



The OBSERVATORY
on borderless higher education

R e p o r t

Trade in Higher Education Services: *The Implications of GATS*

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Trade in Higher Education Services: the implications of GATS

Abstract

Trade in higher education services is a billion dollar industry, including recruitment of international students, establishment of university campuses abroad, franchised provision and online learning. The General Agreement on Trade in Services (GATS) is currently being negotiated under the auspices of the World Trade Organisation (WTO). GATS is designed to increase trade liberalisation internationally, and includes 'education' as a service sector. Examples of perceived 'barriers' in the trade in higher education services might include visa restrictions, taxation that disadvantages foreign institutions and accreditation arrangements that privilege domestic institutions and qualifications. Some view GATS as a positive force, accelerating the influx of private and foreign providers of higher education into countries where domestic capacity is inadequate. Other take a more negative view, concerned that liberalisation may compromise important elements of quality assurance and permit private and foreign providers to monopolise the best students and most lucrative programmes. Many aspects of GATS are open to interpretation, and many nations have yet to fully engage in the process, at least in respect of the potential implications for education. In this report, Dr Jane Knight of the University of Toronto, an expert in the internationalisation of higher education, sets out a clear overview of the GATS agenda, and considers a wide range of issues that may affect developing and developed countries.

i Introduction

This report is about the impact of trade liberalization on higher education services. Particular emphasis is placed on the implications of the General Agreement on Trade in Services (GATS) on borderless or transnational education. The paper focuses more on the education policy implications emanating from the GATS, than on the actual trade issues. The primary audience is higher education institutions in the Commonwealth.

The purpose of the report is to focus attention on GATS and higher education. The liberalization of trade in education services is high on the agenda of trade negotiators but is only just appearing on the radar screen of higher education managers and policy makers. This report aims to

- to position trade in higher education services on the agenda of educators
- to provide information on the GATS and raise awareness about potential policy implications
- to stimulate debate and analysis of the risks and opportunities of increased trade in education services

There are definite limits to the scope and depth of analysis such a report can bring to the complex issue of trade in higher education services, especially given the diversity of countries in the Commonwealth. The objective for preparing such a report for the Observatory on Borderless Higher Education will be met if readers are stimulated to think about the potential positive and negative outcomes of increased trade in higher education services and enter informed debate on the policy implications for higher education.

ii Context

The demand for higher and adult education, especially professionally related courses and non-traditional delivery modes, is increasing in most countries. This is due to: the growth of the knowledge economy, movement to lifelong learning and changing demographics. While demand is growing, the capacity of the public sector to satisfy the demand is being challenged. This is due to budget limitations, the changing role of government, and increased emphasis on market economy and privatization.

At the same time, innovations in information and communication technologies are providing alternate and virtual ways to deliver higher education.¹ New types of providers such as corporate universities, for-profit institutions, media companies are emerging. This scenario is changing further by providers - public and private, new and traditional - delivering education services across national borders to meet the need in other countries.² Alternative types of cross border program delivery such as branch campuses, franchise and twinning arrangements are being developed. As a result, an exciting but rather complex, picture of higher education provision is emerging. So what?

It is important to ask 'so what'. Many educators would point out that demand for higher education has been steadily increasing for years and that academic mobility for students, scholars, teachers and knowledge has been an integral aspect of higher education for centuries. This is true. But the picture is changing. Now, not only are more people moving; academic programs and providers are also moving across borders. Economic rationales are increasingly driving a large part of the international or cross border supply of education. This commercial or profit motive is a reality today, and applies to both private providers and in some cases public institutions. In short, the business side of borderless education is growing and is a target of the GATS. It is therefore important that educators are cognizant of the impact of trade liberalization on higher education and are taking steps to maximize the benefits and minimize the threats to a robust and quality higher education system.

iii Terminology

Transnational³ and borderless education are terms that are being used to describe real or virtual movement of students, teachers, knowledge and academic programs from one country to another. While there may be some conceptual differences between these terms, they are often used interchangeably. For the purposes of this discussion, borderless⁴ education will be used in its broadest sense. The term cross border education is also used because in many cases it is necessary to capture the importance and relevance of geographic and jurisdictional borders.

The term internationalization refers to the process of integrating an international dimension into the teaching, research and service functions of higher education institutions.⁵ Its use has been more closely linked to the academic value of international activities than to the economic motive. In fact, recently the term 'non-profit' internationalization' has been coined to distinguish international education from trade in education services. The liberalization of trade is interpreted to mean the removal of barriers to promote increased cross border movement of educational services. Finally, in this report higher education refers to post secondary degree, certificate and diploma level of education.

iv About the report

The report is intended for university managers, administrators and academics who want a shorthand version of what GATS is about and how it can affect higher education. The current debate on the impact of GATS is rather polarized. Critics focus on the threat to the government role, 'public good' and quality aspects of higher education. Supporters highlight the benefits that more trade can bring in terms of innovation through new delivery systems and providers, greater student access and economic value. This report tries to take a balanced approach by identifying both the risks and opportunities that GATS can bring to the higher education sector. The emphasis is on policy issues and implications rather than the size of the market, trade issues per se or the legal and technical aspects of the agreement itself. All members of the World Trade Organization (WTO) are involved which means that 144 countries are covered by the GATS. Clearly countries are affected differently.

The report is divided into the following sections:

1.0 Overview of GATS:

This section gives a brief introduction to the structure, principles and purpose of GATS. As the GATS is legally and technically a complex agreement, readers are urged to refer to the web sites noted at the end of the report for more information on GATS itself.

2.0 Commitments to date:

A review of the current commitments countries have made to liberalize trade in education services is presented in part two. A brief analysis of the negotiating proposals submitted by Australia, New Zealand and the United States is included.

3.0 Trade barriers:

The aim of the GATS is to promote trade. This involves eliminating or decreasing measures that inhibit the flow of services. Section three discusses some of the major barriers identified as impediments to trade in education services.

4.0 Policy Implications:

This section focuses on policy issues related to trade in higher education services. This includes - the role of government, student access, funding, regulation of providers, quality assurance and intellectual property.

5.0 Moving forward:

Several international governance bodies and non-governmental organizations (NGOs) are taking steps to deal with the implications of GATS. The last section highlights these actions, provides a summary of the significant dates and activities in the official GATS negotiations and urges educators to be better informed on the opportunities and risks associated with trade in higher education services.

1.0 OVERVIEW OF GATS

It is easy to be overwhelmed with the legal and technical complexities of the GATS. The purpose of this section is to provide a clear and concise explanation of GATS and to review some of the key and more controversial articles of the agreement. Readers who are familiar with the basic structure and principles of GATS may want to skip the first four sections that provide background information and focus on section 1.5 that addresses the more controversial aspects of the agreement.

1.1 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 World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the majority of the world's trading nations and ratified in their parliaments. The GATS is one of these key agreements and is a legally enforceable set of rules.⁶

The GATS has three parts. The first part is the framework that contains the general principles and rules. The second part consists of the national schedules that 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 can be attached to the schedule of commitments. This will be discussed in more detail later, but first it is essential to understand what kind of education services will be covered by GATS and what is meant by higher education services.

1.2 Modes of trade in services

The GATS defines four ways in which a service can be traded, known as 'modes of supply'.⁷ These four modes of trade apply to all service sectors in GATS. Chart One 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. It is important to note that the current use of the term 'borderless education' covers all four modes of supply.

Chart One: Mode of Supply

Mode of Supply According to GATS	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

1.3 Categories of education services

Trade in education is organized into five categories or sub-sectors of service. These categories are based on the United Nations Provisional Central Product Classification (CPC)⁸ and are described in Chart Two. The three categories that are most relevant to this report are 'higher', 'adult' and 'other'. The four modes of service described above apply to each of the categories.

Chart Two: Classification system for education services

Category of education service	Education activities included in each category	Notes
Primary Education (CPC 921)	-pre-school and other primary education services -does not cover child-care services	
Secondary Education (CPC 922)	-general higher secondary -technical and vocational secondary -also covers technical and vocational services for the disabled	
Higher Education (CPC 923)	-post secondary technical and vocational education services -other higher education services leading to university degree or equivalent	-types of education (i.e., business, liberal arts, science) are not specified -assumes that all post secondary training and education programs are covered
Adult Education (CPC 924)	-covers education for adults outside the regular education system	-further delineation is needed
Other Education (CPC 929)	-covers all other education services not elsewhere classified -excludes education services related to recreation matters	-needs clarification re coverage and differentiation from other categories -for example- are education and language testing services, student recruitment services, quality assessment covered?

Critics of this classification system believe that it does not reflect the reality of today where non-traditional and private providers exist and alternate forms of delivery using new technologies are being used. However, countries are able to add their own qualifications or supplements to the UN CPC classification scheme and therefore, in principle, should not be limited by the scheme.

1.3 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 elements⁹ of the GATS and provides brief explanatory notes.

Chart Three: Key Elements and Rules

GATS Element or 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.
Measures	All laws, regulations and practices from national, regional or local government that may affect trade	A generic term that applies to all sectors	
General or Unconditional obligations	Four unconditional obligations exist in GATS. <ul style="list-style-type: none"> • most favoured nation (mfn) • transparency • dispute settlement • monopolies 	They apply to all service sectors regardless of whether it is a scheduled commitment or not	Attention needs to be given to "most favoured nation"
Most favoured nation (MFN) treatment	Requires equal and consistent treatment of all foreign trading partners 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 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.	May apply even if the country has made no specific commitment to provide foreign access to their markets. Exemptions, for a period of 10 years, are permissible	MFN has implications for those countries who already are engaged in trade in educational services and/or who provide access to foreign education providers MFN is not the same as national treatment
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 is determined by country	GATS supporters believe that a country's national educational objectives are protected by these two obligations

National Treatment	<p>Requires equal treatment for foreign 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</p> <p>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>	
Progressive Liberalization	<p>GATS has a built in agenda which means that with each round of negotiations there is further liberalization of trade in service. This means more sectors are covered and more trade limitations are removed.</p>	<p>Applies to all sectors and therefore includes education</p>	
Bottom-up and Top-down approach	<p>Bottom up approach refers to the fact that each country determines the type and extent of its commitments for each sector</p> <p>Top down approach 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 impact thereby increasing pressure to liberalize</p>

1.5 Controversial Questions and issues related to higher education

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 aspects of the agreement that question its voluntary nature, notably the built-in progressive liberalization agenda and other elements described in this section.

· *Which education services are covered or exempted?*

Probably, the most controversial and critical issue related to the agreement is the meaning of Article 1.3.¹⁰ This article defines which services are covered or exempted.

According to the WTO, the agreement is deemed to apply to all measures affecting services *except* "those services supplied in the exercise of governmental authority". But what does 'exercise of governmental authority' mean? GATS supporters maintain that education provided and funded by the government is therefore exempted. Sceptics question the broad interpretation of the clause and ask for more a detailed analysis. The agreement states that "in the exercise of governmental authority" means the service is provided on a 'non-commercial basis' and 'not in competition' with other service suppliers. This begs the follow-up question - what is meant by non-commercial basis and not in competition? These issues are at the heart of much of the debate about which services are covered.

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 in fact comes 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.

The debate about what 'not in competition' means is fuelled by the fact that there does not appear to be any qualifications or limits on the term.¹¹ For instance, if non-government providers (private non-profit or commercial) are delivering services, are they deemed to be in competition with government providers? In this scenario, public providers may be defined as being 'in competition' by the mere existence of non-governmental providers. Does the method of delivery influence or limit the concept of 'in competition'? Does the term cover situations where there is a similar mode of delivery, or for instance, does this term mean that public providers using traditional face-to-face classroom methods could be seen to be competing with foreign for-profit e-learning providers?

There are many unanswered questions that 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. Others express concern that the whole question of the protection of public services is very uncertain and potentially at risk in view of 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.

· *What does the principle of progressive liberalization mean?*

GATS is not a neutral agreement. 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 that 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.

The intention of GATS is to facilitate and promote ever-more opportunities for trade. Therefore, countries that 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 instrument and it is too soon to predict the reality or extent of these potential opportunities or risks.

· *What are the implications of negotiating across sectors?*

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 where 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.

These issues relate to the mechanics and legalities of the agreement itself. Each one raises questions that need further clarification and analysis and collectively they serve to wave the red flag that more attention needs to be given to these matters.

There are other aspects of the GATS, such as the dispute mechanism, subsidies, treatment of monopolies which are controversial and apply to all sectors and which need further study. Article 6.4, which addresses measures relating to qualification requirements and procedures, technical standards and licensing requirements may have serious implications for education and requires further clarification. It must be remembered that GATS is still an untested agreement and a certain amount of confusion exists on how to interpret the major rules and obligations. It took many years to iron out the inconsistencies in the General Agreement on Tariffs and Trade (GATT) and the same will likely be true for GATS. While trade specialists and lawyers need to review the technical and legal aspects of the agreement, it is educators who need to study how the agreement applies to and impacts education services.

2.0 COMMITMENTS TO TRADE IN EDUCATION SERVICES

2.1 Extent of country commitments

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 to date, education, in general, has taken a very low priority in the major bilateral agreements and rightly or wrongly, the same may be true for the GATS.

Only 44 of the 144 WTO Members have made commitments to education, and only 21 of these have included commitments to higher education.¹² It is interesting to note that Congo, Lesotho, Jamaica and Sierra Leone have made full unconditional commitments in higher education, perhaps with the 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 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 three (USA, New Zealand, Australia) of the 21 countries with higher education commitments have submitted a negotiating proposal outlining their interests and issues. The next section provides a brief summary of key elements of the three proposals.

2.2 Analysis of negotiating proposals

The purpose of Chart Four is to provide a comparison of some of the key issues identified by the three countries. It is interesting to note that all three acknowledge the role of government as funder, regulator and provider of education services. A comparison of the rationales and benefits of freer trade in education services reveals different perspectives and raises key issues.

Chart Four: Highlights of Negotiation Proposals

	Australia¹³	New Zealand¹⁴	United States¹⁵
Role of Government	<ul style="list-style-type: none"> -government has a role in the financing, delivery and regulation of higher education - either alone or in partnership with individuals, NGOs and private education -governments must retain their sovereign right to determine own domestic funding and regulatory policies/measures 	<ul style="list-style-type: none"> -international trade in education services can supplement and support national education policy objectives (i.e. reduce the infrastructure commitments required of governments and so free resources for other aspects of education policy) -the reduction of barriers does not equate to an erosion of core public education systems and standards 	<ul style="list-style-type: none"> -the principle that governments should retain the right to regulate to meet domestic policy objectives should be respected -in education service sector, governments will continue to play important roles as suppliers of service -"education to a large extent is a government function and it does not seek to displace public education systems. It seeks to supplement public education systems"
Rationale/ purpose of trade liberalization	<ul style="list-style-type: none"> -means of providing individuals in all countries with access to wide range of education options 	<ul style="list-style-type: none"> -education as a role in economic and social development -in New Zealand, education exports are the fourth largest service sector export earner and fifteenth largest foreign exchange earner overall. 	<ul style="list-style-type: none"> -help upgrade knowledge and skills through training and education, while respecting each country's role in prescribing and administering appropriate public education for its citizens.
Benefits of trade liberalization	<ul style="list-style-type: none"> - increased access to education in qualitative and quantitative terms that would otherwise not be available in country of origin -competitive stimulus with flow-on benefits to all students -efficient encouragement of internationalization and flow of students. 	<ul style="list-style-type: none"> -in addition to generating revenue for private and state sector education institutions and Member economies, there are benefits at individual, institutional and societal level through: <ul style="list-style-type: none"> -academic exchange -increased cross-cultural linkages -technological transfer -increased access for members 	<ul style="list-style-type: none"> -these services constitute a growing, international business, supplementing the public education system and contributing to global spread of the modern "knowledge economy" -benefits of this growth help to develop more efficient work force, leading countries to an improved competitive position in the world economy

Public/Private Mix		least committed service sectors due to recognition of its "public good" element and the high degree of government involvement in its provision	-private education co-exists with public domain -private education and training will continue to supplement, not displace public education systems
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• *Role of government*

It is clear that all three proposals acknowledge the central role government plays in higher education. Perhaps the controversy about which public services are exempted from the GATS has prompted this explicit recognition of the government role. Some are comforted and appeased by these statements. Others are even more concerned about the potential erosion of the role of government in higher education provision and the setting of domestic policy objectives.

In some countries, education is decentralized from national to provincial or state governmental bodies. Private education, though nominally under state authority, may not be primarily governed or regulated by a government. These situations further illustrate the complexities involved in determining which services are exempted from GATS coverage and the very different impact GATS will have on individual countries.

• *Rationales and benefits*

The rationales that drive further liberalization differ from country to country. Australia stresses greater access for students, New Zealand points to economic and social benefits and the USA focuses on opportunities for new knowledge and skills. Benefits are closely linked to rationales. Australia believes that the competition inherent in more trade will have flow-on benefits to students. New Zealand emphasizes that in addition to revenue generation there are benefits at the individual, institutional and societal level through academic exchange, technological transfer and cross-cultural linkages. The USA highlights the contribution to global spread of the modern knowledge economy and improved competitiveness. It is not a surprise that the economic benefits are emphasized but it is noteworthy that social and academic value to individuals, institutions and society are not totally overlooked. More work is needed to understand and analyse the perceived rationale and benefits as this will lead to a clearer picture of what countries expect from increased import and export in education. Of course, expectations can be seen in terms of desirable or undesirable results. A better understanding of anticipated outcomes would assist in the development of policies to help achieve or prevent them. At the same time, it is equally important to be mindful of 'unintended consequences'.

• *Public/private mix*

The public/private mix of higher and adult education provision is implicitly and explicitly recognized in the proposals. It is interesting to note that New Zealand suggests that education may be one of the least committed service sectors due to the recognition of its 'public good' element and the high degree of government involvement in its provision. The USA is more pointed when they state that private education co-exists with the public domain and will continue to supplement, not displace public education systems. There are mixed reactions to this statement and a great deal of uncertainty as to how the GATS will affect the balance of a mixed system, especially given the individualized nature of mixed systems

- Further analysis needed

Further analysis of the factors driving commitments or the lack of commitments in higher education is needed. There are diverse perspectives on the number and substance of commitments because countries have different national policy objectives and therefore different goals and expectations from trade in education services.

For example, a consumer oriented rationale can be interpreted as the need to provide a wider range of opportunities to consumers, or the need to protect consumers by assuring appropriate levels of access and quality. The economic rationale can be understood as a way to increase trade revenues for exporting countries or seen as a means to attract additional investment for education for importing countries. Other see the economic rationale as sabotaging the social development goals of education, or even scientific enquiry and scholarship. Any number of issues can be used to illustrate the debate and the dichotomy of opinions on the rationales and benefits of increased trade in education. Differences exist between and within countries and certainly among education groups as well. Further debate and analysis is necessary so that an informed position is taken on why or why not trade liberalization is attractive to an individual country and how trade agreements help or hinder achieving national goals and global interests.

- *Developing country interests*

The voices of developing countries need to be heard so that the benefits and risks associated with increased trade are clear and do not undermine national efforts to develop and enhance domestic higher education. However, the voices and interests of the developing countries differ. The opportunity to have foreign suppliers provide 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 expressed by others. Trade liberalization for whose benefit or at what cost are key questions.

Quality and accreditation are at the heart of much debate. The importance of frameworks for licensing, accreditation, qualification recognition and quality assurance are important for all countries, whether they are importing and exporting education services. Developing countries have expressed concern about their capacity to have such frameworks in place in light of the push toward trade liberalization and increased cross border delivery of education.

The GATS is one of many factors and instruments encouraging greater mobility of professionals. Although the agreement focuses on temporary movement of the labour force, it may lead to and facilitate permanent migration as well. The implications of increased mobility of teachers and researchers are particularly relevant to developing countries. It will be a major challenge to improve education systems if well-qualified professionals and graduates are attracted to positions in other countries.

At the root of the impact of GATS on developing countries is the fundamental issue of capacity to participate effectively in the global trading system and to be equal members in the WTO. Strong feelings exist about the potential for trade rules to make poor countries poorer, instead of narrowing the gap between developed and developing countries. The perceived injustice that poor nations are expected to remove trade barriers while rich nations retain barriers on certain goods, contributes to the strong reactions of some developing countries about the impact of GATS in general.

3.0 **BARRIERS**

Identification of the barriers to trade in higher education services is fundamental because it is the elimination of these barriers which is the *raison d'être* of GATS. There are some barriers that are applicable to all sectors. There are other impediments that are specific to the education services sector. The following two sections list some of the generic barriers and also those most relevant to the four modes of trade in education. The sources used to identify these barriers are the three negotiating proposals described above, reports by non-governmental organizations¹⁶ (NGOs) and intergovernmental bodies¹⁷, and by the WTO itself. This is a comprehensive collection of perceived barriers, not a list of the most significant ones. There is no agreement or consensus on which barriers are the most critical as they are usually seen from a self-interest perspective. The list is for illustrative purposes only. Attention needs to be given to whether the barriers are seen from the perspective of

an exporting or importing country. Finally, it is important to remember that what is perceived as a barrier by some countries is perceived as fundamental to the education system in another.

3.1 Generic Barriers

The majority of these generic barriers are from an exporter country's point of view and focus on supply modes one and three.

- 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
- when government approval is required long delays are encountered and when approval is denied, no reasons are given for the denial and no information is given on what must be done to obtain approval in the future
- tax treatment that discriminates against foreign suppliers
- foreign partners are treated less favourably than other organizations.

3.2 Barriers by mode of supply

Chart Five: Barriers to trade by mode of supply

Modes of delivery	Barriers
<p>1. Cross border supply</p> <p>Examples -distance delivery or e-education -virtual universities</p>	<ul style="list-style-type: none"> -inappropriate restrictions on electronic transmission of course materials -economic needs test on suppliers of these services -lack of opportunity to qualify as degree granting institution -required to use local partners -denial of permission to enter into and exit from joint ventures with local or non-local partners on voluntary basis -excessive fees/ taxes imposed on licensing or royalty payments -new barriers, electronic or legal for use of Internet to deliver education services -restrictions on use/import of educational materials
<p>2. Consumption abroad</p> <p>Example -students studying in another country</p>	<ul style="list-style-type: none"> -visa requirements and costs -foreign currency and exchange requirements - 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
<p>3. Commercial presence</p> <p>Examples -branch or satellite campus -franchises -twinning arrangements</p>	<ul style="list-style-type: none"> - inability to obtain national licenses to grant a qualification - limit on direct investment by education providers (equity ceilings) - nationality requirements - restrictions on recruitment of foreign teachers - government monopolies - high subsidization of local institutions - difficulty in obtaining authorization to establish facilities -economic needs test on suppliers of these services -prohibition of higher education, adult education and training services offered by foreign entities -measures requiring the use of a local partner -difficulty to gain permission to enter into and exit from joint ventures with local or non-

	local partners on voluntary basis -tax treatment that discriminates against foreign suppliers -foreign partners are treated less favourably than other organizations -excessive fees/ taxes are imposed on licensing or royalty payments -rules for twinning arrangements
4. Presence of natural persons Examples - Teachers travelling to foreign country to teach	-immigration requirements -nationality or residence requirements -needs test -recognition of credentials -minimum requirements for local hiring are disproportionately high -personnel have difficulty obtaining authorization to enter and leave the country -quotas on number of temporary staff -repatriation of earnings is subject to excessively costly fees and/or taxes for currency conversion -employment rules -restrictions on use/import of educational materials to be used by foreign teacher/scholar

Of course, many of these barriers are not new or specific to the GATS, as they already impact the flow of education services across borders. However, the barriers are significant as they are seen by some as key elements of a public education system that need to be maintained, and by others as impediments to trade.

Some of the barriers identified above affect internationalization initiatives, in other words, those activities that do not have an economic or for-profit motive. For instance, mobility of students and teachers for academic exchange or research purposes are affected by many of the barriers noted for supply modes two and four.

It is important to note that within a country's schedule of commitments, it is possible to list specific limitations to market access and national treatment. These are a type of barrier and must be honoured. For example, Mexico has telecom laws that restrict the use of national satellites and receiving dishes.¹⁸ This has potential impact on cross border delivery of education services. It is hard to predict what future barriers, especially technological ones, could be applied in order to control the electronic movement of education services across borders. For instance, the capacity to install electronic fences may have major repercussions on cross border e-education.

Finally, it should be mentioned that countries that have not made any formal commitments to trade in higher education services are currently in the process of easing some of the identified barriers. A good example of this is the number of countries who are changing visa and employment requirements to attract more international students to study in their country. This is happening irrespective of the GATS.

4.0 POLICY ISSUES AND QUESTIONS

Given the current interest and pressure toward increasing trade liberalization, what are the policy implications that the higher education sector needs to look at?

It is a challenging task to examine policy implications as the impact of trade liberalization is firmly enmeshed with other issues and trends in higher education. These trends include:

- the increasing use of ICTs for domestic and cross border delivery of programs
- the growing number of private for-profit entities providing higher education domestically and internationally
- the increasing tuition fees and other costs faced by students of public (and private) institutions,
- the need for public providers to seek alternate sources of funding which sometimes means engaging in for-profit activities or seeking private sector sources of financial support.
- the ability of government to fund the increasing demand for higher and adult education

These trends are with us today in both developed and to some extent, developing countries. How does the existence of the GATS relate to these trends? While the GATS may lead to expanded use of electronic or distance education and may contribute to more commercial or market oriented approaches to education, it cannot be held responsible for the emergence or existence of these trends. Supporters of more trade in education services can celebrate the existence of the GATS to maximize the benefits of these trends and opportunities. Critics, on the other hand, can emphasize the risks associated with increased trade, believing that it leads to more for-profit providers, to programs of questionable quality, and to a market oriented approach - all of which are seen to challenge the traditional 'public good' approach to higher education. However, the impact of trade liberalization on education cannot be positioned as an 'either-or' question or answer; it is a multi-layered and complex set of issues.

4.1 Role of government

The changing role of government is a contentious issues. First, let it be said that in general, globalization and the new public management are challenging and changing roles of government and nation state. The movement toward more trade liberalization is yet another factor. With respect to education, the government usually plays a role in the funding, regulation, monitoring and delivery of higher education or at least, designating bodies to do so. This is true in countries where a public system dominates or where a mixed public/private system exists. The advent of increased cross border delivery by foreign education providers raises the following issues all of which impact on the role of government:

- licensing and regulation procedures for foreign providers
- quality assurance and accreditation for imported and exported education services
- funding protocols including operating grants, loans, subsidies and scholarships
- qualification recognition and credit transfer systems

These issues will be discussed in more detail in other sections but the role of government as an education provider needs to be examined. A combination of increased demand for public services and limited financial capacity is forcing governments to examine their priorities and options for service delivery. In higher education, this has prompted a number of new developments. These include

- developing funding formulas which are placing more of the financial burden on students
- forcing publicly funded institutions to seek alternate and additional sources of funds through entrepreneurial or commercial activities at home and abroad
- individual institutions wanting increased autonomy from government regulation
- permitting new private providers (non-profit and for-profit) to deliver specific education and training programs

These developments are further complicated if and when a) a foreign public or private education provider is interested in access to the domestic market; and b) if a domestic public provider is interested in seeking markets in other countries. Together these scenarios require the government to take a long term and macro perspective on the impact of increased foreign trade on their role in the provision of and regulation of higher education.

4.2 Student access

Many governments and public education institutions have keenly felt the responsibility of ensuring broad access to higher education opportunities. In many, if not in most countries, this is a challenging issue as the demand for higher and adult education is steadily growing, often beyond the capacity of the country to provide it. This is one more reason why some students are interested in out-of-country education opportunities and providers are prepared to offer higher education services across borders.

When increased trade liberalization is factored into this scenario, the question of access becomes complicated. Advocates of liberalized trade maintain that consumers/students can have greater access to a wider range of education opportunities at home and abroad. Non-supporters of trade believe that access may in fact be more limited as trade will commercialize education, escalate costs and perhaps lead to a two-tiered system. Trade is therefore often perceived by critics as a threat to the 'public good' nature of education services.

This raises the question of the capacity and role of government with respect to providing access to higher education. For instance, if education is seen as a public function, can private providers or foreign providers help to fulfil this public function? If so, would foreign for-profit providers be eligible for the same grants, subsidies and tax incentives as public providers under the national treatment obligation of the GATS? Would this in turn decrease the amount of financial support available to public universities if funds were distributed across a larger number of institutions? Different education models exist and must exist in order to respond to the needs, resources and priorities of individual countries.

4.3 Funding

Many of the same issues and arguments regarding access can also apply to funding. Some governments have limited budget capacity or at least lack the political will to allocate funds to meet the needs of higher education. Can international trade provide alternate funding sources or new providers? Or, because of the GATS obligations such as most favoured nation treatment and national treatment obligations, does it mean that public funding will be spread too thinly across a broader set of domestic and foreign providers? Furthermore, does the presence of foreign providers signal to government that they can decrease public funding for higher and adult education, thereby jeopardizing domestic publicly funded institutions. Does international trade in education advantage some countries, such as those with well-developed capacity for export, and disadvantage others in terms of funding or access? Once again, the impact of more liberalized trade can be a double-edged sword with respect to funding, whether public or private, higher education teaching/learning and research activities.

4.4 Regulation of foreign or cross border providers

As already noted, a regulatory framework is needed to deal with the diversity of providers and new cross border delivery modes, and becomes more urgent as international trade increases. In some countries, this may mean a broader approach to policy which involves licensing, regulating and monitoring both private (profit and non-profit) and foreign providers to ensure that national policy objectives are met and public interests protected. It may also involve a shift in government and public thinking- while higher education remains a "public good", both public and private providers can fulfil this public function. This in turn may introduce greater competition among providers and general confusion for the consumer. Hence a coherent and comprehensive regulatory framework is called for- to serve national interests and protect the interests of different stakeholders, especially students.

More work is necessary to determine how national regulatory frameworks are compatible with, or part of, a larger international framework.¹⁹ Increased connectivity and interdependence among nations, as well as liberalized trade, will mean urge greater coherence between national frameworks. How can coherence between a national framework and an international framework actually strengthen national regulatory and policy functions, not weaken them? Clearly there are risks and opportunities associated with this issue but doing nothing is a risk in itself.

4.5 Recognition and transferability of credits

New types of education providers, new delivery modes, new cross border education initiatives, new levels of student mobility, new opportunities for trade in higher education- all this can spell further confusion for the recognition of qualifications and transfer of academic credits. This is not a new issue. Trade agreements are not responsible for increased confusion, but they add to the complexity and also make resolution more urgent. National and international recognition of qualifications and the transfer of credits have already been the subject of a substantial amount of work. The 'Lisbon Convention on the Recognition of Qualifications of Higher Education in the Europe Region', the 'European Credit Transfer System', and 'University Mobility in Asia Pacific' are good examples of regional initiatives that could lead to a more international approach.

4.6 Quality assurance and accreditation

Increased cross border education delivery and a set of legal rules and obligations in trade agreements require that urgent attention be given to the question of quality assurance and accreditation of education providers. Not only is it important to have national mechanisms which have the capacity to address accreditation and quality assessment procedures for the academic programs of new private and foreign providers, it is equally important that attention be given to developing an international approach to quality assurance and accreditation.²⁰

There is growing awareness that in the world of cross border education trade, national quality assurance schemes are becoming challenged by the complexities of the international education environment. While there may be growing awareness, there is no acceptance or agreement that harmonization of national policies with an international approach to quality assessment and accreditation is needed. It is imperative that education specialists discuss and determine the appropriate regulating mechanisms at the national and international level and not leave these questions to the designers and arbitrators of trade agreements.

Another, potentially contentious issue is the application of quality assurance schemes to both domestic and foreign providers. It may well be that under certain conditions, the national treatment obligation requires that all providers, domestic and foreign, be subject to the same processes and criteria. In some countries this will not be a problem, in others it will be hotly debated.

Quality assurance of higher education in some countries is regulated by the sector, and in others by the government to a greater or lesser degree. The key point is that authority for quality assurance, regulation and accreditation of cross border delivery needs to be examined and guided by stakeholders and bodies related to the education sector and not left solely in the hands of the market.

4.7 Research and intellectual property rights

In the new economy that emphasizes knowledge production and trade, there is increasingly more value attributed to the creative and intellectual content inherent in both products and services. The 'Trade-Related Aspects of Intellectual Property Rights' (TRIPS) is another trade agreement, completely separate from the GATS, but which also addresses trade liberalization.²¹ TRIPS covers such things as patents, trademarks and copyright, all of which are salient to the research and teaching/learning functions of higher education. Careful monitoring of TRIPS is also necessary by the higher education sector.²¹²²

A look at the potential implications of trade agreements on research and scholarly work reveals a number of issues. A consistent theme expressed by trade critics is a deep concern about the increased emphasis on commercialization and commodification of the production of knowledge. Sceptics believe that the highly valued trinity of teaching, research and service at traditional universities may be at risk. A

more differentiated and niche oriented approach to higher education may be an unanticipated outcome of increased trade in education and the growing importance of agreements such as GATS and TRIPS.

4.8 Internationalization

Attention needs to be given to the impact of trade liberalization on non-profit internationalization activities. Will trade overshadow and dominate the international academic relations of countries and institutions, or enhance them? Many internationalization strategies might be jeopardized by a purely commercial approach. For example, participation in international development or technical assistance programs can lead to mutual benefits for all partners and important spin-off effects for research, curriculum development and teaching. Will these programs have less or more importance when there is increased pressure for trade? Will revenue raised from commercial education activities be used to subsidize internationalization activities? What might happen to student exchange, internships, and other forms of academic mobility that do not have an income generation or for-profit motive? Will limited financial resources be directed to trade initiatives that have an economic return instead of internationalization activities which stress added academic value? How can internationalization and trade activities complement each other? Will bilateral relationships and multilateral networks among institutions be shaped by trade opportunities at the expense of research, curriculum development and other academic endeavours? Effort is needed to profile the benefits and importance of non-profit internationalization and to direct resources to the implementation and sustainability of the international dimension of teaching, research and service.

4.9 Mobility of professionals/ labour force

It has already been noted that the GATS may address the widespread unmet demand for skilled workers by facilitating the mobility of professionals. This impacts many of the service sectors and has particular implications for higher education. Not only is higher and adult education providing education and training programs to meet economic needs, the sector itself is affected by the mobility of its teachers and researchers. In many countries, the increasing shortage of teachers is resulting in active recruitment campaigns across borders. Since many teachers and researchers want to move to countries with more favourable working conditions and salaries, there is a real concern that the most developed countries will benefit disproportionately.

4.10 Culture and acculturation

Last, but certainly not least, is the issue of cultural and indigenous traditions. Education is a process through which cultural assimilation takes place. In fact education is a fundamental vehicle for acculturation. Concern about the homogenization of culture through cross border supply of higher and adult education is expressed by critics of GATS. Advocates maintain that a positive hybridization and fusion of culture will evolve through increasing mobility and the influence of ICTs. In fact, some argue that this has been happening for decades and is contributing to new cultural exchanges and richness. Once again, the divergence of opinion shows that there are potential opportunities and threats to consider.

4.11 Institutional level issues

The emphasis of this section has been on macro policy issues. But the effect on individual institutions, especially public higher education institutions, should not be ignored.²³ The foremost issues are institutional autonomy, academic freedom and conditions of employment for academic staff. While these three issues are linked to trade liberalization, they are more closely associated with the larger

issues of the commercialization and privatization of education in general, which many believe is advanced within as well as across borders.

4.12 Trade dominates

Finally, it needs to be said that the question of trade liberalization, which most often is interpreted in economic terms, has the potential of dominating the agenda. There is a risk of 'trade creep' where education policy issues are increasingly framed in terms of trade.²⁴ Even though domestic challenges in education provision are currently front and centre on the radar screen of most countries, the issue of international trade in education services will most likely increase in importance. Supporters of freer trade applaud the fact that GATS is seen first and foremost as an economic agreement and that its purpose is to promote and expand free trade for economic reasons. Given that the market potential for trade in higher education is already significant and is predicted to increase, it is clear that GATS and other trade agreements will help to promote trade and further economic benefit. Critics of the trade agreements maintain that the domination of the trade agenda is at the expense of other key objectives and rationales for higher education such as social, cultural and scientific development and the role of education in promoting democracy and citizenship.

5.0 MOVING FORWARD

5.1 Actions and reactions of stakeholders

One of the prime objectives of this report is to get the issue of trade liberalization in higher education services on the agenda of university managers and higher education policy makers. Overall, there seems to have been little reaction to the issue. This does not dismiss, however, the work that has been done by some non-government organizations. One of the more interesting initiatives is the 'Joint Declaration on Higher Education and the General Agreement on Trade in Services'²⁵ developed and signed by four organizations: Association of Universities and Colleges of Canada (AUCC), American Council on Education (ACE), European University Association (EUA) and the Council for Higher Education Accreditation (CHEA).

This declaration encourages countries to not make commitments in 'Higher Education Services' or in the related categories of 'Adult Education' and 'Other Education Services' in the GATS. Instead it supports the notion of reducing obstacles to international trade in higher education using conventions and agreements outside of a trade policy regime. Clearly there are supporters of the principles of the declaration, but there are also critics who feel that the protectionist position is rather self-serving, especially given the degree of exporting activity already in existence. It is noteworthy that three of the signatories come from the USA and Europe, both of whom have made some commitments on education services in GATS. This is yet another sign of the heated debate, the complexities and the uncertainties related to GATS. The most important role of the declaration is that it is drawing more attention to the issue.

The declaration is the only internationally co-ordinated effort but there are many national level student, teacher and education organizations that are vocal in their questions and criticisms of the intent and impact of the agreement. There are similar groups such as the 'National Committee for International Trade in Education' (NCITE) in the US and other business organizations which are expressing support for freer trade in education services. At the intergovernmental level there appears to be some level of interest in the issues - primarily from the economic organizations such as APEC or OECD. At the same time, there are international non-government organizations such as Association of Commonwealth Universities that are trying to raise awareness about the broad issue of trade liberalization and the specifics of the GATS. But, this is only a beginning. More work is needed to consult with the different education stakeholders so that their voices are heard in ongoing analysis and negotiations.

5.2 Important dates for WTO negotiations

The key dates to be aware of for the next phases of the GATS negotiations are:

June 30, 2002: Countries will file initial requests asking trading partners to open their markets in service areas.

March 31, 2003: Countries that were the subjects of requests will present offers to open their markets in service areas. Trading partners will hold meetings and discussions. Overall, if insufficient agreement is reached regarding higher education, the sector could be part of new round of global negotiations after talks conclude in January 2005.

January 2005: GATS negotiations will end.

This is a rather tight timetable and the next twelve months are key. By June 2002, the details of all education requests should be known. While it is important that the voice of the education sector is heard in the formulation of these requests, it may be even more important to influence the response to the requests. This involves working with the appropriate government officials and monitoring the offers made by one's own country in response to requests from other countries. The second part is monitoring the offers that are being received by one's own country in response to the requests originally made to other countries. This is an important, but a rather daunting task due to the reality that education stakeholders hold differing perspectives on the extent and nature of the limitations on national treatment and market access and may or may not speak with one voice to government trade officials.

5.4 Concluding remarks

Complex and contentious. These two words sum up the current analysis and debate about the impact of GATS on higher education. Opinions on the risks and benefits are divided, if not polarized. They differ within and between countries. Each country must undertake the very serious challenge of balancing opportunities and commitments to liberalize trade for exporting higher education services, with the possible impact, related to the same commitments, of the import of education services. This is not an easy task. One can tend to be liberal while considering exporting opportunities and more protectionist when analysing the implications of importing.

At this stage, one is left with the impression that there are more questions than clear answers. The questions are complex as they deal with

- technical/legal issues of the agreement itself (see section 1.5)
- education policy issues such as funding, access, accreditation, quality and intellectual property (see section 5) and,
- the larger more political/moral issues for society, such as the role and purpose of higher education, and the 'public good' or 'market commodity' approach.

The one certainty in this picture is the need for the higher education sector to study these questions and to consult stakeholders. At the same time it is necessary to be proactive and strategic in monitoring and influencing government negotiating positions for the request/offer stage of the GATS negotiations. This, of course, involves close communication with education departments and bodies in one's country. It is equally important not to lose sight of the need for international approaches and frameworks for the regulation of providers, quality assurance and qualification recognition. Finally, it is important not to overstate the impact of GATS. Trade in education was alive and well prior to and outside the purview of trade agreements. Yet, it is also critical not to understate the potential implications- risks and opportunities- of GATS.

The first aim of this paper is to highlight the potential impact of trade liberalization on higher education. The second aim is to raise questions and identify policy issues that require further attention and analysis. These will have been met if readers are better informed, and motivated to take appropriate action at institutional, regional, national or international level.

Author's Note

The author has tried to present the views of both the supporters and critics of increased trade liberalization of educational services through GATS. In doing so, she has intentionally not taken a personal position on the risks and benefits of increased trade liberalization on higher education. That being said, the ideas and views in this paper are those identified by the author and not the Observatory of Borderless Higher Education.

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