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Comparative Analysis of Most Favoured Nation and National Treatment under GATT and GATS

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ABSTRACT

Most Favoured Nation and National Treatment obligations are at the core of the WTO regime for non-discriminatory multilateral trade relations. The nature and scope of the two obligations and the exceptions thereto are by and large similar in GATT and GATS, with some marked differences. This paper traces the evolution of these concepts in WTO framework and in the reports of the Panel and Appellate Body. A study of the Most favoured Nation obligation in GATT, its key elements and exceptions is followed by an analysis of the same for National Treatment obligations, and its contrast with the former. Next part deals with the treatment of the two concepts in GATS and the points of departure from GATT, followed by a conclusion on the comparative analysis.

Keywords: *Most Favoured Nation, National Treatment, Non-discrimination, Like Product, Trade in Services*

I. INTRODUCTION

The Second World War caused unprecedented loss of lives and property in the recorded history of humankind. The battered international community was looking at forging global alliances in all fields to make a fresh start. GATT 1947 was one such new beginning, a global cooperation in the field of international trade. It established a modern multilateral trading system. It applied provisionally not requiring legislative approval of the contracting parties.

About half a century later, the establishment of the World Trade Organisation (WTO) on 1 January 1995 marked the biggest reform of international trade since the end of the Second World War. It was the culmination of international efforts over the past five decades to establish a truly international trade organisation which would cater to the growing needs of international economic community[2].

With the establishment of the WTO in January 1995, the GATT 1947 was rectified, amended

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[2] Autar Krishen Koul, *Guide to WTO and GATT: Economics, Law and Politics* 39 (Springer, Singapore, 6th edn., 2018)

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and modified as GATT 1994 which is legally distinct[3] from GATT 1947 and is a part of the WTO dispensation[4].Thus, the provisions of the GATT 1947, incorporated into the GATT 1994, continue to have legal effect as part of the GATT 1994, (hereinafter referred to as the GATT) itself a component of the WTO Agreement. To say GATT 1947 is an annexed agreement and thereby incorporated by reference is to understate its contemporary importance. It remains the central substantive legal document, even the constitution of international trade[5].

Whereas the GATT mainly dealt with trade in goods, the WTO and its agreements also cover, *inter alia,* trade in services under the General Agreement on Trade in Services (hereinafter referred to as GATS).

The GATT framework is based essentially on principles of non-discrimination and equality. The most favoured nation treatment and the national treatment obligation are the cornerstone of the WTO multilateral trading system. These two principles have also been incorporated in the GATS, although with some modifications.

II. MOST FAVOURED NATION (MFN) PRINCIPLE

(A) Scope of the Principle

Article I of the GATT enshrines the MFN treatment principle and aims to prohibit discrimination among like products originating in or destined for different countries. The MFN principle requires WTO Members to extend MFN treatment to like products of other WTO Members with respect to tariffs, regulations on exports and imports, internal taxes and charges on imported products, and internal regulations. Article I:1 of the GATT can be sub-divided in the following manner to understand the scope of the principle comprehensively: -

- With respect to *customs duties and charges* of any kind imposed on or in connection with *importation or exportation* or imposed on the *international transfer of payments* for imports or exports,
- and with respect to the *method of levying* such duties and charges,
- and with respect to *all rules and formalities in connection with importation and exportation*,
- and with respect to *all matters referred to in paragraphs 2 and 4 of Article III*,

[3] WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, 1994, art. II:4
[4] *Supra* note 1 at 8
[5] Raj Bhala, *International Trade Law: Interdisciplinary Theory and Practice* 34-35 (Lexis Nexis, Gurgaon, 3rd edn., 2014).

- any *advantage, favour, privilege or immunity* granted by any member
- to *any product* originating in or destined for *any other country*
- shall be accorded *immediately and unconditionally*
- to the *like product* originating in or destined for the territories of all other members.

On a holistic reading of the above Article, it is clear that the following factors need to be considered to establish a violation of the MFN principle by a Member:-

a) Like products-

The MFN treatment obligation only applies to like products. An advantage granted to a product originating in or destined for any other country shall be accorded to other *like products* originating in or destined for the territories of all other WTO Members. The phrase 'like product' has been the subject of different and varying interpretations and the GATT Panels have not followed uniform criteria to decide what constitutes 'like product'[6].

In *Spain – Unroasted Coffee*[7], the issue before the Panel was whether different types of unroasted coffee were 'like' within the meaning of Article I:1 of the GATT. The Panel considered the characteristics of the products, their end-use and tariff regimes of other Members as the criteria for determining the issue. The Panel determined that the four varieties of coffee beans were like products because most of these four varieties were sold in the form of blends, consumers regarded these four varieties as a single product intended for drinking, and the tariff regimes of many GATT contracting parties did not apply different tariff rates to these four varieties. It concluded that establishing different tariff rates for certain varieties of unroasted coffee beans was in violation of the MFN treatment obligation.

However, in the *SPF (spruce, pine, fir) dimension lumber*[8], establishing different tariff rates on SPF in the tariff regime was claimed to accord discriminatory treatment between lumber from certain countries and lumber from other countries, butte panel recognized that each WTO Member could exercise considerable discretion as to tariff classifications and relied on the standards of each importing country in determining like products.

The key test, set out by the Appellate Body in the 1996 *Japan Alcoholic Beverages*, is the

[6] *Supra* note 1 at 101

[7] Panel Report, *Spain – Tariff Treatment of Unroasted Coffee*, L/5135, adopted 11 June 1981, BISD 28S/102, para. 4.11, 4.6 and 4.7

[8] Panel Report, *Canada/Japan – Tariff on Imports of Spruce, Pine, Fir (SPF) Dimension Lumber*, adopted 19 July 1989, BISD 36S/167, para. 3.19-3.20, 3.37-3.39.

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physical characteristics, consumer tastes and the end uses of the good[9].

b) *any advantage, favour, privilege or immunity* -

The MFN treatment obligation concerns any advantage granted by any Member to any product originating in or destined for any other country through a variety of measures. The obligation to provide MFN treatment is not confined to tariffs. The measures include tariffs and charges of any kind imposed in connection with importation and exportation, the method of levying tariffs and such charges, rules and formalities in connection with importation and exportation, internal taxes and charges on imported goods, internal laws, regulations and requirements affecting sales.

It is important to emphasize that the MFN treatment obligation not only takes into consideration advantages conferred upon products originating in or destined for WTO Members, *but also advantages granted to 'any other country'*. Therefore, if a WTO Member grants an advantage to products originating in or destined for a non-Member, the Member is compelled to grant the same advantage to all other WTO Members[10].

In the *EC-Bananas-III*[11], the imports of bananas from certain countries qualified for allocation of the tariff quota only if they fulfilled requirements which differed from those imposed on importers of bananas from other countries. The Appellate Body of the WTO while accepting the Panel findings that the procedural and administrative requirement *of the activity function rules* for importing third country and non-traditional ACP differ from, and go significantly beyond those required for importing from traditional ACP bananas, held that the method is discriminatory as the rules discriminate among like products originating from different Members.

c) Immediately and unconditionally

Once a WTO Member has granted an advantage to a country, it cannot impose conditions on other WTO Members for them to benefit from that same advantage. The WTO Member must extend the benefit of the advantage to all WTO Members immediately and unconditionally.

In *Indonesia – Autos*[12], the Panel found that under the Indonesia car programmes, customs

[9] *Supra* note 4 at 322

[10] Stéphanie Cartier, United Nations Conference on Trade and Development, et al., "Dispute Settlement: World Trade Organization: 3.5 GATT 1994", 15 (United Nations, New York and Geneva, 2005), available at https://digitallibrary.un.org/record/504986?ln=en (last visited on 25 January 2021)

[11] Panel Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS 27/R, adopted 25 September 1997, as modified by the Appellate Body, reported/DS27/AB/ R, DSR1997: II para 206.

[12]Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R and Corr.1, 2, 3, and 4, adopted 23 July 1998, DSR 1998:VI, 2201, paras. 14.145-

duty and tax benefits were conditional on achieving a certain local content value for the finished car. The Panel concluded that these conditions were inconsistent with the provisions of Article I:1 which provides that tax and customs duty advantages accorded to products of one Member (in that case, on products from the Republic of Korea) be accorded to imported like products from other Members 'immediately and unconditionally'.

A 1992 panel report considered the *United States-Denial of MFN treatment as to non-rubber footwear from Brazil*[13] and held that Article I:1 does not permit balancing more favourable treatment under some procedures against a less favourable treatment under others.

d) *Discrimination*

Discrimination can be *de jure* or *de facto*[14]. Setting different tariff rates for differential treatment to "like products" of one country over another would clearly violate Article I:1. However, discrimination less apparent would also amount to a violation and is defined as *de facto* discrimination. One such case involved *Canada's automobile measures*[15]. In this case, Canada's system, which eliminated tariffs on imported automobiles from the United States under certain conditions, was at issue. The system was open to companies of other countries and could be used by meeting certain conditions. In actuality, however, the acceptance of new applications was suspended after the conclusion of the US-Canada FTA, making it practically available only to the US companies. The Panel and the Appellate Body both determined that the measures were de facto discrimination and concluded that they were in violation of Article I:1. Relevant paragraph has been extracted below:

> *"we observe first that the words of Article I:1 do not restrict its scope only to cases in which the failure to accord an "advantage" to like products of all other Members appears on the face of the measure, or can be demonstrated on the basis of the words of the measure. Neither the words "de jure" nor "de facto" appear in Article I:1. Nevertheless, we observe that Article I:1 does not cover only "in law", or de jure, discrimination. As several GATT panel reports confirmed, Article I:1 covers also "in fact", or de facto, discrimination. Like the Panel, we cannot accept Canada's argument that Article I:1 does not apply to measures which, on their face, are "origin-neutral"."*

14.146.

[13] DS/8/R, adopted 19 June 1992, 39S/128, 151, para. 6.10.

[14] *Supra* note 4 at 329-333

[15] WTO Appellate Body Report, *Canada – Certain Measures Affecting the Automobile Industry*, Panel Report, WT/DS139/AB/R, adopted 19 June 2000, para. 78.

(B) Exceptions to the General Principle of MFN

The GATT obligations are subject to a general set of exceptions (Article XX) and to security exceptions (Article XXI). There are also some specific exceptions to the principle of MFN.

a) General Exceptions-

Article XX in its Chapeau obligates the members that nothing in the Agreement shall be construed to prevent the adoption or enforcement of any contracting party of measures/exceptions as listed in paragraphs (a)–(j) of the Article subject to the condition that these exceptions/measures should not be *applied arbitrarily or unjustifiably* between the countries where the same conditions prevail. And these exceptions/measures should not amount to *disguised restrictions* on international trade.

The exceptions listed under this Article are measures related to public morals, life and health, conservation of exhaustible natural resources etc.

An importing WTO member adopting a trade restrictive measure and invoking an Article XX defence must first prove that the measure fits within one of the ten paragraphs in the Article. If it does, then the measure must pass muster under the requirements set forth in the Chapeau to Article XX[16].

b) Security exceptions-

The security exceptions in Article XXI are the most sensitive of GATT as the wording of this Article suggests that every country is the sole judge on questions relating to its own security. In the cases in respect of security exceptions, Article XXI, although laudable to respect the political and economic sovereignty of nations, yet on balance the political considerations outweigh the economic considerations[17].

c) Specific exceptions-

i. Customs Union/Free Trade Areas (Article XXIV)-

Under Article XXIV, a customs union or a free trade area agreement is a permitted exception to the principle of MFN, as it is generally recognised that such arrangements and agreements are helpful in achieving economic integration without adversely affecting the economic interests of third countries. The regional integration may be allowed as an exception to the MFN principle only if the following conditions are met: tariffs and other barriers to trade must be eliminated with respect to substantially all trade within the region; and the tariffs and

[16] *Supra* note 4 at 337
[17] *Supra* note 1 at 352

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other barriers to trade applied to outside countries must not be higher or more restrictive than they were prior to regional integration.

ii. Preferential treatment to developing countries (Enabling clause)-

The Generalized System of Preferences (GSP) program is a system that grants certain products originating in eligible developing countries preferential tariff treatment over those normally granted under MFN status. It plays a vital role in promoting trade as a means of stimulating economic growth and development.

The 1979 GATT Decision on *Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries*, which is commonly referred to as the 'Enabling Clause' allows grant of GSP preference. The deviation from the MFN obligation is allowed only when the conditions provided in the Enabling Clause are satisfied.

III. NATIONAL TREATMENT (NT) PRINCIPLE

(A) Scope of the Principle

NT principle provides that Members must not accord discriminatory treatment between imports and *like* domestic products (with the exception of the imposition of tariffs, which is a border measure).

Article III:1 stipulates the general principle that Members must not apply internal taxes or other internal charges, laws, regulations, and requirements affecting imported or domestic products *to afford protection to domestic production*.

In relation to internal taxes or other internal charges, Article III:2 stipulates that Members shall not apply *charges in excess* of those imposed on domestic products between imported goods and *like* domestic goods, or between imported goods and a *directly competitive or substitutable product*.

About internal regulations and laws, Article III:4 provides that Members shall accord imported products treatment no less favourable than that accorded to 'like products' of national origin. It is important to note that Article III is only concerned with internal measures and not border measures.

In the subsequent paragraphs, the scope of Article III has been dealt with in detail:

a) Article III:2 (first sentence)-

Internal taxes and internal charges- Internal taxes and other charges of any kind which are applied directly or indirectly on products are covered here. Taxes on products such as value

added taxes (VAT), sales taxes, excise, GST which are applied on products would constitute internal taxes on products.

Like Products- The national treatment obligation under Article III-2, first sentence, only applies to like products. In *Japan – Alcoholic Beverages II*[18], the Appellate Body examined in detail the scope of the concept of like products within the meaning of Article III:2, first sentence. The issue was whether *shochu* and *vodka* could be considered like products. The Appellate Body confirmed the basic approach for determining 'likeness' set out in the 1970 Report of the Working Party on *Border Tax-*

> *"…Some criteria were suggested for determining, on a case-by-case basis, whether a product is "similar": the product's end uses in a given market; consumers' tastes and habits, which change from country to country; the product's properties, nature and quality."*

The Panel in this dispute was of the view that despite the fact that vodka and sochu had different alcoholic strengths, it did not necessarily mean that the two would have been dissimilar products. The Panel took into consideration the physical properties, the extent to which the product maybe perceived as serving the same end use, the extent to which consumers perceive and treat the products as an alternative and the international classification of the products for tariff purposes. On appeal, the Appellate Body agreed with the above-mentioned views of the Panel and upheld that vodka and sochu must be considered as like goods for the purpose of this dispute.

Charge in excess-Once it has been ascertained that the products in question are like, one must next examine whether the like products have been internally taxed or internally charged at rates in excess of that which are being charged to domestic goods. While ensuring that internal taxes or internal charges are not applied in excess, the principle of NT ensures that even the slightest difference in the amount of taxes makes the measure illegal. The exception of *de minimis and the trade effect test* is not a valid exception to the principle.

b) Article III:2 (second sentence)-

No Member must additionally apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in Article III:1. Even when a Member has satisfactorily fulfilled the first criteria, it must in addition successfully prove that the internal taxes or internal charges have not been applied in a manner that would distort

[18]Appellate Body Report, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R and WT/DS11/AB/R, adopted 1 November 1996

the competition in favour of the domestic production.

In *Japan – Alcoholic Beverages*, the Appellate Body stated[19] that in Article III:2, second sentence[20], and the *accompanying Ad Note to Article III (Ad Article)* have equivalent legal status in that both are treaty language which was negotiated and agreed at the same time. The Ad Article does not replace or modify the language contained in Article III:2, second sentence, but, in fact, clarifies its meaning. Accordingly, the language of the second sentence and the *Ad Article must be read together* in order to give them their proper meaning. Further the following three issues need to be answered to determine whether a dispute is covered by Article III:2, second sentence or not-

- *the imported products and the domestic products are* 'directly competitive or substitutable products' *which are in competition with each other,*
- *the directly competitive or substitutable imported and domestic products are not similarly taxed; and*
- *the dissimilar taxation of the directly competitive or substitutable imported domestic products is applied so as to afford protection to domestic production.*

Article III:2, second sentence read with the Ad Article, contemplates a 'broader category of products' than Article III:2, first sentence. It covers *directly competitive or substitutable* products. In the *Japan-Alcoholic* case the Panel emphasized that besides the physical characteristics, common end uses and tariff classifications, the *market place* and *elasticity of substitution* must also be identified before goods are considered as directly competitive or substitutable.

The Appellate Body further held that in order to determine whether there is a violation of Article III:2, second sentence, it must also be found that the products at issue are not similarly taxed. As opposed to Article III:2, first sentence, which provides that even the slightest tax difference suffices for a finding of WTO-inconsistency, Article III:2, second sentence, provides that the tax differential has to be more than *de minimis* in order to support a conclusion that the internal tax imposed on imported products is WTO-inconsistent.

[19] *Supra* note 4 at 382

[20] *Moreover, no [Member] shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.*
The *Ad* Article III provides that:
[a] tax conforming to the requirements of the first sentence of paragraph 2 would be considered to be inconsistent with the provisions of the second sentence only in cases where competition was involved between, on the one hand, the taxed product and, on the other hand, a directly competitive or substitutable product which was not similarly taxed.

It is important to note that if the imported and domestic products are 'not similarly taxed', then a further inquiry must be made in order to determine whether the tax measure has been taken '*so as to afford protection to domestic production'*.

c) Article III-4 (regulatory measures)

For a violation of Article III: 4 to be established, the following three elements must be satisfied-

- that the imported and the domestic products at issue are *'like products'*,
- that measure at issue is *a law, regulation, or requirement affecting* their internal sale, offering for sale, purchase, transportation, distribution or use,
- and imported products are accorded *'less favourable' treatment* than that accorded to like products

A determination of 'likeness' in Article III:4 is fundamentally a determination about the nature and extent of competitiveness between and among products. The scope of 'like' in Article III:4 is broader than the scope of 'like' in Article III:2, first sentence, but is not broader than the combined Article III:2[21]. To arrive at a decision whether the product is a 'like product' for the purposes of Article III: 4, besides all pertinent evidence, four criteria[22] may be used:

- The properties, nature and quality of the products;
- Their end use;
- Consumer tastes and habits; and
- Tariff classification of the products.

The scope of application of Article III:4 has been interpreted broadly. The use of the *term "affecting"* has been interpreted to mean that Article III:4 should cover not only laws and regulations which directly govern the conditions of sale or purchase but also any laws and regulations which might adversely modify the conditions of competition between the domestic and imported products in the internal markets. Moreover, it has been found that Article III:4 covers *procedural* laws, regulations and requirements as well as *substantive* laws, regulations and requirements[23].

[21] *Supra* note 1 at 130
[22] Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing products*, WT/DS135/AB/R, adopted on 5 April 2001, para 101
[23] *Supra* note 9 at 34

'Treatment no less favourable' call for *effective equality of opportunities* for imported products in respect of the application of laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products.

In *Korea – Various Measures on Beef*[24], a dispute concerning a dual retail distribution system for the sale of beef under which imported beef was, inter alia, to be sold in specialised stores selling only imported beef or in separate sections of supermarkets, the Appellate Body stressed that formal different treatment of imported products did not necessarily constitute less favourable treatment while the *absence of formal difference in treatment did not necessarily* mean that there was no less favourable treatment.

(B) Exceptions to the Principle of Nt

The provisions under Article XX on general exceptions, Article XXI on security exceptions, also apply to the national treatment rule. Further, the specific exceptions to the principle are stated briefly below-

a) Article III:8(a) permits governments to purchase domestic products preferentially, making government procurement one exception to the national treatment rule.

b) Article III:8(b) allows for the payment of subsidies exclusively to domestic producers as an exception to the national treatment rule, under the condition that it is not in violation of other provisions in Article III and the Agreement on Subsidies and Countervailing Measures.

c) Exceptions peculiar to national treatment include the exception on screen quotas of cinematographic films under Article III:10 and Article IV.

IV. MFN PRINCIPLE AND NT PRINCIPLE UNDER GATS: DEPARTURE FROM THE CONCEPT UNDER GATT- AN ANALYSIS

(A) MFN principle under GATS

Article II of GATS provides for the MFN clause which has direct parallels to the centrally important Article I of the GATT. It requires that members *accord immediately and unconditionally to services and service suppliers of any other member, treatment no less favourable than it accords to like services and services suppliers of any other countr*y.

The MFN treatment obligation of Article II:1 of the GATS applies both to *de jure* and to *de*

[24] Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/12 WT/DS169/12, adopted on 10 January 2001, paras. 135–6.

facto discrimination[25].

The MFN obligation under GATS is akin to, but loosely so to GATT MFN obligation[26]. The GATS MFN obligation applies to both service and service supplier. MFN treatment must be accorded immediately and unconditionally to services and service suppliers. But Article II:2 is a large exception to immediacy and unconditionality.

A WTO member can derogate from the MFN obligation if it lists the exempting measure in its Schedule of Concessions (for Services and Service Providers), and if the measure meets the requirements of the *Annex on Article II Exemptions*. The *Annex on Article II Exemptions* contains instructions for scheduling exemptions from the MFN obligation. Two of the Annex instructions are about timing and circumscribe the extent of deviation possible from immediate, unconditional MFN treatment. Firstly, in principle the exceptions to the MFN treatment under Article II:1 should not exceed ten years. Secondly, the exemption had to be taken as of the end of the Uruguay Round and listed it in the relevant schedule. The GATS allowed Members to apply for new exemptions after the WTO Agreements came into force. But these exemptions need to attract the support of three-fourths of all the Members.[27]

It can be said that since GATS permits members to make exceptions to the MFN commitments, its MFN obligation is inherently weaker than in GATT. The exemption clause was necessary in the services agreement because countries were not willing to commit to complete trade in services deregulation at the Uruguay Round negotiations. Thus, rather than abandon the agreement process altogether, the exemptions to MFN under GATS allows for a compromise[28].

(B) NT principle under GATS

The NT principle under GATS is contained in Article XVII. It states that *"In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers."*

The MFN obligation in GATS is a *general* one, set forth in Part II, Article II, however the principle of NT is not. The NT obligation is set forth in Part III (specific obligations), Article

[25] *Supra* note 10
[26] *Supra* note 4 at 1579
[27] *Supra* note 2, art. IX:3
[28] Ryan Dain Teksten, "A Comparative Analysis of GATS and GATT: A Trade in Services Departure from GATT's MFN Principle and the Affect on National Treatment and Market Access" 5 (November 15, 2000), available at http://dx.doi.org/10.2139/ssrn.1664584 (last visited on 25 January 2021).

XVII, meaning the national treatment is not an across the board duty[29].

Further, the NT obligation of Article XVII of the GATS is different from the NT obligation of Article III of the GATT. As discussed, above, for trade in goods, the NT obligation has general application to all trade. On the contrary, the NT obligation for trade in services does not have such general application. The NT obligation applies only to the extent that WTO Members have explicitly committed themselves to grant 'national treatment' in respect of specific service sectors. Members set out such commitments in the national treatment column of their 'Schedule of Specific Commitments'. These specific commitments to grant national treatment are often made subject to certain conditions, qualifications and limitations, which are also set out in the Schedules. Members can, for example, grant national treatment in a specific service sector only with respect to certain modes of supply (such as cross-border supply) and not others (such as commercial presence)[30].

Typical national treatment limitations included in Schedules relate to nationality or residence requirements for executives; requirements to invest a certain amount of assets in local currency; restrictions on the purchase of land by foreign service suppliers; special subsidy or tax privileges granted to domestic suppliers etc. These permissible limitations come not directly from Article XVII, but rather from a Dunkel Draft text- the *Examples Document*[31].

V. CONCLUSION

The Preamble to the WTO Agreement identifies the *elimination* of discriminatory treatment in international trade relations as one of the two main ways of contributing to the objectives of the WTO. In the context of approaches to interpreting the institutional aspects of the WTO, Qureshi writes that "the basic principles underpinning the multilateral system embrace notions of fair competition, non-discrimination and efficiency. These principles can be said to have a bearing on the institutional aspects of the WTO."[32] The basic principle of non-discrimination is manifested in the concepts of MFN obligation and the NT obligation. The former prohibits discrimination between countries, and the latter, discrimination against other countries.

The MFN and the NT obligations of the GATT and the GATS place restrictions, subject to exceptions, on discrimination on the basis of 'nationality' or the 'national origin or

[29] *Supra* note 4 at 1588
[30] Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization: Text, Cases and Materials* 365 (Cambridge UP, Cambridge, 4th edn.,2017)
[31] *Supra* note 4 at 1591
[32] Asif H. Qureshi, *Interpreting WTO Agreements: Problems and Perspectives* 46 (Cambridge UP, Cambridge, 2006)

destination' of a product, service or service supplier. The exceptions therein allow for reconciling trade liberalisation with other economic and non-economic values and interests, mostly national.

MFN rule requires both most-favoured treatment and trade restrictions to be applied equally by a member country. Since widespread trade restrictions have the potential to make the national market isolated from world trade and expensive, applicability of MFN rule incentivizes free trade. Moreover, it helps member countries reduce their establishment and recurring costs in monitoring the differential treatments and in negotiating equal or advantageous treatments in trade. National treatment goes a step further and dissuades the members to apply protectionist measures to block market liberalization (viz., internal taxes and internal regulations to offset the value of tariff concessions) and frowns on such measures as hidden barriers to trade, lacking transparency and predictability.

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