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Abstract

**“Mode Switching” as an Interpretational
Problem under Articles XVI and XVII of the
GATS**

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Economic studies provide evidence of inter-modal linkages across the different modes in the World Trade Organization (WTO) General Agreement on Trade in Services (GATS) mode of supply framework. Despite the distinct scheduling of specific commitments under each mode, substitutability and complementarity across modes exist in commercial practices. These cross-modal interdependencies are sometimes referred to as “mode switching”. Article I:2 of the GATS defines the four modes as delivery channels without indicating any interdependence these modes may have. The 2001 Scheduling Guidelines of the WTO’s Council of Trade in Services provide modal separability in the scheduling of commitments even when the delivery of a service requires the necessary utilization of two or more modes. Nevertheless, the interpretational implications of such scheduling practices have not been addressed in the literature or the GATS jurisprudence. This article, thus, identified and examined the interpretational lacunae associated with complementary inter-modal linkages. In order to do so, it interpreted Article I:2 of the GATS in accordance with the Vienna Convention on the Law of Treaties. It also utilized GATS jurisprudence to examine whether inter-modal linkages are considered in assessing the disputed measures. Additionally, it also used “mode switching” as an analytical lens to evaluate the interpretational challenges posed by cross-modal interdependencies. Accordingly, it argued that complementary inter-modal linkages unfold interpretational issues related to legal characterization, the internal consistency of commitments, and the interpretation of cumulative obligations. It suggested reading Article I:2 of the Agreement in accordance with the purpose and objective of the GATS to maintain the economic function of inter-modal linkages and also integrating such linkages into the treaty text and Scheduling Guidelines.

Keywords: GATS, inter-modal linkages, progressive liberalization, services trade

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