

Reconciling Most Favoured Nation Obligations with Geo Economic Discrimination in the World Trade Organisation through a Functional Neutrality Framework

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Abstract

Non-discrimination has long been a key principle of the post-1947 multilateral trading system, as demonstrated by the Most-Favoured-Nation Principle (MFN), the most notable first principle of the General Agreement on Tariffs and Trade (GATT) and later the World Trade Organisation (WTO) Agreements. This principle is not free from the ebb and flow of international trade practices. It faces a structural paradox in which it is more firmly embedded in the legal architecture while being increasingly contradicted in practice. In the contemporary era of geo-economic fragmentation, from 'friend-shoring' and 'de-risking' to bilateral blocs, and the weaponisation of export controls. This study critically examines the relevance, sustainability, and efficacy of the MFN principle. It examines relevant provisions of GATT 1994, WTO decision-making, and Member practices on trade, security, and geoeconomic issues. The study concludes that the erosion of MFN neutrality is neither inevitable nor desirable. It must be retained as a core component of the multilateral trading system and supported by an appropriately constructed Geo-economic Fragmentation Clause. This is based on the security exception under Article XXI of GATT 1994, but with more precise substantive and procedural safeguards, it would cover legitimate geo-economic and security issues without allowing discriminatory trade practices. The study thus recommends a calibrated approach that maintains the MFN principle as the basic rule while establishing a legally formalised, institutionally accountable process to address exceptional cases in the context of modern geo-economic fragmentation. It argued that MFN neutrality should not be abandoned, but reconceptualised: MFN is the principle to be followed, with a Geo-economic Fragmentation Clause similar in structure to Article XXI but more nuanced, drawing on procedural safeguards such as notification, review, and sunset clauses.

I. Introduction

The multilateral trading system was designed to promote a framework of stability, predictability and non-discrimination for international trade, but it is facing a crisis of legitimacy; preferential trade agreements, security-based exceptions, and industrial subsidies push the WTO's non-discrimination disciplines to the margin of practical trade governance (Prost, 2023) (Henckels, 2019). The growing use of exceptions and unilateral trade restrictions could weaken the WTO's strong institutional framework, which traditionally made it more than just a collection of contractual trade commitments (Trommer, 2017). It also deepens a long-running tension between regionalism and universalism that bears most directly on the Most-Favoured-Nation (MFN) principle in Article I:1 of GATT 1940 (Johnston, 2013) (Teng Li & Wang, 2025). The exclusion on security grounds is becoming an increasingly attractive strategy for governments seeking to reshape supply chains along political rather than economic lines, placing the liberal-market assumptions underlying GATT 1947 under sustained strain from both domestic politics and geopolitical competition (Luo, 2023). Moreover, Industrial policy is shifting toward a defensive paradigm in which global value chains are politicised to safeguard geopolitical security over open, rules-based market access (Luo, 2023) and unilateral measures taken on that basis increasingly depart from the good faith and proportionality constraints that trade adjudication has traditionally required (Zafar, 2025) (Moraes, 2026). This study addresses two fundamental questions: the extent to which geo-economic

fragmentation poses a structural challenge to the legality of the MFN obligation under Article I:1 of the GATT 1994, and how functional neutrality can provide a legally coherent framework. This study examines three interrelated sub-questions: first, how the Most-Favoured-Nation (MFN) principle has been used and how it works now in the age of geo-economic fragmentation. Secondly, where existing WTO jurisprudence makes the distinction between reasonable security-based differentiation and protectionism and thirdly, whether a system of procedural and functional neutrality can maintain the disciplining function of MFN whilst not fettering Members' legitimate security autonomy. Further, this study's methodological approach combines doctrinal analysis of texts from both the GATT and the WTO, analysis of jurisprudence related to Article XXI, and a study of three current discriminatory security-related measures of trade.

II. Research Gap and Original Contribution

The existing scholarship has extensively examined the erosion of MFN through preferential trade agreements, national security exceptions, export controls, industrial subsidies, and geo-economic fragmentation. These strands, however, have generally been analysed separately: the preferential-agreements literature rarely engages closely with the Article XXI jurisprudence, and the national-security literature rarely connects its findings back to the distributive consequences for non-aligned and developing Members. The result is a body of scholarship that persuasively demonstrates that fragmentation exists but stops short of explaining what, specifically, existing legal doctrine fails to resolve. This study addresses that missing connection between MFN discrimination and the procedural governance of security-driven trade measures. Its central claim is that the principal contemporary weakness of MFN is not simply the proliferation of exceptions GATT has always contained exceptions, as Section 4 demonstrates but the absence of a coherent institutional mechanism for determining when security-based differentiation becomes discriminatory geo-economic protectionism. Where prior work treats Article XXI's near-total deference as either a permanent design feature or an unfortunate loophole, this article treats it as an incompletely theorised space that the emerging jurisprudence in *Russia Traffic in Transit*, *Saudi Arabia – Intellectual Property Rights* and *United States Steel and Aluminium Products* has only begun to fill, and proposes a Functional Neutrality Framework that operationalises that jurisprudence into an administrable ten-factor test rather than leaving it as case-specific dicta. The study originality therefore rests on three contributions: (i) a doctrinally grounded account of the emerging Article XXI jurisprudence that revises the common characterisation of the security exception as effectively self-judging; (ii) three case studies that connect abstract fragmentation narratives to specific, legally analysable measures; and (iii) an operationalised reform proposal that specifies who would administer it, under which legal basis, and how it would interact with Articles XX, XXI, XXIV.

III. The Evolution of MFN and Geo-Economic Fragmentation

Whether the MFN has genuinely 'eroded' or has always been structurally flexible is best assessed historically. In this regard, four periods are most significant. First, the 1947–1994 GATT era, in which MFN operated alongside an already substantial set of carve-outs: historical preferences grandfathered

under Article I:2, the balance-of-payments exceptions in Article XII, and the security exception itself, included in 1947 precisely because negotiators anticipated that some derogation would be necessary (Trebilcock, 2013). Second, the 1995–2010 period of WTO consolidation, in which the creation of a binding dispute settlement system strengthened MFN's practical disciplining force even as regional trade agreements notified under Article XXIV multiplied. Third, 2010–2018, a period of rising strategic trade policy in which industrial policy re-emerged as a legitimate tool of economic statecraft without yet being routinely framed in security terms. Fourth, 2018–2026, the geo-economic/security fragmentation period that is this article's primary focus, in which security-framed measures tariffs, export controls, investment screening became the dominant vehicle for departures from MFN (Heath J. B., 2020) (Ullah, 2025). This periodisation suggests that the present moment is not simply 'more exceptions' but a qualitative shift in the character and stated justification of departures from MFN: from negotiated, notified and time-bound arrangements (Article XXIV agreements, waivers) toward unilateral, security-framed measures whose review is constrained by the deferential chapeau of Article XXI. The MFN has therefore always operated within a structured system of exceptions rather than as an absolute rule; what has changed is the scale, purpose and strategic function of those exceptions, and in particular the shift from negotiated departures to unilaterally asserted ones (Hahn, 2025) (Azim, 2025). Moreover, in the contemporary scenario, friend-shoring and strategic decoupling of supply chains for critical minerals and semiconductors have moved away from the interdependent world of post-war days (Heath J. B., 2020). This unilateralist shift indicates a move from non-discrimination and market access to national security concerns, happening at a rapid pace. More significantly, states are increasingly expanding the definition of essential security interests, including economic self-sufficiency, which could lead to a growing number of protectionist barriers that could permanently weaken the pillars of the multilateral trading system (Chieng, 2021). Further, the evolution of security-related policies from data localisation to increased industrial monitoring indicates a change from a reactive cyber sovereignty model to a more active and potentially defensive approach (Zhou, 2022) (Ullah, 2025). They often ignore the promotion, protection, and partnering strand of new economic security strategies that can be at odds with the entrenched principle of embedded liberalism. Most notably, states often use the guise of national security to evade their WTO obligations by claiming back delegated sovereignty, making it harder to draw a line between legitimate defence planning and "pretextual protectionism" (Biryukova, 2022) (Dimitropoulos.G., 2023). Eventually, the distinction is especially pronounced in the semiconductor industry, where export control measures and investment screening are now claimed as measures to prevent the weaponisation of economic interdependence (Bu, 2024) (Ikhsan Lubis, 2022). The securitised trade phenomenon indicates a broader shift from the universalist-liberal international order to a geopolitically segmented and competitive one, where trade policy is increasingly framed as a matter of national security (Patricia Garcia-Duran, 2023). As a result, an environment is developing that is extremely volatile and threatens the predictability and fair competition that were the original goals of the multilateral system (Lobanov, 2024) (Ma, 2025). Therefore, this systemic realignment toward "Gated Globalisation" has effectively replaced clear market competition and undermined the Most-Favoured-Nation (MFN) principle (Azim, 2005). The fragmentation forces states to focus on security rather than economic efficiency. It often acts, under the guise of national security, as a cover for protectionist motives that are not subject to non-

discrimination requirements (Lai, 2021). Furthermore, the Appellate Body's continued inaction, driven by the suspension of judicial appointments, has made the organisation increasingly impotent in settling these complex security-related claims and counterclaims (Goldberg, 2023). Therefore, this institutional failure has led to a shift toward less adherence to the rules-based order, with major economic powers increasingly relying on strategic autonomy and industrial policies over adherence to their historic multilateral obligations

IV. Legal Framework of MFN and Its Exceptions

MFN is frequently discussed alongside adjacent WTO disciplines as though they formed a single undifferentiated concept of 'non-discrimination'. They do not, and the distinction matters for the legal analysis that follows. Table 1 sets out the core provisions, their central legal question, and their relationship to security-based differentiation.

Table 1 MFN and adjacent WTO non-discrimination and exception provisions			
Concept	Provision	Core question	Governance model
Most-Favoured-Nation	GATT Article I:1	Are foreign trading partners treated equally?	Default rule; unconditional
National Treatment	GATT Article III	Are imported and domestic products treated equally?	Default rule; unconditional
Security Exception	GATT Article XXI	Can security justify a WTO-inconsistent measure?	Unilateral, self-assessed; limited review
General Exceptions	GATT Article XX	Can public-policy objectives justify a measure?	Chapeau + necessity test; panel-reviewed
Regional Trade Agreements	GATT Article XXIV	Can preferential treatment among a sub-set of Members be justified?	Negotiated, notified, committee-reviewed
Special & Differential Treatment	Enabling Clause	Can developing-country Members receive preferential treatment?	Negotiated, notified, non-reciprocal

The MFN principle is the basic structure of the GATT/WTO system, which requires that all trading partners be treated equally and that there be no discrimination in the market against any member country (Duong, 2023). However, with the arrival of "innovative alternatives" and preferential trade arrangements, this basic duty is increasingly being circumvented, pointing to a more complex and unified trade regulatory (Borlini G. S., 2023). This development is emphasised by the fact that numerous plurilateral agreements and customs unions exist under the existing GATT framework. But these increasingly reduce the amount of world trade covered by the basic MFN discipline (Ruggie J. G., 1982). This Sharp emerging trend is also driven by "open strategic autonomy" agendas, which encourage the creation of exclusionary supply corridors that favour geopolitical alignment over the impartial and non-

discriminatory market access once envisioned. Moreover, security exceptions are frequently used ambiguously, allowing a state to discriminate against imports as a matter of fact and subverting the principle's basic purpose of fostering competitive fairness (Park J.-J., 2023). The change in regulation resulted from the GATT's early emphasis on tariffs that distort trade, as well as a fragmentary regime of non-tariff and politically conditional measures. This development raises the question of whether the existing legal framework can do justice to the growing unilateralism, while still maintaining the non-discrimination principle (KIM D., 2025). Notably, this should also be re-examined in light of the conflict between the original, principled non-discrimination principle and current demagoguery, which uses national security as a pretext to reshape international supply chains. In particular, the absolute obligation of Article I and the broad reference to national security exemptions must be reconciled with a return to the principle of proportionality to avoid strategic protectionism (youyou., 2025). Furthermore, as noted above, the MFN principle, which is supposed to guarantee equal treatment of "like-products" across all members, has been systematically undermined by the increasing number of exclusive regional trade agreements (Wang Z. J., 2023). This creates multiple tiers of market access, a situation incompatible with the WTO's core principle of non-discrimination (Wang). Thus, this development requires a reconsideration of the GATT, Article I is interpreted, from a static to a modular approach, focusing on the difference between defensive strategic measures and discriminatory trade practices (Bohnert., 2025). Moreover, it requires balancing the traditional understanding of MFN as a rule for non-discriminatory treatment (trade benefits without taking into account returns) with the growing expectation of sovereign control over key value chains (Delev, 2023).

Table 2
Key provisions of the Most-Favoured-Nation (MFN) principle under Article I:1 of GATT 1994

Provision	Requirement	Legal significance
Article I:1	Trade advantages granted to one WTO Member must be extended immediately and unconditionally to all WTO Members.	Establishes the MFN principle of non-discrimination.
Any advantage	Covers tariffs, customs duties, import/export rules, and other border measures.	Prevents selective trade preferences.
Like products	Equal treatment applies to products considered 'like' under WTO jurisprudence.	Defines the scope of MFN protection.
Exceptions	Limited exceptions include Article XXIV, the Enabling Clause, waivers, and Article XXI.	Permits lawful departures from MFN obligations.

The doctrinal strictness, particularly of Article I of the GATT, remains limited in this respect because there are no explicit and standardised criteria for assessing the "likeness" of products in this modern day of complicated value-added supply chains. The lack of clarity regarding the notion of like products is further exacerbated when state measures such as subsidies or environmental requirements become part of a product's "process and production method" and thus move beyond the usual WTO product-based approach to comparative analysis (Evenett, 2018). Indeed, this legal stalemate helps shift toward more explicit criteria for distinguishing real from hidden protectionism, so the non-discrimination

requirement can effectively serve as a disciplinary tool, not a static limit. This nuanced approach should be assessed in light of a layered approach that requires inclusiveness, since sectoral cooperation does not exclude developing economies. Article XXIV and the enabling Clause permitting preferential treatment for developing countries deserve closer attention than they typically receive in the fragmentation literature, because they demonstrate that the MFN has always been a qualified rather than absolute principle. Further, Article XXIV requires that a regional agreement cover 'substantially all trade' between the parties and not raise barriers to third-country trade, while the Enabling Clause permits differential and more favourable treatment for developing members without requiring reciprocity. Both provisions are negotiated, notified and at least in principle subject to multilateral review through the Committee on Regional Trade Agreements, in sharp contrast to the unilateral, self-assessed character of Article XXI. The doctrinal contrast is instructive: where GATT drafters wanted a genuinely deferential standard they used explicitly self-judging language, as in Article XXI(b); where they wanted disciplined multilateral oversight of departures from MFN, as in Article XXIV, they built in substantive conditions and a standing review mechanism. The proliferation of security-framed measures analysed in this article represents, in that sense, a shift in the governance model of MFN departures themselves from the notified, reviewed model of Article XXIV toward the unilateral, minimally reviewed model of Article XXI rather than merely an increase in their number (Ruggie J. G., 1982).

V. Article XXI and the Securitisation of Trade

The jurisprudence on GATT Article XXI remains sparse but is no longer, as is sometimes assumed, non-existent, and it does not support treating Article XXI as a purely self-judging escape mechanism. Hence, three panel reports now constitute the operative case law. *Russia Measures Concerning Traffic in Transit* (WT/DS512/R, adopted 26 April 2019) was the first WTO ruling to interpret Article XXI. Russia and the United States, as a third party, argued that the chapeau of Article XXI(b), which permits a Member to take action 'which it considers necessary' for the protection of essential security interests, removed the invocation entirely from panel review. The Panel rejected that position. It held that a panel retains jurisdiction to assess whether the circumstances invoked by a Member objectively fall within the scope of Article XXI(b)(iii). Thus, the discretion granted by the phrase 'which it considers necessary' is bounded by an obligation of good faith requiring, at minimum, that the measures at issue meet a plausibility threshold in relation to the essential security interests asserted (WTO, 2019). On the facts, the Panel found that an emergency in international relations had existed between Russia and Ukraine since 2014 and that Russia's transit restrictions fell within Article XXI(b)(iii), and accordingly found no violation (WTO, 2019). *Saudi Arabia Measures Concerning the Protection of Intellectual Property Rights* (WT/DS567/R, circulated 16 June 2020) applied the *Russia Traffic in Transit* reasoning. The framework for the materially identical security exception in Article 73(b)(iii) of the TRIPS Agreement confirms that the *Traffic in Transit* reasoning was not confined to GATT. The Panel accepted that the 2017 rupture in relations between Saudi Arabia and Qatar satisfied the chapeau's 'emergency in international relations' threshold. However, the Panel did not treat that finding as excusing every measure Saudi Arabia had taken: it declined to extend the security exception to Saudi Arabia's failure to make available criminal

enforcement procedures against a Saudi-based broadcaster engaged in systematic piracy. Because that specific failure to act could not plausibly be connected to the asserted security interest (WTO, 2020). Saudi Arabia Intellectual Property Rights is therefore the first case in which a panel found the chapeau's threshold satisfied in general terms but still declined to extend the exception to a specific measure lacking a plausible security connection, a distinction the fragmentation. The U.S Certain Measures on Steel and Aluminium Products (WT/DS544/R and companion reports, circulated 9 December 2022) is the most directly relevant precedent for the MFN. Because the challenged measures combined an Article XXI security justification with product-specific tariff increases and country-specific exemptions. The panels found that the Section 232 duties exceeded the United States' bound tariff rates under Article II:1, and, more significantly for present purposes, that the country exemptions granted to some trading partners but not others were inconsistent with the MFN obligation in Article I:1 (WTO, 2022). These findings underscore the issue of discriminatory application as a discrete concern under Article I:1, and also provides the confirmation that Article XXI continues to be subject to panel review. Politically motivated security measures are a major contemporary problem with the MFN principle. Article XXI discretion is limited by good faith and plausibility, meaning that there must be a reasonable connection between the measure and the security interest. Discriminatory security measures that give rise to an MFN or product scope violation can be evaluated separately from the Article XXI defence. The existing jurisprudence therefore establishes limited reviewability of Article XXI, but the absence of an operational, institutionally enforceable proportionality framework capable of applying that reviewability consistently and prospectively rather than case-by-case, years after the measures at issue have already reshaped trade flows leaves persistent uncertainty precisely where security justifications increasingly overlap with industrial policy and geo-economic competition. This qualifies the claim, common in the fragmentation literature and present in earlier drafts of this article, that Article XXI is a 'dormant clause' allowing action 'without facing any legal repercussions' (Low, 2022). Moreover, the MFN clause remains the main obstacle to the arbitrary discriminatory practices now supported by the securitisation of trade. Article I GATT embodies the idea that non-discrimination is a firm and binding legal commitment, and that is the starting point for restraining the growing number of preferential and discriminatory trade measures that are the hallmark of modern bloc-based competition (Zhang, 2024). But the efficacy of this baseline is now being called into question by a 'broad interpretation of national security exceptions', which members increasingly use to circumvent their unconditional non-discrimination commitments under the guise of essential security interests (Curran, 2021). The tension is compounded by the fact that, except for national security, one of the most extreme scenarios has never been tested in a manner that balances sovereign prerogative with the overall integrity of the trading system (Anuradha, 2018). Accordingly, the recent rise of unilateral trade restrictive measures (UTRMs) calls for going beyond pro forma good-faith references and moving towards a level of justification that would not let the securitisation of economic policy undermine the essence of the GATT's non-discrimination guarantee (Al-Sulaiti, 2025). Therefore, future legal interpretations should shift from assessing subjective security concerns to setting out clear, concrete guidelines to ensure transparency and proportionality and to minimise harm. This shift in context might redirect attention from the impractical task of judging the truth of individual security perceptions to the more practical task of controlling the use of economic statecraft. The WTO can also

help prevent further "securitisation" of commercial policy, blending unconventional and economic goals with existential threats to the state (Bao, 2026). Such a re-evaluation of the non-discrimination requirement should also consider a new type of "like-minded" plurilateralism that risks institutionalising exclusionary trade blocs in the name of security and industrial strategy (Hoekman, 2023). Furthermore, a higher judicial standard for good faith could prevent the security exception from being used for protectionist purposes, and members must prove that the economic interests they invoke are essential security interests (Voon, 2019). Members should provide objective evidence linking restrictive measures with the claimed emergency (Peng, 2015). Moreover, outside peer review or expert advice could also help judge the ratio of such measures to the perceived security threats (Crivelli P. &.-P., 2021). This institutional adaptation could help reduce the risk that members circumvent their security obligations by pretending to make other economic or industrial decisions under the cover of their security interest. effective in reducing the risk that members circumvent their security obligations by pretending to make other economic or industrial decisions under the cover of their security interests (Vidigal, 2019). In this respect, members should seek means to ensure formal peer review or external security sector experts evaluate the proportionality of trade measures to the alleged threats (Crivelli P. &.-P., 2021). The Dispute Settlement Body has become more of a neutral body for settling static legal obligations than an institution able to balance the principle of non-discrimination with the de-politicised mandate of global trade governance (Escaith, 2022). The ongoing institutional dysfunction of the Appellate Body leaves compromises over MFN-related issues at risk of judicial overreach if the decision involves a national security or trade policy matter (Low P., 2022). Moreover, this judicial friction is compounded by the emergence of new digital trade issues, for which traditional GATT interpretation does not provide a resolution. These difficulties highlight a severe systemic crisis, as the politicisation of sovereign interests encroaches on the sovereignty of the current dispute settlement mechanism (Hao, 2025). Furthermore, the recent trend of using alternative mechanisms to resolve trade disputes outside the formal WTO framework, such as the Multi-Party Interim Appeal Arbitration Arrangement, may lead to further fragmentation of the uniform interpretation of non-discrimination obligations. This shift away from a centralised judicial review opens a space for more and more protectionist action in the name of security, further undermining the predictability required for compliance with MFN (Pomfret, 2024).

VI. Challenges within the Existing WTO Framework

The conflict between regional trade agreements and the multilateral system has not been overlooked: preferential conditions are often applied in exclusive agreements, including tariff preferences, another form of non-discrimination (Wolfe, 2023). In the modern plurilateral framework, there are no specific rules on how the benefits are transferred to non-parties, and thus the potential for sustained sub-regimes beyond the egalitarian Article I. The widespread adoption of such preferential architectures could mean that the WTO's status in global trade will be changing from being a major player in the game to a more marginalised one, observing regional power games (Sacerdoti, 2023). The national security exception is increasingly invoked to justify protectionist action and evade WTO commitments. Major economies can assert essential security interests to justify unilateral tariffs, subsidies, and export restrictions, thereby

undermining the non-discrimination principle and providing opportunities for strategic protectionism (Liu, 2025) (KIM, 2025). These actions can jeopardise the predictability and credibility of the multilateral trading system, as national security can take precedence over existing WTO rules and obligations (Pinchis-Paulsen, 2024). The uncomfortable commonality of trade wars and security concerns has expanded the scope of permissible discrimination, making old-style non-violation arguments less defensible against the global turmoil we face today at the turn of the century (Bäumler, 2020)]. In addition to the above doctrinal deficiency, there is an institutional deficiency: where the Traffic in Transit plausibility standard, if applied, would discipline a particular measure, there is no mechanism by which to do so prospectively. The Appellate Body's ongoing inaction since December 2019 has created a situation where panel decisions on Article XXI can be appealed 'into the void and no panel decision reasoning has become the de facto end point of the adjudication process in most cases that are not brought under the Multi-Party Interim Appeal Arbitration Arrangement. It remains a plurilateral, not a multilateral, solution (Zhou, 2025) and is a governance gap that the Functional Neutrality Framework aims to address.

VII. Proposed Functional Neutrality Framework

The Functional Neutrality Framework proposed in this article shifts the inquiry into the legitimacy of a security-framed trade measure from formal invocation to real-world policy function. Rather than asking only whether a Member has invoked Article XXI in good faith in the abstract, the framework asks whether the specific measure functions, on the evidence, as a proportionate response to a plausible security threat or as protectionist geo-economic discrimination pursued under a security label. This section operationalises that inquiry into a ten-factor Functional Neutrality Test, then addresses the governance questions of administration, legal basis, consensus requirements, and interaction with existing exceptions that determine whether the proposal is legally operational rather than purely normative. The Functional Neutrality Test comprises ten factors, drawn directly from the plausibility and good-faith reasoning in *Russia – Traffic in Transit* and *Saudi Arabia Intellectual Property Rights* and adapted to be administrable ex ante rather than only litigated ex post: (1) the stated security objective; (2) evidence of the actual policy objective, including contemporaneous domestic-industrial-policy statements; (3) the specific connection between the measure and the asserted security threat, applying the Traffic in Transit plausibility standard at the level of the individual measure rather than only the general emergency; (4) the trade-restrictive or discriminatory effect of the measure, including its MFN dimension; (5) the availability of less trade-restrictive or less discriminatory alternatives capable of achieving the same security objective; (6) whether the measure is time-limited or subject to sunset and periodic review; (7) whether similarly situated trading partners are treated consistently, or whether differentiation tracks political alignment rather than the asserted risk; (8) evidence of protectionist intent or effect, including correlation with domestic industrial-policy goals; (9) the measure's impact on Members, particularly developing and least-developed Members, that are not party to the underlying security relationship; and (10) the transparency and reviewability of the measure, including whether it was notified in advance. The framework is a notification and peer-review process, not a treaty amendment process. Members would inform security measures of discriminatory MFN effects and provide a self-assessment on 10 factors for

peer review, with a time-bound timeline. The public record created would advance the proceedings under Article XXI; however, not to the detriment of later Article XXI actions. The structure therefore does not change Article XXI of the WTO, but offers a future process for regular review. The application of the necessity and chapeau tests of Article XX of the Convention would remain the same, as would be the notification procedures under Article XXIV and the Enabling Clause. A Member failing to notify would not be committing a violation, but rather it would be a factor (factor) above that a panel could weigh in any subsequent case, giving the framework bite without having to have the political consensus that would come with a mandatory notification requirement. Over the past few years, the concept of neutrality has been increasingly tested as it balances competing economic models that view the state very differently, traditionally as close to equality in form. This is because the Suppression of Competitive Distortions Agreement (SCMA) does not explicitly state a purpose, posing interpretative challenges in achieving coherence between competitive distortions and legitimate public policy objectives (Boschiero, 2023). This inherent ambiguity makes it difficult to categorise industrial support as a remedy for market failure or as a form of protectionism, and calls for new definitions that account for sustainable development goals as well as traditional measures of trade effect. In addition, it is proposed that the development of rules based on specific sectors or "safe harbours" would help to protect key public policy goals from unmerited legal challenges (Grossman, 2025). Importantly, however, dealing with the hybridity of state-owned enterprises and its relation to the way they perform government mandates is a critical part of recalibrating these disciplines, since the roles of state-owned enterprises confuse private market actors and policy instruments (Borlini L. S., 2020). In particular, it is crucial to define the constituent parts of a "public institution" and to understand whether they are engaged in the actual performance of government functions or are used to promote a policy agenda opposed to competitive neutrality. This requires a stronger conceptual framework for "competitive neutrality" than subsidy policing and the assessment of the commercial and financial activities of state-backed institutions (Borlini L. S., 2023). Broadening the regulatory scope should at least make it clear that state trading enterprises must act on a commercial basis alone, and that no behaviour is justified if it is not discriminatory, to prevent other market-distorting actions from being masked. It is clear that deflection is beyond current subsidy policing efforts; a comprehensive approach to competitive neutrality should take a broader approach to the public body status of state-owned enterprises under the SCM Agreement (Kim, 2023). In particular, reliance on inconsistent case law would be greatly reduced if the criteria for a public body were clarified by providing an illustrative list of entity-based indicators such as majority government ownership, board composition, and the public body's pursuit of assigned strategic functions. Such a presumed list would allow the WTO to ensure its principles align with modern international trade treaties that already use those criteria to define SOEs (Louise Curran & Lee, 2021). Furthermore, such a move would broaden the scope of the multilateral framework to include a wider range of competition policy principles and values, given the current "blind spot" in the disciplines that does not adequately address the subtleties of state-led market distortion (Fox, 2023). This could be complemented by an activity-based approach that is effective, as it brings together seemingly counter-productive economic systems (Ding, 2020). This would involve a systematic rethinking of current understandings to close regulatory loopholes, especially extending the

transparency obligations in GATT Article XVII to include more acts of anti-competitive conduct [99] (Nielsen, 2013).

VIII. Conclusion

The Most-Favoured-Nation principle remains a foundational pillar of the multilateral trading system, guaranteeing predictability and equal market access for WTO Members. This article has argued that MFN's central contemporary weakness is not the mere existence of exceptions GATT has never been an absolute rule, as the historical and doctrinal analysis in Sections 3 and 4 demonstrates, but the absence of a coherent institutional mechanism capable of distinguishing legitimate security-based differentiation from protectionist geo-economic discrimination pursued under a security label. This section demonstrates only a limited reviewability of Article XXI: Russia Traffic in Transit and Saudi Arabia Intellectual Property Rights prove that there is a justiciable basis for invoking the security exception subject to the requirement of good-faith plausibility; United States Steel and Aluminium Products shows that the discriminatory structure of a security-framed measure can constitute a separate MFN violation. What is missing, of course, is the institutional capacity to apply that doctrine prospectively and consistently, as the Appellate Body continues to operate as it does. The Functional Neutrality Framework proposed in Section 9 responds to that institutional gap directly: it operationalises the plausibility standard already established in the jurisprudence into a ten-factor test, routes it through a notification-and-peer-review mechanism that does not require treaty amendment, and is designed with particular attention to its distributive implications for Global South Members, who are disproportionately exposed to the costs of unreviewed geo-economic discrimination but least equipped to contest it through litigation alone. Whether Members are prepared to submit their invocations of essential security interests to this kind of structured, prospective scrutiny rather than relying on the deference that the Article XXI chapeau, on a narrow reading, still affords will determine whether MFN is recalibrated for a fragmented geo-economic order or continues to erode toward what this article has characterised as permission to discriminate rather than a genuine prohibition on doing so. The reform proposed here is intentionally modest in its legal form non-binding, additive, and adoptable without consensus on treaty amendment precisely because a more ambitious proposal is unlikely to secure adoption in the current geopolitical environment. Its value lies in giving the existing, judicially recognised plausibility standard an institutional home before, rather than only after, the trade flows it is meant to discipline have already been reshaped.

Declarations

Ethics approval and consent to participate

This article does not involve studies with human participants or animals that would require formal ethical approval. Not applicable, No human participants were involved, and no informed consent was required.

Consent for publication

The author has reviewed the final manuscript and consents to its publication.

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Author Contribution

M.O.F., T.Q., D.K.M., and M.S. contributed to the conception and design of the study. M.O.F. and D.K.M. developed the conceptual framework and methodology, with particular focus on the Most-Favoured-Nation principle, WTO law, geo-economic fragmentation, and the proposed Functional Neutrality Framework. T.Q. and M.S. contributed to the review and analysis of relevant literature, WTO materials, legal developments, and scholarly sources. D.K.M. coordinated the research, drafted the main manuscript, and integrated the authors' substantive contributions into the final paper. M.O.F., T.Q., and M.S. contributed to critical revision of the manuscript and refinement of the legal and conceptual arguments. All authors reviewed and approved the final version of the manuscript and agree to be accountable for all aspects of the work, ensuring its accuracy and integrity.

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Not applicable, as this Perspective article does not involve the generation or analysis of datasets.

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