

Chapter 5

The National Treatment Obligations Under the WTO

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1 National Treatment in WTO and Other International Treaties

The national treatment requirements can be found in many international treaties of economic nature, such as bilateral investment treaties (BITs); friendship, commerce and navigation (FCN) treaties; free trade agreements (FTAs); and a number of agreements under the WTO, such as Article III of the GATT 1994, Article XVII of the GATS and Article 3 of the *Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement). The general functions of such requirements in different treaties are similar, ie to ensure that persons, properties or products of foreign origin and those of domestic origin are treated equally. However, the specific functions of such treatment in various treaties could be quite different.

For instance, the national treatment provision in the BITs is to ensure that investors and investments from the other party are to enjoy the same treatment granted to local investors and investments by the host country so that foreign investors and investments will be able to enjoy the same operational advantages in the domestic market.¹ The national treatment provision under the FCN treaties requires nationals from the other party to

1 For example, *Treaty Between the US and Uruguay Concerning the Encouragement and Reciprocal Protection of Investment 2005* provides in Article 3, paras 1 and 2 the following:

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

The text of this bilateral treaty is available at <http://www.ustr.gov/sites/default/files/uploads/agreements/bit/asset_upload_file748_9005.pdf> accessed on 2 October 2011.

This is a preview. Not all pages are shown.