



Building capacity through cross-border higher education: the GATS and national policies

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Overview

- **The GATS and higher education**
- **The complementing role of GATS**
- **Implications of GATS when commitments have *not* been made**
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- **Article VI current disciplines**
- **The Article VI.4 mandate**

The GATS and higher education

- **Limited progress to date**
 - Higher education one of the least committed sectors
- **Key concern relates to the potential effects of the GATS on regulatory autonomy**
 - Intensified by the fact that the GATS is a relatively young and unfinished agreement
- **Liberalisation is largely a domestic issue**
 - Most regulation and complementary policies are largely unaffected by the GATS
- **The Agreement can affect the regulatory conduct in some areas of higher education**

The complementing role of GATS

- **The GATS can contribute to expand access to higher education services when countries decide to liberalise**
- **By creating a more transparent and predictable legal framework**
 - Improve the investment climate and help attract FDI
 - Provide capital and expertise to help expand capacity
- **Formal research is infant but there are early indications supporting this in the case of telecoms**

Implications of GATS when commitments have *not* been made

- **Only limited disciplines apply**
 - The most important is the MFN principle
- **MFN does not impinge on governments' ability to regulate**
 - Governments retain the right to exclude any foreign participation

Implications of GATS when commitments have been made

- **More significant obligations kick-in**
 - Market access (Art. XVI) and national treatment (Art. XVII)
- **Genuine concerns arise on the implications for public universities**
 - Art. I:3 does not allow to clearly determine whether governmental services are outside the scope of GATS
- **The main concern for higher education is national treatment**
 - Financial and other benefits to public universities may need to be extended to foreign services and suppliers
 - Or renege on commitments and pay compensation

Limitations on higher education services commitments

Member	Limitations
Australia	Covers provision of private tertiary education services including at university level
Korea	Higher education services provided by private higher educational institutions, which obtained recognition from the government or public accreditation bodies, for the purpose of conferring degrees
Slovenia	Excludes public funded institutions
United States	The granting of U.S. federal or state government funding or subsidies may be limited to U.S.-owned institutions, including land grants, preferential tax treatment, and any other public benefits; and scholarships and grants may be limited to U.S. citizens and/or residents of particular states. In some cases, such funding, subsidies, scholarships, and grants may only be used at certain state institutions or within certain U.S. jurisdictions

Article VI current disciplines

- **Art. VI.1 deals only with the “administration” of regulation**
- **Art. VI. 5 deals with substantive aspects**
 - “not more burdensome than necessary to ensure the quality of the service”
 - Concerns about the potential impact on ability to regulate
 - Ensure quality
 - Other public policy objectives
 - In practice the effects are going to be limited because application is subject to two limitations
 - The measures nullify or impair specific commitments
 - Could not reasonably have been expected when commitments were made

The Article VI.4 mandate

- **Genuine concerns about the possible impact on regulatory autonomy in higher education**
- **Early indications that governments will not tie their hands**
 - Accountancy disciplines
 - Broad and open-ended list of public policy objectives
 - Apply only where specific commitments are made
 - Recent discussions in Geneva reveal very cautious attitude by both OECD and developing countries
- **But close monitoring and involvement of the education community is required**



Thank you

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