

## **Trade in Educational Services and the Doha WTO Round: the need to move out of current impasse.**

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Trade in educational services (ES) is a potentially very lucrative source of revenue for a country and its schools, universities and training providers. For example, exports of ES and their respective share of all exported services in 2000 amounted to 10.28 Billion USD (3.5%) for the USA and 2.155 Billion USD (11.8%) for Australia. Looking at the world market of ES, the total value of annual trade in 1999 in higher education services has been estimated at 30 Billion USD reaching 50% of trade in financial services estimated at 59.3 Billion USD. These figures would even be higher if estimates were available for total trade in ES. Higher education is only one of five sub sectors in ES. Not included are trade in primary, secondary and adult education services.<sup>1</sup>

Education is one of twelve sectors covered by the General Agreement of Trade in Services (GATS) which together with the articles governing trade of goods constitute the rule making body of the World Trade Organisation (WTO, formerly the GATT). Even though trade in Educational Services (ES) has been part of the WTO since its inception in 1995, little progress has been achieved so far by the Contracting Member Parties (CMPs) in terms of commitments towards market access and liberalisation of their respective educational sector. Only a third of the 148 Member countries have made commitments to open their markets for at least one education subsector. The others have remained on the sidelines abstaining from participating in the traditional offer and request process of WTO negotiations.

The main reason for the slow pace of negotiations in ES is due to opposing opinions of various interest groups who either see education as a service sector activity which should be open to competitive market forces and others who consider education as being part of the public service which governments are supposed to regulate and administrate for the benefit of equitable access of their citizens to schools and universities. The latter castigate trade in ES as being a form of "McDonaldisation" or "commoditisation" of education while the first group emphasises the option to provide individuals of all countries with access to wider educational options, of higher quality and at more affordable prices than could be obtained through traditional state run and controlled schooling systems.

Despite the conflictual views and opinions, main exporters and importers of ES have searched for ways to agree on some of the multiple issues of trade in ES. The main obstacles to trade in ES being the conditions of market access for foreign investors, quality assurance of educational services, criteria of accreditation of schools to limit damage to buyers of ES by dubious educational institutions also called "degree mills" and rules of recognitions of professional titles and degrees.

Support for better understanding of the risks and opportunities of trade in ES have been provided by OECD, UNESCO and some country governments such as the USA, Norway and Australia through publications and conferences. For instance, the OECD co-organised forums on trade in ES in 2002 in cooperation with the US government in Washington, then in Trondheim with the Norwegian government in 2003 and on 11/12 October in Sidney in cooperation with the Australian government and UNESCO. The last forum in Sidney focused on Building Capacity for Post Secondary Education through Cross-Border Provision with an additional focus on the Asia Pacific region. The conference was organised around three cross-cutting themes namely: bridging the divide – differing perspectives on cross-border provision of education; trade capacity building – promoting understanding of the General Agreement on Trade in Services (GATS) and the trade negotiation process; and

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<sup>1</sup> For more information, see Raymond Saner & Sylvie Fasel (2003) : Negotiating Trade in Educational Services within the WTO/GATS Context, Aussenwirtschaft, No 59, pp 275-308, Ruegger Verlag, Zurich.

building capacity in quality assurance and accreditation in higher education particularly in the Asia Pacific region.

A total of 242 participants attended the Sydney Forum representing mostly Asia-Pacific countries with strong contingencies from Educational Services (ES) exporting countries such as Australia, New Zealand, UK and the USA. The largest ES importing country delegations were from China, Indonesia, Thailand, Malaysia, Vietnam, the Philippines and Gulf States (Oman, Kuwait). Other European delegations came from Norway, Denmark, Switzerland and Germany. Larger Asian delegations were also present from Japan and South Korea. All together, the forum provided an opportunity to discuss trade in ES for delegates coming from 40 countries among them 25 least developed countries.

Despite these efforts in support of an agreement on trade in ES, not much progress has been accomplished so far. One of the causes for the impasse rests with the particular difficulty of all GATS topics. At the conclusion of the Uruguay Round, GATS (services) were included in the WTO agenda only after leading developing countries dropped their resistance against inclusion of GATS into the final deal in exchange for concessions in other fields of trade. Still, the services sector remains a contentious issue between the developed and developing countries. GATS/ES is no exception. .

The deal reached this July in Geneva regarding the Doha WTO Negotiation Round consisted, among other agreements, in the concessions offered by the EU and subsequently supported by other developed countries to drop three of the so-called four Singapore items<sup>2</sup>. Dropping these three contentious items from the list of negotiations topics helped countries resume negotiations in Geneva. Other contentious issues remain such as the negotiations of trade in health and educational services. In order to avoid further possible impasses, a number of WTO negotiators would like to do the same in regard to GATS/ES however this would mean that the whole GATS would have to be re-negotiated. Such a wide renegotiation would however not be feasible since it would reopen the negotiation framework negotiated and agreed at the beginning of the Doha Round.

Trade in ES hence cannot be dropped from the agenda but finding solutions will not be easy for another reason linked to the aim of the Round itself. The Doha Round is also called the "Development Round" due to the fact that agreement for a new trade negotiation could only be reached by giving more emphasis to the plight of the developing and least developed countries (LDCs) that suffer from low economic growth and in some cases of deep poverty. The Doha Round is supposed to result in sustainable improvement of economic and social development in developing countries.

Besides promising to provide more market access especially in the agricultural sector, the developed countries (most OECD countries) promised to provide support for the poorer countries through capacity building measures (TCB). The issue, which remains to be solved, is what kind of TCB for what kind of purpose? Is it to provide LDCs with development aid to strengthen their competitiveness and to help them create competitive products and services (supply side support) or is it to help them better understand the current WTO rules and to apply them more fully (trade facilitation)? Applied to GATS/ES this means either helping LDCs and DCs create more effective and efficient educational services in their respective countries or provide them with understanding how GATS and GATS/ES function and should be applied and how to use GATS/ES to import ES services. Most of the current capacity building projects are intended for the latter.

In addition to the ambiguity about how to conceptualise capacity building for LDCs, exporters and importers of ES need to clarify key aspects of trade in ES to each other as well as to their respective citizens. For instance, exporters of ES need to demonstrate benefits of liberalisation of the educational sector to other countries (importers) and provide answers to

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<sup>2</sup> Dropped from the list of negotiation issues were Competition, Investment and Public Procurement, only Trade Facilitation was kept within the ongoing Doha Negotiation Agenda.

the question: Why de-regulate? Why liberalise? What are the consequences of liberalising ES? On the other hand, importers of ES need to demonstrate how the importing of ES benefits their education sector and their citizens. For instance, will importing ES increase efficiency and effectiveness of education in their country? Will FDI in education provide better coverage of educational needs and guarantee sufficient equitable access to ES for all citizens? Will importing ES lead to innovation in the educational sector? Will it ensure supply of ES on a continuous basis?

Solutions are needed on how to reach agreement on trade in ES. In principle, the following methods could be envisaged namely negotiating within the context of WTO through traditional bargaining within the ES sector and across other service sectors as has been the case in previous WTO negotiation rounds.

A second method within the context of WTO might be to create a plurilateral solution similar to the one found for trade in public procurement and in information technologies. Countries in favour of liberalisation of trade in ES could for instance agree to negotiate a solution as long as the participating countries represent a combined market share of e.g. 70% of the total market in ES. The other WTO member countries would be given choice to stay outside the plurilateral ES agreement until they feel ready to join up at later stage.

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

Similar to the TRIPS agreement within GATS in regard to generic drugs for AIDS treatment, exceptions could also be made for developing countries to gain access to educational textbooks and software programmes of developed country providers at prices affordable for people of least developed countries. Copyright laws could accordingly be amended to facilitate access to educational services for LDC countries with accompanying protection against use of such discounted ES products in third markets.

Building on the concept of multi-functionality of trade in agricultural products, a similar functional solutions could be entertained for trade in educational services. Trade in education services is more than a simple transaction between a supplier and purchaser of ES. Governments need to achieve multiple developmental goals through education ranging from knowledge and skills transfer to citizen education in order to ensure sustainable social and economic development of their respective societies. Analogous to the concept of multifunctionality of trade in Agricultural products, GATS/ES could provide the basis for trading ES within a larger frame of reference than simple supply or purchase of educational services.

Even though the solutions proposed might make it possible to keep GATS/ES within the WTO structure thereby reducing possible conflicts of interpretation and application should trade in Educational Services be moved to an organisation outside the WTO frame of reference.

The internationalisation of education, particularly of higher education and adult education, has intensified quite independently of the WTO/GATS context. It would be a mistake to expect that the Doha negotiation Round could either stop or accelerate this trend towards internationalisation. An agreement within WTO/GATS can at best offer agreed mechanisms to liberalise supply of educational services. Such agreement, even if limited in scope, could

on the other hand offer predictable market conditions which in turn would be welcome by investors (private or public), governments and consumers alike.

A balance has to be achieved between legitimate requests for consumer protection versus sovereign rights by governments to pursue high quality education without though falling into the trap of closing market access to foreign ES providers. The intent of WTO negotiations is to reduce technical barriers to trade, not to increase them. Trade facilitation in trade of ES is also needed in order to generate solutions to issues such as the recognition and reduction of trade barriers due to the proliferation of standards and requirements which often result in higher transactions costs negatively affecting ES providers from developing country exporters. They do not have the technical know-how nor the necessary resources to deal with the current multitude of technical barriers to trade in educational services..