

IMPACT ASSESSMENT RESEARCH CENTRE

WORKING PAPER SERIES

Paper No: 13 / 2005

Enhancing the Contribution of Trade Liberalisation in Environmental Services to Sustainable Development¹

Colin Kirkpatrick,² Clive George³ and Serban Scriciu⁴

ISBN: IARC Administrator, Institute for Development Policy and Management, School of
Further Environment and Development, The University of Manchester, Harold Hankins
details: Building Precinct Centre, Booth Street West, Manchester M13 9QH, UK.
Published Tel: +44-161 275 2808 Fax: +44-161 275 0423
by: Email: iarc@manchester.ac.uk
Web: <http://www.manchester.ac.uk/sed/idpm/research/iarc>

¹ Prepared for the *Workshop on Trade in Services*, ESRC Research Seminar Series: International Trade and Labour Markets, University of Sussex, 1-2 December 2005. The paper draws on work undertaken for the International Centre for Trade and Sustainable Development (ICTSD), Geneva, and published as ICSTD Issue Paper no 3, January 2006.

² Colin Kirkpatrick is Hallsworth Professor of Development Economics and Director of the Impact Assessment Research Centre at the Institute for Development Policy and Management, School of Environment and Development, The University of Manchester. Email: colin.kirkpatrick@manchester.ac.uk.

³ Clive George is Senior Research Fellow with the Institute for Development Policy and Management, School of Environment and Development, The University of Manchester. Email: clive.george@manchester.ac.uk.

⁴ Serban Scriciu is Research Associate with the Institute for Development Policy and Management, School of Environment and Development, The University of Manchester. Email: serban.scriciu@manchester.ac.uk.

Abstract

WTO-led trade liberalisation in environmental services is often seen as having considerable potential for generating ‘win-win’ outcomes for sustainable development. Despite this, progress in liberalising environmental services within the GATS framework has been limited. This paper argues that a major barrier to progress in environmental services liberalisation is uncertainty about the impact of environmental services liberalisation on sustainable development in developing countries. We develop this argument using the example of water services, where market opening needs to be accompanied by effective domestic regulatory measures. The paper argues that uncertainty on the interpretation of the GATS rules on domestic regulation acts as a further constraint on countries’ willingness to make new commitments for trade liberalisation in environmental services. The final section of the paper makes a number of proposals for ‘accompanying policies’ that may be needed to be adopted if progress is to be made in meeting the Doha Development Agenda’s commitment to the reduction or elimination of barriers to trade in environmental services and goods.

1. Introduction

With the adoption of sustainable development as an over-arching policy goal by many international organisations (including the WTO) and national governments, economic efficiency is no longer the sole criterion in the appraisal of trade liberalisation measures. Other considerations, including the social and environmental consequences of trade policies, have received increasing attention in recent years, particularly in relation to their effects on developing countries. As the WTO Director General has stated recently, ‘We must remember that sustainable development is itself the end-goal of this institution. It is enshrined in page 1, paragraph 1, of the Agreement that establishes the WTO’ (Lamy, 2005).

WTO liberalisation in the area of environmental services is widely advocated as a means of enhancing developing countries’ access to private capital, technology and management expertise, and improving market access for exports of environmental services (Hockman, Mattoo and English (eds), 2002, Part IV). It has been argued that by improving access to environment know-how and technology, liberalisation will lead to greater environmental protection, thereby providing a ‘win-win’ outcome for the economy and the environment (OECD, 2000). More generally, liberalisation of trade in environmental services is seen as contributing to the ‘Development Round’ and to the MDGs for poverty reduction, by improving developing countries’ access to water, waste management, and sanitation services.⁵

⁵ The argument that trade liberalisation in environmental services (and goods) will result in a ‘win-win’ outcome is open to a number of different interpretations and the conclusions to be drawn from theoretical and empirical studies can vary according to which definition of ‘win-win’ is used. In this paper it is assumed that ‘win-win’ outcomes occur where trade liberalisation and/or changes in trade rules have positive *economic, environmental and social* impacts.

In the WTO Ministerial Declaration at Doha in November 2001, members agreed to negotiations on the reduction or elimination of tariff and non-tariff barriers for environmental goods and services as part of the negotiations on trade in services within the GATS framework (WTO, 2001), and called for ‘the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services’ (Para 31- iii). But progress has been limited, with 21 offers made in the environmental services sector by July 2005 (WTO, 2005a). There has been a similar lack of progress in negotiations in other services sectors – 69 initial offers had been made by mid October 2005, some two and half years beyond the date by which submissions of initial offers was to take place (WTO, 2005b). Overall, ‘...the quality remains poor. For most sector categories, a majority of the offers do not propose any improvement’ (WTO, 2005b).

This paper seeks to identify the reasons for this *impasse*, and to provide a number of proposals for progressing trade liberalisation in environmental services in a way that will contribute to the goal of sustainable development, particularly in developing countries. The second part of the paper begins with a summary of the GATS framework for negotiations on liberalisation of trade in services, and then goes on to discuss the case of environmental services. The alternative definitions of environmental services are described and the current stage in the ongoing WTO discussions is summarised. The third section argues that the lack of progress in trade liberalisation in environmental services can be attributed to uncertainty as to both the potential impact of liberalisation on sustainable development and the application of the GATS provisions on national autonomy in the domestic regulation policy. The need for effective regulation in the area of infrastructure environmental services such as water and wastewater management is highlighted. The final section provides a summary and conclusions.

2. GATS and Environmental Services

The principles and rules of the WTO affecting environmental services are found in the General Agreement on Trade and Services (GATS). As part of the Uruguay Round, the GATS came into force on 1 January 1995 with a set of binding rules and disciplines to promote liberalisation of services trade and investment. The GATS is intended to promote trade liberalisation in services and applies to measures taken by WTO members that affect trade in services. There are two main components: (a) a framework agreement covering general provisions, rules and principles and (b) national schedules listing specific commitments made by individual countries on access to their domestic market by foreign suppliers. All

services are covered except those supplied in “the exercise of governmental authority”, that is, services which are neither supplied on a commercial basis nor in competition with other service suppliers.⁶

In contrast to trade in goods, where essentially all tariffs must be bound for WTO members, commitments in services only cover those sectors and ‘modes of supply’ that are explicitly scheduled by members of the WTO⁷. The GATS also specifies that the liberalisation process should be conducted with due respect for national policy objectives and the level of development of individual members, both overall and in individual sectors. Moreover, there should be appropriate flexibility for individual developing country members to open fewer sectors, liberalise fewer types of transactions and progressively extend market access in accordance with their development situation (Article XIX.2 and paragraph I.2 of the Guidelines and Procedures for the Negotiations on Trade in Services adopted by the Special Session of the Council for Trade in Services on 28 March 2001).

WTO members’ commitments are specified in the country schedules, which cover at least 161 service activities across 12 classified sectors. The commitments made by a member country relate to market access and national treatment. Market access is a commitment to guarantee a certain level of access in specified sectors. A national treatment commitment implies that the member state will not operate discriminatory measures that benefit domestic services and service suppliers. Members may choose not to make any commitment (with the relevant entry in the schedule being ‘unbound’) or they may commit to guaranteed market access and/or national treatment without limitations (‘none’). The intermediate case of ‘limited bindings’ refers to entries that are conditioned in some way by a limitation (South Centre, 2005). Since market access and national treatment each apply to the four modes of supply, commitments are defined in the form of eight entries per sector.

This voluntary approach means that there is no compulsion on member countries to open up a particular sector or mode of supply if there are regulatory and public policy concerns about the potential impact. Since several of the GATS provisions are conditional upon the commitments made by member countries, individual countries have considerable flexibility to pursue national policy goals. However, if a member does commit to limited bindings, member’s limitations become subject to WTO disciplines. Article XVII disciplines discriminatory treatment between foreign service suppliers and domestic providers, subject to exceptions listed by a member country in its schedule. Measures that do not

⁶ This has been interpreted to mean that only services that are supplied on a non-profit basis by a public monopoly supplier are excluded from the scope of GATS (Krajewski, 2004). This exclusion is of particular importance in the context of ‘services of general interest’, such as publicly provided environmental services (for example, water services).

⁷ GATS defines four so-called modes of supply (Article I:2): cross-border supply (Mode 1); consumption abroad (Mode 2); commercial presence (Mode 3); presence of natural persons (Mode 4).

distinguish formally between foreign and domestic suppliers and services, but which nevertheless alter the conditions of competition to the disadvantage of foreign service suppliers are covered by Article XVII. Similarly, Article XVI details quantitative restrictions affecting services trade, including the establishment of public monopolies or exclusive service suppliers that are prohibited unless they are listed in a country's schedule of commitments. GATS also contains general exceptions for security or public health reasons (Article XIV). According to this provision, GATS does not preclude the application of measures, which are necessary to protect national security or human, animal or plant life provided such measures, unless the measures are for 'arbitrary or unjustifiable discrimination between countries'. There are additional provisions on subsidies (Article XV) and on government procurement (Article XIII). The GATS states that any new regulations must not be more restrictive in sectors in which they are already scheduled and where commitments have been undertaken.

The negotiations on GATS are conducted on the basis of the so-called request/offer approach, which is mainly of a bilateral nature. There is no comprehensive WTO documentation of these requests between WTO members. It is estimated that around 20 developing countries have submitted requests to some trading partners (Marchetti, 2004:17). Developed countries appear to have submitted requests to almost all members, with the result that almost all developing countries will be involved in bilateral negotiations with at least one major trading partner. The European Commission, for example, submitted requests to 109 WTO members (EC, 2003). According to the Chairman of the Trade Negotiations Committee, 'The request – offer process involves a myriad of time- and resource- consuming bilateral meetings. Proposed GATS commitments in offers require that governments consult with a complex web of consumer, industry, regulatory and ministry representatives. Moreover, because the process is iterative, there will be no time to spare in 2006 in arriving at final offers that fulfil a collective objective' (WTO, 2005a).

These difficulties in the modalities of the negotiating process for services has led to the suggestion that the existing ad hoc groups of WTO members ('Friends Groups') that have a common interest in pushing a particular agenda forward, might form themselves into plurilateral groups to directly negotiate within sectors where the request-offer process is a restraining factor.

Forty-eight WTO members have submitted initial overall offers for environmental services. Of the 25 offers that are publicly available, 11 offer to make new commitments on environmental services (Grosso, 2005:15). Only two developing countries have submitted negotiating proposals for environmental services (Marchetti, 2004:18). The European Commission's initial offer of 10 June 2003 is based on its proposed new classification of environmental services (see below), and offers full commitments in all sub-sectors with the notable exception of water collection, purification and distribution services. The EC has made requests on environmental services to 72 countries (WDM,

2003). These requests are based on its proposed reclassification of environmental services and asked for the removal of all respective discriminations and restrictions, including water distribution services (Krajewski, 2004). In contrast, the United States offered full commitment in environmental services using its own classification that does not include water delivery services as environmental services.

Traditionally, environmental services have been understood in terms of infrastructure that provides water and waste treatment services, often by the public sector. More recently, however, the definition of environmental services has been expanded to include other 'non-infrastructure' environmental services (e.g. air pollution control) and environment-related support services (e.g. environmental consultancy) (Grosso, 2005). The WTO Committee on Specific Commitments has had an ongoing discussion on whether and how the environmental services section contained in the WTO Secretariat Services Classification List (MTN.GNS/W/120) should be revised. Many delegations believe that the existing classification is obsolete because it does not accurately reflect how business now operates in this sector. But opinion differs on how the coverage of the classification should be revised (WTO, 2005c).

The narrow GATS classification framework defines environmental services as end-of-pipe public infrastructure services that largely focus on waste management and pollution control. The main instrument used in the WTO is the Services Sectoral Classification List (W/120), which is based on the Provisional United Nations Central Product Classification (Provisional CPC). The environmental services sector comprises (a) sewage services (b) refuse disposal services (c) sanitation and similar services (d) other (cleaning services for exhaust gases, noise abatement services, nature and landscape protection services, and other environmental services not elsewhere classified).⁸

The limitations of the W/120 classification are the result of several developments in the characteristic features of the environmental services sector. These developments comprise a combination of new regulatory requirements for the emergence of private sector involvement in the supply of environmental services, growing public sensitivities to environmental problems and the shift in environmental regulatory approaches from 'end of pipe' pollution control to pollution prevention through the adoption of technologies for cleaner production and products (OECD, 2000).

An informal working group of experts meeting under the auspices of the OECD and the Statistical Office of the European Community (Eurostat) developed a more comprehensive classification of environmental services. The OECD/Eurostat definition includes services provided to 'measure,

⁸However, no classification is obligatory and WTO members are free to use any classification they prefer or to develop a classification of their own, so long as they provide a 'sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment'.

prevent, minimise or correct environmental damage to water, air, soil, as well as problems related to waste, noise and eco-systems. The classification system encompasses services relating: (i) to pollution management, including those related to the construction and installation of facilities for such purposes (ii) cleaner technologies and products, and (iii) technologies and products which reduce environmental risk and minimise pollution and resource use' (OECD/Eurostat, 1999).

Several members of the WTO Committee on Specific Commitments have suggested alternative definitions of environmental services that could be used when countries submit their requests and offers. The EC proposes to divide the sector into seven sub-sectors, namely (1) water for human use and wastewater management (2) solid/hazardous waste management (3) protection of ambient air and climate (4) remediation and clean-up of soil and water (5) noise and vibration abatement (6) protection of biodiversity and landscape, and (7) other environmental and ancillary services. The EC's approach closely resembles the OECD-Eurostat classification with the important exception of the classification of water for human use as an environmental service.⁹

The ongoing discussions on the classification of environmental services are confronted by the problem of inter-sectoral services. While many environmental services fall within the scope of other GATS classification sectors, such as business, construction and engineering, education and tourism services, the GATT classification system is such that each sector is mutually exclusive so that services under one category should not be covered by another category. This makes it difficult to deal with integrated services particularly in the area of environmental protection. A further problem associated with the classification of environmental services is the relationship with environmental goods. Many suppliers of environmental services integrate their services with environmental goods, as for example in the manufacture, installation and maintenance of pollution control equipment. This complicates the negotiation process where services are dealt with under GATS and goods as part of tariff liberalisation negotiations.

3. Explaining the Lack of Progress in Environmental Services Trade Liberalisation

The claims for significant 'win-win' gains from environmental services trade liberalisation stand in stark contrast to the virtual standstill in new market opening commitments. What factors might explain this impasse? The core argument of this paper is that *uncertainty* linked to market opening for environmental services within the WTO framework has had a major chilling effect on countries' willingness to liberalise trade in environmental services. There are two dimensions to this uncertainty. The first relates to

⁹ The inclusion of water services for human use in environmental services has been controversial, and it has been argued by civil society that water delivery services should not be covered by GATS obligations (Civil Society Submission to the WTO Ministerial Conference, 2003).

uncertainty about the impact of environmental services liberalisation on sustainable development. The second is uncertainty associated with the GATS rules and WTO framework for negotiations as they apply to environmental services.

3.1 Uncertainty about Development Impact

The Doha Ministerial Declaration mandate called for the pursuit of multilateral negotiations that would contribute to global economic welfare and also support the development of less and least developed economies. The current Round has become known as the Doha *Development Agenda* and the challenge confronting WTO negotiators is to agree on a set of liberalisation measures that will deliver a sustainable development outcome.

A combination of classical trade and welfare theory can be used to deduce, *under idealised market conditions*, that trade liberalisation will lead to increased economic welfare and ‘optimal’ environmental quality. However, *in imperfect market conditions*, ‘win-win’ outcomes are not guaranteed. In real world situations, both losers and gainers should be expected. ‘Win-win’ outcomes may be potentially realisable but, whether this is achieved in practice, may depend on the nature and extent of the flanking and other supporting measures that are taken. Though there are often potential, aggregate *economic welfare* gains to be made from trade liberalisation, these are not necessarily shared by all countries and all socio-economic groups within these countries. Further, the *environmental* and *social* impacts may be negative, especially where existing environmental and social protection measures are insufficiently effective. As in the case of the theoretical studies, regulatory and other flanking measures assume a potentially pivotal rôle, if trade liberalisation measures are expected to deliver ‘win-win’ outcomes.

This is now accepted at the highest level within the WTO. In a recent speech to the WTO Symposium on Trade and Sustainable Development in October 2005, DG Pascal Lamy said:

‘But – as you may well ask – if Sustainable Development is so central to the WTO, what then is the WTO doing to make it happen? Trade is an engine of economic growth. And if you believe in markets, as I do, you also believe that trade has the capacity to deliver the most efficient allocation of resources, and hence economic growth. However, if you believe in markets, you also believe that they are in need of being (quote unquote) ‘corrected’ every once in a while. In other words, the ‘invisible hand’ itself needs to be ‘taken by the hand’ sometimes.

So what does this all mean for the WTO? It means that while the WTO has the capacity to open borders – and to thereby switch on an important engine of growth – for the benefits of that growth to show, Members will need ‘accompanying policies’. On the social side, these will be needed to ensure that a fair and equitable distribution of the benefits takes place. On the

environmental side, they will be needed to endure that trade – which has the capacity to help the environment – does not end up going the other way.

I hasten to add that these ‘accompanying policies’ can no longer be looked at by the WTO as the responsibility of other organisations. The WTO is responsible for them too.....Also important are tools – such as Sustainability Impact Assessments – which can help Members, at the national level, identify the ‘accompanying policies’ that they need.’ (Lamy, 2005)

The recent Global Trade and Financial Architecture Project¹⁰ reaches similar conclusions on the need to ‘openly recognise and explicitly address’ domestic adjustment costs associated with trade liberalisation: ‘the trading system can be made more supportive of development by the provision of independent monitoring of the development impact of trade and trade-related policies, together with the proposed aid-for-trade integration mechanism’.

To engage effectively in the GATS process, developing countries need to have the capacity to assess the potential economic, social and environmental benefits and costs of liberalising their services sub-sectors before scheduling commitments. Here, the greater use of impact assessment (IA) methods, such as sustainability impact assessment (SIA), can make an important contribution in informing policymakers of the likely impact of liberalisation on their national development goals (George and Kirkpatrick, 2004; Lee and Kirkpatrick, 2001). Sustainability Impact Assessment (SIA) provides a methodological framework for the systematic ex ante appraisal of the potential benefits and costs of adopting a proposed policy or measure. SIA is a tool that supports more informed decision making, based on the available evidence. In the context of trade negotiations, Sustainability Impact Assessment is increasingly being used to assess the likely economic, social and environmental effects of trade negotiations on the countries participating in the negotiations. The European Commission, for example, is committed to undertaking a SIA for all bilateral and multilateral trade negotiations, including the WTO Doha Development Agenda, with particular attention being given to the potential impacts on the EU’s developing country trading partners.¹¹

Better understanding of the likely consequences will enable developing countries to negotiate more effectively under the GATS, and to ensure that appropriate regulatory and other mitigation measures (‘accompanying measures’) are in place to offset the potential adverse consequences of liberalisation. In the specific context of environmental services trade liberalisation, a major constraint on the willingness of developing countries to make commitments, has been the concern that the potential developmental

¹⁰ <http://www.ycsg.yale.edu>

¹¹ The EC-funded SIA studies on trade are available on www.sia-trade.org.

impact of market opening are at best uncertain, and at worst harmful to the economy's prospects for sustainable development trajectory. Proposals for the liberalisation of environmental services under the GATS framework have stimulated considerable public debate on the potential negative impact of WTO-led liberalisation of environmental services on sustainable development relating to capacity to mitigate the potential negative the potential impact on sustainable development.

These concerns as to the developmental impacts of environmental services liberalisation are exemplified by the issue of water services and the GATS (Kirkpatrick and Parker, 2005; Rijsberman, 2004; ODI, 2005; Tuerk, Ostrovski and Speed, 2005). Traditionally, environmental services have been considered mainly in relation to the operation of infrastructure facilities to provide water and waste treatment services, which account for as much as 80 per cent of the environmental services market. Historically, the major water and waste management services were largely provided by the public sector. However, over the past two decades, trade in environmental services have grown as a result of the adoption of policies aimed at encouraging private sector participation in the supply and management of environmental services (Kirkpatrick and Parker, 2005; Kirkpatrick, Parker and Zhang, 2006). This has resulted in an increase in private sector participation in water services provision in both developed and developing countries, particularly during the 1990s (World Bank, 2003: 144; Baumert and Bloodgood, 2004).

Private participation in the water and sanitation sector in developing countries has been predominantly undertaken by foreign companies. The global water services market is dominated by a small number of multinational corporations, often working in consortia involving local enterprises, with the five biggest private sector companies (Suez, Veolia (formerly Vivendi Environment), Sociedad General de Aguas de Barcelona, Thames Water and Benpres Holdings) accounting for 45 per cent of private projects in the sector during the 1990s (World Bank 2003: 147). Liberalisation of environmental services under mode 3 would be expected to encourage further market involvement by foreign companies in water services delivery in developing countries.

While the forms of private participation in the water sector vary in the allocation of risk, duration of the arrangement and assigning of asset ownership, all involve some form of contract with, or regulation by, the public sector. If a government decides to involve private firms, including foreign ones, in the provision of services in a monopoly or oligopoly market structure, it is desirable to establish a regulatory framework that can control for inefficient monopoly behaviour. Where the service is a basic good such as water for household use, the case for regulation is reinforced by the need to ensure that the welfare and social objectives for the sector are met.

Water is both essential for life and as a natural resource. These characteristics of water provide additional arguments for regulation on social and environmental grounds. Where a service is regarded as meeting a basic need or entitlement, regulation will be needed to ensure universal access. This rationale for regulation has particular significance in the case of water services in developing countries, where improving access to safe, reliable and reasonably priced water services is a priority. Similarly, there is often a need for regulation based on environmental considerations where, for example, excessive extraction of water causes negative externalities by reducing the quality of the remaining water supplies.

The implications for the adoption of GATS liberalisation in infrastructure environmental services such as the distribution of water services, are as follows. First, a regulatory institutional structure is needed to ensure compliance with economic, social and environmental objectives. Second, regulatory capacity needs to be strengthened and effective regulatory institutions established. Market liberalisation in the context of non-competitive markets and institutional and regulatory deficiencies is unlikely to yield the standard economic performance benefits of trade liberalisation and may worsen inequalities in the distribution of services and in the access of the poor to the services. Where regulatory frameworks are absent or ineffective, the gains will be less, the outcome for sustainable development more uncertain, and public opposition more intense. This suggests that developing countries with limited regulatory resources should adopt a cautious approach to liberalisation of infrastructural environmental services, by sequencing the liberalisation programme to match the development of the regulatory institutional capacity.

3.2 Uncertainty about GATS Rules

There is considerable uncertainty associated with the interpretation of the WTO framework of rules. As Stevens and Holmes (2005) observe:

‘the scope of the rules is uneven, their meaning not always unambiguous, and enforcement is erratic since it depends either on members ex ante understanding accurately what is required and doing it voluntarily or ex post being required to do so through dispute settlement. Opinion in the wider community is very sharply divided on the desirability of the impact that the rules are deemed to have, but the debate is often couched in very unsatisfactory terms because of fundamental differences in understanding of what the rules mean in practice.’

The uncertainty as to what the rules do, and do not allow, is particularly marked in relation to the GATS rules on a country’s freedom to regulate its services sector. The Preamble to the GATS recognises ‘the right of members to regulate, and to introduce new regulation, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the

degree of development of services regulations in different countries, the particular need of developing countries to exercise this right'. Article VI (Domestic Regulation) aims to deal with impediments to trade and investment resulting from domestic regulation, but requires only that in sectors where commitments are undertaken, each member shall ensure that all measures of general application are administered, 'in a reasonable, objective and impartial manner'.

It would seem, therefore, that commitments under the GATS to grant market access in sectors such as environmental services where domestic regulation plays an important role need not entail any weakening of national autonomy in regulatory policy. There are concerns, however, about the interpretation of the GATS, and the way in which it may be defined in the ongoing negotiations (Chandra, 2003; IIED-ICTSD, 2003). Despite the GATS' explicit recognition of 'the right of Members to regulate', there is ambiguity as to the range of services covered by the GATS, in particular the boundary between 'services provided in the exercise of government authority', which are excluded from the agreement, and other services that are supplied on a 'commercial basis' or 'in competition with one or more service suppliers'. At present, this ambiguity may be in member countries' interests, in that governments are free to define and treat government services as they decide, and do not need to notify or explain their definition. However, if the negotiations move towards establishing a tighter definition, the autonomy of national governments over publicly provided services, such as water, could be undermined if the sector is scheduled.

The GATS Article VI (Domestic Regulation) on domestic regulation also creates problems in interpretation, which means that further negotiations are required to ensure 'that measures relating to qualifications requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services' (Article VI. 4). Article VI.4 calls for further work on disciplines that would help ensure that regulatory measures affecting services are reasonable, objective and impartial, and spells out the objectives of possible new disciplines for domestic regulation measures. These would aim to ensure that regulatory requirements are (i) based on objective criteria and transparent criteria, such as competence and the ability to supply a service (ii) not more burdensome than necessary to ensure the quality of the service (iii) in the case of licensing procedures, not in themselves a restriction on the supply of the service (Mattoo and Sauve, 2003). In sectors where a member has undertaken specific commitments, pending the entry into force of disciplines developed for these sectors, the member must not apply licensing and qualification requirements or technical standards that may ultimately nullify or impair such specific commitments (Article VI.5). In other words, the provision recognises the right of countries to apply domestic regulations and also their right to impose restrictions on trade, the only requirement being that countries only apply such regulations that do not constitute 'unnecessary' barriers to trade (Drabek, 2005). It has been argued, however, that the limited

case law on services rules suggests that greater weight will be given to market access commitments. Stevens and Holmes (2005) point out that in the two GATS disputes on which the Appellate Body has made a judgement (Mexican telecoms and online gambling case brought by Antigua against the US), the judgments have been in favour of market access commitments rather than domestic regulation. Higgott and Weber (2005) reach a similar conclusion and suggest that ‘what these two cases demonstrate is the degree to which trade law generally and the GATS in particular, as key elements in the DDA, are about reinforcing the commercial logic at the expenses of wider socio-political and cultural logics’.

In an effort to strengthen the application of the provision on domestic regulation, a necessity test has been proposed, which would leave governments free to deal with domestic economic and social regulation, provided that any measures taken are no more burdensome than necessary to achieve the relevant objective. The measures are also likely to have to be non-discriminatory, unless a national treatment limitation had been entered for that measure in the commitment schedules (the precise relationship between national treatment and future IV.4 remains to be determined). Important unanswered questions remain about the feasibility and desirability of incorporating a necessity test for services trade in the GATS provisions for domestic regulation (Chandra, 2003:2005-06).

4. Conclusions

This paper has been concerned with the limited progress made in liberalisation of trade in environmental services as part of the WTO Doha Development Agenda negotiations. The importance of many environmental services to human well-being means that they are central to the Millennium Development Goals. GATS liberalisation of environmental services has the potential to contribute to the advancement of these international development goals. But progress so far in negotiations for the liberalisation of trade in environmental services has so far been limited. We advance a number of explanations for this lack of progress, and argue that the binding constraint is uncertainty about the developmental impacts of market opening in environmental services and in the interpretation of the GATS rules.

The size of the potential gains from environmental services liberalisation will depend to a significant extent on complementary domestic market reform. In monopolistic markets, regulation is required to ensure that the potential gains of services liberalisation are maximised. Where these institutional and policy frameworks are not in place, or where the environmental services trade liberalisation is not sequenced in relation to domestic regulatory capacity, the potential gains in terms of sustainable development are likely to be compromised. If regulation is absent, or ineffective, the potential economic, social and environmental gains from services liberalisation will be significantly reduced, and even reversed. This implies the need for capacity building initiatives to support the establishment of an

effective regulatory institutional framework. Equally, the current uncertainty on the interpretation of the GATS rules, especially the way in which market access commitments are weighted against domestic regulation autonomy in dispute judgements, is acting as a deterrent to countries' willingness to enter into meaningful discussions on improved market access for environmental services.

The realisation of the potential benefits for sustainable development from environmental services liberalisation is dependent upon the careful selection of sectors and modes of supply where market opening will be compatible with national development goals. Effective mitigation measures, which are likely to include a regulatory policy framework that can safeguard the public interest are important preconditions for ensuring an outcome that contributes to sustainable development. For this to be achieved within the framework of WTO trade negotiations will require major increments in 'aid for trade' which can help developing countries to take advantage of the opportunities for the achievement of their sustainable development objectives through the growth in international trade in environmental services.

References

- Baumert, J. and Bloodgood, L. (2004) 'Private Sector Participation in the Water and Wastewater Services Industry' Office of Industries Working Paper no ID-08. Washington DC, US International Trade Commission.
- Chandra, R. (2003) 'Social Services and the GATS: Key Issues and Concerns' *World Development*, 31 (12): 1997-2012.
- Civil Society Submission to the World Trade Organisation's 5th Ministerial Conference in Cancun, 10-14 September, 2003.
- Drabek Z. (2005) 'Limits to Harmonization of Domestic Regulations' Mimeo.Geneva.
- European Commission (EC) (2003) Communication from the European Communities and its Member States, Trade in Services, Conditional Initial Offer, 10 June TN/S/O/EEC WTO: Geneva.
- George, C. and Kirkpatrick, C. (2004) 'Trade and Development: Assessing the Impact of Trade Liberalisation on Sustainable Development', *Journal of World Trade*, 38,3, pp.441-469.
- Grosso, M. (2005) 'Managing Request-Offer Negotiations under the GATS: the Case of Environmental Services', *OECD Trade Policy Working Paper No 11*, TD/TC/WP(2004)8/FINAL. OECD: Paris.
- Higgott R. and Weber H. (2005) 'GATS in Context: development, an Evolving *Lex Mercatoria* and the Doha Agenda' *Review of International Political Economy*, 12:3, August, pp434-455.
- Hockman, B., Mattoo, A. and English A. (eds) (2002) *Development, Trade and the WTO: A Handbook*, World Bank: Washington DC.
- IIED – ICTSD (2003) 'Water, Development and the GATS', *Policy Views on Trade and Natural Resource Management*, September, London: International Institute for Environment and Development and International Centre for Trade and Sustainable Development.
- Kirkpatrick, C. and Parker, D. (2005) 'Domestic Regulation and the WTO: The Case of Water Services in Developing Countries', *World Economy*. October.

- Kirkpatrick, C., Parker, D. and Zhang, Y-F (2006) 'State versus Private Sector Provision of Water Services in Africa' *World Bank Economic Review*, forthcoming.
- Krajewski, M. (2004) 'Environmental Services of General Interest in the WTO: no love at first sight', *Journal of European Environmental and Planning Law*, vol.2, pp.103-115.
- Lamy, P. (2005) 'Trade can be a friend, not a foe, of conservation'. Speech at WTO Symposium on Trade and Sustainable Development. 10-11 October 2005
(http://www.wto.org/english/news_e/sppl_e/spp107_e.htm).
- Lee, N. and Kirkpatrick, C. (2001) 'Methodologies for sustainability impact assessment of proposals for new trade agreements', *Journal of Environmental Assessment Policy and Management*, November.
- Marchetti, J.A. (2004) 'Developing Countries in the WTO Services Negotiations' *Staff Working Paper ERSD-2004-06*, Economic Research and Statistics Division, World Trade Organisation: Geneva.
- Mattoo, A. and Suave, P. (2003) *Domestic Regulation and Services Trade Liberalisation*. World Bank: Washington DC.
- ODI (2005) *Water and the GATS: Mapping the Trade – Development Interface*. ODI Briefing Paper, October. ODI: London.
- OECD/Eurostat (1999) *Environmental Goods and Services Industry Manual for the Collection and Analysis of Data*. OECD: Paris.
- OECD (2000) Environmental Services: The 'Win-Win' Role of Trade Liberalisation in Promoting Environmental Protection and Economic Development. COM/TD/ENV(99)93/FINAL.
- Rijsberman F. (2004) 'Sanitation and Access to Clean Water' in B. Lomborg (editor) *Global Crises, Global Solutions*. Cambridge University Press: Cambridge.
- South Centre (2005) 'GATS Conditions to Achieve Developing Country Policy Objectives' *T.R.A.D. E. Occasional Paper* no 13 (March) Geneva.
- Stevens C. and Holmes P. (2005) 'How Constraining is GATS?' Paper presented at ESRC Seminar on Trade in Services, University of Sussex, 1-2 December 2005.
- Tuerk E., Ostrovski, A. and Speed, R. (2005) 'GATS and its impact on private sector participation in water services' in Edith Brown Weiss, Laurence Boisson de Chazournes and Nathalie Bernasconi (eds) *Fresh Water and International Economic Law* Oxford University Press.
- World Bank (2003) *Private Participation in Infrastructure: Trends in Developing Countries in 1990-2001*, Washington, DC: World Bank.
- World Development Movement (WDM) (2003) 'Whose Development Agenda? A Preliminary Analysis of the 109 EU GATS Requests' WDM: London.
- WTO (2001) Ministerial Declaration, WTO Ministerial Conference, Geneva: WTO.
- WTO (2005a) 'Report by the Chairman to the Trade Negotiations Committee' Special Session of the Council to the Trade Negotiations Committee, 13 October TN/S/22. WTO: Geneva.
- WTO (2005b) 'Report by the Chair to the Trade Negotiations Committee' Special Session of the Council for Trade in Services. 11 July TN/S/20.
- WTO(2005c) 'Environmental Issues Raised in the Services Negotiations' Committee on Trade and Environment 11 October. WT/CTE/GEN/11/Suppl.1.