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Research Article

INTERNATIONAL-LEGAL REGULATION OF TOURISM SERVICES IN THE PROCESS OF ACCESSION OF SOME COUNTRIES TO THE WTO (GATS)

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ABSTRACT

According to experts, the GATS in all cases recognizes the right of member states to regulate the provision of services in accordance with 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 [1.19]. Therefore, the states, which have joined the GATS undertake obligations that can be 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.

KEYWORDS

GATS, economic practicability test, WTO, Russian Federation.

INTRODUCTION

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. 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.

I.A. Chebotereva emphasized that, the specific obligations include such concepts as national treatment and market access. Despite the framework character, the General Agreement on Trade in Services (GATS) is of great importance for international tourism, precisely, the largest number of commitments was made in the tourism sector by 1999 [2.11].

Usually states justify the use of restrictions on access to the market to refer to the “requirement for an economic practicability test”. Within the WTO, many states oppose this position, since the concept of «economic expediency» can be interpreted broadly, based on their interests. In order to specifically regulate the sphere of tourism under the GATS, it was elaborated twice Annexes on tourism by developing and developed countries in 1999 and 2001. These documents include eight sections and a list of services in the sphere. As an institutional body- it was suggested – the Council for trade in services. However, developing countries rejected this Draft linking the non-consideration of their interests. Moreover, the existence of regional integrations on free trade of services was a barrier to sign this Annex [3.P.714].

I.I. Zenkin underlined a peculiarity character of the GATS as, namely, the WTO member state determines itself which service sector to leave closed or open. The WTO member, at least, is committed to provide access to foreign services and their suppliers to the market, as well as provide them with a national mode. Obligations of the state to open this or that sector and exemptions from these commitments are recorded in the national list of commitments and exemptions. The recorded list obliges the state not to establish new restrictions [4.11].

For instance, if we analyze the case of Russia, in the List of Specific Obligations Russia stipulated the following types of services (according to the classification of the WTO) in tourism:

services of tour operators and travel agents; excursion services, hotel and restaurant services (including catering).

For the first two delivery methods, Russia fully opens up the market of travel services for foreign suppliers. In the third mode of delivery - a commercial presence Russia makes restrictions, namely the activity of hotels and restaurants are allowed only in the form of legal entity of the Russian Federation. For companies providing services to tour operators and travel agencies, as well as providing excursion services, commercial presence is allowed only in the form of a legal entity of the Russian Federation, which is a commercial organization. Foreign member of a commercial organization with foreign participation must be a legal entity with experience in providing services of a tour operator in country of its location for not less than 5 years. For the purpose of providing services to tour operators in the field of outbound and inbound tourism, the total foreign participation in the

authorized capital (voting promotions) may be limited to 49%. The restrictions will be eliminated 7 years after the date of Russia's accession to the WTO. The share of foreign participation in the authorized capital, exceeding 49%, cannot be considered as a basis for termination of activities and / or de-investment of legal entities of Russian Federation, licensed to provide travel services and services related to travel, issued before the date of the introduction of such restrictions. Individuals providing services to the guides (guide-interpreters) must be the citizens of Russian Federation [5.2].

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 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", by 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 "Roadmap", which includes 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 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 in the WTO in Geneva, whose work will be coordinated directly by the Ministry of Investments and Foreign Trade of Uzbekistan.

The experience of various countries shows that, success of tourism development directly depends on how this branch is perceived by the government authority, how much it uses state support. With their help, state incentive programs are being developed in a number of countries. Namely, the outbound tourism that provide 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 known that such countries as Kyrgyzstan, Georgia, Ukraine, Moldova, Armenia showed that, after joining the WTO, these countries got more disadvantages, many sensitive industries of these countries suffered significantly, and perhaps these countries were thrown back in economic development. They were not able to fully realize all the benefits from participation in this international organization.

According to A.Lanozska, the governments of the acceding countries routinely lack expertise and sufficient resources to introduce relevant legislative restrictions in order to ensure that liberalization is done in a thoughtful way. 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 economies by opening their unregulated services sectors to foreign competition. This goes against the very principles, which the WTO is based on. The WTO

accession process should support, not inhibit, careful institution building in the vital economic sectors of each acceding country [6.259].

However, there are many countries that were able to defend as much as possible their interests and dictate own terms during joining process. For example, China. Investors wanted to raise the prices of Chinese stocks and resell them, but the government tried to make this process as difficult as possible, sometimes simply by not fulfilling the contractual commitments. Since China's accession to the WTO, its GDP has grown four times, namely, from 1049 in 2001 to 4534 billion dollars in 2010, and the volume of direct foreign investment - more than two times. Concerning the service sector, China joined the WTO in December 2001, after a long fifteen years of negotiations in the status of a developing country, and received the right to maintain restrictions on opening the service sector to foreign capital. China showed that this country has managed to get more benefits from joining this international organization and made a breakthrough in its economic development [7.270].

Concerning service sector in the WTO (GATS) in China, before joining to this organization it was observed in reality that, foreign commercial agencies within cross-border supply and consumption abroad have already appeared there. The researchers predicted positive impact of joining the WTO rather than negative side of it [8.105]. As a result, China became one of the winners among states which join the WTO because, it could negotiate state's interests in the framework of this organization intelligently.

Hence, the Republic of Uzbekistan's attempts to negotiate in 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 tourism sector yet.

Consequently, there would appear several issues and misunderstandings with promotion of their participation in national tourism market. Surely, 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 them. However, this document does not envisage the preferences in participation of foreign supply in tourism sphere. With this regard, it is advisable to elaborate legal framework on participation of foreign supply and consumption abroad in the sphere of tourism of the Republic of Uzbekistan for further development of legal basis in this direction in terms of joining Uzbekistan to the WTO-GATS.

Another successful case of government, which is the member of the WTO, is the Czech Republic. First of all, we would like to answer why this country is analyzed as Case for Uzbekistan's tourism development and joining to WTO? There are many developed countries in the world where tourism industry more progressed than in the Czech Republic, however its potential, history, achievements and shortcomings are very similar to the existing potential in tourism.

1. Czech Republic and Uzbekistan, first of all, from geographical point of view are very similar. These include:
 - Both countries are located in the center of their continent;
 - Both countries have a geographical position due to the disability of exit to the world sea and oceans directly. But despite this drawback the Czech Republic is considered to be one of the world's leading tourism destinations.

2. Both countries have a history of economic development during which it had suffered from the administrative - control system of government.
3. Both countries have own privileges on historical monuments in the sphere of tourism.
4. Historically, both countries are one of the leading religious' centers. Czech is one of the main centers for the Catholic clergy in Christianity.

However, the Czech Republic has a lot of privileges and peculiarities on tourism. These are the followings:

- a) Even though the Republic cannot reach the sea and the ocean in terms of geographical location, the states bordering with the economically developed countries.
- b) Another important issue is the membership of Republic to the EU, as of 1 May 2004 it is a member State of the European Union which also underlined in the Concept of foreign policy, as stated below: "The Czech Republic's prosperity and sustainable development is primarily underpinned by our membership in the European Union and its internal market"[9]; Moreover, the Czech Republic has been WTO member since 1 January 1995 and a member of GATT since 15 April 1993. 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.

Furthermore, it should be underlined that, changes in the domestic regulatory framework and growing role of services sector in the national economy enabled the Czech Republic to become an active participant in the Uruguay Round negotiations on trade in services [10].

- c) Participation as a member of the World Trade Organization positively influenced on the

growth of economy of Czech Republic. Particularly, through its involvement in the EU's Common Commercial Policy, the Czech Republic will seek to strengthen the multilateral trade system and the World Trade Organization (WTO), striving for agreement on transparent and firm trade and investment rules shared by as many countries as possible [11].

From our point of view, the main factor of development of this country is connected with its "open" policy. Openness to main international (WTO) and regional (EU) organizations as well as high investment policy made the Czech Republic possess a leading role among post-soviet countries.

- d) Medical tourism in the Czech Republic is well developed.

It is important to note that in the Czech Republic, there is no special government agency for tourism. This is in the competence of the Czech Ministry of Territorial Development. The most important associations and agencies that emerged from this discovery were the Association of Travel Agents of the Czech

Republic, the Association of Czech Private Travel Agencies, and the National Federation of Hotels and Restaurants. These tourism organizations work together in the Tourism Council, where representatives of each of the above mentioned associations meet and discuss the tourism industry overall. The Tourism Council is advising unit on tourism topics for the Ministry of Economy [12.22]. This case gives an opportunity to private sectors to involve actively into the tourism industry of the Republic, which provides the competition among private touristic agencies and tour operators for further development of tourism sector in the country.

With this regard, we would like to recommend to implement the case of the Czech Republic in terms of increasing the role of private sector in the development of tourism industry in Uzbekistan.

It should be noted that the main factors of tourism development in Czech are: effective and well-established advertising of tourism goods; availability of sufficient information base for tourism; development of transport infrastructure; high level of professionalism in the field; encouraging production of new goods in the sphere of tourism.

The use of above stated practices in the tourism sphere of the Republic of Uzbekistan may show favorable results. Countries should be given enough time to thoroughly discuss each point of contention and work out an optimal package of agreements for their development. Moreover, it is notable to analyze “pros” and “cons” before joining to the WTO. In this research we decided to emphasize these factors only in the sphere of tourism, analyzing that the theme of dissertation is connected with the GATS (WTO) and perspectives of joining the Republic of Uzbekistan to this mega organization.

Potential risks from joining to the WTO (GATS) for the sphere of tourism in Uzbekistan could be the followings:

- Tougher competition in comparison with foreign counterparts in terms of foreign supply chain. Growth of competition will lead to increased marketing costs to maintain position in the market;
- Strengthening competition in order to open tourism market for foreign organizers. Tour operators of Uzbekistan, which focused primarily on outbound tourism, will be forced, could not compete, leave the market or become their small partners or agents (movement of specialists). The

affluence of cheap imports of services and tourism products will lead to the closing of a number of the weakest industries that could not withstand the competition and increase unemployment. Simultaneously, it will cause a decrease in demand for the products of the tourism sector (in the direction of outbound tourism) and threats to small business (for outbound tourism);

- Potential risks of recession in the linked branches; closing of enterprises and rising unemployment will cause a decrease in demand for products of the tourism sector (for domestic tourism); threats to the small tourism industry due to the appearance of new large participants in the market (hotel chains, tour operators etc.) (for domestic and inbound tourism);

In order to avoid and overcome those risks it is suggested to learn practices of People’s Republic of China and Russian Federation in terms of dictating and determining terms and restrictions on participating foreign supply and investors in national tourism market of Uzbekistan.

And from the other hand, potential opportunities from joining the WTO (GATS) would be:

- Investments for further business development due to the uncontrolled arrival of foreign banks to Uzbekistan with their huge capitals and low interest rates; From our point of view, tourism sector would win in the process of attracting more investments in this sphere.
- Insurance market can be completely captured by foreign insurers, having significantly more capital and practice than the domestic companies. More favorable conditions for insurance of tour services (for inbound and domestic tourism);

- Foreign operators under certain conditions must agree during the negotiations on entering the tourist market of Uzbekistan (preferential terms of investment, mandatory target financing of tourism industry facilities etc.) will be forced to invest in the development of tourism infrastructure in Uzbekistan. Exactly this should serve as an incentive to attract customers (tourists) of these operators in Uzbekistan;
- In terms of access to the service market, there are positive consequences in liberalization of international trade is manifested to a greater extent than in trade of goods. This is primarily due to the fact that, trade in services is still in its process of development, and high resource mobility allows to quickly respond to change the conditions of competition and to take advantage of the liberalization of foreign trade.

In conclusion, we would like to note that, the entrance of any country to the WTO should not be regarded only from a positive or negative point of view. For many spheres of production, such a transition will be difficult and the tourism, as one of the spheres of service in the GATS is not an exception. So, a positive solution to the problem of joining the WTO today will pose a number of complicated economic, political and legal questions for Uzbekistan. The length of the process of its accession to the WTO is due to the comprehensive definition of its economic interests and priorities, the establishment of optimal limits for concessions and conditions that guarantee national economic security of Uzbekistan and the ability to defend them during difficult negotiations. With this regard, the following recommendations are elaborated:

1. In order to tackle problems related to the liberalization of trade in tourism services, it is suggested to adopt the Appendix on Tourism

2. Before joining to the WTO, it is suggested for the Republic of Uzbekistan to develop Special Action Program on tourism services regulation, admit foreign tourist companies to the market, and joining a number of agreements. In particular, on the basis of governmental regulation it is advisable to elaborate an effective legislation in the sphere of tourism industry.
3. If Uzbekistan will join the WTO, the national legislation of the country in the sphere of tourism should be fully taken into account, so not only the provisions of the WTO documents that regulate tourism services, but also the law enforcement practice of the WTO in the field of tourism.
4. Under the status of potential accession to the WTO, the Republic of Uzbekistan should assume only those obligations that it can actually fulfill, and not those obligations that are imposed on it from outside. Unjustified liberalization in the field of tourism services may lead to ongoing disputes in the WTO Dispute Resolution Authority after joining it.
5. Considering successful practice of foreign countries, which joined the WTO (GATS) and analyzed by the author (cases of China, the Czech Republic and Russian Federation), it would be useful to implement into national process of entering to the Organization's General Agreement on Trade in Services (namely, in the sphere of tourism services sector).



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