Principles of the WTO Trading System and their applications to Huawei in Canada

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The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities, however, a number of simple, fundamental principles run throughout all of these documents. These principles are supposed to constitute the foundation of the global multilateral trading system.

It is these principles that should govern the treatment of Huawei Canada. Any deviation from these principles is considered an infraction of the rules that should govern the multilateral rules-based system

## Principle 1: Trade without discrimination

This is based on two standard rules: The Most Favoured Nation and National Treatment of foreign firms of countries that are members of the WTO:

**1. Most-favoured-nation (MFN): treating other people equally**

Under the WTO agreements, countries cannot normally discriminate between their trading partners, such as granting a party a special favour (such as a lower customs duty rate for one of their products) and not offering the same for all other WTO members.

This principle is known as most-favoured-nation (MFN) treatment. It is so important that it is the first article of the [General Agreement on Tariffs and Trade (GATT)](https://www.wto.org/english/docs_e/legal_e/legal_e.htm%22%20%5Cl%20%22GATT94), which governs trade in goods. MFN is also a priority in the [General Agreement on Trade in Services (GATS)](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm%22%20%5Cl%20%22ArticleII) (Article 2) and the [Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)](https://www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm%22%20%5Cl%20%22art4) (Article 4), although in each agreement the principle is handled slightly differently. Together, those three agreements cover all three main areas of trade handled by the WTO.

It is true that some exceptions are allowed. For example, countries can set up a free trade agreement that applies only to goods traded within the group — discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. **But the agreements only permit these exceptions under strict conditions**. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners — whether rich or poor, weak or strong.

**2. National treatment: Treating foreigners and locals equally**

Imported and locally-produced goods should be treated equally — at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements (Article 3 of [GATT](https://www.wto.org/english/docs_e/legal_e/legal_e.htm%22%20%5Cl%20%22GATT94), Article 17 of [GATS](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm%22%20%5Cl%20%22articleXVII) and Article 3 of [TRIPS](https://www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm%22%20%5Cl%20%22art3)), although once again the principle is handled slightly differently in each of these.

National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax. But denying a license or precluding a technology (G5) of a company of competing in a WTO member country is not permitted.

## Principle 2: Freer trade: gradually, through negotiation

Lowering trade barriers is one of the most obvious means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as red tape and exchange rate policies have also been discussed.

Since GATT’s creation in 1947-48 there have been [nine rounds of trade negotiations](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm%22%20%5Cl%20%22rounds). More important is the fact that by the 1980s, the negotiations had expanded to cover non-tariff barriers on goods, and to the new areas such as services and intellectual property (under which Huawei’s G5 technology falls)

The WTO agreements allow countries to introduce changes gradually, through “progressive liberalization”. But this is more for developing countries not a developed northern country like Canada. This suggests that Canada should confer on Huawei immediate access to its market and should allow it to compete on equal footing with Canadian and other trading countries in the Canadian market.

## Principle 3: Predictability: through binding and transparency

With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable. One can legitimately ask how predictable is the business environment for Huawei in Canada with a sword of uncertainty is hanging over its head. Surely, this uncertainty is a violation of the principle of predictability that WTO requires and insists on.

Many WTO agreements require governments to disclose their policies and practices publicly within the country or by notifying the WTO. The regular surveillance of national trade policies through the [Trade Policy Review Mechanism](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm11_e.htm) provides a further means of encouraging transparency both domestically and at the multilateral level.

It is fair to argue that there is quite a bit of opaqueness in the way Huawei is treated recently in Canada and several lawyers have filed complaints about the secrecy of the interrogations of Meng Wanzhou.

## Principle 4: Promoting fair competition

The WTO is sometimes described as a “free trade” institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More accurately, it is a system of rules dedicated to open, fair and undistorted competition.

The rules on non-discrimination — MFN and national treatment — are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade. Above all the deviations and exceptions to the rules must be made transparent and squared against the principles above. Surely this has not been the case with Huawei and the invocation of national security concerns.