

IS TANGIBILITY A PREREQUISITE? DIGITAL PRODUCTS AS GOODS

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ABSTRACT

This research is intended to answer whether digital products can be considered as goods even though these products are intangible. Electronic commerce has permeated the lives of billions, and yet World Trade Organization (hereinafter "WTO") law is still facing headwinds in the effort to tackle the issue adequately. One of the major issues is that members are unable to agree on whether to apply the General Agreement on Tariffs and Trade (hereinafter "GATT") or the General Agreement on Trade in Services (hereinafter "GATS") for digital products. The distinction itself could have a radical impact on digital trade, since the GATT regime is known to be more liberal compared to that of GATS. This paper argues that the WTO jurisprudence does not provide a clear guideline on how to properly classify a product. Nevertheless, the application of the rules of interpretation under the Vienna Convention on the Law of Treaties indicates that tangibility is not a prerequisite.

KEYWORDS: *digital products, electronic products, e-products, goods, GATT, digital content, electronic transmissions, electronic commerce, e-commerce, digital trade*

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