



GATS Talks Intensify after Hong Kong

After six days of intensive and often acrimonious negotiations, trade ministers from the 149 member countries of the World Trade Organization reached an agreement to restart stalled global trade talks.

The controversial deal, struck in the dying hours of the ministerial meeting in Hong Kong in December, sets out an ambitious roadmap for the conclusion by the end of this year of a sweeping new trade agreement covering everything from agricultural subsidies to services.

“We have managed to put the round back on track after a period of hibernation,” said WTO director general Pascal Lamy.

The centrepiece of the agreement is the planned elimination of all agricultural export subsidies by 2013 — a key demand of developing countries. But in exchange for the agreement on agriculture, developing country members were forced to make significant concessions in other areas, including trade in services under the GATS.

The Africa Trade Network, the group coordinating the activities of African NGOs, said the services agreement was the “clearest loss” for developing countries.

“The right to choose which services sectors to open and to what extent, according to their own national needs, has been undermined,” the group said in a statement. “The text on services will put enormous pressures on African countries to open up sensitive service sectors.”

Take Education Out of GATS, EI Urges WTO Delegations

One of the sensitive sectors being targeted in the current talks is education, with industrialized countries such as Australia, New Zealand and the United States pressing other nations to open their education “markets”.

In Hong Kong, EI President Thulas Nxesi and Deputy General Secretary Elie Jouen were joined by representatives of affiliates from Australia, Canada, France, New Zealand, Sweden, Taiwan, and the United States. Together, they worked to lobby governments to take education services out of the GATS.

Meetings were held with officials from South Africa, Brazil, Canada, New Zealand, Sweden, Venezuela and the Philippines. In addition, EI organized a news conference for all delegations at which time a statement on GATS, adopted by participants to EI’s higher education and research meeting in Melbourne, was released.

“Because there are so many unanswered questions about the impact of GATS on education, and because there is so much at stake, we believe all WTO members must adopt a precautionary approach,” stated EI President Thulas Nxesi. “They must neither make nor seek any commitments that constrain the rights of governments to regulate education as they see fit.”

“We believe strongly that, at its root, GATS is in conflict with educational values. GATS is a commercial agreement designed to expand business opportunities for private investors. Education, by contrast, is a human right and public good that must not be treated as a commodity subject to commercial trade rules.”

“We strongly support increased international cooperation, mobility and exchanges of students and staff and we reaffirm that in international education and academic cooperation, education values should prevail, not commercial ones. We believe that education is not simply a commercial product. Its most important characteristics are cultural, social and developmental. For it to be governed by commercial agreements like GATS is simply inappropriate.

At the same time, we recognize that education-specific international rules are needed to address the emerging issues in cross-border education, rules that allow domestic regulation as required. For these reasons, we call on Member States to remove GATS coverage of education.”

— *Excerpt from the statement to WTO Delegations, adopted unanimously by the delegates to the 5th Education International Higher Education and Research Meeting
Melbourne, Australia
December 9, 2005*

Intensifying GATS Talks: Plurilateral Negotiations

The final Declaration of the Hong Kong Ministerial Conference contains two important developments that could have a major impact on education services in countries around the world.

First, trade ministers agreed to support a major change in the way the GATS is negotiated. Until now, the practice has been for individual countries to negotiate *bilaterally*. This involves one-on-one exchanges of requests and offers with no obligation for any country to respond to a request.

The new so-called “*plurilateral*” proposal adopted in Hong Kong will see groups of demandeurs — those countries with an interest in seeking liberalization commitments in a particular sector — approach target countries together.

Instead of facing demandeurs one-on-one, target countries will now have to confront a group of countries who are the most aggressive supporters of trade liberalization in the sector. The intention is to greatly intensify the pressure on target countries to make deeper commitments in services like education.

Already, a powerful group of demandeurs is forming around education services. A new plurilateral group — the “friends of private education exports” — has been established by New Zealand, with the aim of pressuring more countries to make more commitments on education services.

While this new “friends” group says it is seeking commitments on private education services only, EI remains strongly opposed. Given the mixed public and private nature of many edu-

cation systems, it is extremely difficult to define which education services are supplied strictly on a non-commercial basis. Commitments taken on private education services may inadvertently expose the public education system to deregulation and commercial competition.

“Proposals to develop benchmarking and plurilateral approaches to GATS negotiations may coerce countries into making commitments in sensitive sectors like education and other public services. This would seriously reduce the flexibility of Member States, particularly those from the developing world. We strongly recommend that Member States reject benchmarking and the use of plurilateral groups to bring undue pressure on Members.”

— *Statement of the 5th Education International Higher Education and Research Meeting*

Domestic Regulation: Undermining regulatory authority

The other aspect of the Hong Kong ministerial declaration that could seriously affect education services relates to the renewed mandate given to negotiators to develop rules on “domestic regulation” by the end of the year.

Domestic regulation refers to a host of rules that governments and other authorities within a country adopt and enforce with respect to the qualification requirements, licensing procedures, and technical standards of service providers.

The aim of the new WTO rules on domestic regulation is to require governments to prove that the regulatory measures they adopt, even if they are applied equally to foreign and domestic

providers, are “not more burdensome than necessary.”

The scope of these proposed disciplines is very broad. Many types of government measures covering education and other public services could be affected.

Disciplines on licensing requirements, for example, would apply not only to professional licensing but also to school accreditation, as well as broadcast licenses and licensing of health facilities and laboratories.

Technical standards, according to the WTO secretariat, refer not just to regulations affecting “technical characteristics of the service itself,” but also to “the rules according to which the service must be performed.” This would cover standards related to quality assurance requirements, health and safety regulations, sustainable environmental practices, and other important regulations.

The implication is clear: literally thousands of non-discriminatory public interest regulations would be exposed to WTO oversight and potential challenge. At the stroke of a negotiator’s pen, every WTO member governments’ existing GATS commitments — including those in education services — would be deepened.

Domestic regulation rules will help offshore education providers who have long wanted to weaken regulations which govern the accreditation and quality assessment of schools. In this way, restrictions on domestic regulation, as they are being proposed, could seriously erode the quality of education in all countries.

Changes to the GATS' Domestic Regulation disciplines, as proposed, could seriously limit the ability of governments to regulate their education systems. The existing provisions already raise concerns. For this reason, we recommend that Member States reject proposals to further constrain domestic regulation.

— *Statement of the 5th Education International Higher Education and Research Meeting*

A Victory for Education Exporters?

While education remains one of the least covered sectors in GATS, pressure is mounting to change this. The United States has identified the liberalization of higher and adult education services as one of its top four priorities in the current round of talks. American trade officials have called for the removal of obstacles to international trade they say prevent their institutions from operating in other countries. Australia, New Zealand and Japan have made similar proposals.

The Ministerial mandate for members to engage in plurilateral negotiations and to develop disciplines on domestic regulation represents a major victory for those pushing for greater commercial trade of education services. In the aftermath of Hong Kong, a powerful grouping of nations led by New Zealand, the United States and Australia will be able to place intense pressure

on developing countries that are seen as potential new markets for education exports.

At the same time, the capacity of developing countries to respond to a liberalized and open education marketplace will be severely constrained if new legally-binding disciplines are imposed on their domestic regulatory authority.

Education services are highly regulated in most countries in order to promote quality, protect students, and to ensure that domestic social, economic and cultural priorities are met. All countries, but developing nations in particular, require flexibility to maintain and to extend their regulation of education services. As education systems develop, the need for additional regulation will inevitably arise. It is important for developing countries to retain the policy space they need to apply regulation best suited to their developmental goals. For these reasons, EI affiliates should continue to lobby their governments and raise concerns about the intrusion of trade law into domestic education policy.

In the meantime, EI will continue to develop the advocacy and public awareness activities launched in 2005. In March, an EI delegation will travel to Geneva to meet with key national negotiators at the WTO in order to urge them to keep education out of the GATS.

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