

# WTO Trade War Resolution for Japan's Chemical Export Restrictions to South Korea

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## Abstract

The research analyses the trade war between South Korea and Japan from the perspective of international law. The trade war involving South Korea and Japan was triggered by a decision by the Supreme Court of South Korea which ordered several Japanese companies to pay compensation to victims of Japanese forced labor during World War II. As a result, on July 1, 2019, Japan imposed restrictions on chemical exports to South Korea. South Korea accused Japan of violating international trade regulations concerning export restrictions. Therefore, South Korea took action by boycotting goods from Japan. The two countries resolved to remove each other from the whitelist of countries that obtain preferential trade status via their activities. The research method used is normative legal research with a case approach. The result shows that the trade war involving Japan and South Korea worsened bilateral relations. The World Trade Organization (WTO) carried out several mechanisms related to solving the problem, namely through consultation and conciliation involving the two countries, but it still needs to resolve the issue. It was also planned to establish a panel between South Korea and Japan by the WTO, but it has not been implemented until now and beyond the timeframe set by the WTO in establishing the Panel. Therefore, the study proposes that South Korea and Japan can initiate arbitration as a solution for another effort to resolve the problem because the arbitration mechanism obtains binding and final decisions.

**Keywords:** chemical export, dispute settlement mechanism, trade war.

## A. Introduction

According to Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, a country can exist because certain elements have been fulfilled, such as *de facto* and *de jure* elements, people, sovereign government, territory, and recognition from other countries.<sup>1</sup> The country is a part of international law in

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which the country has the right to establish relations with other countries and maintain territorial sovereignty. In international relations, the creation of interaction between countries covering various fields, namely economic, political, social, and cultural, which is to increase interaction between countries both bilaterally and multilaterally.<sup>2</sup>

International trade is an important aspect of economics that provides insight into how people, businesses, and governments may maximize their resources through trading with one another. In most countries, international trade is one of the main contributors to the growth of Gross Domestic Product (GDP).<sup>3</sup> Economic growth is a priority in the context of a country's economy because one measure can be changed based on the growth or success of the country's economy, such as industrialization, transportation, globalization, and multinational companies.<sup>4</sup>

The international economic system is a very important issue and involves cooperation between countries. Since 1945, an international economic system has emerged through multilateral agreements, formal institutions and networks of informants and institutions, the most important of which is the result of the Bretton Woods agreement. The factor that led to the emergence of economic agreements was the desire of countries to escape from the instability and economic crises experienced by various countries. In the Bretton Woods agreement, important institutions were born such as the International Monetary Fund (IMF), the World Bank, and also the idea to form a world trade organization at that time, namely the formation of International Trade Organizations (ITO). ITO is an organization planned to regulate world trade, but ITO did not get approval at the Senate meeting in the United States as a world organization. The situation lasted quite a long time and on the other hand, the trade organization had to work, therefore the General Agreement on Trade and Tariff (GATT) was formed which was agreed upon as an agreement that took over the multilateral trade organization.<sup>5</sup>

The GATT, which has been in effect since 1948, is not an organization and is only a multilateral agreement containing provisions and discipline in regulating the behavior of countries in international trade activities. GATT was formed to prepare

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<sup>1</sup> Hamid Awaludin, "State Border versus Culture: An International Legal Examination," *Indonesian Journal of International Law* 15, no. 2 (2018): 110-111, <https://doi.org/10.17304/ijil.vol15.2.721>.

<sup>2</sup> Chaitanya Khurana, "Review of Game Theory Applications in International in Trade," *International Journal of English Literature and Social Sciences* 7, no. 1 (2022): 197, <https://doi.org/10.22161/ijels.71.26>.

<sup>3</sup> Putri Dewi Purnama and Ming Hung Yao, "The Relationship Between International Trade and Economic Growth: An Empirical Finding from ASEAN Countries," *International Journal of Applied Business Research* 1, no. 2 (2019): 113, <https://doi.org/10.35313/ijabr.v1i02.72>.

<sup>4</sup> Amra Babajić, Mirza Suljić and Sanel Halilbegović, "Economic Growth, Economic Development, and Poverty: A Bibliometric Analysis," *Journal of Economic and Social Sciences* 8, no. 1 (2022): 3, <https://doi.org/10.14706/JECOSS21814>.

<sup>5</sup> Isaac O.C. Igwe, "History of the International Economy: The Bretton Woods System and its Impact on the Economic Development of Developing Countries," *Athens Journal of Law* 4, no. 2 (2017): 111, <https://doi.org/10.30958/ajl.4.2.1>.

a world trade organization, namely the World Trade Organizations (WTO). The WTO is an organization that resulted from the General Agreement on Trade and Tariff (GATT) negotiations at the Uruguay Round in (1986-1994) which resulted in an agreement on the formation of the WTO, which came into effect on January 1, 1995. The WTO has the authority as a regulatory organization related to world trade where its members are obliged to comply with the implementation of the WTO agreements. Trade dispute resolution regulations at the WTO are an important element of law at the WTO, in which the WTO settlement system and mechanism is regulated in the Dispute Settlement Procedures or known as Dispute Settlement Understanding (DSU). DSU is a refinement of the GATT 1947 dispute resolution, which is the predecessor of the WTO. In the DSU regulations, the WTO Dispute Settlement Body (DSB) was established to handle WTO disputes. The WTO DSB has two organs, namely the Panel and the Appellate Body as dispute resolution organs under the WTO DSB.<sup>6</sup> The main objective of the WTO settlement is to immediately resolve the demands of WTO members regarding certain rights and obligations of WTO members. According to Article 3.3 of the DSU, speedy and efficient enduring is essential for the effective functioning of the WTO and the balance between member rights and obligations. The current mechanism of the WTO Dispute Settlement Mechanism consists of four phases namely, consultation, panel report, Appellate Body report (AB Report), and DSB adoption.<sup>7</sup>

As with the dispute involving the two countries on the Asian continent, it began with export restrictions imposed by Japan on South Korea. It started with the Japanese government imposing restrictions on the export of some chemicals for the manufacture of a number of materials used for industrial technology in South Korea. The restricted raw materials for manufacture are (i) fluorinated polyamide, a standard material in the manufacture of mobile phone and television screens; (ii) photoresists, one of the materials for producing chips; and (iii) high purity hydrogen fluoride, a material for assembling silicon wafer in semiconductors.<sup>8</sup> The restriction has an impact on the South Korean technological industry because South Korea has a dependence on Japan for the three chemicals.<sup>9</sup> The restrictions imposed by Japan require that every Japanese company that exports to South Korea is required to submit an export application which takes up to 90 working days, which hinders the business processes of South Korean industrial technology companies. As a result, in response to Japan's stance against the export limits,

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<sup>6</sup> Triyana Yohanes, Adi Sulistiyono, M. Hawin, "Legally Binding of the World Trade Organization Dispute Settlement Body's Decision," *Hasanuddin Law Review* 3, no. 2 (2017): 161, <https://doi.org/10.20956/hairev.v3i2.1107>.

<sup>7</sup> I Gusti Ngurah Parikesit Widiatedja, "The Supremacy of the Dispute Settlement Mechanism (DSM) under the World Trade Organization (WTO)," *Brawijaya Law Journal* 6, no. 1 (2019): 64, <https://doi.org/10.21776/ub.blj.2019.006.01.05>.

<sup>8</sup> World Trade Organizations, "Japan – Measures Related to the Exportation of Products and Technology to Korea," accessed on June 20, 2022, [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds590\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds590_e.htm).

<sup>9</sup> Fahrizal Nugroho, M. Mossadeq Bahri, "History and Japanese South Korea Trade Wars," *Japanese Research on Linguistics, Literature and Culture* 2, no. 1 (2019): 47-48, <https://doi.org/10.33633/jr.v2i1.3353>.

South Korea retaliated by boycotting Japanese products, which affected the Japanese economy. The actions taken by South Korea and Japan have worsened relations between the two countries. Thus, the two countries made a policy decision to remove each other from the whitelist of countries that received preferential trade treatment and terminate the military agreement between the two countries.

Thus, the South Korean government reports to the WTO on the policies made by the Japanese government on export restrictions. South Korea asked for the cancellation of the export policy by Japan. South Korea and Japan brought the case to the WTO headquarters in Geneva intending to resolve the trade war between the two countries through the WTO.

The economic conflict between South Korea and Japan was due to Japan's non-tariff barriers, namely restrictions on exports of some chemicals for the manufacture of semiconductors to South Korea and also a form of retaliation carried out by South Korea, namely by boycotting goods originating from Japan and also severing the agreement of military between the two countries and the two countries took actions to eliminate each other against the whitelist policy, namely countries that get preferential treatment in conducting trade. It causes losses for both countries and countries that have trade relations with the two countries. The actions of the two countries led to a trade war between the two countries. A trade war is an act of retaliation against one another between two countries by raising import tariffs or placing other restrictions on other countries' imports. A trade war can start if one of the countries feels that a rival country has unfair trade practices.<sup>10</sup> Also, trade wars are often the result of misunderstandings about the benefits of free trade. Countries trade, therefore, for their own interest. When they take a restrictive policy, it's because they gain an advantage from it.<sup>11</sup> Therefore, the research is presented to discuss the following topics: Japan and South Korea Relationship Dynamics, the emergence of the Japan-South Korea trade war and how the WTO establishes the resolution of trade conflicts between Japan and South Korea.

The research was conducted in normative legal nature in compliance with legal concerns relating to the trade war that occurred involving Japan and South Korea according to international law. The research analyses ideas, legal principles, and regulations. Furthermore, the research used a case study approach. The information is obtained from books, legal journals, newspapers, and other sources. Furthermore, the legal documents were examined and categorized based on the discussion and interpretation related to important ideas to the problems

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<sup>10</sup> Anjala Kalsie and Ashima Arora, "US-China Trade War: The Tale of Clash between Biggest Developed and Developing Economies of the World," *Management and Economics Research Journal* 5, no. 1 (2019): 2, <https://doi.org/10.18639/MERJ.2019.956433>.

<sup>11</sup> Suman Bhakri, Sharma Roopali, "Trade War: War of Dominance," *International Journal of Web Engineering and Technology* 8, no. 4 (2021): 16, <https://doi.org/10.1729/Journal.27177>.

emphasized and qualitatively described using deductive - inductive way to discover solutions to the problems.

## **B. The History and Role of WTO**

An international organization is an entity created by members of the international community voluntarily or on an equal basis with the aim to establish world peace. Countries can establish a joint body with oversight, regulatory, and even judicial powers by establishing a joint international committee based on an international agreement.

The background to the establishment of international trade organizations was the creation of a system called Bretton Woods at the end of World War II, namely from 1944 to the 1970s. The Bretton Woods system is an example of a fully negotiated global order intended to regulate currency relations in sovereign country. During its development, the Bretton Woods System produced two institutions that became regulators in the international economic order, namely the IMF and the World Bank.<sup>12</sup> The Bretton Woods system led by the United States was discursively designed as a system that encourages the development of a liberal economy that develops hegemonic stability to remain a unipolar actor that has an important role as ruler, both in the economic order and in creating global political stability.<sup>13</sup>

In addition to the monetary and financial sector, the member countries of the conference realized the need for regulation in the trade sector. Conference members also held a meeting in Havana in 1948 to discuss the charter of the International Trade Organizations (ITO) which hoped that the ITO could deal with trade issues like the IMF and World Bank, but the formation of the ITO could not materialize. It is because the United States Congress did not approve the establishment of the ITO and based on political considerations the congress stated that it would not ratify the ITO charter. Since the ITO was not established, there has been a vacuum in the institutional framework for trade at the international level. Therefore, the GATT was formed which became a regulatory milestone in the field of international trade in 1948.<sup>14</sup>

Until the WTO is formed, the GATT is the only multilateral Agreement that governs and contains international trade policies. GATT is a forum established to facilitate negotiations between countries in conducting international trade. The formation of GATT is intended to facilitate free and fair trade and promote

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<sup>12</sup> Kathleen Claussen, "Next-Generation Agreement and the WTO," *World Trade Review* 21, no. 3 (2022): 386, <https://doi.org/10.1017/S1474745622000131>.

<sup>13</sup> Yueru Jin, Duanyi Liu, and Yuhan Li, "Factors That Have Led to the Collapse of the Bretton Woods System," *American Journal of Industrial and Business Management* 8, no. 10 (2018): 2134, <https://doi.org/10.4236/ajibm.2018.810141>.

<sup>14</sup> Muhammad Saqib Irshad (et.al.), "The Role of Charismatic World Trade Organization and the Expansion of Free International Trade," *International Journal of Management Science and Business Administration* 2, no. 3 (2016): 17, <https://doi.org/10.18775/ijmsba.1849-5664-5419.2014>.

economic growth and development for the benefit of humanity.<sup>15</sup> Additional board configurations, interpretations, and decisions continue to broaden the GATT Agreement. Over the past 47 years, the GATT system has evolved and become the cornerstone of international trade involving numerous countries. In principle, the formation of GATT aims to provide a secure environment for international trade and to liberalize trade.<sup>16</sup>

The WTO existence began with the negotiations known as the Uruguay Round from 1986 to 1994. It was decided during the discussions that the WTO would assume the GATT's position and responsibilities.<sup>17</sup> The WTO was formally established on January 1, 1995. At its inception, the WTO had 154 member countries. The WTO is also the result of an agreement based on a series of accords that have been long planned and negotiated by practically all governments in the world. WTO is an international organization that was founded to promote country welfare via a set of trade agreement regulations. The WTO purpose is intended to help producers of products and services, as well as export and import policies, in their trading operations.

The GATT and the WTO have substantial differences. GATT is ad hoc and temporary in nature. The parliaments of member countries do not ratify general agreements that do not contain provisions for the creation of an organization, while the WTO becomes a member. The WTO has a dispute resolution system that is more practical and briefer than the GATT. Approvals in the WTO are permanent and have definite rules and are ratified by member countries.

The WTO is an organization that does not have executive power that can be run independently by its member governments and apart from the specialized agencies of the United Nations.<sup>18</sup> WTO played a significant role in managing global trade concerns and was formed to protect countries' welfare through a variety of trade agreement rules.<sup>19</sup> As an international organization with a legal personality, the WTO is granted special diplomatic rights comparable to those of the United Nations specialized agencies. The WTO bears no resemblance or similarity to other international organizations such as the IMF and World Bank because its power is not delegated to a single board of directors or bureaucracies, and it has no influence on each member country's trade policies except to make analytical

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<sup>15</sup> World Trade Organizations, "The WTO Agreement Series," accessed on July 1, 2022 [https://www.wto.org/english/res\\_e/booksp\\_e/agrmntseries2\\_gatt\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf).

<sup>16</sup> Frances Annmarie Duffy, "The Slow Demise of the Most Favoured Nation," *Prophetic Law Review* 3, no. 2 (2021): 113, <https://doi.org/10.20885/PLR.vol3.iss2.art1>.

<sup>17</sup> Peter Van den Bossche and Denise Prévost, *Essentials of WTO Law* (Cambridge: Cambridge University Press, 2016), 232.

<sup>18</sup> Mitsuo Matsushita, Thomas J. Schoenbaum, Petros C. Mavroidis, Michael Hahn, *The World Trade Organization Law, Practice, and Policy* (Oxford: Oxford University Press, 2015), 17.

<sup>19</sup> Vicky Chemutai, Hubert Escaith, "Measuring World Trade Organization (WTO) Accession Commitments and their Economic Effects," *Journal of International Commerce, Economics and Policy* 8, no. 2 (2017): 2, <https://doi.org/10.1142/S1793993317500077>.

comments for the purposes of regular trade reviews of each member country's trade policies.<sup>20</sup>

The WTO was established with three goals in mind. The first is to discuss and negotiate the trade agenda of countries by establishing a mechanism between these countries. The second purpose is to ensure that no Member State feels or faces trade discrimination. The third is the establishment of a functional legal framework to enable trade dispute resolution and the prevention of trade disputes. Which, the purpose is to help producers of services and goods, importers, and exporters in carrying out their activities.<sup>21</sup> The WTO aims in the Agreement to raise living standards, ensure full employment, and large and growing volumes of real income and effective demand, as well as to expand production and trade of goods and services, all while enabling the optimal use of global resources in accordance with development goals. sustainable, attempting both to protect and preserve the environment and to improve the means to do so in a manner consistent with the needs and concerns of each of them at different levels of economic development, further recognizing the need for positive measures designed to ensure such development countries, particularly the least developed, share in the growth of international trade commensurate with their economic development needs, Desiring to contribute to these aims by engaging into mutually advantageous agreements aimed at significantly reducing tariffs and other trade obstacles and eliminating discriminatory treatment in international trade relations, As a consequence, it was agreed to establish an integrated, more practicable, and long-lasting multilateral trading system that included the General Agreement on Tariffs and Trade, the results of previous trade liberalization initiatives, and the outputs of the Uruguay Round of Multilateral Trade Negotiations.<sup>22</sup>

As a global trade system, the WTO symbolizes the intersection of legal, economic, and political theory and practice. The third factor is that each person plays a distinctive role in bringing countries with various levels of economic growth and political power together to eliminate trade barriers in order to construct and sustain a rules-based system. To accomplish free trade and effective liberalization, the WTO works towards the implementation of the agreements that member nations have and are implementing as a package. The WTO is expected to bridge all the world's trade interests via mutually agreed-upon provisions.

The WTO functions as an organization that offers an institutional framework for member nations' trade interactions in the execution of agreements from different legal instruments. Thus, the WTO forms various international legal instruments

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<sup>20</sup> Crowley, M. A., and J. Hillman, "Slamming the Door on Trade Policy Discretion? The WTO Appellate Body's Ruling on Market Distortions and Production Costs in EU–Biodiesel (Argentina)," *World Trade Review* 17, no. 2 (2018): 195-213, <https://doi.org/10.1017/S1474745617000581>.

<sup>21</sup> Tolulope Anthony Adekola, "US–China Trade War and the WTO Dispute Settlement Mechanism," *Journal of International Trade Law and Policy* 18, no. 3 (2019): 125, <https://doi.org/10.1108/JITLP-02-2019-0011>.

<sup>22</sup> World Trade Organizations, "Agreement Establishing the World Trade Organizations," accessed on July 21, 2022, [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto.pdf](https://www.wto.org/english/docs_e/legal_e/04-wto.pdf).

poured into agreements. The WTO, in carrying out its functions, is equipped with some organs as follows:

- a. Ministerial Conferences.  
The Ministerial Conference is the highest decision-making body in the WTO.
- b. General Council.  
The General Council functions as both a dispute resolution and trade policy reviewer to oversee dispute resolution procedures between members and to review members' trade policies.
- c. Goods Trade Council.  
The Goods Trade Council is the body responsible for overseeing the implementation of the agreements reached in the service trade sector.
- d. Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS)  
The TRIPS is in charge of supervising and monitoring countries related to the TRIPS Agreement.
- e. Dispute Settlement Body (DSB).  
The body under the Ministerial Conference is in charge of organizing a trade war among the WTO members.
- f. Trade Policy Review Body (TPRB).  
The body is responsible for carrying out the mechanism for reviewing international trade policies.

Over the last two decades, WTO membership has been a significant source of liberalization. Currently, the WTO has become an organization that can be regarded as a trade organization that cannot be intervened in a decision. Based on a series of accords negotiated and agreed upon by many countries that have recognized the organization, the WTO has evolved into a platform for conducting collective international trade interactions.

Responding to the case of restriction on the export of semiconductor chemicals from Japan to South Korea, both of which are members of the WTO, in which South Korea accused Japan of violating international trade regulations regarding export restrictions. For this reason, it makes a loss to South Korea's annual exports. If the export restrictions imposed by Japan are not handled quickly, then the losses experienced by South Korea will be even greater. It is why South Korea needs to settle trade disputes with Japan. The problem was then handled by the South Korean government by requesting assistance with dispute resolution by a third party, namely the WTO.

### **C. Japan and South Korea Trade Relationship Dynamics**

Japan and South Korea are countries that are geographically close together. Although the two countries have similar values and cultures and are geographically close together, the two countries have political relations that are not very close. It is due to the history of the Japanese colonization of South Korea during World War



II.<sup>23</sup> Japan's policies and treatment in the past left deep wounds in the South Korean people and caused negative sentiments or views towards them. For example, the elimination of the culture of the colonial country and the practice of forced labor or better known as *romusha*. The case that most attracted the attention of the South Korean public and government was comfort women. Comfort women is a term used for sex workers for Japanese soldiers by means of forced recruitment and the comfort women problem has been going on since 1932 and has become a problem that has quite strong implications for bilateral relations between the two countries.<sup>24</sup>

In the early 1950s, there was a plan to normalize relations between the two countries. However, the old wounds caused by Japanese colonialism became one of the obstacles. The two countries have struggled to rebuild equal diplomatic ties. But South Korea is demanding that Japan be held accountable for its war crimes as a condition for normalizing diplomatic relations. It was responded by Japan with Japan's reluctance to admit and apologize for its actions during the colonial period. It made the normalization efforts in vain.<sup>25</sup> Thus, both countries find it challenging to normalize and adhere to their respective principles. Until the situation changed when the Korean War broke out in 1950, the Korean Peninsula was divided into North Korea and South Korea. After the conflict, South Korea faced a difficult period in which South Korea saw the need for Japanese assistance. Improving relations between the two countries affects South Korea's position in the Asia Pacific. It was marked by South Korea receiving US\$ 300 million in grant assistance, US\$200 million in loan assistance, and US\$ 300 million in commercial loans from the Japanese government.<sup>26</sup> Diplomatic relations between Japan and South Korea were officially formed in 1965 when Japan and South Korea agreed to sign an agreement whose contents were to normalize diplomatic relations and economic cooperation in an agreement called the Treaty of Basic Relations involving Japan and South Korea.<sup>27</sup> The establishment of the agreement is seen as a significant impetus for the two countries to settle South Korea and Japan's concerns. The fundamental relations agreement between Japan and South Korea contains references to the establishment of basic diplomatic ties between the two countries

Since the normalization agreement between South Korea and Japan, South Korea's economy has depended on Japan. Goods imported by South Korea are

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<sup>23</sup> Taku Tamaki, "It Takes Two to Tango: The Difficult Japan–South Korea Relations as Clash of Realities," *Japanese Journal of Political Science* 21, no. 1 (2019): 7, <https://doi.org/10.1017/S1468109919000161>.

<sup>24</sup> Q. Edward Wang, "The Study of "Comfort Women": Revealing a Hidden Past-Introduction," *Chinese Studies in History* 53, no. 1 (2019): 1, <https://doi.org/10.1080/00094633.2019.1691414>.

<sup>25</sup> Yun J. W., "Conservative Politics and Compassionate Paternalism in Korea and Japan: No Way Out?," *Asian Survey*, 59, no. 5 (2019): 936, <https://doi.org/10.1525/as.2019.59.5.911>.

<sup>26</sup> Brian Kim, "Korea and Japan Clash over History and Law," *Lawfare*, accessed on August 16, 2022, <https://www.lawfareblog.com/korea-and-japan-clash-over-history-and-law>.

<sup>27</sup> Geoffrey Musyoki Kitetua (et.al.), "Revealed Trade Competitiveness between Korea and Japan. Is It Viable to Deepen Economic Integration?," *Journal of Global Business and Trade*, 17, no. 2 (2021): 69, <https://doi.org/10.20294/jgbt.2021.17.2.67>.

semiconductor materials, iron and steel, machine tools and computer components. South Korean companies in the electronics, automotive and machinery industries rely on Japanese technology firms. Therefore, South Korea is trying to evaluate its relationship with Japan by increasing economic cooperation between the two countries. The two also have a dependency relationship. It is made the two countries carry out profitable negotiations between the two countries, namely by establishing free trade between the two countries. Free trade agreement (FTA) is an international consent that requires countries that ratify to encourage the economic progress of each country. The country's economic progress can be achieved if each country carries out trade liberalization, which means that there are no restrictions on both imports and exports. So that in the future each country can take advantage of each other both from the global market, imports of raw materials, product exports and many more. With the free trade, it is expected to achieve as many results as possible for those who are able to compete globally.<sup>28</sup> The free trade policy between South Korea and Japan contains several negotiations, including the elimination of tariffs and non-tariffs, and freedom of investment. It creates an open and transparent economy involving the two countries. South Korea and Japan are examples of other countries with trade agreements in conducting bilateral and multilateral relations.

In addition to free trade-economic cooperation, South Korea and Japan also formed another economic cooperation called the Economic Partnership Agreement (EPA). The cooperation is more comprehensive in the economic sector. Furthermore, regarding trade agreements involving the existence of the two countries, they tend to be involved in economic cooperation at the multilateral level with various other countries in multinational trade agreements. Both Japan and South Korea are part members of various multilateral cooperation agreements or relations such as the Asia-Pacific Economic Cooperation (APEC) and the Regional Comprehensive Economic Partnership (RCEP) and the two countries are also part members of international trade supervision under the WTO. Cooperation involving Japan and South Korea signifies that the two countries have mutually dependent relations.<sup>29</sup>

However, South Korea and Japan's trade relations have not always been smooth sailing. The rift between the two countries is prone to occur due to disputes that occur between the two countries, the majority of which occur due to problems over historical issues since World War II have become the root of the bilateral relations between the two countries, such as most Japan-South Korea disputes tend to be close to past relations that are still considered to be

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<sup>28</sup> Jose Jaime Baena Rojas and Susana Herrero Olarte, "From Preferential Trade Arrangements to Free Trade Agreements: One of the Downturns of Cooperation in International Relations?," *Social Sciences* 9, no. 8 (2020): 1, <https://doi.org/10.3390/socsci9080139>.

<sup>29</sup> Yen-Chiang Chang and Tiantian Zhai, Shuo Li, "China–Japan–Korea Free Trade Agreement and Legal Issues Regarding the Construction of the Northeast Asia Energy Interconnection," *Journal of Renewable and Sustainable Energy* 12, no. 4 (2020): 2, <https://doi.org/10.1063/5.0003919>.

unresolved.<sup>30</sup> The rift between the two countries can be seen in several cases, such as territorial issues regarding the conflict over the rights of the two countries over various islands known as Dokdo in Korean and Takeshima in Japanese. Japan reaffirmed its claim of sovereignty over Dokdo Island, which is part of Japanese territory and is known as Takeshima Island in Japanese.<sup>31</sup> Then, in order to pay South Koreans who were compelled to labor during World War II, South Korea sued various Japanese firms, including Nippon Steel, Mitsubishi Heavy Industry, and Sumitomo Metal.<sup>32</sup> After Japan responded to these demands, the matter escalated into several disputes between South Korea and Japan. It may be seen in Japan's export limitations and the removal of South Korea from its trade whitelist. Thus, South Korea also then retaliated by boycotting Japanese goods and tourism and by removing the country from its whitelist.

#### **D. The Emergence of Japan-South Korea Trade War**

Relations between Japan and South Korea were formed after the agreement between the two countries in 1965, whose contents were to normalize relations and economic cooperation between Japan and South Korea. Both countries previously had a dark past that triggered the conflict between the two countries. The bilateral relationship between Japan and South Korea is rather intricate. The two countries are often in dispute but also need and support each other.

The peak was in 2019 when Japan issued a policy to restrict the export of chemicals used by South Korea as materials for South Korea's technology industry. Former Japanese Prime Minister, Shinzo Abe, has tightened regulations on exports of fluorinated polyamide, photoresist, and hydrogen fluoride chemicals, each of which is very important to South Korea's technology industry. South Korean companies such as SK Hynix, LG Display, and Samsung Electronics were affected by the Japanese government's policies.<sup>33</sup> South Korea as a technology industrial country is in dire need of the material because the countries depend on Japanese supplies to make monitor screens and also semiconductor technologies such as computer chips. Semiconductors, South Korea's principal export item has long been the key substance installed in most electronic products, and delays in their manufacture might represent a severe danger to its economy. Chemical restrictions

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<sup>30</sup> Tom Phuong Le, "Negotiating in Good Faith: Overcoming Legitimacy Problems in the Japan-South Korea Reconciliation Process," *The Journal of Asian Studies* 78, no. 3 (2019): 638, <https://doi.org/10.1017/S0021911819000664>.

<sup>31</sup> Thomas Schwartz and John Yoo, "Asian Territorial Disputes and the 1951 San Francisco Peace Treaty: The Case of Dokdo," *Chinese Journal of International Law* 18, no. 3 (2019): 507, <https://doi.org/10.2139/ssrn.3434682>.

<sup>32</sup> Gulia Ichikaya Mitzy and Tri Wahyuningrum Indarto, "Comfort Women: The Causes of Other Trade Wars in East Asia," *Journal of Social Political Sciences* 1, no. 3 (2020): 179, <https://doi.org/10.31315/jsdk.v14i2.6699.g4435>.

<sup>33</sup> Ji-Whan-Yu, "Post Democracy and Historicism: The Hidden Origin of the Korea-Japan Trade War," *Issues & Studies: A Social Science Quarterly on China, Taiwan, and East Asian Affairs*, 57, no. 1, (2021): 3, <https://doi.org/10.1142/S101325112150003X>.

imposed by Japan affect the production of electronics industry companies in South Korea. The supply shortage has an impact on the market for the products used in these semiconductor materials. For Japan, it shows that South Korea is dependent on Japan for the production of companies in South Korea. The export restrictions imposed by Japan require every Japanese company that exports to South Korea to submit an application for each contract for the sale of the three restricted materials. The approval process for these restrictions takes up to 90 working days, which can hamper business processes, especially since South Korea's dependence on these three input materials is very high. South Korea imports about 94% of its needs for fluorinated polyamide, 92% of its needs for photoresists, and 46% of its needs for high purity hydrogen fluoride from Japan.

Many have indicated that the export restrictions imposed by Japan on South Korea were in response to South Korean demands against Japanese companies regarding compensation for South Koreans who were forcibly employed and comfort women by Japan during World War II.<sup>34</sup> However, Japan itself said that another reason for the restriction on the export of these chemicals was because of a form of national security system for Japan.<sup>35</sup> Based on a report by Japanese media, one of the ingredients included, namely hydrogen fluoride, can be used in chemical weapons after being exported to South Korea and then sent to countries where the materials are used to manufacture nuclear weapons. Therefore, it is to prevent the misuse of the transfer of technology and goods into weapons or military tools that can endanger the national security system of Japan and the international community.<sup>36</sup>

South Korea who felt that Japan had acted unfairly by taking actions that were not in accordance with the WTO. Due to the export restriction measures imposed by Japan on South Korea, South Korea made various efforts to restore its whitelist status, starting from sending a report on the export restriction to the WTO and planning to terminate their intelligence and military cooperation agreement with Japan if Japan did not lift the export restrictions. The General Security of Military Information Agreement (GSOMIA) is the agreement that facilitates the exchange of information regarding the nuclear and missile threats by North Korea. The agreement was signed by the two countries on November 23, 2016 and is automatically renewed if neither party wants to cancel the agreement.<sup>37</sup> Japan enacted further trade restrictions in reaction to South Korea's actions by removing

<sup>34</sup> Prakash Panneerselvam, "Changing Dynamics of Regional Trade and Cooperation: A Case of Japan and South Korea," *Artha-Journal of Social Sciences* 19, no. 4 (2019): 4-6, <https://doi.org/10.12724/ajss.55.1>.

<sup>35</sup> Rafidhia Putri Hendarjat and Arie Kusuma Paksi, "Japanese Government Reasons behind the Removal of South Korea from Preferential Whitelist: A Mercantilism Perspective," *Jurnal Studi Diplomasi dan Keamanan* 14, no. 2 (2022): 73, <https://doi.org/10.31315/jsdk.v14i2.6699>.

<sup>36</sup> Sangho Shin and Edward J. Balistreri, "The Other Trade War: Quantifying the Korea-Japan Trade Dispute," *Journal of Asian Economics*, 79, no. 1 (2022): 35, <https://doi.org/10.1016/j.asieco.2022.101442>.

<sup>37</sup> Resi Qurrata Aini and Yandry Kurniawan, "Quasi Alliance at Play: The Curious Case of South Korea's Aborted Withdrawal from GSOMIA in 2019," *Jurnal Ilmu Sosial dan Ilmu Politik* 24, no. 3 (2021): 254, <https://doi.org/10.22146/jsp.59148>.

South Korea from the white list, an indicator of preferred trading partners. It has caused further delays in the export of goods to South Korea, such as electronics and auto parts. It was done because Japan believed that South Korea's actions would damage bilateral relations.

Japan's decision to remove South Korea from the whitelist had a negative impact on South Korea. The country needs to get individual approval for 857 imported products from Japan with a permit processing time of approximately 90 days and receive an annual export loss that is predicted to reach KRW 30.5 trillion (USD 27 billion). South Korea is also experiencing supply disruptions and rising input costs for raw materials for the automotive and electronics industries, which in turn will disrupt global supply chains for smartphones and electronic devices.<sup>38</sup>

Due to Japan's policy of removing South Korea from the whitelist, on September 1, 2019, South Korea removed Japan from the country that has special treatment in terms of trade or what is known as the whitelist and also announced the termination of their intelligence and military cooperation agreement with Japan because the actions taken by Japan caused losses that greatly impacted South Korean business and industry. Thus, many South Koreans held demonstrations and boycotted products issued by Japan. The boycott by the South Korean people on Japanese products can have an impact on the Japanese economy, especially on products and services that Japan causes a decline in sales.<sup>39</sup> The boycott caused some losses to Japanese brands and tourism where several companies experienced a decline in sales, such as ABC Mart fell by 11.4%, Muji fell by 33.4%, Daigaku Honyaku Center fell by 55.3%, and Uniqlo's Sales fell 40%. Similarly, South Korean credit card spending decreased in Japan. JTB Corporation reported a 10 percent decline in the number of Koreans visiting Japan. Several South Korean airlines have reduced or eliminated direct flights between South Korea and Japan.<sup>40</sup> In retaliation for Japan's export restriction policy towards South Korea and South Korea's removal from the whitelist, the South Korean society carried out a policy of boycotting goods from Japan. Therefore, the boycott had an impact on exports and tourism in Japan.

Japan and South Korea have extensive economic ties and are vital components of global value chain networks. Therefore, it is important for the two countries to work together and revitalize the critical strategic relationship. Unfortunately, the prospects for a resolution in the short term are still blurry considering that both countries are also faced with political pressures and dark history.

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<sup>38</sup> Jung Min-hee, "S. Korea Likely to Suffer Big Blow from Japan's Export Regulations on 1,100 Strategic Materials," accessed on July 30, 2022, <http://www.businesskorea.co.kr/news/articleView.html?idxno=34403>.

<sup>39</sup> Eugene Song, "South Korean Consumers' Attitudes toward Small Business Owners Participating in the 2019 Anti-Japan Boycott," *Social Sciences* 9, no. 5 (2020): 1, <https://doi.org/10.3390/socsci9050074>.

<sup>40</sup> Choi Moon-hee, "Credit card sales of Japanese Retailers Falling due to Koreans' Boycott of Japanese Goods," accessed on July 30, 2022, <http://www.businesskorea.co.kr/news/articleView.html?idxno=34433>.

### E. Export Restrictions under WTO Rules

The response regarding Japan's export restrictions on South Korea for semiconductor chemicals is one of the problems that occurred between the two countries. Export restrictions are one of the policies prohibited by the WTO, intending to stabilize the global economy; due to the negative impact of export restrictions, there are efforts to reduce the availability of materials on the global market, thus creating a domino effect, such as panic buying and more expensive price competition. Especially for low-income consumers from importing countries who will find it increasingly difficult to meet their daily food needs. The trade restriction policy will continue to raise trade tensions for several countries because many countries are starting to experience an economic recession. In the WTO rules, there are regulations on export prohibitions and restrictions in general, which are something that is prohibited by the WTO. It can be seen in Article XI paragraph (1) GATT 1994, which states:

*“No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party”.*

It indicates that WTO member countries are prohibited from introducing or maintaining any export ban or restriction other than duties, taxes, or other fees. However, it is still possible for WTO member countries to carry out a quantitative restriction if they meet the exclusion criteria specified in Article XI paragraph (2) letter of the 1994 GATT, namely:

*“The provisions of paragraph 1 of the Article shall not extend to the following: (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party”.*<sup>41</sup>

The provision stipulates that WTO member countries may apply temporary export bans or restrictions to prevent or reduce shortages of foodstuffs or other essential products in exporting countries. It must be of the nature that the commodity in question must be indispensable or important for the exporting country. It means that a shortage must cause a "crisis" in the exporting country, which is described as a "turning point, a very important or decisive stage, a period of trouble, danger or tension in politics, trade.

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<sup>41</sup> World Trade Organizations, "Export Prohibitions and Restrictions," accessed on July 23, 2022, [https://www.wto.org/english/tratop\\_e/covid19\\_e/export\\_prohibitions\\_report\\_e.pdf](https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf).

One of the things that South Korea is suing is regarding article XI paragraph (1) GATT 1944 because, with the Japanese policy against violations of the export of semiconductor chemicals, South Korea considers it unfair. After all, it limits access for South Korean producers. So that if it is related to the case of export violations by Japan against South Korea for these semiconductor chemicals it has no relevance to Article XI paragraph (2). Japan's export restrictions on South Korea are a form of political problem between the two countries.<sup>42</sup> Because the actions taken by Japan are detrimental to South Korea. Japan is considered inconsistent in the application of international economic law, which is considered a unilateral action, namely a unilateral action, in which South Korea considers that its rights have been reduced or violated by Japan, which is also suspected of violating the WTO Agreement. WTO as an international organization, in the principles of WTO trade, member countries under the WTO prohibit the application of the principle of multilateral trade, namely a process whereby the nature of circumstances binds certain parties to a trade agreement. Likewise, the actions taken by Japan against South Korea were seen as unilateral actions which triggered a trade war between the two countries.

#### **F. WTO Resolution on the Trade War between Japan and South Korea**

In carrying out trading activities, there is a great potential for disputes. Usually, disputes between countries occur when a country establishes a trade policy that is detrimental to another country or is contrary to its commitments at the WTO.<sup>43</sup> Dispute resolution is one of the areas where the WTO and GATT rules play an essential role in upholding and maintaining the credibility of the WTO agreements and GATT regulations.<sup>44</sup> To anticipate, the WTO has set up procedures for dispute resolution, in which the WTO creates a dispute resolution organ called the DSB, During the Uruguay Round, WTO member countries established the DSB with the intention of establishing a solid structure that would bind all parties in order to settle trade disputes inside the WTO framework.<sup>45</sup> Which is regulated in the DSU. In Article 3 of the DSU, the main tasks of the DSB are as follows:<sup>46</sup>

- a. Clarify the provisions and regulations in the WTO agreement with customary international law.

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<sup>42</sup> Anna Kim: "Understanding Japan–South Korea Cooperation and Friction Through Neoclassical Realist Theory," *Jadavpur Journal of International Relations* 24, no. 1 <https://doi.org/10.1177/0973598419888279>.

<sup>43</sup> Zachary Flowers, "The Role of Precedent and Stare Decisis in the World Trade Organization's Dispute Settlement Body," *International Journal of Legal Information* 47, no. 2 (2019): 91, <https://doi.org/10.1017/jli.2019.21>.

<sup>44</sup> Matthew C. Klein, *Trade Wars are Class Wars: How Rising Inequality Distorts the Global Economy* (London: Yale University Press, 2020), 8.

<sup>45</sup> Sivan Shlomo Agon, *International Adjudication on Trial: The Effectiveness of the WTO Dispute Settlement System* (Oxford: Oxford University Press, 2019), 63.

<sup>46</sup> World Trade Organizations, "Understanding on Rules and Procedures Governing the Settlement of Disputes," accessed on July 27, 2022, [https://www.wto.org/english/tratop\\_e/covid19\\_e/export\\_prohibitions\\_report\\_e.pdf](https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf).

- b. The resolution of a dispute may not increase or decrease the rights and responsibilities provided in WTO regulations.
- c. Ensure a constructive and acceptable solution that is consistent with the substance of the WTO agreement.
- d. Supervise the actions of the country actors that are not in accordance with the provisions of the agreement that have been included in the agreement

The WTO dispute settlement system plays an essential role in clarifying members' obligations under the WTO Agreement.<sup>47</sup> Dispute resolution is a very important aspect of the WTO's performance, although it is not the organization's main activity. The resolution of WTO disputes is also an important tool for managing WTO member states and broad economic relations.

The WTO dispute resolution process, in general, consists of several stages. Starting from mandatory consultations between the disputing parties to reach a resolution agreed upon by the parties, panel hearings, review of appeals, and implementation of recommendations and provisions endorsed by the DSB.<sup>48</sup> Therefore, all WTO members are required to settle trade disputes through the channels determined by the DSB and all member countries may not take actions taken by one party that can cause problems both bilaterally and multilaterally.<sup>49</sup>

On September 11, 2019, South Korea submitted a request for a consultation with Japan according to the stages of the dispute set by the WTO. The basis of South Korea's problem in submitting the request for consultation is related to restrictions on the export of chemicals. South Korea accused Japan's move related to export restrictions in violation of the agreements in the WTO, namely:

- a. Articles I, VIII, X, XI:1, XIII: 1 and XIII: 5 of the GATT 1994;
- b. Articles 2, 6, 7, 8 and 10 of the Trade Facilitation Agreement;
- c. Article 2 of the TRIMS Agreement;
- d. Articles 3.1, 4.1 and 28.2 of the TRIPS Agreement;
- e. Articles VI:1 and VI:5 of the GATS;
- f. Article XVI: 4 of the Marrakesh Agreement.

On October 11, 2019, Consultations involving Japan and South Korea took place in Geneva, Switzerland. The mechanisms for resolving international trade wars through the WTO DSB that have been carried out against South Korea and Japan are carried out with several stages of resolution mechanisms, namely through consultations where the South Korean side has tried to resolve the dispute through

<sup>47</sup> Alberto do Amaral Júnior (et.al.), *The WTO Dispute Settlement Mechanism: A Developing Country Perspective* (New York: Springer International Publishing, 2019), 241.

<sup>48</sup> Robert Ho, Hélène Ruiz Fabri (et.al.), *The Legitimacy of International Trade Courts and Tribunals* (Cambridge: Cambridge University Press, 2018), 10.

<sup>49</sup> Meaza Haddis Gebeyehu, "The Impact of Political Decisions within the WTO Dispute Settlement System: Political Negotiations within Adjudication," *Indonesian Journal of International Law* 17, no. 1 (2019): 19, <https://doi.org/10.17304/ijil.vol17.1.781>.



consultation with the WTO DSB.<sup>50</sup> The reason for the consultation is that the Japanese side should stop restricting the export of chemicals. The next mechanism by the WTO DSB in resolving the problem is carried out at the conciliation stage to resolve the dispute resolution between the two countries, where South Korea and Japan have met in Geneva for 30 days. After the meeting took place, the conflict between the two countries could not be resolved. It is because there is no agreement between the two countries in carrying out the resolution. In this case, through the DSB, the WTO has made several efforts to resolve trade wars between the two countries with several resolution mechanisms. However, it did not result in the resolution of the trade war involving Japan and South Korea.

After the WTO's attempt to end the trade war through discussion and conciliation failed, the trade war resolution escalation between Japan and South Korea reached a difficult phase. On June 18, 2020, to resolve the trade war, South Korea proposed to the WTO the establishment of a panel. The WTO, to resolve the dispute decided to form a trade resolution panel between South Korea and Japan on July 20, 2020, and several countries made it to become a third party in settling the trade war between Japan and South Korea. However, a trade war resolution panel involving Japan and South Korea was not established due to the Covid 19 outbreak. The dispute settlement panel has not been formed, so the WTO cannot say that the dispute has been resolved.<sup>51</sup>

Since the panel was not established by the WTO DSB in early 2021, South Korea and Japan took the initiative to hold a meeting to resolve disputes between the two countries represented by senior trade officials from Japan and South Korea. The meeting indicated it could ease trade and bilateral tensions that have been escalating for some time. However, the meeting did not solve the problem between the two countries. Therefore, the conflict between Japan and South Korea continued to increase.<sup>52</sup>

Until now, it turns out that the settlement of the trade war between the two countries has not been resolved. Therefore, because the settlement mechanism through the establishment of a panel has not been implemented, based on Article 25 of the DSU, arbitration can be an alternative to the panel procedure for settling the trade war between South Korea and Japan.<sup>53</sup> As a result, arbitration is perhaps

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<sup>50</sup> Al Jazeera, "South Korea will lodge WTO complaint over Japan's export curbs," accessed on July 11, 2022, <https://www.aljazeera.com/economy/2019/9/11/south-korea-will-lodge-wto-complaint-over-japans-export-curbs>.

<sup>51</sup> Reuters, "South Korea Removes Japan from Fast-Track Trade Whitelist," accessed on July 11, 2022, <https://www.reuters.com/article/us-southkorea-japan-whitelist/south-korea-removes-japan-from-fast-track-trade-white-list-idUSKBN1W21T2>.

<sup>52</sup> Reuters, "Japan and South Korea Meet, Restate Positions in Dispute," accessed on July 11, 2022, <https://www.reuters.com/world/asia-pacific/japan-south-korea-meet-restate-positions-dispute-2021-09-23/>.

<sup>53</sup> Bashar H. Malkawi, "Can Article 25 Arbitration Serve as a Temporary Alternative to WTO Dispute Settlement Process?," accessed on June 15, 2022, <http://arbitrationblog.kluwerarbitration.com/2019/01/05/can-article-25-arbitration-serve-as-a-temporary-alternative-to-wto-dispute-settlement-process/>.

the most appropriate solution currently available to the WTO to establish panel resolutions. If there is a more efficient way to resolve a trade war, it is not surprising that WTO members will choose that method, and if there are better resolutions than the WTO can provide, it is not surprising that it will be preferred. Arbitration is a process in which two or more parties submit a dispute to one or more impartial persons to obtain a final settlement and a binding decision. If a dispute arises between several parties bound by an agreement, the parties submit the matter to a professional person or body. The arbitration will resolve cases and obtain final and binding decisions.<sup>54</sup> The use of arbitration is not without good reason, because arbitration in international trade is a commonly used dispute resolution forum. Arbitration as an alternative to conflict resolution in the field of trade provides advantages not shared by other dispute resolutions. The benefits are as follows:<sup>55</sup>

- a. Fast procedure, because there is no other legal option as applicable in the existing general justice system, with such a fast process, the parties do not spend energy, ideas, and funds in instances that may result in losses for the disputing parties.
- b. To ensure their independence, the parties are given the option of selecting an agreed-upon arbitrator.
- c. The parties may decide on the applicable law, process, and location of arbitration.
- d. Evaluation by an expert who becomes the arbitrator is a person who is actually an expert and masters the matter in dispute in order to account for the quality of the indicated verdict.
- e. The confidentiality of the disagreement between the parties is ensured because the resolution procedure is conducted in a private way to protect the party interests.
- f. The arbitrator's decision is final and binding.

Because it is final and binding, the arbitral award is considered significant and strong. Arbitration provides justice for the parties to the dispute; the end result of the process is an agreement between the parties that is mutually beneficial to the parties.<sup>56</sup> An arbitration award binding on the parties is a legal result that must be accepted by the parties. Good faith is the most important factor in resolving

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<sup>54</sup> Yordan Gunawan, "Transboundary Haze Pollution in the Perspective of International Law of State Responsibility," *Jurnal Media Hukum*, 21, no. 2 (2014): 11, <https://doi.org/10.18196/jmh.v21i2.1185>.

<sup>55</sup> Supeno, "International Trade Dispute Settlement through Dispute Settlement Body (DSB) and International Arbitration Body," *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 20, no. 1 (2020): 158, <https://doi.org/10.19109/nurani.v20i1.6043>.

<sup>56</sup> Akhmad Al-Farouqi Sastrowiyono, "The Pro's and Con's of Arbitration: A Study of International Arbitration with Perspective of Indonesian and Korean Law," *Lex Renaissance* 4, no. 2 (2019): 245, <https://doi.org/10.20885/JLR.vol4.iss2.art2>.

business disputes, including the confidence to carry out the agreement that has been agreed upon and the parties' awareness of the arbitral award.

Thus, in the case of export restrictions from Japan against South Korea, it is considered that the actions taken by Japan against South Korea constituted an act that violated WTO regulations by South Korea, especially regulations related to the prohibition of export restrictions based on Article XI (1) GATT and a number of other rules. It was also responded to by Japan that the restrictions it was carrying out were a form of national security, until now there was no explanation of how the problems of the two countries and the conflict that occurred between South Korea and Japan were currently dimming, but it does not make the two-country to initiate peace. So, related to the settlement of disputes between the two countries, where currently the formation of a panel has not been formed until now for reasons that are not clear, the mechanism that can be provided is in the form of arbitration. South Korea and Japan can agree on the arbitration settlement method. It is considered a more efficient and final method. The main reason why arbitration is a method of resolving conflicts between South Korea and Japan is because no choice of law is sought in appeal, cassation, and judicial review, which allows the parties to know the outcome of the award quickly.<sup>57</sup>

## G. Conclusion

The trade war between Japan and South Korea was triggered by both internal and external reasons. Internal factors include national security from chemical misuse, as well as Japan's protracted economic recession. While external factors included South Korean demands against three Japanese companies to provide compensation to families of Japanese forced labor during World War II and South Korea violated the 1965 Normalization of Relations Agreement and reports that South Korea has carried out inadequate export management of sensitive materials. It compelled Japan to remove South Korea from the whitelist, a group of partners who receive preferential treatment in trade and impose export restrictions, to which South Korea replied by removing Japan from its list of export partners as well. The trade war between the two countries has harmed both countries' economies.

In terms of limiting the export of chemicals from Japan to South Korea, the dispute resolution steps taken by South Korea and Japan are consultation and conciliation mediated through the WTO DSB organization. However, the resolution did not find a settlement point between the two countries. Therefore, because the resolution mechanism did not resolve the trade war involving South Korea and Japan, South Korea proposed forming a panel to the WTO as a result of not finding common ground in the consultation. However, the WTO has yet to form such a

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<sup>57</sup> World Trade Organization, *A Handbook on the WTO Dispute Settlement System* (Cambridge: Cambridge University Press, 2017), 213.

panel. Thus, an alternative dispute resolution mechanism between South Korea and Japan can be carried out through arbitration. The settlement of disputes through arbitration is one way of resolving disputes outside the court. The dispute resolution mechanism starts from the stage of notification and response to the parties, followed by the selection and appointment of arbitrators, and ends with an examination and decision. These stages show that dispute resolution through arbitration has advantages compared to settlement through court. The advantages are the freedom of the parties to determine the arbitrator and guarantee the parties' confidentiality because the settlement of disputes is private. Because it is final and binding, the arbitral award is considered significant and strong. Arbitration provides justice for the parties to the dispute. Thus, arbitration is an appropriate solution to settle disputes between the two countries. However, settlement through arbitration requires the mutual will of the two countries to resolve the issue in arbitration. However, if arbitration cannot be carried out, another settlement can be carried out using the litigation method or bringing the matter to international courts where it can be done without the consent of one of the parties.

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