



Trade Talk

Security Exceptions in Domestic and International Courts/Tribunals

Keynote Speaker

Hon'ble Justice S. Ravindra Bhat
Former Judge of the Supreme Court of India

This Trade Talk will explore the trend of using emergency powers and security exceptions in international economic law.

Date: 21 November 2025 **Time:** 6:30 PM

Venue: Nalanda Hall, Dr. Ambedkar International Centre, New Delhi

Concept Note

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Background

Security has long framed exceptions in international trade; today, it has moved closer to making the rules. In recent times, we have seen governments treating economic or trade policy as matters of national security, justifying tariffs, quotas, export controls, investment screening, data localization rules, and subsidies on security grounds rather than purely economic ones. The United States' (U.S.) tariffs on steel and aluminium under section 232 of the Trade Expansion Act of 1962,¹ the U.S.' CHIPS Act that ties industrial subsidies to safeguarding critical infrastructure and U.S. security, Japan's Economic Security Promotion Act that explicitly links economic security with national security, China's export controls on rare earth materials, and the European Union's Anti-Coercion Instrument, are some examples of this growing trend.

A timely illustration of this tension between security, emergency powers, and trade rules is the ongoing U.S. tariff litigation under the International Emergency Economic Powers Act.² This dispute has become a landmark test of how far emergency economic powers may be stretched to justify tariff actions. The case offers a practical lens through which broader questions of economic security and judicial oversight can be understood. The domestic lawsuits brought by private parties and certain U.S. states challenge the scope of emergency authority, the role of the Congress and the President in tariff-setting, and constitutional principles, such as the non-delegation and major questions doctrines. While several matters were filed in federal district courts and specialized forums, the core legal issues concern statutory interpretation of emergency powers, separation of powers, and the administration of remedies.

¹ "Adjusting Imports of Aluminum and Steel into the United States – The White House" (*The White House*, June 3, 2025) <https://www.whitehouse.gov/presidential-actions/2025/06/adjusting-imports-of-aluminum-and-steel-into-the-united-states/>

² This dispute challenges the Executive Order 14193 (as amended) 'Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border' (Canada Tariff Order); Executive Order 14195 (as amended) 'Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China' (China Tariff Order); Executive Order 14194 (as amended) 'Imposing Duties to Address the Flow of Illicit Drugs Across Our Southern Border' (Mexico Tariff Order); Executive Order 14257 (as amended) 'Regulating Imports With a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits.'

Meanwhile, the GATT Article XXI³ (*Security Exceptions*) allows WTO Members to adopt measures that are WTO-inconsistent as long as the Member considers the measure to be necessary to protect its essential security interests and the measure falls within the ambit of the three subparagraphs of GATT Article XXI(b): (i) relating to fissionable materials; (ii) or traffic in arms, ammunition and implements of war; or (iii) taken in the time of war or other emergency in international relations. However, previous dispute settlement panels of the World Trade Organization (WTO) have ruled that in case of emergency in international relations, the emergencies should be tied to armed conflict or severe international tensions, not general economic conditions like trade deficits.⁴ In contrast, certain Members have a long-standing position that GATT Article XXI is wholly self-judging in character (because its text includes the phrase “which [the contracting party] considers necessary for the protection of its essential security interests”), and thus, it is non-justiciable. However, this assumption has been rejected by the WTO panels.

In the investment regime, “essential security interests” clauses now appear in two forms: non-self-judging provisions that refer to “measures necessary” (e.g., EU-Canada Comprehensive and Economic Trade Agreement, Art. 28.6; India Model BIT 2015, Article 33(ii)) and self-judging provisions (e.g., U.S. Model BIT 2012, Article 18; US-Canada-Mexico Agreement, Article 32.2) the latter reserving broader unilateral discretion to states. Treaty practice has shifted toward self-judging language in security exceptions, which has grown steadily since 1992,⁵ with the U.S. being an early mover and the U.S., Canada and Japan among the leading users. For non-self-judging clauses, tribunals have treated the exception as reviewable and undertaken substantive review, as in the Argentina crisis cases (*CMS*, *LG&E*, *Enron*, *Sempra*, *Continental Casualty*), applying necessity tests drawn from international law. For self-judging clauses, there is practice indicating tribunals tend to conduct at least a “good faith” inquiry, assessing honest and fair dealing and a rational basis for invoking security - though their contours remain unsettled. For example, in *Samuel Seda v Colombia*, Colombia invoked the security exceptions clause under Article 22.2 of the US-Colombia Trade Promotion Agreement that contained self-judging terminology. The investment tribunal applied the standard of good faith and made an assessment if there was a plausible nexus between the contested measure and Colombia’s security interest i.e., combating drug trafficking, similar to the approach that has been adopted by previous WTO panels.

³ General Agreement on Tariffs and Trade 1994, art XXI.

⁴ Panel Report, *Russia – Traffic in Transit*, paras 7.122-7.123; Panel Report, *Saudi Arabia – Intellectual Property Rights*, paras 7.257-7.266 (The dispute involved Article 73(b)(iii) of the TRIPS Agreement, which is the corresponding provision to GATT Article XXI(b)(iii).)

⁵ See Sauvant et al, *The Rise of Self-Judging Essential Security Interest Clauses in International Investment Agreements*, 188 Columbia CTR. on Sustainable Inv. 1 (Dec. 5, 2016), <https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/publications/No-188-Sauvant-Onq-Lama-and-Petersen-FOR-WEBSITE-FINAL.pdf>

Objective

This Trade Talk will facilitate a general discussion on the trend of using emergency powers and security exceptions in international economic law, and the adjudication of security exceptions and emergency powers across domestic and international tribunals. The discussion will include:

1. whether the boundary between economic security and national security is blurring;
2. the U.S.' ongoing domestic litigation on emergency powers and tariffs;
3. potential implications for the international economic regime; and
4. India's strategy or response, including bilateral engagement, WTO avenues, and remedies in the domestic regime.

Agenda for the Event

Date: 21 November 2025 **Time:** 6:30 PM IST

Venue: Dr. Ambedkar International Centre, New Delhi

Session	Time and Speaker
Introductory Remarks	5 minutes [CTIL Staff]
Welcome Remarks	5 minutes Prof. James J. Nedumpara (Head, Centre for Trade and Investment Law)
Keynote Address	[10] minutes Hon'ble Justice S. Ravindra Bhat Former Judge of the Supreme Court of India
Trade Talk	45 minutes <i>Panelists</i> 1. Mr. Sanjay Chadha (Former Additional Secretary, Department of Commerce) 2. Mr. Sanjay Notani (Partner, Economic Laws Practice) 3. Ms. Moushami Joshi (Senior Counsel, Husch Blackwell, USA) 4. Ms. Sujaya Sanjay (Associate, CTIL) <i>Moderator</i> Prof. James J. Nedumpara (Head, CTIL)
Questions and Answers	15 minutes
Vote of Thanks	2 minutes [CTIL Staff]
Dinner (8:00 PM)	
