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A Study on the Legitimisation of Energy Security Policies under GATT Article XX

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Abstract. Energy security is now linked to environmental protection and climate governance. Because of this, energy-related trade measures have become an important issue in both geopolitics and environmental politics. This paper asks how these measures can be justified under WTO law, especially under GATT Article XX.This paper uses discursive institutionalism as its theoretical framework. It studies legal rules, WTO case law, and the way states justify their policies under Article XX. It uses qualitative analysis of three cases: the EU–Russia Energy Dispute (DS476), China–Rare Earths (DS431, DS432, DS433), and India–Solar Cells (DS456). The cases show that states often use discourse to build legitimacy for their energy policies. They use ideas such as energy security, environmental protection, and climate goals to explain their measures. But WTO Panels usually read Article XX in a narrow way. They require strict proof of necessity, proportionality, and evidence. As a result, most state claims fail to meet these standards. This shows a gap between political legitimacy and legal legitimacy. States may present their policies as legitimate through discourse, but this does not mean that the WTO will accept them as legal exceptions. This paper connects discourse analysis with legal interpretation. It also helps explain how states may better align energy policies with WTO rules.

Keywords: GATT Article XX, Energy Security, Legitimization, WTO Dispute Settlement, Discourse Institutionalism

1. Introduction

Energy security has always been a core issue in geopolitical struggles. At first, energy security was regarded as providing reliable energy supplies at reasonable prices to support economic and commercial development [1]. However, with the continuous changes in energy transition, cross-border energy use and the climate system, sustainable production, transportation and consumption have made energy security a multi-dimensional concept [2]. To meet this demand, energy policies of various countries are increasingly integrating with the frameworks of environmental protection and climate governance. Trade measures related to energy have become the focus of the dual conflict between geopolitics and ecological governance [3, 4]. Yet the legitimacy of these measures remains controversial under World Trade Organisation (WTO) law, particularly GATT Article XX.

Despite increasing legal scholarship examining the interpretation of Article XX of the WTO Agreement in dispute settlement, particularly concerning environmental protection and public

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health, little attention has been paid to the argumentative strategies employed by states to defend contentious energy measures. For instance, countries always describe these measures as a necessary condition for environmental protection, strategic autonomy or global disputes. This means that there is a tension between the state-led discourse claims on legitimacy and the legal reasoning of the WTO. This has led to the WTO's legal reasoning continuing to test how to achieve the boundaries of energy security under multilateral trade rules. Therefore, researching how these narratives were accepted, resisted or rejected in WTO rulings carefully is beneficial to improve WTO law and trade relationship, facilitate the effective use of energy, and create a cleaning, beautiful and harmonious world.

This study takes discourse institutionalism as the main theoretical perspective. In this research perspective, the study makes use of legal analysis and case study methods to explore the interaction between this discourse mechanism and WTO rules. In other words, through citing strategic necessity discourse, such as environmental urgency and global disputes, this study examines how various countries have aligned energy-related trade policies with current WTO norms. Then, this study takes the case of India, China and Europe, investigating how countries adjust their trade policies under the framework of Article XX of the GATT by using policy language of Article XX, thereby safeguarding national energy security in the context of climate change and the continuous rise in energy demand. Some research illustrate that countries are increasingly citing energy security as a reason for trade restrictions under Article XX of the GATT, whereas the WTO only accepts claims that are relevant to specific paragraphs and supported by clear and objective evidence. This highlights the gap between discursive legitimisation by states and the legal requirements of Article XX.

Consequently, this study aims to address the following core question: How can countries use Article XX of the GATT to legalize their energy-related policies? This question primarily involve how states employ discourse to legitimise energy-related trade measures under Article XX. In order to solve this problem, this paper employs discourse institutionalism theory to carry out a qualitative examination. It mainly includes legal analysis of three WTO dispute cases: EU and Russia, China with rare earth, and India with Solar Cells. These cases illustrate how states employ discursive strategies to frame energy-related trade measures as legitimate under Article XX and the legal constraints that shape these strategies.The remainder of this paper is organised as follows. Chapter 2 reviews the literature on energy security and discursive institutionalism. Chapter 3 explains the research methodology and analytical framework. Chapter 4 examines three WTO disputes involving India, China and the European Union. Chapter 5 analyses the findings through the lens of discursive institutionalism, followed by policy recommendations and concluding remarks.

2. Literature review

This literature review has five main parts. The first part explains the idea of energy security. The second part introduces discursive institutionalism. It is used to study how states use ideas and discourse to build legitimacy in trade policy. The third part explains the legal framework of GATT Article XX. It mainly looks at how its sub-paragraphs are used in energy and environmental disputes. The fourth part discusses how states use discourse to justify energy-related trade measures, even when their legal arguments are weak. The fifth part examines the limitations of Article XX, which shows that the WTO often uses narrow legal reasoning.

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2.1. Energy security

Energy security is seen as a concept with both objective and subjective sides. From the objective side, energy security means supply security and demand security. From the subjective side, energy security is often shaped by geopolitics, the economy, and other power relations. These factors can create a feeling of security or insecurity [5]. Some scholars also argue that security has both subjective and objective aspects, and this idea can be used to understand energy security. In the objective sense, supply security means stable and available energy supply and stable prices. In the subjective sense, energy insecurity becomes an important factor affecting energy security [6]. This feeling of insecurity comes from political, economic, and environmental risks, such as climate change [6, 7].

The threats posed by political and economic factors to energy security are generally international conflicts arising from the competition for scarce resources. Energy-exporting countries long for fair and stable prices, while importing countries hope to have a stable and continuous supply. With the reduction in energy production and the imbalance in distribution, a series of contradictions related to energy trade have emerged [6]. For example, the large-scale oil supply suspension by the Organization of the Petroleum Exporting Countries in the 1960s, and the threat posed by Russia's abundant natural gas resources to neighboring countries and major natural gas-consuming countries increasingly raised the worry of energy security of countries [8].

Another important subjective factor is the environmental risk factor. Unlike traditional political and economic factors, this factor incorporates climate change into the consideration of energy security issues [6]. As the impact of fossil fuels on climate change deepens and the WTO increasingly emphasizes sustainable development, policies aimed at reducing the use of chemical fuels have also triggered conflicts among countries, creating more complex security risks [9]. In addition to the above two types, there are also energy security threats brought about by technical factors, such as explosions at hydropower stations and leaks at nuclear power plants caused by technical errors, which will pose threats to the surrounding areas and even further region [6].

Therefore, the considerations of contemporary countries regarding energy security are largely influenced by the above-mentioned factors. In this study, it is often not objective scarcity but subjective insecurity that prompts states to adopt contentious trade policies. These policies are subsequently framed through the legal discourse of Article XX of the General Agreement on Tariffs and Trade to gain legitimacy within the WTO framework. Yet such policies are frequently deemed unlawful as trade protection measures [10]. This study examines how the WTO responds to such discursive interactions, wherein energy policies are legitimised by invoking justifications such as environmental protection, supply shortages, or regulatory obligations.

2.2. Discourse institutionalism

Discourse institutionalism refers to the interactive process in which ideas are conveyed and exchanged through discourse [11]. It often refers to some ideas that prove cognition based on interests and the necessity of cognition, or normative concepts that are legitimized by expressing values and appropriateness [12]. Discourse institutionalism often involves expressing ideas through discourse, which includes frameworks, narratives, myths, collective memory, stories, and scripts, among others [11]. Hence, discursive institutionalism [12] provides a framework to analyse how states strategically frame their contested trade policies, such as export restrictions or subsidies as necessary for energy security, environmental sustainability, or global justice. It focuses on the role of ideas and discourse in legitimising policy actions within institutional contexts of GATT Article XX.

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This discursive framing becomes a critical tool for states to align their policies with the values embedded in GATT Article XX, even when their legal arguments are weak.

2.3. The legal framework of GATT Article XX

Article XX of the GATT provides a general exception to WTO trade obligations, allowing countries to adopt inconsistent measures for legitimate public purposes. The article contains ten subparagraphs, of which subparagraphs (b) (protection of life or health) and (g) (protection of exhaustible natural resources) are most relevant to energy and environmental policies [13]. At the same time, subparagraph (j) has been frequently invoked in energy-related conflicts, in disputes in which States consider energy components or strategic resources to be "general or local short supply". Although WTO Panels require strong evidence to prove such shortages, these cases show that Article XX(j) is still relevant to energy security and environmental change [9, 14].

Under this legal framework, states must meet the basic legal requirements. They also need to follow other legal standards. These standards are strict, so states often need to use clearer discourse to support the legitimacy of their policies. To use Article XX successfully, a WTO member state must meet the requirements of a specific subparagraph, such as Article XX(b), XX(g), or XX(j). It must also meet the general conditions in the opening part of Article XX. Based on WTO case law, the measure should not block international trade or unfairly discriminate against other trading countries. So, WTO Panels usually assess both the trade impact of the measure and the importance of its policy goal [9, 11, 15].

Scholars often point out that the current legal standards for determining nondiscrimination and testing whether energy policies comply with the exceptions are too vague and formalistic, which has negative implications for countries' energy security and the environment. For example, Olawuyi and Elena believe that uncertainty and ambiguity in current WTO rules hinder the harmonisation and implementation of WTO laws and policies, impede the energy transition, and lead to unsustainable and protectionist practices [16]. Nedumpara [9] also argues that the WTO focuses too much on non-discrimination and economic neutrality. This may weaken states' legitimate interests in protecting resource sovereignty or strategic autonomy. So, these interpretation standards have greatly limited the legal space for energy-related trade measures. As a result, states often have to construct legitimacy to meet the dual requirement of legal arguments and the discursive expectations of the WTO system. The next section examines how countries construct this legitimacy discourse in energy-related trade disputes.

2.4. Constructing legitimacy

Under the strict conditions of GATT Article XX case law, it is hard for countries to justify energy-related trade measures. Many countries use discourse strategies to make their policies look consistent with WTO rules, even when the legal basis is weak due to this limitation. Governments do not only rely on the written law. They also build narratives around environmental urgency, strategic need, or global fairness to justify their policies in the international field [15, 16].

In the India-Solar Cells case, India used GATT Article XX(j). It argued that solar cells and modules were in short supply in India. It also argued that these products were important for domestic energy security and sustainable development. Although India's legal defence under GATT Article XX failed, its argument still focused on environmental goals and sustainable development [17]. In China-Rare Earths, China argued that its export restrictions on rare earth minerals were needed for resource conservation and environmental protection. But some critics argued that China's

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real reason was economic protectionism [18]. Also, the EU used gas shortage arguments to justify measures that aimed to reduce dependence on Russian gas after the Ukraine conflict and protect its energy security [19, 20]. In these cases, states tried to connect their actions with wider normative ideas, even when their legal arguments were not strong enough.

Scholars have different views on whether these discourse strategies are useful. Some scholars argue that legitimacy discourse can reduce the negative effects of WTO violations, especially when the measures support global climate goals [9]. But other scholars argue that the WTO may ignore these narratives because it mainly follows strict legal interpretation [15]. Also, using exception clauses to support legitimacy discourse and expand security interests does not solve the deeper conflict between policy legitimacy, energy sovereignty, and security [21]. States use these legitimacy discourses widely because energy-related measures now need support not only from legal arguments, but also from ideas of fairness, sustainability, and political responsibility. On this basis, the next section examines how the WTO Dispute Body has interpreted these legitimacy discourses in practice, and whether current jurisprudence under GATT Article XX leaves room for harmonising trade rules with pressing environmental and energy security.

2.5. WTO jurisprudence and the limits of energy policy legislation

Although GATT Article XX provides legal exceptions that may accommodate environmental protection and resource conservation, existing scholarship generally agrees that WTO adjudicators interpret these exceptions narrowly. Rather than recognising broad policy objectives such as energy security, Panels and the Appellate Body have consistently required respondents to demonstrate strict compliance with the legal requirements of Article XX, including necessity, proportionality, and non-discrimination. As Farah and Cima observe, Article XX(g) requires a substantial relationship between the challenged measure and the conservation of exhaustible natural resources, together with equivalent restrictions on domestic production and consumption, thereby establishing a demanding legal threshold for invoking the exception [22]. Similarly, Selivanova argues that WTO dispute settlement bodies continue to prioritise technical consistency with trade rules over broader policy concerns such as energy security, resulting in a restrictive interpretation of Article XX that limits states' regulatory flexibility [23]. Asmelash likewise notes that renewable energy measures have frequently been scrutinised through the lens of trade liberalisation rather than long-term energy transition objectives, reinforcing the predominance of market-oriented reasoning within WTO jurisprudence [15].

Scholars further argue that these restrictive interpretations stem from the institutional design of the WTO itself. Unlike environmental protection or public health, energy security is not explicitly recognised as an independent objective within the WTO agreements. Consequently, states seeking to justify energy-related trade measures must rely on existing provisions under Article XX, particularly subparagraphs (b), (g), and (j), even though these provisions were not originally designed to address contemporary energy governance challenges. Dadush, Uri Osakwe, Chiedu, and their co-authors and his co-authors point out that the absence of energy-specific disciplines within the WTO legal framework has generated considerable uncertainty regarding the treatment of energy trade and security-related measures [24]. Likewise, Marhold argues that WTO jurisprudence remains largely centred on traditional trade disciplines, leaving limited room for accommodating state interests in resource sovereignty, energy transition, or strategic autonomy [25]. As a result, governments increasingly face the challenge of translating energy security concerns into the legal language of existing WTO exceptions rather than relying on an explicit legal basis.

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Despite these important contributions, current scholarship has focused predominantly on doctrinal interpretation and judicial reasoning, paying comparatively little attention to how states themselves construct the legitimacy of energy-related trade measures before and during WTO disputes. Most studies examine whether Article XX legally permits particular measures, whereas relatively few investigate the discursive strategies through which governments frame energy security, environmental protection, sustainability, or resource conservation as legitimate public policy objectives. Moreover, comparative analyses across different WTO energy disputes remain limited, particularly from the perspective of discourse institutionalism. To address these gaps, this study combines discourse institutionalism with comparative legal analysis to examine how states strategically invoke the language of GATT Article XX to legitimise energy-related trade measures and how these legitimisation strategies reveal the interaction between legal norms and policy discourse.

2.6. Research question and preliminary thesis

This study employs legal analysis and comparative case studies to examine how countries construct and invoke the discourse of legality under Article XX of the GATT to defend energy-related trade measures. By leveraging discourse institutionalism, this paper explores how the government can construct energy security, environmental protection and resource conservation within the legal language framework of Article XX to enhance the legitimacy of its policies. This study holds that countries are increasingly relying on Article XX, not only as a legal defense but also as a source of legitimacy for energy-related trade measures. By strategically invoking recognized public policy goals, governments around the world seek to align domestic energy policies with international trade rules. However, the effectiveness of these legalization strategies depends on whether they comply with the legal requirements of Article XX and the supporting evidence. Based on this, this study raises the following research questions:

How can countries use Article XX of the GATT to legalize their energy-related policies?

To answer this question, this article analyzes three representative WTO disputes to examine the discourse strategies adopted by various countries and their impact on the legitimacy of energy-related trade measures under the multilateral trading system.

3. Methodology

This study adopts a qualitative research method that combines legal analysis with case study, focusing on how countries construct and invoke their legitimacy claims under GATT Article XX in energy-related trade disputes.

3.1. Case selection

a) The EU and Russia's energy dispute (DS476)

b) China's Rare Earth Dispute (DS431/432/433)

c) India-Solar Cells (DS456)

These cases were chosen because they involve invoking Article XX of the General Agreement on Tariffs and Trade in the context of energy security, environmental protection or broader public policy reasons. Through comparison, the consistency, differences and limitations of WTO rulings in terms of interpretation and acceptance of legitimacy discourse can be evaluated.

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3.2. Data sources

a) The main legal texts: Reports of the WTO Panel of experts and the appellate Body, the provisions of the General Agreement on Tariffs and Trade, and the documents submitted by WTO members.

b) Secondary materials: academic articles, legal reviews, WTO laws, energy policies and academic literature on discourse theories

3.3. Analysis steps

The analysis proceeds in two stages. First, this study identifies key discourse elements, including energy security, sustainability, and public health, under GATT Article XX, and examines how states construct legitimacy for their energy-related trade measures through these narratives. Second, it analyses how these discursive strategies are reflected in selected WTO disputes by examining the legal requirements of GATT Article XX, particularly the standards of necessity, proportionality, and evidentiary support. This stage is intended to identify the legal constraints that shape state legitimisation strategies rather than to evaluate WTO jurisprudence as an independent object of study.

This analytical approach demonstrates the interaction between discourse and law. It explains how states seek to align domestic energy policies with multilateral trade rules while illustrating how the legal framework of GATT Article XX influences the construction and effectiveness of these legitimacy claims.

4. Case study

This section explores how WTO members use policy discourse under Article XX of the GATT to justify controversial energy trade policies, with a particular focus on claims related to energy security and environmental protection. Based on a discourse-based legal analysis, the book explores the tensions between national regulatory objectives and the multilateral trade framework through three comparative case studies: the EU-Russia Energy Dispute (DS476), the China-Rare Earths Dispute (DS431/432/433) and the US-Renewable Energy Dispute (DS510).

4.1. The EU–Russia Energy Dispute (DS476)

The European Union has relied heavily on Russian natural gas since the 1990s. As climate goals progress, the EU is attempting to reduce this reliance by adopting the Third Energy Package and the Common Interest Project (PCI) framework. This plan set unbundling rules and gave priority to non-Russian energy routes. So, these measures limited Gazprom's access to the EU market. Russia then filed WTO case DS476. It argued that the EU rules discriminated against gas from Russia. The EU defended its position under GATT Article XX(j) by referring to energy security and supply concerns [26, 27].

The core of this case concerned key rules of GATT 1994. Russia claimed that the EU's measures violated Article I:1 (Most-Favoured-Nation Treatment) and Article III:4 (National Treatment). They claimed that these measures placed heavier burdens on Russian gas and Russian operators. In response, the EU used GATT Article XX(j). This article allows exceptions for measures that are necessary for distributing products in general or local short supply [19, 26, 27]. The EU argued that its measures were legitimate because of long-term supply security concerns and weaknesses in its

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energy system [19]. Through this legal argument, the EU tried to place its internal regulatory goals within WTO law. It presented these measures as legitimate exceptions, not as protectionist actions.

Under WTO rules, this case shows how WTO members try to place domestic policy goals within multilateral trade law. The EU built its argument around "shortage," "resilience," and "clean transition" to support its claim under GATT Article XX(j). But the WTO Panel used a narrow reading of "short supply" and "necessity." It required strong evidence and proportionality. The Panel found that the EU did not prove a clear supply shortage or show that the disputed measures were necessary [26].

This result shows the limits of policy-based arguments under WTO legal review. It also shows that general exceptions may not fully support broad energy and climate claims. Besides, as geopolitical trade tensions increase, this case may affect later EU trade policies that focus on energy security [19].

4.2. China-Rare Earths case (WT/DS431, WT/DS432, WT/DS433)

In 2012, the United States, the European Union, and Japan jointly initiated dispute settlement proceedings (DS431/432/433) with the World Trade Organization. They challenged China's export restrictions on rare earths, tungsten, and molybdenum. These measures included export quotas, export duties, and licensing rules. The complainants argued that these measures violated China's "WTO+" commitments under Article 11.3 of its Accession Protocol. This rule required China to remove export duties, except for products listed in Annex 6.

In response, China used GATT Articles XX(b) and XX(g). It argued that its measures were based on environmental protection and resource conservation. China said these restrictions were used to deal with serious environmental damage caused by rare earth mining. The measures aimed to reduce pollution, protect public health, and keep strategic resources for domestic use. These goals were also linked to sustainable development and environmental governance. But the main legal issue was that these measures were not clearly covered by the GATT exceptions when China joined the WTO [28].

However, the Panel and the Appellate Body rejected this defence. They held that Article XX exceptions did not apply to China's Protocol obligations [29]. The WTO bodies used a strict textual reading. They stressed that the Protocol did not clearly mention these exceptions and had its own legal status. Hence, they concluded that general exceptions could not apply unless the text clearly regulated.

They concluded that the general exception clause could not apply without clear legal grounds. So, China's export restrictions were found to be inconsistent with its WTO accession commitments. This ruling showed that new WTO members must follow the specific rules in their accession protocols, rather than rely on the broader flexibility under GATT.

4.3. India-Solar Cells (DS456)

In 2013, the United States brought WTO case DS456 against India. The case concerned India's domestic content requirements under the National Solar Mission. The United States argued that India's measures violated GATT Article III:4 (National Treatment), and rules under the TRIMs Agreement and the SCM Agreement. This was because India required solar power developers to buy solar cells and modules made in India [30]. The United States and other complainants saw India's policy as a discriminatory trade measure that weakened international cooperation in the solar industry [31].

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India defended its measures by invoking GATT Article XX(d) and (j). India argued that solar cells and modules were products in "general or local short supply," and that supporting domestic production was necessary to secure long-term energy security and promote sustainable development in Article XX(j). Under Article XX(d), India further claimed that the measures were necessary to secure compliance with "laws or regulations" requiring it to promote sustainable development [30].

The WTO Panel and the subsequent Appellate Body both rejected India's defense based on the aforementioned provisions. Regarding Article XX(j), the Panel determined that solar cells and modules were sufficiently available in the international market, and India failed to demonstrate a "shortage" of such products. The Panel further ruled that the preferential procurement rules were not an "essential means" to achieve India's energy objectives, as renewable energy targets could be met through international procurement without discriminatory restrictions [30].

With respect to Article XX(d), the Panel considered that international agreements could constitute "laws or regulations" only if they had "direct effect" in, or otherwise formed part of, India's domestic legal system. It concluded that most of the instruments identified by India did not meet this threshold, and that the DCR measures did not "secure compliance" with the relevant obligations [30].

As a result, India's measures were found inconsistent with WTO obligations, highlighting the strict evidentiary and legal requirements for invoking Article XX exceptions.

5. Hypothesis

This section evaluates the research question: How can these states use GATT Article XX to legitimize their energy policy? To address this question, this research proposes three hypotheses.

1) Hypothesis 1 posits that the state cannot successfully invoke Article XX to legitimize its energy policy.

2) Hypothesis 2 holds that Article XX cannot be invoked to reconcile the tension between safeguarding domestic policy autonomy and minimizing international legal liability.

3) Hypothesis 3 posits that despite these limitations, states frequently construct discursive legitimacy based on Article XX to generate legitimacy, even when their measures are unlikely to receive legal protection.

The following analysis tests these hypotheses against four case studies: the EU–Russia Energy Dispute (DS476), the China–Rare Earths Dispute (DS431/432/433), and India-Solar Cells (DS456). By examining the arguments advanced by states, the reasoning of WTO Panels and the Appellate Body, and the outcomes of each dispute, the analysis assesses the extent to which Article XX can function as a tool of legitimacy in energy-related trade conflicts.

5.1. Hypothesis 1

The first hypothesis argues that states cannot successfully invoke GATT Article XX to legitimise their energy policy. The case studies provide strong support for this view, as none of the attempts to defend energy-related measures under Article XX were accepted by WTO Panels or the Appellate Body.

In India – Solar Cells (DS456), India invoked Article XX(j) by claiming that solar cells and modules were products in "general or local short supply," and that domestic content requirements were essential to secure long-term energy security and promote sustainable development. The Panel and Appellate Body rejected this argument, holding that solar cells and modules were widely available in international markets and that India's measures were not "essential" to its energy

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objectives. Similarly, India also relied on Article XX(d), but this argument was rejected. The WTO found that the international instruments cited by India were not "laws or regulations" in India's domestic legal system [32].

In China-Rare Earths (DS431/432/433), China tried to use Article XX(b) and Article XX(g). It described its export restrictions as measures for environmental protection and resource conservation. But the Panel and the Appellate Body rejected this defence. They ruled that Article XX exceptions could not be used for China's obligations under its Accession Protocol. This shows that even when states use environmental and conservation arguments as part of an energy and resource policy, WTO bodies still read exceptions narrowly. This leaves limited space for states to justify such measures [33].

In EU-Russia (DS476), the EU tried to explain its Third Energy Package through energy security and supply diversification. It used Article XX(j) and argued that natural gas was a product in "short supply." But the Panel did not accept this argument. It found that the EU did not provide enough evidence of a real shortage. It also rejected the claim that the disputed measures were necessary. Although the EU used ideas such as diversification, urgency, and structural risk, the Panel focused more on evidence than on policy discourse. This shows the tension between policy language and WTO legal judgment. States may use terms such as "resilience" and "clean transition" to build legitimacy, but WTO Panels still apply strict legal and evidence standards. So, energy security discourse often fails to provide legal protection.

Totally, these cases support Hypothesis 1. States often used Article XX in energy-related disputes, but WTO bodies did not accept these claims. The EU–Russia case shows that discourse strategies can stress policy urgency and legitimacy. But they are not effective without clear factual evidence. The WTO's approach shows that Article XX gives only limited legal protection for energy-related measures. So, states find it hard to justify their energy policies through this route.

5.2. Hypothesis 2

The second hypothesis posits that states cannot rely on GATT Article XX to simultaneously safeguard domestic policy autonomy and reduce legal liability. The case studies again support this claim, showing that when states attempt to use Article XX to shield sensitive energy or resource policies, WTO adjudicators adopt narrow interpretations that constrain such flexibility.

In China-Rare Earths (DS431/432/433), the central legal question concerned whether Article XX could be invoked to justify breaches of China's Accession Protocol. The Panel and Appellate Body concluded that general exceptions were not available because the Protocol did not explicitly incorporate them. This strict textualist approach prioritised legal certainty over policy coherence, leaving no room for balancing environmental or conservation goals with trade obligations. Academic critiques [28, 34] have challenged this rigid separation between WTO-plus obligations and core WTO rules, arguing that environmental objectives aligned with the WTO's sustainable development mandate should be presumed applicable unless expressly excluded. Nevertheless, the decision reinforced a "two-tier structure" in WTO membership, which means original members retain access to Article XX flexibilities, while acceding members such as China face more restrictive conditions. This outcome shows how the WTO's interpretive practice systematically narrows policy space, preventing states from invoking Article XX to protect domestic autonomy in sensitive policy areas [9].

In India-Solar Cells (DS456), India similarly attempted to use Article XX to balance domestic energy security and international obligations. By invoking both Article XX(j) and Article XX(d), India aimed to protect its solar industrial policy while limiting liability under WTO law. However,

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the Panel ruled that solar cells and modules were not in short supply, and that international agreements cited under Article XX(d) did not constitute "laws or regulations" in India's domestic system. Hence, India's attempt to reconcile policy autonomy with international legality failed, reinforcing the difficulty of using Article XX as a reason for contested energy policies.

The EU-Russia Energy Dispute (DS476) also highlights these limits. While the EU framed its measures as necessary for long-term supply security and resilience [35], the Panel demanded concrete evidence of short supply and rejected the defence. This case shows that even for original WTO members, attempts to use Article XX to defend energy policies are constrained by Panels since the absence of evidence.

Together, these cases demonstrate that Article XX cannot reconcile the tension between protecting domestic autonomy and avoiding WTO liability. States may seek to frame their policies in terms of energy security, sustainability, or compliance with international norms, but WTO adjudicators consistently apply narrow interpretations that reduce the available policy space. This supports Hypothesis 2, which is that Article XX is not a viable mechanism for states to maintain energy-related policy autonomy while minimising international legal risk.

5.3. Hypothesis 3

The third hypothesis argues that even when states cannot get legal protection under GATT Article XX, they still build discourse to present their measures as legitimate. The case studies strongly support this hypothesis. They show that governments often use ideas such as energy security, sustainability, and respect for international norms to describe their measures as consistent with WTO rules, even when these claims fail in legal judgment.

In India-Solar Cells (DS456), India tried to present its domestic content requirements as necessary measures. It argued that there was a "short supply" of solar cells under Article XX(j). It also argued that the measures helped India follow international commitments under Article XX(d). These arguments connected the policy with sustainable development and energy security. They also presented the policy as consistent with global climate goals. But the WTO Panel found that solar cells were available in global markets. It also found that the international agreements cited by India did not have domestic legal effect. India's defence failed, but its discourse shows how states build legitimacy claims by linking industrial policy with WTO exceptions.

A similar pattern can be seen in China-Rare Earths (DS431/432/433). China defended its export restrictions by using Article XX(b) and Article XX(g). It argued that these measures were needed to protect exhaustible resources and reduce environmental damage from mining. China also stressed public health and sustainable development to support the legitimacy of its measures. Some scholars point out that these arguments presented resource conservation as a global public good, even though the restrictions also helped protect domestic supply for Chinese industries. The WTO Panel and the Appellate Body rejected China's defence. But this case shows how states use discourse to present resource protection as an environmental issue, even when the real reasons are also linked to industrial policy and strategic autonomy.

The EU-Russia Energy Dispute (DS476) also shows this pattern. The EU tried to present its Third Energy Package as a response to risks in energy supply. It described natural gas as a product in "short supply" under Article XX(j) [35]. The EU used terms such as "resilience," "diversification," and "structural risks" to support its defence. These terms helped the EU connect its internal regulatory goals with WTO language. In this way, the EU built a legitimacy claim, even though it did not provide clear evidence of real shortages. The Panel rejected this argument, which shows the

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limits of this strategy. But the case also shows that legal discourse has become an important tool for states when their energy policies face legal challenges [36].

Totally, these cases confirm Hypothesis 3. States often describe disputed energy and resource policies through energy security, sustainability, or respect for international norms. They do this to build legitimacy under Article XX. These strategies usually fail to meet the WTO's evidence and legal standards. But they still show that discourse plays an important role in how states defend their policies. The repeated use of these strategies shows both the symbolic power of Article XX and its legal limits. It shows that states can create an appearance of legitimacy, even when their policies are not covered by WTO exceptions.

These three assumptions show that states cannot successfully use Article XX to justify their energy policies. They also cannot rely on this provision to solve the tension between domestic autonomy and international obligations. But countries still use Article XX as a discourse tool. They build narratives that present disputed policies as consistent with WTO rules. This shows the gap between the legal role and the political role of Article XX.

6. Legal constraints on legitimisation

Although states increasingly invoke GATT Article XX to legitimise energy-related trade measures, the effectiveness of these strategies remains constrained by the legal requirements of WTO law. Across the three case studies, WTO adjudicators consistently required a clear relationship between the challenged measure and the policy objectives recognised under Article XX. In India–Solar Cells (DS456) and China–Rare Earths (DS431/432/433), the respondents failed to establish a sufficient connection between their measures and the claimed objectives, despite invoking energy security, environmental protection and resource conservation [25, 29, 37].

In addition, WTO jurisprudence places considerable emphasis on necessity and proportionality. Governments are expected to demonstrate that no reasonably available, less trade-restrictive alternatives exist before relying on Article XX. This approach is reflected in the EU–Russia Energy Dispute (DS476) and China–Rare Earths, where the measures were rejected because the evidence and justification were considered insufficient [26, 38, 39].

Existing scholarship also suggests that the application of these legal standards varies across disputes, while energy security is generally recognised only indirectly through established objectives such as environmental protection, resource conservation and sustainable development rather than as an independent exception under Article XX [15, 23, 25, 30, 40, 41]. These constraints indicate that Article XX provides an important source of legitimacy for states, but the success of such legitimisation strategies ultimately depends on satisfying established WTO legal requirements.

7. Recommendation

This study suggests that improving the legitimacy of energy-related trade measures requires action at both the domestic and international levels. First, states should strengthen the evidentiary basis of energy-related trade measures when invoking GATT Article XX. Governments should provide objective evidence demonstrating necessity, proportionality and the absence of reasonably available alternatives, as insufficient evidence has been a major reason for the rejection of Article XX defences in WTO disputes [42, 43].

Secondly, domestic energy legislation should be better aligned with the recognised objectives of Article XX. Governments should clearly link energy security measures to objectives such as environmental protection or the conservation of natural resources and ensure that policy decisions

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are supported by transparent legal reasoning. Such alignment would strengthen the legal defensibility of these measures in future disputes [44, 45].

Finally, the WTO could provide clearer interpretative guidance on the application of Article XX to energy-related measures. Greater institutional dialogue, together with soft-law instruments and interpretative guidance, could improve legal certainty and promote a more consistent application of concepts such as necessity and proportionality without requiring fundamental changes to the existing WTO legal framework [46-48]. These recommendations are intended to improve both the legal defensibility and the legitimacy of energy-related trade measures. By combining stronger domestic policy design with greater institutional clarity, states would be better equipped to justify energy-related trade measures while remaining consistent with WTO obligations. Over time, such reforms could reduce legal uncertainty, promote greater consistency in the application of Article XX, and facilitate a more balanced relationship between energy security, environmental protection and international trade [49-51].

8. Conclusion

This study applies discursive institutionalism to examine how states seek to legitimise energy-related trade measures under GATT Article XX through legal analysis of three WTO disputes involving the European Union, China and India. The findings show that states increasingly rely on narratives of energy security, environmental protection and sustainability to justify trade measures. However, these discursive strategies do not necessarily result in successful legal defences, as WTO adjudicators continue to apply Article XX through strict requirements of necessity, proportionality and evidentiary support.

The analysis demonstrates a persistent gap between discursive legitimacy and legal legitimacy. While Article XX provides an important framework through which states justify energy-related policies, its application remains constrained by established WTO legal standards. As a result, states increasingly frame their measures within recognised public policy objectives to strengthen their legitimacy under WTO law.

To narrow this gap, states should strengthen the evidentiary basis of their energy-related measures and ensure closer alignment between domestic legislation and the recognised objectives of Article XX. At the international level, clearer interpretative guidance on Article XX would improve legal certainty while preserving the existing WTO legal framework. In this way, trade law can better accommodate the growing importance of energy security while maintaining the balance between national policy autonomy and the multilateral trading system.

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