Chapter 10
Trade Agreements and Recognition

by

Julia Nielson[1]

This chapter explores the coverage of recognition of professional qualifications by the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) and a range of bilateral and regional trade agreements. It also provides a brief overview of what has been achieved to date in professional recognition internationally and the contribution that trade agreements might provide in increasing the transparency of professional recognition across borders. It also offers some preliminary thoughts on the relationship between cross-border education, recognition of professional qualifications and quality assurance in higher education.

10.1. Introduction

In recent times, a number of factors – increasing economic globalisation, reductions in transportation and communication costs, significant (temporary and permanent) migration flows, and the increasingly international labour market for the highly skilled – have led to a growing demand for greater recognition of foreign qualifications. The range of groups with an interest in the recognition of foreign qualifications is also expanding – in addition to universities assessing whether students should be accepted for further study, employers, professional associations and licensing bodies, as well as migration authorities, are also increasingly requiring information on the recognition of foreign qualifications.

Many of these same factors have formed the backdrop for the growth in international trade in services. International trade in a range of services – for example, health and education services, or professional services such as accounting and engineering – is often conducted via the temporary

1. Julia Nielson is a Senior Trade Policy Analyst at the OECD in Paris. The views expressed in this paper are the author's alone and do not bind the member states of the OECD in any way.

movement of individuals to supply these services. For example, trade in health services can occur when a nurse from one country moves to another country for a limited period to work in a clinic; and trade in engineering services can take place when a company with a contract to build a bridge in another country sends its engineer to supervise the project. This trade in services has also led to an increased demand for recognition of qualifications. Consequently, issues related to the recognition of professional qualifications are increasingly covered in trade agreements which include trade in services.

This chapter explores the coverage of recognition of professional qualifications by the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) and a range of bilateral and regional trade agreements. It has six sections. Section 10.2 briefly sets out a working definition of mutual recognition for the purposes of this paper. Section 10.3 outlines the key GATS provisions related to recognition and raises some of the legal issues that arise in terms of the GATS' coverage of recognition agreements. Section 10.4 provides a brief overview of what has been achieved to date in recognition internationally, in particular in agreements concluded pursuant to regional trade agreements (RTAs). Section 10.5 explores some of the reasons why progress on recognition agreements has been relatively limited to date. Section 10.6 offers some preliminary thoughts on the relationship between cross-border education, recognition of professional qualifications and quality assurance in higher education. Section 10.7 concludes. Annexes to the paper provide background information on the GATS and on a range of existing recognition agreements, both those concluded as part of RTAs and those initiated by professional bodies.

10.2. What is recognition?

Recognition can be conferred for academic purposes to enable enrolment in further study, or to enable the practice of a profession. In terms of professional qualifications, recognition usually refers to both the recognition of the equivalence of the content of the training and to the recognition of the home country's authority to certify such training through the granting of diplomas or other evidence of qualification (Nicolaïdis and Trachtman, 2000).[2]

2. There are many different contexts for recognition and definitions can differ, including between academic or professional recognition. Further, different authors take different approaches and terminology use can vary. For the purposes of this paper, the working definition of recognition used is geared towards the recognition of professional

Much recognition is based on the principle of equivalence – generally understood to mean that, where the host country's regulatory goal is addressed by home country regulation, the host country should accept the home country's regulation as equivalent. Where aspects of the host country's regulatory goals are not met (*e.g.* with regard to required local knowledge, or where there are differences in the scope of the licensed activities between jurisdictions), the host country is permitted to set additional requirements for recognition ("compensatory measures").

In practice, recognition is rarely "pure" recognition. Most recognition agreements require a considerable degree of cooperation, including in terms of analysis of the respective parties' regulatory regimes and, often, some regulatory adaptation. In general, recognition agreements: leave considerable residual powers to the host country; involve mutual monitoring between the regulatory authorities; involve some pre-conditions before recognition is granted; and include the possibility to reverse or remove recognition in view of changes to the other party's regulatory system. Additionally, many recognition agreements include a general safeguard, in addition to the specific rules of recognition, enabling the authorities to re-assert regulatory jurisdiction in order to "protect the public good" or the like (Nicolaïdis and Trachtman, 2000).

In general, recognition is a highly complex and time-consuming task. First, recognition requires, or assumes, that a country has in place a system for regulating a given profession. Development of a domestic regulatory framework for a profession is a difficult task, requiring well-developed and competent institutions able to develop systems which balance various public policy objectives, such as ensuring the quality and adequate supply of the profession. In some countries, regulatory frameworks for the professions are either poorly developed or non-existent.

Second, recognition requires a complex comparison between frameworks established to meet different sets of cultural, social and economic circumstances to determine whether the standards set are actually equivalent. Recognition also involves a number of stages: information exchange, analysis of the other party's regulatory regime, assessment of whether there are gaps and, if so, what might be appropriate compensatory measures, whether some aspects should be excluded from recognition altogether and whether any adaptation of the home country regulatory framework is required. The speed and efficacy with which these processes can be undertaken will vary with the degree of differences between the

qualifications in the context of trade in professional services, and related provisions in trade agreements.

parties – *e.g.* in terms of education system, standards, approaches to regulation and level of development – and also with the number of parties involved. Once agreed, recognition agreements also require ongoing resources for monitoring and assessment.

10.3. What does the GATS say on recognition?

Main GATS disciplines and instruments

There are a number of disciplines in the GATS related to recognition. In addition to Article VII that directly refers to recognition, other disciplines related to domestic regulation (Article VI.6) are relevant. Additional instruments related specifically to the accountancy profession have also been developed by WTO Members. A general background to the GATS, which provides some context for these specific disciplines, is at Annex I.

GATS Article VII

The GATS does not require Members to recognise the professional qualifications of other Members, nor does it require any particular standards to be applied in considering recognition. Article VII (Recognition) simply allows Members to recognise the education or experience obtained, requirements met, or licenses or certifications granted in some WTO Members and not others.[3] That is, it permits countries to break the normal rule that treatment offered to one WTO Member must be extended to all other WTO Members (the "Most Favoured Nation", or MFN, requirement that you treat all WTO Members as well as you treat your most favoured WTO Member). This deviation from MFN is based on the realistic assessment that, given the range of regulatory differences amongst Members, recognition is most likely to be agreed bilaterally or plurilaterally (*i.e.* amongst a group of Members),[4] and that a requirement to automatically extend recognition to all other WTO Members would probably result in far fewer, if any, recognition agreements being negotiated.

3. As this shows, recognition in the GATS goes beyond the question of qualifications and professional qualifications and also applies to experience obtained. Further, it goes beyond professional services and encompasses recognition in a range of services. For example, the GATS Annex on Financial Services (Article 3, Recognition) refers to recognition of prudential measures.

4. The possibility of autonomous recognition is also acknowledged in Article VII:1. Singapore has notified the WTO that it does not enter into mutual recognition agreements, but accords recognition autonomously.

The main requirement of Article VII is that WTO Members entering into recognition arrangements amongst themselves must afford adequate opportunity to other interested Members to negotiate their accession to the agreement or to negotiate a comparable agreement. That is, other WTO Members should be given the *opportunity* to demonstrate that they also meet the required standards – whether they actually do or not is a matter for the country according recognition to decide. There is no requirement in the GATS to *accord* recognition to other Members, only a requirement to give them the opportunity to try to *negotiate* such an agreement if they wish.

To facilitate this process, WTO Members must notify existing recognition measures to the WTO Council for Trade in Services (CTS) and promptly inform the CTS when they adopt new recognition measures or significantly modify existing ones.[5] A standard notification format has been developed by WTO Members for the notification of recognition agreements or arrangements.[6]

The other main requirement is that WTO Members not grant recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services. This legalistic language essentially means that WTO Members can apply whatever standards they want in according recognition, but they must apply the same standards to all WTO Members. That is, a Member cannot apply different standards in assessing doctors from country A than from country B; doctors from country A may meet the required standards and those from country B may not, but the same standards must be applied to both.

Article VII has little to say about the substance of recognition, other than noting that a Member may recognise "education or experience obtained, requirements met, or licenses or certification granted", and that recognition may be achieved "through harmonisation or otherwise". Countries are not required to use international standards; the GATS simply states that "wherever appropriate, recognition should be based on multilaterally agreed criteria". Members are also encouraged "in appropriate cases" to work "in cooperation with relevant intergovernmental and

5. The Council for Trade in Services is a body consisting of all WTO Members. The WTO Secretariat serves as the Secretariat to that body.

6. The standard format for Article VII:4 notifications covers: (1) Member notifying; (2) Article under which notification is made; (3) date of entry into force and duration; (4) agency responsible for enforcement of the regulations; (5) description of the regulations; (6) changes to existing regulations; and (7) contact from whom the text is available.

non-governmental organisations towards the development of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions".

GATS Article VI.6

Article VI.6 states that where a country chooses to make a commitment to allow access for a particular type of foreign professional, such as for education professionals, that country is required to have adequate procedures in place to verify the competence of those professionals from all other WTO Members.[7] "Adequate procedures" is not further defined.

This Article is not about recognition *per se*, but simply about having some kind of procedure to assess competence (which could be, for example, a test or other mechanism). Members are again left broad scope to determine the type of procedures they use to do this. Article VI.6 is also silent on the standards to be applied (*i.e.* the criteria used to assess competence), it merely requires the existence of adequate *procedures – i.e.* the availability of a mechanism for assessing competence.

Further, a country has to have actually chosen to make a GATS commitment on market access for a particular professional service for the obligation to apply. If a country allows in foreign university lecturers, but has made no GATS commitment to that effect, the obligation does not apply. A country which is allowing foreign professionals to practice in its territory even without a GATS commitment to that effect presumably still has an interest in having procedures to verify their competence, but is not under a GATS obligation to do so.

The logic of this provision is based on the difference between market access and regulation. A market access commitment by a country to allow foreign lecturers to teach does not mean that that country is obliged to accept all foreign lecturers; whether an individual is actually permitted to teach will depend on whether s/he meets the requirements of the domestic regulatory framework regarding who is competent to lecture in a university. Therefore, if there is no procedure in place to enable that foreign lecturer to prove his/her competence vis-à-vis these domestic regulatory requirements, s/he will never be permitted to teach and the promised market access cannot be used. It is for this reason – to avoid countries undermining the commitments they have made to others to allow access – that the GATS requires them to have an adequate procedure in place to verify the

7. An explanation of GATS commitments is at Annex I.

competence of foreign professionals *where* they have committed to providing access for those professionals.

Accountancy Disciplines[8]

The Accountancy Disciplines are a range of additional disciplines which apply only to trade in accountancy services and only where a Member has made commitments to allow trade in accountancy services. The Disciplines were agreed in 1998 but are yet to enter into force; they are due to do so at the end of the current round of negotiations. There has also been some discussion amongst WTO Members about the possibility of extending the Disciplines to other professional services and Members have been asked to consult with their relevant professional bodies at the national level.

The Disciplines do not require recognition; they only require WTO Members to ensure that their competent authorities take account of accountancy qualifications acquired in the territory of another Member, on the basis of equivalency of education, experience or examination requirements. The requirement to "take account of" is not further defined and is open to many interpretations. Additionally, the Disciplines require that examination or other qualification requirements be limited to subjects relevant to the activities for which authorisation is sought (*e.g.* qualification requirements for accountants cannot include a medical degree or scuba-diving certificate). Specific reference to recognition agreements in the Disciplines is limited to the role which those agreements can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education.

WTO Guidelines on Mutual Recognition in the Accountancy Sector

The WTO "Guidelines on Mutual Recognition Agreements or Arrangements in the Accountancy Sector" [WTO document S/L/38, dated 28 May 1997] were negotiated around the same time as the Accountancy Disciplines and were designed specifically to address the question of recognition agreements in the accountancy sector. The Guidelines are voluntary and non-binding. Indeed, the chapeau notes that the examples listed in the Guidelines are indicative and are intended neither to be exhaustive nor as an endorsement of the application of such measures by WTO Members.

The Guidelines provide practical advice for governments, negotiating entities or other entities entering into mutual recognition negotiations on

8. See WTO Press Release "WTO Adopts Disciplines on Domestic Regulation for the Accountancy Sector", dated 14 December 1998 (available at *www.wto.org*).

accountancy services. The Guidelines cover both the process for negotiating (*e.g.* what should be in notifications, implementation) and the substance of, recognition agreements (*e.g.* clearly state parties and their areas of competence, purpose and scope of agreement, conditions for recognition). The Guidelines do not propose answers or specific content in these areas, but rather simply list the elements which recognition agreements should include, but without further specification (*e.g.* they state that the agreement should explain the qualifications required, but do not state what these should be).

Summary

The GATS does not provide for, nor seek to undertake, recognition – it merely permits Members, in pursuing their own recognition initiatives, to break the MFN rule by according recognition to some WTO Members and not others. GATS Article VII is based on the acknowledgement that recognition will happen elsewhere, through bilateral or plurilateral agreements amongst WTO Members. The links back to multilateralism are via requirements for these agreements to be notified to the WTO so that other interested Members can know about the agreements. These Members must be provided with the opportunity, if they wish, to negotiate to join existing agreements or negotiate comparable ones.

Overall, given the variety of approaches taken (reflecting particular societal choices), and the important policy objectives involved, there are no requirements in the GATS regarding the *substance* of recognition (*i.e.* the particular standards to be applied). Disciplines regarding recognition in the GATS framework leave considerable regulatory flexibility to Members to regulate professions as they see fit. The choice of what standards or criteria to apply is a matter for each WTO Member to determine. While the same standards must be applied to all WTO Members, not all WTO Members may meet those standards and thus not all will be granted recognition.

While not mandating their use ("wherever appropriate") or development ("in appropriate cases"), international standards, both for the practice of professions and for the granting of recognition, are encouraged – although it is again envisaged that these standards will be developed, not in the WTO, but by Members working in cooperation with relevant intergovernmental and non-governmental organisations.

Possible disciplines under Article VI:4

Article VI: 4 mandates the development of any necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary

barriers to trade in services. There is a general understanding that this excludes measures which would be considered limits on market access (see Annex I), as well as those which would be considered limits on national treatment (*i.e.* which discriminate in favour of nationals; see Annex I).[9]

According to the Article VI: 4 mandate, any disciplines developed should ensure that non-discriminatory measures relating to qualification requirements and procedures, technical standards and licensing requirements are:

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

These disciplines *do not* exist as yet. In the interim, disciplines under Article VI: 5 apply; however Article VI: 5 disciplines will cease to apply once any disciplines developed under Article VI: 4 enter into force. Article VI: 5 disciplines apply only in sectors where commitments have been made. They require that Members not apply licensing and qualification requirements and technical standards that nullify or impair specific commitments made in a manner which does not meet the three criteria in the bullet points above. However, all existing – or reasonably foreseeable – measures which nullify or impair specific commitments and do not meet these three criteria are excluded. In effect, as all measures which nullify or impair a commitment and which do not meet these criteria that a country already had in place, or which it could reasonably have been expected to introduce, are excluded, these disciplines are not seen as having any force. So the real focus is on what might be developed in the negotiations on Article VI: 4.

Progress on negotiations under Article VI: 4 has been very slow and there are different views amongst WTO Members on sort of disciplines which should be developed. The most controversial provision has been the requirement that any measures relating to qualification and licensing requirements and procedures and technical standards do not constitute unnecessary barriers to trade in services. A number of arguments have been raised about this provision, including:

9. See Report to the Council for Trade in Services on the Development of Disciplines on Domestic Regulation in the Accountancy Sector, WTO document S/WPPS/4, dated 10 December 1998.

- Some Members argue that any disciplines should only focus on increasing transparency, and that any "necessity test" is itself not necessary. The argument goes that, given that these are measures which also apply to nationals, a country should be free to set its standards as it sees fit – even if they might not seem to be a good idea to others. For example, if a country wishes to require that all universities include 30 trained intensive care nurses in their staff (in the interests of having quality medical care close at hand should students give birth, have heart attacks, etc.) then it should be free to do so even though this is clearly a burdensome, trade restrictive (and perhaps rather silly) requirement.

- Others argue that, in this situation, other WTO Members should be free to challenge such requirements as they are also affected by them. Other WTO Members should, they argue, be able to suggest other – equally effective and reasonably available but less trade restrictive – ways of achieving the same objective. For example, they could suggest that all universities be required to ensure that at least 50% of their staff be trained in First Aid, rather than be highly qualified medical personnel. This, it is argued, could result in a better outcome not just for trade, but also for the country concerned in terms of better, more efficient regulation (and, in this case, a better use of the skills of highly trained personnel – and a freeing up of additional university resources).

- Essentially, some Members have expressed concern that a necessity test could allow other WTO Members to "second-guess" the decisions of national regulators; while others argue that a necessity test would only look at whether there were other, equally effective and reasonably available but less trade restrictive, ways to achieve the same objective. That is, they would not question the objective itself, nor a country's right to see that objective fully achieved; they could only comment on the particular instrument or means chosen to achieve the objective.

- In any event, a number of WTO Members have argued that "ensuring the quality of the service" is too narrow and that the full range of policy objectives that countries might want to pursue should be acknowledged (*e.g.* a licensing requirement for an education provider to offer courses of instruction in the national religion may be aimed at preserving national cultural heritage).

- A further argument has been about whether any disciplines should only apply in sectors where commitments are made, rather than across all sectors. While no final decision has been formally made on this issue, the presumption created by the Accountancy Disciplines and by Article VI:5 (both of which only apply where specific commitments have been made) is that VI:4 disciplines would have the same scope of

application. Equally, the logic of the agreement would tend to suggest that such disciplines could only apply to sectors where specific commitments had been made.[10]

In terms of the possible impact of any possible disciplines which could be developed under Article VI:4 on recognition, several points are worth noting. First, there is a general understanding that possible Article VI:4 disciplines could deal only with non-discriminatory measures. Second, it is unclear that these disciplines will impact on a country's ability to set for itself the level than defines the "quality of the service"; that is, possible VI:4 disciplines could deal with whether a particular requirement is necessary to guarantee that level of quality, but not question the setting of the quality standard at that level.

Third, as Section 10.4 will indicate, experience with recognition suggests that determinations under possible Article VI:4 disciplines on whether particular licensing or qualification requirements were more trade restrictive than necessary are likely to be difficult. The limited progress on recognition agreements suggests that it has been very difficult for countries to reach a common view on whether different measures or systems meet the same objective in an appropriate fashion. The lack of agreed international standards in most service sectors is both a cause and effect of the difficulty in making such determinations.

The legal uncertainties

There are two main issues that arise in terms of the coverage of recognition agreements by GATS Article VII. The first relates to recognition agreements concluded as part of regional trade agreements (RTAs), and whether these agreements are considered to be covered by the GATS disciplines related to RTAs or to recognition. The second relates to agreements reached between industry or professional bodies and whether, given that the GATS is a government-to-government agreement, these agreements fall under the scope of GATS disciplines.

10. This argument rests on the idea that the purpose of possible Article VI:4 disciplines is to prevent frustration of trade by the "back door". Given that if a country's real aim is to exclude foreign suppliers or to discriminate against them, it is free to do so anyway under the GATS, introducing these disciplines only makes sense if there is some commitment made to allow foreign supply under some conditions in the first place. If no opportunity for foreign supply is promised, it is argued that the need to develop disciplines to prevent the use of other measures to undermine that promise disappears.

Agreements concluded pursuant to regional trade agreements (RTAs)

A number of recognition initiatives pursued in the context of RTAs are not notified under GATS Article VII (Recognition), but are included in general notifications of RTAs under Article V (Economic Integration) – *e.g.* in the notifications related to the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and the European Union.[11] Hence a WTO Member consulting Article VII notifications will not receive a full picture of all the recognition agreements in force amongst WTO Members. It could be argued that this undermines Article VII, as countries do not know that a particular recognition agreement exists and therefore cannot indicate their interest in joining the agreement or negotiating a similar agreement.

It has also been queried whether recognition agreements notified in the context of RTAs (Article V) and not under Recognition (Article VII), are in fact still subject to the disciplines of Article VII. This argument says that recognition provisions within RTAs do not constitute separate agreements for the purposes of Article VII. However, the counter-argument is that agreements on recognition are agreements on recognition, regardless of whether they were developed in the context, or form part, of an RTA, and what precise form they take. This argument notes that the relevant provisions of Article VII are very broadly worded and thus the disciplines of that Article should still apply.

Agreements concluded between professional bodies

Recognition is accorded through a wide range of agreements – agreements between states, between agencies acting under delegated authority laid down in legislation, between professional associations which may be wholly independent of government, or a combination of these actors. Agreements may be bilateral, plurilateral, binding on states, or only on parts of states (*i.e.* on certain sub-federal jurisdictions). Indeed, some of the agreements notified to the WTO under GATS Article VII concern bilateral arrangements pursued by professional bodies, implemented by sub-national regulatory authorities, and pursued consequent to RTAs.

Beviglia Zampetti (2000) argues that, even in the context of those recognition agreements pursued subsequent to an RTA, the relevant professional and self-regulatory bodies which are usually entrusted with the negotiations of these agreements are not capable of binding states at

11. Mattoo (1999) cites 11 such notifications.

international law, unless they have a clear delegation of authority to this effect. Therefore, in general, these types of agreements are more likely to have the legal status of a private contract. Agreements reached independently by professional associations are also at best a private contract; even if one of the bodies involved could be considered part of the governmental structure and competent to enter into international agreements, this is insufficient to confer the status of an international agreement.

The GATS applies to "measures taken by Members" and defines this to include those measures taken by "(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments and authorities" (Article I.3). In terms of the question raised by Beviglia Zampetti, much would depend upon how the reference to "the exercise of powers delegated" was interpreted. If, as he argues, a general delegation is insufficient to bind states at international law, it would presumably also mean that such agreements might *not* be subject to the disciplines of Article VII.

10.4. Overview of existing agreements or arrangements for recognition[12]

What has been notified under GATS Article VII?

As noted above, WTO Members are required to notify to the WTO any recognition agreements to which they are a party.[13] Thirty-nine such notifications have been made under Article VII by 19 WTO Members (counting the European Communities and its Member States as one, but including a separate notification by Germany), covering 144 agreements. These figures do not necessarily reflect the real number of recognition agreements operated by WTO Members, however. Some agreements may have been notified under Article V (Regional Integration) instead; indeed, a number of mutual recognition initiatives are contained within, or concluded under the auspices of, broader regional liberalisation or free trade agreements (see Annex II). Further, a number of recognition initiatives have been initiated and undertaken by industry itself, with little or no involvement

12. This section provides a brief overview of existing recognition agreements. For a more detailed description see "Service Providers on the Move: Mutual Recognition Agreements", available at *www.oecd.org*.

13. These notifications are public and are available at the WTO website (*www.wto.org*).

by governments (see Annex III).[14] While some of the agreements have been notified, others have not. Finally, some agreements may not have been notified due to a lack of awareness of the obligation by, or limited administrative capacity of, the competent authorities.

The majority of recognition agreements notified to the WTO relate to recognition of professional qualifications; however, some relate to recognition of academic qualifications to enable applicants to enrol in further study or training in the host country. While there is a standard format for notifications, the amount and type of information varies greatly. Some notifications simply list the agreements, noting broadly that they relate to "mutual recognition of qualifications for the exercise of professions", while others provide a short summary of the main provisions of the agreement(s). To add to the confusion, some agreements have been notified by both parties, but with slightly different descriptions (*e.g.* a number of different notifications cover the Regional Convention on the Ratification of Higher Education Studies, Qualifications and Diplomas in Latin America and the Caribbean) and there are multiple agreements covering the same service sector (*e.g.* accountancy) but with differing membership.

Who is party to Recognition Agreements?

Many recognition agreements are undertaken by neighbouring countries or as part of broader regional cooperation or integration initiatives (*e.g.* Switzerland and Liechtenstein, Switzerland and the European Union [EU]/European Economic Area [EEA],[15] Australia and New Zealand, the Baltic States). In Latin America, where recognition agreements are common and date back to the start of the 20th century, recognition is also very often part of cultural cooperation or exchange agreements of various forms. While regional/cultural links appear to be a major motivation, other types of links may also play a role – such as political linkages (as in the case of Latin American agreements from the 1970s and 1980s with geographically distant former socialist or communist states) or religious linkages (a number of Latin American countries have agreements with the Holy See). Countries with former colonial ties – and thus linguistic and possibly educational

14. There are, however, no clear-cut distinctions between agreements concluded under RTAs and industry agreements. Agreements undertaken pursuant to RTAs are often agreements not between governments, but between professional bodies.

15. Recognition arrangements within the European Union have been extended to countries of the Agreement on the European Economic Area (EEA). EEA countries are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, the United Kingdom.

similarities – (*e.g.* Latin American countries and Spain, Macau and Portugal, Australia and the United Kingdom) also tend to be parties to recognition agreements.

Most agreements also tend to be between OECD countries, and even then seem to be largely based on a shared region or common cultural/historical ties (*e.g.* agreements within the EU/EEA, between the United States and Canada, Australia and New Zealand or between United Kingdom/United States/Canada/Australia/Ireland). Agreements amongst non-member countries seem to be largely limited to intra-Latin American agreements, with the exceptions of a number of agreements between Brazil and other non-member countries.[16] While not all existing agreements may have been notified, no agreements amongst developing economies have been notified to date by countries in Africa or Asia, except for arrangements between Macau and China and Hong Kong, China respectively (Singapore has notified that it extends recognition solely on an autonomous basis).

Some non-OECD Asian and African countries are included in recognition arrangements with OECD countries, but these tend to be industry agreements or agreements concluded pursuant to RTAs. In terms of industry agreements, for example, China; Hong Kong, China; Philippines; Singapore; Vietnam and Malaysia all have some form of Mutual Exemption Arrangement with the Engineering Institute of Australia; South Africa is included in the Washington Accord on engineering (Malaysia and Singapore have provisional membership); and the South African Institute of Chartered Accountants has a bilateral agreement with the Institution of Chartered Accountants in Australia. In RTAs, recognition initiatives are included in the Japan-Singapore New Age Economic Partnership Agreement, the Asia Pacific Economic Cooperation forum (APEC) and the New Zealand-Singapore Free Trade Agreement.

A number of Latin American countries also have some form of agreement with OECD countries – for example, the Cultural Agreement between Brazil and France; Cultural and Educational Cooperation Agreement between Brazil and Turkey; Colombian mutual recognition of study certificates with Korea, Czech and Slovak Republic and the United Kingdom; and equivalence of studies in certain fields with Germany; and a number of agreements with Spain.

16. Cultural Agreement between Brazil and Morocco; Agreement on Cultural and Educational Cooperation between Brazil and China; Cultural and Scientific Cooperation Agreement between Angola and Brazil; Cultural, Educational Scientific and Technical Cooperation Agreement between Brazil and Congo.

Finally, it should also be noted that some agreements do not cover the entire territory of the WTO Member notifying – for example, the agreements on accountancy between relevant professional bodies in the United States and Australia and Canada involve only 19 and 36 US states respectively. In turn, the accountancy agreement with the United States is recognised by most (9), but not all, Canadian provinces.

What type of recognition is granted?

Notwithstanding their titles, many recognition agreements do not provide for automatic recognition of qualifications. Coverage varies widely – some are far-reaching (*e.g.* within the EU/EEA, or recognition of educational qualifications amongst the Baltic States), others provide for reduced requirements or procedures; some provide a degree of facilitation; others are limited to broader types of cooperation or dialogue. In many cases, it is not possible to tell from the WTO notification what type of recognition the agreement actually provides. While the titles of some agreements may give an indication (*e.g.* "Mutual Recognition for Qualifications for the Exercise of Professions") albeit without specifying the actual treatment granted, in many cases recognition elements are included in a broader agreement (*e.g.* on Cultural Exchange or Cooperation), giving little indication of the content.

While some agreements relate to specific sectors (usually accountants/auditors, architects and engineers), many agreements are based on a general recognition of diplomas in partner countries, on the basis of mutual trust and judgement of the equivalence of educational institutions and study programmes. This horizontal approach is taken in many agreements in Latin America;[17] in some cases this recognition is accorded for the purposes of enrolling in further study or training, in others specific recognition of professional qualifications (*e.g.* Chile and Brazil Convention on Cultural and Scientific Cooperation), or specific mention of the objective of allowing the exercise of professional activities (*e.g.* Argentina and Colombia Convention on Mutual Recognition of Certificates, Titles and Academic Grades of Primary, Secondary and Higher Education) is included.

Agreements limited to specific professions are often agreements initiated and negotiated by industry or professional bodies themselves. The

17. Standard language is found in a number of notifications by Latin American WTO Members, along the lines of "Country X will accord recognition to foreign diplomas granted in a country signatory to a bilateral or multilateral instrument to which Country X is a party. This recognition is founded on mutual trust, which is based on the nature and type of educational institutions in the countries concerned, as well as the equivalence and similarity of study programmes and plans".

content of these agreements varies considerably and includes: automatic membership of counterpart organisations (professional bodies in the United States and Canada for the accreditation of engineers; professional bodies in Australia and New Zealand on registration of architects); acceptance of examinations of other organisations (Singaporean professional body for accountants from counterpart bodies in Australia and New Zealand); partial acceptance of qualifications with bridging courses (New Zealand professional body regarding accountants from counterpart bodies in Australia and Canada); and membership of the counterpart organisation subject to assessment and further testing.

What has been achieved under regional trade agreements (RTAs)?

Experience with recognition in the context of RTAs varies (recognition initiatives under a range of RTAs are at Annex II). Some agreements, notably within the EU/EEA and the Trans-Tasman Mutual Recognition Arrangement between Australia and New Zealand, have gone far in establishing recognition, resulting (more or less) in the ability of professionals licensed in their home country to practice in other parties to the agreement. However, this level of recognition is rare, being largely limited to regional agreements aimed at deep integration between the parties.

A number of RTAs encourage the development of recognition agreements between the parties to facilitate trade in professional services. In general, these RTAs specify priority professions (*e.g.* accountancy) and delegate the negotiation of such agreements to the relevant professional bodies. Most of these recognition agreements remain works in progress. For example, even in a relatively developed and far-reaching agreement such as NAFTA, recognition has made little progress. One recognition agreement was concluded by the engineering profession in 1995, which was approved by all Canadian provinces and Mexican states, but ratified in the United States only by Texas. A recognition agreement for foreign legal consultants, also agreed in 1995, remains stalled in the review process undertaken by the Free Trade Commission and has not yet been adopted in any country. The terms and conditions for recognition agreements in accountancy and architecture are currently being negotiated amongst competent authorities of the three NAFTA parties. Under MERCOSUR,[18] some progress has been made on reciprocal recognition for architects, agronomists, geologists and

18. MERCOSUR is the Mercado Común del Sur (Southern Common Market Agreement) and includes Argentina, Brazil, Paraguay and Uruguay.

engineers already in possession of a work contract and who intend to stay abroad no more than 2 years.

RTAs generally do not provide for recognition, but simply include general language that recognition should be pursued between the parties. Some recent agreements (*e.g.* those between the European Union and Mexico, and New Zealand and Singapore) leave recognition agreements to be concluded subsequent to the agreement (generally without firm time frames), often identifying those services where market access has been granted under the agreement as a priority. Recognition agreements concluded pursuant to RTAs are often delegated to, and take the form of agreements between industry associations (rather than forming part of the RTA itself). Perhaps not surprisingly, therefore, they tend to be limited to those internationalised and highly mobile professions where most progress has already been in agreements initiated and developed by industry itself (*e.g.* architecture, engineering and accounting).

Some RTAs do not even formally envisage the development of recognition agreements; the Japan-Singapore agreement on a New Age Economic Partnership uses the language of GATS Article VII – that is, it simply permits the development of recognition agreements, but does not specify any professions for which agreements should be negotiated.

What progress has been made at the industry level?

As negotiation of recognition agreements under RTAs is normally delegated to the relevant professional bodies, there is no clear dividing line between industry agreements and those pursued consequent to RTAs. For example, NAFTA and MERCOSUR encourage the development of recognition agreements *by the relevant professional bodies* and the APEC Engineers Register is an agreement amongst professional bodies only (and not member economies). While recognition amongst EU countries is covered under the terms of the Single Market, and many agreements amongst Latin American countries are government-to-government (including because they take the form of broader cultural and educational agreements), recognition agreements relating to specific sectors amongst other countries (*e.g.* the United States, Canada, Australia) tend to be between professional or industry bodies only. These bodies may be operating under delegated authority or may be independent from government.

In some cases, notably nursing, agreements are only at the industry level, with no links to RTAs. While industry agreements are more likely to include non-OECD, as well as OECD, participants, they tend also to be between industry associations from countries sharing close historical,

colonial and cultural ties (*e.g.* Commonwealth Association of Architects). However, they can also be regional (nursing initiatives in North America, Africa and the Caribbean).

Some industry associations have worked to create agreements on recognition, or international standards, at the multilateral event. The accounting, architectural, nursing and engineering sectors have been particularly active in developing their own agreements on international standards. For example, international standards have been developed by the International Union of Architects; engineers have developed a system of recognition of equivalency of engineering education programmes under the Washington Accord; the International Council of Nurses is working to develop a Framework of Competencies for the Generalist Nurse; and the accountancy profession has been involved in long term efforts to develop international standards of practice, including a model curriculum for technical education.

Finally, in some sectors, industry certification has become more important than recognition of formal qualifications. In the information and communication technology (IT) sector, given the high demand for skills and the fast-changing nature of the industry, industry certification has become important in identifying workers with the latest skills. In the last few years there has been a strong increase in the number of technical credentials granted by companies, business associations and commercial IT bodies. By early 2000, Cisco, Microsoft, Novell and other firms or private bodies had awarded more than 1.8 million credentials certifying IT skills to individuals; and around one in seven vacancies in the United States was found to require commercial certification.[19]

10.5. Why has progress been relatively limited?

It is difficult to make an overall assessment of how much progress has been made in terms of recognition in the context of trade agreements. In many cases, it is unclear what level of recognition the agreement actually provides, and many agreements remain works in progress. However, overall, it appears that recognition has made relatively limited, halting progress.

Recognition agreements tend to be largely undertaken between similar countries, but even then progress has been modest. Most agreements remain largely between OECD countries. Indeed, in the context of the GATS negotiations, a number of developing countries have pointed to this fact and argued that lack of recognition of the qualifications of their professionals is

19. See OECD "STI Working Papers: ICT skills and employment", DSTI/DOC(2002)10.

a major brake on their trade in an area of real export interest to them.[20] Recognition, and ways of improving the implementation of Article VII, is merging as an increasingly important issue in the GATS negotiations.[21]

Agreements are also usually between industry associations, including many of the agreements concluded pursuant to RTAs. In general, more progress is evident at the industry level; agreements between professional bodies generally accord greater recognition and have broader membership.

There are a number of reasons why such limited progress has been made on recognition of professional qualifications in the context of trade agreements. These include:

- The wide range of practices amongst WTO Members in relation to the education and training of professionals, and the equally wide range of cultural influences and assumptions that lie behind these. Indeed, the limited progress in a number of the nursing initiatives – even at the regional level – is attributed to the wide differences in education bases between the parties.
- The fear of loss of regulatory sovereignty or that recognition will lead to harmonisation of standards or practices, including at the lowest common denominator. Many professional or other regulatory bodies at the national level pride themselves on their high standards and can be reluctant to adopt or recognise others' standards as equivalent. In some cases, there is concern that particular local knowledge will not be adequately reflected in a recognition agreement.
- The absence of licensing systems for some professions or of formal qualification mechanisms in some – often developing – countries against which equivalence could be judged. Indeed, the promise of access for their professionals to other countries under an RTA has acted as a spur in some developing countries to introduce more formal licensing or other requirements for its own professionals to ensure that they will be more easily able to prove they meet the standards in other countries and therefore be able to use the access granted. This improved regulation of the professions can also have clear domestic benefits.

---

20. See, for example, WTO Council for Trade in Services "Communication from India: Proposed Liberalisation of Movement of Professionals under the General Agreement on Trade in Services (GATS)", S/CSS/W/12, dated 24 November 2000.

21. This debate, and possible ways to improve the implementation of GATS Article VII, are discussed in more detail in "Service Providers on the Move: Mutual Recognition Agreements", available at *www.oecd.org*.

- The difficulty of calculating the equivalence of on-the-job and formal training. This issue has become more prominent in view of the growth of certain types of professional activity – *e.g.* some forms of computer services – where formal training may be less important than practical, up-to-date experience. It also raises some particular problems for some professions (*e.g.* chefs) in some – again, often developing – countries where a greater emphasis is put on training and apprenticeships than formal qualifications.

- The fact that many recognition initiatives are led by, or require the close involvement of, professional associations. Organised, well-resourced and representative associations may be lacking in some countries. In other cases, professional associations may not be interested in facilitating the access of additional – foreign – suppliers to their country.

- The lack of awareness at the professional level of the possibilities provided by recognition agreements for high quality professionals to become more mobile. In a number of countries, professional associations can be more concerned about market invasion by foreign professionals in the event of a recognition agreement than they are interested in its potential for enhancing their own opportunities to work abroad.

- The resource-intensive and highly complex process involved in establishing recognition. Given the time, resources and expertise required to negotiate recognition agreements, there is a need for the advantages of such agreements to be clear. In the absence of a clear short-term gain to balance the costs, recognition agreements may not be viewed as a good use of resources by professional organisations responsible for their negotiation.

- For some professions, there is little interest in negotiating recognition agreements if foreigners are not permitted to practice the relevant professions in other countries. It is clear that most progress in reaching recognition agreements has been in those professions where there is a clear demand and where other countries are open to foreign professionals. For example, the worldwide shortage of nurses has increased interest in recognition initiatives to facilitate their movement. Relatively internationalised professions and professions where there are multinational companies need to move staff around the world at short notice – such as accountancy, engineering and architecture – have also seen real progress in recognition. Where the provision of some professional services is reserved for nationals, professional bodies are unlikely to see any value in negotiating recognition agreements.

The problem then is not only that recognition agreements do not seem to be happening, but that it is difficult to make them happen. The fundamental issue seems to be one of incentives to negotiate agreements – who has them and what supporting infrastructure is required. Recognition agreements tend to be demand driven and it is difficult to create demand where there is no, or limited interest in accessing another country, or where there is no skill shortage in the home country. Given the resource demands of negotiating recognition agreements, and the complex regulatory issues they involve, it is difficult to overcome the preference of countries and professional bodies to offer access and accord recognition on an "as needed" basis and thereby avoid the regulatory costs (both in terms of resources and loss of flexibility) of plurilateral negotiations.

In view of these costs, assistance might also be needed to help some professional bodies in developing countries to participate in recognition negotiations. The process of negotiating a recognition agreement can itself serve a useful technical assistance function, with dialogue and information exchange between regulatory authorities and between industry associations contributing to raising standards through improved dissemination of best practice.

10.6. Some thoughts on the relationship between cross-border education, recognition and quality assurance

The limited progress to date on achieving recognition also has implications for cross-border education. Lack of recognition of foreign qualifications can be a driver of increased cross-border education. Students may seek to acquire foreign qualifications – for example, by studying abroad, undertaking distance education with a foreign provider or attending the campus of a foreign university established in their home country – to facilitate their eventual employment in other countries, where their home country qualifications may not be recognised, or by multinational companies, which might value qualifications from particularly prestigious institutions or commercially important jurisdictions. On the other hand, however, lack of recognition of foreign qualifications by their home country may create a disincentive for students to study abroad if their qualifications may not subsequently be recognised in their own country. Equally, students' options for undertaking further study abroad may be limited in the first place if their basic home country qualifications are not recognised by the foreign institution for the purpose of enrolling in higher education or further training. Recognition might also be important for the mobility of academic professionals, in terms of whether and how the qualifications of academic

teaching staff or researchers gained in one jurisdiction are valued in another.[22]

While recognition and quality assurance are quite distinct, they are not entirely unrelated. The granting of recognition sends important signals to students, employers and professional and licensing bodies about the quality of foreign qualifications. In turn, however, the assessment of whether foreign qualifications should be granted recognition – *i.e.* whether they meet equivalent standards – relies on mechanisms for assessing their quality. The existence of quality assurance frameworks for post-secondary qualifications can thus provide vital information about the standards of institutions and programmes for the purposes of granting recognition. Quality assurance at the national level could thus be an important means of facilitating international recognition of post-secondary qualifications. Extension of quality assurance programmes to the widest possible range of educational providers would also be desirable, given the growing role of non-traditional providers and non-degree training in a range of occupations, some of which are very much the focus of international professional mobility (notably information and communication technologies).

Further, the value of the information provided by national quality assurance programmes could be enhanced by increased international cooperation and dialogue between quality assurance agencies. While some degree of convergence may be emerging, there is still a variety of practices, standards and approaches employed by national agencies. Greater international cooperation and information exchange could be important in helping authorities with responsibility for granting recognition to make sound assessments of the information provided by national quality assessment agencies. Just as the negotiation of recognition agreements in the professions requires the existence of counterpart associations in the countries concerned, quality assurance agencies will need their own counterparts at the national level, as well as international networks, to increase understanding and acceptance of different approaches to measuring quality.

Finally, if greater communication between quality assurance agencies were to lead to any moves towards understandings of common principles on what constitutes or how to measure quality, these might usefully inform the deliberation of international professional bodies attempting to develop common principles for their particular sector. The development of such

22. In general, high level academic qualifications possessed by academic teaching staff and researchers, such as PhDs, are subject to relatively fewer recognition problems compared with other professions.

common understandings for certain professions has to date has been hampered by differences in educational bases, so moves by the education community to understand these differences and think about comparability could assist professional bodies in their work. Recognition is, of course, in turn facilitated by the development of common international principles or shared understandings of the key elements required for a given profession.

Two caveats should perhaps be noted, however. First, while the quality of a professional qualification is clearly an important factor in whether a professional from one jurisdiction will be permitted to practice in another, it is not necessarily the only factor. In addition to recognition of degrees or other qualifications, governments or professional bodies may impose additional requirements, in particular for the licensed professions, for example related to local ethics laws, financial practices or membership of the national professional body. These additional requirements can form equally important parts of professional recognition and the ability to practice that profession in a given jurisdiction. Second, recognition of the relevant qualifications and other requirements does not automatically confer the right to exercise a profession; market access must be granted. In many countries, certain professions, or activities by those professions are restricted to nationals. Access for foreign providers of a range of professional services is the subject of ongoing negotiations under the GATS (see Annex I).

10.7. Conclusion

While a range of trade agreements – multilateral, plurilateral and bilateral – contain provisions related to recognition in the context of trade in various professional services, to date, they do not seem to have resulted in significant progress in the achievement of recognition of professional qualifications.

Regional trade agreements have indeed played a part by encouraging the development of recognition agreements in certain priority sectors. But this contribution is limited; while the trade agreement encourages the development of recognition agreements, negotiation of the actual recognition agreement is normally delegated to the professional bodies. The resulting agreement is also often between the professional bodies rather than the state parties to the regional trade agreement.

In the case of these agreements, as with those initiated by professional associations themselves outside of the context of regional trade agreements, the extent to which negotiations are successful depends on a variety of factors. Of major importance is whether there are sufficient incentives to negotiate the agreement (shortages of certain professions, companies or

individuals interested in working in other jurisdictions; market access enabling those services to be provided by foreigners) to balance the costs of time-consuming, complex and resource intensive negotiations. Clearly these costs will be lower where there is a greater degree of similarity between the parties – hence the tendency for recognition agreements to be concluded between countries, or professional bodies from countries, at broadly comparable levels of development and often with historical, linguistic or cultural ties.

At the multilateral level, the GATS does not encourage the development of recognition agreements, but merely permits them as an exception to MFN treatment. GATS Article VII on recognition acknowledges that recognition will happen elsewhere, through bilateral or plurilateral agreements amongst Members. The multilateral link created by the GATS is that Members are required to give other WTO Members the opportunity to join their agreements or to negotiate comparable ones. To date, there is little evidence that this provision has been used, or that countries have either tried to use this mechanism to seek to join existing agreements or have been successful in doing so.[23]

This provision might have been used more, and the transparency of existing recognition agreements enhanced, had more WTO Members complied with their obligation to notify recognition agreements to which they are a party. In particular, greater transparency would be achieved by WTO Members complying with their obligation to notify agreements that are in the process of being negotiated to enable other WTO Members to apply to join while the agreement is actually being formed. Greater transparency afforded by improved implementation of the GATS notification requirements might also assist students and education providers to know what recognition agreements exist, and which countries or professional associations are party to them.

However, there may be limits to the extent to which the current GATS disciplines can result in the greater extension of recognition. For example, while other WTO Members must be given the opportunity to negotiate to join a recognition agreement or to negotiate a comparable agreement if they wish, there is no requirement for recognition to actually be extended (*i.e.* for the negotiations to succeed).

There is also no requirement for any particular standard to be applied in the granting of recognition; only that the same standards be applied to all

23. Of the agreements notified to the WTO, that between the US and Canadian professional bodies on accountancy (see Annex II) is one of the few that indicates that it has created a body to handle requests from foreigners for reciprocal treatment.

WTO Members. Again, this requirement has certain logic in existing practice; consumer protection demands that a professional either be deemed competent or not; it does not make sense to apply lower standards to professionals from some countries rather than others. Essentially, WTO Members can confer recognition or refuse it, on whatever grounds they like (provided these do not discriminate by country of origin). Similarly, the requirement to have adequate procedures in place to verify the competence of professionals from other WTO Members does not specify what "adequate procedures" would be and only applies where a GATS commitment for that profession has been made. While this is an untested area, as a practical matter, countries that allow foreigners to practice professions tend – as a matter of good national policy and consumer protection – to have in place some procedure to ensure that they are competent.

The GATS does encourage the development of international standards, although it is clear from Article VII that it is envisaged that these standards will be developed, not in the WTO, but elsewhere by Members working in cooperation with relevant intergovernmental and non-governmental organisations. Use of international standards, both for the practice of professions and for the granting of recognition, is also encouraged by the GATS *wherever appropriate* – that is, Members are free to choose not to use them if they do not judge it appropriate to do so.

Finally, it should be noted that there are some real limitations on the applicability of GATS disciplines. Depending upon the nature of their delegated authority, it is possible that agreements negotiated amongst professional bodies may not fall under the GATS (the GATS being a government-to-government agreement only covering non-governmental bodies where they are exercising powers delegated by governmental authorities). Given the prevalence of agreements between professional bodies in recognition, this is a potentially significant issue.

Hence while trade agreements may play a limited role in encouraging recognition, in the short-term progress may depend more upon creation of the right systems of incentives to encourage professional bodies to embark on complex negotiations. Increases in professional – and student – mobility may also continue to create pressure for more solutions to recognition to be found.

Annex I
Background Information on the GATS

The GATS is a framework agreement for the trade in services. It includes general obligations, obligations which apply only where specific commitments are made; and a framework for making commitments to open specific service sectors to foreign suppliers.

The first part of the GATS consists of general obligations, as well as some obligations which apply only where commitments for particular sectors are made. An example of a general obligation is the "Most Favoured Nation" or MFN requirement, which requires WTO Members to treat all other WTO Members as well as they treat their most favoured WTO Member. That is, treatment offered to one WTO Member must be extended to all other Members. (There are some exceptions to MFN, see below). Some transparency requirements are also general obligations (*e.g.* the requirement to publish or otherwise make publicly available at the national level all relevant measures of general application which pertain to the agreement), while others only apply where a commitment has been made (*e.g.* the requirement to notify other WTO Members via the WTO Council for Trade in Services of any new or changes to existing laws etc which significantly affect trade in services covered by a commitment).

The second part of the GATS sets out the framework for what are known as "specific commitments" under which countries decide which service sectors they want to allow foreign suppliers to enter, and under what conditions. The actual commitments undertaken by each WTO Member are contained in individual schedules of commitments which are annexed to the agreement. The text of the agreement and the schedules of commitments for each WTO Member are available on the WTO website at *www.wto.org*

What is a commitment?

GATS commitments are guaranteed minimum treatment offered to other WTO Members; countries are always free to offer better treatment if they wish, but they cannot offer worse. Commitments are binding – that is, they cannot be changed without paying compensation to other Members (this

takes the form of a commitment in another area of equal value to the one being changed or withdrawn). Commitments are also MFN – that is, the access offered is open to suppliers from all other WTO Members (*i.e.* you can't offer access to suppliers from some WTO Members and not others – subject to the exceptions set out below).

What are modes of supply?

For the purpose of making commitments for each service sector, the GATS divides services into four modes of supply (in education services, this corresponds roughly to programme, student and provider mobility):

- Mode 1 cross border trade (*e.g.* distance education – a student in Kenya undertakes a degree on-line with a university in the United Kingdom);
- Mode 2 consumption abroad (*e.g.* a Kenyan student goes to the United Kingdom to undertake a degree at UK university).
- Mode 3 commercial presence (*e.g.* a United Kingdom university establishes a branch campus in Kenya);
- Mode 4 temporary movement of persons as service suppliers (*e.g.* a university lecturer from the United Kingdom moves to a university in Kenya to teach a course for one year).[1]

It is worth noting that a WTO Member's mode 2 commitments for a particular service cover only whether it allows its own nationals to consume services abroad, not whether it allows foreigners to consume services in its territory (*e.g.* mode 2 commitments by Australia cover the consumption abroad of education services by Australian students, not by foreign students within Australia). A WTO Member's mode 4 commitments cover the acceptance of foreign service suppliers into its territory, not the sending of its own nationals abroad as service suppliers (*e.g.* Australia's mode 4 commitments cover whether it allows, *e.g.* foreign university lecturers to teach in Australian universities, but not whether it allows Australian lecturers to teach in universities overseas).

What are market access and national treatment?

For each service sector or sub-sector, and for each mode of supply within that, countries make commitments as to the level of "market access"

1. Mode 4 covers only temporary movement. While temporary is not defined under the GATS, permanent migration is explicitly excluded. In practice, most WTO Members' commitments under mode 4 range from a couple of days (*e.g.* for business visitors) to up to 5 years.

and "national treatment" they will offer. Read together market access and national treatment commitments inform a foreign supplier about the access they will have to the WTO Member's market and any special conditions that will apply to them as foreigners. In making commitments, a WTO Member has three main choices:

- A commitment to provide full market access and/or national for a particular mode – that is, to maintain no restrictions – indicated in the schedule by "None".
- No commitment to provide anything on national treatment and/or market access for a particular mode, this is indicated by "Unbound" (*i.e.* no bound commitment undertaken).
- Partial commitments for market access and/or national treatment, with the remaining restrictions listed in the schedule.

There are 6 types of restrictions on access to their market for a given service that countries need list in their commitment if they want to use them. These restrictions can apply to both nationals and foreigners or only to foreigners. They are:

- Restrictions on the number of service suppliers, including in the form of monopolies or exclusive service suppliers (*e.g.* the number of universities permitted).
- Restrictions on the total value of service transactions or assets (*e.g.* foreign private universities must not have assets worth more than *e.g.* USD 50 million).[2]
- Restrictions on the total number of service operations or the total quantity of service output (*e.g.* number of students which can be enrolled).
- Restrictions on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ (*e.g.* numbers of lecturers employed).
- Restrictions on or requirements for certain types of legal entity or joint venture for the supply of a service (*e.g.* a foreign university must enter into a joint venture with a local university to be able to provide services in the territory).

2. This is a strange example and, indeed, it is difficult to find an example of this type of market access restriction in education services. These types of restrictions are much more common in, for example, financial services.

- Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment (*e.g.* that foreign private university is limited to 30% of the equity in the newly established joint venture with a local university).

National treatment means that foreign services and service suppliers are granted treatment no less favourable than that accorded to like national services and service suppliers. This can mean formally identical or formally different treatment – the key requirement is that it does not modify the conditions of competition in favour of services or service suppliers who are nationals instead of foreigners. National treatment can also cover both *de jure* and *de facto* discrimination; that is, even if a measure applies to both foreigners and nationals it may still be discriminatory if its *effect* is to discriminate against foreign suppliers. However, national treatment does not require a Member to compensate for any inherent competitive disadvantage which results from the foreign character of the relevant service or service suppliers.

A key consideration in national treatment is whether the services or service suppliers are "like". The GATS, like other WTO Agreements, does not define "like" and panels under the WTO dispute settlement system have tended to approach the issue of "likeness" on a case-by-case basis, taking into account, *inter alia*, consumer perceptions of the degree to which a particular good is like, and its substitutability.

WTO Members are free to make no commitment on national treatment, or to provide partial national treatment provided they list the measures they maintain which discriminate in favour of nationals in their schedule. Unlike for market access, there is no specific list of the types of measures that have to be scheduled. Members must judge whether a measure breaches national treatment and therefore should be scheduled. A measure may not be considered discriminatory if it is genuinely open to both nationals and foreigners to fulfill it – *e.g.* a requirement for a degree of proficiency in a certain language need not be discriminatory if it is genuinely possible for foreigners to be able to learn the language and achieve the required level of proficiency. Some examples of the types of measures which would need to be listed in the schedule as limitations on national treatment include: eligibility for subsidies reserved to nationals; the ability to lease or own land is reserved to nationals; and citizenship requirements for professionals.

What are my options in making commitments?

In making commitments, WTO Members have a number of choices:

- They can exclude an entire sector (*e.g.* education) or parts of a sector (*e.g.* everything other than adult executive training courses) from their commitments. WTO Members are free to define the sector as they wish – they can refer to a list developed for the GATS negotiations,[3] or the United Nations Central Product Classification to which the GATS list refers, or they can use their own definitions.

- They can exclude some modes of supply. For example, a WTO Member may decide to permit its nationals to attend university abroad (mode 2) but not permit foreign universities to establish in their territory (mode 3).

- They can place limits on the "market access" they offer (*e.g.* they can limit the number and type of foreign education providers and the activities in which they can engage).

- They can discriminate against foreign providers in favour of nationals (*e.g.* by placing additional conditions or requirements on foreign education providers, or restricting some activities or benefits to national providers).

- They can discriminate amongst foreign suppliers (*i.e.* they can give better treatment to suppliers from some countries) if they have an MFN exemption for the relevant service or are party to a regional trade agreement notified under Article V. Countries had a one-off opportunity to claim exemptions from MFN at the time they joined the GATS.

- They can commit to providing less access than they currently actually provide (*e.g.* a country may commit in the GATS to allowing foreign universities to have up to 30% equity in joint venture with national universities, but may in practice under their national law allow foreign universities to have up to 50% equity in joint ventures with national universities). Because a commitment is a binding guarantee of minimum treatment, countries often commit to less than they currently offer to leave themselves room to manoeuvre (in the example above, to change the national law to drop the equity limit from 50% to 40%). Indeed, many current GATS commitments represent significantly less openness than actually exists in the country concerned.

3. This list is the Services Sectoral Classification List (MTN.GNS/W/120), known as W/120. It is available at *www.wto.org*. Use of the list was voluntary.

- They can commit to liberalise at a chosen future date to give themselves time to ensure that the necessary regulatory frameworks are in place (*e.g.* they can commit to allowing foreign universities to establish in their territory provided they are in joint ventures with local universities but only from 2010).
- Developing countries have additional flexibility to liberalise fewer sectors and to attach conditions to access offered. Additionally, other Members should facilitate their participation in trade, including by liberalising modes and sectors of interest to them, and should establish special contact points to provide information to developing country service suppliers.

Annex II
Mutual Recognition in Regional Trade Agreements

NOTE: There are some grey areas regarding whether certain agreements should be included in Annex II or III as many RTAs delegate negotiation to industry and any agreements reached are between the relevant professional associations and not the member states of the RTA.

Europe

European Union (EU)[1]

Previous EU approaches to recognition were based of recognition of professional experience (normally 3-6 years) and recognition of professional diplomas, based on systems aimed at the comprehensive harmonisation of education and training. However, these approaches proved to be too cumbersome and complex (de Cockborne, 1995) and were replaced with a new approach based on mutual recognition. Instead of harmonising the conditions for access to the professions, a general system of recognition of higher education diplomas was adopted whereby Member States recognise the comparability of higher education diplomas in particular for granting authorisation to exercise a regulated profession. The current system thus encompasses both sector-specific directives covering particular professions and a more general approach covering those regulated professions which are not the subject of specific directives.[2] The EC system of mutual recognition is intended to facilitate the free movement of EU nationals and does not extend to third country nationals.

Of the sector-specific directives, the greatest progress has been made in the health sector where the professional requirements and training coursers did not vary greatly between Member States. Most health professions benefit from full mutual recognition of national access diplomas; that is, the qualifications listed in Community Directives can be exercised in any EU country with regard to

1. The agreement establishing the EEA extends these rules and principles relating to the recognition of diplomas and other qualifications to EEA countries and their nationals.

2. See European Parliament Fact Sheets 3.2.3, "Freedom of Establishment and Provision of Services and Mutual recognition of Diplomas", available at *www.europarl.eu.int*

establishment and freedom of services. Community Directives cover qualifications for doctors, dentists, nurses, veterinary surgeons, midwives and pharmacists.

Progress has also been made in other professions, despite greater differences between national rules and approaches. For example, the architecture Directive (85/384/EEC) provides that each EU Member State recognises the diplomas, certificates and other evidence of formal qualifications awarded in the field of architecture by other Member States to nationals of Member States. Sectoral Directives had also been developed for certain commercial, industrial or craft occupations (*e.g.* road haulage operators, insurance agents and brokers, hairdressers and self-employed commercial agents).

For those professions not covered by specific Directives, a general system of recognition exists. Directive 89/48/EEC provided for an initial general system for the recognition of higher education diplomas awarded on completion of professional training of at least 3 years' duration. Directive 92/51/EEC expanded this system to diplomas, certificates and qualifications that are not part of long-term higher education, covering both shorter post-secondary or professional courses and secondary courses. Finally, Directive 99/42/EC introduced a system of mutual recognition of qualifications for access to certain commercial, industrial or craft occupations that were not covered by Directives 89/48/EEC and 92/51/EEC, repealing at the same time the sectoral Directives in this specific area.

In all three cases, the host Member State may not refuse access to the occupation in question if applicants have the qualifications required in their country of origin. This is a type of semi-automatic recognition, based on the principle that the training should be recognised when the regulated professional activities the person wishes to perform are the same as those s/he is entitled to perform or has performed in the home state and where there is no substantial difference between the qualifications required in the host country and those possessed by the applicant. If the training the applicant received was of a shorter duration than in the host country, the host state may demand a certain length of professional experience. If the training differed substantially, the host state may require the applicant to undergo an adaptation period or course or to sit an aptitude test.[3] This general approach covers all regulated activities and professions apart from those where a specific Directive already exists, and thus covers both the establishment and free provisions of services for, *inter alia*, surveyors, accountants and engineers.

Legal services, which are covered by the general system of recognition, have also been the subject of sector-specific directives, in order to deal with the challenges posed by the diversity of legal systems within the EU. Directive 77/249/EEC set the rules for the free provision of legal services under home title and, more recently,

3. Interpretations of these requirements by the ECJ in the "Heylens/Vlassopoulou" case law requires the national authorities in the host state to examine to what extent the training and qualifications evidenced by the diploma concerned correspond to those required. Should they only correspond in part, the host country authorities are entitled to require the applicant to demonstrate that s/he has acquired the knowledge and qualifications lacking (see de Cockborne, 1995).

Directive 98/5/EC has developed the regulatory framework for the establishment of EU lawyers in different Member States. The "establishment" Directive allows lawyers from one EU Member to practice on a permanent basis under home title in another Member State, with the proviso that the host country can require them to be assisted by a local lawyer when representing and defending their clients in court. After 3 years' work on this basis, they acquire the right to full exercise of their profession under the host country's title without having to take a qualifying examination.

The European Commission has recently submitted a proposal for a new directive[4] which aims to make the system for mutual recognition clearer, easier and simpler to understand. The proposed new single directive would comprehensively revise all of the directives founded on recognition of title to maintain the principal conditions and guarantees contained therein while simplifying the structure and making improvements to the working of the system. The proposed directive would consolidate both the general system for recognition (Directives 89/48/EEC and 92/51/EEC) as well as recognition for a number of specific professions (doctors of medicine, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, pharmacists and architects), with changes to simplify the system. The proposed directive also provides for simpler conditions for the cross-frontier provision of services compared with those applicable to the freedom of establishment.

European Free Trade Area (EFTA)[5]

Qualifications obtained in an EFTA state under general systems for recognition of higher education diplomas and of professional education or training or in legal professions, medical and paramedical activities, architecture, commerce and intermediaries, will be recognised in other EFTA states.

Europe/North America; Europe/Latin America

Transatlantic Economic Partnership

This initiative between the EU and US was launched at the London Summit on 18 May 1998. It takes the form of a general joint statement of political intent, rather than legally binding obligations. A plan of action was subsequently developed and endorsed by the European Council on 9 November 1998. The Council also approved negotiations in services, with a focus on removing regulatory barriers through mutual recognition. Under this initiative (the "Transatlantic Marketplace"), the EU and US are negotiating a framework agreement for mutual recognition in services. Sectoral annexes would be attached to this agreement as they are developed.

4. See "Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications" COM(2002)119, 2002/0061 (COD), dated 07.03.2002.

5. EFTA members are: Iceland, Liechtenstein, Norway and Switzerland.

Engineering, along with insurance, services have been discussed as potential candidates.

EU-Mexico Free Trade Agreement

On mutual recognition (Article 9) the parties undertake that, in principle no later than three years following the entry into force, the Joint Council shall establish the necessary steps for the negotiation of agreements providing for the mutual recognition of requirements, qualifications, licenses and other regulations, for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of service suppliers and, in particular, professional services (with any such agreements being in conformity with GATS Article VII).

North America

North American Free Trade Agreement (NAFTA)

NAFTA develops a generic blueprint of rules, principles and procedural mechanisms (a "roadmap") aimed at encouraging the accredited professions to conclude agreements on mutual recognition of licensing and certification requirements. The "roadmap" sets out a range of standards and criteria to be considered for adoption in recognition agreements, including, *e.g.* references to alternatives to written examinations as a means of assessing professional competence for professional with several years of experience; scope of practice limitations; requirements for specialised local knowledge; and a range of matters relating to consumer protection (*e.g.* professional liability regimes).

Like US-Canada FTA, NAFTA states that the parties shall encourage the relevant professional bodies to develop mutually acceptable standards and criteria for licensing and certification of professional service providers and to submit recommendations on mutual recognition to the Free Trade Commission. The Commission is to review those recommendations within a reasonable period of time to determine whether they are consistent with the provisions of the agreement. If the recommendations are approved, each party is to encourage its competent authorities to implement them. To date, such recommendations have only been developed for engineering and legal services.

In engineering, the "Mutual Recognition of Registered/Licenses Engineers by Jurisdictions of Canada, the United Dates of America and United Mexican States to Facilitate Mobility in Accordance with the NAFTA" was signed in Washington on 5 June 1995. The agreement is between the Canadian Council of Professional Engineers (CCPE), the US Council for International Engineering Practice (USCIEP) and the Mexican Committees for the International Practice of Profession (COMPIs). The agreement specified the education, experience and examination requirements that are to be recognised in the other NAFTA jurisdictions to obtain a temporary or permanent license to practice engineering. The agreement has been approved in Mexico and Canada, but only in one State in the US (Texas).

For legal services, the "Joint Recommendation of the Relevant Canadian, Mexican and American Professional Bodies under Annex 1210.5, Section B, of NAFTA" was

signed on 19 June 1998. The designated authorities are: for Canada, the Federation of Law Societies of Canada; for the US, the American Bar Association and the National Conference of Bar Examiners; and, for Mexico, the COMPIs (in charge of the negotiation of the "Joint Recommendations") and the Mexican Ministries of Economy (formerly the Ministry of Commerce and Industrial Development) and Public Education. These Ministries will be in charge, respectively, of the review by the Free Trade Commission, and the implementation of the MRA once it is approved). This agreement is aimed at permitting lawyers from the NAFTA countries to act as foreign legal consultants in the other NAFTA countries.

Mexico's COMPIs were created by the Direction General of Professionals (an agency of the Ministry of Public Education) in order to fulfill NAFTA Annex 1210.5 provisions. COMPIs are integrated by the professional associations, representatives of the academic sector and, when needed, representatives of the employer sector of the profession. Representatives of the Ministry of the Economy, the Ministry of Public Education and the National Immigration Institute participate as observers and advisors. The following professions have formed COMPIs to date: architects, actuaries, agronomists, accountants, lawyers, doctors, veterinarians, dentists, nurses, pharmacists and psychologists (Pinera Gonzalez, 2000).

Regarding recognition accorded to third parties, NAFTA does not require mutual recognition to be extended to all other NAFTA parties, provided they have the opportunity to demonstrate their eligibility for such treatment.

United States-Canada Free Trade Agreement

Article 1403 (Licensing and Certification) states: "The Parties shall encourage the mutual recognition of licensing and certification requirements for the provision of covered services by nationals of the other Party". Specific provisions were developed for architecture in Annex 1404A, pursuant to which an agreement was reached by the relevant professional associations.

The US National Council of Architectural Registration Boards and the Committee of Canadian Architectural Councils signed an Inter-recognition Agreement in 1994 for the reciprocal registration of architects practicing in sub-federal jurisdictions which have signed a letter of undertaking. These letters provide for the acceptance of the conditions of the agreement and also permit the individual state or province to stipulate any special requirements, such as demonstration of knowledge of local laws or seismic forces, personal interview or other unique requirements that all applicants for registration must meet. Letters have been signed by 34 US States and 7 Canadian Provinces. Further, a uniform written examination has been in use in Canada and the US since 1986 (applicants in Canada take the same examinations as applicants in the US). Discussions are underway to extend the arrangement to Mexico. This agreement has been notified to the WTO by the United States.

An agreement on accountancy was also pursued by the relevant bodies under the auspices of the FTA. The American Institute of Certified Public Accountants (AICPA) and the Canadian Institute of Chartered Accountants (CICA) agreed in 1991 to Principles of Reciprocity and recommended them to sub-federal bodies in both countries (see Annex II).

Asia-Pacific

APEC Engineers Register

The register ensures that professional engineers from participating APEC economies have the opportunity to have their professional standing recognised within the APEC region. While the system is of particular benefit to firms, it can also be used by individuals. The economies which have been assessed as having the system in place to operate an APEC Engineers Register are Australia; Canada; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; New Zealand; the Philippines and the United States. The register requires engineers to be classified into one of several engineering discipline categories, indicating the area of their competence (although this classification does not imply that they are competent across the whole of the discipline or lack competence outside of that discipline). Each APEC engineer must restrict themselves under the code of ethics to work only in areas in which they are competent.

ANZCERTA/Trans-Tasman Mutual Recognition Arrangement

Under Article 9 of the Closer Economic Relations between Australia and New Zealand, each Member State is also required to encourage the recognition of the qualifications obtained in the other Member State for the purpose of licensing and certification requirements for the provision of services (Article 9.2). Separately, the (less-than-treaty status) Trans-Tasman Mutual Recognition Arrangement was signed in 1996 and entered into force in 1998. This arrangement aims, through mutual recognition principles, to progressively remove regulatory barriers to the movement of goods and service providers. The arrangement is far-reaching and provides that persons registered to practice an occupation in one country can practice the same occupation in the other (with the exception of medical practitioners).

New Zealand-Singapore Closer Economic Partnership

Part 5 (Services) Article 22 (Professional Qualifications and Registration) states that: "With a view to ensuring that measures relating to professional qualification and registration requirements and procedures do not constitute unnecessary barriers to trade in services between them, the Parties agree to have identified by the date of entry into force of this Agreement priority areas to address with respect to the recognition of professional qualifications or registration. In identifying initial priority areas, the Parties agree to focus on sectors where specific commitments have been undertaken, and subject to the terms, limitations, conditions, or qualifications set out therein. Thereafter the Parties shall endeavour to consider sectors where no specific commitments have been undertaken" (Article 22:1).

The Parties further agree (Article 22:2) to facilitate the establishment of dialogue between experts in these priority areas with a view to the achievement of early outcomes on recognition of professional qualifications or registration in these areas. Article 22.3 notes that such recognition may be achieved through recognition of regulatory outcomes, recognition of professional qualifications awarded by one Party as a means of complying with the regulatory requirements of the other Party (whether accorded unilaterally or by mutual arrangement) or by other recognition

arrangements which might be agreed between the Parties. Under Article 22.4, the priority areas for further work on professional recognition requirements and the recognition outcomes achieved on initial priorities shall be reviewed as part of the reviews of this Agreement provided for in Article 68 and shall take place at least every two years.

The parties have agreed to facilitate dialogue between experts in ten priority sectors (engineers, planners, architects, landscape architects, registered valuers, dentists, dental technicians, doctors, nurses, midwives), as well as any other sector that may be mutually agreed within the next 2 years, with a view to the achievement of early outcomes on the recognition of professional qualifications or registration.[6]

Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership

Article 93 (under Chapter 9 Movement of Natural Persons) covers mutual recognition of professional qualifications. It is closely based on GATS Article VII, in that it permits, but does not require recognition. The language basically follows GATS Article VII, but also states that where a Party grants recognition to a non-Party, the other Party must be given an adequate opportunity to demonstrate that they should be accorded similar recognition.

Latin America

MERCOSUR

The Protocol of Montevideo, adopted in December 1997, covers trade in services. Article XI focuses on recognition. It allows Members to recognise unilaterally or by way of an agreement, the education, experience, licenses, matriculation records or certificates obtained in the territory of another member or any country that is not a member of MERCOSUR, without having to automatically extend that recognition to other MERCOSUR members. However, other Members shall be accorded an adequate opportunity to demonstrate that the education, experience, licenses, and certificates obtained in their territories should also be recognised or to conclude an agreement or treaty of equivalent effect.

The Protocol also encourages the development of recognition agreements by the relevant professional bodies, giving them the dominant role in proposing and drafting resolutions for the mutual recognition of professional qualifications. It provides that: "Each Member commits itself to encourage the competent bodies in their respective territories, including, *inter alia*, those of a governmental nature, as well as professional associations and colleges, in cooperation with the competent bodies of the other Members, to develop mutually acceptable rules and criteria for the exercise of activities and professions pertinent to the area of services, through the granting of licenses, matriculation records, and certificates to the suppliers of

6. See Joint Statement by New Zealand Minister for Trade Negotiations, Jim Sutton, and Singapore Minister for Trade and Industry, BG George Yeo 27 November 2001 – available at *www.mft.govt.nz*

services, and to propose recommendations on mutual recognition to the Common Market Group."

Once recommendations are received, the Common Market Group "shall examine it within a reasonable period to determine its consistency with this Protocol. Based on this examination, each Member commits itself to charge its respective authorities, where necessary, to implement the provision passed down by the competent MERCOSUR agency within a mutually agreed period".

Education Ministers have adopted the "Memorandum of Understanding on the implementation of an experimental accreditation mechanism for the recognition of university degrees in the countries of MERCOSUR". This framework has given rise to a pilot project that comprises the professions of architect, agronomist, geologist and engineer. In 1999, the Board of Architecture, Agronomy, Geology and Engineering Professional Entities for MERCOSUR Integration adopted a resolution on the temporary exercise of a professional service by foreign architects, agronomists, geologists and engineers. This resolution allows for the reciprocal recognition of these professionals by the 4 member countries; however, it only covers those professionals already in possession of a work contract and who intend to stay abroad no more than 2 years (Pena, 2000 and Stephenson, 2000).

Andean Community

Decision 439 of the Andean Community on Services Trade provides that criteria for the recognition of titles, licenses and authorisations to provide services will be developed through a future decision to be adopted by the Andean Community Commission (Dangond, 2000). The Community is currently drafting a decision that will elaborate a general framework containing the conditions for the recognition of titles and mandatory licenses, as well as other requirements for the exercise of professional service activities (Stephenson, 2000).

Annex III
Mutual Recognition Initiatives by Professional Organisations

Accountants

Principles of Reciprocity between the US AICPA and NASBA and the Institute of Chartered Accountants in Australia

A Principles Agreement for Reciprocal Licensing was reached in 1996 between the US (19 states only) and Australia (all States and Territories). The agreement is based on a detailed review of the examination, education and experience requirements that must be met in order to be licensed as a CPA in the US and a Chartered Accountant in Australia. Participants found that the professional designations were of comparable standing when the examinations requirements were combined with the education and experience requirements discussed in the agreement. The agreement sets out reduced examination and experience requirements for licensed accountants of both jurisdictions.

Bilateral Agreements between the Institute of Chartered Accountants in Australia and 6 counterparts

Bilateral agreements on recognition of qualifications have been developed between the Institute of Chartered Accountants in Australia and the Institutions of Chartered Accountants in England & Wales, Scotland, Ireland; the Canadian and South African Institutes of Chartered Accountants and the American Institute of Certified Public Accountants. Members of each organisation are eligible to apply for membership of others without having to undergo a separate process for the assessment of their qualifications.

Agreement on Principles of Reciprocity between the Canadian Institute of Chartered Accountants (CICA) and the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA)

The agreement has been accepted by 9 Canadian Provinces and 36 US States. Participants agreed that successful completion of relevant exams and licensing by relevant state authorities in each jurisdiction should be the respective basic requirement for reciprocal recognition of the CPA (US) and CA (Canada) designations. Candidates meeting that requirement should be permitted to qualify without duplicating all the steps in the licensing process. Further, the completion of a minimum period of accounting experience within the US as a requirement for CPA or within Canada as a requirement for CA may be prescribed as a condition for

receiving reciprocity in the Canadian or US jurisdictions where it is sought. The agreement also recommends to the relevant regulatory authorities that US CPAs and Canadian CAs be permitted to qualify by taking an abbreviated, rather than full, examination designed to demonstrate satisfactory knowledge of national and local legislation, standards and practices. The agreement also creates a permanent body to administer the agreement and handle reciprocity requests from foreign associations.

Recognition by the Institute of Chartered Accountants in Singapore

The Institute of Chartered Accountant in Singapore recognises the equivalence of final examination in accountancy in the Australian Society of Certified Practising Accountants; the Institute of Chartered Accountants in New Zealand; and the Association of Chartered Certified Accountants.

Institute of Chartered Accountants of New Zealand (ICANZ) and counterparts in Australia and Canada

The Institute of Chartered Accountants of New Zealand has mutual recognition agreements with the Australian Society of Practising Accountants, and the Canadian Institute of Chartered Accountants. Members of these bodies have to sit two papers (a tax paper and another on business or partnership law) to achieve reciprocal membership with ICANZ.

Inter-governmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR)

This body, under UNCTAD, was created in 1982. It includes representatives of both states and professional associations from both developed and developing countries. On 19 February 1999, accounting experts from 53 countries agreed upon guidelines for the qualification of professional accountants, including a model curriculum for their technical education. The purpose of the guidelines is to establish a benchmark for national qualifications and to assist holders of those qualifications to function in a global economy. A detailed model curriculum was felt to be necessary because developing countries and countries in transition needed more guidance in designing or evaluating accounting curricula of their educational institutions. The guidelines covers general and technical education, the examination system, practice requirements, continuing professional education and a code of professional ethics. The guideline is for use on a voluntary basis, as part of efforts to reduce the time and costs associated with the verification of foreign qualifications.[1]

Architects

International Union of Architects

The UIA is a federation of professional societies of architects from over 100 countries, representing around 1 million architects. The "Accord on Recommended International Standards of Professionalism in Architectural Practice"

1. UNCTAD Press Release, "UNCTAD Expert Group agrees Guidelines for Professional Accountants", dated 24 February 1999.

(the "Barcelona Accord") was adopted in Barcelona in 1996, subsequently revised and adopted by all UIA members in Beijing in June 1999. It is a set of voluntary guidelines aimed at providing practical guidance for governments and negotiating entities seeking mutual recognition for architectural services.

The Accord covers: the recognition of academic diplomas; the waiving of examinations, adaptation periods or tests; the issue and registration of practicing certificates for cross-border and establishment practice; and membership of the local order and use of their professional title. Further, the "Guidelines on Registration/Licensing/Certification of the Practice of Architecture" require that an applicant for recognition hold an accredited professional degree in architecture, have appropriate practical training, pass examinations, possibly undergo a personal interview, and be of good moral character. Anyone thus accepted and licensed should have their current and valid registration recognised by other jurisdictions.

Commonwealth Association of Architects (CAA)

The CAA has established many recognition arrangements between institutes in Commonwealth countries, based on inspection and accreditation of the architectural training provided in specific educational establishments. The validation of courses and examinations for exemption is carried out on behalf of the member institutes by the Royal Institute of British Architects, using a procedure modeled on its own practices. Qualifications are mutually accepted subject to local interview. There were 22 founding member institutes and membership has since risen to 39. The member institutes of the CAA together are estimated to represent 45 000 architects worldwide.

Inter-recognition Agreement between the US National Council of Architectural Boards (NCARB) and the Committee of Canadian Architectural Councils (CCAC)

The agreement, based on the US-Canada FTA, establishes a series of requirements for certification for US and Canadian architects. Qualified architects may use US certification as demonstration of professional competence to practice in either country in jurisdictions which have submitted satisfactory Letters of Undertaking (34 US states and 7 Canadian provinces). Qualifications relate to education, examination and experience. A uniform written examination has been in use in Canada and the US since 1986 - applicants in Canada take the same examinations as applicants in the US.

Letter of Agreement between the Architects Accreditation Council of Australia and the New Zealand Architects Education and Registration Board.

Architects registered in one party will be considered as registered in the other following confirmation from the home authority that they gave a current practising certificate.

Engineers

Washington Accord

The Accord was signed in Washington on 30 November 1989. Its members are the relevant professional associations of Australia; Canada; Hong Kong, China; Ireland; New Zealand; South Africa; the United Kingdom and the United States.[2] It is not a government-to-government agreement. The Accord provides for recognition of equivalency of engineering education courses programmes leading to the "Accredited Engineering Degree". Under the Accord, institutions which are members agree to recognise the substantial equivalence or comparability of accreditation processes (*i.e.* policies, criteria and procedures used to accredit the courses/programmes) used by other institutions in relation to engineering qualifications (first professional degree or basic engineering education). The Accord does not address the mutual recognition of professional credentials such as the Professional Engineer (PE) or Chartered Engineer.

Each signatory has defined its approach to educational quality assurance for graduates entering the profession or those seeking initial professional recognition. Each of the accrediting or professional bodies participating in the Accord remains independent and autonomous. Each country is responsible for its own accrediting standards and evaluation procedures. There may be periodic additions, deletions or other changes in the status of institutions and programmes. Each of the organisations in the Accord maintains a current data bank with information on its programmes.

The Accord is administered through a Secretariat, which rotates amongst the signatories. The Secretariat prepares and distributes approved lists of accredited programmes covered under the Accord. It is a clearinghouse for official communications among the signatories, information on criteria and procedures and new membership affairs.

The accreditation systems in each signatory country are subject to a comprehensive review and report by the other signatories every 6 years, or earlier if substantial change in its accreditation criteria, policies, or procedures is reported. The outcome of the review can be acceptance of the accreditation system for a further 6 years or 3 years if there are specific issues to be addressed, or a downgrading to a provisional status. Termination of signatory status needs the support of two thirds of all signatories.

Signatories agree that decisions rendered by one signatory are acceptable to the other signatories and they will make every reasonable effort to ensure that the bodies responsible for registering or licensing professional engineers to practice in their respective countries accept the substantial equivalence of engineering academic

2. The Institute of Engineers Australia; the Canadian Engineering Accreditation Board of the Canadian Council of Professional Engineers; the Institute of Engineers Ireland; the Institution of Professional Engineers, New Zealand; the Engineering Council, United Kingdom; the Accreditation Board for Engineering and Technology, United States; Hong Kong Institution of Engineers; Engineering Council of South Africa.

programmes accredited by the other signatories. The agreement does not address the mutual recognition of professional credentials (such as professional engineer or chartered engineer) but only of education credentials that are the basis for seeking practice credentials.

APEC Engineers Register

See Annex II

Mutual Recognition between US EAC and Canadian CEAB

The Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology of the US and the Canadian Engineering Accreditation Board of the Canadian Council of Professional Engineers reached a recognition agreement in 1997 that superseded a 1980 agreement. The two parties agree that the accreditation criteria, policies, and procedures used by them in their processes are comparable and that the accreditation decisions rendered by one party are acceptable to the other party.

Agreements between the Engineers Institution of Australia and counterparts in 11 countries

The Engineering Institute of Australia has mutual exemption agreements with a number of professional engineering associations overseas. Under these agreements, members of the counterpart association will be accorded Chartered membership of the other, or equivalent, on receipt of a duly completed and acceptable application. The list of Mutual Exemption Agreements covers the following WTO Members (NOTE: the agreements themselves vary; some provide for mutual recognition; others are MOU for the development of requirements on mutual recognition, while others are aimed at facilitating reciprocity of corporate membership): China; Hong Kong, China; Ireland; New Zealand; the Philippines; Singapore; the United Kingdom (3 agreements); the United States; Vietnam and Malaysia as well as those WTO Members which are members of the Washington Accord (Canada; Hong Kong, China; Ireland; New Zealand; South Africa; the United Kingdom; the United States – see above).

Fédération Européenne d'Associations Nationales d'Ingénieurs (FEANI)

FEANI has established the title of EurIng and has determined a process of assessment of individual engineer's qualifications and practice experience. The model for EurIng is based upon a minimum of seven years of qualifications, training and experience (the latter having to be of at least 2 years).

Heath services – Nursing

Caribbean – Regional Examination for Nurse Registration

Significant progress has been made in the Caribbean on the harmonisation of standards. After 17 years, the ten English speaking countries of the Caribbean developed, in 1993, a Regional Examination for Nurse Registration to: introduce reciprocity of nurse registration amongst countries in the region; establish a pool of

qualified nurses as regional examiners; adopt criteria and procedures for accreditation of schools; and develop improved and common exam procedures (based on those of Canada) (Oulton, 2003).

East, Central and Southern Africa – Draft Framework

In the late 1990s, 15 countries within East, Central and Southern Africa also developed a draft framework to harmonise education and practice within the region. This framework includes common standards for: practice, competencies and core content, education and the scope of practice for nursing and midwifery. The framework was sent to the relevant authorities to be implemented at the national level, however, progress has been slow, including due to the wide differences in educational bases amongst the 15 countries. A Handbook on how to develop the professional regulatory framework for nurses was also developed for use in the region in 2002 (Oulton, 2003).

South East Asia/Western Pacific – Core Competency Initiative

Under this initiative, nursing organisations are aiming to develop core competencies across the region. Progress has been slow (the groups meet only every 2 years), however broad principles regarding ethics and conduct have been agreed. Again, the differing education bases in the region have been a factor in the limited progress to date (Oulton, 2003).

Australia/New Zealand – Memo of Cooperation

Against the backdrop of the Trans-Tasman Mutual Recognition Arrangement (see Annex II) which created mutual recognition for the professions between Australia and New Zealand, the nursing councils of those countries have signed a 3 year memo of cooperation to look closely at regulatory issues of common interest, including standards development (Oulton, 2003).

EU/EEA – Nursing Directives

National nurses' associations in the EU/EEA countries worked closely to develop agreed fundamental points concerning the training of generalist nurses which formed part of the EC Directives of the Nurse Responsible for General Care. This was based on a harmonisation process, whereby Advisory Committees agreed the minimum standards required for the nature, content and length of education and training programmes, leading to a qualification which would be automatically recognised by a member state. Specific health professionals included in this system were midwives, nurses responsible for general care, doctors, dental practitioners, pharmacists and veterinary surgeons. A new "Super Directive" concluded in July 2003, incorporates these sectoral Directives; and consultations are ongoing on amendments sought by the nursing profession (*e.g.* to require registration procedures for temporary workers, to create legal structures for consultation on education and training; and to incorporate specialty practice nurses) (Oulton, 2003). Although nurses within the EU/EEA have few barriers to movement, mobility is limited. This seems to be primarily because of language, although cultural differences, limitations on transfer of pension rights and differences in tax systems also play a role (Oulton, 1998).

North America – Trilateral Initiative

A Trilateral Initiative for North American Nursing was implemented in 1994. This is a collaborative venture between nursing groups from the US, Canada and Mexico and aims to address common professional standards with the goal of strengthening nursing and health care. The first phase, in which representatives of 35 nursing, governmental and other organisations identified similarities and differences in nursing education and practice and drew up recommendations on developing mutually acceptable criteria for licensing and certification, has been completed.

International Council of Nurses (ICN)

The ICN is undertaking the development of a Framework of Competencies for the Generalist Nurse. The framework is designed to provide, *inter alia*, a basis for standard setting and a foundation for the design of nursing curricula and processes of assessment in both theory and practice and to assist in specifying professional expectations associated with nursing roles. The ICN is also developing other global competencies based on this generalist framework, with Family Nurse competencies set to be completed in 2003 and Nurse Practitioner standards to be ready in 2004. The ICN is also working with countries to develop national and regional sets of competencies and implementation processes.

Surveyors

International Federation of Surveyors (FIG)

The FIG General Assembly in April 2002 adopted a Policy Statement on Mutual Recognition of Professional Qualifications. The statement recognises the important of free movement of surveyors and of mutual recognition in facilitating this movement. FIG commits itself to promoting the principle of mutual recognition of professional qualifications by: encouraging communication between professional organisations to ensure a better understanding of how surveyors acquire their qualifications in different countries; developing with professional organisations a methodology for implementing mutual recognition of surveyors; supporting professional organisations where difficulties are identified in achieving mutual recognition, and encouraging debate at the national level to remove such difficulties; working with external organisations (such as the WTO) in order to achieve mutual recognition in both principle and practice for professional qualifications for surveyors world-wide.

Reciprocity Agreement between the Institution of Surveyors of Australia and the Royal Institute of Chartered Surveyors UK

Members of either professional body are eligible to apply for membership of the other without undergoing a separate process for the assessment of their qualifications.

References

Beviglia Zampetti, A. (2000), "Market Access through Mutual Recognition: The Promise and Limits of GATS Article VII", in Sauvé and Stern (eds.), *GATS 2000: New Directions in Services Trade Liberalization*, Harvard University/Brookings Institution Press, Washington DC.

Dangond, M.E. (2000), "Andean Community Decision 439 on Services Trade", in Sherry M. Stephenson (ed.), *Services Trade in the Western Hemisphere: Liberalization, Integration and Reform*, Organization of American States/Brookings Institution Press, Washington DC.

De Cockborne, J.-E. (1995), "Professional Services in the European union", *Liberalisation of Trade in Professional Services*, OECD, Paris.

European Commission (2001), *Guide for Users of the General System for the Recognition of Professional Qualifications* (available at *http://citizens.eu.int*).

Feketekuty, G. (2000), "Improving the Architecture of the General Agreement on Trade in Services", in Sherry M. Stephenson (ed.), *Services Trade in the Western Hemisphere: Liberalization, Integration and Reform*, Organization of American States/Brookings Institution Press, Washington DC.

International Federation of Surveyors (2002), "Mutual Recognition of Professional Qualifications" (available at *www.fig.net*).

Mattoo, A. (1999), "MFN and the GATS", paper presented at the World Trade Forum Conference on "Most Favoured Nation (MFN): Past and Present" at Neuchâtel, 28-29 August, WTO, Geneva.

Nicolaïdis, K. and J. Trachtman (2000), "From Policed Regulation to Managed Recognition in GATS", in Sauvé and Stern (eds.), *GATS 2000: New Directions in Services Trade Liberalization*, Harvard University/Brookings Institution Press, Washington DC.

Oulton, J.A. (1998), "International Trade and the Nursing Profession", in S. Zarrilli and C. Kinnon (eds.), *International Trade in Health Services: A Development Perspective*, UNCTAD/WHO, Geneva.

Oulton, J.A. (2003), presentation to the APEC Seminar on Trade in Health Services, Phuket, Thailand.

Pena, M.-A. (2000), "Services in MERCOSUR: The Protocol of Montevideo", in Sherry M. Stephenson (ed.), *Services Trade in the Western Hemisphere: Liberalization, Integration and Reform*, Organization of American States/Brookings Institution Press, Washington DC.

Pinera Gonzalez, C. (2000), "Mexico's Free Trade Agreements: Extending NAFTA's Approach", in Sherry M. Stephenson (ed.), *Services Trade in the Western Hemisphere: Liberalization, Integration and Reform*, Organization of American States/Brookings Institution Press, Washington DC.

Stephenson, S.M. (2000), "Regional Agreements on Service in Multilateral Disciplines: Interpreting and Applying GATS Article V", *Services Trade in the Western Hemisphere: Liberalization, Integration and Reform*, Organization of American States/Brookings Institution Press, Washington DC.

Stephenson, S.M. and S. Yi (2001), "Recognition in the Services sector", Paper prepared for the APEC Group on Services in Schenzhen, China on 28-29 May.