

**Building the public interest: GATS and Higher education and research**

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## **Introduction – the context for our dialogue**

Defending education within the broad movement of trade liberalization actually began in the negotiations around the original GATS in 1994. At this time, the developing world was dubious about opening up public services under GATS; equally the developed world made limited commitments in education. Over a hundred countries participated in the general Uruguay discussions, yet only 23 countries, including the European Union, made any commitments in education. Many of those commitments were for private education only, and essentially for market access. Governments generally retained policy flexibility, especially over subsidies.

As the WTO began the process for kick-starting a further round of trade liberalization in 2000, it began to face considerable community opposition. Using the new technology of the world wide web, NGOs, trade unions and community groups built a highly effective communication based campaign against the proposal for a multi-lateral agreement on investment in 1998. By the time member states of the WTO met in Seattle in 1999, the stage was clearly set for a battle in the streets. Such high profile engagements with the trade agenda had not been seen before, and the WTO was forced to rethink its response to community concerns. More recent statements from the WTO are careful to stress that national sovereignty will not be undermined by trade agreements, that countries only commit services to the degree that it suits their own national agendas, and that wide consultation and debate is to be encouraged.

Higher education and research workers have been actively involved in facilitating debate about education, internationalization and GATS, ensuring that our governments make education ministries as well as trade ministries take charge of what commitments all our countries make in this current round. Our professional and trade union organizations have constructed policies on GATS and education, run community campaigns and built influential dialogue with our politicians. Our global union, Education International, in association with Public Services International, has been highly influential in articulating the problems associated with GATS, and in constructing debate with other international bodies such as UNESCO, the United Nations Human Rights Commissions and the ILO.

All of these discussions have led to a two-pronged strategy for the future.

- Limit education commitments in trade agreements
- Develop an alternative policy framework so that higher education and research can facilitate internationalization. This framework must be based both on educational values, as well as social justice and acknowledgment of human rights. It must speak to the needs not just of the developed world, but also the developing, and to those within the developed world that remain marginalized from the world of education and work.

How effective have we been? And what must we do to build this new policy framework?

Here are some recent statements from governments involved in GATS negotiations.

**Australia - Mark Vaile (Trade Minister) 1 April 2003**  
**Statement made in releasing Australia's initial offer to the WTO**

"The Government is committed to upholding the right of WTO members to regulate and to fund public services and will not support any new rules or make any offers which cast doubt on that outcome", Mr Vaile said "Australia will not be making any offers in the areas of public health, public education or the ownership of water. The Government will ensure that the outcomes of the negotiations will not impair Australia's ability to deliver fundamental policy objectives in relation to social and cultural goals and to allow for screening of foreign investment proposals"

"The Government's decision to publicly release the offer, recognizes strong public interest in these negotiations"

**Canada 2001**

"Canada's health, public education and social services are not negotiable. Canada will preserve its ability to maintain or establish regulations, subsidies, administrative practices or other measures in sectors such as health, public education and social services. Furthermore, pending development of a new international instrument on cultural diversity, we will not make any commitment that restricts our ability to achieve our cultural diversity policy objectives.

**Canada, March 31 2003**

"It is of great importance to our government that Canadians be informed and consulted at every step of the negotiating process... We developed our offer in partnership with provincial and territorial governments and through extensive consultations with Canadians.. In keeping with what the Government of Canada has heard from Canadians, Canada has submitted no offer on the areas of health, public education, social services or culture"

Pierre Pettigrew, (Minister for International Trade)

**European Union February 2003**

"This carefully constructed proposal will strengthen the EU's position in the Doha negotiations, because it addresses the interests of others, particularly developing countries. At the same time it ensures that services of collective interest in the EU, such as education and health, are preserved. In this way we ensure that the WTO is used to defend and promote the European model."

....

At the same time, the offer does not affect the provision of public services within the EU, the right of the EU to regulate its services sector, and to design its own appropriate regulatory frameworks. Thus, it maintains the EU position of taking no commitments in the audio-visual sector, and also proposes no commitments on either education or health services.

The Commission launched an unprecedentedly wide public consultation in November 2002, and - following widespread public interest - extended the deadline for comments until end January 2003. All comments were carefully reviewed and taken into account.

Even employers and institutional associations have major concerns. Here is an excerpt from a joint statement made in 2001.

**Joint Declaration by employers from Canada, Europe and the United States**

“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 GATS. Where such commitments have already been made in 1995, no further ones should be forthcoming.”

Signed by:

Association of Universities and Colleges of Canada – representing Canada’s 92 public and private not-for-profit universities and degree-level colleges

American Council on Education – representing 1,800 accredited degree granting colleges and universities in the United States

European University Association – representing 30 national Rectors’ Conferences and 537 individual universities across the European continent

Council for Higher Education Accreditation – representing 3,000 accredited degree-granting colleges and universities and 60 recognised institutional and programmatic accreditors in the United States

At one level, these statements reveal that there continues to be significant reservations about making further commitments to GATS.

In 1999 Education International delegates meeting in Budapest articulated our strategy for this round – let's measure these outcomes against those criteria.

## **EI International Conference on Higher Education and Research Budapest 1999**

### **Limiting the scope of GATS**

- A moratorium on further liberalisation of trade in education sectors.
- Retention of GATS as a bottom-up agreement where countries nominate sectors and sub-sectors for inclusion rather than have to rely upon exemptions from a comprehensive top-down agreement.
- Full participation by national education unions in the determination of their countries' position.
- No extension of the GATS to include public education institutions or government subsidies to education providers.
- Recognition of the right of national governments to regulate the supply of tertiary education services, such as the number of places in particular discipline areas and the number of corresponding schools or faculties.
- Recognition of the right of national governments to specify culturally appropriate content for particular courses and qualifications e.g. knowledge of Indigenous culture.
- Recognition that action taken by governments for the protection of public tertiary education cannot be considered a disguised restriction on trade in services.
- Rejection of moves to extend liberalisation of government procurement as it applies to tertiary education in GATS or otherwise in the WTO.

While we have been influential with our own governments in this round, there is certainly little room for complacency.

### **Trade agreements remain relevant**

Why?

### **The trade agenda is changing**

While the Doha round has stalled following lack of movement on opening first world agriculture and supplying generic drugs to the third world, WTO member states are actively pursuing bilateral or regional agreements. We already have NAFTA, but there is also FTAA, Mercosur (4-5 Latin American countries) and, of course, the European Union itself. Here we face our first new difficulty. GATS is a “bottom up agreement”. All WTO members who have signed the GATS are bound by the general articles in the agreement. They are then bound by commitments given in the schedules under market access and national treatment. It is in the schedules that reservations can be detailed. Bilaterals and some regionals are usually top-down agreements – all areas are covered unless specifically exempted or qualified in the agreement.

In the Singapore Free Trade Agreement with Australia, education is automatically covered except for specified exemptions. There are three reservations.

- Subsidies for education (because of a broad reservation of subsidies for all sectors)
- Primary Education has been reserved for Market Access and National Treatment
- In post-primary education, Australia has entered a reservation under mode 3 (commercial presence), with respect to its right to “adopt or maintain any measure with respect to the supply of educational services”.

Paying attention to detail in both multilateral, bi-lateral and regional agreements is particularly significant for research. Since research and development takes place both inside and outside higher education, it is often not formally included in education. Under GATS it is included as a sub-sector in business services. In this section are listed three sub sectors – research and development on natural sciences, research and development on social sciences and humanities and interdisciplinary research and development services. Commitments given here under research and development could impact on the relationship between research and higher education.

Countries that have committed research and development services in GATS

Australia	Austria	Canada
European Community	Finland	Iceland
Japan	Norway	Sweden
Switzerland		

- Generally no limitations for either market access or national treatment across modes 1-3. No commitments for Mode 4
- Some reservations for psychologists.
- These limitations governed by horizontal reservations, and a number of countries have listed horizontal reservations. For example Australia has reserved on subsidies for research and development and the European Union has a general

- reservation on market access which includes research and development services on social sciences and humanities.
- Some limitations on archaeological research from Iceland.

### **Existing commitments must be honoured**

Since many countries only committed their private sector under GATS, it has been assumed that public education is automatically exempted from the agreement. The efficacy of this approach depends upon the way the terms “public” and “private” are used within each member state, as well as the reservations that have been inserted into the agreement under the higher education sector. The European Union has inserted a horizontal reservation applying to all sectors that are defined as public utilities. This means that there are restrictions on market access and national treatment. There are also reservations under the MFN provision that ensures the maintenance of cultural and linguistic links between members of the EU and specific countries, and preserves programs and policies that enhance regional links. There are also some limitations based on nationality tests within the higher education schedules. However there are no limitations on cross-border supply and no limitations on national treatment for commercial presence.

The real difficulty for higher education and research is that at the same time as trade liberalization is taking place, national governments are finding it difficult to finance public higher education and research. In many countries public higher education institutions are being expected to seek funding from non-government sources, including student fees. On the one hand governments are speaking strongly on not committing public education to GATS, and yet indirectly pushing public education towards privatization and commercial activities. To some extent, of course, the gravity of these developments does also depend upon how we define the general exemption for “services supplied in the exercise of governmental authority”, and what we interpret the GATS definition “ 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 providers”

Cross border supply is one of the modes of supply where there are very few limitations scheduled in the GATS. It refers to the delivery of education directly from one country to another. For example through distance education or internet delivery. Within the APEC region there do exist policy measures that are claimed to be impeding trade. These include measures that restrict access to services via the net and restrictions on the import or export of educational materials (“academic tools of trade”). Some of this speaks to the educational need for culturally specific curriculum on the part of the importer of education. In our own region this is a very important issue, especially considering the role Australia plays in exporting educational programs.

## **WTO Working parties will continue their mandate to develop new disciplines in the areas of domestic regulation and subsidies**

The WTO will continue with the working parties currently established for domestic regulation, subsidies and government procurement. The working party on subsidies has been mandated to look at developing new disciplines to deal with the trade distorting effects of subsidies, but has made little progress – partly because most countries that have existing commitments have not made commitments under national treatment for mode 3: commercial presence. On the other hand, the working party on domestic regulation has been active, and my own Government has been playing a leading role. Article VI of the GATS, the Council on Trade in Services has given authority for the development of new disciplines to ensure that “qualification requirements and procedures, technical standards and licensing agreements do not constitute unnecessary barriers to trade in services”.

These new disciplines will aim to ensure that the above requirements are:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

Australia has proposed an alternative framework for the new disciplines, referred to as a necessity test.

*“A measure is not more trade restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves a legitimate policy objective and is significantly less restrictive to trade”*

The outcome of this work is important for governments, especially since in response to community concern, governments have reasserted their policy role and their right to regulate.

### **We need to continue to assert that public education is a public service. Obligations of member states exist both to human rights conventions as well as to trade agreements such as GATS.**

Although public education is not included in the definition of ‘public utilities’ included by the European Union in its horizontal reservation, some within the EU would claim that public education is “supplied in the exercise of governmental authority”. This view is enhanced by the fact that within the European Union public services are seen to be in the common or general interest, and that access to public services such as higher education is seen as a public entitlement or social right. Many NGOs engaged with the trade debate do not believe that we can assume that public education necessarily is a service “supplied in the exercise of governmental authority” under GATS, and that member states would be best not committing educational services to the GATS.

The United Nations High Commissioner has argued that WTO member states that are also members of the UN must recognise the human rights impacts of trade liberalization as essential public services such as health, education, sanitation and water are privatized. Thus governments must be pro-active in resisting intrusion of WTO measures on their rights to retain flexibility in policy measures to guarantee universal, equal and affordable access to public services. This is given some urgency given the work currently being undertaken by the Council of Trade in Services on domestic regulation.

### **A new policy environment**

These statements from the developed world not only reinforce the view that education is not a commodity, but urge others, including the WTO itself, to recognize that there are other policy frameworks in which member states can advance the agenda of internationalization, including 'trade in services'. The September 2001 statement from higher education bodies in the United States, Canada and the European Union make it clear that member states have already established such a framework within UNESCO. In particular the Lisbon Convention, signed in 1997, binds signatories to recognise each others qualifications, establish national information centers to offer advice on recognition of foreign qualifications, and develop procedures to assist refugees and displaced persons to access higher education. The convention makes clear that such recognition of qualifications would ensure that no discrimination applied to students applying to enter courses nor in their use of appropriate academic titles. Both would then facilitate entry into the labour market. Together with normative instruments such as the Recommendation on the Status of Higher Education Teaching Personnel (1995), and the Code of Good Practice in the Provision of Transnational Education (2000) these UNESCO policies are thus more likely to gain support from institutions, and their staff and students than the trade framework which focuses on the rights of business to treat education in a global market as a fully tradeable good with full market value.

The Lisbon Convention specifically recognizes sovereignty when it states that "the great diversity of education systems in the European region reflects its cultural, social, political, philosophical, religious and economic diversity, an exceptional asset which should be fully respected" (p3 Lisbon Convention)