

An Analysis of the Bottlenecks in Implementing the Most Favored Nation (MFN) Treatment Principle: The Impact of Its Substantial Exceptions

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Abstract

The Most-Favored-Nation (MFN) principle is a cornerstone of the World Trade Organization (WTO) which requires that any favorable treatment (such as lower tariffs or fewer trade barriers) granted by one member country to another must be extended immediately and unconditionally to all other WTO members. Nevertheless, there are several exceptions to this principle which recognize situations where differential treatment is justified or necessary. The main exceptions to the MFN principle include: Regional Trade Agreements (RTAs) or Free Trade Areas (FTAs), Preferences to Developing Countries (Generalized System of Preferences GSP), Special Treatment for Developing and Least-Developed Countries, Measures Allowed Under General or Security Exceptions, Waivers Granted by the WTO and Frontier Traffic and Historical Preferences. This paper examines the potential for nations that refuse or may refuse to implement the Most-Favored-Nation principle to justify their actions by invoking the substantial exceptions to the principle, thereby creating obstacles to its effective implementation. It further proposes practical measures to enhance the operational effectiveness of the MFN principle.

Key words: MFN principle, Exceptions, WTO, RTAs, FTAs, GATT, TRIPS

1. Introduction

The Most-Favored-Nation principle is a foundational rule in international trade law that promotes non-discrimination among trading partners. Its origins can be traced back to bilateral commercial treaties of the 18th and 19th centuries, where states began to include clauses ensuring that any trade advantage granted to one country would be extended to others. This principle evolved to prevent preferential treatment and foster predictable, stable trade relations. The MFN principle became firmly institutionalized with the creation of the General Agreement on Tariffs and Trade (GATT) in 1947. Under Article I of GATT, WTO members must grant the same favorable treatment such as reduced tariffs or market access conditions to all other members. The principle was further reinforced when the World Trade Organization was established in 1995, making MFN a core obligation across various WTO agreements, including those governing trade in goods, services (GATS), and intellectual property (TRIPS).

The purpose of MFN is to ensure equality of opportunity, prevent discrimination, and avoid the formation of exclusive trading blocs that could distort trade flows. However, exceptions such as Regional Trade Agreements, customs unions, and preferential schemes create differentiated treatment among WTO Members. This weakens the universality of MFN and reduces its normative force. RTAs allow members to give each other preferential treatment that excludes others. As these agreements multiply, the global trading system becomes fragmented into multiple overlapping blocs and non-members face relative disadvantages, undermining the parity MFN aims to create.

The Exceptions often involve detailed rules of origin, special conditions, and compliance procedures which increase transaction costs and create administrative complexity. Developing countries, in particular, may struggle to meet technical requirements to benefit from preferences. MFN exceptions can divert trade rather than create it. For example, a country may import from an RTA partner not because it is the most efficient supplier, but because of tariff preferences. This results in trade diversion, undermining the efficiency and neutrality that MFN promotes.

2. Legitimate Exceptions to MFN

World Trade Organization law recognizes several legitimate exceptions that allow members to grant preferential or discriminatory treatment under specific conditions. These exceptions ensure flexibility in the multilateral trading system while accommodating developmental, political, and economic realities. Some of the exceptions will be discussed in the subsequent texts

2.1. Regional Trade Agreements (RTAs)

Regional Trade Agreements are legally binding treaties between two or more countries within a defined geographic region that aim to liberalize trade among their parties. While the WTO is based on non-discrimination, RTAs operate as a major MFN exception by allowing members to extend preferential treatment to each other. RTAs vary in form and depth, but they generally operate through a combination of market access commitments, rules, and institutions. RTAs operate under GATT Article XXIV, GATS Article V, and the Enabling Clause. These provisions permit WTO Members to depart from MFN in limited ways. According to the provisions tariffs and restrictions must be eliminated on substantially all trade among the RTA members and it must not raise barriers to trade against non-members.

This exception allows members to remove tariffs and quotas on goods traded among themselves, and each member maintains its own external tariff toward non-members. Under RTAs, members eliminate tariff barriers internally and adopt a common external tariff. For example EU Customs Union and EAC Customs Union. This exception also has Rules of Origin (ROO) which determine whether a product originates within the RTA region and is eligible for preferential tariffs. They prevent trade deflection, where imports enter via the member with the lowest external tariff. Regional Trade Agreements operate as structured, rule-based frameworks that liberalize trade among member states by reducing tariffs, harmonizing regulations, facilitating services and investment flows, and creating institutional mechanisms to manage trade relations. While they advance regional integration and economic cooperation, their operation also creates complexities and potential trade distortions within the global trading system.

2.2. Generalized System of Preferences (GSP)

The Generalized System of Preferences is a trade policy tool through which developed countries unilaterally grant duty reductions or duty-free access to imports from developing countries and Least-Developed Countries (LDCs). It is also one of the main exceptions to the WTO's MFN principle, designed to support economic development in poorer countries. Originally, MFN prohibited preferential treatment for individual members. However, the Enabling Clause of 1979 (formally known as the "Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries") formally authorized non-reciprocal trade preferences from developed countries to developing and least-developed countries. This clause allows GSP schemes without violating MFN. Developed countries may grant tariff preferences nevertheless the preferences must be "generalized, non-reciprocal, and non-discriminatory," though in practice they vary between donors. LDCs may receive more favorable treatment than developing countries. The Generalized System of Preferences operates as a structured but asymmetric trade preference system designed to help developing and least-developed countries access developed markets through reduced or zero tariffs. It functions through eligibility rules, product coverage, rules of origin, conditionality, and periodic reviews. While GSP provides meaningful development benefits, its effectiveness is affected by limited coverage, strict rules, and donor-controlled administration.

2.3. National Security Exception

The National Security Exception is a legal provision found in many international economic agreements that allows a country to depart from its trade obligations when such measures are deemed necessary to protect its essential security interests. It acts as a safeguard to ensure that governments retain ultimate authority over matters affecting national defense, public safety, and strategic interests. The most cited source is Article XXI of the General Agreement on Tariffs and Trade which provides that nothing in the agreement shall prevent a member from taking measures relating to fissionable materials, arms, ammunition, and war materials such as controlling trade in military equipment, dual-use items, or technology with military applications. In a nutshell the National Security Exception allows states to violate trade obligations when essential security interests are at stake. This is essential for sovereignty, but carries risk of misuse and economic politicization.

2.4. Balance-of-Payments (BoP)

Balance-of-Payments Measures are trade restrictions (usually import restrictions) that a country may temporarily adopt when it faces serious balance-of-payments difficulties or a threat thereof. BoP difficulties occur when a country cannot pay for its imports, cannot meet its external debt obligations, or suffers severe shortages of foreign exchange reserves. These measures allow a government to reduce imports, preserve foreign currency, and stabilize its economy. BoP measures are permitted under GATT 1994, Article XII which allows WTO members that are not developing countries to impose import restrictions to safeguard the BoP position. It allows developing countries to take BoP measures to support economic development and protect their external financial stability. Balance-of-Payments measures are temporary trade or foreign-exchange restrictions that countries apply to protect their external financial position during BoP crises. They have a clear legal basis in the WTO, but their use is

strictly regulated, requiring necessity, proportionality, temporariness, and transparency. They are effective for short-term stabilization, but must be carefully managed to avoid long-term economic distortions.

2.5. World Trade Organization Waivers

A world Trade Organization Waiver is a formal decision by its members that allows one or more member states to be exempted from certain obligations under WTO agreements for a limited period of time. In simple terms, a waiver is temporary permission to break or not apply a WTO rule, usually because of special circumstances. The world trade organization system is rules-based and generally requires members to treat each other equally and follow agreed commitments. Waivers allow flexibility when strict application of rules would be inappropriate, impractical, or not in the collective interest. WTO waivers are provided for under article IX:3 of the Marrakesh Agreement Establishing the WTO. This article authorizes the Ministerial Conference to grant a waiver of obligations imposed on any member by the WTO agreement or its Multilateral Trade Agreements. Certain institutions are vested with authorities to grant waivers, for example Ministerial Conference is the highest decision-making body, meeting every 2 years. It has the primary authority to issue waivers. Apart from Ministerial Conferences, the General Council can exercise this authority. However a member requesting a waiver must show "exceptional circumstances" justifying the deviation from WTO rules. Frequent waivers can weaken the credibility of WTO rules and some waivers are politically driven, favoring powerful members. Waivers may also create unequal treatment amongst developing countries

2.6. Government Procurement Exception

Government procurement refers to the process by which government bodies purchase goods, services, and public works. This may include buying medical equipment for public hospitals, hiring contractors to build roads and purchasing computers, vehicles, or office supplies. Government procurement represents a large share of national GDP, and governments often use it to advance economic, social, or political objectives (e.g., supporting local industries, promoting employment, or ensuring national security). Under the WTO rules, the Government Procurement Exception allows WTO Member States to exclude government purchases from the application of core non-discrimination principles such as Most-Favored-Nation (MFN) treatment and National Treatment (NT).

In simple terms, countries are not obliged to treat foreign suppliers the same as domestic ones when procuring goods or services for government use unless they voluntarily commit to doing so. This means a government may legally prefer local companies over foreign suppliers when buying products or services. Article III of the GATT specifically states that the national treatment principle does not apply to government procurement of goods purchased for governmental purposes, and not for commercial resale or use in producing goods for sale. So, if a government buys uniforms for police officers, it can legally prefer domestic firms. But if a state-owned enterprise purchases goods for resale on the market, the exception does not apply. Under the General Agreement on Trade in Services, government procurement of services is also excluded from non-discrimination obligations unless a country committed otherwise. The Government Procurement Exception is a critical component of WTO law, designed to give countries the regulatory freedom to manage public expenditure in a way that reflects

national priorities. While it excludes procurement from core WTO non-discrimination rules, countries that join the GPA commit to more open and transparent procurement systems.

2.7. Special Safeguards in Agriculture

Special Safeguards (SSGs) are temporary import protection measures that WTO members can apply specifically for agricultural products. They allow a country to raise tariffs above bound levels when imports of certain agricultural goods surge unexpectedly or when import prices fall sharply. The purpose of SSGs is to protect farmers from sudden import shocks, stabilize domestic agricultural markets and prevent market disruption caused by volatile prices or abrupt increases in import volume. SSGs are unique to agriculture and do not exist for non-agricultural products. SSGs are established under article 5 of the Agreement on Agriculture. They are different from the General Safeguard Measures under GATT, Article XIX and the Safeguards Agreement. Not all WTO members can use SSGs. They can only be used by members who converted non-tariff barriers to tariffs during the Uruguay Round (a process known as tariffication), and reserved the right to use an SSG for specific tariff lines in their WTO Schedule of Concessions. Only about 39 WTO members have SSG rights (including the EU, Japan, US, Switzerland, Korea, etc.). Developing countries that did not rarify NTM during the Uruguay Round do not have SSG rights except where they reserved them. In a nut shell special Safeguards (SSGs) are WTO-permitted, automatic protection tools that allow certain countries to temporarily raise tariffs on agricultural products when import volumes surge, or import prices fall sharply. They are available only to members who reserved this right during the Uruguay Round and apply only to specific agricultural tariff lines. SSGs are intended to protect farmers from unpredictable world markets but remain controversial due to unequal access and potential protectionist use.

2.8. Service Sector Exceptions

The General Agreement on Trade in Services governs the global trade of services. Unlike goods (which fall under GATT), services are treated differently because they involve intangible outputs, people movement, investment, and regulatory measures within a country. To accommodate these complexities, GATS includes several exceptions that allow governments to deviate from their obligations without violating WTO rules. These exceptions are essential to balance liberalization with national interests, public policy needs, and regulatory autonomy. Even though GATS requires countries to treat all WTO members equally (MFN principle), governments can list MFN exemptions in an official schedule when GATS came into force. Unlike in goods trade, services liberalization is not automatic. Countries choose exactly which sectors they liberalize. This means if a country does not commit a sector, it can impose any restrictions it wants even in committed sectors, a country can maintain listed limitations. These are exceptions because they allow governments to restrict trade even though GATS promotes liberalization. Under Article XVI, Market Access, governments can maintain limits such as numerical quotas (e.g., only 10 foreign banks allowed), economic needs tests (e.g., entry allowed only if local services insufficient), restrictions on legal form (e.g., foreign firm must operate as a joint venture) and limits on foreign shareholding.

Under Article XVII , National Treatment, governments may give tax benefits only to local service providers, reserve government contracts for domestic firms and treat foreign professionals differently. A

country can legally discriminate against Foreign Service suppliers as long as the limitation is clearly scheduled. Similar to GATT Article XX, GATS Article XIV allows governments to violate GATS obligations if necessary to achieve important public policy goals.

Permitted Exceptions include public morals or maintaining public order (e.g., banning online gambling sites), protecting human, animal, or plant life or health (e.g., restricting foreign medical services failing safety standards), preventing deceptive and fraudulent practices (e.g., stricter rules for foreign financial advisors), protection of privacy and data security and ensuring safety in professional services. Countries may take any action they consider necessary to protect national security, even if it violates GATS. These may include measures relating to war or emergency, protection of critical infrastructure (telecoms, cyber security, and financial systems) and compliance with UN Security Council sanctions.

2.9. Intellectual Property Exceptions

Intellectual Property (IP) Exceptions refer to the specific circumstances under which countries are allowed to limit, restrict, or deviate from the exclusive rights normally granted to holders of patents, trademarks, copyrights, geographical indications, industrial designs, and other forms of IP. These exceptions ensure that IP protection does not hinder the broader public interest, development goals, public health, competition, or technological progress. IP Exceptions are crucial because the TRIPS Agreement sets minimum standards of protection for all WTO members, but also recognizes the need for flexibility to balance private rights with public welfare. IP rights are not absolute. While they grant creators exclusive rights to encourage innovation, too much protection can restrict access to essential medicines, limit educational materials, impede technological transfer, raise prices for consumers, create monopolies and slow down innovation. Therefore, exceptions allow governments to adjust IP protection to serve public policy objectives such as public health, food security, access to knowledge, competition and development and poverty reduction. Interpretations by WTO panels and past negotiations allow members some room to adjust IP rules to national development needs. Article 13 of TRIPS allows countries to introduce “limitations and exceptions” to copyright, provided they satisfy the three-step test which are: limited to certain special cases, do not conflict with normal exploitation of the work and do not unreasonably prejudice the rights holder’s legitimate interests.

Developing and least-developed countries use IP exceptions to access affordable medicines, promote local industries, support innovation, build technological capacity, protect traditional knowledge and strengthen public health systems. Intellectual Property Exceptions are essential legal tools that allow countries to balance the rights of creators with the needs of society. While TRIPS sets minimum standards, it includes significant flexibilities that can be used for public health, education, competition, national development, and technological growth. They ensure that IP rules promote innovation without obstructing public welfare, which is the core objective of the global IP regime.

3. Impact of MFN Exceptions

While MFN exceptions exist to allow flexibility such as enabling development preferences or supporting regional integration, they also create several challenges that weaken the principle's uniform application. Key negative impacts include the following among others:

Fragmentation of the Global Trading System: MFN is meant to ensure non-discrimination. However, exceptions especially Regional Trade Agreements create multiple, overlapping trade regimes with different tariff rates and rules. This leads to what is often called a “spaghetti bowl” of rules which ultimately leads to complex rules of origin, increased administrative burden and reduced transparency in trade policies.

Erosion of the Equality among Trading Partners: MFN ensures that no country is given preferential treatment. Exceptions, however, create tiered treatment due to the fact that some countries receive better access through RTAs or preference schemes and others face higher tariffs or restrictions. This undermines the core principle of equal treatment among WTO members.

Reduced Predictability and Certainty in Global Trade: MFN exceptions weaken one of the MFN principle's biggest strengths due to the fact that firms cannot rely on uniform tariffs, policies become harder to forecast and investment decisions become riskier in the presence of varied trade preferences.

Potential for Discrimination and Political Influence: When MFN exceptions are overused; trading partners may grant preferences to politically aligned countries and exclude others based on strategic or geopolitical considerations. This political dimension reduces trust in a rules-based multilateral trading system.

Trade Diversion Instead of Trade Creation: MFN exceptions, especially those in RTAs, can cause trade diversion due to the fact that countries import from a less efficient supplier within the RTA instead of a more efficient supplier outside the RTA. This reduces global welfare and the efficiency gains intended by free trade.

Weakening WTO Authority and Multilateralism: The more countries rely on bilateral or regional agreements with MFN exceptions, the relevance of the WTO decreases, multilateral negotiations become harder and trust in a universal rules-based order declines. Global trade becomes more fragmented and bilateral, moving away from collective global governance.

Complexity and High Administrative Costs: MFN exceptions require verification of origin, monitoring of compliance and management of different tariffs under different agreements. This increases costs for customs administrations, businesses and small exporters, especially from developing countries.

Inequitable Distribution of Benefits: Preferential schemes like Generalized System of Preferences can be unstable (easily suspended), conditional on non-trade issues (human rights, governance, etc.), selective, benefiting some developing countries but not others. This makes developing countries dependent on uncertain, unilateral preferences, weakening the universality of MFN.

4. Concluding Remarks and Recommendations

MFN exceptions, although important for flexibility in global trade, undermine the uniformity, predictability, and fairness that the MFN principle aims to establish. They contribute to fragmentation, discrimination, and administrative complexity, all of which reduce the effectiveness of the MFN rule in promoting a stable global trading system. Below are clear, actionable recommendations to address and reduce the negative impacts of MFN exceptions, while still allowing countries necessary policy flexibility:

Promote Multilateral Trade Liberalization. The best way to reduce reliance on MFN exceptions is to improve general liberalization. This may be done through reviving WTO negotiations to reduce global tariffs for all members and reduce incentive for countries to use preferential arrangements.

Harmonize and Simplify Rules of Origin. Overlapping rules of origin create barriers and high compliance costs. Members should be encouraged to standardize and simplify rules of origin across RTAs. They should also develop WTO guidelines for transparent and uniform rules. This reduces complexity and eases trade for developing countries.

Strengthen the Role of the WTO in Managing Preferential Agreements. MFN exceptions are easier to manage when the WTO plays a stronger coordinating role. There should be reinforcement of WTO committees overseeing RTA compatibility with MFN principles and require systematic review of RTA impacts on non-members.

Strengthen Transparency and Notification in the WTO. Many MFN exceptions, especially RTAs, are not fully reported or reviewed. Members should be required to timely notify all MFN-related exceptions. There is a need of strengthening WTO monitoring through regular reviews. They should also publish simplified, user-friendly reports to ensure transparency for businesses and policymakers.

Encourage Digitalization of Customs and Trade Administration. High administrative burdens come from fragmented tariff regimes. There should be adoption of digital customs platforms to manage multiple tariffs and preferences and provision of capacity-building support for developing countries to implement electronic trade systems.

To ensure the MFN principle remains effective, countries should improve transparency, reduce administrative complexity, strengthen WTO oversight, support fair and stable treatment for developing countries, avoid excessive proliferation of RTAs and promote multilateral solutions

Short Biography of the Author

Dr. Samuel Nzakomeza holds a Ph.D. in Law, an LL.M. in International Economic and Business Law, an LL.B. in Law, and a Postgraduate Diploma in Legal Practice. He has more than ten years of experience in leadership, legal practice, and academia. He currently serves as the Director of Research, Training, and Consultancy at the Institute of Legal Practice and Development (ILPD) and lectures law on a part-time basis at both undergraduate and postgraduate levels in several universities, including Kigali Independent University (ULK), Mount Kigali University (MKU) and the University of Lay Adventists of Kigali (UNILAK). Dr. Nzakomeza has extensive experience in legal practice, having served as legal counsel where he managed a broad portfolio of cases. His work has involved providing legal advice to individuals and institutions, representing clients in litigation before courts and other decision-making bodies, and offering strategic guidance on diverse legal matters.



In addition to his professional practice, Dr. Nzakomeza is an active researcher and scholar. He has published widely in internationally recognized journals and has earned several awards following the successful completion of various professional training programs across multiple areas of law. His professional engagement also extends to regional and institutional platforms. He participated in the Executive Council Meeting and Training organized by the East African Magistrates and Judges Association (EAMJA) held in Rwanda in 2015. He has further contributed to the organization and delivery of numerous capacity-building programs, research activities, and high-level engagements within the justice sector in Rwanda.

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