Liberalisation of Sewerage and Waste Management Services and the GATS: Implications and Challenges for Developing Countries

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INTRODUCTION

Services of organised sewerage1 and waste management are as old as human societies are. Evidence of their existence is found in ancient civilisations, such as Indus Valley, China, Rome, Greece, Egypt, Mesopotamia, and pre-Colombian America, to mention a few.2 Until the 1970s,3 these services have been within the exclusive domain of government authorities to ensure socially equitable access as well as to protect consumers from exploitation in the hands of private sectors.4 Besides, the scope for competition in these service sectors has conventionally been limited due to the exorbitant cost of duplicating existing infrastructure.5 However, this ‘public services’ characteristic of sewerage and waste management services started to erode with the privatisation policies of international financial institutions (the International Monetary Fund and the World Bank) since the 1980s, when they made their loans, aids and debt relief to poor developing countries conditional to privatisation of State-owned enterprises.6 The concerted effort gained momentum when the WTO institutionalised the concept of environmental goods and services (EGS) in a bid to create a ‘win–win–win’ situation for trade, environment and development for achieving sustainable development.7 The 2001 Doha Ministerial Declaration instructs members to negotiate

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1 The term ‘sewerage’ and ‘sewage’ have been used interchangeably in this article.
2 WTO Council for Trade in Services, Background Note on Environmental Services, WTO Doc S/C/W/320 (20 August 2010) (Note by the Secretariat) 1.
3 Jane Kelsey mentions that over the past three decades, State assets, including utilities, have been sold to the private sector. Therefore, before that period these utilities were absolutely within the control of the government authority. Jane Kelsey, “Embedding the Neoliberal Transformation of Government Services through Trade in Services Agreements” in Shawkat Alam, Natalie Klein and Juliette Overland (eds), Globalisation and the Quest for Social and Environmental Justice: The Relevance of International Law in an Evolving World Order (2011) 111, 111. 
5 Ibid., 18.
on 'the reduction or, as appropriate, elimination of tariff and non-tariff barriers on environmental goods and services'. Implied in the Doha Declaration is a commitment to enact an early liberalisation of EGS in relation to across-the-board liberalisation. Sewage and waste management services, classified as environmental services, represent over 80 per-cent of the environmental services market. Negotiations on environmental services, including sewerage and waste management services, are being carried out in the General Agreement on Trade in Services (GATS) Special Session. Hence, it deserves a thorough examination as to how these services sectors could be treated by the provisions of the GATS.

Against this background, this article has two objectives. First to analyse the nature and potential bearing of liberalisation of sewerage and waste management services on the socio-economic condition of poor developing countries. Second to critically examine the impact of the GATS on these service sectors in developing countries. The main argument of this paper is that developing countries need to be especially cautious regarding the socio-economic impact of liberalisation of essential services, such as sewerage and waste management services and also consider the impact of the GATS disciplines on these service sectors before proceeding towards liberalisation.

The article is organised along the following lines: after briefly highlighting the importance and nature of sewerage and waste management services in section I, the article embarks on its core analysis on the socio-economic impact of liberalisation of these service sectors in section II. This section draws on scholarly works, case studies and disputes over utility services which have occurred in the International Centre for Settlement of Investment Disputes (ICSID) Tribunal. Section III examines the key provisions of the GATS in order to determine their relevance for waste management and sewerage services. Surprisingly, despite their long history and vital role in society, sewerage and waste management services have attracted little scholarly work as compared to other service sectors within the ambit of the GATS. Hence it has been rightly said that 'rubbish may be universal, but it is little studied and poorly

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10 WTO services sectoral list (W/120) has classified these services as environmental services. This issue is discussed further below.
12 There are voluminous literatures on health, education, legal, telecommunication, financial services within the GATS. Literatures on sewerage and waste management services are few. However, some literatures have addressed them cursorily. For instance, Simonetta Zarrilli, 'Managing Request-Offer Negotiations under the GATS: The Case of Energy Services' (23 May 2003) UNCTAD/DITC/TNGC/2003/5 (Report prepared for the UNCTAD Secretariat) http://www.unctad.org/en/docs/ditcngc20035_en.pdf at 15 June 2011; UNCTAD, 'Environmental Goods and Services and Sustainable Development' (5 May 2005) TD/B/COM.1/EM.21/2 (Note by the UNCTAD Secretariat) http://www.unctad.org/en/docs/dlem212d_en.pdf at 15 June 2011. Sewerage and sanitation services also have been addressed in bundle with water services. For instance, Shawkat Alam, Pundarik Mukhopadhaya and David Randle, 'The General Agreement on Trade in Services (GATS), Water, and Human Rights from the Perspective of Developing Countries' (2011) LVIII Netherlands International Law Review 43.