

Abstract

Non-discrimination is one of the fundamental principles under the General Agreement on Trade in Services (GATS). It is embodied as the most-favored-nation treatment and the national treatment under the Articles 2 and 17 of the GATS.

According to the Articles 2 and 17 of the GATS, the elements of non-discrimination include: 1) must be measures by Members affecting trade in services, 2) Members have made commitments in its Schedule (national treatment applies only), 3) likeness of services and service suppliers of Members, and 4) must be no less favourable treatment.

Compared with non-discrimination under the GATT, which has been developed more completely, the elements and their related issues of non-discrimination under the GATS are still lacking representative or binding opinions. For example, the issue of “likeness of services and service suppliers” has not been addressed officially on findings of panel or appellate body reports. This article tries to analyze all elements under non-discrimination of the GATS, raise possible issues, and conclude related findings of WTO dispute settlement and opinions of academic publications. By doing this, the legal structure of GATS non-discrimination and possible issues would be clarified more completely. More importantly, we are hoping this beginning would help forward more and more future profounder researches focusing on issues of GATS non-discrimination.

Finally, based on the research results, this Article brings up some potential problems which may happen under the legal system of our country and proposes possible strategies and measures to be taken.

Key Words: Trade in services, GATS, non-discrimination, most-favored-nation treatment, national treatment.

