The WTO Condemns Trump's Tariffs on Steel and Aluminium, but Biden Condemns the WTO

Aldo LIGUSTRO* & Marco BUCCARELLA**

Recently World Trade Organization (WTO) panels declared the illegitimacy of the tariff increases imposed in 2018 by the US government, based on national security grounds, on imports of steel and aluminium products. This paper addresses some of the key legal issues raised in the four controversial panel decisions, leaving some final reflections on the future of multilateral trade system. Given the unsettled nature of the terrain, we firstly focus on the WTO rules that are relevant to the tariffs imposed by Trump in 2018, before dwelling on the complainants' arguments and panels' findings. Two indications or conclusion can be drawn from the paper. First, the General Agreement on Tariffs and Trade (GATT) Article XXI doesn't constitute a self-judging or non-justiciable provision, differently from what argued by the US Government. Second, the controversial reports will not resolve the ongoing conflict initiated by US against the WTO. In fact Biden, far from distancing himself from Trump's measures, openly condemned the panel's decisions through an official statement widely disseminated by the media. The practical significance of the recent condemnation of the US tariffs is even less evident when considering the persistent issue of the appointment of members to the WTO Appellate Body. If multilateralism continues to falter, the US may no longer be the only country winking at bilateralism, as evidenced by the recent rules adopted by the EU.

Keywords: Security Exceptions, Dispute Settlement Understanding, Antidumping Duties, WTO, international economics, European Union, GATT, escape clauses, multilateral trade system

1 INTRODUCTION

With the decisions rendered on 9 December 2022, in the disputes DS544, DS552, DS555, and DS564, the panels of the World Trade Organization (WTO) have declared the illegitimacy of the tariff increases imposed in 2018 by the United States government, based on national security grounds, on imports of steel and aluminium products. These disputes were decided by the expert groups established by the WTO's Dispute Settlement Body (DSB),[1] following requests made by

* Ph.D., Full Prof. of International Law and International Trade Law, University of Foggia - Department of Law, Italy. Email: aldo.ligustro@unifg.it.

** Italian-qualified lawyer and Ph.D. Fellow in Legal Studies, University of Foggia - Department of Law, Italy. Email: marco.buccarella@unifg.it.

1 For a comprehensive analysis of the WTO Dispute Settlement system, *see* A. Ligustro, *Le controversie tra Stati nel diritto del commercio internazionale: dal GATT all'OMC* (Padua 1996).

Ligustro, Aldo & Buccarella, Marco. 'The WTO Condemns Trump's Tariffs on Steel and Aluminium, but Biden Condemns the WTO'. *Journal of World Trade* 58, no. 1 (2024): 131–152.

China (DS544), Norway (DS552), Switzerland (DS556), and Turkey (DS564), and with the additional participation of other states as third parties.[2] The arbitration proceedings, lasting a total of over four years, concluded belatedly due to the effects caused by the Covid-19 pandemic on the functioning of the WTO system.

The issue of tariff increases on imports of steel and aluminium, as a measure targeting major steel-exporting countries to the United States, has also been subject to other disputes within the WTO, initiated by Canada (DS550) and Mexico (DS551), which were later resolved through conciliation after the establishment of panels. However, the disputes initiated by India (DS547) and Russia (DS554) are still pending, as they were proposed after the decisions made in December 2022. The WTO dispute initiated by the European Union (DS548) concluded following the parties' decision to activate an arbitration proceeding under Article 25, paragraph 2, of the Dispute Settlement Understanding (DSU). However, the arbitration process is currently suspended despite the appointment of the arbitration body (composed of the same individuals designated for the WTO panel).

These four rulings represent the first official response of the multilateral trading system to the measures undertaken by the government of Donald J. Trump, who, shortly after his election to the White House, announced interventions aimed at protecting the economic interests of US companies.[3] The 25% and 10% tariff increases on steel and aluminium imports, respectively, were part of the political agenda outlined by the Republican government during those years. This agenda also included Trump's decision to withdraw from the Trans-Pacific Partnership (TPP) trade agreement of 2016 and the decision to initiate negotiations with Canada and Mexico to modify the North American Free Trade Agreement (NAFTA), parts of which were incorporated, with some innovations, into the United States-Mexico-Canada Agreement (USMCA) approved in the last months of 2018.[4]

In the rest of this article, we provide information on the main WTO rules that are relevant to the tariffs imposed by Trump in 2018, which deviated from the foundational principles of the multilateral trading system, in section 2. We then discuss the background to the disputes, the complainants' arguments and panels' findings in section 3. In section 4, we offer some final reflections.

---

2 The report relating to each dispute can be found on the WTO's official website at the following link: https://www.wto.org/english/news_e/news22_e/544_552_556_564r_e.htm (accessed 15 Nov. 2023)

3 *See* A. Ligustro, *La politica commerciale del Presidente Trump: bilancio dei primi cento giorni*, (2) DPCE on line 163–173 (2017).

4 For an analysis of the USMCA, also in relation to NAFTA provisions, *see* M. Buccarella, *From NAFTA to USMCA: Everything has Changed but Nothing has Changed*?, Diritto Pubblico Comparato ed Europeo 299–314 (2019).

2 RELEVANT WTO PROVISIONS

2.1 GATT PRINCIPLES AND EXCEPTIONS

To fully understand the importance and content of the recently published reports, it is necessary to first focus on the main WTO rules that are relevant to the tariffs imposed by Trump in 2018, which deviated from the foundational principles of the General Agreement on Tariffs and Trade (GATT) 1994,[5] contained in Annex 1A of the WTO Agreement established in Marrakesh on April 15, 1994.[6] Although the term 'duty' should technically be distinguished from the term 'tariff' (referring to the list of goods indicating the tariff applied to each of them), in this context, we will use the two terms interchangeably, as is commonly done in economic language.

Within the multilateral trading system, the so called principle of non-discrimination or equal treatment assumes a 'constitutional' significance.[7] This principle is enshrined in the preamble of the WTO Agreement and the GATT, as well as in Annexes 1B (General Agreement on Trade in Services or GATS) and 1C (Agreement on Trade-Related Aspects of Intellectual Property Rights or TRIPs). The principle of non-discrimination has both an 'internal' and an 'external' dimension, corresponding, respectively, to the clause of national treatment (NT) and the clause of most-favored-nation (MFN) treatment. Under the NT clause, explicitly provided for in the WTO Agreement and Articles III of the GATT, XVII of the GATS, and III of the TRIPs, each Member State is required to afford imported products the same treatment as domestic products. The NT clause aims to ensure internal parity, meaning the assimilation between imported and domestic products within the realms of goods, services, and intellectual property (governed by the GATT, GATS, and TRIPs, respectively). The external dimension of the non-discrimination principle is realized through the MFN clause, which, as mentioned earlier, is governed by the WTO Agreement and Articles I of the GATT, II of the GATS, and IV of the TRIPs. In accordance with the MFN clause, the advantages, benefits, exemptions, privileges, or immunities granted by a WTO member to another must be extended immediately and unconditionally to all other Member States. This ensures the elimination of potential discrimination among trading partners. As explicitly stated in Article I, paragraph 1, of the GATT, the NT rule is subordinate to the MFN clause. Consequently, imports from WTO Member States must receive the same (or no less favorable) treatment as that

---

[5] GATT 1994, which incorporates by reference the provisions of the General Agreement on Tariffs and Trade 1947 or GATT 1947.

[6] The text of GATT 1994 is freely available on the official website of the WTO at the following link: https://www.wto.org/english/docs_e/legal_e/06-gatt.pdf (accessed 15 Nov. 2023)

[7] *See* P. Picone & A. Ligustro, *Diritto dell'Organizzazione Mondiale del Commercio* 36–135 (Padova 2002).

granted to any other contracting party, regardless of NT. Among the two dimensions of the non-discrimination principle, the MFN clause has more exceptions, which apply in cases and under the requirements provided by the multilateral agreements attached to the WTO's founding document.

In relation to the international trade of goods, the GATT recognizes the principle of 'exclusive customs protection' whereby customs duties are generally the only permitted instrument for protecting national markets and commercial interests against foreign competition. Article XI of the GATT ('General Elimination of Quantitative Restrictions') indeed prohibits all quantitative restrictions on trade, which refer to prohibitions or restrictions other than customs duties, taxes, or other charges, whether implemented through quotas, import or export licenses, or other measures. This provision has broad scope, as it prohibits all measures that could restrict the international circulation of goods, in addition to the types of measures explicitly mentioned as examples. Given that customs duties, although not prohibited, still constitute a barrier to trade, the WTO system includes provisions aimed at reducing their distorting impact on trade. In particular, the determination and application of duties are subject to compliance with the provisions set out in the lists of concessions for each WTO member, which are annexed to the GATT. These lists can be modified through negotiation, provided that any adjustments do not result in discrimination among member countries.

Article II, paragraph 2, letter b), of the GATT, while generally prohibiting the violation of the amounts indicated in the lists of concessions, allows for the application of higher import tariffs in cases where they serve as instruments of trade defence adopted under Article VI, in the form of so-called antidumping duties or countervailing measures, if the phenomenon of dumping can be attributed to government subsidies. These are additional duties that WTO members can apply to imports from third-country enterprises that trade products at prices lower than the selling price in the originating country of the goods. Specifically, pursuant to Article 2, paragraph 1, of the Agreement on the Interpretation of Article VI of the GATT (also known as the Antidumping Agreement), a good is considered subject to dumping, meaning it is sold in an importing country at a price below its normal value, if its export price from one country to another is lower than the comparable price, under normal commercial conditions, for a similar good intended for consumption in the exporting country.[8] However, this practice is not inherently prohibited since it is undertaken by companies rather than states. It becomes significant within the WTO context when it 'causes or threatens to cause material injury to the production of like or directly competitive products of a

[8] Regarding the Antidumping Agreement, in general, *see* E. Vermulst, *The WTO Anti-Dumping Agreement: A Commentary* (Oxford 2005).

contracting party or substantially retards the establishment of a domestic industry'. WTO discipline aims to sanction those elusive practices that harm competition in foreign markets, thus justifying the use of antidumping duties or countervailing measures in the presence of the following three elements: (1) the existence of imports at a dumping price; (2) the prejudice to the domestic industry; (3) the causal link between the imports at a dumping price and such prejudice. The WTO system, therefore, allows Member States to react against exports subject to dumping by applying additional tariffs to imports, which are useful for protecting the interests of domestic producers and countering anti-competitive practices. At the same time, such measures, being derogations from Article II, paragraph 1, letter b) of the GATT and the principles of liberalization governing international trade, must be applied in accordance with the substantive and procedural obligations provided by WTO rules.

2.2 GATT escape clauses

In addition to the recurring exception in the case of anti-dumping duties and countervailing measures, Member States can establish tariffs higher than those indicated in the schedules of concessions under the so-called safeguard clauses, which consist of derogatory provisions of one or more GATT provisions. The WTO system indeed includes 'specific' and 'general' exceptions that, under certain conditions, exclude the application of specific GATT provisions or all its rules, respectively. For example, Article XIX of the GATT ('Emergency Measures on Imports of Particular Products') belongs to the first group, specifically addressing the obligations of Member States to adhere to the schedules of concessions. The general exceptions, on the other hand, include Article XX ('General Exceptions') and Article XXI ('Security Exceptions') of the GATT, which, by employing the general formula 'No provision of this Agreement may be interpreted to', exclude the application of all GATT rules (and the agreements that give specific implementation to them) where necessary, in the interest of Member States, to pursue certain objectives or adopt certain measures.

In relation to the tariffs imposed by the United States in 2018 on steel and aluminium imports, the exceptions provided for in Articles XIX and XXI of the GATT are relevant.

Article XIX of the GATT includes the so-called general or emergency safeguard clause, which allows a state facing a 'serious production disturbance' to temporarily adopt urgent measures deviating from the obligations under the Agreement in order to counteract increases in imports that are causing or threatening to cause 'serious injury' to domestic competing producers. These measures,

although conceptually overlapping with the aforementioned anti-dumping duties, are characterized by their ability to be adopted not in the presence of unfair practices but rather under 'normal' market conditions and with the aim of protecting domestic businesses from international competition. For safeguard measures to be considered legitimate, it is necessary for the increase in imports of a particular product to be a direct result 'of unforeseen developments' and compliance with the obligations assumed by the state under the GATT. From a procedural standpoint, WTO member countries are not required to obtain prior authorization from the WTO and can independently employ safeguard measures, while still fulfilling the obligations of notification and consultation towards institutional bodies and the states affected by such measures. The procedures for implementing these measures are further specified in the Agreement on Safeguards (SG Agreement), which does not simply replicate the conditions set out in Article XIX of the GATT. Nevertheless, in practice, it has been established that both the conditions indicated in the aforementioned provision and those provided in the Agreement on SG should be fully and cumulatively applied.[9] It should be noted that the SG Agreement excludes from the scope of the discipline on safeguard or emergency measures all those 'measures pursued, adopted, or maintained by a member pursuant to provisions of GATT 1994 other than Article XIX' (Article 11, paragraph 1, letter c), SG Agreement). This naturally includes measures justified by reasons of national security as contemplated in Article XXI of the GATT. As mentioned, this article, like Article XX, constitutes a general exception clause, allowing for derogation from any provision of the GATT for reasons of national security.[10] The exception relating to national security enables Member States to protect their political and military interests, limiting the scope and operation of WTO rules in three distinct scenarios outlined in Article XXI, subparagraphs a), b), and c). In particular, subparagraph a) exempts states from complying with obligations of transparency, information, and publicity provided by the GATT, where the disclosure of information could prejudice 'essential' national security interests. Furthermore, for security purposes, subparagraph b) of Article XXI legitimizes countries to adopt all measures they consider necessary in relation to 'areas' deemed sensitive from a political-military perspective, namely: 1) trade in fissile materials or materials related to their production; 2) the supply of military materials or any other materials directly or indirectly destined for the provisioning of armed forces; 3) measures taken in time of war or in case of international

---

[9] *See Korea – Definitive Safeguard Measures on Import of Certain Dairy Products*, WT/DS98/AB/R of 14 Feb. 1999, paras 68–92; *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS/178 of 1 May 2001, paras 65–70.

[10] For a comprehensive analysis of the national security clause, *see* M. J. Hahn, *Vital Interests and the Law of GATT: An Analysis of GATT's Security Exception*, (3)Michigan J. Int'l L. 558–620 (1991).

tension. The interpretation of subparagraph b) (i) of Article XXI does not present particular difficulties since restrictions in this field are governed by specific rules of international law aimed at limiting the use of such materials for military purposes.[11] These rules specify the lists of products to be considered, also for the purposes of subparagraph b) (i). More problematic is the scenario contemplated in subparagraph b) (ii) of Article XXI, which refers not so much to 'military materials', a notion that clearly evokes the military utilization of the goods in question and therefore has well-defined limits, but rather to the concept of 'articles and materials directly or indirectly destined to ensure the equipping of armed forces'. Today, the concept of war extends well beyond what used to be the mere 'war of armies' in the past,[12] with the result that such a vague provision risks being used in relation to any product of some utility for the equipping of armed forces, effectively prohibiting its import or export to or from another country. To prevent such potential abuses, the majority of doctrine[13] has clarified that this category should include only products that, although usable in both military and civilian contexts, have particular relevance for military activities and national security (consider, for example, materials and technologies specifically used in the construction of chemical and biological weapons). Finally, subparagraph b) (iii) poses interpretative issues regarding the concepts of 'time of war' and 'grave international tension'. While the former notion can be framed within the sufficiently precise boundaries of general international law,[14] the concept of 'grave international tension' is subject to debate between those who advocate for an open interpretation allowing for discretionary evaluation by states and those who invoke the application of strict criteria aimed at preventing Article XXI from being invoked in any situation of cooling down of international relations. In this sense, the notion of 'grave international tension' would evoke only qualified crisis situations that could lead to war or at least be susceptible to armed conflict (similar situations would arise, for example, in the case of serious international crimes and international crimes).

Article XXI, letter c), of the GATT states that no provision of the WTO shall be interpreted 'to prevent any contracting Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security'. This provision establishes a coordination between WTO provisions and those derived from other sources of international law, specifically the United Nations Charter.[15] However, the reference to 'maintenance

---

[11] *See* e.g., Treaty on the Non-Proliferation of Nuclear Weapons, adopted by the UN General Assembly on 1 Jul. 1968, and entered into force on 5 Mar. 1970.

[12] Compare C. Chinkin & M. Kaldor, *International Law and New Wars* (Cambridge 2017).

[13] *See* e.g., M. J. Hahn, *Die einseitige Aussetzung von GATT-Verpflichtungen als Repressal*ie 306 et seq. (Berlin-Heidelberg 1996).

[14] *Ibid.*, at 344 et seq.

[15] Referring to economic sanctions imposed by the UN Security Council under Ch. VII.

of international peace and security' is just a specific example of the broader category of peremptory norms and obligations *erga omnes*,[16] which includes matters such as the safeguarding of the self-determination of peoples, the protection of human beings, and the preservation of the environment. From this perspective, an 'extensive' interpretation of subparagraph c) of Article XXI, based on an organic connection between its provisions and the principles and rules of general international law, could legitimize a derogation from the provisions of the GATT and WTO whenever a serious violation of peremptory norms and *erga omnes* obligations occurs.

Just like the general safeguard clause (Article XIX GATT), measures taken by states under Article XXI GATT are not subject, in procedural terms, to ex ante or ex post review by the WTO, even though a decision by the GATT Contracting Parties in 1947 stated that 'contracting parties should be informed to the fullest extent possible on trade measures taken under Article XXI'.[17]

The relevance of the interests underlying Article XXI GATT in relation to the present matter justifies further exploration, in the following paragraph, regarding a preliminary interpretative issue that has historically arisen concerning the justiciability of the national security exception.

2.3 The justiciability of the security exception under article xxi GATT

The inherent vagueness of the examined scenarios has led to the belief that each country, when invoking Article XXI GATT, would have a blank check and could freely determine the relevance of its national security interests and the necessary nature of the resulting measures to be taken. This belief has been established since the times of GATT 1947, predating the entry into force of the WTO agreements. For example, in 1975, Sweden implemented an import quota system applicable to certain types of footwear, justifying this decision in light of Article XXI. In particular, the adoption of such measures was justified based on the following observations: 'the decrease in domestic production has become a critical threat to the emergency planning of Sweden's economic defense as an integral part of the country's security policy. This policy necessitates the maintenance of a minimum domestic production capacity in vital industries. Such a capacity is indispensable in order to secure the provision of essential products necessary to meet basic needs in case of war or other emergency in international relations'.[18] However, these

---

[16] On *erga omnes* obligations, *see* extensively P. Picone, *Comunità internazionale e obblighi 'erga omnes'* (Napoli, 3d ed. 2013); *Ibid.*, *Obblighi 'erga omnes' e uso della forza* (Napoli 2017).

[17] *See* Decision Concerning Art. XXI of General Agreement, 30 Nov. 1982, GATT doc. L/5426, in *BISD 1983*, suppl. 29, 23 et seq.

[18] *See Sweden – Import Restrictions on Certain Footwear*, GATT Doc. L/4250, 17 Nov. 1975, para. 4.

measures likely concealed Sweden's objective of protecting its footwear industries to some extent, to the point that even at that time, 'many representatives […] expressed doubts as to the justification of these measures under the [GATT]' and 'many delegations reserved their rights under the GATT'.[19] Similar arguments have been made on other occasions, such as the trade embargo imposed on Argentina in 1982 for non-economic reasons related to the Falklands/Malvinas crisis,[20] by the member countries of the then European Economic Community (EEC) as well as the United States, Canada, and Australia. In this regard, the representative of the EEC, during the meeting of the institutional body of GATT 1947 (the predecessor of the WTO), stated that measures taken under Article XXI 'neither required neither notification, justification nor approval'.[21]

The issue of justiciability of the national security exception has always been a matter of discussion in the multilateral forum; however, prior to the establishment of the WTO, there have been no arbitration rulings addressing the legality or illegality of restrictive measures adopted by states. In fact, before the WTO agreements, the national security clause was only the subject of a dispute regarding the trade embargo imposed by the US against Nicaragua in 1985. Within that dispute, the following issue was raised: whether and within what limits the contracting parties could examine the national security reasons underlying any restrictive trade measures. The panel appointed at that time, unable to rule on the validity of the justification provided by the US due to the limited mandate received, nonetheless expressed concerns regarding the potential negative impact of the national security exception on the international trade system, observing that 'GATT could not achieve its basic aims unless each contracting party, whenever it made use of its rights under Article XXI, carefully weighed its security needs against the need to maintain stable trade relations'.[22]

Following the entry into force of the WTO agreements, Article 7, paragraph 2, of the DSU recognized states' right to obtain a decision from the arbitration body regarding all invoked provisions, unless otherwise expressly agreed upon by the parties. On the other hand, the WTO agreements do not contain provisions, either general or specific, aimed at excluding the review by dispute settlement panels on disputes concerning national security matters. In the immediate practice after the establishment of the WTO, Article XXI of the GATT was invoked in two disputes initiated within a few years of each other. The first was initiated in 1996 by the European Community against the United States concerning the

---

19 GATT Council, Geneva, 31 Oct. 1975, GATT Doc. C/M/109.

20 The archipelago in the Atlantic disputed between Argentina and the United Kingdom, at that time engaged in war.

21 GATT Council, Centre William Rappard, 7 May 1982, GATT Doc. C/M/157.

22 *United States – Trade Measures Affecting Nicaragua*, L/6053 (13 Oct. 1986).

so-called Helms-Burton Act of President Clinton, which imposed a 'secondary' embargo on Cuba.[23] The second dispute was initiated in 2000 by Colombia and Honduras against import tariffs imposed by Nicaragua for national security reasons (WT/DSB/M/80, Nicaragua – Measures affecting imports from Honduras and Colombia). However, in the first case, the proceedings before the panel of experts were initially initiated but subsequently terminated due to agreements reached between the parties, and the panel lapsed.[24] In the second dispute, the panel of experts was not appointed, and it was never effectively constituted.

More recently, the issue of Article XXI has been invoked by Russia in a dispute initiated by Ukraine. Kiev had brought the matter before the DSB to challenge the legitimacy of Russian restrictions and prohibitions on road and rail traffic originating from Ukraine and destined, through transit in Russian territory, to Kazakhstan, the Kyrgyz Republic, Mongolia, Tajikistan, Turkmenistan, and Uzbekistan.[25] In response to Ukraine's arguments demonstrating a violation of WTO agreements, the Russian Federation invoked the application of Article XXI, subparagraph b) (iii) of the GATT, asserting that the panel could not examine Moscow's assessment. However, the panel of experts, in its report released on 29 April 2019, unequivocally affirmed the reviewability of Russia's choice, stating that Article XXI, subparagraph b), by allowing states to adopt any measure 'which it considers necessary' to protect its national security, makes the recourse to the exception subject to the objective existence of the circumstances set out in subsequent points (1), (2), and (3). Hence, the Russian proposal that Article XXI represents an absolute self-judging exception is unfounded. The panel is therefore empowered to make a concrete assessment of the existence of the conditions set out in Article XXI, subparagraph b) (iii), in order to determine the potential adoption of measures inconsistent with the WTO agreements.[26] Regarding the merits of the issue, however, the panel acknowledged that the measures in question were adopted in an objective situation of 'emergency in international relations' (subparagraph b) (ii) of Article XXI) and, specifically, in the context of tension in international relations between Russia and Ukraine dating back to the years 2014–2016.[27] Within this decision, the panel also examined both the meaning to be attributed to Article XXI, subparagraph b) (iii), and the scope of the ex post evaluation that the dispute settlement body can conduct in this regard. While

---

[23] Compare *United States – The Cuban Liberty and Democratic Solidarity Act*, DS38; for an in-depth analysis of the legal-economic implications and impact of the Helms-Burton Act in international relations, *see* D. P. Fidler, *LIBERTAD v. Liberalism: An Analysis of the Helms-Burton Act from Within Liberal International Relations Theory*, Ind. J. Global Legal Stud. 297–354 (1997).

[24] Pursuant to Art. 12, para. 12, of the DSU.

[25] Compare *Russia – Measures Concerning Traffic in Transit*, DS512.

[26] *Russia – Measures Concerning Traffic in Transit*, WT/DS 512/7 (29 Apr. 2019), paras 7.102–7.104.

[27] *Ibid.*, paras 7.114–7.126.

each WTO member country remains free to assess whether and when it is necessary to employ a particular measure for national security purposes, the hypothesis contemplated by Article XXI, subparagraph b) (iii), entails a fundamental change of circumstances 'which radically alters the factual matrix in which the WTO-consistency of the measure at issue is to be evaluated'.[28] In this context, it is the task of the WTO dispute settlement body to pronounce on the 'good faith' of the state that has adopted the contested measures, allowing for an evaluation both regarding any evidence aimed at demonstrating the absence of good faith and the 'not implausible' nature of the measures adopted in relation to the purposes of Article XXI, subparagraph b).[29] In the present case, the panel, therefore, assessed the conditions for the adoption of the measures by Russia as being fulfilled since the emergency situation in 2014 was akin to the 'hard core' of war or armed conflict.[30] One cannot ignore the prophetic nature – and, to a certain extent, the validity – of this assessment, considering that the tensions existing at that time between Moscow and Kiev (and identified in 2014 in reference to the WTO) subsequently escalated into the aggression against Ukraine, namely the armed conflict that persists to this day.

3 THE DISPUTES REGARDING US MEASURES ON STEEL AND ALUMINIUM PRODUCTS

3.1 Background to the disputes

With that said, in tracing the chronology of events leading to the disputes mentioned in the introduction, it is worth examining the reasons behind the US decision to impose increased customs tariffs on steel and aluminium products in the spring of 2018. The origins of this decision lie in the results of investigations commissioned by the Trump administration in 2017, pursuant to section 232 of the Trade Expansion Act of 1962, to assess any (negative) effects caused by steel and aluminium imports on US national security.[31] Pursuant to the aforementioned provision, the President is granted the power to regulate imports of foreign products that pose a threat to the national security of the United States, using measures such as quotas or tariffs. In this case, the investigations were prompted by a significant increase in steel and aluminium imports and a corresponding decline in domestic production, to the extent that domestic production volumes became

[28] *Ibid.*, para. 7.108.
[29] *Ibid.*, paras 7.132–7.135 and 7.138–7.139.
[30] *Ibid.*, paras 7.136–7.137.
[31] *See* the relevant section of the US Department of Commerce website titled 'Section 232 Investigation on the Effect of Imports of Steel on U.S. National Security', https://www.commerce.gov/section-232investigation-effect-imports-steel-us-national-security (accessed 15 Nov. 2023)

insufficient to meet domestic demand, making the US 'almost totally reliant on foreign producers'.[32] The investigation procedures on steel and aluminium were initiated due to concerns expressed by President Trump regarding the inadequate domestic production capacity resulting from substantial imports of products from third countries, including China. It was feared that this situation could jeopardize the country's security in the event of a political or military emergency that required a sudden increase in production. These concerns were confirmed by two reports released by the US Department of Commerce in January 2018, pursuant to section 232 of the Trade Expansion Act of 1962.[33] The increase in tariffs on steel imports was deemed necessary to strengthen the protection of national interests, given that 'given the large number of countries from which the United States imports steel and the myriad of different products involved, it could take years to identify and investigate every instance of unfairly traded steel or attempts to transship or evade remedial duties'.[34] Similarly, the tariff increase was also considered necessary for aluminium imports, given its relevance to 'U.S. National Security', 'U.S. National Defense' and 'U.S. Critical Infrastructure' needs.[35]

From the reading of the two Reports, it can be inferred that, in addition to the need for higher volumes of domestic production, there was also an awareness that, through the tariff increases, the USA would have improved the competitive position of domestic producers compared to foreign competition. This assessment, if considered together with the negative judgment released by the US Administration on the effectiveness of anti-dumping and countervailing measures previously adopted in the steel and aluminium sectors, demonstrates how the Trump Administration, with the tariff increases of 2018, intended to act outside the framework of the Antidumping Agreement or the SCM Agreement. Moreover, the US Administration itself, in response to the accusations made at the time by other WTO Member States for violation of the aforementioned agreements, stated from the outset that it had not acted based on the domestic rules implementing the WTO Agreement on safeguard measures,[36] but rather in application of the aforementioned section 232 of the Trade Expansion Act of 1962.

---

[32] Compare White House Official Statement, Presidential Memorandum Prioritizes Commerce Steel Investigation (20 Apr. 2017), https://www.commerce.gov/news/fact-sheets/2017/04/president-donald-j-trump-standing-unfair-steel-trade- practices (accessed 15 Nov. 2023)

[33] Compare US Department of Commerce, The Effect of Imports of Steel on the National Security, An Investigation Conducted under s. 232 of the Trade Expansion Act of 1962, as Amended, 11 Jan. 2018; US Department of Commerce, The Effect of Imports of Aluminium on the National Security, An Investigation Conducted under s. 232 of the Trade Expansion Act of 1962, as Amended (11 Jan. 2018).

[34] US Department of Commerce, The Effect of Imports of Steel, 28.

[35] US Department of Commerce, The Effect of Imports of Aluminum, 23–40.

[36] Section 201 of the Trade Act of 1974.

According to the United States, this assumption prevented the increases in question, as ordered for reasons of national security, from being classified as safeguard measures and therefore brought within the SCM Agreement.

The 2018 increase in tariffs on steel and aluminium affected China and other major exporting countries of steel products to the USA, including South Korea, Brazil, Argentina, Australia, Canada, Mexico, and the European Union. In response to measures directed at such a plurality of countries, the US Government immediately showed willingness to engage with individual states on the issue, hoping for any kind of bilateral agreement that would be useful in avoiding repercussions on the economic and commercial relationship. Among the WTO member countries, China was the first state to challenge the legitimacy of the US tariff increase.[37] Following Trump's announcement, Beijing immediately requested consultations with the United States, while asserting its right to retaliate against the aforementioned restrictions by suspending tariff concessions and other measures provided for under the GATT.[38] In particular, China countered Trump with measures aimed at hitting the 'belly' of the United States, imposing tariff barriers of 15% and 25% on a long list of US-made products, including wine, fruits, automobiles, aircraft, tobacco, pork, and soybeans. In addition to countries that – like China – filed a complaint with the WTO, triggering the disputes mentioned above and those still pending,[39] there are other states that have reached an agreement with the USA, either before or after formally resorting to the WTO dispute settlement mechanism. Among the countries that immediately sought exemption from the tariff increases are South Korea (which immediately committed to reducing its steel exports to the USA by 30%) and Argentina, Australia, and Brazil.[40] As previously mentioned, Canada and Mexico reached a mutually agreed solution with the United States after the establishment of panels. They notified the WTO in May 2019 regarding their respective disputes, DS550 and DS551. In the case of the dispute between the US and the EU, the arbitration proceedings initiated under Article 25, paragraph 2, of DSU are still pending but currently suspended after the initiation of the dispute DS548.

---

37 On the unique position of China as a WTO member, not recognized as a market economy, *see* M. T. Hošman, *China's NME Status at the WTO: Analysis of the Debate*, (1) J. Int'l Trade L. & Pol'y 1–20 (2021), doi: 10.1108/JITLP-09-2020-0054.

38 As provided for in Art. 8, para. 2, of the SCM Agreement.

39 DS547, brought by India, and DS554, brought by Russia.

40 Compare the official statement of the White House of 28 Dec. 2021, which provides an account, also chronologically, of the countries affected by the tariff increases imposed by the Trump Administration: Joseph R. Biden JR., *A Proclamation on Adjusting Imports of Steel into the United States*, whitehouse.gov (accessed 15 Nov. 2023)

3.2 Overview of complainants' arguments and panels' findings

China, Norway, Switzerland, and Turkey contested the United States' failure to comply with the procedures outlined in the SG Agreement for the adoption of safeguard measures in violation of Article XIX of the GATT and the non-observance of the fundamental principles of the WTO system, particularly Articles I and II of the GATT,[41] as well as Article X, paragraph 3, letter a). The latter provision imposes an obligation on each Member State to ensure the possibility of an impartial and independent review of administrative decisions concerning customs matters through the establishment of specialized judicial, arbitration, or administrative bodies within its domestic legal system. According to the complaining countries, the US also violated this provision by allowing US steel and aluminium producers to oppose requests for tariff exemptions submitted by the affected states, resulting in their rejection.[42] Norway, Switzerland, and Turkey also raised the issue of non-compliance with Article XI of the GATT, denouncing the violation, in a broader sense, of the prohibition on applying quantitative restrictions other than those contemplated and permitted by the WTO system. It should be noted that none of the requesting states addressed the non-existence of the prerequisites under Article XXI of the GATT, which the United States explicitly invoked, albeit limited to subparagraph b) (iii), to qualify the increase in tariffs as measures taken 'in time of war or other emergency in international relations'. The US, reaffirming its position in the previously mentioned dispute between Ukraine and Russia,[43] argued that the panel could not rule on the merits of the defence invoked by the respondent under Article XXI of the GATT but should only take note of the invocation of the national security clause. In particular, the US, asserting the self-judging nature of the clause, proposed a specific interpretation of the text of Article XXI, subparagraph b), of the GATT, according to which the phrase enabling a state to adopt 'any measure that it considers necessary' being logically prior to subparagraphs (1), (2), and (3), would entail the automatic exclusive right of the country undertaking the action to freely assess the existence of those circumstances.[44]

In light of the arguments presented by the parties to the dispute, the panels first outlined their mandate within the framework of the terms of reference as

---

41 Compare Report WT/DS544/R, 34 and 44–54; Report WT/DS552/R, 33 and 41–49; Report WT/DS556/R, 40 and 52–63; Report WT/DS564/R, 36 and 47–61.

42 Compare Report WT/DS544/R, 34 and 55; Report WT/DS552/R, 33 and 50; Report WT/DS556/R, 40 and 65; Report WT/DS564/R, 36 and 61.

43 Compare *Russia – Measures Concerning Traffic in Transit* – DS512, Third-Party Oral Statement of the United States of America (25 Jan. 2018), www.ustr.gov (accessed 15 Nov. 2023)

44 Report WT/DS544/R, para. 7.106; Report WT/DS552/R, para. 7.094; Report WT/DS556/R, para. 7.124; Report WT/DS564/R, para. 7.121.

provided in Article 7, paragraphs 1 and 2, of the DSU. This requires the examination of the issues referred to the DSB in light of the 'relevant provisions of the covered agreements cited by the parties' and all the provisions 'in any covered agreement or agreements cited by the parties to the dispute'. In delimiting the scope of their investigation, the expert groups essentially asserted their jurisdiction over all the provisions cited by the parties, as invoked by both the complainant and the respondent.

The first assessment by the panels concerned the compatibility of the measures implemented by Trump with the underlying principles of the WTO, which the complaining states argued had been violated by referring to Articles I, paragraph 1, and II, paragraph 1, of the GATT. The expert group subsequently found that the increase in US tariffs on steel and aluminium was inconsistent with the Most-Favoured-Nation (MFN) clause[45] and the US Schedule of Concessions[46] under the GATT. In fact, the increases imposed by the US government, in addition to exceeding the tariff rates specified in the US Schedule (Article II, paragraph 2) of the GATT, were applied only to certain countries (in violation of the MFN rule and the principle of non-discrimination), resulting in an unfair competitive advantage for products originating from the exempted countries.[47] Within the disputes initiated by Norway (DS552), Switzerland (DS556), and Turkey (DS564), the panels also found a violation of Article XXI of the GATT, as the measures adopted by the US in 2018 could be classified as quantitative restrictions. The identified violations of the aforementioned provisions led the panels, in all four disputes, not to address the challenges regarding Article X, paragraph 3, letter a), as any determination on those issues would have been redundant.[48]

Regarding the violation by the United States of the discipline on safeguard measures, the panels have excluded the applicability of the Agreement on SG. In support of this argument, the expert groups have referred to Article 11, paragraph 1, letter c) of the said Agreement, according to which the relevant discipline does not apply 'to measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX, and Multilateral Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols and agreements or arrangements concluded within the framework of GATT 1994',

---

45 Article I, para. 1, GATT.

46 Article II, para. 2, GATT.

47 Compare Report WT/DS544/R, 83; Report WT/DS552/R, 78; Report WT/DS556/R, 93; Report WT/DS564/R, 88.

48 In a similar vein, with reference to Art. X, para. 3, letter a), of the GATT, cf. Appellate Body, *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, decision of 6 May 2013, paras 5.189–5.190 and 5.194; Appellate Body, *US – Upland Cotton*, decision of 2 May 2008, para. 732; *Russia – Measures Affecting the Importation of Railway Equipment and Parts Thereof*, WT/DS499/R decision of 30 Jul. 2018, para. 7.939.

regardless of the existence of the respective conditions. Since the increase in US tariffs was imposed – as acknowledged by the United States itself in the four disputes – based on alleged national security concerns or on another provision of the GATT,[49] it is clear that 'the Agreement on Safeguards does not apply to the measures at issue'.[50]

Furthermore, with regard to the invoked exception regarding national security, the panels have affirmed their competence to assess the existence of the prerequisites provided for in Article XXI, letter b), in light of the terms of reference mentioned earlier[51] and the correct interpretation of the relevant provision. Contrary to the arguments put forth by the United States, Article XXI, letter b), does not constitute a 'single relative clause' reserving exclusive evaluation of the circumstances and requirements set out in subsequent subparagraphs (1), (2), and (3) to the invoking state. In fact, while recognizing the discretion granted to states in this matter, the provision can be subject to investigation by the dispute settlement body, along with all other WTO provisions that can be invoked by Member States.[52] Having reaffirmed the abstractly reviewable nature of the national security clause, the panels have focused on the elements that led to the increase in tariffs on imports of steel and aluminium, even though they were justified under Article XXI, letter b) (ii) of the GATT. The reports released by the US Department of Commerce in January 2018 justified the concern for US security due to the impact on domestic production capacity based on three factors: (a) the replacement of US steel and aluminium products with imported ones; (b) the resulting negative impact on the economic well-being of the affected domestic industries; and (c) the global overproduction of steel and aluminium.[53] These are elements that, according to the panels, do not constitute an emergency situation under Article XXI(b)(iii) of the GATT. Despite the absence of armed conflicts or war conditions with the affected trading partners, the concept of 'serious international tension' should be limited to situations of particular criticality and severity in terms of their impact on international relations.[54] Since the conditions purportedly invoked by Trump to justify the 2018 tariffs under Article XXI (b)(iii) of the GATT were not met in reality, the panels have affirmed the illegitimacy of the tariff increases on

---

[49] Article XXI, letter b), GATT.

[50] Compare Report WT/DS544/R, 55–67 and 83; Report WT/DS544/R, 50–62 and 78; Report WT/DS556/R, 66–78 and 93; Report WT/DS564/R, 62–73 and 88.

[51] Article 7, paras 1 and 2, DSU.

[52] Compare Report WT/DS544/R, para. 7.128; Report WT/DS544/R, para. 7.116; Report WT/DS556/R, para. 7.146; Report WT/DS564/R, para. 7.143.

[53] Compare US Department of Commerce, *The Effect of Imports of Steel on the National Security*, 16; US Department of Commerce, *The Effect of Imports of Aluminum on the National Security*, 15.

[54] Compare Report WT/DS544/R, paras 7.8.3–7.8.4; Report WT/DS544/R, paras 7.8.3–7.84; Report WT/DS556/R, paras 7.9.3–7.9.4; Report WT/DS564/R, paras 7.9.3–7.9.4.

steel and aluminium imports due to their non-compliance with other provisions of the GATT invoked by the complaining Countries.

4 CONCLUSION

The panel decisions on the US tariffs of 2018 are significant both in terms of the relationship between Washington and the multilateral trading system and in the context of the national security exception, which was reaffirmed as justiciable within the WTO after the 2019 ruling in the dispute between Russia and Ukraine.[55]

Under this latter aspect, recent practice has substantially excluded the interpretative option that the GATT Article XXI would constitute a self-judging or non-justiciable provision,[56] as instrumentally argued by the United States in the WTO both as a respondent (in the context of the four disputes referred to in the heading decisions) and as a third party – in the aforementioned dispute between Moscow and Kiev – DS499/R. In fact, even in the case of the 2018 US tariff increases, the expert groups have adopted a different interpretation of the national security clause, proposing a synthesis of other interpretative approaches that have emerged to date. Reference is made to the doctrine that, without denying the discretion enjoyed by Member States in safeguarding their security interests, holds, on the one hand, that Article XXI should be interpreted in light of the prohibition of abuse of rights or the principle of good faith upon which it is based[57] and, on the other hand, that the WTO dispute settlement body has the power to evaluate ex post the existence of the prerequisites for the invocation of the aforementioned clause.[58] In essence, even the restrictive measures adopted under Article XXI of the GATT, when employed in disregard of the principle of good faith and/or the requirements specified in subparagraphs a), b), and c), can be subject to scrutiny by states within the WTO, and therefore before the DSB, as is also the case with respect to other general exceptions provided for in Article XX of the GATT.[59]

The four reports that have established the illegitimacy of the 2018 US tariffs, despite their legal relevance regarding the interpretation of Article XXI of the GATT, will not resolve the ongoing conflict initiated by Washington against the

---

55 Compare DS499/R, *supra* n. 48.

56 *See* R. Bhala, *National Security and International Trade Law: What the GATT Says, and what the United States Does, Symposium on Linkage as Phenomenon: An Interdisciplinary Approach*, (2) U. Pa. J. Int'l L. 263–317 (1998).

57 Compare H. L. Schloemann & S. Ohlhoff, *'Constitutionalization' and Dispute Settlement in the WTO: National Security as an Issue of Competence*, (2) Am. J. Int'l L. 424–451 (1999), doi: 10.2307/2997999.

58 Compare S. Peng, *Cybersecurity Threats and the WTO National Security Exceptions*, J. Int'l Econ. L. 449–478 (2015), doi: 10.1093/jiel/jgv025.

59 A similar interpretive approach had already been proposed, prior to the ruling issued in the Russia-Ukraine dispute in 2019, by G. Adinolfi in his work *Le misure USA per la protezione dei mercati nazionali dell'acciaio e dell'alluminio*, SIDI Blog (2018), http://www.sidiblog.org/2018/04/13 (accessed 15 Nov. 2023)

WTO. In fact, even with the end of the Trump era and the beginning of the Biden administration, the United States continues to play the role of antagonist to the multilateral trading system.[60] It is noteworthy that Biden, far from distancing himself from Trump's measures, openly condemned the panel's decisions through an official statement widely disseminated by the media, reiterating that 'the Biden Administration is committed to preserving the national security of the United States by ensuring the long-term profitability of our steel and aluminum industries, and we do not intend to remove the section 232 tariffs following these disputes'.[61] Furthermore, the practical significance of the recent condemnation of the US tariffs is even less evident when considering the persistent issue of the appointment of members to the WTO Appellate Body,[62] which is responsible for handling the second stage of the WTO dispute settlement mechanism. The Appellate Body, without adjudicating members since 30 November 2020, has been effectively paralysed since 10 December 2019, when it officially fell below the minimum of three adjudicating members required for its functioning.[63] This situation has been deliberately caused by the United States, starting from 2016, even during the Obama administration (20 January 2009– 20 January 2017), as they have been blocking the appointment of new members to the Appellate Body by consistently exercising their veto power, which every WTO Member State possesses when the DSB needs to appoint or confirm an appellate judge. This situation has effectively paralysed the effectiveness of the first-stage panel reports as well since it is sufficient for a disputing party to appeal the report to confine it to an unresolved state, given the impossibility, on the one hand, of its immediate approval by the DSB and, on the other hand, of proceeding to the second-stage review.[64] The USA-led boycott is thus hindering the effective functioning of a dispute settlement mechanism that, by placing small and large states on an equal footing, ensures equal treatment in the multilateral context. It is a system that is probably now considered less favourable to the interests of a major economic power, which evidently prefers to engage in direct negotiations with counterparts in order to assert its bargaining power more effectively. This has also been observed in the case of the increase in US tariffs on steel and aluminium imports when Washington successfully achieved a direct

---

60 *See* A. Ligustro, *Biden Foreign Trade Policy: The Return to Multilateralism?*, Sp. (1) DPCE Online, 125–138 (2023). *See also* St.S. Malewer, *Biden, National Security, Law & Global Trade: Less Subterfuge & More Strategy in the New Era of Crisis*, (1) China & WTO Rev 185 et seq. (2021), doi: 10.14330/cwr.2021.7.1.09, specifically regarding the invocation of national security in foreign trade relations.

61 Statement from USTR Spokesperson Adam Hodge (9 Dec. 2022), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/december/statement-ustr-spokesperson-adam-hodge (accessed 15 Nov. 2023)

62 *See* e.g., P. L. H. Van den Bossche, *The Demise of the WTO Appellate Body: Lessons for Governance of International Adjudication? – Working Paper n. 2,* in World Trade Institute – wti.org (28 Oct. 2021).

63 Compare Art. 18, para. 1, DSU.

64 Compare Art. 16, para. 4, DSU.

agreement with many countries, subsequently removing the previously imposed tariffs. On the other hand, in a context where panel decisions and the non-functioning of the Appellate Body have zero impact, the hostile attitude of the United States towards the WTO system and multilateralism paradoxically becomes the only element capable of making an international impact, even in terms of implementing domestic regulations. In this sense, for example, the paralysis of the WTO Appellate Body and, more generally, the crisis in the multilateral trading system have been the reasons why the European Union consciously decided to modify, or rather implement, Regulation (EU) No. 654/2014, which contains rules and procedures aimed at safeguarding EU economic interests within international trade agreements.

In particular, the EU, considering what has occurred within the WTO due to the USA's ostracism, has chosen to broaden the scope of an existing exemption for WTO agreements, which allows the Union to quickly suspend concessions or other obligations arising from international trade agreements 'if effective recourse to binding dispute settlement is not possible because the third country does not cooperate in making such recourse possible' and 'with the intention of rebalancing concessions or other obligations in the trade relations with third countries, when the treatment accorded to goods or services from the Union is altered in a way that affects the Union's interests'.[65] Similar modifications imply a (renewed) belief in the importance of unilateral countermeasures, which, in the case of US tariffs on steel and aluminium, have been essential – as expressly recognized by the EU Commission – 'to advance cooperation' and 'to eliminate respective customs duties'.[66] From this perspective, the growing sense of distrust towards multilateralism ends up justifying the return to countermeasures as the only tool capable of producing effects in the context of a bilateral confrontation, even with the prospect of achieving renewed balance between the parties.

In such a scenario, any consideration of the prospects and revitalization of the WTO cannot ignore a realization: if multilateralism continues to falter, the US may no longer be the only country winking at bilateralism.[67]

---

[65] Regulation (EU) 167/2021 of the European Parliament and of the Council, in particular, recitals 3–7 and Art. 1, para. 1, amending Art. 1, letter b), of Regulation (EU) 654/2014.

[66] Commission Report to the European Parliament and the Council of 1 Mar. 2022 on the review of the scope of Regulation (EU) No. 654/2014, COM (2022) 74 final, paras 1, 3.1.2, 3.1.3, and 4.

[67] In this regard, *see* G. Sacerdoti, *Will the WTO survive the Trup challenge? Consideration upon Crisis of Multilateralism, a 'Global Public Good' to Preserve*, Diritto pubblico comparato ed europeo Special Edition, 685–700 (Bologna, May 2019).

5 REFERENCES

G. Abi-Saab, *The WTO Dispute Settlement and General International Law*, in *Key Issues in WTO Dispute Settlement – The First Ten Years* 7–11 (R. Yerxa & B. Wilson eds, Cambridge: Cambridge University Press 2005).

J. H. Barton, J. L. Goldstein, T. E. Josling & R. H. Steinberg, *The Evolution of the Trade Regime: Politics, Law, and Economics of the GATT and WTO* (Princeton: Princeton University Press 2006).

M. Buccarella, *From NAFTA to USMCA: Everything has Changed but Nothing has Changed*?, in (1) *Diritto Pubblico Comparato ed Europeo* 299–314 (2019).

C. Chinkin & M. Kaldor, *International Law and New Wars* (Cambridge 2017).

W. Davey, *Non-discrimination in the World Trade Organization: The Rules and Exceptions* (The Hague: Hague Academy of International Law 2012).

D. P. Fidler, *LIBERTAD v. Liberalism: An Analysis of the Helms-Burton Act from within Liberal International Relations Theory*, 4(2) Indiana J. Global Legal Stud. 297–354 (1997).

M. J. Hahn, *Vital Interests and the Law of GATT: An Analysis of GATT's Security Exception*, 13(3) Michigan J. Int'l L. 558–620 (1991).

M. J. Hahn, *Die einseitige Aussetzung von GATT-Verpflichtungen als Repressal*ie 306 et seq. (Berlin-Heidelberg 1996).

A. Ligustro, *Le controversie tra Stati nel diritto del commercio internazionale: dal GATT all'OMC* (Padua, CEDAM 1996).

A. Ligustro, *La politica commerciale del Presidente Trump: bilancio dei primi cento giorni*, DPCE on line, 163–173 (2017).

A. Ligustro, *Biden Foreign Trade Policy: The Return to Multilateralism?*, DPCE Online, Special Edition, 125–138 (2023).

S. Peng, *Cybersecurity Threats and the WTO National Security Exceptions*, 18(2) J. Int'l Econ. L., 449–478 (2015), doi: 10.1093/jiel/jgv025.

St. S. Malewer, *Biden, National Security, Law & Global Trade: Less Subterfuge & More Strategy in the New Era of Crisis*, 1 China & WTO Rev 185 et seq. (2021), doi: 10.14330/cwr.2021.7.1.09.

P. Picone & A. Ligustro, *Diritto dell'Organizzazione Mondiale del Commercio*, (Padova, CEDAM 2002).

P. Picone, *Obblighi 'erga omnes' e uso della forza* (Napoli, Editoriale Scientifica 2017).

G. Sacerdoti, *Will the WTO survive the Trup challenge? Consideration upon Crisis of Multilateralism, a 'Global Public Good' to Preserve*, Diritto pubblico comparato ed europeo Special Edition, 685–700 (Bologna, Il Mulino 2019).

P. L. H. Van den Bossche, *The Demise of the WTO Appellate Body: Lessons for Governance of International Adjudication? – Working Paper 2,* in World Trade Institute – wti.org (2021).

E. Vermulst, *The WTO Anti-Dumping Agreement: A Commentary* (Oxford 2005).

H. L. Schloemann & S. Ohlhoff, *'Constitutionalization' and Dispute Settlement in the WTO: National Security as an Issue of Competence*, 93(2) Am. J. Int'l L. 424–451 (1999), doi: 10.2307/2997999.