

# Overview

- The Container Security Initiative
- The WTO Agreements
- The GATT 1994
- The Security Exception
- Conclusion

# The Container Security Initiative

- Advance information
- Risk assessment
- Scanning
- Smart containers

# Adverse Effects

- Delay
- Costs
- Competitive distortions

# Which Agreement Applies?

- Pre-shipment Inspection Agreement X
- General Agreement on Trade in Services X
- General Agreement on Tariffs and Trade
- Technical Barriers to Trade Agreement X

# GATT 1994

## Burden of proof = Complainant

- Article I
- Article V (general rules)
- Article XI

## Burden of Proof = Defendant

- Article XXI (exception)

# Article I

- Rules or formalities
- Advantage or benefit
- Like products
- Immediately/unconditionally

# Article V

- Freedom of transit
- Unnecessary delays
- Reasonable charges and regulations
- Discrimination

# Article XI

- Prohibitions
- Restrictions
- Exceptions

# Results

- Article I X
- Article V X
- Article XI X
  
- STANDARD OF PROOF

# Article XXI: Security exception

- Interpretation
- Creating a framework

# Interpretation of Exceptions

- No interpretative practice on Article XXI
- Article XX (the general exception):
  - Objective
  - Conditional and limited exception
  - Narrow construction
  - “Evolutionary interpretation”

# Order of Investigation

- Article XXI(a) subjective
- Article XXI(b)(i) objective
- Article XX(b) subjective/objective

# Article XXI(b)(i)

- Fissionable materials
- International instruments

# Article XXI(b)

## MEASURES IT CONSIDERS NECESSARY

- Essential security interests
- Necessary to protect
  - Proportionality
  - Reasonableness
  - Effectiveness

# Conclusion

- Can the CSI be justified under Article XXI?
- Outlook