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WATER AND FREE TRADE
ACCORDING TO THE GATS' AGREEMENTS
BASIC INFORMATION, COLLECTED BY PROTOS

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OVERVIEW: WTO AND GATS

The World Trade Organization (WTO) came into being in 1995 and is the successor to the General Agreement on Tariffs and Trade (GATT)¹. The WTO is the only international organization dealing with the global rules of trade between nations and its main function is to ensure that trade flows as smoothly, predictably and freely as possible².

Although the WTO is still young, the multilateral trading system that was originally set up under GATT is well over 50 years old. GATT and the WTO have helped to create a strong and prosperous trading system contributing to unprecedented growth. The system is developed through a series of trade negotiations, or rounds and it is precisely one of these, the Uruguay Round (1986-1994), that led to the WTO's creation and also broadened the scope of world trade rules to cover services for the first time in the history of trade negotiation. So, in this context, the General Agreement on Trade in Services (GATS) was created and turned out to be one of the landmark achievements of this round.

The GATS is the first multilateral agreement on trade in services and was inspired by essentially the same objective as its counterpart in merchandise trade: "creating a credible and reliable system of international trade rules for services, ensuring fair and equitable treatment of all participants, stimulating economic activity through guaranteed policy bindings, and promoting trade and development through progressive liberalization"³. Furthermore, the GATS commits members governments of the WTO to undertake negotiations on specific issues and to enter into successive rounds of negotiations to "progressively liberalize" trade in services⁴.

Over the past two decades, the service sector⁵ has expanded rapidly and has come to play an increasingly important role in national economies and in the international economy⁶. The developed countries have dominated this expansion, accounting for three-quarters of the world services output. The sector constitutes close to the 70% of the production and the employment in the OECD countries⁷. In some developing countries, services today constitute over 50% of economic activity, significantly more than traditional sectors such as agriculture.

While services currently account for over 60% of global production and employment, they represent no more than 20% of total trade⁸. Many services, which have been considered genuine

¹ Established in the wake of the Second World War.

² See: <http://www.wto.org>

³ Idem

⁴ The first round had to start no later than five years from 1995

⁵ Service sector is contributing more to economic growth and job creation worldwide than any other sector. No country can prosper today without an efficient service infrastructure, because this sector is the prerequisite for economic prosper and for development.

⁶ This expansion is due to the growing presence of transnational corporations and the internationalisation of production and consumption, rising demand for services around the world, the rapid development of information and communication technology, and the regulation and liberalization of many sector activities.

⁷ WTO Annual Report (1999)

⁸ See: <http://www.wto.org>

domestic activities, have increasingly become internationally mobile and this trend is likely to continue. So, nowadays it is clear that the "tradability" of services has been enhanced and thus created a need for multilateral disciplines and that is where the GATS plays its role.

1. GATS: STRUCTURE AND KEY FEATURES

In order to understand the GATS and its implications for the environmental sector, it is important to be familiar with its structure and main characteristics.

The GATS is a comprehensive legal framework of rules and disciplines covering 161 services activities across 12 classified sectors. The GATS applies in principle to all services sectors, these include activities as wide ranging as telecommunications, financial, maritime, energy, business, education, distribution services and environmental⁹ (in detail it includes: Water for human use and wastewater management¹⁰, solid/hazardous waste management, protection of ambient air and climate, remediation and clean up of soil and waters, noise and vibration abatement, protection of biodiversity and landscape, other environmental and ancillary service). However, the GATS excludes services which are supplied in the "exercise of governmental authority", these are services that are supplied neither on a commercial basis nor in competition with other suppliers¹¹.

One of the most distinguished features of the GATS is the way in which it defines services trade. GATS defines services trade as occurring through four possible modes of supply¹²:

- **Mode 1: Cross Border Supply**, which is defined as the supply of a service from the territory of one member into the territory of any other member (e.g. banking or architectural services transmitted via telecommunications or mail).
- **Mode 2: Consumption Abroad**, refers to situations where a service consumer (e.g. tourist or patient) moves into another Member's territory to obtain a service.

⁹ Core to the EU's negotiating position is the reclassification of 'environmental services'. Under the initial proposed classification, 'water for human use and waste water management' becomes a brand new sub-sector.

¹⁰ The proposal for water only concerns water supply services. It does not concern access to water resources or ownership of those resources.

¹¹ This clause would apply to sectors such as health, education and water services, which are typically public sector domain. Nevertheless, due to lack of clear terminology in this proposition and given the role of private delivery in even such sectors, it is often difficult to determine which activities can be covered by GATS and which are excluded.

CHANDA, Rupa. *"GATS and its implications for developing countries: Key issues and concerns"*, United Nations, 2002.

¹² This classification of services trade into four modes of supply reflects a novel approach. It addresses the complex nature of international transactions in services and the diverse forms in which services are embodied, in consumption, production, and distribution-related activities an in the form of goods, human capital, and information.

CHANDA, Rupa. Op. Cit.

- **Mode 3: Commercial Presence**, which is defined as the supply of a service by a service supplier of one Member, through commercial presence in the territory of any other member (e.g. the establishment of offices, branches, and subsidiaries in overseas markets, analogous to foreign direct investments).
- **Mode 4: Presence of natural persons**, consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers).

Additionally, the GATS architecture consists of three main elements, namely: general rules and principles, commitments in specific sectors and across sectors, and sectoral annexes and various attachments to the agreement¹³. The characteristics of the former two are the following:

General Rules and Principles (provisions)

The first important feature of the GATS architecture is a set of general concepts, principles, and rules that are largely applicable across the board to measures affecting trade services. The most important provisions are those of ***Most-Favoured Nation (MFN)*** and ***transparency***, which apply directly and automatically to all members and services' sectors. Countries are required to accord ***MFN treatment*** to other members, it means not to discriminate among member countries of the WTO in terms of their treatment of foreign services and service suppliers. There is, however, a provision to take a MFN exemption for a period of 10 years, subject to meeting specified conditions. Under the ***transparency***, countries are required to publish all measures of general application and establish national enquiry points mandated to respond to other Member's information requests.

Several of other GATS provisions are not really general, as their applicability upon the commitments filed by members countries, that is the case of ***Market access*** and ***National Treatment*** provisions. Market access is a negotiated commitment in specified sectors. It may be subject to various types of limitations like number of suppliers, service operations or employees in this sector, the value of transactions, the legal form of the service supplier, or the participation of foreign capital. On the other hand, a commitment to national treatment implies that the member concerned does not operate discriminatory measures benefiting domestic services or service suppliers.

Commitments

The second element of GATS is the process by which countries commit themselves to liberalizing services, demonstrating that the GATS commitment structure is of a voluntary and flexible nature.

Countries make commitments on market access and national treatment in specific sectors under what are known as sectoral schedules of commitments. They also make market access and national treatment commitments across sectors in what are known as horizontal schedules of commitments. Four important aspects characterize the commitment process.

¹³ The annexes pertain to regulatory principles agreed upon in specific sectors and decisions on specific issues.

1. Countries are free to decide which service sectors they wish to subject to market access and national treatment disciplines.
2. Countries can specify in their schedules, the limitations and exceptions they wish to maintain on market access and national treatment.
3. The market access and national treatment commitments are made for each of the four modes of supply. Thus, in all, there are eight commitments per sub-sector or activity in both the sectoral and the horizontal schedules.
4. The commitment structure let those countries have a lot of discretion in choosing the extent of liberalization as well as the modal distribution of their commitments.¹⁴ The GATS leave it entirely to its Members to decide whether they provide public services themselves, directly or indirectly (through public undertakings), whether they entrust their provision to a third party, or finally whether they rely entirely on private markets. Today there are a variety of ways in which the public and the private sectors interact to provide such services and experience has shown that there are ways to open sectors involved with the provision of a public service to competition while safeguarding and in many cases improving the availability, quality and affordability of such services.

In this point, to make a relation with the environmental sector, and specifically to the water, it would be interesting to ask the question about what would be the consequences of a GATS market openness commitment in the water sector? In other words, what rights would a full market access and national treatment commitments confer to the foreign services provider?¹⁵

This question is particularly relevant in water services, which constitute a natural monopoly, such as the provision of water through pipes or certain sewage services. Arguably in case of a monopoly, a market access commitment will entail something different than in a sector where competition is possible. Purification of water, or metering services may be an example of the latter. Unlike in truly competitive markets, in a natural monopoly even if (legally) the market is fully open, there will still be only one supplier. Thus, there would still be a quantitative limitation on the number of suppliers, not as a result of a decision of the government but because of the economic specificities of the sector in question. Most likely, the one service supplier would still be subject to a governmental concession, however.

Thus, in such case, GATS commitments could possibly entail the right:

- To participate (on an equal footing) in the bidding process for being granted a concession/exclusive service arrangement. The GATS national treatment provision would then require that this bidding process treats foreign companies no worse than domestic companies.

¹⁴ An entry of "**none**" in the schedule of negotiations means that a member binds himself to not having any measures which violate market access and national treatment for a specific sector and mode of supply. This is also termed as a "**full commitment**". "**Unbound**" implies that no commitment is made for a particular mode of supply. This is also termed as "**no commitment**". The rest of the entries, which include specification of some conditions and limitations, are known as "partial commitments". This characterization of commitments as full, partial, and none is important for assessing the nature and extent of liberalization in various services.

¹⁵ See SPEED, Robert ; TUERK, Elisabeth: "*Gats and Water*" The Center for International Environmental Law. 2003

- To acquire ownership through private equity participation. A market access commitment would allow foreign investors to buy shares, without any limit on foreign equity participation.
- To supply the service without being obliged to operate as a joint venture or other specific legal entity.

2. ASSESSING GATS COMMITMENTS

2.1 GENERAL ASPECTS¹⁶

In the Uruguay Round, a total of 96 countries made commitments in services. Most countries have committed to very limited liberalization. High-income countries (HICs) have scheduled 45 per cent of their service sectors and low and middle-income countries (LMICs) have scheduled only 12 per cent of service sectors¹⁷. Even when commitments have been made, the coverage of commitments in terms of liberalizing obligations is very low with many limitations on market access and national treatment. Only an estimated 25 per cent of all possible services have been scheduled without exceptions by developed countries, while this coverage is as low as 7 per cent in the case of developing countries.

There is also a lot of variation in the commitments across sectors¹⁸. In service sectors such as tourism, many countries have scheduled commitments and made quite liberal offers. In other services, agreement has been possible only after extended negotiations and moderate offers have been made.

Overall, the commitments are biased towards sectors which are relatively open while government monopoly and social service type sectors are either not scheduled by most countries, or when scheduled, have unbound or partial commitments for most of the modes.

Commitments have been forthcoming in the most open sectors and least forthcoming in public goods type of sectors where there are important social and economic considerations and where regulatory intervention and government monopoly are prevalent, both in developed as well as developing countries.

¹⁶ The discussion in this section is based on a close analysis and summary of the document *"GATS and its implications for developing countries: Key issues and concerns"*, United Nations, 2002.

¹⁷ See Table 1: "Structure of commitments by members"

¹⁸ See Table 2: "Structure of commitment by sector" (number of members)

2.2 EU POSITION

2.2.1 GENERAL ASPECTS

Due to the importance of the EU in the world trade, it is necessary to know its point of view in order to understand what the developing countries should expect from the negotiations.

So, in this context it is important to say that the EU has three key objectives¹⁹ in the negotiations on trade in services:

- *To promote the own European offensive interests.* The services sector is the single most important area of economic activity in the EU, accounting for over two thirds of GDP and of employment. The EU is home to some of the world's leading companies in environmental services sectors. The EU wishes to improve access to foreign markets for such companies. The EU therefore has much to gain from a further opening of trade in services, both from increased export of its own services, and also from access to high quality and competitive services from other countries.
- *To protect its public services.* The Treaty of the European Union commits the Union to preserving public services, so the negotiations concern only those sectors that WTO Members have already decided, as a sovereign choice, subject to market mechanisms. No new commitments or improvements are being proposed that could in anyway threaten the availability, quality and affordability of public services. There are 3 protections built into the negotiations:
 - ✓ The negotiations concern only trade in services. They do not concern the ownership of services, these may be organised on either a public or private basis. The negotiations require neither privatisation nor nationalisation of the services concerned, countries are free to choose their preferred solution.
 - ✓ Services that constitute part of government functions are excluded. For other services, each WTO member chooses, according to their sovereign right, which sectors they wish to open to international competition and which will remain closed.
 - ✓ There is no reciprocity - this is an essential part of the negotiations. If for example the US decided to open its education sector, no other country would be obliged to follow suit.

¹⁹ See DG Trade in Services. EU web page <http://www.europa.eu.int>

- *To support developing countries' efforts to integrate into the world economy in accordance with their chosen development model. On average, services make up one half of developing countries' GDP. Even in the least developed countries, the services sector is more important for GDP than agriculture. Developing countries need competitive services; their exporting capacity is often limited by low productivity and lack of competition in the service sector. Without access to high-quality systems an economy cannot be competitive.*
In order to help developing countries to define and defend their interests, the EU has made Trade Related Technical Assistance one of the priorities of its development policy. The EU believes that the negotiations on trade in services could potentially contribute to the international efforts to improve access to water. For many people, access to water as a public service remains a distant hope. 1.1 billion people are without a fixed water supply; even those with access to water supplies may not be getting safe water.

2.2.2 EU OFFERS AND REQUESTS

The WTO negotiations²⁰ offer a means to create a more secure trading environment by allowing WTO members to request and offer legally binding commitments to market access. These negotiations are not about deregulation or privatisation of services. They concern opening of trade in services, which means allowing foreign companies access to provide services on a more equal footing with domestic companies.

2.2.2.1 EU OFFERS/COMMITMENTS

Taking into consideration the objectives aimed by the EU in the negotiations, it is possible to know a little bit more about the offers that have been made.

Today the EU tabled in the WTO a detailed list of sectors where it is offering companies and individuals in third countries further opportunities to offer services in the already very open EU market.

EU offer should encourage other WTO Members to table ambitious offers. A particular focus of the offer aims to give developing countries a better deal especially in sectors of interest for them via the temporary entry of foreign nationals into the EU to provide services. How was said before, the EU offer fully preserves European public services.

²⁰ The schedule for the negotiations is being developed as following: January 2000, start of services negotiations as set by the Uruguay Round agreement; November 2001, WTO Ministerial Conference launches the Doha development Agenda negotiations. The Doha mandate sets a timetable for negotiations on services; End of June 2002, submission of requests for improved market access on services; July 2002 - March 2003, bilateral meetings among WTO Members to present and explain the requests; End of March 2003, submission of initial offers on services; Stock taking: 5th Ministerial Conference, 2003 (in Cancun - Mexico);

1 January 2005, deadline for the negotiations.

The EU offer is fully made public for the first time in negotiations on services.²¹ Through this offer trade in a large number of sectors is expanded, including telecom, financial services, business and professional services, distribution, construction, news agencies, tourism and environmental services.

2.2.2.1.1 EU AND ENVIRONMENTAL SERVICES

Environmental services are of growing importance in all countries, and there is a strong potential for the liberalisation of this sector to result in a 'win-win' scenario through better environmental protection, diffusion of modern technology and know-how.

Due to the importance of the environmental services and its implications in the water, it is necessary to outline the EU position in this sector. In the proposal made for the EU is allowed²², who wish to establish in the European Union, access to foreign providers of waste water, sanitation and similar services. The EU also offers improved commitments on noise and vibration abatement services and on cross-border advisory services for the protection of biodiversity and landscape. Commitments on contractual services suppliers of environmental services are particularly relevant in the area of consulting, environmental impact assessments, and similar service activities.

2.2.2.2 UE REQUESTS

In June 2002, WTO members began to submit so-called 'requests'. These requests are aimed at individually named countries and seek a commitment to binding liberalisation in targeted service sectors.

In July 2002, the EU presented its requests for improved market access to WTO members. These requests seek a reduction in restrictions and expansion of market access opportunities for the European services industry. The EU seeks to facilitate increased participation of developing countries in world trade in services while duly taking into account national policy objectives and levels of development, both overall and in individual sectors. The EU has thus modulated its requests so as to take account of the level of development of individual countries and the requests do not seek to dismantle public services, nor to privatise state-owned companies.²³

²¹ See Conditional offer from the EC and its members states (29 April 2003) in web page http://europa.eu.int/comm/trade/services/index_en.htm

²² Most Member States already committed these services during the Uruguay Round

²³ See http://europa.eu.int/comm/trade/issues/sectoral/services/index_en.htm

The EU tabled requests aimed at 109 countries²⁴, covering a wide-range of service sectors²⁵. Requests made on environmental services seek to capitalise on the experience and skills European environmental services in tackling environmental problems. EU requests do not touch on the issue of access to (water) resources, but touch water distribution²⁶ because it is remarked by the EU that in view of the high capital demand for water infrastructure investment, it is necessary to complement public funding with private support, and to make the sector more attractive for private investment.

Out of the 109 countries targeted in the EU's final requests, 94 are classified as developing countries or economies in transition, 29 LDCs have had requests made of them and seven LDCs have been targeted in environmental services (which includes water distribution)²⁷.

Core to the EU's negotiating position is the reclassification of 'environmental services'. Under the initial proposed classification, 'water for human use and waste water management' becomes a brand new sub-sector. The fact that it has not previously been specifically included within the GATS sectoral classifications is the principle reason why no government has yet made a commitment in water distribution. As well as seeking this reclassification, the EU is requesting that 72 countries out of the 109 targeted, make commitments to open up this water sub sector in the current negotiating round. For example countries target by the EU for water liberalisation are: Bolivia, Egypt, Panama, Trinidad, India.

Besides, almost all the developing countries where PROTOS develops its actions (Benin, Burundi, Congo, Haiti, Mali, Rwanda and Uganda)²⁸ have not received requests for environmental services, only Ecuador has been targeted in this sector.

²⁴ The EU has sent requests to 109 WTO Members and has received so far 35 requests, out of which 27 are from developing countries

²⁵ Primarily business, financial, telecommunications and transport services are the four sectors most heavily targeted, but significant numbers of requests have also been made in others sectors.

²⁶ The opinion of the EU in this issue is as follow "Our proposal concerns only water supply services. It does not concern access to water resources or ownership of those resources. We are not proposing to open cross border trading of water (which would not be, in any case, a service). The proposals do not affect in any way the ability of host governments to regulate water management, impose equitable pricing policies and ensure affordability for the poor". See: <http://europa.eu.int>.

²⁷ See Table 3: "Number of LDC countries where sector has been requested" and Table 4 "Number of low income countries where sector has been requested"

²⁸ See Table 5: "Short Summary of Trade Policies for Burundi, Haiti, Mali and Benin" WTO Information is just available for this countries;

The request from the EC and its member states to Ecuador²⁹, point out the following as general remarks:

- The EC encourages Ecuador to participate actively in the negotiations.
- The EC considers that the progressive liberalisation of services is of benefit for all members, including developing and least developed countries. In this context, the EC recognises the importance of liberalisation being underpinned by domestic regulatory frameworks designed to ensure the achievement of public policy objectives.
- This request covers horizontal commitments, MFN exemptions and 11 service sectors, *environmental services inclusive*.
- The EC proposes that Ecuador's current GATS commitments are revised in accordance with this request. The EC is both seeking improved commitments and clarification of existing commitments as set out in this Request. The EC is furthermore looking for a reduction in schedules limitations whether these are horizontal or sector specific in nature.
- The EC invites Ecuador to present its offer in accordance with this approach.

This request for *environmental services* also remarks that: This request is based on the EC proposal for the classification of environmental services. While discussions on classification in this sector are still ongoing, the EC invites Ecuador to present its offer in accordance with this proposal, without prejudice to the outcome of the discussion on the classification of environmental services:

A. WATER FOR HUMAN USE & WASTEWATER MANAGEMENT

- *Water collection, purification and distribution services through mains, except steam and hot water.*

This sub-sector only concerns the distribution of water through mains (i.e. urban water supply and sewage systems). This excludes any cross-border transportation either by pipeline or by any other means of transport, nor does it imply access to water resources.

EC Request:

- Mode 3: Take commitments for MA and NT.

It means that Ecuador must make commitments (offers) for Commercial Presence (mode 3) related to Market Access (MA) and National Treatment (NT).

- Mode 4: Commit as referred to in the section "Horizontal commitments".

It implies that Ecuador must make Horizontal Commitments related to "Presence of Natural Persons" (Mode 4)

²⁹ Complete request is found in the web page

<http://www.gatswatch.org/docs/offreq/EUrequests/Ecuador.pdf>

2.3 NON EU OFFERS/COMMITMENTS

Not only the EU has made offers, by 10 April 2003 15 WTO member states have now filed an initial *GATS* offer. The countries that have submitted initial offers are: Australia, Bahrain, Canada, Iceland, Japan, Liechtenstein, New Zealand, Norway, Panama, Paraguay, South Korea, Switzerland, Taiwan, the United States and Uruguay. This low response comes as no surprise, as only less than a third of the WTO membership has so far tabled initial *GATS* requests (which was supposed to have happened before 30 June 2002).

Nevertheless the fact that offers have been made, by the time it is practically impossible to get access to them.

3. CRITICS TO GATS: IMPLICATIONS OF LIBERALIZING SERVICES.

There are several critics³⁰ (positives and negatives) to the general characteristics of the *GATS* which are important to take into consideration for possible future implications in the water issues. The most highlighted are as follows:

- Related to the structure of the agreement, exists an agreed opinion and it is said that *GATS* is a much weaker agreement of its architecture than the *GATT*. The main basis to say so is the weak nature of the current *GATS* text. This not only creates ambiguities in the interpretation of key *GATS* provisions or principles, but may also result in increased political, commercial, and other pressures to adopt specific provisions that put efficiency concerns above other objectives.

It seems that the root of the problem is the lack of clarity about the scope of the *GATS*, many of the principles are very loosely defined and broad in terminology so that the nature and the extent of their applicability is subject to discretionary interpretation. Moreover, another indication of the weakness of the text is the problem of overlap between market access and national market commitment.

In addition, the lack of consensus over the legal affect of *GATS*' specific commitments makes it difficult, if not impossible, for countries to assess the consequences of their commitments. This legal ambiguity, the lack of capacity amongst developing countries and the continual pressure to move forward on services commitments makes it likely that countries, especially those less well resourced, will make commitments without fully understanding the long-term consequences of their actions. This is particularly a problem when it comes to basic services sectors: those of vital social, developmental or environmental importance.

³⁰ See.: SPEED, R and TUERK E, 2003. Op. Cit and Web pages: <http://www.gatswatch.org>; http://www.foe.co.uk/resource/press_releases/are_our_services_safe.html; <http://www.scoop.co.nz/mason/>; <http://www.wdm.org.uk/action/EUleaksmedia.htm>; <http://www.corporateeurope.org>

- Another interesting point about the general characteristic of the *GATS* is that many of its supporters agree that the commitment structure presented let the countries to have a lot of discretion in choosing the extent of liberalization as well as the modal distribution of their commitments, in addition to the discretion in choosing which sectors they wish to commit³¹ moreover, countries can also renegotiate their commitments by withdrawing or modifying them. So, given the generally flexible structure of the *GATS*, there is sufficient scope for governments to retain their sovereignty over domestic regulation and to determine the pace and extent of liberalization in the service sector. But related to this point, on the other hand, oppositors to the *GATS* argue that the *GATS*'s flexibility must be considered in the context of the political reality of trade negotiations. Whilst in theory a country is free to decide whether or not to undertake a market access commitment, the political reality is different, and WTO Members, in particular economically-weaker developing countries, may be pressured into agreeing to commitments and *GATS* would force countries to open up their services to trade and investment due to pressures from lobbies in developed countries. This would result in a "corporate takeover"³² of their services by foreign multinationals and forced privatisation of their service sector. This concern is greatest in the case of public services such as environmental and water supply services where governments have important public policy objectives such as equity, universal service obligations and consumer protection. In this context, it is said that is becoming ever more obvious that the *GATS* negotiations are being driven by a small group of OECD countries, basically pursuing the agenda of big services corporations based in those countries.
- Another critic pertains to the wide reach of the *GATS* in terms of its coverage of domestic regulations and government measures. The *GATS* applies to governments at all levels, including central, state, provincial, local, and municipal levels. Such a broad scope raises questions about the extent to which governments at all levels would be able to retain sovereignty over domestic regulations under the *GATS* and if so, under what conditions. It is feared that progressive liberalization due to the *GATS* would undermine the authority of governments at various levels in setting and pursuing their national interests and public policy goals and force them to deregulate their service sectors. In this context, there is also some concern about recent proposals to introduce "necessity tests" which implies that governments are not permitted simply to adopt reasonable laws and regulations; instead, they must identify all conceivable alternatives and their impact on private investing companies before choosing the regulatory measure that will have the least impact on the companies.

³¹ It is important to take into consideration that commitments are meant to be almost impossible to pull back.

³² See: CHANDA, R. Op. Cit. 2002

- Another concern is that inclusion of services would enable developed countries to leverage across sectors, by making their concessions in traditional areas like textiles and agriculture, where developing countries had a comparative advantage, conditional upon concessions by developing countries in the service sector.
- In addition, another critic to the GATS is its extensive coverage of services and ambiguities in scope. The GAT states that "services provided in the exercise of governmental authority" are excluded from the agreement. The latter is further defined as those services, which are neither provided on a commercial basis nor in competition with other suppliers. The main problem lies in the interpretation of this clause.
Oppositors claim that this exclusion has limited value as there is co-existence of government and private suppliers in many services and that the agreement does not clarify the conditions which would make this coexistence "non commercial" and "not in competition" and that definitely could affect the environmental services.

3.1 CRITICS TO THE EU AND GATS

Specifically making a reference about the EU, it is important to say that most of the critics³³ founded out are against its position in the GATS, and it is said that:

- The EU is extensively targeting the world's poorest countries. For example, despite the claim by Patricia Hewitt, UK Secretary of State for Trade and Industry, that, "In the case of the least developed countries, requests are in the main limited to three to five sectors", 5 (17 per cent) of the 29 LDCs targeted have received requests in more than five sectors, Angola (7), Bangladesh (6), Madagascar (6), Mozambique (6) and Tanzania (7).
The reality also contrasts with Patricia Hewitt's claim that, "As regards developing countries, requests are made in line with their levels of development." With low-income countries as a whole (of which there are 41 in the EU requests) the contradiction is even more obvious. For instance: Ecuador (with a per capita income of \$US3203 and ranked 93 on the UN's human development index (HDI)) has received 11 sector requests, the same number as Australia (per capita income US\$ 25693, 5 on the UN HDI) and Japan (per capita income US\$26755, ranked 9 on the UN HDI). The EU is targeting countries where effective non-market based delivery systems are in operation. The EU's requests will attack public services. This point is particularly important to consider, due to the characteristics of the countries where PROTOS develop its actions
- The EU's demand for binding GATS commitments will undermine democratic policy making in the very countries where there has been popular resistance to - ultimately leading to government rejection of - certain liberalisation policies.
- The EU's sector specific requests, if acceded to, will remove countries' ability to regulate investment in the public interest.

³³See web page: <http://www.gatswatch.org>

- The EU is seeking to remove a range of across-the-board regulatory rights in developing countries.

In general it is said that EU requests contain controversial demands for market opening in countries where popular resistance has explicitly rejected foreign companies and privatisation in their water sectors, that is the case of Bolivia that nowadays is targeted for water liberalisation.

3.2 CRITICS TO GATS AND WATER

Concerns relating to the *GATS* and basic services, particularly the provision of water, are many and diverse. They range from broader concerns about the impact and power of multinational corporations, to concerns relating to human rights.

More specifically, concerns can be clustered as follows:

- Concerns over government's abilities to place universal service obligations on private service providers, and that in the case of water it is also related to the concern about public versus private provision of water³⁴.

In other words, the key tension concerning liberalization of social services is between efficiency and equity, for example whether the efficiency gains arising from liberalization are at the cost of equity and other non-economic goals.

While opening up water supply and sanitation services to private suppliers may improve efficiency and quality, there may also be negative effects on equity. Privatisation or contracting out of water supply and sanitation services could result in segmentation of the user market into a profitable and a non-profitable segment, thus leading to cream skimming among users. It may result in higher prices³⁵ and user charges (for cost recovery purposes), thus forcing the poor and marginalized sections to buy water at much higher rates or leave them to be provided for by the state. Hence, liberalization may result in inequitable and discriminatory access to basic services.

The fact that the *GATS* encourages and enhances participation of the private sector (including foreign companies) can threaten public sector provision of essential Universal service obligations. Universal service obligations are requirements placed on a service provider to ensure that their service is available to all. These may include for example, a requirement to provide the service of water to remote areas.

So, privatisation of water management changes the logic of the system. The public goals of sustainable water management and universal delivery are replaced by the profit orientation

³⁴ See SPEED, R and TUERK, E. Op. Cit. 2003

³⁵ Because of the monopolistic character of a water distribution system, privatisation does not involve consumer choice; at best, companies negotiate price levels with governments regulators.

of private companies. Furthermore, water services have already been privatised in some countries and GATS requires that all countries' services markets must be "progressively liberated" how it was mentioned in the beginning of this document.

Despite the said about the liberalisation of water, the main argument to support privatisation³⁶ is that private capital can thereby be mobilised to invest in water infrastructure and/or the expectation that a private company can build and operate water systems more efficiently; evidence however, suggests that the contrary is true. Liberalisation of trade in water, inevitability means opening up water services to the private sector, yet privatisation of water services to date has been problematic, with negative impacts for consumers and the environment. Despite this, GATS' commitments would be irreversible as countries are prevented from altering them once they have made and there is no fallback position.

- Concerns over governments' abilities to provide subsidies (to certain services providers or consumers). Subsidies are an important mechanism for compensating companies required to provide commercially unviable universal services. Civil society has expressed concerns that the GATS may impede governments' abilities to subsidize the provision of services, including basic services like water.

3.2.1 CRITICS TO THE EU - GATS AND WATER

How it was said, there has been an EU proposal concerning water collection, purification and distribution services. Nevertheless, it is said by several experts³⁷ that the EU offers and the requests are happening in the context of a global push by the water industry and its supporters - through corporate-led initiatives like the World Water Council- to sell their services as the solution to the world's water problems.

³⁶ This idea is supported by the WTO and the EU how could be inferred according to what it was said in the previous pages.

³⁷ See: <http://www.gatswatch.org>

While the European Commission continues to keep its GATS' requests (and offers) secret, there are strong indications that the EU's requests for liberalisation of water-supply services are even more aggressive than the leaked draft requests that came into the public domain. Correspondence between the Commission's DG Trade and EU-based water corporations obtained by Corporate Europe Observatory (CEO)³⁸ reveals how the Commission worked directly with a handful of the largest water TNCs, including Vivendi, Suez, Thames Water and Aqua Mundo³⁹. So, in this context it is possible to say that the Commission meets and corresponds with major water corporations to fine-tune the EU's goals for the GATS negotiations with regards to water services.

4. FINAL REMARK

Finally, after all the discussion, it is necessary to say that the most important point to highlight is the need for social impact assessment of trade liberalization and more generally of economic policies, and the importance of having an integrated approach to formulate and implement economic and social policies, taking into consideration that decisions about how water is distributed and used should be based on human rights and environmental needs rather than on pure economics. Furthermore, it is related to this point where the challenge, for all organisations related to water issues, is proposed.

³⁸ Corporate Europe Observatory. The CEO, is a European-based research and campaign group targeting the threats to democracy, equity, social justice and the environment posed by the economic and political power of corporations and their lobby groups.

³⁹ See: <http://forums.transnationale.org/viewtopic.php?p=712>

REFERENCES

Web Pages where it is possible to find information about:

Services Trade

- World Trade Organisation: <http://www.wto.org>
- DG Trade in Services. EU web page <http://www.europa.eu.int>
- EU Trade Page: http://europa.eu.int/comm/trade/issues/sectoral/services/index_en.htm
- Euro market. Management des industries de Réseau
- http://europa.eu.int/comm/trade/issues/sectoral/services/index_en.htm
- Public Services International Research Unit: <http://www.psir.org/>

GATS' Offers and Requests

- Conditional offer from the EU and its members states (29 April 2003) in web page http://europa.eu.int/comm/trade/services/index_en.htm
- Complete request made from the EU to Ecuador
<http://www.gatswatch.org/docs/offreq/EUrequests/Ecuador.pdf>
- Complete first proposal from Ecuador (1996)
http://216.239.51.104/search?q=cache:-XicOxn_r54J:www.wto.org/english/tratop_e/serv_e/telecom_e/sc98.wpf+gats+ecuador+sch edule+commitments&hl=en&ie=UTF-8
- Complete request made from the EU to Benin
<http://www.gatswatch.org/docs/offreq/EUrequests/Benin.pdf>
- Complete request made from the EU to Burundi
<http://www.gatswatch.org/docs/offreq/EUrequests/Burundi.pdf>
- Complete request made from the EU to Congo
<http://www.gatswatch.org/docs/offreq/EUrequests/Congo.pdf>
- Complete request made from the EU to Haiti
<http://www.gatswatch.org/docs/offreq/EUrequests/Haiti.pdf>
- Complete request made from the EU to Mali
<http://www.gatswatch.org/docs/offreq/EUrequests/Mali.pdf>
- Complete request made from the EU to Rwanda
<http://www.gatswatch.org/docs/offreq/EUrequests/Rwanda.pdf>
- Complete request made from the EU to Uganda
<http://www.gatswatch.org/docs/offreq/EUrequests/Uganda.pdf>

Opinions about GATS and Water

- Gatswatch: <http://www.gatswatch.org>
- Friends of the earth: http://www.foe.co.uk/resource/press_releases/are_our_services_safe.html
- Scope page: <http://www.scoop.co.nz/mason/>
- World Development Movement: <http://www.wdm.org.uk/action/EUleaksmedia.htm>
- Corporate Europe: <http://www.corporateeurope.org>
- Forums: <http://forums.transnationale.org/viewtopic.php?p=712>
- Blue Planet project: <http://www.blueplanetproject.net>
- Oxfam: <http://www.oxfam.org.uk/fr/campagnes/agcs/agcs-index.htm>

Articles

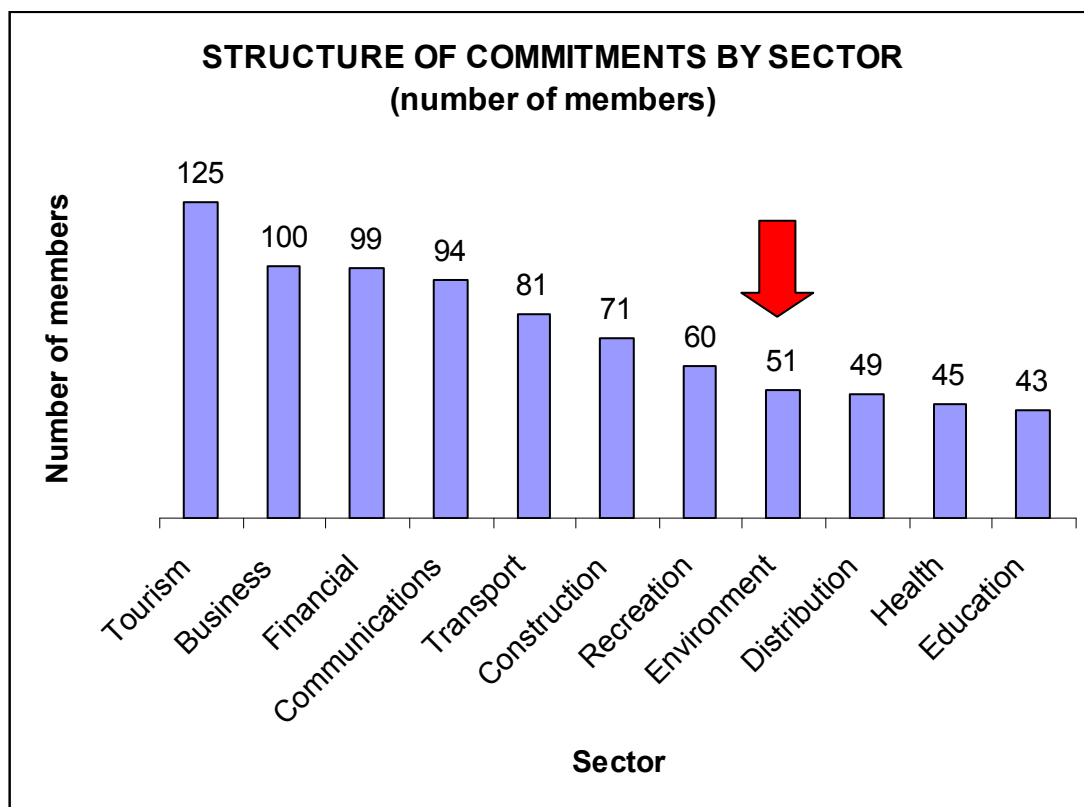
- SPEED, Robert ; TUERK, Elisabeth: *"Gats and Water"* The Center for International Environmental Law. 2003
- CONCANNON, T. "Stealing our Water. Implications of GATS for Global Water Resources" Friends of the Earth. 2001
- CHANDA, Rupa. *"GATS and its implications for developing countries: Key issues and concerns"*, United Nations, 2002.

TABLE 1**STRUCTURE OF COMMITMENTS BY MEMBERS**

Sectors Committed	Number of members	WTO members
20 or less	44	Angola, Bahrain, Barbados, <i>Benin</i> , Botswana, Burkina Faso, Cameroon, Central African Republic, Chad, <i>Congo</i> , Republic of Congo, Costa Rica, Cyprus, Fiji, Gabon, Guinea, Guinea-Bissau, Guyana, <i>Haiti</i> , Honduras, Madagascar, Malawi, Maldives, <i>Mali</i> , Malta, Mauritania, Mauritius, Mozambique, Myanmar, Namibia, Niger, Paraguay, <i>Rwanda</i> , St.Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Solomon Islands, Sri Lanka, Suriname, Swaziland, Tanzania, Togo, <i>Uganda</i> , Zambia.
21-40	23	Bangladesh, Bolivia, Brunei Darussalam, <i>Burundi</i> , Cote D'Ivoire, Djibouti, Dominica, El Salvador, Ghana, Grenada, Guatemala, Kenya, Macao, Mongolia, Nigeria, Papua New Guinea, Peru, Qatar, Senegal, Sierra Leone, Tunisia, Uruguay, Zimbabwe
41-60	10	Antigua and Barbuda, Belize, Cuba, India, Morocco, Netherlands Antilles, Nicaragua, Pakistan, Trinidad and Tobago, UAE
61-80	12	Brazil, <i>Ecuador</i> , Egypt, Hong Kong (China), Israel, Jamaica, Kuwait, Liechtenstein, Poland, Romania, Singapore, Venezuela
81-100	12	Argentina, Chile Czech Republic, Dominican Republic, Indonesia, Lesotho, New Zealand, Panama, Slovak Republic, Slovenia, South Africa, Turkey
101-120	8	Australia, Bulgaria, Canada, Gambia, Latvia, Philippines, Switzerland, Thailand
121 and more	25	Colombia, <i>EC (15)</i> , Hungary, Iceland, Japan, Korea, Kyrgyz Republic, Malaysia, Mexico, Norway, United States

Source: Adlung, R. (1999) Table 1, pp.3-4.

TABLE 2



Source: WTO document, 1999.

TABLE 3**NUMBER OF LDC COUNTRIES WHERE SECTOR
LIBERALIZATION HAS BEEN REQUESTED BY EU**

Service sector	Number of LDC countries (out of 29) where sector has been requested	Percentage
Professional	9	31
Business	23	79
Telecommunications	29	100
Communication	0	0
Construction	5	17
Distribution	0	0
Environmental	7	24
Education	0	0
Financial	20	69
Health	0	0
Tourism	5	17
Culture	1	3
Transport	17	59
Energy	1	3

Source: Statistics on summary of GATS 2000 requests from the EC to LCD countries (World Bank Definition)

TABLE 4

**NUMBER OF LOW INCOME COUNTRIES WHERE SECTOR
LIBERALIZATION HAS BEEN REQUESTED BY EU**

Service sector	Number of low income countries where sector has been requested	Percentage
Professional	21	51
Business	36	88
Telecommunications	38	93
Communication	3	7
Construction	17	41
Distribution	6	15
Environmental	14	34
Education	0	0
Financial	30	73
Health	0	0
Tourism	9	22
Culture	7	17

Source: Statistics on summary of GATS 2000 requests from the EC to 41 low income countries (World Bank Definition)

TABLE 5

SUMMARY OF TRADE POLICIES FOR BURUNDI, HAITI, MALI AND BENIN

TRADE POLICY REVIEW (WTO meetings and report)

Burundi Date: April 2003

General Aspects:

- The government of Burundi is aware of the importance of services for the development of its economy.
- Burundi has assumed limited commitments under the *General Agreement on Trade in Services (GATS)*.
- In 2001, services represented almost 40 per cent of GDP
- Burundi's commitment's under the *General Agreement on Trade in Services (GATS)* concern business services, construction and related engineering services, distribution services, health-related services and social services.
- In Burundi, government authorities have only very recently recognized the need to integrate the "environmental" dimension in planning and development schemes.
- The creation of the Ministry of Land Use Planning, Environment and Tourism in October 1998 was the practical expression of this political determination to institutionalize the rational management of natural resources and the environment.
- The bases of an environmental policy must be perceived in terms of preserving production potential and maintaining the environmental balance. The major objective of this policy is to ensure the sustainability of production potential and the ecosystem.
- Proper management of natural resources and the environment through joint coordinated action by all development actors would allow the ecological balance to be restored and preserved and ensure rational use of land, water, forests and air.

Haiti Date: November 2003

Mali Date: November 1998

General Aspects:

- The services sector has been substantially liberalized
- Owing to the low level of its commitments at the multilateral level, Mali is not fully benefiting from the liberalization efforts it has already made unilaterally
- The services sector accounts for about 40 per cent of real GDP, predominantly accounted for by commercial services: these attract the bulk of informal activities, which represented about 29 percent of Malian GDP in 1994.
- From 1980 onwards, therefore, the Government embarked upon a programme of economic reform in collaboration with its development partners.
- The main planks of the adjustment programme are the liberalization of the economy, promotion of the private sector through the withdrawal of the State, and the improvement of the economic environment and legislative and regulatory framework.
- The execution of the 1992-95 programme enabled significant economic and social progress to be made despite social and political tension (demands by corporate bodies, disturbances in the northern part of the country, etc.).
- The objective of Mali's trade policy is to rehabilitate the domestic market, secure regular and adequate supplies of consumer and capital goods, secure permanent markets for domestic products both at home and abroad, diversify production and exports, increase exports
- The Government has taken action to promote the energy, tourism, transport and crafts sectors.

Benin Date: November 1997

General Aspects

- Benin - role as trade hub would be strengthened by greater predictability of import duties and liberalization of services
- In the course of the last 10 years, Benin has broken decisively away from the centralized planned-economy system which had placed serious obstacles in the way of trade and has established a largely open market economy.
- Benin is a trade centre and thus committed to the principle of free trade. After discarding the Marxist-Leninist model in 1990, Benin has progressively liberalized its economy in recent years, according to a new report by the WTO Secretariat on Benin's trade policies and practices.
- While Benin's trade legislation is liberal, it is not applied transparently
- Continue to be protected by public monopolies, exclusive trading rights and import prohibitions.

GLOSARY

EU.- European Union

EC.- European Community

GATS.- General Agreement on Trade in Services

GATTS.- General Agreement on Tariffs and Trade

GDP.- Gross Development Product

HDI.- Human Development Index

LDCs.- Less Developed Countries

LICs.- Low Income Countries

MA.- Market Access

NT.- National Treatment

UN.- United Nations

WTO.- World Trade Organisation.

Commitment. -

- Compromise considered as an offer related to service trade liberalisation, made for a WTO Member country.
- Process by which countries commit themselves to liberalizing services.

Sectoral schedules commitments.- commitments made for specific sectors according to each country interest.

Horizontal schedules commitments.- commitments made for all sectors by each country.

Request.- proposal made for a WTO Member Country to another Member in order to ask for specific commitments in certain services trade.