

Chapter 4

The Most Favoured Nation Treatment Principle

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1 Introduction

Since 1947, the 'Most Favoured Nation (MFN) treatment' principle has been the key principle governing trade relations amongst states, especially in the context of the GATT and the WTO. It plays a key role in liberalising trade by preventing discrimination between goods coming from different countries at national borders. The principle is now enshrined in numerous provisions of multilateral WTO agreements, such as the GATT, the GATS, and the TRIPS Agreement. There is a strong possibility that this provision would be interpreted differently by different countries, particularly in areas that are not directly related to trade such as intellectual property (IP) protection afforded by the TRIPS Agreement. This chapter aims to provide an analysis of the MFN principle under the WTO covered agreements, by focusing specifically on the GATT and the TRIPS Agreement.

2 Principle of 'Most Favoured Nation' Treatment in Respect of Trade in Goods

2.1 Historical Development

Since the 1940s, the MFN treatment standard has been the key principle governing trade relations amongst states, particularly in the context of the *General Agreement on Tariffs and Trade* (GATT). Prior to the GATT, the principle already contributed greatly to the liberalisation of trade, because it was often included in bilateral trade agreements, particularly treaties regulating economic relations between European imperial powers and their colonial countries to ensure that European nationals were allowed to trade with those nations on an equal footing basis. The MFN principle was incorporated into GATT provisions after the GATT was established in 1947. The non-discriminatory treatment requirement of the MFN was facilitated to create a multilateral trading system that contributes to the stability of the world trade. The MFN rule has become the cornerstone of the GATT and since 1994 of the WTO trading system, as reflected in several decisions of the

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