

EU trade talks: a covert push for water privatisation?



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The European Commission refuses to say whether or not it is using international trade talks to push for new markets for EU-based water multinationals. Trade Commissioner Baroness Ashton appears to be following in the tradition of secrecy established by Peter Mandelson and other predecessors. It is high time for the EU to put its cards on the table. Judging from all available sources, the EU appears in fact to be pushing for including water in trade agreements whenever possible. This approach benefits EU multinationals, but is seriously at odds with securing access to clean water and sanitation for the world's poorest.

"We manifest our profound concern about the possible negative impact that any international instrument, such as free trade and investment treaties, could have on water resources. We reaffirm the sovereign right of the peoples to exclude water, in all its uses and services, from trade agreements."

Complementary Declaration proposed by Uruguay, Bolivia, Venezuela, Ecuador and other Latin American governments in advance of the World Water Forum in Istanbul, March 16-22 2009.¹

Water in the bilateral and regional trade talks?

Over the last few years, the Commission has started new bilateral and bi-regional free trade negotiations (FTAs) with the Gulf countries, with Central America, with India, South Korea, the countries of the Andean region (CAN) and South East Asia (ASEAN)². These negotiations are part of the 'Global Europe' strategy introduced by former Trade Commissioner Mandelson. 'Global Europe' is a departure from the previous focus on World Trade Organisation (WTO) negotiations, which the Commission felt were not moving fast enough.

These new trade talks are no less shrouded in secrecy than the WTO talks, and are perhaps even more so. Even the simple question of whether the EU is pushing for including water and sanitation services in these FTAs is kept from public scrutiny. The Commission has not published a comprehensive overview of its objectives, preventing any discussion. The European Commission's DG Trade website does not provide any answers. But a look at the EU's record on the WTO GATS negotiations shows that there is good reason to assume the worst.

The failed GATS water grab

The WTO GATS negotiations started in January 2000 and have been characterised by secrecy, particularly on the side of the EU. In February 2003, however, the EU's requests to third countries were leaked and became public³. The requests revealed that the EU was asking 72 countries to 'liberalise' their water services, providing unlimited market access and 'national treatment' for foreign firms. Many of the countries targeted had public-managed water sectors. The EU's demands were clearly aimed at advancing privatisation to benefit the EU corporations that dominate the world's private water markets. The EU was also targeting the water sector in many of the world's poorest countries, including 14 of the world's Least-Developed Countries (LDCs)⁴. Leaked correspondence between Commission officials and some of the world's largest water multinationals showed that the EU's requests were influenced by wish lists supplied by these private water giants⁵. The EU came under heavy criticism from trade unions and civil society campaigners worldwide who argued that:

- water privatisation was proven to endanger, not improve, access to water for the poorest
- international trade talks were not an appropriate forum for deciding water management issues
- GATS commitments would reduce the policy options for (local) governments, for instance the option of abandoning privatisation if problems arose.

Water has since become one of the most controversial issues on the GATS agenda,⁶ but the EU has not withdrawn its water requests.

Water in EPAs?

The EU is currently also negotiating trade deals with the former colonies in Africa, the Caribbean and Pacific, the so-called Economic Partnership Agreements (EPAs) to replace the now defunct Lome and Cotonou agreements. The EU's requests in these talks have also not been made public and EU negotiators are taking a flexible and untransparent approach. But the outcomes of talks with Caribbean governments in the context of the EPAs show that the EU has succeeded in including sewage

services and wastewater treatment but not water supply. The Dominican Republic and four other Caribbean countries have agreed to commitments on sewage services⁷. Nine countries have made commitments on waste and waste water management⁸.

Leaked negotiating mandates

The negotiating mandates approved by EU governments for the new FTA talks are supposedly confidential, but some have entered the public domain. The mandates for three of the EU FTAs were made available on the website bilaterals.org. The texts strongly suggest that water is being included in the negotiations. The mandate for the FTA talks between the EU and the Andean countries, for instance, states that “the Parties shall agree on measures aimed at the progressive liberalisation of their respective procurement markets at all levels of public authorities and public entities in the water, energy and transport sectors [...]”⁹. Identical wording is included in the mandate for the EU-Central America talks¹⁰. The mandate for the EU-ASEAN talks aims for “far-reaching liberalisation of services and investment”, but does not explicitly mention water¹¹. The section about public procurement, however, states that “the Agreement will envisage the progressive liberalisation of procurement markets at national, regional and, where appropriate, local levels, as well as *in the field of public utilities*, in particular in priority sectors”¹².

The texts of the leaked mandates provide a strong indication that the EU is indeed aiming to use trade talks to force open the water sector in developing countries for European water multinationals. But question marks remain, for instance about which types of water services the EU is pushing for access to. This is even more the case for the negotiations with India, South Korea and the Gulf countries where mandates have not been leaked.

Asking the trade negotiators

In spring 2008, Corporate Europe Observatory (CEO) put some simple questions to trade officials at the Commission. We asked the DG Trade Policy Co-ordinator for ASEAN for instance: “Does the EU pursue market access, liberalisation or other objectives with regards to water services in the ongoing free trade negotiations with the EU-ASEAN countries? If so, what are the EU's objectives and where is this defined?”

The response was not straightforward (our emphasis with italics): “we are not in a position to provide specific indications on negotiating objectives and issues currently under discussion with ASEAN. We can however indicate that, *in the framework of the services negotiations*, the Commission does not intend to request the ASEANS to negotiate commitments on *water distribution services*.”¹³

The specific mention of water *distribution* services could be taken to imply that the EU is pursuing commitments for other water services (water purification, waste water treatment, etc.). The phrase “*in the framework of the services negotiations*” might mean that the EU is pushing for water distribution in the framework of procurement, investment or in other parts of the FTA talks. We asked for clarification on these points, but the response was that “as indicated previously, we are not in a position to provide more specific indications on ongoing negotiations with the ASEANS”¹⁴.

Other trade officials gave almost identical replies to our questions about negotiations with the Gulf countries, India and South Korea¹⁵. For the Andean Community, we were told that “the Commission does not intend to request [...] the liberalisation of water services”¹⁶. This is remarkable given that the leaked EU mandate for the FTA talks with the Andean Community does mention targeting the water sector and senior officials from both sides have confirmed to NGO campaigners that the EU has been actively pushing for concessions on water. Bolivian negotiators have announced they will quit the negotiations if the EU pushes its water demands.

In February 2009, a year later, CEO made the same information requests, in the hope that the new Trade Commissioner, Baroness Ashton – who replaced Commissioner Mandelson in October 2008 – might have introduced a more transparent approach. Unfortunately the Commission’s willingness to answer basic questions about the objectives of the EU’s trade negotiations remains extremely limited. These objectives are still defined as confidential.

In the case of the EU-ASEAN talks, CEO was told that “negotiations have made no progress over the last few months. Against this background, there has been no change, either because of developments in the negotiations or because of a possible change in the EU’s approach.” We received almost identical responses regarding the talks with India, South Korea, the Andean and the Gulf countries¹⁷. The key question of whether the Commission is pushing for market access for services such as water collection and purification, wastewater collection and treatment or other aspects of water and sanitation services was conveniently ignored.

In the case of the EU-Central America talks, the following statement was added: “the EC does not seek to include any obligation to privatise public services. In fact CA and the EU agree that nothing in the future Association Agreement should result in an obligation to privatise any public service, such as water distribution. If, however, such public services are privatised the EC would want not to have discrimination between foreign and national operators”¹⁸. This approach ignores the concerns about making privatisation virtually irreversible by locking it in via international trade agreements.

Through the grapevine

Feedback from NGOs that are closely following the FTA talks sheds more light on the situation.

In the EU-Mercosur talks (blocked since 2004), the EU’s requests for water sector liberalisation were ‘hidden’ in the chapter on investment, with water distribution fully included.

In the EU-CAN talks, senior officials from both sides have confirmed that the EU has been actively pursuing access to the water sectors in the Andean countries. Bolivian negotiators, however, have made it clear that they will quit the negotiations if the EU pressurises them on this issue. Observers assess that the EU may currently be concentrating on the politically less controversial ‘environmental services’ such as water treatment.

In the trade talks between the EU and Central America, the civil society coalition “Agua Fuera del AdA” is campaigning for water to be excluded from the agreement.

In the EU-India talks, water is not excluded, giving every reason to be concerned. The Indian government is very reluctant to open up public procurement, but the EU may push for water liberalisation as part of services (including environmental services) and investment negotiations.

In the EU-South Korea talks, the two parties appear to have agreed on a list for the services negotiations, and there are rumours that water services may have been excluded, most likely because it is such a politically explosive issue.

Instead of targeting the more politically controversial issue of drinking water distribution, the Commission's focus seems to be primarily on other water services, such as sewage and wastewater treatment. Including these other water services in FTAs is potentially dangerous. These services are closely linked to drinking water provision and should ideally be managed in a holistic and integrated manner within one public utility. Splitting up these different services and leaving some to private water firms is a flawed approach. These are, moreover, services where major efforts towards improvements in public management are needed in the coming decades, efforts that would be seriously jeopardized by locking in liberalisation and privatisation through FTAs. Opening up non-drinking water services to European water multinationals provides them with effective inroads into new markets, with the prospect of expanding into drinking water supply at a later stage.

The Commission's refusal to answer even the most basic questions about the EU's negotiating objectives on water services is in stark contrast to the Commission's cosy relations with industry. CEO's research into corporate lobbying around the Commission's Global Europe strategy and FTAs shows that lobby groups like BusinessEurope and the European Services Forum are regularly given privileged access to information about the EU's negotiating goals and positions. Documents obtained by CEO through access to documents requests show that the doors of DG Trade are wide open to big business lobbyists when it comes to bilateral and regional trade negotiations¹⁹. Corporate lobby groups are structurally kept informed and closely consulted, in a way that no civil society groups are.

Conclusion

The EU refuses to put its cards on the table, but is almost certainly pursuing market access for water services as part of the FTA talks. The Commission has not given up on including water in trade agreements, but prefers to be ambiguous in order to avoid political controversy. The picture that emerges is that EU negotiators are taking a flexible approach, assessing the level of scepticism towards water sector commitments among their negotiating partners. EU negotiators are then pushing for concessions whenever they see the opportunity to do so. This non-transparent, Machiavellian approach is unacceptable. The Commission must put its cards on the table and make clear: what are the EU's goals for the inclusion of essential services like water in FTAs? This is pre-condition for a fair debate about the implications of including water in international trade agreements.

Should such a debate be allowed, the only logical conclusion would be the long-overdue announcement by the EU that it was dropping the inclusion of water in trade negotiations.

¹ The Complementary Declaration is online at <http://worldwaterforum.blogspot.com/>

² Talks with Mercosur (Argentina, Uruguay, Brazil and Paraguay) had started earlier and got stalled in 2004.

³ <http://www.gatswatch.org/requests-offers.html>

⁴ The long list of countries from which the EU demands market access and other regulatory changes in the water sector 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.

⁵ In May 2002, the European Commission asked these companies for help in formulating the European position in the GATS negotiations. Letters sent in follow-up to a May 17 2002 EC-industry 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." Among the EC's questions was whether the companies perceived universal service obligations as a problem. "WTO and Water: The EU's Crusade for Corporate Expansion", CEO Info Brief, March 2003; <http://www.corporateeurope.org/water/infobrief3.htm>

⁶ This eventually resulted in Belgium, the UK and other EU governments distancing themselves from the water requests and the Commission was increasingly isolated in its defense of the requests. In January 2005, the EU submitted its revised requests, which included somewhat less comprehensive demands for water sector liberalization. In December 2005 Norway withdrew its GATS requests for water, energy and education. As a result of this, drinking water was explicitly excluded from the plurilateral requests which the EU tabled together with Norway, Canada, the US and other countries in February 2006. The EU, however, has never withdrawn its water requests from the GATS talks. "Water almost out of GATS?"; CEO briefing, March 2006. <http://www.corporateeurope.org/water/gatswater2006.pdf>

⁷ Barbados and Dominican Republic without any reservation; Saint Kitts and Nevis; Saint Vincent and the Grenadines on the condition of joint ventures. Suriname agreed to open in 2018 but will require transfer of technology.

⁸ Antigua and Barbuda; Dominican Republic; Saint Kitts and Nevis without reservations; Grenada, Saint Lucia, Saint Vincent and the Grenadines and Trinidad & Tobago on the condition of joint ventures; Belize on the condition of technology transfer; Suriname: in 2018 on the condition of technology transfer.

⁹ The Parties shall agree on measures aimed at the progressive liberalisation of their respective procurement markets at all levels of public authorities and public entities in the water, energy and transport sectors as well as for information and communication networks. The objective is to achieve reciprocal and gradual market access on the basis of the principles of non-discrimination and national treatment. The Agreement may also support further market opening at regional level between the Andean Community partner countries."

http://www.bilaterals.org/article.php3?id_article=8334

¹⁰ The mandate for the EU-Central America FTA also states that "Consideration will also be given to measures to facilitate and promote trade in environmental goods, services and technology."

http://www.bilaterals.org/article.php3?id_article=8336

¹¹ "In terms of content, new competitiveness-driven FTAs would need to be comprehensive and ambitious in coverage, aiming at the highest possible degree of trade liberalisation, including far-reaching liberalisation of services and investment." http://www.bilaterals.org/article.php3?id_article=8211

¹² Idem.

¹³ Sandro Paolicchi, email correspondence, March 19th 2008.

¹⁴ Email correspondence April 2nd 2008. We had asked the following question: "My original question was about water services, not only water distribution services; when you write that the Commission does not seek "commitments on water distribution services", does that mean only distribution? In other words, can you clarify whether the Commission (in the EU-ASEAN FTA negotiations) pursues market access, liberalisation or other objectives with regards to water collection and purification, wastewater collection and treatment or other aspects of water and sanitation services?"

¹⁵ "I can however indicate that the Commission does not intend to request to India the liberalisation of water distribution services." Lisa Mackie, email correspondence, March 19th 2008.

¹⁶ Paul Bonnefoy, email correspondence, April 1st 2008.

¹⁷ Email correspondence with Justyna Lasik, Paul Bonnefoy, Nicola Ardito, Miriam Kominarecova and other European Commission officials.

¹⁸ Nicola Ardito, email correspondence, February 24 2009.

¹⁹ "Global Europe: An Open Door Policy For Big Business Lobbyists At DG Trade", Corporate Europe Observatory (CEO), October 2008: <http://www.corporateeurope.org/docs/GlobalEurope-OpenDoors.pdf>