

Water and GATS: Lots of smoke but where exactly is the fire?

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The prospect of developing countries making commitments on trade in water services under the General Agreement of Trade in Services has given rise to considerable controversy. Subsequent debates have revealed a great deal of confusion and have tended to produce a lot of misleading ‘smoke’ which makes it very difficult to see where the real ‘fire’ might be.

In this context it is worth highlighting some of the key points arising from recent studies by ODI researchers in order to contribute to clearer discussion of these issues and hopefully debunk a few myths in the process.

The discussions around water and GATS have served to highlight the disconnect between trade specialists and water specialists, who tend to inhabit parallel worlds which rarely intersect. Debates on international trade agreements and on water sector financing tend to take place in largely separate fora.

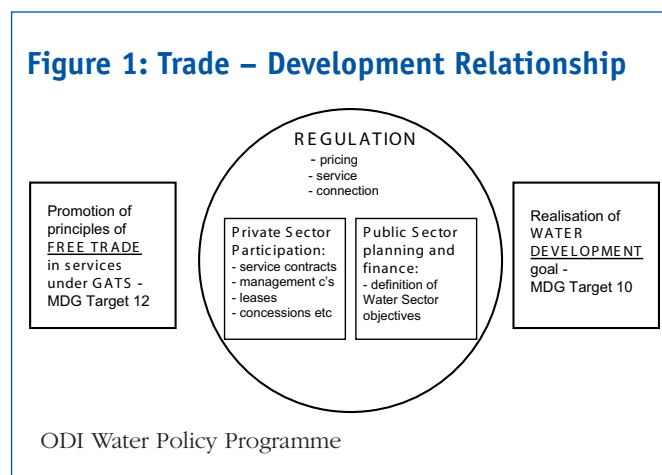
Our own work on this issue highlighted the extent of dialogue and learning required at the GATS-water sector interface. Trade officials, used to negotiating tariff cutting formulae, need to be sensitised to the special regulatory features of water services, and water officials need to build up their understanding of the content of different and changing GATS rules, and how they might be applied to water services under the auspices of the WTO.

However, a further more intractable problem has been the polarisation of debate within the water sector over private sector participation (PSP) in water services, which remains ideologically driven on both sides. The perceived public versus private dichotomy is unhelpful in that it lumps together extremely diverse actors on both sides. It has also effectively served to prevent more constructive debate on how public and private entities can work together to achieve MDG targets for water supply and sanitation.

This important debate on public-private will no doubt rage on but in many ways it is a ‘red herring’ which has distracted from the key issue in the GATS-water relationship, namely regulation (of both public and private sector providers). The

relationship between promotion of principles of free trade via a rules based system governing trade in services under GATS, and realisation of the water sector development goals is illustrated in Figure 1.

Figure 1: Trade – Development Relationship



Despite all the arguments, there has actually been very little systematic consideration of how the inclusion of water services under GATS might affect the achievement of development goals in the sector. Recent studies by ODI researchers highlight a number of important points:

GATS and privatisation. There has been a suggestion that GATS may somehow ‘force’ privatisation of water services. This is misleading. GATS rules themselves do not dictate any specific role for public and private sectors, and member countries are free, in principle, to decide whether and how far to open sectors to foreign competition. There are many ways in which developing country governments may come under pressure to privatise (e.g. donor conditionality), but these operate outside the GATS framework. In practice, requests to liberalise trade in water services through GATS are only relevant to those countries who have already decided to allow PSP.

Social and political sensitivities. Under GATS the onus is very much on the committing country to define clearly the extent and scope of GATS in terms which are effective

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for its own development objectives, including formulating any desired limitations to GATS rules in its schedule of commitments. Social and political sensitivities surrounding 'social' services such as education, health and water mean that commitments in these areas are much less common than other service sectors, sometimes with good reason. But 'blanket' exclusion of water from the list of GATS services would be as blunt, untargeted, an instrument as blanket commitment of water services to GATS by all WTO members. A key issue is legitimate concerns surrounding the capacity of many developing countries to devise and negotiate appropriate schedules of commitments (which apply to water and other services).

Domestic regulatory autonomy and consumer subsidies. Water services are typically highly regulated to protect consumers. A key concern has been that GATS might threaten the sovereign right to regulate and in particular might constrain policymakers in providing consumer protection. GATS envisages specific rules on domestic regulation to eliminate discrimination. Consumer subsidies are yet another issue, which is currently still being developed under GATS. This introduces an element of uncertainty. Our current assessment is that any new rules would be industry-specific and so consumer subsidies and social tariffs would therefore be unaffected. At the same time WTO members retain the sovereign right to specify limitations in this area as they have done in other sectors. And GATS rules tend to be much less strict than rules under bilateral investment treaties.

Regulatory capacity. The experience of PSP in developing countries shows that there are legitimate concerns surrounding liberalisation of water services. The starting point in many developing countries is absent or underdeveloped domestic regulation. Public authorities (many of which are in the process of decentralisation) are often ill-equipped to assess the costs and benefits of PSP, negotiate contracts with private sector and monitor its compliance, and they need to ensure adequate regulation is in place before opening up water services to PSP, including foreign access, and before committing the sector under GATS. Despite all the 'smoke' surrounding PSP, the burning issue and source of the real 'fire' is in fact regulation.

Recent problems associated with implementing major concessions point to a 'crisis of regulation' typically resulting from attempts to 'fast track' liberalisation. A key lesson, therefore, is the need for careful sequencing - rushing to commit is in nobody's interest. Before deciding on their negotiating position regarding GATS, countries need to assess their strengths and weaknesses in the relevant services sector, including regulation, as well as the potential costs and benefits of liberalising those services in local conditions.

It is important to note that the most pressing problems facing water supply development are not in fact trade related. There has been a dramatic decline in recent years in the engagement of multi-national companies in developing country water sectors. Projected levels of capital investment have not been forthcoming and revenue models have in many cases proven overly optimistic. This has led to revised expectations of the potential role of multi-nationals in developing country markets, especially in extending services to poorer areas. The problem is not too much investment, but too little, and GATS is unlikely to change this problem significantly.

At a recent high level plenary on financing for development, international water companies confirmed that they have retreated from developing countries, especially sub-Saharan Africa, and are focusing on developed markets. In many developing countries a greater priority, for the time being at least, is developing domestic regimes capable of harnessing the often considerable potential of smaller scale domestic private sector, and more attention can be devoted to the challenge of building the capacity of those small non-state service providers.

Meanwhile at international level, when the smoke around the heated debate on Water and GATS has cleared somewhat, what will be seen to be 'fires of controversy' which are still smouldering, and might reignite? Certain GATS rules are under discussion, while the rule on 'irreversibility' raises the concern that countries might become 'locked in' to treating foreign and domestic services providers equally, while this was not intended. This and other GATS rules (e.g. on subsidies) need to be drafted so as not to unduly restrict the regulatory autonomy of committing countries. A balance needs to be found between on the one hand reducing the 'political risk' of water companies which deters much needed investment in new water infrastructure, and on the other hand acknowledging and actively addressing the potential risks attached to unregulated entry of foreign companies into markets for sensitive 'social' services like water.

www.odi.org.uk/publications/briefing/bp_oct05_Water_and_GATS.pdf

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