

International Trade in Educational Services

The Implications of GATS for Higher Education and Government

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Introduction

- You may be wondering why you as an educator or student need to know about international trade agreements, in general, and GATS in particular.
- How many of you are aware of the General Agreement on Trade in Services or (GATS) and how it might affect higher education?
- It's my contention that GATS will have significant positive and negative impacts on higher education in the future. Therefore, it is critical for educational policymakers and opinion leaders to understand it and its implications for higher education.
- My goal is to give you a brief introduction to "GATS 101" so you can decide for yourself whether this is something you need to know more about. The GATS agreement is very complex and is still evolving, so realistically all I can do here is to hit the high points.
- In the process of describing GATS, I will attempt to portray the views of both the advocates and critics of GATS

What are some of the major trends are impacting higher education?

- Technology proliferation
 - 25 years ago information technology was barely on the HE radar screen of the HE community. Similarly, at this time GATS is largely unknown. I predict its impacts on HE will be very substantial within less than five years and then far beyond.
- Globalization of the economy
- Private sector education expansion
- Public funding reductions
- Pressures on educators to find revenue sources
- Expansion of cross-border education services
 - Traditional exchanges—Negatively impacted by 9/11 fallout
 - Efforts to facilitate cross-border commerce in educational services
 - Institution, nations and associations like CONAHEC
 - UNESCO
 - WTO and GATS

Why should educators care about GATS?

- GATS will make it easier to market your educational services abroad.
- GATS will make it easier for institutions from abroad to compete with you in your own country and abroad.
- GATS legal structure will allow your country to sue another country on your behalf if you feel GATS rules have been broken.
 - GATS rules and judicial mechanisms also allow foreign countries to sue your country if local, state or Federal laws are ruled barriers to trade.
 - GATS will seriously impact the educational policymaking powers of national, state and local governments and, in the process, your ability to influence some of their actions.

How did GATS and other trade agreements come into being?

Brief History

- **GATT— General Agreement on Tariffs and Trade**
 - Post-World War II multilateral structure to liberalize international trade by reducing barriers— tariffs, taxes, policies, etc.
- **WTO— World Trade Organization**
 - Vehicle to promote and enforce Free Trade
 - 144 member states
 - Established in 1994 to accelerate trade liberalization begun under GATT
 - Provides mechanisms for negotiating free trade agreements that apply to all members
 - Codifies international trade rules
 - Enforces compliance through dispute settlement tribunals
- **NAFTA— North American Free Trade Agreement**
 - Regional agreement between Canada, Mexico and U.S.--1994
 - Focus is on trade in commodities and professional services
 - Goals are consistent with WTO and GATS
- **GATS- General Agreement on Trade in Services**
 - Initiated in 1994 as part of WTO and applies to all 144 nations
 - Negotiations have intensified since 2000 and are ongoing.
 - Aimed at services (e.g., healthcare, education) not tangible commodities (e.g., autos)
 - Covers approximately 160 different services sectors.
 - WTO states are committed to successive future negotiations to expand coverage and increase liberalization.

What are considered “services” in the GATS framework?

GATS definition of “Service”— “a product of human activity aimed to satisfy a human need, which does not constitute a tangible commodity”

What services sectors are covered by GATS?

Business
Communications
Construction
Education (all levels) *
Environmental
Financial
Health and social services *
Tourism and travel
Recreational
Transport

(* Areas with least commitments by member nations to-date.)

Does GATS apply to public services like higher education?

- There is a controversial exclusion provision in GATS for “services supplied by governments.”
- Some GATS advocates claim public services are exempt
- Some educators have made the case that the field is exempted from GATS.
- From all indications, education is covered and we should proceed on the assumption public higher education is included.

What are examples of obstacles to trade in educational services?

- Special taxes or tariffs
- Outright bans on services from foreign institutions
- Restrictions on online instructional material from foreign countries
- Complex accreditation and licensing requirements and procedures for foreign programs
 - Long delays in required governmental approval for foreign programs
 - Restrictions on the movement of foreign academics
 - Requirements that some percentage of instructors be from the host country
- Limited access to technical infrastructure for foreign programs
- Customs restrictions on certain teaching resources

What does GATS Cover?

- Applies only to government measures— laws, regulations, administrative rules, guidelines
 - Does not affect the behavior of private corporations or individuals
 - Covers subsidies, grants, nationality requirements, residency requirements, licensing standards and qualifications, registration requirements, economic quotas or needs tests, licensing or training requirements, among others

What are the main provisions of GATS?

- **Top-Down features**— Apply to all service sectors for all WTO countries.
 - Most favored nation status-- Must be extended to all WTO members.
 - Transparency— Nations must provide open access to information related to trade in services— any changes in laws, regulations, guidelines must be reported at least annually to the WTO.
- **Bottom-Up features**— Apply only to those sectors in which a nation chooses to make specific commitments to market access (e.g., H.E.).
 - Prohibits limitations
 - of the number of service providers
 - on the volume of service transactions
 - on the number of natural persons that may be employed
 - on those legal or organizational forms granted access
 - on the participation of foreign capital
- **Dispute settlement mechanism**
 - Unresolved disputes between countries are settled by WTO tribunals
 - Tribunal proceedings are secret and there is no appeal process.

What modes of services does GATS cover?

- Covers all modes of supplying a service
 - Mode 1-- **Cross-border supply**
 - Distance Learning delivered via Internet, satellite, phone, etc.
 - Research
 - Mode 2— **Consumption Abroad**
 - Student exchanges
 - Mode 3— **Commercial Presence**
 - Foreign-owned HE providers operating in another country
 - Mode 4— **Presence of Natural Persons**
 - Faculty, consultants, technicians working abroad

• What are some of the educational policy issues raised by GATS?

• Student Access

Advocates-- increase student access to education by making more programs available even in developing countries that often lack domestic capacity

Critics— increase the economic gap in developing countries through greater commercialization of education and higher tuition charges from for-profit providers who are likely to serve the wealthy elite but not the larger public.

• Transferability of Credits

Advocates— will contribute to the transferability of credits across borders

Critics-- will confuse existing efforts by national and international educational groups (e.g., UNESCO) to continue progress toward cross-border recognition of qualifications and credits.

• Quality Assurance and Accreditation

Advocates— GATS will lead to greater progress toward quality assurance and accreditation of cross-border education programs.

Critic— Quality assurance and accreditation of cross-border programs are central to higher education and should be handled by educators not trade officials.

• Funding for Students and Institutions

Advocates— Expanded range of programs providers likely to stimulate new sources of funds for students.

Critics— Domestic public institutions will be hurt if foreign providers are allowed to tap public subsidy funds and the availability of foreign competition may lead policymakers to make additional budget cuts in domestic institutions.

• Credentialing and Mobility of Professionals

Advocates— GATS will ease cross-border recognition of credentials and the mobility of professional educators and their graduates.

Critics— GATS will undermine the quality assurance role of domestic institutions and lower quality standards.

Educational policy issues raised by GATS (con't.)

• Authority of Educational Policymakers and Regulators

Advocates— Nations voluntarily join the WTO and in GATS can choose whether or not to commit themselves to liberalizing regulations in specific categories (e.g., higher education, adult education) and can even later withdraw commitments (with penalties).

Critics— National, and especially state and local, governments are severely constrained in the exercise of their sovereignty by threats of law suits and retaliation if they deviate from the strict interpretations of GATS provisions regarding “transparent” and “non-discriminatory” laws and regulations.

Who are the primary GATS advocates and critics?

Advocates

- Service Industry Associations in U.S., Europe, Japan, Hong Kong, Britain
- Chambers of Commerce— U.S., International
- Organization for Economic Cooperation and Development (OECD)
- Education-- Center for Quality Assurance in International Education (CQAIE), Educational Testing Service (ETS), Motorola University, other for-profit colleges and universities in US and abroad

Critics

- Unions— International, European, Australian
- NGOs— Council of Canadians, Canadian Centre for Policy Alternatives, Friends of the Earth, Alliance for Democracy, Public Citizen Trade Watch,
- Higher Education-- Education International, American Council on Education, Council for Higher Education Accreditation, Association of Colleges and Universities of Canada, European university Association
- Student Associations— National Unions of Students in Europe, Canadian Federation of Students

What is the Current Status of GATS?

- Parts of GATS are already in place
 - General (“top-down”) provisions already apply to all WTO nations.
 - Initial round of specific higher education commitments ended 7/02
 - Only 4 nations have made explicit market access commitments in H.E.-- Australia, Japan, New Zealand and the U.S.
- Since July 2002, countries are making specific requests on certain other countries to liberalize their education service policies.
 - The U.S. has already done so— requests are secret.
- Strong pressure on other countries to make commitments in H.E. and to liberalize their education policies.
 - U.S. is likely to expand its educational commitments over time.
 - U.S. is likely to aggressively pressure other countries to make specific commitments in higher education.

What is the Bottom Line for Higher Education?

- Little impact is likely in next 6 months in “first world” countries.
- More nations are likely to make commitments in higher education.
- Wealthy countries are likely to aggressively use GATS to gain market share in less developed nations.
- Private, for-profit H.E. entities are most likely to benefit from GATS.
- Legal cases over foreign provider access to domestic subsidies are likely to arise.
- Governments will have to review and change many laws, regulations
- Poorly-prepared governments are likely to be forced into dispute resolution
- Nations with a federal government structure likely to have the most difficulty adapting to GATS.
- There is much more controversy and information about GATS in Canada, Europe, Australia and New Zealand than in the United States.
- Most higher education leaders are unaware of GATS and its long-term implications for their institutions and policymaking entities.

Closing Quote from Jane Knight, University of Toronto

Finally, it needs to be asked whether trade liberalization has the potential of dominating the higher education agenda. There is a risk of “trade creep,” where education policy issues are being increasingly framed in terms of trade and economic benefit. Even though domestic challenges in education provision are currently front and center on the radar screen of most countries, the issue of international trade in education services will likely increase in importance—and perhaps 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. Jane Knight, “Trade Creep: Implication of GATS for Higher Education Policy,” Center for International Higher Education, Boston College, #28, Summer 2002.

Some GATS-related terminology

- Open access
- Agreement/Treaty
- Transparency
- Liberalization
- Progressive liberalization
- “Progressively higher level of liberalization”
- Sovereignty
- Regulation/Re-regulation/De-regulation
- Market access commitments
- Compliance
- Dispute Settlement Understanding (DSU)
- Compensation (liberalizing trade in some other area)
- Retaliation (“of commercially equivalent effect”)