

WTO –GATS and Entry of Foreign Universities

Youngsood Keem

Professor, School of Management Systems, Singapore Management University, Singapore

Abstract: *The World Trade Organization's General Agreement on Trade in Services allows its WTO members to liberalize trade in Education Services under the four modes of supply of services mechanism. More than 40 countries have liberalized education services under the WTO GATS mechanism. Universities from WTO member countries can open educational institutions and offer their education services in such member countries that have made commitments to open its higher education sector for establishment of campuses or branches. Contemporary studies have shown that there are many differences between Private Universities and Publicly funded universities. The points of differences may vary in different countries. The role and functionalities of them vary as well, depending on the academic scenario in each country.*

Keywords: WTO, Higher Education, National Treatment, Education Sector.

Introduction:

The cross border activity in relation to both goods and services is the order of the day in today's global economy. International trade in goods and services has long been a norm, for various benefits that accrue from it. There have been many bilateral and multilateral agreements in relation to cross border trade negotiations. The services sector, is witnessing an unprecedented growth that positively affects the day-to-day life and standards of living or quality of life.

The World Trade Organization (WTO), of which more than 140 countries are members, has an agreement in relation to international services trade. The General Agreement on Trade in Services (GATS) is the WTO's agreement that governs trade in 12 kinds of services, including 'education services'.

Every WTO member that proposes to liberalize its 'higher education services' sector has to frame the

'commitments' by stipulating certain conditions or limitations as to its policy on such liberalization. Depending on certain national or regional objectives and the conditions of demand and supply of higher education, each member would lay down different kind of conditions while liberalizing the sector to foreign educational institutions. One of the critical question or issue in this regard would be in relation to the kind of university to be allowed to set up its campus or branch or otherwise offer education services. It is: Should WTO members of Pro-'Education Services Liberalization' allow Foreign Private Universities or Foreign Public Universities. The present paper would attempt to provide some possible insights into this issue.

GATS Framework and Higher Education Services

The General Agreement on Trade in Services (GATS) is the World Trade Organization's

(WTO) instrument relating to international trade in services sector governing provision or supply of 12 different kinds of services viz., business, communication, construction and related engineering, distribution, educational, environmental, financial (including insurance and banking), health related and social, tourism and travel related, recreational, cultural and sporting services, transportation services and 'other' services-not included in the previous 11 categories.

The GATS provides a systematic framework for administering and negotiating four different modes of supply of services. Article 1 of Part I of GATS provides for these four modes, namely: 1) cross-border, 2) consumption abroad, 3) commercial presence, and 4) presence of natural persons. It operates in three levels:

- 1) The main text containing General Obligations and Disciplines;
- 2) Annexes dealing with the Rules for Specific Sectors; and
- 3) Individual countries' specific commitments to provide access to their markets.

It does have a fourth element which consists of Lists showing indications of instances where countries are temporarily not applying the "most-favoured-nation"(MFN) principle of non-discrimination.

The three significant aspects of GATS agreement are:

- 1) Market Access: It means the degree to which market access is granted to foreign providers in specific sectors. Each country determines limitations on market access for each committed sector.

- 2) Most Favoured Nation: It means treating one's trading partners equally. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all WTO members. It may apply even when the country has made no specific commitment to provide foreign provider access to their markets and exemptions are permissible for a period of 10 years.

- 3) National Treatment: This requires equal treatment for foreign and domestic providers. Once a foreign supplier has been allowed to supply a service in one's country there should be no discrimination in treatment between the foreign and domestic providers. It is important to note that the NT applies where a country has made specific commitment and exemptions are allowed.

The GATS mechanism adopts the following four ways, in which a service can be traded,

and they are known as *modes of supply*:

- 1) Cross Border Supply – Supply of service from the territory of one Member into the territory of any other Member;
- 2) Consumption Abroad – Supply of service in the territory of one Member to the service consumer of any other Member;
- 3) Commercial presence – Supply of service by a service supplier of one Member through commercial presence in the territory of any other Member; and
- 4) Presence of Natural Persons – Supply of service by a service supplier of one Member through presence of natural persons of a member in the territory of any other member.

Though the 'Education services', is sub-divided¹ into 5 sub-sectors: Primary Education services, secondary education services, higher education services, adult education, other education services, each Member is free to have its own form of commitments for this sector by defining the coverage. The present paper is in relation to liberalization and foreign universities under the 'higher education services' sub-sector (5C) under the 'Educational Services'. The following two points² are significant with respect to education sector as the WTO negotiations are predicated on members making these two major commitments:

1. Under Article 16 of GATS *Market Access* commitment means that a WTO member agrees not to impose limits on the number of foreign education service providers, number of service transactions or assets, number of foreign service personnel that may be employed in the education sector or each particular foreign educational institution, the legal form of foreign-owned/based education service provider, or the use of foreign capital or investment.

2. Under Article 17 of GATS *National Treatment* means that a WTO member agrees not to modify the conditions of competition in favour of domestic

¹ It is based on the United Nations Provisional Classification and referred to with codes viz., Primary education which covers preschool and other primary is CPC 921, Secondary education which includes general and higher education secondary is CPC 922, Higher education including post secondary, technical, vocational, university / tertiary is CPC 923, Adult education covering education for adults outside regular education systems is 924, and Other education services covers all other education services not classified elsewhere and is CPC 929. For the purpose of scheduling during Uruguay Round under GATS, the Services Sectoral Classification List document MTN.GNS/W/120 (W/120), was developed.

² *Whither Education?: Human rights law versus trade law*, available at <http://www.right-to-education.org>

education service providers. This is also characterized as "equal playing field" for both domestic and foreign education service providers. However, the members may make full, partial or no commitments. Member may choose to make additional commitments as well.

The issue of liberalization of trade in education services has provoked much debate from various circles and many countries have been reluctant to make commitments or negotiate in this regard.³ Of all the WTO members that have ratified the GATS agreement, 43 have made specific commitments with regard to the 'Education services' sector (counting the European Community as one). The 35 countries (WTO members) that have made commitments to the higher education sector, are: Albania, Armenia, Australia, China, Congo RP, Costa Rica, Croatia, Czech Republic, Estonia, EC 12 (European Community's 12 countries regarded as 'one' in this regard), Georgia, Hungary, Jamaica, Japan, Kyrgyz Republic, Latvia, Lesotho, Liechtenstein, Lithuania, FYR Macedonia, Mexico, Moldova, New Zealand, Norway, Oman, Pakistan, Panama, Poland, Sierra Leone, Slovak Republic, Slovenia, Switzerland, Chinese Taipei, Trinidad & Tobago and Turkey. The table in the 'Annexure' shows the list of the countries that have liberalized higher education sector along with the extent and nature of their liberalization, including, to allow/disallow foreign universities to enter into their higher education market. The table shows how certain countries have similar commitments in relation to liberalization of higher education sector. The table does not incorporate the recent GATS

³ Centre for Educational Research and Innovation, *Internationalisation and Trade in Education, Opportunities and Challenges*, (Paris: Organization for Economic Co-operation and Development, 2004).

commitments made by Pakistan with respect to liberalization of its education services.

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Moving further from the regulatory aspects of the GATS agreement and how it covers the Higher Education sector for globalization and internationalization, we could now look into the “market access” or “entry” aspect for the foreign universities. In this regard it would be now appropriate to look into the possible issues or angles raised by the current paper’s topic i.e. ‘Once a WTO member proposes to liberalize its higher education sector and allow foreign universities to operate alongside its own public and private universities in their country – What would be appropriate for a country – whether to allow a private university or a public university from abroad, to do so.

In the present context, its important to start under the premise that there cannot be a ‘one- size-fits-all’ scenario in the higher education sector. Every country has a unique higher education scenario and have experienced different historical and contemporary developments that have lead the current governments to lay education policies that would best suit the ‘development’ or other such macro level objectives.

Employment of Academics

There would be increase in the employment opportunities for academic professionals, both teaching and non-teaching by the extra number of universities inside a country by allowing foreign universities to establish branch campuses. A WTO Member liberalizing its higher education sector would not only increase the job opportunities in higher education sector, but also create favourable and competitive conditions for the current domestic

public and private universities to pay more appropriate or better salaries and working conditions. Some private universities are well known for their aggressive payment policies to professors, etc., which attracts the best professionals from the corporate and other sectors who have more hands-on experience to teach, especially in fields like Management, Law, Medicine and Engineering. This would create a very healthy and purposeful competition benefiting both the academic and student community.

Privatization at Domestic Level vis-à-vis Entry of Foreign Private Universities

Most countries have adopted privatization or have otherwise allowed private educational institutions to operate in some form or the other. This is due to many reasons, including need for increasing the supply side of higher education market demands. One of the core aspects of GATS regulations is that once a WTO member country has such a policy to allow private players to offer services in a certain sector, then such a service is bound to be liberalized on the principle that it is not ‘services supplied in the exercise of governmental authority’. While there has been a constant on-going debate that ‘education sector’ is a not a ‘purely or exclusively government service’, as private educational institutions are allowed to offer programs and degrees, the higher education sector has a different treatment, due to the nature of public or governmental responsibility on higher education sector not being as mandatory as in the primary through high school. The question often raised is when a country has already allowed its domestic private educational institutions to operate higher education services, it should allow foreign private universities as well to enter and operate.

Demand for and Supply of Higher Education Services

An obvious fact of higher education sector is that many countries have a higher demand for higher education, while the actual existence (or supply) of current educational institutions is not matching up to it. Due to this fact, the need for allowing foreign universities, apart from local / domestic private universities has aroused. As the domestic public and private institutions are not able to bridge the gap between demand and supply of higher education services, and in some cases due to the quality aspect as well, the need to open up or liberalize higher education sector for foreign public and private universities has taken place. Depending on each countries experience and policies they may or may not allow either / or foreign private universities or foreign public universities.

Concluding Remarks

When a WTO member country decides to open up and liberalize its higher education sector, it has to take into consideration many issues and possibilities as mentioned above. Each country's rationale behind allowing foreign educational institutions or universities would vary with the historical or contemporary scenario existing in their country. Those countries that wish to keep good control on quality and number of foreign educational institutions may choose to open up its sector only for foreign public universities. Some may choose to allow private universities along with stipulations or limitations as to the maximum number of private institutions that may be allowed. Further more, it might not be advisable for certain countries to allow foreign public universities due to competition or other such threats to its local public universities and rather adopt a policy of allowing only private foreign universities. However, it may be noted that the member states while liberalizing education sector can lay down various forms of significant limitations and conditions to best further

the interests of students, academia and the national educational and developmental objectives.

Other References

World Bank's "World Development Indicators" 2001.

Hercules Booyesen, *Principles of International Trade Law as a Monistic System* (Interlegal, 2003)

WTO Secretariat, *Guide to the GATS: An Overview of Issues for Further Liberalization of Trade in Services*, (Hague: Kluwer Law International, 2001).

Jane Knight, 'Trade in Higher Education Services: the implications of GATS', *Mapping Borderless Higher Education: policy, markets and competition*, Selected reports from the Observatory on Borderless Higher Education (London: The Association of Commonwealth Universities).

The World Trade Organization website www.wto.org

Jan Sadlak, 'Globalization and Concurrent Challenges for Higher Education', *The Globalization of Higher Education*, ed., Peter Scott, (Buckingham: The Society for Research into Higher Education & Open University Press, 1998).

Jacques Hallak, *Globalization, human rights and education* (Paris: IIEP, UNESCO, 1999)

The International Bank for Reconstruction and Development, *Constructing Knowledge Societies: New Challenges for Tertiary Education* (Washington, D.C.: The World Bank, 2002).

David Lim, *Quality Assurance in Higher Education – A study of developing countries* (Hants, England: Ashgate Pub.Ltd., 2001).

Jan Currie and Janice Newson eds., *Universities and Globalization, Critical Perspectives*

(California: SAGE Publications-International Educational and Professional Publisher, 1998).

Paul Milne, 'The Role of Universities in Economic Growth: the ASEAN Countries', *Universities and the Creation of Wealth* ed., Harry Gray (The Society for Research into Higher Education and The Open Press, 1999).

Philip G. Altbach, ed., *Private Prometheus, Private Higher Education and Development in the 21st Century*, Contributions to the Study of Education, Number 77 (Westport, CT: Greenwood Press, 1999).