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Abstract

The Regulatory Implications of GATS Modal Commitments in Digitally Delivered Services

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There is an interface among the mode-based scheduling of commitments under the GATS, the fast-paced digitalization of services trade, and the regulatory autonomy of WTO Members. Digitalization has an enormous impact on how services are traded across borders. This impact also has important implications for the regulatory space of Members in the digital sector. By employing a doctrinal legal research approach, this paper analyzes and examines how commitments entered during the pre-digital GATS era constrain the regulatory freedom of Members to regulate cross-border services trade. Mode 1 commitments were entered before the escalation of digitalization and have fewer limitations, unlike modes 3 and 4. Accordingly, the imposition of such regulatory measures as data localization laws, fintech, and platform regulations may be challenged under the GATS for contravening the market access and national treatment guarantees provided in Articles XVI and XVII.

Keywords: Digitalization, Digital Services, GATS, Modal Commitments,
Mode of Supply, Services Trade

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