



## **Water in the Current Round of WTO Negotiations on Services**

*By Ellen Gould*

### **Summary**

By March 2003, members of the WTO will have to decide whether to offer their water services to be fully covered by the General Agreement on Trade in Services. These “initial offers” are the beginning of an intense negotiating process scheduled to conclude January 2005.

The impacts of deciding to offer up water services would be:

1. Losing local decision-making authority over how water services are provided.
2. Subjecting all water regulations – e.g. water quality, universal access to service - to potential trade challenges.
3. Threatening conservation of water as a natural resource.
4. Creating uncertainty and legal risk. WTO members are being pressured to make legally binding commitments when it is not clear either what these commitments cover or when governments would be violating the agreement.

### **Background on the GATS Negotiations**

The General Agreement on Trade in Services is an existing WTO agreement currently being renegotiated to expand its impact. At the end of June 2002, governments began ex-

changing requests to liberalize specific services under GATS rules. If liberalization is bound under the GATS, it becomes effectively irreversible and any violations can be sanctioned under international law. The GATS applies automatically to every level of government: federal, state/provincial, municipal and any non-governmental body with governmental authority, including public utilities.

By March 2003, all WTO members will have to indicate what concessions they are willing to make. These “initial offers” will be followed by negotiations where governments will be individually pressured to cover more services under the GATS. The negotiations are scheduled to conclude on January 1, 2005.

The European Commission has taken the most aggressive position on liberalization of water services of any WTO member, pushing to get water for human use classified as a service on the GATS negotiating table. European Commission correspondence, released due to a freedom of information request<sup>1</sup>, indicates that their GATS position was drawn up in close consultation with Europe’s largest water corporations: Vivendi, Suez-Lyonnaise des Eaux, Thames Water, and AquaMundo. The EC guide to the GATS says “Further liberalization of this sector would offer new business opportunities to European companies, as the expansion and acquisitions abroad by a number of European water companies show.”<sup>2</sup>

## The Leaked 30 June 2002 EC Request on Water

The EC is asking countries to take full GATS “market access” and “national treatment” commitments for investments in:

“Water for human use & wastewater management: Water collection, purification and distribution services through mains, except steam and hot water; Waste water services.”

Where countries have already made commitments of waste water services, the EC is also asking for the “limitations” – exceptions to full coverage under the GATS – countries placed on these commitments to be eliminated. For example, the US committed the waste water sector when it originally signed the GATS, but excluded publicly contracted services from its commitments. In the current round of GATS negotiations, the EC is asking the US to: “Remove limitation of commitments to services contracted by private industry.” The EC would appear to be seeking access for its companies to publicly contracted environmental services.

## The Impact of GATS Market Access and National Treatment Commitments on Water Services

Countries that make unlimited market access commitments under GATS Article XVI are prohibited from doing a number of things.<sup>3</sup> They violate the agreement if they “maintain or adopt” monopolies or exclusive suppliers of a service whether this is on the basis of a regional subdivision or on the basis of their entire territories. Under the GATS “opening service markets to foreign providers is self evidently inconsistent with retaining public sector monopolies”.<sup>4</sup> If governments lock in

privatization with GATS commitments, they are essentially prevented from reversing course because the GATS makes it extremely difficult for commitments to be withdrawn.

Countries that make unlimited “national treatment” commitments under GATS Article XVII are prohibited from providing any preferential loans, loan guarantees, grants, or doing anything else that might change the conditions of competition in favour of domestic water service suppliers. The GATS definition of a service supplier makes no distinction between those that are “for profit or otherwise, and whether privately-owned or governmentally-owned...” (Article XXVIII)

The EC Director of Trade, Mogens Peter Carl, has stated that the EC’s intent in the GATS negotiations is not to seek privatization.<sup>5</sup> Carl argues that the flexibility of the GATS allows governments to protect their public services if they want to: “Monopoly suppliers, whether public or private, can for example be maintained and limitations of any other kind can be imposed on foreign suppliers if that is deemed necessary to safeguard a public service.”

While it is true that governments can decide either to not make any commitments or to place so many limitations on their commitments that they might be able to safeguard public services, that is not what the EC is seeking. The EC has asked countries to make *unlimited* market access and national treatment commitments of water services, and it is making this request of countries where water services are primarily supplied by public utilities. The EC is putting the full weight of its negotiating power behind obtaining “real and meaningful market access for European service providers for their exports of environmental services.” The EC identifies this as one of its main objectives in the current round of GATS negotiations. (See Appendix A “EC Correspondence with European Water Corporations Regarding the GATS Negotiations”)

## The Impact of GATS Disciplines on Water Regulations

In addition to asking for complete commitments on water in its 30 June 2002 GATS requests, the EC also “reiterates its commitment to promote regulatory disciplines in accordance with Article VI:4 of the GATS.” This means the EC is seeking new GATS rules applying to water and other services that would require licensing, standards and qualifications for services to be “no more trade restrictive” or “no more burdensome” than necessary.

For example, in its correspondence with Suez Lyonnaise des Eaux in May 2002 the Commission stated that “Certain regulations applied by governments can constitute more ‘subtle’ barriers for market entry.” The Commission requested help from Suez in formulating the European position in the GATS negotiations, asking company representatives to identify regulations that caused Suez problems: “Are licensing/authorisation requirements and procedures, as well as the application of technical standards, affecting your operations in a negative way?” The Commission asked in particular about universal service provisions. (See Appendix A) It would be useful to know why in confidential consultations with water companies on the GATS the Commission is asking if these companies have problems with universal service provisions. Publicly, the Commission denies the GATS negotiations are a threat to public service regulation.

GATS negotiators have already decided against defining regulatory objectives that would have to be accepted as legitimate by WTO dispute panels. In the absence of such a definition, virtually any government regulation - including universal service provisions - could be judged to be “unnecessary.” Even if a WTO panel accepted that a regulatory objective was legitimate, it could rule that the regulation still violated the GATS because the objective could have been achieved in a less

trade restrictive way. For example, a panel may accept that a government can legitimately seek universal access to drinking water for its citizens. But requiring that a water company subsidize access for the poor from its more profitable operations could be judged unnecessarily trade restrictive. Instead, governments could be expected to provide assistance to the poor so that they could pay the rates the company charged.

A WTO working group has identified regulations (see Appendix B) that would violate the proposed GATS regulatory disciplines, such as:

- “Restrictions on fee-setting” - this could mean governments could not limit or cap the fees charged by water companies in order to ensure equitable access, particularly for the poor.
- “Overly burdensome licensing requirements” - this could mean requirements for water purification, infrastructure construction and maintenance, monitoring, or universal access to services could be challenged as overly burdensome.
- “Federal and sub-federal licensing and qualification requirements and procedures are different, making a license or qualification recognition obtained in one state not valid in other states” - this could mean subnational jurisdictions would be prevented from imposing requirements that were higher than the norm in their countries.

It is very important to be aware that the new restrictions on domestic regulation being negotiated under GATS Article VI.4 would apply to regulations that fully conform with the GATS “non-discrimination” requirement. Trade officials are wrong to assert<sup>6</sup> that governments have nothing to worry about as long as they treat foreign service suppliers and local ones the same. Totally non-discriminatory can already be challenged under the GATS if they violate market access commitments. And if the proposed new disciplines

on domestic regulations are approved, other completely non-discriminatory regulations will become violations of the GATS if they are judged unnecessarily restrictive or burdensome.

The European Commission does not have to advocate new GATS restrictions on governments' regulatory ability as it is now doing. While GATS Article VI.4 provides a mandate for negotiations on the regulation of services, ultimately the negotiations do not need to result in new GATS disciplines. WTO members can decide that new GATS disciplines on regulation are not necessary. Given the critical importance of regulations in areas like water services, all WTO members should be urged not to pursue new GATS provisions through which their regulations could be challenged.

As well as the negotiations to discipline regulation of all services, WTO members are getting specific requests to deregulate sector by sector in many areas that could affect water services. For example, the EC is being asked to eliminate qualifications set for foreign engineers working on temporary visas:

“Remove work permit conditions requiring university degree, professional or technical qualifications demonstrating knowledge and 3 years' professional experience.”<sup>7</sup>

## The Impact of the GATS on Water Management

If governments make commitments of water services under the GATS, how is management of the resource itself affected? In seeking corporate guidance on the EC's GATS position, EC staff have asked European water corporations how water restrictions affect their operations. Acknowledging that ownership of water can be a government prerogative, the Commission asked Thames Water “What if, for instance, the government decides to reduce the amount of water feeding into the

network (because of drought, or agricultural needs, or whatever)?” (See Appendix A)

There is no exception allowed under the GATS (in contrast with other trade agreements) for breaching the provisions of the agreement if the reason for doing so is the conservation of natural resources. In other words, even when governments are pursuing legitimate conservation goals, they can still be found in violation of the GATS.

The EC GATS bargaining position on water services states that their request does not “imply access to water resources.” But this statement cannot provide any assurance to governments that their water management policies will be safe if they make GATS commitments to cover water services. EC trade officials in particular are aware that the “The Agreement encompasses not only measures designed to regulate trade in services directly but also any other measures that might be designed to regulate other matters but which incidentally affect the supply of a service.”<sup>8</sup> The EC lost a WTO case dealing with bananas where they tried to argue that the GATS only applied specifically to services, and not to goods like bananas. In ruling against the EC, the dispute panel said the GATS covers “measures in terms of their effect, which means they could be of any type or relate to any domain of regulation.”<sup>9</sup>

The implication of WTO rulings on the GATS is that if governments make commitments of water services, water resource management policies that negatively impact a corporation could be challenged. EC trade officials already appear to be seeking grounds for such challenges by asking European water corporations about problems they face with water resource management policies. Even if the EC itself does not launch such a challenge, any other WTO member could. When a government agrees to meet one WTO member's request for GATS commitments, this concession is extended automatically to all other members.

## Creating Legal Uncertainty

National governments are currently considering making GATS commitments that would have major implications for local governments – which is where the responsibility for water services often lies. These commitments could be deliberately intended to achieve privatization, with central governments requiring all local authorities to open up their water services to conform with GATS obligations. Or other WTO members could use a country's GATS commitments to challenge local decisions over water.

Assurances are sometimes given that public water services are exempt either under the GATS “governmental authority” (Article I.3.c) or “government procurement” (Article XIII) exemptions. This can leave the impression that even if governments make full commitments of water services, neither public monopolies nor government contracts with private suppliers will be impacted.<sup>10</sup> However, all of the key terms in these GATS exemptions are undefined and there is disagreement on what they mean. No-one can say what is definitely exempt. Trade representatives have stated they are content to leave any ambiguity to be clarified by WTO dispute panels in the event of a dispute.<sup>11</sup>

GATS commitments of water services would consequently create uncertainty for local officials about which policy decisions could trigger application of the GATS and a WTO challenge. For example, if a municipality decided to sell water services to another municipality, this could mean their public water utility now failed to meet the conditions of the GATS exemptions. The WTO Secretariat has stated:

“(T)he question does arise of when public service functions fall within the scope of GATS disciplines and when they do not. A key issue is whether sales are made on a commercial basis. To begin with, it is not completely clear

what the term ‘commercial basis’ means. Nevertheless, if services were deemed to be supplied on a commercial basis, then, regardless of whether ownership was in public or private hands, the sector would be subject to the main GATS disciplines and to the negotiation of commitments under Articles XVI and XVII.”<sup>12</sup>

With these fundamental questions about the GATS unresolved, elected representatives would not be exercising the due diligence required of them if they allow offers to be made on water services in the GATS negotiations.

## Endnotes

- <sup>1</sup> Correspondence between European Commission, DG Trade - Trade in Services, with Thames Water, AquaMundo, Vivendi, and Suez Lyonnaise des Eaux, 15 May to 9 July 2002. This correspondence was obtained through an access request made by Corporate Europe Observatory, a European ngo that has been monitoring corporate involvement in the GATS negotiations (See <http://www.gatswatch.org>). The text of the correspondence is attached as Appendix A, and scanned versions of the original correspondence are attached as Appendix C.
- <sup>2</sup> European Commission, “Opening World Markets for Services: A Guide to the GATS”, <http://gats-info.eu.int/gats-info/guide.pl?MENU=ccc-8>
- <sup>3</sup> The GATS is available at: [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats.pdf](http://www.wto.org/english/docs_e/legal_e/26-gats.pdf)
- <sup>4</sup> LOTIS Committee, “The Case for Liberalising Trade in Services”, International Financial Services, London, 2002.
- <sup>5</sup> Contribution by Mogens Peter Carl, Director European Commission - Trade, to the Hearings of the ITRE Committee, European Parliament, 26 November 2002
- <sup>6</sup> “Local Councils Attack the WTO”, The Guardian, 2 December 2002
- <sup>7</sup> See the UK summary of GATS requests at <http://www.dti.gov.uk/worldtrade/service.htm>
- <sup>8</sup> WTO training package on the GATS, Dec. 1998.
- <sup>9</sup> World Trade Organization, WT/DS27/R/USA, “European Communities - Regime for the Importation, Sale and Distribution of Bananas: Complaint by the United States”, Report of the Panel

- <sup>10</sup> Article I.3.c of the GATS only excludes those governmental services provided neither on a commercial nor on a competitive basis. Very few public services would appear to meet these criteria. Article XIII of the GATS temporarily exempts procurement but does define what "procurement" means.
- <sup>11</sup> Transatlantic Consumer Dialogue meeting with EC and US trade representatives, 30 October 2002, Washington, DC.
- <sup>12</sup> WTO Document S/C/W/46, "ENVIRONMENTAL SERVICES: Background Note by the Secretariat", July 6, 1998, available at [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp)

*Ellen Gould is a Vancouver-based independent consultant on international trade agreements, advising the Harrison Institute - Georgetown University, municipal authorities, and consumer groups on the impact of these agreements. Her reports include: "Impacts of the GATS Negotiations for Consumers" for the **Transatlantic Consumer Dialogue**; "Trade Liberalization and Its Impacts on Alcohol Policy", for Johns Hopkins University's **SAIS Journal**; "International Trade Agreements: A Primer for Local Governments", for the Union of BC Municipalities.*

# Appendix A

## Text of European Commission Correspondence with European Water Corporations Regarding the GATS Negotiations

The following text is some of the correspondence between the European Commission and the European water corporations released in response to a request submitted by Corporate Europe Observatory, an Amsterdam-based non-governmental organization that has been monitoring corporate involvement in the GATS negotiations. The text has been retyped for legibility; copies of the original correspondence are attached in PDF format.

Key points to note:

- the EC communicated extensively with water corporations before it submitted its requests for GATS concessions to other WTO members on June 30, 2002;
- the EC identifies as one of its “main objectives” in the current round of GATS negotiations achieving “real and meaningful market access for European service providers for their exports of environmental services” (see page 3, correspondence following up May 17, 2002 meeting)
- the EC is inviting water corporations to identify regulations that are “subtle” barriers to trade:  
differences in standards among jurisdictions: “a variety of local technical standards might complicate operations and increase costs”; “‘universal service’ provisions”; and procurement regulations (page 2, correspondence following up May 17, 2002 meeting)
- the EC is asking water corporations not only about how regulations of services may cause these corporations problems but as well about restrictions on access to water itself - “what if, for instance, the government decides to reduce the amount of water feeding into the network (because of draught, or agricultural needs, or whatever)?” (July 9, 2002 email to Thames Water Co.) Yet the EC requests on environmental resources claim the EC is not attempting to get commitments that will affect water as a resource.

# List of the Documents Submitted to CEO [Corporate Europe Observatory]

## No. Documents Transmitted to CEO CORRESPONDENCE WITH THAMES WATER

1. E-mail from U. Hauer (TRADE) to THAMES WATER, 15 May 2002: preparatory documents for the meeting of 17 May 2002 (attach: only invitation; for the other 3, see e-mail to VIVENDI, 15 May 2002)
2. E-mail from U. Hauer (TRADE) to THAMES WATER, 31 May 2002: follow-up to meeting of 17 May 2002.
3. E-mail from U. Hauer (TRADE) to THAMES WATER, 14 June 2002: follow-up to meeting of 17 May 2002 (attachment included).
4. E-mail from U. Hauer (TRADE) to THAMES WATER, 3 July 2002: THAMES WATER WTO submission.
5. E-mail from U. Hauer (TRADE) to THAMES WATER, 9 July 2002: THAMES WATER WTO submission.

## CORRESPONDENCE WITH AQUA MUNDO

6. E-mail from U. Hauer (TRADE) to AQUA MUNDO, 2 May 2002: invitation to meeting with environmental services industry, 17 May 2002.
7. E-mail from U. Hauer (TRADE) to AQUA MUNDO, 15 May 2002: preparatory documents for the meeting of 17 May 2002 (attachment included: only the invitation; for the other 3, see e-mail to VIVENDI, 15 May 2002)
8. E-mail from U. Hauer (TRADE) to AQUA MUNDO, 14 June 2002: follow-up to meeting of 17 May 2002 ((attachment included)

## CORRESPONDENCE WITH VIVENDI

9. E-mail from U. Hauer (TRADE) to VIVENDI, 15 May 2002: preparatory documents for the meeting of 17 May 2002 (4 attachments mentioned included)
10. E-mail from U. Hauer (TRADE) to VIVENDI, 14 June 2002: follow-up to meeting of 17 May 2002 (attachment mentioned included)

## CORRESPONDENCE WITH SUEZ

11. E-mail from U. Hauer (TRADE) to SUEZ-LYONNAISE DES EAUX, 14 May 2002: invitation to meeting with environmental services industry, 17 May 2002

12. E-mail from U. Hauer (TRADE) to EZ), 28 May 2002: follow-up to meetings of 17 and 21 May 2002 (attachment mentioned included)
13. E-mail from U. Hauer (TRADE) to SUEZ, 14 June 2002: follow-up to meeting of 21 May 2002

#### CORRESPONDENCE WITH OECD

14. E-mail from Christophe Manet (TRADE) to OCDE, 29 June 1999: EU proposal for new classification
15. E-mail from Christophe Manet (TRADE) to OCDE, 7 July 1999: EU proposal for new classification (reply to a previous one)

#### WTO DOCUMENT

16. WTO Document (CSC), 28 September 1999, Communication from the EC and MS on Classification Issues in the Environmental Services (doc. classified as “restricted”).

European Commission  
Directorate-General for Trade  
Directorate D - Coordination of WTO and OECD matters. Trade questions relating to GATT, services, dispute settlement, Trade Barriers Regulation, Services (including e-commerce)

Brussels  
Trade.D 2/UH D(2002)

Subject: Follow-up to meeting on trade in environmental services in WTO negotiations, 17 May 2002.

Dear [blacked out]

Thank you again for our meeting on trade in environmental services in the WTO/GATS negotiations on 21 May last.

As agreed, we would like to follow-up the discussion we had during that meeting with questions relating to the position, and interests of, the European industry, their main markets, obstacles - if any - to access new markets.

The objective of the General Agreement on trade in services is to provide a framework for progressive liberalisation of trade in services.

A variety of regulatory, administrative, and other measures taken by government can restrict access to their markets for foreign service providers. We would very much appreciate if you could indicate to us, on the basis of your experience, which of the following restrictions are relevant barriers to market entry, and if so, in which markets. If we have missed other barriers you have encountered in your activities in markets outside the European Union, please communicate them to us as well.

### 1.1 Sectors and markets

- Which sub-sectors of environmental services are of particular importance to your international activities (e.g. water and waste water services, waste management, pollution control/reduction, clean-up of soil)?

- Which countries are of particular interest as export markets/destinations for your direct investment?

Ms [blacked out]  
[blacked out]  
[blacked out]

## SUEZ

Commission europeene - B - 1049 Bruxelles, Europese Commissie B-1049 Brussel -, Belgium Telephone (32-2) 299 11 11 Office: CHAR 06/148. Telephone: direct line (32-2) 296.99.58. Fax: (32-2) 299.24.35

- What are the main 'modalities' of operating in emerging markets/developing countries? - concessions, BOTs [Build/operate/transfer], ownership of assets, management contracts?

### 1.2 Market access barriers

- Limitations to foreign equity participation - is this something you have encountered when investing in/acquiring a foreign company;

- Restrictions of legal form of establishment (e.g. only partnership permitted, only representative office permitted, obligation to use joint venture with local companies for certain activities, etc.);

- Reservation of some sectors or activities, or government contracted services to domestic companies;

- Existence of monopoly/duopoly/oligopolies in certain markets, thereby effectively closing the market for new entrants;

- Restrictions on repatriation of profits;

- discrimination compared to national companies operating in this sector, such as different tax regimes;

- Discriminatory taxation for services rendered by companies not established in the country;

- Restrictions/limitations to entry and stay in the export market of managers, specialists or other personnel from 'mother' company.

### 1.3 Regulatory Issues

Certain regulations applied by governments can constitute more 'subtle' barriers for market entry. For instance, the application for licenses, permits or other authorisations might be administered in a very burdensome, costly way, or a variety of local technical standards might complicate operations and increase costs. Also, governments might impose requirements on foreign service suppliers which could seem unreasonable or discriminatory.

- Is government regulation in your sector an issue which affects market access positively or negatively? In what way?

- Are licensing/authorization requirements and procedures, as well as the application of technical standards, affecting your operations in a negative way?

- Is authorization given in a discretionary manner, without clear, transparent criteria on which decision is based?

- How are 'universal service' provisions dealt with?

- Are government procurement rules and/or practices a barrier?

One of the main objectives of the EU in the new round of negotiations is to achieve real and meaningful market access for European service providers for their exports of environmental services. Therefore, we very much appreciate your input in order to sufficiently focus our negotiating efforts in the area of environmental services.

Ulrike Hauer

cc. M. Aguiar Machado, Head of Unit Trade in Services

HAUER, Ulrike (TRADE)

---

From: HAUER, Ulrike (TRADE)  
Sent: mardi 9 juillet 2002 10:27 [Tuesday July 9, 2002]  
To: [blacked out]@thameswater.co.uk  
Cc: [blacked out]@Thameswater.CO.UK  
Subject: RE: Thames Water WTO submission (Virus Checked)

Dear [blacked out]

[blacked out] advised me to contact you if we had any further questions on your contribution on water distribution services with regard to the WTO negotiations.

In fact, I have an additional question which I had not included in my first letter. you mention that Thames Water mainly operates via ownership of assets.

In such contracts, how is the question of access to/control/ownership of the resource, i.e. water, regulated? does that figure at all? I supposed ownership of water is always government prerogative. is there an amount set for distribution?

what if, for instance, the government decides to reduce the amount of water feeding into the network (because of draught, or agricultural needs, or whatever)?

this might seem a slightly strange question to you, and maybe it is beyond the point, but if you have any information, that would be useful. If the question is unclear (which it very well might be), let me know and I try to explain better.

thanks in advance,

Ulrike Hauer

Ulrike Hauer  
European Commission - DG TRADE  
Trade in Services  
Tel. +32-2-296.99.58  
Fax +32-2-299.24.35  
e-mail: ulrike.hauer@cec.eu.int

HAUER, Ulrike (TRADE)

---

**From:** HAUER, Ulrike (TRADE)  
**Sent:** mercredi 14 juin 2002 17:34 [Wednesday June 14, 2002]  
**To:** [blacked out]@bxi.vivendi.net  
**Cc:** Aguiar Machado Joao(TRADE); EDERY Caroline (ENV)  
**Subject:** Follow-up to meeting of 17 May

**Importance:** High

Dear Valerie:

as a follow-up to our follow-up letter, we would like to re-iterate the importance we attach to receiving input from your company on the issues we discussed in order to be able to integrate any input into our negotiations, it would be most helpful if we could receive any information you would be able to provide us with by the end of this month.

Thank you very much in advance,

Ulrike

attached file: follow-up vivendi.doc

---

Ulrike Hauer  
European Commission - DG TRADE  
Trade in Services  
Tel. +32-2-296.99.58  
Fax +32-2-299.24.35  
e-mail: [ulrike.hauer@cec.eu.int](mailto:ulrike.hauer@cec.eu.int)

# Appendix B

(JOB(01)/62/Rev.2) Working Party on Domestic Regulation 12 July 2002  
EXAMPLES OF MEASURES TO BE ADDRESSED BY DISCIPLINES UNDER GATS ARTICLE VI4

Informal Note by the Secretariat Second Revision

## ANNEX I – EXAMPLES CONTRIBUTED BY MEMBERS

These examples appear to meet the requirements set by Members, i.e. specific measures not already covered by the accountancy disciplines, which are also not XVI/XVII [Market Access or National Treatment] measures

### Transparency

- Lack of opportunity for interested non-governmental market participants to meet with government officials to discuss the impact of new or proposed regulations.
- Inadequate information available, or information not readily available, to non-governmental market participants about new or proposed regulations affecting their interests.

### Licensing requirements

- [Subject to Members= interpretation.] Restrictive regulations relating to zoning and operating hours, to protect small stores.
- Federal and sub-federal licensing and qualification requirements and procedures are different, making a license or qualification recognition obtained in one state not valid in other states.
- Too many licenses required in order to operate a business.
- Overly burdensome licensing requirements (e.g. minimum age required for a physiotherapist is 25 years old).
- Branches of a foreign company are required to regularly submit plan of activities to the government authority in order to be eligible to renew registration.
- Lengthy censorship procedures; too many censoring agencies with different criteria.

### Licensing procedures

- It is necessary to obtain/renew the same license in every regional government.
- All the important papers necessary to establish business operation have to be certified by the Public Notary which can take a long time to process with no other alternative available.
- The effective period of licensing is very short.
- Authorization may not be handled through a single point.
- Inability of applicants to file complaints regarding review of their applications.

### Qualification requirements

- Only persons who have specific certification from a government agency can take up managerial posts (e.g. managers of an insurance company must have certification from the insurance agency in that country).

- Requirement for fluency in language of the host country which in some cases not relevant to ensure the quality of service.
- Different sub-federal regulations for recognition of qualifications.
- Minimum requirements for local hiring (accountancy).
- Qualification procedures
- A large number of documents is required (application procedures).
- Need for in-country experience before sitting examinations (accountancy).

## Technical Standards

- Unreasonable environmental and safety standards (maritime transport).

B. The following measures also appear to meet the requirements set by Members n provided they apply to sectors other than accountancy (otherwise they seem to already be covered by the accountancy disciplines)

## Transparency

- Regulatory changes without adequate prior notice, making the applicants not eligible to apply or have to find new supporting documents within a short period of time.
- Non-transparent regulatory environment (architecture, postal and courier, audiovisual, distribution, education, energy, environmental, sporting, and tourism services).
- Domestic laws and regulations are unclear and administered in an unfair manner; subsidies for higher and adult education, and training are not made known in a clear and transparent manner.
- A lack of transparency in domestic town planning regulations, that might prejudice decisions on the location of installations to provide such services through commercial presence (distribution services).
- Long delays when government approval is required, and, if approval is denied, no reasons or information given on what must be done to obtain approval in the future (postal and courier services).

## Licensing requirements

- Absence of pre-determined, clear criteria for licensing requirements (including postal and courier, and distribution services).
- Unreasonable restrictions on licensing (legal services).
- Restrictive licensing practices (tourism).
- Unclear licensing and approval requirements (energy services).
- Unspecified approval and licensing requirements (environmental, financial and tourism services).
- Irrelevant requirements to obtain license (e.g. jewellery artists must obtain a permit or license from the National Bank).
- Too many steps for business registration and such registration must be renewed relatively frequently (e.g. every 2 years) at considerable time and expense.
- Non-transparent registration procedures; unpredictable timeframe for registering process.
- Restrictions on registration (e.g. residency requirements), which prevents foreign engineers from signing off on drawings and managing projects.

## Unduly burdensome requirements.

- Onerous licensing requirements (consulting, engineering, construction, and distribution services).
- As licences can be difficult or impossible to obtain, forwarders often have to resort to intermediaries or form partnerships (Other transport services).
- Registration is required both at the central and local governments (or local commercial courts); the procedures at the local level are often not transparent and taking a long time without adequate explanation for the delay.
- Residency requirements (including computer, telecommunications, audiovisual, construction, distribution, energy, financial, sporting, and tourism services).
- Residency requirements for advertising production professionals filming in some countries and/or for employees of the advertising firm.
- Mandatory membership of a Chamber of Commerce or a local association required as a pre-condition to operate business in local areas.
- To be licensed as a professional, there is a requirement or pre-requirement to be a member of an affiliate organization. This organization has no regulatory authority over the profession (i.e. union, country club). To be a member of this organization, the licensee must be a resident of the territory or have lived in the territory for the past six months.
- Requirement to have numerous different legal entities as a pre-condition to apply for a business operation license.
- Applicant must possess indemnity insurance or be bonded prior to licensing.
- Licensing fees that are considered as expensive by international standards.
- Registration/approval is required in order to provide services.
- Special registration requirements for firms to operate in individual countries (construction service).
- Authorization requirements are cumbersome.g. a permit is required for every single project.

## Licensing procedures

- Work history and letters of reference from all previous employers unrelated to the authorization sought.
- Documented proof of physical and mental well-being.
- Overly complicated licensing procedures (e.g. have to go through many steps in many agencies in order to obtain a license).
- Excessive, vexatious formalities, lacking in transparency, for professional licensing purposes, etc.
- Only original documents will be accepted.
- Only documents translated or authenticated by that country=s Embassy in Bangkok will be accepted, causing unnecessary delays and expenses (especially if additional documents for an application are required at short notice).
- Delays in receiving an application.
- Delays in informing the applicant of the decision (unreasonable time).
- Where government approval is required but denied, no reasons are given for denial, and no information is given on what must be done to gain approval in the future.
- No possibility for the applicant of correcting minor errors in its application form.
- No possibility of resubmitting applications for licensing after a first rejection.

- Delays in implementing the terms of the licence.
- Lack of transparency.
- The period of time required for the processing of a license application is not very clear.
- The processing period for a license application is long.
- A great deal of documents must be submitted throughout several stages in order to obtain authorization.
- Excessive application and processing fees (including postal and courier, distribution, and educational services).
- Authorization procedures are costly.
- Authorization procedures take up a considerable amount of time.

## Qualification requirements

- Residency requirements.
- The scope of examinations of qualification requirements goes beyond subjects relevant to the activities for which authorization is sought.
- Requirements needed for eligibility to take exams are more burdensome than necessary and not relevant to ensure the quality of service (e.g. must stay in that country at least 3 years to be eligible to take exam).
- Qualification requirements other than education, examinations, practical training, experience and language skills.
- Examinations that do not appear to be directly related to the concerned qualifications are required.

## Qualification procedures

- Long delays in the verification of an applicant's qualifications acquired in the territory of another Member.
- Lack of a legal framework for accepting professionals with foreign qualifications, or lack of internal consistencies of such a framework.
- Non-recognition of foreign qualifications (including engineering, construction, financial and sporting services).
- Limited or no recognition of foreign qualifications (architecture, legal services).
- Non-recognition of qualifications obtained in country of origin (e.g. not accepting cooking certificate from a government institute) and refusal to consider past working experiences and/or apprenticeship in country of origin.
- Common exclusion of developing countries from mutual recognition agreements
- Unreasonable intervals for examination of applications.
- Limited openness of process (all eligible applicants do not benefit from the same level of openness).
- Unreasonable period of time for the submission of applications.
- Excessive administrative costs that do not reflect fees charged.
- Residency requirements for sitting examinations (not subject to Article XVII).

## **ANNEX II – EXAMPLES FROM WPPS MATERIALS**

A. These examples appear to meet the requirements set by Members, i.e. specific measures not already found in the accountancy disciplines, which are also not XVI/XVII measures

### Licensing requirements

- Minimum capital requirements.

### Licensing procedure

- Applications to more than one licensing authority in any given jurisdiction for a particular service are required.

### Technical standards

- [Subject to Members= interpretation.] Restrictions on fee-setting, and restrictions/prohibitions on marketing and advertising.
- National standards which diverge from international standards.

B. The following measures also appear to meet the requirements set by Members n provided they apply to sectors other than accountancy (otherwise they are already covered by the accountancy disciplines)

### Licensing requirements

- Restrictions on the use of firm names.
- Residency requirements

### Qualification requirements

- Requirements which do not take account of foreign qualifications.
- Local training requirements exceeding 12 months.

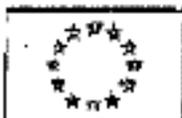
# Appendix C

## LIST OF THE DOCUMENTS TRANSMITTED TO CEO

No.	DOCUMENTS TRANSMITTED TO CEO
<b>CORRESPONDENCE WITH THAMES WATER</b>	
1.	E-mail from U. Hauer (TRADE) to THAMES WATER, 15 May 2002: preparatory documents for the meeting of 17 May 2002 (attach: only invitation; for the other 3, see e-mail to VIVENDI, 15 May 2002)
2.	E-mail from U. Hauer (TRADE) to THAMES WATER, 21 May 2002: follow-up to meeting of 17 May 2002
3.	E-mail from U. Hauer (TRADE) to THAMES WATER, 14 June 2002: follow-up to meeting of 17 May 2002 (attachment included)
4.	E-mail from U. Hauer (TRADE) to THAMES WATER, 3 July 2002: THAMES WATER WTO submission
5.	E-mail from U. Hauer (TRADE) to THAMES WATER, 9 July 2002: THAMES WATER WTO submission
<b>CORRESPONDENCE WITH AQUA MUNDO</b>	
6.	E-mail from U. Hauer (TRADE) to AQUA MUNDO, 2 May 2002: invitation to meeting with environmental services industry, 17 May 2002
7.	E-mail from U. Hauer (TRADE) to AQUA MUNDO, 15 May 2002: preparatory documents for the meeting of 17 May 2002 (attachment included: only the invitation; for the other 3, see e-mail to VIVENDI, 15 May 2002)
8.	E-mail from U. Hauer (TRADE) to AQUA MUNDO, 14 June 2002: follow-up to meeting of 17 May 2002 (attachment included)
<b>CORRESPONDENCE WITH VIVENDI</b>	
9.	E-mail from U. Hauer (TRADE) to VIVENDI, 15 May 2002: preparatory documents for the meeting of 17 May 2002 (4 attachments mentioned included)
10.	E-mail from U. Hauer (TRADE) to VIVENDI, 14 June 2002: follow-up to meeting of 17 May 2002 (attachment mentioned included)
<b>CORRESPONDENCE WITH SUEZ</b>	
11.	E-mail from U. Hauer (TRADE) to SUEZ-LYONNAISE DES EAUX, 14 May 2002: invitation to meeting with environmental services industry, 17 May 2002
12.	E-mail from U. Hauer (TRADE) to EZ, 28 May 2002: follow-up to meetings of 17 and 21 May 2002 (attachment mentioned included)

13.	E-mail from U. Hauer (TRADE) to SUEZ, 14 June 2002; follow-up to meeting of 21 May 2002
CORRESPONDENCE WITH OECD	
14.	E-mail from Christophe Maret (TRADE) to OCDE, 29 June 1999; EU proposal for new classification
15.	E-mail from Christophe Maret (TRADE) to OCDE, 7 July 1999; EU proposal for new classification (reply to a previous one)
WTO DOCUMENT	
16.	WTO Document (CSC), 28 September 1999, Communication from the EC and MS on Classification Issues in the Environmental Services (doc. classified as "restricted").

Correspondence  
with OECD seems  
missing



**EUROPEAN COMMISSION**

Directorate-General for Trade

Directorate D - Coordination of WTO and OECD matters. Trade questions relating to GATT, services, dispute settlement, Trade Barriers negotiation  
Barriers (including e-commerce)

Brussels,  
TRADE.D.20/JE.D(2002)

**Subject: Follow-up to meeting on trade in environmental services in WTO negotiations, 17 May 2002.**

Dear [REDACTED]

Thank you again for our meeting on trade in environmental services in the WTO/TRIPS negotiations on 21 May last.

As agreed, we would like to follow-up the discussion we had during that meeting with questions related to the position, and interests of, the European industry, their main markets, obstacles - if any - to access new markets.

The objective of the General Agreement on trade in services is to provide a framework for progressive liberalisation of trade in services.

A variety of regulatory, administrative, and other measures taken by governments can restrict access to their markets for foreign service providers. We would very much appreciate if you could indicate to us, on the basis of your experience, which of the following restrictions are relevant barriers to market entry, and if so, in which markets. If we have missed other barriers you have encountered in your activities in markets outside the European Union, please communicate them to us as well.

**1.1. Sectors and markets**

- Which sub-sectors of environmental services are of particular importance in your international activities (e.g. water and waste water services, waste management, pollution control/reduction, clean-up of soil)?
- Which countries are of particular interest as export markets/destinations for your direct investment?

Ms. [REDACTED]  
[REDACTED]  
[REDACTED]

SOBZ  
[REDACTED]

Commission européenne, B-1049 Bruxelles; Europese Commissie, B-1049 Brussel - Belgium, Telephone: (32-2) 299 11 11, Office: 02141 02148, Telefax: (32-2) 299 39 39, Fax: (32-2) 299 39 39

- What are the main 'modalities' of operating in emerging markets/developing countries? - concessions, BOTs, ownership of assets, management contracts?

### 1.2. Market access barriers

- Limitations to foreign equity participation - is this something you have encountered when investing in/acquiring a foreign company;
- Restrictions on legal form of establishment (e.g. only partnership permitted, only representative office permitted, obligation to use joint venture with local companies for certain activities, etc.);
- Reservation of some sectors or activities, or government contracted services, to domestic companies;
- Existence of monopoly/duopoly/oligopoly in certain markets, thereby effectively closing the market for new entrants;
- Restrictions on repatriation of profits;
- discrimination compared to national companies operating in this sector, such as different tax regimes;
- Discriminatory taxation for services rendered by companies not established in the country;
- Restrictions/limitations to entry and stay (in the export market) of managers, specialists or other personnel from 'mother' company.

### 1.3. Regulatory issues

Certain regulations applied by governments can constitute more subtle barriers for market entry. For instance, the application for licences, permits or other authorisations might be administered in a very burdensome, costly way, or a variety of local technical standards may complicate operations and increase costs. Also, governments might impose requirements on foreign service suppliers which could seem unreasonable, or discriminatory.

- Is government regulation in your sector an issue which affects market access positively or negatively? In what way?
- Are licensing/authorisation requirements and procedures, as well as the application of technical standards, affecting your operations in a negative way?
- Is authorisation given in a discretionary manner, without clear, transparent criteria on which decision is based?
- How are 'universal service' provisions dealt with?
- Are government procurement rules and/or practices a barrier?

One of the main objectives of the EU in the new round of negotiations is to achieve real and meaningful market access for European services providers for their exports of environmental services. Therefore, we very much appreciate your input in order to sufficiently focus our negotiating efforts in the area of environmental services.

Ulrike Haner

cc: M. Aguiar Machado, Head of Unit Trade in Services

**HAUER Ulrike (TRADE)**

---

From: HAUER Ulrike (TRADE)  
Sent: Monday, 9 July 2002 10:27  
To: [redacted]@thameswater.co.uk  
Cc: [redacted]@Thameswater.CO.UK  
Subject: RE: Thames Water WTO submission [Miss Checked]

Dear [redacted]

[redacted] advised me to contact you if we had any further questions on your contribution on water distribution services with regard to the WTO negotiations.

In fact, I have an additional question which I had not included in my first letter. you mention that Thames Water mainly operates via ownership of assets.

In such contracts, how is the question of access to / control / ownership of the resource, i.e. water, regulated? does that figure at all? I suppose ownership of water is always government prerogative. Is there an amount set for distribution?

what if, for instance, the government decides to reduce the amount of water feeding into the network (because of drought, or agricultural needs, or whatever)?

this might seem a slightly strange question to you, and maybe it is beyond the point, but if you have any information, that would be useful. If the question is unclear (which it very well might be), let me know and I try to explain better.

thanks in advance.

Ulrike Hauer

-----  
Ulrike Hauer  
European Commission - DG TRADE  
Trade in Services  
Tel: +32-2-294 99 58  
Fax: +32-2-294 24 19  
e-mail: ulrike.hauer@cec.eu.int

**HAUER Ulrika (TRADE)**

---

**From:** HAUER Ulrika (TRADE)  
**Sent:** vendredi 14 Juin 2002 17:34  
**To:** [REDACTED] @bel.vivendi.net  
**Cc:** JOAO MACHADO Jobo (TRADE); EDERY Caroline (ENV)  
**Subject:** Follow-up to Meeting of 17 May

**Importance:** High

Dear Valerie,

as a follow-up to our follow-up letter, we would like to reiterate the importance we attach to receiving input from your company on the issues we discussed. In order to be able to integrate any input into our negotiations, it would be most helpful if we could receive any information you would be able to provide us with by the end of this month.

Thank you very much in advance,

Ulrika



---

Ulrika Hauer  
European Commissioner - DG TRADE  
Trade in Services  
Tel: +33-2-296-99-68  
Fax: +33-2-296-94-35  
e-mail: ulrika.hauer@cec.eu.int



Canadian Centre for Policy Alternatives  
Suite 410-75 Albert Street, Ottawa, ON K1P 5E7  
tel: 613-563-1341 fax: 613-233-1458  
email: [ccpa@policyalternatives.ca](mailto:ccpa@policyalternatives.ca) web site: [www.policyalternatives.ca](http://www.policyalternatives.ca)