Non-discrimination: Two rules

- Most favoured nation treatment (MFN)
  - Main elements
  - Significance in international law
  - Link to the principle of sovereign equality between states

- National treatment (NT)
  - Main elements
  - Historical background
  - Link to general principles on non-discrimination

- Are there reasons for different treatment of MFN and NT?
Non-discrimination: Two elements

- The basic "if … then …" distinction
- Who or what shall be compared?
  - General or case-by-case? Average or best treated?
  - Physical characteristics?
  - Potential competitive relationship?
  - Systems of classification?
  - Opinions in the market?
- The obligation of "equal treatment"
  - Absolute or relative? Explicit and implicit?
  - De minimis?
  - Purpose?
  - Effects?
NT I

- Scope of application
  - Public authority – public as an economic actor – private parties
  - Internal measures
  - Local authorities
- Taxes: direct vs. indirect taxes, payment for services
- "laws, regulations and requirements"
- Government procurement
- Subsidies
Who shall be compared?
- Threshold?
- The problem of manipulation of internal markets
- Processes and production methods (PPMs)

Obligation of equal treatment
- Implicit discrimination
- Burden of proof
MFN

- Scope of application
  - Border measures vs. internal measures
  - Safeguards, anti-dumping, countervailing duties, subsidies
- Who or what shall be compared?
  - Average or best treated?
- Obligation of equal treatment
  - "any advantage ..."
    - Degree of flexibility
    - Explicit vs. implicit differential treatment
  - Conditionality
- Importance during negotiations
- Exceptions
  - Regionalism and bilateralism – compensation?
  - Developing countries, the "GSP trap"
Non-discrimination in IEL

- The starting point: merchants and traders
- Trade in goods
  - Scope of application from tariffs to internal measures
  - Subsidies, performance requirements and government procurement?
- Extension to services and service providers
  - The difference between MFN and NT: Top down or bottom up?
  - Difference in wording between GATT art. I and GATS art. II
- Extension to investment
  - Top down or bottom up?
  - The problem of bilateralism
  - The problem of comparing investors