

General Agreement on Trade in Services and Water¹

Summary

The WTO-administered General Agreement on Trade in Services (GATS) poses an increasingly serious threat to the sustainable and equitable management of scarce water resources globally, and in developing countries in particular. The GATS is the first ever multilateral, legally enforceable set of rules to cover a wide array of services, ranging from business related services to water supply and sanitation services.²

Discussions on water within the GATS have so far focused on privatizing drinking water supply and opening the market to foreign investors. However there are many other ways in which GATS can impact water resource use and management,³ including requests to open market access and investment in other water service sectors such as sanitation and sewage services, or water related services such as irrigation, environmental management and tourism development.

Indirectly GATS rules can make it easier for transnational service providers to have unlimited access to water to provide services related to energy production, agribusiness and manufacturing. Before making any new commitments, therefore, WTO members should first think about how foreign operations will impact their domestic water supplies, in terms of both quantity and quality.

How does GATS work?

To extend the market penetration of transnational corporate service providers, WTO members are committed to entering negotiations on services. These negotiations are held bilaterally among the membership, or, since the Hong Kong ministerial conference, they can be plurilateral (among more than two WTO members) as well (described in more detail below). The goal of these rounds (the first such round started in January 2000) is “progressive liberalization in the services area through successive rounds of negotiations” that improve market access and extend national treatment to foreign services and service suppliers across an increasing range of sectors, including public sector services.⁴

GATS rules

The most important rules of GATS are:

- ▶ **Most Favored Nation**, which requires a WTO member government to treat all other WTO members equally. This applies to all services.
- ▶ **National Treatment**, which means that foreign companies must be given the same treatment as national companies (e.g., foreign companies that have contributed nothing to a WTO member’s development would be eligible for government loans on the same terms as a domestic service provider).
- ▶ **Market Access**, which requires that a country not impose new quantitative or structural restrictions on services providers.

- ▶ **Domestic regulation**, which requires that local and national regulations not be “more burdensome than necessary” to the provision of the service.
- ▶ **Compensation to other countries**, if a country has revoked a commitment in a particular sector.

These rules and others, such as proposed limits on domestic regulation of transnational service providers, apply “horizontally” to all WTO members. That is, all service agreements under the GATS have to incorporate a number of rules, whatever the specifics of the sectoral arrangement in the agreement reached under the GATS umbrella.

Nature of GATS negotiations

The other two main features of the GATS negotiating structure are the bilateral request and offer structure and the plurilateral negotiating framework. Developing countries agreed to bring services into the WTO only if one WTO member could choose to accept or reject a request from another member to open up specific sub-sector service markets. However, a number of developed country members grew frustrated at the slow pace of market access for their corporations. They proposed a mandatory plurilateral negotiating approach that would pressure groups of WTO members to open up a whole sector or sectors to developed country-based corporations. Although the majority of WTO members opposed this approach, the GATS negotiating chair’s report stated that members supported the plurilateral approach.⁵ At the sixth WTO ministerial conference in Hong Kong, all WTO members but Venezuela and Cuba for-

mally accepted the adoption of a plurilateral approach to GATS negotiations. To date, 122 demands have been made by 27 countries, with Australia, Japan, Canada, European Commission (EC), Norway and the U.S. each making nine or more requests through the plurilateral process. The contents of these plurilateral requests are unknown even to the WTO secretariat.⁶

How services are provided and classified

The GATS applies in principle to almost all service sectors. It defines four ways in which these services can be traded, known as “modes of supply,” “cross-border supply,” “consumption abroad,” “commercial presence” and “movement of natural persons.” Most WTO members have structured the talks using 12 core service sectors (using a UN classification system), further subdivided into nearly 160 sub-sectors.⁷ The 12 core sectors are:

- ▶ Business services (professional services, computer services etc.)
- ▶ Communication services
- ▶ Construction and related engineering services
- ▶ Distribution services
- ▶ Educational services
- ▶ Environmental services
- ▶ Financial services (including insurance and banking)
- ▶ Health-related and social services
- ▶ Tourism and travel-related services
- ▶ Recreational, cultural and sporting services
- ▶ Transport services
- ▶ Other services not included elsewhere

Water supply, sanitation services and GATS

Prior to 2000, the provision of water supply and sanitation services, which are publicly provided in most countries, was not included in the GATS schedule of commitments. However, in 2000, the EC proposed that these services be included in GATS under environmental services. Even though this was not officially agreed to, the EC followed this up by including water and sanitation services in 72 of their 109 bilateral requests. If granted, these requests would enable the European water multinational companies to not only invest in water supply systems around the world, but to have their investments protected. As the experience of Bolivia and other countries indicates, once established as the provider, these multinationals usually raise water rates, making drinking water unaffordable for large sections of the urban poor.⁸ Cross subsidization to ensure adequate supply in poorer neighborhoods is also more unlikely in a privatized market.

A strong and concerted public reaction against the inclusion of drinking water in the GATS led the EC to exclude water for human use (i.e., the collection, purification and distribution of natural water) in its most recent plurilateral requests on environmental services.⁹

However, the February 2006 requests from the EC still include sanitation and sewage services, which are normally provided with

drinking water. With rapid urbanization in developing countries, wastewater treatment and related services offer not only a growing market but also an entry point for water multinationals interested in entering developing country markets.

Water-related services and GATS

Even when a country does not include water supply and sanitation services in their schedule of commitments under GATS, it may still commit water resources under other services.

Under the plurilateral request structure, the demandeurs (those seeking access to others' markets) have expanded the list of services covered under environmental services from four¹⁰ to seven,¹¹ to include nature and landscape protection services. This particular service sector has serious implications for water resource management, since it covers both “remediation and clean up of soil and water” and “protection of biodiversity and landscape.” Developed country institutions—some of them transnational nongovernmental organizations—have a financial interest in the provision of this particular service because it provides them with a revenue stream as a provider of “green” services. However, such services can cause conflict with local communities, because the methods (for instance, fencing off the protected areas) can reduce public access to water and land which communities need for their survival.

So far, irrigation and drainage services are not explicitly covered by any of the services categories used for GATS negotiations and it is therefore unlikely that requests for the liberalization of irrigation water will be made during the current round of negotiations.¹² However, with the spread of industrial agriculture, several services related to agriculture (e.g., seeds supply, irrigation, marketing and distribution of produce), are likely to be included under GATS in the future.

The policy environment for the expansion of deregulation and liberalization to include irrigation is well established. The World Bank's Water Resources Sector Strategy emphasizes the need to invest in infrastructure development, particularly dams and on-farm services such as watercourse lining and the introduction of new technologies.¹³ International Financial Institutions investments in the water sector come with the conditionality of “water sector reforms” that would pave the way for private sector investments in irrigation. It is only a matter of time before WTO members start to look for GATS commitments in the provision of irrigation water.

Water is also a key resource for several other services listed above. Some of the other service sectors that use water are:

- ▶ Hydropower generation and related services under energy services,
- ▶ Tourism and travel-related services,
- ▶ Water transport services (CPC 65) under transport services,
- ▶ Water distribution services through mains (CPC 692),
- ▶ Amusement park and similar attraction services (CPC 9691) under recreational, cultural and sporting services (e.g., water parks)¹⁴

Commercial presence of service providers

To analyze the impact of opening market access and investments in various service sectors on their national water resources, WTO members should look at specific ways (or Modes) a particular service might be traded.

Of the four “Modes of supply,” the one with the most impact on water resources is Mode 3. Here, services are provided “by a service supplier of one Member, through commercial presence in the territory of any other Member.” In other words, GATS provides a framework for foreign direct investment either by establishing or acquiring a subsidiary in the “target” country. A great many of the February 2006 plurilateral requests require that countries remove barriers to foreign investment through Mode 3. Negotiations on Mode 3 itself are also scheduled. Trade analysts have suggested that GATS is essentially an Investment agreement.

When a corporation establishes commercial presence (in any service sector) they can apply for the right to use the water like any domestic company; and they are granted rights to water, including the right to use it as a raw material, as a carrier of effluents, and are allowed to mine aquifers. Often these rights are granted free or at nominal charges.

Such investors may over exploit the water resource or use it at the expense of local communities. Coca-Cola’s operation in Plachimada, Kerala, is an example of this. Since establishing the factory in 2000, its operations have affected the local water availability: aquifers have been depleted and water quality has deteriorated. The local agriculture based economy was destroyed, and many farmers had to abandon cultivation. In this case, the local democratic institution (the village Panchayat) was able to challenge the operations of the plant, and stop it, so far successfully.¹⁵

Under GATS, however, if a country or a local government tries to limit a corporate service provider’s access to water to ensure environmental protection, or to ensure access to water for local communities, the affected corporation can demand compensation, citing negative impact on their investment.

Conclusion

Once signed, GATS commitments are irreversible. It is critically important that target countries analyze the environmental (and specifically the water quality and quantity-related) implications of the commitments they are requested to make before making commitments in any sector.

Water resource management is at a critical juncture today. Many regions, and even some countries, are facing acute water shortages already. In the coming decades water related services will become increasingly important. The provision of these services will have to be planned and implemented at the local level. It will have to be done under strong national regulatory mechanisms. The GATS framework would be inadequate for such an approach.

1. This document has benefited from comments by Ruth Caplan, Sophia Murphy and Steve Suppan.
2. http://www.wto.org/English/thewto_e/minist_e/min99_e/english/about_e/09serv_e.htm
3. http://www.watnotforsale.org/blog/_WebPages/BackgroundInforme.html
4. http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#mAgreement
5. <http://www.hkcsi.org.hk/reports/mc6/att06.pdf>
6. “Plurilateral services requests made at WTO in 14 more sectors,” by Martin Khor, South-North Development Monitor SUNS (email edition) #5977 Thursday 2, March 2006
7. http://www.wto.org/english/tratop_e/serv_e/cbt_course_e/c1s4p1_e.htm
8. http://www.newyorker.com/fact/content/?020408fa_FACT1
9. This request made in February 2006, on behalf of Australia, Canada, the European Communities, Japan, Korea, Norway, Switzerland, The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States, has been extended to 22 other countries in addition to the demandeurs themselves.
10. 6.A Sewage services; 6.B. Refuse-disposal services; 6.C. Sanitation and similar services; and 6.D Other Environmental Services as per the WTO Services Sectoral Classification List (WTO Document W/120).
11. As per the UN Central Product Classification (CPC) system: Cleaning Services of exhaust gases (9404), Noise abatement services (9405), Nature and landscape protection services (9406) and Other environmental services not elsewhere classified (9409), <http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=9&Lg=1&Co=940>
12. <http://www.iatp.org/iatp/publications.cfm?accountID=451&refID=77569>
13. http://www.wds.worldbank.org/servlet/WDSContentServer?WDSID=IB/2004/06/01/000090341_20040601150257/Rendered/PDF/28114.pdf and <http://www.worldbank.org.pk/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/PAKISTANEXTN/0,,contentMDK:20651368~menuPK:50003484~pagePK:141137~piPK:141127~theSitePK:293052,00.html>
14. CPC is the UN classification designation.
15. <http://www.thesouthasian.org/archives/000358.html>

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