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Globalisation, GATS and Trading in Education Services

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Introduction

If we were asked to name one institution that symbolized the idea of the 'global' in the array of international organisations that now loom large on the education policy horizon, there is little doubt the World Trade Organization (WTO) would be high on the list. Following its establishment in 1995, the WTO has been embroiled in controversy and faced constant crises (Wilkinson, 2003). It has also become the target for the anti-globalisation movement, as well as being a fierce battle-ground between the developed and developing economies over trade and access to markets.

So, what is it about the WTO, its purpose, programmes and politics that has generated such fierce protest and raised the political hackles of the developing countries sufficient to bring the various rounds of negotiations, including many of the Ministerial meetings (notably Seattle, Doha and Cancun) to the edge of collapse? And, why is it that, despite the insistence by the former WTO Director, Mike Moore, that the WTO could do splendid work and advance the progress of the human species (1999), there continues to be a widely shared view that the WTO is a problematic organization sullied by a significant deficit in democratic procedure (cf. House of Lords, 2001; Rodrik, 2001; Callinicos, 2003; Patomaki and Teivainen, 2004). Critics point to the bullying tactics of the powerful member states, as well as the imposition of a mercantalist model of economic development on members, with little or no scope to reverse decisions that might not work in the interests of the country. Critics also ask why is it that public services, like education and health, are now incorporated into the mandate of the WTO's General Agreement on Trade in Services (GATS), and worry about the long-term consequences for national governments and their policymaking space of the commodification of education in this way.

In this paper I examine why it is that the education sectors of national economies have been targeted as an area of regional and global trade, how education is conceptualised and regulated within the WTO/GATS framework, and the implications of these processes for member states. In particular I will be arguing that though GATS formalises trends already taking place in the education sector (from primary to higher education), by reframing education using the language of trade and juridifying it within the global regulatory framework, it transforms education into a legally protected industry that can be traded globally. However, critics point out that while trade in education is argued to be a means for developing economies to engage with the global economy, others argue not only is this model of development favours Anglo-Saxon interests but that it has the potential to undermine education as a human right.

Regulating Trade in the Post-War Period – from the GATT to the WTO

The history of the World Trade Organization can be traced to 1947 when a new trade body, the International Trade Organization (ITO), was created. However, the US refused to join the ITO (Ravenshill, 2005); instead, it became the leading country in the establishment of the General Agreement on Tariffs and Trade (GATT). What made the GATT operable was that there was a shared political commitment amongst its member states; of progressive enlargement of an international free market with a concern with trade liberalisation in a system of progressive interventionist welfare states (Mundy and Iga, 2003:283). This approach was characterised as embedded liberalism.

However, during the 1970's the shared vision that underpinned the embedded liberal order came under pressure as a result of fundamental changes taking place in the global economy. The recession and iconic oil-shocks of 1973 became the final breaking point for the post-war settlement which had, in retrospect, shown signs of serious problems as early as the 1960s. The net result was that when the Bretton Woods system collapsed in 1973, the US share of output had fallen by 10 percentage points since 1950 and its share of exports had fallen to less than the combined total of Germany and Japan (Mitchie and Smith, 1995: 25-26).

The 1973 recession shook the capitalist world, launching it into two decades of economic restructuring and social and political readjustment in what Tickell and Peck (2005) termed 'roll back' neo-liberalism. However, even before the crash, "a minority of ultra-liberal economic theologians" (Hobsbawn, 1994: 409) had attacked the domination of Keynesian thinking, instead promoting the unrestricted free market as the model of economic development. By 1974, free marketeers were on the offensive (Marchak, 1991: 93), though they did not come to dominate government policy until the 1980s. As events unfolded, neo-liberals and their economic policies came to dominate state policymaking and the agendas of the global institutions. Governments at the national level, such as the United States, UK, New Zealand, Australia and Chile, embraced neo-liberal ideologies, prioritising the free flow of trade unhindered by state interference (Karns and Mingst, 2004: 361).

By the mid-1970s, trade in services were becoming major components of international trade, and accounted for an increasing proportion of international investment. Marchak (1991) argues that the internationalisation of manufacturing firms that took place throughout the 1960s and 70s was a precondition for the growth of the international services sector. Thus, when US manufacturing went global, the export of services also expanded. However, by 1984, the US's share of trade in services had not only levelled off but declined as new competitors entered the arena, including local suppliers, who were better able to provide services locally to transnational firms. As Marchak observes, though the advent of telematics is able to reduce the tyranny of distance, many of services, such as banking or insurance, are best located near the consumer (Marchak, 1991: 86). The services sector presented transnational firms with huge problems around domestic regulations (under foreign direct investment), inhibiting their expansion globally. Barriers included regulations on investment, establishment, foreign exchange, insurance, shipping, employment and so on (Marchak, 1994: 84).

In order to respond to the challenges presented by these barriers, various service coalitions formed to lobby for change, including the US based Coalition of Service Industries (created in 1982), dedicated to pressuring the US government[1] to negotiate for the reduction of barriers to US services exports. The CSI also used its lobbying capacity to shape negotiations taking place under the GATT, to include services and not just goods into the mandate of the GATT. Getting rid of domestic regulations would, the CSI argued, enable service firms to expand globally and enhance the global competitiveness of its members (http://www.uscsi.org/about).

[1] For instance, it advises US government agencies such as USTR, Treasury and the Commerce Department through regular briefings and consultations. It also seeks to educate members of Congress and staff on important developments affecting US services trade. Engage key officials in international organizations and other governments to promote positions beneficial to member companies.

Estimating the size of the services market

Trade in services is estimated to be one of the most dynamic growth sectors. Based on current WTO trade figures, trade in services account for $1/5^{th}$ of global trade and 60-70% of GDP in the advanced OECD countries (Hartmann and Scherrer, 2003: 5). 75% of the trade in services is located in the industrial OECD countries, especially the US, Canada, EU (the biggest exporter, largely composed of the UK, France, Germany) and Japan, while the remaining 25% is shared by HK, China, South Korea, Singapore and India (ibid). At present, most of the services trade is in transport and tourism, however this could change if domestic regulations in other service areas were lifted.

Using IMF balance of payments figures, the WTO Secretariat (1999: 5) reported that commercial services grew at an average rate of 8 percent per annum over the period 1990-97, compared with 7 percent for merchandise over the same period. Over the same period, Asia was the most dynamic services exporter, recording average growth rates of 12 percent. By contrast, Latin America was the only large region where merchandise exports grew more rapidly than services exports. By bringing trade related property rights and other kinds of services into the system of world trade, the WTO estimated that it would significantly increase world trade.

If it were possible to quantify the value of education as an industry, it is estimated to be huge. The expenditure on (public and private) education globally is upward of US$2 trillion (Oxfam, 2002), while expenditure on public education globally is estimated to be around US$1386.8 billion (Fredrikssen, 2003).[2] Heyneman (2001) also gives us some idea as to what the education marketplace might be composed of; technology services, books, testing services, the provision of schools, the provision of higher education and so on (see Heyneman, 2001).

Until the early 1980s, education continued to be regarded by national states as a public service. However it was already clear significant changes were taking place, not only in the governance of education[3] but also in how education was conceptualised. Between 1980-82, the Thatcher government created a full-fee-based regime in international education in the UK to generate export revenue, while locally students were encouraged to regard themselves as customers and choosers of services. Australia and New Zealand had also embraced neo-liberalism *and* regionalism as a means of generating a competitive economy.

By the early 1980s, following a period of significant public sector restructuring, the Australian and New Zealand governments had set about aligning themselves with the 'Asian' region[4] (Ziguras, et al, 2003; Dale and Robertson, 1997: 212) with a specific eye to the 'internationalization' of higher education and the provision of English language in locally-organised English Language Schools. Despite the rhetoric of internationalisation and cultural diversity, the national interest was firmly cast in economic terms. [5] The more entrepreneurial higher education institutions acted quickly. Not only were huge numbers

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2 These estimates, and trade figures more generally, must be viewed with some degree of skepticism. Peet (2003) raises a more general point about the calculation of trade statistics by the WTO. He notes, for example, that the WTO offers estimates of between US$109 and US$510 billion, and asks whether it is possible to have any confidence in figures that are so wildly different.

3 In particular the extent of privatisation across all of the education sectors - see Fredrikssen, 2003

4 New Zealand's exports to the Asia-Pacific region rose from 4.1 percent to 52 percent of total exports.

5 The NZ Minister for Education stated at the time, the export of education would enable New Zealand: "…the chance to earn valuable foreign exchange through the export and marketing of education" (op. Cit: 220).

of full-fee-paying students (particularly from Asia) recruited into (largely business) programmes offered in UK, New Zealand, and Australian universities (Ziguras et al, 2003: 360), but many of these universities set up off-shore operations around the Asian region and beyond.

The result was a spectacular increase in the volume of student movement from the Asian region shaped by government policy, entrepreneurial higher education institutions, an expanding middle class, and the demand for English (Marginson, 2004: 138). Trade in education services rapidly became a huge industry. For instance, the Australian Bureau of Statistics figures show that in 2002, education service exports grew by 2.9%, while education remained the third largest export services earner, bringing in AUS$4.1 billion each year (behind tourism AUS$9.3 billion) and transportation (AUS$7.6 billion). Currently it is Australia's 14th largest export earner and one of the most aggressive in developing its education export industry. Indeed, despite or because of its location, "Australia has grown in trade in education services faster than any OECD country, and has one of the world's highest proportion of overseas students in education, second only to Switzerland" (Ziguras 2003: 360).

Figures for the UK tell a similar story. By 2004 there were around 270,000 students studying in UK universities (both off-shore and in the UK), paying around GB£1.5bn in fees and contributing to GB£3 to the economy.[6] With such a significant investment in, and dependence upon, the 'education export market', there is also a concern expressed in the UK as to how best to maintain or increase market-share, as the UK faced competition from the US, Australia, Malaysia and Singapore.

In New Zealand, universities not only opened their doors to trade, but the state-funded schooling sector did as well. As Lewis (2003: 23) observed, the increase in number of foreign students in New Zealand schools has been spectacular, boosted by the marketing efforts of local schools and the government. By 2001, the export of education was estimated by the New Zealand government to be worth $NZ 1.5 billion—or 1.4% of GDP (Ministry of Education, 2001)—placing it in the top 10 export income earners (compared with $5.8 billion for tourism). With heavy dependence on the income earned from education exports, the New Zealand government has moved to market the idea of 'place' (New Zealand) as well as to protect the reputation of this new industry from 'rogue traders'. 'Brand New Zealand' is now stamped across education; one of the selected service industries that the New Zealand government has chosen to individually promote.

These developments in the UK, Australia and New Zealand, had a significant effect on the US's share of the market. A report to the US Department of Trade presented the government with a worrying trend; that their share had declined from around 40% to 30% of the global student market over the 1980's and 90s (http://www.ed.gov/offices). The report noted not only impediments, such as the cost of studying in the United States, but that there were significant barriers placed in the way of students obtaining permission from their home countries to study in the United States. The revenue implications for the US were immense. As the report noted: more than half a million foreign students studying in the USA spend an estimated US$9 billion per year.

6 In 2003, UK universities had 24% of the market for overseas students in English speaking countries (BBC news, 20th April, 2004 http://news.bbc.co.uk/1/hi/education/3640141.stm)

Foreign students, largely from Asia, are also a significant economic resource for the US economy, given that a large number, particularly in the science and technology areas, tend to remain in, or return to, the USA following their studies. Chalamwong, (2004: 6) reported figures for 2002 of 646,000 foreign students studying in universities in the United States on student visas, with more than half of this number from Asia. At the same time, these sorts of figures have given rise to a concern with brain drain in the supplying countries. Chalamwong, (2004: 17) notes that over a 10 year period, *less than* 50 percent of Chinese students studying abroad returned to China, with the result that the Chinese government has curtailed the number of students leaving as well as looked at ways of expanding its own higher education provision to meet with the high level of demand for education. The US also faces competition from countries like Australia, who have stepped up its skilled migration programme since 1998. .

As competition over a share of the global education services market has stepped up, key actors (governments, institutions and transnational firms) within the developed economies have intensified their interest in the way in which the domestic and international regulatory systems of the inter-state world impede their project of creating a global trading system.

The WTO and Services

The establishment of the World Trade Organization in 1995 emerging from the Uruguay Round of negotiations was deeply symbolic of the emerging global regime. This new institution replaced the GATT and now reached ambitiously into two new areas of trade regulation; trade in services and intellectual property. These two agreements – the General Agreement on Trade in Service (GATS) and Trade Related Intellectual Property Services (TRIPS), substantially advanced the rules-based nature of the trade regime. As the WTO Secretariat observed: "…the economic rationale calling for services liberalisation under GATS is no different in principle from the rationale that has driven the liberalisation of mechandise trade under GATT since 1948" (WTO, 1999: 1).

The role of the WTO was to "…formalize, deepen and widen an international system of trade regulation. It was also to bring greater coherence in global policymaking by drawing together the work of the WTO with that of the IMF, the WB as well as to develop relations with other bodies such as the World Intellectual Property Organization (WIPO), the Telecommunications Union and the International Organization of Standards" (Wilkinson, 2002: 129).

Pressure had begun to build from the developed economies—particularly the US—shortly after 1979 to expand the GATT regime to include new issues such as services and investment (Winham, 2005: 100). This was sharply resisted by countries such as India and Brazil who regarded their service sectors as public services. There were also added problems of defining services using the language of trade. As Winham points out:

> …services are processes, defining them is difficult, unless a strict functional definition is employed. …The tasks for the negotiators at the Uruguay Round were to incorporate GATT principles of transparency, national treatment and reciprocity, as well as newer principles such as market access, into areas of trade that was conceptually dissimilar from trade in goods (2005: 101).

This meant developing a code of principles (GATS) as well as identifying which sectors these principles would be applied to – a revolutionary move on the evolving global landscape (Robertson and Dale, 2003). Negotiators then identified measures that restricted trade in services – such as barriers to the labour mobility, cross border supply, commercial presence and the purchase or consumption of services across borders. The result was an agreement that "is not yet complete, not terribly user friendly, with a complex geometry and al acarte obligations set against the backdrop of near universal coverage and sovereign immunity in liberalization matters". (Sauve, 2001: 3). When education is stated in 'trade-speak' it is difficult for the education community to understand (Altbach, 2004: 1).

Much of the concern with the WTO emerges from the kind of organization it is. It is best described as a formally contracted body of rules backed by a judicial system, the dispute panel, and a minimum of political structure. The WTO Agreement outlines a number of specific functions to be taken by the WTO as a collective body; these include the implementation of the Uruguay Round Agreements, maintenance of a forum for further negotiations, administration of the dispute settlement system, administration of the Trade Policy Review Mechanism, and liaison with the World Bank and the IMF (Winham, 2005: 107).

The structures created to carry out the functions of the WTO are a Ministerial Conference meeting every two years, a General Council which can also meet as a Dispute Settlement Panel and Trade Policy Review Mechanism Body, and three councils in the areas of goods, services and intellectual property. There is a small secretariat (of around 500 employees) located in Geneva.[7] Decision making in the WTO is made on the basis of consensus, though there is considerable evidence that consensus is achieved through the powerful countries (known as the Quad – the EC, USA, Japan, Canada) and their allies (Singapore, Australia, Brazil, New Zealand) 'bullying' the less powerful countries into agreement (Jawara and Kwa, 2003). The level of influence a country can exert through the WTO mechanisms is largely determined by their share of world trade (Hartmann and Scherrer, 2003: 9).

The tasks of the WTO are carried out by professional staff along with the delegation from those Member States (at present 147) who are able to manage a presence in Geneva. For instance, in 2000, 24 countries (out of the 144 members at the time) had no permanent presence in Geneva (Kwa, 2002). Furthermore, the sizes of the delegations of the developed economies (lobbyists aside) are twice as large as those from the developing countries (if they are able to establish a presence). This uneven state of affairs suggests a shortfall in legitimacy for the WTO, a view strongly put by the House of Lords Select Committee on Economic Affairs (2002: 47) on the management of the international trading system where they observe:

> We recognise that member countries of the WTO vary in size and economic power. They vary, therefore, in their capacity to influence decisions in the WTO and more fundamentally to maintain a presence in the WTO. It would be naïve to believe that an organization like the WTO would not be dominated by a small group of rich countries. The important question, which applies to the International Monetary Fund and to the World Bank as well, is whether this domination is excessive. We believe it is in all three institutions,

[7] By contrast, the World Bank has nearly 7,000 employees, and the IMF approximately 2,500.

> but the evidence we received placed most emphasis on the WTO. We urge the Government, with its European partners, to consider, first, how to improve the balance of power in the WTO, and, secondly, how to ensure that decisions are more transparent.

Over and above the structures mentioned above, there are over 20 committees and working groups, with various numbers of working parties. Again, without a presence in Geneva, developing countries are unable to participate in important negotiations that take place between the Ministerial Meetings. Furthermore, negotiators from the developing and least developed countries are often excluded from key negotiations or bullied into accepting proposals that undermine their interests (Kwa, 2002; Kapoor, 2004: 529; Wilkinson, 2002: 134).

Such criticism has made the WTO vulnerable to the anti-globalisation lobby. In order to overcome these, countries like Canada and bodies such as the British Commonwealth have been working to ensure country representation to the WTO in Geneva, technical support for Commonwealth developing country ambassadors in Geneva, and capacity building in trade policy formulation, implementation and negotiation skills training to negotiate national interests effectively in the WTO (Williams, 2003).

Finally, because of the historical circumstances in which it was fashioned, the WTO's system of regulation is built upon a series of legal agreements that better suit the needs of the industrial states than their developing counterparts. More than this, it is a system of regulation that favours the economic preferences and legal customs of its founding members. (Wilkinson 2004). Members who join the WTO opt in under a single undertaking to a series of binding rules and a built-in agenda to engage in ongoing negotiations leading to progressive liberalisation.

GATS and Education

Within the WTO framework, the GATS consists of three components:

(a) a framework of rules that lays out the general obligations governing trade in services, which it does in much the same way as the GATT does for trade in goods. It provides disciplines on transparency, most favoured nation treatment, market access, and national treatment.
(b) annexes on specific services sectors; and
(c) schedules detailing the liberalisation commitments of each WTO member.

These result in a combination of *top-down rules* where all measures and sectors are covered unless they are explicitly excluded (MFN, Transparency, Domestic Regulation, government procurement, subsidies) and *bottom-up* rules where measures and sectors that are specifically identified and included (market access, national treatment). (Sinclair 2000). In theory this means it gives countries a change to pace their liberalisation of trade in services (Eglin, 2003: 7), however the overall direction is toward liberalisation.

GATS include all sectors of education within its scope; primary, secondary, higher, adult and other. Four modes of trade are identified:

Mode 1, cross border supply – for instance, services through international mail, internet, teleconference facilities;

Mode 2, consumption abroad – for instance, students studying abroad;

Mode 3, commercial presence – for instance, foreign direct investment in the form of setting up branches in the territory of another Member State; and
Mode 4, presence of natural persons – 'temporary' (with temporary yet to be defined) entry of workers in the territory of another Member State.

Top down features of the GATS	Bottom up features of the GATS
Covers all government measures affecting trade in services	National treatment and market access rules apply only to sectors or sub-sectors that governments have listed in their country schedules
Horizontal rules (MFN) apply across all service sectors	Specific commitments in certain sectors may be designated 'unbound' leaving governments free to take otherwise inconsistent measures in future
Applies to all means (or modes) of supplying a service internationally	
Once a government lists a sector in its country schedule it must list or lose all non conforming measures	

Table 1: Top down and bottom up features of GATS (Sinclair 2000: 30)

Controversial issues in GATS

One of the main issues and sticking points for those concerned with education is whether Member States education sectors are exempt. GATS Article 1.3 excludes services "supplied in the exercise of governmental authority". GATS Article 1.3 (c) further defines a service supplied in the exercise of governmental authority as: "any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers". Given that public services have been radically transformed since the early 1980s, the category of services supplied purely by government without any commercial interest or intent is small if not almost non-existent. While trade negotiators have provided a few examples of what might count as an exemption (social security, central banking, army), as Sinclair (2000: 57) notes: "…most public services, including even basic universal services such as primary and secondary education (K-12), are provided through a mix of public and private funding and in competition with private suppliers, both not-for-profit and commercial".

The considerable amount of ambiguity around the status of the education sector in relation to Article 1.3 has made those concerned with protecting education services very nervous. It is here, too, that we see a clash between those who see education as a public service regulated by states, and those who see it as a service that could be delivered by any supplier regulated by global trade rules. Hartmann and Scherrer (2003: 6) note:

> …state rules for the supply of services is based on a quite different set of motives. They are intended to ensure that basic services are provided nation-wide, are universally accessible, that quality standards are maintained, and particularly in the case of infrastructure services, that democratic participation and control are assured …this encroaches deeply into a body of rules that was and still is committed to other goals than hindering or facilitating cross border economic activities.

Similarly, in commenting on the higher education sector, Altbach (2004: 2) notes that while there are differences amongst the anti-GATS lobby, what unites them is "…a concern with what can be called a public good and by conviction that higher education is not a commodity to be traded without constraint. There is a recognition that higher education is a complex phenomenon involving not just the marketplace but also national culture, the values of society, and access and social mobility…it is therefore a public good and to some extent a public responsibility".

In response, supporters such as Sauve (2001: 16) argue that governments are not forced to either become members of the WTO or to offer their education systems for the purposes of trade, and that "detractors often present false, inflammatory and misleading characterisations of the purpose, rules and policy consequences of the GATS" (op: Cit: 12). He also argues: "…the market for trade in education services is big, diverse, innovative and growing fast. It will almost certainly continue to grow as societies place an increased premium on human capital enhancement as a source of development and as a means of better equipping individuals and societies to confront, adjust to and take advantage of the demands arising from closer economic integration." (op. Cit: 4). If the high demand sectors (such as the lifelong learning market) are to respond to rising levels of demand, new suppliers who have experience in cross-border supply, must be allowed to enter the market (Larsen, 2003: 9).

For countries such as the United States and the larger European countries, with strong and mature higher education systems, the likelihood of being significantly affected by foreign providers (such as transnational firms) is slim. However, for smaller and developing countries with high unmet demands for access to education and with smaller academic systems and universities, GATS could result in considerable external impact (Altbach, 2004: 1).

A second significant issue concerns the difficulty or costliness of reversing decisions. Member states, once a sector and mode are committed, will if they want to withdraw have to wait for a period of three years, they will have to exchange the commitment for another, and will have to pay potential firms future lost earnings. However, for Sauve (2001: 10), commercial suppliers must be able to feel confident about their investments in the education sector.

The highly controversial nature of the inclusion of education in the GATS, coupled with the activities of the anti-GATS lobby in pointing to and monitoring the negotiations, has resulted in an element of wait and see in national negotiating strategies, with only a handful of Member States (8) tabling their requests or offers [8] (Knight, 2003: 6)

WTO and Development

Despite the assurances of WTO Director Mike Moore (1999), that "…the WTO could do splendid work and advance the progress of the human species", and Nelson Mandella's hope that the WTO would become a means for forging a new partnership for development based on trade and investment, for many, the WTO represents the global triumph of a particular model of economic development. As Rodrik observes:

> It is widely accepted, not least in the agreement establishing the World Trade Organization (WTO), that the purpose of the world trade regime is to raise living standards all around the world—rather than to maximise trade per se. Increasingly, however, the WTO and multilateral lending agencies have come to view these two goals—promoting development and maximizing trading—as synonymous, to the point where the latter easily substitutes for the former. The net result is a confounding of ends and means. Trade has become the lens through which development is perceived rather than the other way around (Rodrik, 2001: 5).

Rodrik (2001: 16) argues that the augmented Washington consensus is a particular model of institutions and economic development, and there is no reason to assume that this is the best or only way in which trade ought to take place. For instance, import substitution models did well until the 1980s, while outward-oriented industrialisation, such as in the case of. Korea and Taiwan, was based on a coherent strategy of the return to private investment. Alternatively, China, Mauritius and India developed a dual track system – of an export zone with a highly protected economy. For Rodrik (2001: 25), the real debate is not whether integration is good or not, but what the consequences of integration are over national and local policies and priorities. A 'development' focus rather than a 'trade focus would mean that developing nations could articulate their needs, not in terms of market access, but in terms of the policy autonomy needed to exercise institutional innovations" (op. Cit: 7). In this kind of model the WTO could be an institution that managed diversity rather than one that tended to reduce national institutional differences. This is supported by Rose et al (2003: 6) whose viewed formed the basis of advice to the Commonwealth Meeting of Education Ministers in 2003.

GATS, Education and Human Rights

The right to education is recognised in several international instruments (see Article 13, para 2 of the *International Covenant on Economic Social and Cultural Rights* – adopted in 1966). To achieve full realisation of this right: (a) primary education should be compulsory and available free to all; (b) secondary education in its different forms shall be made available and accessible to all, in particular by the progressive introduction of free education, and (c) higher education in its different forms shall be made equally accessible to all, in particular by the progressive introduction of free education. To ensure this, states must

[8] Requests and offers can also be made right up until November 2005 running up to the Ministerial Meeting in Hong Kong.

ensure availability, accessibility, acceptability and adaptability (High Commissioner Human Rights (2002: 17).

The emergence of the GATS and its relationship to education as a human right has become a concern of the UN Commission on Human Rights. In a specially commissioned report on GATS, the Special Rapporteur stated that the "rapid development of international trade law necessitates a decisive reaffirmation of education as a human right" (Tomasevski, 2001: 5). This led the High Commissioner (2002) to observe that;

> …the liberalization of trade in services, without adequate government regulation and proper assessment of its affects, can have undesirable effects. Different service sectors require different policies and time frames for liberalization and some areas are better left under governmental authority (p. 20)…
> While the WTO Agreements provide a legal framework for the economic aspects of the liberalisation of trade, they focus on commercial objectives. The norms and standards of human rights provide the means of providing a legal framework for the social dimensions of human rights…
> A human rights approach to trade liberalisation emphasizes the role of the State, not only as negotiator of trade rules and setter of trade policy, but also as duty bearer for human rights (p. 10).

In the report, the Commission points to the different ways in which GATS might exaggerate social inequalities in education. For instance, in Mode 1 (cross border supply) those advantaged by virtual suppliers are those who have the necessary infrastructure, such as the internet, to access education. Mode 2 (consumption abroad) could lead to the introduction of a dual market of fees, and exaggerate inequalities if the governments do not have a way of ensuring cross subsidization (see Lewis, 2005). Under Mode 3, (commercial presence) for example if user fees were introduced, then services are likely to become more expensive, and it is not always easy to regulate foreign suppliers. Finally, Mode 4 (presence of natural persons), while it but can enable knowledge transfer and remittances to be returned to the sending country, it can also lead to brain drain.

Furthermore, locking countries into their schedule of commitments and penalising them for seeking reversals highlights the tension between commercial interests and human interests. In making this point the High Commissioner observed:

> From a commercial perspective, holding countries to their commitments to liberalise is important to ensure transparency and predictability in international trade and the payment of compensation is a legitimate commercial response to the settlement of disputes. From a human rights perspective, however, the focus is less on predictability and more on the need for flexibility to modify or withdraw commitments to liberalise services where experience demonstrates that a commitment constrains or limits the enjoyment of human rights. The need for flexibility is particularly relevant for developing countries given that they are in a dynamic process of building infrastructures. …Moreover, while compensation to affected parties might be appropriate in some cases upon withdrawal of commitments, a human rights approach would question whether states should be sanctioned for taking action to protect human rights (2002: 28).

GATS is also seen as having important consequences for the marginalised and poorer sectors of societies, including indigenous peoples, and women and girls. For instance, GATS does not provide for any recognition of indigenous rights or cultural identity. In the NZ case, Kelsey argues that there is no recognition of obligations to Maori under the Treaty of Waitangi (2003: 8). There are also concerns with the way in which gender-based inequalities are likely to be exaggerated. Williams (2003: 106), in a report on multilateralism and gender to the Commonwealth Secretariat, states:

> The implementation of GATS and the expansion of commitments in the education sector are likely to exacerbate negative trends in education. These include diminishing the role of the state/decentralisation of education through (a) shifting the financial responsibility from national to household budgets; (a) the privatisation of the education system; (c) imposing community based and user fee systems for primary education; (d) inadequate resources for universal primary education, (e) insignificant movement toward universal secondary education, (f) rising costs of private education (106-108).

The irony, it seems, is that " …if a child does not get the education he/she is entitled to according to the Convention of the Human Rights of the Child (papa 28 and 29) there is no way to force that government to meet its commitments. However, if a company trading in education services loses its right to trade in a particular country, that country where the company is based will have, according to the WTO rules, the right to compensation. Rules concerning trade seem to be much stronger in international law than rules concerning human rights" (Fredrikssen, 2003: 8).

Recent Developments – Benchmarking

There was considerable hope that the meeting in Hong Kong would be used to progress the interests of the developing countries, and the broad coalitions (such as the G20 led by Brazil and India and the G33 led by Indonesia and the Phillipines) would give the developing countries more clout. However observers, in reviewing the Hong Ministerial meeting that took place in December 2005 (cf. Oxfam, 2005), argue that in the services area, the developed countries "were not satisfied with the developing countries offers" with the result that the EC called for 'benchmarking'. In essence this means that all countries have to demonstrate a minimum commitment in terms of numbers of sectors and level of ambition. This overrides the bottom-up approach which ostensibly enabled countries to move forward at their own pace. While the bilateral process is preserved, developing countries face increased proessure to take part in plurilateral negotations. In essence, if a country asks another to take part in plurilateral negotiations, they are obliged to consider such requests (though in the initial first draft countries were *required* to enter into negotiations rather than merely consider them). Developing countries are also being urged to aim for new qualitative benchmarks, such as enhancing levels of foreign equity participation.

There are also continued concerns about the way in which the developed economies, in particular the EC and to a lesser extent the USA, have used their power to influence proceedings. As the Oxfam briefing paper notes (p. 4) "In a move symptomatic of the way development considerations are squeezed out by power politics as a ministerial approaches, the chair of the services negotiations produced a draft text in October 2005 that suited the EU's proposals, despite developing country opposition". Concerns over process, in particular transparency and accountability and the pressure on countries to respond in a very short period of time, continue to be expressed by delegates, especially with regard to negotiations over services (op. Cit: p. 6; 16). Taken together, these recent developments suggest that the will be continued pressure on countries to both commodify their education sectors and to regulate them through global rules.

Conclusions

While some observers have asked ''what is all the fuss is about?' with regard to applying GATS mechanisms to the education - given that education has been globalising as an industry without GATS, it can be argued that the creation of a set of global rules that both creates and regulates a global education market and industry represents a very significant transformation in the role and function of education. While it is true that many countries who are member states of the WTO have been rather tentative about committing their education sectors, nevertheless, this does not alter the fact that by drawing education sectors into the economy as a direct contributor to accumulation, education is being asked to do more than develop human capital or contribute to nation building through the development of societal cohesion. It seems to me, however, that when member states allow their education sectors to be a part of the bundle of goods and services that make up trade agreements, in response to the pressures of more powerful neighbours (as in the case of African states such as Ghana and Senegal), these member states lose control over an important development and societal mechanism – education. The limited ability, if not impossibility of turning around decisions without large remuneration implications, should make any national government nervous about what is being traded, and what is at stake. There is a real tension between education as a human right and education as an area of trade. When member states allow education to be included and traded in global agreements like GATS, member state's ability to ensure that education is a right for all, rather than a commodity to be purchased by the well off is considerably diminished. In sum, it could be concluded that the GATS as it stands is a high price to pay to regulate the global education industry.

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