



HARMONIZATION ALERT, a publication of Public Citizen, seeks to promote open and accountable policy-making relating to public health, natural resources, consumer safety, and economic justice standards in the era of globalization.

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SERVICE NEGOTIATIONS

Topic: *New WTO Service Negotiations and Implications for Water Privatization in the United States*

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On October 16, 2002, the New Orleans Sewerage and Water Board voted not to privatize the New Orleans drinking water system by a narrow margin. The 20-year contract to run the system, worth \$1.3 billion dollars, was the largest water privatization plan ever proposed in the United States.ⁱ The Board voted 6 to 5 to reject the bids submitted by three interested parties that had been vying for control of the city's water system for the past three years.

The privatization project was initiated by former New Orleans mayor Marc Morial in 1999. However, the project lay dormant as Sewerage and Water Board members, community groups, and New Orleans citizens weighed the pros and cons of the various plans that had been proposed by bidders. New Orleans residents were so concerned about the prospect of having a private company operate their water system that in March of 2002, citizens voted 9 to 1 to amend the City's charter so that any privatization contract in excess of \$5 million would have to be approved by referendum.ⁱⁱ For the moment however,

the public will not face such a referendum vote because the Board's vote to reject the three bids ended, at least temporarily, the debate as to whether privatization was the answer to the sewerage and water system's overwhelming financial and infrastructure problems.

Privatization of government services increasingly is being touted as the best way for cash-strapped governments to deal with expensive maintenance and repair needs of public utilities. However, in many instances when this route has been selected, the privatization of public utilities in the U.S. has not yielded positive results.ⁱⁱⁱ Now, new international negotiations that would establish binding rules regarding domestic government policies in the services sector are underway. These proposed new rules being negotiated under the auspices of the World Trade Organization (WTO) and in the proposed Free Trade Area of the Americas (FTAA) may have far-reaching implications for communities interested in maintaining local control over their sewage and water systems.

Rather than focusing on setting the terms for trade in goods, these new pacts focus on what policies governments may pursue within their own borders regarding investment in and regulation of services. When these ongoing service negotiations are completed, governments could be required to make their public drinking water and wastewater services available for purchase or operation by foreign for-profit water companies; local communities could lose decision-making authority over how water services are provided; water regulations, such as those governing water quality, could be subject to challenges as illegal trade barriers; and, finally, if a municipality later decides to reverse a privatization, as has occurred in many American cities, the U.S. government could be forced to compensate the other governments in these trade pacts for the loss of their companies' future business opportunities. Already under existing WTO rules, such a reversal without prior approval and compensation can result in trade sanctions in certain committed services sectors.

European Water Companies Make Inroads in U.S. Market: The three competitors that sought the right to operate the New Orleans drinking water system were United Water, U.S. Filter and the Managed Competition Employee Committee. United Water is a subsidiary of the French corporation, Suez, which bills itself as the world's

largest water service corporation. This for-profit, private company currently serves 115 million customers and 60,000 industrial customers, with operations in 130 countries, including 17 operations in the U.S.^{iv} While Suez has been successful in acquiring control of water systems all over the world, it has had less systematic success in ensuring quality of service for its customers. For example, in Atlanta, where United Water operates the drinking water system, the company was placed on 90-days probation on August 12, 2002 due to poor performance and customer service.^v In a 450-page report, the City of Atlanta detailed how United Water had failed to satisfy its basic responsibilities, such as proper billing, maintenance, timely emergency responses and consistent record-keeping.^{vi} In 2001, customer service complaints jumped from 13,845 to 14,521 per month regarding such issues as water main breaks, meter installations, billing and collections.^{vii} One local television station did an expose about an Atlanta resident who received an erroneous water bill of \$2,562 and has spent over a year trying to get United Water to correct it.^{viii}

The second major contender for the privatization contract was U.S. Filter, a subsidiary of another large French water company, Vivendi Environment, which itself is a subsidiary of Vivendi Universal. Currently, Vivendi Universal is under criminal investigation by the U.S. Justice Department and the U.S. Securities and Exchange Commission, relating to the company's executive accountability.^{ix} Vivendi Environment is a rapidly expanding for-profit water corporation. It operates in over 100 countries, delivering drinking water and managing wastewater collection for over 110 million people, with an additional 40,000 industrial customers.^x

Vivendi Environment's subsidiary, U.S. Filter, already had a contract to operate New Orleans' wastewater treatment system. Thus, in its bid, it was actually seeking to expand its operation into drinking water.^{xi} U.S. Filter's record with New Orleans' wastewater treatment included serious equipment problems which had resulted in residents and businesses losing water service and numerous people being exposed to raw sewage over the past two years.^{xii} In 2000, a fire erupted at the U.S. Filter Plant due to equipment problems that the company had been aware of for several weeks.^{xiii} The fire resulted in a raw sewage back up and U.S. Filter diverted the untreated raw sewage into the Mississippi River, unbeknownst to New Orleans' residents.^{xiv} Again, a

few months later, two broken U.S. Filter incinerators caused another raw sewage back up, requiring the company to use trucks to facilitate sewage removal.^{xv} In the interim two month period while the removal took place, residents in the surrounding area had to endure the smell of the raw sewage.

The Managed Competition Employee Committee is a group of New Orleans Sewerage and Water Board employees that proposed to address the problems with the water system through internal restructuring. As this was a new group formed solely for the purpose of bidding for this contract, there is no basis from which to assess the group's prospects based on past performance. Committed to restructuring the public utility from within, this group provided an alternative to control of the water system by a for-profit company.^{xvi}

For-profit, private European water companies already have already taken over a number of U.S. drinking and wastewater systems as individual cities have chosen to privatize water services. However, now the European Union (EU) is demanding systematic access for its companies to purchase or contractually operate public water systems throughout the U.S. If the Bush Administration agrees to the European demands and makes binding commitments in the area of drinking water in the context of new international services negotiations, state and local governments throughout the U.S. would be obligated to provide access for European companies to their public water services.

Current and Future WTO Services Rules: The WTO General Agreement on Trade in Services (GATS) was first established during the Uruguay Round negotiations which also led to the formation of the WTO in 1994. The 1994 GATS agreement is now one of the 21 commercial agreements enforced by the WTO. During the Uruguay Round, the very notion of setting uniform, global, binding rules for service sector deregulation and commodifying certain services into tradable units was extremely controversial. Some service sector issues, such as guaranteeing market access to public services, and specific limits on domestic service sector regulations were so sensitive that the EU pushed to have them set aside. However, as a compromise to U.S. demands that such issues be discussed, the agreement was structured to mandate continuing negotiations on these issues at future dates.^{xvii}

As mandated in the GATS text, in January 2000, the WTO began a new round of negotiations dubbed

“GATS 2000.” The official goal of these talks is to achieve “progressive liberalization,” which means to place more service sectors (including those previously excluded as too sensitive or controversial) on the table as a topic for negotiations.^{xviii} The GATS 2000 talks also explicitly include negotiations to establish new “disciplines” on domestic regulation of the service sector. The few documents leaked from the talks reveal their far-reaching parameters, as well proposals to apply these new disciplines to regulations that treat domestic and foreign services identically and thus, should pose no trade barrier.

Notably, the GATS does not define “services,”^{xix} *per se* but includes a provision stating that the agreement covers “any service in any sector.”^{xx} As a consequence, every service imaginable is potentially included under the coverage of GATS’ terms including banking, insurance, accountancy, transportation, construction, mining, tourism, food preparation, retail and wholesale services and many more. Services also include what are often called “essential public services” such as water, education, health care, hospital, social security, libraries, museum, postal, police and prisons. The GATS terms apply to all actions taken by all levels of government “central, regional, or local governments or authorities.”^{xxi} They also cover actions of “non-governmental bodies in the exercise of powers delegated by” any level of government.^{xxii}

Most services, particularly water services, are provided on a local level and seem to have little to do with traditional notions of “trade.” However, reference to a description of GATS by the WTO Secretariat explains this seeming incongruity. The WTO calls the GATS the world’s “first multilateral agreement on investment” since it covers not just cross-border trade in services, but every possible means of supplying a service, including use of service abroad, the movement of persons across borders to provide a service, and the right to set up a commercial presence in an export market.^{xxiii} This last means of supplying a service – the right to set up a service company within another country – is the “right of establishment” that has proved so controversial in a variety of previous investment agreement negotiations.

Under the GATS, countries agree to open up specific service sectors to foreign competition and make them subject to GATS rules. GATS is often called a “bottom-up” agreement in trade parlance, because countries offer up specific service sectors for coverage or “commitments”. In a “top-down” agreement, such as the FTAA, all sectors automatically are covered unless a

country obtains specified exceptions. GATS supporters reiterate the fact that this bottom-up structure offers governments greater flexibility to decide what service sectors they want to open to foreign competition. Moreover, they note that governments are allowed to specify which GATS rules they are willing to embrace in each sector.

However, in reality, the GATS agreement is a hybrid agreement, with some of its rules applying to all services, including those not committed or offered for inclusion. The GATS text is explicit that no service sector is excluded *a priori*,^{xxiv} meaning countries are bound to follow some of the GATS rules on all sectors and that no sector is presumed excluded. GATS' most favored nation requirement and its transparency rules, for instance, apply across the board, even if a country did not specifically offer a service sector for GATS coverage. National treatment and market access rules, however, only apply to service sectors a country commits to GATS coverage. A country's commitments to open up their markets to GATS rules are described in an attachment to the agreement called a "schedule" which is a list of all of the services that will be governed by the GATS.^{xxv}

Currently, WTO member countries are operating under the GATS rules of 1994. These rules include:

- Article XVI, the Market Access Rule, prohibits governments from placing restrictions on the number, value or type of service unless a country specifically lists all existing and all possible future exemptions to this rule at the time they initially commit a sector. In addition, this article prohibits limits on total quantity of output and prohibits all levels of government from maintaining or creating new monopolies or exclusive suppliers of the service.
- Article XVII, the National Treatment rule, requires that governments give foreign services providers and services the best treatment given to domestic services or service providers. The National Treatment requirements in GATS go beyond normal non-discrimination treatment to also prohibit governments from any policies – including preferential loans, grants or loan guarantees – that change the "conditions of competition" in favor of domestic water service providers.
- Article II, Most Favored Nation Treatment, requires that the best treatment given to any foreign service or service provider must be extended to all like foreign services and service providers. This article applies

across the board whether or not a country signs up specific sectors. This provision means that if a government ever makes a contract with any foreign service provider, it must make that business opportunity available to all foreign service providers, whether or not a sector is covered under GATS.

- Article III, on Transparency, requires nations to publish promptly all laws or regulations of general application which could affect services. This provision allows foreign service providers to quickly discover new rules that they may want to lobby against, or if this fails persuade a sympathetic government to challenge in the WTO.^{xxvi} This article also applies across the board whether or not a country signs up specific sectors.
- Article VIII, on Monopolies, requires governments to ensure that private or state monopolies and exclusive services providers (which could include public water services) conform to the terms of GATS. It also stipulates that if a government seeks to grant a monopoly in sectors where it had previously made GATS commitments it can only do so after negotiating compensation with other WTO member governments. If a WTO country reverses a privatization or otherwise creates a new monopoly without compensating its trading partners, it would face trade sanctions under GATS.
- Article VI, on Domestic Regulation, sets forth a number of requirements countries must meet when setting domestic regulations on services and explicitly encourages members to rely on the international standards of relevant international standard-setting organizations.

Only a limited number of general exceptions to the GATS exist in Article XIV, such as those relating to national security measures and measures necessary to protect human, animal, plant life or health. There is no exception available in GATS for conservation of natural resources, as there are in other WTO agreements such as Article XX in the General Agreement on Tariffs and Trade. However, it is important to note that even if such an exemption did exist, it might not be sufficient to protect water services a number of governments which have tried to defend their environmental measure from a WTO challenge relying on Article XX have been ruled against by the WTO.^{xxvii}

GATS Article I.3 does provide an exception from commitments for “all services supplied in the exercise of governmental authority” that are not provided on a commercial basis nor in competition with one or more service providers, for instance public and private providers. This is the provision often raised by defenders of GATS when critics describe concerns about GATS’ effect on public services. However, in application, this exception is very limited in scope because very few services, even governmental services, are without some form of fee structure or private competition. Many public services in the U.S. are a hybrid of both public and private providers, for instance, public and private schools and hospitals. Given there also are some private service providers in policing (security companies) and postal delivery (express services) it would be difficult to identify a service supplied in the exercise of governmental authority that would escape GATS’ coverage.

Many GATS rules only apply only to the service sectors where the U.S. has made commitments and has listed those commitment in its schedules. However, a central element of the GATS 2000 negotiations is the development of new “disciplines” or rules on domestic regulations that would constrain all service sectors whether they have been individually committed or not. These talks are aimed at setting constraints on a wide range of non-discriminatory domestic regulations, which would mean an absolute ban on certain government policies even when those policies treat domestic and foreign services and firms the same – meaning there is no traditional trade issue involved.

Specifically, the obligation in GATS Article VI.4 on domestic regulation is to undertake negotiations to develop “necessary disciplines” to ensure that “measures relating to qualification requirements and procedures, technical standards and licensing procedures do not constitute unnecessary barriers to trade in services.”^{xxxviii} Among other things these proposed disciplines are supposed to ensure that domestic regulations “are no more burdensome than necessary to ensure the quality of the service.”^{xxxix}

The scope of these proposed new disciplines on government regulatory activity is extremely broad. They would not only cover qualification requirements and procedures, technical standards and licensing procedures, but also measures “affecting trade in services.”^{xxx} Measures are defined very broadly, including “laws, regulations, decisions, and even unwritten practices.”^{xxxi} It is hard to imagine a domestic regulatory policy that does

not fall under the listed categories. Leaked documents from the negotiations reveal a long list of standards considered barriers to trade including, restrictions on fee setting, overly burdensome licensing requirements, differing federal and sub-federal level requirements for licensing and qualifications.^{xxxii}

In addition, the proposed new disciplines would subject all domestic service sector regulations to a “necessity test.” Nations would be required to prove first that their measure is necessary to fulfill a specific objective permitted under GATS, and second that the regulation is “not more burdensome than necessary.” This places an impossible burden on the country seeking to maintain or establish a domestic regulation. It would have to prove a negative: that no less trade restrictive means exists to accomplish their policy goal.

Besides the logical impossibility of proving a negative, practically, at a time when corporations are successfully pushing “self-regulation” or simple disclosure as an alternative to binding governmental regulation, this requirement would be nearly impossible to satisfy regarding any strongly-enforced policy. Adding a test of necessity to service sector domestic regulation is extremely worrisome given that U.S. environmental policies have failed a test of necessity when challenged as barriers to trade under the WTO agreement governing goods.^{xxxiii} Finally, there is discussion in these regulatory negotiations of adding further requirements that countries harmonize their domestic regulations to international standards, and engage in mutual recognition and equivalency agreements. These controversial concepts are embedded in other WTO agreements such as WTO Sanitary and Phytosanitary Agreement.^{xxxiv}

It is important to note that while GATS Article VI.4 provides a mandate for *negotiation* on domestic regulation and services, the negotiators have no requirement to produce any new GATS disciplines. Indeed, the U.S. government has questioned the need for such new disciplines in discussion with the Transatlantic Consumer Dialogue.

EU Demands Access to U.S. Water Services for European Water Service Corporations: One major question in the ongoing GATS 2000 negotiations is whether and to what extent WTO member countries will open up to private acquisition or operation their public drinking water and wastewater systems in the face of pressure from the EU.^{xxxv} The delivery of drinking water is not yet a committed service in the United States or any

of the WTO countries.^{xxxvi} However, there is now a very strong possibility that this could occur in the context of the GATS 2000 negotiations. Extending GATS rights over water services is one of the top priorities of EU negotiators in these global trade talks.^{xxxvii}

WTO member nations are currently in the so-called “request-offer” phase of GATS 2000 negotiations. WTO countries submitted their “requests” for access to the service markets of other WTO nations on a bilateral basis by June 30, 2002. During the request stage, countries listed the service markets in other countries that they wanted opened to foreign competition and covered by GATS rules. Nations then are to respond with their “offers” of market access starting in March 31, 2003. This request-offer process is the mechanism by which countries bind their services to GATS rules.

Despite the importance of this process, the U.S. only has released a summary of its requests for market access.^{xxxviii} However, a complete draft set of European GATS requests of the U.S. and other nations were leaked in May 2002.^{xxxix} These draft documents confirmed the concerns of many GATS observers. In addition to a broad set of demands that would impact federal, state and local regulation of a variety of service sectors including professional, postal and insurance services, the EU submitted a request petitioning the U.S. for access to its water services sector. The EU is asking the U.S. to fully commit “Water for human use and wastewater management: Waste collection, purification and distribution services through mains, except steam and hot water; wastewater services.”^{xl}

In the 1994 GATS, the U.S. already had committed certain private sewage and refuse services, but not public sewage and refuse and not potable drinking water.^{xli} By asking for full market access commitments in “water for human use” the EU was not only asking for access to control U.S. drinking water services, it was also asking the U.S. to lift its previous GATS exclusion on publicly provided sewage and refuse services and open those services to foreign competition as well. In return, one of the primary U.S. demand of the EU is for access to and deregulation of its energy markets, particularly with regard to wholesale energy trading, energy extraction, and use of transmission lines.^{xlii}

To the massive European water companies that have managed to obtain privatization of water services in much of Europe, and in the developing world with the help of the International Monetary Fund and World Bank,

publicly provided water services are definitionally inconsistent with the GATS. A powerful EU services coalition, put it most clearly when it said the goal of “opening service markets to foreign providers is self-evidently inconsistent with retaining public sector monopolies.”^{xliii}

Because of the secrecy under which the U.S. Trade Representative is operating, it is unknown whether the U.S. has responded to the EU’s demand for water or how the U.S. will respond. Both the U.S. and EU trade officials have stated that they will keep GATS “request” and “offer” documents secret. However, given the level of interest by both governments in one another’s markets, it is highly conceivable that they could reach some type of agreement, in which transnational water and energy corporations obtain the new rights they are seeking. Such a scenario would transform dramatically the context in which water privatization could occur with new, binding international legal obligations requiring state and local governments to allow municipal systems to be purchased or run by for-profit companies. Not only will foreign corporations have access to the U.S. water market, but additionally, via the market access, national treatment and most favored nation rules in the WTO GATS agreement, they will be entitled to all of same subsidies and benefits accorded domestic entities including local citizen coops and other locally controlled entities vying for privatization contracts.

What Can U.S. Municipalities Expect Under the GATS?: Although the New Orleans Sewerage and Water Board rejected all three submitted bids for operation of the city’s water services, unfortunately, this popular victory is not the end of the story. Shortly after the Board vote, the office of the new mayor, Ray Nagin, issued a statement indicating that the Board could amend and then reissue a request for proposals.^{xliv} Furthermore, two of the Board members who voted against the bids received termination letters from the mayor removing them from the Board, dated the same day that the privatization vote took place.^{xlv} In addition the new City Attorney has expressed some doubt as to the legitimacy of the March 2002 vote which requires citizens’ approval via referendum for any future privatization contract exceeding \$5 million, and may be poised to attack its validity.^{xlvi}

What do municipalities need to consider with regard to the ongoing GATS negotiations?

First, local communities and their governments could lose the ability to decide for themselves how to provide water services. Under GATS market access rules

(Article XVI), countries that make commitments in a specific service sector are prohibited from maintaining or adopting monopolies or exclusive suppliers of the service.^{xlvii} This limit applies on both the basis of a regional subdivision and on the basis of the entire territory of a government. This provision would oblige the U.S. government to give EU water companies access to the “market” of our more than 60,000 existing municipal water service providers and restrain communities from establishing new municipal water systems in the future. The only exception is for existing monopolies or anticipated future monopolies which the government specifically exempts in its schedule at the time a sector is committed. A potential vehicle for the implementation of this obligation was already introduced in the 107th Congress. H.B. 3930 and S.B.1961 would require municipalities to consider public-private partnerships in order to receive federal funds for capital improvements.^{xlviii} This requirement to consider privatization could be made more onerous in future versions of the bill.

Second, if new proposed disciplines on domestic regulations are agreed as part of the GATS 2000 package, any federal, state or local regulation governing water services, such as those designed to protect water quality, universal access to services or licensing and qualification standards, could be challenged as barriers to trade in the powerful and binding dispute resolution system of the WTO. Under the proposed rules, a government would have to demonstrate that the policy was necessary and that no other “less trade-restrictive measure” could be taken to accomplish the same objective.^{xlix} These constraints would apply to both discriminatory and non-discriminatory local, state and federal regulations, such as those governing water quality. A government that loses a case in the WTO would be required to compensate other WTO members who were adversely impacted by their law or regulation or risk punitive tariffs.

In the case of New Orleans, the requirement that private service contracts exceeding \$5 million must be authorized by referendum could be challenged by a foreign country as GATS-illegal. A WTO panel could find that this requirement in the city charter undermines the conditions of competition for foreign companies or does not meet the necessity test. After an adverse WTO ruling, the U.S. federal government would be obliged under WTO rules to pressure New Orleans to change the law. If this happens, then New Orleans voters would be deprived of the right to have a voice in the privatization process even though 86% of New Orleans voters approved this

referendum, expressing their desire to have some input into who controls and manages their water system.

Third, under the GATS rules on monopolies (Article VII.3), if a country commits a specific service and then later seeks to reverse this commitment, the country must then compensate its affected trading partners or risk trade penalties equivalent to the value of the lost market or replace the withdrawn commitment with other commitments of comparable value. In the event that the New Orleans water system were privatized, and the public were later dissatisfied and wanted to put its water services back into the public realm, New Orleans would face two choices – neither of which is financially or socially beneficial to the city. It can either fulfill its long-term contract with an under-performing corporation or it can cancel the contract and compensate not only the company under the terms of the contract, but the U.S. would also be obliged to compensate the government of the country in which the company is incorporated. This double jeopardy has led some GATS observers to conclude that under GATS rules privatization is a one-way street tying the hands of all future municipal governments that may want to pursue other options with regard to water services. Municipalities in Indiana, Ohio, Florida and Illinois, for instance, have bought back their water works when privatizations have failed to deliver quality services and reasonable rates.¹ This option could be effectively ruled-out.

Fourth, even if the U.S. does not decide to make commitments with regard to drinking water, many water pollution control and prevention measures may be subject to GATS disciplines if they affect other services where the U.S. makes commitments.^{li} Many countries have made GATS commitments in engineering, construction, transport, manufacturing, agriculture, resource extraction (such as mining), and literally hundreds of other services categories that are related to water infrastructure or use. We can only speculate about how water as an input into mining production, for instance, would be treated under GATS rules. However, if a nation takes full commitments in the mining sector, regulations needed to reduce pollution of rivers and lakes and ensure water quality would very likely have to meet the GATS least trade restrictive obligations or risk challenge in the WTO.

Although a thorough discussion of similar rules in the North American Free Trade Agreement (NAFTA) and the proposed NAFTA expansion to 31 new countries via the FTAA is beyond the scope of this article, it is worth pointing out that the NAFTA/FTAA model contains

certain provisions that limit government actions and policies even more than those in GATS and thus pose new legal hazards for municipalities. The FTAA's "top-down" structure would apply to all domestic services automatically, without a government having to commit or sign-up a specific sector as they do under the GATS.

In addition, the expansive investor rights in NAFTA and the FTAA would allow corporations, not just governments, to bring trade suits against domestic service regulations the companies consider to be barriers to trade and investment or against government actions that the companies believe damage the value of their investment. These suits for cash damages are arbitrated behind closed doors in World Bank or United Nations tribunals that do not allow for public observation or input, even though it is the taxpayers that would have to foot the bill should any compensation be awarded after a successful challenge. Similar sorts of cases already have been launched by water companies using investment rules contained in bilateral investment agreements against municipal governments in Argentina and Bolivia who have cancelled water service contracts.ⁱⁱⁱ In the case of Bolivia, a water company is demanding \$25 million in compensation for lost future profits because the municipality of Cochabamba cancelled a water services contract with a European subsidiary of U.S.-based Bechtel Corporation in response to public pressure over skyrocketing rates.

Conclusion: Public services depend on a network of federal, state and local regulation that seeks to ensure a variety of public interest goals such as service quality and universal access. Conversely, the WTO and FTAA are

predicated on the assumption that accelerated trade and investment opportunities for companies in the service sector should be the top public policy goal of federal, state and local governments.

Whether one is a supporter or a critic of water privatization, most would agree that these decisions should be made by local governments in the context of particular experiences, policy goals and democratic decision-making. Privatization requirements imposed upon governments via obligations in international commercial agreements, are sure to generate extreme controversy. GATS/FTAA negotiating documents are secret and are not available to state or local governments or even members of Congress, yet the U.S. will be making initial market access offers as early as March 31, 2003. Few U.S. local or state governments have been consulted with regard to the GATS negotiations or the FTAA talks. Certainly there is no formal mechanism requiring states or localities to review or approve the obligations of the agreement prior to its signing.

There are some 60,000 publicly owned and operated water systems in the U.S. whose future could be dramatically changed if the U.S. decides to make further commits in the water services area during the current round of GATS talks scheduled to conclude in 2005. Such a decision could permanently remove U.S. water systems from the public trust and into the hands of for-profit foreign investors, leaving little recourse for dissatisfied governments and consumers.

FEDERAL REGISTER ALERTS

For more timely notice of these alerts, please visit our web site at www.harmonizationalert.org and sign up for one of four listserves. The full texts of these notices are available at http://www.access.gpo.gov/su_docs/aces/aces140.html. For a document cited as 66 Fed. Reg. 52752 (August 30, 2001), search the 2001 Federal Register for "page 52752" (quotation marks required) and choose the correct title from the results list.

Department of Agriculture

Codex Alimentarius Commission: Twenty-Fifth Session of the Codex Committee on Methods of Analysis and Sampling (FSIS)

67 Fed. Reg. 58583 (September 17, 2002)

Notice of public meeting and request for comments.

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables (APHIS)

67 Fed. Reg. 65016 (October 23, 2002)

Final Rule.

Codex Committee on Fats and Oils (FSIS)

67 Fed. Reg. 69183 (November 15, 2002)

Notice of public meeting and request for comments.

Aventis CropScience (APHIS)

67 Fed. Reg. 77034 (December 16, 2002)

Notice.

Draft Guideline on Testing for the Detection of Mycoplasma Contamination (APHIS)

67 Fed. Reg. 77035 (December 16, 2002)

Notice of availability and request for comments.

Environmental Protection Agency***Revised Final Health Effects Test Guidelines (EPA)***

67 Fed. Reg. 77064 (December 16, 2002)

Notice.

Department of Health and Human Services***Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Developmental Toxicity Testing (FDA)***

67 Fed. Reg. 56572 (September 4, 2002)

Notice; request for comments.

Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (90-Day) Toxicity Testing (FDA)

67 Fed. Reg. 56569 (September 4, 2002)

Notice.

Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing (FDA)

67 Fed. Reg. 56570 (September 4, 2002)

Notice.

Codex Alimentarius: Meeting of the Codex Committee on Food Import and Export Inspection and Certification Systems (FDA)

67 Fed. Reg. 61847 (October 2, 2002)

Notice of public meetings, request for comments.

White Chocolate; Establishment of a Standard of Identity (FDA)

67 Fed. Reg. 62171 (October 4, 2002)

Final rule.

Standardized Training Curriculum for Application of HACCP Principles to Juice Processing (FDA)

67 Fed. Reg. 62489 (October 7, 2002)

Notice.

Exemptions From the Warning Label for Juice (FDA)

67 Fed. Reg. 62490 (October 7, 2002)

Notice.

E. Coli O157:H7 Contamination of Beef Products (FSIS)

67 Fed. Reg. 62325 (October 7, 2002)

Compliance with the HACCP system regulations and request for comment.

Contaminants and Natural Toxicants Subcommittee of the Food Advisory Committee (FDA)

67 Fed. Reg. 69225 (November 15, 2002)

Notice.

Department of Transportation***North American Standard for Protection Against Shifting and Falling Cargo (FMCSA)***

67 Fed. Reg. 61211 (September 27, 2002)

Final rule.

Trim Systems and Protective Breathing Equipment (FAA)

67 Fed. Reg. 61836 (October 2, 2002)

Notice of proposed rulemaking.

Aviation Rulemaking Advisory Committee Meeting on Occupant Safety Issues (FAA)

67 Fed. Reg. 62281 (October 4, 2002)

Notice of public meeting.

Improved Seats in Air Carrier Transport Category Airplanes (FAA)

67 Fed. Reg. 62293 (October 4, 2002)

Supplemental notice of proposed rulemaking.

International Standards on the Transport of Dangerous Goods (RSPA)

67 Fed. Reg. 64962 (October 22, 2002)

Notice of public meetings.

Safety Rating Program for Child Restraint (NHTSA)

67 Fed. Reg. 67491 (November 5, 2002)

Final rule.

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards (NHTSA)

67 Fed. Reg. 68551 (November 12, 2002)

Denial of petition for rulemaking.

1-g Stall Speed as the Basis for Compliance With Part 25 of the Federal Aviation Regulations (FAA)

67 Fed. Reg. 70811 (November 26, 2002)

Final rule.

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code (RSPA)

67 Fed. Reg. 72033 (December 3, 2002)

Notice of proposed rulemaking.

U.S. Locational Requirement for Dispatching of U.S. Rail Operations (FRA)

67 Fed. Reg. 75937 (December 10, 2002)

Final rule.

Airspeed Indicating System Requirements for Transport Category Airplanes (FAA)

67 Fed. Reg. 76651 (December 12, 2002)

Final rule.

Office of the United States Trade Representative

Public Hearing Concerning Market Access in the Doha Development Agenda Negotiations

67 Fed. Reg. 59086 (September 19, 2002)

Request for comments and notice of public hearing concerning market access and services issues in the WTO Doha Development Agenda negotiations.

Request for Comments Concerning Compliance With Telecommunications Trade Agreements

67 Fed. Reg. 71229 (November 29, 2002)

Notice of request for public comment and reply comment.

NOTES

ⁱ American Water Works Association, *Water Week*, Volume 11, No. 12, Mar. 6, 2002.

ⁱⁱ Jim Hightower, "Going Down the Road – The Water Profiteers," *The Nation*, Sep. 2, 2002.

ⁱⁱⁱ See Public Citizen Critical Mass and Environment Program, *Water Privatization: A Broken Promise*, Oct. 2001

^{iv} Suez: Water – Key Facts and Figures – World Leader in Water Services: http://www.suez.com/metiers/english/eau/index_frames.htm, downloaded Jan. 6, 2002.

^v Sarah Rubenstein, "City Finds Pros, Cons for United Water," *Atlanta Business Chronicle*, Sep. 30, 2002.

^{vi} Brown and Caldwell, *Annual Performance Audit of United Water*, 2001 – available at <http://www.browncaldwell.com>.

^{vii} Brown and Caldwell, *Annual Performance Audit of United Water*, 2001 – available at <http://www.browncaldwell.com>.

^{viii} Jim Strickland, "United Water Aims to Ease Customers' Frustrations," *WSB-TV – Action News* (Atlanta, Georgia), Aug. 15, 2002.

^{ix} Frank Ahrens, "2 U.S. Agencies Investigating Vivendi," *Washington Post*, Nov. 5, 2002.

^x Vivendi Environment Key Facts: http://www.vivendiuniversal.com/vu2/en/what_we_do/factsheet_environment.cfm, downloaded Jan. 6, 2002.

^{xi} Public Citizen's Critical Mass and Environment Program, *The Big Greedy: A Background Check on the Corporations Vying to take over New Orleans' Water System*, Sep. 2000, at 6-7.

^{xii} See *The Big Greedy*, at 6-7.

^{xiii} See *The Big Greedy*, at 6-7.

^{xiv} See *The Big Greedy*, at 6-7.

^{xv} See *The Big Greedy*, at 6-7.

^{xvi} See *The Big Greedy*, at 6-7.

^{xvii} General Agreement on Trade in Services (GATS), Annex 1B, Article XIX – available at http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm.

^{xviii} GATS Article XIX.

^{xix} Scott Sinclair, *Facing the Facts: A Guide to the GATS Debate*, Canadian Centre for Policy Alternatives, 2002, at 11.

^{xx} GATS Article I-3-b.

^{xxi} GATS Article I-3-a-i.

^{xxii} GATS Article I-3-a-ii.

^{xxiii} GATS Article I-2. The four modes of services are: Mode 1 - cross border trade in service; Mode 2 - use of service abroad; Mode 3- commercial presence, Mode 4 - movement of natural persons.

^{xxiv} See GATS Article V-1-a, Footnote 1, "This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply."

^{xxv} See WTO member countries schedules of commitments at http://www.wto.org/english/tratop_e/schedules_e/goods_schedules_e.htm.

^{xxvi} Steve Shrybman, *Thirst for Control: New Rules in the Global Water Grab*, Council of Canadians, 2002, at 34.

^{xxvii} See Public Citizen Global Trade Watch, *Whose Trade Organization: Corporate Globalization and the Erosion of Democracy*, Public Citizen, Inc., 1999, Chapter One discussion of the Shrimp-Turtle, Tuna-Dolphin and Venezuela Gas cases.

^{xxviii} GATS Article VI-4.

^{xxix} GATS Article VI-4-b.

^{xxx} GATS Article I.

^{xxxi} WTO Secretariat, "Report on the Meeting Held on Oct. 2, 2001," Note by the Secretariat, S/WPDR/M/13, at 2. This leaked WTO document is on file with Public Citizen.

^{xxxii} WTO Committee on Domestic Regulations, "Examples of Measures to be Addressed by Disciplines under GATS Article VI.4," WTO Document Job (02) 20/Rev., Oct. 18, 2002. This leaked WTO document is on file at Public Citizen.

^{xxxiii} See Public Citizen Global Trade Watch, *Whose Trade Organization: Corporate Globalization and the Erosion of Democracy*, Public Citizen, Inc., 1999 discussion of GATT dolphin case.

^{xxxiv} WTO Secretariat, "Report on the Meeting Held on Oct. 2, 2001," Note by the Secretariat, S/WPDR/M/13, at 2.

^{xxxv} The WTO GATS negotiations rely on three services classifications systems, individual nation schedules of commitments which are appended to the 1994 GAT agreement; sectors identified in the GATT Secretariat's Services Sectoral Classification List; and sectors defined and numbered in the U.N. Provisional Central Product Classification (CPC) system. (See U.S. Schedule of Commitments Under the GATS, Investigation No. 332-354, Aug. 1998, at vii for fuller explanation of the classification systems).

^{xxxvi} See *Thirst for Control*, at 39.

^{xxxvii} The EU is seeking to advance this agenda in the International Organization for Standardization (ISO) as part of the WTO GATS 2000 negotiations and as part of the larger WTO "Doha Agenda." [See Public Citizen, "Proposal for Drinking Water and Waste Water Management Committee in ISO," *Harmonization Alert*, Vol. 2. No. 6, May/June 2001.] The EU succeeded in getting a clause about future negotiations on "environmental services" inserted into the 2001 WTO Doha Ministerial Declaration. This element of the Doha Ministerial text may provide the EU with a route to negotiate on water services outside of the bilateral GATS negotiations, and as part of major horse-trading in the larger multilateral framework. In other words, by adding this second

avenue to pressure for water privatization, they will be able to trade-off major items, such as access to U.S. and developing country water markets in exchange for access to European agricultural markets.

^{xxxviii} See U.S. summaries available at available at <http://www.ustr.gov/sectors/services/docsvcs.shtml>.

^{xxxix} A complete set of the draft EU request documents can be accessed at <http://www.citizen.org/trade/wto/gats/articles.cfm?ID=7483>

^{xi} European Commission, "Request from EC and its Member States to the United States of America," Ad Hoc 133 Committee, Jun. 3, 2002. A complete set of the draft EU request documents can be accessed at <http://www.citizen.org/trade/wto/gats/articles.cfm?ID=7483>. The EU is proposing a re-classification of environmental services that would rename the classification category "Water for Human Use and Wastewater Management," and would include "potable water treatment, purification and distribution including monitoring," as well as along list of other water related services (Communication from the European Communities and Their Member States, Classification Issues in the Environmental Sector. S/5, Sep. 28, 1999).

^{xii} See U.S. Schedule of Commitments Under the GATS, Investigation No. 332-354, Aug. 1998, at xix – available at <ftp://ftp.usitc.gov/pub/reports/studies/GATS97.pdf>

^{xiii} See USTR Negotiating Proposal, "Energy Services," – available at <http://www.ustr.gov/sectors/services/docsvcs.shtml>

^{xiii} See International Financial Services London, LOTIS Committee, *The Case for Liberalising International Trade in Service*, 2002.

^{xiv} Stephanie Grace, "Water Privatization Idea Killed," *The Times-Picayune*, Oct. 17, 2002.

^{xv} Stephanie Grace, "Nagin Flushes S&WB Dissenters," *The Times-Picayune*, Oct. 26, 2002.

^{xvi} Stephanie Grace, "S&WB Voting Today on Going Private," *The Times-Picayune*, Oct. 16, 2002.

^{xvii} GATS Article XVI-2-a.

^{xviii} Water Quality Financing Act of 2002, H.R 3930, 107th Congress (2002), Duncan, DeFazio, SB 1961 Bob Graham.

^{xix} See Gil Yarron, *The Final Frontier*, Polaris Institute, May 2000.

ⁱ See Public Citizen's Critical Mass and Environment Program, *Reclaiming Public Assets: From Private to Public Ownership*, Sep. 2002.

ⁱⁱ See *Thirst for Control*, at 40-47.

ⁱⁱⁱ *Compania de Arguas del Acoquiya S.A. & Vivendi Universal v. Argentine Republic*, Case No. ARB/97/3, ICSID (W. Bank).
Aguas del Tunari S.A. v. Republic of Bolivia, Case No. ARB 02/3, ICSID (W. Bank).



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