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THE IMPLEMENTATION MECHANISM OF THE GENERAL AGREEMENT ON TRADE IN
SERVICES

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ABOUT ARTICLE

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Abstract: Regulation of services under the General Agreement on Trade in Services plays an important role in further cooperation of the states in the world community. The research paper emphasizes the legal assessment of implementation mechanism of the GATS during this cooperation process. Precisely, comparative analyses of the main articles of the agreement have been conducted. The GATS has achieved a progressively higher degree of liberalization through the elimination or reduction of trade barriers. With this regard, analyses based on the World Trade Organization's legal norms, scientific sources, which can be implemented in the conditions of new countries joining process the GATS agreement have been researched.

INTRODUCTION

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. 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.

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.

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 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.

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.

METHODS

To search the answers for research questions from legal perspective it was used qualitative data from primary and secondary sources. As for the methods of data collections have been used comparative and legal analyses of international-legal norms in the sphere of GATS. The research papers and written books (secondary sources) that have been conducted on some aspects of this particular research before have been analyzed and systematized. In order to engage the practicability of the research, different analysis methods such as content analyses and comparative-legal, normative-legal analyses of international agreements are used. The content of the international legal norms are analyzed and form an integral part of the research.

The important method for the research the research papers, statistics to develop qualitative data of the research. It was prepared the general questions on WTO and GATS, and specific questions considering the specialty of interviewers also had been posed. The implementation of the particular methodology served to make the research more effective and enrich its scientific and practical values.

RESULTS

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 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.

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.

It is misunderstood that the rule on the origin of goods also applies to services (Article XXVII).

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. 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.

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.

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 “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. 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.

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;
- 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.

Analyses

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.

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;
- 5) Security exceptions under Article XIV bis of the GATS.

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 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.

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 “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.

DISCUSSIONS

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;
- 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. 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 Bosche, the most-favored-nation obligation is the single most important rule in WTO law. Without this provision, the multilateral trading system will not exist.

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 “cannot be subject to barriers other than those based on WTO documents.”. The obligation to provide the most favorable country 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 “.

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. The GATS, like the GATT, contains provisions 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) .

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, 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.

CONCLUSION

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.

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 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.

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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