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# Domestic Regulation and Market Access in Tourism Services: A Legal Perspective

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**ABSTRACT:** This article offers a comprehensive analysis of the legal dimensions governing market access and domestic regulation in tourism services under the framework of the World Trade Organization’s General Agreement on Trade in Services (GATS). It begins by outlining GATS’s obligations—Most-Favoured-Nation (MFN) treatment, transparency, market access, and national treatment—and examines their specific application to the tourism services sector. The discussion emphasizes that liberalization under GATS extends beyond mere market opening; it also aims to foster fair competition, enhance service quality, and align domestic regulatory practices with international standards.

The study argues that while liberalization presents opportunities for attracting foreign investment and stimulating innovation, it must be complemented by robust mechanisms to protect consumer rights, uphold public interests, and ensure environmental sustainability. Moreover, the research underscores the necessity of establishing a level playing field for both domestic enterprises and foreign investors as a foundation for a balanced and competitive tourism market.

By harmonizing international commitments with national regulatory frameworks, the tourism industry can achieve long-term sustainable growth, greater transparency, and deeper global integration. Ultimately, the findings suggest that aligning GATS principles with domestic tourism policies can enhance service quality, drive economic development, and strengthen international cooperation.

## 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[1].

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[2].

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

[1] 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.

[2] 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.

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.

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[3].

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[4].

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[5].

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[6].

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[7]. 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[8].

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 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[9].

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

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[3] 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.

[4] Yilmaz M. (ed.), Domestic Judicial Review of Trade Remedies (Cambridge, Cambridge University Press 2013) 5.

[5] 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').

[6] 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.

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

[8] 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.

[9] For example, the 'Charming Betsy' doctrine: Murray v The Charming Betsy, 6 US 2 Cranch 64 (1804).

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'[10].

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 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 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[11].

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 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

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[10] The World Trade Organisation, "Chapter 3. Part I. Globalisation, Law and the WTO," *Cambridge Books Online*, Cambridge University Press, 2010, 54.

[11] Misoon Lee, Hanna Fayed, and John Fetcher, "GATS and Tourism," *Tourism Analysis* 7 (2002): 125-37.

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[12].

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 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[13].

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)[14].

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. 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[15]. 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[16]. 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"[17].

**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

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[12] Bernard Hoekman and Pierre Sauve, *Liberalizing Trade in Services*, no. 243 (Washington, D.C.: World Bank, 1995).

[13]Bernard Hoekman and Pierre Sauve, *Liberalizing Trade in Services*, no. 243 (Washington, D.C.: World Bank, 1995).

[14] Scarlett Cornelissen, "Tourism and the General Agreement on Trade in Services: Debates, Progress, and Implications for the African Continent," (2002): 195.

[15] 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.

[16] 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.

[17] Ibid.

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"[18].

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[19].

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 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.

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