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**Steering Committee on Higher Education and Research
(CD-ESR)**

Working Party on the Bologna Process

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Council of Europe, Room 16

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**SECRETARIAT BACKGROUND
DOCUMENT**

Directorate General IV: Education, Culture and Heritage, Youth and Sport
(Directorate of School, Out-of-School and Higher Education/Higher Education and Research
Division)

ITEM 5

Distribution: Working Party

1. General information on the General Agreement on Trade in Services (GATS)

The present document is intended to provide a basic overview of the GATS and in particular its provisions concerning higher education. It should not be seen as expressing the views of the Council of Europe on the GATS in general or on any specific issue involved in the GATS. The Secretariat would like to acknowledge the assistance of Hella Schneider, trainee with the Higher Education and Research Division, in the elaboration of this document.

1.1. On the WTO

The World Trade Organisation (WTO) with its 144 member states is the only international body dealing with the rules of trade between nations. The three most important tasks of the WTO include

- 1) Increasing trade liberalization internationally and helping trade flow as freely as possible. It therefore provides information on trade rules and assures transparency in trade.
- 2) The WTO serves as a forum for trade negotiations.
- 3) As trade involves different interest groups and as negotiations often need to be interpreted, these differences must be settled through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

At the heart of the WTO are the WTO agreements, negotiated and signed by the majority of the world's trading nations and ratified at their parliaments. One of these agreements is the GATS. These contracts are binding governments to keep their trade policies within agreed limits as they form the legal ground-rules for international commerce.

1.2. Overview of the GATS

The GATS is a multilateral agreement under the WTO that was negotiated in the Uruguay Round and came into effect in 1995. It was essentially inspired by the same objectives as the General Agreement on Tariffs and Trade (GATT), which is its counterpart in merchandise trade:

- Creating a credible and reliable system of international trade rules
- Ensuring fair and equitable treatment of all participants (principle of non-discrimination)
- Stimulating economic activity through guaranteed policy bindings
- Promoting trade and development through progressive trade liberalization.

GATS applies in principle to all service sectors, with two exceptions: Article I (3) of the GATS excludes

- “services supplied in the exercise of governmental authority”. These are services that are supplied neither on a commercial basis nor in competition with other suppliers. Cases in point are social security schemes and any other public service, such as health or education that is provided at non-market conditions. Still this article is commonly discussed, as further described in chapter 4.
- Further, the Annex on Air Transport Services exempts from coverage measures affecting air traffic rights and services directly related to the exercise of traffic rights.

GATS consists of three parts

- the framework, containing the general principles and rules.
- national schedules, which list a country’s specific commitments on access to their domestic market by foreign providers.
- Annexes, in which specific limitations for each sector can be attached to the schedule of commitments.

Through negotiating rounds, countries choose the sectors and modes of services trade they wish to include in their schedules as well as the limitations to market access and national treatment they wish to maintain. It is only by reference to the individual country schedules that one can know not only the service sector(s) that will be committed, but also the extent of commitment a country is prepared to make. There is no minimum requirement as to its coverage, so that WTO members are free to leave entire sectors out of their GATS commitments, or they may choose to grant market access only in specific sectors, subject to the limitations they wish to maintain. Moreover governments may limit commitments to one or more of the four recognized modes of supply, see also paragraph 1.3 below. Commitments may also be withdrawn or renegotiated.

The agreement contains a number of general obligations for all services, the most important of which is the Most Favoured Nation (MFN) rule. Apart from these obligations each member state defines its own obligations through the commitments undertaken in its schedule. Market access and national treatment obligations for instance apply only to the sectors in which a country chooses to make commitments.

1.3. Key elements and Rules

Total coverage

The agreement covers all internationally traded services in the 14 different service sectors (see appendix). Included are all the different ways of providing an international service, as follows:

- Services supplied from one country to another, not requiring the physical movement of the consumer (e.g. distance education, e-learning, virtual universities), also known as “cross-border supply”;
- Consumers or firms making use of a service in another country (e.g. students who go to another country for their studies), which is called “consumption abroad”;
- A foreign company setting up subsidiaries or branches to provide services in another country (e.g. twinning partnerships, local branch or satellite campuses, franchising arrangements with local institutions), officially “commercial presence”;
- Individuals travelling from their own country to supply services in another (e.g. professors, teachers, researchers working abroad), known as “presence of natural persons”.

General or unconditional obligations

This includes transparency, most favoured nation treatment, dispute settlement and monopolies and apply to all service sectors.

Most Favoured Nation treatment

MFN means treating one’s trading partners equally. Under GATS, if a country allows foreign competition in a given sector, equal opportunities in that sector should be given to service providers from all other WTO members. This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO and it applies moreover to mutual exclusion treatment. E.g. if one country chooses to exclude another country from providing a certain service, all WTO members should be excluded.

MFN applies to all services, but some special temporary exemptions have been allowed.

Transparency

In order to guarantee transparency, governments must publish all relevant laws and regulations. Inquiry points within their administrations should help foreign companies and governments obtain information about regulations in any service sector. Moreover governments have to notify the WTO of any changes in regulations that apply to the services that come under specific commitments.

Measures

These include all laws, regulations and practices from national, regional or local governments that may affect trade; this term applies to all sectors.

Conditional obligations

There are a number of conditional obligations attached to national schedules, e.g. market access and national treatment. These apply only to commitments that are listed in national schedules and whose degree and extent is determined by country.

Market access

The lists of market access commitments (along with any limitations and exemptions from national treatment) are negotiated as multilateral packages, although bilateral bargaining sessions are needed to develop the packages. The commitments therefore contain the negotiated and guaranteed conditions for conducting international trade in services. If a recorded condition is to be changed for the worse, then the government has to give at least three months' notice and it has to negotiate compensation with affected countries. But the commitments can be improved at any time.

National treatment

This principle means treating one's own nationals and foreigners equally. In services, this means that once a foreign company has been allowed to supply a service in one's country there should be no discrimination between the foreign and local companies. Under GATS, a country only has to apply this principle when it has made a specific commitment to provide foreigners access to its services market. It does not have to apply national treatment in sectors where it has made no commitment. Even in the commitments, GATS does allow some limits on national treatment.

Progressive Liberalization

In GATS, it is the intention that with each round of negotiations further liberalization of trade in service is realized. This involves two aspects - more sectors are covered and more trade limitations are removed.

Bottom-up and Top-down approach

In the context of GATS, a bottom-up approach means that each country determines the type and extent of its commitments for each sector.

Top down refers to the main rules and obligations as well as the progressive liberalization agenda, there will be increasing pressure to remove trade barriers.

Specific commitments

Individual countries' commitments to open markets in specific sectors — and how open those markets will be — is the subject of negotiations. The commitments appear in "schedules" that list the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), as well as any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies).

These commitments are “bound”: like bound tariffs, they can only be modified or withdrawn after negotiations with affected countries — which would probably lead to compensation. Because “unbinding” is difficult, the commitments are virtually guaranteed conditions for foreign exporters and importers of services and investors in the sector to do business.

2. Impacts of GATS on Higher Education

2.1. Categories of education and commitments on the different sectors

Trade in education is organized in five categories of service, based on the United Nations Provisional Central Product Classification (CPC):

- Primary education, covering preschool and other primary education services, but excluding child care services;
- Secondary education, including general higher secondary, technical and vocational secondary and technical and vocational services for disabled;
- Higher Education, covering post secondary technical and vocational education services as well as other higher education services leading to university degree or equivalent;
- Adult Education covers education for adults outside the regular education system;
- Other Education; which covers all other education services not elsewhere classified; nonetheless education services related to recreation matters are not included.

So far only 44 of the 144 WTO members have made commitments to education and only 21 of these have included commitments to higher education. It is interesting to note that Congo, Lesotho, Sierra Leone and Jamaica have made full unconditional commitments in higher education, perhaps with the intent of encouraging foreign providers to help develop their education systems. Australia’s commitment for higher education covers provision of private tertiary education services, including university level. The European Union has included higher education in their schedule with clear limitations on all modes of trade except ‘consumption abroad’, which generally means foreign tuition paying students. Only four (Australia, New Zealand, USA and Japan) of the 21 countries with higher education commitments have submitted a negotiating proposal outlining their interests and issues.

The number of schedules containing commitments on the different education sectors is relatively constant. The least frequently committed sector is “Other education”. Regarding *cross-border-supply* (mode 1), primary and secondary education have been fully committed without any limitations in slightly more than half of the schedules. The corresponding share for “higher education” and “adult education” is higher; where approximately three-quarters of all existing commitments are without limitations.

Limitations on the *consumption abroad of education services* (mode 2) are very rare in all education sub-sectors. As in many other services areas, countries saw less need

– or scope – for restricting trade under this than any other mode of supply, given that the consumption of the service takes place outside their national boundaries.

Regarding *commercial presence* (mode 3) primary, secondary and higher education have “no limitations” in about half of the schedules.

Finally, regarding *presence of natural persons* (mode 4) almost every country has “unbound” commitments across all education sub-sectors, implying that no commitments in those sectors have been taken.

To sum it up, WTO members have chosen to impose considerably more limitations on trade in educational services in modes 3 and 4 than in modes 1 and 2. This is also the common picture for trade in other services. Furthermore, member countries have in general put slightly more limitations on trade in primary and secondary education than on higher and adult education.

2.2. Trade barriers

Identification of the barriers to trade in higher education services is fundamental since the elimination of these barriers is the *raison d'être* of GATS. There are some barriers that are applicable to all sectors, while other impediments are specific to the education services sector.

The majority of generic barriers are from an exporter country's point of view and focus on the supply modes “cross border supply” and “commercial presence”:

- There is a certain lack of transparency of government regulatory, policy and funding frameworks
- Domestic laws and regulations are administered in an unfair manner
- Subsidies are not made known in a clear and transparent manner
- Tax treatment which discriminates against foreign suppliers
- Foreign partners are treated less favourably than other providers

The principal barriers to trade in higher education services as regards *cross-border supply* (mode 1: e.g. distance delivery or e-education; virtual universities) are the following:

- Inappropriate restrictions on electronic transmission of course materials
- Economic needs test on suppliers of the services in question
- Lack of opportunity to qualify as degree granting institution
- Requirement to use local partners, with at the same time a barrier against entering into and exiting from joint ventures with local or non-local partners on a voluntary basis
- Excessive fees/taxes imposed on licensing or royalty payments
- Restrictions on use/ import of educational materials

The principal barriers to *consumption abroad* (mode 2, e.g.: students studying in another country) are

- Measures that restrict the entry and temporary stay of students, such as visa requirements and costs, foreign currency and exchange controls
- Recognition of prior qualifications from other countries
- Quotas on numbers of international students in total and at a particular institution
- Restrictions on employment while studying
- Recognition of new qualification by other countries

For *trade via commercial presence* (mode 3: branch or satellite campus; franchises; twinning arrangements), common barriers include

- The inability to gain the required licences to grant a qualification
- Subsidies provided solely to local institutions
- Nationality requirements
- Restrictions on recruitment of foreign teachers
- Government monopolies
- Difficulty in obtaining authorization to establish facilities
- Prohibition of higher education, adult education and training services offered by foreign entities

Barriers to mode 4 *presence of natural persons* (e.g. teachers travelling to foreign country to teach) are

- Measures that restrict the entry and temporary stay and work for the service suppliers, such as immigration barriers, nationality or residence requirements, quotas on number of temporary staff, employment rules
- Economic needs test
- Recognition of credentials
- Minimum requirements for local hiring being disproportionately high
- Repatriation of earnings is subject to excessively costly fees or taxes for currency conversion

3. Negotiating proposals

3.1. The proposal from Australia

It is well recognised that governments play a significant role in financing, delivery and regulation of education, either alone or in partnership with private or non-governmental organisations. Therefore the negotiations should not prevent member countries from establishing their own education policy objectives; furthermore they should not prevent member countries from providing public funds for education to meet domestic policy and regulatory objectives.

The proposal reflects the importance of education in the preparation for life as a citizen, transmission of values and culture. It aims at providing individuals in all countries with access to a wide range of educational options and to the best education services wherever they are provided and through whatever mode of supply they are provided. Australia proposes, furthermore, that given that there are significant linkages between the regulatory framework governing international trade in education services and other services sectors (for example, the telecommunication/audiovisual sector and movement of persons), there is a need for the education services negotiation to be viewed within the context of a comprehensive services round.

Benefits recognised:

- Facilitating access to education and training courses that in qualitative and quantitative terms are not otherwise available in the country of origin
- Providing a competitive stimulus to institutions with flow-on benefits to all students

Long-term benefits recognised include:

- Fostering a knowledge and appreciation of other languages, cultures and societies; students will benefit professionally and culturally
- Facilitation of exchange of people, ideas and experiences, which means richness of diversity at national and international levels, international cross fertilisation of academic knowledge
- Networking relationships among individuals, groups and institutions which can facilitate future economic, political and socio-cultural alliances

Governments must retain their sovereign right to determine their own domestic funding and regulatory policies. Nevertheless there is a will to liberalize trade in higher education; therefore a number of obstacles that should be removed are listed, such as:

Consumption abroad

- Visa requirements regulating the free flow of international student
- Foreign exchange requirements regulating the free flow of international students
- Qualification recognition issues which act as a deterrent to gaining qualifications at overseas institutions

Commercial presence

- Limits on ownership: foreign equity
- Rules on twinning arrangements which restrict the development of these institution to institution arrangements;
- Lack of transparent government regulatory, policy and funding frameworks

Presence of natural persons

- Visa regulations restricting the free flow of academics;
- Restrictions on the use/import of educational materials (academic tools of trade)

Cross-border supply

- Erection of new barriers as governments respond to growing use of the Internet for delivering education services;
- Restrictions on the use/import of educational materials (academic tools of trade)

Quality is not mentioned.

3.2. The proposal from New Zealand

Education is seen as vitally important. The critical role of education in economic and social development is pointed out.

A balance is needed between pursuing domestic education priorities and exploring ways in which trade in education services can be further liberalised.

New Zealand claims that the reduction of barriers to trade in education does not equate to an erosion of core public education systems; instead international trade in education services can provide a means of supplementing and supporting national education policy objectives. Furthermore it recommends a more elaborated definition of the 'Other education' category.

Quality is not mentioned.

3.3. The proposal from the USA

Education is to a large extent seen as a government function. Still, most countries allow private education to coexist with public education. Private education supplements public education systems; a risk of displacement is not seen.

The role of government is not in doubt; the proposal seeks to supplement public education systems and to give opportunities for suppliers to make their services available to students in other countries. The proposal intends to help upgrade knowledge and skills through these educational and training programs, while respecting each country's role of administering appropriate public education for its citizens.

It demands clarification of the coverage, since particular types of education (e.g. liberal arts business, professional...) are not specified. The classification of education

services should clearly cover and distinguish two types of services: training and educational testing services.

The proposal lists a number of obstacles it considers should be removed in future; it proposes that WTO members that have not yet made any commitments, formulate their commitments on the basis of this list:

- Prohibition of higher education, adult education, training services offered by foreign entities
- Lack of an opportunity for foreign suppliers of higher education, adult education and training services to obtain authorization to establish facilities within the territory of the Member country¹
- Inappropriate restrictions on electronic transmission of course materials
- Economic needs test on suppliers of these services
- Measures requiring the use of a local partner
- Denial of permission for private sector suppliers of higher education, adult education and training to enter into and exit from joint ventures with local or non-local partners on a voluntary basis
- Where government approval is required, exceptionally long delays are encountered and when approval is withheld, no reasons are given for the denial and no information is provided on what must be done to obtain approval in the future
- Tax treatment that discriminates against foreign suppliers
- Foreign partners in a joint venture are treated less favourably than the local partners
- Franchises are treated less favourably than other forms of business organization
- Domestic laws and regulations are unclear and administered in an unfair manner
- Subsidies for higher education, adult education and training are not made known in a clear and transparent manner
- Minimum requirements for local hiring are disproportionately high, causing uneconomic operations
- Specialized, skilled personnel (including managers, computer specialists, expert speakers), needed for a temporary period of time, have difficulty obtaining authorization to enter and leave the country
- Repatriation of earnings is subject to excessively costly fees and/or taxes for currency conversion
- Excessive fees/taxes are imposed on licensing or royalty payments.

Quality is not mentioned

¹ It may be worth noting that this proposal underlines the concept of territoriality rather than the concept of a specific institution, programme or provision belonging to the higher education system of a country, which is the concept used in the Lisboa Recognition Convention.

3.4. The proposal from Japan

The importance of improvement of the quality of education and research is recognized and the need for education to correspond to the rapidly changing needs of society is stressed. Therefore the Proposal suggests promoting a certain level of liberalization, while taking various governmental policy measures. It recognizes the importance of the government's role in education, especially in primary and secondary education. Any measures in the education services should be considered with primary interest in maintaining and improving the quality of the service.

Due considerations:

- Maintenance and improvement of the quality of the education activities in each country
- Protection of consumers to ensure that they are not damaged by services of low quality
- Measures to ensure international equivalence of degrees and diplomas
- Differences of educational systems should be taken into consideration
- Raises the question of how to maintain the quality of higher education supplied across borders
- Necessity of an information network on higher education supplied across borders is seen.

3.5. Key issues of the different proposals

All proposals acknowledge the important role of government as founder, regulator and provider of education services. Japan points out the diversity of education systems that are due to different social background and the necessity to take these differences carefully into consideration.

The rationales differ from country to country. Australia stresses greater access for students, New Zealand points out economic and social benefits, the USA stresses opportunities for new knowledge and skills, while Japan aims at an improvement of quality and at flexible respond to the rapidly changing needs of society. Australia believes that the competition inherent in more trade will have flow-on benefits for students. New Zealand emphasizes, that academic exchange, cross-cultural linkages and technological transfer will have a positive effect on education on an individual, institutional and societal level. The global spread of modern knowledge and improved competitiveness is pointed out by the USA, who stresses the economic benefits. Japan points especially on the importance of maintenance and improvement of quality in education and the protection of consumers. Yet the social and academic value to individuals, institutions and society are not overlooked.

There are ambiguous reactions to the effect GATS will have on a public/private mixed system. New Zealand believes that education may be one of the least committed service sectors, due to the high degree of government involvement. The USA stress, that private education will further supplement, not displace public education systems.

Still, there is uncertainty as to the way GATS will affect the balance of mixed education systems.

4. Different opinions on GATS affecting education and Higher education

The voices differ as to an increased liberalization of trade in education services. The opportunity to have foreign suppliers provides increased access to higher and adult education programs or to invest in the infrastructure for education provision is attractive to some. The threat of foreign dominance or exploitation of a national system and culture is emphasized by others.

The purpose of this document is to provide a brief overview of the GATS issues rather than of the different views of the process. A selection of the process from some stake holders may be found in Appendices 3-5.

APPENDIX 1 – AN OVERVIEW OF KEY AREAS OF GATS

14 different service sectors of GATS

1. Education services
2. Energy services
 - a. Oil and gas services
3. Environmental services
4. Express delivery services
5. Financial services
6. Health and social services
7. Legal services
8. Logistics and related services
9. Postal and Courier services
10. Professional services
11. Sporting services
12. Telecommunications
13. Tourism services
14. Transport services:
 - a. Air transport
 - b. Land transport
 - c. Maritime transport
 - d. Services auxiliary to all modes of transport

Article I (3)

Article I - Scope and definition

3. For the purposes of this agreement

- (a) “measures by Members” means measures taken by:
- (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

- (b) “services” includes any service in any sector except services supplied in the exercise of governmental authority;
- (c) “a service supplied in the exercise of governmental authority” means any service, which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

4 modes of supply of services under GATS (Article I.2 of the GATS)

Cross Border Supply:	Provision of a service where the service crosses the border
Consumption abroad:	Provision of the service involving the movement of the consumer to the country of the supplier
Commercial presence:	The service provider establishes or has presence of commercial facilities in another country in order to render service
Presence of Natural Persons:	Persons travelling to another country in order to provide service

Classification of education services under GATS and the four modes of supply

Category of education service	Cross border supply	Consumption abroad	Commercial presence	Presence of natural persons
1.Primary education:		Children attending classes abroad (frontier towns)	Twinning arrangements	Teachers travelling to foreign country to teach
2.Secondary education:		Students attending summer school/ language courses etc. abroad	Twinning arrangements	Teachers travelling to foreign country to teach
3.Higher education:	E-education; virtual universities	Students studying in another country	Branch or satellite campus; franchising; twinning arrangements	Teachers travelling to foreign country to teach
4.Adult education:	Internationally providing Language schools	Attending classes abroad	Branch or satellite schools; franchising; twinning arrangements	Teachers travelling to foreign country to teach
5.Other education:				Teachers travelling to foreign country to teach

<i>21 WTO-member state that have included commitments to Higher education under GATS²</i>	<i>20 member states that have included adult education under GATS</i>
<ol style="list-style-type: none"> 1. Australia 2. Costa Rica 3. Czech Republic 4. Zaire/Congo 5. European Community 6. Hungary 7. Jamaica 8. Japan 9. Lesotho 10. Liechtenstein 11. Mexico 12. New Zealand 13. Norway 14. Republic of Panama 15. Poland 16. Sierra Leone 17. Slovak Republic 18. Slovenia 19. Switzerland 20. Trinidad and Tobago 21. Turkey 	<ol style="list-style-type: none"> 1. Austria 2. Bulgaria 3. Czech Republic 4. European Community 5. Gambia 6. Haiti 7. Hungary 8. Japan 9. Lesotho 10. Liechtenstein 11. Mali 12. Norway 13. Poland 14. Rwanda 15. Sierra Leone 16. Slovak Republic 17. Slovenia 18. Switzerland 19. Thailand 20. USA

² For more information see also: http://www.wto.org/english/tratop_e/serv_e/sanaly_e.htm

APPENDIX 2 - WEB SITES ON THE WTO AND GATS

WTO

<http://www.wto.org>

The WTO in brief

http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm

GATS – objectives, coverage, disciplines

http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm

GATS – scope and definition

http://www.wto.org/english/tratop_e/serv_e/1-scdef_e.htm

Communication from Australia. Negotiating proposal for Education Services.
Document S/CSSW/110

http://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm

Communication from New Zealand

Negotiating proposal for Education Services. Document S/CSSW/93

http://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm

Communication from the USA.

Negotiating proposal for Education Services. Document S/CSS/W/93

http://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm

Communication from Japan

Negotiating proposal for Education Services. Document S/CSS/W/137

http://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm

The framework: the GATS articles

http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm5_e.htm

The new negotiations:

http://www.wto.org/english/tratop_e/serv_e/s_negs_e.htm

European Commission's web site on World Trade in Services

<http://gats-info.eu.int/>

A guide to the GATS:

<http://gats-info.eu.int/gats-info/guide.pl>

Legal texts and Commitments

<http://gats-info.eu.int/gats-info/gatscomm.pl>

The texts on GATS

<http://gats-info.eu.int/gats-info/gatscomm.pl?MENU=aaa>

A quick list of articles by subject

<http://gats-info.eu.int/gats-info/gatscomm.pl?MENU=ccc>

GATS terms

<http://gats-info.eu.int/gats-info/gatscomm.pl?MENU=ddd>

APPENDIX 3 – A VIEW OF GATS : DR. PER NYBORG, CHAIR OF THE CD-ESR

*Dr. Per Nyborg,
Chairman, Committee for Higher Education and Research
Council of Europe, 23 May 2002*

OECD/US Forum on Trade in Educational Services
International Competition: Implications for Educational Providers and Students
Workshop IV

GATS in the light of increasing internationalisation of higher education. Quality assurance and recognition

The increasing demand for international education has triggered a number of initiatives by different education providers including traditional higher education institutions, distance learning institutions and private education companies. Sometimes these different education providers have created new partnerships, also transnationally, to meet the demand. However, it is important to bear in mind that traditional, campus-based institutions account for most of the higher education degrees granted and probably will continue to do so, as all governments agree that higher education is a public responsibility and that higher education institutions are important elements in national infrastructure. Nationally recognised institutions also make up for the bulk part of the export of educational services in the form of tuition fees paid by foreign students (or by foreign governments).

When we open up international education for new and untraditional forms, we must not undermine the global network of international co-operation built on trust between individuals, institutions and nations. This mutual trust is the base for the mutual recognition of courses and degrees that makes higher education truly international, and also for international co-operation on quality assessment in higher education.

On the European arena, governments, university leaders and student organisations agree on the importance of international co-operation in higher education. European Ministers of Education being responsible for the so-called Bologna Process to create a European Higher Education Area by 2010, in their Prague Communiqué of May 2001 supported the idea that higher education should be considered a public good and that it is and will remain a public responsibility. The Bologna Process is building down national barriers while at the same time promoting quality. It is important that the GATS negotiations relating to higher education take due account of the Bologna Process and the international conventions and codes of good practice it builds on, in particular the Lisbon Convention.

Little is yet known about the consequences of GATS for quality, access, and equity of higher education. There is in the university sector a fear that GATS may influence the national authority to regulate higher education systems, and have unforeseen consequences on public subsidies for higher education. Both the European University Association (EUA) and the National Unions of Students in Europe (ESIB) have taken a critical stand on trade in educational services. Also American university organisations are critical to GATS.

Many governments may want to remove barriers against trade in educational services, however, only a few national proposals have yet reached WTO. These proposals

underline the need for governments to retain their sovereign right to determine their own domestic educational policy, a right which is also confirmed in the provisions of WTO.

The Australian proposal recognises that governments across the globe play a significant role in the financing, delivery and regulation of education, alone or in partnership with private and non-governmental organisations. This reflects the importance of education in the preparation for life as a citizen, the transmission of values and culture, and development of national well being. Accordingly, Australia believes that governments must retain their sovereign right to determine their own domestic funding and regulatory policies and measures.

The proposal from New Zealand states that the education sector is vitally important to all countries, given the critical role of education in economic and social development. The proposal claims that the reduction of barriers to trade in education does not equate to erosion of core public education systems and standards.

The proposal of the United States recognises that education to a large extent is a government function, but that most countries permit private education to coexist with public education. The proposal, therefore, envisions that private education and training will continue to supplement, not displace, public education systems.

The proposal from Japan brings in the quality concept, stating that it has become extremely important for each country to improve the quality of education and research, responding flexibly to the rapidly changing needs of the society. Any measures in the education services sector should be considered with primary interest in maintaining and improving quality.

Due consideration needs to be taken to

- maintenance and improvement of the quality of education activities in each country,
- protection of consumers (learners) against services of low quality,
- measures to ensure international equivalence of degrees and diplomas.

The Japanese proposal points out that the educational system varies from country to country, due to different social background and varied course of development of system. The roles of governments vary from country to country due to the difference in their administrative structures. Therefore, while seeking the liberalisation of education services, these differences should be carefully taken into consideration.

The Japanese proposal also refers to the fact that the development of globalisation and information technology has given rise to the question of how to maintain the quality of higher education supplied across borders. One must be aware of the existence of “degree mills”.

From the viewpoint of protecting consumers, i.e. learners, countries should recognise the necessity of an information network on higher education supplied across borders. On this background it is important to be aware that an international code for quality assurance, for national information centres and for international information networks already exists:

The Lisbon Convention - *The Convention on the Recognition of Qualifications concerning Higher Education in the European Region* - was developed by the Council of Europe and UNESCO and adopted by national representatives meeting in Lisbon

five years ago. The Convention has since been ratified by 27 countries and signed by 14 more.

Among the main points of the Lisbon Convention are the following:

- Holders of qualifications issued in one country shall have adequate access to an assessment of these qualifications in another country.
- Each country shall recognise qualifications as similar to the corresponding qualifications in its own system unless it can be shown that there are substantial differences.
- Recognition of a higher education qualification issued in another country shall have one or both of the following consequences:
 - a. access to further higher education studies,
 - b. the use of an academic title.

In addition, recognition may facilitate access to the labour market.

- All countries shall provide information on the institutions and programmes that belong to their higher education systems.
- All countries shall appoint a national information centre, one important task of which is to offer advice on the recognition of foreign qualifications to students, graduates, employers, higher education institutions and other interested parties or persons.
- All countries shall encourage their higher education institutions to issue the Diploma Supplement to their students in order to facilitate recognition. (*The Diploma Supplement* is an instrument developed jointly by the European Commission, the Council of Europe and UNESCO that aims to describe the qualification in an easily understandable way and by relating it to the higher education system within which it was issued.)

The Parties to the Lisbon Convention have also agreed on the need for a code of good practice in the provision of higher education study programmes and other educational services by means of transnational arrangements, *The Council of Europe/ UNESCO Code of Good Practice in Transnational Education*. Building on the Lisbon Convention, this code reminds us that

- academic quality and standards of transnational education programmes should be at least comparable to those of the awarding institution as well as to those of the receiving country,
- awarding institutions as well as the providing institutions are accountable and fully responsible for quality assurance and control,
- awarding institutions should be responsible for issuing the qualifications resulting from their transnational study programmes, providing clear and transparent information on the qualifications, in particular by using the Diploma Supplement.

To be accepted in the higher education sector, it is essential that GATS respects the existing mechanisms in international higher education, in particular the Lisbon Convention. Among the 41 signatories to the Lisbon Convention we find the four leading exporters of educational services: The United States, the United Kingdom, Australia and Canada, and they are now in the process of ratifying the Convention.

Committing to and abiding by the Lisbon Convention – with the full implication of national recognition or accreditation systems, national information centres and the Code of Good Practice in Transnational Education - should be seen as a basis also for trade in educational services relating to higher education.

Under the Lisbon Convention, a national quality assessment system is an option, not a formal requirement. However, *importers* of higher education may require the effective operation of a national quality assessment system in *exporting* countries as a prerequisite for trade in educational services. Then, according to the Convention, information on the methods and results of this assessment, and on the standards of quality specific to each type of higher education institution, will be available. This may take care of quality in a trade in higher education by using the national assessment systems in the *exporting* countries.

It has been argued that national quality assurance systems in importing countries could be used as barriers against import of higher education. Ratifying the Lisbon Convention, a country will be bound to recognise qualifications from other parties to the Convention as similar to the corresponding qualifications in its own system. This certainly is *not* to build barriers against higher education from other countries. Of course, all countries should have a quality assurance system and authorities in importing countries should put their foot down if there are significant and negative differences in quality.

Thus, the Lisbon Convention, based on co-operation and trust between national systems, may help to secure quality and at the same time hinder the building of barriers against trade in higher education. If GATS builds on the Lisbon Convention, it may stimulate free trade between signatory parties and quality assurance at the same time by enforcing a practice in accordance with the Lisbon Convention – albeit through mechanisms external to the Convention.

On the other hand, if GATS should mean free trade *without* quality assurance, the worst fears of ESIB, EUA and its US and Canadian partners may come true.

An additional challenge that has to be met in transnational education is multinational providers. This has been used as an argument for the development of an international accreditation system. However, all efforts up to now have shown this to be a tricky matter: National systems differ and there is no internationally agreed quality concept. We may not even wish to introduce over-national regulations, as education is a part of a country's culture identity.

Also, not all countries have reached the same stage of development. In many countries, higher education institutions are poorly equipped and may lack highly qualified specialists in many fields. Co-operation and trade in higher education

between countries at the same stage of development may be relevant, even if the quality should not be fit for the most developed countries.

For many reasons, education, including higher education is an important element in national politics, and should remain so. Commercial and multinational providers of educational services must respect this, seeking national recognition in the country where their main office is located or in the countries in which they operate, adhering to international conventions and codes of good practice.

APPENDIX 4 – A VIEW OF GATS : FOUR HIGHER EDUCATION ORGANIZATION

Joint Declaration on Higher Education and the General Agreement on Trade in Services

LIST OF SIGNATORIES

Association of Universities and Colleges of Canada (AUCC), representing Canada's 92 public and private not-for-profit universities and degree-level colleges; *American Council on Education (ACE)*, representing 1,800 accredited degree granting colleges and universities in the United States; *European University Association (EUA)*, representing 30 national Rectors' Conferences and 537 individual universities across the European continent; *Council for Higher Education Accreditation (CHEA)*, representing 3,000 accredited, degree-granting colleges and universities and 60 recognized institutional and programmatic accreditors in the United States.

INTRODUCTION

The General Agreement on Trade in Services (GATS) is a multilateral, legally enforceable agreement covering international trade in services. Education services, including higher education, are one of the 12 broad sectors included in the agreement. We, the above associations, put forward the following declaration with respect to the GATS and trade in education services:

PRINCIPLES

Whereas:

Higher education exists to serve the public interest and is not a “commodity”, a fact which WTO Member States have recognized through UNESCO and other international or multilateral bodies, conventions, and declarations . The mission of higher education is to contribute to the sustainable development and improvement of society as a whole by: educating highly qualified graduates able to meet the needs of all sectors of human activity; advancing, creating and disseminating knowledge through research; interpreting, preserving, and promoting cultures in the context of cultural pluralism and diversity; providing opportunities for higher learning throughout life; contributing to the development and improvement of education at all levels; and protecting and enhancing civil society by training young people in the values which form the basis of democratic citizenship and by providing critical and detached perspectives in the discussion of strategic choices facing societies.

Given this public mandate, authority to regulate higher education must remain in the hands of competent bodies² as designated by any given country. Nothing in international trade agreements should restrict or limit this authority in any way.

1 Taken from UNESCO's 1998 *World Declaration on Higher Education for the Twenty-First Century: Vision and Action*

2 The term “competent bodies” is used in order to take into account the fact that in any given nation, authority for higher education rests with different levels of government, institutions, and organizations.

Education exports must complement, not undermine, the efforts of developing countries to develop and enhance their own domestic higher education systems .

While international cooperation and trade in educational services can present opportunities for developing countries to strengthen their human resources, trade rules must not have the effect of imposing models or approaches to higher education on nations or of weakening their own national systems.

The internationalization of higher education is integral to the quality and relevance of the academic endeavour and research mission in the twenty-first century.

For most institutions, international trade in higher education is an important component in attaining higher education's mission. For these institutions, education exports such as international student recruitment or the delivery of higher education programs across borders through distance education are part of a broader set of international activities which include faculty and student exchanges, research cooperation and capacity-building initiatives in developing countries.

Quality is a key objective for both domestic provision of higher education and international education exports, irrespective of the mode of delivery.

Appropriate quality assurance mechanisms administered by higher education institutions under the competent bodies must exist to ensure that quality is not compromised. These mechanisms need to be transparent and widely understood.

International higher education cooperation must operate under a rules-based regime .

WTO Member States have already established mechanisms to achieve this objective, in fora such as UNESCO, including international conventions on the recognition of academic credentials and a network of national information centres on foreign credentials. These mechanisms need to be further developed and their implementation better supported by our respective governments to protect learners.

Higher education differs significantly from most other service sectors , in that because of its public mandate there is typically a high degree of government involvement in higher education provision co-existing with private funding and commercial activities. This public/private mix permeates not only the sector but, indeed, the individual institutions within it.

Public and private higher education systems are intertwined and interdependent.

Therefore it is impossible to effectively separate out certain sub-sectors e.g., adult education, or certain types of institutions e.g., "private providers", for the purposes of the GATS without impacting other parts of the system.

Caution must be exercised before putting the quality, integrity, accessibility and equity of our higher education institutions and systems at risk without obvious benefit.

Transparency and open consultation with affected stakeholders is imperative in the development of effective public policy.

RATIONALE

Given that:

Very little is known about the consequences of including trade in education services in the GATS such as on the quality, access, and equity of higher education, on domestic authority to regulate higher education systems, and on public subsidies for higher education. The potential risks of including higher education in the GATS, as indicated above, could be very significant.

While there are currently some barriers to trade in education services, there does not appear to be a major problem overall. Institutions continue to be able to actively develop exchange agreements, distance education programs, research collaborations, offshore partnerships etc. to meet their internationalization objectives and contribute to international development. Moreover, many of these barriers appear to be related to the lack of recognition of academic qualifications or concerns over the quality of educational providers; it is therefore unlikely that they will lend themselves to trade policy remedies through the GATS process. Conversely, there are existing mechanisms, such as the Convention on the Recognition of Qualifications Concerning Higher Education in the European Region (Lisbon Convention), open to all states, which are dealing with these issues. There are also national information centres to foster recognition of credentials and vigorous discussions on ways to improve bilateral or multilateral recognition of each other's domestic quality assurance mechanisms.

It is extremely difficult to clearly define which education services are supplied strictly on a commercial basis due to the public-private mix in all systems and within many institutions of higher education.

GATS Article I:3 is recognized as being ambiguous and open to interpretation. 3

While we applaud senior officials in our respective governments for insisting that public service systems are exempted from the agreement based on Article I:3, we do not understand how this conclusion has been reached given the absence of clear, broadly accepted definitions and, more importantly, the fact that the component parts of the system are so inextricably linked. In addition, history shows that exemptions to international agreements such as the GATS tend to be interpreted narrowly by trade dispute tribunals. For these reasons, it seems unrealistic to assume that public education at the tertiary level is exempted from the GATS based on Article I:3.

Many of our respective countries have not undertaken an effective consultation process between trade officials and the organizations representing public and private higher education institutions.⁴

³ Article I:3 is the agreement's exemption of services supplied in the exercise of government authority, where these services are defined as being supplied neither on a commercial basis nor in competition with one or more service suppliers.

⁴ It should be noted, however, that in the case of Canada, there is ongoing dialogue between the federal government and the education sector with respect to the GATS.

DECLARATION

Operating under these principles, and given these circumstances, the Association of Universities and Colleges of Canada, the American Council on Education, the European University Association, and the Council for Higher Education Accreditation jointly declare that:

Our member 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. Our respective countries should not make commitments in Higher Education Services or in the related categories of Adult Education and Other Education Services in the context of the GATS. Where such commitments have already been made in 1995, no further ones should be forthcoming.

AUCC, ACE, EUA , and CHEA convey this joint declaration to the Government of Canada, the office of the United States Trade Representative, the European Commission, individual European states that are members of the nascent European Higher Education Area, and all interested Member States of the WTO for their attention.

DATE: 28 September, 2001

ROBERT J. GIROUX DAVID WARD

PRESIDENT, AUCC PRESIDENT, ACE

ERIC FROMENT JUDITH EATON

PRESIDENT, EUA PRESIDENT, CHEA

APPENDIX 5 – A VIEW OF GATS : DR. MAJORIE PEACE LEAN

