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Trade in Water Services: Improving Certainty with Respect to Drinking Water

by

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INTRODUCTION

- This paper will look at
  - Service liberalisation, human rights and the SDG
  - The General Agreement on Trade in Services (GATS)
  - Service Classification under the GATS
  - Problems of Interpretation
  - How May Greater Certainty be achieved?

SERVICE LIBERALISATION, HUMAN RIGHTS AND SDGS

- Service liberalisation and improving water supply
- In 2017 there were nearly 2.1 billion people without access to adequately managed drinking water (UNICEF/WHO)
- In 2010 the UN General Assembly and Human Rights Council recognised the existence of the right to water within international law
- Sustainable Development Goal 6.1
  - 'By 2030, achieve universal and equitable access to safe and affordable drinking water for all'

GATS: Key Provisions

- Article II:1: Most Favoured Nation (MFN)
  - "With respect to any measure covered in this Agreement, each Member shall accord immediately and unconditionally to service and service suppliers of any other Member treatment no less favourable than it accords to like services and service suppliers of any other country".

- Article XVI – Market Access
  - "With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule"

GATS: Key Provisions Cont.

- Article XVII – National Treatment obligation
    - "In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers."
- Also Article III Transparency
    - Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement…..

SERVICE CLASSIFICATION

- Classification Documents
  - Services Sectorial Classification List (W/120)
  - Central Product Classification (CPC)
    - Creation of Service Sectors and Sub-Sectors
    - Member States are free to use either classification system or to adopt another of their choosing
- Environmental Services
  - The W/120 creates four subcategories within this sector namely 'sewage services', 'refuse disposal services', 'sanitation and similar' and 'other'.
    - May include cleaning, noise abatement and landscaping.
  - No specific category for water or water services
  - Limited number of commitments
  - Proposal of the European Community (2000)

PROBLEMS OF INTERPRETATION

- Limited case law
- *US - Gambling*
  - Remote supply of gambling services
  - Commitment to 'other recreational services (except sporting)' interpreted as including 'gambling and betting services' within its scope.
    - Violation of Article XVI
  - Public morals exception (Article XVI(a))
  - Unintended liberalisation
- Challenges for the liberalisation of water services
  - Possible chilling effect
  - Monopolistic and interconnected nature of water supply
  - Need to support investment

HOW MAY GREATER CERTAINTY BE ACHIEVED?

- Application to water services a controversial issue
  - Links to globalisation and privatisation
- Improved understanding of the process
- Services sub-sector 'water services including drinking'
- Supporting investment and the attainment of SDG 6 (6.1)