

## THE WTO'S THREATS TO GLOBAL WATER SECURITY: THE GENERAL AGREEMENT ON TRADE IN SERVICES AND BEYOND

“Water will be to the 21st Century what oil was to the 20th.”—*Fortune Magazine*

A CRITICAL QUESTION TO BE ADDRESSED at the World Trade Organization's (WTO) fifth ministerial in Cancun is who will control the world's dwindling water supply. Will the WTO expand corporate control of water granting access based on who can afford it? Or, will water be declared a basic human right and a public trust, guaranteed to all in need? Citizens' movements around the world are joining forces in Cancun to declare water a basic human right outside of the WTO's authority.

### THE PROBLEM

Worldwide, the consumption of water is doubling every 20 years, at more than twice the rate of the increase in human population. According to the United Nations, by the year 2025, as much as two-thirds of the world's population will be living in conditions of serious water shortage and one-third will be living in conditions of absolute water scarcity. For this reason, the vice-president of the World Bank has said, “the wars of the next century will be about water.”

Where most people see a humanitarian crisis requiring immediate changes in consumption patterns, conservation, environmental protections, and distribution, corporations see enormous profits. As one Canadian water privatization company, Global Water Corporation, has said, “water has moved from being an endless commodity that may be taken for granted to a rationed necessity that may be taken by force.”

Multinational corporations are using the WTO to increase their control over water by: (1) privatizing water services; (2) reducing the ability of governments to regulate corporate activity; and (3) exporting water to sell for a profit.

### FORCED WATER PRIVATIZATION:

#### THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

The GATS takes the decision of whether or not to privatize water services, and under what conditions, out of the hands of communities and governments and puts it into the hands of the WTO.

The GATS is a liberalization agreement which applies to all government measures affecting services, including water, education, health care, Social Security, libraries and prisons. The GATS covers hundreds of types of water services—sewer services, freshwater services, treatment of waste water, nature and landscape protection, construction of water pipes, waterways, tankers, groundwater assessment, irrigation, dams, bottled water, and water transport services, just to name a few.

The agreement requires that governments reduce their role in the provision and regulation of services as much as possible and increase the role of private companies. No government measures affecting the trade in services, whatever its aim—environmental or consumer protection, labor standards, universal service, fair competition, etc.—is beyond GATS scrutiny. All signatories to the GATS (including the U.S.) have already committed to move toward the privatization of their service industries. Through negotiations, including those in Cancun, governments specify which of their own services will be liberalized and make requests of other nations. The U.S. has not yet listed water services in its GATS commitments; however, the European Union has specifically requested that the U.S. open its water services to for-profit water companies in its GATS negotiating positions.

Private ownership of once public water systems is one way that corporations are making steep profits from water. Communities around the world are fighting water privatization because of its devastating impact on consumers, workers and the environment. For example:

**Great Britain:** Between 1989 (when water was privatized) and 1995, there was a 106 percent increase in water prices in the UK, while profits of the privatizing companies increased by 692 percent. As a result of these price hikes, literally twice as many households had their water cut-off after privatization as were cut-off before. In addition, the private companies fired almost 25 percent of the work force, approximately 100,000 workers. Finally, between 1989 and 1997, five British water privatization companies were found guilty of 128 environmental offences.

**Cochabamba, Bolivia:** After privatizing the water systems in Cochabamba, Bolivia in 1999, Aguas del Tunari, a subsidiary of the Bechtel Corporation, implemented massive price hikes. Families earning a minimum wage of \$60 per month suddenly faced water bills of \$20 per month. Rate increases of 100 percent were the most common, while increases of 300 percent were reported. The citizens rose in protest, forcing the cancellation of Bechtel's contract and replacing it with a community-controlled water system that is providing water more equitably and universally than before. Bechtel has responded with a \$25 million lawsuit for lost profits (described below).

**KwaZulu-Natal, South Africa:** After the World Bank forced KwaZulu-Natal province in South Africa to privatize its water, those who were too poor to pay were simply cut off. They were then forced to resort to using polluted river water, resulting in an outbreak of cholera that has claimed at least 32 lives. In fact, due to privatization and other forces, cholera outbreaks affecting more than 140,000 people occurred in South Africa between the years 2000 and 2002. This story is repeating itself all across Africa today.

#### IMPLICATIONS FOR THE UNITED STATES

In the U.S., water for drinking and sanitation is almost a completely government-run, non-profit and heavily subsidized service. Few Americans, therefore, worry about access to water in the same way they worry about their medical bills, for example. Under GATS rules, however, this would change.

**Loss of local government and rate payer control:** If the U.S. commits water under the WTO GATS talks, municipalities would lose the ability to decide how to provide water services. The U.S. would be prohibited from maintaining public service "monopolies" or exclusive suppliers of the service. This provision would require U.S. state, local, and federal governments to give private, for-profit water companies "access" to the "market" of our more than 60,000 U.S. municipal water service providers.

**Race to the bottom in water standards:** If the U.S. commits water services under proposed GATS rules any federal, state or local regulation governing water services, such as those designed to protect water quality, universal access, as well as Public Utility Commission rulings, could be challenged as "barriers to trade." A government would have to demonstrate that the policy was necessary and that no other less trade-restrictive measure could be taken to accomplish the same objective in order to maintain it.

**Privatization is a one-way street:** Under GATS rules, if a municipality decides to experiment with privatizing water services by selling its operation to a foreign corporation, it is extremely difficult to bring the utility back under public control. For instance, if a municipality is later unhappy with a private company's performance, and wants to take back its water system, it not only must compensate the company under U.S. law, but the U.S. government must also compensate all potentially affected trading partners for their corporations' lost business opportunities. This double jeopardy is geared toward locking in privatization, and preventing the water take-backs which have occurred in many U.S. cities dissatisfied with privatization experiments.

## ADDITIONAL WTO PROVISIONS THAT THREATEN WATER

### *Once water starts flowing it cannot be stopped.*

General Agreement on Tariffs and Trade (GATT) Article XI specifically prohibits the use of export controls for any purposes and eliminates quantitative restrictions on imports and exports. This means that quotas or bans on the export of water imposed for environmental purposes could be challenged as a form of protectionism. Thus, if the U.S. began to export water but then learned that it was harmful to the environment, it could not reduce the original amount of export without fear of a WTO challenge.

### *Trade cannot be restricted to protect water.*

Under WTO rules, nations cannot differentiate between products based on how they are produced (known as Production Processed Methods). If it were discovered that the commercial trade in water was destructive to watersheds, for example, the WTO could prevent countries from restricting that trade based on environmental concerns. Furthermore, the WTO requires that any law that a country writes to protect its water would also have to be the “least trade restrictive” law imaginable (as interpreted by a panel of trade lawyers). This vague language has already been the downfall of several environmental protection and public health laws.

## INVESTOR RIGHTS: THE THREAT OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) *Chapter 11—“Investor State Provisions.”*

Chapter 11 of NAFTA is favored by the U.S. and others for inclusion in the WTO. This provision gives corporations additional rights over governments, including the right to sue a foreign government directly if they believe that their rights have been violated. As a result of this provision, there have been a flurry of investor-state suits in North America challenging important environmental, health and safety legislation. Several examples involving water follow.

***Sun Belt Water, Inc. vs. Canada.*** The first NAFTA Chapter 11 case on water was filed in the fall of 1998. Sun Belt Water, Inc. of Santa Barbara, CA, signed a contract with the province of British Columbia (BC) to export water to California for profit. The people of BC were outraged when they found out about the contract and successfully demanded both its cancellation and a permanent ban on the export of bulk water. In response, Sun Belt used NAFTA to sue Canada for \$220 million in damages, including potential future lost profits. According to Sun Belt’s CEO Jack Lindsay, “Because of NAFTA, we are now stakeholders in the national water policy in Canada.” This case is still pending.

***Ethyl Corporation vs. Canada.*** Chapter 11 was used successfully by the Virginia-based Ethyl Corporation to force the government of Canada to reverse its ban on the gasoline additive, methylcyclopentadienyl manganese tricarbonyl (MMT). In June 1997, Canada legislated a ban on the cross-border sale of MMT because it pollutes ground water and is believed to cause cancer in humans. MMT is banned in Europe and California for these reasons. Ethyl used NAFTA to sue the Canadian government for \$250 million in damages for lost future profits and for damaging their “good name” during the debate over the legislation in the Canadian Parliament. Rather than allow the case to go to a NAFTA tribunal where it feared it would lose, the Canadian government reversed its ban in July 1998, paid Ethyl \$13 million in compensation for its “trouble,” and wrote a letter of apology.

***Methanex Corporation vs. the United States.*** In July 1999, the Canadian Corporation Methanex sued the U.S. government after California mandated the removal of methyl tertiary butyl ether (MTBE) from gasoline sold in the state by December 31, 2002. The chemical has been associated with human neurotoxicological effects, with the potential to cause human cancer. Methanex claims that California’s ban violates NAFTA by limiting the corporation’s ability to sell MTBE and is asking for \$970 million in damages. They have not, however, claimed that their chemical does not cause cancer. The case is still pending.

***Bechtel Corporation vs. Bolivia.*** NAFTA Chapter 11 is based on the thousands of Bilateral Investment Treaties (BIT) between nations around the world. After being thrown out of Bolivia for its water privatization practices

(see above), Bechtel is suing the Bolivian government for \$25 million using a BIT between the Netherlands and Bolivia. The U.S. does not have a BIT with Bolivia; Bechtel established a holding company in the Netherlands that gave it access to the BIT. The BIT entitles Bechtel to the recovery of out-of-pocket expenses plus unrealized profits projected over the life of the deal. The case is being heard at a World Bank court that is closed to the public even though it was the World Bank that required that Bolivia privatize its water in the first place.

## ALTERNATIVES

*(from IFG Board Members Maude Barlow and Tony Clarke)*

### ***1. Exempt Water from all Agreements of the WTO.***

Water is a public trust to be guarded at all levels of government. Water, life's most important resource, must be treated not as a good for profit, but as a public trust, guaranteed to all. Governments must take immediate action to declare that the waters in their territories are a public good and enact strong regulatory structures to protect them.

While it is true that governments have failed badly in protecting their water heritage, it is only through democratically-controlled institutions that this situation can be rectified. When water becomes clearly established as a commodity to be controlled by the private sector, decisions about water are made solely on a for-profit basis.

Each level of government must protect its water trust: municipalities should stop raiding the water systems of rural communities. Watershed cooperation will protect larger river and lake systems. National and international legislation will bring the rule of law to transnational corporations and end abusive corporate practices. Governments should tax the private sector adequately to pay for infrastructure repair. All levels of governments will work together to set targets for global aquatic wilderness preserves. People everywhere, particularly in wealthy nations, will aggressively work to conserve water usage.

### ***2. Keep Water and Sewage Services in the Public Sector, Regulate the Protection of Water Supplies and Promote the Efficient Use of Water.***

An adequate supply of clean water is a basic human right. Every person in the world has a right to clean water and healthy sanitation systems no matter where they live. This right is best ensured by keeping water and sewage services in the public sector, regulating the protection of water supplies and promoting the efficient use of water. Adequate supplies of clean water for people in water-scarce regions can only be ensured by promoting conservation and protection of local water resources.

This does not mean that water should be "free" or that everyone can help themselves. However, a policy of water pricing that respects this principle would help conserve water and preserve the rights of all to have access to it. Water pricing and "green taxes" (which raise government revenues while discouraging pollution and resource consumption) should place a heavier burden on agribusiness and industry than on citizens; funds collected from these sources should be used to provide basic water for all.

Economic globalization policies are not water sustainable. Economic globalization's values of unlimited growth and increased global trade are totally incompatible with the search for solutions to water scarcity. Designed to reward the strongest and most ruthless, economic globalization locks out the forces of local democracy so desperately needed for a water-secure future. Economic globalization undermines local communities by allowing for easy mobility of capital and the theft of local resources. Liberalized trade and investment enables some countries to live beyond their ecological and water resource means; others abuse their limited water sources to grow crops for export. In wealthy countries, cities and industries are mushrooming on deserts. A water-sustainable society would denounce these practices. ▲