BLURRING THE BOUNDARY BETWEEN SECURITY AND PROTECTIONISM: A CRITICAL ASSESSMENT OF THE FRAGMENTATION OF THE ASIAN TRADING ORDER

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ABSTRACT

Trade liberalisation has long underpinned regional economic integration, and geopolitical rivalry is now testing it. States increasingly rely on export controls, tariffs, investment restrictions and supply-chain measures justified as economic security. The US–China rivalry has pushed these tools to the centre of Asian trade policy, while ASEAN states hedge between the two powers. The paper asks to what extent GATT Article XXI can accommodate legitimate economic-security measures without letting security justifications drive protectionist fragmentation, and what framework can reconcile economic resilience with regional integration in Asia. Using a doctrinal method and a bounded case study of the US–China rivalry, it argues that economic security should not serve as a blanket justification for protectionism. It proposes a four-factor test (nexus, necessity and proportionality, non-discrimination, and external review) drawing on WTO necessity analysis and on the CFIUS and EU investment-screening regimes. Applied to the case study, the test shows that some measures hold up and others do not. ASEAN's hedging depends on a more disciplined approach to Article XXI, and resilience and openness need not compete.

Keywords: Economic Security; Free Trade; Asian Trading Order; WTO; GATT Article XXI; Trade Fragmentation; Geopolitical Risks; Economic Resilience; Regional Economic Integration.

I. Introduction

In May 2024 the United States announced a round of tariff increases on Chinese goods in what it called strategic sectors. The rate on electric vehicles went from 25 percent to 100 percent. Semiconductors were scheduled to go from 25 to 50 percent by 2025, and certain steel and aluminium products to 25 percent.[1] The White House described the package as a response to unfair trade practices, and in the same document called the targeted sectors vital to the country's economic future and national security.[2] The legal footing was Section 301 of the Trade Act of 1974, which is a trade remedy statute and not a security statute. The language around it, though, was the language of security.

That overlap is the subject of this paper. When a government says a trade restriction is needed for security reasons, who checks the claim? For most of the GATT's history the practical answer was that nobody did. Since 2019 WTO panels have said that somebody can, but the case law they produced was built on wars, sanctions and border closures. It says little about a tariff on car batteries or a licensing rule on advanced chips, and those are the measures that now define the dispute.

The question matters most in Asia, where goods cross several borders before they reach a buyer, so a restriction aimed at one country lands on many. Southeast Asian governments have tried to stay on good terms with both Washington and Beijing, and whether that can last depends partly on how much room great powers have to restrict trade in the name of security.

We ask two linked questions. To what extent can GATT Article XXI accommodate legitimate economic-security measures without letting security justifications become a vehicle for protectionist fragmentation? And what framework can reconcile economic resilience with regional integration in Asia? Our answer to the first is that Article XXI can absorb more than critics fear and less than some governments hope, provided its review is given structure. We propose a four-factor test (nexus, necessity and proportionality, non-discrimination, and

[1] U.S. Trade Representative, *Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation* (May 14, 2024); *see also USTR Releases the Results of Its Four-Year Review of China Section 301 Tariffs*, King & Spalding (May 14, 2024), https://www.kslaw.com/insights/articles/ustr-releases-the-results-of-its-four-year-review-of-china-section-301-tariffs (listing the product-level rate changes).

[2] *Fact Sheet: President Biden Takes Action to Protect American Workers and Businesses from China's Unfair Trade Practices*, The White House (May 14, 2024), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2024/05/14/fact-sheet-president-biden-takes-action-to-protect-american-workers-and-businesses-from-chinas-unfair-trade-practices.

external review) for separating defensible security measures from disguised protectionism. Our answer to the second is that resilience is better pursued through deeper regional integration than through fragmentation, and that the test gives ASEAN states a vocabulary for saying so.

The method is doctrinal. We read Article XXI and its WTO interpretation, then test the framework against a bounded case study of the United States and China, covering selected tariffs, export controls, investment restrictions and supply-chain measures. We do not claim the rivalry represents the Asian trading order as a whole. It is the best documented instance of security-based trade measures at scale, which makes it the hardest test for any framework that claims to tell real security concerns from pretext. Models of fragmentation often treat the legal trigger for a security measure as a given. This paper tries to open that box.

II. The text and the old argument about who decides

Article XXI of the GATT 1994 sits among the exceptions, but it is unlike the general exceptions in Article XX. It provides that nothing in the Agreement prevents a member from taking "any action which it considers necessary for the protection of its essential security interests" in three listed situations.[3] The first covers fissionable materials. The second covers traffic in arms and in other goods supplied to a military establishment. The third covers action "taken in time of war or other emergency in international relations."[4] Article XXI(a) separately says that no member can be required to disclose information contrary to its essential security interests, and Article XXI(c) preserves action under the United Nations Charter.

The drafting invites two readings. On the first, the words "which it considers" hand the whole matter to the state that acts, and a panel can do no more than note that the exception was invoked. On the second, those words leave the state some discretion but the three subparagraphs describe circumstances that can be checked against facts. For decades the first reading had the louder advocates. Washington argued that Article XXI is self-judging and that a measure taken under it is outside the reach of dispute settlement, and a majority of members that spoke on the point in GATT-era practice appeared to share that view.[5] The fear behind it is easy to understand. A panel that told a government what its security required would be

[3] General Agreement on Tariffs and Trade 1994 art. XXI(b), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187 [hereinafter GATT 1994].
[4] *Id.* art. XXI(b)(i)–(iii).
[5] Roger P. Alford, *The Self-Judging WTO Security Exception*, 2011 Utah L. Rev. 697 (surveying state practice and concluding that the exception is treated as self-judging but invoked in good faith).

making a political judgment it has no standing to make.

The opposite fear is just as old. If the exception is unreviewable, it is a switch any member can flip. Commentators writing before any panel had ruled warned that a self-judging clause, read literally, could swallow the rest of the agreement.[6] The GATT Contracting Parties came close to the problem in 1982, when they adopted a decision recalling that members should be informed of trade measures taken for security reasons, while stopping short of saying anything about review.[7] Alford's reading of that history is that restraint came from good-faith practice, not from law.[8]

III. What panels have said so far

The first ruling came in 2019. In *Russia — Measures Concerning Traffic in Transit*, Russia had barred road and rail transit of Ukrainian goods and argued that Article XXI(b)(iii) put its measures beyond review.[9] The panel disagreed in part. It held that whether the circumstances in the subparagraphs exist is for the panel to decide objectively, and that the discretion in the opening words of Article XXI(b) is bounded by the duty to act in good faith.[10] In practice, the panel said, a member has to articulate its essential security interests clearly enough to show they are real, and the measures must bear a minimally plausible connection to those interests.[11] It also took a view on what an "emergency in international relations" is. The phrase refers to armed conflict or its latent form, heightened tension or crisis, or general instability around a state, and a political or economic disagreement between members does not by itself qualify.[12] On the facts, Russia met the standard because the conflict with Ukraine since 2014 was an emergency of exactly that kind.[13] No party appealed, and the report was adopted.

A second panel applied the same reasoning to the identical wording in Article 73 of the TRIPS Agreement. In *Saudi Arabia — Measures Concerning the Protection of Intellectual Property*

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[6] Hannes L. Schloemann & Stefan Ohlhoff, *"Constitutionalization" and Dispute Settlement in the WTO: National Security as an Issue of Competence*, 93 Am. J. Int'l L. 424 (1999); Peter Lindsay, *The Ambiguity of GATT Article XXI: Subtle Success or Rampant Failure?*, 52 Duke L.J. 1277 (2003).

[7] GATT Contracting Parties, Decision Concerning Article XXI of the General Agreement, L/5426 (Nov. 30, 1982), GATT B.I.S.D. (29th Supp.) at 23 (1983).

[8] Alford, *supra* note 5, at 697.

[9] Panel Report, *Russia — Measures Concerning Traffic in Transit*, WTO Doc. WT/DS512/R (circulated Apr. 5, 2019, adopted Apr. 26, 2019) [hereinafter *Russia — Traffic in Transit*].

[10] *Id.* ¶¶ 7.101–.103.

[11] *Id.* ¶¶ 7.132–.138.

[12] *Id.* ¶¶ 7.74–.76.

[13] *Id.* ¶ 7.149.

Rights, the panel accepted that Saudi Arabia's measures against a Qatar-based broadcaster could be covered for part of the dispute, and rejected the defence for another part because the connection between the stated security interest and the conduct at issue was not plausible.[14] The practical lesson is that the good-faith standard can bite.

The third decision matters most for our purposes. In December 2022 a panel examined the 2018 United States tariffs on steel and aluminium, which Washington defended under Article XXI(b)(iii) and described as a matter for the United States alone.[15] The panel rejected that position. It read "emergency in international relations" to mean a situation of some gravity or severity, with international tensions of a critical or serious kind, and concluded that the United States had not shown the measures were taken in such a situation.[16] The United States notified an appeal on 26 January 2023.[17]

That appeal goes nowhere, because the Appellate Body has lacked a quorum since December 2019. A losing party can stop a report from taking effect by appealing "into the void."[18] The 2020 panel report on the Section 301 tariffs followed the same path. The United States defended those tariffs under the public morals exception in Article XX(a), not Article XXI, lost, and announced its appeal in October 2020.[19]

Two things are left open by all this, and both go to the heart of economic security. The first is the fit between the subparagraphs and the measures. Existing findings treat Article XXI(b)(iii) as a provision about emergencies, and the *Russia* panel said in terms that economic disagreement is not enough. Measures that respond to dependence on a foreign supplier, or to concern that a technology will strengthen a rival's military, do not obviously describe an

[14] Panel Report, *Saudi Arabia — Measures Concerning the Protection of Intellectual Property Rights*, ¶ 8.1(c), WTO Doc. WT/DS567/R (circulated June 16, 2020); Agreement on Trade-Related Aspects of Intellectual Property Rights art. 73(b)(iii), Apr. 15, 1994, Marrakesh Agreement, Annex 1C, 1869 U.N.T.S. 299.

[15] Panel Report, *United States — Certain Measures on Steel and Aluminium Products*, WTO Doc. WT/DS544/R (circulated Dec. 9, 2022) [hereinafter *US — Steel and Aluminium*].

[16] *See Dispute Settlement DS544: United States — Certain Measures on Steel and Aluminium Products*, World Trade Org., https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm (last visited Oct. 26, 2026) (summarising the panel's findings under Article XXI(b)(iii)).

[17] *Id.* (recording the notification of appeal).

[18] *See* Understanding on Rules and Procedures Governing the Settlement of Disputes art. 25, Marrakesh Agreement, Annex 2, 1869 U.N.T.S. 401 (the basis for the Multi-Party Interim Appeal Arbitration Arrangement, which offers appeal arbitration among participating members only).

[19] Panel Report, *United States — Tariff Measures on Certain Goods from China*, WTO Doc. WT/DS543/R (circulated Sept. 15, 2020); Cong. Rsch. Serv., Legal Sidebar LSB10553 (Apr. 5, 2022), https://www.everycrsreport.com/reports/LSB10553.html (noting the United States' announced appeal on Oct. 26, 2020 and the Appellate Body's lack of quorum).

emergency in international relations. A government that wants to defend them under Article XXI has to stretch the text, and a panel that wants to accept them has to say how far. The second is the review that follows once a member passes the threshold. The good-faith standard asks for articulation and plausibility. It does not ask whether the measure is proportionate, whether other states with the same risk are treated alike, or whether anyone outside the invoking government can test the claim. A government can satisfy a plausibility standard with a measure that is much broader than the risk it names. The case law has not yet had to say whether that is acceptable. Our test is an attempt to supply what the case law has so far left out.[20]

IV. A four-factor test

The test has four parts. Each asks a question that a panel, a negotiator or an affected state could answer from the public record of a measure.

The first is nexus. Is there an identifiable and articulable security interest behind the measure, or only a general reference to national security? This factor draws directly on the good-faith standard in *Russia — Traffic in Transit*, which already requires a member to say what its interest is and to link the measure to it.[21] A measure with a clear nexus names the risk, such as the transfer of dual-use technology to a military end user. A measure without one repeats that the sector is "critical" and leaves it there.

The second is necessity and proportionality. Is the measure sized to the risk it identifies, or does it reach well beyond? This borrows from the necessity analysis under Article XX, where the Appellate Body has asked panels to weigh the importance of the interest, the contribution of the measure to it, and the trade restrictiveness of the measure, and to consider whether a less restrictive alternative is reasonably available.[22] Article XXI does not say "necessary" in the same way as Article XX, because the member "considers" the action necessary. The word still appears, though, and we think a good-faith reading can bring a lighter version of the same weighing into it. A restriction that covers ten categories of goods to address a risk located in

[20] *See* Tania Voon, *The Security Exception in WTO Law: Entering a New Era*, 113 Am. J. Int'l L. Unbound 45 (2019) (discussing the questions the *Russia* report left open); Pramila Crivelli & Mona Pinchis-Paulsen, *Separating the Political from the Economic: The Russia–Traffic in Transit Panel Report*, 20 World Trade Rev. 582 (2021).

[21] *Russia — Traffic in Transit*, WTO Doc. WT/DS512/R, ¶¶ 7.132–.138.

[22] Appellate Body Report, *Korea — Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, ¶¶ 161–64, WTO Doc. WT/DS161/AB/R, WT/DS169/AB/R (adopted Jan. 10, 2001); Appellate Body Report, *Brazil — Measures Affecting Imports of Retreaded Tyres*, ¶¶ 139–56, WTO Doc. WT/DS332/AB/R (adopted Dec. 17, 2007).

two is hard to explain as good faith.

The third is non-discrimination. Is the measure applied consistently across states with a similar risk profile, or does it single out one state and spare others that pose the same concern? The factor does not forbid country-specific action. A measure aimed at one state is fine if that state is the only one with the relevant capability. The factor asks about the states left out. If a measure justified by the risk from advanced chips reaches one country but ignores a second country with the same access, the stated nexus starts to look like a label.

The fourth is external review. Is there any meaningful avenue, in WTO dispute settlement or elsewhere, for the claim to be tested rather than simply asserted? A measure that cannot be challenged anywhere gives no signal that the security reasoning could withstand scrutiny, and it invites imitation. This factor is about the system around the measure as much as the measure itself.

These factors are not new inventions. They are the common core of regimes that already exist. The United States screens inbound investment through the Committee on Foreign Investment in the United States, which since 2018 operates under the Foreign Investment Risk Review Modernization Act and looks at whether a transaction threatens national security.[23] The European Union's screening regulation sets minimum requirements for the national mechanisms of its member states. Those mechanisms must be transparent, must not discriminate between third countries, and must let foreign investors seek recourse against screening decisions.[24] Put those requirements next to the Article XX case law and three of our four factors are already there in some form: a link to a risk, proportion to it, even-handed application, and an outside check. The point of the test is to carry them into the review of Article XXI.

The test has limits. Its first two factors can be applied under existing law, because nexus is the good-faith inquiry that *Russia* already requires and proportionality can be read into it. The other two are harder. A panel cannot create an external review mechanism, and it would be reaching to read a general non-discrimination duty into a clause that has none. For those, members could

[23] 50 U.S.C. § 4565; Foreign Investment Risk Review Modernization Act of 2018, Pub. L. No. 115-232, tit. XVII, 132 Stat. 1636, 2173.

[24] Regulation 2019/452, of the European Parliament and of the Council of 19 March 2019 Establishing a Framework for the Screening of Foreign Direct Investments into the Union, arts. 3(2), 3(5), 2019 O.J. (L 79 I) 1.

adopt an authoritative interpretation by a three-fourths majority under Article IX:2 of the Marrakesh Agreement, which is a high bar, or groups of states could write the discipline into their own agreements.[25] The test therefore works as a method for adjudicators and as a checklist that governments can run on their own measures.

V. Testing the test on the United States and China

Take export controls on advanced semiconductors first. In October 2022 the Bureau of Industry and Security imposed new controls on advanced computing chips and semiconductor manufacturing items destined for China, and it stated that the purpose was to restrict China's military modernization and its ability to commit human rights abuses.[26] On nexus, this does well. The interest is named and linked to the product. On proportionality the picture is more mixed but not poor. The rules define their coverage through technical performance thresholds, which ties the reach of the control to the capability that worries the regulator, and BIS revised the rules in October 2023 after public comment, both to narrow some aspects and to close loopholes.[27] The revisions also extended certain licensing requirements to additional countries, which speaks to non-discrimination: a control that stops at the border of one state while the same chips can flow through another would fail this factor, and the update was in part a response to that gap.[28] The weak point is external review. These are unilateral executive rules, and no tribunal outside the United States has examined whether the thresholds are proportionate. The measure therefore passes three factors comfortably and the fourth only thinly.

The 2024 tariff increases look different. The White House fact sheet speaks of strategic sectors and also of unfair practices, overcapacity and export surges.[29] The legal vehicle is a statute on unfair trade practices, and the stated aim is to encourage China to change those practices. Where the justification is leverage over another government's conduct, the nexus to a security

[25] Marrakesh Agreement Establishing the World Trade Organization art. IX:2, Apr. 15, 1994, 1867 U.N.T.S. 154.
[26] Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification, 87 Fed. Reg. 62,186 (Oct. 13, 2022).
[27] Implementation of Additional Export Controls: Certain Advanced Computing Items; Supercomputer and Semiconductor End Use; Updates and Corrections, 88 Fed. Reg. 73,458 (Oct. 25, 2023); Export Controls on Semiconductor Manufacturing Items, 88 Fed. Reg. 73,424 (Oct. 25, 2023).
[28] *BIS Releases New Rules Updating Restrictions on Advanced Computing Chips, Manufacturing Equipment, and Supercomputing Items to Countries of Concern*, Mondaq (2023), https://www.mondaq.com/unitedstates/export-controls-trade-investment-sanctions/1385082/bis-releases-new-rules-updating-restrictions-on-advanced-computing-chips-manufacturing-equipment-and-supercomputing-items-to-countries-of-concern.
[29] *Fact Sheet*, *supra* note 2.

interest is thin. The 100 percent rate on electric vehicles is the clearest example: a claim that it is needed for security would have to say what interest it serves, and the official statements say mostly something else. Proportionality is also hard to show. The Section 301 tariffs cover goods worth approximately $370 billion in annual trade, which is most of what the United States buys from China, and a measure that broad cannot easily be described as calibrated to a specific risk.[30] The reasoning still blends leverage, resilience and security, and a panel would have to separate them before applying Article XXI.[31] Country-specific measures aimed at product-level risks raise a further problem: production moves, so the measure either follows it to neighbouring states or stops, and in the second case the nexus erodes because the named risk is still being met elsewhere. Southeast Asian exporters are where that question tends to arrive.

The steel and aluminium case from Part III shows the problem on external review. The United States declined to treat Article XXI as reviewable at all, and it blocked the effect of the loss by appealing where no one can hear the appeal.[32] A measure defended on the position that no one outside the state may examine it fails the fourth factor by design.

The picture is uneven, which we think is the correct result. Some measures have a clear nexus and reasonable proportion and fall short mainly on review. Some measures are justified by leverage and not by security, and belong under a different legal heading. And some measures are defended on a basis that puts them out of reach of any test. A binary judgment of "legitimate" or "illegitimate" would flatten these differences. The four factors let a panel, or a government reviewing its own policy, say which part of a measure is defensible and which part is protection under another name.

VI. What this means for ASEAN's hedging

None of this stays inside the US–China relationship. Southeast Asian economies sit in the middle of the supply chains that the measures disturb, and their governments have chosen a strategy that depends on both sides staying reachable.

Cheng-Chwee Kuik's account of hedging is the standard reference. A state hedges when it

[30] *USTR Continues 4-Year Review of Actions Taken Against China Under Section 301*, Holland & Knight (Jan. 5, 2023), https://www.hklaw.com/en/insights/publications/2023/01/ustr-continues-4year-review-of-actions-taken-against-china.
[31] *See supra* note 1.
[32] *US — Steel and Aluminium*, WTO Doc. WT/DS544/R.

pursues policies that point in different directions toward competing powers so that it has a fallback if conditions change, combining options that maximise returns with options that guard against risk.[33] The condition for hedging to work is that a state can keep dealing with both powers. The trade numbers show how real that condition is. In 2023 China was ASEAN's largest trading partner, with trade of about $702 billion, or 19.7 percent of ASEAN's total, and the United States was second, at about $395.9 billion and 11.2 percent.[34]

Broad, loosely disciplined security justifications threaten that arrangement through at least three channels. They raise the odds that a third state's exporters will be hit by a restriction that was aimed elsewhere, as production relocates to avoid country-specific measures. They push third states to adopt defensive measures of their own, because a government that expects to be caught in the crossfire will want something to point to when it is. And they push firms to move capacity on the expectation of future restrictions, which changes the economic relationship before any measure formally applies.

A more disciplined approach to Article XXI works in the opposite direction. If the major powers know that a security claim will be examined for nexus, proportion, consistency and review, pretextual protection becomes more expensive to attempt. That in turn lowers the pressure on third states to retaliate or realign, and it protects the market access and supply chains on which hedging relies.

ASEAN members also have homework of their own. The Regional Comprehensive Economic Partnership, which entered into force on 1 January 2022 and joins ASEAN to China, Japan, Korea, Australia and New Zealand, has its own security exception, and its wording is the self-judging wording that the WTO panels have been working to discipline.[35] One of its provisions on data localisation goes further and says that measures a party considers necessary for its

[33] Cheng-Chwee Kuik, *The Essence of Hedging: Malaysia and Singapore's Response to a Rising China*, 30 Contemp. Se. Asia 159 (2008).

[34] *China Emerges as ASEAN's Top Trading Partner*, VietnamPlus (Sept. 23, 2024), https://baobinhduong.vn/en/china-emerges-as-asean-s-top-trading-partner-a331560.html; *US Ranks ASEAN's 2nd Largest Trade Partner*, Lao Nat'l News Agency (Sept. 20, 2024), https://kpl.gov.la/EN/detail.aspx?id=86035; *see also Overview: Integration with Global Economy*, ASEAN, https://asean.org/our-communities/economic-community/integration-with-global-economy/overview/.

[35] Regional Comprehensive Economic Partnership Agreement art. 17.13, Nov. 15, 2020 (entered into force Jan. 1, 2022); Jingyuan (Joey) Zhou, *An Important Step Forward and a Delicate Balance: Observations on the Regional Comprehensive Economic Partnership*, ASIL Insights, vol. 24, issue 30 (Dec. 10, 2020), https://asil.org/insights/volume-24-issue-30/ (noting that neither Article 10.15 nor Article 17.13 defines "essential security interests").

essential security interests may not be disputed by other parties.[36] A region that wants the major powers to discipline their security claims has an obvious credibility problem if its own flagship agreement leaves them unexamined. ASEAN is well placed to start with a shared understanding, adopted through the RCEP institutions, on how members will articulate and justify security measures to one another.

VII. Objections

The first is that panels should not be doing this at all. One line of argument holds that insisting on panel review of what members consider their essential interests will make it harder to restore binding dispute settlement, because the powers whose cooperation is needed will not accept a system that tests their security claims.[37] We take this seriously. Our reply is that the test asks panels to do less than the objection assumes. It leaves the identification of the interest to the member and asks for an account of the link, a rough proportion, even treatment and some outside check. That is a modest standard, and a panel can apply it without deciding what a country's security requires. The alternative, in which review is refused and the exception grows in practice, has its own costs for the same system.

The second objection is that the test would chill legitimate action, or that governments will draft around it. Some drafting behaviour is the price of requiring reasons, since a government that must write down a nexus and a proportionality rationale has to think about them first. The uneven results in Part V also show that the test does not condemn security measures as a class.

The third is that the case study is too narrow. It is. The United States and China are one dyad, and Asian trade involves much more. But if a framework cannot sort the measures in the best documented and most contested case, it will not be useful elsewhere.

VIII. Conclusion

Our contribution is twofold. Doctrinally, we turn the review of Article XXI into a four-factor test that panels and states can apply, so that the question of who decides is not left as an open standard. Two of the factors can be applied under existing law, and the other two need

[36] *RCEP's Airtight Data Localization Security Exception*, Int'l Econ. L. & Pol'y Blog (Sept. 2021), https://ielp.worldtradelaw.net/2021/09/rceps-airtight-data-localization-security-exception/.

[37] *When Sovereigns Clash and International Rules Fail: Dealing with National Security at the WTO*, Peterson Inst. for Int'l Econ. (2023), https://www.piie.com/commentary/speeches-papers/2023/when-sovereigns-clash-and-international-rules-fail-dealing-national.

collective action or regional agreements to become real. Regionally, we apply the test to ASEAN's hedging, a perspective that the Article XXI literature, which is overwhelmingly about the United States and China themselves, has not offered.

Resilience and openness are not opposites. A state can protect itself against a real vulnerability and still keep the market access that others have built their economies around. What it cannot do, if the system is to hold, is claim both at once without giving anyone the ability to check. The next step, which we leave to further work, is to test the factors against measures taken by Asian governments other than the United States and China, and to examine whether an ASEAN or RCEP understanding on security exceptions could be drafted in terms that its members would accept.