

# 1.

## The WTO: general principles and exceptions

**Part I outlines the overall structure and general principles of the World Trade Organisation (WTO). It focuses on provisions which establish the possibility of derogations to the general principle of free trade, within the General Agreement on Tariffs and Trade (GATT).**

**In this framework, Article XX of the GATT, which establishes general exceptions, will be succinctly explored, while the main part of this chapter will be devoted to the analysis of Article XXI, which sets up security exceptions.**

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# 1. **Creation of the World Trade Organisation (WTO)**

The World Trade Organisation (WTO) came into being in 1995, but its predecessor, the General Agreement on Tariffs and Trade (GATT) was established in the wake of the Second World War. In this period, a series of elements in international relations (IR) and world economy converged as to allow the progressive liberalisation of trade. Among these elements, there was both a strong desire to avoid repeating disasters of a World War and the abandonment of isolationism by the United States (US) for a leadership role in world affairs, which fostered support around the world for a new approach to international economic cooperation.

Following this trend, at a conference in the *Palais des Nations*, in Geneva (Switzerland) representatives of 23 countries met from April to October 1947 and established the post-war world trading system, in which governments agreed the rules about the use of certain trade barriers and to negotiate tariff reductions with one another.<sup>1</sup>

The system was developed through a series of trade negotiations, or rounds, held under the GATT. The first rounds dealt mainly with tariff reductions, but later negotiations included other areas such as anti-dumping and non-tariff measures. The Uruguay Round (1986-1994) led to the WTO's creation.

Today, the WTO still provides a forum for negotiating agreements aimed at reducing obstacles to international trade and ensuring a level-playing field for all, thus contributing to economic growth and development. The WTO also provides a legal and institutional framework for the implementation and monitoring of these agreements, as well as for settling disputes arising from their interpretation and application.

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1 D. A. Irwin, P. C. Mavroidis, and A. O. Sykes, *The genesis of the GATT*, Cambridge University Press, May 2009.

The WTO currently has 162 members,<sup>2</sup> 117 of which are developing countries or separate customs territories. WTO activities are supported by a Secretariat (located in Geneva) of some 700 staff, led by the WTO Director-General. Decisions in the WTO are generally taken by consensus of the entire membership.

The WTO agreements cover goods, services and intellectual property. They spell out the principles of liberalisation and the permitted exceptions. They include individual countries' commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. They set procedures for settling disputes. They prescribe special treatment for developing countries.

The agreements for the two largest areas (goods and services) share a common three-part outline. They start with broad principles: the *General Agreement on Tariffs and Trade* (GATT) for goods and the *General Agreement on Trade in Services* (GATS). The third area, *Trade-Related Aspects of Intellectual Property Rights* (TRIPS), also falls into this category although it has no additional parts at present. Then come extra agreements and annexes dealing with the special requirements of specific sectors or issues, such as agriculture, sanitary and phytosanitary measures, textiles and clothing, technical barriers to trade, trade-related investment measures, rules of origin, import licensing, safeguards, and plurilateral trade agreements in area such as trade civil aircraft and public procurements.

Finally, detailed and lengthy schedules (or lists) of commitments made by individual countries allow specific foreign products or service providers access to their markets.<sup>3</sup>

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2 For an updated status of the WTO membership, please see: [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm). (Accessed on 13/09/2016).

3 World Trade Organisation, *Overview: a navigational guide*. Available on: [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm1\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm). (Accessed on 13/09/2016).

## 1.1. **Main principles**

Starting from the GATT's essential principle of free trade, other GATT's founding general principles are:

- General Most-Favoured-Nation Treatment Principle;
- National Treatment on Internal Taxation and Regulation (equality principle);
- Principle of General Elimination of Quantitative Restrictions;
- Principle of Non-discriminatory Administration of Quantitative Restrictions.

The General Most-Favoured-Nation Treatment Principle (MFN) establishes that, under the WTO agreements, countries cannot normally discriminate between their trading partners. If one country grants another country a favour (such as a lower customs duty rate for one of their products), the same treatment/favour shall be granted to other WTO members.

Exceptions are allowed. For example, countries can set up a free trade agreement that applies only to goods traded within the group, discriminating against goods from outside. Alternatively, they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. As for services, countries are allowed, in limited circumstances, to discriminate. However, the agreements only permit these exceptions under strict conditions. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners.

The National Treatment on Internal Taxation and Regulation (equality principle) is based on the idea that imported and locally-produced goods should be treated equally, at least after the foreign goods have entered the market. The same should apply to foreign and domestic services and to foreign and local trademarks, copyrights and patents. In this

sense, taxation rules and regulation in general should be the same for foreign/imported products as for national products.<sup>4</sup>

The Principle of General Elimination of Quantitative Restrictions prohibits quantitative restrictions on the importation or the exportation of any product. One reason for this prohibition is that quantitative restrictions are considered to have a greater protective effect than tariff measures and are more likely to distort free trade. However, the GATT provides exceptions to this fundamental principle. These exceptional rules permit the imposition of quantitative measures under limited conditions and only if they are taken on policy grounds that are justifiable under the GATT, such as critical shortages of foodstuffs (Article XI:2) and balance of payment (Article XVIII:B). As long as these exceptions are invoked formally, in accordance with GATT provisions, they cannot be criticised as unfair trade measures.<sup>5</sup>

Lastly, the Principle of Non-discriminatory Administration of Quantitative Restrictions stipulates that, with regard to like products, quantitative restrictions or tariff quotas on any product must be administered in a non-discriminatory manner. It also stipulates that, in administering import restrictions and tariff quotas, WTO Members shall aim to allocate shares approaching as closely as possible to that which might be expected in their absence.<sup>6</sup>

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4 World Trade Organisation, *Principles of the trading system*. Available on: [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm#seebox](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#seebox). (Accessed on 13/09/2016).

5 Ministry of Economy, Trade and Industry of Japan, *Quantitative restrictions*, in “2006 Report on the WTO Inconsistency of Trade Policies by Major Trading Partners”, Part 2, Chapter 3, p. 239. Available on: <http://www.meti.go.jp/english/report/data/gCT9903e.html>. (Accessed on 13/09/2016).

6 Idem.

**1.2.****GATT exceptions to General Trade Rule**

Despite the GATT's general principle of free trade and the possibility to stop or control trade for economic reasons, the GATT also provides the possibility to stop or control trade for non-economic reasons. These reasons could be qualified as "political". They are established by two articles: Article XX regarding general exceptions for measures necessary to protect public morals, life and health, etc., and Article XXI regarding security exceptions.

**1.2.1.****Article XX: General Exceptions**

Article XX establishes the possibility for Participating States to derogate to the GATT's principles by adopting national measures for the protection of:

- Public morals;
- Human, animal, plant life and health;
- Gold and silver;
- Patents, trademark and copyrights;
- Prison labour;
- National treasures of artistic, historic or archaeological value;
- Conservation of exhaustible natural resources.

It is important to bear in mind that Article XX establishes exceptions to the general principle. For this reason, it has to be limited to a number of identified and identifiable cases. In other words, the scope of each exception has to be clearly outlined, and conditions of use should be strictly defined. Moreover, in order to adopt national measures, a State has to verify that all conditions specified in the first part of the Article, called *chapeau* or opening clause, and in its second part, i.e. the list of categories, are met.

The *chapeau* or opening provision establishes general conditions that need to be met by a State to adopt national provisions whatever the category of items will be concerned:

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures”.<sup>7</sup>

The conditions are formulated in a negative way, in the sense that States cannot use Article XX to stop or control trade if:

- The measures adopted in this purpose result in discrimination;
- Discrimination is arbitrary or unjustifiable in character;
- Discrimination occurs between countries where the same conditions prevail.

To better understand the conditions that must be satisfied in the opening clause, two examples are provided in the boxes below.

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7 World Trade Organization, *General Agreement on Tariffs and Trade*, Article XXI, 1947. Available on: [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_o2\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_o2_e.htm). (Accessed on 13/09/2016).

**WTO case 1****United States - Import Prohibition of Certain Shrimp and Shrimp Products, DS58, Report of 6 November 1998**

Seven species of sea turtles have been identified to date. They spend their lives at sea, where they migrate between their foraging and nesting grounds. Sea turtles have been adversely affected by human activity, especially indirectly (for instance, through incidental capture in fisheries). In early 1997, India, Malaysia, Pakistan and Thailand brought a joint complaint against a ban imposed by the US on the importation of certain shrimp and shrimp products.

The US Endangered Species Act of 1973 listed as endangered or threatened the five species of sea turtles that occur in US waters, and prohibited their “take” within the US, in its territorial sea and the high seas.

Under the act, the US required that US shrimp trawlers use “turtle excluder devices” (TEDs) in their nets when fishing in areas where there is a significant likelihood of encountering sea turtles. Section 609 of US Public Law 101–102, enacted in 1989, said that shrimp harvested with technology that may adversely affect certain sea turtles may not be imported into the US unless the harvesting nation was certified to have a regulatory programme and an incidental take-rate comparable to that of the US, or that the particular fishing environment of the harvesting nation did not pose a threat to sea turtles. In practice, countries that had any of the five species of sea turtles within their jurisdiction and harvested shrimp with mechanical means, had to impose on their fishermen requirements comparable to those borne by US shrimpers if they wanted to be certified to export shrimp products to the US.

The appellate WTO dispute settlement body (DSB), in its final report, clearly condemned the US policy and measures adopted on grounds of “unjustifiable discrimination”.

*We scrutinize first whether Section 609 has been applied in a manner constituting “unjustifiable discrimination between countries where the same conditions prevail”.*

*Perhaps the most conspicuous flaw in this measure’s application relates to its intended and actual coercive effect on the specific policy decisions*

*made by foreign governments, Members of the WTO. The US measure in its application, is, in effect, an economic embargo which requires all other exporting Members, if they wish to exercise their GATT rights, to adopt essentially the same policy (together with an approved enforcement programme) as that applied to, and enforced on, United States domestic shrimp trawlers.*

*It may be quite acceptable for a government, in adopting and implementing a domestic policy, to adopt a single standard applicable to all its citizens throughout that country. However, it is not acceptable, in international trade relations, for one WTO Member to use an economic embargo to require other Members to adopt essentially the same comprehensive regulatory programme, to achieve a certain policy goal, as that in force within that Member's territory, without taking into consideration different conditions which may occur in the territories of those other Members (...).<sup>8</sup>*

The US lost the case, not because it sought to protect the environment but because it discriminated between WTO members. It provided countries in the Western hemisphere — mainly in the Caribbean — technical and financial assistance and longer transition periods for their fishermen to start using turtle-excluder devices.

It did not give the same advantages, however, to the four Asian countries (India, Malaysia, Pakistan and Thailand) that filed the complaint with the WTO.

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8 World Trade Organisation, *United States - Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R of 12 October 1998 (98-0000). Available on: <http://www.sice.oas.org/dispute/wto/58abro7.asp>. (Accessed on 13/09/2016).

**WTO case 2****European Communities — Measures Prohibiting the Importation and Marketing of Seal Products, dispute DS400, Report of 18 June 2014**

This dispute concerns regulations of the European Union (“EU Seal Regime”)<sup>9</sup> that prohibit the import and placing on the market of seal products.

The EU Seal Regime provides various exceptions to the prohibition when certain conditions are met, including seal products derived from hunts conducted by Inuit or indigenous communities (IC exception) and hunts conducted for marine resource management purposes (MRM exception). The panel concluded that the IC exception under the EU Seal Regime violates Article I:1 of the GATT 1994 because an advantage granted by the European Union to seal products originating from Greenland (specifically, its Inuit population) is not accorded immediately and unconditionally to the like products originating from Canada. With respect to the MRM exception, the panel found that it violates Article III:4 of the GATT 1994 because it grants imported seal products less favourable treatment than that granted to like domestic seal products. The panel also found that the IC exception and the MRM exception are not justified under Article XX(a) of the GATT 1994 (“necessary to protect public morals”) because they fail to meet the requirements under the *chapeau* of Article XX (“not applied in a manner that would constitute arbitrary or unjustified discrimination where the same conditions prevail or a disguised restriction on international trade”).<sup>10</sup> The panel additionally

9 Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products, *Official Journal of the European Union*, L 286/36 of 31 October 2009.

10 To evaluate conformity of EC’s measures to the opening clause, three elements have been considered:

- Lack of willingness of the State to negotiate a compromise that reach the same objective with States concerned by the measure;
- Lack of flexibility of the rule that does not take into consideration specificities of third States;
- Lack of transparency of the decision-making process.

found that the European Union failed to make a *prima facie* case that the EU Seal Regime is justified under Article XX(b) of the GATT 1994 (“necessary to protect ... animal ... life or health”).<sup>11</sup>

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11 World Trade Organisation, *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, dispute DS400, Report of 18 June 2014. Available on: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds400\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds400_e.htm). (Accessed on 13/09/2016).

Article XX is a “two-tiered mechanism” in the sense that a national measure has to satisfy two sets of conditions to be adopted: conditions imposed by the *chapeau* (as shown above) and conditions established by one of the sub-paragraphs establishing the reason to derogate to general principles (public morals, human, animal, plant life and health, etc.). In this context, to satisfy the conditions set by the sub-paragraph of reference means to analyse whether the national case falls within the scope of the definition. In the EC seal products case, for example, the EC failed to comply not only with conditions required by the *chapeau* (Article XX of the GATT) but also with the sub-paragraph invoked, Article XXb (“necessary to protect (...) animal (...) life or health”).

The content of subparagraphs will be briefly explored with the aim of understanding their scope and the conditions that have to be satisfied to comply with general exceptions established in Article XX.

#### **1.2.1.1. Article XX(a): “Public Morals”**

*Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:*  
*(a) necessary to protect public morals*

The difficulty in this provision lies in the understanding of the words “necessary to” and “public morals”, which is a quite subjective concept strictly linked to a specific culture or socio-political context. Generally speaking, it is possible to consider “public morals” as standards of right and wrong conduct maintained by, or on behalf of, a community or nation. However, content can vary in time and space, depending upon a range of factors including prevailing social, cultural, ethical and religious values.

The provision, in principle, leads to the possibility for a State to adopt preventive actions to prohibit/control trade items considered as contrary to the State’s values, such as: sale of alcohol to minors, cigarettes, drugs, pornography and pork meat.

It could also involve the adoption of protectionist measures, such as the import’s prohibition of beer, wine or cheese, to safeguard local culture or tradition.

To reduce the subjective dimension of this provision, the adoption of national measures are submitted to three conditions:

1. They should conform to opening clause conditions;
2. Measures shall be necessary in the sense that there are no reasonably available alternative and the burden of proof will be supported by the State that has adopted the measure;
3. National measures shall concern “public morals”.

With regards to the third condition, there is no common understanding of the term “public morals”, but it does not seem to be controversial among States. They unilaterally define and apply the concept of “public morals” in their respective territories, according to their own systems and scales of values.

Some examples include the US’ ban on the importation of “obscene” pictures; Thailand’s ban on the exportation of Buddha images; the US’ ban on the importation of products made by convict labour, forced labour and indentured labour; Chinese measures regulating activities relating to the importation and distribution of certain publications and audio-visual entertainment products.

**1.2.1.2. Article XX(b): “Necessary to Protect Human, Animal or Plant Life or Health”**

*Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:*

*(b) necessary to protect human, animal or plant life or health;*

The criteria used to interpret subparagraph XXb are almost similar to the criteria used for national measures related to public moral. They are submitted to three conditions:

1. Should conform to opening clause conditions;
2. Measures shall be necessary;
3. National measures shall concern human, animal or plant life or health.

In this context again, there is no common understanding and the reasons to adopt national measures to restrain or control trade because of concerns for human, animal or plant life or health can vary. Some examples are provided in the boxes below.

**WTO case 3****Thailand – Restriction on importation of and internal taxes on cigarettes, Report of the Panel adopted on 7 November 1990**

On 22 December 1989, the United States requested consultations with Thailand regarding restrictions on imports of and internal taxes on cigarettes maintained by the Royal Thai Government.

Thailand justified the prohibition on imports of cigarettes by the objective of public health policy which it was pursuing, namely to reduce the consumption of tobacco, which was harmful to health. It was therefore covered by Article XX(b).

The production of tobacco had not altogether been prohibited in Thailand because this might have led to production and consumption of narcotic drugs, such as opium, marijuana and kratom, which have even more harmful effects than tobacco.

Cigarette production in Thailand was a State-monopoly under the Tobacco Act because the government felt the need to have total control over such a product which, even though legal, could be extremely harmful to health. One of the main objectives of the Act was to ensure that cigarettes were produced in a quantity that was just sufficient to satisfy domestic demand, without increasing such demand.

Thailand also argued that cigarettes manufactured in the United States may be more harmful than Thai cigarettes because of unknown chemicals placed by the United States cigarette companies; partly to compensate for lower tar and nicotine levels. United States cigarette companies also used other additives which increased the health risks of smoking. The panel recognised that:

73. (...) *In agreement with the parties to the dispute and the expert from the WHO, the Panel accepted that smoking constituted a serious risk to human health and that consequently measures designed to reduce the consumption of cigarettes fell within the scope of Article XX(b). The Panel noted that this provision clearly allowed contracting parties to give priority to human health over trade liberalization; however, for a measure to be covered by Article XX(b) it had to be “necessary”.*

75. *The Panel concluded from the above that the import restrictions imposed by Thailand could be considered to be “necessary” in terms of Article XX(b) only if there were no alternative measure consistent with the General Agreement, or less inconsistent with it, which Thailand could reasonably be expected to employ to achieve its health policy objectives.*
81. *The Panel found therefore that Thailand’s practice of permitting the sale of domestic cigarettes while not permitting the importation of foreign cigarettes was an inconsistency with the General Agreement not “necessary” within the meaning of Article XX(b).<sup>12</sup>*

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12 World Trade Organisation, *Thailand - Restriction on importation of and internal taxes on cigarettes*, Report of the Panel adopted on 7 November 1990 (DS10/R - 37S/200). Available on: [https://www.wto.org/english/tratop\\_e/dispu\\_e/90cigart.pdf](https://www.wto.org/english/tratop_e/dispu_e/90cigart.pdf). (Accessed on 13/09/2016).

**WTO case 4****European Communities — Measures Affecting Asbestos and Products Containing Asbestos, DS135, Report of 5 April 2001**

On 28 May 1998, Canada requested consultations with the EC in respect of measures imposed by France, in particular the Decree of 24 December 1996 on the prohibition of asbestos and products containing asbestos, including a ban on imports of such goods.

On the issue of whether the use of chrysotile-cement products poses a sufficient risk to human health to enable the measure to fall within the scope of application of the phrase “to protect human (...) life or health” in Article XX(b), the Panel stated that it “*considers that the evidence before it tends to show that handling chrysotile-cement products constitutes a risk to health rather than the opposite.*”

On the basis of this assessment of the evidence, the Panel concluded that the EC has made a *prima facie* case for the existence of a health risk in connection with the use of chrysotile, in particular as regards lung cancer and mesothelioma in the occupational sectors downstream of production and processing as well as for the public in general in relation to chrysotile-cement products.

Thus, the Panel found that the measure falls within the category of measures embraced by Article XX(b) of the GATT 1994.

In the light of France’s public health objectives as presented by the European Communities, the Panel concludes that the EC has made a *prima facie* case for the **non-existence of a reasonably available alternative** to the banning of chrysotile and chrysotile-cement products and recourse to substitute products. Canada has not rebutted the presumption established by the EC. We also consider that the EC’s position is confirmed by the comments of the experts consulted in the course of this proceeding.<sup>13</sup>

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13 World Trade Organisation, *European Communities — Measures Affecting Asbestos and Products Containing Asbestos*, DS135, Report of 5 April 2001. Available on: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds135\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds135_e.htm). (Accessed on 13/09/2016).

**1.2.1.3. Article XX(c) “Relating to the Importations or Exportations of Gold or Silver”**

*Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:*  
*(c) relating to the importations or exportations of gold or silver.*

A similar reasoning is applied to the interpretation of subparagraph XXc, which, in order to be adopted by a State, shall satisfy the conditions imposed by the opening clause. Adopted measures shall also be related to import and export of gold and silver.

However, the interpretation of subparagraph XXc has never been discussed within the panel, except once when Canada adopted a retail tax on gold coins and exempted from this tax Maple Leaf gold coins struck by the Canadian Mint.

**1.2.1.4. Article XX(e)<sup>14</sup> “Products of Prison Labour ”**

*Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:*  
*(e) relating to the products of prison labour;*

Subparagraph XXe seems to be another case of “tacit consensus” among States since the issue of products of prison labour has never been discussed in a panel. As for subparagraph XXc, the necessity dimension is not requested.

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14 Article XX(d) will not be analysed because it is not relevant for this handbook. For the sake of completeness, Article XX(d) provides that:  
*Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:*  
*(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices.*

#### **1.2.1.5. Article XX(f) “National Treasures”**

*Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:*  
*(f) imposed for the protection of national treasures of artistic, historic or archaeological value;*

The difficulty in interpreting this provision lies in the subjective nature of “national treasures of artistic, historic or archaeological value”. In fact, the provision does not only lack any link with a financial value, but there is no common understanding of what might be considered as a “national treasure”. Furthermore, the provision does not specify if tangible as well as intangible goods are covered by the definition. Presently, no cases have been brought in front of a panel.

#### **1.2.2. Article XXI: Security Exceptions**

Article XXI of the GATT establishes five possibilities of national restrictive measures related to:

- Information;
- Actions concerning:
  - UN embargoes;
  - Nuclear materials
  - War and emergency;
  - Arms and related items.

Contrary to the general exceptions established in Article XX, Article XXI does not include an opening clause.

##### **1.2.2.1. Article XXI(a) Information**

*Nothing in this Agreement shall be construed*  
*(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests.*

As in Article XX, most of the terms used in Article XXI have been extensively debated or defined. It is the case with “information” that has been considered indirectly once, in 1949, regarding the publication

of COCOM<sup>15</sup>s list of items. At the Third Session in 1949, Czechoslovakia requested a decision under Article XXIII as to whether the US had failed to carry out its obligations under Articles I and XIII because of the 1948 US administration of its export licensing controls (both short-supply controls and new export controls instituted in 1948 discriminating between destination countries for security reasons). The US stated that its controls for security reasons applied to a narrow group of exports of goods which could be used for military purposes. The US also stated that *“the provisions of Article I would not require uniformity of formalities, as applied to different countries, in respect of restrictions imposed for security reasons”*. It was also stated by one contracting party that *“goods which were of a nature that could contribute to war potential”* came within the exception of Article XXI. The US representative stated that (...) *“Article XXI ... provides that a contracting party shall not be required to give information which it considers contrary to its security interest – and to the security interest of other friendly countries – to reveal the names of the commodities that it considers to be most strategic”*.<sup>16</sup>

However, the scope of “information” has never been controversial between States. It is commonly agreed that it is up to each State to define what could be included in the definition. The only condition established by the Article is an obligation for States to inform contracting parties to the fullest extent possible of trade measures taken under Article XXI (the GATT’s analytical Index).

The same logic applies to the definition of “essential security interests”. There is no common understanding, and it is up to each State, adopting national measures under this article, to decide what might fall into

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15 The Coordinating Committee for Multilateral Export Controls (COCOM) was the first export control regime set with the intention to restrict the trade toward another group of countries. It was founded under the impulse of the United States, in 1949, in the context of the Cold War, without proper status. It was intended to prevent the export of high technology goods, such as nuclear industry items, conventional arms and dual-use goods, from NATO countries and their allies to countries of the Warsaw Pact.

16 World Trade Organization, *GATT Analytical Index*, Article XXI “Security Exceptions”, p. 602. Available on: [https://www.wto.org/english/res\\_e/booksp\\_e/gatt\\_ai\\_e/art21\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art21_e.pdf). (Accessed on 13/09/2016).

this category. *“We cannot make it too tight, because we cannot prohibit measures which are needed purely for security reasons. On the other hand, we cannot make it so broad that, under the guise of security, countries will put on measures which really have a commercial purpose”* (Chairman of the Commission quoted in the GATT’s Analytical Index).

States have regularly recourse to “essential security interests” to justify national measures, but it has been controversial.

During the discussion of the complaint of Czechoslovakia at the Third Session in 1949 it was stated, inter alia, that: *“Every country must be the judge in the last resort on questions relating to its own security. On the other hand, every contracting party should be cautious not to take any step which might have the effect of undermining the General Agreement”*.<sup>17</sup>

In 1961, on the occasion of the accession of Portugal, Ghana stated that its boycott of Portuguese goods was justified under the provisions of Article XXI:(b)(iii), noting that *“(...) Under this Article each contracting party was the sole judge of what was necessary in its essential security interest. There could therefore be no objection to Ghana regarding the boycott of goods as justified by security interests. It might be observed that a country’s security interests might be threatened by a potential as well as an actual danger, was therefore justified in the essential security interests of Ghana”*.<sup>18</sup>

The Ghanaian Government’s view was that the situation in Angola was a constant threat to the peace of the African continent. In their view, any action which, by bringing pressure on the Portuguese Government might lead to a lessening of this danger, was therefore justified by the essential security interests of Ghana.

In 1982, during the Falkland War, trade restrictions for non-economic reasons were adopted and applied by the EEC: *“The EEC and its member States had taken certain measures on the basis of their inherent rights, of which Article XXI of the General Agreement was a reflection. The exercise*

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17 Ibid. p. 600.

18 Idem.

*of these rights constituted a general exception, and required neither notification, justification nor approval, a procedure confirmed by thirty-five years of implementation of the General Agreement”.*<sup>19</sup>

The question of whether and to what extent the Contracting Parties can review the national security reasons for measures taken under Article XXI was discussed again in the GATT Council in May and July 1985 in relation to the US trade embargo against Nicaragua, which had taken effect on 7 May 1985. Nicaragua stated that “(...) *this was not a matter of national security but one of coercion*”. Nicaragua further stated that Article XXI could not be applied arbitrarily; there had to be some correspondence between the adopted measures and the situation giving rise to such adoption. Nicaragua stated that the text of Article XXI made clear that the Contracting Parties were competent to judge whether a situation of “war or other emergency in international relations” existed and requested that a Panel be set up under Article XXIII:2 to examine the issue. The United States stated that its actions had been taken for national security reasons and were covered by Article XXI:(b)(iii) of the GATT and that this provision left to each contracting party to judge what action it considered necessary for the protection of its essential security interest. The terms of reference of the Panel precluded it from examining or judging the validity of the invocation of Article XXI(b)(iii) by the US. In the Panel Report on “United States - Trade Measures affecting Nicaragua”, which has not been adopted, “(...) *The Panel noted that, while both parties to the dispute agreed that the United States, by imposing the embargo, had acted contrary to certain trade-facilitating provisions of the General Agreement, they disagreed on the question of whether the non-observance of these provisions was justified by Article XXI(b)(iii)*”. The Panel also noted that, in the view of the United States, Article XXI applied to any action which the contracting party considered necessary for the protection of its essential security interests and that the Panel, both by the terms of Article XXI and by its mandate, was precluded from examining the validity of the United States’ invocation of Article XXI.<sup>20</sup>

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19 Idem.

20 Ibid. p.601.

### 1.2.2.2. **Article XXI(b) action relating to fissionable materials**

*Nothing in this Agreement shall be construed*

*(a) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests*

*(i) relating to **fissionable materials** or the materials from which they are derived;*

This provision has two interpretations. According to the most restrictive interpretation (minimum), the provision authorises only the adoption of restrictive measures for “national security essential interest” related to nuclear “non-proliferation concerns”.

Following the most comprehensive interpretation (maximum), this provision would authorise the adoption of restrictive measures for all potential nuclear trade activities in order to protect even national energy needs.

Despite very broad exceptions allowed by Article XXI for security reason, this provision concerning nuclear trade has to be analysed in the light of the very specific geopolitical context of the fifties. In 1949, the quantity of fissile material available for industrial exploitation on earth was thought as rather limited in terms of quantity and geographical location. Therefore, countries holding such reserves wanted to keep the possibility to control fissionable materials for their national strategic interest, i.e. for energy needs. This second interpretation might seem quite anachronistic and, indeed, the general trend today is to consider the first interpretation—concerning the risk of nuclear proliferation—as the most suitable interpretation of the security exception.

### **1.2.2.3. Article XXI(b) action relating to weapons trade**

*Nothing in this Agreement shall be construed*

*(a) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests*  
*(ii) relating to the **traffic in arms**, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;*

The difficulty with the interpretation of this provision is the definition of scope, in particular of the terms “arms” and “implements of war”. As an example of how the first term could be comprehensive (or arguable), it is sufficient to consider the events of the 9/11 terrorist attacks. The towers crumbled because attacked by a plane “taking off”. The explosion, however, was not caused only by the crash of the aircraft but also by the explosion of its tank full of fuel. Can a plane taking off (with its tank full of fuel) be considered as a weapon?

Considering the issue of “implements of war”, the debate is today on cyber-attacks, for example, through Internet monitoring and other techniques allowing to take over control of someone else’s computer. Can Internet monitoring or other similar actions be considered as “implements of war”?

Once again, the lack of definition leaves room for States’ interpretations.

### **1.2.2.4. Article XXI(b) action in time of war or other emergency in international relations**

*Nothing in this Agreement shall be construed*

*(a) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests*  
*(iii) taken in **time of war or other emergency** in international relations;*

This provision has been regularly used by several countries. From the content of the justification for using it, it appears how “comprehensive” the understanding of “in time of war” and “emergency” can be. Some examples are given below.

In November 1991, the European Community notified the contracting parties that the EC and its Member States had decided to adopt trade

measures against Yugoslavia “on the grounds that the situation prevailing in Yugoslavia no longer permits the preferential treatment of this country to be upheld. Therefore, as from 11 November, imports from Yugoslavia into the Community are applied m.f.n. treatment (...) These measures are taken by the European Community upon consideration of its essential security interests and based on GATT Article XXI”.<sup>21</sup>

Another example is the Arab boycott against Israel, justified on the ground of the political situation (the state of war which had long prevailed in that area) of the region.

“The history of the Arab boycott was beyond doubt related to the extraordinary circumstances to which the Middle East area had been exposed. The state of war which had long prevailed in that area necessitated the resorting to this system (...). In view of the political character of this issue, the United Arab Republic did not wish to discuss it within GATT. (...) It would not be reasonable to ask that the United Arab Republic should do business with a firm that transferred all or part of its profits from sales to the United Arab Republic to an enemy country”.<sup>22</sup>

Sweden used the provision in 1975 when introducing a global import quota system for certain footwear. The Swedish Government considered that the measure was taken in conformity with the spirit of Article XXI and stated that the “decrease in domestic production has become a critical threat to the emergency planning of Sweden’s economic defence 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”.

Other examples of the use of the security exceptions for emergency situations are given by the United States through the adoption of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

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21 Ibid. p.604.

22 Ibid. p.602.

(Helms-Burton Act) and the Iran-Libya Sanctions Act (ILSA) of 1996 (D'Amato Act).

The purpose of the Helms-Burton Act dedicated to Cuba was to support “*the Cuban people in regaining their freedom and prosperity*” and to strengthen international sanctions against Castro’s government. The United States adopted a first set of measures against Cuba in 1960, which was gradually extended up to a full embargo in 1963. In this sense, the Helms-Burton Act has to be interpreted not only as a way to reinforce the US embargo but also as the US attempt to convince third States to do the same (there was no UN embargo against Cuba, adopted under Chapter VII of the UN Charter (*see infra*)). As stated by the US Congress: “*The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992, which states that the President should encourage foreign countries to restrict trade and credit relations with Cuba in a manner consistent with the purposes of that Act*”.<sup>23</sup> The policy behind the Helms-Burton Act was to establish a sort of mechanism of sanctions against States assisting Cuba: “*The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b)(1) of that Act against countries assisting Cuba*”.<sup>24</sup>

For the D’Amato Act, the logic was almost the same. The Act was a response to Iran’s stepped-up nuclear program and its support to terrorist organisations such as Hezbollah, Hamas, and Palestine Islamic Jihad. The idea behind it was the establishment of sanctions that would have curbed the strategic threat from Iran by hindering its ability to modernise its key petroleum sector, which generates about 20% of Iran’s GDP, but also that of third States “supporting it”.

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23 U.S. Code § 6032 - *Enforcement of economic embargo of Cuba*, in United States Code, 2006 Edition, Supplement 3, Title 22 - Foreign Relations and Intercourse. Available on: <https://www.law.cornell.edu/uscode/text/22/6032>. (Accessed on 13/09/2016).

24 Idem.

For this purpose, sanctions adopted by the US and behind the Helms-Burton Act and D'Amato Act included:

- denial of export-import bank loans, credits, or credit guarantees for US exports to the sanctioned entity;
- denial of licenses for the US export of military or militarily-useful technology to the entity;
- prohibition on US government procurement from the entity;
- restriction on imports from the entity.

This set of sanctions targeted very strategic and sensitive sectors of industry, establishing restrictions on trade of strategic and advanced technology mainly developed in and by the US.

The EU reacted by adopting Council Regulation (EC) 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom.<sup>25</sup>

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25 [Council/Parliament are discussing a proposal to amend/recast the Regulation: Proposal for a Regulation of the European Parliament and of the Council protecting against the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom \(recast\) COM/2015/048 final - 2015/0027 \(COD\)](#) . (Accessed on 13/09/2016).

The objective of the EU Regulation was to protect the economic and/or financial interests of natural or legal (EU) persons against the effects of the extra-territorial application of, essentially, US legislation. Some measures adopted in this direction were:

- the protection of international trade and/or movement of capital and related commercial activities between the Union and third countries;
- the protection against any court or administrative authority decision located outside the Community giving effect, directly or indirectly, to the laws listed in the Annex of the Regulation;<sup>26</sup>
- open access, in particular to any person being a resident in the Union and a national of a Member State;
- obligation to inform the Commission within 30 days from the date on which it obtained information that its economic and financial interests are affected by foreign legislation;
- right to recover any damage caused by the application of the laws with extraterritorial effect;
- countermeasures to be decided by the Commission or the Council.

#### **1.2.2.5. Article XXI(b) action related to obligations under the United Nations Charter**

*Nothing in this Agreement shall be construed to (c) 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.*

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26 US legislation specified in the Annex of the Regulation includes:

- National Defence Authorization Act for Fiscal Year 1993, Title XVII ‘Cuban Democracy Act 1992, sections 1704 and 1706;
- Cuban Liberty and Democratic Solidarity Act of 1996;
- Iran and Libya Sanctions Act of 1996;
- 1 CFR (Code of Federal Regulations) Ch. V (7-1-95 edition) Part 515 - Cuban Assets Control Regulations, subpart B (Prohibitions), E (Licenses, Authorizations and Statements of Licensing Policy) and G (Penalties).

This provision of Article XXI (b) refers to Chapter VII of the UN Charter, which provides the framework within which the Security Council may take enforcement action. It allows the Council to “*determine the existence of any threat to the peace, breach of the peace, or act of aggression*” and to make recommendations or to resort to non-military and military action to “*maintain or restore international peace and security*”.

Chapter VII of the UN Charter is the only international instrument giving legal ground to the adoption of measures to restore peace and security. Measures adopted to this end vary; they can be, for example, of economic nature, such as the adoption of embargoes, or they can be of military nature, authorising the military intervention of a group of countries in a third State causing a threat to international peace and security.

Article 39 provides the legal ground for the determination of threat to the peace, breach of the peace, or act of aggression:

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”.<sup>27</sup>

Before the Security Council can adopt enforcement measures, it has to determine the existence of any threat to the peace, breach of the peace or act of aggression. The range of situations which the Council determined as giving rise to threats to the peace includes country-specific situations such as inter- or intra-State conflicts or internal conflicts with a regional or sub-regional dimension. Furthermore, the Council identifies potential or generic threats as threats to international peace and security, such as terrorist acts, the proliferation of weapons of mass destruction or

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<sup>27</sup> United Nations, *Charter of the United Nations*, 26 June 1945, San Francisco, Article 39. Available at: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>. (Accessed on 13/09/2016).

the proliferation and illicit trafficking of small arms and light weapons. Article 41 establishes measures not involving the use of armed force.

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”.<sup>28</sup>

Among the most common measures not involving the use of armed force, which the Council has at its disposal to enforce its decisions, are those measures that are known as sanctions. Sanctions can be imposed on any combination of States, groups or individuals. The range of sanctions has included comprehensive economic and trade sanctions and more targeted measures such as arms embargoes, travel bans, financial or diplomatic restrictions. Apart from sanctions, Article 41 includes measures such as the creation of international tribunals (such as those for the Former Yugoslavia and Rwanda in 1993 and 1994) or the creation of a fund to pay compensation for damage resulting from an invasion.

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28 Idem.

### Mandatory UN embargoes\*

TARGET	ENTRY INTO FORCE	SUSPENDED	LIFTED	ESTABLISHING DOCUMENT
Afghanistan (Taliban)	19 December 2000	16 January 2002		UNSCR 1333
Angola (UNITA)	15 September 1993		9 December 2002	UNSCR 864
Central African Republic	5 December 2013			UNSCR 2127
Cote d'Ivoire	15 November 2004		28 April 2016	UNSCR 1572
DRC (NGF)	28 July 2003			UNSCR 1493
Eritrea	17 May 2000		15 May 2001	UNSCR 1298
Eritrea	23 December 2009			UNSCR 1907
Ethiopia	17 May 2000		15 May 2001	UNSCR 1298
Haiti	16 June 1993	29 September 1994	29 September 1994	UNSCR 841
Iran	23 December 2006			UNSCR 1737
Iraq (NGF since 2004)	6 August 1990			UNSCR 661
ISIL, Al-Qaeda and associated individuals and entities	16 January 2002			UNSCR 1390
Lebanon (NGF)	11 August 2006			UNSCR 1701
Liberia (NGF since 2009)	19 November 1992		26 May 2016	UNSCR 788
Libya	31 March 1992	5 April 1999	12 September 2003	UNSCR 748
Libya	26 February 2011			UNSCR 1970
North Korea (DPRK)	14 October 2006			UNSCR 1718
Rwanda (NGF since 1995)	17 May 1994		10 July 2008	UNSCR 918
Sierra Leone (NGF since 1998)	8 October 1997		29 September 2010	UNSCR 1132
Somalia	23 January 1992			UNSCR 733
South Africa	4 November 1977		25 May 1994	UNSCR 418
Southern Rhodesia (Zimbabwe)	16 December 1966		21 December 1979	UNSCR 232
Sudan (Darfur region)	30 July 2004			UNSCR 1556
Taliban	16 January 2002			UNSCR 1390
Yemen (NGF)	14 April 2015			UNSCR 2216
Yugoslavia (FRY)	25 September 1991		1 October 1996	UNSCR 2216
Yugoslavia (FRY)	31 March 1998		10 September 2001	UNSCR 1160

\* Source: Sipri database, Arms embargoes. Available at: <http://www.sipri.org/databases/embargoes>. (Accessed on 13/09/2016).

**N.B.** Embargoes do not concern only weapons. An embargo can be established to control arms and related materials, equipment that might be used for internal repression, and dual-use goods and technology. They can also target certain services, such as restrictions on admission of certain individuals, freezing of funds and economic resources of certain persons who constitute a threat to the peace and national reconciliation process.

**Example of weapons embargo: Sudan (UNSCR 1556 (2005) reaffirmed with UNSCR 2200 (2015))\***

*Acting under Chapter VII of the Charter of the United Nations, (...)*

- 7. Decides that all states shall take the necessary measures to prevent the sale or supply, to all non-governmental entities and individuals, (...) of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, whether or not originating in their territories;*
- 8. Decides that all states shall take the necessary measures to prevent any provision to the non-governmental entities and individuals identified in paragraph 7 (...) of technical training or assistance related to the provision, manufacture, maintenance or use of the items listed in paragraph 7 above;*
- 9. Decides that the measures imposed by paragraphs 7 and 8 above shall not apply to:*
  - supplies and related technical training and assistance to monitoring, verification or peace support operations, including such operations led by regional organizations, that are authorized by the United Nations or are operating with the consent of the relevant parties.*

\* United Nations, UNSC Resolution 2200(2015) of 12 February 2015. Available on: <http://www.un.org/press/en/2015/sc11776.doc.htm>. (Accessed on 13/09/2016).

**Example of WMD-related items and technology embargo:  
UNSCR 1718 (2006) on People's Democratic Republic  
of North Korea (reaffirmed with UNSCR 2094 (2013) and  
UNSCR 2207 (2015))**

(...)

8. *Decides that:*

- (a) *All Member States shall prevent the direct or indirect supply, sale or transfer to the DPRK, through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories, of:*
- (ii) *All items, materials, equipment, goods and technology as set out in the lists in documents S/2006/814 (NSG trigger and dual-use lists) and S/2006/815 (MTCR list), unless within 14 days of adoption of this resolution the Committee has amended or completed their provisions also taking into account the list in document S/2006/816 (Australia Group list), as well as other items, materials, equipment, goods and technology, determined by Security Council or the Committee, which could contribute to DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes.*

\* United Nations, UNSC Resolution 2207(2015) of 22 December 2015. Available on: [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_res\\_2207.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2207.pdf). (Accessed on 13/09/2016).

# References

## Books and Articles

- D. A. Irwin, P. C. Mavroidis, and A. O. Sykes, *The genesis of the GATT*, Cambridge University Press, May 2009.
- E., Louka, *Nuclear Weapons, Justice and the Law*, Edward Elgar Publishing, 2011.
- J., Stearns, “General Conclusions”, in J., Cuvelier (ed.), *The Complexity of Resource Governance in a Context of State Fragility*, International Alert, 2010, pp. 70–71, in Loïse Arimatsu and Hemi Mistry, *Conflict Minerals: The Search for a Normative Framework*, International Law Programme Paper IL PP 2012/01, Chatham House, September 2012.
- NGO Coalition, *Briefing on EU Regulation on responsible mineral sourcing: implementing the Parliament’s proposed due diligence system*, p. 2, October 2015.
- P., Wezeman and S., Wezeman, *The 2015 UN Register on Conventional Arms: still time to improve*, Sipri, 18 September 2015.
- Q., Michel, S., Paile, M., Tsukanova, A., Viski, *Controlling the Trade of Dual-Use Goods: A Handbook*, P.I.E. Peter Lang, Non-Proliferation and Security No. 9, Brussels, 2013.
- Q., Michel, *The European Union Export Control Regime of Arms: Comment of the Legislation: article-by article*, August 2015.
- Q., Michel, *Vademecum dedicated to the European Union Dual-Use Items Export Control Regime: Comment of the Legislation*, January 2016.

## Press/Other

- Australia Group Agrees New CBW Export Control Measures*, The Acronym Institute for Disarmament Diplomacy, June 6 2002.
- Dodd-Frank Section 1502 and the SEC’s final rule, Conflict minerals: what you need to know about the new disclosure and reporting requirements and how Ernst & Young can help you*, Ernst & Young Assurance, Tax, Transactions, Advisory, 2012, EYGM Limited.
- K., Reif, *Ukraine and the future of non-proliferation*, Bulletin of the Atomic Scientists, posted on 3 April 2014.
- L., Weiss, *Flash from the past: Why an apparent Israeli nuclear test in 1979 matters today*, Bulletin of the Atomic Scientists, posted on 8 September 2015.
- M., T., Cicero, *The Sinews of war: eliminating the trade in conflict resources*, Global Witness November 2006.
- P., F., Walker, “Syrian Chemical Weapons Destruction: Taking Stock and Looking Ahead”, *Arms Control Association*. Posted on December 2014.
- S., Bano, “Can India join the Nuclear Suppliers Group?”, *The Diplomat*, 9 May 2015.
- Z., Mian and A., Glaser, *A frightening nuclear legacy: Early expansion of nuclear energy resulted in dangerous dispersal of fissile material and weapons proliferation — threats that persist today. Is it possible to prevent history from repeating itself?*, Bulletin of the Atomic Scientists, September/October 2008, Vol. 64, No. 4, pp. 42-47.
- The World Post, *20 years ago, a shadowy cult poisoned the Tokyo Subway*. Posted on 20 March 2015.

## Official Documents

*Convention on Cluster Munitions*, 3 December 2008, Oslo.

*Convention on the Prohibition of the Development, production, Stockpiling and the Use of Chemical weapons and on their Destruction*, Geneva, 3 September 1992.

*Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effect*, Geneva, 10 October 1980.

*Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, Oslo, 18 September 1997.

European Commission, *Proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas*, COM/2014/0111 final - 2014/0059 (COD).

European Commission, *Proposal for a Regulation of the European Parliament and of the Council protecting against the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom* (recast) COM/2015/048 final - 2015/0027 (COD).

European Parliament Workshop on Dual-use export control, Directorate-General for External Policies, Policy Department, p.17, October 2015 – PE 535.000.

European Union, Amendments adopted by the European Parliament on 20 May 2015 on the proposal for a regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas (COM(2014)0111 – C7-0092/2014 – 2014/0059(COD)).

European Union, *Charter of Fundamental Rights of the European Union*, Article 4, OJ, C 83/391 of 30/03/2010.

European Union, Commission Delegated Regulation (EU) No 1382/2014 of 22 October 2014 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, OJ L 371/1 of 30/12/2014.

European Union, Commission Delegated Regulation (EU) (EU) 2015/2420 of 12 October 2015 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual use items, OJ L 340/1 of 24/12/2015.

European Union, Commission Delegated Regulation of 12.9.2016 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, Brussels, 12.9.2016 C(2016) 5707 final.

European Union, *Commission Regulation (EC) No 1447/2004 of 13 August 2004 imposing provisional safeguard measures against imports of farmed salmon*, OJ L 267/3 of 14/08/2004.

European Union, *Commission Regulation (EC) No 206/2005 of 4 February 2005 imposing definitive safeguard measures against imports of farmed salmon*, OJ L 33/8 of 05/02/2005.

European Union, *Commission Regulation (EU) No 570/2010 of 29 June 2010 making imports of wireless wide area networking (WWAN) modems originating in the People's Republic of China subject to registration*, OJ L 58/36 of 03/03/2011.

European Union, *Consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) - Consolidated version of the Treaty on European Union - Protocols - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007*, Official Journal C 326, 26/10/2012 P. 0001 – 0390.

European Union, Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, OJ L 156 of 25/06/2003.

European Union, *Council Common Position 2003/495/CFSP of 7 July 2003 on Iraq and repealing Common Positions 96/741/CFSP and 2002/599/CFSP*, OJ L 169/72 of 08/07/2003.

European Union, *Council Common Position 2006/795/CFSP of 20 November 2006 concerning restrictive measures against the Democratic People's Republic of Korea*, OJ L 322/32 of 22/11/2006.

European Union, Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, paragraph 3, OJ L 335/99 of 13/12/2008.

European Union, *Council Decision (CFSP) 2015/666 of 28 April 2015 amending Decision 2013/184/CFSP concerning restrictive measures against Myanmar/Burma*, OJ L 110, 29.4.2015.

European Union, *Directive 2014/60/EU of the European Parliament and the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast)*, OJ L 159, 28.5.2014.

European Union, Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code, OJ L 302, 19.10.1992.

European Union, Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds, OJ L 358/28 of 31/12/2002.

European Union, *Council Regulation (EU) 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96*, OJ L 169/6 of 08/07/2003.

European Union, Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment was established to prevent the trade in certain torture-related goods, OJ L 200/1 of 30/07/2005.

European Union, *Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea*, OJ L 88, 29.3.2007.

European Union, *Council Regulation 116/2009 of 18 December 2008 on the export of cultural goods*, OJ L 39, 10.2.2009.

European Union, *Council Regulation 116/2009 of 18 December 2008 on the export of cultural goods*, OJ L 39, 10.2.2009.

European Union, *Council Regulation 1061/2009 of 19 October 2009 establishing common rules for exports*, OJ L 291/1 of 7/11/2009.

European Union, *Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports*, OJ L 84/1 of 31/3/2009.

European Union, *Council Regulation (EC) no 260/2009 of 26 February 2009 on the common rules for imports (codified version)*, OJ L 84, 31.3.2009, p. 1-17 (as codified by Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (codification), OJ L 83/16 of 27/03/2015).

European Union, *Council Regulation (EC) No 625/2009 of 7 July 2009 on common rules for imports from certain third countries* (codified version), OJ L 185/1 of 17/07/2009.

European Union, *Council Regulation (EC) No 1061/2009 of 19 October 2009 establishing common rules for exports*, OJ L 291 of 7/11/2009, p.1 (as codified by Regulation (EU) 2015/479 of the European Parliament and of the Council on common rules for exports (codification), OJ L 83/34 of 27/03/2015).

European Union, *Council Regulation (EU) No 401/2013 of 2 May 2013 concerning restrictive measures in respect of Myanmar/ Burma and repealing Regulation (EC) No 194/2008*, OJ L 121, 3.5.2013.

European Union, *Council Regulation (EU) 1332/2013 of 13 December 2013 concerning restrictive measures in view of the situation in Syria*, OJ L 335/3 of 14/12/2013

European Union, European Commission Implementing Regulation (EU) 2016/91 of 26 January 2016 amending Council Regulation (EC) 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds, OJ L 19/28 of 27/01/2016.

European Union, European Parliament, Amendments adopted by the European Parliament on 27 October 2015 on the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (COM(2014)0001 – C7-0014/2014 – 2014/0005(COD)) (Ordinary legislative procedure: first reading).

European Union, European Parliament resolution on implementation of Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, P7\_TA(2010)0236.

European Union, EU Commission proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas, Brussels, 5.3.2014 COM(2014) 111final 2014/0059 (COD).

European Union, *Guidelines on Trading with the European Union (EU): A practical guide for Kimberley Process Participants and companies involved in trade in rough diamonds with the EU*, September 2015.

European Union, Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, COM/2014/01 final - 2014/0005 (COD).

European Union, *Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products*, OJ L 286/36 of 31 October 2009.

European Union, Regulation (EU) No 1232/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, OJ L 326/26 of 08/12/2011.

European Union, Regulation (EU) No 388/2012 of the European Parliament and of the Council of 19 April 2012 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, OJ L 129/12 of 16/05/2012.

European Union, Regulation (EU) No 599/2014 of the European Parliament and of the Council of 16 April 2014 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, OJ L 173/79 of 12/06/2014.

European Union, Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, OJ L 338/1 of 13/12/2016.

European Union, *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods*, 1 January 2000 - 31 December 2010. Brussels, 27.6.2011 COM(2011) 382 final.

European Union, *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods*, 1 January 2011 - 31 December 2013, Brussels, 1.4.2015 COM(2015) 144 final

*ICGLR Model Law RINR: Prevention and Suppression of the Illegal Exploitation of Minerals in the Great Lakes Region*, a publication of the Conference Secretariat of the International Conference on the Great Lakes Region with support from the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, July 2012.

Ministry of Economy, Trade and Industry of Japan, *Quantitative restrictions*, in “2006 Report on the WTO Inconsistency of Trade Policies by Major Trading Partners”, Part 2, Chapter 3, p. 239.

Nuclear Suppliers Group, *Guidelines for Nuclear Transfers*, INFCIRC/254/Rev.12/Part1, 13 November 2013.

- Organisation for Economic Cooperation and Development (OECD), *OECD Due Diligence Guidance for responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 2013.
- Organization for the Prohibition of Chemical Weapons (OPCW), *Convention on the Prohibition of the Development, Production, Stockpiling and the Use of Chemical Weapons and on their Destruction*, Geneva, 3 September 1992.
- Organization for the Prohibition of Chemical Weapons (OPCW), *Report of the OPCW on the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction in 2014*, Twentieth Session, 30 November – 4 December 2015, C-20/4 of 2 December 2015.
- Protocol Against the Illegal Exploitation of Natural Resources*, December 2006.
- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices*, amended on 3 May 1996 (*Protocol II to the 1980 CCW Convention as amended on 3 May 1996*), Geneva, 3 May 1996.
- Republic of Rwanda, *New details, 31st January 2016: Deadline for mineral exporters to export without Rwanda-ICGLR certificate*.
- Republic of Rwanda, *Rwanda issues the 1st ICGLR mineral export certificate to boost mining sector*, 06.11.2013.
- Section 1502 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, 2010.
- Small Arms Survey Yearbook 2001, Crime, Conflict, Corruption: *Global Illicit Small Arms Transfer*, 2001.
- Treaty on the Non- Proliferation of Nuclear Weapons, 12 June 1968.
- UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* 1970, 14 November 1970, Paris.
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*, Rome, 24 June 1995.
- United Nations, *Charter of the United Nations*, 26 June 1945, San Francisco.
- United Nations General Assembly and Security Council, *Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons*, Annex I to UN Document A/49/765, 19 December 1994
- United Nations, UN General Assembly Resolution A/52/298 of 27 August 1997.
- United Nations Office for Disarmament Affairs, *UNODA Occasional Papers No. 16 April 2009, Assessing the United Nations Register of Conventional Arms*, 2009.
- United Nations, *Report of the Group of Experts of 29 November 2010* (S/2010/596).
- United Nations, UNSC Resolution 1291(2000) of 24 February 2000.
- United Nations, UNSC Resolution 1306(2000) of 5 July 2000,
- United Nations, *Report of the Group of Experts of 18 July 2006* (S/2006/525).
- United Nations, *Report of the Group of Experts of 10 December 2008*, (S/2008/773).
- United Nations Office for Disarmament (UNODA), *Arms Trade Treaty*, 23 December 2014.

United Nations Office for Drugs and Crime (UNODC), *Protocol Against the Illicit Manufacturing of And Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime*, New York, 31 May 2001.

United Nations, *UN Register of Conventional Arms*, The Global Reported Arms Trade, 1991.

United Nations, UNSC Resolution 1540(2004) of 28 April 2004.

United Nations, UNSC Resolution 1857(2008) of 22 December 2008.

United Nations, UNSC Resolution 2200(2015) of 12 February 2015.

United Nations, UNSC Resolution 2207(2015) of 22 December 2015.

United Nations, *The UN General Assembly Guidelines on International Arms Transfers were an outcome of the UN Disarmament Commission's 1996 substantive session from April 22 - May 7, 1996*.

U.S. Code § 6032 - *Enforcement of economic embargo of Cuba*, in United States Code, 2006 Edition, Supplement 3, Title 22 - Foreign Relations and Intercourse.

Wassenaar Arrangement, *Public Statement by the Wassenaar Arrangement on the Arms Trade Treaty (ATT)*, 3 June 2013.

World Trade Organisation, *European Communities — Measures Affecting Asbestos and Products Containing Asbestos*, DS135, Report of 5 April 2001.

World Trade Organisation, *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, dispute DS400, Report of 18 June 2014.

World Trade Organization, *GATT Analytical Index*, Article XXI "Security Exceptions", pp. 599-610.

World Trade Organisation, *Thailand - Restriction on importation of and internal taxes on cigarettes*, Report of the Panel adopted on 7 November 1990 (DS10/R - 37S/200).

World Trade Organisation, *United States - Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R of 12 October 1998 (98-0000).

## Websites

Arms Control: <https://www.armscontrol.org>

Australia Group: <http://www.australiagroup.net/en/>

Comprehensive Nuclear-Test-Ban Treaty Organization: <https://www.ctbto.org>

Death Penalty Information Center: <http://www.deathpenaltyinfo.org>

European Commission: [http://ec.europa.eu/index\\_en.htm](http://ec.europa.eu/index_en.htm)

European Council: <http://www.consilium.europa.eu/en/home/>

European Parliament: <http://www.europarl.europa.eu/portal/en>

European Union: <http://eur-lex.europa.eu/oj/direct-access.html>

International Small Arms Control Standards (ISACS): <http://www.smallarmsstandards.org>

Geopolitical Monitor: <https://www.geopoliticalmonitor.com>

Kimberley Process: <https://www.kimberleyprocess.com/en>

Stockholm International Peace Research Institute: <https://www.sipri.org>

Transparency International: <https://www.transparency.org>

Unesco: <http://en.unesco.org>

Unidroit: <http://www.unidroit.org/about-unidroit/overview>

United Nations: <http://www.un.org>

Wassenaar Arrangement: <http://www.wassenaar.org>.

Organisation for the Prohibition of Chemical Weapons (OPCW): <https://www.opcw.org>

World Diamond Council: <https://www.worlddiamondcouncil.org>

World Trade Organisation: <https://www.wto.org>