

Trade, Education and the GATS: What's In, What's Out, What's All the Fuss About?

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Abstract

This paper addresses some of the public policy controversies surrounding the treatment of education services under the World Trade Organization's General Agreement on Trade in Services (GATS). The rapid rise in cross-border trade and investment in education services observed in recent years has given new prominence to the role the GATS might play as a force for progressive liberalization in the sector. The paper provides a synthetic description of the core features of the GATS, highlighting in particular how the four modes of supplying services subject to the Agreement's disciplines relate to trade in education services. The paper recalls the policy flexibility WTO Members retain under the GATS as regards the nature, extent and pace of possible progressive liberalization. It describes a number of key misunderstandings and fallacies that have tended to cloud a rational discussion of the possible effects of the GATS on trade in education services. The paper also depicts the key elements found in the negotiating proposals on education services put forward to date by the governments of Australia, New Zealand, Japan and the United States, recalling their circumscribed nature and the acute awareness WTO Members are showing about the policy sensitivities arising in the sector. The paper concludes with a discussion of the limited role the GATS can be expected to play as a force for change in the education field. The paper argues that many of the impediments that stand in the way of greater cross-border exchanges of education services may be more appropriately pursued outside a trade policy setting.

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I. Basic facts about the GATS and trade in education services

The GATS is a new agreement, not yet complete, not terribly user-friendly, with a complex geometry of general and *à la carte* obligations set against the backdrop of [near] universal coverage and sovereign immunity in liberalization matters. Novelty, complexity and variable geometry all too easily lead to misrepresentation and/or over-interpretation.

Trade agreements don't come much more flexible than the GATS. The Agreement is arguably the most development-friendly of all Uruguay Round pacts, as is evidenced by the fact that no GATS-related issues appeared on the laundry list of implementation concerns raised by developing countries prior to and at the WTO's Ministerial meeting in Doha, Qatar.

But such flexibility tends to be obscured by the Agreement's near universality in scope and coverage. Such universality is not however absolute, given two important carve-outs in GATS Article I.3 – much of air transport and, significantly in the context of the trade and education debate, “*services supplied in the exercise of governmental authority*”, by which is meant services not supplied on a commercial basis nor in competition with other service suppliers. A simpler way of putting it is to regard such an exclusion as pertaining to economic activities carried out on a not for profit basis.

GATS negotiators understand this to cover ‘public services’ broadly (if somewhat loosely) defined, including public health and education services. But public/private frontiers are inherently murky, vary significantly across countries and sectors, and are subject to change as markets, political dynamics and technology evolve. Governments have to date chosen not to clarify the scope of the GATS’ public services carve-out. But if one were to ask any services negotiator in Geneva, the latter would be prone to regard primary and secondary schooling, so-called “basic” or “compulsory” education, as lying outside the scope of the GATS.

A common understanding at the inter-governmental level is thus that public education services and education services supplied by private actors on a non-commercial basis are excluded from the GATS (as are all government measures, including in respect of public funding, relating to the supply of such services). Still, opinions differ as to whether some attempt should be made in the context of the current negotiations to provide greater clarity to what WTO Members understand to be services supplied in the exercise of governmental authority.

Education services rank amongst the least committed of all sectors subject to GATS coverage (after audio-visual and energy services). However, there remains some degree of confusion in the debate about education and the GATS to the extent that, despite the GATS carve-out described above, a number of WTO members have scheduled commitments in basic education services under the GATS. Such commitments are seen by GATS opponents as offering proof that no public services carve-out exists in practice, fanning speculation that the forces of unbridled competition and privatisation are about to be unleashed by the GATS on the sector.

Being clearer on how the GATS operates and on the policy flexibility WTO members retain under it is a central challenge facing those interested in gaining a better understanding of whether, how

and to what extent the current set of services negotiations could affect the burgeoning area of cross-border trade and investment in education services.

The current negotiations take place not only against the backdrop of a weak initial harvest of liberalisation commitments in the sector. They are also proceeding with significant regulatory and political precaution, and in the midst of a growing anti-GATS campaign, of which public sector unions in the educational field are active players, especially in OECD countries, together with students sensitive to the anti-globalisation movement.

Meanwhile, the educational world has hardly been standing still. The last decade witnessed explosive growth in international trade in education services, particularly at the tertiary level and in specialized training fields, covering all modes of supply and involving a mosaic of institutional arrangements among a great diversity of public and private players (on their own and in combination) in developed and developing countries alike.

As Table 1 below depicts, the “market” for trade in education services is big, diverse, innovative and growing fast. It will almost certainly continue to grow as societies place an increased premium on human capital enhancement as a source of development and as a means of better equipping individuals and societies to confront, adjust to and take advantage of the demands arising from closer economic integration. The continuous upgrading of skills is increasingly seen as a key ingredient of – and perhaps a precondition for - orderly adjustment in labor and product markets.

The changes described in Table 1 have been occurring almost wholly independently of developments in the WTO. For reasons discussed in the paper’s concluding section, such a situation is unlikely to change in the near future. While the GATS can play a useful complementary role in accompanying and imparting greater credibility and permanency to ongoing policy changes in the education sector (but only to the extent that WTO Members choose to assign it such a role), it is not likely to be a driving force or even a major consideration behind such changes. In part, this is because the trade policy framework may not offer the most appropriate environment in which to tackle many of the measures likely to constrain the further internationalization of education services.

The rest of this paper is structured as follows. Section II provides a synthetic description of the core features of the GATS, highlighting in particular how the four modes of supplying services subject to the Agreement’s disciplines relate to trade in education services and recalling the policy flexibility WTO Members retain under the GATS as regards the nature, extent and pace of possible progressive liberalization. Section III describes a number of key misunderstandings and fallacies that have tended to cloud a rational discussion of the possible effects of the GATS on trade in education services. Section IV depicts the key elements found in the negotiating proposals on education services put forward by the governments of Australia, New Zealand, Japan and the United States, recalling their circumscribed nature and the acute awareness of WTO Members about the policy sensitivities arising in the sector. Section V concludes with a discussion of the limited role the GATS may play in the education field, noting that many of the impediments that stand in the way of greater cross-border exchanges of education services may be more appropriately pursued outside a trade policy setting.

Table 1
New providers of post-secondary education and training services

Type of provider	Explanation	Examples	Comments/Cases
1. Corporate training	<ul style="list-style-type: none"> Generally spin-offs of multinational companies, which mostly train their employees across the world but also train lifelong learners, suppliers and customers and sometimes deliver degrees 	<ul style="list-style-type: none"> General Electric Crotonville Motorola University McDonalds Hamburger University Sun Microsystems Educational Services Fordstar Microsoft's Certified Technical Education Centers (CTECs) 	<ul style="list-style-type: none"> over 1600 in 1998 in North America 42% of all American "corporate universities" provide courses for which a degree could be granted at an educational institution <u>Microsoft</u>: 1700 franchised private training companies (CTECs) internationally, using Microsoft Certified trainers and the Microsoft Official Curriculum
2. For-profit institutions	<ul style="list-style-type: none"> use strict business principles of operation, such as targeting specific customers (e.g. adults) or developing standardised and limited education "products" 	<ul style="list-style-type: none"> Apollo Group Sylvan learning systems Inc. De Vry inc. 	<p><u>Sylvan Learning</u>:</p> <ul style="list-style-type: none"> \$ US 484.8 million turnover International strategy of Sylvan through the acquisition of established private post-secondary institutions (Mexico, Chile, Spain, France, Switzerland) Number one in testing in the world Number two in language training in the world
3. Virtual universities	<ul style="list-style-type: none"> Offer conventional university services via ICTs 	<ul style="list-style-type: none"> National Technological University (Sylvan) Open Learning Agency of Australia Western Governors University Open University worldwide (UK) Army University 	

		Access Online	
4. Traditional universities (or not for-profit post-secondary institutions)		<ul style="list-style-type: none"> • Monash University • Open University, UK 	<ul style="list-style-type: none"> • Increasingly use ICT for their teaching operation, set up e-learning programmes as well as overseas campuses
5. For-profit arms of traditional universities	<ul style="list-style-type: none"> • Start to meet the competition of for-profit and virtual universities • Extend their activity to working adults 	<ul style="list-style-type: none"> • NYU's School of Continuing and Professional studies • University of Maryland University College (UMUC) • Ecornell 	<ul style="list-style-type: none"> • UMUC: degree-granting for working adults, both face to face and at distance
6. Partnerships	<ul style="list-style-type: none"> • Private/public • Private/private • Public/public 	<ul style="list-style-type: none"> • Universitas 21 • U21global (U 21 & Thomson learning) • Trium EMBA (LSE, Stern of New York, HEC Paris) 	<ul style="list-style-type: none"> • Increasing number of partnerships and ventures in e-learning and international programmes • U21 global: online university concentrating on the postgraduate business education sector in Singapore, Malaysia, and Hong Kong, with expansion plans targeting students in Africa, China, and Latin America.

II. How the GATS operates

The GATS consists of three core components. The first is a framework of rules that lays out the general obligations governing trade in services, which it does in much the same way as the GATT does for trade in goods. It provides for disciplines on transparency (of considerable importance given the regulatory density of services trade), most-favoured-nation (MFN) treatment, market access, and national treatment. The framework is still incomplete, and rule-making efforts on certain issues, such as emergency safeguards, subsidies, government procurement and, perhaps most importantly, on domestic regulation, are still underway.

Second, the GATS includes annexes on specific services sectors (air transport, financial services, maritime transport, and telecommunications) as well as the movement of natural persons. The

third element consists of the schedules of commitments detailing the liberalisation commitments of each WTO member.

The preamble to the Agreement sets out the some of the key considerations that underlie its continued negotiation. These include:

- The belief that a multilateral framework of rules and principles that aim to progressively liberalise services trade will assist the growth of international trade in services and contribute to economic development world-wide;
- Recognition that the liberalisation process must respect the needs and rights of governments to regulate in order to pursue national policy objectives;
- Acknowledgement that the integration of developing countries into the multilateral trading system must be facilitated through a reinforcement of the capacity, efficiency and competitiveness of their domestic service industries.

The GATS distinguishes between four “modes of supply” through which services can be traded. As Table 2 shows, these four modes might be analogously compared to the means by which goods are exchanged: exports, called cross-border trade in GATS (Mode 1), movement of consumers (Mode 2), foreign direct investment, called “commercial presence” (Mode 3), and the movement of service providers (Mode 4). Table 2 indicates how each of these four modes is germane to how cross-border trade and investment in education services takes place today. For any given service in which a WTO member chooses to make a commitment, it can set limits sector-by-sector and mode-by-mode with regard to its market access and national treatment commitments. In other words, over and above so-called “horizontal” restrictions that may be maintained across the board (i.e. applicable to all sectors, as is often the case of limitations on foreign investment or the temporary entry of service suppliers), countries have eight separate opportunities to indicate how they will treat foreign service providers in any given sector (i.e., market access and national treatment restrictions can be lodged against each of the four modes of supply. This geometry is depicted in Table 3 below.

Table 2
Modes of Supply of education services

Mode of Supply according to GATS	GATS Definition	Examples in education	Size, potential of market and major impediments
Mode 1 Cross-border supply	The supply of a service “from the territory of one Member into the territory of any other Member.” The service travels, but both the provider and the consumer stay home. Comparable to the export of a good.	<ul style="list-style-type: none"> • Distance education • Virtual education institutions • Education software • Corporate training through ICT delivery 	Currently a relatively small but rapidly growing market. Seen to have great potential through the use of ICTs and especially the Internet.

<p>Mode 2 Consumption abroad</p>	<p>The supply of a service “in the territory of one Member to the service consumer of any other Member.” Comparable to tourism or business travel by the consumer.</p>	<ul style="list-style-type: none"> • A student travels to another country to enrol in a school for a course of study/degree programme. 	<p>Currently represents the largest share of the global market for education services, especially in post-secondary education. For prospective students, however, GATS commitments are of little significance given general lack of restrictions and relative to non-GATS issues such as student visas and funding. GATS may help in encouraging greater recognition of degrees by home-country institutions.</p>
<p>Mode 3 Commercial presence</p>	<p>The supply of a service “by a service supplier of one Member, through commercial presence in the territory of any other Member.” GATS-speak for foreign direct investment.</p>	<ul style="list-style-type: none"> • Local university or satellite campuses • Language training companies • Private training companies e.g. Microsoft, CISCO, etc. 	<p>Growing interest and strong potential for future growth. But significant reluctance to make binding commitments: only seven WTO members have made full commitments for higher education under this mode.</p>
<p>Mode 4 Movement of natural persons</p>	<p>The supply of a service “by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.” Comparable to temporary emigration or business travel by the service provider.</p>	<ul style="list-style-type: none"> • Professors, teachers, researchers working abroad on a temporary basis. 	<p>Potentially a strong market given the emphasis on/increasing demand for the mobility of highly-skilled professionals Generally more politically sensitive and less commercially significant than the other three modes. Most WTO members maintain restrictions on a horizontal basis (e.g., immigration rules that apply to all services sectors). Academics tend to encounter little difficulty in this area, as their mobility is demand driven and given the</p>

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