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Abstract

Loopholes, Legal Interpretations and Game Playing: Whither the WTO without the *Spirit of the GATT?*

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As with any document with legal form, the GATT and WTO agreements are replete with loopholes, vagueness and procedural rigidities that can be used to thwart or diminish the efficacy of what was intended when the document was agreed and drafted. Exploitation of such weaknesses is expected in, for example, tax codes. Until recently, the member states of the WTO have largely refrained from taking advantage of the opportunities for circumvention presented in the legal documents. The reason lies in the conduct embodied in the *Spirit of the GATT* which was informally embraced by member states and their diplomats right from the inception of the GATT. In recent years, however, acceptance of the *Spirit of the GATT* has waned, leading to exploitation of loopholes and other weaknesses of the WTO architecture, which threatens the ability of the organization and its agreements to function as intended. This paper examines two loopholes – (1) the Article XX(a) public morals exemptions and (2) the Article XXI national security exemption – and looks at how their recent use threatens the future viability of the WTO.

Keywords: loopholes, national security, public morals, spirit of the GATT