

Trade in Educational Services: A European University Perspective

Washington, May 23rd, 2002

Perception problem

In January 2005, the GATS negotiations are supposed to be completed. Many people don't know this. The problem, however, is that at this moment, many people don't even know that these negotiations have already *started*. To an astonishing number of people, the acronym GATS has no more meaning than its full form does, General Agreement on Trade in Services. When the GATS framework came into effect in 1995, it went largely unnoticed, and nothing much has changed in that respect. Also the first real discussions did not cause much of a stir, except in specialized circles. This is highly surprising, and even alarming, because GATS *will* affect our entire life, maybe not tomorrow or next year, but definitely in the long run.

GATS is one of the major tools of the WTO, the World Trade Organization, in which more than 140 countries participate. Obviously, the WTO is far better known than its GATS framework - just think of the antiglobalist manifestations against it. GATS is based on the principle of free competition, which says that freedom of trade is the best guarantee for the best possible quality at the lowest possible cost. The General Agreement on Trade in Services creates a (practically) world-wide and legally binding framework for trade liberalization in the field of tradeable services by private persons or organizations. Therefore, public and government services are excluded from the GATS framework. The question will be, of course, how to draw the line between public and private, and between commercial and non-commercial. GATS's main goal is to remove all barriers between countries which block or hinder the free flow of tradeable services. One of the main instruments to do this, is the principle of non-discrimination. This means that once a country allows a privilege to one provider of a service, foreign or domestic, no other provider must be denied the same privilege. Also discrimination between users of a service is forbidden, for instance with regard to tuition fees to be paid by foreign students. This does *not* mean that a country is forbidden to enforce certain quality or other standards, but these standards should be the same for all possible competitors.

What many don't realize, is the incredible scope of GATS. GATS has to do with trade in services. This word, as one observer put it, means 'everything which you can't drop on your foot'. Indeed, the breadth of the word *services* cannot be overstated. It includes a long list of tradeable services. In theory, GATS has to do with burial services, music, satellite communications, water distribution, medical care, insurance, financial services and so on - and education. Despite this huge potential impact, nobody seems to care very much. In my opinion, this apparent lack of interest is definitely caused by a lack of appropriate publicity on the part of the GATS negotiators - that is, most national governments or international organizations, such as the European Commission.

Lately, however, the world of education *has* become aware that their own field too will or has become part of the GATS negotiations, causing a certain level of protest. Not all of the protest is based on a good understanding of what GATS actually means, however. Be that as it may, the protesters fear that the GATS framework is too vague, too wide, and too unknown to be trusted. They fear that GATS would pave the way for a complete commercialization of education, especially on the post-secondary level. It would make our national governments powerless to continue to maintain their public education system, and therefore jeopardize the basic human right to education. It would open our borders for unknown, very commercial and probably low quality

foreign educators, or so-called educators. It would be the beginning of endless legal challenges, making it difficult for any government to take the appropriate measures to protect the quality of national education systems. In their opinion, a GATS regulated education would no longer allow a system of government subsidies. Consequently, there would be no more room for freely accessible education, with a minimum level of quality, to be guaranteed by government. Governments would lose their authority to guarantee democratically available quality education. The forces of the free market would increase the quality gap between education providers, the best quality only being available to the financial elite. In short, GATS is supposed to be an invention by the devil, an evil attempt to sell out everything which was good and valuable, to some vague authority, or even worse, to some hazy conglomerate of giant companies. Education, it is said, would soon become a commodity, similar to petroleum, steel or insurance. GATS would be the end of education as we know it. Furthermore, English would become the only dominant language of education, destroying local language and culture.

In all honesty, these fears are not entirely unsubstantiated. To a casual observer, GATS *has* something which can give rise to serious concern. Just look at its scope: in principle, GATS applies to all tradeable services, except those supplied in the exercise of governmental authority. Every single service which is supplied on a commercial and competitive basis, falls within the scope of GATS. To many, this sounds frightening.

A realistic starting point

Having said this, it might look as if I am about to start an anti-GATS discourse. On the one hand, I am. And on the other hand, I am not, at least not entirely. The reason for this ambiguity is that I am talking to you from a dual perspective. Being the representative of the EUA, the *European Universities Association*, compels me to explain the views of this organisation. But on the other hand, I am also talking to you from a more personal point of view, and as the president of K.U.Leuven, Belgium's foremost university. My appreciation of GATS differs, according to the position I am speaking from.

Personally, I am in favour or even a true believer of the basic idea of liberalizing trade in services. I am, however, also cautious with regard to its implementation, and I am especially cautious when education is to become part of this liberalization process. There are obvious *pros*, but there are equally obvious *cons*. The problem, at this moment, is that the discussion is far too polarized, which is rarely the basis for healthy discussions. I hope that this forum, and maybe even my own small contribution, will add to a more balanced approach.

It makes sense to start with a few simple and realistic observations.

- On a global scale, trade in higher education amounts to 3 % of total trade in services – a conservative estimate. It would not be wise to simply ignore this, and to assume that it would be possible to keep this vast market away from commercial interest. This is impossible and unrealistic.
- Another observation: in Australia, New Zealand and the United States, educational services are respectively the third, the fourth and the fifth largest export service. It would not be wise to think it possible to keep this important component of export away from commercial considerations.
- And a third observation: what universities do, *is* already taking place in an environment where market forces are clearly present. Just think of adult education, which is not part of the public mandate which universities get from their governments. Or think of intellectual

property, think of the valorization of university discoveries through franchises or spin-offs. Think of contract research. Most universities are receiving a substantial part of their finances through channels which are clearly private and market-oriented.

Simply put: whether we like it or not, the sheer volume of the education market and everyday practice make it inevitable for economic and commercial considerations to be part of education policy.

No to GATS?

This is something which the educational community does not like. Maybe that is one of the reasons why in September last year, a rather blunt statement was made by four umbrella organizations of higher education against inclusion of education in the GATS negotiations. One of these organizations was the *European University Association*, of which I am a board member. The other three organisations are: the *Association of Universities and Colleges of Canada* (AUCC), the *American Council on Education* (ACE) and the *Council for Higher Education Accreditation* (CHEA). This *Joint Declaration* expressed a firm *nyet*. And its arguments were not without foundation. Let me briefly summarize them.

The Joint Declaration first describes its basic principles. Education is not a commodity, but a basic human right. It is to be organized by the competent bodies in any given country. The international aspects of modern education are essential to its quality, and quality must be the focal point of any discussion or decision with regard to its future. Whatever discussion we organize, they must take place in a context of clear rules. There is a firm distinction between education and other services, mainly because of the public mandate on which education rests. Many also consider the system where the government subsidizes private providers as a public act, because government reserves itself the right to accept or refuse these providers – depending on the quality they offer, and on certain considerations of local economic efficiency. Therefore, it is impossible to separate the public and private aspects of higher education systems. For these and other reasons, the Joint Declaration states that it is *not* acceptable to include education in the GATS discussions. Too little is known about the possible consequences of such an inclusion. Furthermore, the Declaration says, inclusion is not necessary, because there are hardly any real problems. Education has already become quite internationalized, and the number of so-called barriers does not result in real problems which could be solved by GATS. The GATS framework is far too vague, and its basic terms require much more solid definitions for GATS regulation of education to be trustworthy. Therefore, the document says, "our member institutions are committed to reducing obstacles to international trade in higher education using conventions and agreements outside of a trade policy regime (...) Our respective countries should not make commitments in Higher Education Services or in the related categories of Adult Education and Other Education Services in the context of the GATS. Where such commitments have already been made in 1995, no further ones should be forthcoming." End of quote.

There are more nay-sayers. The ESIB, the *National Unions of Students in Europe*, has expressed its doubts about the so-called commodification of education. In the *Times Higher Education Supplement*, similar views were expressed. Education will suffer if it is just treated as yet another service. Many of the objections are, in fact, ethical considerations. Education is considered as a basic right, and therefore a duty of any government. It is feared that governments would lose their regulatory independence if education is included in the GATS framework. Criticism does not disappear by simply pointing at the GATS agreements which

explicitly guarantee that governments *will* maintain their freedom to take care of constructing society through education.

It is wise to take this criticism seriously. Education *is* a fundamental human right, and must at all times be considered like that. It will become even more crucial in today's and tomorrow's knowledge society. On the other hand, it is equally wise to give due attention to the *pros* of GATS inclusion. Let me briefly go into these reasons, in order to be able to finish my contribution with a set of balanced suggestions for a healthy discussion.

Yes to GATS?

The main reason why the world of education should take an interest in GATS, is that it would be unwise *not* to do so. Even those who strongly oppose it, would have to agree that the best way to influence the negotiations, and the best way to make sure that education is treated the way it should be, is to take part in the discussions. We, the world of education, should convince the negotiators in our respective countries to pay special attention to GATS. We can only do so by taking an interest in the forthcoming talks. I think many people still consider GATS as some shady construction, filled with hyper-commercial individuals. This is simply not true. GATS is where *government* representatives meet, and it is our duty to meet with them. We, the education world, aren't doing this, at least not sufficiently. Let me quote a text from november 2000, written by European Commission: "In preparing a negotiating position for such negotiations, the Commission's practice is to consult both national authorities and the sector concerned, as well as NGOs representing interests likely to be affected. In many instances, the sector volunteers its advice in the light of its ongoing experience in the marketplace, or lobbies actively to have its concerns taken into account, and there are well-established lines of communication to representative bodies and trade federations. *In the field of education, however, the Commission has not been approached by any education providers.*" End of quote. This is a shame. It is the governments of the WTO member states who are deciding how much or how little space there will be for non-governmental or foreign education providers. And it is up to us to let our opinion be known. At this very moment, the future framework of the international aspects of our education is being erected. If we don't take part now, the building will be half finished, and it will be too late for substantial modifications.

I don't think you will find many people in the world of education who are actually *keen* to be involved with the GATS developments. But I do hope that there will be a growing number who will realize that it has become impossible to ignore it – for our own good. Just look for instance, at one of the key elements in modern education policy: the concern for verifiable quality. At this moment, this is still a very dark spot in the GATS negotiations. From a GATS perspective, quality control and quality assurance in the area of education are still largely a theoretical matter. I don't think it makes sense to have these all-important international quality measures discussed by politically trained negotiators alone. It is *we*, the education community, who have to do this. *We* are the ones who are familiar with the many difficulties involved in quality assurance in international education matters. But if we stay out, nobody will listen to us.

Positive reasons to enter into the GATS debate could also be found by trying to counter some of the objections of the *nay*-sayers.

- One of their arguments has to do with the fact that very little is known about the consequences of including trade in education services in the GATS. That is true, but one could argue that the best source to find out more about this is exactly the GATS framework itself.
- Another argument says that the world of education is already very active in the area of eliminating international barriers. This is very true. In Europe, we have had huge numbers of students studying abroad through the *Erasmus* programme. And once the Bologna framework is fully operational, it will increase international contacts even more. One could even argue that GATS could be considered as an extension of the Bologna system, which we are currently implementing throughout Europe. The Bologna Declaration aims to establish an open European space for higher education. It is obvious that Bologna will increase competition among education providers, but it will also improve the overall quality of European education, for instance through increase mobility. Bologna guarantees comparability of degrees in all participating countries. It therefore increases equal treatment of students, it improves quality, and it prevents discrimination. If GATS can also guarantee this, undoubtedly many protesters would soon switch sides. So, why not try to go even further, and get rid of even more barriers through GATS discussions? Having done part of the job ourselves does not mean that we should not be interested in removing additional barriers through another mechanism, which could be GATS.
- Another argument against GATS holds that there is a lot of ambiguity in the basic texts of GATS. The main obstacle is Article I:3, which discusses the exemption of services supplied in the exercise of government authority, when these services are not commercial and not competitive. These terms *are* vague. The problem is, once again, that if we don't give any input on how to interpret these terms, they will be interpreted for us – but probably not in the way we would want them to be. It is essential that GATS negotiators make it very clear what is meant by these terms, and that very clear distinctions are made between, for instance, the public aspects of education, and the private ones. Clarifying the basic terms of the GATS texts can prevent unnecessary fears.

At this moment, I think it is very difficult to be fully and rigidly opposed to GATS, but it is equally difficult to be wholeheartedly in favour of it. That is all right, because so much still needs to be filled in. Talking about GATS is talking in the future tense. Many aspects still require fine-tuning, many consequences still require further study. Facing reality first and foremost requires an open mind, from both sides. GATS negotiators need to be aware that education is indeed a service, but a service of a special kind. And educators need to be aware that what they are doing, is indeed a basic human right, but also an activity with important economic implications. At this moment, I feel we need to assume a positive attitude, instead of bluntly refusing to talk about it. But at the same time we need to remain very critical. That is what I have been trying to do until now.

Recommendations

I would like to take this positive attitude as the start of the concluding part of my remarks, which will consist of a number of recommendations, both for the people directly involved with the GATS negotiations, and for the world of education.

a) Sense of reality

First and foremost, I plead for a sense of reality, as I have done earlier on. Talking about education needs to be done in realistic terms. Education *is* a service with an important economic impact, whether we like it or not. Let us, therefore, at least try to keep an eye on the relationship between education and its economic implications. It would be wrong to state that this relationship is exclusively positive, but it would be equally wrong to hope that this relationship can be undone.

b) More and better communication

Another recommendation has to do with the relative obscurity in which much of the preparatory work has been taking place. The scope and the possible consequences of GATS don't allow for this obscurity to continue. We urgently *need* an open debate, in all WTO member states. GATS has to do with our future generations. We must not leave any decisions regarding these generations in the hands of professional negotiators and lobbyists alone. We need national debates, parliamentary debates and media attention, instead of boardroom deals. In short, I think we need to make sure that GATS gets *much* more publicity than it has received until now. If we allow the obscurity to continue, the final outcome of GATS will turn out to be something like a nameless decision, imposed by an equally nameless and therefore unwanted authority.

c) Gradual and specific approach

Let us move on to another recommendation. Instead of talking about liberalizing education as a whole, I think we need to be much more specific. I am in favour of introducing a more gradual approach, in which certain levels of education do *not* qualify for liberalization, while others *do*.

- It makes no sense to waste time on trying to liberalize primary education.
- Liberalizing secondary education too is probably going too far, although some exception could be made for Mode 2, in terms of the GATS definition. Secondary school students going abroad for one year, as happens already now, could be a trend which needs further attention. The rest of secondary education, however, seems to me to be far too much state controlled to find any opening for global liberalization. And this is probably how it should remain. Primary and secondary education are an undeniable part of state responsibility. There is no need for commercial intervention.
- On the next level of education, undergraduate and graduate university studies, we are entering a whole new area of negotiation possibilities. This is clearly where GATS is applicable. The question is: how? A sensible criterion might be found in the idea of *tradeability*. It would make sense to differentiate between various forms of education along the lines of this criterion. It would make *less* sense to treat education as a whole, as one monolithic block. A sensible differentiation would make the negotiations much less threatening. Focusing on those aspects which are obvious improvements for our education should be agreed upon first, in order to gain more public support and approval for the more tricky parts.

Let us focus on certain aspects of trade. Improved mobility of students and teachers can only improve the quality of our education. Mobility of education providers, on the other hand, might imply certain risks. So, once again, let us focus on this type of aspects first. Another example could be found in the sector of E-learning. Treating education as one big package does not seem like a good idea. My point here is that it makes sense to focus on areas which *need* international regulatory action.

d) Protect the term 'university'

Another recommendation might look like a detail, but I think it is not. In my opinion, the GATS negotiations are a suitable opportunity to discuss the term "university". At this moment, we are witnessing a proliferation of education services which call themselves "university", but which clearly are not. In the United States, there were 400 corporate universities in 1998. Three years later, there were 2.000. Motorola or MacDonald's may be respectable companies, but they are not the same as Harvard or Heidelberg or Cambridge. Hence, they should not be allowed to use a misleading name. A university is a place where education and research are closely and inseparably connected. No service or institution should be allowed to use that name, unless it obeys this basic principle.

This is not simply a matter of terminology. Many universities feel threatened by the increase of new education providers. They would probably feel less under attack if their competitors were forbidden to make use of very attractive and the very marketable name "university". GATS might be a good forum to agree upon a global protection of this term.

e) Focus on quality and accreditation

This leads me to another point. In order to distinguish universities from non-universities, we urgently need to agree on the criteria of quality and accreditation. This, too, would probably make a lot of criticism of GATS disappear. At this moment, many fear that the only result of GATS will be that profit will become the only target. It is up to GATS negotiators to prove that this is not true. Promoting global quality standards as the prime GATS concern would be the appropriate way to do this. Obviously, as I said before, these standards should be defined in close collaboration with education specialists. The major concern of the world of education is that GATS would lead to some sort of *race to the bottom*, a lowering of quality criteria because of commercial considerations. It is our duty to make sure that this does *not* happen. This is perfectly reconcilable with the GATS principle of non-discrimination: national quality standards can remain as high as ever, provided they are the same for all competitors. We should not expect GATS to be the forum where quality education will be provided. GATS is about trade, let us never forget that. But quality and trade can be very closely related.

f) Guarantee the right to government subsidies

My final recommendation is a word of caution to our GATS negotiators. A growing number of people in the world of education feels that the fundamental right to free and good education must remain untouched. This right should be guaranteed and protected by government. On the other hand, this government protection appears to contradict the basic idea of GATS, which is free competition. This contradiction is only apparent, however. This becomes obvious if we distinguish between an active right to education, and a passive right, as it is done by the Belgian Constitution. Let me explain this. The active right implies the right to take certain initiatives, for instance to provide education and at the same time have the right to government subsidies. In certain cases, depending on the quality of the education provided, differential state subsidies can be granted to the various providers. These differences should be established within objective and measurable criteria. Conclusion: the active right to education implies a right to a certain level of minimum subsidies, provided certain constraints are met, for instance regarding language, quality or size. The passive right is, of course, the right to accessible and good quality education, *and* the right to choose among education providers. This double right means that *both* government guarantee *and* free competition can co-exist. The Belgian situation has led to a very high level of education quality, as illustrated

by many OECD reports. If you add this active and passive right to education to the ideas of non-discrimination and free competition, as they exist within the European Union, you get a very workable framework for our future education. If GATS would get some inspiration from this Belgian and European example, proving that free competition and governmental guarantee and protection of quality are not hostile to one another, I am convinced that much of the current resistance against GATS would soon disappear.

Epilogue

Ladies and Gentlemen, you have heard me express a dual set of opinions. On the one hand, I have spoken about the negative Joint Declaration of four important umbrella organizations, who feel that GATS must not deal with education. On the other hand, I have also expressed a number of personal ideas, pleading for a more realistic but at the same time very cautious approach.

I would like to conclude my contribution with just one more consideration. Education is a very complicated matter. It is not just something which takes place between a teacher and a pupil, or between an institution and a number of students. Education is something which should be described in terms of the *stakeholder model*, a delicate set of balances between a number of parties, namely our students, their parents, our staff, government, the working world, and society at large. Describing these balances requires careful thinking, and much more time than I have. But I do think that this stakeholder model should be used in defining the position of the education world with regard to GATS. In my opinion, GATS proves the presence of yet another stakeholder in this already very complicated model, namely the international world. It would be unwise and unhealthy to ignore this new stakeholder, but it would be equally unwise to allow this new stakeholder to define the other balances. Careful and prudent discussions are what we need, and I hope that this is exactly what our GATS negotiators will give us.

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