

**The Association
of Commonwealth
Universities**

**International Trade in Higher Education:
Implications for the Commonwealth**

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Preface

The international trade in higher education services became a hugely significant aspect of higher education provision in the latter part of the 20th century and continues to grow in importance. Revenue generated by this trade runs to billions of dollars. The commercial drivers that underpin cross-border trade in higher education services generate both risks and opportunities for those exporting and those importing provision. Managing the risks while capitalising on the opportunities remains a critical challenge for those engaged in the import and export of education services. The global impetus towards a more liberal trade regime for education services has been pushed forward by the international services trade framework established by the World Trade Organisation, the General Agreement on Trade in Services (GATS). The GATS classifies education as a tradable service and seeks to bind it to a set of legally enforceable rules to facilitate the trade in services. The implications of the growing trade in education services and the drive to liberalise this trade are of critical importance to higher education sectors throughout Commonwealth. It is in this context that this paper reflects on the role of trade and the implications of GATS for higher education in the Commonwealth.

Trade in education services and the notion of education as a tradable entity, is not a new phenomenon but has grown in significance as the imperatives of the market and competition exert their influence over higher education sectors worldwide. Trade cannot be divorced from the associated assumptions that higher education services operate within a competitive market and have a market value that can be traded both the domestically and internationally. At the same time the traditional public mandate of higher education services has been challenged by falling public subsidies and the need for higher education institutions to diversify their income and boost the market value of their services. Herein lies one of the key rationales for the growing trade in education services.

The push to liberalise the trade in education services, through the GATS and various other bilateral and regional trade agreements and partnerships, remains however a sensitive and contentious issue. Critics argue that the focus on removing the barriers to international higher education provision will increase the vulnerability of some countries to low quality foreign providers and curtail the ability of countries to regulate foreign provision as they see fit. Moreover, in a broader critique, opponents have challenged the very notion of higher education as a tradable commodity claiming it undermines the public role and societal obligations of higher education in favour of market driven values. It is further argued that this approach poses a particular risk for developing countries where the higher education sectors are often fragile and lack the resources and regulatory framework to ensure the import of quality provision that is responsive to the developmental needs of the country. There is no doubt that benefits are to be had from the import of education services, especially by low and middle development countries. However,

for these benefits to be realised countries need the flexibility to develop their sectors and regulate imports in accordance with national needs. The extent to which this is possible within a framework of progressive trade liberalisation is a core issue facing trade negotiators and higher education stakeholders across the globe.

This paper examines why trade has become such a critical issue for the sector; how it has become incorporated into the international trade regime under the authority of the World Trade Organisation; the processes and implications of the international trade framework established under the GATS, and how the different regions of the Commonwealth, both developing and developed, are impacted by trade in higher education services and the attempts to regulate it. The first part of the paper briefly examines the context for the growing trade in higher education services. This is followed by a more detailed analysis of the GATS and international trade agreements that incorporate the trade in education services. The final part of the paper provides an overview of the engagement and implications of the trade in higher education provision for the different regions and countries of the Commonwealth – to the extent that this is possible with the available data – and how, if at all, they have sought to manage this process. The paper provides a review of recent literature and data currently in the public domain and while it does not set out to generate a comprehensive picture of all aspects of trade or all regional developments across the Commonwealth, it does highlight some of the key issues for consideration by stakeholders. The aim is to contribute to and inform the debate on trade in higher education within, and beyond, the Commonwealth, and hopefully encourage others to do the same.

Part 1: International trade in context

1.1 Introduction

The international trade in education services has become an important element in the global provision of higher education. The primary functions of higher education institutions (HEIs) – teaching and learning, research, community service and technology transfer – are increasingly influenced by the international market for staff, students, knowledge and innovation as well as the imperatives of economic and social development. The intellectual capital generated by the higher education sector has become an integral part of what is now termed the global knowledge economy; as such the output of universities is increasingly viewed in global and economic terms. This is reinforced by the growth of commercial opportunities offered by the international market for higher education services. There are strong arguments against the movement of higher education towards a market oriented 'service sector' but there is no denying that the movement is underway and gathering pace. This paper provides an overview of global trends in the international trade of higher education (HE) services. It also examines the role of international trade frameworks, in particular the World Trade Organisation's (WTO) General Agreement on Trade in Services (GATS), in shaping the trade in higher education services, with particular reference to the Commonwealth.

The Commonwealth represents a diverse range of economic, political and educational realities across its 53 Member states.¹ Among its number are some of the richest and poorest countries in the world, with populations ranging from just over 10,000 to over a billion. Equally, it is home to some of the most advanced and established higher education systems, hosting many of the highest ranking universities, while at the same time containing some of the most resource starved sectors and lowest ranked universities.² Around two thirds of Commonwealth member states are classified as developing countries³ and Commonwealth members comprise over half of the world's Small Island Developing States (SIDS).⁴ Many of these countries have fledgling or non-existent higher education sectors; others are in the process of building and expanding their higher education systems. The social and economic diversity of Commonwealth member states provides a useful context in which to look at the wide-ranging and multifaceted implications and debates surrounding the trade of education services. It should be added, however, that this paper does not set out to provide a definitive analysis of

¹ Fiji and Pakistan are suspended from the Councils of the Commonwealth (December 2006 and November 2007, respectively) but both will be included in this analysis and counted among the Commonwealth Member States.

² See Times Higher Education (2007) *The Top 200 World Universities, 2007*. Available from: <http://www.timeshighereducation.co.uk/hybrid.asp?typeCode=144> [Accessed 23 January 2008]; and also Shanghai Jiao Tong University (2007) *Academic Ranking of World Universities – 2007*. Available from <http://ed.sjtu.edu.cn/ranking.htm> [Accessed 23 January 2008].

³ In the United Nations' Human Development Index for 2007/08 32 of the 53 Commonwealth states are classified as medium or low development and 17 are classified as high development (three Commonwealth countries are not included in the index: Kiribati, Nauru and Tuvalu). Available from: <http://hdr.undp.org/en/statistics/> [Accessed 18 January 2008].

⁴ UN: Department of Economic and Social Affairs Statistics Division (2003) *World Statistics Pocketbook: Small Island Developing States*. UN: Department of Economic and Social Affairs Statistics Division. Available from: http://www.sidsnet.org/docshare/other/20040219161354_sids_statistics.pdf [Accessed 18 January 2008].

internationalisation and trade nor a comprehensive profile of trends in the Commonwealth. It will instead outline some of the main developments and implications by drawing on examples from some Commonwealth states.

1.2 The evolving landscape for higher education

Fundamental to the debate surrounding international trade are the changes taking place in higher education more broadly, in terms of increasing diversity in the types of provision, types of provider, types of delivery and types of 'consumer'. The sector has expanded rapidly over the last two decades, in both developing and developed countries and the influence of the market has grown, placing new requirements and pressures on higher education providers and policy makers. UNESCO reported in its 2007 Global Education Digest that there were 138 million tertiary students worldwide in 2005.⁵ Some estimates expect this number to more than double in the next two decades – predominantly in non-OECD countries.⁶ This level of growth requires, and has prompted, new and innovative approaches to higher education provision and delivery. Online technology, flexible learning, different types of collaborative provision including public-private partnerships, and in some countries increasing provision by private and foreign providers, have developed in response to greater diversity and rising levels of demand for tertiary education. Undoubtedly, the combination of an expanding sector, high levels of (unmet) demand and greater flexibility in delivery has underpinned the international market for higher education services. At the same time widespread stagnation and decline in public funding for higher education is forcing institutions to diversify their income streams and engage more readily in revenue generating international activities.

1.2.1 Student mobility

International trade in education services has become big business. The global value of trade in higher education services has been estimated to be in the region 40 to 50 billion dollars.⁷ In 2004 Australia, New Zealand and the US trade in education services was respectively the third, fourth and fifth largest service export.⁸ More recent data for Australia has indicated that education exports constituted

⁵ UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p.132. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 18 January 2008].

⁶ Kritz, M. (2006) *Globalisation and Internationalisation of Tertiary Education*, pp.16-17. Paper presented at the United Nations – Department of Economic and Social Affairs (UNDESA) *International Symposium on International Migration and Development*. Turin, Italy. [28-30 June 2006]. Available from: http://www.un.org/esa/population/migration/turin/Symposium_Turin_files/P02_KRITZ_Rev3_Augst21.pdf. [Accessed 18 January 2008].

For OECD countries estimated projected growth in enrolment (factoring in change in the 20-24 age group and projected changes in tertiary gross enrolment ratio) will increase from 46 million in 2002/03 to 51 million in 2025; in non-OECD countries equivalent growth in enrolment is projected to rise from 69 million in 2002/03 to 255 million in 2025. The figures draw on the population projections of the Population division of UNDESA (UN Department of Economic and Social Affairs).

⁷ *Plurilateral request on private education services*. Available from: http://www.citizen.org/documents/Private_education_3.06.pdf. [Accessed 23 January 2008]. See also Appendix 3.

⁸ Organisation for Economic Co-operation and Development (OECD) Observer (2004) *Policy Brief: Internationalisation of Higher Education*. OECD. Available from: <http://www.oecd.org/dataoecd/33/60/33734276.pdf> [Accessed 18 January 2008]. The Australian Treasury reported in the 2006 that 2005 education exports were third to services to tourists and passenger transport and generated around AUS\$7 billion in income. See

Australia's fourth largest (overall) export in 2006/07 and contributed AUS\$11.3 billion to the Australian economy.⁹ Demand for international education in Australia has been projected to grow by 71% between 2005 and 2025.¹⁰ For the UK the British Council estimated in 2004 that international students generate around GBP3 billion for the British economy per annum. It has also forecast, optimistically, that income from education exports might rise to as much as £12 billion by 2020.¹¹ The most visible manifestation of this trade has been the international movement of students. Between 1990 and 2005 the number of international students rose from 1.2 million to 2.7 million.¹² This is consistent with the overall growth in tertiary student numbers which almost doubled between 1991 and 2005 from 68 to 138 million worldwide.¹³

International student enrolment has long been an important part of the tertiary sector and has wide ranging social, cultural, historical and political roots as well as, in more recent years, providing an important source of revenue for many institutions. International students typically pay significantly higher fees (unsubsidised by the state) than their domestic counterparts.¹⁴ The financial benefit of international students is not only felt by the universities, they also bolster the local and regional economy. In 2006/07 in the US international student enrolment in the US rose by 3% and generated US\$14.5 billion revenue for the US economy in 2006/07, with education continuing to constitute the fifth largest service export.¹⁵ It is not surprising therefore that institutions and governments are investing considerable resources into attracting international students. In New Zealand an 'Export Education Levy' was introduced in 2003 whereby all institutions and schools with international students pay a flat fee of NZ\$185 along with 0.45% of tuition fee income for each student. These funds go to the Ministry of Education to support New Zealand's education exports. For the academic year 2005/06 the government received around NZ\$3 million from the Levy.¹⁶ In 2007 the Canadian government also set aside funding (CAD 2 million) to develop a co-ordinated international marketing strategy and brand aimed at attracting international students.¹⁷ Recognising that the value of international students to the Canadian economy – estimated at CAD 5 million – the government also views foreign students who

Treasury submission to House of Representatives Economics, Finance and Public Administration Committee Public Inquiry (2006) *Australia's Services Exports*. Available from http://www.treasury.gov.au/documents/1156/PDF/06_HoR_services.pdf [Accessed 18 January 2008].

⁹ Banks, M., Olsen, A. and Pearce, D. (2007) *Global Student Mobility: An Australian Perspective Five Years On*. IDP Education Pty Ltd Available from: http://www.idp.com/research/images/GSM_Brochure_Oct07.pdf [Accessed 18 January 2008].

¹⁰ Ibid.

¹¹ Böhm A. et al. (2004) *Vision 2020: Forecasting international student mobility; a UK perspective*, p. 73. British Council. Available from: http://www.britishcouncil.org/eumd_-_vision_2020.pdf [Accessed 23 January 2008].

¹² Organisation for Economic Co-operation and Development (2007) *Education at a Glance 2007: OECD indicators*, p. 303. OECD.

¹³ UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p.132. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 23 January 2008].

¹⁴ Canada, Australia and the UK in 2004 annual tuition fees for international students ranged from 8,000 – 18,000 USD (PPP). See Organisation for Economic Co-operation and Development (2006) *Education at a Glance 2006: OECD indicators*, p. 292. OECD. 2007 OECD indicators do not include the UK.

¹⁵ Institute of International Education (2007). *Press Release November 12, 2007: Open Doors 2007: International Student Enrolment in U.S. Rebounds*. IIE. Available from: <http://opendoors.iienetwork.org/?p=113743> [Accessed 23 January 2008].

¹⁶ New Zealand, Ministry of Education (2006) *Ministry of Education Export Education Levy: Annual Report 2004 - 2005*. NZ Ministry of Education. Available from: http://www.minedu.govt.nz/web/downloadable/dl11040_v1/2004-05-eel-annual-report---pdf.pdf [Accessed 23 January 2008].

¹⁷ Tamburri, R. (2008) *Canada works on a brand for postsecondary education*. University Affairs [February 2008] Association of Universities and Colleges of Canada. Available from: http://www.universityaffairs.ca/issues/2008/february/canada_brand_01.html [Accessed 15 February 2008]

remain in Canada as an important source of skilled migrants potentially offsetting future skills shortages resulting from an ageing workforce.¹⁸

Although the direct impact of active recruitment is difficult to quantify a more pro-active and strategic approach to international marketing and recruitment has clearly coincided with the significant growth of international student numbers, which more than doubled between the mid 1990s and 2005.¹⁹ The UK and the US dominate the international student market, accounting for a third of the market share of international students. However, in recent years the share of the US and UK has fallen marginally while other countries such as New Zealand, Canada, Australia and South Africa as well as a number of European countries have increased their international enrolments and market share. The table below details the percentage of international students in the US and Commonwealth OECD member states.

International student share

Country	2000		2005	
	% of total int'l students	Ranking	% of total int'l students	Ranking
United States	26	1	22	1
United Kingdom	12	2	12	2
Australia	6	5	6	5
Canada	2	8	3	8
New Zealand	0.5	9	3	9
South Africa	1	10	2	10

Source: OECD – Education at a Glance 2007 p. 304

The need to compete for international students has made institutions more sophisticated in marketing their provision to suit the requirements of the international student market. Programmes are being developed and marketed with the express aim of attracting international students. In the UK, for example, there is an emerging trend of establishing higher education units that cater specifically for the international market. One well cited example is the collaboration between the Nottingham Trent University (NTU) and the US for-profit provider - Kaplan Inc. - to set up a law school aimed at international students. This follows on from an earlier partnership between Nottingham and Kaplan to set up Nottingham Trent International College, which provides foundation courses and English language support to international students and assists their entry on to full degree programmes at NTU.²⁰ A more recent example is the INTO initiative launched in 2006, these public-private partnerships are focused on preparing international students for the UK higher education system.²¹ These types of partnerships are

¹⁸ Ibid.

¹⁹ Organisation for Economic Co-operation and Development (2007) *Education at a Glance 2007: OECD indicators*, p. 303. Paris: OECD.

²⁰ Observatory of Borderless Higher Education (2006) *Collaboration now, competition later? US for-profit Kaplan strikes again in the UK, as foreign and private provision continues to grow* (Breaking News: 6th July 2006). Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=566&mode=month> [Accessed 23 January 2008].

²¹ For further information see INTO website at: http://www.into.uk.com/02_into.php [Accessed 23 January 2008].

allowing private and foreign providers to enter into the lucrative international student market through collaborations with the public sector. They are also indicative of broader trends in higher education provision taking place nationally and internationally, particularly the blurring of the lines between higher education as a public service and higher education as a private, tradable commodity that seeks to generate revenue and profit.

The course of student mobility has traditionally run from south to north or north to north with more limited south to south mobility, but increasingly southern students are travelling to institutions within their own region. Some countries are emerging as regional hubs for international students. South Africa is a notable example, drawing on students throughout sub-Saharan Africa but especially from the SADC (South African Development Community) region. Between 2000 and 2004 the proportion of international students, where the nationality was known, that came from the SADC region rose from 47% to 68% and the proportion of students from the rest of Africa rose from 4.7% to 13.7%.²² The OECD reported that in South Africa the international student share doubled between 2000 and 2004. (Although this was only from 1% to 2%, it represents a significant increase in international students for South Africa.) Regionalisation of student mobility is encouraging certain countries – such as South Africa in Africa, Malaysia and Singapore in East Asia and India in South Asia – to boost the international student recruitment efforts within their own regions and among students from the south more broadly.

1.2.2 Programme mobility

It is not only the mobility of students that is growing; the movement of academic programmes and services across borders is also becoming increasingly common.²³ New technologies and more open markets have made this more viable. One of the most comprehensive mechanisms for programme mobility is the development of branch campuses overseas. While the number of international branch campuses set up by higher education institutions remains relatively low the numbers are steadily increasing. A recent report by the Observatory on Borderless Higher Education (OBHE) indicates that there has been significant growth in branch campus activity in recent years, with half of the 82 branches listed in the report established since 2000.²⁴ However, setting up a branch campus is a very resource intensive enterprise and while there has been significant growth in the past few years this provision is dominated by a few key countries, notably, the UK, Australia and the US. Other, more common, forms of cross-border provision include: franchising, selling or validating programmes delivered by a foreign institution; programme articulations (i.e. twinning), where institutions collaborate to deliver joint

²² Sehoole, C. (2006) *The dynamics of international student circulation and skills/brain circulation*. In 16th Conference of Commonwealth Education Ministers (CCEM), Cape Town, South Africa. [10-14 December 2006].

²³ Rizvi, F. (2004) *Offshore Australian Higher Education*. International Higher Education, Number 37 [Fall 2004]. Center for International Higher Education, Boston College. Available from: http://www.bc.edu/bc_org/avp/soe/cihe/newsletter/News37/text004.htm [Accessed 23 January 2008].

²⁴ Verbik, L. and Merkley, C. (2006) *The International Branch Campus - Models and Trends*, Annex A. Observatory on Borderless Higher Education. Available subscription only from: <http://www.obhe.ac.uk/products/reports/ftpdf/2006-10-01.pdf> [Accessed 18 January 2008].

programmes; off-shore institutions and other types of internationally sponsored universities; as well as online and distance provision.²⁵

The financial benefits of providing off-shore programmes are, generally, much lower than the revenue generated by international students. A number of factors offset the profitability of offshore operations, including the need to set fees at a rate the local market can sustain, the financial investment required to set up overseas operations, and profit-sharing with local partner institutions.²⁶ There are, however, additional benefits and rationales for exporting programmes. It can serve to promote the international brand of the university and provide direct access to international students and international staff; it also creates new opportunities for research collaboration. Furthermore, offshore facilities provide opportunities to support the mobility of students and staff from the home institution. The developmental and capacity building potential of cross-border provision is also a key rationale with wide-ranging implications for developing countries, which will be discussed in much more detail in part 3 of this paper.

1.2.3 International trade

As cross-border and off-shore provision of higher education becomes more widespread the implications of international trade frameworks on higher education will become more important. Stakeholders within the higher education sector have different views on the inclusion of education within international trade agreements and frameworks. Some view liberalising trade agreements as a good opportunity to expand the international activities of education providers and make trade rules more transparent and enforceable. Those espousing the benefits of international trade often advocate the role of market competition in higher education provision, arguing that increased competition will stimulate better quality and more responsive services, driven by domestic and international market demand. More critical voices see the incorporation of education within international trade agreements as a fundamental threat to the integrity and quality of provision, with the most ardent critics arguing against all commodification of education services. The issues are complex and contentious; however, there is growing consensus that transnational education is a reality and mechanisms need to be put in place to recognise, regulate and assure the quality of such provision. Whether the liberalising market model adopted by the GATS are the most effective approach for regulating the international trade of services goes to the heart of the debate.

²⁵This is not an exhaustive list but highlights the main forms of cross-border provision. For further details on different forms of transnational education see: Adams, S. (2001) *Transnational Education Project Report and Recommendations*. Confederation of European Union Rectors' Conference. Available from: http://www.bmwf.gv.at/fileadmin/user_upload/europa/bologna/transnational_education_proj.pdf [Accessed 23 January 2008]. See also chapter 2 in McBurnie G. and Ziguarias, C. (2007) *Transnational Education: Issues and trends in offshore higher education*. London: Routledge.

²⁶ New Zealand, Ministry of Education (2006) *New Zealand's Offshore Public Tertiary Education Programmes*. NZ Ministry of Education. Available from: <http://www.minedu.govt.nz/index.cfm?layout=document&documentid=6876> [Accessed 23 January 2008].

Internationalisation and international trade

It is perhaps worth briefly distinguishing between internationalisation and international trade in higher education. International activities have long been part of the academic enterprise through collaborations, exchanges, international conferences and various other activities. In recent years the definition of internationalisation has become increasingly broad and encompassing. Knight and de Wit's widely cited definition describes internationalisation as "the process of integrating an international, intercultural and/or global dimension into the goals, functions (teaching/learning, research and services) and delivery of higher education".²⁷ This broad conceptualisation is not necessarily the definitive understanding of what is after all a relatively fluid and evolving concept; it does, however, provide a sense of the potentially broad and encompassing nature of internationalisation. Moreover it extends the perception of internationalisation beyond the relatively narrow confines of cross-border education and research to something that is embedded within the overall university mission.

In the latter part of the last century the influence of 'globalisation'²⁸ necessitated a more outward looking and international perspective among universities. Universities operate within an international context and cannot isolate themselves from international trends and developments. Equally globalisation, and the economic interdependence that it engenders, has facilitated the expansion of one aspect of internationalisation in particular, the movement and trade in education services across national boundaries. By trade in education services we are talking about cross-border activities that involve some kind of commercial exchange, are designed to generate revenue and in some cases, but not all, are aimed at generating profit. Internationalisation in higher education has become much more closely aligned with the concept of trade in higher education services, whether through student, staff or programme mobility. While there are still many motivations behind the international activities and strategies adopted by higher education institutions, some concerns have been raised within the higher education community that the multiple rationales for internationalisation are increasingly dominated by the economic functionalism of trade and trade liberalisation. In their 2004 publication on internationalisation and trade in higher education the OECD reported that "several countries are reconsidering or have reconsidered their internationalisation policy in light of the revenue-generating

²⁷ See *Concepts and definitions: Internationalization of Higher Education*. Available from: http://www.unesco.org/iau/internationalization/li_definitions.html [Accessed 18 January 2008].

²⁸ There are multiple and in some cases conflicting definitions for globalisation, it is a complex subject with no space for detailed discussion here. The global policy forum contains a series of articles and documents considering the definition of globalisation at: <http://www.globalpolicy.org/globaliz/define/index.htm> [Accessed 18 January 2008]. For our purposes in the discussion on trade in education services we will draw on the IMF's economic definition that emphasises "the growing economic interdependence of countries worldwide through the increasing volume and variety of cross-border transactions in goods and services and of international capital flows, and also through the more rapid and widespread diffusion of technology." Definition contained in: IMF World Economic Outlook (1997) *Globalization: Opportunities and Challenges*, p. 45. Washington DC: IMF. It will also draw on the higher education specific definition used by Knight and Altbach, where globalisation is seen as the "economic, political, and societal forces pushing 21st century higher education toward greater international involvement." They go on to explain that "Global capital has, for the first time, invested heavily in knowledge industries worldwide, including higher education and advanced training. This investment reflects the emergence of the "knowledge society," the rise of the service sector, and the dependence of many societies on knowledge products and highly educated personnel for economic growth." See: Altbach, P. and Knight, J. (2006). *The Internationalization of Higher Education: Motivations and Realities*. Center for International Higher Education, Boston College. Available from: http://www.bc.edu/bc_org/avp/soe/cihe/pqa/pdf/Internationalization_2006.pdf [Accessed 18 January 2008]. More generally, however its influence on higher education can be taken to be holistic, with global dimensions affecting the economic, cultural, social, political, intellectual, religious and technological spheres of higher education provision.

approach".²⁹ The revenue-generating rationales for internationalisation strategies were perceived to be particularly important in the UK, Australia and New Zealand, with other countries having a more integrated mix of motives for their international activities and less explicit financial motivations.³⁰

Trade and developing countries

The developmental opportunities of international mobility in higher education services have received considerable attention in the past few years. Emphasis has been placed on the possibilities of building higher education capacity through the participation of foreign and private providers and encouraging the growth of cross-border activity in developing economies under the banner of a 'capacity building' agenda. The mid-1990s witnessed a change in policy at the World Bank, and other key development agencies, with regard to investing in higher education. In the previous decade the goal of universal primary education was prioritised, while higher education development was neglected by the donor community as the preserve of an elite, and with apparently limited developmental impact. This view has since been revised and has given way to recognition that higher education holds the key to sustained economic development through the production of skilled human resource and expertise as well as knowledge and innovation. The current policy agenda of donors appears to recognise that an holistic approach is necessary to achieve long term development objectives. This was highlighted in the report of the Commission for Africa which went to the G8 in 2005; it firmly asserted the fundamental role to be played by tertiary education in the development of the continent. Building capacity has been cited as one of the important opportunities emerging from internationalisation and the international trade in education services and how this trade is organised and structured within the international community is therefore of critical importance to education stakeholders in developing as well as developed countries.

1.2.4 Importers and suppliers of education services

Importing education services from overseas has been particularly noticeable in countries with rapidly expanding economies such as the tiger economies of East Asia. These countries prove attractive to potential foreign investors with economic growth fuelling demand and resources for student places and graduates. In terms of East Asian Commonwealth countries, Malaysia and Singapore have long recognised the need for a strong higher education sector to support their future economic development and have placed a premium on higher education. These countries are a major source of international students to Western universities but also host an increasing number of foreign providers, looking to access their strong domestic and regional markets. The OECD have reported that in the Asia Pacific region both study abroad by domestic students and in-country foreign programmes and institutions are encouraged, with a number of countries issuing policy statements about the capacity-building potential

²⁹Organisation for Economic Co-operation and Development (2004) *Internationalisation and Trade in Higher Education: Opportunity and Challenges*, p. 228. Paris: OECD.

³⁰ *Ibid.* p. 225

of programme and institution mobility.³¹ Globally, China, Hong Kong, Malaysia and Singapore constitute the largest importers of higher education programmes. India is also emerging as a significant importer of services.

In contrast to the emergent economies of East Asia where imports have played a significant role in higher education development and student participation rates have massively increased, the poorest developing countries continue to struggle towards minimal participation rates despite the rapid growth in student numbers. In sub-Saharan Africa participation rates are often below 5%.³² Major capacity limitations mean that the majority of sectors are unable to cope with demand and significantly improve on participation rates. Universities struggle to cope with rising numbers of students and increasingly look to attract fee paying students on a broader range of academic programmes. Uganda provides an instructive example of these trends. Some estimated hold that there was a ten-fold increase in student enrolment at Uganda's flagship university, Makerere University, in the 1990s.³³ Makerere increased provision by introducing private sponsorship schemes, distance learning and part-time evening study programmes. Since it began charging fees the proportion of self-financing students at Makerere has risen to 80% of its enrolments.³⁴ During this same period Uganda also saw the escalation of private provision with more than ten private universities established. Similar trends are reflected throughout the continent. The impact of the domestic private sector in Africa has been widespread with massive growth of private providers in the last 15 years, although precise numbers of current private providers are not available. In Kenya too the growth of the private sector provision has prompted the public sector to increasingly look to private sources of income and has led to what Otieno describes as the 'privatization of public universities'.³⁵ Public institutions are under greater pressure to compete with private higher education institutions and are similarly turning to private sources of income, most commonly from student fees, to sustain themselves in the absence of proportionate growth in public funding.

Foreign education providers have yet to fully penetrate or target Africa (and to a lesser degree South Asia) commercially, presumably because, unlike the attractive markets of South East Asia the ability to pay international premiums for higher education services is relatively limited. Moreover, the regulatory conditions under which private and foreign providers operate tend to be less established. There are also

³¹ Ibid. p. 229

³² Institute for Statistics estimated 2005 average gross enrolment across sub-Saharan Africa was 5% and for South and West Asia was 11%. See: UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p. 132. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 23 January 2008]

³³ Mamdani, M. (2006) *Higher Education, the State and the Marketplace*. Speech to the 16th Conference of Commonwealth Higher Education Ministers (CCEM), Cape Town, South Africa. [10-14 December 2006]. States that the increase was from 3,000 before the 1990s to 30,000 after. See also Aguti, J. N. (2006) *Education for national development: The Makerere University dual mode experience*. Paper presented at The Fourth Pan-Commonwealth Forum on Open Learning, Ocho Rios, Jamaica. [30 October – 3 November 2006]. Available from: <http://pcf4.dec.uwi.edu/viewpaper.php?id=402&print=1> [Accessed 15 February 2008] Reports undergraduate enrolment at Makerere University was 5597 in 1991 rising to 31,302 in 2005.

³⁴ Kasozi, A. B. K (2006) *The politics of fees in Uganda*, International Higher Education, Number 43 [Spring 2006]. Center for International Higher Education, Boston College http://www.bc.edu/bc_org/avp/soe/cihe/newsletter/Number43/p23_Kasozi.htm [Accessed 23 January 2008]

³⁵ Otieno, W. (2004) *The Privatization of Kenyan Public Universities International Higher Education*. International Higher Education, Number 36 [Summer 2004]. Center for International Higher Education, Boston College. Available from: http://www.bc.edu/bc_org/avp/soe/cihe/newsletter/News36/text007.htm [Accessed 23 January 2008].

long-standing practical issues around providing education services in poor developing countries, with infrastructural problems and limited access to technology increasing the difficulty of delivering courses by distance.³⁶ Nonetheless, the increasing pervasiveness of the private sector is likely to attract foreign providers not only from established exporting countries but also from within the region and from countries looking to expand their education exports. China for example is looking to expand its exports and announced its intention to establish closer higher education links with 17 African countries. India is also showing an interest in Africa.³⁷ Thus foreign penetration in Africa might come most markedly from the South.

Suppliers of education services

Within the Commonwealth the biggest suppliers of higher education services to the international market are, unsurprisingly, high-income English speaking countries, namely the UK, Australia, New Zealand and Canada.³⁸ South East and East Asia (including China) are the major source for international students and constitute the strongest market for education exports, many of the major exporting countries concentrate here. Australia is particularly active in East Asia and 71% of its education service exports go to Singapore, Malaysia, Hong Kong and Mainland China.³⁹ New Zealand's largest markets are also in East Asia, notably China, which has grown dramatically in the last 10 years with the number of Chinese students in New Zealand rising from 139 in 1998 to 26,546 in 2005, according to national data.⁴⁰ Off-shore provision is concentrated on China/Hong Kong and the Pacific but the largest proportion of programmes in Asia were delivered in Malaysia.⁴¹ Canada also has a significant number of programmes in Asia (Malaysia, Hong Kong, Japan and China) as well as providing programmes to Francophone Africa, the Caribbean and Latin America.⁴² The UK has a more diverse profile of offshore provision but again the strongest markets (outside of the EU) have traditionally been in Malaysia,

³⁶ In his speech to the International Investment Forum John Daniel, President and CEO of the Commonwealth of Learning, spoke of: "only 1% of African people are online and 50% of them are in South Africa [and] access to technology in Bangladesh is 0.1%". See: Daniel, J. (2006) *The reality of cross-border delivery in higher education: Challenge, myth and opportunity*. Paper presented at 2006 International Investment Forum for Private Higher Education, Washington, D.C. February 3, 2006. Available from: <http://www.col.org/colweb/site/pid/3568> [Accessed 23 January 2008].

³⁷ Observatory of Borderless Higher Education (2006) *A win-win deal? China and Africa pave the way for closer higher education collaboration* (Breaking News: 24th . OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=596&mode=month> [Accessed 18 January 2008].

³⁸ Garrett, R. (2005) *Does Cross-Border Education make sense for Africa? Conditions for growth, current characteristics and enhancement for development*. Paper presented at the 11th General Conference of the Association of African Universities, Cape Town, South Africa. 21-25th February, 2005.

³⁹ Calderon, A, and Tangas, J. (2006) *Trade Implications, Regional Agreements and Implications for Higher Education*. Higher Education Management and Policy 18 (1), p. 96. Institutional Management in Higher Education, Organisation for Economic Cooperation and Development. See also: Verbik, L. and Lasanowski, V. (2007) *International Student Mobility: Patterns and Trends*. Observatory on Borderless Higher Education. Available with subscription from: http://www.obhe.ac.uk/products/reports/pdf/2007-09-01_3.pdf [Accessed 21 January 2008].

⁴⁰ Ministry of Education, New Zealand: Education Counts. *International Students Enrolled in Tertiary Education*. Available from: http://www.educationcounts.govt.nz/indicators/student_participation/tertiary_education/international_students_enrolled_in_formal_tertiary_education [Accessed 21 January 2008].

⁴¹ New Zealand, Ministry of Education (2007) *New Zealand's Offshore Public Tertiary Education Programmes*. NZ Ministry of Education. Available from: <http://www.minedu.govt.nz/index.cfm?layout=document&documentid=6876> [Accessed 23 January 2008]. See also Verbik, L. and Lasanowski, V. (2007) *International Student Mobility: Patterns and Trends*. Observatory on Borderless Higher Education. Available with subscription from: http://www.obhe.ac.uk/products/reports/pdf/2007-09-01_3.pdf [Accessed 23 January 2008].

⁴² New Zealand, Ministry of Education (2007) *New Zealand's Offshore Public Tertiary Education Programmes*, NZ Ministry of Education. Available from: <http://www.minedu.govt.nz/index.cfm?layout=document&documentid=6876> [Accessed 21 January 2008].

Singapore and Hong Kong.⁴³ Distance education remains the most common mode of offshore programme delivery.

The reasons for importing and exporting tertiary provision are fairly clear. The critical issue, and major debate, relates to the quality, access and cost of education supplied by foreign providers. One of the main concerns regarding in-country foreign provision, especially to developing countries, is how to monitor and regulate the quality and legitimacy of foreign and private providers. There are concerns that the liberalisation of trading conditions for services might open the door to poor quality provision and limit the ability of host countries to effectively monitor or regulate foreign providers. There is also concern around the curriculum relevance of foreign programmes and whether they are suitably adapted to the host country. The evolving growth and diversity of private provision and public-private collaborations has made the regulatory environment for higher education more complex and this has significant implications for the application of international trade rules to education services.

1.2.5 A public-private hybrid

The increasingly complex and integrated relationship between the public and private sectors in higher education has been identified as a major challenge in positioning education within the international trade framework. The WTO's General Agreement on Trade in Services, examined in greater detail in the next section, defines public services as "services supplied in the exercise of the government authority" that are offered on a non-commercial basis and are not in competition with other service providers.⁴⁴ Using these criteria it would be difficult to define precisely what elements of the public higher education system could actually be classified as public. Increased private investment in higher education services - whether through fees, commercialisation of research, consultancy or other forms of private investment - and the diversification of income streams as well as the cross-subsidisation of courses have blurred the distinction between public and private provision.

The most recent Global Education Digest produced by UNESCO testifies to the importance of private funding of tertiary education in certain Commonwealth countries. In Australia, in 2004, as a proportion of GDP, private funding matched public investment.⁴⁵ Private funding comes primarily from student fees, but increasingly income is generated through the knowledge transfer activities of universities and their links with the business and commercial sectors. In the UK, where private investment has not quite reached the levels of Australia, the introduction of tuition fees means that a significant proportion of the income for public institutions comes from private sources and this is likely to increase as fees are set to

⁴³ Ibid.

⁴⁴ See Part I, Article I: Scope and Definition in the *General Agreement on Trade in Services*. Available from: http://www.wto.org/english/docs_e/legal_e/26-gats.pdf. [Last accessed 21 January 2008].

⁴⁵ The Global Education Digest indicates that as a proportion of GDP 0.8% of the public funding is spent on tertiary education and 0.8% comes from private sources. See: UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p.177. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 21 January 2008].

rise from the current rate, capped at £3,000.⁴⁶ Moreover, the UK Government has made a firm commitment to support business engagement with the higher education sector. In 1999 the Higher Education Funding Council for England (HEFCE) launched the Higher Education Reach Out to Business and the Community (HEROBC) initiative. This provided support for universities to engage in knowledge transfer activities with the business community, attract funding from the private sector, creating businesses and encourage universities to respond more readily to the needs of business and the wider community.⁴⁷ In 2003 the Lambert review of business–university collaboration in the UK was published and supported the establishment of the successor to HEROBC, the Higher Education Innovation Fund which aims to promote knowledge transfer for “economic and social benefit”.⁴⁸ In 2003 it was reported that Canadian Universities created 680 spin-off companies generating estimated revenue of CAD 2.58 billion dollars.⁴⁹ Links to business, industry and the commercial sector varies considerably across countries and institutions; nonetheless, it is a rising trend, increasingly supported by institutional and national policy.

The difficulty in differentiating between the public and private is not only confined to the commercial and private activities of the university but to the various forms of public private partnerships (PPP's) and trade relationships that higher education institutions are party to. There are a number of configurations of public-private partnerships/relationships in the higher education sector. Examples include public institutions that set up 'private' branch campuses abroad, public institutions that deliver programmes through private companies or institutions (at home or abroad), and private companies that offer courses in partnership with state sector providers, as with the Nottingham Trent University and Kaplan collaborations described above.⁵⁰

Competition between public and private sector

Competition between public and private providers varies significantly across the Commonwealth. In most countries competition between higher education institutions is still largely confined to the public sector. The number of private and for-profit institutions is, however, increasing and this is proving to be

⁴⁶ For most British students (excluding Scottish students studying in Scotland) tuition fees were introduced in 1998/99 at a fixed rate which by 2005/06 stood at £1,175. In 2006/07 legislation came into effect which allowed universities to charge fees of up to £3,000 – these are referred to as top-up fees as they allow institutions to top-up the basic tuition fee to a maximum of £3,000. In 2009 the system is to be reviewed and it is likely that the cap of £3,000 will be increased or removed.

⁴⁷ HEFCE (2007) *Higher Education Reach-Out to Business and the Community*. Information available from: <http://www.hefce.ac.uk/reachout/initial/#herobc> [Accessed 21 January 2008]. HEFCE is responsible for HEIs in England, other knowledge transfer schemes are in operation in other parts of the UK.

⁴⁸ HM Treasury (2003) *The Lambert Review of Business-University Collaboration*. HM Treasury. Available from: http://www.hm-treasury.gov.uk/consultations_and_legislation/lambert/consult_lambert_index.cfm. [Accessed 21 January 2008]. See also information on HEFCE's *Higher Education Innovation Fund 4*. Available from: <http://www.hefce.ac.uk/reachout/heif/> [Accessed 21 January 2008].

⁴⁹ Association of Universities and Colleges of Canada (2003) *Action File: Commercialisation*. AUCC. Available from: http://socrates.aucc.ca/pdf/english/publications/actionfile/commercialization_e.pdf [Accessed 23 January 2008].

⁵⁰ Other examples include (but are not limited to): private companies that develop in-house education institutions or universities with a state provider; public-private co-operation in developing programmes for global delivery through distance and e-learning; research collaboration between public universities and private organisations; private companies who provide support services to public institutions (e.g. marketing, student recruitment or admissions management); private companies that invest in infrastructure; private funding of research and development where specific research is supported by private organisations and executed at the university. These were cited as examples for the British Council's *Going Global 2* conference (December 2006) which had the theme of public private partnerships. Further information is available from: <http://www.britishcouncil.org/goingglobal2-themes-public-private-partnerships.htm> [Accessed 23 January 2008].

a particular challenge for public sector institutions in some developing countries. For-profit institutions are driven primarily by market forces and will gear their provision to courses with high demand and with high rates of return. It is argued that where private providers have a competitive advantage over public providers is in their ability to adapt their course offerings to respond to market demand. Public institutions, while trying to diversify their income and engage in more revenue generating activities, have a public mandate and are subject to greater levels of public and government scrutiny. Private providers would, however, argue that public institutions have the obvious advantage of state subsidy. Not surprisingly, protecting state subsidies is a key concern among higher education stakeholders in the process of trade liberalisation. In addition, public institutions, certainly in the major exporting countries, tend to have a higher profile and reputation than their private counterparts. This makes it a much more difficult prospect for private providers wanting to penetrate countries with a strong and well established public higher education sector. However, in some countries private providers (domestic and foreign) have significantly increased the number of institutions and the level of competition and are especially active in the developing world. In 2004 Middlehurst and Woodfield reported that 30 private institutes had been established in Bangladesh between 1992 and 2002.⁵¹ They also reported that in 2002 40% of higher education providers in Jamaica were private⁵² and that Malaysia had a staggering 536 private providers, with 18 private universities (four of which were foreign university campuses) compared to 17 public-funded higher education institutions.⁵³

The growth of the private sector and private investment in the public sector generates considerable opportunities for foreign providers. The second part of this paper looks in greater detail at how the international trade framework, through multilateral and bilateral trade agreements, seeks to capitalise on and develop the possibilities of international trade in services, including education. There is a particular focus on the WTO's General Agreement on Trade in Services, but the growth of other bilateral and regional agreements are also considered. The inclusion of education within the GATS and other international trade agreements remains controversial and contested, and highlights the difficulties of placing education within a multilateral and liberalising trade framework. This discussion is followed, in the final section, by an assessment of the developments of private and foreign provision across the regions of the Commonwealth.

⁵¹ Middlehurst, R., Woodfield S. (2004) *Summary Report: The Role of Transnational, Private, and For-Profit Provision in Meeting Global Demand for Tertiary Education: Mapping, Regulation and Impact (Case Study: Bangladesh)*, p. 26. Commonwealth of Learning and UNESCO. Available from: http://www.col.org/colweb/webdav/site/myjahiasite/shared/docs/03Transnational_Bangladesh.pdf [Accessed 23 January 2008].

⁵² Middlehurst, R., Woodfield S. (2004) *Summary Report: The Role of Transnational, Private, and For-Profit Provision in Meeting Global Demand for Tertiary Education: Mapping, Regulation and Impact (Case Study: Jamaica)*, pp. 28-29. Commonwealth of Learning and UNESCO. Available from: http://www.col.org/colweb/webdav/site/myjahiasite/shared/docs/03Transnational_Jamaica.pdf [Accessed 21 January 2008].

⁵³ Middlehurst, R., Woodfield S. (2004) *Summary Report: The Role of Transnational, Private, and For-Profit Provision in Meeting Global Demand for Tertiary Education: Mapping, Regulation and Impact (Case Study: Malaysia)*, p. 47. Commonwealth of Learning and UNESCO. Available from: http://www.col.org/colweb/webdav/site/myjahiasite/shared/docs/03Transnational_Malaysia.pdf [Accessed 21 January 2008].

Part 2: Multilateral and bilateral trade agreements and higher education

Trade in higher education services is a multi-billion dollar enterprise that affects both public and private providers. As public funds struggle to keep pace with an expanding and increasingly competitive higher education sector, public higher education institutions are looking for ways to diversify their income and develop new ways to attract funding and resources. International activity has become an important part of this diversification. For those countries with large and relatively developed higher education sectors the revenue from international students and in some cases from the export of academic programmes is becoming an essential income stream. However, cross-border provision and the trade in educational services are driven not only by financial imperatives. In low and middle income countries the import of education services from foreign providers is seen as potentially contributing to much needed capacity development.

Growth in the trade of education services coincides with a stronger global focus on the economic significance of trade in services. Multilateral and bilateral trade agreements and frameworks have emerged to codify and facilitate the trade in services. The most significant development to date has been the General Agreement on Trade in Services (GATS) which came into force in 1995. The aim of this multilateral agreement is to remove barriers to trade and establish a clear and transparent framework for the international trade in services. All 151 countries of the World Trade Organisation are signatories of the GATS. This includes 46 of the 53 Commonwealth member states.⁵⁴ This section provides an overview of the GATS framework and looks at some of the latest developments including the recent growth of bilateral and regional agreements on services.

2.1 GATS - background and history

The GATS is the first legally binding multilateral trade agreement that covers the trade in services. It was set up as a counterpart to the General Agreement in Tariffs and Trade (GATT), established in 1947 to cover the trade in goods and merchandise. The aim of the GATS is to facilitate the expansion of trade “under the conditions of transparency and progressive liberalisation and as a means of promoting economic growth of all trade partners and the development of developing countries”.⁵⁵ The GATS was established in 1995 following negotiations within the WTO’s Uruguay round of trade talks (1986-1994) which resolved to extend the multilateral trading system to services. The most recent GATS negotiations were launched in 2000 and set out to expand the coverage of the Agreement and increase the level of country commitments. The 2001 Ministerial Conference in Doha placed the services

⁵⁴ Commonwealth countries that are not members of the WTO include: The Bahamas; Kiribati; Nauru; Seychelles; Tuvalu; Vanuatu; Samoa. See WTO website: http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm [Accessed 21 January 2008].

⁵⁵ Taken from the preamble to the GATS. See World Trade Organisation (2005) *A Handbook on the GATS Agreement*. Excerpt available from: <http://www.cambridge.org/catalogue/catalogue.asp?isbn=9780521615679&ss=exc> [Accessed 21 January 2008].

negotiating framework into the overall timeframe of the Doha negotiating round – also known as the Doha ‘development round’ because of the undertaking to pursue development-friendly outcomes within the round.

The Doha round consists of three negotiating frameworks, the first two concentrate on agricultural and non-agricultural products and the third on services. The round was originally set to run to January 2005, however, services negotiations have been stalled by protracted and contentious negotiations around agricultural subsidies and tariff cuts. In a recent speech the Director General of the WTO, Pascal Lamy, stated that the “negotiating reality of the Doha round is that agricultural subsidies, agriculture tariffs and industrial tariffs are the gateway issues to the rest of the Doha package. Without settling these we simply cannot progress to the final stage of the Doha round”.⁵⁶

In December 2005 a Ministerial trade meeting was held in Hong Kong which sought to give momentum to the GATS negotiations, but by July 2006, the round was suspended following the failure to reach agreement on concessions in agricultural subsidies and import tariffs. Talks resumed in 2007 and the WTO continues to stress the importance of services negotiations to the successful conclusion of the Doha round. However, one of the key criticisms of the round is that it is too complex and broad, and the conflation and inter-dependency of three negotiating strands presents a major obstacle to the successful resumption of the process, as Lamy notes “until everything is agreed, nothing is agreed”.⁵⁷ No formal outcomes have emerged from the 2007 meetings/negotiations and agreements are unlikely to be reached until there is movement on the parallel negotiations on agriculture and industrial good. Negotiations are now set to extend well into 2008 and even 2009 without any guarantees of success.

The GATS process and the evolving international trade environment for services are complex legal terrain, but the stakes are potentially high. The implications for education services could be significant, one vice chancellor from the UK referred to it “as a sleeping threat at the moment but will require vigilance and action if it awakens in the HE market”.⁵⁸ It is therefore important that education stakeholders are aware of the issues and able to inform the negotiating position adopted by their countries. Across the Commonwealth the structure and capacity of higher education sectors vary and the implications of trade and trade agreements will be different. This chapter outlines the key elements of the GATS framework in terms of the underlying structures, obligations and processes, and assesses the implications for higher education services for both developing and developed countries.

⁵⁶ Lamy, P. (October 2007) *Doha Success Will Need Positive Outcome in Services*. Speech at European Services Forum and London School of Economics Conference, London, England. [15th October 2007]. Available from: http://www.wto.org/english/news_e/sppl_e/sppl77_e.htm [Accessed 21 January 2008].

⁵⁷ Ibid.

⁵⁸ Taken from an interview conducted as part of a consultation on the GATS carried out by the Association of Commonwealth Universities in 2006.

2.2 The GATS framework

2.2.1 Mechanisms and terminology

The terminology and legal terms used within the GATS can be difficult to grasp. It is therefore worth briefly outlining some of the key terms and processes used, before assessing the latest developments and implications of the Agreement.

Service sector

The GATS covers 12 service sectors, including education.⁵⁹ The education sector is divided into five sub-sectors: primary, secondary, higher (which also includes post-secondary technical and vocational education), adult and 'other education'. There is still a certain lack of clarity as to what the 'other' category represents but it could include, for example, language courses as well as testing, auditing, marketing and accreditation services.

Modes of supply

The Agreement defines four 'modes of supply' for service provision; these are listed below with examples of their application to the higher education sector:

Mode 1. *Cross-border supply:* where the *service* crosses the border (e.g. distance education)

Mode 2. *Consumption abroad:* where the *consumer* crosses the border to consume the service (e.g. study abroad programmes, international students)

Mode 3. *Commercial presence:* where a service *supplier* (institution) establishes a physical presence in a second member country to provide services (e.g. franchise or twinning arrangements, branch campuses)

Mode 4. *Presence of natural persons:* where an *individual* from one member country supplies a service in another member country for a temporary period (e.g. faculty exchanges and short-term teaching contracts in branch campuses or on franchised programmes) – this excludes overseas workers seeking permanent posts abroad

When negotiating the level to which they commit a particular service sector to the GATS trade rules WTO members can differentiate between different modes of supply. For example, a member could offer full market access for cross-border supply in a particular service sector, but attach conditions or prevent access for commercial presence (e.g. establishing a branch campus) in the same sector.

⁵⁹ Business services (including professional services and computer services); Communication services; Construction and related engineering services; Distribution services; Educational services; Environmental services; Financial services (including insurance and banking); Health-related and social services; Tourism and travel-related services; Recreational, cultural and sporting services; Transport services; Other services not included elsewhere.

Commitment

A commitment is a service sector or sub-sector that a member has put forward as being a sector open for market access (for example a number of WTO members have committed private higher education as open for negotiation on market access). A commitment can be bound or unbound. Bound commitments are liable for compensation if withdrawn or modified whereas unbound commitments are left to the discretion of the country making the commitment and therefore effectively equates to no commitment. The GATS process seeks to increase the number of bound commitments. Commitments are the outcome of negotiations and are detailed in each member's 'national schedule of commitments'.⁶⁰

Market access and national treatment

Member states must specify the level of 'market access' they will give to foreign providers, and also the extent to which they will treat foreign and domestic providers equally ('national treatment'). Again, the liberalising drive of the Agreement pushes towards full market access and equal treatment for all service providers. Countries can place a number of limitations or conditions on the *market access* provided and these will be listed in the schedule of commitments.⁶¹ *National Treatment* obligations seek equal treatment of foreign and domestic providers but members can negotiate differential treatment if justified on the basis of national interest and/or national policy objectives.

Most favoured nation rule

Market access and national treatment are conditional obligations that only apply to sectors that are committed. There are also unconditional obligations, which apply to all sectors, whether they are committed or not. The most important unconditional obligation is the Most Favoured Nation (MFN) rule. This rule requires that WTO members apply the same treatment to all WTO trading partners – this means that the level of foreign access (whether it is full, partial or no access) must be the same for all member States. There are, however, a number of exceptions to the rule, for example, regional trade agreements often fall outside of the purview of the MFN rule. Moreover, countries can implement exemptions to the MFN rule for a set period of time, however, in pursuit of progressive liberalisation the GATS seeks to eliminate such exemptions through the negotiating process.

⁶⁰ The national schedule of commitments detail the sectors that the members are prepared to open up for negotiation. They contain at least eight entries per committed sector; these detail the commitments with regard to *market access* and *national treatment* for each of the four *modes of supply*, indicating if they are bound or unbound and if there are any associated conditions or exceptions to the commitment.

⁶¹ Limitations on market access include: limitations on the number of foreign suppliers; limitations on the assets of foreign providers; a requirement that foreign suppliers partner with local partners or become a legal entity in the host country; limitations on the number of natural persons (mode 4) that a service supplier may employ or an economic needs test – where the supplier must prove that their service is economically necessary to the host country; limitations can also be placed on the foreign capital investment of a service supplier. These are listed in the General Agreement on Trade in Services text under *Specific commitments – Market Access*, p.297. Available from: http://www.wto.org/english/docs_e/legal_e/26-gats.pdf [Accessed 21 January 2008].

2.2.2 Barriers

Fundamental to the GATS, and other trade agreements, is the facilitation of trade by the removal of barriers. Knight (2002 and 2006) has outlined a number of examples of general and education specific barriers that might be targeted by international trade agreements such as the GATS:

Barriers to trade

General barriers include:	<ul style="list-style-type: none"> • Lack of transparency in regulatory policy and funding frameworks • Unfair administration of a country's domestic laws and regulations • Hidden subsidies • Economic needs tests • Discriminatory tax treatment • Delays in grant of approval and denial of explanation or information when approval is not granted
Some of the barriers specific to the higher education sector, by mode of supply, include:	
<i>Crossborder Supply (mode 1)</i>	<ul style="list-style-type: none"> • Restriction on the import or electronic transmission of educational/course material • Non-recognition of degrees obtained through distance mode
<i>Consumption Abroad (mode 2)</i>	<ul style="list-style-type: none"> • Restrictions on export of currency and exchange • Quotas on the number of students proceeding to a country or institution and the prescription of minimum standards or attainments
<i>Commercial Presence (mode 3)</i>	<ul style="list-style-type: none"> • Requirement to collaborate with a local partner to provide education services and/or insistence on partners/collaborators being from the formal academic stream • Requirement that foreign providers are accredited in home country • Insistence on equal academic participation by foreign and local partner • Disapproval of franchise operations or difficulty in approval of joint ventures • Restrictions on certain disciplines/ areas/ programs that are not viewed as serving national interests • Limitations on foreign direct investment (FDI) by education providers
<i>Presence of Natural Persons (mode 4)</i>	<ul style="list-style-type: none"> • Visa and entry restrictions • Restriction on the basis of quotas for countries and disciplines • Nationality or residence requirements • Restriction on repatriation of earnings

Source: Knight, J. *Higher Education Crossing Borders* p.33-34

2.2.3 Coverage – Article I:3

Defining the services that are covered by the GATS agreement continues to be a topic of considerable debate and contention. Article I:3 of the Agreement stipulates that "services supplied in the exercise of governmental authority" (i.e. public services) are exempt from the Agreement. This would appear to exclude public/state funded education from the Agreement. However, Article I:3 also specifies that

excluded services must not be supplied on a “commercial basis” and must not be “in competition with one or more service suppliers”. This definition of public services or ‘services in the exercise of government authority’ is a problematic one for the modern higher education sector where increasingly the lines between public and private are blurred with public institutions often operating competitively and having commercial or revenue generating activities. Concerns have been raised that under this definition the liberalising rules of the GATS agreement might encroach on the public education sector which should be outside of the remit of the Agreement.

2.2.4 The Process

The GATS negotiating framework operates on the basis of requests and offers submitted by WTO members regarding service commitments. There are four types of request submitted by members:

1. A request to include a particular sector that is currently not included in the national schedule.
2. A request that is directed at an ‘unbound’ commitment with a view to establish a binding commitment.
3. A request that focuses on making additional commitments in a particular sector (most commonly in relation to market access and national treatment) in order to make it more open.
4. Fourthly, a request to remove MFN exemptions.

The exchange of requests has traditionally been bilateral, from country-to-country, with written requests usually sent out in the first instance. Members in receipt of requests are then at liberty to submit an offer, this is normally in the form of a draft national schedule of commitments. An offer does not have to address every element of the request. In general, an offer represents something a member is prepared to bind as a commitment, but is not itself bound and would, in the negotiations, be conditional on an acceptable package of offers by others. However, it must be remembered that the process of negotiation is generally an ongoing one (within a defined timeframe) with requests and offers going back and forth and subject to multiple revisions. The preparation of offers is often a complex and technical matter that requires considerable legal and technical knowledge and support. The offers - which are disseminated multilaterally – provide the basis for the advanced stage of negotiations whereby negotiators go to Geneva for face-to-face negotiations. In the current round of negotiations the deadline for final offers has been extended on a number of occasions, the most recent deadline was 31st July 2006, but has been put on hold following the suspension of the Doha Round in July 2006.

2.2.5 Latest Developments

Level of commitment

The number of countries willing to commit their education sectors to the GATS framework is relatively limited. At the last count 47 members (with the EC counted as one) made some level of commitment in

the education sector; 38 of these made commitments in higher education.⁶² Seven Commonwealth countries (of 53) have made commitments in higher education services.⁶³ The full list of countries that have made commitments in education is available in Appendix 1. At this time the majority of the Commonwealth countries including Canada have yet to commit any element of their education sector to the GATS rules. There are indications however, that increased pressures might be placed on countries to extend their commitments within the GATS, and sensitive sectors such as education with relatively limited commitments from countries may be particularly vulnerable to this drive.

Negotiating strategies

At the December 2005 WTO meeting of Trade Ministers held in Hong Kong it was decided that efforts should be made to strengthen the GATS negotiating process and expand the number of sectors covered by the Agreement. To this end, new negotiating strategies were advocated with the aim of pushing forward the process. The Ministers agreed in the Hong Kong Declaration "to intensify and expedite the request-offer negotiations...with a view to securing substantial commitments."⁶⁴ The intensification of negotiations might place disproportionate pressure on lower and middle income countries because they tend to be in a weaker negotiating position, but also because demand for services in these countries often far-outstrips supply. This generates opportunities for foreign exporters wanting to access their markets. Commonwealth countries that have not made any commitments in the education sector might be targeted for greater liberalisation, particularly those with high demand and a burgeoning private sector such as Pakistan, India, Malaysia and Singapore. Countries that have a strong market for higher education services but relatively restrictive conditions for foreign providers like South Africa might also be targeted.

Plurilateral negotiations

In addition to established bilateral negotiations, it was agreed at the Ministerial conference that negotiations could also be pursued on a plurilateral basis. Plurilateral negotiations involve groups of similarly interested WTO members putting forward a joint request (either in a particular sector or for a particular mode of supply) to one or more member states. The results of such negotiations would then be extended to other members on a *most favoured nation* basis. These negotiations are organised in the following way:

1. Any member or group of members may present requests or collective requests to other members in any specific sector or mode of supply, identifying their objectives for the negotiations in that sector or mode of supply.

⁶² Knight, J (2006) *Higher Education Crossing Borders: A Guide to the Implications of the General Agreement on Trade in Services (GATS) for Cross-border Education*, p.72, Appendix A. Commonwealth of Learning and UNESCO. Available from: http://www.col.org/colweb/webdav/site/myjahiasite/shared/docs/GATS_web_nocover.pdf [Accessed 21 January 2008].

⁶³ These include the UK (as part of the European Community, which has a single membership of the WTO and negotiates as a single bloc) Australia, New Zealand, Lesotho, Sierra Leone, Trinidad and Tobago and Jamaica.

⁶⁴ World Trade Organisation (2005) *Hong Kong Ministerial Declaration, Annexes*. Available from: http://www.wto.org/english/thewto_e/minist_e/min05_e/draft_annex2_e.htm#annexc [Accessed 21 January 2008].

2. Members to whom plurilateral requests have been made must consider such requests.⁶⁵

The idea behind plurilateral negotiations is to strengthen the position of countries with similar interests as well as make the process more efficient. One plurilateral request was submitted in relation to the education sector. New Zealand led a group of countries (including the US, Australia, Malaysia and Chinese Taipei – known as the ‘friends of higher education’ group) in putting forward a joint request on private education to 21 WTO members.⁶⁶ The request seeks to eliminate national treatment and market access limitations for private higher education for modes 1, 2 and 3 and to allow access to individuals who are education providers for mode 4.

Despite the latest talks, it remains unclear how each of the individual targeted members will respond to the request and no firm commitments have been made. The European Union, one of the targeted members, has indicated that it will not go beyond what has already been offered under the GATS and a number of other countries have similarly indicated that they will not make concessions in accordance with the demand. Conversely Pakistan has indicated that it might make significant commitments in response to the private higher education request as it believes that this might increase its attractiveness to foreign investors.⁶⁷ Already in May 2005 Pakistan put forward a conditional offer on services which included higher and adult education services, but this has not been formalised.⁶⁸ Nonetheless, the Pakistan Ambassador has acknowledged that more discussion is needed with the higher education sector in Pakistan to consider the impact of GATS on education services.⁶⁹ Malaysia has also indicated the likelihood of making commitments in response to the request.

The concerns around plurilateral requests centre on the pressure they place on the targeted countries, especially developing countries. The guidelines stipulate that plurilateral negotiations should be organised with a view to facilitating the participation of all members and should take into account the limited capacity of developing countries and smaller delegations to participate in such negotiations. Nonetheless, critics argue the pressure to negotiate remains strong and requests are generally put forward by influential countries in a strong negotiating position. Moreover, countries that are subject to a request are obliged to negotiate regardless of whether they wish to open up the sector or not. With regards to the specific request on private higher education, the complexity of distinguishing what precisely constitutes public and private higher education has been raised and some concerns have

⁶⁵ See point 7 of Annex C of the Hong Kong Ministerial Declaration. Available from: http://www.wto.org/english/thewto_e/minist_e/min05_e/draft_annex2_e.htm#annexc [Accessed 21 January 2008]. Also available in Appendix 2.

⁶⁶ Countries targeted by the plurilateral request include Argentina, Brazil, Chile, China, the European Union, Hong Kong, India, Indonesia, Korea, Malaysia, Mexico, Oman, Pakistan, Philippines, Singapore, Saudi Arabia, Sri Lanka, Switzerland, Thailand, Turkey and the United Arab Emirates.

⁶⁷ Education International (2006) *TradEducation 10* (August 2006). EI. Available from: <http://www.ei-ie.org/en/publication/> [Accessed 23 January 2008].

⁶⁸ World Trade Organisation (2005) *Council for Trade in Services - Special Session - Pakistan - Conditional Initial Offer on Services* [TN/S/O/PAK] [30th May 2005].

⁶⁹ Education International (2006) *TradEducation 10* (August 2006). EI. Available from: <http://www.ei-ie.org/en/publication/> [Accessed 23 January 2008].

been voiced by the targeted countries that the commitments outlined in the request might inadvertently expose the public sector to the GATS rules.

Modal and sectoral targets

In addition of plurilateral requests, another proposal for advancing the GATS negotiations has been the establishment of 'modal benchmarks', whereby particular limitations/barriers are removed for all commitments in a particular mode of delivery regardless of the sector. Knight cites the example of removing restrictions related to foreign ownership in Mode 3 for all sectors.⁷⁰ Numerical targets have also been put forward for sectoral commitments. Numerical targets would oblige countries to make a minimum number of new or improved commitments in an agreed number of sub-sectors. The European Community has been one of the most forceful proponents of numerical targets, proposing that developed countries make commitments in 139 of the 163 sub-sectors (a 31% increase of average commitments) and that developing countries make commitments in 93 sub-sectors (an 86% increase of current commitments).⁷¹ Both benchmarks and numerical targets have been criticised for placing too much pressure on countries, especially developing countries, to extend their commitments and, unlike plurilateral negotiations, have not been put into practice.

Negotiating guidelines

Annex C of the Hong Kong Ministerial Declaration contains the strategy and timeline for the GATS negotiations. A number of objectives were set out for making new and improved commitments across the service sectors and making deeper commitments across the four modes of supply. It was also recommended that exemptions from the most favoured nation (MFN) rule are removed or substantially reduced. In essence the guidelines seek to bind actual levels of liberalisation practised by countries, which is generally much higher than they are prepared to bind within the GATS negotiations. Education was specifically identified as a sector where the level of liberalisation practised by countries was far greater than the commitments made under the Agreement. Within the 2005 negotiation guidelines the following barriers to trade in education services were identified as areas that might be targeted in the negotiations:

Mode 1

- Restrictions on the use and import of educational materials, including material supplied online
- Commercial presence requirements linked to the provision of distance learning.
- Lack of accreditation possibilities for online education service.

⁷⁰ Knight, J (2006) Higher Education Crossing Borders: A Guide to the Implications of the General Agreement on Trade in Services (GATS) for Cross-border Education, p.44. Commonwealth of Learning and UNESCO. Available from: http://www.col.org/colweb/webdav/site/myjahiasite/shared/docs/GATS_web_nocover.pdf [Accessed 21 January 2008].

⁷¹ World Trade Organisation (2005) *Communication from the European Communities and its Member States: 'Elements for "Complementary Approaches" in Services*. Council for Trade in Services: Special Session [TN/S/W/55] [27 October, 2005]. Available from: www.wtoddanet/download.php?path=/home/wtoddanet/download/&filename=TNsW55.pdf [Accessed 21 January 2008].

Mode 2

- "Unbound" entries in mode 2.

Mode 3

- Joint venture and minimum foreign equity requirements, where these restrict twinning arrangements and other institute-to-institute arrangements.
- Preventing foreign institutions to establish branch campuses within local institutions.
- Restrictions preventing foreign institutions from directly marketing education services and/or recruiting students.
- Limitations on the ability to run onshore education programmes in collaboration with local partners.
- Restrictions on repatriation of funds by joint-venture educational establishments.
- Restrictions on the movement of education service suppliers.
- Limits on the number of foreign nationals represented on the board of educational institutions.⁷²

Proposed disciplines on domestic regulation

One of the major concerns surrounding the inclusion of education in GATS is that liberalisation might undermine the autonomy of countries to regulate the quality, recognition and accreditation of imported education services. This has led to much fevered debate around the proposed disciplines on domestic regulation. The disciplines relate to Article VI of the GATS which states that regulations relating to qualification and licensing procedures and requirements and technical standards must not constitute 'unnecessary barriers to trade in services', and the disciplines must ensure that requirements placed on foreign providers are:

- Based on objective and transparent criteria, such as competence and the ability to supply the service.
- Not more burdensome than necessary to ensure the quality of service.
- In the case of licensing procedures, not in themselves a restriction on the supply of the service.

The Hong Kong Declaration instructed members to develop disciplines on domestic regulation before the end of the Doha Round of negotiations. In July 2006 the Chair of the Working Party on Domestic Regulations (WPDR) produced a draft text for the disciplines shortly before the round was suspended. Following the suspension, informal talks on domestic regulations continued and in April 2007 a revised draft of the proposed disciplines was released. The proposed rules on domestic regulation have been subject to a number of criticisms from stakeholders, with some countries taking a particular lead in the objections to these proposals. There have been reports that the talks preceding and following the April draft were contentious with polarised positions adopted by participating countries, some arguing that regulations are too great an infringement on the ability of countries to regulate their services, while

⁷² World Trade Organisation (2005) *Special Session of the Council for Trade in Services, Report by the Chairman to the Trade Negotiations Committee*, p.16. [28th November 2005]. Available from: <http://www.ifsl.org.uk/uploads/CTSSS.doc> [Accessed 21 January 2008].

others argue it does not go far enough and advocate for firmer restrictions.⁷³ Opposition has revolved around the imposition of a 'necessity test'. Two of the most vocal opponents of the test have been Brazil, which has rallied a majority of developing countries, and the US. A number of delegations argued that the draft text of July 2006 does not properly reflect the concerns surrounding the necessity test. African, Caribbean and Pacific (ACP) countries proposed that the disciplines should remove the necessity test altogether and exempt least developed countries from any new rules implemented. Conversely, several countries, including the pro-trade Australia and New Zealand are arguing that some kind of 'necessity' or 'relevance' test is essential for the new disciplines to be effective. There is further controversy concerning the issue of whether the domestic regulation rules should apply retroactively to existing commitments or should only apply to new commitments, which could have implications for countries that have already made commitments in various sectors – including education. In September 2007, the Chair of the WPDR announced that drawing on the consultations that followed the April draft, a revised version of the disciplines would be tabled.⁷⁴

Chief among the concerns raised by those in the education sector are that the disciplines may well impede the ability of the government to regulate and ensure the quality of education services. It would also make it difficult for countries to impose conditions or national obligations on providers that may not relate to quality, such as language or cultural requirements which could be challenged under the GATS rules as an unnecessary barrier to trade. It has been suggested that standards for the licensing of foreign providers and the qualification requirements of incoming students and service providers might have to be lowered in order to meet the criteria of being 'not more burdensome than necessary'. This issue has been of particular importance to developing countries, many of whom are still in the process of developing their regulatory frameworks for higher education and would potentially be confounded by the new rules on domestic regulation in a way that countries with strong existing regulatory frameworks would not. One element of the new proposals that has sparked particular controversy is the proposal to expand transparency obligations so that countries would be obliged to not only make clear and public all their regulations but also to provide other WTO members with the right to comment on proposed national regulations relating to quality, licensing and technical standards before they are implemented and ensure that those comments are acknowledged in the final measures adopted. This has proved unacceptable to a number of countries and will impact most heavily on those countries trying to build on

⁷³ Education International reported on difficulties in the talks following the July 2006 report. See Education International (2006) *Trade Education 17* (October 2006) EI. Available from: <http://www.ei-ie.org/en/publication/> [Accessed 23 January 2008]. This was updated in October 2007, see: Education International (2007) *WTO Talks Teeter on the Brink Again (31st October 2007)* Available from: <http://www.ei-ie.org/en/news/show.php?id=655&theme=gats&country=global> [Accessed 23 January 2008]. See also European Services Forum for commentary on the April 2007 draft which criticises the draft for pursuing common ground at the expense of generating a strong and useful set of disciplines. Available from: http://www.esf.be/pdfs/documents/position_papers/ESF%20Commentary%20on%20Domestic%20Regulation%20Draft%20Disciplines%20July%202007%20final.pdf [Accessed 23 January 2008].

⁷⁴ The revised version had not been released at the time of writing. See World Trade Organisation (2007) *Annual Report of Working Party on Domestic Regulations to the Council for Trade in Services (2007)* [S/WPDR/10] [13th November 2007]. Available at: <http://www.wto.org.tw/SmartKMS/fileviewer?id=91657> [Accessed 21 January 2008].

and develop regulatory frameworks for their sector.⁷⁵ In South Africa, for example, the regulations put in place in 1997 would have undoubtedly contravened the proposed disciplines and if they had committed education to the GATS rules under these conditions they could have been legally challenged by any other member who felt their regulations, or any future regulations, breached the disciplines.

2.3 Opportunities and risks of the GATS

The proponents of the GATS claim it offers an established mechanism for trade and without it there might be a greater tendency by countries to determine international trade parameters behind closed doors, with less transparency and without consulting key stakeholders. Countries that are significant exporters of services and who wish to expand their service exports tend to be the strongest advocates of the GATS. However, major importers and those looking to increase their imports might also benefit from having an agreed international framework for trade that is legally binding and increases the confidence of foreign investors. As higher education services become subject to increasing international trade it is likely that the lobby to include education services under the purview of international trade agreements will become stronger, with significant financial gains to be made from more liberal conditions. The fact remains, however, that very few governments have committed their education services to GATS and several national delegations have expressed specific concerns in relation to some aspects of the Agreement.

The key arguments against the inclusion of higher education in the GATS revolve around the limitations placed on governments to regulate the sector, in terms of licensing, accreditation, recognition and quality assurance requirements for foreign providers. Some commentators argue that this could have a highly detrimental impact on the quality of provision. Regulatory autonomy is an important issue for negotiators to consider, not only in terms of regulatory issues but also for areas that can be broadly defined as national and cultural objectives. It is worth highlighting some of the provisions made in the US schedule of commitments regarding their provisional offer on higher education. They explicitly state that if the US includes higher education commitments within their offer it will not interfere with autonomy over admissions policies, the development of curricula and course content, and recognition of credits and degrees.⁷⁶ This very explicit approach of defining the exact parameters provides an example of a negotiating strategy that might resolve some of the concerns raised about the coverage of the Agreement. It should be added, however, that the US is clearly in a stronger negotiating position than most countries and more able to define its terms of engagement than other, less powerful nations.

⁷⁵ Strong opponents include Brazil, Philippines and ACP (African, Caribbean and Pacific countries).

⁷⁶ See conditions attached to higher education services in US national schedule of commitments. World Trade Organisation (2003) *Council for Trade in Services - Special Session - Communication from the United States - Initial Offer* [TN/S/O/USA] [9th April 2003]. Available from: http://docsonline.wto.org/GEN_highLightParent.asp?qu=&doc=D%3A%2FDDFD%2FDOCUMENTS%2FT%2FTN%2FS%2FOUSA%2EDOC%2EHTM [Accessed 21 January 2008]. Also available in Appendix 4.

Another concern relates to funding, with fears that the provision of equal treatment of foreign and domestic providers might lead to calls for public funding to be opened up to foreign providers. In response it has been argued that public education and public subsidies are not covered by the GATS under Article I:3. However, as discussed earlier, the wording of Article I:3 is highly ambiguous and it is unclear if parts of the public sector could come under the remit of the Agreement. Rather than rely on Article I:3, several member States have taken the step of explicitly exempting those areas such as public subsidies which they do not want to commit to the GATS rules. The US and EC, for example, specifically exclude government funding and subsidies from their national schedules. Moreover the plurilateral request on private education suggests that education should be treated like any other sector with a public and private dimension and countries can clearly specify what they are prepared to commit.⁷⁷

The development agenda

In the Doha Declaration it was agreed that "the negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries".⁷⁸ As previously explained, service negotiations within the Doha round constitute one part of a three-part negotiation framework. Much of the focus within the round has centred on agricultural trade and subsidies and import tariffs; this caused the 2006 breakdown of negotiations with members unable to reach agreement. The implications of global trade for developing countries are highly significant. For example, it has been estimated that if Africa was to increase its share of world trade by just 1% this would equate to \$70 billion in revenue.⁷⁹ The stakes are thus very high. The stated aim of the Doha round was to balance some of the entrenched inequalities in the international trading system, although opponents argue that the twin aims of development and trade liberalisation are incompatible and even contradictory. If the Doha round is resumed and progress is made in the development objectives of the agricultural and industrial negotiations, there are suggestions that developing countries might, in return, be under greater pressure to make liberalising concessions in the trade in services. Recent reports for example suggest that the EU (with possible support from the US) are pushing for 'pledging sessions' in the services negotiations, in which countries signal what future commitments they would be prepared to make, should a satisfactory agreement be reached in the other areas.⁸⁰ For now, however, the status of the agriculture and industrial goods negotiations remains unclear but talks are underway. With regard to services it appears that the Chair of the services

⁷⁷ See Plurilateral request on private education in Appendix 3.

⁷⁸ World Trade Organisation (2001) *Doha WTO Ministerial, 2001: Ministerial Declaration* [November 2001]. Available from: http://www.wto.org/English/thewto_e/minist_e/min01_e/mindecl_e.htm [Accessed 21 January 2008].

⁷⁹ *Ibid.*

⁸⁰ International Centre for Trade and Sustainable Development (2007) *Preparations Underway for New Services Text*. Bridges, Weekly Trade News Digest, Volume 11, Number 38 [7th November 2007]. Available from: <http://www.ictsd.org/weekly/07-11-07/story6.htm> [Accessed 21 January 2008].

negotiations is planning to develop a new services text that would establish the framework for market access talks/negotiations in 2008.⁸¹

Some countries and various education unions have argued that not enough is being done to promote the development agenda of the Doha round, especially in light of the plans to expedite and strengthen the GATS. While some commentators argue that there is a fundamental conflict between the principle of progressive liberalisation and the promotion of a development agenda, some developing countries have welcomed the opportunity to engage more fully in the trade process and use it to promote their national interests. The implications of international trade, the GATS and Doha negotiating framework on developing countries is discussed more fully in the third part of this paper.

2.4 Bilateral and regional trade agreements

Given the complex and unwieldy nature of the multilateral trade framework countries are increasingly reverting to bilateral and regional trade agreements as a more straightforward and effective way to respond to their trade needs. Since the suspension of the WTO negotiations, the EU, traditionally a strong advocate for the multilateral process, has announced that it will pursue a trade policy that will place greater emphasis on building new bilateral and regional agreements. The European Trade Commissioner announced in 2006 that South Korea, Russia, India and Southeast Asian (ASEAN) countries, among others, would be the focus of new free trade agreements.⁸² They have argued that this policy is not intended supplant the multilateral approach of the GATS but to develop more creative and less complex ways of pushing forward the trade agenda. Other countries are also looking to bilateral and regional agreements to develop their trade position. The WTO published a report in 2006 that analysed 28 bilateral and regional trade agreements (defined as preferential trade agreements - PTAs) that incorporated services.⁸³ At the time of the report's publication, 197 PTAs were in place and notified to the WTO⁸⁴ but only 36 of these were believed to include the trade in services. Services appear to have gained prominence in the international trade agenda more recently and all of the 28

⁸¹ Ibid.

⁸² European Community (2006) *Trade Issues: Trade in Services: Services the Most Dynamic Sector of the Economy*. EU. Available from: http://ec.europa.eu/trade/issues/sectoral/services/index_en.htm [Accessed 21 January 2008].

⁸³ Roy, M., Marchetti, J. and Lim, H. (2006) *Services Liberalisation in the New Generation of Preferential Trade Agreements (PTAs): How much further than GATS?* World Trade Organisation, Economic Research and Statistic Division. Available from: http://www.wto.org/English/res_e/reser_e/ersd200607_e.pdf [Accessed 21 January 2008].

⁸⁴ Other major regional trade agreements included in this list are:

- African, Caribbean and Pacific Group of States (ACP) which includes 79 states including 38 Commonwealth countries
- Association of South East Asian Nations (ASEAN) including Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam
- Australia-US Free Trade Agreement (AUSFTA). The agreement, signed in 2004, commits education services in a number of respects including: intellectual property, licensing requirements for cross-border supply, recognition of qualifications and government procurement.
- North American Free Trade Agreement (NAFTA) includes the US, Canada and Mexico;
- South Asian Preferential Trading Arrangement (SAPTA) includes Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

agreements under review in the report have been established since 2000.⁸⁵ Most of the advocates for liberalisation are involved in PTAs. Of those in the Commonwealth there is the UK, as part of the EU, Australia, New Zealand, India, Malaysia and Singapore.⁸⁶ Three of the agreements under review in the report are between two Commonwealth countries.⁸⁷

PTAs were seen to make advances in sectors that had lower levels of commitments in the GATS. It was found that the extent to which countries went beyond their GATS commitment for education in the PTAs was highly dependent on whether they had an agreement with the US.⁸⁸ All of the countries that signed PTAs with the US (which include Australia and Singapore from the Commonwealth) made more liberal education commitments than in their GATS schedules. Singapore, for example, has not made any GATS commitments in education, but in its PTAs with the US, and with Australia, it has included higher education. Education services were not, however, included in Singapore's agreements with New Zealand and India. This signifies that countries might want to choose which countries they provide more liberal access to rather than operate on a multilateral basis with agreements extending to all members of the WTO. Australia also improved on its GATS commitments in adult education and 'other education services' in its PTA with the US. The other Commonwealth countries involved in the PTAs under review – New Zealand, UK, India and Malaysia - made limited or no additional commitments in education.

The report found that large, influential countries, most notably the US, entering into regional or bilateral agreements tend not to go far beyond their GATS commitments while smaller economies often made much more substantial commitments. It suggests that this might partially be due to the "imbalance between negotiating partners", with smaller economies having less bargaining power and possibly anticipating that concessions in services might be rewarded with "preferential access in goods trade".⁸⁹ In addition, the simpler format and smaller scope of a bilateral agreement might lend itself to greater engagement by smaller countries. The resources required in the GATS process and the input required from the broad range of stakeholders across the various sectors and sub-sectors covered by the GATS is substantial. Large trading countries/regions (such as the US, EU, China and India) however, do not tend to establish agreements among themselves and the multilateral system still remains the principal means by which these countries resolve trade issues and negotiate the process of liberalisation.

As well as pursuing a series of bilateral trade agreements the EU is also developing the legal framework for trade in services among EU member states. The European Parliament recently adopted the

⁸⁵ Roy, M., Marchetti, J. and Lim, H. (2006) *Services Liberalisation in the New Generation of Preferential Trade Agreements (PTAs): How much further than GATS?* p. 7. World Trade Organisation, Economic Research and Statistic Division. Available from: http://www.wto.org/English/res_e/reser_e/ersd200607_e.pdf [Accessed 21 January 2008].

⁸⁶ *Ibid.* p. 8

⁸⁷ New Zealand and Singapore (2000); Singapore and Australia (2003); Singapore and India (2005).

⁸⁸ Roy, M., Marchetti, J. and Lim, H. (2006) *Services Liberalisation in the New Generation of Preferential Trade Agreements (PTAs): How much further than GATS?* p. 41. World Trade Organisation, Economic Research and Statistic Division. Available from: http://www.wto.org/English/res_e/reser_e/ersd200607_e.pdf [Accessed 21 January 2008].

⁸⁹ *Ibid.* p.54

European Directive on services in the internal market which will come into force in 2010 (28 December 2009 is the deadline for member states to transpose the Directive into their national legislation). Like GATS this is aimed at removing barriers to trade in services, in this case within the EU, and ensuring that regulation applied to member states is 'non-discriminatory', 'necessary' and 'proportional'. The position of education within the Directive is unclear. While 'public' education – defined as "courses provided under the national education system" – appears to be excluded from the Directive, the position of private, foreign and public-private partnerships is uncertain and may have to be determined on a case-by-case basis by the European Court of Justice. Needless to say advocates for trade liberalisation and European countries who already have relatively unrestrictive regulatory conditions for the access to foreign providers are generally positive about the Directive while critics strike a more cautious tone about the dangers of liberalisation.

Some concerns have been expressed that bilateral and regional agreements are diverting attention and resources from the GATS negotiations and reducing the appetite for engaging in a multilateral process. It is further argued that some of the bilateral trade agreements can be much less transparent than the multilateral GATS process and can serve to push trade liberalisation further than multilateral negotiations and drive forward the trade agenda. The campaigning body, Education International, for example, has argued that: "concessions that are made on higher education in bilateral talks will inevitably be placed on the agenda in multilateral settings."⁹⁰

Another view is that bilateral and multilateral processes are complementary and provide the flexibility that complex issues of global trade require. This was argued in a speech given by the EU Trade Commissioner, who spoke about the EU approach of pursuing "targeted bilateral trade agreements as part of a wider EU strategy centred on the WTO and the multilateral trading system."⁹¹ The point was also made "that the key policy choice is not between bilateral agreements and the multilateral system, but between ambitious bilateral agreements that drive forward global liberalisation and bilateral deals that avoid sensitive issues or 'open some borders only to close others'".⁹² The escalation of activity in establishing trade agreements on services, be they multilateral, bilateral or regional, in the last few years reflects the continued growth and importance of the trade in services, and education is unlikely to remain untouched by these activities. The next section looks in more detail at the regional trends in private and foreign higher education provision and the implications of trade in education services.

⁹⁰ Education International (2006) *GATS: Education is a Right, not a Commodity*. EI. Available from: <http://www.ei-ie.org/en/article/show.php?id=36&theme=gats> [Accessed 21 January 2008].

⁹¹ Mandelson, P (2006) *Bilateral Agreements in EU Trade Policy*. Speech by EU Trade Commissioner, Peter Mandelson at the London School of Economics on 9th October 2008. Available from http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130516.pdf [Accessed 21 January 2008].

⁹² Ibid.

Part 3: Regional perspectives on trade in education services

The first two sections of this paper addressed the rising trends of internationalisation and trade in the provision of higher education and the specific implications of the GATS and other bilateral and regional trade agreements for the higher education sector. This section looks more closely at regional and national trends across the Commonwealth. The impact of trade and the implications of trade agreements vary according to the characteristics of the national education system and the level of engagement in the international trade of education services, as an exporter or importer. Countries that are primarily importers will have a different experience from major exporting countries. Similarly countries with higher levels of capacity and strong regulatory frameworks will also be in a different trading position to those with low levels of capacity, poor infrastructure and weak regulations.

This chapter looks specifically at the implications and developments of international trade across the regions of the Commonwealth. Countries are examined within the following categories:

1. Sub-Saharan Africa;
2. South Asia;
3. South East Asia; and
4. Small Island Developing States (primarily of Caribbean and Pacific Islands)
5. Major exporters of education services (the UK, Australia, New Zealand and Canada)

While there are undoubtedly differences within these country groups there are also sufficient similarities to connect their experiences for comparative analysis. The first four categories are dominated by developing and low income countries, more commonly importers than exporters of foreign education provision. The issues facing developing countries within the international trade framework are of critical importance in the Commonwealth where over two thirds of the countries have considerable development needs. Some of the specific issues and conditions facing developing countries are addressed in section 3.1. The fifth category is not a regional grouping *per se*; it is made up of the Commonwealth's main exporters/suppliers of education services to the international market, spread across three continents. It comprises the UK, Canada, Australia and New Zealand, all of whom are key players in the international trade in higher education as exporters and, to a varying degree, advocates for greater liberalisation in trade conditions. The regional analysis will draw on developments in private and foreign provision and the regulation of this provision. It will also look at the trade positions adopted within each of the categories.

3.1 Trade and developing countries

The majority of countries in the Commonwealth are classified as middle or low development countries.⁹³ Their engagement in the trade of education services is primarily as importers. The extent to which low income countries and emergent economies have embraced and managed the international trade in education varies considerably. Some countries have welcomed foreign provision as a means of developing and expanding their domestic capacity or providing a regional hub to attract students from the region. In these countries, notably Malaysia and Singapore in South East Asia, foreign providers have been encouraged and regulatory mechanisms developed to ensure the quality of foreign provision. Other countries, especially low income countries in sub-Saharan Africa and South Asia, have proved less attractive to importers largely because of insufficient numbers willing or able to pay a premium for foreign provision in country but also due to other deterrents such as an unstable investment environment, poor higher education infrastructure and unclear regulatory mechanisms.

There is no doubt that high quality foreign and private provision has the potential to deliver much needed investment and capacity to countries where the higher education sector is unable to meet demand. However, countries with weak systems and poor regulatory mechanisms are often unable to monitor the practices of foreign providers. For these countries commitment to greater liberalisation leaves them more exposed to poor quality and even fraudulent providers, drawn towards the high levels of unmet demand. This is one of the key concerns around the push for greater liberalisation and why many developing countries are unwilling to make commitments under the GATS or other trade agreements to liberalise their education systems. While there continues to be a strong division between those advocating for trade and those against, the reality for the majority of Commonwealth countries is that countries will have to assess how best to operate within the global trading system to benefit their developmental objectives.

3.1.1 The Doha round

The Doha round of trade negotiations has been shaped by the stated commitment to pursue pro-development outcomes. The GATS text and the guidelines for negotiations set out in Annex C of the Hong Kong Declaration make specific provisions to facilitate the participation of developing countries while at the same time pursuing greater levels of liberalisation and extended commitments from countries across the development spectrum. Critics and development agencies have dismissed the development objectives of the round as largely superficial. Indeed the Hong Kong Ministerial Declaration has been accused of being “anti-development, anti-poor and favouring transnational

⁹³In the UN Human Development Indicators of 2007/08, 68% of Commonwealth member states are categorised as middle or low human development. Sierra Leone sits at the bottom of the index at 178. All 22 countries classified as low development are in Africa and 6 are Commonwealth countries (Nigeria, Tanzania, Malawi, Zambia, Mozambique and Sierra Leone). Further details of the 2007/08 Human Development Index rankings are available from: <http://hdr.undp.org/en/statistics/> [Accessed 21 January 2008].

corporation" by one development charity.⁹⁴ Action Aid argued in a report that assessed the outcomes of the Hong Kong Declaration that it "forces developing countries to liberalize sectors which they don't want to, binds countries to increase foreign equity levels, focuses on commercial presence, replaces the bilateral request-offer approach with a plurilateral process, targets sectors under a sectoral approach that are of export interest to rich countries, takes away the right to regulate, and contradicts the GATS negotiating guidelines and the Doha mandate".⁹⁵

However, the Hong Kong Declaration clearly states that the services negotiations should promote the "development of developing and least developed countries with due respect for the right of members to regulate".⁹⁶ It also states that appropriate flexibility should be reserved for developing countries as provided for in Article XIX of the GATS which states "there shall be appropriate flexibility for individual developing country members for opening fewer sectors, liberalizing fewer types of transactions [and] progressively extending market access in line with their development situation". Within the Declaration particular acknowledgement is given to the difficulties of the least developed countries in making new commitments and it is stated that LDCs "are not expected to undertake new commitments".⁹⁷ While some may dismiss such commitments in the face of growing pressures to liberalise, it is clear that developing countries are becoming increasingly assertive in demanding that the GATS process, and the Doha round more generally, adheres to its development commitments. In late 2007 members gave the services negotiations' Chair proposals regarding what they want to see in the text, and a number of developing countries including Brazil, China, India, Pakistan and South Africa emphasised that the text must reflect the commitment set out in Annex C of the Ministerial Declaration to develop methods for the "full and effective implementation of the LDC (Least Developed Countries) modalities".⁹⁸

In the recent proposals to the Chair, developing countries were also keen to see the preservation of the 'positive list' approach to negotiations, whereby members choose the sectors and modes that they will bind, rather than adopting modal benchmarks and numerical targets (discussed in Part 2). Knight argues that the flexibility engendered by the bilateral 'positive list' approach has given developing countries more power to control the extent to which they open their service sectors to international trade.⁹⁹ Progress on Mode 4 negotiations, concerning the temporary movement of natural persons, was another concern raised, and the Africa Group emphasised that it was one of the few areas in the

⁹⁴ Rice, T. and Talpur, M. (2006) *A Development Analysis of the WTO Hong Kong Declaration*, p.8. Action Aid International. Available from: http://www.actionaid.org.uk/doc_lib/181_1_hongkong_analysis.pdf [Accessed 23 January 2008].

⁹⁵ *Ibid.* p. 8

⁹⁶ World Trade Organisation (2005) *Hong Kong Ministerial Declaration* (December 2005), Paragraph 25. WTO. Available from: http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm [Accessed 21 January 2008].

⁹⁷ *Ibid.* Paragraph 26

⁹⁸ International Centre for Trade and Sustainable Development (2007) *Preparations Underway for New Services Text*. Bridges, Weekly Trade News Digest, Volume 11, Number 38 [7th November 2007]. Available from: <http://www.ictsd.org/weekly/07-11-07/story6.htm> [Accessed 23 January 2008].

⁹⁹ Knight, J (2006) *Higher Education Crossing Borders: A Guide to the Implications of the General Agreement on Trade in Services (GATS) for Cross-border Education*, p.72, Appendix A. Commonwealth of Learning and UNESCO. Available from: http://www.col.org/colweb/webdav/site/myjahiasite/shared/docs/GATS_web_nocover.pdf [Accessed 21 January 2008].

services negotiations where developing countries have a comparative advantage.¹⁰⁰ The overriding concern of developing countries is to ensure that the special and differential treatment for developing countries permitted under Article XIX is respected and even strengthened. Article XIX is one of the principal mechanisms through which the development agenda of the Doha round can be asserted. A 2006 UN report noted that “at the behest of African and other developing countries, the Doha Ministerial Declaration reaffirmed that the ‘provisions for special and differential treatment are an integral part of the WTO agreements’ and called for a review of special and different treatment provisions with the aim of ‘strengthening them and making them more precise, effective and operational’”.¹⁰¹ Special provisions for developing and least developed countries can take a variety of forms including technical and legal assistance in the negotiating process and other aspects of the multilateral trade process. It also might include an extended period to honour commitments and exemption from undertaking new commitments.

Article XIX is one of two Articles within the GATS that deal specifically with the conditions for the participation of developing countries, Article IV is the other.¹⁰² While Article XIX emphasises special and differential treatment for developing countries, Article IV addresses specific ways to strengthen the ability of developing countries to participate in international trade through:

- Strengthening domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis.
- Improving access to distribution channels and information networks.
- Liberalising market access in sectors and modes of supply of export interest to them.

It also stipulates that developed countries have a role to play and should provide developing countries with information that will assist them to capitalise on their markets. Three areas of particular relevance are identified:

- Commercial and technical aspects of the supply of services.
- Registration, recognition and obtaining of professional qualifications.
- The availability of services technology.

3.1.2 Aid for trade

Another consideration for developing countries is the impact of trade on the aid that is received from the international community. The purpose of development funding for higher education is generally to facilitate the development of skills and knowledge that can support long-term sustainable development.

¹⁰⁰ International Centre for Trade and Sustainable Development (2007) *Preparations Underway for New Services Text*. Bridges, Weekly Trade News Digest, Volume 11, Number 38 [7th November 2007]. Available from: <http://www.ictsd.org/weekly/07-11-07/story6.htm> [Accessed 21 January 2008]

¹⁰¹ United Nations Conference on Trade and Development and United Nations Development Programme (2006) *Trade Capacity Development for Africa*. Trade Negotiations and Africa Series: No. 3 Policy, p.40. Available from: http://www.unctad.org/en/docs/ditctncd20066_en.pdf [Accessed 23 January 2008].

¹⁰² See Articles IV and XIX in the GATS text available from: http://www.wto.org/english/docs_e/legal_e/26-gats.pdf [Accessed 23 January 2008].

A central element in the development objective of the Doha round is providing 'Aid for Trade' through which additional support would be earmarked specifically to promote participation in trade by developing countries. In December 2005, the Sixth Ministerial Conference in Hong Kong created a new WTO work programme on Aid-for-Trade. However, as Knight points out "there is a great deal of ambiguity about what is actually included in this package. There are ongoing deliberations about whether 'aid for trade' assistance will be in the form of concessional grants or loans, whether it will come from new or old money, and what the criteria are. There is a perception and a concern by a group of developing countries that this 'aid for trade' is nothing but a "trade-off ploy" or a sweetener to persuade developing countries to agree to certain concessions or changes being proposed by developed countries."¹⁰³

3.2 Regional analysis

The following sections will look at the impact of trade and some of the more recent developments in trade negotiations on higher education across the regional constituencies of the Commonwealth, first looking at developing countries and major importers before turning to major exporters. The analysis is intended to provide a brief overview of developments rather than a comprehensive analysis for each of the regions. Moreover, the level of detail and information available for countries within each of the regions varies and consequently the analysis for each region will also vary according to the number of countries it covers and the information available.¹⁰⁴

3.2.1 Sub-Saharan Africa

Context

The most economically under-developed countries within the Commonwealth are located in Africa.¹⁰⁵ Higher education capacity is a major issue across sub-Saharan Africa, and while there is some degree of diversity, most countries across the continent are failing to keep pace with demand and access to higher education remains very limited. Enrolment rates are the lowest in the world, the most recent UNESCO estimates for the Gross Enrolment Ratio in sub-Saharan Africa is 5% (4% for women and 6% for men); compared with reported enrolment rates of up to 70% in North America and Western Europe.¹⁰⁶ That is not to say higher education provision and enrolment is not increasing, it is, and at a

¹⁰³ Knight, J (2006) Higher Education Crossing Borders: A Guide to the Implications of the General Agreement on Trade in Services (GATS) for Cross-border Education, p.42. Commonwealth of Learning and UNESCO. Available from: http://www.col.org/colweb/webdav/site/myjahiasite/shared/docs/GATS_web_nocover.pdf [Accessed 23 January 2008].

¹⁰⁴ The Sub-Saharan Africa and Small Island States section cover multiple countries, but these regions also have relatively limited detail on foreign and private provision and trade, and therefore analysis tends to be concentrated and extrapolated from one or two key case studies. For the other regions fewer countries are represented and information tends to be more easily available and so the analysis is more evenly represented across the countries.

¹⁰⁵ All of the Commonwealth countries in sub-Saharan Africa (South Africa, Botswana, Namibia, Ghana, Lesotho, Swaziland, Cameroon, Kenya, Uganda, The Gambia, Nigeria, Tanzania, Zambia, Malawi, Mozambique and Sierra Leone) are in the bottom third of the Human Development Indicators for 2007. South Africa is the highest ranked at 121 and Sierra Leone is the lowest ranked at 177. 2007/08 Human Development Index rankings are available at: <http://hdr.undp.org/en/statistics/> [Accessed 23 January 2008].

¹⁰⁶ UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p.132. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/qed/2007/EN_web2.pdf [Accessed 23 January 2008]. The UNESCO definition used for Gross Enrolment Ratio is: "The number of pupils/students enrolled in a given level of education, regardless of age,

very fast pace, in fact the current rate of increase in tertiary enrolment in Africa is said to be the fastest in world at around 15% per annum.¹⁰⁷ However, years of under-development and under-investment, at all levels of the education system, have taken their toll and it will be some time yet before Africa, as a region, is able to match the enrolment rates of even middle development countries.

The table below details the enrolment rates for the Commonwealth African countries in 2005 (where information is available) and highlights that many African Commonwealth countries fell below the 5% average.

Gross enrolment ratios for Commonwealth African countries (2005)

Country	GER
Botswana	5
Cameroon	6*
The Gambia	1**
Ghana	5***
Kenya	3**
Lesotho	3
Malawi	Not available
Mauritius	17
Mozambique	1
Namibia	6**
Nigeria	10**
Seychelles	Not available
Sierra Leone	2****
South Africa	15
Swaziland	4
Uganda	3**
Tanzania	1*****
Zambia	Not available

Source: *UNESCO Global Education Digest 2007*

* National estimation

** Data taken from 2004

*** Data taken from 2006

**** UIS estimate for 2002 (see *Global Education Digest 2006*)

***** UIS estimate

It is increasingly recognised that higher education, and tertiary education more broadly, has a hugely significant role to play in the sustainable development and economic growth of developing countries.

The international donor community, after many years of neglect, is refocusing its attention on, and

expressed as a percentage of the population in the theoretical age group for the same level of education. For the tertiary level, the population used is the five-year age group following on from the secondary school leaving age. i.e. the number of all tertiary students as a proportion of the 18-23 population.

¹⁰⁷ Materu, P. (2006) *Tertiary Education as an Engine for Growth*. Presentation given at the University Leaders Forum. Cape Town, South Africa. [19-21st November 2006]. Available from: <http://www.foundation-partnership.org/pubs/leaders/assets/papers/MateruSession4.ppt#257.1>, Tertiary Education as Engine for Growth in Africa [Accessed 22 January 2008]. Reports that between 1991 and 2004 tertiary enrolment grew at an average rate of 15.6% per annum.

investment in, higher education. Underpinning this shift is the belief that economic progress can be advanced through the 'global knowledge economy' whereby skills, expertise and knowledge are ascribed an increasing global value. Nonetheless with enrolment rates that are less than 10% of those in industrialised economies, African countries are barely able to serve their own communities let alone compete in the growing knowledge economy and have to turn to new forms of provision. Increasingly African countries are looking to the private sector to help fill the gaps. With the growth of private provision the opportunities for foreign providers are likely to increase from their current a low base.

Private provision

Private providers are a typical gateway for foreign providers to trade in a given country, and since the 1990s private provision has become a significant force in Africa. Some countries such as Cameroon and Malawi have specifically targeted the private sector to develop their higher education capacity as part of their poverty reduction strategies.¹⁰⁸ The growth of private providers in the continent is, however, a relatively recent phenomenon; prior to the 1990s African countries were, for the most part, strongly committed to the public ownership of higher education provision. Varghese writes that: "While political thinking favouring the application of market principles in higher education was debatable in the 1980s, it became an operational principle guiding developments in higher education in the 1990s in Africa."¹⁰⁹ Moreover the deregulation which accompanied the structural adjustment programmes of the 1990s and high levels of unmet demand created the right conditions for private providers to capitalise on the education market.¹¹⁰

It is very difficult to obtain reliable data on the number of private providers operating in sub-Saharan Africa but in several countries private institutions of higher education outnumber public institutions, in some cases by a significant margin. In Ghana and Tanzania for example it is reported that the number of private universities outnumber the public universities by a ratio of two-to-one and three-to-one respectively.¹¹¹ The private universities are, however, much smaller than their public counterparts and enrolment is usually much higher in the public universities. For example, 2004/05 enrolment estimates for Tanzania suggest around 10% of university students were enrolled in private universities, with the vast majority still enrolled in public universities.¹¹² Nonetheless it heralds the growth of the private sector and the intensification of competition from private providers. These trends are not only present in Ghana

¹⁰⁸ Cameroon and Malawi have specifically targeted private services as a means to improve their current HE provision. See Bloom, D., Canning, D., Chan, K. (2005) *Higher Education and Economic Development in Africa*, pp. 34-35. World Bank. Available from: http://siteresources.worldbank.org/EDUCATION/Resources/278200-109907987269/547664-1099079956815/HigherEd_Econ_Growth_Africa.pdf [Accessed 23 January 2008].

¹⁰⁹ Varghese, N.V. (2004) *Private Higher Education in Africa*, p. 12. UNESCO. Available from: <http://www.unesco.org/liep/PDF/pubs/PrivatHEAfr.pdf> [Accessed 23 January 2008].

¹¹⁰ Ibid. p.12

¹¹¹ Morley, L., Leach, F. and Lugg, R. (2007) *Democratising higher education in Ghana and Tanzania: Opportunity, Structures and Capacity Change. P.8*. Paper presented at UKFEIT Conference. Oxford, UK. [11-13th September 2007]. Available from: http://www.sussex.ac.uk/education/documents/working_paper_4_-_democratising_higher_education.pdf [Accessed 21 January 2008]. The study reports that Ghana has 13 private universities compared with 6 public; Tanzania, 17 private universities compared with 5 public.

¹¹² Ibid. p. 8

and Tanzania but are replicated across the continent. The regulation of private provision remains, however, a thorny issue with little information in the public domain on the regulation of private provision. Few countries, outside of South Africa, appear to have a clear regulatory framework for private providers and are struggling to adapt to the changing circumstances. Consequently in many countries the regulatory terrain for private, and ultimately for foreign providers remains very uncertain.

Foreign provision and trade in higher education

One of the key consequences of poor infrastructure and limited capacity is the loss of significant numbers of students abroad. This is not a new phenomenon but is an enduring challenge for developing countries, vulnerable to the long term and permanent loss of skilled human resources. It is estimated that between 1999 and 2004 the number of students from sub-Saharan Africa studying abroad increased by 78%, an increase of 90,000 to 160,000.¹¹³ Students from sub-Saharan Africa are drawn primarily to France (26%), the US (21%) and the UK (15%). Australia more than doubled its relatively small share of African students between 1999 and 2004 from 1.5% to 3.4% (in terms of numbers this represented a four-fold increase from around 1350 to 5440 students).¹¹⁴

As mentioned, the trade debate for African countries, and for developing countries more generally, is becoming fused with the renewed focus on higher education as a critical component of sustainable development. The main tenets of the argument are that higher education provides the essential skills and expertise for development and for greater competitiveness with other countries. This contention is rooted in the 'neo-liberal economic model' whereby competition is perceived to drive up quality, lower cost and sustain growth. Within the context higher education this model relies on the market to determine what knowledge and skills are required from the higher education sector and to establish the price or value of that knowledge and those skills. It follows therefore that participation and competition from market responsive private and foreign providers will be positive and will serve to enhance access, cost effectiveness and efficiency of higher education.¹¹⁵ However, questions remain around the application of this model to education services, particularly in developing countries. Naidoo writes that we need to interrogate the belief that the "social, political and economic assumptions underlying neo-liberal policies implemented in many industrialised countries are appropriate to the contexts of developing countries and that all countries are likely to benefit equally from the implementation of free-trade and market policies."¹¹⁶

¹¹³ Bashir, S. (2007) *Trends in International Trade in Higher Education: Implications and Options for Developing Countries*, p.14. World Bank. Available from: http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079956815/WPS6_Intl_trade_higherEdu.pdf [Accessed 21 January 2008]

¹¹⁴ *Ibid* pp.14-17

¹¹⁵ Naidoo, R. *Higher Education as a Global Commodity: The Perils and Promises for Developing Countries*, p. 3. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2007-02-01.pdf> [Accessed 21 January 2008].

¹¹⁶ *Ibid*. p.13

African countries are acutely aware of the benefits that can be accrued from higher education development and the potential benefits of greater connectedness and input from the international academic community. However they have been very reticent about making commitments on the trade of educational services. To date only three African countries have made any commitments in higher education under the GATS: Congo (RP), Lesotho and Sierra Leone. Given the arguments that the GATS will provide a more stable and attractive environment for international investment and expand education access through capacity development, it is perhaps surprising that more countries have not opted to sign up. However, in many countries the conditions are not in place to capitalise on the benefits of trade. Singh points out that "it is possible that there are opportunities within a GATS regime which are advantageous to African countries and their higher education systems, but there are a large number of socio-economic and educational conditionalities that have to be in place for those opportunities to yield the kind of benefits claimed".¹¹⁷

African countries are generally not perceived to be a major target of exporting countries, nor have they participated to any significant degree in the export of education services, with the possible exception of South Africa. South Africa is arguably the most attractive market among Commonwealth African countries for foreign providers, and is the only country across the sub-continent that has any foreign branch campuses.¹¹⁸ The activities of foreign providers in South Africa have, however, been somewhat curtailed by the regulatory conditions that has applied to foreign providers since 1997. Compared to other African countries South Africa has a relatively strong and internationally established higher education sector, supported by strong primary and secondary provision with near universal enrolment. In most African countries enrolment and attainment at the upper-secondary level, while expanding, is still relatively low, the widespread ability to pay for tertiary education is also limited and infrastructure is generally poor. All this serves to inhibit Africa's appeal to foreign education providers. The popularity and value attributed to foreign qualifications, however, remains high, largely for economic related reasons. The anticipated rate of return in terms of the potential earnings and opportunities of migration to and employment in economically developed countries are significant factors. The prestige and perception of quality often attached to foreign qualifications also drives demand.¹¹⁹

Quality and regulation of foreign provision

The market for foreign provision is, therefore, a significant one but its appeal to high cost foreign providers with a strong international brand remains limited. Instead many countries across the continent, especially those without an established regulatory framework, are vulnerable to the exploits of lower

¹¹⁷ Singh, M. (2004) *Higher Education in Africa: International Cooperation and GATS*. Paper presented at the AAU workshop on the Implications of WTO/GATS for Higher Education in Africa. Accra, Ghana. [27-29 April 2004].

¹¹⁸ Verbiik, L. and Merkley, C. (2006) *The International Branch Campus – Models and Trends*, pp. 25-31. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2006-10-01.pdf> [Accessed 22 January 2008].

¹¹⁹ Bashir, S. (2007) *Trends in International Trade in Higher Education: Implications and Options for Developing Countries*, p.41. World Bank. Available from: http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079956815/WPS6_Intl_trade_higherEdu.pdf [Accessed 22 January 2008].

cost, but also lower quality, providers. This context necessitates caution among African countries in opening their markets and the need to strengthen regulatory and quality assurance mechanisms. While many countries on the continent are in need of higher education investment and would benefit from affordable quality provision from foreign providers, the providers attracted to countries with poor infrastructure and capacity, under-developed regulation and high demand for low cost foreign programmes may be the kind of 'fly-by-night' operators that will harm rather than benefit the higher education sector.

The influx of low quality or bogus providers is not the only concern that developing countries face in opening up their higher education sectors to foreign providers. In some cases even the quality and motives of reputable providers can be open to question when courses are transferred without the same pedagogical rigour applied in their home countries. In a 2004 report commissioned by UNESCO, Naidoo and Singh, analysed the impact of foreign providers in South Africa and concluded that the benefits were limited. They argued that access had not been significantly increased and that foreign providers had a tendency to 'cherry-pick', programmes and students to generate income rather than enhance capacity and contribute to human resource needs. While the public universities from the UK and elsewhere were committed to public missions in their home countries they were largely profit-driven when operating in a foreign country. It was also felt that the research contributions of such providers were virtually non-existent and quality of provision was not sufficiently monitored.¹²⁰ Countries also need regulations to protect the rights of students, not only in terms of quality but also by ensuring that foreign providers are legally obliged to fulfil their commitments to students. Another consideration is the flexibility to pursue national policy objectives through regulatory measures, which might be constrained under the GATS rules. For example countries might stipulate certain language requirements or have certain provisions in place for disadvantaged groups which may be considered to run counter to liberalising drive of the Agreement. Malawi, for example, has a Poverty Reduction Strategy Paper that outlines plans to reserve 30% of university places for women and create scholarships for women and the needy.¹²¹ Such a provision if extended to private and foreign providers operating in the country could potentially be challenged within the GATS negotiations or under the GATS rules if commitments were made. Where commitments are bound countries need to be very careful about stipulating any exceptions or conditions in their schedule of commitments and this can prove an arduous task within the complex negotiation process, especially where pressures are exerted for greater liberalisation.

¹²⁰ Naidoo, P. and Singh, M. (2004) *National Regulation of Transnational Higher Education: A South African Case Study*. UNESCO. Quoted in paper by Badsha, N. at World Bank, OECD and Nuffic seminar on Cross-border higher education for Capacity Development. Hague, Netherlands. [14-15th September 2006]. http://www.nuffic.nl/pdf/os/Cross_border_2006/NB.pdf [Accessed 22 January 2008].

¹²¹ Bloom, D., Canning, D., Chan, K. (2005) *Higher Education and Economic Development in Africa*, p. 10. World Bank. Available from: http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079956815/HigherEd_Econ_Growth_Africa.pdf [Accessed 22 January 2008].

South Africa has some of the strictest regulations for foreign providers, not only within the region but among all Commonwealth countries. South Africa took a strong stand against what it perceived to be poor quality delivery by foreign providers when it tightened regulations in the 1997 Higher Education Act. Following the political transformations of 1994, there was a policy vacuum in higher education that allowed for an influx of foreign providers into the fledgling democracy.¹²² Following the 1997 legislation the franchising of programmes was effectively banned and all private higher education institutions, including foreign institutions, were required to register with the Department for Education by the beginning of 2000. The new measures led to a significant curtailment of foreign providers in South Africa – dropping from 38 to four.¹²³ Institutions that want to offer degree programmes in South Africa now have to be accredited by the Council of Higher Education and in 2004 three foreign institutions that were providing MBAs in South Africa lost their accreditation. There are also strict criteria for foreign institutions that wish to obtain university title in South Africa (such as enrolment of 4,000 students, a minimum of 20% of staff with doctoral qualifications, and provision of a wide range of subjects).¹²⁴ Some critics have argued that the South African approach is very restrictive and stringent and would deter foreign providers from participating. However, South Africa's response is that it was a necessary process for protecting the quality of higher education provision in the country. South Africa, with its relatively strong sector and sophisticated infrastructure, is perhaps in a better position to monitor and regulate the practices by foreign providers (rather than relying on the market to do so) than many other African countries.

Trade in education services

Of all the African countries in the Commonwealth it is again South Africa that has addressed the topic of trade in higher education most directly and generated the most perceptible response. While South Africa's experience might not necessarily be typical of the continent, it does provide insight into the potential implications and considerations for African countries. South Africa remains reticent about engaging in the GATS because of fears that it will undermine the rigour of South Africa's regulatory mechanisms and revive the liberalism that allowed the proliferation of poor quality foreign provision between 1994 and 1997. Particular areas of concern are the most-favoured nation rule and the potential implications for public funding of national treatment rules, which hold that foreign providers should be treated the same as private domestic providers. While South Africa is open to cross-border provision – both as an exporter and importer – it is argued by higher education policy makers that this is currently best served by conventions and agreements outside of the trade policy regime. However, they continue

¹²² Badsha, N. Paper presented at World Bank, OECD and Nuffic seminar on Cross-Border Higher Education for Capacity Development. Hague, Netherlands. [14-15th September 2006]. Available from: http://www.nuffic.nl/pdf/os/Cross_border_2006/NB.pdf [Accessed 23 January 2008].

¹²³ Some estimates indicate that there were, at one time, over 50 foreign providers operating in South Africa.

¹²⁴ Verbik, L. and Jokivirta, L. (2005) *National Regulatory Frameworks for Transnational Higher Education: Models and Trends, Part 2*, pp. 6-7. Observatory on Borderless Higher Education. Available with subscription from: http://www.obhe.ac.uk/products/reports/pdf/regulations_part2.pdf [Accessed 23 January 2008].

to monitor the developments within the WTO and the GATS negotiations will continue to be monitored closely.¹²⁵

South Africa is perhaps better placed to withstand pressure to liberalise than other countries in the continent and if pressure to liberalise intensifies, as it is likely to do, countries will need to have a response in place. While African countries are not currently targeted heavily by exporters, the appeal of African countries might change, especially as the private sector in Africa continues to grow and some countries (e.g. South Africa, Ghana and Nigeria) look to expand their education exports within and beyond the continent. The considerable pace of private activity generates a ready-made infrastructure for foreign providers to tap into, not just from established exporting countries such as the UK and Australia, but from emerging exporters in the South such as India, China and South East Asia. The complex negotiation process might also put particular pressure on developing countries through cross-sectoral negotiations. Knight comments that education services, still relatively uncommitted, might be used as part of "cross-sector trading, meaning that education may be "traded-off" to permit market access in another sector or to meet a mandatory and predetermined number of commitments".¹²⁶

Collaborative negotiations

One possible means of strengthening the negotiating power of African countries is to act collectively. There are various multilateral and regional bodies operating in Africa that could provide a coherent bloc of African countries, like the EU. However, while the EU is a legal entity with a governing infrastructure that supports negotiations within a multilateral trade framework (for example they have an appointed trade commissioner), African countries would perhaps have to operate on a more informal basis. At the 2004 workshop on the implications of GATS for African higher education organised by the Association of African Universities (AAU), Paschal Mihyo, then Director of Research and Programmes for the AAU, put the case forward for an 'Africa Higher Education Area' (AHEA) alluding to similarities with the European Higher Education Area. He argued that most of the concerns in relation to GATS and trade negotiations related to lack of co-ordination of initiatives among African countries. It was pointed out that while many international trade issues are co-ordinated by the Economic Commission for Africa (ECA) "services are still an issue over which there are no agreed positions".¹²⁷ Mihyo argued that it is incumbent on continental, regional and national higher education stakeholders to initiate discussion and analysis and develop possible frameworks and guidelines for engagement in multilateral trade agreements that are conducive to the development, quality and sovereignty of higher education sectors

¹²⁵ Badsha, N. – former advisor to Minister of Education in South Africa. Paper presented at World Bank, OECD and Nuffic seminar on Cross-Border Higher Education for Capacity Development. Hague, Netherlands. [14-15th September 2006]. Available from: http://www.nuffic.nl/pdf/os/Cross_border_2006/NB.pdf [Accessed 22 January 2008]

¹²⁶ Knight, J (2006) Higher Education Crossing Borders: A Guide to the Implications of the General Agreement on Trade in Services (GATS) for Cross-border Education, p.62. Commonwealth of Learning and UNESCO. Available from: http://www.col.org/colweb/webdav/site/myjahiasite/shared/docs/GATS_web_nocover.pdf [Accessed 23 January 2008].

¹²⁷ Mihyo, P. (2004) *GATS and Higher Education in Africa: Conceptual Issues and Development Perspectives*. Paper presented at the AAU Workshop on the Implications of WTO/GATS for Higher Education in Africa. Accra, Ghana. [27-29 April 2004].

across Africa. Organisations and bodies charged with having a key role to play in facilitating and undertaking this process included the AAU, regional university associations (such as SARUA and IUCEA¹²⁸), UNESCO and NEPAD. The types of activities such bodies could undertake could include, among other things, initiating continental consultations, designing sample legislation, and lobbying Ministers (of both education and trade) and economic communities – such as ECOWAS, SADC, and the ECA. He goes on to emphasise that: “the AHEA could be used to deal with issues specific to trade in education services and related issues such as quality assurance, accreditation, certification, standards harmonization and the Arusha Convention” (on the recognition of qualifications in Higher Education in Africa).¹²⁹ In essence Mihyo is recommending a Bologna Process for Africa that will help to generate common policies on higher education for Africa, but the logistical complexities of formalising this process, if deemed desirable across the continent, would take many years and in the meantime countries need to develop workable policies and structures nationally and regionally in order to participate in the global framework for trade and cross-border activity.

A more recent example of collaboration and cooperation in the trade negotiations have been in the negotiations around domestic regulation. In this process African countries were engaged collectively in making submissions to the Working Party on Domestic Regulation (WPDR). The African Group made efforts to ensure that their developmental needs were taken into account in their communication to the WPDR, highlighting the “practical realities in many African countries” such as “weak regulatory infrastructure and low government resources and capacities (financial, technical and human) and small (sometimes micro) sized service providers striving to upgrade their services”.¹³⁰ The group sought to secure appropriate flexibility in allowing countries to pursue their development objectives. Emphasis on the right of countries to regulate was paramount and it was stated that in the communication that the new disciplines should not prevent members from exercising their “right to maintain existing regulation or introduce new ones to meet national objectives”.¹³¹ In the communication by African, Caribbean and Pacific (ACP) States (which includes all Commonwealth African, Caribbean and Pacific countries) it was felt that the necessity test, if included in the disciplines on domestic regulation, would not guarantee enough flexibility to safeguard national policy objectives. Placing the onus on countries to prove that a particular piece of regulation was necessary is seen as a restrictive measure for developing countries needing to reform and develop the regulations of their service sectors. The negotiations over the disciplines on domestic regulation continue but it is an area of the negotiating process where countries are coming together to jointly represent their interest and voice their concerns.

¹²⁸ Southern African Regional Universities Association (<http://www.sarua.org>). Inter-University Council for East Africa (<http://www.iucea.org/>).

¹²⁹ Mihyo, P. (2004) *GATS and Higher Education in Africa: Conceptual Issues and Development Perspectives*. Paper presented at the AAU Workshop on the Implications of WTO/GATS for Higher Education in Africa. Accra, Ghana. [27-29 April 2004].

¹³⁰ Taken from the *Communication by the African Group on Domestic Regulation* (May 2006). Available from: <http://www.tradeobservatory.org/library.cfm?RefID=80781> [Accessed 23 January 2008].

¹³¹ Ibid.

Concluding comments

Before being able to confidently enter into negotiations for higher education, African governments need to strengthen their existing rules and regulations for higher education provision both domestically and regionally. Failure to create a strong framework of regulation and monitoring puts countries at risk to poor quality provision. South Africa, as one of the strongest sectors in the continent, has taken a firm position on regulating foreign providers and it is necessary for other sectors to define their terms of engagement in international trade. So far countries have been cautious about making binding commitments in education and very few have done so. It seems unlikely that African countries will suddenly start making education commitments under the GATS or any other international trade agreements, given the concerns that have been raised about the pace of liberalisation for developing countries and some of the reservations about the proposed disciplines on domestic regulation. Moreover, African countries, with the possible exception of South Africa, do not currently appear to be under significant pressure from the main exporters pushing for access to education services. Nonetheless, education may be seen as a sector that can be traded for concessions elsewhere in the Doha package and education stakeholders need to remain alert to the developments taking place so that any risks associated with liberalising international trade in the education sector are known and avoided by negotiators.

3.2.2 South Asia

Context

The countries grouped within the South Asian region (India, Pakistan, Bangladesh and Sri Lanka) have, like their counterparts in sub-Saharan Africa, struggled to achieve minimal participation rates. India, the most populous country in the Commonwealth, has one of the largest higher education systems in the world. The most recent UNESCO figures for tertiary enrolment in India are 11.8 million, five times the number enrolled in the UK. However, this represents a gross enrolment ratio of only 11%.¹³² In Bangladesh the gross enrolment ratio is 6% and in Pakistan 5% (there is no reliable recent data for Sri Lanka).¹³³ While these percentages are well below the global average, the numbers accessing tertiary education has increased substantially over the last two decades. UNESCO estimates that the number of tertiary graduates in South and West Asia rose from 6 million in 1990 to 15 million in 2004.¹³⁴ This increase is largely a reflection of growth in India where enrolment has more than doubled since the early 1990s.

¹³² UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p.130. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/qed/2007/EN_web2.pdf [Accessed 23 January 2008].

¹³³ The University Grants Commission of Sri Lanka provides data on university enrolment, and indicates that participation at university level education of 20-24yr olds in 2006 was 3.4% and that undergraduate and postgraduate enrolment had increased from 52,623 in 2000 to 71,208 in 2006, an increase of 35%. However these figures are not comparable with the UNESCO figures which are calculated differently. See UGC (Sri Lanka) website for further details. Available from: <http://www.ugc.ac.lk/mis/index.html> [Accessed 23 January 2008].

¹³⁴ UNESCO (2006) *Global Higher Education Digest 2006: Comparing Education Statistics across the World*, p. 21. UNESCO, Institute for Statistics. Available from: <http://www.uis.unesco.org/TEMPLATE/pdf/qed/2006/GED2006.pdf> [Accessed 23 January 2008].

India has the third largest education system in the world (after China and the US), and hosts the largest number of educational institutions (18,435 in 2006/07 – 371 universities and 18,064 colleges).¹³⁵ The number of higher education institutions has increased by almost a 150% since 1990/91. In neighbouring Pakistan and Bangladesh, and in Sri Lanka the context is different, with much smaller and more fragile systems in place and much lower levels of enrolment; nonetheless growth in these countries has also been rapid. UNESCO's most recent data on enrolment indicates that Pakistan hosts 782,000 students almost tripling since 2001/02.¹³⁶ In terms of the growth of higher education institutions growth rates have been comparable to India with an increase since the early 1990s of nearly 150% in public higher education institutions, and 300% if private higher education institutions are included. There was a particularly big leap between 2001/02 and 2002/03 when the number of public universities increased from 36 to 45 and the number of private universities rose from 20 to 31.¹³⁷ UNESCO data for Bangladesh enrolment stands at around 0.9 million and while there is no UNESCO data for Sri Lanka the University Grants Commission indicates enrolment in 2006 was around 70,000, up 35% from 2000.¹³⁸

Private provision

Trade is an important issue in South Asia where private tertiary provision is a growth industry. The private sector has played an important role in catering for the expansion of tertiary provision across the sub-continent. In common with other countries, the rise of private provision and the growth of income generating activities in the public sector have followed the expansion of the tertiary sector beyond the scope of public resources. Significant increases in student numbers without corresponding growth in public resources has driven many institutions to look to private sources of income to bolster their revenue and supplement public funding. This has been accompanied by the growth in wholly private initiatives. In India some estimates of private spending on higher education run to 50% with many institutions incorporating a complex formula of private and public funding and investment, and many public institutions beginning to offer entirely self-financing programmes.¹³⁹ Tuition fees have become an increasingly important source of funding for public institutions and the rise in tuition fees across India has improved the economic prospects for private and foreign providers, and enhanced the competitiveness of fees charged for their courses.

¹³⁵ Agarwal, P. (2007) *Private Higher Education in India: Status and Prospects*, p. 6. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2007-07-01.pdf> [Accessed 23 January 2008]. Data taken from UGC India.

¹³⁶ UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p. 130. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 22 January 2008]. Reports 2005 tertiary enrolment for ISCED (International Standard Classification of Education) 5 and 6 (includes first and upper degrees) at 782,621(2005). Higher Education Commission, Pakistan, reports higher education enrolment in Pakistan in 2001/02 to be 276,274. HEC, Pakistan *Enrolment in Higher Education Institutions*. Available from: <http://www.hec.gov.pk/new/QualityAssurance/Statistics.htm> [Accessed 22 January 2008].

¹³⁷ Higher Education Commission, Pakistan. *Statistics on Higher Education*. Available from: <http://www.hec.gov.pk/new/QualityAssurance/Statistics.htm> [Accessed 22 January 2008].

¹³⁸ UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p. 130. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 23 January 2008]. 2005 data for Bangladesh is 911,600. Sri Lanka data from UGC (Sri Lanka) website. Available from: <http://www.ugc.ac.lk/mis/index.html> [Accessed 23 January 2008].

¹³⁹ Agarwal, P. (2007) *Private Higher Education in India: Status and Prospects*, pp. 7-9. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2007-07-01.pdf> [Accessed 23 January 2008].

The expansion of private income within the tertiary sector has somewhat blurred the distinction between public and private higher education provision. In India this is further complicated by the growing overlap between the vocational and professional training sector and the higher education sector. The economic value of tertiary education has become more directly linked to employability and the job market. These overlaps between higher education and vocationally oriented training and public and private funding have significant implications within the context of trade and the notion of education as a tradable commodity, particularly within the framework of the GATS agreement where the distinction between what constitutes private and public, and what is covered by the rules of the Agreement remain unclear and contentious.

In India growth in the private sector has been steady since the early 1980s but in recent years there has been an acceleration in the growth of private, un-aided provision; currently around 43% of institutions and 30% of enrolment are accounted for by this sector.¹⁴⁰ While it is reported that there are only 10 private universities in India, there are 72 private higher education institutions which have 'deemed university' status and degree awarding powers in place.¹⁴¹ The number of private colleges making the transition to 'deemed university' is on the increase, most providing undergraduate programmes in professional disciplines with little research activity.¹⁴² The president of the Association of Indian Universities recently emphasised the importance of private initiatives in "enhancing the scope of higher education to meet the challenges of the 21st century" and argued that "the attitude towards private investments and private-public partnership has to change."¹⁴³ At the same time he warns against commercialising education and the risks of poor quality, high cost provision and the 'cherry picking' of lucrative courses by private providers.

Elsewhere in the region private provision is also expanding. In Bangladesh private provision of higher education was only sanctioned by law in 1992 when the government enacted the Private Universities Act (updated in 1998 and 2002). The Act allowed the establishment of private higher education institutions and represented "an attempt to expand access to higher education [in order] to reduce the financial burden on the public sector and make higher education more attuned to the labour market needs and develop a skilled manpower base".¹⁴⁴ Since then Bangladesh has hugely increased its private provision with the number of private universities reaching 52 by 2003.¹⁴⁵ Enrolment in private universities was estimated to be around 45,000 in 2003 and like India the focus for these institutions is

¹⁴⁰ Ibid p. 9

¹⁴¹ Ibid. pp. 8-9

¹⁴² Ibid. p.12

¹⁴³ Simhadri, Y.C. *Presidential Address* at the Association of Indian Universities 82nd Annual Meeting. Chennai, India. [26th November 2007].

¹⁴⁴ Middlehurst, R., Woodfield S. (2004) *Summary Report: The Role of Transnational, Private, and For-Profit Provision in Meeting Global Demand for Tertiary Education: Mapping, Regulation and Impact (Case Study: Bangladesh)*, p. 3. Commonwealth of Learning and UNESCO. Available from: http://www.col.org/colweb/webdav/site/myjahiasite/shared/docs/03Transnational_Bangladesh.pdf [Accessed 23 January 2008].

¹⁴⁵ Allam, M., Haque, M.S., Siddique, S. edited by N.V. Varghese (2007) *Private Higher Education in Bangladesh*, p. 11. UNESCO. Available from: <http://unesdoc.unesco.org/images/0015/001501/150151e.pdf> [Accessed 23 January 2008].

the more lucrative professional disciplines of business administration, computer science and engineering.¹⁴⁶

Pakistan has similarly increased the number of private higher education institutions in the past two decades, with the number of private universities increasing from 10 to 36 between 1997-98 and 2005-06. In the same period the number of private non-university degree awarding institutions increased from 5 to 18.¹⁴⁷ The private sector currently accounts for around a quarter of higher education enrolments, with a strong presence in business administration and computer science and areas with high levels of employer demand.¹⁴⁸ Private institutions come under the purview of the Higher Education Commission (HEC) for Pakistan which has in recent years looked favourably on the opportunities offered by private providers and public/private partnerships to enhance capacity and absorb rising demand. In the government's 2001 education sector reforms one of the main targets was to increase the share of private sector higher education enrolment to 40%.¹⁴⁹ Moreover, in the Higher Education Commission's medium-term development framework for 2005-2010 it was proposed that incentives should be provided to facilitate the expansion of private higher education institutions and to encourage the private sector to contribute to the provision of public universities.¹⁵⁰ There are also signs that the HEC is becoming increasingly receptive to regulated foreign provision, especially by highly regarded foreign institutions.

Private higher education provision in Sri Lanka is also growing due to high levels of demand. Public undergraduate education is provided free in Sri Lanka, but places at public universities are highly competitive with only a small proportion of eligible applicants gaining access. The most recent figures indicate that around 115,000 -120,000 students meet the minimum requirement for eligibility, but only around 18,000 are admitted to public universities.¹⁵¹ Unmet demand is therefore high and significant numbers are turning to private providers to access higher education.¹⁵² Estimates from the University Grants Commission in Sri Lanka indicate that the number of students in private higher education institutions in 2004 was 45,700, this equates to 53% of student enrolments in 2004.¹⁵³ With such high

¹⁴⁶ Ibid. p. 11

¹⁴⁷ Higher Education Commission, Pakistan. *Statistics on Higher Education*. Available from: <http://www.hec.gov.pk/new/QualityAssurance/Statistics.htm> [Accessed 23 January 2008].

¹⁴⁸ World Bank (2006) *Higher Education Policy Note: Pakistan - An Assessment of Medium-term Development Framework*, Executive Summary Paragraph 35. World Bank, Human Development Sector, South Asia Region. Available from: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/11/15/000020953_20061115104440/Rendered/PDF/372470PK0white1er01410200601PUBLIC1.pdf [Accessed 23 January 2008].

¹⁴⁹ Observatory on Borderless Higher Education (2005) *Latest Developments in Pakistan: Government slowly opens up to private and foreign provision, but aims to maintain control over the higher education sector* (Breaking News: 18th March 2005). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=366&mode=month> [Accessed 23 January 2008].

¹⁵⁰ World Bank (2006) *Higher Education Policy Note: Pakistan - An Assessment of Medium-term Development Framework*, p. 44. World Bank, Human Development Sector, South Asia Region. Available from: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/11/15/000020953_20061115104440/Rendered/PDF/372470PK0white1er01410200601PUBLIC1.pdf [Accessed 23 January 2008].

¹⁵¹ UNESCO (2007) *Country Report: Sri Lanka*, p. 2. Presented to the Ninth Session of the Regional Committee Meeting for the Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific. UNESCO. Available from: http://www.unescobkk.org/fileadmin/user_upload/apeid/workshops/9th_convention/Country_Rpt_SRL.pdf [Accessed 23 January 2008].

¹⁵² Ibid p.4

¹⁵³ Ibid p.4

levels of demand it is not surprising that Sri Lanka is emerging as an attractive prospect for higher education exporters and was targeted in the plurilateral request on private education.

The growth of private providers has paved the way for foreign providers to expand their activity in India. However, activity (that is known) remains relatively limited despite the fact that India, and to a lesser extent other countries in the region, are much coveted by major exporters of education services. This is reflected in the targeting of India, Pakistan and Sri Lanka in the plurilateral request for greater market access in private higher education under the GATS. India has also received individual requests from Australia, Brazil, Japan, New Zealand, Singapore and the US.¹⁵⁴ At present, however, none of the countries of this region has made any commitments in education under the GATS despite beginning to engage more readily in cross-border activity.

Foreign provision

It is clear that the degree of private provision and the conditions under which private providers operate are an important element in shaping foreign participation and opportunities for trade in higher education services. In spite of high levels of demand and the strong appeal of this region to exporters, South Asia is only a moderately active in cross-border activity. The primary mode of foreign education supply for students in South Asia is through consumption abroad. India sent over 139,356 students abroad in 2005.¹⁵⁵ While, as a proportion of enrolled students in India the number travelling abroad might not be particularly high (around 1.2%) in terms of the international student market and the income generated for foreign institutions it is of huge significance and represents the second biggest market after China. A recent World Bank report estimated that income generated from Indian students in the five main exporting countries (Australia, New Zealand, US, UK and Canada) was in the region of 3.1 billion (including cost of living estimates).¹⁵⁶ Pakistan sent 21,172 students abroad in 2005 (2.9% of enrolled students) and Bangladesh 14,513 (1.7%) and Sri Lanka 10,449.¹⁵⁷

Analysis of foreign provision in South Asia remains largely anecdotal as much of this provision falls outside the purview of the state and official bodies and official data is often patchy or non-existent. Evidence would appear to suggest that the presence of overseas providers is still relatively limited but opportunities are being sought for expansion. Much provision is through franchising, twinning and

¹⁵⁴ Department of Commerce, India (2006) *Consultation Paper on Higher Education in India and GATS: An Opportunity*, p. 17. Department of Commerce, Trade Policy Division, Government of India. Available from:

http://www.commerce.gov.in/trade/Consultation_paper_on_Education_GATS.pdf [Accessed 23 January 2008].

¹⁵⁵ UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p. 142. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 22 January 2008].

¹⁵⁶ Bashir, S. (2007) *Trends in International Trade in Higher Education: Implications and Options for Developing Countries*, p.19. World Bank. Available from: http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079956815/WPS6_Intl_trade_higherEdu.pdf [Accessed 22 January 2008].

These estimates are based on the number of students from the sending country in the US, UK, Australia, New Zealand and Canada and the estimated respective cost of tuition fees and living in 2004) Other estimate of expenditure have come in lower. For example, US\$700 million-1 billion by Kapur, D. and Mehta, P. *Indian higher education reform: Half-baked socialism to half-baked capitalism* (September 2004) – these figures are presumably for tuition fees alone.

¹⁵⁷ UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p. 142. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 22 January 2008].

distance mode delivery. Branch campuses of foreign providers are virtually non-existent. In the Observatory on Borderless Higher Education report on branch campuses only one campus was listed for the region, Griffith College Dublin in Pakistan. An American facility had set up operations in India in 2003 but closed a year later citing problems obtaining accreditation from the University Grants Committee in India.¹⁵⁸ In India there is no formal registration of foreign provision; foreign providers therefore operate outside of the regulatory framework, and systematic and comprehensive monitoring of provision is not possible. The most recent analysis of activity was carried out by the National Institute of Education Planning and Administration (NIEPA) in 2006. The NIEPA study identified 131 private Indian institutions collaborating with foreign providers in 2004 – mainly from the US and UK.¹⁵⁹ The report claims that other countries such as Australia, New Zealand and Canada have also expressed an interest in India but are closely monitoring developments in the regulatory framework to assess the prospects for recognition of foreign provision.¹⁶⁰ At present it is estimated that only around 10,000 - 15,000 students are enrolled on courses offered by foreign providers (around 10% of the number studying abroad).¹⁶¹ But this is only a speculative estimate given the relatively limited information on foreign activity.

Across the region there is strong opposition to the commodification and commercialisation of higher education and there continues to be much scepticism about the value and quality of foreign provision. However, the pressure from external donors and, more importantly, from internal demand has already pushed the region to draw more heavily on private provision, and increasingly foreign providers are showing an interest in accessing these potentially significant markets. Some countries have been more proactive in developing a regulatory framework for foreign providers than others. In Pakistan for example the Higher Education Commission (HEC) has begun to look more favourably on collaborations between foreign institutions and local providers and has established a system of regulation to monitor different types of collaboration. Regulatory requirements which relate to infrastructure, accreditation and inspection have been established but depend largely on the nature of the collaboration and the perceived quality of the foreign institution. So, for example, 'top ranked' foreign higher education institutions such as the London School of Economics are subject to much less scrutiny than lower profile foreign institutions. They are generally allowed to run degree programmes with local partners with only minimal regulation – it is not entirely clear, however, what criteria is used to judge what constitutes a 'top-ranked' university, this appears to be at the discretion of the HEC.¹⁶² Currently 11 foreign

¹⁵⁸ Verbik, L. and Merkley, C. (2006) *The International Branch Campus – Models and Trends*, p. 31. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2006-10-01.pdf> [Accessed 23 January 2008].

¹⁵⁹ Bhushan, S. (2006) *Foreign Education Providers in India: Mapping the Extent and Regulation*, p. 10 Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/March2006.pdf> [Accessed 23 January 2008].

¹⁶⁰ *Ibid.* p. 10

¹⁶¹ Agarwal, P. (2007) *Private Higher Education in India: Status and prospects*, p. 17. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2007-07-01.pdf> [Accessed 23 January 2008].

¹⁶² World Bank (2006) *Higher Education Policy Note: Pakistan - An Assessment of Medium-term Development Framework*, p. 43 and p.94. World Bank, Human Development Sector, South Asia Region. Available from: <http://www->

universities/institutions have been approved to run collaborative degree programs in Pakistan (not including the programmes of 'top-ranked' universities).¹⁶³ The HEC quality assures the provision of approved foreign providers and all private universities, and this level of regulation might actually encourage foreign providers looking to operate in an environment where structures are in place to validate and recognise foreign provision. Where this is not the case, as in India, the terrain is much less certain.

India has been very cautious about approving the foreign provision of higher education. This has proved a major obstacle to foreign providers who would otherwise be keen to enter the extensive Indian sector. There is increasing recognition that international trade in the form of imports and exports could play an important role in strengthening and expanding higher education provision in India. The president of the Association of Indian Universities has emphasised the need for appropriate policies to facilitate the "entry of foreign institutions into India and the promotion of Indian institutions abroad, not necessarily as business opportunities but as drivers of competition in their quest for academic excellence".¹⁶⁴ In 2007 India made moves to break the current impasse over regulating and recognising foreign provision with the latest iteration of the proposed Foreign Education Providers Bill. At present it is very difficult for foreign institutions to gain recognition for their operations in India, but, according to India's Ministry of Commerce, the new Bill would provide a more secure and stable legal framework for foreign providers to operate there. It is also argued that a more regulated environment will help prevent abuses by unscrupulous foreign providers who are currently not subject to the rigours of a regulatory framework. Currently any provider of higher education services who does not want UGC/AICTE recognition is relatively free to provide services unregulated. This situation might actually serve to deter quality providers, who have a brand to protect, as well as large scale foreign investors. In the meantime 'fly-by-night' operators might be drawn by the prospect of easy profit in an unregulated environment where high levels of unmet demand have generated a strong market for foreign qualifications. Under the Bill foreign providers would be monitored and regulated by the University Grants Commission. The Bill was finally approved by the government for introduction to the parliament in March 2007. However, at the time of writing the Bill had still not been presented at parliament and there are indications that it will not be passed when it is.

There is fundamental concern within India about the threat of privatisation and commercialisation of higher education and fears that this will reinforce existing divisions with high quality provision limited

wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/11/15/000020953_20061115104440/Rendered/PDF/372470PK0white1er01410200601PUBLIC1.pdf [Accessed 23 January 2008].

¹⁶³ Higher Education Commission, Pakistan. *Foreign Collaboration*. Available from: http://www.hec.gov.pk/new/QualityAssurance/UA_Foreign_Collaboration.htm [Accessed 23 January 2008].

¹⁶⁴ Simhadri, Y.C. *Presidential Address* at the Association of Indian Universities 82nd Annual Meeting. Chennai, India. 26th November 2007.

dominated by rich elite who will, in turn, set the market value.¹⁶⁵ Whilst in principle the Bill is aimed at maintaining quality and preventing commercialisation, many have argued that the Bill does not go far enough to protect the sector from commodification or to monitor the quality of provision.¹⁶⁶ This has remained a highly contentious issue within the country, with several earlier versions of the Bill failing to be approved by parliament, and it is an issue that is far from being resolved. In the meantime the likelihood that India will further liberalise its higher education sector under the multilateral rules of GATS or other trade agreements seems very slim, despite growing recognition of some of the potential benefits of the Agreement for India, especially as an exporter. Vocal criticism of the commercialisation and trade in higher education services among higher education and political stakeholders will remain a key stumbling block for those seeking better conditions and market access for foreign providers and recognition of their qualifications.

Foreign providers also operate in Bangladesh and Sri Lanka but as with India and, to a lesser extent Pakistan, information on the numbers is patchy and unclear. There has been discussion about quality assurance and regulation of foreign providers – nominally falling under the remit of the UGC in both countries – but as yet there is no firm legislation and this makes the processes for registration and monitoring of foreign providers somewhat ambiguous.

Exporting higher education

Within the context of international trade in higher education services, South Asia is predominantly an importer, yet there are indications of increasing interest in exporting higher education services, particularly in India. India not only has an extensive higher education sector but a growing international reputation for high quality professional and technological education and research. Efforts are being made to develop this brand for export and India has a particular advantage by exporting higher education to its large diaspora throughout the region.¹⁶⁷ The UGC has established an initiative for the Promotion of Indian Higher Education Abroad (PIHEA) with target countries identified in the Middle East, Africa, Central, South and East Asia.¹⁶⁸ Given the size of the Indian sector it still has relatively few international students; the most recent figures reported by UNESCO appear very low, standing at 7,589 (for 2004).¹⁶⁹ There are signs, however, that India's higher education presence abroad is on the increase. The 2007 branch campus report highlighted five Indian branch campuses, four operating in the United Arab Emirates and one in Singapore. All of the branch campuses established by Indian

¹⁶⁵ Bhushan, S. (2006) *Foreign Education Providers in India: Mapping the Extent and Regulation*, p. 7. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/March2006.pdf> [Accessed 23 January 2008].

¹⁶⁶ For further information on the Bill see: The Times of India (2007) *Foreign Institutes to be Regulated* (23 February 2007). Available from: <http://timesofindia.indiatimes.com/articleshow/msid-1662532,prtpage-1.cms> [Accessed 23 January 2008].

¹⁶⁷ Powar, K.B. (2002) *WTO, GATS and Higher Education: An Indian Perspective*. University News, 40 (23) [June 10-16 2002], p. 11. India: Association of Indian Universities.

¹⁶⁸ University Grants Commission, India. *Promotion of Indian Higher Education Abroad*. Available from: http://www.ugc.ac.in/new_initiatives/promothe.html [Accessed 22 January 2008].

¹⁶⁹ UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p. 136. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 22 January 2008].

institutions have been established since 2000.¹⁷⁰ Bhushan also reports that India has signed a series of bilateral agreements covering education services with Sri Lanka, Singapore and Mexico.¹⁷¹

Elsewhere, Pakistan exports some education programmes, particularly through online and distance modes, to Saudi Arabia, Kuwait, and Qatar, among others, and has established branch campuses in Kenya and the UAE.¹⁷² There is little information on higher education exports from Bangladesh and Sri Lanka, but given the small size of their sectors it is unlikely that they have any real export presence or market. Some of the discussions around GATS in the region have focussed on opportunities the Agreement might generate for sectors such as India and Pakistan to further develop and expand their export markets.

Trade positions

The demand for higher education in South Asia is obviously not being met by campuses at home, either through domestic or foreign providers. Within India some argue for the value of making commitments in higher education under the GATS agreement, and having foreign providers assist in developing the higher education infrastructure in the country. A 2006 report by the Indian Department of Commerce stated that “services negotiation could be used as an opportunity to invite foreign universities to set up campuses in India, thereby saving billions of dollars for the students travelling abroad”.¹⁷³ It goes on to state that given the need for investment and international trade, Indian multilateral negotiations should aim to secure a “regulatory framework with transparent rules and a stringent accreditation mechanism, which would protect the interests of students”.¹⁷⁴

Despite the opportunities identified in the GATS process, there are a number of concerns in the region that have restrained active pursuit of trade in higher education services and the entry of higher education into the GATS. As mentioned, many of the anxieties around importing foreign provision revolve around loss of autonomy, commodification of higher education, equity of access, quality assurance and lack of adequate regulatory legislation. In India, even those who support India’s engagement with GATS, have argued that the higher education infrastructure needs to improve before it can participate meaningfully and competitively in international trade agreements. Drawing on an

¹⁷⁰ Verbik, L. and Merkley, C. (2006) *The International Branch Campus – Models and Trends*, p. 26. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2006-10-01.pdf> [Accessed 22 January 2008].

¹⁷¹ Bhushan, S. (2006) *Foreign Education Providers in India: Mapping the Extent and Regulation*, p. 21 Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/March2006.pdf> [Accessed 22 January 2008].

¹⁷² Observatory on Borderless Higher Education (2003) *Pakistan to recruit foreign academic staff en masse in pursuit of ‘knowledge economy’*, (Breaking News: 21st November 2003). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=243&mode=month> [Accessed 23 January 2008]. See also: Verbik, L. and Merkley, C. (2006) *The International Branch Campus – Models and Trends*, p. 27. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2006-10-01.pdf> [Accessed 22 January 2008].

¹⁷³ Department of Commerce, India (2006) *Consultation Paper on Higher Education in India and GATS: An Opportunity*, p. 9. Department of Commerce, Trade Policy Division, Government of India. Available from: http://www.commerce.gov.in/trade/Consultation_paper_on_Education_GATS.pdf [Accessed 23 January 2008].

¹⁷⁴ *Ibid* p. 17.

unpublished consultative paper for NIEPA in 2001 on the trade in education services under the WTO regime, Powar argued that an extensive preparatory exercise should be undertaken to identify:

- Areas where national treatment and market access cannot be given to foreign providers
- Areas where safeguards are required to preserve the national culture and education ethos
- Key conditions and negotiating points for the recognition of Indian degrees

With regard to the final point, both India and Pakistan have argued for fair and equitable conditions within the GATS rules for the recognition of qualifications. In the debate on the proposed disciplines for domestic regulations both countries have emphasised that the disciplines should ensure that countries have transparent recognition procedures for the qualifications attained in member countries, and do not discriminate against certain countries. Clearly there is concern in India and Pakistan that qualifications and degrees received in their countries are not recognised by other WTO members, thereby reducing their international currency and value among both domestic and foreign students.

Concluding comments

There remains strong opposition to trade liberalisation and GATS in South Asia and none of the countries in this region have committed higher education into the GATS. In 2005 the Association of Indian Universities produced a position paper on GATS and came out strongly against the commercialisation of higher education arguing that “if higher education is thrown open to the market it will have adverse consequences for the growth of knowledge... [and]...erode the autonomy of the university and the academic freedom of the university teachers”. It was further argued that “education for profit...threatens the long-term sustainability of cultural and linguistic diversity”.¹⁷⁵ In common with Africa, current regulations and accreditation legislation are not yet properly established. Countries are making efforts to tighten regulations, generally with a view to ensuring that reputable foreign providers can provide programmes whilst at the same time protecting against the threat of an influx of low quality foreign providers. Nonetheless the pro-trade voices are getting louder and pressures from those keen to export services to the region are intensifying. India has not signed higher education on to the GATS, but is increasingly interested in establishing regulations to take advantage of the opportunities that are offered by international trade. India is developing its exports and has moved significantly from its early positions opposing trade liberalism to become a significant advocate of the trade in services. Indeed during the Hong Kong Ministerial in December 2005, India was said to have broken ranks with its long-standing allies to support and even draft key sections of the pro-liberalisation Annex C of the Declaration that pushed for greater expedition of the GATS agenda.¹⁷⁶ However, the area of education remains highly sensitive within India, as well as the rest of the region. Other countries in the region have similarly not committed any area of education to GATS rules and while there is less public information

¹⁷⁵ Association of Indian Universities (2005) *Position paper: GATS and its Implications on Higher Education*, University News, 43 (06) [February 07-13, 2005]. India: Association of Indian Universities.

¹⁷⁶ Kuruvilla, B. (June 2006) *Services Industry Drives India GATS Negotiations* (30 June 2006). Focus on the Global South. Available from: <http://www.focusweb.org/services-industry-drives-india-gats-negotiations.html> [Accessed 23 January 2008].

on the positions of Sri Lanka, Bangladesh and Pakistan towards the GATS process it is likely that similar issues and concerns to those of India are shaping the debates taking place in these countries.

3.2.3 South East Asia

Context

The two Commonwealth countries in South East Asia, Singapore and Malaysia, are major importers of education and their exports of education services are on the increase. As a result they have a major interest in the developments of the international trading system in relation to education services. The dramatic increase in imports since the 1990s has supported the substantial expansion of provision. Higher education has been viewed in both Singapore and Malaysia as a key factor in developing and retaining skilled human capital to fuel economic development and growth. Private as well as foreign provision has played an important role in the expansion of higher education capacity within the region. The results of expansion have been clear to see. In Malaysia UNESCO reported that the numbers enrolled in tertiary education tripled between 1995 and 2003 from 227,689 to 632,309. This equated to an increase in the Gross Enrolment Ratio from 7.2% (enrolled in local universities) in the early 1990s to 29% in 2003.¹⁷⁷ In Singapore the level of tertiary participation is equally extensive, with growth in cohort enrolments from 15% in 1990 to around 45% in 2005.¹⁷⁸ This level of expansion was only possible due to the participation of private and foreign providers.

In recent years, both Malaysia and Singapore have been keen to establish themselves as regional hubs of higher education seeking to attract students from across the region, foreign providers are a key factor in this strategy. Both countries are striving to be the destination of choice for students in the region, and are also increasing efforts to export education programmes. However, in spite of their strong *de facto* engagement in international trade in higher education services neither Singapore nor Malaysia have committed higher education to the GATS. The region has been subject to numerous requests by major exporters, not least through the plurilateral negotiations, and the pressure for Singapore and Malaysia to liberalise and sign up to the multilateral framework is unlikely to abate.

Private provision

Since the 1980s and 1990s private higher education in Malaysia and Singapore has been an integral part of the system and provided fertile ground for foreign providers. In Malaysia in 1995, just before the

¹⁷⁷ Ziguas, C. (2003) *The Impact of the GATS on Transnational Tertiary Education: Comparing Experiences of New Zealand, Australia, Singapore and Malaysia*. The Australian Educational Researcher, 30 (3), P. 102. Available from: <http://www.aare.edu.au/aer/online/30030f.pdf> [Accessed 23 January 2008]. 2004 GER is 32% (731,077) see: UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, p. 126. UNESCO. Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 23 January 2008].

¹⁷⁸ Observatory of Borderless Higher Education (2005) *Latest Developments in Singapore* - more funded places, national open university and university status for private institutions. What does it mean for foreign providers? (Breaking News: 28th January 2005). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=349&mode=month> [Accessed 23 January 2008].

passing of the Private Education Act of 1996, 20% of Malaysian students were studying abroad at an estimated cost of around US\$800 million.¹⁷⁹ The private sector was viewed by the Malaysian government as the “key means of reducing this currency outflow and in the long term of transforming Malaysia into a net exporter of tertiary education”.¹⁸⁰ By 1999 there were more students enrolled in private institutions than public institutions.¹⁸¹ Similarly in Singapore, by 2005 the Department of Statistics reported that in the 2004 academic year there were 166 private tertiary institutions in the country enrolling 106,700 students. Of these 166 institutions 140 offered programmes in collaboration with overseas educational institutions, and accounted for over 80,000 students; 36% of all higher education students in Singapore.¹⁸²

Foreign imports and exports

Both Malaysia and Singapore have made concerted efforts to utilise foreign providers and foreign investment to develop their higher education sectors. The systematic and strategic embrace of foreign provision has been more pronounced by these two countries than anywhere else in the Commonwealth. Since the mid-1990s the Singapore government has encouraged foreign providers, mainly from elite universities, to establish operations in Singapore, not least to attract international students from the region. In 2002 a Singaporean government economic review panel set a target of attracting 150,000 international students by 2015. It was argued that this would boost the contribution of the education sector from 1.9% (US\$1.8 billion) to 5%.¹⁸³ There are currently 15 ‘world-class’ foreign institutions operating in Singapore, in addition to the foreign programmes offered by local private providers.¹⁸⁴ It is estimated that some 80,000 international students were studying in Singapore in 2006, an 11% increase on the previous year.¹⁸⁵ The number of registered external degree programmes reported by the Ministry of Education in Singapore has more than doubled since 2003 from around 500¹⁸⁶ to over 1000 in 2007.¹⁸⁷ However, Singapore has recently faced a series of set backs to the so-called ‘global schoolhouse’ strategy, most recently with the closure in June 2007 of Australia’s University of New South Wales’ Singapore campus. The UNSW campus was to play a central role in drawing international

¹⁷⁹ Ziguras, C. (2003) *The Impact of the GATS on Transnational Tertiary Education: Comparing Experiences of New Zealand, Australia, Singapore and Malaysia*. The Australian Educational Researcher, 30 (3), P. 103. Available from: <http://www.aare.edu.au/aer/online/30030f.pdf> [Accessed 23 January 2008].

¹⁸⁰ Ibid. p. 103

¹⁸¹ Ibid. p. 103. Ziguras reports that by the end of 1999 there was 22% enrolment of 17-23 age cohort with 167, 507 students enrolled in public institutions, and 203, 391 enrolled in private institutions according to government figures.

¹⁸² Lee, S.J. (2005) *Educational Upgrading through Private Education Institutions, 2004*. Statistics Singapore Newsletter (September 2005). Business Statistics Division, Singapore Department of Statistics. Available from: <http://www.singstat.gov.sg/pubn/papers/economy/ssnsep05-pg15-17.pdf> [Accessed 23 January 2008].

¹⁸³ Singapore Economic Development Board (2006) *Singapore: The Global Schoolhouse* (1st February 2006). Available from: http://www.sedb.com/edb/sg/en_uk/index/news_room/publications/singapore_investment2/singapore_investment0/singapore_the_global.html [Accessed 23 January 2008].

¹⁸⁴ Gribble, C. and McBurnie, G. (Summer 2007) *Problems within Singapore’s Global Schoolhouse* International Higher Education, Number 48, [Summer 2007]. Center for International Higher Education, Boston College. Available from: http://www.bc.edu/bc_org/avp/soe/cihe/newsletter/Number48/p3_Gribble_McBurnie.htm [Accessed 23 January 2008].

¹⁸⁵ Ibid.

¹⁸⁶ Garrett, R. and Verbik, L. (2003) *Transnational Higher Education, Part 1: The Major Markets- Hong Kong & Singapore*. Observatory on Borderless Higher Education. Available from: <http://www.obhe.ac.uk/products/reports/pdf/Transnational1.pdf> [Accessed 23 January 2008].

¹⁸⁷ Ministry of education provides a list of external degree programmes. Available from: http://www.moe.gov.sg/privatesch/list_of_dip.htm [Accessed 23 January 2008].

students to Singapore. A year earlier John Hopkins University (US) announced that it would close its biomedical research centre in Singapore and the University of Warwick withdrew plans to establish a branch campus in Singapore. Nonetheless, Singapore continues to be a major draw to students within the region and the same can increasingly be said for Malaysia.

Similar developments have taken place in Malaysia following a decisive push in the 1990s to encourage the participation of foreign providers. In 1995 Malaysia produced its '2020 Vision' for the transformation of the Malaysian economy and society; this encouraged both private and foreign investment in higher education. In 1996 the Private Higher Education Act came into force, which encouraged foreign providers, but, at the same time, set out detailed requirements that foreign institutions must fulfil in order to operate in Malaysia. It can be said that both Malaysia and Singapore, while encouraging foreign provision, have taken an 'interventionist position' in setting the parameters for foreign participation. Both Singapore and Malaysia host five international branch campuses (following the withdrawal of UNSW from Singapore).¹⁸⁸ The number of students travelling abroad from these countries also continues to be among the highest in the world with the most recent UNESCO estimates (for 2005) standing at over 45,000 for Malaysia and over 20,000 for Singapore, indicating that there still exists a very strong market for foreign, mostly English-language, provision.¹⁸⁹

Like Singapore, Malaysia has set a target for international students and aims to accommodate 100,000 international students by 2010.¹⁹⁰ Since 2000 the number of international students studying in Malaysia has increased massively from around 18,892 to almost 55,000 in 2005/06. Malaysia is actively recruiting students, and has set up bureaus in China, Indonesia, Vietnam, UAE and South Africa to attract new students, and is also targeting students from Muslim countries such as Iran.¹⁹¹ They have streamlined the application process with 'myCampus' which manages applications for all public, private and foreign institutions.¹⁹² The Ninth Malaysia Plan (2006-2010) also sets aside RM16 billion for tertiary education which roughly converts into USD 4.8 billion, for 2006-2010. Investment is aimed not only at developing domestic capacity and human capital but also in transforming Malaysia into an educational hub that will attract international students and, as in Singapore, foreign providers will undoubtedly have a significant role to play in this process.¹⁹³

¹⁸⁸ Verbik, L. and Merkley, C. (2006) *The International Branch Campus – Models and Trends*, p. 26. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2006-10-01.pdf> [Accessed 23 January 2008].

¹⁸⁹ UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, pp. 139-140. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/qed/2007/EN_web2.pdf [Accessed 22 January 2008].

¹⁹⁰ Malaysian Government (2006) *The Ninth Malaysian Plan: 2006-2010*, Chapter 11, p.260. The Economic Planning Unit, Prime Minister's Department. Available from: <http://www.epu.jpm.my/rm9/english/cover.pdf> [Accessed 22 January 2008].

¹⁹¹ Observatory on Borderless Higher Education (2003) *Malaysia steps up recruitment of foreign students and looks to foreign universities for help* (Breaking News: 10th June 2003). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=193&mode=month> [Accessed 22 January 2008].

¹⁹² Observatory on Borderless Higher Education (2006) *Malaysia launches new US\$4.8 billion higher education strategy in continued pursuit of 'regional hub' status* (Breaking News: 28th April 2006). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=193&mode=month> [Accessed 22 January 2008].

¹⁹³ *Ibid.*

Regulations for foreign providers and implications for trade

In contrast to the other importing regions discussed in this chapter, Singapore and Malaysia have a more established regulatory framework for transnational provision. Even so, some ambiguities persist in relation to the registration, recognition and quality assurance of foreign provision, especially in Singapore. Under Singaporean regulations foreign institutions with a local presence – i.e. through branch campus or with a local partner - have to register with the Ministry of Education. Distance and online courses do not require any formal approval, but programmes offered in-country must be registered on a programme-by-programme basis. For programmes that need to be registered, both the awarding university and the local partner (if applicable) have to provide detailed information to the Ministry outlining their capacity to deliver the stated programmes.¹⁹⁴ Regulations in Singapore have been criticised for being unclear and lacking transparency. There are no clear guidelines for offering external programmes in Singapore and different institutions appear to go through different processes for registering programmes. Moreover, registration by the Ministry does not represent an endorsement or accreditation of the quality of the courses offered. Currently the Consumers Association of Singapore has established a registration scheme for private education operators that address consumer protection issues such as fee policies. Meanwhile the product and innovation board of Singapore has established a Singapore Quality Class for Private Education Operators, which looks at governance and business structures, but “neither address the issue of academic standards.”¹⁹⁵ It has, however, recently been reported that the Ministry of Education is exploring the possibility of introducing a licensing system to ensure the standards of private providers and an accreditation system might also be implemented.¹⁹⁶

In terms of institutions that Singapore has approached or encouraged to establish a local presence, the Ministry has been highly selective, approaching elite universities and offering them favourable conditions of operation. Arguably one of the main reservations about committing higher education to the GATS is the likely removal of some of the government’s power and discretion to determine which foreign providers can operate in Singapore. Moreover, the lack of clarity in the regulatory conditions for operation would pose a significant problem for entering education into the GATS, especially in light of the proposed disciplines on domestic regulation. As Ziguras points out: “The major impact of a commitment to market access treatment would be the requirement of the Singapore government to implement guidelines and processes for approving external programmes and foreign branch campuses.”¹⁹⁷ Officially, however the Singaporean government maintain that “as there is a wide variety

¹⁹⁴ Ziguras, C. (2003) *The Impact of the GATS on Transnational Tertiary Education: Comparing Experiences of New Zealand, Australia, Singapore and Malaysia*. The Australian Educational Researcher, 30 (3), p. 100. Available from: <http://www.aare.edu.au/aer/online/30030f.pdf> [Accessed 23 January 2008].

¹⁹⁵ Gribble, C. and McBurnie, G. (Summer 2007) *Problems within Singapore’s Global Schoolhouse*. International Higher Education, Number 48, [Summer 2007]. Center for International Higher Education, Boston College. Available from: http://www.bc.edu/bc_org/avp/soe/cihe/newsletter/Number48/p3_Gribble_McBurnie.htm [Accessed 23 January 2008].

¹⁹⁶ Ibid.

¹⁹⁷ Ziguras, C. (2003) *The Impact of the GATS on Transnational Tertiary Education: Comparing Experiences of New Zealand, Australia, Singapore and Malaysia*. The Australian Educational Researcher, 30 (3), p. 102. Available from: <http://www.aare.edu.au/aer/online/30030f.pdf> [Accessed 23 January 2008].

of programmes offered by private schools, it is more practical for these programmes and their quality to be subject to the test of the market".¹⁹⁸

Malaysia is much more structured in its dealings with foreign providers. New private universities are established only if they have been invited by the Minister for Education, and supply a detailed outline of each course they propose to provide. Once established, both private and foreign universities are subject to the same regulation as local providers and courses must be registered, licensed and approved by the Ministry of Education.¹⁹⁹ In the past few years those institutions that have not met standards have been stripped of their status.²⁰⁰ The Malaysian government is in the process of establishing a unified quality assurance agency for private and public providers which is aimed at strengthening the quality and legal framework for all providers and foreign providers. This may have the effect of increasing the legitimacy and recognition of private providers in Malaysia.

As with Singapore one of the key factors stopping Malaysia from committing higher education to the GATS rules is likely to be the limitations on government flexibility and discretion in inviting foreign providers to operate in Malaysia. Indeed the whole process of participation by invitation only could be challenged as discriminatory under the GATS rules. Moreover, the Malaysian government has set a precedent of providing financial support and encouragement for the development of private education and there may be concerns that this would have to be extended to new private and foreign institutions under the terms of the GATS. In other words, the government would have to loosen its control of the private system and support this more open system with transparent and equal criteria for the participation of foreign providers from WTO member states. It is possible that Singapore and Malaysia and perhaps other countries might be more willing to engage with bilateral rather than multilateral agreements where they can select their trading partners. Singapore for example chose to make commitments to higher education in its bilateral agreements with the US and Australia, but not with New Zealand and India, indicating a preference for differential country commitments rather than a uniform commitment to multiple countries. Moreover, while both countries are actively organising their internal quality assurance mechanisms, they are not yet complete to the point where they will be able to manage an influx of requests, or do so with the necessary transparency.

¹⁹⁸ Quote taken from Ministry of Education, Singapore, website. See list of private schools. Available from: http://www.moe.gov.sg/privatesch/list_of_schs.htm [Accessed 23 January 2008].

¹⁹⁹ Ziguras, C. (2003) *The Impact of the GATS on Transnational Tertiary Education: Comparing Experiences of New Zealand, Australia, Singapore and Malaysia*. The Australian Educational Researcher, 30 (3), p. 104. Available from: <http://www.aare.edu.au/aer/online/3003of.pdf> [Accessed 23 January 2008].

²⁰⁰ Observatory on Borderless Higher Education (2003) *Malaysia steps up recruitment of foreign students and looks to foreign universities for help* (Breaking News: 10th June 2003). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=193&mode=month> [Accessed 22 January 2008].

Concluding comments

Singapore and Malaysia are active in the trade in education services and have been successful in providing higher education to the domestic population through public, private and foreign providers. Both are also strengthening their export capacity with the assistance of foreign providers. Singapore and Malaysia have championed higher education as the cornerstone of social and economic development, and increasingly as a globally competitive sector, which has underpinned their engagement in cross-border activity. To date, both countries have been fairly selective in targeting foreign providers and have been able to shape their regulatory mechanisms to suit this discretionary approach. However, under a more liberal trade regime some of the control over foreign providers might have to be ceded. This is perhaps why both countries, despite having welcomed foreign provision as a crucial part of their higher education systems have not committed education to GATS, despite considerable pressure to do so.

If either country were to make commitments under GATS their approach towards foreign providers would need to be re-examined. Both countries are highly attractive markets to a wide range of exporters and while they are keen to participate in the trade in education services, it might be judged that at this time they are better positioned to control the flow of foreign provision by keeping education outside of the multilateral framework. Bilateral agreements might be seen to offer a better opportunity to control the nature and pace of liberalisation in higher education services. Both countries have a vested interest in attracting high quality institutions and building a global brand for their higher education systems that will retain domestic and attract international students. In developing this brand it is perhaps with measures of both enthusiasm and caution that they embrace the participation of foreign providers and the liberalisation of trade.

3.2.4 Small Island Developing States (SIDS)

Context

Small island developing states constitute the largest bloc of countries in this regional breakdown and are perhaps the most culturally, socially and economically diverse. Nearly half of all Commonwealth countries are Island states with varying development needs (however not all are WTO members).²⁰¹ The Small Island Developing States Network is a group of islands, predominantly in the Caribbean and Pacific, recognised by the United Nations as having distinct development needs. Geographically too, this represents the most diverse of all the groups, including islands from four of the five continents covered by the Commonwealth. However, there are common issues facing countries that generally

²⁰¹ Commonwealth countries included in the United Nations' list of Small Island Developing States include: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Fiji Islands, Grenada, Guyana, Jamaica, Kiribati, Maldives, Mauritius, Nauru, Papua New Guinea, St Kitts and Nevis, St. Lucia, St Vincent and the Grenadines, Samoa, Seychelles, Solomon Islands, Tonga, Trinidad and Tobago, Tuvalu and Vanuatu. Non-WTO members are Bahamas, Kiribati, Samoa, Seychelles, Tuvalu, and Vanuatu.

have smaller economies, markets and populations and in many cases physical isolation from neighbouring countries. The populations of the islands range from 11,000 to over 5 million, but the majority (18 of the 24) have populations under 500,000.²⁰² Details of the gross enrolment ratios for the SIDS are fairly limited and in UNESCO's 2007 education digest figures were only available for eight of the 24 countries.

Gross enrolment ratios for Commonwealth Small Island Developing States (2005)

Country	GER
Belize	3*
Fiji	15**
Guyana	10
Jamaica	19**
Saint Lucia	14
Tonga	6**
Trinidad and Tobago	12
Vanuatu	5**

Source: UNESCO Global Education Digest 2007

* Data taken from 2004

** UIS estimate

Enrolment rates are variable, but generally quite low. The islands tend to be relatively open to trade in higher education and have a willingness to import foreign education as a means of expanding capacity. Many of the countries in this category have a very limited higher education infrastructure and in some of the smaller island states no infrastructure at all. Access to a regional university has been the main, and in some cases only, source of higher education for many of the smaller island states. The primary provider of higher education in both the Caribbean and the Pacific Islands are regional, multi campus universities – respectively, the University of the West Indies (UWI) and the University of the South Pacific (USP). Nevertheless, there continues to be a considerable outflow of students from these island states. There is a long tradition of students from small developing countries, with the ability and/or resources to do so, pursuing university education abroad given the limited opportunities at home. For many countries this is an ongoing trend. Figures for students travelling abroad from the SIDS are again quite patchy but those that are available reveal comparatively high rates of student mobility (as a proportion of the student population). UNESCO figures for student mobility among the SIDS are available for ten of the islands and the proportion of students studying abroad range from 9% in Papua New Guinea to 115% in Belize with an average across the nine countries of 36.7%.²⁰³

²⁰² Small Island Developing States Network. List of Small Island Developing states available from: http://www.sidsnet.org/sids_list.html [Accessed 23 January 2008].

²⁰³ UNESCO (2007) *Global Higher Education Digest 2007: Comparing Education Statistics across the World*, pp. 139-140. UNESCO, Institute for Statistics. Available from: http://www.uis.unesco.org/template/pdf/ged/2007/EN_web2.pdf [Accessed 22 January 2008]. Estimates: Belize (115%), Fiji (15.8%), Guyana (9.5%), Jamaica (14.2%), Papua New Guinea (9.1%), St Lucia (50.8%), Samoa (30.2%), Tonga (79.6%), Trinidad and Tobago (27.5) , and Vanuatu (15.6%) pp.133-134. The *Outbound mobility ratio* represents the number of students from a given country studying abroad as a percentage of the total tertiary enrolment in that country. It can be over 100% when the proportion of those reported to be studying abroad outnumbers the tertiary students at home.

Foreign provision

Many small island developing states are striving to expand their higher education provision. Indeed in Belize, where a large proportion of the student population is studying abroad, the national university was only established in 2000. The impetus to develop and expand the higher education systems in many of these countries has engendered a receptiveness to foreign provision. However, from the perspective of exporting countries the market opportunities offered by many of the SIDS might appear somewhat limited and it is rather telling that none of the SIDS were targeted by the plurilateral request of higher education. Jamaica, the one country that has seen significant activity among foreign providers, has already made full commitments in higher education under GATS.

There are currently a number of foreign university providers operating in the small island states. In Jamaica there are nine providers from the US, UK and Canada (as of June 2007).²⁰⁴ Similarly Trinidad and Tobago have a significant number of franchise operations primarily from Canada, the UK and the US.²⁰⁵ Most of the courses offered focus on postgraduate studies.²⁰⁶ According to the 2006 branch campus report only Jamaica and Fiji have international branch campuses (although the branch campus of the University of Central Queensland operating in Fiji closed in early 2007).²⁰⁷ Offshore operations for the domestic market are another significant phenomenon, particularly in the Caribbean. A recent World Bank report noted that there are over 120 external providers operating in the Caribbean, mostly from the US.²⁰⁸ Much of this US offshore provision is in the form of satellite campuses directed towards the domestic population of the home country rather than the host country. These campuses are used as a means of providing cheaper study options for home students. There are, for example, 38 institutions offering courses in medical, veterinary and health sciences that allow students to take US Medical License examinations.²⁰⁹ If the programmes have been accredited by a recognised local authority US students are eligible for federal loans for attending these institutions. As Bashir puts it "this model consists of the 'offshoring' of US medical education to produce medical graduates at lower cost for the US market".²¹⁰ This latter model is distinct from the international trade in education services in that it is not directed at the international market, it is rather a means of providing for the domestic market in more cost effective locations.

²⁰⁴ University Council of Jamaica (2007). *List of Accredited Programmes as at June 2007*. Available from: <http://universitycouncilja.com/credit/index.htm> [Accessed 23 January 2008].

²⁰⁵ Observatory on Borderless Higher Education (2005) *Trinidad and Tobago announces 'free university education for all' - but at what cost to private and foreign providers?* (Breaking News: 25th October 2005). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=419&mode=month> [Accessed 23 January 2008].

²⁰⁶ Observatory on Borderless Higher Education (2003) *Private higher education in Jamaica demands equal treatment under GATS - will the government give in?* (Breaking News: 17th September 2003). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=219&mode=month> [Accessed 23 January 2008].

²⁰⁷ Verbik, L. and Merkley, C. (2006) *The International Branch Campus - Models and Trends*, p. 31. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2006-10-01.pdf> [Accessed 23 January 2008].

²⁰⁸ Bashir, S. (2007) *Trends in International Trade in Higher Education: Implications and Options for Developing Countries*, p.31. World Bank. Available from: http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079956815/WPS6_Intl_trade_higherEdu.pdf [Accessed 22 January 2008].

²⁰⁹ *Ibid.* p. 31

²¹⁰ *Ibid.* p. 31

There is very limited data on private and transnational provision for the majority of SIDS, although for some countries information is more available than others. In Jamaica, for example, it is known that private provision has made a significant contribution to improving tertiary participation rates in Jamaica. A 2006 UNESCO report identified 23 public tertiary facilities (including two universities), 20 private facilities (including one university) and nine registered foreign institutions providing accredited programmes in Jamaica (including one branch campus established by the University of New Orleans).²¹¹ The University Council of Jamaica is responsible for registering all public and private providers and accrediting the programmes of local and foreign based institutions on a voluntary basis. Anecdotally there appears to be tacit acceptance of private and foreign provision as an integral part of the system in these smaller island states. It is, however, difficult to obtain detailed information on the scope and regulation of private and foreign providers, but where information is available conditions appear to be relatively liberal.²¹²

Trade commitments

Trinidad and Tobago and Jamaica have made commitments in higher education under the GATS. Jamaica's schedule of commitments was formulated in 1994 and provided for very liberal terms. Commitments are made in primary, secondary and higher education with full market access, except for mode 3 (commercial presence) where it is stipulated that foreign providers must comply with registration and certification requirements. Trinidad and Tobago's commitments are less open and remain unbound for commercial presence. The Jamaican example is instructive in highlighting some of the risks and concerns associated with liberalisation under the GATS. The liberal approach to trade was aimed at facilitating the expansion and development of the higher education sector. However, Frater has argued that as a result of this liberal trading position "Jamaica must now endeavour to craft a policy framework for the sector that captures its strategic intent while complying with its obligations as a member of the WTO".²¹³ He goes on to state that Jamaica needs to develop a policy framework that can "address the concerns related to GATS, clarify the role of foreign providers, ensure greater articulation in the system, strengthen the certification and accreditation mechanisms and be more tightly linked with other key policy areas".²¹⁴ It should also be added, however that having made very liberal commitments under the GATS, which cannot be reversed or withdrawn, the manoeuvrability of Jamaica in redefining the regulatory framework in which foreign providers operate is much more limited. A cautionary note has

²¹¹ Foreign institutions operating in Jamaica include – Florida International University; Mount St. Vincent University (St. Josephs Teachers College); Nova Southeastern University (Mico College); University of South Florida (Shortwood Teachers College); University of New Orleans; Temple University (Church Teachers College); University of Southern Carolina: Central Connecticut (Sam Sharpe Teachers College). See: Evans, H. and Burke, O. (2006) *National Report on Higher Education in Jamaica*, p. 23. Prepared for UNESCO-IIESCALC. Available from: <http://www.iesalc.unesco.org/ve/programas/nacionales/jamaica/nacional%20report%20jamaica.pdf> [Accessed 23 January 2008].

²¹² For further information on regulation within the Caribbean see: Didou Aupetit, S. and Jokivirta, L. (2007) *Foreign education and activity in Latin America and the Caribbean: Key Issues, Regulation and Impact*, p.21. Observatory on Borderless Higher Education. Available with subscription from: http://www.obhe.ac.uk/products/reports/pdf/2007-06-01_2.pdf [Accessed 22 January 2008].

²¹³ Frater, T. (2006) *Shaping a New Higher Education Policy for Jamaica*. International Higher Education, Number 44 [Summer 2006]. Center for International Higher Education, Boston College. Available from:

http://www.bc.edu/avp/soe/cihe/newsletter/Number44/p22_Frater.htm [Accessed 23 January 2008].

²¹⁴ Ibid.

also been struck in Jamaica for those policy makers concerned that private and foreign providers might pursue public subsidies under the national treatment provisions of the Agreement. Private and foreign providers were quick to argue that the logic underpinning the GATS rules should result in an extension of public subsidies (of up to 80%) to private providers, although the government has countered this by arguing that this was matter of interpretation and no provisions have been made or are planned to extend government support to students attending private and foreign institutions at this stage.²¹⁵ However, once the rules come into affect – for which there is now no clear timetable – it is not clear how private and foreign providers might argue their position. While some countries, such as the US, have explicitly exempted foreign providers from accessing public subsidies Jamaica has not done so and will therefore have to rely on Article I:3 to protect public subsidies.

There are two main reasons that some of the small island states might look favourably on greater liberalisation in relation to the GATS agenda. First, brain drain continues to be a significant problem for many states, especially for the smaller islands. Foreign provision is often argued to be a way of providing foreign qualifications in the home country for less cost and may assist the retention of a skilled and educated workforce. Second, the market and demand for foreign provision is in many cases well established. Moreover, many of these countries have long-standing experience of working with foreign providers through their regional collaborations so the culture of foreign and collaborative provision, born initially out of necessity, is not an alien one.

Exports of education services and the numbers of international students are, unsurprisingly, limited among the island states. The regional university system generates a significant degree of inter-regional mobility especially to the three main campuses of the University of the West Indies (Jamaica, Trinidad and Tobago and Barbados) and to the main campus of the University of the South Pacific in Fiji. Technically, however, these regional students are counted as home students. There is growing interest in promoting the countries as education destinations outside of their own regions, and developing a regional brand, however this is still a very nascent development and the regions are unlikely to become a significant force in the near future.²¹⁶

Collaborative models already have a strong precedent in the Caribbean and Pacific regions through the regional university system. From a broader policy perspective the island states can develop their mutual interests through joint activity. Examples from the Caribbean include the Caribbean Knowledge and Learning Network and the Caribbean Research and Education Network. The former is a regional collaboration of political alliances which encourage tertiary education provision in areas of improving

²¹⁵ Observatory on Borderless Higher Education. (2003) *Private higher education in Jamaica demands equal treatment under GATS – will the government give in?* (Breaking News: 17th Sept 2003). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=219&mode=month> [Accessed 23 January 2008].

²¹⁶ SIDSnet (2004) *Increased Tertiary Education Crucial for National Development* (19th April 2004) Available from: <http://www.sidsnet.org/archives/other-newswire/2004/msg00286.html> [Accessed 23 January 2008].

capacity, widening access, and dealing with issues of regional recognition of qualifications.²¹⁷ The aim of the latter network is to enhance global competitiveness by upgrading and diversifying the skills and knowledge of human resources in the Caribbean through greater regional collaboration and connectivity.²¹⁸ Due to the number of collaborative groups to which the islands belong, in education, trade, and development, it is likely that there could emerge some form of consensus between the member groups regarding the GATS and education. Negotiating on a regional basis, or perhaps less formally establishing regional policy positions, might generate a stronger negotiating position for these small economies. It has been argued that: "The WTO is the only set of international rules which gives small and developing countries the power to challenge any misuse by the giants of the world economy in trade.....Nothing in the world gives small and developing countries such power."²¹⁹ Despite these benefits, there are specific issues for the small island states to consider when deciding to enter higher education into the GATS. As with other regional groups, a number of the SIDS came together under the banner of small and vulnerable economies to put forward a joint position on the proposed disciplines on domestic regulations.²²⁰ Their position stressed the importance of allowing small economies to engage with international trade at their own pace and with special consideration for their development needs.

Concluding comments

There is significant variation in the higher education systems in place across the small island states and the subsequent implications of international trade. Detailed information on trading positions, the level and regulation of foreign and private provision is generally very limited, however anecdotal evidence suggests that trade and foreign provision is viewed as an opportunity to boost domestic capacity. Nevertheless there is still very little commitment of higher education in the GATS among these countries. Two of the larger states in this group, Jamaica and Trinidad and Tobago, have made higher education sector commitments under the GATS. Both countries have comparatively strong higher education infrastructures and have indicated that trade with foreign providers is a way of building on their existing provision. However, many of the other small island states have much more fragile higher education systems in place and would find it difficult to tackle many of the complexities, especially given all the potential implications involved in multilateral trade negotiations and commitments. The Doha round is meant to empower developing and small economies to participate in and benefit from the international trade framework. However, the Doha round is yet to deliver and the majority of countries with small and/or vulnerable economies remain hesitant about making commitments especially in sensitive sectors such as education.

²¹⁷ Further information on the Caribbean Knowledge and Learning Network can be found at: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan017135.pdf> [Accessed 23 January 2008].

²¹⁸ Further information on the Caribbean Research and Education Network can be found at: http://www.ckln.org/index.php?option=com_content&task=view&id=76&Itemid=2 [Accessed 23 January 2008].

²¹⁹ Oxley, A. (2001) *A Fresh Attack on the WTO – this time the GATS*. Australian Financial Review, 29 [June 2001].

²²⁰ Commonwealth countries included in the group include: Antigua and Barbuda, Barbados, Dominica, Fiji, Grenada, Jamaica, Mauritius, St Kitts and Nevis, St Vincent and the Grenadines and Trinidad and Tobago.

3.2.5 Major Commonwealth exporters/suppliers

Context

The final category of Commonwealth countries under examination are the major trading countries comprising: the UK, Australia, New Zealand and Canada. In 2004 these countries accounted for over one fifth of all students studying abroad (excluding intra-EU students).²²¹ Moreover, in terms of income generated from foreign students, the World Bank reports that education exports were valued at US\$14 billion across the four countries.²²² The value of education exports to major exporting countries of the Commonwealth are therefore hugely significant. They represent a significant proportion of the overall income for higher education services, but also a considerable part of the global income generated from the international trade in higher education. Unsurprisingly, as major players in the international trade in education services these countries constitute some of the main advocates of greater liberalisation.

There are several factors that have shaped the importance of these countries in the export/provision of education services to students worldwide. One of the key factors is the widespread appeal and accessibility of English language provision. In addition, each country has a well established and well regarded sector with the capacity to cater for domestic and international demand. Each country has also made concerted efforts to develop and project their global brand for higher education services through marketing, communication and greater visibility. Finally, in the case of the UK, there is a long-standing history of providing education services to former colonies. Much of the trade comes from incoming international students, but in the past 20 years the offshore activities of universities have increased substantively, with the four main Commonwealth exporters (together with the US) leading this trend. The primary markets for the Commonwealth exporters are outlined below:

- Australia: *China, India, Malaysia, Hong Kong, and Indonesia (71% of exports are to East Asia*²²³)
- UK: *China, US, India, Malaysia, and Hong Kong*
- Canada: *China, US, France, India, and South Korea*
- New Zealand: *China, South Korean, Japanese, US, and India*²²⁴

²²¹ The proportion of all international students as a percentage of the world total in these four Commonwealth countries are: UK (9.4%), Australia (7.6%), New Zealand (1.7%) and Canada (3.9%). Taken from: Bashir, S. (2007) *Trends in International Trade in Higher Education: Implications and Options for Developing Countries*, p.17. World Bank. Available from: http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079956815/WPS6_Intl_trade_higherEdu.pdf [Accessed 23 January 2008].

²²² UK (\$US 6 billion), Australia (US\$ 5.5 billion), Canada (US\$1.5 billion) and New Zealand (US\$1 billion). These figures are taken from Balance of Payment statistics released by the countries, which take into account average tuition fee and cost of living estimates. However the BOP statistics do not provide a disaggregation by level of education, although it is thought that the majority of foreign students will be pursuing higher levels of education. See: Bashir, S. (2007) *Trends in International Trade in Higher Education: Implications and Options for Developing Countries*, p.19. World Bank. Available from: http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079956815/WPS6_Intl_trade_higherEdu.pdf [Accessed 23 January 2008].

²²³ Calderon, A, and Tangas, J. (2006) *Trade Implications, Regional Agreements and Implications for Higher Education*. Higher Education Management and Policy 18 (1), p. 96. Institutional Management of Higher Education, Organisation for Economic Cooperation and Development.

²²⁴ Australian Government, Australian Education International (2005) *Research Snapshot: International Students in Higher Education – Comparison of Major English Speaking Destinations for the Top Five Source Markets* (October 2005). Available from: http://aei.dest.gov.au/AEI/PublicationsAndResearch/Snapshots/03SS05_pdf.pdf [Accessed 22 January 2008].

Some countries have made great strides in developing and expanding their international profile and share of international students. Australia and New Zealand are particularly notable in this context. The significant presence of Australia and New Zealand in the international education market has been reinforced by active marketing by higher education institutions, as well as government support for the export of higher education services. The Australian and New Zealand governments have been keen to support the development of a global higher education brand and to create a favourable domestic and international policy environment for international activities and international students. With such a strong emphasis on international activity it comes as no surprise that both Australia and New Zealand (and, to a slightly lesser extent, the UK) are major advocates of the liberalisation of education services and their inclusion within the GATS framework. Australia, New Zealand and the UK have all made commitments in higher education under the GATS, although Canada is yet to make any GATS commitments and remains slightly reticent in adopting a strong liberalising agenda.

Private provision

The importance of international exports and the international student market in particular, has been greatly strengthened by the need for institutions to diversify their income streams. As in other regions, the higher education sectors in the UK, Australia, Canada and New Zealand have all faced growing pressure on public resources. Consequently the contribution of private sources of income to the financial sustainability of public higher education institutions has become increasingly significant. To take one example, the UK saw public funding per student fall by 37% between 1989 and 2002 while student numbers increased by 94%.²²⁵ Unlike many importing countries where private providers have emerged as a significant force accounting for much of the expansion of tertiary provision, in the major Commonwealth exporting countries private provision remains relatively limited, though public institutions are increasingly drawing on private income.

Nonetheless, private providers are beginning to emerge as a more significant force within these countries. Private higher education institutions across the major exporting countries are largely colleges and technical schools, providing vocational and professional qualifications rather than degree qualifications. New Zealand, for example, hosts over 800 private training establishments (although no private universities) and while these are perhaps not in direct competition with public universities they still account for around 15% of overall tertiary enrolment – with enrolment more than doubling between 1997 and 2003 from 28,000 to 70,000.²²⁶ New Zealand is perhaps a firmer advocate of private education and has actively encouraged the expansion of the private tertiary sector with funding support

²²⁵ Warwick, D. (2005) *The Human Resource Challenge for Higher Education*, P. 7. Keynote address given at OECD Conference on Trends in the Management of Human Resources in Higher Education, Paris, France. [25-26th August 2005]. Available from: <http://www.oecd.org/dataoecd/44/29/35333044.pdf> [Accessed 23 January 2008].

²²⁶ LaRocque, N. (2005) *Private Tertiary Education in New Zealand: Evolution and Context*, p.2. Paper presented at New Zealand Association of Private Education Providers Conference 2005, Wellington, New Zealand. [15th September 2005]. Available from: http://www.educationforum.org.nz/documents/speeches/050915_nzapep.pdf [Accessed 23 January 2008]. It is acknowledged that estimates vary and this represents an estimate of proportional enrolment.

and improved regulatory conditions. Crucially, the New Zealand government has provided public funding for private providers and this increased significantly throughout the 1990s and early 2000s from around NZ\$2 million in 1992 to over NZ\$120 million in 2003.²²⁷

Elsewhere, the UK has one private university (the University of Buckingham²²⁸), but has recently granted degree awarding powers to two private colleges, the College of Law (2006) and BPP (2007). Australia has two private universities Bond University (established 1987) and the University of Notre Dame Australia (established 1989). The Canadian example is particularly interesting; despite only recently allowing private education in four provinces,²²⁹ Canada now hosts the most private universities of the Commonwealth exporters with nine, one of which is foreign owned.²³⁰

International supply of education services

It is apparent that the private providers are strongly targeting international students; Bond University in Australia, for example, has around 40% international students and even established a, now defunct, branch campus in South Africa. In the UK 2005/06 data indicates that of the 750 students enrolled at the private University of Buckingham 485 (64%) are from outside of the European Union and 71% are from outside of the UK, this is five times the UK average of 14%.²³¹ The University of Buckingham has the highest proportion of international students of all UK higher education institutions, ahead of the London Business School at 66% and the London School of Economics and Political Science at 64%.²³² However, it should be emphasised that international students, both onshore and increasingly offshore, are overwhelmingly located within public institutions. This raises an interesting dilemma with regard to the distinction between public and private provision. Public institutions are effectively supplying services to international students on a private basis, with unsubsidised fees and strong competition among institutions to attract these students. Moreover, public institutions often operate as private institutions in their offshore ventures yet still benefit from the substantial public subsidies from their home governments to develop and publicise their course offerings abroad.

Detailed information on mode 1 and 3 (cross-border supply and commercial presence) activities of universities is limited but it is understood that universities will generally run their offshore activities as a commercial enterprise, and the onus is on the purchaser and receiving country to ensure that they are receiving quality 'products'.²³³ However, there is growing recognition that it is important to protect the

²²⁷ Ibid. p.2 In US\$ this represents an increase from \$1.5 million to \$90 million (using rate of exchange at the time of writing).

²²⁸ The University of Buckingham has been operating since the 1970s, but operates on a not-for-profit basis.

²²⁹ Each province autonomously governs their education system. Three provinces have agreed to host private institutions, British Columbia, Manitoba, Ontario and New Brunswick.

²³⁰ Fairleigh Dickinson University of New Jersey opened a campus in Vancouver, British Columbia in 2007.

²³¹ Proportionally the University of Buckingham has over six times the UK average international student enrolment (from outside of the European Union).

²³² UK Higher Education Statistics Agency (HESA) (2007) *Students in Higher Education Institutions 2005-06*. HESA. Cheltenham, UK.

²³³ Larsen, K, and Vincent-Lancrin, S. (2002) *International Trade in Education Services: Good or Bad?* Higher Education Management and Policy, 14 (3), p. 24. Institutional Management of Higher Education, Organisation for Economic Cooperation and Development.

international brand of exported provision, and national quality assurance agencies, such as the UK's Quality Assurance Agency, are increasingly charged with assessing the quality of this. It is difficult to gauge the degree of income generated from the offshore activities of universities as statistics tend not to be in the public domain, but it is clear that these activities are not nearly as lucrative as hosting international students. In particular the establishment of branch campuses abroad is a highly resource intensive and risky enterprise that institutions do not enter into lightly. The limited information available suggests that branch campuses have increased since the mid-1990s and especially since the early part of this century but not as dramatically as other areas of cross-border activity. There have also been a few high profile closures in recent years.²³⁴ The 2006 branch campus report indicates that among Commonwealth countries Australia has the highest number of branch campuses at 10, the UK has four and Canada three. New Zealand does not currently have any branch campuses associated with their universities.²³⁵

Trade positions

The countries in this group have, for the most part, engaged actively in the international trade framework for services. In addition to pursuing a multilateral agenda through the GATS (with the exception of Canada), all four are party to bilateral and regional trade agreements that include some aspect of higher education. A few examples include:

- The Australia-US Free Trade Agreement (AUSFTA) signed in 2004, incorporates a number of dimensions of education services: intellectual property, licensing requirements for cross-border supply, and recognition of qualifications.
- The UK is part of the European Union (EU) of 24 European countries. Within the EU higher education is covered by a number of agreements and initiatives such as the Socrates and Erasmus schemes which facilitate credit transfer and exchanges within the EU. The Bologna Process was also established to generate greater convergence among higher education systems across the EU. At the end of 2006 a Directive on services was also adopted by the EU which aims to ease trade in services, including education, though the extent to which higher education will be covered by the agreement uncertain.
- Canada is part of the North American Free Trade Agreement (NAFTA) that includes the US, Canada and Mexico. It covers intellectual property rights but does not deal with services or education services explicitly. Canada is also part of the Consortium of North American Higher Education Collaboration which facilitates exchanges, credit transfer and collaboration.

²³⁴ In 2007 Australian institutions closed branch campuses in Fiji (Central Queensland University) and in Singapore (The University of New South Wales).

²³⁵ Verbik, L. and Merkley, C. (2006) *The International Branch Campus – Models and Trends*. Observatory on Borderless Higher Education. Available with subscription from: <http://www.obhe.ac.uk/products/reports/pdf/2006-10-01.pdf> [Accessed 23 January 2008].

These bilateral and regional agreements serve to assist countries in their cross-border activities (whether explicitly for trade purposes or not), but are not as all-encompassing and expansive as the GATS. Among the Commonwealth exporters New Zealand and Australia are perhaps the leading advocates of greater liberalisation in international trade in higher education services. New Zealand has led the 'friends of private education exports' group, and is strongly committed to free trade in education services and initiated the plurilateral request on private education with the support of other members of the 'friends group' including Australia, Malaysia and the US. The GATS rules sit well with the New Zealand regulatory framework, as most of its policies and regulations are consistent with GATS obligations. Within New Zealand there is "no requirement for foreign providers to meet New Zealand quality standards unless they are seeking public tuition subsidies or seeking to have their programmes recognised under the National Qualifications Framework".²³⁶ Thus conditions for foreign providers are already very liberal. The Australian government has made GATS commitments in private tertiary education and has provided full market access and national treatment for modes 1 and 2 (cross-border supply and consumption abroad). For commercial presence it has provided market access but not national treatment – thereby not committing it to treat foreign providers operating in Australia the same as domestic (private) providers. This allows it to distinguish between foreign and domestic providers with respect to government funding.²³⁷ The UK – as a Member of the European Community – has committed 'private funded higher education' to the GATS rules. Mode 4 (presence of natural persons) commitments remain unbound for all three countries (i.e. no commitments have been made).

Canada is the only one of the major exporting Commonwealth countries that has made no commitments in education under the GATS, and has not made any requesting proposals. In Canada education is under the purview of the provinces and territories and there is no federal department for education. Each province determines their own regulations and guidelines for all levels of education – public, private and international. For example, some private/international organisations are accredited in some provinces and not others, and while British Columbia has had foreign university providers for a number of years, Ontario only opened its borders to foreign universities in 2002.²³⁸ Decentralised governance of education may explain the reluctance and difficulty for Canada to make commitments under the GATS. The provinces are protective over their education systems, particularly from federal government influence but also from external sources. Commitments under the GATS would necessitate some form of centralised organisation and would therefore require the provinces to relinquish some of their provincial control to a federal or collaborative body. Canada would also risk opening its services to its

²³⁶ Ziguas, C. (2003) *The Impact of the GATS on Transnational Tertiary Education: Comparing Experiences of New Zealand, Australia, Singapore and Malaysia*. The Australian Educational Researcher, 30 (3), p. 95. Available from: <http://www.aare.edu.au/aer/online/30030f.pdf> [Accessed 23 January 2008].

²³⁷ Calderon, A, and Tangas, J. (2006) *Trade Implications, Regional Agreements and Implications for Higher Education*. Higher Education Management and Policy 18 (1), p. 85. Institutional Management of Higher Education, Organisation for Economic Cooperation and Development.

²³⁸ Observatory on Borderless Higher Education (2005). *Australia's Charles Sturt University to set up shop in Ontario: just as the Rae Report calls for massive increases in public funding for higher education in the Canadian province* (Breaking News: 25th February 2005). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=358&mode=month> [Accessed 23 January 2008].

powerful neighbour which might be perceived as a threat to domestic provision. Currently foreign providers operating in Canada are not marketing themselves to the Canadian population, but rather to foreign markets, purporting to be a cheaper way to access North American education (as with the Caribbean case). With no centralised organisation responsible for education at the national level, national policy decisions through consensus are complex. However, Canada's decision not to make commitments under the GATS is not simply a question of logistics but of principle. The Canadian government has made it clear that public education will not be negotiated in the GATS.²³⁹ The Association of Universities and Colleges in Canada has reported that while the government has specified that it will not negotiate on 'public education services', at the current time this has been interpreted broadly to include all 'education services' given the "lack of consensus among the provinces about what constitutes public and private education and the lack of pressure from most Canadian educational providers to open up the sector".²⁴⁰ Clearly, however, they have left the door open for making commitments in what might be considered private or commercial services.

Regulating foreign and private provision

All of the major Commonwealth exporters have structures in place to monitor and regulate their higher education sectors; in the case of Canada this process is decentralised through provincial and territorial government, elsewhere procedures are implemented nationally. All of the countries have at least one accreditation agency, though they all allow non-accredited institutions to operate. The quality of the institutions is a very important aspect of the trade in higher education, not only to ensure that students are given a quality education, but also that a strong international brand, underpinned by verifiable quality, is upheld institutionally and nationally. Failure to provide, or be seen to provide, quality education may result in fewer international students attending the institutions, fewer offshore programmes being accepted by host countries, or offshore programmes not receiving the requisite student enrolment and/or revenue. One example of how unmonitored exports can damage the national reputation occurred in late 2006 when the Chinese government warned students against enrolling in private tertiary institutions in Canada following complaints about a number of private colleges. Whilst the warning did not extend to public institutions there are fears that its ramifications will extend to Canada's reputation more broadly in one of its strongest higher education markets. It has been argued that since private post-secondary education was deregulated in 2004 concerns about the quality of private have risen. In addition to China concerns have also been raised by the Indian Consulate in Canada.²⁴¹

²³⁹ VanDuzer, J. A. (2004). *Trade Policy Research: Health, Public Education and Social Services: The Impact of GATS*. Department of Foreign Affairs and International Trade, Canada (DFAIT). Available from: <http://www.dfait-maeci.gc.ca/tna-nac/ls/gats-ps-h-edu-en.asp#2> [Accessed 23 January 2008].

²⁴⁰ Association of Universities and Colleges of Canada (2003) *The GATS and Higher Education in Canada : An update on Canada's Position and Implications for Canadian Universities*. AUCC. Available from: http://www.aucc.ca/pdf/english/reports/2003/gats_update_e.pdf [Accessed 23 January 2008].

²⁴¹ Steffenhagen, J. (2007) *Avoid Canadian schools, China Warns Students* Vancouver Sun (9th January 2007). Access online via the Office of External Relations, University of Alberta. Available from: <http://www.uofaweb.ualberta.ca/govrel/news.cfm?story=54935> [Accessed 23 January 2008].

Canadian quality assurance is conducted at the provincial level. Most provinces have an organisation either within the provincial government (e.g. British Columbia) or as a legislated organisation devoted to quality assurance (e.g. Ontario).²⁴² Some of the provinces, such as the Eastern Maritime Provinces collaborate on quality assurance. While each of the agencies is responsible for its own region, they have similar requirements in determining and reviewing degree granting institutions. Currently only British Columbia, Ontario, Alberta and New Brunswick allow foreign or private degree-granting institutions.²⁴³ For colleges as well, the standard provincial requirements vary from province to province but may include: provincial registration, licensing, certification, accreditation and programme approval. There does not appear to be much, if any, specific regulation on foreign providers (where they are permitted) other than that which applies generally to private providers.

Australia has recently overhauled its regulatory framework, passing the National Protocols for Higher Education Approval Processes in 2006. The Protocols set out national standards for approving domestic and foreign higher education institutions in Australia; they also detail criteria for obtaining degree awarding powers and 'university title'. They allow foreign providers accredited by a recognised accrediting body in their home country to operate in Australia and can even use their university title, if approved in their home country. Foreign institutions that wish to provide Australian qualifications need to go through the same accrediting procedures as Australian universities and higher education institutions. It remains unclear, however, if foreign institutions would be eligible for state funding, but no provisions have been made to specifically restrict the eligibility of foreign providers. Proponents of the reforms have argued that they provide a favourable environment for regulated market competition that will be better placed to serve the needs of the Australian sector. Critics have raised concerns that this relatively liberal framework could lead to a proliferation of private and foreign providers with fewer obligations to provide high quality and broad-based programmes. These institutions could focus their attention and resources on more lucrative programmes unencumbered by the public mandate of public institutions. The response to this, and a core principle underpinning the more liberal regulatory conditions, is that the market will regulate provision (or services). In Australia it is argued that the relatively strong capacity and high quality provision of the sector will require new providers to offer added value through high quality programmes that are supported by market demand, if they want to compete successfully. It is also emphasised that new providers will be subject to the quality assurance procedures of Australia or of another recognised body.²⁴⁴

²⁴² Association of Universities and Colleges of Canada (2007) *Overview of Provincial and Regional Quality Assurance Mechanisms in Canadian Higher Education*. AUCC. Available from: http://www.aucc.ca/qa/_pdf/reg_prov_overview_e.pdf [Accessed 23 January 2008].

²⁴³ Council of Ministers of Education, Canada. *Quality Assurance in Postsecondary Education in Canada*. CMEC. Available from: <http://www.cmec.ca/postsec/qa/indexe.stm> [Accessed 23 January 2008].

²⁴⁴ Observatory on Borderless Higher Education (2006) *Diversity or dilution of quality? Wave of new providers is expected in Australia, as Government releases revised National Protocols* (Breaking News: 16th July 2006). OBHE. Available with subscription from: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=569&mode=month> [Accessed 23 January 2008].

Australia has also been keen to protect and promote its reputation for quality provision abroad and has mechanisms in place to monitor the quality of the offshore activities of its universities. In 2005 the Australian government committed AUS\$590,000 per annum for three years to the Australian Universities Quality Agency (AUQA) for enhancing offshore auditing of Australian higher education and developing bilateral partnerships. The Australian government has stated that it remains committed to providing a regulatory framework that will support trade in education services and promote quality exports.²⁴⁵

Similar to Australia, a foreign institution wishing to set up operations in New Zealand must demonstrate that it meets agreed standards and that it is a recognised and reputable institution in its own country. Unless seeking public funding there is no requirement for foreign institutions to meet specific quality standards. Foreign providers that wish to be eligible for public subsidies must register with the New Zealand Quality Assurance (NZQA) agency and have their courses accredited.²⁴⁶ With regard to monitoring offshore activities, New Zealand has made some provisions for monitoring programmes and qualifications abroad but does not carry out direct audits of offshore activity. Like other major exporters it is important that the global reputation of the New Zealand tertiary sector is maintained to facilitate the expansion of exports. To this end the New Zealand Qualifications Authority is developing a series of formal agreements with overseas accreditation authorities to monitor offshore provision and all organisations planning to deliver courses overseas need to notify the NZQA. The NZQA has also drafted guidelines on quality assurance for overseas delivery of approved courses and registered qualifications.²⁴⁷

The conditions under which foreign providers operate in the UK are again relatively liberal. There are no regulations for foreign providers in the UK as long as they are not claiming to offer UK degrees and provided that they are not defrauding students. Like elsewhere, it has been judged, thus far, that the UK higher education environment and market will not allow low quality providers to prosper when the range, diversity and quality of the domestic sector are strong. However, the UK has been affected by a number of scandals concerning bogus providers and degree mills selling fake UK degrees. These are illegal, but the relaxed legislation of the UK towards foreign and private providers has made the UK vulnerable to this practice. One commentator remarked that: "The UK is becoming a haven for bogus universities. They feign legitimacy, and the UK is being preyed upon because of weak legislative practice."²⁴⁸ The reputational implications for the UK might force legislators to look at this issue more carefully. Stringent

²⁴⁵ Department of Education, Employment and Workplace Relations, Australia (formerly DEST). *Quality Auditing of Offshore Delivery*. Available from: http://www.dest.gov.au/sectors/international_education/policy_issues_reviews/reviews/quality_auditing_of_offshore_delivery/ [Accessed 23 January 2008].

²⁴⁶ Ziguas, C. (2003) *The Impact of the GATS on Transnational Tertiary Education: Comparing Experiences of New Zealand, Australia, Singapore and Malaysia*. The Australian Educational Researcher, 30 (3), p. 95. Available from: <http://www.aare.edu.au/aer/online/30030f.pdf> [Accessed 23 January 2008].

²⁴⁷ Catherwood, V. (2006) *Offshore Education: Minimum Regulatory Requirements, Including Quality Assurance Measures*. Prepared for Education New Zealand. Available from: <http://www.educationnz.org.nz/indust/eeip/OffEdReportv2.pdf> [Accessed 23 January 2008].

²⁴⁸ Dowd, H. (2005) *UK Kudos Hit by Fake Degrees* (23rd December 2005) Times Higher Education Supplement.

auditing and accreditation processes do however apply to those institutions which offer UK degrees and as mentioned only one private university and two private colleges, all UK based, have obtained these powers. Private and foreign providers are not supported with state funding, although there are increasing cases of public universities collaborating with private and foreign providers to provide some, most commonly pre-degree, services.

Accreditation and quality assurance in the UK is undertaken by the Quality Assurance Agency for Higher Education in the UK (QAA). The QAA co-ordinates auditing processes for accredited institutions in the four countries of the United Kingdom, typically by drawing on peer review processes. The QAA also advises the government on applications for degree awarding powers, university title or designation as a higher education institution.²⁴⁹ In addition the UK government provides a list of recognised institutions able to award degrees in their own right or on behalf of other recognised degree awarding institution.²⁵⁰ With regard to offshore provision by UK institutions the QAA engages in a number of international quality assurance activities and is a member of several international bodies concerned with cross-border quality assurance such as the International Network of Quality Assurance Agencies in Higher Education (INQAAHE) and the European Network for Quality Assurance (ENQA). Since 1997 the QAA has conducted international quality audits of overseas operations by UK institutions offering UK degrees and to date has carried out around 130 audits. As the UK is part of the EU, it also abides by the international regulations set by the European Qualifications Framework, which aids the comparison of qualifications across the EU. One of the UK's challenges under the GATS is to ensure that quality assurance processes are maintained and do not come under pressure for being 'unnecessarily burdensome' for foreign providers, or indeed for UK exporters.

Concluding comments

The trading position of the major exporters is strong, especially when compared to countries in the other regions of the Commonwealth. They have well-established higher education sectors, comparatively high levels of enrolment and capacity, strong export profiles and robust regulatory and quality assurance procedures, all of which serve to protect them from the most obvious risks of committing higher education services to GATS rules. The likelihood of the market becoming flooded with rogue providers or undermining the tradition, quality or existing regulation of higher education in these countries is relatively remote and certainly not as significant as in other regions. Nonetheless institutions and government still need to be aware of the implications of the agreement and how to protect those areas that might be vulnerable under the GATS rules – such as regulations that appear to contravene their commitments on market access, but especially on national treatment.

²⁴⁹ See UK Quality Assurance Agency website for further information about its activities. Available from: <http://www.qaa.ac.uk/aboutus/qaalintro/intro.asp> [Accessed 23 January 2008].

²⁵⁰ See Recognised UK degrees website at: <http://www.dfes.gov.uk/recognisedukdegrees>. [Accessed 18 February 2008].

Critics of the inclusion of education in the GATS commitments are strongest among students and staff and their representative bodies, as well as NGOs concerned about the implications of trade liberalisation more generally. Regional and national associations of universities have also been very sceptical about the benefits of signing up to the GATS, and in 2001 four national and regional university associations signed a Joint Declaration on Higher Education and the GATS stating:

Our member institutions are committed to reducing obstacles to international trade in higher education using conventions and agreements outside of a trade policy regime..... Our respective countries should not make commitments in Higher Education Services or in the related categories of Adult Education and Other Education Services in the context of the GATS. Where such commitments have already been made in 1995, no further ones should be forthcoming.²⁵¹

No significant revision to this position has subsequently been made. The key rationale behind this declaration is that too little is known about the consequences of the GATS on the quality, access and equity of higher education and on the ability of national governments to regulate their sectors as they wish under the terms of the Agreement. The ambiguity surrounding Article I:3 is also viewed as problematic. Moreover, it is further argued that the need for international trade agreements covering education is not clearly demonstrated. Trade and various other forms of internationalisation are already advancing outside the legally enforced international trade framework and the argument follows that it is not necessary for wide-reaching commitments to be made across the board to WTO members in order to develop and advance the international activities of higher education institutions.

Nevertheless, the debate around the notion of higher education as a tradable commodity has moved on somewhat since 2001, with growing recognition that trade is very much a reality that countries and institutions have to grapple with. At a time when market competition is becoming an increasingly important consideration, the major exporting countries, including those in the Commonwealth, are likely to become more concerned with protecting and advancing their trading positions and working towards a more open and liberal trading environment. Clearly major exporters will always be at the vanguard of the forces for greater liberalisation. However, what the experience of these countries demonstrates is that a liberal position on the trade in education services is facilitated by a strong higher education sector with strong mechanisms in place to assure the quality and integrity of provision. Without this countries are much more vulnerable to the risks of trade liberalisation.

²⁵¹ *Joint Declaration on higher education and the General Agreement on Trade in Services*. Signed by the Association of Universities and Colleges of Canada, American Council on Education, European University Association, Council for Higher Education Accreditation Available from: http://www.aucc.ca/_pdf/english/statements/2001/gats_10_25_e.pdf [Accessed 23 January 2008].

Key messages

Trade has become an important aspect of higher education in the past 20 years, driven forward by the closer alignment between knowledge production and economic globalisation. Knowledge has become a key commodity of global exchange and the trade in education services is one of the visible manifestations of this exchange. The trade in education services is driven not only by financial imperatives but is a broader reflection of a sector that has become more international and more globally networked in its core functions and outlook. As the trade in education services evolves and becomes more widespread, there is growing pressure to integrate it within the scope of formal international trade agreements, not least the General Agreement on Trade in Services. Across the Commonwealth, higher education systems and contexts vary considerably and their responses to and participation in the trade in education services reflects this diversity. This final section draws together some of the key messages to emerge from this study with the aim of prompting further discussion and analysis.

- Trade has come to play a crucial role in many higher education systems across the globe. This trade is worth billions and its growth is gathering pace and likely to become increasingly important to higher education sectors internationally. Trade not only provides important revenue for many institutions and economies, it can also significantly boost the higher education capacity of countries importing education services. Student mobility remains the primary form of trade in education services but programme mobility and cross-border provision is becoming increasingly common.
- The spread of private higher education provision over the past decades has underpinned the growth in trade. Foreign providers often use private providers as a gateway into new markets. Higher education providers that have an established presence in a foreign territory tend to operate through a local private provider or set up their own private operation and therefore benefit from an established infrastructure and regulatory framework for private provision. Another critical dimension in the growth of private investment in higher education is the increasing dependence of public institutions on private sources of income. As public funding comes under greater pressure in the face of growing demand, the overlap between the public and private spheres in the higher education provision is set to increase.
- The General Agreement on Trade in Services seeks to progressively liberalise the conditions of international trade in services. To date only 38 countries have made commitments in higher education services, seven of which are Commonwealth countries. The Doha round of trade negotiations has been protracted and contentious and negotiations around trade commitments

are likely to continue into 2008 and possibly 2009. The Doha round was meant to deliver positive outcomes for developing countries but has faced difficulties in reaching agreements in the areas of agricultural subsidies and import tariffs. The services negotiations have not been quite as fractious as the other strands of negotiation but there are a number of key areas of concern especially around the autonomy to regulate service sectors. With regard to the development agenda of the Doha round, critics have argued that the emphasis on expanding the coverage of the GATS and of developing negotiating strategies and guidelines to expedite the process of liberalisation is fundamentally at odds with the achievement of development outcomes. Advocates of the inclusion of education within the GATS argue that it represents an important opportunity for developing countries to build on much needed higher education capacity.

- Positions on the trade in education services and on the particular issue of whether education should be included within the GATS are polarised. They are closely aligned with the broader debate about the role of the market in higher education and the commodification of higher education services and outputs. Some have argued that the growing influence of the market is undermining the fundamental public and social values of higher education. Others feel that the market drives up quality and makes higher education responsive to the needs and demands within society. A third and possibly dominant position, takes a less ideological and more pragmatic approach, accepting that higher education is subject to market forces, especially in the face of falling public subsidies, and must adapt to this context whilst continuing to fulfil its social obligations and maintaining high levels of quality. The trade debate appears to be similarly moving towards this latter position with acceptance that trade is happening and is set to expand and therefore needs to be properly addressed and managed by the education sector. However, there are different views on the most appropriate mechanism for managing this process. Some are pushing for a more liberal free-market approach, guided by the underlying principle of removing the barriers to trade. The GATS adopts this approach on a multilateral basis and some of the strongest advocates for trade in education such as New Zealand are driving forward the GATS agenda. Other countries support relatively liberal conditions for trade but want to retain flexibility and discretion regarding their trading partners and are therefore not keen on engaging in the multilateral process, Singapore and Malaysia might be seen as falling into this category. The most common position across the Commonwealth, however, is to place education outside of the international trade framework represented by the WTO. This is typified by the South African position, where the trade in education services is perceived to be best managed through conventions and agreements outside of the legally binding trade policy regime.

- Regulation of the trade in education services and of cross-border provision more generally is a critical issue and the area that most countries are particularly sensitive about in relation to removing the barriers to the trade education services. Concerns about the impact of trade agreements on the regulation of foreign provision are more keenly felt in developing countries where regulatory frameworks tend to be less well established and countries are more vulnerable to the negative aspects of trade, such as the influx of low quality providers. Where enrolment, capacity and quality are high – private and foreign providers have to add value through distinct and high quality offerings to be able to compete successfully with domestic provision. Where this is not the case and enrolment and capacity is low, but demand is high, market forces might sustain the operations of unscrupulous low-cost providers. This is an ongoing issue that will exercise trade negotiators in all areas of the services negotiations but might prove a particular sticking point for sensitive and relatively uncommitted sectors such as education that are imbued with a very public mission.

The debate surrounding the trade in education services is unlikely to abate, linked as it is to fundamental issues concerning the essential purpose and function of higher education within a changing and evolving context. It is incumbent upon higher education stakeholders and policy makers across the Commonwealth and beyond to ensure that they are positioned at the forefront of this debate.

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Appendices

Appendix 1: GATS commitments in education by country

<i>Country</i>	Education level					<i>Total</i>
	<i>Primary</i>	<i>Secondary</i>	<i>Higher</i>	<i>Adult</i>	<i>Other</i>	
Albania	x	x	x	x		4
Armenia			x	x		2
Australia		x	x		x	3
Austria	x	x		x		3
Bulgaria	x	x		x		3
Cambodia			x	x	x	3
China	x	x	x	x	x	5
Congo RP			x			1
Costa Rica	x	x	x			3
Croatia		x	x	x	x	4
Czech Republic	x	x	x	x	x	5
Estonia	x	x	x	x	x	5
European Community	x	x	x	x		4
FYR Macedonia	x	x	x	x	x	5
Gambia	x			x	x	3
Georgia	x	x	x	x		4
Ghana		x			x	2
Haiti				x		1
Hungary	x	x	x	x		4
Jamaica	x	x	x			3
Japan	x	x	x	x		4
Jordan	x	x	x	x	x	5
Kyrgyz Republic	x	x	x	x		4
Latvia	x	x	x	x		4
Lesotho	x	x	x	x	x	5
Lichtenstein	x	x	x	x		4
Lithuania	x	x	x	x		4
Mali				x		1
Mexico	x	x	x		x	4
Moldova	x	x	x	x	x	5
Nepal			x	x	x	3
New Zealand	x	x	x			3
Norway	x	x	x	x	x	5
Oman	x	x	x	x		4
Panama	x	x	x			3
Poland	x	x	x	x		4
Rwanda				x		1
Saudi Arabia	x	x	x	x	x	5
Sierra Leone	x	x	x	x	x	5
Slovak Republic	x	x	x	x	x	5
Slovenia		x	x	x		3
Switzerland	x	x	x	x		4
Taiwan China		x	x	x	x	4
Thailand	x	x		x		3

Trinidad and Tobago			x		x	2
Turkey	x	x	x		x	4
USA				x	x	2
Total 47	33	37	38	37	22	167

Source: Jane Knight *Higher Education Crossing Borders: A guide to the implication of the General Agreement on Trade in Services (GATS) for cross-border education* pp. 72-73

Appendix 2: Annex C of Hong Kong Declaration: Services

Objectives

1. In order to achieve a progressively higher level of liberalization of trade in services, with appropriate flexibility for individual developing country Members, we agree that Members should strive to ensure that their new and improved commitments adhere to the following objectives:

(a) Mode 1

- (i) commitments at existing levels of market access on a non-discriminatory basis across sectors of interest to Members
- (ii) removal of existing requirements of commercial presence

(b) Mode 2

- (i) commitments at existing levels of market access on a non-discriminatory basis across sectors of interest to Members
- (ii) commitments on mode 2 where commitments on mode 1 exist

(c) Mode 3

- (i) commitments on enhanced levels of foreign equity participation
- (ii) removal or substantial reduction of economic needs tests
- (iii) commitments allowing greater flexibility on the types of legal entity permitted

(d) Mode 4

- (i) new or improved commitments on the categories of Contractual Services Suppliers, Independent Professionals and Others, de-linked from commercial presence, to reflect *inter alia*:
 - removal or substantial reduction of economic needs tests
 - indication of prescribed duration of stay and possibility of renewal, if any
- (ii) new or improved commitments on the categories of Intra-corporate Transferees and Business Visitors, to reflect *inter alia*:
 - removal or substantial reduction of economic needs tests
 - indication of prescribed duration of stay and possibility of renewal, if any

(e) MFN Exemptions

- (i) removal or substantial reduction of exemptions from most-favoured-nation (MFN) treatment
- (ii) clarification of remaining MFN exemptions in terms of scope of application and duration

(f) Scheduling of Commitments

- (i) ensuring clarity, certainty, comparability and coherence in the scheduling and classification of commitments through adherence to, *inter alia*, the Scheduling Guidelines pursuant to the Decision of the Council for Trade in Services adopted on 23 March 2001
- (ii) ensuring that scheduling of any remaining economic needs tests adheres to the Scheduling Guidelines pursuant to the Decision of the Council for Trade in Services adopted on 23 March 2001.

2. In order to provide guidance for the request-offer negotiations, the sectoral and modal objectives as identified by Members may be considered¹.
3. Members shall pursue full and effective implementation of the Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services (LDC Modalities) adopted by the Special Session of the Council for Trade in Services on 3 September 2003, with a view to the beneficial and meaningful integration of LDCs into the multilateral trading system.
4. Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles X, XIII, and XV in accordance with their respective mandates and timelines:
 - (a) Members should engage in more focused discussions in connection with the technical and procedural questions relating to the operation and application of any possible emergency safeguard measures in services.
 - (b) On government procurement, Members should engage in more focused discussions and in this context put greater emphasis on proposals by Members, including on proposals for a possible framework for government procurement.
 - (c) On subsidies, Members should intensify their efforts to expedite and fulfil the information exchange required for the purpose of such negotiations, and should engage in more focused discussions on proposals by Members, including the development of a possible working definition of subsidies in services.
5. Members shall develop disciplines on domestic regulation pursuant to the mandate under Article VI:4 of the GATS before the end of the current round of negotiations. We call upon Members to develop text for adoption. In so doing, Members shall consider proposals and the illustrative list of possible elements for Article VI:4 disciplines².

Approaches

6. Pursuant to the principles and objectives above, we agree to intensify and expedite the request-offer negotiations, which shall remain the main method of negotiation, with a view to securing substantial commitments.
7. In addition to bilateral negotiations, we agree that the request-offer negotiations should also be pursued on a plurilateral basis in accordance with the principles of the GATS and the Guidelines and Procedures for the Negotiations on Trade in Services. The results of such negotiations shall be extended on an MFN basis. These negotiations would be organized in the following manner:
 - (a) Any Member or group of Members may present requests or collective requests to other Members in any specific sector or mode of supply, identifying their objectives for the negotiations in that sector or mode of supply.
 - (b) Any Member or group of Members who have made such requests in a specific sector or mode of supply, together with Members to whom such requests have been made, and any other interested Member, shall enter into plurilateral negotiations to consider such requests.
 - (c) Plurilateral negotiations should be organised with a view to facilitating the participation of all Members, taking into account the limited capacity of smaller delegations to participate in such negotiations.
8. Due consideration shall be given to proposals on trade-related concerns of small economies.
9. Members, in the course of negotiations, shall develop methods for the full and effective implementation of the LDC Modalities, including expeditiously:

- (a) Developing appropriate mechanisms for according special priority including to sectors and modes of supply of interest to LDCs in accordance with Article IV:3 of the GATS and paragraph 7 of the LDC Modalities.
- (b) Undertaking commitments, to the extent possible, in such sectors and modes of supply identified, or to be identified, by LDCs that represent priority in their development policies in accordance with paragraphs 6 and 9 of the LDC Modalities.
- (c) Assisting LDCs to enable them to identify sectors and modes of supply that represent development priorities.
- (d) Providing targeted and effective technical assistance and capacity building for LDCs in accordance with the LDC Modalities, particularly paragraphs 8 and 12.
- (e) Developing a reporting mechanism to facilitate the review requirement in paragraph 13 of the LDC Modalities.

10. Targeted technical assistance should be provided through, *inter alia*, the WTO Secretariat, with a view to enabling developing and least-developed countries to participate effectively in the negotiations. In particular and in accordance with paragraph [...] on Technical Assistance in the Hong Kong Ministerial Declaration, targeted technical assistance should be given to all developing countries allowing them to fully engage in the final phase of the negotiation. In addition, such assistance should be provided on, *inter alia*, compiling and analyzing statistical data on trade in services, assessing interests in and gains from services trade, building regulatory capacity, particularly on those services sectors where liberalization is being undertaken by developing countries.

Timelines

11. Recognizing that an effective timeline is necessary in order to achieve a successful conclusion of the negotiations by [...], we agree that the negotiations shall adhere to the following dates:

- (a) Any outstanding initial offers shall be submitted as soon as possible.
- (b) Groups of Members presenting plurilateral requests to other Members should submit such requests by [February 2006] or as soon as possible thereafter.
- (c) A second round of revised offers shall be submitted by [date].
- (d) Final draft schedules of commitments shall be submitted by [date].
- (e) Members shall strive to complete the requirements in 9(a) before the date in 11(c).

Review of Progress

12. The Special Session of the Council for Trade in Services shall review progress in the negotiations and monitor the implementation of the Objectives, Approaches and Timelines set out in this Annex.

Notes:

1. As attached to the Report by the Chairman to the Trade Negotiations Committee on 28 November 2005, contained in document TN/S/23, as well as any future revisions thereof.

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2. As attached to the Report of the Chairman of the Working Party on Domestic Regulation to the Special Session of the Council for Trade in Services on 15 November 2005, contained in document JOB(05)/280.

Appendix 3: Plurilateral Request on private education services

Further to paragraphs 25 through 27 of the Hong Kong Ministerial Declaration, and in accordance with paragraphs 7 and 11 (b) of Annex C of the Hong Kong Ministerial Declaration, the Mission of New Zealand is pleased to present the delegation of [recipient Member] with a collective request in private education services on behalf of the following interested Members: Australia, Chinese Taipei, Malaysia and the United States.

This request identifies specific objectives for private education liberalization, while recognizing the flexibilities provided for individual developing country Members in accordance with Article XIX.2 of the GATS. The aforementioned interested Members are also deemed to be recipients of this request. In accordance with paragraph 7 of Annex C of the Hong Kong Ministerial Declaration, this collective request is intended to complement, and not supersede, the bilateral request-offer negotiations and the specificity of bilateral requests.

The Mission of New Zealand has the further pleasure to invite [recipient Member] to participate in a plurilateral discussion of this request, which will be organized in Geneva during the Services cluster taking place from 27 March to 7 April, 2006. Please note that 21 other Members have received this collective request in private education services from the aforementioned group of interested Members, and have also been invited to this plurilateral meeting. The aforementioned interested Members reserve the right to modify the content of this request in the future. The list of interested Members is also subject to change.

- The requesting Members urge recipient Members to take commitments in private higher and/or other education.

A. The importance of private education services

Trade in private education services has seen rapid growth in recent years. Estimated at somewhere between \$US40-50 billion, private education services has indeed become a major tradable service sector in a wide range of countries. As well as generating economic benefits, cross-border education brings with it opportunities for students to gain a truly international understanding of their subject. It also helps to level the playing field in a knowledge-driven economy by providing access to subjects that might not otherwise be available domestically or by providing access to the world leaders in a given field. Properly regulated, increased trade in education opens the door to great economic, social, cultural and political benefits.

B. Key points in this request

- The requesting Members are seeking new or improved commitments in relation to private higher education (CPC 923**) and/or private "other" education (CPC 929**) only.
- The requesting Members are **not** requesting commitments in public education.
- Making a commitment in education, especially in private education, does **not** necessarily mean committing government resources to private institutions. The annex to this request contains an example of how government funding, as well as education in institutions that are largely publicly funded, can be excluded from commitments.
- The requesting Members suggest that scheduling an offer to make a commitment in private education might include two key features:
 - A sector description that excludes that part of a member's sector that it considers public *combined with*

- A limitation for government funding available to students or institutions.
- Attachment 1 addresses some frequently-asked questions about how Members can limit their commitments to "private" education only. Attachment 2 shows how exclusions and limitations may be incorporated into a Member's schedule. This example is indicative only.

C. Request: Sub sectors and modes in which new and improved commitments are sought

The following checklist is presented as a plurilateral request in accordance with Annex C of the Ministerial Declaration. The example provided in the annex is indicative only, and does not form part of the request.

(i) The Request

A meaningful commitment in private education services¹ would include:

- Coverage of private higher (CPC 923**) and/or private other education (CPC 929**);
- No MA or NT limitations on mode 1 supply of education services (i.e. "none");
- No MA or NT limitations on mode 2 (i.e. "none");
- For mode 3:
 - No MA or NT limitations (i.e. "none")
 - or**
 - No MA or NT limitations, other than scheduling a time-bound limitation in respect of foreign capital participation/shareholdings
- For mode 4³: horizontal commitments that allows natural persons who are education providers to enter.

Attachment 2 gives an example of a possible scheduling approach.

(ii) Developing countries

The co-sponsors recognise that flexibility should be allowed for individual developing Members in taking commitments in different services sectors across the private education checklist as well as in developing the content of such commitments, taking into account their development needs and priorities. In particular, in making this request, it is understood that Malaysia subscribes to the principle of progressive liberalization as elaborated in Article XIX.2 of the GATS.

¹ As indicated in Part B of this document, such a meaningful commitment could exclude public services and/or government funding.

² "Higher education" (CPC 923) is understood to cover both post-secondary technical and vocational education services (CPC 92310) and other higher education services (CPC 92390).

³ For this element, the United States is not a requesting Member, but shall also be deemed a recipient.

Attachment 1

How to commit private education services while protecting policy sensitivities

(i) Private, not public education

The requesting members recognise that education does, and should, enjoy a special status in society. We recognise that most members provide some form of public, or state education, and that for various reasons, some members do not wish to make commitments in this area.

For this reason, the requesting members only request that members make commitments in private education, which by its nature, is already open to foreign investment in many members. For this reason, many members are therefore comfortable, in principle, with making commitments in private education services, as it simply entails maintaining existing levels of market access and national treatment.

(ii) The problem: the futile search for a universal definition of "public" and "private"

However, the requesting members recognise that many members have been reluctant to make such commitments because of the perceived difficulty in crafting a commitment in private education only. The perceived need to use the terms "private" and "public" to define what is "private" or "public" has created particular concern for some members.

However, it is **not** necessary to **define** or even **use** the terms 'private' or 'public' in order for a member to avoid committing what it considers to be public education.

(iii) The solution: treat education like any other sector that has both public and private dimensions and describe, using domestic structures, what you do and do not wish to commit

The requesting members certainly do not suggest any such definition for use in a schedule. This would be unworkable: we recognise that what is considered "public education" and "private" differs between members. Therefore, the co-sponsors simply suggest that members treat education like any other service in which they do not wish to commit the full sector, and use the sectoral column to **describe, based on their own country's circumstances**, that part of education services they wish to commit. There is no need to attempt to find a universally accepted definition of public and private and to use these terms to make a commitment. For example, one Member has simply excluded educational institutions that have government equity or which receive government assistance, as not falling within the scope of private education. After all, there are many sectors in which services can be provided by both the government and the private sector; for example: telecommunications, postal services, medical services and environmental services. Many members have extensive commitments in these sectors in the absence of a universal definition of what is "public" and what is "private." Instead, members have used the flexibility that the GATS provides them to craft a commitment that fits their own local circumstances. To take an example from legal services, some members commit legal services, except legal services provided under a legal aid scheme free of charge to the client. Further, in order to ensure that public funding provided to students who are citizens or permanent residents and domestic research grants are clearly outside any commitment, it is suggested that members make clear in their schedule that these fall outside the scope of their commitments. An example is provided in Attachment 2.

Questions & Answers

(i) Question: Does a commitment in private education mean using scarce government resources on private education competitors?

No. Whether a member wishes to allow private education services providers to access government funding is entirely up to that member. Public funding can be excluded from coverage. All the requesting members ask is that if a member chooses to make government funding available to private education providers, that a member consider extending the same treatment to both domestic and foreign private providers.

(ii) Question: Won't commitments on education reduce a member's ability to regulate its national curriculum?

No. All members retain their sovereign right to regulate, as recognised in the preamble. A member's right to set its education curriculum can in no way be described as a market access or national treatment issue.

(iii) Question: How about accreditation? Would accreditation criteria be affected by commitments? Would commitments obligate the accreditation of institutions located anywhere in the world?

In some members, some types of education institutions are "accredited", one effect of which is that they are entitled to receive state support. There are several points which are important to note in this respect. First, objective quality standards applied by accreditors are entirely consistent with market access and national treatment, and further, fall within a member's right to regulate, to the extent that accreditation is a form of regulation. Secondly, accreditation bodies cannot be expected to perform functions which exceed their competence, such as to accredit an institution located in a foreign country. Third, if members exclude coverage of government funding, then the fact that accreditation entails access to such funding is no longer a market access or national treatment issue.

(iv) What are the different ways in which private education can be exported?

There are several ways in which a foreign supplier can provide private education:

- Through educators travelling abroad to deliver courses (mode 4).
- Through a 100% foreign owned supplier (this in no way detracts from a member's right to set its curriculum, and regulate standards etc.) (mode 3).
- Through a joint-venture, whereby the foreign institution shares ownership of the facility (mode 3).
- Through a student travelling abroad to study at a foreign institution (mode 2).
- Through a twinning arrangement, whereby institutions in different countries enter into an arrangement that allows students to complete part of their course in institution A, and then travel abroad to complete the other part in institution B. Because the student is moving abroad to receive education in institution B, and institution B will receive some payment for this, this can be a mode 2 arrangement. However, because institution A will often continue to receive revenue for that part of the course delivered in institution B (which is effectively acting as an agent for institution A), there may also be mode 3 trade.
- Through a correspondence or internet-based course (mode 1). This is often combined with on-campus study abroad (mode 2).

Attachment 2

An example of how a private education commitment can be scheduled

An example of a way to 'effectively' commit only private education which does not depend on a definition

SECTORAL	MA	NT	Additional
[Private] Higher Education (CPC 923**)	1) None 2) None 3) None 4) Unbound except as set out in the horizontal section		1), 2), 3) The granting of [insert member] federal or state government funding or subsidies may be limited to [insert member]-owned institutions, including, <u>but not limited to</u> , land grants, preferential tax treatment, and any other public benefits. <u>Federal and State scholarships, grants and loans</u> may be limited to [insert member] 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 [insert member] jurisdictions. 4) Unbound except as set out in the horizontal section.
[Private] Other education (CPC 929**)	1) None 2) None 3) None 4) Unbound except as set out in the		1), 2), 3) The granting of [insert member] federal or state government funding or subsidies may be

Appendix 4: Preamble to US GATS offer

The United States is considering including in its offer commitments on Higher Education Services (including training services and educational testing services, but excluding flying instruction). These commitments would include, inter alia, the following limitations:

- Nothing in this agreement will interfere with the ability of individual U.S. institutions to maintain autonomy in admissions policies, in setting tuition rates, and in the development of curricula or course content. Educational and training entities must comply with requirements of the jurisdiction in which the facility is established.
- The granting of U.S. federal or state government funding or subsidies may be limited to U.S. schools. Scholarships and grants may be limited to U.S. citizens and/or U.S. residents of particular states. Tuition rates may vary for in-state and out-of-state residents
- Additionally, the commitments would make clear that: Admission policies include considerations of equal opportunity for students (regardless of race ethnicity or gender), as well as recognition of credits and degrees; state regulations apply to the establishment and operation of a facility in the state; accreditation of the institution and its programs may be required by regional and/or specialty organizations; required standards must be met to obtain and maintain accreditation; foreign-owned entities may be ineligible for federal or state funding or subsidies, including land grants, preferential tax treatment, and any other public benefits; and to participate in the U.S. student loan program, foreign institutions established in the United States would need to meet the same requirements as U.S. institutions.