

## The Non-Discrimination Principle and the National Security Exception under GATT Article XXI: An Analysis of the Revocation of Russia's Most-Favoured-Nation Status by the US and Its Allies

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*Non-discrimination is a fundamental principle of the World Trade Organization (WTO), which promotes global trade with the goal of eradicating hunger, reducing poverty, and ensuring global prosperity. According to the WTO rules, members are required to give other members most-favoured-nation and national treatment. Due to the military conflict between the Russian Federation and Ukraine, the United States, European Union, and several other member countries suspended most-favoured-nation treatment for Russian goods in mid-March 2022. This study examines the principle of non-discrimination under the WTO provisions, identifies relevant exceptions, analyses the Russia-Traffic in Transit case, and evaluates the appropriateness of the above actions by the US and others. Finally, this paper concludes that the US and its allies failed to present concrete evidence demonstrating a direct and causal relationship between the military situation in Ukraine and their own essential interests under Article XXI of GATT 1994.*

### Keywords

Non-Discrimination, Most-Favoured Nation Treatment, International Trade, United States, Russia, WTO

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## 1. Introduction

International free trade is based on Adam Smith's theory of competitive advantage and the natural division of labour, as well as David Ricardo's theory of comparative advantage.<sup>1</sup> Both Smith and Ricardo later emphasised the numerous benefits of trade liberalisation, greatly influencing the global trend of bilateral and multilateral trade treaties.<sup>2</sup> After WWII, while the International Monetary Fund and the World Bank played critical roles in monetary management and financial support in the new international framework, the International Trade Organization was unable to achieve its goal of monitoring the development of a new multilateral trade order. Instead, the General Agreement on Tariffs and Trade (GATT 1947) was signed and ratified in 1947 to establish the basic principles for promoting international trade, such as national treatment (NT) and most-favoured-nation (MFN) treatment, with the goal of reducing and eventually eliminating tariff barriers to promote international trade activities.<sup>3</sup> Following the Uruguay Round of trade negotiations, the World Trade Organization (WTO) succeeded the GATT 1947 as the global watchdog for global trade liberalisation in 1995. While GATT 1947 focused primarily on goods, the WTO has gone much further, incorporating policies on services, intellectual property, and investment.<sup>4</sup> The GATT 1947's principle of non-discrimination has been thus upheld by the WTO and more clearly defined through specific agreements.

Against this historical background, this research sought to examine whether the US and its allies' unilateral renouncement of MFN treatment for Russian goods is consistent with the WTO's rules. This paper is divided into four parts. Following the introduction, Part two discusses the non-discrimination principle under the WTO and its exceptions. Part three applies the national security exception to the contemporary Russian case. This part checks whether Russia can sue the US, the EU, and other countries for unilaterally depriving it of the right to MFN treatment at the WTO. More specifically, this part tries to answer the following questions: (1) Are the actions of the US and other relevant countries in accordance with WTO regulations?; (2) Can the Russian Federation sue the US and other WTO countries and win? To

<sup>1</sup> H. Myint, *Adam Smith's Theory of International Trade in the Perspective of Economic Development*, 44 (175) *ECONOMICA* 231-48 (1977).

<sup>2</sup> R. Atkinson, *Economic doctrines and network policy*, 35 *TELECOMM. POL'Y* 413-25 (2011).

<sup>3</sup> P. BOSSCHE & W. ZDOUC, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION* 76-9 (3d ed. 2013).

<sup>4</sup> T. Carpenter, *A Historical perspective on Regionalism*, in *MULTILATERALIZING REGIONALISM: CHALLENGES FOR THE GLOBAL TRADING SYSTEM* 17-20 (R. Baldwin & P. Low eds., 2009).

answer these questions, it is necessary to examine Article XXI of GATT 1994. Finally, Part four concludes the paper.

## 2. The Non-discrimination Principle under the WTO and Its Exceptions

### *A. The Non-discrimination Principle under the WTO regulations*

GATT 1994 and the WTO divided non-discrimination into two parts: (1) MFN and (2) NT. Under the WTO agreements, a member state gives a specific country preferential treatment, and the importing country must do the same for all other members' products.<sup>5</sup> The MFN principle is also enshrined in Article 2 of the General Agreement on Trade in Services (GATS) and Article 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), although the core meaning of this principle varies depending on the agreement.<sup>6</sup> The WTO allows member countries to discriminate against goods from member countries not included in bilateral or multilateral agreements and exempts them from MFN obligations. If the exporting country is a developing country, the importing country may offer special access rights to its market or raise barriers to products from countries that violate "fair trade" obligations.<sup>7</sup>

The NT principle normally requires equal treatment of foreigners and citizens, imported and domestic goods and services, and intellectual property issues. NT is laid down in all three major WTO agreements (Article III of GATT 1994, Article 17 of GATS, and Article 3 of TRIPS). The NT principle only applies when an intellectual property product, service, or item is sold. So, it does not apply to import tax calculations.<sup>8</sup>

### *B. Exceptions to the Non-discrimination Principle*

The WTO exception to the non-discrimination principle allows member countries to deviate from its basic principles. Instead, they must comply with the WTO

<sup>5</sup> WTO, Principles of the Trading System, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

regulations to protect sovereignty and security, ethics, human health, precious and rare natural resources, and the balance of payments. Exceptions were made during the WTO document negotiation and development, with special emphasis on international trade and the WTO provisions in three areas: goods, services, and intellectual property. There are also exceptions for developing countries.

### Special Treatment

GATT 1947 aimed to liberalise trade and fight discrimination among member countries, but it did not immediately eliminate tariff preferences. Under GATT 1947, this special treatment was accepted as an exception for the following reasons.<sup>9</sup> First, these incentives only apply to import tariffs and do not allow special preferences for export tariffs, import and export restrictions, or other items. Second, this special preference is limited to a few previously accepted member countries that were unable to establish new preferences when GATT 1947 was established. Third, the gap between GATT 1947's special preferential tax rates and MFN tax rates cannot be increased.<sup>10</sup>

### Regional Economic Integration

The MFN principle does not apply to a free-trade zone or customs union, according to Article XXIV of GATT 1994. Hence, regional economic integration, such as free-trade zones and customs unions, are considered an exception to the MFN principle. The presence of a customs union means that its members do not, in general, erect trade barriers to each other.<sup>11</sup> A free trade area means that the members do not, in principle, erect trade barriers to each other, but each member maintains its own tariff system and trade regulations through regional foreign trade.<sup>12</sup>

Free-trade zones and customs unions can liberalise and streamline trade, according to GATT 1947. Only intra-bloc trade is free. Thus, such agreements discriminate against non-members. For example, these barriers may replace imports from high-efficiency non-EU countries with low-efficiency intra-regional products. Due to these characteristics, GATT 1947 set the following conditions for a free-trade zone or customs union:<sup>13</sup> (i) regional trade barriers must be eliminated; (ii) tariffs and

<sup>9</sup> UNCTAD, The Reio Exception in MFN Treatment Clauses, UNCTAD/ITE/IIT/2004/7 (Sept. 2004), [https://unctad.org/system/files/official-document/iteit20047\\_en.pdf](https://unctad.org/system/files/official-document/iteit20047_en.pdf).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> GATT 1994 art. XXIV(8).

<sup>13</sup> *Id.* art. XXIV(5).

other trade barriers for countries outside the region cannot be increased; and (iii) customs allies and free-trade zones must be built on a reasonable timeline.

### Special Treatment for Developing Countries

The next exception to the MFN principle is special treatment for developing countries, which has been in effect since the establishment of the GATT in 1947. This exception is intended to assist governments with economic development, as provided in Article XVIII. Therefore, member countries in the early stages of economic development are permitted, under certain conditions, to impose import restrictions as necessary for economic development.<sup>14</sup>

Following changes in the world's economy and politics in the 1960s and the disparity in development levels between developing and developed countries, several developing countries fought for more preferential treatment in international trade.<sup>15</sup> Meanwhile, developed countries unilaterally lowered import taxes on developing-country products under the generalised system of preferences (GSP). This implies that developed countries would unilaterally reduce and eliminate tariff barriers rather than ask developing countries for 'reciprocal' trade commitments. The GSP has increased exports from developing to developed countries, boosting revenue, industrialisation, and economic growth.<sup>16</sup> Currently, there are 17 active preferential regimes across 42 developed countries, including the 27 EU member states, as well as the US, the UK, Japan, Australia, New Zealand, Switzerland, the Russia-Kazakhstan-Belarus Customs Union, Canada, Norway, and Turkey. The GSP was also applicable during this period.<sup>17</sup> When the WTO was established, special and differential treatment for developing countries was specified in its agreements, in addition to the GSP. This includes certain privileges, exemptions from performance for a set period of time, and technical assistance.<sup>18</sup>

### Additional Exceptions

In addition to the above exceptions, GATT 1994 provides a number of cases in which the importing countries did not apply the MFN principle without permission or special procedures. These relate to safeguards for morality, public order, human and

<sup>14</sup> WTO, Special and differential treatment provisions, [https://www.wto.org/english/tratop\\_e/devel\\_e/dev\\_special\\_differential\\_provisions\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm).

<sup>15</sup> UNCTAD, Generalized System of Preferences, <https://unctad.org/topic/trade-agreements/generalized-system-of-preferences>.

<sup>16</sup> P. MAVROIDIS, *TRADE IN GOODS* 120-5 (2008).

<sup>17</sup> UNCTAD, *supra* note 15.

<sup>18</sup> WTO, *supra* note 14.

non-human life, natural resources (Article XX), and national security (Article XXI).

### 3. The Non-Discrimination Principle and MFN Treatment for Russia

Professor Bossche (a WTO Appellate Body member from 2009 to 2019) notes that for more than 70 years, the first signatories to GATT 1947 and later the WTO members demonstrated self-restraint by citing the national security clause as a justification for any inconsistent GATT measures. However, self-restraint is now a thing of the past, with countries particularly invoking the national security exception under Article XXI of GATT 1994.<sup>19</sup>

In mid-March 2022, due to the armed conflict between Russia and Ukraine, a quarter of the 164 WTO members – accounting for 58 per cent of the global GDP – stopped applying the MFN principle to Russia. This list includes major economies such as the US, the EU (27 member states), Japan, the UK, Canada, South Korea, and Australia. However, other countries, including China, India, Brazil, Indonesia, Saudi Arabia, and Turkey, still support Russia's MFN status.<sup>20</sup>

Under the WTO rules, Russia should receive MFN treatment for its goods<sup>21</sup> on the grounds that 'the Russian Federation cannot seriously violate international law and expects to benefit from membership in the WTO'.<sup>22</sup> A problem may thus arise when both the US and EU are required to follow the provisions of GATT 1994 as well as other WTO agreements. Is it considered a violation of the WTO's provisions on the principle of non-discrimination if the EU and other countries unilaterally renounce MFN treatment for Russian goods? If so, can Russia sue the US, the EU, and other countries for unilaterally depriving it of the right to MFN treatment at the WTO? The US and other countries have argued that they relied on the national security exception

<sup>19</sup> *Supra* note 3, at 602-3.

<sup>20</sup> Bryce Baschuk, *How Russia's Lost Trade Rights Leads to Import Bans on Diamonds, Platinum, Vodka*, BLOOMBERG (Mar. 15, 2022), <https://www.bloomberg.com/news/articles/2022-03-15/the-unprecedented-end-of-russia-s-basic-trade-rights-quicktake>.

<sup>21</sup> European Commission, *Ukraine: EU Agrees Fourth Package of Restrictive Measures Against Russia*, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1761](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1761).

<sup>22</sup> Subhayan Chakraborty, *What is MFN status, Why the West Wants to Strip Russia of It?*, MONEY CONTROL (Mar. 14, 2022), <https://www.moneycontrol.com/news/business/economy/explained-what-is-mfn-status-why-the-west-wants-to-strip-russia-of-it-8229021.html>.

in Article XXI of GATT 1994 to waive the MFN obligation for Russian goods.<sup>23</sup>

As discussed, per WTO rules, member countries are not permitted to discriminate against their trading partners under normal circumstances. However, this principle may be waived by the importing country in the case of “security exceptions,” as provided in Article XXI of GATT 1994. The countries that revoked Russia's MFN status argued that their decision was justified under these exceptions, which allow a country to take “any action it deems necessary to protect its essential security interests.”<sup>24</sup> Thus, when a member state falls into one of the following categories, the binding obligations of the GATT 1994 no longer apply:

Nothing in this Agreement shall be construed:

- (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests: (i) relating to fissionable materials or the materials from which they are derived; (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security

The GATT Dispute Panels have confirmed that countries can impose such measures “taken in time of war or other emergency in public relations.”<sup>25</sup> Notably, the Czechoslovakian Complaints Settlement Council explained in 1949 that “every country must be the judge in the last resort on questions relating to its own security. On the other hand, every contracting party should be cautious not to take any step which might have the effect of undermining the General Agreement.”<sup>26</sup> Furthermore, in 2019, when considering the case between Ukraine and Russia involving the

<sup>23</sup> Inu Manak, *Suspend Russia's Trade Benefits, For Now*, CFR (Mar. 3, 2022), <https://www.cfr.org/article/suspend-russias-trade-benefits-now>.

<sup>24</sup> *Id.*

<sup>25</sup> GATT 1994 art. XXI (Security Exceptions), [https://www.wto.org/english/res\\_e/booksp\\_e/gatt\\_ai\\_e/art21\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art21_e.pdf).

<sup>26</sup> GATT/CP.3/SR.22/Corr.1, <https://gatt-disputes.wto.org/document/gatt-cp3-sr22-corr1>.

latter's many restrictions on transit traffic from Ukraine through Russia to third countries, the WTO's Dispute Settlement Body supported Russia's contention that its trade restrictions on Ukraine were justified after Russia's annexation of Crimea.<sup>27</sup> On September 14, 2016, Ukraine requested that the WTO consult with Russia about imposing restrictive measures on goods in international transit by road and rail from Ukraine to Kazakhstan or the Kyrgyz Republic, as well as prohibiting the carriage of certain goods in transit.<sup>28</sup> Article XXI (b) of GATT 1994 was one of the grounds for Russia taking the above measures.<sup>29</sup>

In *Russia-Traffic in Transit*, the panel held that given the context of the article itself, and based on its objective and that of GATT 1994 and the WTO Agreement as a whole, consideration must be given to whether the measure in question meets the requirements of Article XXI(b).<sup>30</sup> The panel determined, based on the evidence before it, that the situation between Ukraine and Russia since 2014 was an "emergency in international relations."<sup>31</sup> According to the panel, the challenged transit bans and restrictions were instituted in 2014 and 2016 and therefore were "taken in time of" this 2014 emergency.<sup>32</sup> In this regard, the panel found that Russia's actions were objectively "taken in time of" an "emergency in international relations" under Article XXI(b)(iii).<sup>33</sup>

The panel also concluded that given the nature of the emergency in international relations, which was very close to a state of war or armed conflict, Russia's articulation of its essential security interests could not be considered ambiguous or undefined.<sup>34</sup> As a consequence, the panel determined that Russia met the requirements for invoking GATT Article XXI(b)(iii) when applying the relevant trade measures against Ukraine.<sup>35</sup> Nonetheless, the panel stated that States Parties should not "use the exceptions in Article XXI as a means of circumventing its obligations under GATT 1994"<sup>36</sup> as part of their obligation to interpret and apply Article XXI

<sup>27</sup> Panel Report, *Russia – Measures Traffic in Transit*, WTO Doc. WT/DS512/7 (adopted Apr. 29, 2019), [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds512\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm).

<sup>28</sup> *Id.*

<sup>29</sup> WTO, Members adopt national security ruling on Russian Federation's transit restrictions, [https://www.wto.org/english/news\\_e/news19\\_e/dsb\\_26apr19\\_e.htm](https://www.wto.org/english/news_e/news19_e/dsb_26apr19_e.htm).

<sup>30</sup> *Supra* note 27, ¶ 7.82.

<sup>31</sup> *Id.* ¶¶ 7.76 & 7.114-7.123.

<sup>32</sup> *Id.* ¶¶ 7.70 and 7.124-7.125.

<sup>33</sup> *Id.* ¶ 7.126

<sup>34</sup> *Russia Traffic in Transit*, Dispute Settlement Summary of Key Panel Findings DS512 (2021), [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/1pagesum\\_e/ds512sum\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds512sum_e.pdf).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* ¶ 7.138.



in good faith. The panel's findings and conclusions on the nature and application requirements of Article XXI of GATT 1994 can be used to settle pending cases and answer future questions concerning Article XXI.<sup>37</sup>

Considering the preceding analyses, the current armed conflict between Russia and Ukraine is unlikely to have a direct impact on the security of the US, Canada, the EU, and other NATO allies. In their official statements, these countries failed to demonstrate a reasonable cause-and-effect relationship between Ukraine's unrest and their national security and economic performance. In *Russia-Traffic in Transit*, the panel emphasised that security threats should be specific and not based on fanciful grounds. The panel found that while the scope of Article XXI(b) allows a member to take action "which it considers necessary" for the protection of its essential security interests, this discretion is limited to circumstances that objectively fall within the scope of the three subparagraphs of Article XXI(b).<sup>38</sup>

The dispute between Russia and Ukraine in 2014 demonstrated the real state of national security, and Russia's actions met the minimum requirement of legitimacy regarding its essential security interests. Meanwhile, in the current military conflict between Russia and Ukraine, the US, the EU, and other NATO allies had no grounds to demonstrate the legitimacy of their actions. However, on March 14, 2022, a joint statement by the G7, the EU, and nine other countries, including Albania, Australia, Iceland, South Korea, Moldova, Montenegro, New Zealand, North Macedonia, and Norway, was submitted to the WTO. The statement asserted that its sponsors "will take any actions, as WTO Members, that we each consider necessary to protect our essential security interests," including "actions in support of Ukraine, or actions to suspend concessions or other obligations with respect to the Russian Federation, such as the suspension of most-favoured-nation treatment to products and services of the Russian Federation."<sup>39</sup> The "essential security interests" of these countries are unlikely to be affected by the Russia-Ukraine war. However, some people in Europe seem to be very rattled by the Russian military operation in Ukraine based on their own security concerns.<sup>40</sup> The US may also feel that way as a member of NATO.<sup>41</sup> States

<sup>37</sup> *Supra* note 3, at 597-8.

<sup>38</sup> *Supra* note 27, ¶¶ 7.101 & 7.53-7.100.

<sup>39</sup> WT/GC/244 - Joint statement on aggression by the Russian Federation against Ukraine with the support of Belarus, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/244.pdf&Open=True>.

<sup>40</sup> Giovanni Grevi, Shockwaves: How does the War in Ukraine Impact the EU's Grand Strategy? (Mar. 16, 2023), <https://brussels-school.be/publications/other-publications/shockwaves-how-does-war-ukraine-impact-eu%E2%80%99s-grand-strategy>.

<sup>41</sup> European Union, A strategic compass for security and defence, [https://www.satcen.europa.eu/keydocuments/strategic\\_compass\\_en3\\_web6298d4e4601f2a0001c0f871.pdf](https://www.satcen.europa.eu/keydocuments/strategic_compass_en3_web6298d4e4601f2a0001c0f871.pdf).

such as Japan and South Korea may also believe that armed aggression by a major state in Europe against a neighbouring state would destabilise their surrounding geopolitical environment.<sup>42</sup> Notably, these countries have a high degree of discretion when it comes to deciding what may or may not threaten their national security. While the Russia-Transit Panel refused to accept the self-judging nature of Article XXI,<sup>43</sup> the panel held that it is up to every member to define what it considers to be its essential security interests.<sup>44</sup> Moreover, the panel found that the specific phrase “which it considers” meant that it is up to the member itself to decide on the ‘necessity’ of its actions to protect its essential security interests.<sup>45</sup> The panel also considered that a member’s general obligation to interpret and apply Article XXI(b)(iii) in good faith meant that WTO panels may review: (i) whether there was any evidence to suggest that the member’s designation of its essential security interests was not made in good faith; and (ii) whether the challenged measures were “not implausible” as measures to protect those essential security interests.<sup>46</sup>

Although the *Russia-Traffic* Panel explained the term “essential security interests,” it is still hard to determine on a case-by-case basis. Therefore, based on the current database, it can be concluded that these countries’ renunciation of the Russia’s MFN status might be inconsistent with Article XXI of GATT 1994. It is clear that Russia’s action against Ukraine violates international law, but the US and its allies are politicising economic activity, setting a dangerous precedent for arbitrarily abusing WTO exceptions to create economic and political danger for other countries. As mentioned earlier, the panel in the *Russia-Traffic* case required members to interpret and apply Article XXI(b)(iii) in good faith to the extent that there is a lack of rules or unclear rules. In this regard, the WTO members have to be careful about any action they take so as not to make the current situation worse. However, the actions of the US, the EU, and others in revoking Russia’s MFN status can be seen as distorting the WTO’s basic premises and violating its rule-based trade relations. They attempted to isolate Russia and politicise fair trade by distorting Article XXI of GATT 1994, contrary to the WTO’s emphasis on the rule of law and non-discrimination.

Bacchus noted that one or more member countries lack a formal process to

<sup>42</sup> P. Szabó, Participating in sanctions regimes: A comparison of Japan’s and South Korea’s responses to the 2014 annexation of Crimea and the 2022 Russian invasion of Ukraine (2023), [https://kki.hu/wp-content/uploads/2019/05/PB\\_2023\\_07\\_\\_Asia\\_Participating\\_in\\_sanctions\\_SZPB-1.pdf](https://kki.hu/wp-content/uploads/2019/05/PB_2023_07__Asia_Participating_in_sanctions_SZPB-1.pdf).

<sup>43</sup> *Supra* note 27 at, ¶¶ 7.102-7.104.

<sup>44</sup> *Id.* ¶¶ 7.130-7.131

<sup>45</sup> *Id.* ¶¶ 7.146-7.147.

<sup>46</sup> *Id.* ¶¶ 7.132-7.135 & 7.138-7.139

waive another's right to MFN status under the WTO's rules.<sup>47</sup> In fact, a country is not required to notify or consult with the WTO if it unilaterally renounces another member's right to equal treatment. This situation has led to the arbitrary and excessive overuse of the GATT 1994 exceptions, which has serious implications for global economic stability and long-term development.<sup>48</sup> Besides, the US and its allies are calling for Russia to be expelled from the WTO. However, it is a difficult campaign as there is no formal mechanism to expel the WTO members from the organisation under the WTO's agreements. While the WTO members could theoretically amend the agreements to create such a mechanism, the eWTO decision-making has traditionally been conducted by consensus, even where the WTO rules require only a super-majority (in some cases, two-thirds or three-fourths of the WTO membership) to adopt a decision.<sup>49</sup> A departure from the consensus approach would thus require a significant cultural shift among the WTO members. If the traditional consensus approach remains in place, Russia will retain the ability to block any decisions that could result in its expulsion from the WTO. In this regard, coordinated bilateral revocation of Russia's MFN status is likely the best alternative for the US and its allies with similar practical effects.<sup>50</sup>

## 4. Conclusion

The obligation of non-discrimination in international trade may not be binding under certain conditions, as specified in Article XXI of GATT 1994. Despite claiming that their actions were based on Article XXI of GATT 1994, the US and its allies were unable to present concrete evidence of a direct and causal relationship between the military situation in Ukraine and their own "essential interests." In the past, the US and its NATO allies have repeatedly used military force in other countries' territory. At that time, however, the MFN status of the US and its allies was never revoked

<sup>47</sup> James Bacchus, *Boot Russia From the WTO*, WALL ST. J. (Feb. 28, 2022), <https://www.wsj.com/articles/boot-russia-from-the-wto-world-trade-organization-putin-international-economic-sanctions-tariffs-legal-authority-11646092051>.

<sup>48</sup> *Id.*

<sup>49</sup> D. Son & T. Vang-Phu, *The Effects of FTAs on the Operation of the WTO: Reviews and recommendations*, 4(2) CORPORATE L. & GOV. REV. 42–9 (2022), <https://doi.org/10.22495/clgrv4i2p5>.

<sup>50</sup> Shara Aranoff et al., *Revocation of Russia's Most-Favored-Nation Trade Status: What Companies Need to Know*, GLOBAL POL'Y REV. (Mar. 21, 2021), <https://www.globalpolicywatch.com/2022/03/revocation-of-russias-most-favored-nation-trade-status-what-companies-need-to-know>.

by any WTO member state.<sup>51</sup> Nonetheless, these countries are now condemning and sanctioning Russia by revoking its MFN status. This is inconsistent with the rule-based international trading system and distorts and challenges the WTO's fundamental rules.<sup>52</sup>

It can be said that the US and its allies invoke international law only when it benefits them.<sup>53</sup> Some experts have commented that the US and its allies unilaterally suspended Russia's MFN status not only because they were not concerned about economic retaliation by Russia, but also because the WTO's Appellate Body is currently inactive.<sup>54</sup> If Russia files a lawsuit with the WTO, it will have little impact on the US and its allies.<sup>55</sup> Russia might file a lawsuit if it faces serious economic harm as a result of the deprivation of its MFN status, but it would have to prove to the WTO's Dispute Settlement Body that the measures taken by the US and its allies violated GATT 1994 and other relevant WTO regulations.

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<sup>51</sup> Clement Kpeklitsi, *Libya: The NATO Invasion of Libya - There Are Consequences, but There Is No State*, GHANAIAN TIMES (Apr. 7, 2021), <https://allafrica.com/stories/202104080168.html>.

<sup>52</sup> Shamil Shams, *How the US Invasion Changed Afghanistan*, DEUTSCHE WELLE (Oct. 6, 2021), <https://www.dw.com/en/how-the-us-invasion-changed-afghanistan/a-59427641>.

<sup>53</sup> Margot Patterson, *How the U.S. Violates International Law in Plain Sight*, AM. MAG. (Oct. 12, 2016), <https://www.americamagazine.org/politics-society/2016/10/12/how-us-violates-international-law-plain-sight>.

<sup>54</sup> *Supra* note 47.

<sup>55</sup> *Id.*