



WTO Law

Class 5: MFN Treatment, National Treatment

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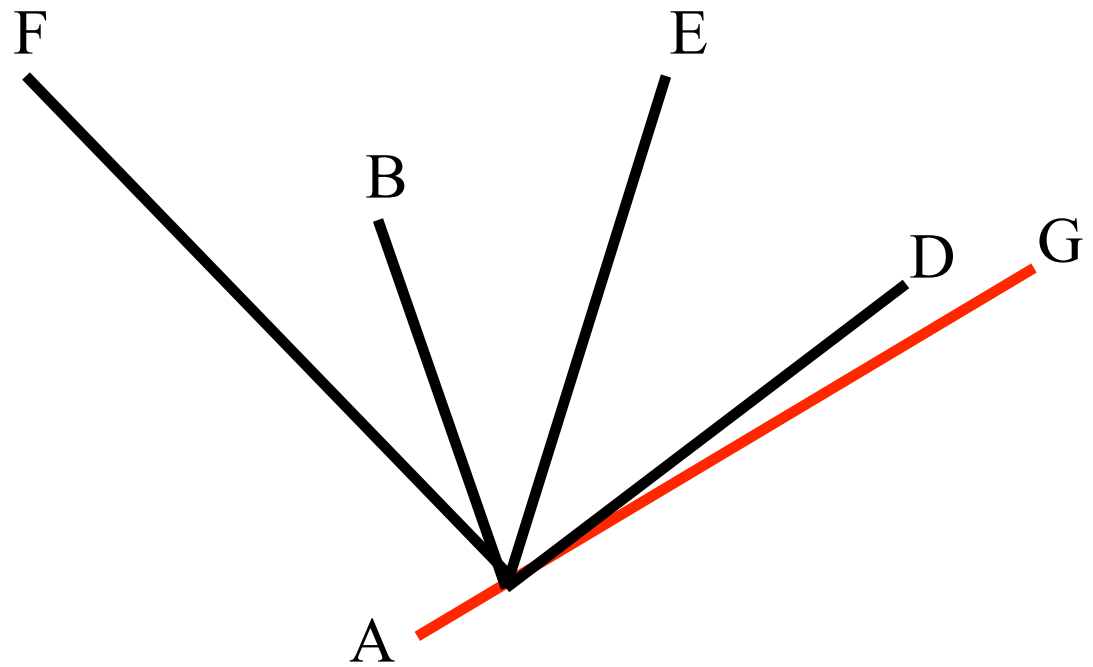
Today 's Program

- MFN
- NT

MFN

- Basics
- Requirements
- Exceptions

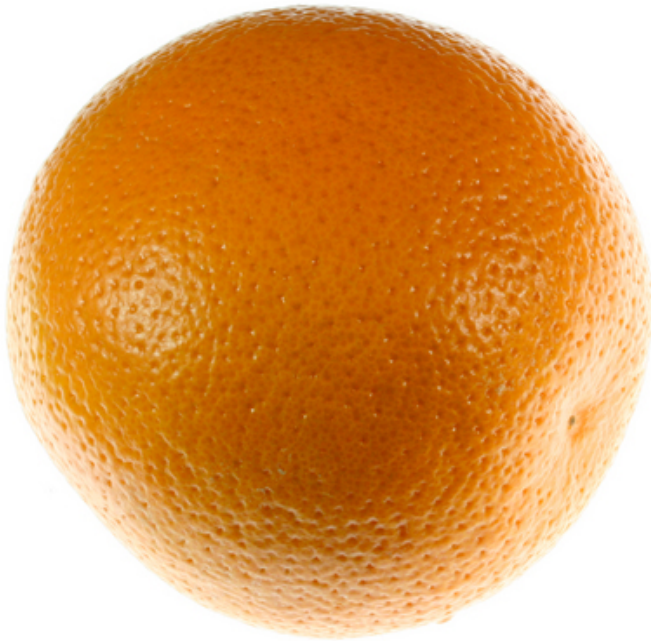
MFN Basics



MFN Requirements

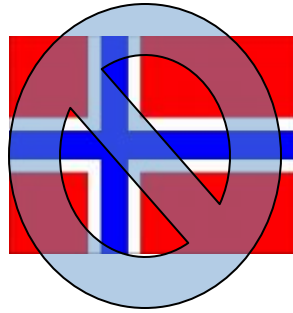
- Measure at issue covered by Art. I:1
- Grants advantage, favor, privilege, immunity
- Like product
- Advantage immediately and unconditionally granted to all like products

Like Products

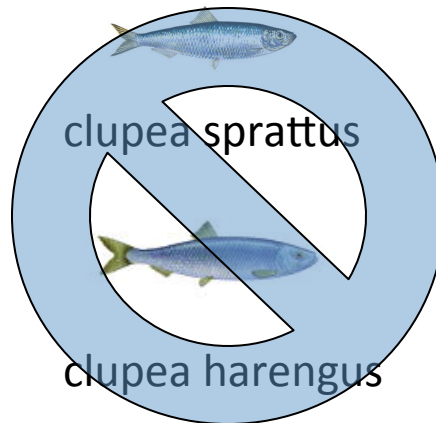


De facto discrimination

Model I:



Model II:



clupea pilchardus

MFN Exceptions

- Art. I paras. 2-4
- Enabling Clause (GSP) (EU Drug Arrangements challenged in EC – Tariff Preferences: non-discrimination, must be granted to all similarly situated dc members)
- Art. XXIV
- Art. XX, XXI, Waiver

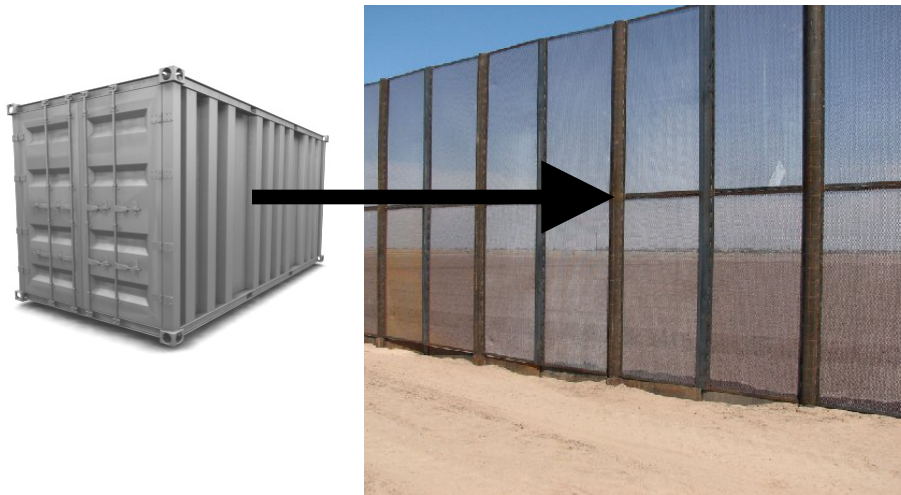
National Treatment

- Basics
- Requirements
- Particular Issues

Purpose Art. III

- Combat protectionism
- Equal treatment of products once imported
- Equality of competitive conditions
 - Trade effects irrelevant
 - Protection of expectations
 - More than protection of concessions

NT: Basics



Art. II, XI

NT: Basics

- Structure:
- Art. III:1 principle
- Art. III:2 internal taxation (sentence 1 like products, sentence 2 DCSP)
- Art. III:4 internal laws, regulations, requirements
- Goal: expectations of equal competitive relationships (actual trade effects not relevant), not just prevent undermining Art. II
- Art. III applies to internal measures, not to border measures (read Note *Ad* III)

Art III.1-2 GATT

- Article III National Treatment on Internal Taxation and Regulation
 - 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 [...], 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.

Art III.1-2 GATT

- *Ad* article III, Paragraph 2
 - 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.

NT: Requirements (III:2)

Threshold issue: is it an internal tax or charge on products (accrues due to internal event)

- III:2 s. 1
 - III:2 s. 2
- Like products
 - DCS products (ad Art.)
- Taxed in excess
 - Not similarly taxed (ad Art.) > ad minimis
 - So as to afford protection (III:1)

Like Products



Luxury tax on automobiles

- Luxury tax (10% tax of the excess of the retail price over a fixed threshold value) imposed on cars with value >US\$30K
- Are cars below/above US\$30K like?
- Panel: ‘aim and effect’ test
 - statements by legislators
 - wording of legislation (% of cars sold in US above the threshold)
 - sales data (predominantly affecting EC/US cars?)
 - design, production and marketing capabilities