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Abstract

Interpreting “Necessary”: Balancing Trade Liberalization and Regulatory Autonomy

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The GATT, GATS, SPS, and TBT Agreements use the term “necessary” to demarcate the limits of permissible treaty inconsistent Member State measures, in the form of positive or negative obligations. A balance is struck between the pursuit of trade liberalization and maintenance of regulatory autonomy in the treaty text itself. Judicial interpretation by the Dispute Settlement Body of these provisions appears to have evolved and struck a different balance than that which was originally envisaged. This paper attempts to verify if the evolution of the interpretation of “necessary” maintains the balance between trade liberalization and regulatory autonomy originally envisioned in the WTO Agreements. First, through determination by examination of the supposed original balance in the treaty text itself, and thereafter by examination of evolution of interpretation of provisions which have received judicial attention of the DSB panel and Appellate Body.

Keywords: Exceptions, Least Restrictive Alternative, Necessary, Regulatory Autonomy, Trade Liberalization