

Higher education in the GATS negotiations. The European approach

The General Agreement on Trade in Services has been firmly on the agenda of the education community for the past two years and has featured prominently in the work of international institutions such as the OECD, UNESCO, CoE and the EU. The GATS has inspired volumes of research showing that the GATS can do anything from promoting peace and empowering developing countries to excluding poor people from medical care and education. Why is the GATS so controversial? How does the GATS affect educational policy made at the European level? How does it affect us as European educationalists? And finally, how should we respond to it?

Why is the GATS so controversial?

GATS is a multilateral agreement, administered by the World Trade Organisation, that seeks to provide market access on equitable conditions to service providers anywhere in the territory of WTO members. Higher education is regarded as a service sector for the purposes of the agreement and so is subject to the articles that govern the GATS. These articles cover aspects of service provision such as subsidies, domestic regulation, recognition, market

access, accreditation, licensing and others. The GATS is and has been enforced by the WTO dispute settlement panel, a body that seeks to uphold WTO principles of free trade through arbitration. The raison d'etre of the WTO is to push for freer trade in all areas of its mandate. Prior to 1995, the WTO as a body did not exist. In its place was the GATT that was established at the end of the Second World War to try and redress the heavy isolationist trade policies that countries had retreated into before the war. Over fifty years, the GATT was renegotiated through numerous trade rounds and was eventually dissolved into the WTO that also included the GATS and the Trade Related Aspects of Intellectual Property Rights (TRIPS). The reason for the formation of these multilateral agreements was to provide a stable climate for businesses to operate and to enter markets on favourable terms. To pursue these objectives, the GATS treats objectives such as domestic regulation, that is: quality assurance, accreditation, institutional licensing as likely sites of trade protection. It is assumed that there is a tension between the need to have the benefits of these regulations and their capacities to act as disincentives to companies selling education services. So in the GATS articles, regulatory measures taken by governments are not allowed to be more burdensome than necessary to ensure the quality of the service. How this will be implemented is unclear though there are models that have been utilised in the case of environmental regulations. One model is to set up a working party to assess regulations and see whether they are indeed more trade restrictive than they need to fulfil their policy purpose. The working party, as utilised in the implementation of environmental regulations,

examines the policy instrument and tries to come up with alternatives that uphold the spirit of the treaty. In the GATS context this could mean examining the regulations that cover degree awarding powers and judging them as too restrictive. The logic would be that students are capable of judging for themselves what a competent HE institution is and choosing their course accordingly. Domestic regulatory mechanisms are seen as interfering with the natural drive of students to weigh up the available information and ignore the worse providers. Of course, this is at best an incomplete assessment of the regulatory debate. Information is always distorted by hearsay, marketing material and aspirations. The idea of the student as a rational actor, seeking the best course, ignores factors in a student's decision making such as finances, geography, desires from HE, their employment situation and their social and cultural networks.

One of the most important concerns that we have about the GATS is related to the role of the treaty as a free trade document. Free trade from a supply side perspective brings with it a certain amount of baggage. Standard types of crude protectionist measures are quota restrictions, tariffs and subsidies. Subsidies are always going to be trade distorting and indeed are covered explicitly by the GATS. The GATS in its desire to promote a homogenous, global trade zone opposes the extensive use of subsidies in the service sector through articles on subsidies. What are common examples of subsidies found in the HE sector? From the student perspective, subsidies are the most important mechanism for enabling students to get into HE. A system that demands that students find the

whole cost of their tuition would restrict access in the extreme. The cost of studying a degree in Europe would rise to around 40000 Euros in tuition alone. This would have disastrous effects on the social progression of the state, propagation of cultures and the vibrancy of the knowledge based industries. Socially this is a retrograde step that ignores the historical progression of the conception of higher education institutions as small centres limited to elites to mass access centres of learning that are becoming the norm rather than the exception. To reduce student subsidies either by the introduction or increase of student contributions to tuition or by cutting back on student welfare expenditures goes against the conception of HE as a public good, that is a service that one cannot be excluded from. Of course, the implications of the GATS are not certain at the moment. The position that ESIB has taken on this issue is the result of legal studies conducted in both Europe and North America. It is simple mathematics that if a state is unable to refuse HE providers entry to its sector and is obliged to offer subsidies at the same level as it effectively would under the GATS rules on market access coupled with the rules on national treatment that this situation is untenable. It means the same sized funding pot stretched between more providers- this could lead, in the worst case, to a situation whereby the grants are too small to be of any purpose and so to the abolition of public funding. The situation is also serious within the context of basic research funding. Often private interests do not fund this research and unless public funds can be used it will not be carried out leading to knock on effects for more directly applied research. The GATS specific commitments do not allow countries to

restrict the numbers of providers entering their sector, the net effect has to be to review the role of the state in sponsoring HE. Subsidies are also used to directly discriminate between providers and students to support governmental objectives based on social or economic criteria. Schemes such as the widening access and increasing participation agenda in the UK utilise subsidies in a manner that would disadvantage foreign providers who are not able to apply for the funds.

Proponents of the GATS argue that there is a provision under rules relating to emergencies for a country to withdraw from the GATS without facing penalties. However, what constitutes an emergency is highly contestable and political. It is unlikely that a country would be able to withdraw or suspend its GATS commitments in order to pursue policy objectives that involve a degree of increasing the role of the state or interfering with the market without running the risk of being penalised. The GATS has substantial implications for the future ability of states to determine their HE policy. States that have already made commitments to HE, in Europe these include the EU, Norway and Switzerland have determined the legal obligations that their legislators have to contend with when setting policy. Some interests have argued that the GATS is a benign and neutral agreement that can be utilised to pursue solutions to the challenges thrown up by the globalisation process. Those that argue this should look more carefully at the history of the GATT and the WTO. One case that was arbitrated under the WTO dispute settlement panel (DSP) focused on the ability of a country to regulate in the interest of public health. An East Asian state refused market access to a western cigarette supplier to advertise within the country.

Why? Well, the reason that they pushed was that an increase in cigarette advertising leads to an increase in smoking and related illnesses. The World Health Organisation appeared before the WTO and supported this claim but they were overruled by the WTO and were left under pressure to let the company advertise. The WTO has an extremely limited social mandate. The concept of the GATS is to enable companies to trade freely, governed predominantly by market forces. In many cases this is accompanied by limited externalities but for education it is not that simple. As the East Asian example illustrates, expert bodies can and have been ignored by the WTO processes. This is relevant for the HE community to bear in mind when discussing the role of the Lisbon convention within the GATS. Currently the Lisbon convention is administered by its own secretariat, free to pursue the spirit of the agreement, free from heavy external pressures. If it were to be taken into the GATS as a tool for globalising recognition the secretariat would lose a large degree of control over how the agreement is implemented. The WTO has no expertise in the educational aspects of trade in education and is not a competent body constituted to have expertise in this area yet it is facilitating an agreement that could well make it the most influential multilateral body dealing with education. UNESCO recently began the process of responding to the challenges facing the educational community from globalisation. The difference in approach between the UNESCO and WTO process is fundamental. UNESCO has specific responsibility to guarantee HE as a human right and that it remains accessible. The WTO has responsibility for making it easier for companies to sell education and testing

services. ESIB believes that UNESCO first of all has a mandate to work in this area and second has the capacity to address complex policy issues in the public interest.

The Bologna process can also be influenced by the GATS but to what extent? A key debate in the Bologna process discourse is the tension between the competitiveness and cooperation of the European HE area. Contradictions between these two concepts have to be dealt with carefully or you will find a sector that is overly bureaucratised and inefficient, or conversely a degeneration of the academic community and a stratification of the market along the same lines that we see in the US with wealthy students having a much easier time of getting into the Ivy League institutions. The GATS could well directly impact on the European construction process. It is the responsibility of those working on the Bologna process to be fully aware of the GATS, its aims and how these conflate with the normative framework of Bologna, a framework that is reflected in rhetoric such as HE is a public responsibility and students should not be excluded from HE for economic or social reasons. If we want a European HE area that is characterised by the fluid mobility of students in terms of geographical, economic and social mobilities we cannot follow the GATS model. If we want a vibrant HE community that is democratically accountable and supports varying domestic objectives we cannot follow the GATS model. The choice is quite clear, we can either follow the GATS model, an ambiguous agreement that conceives HE as a tradable commodity or we can follow our own

path.