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- 1. СУФИЕВА Дилафруз Улугбековна**
ПРОТИВОДЕЙСТВИЕ КОРРУПЦИИ В КАЧЕСТВЕ ОСНОВНОГО НАПРАВЛЕНИЯ
ДЕЯТЕЛЬНОСТИ ПАРЛАМЕНТАРИЕВ..... 8
- 2. АДЛКАРИЕВА Феруза Ходжимуратовна**
КОНСТИТУЦИЯВИЙ СУД ВАКОЛАТЛАРИНИНГ КЕНГАЙИШИ – ЗАМОНАВИЙ
КОНСТИТУЦИЯВИЙ ИСЛОҲОТЛАР МАҲСУЛИ 15

ФУҚАРОЛИК ҲУҚУҚИ. ТАДБИРКОРЛИК ҲУҚУҚИ. ОИЛА ҲУҚУҚИ. ХАЛҚАРО ХУСУСИЙ ҲУҚУҚ

- 3. МАСАДИКОВ Шерзодбек Махмудович**
СУДЕБНАЯ ПРАКТИКА ПО ПРИЗНАНИЮ И ИСПОЛНЕНИЮ ИНОСТРАННЫХ
АРБИТРАЖНЫХ РЕШЕНИЙ В РЕСПУБЛИКЕ УЗБЕКИСТАН 21
- 4. ТОШЕВ Зафар Бобокулович**
МУАЛЛИФЛИК ҲУҚУҚИНИНГ ИНСОН ҲУҚУҚЛАРИ ТИЗИМИДАГИ ЎРНИ ВА
КОНСТИТУЦИЯВИЙ-ҲУҚУҚИЙ АСОСЛАРИ 28
- 5. DENQANOV Raxmatilla Mirzaraxmat o'g'li**
TRANSCHEGARAVIY ELEKTRON TIJORATDA ISTEMOLCHILAR HUQUQLARI 34
- 6. TOSHKANOV Nurbek Bahriddinovich**
INTELLEKTUAL MULK OBYEKTLARIGA BO'LGAN HUQUQLARNI USTAV JAMG'ARMASIGA
ULUSH SIFATIDA KIRITISH: BUNI QANDAY AMALGA OSHIRISH MUMKIN?..... 40

СУД ҲОКИМИЯТИ. ПРОКУРОР НАЗОРАТИ. ҲУҚУҚНИ МУҲОФАЗА ҚИЛИШ ФАОЛИЯТИНИ ТАШКИЛ ЭТИШ

- 7. НАБИРАЕВ Акмал Исматуллаевич**
АГРАР ВА ОЗИҚ-ОВҚАТ СОҲАСИДА ҚОНУНЧИЛИК ИЖРОСИ УСТИДАН
НАЗОРАТИНИ АМАЛГА ОШИРИШДА ПРОКУРАТУРА ОРГАНЛАРИНИНГ РОЛИ... 48

ЖИНОЯТ ҲУҚУҚИ, ҲУҚУҚБУЗАРЛИКЛАРНИНГ ОЛДИНИ ОЛИШ. КРИМИНОЛОГИЯ. ЖИНОЯТ-ИЖРОИЯ ҲУҚУҚИ

- 8. ОТАЖОНОВ Абдоржон Анварович**
СУНЪИЙ ИНТЕЛЛЕКТ: ЖИНОИЙ ЖАВОБГАРЛИК ВА ҚОНУНЧИЛИКНИ ТАРТИБГА
СОЛИШ ИСТИҚБОЛЛАРИ 54
- 9. АЛИМОВ Гайбулла Алимович**
ЎЗБЕКИСТОН РЕСПУБЛИКАСИНИНГ ЖАМОАТ ХАВФСИЗЛИГИНИ ТАЪМИНЛАШ
ЖАРАЁНИДА ФУҚАРОЛАРНИНГ ҲУҚУҚ ЭРКИНЛИКЛАРИНИ ЧЕКЛАШНИНГ
КОНСТИТУЦИЯВИЙ ВА ҚОНУНИЙ АСОСЛАРИ 70

10. МИРЗАТИЛЛАЕВ Умид ВОЯГА ЕТМАГАНЛАР МАСАЛАЛАРИ БЎЙИЧА ИНСПЕКТОР-ПСИХОЛОГЛАР ФАОЛИЯТИ ТУШУНЧАСИ ВА АҲАМИЯТИ.....	78
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ХАЛҚАРО ҲУҚУҚ ВА ИНСОН ҲУҚУҚЛАРИ

11. ГАФУРОВА Нозимахон Эльдаровна АНАЛИЗ СОДЕРЖАНИЯ И ОСНОВНЫХ ПРИНЦИПОВ ПРАВА НА ЗДОРОВЬЕ В СИСТЕМЕ МЕЖДУНАРОДНОГО ПРАВА ПРАВ ЧЕЛОВЕКА.....	85
12. USMANOVA Surayyo ANALYSES OF DEVELOPING COUNTRIES ON TOURISM SERVICES REGULATION UNDER THE GATS	96
13. БАБАЕВА Иродахон ОБЗОР И КЛАССИФИКАЦИЯ МЕЖДУНАРОДНЫХ ДОКУМЕНТОВ ПО ИЗМЕНЕНИЮ КЛИМАТА.....	105
14. АКБАРОВ Саидакбар ХАЛҚАРО ҲУҚУҚДА ҲАРБИЙ ЖИНОЯТЛАРНИНГ БЕЛГИЛАРИ.....	117

ҲУҚУҚ, ИННОВАЦИЯ ВА ТЕХНОЛОГИЯЛАР

15. МЕЛИЕВ Худоёр Хуррамович ДАВЛАТ ХИЗМАТЛАРИ СОҲАСИДА СУНЪИЙ ИНТЕЛЛЕКТНИ ҚЎЛЛАШНИНГ КОРРУПЦИЯНИ ОЛДИНИ ОЛИШГА АҲАМИЯТИ	125
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ЮРИСТ АХБОРОТНОМАСИ ВЕСТНИК ЮРИСТА LAWYER HERALD


USMANOVA Surayyo

Associate Professor of the University of World Economy and Diplomacy,
Doctor of Philosophy (PhD) in Law

E-mail: s.b.usmanova@uwed.uz
orcid.org/0000-0002-6624-7685

ANALYSES OF DEVELOPING COUNTRIES ON TOURISM SERVICES REGULATION UNDER THE GATS

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ANNOTATION

Regulation of tourism services under the General Agreement on Trade in Services plays an important role in further cooperation of the developing states in the world community. The research paper emphasizes the legal assessment of regulating tourism services during this cooperation process. Precisely, comparative analyses of developing countries' practices which are the members of the WTO has been conducted. With this regard, analyses based on the World Trade Organization's legal norms, scientific sources, and in-depth interviews with international professionals, which can be proposed in the conditions of new countries signing the GATS agreement have been researched. The GATS has achieved a progressively higher degree of liberalization through the elimination or reduction of trade barriers. 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 sector.

Keywords. Developing countries, General Agreement on Trade in Services, liberalization, Tourism, World Trade Organization.

USMANOVA Surayyo Bultakovna

Jahon iqtisodiyoti va diplomatiya universiteti dotsenti
yuridik fanlar bo'yicha falsafa doktori (PhD)

E-mail: s.b.usmanova@uwed.uz
orcid.org/0000-0002-6624-7685

XIZMATLAR SAVDOSI BO'YICHA BOSH KELISHUVGA KO'RA RIVOJLANAYOTGAN DAVLATLARNING TURIZM XIZMATLARINI TARTIBGA SOLISH TAHLILI.

ANNOTATSIYA

Rivojlanayotgan davlatlarning jahon hamjamiyatidagi ko'p tomonlama hamkorligini

yanada rivojlantirishda Xizmatlar Savdosi to'g'risidagi Bosh kelishuv doirasida turizm xizmatlarini tartibga solish muhim o'rin tutadi. Tadqiqotchi tomonidan mazkur maqolada ushbu hamkorlik jarayonida turizm xizmatlarini tartibga solishning huquqiy baholanishiga urg'u berilgan. Xususan, Jahon Savdo Tashkilotining Xizmatlar bo'yicha Bosh Kelishuviga a'zo bo'lgan rivojlanayotgan ayrim mamlakatlar amaliyotining turizm xizmatlarini tartibga solishi jarayonlari qiyosiy tahlili amalga oshirildi. Shu munosabat bilan, Jahon Savdo Tashkilotining huquqiy normalari, ilmiy manbalari hamda Xizmatlar Savdosi to'g'risidagi Bosh kelishuv (GATS) bitimini imzolayotgan yangi davlatlar sharoitida taklif etilishi mumkin bo'lgan bir qancha xalqaro mutaxassislar bilan suhbatlar asosida tahlillar o'rganildi. GATS savdo to'siqlarini yo'q qilish yoki kamaytirish orqali tobora yuqori darajadagi liberallashtirishga erishmoqda. O'zbekiston Respublikasi ushbu maqsadlarni to'liq qo'llab-quvvatlaydi va xizmatlar sohasini yanada global jihatdan liberallashtirish va to'siqlarni bartaraf etish jahon iqtisodiy o'sishini rag'batlantirishga, xizmatlar savdosi doirasida ayirboshlash hajmini sezilarli darajada oshirishga, xorijiy investitsiyalarni jalb qilishga, sohada samaradorlikni yanada oshirish va rivojlantirishga xizmat qiladi, deb hisoblanadi.

Kalit so'zlar: Rivojlanayotgan mamlakatlar, Xizmatlar savdosi bo'yicha Bosh kelishuv, erkinlashtirish, turizm, Jahon savdo tashkiloti.

УСМАНОВА Сурайё Бултаковна

Доцент Университета мировой экономики и дипломатии,
доктор философии по юридическим наукам (PhD)

E-mail: s.b.usmanova@uwed.uz
orcid.org/0000-0002-6624-7685

АННОТАЦИЯ

Регулирование туристических услуг в рамках Генерального соглашения по торговле услугами (ГАТС) играет важную роль в дальнейшем сотрудничестве развивающихся государств с мировым сообществом. ГАТС фокусируется на туризме как одном из наиболее важных компонентов международной торговли. В статье особое внимание уделяется правовой оценке регулирования туристических услуг в процессе сотрудничества. В частности, был проведен сравнительный анализ практики развивающихся стран, являющихся членами ВТО. В связи с этим исследованы анализы, основанные на правовых нормах Всемирной торговой организации, научных источниках и интервью с несколькими международными специалистами, которые могут быть предложены в условиях подписания соглашения ГАТС новыми странами. ГАТС достигло все большей степени либерализации за счет устранения и сокращения торговых барьеров. Вопросы доступа к рынкам и внутреннего регулирования в ГАТС в развивающихся странах являются актуальными. Республика Узбекистан полностью поддерживает эти цели и считает, что дальнейшая глобальная либерализация и устранение барьеров в сфере услуг будет стимулировать глобальный экономический рост, значительно увеличить торговлю услугами, привлечет иностранные инвестиции, а также улучшить и повысить производительность в этом секторе.

Ключевые слова. Развивающиеся страны, Генеральное соглашение по торговле услугами, либерализация, Туризм, Всемирная торговая организация.

Introduction. 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 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. According to national researchers, WTO accession for Uzbekistan is a more an opportunity to foster market reforms aimed at modernizing its economy and increasing its competitiveness. Uzbekistan will have to reduce import tariffs, allow foreign products to equally compete in domestic markets, and oblige itself to further liberalize its trade within multilateral trade negotiations[1; 74]. Accession to the WTO is an integral step towards integration into the world community as a full participant in the multilateral trading system and bringing the legislation of the republic to the modern international level [2;593].

With this regard, the article aims to identify and analyse the regulation of tourism services in the framework of the WTO, from the concept of developing countries, in order to implement the results into the practice of Uzbekistan during accession.

The concept of GATS.

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 [3; 137].

Many nations disclosed the limitations on market access they had during the GATS negotiations. Setting minimal liberalization thresholds, nevertheless, could 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 [4; 221].

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 [5; 7].

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 [6; 4].

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 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 [7; 189].

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) [8; 194-195].

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 [9]. 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 that only hotels of a specific size are permitted to have a commercial presence in, say, the hotel industry [10; 574].

GATS' articles analyses regarding developing states.

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 [11;43]. 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 Members are only expected to undertake market access commitments commensurate with their level of development [12; 482].

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 [13].

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 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 [14; 128].

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 of regional limitations on the free exchange of services acted as a hindrance to signing this Annex [15; 714-720].

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.

Some aspects for tourism services' regulation.

The adoption of the Annex on tourism services, according to Jaroslaw Pietras [bu joyda aniqroq manba berishingizni so'raymiz], 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; WWF, 2(01). Their concerns have focused on the need to support liberalization with complementary provisions for development and environmental issues [16; 218].

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, [17; 26-30] 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 author's conducting the research in Poland. According to Dr.Magdalena Duda-Seifert,professor at Wtoclaw University, 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 [18].

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 [19; 219].

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.

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 [20; 392].

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 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.

Conclusion.

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) [21].

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 of Warsaw University, *Anna Wrobel*. 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 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, in the process of Uzbekistan’s joining the WTO’s GATS agreement as a 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.

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