

# WTO and Water: the EU's Crusade for Corporate Expansion

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**In the GATS negotiations on further liberalisation of services, currently underway in the World Trade Organisation (WTO), the European Union has asked 72 WTO member states to open up water delivery and waste water management to international competition. Liberalisation of water markets through the GATS talks would not only help Europe-based water TNCs to expand further. Bringing water supply under WTO disciplines may effectively make privatisation irreversible and close off the development of participatory and cooperative models. The EU's aggressive promotion of the narrow commercial interests of EU-based water corporations, spells disaster for the worlds poorest.**

The EU's GATS and water approach is covered in the usual layer of 'sustainable development' rhetoric, but the bottom-line is to secure profitable markets around the world for European water TNCs. [1] Before the current round of GATS negotiations was launched in 2000, water delivery (which the WTO defines as part of 'environmental services') was only to a limited degree covered by GATS. That will change if the EU gets its way. "European companies are world leaders in this sector [...]", the European Commission wrote in July 2002. [2] It continued stating that "the main objective of the EC for the negotiations is to reduce the barriers which European operators face in third countries' markets." The EU pushes for a reclassification of water services which would extend the coverage of the GATS agreement to fully include drinking water. At the same time, the EU is requesting individual countries to allow unlimited market access and other rights for EU-based water corporations.

The European Commission, which coordinates the EU's position in the WTO talks, worked in close consultation with Vivendi, Suez, RWE and other water giants when it finalised the EU liberalisation wish-list. In May 2002, the European Commission asked these companies for help in formulating the European position in the GATS negotiations. [3] Letters sent in follow-up to a May 17 ECindustry meeting leave no doubt about the Commission's intent to use GATS to remove government regulations within Third Countries. The Commission asked the companies to fill in a two-page questionnaire in order to identify the "variety of regulatory measures ... that restrict market access".[4] Among the EC's questions was whether the companies perceived universal service obligations as a problem.

The details of the outgoing GATS requests which the European Union sent to other WTO member states in July 2002 were labeled strictly confidential. The documents were kept away from the public eye through draconian secrecy measures. In the end of February 2003, however, the requests entered the public

domain following a leak. [5] The requests reveal that the European Union is asking 72 countries to liberalise water services, including full market access and 'national treatment' to foreign investors. [6] Contrary to claims made by the European Commission, the EU also targets water services in many of the world's poorest countries, including 14 out of 41 Least-Developed Countries (LDCs). [7] The long list of countries from which the EU demands market access and other regulatory changes includes Brazil, Bolivia, Botswana, Bangladesh, China, Honduras, India, Indonesia, Mozambique, Malaysia, Paraguay, Tanzania, Thailand and Tunisia. Also industrialised countries like Norway, Switzerland, the United States, Japan and Australia are targeted.

Governments that agree to the EU's demands risk losing national and local decision-making power over how water services are provided. One potential minefield is for instance the GATS article declaring that policies and regulations should be "no more burdensome" than necessary. [8] A wide range of rules concerning water quality, universal access obligations and other public interest regulations could be challenged as GATS-illegal through the WTO's dispute settlement mechanism. "Restrictions on fee-setting" has been singled out as type of regulation that would violate GATS disciplines. [9] This could mean that governments lose the right to control price increases or to demand socially responsible pricing systems to ensure access to drinking water for the poorest.

### **Liberalisation and Privatisation?**

The EU defends itself by claiming that GATS liberalisation does not equal privatisation of water services. While making a distinction is theoretically correct, the two concepts are very closely connected. [10] As a corporate lobby group pointed out: "opening service markets to foreign providers (which is what GATS is designed to do) is self-evidently inconsistent with maintaining public monopolies." [11] The EU demands market access in numerous countries in which water is currently not privatised, but supplied by well-functioning public utilities. The EU targets the water sector in countries whose governments are explicitly opposed to (further) privatisation of water, such as Egypt and Brazil. [12] In countries where water is currently not privatised, greater market access for European corporations seems impossible without changing government policies on the role of the private sector in water delivery. It is therefore difficult to imagine how the EU's requests would lead to accelerated privatisation.

### **Closing Off De-Privatisation**

Regardless of a country's degree of privatisation, bowing to the EU's pressure will have major implications for the possibilities of governments (national, regional or local) to change course in the future. De-privatising water supply in cities where corporate management has failed is an entirely rational policy option. If however a government agrees to the GATS commitments for water services demanded by the EU, current levels of privatisation could become effectively irreversible. Accepting such GATS commitments could mean closing off deprivatisation as a policy option.

Whereas WTO rules in principle allow a country to undo its GATS commitment in a given service sector, in practice this is virtually impossible. [13] In the light of the negative experiences with water privatisation in many cities around the world,

locking in the liberalisation status quo and making privatisation irreversible would be a disastrous mistake. In many cases, water privatisation in the South was not the result of democratic decision-making, but simply imposed by the World Bank and the International Monetary Fund (IMF) as a condition for new loans. The EU's GATS requests on water are not only socially and environmentally flawed, but also fundamentally undemocratic.

The example of Nicaragua shows the perverse potential impacts of the EU's GATs policies. Following a massive citizens campaign, the Nicaraguan National Assembly in 2002 voted to stop water privatisation until a thorough impact assessment has taken place. The International Monetary Fund (IMF) however pressured the President to veto the bill, in return for loans. [14] The EU is now asking Nicaragua to take on GATS commitments for water services. If the government of Nicaragua agrees, this could mean making privatisation effectively irreversible. Even if Nicaragua would escape from the neoliberal stranglehold of the IMF, new GATS commitments might deny the citizens of Nicaragua their democratic right to decide on their preferred model of water supply in the foreseeable future.

### **Is Porto Alegre's Water GATS-proof?**

When responding to criticism, EU trade negotiators have repeatedly referred to articles in the GATS agreement which they claim exempt government-run public services. [15] In reality these exemptions are so ambiguous that no-one can predict how a WTO dispute panel would interpret them. This is certainly the case when municipalities have entered public-private partnerships, with varying degrees of private sector involvement. The WTO secretariat has made one thing very clear: if services are supplied on a commercial basis, these are covered by GATS disciplines, whether the ownership is public or private. [16]

This could have far-reaching implications for alternative models of water management that go beyond the clear-cut public-private divide. The participatory model of the Brazilian city of Porto Alegre would almost certainly not be protected by the GATS exemptions. Although the successful water utility DMAE is a not-for-profit company, it is financially fully independent from the local government and in fact functions on a commercial basis. [17] Also the widely respected cooperative model of the Bolivian city of Santa Cruz operates in a way that could be undermined through GATS rules.

Would the governments of Brazil and Bolivia agree to the EU's demand for full water supply commitments under GATS, it might seriously limit the possibility to expand these promising alternative models to other cities. If the Brazilian government decided to actively promote participatory and other not-for-profit water delivery models, this could be identified as GATS-illegal. Any other WTO government could challenge the Brazilian government's policy on the ground that it discriminates against foreign for-profit water corporations or blocks their market access.

### **Will the EU's Hypocrisy Survive Public Scrutiny?**

The European Commission, in an attempt to steer free of public opposition in Europe, has recently announced that the EU does not intend to make any

(additional) GATS commitments itself in public service sectors like culture, education, health and water. [18] Trade Commissioner Lamy explained that "services of collective interest in the EU are preserved. In this way we ensure that the WTO is used to defend and promote the European model." [19] At the same time, the leaked requests make clear just how aggressively the EU is promoting the offensive interests of European water giants, corporations that have proved unable to fulfill the drinking water needs of the world's poorest. The controversial nature of the EU's GATS and water approach finally made it into the international media when the EU requests were leaked, causing a serious PR problem for the European Commission. [20] The coming weeks and months will show whether the EU will finally be forced to rethink its irresponsible corporate-centered trade policies.

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## Notes

1: The European Commission for instance defends the European Union's GATS requests for opening up water services worldwide by referring to the WTO's Doha Declaration. This declaration states that reduction or elimination of barriers to trade in environmental services can make trade and environment mutually supportive.

2: From the official summary of the EU GATS requests, published in July 2002, [http://europa.eu.int/comm/trade/services/gats\\_sum.htm](http://europa.eu.int/comm/trade/services/gats_sum.htm)

3: As a result of an access-to-documents request, CEO in the autumn of 2002 received an (incomplete) collection of the Commission's correspondence on GATS with some of the largest water TNCs. The documents obtained by CEO reveal 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. On May 17 2002 the Commission met with these companies to discuss "the position, and interest of, the European industry, their main market, obstacles if any to access new markets, as well as other questions you would consider relevant in this context". After the meeting, extensive follow-up discussions took place by email. This all happened in the last weeks before the Commission submitted its GATS requests to Third Countries (July 1<sup>st</sup> deadline). The documents are on file at Corporate Europe Observatory.

4: DG Trade introduces the questionnaire with the following words: "One of the main objectives of the EU in the new round of negotiations is to achieve real and meaningful market access for European services providers for their exports of environmental services. Therefore we very much appreciate your input in order to sufficiently focus our negotiating efforts in the area of environmental services". Source: "Follow-up to meeting on trade in environmental services in WTO negotiations", European Commission, 17 May 2002. On file at Corporate Europe Observatory.

5: See for instance the GATSwatch website: <<http://www.gatswatch.org/requests-o...>> The documents were first obtained by the Canada-based Polaris Institute, see [\">http://www.polarisinstitute.org/gats/main.html\](http://www.polarisinstitute.org/gats/main.html)

6: The EU asks for liberalisation of "water for human use & wastewater management: Water collection, purification and distribution services through mains, except steam and hot water; Waste

water services.”

7: A preliminary analysis of the EU’s leaked GATS requests to 109 WTO member states”, World Development Movement, 25 February 2003, <http://www.wdm.org.uk/action/EUleaksmedia.htm>]

8: GATS Article VI:4 opens up for ‘disciplining’ government regulations around water supply by demanding these are no more trade restrictive than necessary. For a thorough analysis of how GATS “fundamentally limits the authority of governments to foster local economic development, conserve water resources or ensure universal service”, see “Thirst for Control - New Rules in the International Water Grab”, The Blue Planet Project, 2002.

9: A WTO Working Group recently investigated which types of regulations would violate proposed GATS regulatory disciplines. See also “Water in the Current Round of WTO Negotiations on Services”, Ellen Gould, Canadian Institute for Policy Alternatives, January 2003, <http://www.policyalternatives.ca/publications/brief4-1.pdf>

10: While privatization can be defined as the process of handing over (parts of) the management or operation of a public service to a private company,, liberalisation is the process of decreasing government controls over a sector and boosting the role of market forces, for instance allowing for direct competition between water services suppliers.

11: “The Case for Liberalising International Trade in Services”, International Financial Services London (IFSL), May 1<sup>st</sup> 2002.

12 . Also Panama, where water privatization has been rejected following popular resistance, is covered in the EU requests . “A preliminary analysis of the EU’s leaked GATS requests to 109 WTO member states”, World Development Movement, 25 February 2003, <http://www.wdm.org.uk/action/EUleaksmedia.htm>]

13: For a country to allowed to remove a GATS commitment it needs approval from from all WTO member countries. It must financially compensate affected trading partners or face retaliation in the form of trade sanctions.

14: “IMF Loan Conditions for Nicaragua Require Privatization Measures That Would Enrich Corporations at the Expense of People”, 50 Years is Enough, December 4, 2002, <http://www.globalpolicy.org/socecon/bwiwto/imf/2002/1204nicaragua.htm>

15: GATS includes exemptions for water under “governmental authority” (Article I.3.c) and “government procurement” (Article XIII). See for instance “Water in the Current Round of WTO Negotiations on Services”, Ellen Gould, Canadian Institute for Policy Alternatives, January 2003, <http://www.policyalternatives.ca/publications/brief4-1.pdf>

16: Idem

17: See for instance “The Power of Participation”, Corporate Europe Observatory, March 2002.

18: The EU’s draft Initial GATS Offer on environmental services specifies that “the offer does not include public works functions whether owned and operated by municipalities, state or federal government or contracted out by these governments”. The EU’s draft Initial GATS Offer, February 2003, page 63. The EU’s draft ‘Initial Offers’, which form the basis for horse-trading in the next phase of the GATS negotiations, were leaked and can be found on the GATSwatch website: <http://www.gatswatch.org/docs/offreq/EUoffer/EU-draftoffer-1.pdf>

19: EC press release on draft EU GATS offer: "WTO Services: Commission submits draft offer to Council and Parliament - public services fully defended", IP/03/186, Brussels, 5 February 2003

20: The leaked documents were extensively covered in media around the world, including BBC World (TV), The Guardian, The Wall Street Journal, Süddeutsche Zeitung, Libération. For an overview , see <http://www.gatswatch.org/offreq-pr.html>