

Articles

DIGITAL TRADE IN WTO-LAW — TAKING STOCK AND LOOKING AHEAD

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ABSTRACT

Figures in digital trade show a substantial growth over the last years, but WTO law does not provide for an adequate legal framework encompassing digital trade rules. The Information Technology Agreement might not encompass all new goods since the relevant Appendices have not been amended for 14 years and the digital services are only partially covered in the Specific GATS Commitments of WTO Members due to the fact that the so-called positive list approach requires active national commitments with respect to newly developed services. The most recent court practice (US-Gambling, China-AVHE), however, contains some promising signs of accepting e-commerce as service covered by the GATS. Legal scholars are now invited to formulate new digital trade rules facilitating the cross-border delivery of electronic goods and services as well as to develop concepts to overcome anticipated digital trade barriers (such as lack of access to technology, of interconnectivity and compatibility). Finally, the present digital divide must be overcome and turned into a digital opportunity for all.

KEYWORDS: *GATT v. GATS, E-Commerce, Future Digital Trade Rules, Information Technology Agreement, Preferential Trade Agreements*

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