



# **LEGAL REGULATION OF TRADE IN TOURISM SERVICES WITHIN THE FRAMEWORK OF THE WORLD TRADE ORGANIZATION**

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**MONOGRAPH**



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Monograph researches the international legal regulation of trade in tourism services, in the framework of the General Agreement on Trade in Services (GATS). It contains the concept, and characteristics of trade in services, and the process of formation and development of international legal regulation of trade in services before the adoption of the GATS and the implementation mechanism of the GATS.

The second chapter of the research work is dedicated to the international legal regulation of trade in tourism services within the framework of the GATS, legal analyses of domestic regulation, and market access in tourism services, the analyses of developing countries' practices on tourism services regulation. Precisely, recommendations have been proposed based on international legal norms, scientific sources, and in-depth interviews with foreign and national experts, that may be implemented in the conditions of Uzbekistan's joining the World Trade Organization.

The presented monograph may be useful for students of higher educational institutions studying in the specialty "Jurisprudence", teachers and researchers, practicing lawyers, and those who are interested in the World Trade Organization Law.

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# INTRODUCTION

International trade is the basis of all economic activity in today's globalized world. Global trade in manufactured goods was initially prioritized, but this focus has recently changed due to the significant expansion of trade in services. Although there has always been international cooperation in the trade of services, the General Agreement on Trade in Services (GATS) is the first attempt at a multilateral trade agreement to regulate trade in services, including travel and tourism, and to provide a mechanism for multilateral negotiations on improved market access for foreign services and service suppliers. The GATS is the first legally binding global agreement on trade in services. It represents a significant step forward in international economic cooperation. It reflects a growing recognition of the economic importance of trade in services and the need for closer cooperation among nations in an increasingly interdependent world<sup>1</sup>.

The classification of tourism services for GATS is a compromise result and an agreement that responds to the practical need to move forward in the presentation of commitments. Given services' complexity, overlap, and interdependence, their ideal classification may not be possible. These observations concerning the definition of tourism services are not aimed at criticizing the established GATS classification<sup>2</sup>.

The importance of tourism as a source of employment and income, as well as a significant contributor to the balance of payments of many nations, has attracted increasing attention from regional and local authorities, the business sector and governments. International trade in tourism services is expected to increase dramatically if travel restrictions are eliminated or significantly reduced. Multilateral trade agreements, such as the General Agreement on Tariffs and Trade (GATT), are one method of reducing barriers to international tourism trade. Certain prohibitions on the employment of foreign workers and the establishment of foreign companies

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<sup>1</sup> World Tourism Organization. "GATS Implications for Tourism: The General Agreement on Trade in Services and Tourism". In "Tourism Services Under GATS", WTO Seminar, 1995, 17–18.

<sup>2</sup> Ibid. World Trade Organization. "GATS Implications for Tourism, The General Agreement on Trade in Services and Tourism." In "Tourism Services Under GATS", 17–18. WTO Seminar, 1995.

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may eventually be lifted thanks to GATS. As a result, providers of travel and tourism-related services such as hotels, restaurants, transport, car rental, cultural and other travel-related businesses can expect to benefit directly from the agreement. The General Agreement on Trade in Services (GATS) focuses on tourism as one of the most important components of international trade.

One of the most important trade agreements, particularly for developing countries, is GATS, which aims to liberalize trade in services. The GATS has achieved a progressively higher degree of liberalization through the elimination or reduction of trade barriers, the promotion of the interests of all participating countries in a mutually beneficial manner, and the securing of an overall balance of rights and obligations while paying due regard to national policy objectives the main objective of the negotiations on services. The Republic of Uzbekistan fully supports these goals and believes that further global liberalization and removal of barriers in the services sector will stimulate global economic growth, significantly increase trade in services, attract foreign investment, and improve and enhance productivity in the manufacturing sector.

With this regard, the monograph aims to identify and analyse the regulation of services in the framework of the WTO, the concept and characteristics of trade in services in international law, the process of formation and development of international legal regulation of trade in services before the adoption of the GATS, and the and the mechanism of application of the General Agreement on Trade in Services. Moreover, the international-legal regulation of trade in tourism services within the framework of the GATS, the formation of trade in tourism services' regulation in the General Agreement on Trade in Services, legal analyses of domestic regulation and market access in tourism services, the analyses of selected developing countries' practices on tourism services regulation under the GATS, and topical issues for the Republic of Uzbekistan concerning the regulation of tourism services within the WTO, as well as law enforcement practices that Uzbekistan should consider during the process of accessing this international organization.

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# **Chapter I.**

## **International Legal Regulation of Trade in Services in the General Agreement on Trade in Services.**

### **1.1. The Concept and Characteristics of Trade in Services in International Law.**

Nowadays, the importance of the services market for international trade and the world economy as a whole cannot be ignored. The development of the service sector accelerates countries' economic growth. However, there are still many barriers to international trade in services. Therefore, the main issues in international trade negotiations are the liberalization of international trade in services and the economic security of national markets.

Today, the service market is one of the fastest-growing sectors of the world economy. Although services themselves are increasing rapidly, they serve as a decisive resource in the manufacturing of products, and therefore, services account for approximately 50 percent of world trade in terms of value added<sup>3</sup>. Countries have begun to include trade-in-service provisions in regional trade agreements.

To understand the concept of “service”, it is necessary to turn it into the theory of economics because services have an economic nature. Until now, there was no clear definition of the concept of “service” in international trade law. On the one hand, in the science of civil law, “service” means the actions of the subjects of civil transactions that do not end with a specific result or end with an intangible result. Attempts to define the concept of “services” by specific characteristics, for example by comparing the “intangibility” of services with the

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<sup>3</sup> World Trade Organization. *GATS: Frequently Asked Questions*. Accessed October 26, 2023. [https://www.wto.org/english/tratop\\_e/serv\\_e/gatsqa\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm)

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“tangibility” of goods, have lost their relevance in the development of the economic sphere. In contrast to goods, which can be moved and stored, services are immobile and cannot be stored. The difference between services and goods is that the provision of services is inseparable from their consumption, while the production and receipt of goods are two separate processes. Accordingly, the process of providing a service includes the result. In most cases, the consumer is the object of service provision and can participate directly in the process of service provision; the service is usually individual in terms of provision and consumption. The service provider does not usually act as the owner of the result of the service provided. It should be noted that, although the above characteristics apply to many types of services, they do not always apply to a specific service.

The need for a trade agreement in the service sector has long been questioned. Large segments of the service economy, from hotels and restaurants to personal services, have traditionally been viewed as domestic activities beyond the scope of trade policy concepts and tools. Other industries, from rail to telecommunications, are considered classic areas of state ownership and control, given their infrastructural importance and, in some cases, the existence of natural monopolies. A third group of critical sectors, including health, education and basic insurance services, is considered a government responsibility in many countries.

Nevertheless, some service industries, notably international finance and maritime transport, have remained open for centuries as natural complements to trade in goods. Other major industries have undergone radical technical and regulatory changes in recent decades that have opened them up to private commercial participation and lowered, if not eliminated, existing barriers to entry. The advent of the Internet has helped create a range of internationally sought-after products from electronic banking to telehealth and distance learning that were unknown two decades ago, and trade that puts long-distance suppliers and users at a disadvantage removed barriers (professional services such as software



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development, consulting services, etc. to relevant industries). A growing number of governments are gradually opening up formerly monopolistic industries to competition, telecommunications can be an example of this.

Examples include visible tourism services; the travel company organizes a tour for the consumer before the consumer uses the results of the provided service, etc. Even though the studied concept is essentially economic, the content of the relations that arise in connection with the sale of services, including the order of organization and the legal capacity of the participants in these relations, is regulated by legal norms. It follows that the peculiarity of the legal study of trade in services has a mixed nature and is located at the intersection of economics and law<sup>4</sup>.

An example of the definition of “service” at the regional level can be found in Article 60 of the Treaty of Rome establishing the European Economic Community in 1957, where “service” is defined as an activity to satisfy needs, i.e., goods, capital or, if the rules on the free movement of persons are not regulated, normally provided in return for payment<sup>5</sup>. This distinguishes an important characteristic of services, i.e. the provision of services in return for payment.

However, experts in international economic law consider this concept of “service” as too broad. When goods are exchanged, ownership of the goods is transferred to the buyer. In the process of buying and selling services, the ownership of material things is not transferred; the question is whether or not there is an obligation to perform some action (transport, insurance, advice). Customs tariffs apply to the purchase and sale of goods and the national legislation of the Member State applies to the provision of services. “The adaptation of domestic legislation to the needs of international trade in services is a legal revolution in almost all areas of law”<sup>6</sup>.

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<sup>4</sup> Zheleznov, R. V. *The Principle of Liberalization of International Trade in Services in International Trade Law*. Diss., Cand. of jurid. Sci., Kazan, 2017. 16.

<sup>5</sup> Treaty of Rome : Two treaties were signed on 25 March 1957 – the Treaty establishing the European Economic Community (EEC) and the Treaty establishing the European Atomic Energy Community (EAEC or Euratom).

<sup>6</sup> Shumilov, V. M. *International Economic Law: Textbook for Masters*. Moscow: Yurait, 2017. 418.

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The criterion of “crossing borders” or, in other words, “cross-border” was not suitable for defining international trade in services in a literal sense. Therefore, in preparation for the creation of the World Trade Organization, the understanding that services can be supplied in different ways was reinforced. As a result, the GATS defined 4 modes of supply: cross-border supply, consumption abroad, commercial presence, and physical presence in the country where services are consumed. The General Agreement on Trade in Services uses the concept of “supply of services”, which confirms the development of the services market as a trade operation, which is confirmed by the increase in the positions and volume of “trade” services.

GATS is intended to contribute to the expansion of trade “in a context of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the progress of developing countries.” Thus, trade expansion is seen, as some critical voices have argued, not as an end in itself, but as a tool for growth and development. The development link is further strengthened in the Preamble with clear references to the objective of increasing the participation of developing countries on trade in services and to the specific economic situation and development, trade and financial needs of least developed countries.

The contribution of GATS to world trade in services based on two main pillars: (a) ensuring transparency and predictability of relevant norms and rules, and (b) facilitating progressive liberalization through successive rounds of negotiations. Under the deal, the latter concept amounts to improving market access and extending national treatment to foreign services and service providers in various sectors. However, this does not imply the abolition of regulation. Rather, the agreement clearly recognizes the right of governments to regulate and introduce new rules to achieve national policy objectives, and the particular needs of developing countries to exercise this right.

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In the process of developing the current GATS text, the production of services is understood as an activity aimed at satisfying the specific needs of service consumers. During the negotiations that preceded the adoption of the GATS, the problem of defining the concept of “trade in services” arose. Developed countries supported the idea that the provision of services on a large scale requires the presence of a service provider in the territory of another country through investment. In turn, developing countries proposed to include the movement of factors of production in the concept of “trade in services”, if this movement is fundamental for the supplier. As a result, a system consisting of 4 regimes of service provision strengthened in Article 2 of the GATS was developed. Clause 2 of Article 1 of the GATS contains the concept of “trade in services”. The General Agreement on Trade in Services does not define the term “service”. At the same time, the provision of services in the Agreement means their production, distribution, sale, and delivery by both legal entities and individuals.

The forms of international trade in services covered by the Agreement are as follows:

a) cross-border trade, i.e., a situation where trade is conducted from the territory of one state to the territory of another state, where the seller and the buyer of the service do not cross the border themselves, only the service crosses the border (banking services, communication services, etc.);

b) consumption abroad, i.e., a situation where a consumer from one country buys services in the territory of another country (tourism, education – study in foreign educational institutions);

c) commercial presence (commercial presence or right of establishment) in the country where the service is provided, i.e., a branch providing the service through the service provider crossing the border and being in the territory of a certain country, the situation of opening a representative office or a subsidiary.

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The service itself and its customer do not cross the border (auditing, advertising and other services);

d) the presence of natural persons providing services, i.e., the presence of natural persons providing services, i.e., the presence of persons from abroad (qualified employees of the TNC or holders of certain professions: consultants, engineers, doctors, sportsmen, artists, teachers, etc.)<sup>7</sup>.

The adoption of the General Agreement on Trade in Services became the basis for the separate legal regulation of trade in services. Prior to the adoption of the GATS, which was specifically designed to regulate trade in services, the application of the GATT to this area was very different from trade in goods, and the subject matter was difficult to define and required considerable adaptation.

During the Uruguay Round, a new understanding of what constitutes international trade in services was developed. The study by UNCTAD, the WTO's International Trade Centre, showed that services are the subject of international trade if the transaction between these persons, which is also reflected in the GATS, the producer and the consumer of these services are natural or legal persons – from different countries. This follows from the fact that the provision of services is a result, product or activity aimed at satisfying the consumer of services, regardless of the location of the GATS.

The GATS does not define “services”, but defines “service of another member” as goods supplied from the territory of another member state or by sea / by a vessel registered under the laws of that state by a person of that State providing the service or the use of the vessel in whole or in part; or services provided by a service provider of another country through commercial presence or physical presence<sup>8</sup>.

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<sup>7</sup> General agreement on trade in services.1994. Art I.

<sup>8</sup> General agreement on trade in services. 1994. Art. XXVIII. II. (f).

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There are also definitions of the concepts of “service sector”, “service provider” and “service consumer”. For GATS, a special description draws on a sectoral classification of services, which includes 160 types of services grouped into 12 main sectors: business services; distribution; communication services; education; financial services; construction and engineering; health services; environmental services; recreational, cultural and sporting services; transport services; services related to tourism and travel; other services.

It should be noted that this classification does not cover the characteristics of services, and reference is therefore made to the UN's Provisional Central Product Classification. The CPCs provide a consistent structure for classifying goods and services based on a set of internationally agreed concepts, definitions, principles, and classification rules. It contains all types of information requiring product details, including industrial production, domestic and foreign trade in goods, international trade in services, the balance of payments, consumption and price statistics, and other information used in national standards and serves as an international standard for summarisation and tabulation<sup>9</sup>.

According to the GATS, restrictive measures include:

- limiting the number of service providers (quoting, granting exclusive rights);
- limiting the volume of trade in this type of service;
- limiting the number of operations or the number of services provided;
- limiting the number of individuals who may be employed in the relevant service sector;
- the requirement of a specific legal form of the company;
- limiting the share of foreign capital in the form of the maximum percentage of participation in the company<sup>10</sup>.

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<sup>9</sup> United Nations. *Central Product Classification*. New York: United Nations, 1991.

<sup>10</sup> Appendix 1 B: (1994 WTO) General Agreement of Trade in Services.

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At the same time, each sector is divided into specific sub-sectors, e.g. the 'Business Services' sector comprises Research and development services; Professional, technical, and business services (except research and development, legal and accounting services); Telecommunications, broadcasting and information services, etc. The classification of services is necessary for the negotiations on the liberalization of trade in services and for the preparation of Member States' commitments in the negotiations. It should be noted that trade in services is constantly developing, which leads to periodic revisions of the classification of services. The incompleteness of the classifier is its main advantage.

According to Article 1 of the General Agreement on Trade in Services (GATS), “services” include services in all fields other than those provided in the exercise of public authority. At the same time, public services should be understood “not in an organizational sense, but in a material and legal sense”<sup>11</sup>. At the same time, public services should be understood “not in an organizational sense, but in a material and legal sense.” Consequently, government services are excluded from the scope of the GATS, thereby expanding the GATS to “tradable” services, commercial services provided on a competitive basis. When national governments procure services for public needs, they are governed by the Government Procurement Agreement and are not covered by the GATS.

In conclusion, it should be noted that the uniqueness, diversity and constant emergence of new types of services do not allow us to give a clear and permanent definition of the concept of “services”. The changing classification of trade in services is also a result of the current development of these relations.

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<sup>11</sup> Karro D., Zhyujar P. *Mezhdunarodnoe e'konomicheskoe pravo* / Per. s franc. V.P. Serebryannikova, V.M. Shumilova. – M.: Mezhdunarodny'e otnosheniya, 2002.

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## 1.2. The Process of Formation and Development of International Legal Regulation of Trade in Services Before the Adoption of the GATS

In the 19th century, international organizations such as the Universal Telegraph Union (1865) and the Universal Postal Union (1874) were set up to regulate trade in services. However, these organizations had only administrative functions. Later, organisations began to appear in the field of air and maritime transport. For example, the International Civil Aviation Organisation (ICAO) started its activities in 1944. For a long time, only intersectoral intergovernmental treaties existed due to the specific nature of the services market. The first attempts to develop uniform rules and principles for international trade in services were made in the late 1940s. They were part of the preparations for the creation of the International Trade Organisation (ITO). Activities to establish this organization were carried out under the auspices of the UN Economic and Social Council. The future ITO Statute was developed over many years. The development process was completed in 1947-1948. Under the auspices of the UN Economic and Social Council, activities were carried out for the establishment of this organization. The future statute of the ITO has been in development for several years.

The development process culminated in the United Nations Conference on Trade and Employment in Havana in 1947-1948. This is why the WTO Charter was called the Havana Charter. The Havana Charter was signed by more than 50 countries on 24 March 1949. It was to enter into force after ratification by a majority of the signatories. The United States changed its mind on the ITO statute because it believed that it was advantageous to regulate international trade unilaterally and on a group basis rather than universally. The draft charter of this organisation states that services are the main element of international trade. At the

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same time, the following services were included in the project: transport services, banking, communication services and insurance<sup>12</sup>.

As part of the preparations for the Havana Conference, 23 countries held their first negotiations on tariff preferences in Geneva. The result of these negotiations was the Final Act of the First Tariff Conference, signed on 30 October 1947, which contained the text of GATT (1947). The text of the General Agreement on Tariffs and Trade entered into force on 1 January 1948. The GATT began the gradual transition from bilateral to multilateral regulation of international trade.<sup>13</sup> The GATT (1947) had only one article on services. Article IV of the agreement dealt with the issue of quotas for the showing of foreign films.

In the 1950s, the Organisation for European Economic Co-operation (OECD) worked on the liberalisation of trade in services. A code to liberalise the existing invisible operations with a list of services was developed within its framework.<sup>14</sup> At that time, in Article 60 of the Treaty of Rome, “service” was defined as an activity carried out for a fee to satisfy the needs of the consumer, unless, as a rule, it is regulated by the rules of free movement of goods, capital or persons<sup>15</sup>. This agreement commits countries not to introduce new restrictions on trade in services (Article 62), to progressively eliminate such restrictions (Article 59), and also commits members to liberalise payments directly related to services.

The Conference on Trade and Development (UNCTAD) was established in 1964 as a subsidiary body of the United Nations. The objectives of UNCTAD are to determine the main policy directions in the sphere of international trade, economic development, and the promotion of the growth of international trade.

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<sup>12</sup> “A Journey from Havana to Paris: The Fifty-Year Quest for the Elusive Multilateral Agreement on Investment.” *Fordham International Law Journal* 24, no. 2 (2000): 275-78.

<sup>13</sup> Shumilov V.M. *Mezhdunarodnoe ehkonomicheskoe pravo: Uchebnik dlya magistrrov*. [International Economic Law: Textbook for Masters]. M.: Izdatel'stvo Yurajt, 2017. p. 189.

<sup>14</sup> Forty Years' Experience with the OECD Code of Liberalisation of Capital Movements. OECD, 2002.P.7-9.

<sup>15</sup> “Treaty Establishing the European Community,” Chapter 3. “Services.”



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The main task of UNCTAD is to promote trade between countries at different levels of socio-economic development<sup>16</sup>.

In its work, UNCTAD pays particular attention to the issue of trade preferences for developing countries. Throughout its existence, UNCTAD has had a significant impact on the development of international trade relations and on the formulation of principles and rules governing international trade in goods and services. The principles of international trade relations and trade policy were adopted at the first session of UNCTAD. In 1989, negotiations under the auspices of UNCTAD resulted in the Agreement on the Global System of Trade Preferences for Developing Countries<sup>17</sup>.

Also, UNCTAD played an important role in the development of international agreements on maritime transport (Convention on Carriage of Goods by Sea, 1978, Convention on International Mixed Carriage, 1980). The United Nations Commission on International Trade Law (UNCITRAL) was established in 1966 to harmonize and unify rules, codify international trade practices, and develop conventions<sup>18</sup>.

UNCITRAL has prepared 2 Conventions in the sphere of unification of international transport regulations: the 1978 Convention on the Carriage of Goods by Sea (“Hamburg Rules”) and the UN Convention on the Liability of Transport Operators.

The United Nations Convention on the Carriage of Goods by Sea established a unified legal framework for the rights and obligations of consignors, carriers, and consignees under a contract of carriage by Sea.<sup>19</sup>

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<sup>16</sup> UNCTAD. n.d. “About UNCTAD | UNCTAD.” Unctad.org. <https://unctad.org/about>.

<sup>17</sup> “Agreement on the Global System of Trade Preferences among Developing Countries.” 1988.

<sup>18</sup> “Legal Harmonization through Model Laws: The Experience of the United Nations Commission on International Trade Law (UNCITRAL).” 4-6.

<sup>19</sup> “United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules).”

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The Second Convention, adopted in 1991, regulates the legal regime in the field of liability of the transport terminal operator for the delay in the delivery of goods, loss or damage during the international transportation process. Later, services were mentioned as issues to be considered in the Tokyo Round of GATT negotiations. Taking into account the increase in the volume of world trade in services, in 1986, at the GATT Ministerial Conference, it was decided to conduct negotiations on trade in services to further develop international rules and principles regulating this trade market, liberalize interstate trade relations, and expand trade. This will help the economic growth of all participants. Thus, following the results of the Uruguay Round of GATT negotiations (1986-1994), it was decided to create the World Trade Organisation, which included the GATS in its set of agreements.

The second zone of the global level is the zone of the International Monetary Fund, which deals with currency and other monetary operations, including payments for the provision of services. The third zone is a regional area of the European Union where the free movement of goods, services, capital, and persons is carried out. The fourth zone is the regional influence of NAFTA. GATS was the first set of multilateral, legally binding rules on international trade in services. This Agreement includes the main principles and conditions for the liberalization of the service markets of the member states for economic growth and further development of all participating countries.

The preparation for the conclusion of the General Agreement on Trade in Services was a long process. In the 1970s, the United States began to play an important role in the stock market and the trading of derivative financial instruments in the exchange and over-the-counter markets. The problem of developing the theory of the emergence of financial risks and market insurance mechanisms in the world economy arose. Given the vast experience of the United States in this area, American companies have become the main providers of consulting, financial, and auditing services. This led to the establishment and operation of American companies in the markets of other countries. As a result of the development and demand for services in the world market, the United States began to prepare to include the development

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of general international rules for trade in services on the agenda of multilateral trade negotiations. In 1984, America passed the Trade and Tariff Act, and some of its provisions are very similar to the later GATS<sup>20</sup>.

This law specifically defined the task of increasing the competitiveness of the sector related to trade of services in the world market. A set of international rules for regulating trade in services and settling disputes in this area had to be developed in order to implement this task. Article 305 of the Law states that the purpose of the negotiations on the provision of services is to promote the development of trade in services and to reduce and eliminate existing barriers. In turn, one of the objectives of the GATS is to expand trade in services, and WTO member countries commit themselves to guaranteeing a certain level of access to their domestic market in various service sectors, as set out in national schedules of specific commitments.

The law defines the concept of “trade in services”, and its result is understood as an economic activity other than goods. This definition includes insurance, banking, transportation, retail and wholesale trade, advertising, auditing, construction, architecture, consulting, education, health, and tourism services. The next stage of finalizing the GATS can be considered the beginning of negotiations on the development of relevant international rules for trade in services. It is worth noting that the most important round of negotiations was the Uruguay Round, which for the first time included the issue of regulating trade in services on the negotiating agenda. There have been 7 rounds of negotiations: 1947 (Geneva), 1949 (Annecy, France), 1950 (Turkey, UK), 1956 (Geneva), 1960-1961 (Geneva, “Dillon Round”), 1964-1967 (Geneva, “Kennedy Round”), 1973-1979 (Tokyo and Geneva)<sup>21</sup>.

The first rounds of negotiations focused on reducing the level of customs duties on goods. The countries participating in the negotiations mutually agreed

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<sup>20</sup> Trade and Tariff Act of 1984. (1984). Public Law 98-573.

<sup>21</sup> The American Economy: A Historical Encyclopedia. (n.d.). “Volumes One and Two”. (p. 129).

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on tariff preferences and coordinated them in the list of relevant preferences. The issue of the creation of the European Economic Community was also raised in the Dillon Round negotiations. During the Kennedy Round, agreement was reached on a “linear” reduction in the level of tariffs on industrial goods, and an exception to the principle of reciprocity in favour of developing countries was approved. During the negotiations held in Tokyo, member states agreed on the next round of tariff cuts. Tokyo Round: Agreement on the Implementation of Articles VI, XVI and XXIII of the GATT, Agreement on Technical Barriers to Trade, Agreement on the Implementation of Article VI of the GATT and Article VII of the GATT were adopted<sup>22</sup>.

At the time, the GATT system had several disadvantages:

1) From a legal point of view, the General Agreement on Tariffs and Trade did not have an appropriate form, and its existence was based only on the Protocol on the Provisional Application of the GATT;

2) There was no appropriate institutional mechanism or dispute settlement body;

3) GATT contained a lot of misunderstandings filled with additional agreements, but not all GATT members were parties to these agreements;

4) GATT reinforced the principle of the supremacy of domestic legislation of member states over international legal norms;

5) The GATT did not apply to all goods. For example, trade in agricultural and textile products was excluded from the GATT;

6) GATT did not apply to trade-in services<sup>23</sup>.

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<sup>22</sup> “WTO | GATT Bilateral Negotiating Material by Round.” n.d. [https://www.wto.org/english/docs\\_e/gattbilaterals\\_e/indexbyround\\_e.htm](https://www.wto.org/english/docs_e/gattbilaterals_e/indexbyround_e.htm).

<sup>23</sup> Shumilov V.M. Pravo Vsemirnoj trgovoj organizacii: Uchebnyk dlya bakalavriata i magistratury [World Trade Organization Law: A Textbook for Undergraduate and Postgraduate Studies]. 2-e izd., pererab. i dop. M.: Izdatel'stvo Yurajt, 2018, 46-47.

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Later, the Uruguay Round fundamentally changed the entire GATT system and turned it into the WTO. Most of the shortcomings listed above were eliminated during the negotiations in Uruguay. The subject of the Uruguay Round negotiations included the following issues: reduction and elimination of tariff and non-tariff methods of trade regulation, trade in textile goods, trade in agricultural products, trade in tropical goods, revision of GATT rules, disputes settlement, subsidies, and countervailing duties, investment rules directly related to trade, intellectual property rules related to trade and trade in services. The Uruguay round was held at the initiative of the USA. In 1984, the US president proposed to start a new round of negotiations. In early 1986, countries agreed on a program and organizational structure for a new eighth round of multilateral negotiations<sup>24</sup>.

In September 1986, Uruguay officially started a new tour. The goals of the Uruguay Round were as follows: liberalization and development of international trade, improvement of the multilateral trade system, and increase in the level of international trade. The Ministers emphasized the need to adopt uniform international rules and principles for trade in services, noting that specific rules can be developed for some sectors of the services market. Particular attention was given to the need to establish rules that would contribute to the expansion of trade in services based on the principles of openness and progressive liberalisation, as well as to the economic growth and development of all countries participating in the Agreement. The Uruguay Round continued the work of the Tokyo Round and introduced new issues for consideration: the regulation of trade in services, intellectual property issues, and trade-related investment issues.

The Uruguay Round Declaration consisted of two parts, the first part was devoted to negotiations on trade in goods, and the second to trade in services. Negotiations on services were based on GATT procedures and practices. The purpose of the negotiations on trade in services in the Round Declaration was to

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<sup>24</sup>World Trade Organization. 2000. "WTO | Understanding the WTO – the Uruguay Round." Wto.org. 2000. [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm).

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develop multilateral principles and rules for trade in services, including the creation of specific rules for certain service sectors.

The final phase is characterized by the beginning of the development of the GATS concept. In 1988, in Montreal, the main provisions of the emerging agreement were agreed. First, the scope of the agreement was agreed. The regulation of trade in services was to cover the cross-border movement of services and consumers. In particular, the main principles of the agreement were established:

- Transparency, i.e. providing necessary information about legal documents, international agreements, and other procedures related to trade in services;

- Gradual liberalization, that is, after the end of the Uruguay Round, the rules of liberalization had to be adopted. At the same time, in developing countries, it was planned to provide a more flexible liberalization regime covering a smaller number of sectors of the service market.

- National treatment, i.e., treatment that is no worse than the export of services from one country to the territory of another country is normally provided to its service providers or services in a similar market.

- Non-discrimination of service providers and services is the most convenient state regime.

- Participation of developing countries.

- Market access is guaranteed based on multilateral rules.

The final stage was the ratification of the GATS. In mid-December 1993, at a meeting of the Trade Negotiations Committee, a complete list of agreements between the countries was announced. But officially, all the documents of the Uruguay Round were adopted by the Ministerial Conference in April 1994. The

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final document made it possible to sign the agreement on the establishment of the WTO in Marrakesh<sup>25</sup>.

The main distinguishing feature of the final document is that the results of the Uruguay Round are presented in a single set of documents, the adoption of which is mandatory for WTO countries. Recently, services have become the most dynamic segment of international trade. Since 1980, world trade in services has grown faster than the flow of goods<sup>26</sup>.

Developing countries took an important part in this growth. Given the continued pace of global trade in services, most importantly as a result of the proliferation of international supply chains, the need for internationally recognized rules has grown. The General Agreement on Trade in Services (GATS) regulates trade in services, which was the first comprehensive multilateral trade agreement. Its creation was one of the main achievements of the Uruguay Round of trade negotiations from 1986 to 1993. It is the trade counterpart of the GATS, nearly half a century after the General Agreement on Tariffs and Trade (GATT) came into force in 1947<sup>27</sup>.

Summarizing all of the above, it is worth noting that, the main result of the Uruguay Round negotiations was a new level of understanding of the current problems of regulating trade in services at the multilateral level of the participating countries. Countries have entered into negotiations on the development of new multilateral rules for the regulation of spheres, where such rules do not exist. The Uruguay Round significantly increased the activity of the national institutions of the countries on the issues discussed during the negotiations. It contributed to the development of a better understanding of the national interests of each country. The study of the mechanism of international

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<sup>25</sup>“Marrakesh Agreement Establishing the World Trade Organization.” “WTO Publications”, World Trade Organization, Centre William Rappard, rue de Lausanne 154.

<sup>26</sup> “Global Trade Liberalization and the Developing Countries.” “IMF Staff Papers”, November 2001.

<sup>27</sup> “The General Agreement on Trade in Services.” “WTO”, January 31, 2013. Trade in Services Division.

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legal regulation is determined by the need to understand the nature of the activity of law as a social regulator and allows it to assess its normative potential.

The formation of legal regulation of social relations at the domestic level and then at the level of interstate interaction is connected with the development of the state and the emergence of the need for a special type of regulatory rule. On this basis, the state becomes the main subject of legislation, establishes legal norms, and makes them generally binding. Using its existing legal instruments it provides for the actualization of the mechanism of international legal regulation, and by its activities it ensures that legal norms are reflected in the actual behavior of the subjects of international legal relations.

Recently, services have become the most dynamic segment of international trade. Since 1980, world trade in services has grown faster than the flow of goods, albeit on a relatively modest basis. Developing countries have actively participated in this growth, rejecting common misconceptions. In 1990-2000, the export of services, mainly consisting of tourism and travel services, grew rapidly by 3% per year on the basis of the balance of payments compared to the exports of developed countries.

Given the continued momentum of global trade in services, the need for internationally recognized rules is ever-increasing.

The drafters of the GATS were largely inspired by the GATT and used terms and concepts that had been tested over decades of trade in goods. These include the Most Favored Nation (MFN) and National Treatment (NT) principles. Compared to its status under the GATT, the most favorable national treatment—that is, the obligation not to discriminate between other WTO members—is an implicit obligation that covers all the GATS. used in services. Tariff schedules under the GATT, which bind countries to their tariff preferences for imports of goods, find their equivalent in schedules of special obligations, which define the relevant terms of trade for services.



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Reflecting the unique characteristics of trade in services, there are also significant differences in scope and content between the two agreements.

We can conclude from the above that the liberalization of international trade in services has been slow in practice. Before the GATS agreement, there were many issues in the international sphere, especially in the sphere of regulation of trade in services. The services market is one of the most heavily state-controlled sectors of the external economy. Trade in services not only creates economic stability in the country, but also contributes to a positive social environment. The General Agreement on Trade in Services was the first international agreement to regulate trade in services.

### 1.3. The Implementation Mechanism of the General Agreement on Trade in Services.

The World Trade Organisation, in cooperation with the World Bank and the International Monetary Fund, forms a modern institutional structure of international economic cooperation. All of the organisation's activities are aimed at liberalizing trade. The basis of the WTO system is essentially a single global legal platform. In legal terms, WTO agreements serve as multilateral trade agreements, and accession to them significantly reduces the need for bilateral agreements. At the same time, the WTO concludes both bilateral and multilateral agreements between its members. The General Agreement on Trade in Services (GATS), which is part of the WTO's legislation, is the first multilateral code of legally binding rules governing international trade in services.

Adequate knowledge of potentially relevant rules and regulations is essential to effective negotiation. Article III provides for the prompt notification by members of all measures relating to or affecting the functioning of the GATS. In addition, there is an obligation to notify the Council for Trade in Services at least once a year of all legal or regulatory changes that have a significant impact on

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trade in sectors where specific commitments have been made. Members shall also establish inquiry points that will provide accurate information to other Members upon request. However, there is no requirement to disclose confidential information (Article IIIbis).

For various reasons, including social policy objectives or taking into account the strong presence of the state in many service markets, such as the existence of natural monopolies, an attempt to ensure that the Agreement does not undermine the relevant measures, such as the most favorable national treatment or special obligations in particular sectors does. Thus, each member is required to ensure that common measures are applied impartially and reasonably and objectively in the sectors where obligations exist (Article VI:1). Suppliers of services in all sectors should have access to national courts or procedures to challenge administrative decisions affecting trade in services (Article VI: 2a).

Modern international law as a set of norms for regulating international cooperation in solving international issues of an economic, social, cultural, and humanitarian nature (paragraph 3 of Article 1 of the UN Charter) essentially directs states in the format of certain correct behavior<sup>28</sup>. All subject structures of modern international law (states, international organizations) based on the conditions of their requirements, taking into account their specific participation in the processes of legal defense and law enforcement, conduct their behavior in a principled mode. The World Trade Organization (WTO) as a full-fledged subject of modern international law actively participates in the implementation of cooperation between countries in the political, economic, and social spheres within the framework of the general goals of the UN<sup>29</sup>.

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<sup>28</sup> “Charter of the United Nations | International Court of Justice.” 2019. Icj-Cij.org. 2019. <https://www.icj-cij.org/en/charter-of-the-united-nations>.

<sup>29</sup> “The WTO and the United Nations.” *World Trade Organization*, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact1\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm) (accessed October 26, 2023).

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Article 65. 1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or by the Charter of the United Nations to make such a request”<sup>30</sup>.

The integrity of the international legal order created within the parameters of the WTO's activities is similar to the logical interests of the entire world community because the WTO operates within the general regime of the announced goals. The World Trade Organisation, together with the World Bank and the International Monetary Fund, forms a modern institutional structure of international economic cooperation. All activities of this organisation are ultimately aimed at the main goal of its creation – trade liberalisation. WTO is recognized as the only legal and institutional basis of the multilateral trade system<sup>31</sup>.

The GATS market access rules set out in Article XVI cover six types of restrictions that should not be maintained without restrictions. These include:

- A. number of service providers
- B. value of service operations or assets
- C. number of operations or quantity of product
- D. number of individuals providing services
- E. type of legal entity or joint venture
- F. participation of foreign capital

These measures, with the exception of (e) and (f), are not necessarily discriminatory, i.e. they may affect domestic as well as foreign services or service providers.

The national regime (Article XVII) provides for the absence of all discriminatory measures that may alter the conditions of competition to the detriment

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<sup>30</sup>“Statute of the Court of Justice | INTERNATIONAL COURT of JUSTICE.” n.d. Wwww.icj-Cij.org. <https://www.icj-cij.org/statute#:~:text=Article%2065>.

<sup>31</sup> *Basic Facts about the United Nations*. Trans. from English. Moscow.

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of foreign services or suppliers of services. However, discriminatory subsidies and tax measures, residency requirements, etc. Restrictions may be listed to compensate for inappropriate measures such as It is the individual member's responsibility to ensure that all potentially relevant measures are recorded; Article XVII does not have a typology comparable to Article XVI. The national treatment obligation applies to foreign services and suppliers regardless of whether or not they are formally treated the same as their national counterpart. Most importantly, they are given equal opportunities to compete.

Reflecting the unique characteristics of trade in services, there are also significant differences in scope and content between the two agreements.

a. Unlike GATT, GATS includes measures affecting products (services) and suppliers.

b. The definition of trade in services covers not only cross-border supply but also three additional forms of transaction (i.e. methods of supply).

c. While quota-free access (i.e. market access) and national treatment are obligations generally applicable under the GATT, they apply under the GATS on a sectoral basis and only to the extent that no qualifications (restrictions) are specified.

The rules of the WTO provide for certain opportunities for the protection of the national economy of the members of this organization, while in the methods of protection of national interests, priority is given only to multilateral rules (not to unilateral or narrow group actions of states). The provisions of GATT and GATS allow WTO members to apply comprehensive measures aimed at protecting certain national interests of WTO members, as long as these measures are not based on arbitrary or unjustified discrimination or covert restriction of international rights. These measures include, in particular, the right of each WTO member to take any action it deems necessary to protect its most important security interests.

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Under the GATT, comparable obligations to tariff preferences aim to ensure stability and predictability of trade conditions. However, obligations are not an obstacle. They can be revised against the compensation of the affected trading partners (Article XXI); and notwithstanding existing obligations, there are special provisions allowing free response under specified circumstances. For example, under Article XIV, members may take measures necessary to address certain important policy issues, including the protection of public morals or the protection of human, animal or plant life or health. However, such measures shall not result in arbitrary or unreasonable discrimination or constitute a disguised restriction of trade. Article XIVbis provides safeguards if essential security interests are at stake.

Article XII authorizes the introduction of temporary restrictions to ensure the balance of payments; and in financial services, so-called prudential allocation allows members to take measures, *inter alia*, to ensure the integrity and stability of their financial system (Annex on Financial Services, paragraph 2).

Obligations are not necessarily fulfilled from the date of entry into force of the schedule. Instead, members may set the implementation period in the relevant part(s) of their schedule. Such “prior obligations” have the same legal force as any other obligation.

Under WTO law, the General Agreement on Trade in Services (GATS) is the first set of legally binding multilateral rules governing international trade in services. It contains the main principles and conditions for the liberalization of the internal markets of countries to support the economic growth of all trading partners and the further development of developing countries. GATS rules can be divided into two main blocks, which constitute the main agreement. The first block shows the general principles and mutual obligations of the member states in the field of trade in services, including the Annex on exemption from obligations under Article II, as well as the Annexes related to certain areas of

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regulation of trade in services – services on trade in services. The second block includes a list of initial mutual benefits for access to service markets<sup>32</sup>.

The GATS rules apply to all international trade services, with the exception of services provided in the exercise of governmental functions, which are provided on a non-commercial and non-competitive basis. In the financial sector, services provided in the exercise of governmental functions are defined as the types of activities performed by the central bank, monetary authority or other governmental structure in the conduct of monetary or exchange rate policy. As for other services of this type, they include activities that are part of the social security system or of the state pension system, as defined by law, as well as other activities carried out by the government body at the expense of government financial resources, guaranteed or at the expense of their use. However, if a Member State allows any of these activities to be carried out by its financial service providers in competition with a public authority or other entity.

The agreement does not apply to international trade in certain types of air transport services. By Clause 2 of the Annex on Air Transport Services, the Agreement does not cover transport and service rights directly related to the exercise of these rights, with certain exceptions.

Various measures are used to regulate the entry of foreign services and their suppliers into the national market, depending on one or another form of supply. The agreement applies to all measures related to the trade of services performed by central, regional, and local state authorities and management bodies, as well as non-governmental non-commercial bodies.

It should be noted that the most common measures used by states in the field of regulation of trade in services are quantitative restrictions, which limit the number or price of specific products containing services, the share of foreign service providers, the number of services for the import of services foreign currency provided and taken

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<sup>32</sup> WTO. 2019. “WTO | Services – the GATS: Objectives, Coverage and Disciplines.” WTO.org. 2019. [https://www.wto.org/english/tratop\\_e/serv\\_e/gatsqa\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm).

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out of the country; procedures for issuing passports, visas, medical certificates; confirmation of the availability of financial resources necessary for living and traveling; foreign language requirements; licensing system for certain professional activities; exit fees; increase in hotel rates; national rules for the establishment of foreign companies and their activities, taxation, currency transactions; including requirements to hire local workers. The Annexes to the Agreement specify the measures of the members to which it is applied, as well as the measures to which it is not applied. For example, by the Annex on the movement of natural persons providing services, the Agreement does not apply to measures relating to natural persons seeking to enter the labor market of a Member and to measures related to citizenship, permanent residence, or permanent employment<sup>33</sup>.

This Annex applies to measures affecting the provision of services to natural persons who are service suppliers of a Member State and to natural persons of a Member State employed by a service supplier of a Member State. General exceptions to the GATS regime are provided for in Article XIV, which allows member states to take measures to protect public morals, public order, human and animal life, and health. At the same time, the measures specified in the Article should not be used as a means of arbitrary or unjustified discrimination between countries with similar conditions, or should not create hidden restrictions on trade in services. There are also exceptions for security reasons (Article XIV).

Article XXVII gives the participating States the right to withdraw from GATS benefits applied to non-member public services and service providers. This is especially true for sea transport services.<sup>34</sup>

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<sup>33</sup> “GATS.” 1994. “Annex on Movement of Natural Persons Supplying Services under the Agreement,” *General Agreement on Trade in Services*.

<sup>34</sup> “The General Agreement on Trade in Services (GATS): Objectives, Coverage and Disciplines.” *World Trade Organization*, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact7\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact7_e.htm) (accessed October 26, 2023).

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It is misunderstood that the rule on the origin of goods also applies to services (Article XXVII)<sup>35</sup>.

For example, if the service is provided by a transnational organization that does not have a national identity, it is not possible to implement it if the specified Article does not specify formal criteria for registration, location of the head office, etc. Given that GATS is, in fact, an agreement within a certain framework, it is too early to talk about the established principles of universal multilateral regulation of trade in services. In any case, the principles developed under the GATT trade system, although they are present in the GATS, are very incomplete.

The international legal regulation of trade in services consists of defining a set of legal standards, forms, and procedures that guarantee the orderliness of trade-legal relations in the field of trade in services with international documents, as well as certain types of them<sup>36</sup>. A distinctive feature of the legal regulation of international trade in services is the use of “indirect unification”, which does not reflect the norm itself that should be applied in an international agreement but is a regulation of the country's legal relations, which interprets its specific obligations. The important principles and rules of cooperation in the field of international trade of services between the member states of the World Trade Organization are consolidated in the General Agreement on Trade in Services included in Annex 1B to the Marrakesh Agreement Establishing the World Trade Organization<sup>37</sup>.

As mentioned above, the GATS which was adopted in 1994, was the first step in the transition to universal multilateral regulation of trade in services. According to Article 1 of the General Agreement on Trade in Services, it applies to measures of member states related to trade in services. However, the term “services” under the GATS does not include any service in any sector, that is,

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<sup>35</sup> Trebilcock, Michael J., and Robert Howse. *The Regulation of International Trade*. Routledge, London and New York, 1995. 291.

<sup>36</sup> Zheleznov, R.V. “Printsip liberalizatsii mezhdunarodnoi trgovli uslugami v mezhdunarodnom trgovom prave.” \*Dis. ... kand. yurid. nauk.\* Kazan', 2017. 36.

<sup>37</sup> “Agreement Establishing the World Trade Organization,” Marrakesh, Morocco, Apr. 15, 1994.



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services provided in the performance of public functions on a non-commercial basis, not in competition with one or more service providers. GATS works as a framework agreement, which should be supplemented by the legal obligations of member states. The preamble to the agreement calls for countries to negotiate a gradual liberalization of regulations that hinder free trade in services within participating territories. A unique feature of the GATS is that each WTO member country has the right to regulate the supply of services by its national policy in fulfilling its obligations under the GATS.

Taking into account the structure of the GATS, we can highlight that it consists of the following:

- The main agreement, which includes the general obligations of the participating countries on trade in services;
- Applications that complement certain service networks;
- List (tables) of specific obligations of the countries that the GATS have signed.

The provisions of GATS can be divided into two major blocks that are a reasonable agreement. The first block contains the main principles and mutual obligations of states in the field of international trade in services, while it also includes rules for the separate regulation of trade in services: negotiations on maritime transport services, actions of individuals providing services, etc. The second block contains a list of initial preferences for access to their domestic service markets by country<sup>38</sup>.

The classification of the service sector is intended for information purposes and is not included in the GATS. On this basis, the member states are free to define the spheres of service themselves. A clear and important disadvantage of this classifier is that many services remain unclear due to their inclusion in the

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<sup>38</sup> Dubinkina, S.N. "Regulirovanie mezhdunarodnoi trgovli uslugami v ramkakh Vsemirnoi trgovoi organizatsii. [Regulation of international trade in services within the framework of the World Trade Organization]" *Mezhdunarodnoe pravo i mezhdunarodnye organizatsii* 4 (2013): 478.

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“other” section, which makes it difficult to apply in practice. GATS defines trade in services as the “supply of services”. At the same time, providing services includes the entire process of providing services: production, distribution, marketing, sales, and delivery<sup>39</sup>. One of the features of GATS is an integrated approach, which is expressed in defining the concept of “service” through the methods of its delivery.

The General Agreement on Trade in Services consists of 6 parts, 29 Articles, and several Annexes. It defines the general obligations of the member states, the specific obligations to access the internal markets of other public services or suppliers, and to ensure the national regime. The GATS serves as both a general code of rules for participating countries and a means of operational management of the territory of the international trading system. As mentioned above, GATS consists of several applications. Eight GATS Annexes are dedicated to specific service sectors. On this basis, the Annex on air transport services aims to separate the powers of GATS and multilateral or bilateral agreements in the field of air transport. GATS reserves the right to regulate services that fall outside the jurisdiction of multilateral and bilateral agreements. This includes, for example, the repair or maintenance of aircraft, and the sale of air transport services. Two other GATS Annexes concern financial services. This sector includes 17 types of services. One of these applications is designed to separate commercial financial services from non-GATS government services. Another Annex on financial services regulates the right of WTO countries to change their list of specific obligations, as well as to amend the Annex on exemptions from obligations under Article II of the GATS<sup>40</sup>.

The maritime supplement is the result of the pending multilateral negotiations on this type of service. In addition, two Annexes apply to the field of telecommunications services, the first of which lays down rules for this type of

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<sup>39</sup> Генеральное соглашение по торговле услугами. 1994. Ст. XXVIII. II. (b) “General Agreement on Trade in Services.” 1994. Art. XXVIII, para. (b).

<sup>40</sup> “General Agreement on Trade in Services (GATS).” 1994. “Annex on Financial Services.”

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service. The second Annex was adopted because of the pending negotiations between the countries and it is called the “Annex on Negotiations on Basic Telecommunications”. This application allows members to opt out of their preferred mode before the end of the negotiation phase. The telecommunications application facilitates the free trade of other services that require telecommunications as a means of supply. This Annex applies to all countries that are members of the GATS, even if the country has not made specific commitments in the field of telecommunications services. The primary obligation for States under this Annex is to ensure access to and use of public telecommunications networks and services<sup>41</sup>.

Individuals – the Annex on the act of suppliers of services, firstly, distinguishes service suppliers from all other natural persons, and secondly, individual service suppliers are the members of the member countries in the field of services enshrined in the GATS determines that it is subject to its obligations. However, as noted separately, the General Agreement on Trade in Services does not apply to measures related to citizenship, permanent residence, or permanent employment<sup>42</sup>.

After analyzing the content of the General Agreement on Trade in Services, we can highlight the following main principles of the GATS:

- the most favorable state regime;
- granting a national regime;
- transparency;
- the principle of a special attitude towards developing countries, which helps to develop their participation in the trade of services;

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<sup>41</sup> “GATS.” 1994. “Annex on Telecommunications.”

“GATS.” 1994. “Annex on Negotiations on Basic Telecommunications.”

<sup>42</sup> “Annex on Movement of Natural Persons Supplying Services under the Agreement.” *General Agreement on Trade in Services (GATS)*, 1994.

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- ensuring the general balance of rights and obligations of countries and protecting their national interests;
  - non-discrimination and market competition in domestic regulation of countries;
  - gradual liberalization of trade in services.

The principle of granting the most favored nation treatment is enshrined in Article II of the GATS. As noted above, when considering the general obligations of the WTO countries, by this principle, each member country shall provide services and suppliers of services of another country no less favorable than that country provides for the same services or service providers, undertakes to provide the regime<sup>43</sup>.

Therefore, the GATS provides for the provision of this regime both for services themselves and for service providers. However, Article II, paragraph 3, reserves the right of a state to maintain a non-most-favored-nation measure if the measure is included in the list of preferences and meets the conditions of the Schedule to Article II Exemptions. Therefore, the GATS provides for the provision of this regime both for services themselves and for service providers. At the same time, paragraph 3 of Article II regulates the right of a state to maintain a measure that does not correspond to the most favorable national regime, if this measure is included in the list of preferences and it meets the conditions.

This principle does not apply to the preferences given to neighboring countries to ensure the exchange of services in these areas when services are provided and consumed in these spheres. The GATS provided for the spread of the most-favored-nation regime for market access, which the country provides by its schedule. Thus, the starting point is the liberal regime existing in each country at the time of signing the GATS. By the principle of providing a national regime to foreign services and suppliers of foreign services, a favorable regime no less

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<sup>43</sup> The General Agreement on Trade in Services (GATS) Most-Favoured-Nation Treatment

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favorable than that provided by the state to suppliers of similar national services and services is provided. Although this principle is integral to the GATT for goods, the GATS specifies that this principle applies only to countries that have entered into specified obligations and only to service sectors that have assumed these obligations. GATS also regulates the issue of limited application of national regimes. Article XVII of the GATS regulates specific obligations to provide national treatment. The national regime is provided on a reciprocal basis in certain service areas by the obligations and conditions set out in the Schedule of the Participating State<sup>44</sup>.

The principle of transparency is given the main attention in Article III of the GATS. This is one of the main principles that countries should follow. The agreement stipulates the creation of information points where other member states can request information and receive necessary information about specific service areas. Each country undertakes to publish all signed international agreements on trade in services. At least once a year, any GATS member shall notify the Council on Trade-in Services of new, modified rules or orders relating to trade-in services covered by that member's specific obligations under the GATS. Article IV of the GATS stipulates that developed countries establish special contact points to ensure that service providers from developing countries have access to information on the commercial and technical aspects of service provision, registration, recognition, professional qualification, and the availability of technology.

According to the GATS, each member state undertakes to ensure that providers of monopoly services in their internal territory do not carry out actions in the provision of monopoly services that are inconsistent with their obligations or specific obligations under the GATS. Following Article IX of the GATS, each country shall, at the request of another party to the Agreement, hold consultations to eliminate business practices that may restrict competition. The principle of gradual liberalization is reflected in Article XIX of the GATS, according to which

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<sup>44</sup> "General Agreement on Trade in Services." 1994. Art. XVII.

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all participating countries agree to hold periodic negotiations to achieve a higher level of liberalization. The purpose of the negotiations is to reduce or eliminate measures that adversely affect trade in services. Liberalization is a process that ensures the opening of the national economies of countries to the world market of services through the adoption of relevant regulatory and legal documents. The opening of the national market to international competition implies the removal of barriers regulating the free movement of services across borders, which leads to the improvement of the national regulatory system in this sphere. This process of liberalization also involves paying attention to national policy goals and the development of certain countries, in general, and in certain service sectors. The process of liberalization continues even when a country renounces its previous commitments under Article XXI<sup>45</sup>.

Due to the strict mechanism of changing the list of national obligations to provide services to the market, that is, if the list of one member changes, the deterioration of the use of the services of another member is the most convenient. Accompanied by “compensatory actions” based on the principle A country that has renounced its obligations compensates other countries for the damage that may be caused as a result of such a waiver by liberalizing trade in other services.

Thus, “ultimately, the abolition of individual obligation becomes an additional means of a more general liberalization of trade in services”. It should be noted that the GATS significantly changed the meaning of the term “trade” compared to the GATT. Only some of the services are provided across borders.

A significant part of the services is provided on the territory of the country that is importing or exporting the public service. Based on this, the scope of the most favored nation regime on trade in services already differs from trade in goods. The principles of providing the most favorable state regime and the national regime are components of the principle of non-discrimination in WTO law. The most-favored-nation regime obligation prohibits a member state from

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<sup>45</sup> “General Agreement on Trade in Services.” 1994. Art. XXI.

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discriminating against other states, and the national regime obligation prohibits a WTO member from discriminating against other states. However, it should be remembered that these principles are applied to goods and services at different levels. Summarizing all of the above, it should be noted that, the structure of the General Agreement on Trade in Services “made the Agreement acceptable to countries at different stages of economic development and countries that support different forms and methods of liberalization of trade in services.” It is impossible not to underestimate the importance of GATS in the liberalization of international trade in services within the framework of integration associations that take into account the provisions of the World Trade Organization, as well as GATS. On this basis, the GATS had a strong influence on the development of the national legislation of the countries. At the same time, it should be emphasized that the effectiveness of international legal regulation of trade in services, in particular, the application of international legal norms to the national legislation of states, creates the opportunity to achieve this effect through international integration, and unity is achieved in national legal regulation.

The General Agreement on Trade in Services defines several exceptions to the obligations of member states. These exceptions include:

- 1) In the form of temporary preferences recorded in the list of exemptions of WTO member states about the most-favored-nation regime provided for in Article II of the GATS and with exceptions consistent with the conditions of the Annex on preferences in Article II or with an economic integration agreement (Article V of GATS);
- 2) Removal of public procurement from GATS;
- 3) General exceptions by Article XIV of the GATS;
- 4) Restrictions to protect the balance of payments;

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## 5) Security exceptions under Article XIV bis of the GATS<sup>46</sup>.

Protection of the national interests of a WTO member state: human health, public order, public morals, national security, environmental protection, and trade restrictions that may directly conflict with GATS obligations require taking certain measures. General exceptions enshrined in Article XIV of the GATS allow countries to achieve their national policy goals. Article XIV allows countries to take and introduce measures contrary to the GATS, taking into account the requirements and objectives outlined in this Article. On this basis, the provisions of the General Agreement on Trade in Services offer a general “framework” for such exceptions, consistent with the GATS and the obligations undertaken by States.

If we compare the GATS with the General Agreement on Tariffs and Trade and the Agreement on Trade-Related Aspects of Intellectual Property Rights, we can observe a more flexible approach that allows the WTO member states to take into account specific obligations in their policies. Several Articles are devoted to exceptions in the General Agreement on Trade in Services. In particular, Article V of the GATS is devoted to issues of economic integration of WTO member states. According to Article V, states may participate in or enter into agreements aimed at liberalizing trade in services among members. At the same time, the GATS provides conditions for such an agreement between countries: the agreement should cover important sectors and not allow discrimination between the participants about the national regime in the sense of Article XVII of the GATS. The purpose of these economic integration agreements is to facilitate trade between the participating countries, but such an agreement should not create barriers to trade in services in certain sectors concerning other countries not participating in the agreement. According to the general rule enshrined in Article

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<sup>46</sup> “General Exceptions Under the GATS (pp. 1-39).” *TILEC Discussion Paper Series*, vol. 2020, no. 027.



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XI of the GATS, any member state does not apply any restrictions on international money transfers and current account payments related to its special obligations<sup>47</sup>.

However, Article XII provides for specific obligations to a country in the event of a “serious balance of payments and external financial difficulties or the threat thereof”, including restrictions on trade in services with related payments or transfers, or providing support. In such a situation, it is possible to emphasize the flexibility of the GATS for countries that are in the process of economic development or transition and can introduce the necessary restrictions to maintain a certain level of material reserves that ensure their implementation. Each member state makes a list of specific obligations in specific service areas for each of the methods of providing services related to the provision of the national regime, not only access to the internal market of services. At the same time, the agreed positions remain binding and may be amended or revoked in the future only by agreement with the countries concerned. Terms may be changed at any time if they facilitate access to the market for services. Article XII of the GATS stipulates that any country may establish or maintain restrictions on trade in services to which it has assumed specific obligations if it is limited by financial difficulties in the process of economic transformation. However, such measures should be non-discriminatory and temporary and should not be adopted or used to protect a particular service sector.

Article XIII of the GATS provides that most-favored-nation, market access, and national treatment rules do not apply to public procurement laws or requirements. These purchases must be for government purposes only and not for commercial resale or commercial distribution. Similar to the General Agreement on Tariffs and Trade, GATS includes exceptions to obligations, as well as additional conditions for waiving benefits under certain conditions (escape clause). On this basis, Article XVII of the GATS stipulates that any country may withdraw from the GATS benefits if it is determined that services are provided

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<sup>47</sup> “General Agreement on Trade in Services.” 1994. Art. XI.

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“from the territory of a member state or to a territory or territory other than the territory of a member state that does not apply the WTO Agreement”.

Article XIV allows member states to take or apply measures necessary to protect the life or health of people, animals, or plants, protect public morals, and maintain public order in the state. At the same time, this Article stipulates that countries may not apply these measures as disguised restrictions on trade in goods or services that are arbitrary or unjustifiably discriminatory between members with similar conditions. It should be noted that it is very difficult to apply Article XIV in practice. The government of a particular country must prove that any necessary public regulation is, in the opinion of that government, consistent with the concept of public policy for the maintenance of public order, public morals, or public health.

The purposes specified in paragraphs a) – c) of the Article can be a means of protection in case of non-fulfillment of any provision of the GATS, in turn, paragraphs d) and e) of the Article apply only in cases of deviation from certain obligations accepted under the GATS. Clause d) of this Article specifies that measures contrary to the national regime can be used for “fair and effective assessment or collection of direct taxes.” On this basis, paragraph d) of Article XIV applies to measures contrary to the provision of national treatment following Article XVII of the GATS, and paragraph e) of this Article justifies measures applied contrary to the most-favored-nation treatment established in Article II of the GATS. Article XIV bis regulates security exceptions. On this basis, any country has the right not to provide information, the disclosure of which could threaten its security. Each member state may take any action it deems necessary to protect its essential security interests. It should be emphasized that states must demonstrate the “necessity” and “legality” of applying certain restrictive measures to protect public order, human and animal health, and public morals. At the same time, it should be underlined that the public order exception in the GATS can be applied only in cases where there is a real and sufficiently serious threat to one of the main interests of society.

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Taking into account the above, it should be noted that GATS, unlike GATT, follows a flexible approach that allows member states to take into account the specific obligations adopted in their domestic policies. On this basis, assuming certain obligations, the country can restrict the access of foreign services and service providers to the service sectors most important for domestic development. Exceptions to GATS allow WTO member states to waive GATS obligations in certain cases. In practice, the exceptions provided for in the GATS, in particular the general exceptions provided for in Article XIV, are difficult to implement. To apply this article of the GATS, the WTO member state must prove that the disputed “necessary” state regulation is consistent with public policy directions, for example, the protection of life and health of the population. Two areas of WTO law that have been particularly controversial concerning centrally planned economies in the past concern instruments of trade<sup>48</sup>.

The structure of obligations of the General Agreement on Trade in Services differs from other WTO agreements. GATS defines not only general obligations that apply to all imported services but also specific obligations that are reflected in the List of each member state and apply only to sectors that the government of a particular country agrees to include in its List. Part II of the GATS is devoted to the general obligations of the members.

General obligations of the state apply to all types of services. On this basis, the general obligations that each member of the WTO must fulfill include:

- the most favorable state regime;
- ensuring transparency;
- to help increase the participation of developing countries in the international trade of services;

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<sup>48</sup> Pomfret, Richard. “Uzbekistan and the World Trade Organization.” June 2020.

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- to ensure reasonable, objective use of commonly used measures related to the trade of services in sectors where appropriate specific obligations have been accepted, etc.

The main general obligation enshrined in Article II of the GATS is that a country should treat the services or suppliers of services of another WTO member no less favorably than it accords to the suppliers of similar services or services of any other country<sup>49</sup>. The most favorable state regime prohibits any form of discrimination against foreign service or service providers. Based on the above, the most favorable state regime is provided for both the services and the service providers of another WTO member state. As noted by Professor Peter Van den Bossche, the most-favored-nation obligation is the single most important rule in WTO law. Without this provision, the multilateral trading system will not exist<sup>50</sup>.

Most-favored-nation treatment and national treatment under the GATT and GATS prohibit discrimination based on the “nationality” or “national origin or current address” of suppliers of goods, services, or service providers. Accordingly, in Article VI of the GATS, each member of the WTO is obliged to ensure the reasonable and impartial application of laws, court decisions, administrative procedures, and other generally applicable measures affecting trade in services.

This regime is given to measures related to trade in services, that is, to the rules and procedures for the delivery of services carried out by one of four fixed delivery methods. It should be noted that the Most Favored Nation regime applies only to measures related to trade in services that are the subject of the GATS. As for the GATT and trade in goods, this regime does not mean that there are no barriers to the import of goods in the territory of WTO member countries, which means that, the import of goods “can not be subject to barriers other than those based on WTO documents.”. The obligation to provide the most favorable country

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<sup>49</sup> General Agreement on Trade in Services. 1994. Art. II. // “Consultant Plus”.

<sup>50</sup> Van den Bossche, P. *The Law and Policy of the World Trade Organization: Text, Cases and Materials*. Cambridge University Press, 2005. 40.

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regime is unconditional, it cannot depend on the fulfillment by one country of any requirements of another WTO member. The regime enshrined in Article II of the GATS does not determine the conditions of market access, it only guarantees the non-discriminatory basis of national market access. In other words, if access to the domestic market of a certain member state is limited, then it is equally limited for all other WTO members. The most favorable state regime is included in the list of common obligations of all WTO countries. This obligation has a specific character because the development of a list of exceptions to this regime “makes this obligation specific, depending on the will of a certain state concerning a certain sector (sub-sector) of services and depending on the type of service “<sup>51</sup>.

Proposals consider the most favorable state regime as a specific obligation “affecting the actual understanding of the scope of obligations undertaken by specific members of the WTO, as well as the legal consequences of their application.” Comparing the most favorable state regime under GATT and GATS, it should be noted that this regime in international trade of goods by Article I of GATT includes customs fees for import and export of goods, import and export of goods, duties, and fees. including any fees for collection methods, remittance of import or export charges, and regulations governing imports and exports. On this basis, the GATT contains several articles that provide for the provision of most-favored-nation treatment or treatment “similar to” most-favored-nation treatment: Article III, paragraph 7 (domestic quantitative regulation section on), V (on freedom of transit), paragraph 1 of Article IX (on marking requirements), XIII (on non-discriminatory application of quantitative restrictions), XVII (state trading enterprises about). In turn, Article XX of the GATT, which establishes general exceptions, also contains an obligation “similar” to the obligation to grant most-favored-nation treatment<sup>52</sup>. The GATS, like the GATT, contains provisions

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<sup>51</sup> Arkhipova, M.F. “General'noe soglashenie po trgovle uslugami (GATS). [General Agreement on Trade in Services (GATS)]” *Evrasiiskii yurid. zhurnal* 4 (47) (2012): <http://www.eurasialegal.info> (accessed October 26, 2023).

<sup>52</sup> Van den Bossche, P. *The Law and Policy of the World Trade Organization: Text, Cases and Materials*. Cambridge: Cambridge University Press, 2005. 310.

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on the granting of most-favored-nation treatment or treatment “similar to” most-favored-nation treatment:

- Article VII (on recognition of knowledge or acquired experience);
- VIII (on monopolies and special service providers);
- X (according to the rules of protection against future emergencies);
- XII (on measures on the balance of payments);
- XXI (on changes in the lists);
- XIV (obligation “similar” to the obligation to provide the most favorable state treatment)<sup>53</sup>.

As noted above, the GATS does not contain a definition of the term “services”, but Article XXVIII of the GATS defines a “service provider” as any person, including natural and legal entities, that provides services, as well as branches or representative offices in the case of providing services through commercial participation. At the same time, the GATS does not contain definitions of the concepts of “like services” or “suppliers of similar services”.

Establishing “similarity” of services or service providers should be based on factors including:

- 1) Characteristics of the service provider or service provider supplier;
- 2) Classification and description of the service in the UN Provisional Basic Product Classification;
- 3) Habits and preferences of consumers concerning the service or service provider.

Furthermore, two service providers supplying “similar services” are not necessarily “similar service providers”. Factors such as the size of companies,

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<sup>53</sup> “General Agreement on Tariffs and Trade.” Art. VII, VIII, X, XII, XXI, XIV.

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their assets, their use of technology, and the nature and scope of their experience should also be taken into account.

According to Article II of the GATS, any country may continue to apply a measure that is not compatible with most-favored-nation treatment if the measure is included in the country's list of exceptions and complies with the terms of the Annex to Article II exceptions. Accordingly, the Council for Trade in Services should consider all exceptions to the obligations; check whether such conditions that led to the exemption still exist, as well as set a date for their next review. It is noted in the Annex of Privileges to Article II of the GATS that, exemptions from the country's obligations under a specific measure expire at the time indicated in such privileges. But at the same time, it was noted that the concessions should not exceed 10 years and that the next stages of trade liberalization would be negotiated.<sup>54</sup>

In addition, according to paragraph 3 of Article II of the General Agreement on Trade in Services, "The provisions of the Agreement shall not apply to neighboring countries to facilitate the exchange of services produced and consumed in such spheres in border areas cannot be interpreted as giving or preventing the granting of benefits to the members". On this basis, we may underline a certain flexibility of the GATS, which allows countries to grant benefits to neighboring countries to develop services trade in their territory. The reasons for exemption from the most favorable state regime are often international agreements and the mutual interests of states. On this basis, exceptions to this regime based on mutual interests, it is emphasized that a measure contrary to the most favorable state regime is necessary to ensure market access or to ensure equality in foreign markets. Exceptions based on bilateral or multilateral agreements are confirmed by the conclusion of such agreements, as well as the legal consequences of the fulfillment of WTO obligations by the states.

Article V of the General Agreement on Trade in Services allows countries to participate or enter into integration agreements aimed at liberalizing trade in

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<sup>54</sup> "General Agreement on Trade in Services." 1994. "Annex on Article II Exemptions," 5-6.

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services among participants, provided that such agreements cover a significant portion of the services sector, ensuring non-discrimination, eliminating existing discriminatory measures and should not increase trade barriers between them. As stated in Article XIII of the GATS, the most-favored-nation regime does not apply to rules governing public procurement that are not intended for commercial resale or use in the provision of commercial services. The General Agreement on Trade in Services provides for exemptions from the most favorable national treatment for countries if such restrictions were announced when the country joined the GATS and then became the subject of subsequent multilateral negotiations on the liberalization of trade in services. In turn, WTO members are not required to justify the benefits of Article II with specific state regulations or to include them in specific types of services.

With this regard, the GATS allows the following exemptions from the most favorable treatment:

1. Benefits included in the list of exceptions from the most favorable state regime of WTO countries;
2. Privileges to facilitate trade in services in border areas;
3. Privileges according to the rules on public procurement;
4. Privileges for participation in integration associations aimed at liberalization of trade in services;
5. Benefits related to participation in contracts that provide for the full integration of the labor markets of the participants<sup>55</sup>.

Such MFN preferences are important for WTO law and policy because they allow trade liberalization to be “aligned” with other economic and non-economic interests and values. Article III of the GATS reinforces the requirement of transparency in domestic regulation. This requirement is that all regulatory legal

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<sup>55</sup> “General Agreement on Trade in Services.” 1994. Art. XIV.



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documents, administrative orders, and international agreements signed by the state must be published. The requirement to ensure transparency is disclosed as a set of obligations of states in the GATS, including all regulatory documents related to the regulation of trade in services disclosed as an obligation of WTO member countries; The Council for Trade in Services shall be notified of the adoption of “new or amended laws, regulations, or administrative orders in effect each year that materially affect trade in services covered by its specific obligations under this Agreement”, obligation to notify and included a form of rapid response to all requests from other WTO members for “any specific information relating to measures of general application or international agreements” concerning to trade in services.

It should be noted that Article VII uses the term “specific country” which means that, it does not apply to all WTO countries, so there is a violation of the most favored nation regime<sup>56</sup>.

The role of the WTO and the General Agreement on Tariffs and Trade (GATS) will be to ensure that the broad economic benefits of multilateral rules and obligations are delivered electronically in the same way as other forms of trade. According to some negotiations presented today by both developed and developing member states (e.g. telecommunications and computer services), linking the FTAs has broad implications for strengthening the capacity of countries to take advantage of e-commerce and reduce the digital divide. there is a widespread belief. In addition to telecommunications and computer services, financial payment services, advertising services, and delivery services are also mentioned as components of e-commerce that provide "infrastructure". Various professional services and IT services, in particular "back-office" services (the part of the company consisting of administration and support staff that are not dependent on customers), as well as education and health services, e-commerce

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<sup>56</sup> O.V. Il'ina and G.V. Mikhailova, “Features of Regulation of the International Services Market: An Overview and Analysis of General and Specific Obligations within the WTO,” *Izvestiya Sankt-Peterburgskogo gosudarstvennogo ekonomicheskogo universiteta* 3 (2017): 25.

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and Internet capabilities have improved potential beneficiaries in developing countries. Non-WTO forums deal with technical issues such as authentication (verification of a person or object), encryption, internet governance and domain names (org, com, gov) or cultural and human issues such as promoting diversity in local and linguistic content, computer literacy and education. may be equipped to deal with resource issues.

In conclusion, we can identify important methods of recognition of documents enshrined in the GATS. These include harmonization, bilateral agreements between countries, or unilateral recognition of documents. At the same time, no country should act as a “means of discrimination between countries in the application of standards or criteria for licensing, licensing or certification of service providers” or as a disguised restriction on trade in services. According to Article VIII of the GATS, each WTO country shall ensure that the monopoly supplier of services does not act inconsistently in the provision of monopoly services in a certain service market in the territory of this country with the state's obligations to ensure the most favorable state regime and its specific obligations. According to Article VIII of the GATS, each WTO country shall ensure that the monopoly supplier of services does not act inconsistently in the provision of monopoly services in a certain service market in the territory of this country. On this basis, it can be concluded that the GATS allows monopoly and exclusivity of service providers, but on the condition that they do not violate specific obligations and provide the most favorable state treatment in the WTO countries. On this basis, by the General Agreement on Trade in Services, countries entered the foreign market to ensure that national service providers do not abuse their monopoly position. The GATS recognized in Article IX that “certain business practices of service providers ... may restrict competition.” Consequently, to put an end to such practices, the obligation of the WTO countries to enter into consultations to eliminate unfair practices in the field of service provision has been strengthened. States are also encouraged to cooperate by providing non-confidential information on this issue.

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## **Chapter II.**

# **The International-Legal Regulation of Trade in Tourism Services within the Framework of the GATS.**

### **2.1. Formation of Trade in Tourism Services' Regulation in the General Agreement on Trade in Services.**

Article 2(1)(a) of the Vienna Convention on the Law of Treaties from 1969 defines 'treaty' as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. The Convention uses 'treaty' as a generic term, and so includes treaties that may be described as universal or regional, intergovernmental, inter-ministerial or administrative. A treaty can be made between only two States (bilateral) or three or more States (multilateral), and almost all of the Convention applies to both types<sup>57</sup>. The international treaty functioned, in Kelsen's view, as a flexible and substantively unlimited instrument of law-creation<sup>58</sup>. Foreign scientists suggest that treaties are thus supple legal tools in the hands of states, permitting them to enter into individual relationships with other states on very specific issues or projects or to establish widely applicable norms intended to govern legal relationships with as many other states as will expressly agree to their terms<sup>59</sup>.

The GATS, which entered into force in January 1995, is one of the first and most significant multilateral trade agreements for the provision of tourism services. The objectives of the GATS were almost identical to those of its goods counterpart. According to the WTO agreements, all contracting parties can benefit

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<sup>57</sup> Anthony Aust, *Handbook of International Law* (New York: Cambridge University Press, 2010), 50.

<sup>58</sup> Jochen von Bernstorff. 2010. *The Public International Law Theory of Hans Kelsen*. Cambridge University Press, 179.

<sup>59</sup> Currie, John H. 2008. *Public International Law*, 123.

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from several general opportunities provided by the GATS to boost trade and production related to services. It also includes certain ideas, precepts, and guidelines that are particularly relevant to emerging nations. An essential component of the GATS is the clauses on developing nations.

Tourism-related services tend to be labor-intensive, with many links to other important sectors of the economy, such as transport, cultural and creative services, tourist guides and other related services, or financial and insurance services. GATS covers the travel and tourism industry. The WTO states<sup>60</sup> that Tourism and Travel Related Services (TTRS), category 9 of the Services Sectoral Classification List of GATS, is distinctly limited in scope. The category is divided into four sub-sectors:

1. Hotels and restaurants (including catering);
2. Travel agencies and tour operators' services;
3. Tourist guide services;
4. Other.

According to Malyanova, the GATS in all cases recognizes the right of member states to regulate the provision of services by their policies and their legislation. Moreover, the agreement establishing the GATS is a framework of rules aimed at ensuring that the rules of trade in services do not contain unnecessary barriers. The main idea of the GATS is to develop and adopt multilateral rules aimed at liberalizing trade in services. However, in practice, most states apply various types of restrictions to protect the interests of national service providers. The GATS establishes the rules and procedures for applying the permissible restrictions on trade in services<sup>61</sup>. Therefore, the states, which have joined the GATS undertake obligations that can be

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<sup>60</sup>WTO.1998g.

See:[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009DP.aspx?CatalogueIdList=69812,74140,72076,50858,9868,54805,29130,28519&CurrentCatalogueIdIndex=6](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009DP.aspx?CatalogueIdList=69812,74140,72076,50858,9868,54805,29130,28519&CurrentCatalogueIdIndex=6)

<sup>61</sup>See: A.N. Malianova, *The Formation and Development of the Law of the World Trade Organization: Abstract of Dissertation for the Candidate of Juridical Sciences* (Moscow, 2008), 15.

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divided into two groups: general obligations assumed by states unconditionally and specific obligations relating to the particular conditions of access to the market for services of a certain state.

The most important place in the obligations belongs to the most favored nation. This regime requires the state to provide each member of the WTO with a mode of access to the market of services no worse than the one it provides to any third state, including non-WTO members<sup>62</sup>. It is important to note here that the provision for MFN in the GATS differs from MFN provisions in other documents of the WTO system by the fact that according to the GATS from MFN, any exemptions are allowed at the discretion of the WTO members.

Paragraph 2 of Article 1 of the GATS distinguishes four ways of international delivery of services:

1. Cross-border delivery is the mode of delivery when the service moves across the border.
2. Consumption abroad – the mode of supply in which the consumer of the service moves across the border.
3. Commercial presence – the mode of delivery in which the company providing the service opens a branch abroad.
4. The movement of individuals – the mode of delivery, in which the specialist providing the service moves across the border for delivery services<sup>63</sup>.

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<sup>62</sup> Regarding any measures covered by the GATS, each WTO member provides services and suppliers of another member of the WTO the most favored nation (MFN).

<sup>63</sup> According to the GATS, restrictive measures include:

- limiting the number of service providers (quoting, granting exclusive rights);
- limiting the volume of trade in this type of service;
- limiting the number of operations or the number of services provided;
- limiting the number of individuals who may be employed in the relevant service sector;
- the requirement of a specific legal form of the company;
- limiting the share of foreign capital in the form of the maximum percentage of participation in the company.

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The debate on GATS and its impacts has gone through a radical shift in the post-9/11 world. Potentially diverse conceptions of terms and their diverse practical realizations in different communities, cultures, and competing stakeholders can restrict their scope<sup>64</sup>. However, as noted by Cleverdon and Kalisch<sup>65</sup>, a lack of consensus should not be construed as an opportunity to bulldoze upon all the vested opinions of the mighty<sup>66</sup>.

The General Agreement on Trade in Services was largely untested. A high number of commitments had been made in the tourism sector, particularly in Mode 2 (the consumer traveling to the territory of the supplier). Fewer commitments have been made for data processing and software, and still fewer for the construction sector and health services. Looking from the point of view of the 4 modes (Section 6.3 (a)), commitments have been easiest to secure in respect of Mode 1-cross-border supply of services and Mode 2- consumption abroad, most difficult in Mode 4 presence of natural persons, which is typically linked in horizontal commitments to Mode 3- commercial presence, and limited to technical specialists and senior executives<sup>67</sup>.

In the interview with *Umida Haknazar*<sup>68</sup>, she emphasized the vital role of clarifying restrictions and commitments in Modes and horizontal issues during

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See: Appendix 1 B: (1994 WTO) General Agreement of Trade in Services.

<sup>64</sup> Mattoo, Aaditya & Subramanian, Arvind, 1998. "Regulatory autonomy and multilateral disciplines: The dilemma and a possible resolution," WTO Staff Working Papers TISD-98-02, World Trade Organization (WTO), Economic Research and Statistics Division.

<sup>65</sup> Cleverdon, Robert and Angela Kalisch. "Fair trade in tourism." *International Journal of Tourism Research* 2 (2000): 171-187.

<sup>66</sup> R. Cleverdon and A. Kalisch, "Fair Trade in Tourism," *International Journal of Tourism Research* 2, no. 3 (2000): 171-87.

<sup>67</sup> Andreas F. Lowenfeld and Herbert and Rose Rubin, *International Economic Law* (New York: Oxford University Press, 2002), 130-31.

<sup>68</sup> Dr. Umida Haknazar is an independent legal/trade advisor on WTO membership and subsequent international development projects in Central Asian and CAREC (Central Asia Regional Economic Cooperation) member countries funded by various international development institutions such as ADB, World Bank, USAID, UN FAO, European Union. Her main activity is to provide technical assistance in the process of accession to the WTO, preparation of legislative acts in areas related to the WTO, such as technical regulation, sanitary and phytosanitary measures, intellectual property rights, regional trade agreements, customs regulation, trade facilitation, etc. Umida is the editor of the Russian translation of the second edition of "WTO Law and Policy" by Peter Van den Bosch.

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the negotiations on services in WTO accession. Professor Anna Wrobel has approved the analogical view, who also emphasizes the connectedness of tourism services with other service sectors, such as transportation, telecommunication, finance, etc.

The “others” group lacks an explicit definition, and the categorization is extremely broad. The Framework Agreement, Annexes, and Schedules of particular Market Access and National Treatment obligations make up the GATS. More WTO members than any other service sector—more than 133—have committed to travel. This shows that in an attempt to foster economic growth, the majority of members want to grow their tourism industries and attract more inbound foreign direct investment (FDI). Depending on the supplier’s and the customer’s territorial presence at the time of the transaction, GATS emphasizes and covers certain services.

Three categories are used to systemize the goals of GATS:

- The gradual liberalization of services trade. Liberalizing and establishing a secure framework for international trade in services is the main goal of GATS. GATS’s key tenets are the elimination of trade discrimination and the advancement of fully free trade worldwide. A framework for the lawful and practical removal of obstacles to cross-border services trade is established by GATS.

- Increased participation of emerging economies. One of the main objectives of the GATS is to involve developing countries in the process of liberalizing trade in services. Developed countries need to help emerging countries by committing to market access in industries and supply chains where they are weak.

- Promoting economic growth and development. The liberalization of trade in services GATS will promote economic growth, development, and welfare of the world. GATS recognizes that countries are at different stages in their economic development, and it offers special treatment for developing and less developed countries, whose tourism development may still be in its infancy.

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Every regional agreement's member nations seek to break down all barriers between them, but one of the main challenges to international trade liberalization has been the protection of their markets from non-member nations. The EU in particular is known for shielding its members from non-member nations. GATS's primary objective is to lessen protectionism among its members, which will ultimately benefit all of them. By offering equal chances for domestic and foreign businesses in the trade of services, GATS aims to combat protectionism. Protectionism under the GATS, however, appears to affect developing nations more than industrialized ones. According to Juan Marchetti and Petros Mavroidis, developing countries eventually wanted to find a new home for the services agreement. It is probably the realization that trade-offs between (offers in) services and (requests in) goods were possible that persuaded them to change course<sup>69</sup>.

Article IV of the GATS is specifically intended to encourage developing nations to participate more in services trade. It is important to fulfill specific promises in a way that supports developing nations in enhancing their capacity to offer domestic services and gaining access to industries and supply chains that are relevant to their exports.

The interview with Jarosław Pietras<sup>70</sup> indicated that the GATT regulations are studied more clearly and precisely than the GATS regulations. Compared to GATS, the agreement itself is more standardized, intelligible, and beneficial to member states both de jure and de facto. Furthermore, under the GATT, the parties can observe and monitor the flow of goods; but, the movement of services cannot

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<sup>69</sup> Juan A. Marchetti and Petros C. Mavroidis, "The Genesis of the GATS (General Agreement on Trade in Services)," *The European Journal of International Law* 22, no. 3 (2011): 720.

<sup>70</sup> Jarosław Pietras is a Senior Research Associate at the Martens Centre and Visiting Professor at the College of Europe in Bruges, Belgium. He is also a former Visiting Fellow at the Martens Centre. Prior to this, he served as Director General in the Council of the European Union from 2008 to 2020 (covering issues of Climate Change, Environment, Energy, Transport, Telecom, Education, Culture, Audiovisual, Youth and Sport). His professional career started in 1980 at the University of Warsaw Faculty of Economics, teaching international economy and trade policy. After 1990, he worked for consecutive Polish Governments, serving as Secretary of State in Ministry of Finance, Secretary of State for Europe and Head of the Office of the Committee for European Integration.



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be followed because it appears to be abstract. No legal document defines the General Agreement on Tariffs and Trade (GATS). Nevertheless, the agreement process ensures that customers can purchase goods and services from both domestic and foreign businesses.

## 2.2. Legal analyses of domestic regulation and market access in tourism services.

Several services trade-related issues were put on hold to be resolved since they were deemed too complex to handle at this early point. Trade in services is hampered by regulatory restrictions. It is often impossible or too costly to apply border measures.

Assume for example that a country wishes to stop imports of hairdressers services. How could such a measure be enforced without heavy policing of all its citizens passing the border, without putting into question constitutional values and some sort of extra-territorial enforcement? More importantly, most of the trade in services takes place intra-territorially and this is why restricting domestic regulation becomes an important aspect of trade liberalization. Trade liberalization in services consequently, becomes a matter of negotiation on restricting domestic regulation. In a sense, the GATS resembles the GATT story after border protection had been substantially addressed through international negotiations<sup>71</sup>.

Domestic legal orders, on the other hand, offer a qualitatively different dynamic for globalized actors interested in stimulating the development of WTO law. Rather than enjoying a conflictual relationship with WTO law, domestic trade remedies legislation (for example) customarily mirror WTO obligations. Their judicial review processes are supplementary to, rather than in competition with, WTO law<sup>72</sup>.

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<sup>71</sup> Mitsuo Matsushita, Thomas J. Schoenbaum, and Petros C. Mavroidis, *The World Trade Organization: Law, Practice, and Policy* (Oxford and New York: Oxford University Press, 2009), 604.

<sup>72</sup> Yilmaz M. (ed.), *Domestic Judicial Review of Trade Remedies* (Cambridge, Cambridge University

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The overlap between the content of legal obligations at the WTO and other legal systems allows globalized actors to stimulate contestations over WTO obligations within domestic (or regional) legal systems. Take the example of a producer who feels that they are being undermined by a foreign producer who is exporting goods at below value. The domestic producer petitions for an investigation into whether dumping is taking place, and whether anti-dumping duties should be imposed upon the foreign imports<sup>73</sup>.

This investigation, the process whereby an actor requests the governing structures of a member to investigate a perceived breach of WTO or coterminous domestic rights or duties through internal administrative bodies, necessarily requires an interpretation of the correct application of the rule in question. By initiating an administrative investigation, actors encourage an evaluation of how a member should apply WTO rules in its territory<sup>74</sup>.

WTO law not only prescribes certain requirements for members as they conduct investigations but it also requires judicial review for those affected. Many systems allow not only the review of a determination but also the review of a decision not to act, thus granting actors a legal mechanism to require members to act in ways which may open them to scrutiny at the WTO<sup>75</sup>. The liberal approach that domestic systems tend to take vis-à-vis standing in raising matters, especially in comparison to the WTO itself further highlights this mechanism<sup>76</sup>.

Through the process of judicial review of administrative decisions relating to WTO obligations, a globalized actor may attempt to appeal to the rights and duties under the covered agreements in raising a claim at the domestic level. While the success of such an appeal may be limited in terms of formal responses, judicial

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Press 2013) 5.

<sup>73</sup> Article 9 Agreement on Implementation of Art. VI of the General Agreement on Tariffs and Trade 1994 (15 April 1994) LT/UR/A-1A/3 <<http://docsonline.wto.org>> ('AD Agreement').

<sup>74</sup> For this reason, many legal systems attempt to limit 'external' actors (that is, competitors) from using domestic systems against the host member: Opinion 1/94 (WTO) [1994] ECR I-05267.

<sup>75</sup> See: Case C-76/01, Eurocoton and Others v Council [2003] ECR I-1091.

<sup>76</sup> For an analysis of a number of jurisdictions reaching this conclusion: M Yilmaz (ed.), *Domestic Judicial Review of Trade Remedies* (Cambridge, Cambridge University Press 2013) 424.

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bodies nonetheless frequently follow the WTO *acquis* through a process of ‘muted dialogue’. Even where systems openly reject the prioritization of ‘external’ law in instances of apparent conflict, the interpretation of domestic rules in line with international obligations is a common feature of many domestic legal systems<sup>77</sup>.

It is known that the GATS permitted countries to vary their level of commitment to national treatment and market access. This bargaining structure threatened to undermine the multilateral character of the WTO. The provision for MFN exemptions played a special role here (Article II:2). The agreement placed no legal restrictions on the circumstances in which the exemptions could be taken. The USA in particular employed the threat of an exemption to gain leverage in the negotiations. Most spectacularly, it threatened to take wholesale exemptions in the basic telecommunications and financial services sectors and leave itself free to operate exclusively on a bilateral and regional basis. It argued that, unless many members were more forthcoming in their offers, it would be obliged to extend its commitments to countries that were not reciprocating materially. To placate the US, the negotiations in these sectors were extended beyond the conclusion of the Round. But it was by no means clear that the GATS required negotiations to produce a ‘balance of commitments’<sup>78</sup>.

GATS will make licensing, patents, technical service agreements, franchising, and management contracts easier in the hotel industry. International businesses will have the ability to relocate and station their employees abroad. The EC and NAFTA experiences indicate that opening service markets to foreign providers may need more than just applying concepts like nondiscrimination and national treatment. The GATS negotiations have demonstrated how liberalized travel is already. Not a single nation has implemented travel restrictions, sometimes known as “consumption abroad.” Travelers should also be free to

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<sup>77</sup> For example, the ‘Charming Betsy’ doctrine: *Murray v The Charming Betsy*, 6 US 2 Cranch 64 (1804).

<sup>78</sup> The World Trade Organisation, “Chapter 3. Part I. Globalisation, Law and the WTO,” *Cambridge Books Online*, Cambridge University Press, 2010, 54.

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purchase foreign currency to make payments. In this regard, negotiations have not resulted in total deregulation.

The actual presence of the service provider is also necessary for the performance of a tourism service. In international locations, airlines must have their customer inquiry window and their airport slots. Hoteliers must have a commercial presence overseas as well. In actuality, one of the main goals of the deregulation of tourism must be the establishment of a commercial presence. In fact, under the GATS, 89 countries formulated no limits on commercial presence. Thus, the goal of GATS is to guarantee and provide market opportunities for various service delivery methods. Measures impacting trade-in services provided by the following modes are covered by GATS:

Through cross-border trade, service providers from one member nation can export their services to another. Travel agencies and tour operators usually offer a variety of cross-border travel services, including reservation assistance and trip counseling. In this case, certain clauses in the GATS agreement will ensure that the foreign supplier will have equitable and nondiscriminatory access to the telecommunications networks, thereby facilitating the trans-border flow of information. This guarantees that service providers will have access to telecommunications infrastructure for planning, marketing, and offering travel advice.

Consumption abroad makes allowances for the fact that trade in services takes place when consumers move abroad to purchase services, which, in effect, is tourism itself. As the growth of tourism could be seen to be limited by any restrictions on the ability of the individual tourist to 1) leave home and be permitted to return and 2) be able to pay or make financial arrangements for the services purchased abroad, the GATS agreement attempts to remove restrictions on consumption abroad.

To provide and market services, member nations can create and grow a commercial presence abroad. This is known as a commercial presence. The

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agreement covers every avenue that a service provider may lawfully enter the market, including agency, branch, subsidiary, and joint venture. The GATS agreement will remove barriers that impede businesses that offer services to enable travel, as well as government prohibitions on the transfer of funds into and out of the relevant nation.

The presence of natural persons permits service supply personnel to temporarily enter and remain in international market places. The stringent regulations on work permits, visas, and residence can provide a challenge for professionals, managers, and technicians relocating among member countries.

The GATS agreement attempts to address this issue by providing a framework for the negotiation of temporary staff leaving one member country to work in another member country. However, the agreement does not prevent individual countries from controlling the admission and stay of foreign workers for security, health, or economic reasons. Also, the liberalization of personnel is not concerned with the free movement of labor across borders and therefore does not require alterations to national immigration laws. The implications of this for tourism are that the quality of the tourism service often depends on the expertise, skills, and knowledge of company owners and employees<sup>79</sup>.

According to the GATT (1994), Articles mentioning the level of economic development of parties in developing countries include Article III (transparency), IV (increasing participation of developing countries), V (economic integration), XII (measures to safeguard the balance of payments), XV (subsidies), XIX (negotiation of commitments) and XXV (technical co-operation). Moreover, the telecommunications Annex contains a separate Article on technical cooperation in the telecommunication industry. World Bank (1995b) argues that Article IV and XXV are the only two provisions that deal exclusively with developing countries. UNCTAD (1997a) points out that in Article IV entitled “Increasing

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<sup>79</sup> Misoon Lee, Hanna Fayed, and John Fetcher, “GATS and Tourism,” *Tourism Analysis* 7 (2002): 125-37.

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participation of developing countries”, the first provision that deals directly with the situation of developing countries, has three paragraphs. The first states that the developed countries have to assist the increasing participation of developing members by making market access commitments in sectors and modes of supply, in which the developing countries have an export interest.

According to the second section of Article IV, developed nations must establish contact points within two years of the agreement’s implementation to help developing country service providers access information about the technical and commercial aspects of particular services, the prerequisites for registering, being recognized, and obtaining professional qualifications, as well as the accessibility of services technology. The last clause of Article IV specifies that the least developed nations shall be given special consideration when the first two paragraphs are put into practice. Given the potential that electronic commerce offers for the delivery of labor-intensive, long-distance services, Sauve emphasizes that special attention must be paid to the cross-border method of service supply<sup>80</sup>.

The GATS’s most significant norm will probably be related to market access (Article XVI). Its entire consequences, however, have yet to be fully investigated. If it follows the GATT tradition to the letter, it will be concerned with border restrictions on the entry of foreign services into domestic markets. Such limitations invariably treat foreigners unfairly and discriminatorily. Market access and national treatment are so very similar. But there is also a more expansive use of the term “market access.” Non-discriminatory limitations must also be removed if foreigners are to have effective access to domestic markets. There are hints that this type of home regulation would be reduced under the GATS standard.

Some regulation restricts the opportunities for both foreigners and locals to enter markets and engage in market activities. As we shall see, the language of the GATS is by no means conclusive. About the negotiation of specific

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<sup>80</sup> Bernard Hoekman and Pierre Sauve, *Liberalizing Trade in Services*, no. 243 (Washington, D.C.: World Bank, 1995).

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commitments, it speaks of ‘effective market access’ for instance but also of submitting restrictions on ‘trade’ to the scrutiny of this norm (Article XIX). Insight into its intent is offered by the Article enumerating measures that cannot be maintained, once a sector is inscribed and exposed to the disciplines of the agreement (Article XVI:2). Measures that restrict foreign investment and discriminate against foreigners are included in the list. It includes actions that limit the kind of business that can provide the service, whether or not they discriminate. It includes new regulations that ostensibly impact both domestic and international suppliers, such as limiting the number of vendors allowed to participate in a services market<sup>81</sup>.

Concerning the mode of supply, the level of market access provided and commitments for national treatment are highest for consumption abroad and lowest for the mode, “presence of natural persons.” Concerning the level of commitments made by the subsector, there is greater deregulation for hotels and restaurants (all of the national schedules contain commitments for this subsector), followed by a declining level of commitments, by travel agencies and tour operators, tourist guide services, and other (where fewer than 20 commitments had been made in this subcategory)<sup>82</sup>.

Both qualitative and quantitative constraints (limits and quotas) are excluded by market access principles as potential causes of trade discrimination. Numerous quantitative and qualitative precautions that local governments and communities have employed to establish an environment conducive to sustainable tourist growth may be called into question by these regulations. For example, the carrying capacity of tourism may be threatened. This is because it is often intended to be a tool for managing the course and effects of tourism development. The idea of setting a maximum population size and usage in a particular tourist region is opposed to free trade and market principles, despite being a hotly debated issue.

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<sup>81</sup>Bernard Hoekman and Pierre Sauve, *Liberalizing Trade in Services*, no. 243 (Washington, D.C.: World Bank, 1995).

<sup>82</sup>Scarlett Cornelissen, “Tourism and the General Agreement on Trade in Services: Debates, Progress, and Implications for the African Continent,” (2002): 195.

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Establishing quotas or limitations in places endangered by high tourist numbers and other factors is extremely challenging for environmental protection authorities, tourism planners, and other stakeholders due to market access laws.

According to researchers in the sphere of WTO and human rights issues, even apart from specific commitments, the WTO members made concerning Mode 4 under GATS, the MFN clause applies generally to all services trade<sup>83</sup>. This means that, notwithstanding making the specific commitments WTO members cannot discriminate between different countries in its approach to regulating services.

However, one of the issues in GATS is strong protectionism, particularly in developing countries. Stated differently, the GATS classification scheme fails to acknowledge the intricacy and multiplicity of travel and tourism. However, according to Handchouz, the definition of tourist services only seeks to make things clear and encourage a thorough and creative interpretation of the facts, which is crucial for tourism policy<sup>84</sup>. The GATS classification replaces “tourism services” with “tourism and travel-related services,” or services associated with travel and tourism. This definition of tourism, as given by the UN/WTO, includes “the activities of persons traveling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business, and other purposes”<sup>85</sup>. This wording of the term aligns with that definition.

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<sup>83</sup> Sarah Joseph, David Kinley, and Jeff Waincymer, eds., *The World Trade Organization and Human Rights: Interdisciplinary Perspectives* (Cheltenham, UK, and Northampton, MA, USA: Edward Elgar, 2010), 57.

<sup>84</sup> H. Handszuh, “Tourism Services under GATS,” in \*Seminar on GATS Implications for Tourism\*, ed. World Tourism Organisation (Milan, Italy: World Tourism Organisation, 2-3 December 1995), 17-18.

<sup>85</sup> Ibid.



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### 2.3. The analyses of developing countries' practices on tourism services regulation under the GATS.

It is vital to emphasize that, the WTO dispute settlement body (DSB) has not encountered any disputes or cases regarding to GATS' tourism services. To resolve disputes regarding tourism services, governments would engage in direct bilateral negotiations rather than using the WTO DSB. Based on the GATS classification, only four subsectors have been identified under the GATS sector of (TTRS): hotel and restaurant (including catering), tour operators and travel agents, tour guides, and others.

The main issues in the spheres such as:

Financial Services Related to Tourism;

Computer Reservation System (CRS);

Business Services Related to Tourism;

Air Transport Services and GATS.

By unlocking the competitive and comparative advantages of the GATS's member nations, more trade will take place as businesses find it simpler to engage in commerce, which will boost the economies of all participating nations. Put another way, companies that offer services comparatively inexpensively and effectively would have an advantage over others if trade in services becomes less restricted as a result of the GATS. Accordingly, the industrialized nations would probably be the most competitive service providers. It is probably simple to define globalism as multilateralism, which includes any strategy aimed at achieving the goals of eliminating discrimination and bringing the global trading system closer to free trade<sup>86</sup>.

Many nations disclosed the limitations on market access they had during the GATS negotiations. Setting minimal liberalization thresholds, nevertheless, could

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<sup>86</sup> Peter Dicken, *Global Shift*, 2nd ed. (London: Paul Chapman Publishing, 1992), 137.

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counteract this. Egypt is the only nation that has mentioned environmental protection restrictions in any detail thus far. Egypt has placed restrictions on the number of carriers permitted to operate on the Nile as part of its commitment timetable, which it made in preparation for the effects of tourist liberalization. Quantitative and qualitative restrictions, a cornerstone of environmental protection and sustainable tourism in areas such as the Antilles, the Red Sea Coast, and the Great Barrier Reef may be considered discriminatory. Typical regulatory measures such as the number of diving boats allowed on coral reefs, limitations on tourist numbers experiencing natural events or subsidies, and concessions to environmentally friendly firms could be viewed as violating market access commitments and free trade<sup>87</sup>.

In the context of developing countries, a frequently cited concern is the need for some form of government intervention to ensure that markets contribute to poverty reduction and to help bring about inclusive and sustainable development<sup>88</sup>.

Additionally, the provision of some services may result in negative externalities, the costs of which are not adequately assumed by the involved parties. For example, extensive tourism or significant road transportation may hurt the ecosystem. Financial institutions that take on too much risk run the risk of jeopardizing global macroeconomic stability and straining international relations. A collection of regulations that are commonly utilized to accomplish specific policy goals is given in Box 1.1<sup>89</sup>

At an ideological level, the debate on GATS significantly mirrors predominant discourses on development in tourism sphere: a strong discourse on the positive growth outcomes of liberalization (reminiscent of the modernization perspective in tourism) is countered by claims that such measures may be to the disadvantage of

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<sup>87</sup> Darren Hoad, "The General Agreement on Trade in Services and the Impact of Trade Liberalization on Tourism and Sustainability," *Tourism and Hospitality Research* 4, no. 3 (2002): 221.

<sup>88</sup> See Cook et al. 2004: 11; Services, Development and Trade: The Regulatory and Institutional Dimension, Note by the Secretariat, UN doc. TD/B/C.I/MEM.3/11, 15 December 2011, p.7.

<sup>89</sup> Aik Hoe Lim and Bart de Meester, An introduction to domestic regulation and GATS. <https://doi.org/10.1017/CBO9781107476448.003> Published online by Cambridge University Press. P.4.

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developing countries, may break or divert spin-offs for the poorer groups in the host societies, may enhance, rather than offset, dependence, and are likely to reflect power imbalances in the manner tourism is organized and owned at the international level. As such, the debate on GATS provides a useful terrain to also evaluate contemporary theoretical considerations of tourism and development and to examine to what extent GATS invites a different interpretation of how development through tourism is predominantly approached<sup>90</sup>.

It is striking that since the inception of the scheme, commitments made in tourism have typically been higher and more extensive than those made for any other GATS sector. The hybrid nature of tourism and its overlap with other important service sectors may account to a significant degree for this. In 1998, for instance, a total of 112 national schedules, with specific commitments, had been submitted for tourism. In 2006 this had increased to 120 (World Trade Organization, 2006)<sup>91</sup>.

There seems to be a general belief among member states that national tourism economies are sensitive and should be protected from excessive competition, even though the tourism sector has higher obligations than other GATS sectors<sup>92</sup>. This is seen in the kinds of limitations that are typically placed on tourism obligations, such as unbound commitments. Among these are the imposition of economic necessity tests (for instance, in the case of foreign companies opening bars and restaurants), limitations based on license and citizenship requirements, and the rejection of new foreign investments on the grounds of “technical unfeasibility”. Moreover, agreements frequently stipulate

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<sup>90</sup> Scarlett Cornelissen. Tourism and the General Agreement on Trade in Services: debates, progress, and implications for the African continent.P.189.

<sup>91</sup> Scarlett Cornelissen. Tourism and the General Agreement on Trade in Services: debates, progress, and implications for the African continent.P.194-195.

<sup>92</sup> D.W. te Velde and S. Nair, “Foreign Direct Investment and Services Negotiations, the Case of Tourism in the Caribbean,” [http://www.odi.org.uk/wto\\_portal/FDI\\_STN\\_Tourism\\_Caribbean.pdf](http://www.odi.org.uk/wto_portal/FDI_STN_Tourism_Caribbean.pdf) (accessed October 26, 2023).

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that only hotels of a specific size are permitted to have a commercial presence in, say, the hotel industry<sup>93</sup>.

The GATS definition extends to measures taken by non-government bodies in the exercise of powers delegated by central, regional, and local governments (Art. I:3). Such an ambit brings into contention the relationship between member government measures and the private sector practices which are seen as impeding market access by foreign suppliers. To what extent will trade agreements place the onus on government members to remove private barriers to trade? The GATS extension is cautious. It envisages a situation in which the non-government body is acting on behalf of the government. In that sense, the government remains the source of the non-conforming measure. Responsibility is extended out through the obligations concerning monopoly and exclusive service suppliers<sup>94</sup>. The GATS says that where governments formally or in effect create monopolies or oligopolies, the governments are bound to ensure that they do not act in a manner inconsistent with the commitments that the governments have made to national treatment or market access (Art. VIII).

Article XIX:2 further provides concerning the position of developing country Members in the negotiations on the liberalization of trade in services that:

“There shall be appropriate flexibility for individual development. Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation, and, making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

It is thus accepted that developing country Members undertake fewer and more limited market access commitments than developed-country Members. “Full reciprocity” is not required from developing-country Members. These

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<sup>93</sup> World Trade Organization, 2001, p. 574.

<sup>94</sup>The World Trade Organisation, “Chapter 3. Part I. Globalisation, Law and the WTO,” *Cambridge Books Online*, Cambridge University Press, 2010, 43.

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Members are only expected to undertake market access commitments commensurate with their level of development<sup>95</sup>.

As provided in Article XIX:3 of the GATS, for each round of multilateral negotiations on the liberalization of trade in services, negotiating guidelines and procedures shall be established.

A primary goal of the Uruguay Round was to include developing nations in the process of liberalizing trade in services. The disparity that currently exists between the growth of services in developing and wealthy economies alarmed the developing world. They were concerned that before they had a chance to build their domestic services, wealthy nations would spend heavily on them as a result of trade liberalization in services. Conversely, wealthy nations believed that certain emerging nations had competitive and liberalized services sectors already and that at the very least, these sectors should be guaranteed complete liberalization<sup>96</sup>.

Both positive and negative effects of the GATS will occur at the same time, but to varying degrees depending on the nation and, more crucially, on developed versus developing nations. Europe and the US united to demand liberalization promises from the newly industrialized nations, particularly those in Asia, that would support their continued economic growth, particularly in the financial services sector. The developing nations requested that the framework agreement include a set of regulations that would be sufficiently flexible to take into account their different stages of development for them to be able to endorse it. They were especially concerned that the negotiations not degenerate into a north-south conflict.

Many developing countries' economic structure is not as stable as those of developed countries and most of them have suffered from complicated political situations. Before applying GATS and focusing on liberalization, the main issue

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<sup>95</sup> Peter Van Den Bossche, *The Law and Policy of the World Trade Organization: Text, Cases, and Materials* (Cambridge: Cambridge University Press, 2011), 482.

<sup>96</sup> Bernard Hoekman and Peter Holmes, "Competition Policy, Developing Countries, and the World Trade Organization," Policy Research Working Paper Series, no. 2211 (Washington, D.C.: The World Bank, 1999).

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for them is to make their market stable and firm enough to compete with developed countries. Small and medium-sized domestic businesses may find it extremely difficult to compete with foreign companies if developing nations accept a fully open market without any government intervention or protectionism. This is because the main issue with developing nations is that they still have strong protectionism against foreign companies. Different nations have distinct political issues, societal structures, economic development stages, and agendas. As such, the degree of success in implementing the GATS will vary throughout nations. Robust protectionism persists in the face of global efforts to liberalize services related to tourism. The promotion of liberalization in the tourism industry is jeopardized by the limitations on entry visas and the ownership and labor permits of foreign nationals.

Many countries simply do not allow foreigners to own properties, shares, and companies by more than 50%. These restrictions may be more serious in developing than in developed countries. For example, India did not allow foreigners to own anything at all but recently reduced restrictions for foreigners to own no more than 48% shares so that foreigners will not be able to own the majority of a company<sup>97</sup>.

States typically cite the “need for an economic practicability test” to support their use of market access limitations. Many states in the WTO disagree with this stance because they believe that the term “economic expediency” can be interpreted widely to suit their interests. Annexes on tourism by developed and developing nations were elaborated twice in 1999 and 2001 to particularly regulate the tourism sector within the GATS. Eight parts and a list of the sphere’s services are included in these documents. It was proposed to establish the Council for Trade in Services as an institutional body. Developing nations, however, rejected this draft due to its disregard for their interests. Additionally, the presence

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<sup>97</sup>Misoon Lee, Hanna Fayed, and John Fletcher GATS and tourism. International Centre for Tourism & Hospitality Research, Bournemouth University, UK: *Tourism Analysis*, Vol. 7 pp. 125–137 1083-5423/02. Printed in the USA. P.128.

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of regional limitations on the free exchange of services acted as a hindrance to signing this Annex<sup>98</sup>.

Example: A foreign national provides a service within country A as an independent supplier (e.g., consultant, health worker) or employee of a service supplier (e.g. consultancy firm, hospital, Construction Company) (UNSTATS, 2016). Tourism services, like other services covered by the General Agreement on Trade in Services (GATS), were included in the services negotiations that began in 2000. One of the earliest documents was a proposal for a GATS Annex on Tourism, originally sponsored by the Dominican Republic, El Salvador, and Honduras (S/C/W/127 and S/C/W/127/Corr.1). The proposal had two main aspects: more comprehensive treatment of the tourism sector (concerning classification issues), and the prevention of anti-competitive practices. As part of the plurilateral process, a joint request was made by a group of developing countries, asking for improved tourism commitments for all modes of supply. (WTO, 2021) There have been continuous recommendations and criticism from the tourism fraternity to include more services that are directly linked to tourism services and also to expand the coverage of the Annex proposed.

Moreover, as for the adoption of the Annex on tourism services, according to Jaroslaw Pietras<sup>99</sup>, Professor and expert on WTO, it is not necessary because many questions regarding consumer protection, tourism services provision, and others may be negotiated during the accession process.

Moreover, support for the GATS is by no means confined to industry groups. Though the strongest criticism (and much of the analysis) has certainly come from NGOs, not all hold the view that the GATS is bad. Tourism Concern and the World Wildlife Fund For Nature (WWF), though critical of the GATS in its current form, appear to regard the basic idea of the GATS as positive (Tourism Concern, 2002;

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<sup>98</sup> See: Abaydeldinov Y., Kala N. (2016). International Legal Aspects of Tourism Activity: International Treaties Analysis. *Journal of Advanced Research in Law and Economics*, (Volume VII, Summer), 4(18): – pp.714 – 720, DOI: 10.14505/jarle.v7.4(18).01. Available from: <http://www.asers.eu/journals/jarle/jarle-issues..>

<sup>99</sup> Based on the answers during in depth interview by the researcher.

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WWF, 2(01). Their concerns have focused on the need to support liberalization with complementary provisions for development and environmental issues<sup>100</sup>.

The opponents of the GATS are aware of the importance of the liberalizing paradigm. The GATS seems to be consolidating trends in the supply of services for international tourism. Multinational suppliers, who stand to gain from the removal of trade restrictions, are in favor of the liberalization of tourism services. Free trade, in the opinion of Vivanco,<sup>101</sup> hurts small businesses as well because they are unable to compete with large conglomerates. The agreement solidifies the dynamic of multinational service dominance in the tourism industry by lowering or eliminating onerous trade obstacles like legislation governing employment, joint ventures, investment, and corporate structures.

The analogical view was provided by another interviewer while conducting the research in Poland. According to *Dr. Magdalena Duda-Seifert*<sup>102</sup>, after joining WTO the competition in the sphere of tourism increased in Poland. Afterward, the majority of small tour companies, agencies, and operators could not survive. Some of them resumed operating after several years under a new name or began to cooperate with stronger ones. As for the larger tour operators, which remained to function after joining and implementing GATS rules, continued to develop within the country and cooperate with international and European tour operators and their branches in Poland. For clarification, Poland has been a member of WTO since 1 July 1995 and a member of GATT since 18 October 1967. As of 1 May 2004, it is a member State of the European Union. All EU member States are WTO members, as is the EU (until 30 November 2009 known officially in the WTO as the European Communities for legal reasons) in its own right<sup>103</sup>.

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<sup>100</sup> Darren Hoad, "The General Agreement on Trade in Services and the Impact of Trade Liberalization on Tourism and Sustainability," *Tourism and Hospitality Research* 4, no. 3 (2002): 218..

<sup>101</sup> L. Vivanco, "Escaping from Reality," *The Ecologist* 32 (2002): 26–30.

<sup>102</sup> Dr. Magdalena Duda-Seifert – ADIUNKT, Department of Regional Geography and Tourism, Institute of Geography and Regional Development, Faculty of Earth and Environmental Sciences, University of Wrocław.

<sup>103</sup> Rosińska-Bukowska, Magdalena ORCID Bukowski, Józef. Poland in International Organizations. 2012.



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Considering Poland's functioning under the European Union in the framework of WTO, it cannot be compared with other developing countries (for instance, Uzbekistan), which is going to be a member of this organization.

Moreover, foreign companies will be entitled to the same benefits as local companies in addition to being allowed to move staff across borders as they wish, open branch offices in foreign countries and make international payments without restrictive legislation. Meethan suggests that small-scale operations that involve "grassroots" participation will suffer as a result of the challenge by multinational providers. Free from investment obligations, they are not bound to make guarantees over the protection of local communities or the environment<sup>104</sup>.

The liberalization of international trade in services is the primary concern for developing nations. The global tourist business will shift as a result of the GATS, which was created to lower trade barriers between nations. Due to the tourist sector's rapid expansion in comparison to the overall domestic economy, it already employs a significant number of people in emerging nations, and its significance is only growing.

The obvious benefits of GATS to developing countries related to tourism development are as follows:

Enhancing underdeveloped nations' capacity to provide domestic services by giving them economic access to technology. For numerous developing nations, the most advantageous aspect of joining GATS is having more access to technology and expertise. Furthermore, it will assist in lessening barriers to entry for foreign businesses into the market since emerging nations may come to understand that international businesses contribute cutting-edge knowledge and technology to their nation.

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<https://dspace.uni.lodz.pl/bitstream/handle/11089/3619/Poland%20in%20International%20Organizations%20%20%28maszynopis%20-%20wesja%20do%20publikacji%29.pdf?sequence=1&isAllowed=y>

<sup>104</sup> K. Meethan, *Tourism in Global Society* (London: Palgrave, 2001), 219.

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Facilitating developing nations' access to information networks and distribution outlets. Access to computerized data and reservation networks is crucial in the tourism industry, so poorer nations can easily access the resources and services that developed nations own and administer.

As noted by the World Tourism Organisation, adequate infrastructure must be in place and sufficiently maintained to support any intended tourism activities, both for domestic and international tourism. This most obviously includes airport facilities, port facilities road systems, and telecommunications, as well as water supplies, electric power, and sewage treatment facilities. Regarding actual tourism facilities, adequate consideration must be given to lodging and food, as well as local transportation. Developing countries 'also face significant cost and technical barriers to Global Distribution Systems (GDS) access: small airlines and tour operators find the booking fees of individual CRS prohibitively high, and the "back office systems" in developing countries are also often insufficiently developed. Grouping into associations could provide the necessary economies of scale for the CRS. Also, GDS could be developed on a national basis. Standardization of electronic systems and interfaces could also reduce costs.

Liberalizing market access in industries and supply chains that are relevant to export for developing nations. This speaks to the freedom to send regular employees as well as crucial professionals outside to locations where developing nations provide services related to tourism<sup>105</sup>.

GATS may help developing countries become more competitive by placing restrictions on their promises to open their markets and requiring the transfer of technology and expertise (WTO, 1996a). Nevertheless, many developing countries initially reacted negatively to GATS, fearing a "foreign invasion."

UNCTAD (1999b) determined that suppliers from developing countries face significant obstacles in expanding their service exports due to their limited understanding of the global services market. Lack of international standards for

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<sup>105</sup> François Vellas and Lionel Bécherel, (London: Macmillan Education UK, 1995), 392.

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professional services, including issues with credentials or certificate recognition, may make it more difficult or impossible for foreign professionals to enter domestic markets. Issues about information technology and telecommunications infrastructure: Making the most of the opportunities presented by emerging technologies requires that information technology and telecommunications infrastructure be easily accessible, both financially and technically.

So, what should developing countries do to overcome trade barriers?

To help them become ready for upcoming debates on trade in services in the regional and multilateral contexts, many developing nations—especially those with less developed economies and those with more fragile economies—also require technical cooperation. The degree of liberalization in the services sectors that are of interest to them for export and their potential to enhance their ability to provide globally competitive services (UNCTAD, 1998a)<sup>106</sup>.

Future multilateral attempts to enhance market access for services are probably going to be influenced by regional trade agreements of services.

Last, but not least this paragraph is topical to point out the answers to the conducted semi-structured in-depth interview with Professor *Anna Wrobel*<sup>107</sup>. In particular, for the question “How true is it that protectionism is said to be a bigger issue in developing countries than in developed countries in the WTO GATS?”, she emphasized that: “This is true and is due to the level of development of the service sector. Developed countries became service economies as early as the 1970s and 1980s. In developing countries, the sector still plays a smaller role than in developed ones. There are, of course, some exceptions, for example, in the case of India, the service sector plays an important role in foreign trade. Indian corporations have a presence abroad and compete with companies from highly

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<sup>106</sup> UNCTAD (1998a): Trade and Development Report. New York, United Nations.

<sup>107</sup> Anna Wróbel, PhD, Assistant Professor, Head of First and Second Cycle Degree Programme in International Relations Faculty of Political Science and International Studies, University of Warsaw; Treasurer World International Studies Committee (WISC). Her doctoral dissertation is on the policy of liberalization of international trade in services. Postgraduate Studies in Foreign Trade at the Warsaw School of Economics (2004).

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developed countries. For example, Infosys has a subsidiary in Poland in Lodz. India has, for example, a strong IT sector, BPO”.

Furthermore, for the question regarding issues on market access and domestic regulation in the GATS in developing countries, she responded as follows: “The main issue in the liberalization of international trade in services is the inefficiency of negotiations at the WTO. Due to the WTO crisis, trade liberalization is now mainly based on Free Trade Agreements. It has some progress, but it is a second-based solution As for domestic regulations, they are not a problem only for developed countries. They are a huge challenge even in the EU. Through various internal regulations, the service market in the EU is not fully liberalized”.

To summarize, developing country service professionals need opportunities to continuously upgrade their skills and keep abreast of professional and technical advances, to meet and exceed international standards of service quality, and integrate information technology into the delivery of their services if they are to succeed in an increasingly competitive global services environment and take full advantage of trade liberalization opportunities.

#### 2.4. Uzbekistan’s access to the WTO: challenges in the sphere of tourism services.

In the Republic of Uzbekistan, tourism is still considered a relatively new industry. Nevertheless, the government has been working hard to expand this sector, particularly since Mirziyoyev’s presidency in 2017. Reducing poverty is one of the objectives of sustainable development worldwide. To reduce poverty in the Republic of Uzbekistan, locals are hired to work in tourism, and guest houses are established and managed in rural areas and villages. Additionally, the activities of guides are made simpler, and the population is supported socially by these jobs. At the national level, the growth of rural tourism facilitates the

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participation of local people in the tourism sector; for example, in the development of tourist routes in rural areas, local people are given preference as guides, and in the development of tourism businesses for local minorities, local authorities operate and promote the state tourism sector, providing equal consultation to all who wish to be involved in the sector.

The government also has taken action for the disadvantaged people in the tourism industry. Special jobs are being created for people with disabilities, women have equal opportunities in the tourism industry, older people are integrated into the industry as mentors, special business development programs for young people and there are special tourist programs (packages) created for ethnic minorities to spread their culture and lifestyle. Finally, the tourism development initiative starts with the local communities and is taken into account by the state. The development does not have a negative impact on the opinion of the local communities, but their opinions are taken into account and studied without any significant result or outcome so far. As for the private sector, there are no negative social impacts, local communities are positive about the development of tourism, so there are no particular concerns<sup>108</sup>.

According to the statistics agency, in January-December 2022, 5.2 mln. foreign citizens visited Uzbekistan for tourism purposes<sup>109</sup>. The tourism sector in Uzbekistan has not yet reached its full potential, despite its significance to the country's economy. Governmental or non-governmental organization policies about tourism are insufficiently successful. Large corporations, including those with foreign capital participation, also compete fiercely with tourism organizations. This has led to sharp price reductions and lower-quality services, which hurt local service providers in Uzbekistan and other developing countries.

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<sup>108</sup> Policy recommendations in the field of sustainable tourism a study produced for the switch-Asia Programme by Lead Partner Heraklion Development Agency under sub-contractor Ploigos Heraklion, September 2022.

<sup>109</sup> Statistics. Official channel. [https://t.me/statistika\\_rasmiy/3164](https://t.me/statistika_rasmiy/3164)

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It is widely accepted that Uzbekistan's tourism sector and its potential are seen as one of the driving forces for the country's economic development<sup>110</sup>.

The original WTO Members were more reluctant to liberalize. Newly acceding WTO Members, either because of persuasion, or because they were obliged to, or in part, because of both, have liberalized substantially more (although not necessarily in terms of trade impact)<sup>111</sup>.

The tourism sphere of Uzbekistan cannot develop, without affecting the formality and integration of the international level. One such direction is the bilateral agreements signed by the Republic with other countries. Moreover, it became a normatively legal basis for not only the departure of citizens outside the Republic but also the activity of tourism establishments, strengthening of their partner connections, and advancements of national tour products to the markets of foreign states/regions/continents. Moreover, in a globalized world, multilateral cooperation remains important in all spheres of international relations.

In the process of signing the GATS, states do not undertake to liberalize the domestic market immediately for services in all sectors till the level of assignation of the national regime. It is also necessary during negotiation rounds to achieve a specific duration of a transition period for some service sectors with the priority of national economic policy and level of development. It was especially relevant to the adoption of the Decree of the President of Uzbekistan Sh. Mirziyoyev dated February 28, 2018 "On organizational measures to further regulation of the foreign economic activity of the Republic of Uzbekistan", which it was created a working group to improve the system of customs and tariffs regulation and optimize customs payments during foreign trade activities. Also, to achieve effective systemic work and regular monitoring of the process of Uzbekistan's accession to the WTO, the government approved a "Roadmap", which includes

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<sup>110</sup> Buriyev, K.; Rakhmanova, F.; Tashnazarova, L.S. Analysis of the Impact of Tourism-Related Industries on Employment in Uzbekistan; Samarkand State Institute of Architecture and Civil Engineering: Samarkand, Uzbekistan, 2020. [CrossRef]

<sup>111</sup> Mitsuo Matsushita, Thomas J. Schoenbaum, and Petros C. Mavroidis, *The World Trade Organization: Law, Practice, and Policy* (Oxford and New York: Oxford University Press, 2009), 675.

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34 activities aimed at preparing documentation for resuming the process of entering and adapting national legislation. Another step in this direction is the foundation of the Interdepartmental Commission for activities with the WTO, headed by the Ministry of Investments and Foreign Trade. The heads of various ministries and departments of the country are included in this Commission. At the same time, measures are being worked out to intensify the activities of the representative of Uzbekistan at the WTO in Geneva, whose work will be coordinated directly by the Ministry of Investments and Foreign Trade of Uzbekistan<sup>112</sup>.

The experience of various countries shows that the success of tourism development directly depends on how this branch is perceived by the government authority, and how much it uses state support. With their help, state incentive programs are being developed in several countries. Namely, the outbound tourism that provides benefits in taxation, the exercise of the border customs regime, the creation of favorable conditions for investment, the increase in budget allocations for infrastructure development, advertising in foreign markets, and staff training are included. It is well known that nations like Kyrgyzstan, Georgia, Ukraine, Moldova, and Armenia shown that they suffered more after joining the WTO, severely harming many of its sensitive businesses, and possibly regressing economically. They were unable to take advantage of every advantage that came with being a part of this global organization.

According to A. Lanozska, the governments of the acceding countries routinely lack expertise and sufficient resources to introduce relevant legislative restrictions to ensure that liberalization is done thoughtfully. Thus, by asking the acceding countries to rapidly liberalize, the WTO Members are adding to the erratic and inconsistent liberalization pattern. At the same time, the acceding governments potentially lose supervisory control over a large part of their

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<sup>112</sup> См.: Узбекистан на пути к ВТО: что делает страна для вступления в организацию. 14.03.2018. Доступен на: <https://ru.sputniknews-uz.com/analytics/20180314/7709364/wto-uzbekistan-torgovlya.html> (Дата посещения: 11.10.2018).

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economies by opening their unregulated services sectors to foreign competition. This goes against the very principles, on which the WTO is based. The WTO accession process should support, not inhibit, careful institution building in the vital economic sectors of each acceding country<sup>113</sup>.

Republic of Uzbekistan's attempts to negotiate in the service sector, in particular in the sector of tourism will not be simple. There are no foreign commercial agencies with cross-border supply and consumption abroad in the tourism sector yet. Consequently, there are several issues and misunderstandings with the promotion of their participation in the national tourism market. Surely, the Presidential Decree on "Additional organizational measurements for establishment conveniences for development of tourism potential of the Republic of Uzbekistan" made the fundament for progressing tourism business in Uzbekistan. Several preferences and privileges were accorded to them<sup>114</sup>. Nevertheless, the desires for foreign supply's participation in the tourism sector are not included in this text. To further develop the legal basis in this direction and enable Uzbekistan to join the WTO-GATS, it is advisable to deepen the legal framework on the involvement of foreign supply and consumption abroad in the domain of tourism of the Republic of Uzbekistan.

It is important to note that, WTO membership is "an absolute priority" for Uzbekistan<sup>115</sup>. Uzbekistan's accession process formally resumed in July 2020 with the 4th Working Party meeting. Two more meetings took place in June 2022 and March 2023. As a result, Uzbekistan presented the latest legislative developments based on an updated Legislative Action Plan, as a follow-up to its earlier revision submitted in July. It highlighted steady progress towards the implementation of WTO-compliant legislation in the areas of customs fees, TBT, SPS, trade facilitation, transit, intellectual property, import licensing, and other

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<sup>113</sup> A. Lanozka, *The World Trade Organization (WTO) and the Accession Process: Testing the Implementation of the Multilateral Trade Agreements* (PhD diss., Dalhousie University, 2001), 259.

<sup>114</sup> See: <http://uzlidep.uz/uznews-of-uzbekistan/921>

<sup>115</sup> "Uzbekistan Brings Fresh Impetus to WTO Membership Negotiations," World Trade Organization, accessed March 14, 2023, [https://www.wto.org/english/news\\_e/news23\\_e/acc\\_14mar23\\_e.htm](https://www.wto.org/english/news_e/news23_e/acc_14mar23_e.htm).



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areas. In the lead-up to the meeting, Tashkent also circulated a consultation document with information on the process of adoption of legislation and the hierarchy of legal instruments, itemizing 23 pieces of legislation, including 14 drafts, in addition to 16 pieces of legislation submitted in July<sup>116</sup>. Moreover, in the last meeting of the Working Party it was underlined that, on the bilateral front, Uzbekistan was requested to share its revised market access offers on goods and services with interested members. On legislation, Tashkent was invited to revise its Legislative Action Plan and provide copies of enacted and draft trade-related legislation<sup>117</sup>. So, the process of negotiating and implementing the WTO legislation is ongoing in the Republic of Uzbekistan.

“The positive impact of WTO accession on the international image and ranking of the Republic of Uzbekistan should be emphasized.”, mentioned during the in-depth interview with *Sokhib Muminov*, Head of the Service Sector Regulation Department for accession to the World Trade Organization under the Ministry of Economy and Finance of the Republic of Uzbekistan. As an expert and participant in these proceedings, during his interview, S.Muminov underlined that “Uzbekistan is open for negotiations with interested countries in all spheres, including the GATS agreements of the WTO. At the same time, the government of Uzbekistan considers the successful practices of selected states and tries to make commitments considering the national interests and legislation of the country. As for the sphere of tourism, Eastern countries are interested in pilgrimage (“Ziyarah”) tourism development in Uzbekistan, and during negotiations, they emphasized (Indonesia, Turkey) this aspect. In general, tourism services are one of the softest spheres in the GATS and in WTO, which countries try to come easily into consideration. The national legislation allows to opening of branches of international tour companies, tour operators, and functions in the

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<sup>116</sup>See: “Uzbekistan Injects Renewed Momentum into the WTO Accession Process,” World Trade Organization, accessed November 16, 2023, [https://www.wto.org/english/news\\_e/news23\\_e/acc\\_16nov23\\_e.htm](https://www.wto.org/english/news_e/news23_e/acc_16nov23_e.htm)

<sup>117</sup> Ibid.

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territory of Uzbekistan. However, some restrictions regarding the protection of national interests should be followed during these proceedings”.

Moreover, the results of the conducted in-depth interview with *Prof. Jarosław Pietras*<sup>118</sup> examined some practical advice for Uzbekistan during the accession process:

1. While creating the restrictions to the Schedules for the list of commitments, it is important to analyze the foreign companies’ accession process to Uzbekistan’s internal market and vice versa Uzbekistan’s entities’ functioning abroad;

2. Uzbekistan government should pay more attention to the implementation of modes of supply; In terms of domestic regulation to allow foreigners to move without requirements;

3. The country should follow the principle of nondiscrimination and implementation of it for and by foreign entities;

4. To organize the list of commitments (limitations) by taking into consideration national legislation and practice;

5. The process of modification of national legislation should function in parallel with organizing the restrictions;

6. The steps in the process should be arranged methodically as follows: examine national legislation, execute an open economic policy to facilitate the entry of foreign enterprises into the market, and make decisions (additional regulations).

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<sup>118</sup> Jarosław Pietras is a Senior Research Associate at the Martens Centre and Visiting Professor at the College of Europe in Bruges, Belgium. He is also a former Visiting Fellow at the Martens Centre. Prior to this, he served as Director General in the Council of the European Union from 2008 to 2020 (covering issues of Climate Change, Environment, Energy, Transport, Telecom, Education, Culture, Audiovisual, Youth and Sport). His professional career started in 1980 at the University of Warsaw Faculty of Economics, teaching international economy and trade policy. After 1990, he worked for consecutive Polish Governments, serving as Secretary of State in Ministry of Finance, Secretary of State for Europe and Head of the Office of the Committee for European Integration.

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7. Most Favored Nation treatment should be used properly by the Republic of Uzbekistan.

The supply chain that connects financial services, air travel, transportation services, and business services associated with tourism is thought to include the tourism services sector. Since small and medium-sized firms make up the bulk of travel and tourism-related businesses in Uzbekistan, there will be significant variations between those multinational foreign organizations and domestic ones in terms of their operating systems and financial soundness. Because they are sufficiently competitive in terms of both quality and quantity of services, domestic businesses may not be able to remain in the market once the government fully opens up the tourism sector to international companies.

According to Anna Wrobel, about whom it was mentioned above, a developing country Uzbekistan before accessing the WTO should precisely respond to the question of whether this sector is ready for more competition. For the presence of foreign investors? It can serve to increase its offer and improve its efficiency. However, it can also threaten local companies.

It is important to underline the answers from another interviewer, *Umida Haknazar*,<sup>119</sup> regarding the semi-structured interview questions (“What measures Uzbekistan should regulate in tourism services before signing the GATS? And what do you think will be the perspectives for the development of the tourism industry after the signing of the GATS?”) are followings:

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<sup>119</sup> Dr.Umida Haknazar is an independent legal/trade advisor on WTO membership and subsequent international development projects in Central Asian and CAREC (Central Asia Regional Economic Cooperation) member countries funded by various international development institutions such as ADB, World Bank, USAID, UN FAO, European Union. Her main activity is to provide technical assistance in the process of accession to the WTO, preparation of legislative acts in areas related to the WTO, such as technical regulation, sanitary and phytosanitary measures, intellectual property rights, regional trade agreements, customs regulation, trade facilitation, etc. Umida is the editor of the Russian translation of the second edition of “WTO Law and Policy” by Peter Van den Bosch.

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- Taking into consideration, that the tourism sphere is one of the free and soft sectors on the international scale, it is advised to minimize the Uzbekistan government's interference in this sector;

- Liberalization of measures for licensing and certification of tourism activities in national legislation and practice, with a proper assessment of the threats that can be expected from the tourism sector;

- Unification of the national legislation related to the opening of foreign legal entities with the implementation of international legal norms;

- During the process of bilateral negotiations, without restriction from competition, to pay more attention to the development of training of Uzbek specialists in foreign centers;

- To include in the “offer” suggestion on training the national tour operators, and staff in this sector;

- Considering the high potential of the young labor force in Uzbekistan, it is appropriate for the country to make plans to use the opportunities of the GATS in the future;

- In general, the service sector and the tourism services sector are currently considered to be the most innovative sectors and the most profitable spheres in the world. Based on this, it is recommended that Uzbekistan will use the opportunities of GATS by establishing a real market economy and competitive conditions.

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## Conclusion.

When contrasted with some of the rather limited development methods used in many regions of the world, the liberalization of international tourism may have a significant impact on development. It can expose nations and cultures to currents of democracy and free thought, global peace and understanding, human rights respect, and good governance. It may result in the replacement of outdated, environmentally harmful technology with more contemporary apparatus. It can produce the wealth required to solve issues related to sustainable development. The realization of these changes depends on our ability to overcome the related obstacles. As Hoekman points out, “The best way to see GATS is as a platform for future liberalization rather than as a tool that didn’t result in any liberalization, assuming that clarifications have been made”<sup>120</sup>.

The development of the GATS should be based on broader concerns such as equity, participation, and development rather than open markets and increased global access. If this is the case mechanisms will have to be created to cope with the changes in governance which the GATS will encourage, to be able to channel resources to local communities and cope with the environmental pressures that emerge<sup>121</sup>.

It should be noted that the general obligations of the states under the General Agreement on Trade in Services became the basis for achieving the goal of liberalization of international trade in services. Each country participating in the WTO should provide the most favorable state regime to foreign services or service providers (at the same time, the GATS allows some exceptions), ensure

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<sup>120</sup> Hoekman, Bernard, *Safeguard Provisions and International Agreements Involving Trade in Services*, The World Economy, 1993, 16: 29-49. Hoekman, Bernard, “Assessing the General Agreement on Trade in Services”, in Will Martin and I. Alan Winters (eds.), *the Uruguay round and developing economies*, Cambridge University Press, 1996.

<sup>121</sup> Darren Hoad (2002), *The General Agreement on Trade in Services and the impact of trade liberalisation on tourism and sustainability*. Tourism and Hospitality Research Volume 4 Number 3. P.226.

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transparency of internal regulation; increase the share of developing countries' participation in trade in services, ensure the possibility of prompt consideration of cases by courts, arbitration or administrative bodies at the request of service providers whose interests have been violated; strengthened regulations such as ensuring the possible recognition of certificates, licenses, qualifications.

The government should have a clear plan for domestic reform to engage in the GATS negotiations effectively. They also need to be aware of the main obstacles preventing them from exporting. The government of Uzbekistan should ideally seek better access to export markets while pursuing domestic changes through multilateral trade agreements, which are desired in any case. Given the foregoing, it is evident that, while taking into consideration the features of Uzbekistan's tourism industry and its stage of growth, it is imperative to comprehend, investigate, and evaluate the effects of the GATS and WTO processes on Uzbekistan's tourism development.

The analyses showed that GATS will benefit the tourism sector of Uzbekistan in several ways:

- The production of tourism services;
- The free movement of people on these services;
- The global and sustainable development of tourism
- As the fundamental framework for economic growth, GATS will assist in the establishment and adoption of an "open and fair competition system."
- More employment opportunities will be created.
- More demand for tourism activities, through exhibitions, incentive and business travel, meetings, and conventions;
- GATS will support Uzbekistan's tourism sector in adapting to emerging global tourism trends and in assisting its member nations in responding quickly and effectively to such trends.

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- Uzbekistan's tourism-related enterprises looking to grow internationally can benefit from GATS. If Uzbek businesses took a more active part in the globalization process, they would have a greater position in the global market.

Hence, the main issue facing Uzbekistan's tourism sector is that it isn't big enough or specialized enough to compete on a global scale. In Uzbekistan, the travel industry—including airlines and travel agencies—focuses more on outward than on inbound travel markets. As a result, the government attracts investors to take part in Uzbekistan's sustainable tourism growth, which is made possible by GATS membership. It is no longer sufficient for policymakers and the supply sector to think about their policies in isolation from global market policy if Uzbekistan signs the GATS agreement and opens the tourism market to foreign competition. They must admit that liberalization carries the inherent risk of influencing not just their policies but also their businesses and the growth of tourism in the country.

The expansion and advancement of human resources will be aided by the GATS. Globalisation will make the industrial structure change more rapidly, increasing the demand for new, highly skilled workers. It is also important to pay attention to another important aspect of the issue. The regulation of tourism services under the GATS is closely related to other important service sectors. When conducting negotiations on the tourism services of the Republic of Uzbekistan, it is necessary to take into account not only narrow areas but also the reforms in related spheres. In particular, these include transportation issues (in the case of airlines), political issues (visa issuance), legal regulation of the activities of legal entities, financial services, internet services, and telecommunication services. The government should consider the tourism services sector as a supply chain sector in connection with other services.

The key to the success of tourism in Uzbekistan is the government's clear awareness of the importance of tourism in the country's economic development. Tourism is an essential tool for increasing economic growth, improving quality of life and employment, and developing the overall balance of payments by

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offsetting deficits in other sectors. These include significant economic growth, income growth, the removal of political issues, the relaxation of travel restrictions, the liberalization of air transport, and targeted marketing activities. These factors are expected to accelerate the growth of tourism over the next decade. In terms of trade limitations, tourism legislation, and foreign investment, Uzbekistan's tourism industry must overcome several challenges in both the public and private sectors. Consequently, further development of Uzbekistan's tourism sector is connected, in a sense, with the GATS' enforcement.



## **AIRLINE VIEWS ON THE PROPOSED TOURISM ANNEX TO THE GATS**

RICHARD SMITHIES

WTO/OMC SYMPOSIUM ON TOURISM SERVICES

Geneva, 22-23 February 2001

Introductory Remarks

We welcome the opportunity to participate in this Symposium and to share our views on the proposal for a new Tourism Annex to the GATS.

My name is Richard Smithies and I am the IATA Director of Policy Analysis, Government and Industry Affairs and Secretary of the IATA GATS task force.

From the outset, I should like to make it clear that the airline industry is opposed to including passenger-related air transport services in the proposed Tourism Annex.

Air Transport and the GATS today

As you are no doubt aware, the coverage of air transport under the GATS is determined by the Annex on Air Transport Services.

As things stand, this Annex excludes traffic rights and all services directly related to their operation. The reason for this exclusion from the GATS was that international air transport is governed by a complex network of more 3,500 bilateral agreements between States.

The bilateral system continues to provide States with control over the speed and the way in which they liberalise market access to their aviation markets.

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Relations between States continue to be based on the principles of reciprocity and fair and equal opportunity to compete.

Bilateral agreements also provide effective procedures for handling disputes involving anti-competitive practices, market access issues and a wide range of other services related to the provision of air transport as well as computer reservation systems. I shall come back to this later.

Developing countries in particular value the bilateral system as a known and effective means of protecting their national interests in a liberalising and competitive marketplace.

The Annex on Air Transport Services specifically extends GATS coverage to three services – Computer Reservation Systems, Selling and Marketing of air transport services and Aircraft Repair and Maintenance.

Furthermore, paragraph 5 states that the Council for Trade in Services “shall review periodically and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector”.

The first review by the Council began last year and is still continuing.

Industry views on air transport and the GATS

In preparation for this review, an IATA developed an industry position on air transport and the GATS. These views are set out in a position paper that has been circulated.

Let me share some of the conclusions with you:

- with few exceptions, airlines do not see the GATS as the vehicle for fundamental reform of international air transport at this time;
- ICAO remains the inter-governmental agency best qualified to take account of the particular characteristics, regulatory arrangements and structure of the air transport sector;

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- there is a strong preference in the industry for air transport services to continue to be dealt with on a sectoral basis, and not to be negotiated together with other services on a comprehensive basis;

- nevertheless, the review of the Air Transport Annex presents the opportunity to clarify the scope of the coverage of air transport services that are directly related to the operation of traffic rights;

- finally, there is a growing belief that a hybrid system can be developed that would permit multilateral and bilateral arrangements to co-exist depending on regional preferences and needs.

The WTO secretariat has produced several excellent and comprehensive documents describing developments in the air transport sector to provide documentation for the review by the Council.

The Services Division is to be warmly congratulated on this work and I would strongly recommend these studies to anyone interested in understanding what is happening in this complex and dynamic business, from both a regulatory and economic perspective.

I would like now to address some of the questions raised by the proposal for a Tourism Annex, which is the focus of this Symposium.

First, what is the basis for the Tourism Annex?

“Tourism and Travel Related Services” for the purposes of filing GATS commitments have been defined by Category 9 of the Services Sectoral Classification List. This covers four sub-sectors: hotels and catering, travel agencies and tour operator services, tourist guide services and other services.

However, the recently developed Tourism Satellite Account system is now being used as the basis for an Annex on Tourism Services that would group a broader “cluster” of tourism-related services.

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We have heard how the Tourism Satellite Account system was developed with the support of WTO/OMT and WTTC as a national accounting tool to better measure the impact of tourism on national economies.

In addition to the traditional tourism services, this “cluster” approach expands the list to include air, sea, rail and road passenger services, certain financial services, navigational aids and tourism information services.

This is a comprehensive list and would increase the importance given to tourism. However, IATA does not consider that the TSA provides a sufficient rationale for a Tourism Annex that would include air transport services when these are already covered by the GATS Annex on Air Transport.

Second, why include air transport in a new Tourism Annex?

So what other reasons can be advanced for including passenger air transport services in the Tourism Annex?

On 14 October 1999, the Dominican Republic, El Salvador and Honduras presented a Communication (S/C/W/127) to the Council for Trade in Services. This refers to a series of seminars and meetings organised by the World Tourism Organisation and by UNCTAD in 1994, 1998 and 1999.

Having participated in two of these meetings, I was surprised to read that “one common element of these events was the insistence of participants on the need to focus on the tourism sector as a whole for the purpose of multilateral trade negotiations, to include travel reservation services, air and other transportation services and other travel-related financial services.” This was not my recollection of events.

The reason for including CRS and air transport becomes more apparent in a second communication from the same States dated 20 November 2000. This states: “if the development of tourism is to be sustainable, there must be additional disciplines to overcome the obstacles to trade in tourism caused by anti-competitive practices in network services”.

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The key proposition then is that tourist destination countries, and in particular those in developing countries, are placed at, I quote, “the mercy of abuses of a dominant position”.

While this may or may not be true, the only sources referenced for these assertions are publications of the WTO-Tourism and UNCTAD. Neither of these bodies have a direct responsibility for or knowledge of air transport matters.

Third, what are the consequences of a Tourism Annex?

Including air transport services in a GATS Tourism Annex would have several consequences.

First, it would eviscerate the existing Annex on Air Transport by taking out two of three services covered – maintenance and repair of aircraft and CRS.

Second, it would split the air transport sector by including passenger transport, wet leasing, supporting services including ground handling and airport services and navigational aids.

Anything to do with freight would be excluded. In practical terms this would pose difficulties for airlines and governments.

Third, as this would only leave marketing and selling of air transport services in the Annex on Air Transport Services. Presumably this would make it necessary to reopen negotiations on the Air Transport Annex itself.

It seems clear then that this proposal would have significant consequences for the existing legal framework of the GATS.

#### Airline industry changes

It is relevant at this point to say a few words about some of effects of changes brought about the progressive liberalisation of the airline business.

Clearly liberalisation has resulted in increased competition and has forced airlines to restructure their operations.

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Everyone is familiar with the development of hubs, alliances, commercial arrangements of one kind and another, revenue management systems, evolving distribution systems and the growing reliance on e-commerce.

However, these changes are not unique to the airline business. The only sure thing is that if you do not constantly adapt to the marketplace your chances of surviving will certainly be diminished.

At the same time, airlines have been constrained in their ability to adapt to meet market and regulatory changes. These limitations include growing airport and airspace constraints, environmental considerations and foreign ownership restrictions.

#### Liberalisation and competition law

Liberalisation has also led national competition authorities around the world to assume a more important role.

Airlines and other industry business partners, like CRS providers, must comply with the antitrust laws of jurisdictions where the effects of their operations may have an impact.

This also raises questions of extra-territoriality since a single transaction, activity or arrangement can trigger antitrust compliance issues in a number of countries.

An important feature of the industry is that it has developed a global network of air services based on a coherent multilateral framework. This requires co-operation between airlines and needs exemptions or immunity from antitrust laws for airlines to agree on service standards and interline fares.

An interline fare is one that allows a consumer to purchase a single standard ticket, in one currency, in a single transaction for carriage over the lines of more than one carrier, while providing the flexibility to change flights, carriers and routings if desired. The interline system also allows you to check your baggage through to your end destination.

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At the same time, airlines remain completely free to offer on-line and market fares that are distinct from IATA interline fares. These are usually cheaper and less flexible, particularly in terms of carrier and routing choice.

Unfortunately, the continued functioning of the global airline network can no longer be taken for granted.

IATA is firmly committed to defending this unique multilateral system that has been developed over half a century.

One of IATA's goals in the coming years will be to defend procedures that enable every country to continue to enjoy access to the global network.

#### Dispute settlement

Presumably an important reason for placing passenger air transport in a Tourism Annex is to gain access to the unique WTO Dispute Settlement system. Is this really necessary to resolve airline disputes?

As it is worded now, the GATS Annex on Air Transport Services states that “dispute settlement procedures of the Agreement may be invoked only where obligations or commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral arrangements have been exhausted”.

All air service agreements contain articles relating to anti-competitive practices and dispute resolution. Complaints are usually handled and settled directly by the States involved in an expeditious manner.

The situation involving CRS practices and disputes is rather more complicated for two reasons. First, possible anti-competitive practices were addressed beginning 18 years ago in regulations or codes adopted by ICAO, the US, the EU, ECAC, Australia and Canada.

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CRS rules are periodically revised to take account of market and technological evolution. Indeed, both the US Department of Transport and the European Commission have reviews pending.

A second reason is that computer reservation systems are already covered by the GATS.

### Conclusion

The current version of the draft Annex on Tourism was considered last November at a meeting of the WTO-Tourism Working Group on Liberalisation in Madrid.

Industry interests represented at this meeting were limited to IATA and WTTC. IATA's presence reflected our concern at the inclusion of air transport in this document and we clearly stated our opposition. WTTC also shared our concern.

We would suggest that the proposed Tourism Annex would have benefited from the greater involvement and contribution of other tourism and travel industry partners to better highlight shortcomings in the existing commitments for tourism services.

In closing, I would like to make three points:

First, the creation of a Tourism Annex is an important undertaking and should therefore include all interested parties in the drafting process.

Second, if the proposed Tourism Annex is put in place, it should not include any part of the air transport sector.

And third, to end on a positive note, IATA supports the informed and transparent way in which the review of the GATS Air Transport Annex is being conducted by the Council for Trade in Services.



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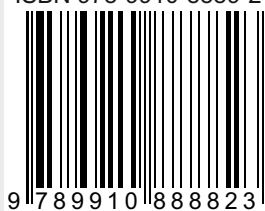






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