

## CPATH ANALYSIS: MAJOR GATS PROVISIONS AND “TOP DOWN” RULES: HEALTH IMPLICATIONS

These provisions automatically apply to all services in all modes.  
The exact wording of some provisions is under negotiation.

<u>GATS PROVISION</u>	<u>WHAT IT SAYS</u>	<u>IMPLICATIONS FOR HEALTH-RELATED SERVICES: EXAMPLES</u>
<b>DISCLOSURE: Article III</b>	Each nation shall publish all current laws, regulations or administrative guidelines related to GATS, and at least annually inform the WTO’s Council for Trade in Services of the introduction of any new measures, or any changes to existing measures, which significantly affect trade in services covered by its specific commitments under this Agreement.	Costly administrative burden on local, state and federal governments. International involvement in domestic rule-making.
<b>DOMESTIC REGULATION: Article VI</b>	The WTO’s Council for Trade in Services shall establish any necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. Such measures should be based on objective and transparent criteria, such as competence and the ability to supply the service; and should not be more burdensome than necessary to ensure the quality of the service. Licensing procedures should not in themselves constitute a restriction on the supply of the service.  [Note: The Domestic Regulation rule is still under negotiation through a WTO committee.]	1. Trade tribunals without expertise in health can determine that protective laws and regulations are more burdensome than necessary and are unnecessary barriers to trade in services. 2. Burdensome measures could address: training and licensing for health professionals; privacy of information; patient protection; health and safety; alcohol and tobacco control; equitable services for vulnerable populations; access to affordable medications. 3. Controversial criteria can be used to determine that protective regulations are more burdensome than necessary to assure quality. 4. Commercial trade interests are given priority over health concerns; reversal of the precautionary principle.
<b>MONOPOLIES AND EXCLUSIVE SERVICE SUPPLIERS: Article VIII</b>	Nations must assure that any monopoly supplier of a service in its territory does not compete in the supply of a service outside the scope of its present monopoly rights and which is subject to the nation’s specific commitments. If a Member grants new monopoly rights regarding the supply of a service covered by its specific commitments, it shall notify the Council for Trade in Services no later than three months before the intended implementation	Public health and health insurance systems are monopoly suppliers of health insurance services and in some cases also supply health care services. Since the US has a specific commitment in GATS for health insurance, any legislation or other action to create a nationally funded or state-funded health insurance system would have to be reported three months in advance to the WTO, which could take action to assure the program is not preventing competition among private insurance companies.

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<b>GOVERNMENT PROCUREMENT: Article XIII</b>	GATS rules shall not apply to certain laws, regulations or requirements governing the procurement of services by governmental agencies. Procurement can be exempt from GATS if they are purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.	Some public payments could be considered purchases for commercial sale, and therefore could be challenged under GATS. For example, Medicaid payments to private hospitals and nursing homes that are then used to reimburse temporary employment agencies could be considered commercial sales.
<b>SUBSIDIES: Article XV</b>	Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.	Government subsidies for many health services at the local, state and federal levels could be challenged as distortions to trade, possibly including Disproportionate share hospital payments; community health center allocations.
<b>DISPUTE RESOLUTION: Articles XXII and XXIII</b>	Nations can file charges against each other for failing to carry out the obligations or specific commitments under GATS. Remedies can include financial compensation, and the modification or withdrawal of the measure in question.	Nations can be compelled to reverse health-related laws and regulations determined by the WTO to violate competitive trade rules.

**Source: General Agreement on Trade in Services**