WORLD TRADE AND THE LAW OF GATT

(A Legal Analysis of the General Agreement on Tariffs and Trade)

by

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CHAPTER 11

Most-Favored-Nation Treatment (Article I)

§ 11.1. Perspectives on Most-Favored-Nation

An embryonic version of an MFN clause has been traced as far back as 1417,[1] but the origins of the Most-Favored-Nation commitment in international commercial matters are generally considered to stem mainly from the Seventeenth and Eighteenth

[1] N. ITO, LA CLAUSE DE LA NATION LA PLUS FAVORISÉE 80 (les editions internationales 1930). There is an extensive literature concerning the MFN clause, at least with regard to its history prior to the formation of GATT. A 1936 League of Nations report stated that "so much has been written, and written with such authority, on the most-favored-nation clause and the system of equal treatment which it is intended to insure, that the subject might well be regarded as exhausted." League of Nations Economic Comm., Equality of Treatment in the Present State of International Commercial Relations—The Most-Favored-Nation Clause, L.N. Doc. C.379. M.250. 1936 II.B. Some other works which examine the history or other aspects of the MFN clause include: H. DAVIS, AMERICA's TRADE EQUALITY POLICY (1942); E. LUDWIG, COMMENTS ON THE MOST-FAVORED-NATION CLAUSE (1913); R. SNYDER, THE MOST-FAVORED-NATION CLAUSE (1948); R. VELASCO, LA CLAUSULA DE LA NACION MAS FAVORCIDA (1962); R. ZINSER, DAS GATT UND DIE MEÏSTBEGUNSTIGÜNG (1962); LEAGUE OF NATIONS, COMMERCIAL POLICY IN THE INTERWAR PERIOD: INTERNATIONAL PROPOSALS AND NATIONAL POLICIES 47-51 (1942); ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS (INFORMATION DEP'T), MEMORANDUM ON THE MOST-FAVORED-NATION CLAUSE AS AN INSTRUMENT OF INTERNATIONAL POLICY (1933); Rist, *Comments on the Past and Future of the Most-Favored-Nation Clause in Its Limited and Unlimited Forms*, in The Improvement of Commercial Relations Between Nations 111 (Joint Comm. of the Carnegie Endowment for International Peace and the International Chamber of Commerce 1936). Economic works

Centuries.[2] Prior to that time, special trade concessions and monopolies seemed to be the general order of the day but, as states negotiated for protection abroad for their traders, MFN became a convenient shorthand to incorporate by reference the advantages previously granted in other treaties. Additionally, as the bad effects of a contrary policy that engendered retaliation and other bitterness became apparent, the notion of nondiscrimination developed. In the view of one author, 1860 marks the culmination of the MFN clause, at which date it became the "common commercial law of the great European Powers."[3] Nevertheless, the extent of MFN application could vary greatly, from the narrow confines of tariffs alone to a broader application to other types of barriers.[4] Despite MFN, various trade restrictions and discriminations did exist.[5] The United States MFN policy until 1922 was "conditional," *i.e.*, concessions negotiated with *A* would be applied to *B* only if *B* granted compensatory concessions.[6]

One of Wilson's fourteen points in 1918 urged "the establishment of an equality of trade conditions among all the nations consenting to the Peace," which was explained to mean "whatever tariff any nation might deem necessary for its own economic service, be that tariff high or low, it should apply equally to all foreign nations."[7] The League of Nations Covenant likewise mentioned the goal of "equitable treatment for the commerce of all members" and the 1919 peace treaties contained MFN clauses.[8] The League occupied itself with various economic and financial matters, but one prominent topic was MFN, on which the League prepared a series of reports and studies.[9]

In 1936, the League published a study that included legal language for a recommended MFN clause, as well as a discussion of

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relating to the MFN clause include G. PATTERSON, DISCRIMINATION IN INTERNATIONAL TRADE: THE POLICY ISSUES, 1945-1965 (1966). In addition, there are a number of League of Nations documents relating to this subject, as cited in note 9 *infra*.

2 Rist, *supra* note 1, at 113.

3 *Id.*

4 *See* N. ITO, *supra* note 1.

5 *See* Rist, *supra* note 1, at 111.

6 LEAGUE OF NATIONS, COMMERCIAL POLICY IN THE INTERWAR PERIOD, *supra* note 1, at 47.

7 *Id.* at 15.

8 *Id.* at 16.

9 The following documents were prepared by the Economic Committee of the League of Nations on the subject of tariff policy and MFN: C.666. M.224. 1927 II.; C.357. M.111. 1928 II.; C.20. M.14. 1929 II.; C.155. M.61. 1929 II.; C.138. M.53. 1929 II.; C.427. M.177. 1931 II.B.; C.379. M.250. 1936 II.B. (Sales No. 1936 II.B.9.); C.205. M.79. 1927 V. (Sales No. 1927 V.10.).