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Improving the Legal Framework of Core Public Services in the Republic of Uzbekistan in the Context of the GATS, WTO

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Аннотация. Ushbu tadqiqot O‘zbekistonning JSTga kirishi jarayonida ijtimoiy xizmatlarni (sog‘liqni saqlash, ta’lim, kommunal xizmatlar) huquqiy tasniflash muammolarini tahlil qiladi. Milliy qonunchilikda ushbu sohalar tijorat xizmati emas, balki ijtimoiy ahamiyatga ega sohalar sifatida qaralsa-da, ularning GATS doirasidagi "davlat hokimiyati vakolatlarini amalga oshirishda ko‘rsatiladigan xizmatlar" maqomi aniq belgilanmagan. Muallif xalqaro huquqiy noaniqlikning oldini olish uchun ushbu xizmatlarning notijorat va raqobatdan tashqari tabiatini qonunchilikda mustahkamlashni taklif etadi. Bu yondashuv O‘zbekistonga xalqaro savdo qoidalari doirasida o‘zining tartibga solish muxtoriyatini (regulator autonomy) saqlab qolish imkonini beradi.

Калит сўзлар. JST, GATS, ijtimoiy xizmatlar, davlat hokimiyati vakolatlari, notijorat xizmatlar, huquqiy tartibga solish, O‘zbekiston, aksessiya.

Аннотация. В данной работе анализируются проблемы правовой классификации социальных услуг (здравоохранение, образование, электро- и водоснабжение) Узбекистана в контексте вступления в ВТО. Несмотря на то, что национальное законодательство рассматривает эти сферы как социально значимые сектора, отсутствие четкого правового разграничения между коммерческими услугами и услугами, "предоставляемыми при осуществлении функций государственной власти" (согласно GATS), создает нормативную двусмысленность. Автор обосновывает необходимость внедрения нормативной модели, которая четко определяет некоммерческий и неконкурентный характер этих услуг. Такой подход позволит Узбекистану укрепить правовую защиту государственных услуг и сохранить регуляторную автономию на международном уровне.

Ключевые слова. ВТО, ГАТС, социальные услуги, государственные полномочия, некоммерческие услуги, правовое регулирование, Узбекистан, вступление в ВТО.

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Annotation. This study examines the legal challenges of classifying social services (healthcare, education, utilities) in Uzbekistan within the framework of WTO accession and GATS obligations. While domestic law treats these sectors as socially significant functions of the state, the lack of an explicit distinction between commercial services and those "supplied in the exercise of governmental authority" creates conceptual ambiguity. The author proposes a scientifically grounded transition towards a normative model that explicitly defines the non-commercial and non-competitive nature of essential public services. By aligning domestic legislation with the GATS carve-out logic, Uzbekistan can secure legal certainty and preserve its regulatory autonomy while fulfilling international trade commitments.

Keywords. WTO, GATS, public services, governmental authority, non-commercial services, regulatory framework, Uzbekistan, accession.

I. Core Public Services and the Governmental Authority Carve-Out under GATS: Conceptual and Legal Foundations. The regulation of core public services occupies a central position in the constitutional and socio-economic architecture of the Republic of Uzbekistan. Services such as healthcare, education, water supply and electricity are traditionally conceived not as market commodities but as instruments through which the state fulfils its social obligations, guarantees minimum living standards, and ensures social cohesion. These services are generally characterised by universal access, public financing, and a strong element of state responsibility for availability, affordability and continuity. In this sense, they differ fundamentally from administrative services or commercial activities of the state and should be analysed through the lens of public law rather than market regulation.

Within the framework of the World Trade Organization, this distinction finds its legal expression in Article I:3 of the General Agreement on Trade in Services (GATS), which excludes from the scope of the Agreement “services supplied in the exercise of governmental authority,” defined as services supplied neither on a commercial basis nor in competition with one or more service suppliers. This carve-out is not sector-based but functional in nature. It does not automatically apply to entire sectors such as healthcare or education; rather, it depends on how a particular service is organised, financed and delivered in practice. Nevertheless, the Agreement itself and subsequent explanatory materials issued by the World Trade Organization make clear that many core public services fall outside the scope of GATS precisely because they are not supplied on a commercial basis and are not subject to market competition.

For Uzbekistan, this functional understanding is of critical importance. The country’s legal system does not generally frame healthcare, education, electricity or water supply as “services” in the commercial sense. Instead, they are regulated as socially significant sectors, often with constitutional relevance, where the state retains

primary responsibility for organisation, financing and oversight. Public hospitals and schools are largely budget-funded; tariffs for utilities are regulated; and access to essential services is treated as a matter of public interest rather than contractual freedom. From a GATS perspective, such features strongly support the qualification of these activities as services supplied in the exercise of governmental authority.

However, the absence of an explicit domestic legal articulation of this functional distinction creates conceptual and normative ambiguity. Uzbek legislation tends to regulate each sector separately, focusing on institutional design, financing mechanisms and regulatory oversight, without explicitly addressing the question of whether and under what conditions a particular service remains non-commercial and non-competitive. This omission does not pose immediate problems in purely domestic terms, but it becomes legally significant in the context of WTO accession, where the scope of GATS obligations depends on the classification of services and the nature of their supply.

A scientifically sound approach to improving the legal framework therefore requires moving beyond a sectoral description of public services toward an explicit normative model that mirrors the GATS carve-out logic. Such a model would not subordinate domestic social policy to trade law; rather, it would strengthen the legal protection of public services by clearly anchoring them within the governmental authority exception. By defining the core of public services as non-commercial and non-competitive by law, Uzbekistan can preserve regulatory autonomy while ensuring conceptual clarity and legal certainty at the international level.

II. The Risk of "Carve-Out Erosion" in Mixed Models of Public Service Provision. While core public services in Uzbekistan are predominantly organised as non-commercial and non-competitive, recent reforms and economic pressures have introduced elements of mixed provision in several sectors. Paid services in public hospitals, contract-based education programmes, private participation in utility provision, and outsourcing arrangements are increasingly common. From a domestic policy perspective, such arrangements are often justified as tools to improve efficiency, attract investment or supplement public funding. From a GATS perspective, however, they introduce the risk of what may be described as "carve-out erosion."

The erosion does not occur because a sector as such is opened to reform, but because the functional conditions of non-commerciality and non-competition are gradually diluted. When public providers charge fees beyond cost recovery, compete with private suppliers for the same users, or cross-subsidise commercial activities through their privileged public position, the factual basis for the governmental authority carve-out becomes weaker. WTO law does not prohibit such models, but it does

reclassify them: once a service is supplied on a commercial basis or in competition, it potentially falls within the scope of GATS as a measure affecting trade in services.

This risk is particularly salient in network industries such as electricity and water supply. These sectors often operate under natural monopoly conditions, where a single provider controls infrastructure but may also offer ancillary or value-added services. GATS contains specific provisions on monopolies and exclusive service suppliers, requiring Members to ensure that such entities do not act inconsistently with the Member's obligations under the Agreement. While these obligations apply only within the scope of GATS commitments, the underlying principle is clear: where a monopoly extends its activities beyond the non-competitive core, regulatory safeguards become necessary.

A similar dynamic can be observed in healthcare and education. The existence of private clinics or universities does not automatically bring public healthcare or education within the scope of GATS. What matters is whether public institutions themselves operate on a commercial basis or compete directly with private providers for the same category of users under market conditions. Without clear legal separation between the public-service core and ancillary commercial activities, the boundary becomes blurred, increasing legal uncertainty and potential exposure to international obligations.

From the perspective of legal reform, the key challenge is therefore not to prohibit mixed models, but to regulate them in a way that preserves the integrity of the governmental authority carve-out for core public services. This requires explicit legal techniques of separation: institutional separation, accounting separation, and normative separation of functions. Public providers must be able to demonstrate that their core activities are financed, organised and delivered as public functions, distinct from any commercial operations that may exist at the periphery.

In the absence of such separation, the risk is not only international. Domestically, unclear boundaries may lead to cross-subsidisation, unequal access, and erosion of the universal service principle. Internationally, they may expose Uzbekistan to arguments that certain services are supplied under conditions comparable to market services and therefore subject to GATS disciplines on domestic regulation, non-discrimination or market access. Preventing such outcomes requires deliberate legislative design rather than ad hoc administrative practice.

III. Legislative Proposals for Strengthening the Legal Protection of Core Public Services in Uzbekistan. Against this background, improving the legal framework for the provision of core public services in Uzbekistan should be guided by a dual objective: safeguarding the social function of these services while ensuring conceptual coherence with the governmental authority carve-out under GATS. This can be achieved through a limited but strategically targeted

set of legislative reforms.

First, Uzbek legislation should introduce an explicit statutory definition of "core public services" grounded in the criteria of non-commerciality and non-competition. This definition should apply across sectors and serve as an interpretative clause in sectoral laws governing healthcare, education, electricity and water supply. By codifying the functional test reflected in GATS Article I:3(b)–(c), the legislature would affirm that these services are supplied in the exercise of governmental authority and are therefore excluded from trade liberalisation disciplines by design, not by assumption.

Second, sectoral laws should incorporate a principle of functional separation between the public-service core and any ancillary commercial activities. Where public entities are authorised to provide paid or competitive services, the law should require clear institutional or accounting separation to prevent cross-subsidisation and to preserve the non-commercial character of the core service. This approach does not restrict policy choice; rather, it enhances transparency and legal defensibility, both domestically and internationally.

Third, monopoly or exclusive providers of core public services should be subject to minimum transparency and accountability standards, even where their activities fall outside the scope of GATS. These standards should include clear tariff-setting rules, publicly available service conditions, objective quality benchmarks, and accessible complaint mechanisms. Such measures do not amount to liberalisation; they reflect principles of good governance and reinforce public trust while reducing the likelihood that monopolistic practices spill over into competitive domains.

Fourth, the use of government procurement as a tool for delivering public services should be explicitly framed as serving governmental purposes. By clearly anchoring outsourcing and contracting arrangements within the public-service mandate, Uzbek law can make effective use of the policy space recognised in GATS for government procurement, while maintaining control over quality, accessibility and social objectives.

Finally, at a systemic level, the improvement of the legal framework should be accompanied by an interpretative clause stating that the organisation and delivery of core public services are guided by constitutional social objectives and, where relevant, by the principles underlying the governmental authority carve-out of GATS. Such a clause would not create direct international obligations, but it would provide a coherent normative compass for courts, regulators and policymakers in navigating the interface between public service provision and international economic law.

In conclusion, the relationship between GATS and core public services in Uzbekistan should not be framed as a zero-sum conflict between trade liberalisation and social policy. Properly understood, the governmental authority carve-out offers a robust legal foundation for preserving the public character of essential services,

provided that domestic law clearly articulates and protects the conditions on which that carve-out rests. By refining its legal framework accordingly, Uzbekistan can both strengthen the internal coherence of its public service system and enter the WTO accession process with confidence that its core social functions remain legally secure.

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