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Abstract

Defining the Contours of the Public Morals Exception under Article XX of the GATT 1994

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Though the liberalisation of trade in goods is the central objective of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article XX makes provisions on general exceptions to the legally binding trade liberalisation obligations. Of the ten paragraphs contained under Article XX that provide for various exceptions, the first paragraph – Article XX(a) – allows for derogation from the obligations under the GATT 1994 if the justification for this is based on a necessary protection of public morals. There are very few cases on the public morals exception. The *U.S. – Gambling* case was the first decided case where the public morals exception was the subject matter. However, this case was decided under the services regime in WTO law – i.e., the General Agreement on Trade in Services. The *China – Publications and Audiovisual Products* case offered the opportunity for a WTO dispute settlement panel and the Appellate Body to provide clarity on the public morals exception as it relates to trade in goods. This article explores the contours of the public morals exception under Article XX(a) of the GATT 1994 by engaging in analyses of the two decided cases where the issue of public morals was a key subject matter in the dispute. It also borrows from the jurisprudence on other exceptions under Article XX in a bid to map out the contours of the public morals exception.

Keywords: extra-territorial jurisdiction, public morals, trade liberalisation.

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