Part 2:
The Application of Trade Law from a Right to Health Perspective

Chapter 4:
Invoking the Human Right to Health at the Violation Stage

Authors that support the assumption that human rights are not applicable in DSU proceedings generally refer to the provisions that allow for exceptions from WTO obligations such as Art. XX GATT, Art. XIV GATS, and Art. 30 TRIPS in order to take account of non-WTO law.[559] These exceptions work as justifications in a second step of the analysis of a measure that a complaining Member regards as a breach of WTO law. However, in view of the route taken here, human rights can also become relevant in the first step of the analysis, *i.e.* at the violation stage which questions whether a measure can be considered as a breach in the first place. Dealing with this aspect is not just an academic exercise but can have practical implications for dispute settlement. The initial burden of proof as to a breach of WTO law lies on the complaining party. It has to establish a *prima facie* case of inconsistency which shifts the burden of proof towards the defending party that must in turn refute the claimed inconsistency.[560] Since the complaining party bears the original burden of proof and the defending party enjoys the benefit of doubt, an equilibrium of evidence and arguments goes to the detriment of the complaining party.[561] Consistent with the basic rule that the burden of proof rests upon the party that asserts the affirmative of a particular claim or defence, it follows that a respondent invoking an exception provision has to establish the defence which makes the corresponding burden of proof rest upon that party.[562] Therefore, a respondent State is in the better procedural position when it can already make a *prima facie* case as to the applicability of the human right to health at the violation stage to the effect that it is not in breach of its WTO obligations. In contrast, the threshold towards the persuasion of a Panel as to the justification of a breach with reference to exception

559 See, for example, Marceau "*WTO Dispute Settlement and Human Rights*", 2002, at 791; Böckenförde "*Zwischen Sein und Wollen – Über den Einfluss umweltvölkerrechtlicher Verträge im Rahmen eines WTO-Streitbeilegungsverfahrens*", 2003, at 1001–1002.

560 EC Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R, WT/DS48/AB/R, 16 January 1998, at para. 98.

561 United States-Sections 301–310 of the Trade Act of 1974, WT/DS152/R, 22 December 1999, at para. 7.14.

562 United States-Measures Affecting Imports of Woven Wool Shirts and Blouses from India, WT/DS33/AB/R, 25 April 1997, at 14, 15–16.

rules is higher because the respondent State bears the original burden of proof at this stage.

In this chapter the most significant provisions in the WTO framework are evaluated as to their potential to accommodate the human right to health, however, without meaning to exclude the capability of other provisions from being interpreted and applied with reference to the human right to health.

A. Rules on Non-Discrimination

I. Trade in Goods: National-Treatment Principle

Art. 12 ICESCR contains the duty of the State Parties to protect against health-related risks such as diseases. The examples of avian flu and mad cow disease demonstrate how threats to health can spread through the movement of goods.[563] A WTO Member that prohibits the importation of goods in order to fulfil its obligation to protect might trigger the national-treatment obligation under Art. III:4 GATT which requires that imported products shall be accorded treatment no less favourable than that accorded to like products of national origin. If one accepts the view that human rights are applicable in DSU proceedings, the question as to the effects of human rights on the national-treatment obligation becomes pertinent. The criteria relevant in this context are the likeness of the products and the 'treatment no less favourable'.

1. Likeness

The meaning of 'like products' in Art. III:4 GATT has been first ruled on by the Appellate Body in *EC-Asbestos*. It reaffirmed that the content of the likeness principle differs from provision to provision and that it has its very specific meaning in Art. III:4 GATT.[564] The question arises in relation to the human right to health whether the fact that a measure is intended to protect human health has any impact on the analysis of 'likeness'. A product that constitutes a threat to health may not be regarded as a like product in relation to a comparable product that does not impose such a threat. In fact, the Appellate Body ruled in *EC-Asbestos* that the health risks due to a product's toxicity and carcinogenicity can have an impact on the 'likeness' analysis. However, the Appellate Body reached this conclusion with reference to the physical properties of the asbestos fibres in question not with a view at the regulatory purpose of the disputed measure.[565] In contrast, it highlighted the

563 Robert Howse and Ruti G. Teitel, *Beyond the Divide: The Covenant on Economic, Social and Cultural Rights and the World Trade Organization* (Friedrich Ebert Stiftung Occasional Paper No. 30, April 2007), at 20.

564 EC-Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R, 12 March 2001, at paras. 88–89.

565 Ibid., at paras. 113–114.

competitive relationship between the products and in this context took account of consumers' tastes and habits which were being influenced by the health risks associated with asbestos fibres to the effect that consumers would opt for a comparable product without carcinogenic qualities.[566] It is only through the competitive relationship that the issue of health was brought up pertaining to the 'likeness' criterion. This reasoning is in line with the rejection of the so-called aim and effects test by the Panel in *Japan-Alcoholic Beverages* in the context of 'likeness' in Art. III:2 GATT.[567] While Art III:2 sentence 2 GATT references to Art. III:1 GATT – which contains the criterion that measures mentioned in this provision should not be applied 'so as to afford protection to domestic production' – such a reference is not included in Art. III:2 sentence 1 GATT[568] or Art. III:4 GATT.[569] Therefore, the regulatory purpose is supposed to be of no concern for the latter provisions. In fact, situating the question of whether a measure pursues a legitimate aim (such as the protection of human health) within the examination of the products' physical properties, the end-use, the consumers' perception as to the substitutability, and the tariff classification, which are all regarded as the basic criteria for the assessment of 'likeness',[570] will cumbersomely result in a focus on what is generally permissible (whether the products can legitimately be regarded as unlike) whereas the real question is whether the concrete measure at issue is not permissible (whether the differentiation is based on origin).[571] The criterion 'treatment no less favourable' seems therefore to be the more promising point for discussion of the regulatory purpose.

2. Less Favourable Treatment

Treatment no less favourable means 'according conditions of competition no less favourable to the imported product than to the like domestic product'.[572]

566 Ibid., at 116–122.

567 Japan-Taxes on Alcoholic Beverages, WT/DS8/R, WT/DS10/R, WT/DS11/R, 11 July 1996, at paras. 6.15–6.16.

568 Japan-Taxes on Alcoholic Beverages, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, 4 October 1996, at 18.

569 European Communities-Regime for the Importation, Sale and Distribution of Bananas, WT/DS27/AB/R, 9 September 1997, at paras. 215–216; see also Amelia Porges and Joel P. Trachtman "*Robert Hudec and Domestic Regulation: The Resurrection of Aim and Effect*" 37(4) Journal of World Trade (2003) 783–799, at 786–788.

570 EC-Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R, 12 March 2001, at para. 101.

571 Joost Pauwelyn "Comment: The Unbearable Lightness of Likeness" in Marion Panizzon, Nicole Pohl, and Pierre Sauvé (eds) *GATS and the Regulation of International Trade in Services* (Cambridge, 2008, 358–369), at 361.

572 Korea-Measures Affecting Imports of Fresh, Chilled and Frozen Beef, WT/DS161/AB/R, WT/DS169/AB/R, 11 December 2000, at para. 135; India-Measures Affecting the Automotive Sector, WT/DS146/R, WT/DS175/R of 21 December 2001, at para. 7.199.

There must be an 'effective equality of opportunities for imported products in respect of laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products'.[573] Contrasting the rejection of an aims and effects test under the likeness criterion, the Appellate Body reintroduced in *EC-Asbestos* the possibility to assess the regulatory purpose under the less favourable treatment criterion with reference to the general principle contained in Art. III:1 GATT that internal regulations 'should not be applied […] so as to afford protection to domestic production'. It held that a different treatment of 'like' products does not necessarily mean that imported products are treated 'less favourably' compared to the group of 'like' domestic products.[574] It thus seems as if the Appellate Body is willing to examine the purpose of a measure, which can consist in the protection of human health, under this criterion.[575] In this line of reasoning is also the decision of the Panel in *EC-Biotech* where it held:

> that it is not self-evident that the alleged less favourable treatment of imported biotech products is explained by the foreign origin of these products rather than, for instance, a perceived difference between biotech products and non-biotech products.[576]

Pauwelyn suggests that the question of whether a measure is discriminatory under this test will be dependent upon a range of factors, such as the structure, design, and architecture of the measure, as well as its application and effect on the groups of imported products in comparison to the groups of like domestic products, and evidence of a non-protectionist purpose that explains the regulation.[577] The human right to health can be of particular relevance for the last aspect. The finding as to a violation of Art. III:4 GATT will be contingent on the weighing of the different elements in order to determine whether the complainant meets its burden in proving that its imports are treated less favourably.[578] The credible substantiation of a Member that it would violate its obligation to protect under Art. 12 ICESCR if it fails to take measures against a product harmful to health should be of exception-

573 United States-Standards for Reformulated and Conventional Gasoline, WT/DS2/R, 29 January 1996, at para. 6.10; Japan-Measures Affecting Consumer Photographic Film and Paper, WT/DS44/R, 31 March 1998, at para. 10.379.

574 EC-Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R, 12 March 2001, at para. 100.

575 Porges and Trachtman "*Robert Hudec and Domestic Regulation: The Resurrection of Aim and Effect*", 2003, at 795–796; Pauwelyn "Comment: The Unbearable Lightness of Likeness", 2008, at 364–365.

576 European Communities-Measures Affecting the Approval and Marketing of Biotech Products, WT/DS291/R, WT/DS292/R, WT/DS293/R, 29 September 2006, at para. 7.2514.

577 Pauwelyn "Comment: The Unbearable Lightness of Likeness", 2008, at 366.

578 Ibid., at 366–367.

al weight in this balancing process considering the compatibilization approach advocated here. This does not mean that human rights may be used as a fig-leaf in order to cover discriminatory measures. The Appellate Body demonstrated in *EC-Hormones* how to gauge whether a measure results in less favourable treatment, albeit in the appearance of 'discrimination or a disguised restriction on international trade' in Art. 5.5 SPS. One factor to take into account is whether the measure provides for a consistent level of protection from the risk to health in question.[579] For example, banning meat from cattle to which growth hormones have been administered but at the same time allowing the use of comparably dangerous anti-microbial agents in the domestic pork sector might suggest an inconsistent level of protection. Other conceivable criteria may be the established tradition of the protection from certain health risks on the one hand and on the other hand the coincidence of a market surplus of the product at issue with the adoption of the measure.[580]

3. Relationship to Art. XX(b) GATT

Considering human health already at the violation stage raises the question whether the inclusion of the regulatory purpose at the violation stage leaves Art. XX(b) GATT redundant because this provision provides for justifications pertaining to issues such as health.[581] This reasoning has been rebutted by the Appellate Body in *EC-Asbestos* with the argument that the scope and meaning of both Art. III:4 GATT and Art. XX(b) GATT have to be determined independently. A less frequent recourse to Art. XX(b) GATT does not deprive the provision of its *effet utile* as longs as it still serves its function to provide a justification of Art. III:4 GATT inconsistent measures.[582] However, the Appellate Body nuanced its explanation for this view differently to the point made here. It argued that health risks are pertinent both in assessing the 'competitive relationship in the marketplace' for the application of Art. III:4 GATT as well as in the justification of WTO-inconsistent measures based on human health consideration under Art. XX(b) GATT.[583] But beyond the Appellate Body's reasoning of the relevance of health risks for gauging the competitive relationship, human health can be a criterion in the determination of 'less favourable treatment' without depriving Art. XX(b) GATT of its use. A judicator that considers the regulatory purpose when examining

579 EC Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R, WT/DS48/AB/R, 16 January 1998, at para. 240.

580 Ibid., at para. 244–245.

581 Robert E. Hudec "*GATT/WTO Constraints on National Regulation: Requiem for an 'Aim and Effects' Test*" 32(3) The International Lawyer (1998) 619–649, at 628–629.

582 EC-Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R, 12 March 2001, at para. 115.

583 Ibid.

the design, effect, and circumstances of the measure only balances the evidential value of these criteria in order to determine whether there is less favourable treatment. Therefore, Art. XX(b) GATT retains its relevance in such cases where the respondent cannot counter the complainant's *prima facie* case of a violation of Art. III:4 GATT. After the complainant successfully claimed treatment no less favourably, the question under Art. XX(b) GATT arises as to whether this discrimination is 'arbitrary or unjustifiable' or constitutes a 'disguised restriction on international trade'.

II. Trade in Services: Most-Favoured-Nation Principle

In the context of trade in services, the human right to health may have an impact in assessing the question of whether the most-favoured-nation obligation has been violated. This issue relates to the question of whether health care services are generally subject to the GATS regime. If so, the health care sector will be bound by the most-favoured-nation principle regarding any measure across all modes of supply. This is the case even when a Member has not made any voluntary commitments in that sector in its country specific schedules because Art. II GATS is part of the general treaty obligations. The purpose of this clause is the multilateralization of existing bilateral relations and the avoidance of a fragmentation into bilateral relations.[584] Assuming a State enters into a bilateral agreement with another WTO Member, allowing medical practitioners from that other State to supply health services, it will likewise have to afford this treatment to any other WTO Member due to the most-favoured-nation principle even in the absence of commitments to liberalize trade in health services, provided that health care is to be understood as the supply of service according to Art. I GATS.[585] As the bilateral agreement has to be extended to all other Members, a State would be forced to pursue an 'all or nothing' approach regarding foreign health care suppliers whereas a balanced policy might be necessary to provide for the financial viability of the State's health care services. Commercialization would be consolidated and States that would like to reverse it would be faced with the opposition of many Members affected.[586] Measures by Members affecting health care services may be directed at the individual health care provider (doctors, physiotherapist, nurses, etc.), companies and organizations operating in the system (clinics, hospitals, nursing homes, etc.) and commercially related sectors (insurance funds, suppliers of medical equip-

584 Wolfrum, in Wolfrum, Stoll and Feinäugle, *WTO – Trade in Services*, at Art. II, para. 5.

585 See United Nations High Commissioner for Human Rights, *Liberalization of Trade in Services and Human Rights* (E/CN.4/Sub.2/2002/9, 25 June 2002), at para. 54.

586 Scott Sinclair and Jim Grieshaber-Otto, *Facing the Facts: A Guide to the GATS Debate* (Ottawa, 2002), at 46–48.

ment and pharmaceuticals, etc.).[587] In the context of health services, the human rights obligations to protect and to fulfil are the most pertinent ones. Accordingly, the measures taken by States will most likely be directed at the health care service providers themselves on the one hand and the service providers of the funds (*e.g.* by regulating a statutory insurance scheme) on the other. Therefore, the following analysis is based upon this rough differentiation.

Starting point for the examination is Art. I:3(b) GATS. This provision excludes services 'supplied in the exercise of governmental authority' from the scope of the Agreement. According to lit. c of the same paragraph, 'any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers' is to be understood as a service supplied in the exercise of governmental authority. Therefore, health care is not subject to the most-favoured-nation obligation if it is a service that is supplied in the exercise of governmental authority.

1. Governmental Authority

The notion of 'authority' implies command and control including the power to make decisions binding on others.[588] The exercise of authority by a government can be distinguished from activities of the government in the role of an economic actor. While the former is characterized by an element of subordination and is usually ruled by public law, the latter indicates equal standing and an element of coordination between citizen and government within the area of private law. This criterion would thus be dependent on whether national law supplies health care in the exercise of governmental authority through public law.[589] However, employing the distinction between public law and private law as the determining factor would allow States to deliberately exclude a sector from the GATS by subjecting it to the public law regime.[590] Therefore, it is suggested that a governmental connection is crucial regardless of whether the service suppliers are outside the government structure, as long as they are vested with governmental powers and make use of these powers when supplying the services.[591] In fact, para-

587 Council for Trade in Services, *Health and Social Services, Background Note by the WTO Secretariat* (S/C/W/50, 18 September 1998), at para. 35.

588 Markus Krajewski "*Public Services and Trade Liberalization: Mapping the Legal Framework*" 6(2) Journal of International Economic Law (2003) 341–367, at 350.

589 Ibid.; Markus Krajewski, *National Regulation and Trade Liberalization in Services: The Legal Impact of the General Agreement on Trade and Services (GATS) on National Regulatory Autonomy* (The Hague et al., 2003), at 72.

590 Zacharias, in Wolfrum, Stoll and Feinäugle, *WTO – Trade in Services*, at Art. I, para. 65; Krajewski "*Public Services and Trade Liberalization: Mapping the Legal Framework*", 2003, at 353.

591 Werner Zdouc, *Legal Problems Arising under the General Agreement on Trade in Services. Comparative Analysis of GATS and GATT* (Bamberg, 2002), at 109; see also Werner Zdouc

graph 1 lit. b of the Annex on Financial Services of the GATS indicates that governmental authority itself is less determining than the conditions of competition. This provision clarifies which financial services are 'supplied in the exercise of governmental authority' according to Art. I:3(b) GATS. Lit. c goes on to exempt certain financial services from the exception in case the Member allows the conduct of such services in competition with a public entity or a financial service supplier, therefore subjecting those services again to the GATS.[592] The use of the expression 'means' in Art. I:3(c) GATS supports the assumption that the exemption of the 'exercise of governmental authority' is dependent upon the criteria 'commercial basis' and 'competition'.[593] But since the term 'governmental authority' would be superfluous in case the exception is to be solely defined by the two latter conditions, it is submitted that instead of excluding any private non-commercial and non-competitive activity from the GATS, a certain public interest must additionally exist.[594]

In view of the conceptual vagueness of the term 'governmental authority', it might be useful to refer to the responsibilities of a State under the human right to health in order to ascertain the existence of a public interest. According to Art. 12(2)(d) ICESCR, Member States have to create 'conditions which would assure to all medical service'. The creation of conditions that assure medical services does usually not only require the existence of public health services such as public hospitals which may be understood to fall under the notion of 'governmental authority'. It also requires the presence of private actors like physicians that provide services under governmental scrutiny. Even though they do not exercise governmental powers, such private actors are usually subject to governmental licensing requirements. Therefore, they supply their services because their government has authorized them to do so in order to fulfil its human rights responsibilities. To conclude, the supply of health care services pertains to the notion of

"WTO Dispute Settlement Practice Relating to the General Agreement on Trade in Services" in Federico Ortino and Ernst-Ulrich Petersmann (eds) *The WTO Dispute Settlement System 1995–2003* (The Hague et al., 2004, 381–420), at 387–389.

592 Zacharias, in Wolfrum, Stoll and Feinäugle, *WTO – Trade in Services*, at Art. I, para. 68; Krajewski, *National Regulation and Trade Liberalization in Services: The Legal Impact of the General Agreement on Trade and Services (GATS) on National Regulatory Autonomy*, 2003, at 72–73.

593 Erich H. Leroux "*What is a "Service Supplied in the Exercise of Governmental Authority" under Article I:3(b) and (c) of the General Agreement on Trade in Services?*" 40(3) Journal of World Trade (2006) 345–385, at 347–348.

594 Krajewski, *National Regulation and Trade Liberalization in Services: The Legal Impact of the General Agreement on Trade and Services (GATS) on National Regulatory Autonomy*, 2003, at 71–72; Krajewski "*Public Services and Trade Liberalization: Mapping the Legal Framework*", 2003, at 353–354.

'governmental authority' regardless of whether it is supplied by public or by private actors.

Paragraph 1 lit. b (ii) of the Annex on Financial Services of the GATS exempts activities forming part of a statutory systems of social security from the GATS as long as they are not conducted by a Member's financial service suppliers in competition with a public entity or a financial service supplier (lit. c). ILO Convention No. 102 as a worldwide recognized standard regarding the meaning of the term 'social security' clarifies that this encompasses medical care (Part II of the Convention).[595] Hence, the service of providing the funds to health care services in a non-competitive environment is explicitly a service 'supplied in the exercise of governmental authority'.

2. Services not Supplied on a Commercial Basis

The term 'commercial' can be understood as referring to an 'act of buying and selling' or an 'exchange relationship' without the expectation or necessity of making a profit.[596] Such an interpretation would only encompass services provided for free, excluding even services in exchange for an administrative fee.[597] A broader reading would relate 'commercial' to profit-seeking activities, excluding service providers that only cover their cost.[598] Such an interpretation seems to be indirectly confirmed by Art. XXVIII:(d) GATS. This norm provides for a definition of 'commercial presence' as 'any type of business or professional establishment'. It is suggested that this implies a notion of profitability since businesses or professional establishments are generally set up to make a profit, therefore, 'commercial' in Art. I:3(c) GATS must likewise refer to profit-seeking activities.[599] However, Art. XVIII:(l) GATS defines the term 'juridical person' – which is also included in Art. XXVIII:(d)(i) GATS – as a 'legal entity […] whether for profit or otherwise', thus rendering the contextual argument less convincing.[600] As 'commercial' must thus have a meaning beyond profit-seeking, the correct deter-

595 Ursula Kulke and Germán López Morales "Social Security – International Standards and the Right to Social Security" in Eibe Riedel (ed) *Social Security as a Human Right* (Berlin et al., 2007, 91–102), at 91–92.

596 Krajewski "*Public Services and Trade Liberalization: Mapping the Legal Framework*", 2003, at 351.

597 Zacharias, in Wolfrum, Stoll and Feinäugle, *WTO – Trade in Services*, at Art. I, para. 69.

598 Krajewski, *National Regulation and Trade Liberalization in Services: The Legal Impact of the General Agreement on Trade and Services (GATS) on National Regulatory Autonomy*, 2003, at 69; Krajewski "*Public Services and Trade Liberalization: Mapping the Legal Framework*", 2003, at 351.

599 Krajewski, *National Regulation and Trade Liberalization in Services: The Legal Impact of the General Agreement on Trade and Services (GATS) on National Regulatory Autonomy*, 2003, at 70.

600 Rudolf Adlung "*Public Services and the GATS*" 9(2) Journal of International Economic Law (2006) 455–485, at 462, note 20.

mination of the term must qualify the criterion 'exchange relationship' because relying only on the act of paying would leave hardly any scope of application for Art. I:3(b) and (c) GATS.[601] Therefore, it is suggested to require an element of strategic economic behaviour which takes into account the preferences of potential users or the availability of alternative sources of supply (examples include rail services which users might substitute with other means of transport or e-mail as a substitute for postal services).[602] This does not mean that operators which provide commercial services cannot at the same time act non-commercially regarding another service. [603] The term 'commercial basis' refers to the conditions of supply of the particular service instead of the operational structure of the service supplier. Thus, if a service supplier 'cross-subsidizes' a non-profit service by additionally offering a rent-seeking service, the non-commercial character of the former remains untouched.[604]

Regarding health care services, the criterion 'commercial basis' is only relevant for the supply of health care services themselves because paragraph 1 lit. b (ii) of the Annex on Financial Services of the GATS as the special provision for services providing the funds contains no such criterion. Therefore, a health care service that is 'paid' by the patient through an insurance contribution does not raise the question of being provided on a commercial basis.

In accordance with the preceding discussion, health care services provided for free are in any case not supplied on a commercial basis. The same is true for services offered below cost or at a price that is only cost covering because they lack a profit-seeking character. Whether this is the case can be determined by the regulatory design, for example, whether it is stipulated that all funds have to be directed exclusively to the fulfilment of public health care purposes.[605] The situation is different with private actors that

601 Mireille Cossy "Water Services and the WTO" in Edith Brown Weiss, Laurence Boisson de Chazournes, and Nathalie Bernasconi-Osterwalder (eds) *Fresh Water and International Economic Law* (Oxford, 2005, 117–141), at 126.

602 Adlung "*Public Services and the GATS*", 2006, at 463; Gunnar Kallfaß, *Von der Marktöffnung zum unverfälschten Wettbewerb für Dienstleister unter dem GATS? Regeln zur Schaffung und Erhaltung von Wettbewerbsmärkten und gemeinwohlbezogene Eingriffe des Staates* (<http://ediss.sub.uni-hamburg.de/volltexte/2013/6391/pdf/Dissertation.pdf, 2013>), at 52 criticizes this view for confusing the term 'commercial' with 'competition' which has to be evaluated separately.

603 J.R. Shackleton "*Opening Up Trade in Higher Education: a Role for GATS?*" 4(4) World Economics (2003) 55–77, at 72 articulates such worries.

604 Krajewski "*Public Services and Trade Liberalization: Mapping the Legal Framework*", 2003, at 351–352; Adlung "*Public Services and the GATS*", 2006, at 463.

605 See J. Anthony VanDuzer "Health, Education and Social Services in Canada: The Impact of the GATS" in J. M. Curtis and D. Ciuriak (eds) *Trade Policy Research 2004* (Ottawa, 2004, 287–518), at 427–428.