

WTO AND THE PROTECTION OF PUBLIC MORALS

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ABSTRACT

The World Trade Organization (hereinafter “WTO”) members’ right to adopt measures to achieve certain nontrade objectives, notwithstanding any other provisions of WTO agreements, is well entrenched in the WTO legal system. These objectives, listed as general exceptions, have been a matter of contestation in several WTO disputes. One such exception that has found increased use in recent times is the adoption of measures to protect “public morals”. This paper attempts to analyse the scope and meaning of the public moral exception in the WTO context with specific reference to the evolving jurisprudence of the WTO, and its implication on the practices of WTO member States. The paper shall look at the evolving jurisprudence and the regulatory discretion as interpreted by the WTO panels and the Appellate Body (hereinafter “AB”). The paper finds that the WTO adjudicating bodies have taken a more lenient approach while interpreting the public moral exception and have shown deference to Members’ own determinations rather than imposing their own version of what constitute “public moral” in a given context. The Panel/AB’s show of deference towards national determination and the broadening of the scope of the public morals exception, however, have been balanced by a tightened necessity test. Although, this may have adverse implications on the use/abuse of the general exceptions.

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