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The Concept of Like Products

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The idea of 'like products' is crucial in assessing the scope of certain global trade law responsibilities relating to products commerce. Over 50 articles of the World Trade Organization (WTO) approved accords use definition of 'comparable products.'[1] Articles 1 and 3 of the General Agreement on Tariffs and Trade (GATT) [1947 and 1994], the second article in the TBT Agreement and Annex C.1 of Agreement on the Application of Sanitary and Phytosanitary Metrics (SPS) all forbid unfair practices between 'similar' product lines. When evaluating if an action breaches the WTO's non-discrimination standards, we must first establish whether the action distinguishes between one product line (favored goods) and another similar commodity. In this context, this paper aims to interpret the idea of 'like products' while considering the WTO provisions like the MFN Principle, National Treatment Principle, Anti-dumping Law, and Regional Trade Agreements.

The protocol contained in Article Six of the GATT 1994 (The Anti-Dumping Accord) terms dumping as the launch of new products into another nation's economy at a lower price than its usual worth.[2]. WTO signatories can implement anti-dumping initiatives as per Article Six of GATT and the Anti-Dumping Agreement if a verdict is reached (1) that dumping is taking place, (2) that the domestic market generating the same goods in the importing nation is experiencing significant damage, and (3) that there is a causation relationship between the two. [3]The Agreement constitutes specific procedural regulations for the start and execution of probes, the implementation of actions, and the length and evaluation of metrics, in addition to substantive standards controlling the assessment of dumping, damage, and possible connection. The

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[1] Sampson, Gary P. "Challenges Facing the World Trade Organization: An Overview." *Australian Economic Review* 51, no. 4 (2018): 453-473.
[2] Mafu, Michael. "Has South Africa been handed a poisoned chalice? Assessing the legal implications of the African Growth and Opportunity Act (AGOA) for South Africa's trade policy." Ph.D. diss., University of Pretoria, 2016.
[3] Ibid

principle of the like product is used in Article 6 on subsidization and regulatory initiatives. It also features Article 15.2 of the treaty on applying Article VII of the general multilateral trading 1994 (border control) and XI of the general intercontinental treaties 1994. The description and consequent extent of 'similar products' determine the exact fulfillment of these responsibilities.[4] A broad definition of the 'like products' construct in non-discrimination regulations would broaden the definition of basic WTO commitments and thus restrict participants' compliance autonomy, while a myopic viewpoint would reduce the scope of WTO criticism, leaving member countries with more regulatory prerogative. Similarly, a broad or restricted use of the word "similar products" in the meaning and application of countries' responsibilities regarding trade remedies would impact dumping and harm decisions.

Many inter-governmental trade deals, including regional trade agreements (RTAs), examine the concept of 'like products' in non-discrimination regulations. It forbids the levying of discriminatory practices on 'like products' shipped from contracting countries. As a result, the notion of "similar products" is also crucial in defining the extent of such accords. For all of these factors, trade negotiations frequently entail determining if two items are "similar products" in contrast to one another. For instance, one must fulfill certain criteria to contravene the 'MFN'; Most-Favored-Nation stipulation as per Article I GATT. (1) The different sides of imported goods under concern involve 'like goods; and (2) any favor conferred to one was entity not granted to the other.' Similarly, some conditions must be met to avoid an infringement of the fair and equitable treatment (National Treatment, Premise) responsibility (for instance, as per Article III GATT, some conditions must be met. (1) The domestic and imported product lines are 'like products' (or explicitly competitive or replaceable items); and (2) the foreign goods received less

[4] Agelebe, Dennis Oghenerobor. "Application of the Precautionary Principle in International Trade: Implications and Legal Perspectives." PhD diss., Universität zu Köln, 2020.

preferential coverage. In other respect, these global trade law responsibilities are predicated on the definition of "similar products."[5]

Article III of the GATT mandates that WTO member states accord national treatment to other WTO partners. States must not impose indirect taxes and other domestic levies, policies, guidelines, or restrictions impacting foreign or local products in a manner that favors home production. Member nations shall not apply benchmarks greater than those levied on local goods between foreign goods and "comparable" local products or between foreign products and " actively competitive or replaceable item" when it comes to domestic taxes or other local levies.[6] Article III: 4 of the Agreement on Internal Policies and Rules states that members must treat foreign goods no less favorably than "similar products" of national origin. Additionally, the country shall adopt or retain any internal qualitative rule requiring, direct or indirect, that any defined quantity or portion of any commodity susceptible to the regulation be provided from internal sources. GATT panel reports have used various parameters to compare "like items," including the product's physical attributes, end applications, customer tastes and preferences, and tariff categorization. WTO panels and Appellate Body decisions use the same standards.

While national treatment is a fundamental concept of the GATT, it does allow for some exclusions. The supply chain is the exception to the national treatment concept since it will selectively enable countries to buy local items for their purposes.[7] Since many GATT signatory countries were reluctant to remove the special privileges they afforded domestic goods in

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[5] Nantawaroprai, Dolnapa. "Principles of Non-Discrimination against Trading State Party of Powerful Country based on World Trade Organization "Case Study Banning Thai Coconut Products." *Psychology and Education Journal* 58, no. 1 (2021): 1364-1368.

[6] Grinberg, Itai. "A destination-based cash flow tax can be structured to comply with world trade organization rules." *National Tax Journal* 70, no. 4 (2017): 803-818.

[7] Ojha, Shubha. "The Rise of Exceptions and the Eclipse of the Elemental Principle of Most-Favoured-Nation." In *Proceedings of the 18th International RAIS Conference on Social Sciences and Humanities*, pp. 133-142. Scientia Moralitas Research Institute, 2020.

government contracts, they created this exception. In the Tokyo Round, many parties established a government contracting pact that included the national treatment premise. The parties had it in the Uruguay Round's multilateral treaty on Government Contracting.[8] WTO members, on the other hand, are not obligated to join the Government Procurement Agreement. Wealthy nations have been the majority of those who have ratified the accord. Consequently, the national treatment method is only applicable to those who have signed the deal on state procurement in the scope of government contracting. The conventional exclusion still applies to others.

As a departure from the national treatment concept, the GATT permits assistance solely to local manufacturers. The rationale for this exception is that bailouts are widely considered a valuable policy instrument that falls within the purview of local policymakers. Nevertheless, governments must directly subsidize local manufacturers to qualify for the exemption and grants offered to customers for buying local products. Tax break initiatives do not come under the purview of the exception, as per tradition. Fostering the construction of infant enterprises can help participating countries increase their living standards in the early growth stages. The attempt may necessitate some government aid, and the goal of establishing the business may not be practically achievable given the GATT's constraints. In such instances, governments can use the GATT Article procedures to inform WTO signatories and begin talks. The developing country is entitled to take actions contradictory to GATT requirements once talks are concluded and under specific constraints.

To sum it up, a "like product" is a term used in global agreements to indicate the link between two items generated by two separate trading states. The two core concepts of the WTO system, as described in the GATT of 1947, are based on this premise. While this is undoubtedly

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[8] Singh, Shikira. "An analysis of the impact of the sanitary and phytosanitary agreement on market access: case study on the SA/EU citrus dispute and AGOA dispute." Ph.D. diss., 2016.

one of the essential developments in global trade law, there have been many instances in which panels have avoided dealing with the idea of 'like products' by assuming a resemblance correlation when the dimension in inquiry differentiates goods purely based on their source. The concept of "like products" has also been understood and implemented inconsistently by adjudicating bodies. One explanation for apparent inconsistencies is that the trade agreements that use the idea may be seeking to eliminate trade restrictions with significantly different objectives. Nonetheless, the goals are to eradicate unfair policies to avoid protectionism.

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