WORLD TRADE ORGANIZATION

WT/WGTI/W/124
28 June 2002

(02-3624)

Working Group on the Relationship between Trade and Investment

Original: English

COMMUNICATION FROM JAPAN

The following communication, dated 27 June 2002, has been received from the Permanent Delegation of Japan.

NON-DISCRIMINATION

I. INTRODUCTION

1. The principle of non-discrimination in international trade and investment agreements prohibits discriminatory treatment regarding measures taken by member countries on issues covered by the agreements.

2. The WTO Agreements also have articles regarding MFN treatment and national treatment, and prohibit discriminatory treatment based on nationalities etc. Non-discrimination is the core principle of the WTO Agreements.

3. The principle of non-discrimination was originally applied only to the field of trade of goods under the GATT, but its application came to be extended to the fields of; trade in services, intellectual property rights(IPR), government procurement, and trade-related investment measures(TRIMs), as the scope of WTO Agreements expanded. This is because WTO Members recognized that the principle of non-discrimination, which provides equal competition opportunities across borders, leads to efficient use of world resources and contributes to the improvement of each Member's welfare.

4. In the context of investment, a provision on non-discrimination would oblige Members not to discriminate between foreign investors/investment and domestic investors/investment, or between foreign investors/investment from one country to another country.

5. The principle of non-discrimination is usually accompanied by exception clauses based on specific reasons. On what grounds exception clauses should be introduced is an important issue as it would greatly influence the level of discipline of the agreement.

6. This paper will elaborate on MFN treatment in the second section, and on national treatment in the third section.

II. MOST-FAVOURED-NATION(MFN) TREATMENT

A. OUTLINE

7. The principle of MFN treatment requires each country to accord to another country treatment that is no less favourable than that accorded to any other country. This principle had been introduced in many bilateral commerce treaties before the GATT, and has contributed to trade liberalization.

Subsequently, some treaties introduced measures restricting MFN[1], but MFN treatment was stipulated in the GATT and has supported the framework of trade liberalization on a global scale since then.

8. With the conclusion of the WTO Agreements, the field of application of MFN treatment has been expanded from trade of goods to the field of trade in services and intellectual property rights. For example, Article 2 of the GATS stipulates MFN treatment as part of "General Obligations and Disciplines" with regard to services and services suppliers in the context of trade in services. And Article 4 of the TRIPs Agreement stipulates MFN treatment in the field of intellectual property rights protection as part of "General Provisions and Basic Principles."

B. MFN TREATMENT IN THE CONTEXT OF INVESTMENT

9. In the context of investment, MFN treatment guarantees that the host country accords to foreign investors/investments of any other country treatment that is no less favourable than that it accords to foreign investors/investments from another country. Accordingly, a provision on MFN treatment would prohibit host countries to apply discriminatory treatments based on the foreign investor's nationalities etc. This is indispensable for the foreign investors to increase predictability concerning the investment environment of the host country, and needs to be stipulated in an investment agreement as a basic principle.

C. ECONOMIC IMPLICATION OF MFN TREATMENT

10. It is important to have the principle of MFN treatment as a basic discipline in an international agreement. The economic implications of MFN treatment in rules of investment can be described as the following.

11. First, MFN treatment leads to all Members being treated equally and promotes an environment for fair competition. In other words, it leads to "enhanced objectivity". Such function leads to a more active, increasing investment activities, and provides benefits for both investors and host countries.

12. Second, MFN treatment contributes to achieving a liberal investment environment and a stable free trade system, thereby preventing the development of a block economy.

13. Third, there is the issue of the cost of maintaining a multilateral free trade system. The MFN treatment enables us to reduce costs of monitoring on whether a country is treated equally compared to other countries, and reduces the cost of negotiation for equal treatment.

D. EXCEPTIONS

14. MFN treatment should be applied without exceptions, but it is possible that exception clauses would be necessary as some countries will not be able to grant MFN treatment in all fields or to all countries immediately for various reasons. Exception clauses can be seen in the various WTO agreements which stipulate MFN treatment. Referring to these exception clauses, the followings are grounds for exceptions that could have implications for an investment agreement. (Other than those below, general exceptions related to issues such as national security and maintenance of public order compose exceptions to the principle of MFN treatment.)

[1] For example, Ottawa Tariff Agreements (1932).

1. Regional agreements and bilateral agreements

(a) Regional integration (Article 24 of GATT, Article 5 of GATS)

15. Various regional integrations have been established due to regional and economic closeness, and recently, new free trade areas are being considered. Such an approach, in theory, deviates from the MFN treatment under the WTO since it aims at liberalizing trade only among certain countries. However, both GATT and GATS do not strictly apply the MFN treatment principle against regional integration and allow regional integration to compose an exception under certain conditions. The main reason for this is because even if it is limited to a certain region, regional integration has the effect of promoting trade liberalization, which is what WTO aims at. From this perspective, it is not adequate to treat unconditionally regional integration as an exception, rather clear conditionality is required. The existent WTO rules refer to factors such as; substantially abolishing all trade obstacles including tariffs within the region integration, prohibiting trade obstacles including tariffs against outside countries to be more restrictive than before establishing the regional integration. It is therefore necessary to examine what requirements should be introduced in an investment agreement on this issue.

(b) Bilateral investment treaties

16. In the area of investments, there are already more than 1,900 bilateral investment treaties, and we need to fully examine the following; to what extent treatment accorded under the existing agreements should be provided to other countries based on the principle of MFN treatment, under what conditions exceptions to the principle are to be allowed when MFN treatment is not provided to others.

2. Exemption list

17. One approach is that a country may select specific fields or measures to be an exception to the principle of MFN treatment. The GATS exempts a Member from the obligation to grant MFN treatment under the Annex on Article II Exemptions, but limits it to concrete measures in specific fields which were registered when the GATS was established. (Article 9 of the WTO Agreement provides that in exceptional circumstances, the Ministerial Conference may decide to waive an obligation, provided that such decision are taken by three fourths of the Members. However, no new exemption has been made according to this provision.) In principle, such exemption should not exceed a period of 10 years. Introducing such exemption could be considered in the investment area with regard to liberalization of entry. However, considering the fact that it has been discussed in the services negotiations on the point that there exist too many exemptions, this issue should be considered carefully when a new investment agreement is to be drawn up.

3. Vested benefits

18. How to treat foreign investors who have already invested into a member country and how to treat the investment would be an issue with regard to the MFN treatment. They would become an issue, for example, when a Member has already granted to a specific foreign investor/investment, treatment that is more favourable than that it accords to foreign investors/investment under the multilateral investment agreement. Whether to accord the favourable treatment to other foreign investors/investment based on the MFN principle, or whether to allow protection of prior benefits as an exception although it deviates from the principle of non-discrimination, is an issue that needs to be considered fully.

E. VOICES OF THE INDUSTRY

19. Voices of the industry clearly indicate the necessity of MFN treatment. The responses to the questionnaire sent to the member companies by Japan's Federation of Economic Organizations this year includes the following opinions.

- MFN treatment is a principle of the WTO. Exceptions should be very limited. (Manufacturing industry)
- Exceptions should be limited as possible and when unavoidable, the rationale for them should be noted for the sake of transparency. (Construction machinery industry)
- Clear MFN treatment ensures free and fair competition. (Electricity machinery industry)
- Ensuring fair opportunity is necessary. (Pharmaceutical industry)
- If MFN treatment is not ensured at a pre-established phase, predictability will be at sake. (Construction industry)

III. NATIONAL TREATMENT

A. OUTLINE

20. The principle of national treatment requires each country to accord to any other country treatment that is no less favourable than that of its own. In the case of trade of goods, this principle means that treatment applied to imported goods must not be less favourable than that of domestic products, except for import tariffs, which is a border measure. This principle aims to eliminate "hidden trade obstacles" inside the WTO Members by according to imported goods treatment that is no less favourable than that of domestic products.

21. Like the principle of most-favoured-nation treatment, the principle of national treatment has been introduced not only in the field of trade of goods, but also in the fields of; trade in services(Article 17 of GATS), intellectual property rights (Article 3 of TRIPs Agreement), and standards/certification(Article 5 of TBT Agreement).

B. NATIONAL TREATMENT IN THE CONTEXT OF INVESTMENT

22. The principle of national treatment in investment agreements requires host countries to treat foreign investors/investments no less favourably than domestic investors/investments. A provision stipulating national treatment would prohibit host countries to grant discriminatory treatment to foreign investors/investments. In this context, the definition of "domestic investors and investment" needs to be fully considered by referring to the GATS language and others, since the definition would directly influence the rights accorded by the investment agreement.

23. It is beneficial for investors of both the host country and other member countries, when the host country participates in an international investment agreement with a provision on national treatment. Ensuring both domestic and foreign investors to conduct economic activities in the host country under equal conditions, would improve predictability for foreign investors, and promote future inward investments to the host country.

24. It is true that the existing investment agreements include exceptions to the principle of national treatment, taking into consideration each country's stage of development, industrial structure, social policies among others. In the case of investment, in particular, how to view industrial policy and formulation of domestic capital that are conducted by measures inconsistent with the principle of national treatment, and to what extent they should be accepted, are important issues and need to be fully examined.

25. However, it needs to be fully recognized that too many exceptions would inhibit the principle of national treatment. Even if setting exceptions is necessary for the time being, it is beneficial for the social and economic development of the host country if exceptions are removed progressively as changes are made in the host country. In any event, national treatment is an essential discipline that is at the core of maintaining balance between countries' rights and obligations, and maintaining the multilateral trade and investment system.

26. On the issue of how to grant national treatment, there are several issues to be considered.

27. First, at what stage of the investment should national treatment be applied. This is an issue of whether national treatment should be applied not only to the post-establishment phase but also to the pre-establishment phase. From the perspective of enhancing predictability, pre-establishment phase should be covered. On this issue, refer to the paper submitted by Japan on "Modalities for Pre-establishment Commitments" (WT/WGTI/W/125) for more details.

28. Second, whether a top-down approach or a bottom-up approach should be adopted. The former is an approach where the general rule is to liberalize investment in all fields although a country may set exceptions. The latter is an approach adopted in the GATS where Members make commitments as to which sectors and measures to liberalize. On this issue, refer to section D. Exceptions; D.1. National Treatment and the paper on "Modalities for Pre-establishment Commitments (WT/WGTI/W/125).

C. ECONOMIC IMPLICATIONS OF NATIONAL TREATMENT

29. It is important to have the principle of national treatment as a basic rule in an international agreement. The following is a description of the economic implications of national treatment.

30. First, national treatment improves each member country's total welfare. In the field of trade of goods/services, if a country protects its inefficient domestic production/service supply in a manner inconsistent with the principle of national treatment, the competition between domestic and foreign goods/services will be distorted. Similarly, in the field of investment, granting unfavourable treatment to foreign investors in order to protect domestic industries hampers the optimal environment for production of goods/supply of services, which decreases the economic efficiency and welfare of the entire world including the host country.

31. Second, ensuring national treatment in the investment agreement leads to further development of the WTO system. If measures restrictive to foreign investments adopted by Members decrease by virtue of national treatment, investments will be further active. Considering the size of the positive impact investment has on world trade, active investment is expected to promote free trade.

32. Third, as in the case of most-favoured-nation treatment, there is the issue of cost for maintaining the multilateral free trade and investment system. By introducing national treatment, the cost of monitoring different treatment in the home country and the host country, and cost for negotiating for the elimination for it can be reduced.

D. EXCEPTIONS

33. As was mentioned above, there are some exceptions to national treatment which is a basic principle. The WTO Agreements include exceptions as the followings. (Other than those below, general exceptions related to issues such as national security and maintenance of public order compose exceptions to the principle of MFN treatment.)

1. Commitment of national treatment

34. The structure of national treatment in GATS (Article 17) is based on the approach of explicitly committing certain sectors that national treatment will be accored to, which is contrary to the approach of "making exceptions to the national treatment".

35. This structure has the benefit of accepting flexibility with regard to the policy of the Member importing the trade in services. Considering that the acceptable level of liberalization in each sector differs from one country to another, depending on the stage of development, economic structure, etc., a system that enables to commit liberalization in a tailored manner based on the differences could be easier for Members, in particular the developing countries, to accept. However, even if a Member decides to newly commit to liberalization in a certain sector, in reality, the administrative procedure would take time to make the change. It cannot be denied that liberalization in each sector and the review of it would not be as fast as the actual business needs. In the present international economy where globalization develops fast, it needs to be noted that if the development of an appropriate investment environment is delayed, a country could possibly fall behind others in attracting foreign inward investments.

2. Domestic subsidies

36. With regard to subsidies, GATT allows a Member to grant subsidies to domestic producers only (Article 3-8(b)), as long as it does not violate the conditions set out in Article 3 of GATT and the Agreement on Subsidies and Countervailing Measures(ASCM). Such exceptions are accepted because subsidies are regarded as an important tool for development policies, while certain conditions are set because subsidies can have distorting effect on trades, and ASCM needs to be strictly applied.

E. VOICES OF THE INDUSTRY

37. In addition to the issues mentioned above, voices of the industries clearly indicate the necessity of national treatment for conducting business. The responses to questionnaire sent to the member companies by Japan's Federation of Economic Organizations this year include the following opinions.

- It is important to ensure fair opportunity. (Pharmaceutical industry)
- It is difficult to invest when national treatment is not ensured, although some exceptions may be allowed to developing countries. It is desirable to have national treatment in all sectors. (Chemical Industry)
- The viewpoint of protecting specific domestic industries in developing countries is understandable, although transparency is critical in such cases. (Construction machinery)

IV. CONCLUSIONS

38. Most-favoured-nation treatment and national treatment are not only the basic principles of the WTO Agreement but also the core principles in numerous international investment agreements. It is likely that these two would be the most important principles in the future investment agreement at WTO. Members need to discuss extensively on issues such as; whether these principles are to be a general obligation or a obligation that applies only to specific fields where the Member made commitments; whether these principles apply not only to the post-establishment phase but also to the pre-establishment phase; how to accept exceptions and what kind of exceptions to accept.

(For Reference)

ANNEX

Provision on "Non-discrimination" in existing WTO Agreements (Most-Favoured-Nation Treatment, National Treatment)

Article 2 of GATT (General Most-Favoured-Nation Treatment)

1. 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, any advantage, favour, privilege or immunity granted by any contracting party 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 contracting parties.

Exceptions to the MFN principle:
Article 24 of GATT (Territorial Application – Frontier Traffic – Customs Unions and Free-trade Areas)

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; Provided that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.

2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

3. The provisions of this Agreement shall not be construed to prevent:
(a) Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;
(b) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; Provided that:
(a) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;
39. (b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each if the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and

(c) any interim agreement referred to in sub-paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of sub-paragraph 5 (a), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.

7. (a) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACT1NG PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.
(b) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (a), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.
(c) Any substantial change in the plan or schedule referred to in paragraph 5 (c) shall be communicated to the CONTRACTING PARTIES, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. For the purposes of this Agreement:
(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that
(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and, (ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;
(b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article I shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected. This procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8 (a)(i) and paragraph 8 (b).

10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.

Article 3 of GATT National Treatment

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party 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.

3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2, but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

5. No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.

(a) 6. The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in the territory of any contracting party on July 1, 1939, April 10, 1947, or March 24, 1948, at the option of that contracting party; Provided that any such regulation which is contrary to the provisions of paragraph 5 shall not be modified to the detriment of imports and shall be treated as a customs duty for the purpose of negotiation.

(b) 7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

[Exceptions]
8. (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.
(b) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

9. The contracting parties recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.

[Exceptions]
10. The provisions of this Article shall not prevent any contracting party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV.

Exception to National Treatment
Article 18 C of GATT Exceptional measures against Members in the early stage of development

4. (a) Consequently, a contracting party the economy of which can only support low standards of living and is in the early stages of development, shall be free to deviate temporarily from the provisions of the other Articles of this Agreement, as provided in Sections A, B and C of this Article.

Section C

13. If a contracting party corning within the scope of paragraph 4 (a) of this Article finds that governmental assistance is required to promote the establishment of a particular industry with a view to raising the general standard of living of its people, but that no measure consistent with the other provisions of this Agreement is practicable to achieve that objective, it may have recourse to the provisions and procedures set out in this Section.
14. The contracting party concerned shall notify the CONTRACTlNG PARTIES of the special difficulties which it meets in the achievement of the objective outlined in paragraph 13 of this Article and shall indicate the specific measure affecting imports which it proposes to introduce in order to remedy these difficulties. It shall not introduce that measure before the expiration of the time-limit laid down in paragraph 15 or 17, as the case may be, or if the measure affects imports of a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, unless it has secured the concurrence of the CONTRACTING PARTIES in accordance with provisions of paragraph 18; Provided that, if the industry receiving assistance has already started production, the contracting party may, after informing the CONTRACTlNG PARTIES, take such measures as may be necessary to prevent, during that period, imports of the product or products concerned from increasing substantially above a normal level.
15. If, within thirty days of the notification of the measure, the CONTRACTING PARTIES do not request the contracting party concerned to consult with them, that contracting party shall be free to deviate from the relevant provisions of the other Articles of this Agreement to the extent necessary to apply the proposed measure.
16. If it is requested by the CONTRACTlNG PARTIES to do so, the contracting party concerned shall consult with them as to the purpose of the proposed measure, as to alternative measures which may be available under this Agreement, and as to the possible effect of the measure proposed on the commercial and economic interests of other contracting parties. If, as a result of such consultation, the CONTRACTING PARTIES agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective outlined in paragraph 13 of this Article, and concur in the proposed measure, the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to apply that measure.
17. If, within ninety days after the date of the notification of the proposed measure under paragraph 14 of this Article, the CONTRACTING PARTIES have not concurred in such measure, the contracting party concerned may introduce the measure proposed after informing the CONTRACTING PARTIES.
18. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the contracting party concerned shall enter into consultations with any other contracting party with which the concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. The CONTRACTING PARTIES shall concur in the measure if they agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective set forth in paragraph 13 of this Article, and if they are satisfied:
(a) that agreement has been reached with such other contracting parties as a result of the consultations referred to above, or
(b) if no such agreement has been reached within sixty days after the notification provided for in paragraph 14 has been received by the CONTRACTING PARTIES, that the contracting party having recourse to this Section has made all reasonable efforts to reach an agreement and that the interests of other contracting parties are adequately safeguarded.
The contracting party having recourse to this Section shall thereupon be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure.
19. If a proposed measure of the type described in paragraph 13 of this Article concerns an industry the establishment of which has in the initial period been facilitated by incidental protection afforded by restrictions imposed by the contracting party concerned for balance of payments purposes under the relevant provisions of this Agreement, that contracting party may resort to the provisions and procedures of this Section; Provided that it shall not apply the proposed measure without the concurrence of the CONTRACTING PARTIES.
20. Nothing in the preceding paragraphs of this Section shall authorize any deviation from the provisions of Articles I, II and XIII of this Agreement. The provisions to paragraph 10 of this Article shall also be applicable to any restriction under this Section.
21. At any time while a measure is being applied under paragraph 17 of this Article any contracting party substantially affected by it may suspend the application to the trade of the contracting party having recourse to this Section of such substantially equivalent concessions or other obligations 'under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove; Provided that sixty days' notice of such suspension is given to the CONTRACTING PARTIES not later than six months after the measure has been introduced or changed substantially to the detriment of the contracting party affected. Any such contracting party shall afford adequate opportunity for consultation in accordance with the provisions of Article XXII of this Agreement.

Exceptions to Most-Favoured-Nation Treatment and National Treatment: Article 20 of GATT(General exceptions), Article21 of GATT(Security exceptions)

Article XX General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
(a) necessary to protect public morals;
(b) necessary to protect human, animal or plant life or health;
(c) relating to the importations or exportations of gold or silver;
(d) necessary to secure compliance with laws or regulations which are not in-consistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
(e) relating to the products of prison labour;
(f) imposed for the protection of national treasures of artistic, historic or archaeological value;
(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
(h) undertaken in pursuance of obligations under any inter-governmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved;
(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
(j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

Article XXI Security Exceptions

Nothing in this Agreement shall be construed
(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
(i) relating to fissionable materials or the materials from which they are derived;
(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
(iii) taken in time of war or other emergency in international relations; or
(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Exceptions Article 9 of WTO Agreement Waiver provision

Article IX Decision-Making

3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three fourths of the Members unless otherwise provided for in this paragraph.

(a) A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time-period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three fourths**** of the Members.

(b) A request for a waiver concerning the Multilateral Trade Agreements in Annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPS, respectively, for consideration during a time-period which shall not exceed 90 days. At the end of the time-period, the relevant Council shall submit a report to the Ministerial Conference.

**** A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting Member has not performed by the end of the relevant period shall be taken only by consensus.

(i) 4. A decision by the Ministerial Conference granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.

5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.

Exceptional to Most-Favoured-Nation Treatment (other than the GATT)
GATS/TRIPS agreements

G A T S	Article II: Most-Favoured-Nation Treatment 1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country. 2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions. 3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed. ANNEX ON ARTICLE II EXEMPTIONS Scope 1. This Annex specifies the conditions under which a Member, at the entry into force of this Agreement, is exempted from its obligations under paragraph 1 of Article II. 2. Any new exemptions applied for after the date of entry into force of the WTO Agreement shall be dealt with under paragraph 3 of Article IX of that Agreement. Review 3. The Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of the WTO Agreement. 4. The Council for Trade in Services in a review shall: (a) examine whether the conditions which created the need for the exemption still prevail; and (b) determine the date of any further review. Termination 5. The exemption of a Member from its obligations under paragraph 1 of Article II of the Agreement with respect to a particular measure terminates on the date provided for in the exemption. 6. In principle, such exemptions should not exceed a period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds. 7. A Member shall notify the Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II of the Agreement. Lists of Article II Exemptions [The agreed lists of exemptions under paragraph 2 of Article II will be annexed here in the treaty copy of the WTO Agreement.]

TRIPS	Article 4 Most-Favoured-Nation Treatment With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member: (a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property; (b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country; (c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement; (d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

Provisions on National Treatment other than Article 3 of GATT
GATS/Government Procurement Agreement/TRIPS agreements

GATS	Article XVII: National Treatment 1. 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. 2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers. 3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.
Government Procurement Agreement	Article III National Treatment and Non-discrimination 1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than: (a) that accorded to domestic products, services and suppliers; and (b) that accorded to products, services and suppliers of any other Party. 2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure: (a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership; and (b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article IV. 3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Agreement.
TRIPS	Article 3 National Treatment 1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS. 2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.