Index

African, Caribbean and Pacific Group (ACP) 23
Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) 125–57
Annex C 134, 151–56
arbitrary and unjustifiable 144, 147–51
Article 1 (General Provisions) 129
Article 2.3 (Basic Rights and Obligations – National Treatment) 131–57, 141–3, 147–51
Article 5.5 (Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection – National Treatment) 133, 141–3
burden of proof 133
control, inspection and approval 134 identical or similar 147, 149–51
Preamble 129
regulatory autonomy 144
Agreement on Subsidies and Countervailing Measures (SCM Agreement) 87, 271
Agreement on Technical Barriers to Trade Tokyo Round Agreement 1979 Standards Code 128
Agreement on Technical Barriers to Trade (TBT) Uruguay Round Agreement 1994 42, 44, 230
Article 2 (National Treatment) xxi, 42, 55, 58–60, 92, 96–7, 147–3, 154–5
Recitals 59, 94

Article 1 (Nature and Scope of Obligations) 287
Article 2 (Intellectual Property Conventions) 260, 286
Article 3 (National Treatment) xxi, 252, 254, 259, 283, 290–91, 294
Article 4 (Most-Favoured-Nation Treatment) 14, 230
Article 9 (Relation to the Berne Convention) 292
Article 10 (Computer Programs and Compilations of Data) 265
Article 14 (Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations) 279
Article 19 (Trademarks – Requirement of Use) 289
Article 20 (Trademarks – Other Requirements) 289
Article 27 (Patentable Subject Matter) 246, 288, 295–6
Article 30 (Patents– Exceptions to Rights Conferred) 295
Article 31 (Other Use Without Authorization of the Right Holder) 289
Article 68 (Council for Trade-Related Aspects of Intellectual Property Rights) 291
Choice of law rule 283
databases 288–9
differential treatment 295–6
The principle of national treatment in international economic law

effective equality of opportunities 254–8
field of technology 296
footnote 3 on ‘Protection’ (to Article 3(1) TRIPS) 287
incorporation by reference 286, 294
like field of technology 295–6
Paris Convention 1883, Stockholm Act of 1967 286
Plant Breeder’s rights protection (footnote 3 on ‘to Article 3(1) TRIPS’) 287
Temporary Protection at Certain International Exhibitions 288
trade names 288
TRIPS-plus provisions 230, 270
unfair competition 288
Agreement on Trade-Related Investment Measures (TRIMS) 180
America Invents Act 2011 234, 239
ASEAN 30, 170–71
ASEAN Comprehensive Investment Treaty (2009) 177, 180
Beijing Treaty on Audiovisual Performances 2012 280
Article 4 (National Treatment) 280
Berne Convention for the Protection of Literary and Artistic Works (1886) 227, 260, 265, 282
Article 5 (National Treatment) xviii, 226–7, 252, 259–60, 269, 281–2
Article 6 (Possible Restriction of Protection) 291
Article 6bis (Moral Rights) 292
Article 7 (8. Applicable law; “comparison” of terms) 227, 265, 282
Article 14ter (Droit de suite) 276
Article 20 (Special Agreements) 269
Choice of law rule 283, 300–303
copyright broadcasting 276–80
computer programs 265
databases 264, 288
Digital Rights Management (DRM) 268
Droit de suite 276
equitable remuneration 279
fixation 282
formalities 260, 281–2
literary and artistic works 260
moral rights 292
performance rights 276–80
phonograms 276–80
private copying levies 274–6, 278, 280
public lending 256, 272–3
right of distribution 268
right of making available 268–9
rule of the shorter term 249, 263–4, 282
subsidiaries 271, 273–4
technological measures 268

redress 281
related rights 291
remedies of statutory damages and attorney’s fees 281, 290–91
Rule of the shorter term 249, 263–4, 282
territoriality 303
works definition/enumeration 261–6

Calvo Doctrine 167–8, 185, 189–90
Calvo clause 190
Charter of Economic Rights and Duties of States 162
compensation Hull formula 168, 190–91
Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms 1971 249
Convention on the Settlement of Investment Disputes between States and Nationals of other States 192

Lex loci protectionis 300
ownership 283
Paris Act of 1971 286

Anselm Kamperman Sanders - 9781783471225
Downloaded from Elgar Online at 02/01/2019 12:52:32AM via free access
<table>
<thead>
<tr>
<th>Term/Definition</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>term of protection</td>
<td>282</td>
</tr>
<tr>
<td>translation</td>
<td>256</td>
</tr>
<tr>
<td>works definition/enumeration</td>
<td>261–6</td>
</tr>
<tr>
<td>Customs Union/Territory</td>
<td>15, 254</td>
</tr>
<tr>
<td>Dispute Settlement</td>
<td></td>
</tr>
<tr>
<td>TRIPS Disputes</td>
<td>250</td>
</tr>
<tr>
<td>WTO Dispute Settlement Understanding (DSU)</td>
<td>32</td>
</tr>
<tr>
<td>distributive justice</td>
<td>20</td>
</tr>
<tr>
<td>Doha Development Agenda</td>
<td>33</td>
</tr>
<tr>
<td>reciprocal reciprocity</td>
<td>259, 288–9</td>
</tr>
<tr>
<td>European Convention on Human Rights (ECHR)</td>
<td>243</td>
</tr>
<tr>
<td>expropriation</td>
<td></td>
</tr>
<tr>
<td>Calvo Doctrine 167–8, 185, 189–90</td>
<td></td>
</tr>
<tr>
<td>Ecuador-United States BIT (signed 27 August 1993) 209–11</td>
<td></td>
</tr>
<tr>
<td>Hull formula 168, 190–91</td>
<td></td>
</tr>
<tr>
<td>Foreign Direct Investment (FDI)</td>
<td>161–82</td>
</tr>
<tr>
<td>International Investment Agreements</td>
<td>161–2, 179</td>
</tr>
<tr>
<td>Free Trade Agreement</td>
<td></td>
</tr>
<tr>
<td>ASEAN–Australia, China, India, Japan, New Zealand, Korea Regional Comprehensive Economic Partnership Agreement</td>
<td>199</td>
</tr>
<tr>
<td>ASEAN–Australia–New Zealand (2009)</td>
<td>198</td>
</tr>
<tr>
<td>ASEAN–India Trade in Services and Investment Agreements</td>
<td>198</td>
</tr>
<tr>
<td>Central America–Mexico (2011)</td>
<td>198</td>
</tr>
<tr>
<td>Transatlantic Trade and Investment Partnership</td>
<td>199</td>
</tr>
<tr>
<td>Transpacific Partnership</td>
<td>199</td>
</tr>
<tr>
<td>Free Trade Zone</td>
<td>15</td>
</tr>
<tr>
<td>GATS Scheduling Guidelines</td>
<td>56, 62–7, 69–73, 74, 79, 89</td>
</tr>
<tr>
<td>General Agreement on Tariffs and Trade (GATT) 1947 xix, 10, 17, 97, 122, 128, 232, 254, 271</td>
<td></td>
</tr>
<tr>
<td>General Agreement on Tariffs and Trade (GATT) Uruguay Round Agreement 1994</td>
<td></td>
</tr>
<tr>
<td>Article I (General Most-Favoured-Nation Treatment)</td>
<td>14, 34, 46</td>
</tr>
<tr>
<td>Article III (National Treatment)</td>
<td>10, 12, 17, 34–5, 37–8, 40, 42, 45, 51, 54, 55–8, 65, 72, 92–3, 97, 132, 136–40, 143, 164, 214, 257, 293</td>
</tr>
<tr>
<td>Article XI (General Elimination of Quantitative Restrictions)</td>
<td>72, 74</td>
</tr>
<tr>
<td>Article XX (General Exceptions)</td>
<td>18, 25, 52, 59, 65, 94, 108–10, 116–7, 121, 131, 136–40, 139, 147, 150, 177, 197, 214, 216</td>
</tr>
<tr>
<td>Article XXIV (Territorial Application – Frontier Traffic – Customs Unions and Free-trade Areas)</td>
<td>15, 23, 24, 270</td>
</tr>
<tr>
<td>differential treatment</td>
<td>18</td>
</tr>
<tr>
<td>discrimination (de facto and de jure)</td>
<td>35–6, 52–3, exemptions 18, 23</td>
</tr>
<tr>
<td>GATT 1994 59, 62–7, Preamble 3</td>
<td></td>
</tr>
<tr>
<td>regulatory freedom</td>
<td>147</td>
</tr>
</tbody>
</table>
The principle of national treatment in international economic law

General Agreement on Trade in Services (GATS) Uruguay Round Agreement 1994

Article I (Scope and Definition) 63–4

Article II (Most-Favoured-Nation Treatment) 14, 63, 76

Article V (Economic Integration) 15, 24

Article XIV (General Exceptions) 18, 80, 174, 177

Article XV (Subsidies) 74, 271

Article XVI (Market Access) 18, 56, 62, 68–9, 71, 78–80, 79–80

Article XVII (National Treatment) xx, 18, 55–6, 62, 70, 73–8, 78–86

Article XX (Schedules of Specific Commitments) 71–2

Article XXI (Modification of Schedules) 80

commercial presence 171
discrimination (de facto and de jure) 56–7, 68, 75–6, 82–6
market access rule 78–79, 81–6
MFN 64, 77
modifies the conditions on competition test 76
Preamble 63, 84
pre-establishment national treatment 171
quantitative restrictions 68
General Systems of Preferences (GSP) 22, 24, 31, 32
Genetically modified (GM) Food 139–40
geographical indications of origin 38–9, 230
Grace Period 240–46

Hull formula 168, 185

International Investment Agreements (IIA) 161–2, 165, 184–5

Argentina-Canada BIT (signed 5 November 1991) 170

ASEAN 170

Brazil-Chile BIT 175

Brazil-Cuba BIT (signed 26 June 1997) 168
broadcasting 176
burden of proof 165
Canada BIT Model (2012) 197
Canada-China BIT (signed 9 September 2012) 197
Canada–South Africa BIT (signed 27 November 1995) 169

Chile-Canada RTA (signed 5 December 1996) 176, 178

China–Cambodia BIT (signed 19 July 1996) 173

China–Czech Republic BIT (signed 8 December 2005) 172

China-Guyana BIT (signed 27 March 2003) 176
cultural industries 176

Ecuador-United States BIT (signed 27 August 1993) 209–11

Ecuador-Netherlands IIA 170

exceptions to national treatment 174–8

health care services 175

India-Sweden BIT 173

India-Turkey BIT (signed 17 September 1998) 172

India-Switzerland BIT (signed 4 September 1997) 177

Indonesia–Romania BIT (signed 26 June 1997) 167

Indonesia–Sweden BIT (signed 17 September 1992) 173

Indonesia–Thailand BIT (signed 17 February 1998) 173

Japan–Singapore RTA (signed 13 January 2002) 169

Jordan–Singapore BIT (signed 16 May 2004) 174–5

Malaysia-Germany BIT (signed 22 December 1996) 173

national security and public order 176

performance requirements 179

Peru–Czech Republic BIT (signed 16 March 1994) 170

Philippines–Czech Republic BIT (signed 5 April 1995) 172
Index

Philippines–UK BIT (signed 3 December 1980) 173
post-establishment national treatment 170, 172–3, 197
pre-establishment national treatment 169–71, 197
Russia–Canada BIT 170
Russia–Cyprus BIT 175
Russia–Egypt BIT (signed 23 September 1997) 175
Russia–Thailand BIT (signed October 2003) 176
Russia–US BIT (signed 17 June 1992) 173, 175, 178
Singapore–India RTA 170
Singapore–Mongolia BIT (signed 24 July 1995) 173
Singapore–Peru BIT (signed 27 February 2003) 173
South Africa–Turkey BIT (signed 23 June 2000) 172
subsidies and grants 176
termination 185–7
Turkey–Indonesia BIT 172
Vietnam–Chile BIT (signed 16 September 1999) 172
Vietnam–Japan BIT (signed 14 November 2003) 170, 175
Investor–state dispute settlement (ISDS) 187–8
labeling 44, 46
like circumstances 163, 166
like product 58–61, 97–114, 136–7, 213
aim and effect approach 138
Four–part test 97–102
‘like goods’ and ‘like circumstances’ 211–13
like field of technology 295–6
Lisbon Agreement for the Protection of Appellations of Origin and their International Registration 1957 230
Lomé Agreements 23

Madrid Agreement Concerning the International Registration of Marks 1891 230
Madrid Arrangement 1890/Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods 1891 230
Madrid Protocol/Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989 230
Market access rule 78–80
modifies the conditions of competition test 76
Most–favoured–nation treatment (MFN) fair and equitable treatment 184
Preferential trade agreements 14 principle 6, 8–9, 14, 231–2
regional integration 14, 22
Multifibre Agreement 25
national treatment arbitrary and unjustifiable treatment 144, 147
Article 18 Treaty on the Functioning of the European Union (TFEU) (Non–Discrimination and Citizenship of the Union) 10
Beneficiaries of and Exceptions to National Treatment under Treaties Administered by WIPO, Communication from the World Intellectual Property Organization 291, 297–9
best regulatory practices 143
breach (de facto) 80–86
breach (de jure) 86–90
Charter of Economic Rights and Duties of States 162
Conflict of law rule 283, 300–303
consumer preference 45
copyright remedies (US non–compliance with Berne Convention?) 281–2, 290–91
detrimental impact 52, 114–22, discriminatory intent 165
disproportionate advantage 204
The principle of national treatment in international economic law

Ecuador-United States BIT (signed 27 August 1993) 209–11
effective equality of opportunities 254–8
equal treatment 4–6, 8, 19, 23, 26, 34–5, 37, 53, 92, 231–2, 237, 246, 258–9, 285
filing fees 232
GATS Scheduling Guidelines 69–73
Government treatment 45
International Investment Agreements 165
market access rule 56
North American Free Trade Agreement (NAFTA) 194–5, 199
Organisation for Economic Co-operation and Development (OECD) 193–4
post-establishment national treatment 170, 172–3, 197
pre-establishment national treatment 169–71, 197
preferential treatment 167
principle 9–10, 62
quantitative restrictions 56
regulatory autonomy 144
risk-focused reach 144
SPS 131–57
treatment (no) less favourable 144–7, 150–51, 167, 203–7, 252, 254, 258
Unionist treatment (Berne Union) 281
Unionist treatment (Paris Union) 228
United Nations Conference on Trade and Development (UNCTAD) 162, 166
US Model BIT (2012) 196–7
non-discrimination 5, 7–8
arbitrary and unjustifiable treatment 144
distributive justice 20
North American Free Trade Agreement (NAFTA) 164
Article 1102 (National Treatment) 194–5, 199, 205–9, 212
Article 1105 (Fair and Equitable Treatment) 201, 205–6, 209, 212
Article 1106 (Performance Requirements) 205–6, 208
Article 1110 (Expropriation) 201, 205, 208, 212
reciprocity (sound recordings) 279
Organisation for Economic Co-operation and Development (OECD) 208
Declaration on International Investment and Multinational Enterprises 194
National Treatment Instrument 193–4
Paris Convention for the Protection of Industrial Property (1883)
Article 1 (Scope of Industrial Property) 227
Article 2 (National Treatment) xvii, 226
Article 3 (Same Treatment for Certain Categories of Persons as for Nationals of Countries of the Union) 226
Article 4 (Right of Priority) 228, 233–8
Article 4bis (Independence of Patents) 228, 237, 242
Article 5 (A. Patents: Importation of Articles; Failure to Work or Insufficient Working; Compulsory Licenses – B. Industrial Designs: Failure to Work; Importation of Articles – C. Marks: Failure to Use; Different Forms; Use by Co-proprietors – D. Patents, Utility Models, Marks, Industrial Designs: Marking) 246
Article 5quater (Patents: Importation of Products Manufactured by a Process Patent in the Importing Country) 228
Article 6 (Marks: Conditions of Registration; Independence of
<table>
<thead>
<tr>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection of Same Mark in Different Countries</td>
</tr>
<tr>
<td>Article 6quinquies (Marks: Telle Quelle)</td>
</tr>
<tr>
<td>Article 6sexies (Marks: Service marks)</td>
</tr>
<tr>
<td>Article 8 (Trade Names)</td>
</tr>
<tr>
<td>Article 9 (Marks, Trade Names: Seizure, on Importation, etc., of Goods Unlawfully Bearing a Mark or Trade Name)</td>
</tr>
<tr>
<td>Article 10 (False Indications: Seizure, on Importation, etc., of Goods Bearing False Indications as to their Source or the Identity of the Producer)</td>
</tr>
<tr>
<td>Article 10bis (Unfair Competition)</td>
</tr>
<tr>
<td>Article 11 (Temporary Protection at Certain International Exhibitions)</td>
</tr>
<tr>
<td>Article 19 (Special Agreements)</td>
</tr>
<tr>
<td>Conflict of law rule</td>
</tr>
<tr>
<td>Hague Revision Conference 1925</td>
</tr>
<tr>
<td>Lex loci protectionis</td>
</tr>
<tr>
<td>Lisbon Revision Conference 1963</td>
</tr>
<tr>
<td>London Revision Conference 1935</td>
</tr>
<tr>
<td>Madrid Revision Conference 1890</td>
</tr>
<tr>
<td>Stockholm Act of 1967</td>
</tr>
<tr>
<td>territoriality</td>
</tr>
<tr>
<td>Unionist treatment</td>
</tr>
<tr>
<td>Patent Law Treaty 1990</td>
</tr>
<tr>
<td>patents best mode disclosure</td>
</tr>
<tr>
<td>differential treatment</td>
</tr>
<tr>
<td>domestic use requirement</td>
</tr>
<tr>
<td>field of technology</td>
</tr>
<tr>
<td>grace period</td>
</tr>
<tr>
<td>Hilmer Doctrine</td>
</tr>
<tr>
<td>importation of patented articles</td>
</tr>
<tr>
<td>like field of technology</td>
</tr>
<tr>
<td>priority</td>
</tr>
<tr>
<td>territoriality</td>
</tr>
<tr>
<td>performance requirements</td>
</tr>
<tr>
<td>Preferential trade agreements (PTAs)</td>
</tr>
<tr>
<td>Punta Del Este Declaration</td>
</tr>
<tr>
<td>reciprocity</td>
</tr>
<tr>
<td>Droit de suite</td>
</tr>
<tr>
<td>Paris Convention Hague Revision Conference 1925</td>
</tr>
<tr>
<td>Rome Convention</td>
</tr>
<tr>
<td>Rule of the shorter term</td>
</tr>
<tr>
<td>sound recordings</td>
</tr>
<tr>
<td>Article 2 (National Treatment)</td>
</tr>
<tr>
<td>Article 7 (Minimum Protection for Performers)</td>
</tr>
<tr>
<td>Article 12 (Secondary Uses of Phonograms)</td>
</tr>
<tr>
<td>Article 16 (Reservations)</td>
</tr>
<tr>
<td>WIPO Guide to the Rome Convention</td>
</tr>
<tr>
<td>Russian revolution</td>
</tr>
<tr>
<td>Sovereign equality of States</td>
</tr>
<tr>
<td>Special and Differential treatment (S&amp;D)</td>
</tr>
<tr>
<td>technology transfer</td>
</tr>
<tr>
<td>territoriality</td>
</tr>
<tr>
<td>patents</td>
</tr>
<tr>
<td>Trade Marks Bilateral agreements</td>
</tr>
</tbody>
</table>
requirement of use 289
use restrictions 289
use without authorization of the right holder 289
trade names 227
Trans-Pacific Partnership (TPP) 15
Transatlantic Trade and Investment Partnership 15
Treaty on the Functioning of the European Union (TFEU)
Article 18 (Non-Discrimination and Citizenship of the Union) 10
Article 28:2 (Free Movement of Goods) 10

unfair competition 227
United Nations
Conference on Trade and Development (UNCTAD) 162, 166
Declaration on the Establishment of a New International Economic Order (1974) 191
Proclamation of a right to development (1986) 191
Resolution 1803 on Permanent Sovereignty over Natural Resources 191
United States Copyright Term Extension Act 282
Universal Copyright Convention 1952 249

Universal Declaration of Human Rights 20, 28
Uruguay Round of Multilateral Trade Negotiations 127
Agreement on Agriculture 127
utility models 227
WIPO Copyright Treaty (WCT) 1996 248, 268–70
Article 3 (National Treatment) 252
Article 4 (Computer Programs) 265
WIPO Performances and Phonograms Treaty (WPPT) 1996 248
Article 2 (Definitions) 267
Article 4 (National Treatment) 252, 266–8, 279–80, 284
Article 11 (Right of Reproduction) 279, 284
Article 15 (Right to Remuneration for Broadcasting and Communication to the Public) 280
Article 20 (Formalities) 284
Working Party on Border Tax Adjustments 97–102
WHO Framework Convention on Tobacco Control 112
World Trade Organization WTO Agreement 8, 188

The principle of national treatment in international economic law