

RESEARCH ARTICLE

Balancing GATS Obligations and The Public Interest in Light of Turkiye's Schedule of Specific Commitments and Uzbekistan's WTO Accession

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Abstract

This article examines how GATS reconciles binding services-liberalisation commitments with States' regulatory space for public-interest objectives, using Turkiye's 1994 Schedule of Specific Commitments as a case study for Uzbekistan's ongoing WTO accession. It shows that the GATS governmental-authority exception (Article I:3(b)-(c)) is narrower and legally more uncertain than commonly assumed, so the real safeguard for public interest lies in scheduling choices: which sectors are left fully open, "Unbound", or subject to calibrated limitations. Turkiye's schedule shows a differentiated strategy: broad openness in tourism, calibrated limits in maritime, postal and technical-testing services, and caution in education and health. The article argues that Uzbekistan, negotiating its own schedule from scratch, should not rely on the governmental-authority exception for its mixed public-private health and education systems, but should instead adopt Turkiye's technique of explicit, mode-specific limitations to reconcile liberalisation gains with the protection of essential public functions.

KEY WORDS

General Agreement on Trade in Services; governmental authority; Schedule of Specific Commitments; Turkiye; Uzbekistan; WTO accession; public interest; trade in services; regulatory autonomy.

INTRODUCTION

The General Agreement on Trade in Services (GATS) is unusual among multilateral trade instruments in that its central discipline the obligation to grant market access and national treatment applies only to the extent that a Member has voluntarily inscribed a sector in its Schedule of Specific Commitments. This 'positive list' architecture gives every Member, whether an original signatory of 1994 or a State acceding decades later considerable latitude to decide how far liberalisation should extend into sectors that touch on health, education, social security and other public functions.

Yet the precise boundary between what GATS requires and

what a State may still regulate for reasons of public interest is contested. Article I:3(b) of the GATS excludes 'services supplied in the exercise of governmental authority' from the Agreement's scope altogether, but Article I:3(c) confines that exclusion to services supplied 'neither on a commercial basis, nor in competition with one or more service suppliers' a formula that, as this article shows, covers a much narrower set of activities than a lay reading of 'public service' would suggest.

This article asks two connected questions. First, taking Turkiye's Schedule of Specific Commitments submitted at the

conclusion of the Uruguay Round on 15 April 1994 as an empirical case, in which service sectors touching on governmental authority did Türkiye open its market fully, in which did it retain calibrated limitations, and in which did it effectively carve sectors out of GATS discipline altogether? Second, given that the Republic of Uzbekistan has not yet acceded to the WTO and is, as of 2026, in the final stages of its Working Party negotiations, what should Uzbekistan's negotiators learn from Türkiye's experience when they draft Uzbekistan's own schedule of specific commitments in services?

The article proceeds in five sections. Section 2 sets out the legal architecture within which public interest can be protected under GATS. Section 3 analyses Türkiye's Schedule sector by sector, distinguishing sectors of full commitment, calibrated limitation, and de facto carve-out. Section 4 develops a three-layer model of where 'public interest' actually resides in this architecture and applies that model to draw comparative lessons for Uzbekistan's accession negotiations. Section 5 concludes.

The Legal Architecture of GATS for Protecting Public Interest

The starting point is the text of the exception itself. Article I:3(b) GATS excludes from the Agreement's scope 'services supplied in the exercise of governmental authority', which Article I:3(c) defines as 'any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers'. The WTO Secretariat itself gives 'social security schemes and any other public service, such as health or education, that is provided at non-market conditions' as illustrative examples, yet the qualifying phrase 'non-commercial' and 'non-competitive' is doing most of the legal work, and it is precisely this phrase that is difficult to satisfy in mixed health and education systems where public providers coexist and compete with private, fee-charging providers.

Academic commentary has stressed that the exception was never intended, and cannot safely be read, as a general 'public services' carve-out. Natens and Wouters observe that the reference to services provided 'in the exercise of' governmental authority may import an additional requirement of command and control by the State, so that mere government involvement or funding does not suffice to remove a service from GATS disciplines. Krajewski's analysis for the Center for International Environmental Law similarly concludes that the illustrative list found in the GATS Annex on

Financial Services cannot be extrapolated to define 'governmental authority' for the Agreement as a whole, leaving considerable interpretive uncertainty as to which health, education or social-security activities actually fall outside GATS.

WTO adjudicators have, moreover, consistently read the term 'services' in Article I broadly, reinforcing the conclusion that the governmental-authority exception is the exception, not the rule. A commentary published by the Institute for Agriculture and Trade Policy reaches the same conclusion, warning that the exclusion should not be treated as automatically shielding government procurement of services or mixed delivery systems.

Given how narrowly the textual exception is construed, the practical instrument through which a Member preserves regulatory space in sensitive sectors is the Schedule of Specific Commitments itself. Each Schedule records, for every scheduled sector and for each of the four modes of supply: cross-border supply, consumption abroad, commercial presence, and presence of natural persons, either 'None' (no limitations), a specific textual limitation, or 'Unbound' (no commitment at all, leaving the Member free to regulate as it wishes). A sector that is simply absent from a Member's Schedule is not subject to the market-access and national-treatment disciplines of Articles XVI and XVII at all, which is why the complete absence of a sector from a Schedule is sometimes described as a de facto carve-out.

Beyond the Schedule, GATS Article XIX:2 requires that the 'process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members', and Article IV commits Members to facilitating the increasing participation of developing countries while respecting their development needs. These provisions confirm that progressive liberalisation is meant to be voluntary and calibrated rather than automatic, but they operate as negotiating principles rather than as directly enforceable exceptions, and cannot substitute for careful scheduling.

Türkiye's Schedule of Specific Commitments and Its Sectoral Anatomy

Türkiye's own Schedule illustrates how the discretionary layer described above operates in practice. Submitted with the Uruguay Round Final Act on 15 April 1994, it follows the standard GATS format of horizontal commitments applicable to all sectors, followed by sector-specific entries. Several

general notes in the Schedule are themselves public-interest safeguards of a systemic kind: the Schedule states that 'the rights and obligations arising from this Schedule shall have no self-executing effect and thus confer no rights directly on natural or juridical persons', that Türkiye 'does not undertake any commitments on foreign trade and/or customs measures with regard to goods' even where goods are integral to a scheduled service, and that where an inconsistency arises between the Schedule and other applicable instruments, 'the commitment that is the most favourable shall prevail'.

Beyond these systemic notes, four distinct sectoral patterns emerge on a closer reading of the Schedule. The first is straightforward openness. Türkiye's Schedule extends comparatively open commitments to commercially oriented services with limited public-interest sensitivity, such as hotels and restaurants and travel agency and tour-operator services, which are core export sectors for Turkish tourism and were bound with few limitations.

Even in these liberal sectors, however, Türkiye retained a residual, non-discriminatory measure connected to the balance of payments: outbound Turkish travellers were, at the time of scheduling, 'required to pay, with certain exceptions, a TL amount equivalent up to US\$100 for each exit', illustrating that even 'open' sectors retained one calibrated, revenue- and macro-prudential-motivated limitation rather than an unconditional commitment.

A second, more calibrated pattern comprises sectors in which Türkiye made commitments but attached specific limitations connected to national sovereignty, safety or regulatory oversight. In maritime transport, the Schedule preserves flag-state requirements, reserving certain activities to vessels flying the Turkish flag or registered in the Turkish International Ship Register and excludes 'maritime cabotage services', defined as the transport of passengers or goods between two Turkish ports, from the scope of the commitments altogether. In postal services, the commitment is expressly made subject to the domestic Law on Postal Services, preserving the State's continuing regulatory authority over a network sector with universal-service implications. In technical testing and analysis, Türkiye excluded from its commitments 'technical testing and analysis services relating to the construction sector, including construction and building control activities performed to ensure that the whole construction process...[is] in conformity with the technical specifications and standards', retaining only

a narrow commitment for inspection, testing and analysis of air, water, noise and vibration levels under CPC 86761.

These entries share a common logic: Türkiye did not withhold commitments from entire sectors, but surgically excluded the sub-activities most directly tied to public safety, network universality, or sovereign prerogative, while liberalising the remainder of the sector.

A third pattern is the complete absence of a sector from the Schedule, which goes a step further than a calibrated limitation. The United States International Trade Commission's contemporaneous review of the schedules of twelve European and Eurasian trading partners, including Türkiye, found that, in the absence of any specific commitments on audiovisual services, 'the subject countries have effectively carved out this sector from the scope of the GATS'. This is analytically distinct from an 'Unbound' entry within a scheduled sector: an unscheduled sector is simply outside the reach of Articles XVI and XVII, whereas an 'Unbound' entry within a scheduled sector signals that the Member considered the sector but chose to retain full regulatory discretion for a particular mode of supply.

A fourth and final pattern, the one closest to the governmental-authority question examined in Section 2 appears in health and education. These are the sectors in which the boundary between commercial trade in services and the exercise of governmental authority is most contested, and they are also, globally, among the least liberalised. The WTO's own sectoral overview records that education 'is one of the sectors with the lowest number of WTO members' commitments under the GATS', that higher education attracts the largest share of such commitments as exist, and that where commitments have been made, 'Mode 3 has the highest number of limitations, including quotas on the total number of suppliers, limits on foreign capital participation, and discriminatory treatment in relation to subsidies'. Verger's analysis of the negotiating history under GATS 2000 confirms that education has consistently been treated by both developed and developing Members as a sector requiring cautious, incremental scheduling rather than blanket liberalisation.

Türkiye's domestic institutional architecture illustrates why this caution persists independently of its GATS commitments: the Council of Higher Education (Yükseköğretim Kurulu, YÖK), established in 1981 under Article 130 of the Turkish Constitution, retains supervisory authority over the planning,

coordination and quality assurance of all Turkish universities, while the Ministry of National Education administers all other levels of education, so that market entry by any provider, domestic or foreign, remains conditioned on a public regulatory gatekeeper regardless of the precise wording of Turkiye's Schedule.

This pattern reflects a rational policy choice rather than an oversight: the health and social-services sub-sector was, in a large multi-country statistical study, not found to be associated with measurable improvements in population health outcomes when liberalised under GATS, one plausible explanation being that scheduled commitments in this sector chiefly consolidated pre-existing market conditions rather than driving deregulation.

Where Does 'Public Interest' Actually Live? A Three-Layer Model and Comparative Lessons for Uzbekistan's WTO Accession

Bringing Sections 2 and 3 together, it is possible to distinguish three distinct and unequally reliable layers at which public interest can be protected under GATS.

The first layer is the textual exclusion in Article I:3(b). This layer is legally automatic it requires no scheduling decision, but, as Section 2 showed, it is narrow and interpretively uncertain, and it is unlikely to cover mixed public-private delivery systems of the kind found in both Turkiye and Uzbekistan. Reliance on this layer alone is therefore precarious: a government cannot assume that a service is outside GATS merely because it is publicly funded, publicly regulated, or traditionally considered a public good.

The second layer is scheduling discretion, and it is this layer that does the real protective work, entirely within the Member's control. Turkiye's Schedule shows this layer operating at three levels of granularity: (i) the sectoral level (audiovisual services omitted altogether); (ii) the sub-sectoral or activity level (construction-related technical testing excluded, cabotage excluded); and (iii) the modal level (specific modes left Unbound while others are bound). Because this layer is discretionary and negotiated, it is also the layer most exposed to pressure from trading partners during negotiations — whether during a Uruguay Round-style single undertaking or, as discussed below, during an accession Working Party.

The third layer consists of general and security exceptions. GATS Article XIV permits Members to maintain measures

necessary to protect public morals, human, animal or plant life or health, subject to a chapeau requiring that such measures not be applied in a manner constituting arbitrary or unjustifiable discrimination. This is a residual safety valve rather than a substitute for careful scheduling: it applies only to measures otherwise inconsistent with a commitment the Member has already undertaken, and its availability is assessed after the fact, through dispute settlement, rather than guaranteed in advance.

The practical conclusion from this three-layer model is straightforward: a government cannot outsource the protection of its public-interest objectives to Article I:3(b) or to Article XIV. It must build that protection into the architecture of its Schedule at the time of scheduling which is precisely the stage at which Uzbekistan currently finds itself, and the remainder of this section applies the three-layer model to Uzbekistan's own accession negotiations.

Unlike Turkiye, which became a GATS signatory automatically upon the conclusion of the Uruguay Round in 1994, Uzbekistan is acceding to the WTO under Article XII of the Marrakesh Agreement, a process it first opened in 1994 but which stalled between 2005 and 2020. Negotiations resumed with the Fourth Working Party meeting in July 2020, and the pace has since accelerated markedly: five further Working Party meetings were held between November 2023 and November 2025 alone. At its most recent session, on 5–6 November 2025, the Working Party reviewed a revised Draft Working Party Report containing Uzbekistan's draft commitments, with the Uzbek delegation, led by Deputy Prime Minister Jamshid Khodjaev, reaffirming the goal of concluding accession at the WTO's Fourteenth Ministerial Conference (MC14).

Alongside these negotiations, Uzbekistan has undertaken substantial domestic reform including the elimination of export-contingent subsidies and of exclusive rights for state-owned enterprises in gas, electricity and metals, the liberalisation of price controls, and the acceleration of privatisation and has submitted, cumulatively, 192 pieces of draft or adopted legislation for Members' review since 2020. The European Union concluded its own bilateral market-access deal with Uzbekistan in October 2025, alongside a new Enhanced Partnership and Cooperation Agreement, confirming that services commitments negotiated bilaterally during accession will, once accession is finalised, extend on a most-favoured-nation basis to the entire WTO membership.

This context matters for the comparison with Türkiye. Türkiye's 1994 Schedule was negotiated within the single undertaking of the Uruguay Round, alongside more than ninety other original Members submitting schedules simultaneously, with comparatively less individualised pressure on any single Schedule. Uzbekistan, by contrast, is negotiating bilaterally and multilaterally, sector by sector, with individual WTO Members who submit specific requests and questions on its draft commitments a dynamic in which acceding governments are, in the accession literature, generally understood to face more detailed and exacting scrutiny of their draft schedules than existing Members faced when they first scheduled commitments in 1994. Four lessons follow from applying the three-layer model to this structurally different bargaining position.

The first lesson is not to rely on the governmental-authority exception for mixed systems. Uzbekistan's health and higher-education systems, like Türkiye's, combine public provision with a growing private and fee-charging sector. Under the first layer of the model Article I:3(b)-(c) services supplied in competition with private providers fall outside the governmental-authority exception and inside GATS's ordinary disciplines once a corresponding sector is scheduled. Uzbekistan's negotiators should therefore not assume that leaving health or education unmentioned, or lightly scheduled, is legally equivalent to a guaranteed carve-out; the safer and more transparent technique the one Türkiye used for cabotage, postal services and construction-related testing is to schedule the sector but attach explicit, narrowly drawn limitations or 'Unbound' entries to the specific modes and sub-activities that touch on public functions, such as licensing of medical and teaching personnel, accreditation of institutions, and the setting of curricula or clinical standards.

The second lesson is to use systemic general notes, not only sector-by-sector limitations. Türkiye's general notes disclaiming self-executing effect, preserving control over customs measures on goods embedded in services, and applying a most-favourable-commitment rule across overlapping annexes show that some public-interest protection can be built into the architecture of the Schedule itself, at the second layer of the model, rather than negotiated sector by sector. Uzbekistan could adopt an analogous horizontal note clarifying, for instance, that commitments in professional or business services do not extend to the licensing, accreditation or safety-certification functions that

remain within the competence of the relevant state authority, reducing the risk of the interpretive disputes identified by Natens and Wouters and by Krajewski.

The third lesson is that liberalisation and public-interest protection are not simply opposed. World Bank modelling of Uzbekistan's services sector suggests that halving the gap between Uzbekistan's current level of services-trade restrictiveness and that of the best-performing comparator economies could raise real GDP by as much as 9 per cent and average real wages by around 8 per cent, with associated poverty reduction. These gains are estimated at the level of the services sector as a whole logistics, telecommunications, finance, professional and business services and do not require, and should not be taken to require, unconditional liberalisation of core public-interest sub-sectors such as compulsory basic education or the essential-medicines and primary-care segments of the health system. Türkiye's own Schedule demonstrates precisely this kind of differentiated strategy: broad commitments in tourism and hospitality, calibrated openness in ancillary business and professional services, and continued caution in education, health and other governmental-authority-adjacent sectors. Uzbekistan can pursue the growth dividend identified by the World Bank in the commercially oriented segments of its services economy: logistics, digital and professional services, tourism-related services, while adopting a Türkiye-style calibrated approach to the sub-activities within health and education that are most closely bound up with public regulatory authority, such as medical and teaching licensure, quality accreditation, and the financing of compulsory education.

The fourth and final lesson concerns timing. Once a Schedule of Specific Commitments is bound, modifying or withdrawing a commitment under GATS Article XXI requires notice and, in most cases, compensatory renegotiation with affected Members, a costly and legally uncertain process. Türkiye's 1994 Schedule has, in the more than three decades since, remained substantially the reference point for its GATS obligations even as its domestic health, education and telecommunications sectors have evolved considerably. Uzbekistan, negotiating its Schedule for the first time under active multilateral scrutiny and with substantial technical assistance from the WTO Secretariat, the International Trade Centre, the IMF and the World Bank, is in the comparatively rare position of being able to design its governmental-authority-adjacent limitations deliberately and prospectively,

rather than having to correct an overly generous 1990s-era schedule after the fact, as some original Members have subsequently sought to do through the WTO's domestic-regulation certification process.

CONCLUSION

Turkiye's Schedule of Specific Commitments shows that the balance between GATS obligations and public interest is struck not primarily through the Agreement's governmental-authority exception, which is narrower and more legally uncertain than is often assumed, but through the deliberate, differentiated design of the Schedule itself: full commitments where trade gains are clear and public-interest risk is low, calibrated and sub-activity-specific limitations where sovereignty, safety or universal-service concerns are engaged, and caution, expressed through unbound or unscheduled entries, in education, health and other sectors closest to the exercise of governmental authority. For Uzbekistan, still completing its WTO accession, the central lesson is not that public services can simply be declared outside GATS, but that the protection of Uzbekistan's health, education and social-security systems must be engineered, sector by sector and mode by mode, into the schedule it is negotiating now a schedule that, once bound, will be far harder to unwind than it will be to draft carefully in the first place. Combined with the World Bank's evidence that substantial growth gains are available from liberalising the commercially oriented segments of its services economy, Uzbekistan is well placed to adopt a hybrid strategy: pursuing openness where Turkiye found it profitable to do so, while replicating Turkiye's caution in the sectors where the exercise of governmental authority, however narrowly GATS itself may define it, remains a matter of legitimate national concern.

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