

Legality of Trade Restrictions Against Russia

from the Lens of WTO Law

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Abstract

The Russian invasion of Ukraine has had significant cross-border humanitarian and economic impacts, on the parties involved in the conflict as well as the global economy in general. The detrimental economic impacts and Russia's blatant violations of Article 2(4) of the UN Charter have been countered by States taking actions against Russia through economic routes, mainly sanctions. This paper analyses the effect of these trade-related coercive measures employed by States against Russia, and the way they can be situated in international trade law regimes. The paper explores the essential security interest exception within the framework of GATT and GATS, and after analysing relevant case laws and disputes, establishes the way in which the exception can be applied in the present case of sanctions against Russia.

Keywords Sanctions, Ukraine, Russia, International Trade Law

1 Introduction

The conflict between the Russian Federation and Ukraine increases day by day in intensity and, with it, the already heavy toll in terms of victims, missing persons, and displaced persons seeking refuge in neighbouring countries grows. This piece will not deal with humanitarian issues or the qualification of the Russian military intervention in light of international law and violation of Article 2(4) of the United Nations Charter,¹ but rather the

¹ See, e.g., Ahan Gadkari and Tushar Rajput, *A Leopard Never Changes its Spots - Legal Validity of Russia's Use of Force Against Ukraine*, BERKELEY JOURNAL OF INTERNATIONAL LAW (Apr. 26, 2022), at <https://www.berkeleyjournalofinternationallaw.com/post/a-leopard-never-changes-its-spots-legal-validity-of-russia-s-use-of-force-against-ukraine>; Andrea Spagnolo, *First Considerations On Russia's Attempt To Justify Armed Intervention In Ukraine*, SIDIBLOG (Feb. 25, 2022), at

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negative implications of the same on financial markets and the world economy. War, geopolitical instability, and the risk of a nuclear escalation, have in fact introduced numerous unknowns for global trade, for multinational companies, for capital markets and for national economies themselves.

Economically, the first and perhaps most obvious effect of the Russian-Ukrainian conflict was a general *increase in the prices* of raw materials and food. The Russian Federation is among the main exporters of hydrocarbons, as well as of numerous metal alloys (such as aluminium, titanium, nickel, and palladium) essential for the steel, chemical and petrochemical, pharmaceutical and major engineering sectors.² The instability generated by the conflict and the consequent trade restrictions has caused a very strong rise in energy prices, as evidenced by the current price of natural gas, which has practically doubled compared to a year ago. Moreover, taken together, the Russian Federation and Ukraine account for over a quarter of the world trade in wheat: tensions in Eastern Europe threaten to curb grain shipments around the world, increasing the costs of producing bread and pasta.³ The gravity of the situation was underlined by the Director-General of the World Trade Organization (WTO), Ngozi Okonjo-Iweala, already in March 2022: “At the WTO, we have watched this tragedy in Ukraine unfold with disbelief and [...] are also concerned about the

<http://www.sidiblog.org/2022/02/25/prime-considerazioni-sul-tentativo-della-russia-di-giustificare-lintervento-armato-in-ucraina/>; Federica Favuzza, *Is Russia Occupying Ukraine?*, SIDIBLOG (Mar. 4, 2022), at <http://www.sidiblog.org/2022/03/04/is-russia-occupying-ukraine/>; Marco Fasciglione, *Russia's Armed Intervention In Ukraine, Private Sector Complication And Guiding Principles On Business And Human Rights*, SIDIBLOG (Mar. 6, 2022), at <http://www.sidiblog.org/2022/03/06/lintervento-armato-della-russia-in-ucraina-complicita-del-settore-privato-e-principi-guida-su-impres-e-diritti-umani/>.

² A. Gadkari, *Financial Statecraft: Economic Impact of the Sanctions Against Russia*, in: J. Econ. Fin. 13(3) (2022).

³ Aine Quinn and Megan Durisin, *Russian Grain Exports Boom While Deal Risk Hobbles Ukraine Flows*, Bloomberg (Nov. 14, 2022), at <https://www.bloomberg.com/news/articles/2022-11-14/russian-grain-exports-boom-while-deal-risk-hobbles-ukraine-flows?leadSource=verify%20wall>.

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trade implications of the conflict, especially trade in agriculture and food products and the rise in energy prices and their effects on the impacted populations.”⁴

The conflict also has significant impacts on global supply chains: commercial companies are struggling to find easy merchant routes, with the closure of Ukrainian ports, the *risks for navigation* in the Black and Azov seas, theatres of the conflict, and restrictions on transit in the Bosphorus, where Turkey has already announced its intention to implement the provisions of the Montreux Convention⁵ that allow it to restrict navigation, in particular warships, through the Dardanelles. Following the decisions of the European Union (EU), the United States and other countries, to close their airspace to aircrafts flying the Russian flag - and the reciprocal measures adopted by the Russian government - trade is further restricted also by air.

If the effects of the conflict have and will have global repercussions, the "price" that the Russian Federation risks paying could be very high. The *condemnation of the conflict*, in the foregone paralysis of the United Nations Security Council, came almost unanimously from the United Nations General Assembly (UNGA) which, with a resolution adopted on 2 March 2022, requested the Russian Federation to “immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders.”⁶ Several *like-minded states* (including Australia⁷, Canada⁸, South

⁴ DG Okonjo-Iweala issues statement on Ukraine (Mar. 2, 2022), at https://www.wto.org/english/news_e/spno_e/spno23_e.htm.

⁵ The Convention regarding the Regime of the Straits, July 20, 1936, Volume CLXXIII.

⁶ GA Res. A/ES-11/L.1 (Mar. 3, 2022).

⁷ *Russia sanctions regime*, at <https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/russia-sanctions-regime#:~:text=Australia%20imposes%20autonomous%20sanctions%20in,extended%20in%202015%20and%202022>.

⁸ *Canadian Sanctions Related to Russia*, at https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/russia-russie.aspx?lang=eng.

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Korea⁹, Japan¹⁰, the United Kingdom¹¹, Singapore¹², the United States of America¹³, Switzerland¹⁴) and the EU¹⁵ have responded to the heavy mobilisation of troops with the employment of all its economic strength, implementing numerous unilateral – but coordinated – measures in reaction to the blatant violation of Article 2 (4) of the United Nations Charter,¹⁶ and the previous Russian recognition of the separatist republics of Luhansk and Donetsk. Many of these *coercive measures* (commonly – but improperly – known as “sanctions”) have also been extended to subjects and entities of Belarusian nationality, due to the complicity of the Lukashenko regime in military intervention alongside the Russian Federation.¹⁷ Clearly, these measures are aimed at isolating the Russian state and evaporating the economic resources necessary for the conduct of the war.

This article commences with an assessment of the numerous measures which can and are being used for economic coercion (2). Section 3 then introduces the international trade law angle to coercive actions, understanding how embargoes, boycotts, quotas, quantitative

⁹ Hyonhee Shin and Cynthia Kim, *South Korea bans exports of strategic items to Russia, joins SWIFT sanctions*, REUTERS (Feb. 28, 2022), at <https://www.reuters.com/business/aerospace-defense/skorea-bans-exports-strategic-items-russia-join-swift-sanctions-2022-02-28/>.

¹⁰ *Japan targets banks, military groups in new sanctions on Russia*, KYODO NEWS (Feb. 26, 2022), at <https://english.kyodonews.net/news/2022/02/55c29691cc52-urgent-japan-pm-announces-more-sanctions-on-russia-after-attack-on-ukraine.html>.

¹¹ *UK sanctions relating to Russia*, (Apr. 15, 2022), at <https://www.gov.uk/government/collections/uk-sanctions-on-russia>.

¹² *Sanctions and Restrictions Against Russia in Response to its Invasion of Ukraine*, (Mar. 5, 2022), at <https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2022/03/20220305-sanctions>.

¹³ *Treasury Sanctions Russians Bankrolling Putin and Russia-Backed Influence Actors*, (Mar. 3, 2022), at <https://home.treasury.gov/news/press-releases/jy0628>.

¹⁴ Michael Shields and Silke Koltowitz, *Neutral Swiss join EU sanctions against Russia in break with past*, REUTERS (Mar. 1, 2022), at <https://www.reuters.com/world/europe/neutral-swiss-adopt-sanctions-against-russia-2022-02-28/>.

¹⁵ *EU restrictive measures against Russia over Ukraine*, at <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/>.

¹⁶ Marko Milanovic, *What is Russia's Legal Justification for Using Force against Ukraine?*, EJIL TALK (Feb. 24, 2022), at <https://www.ejiltalk.org/what-is-russias-legal-justification-for-using-force-against-ukraine/>.

¹⁷ Niklas Reetz, *Belarus is Complicit in Russia's War of Aggression*, EJIL TALK (Mar. 1, 2022), at <https://www.ejiltalk.org/belarus-is-complicit-in-russias-war-of-aggression/>.

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restrictions, and non-tariff barriers might violate the GATT and GATS. This section also analyses if these actions against Russia can fall within the essential security needs exception, in Article XXI of GATT and Article XIV^{bis} of GATS. Section 4 probes the relevant past WTO disputes, such as the 2017 Qatar-Saudi Arabia dispute and the 2016 Russia-Ukraine dispute. Section 5 applies the disputes provides an understanding of Article XXI of GATT with reference to the findings in the disputes from Section 4. Section 6 applies the doctrinal interpretation from Section 5 to the current sanctions imposed against Russia. The paper concludes that, based on the analysis made, the essential security interests exception might apply to the present scenario, *i.e.* the measures taken by states against Russia.

2 Economic Coercive Measures in Question

The measures adopted by states against the Russian Federation include the freezing of assets of individuals and commercial companies, the limit on bank deposits and access to bank credit, the prohibition of bargaining for industries operating in the defence sector, the imposition of duties, restrictions on the access to the market and commercial measures such as the withdrawal of concessions and the blocking of exports (of arms, *first of all*, together with products, systems and technologies susceptible of so-called *dual use*). The *assets* of the Russian central bank in the territory of the EU and the United States have been blocked, as have those of the main Russian and Belarusian banks, whose operation was severely limited by disconnection¹⁸ from the SWIFT system, which made payments of a transnational nature connected to trade and financial activities substantially more complex, articulated, and lengthy.¹⁹ In total, some 700 people and 60 entities as of 10th December, 2022 subject to

¹⁸ Tony Czuczka, *Western Allies Agree to Disconnect Some Russian Banks From SWIFT*, BLOOMBERG (Feb. 27, 2022), at <https://www.bloomberg.com/news/articles/2022-02-26/eu-u-s-agree-to-disconnect-some-russian-banks-from-swift#xj4y7vzkg>.

¹⁹ Richard L. Kilpatrick, *Blocking SWIFT in Russia*, OPINIO JURIS (Mar. 4, 2022), at <http://opiniojuris.org/2022/03/04/blocking-swift-in-russia/>.

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sanctions,²⁰ including President Putin, ministers and senior officials of the Russian administrative apparatus, 351 deputies of the Duma and well-known personalities of the Russian financial elite, including billionaires Alexei Mordashov, Vladimir Lisin, and Alisher Usmanov, considered to be very close to the Russian President, whose assets have also been subject to seizure orders, for example, in Italy.²¹ These measures, which are already quite incisive in themselves, have been accompanied by provisions that impose a ban on the stay and movement of affected individuals on the territory of the states that impose the sanction (*travel ban*) and blockades of air and naval traffic.²² In addition, the main international *clearing systems*, Euroclear and Clearstream, have decided to refuse transactions in Roubles, as well as several commercial banks have temporarily suspended the sale and purchase of the currency, the value of which has fallen by more than 40%.²³ Other global financial players, such as major payment and credit card networks, have suspended their operations in Russia and Belarus.²⁴ Many multinational companies, including the so-called big-tech, have suspended sales of their products and services in Russia.²⁵

3 International Instruments

²⁰ Minami Funakoshi, Hugh Lawson and Kannaki Deka, *Tracking Sanctions against Russia*, Reuters (Jul. 7, 2022), at <https://www.reuters.com/graphics/UKRAINE-CRISIS/SANCTIONS/byvrjenzmve/>.

²¹ *The assets seized by Italy from the Russian oligarchs*, ILPOST (Mar. 5, 2022), at <https://www.ilpost.it/2022/03/05/italia-sequestri-oligarchi-russi/>.

²² Andrei Kolesnikov, *A Travel Ban on All Russians Will Only Play Into Putin's Hands*, Carnegie Endowment for International Peace (Aug. 29, 2022) at <https://carnegieendowment.org/politika/87772>. For eg., US: US Department of State, *Russia Travel Advisory, Bureau of Consular Affairs* (Oct. 2, 2022), at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/russia-travel-advisory.html>; EU: European Council, *EU restrictive measures against Russia over Ukraine (since 2014)* (Oct. 20, 2022), at <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/>.

²³ Huw Jones, *Europe carves out Russia securities from financial markets*, Reuters (Feb. 28, 2022), at <https://www.reuters.com/article/ukraine-crisis-euroclear-sanctions-idCAL1N2V300T>.

²⁴ A. Gadkari, *Financial Statecraft: Economic Impact of the Sanctions Against Russia*, in: J. Econ. Fin. 13(3) (2022).

²⁵ Sophie Mellor and Erin Prater, *Netflix, China-based TikTok join Google, Apple, other companies cutting ties with Russia*, FORTUNE (Mar. 7, 2022), at <https://fortune.com/2022/03/06/business-sanctions-russia-ukraine-invasion-google-daimler-meta-fifa/>.

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All the instruments listed (without any claim to be exhaustive) have been adopted unilaterally by the States and by the EU or voluntarily by private subjects. As regards the measures adopted by the States and the EU, it should be emphasized that these coercive measures were implemented in the absence of a decision by the United Nations Security Council pursuant to Article 41 of the United Nations Charter²⁶ which, as is well known, allows for the adoption of measures not involving the use of force when one of the situations envisaged by Article 39 of the United Nations Charter.²⁷ The *legality* of the countermeasures adopted by States not directly harmed by an international offense is still today the subject of a wide debate on the level of general international law.²⁸ However, it is clear that some measures can be framed in specific regulatory regimes: in particular, this practice appears questionable in the light of *international trade law*.

The tools most often used by governments for sanctions include embargoes, boycotts or the imposition of quantitative restrictions on trade, as well as the creation of non-tariff barriers, such as prescribing specific licensing or packaging requirements. Such measures could violate various clauses of the WTO agreements, in particular the *General Agreement on Tariffs and Trade* (GATT) and the *General Agreement on Trade in Services* (GATS), whose founding principles are reciprocity and non-discrimination in commercial relations,

²⁶ U.N. Charter Article 41.

²⁷ Alain Pellet & Alina Miron, *Sanctions*, Max Planck Encyclopedia of Public International Law (2013).

²⁸ For further elaboration on sanctions on Russia's sovereign debt market, see A. Gadkari/A. Chouksey, *Should States Use Unilateral Coercive Measures as a Means of Economic and Political Compulsion?*, JFIEL, 20 November 2021, <https://www.jindsocietyofinternationallaw.com/post/should-states-use-unilateral-coercive-measures-as-a-means-of-economic-and-political-compulsion> (accessed on 29.11.2022); on measures adopted in 2014 against Russia, see P. De Sena/L. Gradoni, *Crimea: The Reasons For The Wrong (Russian) And The Wrong For The (Western) Reasons*, SIDIBLOG, 21 March 2014, <http://www.sidiblog.org/2014/03/21/crimea-le-ragioni-del-torto-russo-e-il-torto-delle-ragioni-occidentali/> (accessed on 29.11.2022). More generally: M. Asada, *Economic Sanctions in International Law and Practice*, 2021; M. Dawidowicz, *Third-Party Countermeasures in International Law*, 2017; A. Hofer, *The 'Curiouser and Curiouser' Legal Nature of Non-UN Sanctions: The Case of the US Sanctions against Russia*, in: *J. Confl. Secur. Law* 23 (1) (2018); S. Silingardi, *Unilateral Sanctions and Sanction with Extraterritorial Application in International Law*, 2020; M. Sossai, *Sanzioni delle nazioni unite e organizzazioni regionali*, 2020; N. Ronzitti, *Coercive Diplomacy, Sanctions and International Law*, 2016.

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the latter expressed by the well-known *standards* of national treatment and *most favoured nation* (MFN). In particular, Article I, paragraph 1, of the GATT (as well as Article II of the GATS) provides for equal treatment with respect to similar products originating in or destined for the territories of all the other Contracting Parties: some countries, such as Canada, have already withdrawn this privilege with regard to goods from the Russian Federation and Belarus,²⁹ while legislative proposals to this effect have been introduced at the US Congress.³⁰ On 15 March 2022, the President of the European Commission announced that this measure will also be implemented by the EU and its Members within the framework of the World Trade Organization.³¹

As a result of these decisions, goods and services from the Russian Federation could incur much higher tariffs. Furthermore, the unilateral measures implemented so far have established quantitative restrictions on the export of various categories of goods, which could constitute a violation of Article IX of the GATT, which prescribes the elimination of the so-called quotas, as well as the limitations imposed on air, sea, and land transport, could result in a violation of the rule that requires the free transit of goods and services in the territories of the Contracting Parties (Article V GATT). In addition, it should be noted that Article 23 of the Understanding on Dispute Settlement³² (DSU) prohibits the use of unilateral *self-help measures*, establishing the obligation to resort to the dispute resolution system provided for by the Agreement: this interpretation has been confirmed by various *panels*, including those

²⁹ *Canada cuts Russia and Belarus from Most-Favoured-Nation Tariff treatment*, (Mar. 3, 2022), at <https://www.canada.ca/en/department-finance/news/2022/03/canada-cuts-russia-and-belarus-from-most-favoured-nation-tariff-treatment.html>.

³⁰ Simon Lester, *Senators Brown and Cassidy Introduce No Most Favored Nation Trading with Russia Act*, INTERNATIONAL ECONOMIC LAW AND POLICY BLOG (Mar. 3, 2022), at <https://ielp.worldtradelaw.net/2022/03/senators-cassidy-and-brown-introduce-.html>.

³¹ *Ukraine: EU agrees fourth package of restrictive measures against Russia*, (Mar. 15, 2022), at https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1761.

³² Annex 2 of the WTO Agreement, *Understanding on rules and procedures governing the settlement of disputes* (1994).

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set up in cases *US-Shrimp*³³ and *Canada - Aircraft Credits and Guarantees*,³⁴ which have clearly identified as “prohibited” the measures taken individually by States outside the procedural framework managed by the *Dispute Settlement Body*. These and other provisions, therefore, would render illegitimate any unilateral coercive measure of a commercial nature adopted by one Member State against another.

However, the WTO agreements also include clauses of exception to the general regime of trade liberalization, allowing that - in the presence of specific requirements - Member States can adopt measures that have the effect of restricting commercial traffic in order to protect values and non-economic needs. Specifically, while Article XXI of the GATT (and Article XIV**bis** of the GATS) outline a series of general exceptions,³⁵ Article XXI of the GATT and XIV**bis** of the GATS (as well as Article 73 of the agreement relating to the Trade Related Aspects of International Property Rights³⁶ (TRIPS)) instead offer the opportunity to use measures based on *essential security interests*. Such clauses have very rarely been invoked in WTO practice.³⁷

As dictated by Article XXI of the GATT, this security exception is directly linked to the objectives of peace protection and maintenance of international security professed by the United Nations Charter. Article XXI (b) of the GATT prescribes that such measures can be adopted in a period of armed conflict or emergency in international relations. By invoking this provision, Ukraine has decided to apply a full embargo to products originating from the

³³ World Trade Organization, *United States — Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Doc. WT/DS58/R (May 15, 1998), para. 7.43.

³⁴ World Trade Organization, *Canada – Export Credits And Loan Guarantees For Regional Aircraft*, WTO Doc. WT/DS222/R (Jan. 28, 2002), para. 7.170.

³⁵ ILARIA ESPA, EXPORT RESTRICTIONS ON CRITICAL MINERALS AND METALS 193-228 (2015); MAURO MARIA ROSARIA, DIRITTO INTERNAZIONALE DELL'ECONOMIA 159-162 (2019).

³⁶ Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, *Agreement on Trade-Related Aspects of Intellectual Property Rights*, (Jan. 1, 1995).

³⁷ Petros Mavroidis et al., *The Law of the World Trade Organization (WTO): Documents, Cases, and Analysis* 684- 786 (2010).

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Russian Federation and not to apply the WTO agreements with the same state, as summarized in a letter addressed to the Chairman of the General Council of the WTO.³⁸ It is questionable, however, whether the coercive measures adopted by Ukraine and other states against the Russian Federation and Belarus are legitimate and therefore can fall within the exception clause.

4 WTO Jurisprudence

Two recent cases in the WTO may come in support, as the use of unilateral economic measures was specifically considered in them. In 2017, Qatar had resorted to the WTO dispute settlement body because of the actions of four states – Bahrain, Egypt, Saudi Arabia, and the United Arab Emirates (UAE) – arguing that the coercive economic measures taken by those states constituted a violation of the Organization’s rules, impeding the freedom of transit of goods and frustrating most of the commercial exchanges between the two countries. However, although the *panel* established in the dispute between Qatar and Saudi Arabia had recognized the existence of a state of “tension” and the breakdown of diplomatic relations between the two countries, in the decision only some measures adopted by the Saudi government had been deemed justified by security reasons: rather surprisingly, however, there was no elaboration or analysis in the report about the nature of the *emergency situation* that would have justified trade restrictive measures.³⁹ A previous case between Ukraine and Russia, opened in 2016, resulted in a decision in 2019 that provides a more complete interpretation of the security exception under Article XXI of the GATT.⁴⁰ The dispute arose

³⁸ Yevheniia Filipenko, Letter dated Mar. 2, 2022, from Permanent Mission of Ukraine addressed to the Chairman, WTO General Council U.N. Doc. 80/017 (Mar. 2, 2022).

³⁹ World Trade Organization, *Saudi Arabia – Measures Concerning The Protection Of Intellectual Property Rights*, WTO Doc. WT/DS567/R (June. 16, 2020), para. 7.257; Caroline Glöckle, *The second chapter on a national security exception in WTO law: the panel report in Saudi Arabia – Protection of IPR*, EJILTALK (July 22, 2020), at <https://www.ejiltalk.org/the-second-chapter-on-a-national-security-exception-in-wto-law-the-panel-report-in-saudi-arabia-protection-of-ipr/>.

⁴⁰ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019); Loris Marotti and Giovanna Adinolfi, *WTO security exceptions: A*

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following the serious deterioration of relations between the two countries in February 2014, a situation that had led the Russian Federation to limit the transit through its territory of Ukrainian goods destined for Central Asian markets. Ukraine had challenged these restrictions before the WTO bodies as contrary to Article V of the GATT as well as to various trade commitments under the Protocol of Accession of the Russian Federation to the Organization. Russia replied by invoking Article XXI (b) (iii) of the GATT,⁴¹ which provides that a member of the WTO can take any action “which it considers necessary for the protection of its essential security interests taken in time of war or other emergency in international relations.” The *panel* considered⁴² that Russia had satisfied the requirements to invoke the exception and had interpreted the requirement of emergency in international relations as a “situation of armed conflict, or of latent armed conflict, or of heightened tension or crisis, or of general instability engulfing or surrounding a state.”⁴³ Consequently, the situation between these two states could well be considered an emergency in international relations which justifies the restrictive measures adopted against Ukrainian goods pursuant to Article XXI (b) (iii) of the GATT.⁴⁴ According to the panellists, in fact, there was evidence that relations between Ukraine and the Russian Federation had deteriorated to the point of causing concern for the entire international community, in light of the recognition of the situation by the UNGA and the protests and unilateral measures adopted by numerous governments.⁴⁵

landmark Panel report in times of crisis, QIL-QDI (May 12, 2020), at <http://www.qil-qdi.org/wto-security-exceptions-a-landmark-panel-report-in-times-of-crisis/>; Tania Voon, *Russia—Measures Concerning Traffic in Transit*, 114 AJIL 1, (2020).

⁴¹ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019), para. 7.34.

⁴² *Id.*

⁴³ *Id.*, para. 7.75-7.76.

⁴⁴ *Id.*, para. 7.5.7; Rostam J. Neuwirth & Alexandr Svetlicinii, *The Economic Sanctions over the Ukraine Conflict and the WTO: ‘Catch-XXI’ and the Revival of the Debate on Security Exceptions*, 49 J. World Trade 5 (2015).

⁴⁵ GA Res. A/ES-11/L.1 (Mar. 3, 2022).

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In light of the previous – albeit sparse – case law related to the security exception, a first assessment of the coercive measures implemented against the Russian Federation and Belarus in February/March 2022 can therefore be proposed. First of all, there seems to be no doubt about the fact that the current conflict can be considered a situation of “war or emergency in international relations” which makes Article XXI - and the relevant provisions contained in the other agreements – applicable by Ukraine vis-à-vis the Russian Federation. However, it has to be ascertained whether the Ukrainian state can also disregard the obligations arising from agreements that are not strictly "commercial": the Ukrainian diplomatic note, in fact, speaks in a generic way of “WTO Agreements”, also including other annexes to the WTO Agreement, such as the DSU and the Agreement relating to periodic review of commercial policies.⁴⁶ The exception clauses for security reasons, on the other hand, refer exclusively to the obligations present in the agreements in which they are contained and could therefore be invoked only in reference to obligations under the GATT, GATS and TRIPS. This circumstance was underlined by the Russian Federation itself in its diplomatic reply note.⁴⁷

Secondly, in relation to the measures implemented by third countries, such as Canada, and by the EU, it seems that the exception clause can still apply: the text of Article XXI of the GATT, in fact, does not contain any reference to emergency situations that directly involve the State invoking the exception, but refers to generic “essential interests” of security, which, in the opinion of the authors, may well include compliance with the principle of the prohibition of using force in international relations, the safeguarding of the territorial integrity and political independence of other States and the obligation to resolve disputes peacefully. Nor do the cited clauses limit their scope of application to purely national

⁴⁶ World Trade Organization, Trade Policy Review Mechanism as Amended by the General Council (Jan. 1, 2019).

⁴⁷ D.Lyakishev, Letter dated Mar. 7, 2022, from Permanent Mission of The Russian Federation addressed to the Chairman, WTO General Council U.N. Doc. 17/756/95 (Mar. 7, 2022).

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situations: for example, Article XXI (c) of the GATT makes a clear reference to the UN-Charter and the obligations related to the maintenance of international peace and security, allowing WTO Members to disregard *ex GATT* obligations in order to implement the coercive measures decided by the UN Security Council on the basis of Articles 39 and 41 of the UN-Charter.⁴⁸ Based on these considerations, the suspension of commercial obligations would also be allowed by countries not directly involved in the Russian-Ukrainian conflict.

Finally, however, it should be remembered that the predominant interpretation of the exceptions in question recognizes the power of states to *self-determine*, in a completely subjective way which situations jeopardize their national security and what actions are necessary to deal with this emergency.⁴⁹ Consequently, this assessment is beyond the control of any bodies responsible for establishing the legitimacy of such measures in the framework of the WTO dispute settlement system.⁵⁰ However, the invocation of Article XXI (b) of the GATT is not completely non-justiciable: the panel and the eventual WTO Appellate Body will in any case have to assess that the appeal to the exception is made in good faith.⁵¹

Article XXI of the GATT and the “sister” provisions contained in the other WTO agreements, therefore, could offer a certain margin of manoeuvre to *justify* coercive measures of a unilateral nature which in principle would be prohibited by the DSU and contrary to various provisions of the WTO agreements. It is clearly necessary to objectively demonstrate the existence of an exceptional situation for international relations and, furthermore, that the measure was undertaken reasonably and without abuses. If not, there appears to be no justification in the WTO special regime for such measures. Certainly, the Organization's

⁴⁸ PETER VAN DEN BOSSCHE & WERNER ZDOUC, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION* 622-623 (2017).

⁴⁹ Daria Boklan & Amrita Bahri, *The First WTO's Ruling on National Security Exception: Balancing Interests or Opening Pandora's Box?*, 123 *J. World Trade* 19 (2020).

⁵⁰ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019), para. 7.102-7.103.

⁵¹ Stephan Schill & Robyn Briese, *“If the State Considers”: Self-Judging Clauses in International Dispute Settlement*, Max Planck UNYB 13 106-110 (2009).

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dispute resolution system may soon have to confront this issue again, by virtue of the many measures adopted against the Russian Federation and, to a lesser extent, Belarus, by other states

5 Zooming in on Article XXI of the GATT

Article XXI permits nations to diverge from their GATT commitments for national security considerations, subject to specified circumstances. In recent years, some nations have used national security as a justification for certain allegedly GATT-inconsistent actions. Japan, claiming national security concerns, has imposed stringent export restrictions on South Korea in 2020.⁵² In 2021, the United States increased tariffs on steel and aluminium, also on the basis of national security concerns,⁵³ which was challenged in the WTO by a number of nations, including the EU.⁵⁴ Article XXI(b)(iii) of the GATT gains significance in the context of this article in light of the continuing conflict between Russia and Ukraine and the heightened global tensions. Article XXI(b)(iii) of the GATT permits WTO member countries to take whatever action ‘which it considers necessary’ for the preservation of its ‘essential security interests’ in times of war or other international emergencies. Three pertinent questions are addressed in the following text. First, what do the words ‘which it considers’ in the chapeau of Article XXI(b) imply, i.e., if these words render Article XXI (b) (iii) self-judging and, as such, non-justiciable (5.1)? Second, what do ‘war or other emergency in international relations’ and ‘essential security interests’ entail as defined in subparagraph (iii) (5.2)? Third, what does ‘necessary’ imply in the Article XXI (b) chapeau (5.3)?

⁵² Derek Kang, *An Uncertain Future: How the Current Japan-Korea Dispute Signals Deteriorating Trade Norms*, MICHIGAN JOURNAL OF INTERNATIONAL LAW (2020) AT <http://www.mjilonline.org/an-uncertain-future-how-the-current-japan-korea-dispute-signals-deteriorating-trade-norms/>

⁵³ David Lawder, *U.S. court upholds Trump’s national security tariffs on steel imports*, REUTERS (Feb. 5, 2021), at <https://www.reuters.com/article/us-usa-trade-steel-idUSKBN2A42MN>.

⁵⁴ *Id.*

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5.1 “Which it Considers”

The primary issue in this case is whether the wording “which it considers” permits the invoking nation to unilaterally assess whether the approved measure is required under Article XXI (b) (iii) of the GATT. In other words, may a WTO panel examine the action taken by the requesting nation? In several GATT/WTO disputes, countries have asserted that Article XXI is subjective. For example, in a 1985 dispute between the United States and Nicaragua over the former’s imposition of a trade embargo on the latter,⁵⁵ the United States argued that Article XXI (b)(iii) gave each country the discretion to determine what action it deemed necessary for the protection of its essential security interests. Similarly, in a disagreement between the UAE and Qatar, the UAE said that it had taken steps to protect its vital security interests and that the WTO had the jurisdiction to question a member’s determination of its national security interests.⁵⁶ In *Russia: Transit Measures*,⁵⁷ Russia asserted that the WTO panel has the authority to consider measures implemented to preserve a country’s critical security interests under Article XXI GATT.⁵⁸ Similarly, in the recent *Saudi Arabia: Intellectual Property case*,⁵⁹ Saudi Arabia contended that a measure implemented under the security exception of Article 73(b)(iii) of the TRIPS Agreement cannot be assessed by a WTO panel and is, thus, non-justiciable.⁶⁰

In *Russia: Transit Measures*, a WTO panel determined that it had the authority to evaluate Russia’s use of the national security defence granted by Article XXI(b)(iii) GATT. The panel determined that it had this authority due to its ‘inherent jurisdiction,’ which stems

⁵⁵ World Trade Organization, *United States: Trade measures affecting Nicaragua*, WTO Doc. L/6053. Report by the Panel (Oct. 13 1986, unadopted).

⁵⁶ Tania Voon, *The Security Exception In WTO Law: Entering a New Era*, 113 AJIL 45 (2019).

⁵⁷ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019).

⁵⁸ *Id.* para. 7.30.

⁵⁹ World Trade Organization, *Saudi Arabia – Measures Concerning The Protection Of Intellectual Property Rights*, WTO Doc. WT/DS567/R (June. 16, 2020).

⁶⁰ *Id.* para. 7.8-7.9.

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from its adjudicatory position.⁶¹ The panel concluded, therefore, that Article XXI(b)(iii) is not wholly self-judging.⁶² Therefore, the invoking nation does not have exclusive discretion in this respect since the phrase ‘which it considers’ does not qualify the conditions in subparagraph (iii).⁶³ The invoking country cannot only assert that it is acting ‘during times of war or other international emergencies’ to sufficiently justify it’s The panel will assess whether such a condition really exists. This decision cannot be left to the unfettered discretion of the invoking member states. As such, Article XXI (b) (iii) of the GATT is neither self-judging nor non-justiciable, but measures taken are subject to WTO review. Therefore, the use of the Article XXI exception by States placing sanctions on Russia can be subject to WTO review.

5.2 “Essential Security Interests” regarding Measures “Taken in Time of War or Other Emergency in International Relations”

This section focuses on clarifying the meaning of the other phrases that appear in Article XXI (b) (iii). First, the meaning of the two notions will be explained.

5.2.1 Essential Security Interests

In the framework of Article XXI, it is crucial to determine whether the invoking nation has properly expressed its ‘essential security interests.’ The notion ‘essential’ implies that the security interests at risk must be crucial as opposed to wide or insignificant. In common parlance, the term essential indicates ‘vitally significant.’⁶⁴ To rely on essential security interests as a justification for departing from GATT requirements, it is necessary to establish that the security interests are not only ordinary but crucial. The security interests must fulfil a

⁶¹ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019), para. 7.53.

⁶² *Id.* para. 7.102.

⁶³ *Id.* para. 7.82.

⁶⁴ *Id.*

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higher criterion or standard and must be distinguished from broad or non-essential security interests.⁶⁵ In *Russia: Transit Measures*, this line of reasoning was confirmed. The panel determined that ‘essential security interests’ are evidently narrower than ‘security interests’ and can generally be understood to refer to those interests relating to the state’s fundamental functions, namely the protection of its territory and population from external threats and the maintenance of law and public order internally.⁶⁶ In *Saudi Arabia: Intellectual Property*, a WTO panel relied on the reasoning from *Russia: Transit Measures* on this issue.⁶⁷

A related question is whether nations may unilaterally (i.e., without judicial oversight) identify ‘essential security interests.’ In other words, do the phrases ‘which it considers’ simply apply to assessing the need of the action taken to preserve ‘essential security interests,’ or do they also apply to determining ‘essential security interests’? In Article XXI (b) GATT, the words ‘which it considers’ are positioned between ‘taking any actions’ and ‘necessary’. This demonstrates that while countries have considerable discretion in determining the necessity of the measure to be adopted for the protection of ‘essential security interests’ (subjective standard), the same cannot be said regarding the determination of ‘essential security interests’ for Article XXI (b) GATT.⁶⁸ The determination of ‘essential security interests’ in Article XXI (b) GATT is subject to an objective standard of review; however, a margin of appreciation shall be accorded to the State in articulating its essential security interests.⁶⁹ *Russia: Transit Measures* affirmed the validity of this rationale.⁷⁰ Due to the diverse nature of security interests and circumstances, the panel determined that all WTO members have the right to voice what they consider to be their important security interests.

⁶⁵ *Id.*

⁶⁶ *Id.* para. 7.130.

⁶⁷ World Trade Organization, *Saudi Arabia – Measures Concerning The Protection Of Intellectual Property Rights*, WTO Doc. WT/DS567/R (June. 16, 2020), para. 7.249.

⁶⁸ *Id.*

⁶⁹ Tania Voon, *Russia—Measures Concerning Traffic in Transit*, 114 AJIL 1, (2020).

⁷⁰ *Id.*

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This does not, however, imply that all issues may be raised to the status of an ‘essential security interest.’⁷¹ The state’s discretion in this respect is subject to the need to interpret and implement Article XXI (b) (iii) GATT in good faith.

In other words, a WTO panel may conduct a good faith assessment of a country’s determination. In *Saudi Arabia: Intellectual Property*, Saudi Arabia expressed its essential security interests in terms of protecting itself from the twin threats of terrorism and extremism,⁷² which the panel deemed sufficiently evident. Moreover, in *Russia: Transit Measures*, it was determined that what constitutes a sufficient degree of articulation of important security interests depends on the international relations exigency at hand.⁷³ In other words, the less acute an ‘emergency in international relations’ is, that is, the farther away it is from a state of armed conflict, the less apparent the country’s defence or military interests will be.⁷⁴ In such situations, the requesting nation will be obliged to define its fundamental security interests with more detail or accuracy.⁷⁵ Conversely, if an emergency situation in international relations emerges as a result of an armed conflict, the level of precision required of a country in defining its fundamental security interests will be substantially lower. To this end, the panel established a criterion of ‘minimum satisfaction’, i.e., the enunciation of the core security interests should be minimally appropriate in the context in which it is used.⁷⁶ The panel in the *Saudi Arabia: Intellectual Property* also adopted the ‘minimal satisfaction’ standard for articulating essential security interests.⁷⁷ Consequently, the country’s

⁷¹ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019), para. 7.137.

⁷² World Trade Organization, *Saudi Arabia – Measures Concerning The Protection Of Intellectual Property Rights*, WTO Doc. WT/DS567/R (June. 16, 2020), para. 7.280.

⁷³ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019), para. 7.135.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* para. 7.137.

⁷⁷ World Trade Organization, *Saudi Arabia – Measures Concerning The Protection Of Intellectual Property Rights*, WTO Doc. WT/DS567/R (June. 16, 2020), para. 7.281.

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responsibility to describe its fundamental security interests is not onerous and is subject to a limited examination by the panel.⁷⁸ Once the invoking country demonstrates that the criteria specified in one of the subparagraphs exist (such as a state of war or other emergency in international relations), it will be presumed that an essential security interest is at stake. The State will not be required to demonstrate any additional criteria that it has satisfied the essential security interest criteria.

5.2.2 Taken in Time of War or Other Emergency in International Relations

Due to the fact that the invoking country's determination of essential security interest is contingent on demonstrating the existence of 'war or other emergency in international relations' and that it has 'taken' measures 'in time' of such a situation or circumstance, this discussion is divided into two parts: first, the meaning of 'war or other emergency in international relations' will be discussed. Subsequently, the meaning of 'taken in time of', i.e. the temporal scope of the provision, will be examined.

5.2.2.1 War or Other Emergencies in International Relations

Importantly, the phrase 'which it considers' does not extend to the subparagraphs of Article XXI(b). Thus, a state cannot unilaterally establish the existence of a state of war or other international emergency by relying on subjective criteria for the purpose of Article XXI (b) GATT.⁷⁹ Therefore, a WTO panel will establish their meaning objectively. In *Russia: Transit Measures*, it was determined that war is one kind of international emergency that may be objectively determined.⁸⁰ In addition, the panel determined that war refers to armed conflicts

⁷⁸ *Id.*

⁷⁹ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019), para. 7.101.

⁸⁰ *Id.* para. 7.70-7.72.

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and that armed conflicts for the purpose of the provision in may be international as well as non-international armed conflicts.⁸¹

Article XXI(b)(iii) of the GATT does not define the word ‘international emergency.’ As was also stated in *Russia: Transit Measures*, the context of Article XXI(b) is helpful in elucidating the meaning of these terms.⁸² Subparagraphs (i) and (ii) discuss fissionable material; the trafficking of guns, ammunition, and war implements; and the trafficking of other products and materials directly or indirectly used to support a military installation. This context suggests that the notion of ‘international relations emergency’ should relate to defence or military circumstances. Another connected element is that ‘other emergency in international relations’ is linked to ‘war’ in subparagraph (iii). Consequently, an ‘emergency in international relations’ should be of a comparable gravity.⁸³ As such, not every circumstance in which the state perceives a danger meets the level of an ‘emergency in international relations’.

Further, in *Russia: Transit Measures*, it was also determined that emergency in international relations generally refers to armed conflicts, situations of latent armed conflict, situations involving high tension or emergency, or a country’s overall instability.⁸⁴ Similarly, in *Saudi Arabia: Intellectual Property*, it was determined that when a group of countries persistently accuses another country of providing support for terrorism and fanaticism, it reflects a state of heightened tension or predicament between the aforementioned countries and thus qualifies as an ‘international relations emergency.’⁸⁵

5.2.2.2 ‘Taken in the Time of’

⁸¹ *Id.* 7.72.

⁸² *Id.* 7.74.

⁸³ Tania Voon, *Russia—Measures Concerning Traffic in Transit*, 114 AJIL 1, (2020).

⁸⁴ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019), para. 7.76.

⁸⁵ World Trade Organization, *Saudi Arabia – Measures Concerning The Protection Of Intellectual Property Rights*, WTO Doc. WT/DS567/R (June. 16, 2020), para. 7.263.

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For a measure to fall under Article XXI(b)(iii), it must have been ‘taken in time of’ ‘war or other international emergency.’ In *Russia: Transit Measures*, the panel determined that whether a measure or action has been undertaken within a certain timeframe is an objective fact amenable to WTO jurisdiction.⁸⁶ The terms ‘taken in time of’ describe the relationship between the action done and the occurrence of war or other crises in international relations.⁸⁷ In the *Russia: Transit* case, it was determined that in order for a measure to fulfil the criteria of Article XXI (b)(iii), it must have been adopted while a state of war or other international emergency *existed* between the nations. Thus, ‘chronological concurrence’ is required between the measure taken and the emergency. A measure that lacks this chronological congruence, i.e., one that was not approved at a time of war or other emergency in international relations, cannot be said to have been ‘taken in time of’ such a crisis.

5.3 Necessity of a Measures

Now this paper will turn to the term ‘necessary’ in GATT Article XXI. The word ‘necessary’ is followed by ‘which it deems.’ As previously noted, the phrase ‘which it deems’ does not render Article XXI (b) entirely self-judging. Nonetheless, it follows from the preceding explanation that the phrase ‘which it considers’ gives the invoking country some latitude in determining the need of the action. The panel in *Russia: Transit Measures* determined that the requesting countries must demonstrate in good faith that the enacted measures are related to protecting essential security interests.⁸⁸ Therefore, according to Akande and Williams, the requesting nation must really think that the enacted action is required to protect its vital security interests.⁸⁹

⁸⁶ *Id.* para. 7.70.

⁸⁷ *Id.*

⁸⁸ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019), para. 7.138.

⁸⁹ Dapo Akande & Sope Williams, *International Adjudication on National Security Issues: What Role for the WTO?*, 365 Virginia JIL 43 (2003); Tania Voon, *Russia—Measures Concerning Traffic in Transit*, 114 AJIL 1, (2020).

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In *Russia: Transit Measures*, it was determined that this indicates the challenged measures fulfil the minimal plausibility standard in connection to the asserted essential security interests. In other words, the measures should not be implausible, distant, or unconnected to the current problem.⁹⁰ If the action is plausible, considering the emergency circumstances, it will indicate that the nation honestly believed it was required to protect its vital security interests. If, on the other hand, the chosen measure is detached or unconnected to emergency or national security situations, it will be difficult to demonstrate that the country really believed in the need of the action.

6 Applying the Interpretation of Article XXI(b)(iii) to the Russia-Ukraine Conflict

6.1 Essential Security Interests

In its letter to the WTO General Council, Ukraine asserts that the Russian incursion constitutes an assault on its sovereignty and territorial integrity. In other words, the articulation of Ukraine's core security interests pertains to the protection of its territorial integrity and sovereignty against foreign invasion. Protecting a nation's territorial integrity and sovereignty is an 'essential' security interest. Given the fact that Russian armed forces entered Ukrainian territory and that there has been widespread damage and destruction caused by the continuing international armed conflict in Ukraine, it is without question that Ukraine has articulated her core security interests.

Concerning third-states like Canada, which are not engaging in the hostilities, the issue is what degree of articulation of its fundamental security interests may be deemed appropriate. A first issue is that nowhere in Article XXI of the GATT does it say that only states party to an armed conflict may use the national security exemption. Article XXI(b)(iii) of the GATT

⁹⁰ World Trade Organization, *Russia - Measures Concerning Traffic In Transit*, WTO Doc. WT/DS512/R (Apr. 5, 2019).

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may be invoked by any WTO member nation that meets all the prerequisites. Canada's rationale for removing Russia's MFN designation is as follows:

“Russia's invasion of Ukraine [...] is a violation of international law and threat to the rules-based international order. Canada is taking further action to ensure those who do not support the rules-based international order cannot benefit from it.”⁹¹

To guarantee that their actions are grounded on GATT's Article XXI, countries such as Canada and the EU may argue that Russia's violation of Article 2(4) of the UN Charter constitutes a danger to the essential security interests of the international community as such. In addition, the fact that Russian President Vladimir Putin advised Western nations not to intervene in the conflict with Ukraine and threat to use nuclear weapons,⁹² illustrates the dire global security scenario. Considering this, it will not be difficult for nations such as Canada to adequately describe their fundamental security interests in order to satisfy the 'minimum satisfaction' criteria. In any event, the duty to identify its core security interests is not onerous, and the WTO panel will accord nations substantial margin of appreciation on the matter.

6.2 Taken in Times of War or Other Emergency Situations in International Relations

Furthermore, as previously noted, the articulation of important security interests also relies on the gravity or severity of the conditions specified in Article XXI(b) of the GATT. The situation in the continuing battle between Russia and Ukraine is extremely dire. Since Russia has initiated a full-scale military invasion of Ukraine, subparagraph (iii) certainly applies. On 2 March 2022, the UNGA passed a Uniting for Peace Resolution denouncing Russia's

⁹¹ Government of Canada, *Canada cuts Russia and Belarus from Most-Favoured-Nation Tariff treatment*, GLOBAL TRADE ALERT (Mar. 3, 2022) at <https://www.canada.ca/en/department-finance/news/2022/03/canada-cuts-russia-and-belarus-from-most-favoured-nation-tariff-treatment.html>.

⁹² Hugo Bachecha and John Simpson, *Ukraine war: World must act now to stop Russia nuclear threat - Zelensky*, BBC NEWS (Oct. 7, 2022) at <https://www.bbc.com/news/world-europe-63173443>.

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aggression against Ukraine in violation of Article 2(4) of the UN Charter, with 141 states voting in favour.⁹³

Additionally, Ukraine has broken diplomatic relations with Russia. Russia has been subjected to harsh economic and financial sanctions by multiple countries.⁹⁴ All of this indicates the existence of an ‘international relations emergency’ on a global scale between Russia and other nations such as Canada and the United States. Accordingly, the threshold for states to sufficiently set forth the reasoning for their measures is not particularly high –in submitting their essential security interest, they will have a certain margin of appreciation.

In a letter dated 2 March 2022, Ukraine said that it will impose a trade embargo on Russia in response to the Russian invasion on 24 February 2022 and the ongoing conflict.⁹⁵ Consequently, there is a clear ‘chronological congruence’ between the action performed and the current problem. Similarly, Canada’s decision to revoke Russia’s MFN designation was made on 3 March 2022, which likewise fulfils the need for temporal congruence.

6.3 Necessity of the Measures

As noted, the criteria of the measure’s necessity will be met if the invoking nation passes the plausibility test. The action selected by the state to protect its essential security interests should be plausible in relation to the proposed essential security interests and should not be too distant or unrelated. The move by Ukraine to implement a trade embargo on Russia will pass the plausibility test. It has a fair relationship to Ukraine’s asserted essential security interest in preventing a Russian invasion of its territory and sovereignty. For the claimed

⁹³ GA Res. A/ES-11/L.1 (Mar. 3, 2022).

⁹⁴ A. Gadkari, *Financial Statecraft: Economic Impact of the Sanctions Against Russia*, in: *J. Econ. Fin.* 13(3) (2022).

⁹⁵ Letter from Permanent Mission of Ukraine to the UN Office and Other International Organisations in Geneva to H.E. Mr. Didier Chambovey (Mar. 2, 2022) at <https://worldtradelaw.typepad.com/files/ukraine-wto.pdf>.

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security objective, the measure of implementing a trade embargo is neither too close nor too far away.

How Canada articulates its essential security interest will determine the reasonableness of its decision to suspend MFN tariff rates on Russian goods. If the essential security interest is tied to the violation of Ukraine's territorial integrity, suspending the MFN designation will be a feasible means of achieving this aim.

7 Conclusion

This paper has firstly discussed the negative implications of the Russian invasion on the world economy, and how sanctions are being used to economically isolate Russia. The paper also discussed the numerous measures that can be employed as economic coercion, and the vast extent of sanctions upon Russian businesses, including their impact such as the fall in the Russian Rouble and the withdrawal of big-tech and financial companies. The paper goes on to delve into actions such as embargoes, boycotts, quantitative restrictions, quotas, and restrictions on free transit, and acknowledges that these might violate GATT or GATS, but analyses these measures from the lens of the essential security needs exception provided within GATT and GATS. The paper then looked at the Qatar-Saudi Arabia dispute (2017) and the Russia-Ukraine dispute (2016). Finally, the paper concludes that the essential security needs exception should apply in the given scenario, and notes that the WTO should assess if the self-determination of situations affecting national security are in good faith or not.

The armed conflict between Russia and Ukraine is a clear case for Ukraine to impose trade sanctions against Russia under Article XXI of the GATT. Even though Canada and the EU are not at war with Russia, they may nonetheless impose trade restrictions on Russia under GATT's Article XXI. When Russia invaded Ukraine, it violated Article 2(4) of the UN Charter, which in turn sparks the essential security interest on a global scale. There is now an international armed conflict between Russia and Ukraine, and this is an emergency in

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international relations. Russian President Vladimir Putin's strong warning to Western nations who want to aid Ukraine in this conflict is further evidence of the heightened global tensions between Russia and the West, especially the United States, the European Union, and Canada.

The coercive measures employed by Ukraine and other countries against Russia are likely to survive the test of legality on the basis of the analysis provided above. It is important to analyse the effect of the coercive measures employed by different countries, and whether they would help the countries achieve their goal. The Russian economy was hit by these measures, having significant economic impacts such as the crash of the Rouble and the stock market, however, the Russian Central Bank was able to counteract this by increasing interest rates and implementing capital controls. Furthermore, Russia is still able to export one of its most precious commodities-oil-to European nations. Lastly, the effect of the coercive measures would be felt by countries imposing them too, as numerous countries depend on Russia for grains, fertilisers, and arms!