national security is riddled with the conflicting interests of all parties. The balancing mechanism that the Panel tried to establish was faced with many challenges, such as the geopolitical game entering the economic field, the suspension of the WTO Appellate Body, the generalization of the concept of national security, and the emergence of new security threats, which made the application of the national security exception complicated and open to abuse. However, as the “Achilles heel” of international law, the interpretation of national security has a profound impact on the future trend of the world economy, politics and military affairs. At a time when the world is undergoing profound changes unseen in a century, China’s correct interpretation and application of the national security exception is of great

⁶⁵ *Supra* n. 18, pp. 153-154.

⁶⁶ *Supra* n. 1, p. 39.

significance.

In a practical sense, the research on national security exception is also closely related to the current Sino-US relations. The case against the US Chips and Science Act, brought by China before the WTO last year, for example, is closely linked to the national security exception. The case will focus on the export control measures imposed by the US on China in the name of national security, which is still essentially the issue of the generalization and abuse of the concept of national security.⁶⁷ In fact, the trade friction between China and the United States is the inevitable result of the dynamic adjustment of the power structure between established and rising powers over time in the course of history. All the signs show that the US government launched the 232 investigation not to safeguard its national security, but to seek the rebalance of trade interests through economic sanctions.⁶⁸ Taking the DS556 case as an example to highlight the areas of concern with respect to the balance mechanism may enable China to have a better understanding of the attitude of the Panel and the international community, and may serve as a reference for future cases.

67 Hong Li, *China v. United States Steel and Aluminum 232 Tariff Measures WTO Dispute Case*, *Overseas Investment and Export Credits*, Vol. 1, 2023, p. 27.

68 Shen Wei, *Security Exceptions in International Economic Rules: An Analysis Based on International Agreements and Applications*, Shanghai Jiaotong University Press, 2022, p. 7.