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Analysis of "necessity" requirement of

Article 20 of GATT 1994 and Article 2.2 of the TBT Agreement

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Summary

In recent years, the global environmental awareness is gradually rising, WTO Member based on the protection of animals and plants and people Class life and health, and promote public health and other legitimate purposes, they develop a certain product specifications or standards to ensure The purpose of the fulfillment of the policy, provided that such measures for international trade may result in unnecessary restrictions, contrary to WTO Under the TBT Agreement. Among them, Article 2.2 of the TBT Agreement when WTO members to develop technical specifications and regulations require compliance Through "necessity" principle that Member States should ensure that the formulation in order to achieve its legitimate purpose, adopted or applicable State Within the law, and shall not cause unnecessary obstacles to international trade or produce such effects, and members of the technical formulation Regulatory restrictions on trade should reach more strictly necessary for a legitimate purpose, but did not express the TBT Agreement will To determine the basis of the elements of nature. WTO Agreement, GATT 1994 Article 20 paragraph b of text and Article 2.2 of the TBT Agreement text and Content is very similar, but the necessity of the elements of these two provisions have not taken the same way of explanation, WTO-related agreements Given no specification. WTO Dispute Settlement Body has the necessary GATT 1994 Article 20 Subsection (b) of the multiple award Chronological review of the basis of the occurrence of this article to follow GATT and WTO cases, observe the Dispute Settlement Body For the ruling GATT 1994 Article 20 Subsection (b) Article 2.2 of the TBT Agreement and the relevant requirements of the

necessity to Clarify the Dispute Settlement Body to determine the necessity of Article 2.2 of the TBT Agreement requirements basis context, inferences which take The reason for this way of explanation, and make paper argues that Article 2.2 of the TBT Agreement requirements over the appropriateness of the necessity of trial Check standards, in order to understand if the next WTO members to protect their domestic human, animal or plant life or health, etc. When the purpose of the legislation, space-related policies and regulations of why.

Abstract

Due to the consciousness raising of environmental protection recently, WTO members legislate for regulations which aim at protecting human, animals and plants' lives and health. However, it may result in trade barriers and be inconsistent with TBT Agreement. Article 2.2 of TBT Agreement regulates that WTO members shall comply with the necessity concept when legislating technical regulations, inter alia: Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade and technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective. However, TBT Agreement does not regulate how to judge necessity test. Among WTO agreements, article XX (b) of GATT 1994 and article 2.2 of TBT Agreement have similar words and contents, but WTO agreements do not define the necessity test and do not regulate whether these two provisions can be interpreted in the same way. WTO dispute settlement body had ruled the necessity test in article XX (b) of GATT 1994 several times. This thesis chronicled the jurisdiction in order to clarify how WTO dispute settlement body interpreted the necessity test of these two provisions. This thesis also brought up the proper interpretation of necessity test in article 2.2 of TBT Agreement to comprehend how much the policy space left to WTO members.

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The first chapter

Section motivation and purpose In recent years, as the global economy and the rapid growth of international trade, environment and natural resources suffered serious Destruction, and gradually realize that in addition to developing countries trade and the economy, should also reduce the burden on the environment, so the formulation of relevant Regulations restrict trade practices harm the environment. And because of the booming international trade, countries in international commodity Flow between consumers, while affecting consumer interests heard, such as improper packaging impact on consumers, Poor quality or unsafe goods harmful to human, animal and plant life or health, etc., will consumers Danger to health and safety, it is a government to protect the safety and health of its citizens, or any other lawful purpose, Provisions required for product specifications or standards in order to ensure the fulfillment of the policy objectives. Such specifications or standards in an increasingly complex Miscellaneous items of products and product structure, to protect the legitimate interests of the importing country and its peoples is important, but this Specifications or standards also tend to generate undue restrictions on the import of the role, and constitute barriers to trade. This is called technology Trade barriers, referring to rules or regulations relating to standards set by a country's technical restrictions on trade or Interference 1 . Countries to develop a mandatory technical regulations, although the Department in order to protect the natural environment and human, animal and plant life Or health and safety, but it may also create barriers to trade, great influence on global trade. In addition, in the past WTO (World Trade Organization, hereinafter referred to as WTO) under the Dispute settlement mechanism between the Member multiprocessing because of high tariffs create barriers to trade disputes in recent years, due to the tariff Continually lowered, WTO membership is no longer a dispute more than this issue, and focus instead on issues of non-tariff trade barriers. In particular, Since 2011, non-tariff trade barriers gradually become the core of the

international trade arena, many on a legitimate The purpose of the regulations in the interests of the country and international trade of conflict, resulting in disputes, manufacturing of non-tariff countries What the Department of trade barriers for legitimate purposes set square and about, or a disguised trade protection behavior still doubts It makes WTO Agreement on Technical Barriers to Trade under (Agreement on Technical Barriers to Trade, to

1 Ra Chang hair, International Trade Law, pp. 161-162,2010 years.

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Hereinafter referred to as TBT Agreement) are becoming increasingly important. GATT on technical barriers to trade, although certain provisions, but its provisions are not complete. Technical law of a country Regulations can be extremely complex, or regulations, such as those involving the central government level, and even that non-governmental organizations, the importing country Implementation of the new norms may already importers and exporters failed to prepare before; or may be obvious manner importing country Control inspection or certification program product standards, making imported products is not easy to get the opportunity to imports, which are non- GATT provisions can handle. Given the complexity of technical trade barriers, GATT provisions not coping, and Countries due to the use of technical barriers to trade caused by import restrictions, when the Tokyo Round, Member formulate technical trade Barriers Agreement (Agreement on Technical Barriers to Trade), the Uruguay Round TBT Agreement when more amendments Fixed, it can adapt to the increasingly diverse and complex technical trade barriers 2 . TBT Agreement, Article 2.2 of the WTO Member States for technical specifications and regulations formulated by the principle of necessity, That Member States should ensure that their national security, human health or safety, animal or plant life or health, environmental The purpose of environmental protection formulated, adopted or applicable national law, and shall not cause unnecessary barriers to international trade Hinder or produce such effects, and the Member States to develop the technical regulations on trade restrictions should not be more fulfilled Strictly necessary for a legitimate purpose, but must also be considered if the risks that may arise from less than legitimate purposes. In fact, the implementation has been long 1994 General Agreement on Tariffs and Trade (General Agreement on Tariffs and Trade, hereinafter referred to as GATT 1994) Section 20 is also similar to the text of paragraph 2.2 with the TBT Agreement, Among them, the GATT 1994 Article 20 paragraph b Text Article 2.2 of the TBT Agreement with similar content, GATT 1994 Section 20 Subsection (b) specification when the purpose of trade in goods and which are listed — — "to protect human, animal or plant When things of life, "conflict, making international trade restrictions, the need to investigate whether the system of free trade between the Member Easy steps to consider, or that want to pursue a legitimate aim of each member is taken first, that the measures adopted by Member

2 WTO, Detailed Presentation of the Agreement on Technical Barriers to Trade, available at http://etraining.wto.org/admin/files/Course_361/Module_1602/ModuleDocuments/TBT_Agr-L2-R1-E.pdf; Simon Lester and William Stemberg, The GATT Origins of TBT Agreement Articles 2.1 and 2.2.

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Why the need for square may invoke Article 20 of GATT 1994 shall be justified. But the GATT 1994 20 Subsection (b) and Article 2.2 of the TBT Agreement. Although the provisions of the text and contents are similar, but have not taken the same way of explanation, Relevant WTO agreement does not regulate. Since the

objectives listed in the preamble of the TBT Agreement is not exhaustive and complete objectives in addition to the listed as a State Ensure the quality of the output of goods, or to protect human, animal or plant life or health, or to protect the environment or anti- Fraud and other than ending may take the necessary measures to be taken by members of the measures for other lawful purposes. However, The measures applied in a manner, in the same situation between countries under do not constitute a means of arbitrary or unjustifiable discrimination or For international trade restrictions are hidden, and shall comply with the requirements and the TBT Agreement, to review some of this legislation Of necessity, have to explain whether Section 20 Subsection (b) of the GATT way "necessity", applied to the TBT Agreement About the necessity of a given part of Article 2.2, so this article is to investigate the GATT 1994 Article 20 Subsection (b) and TBT Article 2.2 of the Agreement relating to the concept of "necessity" to clarify the interpretation of the WTO dispute settlement mechanism for these two provisions Why is the context in order to understand if the WTO countries to protect human, animal or plant life or health and the development of future When the relevant laws and regulations, the spatial extent of its policies, whether stated or other legitimate objectives based on the TBT Agreement, May set restrictions for trade produce technical regulations. 1.2 Research Scope and limitations In this paper, in addition to exploring the GATT 1994 20 Subsection (b) Article 2.2 of the TBT Agreement and the provisions of the text, the main Based on GATT and WTO dispute settlement cases of the development process for the spindle to discuss the case development process, WTO How to Dispute Settlement Body interpretation of Article 2.2 of the TBT Agreement and the GATT 1994 Article 20 b paragraph on "essential Part of nature, "two provisions are to be interpreted in the same manner concepts and viewpoints in this article" necessity "of. In this paper, the scope of the division of the text itself, but also the Thai cigarette case from the GATT era

3 Panel Report, Thailand - Restrictions on importation of and internal taxes on cigarettes, BISD 37S/200 (adopted Nov. 7 1990).

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4 Case I 4 American Tuna Case II 5 , To the WTO during the American Petroleum Case (US - Gasoline) 6 , The European body asbestos case (EC - Asbestos) 7 Brazilian tire case (Brazil - Retreaded Tyres) and raw materials case China (China - Raw Materials) Dispute Settlement Body report explored GATT 1994 Article 20 Subsection (b) of the Section 8 , And the recent case of the United States kretek (US - Clove Cigarettes) 9 American Tuna Case II (US - Tuna II) 10 U.S. origin meat labeling case (US - COOL) covered by Article 2.2 of the TBT Agreement cut Never content 11 In Section 2.2 of the similarities and differences comparing GATT 1994 Article 20, paragraph after paragraph b and TBT agreements to explore Whether the WTO Dispute Settlement Body to GATT 1994 Article 20 Subsection (b) the necessity requirement analysis, into the TBT Section 2.2 to determine the necessity of the agreement. GATT 1994 Article 20 of the general exceptions for lawful purposes listed in Subsection (b) In addition to the first paragraph a "Protecting the public Morals or health "and the first paragraph d" to ensure that this agreement is not contrary to the laws or regulations "also" necessity. " The concept, but due to the content of Article 2.2 of the TBT Agreement by most relevant GATT 1994 Article 20, paragraph (b) shall, And due to the necessity of GATT 1994 Article 20 a concept first paragraph and the first paragraph of d Department also extends from Subsection (b) 12 Because This article will focus on the GATT 1994 Article 20 Subsection (b) and Article 2.2 of the TBT Agreement "necessity" of the relevant Requirements analysis.

4 Panel Report, United States - Restrictions on imports of tuna, BISD 39S/155 (Sept. 3 1991).

5 Panel Report, United States - Restrictions on imports of tuna, BISD 29 / R (June 16 1994).

6 Appellate Body Report, United States - Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R (adopted May 20, 1996).

7 Appellate Body Report, European Communities - Measures Affecting Asbestos and Products Containing Asbestos, WT/DS135/AB/R (adopted Apr. 5, 2001).

8 Appellate Body Report, Brazil - Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB/R (Adopted Dec 17, 2007.); Appellate Body Report, China - Measures Related to the Exportation of Various Raw Materials, WT/DS394/AB/R (adopted Feb. 22, 2012).

9 Appellate Body Report, United States - Measures Affecting the Production and Sale of Clove Cigarettes, WT/DS406/AB/R (adopted Apr. 24, 2012).

10 Appellate Body Report, United States - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS381/AB/R (adopted June 13, 2012).

11 Appellate Body Report, United States - Certain Country of Origin Labelling (COOL) Requirements, WT/DS384/AB/R and WT/DS386/AB/R (adopted July 23, 2012). 12 If Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef, WT/DS161/AB/R, WT/DS169/AB/R, United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/AB/R, China - Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, WT/DS363/AB/R and other case

Research Methods Section

This paper uses case studies and literature review 13 To GATT 1994 Article 20 Subsection (b) and TBT Agreement relating to the case study section 2.2 of the core, the WTO dispute settlement mechanism for how to determine the GATT 1994 Section 20 Subsection (b) the concept and necessity under Article 2.2 of the TBT Agreement, be construed to make a finishing, this information Department from sources on the WTO website to resolve the dispute report, summarized and analyzed to solve the machine through the WTO dispute Structure for the analysis of Article 20 of GATT 1994 and the TBT Agreement Subsection (b) Section 2.2 The concept of necessity, to understand Whether the WTO dispute settlement mechanism will involve about the necessity of previous GATT 1994 Article 20, paragraph (b) shall be the case Part of the analysis pieces, cover recent cases concerning Article 2.2 of the TBT Agreement for.

This paper is divided into five chapters, research of this paper was to discuss the motivation and purpose, scope and limitations of the first chapter, Research methods, research framework, the following is the content of Chapter II to Chapter Overview: This article will discuss in the second chapter, "necessity" concept GATT 1994 Article 20, paragraph (b) shall regulate under the first First study to review the necessity of its object, the scope of the review and policy objectives, namely to protect human, animal or plant Life, and then delve into GATT 1994 Article 20 paragraph b of the relevant case — — GATT era Thai fragrant Cigarette case, the U.S. tuna case I, the U.S. tuna Case II, and during the American Petroleum WTO Case (US - Gasoline), EC Asbestos Case (EC - Asbestos), Brazil tire case (Brazil - Retreaded Tyres) and the Chinese original Material case (China - Raw Materials), to better understand the WTO dispute settlement body for GATT 1994 Subsection (b) view of the need to review under Section 20. The third chapter then discusses "necessity" concept TBT Agreement under Section 2.2 specification, as last

 13 DIANA RIDLEY, THE LITERATURE REVIEW: A STEP- BY -STEP GUIDE FOR STUDENTS (2008); LAWRENCE F. LOCKE , WANEEN WYRICKS PIRDUSO, STEPHEN J. SILVERMAN, PROPOSALS THAT WORK: A GUIDE FOR PLANNING DISSERTATIONS AND GRANT PROPOSALS (2013)

Research context chapter, the Department is also scope for Article 2.2 of the TBT Agreement to review the necessity of the object, review of research And policy purposes, that does not exceed the possible risks arising from unrealized necessary degree of trade restrictions and considerations, then Recent discussions with the TBT Agreement Article 2.2 of the relevant case — — U.S. kretek Case (US - Clove Cigarettes), American Tuna Case II (US - Tuna II), the U.S. origin meat labeling case (US - COOL) and other dispute settlement Agency reports,

in order to understand its analysis for Article 2.2 of the TBT Agreement requirements of necessity. The fourth chapter compares GATT 1994 Article 20 Subsection (b) and TBT Article 2.2 "necessity" of the differences Same. This chapter begins on the elements of "necessity" of be discussed, namely the country's legislation or measures, the regulations or measures To reach the goal of Shi, the Dispute Settlement Body of the need for trial-depth review of the way that the minimum discussion Trade restrictions and trade-offs required manner; then enter the comparison GATT 1994 Article 20 b paragraph 2.2 of the TBT Of similarities and differences between "necessity", the two studies examine the provisions of the order, the burden of proof allocation of responsibilities, the legitimate goals and fitness When the difference in the level of protection. This article and this chapter observe GATT and the WTO Dispute Settlement Body in view GATT 1994 Section 20 Subsection (b) and after TBT Article 2.2 at two different provisions of the "necessity" of the judgment is No mining in the same way, why the Dispute Settlement Body adopted the way of necessity TBT Agreement Article 2.2 of the analysis to be Pieces and explore whether there are other ways to explain the necessity of elements and ideas in this article under Article 2.2 of the TBT Agreement. The fifth chapter is the conclusion, the paper will summarize the arguments of each chapter, to collate and summarize the conclusions.

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"Necessity" under Chapter II of the GATT 1994 20 Subsection (b)

Concept

Since the GATT 1994 and Article 20 of the GATT and the WTO's free trade policies related obligations Introduction Department as a negative effect of having a predetermined limit, rather than the creation of a positive obligation norms, so practical operation Work on dispute settlement panel tend to limit the scope of this section applies to the reduction in the free trade system under GATT; exchange In short, involving GATT 1994 Article 20 of the policy is not only inconsistent with the interests of the GATT and the WTO's free trade Easy only meaningful policy, therefore, in every dispute involving GATT Article 20 of the 1994, in addition must Should carefully consider the legal basis for the relationship between the Department of the cases of disputed questions, GATT and WTO members have used the relevant Text in the express terms of the attempt, the object and the purpose of setting up such norms are also required to be taken into account, such as 14 . In the GATT 1994 Article 20, the first paragraph a, Subsection (b) of the first paragraph d Individually associated with the "necessity." Content, that is one country in the pursuit of trade restrictive measures necessary to protect public morals and energy, protect human, animal Necessary measures or plant life or health, and about the possible depletion of natural resources conservation measures such as legal When purposes are likely to result in restrictions on trade. GATT and WTO dispute settlement body should carefully review a country Measures to achieve the legitimate purpose of trade restrictions arising on whether the GATT 1994 Article 20, paragraph a, Article the alleged necessity of paragraph b or paragraph d, want to maintain the GATT and the WTO to achieve the purpose of free trade. However, due to This paper aims to discuss the Department of Article 2.2 of the TBT Agreement and the GATT 1994 Article 20 Subsection (b) requirements relating to the need for Analysis, and because of the necessity of GATT 1994 Article 20, a concept first paragraph and the first paragraph of the d line also extends from the first paragraph b, Therefore, this chapter discusses only the relevant GATT 1994 Article 20 Subsection (b) and the requirements related to the terms of the GATT WTO cases, the dispute settlement mechanism observed in one country measures to protect human, animal or plant life or health of the implementation of the When applied, resulting in barriers to trade on the need to determine whether the.

14 Cattle benefits of environmental protection and GATT / WTO: the environmental issues involved in the GATT / WTO dispute settlement panel report on phase And limitations on the scope of application of unilateral trade measures of the environment, Socioeconomic Law Review, 23, pp. 163-198,1999 years

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...The second GATT 1994 Article 20, paragraph b paragraph with TBT Agreement Article 2.2 of the The first review of the object GATT 1994 Article 20, paragraph b, by reviewing the object of "necessity" for the implementation of the "measures" if a Necessity, rather than whether "has violated other provisions of GATT 1994," Review of necessity. The Department of the TBT Agreement

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The more special agreement, in judging whether the disputed measures when Article 2.2 of the TBT Agreement referred to the "necessity" You must view the measure is a Department of "technical regulations", so the object of the review was the need for a regulatory system needed Technical regulations, if the regulations to apply to identifiable (identifiable) product group, or one or the Department of norms Kind of product characteristics (product characteristics), or compulsory (mandatory) 176, Through technology After the test operation of the statute, the Dispute Settlement Body of the regulations to determine whether the party was contrary to Article 2.2 of the TBT Agreement. The second paragraph of the burden of proof Since Article 20 of GATT 1994 for the defense of the dispute settlement procedures in the subject of exceptions, therefore, Regarding Article 20 of GATT 1994 "necessity" Subsection (b) of the burden of proof will fall into the disputed measures consistent advocate Exceptions being complained against, Article 2.2 of the TBT Agreement contingent "necessity" surface onus is controlled by the Department of V. State commitments, if this prima facie evidence that the respondent State was presumed breach of the TBT Agreement, the burden of proof will shift to the accused V. State, therefore the burden of proof provisions of Article 2.2 b GATT 1994 Article 20, paragraph (b) shall not be with the TBT Agreement Same. Operational, GATT 1994 Article 20, first by complaints States sufficient prima facie presumption of measures to fight the Department of Violation of the provisions of the GATT 1994 agreement, then the measure has been accused by the State to prove compliance with the GATT 1994 20 The exceptions; TBT Article 2.2 of the Agreement is disputed measures proposed by the complaint prima facie case does not match the need of the country, After the presumed irregularities, then by evidence to the contrary is proved that the accused State measures consistent with the provisions of the "necessity." Therefore, Although the burden of proof on the accused Guoxu GATT 1994 and Article 20 of the operating section 2.2 of the TBT Agreement's content is different, But are only presented a prima facie case, a complaint can be presumed to be illegal state contested measures, if the presumption established who is still Was accused by the State Department to prove that the measures comply with "necessity", bear a heavier burden of proof. Third paragraph policy objectives Under the WTO framework, each member has their own set of domestic policy objectives rights norms and decisions, provided that such 176 Supra Note 4.

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Rights must be consistent with WTO norms, such as the GATT 1994. Therefore, when a country's laws and contrary to WTO rules, the Section 20 allows the GATT 1994 provisions of GATT 1994 compared to if the legislation aims to pursue more significant When goals, Member States will have to adopt the measure. However, Article 20 of GATT 1994 provisions cited mining, that is, if the disputed When measures are not consistent with the policy objectives set out in Article 20 of GATT 1994, the GATT 1994 can not apply to Section 20 Article to be defended. Although Article 2.2 of the TBT Agreement and the GATT 1994 text Subsection (b) Article 20 is similar but not as the former Will have to allow the pursuit of policy objectives enumerated in the provisions, which means that only the "technical regulations resulting from trade restrictions Effect, shall not exceed necessary to achieve a legitimate objective "and to the provisions as exemplified in the

pursuit of WTO Member States may Such as national security requirements of fraud prevention, the protection of human, animal or plant life or health policy objectives Time scale, may formulate measures violate other provisions of the TBT Agreement. Furthermore, in addition to Article 2.2 of the TBT Agreement enumerated Outside the legitimate policy objectives, the preamble of the TBT Agreement also mentioned in paragraph 6 "to ensure the quality of exports," this goal, TBT Committee meetings held each year to review the policy from time to time to increase the allowable target 177 . Section II of the Dispute Settlement Body to GATT 1994 Article 20 , paragraph b terms and TBT Section 2.2 of the need to adopt the same elements are interpreted Cases involving Article 2.2 of the TBT Agreement requirements of necessity, because of the GATT 1994 and the TBT 20 Article 2.2 of the Agreement Individually analysis requirements of necessity, the WTO dispute settlement body more than the first two provisions set forth in this Relationship 178 . U.S. kretek case, the team explain in particular GATT 1994 Article 20, paragraph (b) shall have the appropriate solution is Article 2.2 of the TBT Agreement release standards for unnecessary trade restrictions. Panel considered when interpreting the treaty, not straight Then the other method of legal transplant, you should carefully consider the context of the provisions of the word differences, the purpose of the use, in accordance with

177 WTO, Annual Review of the Implementation and Operation of the Agreement , G/TBT/7, G/TBT/8,G/TBT/10, G/TBT/11, G/TBT/12

178 Due to the following three cases involving the TBT Agreement Article 2.2 of the only team to elaborate on the GATT 1994 and the TBT Agreement Article 20 Relations 2.2, the Appellate Body is not mentioned, so the following article only three cases of group reporting analysis.

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This was considered to Article 2.2 of the TBT Agreement and the GATT 1994 Article 20 Subsection (b) is very similar 179 , And the group has also Asbestos Panel report cited the European Communities 180 Standards and GATT, Article 2.2 of the TBT Agreement considered applicable, adoption, etc. 1994 same, TBT Agreement and the GATT 1994 Foreword In fact 20 of the text, some repeat 20 181 , And the panel said the EC Asbestos 182 Preparations Tokyo Round TBT Agreement, the TBT Agreement has been shown Surely be regarded as the product of GATT 1994 extends the existing provisions, in particular from the Department of Development of the GATT 1994 20 From 183 . Tuna case team considered Article 2.2 of the TBT Agreement and the GATT 1994 20 some different place, its a Two other provisions of this agreement reflect the different, in particular Article 2.2 of the TBT Agreement gives WTO membership positive obligations Rather than the GATT 1994 Article 20 of the general exception clause 184 . In addition, Article 2.2 of the TBT Agreement applies to Technical regulations in order to achieve a legitimate purpose, whether caused by the necessity to go beyond trade restrictions, and GATT 1994 Article 20 refers to the measures taken to protect public morals, human, animal or plant life or health of necessity with the HUD regulations 185 . Therefore, the Panel noted that the U.S. tuna case Article 2.2 of the TBT Agreement and the GATT 1994 20 Article is not the same, GATT 1994 applies to the first 20 lines of the measures are justified and have the need, not the measures In order to achieve the purpose of applying regulations necessity, the base of this, the necessity under Article 2.2 of the TBT Agreement should be evaluated "Trade restrictive" measures rather than measures itself, Article 2.2 of the TBT Agreement that the second sentence of the "necessity" As the Member States should be required to refer to (required) meet regulatory objectives, and therefore result in restrictions on trade measures. U.S. meat labeling case group agreed to Article 2.2 of the TBT Agreement and the GATT 1994 20 series two each Since independence the law of different WTO agreements, however, this does not mean that its interpretation of the law is not interoperable manner. The Panel finds that the United States despite the emphasis on two different provisions, but did not explain why these differences become

179 See chapter three, page 34.
180 Panel Report, U.S. - Clove Cigarettes , ¶ 7.360.
181 Panel Report, EC - Asbestos , ¶ 8.55.
182 ID . footnote 41.
183 WTO, MTN/3E/W/26 (Oct. 1974) & TRE/W/21 (Jan. 17, 1994).
184 Panel Report, U.S. - Clove Cigarettes , ¶ 7.458.
185 ID . ¶ 7.459.

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Article 20 of the GATT 1994 and the TBT Agreement legal method not related to Article 2.2 186 . U.S. meat labeling case of small Group presented its view that Article 2.2 of the TBT Agreement reason correlation with the GATT 1994 20. First of all, TBT Agreement Preamble Section 2 wrote: "Desiring to promote the objectives of the GATT 1994" This display GATT 1994 and the close links of the TBT Agreement. Article 2.2 of the TBT Agreement and the provisions of the text and GATT 1994 Article 20 is very similar, TBT Agreement examples of legitimate objectives listed in section 2.2 and GATT 1994 Policy objectives set out in Article 20 of the same. Worse still, TBT Agreement sixth preamble "unanimously believe should not prevent any Countries in the extent of State considers appropriate, take the necessary measures to ensure the quality of the country's output of goods, or to protect Human, animal, plant life or health or the environment or to prevent fraud. But to apply such measures of the party Type, between countries under the same conditions do not constitute a means of arbitrary or unjustifiable discrimination or international trade Disguised restriction is limited, and this Agreement and shall comply with the provisions of "GATT 1994 and Article 20 of the Preface extremely phase Same, so the team does not believe that these two provisions of the United States agreed to no discussion of the relevance 187 . The above three cases reported by the group involving Article 2.2 of the TBT Agreement shows, WTO Dispute Settlement Body on U.S. kretek case believes that the provisions of view Zoe words, context, purpose and other angles, TBT Agreement 2.2 Of GATT 1994 and Article 20 Subsection (b) is very similar to the provisions of the Department, it is for the previous GATT dispute settlement body 1994 Necessity of Article 20, paragraph (b) shall be applied to the analysis deserve Article 2.2 of the TBT Agreement. Although the U.S. tuna Case, the group changes its view, recognize that Article 2.2 of the TBT Agreement and the GATT 1994 Article 20 Subsection (b) of the When different place, but the necessity of Article 2.2 of the TBT Agreement, the final judgment, the Department still apply the GATT 1994 20 Subsection (b) the necessity of the legal analysis. In the U.S. meat labeling case, the continuation of the U.S. tuna case group View report, Section 2.2 agrees with the GATT 1994 20 series two different provisions of the TBT Agreement, and then And, its requirement for the necessity of legal interpretation methods still common with each other. Thus, despite the provisions vary, But the dispute settlement mechanism in the case of the TBT Agreement, the GATT 1994 Article 20 to apply the concept of Subsection (b) of that With a "trade-off" approach to determine the necessity requirement.

186 ID . ¶ 7.669.
187 ID . ¶ 7.670.

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Section TBT Article 2.2 interpreted under the necessity requirement of Article The first WTO case By American kretek case, the U.S. tuna case with the group's report shows that U.S. meat labeling case, WTO dispute Settlement Body awareness to Article 2.2 of the TBT Agreement and the GATT 1994 Article 20 essentially is somewhat different, but despite So, the DSB believes in the necessity of this judgment, is not an

important issue. Since the TBT Agreement Section 2.2 of the applicable standard, such as the adoption of GATT 1994 and Article 20 are very similar, and both the TBT Agreement Foreword GATT 1994 and Article 20, paragraph b duplicate text, the Dispute Settlement Body considered the GATT 1994 20 Subsection (b) of Article jurisprudence is still used to explain a part of Article 2.2 of the TBT Agreement "unnecessary trade restrictions." Because Here, the dispute settlement mechanism still used previously relevant GATT 1994 Article 20 Subsection (b) the necessity of the case for sentence Off method. Clove cigarettes in the U.S. case, the group cited the case of the Brazilian tire group report, pointed out that the country can not just complaints A smaller alternative measures to restrict trade, must consider alternative measures to simultaneously measure up to the original respondent State To achieve the level of protection, it can be said when making the Dispute Settlement Body to determine the necessity still use from Brazil "Weigh" the way the case since the implementation of the tire; U.S. tuna case, the Dispute Settlement Body mainly in test Whether alternative measures proposed by the Mexican Department to achieve the same purpose, and reasonable restrictions on trade execution and smaller When the measures of this and previous GATT 1994 Article 20 Subsection (b) to determine the way related cases are also the same, so Dispute Settlement Body has noted GATT 1994 Article 20, paragraph (b) shall in the case of the United States and the United States kretek tuna case Article 2.2 of the TBT Agreement different, but essentially its necessity judgment, whether it is in the GATT 1994 Section 20 Subsection (b) or TBT Agreement Article 2.2 cases are collected in the same manner. For the second TBT Agreement Article 2.2 of the necessity of appropriate elements more properly interpreted as This paper argues that, although the text is similar to Article 2.2 of the GATT 1994 Article 20 Subsection (b) and TBT agreements, project The department is also in order to protect the life or health of humans or animals, may have taken the effect of the trade measures have limitations Facilities, but the two are not the same in nature. From the structure of the law is concerned, GATT 1994 Article 20 of the general exception

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Terms, TBT Article 2.2 of the Agreement is given membership obligations in adopting technical regulations, this has a different system Two provisions; would also completely different in terms of the burden of proof, and examine the object, a particular object of the TBT Agreement - - Technical regulations or standards are different with GATT 1994 Article 20 applies object. In addition, TBT Agreement Mentioned in Section 2.2, you must consider the risk when the contested measures did not reach the legitimate purpose that may arise, like Dispute Settlement Body also gives another layer of considerations involved in the face of the TBT Agreement Article 2.2 cases when, and this and Does not appear in the GATT 1994 Article 20, paragraph (b) shall determine the need for, and therefore, the provisions of this article do not think these two The gap is great, even though similar desire to protect its interests and purposes of the law, but the law is still completely different article.

This paper argues that, GATT 1994 Article 20 Subsection (b) compared with the TBT Agreement Article 2.2 of the association, Article 5.6 of the SPS Agreement and Article 2.2 of the TBT Agreement is more similar. Grass in the repair process of the Uruguay Round, Members Although not expressly provided in Article 5.6 of the SPS Agreement and Article 2.2 of the TBT Agreement two provisions relevance 188 However, this The true nature of the two agreements are more similar. Department of the SPS Agreement is to ensure that Member States of the human, animal and plant life and health Kang, and the formulation of public health and risk management policy autonomy in respect of the same members, restrictions related control measures Shi negative effects of trade 189 ; TBT Agreement is to recognize members in response to the needs of national security, the prevention of deception row To protect the legitimate purpose of human health or safety, animal or plant life or health, or the environment, etc., have been taken The effect of trade restrictions with technical regulations 190 , Two agreements are to be considered are based on GATT 1994 Article 20 b Money "to protect human, animal or plant life or health" or promote the objectives of the GATT 1994 solution Release 191 , Ie agreements can be applied to technical barriers to trade and health-related, some only on the field of application Different. In addition, TBT Agreement Article 2.2 and Article 5.6 of the SPS Agreement are given the burden of proof

indictment country, not as GATT 1994 Article 20 as being complained against the burden of the nature of law are also more similar, so 5.6 of the SPS Agreement The legal interpretation of Article 2.2 of the TBT Agreement is more like Botox.

188 ERNST-ULRICH PETERSMANN, INTERNATIONAL AND EUROPEAN TRADE AND ENVIRONMENTAL LAW AFTER THE URUGUAY ROUND (1996).

189 The Preamble of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

190 The Preamble of the Agreement on Technical Barriers to Trade.

191 The Preamble of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, the eighth recital; The Preamble of the Agreement on Technical Barriers to Trade, the second recital.

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If a closer look at the text and purpose of the provisions of the SPS Agreement Article 5.6 of the SPS Agreement and the TBT Agreement discovery of More similar nature, SPS Agreement Article 5.6 set in consideration of the technical and economic feasibility of the premise, unless there Another reasonable measures available to achieve an appropriate level of inspection and phytosanitary protection and is significantly less restrictive to trade, Otherwise, the original measure is considered necessary trade restrictions are not exceeded. This paper argues that Article 2.2 of the TBT Agreement and the SPS Section 5.6 higher similarity Agreement. Although the SPS Agreement Article 5.6 of the text is based on the need for "required" Expression, TBT Article 2.2 of the Agreement is based on "necessary" expression, but if agreement on the nature and purpose of this two Provision of greater similarity. "Australia, Canada restricted imports of fresh and frozen salmon Case (Australia - Salmon) "refers to the Appellate Body Out 192 , SPS Agreement Article 5.6 of the so-called "less does not have the effect of trade restrictions and phytosanitary measures" must have three Requirements: A reasonable considering technical and economic feasibility, the second is to achieve an appropriate quarantine importing country setting Protection standards, three less obvious effects of trade restrictions with the above requirements apply to the cumulative (cumulative in nature 193). After the WTO Dispute Settlement Body in the case of agricultural products in Japan (Japan - Agricultural Products II 194) And the Australian Apple Case (Australia - Apples 195) In judging whether the disputed measures against the 5.6 of the SPS Agreement When bar, all follow this standard. Section 5.6 of the case involving the SPS Agreement shows that the Dispute Settlement Body to consider When the amount of the disputed measures to restrict trade does not exceed reached the appropriate level of sanitary or phytosanitary protection, in addition to simple Outside the single tradeoff, its less biased view, "if there are other viable alternative measures" to achieve the same purpose, And over the disputed trade restrictive measures for the smaller. GATT 1994 Article 20, paragraph b of the trade-offs compared to the first, Dispute Settlement Body to review the need for the SPS Agreement Article 5.6 of the more lenient, if Article 2.2 of the TBT Agreement Can the necessity of using the SPS Agreement Article 5.6 of the inspection, then a country to reach a legitimate purpose, and may set When measures of trade restrictions caused by its policy formulation space will increase the number of, or be able to more effectively achieve its desire to chase

192 Appellate Body Report, Australia - Measures Affecting Importation of Salmon , WT/DS18/AB/R(Adopted Nov. 6, 1998).

193 ID . ¶

194. 194 Appellate Body Report, Japan - Measures Affecting Agricultural Products , WT/DS76/AB/R(Adopted Mar. 19, 1999).

195 Appellate Body Report, Australia - Measures Affecting the Importation of Apples from New Zealand , WT/DS367/AB/R (Adopted Dec. 17, 2010).

Seeking a legitimate target. In fact, the United States in the case of clove cigarettes, tuna case, meat case are proposed labeling for Article 2.2 of the TBT Agreement Judgment of necessity, shall in accordance with Article 5.6 of the SPS Agreement Note 3: "purpose of Article 5, Paragraph 6 and the test Under the premise of the amount of technical and economic feasibility, unless there is another reasonable measures available to achieve the proper inspection and anti- Quarantine protection standards, and significantly less restrictive to trade, otherwise the original measure is considered trade does not exceed the required Restrictions. "But teams are not specifically proposed that the United States and GATT 1994 Article 20 Subsection (b) and SPS Article Differences in interpretation 5.6 or any GATT 1994 Article 20, paragraph (b) shall not be interpreted as TBT Agreement Reasons 2.2 "necessity" of 196 . The United States in the three cases are presented in Section 5.6 of the SPS Agreement to interpret Article 2.2 of the TBT Agreement, which The basis for the 1993 GATT by the Secretary-General Peter D. Sutherland wrote to the then U.S. ambassador John Schmidt's letter, explain the situation and SPS 3 similar agreements comment section 5.6 Article 2.2 of the TBT Agreement Next, in accordance with the Vienna Convention on the Law of Treaties (Vienna Convention on the Law of Treaties) Section 32 197 , SPS Agreement Article 5.6 of the TBT Agreement Note 3 was used as supplementary means of interpretation of Section 2.2, it can be the SPS Agreement Necessity 2.2 interpretation of Article 5.6 of the TBT Agreement 198 However, the WTO dispute settlement mechanism in this letter are the most

196 Panel Report, U.S. - Clove Cigarettes , ¶ 7.365.

197 Vienna Convention on the Law of Treaties, art 32: "Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable."

198 Interim Report, ¶ 7.365, United States suggests to the Panel that a new footnote at the end of the first sentence be added to read: "New footnote 661: The Panel notes that the United States further contends that the 1993 letter from Peter D. Sutherland, Director-General of the GATT, to Ambassador John Schmidt, Chief US Negotiator, Exhibit US-79, provides additional support, as a supplemental means of interpretation under Article 32 of the Vienna Convention, that TBT Article 2.2 should be interpreted similarly to SPS Article 5.6, specifically that a measure cannot be considered more trade-restrictive than necessary in the absences of a reasonably available alternative measure that is significantly less-trade restrictive."

Other members of the GATT has not been accepted 199 .

This paper argues that, WTO dispute settlement body should be a detailed comparison of the SPS Agreement and the TBT and SPS agreements nature Agreement under Article 5.6 and Article 2.2 of the TBT Agreement similarity of the text of the conclusions is more properly fit the rear, only if required to be State complaint cited Article 5.6 requires different GATT 1994 Article 20 Subsection (b) and the SPS Agreement, or require the accused V. State need to explain the necessity of GATT 1994 Article 20 jurisprudence Subsection (b) of the TBT Agreement can not be used until 2.2 The reason of the, like exposure to the Dispute Settlement Body has to be applied GATT 1994 Article 20, paragraph (b) shall explain TBT Stereotypes Agreement necessity requirement of Article 2.2, but did not really clarify unable to Article 5.6 of the SPS Agreement necessity Act Because any reasonable interpretation of Article 2.2 of the TBT Agreement. The third WTO Dispute Settlement Body adopted GATT 1994 Article 20 , paragraph b necessity paragraphDue to the legal requirements of the This paper wants to see WTO Dispute Settlement Body to recognize that despite the GATT 1994 Article 20

Subsection (b) and Article 2.2 of the TBT different agreements, but in the judgment of the necessity requirement was applicable in the same way. In accordance with the GATT 1994 and the review of the order of the TBT Agreement, as the TBT Agreement and GATT 1994 are applicable to the relationship between cumulative, so In reviewing measures to comply with the requirements of a State after the TBT Agreement, if the measure is contrary to the provisions of GATT 1994, is still Depending on whether the measure was again able to be a defense in accordance with Article 20 of GATT 1994. Therefore, if the disputed measure if not illegal Article 2.2 of the TBT Agreement, in contravention of the provisions of the GATT 1994, the Dispute Settlement Body must determine The measure was not applicable GATT 1994 Article 20, paragraph (b) shall be justified. In testing whether the disputed measures GATT 1994 Article 20 Subsection (b) when the alleged necessity, the process must go through a series of trade-offs to be evaluated Includes consideration of the importance of the objectives pursued, trade restrictive measures and measures to help reach whether to pursue Objectives, and verify if there are other alternatives. But in fact, the dispute settlement mechanism in the previous test a measure Whether through the necessity of applying Section 2.2 of the TBT Agreement, is bound to have passed the rigorous review, in addition to checking the disputed

199 Panel Report, U.S. - Tuna II , ¶ 4.97; Appellate Body Report, U.S. - COOL , ¶ 109.

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Whether the measures implemented in the Department for the pursuit of a legitimate aim side measures to protect what extent, if there are other for trade Less restrictive alternative measures, and risk if less than legitimate purposes may be caused by some tests are better than this Subsection (b) the necessity of Article 20 of the 1994 GATT rigorous review. Thus, a measure has endorsed the TBT Agreement 2.2 The test should also be through GATT 1994 Article 20, paragraph (b) shall comment about the necessity of breaking, it is indisputable To avoid this end settlement bodies of two conflicting results, namely the need for a measure seized by the TBT Agreement Article 2.2 of the Inspection, but did not by circumstances Subsection (b) Section 20 of the 1994 GATT, it must take the same approach will be judged To sexual element. Case of clove cigarettes in the United States, the Dispute Settlement Body to consider the United States banned the import of cloves and other spices taste of cigarettes The bill is the pursuit of a legitimate purpose system, and the regulations shall not cause unnecessary trade restrictions and the need to consider The risks that may arise when not fulfilled. Indonesia was considered only a smaller alternative measures to restrict trade, not Consider alternative measures to achieve the required level of protection while the former measures the respondent State to be achieved, and therefore can not prove that the United States The measures cause unnecessary trade restrictions. In accordance with the GATT 1994 and the review of the order of the TBT Agreement, the review After the United States comply with the measure of the TBT Agreement, may still be illegal depending on the measure if the provisions of GATT 1994, By trade restriction is whether Article 20 of GATT 1994 to justify measures. In terms of the way test to weigh the disputed measure whether the United States GATT 1994 Article 20 paragraph b shall be referred to the To nature, must consider "reducing youth smoking population" of why the importance of this goal, the United States banned selling wind Act flavor cigarettes it help the youth smoking reduction targets, and the need to examine whether there are other alternatives. If the panel held that the degree of protection that the United States only to reduce youth smoking population, rather than the "total elimination" Green Youth smoking population, and the United States banned imports of clove cigarettes to domestic measures should not exceed sought "to reduce youth Between means and ends with a degree of protection in the smoking population "of the Act prohibits selling and purpose of regulation Correlation between, so the team should be considered in Indonesia failed to prove that the disputed ban set by the United States over security Nursing degree, the necessity of the measure of the U.S. inspection by Article 2.2 of the TBT Agreement. This paper argues that, in has passed TBT Agreement under Section 2.2 of the necessity

requirement, since GATT 1994 Article 20, paragraph (b) shall examine the necessity of Article 2.2 of the TBT Agreement over the loose, the United States may also disputed measures should GATT 1994 by Article 20 b

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Assessment models concerning the necessity of breaking the United States should give evidence that the measure may invoke GATT 1994 Article 20, paragraph (b) shall be To defend. Thus, WTO Dispute Settlement Body wishing to GATT 1994 Article 20 Subsection (b) analysis of the requirements set TBT Agreement with the necessity to Section 2.2 of the elements that tailor to be weighed to determine ways to avoid if at pass After over Article 2.2 of the TBT Agreement, there may not pass GATT 1994 Article 20 Subsection (b) of the necessity test Conflicts arising before and after the ruling. In addition, by the U.S. kretek case, the U.S. tuna dispute case and the case of the U.S. meat labeling solve Report Shows that, although Article 2.2 of the TBT Agreement is scheduled to consider the technical regulations specified time limit on trade, in addition to not higher than All necessary to achieve a legitimate aim strictly, should also taking into account "the legitimate purpose is not to reach that may arise Risk ", but only focus on the WTO dispute settlement mechanism resulting in the disputed measures are beyond the reach of trade restrictions The purpose of the analysis of the necessity, if not more than the risks that may occur when not achieve the purpose of view, the degree of risk caused by And determine what the standard. This paper argues that the WTO dispute settlement system which is also likely to be used by organizations GATT 1994 Article 20, paragraph (b) shall apply to the development of jurisprudence from the Article 2.2 of the TBT Agreement, in this case, because the GATT 1994 Section 20 Subsection (b) risks arising from the need to achieve the goal has not yet assessed, so the Dispute Settlement Body on Adjudicating Article 2.2 of the TBT Agreement, also intends to ignore this part, it may be directly applied to the GATT 1994 20 Subsection (b) analysis of the necessity to Article 2.2 of the TBT Agreement. IV Summary This section compares the TBT Agreement and GATT 1994 Article 2.2 Section 20 Subsection (b) of the dissimilarity that two Review the text of the object, the burden of proof with different policy objectives; contrast, SPS Agreement Article 5.6 and Higher similarity TBT Article 2.2 of the Agreement. But three recent cases of Article 2.2 of the TBT Agreement on report Still used in GATT 1994 Article 20, paragraph (b) shall determine the necessity of the legal requirements, it seems, said the WTO dispute Settlement Body section 2.2 of the TBT Agreement for the necessity of interpretation has set the tone. WTO members in formulating future security When protecting human, animal or plant life or health of the technical regulations, in accordance with the dispute settlement mechanism seems to have GATT 1994 Article 20, paragraph (b) shall review the manner fixed by necessity, but, compared to Article 5.6 of the SPS Agreement

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The necessity requirement, the Dispute Settlement Body on GATT 1994 Article 20 paragraph b of the trade-offs like manner more stringent And positive obligations since Article 2.2 of the TBT Agreement requires WTO members to follow, then the need for more stringent in accordance with this Review of the way, like WTO membership will greatly affect the development of space policy, whether Botox is not without doubt.

Chapter V Conclusion

Due to the gradual global focus on environmental protection, protection of flora and fauna and human life and health, and promote public health Concept of future WTO Member States to base this may result in the formulation of many regulatory barriers to trade, and this some measures Are there facilities unnecessary restrictions on trade and why countries to develop space policy for lawful purposes, are The focus of this article inquire. Since the GATT 1994 Article 20 paragraph b of text and Article 2.2 of the TBT Agreement provisions Man Words are very similar, whether the measures are covered by a concept of "necessity" of the recent case involving the TBT Agreement Pieces of the report begin with GATT Article 20, paragraph (b) shall apply to the

necessity interpreted Article 2.2 of the TBT Agreement. This The time sequence of text followed the incident, observe the GATT and the WTO Dispute Settlement Body prior to the GATT 1994 Section 20 Subsection (b) and Section 2.2 "necessity" requirement of the TBT Agreement ruling to clarify WTO dispute Settlement Body text for explanation of why this context two and made herein considered to be more appropriate for the proper interpretation of the necessity requirement Way. Since the Thai cigarette case, the group has cited the U.S. team in 1989 Tariff Act of 1930 Section 337 cases of Report ruling, the criteria for judging the necessity of GATT 1994 Article 20 of the set: if there is a reasonable take other, Does not violate the relevant provisions of GATT 1994 "alternative measures" if the country were accused of measures violate GATT 1994 provisions, they can not have the necessity Weici measures. Even if there was no one to be reasonable and does not violate the adoption GATT 1994 provisions of the Anti-alternative measures, the defendant still violate GATT obligations on reasonable selection of measures 1994 the lowest level of the terms of the measures. By the U.S. tuna case I, the U.S. Tuna Case II of GATT 1994 and the period WTO case during the American Petroleum group has been followed to understand who obtain this standard, that is, whether there are other reasonable to use, And violate the minimum specification of the GATT 1994 to the extent of the use of alternative measures to be judged case the disputed measure is Subsection (b) whether the alleged necessity of GATT 1994 Article 20 has. After the European Communities asbestos case, in addition to follow former team Way to determine the need for external reference, and additionally add "weigh method" to determine the necessity of measures. Appellate Body Strong Tone, if the target of the measures on the contribution of the higher or smaller degree of trade-restrictive measures, or measures to protect desired The higher the value, the more likely the measures were identified as necessary measures. In Brazil and China, after the tire case

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Raw materials case, the Dispute Settlement Body is licensed under the trade-offs standard 纳欧 body of asbestos cases. Recently the U.S. kretek case, the U.S. tuna Case II and U.S. meat labeling case and other cases came out, getting to explore WTO Dispute Settlement Body to investigate the TBT Agreement Article 2.2 of judgment "necessity" Why context. Fight End settlement body in the context of the interpretation of Article 2.2 of the TBT Agreement, and more references to GATT, "the Ministry of Article 20 of the 1994 Points "jurisprudence, and the" degree of protection "to 2.2 introduced the term judgments about the necessity of the TBT Agreement. Previous analysis of whether the disputed measures necessity, must be considered the measure "To achieve the level of protection" for the He, after confirmation, side way past cases cited weigh adopted, the confirmation whether the disputed measures to achieve target There contribute substantively, if contributions are to continue to see if there are other trade restrictions for small The alternative measures, which may achieve the same purpose. Dispute Settlement Body in cases related to the TBT Agreement, although considered in Article 2.2 of the TBT Agreement and the GATT 1994 Article 20, paragraph (b) shall be different, but the concept of the necessity of the elements of the final judgment, the use of previously Dispute settlement mechanism involving the GATT 1994 20 Elements of Subsection (b) of the necessity to explain ways that are adopted Analyzing weigh manner. This paper argues that although these two provisions are to explore the concept of necessity, but in the end the provisions of The structure, whether it is the object of the review, the burden of proof and the policy objectives that are different. In contrast, SPS Agreement Article 5.6 Article 2.2 of the TBT Agreement should be more similar, WTO dispute settlement body should first determine the SPS Agreement View necessity manner 5.6 Section 2.2 of the TBT Agreement. But this article will recognize that for the sake of the Dispute Settlement Body rulings The consistency, the need for the concept of free contradictions happens, it will GATT 1994 Article 20 b Models on the way to judge the necessity of continued until the TBT Agreement Article 2.2. WTO dispute settlement mechanism to resolve but While recognizing the GATT 1994 Article 20, paragraph (b) shall differ from Article 2.2 of the TBT Agreement, but did not explain why it View the need to tailor the law to weigh these two can not follow the provisions of the SPS Agreement and Article 5.6 of the legal necessity to Section 2.2 of the reasons why the TBT Agreement, but only in order to take over the non-important issue, it is a pity. WTO members are contentious, although control measures of a

country with a legitimate purpose, but if the other Economic Development contravene WTO Members would be required to determine whether the legitimacy of trade liberalization or regulatory purposes whichever

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More important, however no absolute answer to this controversy. In the judgment on the necessity of involving Article 2.2 of the TBT Agreement measures, TBT cases due to three consecutive pieces baked, may wish to consider the need for the WTO dispute settlement body of the clause for trial Check approach has set the tone, but the principles of the WTO dispute settlement is neither precedent, fear still waiting for the increasing technical trade Easy disorder cases are still observing the Dispute Settlement Body adopted the concept of GATT 1994 Article 20 Subsection (b) of the judgment TBT Agreement Article 2.2 of the related cases. In particular, Article 2.2 of the TBT Agreement Yau on a country to achieve a legitimate purpose Formulate policies may result in trade barriers when their spatial extent, this paper hope future dispute settlement body if still The GATT 1994 Article 20 Subsection (b) and Article 2.2 of the TBT Agreement to take the same approach to determine the necessary tradeoffs Resistance, the more convincing reasons can be given, in order to understand the adoption of the same in a different way to explain the structure of the law Why jurisprudence.

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