

CPATH ANALYSIS

U.S. Public Health-Related Services Committed under the “Bottom Up” Rules of the General Agreement on Trade in Services (GATS), and Concerns

“Top Down” GATS rules automatically apply to all services.

For “Bottom Up” rules, countries can choose whether and how particular services are covered. The major bottom up rules are:

Market Access rules: Prohibit government limitations on the amount or type of services supplied by foreign private service providers.

National Treatment rules: Grant foreign private service providers the same treatment as domestic service providers.

Modes. Market Access and National Treatment rules can be applied to cover services in any or all of 4 “modes” of trade:

Mode 1: Cross-border supply: Provision of services to consumers located abroad (e.g. telemedicine)

Mode 2: Consumption Abroad: Provision of services in the provider’s home country to foreign consumers (e.g. niche medical services)

Mode 3: Commercial Presence: Foreign direct investment (e.g. European hospital chain ownership of hospitals in US)

Mode 4: Presence of Natural Persons: Temporary immigration of personnel

<u>PART A. US Health-Related Services Covered by GATS Bottom Up Rules</u>	<u>Bottom Up Rules (Market Access and National Treatment) That US Has Agreed To Apply</u>	<u>Examples of current US laws, regulations, and funding arrangements at risk due to coverage under GATS rules</u>	<u>Exceptions: Services and Modes Currently Excluded from Bottom Up Rules; At Risk for Coverage in Future Negotiations</u>	<u>Pending Requests to Remove Limits on Coverage</u>
Services in hospitals and community health centers	Market Access: Mode 2	Prioritizing resources for domestic populations vs. foreigners who may travel to receive specialty care.	No stated exception	No known request
	Market Access, Mode 3	Limits on establishment of hospital services based on needs or other criteria such as outcomes, e.g. cardiac care or neonatal intensive care units.	Needs-based quantitative limits on establishment of hospitals, procurement of specific types of medical equipment, or provision of certain medical procedures may be permitted New York rules limiting corporate ownership of hospitals, nursing homes, or diagnostic and treatment centers	No known request No known request
			Michigan & NY laws on licensing of managed care organizations	No known request

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	National Treatment: Mode 2	Public sector support for safety-net providers	Limits on federal or state government reimbursement of medical expenses to licensed facilities in the United States No stated exception	Mexico and Paraguay have requested eliminating this restriction No known request
	National Treatment Mode 3	Public sector support for domestic safety-net providers	No stated exception	No known request
	National Treatment Mode 4	Training and residency requirements for non-clinical personnel	No stated exception	No known request
Health insurance	Market Access Modes 1, 2, 3	Limit on number of competing insurers	There are limits under Mode 3 on activities by foreign life, accident and health insurance companies, in conformance with state laws. Tax exemptions for employee benefit trusts currently excluded	European Union has requested removing limit on tax exemptions for employee benefit trusts
	National Treatment Modes 1,3,4	Subsidies and government procurement under Medicare, Medicaid. Extended coverage for health care. Patient protection regulations. Restrictions on genetic and gender discrimination. Privacy and patient protection laws.	Workers compensation currently excluded No stated exception No stated exception No stated exception No stated exception	No known request No known request No known request No known request

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Environmental Services: Sanitation, Sewage, Nature and landscape protection	Market Access: Modes 1,2,3 National Treatment: Modes 1,2,3,4	Rules and decisions regarding standards for delivery of these services. If US authorities cancelled contract with foreign sanitation companies, could be subject to GATS lawsuit.	Drinking water, wastewater treatment currently excluded. USTR proposes to include wastewater, but has not yet agreed to include drinking water. If covered by Bottom Up rules, could open door to privatization of US water systems. If US authorities cancelled contract with foreign water companies, could be subject to GATS lawsuit.	European Union has requested covering drinking water and wastewater services under bottom up rules.
Distribution of goods, including tobacco and alcohol products	Wholesale distribution: National Treatment: Modes 1,2,3,4	State-run liquor stores. Rules on wholesale trade of tobacco and tobacco products.	Wholesale distribution of alcohol and tobacco not yet covered under Market Access rules. Retail distribution of alcohol and tobacco not yet covered under Market Access or National Treatment. Coverage by Market Access could challenge: <ul style="list-style-type: none"> o Minority communities' efforts to limit liquor stores in neighborhoods o State laws that limit tobacco distribution 	European Union has requested lifting Market Access limits for retail distribution of alcohol.
Adult education	Market Access: Modes 1,2,3 National Treatment: Modes 1,2,3,4	Rules or public subsidies that give an advantage to domestic adult education providers. <ul style="list-style-type: none"> o Scholarships designated for citizens, and preferences to domestic disadvantaged populations. 	No stated exceptions	European Union has requested eliminating special programs and preferences for US citizens. To date, USTR has declined to agree.

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Libraries, archives and museums	Market Access: Modes 1,2,3 National Treatment: Modes 1,2,3,4	Freedom of information laws and regulations. Access to public archives and databases		
Management consulting	Market Access: Modes 1,2,3 National Treatment: Modes 1,2,3,4			
Placement and supply services of personnel	Market Access: Modes 1,2,3 National Treatment: Modes 1,2,3,4	Regulations and standards for temporary employment agencies		
Scientific and Technical Consulting		Federal and state laws on market access, national treatment, foreign direct investment		
Intra-corporate Transferees		Temporary transfer of managers, executives and specialists		
Electronic Mail, Voice Mail, Online information, Data processing	Market Access: Modes 1,2,3 National Treatment: Modes 1,2,3,4	Privacy protections for researchers, patients, health care providers		

<u>Part B. Health-Related Services That Other Countries Have Requested the US to Cover Under GATS Bottom-Up Rules</u>	<u>Pending Requests to Remove Limits on Coverage</u>	<u>US Laws and Regulations that Would be at Risk if USTR and Congress Agree to Request to Cover</u>
Physicians, dentists, veterinarians, midwives, nurses, physiotherapists, and paramedical personnel	India has requested that the US extend recognition for clinicians trained in India.	Immigration and licensing standards for clinicians
Research and development in the natural sciences, social sciences, humanities, and engineering	European Union has requested including these services	Standards for and allocation of funding. Rules concerning conflicts of interest with corporations and other funding sources
Energy: exploration, production, distribution, trading, brokering o Exploration, production, and bulk storage of liquids or gases	The European Union has requested removal of these provisions. The European Union has requested removal of a Michigan law requiring that contractors maintain an in-state monitoring office.	Regulations protecting the safety of workers and the public:
Small Business Administration loans	The European Union has requested that US remove restriction of federal SBA loans to US nationals.	Federal and state small business loan programs that restrict loans to US citizens or categories such as veterans (Maine), socially disadvantaged populations (Maryland), dislocated timber workers (Oregon), minority-owned businesses (Pennsylvania)

<p><u>Part C. Health-Related Services Covered by GATS But Not Currently Covered by Bottom Up Rules in the US, and Not Requested in the Current Negotiations</u></p> <p>Agriculture, fishing and mining services</p> <p>Construction</p> <p>Retail food services</p> <p>Air, rail, and road transport services</p>	<p><u>Current laws, regulations, and funding arrangements at risk under GATS if covered in the future</u></p> <p>Health and safety codes</p> <p>Health and safety codes</p> <p>Food safety codes</p> <p>Health and safety standards</p>
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Sources: United States International Trade Commission, U.S. Schedule of Commitments under the General Agreement on Trade in Services, May 1997, and August 1998; WTO Services Database, Opening World Markets for Services, Legal Texts and Commitments; United States Trade Representative. Information and analysis current as of March, 2004.