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THE APPLICATION OF INTERNATIONAL TRADE LAW TO SPACE MINING ACTIVITIES

**Abstract**

The idea of conducting mining activities in outer space has caught the imagination of States and private entities alike. Recently the U.S. passed the Space Resource Exploration and Utilization Act of 2015 and Luxembourg announced its intention to establish a legal framework for promotion of space mining. Private entities worldwide have plans to extract valuable minerals from asteroids in the next few years. In 2015, the IISL Board of Directors published a position paper stating, while appropriation of space resources is permitted, appropriation of territory is prohibited. In light of recent developments, the corollary question that arises is whether States are free to use benefits accrued from space mining activities only for their own advantage or does Art. I of the Outer Space Treaty (OST) impose an "affirmative duty" to share such benefits for the 'benefit and interest of all countries'? Naturally, States would tend to protect natural resources found in outer space, primarily, for domestic use. Such protectionism is usually implemented through export control legislations. Export restrictions alter the optimal allocation of resources worldwide and introduce inefficiencies in global production. The goal of World Trade Organization (WTO) is to counter such trade distortions in order to promote fair allocation of resources by eliminating quantitative and qualitative restrictions on international trade. This paper aims at analyzing the interaction of WTO law and space law, principally the question whether Art XI and XX of GATT which prohibit export quotas and provides for exemptions, complement Art. I para.1 of the OST? The recent judgment of WTO Panel on China Rare Earth Metals case will be discussed to examine whether GATT principles are applicable to space mining and whether States can restrict the use of extracted resources only for the benefit of domestic market. Another question the paper deals with is whether Art IX of OST read with Art XI and XX GATT imposes any "negative duty" upon States to not impose export restrictions upon extracted resources. Space mining opens up myriad issues border-lining trade law and space law, and these issues shall increasingly become significant as technological advancements grow exponentially. The paper identifies the relevant issues and tries to harmonize the distinct legal regimes in order to promote space activities which "benefits all countries equitably".