

## CHAPTER I INTRODUCTION

### A. Research Background

As international law progresses, the development of legal frameworks that facilitate cooperation among nations also introduces principles of free trade. Conflicts in free trade arise as its intended function often collides with protectionism practices emerging from sovereign decisions and essential interests. Over time, states have recognized the importance of regulating national autonomy and establishing a set of laws for proper conduct in trade.

The challenges of rapid technological changes, geopolitical shifts, and global crises may force states to adapt their trade policies, potentially leading to tensions with established international standards. As states have the right to make sovereign decisions, these actions may further cause conflicts, disrupting international trade. This is mainly motivated by a state's desire to maintain control over its decisions with trading partners, an example of which is trade defense practices.

Adam Smith in *The Wealth of Nations* emphasized that defence is more important than free trade. He further reiterated that the encouragement of domestic industry by burdening foreign traders is justified for national defense.<sup>1</sup> National security is often heavily used as the basis of trade defense practices because it protects the interests of the state invoking it. Nevertheless, it is crucial to note that while trade defense is important, free trade also plays a pivotal role in the prosperity of a sovereign nation.

---

<sup>1</sup> Roger P. Alford, 2011, *The Self-Judging WTO Security Exception*, *Utah Law Review* Vol. 697, p.756.

Trade measures are a form of trade defence, as they allow trading nations to implement policies to increase trade barriers unilaterally and reduced market access for exporters. As a result, global trade flows may be disrupted, causing negative impacts on economies and supply chains. Consequently, many countries resort to retaliation as a form of trade remedies to nullify the effects of said trade measures resulting in escalated tensions in trade relations and leads to spark trade wars and disputes.

Free trade is global trade without protectionism, discriminatory measures, and borders to increase the competition of economic actors. To promote and support the practice of free trade, the General Agreement on Tariffs and Trade (hereinafter “**GATT**”) was introduced in 1947, which later was updated in 1994 to regulate a wider scope of new trade measures, areas of trade, namely service and goods. This prompted setting the establishment of World Trade Organization (hereinafter “**WTO**”) to support free trade by ensuring a fair and cooperative multilateral trading system.

Exceptions clauses are established as additional protection to the existing rules of trade in maintaining the interests of states, despite its counter-intuitiveness to GATT principles, are still practiced within the organization in a *de jure* and *de facto* manner.<sup>2</sup> At the time of formulation, the GATT Committee carefully framed the wording of security exception clause to be non-stringent and flexible. The aim is to be a balancing act to achieve trade liberalization while protecting essential interests of WTO members.

---

<sup>2</sup> Makane Moïse Mbengue, 2011, *The Principle of Non-Discrimination in International Trade Law (GATT Perspective)*, Lecture Series from United Nations: Audiovisual Library of International Law. Accessed on August 31, 2024. [https://legal.un.org/avl/ls/Mbengue\\_IEL.html#](https://legal.un.org/avl/ls/Mbengue_IEL.html#)

Throughout its years of practice, the debate on the interpretation continued to whether this exception clause should be narrowed with standards and conditions or whether it is within the sole discretion of the invoking state's respective assessments.<sup>3</sup> There is an urgency for a cohesive framework in standardized approach to the invocation of security exception, as it calls for transparency and accountability to preserving the vitality of the global trade system.

Some scholars also believe that foreign policies and national security issues are difficult to be assessed through trade agreements as it holds an unclear scope and limitations in the wording of the Article XXI clause, therefore it would be jurisdictional reach to have an international organization such as the World Trade Organization to adjudicate or regulate the measures implemented.<sup>4</sup>

Since the interpretation of Security Exceptions is notably more subjective, complex, and open-ended than General Exceptions, states can implement measures in situations deemed to threaten their national security. National security has been more frequently used to justify unilateral actions in international economic activities and threatens the trade regime established by the WTO. The WTO has produced panel reports to create stability and ensure predictability with a standardized approach framework.<sup>5</sup>

---

<sup>3</sup> John D. Daniels, Lee H. Radebaugh, and Daniel P. Sullivan, 2019, *International Business: Environment & Operations*, United Kingdom: Pearson Education Limited, p.212-214

<sup>4</sup> Wesley A. Cann, Jr, 2001, *Creating Standards and Accountability for the Use of the WTO Security Exception: Reducing the Role of Power-Based Relations and Establishing a New Balance Between Sovereignty and Multilateralism*, 26 *Yale Journal of International Law* 413, p.416.

<sup>5</sup> Amrita Narlikar, Martin Daunton, Robert M. Stern, 2014, *The Oxford Handbook on the World Trade Organization*. New York: Oxford University Press. p.528.

Starting in 2019, the security exceptions clause was invoked for the first time after being dormant for the last twenty (25) years in several disputes at the WTO Dispute Settlement Body (“DSB Panel”) of the following; namely Russia–Traffic in Transit; Saudi Arabia–Intellectual Property Rights; and United States–Aluminium and Steel. DSB Panel was requested to interpret and define the scope of the security exceptions clause within these disputes.

The DSB Panel offers a platform for negotiation, dispute resolution, and consultation to uphold international cooperation while respecting the autonomy of members in trade activities. The recent panel reports detailed the interpretation and application of this clause to maintain WTO’s jurisdiction and achieve the objective analysis in its invocation.<sup>6</sup> The aim is to eliminate trade measures for commercial purposes disguised as national security and unmonitored abuse of non-compliance with WTO obligations, making it influential for the progression of International Trade Law.<sup>7</sup>

The resolution of these disputes involving the Article XXI has the potential to be a precedent for the future DSB Panel and Appellate Body to make decisions on similar cases. This became an interesting discourse regarding the jurisdiction and enforcement of the WTO Panel Reports, whether it is considered to be a judicial decision from a judicial body with the power to not only define but to also interpret and set a standard for article XXI, particularly on the self-judging nature of Article XXI(b)(iii).

Over the years the United States’ view has been stagnant that security exception is a clause or a law that is self-judging and

---

<sup>6</sup> Tania Voon, 2019, “The Security Exceptions in WTO Law: Entering a New Era”. *AJIL Unbound* Vol. 113. 45-46.

<sup>7</sup> Patricio Grané, 2001, *Remedies under WTO Law*, Journal of International Economic Law Volume 12 Issue 755, p.764.

holds a self-determination power on the invoking states. The United States noted repeatedly that invoking security exception clause is an exercise to state sovereignty acting in absolute discretion, therefore non-justiciable through the DSB Panel (thus making WTO possess no jurisdiction to alter or suspend the implementation of the measure).<sup>8</sup>

In 2018, the United States imposed tariffs on Chinese steel and aluminium, citing national security concerns. The U.S. levied twenty-five percent (25%) tariffs on China-imported steel and ten percent (10%) on Chinese aluminium on national-security grounds, which also noted the need to protect domestic manufacturers from global overproduction of the metals. The tariffs announced were part of the Presidential Proclamations from the Donald Trump's administration at the time, with supporting document detailing Aluminium and Steel imports in the US.<sup>9</sup>

The U.S. Department of Commerce released an investigation to justify tariffs implementation under Section 232 of the Trade Expansion Act. The investigation report noted the effect of the surplus in aluminium and steel imports to the U.S. market has threatened to impair national security emphasizing that the concerns for the circumstances justified immediate action to adjust imports as necessary.<sup>10</sup> The aforementioned tariffs are still implemented to this date (as of 2025).

DS543 *United States—Certain Measures on Steel and Aluminium Products* was then initiated by China on April 5, 2018.

---

<sup>8</sup> Alford, Roger P, *op.cit.*, p.698.

<sup>9</sup> Proclamation 9705 of March 8, 2018, *Adjusting Imports of Steel Into the United States*, Federal Register, Vol 83, No. 51 (March 15, 2018), 2018-11625 and Proclamation 9704 of March 8, 2018, *Adjusting Imports of Aluminium Into the United States*, Federal Register, Vol 83, No. 51 (March 15, 2018), 2018-11619.

<sup>10</sup> United States Congressional Research Service, 2018, *Section 232 Investigations: Overview and Issues for Congress*, p.7-9.

China initiated consultations with the United States regarding certain duties that the United States imposed on imports of steel and aluminium products. China claimed that these measures appeared to be inconsistent with several articles of the Agreement on Safeguards and the General Agreement on Tariffs and Trade (GATT) 1994. As of January 2023, the panel report was under appeal.

The measures included imposing tariffs on imports of certain steel and aluminium products, in so proceeding to have exemptions for selective WTO members trading partners. In response, China retaliated with additional duties that were made applicable to imported products originating from the United States. China's retaliation on its counterpart specifically comprised of products in seven categories, where aluminium waste and scrap, and pork are subject to the twenty-five percent (25%) tariffs, and the remainder to fifteen percent (15%) duty.

*DS558 China—Additional Duties on Certain Products from the United States* was then initiated by the United States on July 16, 2018. The United States started consultations with China for the imposition by China of additional duties on certain products with origin of goods from the United States. The United States claimed that these measures appeared to be inconsistent with several articles of the Agreement on Safeguards and GATT 1994. As of September 2023, the panel report was under appeal.

Both disputes United States—Certain Measures on Steel and Aluminium Products (DS544) and China—Additional Duties on Certain Products from the United States (DS558) have become pivotal cases in shaping the interpretative and institutional trajectory of the WTO dispute settlement system. Both disputes have significantly tested the limits of the WTO legal framework, especially

concerning the self-judging nature of security exceptions, the procedural consequences of the Appellate Body's paralysis, and the practice of WTO retaliation.

From a systemic perspective of the WTO dispute settlement system, DS544 and DS558 illustrate a growing concern in the interpretation and application of trade security measures. The Panel's reasoning in DS544, insisting on an objective review of security claims to have attempted to counterbalance this trend, whereas DS558 emphasizes procedural discipline against unilateral retaliation.

While primarily a bilateral conflict, these disputes has had profound implications for global trade flows, international production networks, and the normative foundation of the multilateral trading system. For international trade law, this dispute offers a critical reflection on the need to balance state sovereignty and reciprocity principles in practice with collective commitments of free trade in an increasingly competitive market. These tariffs combined with retaliatory measures created a state of prolonged economic conflict and legal dispute between the two major economies.

Without credible avenues for final appeal and enforcement, as exemplified by these disputes, the WTO risks further erosion of its authority and effectiveness in mediating high-stakes economic conflicts involving national security justifications. The failure to resolve these issues within the WTO framework highlights not only the limits of current international trade law in resolving power-based disputes but also reshaped the economic landscape into a more fragmented and politically charged global order.

Therefore, this description underlies the author's interest in compiling a thesis titled "**INTERNATIONAL LAW ANALYSIS ON**

## **SECURITY EXCEPTIONS AND RETALIATORY MEASURES IN THE UNITED STATES V. CHINA TRADE DISPUTE”**

### **B. Research Questions**

1. How does the WTO interpret security exceptions according to the GATT 1994 and the *United States – Aluminium Steel* dispute?
2. What are the implications of retaliatory measures from *China – Additional Duties* dispute to US—China, the WTO and Global Trade?

### **C. Research Objectives**

Based on the formulation of the research questions described above, the objectives to be achieved in this study are:

1. To understand WTO's interpretation of security exceptions according to the GATT 1994 and *United States – Aluminium Steel* dispute.
2. To understand the implications of retaliatory measures from *China – Additional Duties* dispute to US—China, the WTO and Global Trade.

### **D. Research Benefits**

1. For theoretic purposes, this study is poised to serve as a foundational resource concerning the security exceptions clause embedded in International Trade Law (GATT 1994), specifically in the context of the WTO dispute involving Aluminium and Steel. It is envisioned to be a scholarly reference available within the Faculty of Law library at Hasanuddin University.

2. For research purposes, this study is anticipated to significantly augment the researcher's understanding of pivotal aspects within the context of international trade. This encompasses insights into WTO security exceptions, domestic policies, and trade protectionism. The goal is to empower the author with an enhanced grasp of legal principles within the domain of international law and its application.
3. For practical purposes, this research aspires to function as a guiding reference for the interpretation and application of the exceptions clause within WTO obligations. By offering an alternative perspective on the current dispute settlement system, the study hopes to contribute valuable insights to make informed discussions within academic and practical spheres.

#### **E. Research Originality**

This research titled **“INTERNATIONAL LAW ANALYSIS OF SECURITY EXCEPTIONS AND RETALIATORY MEASURES IN THE UNITED STATES VS. CHINA DISPUTE”** was originally written and carried out by the author through observing the practices of developed states in applying trade measures under the security exception clause in the GATT 1994. Comparatively, the author found several previous research available to provide different analyses in the context of this thesis' subject matter:

<b>Research No. 1</b>	
Author	Daniel Nicholas Putra
Year	2021
Category	Skripsi Thesis (Undergraduate)
Institution	Universitas Indonesia

Title	Penggunaan Klausula <i>Security Exceptions</i> Untuk Mengesampingkan Kewajiban dalam Perjanjian <i>Trade-Related Aspects of Intellectual Property Rights</i> (TRIPS) Selama Pandemi COVID-19.	
<b>Description</b>	<b>Previous Research</b>	<b>Proposed Research</b>
Research Questions	<ol style="list-style-type: none"> <li>1. <i>Bagaimana pengaturan security exceptions WTO dibandingkan dengan general exceptions di Pasal XX GATT 1994 dan non-precluded measures di BIT Argentina-AS, BIT India-Jerman, dan BIT India-Mauritius;</i></li> <li>2. <i>Apakah pandemi Covid-19 merupakan alasan yang sah untuk mengesampingkan kewajiban dalam Perjanjian TRIPS menggunakan klausul security exceptions.</i></li> </ol>	<ol style="list-style-type: none"> <li>1. How does the WTO interpret security exceptions according to the GATT 1994 and the <i>United States – Aluminium and Steel</i> dispute?</li> <li>2. What are the implications of retaliatory measures from <i>China – Additional Duties to US—China</i>, the WTO, and Global Trade?</li> </ol>
Research Methodology	Normative	Normative
Comparative Analysis	The research above focuses on the application of security exceptions under the context of the COVID-19 pandemic through an overview of the TRIPS Agreement and International Centre for Settlement of Investment	This research focuses on the interpretation of security exceptions through an overview of the GATT 1994 and the qualification under the context of Global Aluminium

	<p>Disputes (ICSID) BIT Arbitration decisions. The previous author focuses on the discussion of intellectual property disputes. Security exceptions used within this scope of TRIPS agreement follows through in scrutinizing COVID-19 as emergency in international relations.</p>	<p>and Steel Surplus in the WTO Dispute Settlement Body (DSB) Panel Reports. This author proceeds to elaborate on the discussion of retaliation as countermeasures, temporary trade barriers, and the elements set out under the DSU. The research ends with an analysis of the implications of retaliation to respective countries, the WTO, and the future of global trade.</p>
<b>Research No. 2</b>		
Author	Rafie Haristo Putra	
Year	2023	
Category	Skripsi Thesis (Undergraduate)	
Institution	Universitas Indonesia	
Title	Penerapan Klausul <i>Security Exception</i> dalam Pasal XXI GATT: Studi Kasus <i>Russia-Measures Concerning Traffic in Transit</i>	
<b>Description</b>	<b>Previous Research</b>	<b>Proposed Research</b>
Research Questions	<ol style="list-style-type: none"> <li>1. <i>Bagaimana pembentukan klausul pengecualian security exceptions dalam hukum WTO?;</i></li> <li>2. <i>Bagaimana sifat dan hakikat national security</i></li> </ol>	<ol style="list-style-type: none"> <li>1. How does the WTO interpret security exceptions according to the GATT 1994 and the <i>United</i></li> </ol>

	<p><i>exceptions dalam hukum WTO?;</i></p> <p>3. <i>Bagaimana penerapan national security exceptions dalam kasus Russia—Measures Concerning Traffic of Transit?</i></p>	<p><i>States – Aluminium and Steel dispute?</i></p> <p>2. What are the implications of retaliatory measures from <i>China – Additional Duties to US—China, the WTO, and Global Trade?</i></p>
Research Methodology	Normative	Normative
Comparative Analysis	<p>The previous author explored the history of security exception clause, further explaining the current state of practice, characteristics, and the application of the security exception in the present day. The thesis focuses on the dispute of <i>Russia—Measures Concerning Traffic of Transit</i>.</p> <p>The previous author does not touch upon the discussion in the event of retaliation and only focuses on the interpretation of security exceptions clause by the DSB panel report.</p>	<p>This author explores the distinction of security exceptions clause and the safeguard measures, further noting the wording of the elements set out in Article XXI of the GATT 1994 and ends with the analysis on the interpretation by the WTO DSB in the <i>United States—Certain Measures Concerning Aluminium and Steel</i>.</p> <p>This author discussed the retaliation practice in response to trade barriers and whether the</p>

		implications of retaliatory measures is adequate to use as a dispute settlement mechanism.
--	--	--

## F. Theoretical Foundation

### 1. Economic Sovereignty

Sovereignty in international community is a nation's exclusive authority to control its economic activities, including trade. Sovereignty empowers states to determine their policies and regulations based on national interests.<sup>11</sup> State sovereignty is a nation's right to govern its internal affairs without external interference aimed to protect its security interests. To exercise sovereignty effectively, each state must establish rules and regulations that maintain law and order within its borders.

The development of global trade and authority of state sovereignty has been reduced to mainly an effective ownership of natural resources with economic value, known as Economic Sovereignty. Economic sovereignty is an exercise of state's interest through government activities to control and regulating the resources and labor within its territory without external control.<sup>12</sup> This shift in perception of state sovereignty to economic sovereignty allows for economic nationalization or the protection of national economy in world market.<sup>13</sup>

---

<sup>11</sup> Claude E Barfield, 2001, *Free Trade, Sovereignty, Democracy: The Future of the World Organization*, Chicago Journal of International Law Vol. 2 No.2, p.410-413. Available at <https://chicagounbound.uchicago.edu/cjil/vol2/iss2/13>

<sup>12</sup> Savanovic, A, 2014, Economic Sovereignty. *12th International Academic Conference, Prague*. Accessed on October 3<sup>rd</sup>, 2024

<sup>13</sup> Pryke, S, 2012, *Economic Nationalism: Theory, History and Prospects*, Global Policy, q3(3), p.281-291.

This autonomy includes balancing economic goals in resolving disputes and navigating the effects of technological advancements in trade. There is a prevailing view post-World War II where the rather than free trade compromises national security, it reinforces it. The ultimate goal of trade is to promote development by enhancing efficiency and productivity in the production process.<sup>14</sup> The legal framework of exceptions in GATT 1994 showcases the understanding of practice by WTO members on the existence of trade law rests on restricting protectionism through free trade.

## **2. Theory of Reciprocity**

Reciprocity theory that exists in the international community could be distinguished from cooperativeness and retaliation in its interactions. Reciprocity does not stem from benefits from the expected actions, irrespective of material gains. The GATT is a balanced system of reciprocal rights and obligations, which in turn allows injured parties to suspend concessions. The trading framework established by GATT and the WTO operates on the principles of reciprocity and a balanced exchange of concessions.

The advantages of trade are frequently evaluated based on the perceived enhanced entry to international markets, which is exchanged for a participant relinquishing further access to its domestic market. William Alford (2023) emphasizes that the use of national security has evolved to function not merely as a protective measure but rather as a calculated tool in trade policy.<sup>15</sup> The use of exceptions is a matter of significant gravity. It is unreasonable to

---

<sup>14</sup> Paul R. Krugman, Maurice Obstfeld, and Marc J. Melitz, 2022, *International Economics: Theory & Policy*. United Kingdom: Pearson Education Inc., p.10

<sup>15</sup> Alford, W.P, 2023, *op.cit.*, p.121–157.

maintain an exception that cannot be reviewed solely on the grounds of its invocation.<sup>16</sup>

The ongoing debate within the WTO regarding the national security exception centers on the question of whether a member is entitled to independently assess the legitimacy of its national security claims as a rationale for implementing trade-restrictive measures. A significant perspective shared by numerous members of the WTO is that it is unacceptable for any nation to impose trade restriction merely by asserting that such actions are necessary for their national security.

### **3. Multilateralism**

There are three major organizations of the world; they are World Bank, IMF and WTO. These institutions originally intended to stabilize the economy after World War II to build the welfare of its member countries. However, since the 1980s, along with the dominance of Neo-Liberalism, then Multilateralism has been switched. Along with global capitalism, Multilateralism has put itself into a supra-state. Operating agencies have to confront the country's national sovereignty, to intervene in domestic policy, and facilitate the control of transnational in many countries.

### **4. Competitive Advantage**

The law of Competitive Advantage by David Ricardo is a classical international trade theory, views that countries should specialize in producing goods and services where they have a lower opportunity cost compared to other nations and then engage in trade. This specialization and trade, even if one country has an absolute advantage in all goods, leads to greater overall global production and

---

<sup>16</sup> Maruyama, Warren, et.al, 2023, *Saving the WTO from the National Security Exception*, Working Paper by Peterson Institute for International Economics Vol.23 No.2. p.3-15.

consumption. Essentially, countries benefit by focusing on what they do relatively best, rather than trying to be self-sufficient.

Competitive Advantage is drawn in view of deficiencies observed by Ricardo in Adam Smith's principles of absolute cost advantage in explaining territorial specialisation as a basis for international trade. The theory implies that comparative costs are different in different countries because the abundance of factors which may be necessary for the production of each commodity does not bear the same relation to the demand for each commodity in different countries.

Free trade is achieved "*by increasing the general mass of production diffuses general benefit and binds together by one common tie of interest and intercourse, the universal society of nations throughout the civilised world.*" Thus, specialisation based on comparative cost advantage clearly represents a gain to the trading countries insofar as it enables more of each variety of goods to be produced cheaply by utilising the abundant factors fully in the country concerned and to obtain relatively cheaper goods through mutual international exchange.

## **5. New Trade Theory**

New Trade Theory (NTT) developed by Paul Krugman explains international trade patterns by incorporating economies of scale, network effects, and first-mover advantage. It suggests that trade can be beneficial even between countries with similar production capabilities, unlike classical trade theory relying on comparative advantage. This theory helps explain the existence of extensive trade between similar nations, the rise of multinational corporations, and the concentration of industries.

There are three (3) components of the New Trade Theory, which are:

- 1) Economies of the Scale: the cost of an item decreases as it is produced in huge quantities, making it lower for the cost of production per unit as the demand for goods from overseas countries increases. Every states has a particular industry with this capacity, and by broadening the range of products offered, production costs can be reduced.;
- 2) Advantage of Being First: it is explained by the idea that a company gains a larger tactical and financial advantage over late entrants the earlier it begins manufacturing a given good. It occurs as a result of the low-cost structures of early entrants growing into enormous companies.;
- 3) Impact of Networks: it claims that as more people use the products, the more valuable they become.

## **G. Conceptual Framework**

The author would like to preface the discussion of this thesis' research questions with an initial assessment. First, the U.S. Tariffs on Aluminium Steel Imports from China may be considered a WTO-inconsistent measure due to their discriminatory manner. However, this measure can only be justified through the security exceptions clause conditions under GATT 1994 in conjunction with the WTO's views as set in similar dispute panel reports.

Second, it is also the assumption that China has the right to implement additional duties in retaliation to negate the adverse effects of U.S. tariffs. However, trade retaliation can only be enforced with the approval of the DSB Panel and as a last resort for dispute settlement mechanism when an agreement not be reached, under the auspices of domestic or international law.

To determine whether a trade measure or trade policies falls within the scope of Article XXI of GATT 1994 requires the analysis of if such measure has fulfilled the qualification or *standard of review* based on judgments and state practices of WTO member countries. Article XXI applies to certain situations in which a state considers measures to threaten essential interests, i.e. *national security*.

This research aims to scrutinize the complex area of international trade law, particularly the interpretation and the scope of the security exceptions clause under GATT 1994, how the WTO views and balances state sovereignty and with its members' obligations, also the competency of the DSB Panel to review the consistency of security exception practices under international law.

Specifically, this thesis will also review the practice of retaliation as a countermeasure and the effectiveness of retaliation dispute settlement mechanism in international trade law. Furthermore, this author will analyse WTO's interpretation of security exceptions in *United States—Aluminum Steel* and the implications of the *China—Additional Duties* dispute to the United States, China, the WTO and development of global trade practices.

The author's thesis sets out to be comprised of two variable of this research. The 1st variable of this research is the Interpretation of Security Exceptions. From the 1st variable, the indicators of this research are: 1) GATT Principles; 2) Elements of Article XXI GATT 1994; 3) Distinction of Security Exceptions and Safeguard; 4) DSB Panel's Interpretation on Standard of Review.

The 2nd variable of this research is the Implications of Retaliation. From the 2nd variable, the indicators of this research are as follows: 1) Countermeasure; 2) Temporary Trade Barriers; 3) DSU Rules on Retaliation; 4) Impact of Retaliation to the United States,

China, Global Trade and WTO. To illustrate the general review of the connection and the correlation of the variables and indicators of this research, therefore a Conceptual Framework structure is portrayed below:

*International Law Analysis on Security Exceptions and Retaliatory Measures in the United States v. China Trade Dispute*

How does the WTO interpret security exceptions clause according to the GATT 1994 and the *United States – Aluminium Steel* dispute?

- GATT 1994 General Principles
- Elements of Article XXI in GATT 1994
- Comparative Analysis of Safeguarding and Security Exceptions
- WTO DSB's Standard of Review (SoR) and 3-Step Analysis

What are the implications of retaliatory measures from the *China–Additional Duties* dispute to the U.S., China, Global Trade and the WTO?

- Retaliation as Countermeasure under ARSIWA
- Retaliation as Temporary Trade Barriers
- WTO DSU Rules on Retaliation
- Impact of Retaliation to United States, China, Global Trade and WTO

The implementation of Security Exceptions in accordance with WTO interpretation and GATT 1994 principles, as well as the implementation of Trade Retaliation practices in accordance with ARSIWA and DSU's requirements under International Trade Law.

## H. Operational Definition

- a) **International Economic Law** is a branch of international law that governs the behavior of states and private entities in various economic activities, including international commerce, trade, financial activities, investments, tax regulations, and conditions related to economic sanctions.
- b) **International Trade Law** is a subset of international economic law that focuses on regulating agreements among states for the conduct of trade in goods, services, and investments. This subset of IEL spans both public and private international law.
- c) **Trade Measures** are non-restrictive barriers implemented as means to suspend schedule of concessions and the obligations of a WTO member.
- d) **Security Exceptions** is an exception clause provided within the GATT for a WTO member state to implement trade measures to suspend its obligations based on national security justification.
- e) **Self-Judging** is characteristic of unilateralism practice in which states reserve its right to non-compliance to its international obligations under certain circumstances
- f) **Protectionism** are policies created to protect domestic industry against foreign competition such as tariffs, subsidies, import quotas, and other restrictive measures placed to reduce imports of competitors.
- g) **Countermeasures** are measures taken in response to the conduct of member state committing a violation

against its obligation which constitutes an Internationally Wrongful Act.

- h) **Trade Retaliation** is a retaliatory measure implemented by an aggrieved WTO member from an unjustified trade measure by an aggrieving WTO member.
- i) **WTO** (also known as the World Trade Organization) is a intergovernmental organization that supervises, advises, and resolves global trade issues. WTO's main purpose is for liberalizing trade while serving a function as negotiating forum for trade agreements and judicial body for settling trade disputes.
- j) **GATT** is General Agreement on Tariffs and Trade signed in 1947, then renewed in 1994 as a treaty to minimizing barriers to international trade and promoting free trade by eliminating or reducing quotas, tariffs, and subsidies.

## **CHAPTER II**

### **RESEARCH METHOD**

#### **A. Research Types and Approaches**

In this thesis, the author uses normative research examining legal norms concentrating on the analysis of existing laws within the international community that are relevant to the current dispute. This approach helps establish a legal framework for practices in global trade. The primary focus is on international law, including relevant rules, doctrines, and scholarly opinions based on international agreements and domestic regulations.

The author will apply the IRAC (Issue, Rules, Analysis, Conclusion) method to gain a deep understanding of the disputes. These disputes are chosen for their outcome and relevance, offering significant insights into the legal discourse. This research analyses trade law by evaluating how specific provisions are applied and considering the recommendations provided in selected panel reports.

The promotion of ethical research is ensured through independent investigation with respect of standards set by these institutions. The author will utilize publications, guidelines, and reports from judicial bodies and international organizations, particularly the World Trade Organization (WTO). This research derives its sources of law in accordance with the hierarchy outlined in Statute of International Court of Justice (ICJ).

#### **B. Types and Sources of Legal Materials**

##### **a) Primary Legal Materials**

Primary research material is authoritative legal material which may be in a form of statutory regulations, case

law, or official commentaries of certain statutory regulations.<sup>17</sup>

b) Secondary Legal Materials

Secondary legal material is a complementary source in analysing primary legal materials, this includes monographs (including textbooks, case books), journal article, and conference papers.

c) Tertiary Materials

Tertiary sources include non-legal documents that give direction and support in interpreting primary and secondary legal sources. This includes legal dictionaries, internet sources, and reports related to the research topic.

Legal sources used by the author in this study are:

- i. Article 38 of the Statute of International Court of Justice
- ii. General Agreements on Tariffs and Trade (GATT) 1994
- iii. Dispute Settlement Understanding (DSU) of the WTO
- iv. Domestic Policies and Institutional Reports
- v. Books
- vi. Scholarly publications, research materials, and various informational resources available in both physical and digital formats, acquired directly or through online search outcomes pertinent to the subject under researched.

### **C. Legal Materials Collection Techniques**

The author employs the Library Research method to gather primary, secondary, and tertiary legal sources for this thesis. This study uses qualitative methods, particularly

---

<sup>17</sup> Bambang Sunggono, 2003, *Metode Penelitian Hukum*, Jakarta:PT Raja Grafindo Persada, p.67.

conceptual approach to examine the materials. In this technique, primary legal materials consist of laws and regulations, while secondary legal materials include doctrines from legal scholars.

The literature reviews are collected to address both of the research questions by evaluating all the legal materials. These materials are then connected to the core legal issues relevant to the thesis. This connection is established following a systematic process of inventory and data preparation, ultimately leading to the formulation of conclusive findings.

#### **D. Legal Materials Analysis**

This research will then conduct an analytical process after collecting all the legal materials, known as legal analysis, to provide a thorough understanding of the key issues within a normative judicial and customary practice discourse. The literature reviews are collected to address the research questions that will be integrated into a macro-scale legal comparison to systematically evaluate all situational factors of the dispute. Additionally, the analysis will include a micro-scale legal comparison focusing on the cited authoritative instruments to serve as deciding factors for a uniform practice of law.