

RESTRICTING ACCESS TO SERVICES OR INFORMATION SYSTEMS IN LIGHT OF TRADE IN SERVICES COMMITMENTS

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ABSTRACT

States increasingly consider restricting access to online services or information systems as part of their domestic policies, as well as with regard to international disputes or conflicts. Such access restriction is often critically approached through human rights concerns. This paper argues that, additionally, commitments in the realm of the World Trade Organization (WTO) are applicable to those measures. Hence, states need to consider their individual obligations with regard to trade in services when tailoring such measures.

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I. INTRODUCTION

Based on the economic principle of comparative advantages, the aim of the main agreements of the WTO, the General Agreement on Tariffs and Trade (GATT)¹

The genesis for the essays that comprise issue 32.2 of this Journal was a May 2017 workshop hosted at Temple University, and co-hosted with Leiden University. Under the theme “Influencing International Behavior in Cyberspace: Devising a Playbook of Consequences for Cyber Incidents,” the workshop gathered a broad array of academic and governmental experts. Participants included representatives of the Estonian, Finnish, and U.S. governments (including officials from the Department of Defense, the State Department, and the U.S. Trade Representative). All government officials, however, participated in their personal capacity. As such, the views expressed in this special issue should not be attributed to any government or government agency.

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1. General Agreement on Tariffs and Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187 [hereinafter GATT].

and the General Agreement on Trade in Services (GATS),² is to establish free trade in order to foster economic growth and economic development. Therefore, the agreements work toward the reduction of trade barriers to induce free trade between states.³ This results, inter alia, in an increasing economic interdependence between states leading to situations where many state regulations and activities in other areas have an impact on international trade.⁴ The same applies to activities affecting the internet.⁵ The internet has contributed to the rapid movement of data across borders and is key to the global economy today.⁶ This interdependence between access to global data flows and international trade leads to the assumption that blocking websites and access to services may have implications for both the global economy and international trade. Therefore, this article seeks to shed some light on blocking access to certain websites and online services, and the legality of such actions under international trade law. This has been done to some extent in the relevant literature,⁷ as well as in *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services (US – Gambling)* in front of the WTO Dispute Settlement Body (DSB).⁸ Today, these considerations become especially relevant due to the discussion concerning norms on responsible state behavior in cyberspace. This is because it is often assumed that states have much leeway due to the uncertainty regarding the application of international law to state activities in cyberspace.⁹ Furthermore, blocking access to websites is increasingly being carried

2. General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183 [hereinafter GATS].

3. See, e.g., GATT arts. I, III, XI (indicating through its terms a goal of promoting freer trade between states).

4. JOOST PAUWELYN, CONFLICT OF NORMS IN PUBLIC INTERNATIONAL LAW: HOW WTO LAW RELATES TO OTHER RULES OF INTERNATIONAL LAW 20 (2003), http://assets.cambridge.org/97805218/24880/frontmatter/9780521824880_frontmatter.pdf.

5. For an illustration of the impact of activities carried out through the internet on different fields of politics, see Joshua Meltzer, *The Internet, Cross-Border Data Flows and International Trade*, ISSUES IN TECH. INNOVATION, Feb. 2013, at 1.

6. See *id.* at 4 (detailing the facility of cross-border data flows caused by the internet, evolving various industries).

7. See, e.g., Tim Wu, *The World Trade Law of Censorship and Internet Filtering*, 7 CHI. J. INT'L L. 263, 268 (2006) (discussing the question of categorizing internet-based services as goods or services for WTO regulation); see generally Kristen A. Knapp, *Internet Filtering: The Ineffectiveness of WTO Remedies and the Availability of Alternative Tort Remedies*, 28 JOHN MARSHALL J. INFO. TECH. & PRIVACY L. 273 (2010) (arguing that U.S. internet filtering does not violate GATS, but tort remedies may be available instead); Stuart S. Malawer, *Internet Commerce and Trade Policy*, VIRGINIA LAWYER, June 1999, at 2 (surveying the issues of governing international internet commerce).

8. Appellate Body Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R (adopted Apr. 20, 2005) [hereinafter Appellate Body Report].

9. See Rep. of the Grp. of Governmental Experts on Dev. in the Field of Info. and Telecomm. in the Context of Int'l Sec., Sixty-Eighth Session, U.N. Doc. A/68/98 (June 24, 2013); see also Rep. of the Grp. of Governmental Experts on Dev. in the Field of Info. and Telecomm. in the Context of Int'l Sec., Seventieth Session, U.N. Doc. A/70/174 (July 22, 2015) (displaying the outcomes of negotiations within the UNGGE, reflecting the uncertainty of the application of international law on cyberspace); Michael Schmitt, *US Transparency Regarding International Law*

out by states for domestic reasons,¹⁰ as well as part of interstate relations.¹¹

To illustrate these considerations, two case studies will be examined. The first will consider the blocking of Russian websites by Ukraine in the aftermath of the annexation of Crimea, as it is part of current negotiations under the WTO Dispute Settlement Procedure. The second case study focuses on the limitation of access to websites by Turkish authorities. Cases of censorship, such as these, have often been approached through human rights concerns, and not as the subject of current interstate conflict.¹² However, this paper argues that censorship can also be considered in light of trade commitments.

II. GATS COMMITMENTS AND ONLINE SERVICES

Trade in services has always been a sensitive and controversial topic for WTO member states.¹³ Therefore, they agreed on the approach of anchoring commitments in positive lists.¹⁴ By doing so, states can decide individually which services they want to liberalize by including specific commitments in their national schedules.¹⁵ Those services are divided into different sectors. Regarding online services, the classification of telecommunication services is the most relevant categorization. Telecommunication services were adjoined into the WTO regime through the WTO Agreement on Basic Telecommunications (Fourth Protocol).¹⁶ For the classification of services, member states often refer to the Central Product Classification (CPC) system of the United Nations Statistics Division (UNSD).¹⁷ One of the

in Cyberspace, JUST SECURITY (Nov. 15, 2016), <https://www.justsecurity.org/34465/transparency-international-law-cyberspace/> (discussing states' duties under international cyberspace law).

10. See generally SANJA KELLY ET AL., FREEDOM HOUSE, FREEDOM ON THE NET 2016, SILENCING THE MESSENGER: COMMUNICATION APPS UNDER PRESSURE (2016), https://freedomhouse.org/sites/default/files/FOTN_2016_BOOKLET_FINAL.pdf (reporting the results of its annual study of worldwide internet freedom and finding that censorship of domestic political opposition groups has expanded).

11. See, e.g., Council Decision 2012/152/CFSP, 2012 O.J. (L 77/18) (deciding upon the denial of access to “[specialized] financial messaging services” as part of EU sanctions against Iran); *Iran’s Banks to Be Blocked from Global Banking System*, BBC NEWS (Mar. 15, 2012), <http://www.bbc.com/news/business-17390456> (explaining how EU sanctions forced Swift, the Belgium-based Society for Worldwide Interbank Financial Telecommunication that routes most banking transactions, to remove Iran’s access to its systems).

12. Meltzer, *supra* note 5, at 9; see also COUNCIL OF EUR., EUROPEAN COURT OF HUMAN RIGHTS RESEARCH DIV., INTERNET: CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS (2015), http://www.echr.coe.int/Documents/Research_report_internet_ENG.pdf (listing internet-related cases dealt with under the European Convention on Human Rights).

13. However, it has been argued that back in the 1990s states did not fully understand what implications online trade would have in the future. See Meltzer, *supra* note 5, at 13.

14. See Fourth Protocol to the General Agreement on Trade in Services, ¶ 1, WTO Doc. S/L/20 (adopted Jan. 1, 1998) [hereinafter Fourth Protocol] (establishing a new “Schedule of Specific Commitments” for WTO members, concerning basic telecommunications).

15. GATS, *supra* note 2, art. XX.

16. Fourth Protocol, *supra* note 14.

17. Dep’t of Econ. & Soc. Affairs, Central Product Classification (CPC) Version 2.1, U.N.

classifications within the CPC that is relevant for online services is CPC 843,¹⁸ “Data/online processing services.”¹⁹ In a next step, states clarify their commitments with regard to market access and national treatment. Hence, States are only bound to the extent to which they have committed themselves in their national schedule.

Within the general rules of the GATS, four different ways of supplying services exist. The definition of trade in services provided in GATS Article I(2)(a) is of special importance to services supplied through the internet.²⁰ Trade in services is defined in part as the “supply of a service from the territory of one Member into the territory of any other Member,”²¹ often referred to as “mode 1.”²² The relevance of this definition to online services was stressed by the findings in the *US – Gambling* case.²³ Accordingly, mode 1 covers a situation in which the service supplier and consumer are present in two different member states, hence the service is supplied cross-border.²⁴ The “supply of a service through telecommunications or mail”²⁵ is an example of a mode 1 service supply. Other technical means by which a service can be provided cross-border include the internet.²⁶ At the same time, the Panel also emphasized the principle of technological neutrality, which it qualifies as being “largely shared among WTO Members.”²⁷ According to this principle, “the GATS is technologically neutral in the sense that it does not contain any provisions that distinguish between the different technological means through which a service may be supplied.”²⁸

In the case where a service is covered by a national schedule, then a state should

Doc. ST/ESA/STAT/SER.M/77/Ver.2.1 (2015).

18. *See id.* at 123.

19. *See id.*; *see also* Fredrik Erixon et al., *Protectionism Online: Internet Censorship and International Trade Law*, 12 EUR. CTR. INT'L POL. ECON. 1, 10 (2009) (“[T]he category group ‘data/online processing services’ [is] equivalent to CPC 843 . . .”).

20. Anonymous, *A Dual Track Approach to Challenge Chinese Censorship in the WTO: The (Future) Case of Google and Facebook*, 34 MICH. J. INT'L L. 857, 871–73 (2013) [hereinafter *A Dual Track Approach*]; *see* Wu, *supra* note 7, at 275 (“[F]or Internet services, much of the importance of the GATS Telecommunications commitments as applied to the Internet is through Mode 1—cross-border provision of services. Whether or not intended by the drafters, this delivery mode formulation is nearly synonymous with ‘Internet-based.’ Thus, the analysis of the GATS and services is better understood as an analysis of the commitments to Mode 1 service liberalization.”).

21. GATS, *supra* note 2, art. I(2)(a).

22. *E.g.*, Panel Report, *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, ¶ 3.29, WT/DS285/R (adopted Apr., 2005) [hereinafter Panel Report, *United States*].

23. Appellate Body Report, *supra* note 8.

24. GATT Secretariat, Group of Negotiations on Services, *Scheduling of Initial Commitments in Trade in Services: Explanatory Note*, ¶ 18, MTN.GNS/W/164 (Sept. 3, 1993).

25. *Id.* ¶ 19(a).

26. Panel Report, *United States*, *supra* note 22, ¶ 6.33.

27. *Id.* ¶ 6.285.

28. Council for Trade in Services, *Work Programme on Electronic Commerce – Progress Report to the General Council*, ¶ 4, WTO Doc. S/L/74 (July 27, 1999); *see also* Sacha Wunsch-Vincent, *The Internet, Cross-Border Trade in Services, and the GATS: Lessons from US–Gambling*, 5 WORLD TRADE REV. 319, 330 (2006); Erixon et al., *supra* note 19, at 10; Panel Report, *United States*, *supra* note 22, ¶ 6.285.

not take any measure which would contradict the commitments it has made with regard to the respective service sector. Commitments entailed in a schedule are inter alia state obligations with regard to market access,²⁹ national treatment,³⁰ and most-favored-nation treatment.³¹ In such a scenario, a state entails commitments with regard to market access in its schedule, and any measure which limits the number of service suppliers would be a violation of the GATS.³² According to the provision on national treatment, no measure may lead to unequal treatment of the foreign service supplier compared to a domestic supplier of like services.³³ Finally, no measure may lead to unequal treatment between a foreign service supplier and the foreign service supplier of the targeted state according to the most-favored-nation principle.³⁴

Another important document with regard to online services is the Annex on Telecommunication.³⁵ This Annex acknowledges the dual role of the telecommunication sector being a sector of economic activity on the one side and providing the underlying transport means for several other activities on the other side. It targets domestic measures which affect the access to and use of telecommunications infrastructure (networks and services).³⁶ Hence, it is concerned with the supply of value-added services through such networks.³⁷ The Annex applies “to all measures of a Member that affect access to and use of public telecommunications transport networks and services.”³⁸ Accordingly, Annex art. 5(a) prescribes that each state has to ensure the access to and use of its “public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions,” regarding those services as specified in its schedule.³⁹ Hence, a service supplier for a scheduled service of another WTO member state is entitled to access and use the public telecommunication transport networks and services.⁴⁰ Therefore, the denial of access to infrastructure located on a state’s own territory would need to be considered in light of its trade commitments.

29. GATS, *supra* note 2, art. XVI.

30. GATS, *supra* note 2, art. XVII.

31. GATS, *supra* note 2, art. II.

32. GATS, *supra* note 2, art. XVI(2)lit.a.

33. GATS, *supra* note 2, art. XVII.

34. *Id.*

35. General Agreement on Trade in Services, Annex on Telecommunications, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], Annex 1B, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS: THE LEGAL TEXTS 359 (GATT Secretariat 1994), 33 I.L.M. 44 (1994) [hereinafter GATS, Annex on Telecommunications].

36. See Henry Shuchao Gao, *Annex on Telecommunications*, in WTO—TRADE IN SERVICES 683, 689 (Rüdiger Wolfrum et al. eds., 2008) (explaining the effects of the Annex on Telecommunications, applying obligations to GATS members).

37. Ian Walden, *International Telecommunications Law, the Internet and the Regulation of Cyberspace*, in PEACETIME REGIME FOR STATE ACTIVITIES IN CYBERSPACE, INTERNATIONAL LAW, INTERNATIONAL RELATIONS AND DIPLOMACY 261, 280 (Katharina Ziolkowski ed., 2013).

38. GATS, Annex on Telecommunications, *supra* note 35, art. 2(a).

39. *Id.* art. 5(a).

40. Gao, *supra* note 36, at 697.

If it is contrary to the commitments a state has made, such a measure could qualify as a breach of an international obligation.⁴¹ Furthermore, the provisions of the Annex underline the obligations of member states regarding the grant of market access⁴² and stress the principle of technical neutrality.

In conclusion, to determine which domestic measures are contrary to the GATS, several elements must be met. First, the service in question must be covered by the schedule of commitments. Second, the member state must have made commitments regarding the mode of supply concerned. Finally, the measure taken by the state must violate the promised commitments under the schedule with regard to market access or national treatment.⁴³ However, measures preliminarily rendered as contrary to the GATS can be justified. The GATS allows for a deviation from the commitments due to considerations of general exceptions such as public order as well as security exceptions.⁴⁴

III. CASE STUDIES

A. *Ukraine*

In response to the annexation of Crimea by the Russian Federation, Ukraine adopted Decree No. 133/2017 “on the decision of the National Security and Defence Council of Ukraine of 28 April 2017 on the Imposition of Personal Special Economic and Other Restrictive Measures (Sanctions).”⁴⁵ The decree requires internet service providers to block access to certain Russian websites, including online search engines and email services.⁴⁶ In response, Russia started consultation procedures in accordance with the Dispute Settlement Understanding of the WTO regime.⁴⁷ In the request for consultation, Russia complains about measures taken by Ukraine since 2014 which led to discrimination of persons, goods, and services of

41. *But see* Schmitt, *supra* note 9 (showing that the U.S. position, does not take into account trade commitments when analyzing the response to a cyberattack).

42. Panel Report, *Mexico—Measures Affecting Telecommunications Services*, ¶ 7.278, WTO Doc. WT/DS204/R (adopted June 1, 2004) (clarifying within its Mexico-Telecoms decision that the Panel decision includes not only the use of networks but also access to the market for all services, regarding which a member has made specific commitments within its schedules).

43. *See A Dual Track Approach*, *supra* note 20, at 871–73 (discussing the elements for determining which domestic measures are contrary to the GATS).

44. *See* Joel P. Trachtman, *International Economic Law in the Cyber Arena*, in PEACETIME REGIME FOR STATE ACTIVITIES IN CYBERSPACE: INTERNATIONAL LAW, INTERNATIONAL RELATIONS AND DIPLOMACY, 380 (Katharina Ziolkowski ed., 2013) (analyzing the security exceptions in depth).

45. Decree of the President of Ukraine (Oficijnyj Visnyk Ukrainy, 2017, no. 133, Annex), <http://www.president.gov.ua/documents/1332017-21850>; *see* Alec Luhn, *Ukraine Blocks Popular Social Networks as Part of Sanctions on Russia*, GUARDIAN (May 16, 2017, 12:40 PM), <https://www.theguardian.com/world/2017/may/16/ukraine-blocks-popular-russian-websites-kremlin-role-war> (providing a short description of the decree).

46. *See* Decree of the President of Ukraine, *supra* note 45.

47. *See* Understanding on Rules and Procedures Governing the Settlement of Disputes art. 4, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

the Russian Federation.⁴⁸ Russia complains that the decree limits, inter alia, the number of service suppliers, which would amount to a prohibited measure under GATS art. XVI(2)lit.a (market access). The email service Mail.ru and the search engine Yandex are part of the impacted entities.⁴⁹

In order to determine whether blocking those online services breaches Ukraine's obligations under the GATS, the Ukrainian schedule of commitments needs to be considered: Ukraine has no reservations with regard to the mode 1 supply of electronic mail services or online information and database retrieval.⁵⁰ Hence, market access must be accorded to all Russian (and other member state) services in this sector. By blocking certain Russian service suppliers, the decree limits the number of service suppliers by prohibiting their access to the Ukrainian market, and hence violates GATS art. XVI(2)lit.a.

Furthermore, the decree leads to difference in treatment between Russian service suppliers and service suppliers of other countries. In order to examine a violation of the most-favored-nation treatment, the establishment of likeness between the service or service supplier⁵¹ in question (Mail.ru) and another WTO member state service or service supplier is crucial. With regard to the criterion of likeness, the WTO panels found that if the measure in question targets certain service suppliers de jure based on their origin, it can be assumed that the criterion of likeness is fulfilled.⁵² Hence, it can also be argued that the decree additionally violates the provision on most-favored-nation treatment.

The decree at hand is part of Ukraine's response to the annexation of Crimea by the Russian Federation and thus could be justified under international law by classifying it as a countermeasure.⁵³ A countermeasure is an act of an injured State not in conformity with an international obligation, taken in response to an international wrongful act of another state.⁵⁴ In order to be legitimate, countermeasures must adhere to certain criteria such as being proportionate and

48. Request for Consultations by the Russian Federation, *Ukraine – Measures Relating to Trade in Goods and Services*, WTO Doc. WT/DS525/1 (June 1, 2017).

49. See Decree of the President of Ukraine (Oficijnyj Visnyk Ukrainy, 133/2017, no. 175, Annex 2, 422–25), http://www.president.gov.ua/storage/j-files-storage/00/40/38/6f76b8df9d0716da74bb4ae6a900d483_1494964345.pdf.

50. See Ukraine – Schedule of Specific Commitments, Telecommunication Services, Value-added Telecommunication Services, GATS Doc. GATS/SC/144, 17–19 (Mar. 10, 2008).

51. For an overview of a discussion on the challenges of these provisions, see WTO Economic Research and Statistics Division, *Determining “likeness” under the GATS: Squaring the Circle?*, Staff Working Paper ESRD-2006-08 (Sept. 2006) (providing an overview of the challenges posed by these provisions).

52. Appellate Body Report, *Argentina – Measures Relating to Trade in Goods and Services*, ¶ 6.35 et seq., WTO Doc. WT/DS453/AB/R (May 9, 2016).

53. See also Diane Desierto, *The EU/US v. Russia Trade Wars: Revisiting GATT Article XXI and the International Law on Unilateral Economic Sanctions*, EJIL: TALK!, (Sept. 22, 2014), <https://www.ejiltalk.org/the-eu-us-v-russia-trade-wars-revisiting-gatt-article-xxi-and-the-international-law-on-unilateral-economic-sanctions-2/>.

54. Draft Articles on Responsibility of States for International Wrongful Acts, Int'l Law Comm'n, Rep. on the Work of Its Sixty-Fourth Session, UN Doc. A/56/10, art. 22.

reversible or temporary.⁵⁵ In addition, the GATS also allows for exceptions based on security concerns “*taken in time of war or other emergency in international relations.*”⁵⁶ Therefore, the measures taken by Ukraine may be justified under general international law as well as the GATS itself.

Due to Ukraine’s commitments regarding market access and national treatment in its schedule in the sector of online services, blocking those services is presumptively wrongful according to the GATS. However, the measures are possibly justified according to GATS art. XIV or general international law.

B. Turkey

According to Freedom House, “[b]locking continues to increase steadily in Turkey.”⁵⁷ Targets of blocking practices are news websites, blogs of online communities, and social media.⁵⁸ In addition to Facebook and Twitter, YouTube has also been blocked by the Turkish authorities.⁵⁹ YouTube, the service supplier, is a subsidiary company of Google Inc., a corporation organized and existing under U.S. law.⁶⁰ YouTube provides video and audio streaming services, giving users the ability to upload, view, and share videos.⁶¹ Those services include streamed video data sent over the internet.⁶²

In order to establish whether the restriction of access to services provided by YouTube is a concern under the GATS, it is again necessary to examine the scheduled commitments by Turkey. According to section 843 CPC, “online content,” Turkey has made a reservation relating to public monopolies for the supply of this service via mode 1.⁶³ The access to YouTube has not been limited due to considerations of public monopolies but rather due to Law no. 5651 of 4 May 2007 on regulating internet publications and combating internet offences.⁶⁴ Based on this law, Turkey limited access to YouTube from May 2008 until October 2010.⁶⁵ By blocking access to YouTube, Turkey limited the number of service suppliers in this

55. *See id.* art. 49.

56. GATS, *supra* note 2, art. XIVbis(1)(b)(iii) (emphasis added).

57. *Freedom on the Net 2016, Turkey—Country Profile*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-net/2016/turkey> (last visited Mar. 11, 2018) (emphasis added).

58. *Id.*; Kelly, *supra* note 10.

59. Kelly, *supra* note 10.

60. *See Whois Record for YouTube.com*, WHOIS, <http://whois.domaintools.com/youtube.com> (last visited Feb. 2, 2018); *see also Amended and Restated Certificate of Incorporation of Alphabet Inc.*, ALPHABET INV’R RELATIONS, <https://abc.xyz/investor/other/certificate-of-incorporation.html> (last visited Feb. 9, 2018).

61. *Cengiz and Others v. Turkey*, App. Nos. 48226/10 and 14027/11, Eur. Ct. H.R. (2015), para. 6.

62. *CPC Ver.2 code 84332, Classifications Registry*, UNITED NATIONS STATISTICS DIVISION, <https://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=25&Lg=1&Co=84332> (last visited Feb. 3, 2018).

63. Turkey – Schedule of Specific Commitments, GATS Doc. No. GATS/SC/88 (Apr. 15, 1994).

64. *See Cengiz*, App. Nos. 48226/10 and 14027/11 para. 20.

65. *See id.* paras. 16–18.

services sector, and thus limited market access contrary to its schedule commitments in the realm of GATS art. XVI(2)lit.a.⁶⁶

Contrary to the example of Ukraine and Russia, great controversy surrounds whether Turkey also violated the provision of national treatment and the most-favored-nation principle. Those provisions are only breached if it can be shown that a national service supplier which offers “like services” is not banned from providing its service (national treatment) or that a service supplier from another WTO member state is not banned from providing its service (most-favored-nation treatment). The practice in Turkey, however, also shows blockage of several national sites as well as websites of other countries.⁶⁷

Governments often publicly justify bans of access to social media and news pages for national security reasons.⁶⁸ Under the GATS, deviation from the commitments can be justified if the measure in question is necessary to maintain public order.⁶⁹ However, the grounds for such an exception is subject to a very narrow interpretation.⁷⁰ The agreement itself indicates that “*the public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.*”⁷¹ Furthermore, the requirement of being “necessary” also calls for a narrow application of this justification, meaning that there must be no less-restrictive measure reasonably available in order to obtain the pursued interest.⁷² Regarding the necessity requirement, it has been argued that selective filtering of search results is a less trade restrictive measure than a permanent, absolute ban of certain services.⁷³ However, in the case of *Cengiz and Others v. Turkey*, the European Court of Human Rights found that Turkey was not able to apply URL-filtering technology for foreign-based websites.⁷⁴ Hence, selective filtering might not be a feasible alternative in Turkey. Still, other less restrictive measures exist, such as requesting the respective website to remove certain content.⁷⁵

Considering Turkey’s commitments according to the GATS, the blockage of foreign websites such as YouTube represents a breach of Turkey’s obligations with regard to market access. This violation can be justified by relying on the exception of protection of the public order. However, due to the narrow interpretation of this justification and the availability of other measures besides a complete block of the website, the practice of blocking websites in Turkey might nevertheless be classified

66. See also *A Dual Track Approach*, *supra* note 20, at 875–76 (regarding China’s analogous situation); Wu, *supra* note 7, at 269–70.

67. *Freedom on the Net*, *supra* note 57, at 830.

68. Meltzer, *supra* note 5, at 7.

69. GATS, *supra* note 2, art. XIV(a).

70. See also Erixon et al., *supra* note 19, at 13.

71. GATS, *supra* note 2, art. XIV(a) n.5 (emphasis added).

72. Erixon et al., *supra* note 19, at 13; see also Appellate Body Report, *supra* note 8.

73. Erixon et al., *supra* note 19, at 14.

74. *Cengiz and Others v. Turkey*, App. Nos. 48226/10 and 14027/11, Eur. Ct. H.R. (2015), para. 6.

75. Erixon et al., *supra* note 19, at 14.

as a breach under the GATS.

IV. CONCLUSION

The main argument of this Essay is that, due to strong economic interdependence between states, it is necessary for a state to consider its international trade law commitments before restricting access to online services or information systems. Generally, GATS obligations can be considered applicable to those measures because online services qualify as services under the GATS and restricting access constitutes a limitation of market access. However, the bottom-up approach of commitments under the GATS makes a careful analysis of the schedule of commitments for each individual state necessary in order to establish whether a measure qualifies as a breach of these commitments.

This Essay looked at measures taken by Ukraine and Turkey as examples of state restrictions of access to online services. In the case of Ukraine, blocking Russian websites can be classified as a preliminary breach of the obligations of market access, national treatment, and most-favored-nation treatment made by Ukraine as a result of its schedule of commitments. However, this violation can most likely be justified for being part of a countermeasure under public international law or according to the GATS which allows for security exceptions.

In the case of Turkey, the blockage of online services can also represent a breach of Turkey's obligation with regard to market access for online services. In this case, the preliminary breach of commitments is difficult to justify. This is the result of a very narrow interpretation of the possible invocation of the public order justification ground, especially if other less restrictive measures are available to reach the pursued interest.