



United Nations Educational, Scientific and Cultural Organization
Organisation des Nations Unies pour l'éducation, la science et la culture

Original: English
ED-2002/HED/AMQ/GF.1/05
11 October 2002
Distribution: meeting

First Global Forum on
International Quality Assurance, Accreditation and the
Recognition of Qualifications in Higher Education:

“Globalization and Higher Education”

**GATS – HIGHER EDUCATION IMPLICATIONS,
OPINIONS AND QUESTIONS**

BY

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UNESCO, Paris
17 - 18 October 2002
Room IX

Division of Higher Education
Section for Access, Mobility and Quality Assurance
<http://www.unesco.org/education/studyingabroad/index.shtml>

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INTRODUCTION

1 Increased awareness and debate

There is increased awareness and debate on the potential implications of the General Agreement in Trade and Services (GATS) for higher education policy. This is a positive sign. Growth in cross border delivery of education, coupled with the pressure of increased trade liberalization through trade agreements, are two developments that the higher education sector needs to understand, monitor and act on.

It is, however, unfortunate that the debate about the impact of increased trade on education is becoming more and more polarized. There are GATS proponents who support the benefits that more trade can bring in terms of 1) greater student access to help meet increasing demand, 2) innovation through new providers and delivery modes, and 3) increased economic gain. There are equally strong voices which maintain that GATS and increased trade will 1) threaten the role of government to regulate higher education and meet national policy objectives and 2) jeopardize the “public good” and quality of education. GATS is a reality, and we must also realize that cross border for-profit delivery of higher education is not a new phenomenon. It has been taking place long before GATS appeared in 1995 and has clearly increased in the last decade (Larsen et al, 2002). Trade agreements will not go away; we need to figure out how best to minimize the risks that they may pose to higher education provision and maximize the new opportunities and benefits they may bring. This means that the education sector needs to be vigilant, informed and active in ensuring that the education voice is heard on the intended and more important, the potential unintended consequences of GATS and regional trade agreements.

1.2 Purpose and scope of paper

This draft working paper is a companion piece to an earlier report on ‘Trade in Higher Education Services: the Implications of GATS (Knight, 2002). It has been prepared as a background paper to the UNESCO First Global Forum on International Quality Assurance, Accreditation and Recognition of Qualifications in Higher Education. The aim of this paper is to provide an update on some of the key GATS issues we need to focus on and to report on some of the actions, reactions and distractions in the current debate on the impact of trade agreements on higher education. In order to provide essential background information on GATS and the current negotiations, some of the fundamental aspects of the agreement are repeated in this paper. A balanced approach remains a priority and therefore, the discussion will try to include and address views from both the GATS-friendly advocates and the GATS- chilled critics.

The scope of this paper is by necessity limited. Therefore, information on regional perspectives or the size of the education market is not included. This first section briefly addresses some of the conceptual and language issues which are clouding the understanding of the terms internationalization, globalization and trade in education services. The second section provides a brief explanation of the structure, rules and timelines of GATS and the present negotiation phase. The third section attempts to identify and ‘unpack’ several of the more troublesome and controversial aspects of GATS which are precipitating the current debate. The fourth section reports on some of the actions and reactions of several key international and regional higher education stakeholder groups during this past year and tries to analyze their key messages and concerns.

1.3 Internationalization, globalization and cross border trade in education

The relationship between these three terms and their use is both complex and confusing. A brief overview of the evolution and meaning of these terms may help to clarify some of the misinterpretations and misunderstandings.

Only in the last two decades has the term internationalization been an important part of higher education vocabulary. Prior to this time, international development cooperation, international academic affairs and foreign students were the key concepts used to describe the kind of international activities that post secondary institutions engaged in. Beginning in the mid-eighties internationalization of higher education (interpreted in the broadest sense to mean 'the integration of an international dimension in the teaching, research and service functions of higher education') started to increase in importance, scope and volume. Evidence of this includes:

- the growing numbers of students, professors, and researchers participating in academic mobility schemes,
- the increase in the number of courses, programs and qualifications which focus on comparative and international themes,
- growing number of cross border delivery of academic programs
- the development of new international networks and consortia,
- increase in campus based extra-curricular activities with an international or multi-cultural component
- the impetus given to recruitment of foreign students,
- the rise in number of joint or double degrees,
- the expansion in partnerships, franchises, offshore satellite campuses
- the establishment of new national organizations focussed on international education
- new regional and national level government policies and programs supporting academic mobility and other internationalization initiatives

In the early nineties, the notion of globalization became omnipresent and commentators started referring to the globalization of education. As in other sectors, this met with some resistance. Even though a very neutral definition of globalization can be used - "the flow of technology, economy, knowledge, people, values and ideas across borders " there seems to be more emphasis put on the economic aspect of globalization. Therefore, efforts were made to distinguish internationalization of higher education from globalization but also recognize the link between the two concepts. This led to internationalization being positioned as both a reaction to, but also, an agent of globalization (Knight, 1999a and b).

Why was internationalization seen as both a response to and a catalyst for globalization? The "response to" position was based on the fact that higher education needs to prepare students for living and working in a more connected, interdependent and globalized world, and secondly, that research and scholarship need to contribute to national and international issues. On the other hand, internationalization was seen as an agent of globalization, especially trade, because higher education was becoming more active in the for-profit side of foreign student recruitment and commercial cross border delivery of education (which today is labelled as trade in education services).

This begs the question, what distinguishes activities that are labelled internationalization initiatives from those that are called trade in education services? This is a key question. The answer may lie in the analysis of the rationales, motivations, and perceived benefits driving the initiatives, not in the nature of the activities themselves. Internationalization can be seen as a tool for enhancing the quality, relevance and social benefits of education and it can be seen as tool for income generation and economic gain. It is very important to note, that these are not necessarily mutually exclusive positions. (In addition to academic/social and economic drivers, there are political, cultural, and

branding rationales for internationalization, but for the purposes of this discussion the first two are emphasized.)

For example, the academic, social and individual benefits of student study abroad schemes are recognized. Historically, they have been organized on an institutional exchange basis or subsidized by national/institutional programs, and have traditionally been seen as a non-profit activity. This is still the case, but at the same time, there has been a definite increase in commercial study abroad programs offered by a variety of education providers. The creation of institutional level bilateral and consortium based agreements for joint research, course development, double or joint degrees, exchange programs etc. is another important vehicle for internationalization. Again, these have been traditionally non-profit activities - but, there are for-profit ventures being developed. The UGlobal 21 is an example of this. The study of borderless education (CVCP 2000, Cunningham 2000) reveals many other examples including new types of providers and innovative delivery methods.

1.4 Do we need to distinguish between for-profit and non-profit internationalization?

The term internationalization is now expanded to include a vast array of cross border activities, and this is leading to a rather unfortunate, but perhaps necessary, use of the labels 'for-profit internationalization' and 'non-profit internationalization'. This will help to distinguish between those education activities which are primarily for-profit and have a cross-border delivery component to them from those initiatives which are domestic or international based, clearly not commercial in nature and are primarily oriented to enhancing the quality, relevance and academic/social benefits of academic endeavours (teaching, research and service). This could be seen as a rather spurious distinction as it is not helpful or accurate to infer that for-profit internationalization cannot also contribute to academic quality and social benefit. Furthermore, there are academic internationalization activities, such as curriculum innovation, research, extra-curricular activities which have a comparative and multi-cultural component to them, but never cross a border! For the purpose of discussing the impact of trade liberalization it may be necessary to distinguish between for-profit and non-profit internationalization activities in order to have clarity on what kinds of initiatives are interpreted as "trade in educational services"

This for-profit versus non-profit approach to internationalization needs to be explored further, as it may have unintended consequences. It is a first attempt to try to clarify the confusion which exists around the use of the terms internationalization and trade in services. It is just too simple to label all activities which cross borders as internationalization activities. Trade in services is clearly a for-profit approach to internationalization of education. Whether trade in education has a net positive effect on internationalization of higher education is yet to be determined.

Therefore, the term internationalization will continue to be used in the debate about the implications of trade on higher education. However, as we move towards the development of international education frameworks or guiding principles, there will be times when the difference between trade in higher education services (for-profit) and non-profit internationalization will be irrelevant and other times when it will be important.

1.5 Terminology

The active interest and growth in the internationalization of higher education have introduced new concepts and terminology to the sector. The plethora of new terms is a sign of the accelerated rate of change taking place in education. As a result there is confusion and misunderstanding about what terms mean and how they relate to each other. Therefore, a description of the key terms used in this paper is provided in Chart One.

Chart One: Terminology

Explanation of terms used in Trade of Higher Education Services		
<p>Internationalization: The process of integrating an international dimension into the teaching, research and service functions of higher education (Knight, 1994, p.3)</p>		
<p>Borderless Education: Education initiatives which cross the traditional borders of higher education, whether geographical or conceptual (CVCP 2000, p. 7)</p>		
<p>Cross border Education: A generic term to describe the delivery of education where the teacher, learner, program, institution or course materials cross a national jurisdictional border.</p>		
<p>Cross border Trade in Education services: The delivery of education services across jurisdictional borders on a commercial basis for purposes of economic gain or profit.</p>		
<p>Trade Liberalization: The promotion of increased trade through the removal of barriers which impede freer trade. Trade agreements such as GATS, NAFTA, EU and APEC are legal entities with formal rules and obligations designed to systematically liberate trade from current barriers or impediments.</p>		
Cross border providers and methods of delivery of higher education services		
Concept/ Term	Type	Note/ Example
<p>Public non-profit higher education institutions and providers</p> <p>Private non-profit higher education institutions and providers</p>	<ul style="list-style-type: none"> -universities -colleges -vocational and technical schools -specialized institutes <p>*could also engage in for-profit educational delivery of specific courses or programs</p>	<p>Public higher education institutions are likely to be considered private companies when they set up commercial presence in another country</p>
<p>New private for-profit providers</p> <p>Includes a diverse range of non-governmental bodies, institutions, companies</p>	<ul style="list-style-type: none"> - Corporate Universities - For-profit private institutions - Media companies - Educational brokers - University Consortia* - Professional bodies* <p>*May also engage in non-profit education services</p>	<ul style="list-style-type: none"> -Cisco, IBM -Devry Institute -Thompson Learning -UK Open Learning Foundation -Universitas 21-U21global -Australia's Association of Profession Engineers
<p>New and Non-traditional Delivery Methods</p> <p>Delivered by private and public institutions within a country and across borders</p>	<ul style="list-style-type: none"> - Distance and E-learning - Virtual universities - Franchises - Satellite campuses -Twinning Arrangements 	<ul style="list-style-type: none"> -Athabasca University -Phoenix University* -Informatics Ltd* -RMIT University in Vietnam* -Sunway College Malaysia* <p>*Private for-profit providers</p>

2. KEY ASPECTS OF GATS

This section provides a brief overview of the purpose, structure, main elements and rules of GATS. The present level of commitments to higher education and the timelines for the current negotiating phase of the agreement are presented

2.1 Structure and purpose of GATS

The GATS is the first ever set of multilateral rules covering international trade in services. Previous international trade agreements covered trade in products, but never services. The GATS was negotiated in the Uruguay Round and came into effect in 1995. It is administered by the World Trade Organization (WTO) which is made up of 144 member countries.

The GATS has three parts. The first part is the framework which contains the general principles and rules. The second part consists of the national schedules which list a country's specific commitments on access to their domestic market by foreign providers. The third part consists of annexes which detail specific limitations for each sector and are attached to the schedule of commitments. To understand GATS, it is essential to understand what kind of education services will be covered by GATS and what is meant by higher education services.

2.2 Modes of trade in services

The GATS defines four ways in which a service can be traded, known as 'modes of supply'. (WTO, 1998) These four modes of trade apply to all service sectors in GATS. Chart Two provides a generic definition for each mode, applies them to the education sector and comments on the relative size of the market supply and demand.

Chart Two : Mode of Supply

Mode of Supply	Explanation	Examples in Higher Education	Size /Potential of market
1. Cross Border Supply	-the provision of a service where the service crosses the border (does not require the physical movement of the consumer)	-distance education - e-learning -virtual universities	-currently a relatively small market -seen to have great potential through the use of new ICTs and especially the Internet
2. Consumption Abroad	-provision of the service involving the movement of the consumer to the country of the supplier	-students who go to another country to study	-currently represents the largest share of the global market for education services
3 Commercial Presence	-the service provider establishes or has presence of commercial facilities in another country in order to render service	-local branch or satellite campuses -twinning partnerships - franchising arrangements with local institutions	-growing interest and strong potential for future growth -most controversial as it appears to set international rules on foreign investment
4. Presence of Natural Persons	- persons travelling to another country on a temporary basis to provide service	-professors, teachers, researchers working abroad	-potentially a strong market given the emphasis on mobility of professionals

2.3 Categories of education services

Trade in education is organized into five categories of service according to the UN Provisional Central Classification . They are primary, secondary, higher, adult and other. The three categories that are most relevant to this paper are the last three. Of particular interest is the category of ‘other’ education services. Clarification is needed to determine what is included in this group. At this time it is wide open and includes services as diverse as language testing, student recruitment and quality assessment of programs. A review by UNESCO or another appointed body, in order to elaborate on and clarify the types of education services in each of the three categories would be of enormous benefit to the higher education sector. The classification system needs to reflect the new types of education providers, delivery modes and qualifications which have been emerging in the last decade.

2.4 Key elements and rules of the GATS

The overall framework contains a number of general obligations applicable to all trade in services regardless of whether a country has made a specific commitment to sectors or not. These are called unconditional obligations. Fundamental to this discussion is the Most Favoured Nation (MFN) rule.

Each WTO member lists in its national schedules those services for which it wishes to provide access to foreign providers. In addition to choosing which service sector/s will be committed, each country determines the extent of commitment by specifying the level of market access and the degree of national treatment they are prepared to guarantee. The following chart lists the key elements (WTO, 1999c) of the GATS and provides brief explanatory notes.

Chart Three: Key Aspects and Rules of GATS

Element / Rule	Explanation	Application	Issues
Coverage	All internationally traded services are covered in the 12 different service sectors. (e.g. education, transportation, financial, tourism, health, construction)	Applies to all services- with two exceptions: i) services provided in the exercise of governmental authority ii) air traffic rights	Major debate on what the term “exercise of governmental authority” means.
Conditional obligations	There are a number of conditional obligations attached to national schedules -market access -national treatment	Only applies to commitments listed in national schedules. Degree and extent of obligation are determined by country	GATS supporters believe that a country’s national educational objectives are protected by these two obligations

Most favoured nation (MFN) treatment	<p>Requires equal and consistent treatment of all foreign trading partners</p> <p>MFN means treating one's trading partners equally. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all WTO members. This also applies to mutual exclusion treatment</p> <p>For instance, if a foreign provider establishes branch campus in Country A, then Country A must permit all WTO members the same opportunity/ treatment. Or if Country A chooses to exclude Country B from providing a specific service, then all WTO members are excluded.</p>	<p>May apply even if the country has made no specific commitment to provide foreign access to their markets.</p> <p>Exemptions, for a period of 10 years, are permissible</p>	<p>.MFN has implications for those countries who already are engaged in trade in educational services and/or who provide access to foreign education providers</p> <p>MFN is not the same as national treatment</p>
National Treatment	<p>Requires equal treatment for foreign providers and domestic providers</p> <p>Once a foreign supplier has been allowed to supply a service in one's country there should be no discrimination in treatment between the foreign and domestic providers.</p>	<p>Only applies where a country has made a specific commitment</p> <p>Exemptions are allowed</p>	<p>GATS critics believe that this can put education as a 'public good' at risk.</p>
Market Access	<p>Means the degree to which market access is granted to foreign providers in specified sectors. Market access may be subject to one or more of six types of limitations defined by GATS agreement</p>	<p>Each country determines limitations on market access for each committed sector</p>	
Bottom-up and Top-down approach	<p><u>Bottom up approach</u> refers to the fact that each country determines the type and extent of its commitments for each sector.. <u>Top down approach</u> refers to the main rules and obligations as well as the progressive liberalization agenda, there will be increasing pressure to remove trade barriers.</p>		<p>Sceptics maintain that the top down approach will have increasing importance and apply more pressure to liberalize</p>

2.5 Country commitments and negotiating deadlines

The education sector is one of the least committed sectors. The reason is not clear, but perhaps it can be attributed to the need for countries to strike a balance between pursuing domestic education priorities and exploring ways in which trade in education services can be further liberalized. Or it could be linked to the fact that other more lucrative service sectors are taking priority. To date, education has taken a low priority in the major bilateral/regional trade agreements and the same may be true for GATS.

Only 44 of the 144 WTO Members have made commitments to education, and only 21 of these have included commitments to higher education. (WTO, 2000) It is interesting to note that Congo, Lesotho, Jamaica and Sierra Leone have made full unconditional commitments in higher education, perhaps with the interest and intent of encouraging foreign providers to help develop their educational systems. Australia's commitment for higher education covers provision of private tertiary education services including at the university level. The European Union has included high education in their schedule with clear limitations on all modes of trade except 'consumption abroad' which generally

means foreign tuition paying students. Only four (USA, New Zealand, Australia, Japan) of the 21 countries with higher education commitments have submitted a negotiating proposal outlining their interests and issues in pursuing more trade liberalization in higher education services

At the end of June 2002, each member country had to submit their requests for trade liberalization to other countries. This is done on a bilateral basis. A country is not required to publicize its requests, although several countries have voluntarily made executive summaries available. Each country is now negotiating, on a bilateral basis, the offers they will make in response to the requests for removing barriers to trade. This is done with the full realization that any offer/commitment made to one country will be available to all countries due to the most favoured nation rule. This stage of negotiations is done 'behind closed doors'. By March 2003, the offers corresponding to the initial set of requests must be finalized but new request/offers can be introduced at any time until the close of this round of negotiations in 2005.

3.0 KEY ISSUES AND IMPLICATIONS - UPDATE, DEBATE, ACTION ?

3.1 Article 1.3 - Which education services are covered or exempted?

For the higher education sector this remains one of the most troublesome articles of the agreement. Essentially, it is trying to ensure that "services supplied in the exercise of governmental authority" are not covered by the agreement. This is what is being labelled that "public services carve out". However, there is great confusion about what exactly 'exercise of governmental authority' means. It should be noted that this confusion exists in several of the service sectors, not just in education. The agreement states that "in the exercise of governmental authority" means that the service is provided on a 'non-commercial basis' and 'not in competition' with other service suppliers. The interpretation of these two requirements is at the heart of much of the debate about which services are covered or exempt. This is an important question to address.

Education critics of the GATS maintain that due to the wide-open interpretation of 'non-commercial' and 'not in competition' terms, the public sector/government service providers may not in fact be exempt. The situation is especially complicated in those countries where there is a mixed public/private higher education system or where a significant amount of funding for public institutions is in fact, coming from the private sector. Another complication is that a public education institution in an exporting country is often defined as private/commercial when it crosses the border and delivers in the importing country. Therefore, one needs to question what 'non-commercial' really means in terms of higher education trade. For instance, it is too simple to characterize the difference between commercial and non-commercial as private providers vs public providers. Why? First, because the descriptor 'public' is not clear in terms of commercial criteria (for example, how much private sourced income would exempt a public institution from being public) and secondly, because many so called 'private' institutions operate on a totally non-profit basis. Nor, is it entirely correct to explain the difference between commercial and non-commercial by distinguishing between for-profit or non-profit higher education providers, as there are public institutions who now operate 'for-profit units'. Again, one can ask, what level of 'for-profit activity' would cause a public institution, which received substantial public funding to be characterized as operating on a 'commercial basis' and therefore covered by GATS. While these may be slightly extreme questions, they point to the absolute necessity of gaining further clarification of which higher education services are exempted from GATS coverage based on the "non-commercial" requirement.

The debate about what 'not in competition' means is also fuelled by the fact that there does not appear to be any qualifications or limits on the term. (Gottlieb and Pearson, 2001) For instance, if non-government providers (private non-profit or private for-profit) are delivering services, are they deemed to be in competition with government providers or those operating in the exercise of governmental authority. In this scenario, can public providers be defined as being "in competition" by the mere existence of non-governmental providers. Does the 'mode of supply' (see Chart Two)

or the ‘method of education delivery’ influence limit or delimit the requirement of “not in competition”? These are unanswered questions which need clarification.

Supporters of the GATS emphasize that education is to a large extent a government function and that the agreement does not seek to displace the public education systems and the right of government to regulate and meet domestic policy objectives (Sauve 2002). This viewpoint is confirmed by the statements made in the negotiating proposals from Australian and the United States. Others express concern that the whole question of the protection of public services is very uncertain and potentially at risk by the narrow interpretation of what governmental authority means and a wide-open interpretation of what ‘not in competition’ and ‘non-commercial basis’ mean. Clearly, the question - which higher and adult education ‘services exercised in governmental authority’ are exempted from GATS - needs to be front and centre in the debate on the risks and opportunities associated with the agreement. We need to give serious consideration as to what is the best route to try to delineate the issues and concerns inherent in the interpretation and application of Article 1.3 to our sector. Secondly, the higher education sector needs to be proactive in stimulating and guiding this debate with the goal of maintaining a robust and quality higher education sector while experiencing increased trade in higher education services. This issue should not be left solely in the hands of the trade experts and negotiators, we need to work collaboratively with them.

3.2 Progressive liberalization and cross-sector trading

The GATS is described as a voluntary agreement because countries can decide which sectors they will agree to cover under GATS rules. This is done through the preparation of their national schedules of commitments and through the ‘request-offer’ negotiation rounds. However, there are GATS critics who question the voluntary nature of the agreement, notably the built-in progressive liberalization agenda (EI/PSI 2000). This needs to be looked at carefully as in the future there may be some implications for the higher education sector given the low level of commitments at the present time.

GATS is not a neutral agreement as it aims to promote and enforce the liberalization of trade in services. The process of progressive liberalization involves two aspects- extending GATS coverage to more service sectors and decreasing the number and extent of measures which serve as impediments to increased trade. Therefore, in spite of the right of each country to determine the extent of its commitments, with each new round of negotiations, countries are expected to add sectors or sub-sectors to their national schedules of commitments and to negotiate the further removal of limitations on market access and national treatment. (AUCC, 2001)

GATS- friendly countries, who may be presently disappointed by the initial low level of commitments to higher education can remain optimistic that pressure for further commitments to remove barriers to trade for higher education services will occur. Both the flexibility of the agreement and the progressive liberalization feature will help to facilitate and encourage more opportunities for trade. GATS-chilled countries, who are not interested in either the import or export of education services, will most likely experience greater pressures to allow market access to foreign providers. GATS is a very new and still evolving instrument and it is too soon to predict the reality or extent of these potential opportunities or risks. However, the timing is right for the education voice and advice to be heard either for promoting more trade to provide greater foreign supply and thereby increased student access, or for taking a more cautious approach in order to maintain national education policy objectives and a strong domestic supplied system.

As has been noted, at the ‘request-offer’ stage of the process, there are bilateral negotiations on market access and national treatment commitments. The key point at this step, is that sectors for which access is sought do not have to correspond to those for which requests are made. So country A may request of Country B greater access to transportation services. Country B can respond by requesting access to education services. It is up to each country as to whether they are willing to make concessions on foreign access to domestic markets. This situation, applies to all sectors and may be of greatest concern to countries, developing or developed, who have not made commitments

to open up education services and might therefore consider their education service sector vulnerable to negotiating deals across sectors. It needs to be emphasized that at the current time, education is one of the least committed sectors. To date, the education services sector has not been an extremely important sector in WTO deliberations or in initial commitments. We will have to wait until March 2003 to see the results of the current negotiating rounds. This means that there is time for the higher education sector to be more informed as to how they can work towards having GATS help the development of their national education system or on the other hand, prevent GATS from posing risks to their national policy and development plans.

3.3 Subsidies

Government subsidy for higher education is a topic near and dear to the hearts of public and private non-profit higher education institutions. Therefore, it is not surprising that the issue of subsidies is being looked at in relation to GATS. There are many scenarios being circulated by GATS-chilled critics about the potential impact of the agreement on whether government subsidies could be construed as unfair and discriminatory measures. It is important that these questions are raised and carefully studied to ensure an informed analysis and approach, and prevent an extremist or 'doomsday' approach.

Under Most Favoured Nation treatment, when a specific commitment is made, it implies that if a subsidy is granted to one foreign service provider, then it must be granted to all foreign providers. Similarly, under national treatment, if a country decides to make a commitment, then any subsidies given to domestic providers must also be given to foreign providers except where a country imposes special limitations on national treatment (such as in the United States proposal). This may have significant implications for public-funded providers as it could remove the ability of government to give preferential treatment to domestic providers unless a limitation is stated (Sinclair, 2000). One can ask the question, if this scenario were taken to its extreme, whether public funding for higher education would be subject to action under GATS as an unfair subsidy. There are still many 'unanswered' and hypothetical type questions related to the topic of government subsidies and cross-subsidization for publicly funded institutions. The ruling on subsidies is the subject of much debate in many service sectors. WTO is continuing to work on the disciplines relating to subsidies. Therefore, it is important that the higher education sector monitor these developments as public subsidies and cross-subsidization of educational programs are a common and often necessary practice in public higher education. We need to ensure that necessary limitations can continue to be put in place under national treatment to prevent government subsidies for public education being interpreted as unfair measure or barrier which should be removed.

4.0 ACTIONS AND REACTIONS

4.1 Stakeholders' actions and reactions

It is fair to say that the higher education sector is giving voice to the risks associated with further trade in higher education services within the framework of GATS. It is interesting to note, that besides the four negotiating proposals (USA, Australia, New Zealand, Japan) there are few statements or reports that have championed the benefits, other than the obvious ones by the WTO and other intergovernmental agencies which speak of increased supply and economic gain. In fact, there is little discussion, as to whether the anticipated economic and supply benefits are reasonable and probable. This may change as more private companies and institutions take financial risks to enter into foreign educational markets and importing countries develop standards of quality and indicators of increased access and benefit. It bears mentioning that the controversy to date, exists more within countries than between countries. For instance, both the United States and United Kingdom have made commitments to liberalize trade in higher education services and in both cases, representatives from the university sector have spoken out against such commitments

From the education sector, there are international bodies, national organizations and individual institutions who have jointly and individually expressed their opinions about the potential impact of GATS on higher education. The following examples of initiatives are from various stakeholder groups and they illustrate the different areas of concern and the divergence in opinions.

Joint Declaration on Higher Education and the General Agreement on Trade in Services - September 2001. Developed and signed by the European Universities Association, the Canadian Association of Universities and Colleges, the American Council for Education and the Council for Higher Education Accreditation. The declaration expresses that “our institutions are committed to reducing obstacles to international trade in higher education using conventions and agreements outside of a trade policy regime. This commitment includes, but is not limited, to improving communications, expanding information exchanges, and developing agreements concerning higher education institutions, programs, degrees or qualifications and quality review practices.” Furthermore, the declaration noted that “while some barriers exist to trade in educational services, “there does not appear to be a major problem overall”. In November 2001 International Association of Universities endorsed the declaration as well.

Port Alegre Charter (April 2002) The participating rectors at the III Iberoamerican Summit of Rectors of Public Universities signed this charter and requested “ the governments of their respective countries not to become engaged in any commitment concerning higher education”. This Charter in turn stimulated other Brazilian organizations such as the National Association of Leaders of Federal Institutions of Higher Education to send the Port Alegre Charter to the president of Brazil and the Brazilian Society for the Progress of Science to request the President to state explicitly the government’s position re commitment to GATS in higher education services sector.

National Committee for International Trade in Education (1999) has prepared a report outlining the barriers to education as experienced by US higher education providers which was submitted by the Centre for Quality Assurance in International Education to the Office of the US trade Representative.

Education International is a worldwide trade union organization of education personnel and was one of the first groups to prepare a comprehensive report cautioning against the potential risks and threats of including higher education services in the GATS. Special attention was given to article 1.3, subsidies, progressive liberalization, employment conditions of academics among others.

The National Unions of Students in Europe have prepared a report identifying some of the worrisome consequences of the increasing commercialization of education and the treatment of education as a tradable commodity within regional trade agreements and GATS.

The Canadian Federation of Students’ brief entitled “Friend or Foe: Trade Agreements and their Impact on Post-secondary Education” (2002) concludes “that in Canada the intersection between education and trade agreements poses a definite threat to the strong and public system that is in existence”.

The European University Association (2002) issued a memo to all national Rectors’ conference on the Bologna Process and GATS. In the memo, it was stated that “the World Bank, OECD, the US Department of Commerce and other organizations co-sponsored a conference in Washington, D.C. (May 2002) to deliver one central message. Of the four “modes of supply” defined by GATS, only the third mode (virtual or physical commercial presence needs to be addressed through GATS negotiations. According to officials at the conference, there is a need for a regulatory framework for e-learning and institutions crossing

borders to ensure fair market access. While the other three modes experience “obstacles to trade” these could not be overcome through GATS but through other measures”.

Association of Universities and Colleges of Canada (2001) prepared a briefing paper for its members to prepare for consultation with government officials and non-government experts on this topic. Special attention was given to the Article 1.3 which addresses which services are covered and exempted. There is concern that the so called “carve out for public service” is unclear and problematic.

UNESCO (2001) An expert meeting was held on the impact of globalization on quality assurance, accreditation and the recognition of qualifications in higher education. In light of increased cross border education delivery and new trade agreements, attention was given to the importance and need for an international education framework to promote the quality of higher education and to facilitate recognition of reputable national quality assurance and accreditation bodies. The topic of international recognition of qualifications was also addressed and urgency expressed to move forward on looking at the relationship between trade agreements and the regional conventions on qualifications, such as the Lisbon convention.

OECD/US Forum on Trade in Educational Services (May 2002) brought together a range of stakeholders with a strong interest in cross-border trade of higher education services. Perspectives on the benefits, risks and issues were heard from representatives from different regions of the world, from private for-profit and public education providers, trade experts, from students, non-government organization, sceptics and supporters. Given the diversity of views it is understandable that there was no convergence of viewpoints, other than an acknowledgement by higher education sector that an international educational framework to enable quality assurance, accreditation and mutual recognition of qualifications was needed.

4.2 Concluding Remarks - Observations on actions and reactions of stakeholders

It is difficult to address and summarize all the points made by these groups, however, it is possible to point out some of the common themes which relate to the policy implications for higher education. The concerns relating to the technical and legal issues of GATS principal articles are not included in the list below as several have already been addressed in section 3 and in the previous paper.

- There has been very little debate questioning the benefits of increased trade in education, most of the concern is on the respective roles of the government and the market in the regulation and provision of higher education
- Of common concern is the fear that public provision of higher education may be undermined by foreign competition and that national education policy objectives may be a risk.
- There is a strong belief that the commercialization and commodification of higher education will put more importance on economic benefits than on academic, social and individual benefits of higher education and that the national cultural component will be eroded
- It is believed that the increase in new types of cross-border providers and for-profit providers may jeopardize consumer confidence and public trust in the quality of higher education.
- Higher education is seen to be different from other service sectors due to the public mandate and the subsequent role that government plays
- Even though in some countries the demand for higher education surpasses the capacity of the domestic public system, the introduction of foreign private providers requires close attention to monitor the degree of equitable access for students
- Many of the barriers identified for Mode 2 (study abroad) and Mode 4 (movement

of people) do not fall within the GATS framework. These include aspects such as visas, work permits, immigration status. It is Mode 3 (commercial presence) which merits the closest scrutiny as this is where the barriers fall primarily within the purview of the GATS agreement. It is pointed that what may be seen as barriers by exporting countries are in fact, fundamental aspects of the regulatory system in the importing country.

- The impact of trade in education services on institutional level autonomy, academic freedom and the employment of academics has been identified as an area requiring further investigation.
- One of the most critical implications is the impact of increased trade on the quality of higher education provision and the recognition of qualifications and accreditation. It is recommended that the quality standards and mutual recognition issues be addressed by the education sector, and dealt with outside the purview of trade agreements. (However, attention needs to be given to the impact of Article VI.4 which addresses ‘ qualification requirements and procedures, technical standards and licensing (are) not more burdensome than necessary to ensure that quality of the service.)
- There are existing regional conventions to recognize academic qualifications and these existing mechanisms need to serve as reference points and a foundation for further work in developing an international education framework in which to work towards quality assurance of higher education

It is equally interesting to note who has not been involved in the discussions and which issues have not been addressed.

The primary and secondary education sectors have been almost silent on the implications of GATS. There seems to be an implicit understanding or assumption that this level of education is not the focus of increased trade liberalization. This may or may not be the case. Time will tell.

It is the university sector within the post-secondary education category which has been most involved in discussing GATS. The professional, technical and vocational providers have not been very vocal. It would be useful to have more information and discussion with the non-university sector.

To date there has been little discussion of issues related to the “other services” category. Increased trade in education services such as language testing or quality assessment and evaluation services may have implications for higher education. The category of adult education has also not been fully addressed even though commitments have been made in this category.

TRIPS is another WTO agreement. TRIPS stands for Trade Related Aspects of Intellectual Property Rights. Not surprisingly, there are both supporters and critics. Of particular interest to the higher education community are issues related to whether intellectual property rights will encourage or inhibit innovation and research, who owns copyright of materials used in e-education, and protection of indigenous knowledge.

The focus thus far, has been almost entirely on the teaching side of education and has not addressed implications for research. Research is an integral part of a university’s role and further investigation is needed into the potential impact on applied research and especially privately contracted or funded research.

Individually, the issues outlined above merit further investigation and rigorous analysis. Collectively, they demonstrate the breadth of interest and concern. They also point to the need for further consultation within the higher education sector, with other service sectors perhaps, and certainly with trade officials.

As has been repeated many times, GATS is a new, untested and evolving agreement. There continue to be more questions than answers. This means that there is time and opportunity for the higher education sector to become better informed and educated about how best to move forward to maximize benefits and minimize risks. It also can mean that interpretations of existing articles and

obligations can change or that new disciplines can be developed. It requires that the higher education community at the national level be vigilant in monitoring new developments and working collaboratively with the government representatives from education, trade and foreign affairs.

It is true that both the benefits and risks of increased international trade in education will be felt most keenly at the national level. However, it also important that the wider international higher education community continue to work together on these issues so that 1) educators' views and expertise come to bear on the developments in trade in education services ; 2) the higher education sector continues to work towards an international education framework which addresses the quality assurance, accreditation and recognition of qualifications and 3) further work is done on investigating the implications of trade agreements on scholarly pursuits, research and intellectual property and 4) the larger more philosophical questions related to the purpose and 'public good' of higher education continue to be explored.

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