

The regulation of education through the WTO/GATS¹

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Abstract

This paper focuses on the growing interest of 'entrepreneurial groups' in the field of education. It refers to the large amount of resources involved in education, and critically analyses the inclusion of education as a 'service' on the current agenda of the General Agreement on Trade in Services, as a World Trade Organisation directive.

To this end, the paper analyses the WTO and GATS' documents, as well as proposals presented by various countries, demonstrating their interests in eliminating "barriers" to "free trade" in education. The text points out that the existence of national regulations and even the offer of public education can be challenged as practices that are harmful to the "free" offer of educational services and subject to WTO sanctions, allowing business groups to demand public resources and other benefits. Should GATS succeed, it runs the risk of converting education from a subjective public right into a process of simple commercialisation of educational packages (e.g. courses, evaluation and certification systems, textbooks, maps, uniforms, etc). It concludes that such a perspective clearly endangers national sovereignty and autonomy, leading potentially to the loss of cultural diversity and local values, to the benefit of a process of cultural homogeneity. Notwithstanding, the emergence of movements opposed to this tendency is also highlighted.

Keywords: commercialisation of education; privatisation; World Trade Organisation; General Agreement on Trade in Services.

Introduction

This text is an attempt to explain how and why the General Agreement on Trade in Services (GATS) has fallen under commercial regulations, as well to verify the interests involved in its adoption into the educational system and the possible drawbacks this situation brings. One drawback is the reduction of education to an ordinary commercial service, becoming based on the general rules of the trade. This affects not only the idea of education as a human and social right, but also jeopardises the identities and sovereignty of participating countries. Lastly, some emergent reactions to such proposals and the need of a larger collective mobilisation will be presented.

It is estimated that nowadays, including government and private expenses, the global educational sector comprises a market of about 2 trillion dollars (Patrinos, 2002). This expressive volume of resources has been attracting the growing interest of several groups, mainly business ones, from areas such as communication, computer science, services and profit education management².

The richest countries, having the majority of their population already schooled, with a decreasing birth rate and ample educational systems in operation, are becoming a restricted market for the operation of companies in the educational sector. On the other hand, developing countries –whose majority of inhabitants are at the school age, and therefore, represent a great demand in potential for the educational offerings at several levels – are the preferred targets of the businesses groups' search for new markets.

However, as in most countries, education has been established as one of the human and social rights, offered and controlled by the State, this poses several limitations on the commercial/mercantile expansion of education traders. These limitations are now being identified as “barriers” that should be suppressed. As a result, there is growing pressure for education to be treated as a commodity, regulated by the supposedly “neutral and general” rules of the market/commerce, without interferences from local regulations (barriers), but with increased possibility of reaping public funding.

The following is a brief historical view on trade regulation.

Trade Regulation After World War II

With the end of World War II (in the late 1940's), world leaders gathered in Bretton Woods and created two institutions: the World Bank (WB) and the International Monetary Fund (IMF). The first, the WB, emerged with the purpose of supplying loans for the reconstruction of countries destroyed by the war. This did not come about due to lack of funds. Soon after it became a Bank of Development, rather than a Bank of Reconstruction, aiming at lending resources to developing countries. The IMF would control countries' finances, using the "gold-pattern" as a warranty for the currency value and monetary reserves. There was an intention to create an International Commerce Organisation. However, due to diverging ideas among countries, it did not take place. Nevertheless, the General Agreement on Tariffs and Trade, known as GATT, was created. In spite of being called an Agreement and not an institution, GATT had its own office, staff and secretariat. Developing countries, however, did not accept GATT's principles, such as: equal treatment for every country, regardless of differences or development level as well as the requirements set for agricultural products (prices, patterns of size, colour, spots and sanitary demands, among others). These countries always felt that GATT brought more benefits to the industrialized countries and, as a result, only a few countries initially endorsed the Agreement (Williams, 1994).

It is worthwhile mentioning in this brief historical account, that during the same period the United Nations was created and the Universal Declaration of Human and Social Rights was sanctioned, both advocating solidarity and reciprocal collaboration among countries, without competition.

During the 1960s, developing countries became stronger within the political and commercial milieu. In 1964, they were able to create, within the United Nations, the UNCTAD (United Nations Conference on Trade and Development): an institution to deal with trade in more favourable terms for themselves and in which they would have larger influence. It was, however, never well accepted by most developed countries. However, in 1974, the UNCTAD was fundamental in the approval, by the UN General Assembly, of a document known as "The New International Economic Order" that foresaw more co-operation, barter and solidarity between countries, along with respect for their sovereignty and their social, cultural, religious, and political

differences, as well as the abolition of all forms of commercial apartheid, colonialism and neo-colonialisms (UN, 1974).

The aforementioned principles were advocated by developing countries in the GATT Round in Tokyo (1973-1979). The Tokyo Round ended up recognizing the problems and interests of the poor and developing countries and introduced the principle of special and differential treatment to them.

The formation of OPEC and the two petroleum crises (in 1974 and 1979), the defeat of the United State in the Vietnam War, its influence in deposing Salvador Allende's government in Chile, and the growth of anti-interventionist movements were other factors that led some of the richest countries to adopt a position of trying to weaken the United Nations and its institutions through the reduction of resources, mainly in the 1980s (UN, 1999). At the same time, the Bretton Woods institutions were reinforced and the WB and IMF began acting jointly. The WB stopped operating as a Development Bank and started functioning as an assistant in charge of the foreign debt (Fried and Owen, 1982), compelling indebted countries to adopt structural adjustments, such as loans known as SALS and SECALS (structural and sectoral adjustment loans, respectively), and having to privatise many public companies and open their markets.

Within the trade area, in 1986, a new round of GATT negotiations was initiated known as the Uruguay Round, which extended up to 1995. In that Round there was the rejection of special and differential treatment for the less developed countries, and its substitution by the rules of “free” trade, as sought by large corporations. Indeed, these corporations counted on their governments' support to open markets and to establish general rules. As a result of the Uruguay Round there was the creation of the World Trade Organisation (WTO). The WTO not only incorporated the GATT, as a general agreement governing the trade of material goods, but it also established agreements in other areas with a growing profit perspective: knowledge, investments and services, known as TRIPS (Trade-related aspects of intellectual property rights), TRIMS (Trade-related investment measures) and GATS (General Agreement on Trade in Services), respectively. The meaning and impact of the creation of the WTO can be seen in the following excerpts:

The WTO gives the trade rules both a permanent organisational structure (powers that GATT did not have) and the kind of “legal personality” enjoyed by the UN, the World Bank, and the IMF. [In] [t]he WTO “dispute resolution system” ... [d]isputes are not decided by democratically elected officials of their appointees, but by secret tribunals of foreign-trade bureaucrats from a present roster.... The qualifications for dispute tribunal members... include experience in a country’s trade delegation or experience as a lawyer on past trade dispute. Such qualifications produce panelists with a uniformly pro-trade perspective (Nader and Wallach, 1996, p.102-103)

[A]ny member country can challenge, through the WTO, any law of another country that it believes deprives it of benefits it expected... Although... challenges are brought by one country against others, the impetus for a challenge normally comes from a transnational corporation that believes itself to be disadvantaged by a particular law... When a challenge to a national or local law is brought before the WTO, the contending parties present their case in a secret hearing before a panel of three trade experts.... The burden of proof is on the defendant to prove that the law in question is not a restriction of trade as defined by the GATT. (Korten, 1996, p.174-176)

At this point it is not my intention to discuss TRIPS, TRIMS or the GATT, but just the GATS (General Agreement on Trade in Services). It is important to state that in the WTO the prevailing rationale is geared towards the commercial and the market, aimed at increasing profits and competition. In addition, it is worthwhile to mention that the WTO was indicated as the “only forum for the elaboration of global rules of trade and liberalisation” (WTO, 2001, November, p.1), which means an attempt to disqualify other forums that could be endorsing a different logic on trade or on services, and reveal its limitations on facing human and social rights.

The Objectives, Discipline and Scope of the GATS

The GATS was signed by the WTO members-countries on 01/01/1995, aiming to achieve a progressive liberalisation of services (WTO, 1995, p.278), and with the perspective of concluding negotiations within a 10-year period (up to 01/01/2005). This was not accomplished due to several disagreements, mainly from developing countries. In the negotiation process countries were to initially submit proposals for the liberalisation of several services, and, later on, present requests for specific commitments (by 30 June 2002), to be followed by offers (up to 31 March 2003). During this period of negotiations, successive Ministerial meetings were scheduled, such as the one in Doha, Qatar, in November 2001, and another one, in Cancun,

Mexico, in September 2003. The next WTO Ministerial meeting will be held in Hong Kong, China, in December 2005.

This context of negotiations consists of the incorporation of several services, usually maintained and regulated by the State, as part of the Bill of Human Rights, brought into being due to citizens' long-term organized demands (e.g., education, health, environment protection, sewage, public transportation, power and water supply) within the GATS, and its direction towards profit, competition, demand/ supply, cost-benefit logic, which are characteristics of the supposedly "free"-market.

The list of services of the GATS includes 12 types, subdivided in many other: 1- Business (accounting, computer science and related subjects, legal, marketing and correlated, medical and dental services, architecture, etc); 2- Communication (telecommunication, mail, audiovisual, radio, motion picture etc), 3- Construction and related engineering services; 4- Distribution (franchising, retail and wholesale, etc), 5- Education (primary, secondary, higher, adult education and others); 6-Environmental (sewage, sanitation, disposal, etc); 7- Financial (insurances, banking, leasing, asset management, etc); 8- Health and related social services (hospital, other human health services, social, etc); 9- Tourism and travel related (hotel, restaurant, travel agencies, etc); 10 – Recreational, Cultural and Sporting (news agency, libraries, archives, museums, theatre, sports, etc); 11 - Transports (maritime, aerial, railway, railroad, passenger, freight, maintenance and repair, towing, pipelines, warehouses, etc); and the last, 12 - "Other services not mentioned in any other place" (WTO, 2003). The last item allows the inclusion of any other services not listed and/or that comes into being in the future.

At the time of the conception of the GATS, the WTO's member-countries agreed with the inclusion of all the services within the Agreement, with the fragile exception of those characterized as being supplied in the exercise of governmental authority, which could not be supplied on a commercial basis and neither in competition with one or more service suppliers (WTO, 1995, Art.I, 3, b – c, emphasis mine). It means, for instance, that in education, if any government charges any tax or fees, offers paid courses directly or through corporation or institutional agreements, or develops research and receives financial compensation – which is increasingly taking place in many countries – this government will be offering services on a commercial basis

and, therefore, it would be excluded from the exception. Indeed, if a government offers, for example, distance education, language courses, or MBAs, and private suppliers do the same, such a government is in competition with these service providers, it would also be excluded from the exception.

This same Article 1, item 3, indicates that GATS' rules and the commitments are accepted by signatory government countries - at all levels (from local to national) - as well as by non-governmental organisations, when executing governmental activities. The agreement also presents several “**general rules**” – among them, the following will be highlighted: Most-Favoured Nation (MFN), Transparency, Domestic Regulation, Recognition and Restrictions to Safeguard the Balance of Payments – and “**voluntarily**” **adhesion rules**, from which Market Access and National Treatment stands out.

General Rules

The first MFN rule, establishes that no country can receive inferior treatment to that given to another country. This which means that if a country allows competition in a certain section or has specific bilateral agreements (eg. Brazil-France; US-Chile) and/or with a group of countries (e.g., Mercosur, European Community, Nafta), the same benefits are to be extended to all countries. It is worthwhile mentioning that when the GATS was signed, member-countries had a single permission opportunity to request exemption from the MFN rule for a certain period; that is, up to 01/01/2005. But, according to Article II Annex, the pertinence of these exemptions was always subject to be reviewed as part of the current negotiations, indicating that the existent exemptions could be extinct before the deadline for the negotiations (by now, extended to May 2005).

Brazil and France, for example, have a specific Agreement, known as Santos Dumont, that exempts the consular seal on diplomas and documents by the authority of the receiving country, facilitating the process of recognising degrees. Such an Agreement was signed as a reciprocal recognition of the trustworthiness of the institutions, granting titles with national validity and program requirement equivalency (a master degree for instance, demands research work, academic discussion and a thesis). However, with the expansion of institutions and courses whose larger objective is

accruing profits, the extension of such an Agreement to different countries could generate the entrance of an avalanche of certificates and titles issued by unreliable institutions or programs without national validity. These already exist in many countries. Indeed, as pointed out in the 2000 World Bank and UNESCO joint document (The Task Force, 2000), there are prestigious universities from developed nations offering shabby courses in poor and developing countries, using their renowned names, without assuring equivalent quality.

Concerning the Transparency Rule (Article II), countries were to immediately publish all relevant laws and measures affecting services, as well as to answer any requests for specific information on measures taken in any sector, placed by any other country. Members are also to notify if any alteration in the legislation to the WTO, where it can be challenged (e.g., prohibition or liberalisation of genetically modified products, pollution levels, movement of people). Important questions to ask are: Who will decide what is important- individual countries or the WTO? Based on what framework? Certainly it is likely that the interests of entrepreneurial groups, based on capital accumulation and maximising the rule of the market will prevail within an organisation created to regulate world commerce to the detriment of human and social rights (housing, food supply, education, health, employment, leisure, etc).

With reference to Domestic Regulation (Article. VI), the GATS' document establishes that this regulation shall be administered in a "reasonable, objective and impartial" way. It also states that, in order to avoid that measures related to "qualification and requirements procedures, technical standards and licensing do not constitute unnecessary barriers to the trade in services, the Council for the Trade in Services shall, through the appropriate bodies it may establish, develop any necessary disciplines." In addition, such rules should assure that requirements are to be based on "objective and transparent criteria, such as competence and the ability to supply the service," not being "more burdensome than necessary to assure the quality of the service" (WTO, 1995, p. 290). Based on this Article, corporations will be able to argue to the WTO dispute panel, with regard to education, what "requirements and procedures no more burdensome than necessary" would be, as well as "unnecessary barriers". These could include such requirements and procedures as requesting a minimum level of teachers' qualifications, rules for program authorization and

operation; requirements for degrees and the validity of diplomas, and norms for personnel hiring/firing.

Regarding Recognition (Article VII), the Agreement proposes that “for the purposes of the fulfilment of standards or criteria for the authorization, licensing or certification of services suppliers... Members [countries] may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country”. It also warns that a member should not use Recognition as a way of discriminating against countries or a hidden procedure aiming at restricting trade in services.

Finally, it postulates that Recognition is to be based on “multilaterally agreed criteria” and, that members are to work in “cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and the adoption of common international standards and criteria for recognition”, also applicable to the practice of relevant services and professions (WTO, 1995, p.291). This GATS article seeks to eliminate countries’ validation requirements for courses, titles and professional authorisations, substituting them for an international certification. UNESCO has been the main multilateral agency, acting toward the unification of national rules of certification, mainly in Europe, along with CRUE (Council of Rectors of the European Universities) through the Bologna Agreement. Indeed, since 2000, UNESCO has been advocating similar positions to the ones expressed by the World Bank for the educational area (The Task Force... 2000). This means approaching education more and more as investment, and no longer as a universal right. In this sense, and in order to facilitate education “trade” worldwide it is essential to bring to an end the national rules and features of local identity, opening room for the emergence of a “globalised” education, more homogeneous and easily tradable to different countries. This process would certainly affect nations’ sovereignty.

As for the Restrictions to Safeguard the Balance of Payments (Article XII), the Regulation establishes that countries with serious problems in the balance of payments and external financial difficulties could adopt or maintain restrictions in the trade of services. However, such restrictions could not disrupt IMF rules. They should also avoid unnecessary damages to the commercial, economic and financial interests

of any other country; and not be used to protect a particular sector (WTO, 1995, p.293).

Despite the specification that poor countries' differences and difficulties are to be respected, the proposed legislation – mainly the MFN, the domestic regulation, and even the one regarding the “safeguard of the balance of payments” – certainly impede any differential treatment based on principles and needs that diverge from the allegedly “objectives and transparent” market criteria and its profit seeking purpose. Indeed, these are general rules; that is, they affect all signatories of the Agreement.

“Voluntarily” adhesion rules

These rules euphemistically named “specific commitments”, present two main requests: Market Access and National Treatment.

Market Access (Art. XVI) establishes that a member-country cannot adopt or maintain limitations regarding: the number of suppliers (be it through quotas, monopolies, exclusive suppliers or economic needs tests); the total value of service transactions or assets; the total number of service operations or the total amount of services performed; the number of natural persons (in WTO language this is human beings) that may be employed in a particular service or that a service supplier may employ and who are necessary; the participation of foreign capital in national firms or the total value of individual or aggregate foreign investment; the restriction or request in specific types of legal organisations or joint ventures (WTO, 1995, p.297). This rule can accelerate the process of merging, acquisition and denationalisation of basic services, (e.g. education, transportation). It can also lead to unbridled competition in which several suppliers, looking to reducing their costs, would be offering lower quality services (short time programs with less qualified teachers or only distance learning), exploiting the workers more (payment for tasks or productivity, without any vacations or paid rest), and damaging the environment (construction in preservation areas, use of hazardous products and /or equipment that put the population at risk).

The National Treatment rule (Art. XVII), implies that foreign services and suppliers are to receive “treatment no less favourable” than that adopted for national ‘alike’ services and suppliers. It also points out that formally equal or different treatment can

be considered to be less favourable if it modifies the conditions of competition in favour of services or national suppliers of similar services or suppliers of any other member-country. This means that, in case a government offers a public service, such as transportation, education, or health and it is understood as entering in competition or being offered in a commercial way, the government can be ordered to discontinue offering such services and/or to be obliged to offer the same conditions to foreign suppliers (e.g., buildings, personnel payment, scholarships, research grants, fuel, maintenance, etc).

Finally, it is necessary to point out that, within the negotiations, trade in services, including the educational sector, is grouped in four modes of supply (WTO, 1995, Art I, 2): MODE 1- Cross-border supply: the offer of services by suppliers from the territory of one member-country into the territory of another member-country (e.g., distance education and testing); MODE 2- Consumption abroad: the consumption of services by individuals from a country in another member-country (e.g., languages courses, technical or vocational training, B.S., MS.C. and Ph.D. degree courses); MODE 3- Commercial presence: the commercial presence of service suppliers from one country in another country, through the creation of local branch campuses, partnerships (joint-ventures) or “twinning” arrangements (franchises); MODE 4- Presence of natural persons: the presence of individuals of a country executing services in another country (e.g., consultants, teachers, administrators, testing and computer staff). Countries are to declare the commitment level they accept/request to undertake (full [no limitations], partial or no commitments [refusal]) in each one of those Modes, in reference to each one of the service categories / sub-categories.

The Particular Characteristics of Educational Services³

In 1998, a document elaborated by the WTO Secretariat on educational services was disclosed (WTO, 1998 September). Its contents not only pointed out the economic importance of education, mainly for countries that usually receive a large number of foreign students (USA, France, Germany, United Kingdom, Russian Federation, Japan, Australia, Canada, Belgium and Switzerland), but also revealed the expected expenditure for education services in countries with a large school age population (from 5 to 29 years). It also highlighted changes that are taking place within the education sector. These include the reduction of public resources, which has been

provoking a growing search for alternative sources of funding; and the adoption of business administration practices. This same text reveals the emergence of new institutions and forms of partnerships between public and private providers, mentioning the example of the West Governor's University, in the USA, founded by 17 governments of the Western US, with private partners such as IBM, AT&T, Cisco, Microsoft and Thomson. It clearly states that the aforementioned university does not employ any teachers or develop its own courses, but acquires academic contents from "faculty providers" employed by other public and private institutions. It reaches students through the Internet and other distance learning technologies (WTO, 1998, September, p. 5). This means that it functions as a virtual university: no faculties, no large buildings or campuses, nor students wandering around.

The document presents the educational "services" classification within the WTO/GATS: 1- Primary education services (including preschool education); 2- Secondary education services (consisting of general education, preparatory for technical or university studies; technical and vocational for general students and for students with special needs – referred to as handicapped); 3- Higher education (post-secondary, technical and vocational, as well as graduation and research programs); 4- Adult education (no-formal education; literacy; general and vocational education; education through radio, TV, correspondence) 5- Other education services, educational support services or related educational services (adult formal education, counselling, educational consultants, special education, testing services, school administration/management, teachers' training, books and didactic material, school construction, school maintenance and meal services, etc). (WTO, 1998, September, Annex I). Actually, the definition for "other educational services" is somewhat contentious. As it can be perceived, there is the inclusion of education in all its levels and modalities, besides the labelled "educational support services or related educational services" and its offer is based within a commercial logic; that is, with a market perspective and objective; in summary, a profit standpoint.

The document referred to alludes to barriers to trade, grouping them by Modes of Supply related to the previously mentioned education "services" categories. Regarding the consumption abroad (MODE 1), it points out direct restrictions, such as immigration requirements and foreign currency controls; and indirect restrictions,

such as the national equivalence of titles obtained abroad. In relation to Commercial presence (MODE 3), it mentions the impossibility of obtaining national licenses, e.g., the recognition as a degree/ certificate granting educational institution; measures limiting direct foreign investments by foreign providers (e.g., equity ceiling); nationality requirements; needs tests; restrictions on foreign teachers employment; the existence of government monopolies and the high subsidisation of national institutions. Concerning the presence of natural persons (MODE 4), it chiefly indicates immigration service restrictions, nationality requirements, financial capacity and the recognition of credentials (WTO, 1998, p.8). The text did not make any reference to MODE 2, Cross-border supply, but did mention certain limitations on recognition of titles, number of suppliers, financial and academic reliability, contents, qualifications, imports of computer equipment, schoolbooks and supplies, etc.

The document also presents a list of 30 countries that, in 1998, had already formulated some commitment in relation to trade in educational services, indicating 21 to basic education; 23 to secondary; 21 to superior; 20 to adult education and 12 to other services (WTO, 1998, September, Table 5).

Only three countries' proposals were disclosed through the WTO: the United States (1988 and 2000), New Zealand and Australia (2001) and Japan (2002).

The United States emphasized in its proposal higher education, adult education (WTO, 2000, p. 1), training services and educational testing services (p.2), demonstrating their desire for countries to adopt national treatment and market access disciplines (p.3). The document points out several "obstacles" that this country questioned: the prohibition to foreign suppliers of offering the three mentioned services sub-categories and/or lack of authorisation to establish facilities within a member-country and/or to be qualified as degree granting institutions; inappropriate restrictions on electronic transmission of course material; providers' proof of economic reliability; measures demanding the use of national partners; denial of permission for private suppliers to freely enter into and exit from or form joint-ventures with national or foreign partners; delays for obtaining governmental authorisation, where required, and non-explanation when approval is denied; unfavourable tax treatment for foreigners; less favourable treatment to foreign partners in joint-ventures than to national ones; less favourable treatment to franchises

than to other forms of entrepreneurial organisation; laws and internal norms unclear and administered in an unfair manner; subsidies for the three sub-categories not made known in a clear and transparent way; excessively high minimum requirements for local hiring; difficulty in obtaining permission for the entrance and departure of specialised personnel needed for temporary service (e.g., managers, computer specialists, expert speakers); excessively costly fees/taxes imposed on currency conversion when repatriating earnings; and high fees/taxes imposed on licensing or royalty payment (WTO, 2000, p. 3-4).

New Zealand's proposal indicates its commitment to private education, within primary, secondary and higher education levels, highlighting "other services" as areas of interest. Thus, the New Zealand proposal puts forward the idea of including "short term training courses, languages training and practical/vocational courses on a range of subjects (e.g., computing, hospitality, resource management and primary production), as well as courses of driver education and corporation training services. It also suggests the addition of education agency services, working with student recruitment and placement, including the advertising and marketing of education services, and the processing and payment of applications (WTO, 2001, June).

Australia's proposal mentions secondary education, higher education and other education services, emphasizing the consumption abroad (MODE 1). The document also lists several barriers that are similar to the ones acknowledged by the US, emphasizing visa-immigration matters, as well as pointing out a relationship with other sectors: telecommunication/audiovisual and the movement of natural persons, indicating, therefore, that education should be seen "within the context of a comprehensive services round" (WTO, 2001, October). It is worthwhile to mention that, according to data presented by a World Bank specialist, Australia is becoming a strong US competitor in foreign student enrolment. In 2000, the US had 450 thousand foreign students, while Australia had about 25 thousand in the 1980s, achieving 100 thousand in 1990, and reaching about 410 thousand in 1999 (Holm-Nielsen, 2002).

Japan's proposal (WTO, 2002, March) differs from the previously mentioned 'Anglo-Saxon' proposals. It indicates the need to promote a "certain level of liberalisation", but it points out aspects of government policies and educational sector specificities that need to be considered, such as: the maintenance and improvement of the quality

of education and research activities in each member-country; the protection of consumer (learners) students, with measures to ensure that they will not be affected by services of low quality; and measures to ensure equivalence of titles, diplomas, etc. The document also criticizes services supplied by “degree mills” of one country in other country through e. learning. However, it does not make clear the meaning of the “quality” it refers to in this mercantile context: Is this standardized quality, measurable by standardized tests with the creations of educational ISOs? (international standards to be applied to all students worldwide, irrespective of the particularities of specific countries’ or groups’ values, language, religion, ethnicities.

The aforementioned proposals are presented as a general letter of intentions, and countries are to present requests and specific offers in bilateral negotiations, which continues to be kept in secrecy. Some requests leaked, such as the one from the US. The leaked US document presents demands regarding the education area, listing 31 countries (treating the European Union as a block), for which it requests the total adhesion to market access rules and national treatment, in MODES 1, 2 and 3, as for higher education and training, adult education, “other services” and testing (Sharma, 2002).

It is worth mentioning that the education negotiation within the FTAA is based on the same perspective of progressive and enlarged liberalisation (Aboites, 1999; Grieshaber-Otto and Sanger, 2002). The World Bank through the International Finance Corporation/EdInvest (IFC, 2001) is making efforts and organising events (the first one was in Africa, in 1999), in order to promote the interaction and financing of groups interested in the education “business” within developing countries (Siqueira, 2001; Schoole, 2004). An international fair for promoting the “education business” already exists: The World Education Market (WEM, 2002), gathers governments' education “services seller” (New Zealand, Australia, US, Canada, Finland, France, etc), as well as “potential buyers” (Brazil, Brunei, China, Chile, Nigeria, Russia, etc), educational sector enterprises (Apollo International, Sylva Learning Systems, etc), managers of educational services (such as *Centre d'étude et recherches sur les qualifications*), multilateral institutions (the World Bank, through IFC/Edinvest, UNESCO, OECD), enterprises within the computer/communication sectors (such as Cisco System, IBM, Sun Systems, etc), and universities (such as

Auckland University - New Zealand, University of British Columbia-Canada, Virtual Finnish University - Finland, Université Paris III - Sorbonne Nouvelle - Tele3, etc).

Reactions

The strongest reactions to the inclusion of education as a matter of GATS' regulation are taking place within the European Community. During the first European Social Forum (ESF), in 2002, the idea that be created an European Education Forum (EEF) should be created was introduced, and this came true in September 18-19, 2003, in Berlin, Germany, as an alternative forum to the European Conference of Ministers of Education. For the EEF to succeed, a number of meetings were scheduled in distinct countries: in June, one was in Germany; in July, another in Switzerland; in August, in France. There was also a demonstration in Berlin, on September 20, mainly protesting against the creation of accreditation and qualification standards (the Bologna Agreement). In the second ESF, in November, in France, groups representing pro-education as a social right also questioned education in the GATS.

On August 23, 2003, an international petition was launched, aiming at taking education out of the GATS. Groups in several countries are establishing discussion lists and websites⁴ to create a stronger counter-movement against the regulation of education as a service within the GATS.

On the other hand, groups interested in the commercialisation of education – some of them already mentioned in the Introduction – count on the support and leverage exerted by their governments, as well as from the Global Alliance for Transnational Education (GATE); World Education Market; World Bank: EdInvest / IFC; Heritage Foundation; US Coalition of Service Industries (USCSI), among others.

At the GATS ministerial meeting held in Cancun, Mexico, from September 10 to 14, 2003, twenty-two developing countries – among them the five largest ones both in geographical size and population (Brazil, Argentina, India, China and South Africa) united, forming a group known as G-22, demanding the negotiation of agricultural products. This was not accepted by the USA or the European Union. Consequently, an impasse was created and the general list of trade in services negotiations was blocked. Currently, the US is exerting pressure on those developing countries that adhered to

G-22, trying to advance bilateral agreements. It is worthwhile pointing out, in this scenario, the risk that education, and other recently called “services,” can be used as a bargaining chip, in exchange for concessions accepted by the US and European Union in the agricultural sector.

Conclusions

The perspective of education within the GATS agenda, as a commercial service, implies the non-existence of barriers for its “free trade.” There are general clauses to which member-countries are automatically subjected to, such as, the one extending to all signatory countries the same treatment given to the most favoured nation, not having very “demanding” internal norms, accepting the titles and qualifications obtained abroad, etc. The “voluntary” adhesion rules (national treatment and market access), if given what the US requests, are to be accepted without restrictions. That means, there shall not be differential treatment for national or foreign groups: whether or not they maintain their physical presence in the country, use national labour, develop courses respecting national reality, language or customs. With the rules proposed by the GATS currently available subsidies, tax exemptions, scholarships and research grants for national private institutions can be required by all foreign education business groups.

Regarding the public sector, as much as it utilises third party services to carry on long-established governmental activities (e.g., meal supply, transportation, teachers' training, evaluation, etc); sells services (paid courses and treatments, remunerated researches or that benefit specific companies); makes use of commercial marketing to attract interested people, this sector becomes extremely vulnerable to the regulation of education as a commercial service through the WTO/GATS, getting away from the fragile “exercise of the government authority” exemption, because it would be offering education on a commercial basis and in competition with other suppliers. Thus, entrepreneurial groups can file a suit against countries, accusing them of adopting “harmful practices” against the “free offer” of educational services. Thus, these groups could require the same treatment: public resources to all institutions or to none.

With education in GATS there is the risk of its transformation into a process of simple commercialisation, where international groups or national groups associated with them would be the salespersons, while the countries, mainly the developing ones, would become mere buyers of packages of direct services (e.g.. vocational, graduation, masters and Ph.D. degrees), complementary services (e.g.. evaluation and certification systems), plus “educational consumption goods” (e.g.: books, pencils, pens, maps, scientific equipment, uniforms, etc). The GATS regulation of education can jeopardise the sovereignty and autonomy of nations on a path that can lead to the loss cultural diversity and local values; thus, hampering countries and their people’s lives while reinforcing homogeneity and making room for a new form of cultural/educational colonialism.

Notes

1 A first version of this paper was presented at the Comparative International Education Society 48th Annual meeting, held in Salt Lake City, Utah, US, March 2004.

2 e.g., General Electric, Motorola, McDonalds, Sun Microsystems, Fordstar, Microsoft, Appolo Group, Sylvan Learning Systems, De Vry Inc., Open Learning Agency of Australia, Open University Worldwide, Universitas21, U21 & Thompson learning, Ecornell, NYU’s School of Continuing and Professional Studies, etc (ROSENBURG, 2002; SALVÉ, 2002; WEM, 2002).

3 It is important to acknowledge Jane Knight’s papers on GATS regulation and education, found by the author of the present article after writing this paper.

4 GATScrit; GATSwatch; Education is not for sale; Right-to-education; Global Services Network; Challengeglobalization; ITAPI-tradeobservatory; Polaris Institute; Third World Network; Jubileesouth; Corpwatchindia; Transattac; Alternative Liste Duisburg (Germany); Appel pour une école démocratique (Bélgica); Asociación de Estudiantes de Derecho, Universidad Autonoma de Madrid (Spain); AstA Uni Düsseldorf, Essen, Kassel, Mainz, Münster, Wuppertal, (Germany); Attac Berlin, Hamburg, Düsseldorf, Potsdam (Germany); Attac France; Attac-Universiteit Gent (Belgium); Campaign for Free Education (United Kingdom); Casa Diritti Sociali

(Italy); Sindicato de Enseñanza de Sevilla (Spain); DIDAweb – Comunità di educatori in rete (Italy); die sozialistische Jugend (Germany); Escuela Libre Paideia (Spain); Movimento Di Cooperazione Educativa (Italy); Focus on the Global South,(Thailand); Il Gruppo Saperi del Social Forum di Firenze (Italy); Initiative Berliner Sozialforum (Germany); Internacional de la Educación (Belgium); Internationale Socialists Ungdom (Denmark); Kritische StudentInnen Utrecht (The Netherlands); Kulturattac (Germany); Laent- laboratorio apprendimento e nuove tecnologie, Capoterra (Italy); Lithuanian National Union of Students (Lithuania); Movement for Modern School (Bulgaria); Public Interest Advocacy Centre (Australia); Redazione della rivista italiana di scuola “écolle” (Italy); ReferentInnenRat der Humboldt Universität zu Berlin (Germany); Scudag Network (Germany); SDAJ Münster (Germany); Sindacato Italiano Unicobas Scuola (Italy); Socialist Worker Student Society (Reino Unido); Studentska sekcija Forum mladih SDP-a Hrvatska (Croatia); Klub studenata Hrvatskih studija Sveucilista u Zagrebu (KSHS), Hrvatska (Croatia); Syndicat Franceis SUD Etudiant (France); UNES – Union des Etudiants de Suisse (Switzerland); UPSF – Universal Proutist Student Federation (Worldwide); USU – Unione Svizzera degli Universitari (Switzerland); Verband Sozialistischer StudentInnen Österreich (Austria); World Development Movement, Londres (England).

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