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Negotiating Trade in Educational Services within the WTO/GATS Context

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Der Handel in Erziehungsprodukten (ES) tangiert die Handels-, Wirtschafts-, Erziehungs- und Kulturinteressen vieler Länder und führt zu erhitzten Debatten zwischen Regierungsvertretern, privaten Investoren, Lehrkörpern und Studentenvereinigungen. Ein Abkommen über GATS/ES sollte genügend flexibel sein, so dass die unterschiedlichen Bedürfnisse so weit als möglich zufrieden gestellt werden können, ohne dass WTO Mitgliedsländer in die Falle des «managed trade» oder des innovationshemmenden Protektionismus verfallen. Die Autoren beschreiben die Komplexität der WTO/GATS Verhandlungen im Bereich ES und zeigen mögliche Wege auf, wie die Verhandlungen sinnvoll und zeitgerecht innerhalb der Doha Verhandlungsrunde abgeschlossen werden könnten.

Keywords: Trade in educational services, WTO/GATS negotiations, Doha Round, accreditation
JEL-Codes: F13, F14, I29, H41

1 Importance of Trade in Educational Services

Trade in educational services (ES) has received growing attention and has elicited increasingly heated reactions by various stakeholders ranging from governments, private sector investors, teachers' unions to student associations and parent organisations in OECD and developing countries. This article will describe some of the issues, give a summary of the negotiation process so far within the WTO context, and outline possible avenues to resolve the conflicting interests of trade in educational services. The following points depict the growing importance of trade in ES:

(1) The value of annual trade in 1999 in higher education services has been estimated at 30 billion US$[1], reaching 50% of trade in financial

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1 See LARSEN ET AL. (2002) p. 3.

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services estimated at 59.3 billion US$[2]. The estimates of trade in ES would be higher if estimates were available for the total trade in ES. Higher education is only one of five subsectors of ES.

(2) High quality education can positively influence labour factor conditions of a country's economic development. The availability of a highly skilled labour force is a factor contributing substantially to national economic development. Most countries consider investment in education as being of strategic importance to enhance national competitiveness[3] and to increase opportunities to attract foreign direct investment.[4]

(3) Trade in ES is inherently cross-sectoral affecting trade, economics, education and culture. This built-in multi-functionality of trade in ES requires cooperation between institutions mandated to deal with the different aspects of trade in ES (WTO) and ways to establish cross-national recognition of educational products (UNESCO).

(4) While most stakeholders can agree that private sector providers can be equal or even more efficient producers of educational services, no agreement exists so far as to the intended effectiveness or purpose of education. Is education supposed to be only about acquisition of knowledge and skills, or also about ensuring students' integration into civil society, ensuring social and national cohesion and equitable access to knowledge by all strata of society independent of wealth and social class? In case of the latter, education can be seen as a public good to be provided solely by state schools or at best under strict supervision by state regulators.[5]

The points listed above highlight why so many stakeholder groups attach so much importance to trade in ES. A full discussion of all the four points is beyond the scope of this article.

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2 See ROLF ADLUNG, Councellor, WTO, Symposium on Assessment of Trade in Services, March 14–15, 2002, WTO Statistics Division, Geneva.

3 See SANER (2002) pp. 27-37.

4 See MICHIE (2002); and background note to OECD Development Centre Technical Meeting: FDI, Human Capital and Education in Developing Countries, December 2001, Paris: OECD.

5 For advocating a strong role of the state in education, see EDUCATION INTERNATIONAL/PUBLIC SERVICES INTERNATIONAL, The WTO and the millennium round: What is at stake for public education?, Internet: http://www.ei-ie.org/pub/english/epbeipsiwto.html (downloaded May 1, 2003).

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The authors will instead focus on ES within the context of WTO and the complexities of the WTO/GATS negotiations on trade in educational services, and develop avenues how negotiations of GATS/ES could be undertaken under the auspices of the Doha Round.

2 GATS and Trade in Educational Services

Education is one of twelve sectors[6] covered by the General Agreement on Trade in Services (GATS), which together with the articles governing trade in goods constitute the rule-making body of the WTO (formerly the GATT). Although trade in ES has been part of the WTO since its inception in 1995, it did not draw as much attention as other sectors like communications or financial services before the launch of the Services Round (2000) and its inclusion in the Doha Round (end of 2001). As a result, little progress had been achieved by the Contracting Member Parties (CMPs) in terms of commitments towards market access, national treatment and liberalisation of their respective educational sectors. Nevertheless, during the last two years, ES has received considerable attention especially in OECD countries.

Before the start of the Doha Round, market shares in ES have been seriously underestimated. Since then, a more precise picture has emerged of the sector's relative growth in terms of exports and imports, thereby putting ES on a higher position on the agenda of the CMPs negotiation items.

2.1 GATS Main Principles

In general, GATS consists of three obligations, namely: most favoured nation treatment, transparency, and dispute settlement. They apply to all service sectors regardless of whether or not CMPs schedule commitments to liberalise their markets in any of the twelve service sectors.

WTO members have to respect sector specific obligations attached to national schedules in regard to (i) market access and (ii) national treatment

6 The other sectors are: business services; communication services; construction and related engineering services; distribution services; environmental services; financial services; health and social services; tourism and travel related services; recreational, cultural and sporting services; transport services; other services not included elsewhere (WTO: Services Sectoral Classification List).

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rules. Market access focuses primarily on non-discriminatory quantitative restrictions impeding access to markets. Each CMP determines limitations on market access for each committed sector and mode of supply of its respective national service sector. National treatment refers to equal treatment for foreign and domestic providers (or equal competitive opportunities where identical treatment is not possible). Once a foreign supplier has been allowed to supply a service in another country there should be no discrimination in treatment between foreign and domestic providers. National treatment applies where a country has made a positive specific commitment. Non-conforming measures can be retained in scheduled sectors/modes of supply, as national treatment does not require identical treatment of domestic and foreign providers, but its specification must be made clear. These sector specific obligations apply to commitments listed in national schedules. The degree and extend of obligation is determined by each CMP.

However, services supplied in the exercise of governmental authority are specifically excluded from the scope of the GATS. GATS Article I.3 (b) stipulates that "services includes any service in any sector except services supplied in the exercise of governmental authority" which is further refined in GATS article I.3 (c) which states that "a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers".[7]

Since it came into force, GATS has a built-in agenda which means that negotiations can be re-examined periodically with the goal of reaching progressively higher levels of bound (legally binding) liberalisation with specific flexibilities built in for developing countries. However, each CMP determines the pace, extend and nature of market opening under GATS and retains its right to schedule no commitments in any sector/mode of supply whatsoever.

2.2 GATS Classification of ES

In general, GATS distinguishes between four modes of supply through which services can be traded, namely Mode 1 (Cross-border supply), Mode 2 (Consumption abroad), Mode 3 (Commercial presence) and

7 WTO "General Agreement on Trade in Services", Annex 1B, p. 286.

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Mode 4 (Presence of natural persons). Applied to trade in ES within GATS, the examples listed in *Table 1* help illustrate the modalities available for CMPs to engage in ES trade.

Table 1 Modes of Supply in GATS/ES

	Mode of supply	Explanation	Examples for ES
1.	Cross-Border Supply (Mode 1)	The provision of a service where the service crosses the border (does not require the physical movement of the consumer).	Distance education; Virtual education institutions; Education software; Corporate training through ICT delivery.
2.	Consumption Abroad (Mode 2)	Provision of the service involving the movement of the consumer to the country of the supplier.	Students who go to another country to study.
3.	Commercial Presence (Mode 3)	The service provider establishes or has presence of commercial facilities in another country in order to render service.	Local university or satellite campuses; Language training companies; Private training companies, e.g. Microsoft, CISCO, etc.
4.	Presence of Natural Persons (Mode 4)	Persons travelling to another country on a temporary basis to provide service.	Professors, teachers, researchers working abroad.

Source: OECD/CERI (2002a) p. 6.

Inside the four modes of supply of ES identified above, education services are commonly defined by reference to five subsectors, namely:[8]

1. *Primary:* pre-school and other primary education services;
2. *Secondary:* general secondary, higher secondary, technical and vocational secondary, and technical and vocational secondary education services for handicapped students;
3. *Higher:* post-secondary technical and vocational and other higher education services;
4. *Adult:* education services for adults who are not in the regular school and university system and includes education services through radio or television broadcasting or by correspondence;
5. *Other*[9]*:* education services at the first and second levels in specific subject matters not elsewhere classified and all other education services that are not definable by level (LARSEN ET AL. 2002, p. 10).

8 See OECD/CERI (2002a) p. 5; and LARSEN ET AL. (2002) p. 10.
9 See also *Section 4.3* below for a surprising consideration of "Other".

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Most Members who made commitments for trade in ES used the United Nations Provisional Central Product Classification in order to avoid the creation of a new GATS methodology which would be applicable only to this sector. However, inconsistency of classification remains a problem since some CMPs have opted for different methodologies making comparisons within sectors across countries more difficult.

2.3 Estimated Size of Educational Services Markets

In general, the estimated overall market value in higher education for Mode 2 trade in ES of OECD countries was around US$ 30 billion representing 3% of total services trade in OECD countries. Hence, contrary to popular belief, trade in higher educational services is significant and should not be underestimated. However, it remains difficult to estimate total trade in ES based on the four GATS modes of supply. Statistics on trade in ES are classified under various headings and are often lumped together with other service activities. Only a few countries have reported data on "personal travel and education-related activities", as listed under the OECD and IMF databases on international trade in services statistics.[10]

One of the reasons why an estimation of ES market volumes is difficult is due to the fact that the few countries which report any ES data at all mostly limit their reporting to Mode 2 (Consumption abroad), which is the simplest way of measuring trade in ES but which also results in a very incomplete picture of ES trade. The other modes taken into account by the GATS – namely Mode 1 (Cross-border supply), Mode 3 (Commercial presence), and Mode 4 (Presence of natural persons) – have still not been quantified. Given the lack of adequate and reliable information on ES trade volume, OECD and UNESCO have started to collect empirical data to enable more substantive comparisons in the future.

Even though limited to Mode 2, the reported data offers a convincing argument for the importance of trade in ES, at least for the exporting countries. In addition, the reported data also documents the growing importance of the delivery of educational services through offshore campuses. For instance, Australia increased the share of international students studying in Australian post-secondary institutions through distance learn-

10 See LARSEN ET AL. (2002) pp. 2–4, 9–10.

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ing and offshore programmes from 18% to 35% between 1997 and 2001. As another example, more than half of the international students from Singapore and Hong Kong enrolled in an Australian educational institution are following classes in offshore locations. On a related note, British ES offshore programmes enrolled around 140,000 students in 1996–1997 as compared to 199,000 international students taking higher education course in the UK in the same year.[11]

The data shown in *Table 2,* even though concerning only the main exporters and more or less only Mode 2 – are of interest. First, they show a clear prevalence of English speaking countries who enjoy a comparative advantage compared to non-English language ES.[12] Second, in total values and including only the first five countries, exports in ES achieved more than 200% of growth between 1989 and 2000, United States and Australia being the most impressive cases – as long as statistics for New Zealand are not available for 1989. In relative terms, it is worth noting that some countries' share of ES exports compared with total service exports for 2000 were impressive as, for instance, was the case for New Zealand.

The five major ES exporters are also among the few countries which collect data concerning imports of ES. Their records as importers won't show where these flows are going, but confirm them as net ES exporters.

Table 2 Five Major Exporters of ES, US$ million (current prices) and as a percentage of total exports in services, 1970–2000

	1970	%	1989	%	1997	%	2000	%
Australia	6	0.6	584	6.6	2'190	11.8	2'155	11.8
Canada	68	2.7	530	3.0	595	1.9	796	2.1
New Zealand	...	...	...	...	280	6.6	199	4.7
United Kingdom	...	...	2'214	4.5	4'080	4.3	3'758	3.2
United States	...	...	4'575	4.4	8'346	3.5	10'280	3.5
Five countries	**74**	**...**	**7'903**	**...**	**15'491**	**...**	**17'188**	**...**

Source: Based upon LARSEN ET AL. (2002); OECD/CERI (2002a) p. 6.
Note: "..." denotes data not available.

11 See OECD/CERI (2002b) p. 12.
12 Other comparative advantages are (1) a favourable geographical situation, sometimes even a "nice weather advantage" (cf. Australia), (2) strong historical links with other countries, (3) the international reputation of the many Anglo-Saxon universities, and (4) the well established practice of recognition of degree equivalencies and the practice of applying for quality labels which is typical for many Anglo-Saxon countries.

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Most of the compiled data about trade in ES falling under Mode 2 refers indeed to the "Higher education" subsector. This is not surprising since purchasing education abroad requires the consumer to be old enough to travel abroad and to qualify as temporary resident. Another way of sizing up the importance of ES exports is the comparison between foreign students studying in a home country versus their own nationals studying abroad (in higher education). Based on 1999 figures, for instance, Australia received 99,014 foreign students at home while 5,169 Australian students studied abroad (ratio: 19.15). *Table 3* presents ratios for some countries and the corresponding trend between 1995 and 1999.

Table 3 Ratio of Foreign Students per Domestic Students Abroad in Tertiary Education, 1995 and 1999

	Country	1995	1999	Tendency
Net inflow (1999)	Australia	18.36	19.15	↗
	United States	19.37	14.98	↘
	United Kingdom	6.58	10.49	↗
	New Zealand	4.42	4.18	↘
	Belgium	5.52	3.84	↘
	Germany	3.79	3.45	↘
	Switzerland	2.39	2.99	↗
	France	4.75	2.71	↘
Net outflow (1999)	Norway	1.68	0.75	↘
	Italy	0.81	0.60	↘
	Finland	0.69	0.51	↘
	Ireland	0.42	0.38	↘
	Iceland	...	0.09	...

Source: OECD (2002a) Figure 4.3, p. 115.

Belgium, Germany, Switzerland or France are above or slightly under the average ratio of 3 of OECD countries. On the importing side of OECD members figure countries like Norway, Italy, Finland, Ireland, and particularly Iceland. With the exception of Iceland, the other importers have seen their ratios decrease between 1995 and 1999. Still, an increasing outflow might raise concerns by the education ministries of the importing governments in regard to the level of quality of ES purchased abroad by their nationals, and conversely result in worries in regard to the potentially perceived lower quality of education offered by their respective national education providers.[13]

13 See OECD (2002a) Figure 4.3, p. 115; and OECD/CERI (2002b) p. 5.

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When considering only the percentage of foreign students enrolled in higher education, Switzerland has the highest level with 16.6% in 2000, followed by Australia (12.5%), Austria (11.6%), UK (11%) and Belgium (10.9%), all well above the 4.9% average for the OECD. In comparison, the USA only scored at 3.6%.[14]

These figures indicate that not only English speaking countries pursue ES exports. Motivations for exporting ES are often manifold, ranging from commercial interests to considerations about reducing costs of public education. For instance, in some OECD countries, foreign students enrolling in public education institutions pay higher education fees than national students. In addition, smaller countries like Switzerland, Belgium or Austria are able to reach a critical size of student populations thanks to the additional fees paid by foreign students, which provide the schools and universities of these countries with opportunities to achieve economies of scale and a higher level of quality of education which would otherwise not be attainable.

3 Pre-Doha Schedules and Negotiation Initiatives

3.1 Pre-Doha Schedules

As of May 2002, only 42 out of 144 CMPs have made commitments for at least one education subsector. Among these 42 countries, 25 CMPs have included commitments for at least four of the five education sectors. Among OECD countries, Canada, Finland, Iceland, Korea and Sweden have made no commitments in educational services, and 10 out of 14 schedules of OECD countries contained commitments for at least four of the five education subsectors.[15]

In general, the countries that have made their commitments after the Uruguay Round show a wider sector coverage than countries that made commitments before the conclusion of the Uruguay Round. This can be explained by the fact that countries having acceded to the WTO after the completion of the Uruguay Round have been under greater pressure to make commitments in the educational sector.

14 See OECD (2002b) p. 268.
15 See OECD/CERI (2002a) pp. 8–13, 18.

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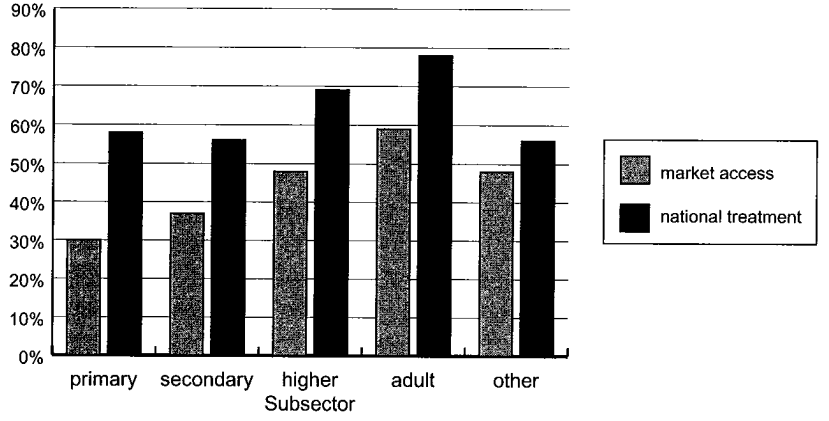
Figure 1 Share of Full Commitments by Education Sector in Modes 1, 2 and 3



Source: OECD/CERI (2002a) p. 8.

Caution is required when interpreting statistics and commitments in ES trade. Due to the highly controversial nature of GATS/ES, secondary literature can often be misleading. For instance, "full commitment" might only be reserved for privately funded education and not for public educational institutions, which is the most frequent situation of high-income countries such as Switzerland, all of the EU countries and the USA. Being an exporter of ES does not necessarily mean that the same country has made full commitments in all of its subsectors. For example, the USA has only made commitments in two subsectors namely "adult education" and "other", not in primary, secondary nor higher education in contrast to EU countries which have made commitments for privately funded educational institutions in all subsectors except "other".

Primary and secondary education are most of the time under the control of the state, being considered as basic schooling in many OECD countries. It is therefore not surprising to find out that fewer countries made commitments in these subsectors *(see Figure 1)*. In regard to adult education, more than 50% of the 42 CMPs with commitments have no limitations on market access on Modes 1, 2, and 3 and close to 80% have made full commitments in regard to national treatment. The subsector adult education has the highest number of commitments in regard to market access and national treatment. However, even though adult education has come under wider scrutiny than higher education, the analysis of this sec-

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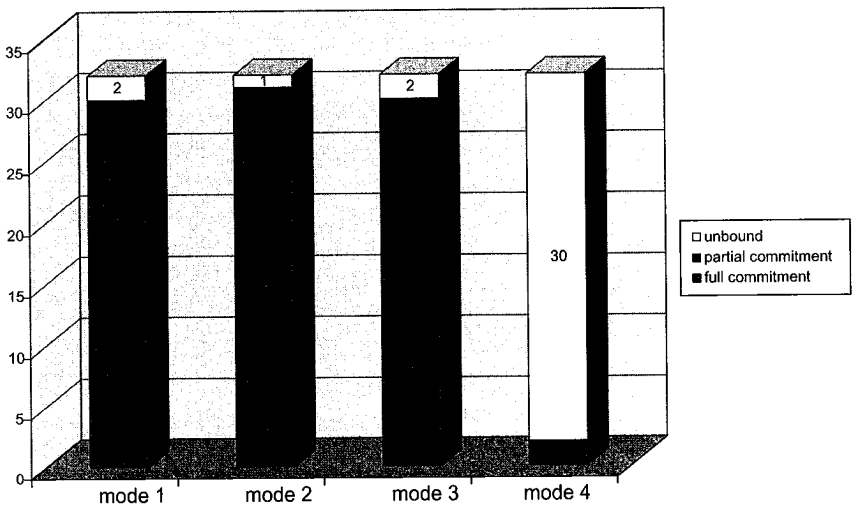
tor is difficult as adult education is mostly provided by private schools and relevant data covering this subsector is often non-existent on a national level.

Figures 2 and *3* show the commitments relating to the subsector "Higher Education" in more detail by market access, national treatment, and the four modes of supply. Mode 1 shows the second highest level of commitments made concerning this subsector with slightly higher commitments made in terms of national treatment compared to market access. Mode 2 currently represents the largest share of the global market for higher ES, and is therefore the most committed of the four modes. Mode 3, presenting a direct threat for national – public or private – providers is less open, at least under market access. In Mode 4, dealing with migration issues and being still more controversial than Mode 3, most CMPs maintain restrictions on a horizontal basis (for instance immigration rules that apply to all services sectors).

Figure 2 Market Access Commitments in Higher Education by Mode, number of country commitments



Source: OECD/CERI (2002a) p. 12.

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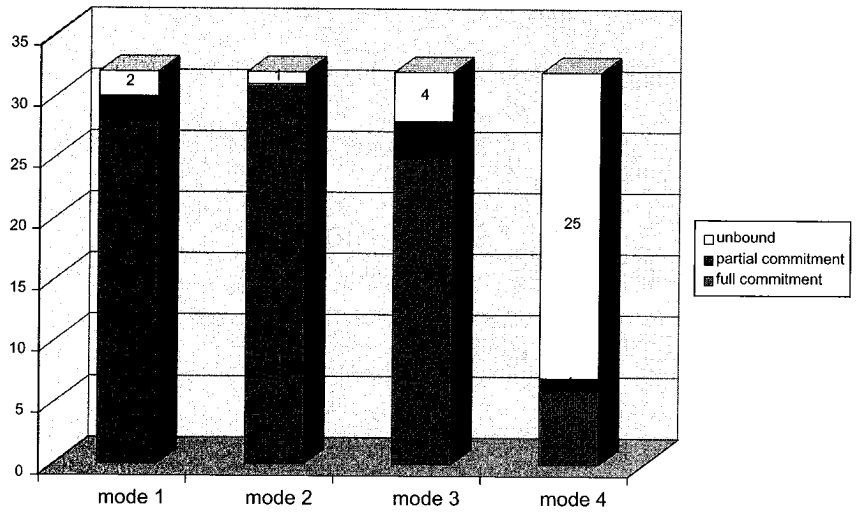
Figure 3 National Treatment Commitments in Higher Education by Mode, number of country commitments



Source: OECD/CERI (2002a) p. 13.

3.2 Negotiation Initiatives

Negotiations at multilateral institutions such as the WTO are characterised by high complexity due to (1) the participation of a multitude of actors (currently 146 CMPs), (2) the multiplicity of issues to be simultaneously negotiated (the Uruguay Round consisted of 14 negotiation fora while the Doha Round amounts to 6 negotiation fora), and (3) the direct and indirect involvement of related competing and complementary organisations (e.g. WIPO, IMF, UNEP, ITU etc).[16]

Countries with a strong interest in a particular sector try to shape the scope of the negotiation process by, for instance, drafting initial discussion papers which then are sent as national communications to other WTO members. Another way of influencing the process is by attempting to shape the scope and definition of key issues to be negotiated through official or semi-official workshops and seminars. For instance, a privately owned US based lobby group called GATE (Global Alliance for Transnational Edu-

16 See SANER (2000) pp. 203–213.

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cation) played an important role in starting the discussions on trade in ES. GATE was envisioned by the corporate sector and founded in 1995 by Jones International Ltd., a multinational telecommunications corporation. Jones was later on joined by a number of multinational corporations including Coca-Cola, Ericsson Telecom, and others. The first invitational forum of GATE was held in October 1995, co-hosted by the Centre for Quality Assurance in International Education and Jones International Ltd.[17] For example, GATE organised in 1999 a conference in Melbourne, Australia, on "Access or Exclusion: Trade in Transnational Education Services" which was co-organised by CERI (Centre for Educational Research and Innovation) of the OECD and CEPES (European Centre for Higher Education) of UNESCO.[18]

Subsequent to the acquisition of GATE by Sylvan Learning Systems, leading staff left GATE and co-founded a NGO called "The Centre for Quality Assurance in International Education" (QA) which offers publications on quality and trade in educational services. Together with other representatives of US professional accrediting and certifying bodies, QA created NCITE (National Committee for International Trade in Education), a non-profit advocacy body which has been recognised by the US government (specifically the US Trade Representative and the US Department of Commerce). Based on substantive inputs by NCITE, the US representative to the WTO submitted a negotiation proposal on December 18, 2000, which added more weight to the still very dormant negotiation process of trade in ES.[19]

Negotiations started to pick up speed before and after the conclusion of the Doha declaration in November 2001 which set off the new round of trade negotiations. Additional country communications were submitted and circulated on trade in education by Australia, New Zealand and Japan. Taking another step towards launching in earnest WTO negotiation on ES, a kick-off forum was jointly organised by CERI (OECD), the US Departments of Education and Commerce, NCITE, and QA in cooperation with the Office of the US Trade Representative and the US Department of State. The Forum was held in May 2002 in Washington and was attended by more than 250 representatives from 25 countries includ-

17 See MARJORIE PEACE LENN, "The Global Alliance for Transnational Education: Transnational Education and the Quality Imperative", Internet: http://www.lmcp.jussieu.fr/eunis/html3/congres/EUNIS97/papers/031901.html (downloaded May 1, 2003).

18 See GATE News, Vol. III, Nr. 3, 1999, p. 9.

19 See LENN (2001).

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ing three ministers and one state secretary of education.[20] A second forum is scheduled for 2003 in Oslo to be co-organised by OECD and the Norwegian government, and the third and last forum will take place in the Pacific area in 2004, one year before the negotiations are scheduled to be completed, as foreseen, in 2005.[21]

Subsequent to the Washington OECD/US Forum, a conference was organised by UNESCO in Paris in October 2002 titled "First Global Forum on International Quality Assurance, Accreditation and Recognition of Qualifications in Higher Education" attended by 120 participants, representing a wide range of higher education providers and stakeholders. In contrast to the Washington Forum, the UNESCO Conference in Paris aimed at identifying the new challenges and dilemmas facing higher education as a result of globalisation. Trade in ES and GATS/WTO formed an additional backdrop to the Forum but were not the main theme of discussion which focused primarily on the general organisation of the "new" higher education around three general topics, namely: (1) quality assurance, accreditation and recognition of qualifications, (2) identification of learning processes and learners, and (3) public goods versus private goods. However, possible commercialisation of education as exemplified by the GATS/ES was seen as a major threat by a large number of educational specialists, some of them even suggesting to take the educational sector out of the GATS/WTO negotiations.

In addition to the above-mentioned OECD and UNESCO centred initiatives, a third institutional initiative was started by the Council of Europe whose Steering Committee for Higher Education and Research (CD-ESR) debated trade in ES during its October plenary session in Strasbourg.[22]

Figure 4 below illustrates some of the main negotiation initiatives and movements by actors (countries, institutions, NGOs) interested in market access for educational services as they evolved since 1999 up to April 2003. For the sake of conceptual clarity, the authors have restricted themselves to a summary version of negotiation movements and initiatives.

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20 Under the auspices of MARINO OSTINI (Swiss Federal Office of Education and Science, OFES), the Swiss delegation consisted of SYLVIE FASEL (OAQ), ANDRI GIERÉ (Federal Office for Professional Education and Technology, OPET), DOMINIQUE MARTIN (State Secretariat for Economic Affairs, SECO), RAYMOND SANER (CSEND), and HANS WEDER (University of Zurich).

21 See UNESCO (2002a) p. 5; and OECD (2002c) p. 2.

22 For more information see COUNCIL OF EUROPE (2002).

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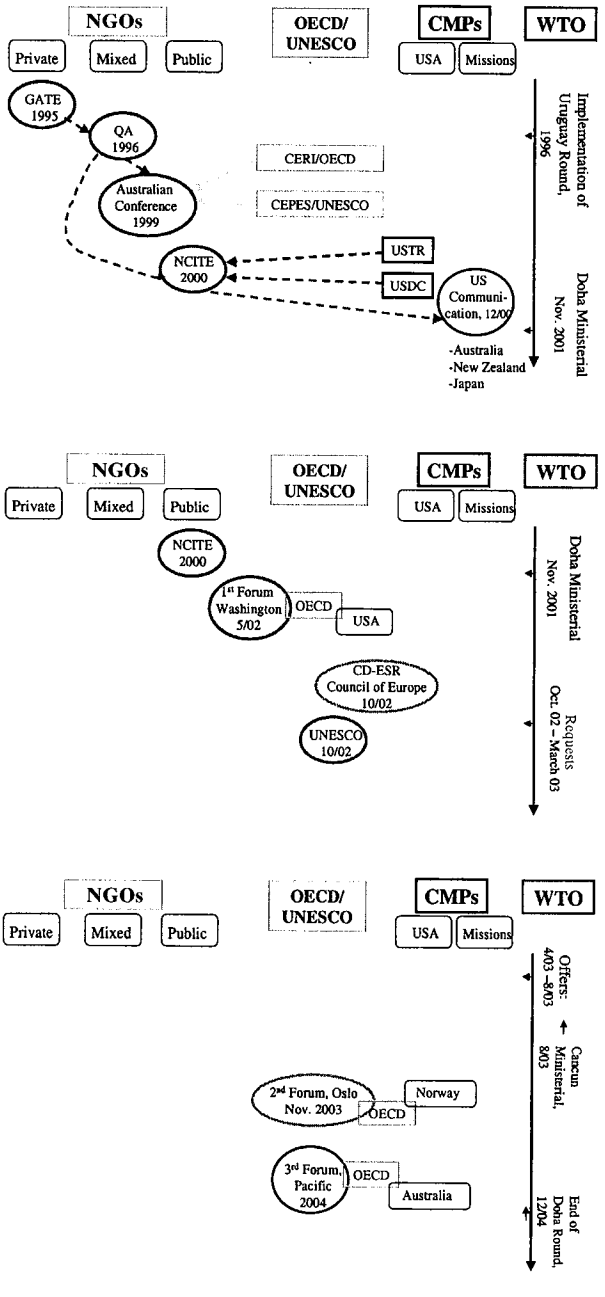
Figure 4 Countries, Institutions and Actors Requesting Market Access for Trade in ES



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4 Key Issues in Trade of Educational Services

Often depicted as "invisible", services nevertheless are not immune to obstacles to trade, be this in regard to market access or national treatment. The main barriers to trade are listed and described below.

4.1 Obstacles to Trade in ES

Various hindrances to trade in ES have been described in the negotiation proposals on trade in educational services submitted by Australia, the United States, New Zealand and Japan. The most often cited ones can be found in *Table 4.*

Table 4 Typology of Existing Barriers to Trade in ES as identified by USA, New Zealand, Australia and Japan

	Barriers to trade	Examples and modes of supply concerned
1	Prohibition for foreign providers	• No possibility for foreign supplier to offer its services (all modes of supply).
2	Administrative burden and lack of transparency	• Domestic laws and regulations unclear and administered in unfair manner (all modes of supply); • When governmental approval required for foreign suppliers, extremely long delays encountered; when approval denied, no explication given, no information about necessary improvements to obtain it in the future (all modes of supply); • Denial of permission for private sector suppliers to enter into and exit from joint ventures with local or non-local partners on a voluntary basis (Modes 1 and 3).
3	Fiscal discrimination	• Subsidies for education are not made known in a clear and transparent manner (all modes of supply); • Repatriation of earnings is subject to excessively costly fees and/or taxes for currency conversion (all modes of supply); • Excessive fees/taxes imposed on licensing or royalty payments (Modes 1 and 3).
4	Accreditation/recognition discrimination	• No recognition of titles delivered by foreign providers (all modes of supply); • No recognition of foreign diplomas (Mode 2); • No accreditation delivered nationally for foreign providers (Modes 1 and 3).

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Source: Based upon communications submitted to WTO regarding trade in ES by USA (WTO Doc. S/CSS/W/23, December 18, 2000), New Zealand (WTO Doc. S/CSS/W/93, June 26, 2001), Australia (WTO Doc. S/CSS/W/110, October 1, 2001), and Japan (WTO Doc. S/CSS/W/137, March 15, 2002). Of these four communications, only Japan raises the issue of quality control of trade in ES.

The main types of barriers could be applied to all services sectors – except in regard to the trade obstacles pertaining to "accreditation/recognition discrimination" – and the way they apply to trade in ES are particular to this GATS sector.

Even if Case 1 ("Prohibition for foreign providers") is an extreme case[23], it could nevertheless be possible for one or more of the 102 WTO members who have no commitments in ES. For the three other cases of barriers to trade in ES, the reality shows a mixture of the three forms of trade barriers rather than a clear distinction between them. Overlapping of trade barriers is not unusual, as every one of them can be a measure taken by a different national department or quality agency.

According to SAUVÉ (2002, pp. 25–26), the kind of trade most affected by trade barriers is Mode 3 (Commercial presence or investment). "Presence" is an important issue for some schools from a few but growing number of countries (e.g. USA, Australia, New Zealand), interested in opening branches abroad.[24] In terms of "Investment", GATS aims to deepen the liberalisation of the investment regimes in services of WTO member countries. Even though complete access to all ES subsectors has not been achieved so far, cautious commitments have been taken in Mode 3 by several countries. More trade liberalisation could be achieved by detaching some of the ES transactions like, for instance, providing educational services (GATS) from selling or purchasing educational materials such as books (GATT) provided, of course, that all parties involved respect and honour copyright laws.[25]

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23 The commitment "unbound", inserted after either market access or national treatment under every mode, does not mean that trade in ES is prohibited, but instead means that a country has made no commitment. "None" in conjunction with either market access or national treatment under every mode indicates that the country does not impose any restrictions on foreign ES providers.

24 Privately owned schools of leading ES exporting countries are particularly interested in Mode 3. However, quite a few publicly owned schools in OECD countries have also set up subsidiaries based on private commercial law with the aim of gaining better market access abroad as well as being less constrained by national laws and regulations.

25 For example, restrictions on trade in educational materials should be negotiated in market access under GATT rather than under GATS.

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Many WTO countries essentially focus on trade in ES under Mode 2: namely supply of ES through consumption abroad. On the side of the providers – who are by definition abroad –, barriers could only exist in the case of non-recognition of the titles issued by the exporting supplier on the part of the importing country. This would constitute an example of prohibition.[26] A different form of hindrance exists in regard to individual consumption abroad of educational services or *education abroad* – the problems here are of a more basic nature like difficulties in obtaining entry visas, getting access to funding possibilities, obtaining student-related work permits etc. These obstacles are mostly measures taken by the exporting countries and impede the importers' consumption. As these kinds of barriers are linked to national questions of security, immigration, and labour market issues which are considered outside the realm of GATS (sovereignty concerns), they represent barriers that are much more difficult to lower.

Mode 4 (Presence of natural persons) is less subject to hindrance if the skills and competencies offered by the "self-exporting" experts are scarce in the importing country. Domestic concerns with immigration and labour market regulation still constitute a formidable obstacle to liberalisation of Mode 4. However, this kind of ES exports will probably expand especially when linked to the provision of English language teaching services, the *lingua franca* of globalisation. India has, for example, expressed strong interest in liberalisation of Mode 4.

Many of the barriers mentioned above are linked to the view that education is a public service, not a market based activity. Hence, it should fall under the provision of governmental prerogatives. Seen from this perspective, many of the barriers against trade in ES are linked to a country's sovereign right to determine its own educational policy, as confirmed in GATS article I.3 (c), exempting "services in the exercise of governmental authority" from foreign competition.[27] The interpretation of this clause is one of the main contentious issues to be solved by the WTO negotiators and CMPs.

26 Article VII of the GATS addresses the issues of recognition and accreditation (WTO "General Agreement on Trade in Services", Annex 1B, p. 291).

27 See NYBORG (2002) pp. 14–18.

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4.2 Competition between Public and Private Providers of ES

Trade in educational services has become part of GATS because of the presence of private suppliers causing tensions with the public providers, especially in non-English speaking Europe[28], even though GATS in its general preamble (Art. I.3) recognises the right for governments to regulate the public sector.

Providing education has traditionally been a function attributed to the state, based on the view that it is a public good which should not be supplied on a commercial basis in order to guarantee equal access to education for all citizens of a country, no matter of their background or financial means. Along with this view goes the expectation that the quality of the education provided should be comparable for all students independent of their origin and endowment. Stakeholders like teachers and student unions to a large majority reject trade in ES in general fearing that agreeing to liberalisation of the educational sector would open the backdoor to a dismantling of education as a public service via privatisation and deregulation. For these stakeholders, the worst case would be to see that states end up loosing their sovereign regulatory rights once the education sector should become dominated by foreign and/or private suppliers, as might be the case if underfunded developing countries open their educational markets to foreign suppliers.[29] Refuting such claims, parties in favour of trade in services highlight the fact that services supplied in the exercise of governmental authority are specifically excluded from the scope of the GATS (Articles I.3 [b] and [c]).

Commenting on the fact that people confuse the terms of "liberalisation" with "deregulation", SAUVÉ reiterates his belief that nations do retain the right under the GATS rules to regulate the educational sector as they see needed. However, being aware of the impact which liberalisation might exert on regulatory processes he also states that "the GATS can affect the regulatory conduct of member countries. Yet countries accept such disciplines because they deem them necessary to reaping the full benefits from international co-operation in a rules-based system"[30]. According to GATS rules, countries do have considerable freedom to choose between liberalising or restricting the educational sector and its five subsections.

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28 See HIRTT (2000), p. 16.

29 See EDUCATION INTERNATIONAL/PUBLIC SERVICES INTERNATIONAL (Note 5 above) and Internet: http://www. world-psi.org (downloaded May 1, 2003).

30 SAUVÉ (2002) p. 15.

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Choosing when and how far to open their respective educational sector, and at what time in their social and economic development path, represents a crucial aspect of government competence requiring a know-how in regulation and policy implementation which many countries do not have, especially not in the developing world[31] where insufficient public finance perspectives worsen government options to provide high quality education for all of its citizens.

Reading commitments already taken in ES by high income OECD countries, one may notice the startling fact that most of these countries (USA, EU, Switzerland) are more likely to restrict their commitments to privately funded education especially in primary, secondary and higher education, quite contrary to the often virulent criticism of domestic stakeholders accusing their respective governments of jeopardising the monopolies of their public education. Even if most advanced countries appear to have a larger margin of manoeuvre than developing countries in regard to opening or protecting their education sector, their public finances have nevertheless come under great pressure over the last four years resulting in competitive budget battles between public education and other sectors like health and social welfare. Faced with fewer financial resources, a growing number of OECD countries are exploring possibilities of delegating or outsourcing parts of education to private providers who are more efficient service providers due to the fact that their production costs are lower since they are less bound by labour conventions typical for public education facilities. However, in order to ensure continued delivery of high quality ES by private (national or foreign) education providers, governments need to increase their regulatory supervision.

While it is certainly helpful to make use of legal expertise and advice[32], more needs to be done by governments and concerned stakeholders before deciding whether or not to make further commitments relating to the educational sector. In particular, a strategic assessment of opening or protecting their education sectors needs to be done by stakeholders responsible for their respective country's negotiation position on trade in ES. Before debating national negotiation positions on ES or other sectors, stakeholders need to understand the request and offer mechanism of WTO negotiations and develop short-term and long-term solutions to key strategic challenges including exporting/importing and aggressive/defensive

31 For further information on links between education, policy and economic development, see BLOOM (2000).

32 See the legal expertise on trade in ES for Switzerland by COTTIER ET AL. (2003) and KRAFFT (2003).

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considerations. Once sectoral stakeholders have done their homework, internal consultations with their respective national WTO negotiation team might be called for in order to reach a common view and position[33].

An example of national strategic thinking can be found in China's coastal provinces where private schools (domestically owned) are given permission to offer secondary education to students who failed the entrance exams to the public schools. Since education is a highly esteemed investment in their children's future, Chinese parents are willing to pay the relatively high tuition fees. The private schools are regulated by the authorities in charge of education, they pay taxes and lower the pressure on the governments to provide more remedial education. Foreign schools offering higher education degrees are highly regulated and requested to include local teachers in their teaching faculty, their tuition fees are regulated, the student intake limited, and the authorities often require that higher education degree programmes provided by foreign schools be complemented by a one to two year academic programme in their respective home country. Such one to two years of academic studies offer Chinese students opportunities to become familiar with a foreign country, learn a foreign language, and potentially qualify for jobs in developed countries.

Successful strategic assessments of threats and opportunities of ES and possible opening of trade in ES to foreign providers require (1) the formulation of adequate strategies focusing on the future development of the respective national education sector, (2) the identification of possible export opportunities of national ES providers and their chances for market access in other countries, (3) the corresponding assessment of how to prepare their domestic market for foreign competition, (4) the clarification of how a country wants to define the role of government – as a provider or regulator of ES?, and (5) concomitantly an agreement of the national stakeholders on how to negotiate at WTO the boundaries of national sovereignty in regard to trade in ES.

4.3 The Role of Accreditation / Quality Assurance

Even if countries open education to foreign providers, the GATS preamble recognises, *inter alia,* "[...] the right of Members to regulate, and to introduce new regulations, on the supply of services within their territo-

33 See OECD (2002d) p. 37.

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ries in order to meet national policy objectives [...]"[34]. In practice, ES are delivered to consumers within the context of accreditation/quality assurance schemes, under the control of or based on official recognition of government offices in charge of education. The intention of quality control and accreditation of ES providers is to protect consumers from fraudulent low quality "diploma mills" and to safeguard the achievement of educational goals beyond simple skills and knowledge acquisition. Nevertheless, quality assurance and accreditation of ES providers remain key contentious issues of GATS/ES negotiations, since both measures could be seen as a measure to create barriers to trade in ES. Technical barriers to trade have been an ongoing concern to CMPs, and simplification of trade procedures through Trade Facilitation Measures have been on the agenda of WTO since the Ministerial meeting in Singapore in 1996.

Reflecting on the importance of quality assurance of educational services, a position paper by the COUNCIL OF EUROPE observes that "[...] it is important to recall that free trade is not trade in the absence of quality standards. While comparisons between ES and industrial products should not be exaggerated, it may be worth keeping in mind that few countries would allow cars to be imported and sold without an independent verification of whether they meet the quality standard of the importing country"[35].

A balance has to be achieved between legitimate requests for consumer protection and the sovereign right by governments to pursue high quality education without falling into a trap of completely closing market access to foreign ES providers. Some form of quality control seems legitimate, comparable to the Sanitary and Phytosanitary Measures (SPS) imposed, for instance, by developed countries on agricultural products of developing countries[36]. Defining quality in education and deciding on accreditation of service providers is a complex and contentious issue. Educational services are intellectual goods which are embedded within the cultural and historical context of their native country or continent. Consumers often find it difficult to assess the value and quality of education offered in other countries and sometimes have difficulties in distinguishing serious ES providers from cheap "diploma mills".

Accreditation and quality assurance have been developed and applied mostly in developed countries for quite some time. For example, in the

34 WTO "General Agreement on Trade in Services", Annex 1B, p. 285.
35 COUNCIL OF EUROPE (2002) p. 7.
36 See SCHWAMM (2002), p. 4.

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United States, accrediting schools and regulating recognition of degrees has been a common procedure since the beginning of the 20th century. In most of the cases, accreditations are issued by professional associations, after verification of the subjects taught in their respective skills area. In Europe, this kind of assessment is a more recent concern. In the 1990's, a few countries – most of them in the Northern and Eastern parts of the European continent – started to evaluate their higher education sector (institutions or educational programmes), often in conjunction with governmental reform efforts, e.g. within the concept of New Public Management starting in the late 1970s and 1980s. Ten years later, with very few exceptions, the European countries have all created some form of accreditation/evaluation agencies. The Bologna Declaration (1999) whose aim it is to create an integrated education area across the European continent, could lead to, among others, the creation of such accreditation agencies to make sure that the quality of education supplied in the committed countries is guaranteed at comparable levels.[37]

Because of the Doha Round, the issue of quality control and accreditation of ES has become a WTO-wide issue. However, there are no intentions for GATS to create an international infrastructure for assuring quality of the ES. Most national and international stakeholders involved in education and in quality of ES do not want WTO/GATS to organise quality control or accreditation procedures[38]. This was made clear at the Washington Forum on trade in ES – as well as by WTO representatives and by accreditation/educational professionals – and further reinforced at the UNESCO Forum which was held in Paris in October 2002.

At the final meeting of the UNESCO forum, some participants expressed the wish to complete article VI.4 of the GATS (domestic regulation)[39] in order to enhance the concept of quality and to clarify why it is necessary to assure it. However, many other delegates felt that the term "quality" in ES first needed to be defined. UNESCO[40] decided to undertake an action plan to clarify the role and importance of quality in education and possi-

37 One of the objectives of the Bologna Declaration is the "Promotion of European co-operation in quality assurance with a view to developing comparable criteria and methodologies", see JOINT DECLARATION OF THE EUROPEAN MINISTERS OF EDUCATION (1999) p. 2.

38 See HIRSCH (2002) p. 10.

39 See WTO "General Agreement on Trade in Services", Annex 1B, pp. 289–290; and UNESCO (2002b) p. 5.

40 The UNESCO's Global Forum proposed a general action plan covering the following topics: development of guiding principles, revision of regional/intergovernmental conventions, transborder higher education, better information reflecting new developments in higher education, and enhanced internet resources to address new developments, see UNESCO (2002c) pp. 3–5.

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bly negotiate amendments to article VI.4 of the GATS. This won't be an easy step to take since most of the agencies working in the accreditation field hold their own views and definitions of quality and accreditation.

The development of an international framework for quality assurance/accreditation could take different forms such as, for example, a meta-accreditation of national agencies by a supranational "clearinghouse" or the development of truly international and relevant accreditation schemes[41]. However, before organising a global framework for accreditation, stakeholders should begin with defining basic concepts like, for example, "university", a term without a universally agreed definition. These differences in defining key concepts make it difficult for countries to use a common language which in turn hinders trade in ES. By not agreeing on basic terms and concepts, the chances are high that countries cannot reach an agreement and hence run the risk that their current concepts, albeit very different from country to country, will be crowded out by standard terminology used within the GATS context. This in turn would mean that the current diversity of terms and practices would be lost and replaced by standard "GATS Talk".

Related to the issues of quality and accreditation is the recognition of academic titles and certificates across countries. It is useless to study at an accredited university when the delivered diplomas are not recognised in the students' home country (in the case of Mode 2 consumption abroad) or in other countries. This issue was highlighted at the UNESCO Forum in Paris. Delegates were concerned with updating existing regional conventions on qualification and recognition. They were also concerned with the lack of co-ordination and integration of accreditation and recognition schemes. There is a need for a comprehensive agreement on quality and accreditation of ES in order to limit the risk of consumers being inundated by low quality ES products offered at dumping prices without minimum quality guarantees.

Even if it seems difficult to find soon a solution to this complex and highly sensitive problem, the liberalisation of trade in ES could be in itself an unexpected accelerator for a more coherent and international framework for accreditation/quality assurance. Indeed, the last and less satisfactorily defined fifth sector of ES in GATS labelled as "Other" could also relate to trade in ... accreditation services! This would not be a surprise as inter-

41 See VAN DAMME (2002) p. 32.

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national agencies – for instance, ABET, ASPHER, EQUIS[42] – already operate on an international basis. Public accreditation agencies could theoretically do the same and export their accreditation services abroad, as long as governments accept and recognise such accreditation provided by a foreign accreditation institution. Such a globalised conceptualisation of accreditation services would probably foresee the CMPs to go beyond national or regional frameworks and encourage the development of a common framework agreement on quality and accreditation earlier than currently seems possible.

5 Divergent and Convergent Interests

Support and opposition towards trade in ES manifests itself across professional boundaries, international organisations, regions, and the North/South divide between developed and developing countries. What follows is a summary of current negotiations positions and coalitions of interest by some select countries and institutions as they have emerged since the start of the Doha Round.

While the majority of the privately held schools in OECD countries are concerned mostly with regulations which potentially restrict Mode 2 supply, others have invested abroad and are keen on improving Mode 3 conditions especially in regard to unhindered market access and non-discriminatory investment conditions in foreign countries[43]. Lobbying groups representing private sector actors with FDI interests in ES have actively attempted to influence governments' negotiation positions on GATS/ES. Some of the better known groups like GATE, Sylvan Learning Systems and QA are close to privately held schools and universities with business interests and subsidiaries spread in multiple countries. While many of these lobby groups emanate from the USA, some are also based elsewhere as, for instance, Monash University of Australia with its many off- and onshore campuses in East Asia. The Monash University has developed an interesting strategy as it is a public institution inside Australia but becomes a private provider as soon as it exports its educational services abroad.

Figure 5 below depicts the negotiation positions of some key countries along the axis of «Liberalising» versus «Protecting». The country cluster

42 For further information see Internet: http://www.abet.org; http://www.ensp.fr/aspher, and http://www.efmd.be (downloaded May 1, 2003).

43 See LANG (2002) pp. 11–15.

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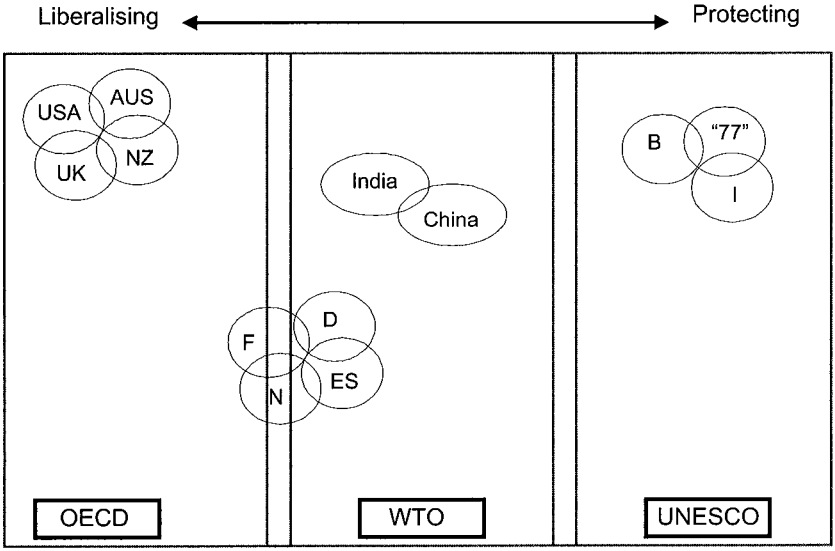
around «Protecting» is in reality larger than suggested. The same needs to be stated in regard to the country cluster positioned in the middle but leaning towards «Liberalising». Within this cluster, Norway has taken several initiatives leading to the creation of "the contact group" which acts as an informal interest group within the Geneva GATS negotiation forum.

Figure 5 Coalition Clusters of Selected CMPs in ES markets



The large majority of publicly held schools and universities have lobbied strongly against GATS/ES. On September 28, 2001, the presidents of the European University Association (EUA), the Association of Universities and Colleges of Canada (AUCC), the American Council on Education (ACE), and the Council for Higher Education Accreditation (CHEA) signed a joint declaration on higher education and trade in ES/GATS strongly expressing opposition to the inclusion of higher education services in the GATS negotiations. The joint declaration asks all actors in the GATS negotiations not to make commitments in ES in the context of the GATS. At the same time, the signatories expressed a willingness to reduce obstacles to international exchange in higher education using conventions and agreements outside of a trade policy regime.[44]

44 See Internet: http://www.unige.ch/eua/En/Activities/WTO/welcome.html (downloaded May 1, 2003).

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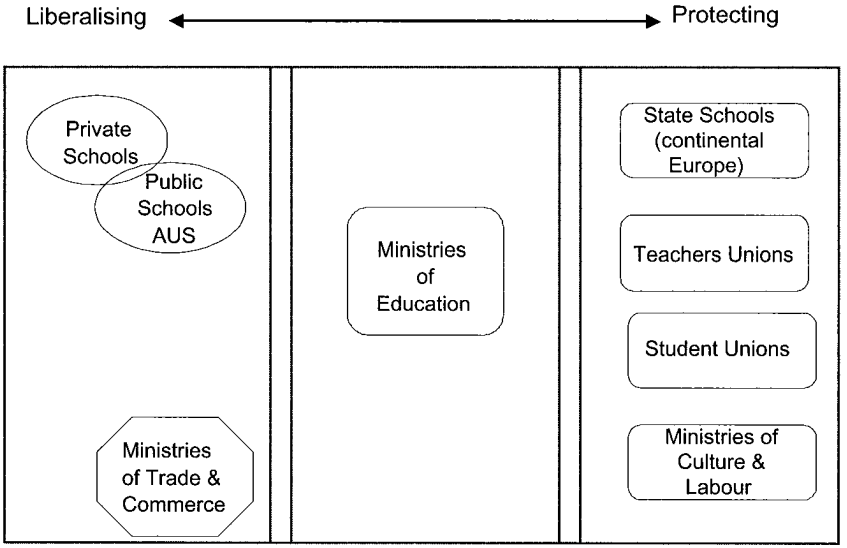
Figure 6 positions professional groups, government ministries, and ES providers (private or public) along the axis of «Liberalising» versus «Protecting». A general middle position is suggested for Ministries of Education which have to manage multiple and also conflicting policies and interests ranging from ensuring high quality education, low cost educational services, equitable access to education, and general goals pertaining to education in cultural and civic values for the totality of their constituencies.

Figure 6 Coalition Clusters of Stakeholders in ES markets



6 Possible Solutions for GATS/ES

The education and health sectors are two of the most controversial domains of the Doha Round negotiations for all the reasons elaborated above. Even though the process of request and offer has picked up speed, the two sectors remain behind compared to the other sectors. This might change over the coming months, although there is still a risk that stalling on education might result in a slow-down of other sectors. The following solution sets could be envisaged to ensure sustainable progress in trade in ES within the following negotiation frameworks:

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6.1 Structural Solutions

(1) Within GATS/WTO

One could envisage two possible scenarios for negotiation of trade in ES within the context of WTO. The first one would be to continue negotiations as is and to include ES in the general context of concession bargaining within and across sectors as has been the case in previous WTO negotiation rounds.

The second one might be to create a plurilateral solution similar to the one found for trade in public procurement and in information technologies. Countries in favour of liberalisation of trade in ES agree to negotiate a solution as long as the participating countries represent a combined market share of e.g. 70% of the total market in ES. The other WTO member countries would be given the benefits of the agreement reached due to the most favoured nation rule.

(2) Outside GATS/WTO

Member countries could also decide to take trade in ES out of the current GATS negotiations or to keep negotiations in ES at a standstill. At the same time, agreement could be reached to start negotiations on a convention which would set ground rules for trade in ES at an international level. Leading institutions such as UNESCO, the OECD, or a new ad-hoc convention could be envisaged for such a negotiation. Locating trade in ES within UNESCO might facilitate the inclusion of other related issues such as international recognition of accreditation and quality assurance. Integrating trade in ES within the OECD might on the other hand facilitate some cross-sectoral linkages among the current OECD members. The weakness of the OECD option is the limited size of membership mostly confined to the developed industrialised world. The exclusion of key developing countries such as China, India and Brazil would be a shortcoming.

6.2 Functional Solutions

(1) Social Knowledge

Similar to the TRIPS agreement in regard to generic drugs for AIDS treatment, exceptions could be made for developing countries to gain access to educational textbooks and software programmes of developed country providers at prices affordable for people of least developed countries

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(LDC). Copyright laws could be amended accordingly to facilitate access to educational products for LDCs with accompanying protection against the use of such discounted ES products in third markets.

(2) Multi-developmental Education

Building on the concept of multi-functionality of trade in agricultural products[45], similar solutions could be considered for trade in ES which is more than a simple transaction between a supplier and purchaser of ES. As RUTH DUNKIN states: "Education is more than a simple public good provided to students for a fee, since students later provide services to the community, which in turn provides resources to education and research. Education plays a central role in social cohesion [...] education must be seen as an investment, rather than a cost".[46] Governments need to achieve multiple developmental goals through education, ranging from knowledge and skills transfer and citizen education to social cohesion, in order to ensure sustainable social and economic development of their respective societies. Analogous to the concept of multi-functionality of trade in agricultural products, GATS/ES could provide the basis for trading ES within a larger frame of reference.

Even though both options proposed need further elaboration, they might nevertheless offer a solution which would make it possible to keep GATS/ES within the WTO structure, thereby reducing possible conflicts of interpretation and application which are to be expected should trade in ES be moved to an organisation outside the WTO framework.

7 Conclusions

In conclusion, the following observations can be made:

1. The internationalisation of education, particularly of higher education and adult education, has intensified quite independently of trade in ES within the WTO/GATS context. It would be a mistake to expect that the Doha negotiation Round would either stop this trend towards internationalisation, nor would an agreement dramatically accelerate the trend. An agreement within WTO/GATS could at best offer agreed mechanisms to liberalise Mode 1, 2, 3 and 4 supply of educational serv-

45 See OECD (2001).
46 Interview with RUTH DUNKIN in OECD (2002e) p. 1.

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ices. Such an agreement, even if limited in scope, could on the other hand offer predictable market conditions which in turn would be welcomed by investors (private or public), governments, and consumers alike.

2. Providing education remains to a large extent the responsibility of governments. Faced with budget cuts and limited spending power, many governments might want to consider participation by private sector providers including foreign investors (through FDI). Private sector providers could alleviate the financial pressures on governments. However, this does not mean that governments should abdicate responsibility. Regulating education at a national level also includes providing students with the highest possible, equal access to education for the benefit of social cohesion and for the most effective development of a skilled manpower potential to meet the economic and social challenges of the next generation. Letting private sector ES providers gain monopoly positions in the most lucrative segments of education, higher education and adult education, could deepen divisions between wealthy and less privileged social classes, thereby leading to a two-tier society which is not the best solution to meet the complex challenges of globalisation.

3. Quality assurance and accreditation of ES providers remain a double-edged issue. While it is perfectly legitimate to prevent fraud and limit misleading practices (e.g. "diploma mills without sufficient content nor adequate quality"), it would be too short-sighted to preserve existing positions. Innovation in education is equally needed as much as inventions in industry. Some of the constructive and innovative impulses might be better facilitated through competition of ES providers, be they privately or publicly owned. In addition, some of the technical features of quality assessment, accreditation and recognition of degrees might be better negotiated outside the WTO/GATS context.

4. Providing and organising education in the most cost efficient and learning effective manner, to ensure the largest possible participation, requires strategic policies, involvement and active participation of the stakeholders (employers, labour unions, parent organisations, political parties, sector competent NGOs). Each WTO negotiation round is complex and very challenging. The Doha Round is even more complex than the previous Uruguay Round. Country negotiators are expected to do their best to safeguard the interest of their respective countries.

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However, it would be unfair to blame these official negotiators for any shortcomings if the concerned sector stakeholders do not involve themselves in defining their short-term and long-term interests. It is up to the sectoral stakeholders to consolidate their at times divergent views, and to communicate their strategic interests to the respective national WTO negotiators through constructive discussions, not through threats or tactical stand-off behaviour.

5. Education is a multi-faceted undertaking characterised by a multitude of convergent and divergent interests of multiple stakeholders. Education policy cannot be limited only to consideration of free choice and price efficiency criteria. Social cohesion and good citizen behaviour such as democracy and ethical values are as important as top level scientific research or highest level business degree programmes. It would be unwise to opt solely for "free trade" positions since important private sector providers might not be willing to invest in low revenue ES services such as civic education or basic professional skills training. Governments cannot opt out of such responsibilities. Similar to the concept of multi-functionality in the agricultural sector, education requires a multi-faceted approach in order to guarantee adequate provision of ES for various target groups, and to ensure access to education for the less-privileged. Such a multi-developmental perspective is even more necessary for developing countries who often lack financial resources and technical know-how in the field of education. Agreement on GATS/ES should provide sufficient flexibility to safeguard the multi-functional diversity of education, as well as the fundamental different needs of developing countries without falling into the trap of "managed trade" immobility in ES.

6. A balance has to be achieved between legitimate requests for consumer protection and sovereignty rights by governments to pursue high quality education without falling into the trap of closing market access to foreign ES providers. The tendency of WTO members is to reduce technical barriers to trade, not to increase them, though without ending up regulating trade which is not be the mandate of WTO. The new catch word is instead "trade facilitation", meaning the recognition and reduction of trade barriers due to a myriad of different norms, standards and requirements which often result in higher transactions costs affecting particularly developing country exporters who might have neither the technical know-how nor the necessary resources to deal with the current multitude of technical trade barriers.

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