



United Nations Educational,
Scientific and Cultural Organization



COMMONWEALTH *of* LEARNING



Higher Education Crossing Borders:

A Guide to the Implications of the
General Agreement on Trade in Services
(GATS) for Cross-border Education

A Report Prepared for the
Commonwealth of Learning
and UNESCO

by Jane Knight

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Commonwealth of Learning
1055 West Hastings, Suite 1200
Vancouver, British Columbia
Canada V6E 2E9

Telephone: +1 604 775 8200
Fax: +1 604 775 8210
Web: www.col.org
E-mail: info@col.org



UNESCO
The Division of Higher Education
7 place de Fontenoy
Paris 75352
France

Telephone: +33 (0)1 45 68 08 88
Fax: +33 (0)1 45 68 56 32
Web: www.unesco.org
E-mail: amq@unesco.org

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About the Author

Dr. Jane Knight focuses her research and professional interests on the international dimension of higher education at the institutional, system, national and international levels. Her work in many countries of the world helps to bring a comparative, development and international policy perspective to her teaching and research. She is the author of many publications on internationalization concepts and strategies, quality assurance, institutional management, academic mobility, cross-border education, GATS and capacity-building. In the last 10 years she has taken a leadership role in working with international teams on three regional studies/publications for the OECD, UNESCO and the World Bank on internationalization of higher education in Europe/North America, Asia Pacific and Latin America. Currently she is involved with a similar project in Africa.

Dr. Knight has been the principal researcher and author of several national and international survey projects on internationalization, including the 2003 and 2005 worldwide surveys by the International Association of Universities. She is an adjunct professor at the Ontario Institute for Studies in Education, University of Toronto, and is a member of the Editorial Board of the *Journal of Studies in International Education* and the *Indian Journal on Higher Education: Policy and Practice*.

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Commonwealth of Learning

Dave Wilson, Communications Manager, COL

Alex Hennig, Designer/Production Coordinator, COL

Lydia Meister, Programme Coordinator, COL

Ruvani Ameresekere, Programme Assistant, COL

Georgina Montgomery, Copy Editor, Victoria, BC, Canada

Reviewers

Prof. Abdel Bagi (A.G.) Babiker, Ministry of Higher Education and Scientific Research, Sudan

Dr. Mohsen Elmahdy Said, Ministry of Higher Education, Egypt

Dr. Yomn Mohamed Hafez El Hamaki, Ain Shams University, Egypt

Lim Aik Hoe, Trade in Services Division, World Trade Organization, Switzerland

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Karen Rosemin, Director, Distance Learning, Ministry of Science Technology and Tertiary Education, Trinidad & Tobago

Coordinators:

Asha Kanwar, Vice President, Commonwealth of Learning

Stamenka Uvalić-Trumbić, Chief of the Section for Reform, Innovation and Quality Assurance, Division of Higher Education, UNESCO

Foreword

As bastions of critical thinking, cutting-edge research and academic freedom, universities play a vital role in social development. At the dawn of the 21st century, this is particularly significant for the process of building knowledge societies in which knowledge acts as the motor of economic growth, cultural development and social change.

Higher education has always been at the heart of UNESCO's mission to promote the intellectual solidarity of humankind. In 1998, this engagement was reinforced by the World Conference on Higher Education (WCHE) organized by UNESCO in Paris and by its "Declaration on Higher Education in the 21st Century." The World Conference, which brought together over 4,000 participants from 182 countries, provided a comprehensive forum for policy debate. It focused on the radical change and renewal of higher education and put forward key principles to guide higher education developments worldwide, in particular equity of access, quality and relevance, and higher education as a public good and a basic human right.

Five years later, the WCHE+ 5 meeting (held in Paris in 2003) revealed that the changes taking place were already exceeding the far-reaching expectations of 1998: demographic growth estimations pointed to a population of 7 billion to 8 billion people by 2025; the threshold of 100 million students worldwide had been crossed; and it was estimated that there would be some 125 million students by 2020. Today, five countries (China, USA, India, Russia and Japan) account for 53.1 million students, which is more than half the total number of students in the world. At the same time, as demand for higher education continues to grow, state budgets for higher education keep on decreasing.

The face of higher education is changing rapidly. In addition to the trends outlined above, higher education is subject to mounting pressures. It is expected, for example, to engage with the challenges of sustainable development and to accommodate itself to mounting demands for lifelong learning. New providers, such as virtual universities, branch campuses in other countries and corporate universities, are creating a new paradigm of higher education largely as a response to new demand, but also as a way of taking advantage of technological developments. Moreover, new trends and challenges posed by the growing commercialization of higher education require that increased attention be paid to such questions as the quality of higher education provision and the portability of higher education qualifications.

Higher education has always had an important international dimension. In this age of accelerating globalization, however, dynamic processes of increasing interdependence, growing competition and the communications revolution are calling into question the traditional forms of the university. Furthermore, many countries are witnessing a major change in the role of the nation-state in higher education, especially through the loss of its monopoly over higher education policy. This is a cause for concern for those who fear that increasing commercialization of higher education will adversely affect social inclusion and the educational opportunities of the poor.

It is against this background of changes and developments that one must consider the General Agreement on Trade in Services (GATS) and its implications for the world of higher education. Adopted in 1995 under the World Trade Organization (WTO), GATS clearly identifies education as a service to be liberalized and regulated by trade rules. While its supporters see GATS as an opportunity, others view it more as a threat. For some, the notion of higher education as a tradable commodity is a challenge to the traditional values of higher education – especially the idea of higher education as a public good and a public responsibility, and of access to higher education according to merit being a basic human right.

As a response to the ethical challenges and dilemmas facing higher education in an era of globalization, UNESCO launched in 2002 a Global Forum on International Quality Assurance, Accreditation and the Recognition of Qualifications. Its purpose was to provide a platform for exchange between different partners and to foster debate on the social, political, economic and cultural dimensions underpinning the relationship between globalization and higher education. The participants agreed that there was a need to build bridges between education (i.e., academic values and principles) and trade in higher education services. Moreover, they recognized that existing instruments – such as the UNESCO regional conventions on the recognition of qualifications – could be adapted to new challenges, while being based on the values affirmed by the Declaration of the World Conference. The Global Forum also stressed that research on the concept of the global public good and empirical evidence about the impact of cross-border higher education on widening access to higher education were needed in order to support policy development.

To make the UNESCO position clear, an Education Sector Position Paper on “Higher Education in a Globalized Society” was prepared in 2004. It is one in a series of position papers to give the organization’s views on key issues relevant to contemporary education, based on a review of trends, issues, worldwide debates and regional reviews through case studies, as well as UN and UNESCO standard-setting instruments and principles.

A further contribution to the debate has come through the UNESCO Forum on Higher Education, Research and Knowledge, which has addressed the issue of GATS in meetings in Accra, Seoul and Mexico, each of which produced a statement and/or declaration.

Finally, as part of this framework, UNESCO and the OECD have jointly developed the *Guidelines for Quality Provision in Cross-border Higher Education*, launched at the end of 2005, as an educational response to GATS. The Guidelines provide an international framework to promote dialogue and international cooperation between providers and receivers of higher education, with a special focus on student protection.

This Guide, *Higher Education Crossing Borders: A Guide to the Implications of the General Agreement on Trade in Services (GATS) for Cross-border Education*, is perceived as complementary to these efforts. We are pleased that the Guide is a joint initiative of UNESCO and the Commonwealth of Learning (COL), within their shared mission of contributing to the Millennium Development Goals and other development goals through policy advice and capacity-building for decision-makers in education. As the specialized agency of the United Nations for education, culture, science and communication, UNESCO has a specific mandate in the field of higher education. COL, for its part, is an intergovernmental organization created by Commonwealth Heads of Government to encourage the development and sharing of open learning/distance education knowledge, resources and technologies. COL is a particularly appropriate partner for UNESCO in this endeavour, as the larger part of cross-border higher education takes place through open and distance learning.

The Guide provides basic information on the principles and rules of GATS and the new developments related to cross-border higher education. We hope that the key issues it identifies will assist governments and academic leaders in maximizing the benefits and overcome the challenges of cross-border higher education.

Koichiro Matsuura
Director-General of UNESCO

Preface

The Chinese scholars in ancient India and the academic nomads of medieval Europe would be thoroughly confused by the diversity of cross-border higher education today. No doubt, they would also share the alarm of their contemporary counterparts at the legal and technical complexities of the General Agreement on Trade in Services (GATS) and the prospect of its application to education.

Given the sound and fury generated by these two related developments, the Commonwealth of Learning and UNESCO have jointly prepared this Guide to answer all the questions that you wanted to pose but were afraid to ask about cross-border education and GATS.

The Guide examines the different dimensions of cross-border education within the context of GATS: the present landscape, opportunities and challenges and the implications for policy and practice in higher education. It is meant for a range of stakeholders: policy-makers, senior academic leaders, faculty members, students and researchers. The aim is to heighten awareness and knowledge about this elusive and evolving phenomenon so that both policy-makers and practitioners can make informed decisions in the light of their own priorities and goals. Initial reviews from countries as diverse as Sierra Leone, Trinidad & Tobago and India suggest that this Guide will be of particular benefit to colleagues in the developing world.

The central challenge in international higher education is the stark contrast in participation rates across the globe. In the developed world, Age Participation Rates (APRs) in post-secondary education of around 50% are becoming the norm. Addressing this challenge, Malaysia plans to raise its APR to 35% over the next four years, requiring a 250% increase in student numbers. China has more than doubled its enrolments in higher education over a short period and, with 16 million students, now has the world's largest higher education system.

Yet APRs still languish below 10% in India and even below 5% in parts of Sub-Saharan Africa. This is the dilemma. Participation rates must now increase dramatically throughout the developing world. After many wasted years when international bodies such as the World Bank downplayed the importance of post-secondary education, everyone is now agreed about its vital role in development. Most of the response to the challenge must be home grown, but higher education across borders may also help countries rise to the challenges of access, quality and costs.

Cross-border higher education will not help developing countries unless it is accessible, available, affordable, relevant and of acceptable quality. Also key are the contentious issues of who awards the degree, who recognizes the degree and whether this is accredited or quality assured.

Many developing countries lack quality assurance mechanisms. Where they do exist, as in India, the countries are not properly equipped to cope with cross-border provision. Even though a national agency like the Higher Education Quality Committee in South Africa deals with foreign providers and approves the setting up of branch campuses, distance education from abroad eludes its grasp.

Cross-border provision without concern for equity and social justice has generated a backlash that manifests itself as restrictive regulations and punitive measures. This clearly indicates that the providers from the developed world must instill confidence and trust within the developing world by forging partnerships, facilitating the development of quality assurance mechanisms and building indigenous human resource capacity. Even if the Open Educational Resources movement starts to make free quality content available, it is no use without institutions and teachers to support it.

The Guide points out that even if the impact of GATS on higher education proves to be gradual, the trend to liberalization is probably unstoppable. The nub of the issue is that countries will increasingly have to demonstrate that they are treating foreign providers in the same way as national institutions. This requires governments to have clear legislative and regulatory frameworks for higher education on their territories. Furthermore, these frameworks will be most helpful if they embrace all types of providers: state, private and for-profit institutions; and all types of provision, from face-to-face teaching to technology-mediated distance learning.

In this context, intergovernmental agencies like COL and UNESCO have an important role because they can augment regional and national efforts in capacity enhancement and mobilize international debates on key issues such as quality assurance.

Created by Commonwealth Heads of Government in 1987, COL is the only international, intergovernmental organization that focuses exclusively on enhancing access to education and training through open, distance and technology-enhanced learning. It works with governments and partners to expand the scope, scale and quality of learning by promoting policies, building models, creating materials, enhancing capacity and nurturing networks in support of development goals.

Having moved from UNESCO to COL, I find that these two intergovernmental bodies complement each other well. UNESCO covers the whole of education, whereas COL focuses on technology-mediated learning. UNESCO's 191 Member States represent the world in all its complex diversity, whereas COL exists for 53 countries, mostly developing states that are democratic and at peace. A special feature is that two-thirds of Commonwealth countries are small states, either islands or landlocked territories, in which the use of learning technologies is particularly helpful. Finally, UNESCO has hundreds of people around the world while the COL staff number only 40, split between Vancouver and New Delhi.

Despite the difference in size, both organizations are committed to global development goals and the needs of Member States. UNESCO has put in place Regional Conventions for the awarding and recognition of qualifications – conventions that have been ratified by 100 member states across Europe, Asia and the Pacific, Latin America and Africa. More recently, it has also worked with the OECD to develop Guidelines for cross-border higher education, in which COL played a small but helpful role in ensuring that distance education was addressed.

I am delighted to commend this Guide which makes complex phenomena such as cross-border higher education and GATS simple and easy to understand. The language is lucid and the presentation precise. Key questions are addressed and the Guide carries links to resources and sites so that readers can examine issues in greater depth. This COL–UNESCO publication will be a valuable resource and a companion volume to the UNESCO–OECD Guidelines. I am sure that once the ancient Chinese scholar and the medieval European academic got over the shock of seeing education treated as a tradable commodity, they too would thoroughly approve!

Sir John Daniel
Commonwealth of Learning

1 Introduction to the Guide

Why are cross-border education and GATS important issues?

The overall demand for higher and adult education, especially professionally related courses, is increasing in most countries. There are a number of reasons for this: changing demographics, the increased number of secondary school graduates, the movement to lifelong learning, and the growth of the knowledge economy. While demand is growing, however, the capacity of the public sector to satisfy this need is being challenged.

At the same time, many changes are occurring on the education delivery side:

- Innovations in information and communication technologies are providing alternative and virtual ways to deliver higher education.
- New types of providers are emerging, such as international companies, for-profit institutions, corporate universities, and IT and media companies.
- Providers – public and private, new and traditional – have begun delivering education across national borders to meet the demand in other countries.
- Alternative types of cross-border program delivery, such as branch campuses and franchise and twinning arrangements, are being developed.

The result is that a rather complex picture of higher education provision is developing. Yet some observers might say, so what?

This is an important question to ask. Many educators would point out that the demand for higher education has been steadily increasing for years and that academic mobility between countries has been a central feature of higher education for decades, if not centuries. They therefore question why there is such interest in the prospect of increased mobility of education. The answer lies partially in the fact that while cross-border education is an important aspect of the internationalization of higher education, it has not been subject to international trade rules and, until recently, has not really been described as commercial trade.

The fact that the General Agreement on Trade in Services (GATS) clearly identifies education as a service sector to be liberalized and regulated by trade rules is new territory for the education sector.

In this way, GATS has served as an important wake-up call. It has forced the education sector to carefully examine two separate but related issues. The first is the significant growth in cross-border education (both commercial and non-profit) that is happening even without trade agreements. The second is the impact of multilateral trade rules such as GATS on domestic and cross-border higher education and on the further promotion of commercial trade in education services.

What is the purpose of the Guide?

This Guide focuses on the changes, challenges, opportunities and risks involved in cross-border education operating in a trade environment. The major objectives of the Guide are to:

- explore the new world of cross-border education, especially the new types of initiatives, providers (companies and institutions) and methods of program delivery;
- provide basic information on, and an analysis of, the principles and rules of GATS as they relate to the higher education sector;
- discuss the major issues and implications arising from increased commercial cross-border education and the application of new multilateral trade rules; and
- confirm the realities and challenges that government officials and senior academic leaders face as they reflect on changes to policy and regulations in light of increased cross-border education in the context of GATS.

Who will find the Guide useful?

The Guide addresses, as its primary audience, higher education policy-makers and senior leaders in developing countries – especially those nations that are in the first stage of discussing the implications of increased cross-border education and the presence of new trade agreements such as GATS. Faculty members, students and administrators in higher education institutions and non-government organizations may also find the Guide enlightening and be motivated to research the topic further.

How the Guide is organized

Even though the topic of “cross-border education and GATS” is complex, the intention is to make this Guide as clear and straightforward as possible. Where appropriate, a question and answer format is used. There is always a risk in overlooking important nuances when trying to present complicated information in a concise manner. Therefore, sources of further information are listed at the end to allow readers to explore this topic more deeply.

Sections 1 and 2 provide background information on the nature and scope of cross-border education. This is followed in Section 3 with a basic introduction to GATS, explaining some of the key rules and controversial issues of this new trade agreement. Sections 4 and 5 bring GATS and cross-border education together by highlighting potential issues and implications of GATS for higher education in general, and cross-border education in particular. The last section of the Guide, Section 6, reviews the realities of today and identifies some of the new challenges that policy-makers in developing countries face as they think about what policies and regulations would be useful to help maximize potential benefits and minimize potential risks. The issues, implications and challenges are understandably quite generic because they need to apply to a diversified group of developing countries – some of which are friendly to commercial cross-border education trade and GATS – and others of which are adverse to the trade and the agreement.

Key terms and concepts

The growing interest in the international dimension and delivery of higher education has led to an increase in the number of terms used in the field. In the Guide, the following key terms and concepts are frequently used:¹

Globalization: A process that is increasing “the flow of people, culture, ideas, values, knowledge, technology, and economy across borders, resulting in a more interconnected and interdependent world.” Globalization affects each country differently. It can have both positive and negative consequences, according to a nation’s individual history, traditions, culture, priorities and resources. Education is one of the sectors impacted by globalization.

Internationalization of higher education: Typically, “the process of integrating an international, intercultural, and global dimension into the purpose, functions (teaching, research, service) and delivery of higher education”; a different process than globalization.

Internationalization strategies: In the context of higher education, refers to both campus-based activities and cross-border initiatives to facilitate and promote internationalization. Strategies include: international cooperation and development projects; institutional agreements and networks; the international/intercultural dimension of the teaching/learning

process, curriculum and research; campus-based extracurricular clubs and activities; mobility of academics through exchange, field work, sabbaticals and consultancy work; recruitment of international students; student exchange programs and semesters abroad; joint/double degree programs; twinning partnerships; and branch campuses. This Guide addresses only the cross-border aspects of internationalization of higher education.

Cross-border education: The movement of people, knowledge, programs, providers and curriculum across national or regional jurisdictional borders. Cross-border education is a subset of “internationalization of higher education” and can be an element in the development cooperation projects, academic exchange programs and commercial initiatives. The commercial initiatives are the focus of this Guide.

Trade of education services: Cross-border education initiatives that are commercial in nature and are usually intended to be for profit (though this is not always the case); a term primarily used by the trade sector.

Note: The list shows the terms in a hierarchy, from generic, such as globalization and internationalization of higher education to very specific, such as trade of commercial education services. Although this Guide focuses primarily on cross-border education activities of a commercial nature, in reality the mode of cross-border education delivery may be the same for academic exchange and commercial activity, but the purpose of the two is different – the latter being for-profit.

1 Knight, J. (2006). “Crossborder Education: An Analytical Framework for Program and Provider Mobility” in J. Smart and B.Tierney (eds.). Higher Education Handbook of Theory and Practice: Springer, Dordecht, Netherlands.

2 Cross-border Education: Complexities and Challenges

What is cross-border education?

Cross-border education refers to the movement of people, programs, providers, knowledge, ideas, projects and services across national boundaries. The term is often used interchangeably with “transnational education,” “offshore education” and “borderless education.”² There are subtle but important differences between these terms,³ and the reader who wishes to explore this further can consult the list of references at the end of the Guide.

A fuller description of cross-border education is included in the recent *Guidelines for Quality Provision in Cross-border Higher Education* jointly developed by UNESCO and the OECD.

In that document, cross-border education is described as:

“higher education that takes place in situations where the teacher, student, program, institution/provider or course materials cross national jurisdictional borders. Cross-border education may include higher education by public/private and not-for-profit/ for-profit providers. It encompasses a wide range of modalities in a continuum from face-to-face (taking various forms from students travelling abroad and campuses abroad) to distance learning (using a range of technologies and including e-learning).”⁴

Table 1 provides a framework to understand the nature of cross-border education and illustrates two significant trends. The first trend is the vertical shift downwards from student mobility to program and provider mobility. It is important to note that the numbers of students seeking education in foreign countries is still increasing. However, more emphasis is currently being placed on delivering foreign academic courses and programs to students in their home

2 CVCP (Committee of Vice-Chancellors and Principals) (2000). *The Business of Borderless Education: UK Perspectives*. CVCP, London.

3 Knight, J. (2005). *Borderless, Offshore, Transnational and Crossborder Education: Definition and Data Dilemmas*. October 2005 Report of the Observatory on Borderless Higher Education, London.

4 UNESCO/OECD (2005). *Guidelines for Quality Provision in Cross-border Education*. Paris. See <http://www.oecd.org/dataoecd/27/51/35779480.pdf>.

country. The second shift is from left to right, signifying substantial change in orientation from development cooperation to competitive commerce – or, in other words, from aid to trade. Given the presence and importance of GATS and other multi-lateral trade agreements, this discussion focuses on the mobility of programs and providers for commercial purposes.

TABLE 1: Framework for Cross-border Education

Category	Forms and Conditions of Mobility		
	Development Cooperation	Educational Linkages	Commercial Trade
PEOPLE Students Professors/scholars Researchers/ Experts/consultants		Semester/year abroad Full degrees Field/research work Internships Sabbaticals Consulting	
PROGRAMS Course, program sub-degree, degree, post-graduate		Twinning Franchised Articulated/validated Joint/double award Online/distance	
PROVIDERS Institutions Organizations Companies		Branch campus Virtual university Merger/acquisition Independent institutions	
PROJECTS Academic projects Services		Research Curriculum Capacity-building Educational services	

Adapted from Knight 2005

New developments in cross-border education

The demand for international education is forecast to increase from 1.8 million international students in 2000 to 7.2 million international students in 2025.⁵ This is a staggering increase that presents enormous challenges as well as opportunities. It is not known what proportion of the demand will be met by student mobility, but it is clear that there will be exponential growth in the movement of programs and institutions/providers across national borders.

A fascinating but very complex world of cross-border education is emerging. The last five years have been a hotbed of innovation and new developments.⁶ For instance:

- Phoenix University has become the largest private university in the U.S. (owned and operated by the Apollo Group company) and is now present or delivering courses in Puerto Rico, Netherlands, Mexico and Canada. Other Apollo companies are offering courses in Brazil, India and China.
- The Netherlands Business School (Universiteit Nijenrode) has recently opened a branch campus in Nigeria.
- Harvard is developing two branch campus initiatives in Cyprus and the United Arab Emirates.
- Jinan University will be the first Chinese university to open a branch campus outside China when it does so in Thailand.
- Laureate Education (formerly Sylvan Learning Systems) has purchased whole or part of private higher education institutions in Chile, Mexico, Panama and Costa Rica and owns universities in Spain, Switzerland and France.
- Dubai has developed a “Knowledge Village” in the Dubai Technology and Media Free Zone. The London School of Economics, India’s Manipal Academy of Higher Education and the University of Wollongong from Australia are offering courses through franchising agreements and branch campuses.
- The University of Westminster (UK) is the key foreign academic partner in the new private Kingdom University of Bahrain and plays a similar advisory/provision role with new institutions in Nigeria, Uzbekistan and Kazakhstan.
- As of June 2003, Hong Kong S.A.R., China, had 858 degree level programs from 11 different countries operating, and Singapore had 522 degree level programs from 12 foreign countries.

5 Bohm A., D. Davis, D. Meares and D. Pearce (2002). *The Global Student Mobility 2025 Report: Forecasts of the Global Demand for International Education*, IDP, Canberra, Australia.

6 These examples taken from Observatory on Borderless Higher Education (OBHE) (2002–2004), *Breaking News Stories from 2002–2004*. OBHE, London. See <http://www.obhe.ac.uk>.

- In 2002, Australia, one of the lead exporters of education, had 97,000 students enrolled in 1,569 cross-border programs.

These are only a few examples of hundreds of new initiatives that have developed in the last five years. They involve higher education providers (including institutions and companies) delivering their courses and programs to students in their home countries. It is convincing evidence that it is no longer just the students moving across borders.

Who are the cross-border providers?

The increase in worldwide demand for higher education has resulted in a diversity of providers delivering education across borders as illustrated in the previous section. The providers are classified into two categories: 1) the traditional higher education institutions who are normally oriented to teaching, research and service/commitment to society; and 2) the “new or alternative providers” who primarily focus on teaching and the delivery of education services.

Traditional higher education institutions (HEIs)

These include public non-profit, private non-profit and private for-profit institutions. Many countries have a mixed system of publicly and privately funded HEIs. There is a definite blurring of the boundary between public and private institutions as many public universities now find it necessary to seek private financing and to charge a tuition or service fee. On the other hand, private institutions in many countries are eligible for public funds and engage in social non-profit activities.

One important factor is whether the HEI is part of a home national education system and recognized by a national bona fide licensing/accrediting body. In cross-border education, recognition/registration is critical to ensuring the legitimacy of the institution and the qualifications provided. The majority of traditional universities are bona fide institutions that comply with domestic and foreign regulations (where they exist). But there is also an increase in rogue or low quality providers who are not recognized by bona fide accreditation/licensing bodies in either the sending or receiving countries. “Rogue providers” are often accredited by self-accrediting groups or by agencies that sell accreditation (“accreditation mills”).

In addition, there is a worrisome increase in the number of “degree mills” operating around the world.⁷ These are often no more than web-based companies

⁷ Garrett, R. (2005). “Fraudulent, sub-standard, ambiguous: the alternative borderless higher education.” Briefing Note, July 2005. Observatory on Borderless Higher Education, London.

that are selling certificates based on “life experiences” and not delivering any education programs. This Guide acknowledges the existence of low quality rogue providers, but focuses on the serious and trustworthy providers of higher education.

New or alternative providers

The new providers are diverse in nature, but typically described as a company or organization that provides education programs and/or services for profit purposes. They are more oriented to delivering education and training programs than undertaking research and scholarly activities. The new providers include publicly traded companies such as Apollo (USA), Aptech and NIIT (India) and Informatics (Singapore), corporate universities such as those run by Motorola and Toyota, and networks of universities, professional associations and organizations. These new types of cross-border providers can be bricks and mortar institutions or virtual universities and can complement, compete, collaborate or simply co-exist with domestic higher providers (and other cross-border providers).

How do programs move across borders?

Cross-border mobility of programs can be described as “the movement of individual education/training courses and programs across national borders through face-to-face, distance or a combination of these modes. Credits towards a qualification can be awarded by the sending foreign country provider or by an affiliated domestic partner or jointly.”⁸ Franchising, twinning, double/joint degrees and various articulation models are the more popular methods of cross-border program mobility. A short description of each follows:

Franchise

This is an arrangement whereby a provider in source Country A authorizes a provider in Country B to deliver course/program/service in Country B or other countries. The qualification is awarded by the provider in Country A. Arrangements for teaching, management, assessment, profit-sharing and awarding of credit/qualification are customized for each franchise arrangement and must comply with national regulations (if they exist) in Country B.

8 Knight, J. (2005). *Crossborder Education: Programs and Providers on the Move*. Research Monograph 10. Canadian Bureau for International Education, Ottawa, ON, Canada.

Twining

In a twinning situation, a provider in source Country A collaborates with a provider in Country B to develop an articulation system that allows students to take course credits in Country B and/or in source Country A. Only one qualification is awarded by the provider in source Country A. Arrangements for twinning programs and awarding of degrees usually comply with national regulations of the provider in source Country A.

Double/joint degree

This is an arrangement where providers in different countries collaborate to offer a program for which a student receives a qualification from each provider or a joint award from the collaborating partners. Arrangements for program provision and criteria for awarding the qualifications are customized for each collaborative initiative in accordance with national regulations in each country.

Articulation

Various types of articulation arrangements between providers situated in different countries permit students to gain credit for courses/programs offered by all of the collaborating providers. This allows students to gain credit for work done with a provider other than the provider awarding the qualification.

Validation

Validation arrangements between providers in different countries allow Provider B in the receiving country to award the qualification of Provider A in the source country. In some cases, the source country provider may not offer these courses or awards itself, which may raise questions about quality.

Virtual/distance

This is an arrangement where a provider delivers courses or a program to students in different countries through distance and online modes. It may include some face-to-face support for students through domestic study or support centres.

It is clear that a key factor in program mobility is “who” awards the course credits or ultimate credential for the program. As the movement of programs proliferates, there will undoubtedly be further changes to national, regional and even international regulatory frameworks. The question of “who grants the

credits/awards” will be augmented by “who recognizes the provider” and whether or not the program has been “accredited or quality assured” by a bona fide body. Of critical importance is whether the qualification is recognized for employment or further study in the receiving country and in other countries as well. The perceived legitimacy of the qualification and its recognition at home and abroad are fundamental issues yet to be resolved.

Given that several modes for program mobility involve partnerships, there are questions about who owns the intellectual property rights to course design and materials. What are the legal roles and responsibilities of the participating partners in terms of academic, staffing, recruitment, evaluation, financial and administrative matters? While the movement of programs across borders has been taking place for many years, it is clear that the new types of providers, partnerships, awards and delivery modes are challenging national and international policies and regulatory frameworks.

How do traditional and new providers move across borders?

Cross-border mobility of providers can be described as “the physical or virtual movement of an education provider (institution, organization, company) across a national border to establish a presence in order to offer education/training programs and/or services to students and other clients.” The difference between program and provider mobility is one of scope and scale in terms of programs and services offered and the local presence (and investment) by the foreign provider. A distinguishing feature between program and provider mobility is that with provider mobility the learner is not necessarily located in a different country than the awarding institution, which is usually the case in program mobility.

Credits and qualifications are awarded by the foreign provider (through foreign, local or self-accreditation methods) or by an affiliated domestic partner. Different forms of cross-border provider mobility are as follows:⁹

Branch campus

A provider in Country A establishes a satellite campus in Country B to deliver courses and programs to students in Country B (Country A students may also take a semester or courses abroad). The qualification awarded is from the provider in Country A.

⁹ Knight (2005).

Independent institution

Foreign Provider A (a traditional university, a commercial company or alliance/network) establishes in Country B a stand-alone higher education institution to offer courses/programs and awards. There is usually no “home institution” in Country A and it is therefore independent.

Acquisition/merger

Foreign Provider A purchases part of or 100% of the local higher education institution in Country B.

Study centre/teaching site

Foreign Provider A establishes study centres in Country B to support students taking their courses/programs. Study centres can be operated independently or in collaboration with local providers in Country B.

Affiliation/networks

Different types of “public and private,” “traditional and new,” “local and foreign” providers collaborate through innovative types of partnerships to establish networks and institutions to deliver courses and programs in local and foreign countries through distance or face-to-face modes.

Virtual university

Provider A delivers credit courses and degree programs to students in different countries through distance education, using predominantly the Internet technology mode, generally without face-to-face support services for students.

The virtual and physical movement of providers to other countries raises many of the same registration, quality assurance and recognition issues that program mobility does, but there are additional factors to consider if a network or local/foreign partnerships are involved. Setting up a physical presence requires attention being paid to national regulations regarding status of the entity, total or joint ownership with local bodies, tax laws, for profit or non-profit status, repatriation of earned income, boards of directors, staffing, granting of qualifications, and selection of academic programs and courses. For some countries, it means that strict regulations are being developed to closely monitor (and, in some case, restrict) new providers coming into the country.

In other instances, incentives are being offered to attract high quality institutions/providers to set up a teaching site or full campus. This is especially true where “knowledge parks” or “technology zones” or “education cities” are being developed to attract foreign companies and education/training providers.

Varying perspectives on rationales and impacts of cross-border education

It is enlightening to examine the rationales and anticipated impacts of cross-border education from different viewpoints. Table 2 presents the perspectives of students in a home country, providers in a source or sending country, and providers in the home/receiving country on several key factors.¹⁰

As this section has shown, a wide range of traditional higher education institutions and new providers is involved in cross-border education and there are many different forms of delivery used. Whether one is a sending or a receiving country, a variety of important policy issues and implications must be considered. Most important is whether receiving countries have the requisite policies in place to effectively manage registration and accreditation of foreign education programs and providers and also regulation of the financial aspects – including taxes, degree of foreign/local ownership, profit sharing and repatriation.

The next section focuses on the basic rules of GATS (General Agreement on Trade in Services) and the key issues that the education sector needs to monitor as the agreement becomes further developed and is applied to private and commercial education moving across borders.

¹⁰ Knight (2006).

TABLE 2: Different Perspectives on Rationales and Impacts of Cross-border Education

Rationales and Impact	Enrolled Students in Home/Receiving Country	Institution/Provider in Source/Sending Country	Institution/Provider in Home/Receiving Country
Increased Access/Supply in Home Country	Ability to gain foreign qualification without leaving home. Can continue to meet family and work commitments.	Attracted to unmet need for higher education and training.	Relationship with foreign provider can be one of competition, collaboration or co-existence.
Cost/Income	Less expensive to take foreign program at home, as no travel or accommodation costs. Tuition fees from quality foreign providers may be high for majority of students.	Strong imperative to generate a profit for cross-border operations. Fees could be high for receiving country students.	If tuition or service charges are applied by local higher education institutions, it is anticipated that they would be lower than those charged by foreign providers.
Selection of Courses/Programs	Increased access to courses/programs in high demand by labour market (e.g., Business, IT, Communications).	Tendency to offer high demand courses that require little infrastructure or investment.	Local higher education institutions have to offer broad selection of courses regardless of whether they have high/low enrolments and/or have major lab or equipment requirements.
Language/Cultural and Safety Aspects	Can have access to courses in foreign and/or indigenous language. Students remain in familiar cultural and linguistic environment. Students today have stronger concerns about travel-related safety and security.	Language of instruction and relevance of curriculum to host country are key issues. If foreign language is used for delivery, then additional academic and linguistic support may be needed.	Courses are usually offered in national language (or languages).
Quality	Can be exposed to higher or lower quality course provision. National policies are required to register and quality-assure foreign providers.	Depending on delivery mode quality may be at risk. Assurance of relevant and high quality courses may require significant investment.	Presence of foreign providers may be a catalyst for innovation and improvement of quality in courses, management and governance.
Recognition of Qualification	Foreign qualification has to be recognized for academic and employment purposes.	May be difficult for academic award and for institution to be recognized in foreign country.	Recognized home providers have an advantage and are often attractive to foreign providers for their award granting powers.
Reputation and Profile	Because of massive marketing campaigns, international profile is often mistakenly equated with quality of provider/program.	Profile and visibility are needed to attain high enrolments and strategic alliances.	Home (domestic) providers are challenged to distinguish between those providers with high/low profile and high/low quality.

3 GATS: An Overview

It is easy to be overwhelmed with the legal and technical complexities of the General Agreement on Trade in Services (GATS). The purpose of this section is to provide a clear and concise explanation of GATS and to review some of the key and more controversial articles of the agreement. Readers who are familiar with the basic structure and principles of GATS may want to skip the first four subsections, which provide background information, and go to the last two sections that address the more controversial aspects of the agreement and the state of current negotiations and commitments.

What is GATS?

First, a few facts about the agreement:

- GATS is the first international legal trade agreement that focuses exclusively on trade of services. The others focus on the trade of products such as GATT – General Agreement on Tariffs and Trade. GATS is administered by the World Trade Organization (WTO) (see <http://www.wto.com>).
- GATS was negotiated at the Uruguay Round and the call for requests and offers came into effect in 1995. The progress made during the first 10 years has been less than expected in terms of the number and level of commitments made by countries to liberalize trade in the service sectors, but the current round of negotiations is not yet finished.
- GATS is a legally enforceable set of rules, having been ratified by the parliaments of each of the 149 member countries of WTO (as of March 2006).
- The purpose of GATS is to progressively and systematically promote freer trade in services by removing many of the existing barriers to trade; and to ensure increased transparency of trade regulations.

The agreement has three parts. The first part is the framework, which contains the general principles and rules such as National Treatment (NT) and Most Favoured Nation (MFN). The second part consists of the national schedules that list a country's specific commitments on access to its domestic market by foreign providers. The third part consists of annexes that detail specific limitations for each sector and can be attached to the schedule of commitments.

This Guide focuses on the first part of GATS which deals with key principles and rules.

The four “modes of supply”

Under GATS there are four ways in which a service can be traded. These are known as “modes of supply.” These four modes apply to all 12 of the service sectors (made up of 160 sub-sectors) in GATS, including education. Table 3 provides a generic definition for each mode, applies them to the education sector and comments on the relative size of the market.

TABLE 3: Modes of Supply in GATS

Mode of Supply	Explanation	Examples in Higher Education	Size/Potential of Market
1. Cross-border Supply	The provision of a service where the service crosses the border (excludes the physical movement of the consumer)	<ul style="list-style-type: none"> - distance education - e-learning - virtual universities 	<ul style="list-style-type: none"> - currently a relatively small market - seen to have great potential through the use of new information and communication technologies (ICTs) and especially the Internet, but difficult to monitor quality
2. Consumption Abroad	The provision of a service where the consumer moves to the country of the supplier	<ul style="list-style-type: none"> - students who go to another country to study 	<ul style="list-style-type: none"> - currently represents the largest share of the global market for education services and is growing
3. Commercial Presence	The provision of a service where the provider establishes, or has presence in, commercial facilities in another country in order to render service	<ul style="list-style-type: none"> - local branch or satellite campuses - twinning partnerships - franchising arrangements with local institutions 	<ul style="list-style-type: none"> - increasing interest and strong potential for future growth - most controversial because it appears to set international rules on foreign investment
4. Presence of Natural Persons	The provision of a service where people travel to another country on a temporary basis to provide the service	<ul style="list-style-type: none"> - professors, teachers, researchers working abroad 	<ul style="list-style-type: none"> - potentially a strong market, given the emphasis on mobility of professionals

Source: Knight 2002 (updated 2006)

Each of the 12 sectors in GATS (e.g., telecommunications, financial services, health, tourism, culture) is divided into sub-sectors. The education sector is organized into five sub-sectors of service: primary, secondary, higher, adult and other. The four modes described above apply to each of the sub-sectors. Higher education is the focus of this Guide, but attention to “other services” is important because this category includes a variety of services of interest to higher education, including testing, language training, student or teacher recruitment, and others.

The principal elements and rules of GATS

The overall framework of GATS contains a number of general obligations applicable to all trade in services. These are called unconditional obligations and are often referred to as the “top-down rules” because they apply regardless of whether a country has made a specific commitment to sectors or not.

Each WTO member lists in its national schedules those services for which it wishes to provide access to foreign providers. In addition to choosing which service sector (or sectors) will be committed, each country determines the extent of commitment by specifying the level of market access and the degree of National Treatment it is prepared to guarantee. These are known as the “bottom-up aspects” of GATS, because individual countries are making these decisions. GATS is known as a “positive list” approach, meaning that countries specify which sectors are to be included in the schedule of commitments. This is different from other agreements, where all sectors are automatically included and each country must specify which sector is excluded. Table 4 summarizes the key elements and rules of GATS.

TABLE 4: Key Elements and Rules of GATS

GATS Element/ Rule	Explanation	Application
Coverage	All internationally traded services are covered in the 12 different service sectors (e.g., education, transportation, finance, tourism, health, culture, communication, construction).	Applies to all services, with two exceptions: 1) service provided in the exercise of governmental authority; and 2) air traffic rights.
Measures	All laws, regulations and practices from national, regional or local government that may affect trade.	A generic term that applies to all sectors.
Unconditional Obligations ("Top Down")	Four unconditional obligations exist in GATS: <ul style="list-style-type: none"> - Most Favoured Nation (MFN) - Transparency - Dispute settlement - Monopolies 	Apply to all 12 service sectors regardless of whether a country has a scheduled commitment or not.
Most Favoured Nation (MFN) Treatment	Requires equal and consistent treatment of all foreign trading partners. 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. This also applies to mutual exclusion treatment. For instance, if a foreign provider establishes a branch campus in Country A, then Country A must afford all WTO members the same opportunity/treatment. Or if Country A chooses to exclude Country B from providing a specific service, then all WTO members are excluded.	May apply even if the country has made no specific commitment to provide foreign access to its markets. Exemptions, for a period of 10 years, are permissible.
Transparency	Requires that member countries publish all measures that affect services, inform the WTO about changes and respond to any request from other members concerning information about any changes.	Applies to all sectors and all countries.
Conditional Obligations ("Bottom Up")	The following conditional obligations are attached to national schedules: <ul style="list-style-type: none"> - National Treatment - market access 	Applies only to commitments listed in national schedules. The degree and extent of obligation is determined by country.
National Treatment	Requires equal treatment for foreign providers and domestic providers. Once a foreign provider has been allowed to supply a service in one's country, there should be no discrimination in treatment between the foreign and domestic providers.	Applies only where a country has made a specific commitment. Exemptions are allowed.
Market Access	Means the degree to which market access is granted to foreign providers in specified sectors. Market access may be subject to one or more of six types of limitations defined by GATS.	Each country determines limitations on market access for each committed sector or determines whether to make a commitment at all.

Source: Knight 2002 (updated 2006)

What does “removal of barriers” involve?

The purpose of GATS is to liberalize trade: that is, to reduce or eliminate restrictions and barriers in order to promote further trade. It is important to note that national policies and regulations that have been established by some countries in order to control the import of education and training services into their country are in fact sometimes seen by exporting countries as trade barriers that need to be removed. That said, a key principle of GATS is that it recognizes the right of member countries to regulate how they see fit to meet national policy objectives.

While some barriers are applicable to all 12 service sectors, others may be mode-specific or sector-specific. The commonly identified barriers are those relating to supply mode 1 and 3 (Table 3). Some of the generic barriers are:¹¹

- lack of transparency in government’s regulatory policy and funding frameworks;
- unfair manner of administration of a country’s domestic laws and regulations;
- hidden subsidies;
- economic needs test;
- discriminatory tax treatment; and
- delays in granting of approval (and denial of explanation or information when approval is not granted).

A number of barriers are specific to higher education services. The more important ones that education and trade policy-makers need to pay close attention to are listed below:

Mode 1: Cross-border supply

- Restriction on import of educational material
- Restriction on electronic transmission of course material
- Non-recognition of degrees obtained through distance mode

Mode 2: Consumption abroad

- Restriction on travel abroad based on discipline or area of study
- Restriction on export of currency and exchange
- Quota on the number of students proceeding to a county or institution
- Prescription of minimum standards or attainments

¹¹ Powar, K.B. (2003). “Indian Higher Education in a GATS-controlled Regime: Looking for a Pathway in the Haze of Uncertainty” in *Higher Education Policy and Practices*, Vol. 1(1-2):1-9.

Mode 3: Commercial presence

- Insistence on a local partner
- Insistence that the provider be accredited in the home country
- Insistence on partner/collaborator being from the formal academic stream
- Insistence on equal academic participation by foreign and local partner
- Disapproval of franchise operations
- Restrictions on certain disciplines/areas/programs that are deemed to be against national interests
- Limitations on foreign direct investment by education providers
- Difficulty in approval of joint ventures

Mode 4: Presence of natural persons

- Visa and entry restrictions
- Restriction on basis of quota for countries and disciplines
- Nationality or residence requirements
- Restriction on repatriation of earnings

Table 5 illustrates how these types of barriers apply to the education sector. The table lists a sample of requests for barrier removal that targeted countries are making of other countries seeking to increase market access.¹²

¹² These are examples from the United States' 2003 offer and are used for illustrative purposes only.

TABLE 5: Examples of One Country’s Requests to Remove Trade Barriers to Education

Request to Remove Barrier	Targeted Country
- Remove nationality requirements for certain executives and directors of educational institutions	Taiwan China
- Remove ownership limitations on joint ventures with local partners	Egypt, India, Mexico, Philippines, Thailand
- Remove prohibition on joint ventures with local partners	El Salvador
- Remove requirement that foreign entities teach only non-national students	Turkey
- Remove ban on education services provided by foreign companies and organization via satellite networks - Remove requirements for foreign educational institutions to partner with national universities - Remove ban on for-profit operations in education and training services - Relax other operational limits and restriction on geographic scope of activities	China
- Recognize degrees issued by accredited institutions of higher education (including those issued by branch campuses of accredited institutions) - Adopt a policy of transparency in government licensing and accrediting policy with respect to higher education and training	Israel, Japan
- Remove burdensome requirements, including non-transparent needs tests, applicable to foreign universities operating or seeking to operate in the country	South Africa
- Remove restrictions that the granting of degrees is limited to national institutions only	Greece
- Remove requirement that foreign entities teach only non-national students	Italy
- Remove quantitative limitation of education institutions in Ireland	Ireland
- Adopt a policy of transparency in government licensing and accrediting policy with respect to higher education and training	Spain, Sweden

One GATS principle is that countries be able to determine the degree of market access they will give to foreign providers. This is known as a “bottom-up” rule, and is seen as a kind of safeguard. However, in reality some safeguards can be interpreted as barriers. Therefore, in view of the GATS principle of progressive liberalization, it is questionable whether the so-called safeguards will be able to endure under the pressure of liberalization in future rounds of negotiations.

Controversial issues and questions

Which education services are covered or exempted in GATS?

Probably the most controversial and critical issue related to the agreement is the meaning of Article 1.3. This article defines which services are covered or exempted. According to the WTO, the agreement is deemed to apply to all measures affecting services *except* “those services supplied in the exercise of governmental authority.” But what does “exercise of governmental authority” mean? WTO officials maintain that education provided and funded by the government is exempted. However, the interpretation of what is funded by the government is unclear in many countries because both public and private institutions often receive public financing.

The agreement states that “the exercise of governmental authority” means the service is provided on a “non-commercial basis” and “not in competition” with other service suppliers. This begs the follow-up question: what is meant by “non-commercial basis” and “not in competition”? These are the issues at the heart of much of the debate about which services are covered.

Education analysts maintain that because of the wide-open interpretation of “non-commercial” and “not in competition” in GATS, the public sector – or, in other words, government service providers – may not truly be exempt. The situation is especially complicated in countries where a significant amount of funding for public institutions comes from the private sector. Another complication is that a public education institution in an exporting country is often defined as private/commercial when it crosses the border and delivers in the importing country. Therefore, one needs to question what “non-commercial” really means in terms of higher education trade.

Furthermore, the debate about what “not in competition” means is fuelled by the fact that there does not appear to be any qualifications or limits on the term. For instance, if non-government providers (private non-profit or commercial) are delivering services, would they be deemed to be in competition with government/

public providers? In that scenario, it might be that public providers are defined as being “in competition” by the mere existence of non-governmental providers.

These and many other unanswered questions need clarification. WTO officials emphasize that education is largely a government function and that GATS does not seek to displace the public education systems and the right of government to regulate and meet domestic policy objectives. Other observers, however, say the protection of public services is very uncertain and potentially at risk because of the narrow interpretation of governmental authority and the very open interpretation of “not in competition” and “non-commercial basis.” Clearly, the question about which higher and adult education services “exercised in governmental authority” are exempted from GATS needs to be front and centre in the discussion between trade and education officials at national and international levels.

What is the impact of GATS on a country's ability to make its own national regulations for education?

Another controversial issue is over the extent that GATS rules affect a nation's ability to determine and implement policy/regulations for post-secondary education. Trade policy analysts are quick to give assurances that the role of national governments in setting their own policy objectives and regulations will not change, but more clarification of Article 1.3 (as discussed above) is needed and of Article 6.4 which addresses domestic regulations and a country's ability to set qualifications, quality standards and licences.

As stated in Article 6.4, “qualifications, requirements and procedures, technical standards and licensing are not more burdensome than necessary to ensure the quality of the service.” The language is purposely vague and there are no definitions for terms such as “more burdensome than necessary” or “quality of services.” This leaves the higher education sector concerned about the potential impact of this statement on quality assurance and accreditation procedures. Direct questions to trade specialists do not yield any concrete answers other than “it is still being developed.” However, the specialists state strongly that it is certainly not the intention of GATS to limit government's role in the regulation of quality assurance of education or the professions.

Article 6.4, part of which is often referred to as the “necessity test,” merits close monitoring by the education sector because a country's ability to establish quality assurance and accreditation policy for domestic and foreign providers is central to the question of the role of government in determining domestic regulations.

What does the principle of progressive liberalization mean?

GATS is not a neutral agreement because it aims to promote and enforce the liberalization of trade in services. The process of progressive liberalization involves two aspects: extending GATS coverage to more service sectors and decreasing the number and extent of measures that serve as impediments to increased trade. Therefore, in spite of the right of each country to determine the extent of its commitments with each new round of negotiations, countries are expected to add sectors or sub-sectors to their national schedules of commitments and to negotiate the further removal of limitations on market access and National Treatment.

The intention of GATS is to facilitate and promote increasingly more opportunities for trade. Therefore, countries that are not interested in either the import or export of education services will most likely experience greater pressure to allow market access to foreign providers. GATS is a new instrument and it is too soon to predict the reality or extent of these potential opportunities or risks.

What are the implications of negotiating across sectors?

At the “request-offer” stage of the process, there are bilateral negotiations on market access and National Treatment commitments. The key point at this step is that sectors for which access is sought do not have to correspond with those for which offers are made. So, Country A may request of Country B greater access to transportation services. Country B can respond by requesting access to education services. It is up to each country to decide where it is willing to make concessions on foreign access to domestic markets. This situation applies to all sectors, but it may be of greatest concern to developing countries that have not made commitments to open up education services and might therefore consider their education service sector vulnerable to negotiating deals across sectors.

What other aspects of GATS need to be monitored?

Other aspects of GATS that education analysts need to monitor include subsidies, the dispute mechanism, and the treatment of monopolies, all of which are controversial and apply to all sectors. It must be remembered that GATS is still an untested agreement and a certain amount of confusion exists on how to interpret the major rules and obligations. It took many years to iron out the inconsistencies in the General Agreement on Tariffs and Trade (GATT) and the same will likely be true for GATS. While trade specialists and lawyers need to review the technical and legal aspects of the agreement, educators need to study how the agreement applies to, and impacts, education services.

Which countries have made education commitments to GATS?

As of March 2006, 47 countries (the European Union is counted as one country) had made a commitment to the education sector, and 38 of these countries had made a commitment to liberalize access to the higher education sub-sector. (See Appendix A for a list of the country commitments.) At this point in the negotiations, the higher education sub-sector has the most commitments of the five education sub-sectors. In general, though, education is one of the three sectors (health, education and culture) that are often referred to as the sensitive sectors and are seen to be under-committed. In fact, there is an overall sense of disappointment in the progress made to date in the number of countries that have tabled offers, the degree of liberalization offered, and the number of sectors committed. The current round of negotiations (known as the Doha Round) was to have closed at the beginning of 2005, but major delays have been experienced and the proposed end is now October 31, 2006. It is true that negotiations on the troublesome issues related to agriculture subsidies have been the major stumbling block to progress and closure of the Doha Round. But the unexpected low level of commitments has also been a deep concern, prompting much work to develop new and alternative means of encouraging countries to improve their offer.

4 WTO/GATS and Developing Countries

Are developing countries treated differently than developed countries?

Developing countries, which also include the least developed countries, play an increasingly important role in the WTO because they now make up over three-quarters of WTO membership.¹³ There are no WTO definitions of developed or developing countries: members simply declare themselves as belonging to one of the categories. Developing countries are a collection of nations with very diverse views on different aspects of trade in service. They therefore cannot be seen as a unified voice or force of influence – just as developed countries cannot.

It is recognized that developing countries (including least developed countries) have particular needs and thus GATS includes articles, special provisions and preferential treatments.¹⁴ For instance, Article XIX states that the process of liberalization is to take place with “due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors.” Examples of preferential treatment include extra time to fulfill commitments, legal assistance, and training on technical aspects of agreements by different international bodies such as the United Nations Conference for Trade and Development (UNCTAD), the United Nations Development Program (UNDP) and the World Bank.

GATS was established during the Uruguay Round and many developing countries believed that GATS favoured developed countries. As a result, the Doha Round (the current round of negotiations) was named the Development Round indicating that it would pay more attention and make further provisions for developing countries. There are very mixed and contentious views as to whether this label is more rhetoric than reality. For instance, a key part of the “development package” is “aid for trade.” However, there is a great deal of ambiguity about what is actually included in this package. There are ongoing deliberations about whether “aid for trade” assistance will be in the form of concessional grants or

¹³ For further information, see <http://www.wto.org>.

¹⁴ Further information is available in Annex 2 of Khor, M. (2005). *A Development Assessment of the Current WTO Negotiations*. *Third World Network*. See <http://www.twinside.org.sg>.

loans, whether it will come from new or old money, and what the criteria are. There is a perception and a concern by a group of developing countries that this “aid for trade” is nothing but a “trade-off ploy” or a sweetener to persuade developing countries to agree to certain concessions or changes being proposed by developed countries.

It is important to realize that the current Doha Round includes negotiations on three different aspects of international trade: two that deal with goods and one that focuses on services. The first is “agriculture,” where the most contentious and pivotal issue is the reduction of domestic support to farmers – primarily, but not exclusively, by the European Union and the United States. The second is “non-agriculture market access,” where the reduction of tariffs is the key stumbling block. And the third is trade in services as enshrined in GATS. This Guide focuses only on the third aspect, GATS, but some level of agreement on the first two aspects is necessary before movement on services can be expected.

The negotiation process and Hong Kong meeting of Trade Ministers

As previously explained, the bottom-up nature of GATS allows any country to choose whether or not it will make a commitment in any of the 12 sectors, and what degree of liberalization or market access will be permitted. Restrictions and limits can be placed on any of the four “supply modes” in any sector. Furthermore, because negotiations are based on a bilateral request/offer system, any country is free to make a request of another and, in return, any country is free to decide if or how to respond to the request. Thus, countries – and especially developing countries – are able to decide if, how, when and under what conditions it will participate in the GATS negotiations.

Given the particular conditions and needs of developing countries, additional clauses have been established in subsequent GATS-related documents that state that developing countries should be allowed to liberalize less developed countries and to choose their own pace of liberalization. These clauses, designed to give greater flexibilities to developing countries, are referred to as “special and differential treatment” measures and are seen as being “development friendly.”

To summarize, the bottom-up nature and the “special and different treatment” clauses are seen as ways to permit developing countries to control the extent of liberalization given to countries requesting improved market access. However, when the big picture of liberalization afforded through GATS is considered, there is both disappointment and concern by WTO members –

especially developed countries – about the slow rate of progress being made in opening up trade in services. As already mentioned, one of the primary reasons for slow progress is the log jam that exists around agricultural subsidies and non-agriculture market access. However, since that the Hong Kong meeting of Trade Ministers (known as the Hong Kong Ministerial and held in December 2005) reached an agreement that export subsidies for agriculture will be eliminated by 2013, there has been an expectation that more progress will be made on trade in services.

Much debate occurred both before and during the Hong Kong meeting on how to improve the number and level of offers for trade in services. New developments are being proposed for GATS negotiations (see section below). It is prudent that each developing country be aware of these new proposals because of their potential impact.

New options proposed to strengthen GATS commitments

A number of developed countries – primarily European Union, USA, Japan, Korea, Hong Kong, S.A.R. China, Taiwan China and Australia – frustrated by the lack of increased access to trade in services are proposing a number of so-called “complementary approaches” for negotiations. They include a variety of methods designed to push countries (especially developing countries) to commit to liberalization in a greater number of sectors and, more importantly, to deepen market access by the removal of more and more barriers to trade. This is in line with the goal of progressive liberalization, but the options being suggested may be seen as a threat to the basic bottom-up nature and flexibilities built into the GATS framework.

The proposed new approaches include:

Plurilateral negotiations

This involves a group of countries, with common interests in a specific sector, making a *joint approach* to a country for market access in one or more specific sectors. This is very different from the “bilateral approach” and puts increased pressure on a country to agree to the request given the consequences of refusing a group of potentially important and powerful trading partners. On the other hand, it can also permit smaller and less developed countries to pool their expertise to influence the negotiation process.

Numerical targets and indicators

This is basically a formula approach that proposes that countries should include a minimum number of new or improved commitments in an agreed upon number of sub-sectors. The number or percentage of sub-sectors would differ for developed and developing countries. This proposal is perceived by many developed and developing countries to ignore the fundamental principle that countries can choose which sectors to commit to. If targets are high, the education sector may be vulnerable given the low number of commitments to date.

Qualitative parameters for modes of supply

This involves removing specific types of barriers for all commitments to a particular mode of delivery, irrespective of the sub-sector. For example, removing the restrictions related to limited foreign ownership in Mode 3 (commercial presence) might be done across all sectors and sub-sectors.

These plurilateral, sectoral and modal approaches, respectively, are examples of the “new complementary approaches” being suggested – all of which will be the subject of much heated debate. The details of these new approaches are not known, but the position of many developing countries is that such options will significantly erode the flexibilities that the countries have to liberalize in sectors they choose to and to the extent they want to.

Implications for trade in education services

As already indicated, education is one of the least committed sectors to date and may remain that way in relation to the other more important sectors such as financial services, transportation or telecommunications. However, there are several changes afoot. First, if and how these new complementary approaches are eventually implemented, it is likely that many countries will be receiving additional requests for access to their domestic education market or receive increased pressure to remove barriers and deepen the level of liberalization. For instance, as of March 2006, five countries (New Zealand, Australia, Malaysia, Taiwan China and the United States) have made a plurilateral request on private education to 22 countries. Second, for countries that have already made a commitment to higher education, there may be increased pressure to remove restrictions or Most Favoured Nation exceptions that were detailed. Third, education may be seen as a useful “horse-trading” sector, meaning that commitments to education will be given in order to gain access to other key sectors.

It is important to emphasize, that there will continue to be great speculation and controversy on these proposed changes to the GATS methods of negotiation. Developing countries are deeply involved in these discussions and are trying to ensure that the GATS articles and special provisions made for developing countries are still respected and abided by. It is more important than ever that education policy-makers develop a close and consultative relationship with the lead trade negotiators and GATS experts in their country. As well, it is advisable that the higher education leaders and policy-makers provide the trade negotiators with a solid analysis of the potential opportunities and benefits – and potential risks and disadvantages – related to trade in education services for their national higher education system.

5 Issues Related to GATS and Higher Education Policy and Practice

This section of the Guide takes a closer look at some of the implications of the relationships between cross-border education, GATS and higher education policy and practice.

Much has been debated about several notable trends in higher education:

- commercialization (buying and selling including commodification),
- privatization (private ownership and/or funding),
- marketization (allowing the market to determine supply and demand) and
- liberalization (removal of trade barriers and promotion).

A fifth trend – globalization – it is often pointed to as being a cause for the others.

These trends are closely related to each other and are linked to the following four important issues discussed in this section. The first group of issues deals with the challenge for national governments and other bodies to develop new policies and regulations regarding the registration, quality assurance, and recognition of cross-border provision. The second group of issues focuses on the implications of GATS for the role of government, financing, student access and program offer. The third group deals with broader issues including culture, values, and brain drain/gain. And the fourth group focuses on the implications for policy and practice at the institutional level.”

Policies for registration, quality assurance and recognition of qualifications of cross-border education

Registration of cross-border providers in receiving country

A fundamental question is whether the institutions, companies and organizations that are delivering award-based programs are registered, licensed or recognized by the receiving country. The answer to this question varies. Many countries do not have the regulatory systems in place to register out-of-country providers. Several reasons account for this, including lack of capacity or political will. If

foreign providers are not registered or recognized, it is difficult to monitor their performance. It is usual practice that if an institution or provider is not registered as part of a national system, then regulatory frameworks for quality assurance or accreditation do not apply. This is the situation in many countries in the world and therefore foreign providers (bona fide and rogue) do not have to comply with national regulations of the receiving countries.

The factors at play in the registration or licensing of foreign providers are many. For instance, are there different criteria or conditions applicable to those providers who are part of, and recognized by, a national education system in their home country than for those providers who are not? Does it make a difference if the provider is for-profit or non-profit, private or public, an institution or a company? What conditions apply if the provider is a company that has no home-based presence and only establishes institutions in foreign countries? How does one monitor partnerships between local domestic institutions/companies and foreign ones? Is it possible to register a completely virtual provider? Clearly, there are challenges involved in trying to establish appropriate and effective national or regional regulatory systems for registration of cross-border providers.

Often there are bilateral cultural/academic agreements in place to facilitate and monitor the foreign presence of education providers. However, the fact that education services are now part of bilateral and multilateral trade agreements introduces new regulations and questions. A key question facing both national governments and international organizations is: To what extent will the introduction of new national regulations to license or recognize cross-border providers be interpreted as barriers for trade and therefore need to be modified to comply with new trade policies? Everything considered, the issue of regulating and licensing providers that deliver education across borders needs further attention by national education policy-makers.

Quality assurance of cross-border education

First of all, it is important to acknowledge that the terms “accreditation” and “quality assurance” have different meanings and significance depending on the country, actor or stakeholder using the term. In this Guide, quality recognition and assurance is used in a general sense and includes quality audit, evaluation, accreditation and other review processes and elements.

In the last decade, increased importance has certainly been given to quality assurance at the institutional and national levels. New quality assurance mechanisms and national organizations have been developed in over 60 countries in the last 10 years. New regional quality networks have also been established. The primary task of these groups has been quality recognition and assurance of domestic

higher education provision by primarily public and private higher education institutions. However, the increase in cross-border education by institutions and new private commercial providers has introduced a new challenge (and gap) in the field of quality assurance. Historically, national quality assurance agencies have generally not focused their efforts on assessing the quality of imported and exported programs, with some notable exceptions. The question now facing the sector is how to deal with the increase in cross-border education by traditional higher education institutions and the new private commercial providers who are not normally part of nationally based quality assurance schemes.

It is also important to acknowledge that there is a great deal of cross-border mobility of students, teachers and programs through non-commercial initiatives. Education activities that are part of development aid projects and international academic linkages and networks are good examples. Therefore, international trade of education services is not the only factor driving the urgency of addressing international quality recognition and assurance. At this point, it must be clarified that GATS or any other bilateral trade agreements do not claim to be establishing rules for quality assurance or accreditation. But increased trade in education is an important catalyst for more urgent attention being given to the creation of national level systems to assure the quality for incoming and outgoing cross-border education.

As the discussion moves forward, it will be of strategic and substantive importance to recognize the roles and responsibilities of all the players involved in quality assurance, including individual institutions/providers, national quality assurance systems, non-government and independent accreditation bodies, and regional/international organizations, all of whom contribute to ensuring the quality of cross-border education. Much is at risk if rogue providers or fraudulent qualifications become closely linked to cross-border education. It will be important to work in a collaborative and complementary fashion to build a system that ensures the quality and integrity of cross-border education and maintains the confidence of society in higher education.

It is timely that UNESCO and the OECD have jointly developed *Guidelines on Quality Provision in Cross-border Education* (<http://www.unesco.org/education/hed/guidelines>). These guidelines address six stakeholder groups in higher education: governments, higher education institutions/providers, student bodies, quality assurance and accreditation entities, academic recognition bodies, and professional associations. The purpose of the guidelines is to encourage international cooperation and enhance the understanding of the importance of quality provision in cross-border higher education. The guidelines aim to protect students and other stakeholders from low-quality higher education programs,

accreditation and degree mills, and other disreputable providers. The guidelines are not legally binding, but countries are encouraged to use them in the manner that is most appropriate for their national context. One of the steps towards assuring the quality of cross-border education is the development of national regulatory frameworks. To complement the guidelines, UNESCO and the Asia Pacific Quality Network have prepared a *Toolkit on Regulating Quality Assurance in Cross-Border Education*. That resource is designed to help receiving and sending countries with the issues, models, benefits and practical steps associated with establishing a regulatory framework for cross-border education.¹⁵

In addition, several international, regional and national higher education organizations have produced declarations and position papers on the issues related to quality cross-border education and GATS (see Appendix B). These include the “Accra Declaration on GATS and the Internationalization of Higher Education in Africa” emanating from the Association of African Universities workshop, part of the “Implications of WTO/GATS for Higher Education in Africa” workshop in 2004 (see <http://www.aau.org/wto-gats/>). The International Association of Universities and national university associations have also prepared an international statement, “Sharing Quality Higher Education Across Borders: A Statement on Behalf of Higher Education Institutions Worldwide” (see http://www.unesco.org/iau/he/tne/tne_dstatement.html).

New developments in accreditation

The increased awareness of the need for quality assurance and/or accreditation has led to several new developments in accreditation, some of which are helping the task of domestic and international recognition of qualifications and others of which are only hindering and complicating matters. First, it is important to acknowledge the efforts of many countries to establish criteria and procedures for quality assurance recognition systems and the approval of bona fide accreditors. At the same time, it is necessary to recognize the increase in self-appointed and self-serving accreditors, as well as accreditation mills that sell “bogus” accreditation labels.

Market forces are making the profile and reputation of an institution/provider and their courses more and more important. Major investments are being made in marketing and branding campaigns to get name recognition and increase enrolments. The possession of some type of accreditation is part of the campaign and assures prospective students that the programs/awards are of high standing. The desire for accreditation status is leading to a commercialization of quality assurance/accreditation as programs and providers strive to gain as many

¹⁵ See UNESCO (2006). *UNESCO-APQN Toolkit: Regulating the Quality of Cross-Border Education*. UNESCO Bangkok.

“accreditation” starts as possible and so increase competitiveness and perceived international legitimacy. The challenge is how to distinguish between bona fide and rogue accreditors, especially when neither the cross-border provider nor the accreditor is nationally based or recognized as part of a national higher education system.

At the same time, there are networks of institutions and new organizations that are self-appointed and engage in accreditation of their members. These are positive developments when seen through the lens of trying to improve the quality of the academic offer. However, there is some concern that they are not totally objective in their assessments and may be more interested in generating income than in improving quality. While this can apply to both cross-border and domestic provision, it is particularly worrisome for the former because attention to national policy objectives and cultural orientation is often neglected.

Another worrisome development is the growth in accreditation mills. These organizations are not recognized or legitimate bodies and they more or less “sell” accreditation status without any independent assessment. They are similar to degree mills that sell certificates and degrees with little or no course work. Different education stakeholders, especially the students, employers and the public, need to be aware of these accreditation (and degree) mills which are often no more than a web address and are therefore out of the jurisdiction of national regulatory systems (see http://www.chea.org/pdf/fact_sheet_6_diploma_mills.pdf).

Recognition of qualifications

The credibility of higher education programs and qualifications is extremely important for students, their employers, the public at large and, of course, the academic community itself. It is critical that the qualifications awarded by cross-border providers be legitimate and recognized for employment or further studies both at home and abroad. This is a major challenge facing the national and international higher education sector in light of new cross-border providers and programs.

UNESCO has long acknowledged the requirement of an international system to facilitate and ensure recognition of academic and professional qualifications. Regional UNESCO conventions on the Recognition of Qualification were established more than 25 years ago and have been ratified by over 100 Member States in Africa, Asia and the Pacific, the Arab States, Europe and Latin America. These conventions are unique, legally binding instruments dealing with cross-border mutual recognition of qualifications. There is limited general awareness of these instruments – except for the European regional convention, which was updated in 1997 jointly by UNESCO and the Council

of Europe in the form of the Lisbon Convention. In 2001, the same two organizations established a Code of Good Practice for Transnational Education that is now a recognized part of the Lisbon Convention (see <http://www.cepes.ro/hed/recogn/groups/transnat/code.htm>). Currently, there is discussion on how these UNESCO conventions can be used as instruments to complement trade agreements and assure students, employers and the public that there are systems in place to recognize academic and professional qualifications.

The increase in academic and labour force mobility, along with the fact that GATS is encouraging greater professional mobility, points to the clear and urgent need that national education policy-makers address this issue.

Implications of GATS for role of government, access, financing and program offer

Role of government

In most, if not all, countries of the world, the government plays a critical role in regulating, funding, and monitoring the provision of higher education. This applies where education is more or less publicly funded, and also where there is a mixed public/private higher education system. One might ask: will trade liberalization affect a mixed system differently than a public system, and will the role of government change measurably? Inherent in these questions is the issue of just what services are covered or exempted from GATS. There is an implicit understanding that public services will be exempted, but close scrutiny of Article 1.3 raises several related questions and concerns. Legal opinion¹⁶ and the general consensus in the higher education sector is that there is so much “wobble room” in the definition that one should not count on government funded and mandated institutions being exempted from GATS rules unless a country stipulates this in its commitments. This is an important point for government education officials to discuss with trade negotiators.

Student access

Demographic changes, increasing number of graduates from secondary level education, lifelong learning and changing human resource needs created by the knowledge economy are increasing the unmet demand for post-secondary education and training. Supporters of GATS and increased commercial cross-

16 Gottlieb & Pearson (2001). *GATS Impact on Education in Canada*. Legal Opinion. Ottawa, ON, Canada.

border education maintain that international trade will help countries satisfy this growing demand for further education and specifically increase student access. Cross-border commercial providers – who are primarily concerned with teaching (meaning limited attention is given to research and service) – are targeting niche markets of these learners and responding to a clearly identified need. Therefore, GATS supporters believe that increased student access to education and training is one of the strong rationales and articulated benefits linked to trade liberalization. GATS critics question why trade rules are necessary when cross-border education is already occurring outside of a trade regime and can be regulated through education conventions and national education regulations. So, while there is general agreement on the need for greater student access, concern remains that increased access will be available only to those who can afford it; and debate continues about how trade rules will impact the service providers and the student access.

Financing of education

The fact that the growth rate in public funding is not keeping pace with the accelerated levels of private investment in higher education is a discernible trend in many developed and developing countries. This trend, plus the pervasive climate of stricter accountability for public support, is creating a more receptive environment for private and commercial providers of post-secondary education. And, as already noted, private provision of education in niche markets is increasing. These three factors are contributing to an expectation that there will be more private investment in education and more private providers in the future. When forces for increased liberalization of trade are added to this scenario, there is an expectation that private and commercial providers will be very active in the international education markets. According to Global Education Index, developed by the Observatory on Borderless Higher Education,¹⁷ more than 50 companies listed currently on the stock exchange are providing education and training programs and services to support tertiary education, and most are doing so on an international scale. This does not include companies that are not publicly listed.

The greatest fear among many education leaders is that while private investment in education rises, public support may fall steeply. The role that trade plays in this scenario is that countries without the capacity or political will to invest in the physical and soft infrastructure for higher education will begin to rely more and more on foreign investors and cross-border education providers. This

¹⁷ Garrett, R. (2005). *Global Education Index: Part 2. Public Companies: Relationships with Non-profit Higher Education*. November 2005 Report of the Observatory on Borderless Higher Education, London.

in turn will lead to trade rules heavily influencing the use of private investment and influencing policy for higher education. A review of the barriers to trade in education services shows that measures related to commercial presence/ foreign investment (Mode 3) are already being targeted for removal. Of course, a huge proviso in this scenario is that the commercial cross-border education providers (including traditional higher education institutions and new providers) will be able to make it economically worthwhile to deliver internationally – and if this is not the case, then new questions will arise.

It is fair to say that there are more questions than answers about the impact of cross-border education on public financing of higher education. Key factors to consider are the social and economic conditions and the nature of the higher education system in the receiving country:

- What are the national policy objectives and priorities for the higher education sector, and how can cross-border education contribute?
- What is the domestic capacity to meet the demand for higher education, and what is the current coverage rate?
- What is the role of the government: funder, provider, regulator or monitor?
- How regulated or deregulated (market oriented) is the higher education sector? Are there tuition fees and, if so, who determines the fee?
- Is public funding for higher education directed to the institutions, to the students (voucher system) or to the programs based on national needs and priorities?
- Is the higher education sector a mixed system of for-profit and not-for-profit institutions?
- For publicly funded institutions, what is the mix of government, student/ household and private sources of income?
- What percentage of enrolled higher education students is paying tuition fees and service charges?
- What is the position of the country in terms of granting access to education through trade agreements? Is education seen as a public good/service or a private good/service?
- If education is a public good/service, can it be delivered privately?

These are but a few of the questions that need to be asked in order to determine what impact foreign providers – both higher education institutions and commercial companies – will have on the higher education in terms of financing the system.

Program offer

Commercialization has important implications for the diversification and differentiation of higher education institutions and providers – and, more specifically, for the selection of academic programs and courses being offered. There are two key aspects to this issue: what courses are offered and what type of providers are offering them. A market approach to higher education can lead to a situation where commercial or for-profit providers focus on offering courses that are in high market demand, such as business, information technology and communication programs. This means that some of the less popular and often more costly programs are the responsibility of public/non-profit institutions. The result can be a differentiated menu of courses between profit and non-profit, foreign and domestic providers based on discipline and profitability. Foreign for-profit providers will offer their programs as long as it is profitable for them to do so. This has implications for national higher education planners and individual higher education institutions.

Issues related to values, cultural diversity and brain drain/gain

Values driving higher education

At the heart of the debate for many educators is what impact increased commercial cross-border education and new trade policy will have on the purpose, role and values of higher education. The growth in new commercial and private providers, the commodification of education, and the prospect of new trade policy frameworks are catalysts for stimulating serious reflection on the role, social commitment and funding of public higher education institutions in society.

The trinity of teaching/learning, research and service to society has traditionally guided the evolution of universities and their contribution to the social, cultural, human, scientific and economic development of a nation. Is the combination of these roles still valid or can they be disaggregated and rendered by different providers? Values that have traditionally underpinned public education – for example, academic freedom, collegiality and institutional autonomy – are being closely examined. Is education still considered to be a public good in the sense of contributing to the development of society, or is it being perceived as a private good for consumption by individuals? Some believe that the traditional values and roles are even more relevant and important in today's environment. Others suggest there is a need for a shift away from these traditional values in

light of globalization. And still others argue that if higher education is to fulfill its role as a “public good,” then it will need to move away from its traditional public funding sources in favour of more market-based approaches.

Once again, the existence of new trade rules covering education is an important catalyst demanding a rigorous review of the values fundamental to higher education and a nation’s perception of how education meets national priorities and needs. Perhaps the issues of trade and the commercialization of higher education will eventually be fundamental elements that define and contrast different countries’ values and approaches to the role and purpose of higher education.

Cultural diversity and acculturation

The impact of new forms and types of international academic mobility on the recognition and promotion of indigenous and diverse cultures is a subject that evokes strong positions and sentiments. Many believe that modern information and communication technologies and the movement of people, ideas and culture across national boundaries are presenting new opportunities to promote one’s culture to other countries and furthering chances for fusion and hybridization of culture. This position rests on the assumption that such flow of culture across borders is not new at all; only the speed has been accelerated. Others, however, contend that these same forces are eroding national cultural identities and that instead of creating new forms of cultures through hybridization – the forces are acting to homogenize cultures (in most cases, meaning westernization). Given that education has traditionally been seen as a vehicle of acculturation, these arguments are played out in terms of curriculum content, language of instruction (English, increasingly) and the teaching/learning process of exported/imported programs. Both perspectives have strengths to their arguments.

Ultimately, because commercial exports are often based on surplus capacity and bottom-line profit, it is important to ask whether efforts are being made to customize programs to meet local needs and to make programs culturally appropriate and useful.

Will commercially traded education programs be any more or less culturally imperialistic or diversified than programs or curriculums that cross borders as part of development projects or academic exchange programs? There is no clear answer to this question yet. Many analysts would argue that for-profit private providers will not be willing to invest the time and resources to ensure that courses respect cultural traditions and include relevant local content. Given that commercial providers are market-driven, there may be a demand from students

and employers for what is perceived to be a modern (that is, western) type of education.

The potential impact of cross-border programs and programs on cultural diversity requires policy-makers to be alert and sensitive to these issues in their own cultural environment.

The potential for brain drain/gain

Brain power is an increasingly important issue for many countries because of the growing mobility of professional and skilled workers and the increased pressure for trade liberalization – especially for GATS Mode 4 (movement of persons). The increase in cross-border movement of scholars, experts and teachers/professors is due in part to the increasing competitiveness for human capital in the knowledge economy. There is a trend today not only for higher education personnel to move from country to country, but also for them to be attracted to the corporate sector where benefits can be more attractive than in the education sector. The higher education sector can be affected by this trend positively or negatively, depending on whether a country is experiencing a net brain drain or gain effect and on what level of brain circulation is occurring.

It is important to be aware of the long-term implications of this on human resource capacity in specific fields at both the national and institutional levels. Such implications include those for education policies, as well as for immigration, science and technology, trade, employment and foreign relations. There are also direct links between foreign student recruitment/mobility (Mode 2) and the immigration needs for skilled labour of the recruiting country. Thus, the complex and increasingly interrelated dynamics between national policies for trade in education, migration policies and nation building/human capacity-building efforts are areas worthy of serious investigation by education policy-makers.

Implications for policy and practice at the institutional level

Implications for higher education institutions

It would be wrong if one were left with the impression that these issues do not have implications for individual providers and especially higher education institutions. Quality assurance starts with the provider who is delivering the program – domestically or internationally. Most higher education institutions have adequate

quality assurance processes in place for domestic delivery, but these processes do not cover all the aspects of delivering abroad. The challenges inherent in working cross-culturally, in a foreign regulatory environment and potentially with a partner, raise new issues. These include academic entry requirements, student examination and assessment procedures, work load, delivery modes, adaptation of the curriculum, quality assurance of teaching, academic and socio-cultural support for students, title and level of award. Quality issues must be balanced with the financial investment and return to the source provider. Intellectual property ownership, choice of partners, division of responsibilities, academic and business risk assessments and internal and external approval processes are only some of the issues the higher education institutions need to be clear about when they become engaged in cross-border education.

Codes of good practice

Codes of conduct for cross-border / transnational education have been developed by several national university associations, quality agencies and government departments. They are usually a set of principles to guide the practice of delivering programs across borders and for establishing partnerships with foreign providers. They are intended for public and private higher education institutions, but have relevance for other providers as well. Although the codes differ in substance and perspective, they are similar in spirit and purpose, which is to assure quality in cross-border academic provision regardless of mode of delivery and partnership model, and to maintain the integrity of the academic qualification. Examples of these codes include:

- Quality Assurance Code of Practice: Collaborative Provisions – UK Quality Assurance Agency: <http://www.qaa.ac.uk/academicinfrastructure/codeOfPractice/default.asp>
- Code of Ethical Practice in the Offshore Provision of Education and the Educational Services by Higher Australian Higher Education Institutions – Australian Vice-Chancellors Committee: http://www.avcc.edu.au/news/whats_new/wnarch.html
- Principles of Good Practice for the Educational Programs for Non-US Nationals: http://www.neasc.org/cihe/overseas_programs.PDF
- Code of Good Practice in the Provision of Transnational Education – UNESCO/CEPES and the Council of Europe: <http://www.cepes.ro/hed/recogn/groups/transnat/code.htm>

- Code of Conduct for Cross-Border/Transnational Delivery of Higher Education Programs – South African Ministry of Education (in draft; not yet available)
- Code of Practice for Overseas Education Institutions Operating in Mauritius – Tertiary Education Commission: <http://tec.intnet.mu/>

These codes are not enforceable; they are guidelines only. But, in a similar way to the recently developed UNESCO/OECD *Guidelines for Quality Provision in Cross-border Higher Education*, they are important awareness-building tools for the different actors in cross-border education and, as such, could be very useful to education policy-makers.

6 In Conclusion: New Realities and Challenges

The purpose of this Guide is to make higher education policy-makers and leaders more aware of the realities of cross-border education in an increasingly trade-oriented environment. In turn, this greater awareness will likely prompt closer examination of the role that cross-border education plays in relation to a country's priorities, resources and goals for higher education.

Higher education has new responsibilities and new challenges in a more globalized world – a world where the knowledge society, market economy, information and communication technologies (ICTs), and trade have ever-growing importance and influence.

Realities of today

International education in all forms has been occurring since long before the advent of GATS. However, new developments in cross-border education require a careful review of what national policies and regulations are needed to ensure that cross-border education – either outgoing or incoming – provides greater access to a high quality education experience for learners, offers a bona fide qualification, and fits into the national-level policy framework for post-secondary education.

The introduction of bilateral and multilateral trade agreements that focus on services rather than goods has been a wake-up call for many service sectors. The education sector is no exception. Who would have anticipated even two decades ago that education moving between countries for commercial reasons would be subject to trade regulations? But this is the reality of today.

Has GATS been a catalyst for increased commercial higher education between countries? Many would say the opposite is true – that increased private for-profit education at national levels and the flow of students and education programs between countries came first, and only now are trade agreements recognizing education as a commodity. Most educators believe that trade rules are not necessary to regulate the movement of commercial education between countries. Education has been moving between countries through development cooperation, academic exchanges and now commercial initiatives for years and the education sector has developed and can continue to create the appropriate

policies and regulations. Nevertheless, bilateral regional and multilateral trade agreements exist and their rules are being applied to trade in higher education. This reality must be faced and acted upon by the higher education sector.

Some governments, higher education institutions and educators embrace this reality. Others are repelled by the notion that education is being treated as a tradable commodity. Both reactions exist often within the same country or higher education institution.

Challenges related to GATS and higher education

Dealing with the issues and implications of trade agreements is a relatively new policy area for the higher education sector. By the same token, trade negotiators have not had extensive experience with education services. This requires close collaboration and intensive information exchange between education policy-makers and trade negotiators. Also, given that progressive liberalization is the ultimate goal of GATS, higher education leaders and policy-makers need to be working in close consultation with trade negotiators to monitor current and future negotiations that include trade-in-education services.

As has been emphasized in this guide many times, GATS is a new, untested and evolving agreement. The interpretations of existing articles and obligations may change and new disciplines be developed. The recent introduction of the “new complementary approaches” is proof of this. Requests and offers are still being tabled. To date, there is little activity in the higher education sub-sector, but current and future negotiations may put greater pressure on using education services as part of cross-sector trading, meaning that education may be “traded off” to permit market access in another sector or to meet a mandatory and predetermined number of commitments.

Further investigation into the types of barriers to trade in education services is necessary because the removal/reduction of barriers is at the core of trade liberalization. What may be seen as barriers by a country wishing to access a foreign market may really be fundamental aspects of the regulatory system in the receiving country. It is important that the higher education sector be vigilant and make sure that domestic regulations that are seen as policy priorities are not removed or watered down by countries wanting access to domestic higher education markets through cross-border education.

The focus of cross-border education and of GATS deliberations has been almost entirely on the teaching side of education and has not addressed implications for research. Research is an integral part of higher education and further investigation is needed into the potential impact on applied research

– and especially privately contracted or funded research. Do public education institutions that are undertaking research and development activities have unfair advantage over private organizations that do not usually receive public support for their activities? Could public subsidies be construed as a barrier to fair trade or, under the national treatment condition, have to be given to private foreign providers?

The rationales driving trade in education are complex. They differ if one is a receiving country or a sending country. For instance, receiving countries may be interested in increasing student access, and in creating a competitive environment between domestic and foreign providers in order to improve quality or provide education programs in areas where there is no domestic expertise. Sending countries often see cross-border education as a means of creating strategic alliances or generating alternative sources of income. Rationales for commercial cross-border education differ from rationales for exchange partnerships or international development initiatives. Education policy-makers need to be clear about the rationales that underpin national policies on cross-border education and to ensure that the appropriate regulatory frameworks and strategies are in place to achieve the stated objectives.

It is the university sector, within the post-secondary education category, that has been most involved in discussing GATS. Much less vocal have been the professional, technical and vocational providers. It would be useful for national policy-makers to have more discussion with the non-university sector. The impact of trade rules on the regulations of the professions also merits further attention, especially given that higher education is often directly involved in the education, training and possibly certification of the professions. To date there has been little discussion of issues related to the “other services” category. Increased trade in education services such as language testing and quality assessment and evaluation services will have significant implications for higher education and need to be kept on the radar screen. Finally, perhaps there is something to be learned from how other social service sectors such as health and culture have approached the issues related to the inclusion of their services within the GATS regulations.

This Guide has focused on GATS, but another WTO agreement that merits careful monitoring is TRIPS – Trade Related Aspects of Intellectual Property Rights. Of particular interest to the higher education community are issues related to: whether intellectual property rights will encourage or inhibit innovation and research; who owns copyright of materials used in e-education; and how indigenous knowledge can be protected.

Issues in other policy domains

GATS and other regional/bilateral trade agreements are trying to facilitate increased mobility of professional and skilled workers on a temporary basis. Cross-border education, especially the movement of students, scholars and professors, will introduce new issues related to immigration policies in terms of visas, working permits, residency status and even dual citizenship. What are the long-term implications for migration patterns and immigration status?

Cross-border education, as well as science/technology research and development, are seen as tools for strategic alliances between countries and institutions. In the past, there has been more emphasis on cultural, scientific and political alliances, but given the increasing importance of commercial trade of education services, higher education is perceived as a more important means of developing for economic alliances. What is the emerging role of higher education in bilateral and regional foreign policy development?

In the past, nation-building by investing in higher education through human resource development, institutional strengthening, and scholarship programs has been an important part of international development and technical assistance programs. In the last decade, these aid-oriented initiatives have given way to projects that based on principles of partnership, exchange and mutual benefits. Is the inclusion of education as a tradable service under the purview of trade agreements such as GATS an indication of a shift away from aid and partnership initiatives towards commercial trade as a primary tool for developing higher education in developing and transition countries? What are the implications and consequences of the “aid to trade shift” and the existence of the “aid for trade” package in GATS?

The issues raised in this section highlight a number of critical areas for further investigation, analysis and policy reform. Clearly, the list is more illustrative than comprehensive. Further attention needs to be given to these and other aspects of education that will potentially be affected by increased cross-border education and the presence of new trade regulations.

Maximizing benefits and minimizing risks

The mobility of students, professors, knowledge and values has been part of higher education for centuries, but only in the last two decades has there been a significant growth in the mobility of programs and providers through physical and virtual modes of delivery. This presents many new opportunities – for increased access to higher education; for strategic alliances between countries and regions; for the

production and exchange of new knowledge; for the movement of graduates and professionals; for human resource and institutional capacity-building; for income generation; for the improvement of academic quality; and for increased mutual understanding. But just as the list of potential benefits is long and varied, so is the list of potential risks.

Risks can include: an increase in low quality or rogue providers; a decrease in public funding if foreign providers are providing increased access; non-sustainable foreign provision of higher education if profit margins are low; foreign qualifications not recognized by domestic employers or education institutions; elitism in terms of those who can afford cross-border education; overuse of English as the language of instruction; and national higher education policy objectives not being met.

Both risks and benefits vary between sending and receiving countries, between developed and developing countries, for students, institutions, companies and employers. In light of the fast pace of cross-border growth and innovation, it is important that the higher education sector be informed and vigilant about the risks and benefits and, more importantly, about the need for appropriate policies and regulations to guide and monitor current and future developments.

Sources of Further Information

Several international organizations and independent researchers have addressed the topics of internationalization of higher education in general and both cross-border education and GATS in particular. The following websites and publications can help interested readers find further information on these topics.

Websites and relevant reports of international organizations

Commonwealth of Learning (COL)

<http://www.col.org/colweb/site/pid/3108>

Summary reports on “Role of Transnational, Private, and For-Profit Provision in Meeting Global Demand for Tertiary Education: Mapping, Regulation and Impact” were completed by R. Middlehurst and S. Woodfield for four countries: Bangladesh, Bulgaria, Jamaica and Malaysia are available on their website.

UNESCO

http://portal.unesco.org/education/en/ev.php-URL_ID=12516&URL_DO=DO_TOPIC&URL_SECTION=201.html

This website focuses on university mobility, quality and innovation. It provides information and resources on a variety of key issues, including higher education quality assurance, accreditation, study abroad, cross-border providers, trade in higher education, and open and distance learning.

International Association of Universities (IAU)

<http://www.unesco.org/iau/internationalization/index.html>

Internationalization is a central theme to the work done by the IAU. The association’s website offers a bibliography, declarations, survey information and links to other sources of information. The presentations from a recent conference on cross-border education are also available.

Association of African Universities (AAU)

<http://www.aau.org/wto-gats/>

This regional association of universities has addressed GATS and transnational education through special seminars and a conference. Proceedings of these events are available, as well as the “Accra Declaration on GATS and the Internationalization of Higher Education in Africa” and an extensive bibliography on “GATS and Higher Education” prepared by the Council of Higher Education in South Africa.

Observatory on Borderless Higher Education (OBHE)

<http://www.obhe.ac.uk>

This centre provides an international strategic information service on a wide selection of issues related to borderless education. Breaking news, briefing and full reports are prepared on a monthly basis. This is a subscription-based service, but some of the most popular reports are available to the public. Many of the reports addressing cross-border/transnational education are included below in the list of relevant documents and publications.

Center for International Higher Education (CIHE)

<http://www.bc.edu/cihe/>

The International Higher Education newsletter is available on online four times a year. It provides an overview of new developments in higher education in countries all over the world and addresses key issues such as cross-border education, GATS, ICT and private education.

Third World Network (TWN)

<http://www.twinside.org.sg>

The Third World Network is an independent non-profit international network of organizations and individuals involved in issues related to development, the Third World and North–South issues. Analytical papers, briefing notes and regular updates on GATS and the WTO are available on the website.

International Centre for Trade and Sustainable Development (ICTSD)

<http://www.ictsd.org>

The goal of ICTSD, an independent non-profit and non-government organization, is to encourage dialogue and to provide news and analysis on the

intersection of international trade and sustainable development. It publishes the Bridges Weekly Digest of news and the website offers information on publications, dialogues, events and monthly reviews.

World Trade Organization (WTO)

http://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm

The WTO website provides extensive information on all issues concerned with GATS. Information on country commitments to all sub-sectors is also available.

Documents and publications

Breton, G. and M. Lambert (eds.). (2003). *Universities and Globalization: Private Linkages, Public Trust*. UNESCO/Université Laval/ Economica, Paris.

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Appendix A: GATS Commitments to Education, as of February 2006

Country	Education level					Total
	Primary	Secondary	Higher	Adult	Other	
Albania	x	x	x	x		4
Armenia			x	x		2
Australia		x	x		x	3
Austria	x	x		x		3
Bulgaria	x	x		x		3
Cambodia			x	x	x	3
China	x	x	x	x	x	5
Congo RP			x			1
Costa Rica	x	x	x			3
Croatia		x	x	x	x	4
Czech Republic	x	x	x	x	x	5
Estonia	x	x	x	x	x	5
European Community	x	x	x	x		4
FYR Macedonia	x	x	x	x	x	5
Gambia	x			x	x	3
Georgia	x	x	x	x		4
Ghana		x			x	2
Haiti				x		1
Hungary	x	x	x	x		4
Jamaica	x	x	x			3
Japan	x	x	x	x		4
Jordan	x	x	x	x	x	5
Kyrgyz Republic	x	x	x	x		4

Source: Knight 2006

Country	Education level					Total
	Primary	Secondary	Higher	Adult	Other	
Latvia	x	x	x	x		4
Lesotho	x	x	x	x	x	5
Liechtenstein	x	x	x	x		4
Lithuania	x	x	x	x		4
Mali				x		1
Mexico	x	x	x		x	4
Moldova	x	x	x	x	x	5
Nepal			x	x	x	3
New Zealand	x	x	x			3
Norway	x	x	x	x	x	5
Oman	x	x	x	x		4
Panama	x	x	x			3
Poland	x	x	x	x		4
Rwanda				x		1
Saudia Arabia	x	x	x	x	x	5
Sierra Leone	x	x	x	x	x	5
Slovak Republic	x	x	x	x	x	5
Slovenia		x	x	x		3
Switzerland	x	x	x	x		4
Taiwan China		x	x	x	x	4
Thailand	x	x		x		3
Trinidad & Tobago			x		x	2
Turkey	x	x	x		x	4
USA				x	x	2
Total 47	33	37	38	37	22	167

Appendix B: The UNESCO Forum on Higher Education, Research and Knowledge: Declarations and Statements on the WTO/GATS Issue – Africa, Asia Pacific, Latin America and the Caribbean

Accra Declaration on GATS and the Internationalization of Higher Education in Africa

(29 April 2004, Accra, Ghana)

The Association of African Universities (AAU), in collaboration with UNESCO and the Council on Higher Education (CHE) (South Africa), organized a regional workshop on the theme: “The Implications of WTO/GATS for Higher Education in Africa”. The workshop was held 27-29 April 2004 in Accra, Ghana. It succeeded in bringing together high profile participants, including trade and education ministers and other senior policy-makers, Vice-Chancellors and other leaders of public and private universities, heads of regional research and higher education organizations, representatives of national and regional regulatory agencies, sub-regional and international organizations, donors, advocacy networks, as well as consultants, journalists and other major stakeholders. A total of 67 participants, mostly drawn from 16 African countries, but with others coming from Europe, the Middle East and Canada, took part in the workshop.

The workshop participants:

- explored the issues related to GATS and its implications for higher education Africa;
- noted the transformations in African higher education;
- identified the gaps in research and advocacy in the context of the internationalization of higher education in Africa; and
- unanimously adopted the Accra Declaration to affirm their commitments and to guide the concerted actions of all major stakeholders.

The Accra Declaration reaffirmed the role and importance of higher education for sustainable social, political and economic development and renewal in Africa in a context where ongoing globalization in higher education has put on the agenda issues of increased cross-border provision, new modes and technologies of provision, new types of providers and qualifications, and new trade imperatives driving education. Higher education in Africa has to respond to these challenges in a global environment

characterized by increasing differences in wealth, social well-being, educational opportunity and resources between rich and poor countries and where it is often asserted that “sharing knowledge, international cooperation and new technologies can offer new opportunities to reduce this gap” (preamble to *World Declaration on Higher Education for the 21st Century*, 1998, p. 19).

Key concepts: public mandate of higher education, higher education and development, structural adjustment policies, international cooperation in higher education, quality assurance, accreditation, cross-border higher education, national institutional capacity in higher education

Implications of WTO/GATS on Higher Education in Asia and the Pacific

**(27–29 April 2005, Seoul, Democratic People’s Republic of Korea)
Seoul Recommendations on Future Action**

The UNESCO Division of Higher Education (represented by the Forum on Higher Education, Research and Knowledge and by the Section for Reform, Innovation and Quality Assurance) and the Korean National Commission for UNESCO took the initiative, in cooperation with the Korean Educational Development Institute and the Korean Council for University Education, to organize a regional seminar on “The Implications of WTO/GATS on Higher Education in Asia and the Pacific” (27–29 April 2005 in Seoul, Republic of Korea).

The socio-economic changes in the region and the developing information and knowledge society have emphasized the importance of higher education and research in the Asia-Pacific region. At the same time, the countries in the region are confronted with the challenges of international trade and cross-border provision of higher education. With the liberalization of the higher education sector, the role of higher education in the future societal, cultural and economic development of the region has become an important issue. Moreover, the question of education as a public responsibility has become a relevant topic.

With these considerations in mind, it is imperative to emphasize the purpose of the Seminar on the Implications of WTO/GATS on Higher Education in Asia and the Pacific.

The seminar’s aim was to identify the implications of WTO/GATS for higher education and research on the one side, and policy developments on the other, to enable countries and regions that are exceptionally diverse to share experiences, and to reaffirm the importance of cooperation between all major stakeholders through the Seoul Recommendations on Future Action. It is recognized that, along with WTO/GATS, other trade agreements have been developed at the subregional, regional, bilateral

and multilateral levels, some of which may include the education sector. The Seoul Recommendations on Future Action also concern these agreements.

Key concepts: national capacity in higher education and research, research-based policy-making, basic and applied research, institutional autonomy, international cooperation in higher education, quality assurance, cross-border higher education, accreditation, recognition of academic qualifications, involvement of professional association and student bodies.

Mexico Statement on the Implications of WTO/GATS on Higher Education in Latin America and the Caribbean

(7–8 June 2005, Mexico City)

The Regional Scientific Committee for Latin America and the Caribbean of the UNESCO Forum on Higher Education, Research and Knowledge organized a seminar on “Academic Mobility in a Trade Environment: Issues, Risks, and Opportunities,” in Mexico City, 7–8 June 2005. The seminar was aimed at analyzing the repercussions on academic mobility in the region of the planned incorporation of the transnational trade of educational services of GATS. The event had the support of the Center of Studies about the University (CESU) of the Universidad Nacional Autónoma de México (UNAM), the Latin American Social Science Council (CLACSO) and the UNESCO Global Forum on International Quality Assurance, Accreditation and the Recognition of Qualifications in Higher Education.

The event gathered a group of specialists, university authorities, representatives from governments, multilateral agencies and organizations linked to education to analyze: key issues related to the dynamics imposed by the new transnational commercial suppliers of educational services; their impact on academic mobility in Latin America and the Caribbean; the variety of national forms that this presence assumes in the different national experiences; and the future scenarios that might be envisioned as a consequence of the eventual inclusion of higher education within the scope of the WTO trade agreements.

After considering and debating the analytic works presented, the participants in the seminar agreed in the formulation of a set of general statements for structuring the new scenario of higher education and research in Latin America and the Caribbean.

Key concepts: quality higher education, evaluation systems, quality assurance, accreditation, recognition of academic qualifications, academic mobility of faculty and students, international cooperation in higher education, national science and technology capacity, cultural and linguistic diversity