



# LEGAL ANALYSIS OF INTERNATIONAL TRADE LAW AND DIGITAL TRADE

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## ABSTRACT

This brief gives a lawful examination of existing principles in computerized exchange in regards to the different parts of man-made consciousness ('computer based intelligence'), specifically (individual and nonpersonal) information, PC code as calculations, and figuring power (counting distributed computing). To do as such, the initial segment of this investigation will plan different worldwide exchange decides that influence cross-line streams of information, PC code and figuring ability to ecide their separate benefits and drawbacks.

This will frame the reason for the second piece of the examination, which will address the attractiveness and need of worldwide rulemaking around here. Digitization has extraordinarily extended the extent of exchange, and with it the extent of exchange regulation. Yet, the administrative system, albeit filling in reciprocal and territorial fora, is profoundly unique and stays divided, expanding the challenges confronting computerized exchange regulation.

It is normal these days to participate in computerized exchange without knowing it. A few exercises, such as purchasing books on Amazon or downloading computer games, show up naturally covered by computerized exchange, as they plainly include an on the web business exchange. Others, like gathering over Zoom or watching a video on YouTube, may not be perceived as computerized exchange, as there are apparently no agreements marked or money related trades, yet they also are properly arranged as computerized exchange. Basic to these various kinds of computerized exchange is the assortment and move of information innate to the arrangement of these labor and products, which might stream across different state borders. Thusly, while the exchange of past centuries was completed through camels along the Silk Street, ships cruising around the Cape of Good Expectation, and, starting with the last hundred years, cranes dumping compartments at tremendous ports, digitization has reclassified exchange our age.<sup>1</sup> However even as computerized exchange has turned into the undetectable texture of the advanced economy and our day to day existences and the advantages of the advanced change for exchange are applauded in report after report,<sup>2</sup> do we genuinely grasp what "computerized exchange" is and all the more critically how to manage it? This exposition resolves these inquiries and divulges the ease of the subject of computerized exchange – both from an innovative and a strategy lawful point of view.

**KEY WORDS-:** advanced exchange, internet business, information streams, particular economic deals, computerized economy arrangements, TAPED

## INTRODUCTION

the interconnected universe of today, advanced business has formed into a fundamental part of the global economy. The advancement of internet business, computerized administrations, and the progression of information across global lines has on a very basic level modified the manner by which organizations capability. It is accordingly difficult to exaggerate the impact that computerized business has had on the advancement of worldwide business regulation. One of the main parts of worldwide business regulation that has been affected by the ascent of advanced exchange is the space of global deals. By and large, exchanges including unfamiliar exchange were dealt with using unmistakable mediums, like paper documentation and the genuine shipment of wares. The multiplication of computerized advancements, then again, has made it feasible for organizations

to take part in quick worldwide exchanges without the requirement for an actual presence or the fruition of difficult desk work. New sorts of plans of action, like web-based commercial centers and stage economies, have arisen as an immediate consequence of the multiplication of computerized exchange. Digitalization processes are driving significant changes in the creation, trade, and utilization of products and services. The new models introduce a plenty of lawful and administrative worries that should be tended to. Free-er exchange will improve each state off, we make sense of and are told. For example, in light of the fact that the web isn't restricted by actual boundaries, it is more hard to figure out which state has authority and whose regulations apply while managing advanced issues. What's more, concerns in regards to licensed innovation privileges, shopper security.



## LITERATURE REVIEW

### 1. Global Exchange Rules, Information Streams, Registering Assets

what's more, Man-made brainpower Global exchange regulation looks to eliminate vulnerability for organizations and states participating in crossborder exchange. These guidelines were at first considered for customary exchange products, and later on refined to likewise apply to administrations. Today, their pertinence and need for change considering the computerized turn, especially with respect to man-made reasoning, has turned into a subject of monetary and political significance. This brief gives an outline of significant parts of exchange regulation, specifically European Association ('EU'), World Exchange Association ('WTO') regulation and ongoing International alliances ('FTAs'). Each plan will be reviewed for its pertinence to (i) individual and non-individual information; (ii) PC code as calculations; and (iii) figuring ability to pinpoint existing limitations on the exchange of man-made consciousness to give an image of the present status of exchange regulation and its relevance to man-made intelligence.

Man-made reasoning alludes to calculations that have been prepared on (frequently huge) amounts of information. For sure, upgrades in computerized reasoning over the course of the last<sup>1</sup> years are less because of significant forward leaps in calculations as opposed to changes in the enlarging accessibility of data of interest as well as enhancements in registering power. Cross-line exchange computerized administrations that incorporate artificial intelligence is consistently expanding, which brings such programming inside the extent of global exchange regulation. From one viewpoint, administrations as such are turning into an undeniably conspicuous part of worldwide exchange, while, on different, products progressively have an administrations part 1. Man-made reasoning can be integrated into labor and products in various structures, which brings up the issue of the use of worldwide exchange regulation to man-made reasoning and the in this way coming about consequences

<sup>1</sup> Consider, for example, the case of an oscillating brush associated with a portable application, where the application then, at that point, makes customized (future handling ideas) to the client.

<sup>2</sup> Note that digitalization overall has led to banter with regards to whether half breeds, for example, servitised merchandise are best qualified as

labor and products according to a legitimate viewpoint: Usman Ahmed, Brian Bieron, and Gary Horlick, *Mode 1, Mode 2 or Mode 10: How Should Internet providers be Ordered in the Overall Settlement on Exchange and Administrations?, Current Points in Worldwide Regulation*, Boston College School of Regulation, 2015. Accessible at: <https://www.bu.edu/ilj/2015/11/24/mode-1-mode-2-or-mode-10-how-should-internet-providers-be-characterized-in-the-worldwide>

### 2. Hindrances to Worldwide Exchange Labor and products

that coordinate Man-made reasoning as of late, different purviews have taken on measures connected with the center parts of fake knowledge: information, calculations, and processing power, which trouble or obstruct the global dissemination of man-made consciousness as well as its different parts. These new obstructions to computerized exchange are for the most part non-levy hindrances, including localisation measures, or public or potentially territorial guidelines, counting dissimilar ways to deal with information insurance and security prerequisites or oversight rules. Past, innovation norms can be utilized to incline toward nearby organizations as 'numerous utilizations of computer based intelligence include reciprocal advancements in which principles could not as yet exist'

Specifically, homegrown information confinement necessities have been the subject of much discussion. Information restriction estimates generally force impediments on the free development of information

. These actions include solicitations to utilize nearby server farms (which forestalls the utilization of distributed computing administrations where servers are situated external the pertinent purview) or through and through boycotts to move information abroad (for example to guarantee policing for digital protection reasons). These actions force topographical limits on information, as they expect that information is put away on nearby servers. These restriction estimates influence two center parts of man-made reasoning: information and PC stockpiling. Some have alluded to this pattern as 'information patriotism Others are wary whether such measures can as a general rule accomplish their expressed targets like protecting residents from unfamiliar reconnaissance, security and security, monetary turn of events, homegrown policing the assurance of opportunity.

Information restriction measures across purviews are shifted and range from rules with respect to content, like for example Nigeria's rules on satisfied advancement, online control (as rules set up in Turkey), information security rules as existing in the EU and South Korea, information move prerequisites, moves of source code in charge related data (USA), traffic steering necessities, which remembers limitations for<sup>2</sup> unfamiliar ISPs to

settlement on-exchange administration/#\_ftn18 <sup>3</sup> The way that information security prerequisites protection and information insurance may in some cases be viewed as an obstruction to exchange does of course not imply that these are unwanted. For sure, security and information assurance are crucial privileges safeguarded by the EU Sanction of Basic Freedoms <sup>4</sup> Avi Goldfarb et al, *man-made intelligence and Worldwide Exchange*, NBER Working Paper 24254 (2018) <https://www.nber.org/papers/w24254.pdf> p. 26. <sup>5</sup> See further Joshua Meltzer, 'Another Advanced Exchange Plan' [2015]

<sup>2</sup> Anupam Chander and Uyen P Le, 'Information Patriotism' (2015) 3 *Emory Regulation Diary* 64, 677. Anupam Chander and Uyen Le, *Breaking the Internet: Information Localisation versus the Worldwide Web*, UC Davis School of Regulation Working



give web access (Vietnam), nearby information stockpiling and handling necessities, for example, for example the Brazilian limitation prerequisites for public obtainment contracts remembering for cloud figuring administrations, prerequisites that specific information be handled locally (Russia) and the Chinese Extraordinary Firewall .A further illustration of information move prerequisites are India's necessity that installment specialist co-ops set up server farms or store their information with cloud suppliers utilizing Indian server farm.

Compulsory exchange of innovation necessities may also propel organizations to uncover components of an innovation, for example, the source code (in other words PC code that can clearly be perused by gifted people) of the product utilized in man-made brainpower. Nations can make market access restrictive to such revelations 11. Moreover, neighborhood content guidelines like substance obstructing, content sifting and geo-impeding influence the accessibility of information to prepare man-made brainpower on. Past,authorizing commitments for cloud administrations can hamper the consistent information streams between various server farms in different areas and locales that describe distributed computing

### 3 European Association Regulation

The European Association has elite ability to arrange economic deals for its part states 13.Article 207(3) TFEU gives that arranged arrangements should be in accordance with the EU's inner strategies and rules. Hence, any economic deal to which the EU would be a signatory should follow EU regulation, remembering its different arrangements for the admiration of key freedoms ought to as the right to information security as set out in Article 16 TFEU and Article 8 of the Sanction of Central Privileges.

Particularly the use of the information security arrangements to global information streams has been a muchdiscussed issue lately. Especially critical with regards to global information moves is the European Official courtroom's mid year 2020 choice in Information Security Chief v Facebook Ireland andMaximilian Schrems in which the ECJ revoked the EU-US Protection Safeguard and moreover put critical troubles on those expecting to move individual information from the EU to the US utilizing standard legally binding

statements under the GDPR14. Chander has contended that this administering is likened to a delicate information localisation necessity as it troubles the commodity of individual information outside the EU to a degree making it restrictively convoluted, especially for SMEs.

It ought to likewise be noticed that EU regulation encapsulates a certified restriction on information localisation prerequisites as they have been taken on in different purviews. The Guideline on the Free Progression of Non-Individual Information gives that information localisation necessities 'will be disallowed, except if they are legitimate on grounds of public security in consistence with the rule of proportionality'. Later on, there might be extra principles might affect the global flow of information and man-made intelligence, for example conceivable straightforwardness prerequisites4 The Overall Settlement on Exchange Administrations WTO regulation covers exchange man-made brainpower (regularly exchange computerized administrations or servitised merchandise with an artificial intelligence part). Of specific pertinence in this regard is the WTO's Overall Settlement on Exchange Administrations ('GATS'). Where exchange happens between individuals from the WTO, (for example, the European Association and its part states) public estimates that confine exchange man-made reasoning must consequently be steady with the GATS, or, where they are not, be gotten by one of its exemptions.

The GATS is the principal multilateral deal on the advancement of global exchange administrations. It looks to advance exchange administrations by dispensing with exchange hindrances and applies to all administrations aside from taxpayer driven organizations. There are, notwithstanding, cutoff points to its exchange progression plan. Without a doubt, that's what its preface perceives individuals additionally have an interest in assisting homegrown strategy objectives through guideline. The GATS applies to any action 'whether as a regulation, guideline, rule, strategy, choice, regulatory activity or whatever other structure' that covers administrations from their introduction to conclusive conveyance 20. Consequently, where a homegrown measure influences exchange administrations, it falls under the GATS 21.

WTO regulation works in light of qualifications on whether something is a decent, a help or protected innovation. This makes

Paper 2014-1 (2014) 9 Nivedita Sen, 'Understanding the Job of WTO in Worldwide Information Streams: Taking the Progression or the Administrative Independence Way?' (2018) 21 *Diary of Worldwide Monetary Regulation* <https://academic.oup.com/jiel/article/21/2/323/5004397#117982790>  
10 See further <https://www.pwc.in/counseling/digitalprotection/informationsecurity/informationlocalisationnorms.html#:~:text=In%202017%2C%20several%20directives%20and,for%20data%20localisation%20across%20sectors.&text=>

However%2C%20in%20June%202019%2C%20the,data%20is%20kept%20outside%20India.  
11 Andrea Andrenelli, Julien Gourdon and Evdokia Moisé, 'Worldwide Innovation Move Strategies' (2019) 222 *OECD Exchange Strategy Papers*  
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difficulties with respect to categorisations of information as it can connect these classifications.

Regardless, obviously WTO regulation gets exchange information streams and computerized reasoning. In US Betting, the WTO debate settlement system held that the web-based electronic conveyance of a help is inside the domain of the GATS and characterized it under Mode 122. China-Sound visuals affirmed that help responsibilities stretch out to administrations conveyed online<sup>23</sup>. WTO regulation characterizes administrations as indicated by existing help groupings, which recognize a party's responsibilities. This is finished based on a 1994 rundown as the WTO Administrations Sectoral. It tends not out of the ordinary that the topic of groupings will be the subject of future exchange debates. These general assistance classifications can be hard to guide to contemporary (advanced) administrations . Almost certainly, man-made consciousness will additionally compound that trouble, especially as it becomes coordinated in an enormous wide range of administrations (like medical care or monetary administrations, to give only two models). Where the GATS apply, its overall commitments should be regarded.

### RESEARCH OBJECTIVES

- The Most Preferred Nation('MFN') treatment commands that every part will treat the administrations and administration supplies of different individuals in a 'no less positive' way than 'like' homegrown administrations what's more, administrations providers .
  - The Public Treatment necessity constrains WTO individuals to treat administrations and administration providers from other WTO individuals similarly to homegrown administrations and administration providers
  - The Homegrown Guideline decide predicts that every part 'will guarantee that all proportions of general application influencing exchange administrations are controlled in a sensible, evenhanded and unprejudiced way
- This is basically a procedural fair treatment and reasonableness ensure that guarantees that, bury alia, permitting necessities follow objective measures.
- The Market Access decide expects that individuals limited by responsibilities in its timetable shouldn't force the six market access boundaries recorded n Article XVI:2 Public measures relevant to man-made consciousness can fall inside the extent of the GATS in various structures. Numerous locales have in the previous years taken on measures concerning information, some of which fall inside the domain of the GATS. For instance, information localisation prerequisites can cause circumstances

<sup>3</sup> WTO, *Administrations Sectoral Arrangement Rundown*. Note by the Secretariat, MTN.GNS/W/120, 10 July 1991. See further Rolf Weber and Mira Burri, *Arrangement of Administrations in the Advanced Economy* (Schulthess 2012). GATS Article II. Article XVII.1 GATS. Article VI GATS. Article XVI GATS. Holger Hestermeyer and Laura Nielsen, 'The Legitimateness of Nearby Satisfied Measures under WTO Regulation' (2014) 48 *Diary of World Exchange*, 553. Article XIV of the

where unfamiliar help providers are dealt with less well than homegrown assistance providers, in break of the public treatment rule. Depending on the standard, they may likewise be risky from a market access viewpoint. This likewise affects distributed computing as business are confronted with a smaller selection of suppliers where they can't depend on administrations utilizing servers situated beyond the purview.

Information assurance standards can bring up issues in regards to the public treatment arrangements, yet can be legitimate by individuals' opportunity to embrace security insurances. Specifically information localisation measures have been dependent upon clear discussion in regards to their effect on exchange and it subsequently does not shock anyone that the point is additionally on the plan of the WTO according to its Joint Assertion Drive on web based business.

Part estimates connected with programming that might make issues under the GATS incorporate necessary innovation move prerequisites (which might appear as a commitment to uncover source code) .

It was seen over that in certain wards, market access is simply allowed to firms that make accessible the source code of the product to nearby legislatures. Without a doubt, legislatures might interest admittance to source code for the sake of security, (for example, to decrease extortion or guarantee public safety) Obligatory innovation move necessities, for example, the divulgence of source code are gotten by GATS market access and homegrown guideline disciplines (albeit protected innovation freedoms and proprietary advantages are safeguarded under <sup>3</sup>the WTO Outings Arrangement). Beneath, it will be seen that such standards are currently denied by ongoing economic deals, for example, the TPP, which disallows accomplices from requesting the exposure of source code, with a couple of special cases, for example, security reasons important such measures, which at first sight repudiate WTO standards can regardless be legitimate under the GATS where they are gotten by one of tits different supports. Nonetheless, at the same time, such measures might be reasonable by the overall exemptions conditions connected with security, public ethics, and privacy<sup>36</sup>. GATS Article V, which manages monetary coordination and empowers individuals to turn into involved with an understanding changing exchange with different gatherings; GATS Article XIV which empowers individuals to seek after their security advantages, and GATS Article XIV, which draws in with overall population interest measures. Until this point in time, no cases on these inquiries have been brought before the WTO debate settlement systems.

*Overall Settlement on Exchange Administrations ensures that actions that are really planned to safeguard individual information are completely viable with GATS.* World Exchange Association, *Joint Proclamation on Electronic Trade* (WT/L/1056), 25 January 2019. 33 See further Andrea Andrenello et al, 'Global Innovation Move Approaches' (2019) 222 *OECD Exchange Strategy Papers*.



Previously, the security exclusion has not frequently been utilized. Notwithstanding, it has been anticipated that later on, legislatures might be to a greater extent depending on such exemptions, which will thusly increment generally speaking exchange limitations. For sure, this peculiarity has previously begun. In 2019, a WTO found in Russia Measures Concerning Traffic On the way that the GATS security special cases can be explored by WTO debate settlement boards to decide if there are objective security grounds under GATT Article and that individuals summoning that arrangement should show that there are pure intentions fundamental security interests. Under Article XIV(c), individuals can seek after significant public interests, including the avoidance of misleading and fake practices and the insurance of security where these actions meet the arrangements material prerequisites and the chapeau.

Past the overall GATS plot, various area explicit standards are additionally of significance for the exchange of labor and products consolidating man-made brainpower under WTO regulation, like area explicit responsibilities for broadcast communications (as predicted by the Extension on Broadcast communications) as well as the Add on Monetary Administrations. The last option gives that individuals will not embrace measures forestalling data moves or preclusions on the handling of monetary data including 'moves of information by electronic means' aside from where important for information insurance reasons.

The Data Innovation Understanding is a plurilateral bargain regardless of having been embraced under the sponsorship of the WTO (this implies that main restricting upon those gatherings have marked it). Many key wards in the creating and created world have marked, yet it is simply a duty cutting component that doesn't consolidate restricting responsibilities with respect to non-duty obstructions. The ITA additionally works on the bass of an item grouping list tracing all the way back to 1989, obviously such orders can only with significant effort be applied to current and future technologies.

## CONCLUSION

Digitization has extended the extent of both endlessly exchange regulation, in this manner changing the idea of the administrative issues in question. The scene of computerized exchange rulemaking is probably going to stay dynamic. Mechanical advancements will definitely request proper administrative reactions (for example concerning man-made brainpower). Yet, it isn't just mechanical change, however international tensions that will drive the administrative scene, as nations keep on situating themselves separately opposite essential partners, like China, the EU, and the US, and in new international blocks, like the Indo-Pacific Financial Structure for Success. The next few years will test the eagerness for global participation in the space of advanced exchange guideline and explain how much lawful systems created in respective and provincial gatherings can be translated to the WTO, while additionally thinking about the interests of creating and least-created nations

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