New Zealand leads collective GATS request on “private” higher education services

The government of New Zealand is spearheading an effort to pressure certain members of the WTO to open up their private higher education “market” in the ongoing GATS talks.

The collective request, tabled in early March as part of a controversial new “plurilateral” approach to negotiations approved at the Hong Kong Ministerial meeting last December, is also being supported by Australia, the United States, Malaysia, Chinese Taipei, and Japan. The countries targeted include Argentina, Brazil, Chile, China, the European Union, Hong Kong, India, Indonesia, Korea, Malaysia, Mexico, Oman, Philippines, Singapore, Pakistan, Saudi Arabia, Sri Lanka, Switzerland, Thailand, Turkey, and the United Arab Emirates.

To date, most countries have been reluctant to make GATS commitments in education out of concerns that regulations governing public schools and institutions could be affected. The plurilateral request tries to address these concerns by asking members to take commitments only in “private” higher education and other education services.

However, at a meeting organized by the demandeur group in late March, targeted countries continued to express discomfort over the ambiguity between public and private education services. The worry is that with the boundary between public and private increasingly blurring, GATS commitments in private higher education services may inadvertently expose the public system to the full weight of GATS rules.

In addition, several members stated they were reluctant to make commitments out of concern over the quality of overseas education providers. It is not clear, they said, whether GATS commitments would weaken their ability to protect students from an influx of low-quality higher education providers.

EI meets with key WTO negotiators and officials

With the launch of the plurilateral negotiations on services on March 27, EI organized a series of meetings with key countries and officials. The EI delegation, led by Monique
Fouilhoux, EI’s education and employment coordinator, included representatives of affiliates from Australia, Canada, and Denmark. Meetings were held with services negotiators from the United States, EU, Brazil, and with senior WTO officials. In addition, a special meeting was held with Mexican Ambassador Fernando de Mateo who is also the Chair of the Council for Trade in Services, the body responsible for facilitating GATS negotiations.

The EU, Mexico and Brazil, all targets of the plurilateral request, indicated they will not be acceding to the demands of the New Zealand-led group. The EU believes its current commitments on private education services already exceed those in the request. The EU stated firmly that it is not willing to eliminate the specific exemptions that its member states have taken to protect against GATS coverage of education services.

For example, WTO officials told the EI delegation in Geneva that if rules on licensing requirements are developed, they would be interpreted broadly. The rules would apply not only to professional licensing but also to school accreditation, as well as licensing of health facilities and laboratories.

Similarly, according to the WTO secretariat, technical standards apply, amongst other things, to “the rules according to which the service must be performed.” Again, WTO officials conceded that this could apply to standards related to quality assurance requirements of schools, as well as to health and safety.

**Domestic regulation rules questioned**

As part of the current round of WTO talks, countries are also negotiating new rules on domestic regulation. In the GATS, domestic regulation refers to rules that govern the qualification requirements, licensing procedures, and technical standards of individuals or companies that provide a service. The purpose of the new rules would be to require countries to ensure that their domestic regulations are transparent, relevant, and objective.

The scope of the proposed rules on domestic regulation is very broad. Many types of government measures covering education and other public services could be affected.

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**What’s wrong with the proposed rules on domestic regulation?**

- The rules would unduly interfere with the right of governments to regulate their education systems. It is simply not acceptable that education regulations be subject to second-guessing by the WTO.
- The rules ignore the reality of how regulations, including those affecting education, are developed.
Rules and standards are reached through compromises that impose neither the greatest burden nor the least burden on businesses and other providers of a service.

• Requirements that regulations be based on “objective” criteria also raise concerns. That’s because many legitimate regulations are often based on “subjective” judgments about the quality of a service.

• All governments, but developing countries in particular, require flexibility to maintain and to extend their regulation of education. As education systems develop, the need for additional regulation may arise.

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To date, most of the talks around domestic regulation have centred upon questions of transparency -- that is, ensuring that regulations are publicly available and clear. However, there is disagreement over the understanding of the term.

For some members, such as Brazil, transparency means only that members should be required to publish all their regulations regarding qualification requirements, licensing requirements, and technical standards. Others, such as the US and the EU, are pressing for a broader notion of transparency that includes prior notice of any new or modified regulation, with the opportunity for other countries to offer their comments.

In their meeting with the EI delegation, Brazilian officials indicated that their country, and many other developing countries, would never accept the broader definition of transparency. The requirement of prior notification and consultation would create an undue burden on them and allow industrialised countries to exert pressure to withdraw or weaken regulatory measures.

Other countries want the new domestic regulation rules to require governments to prove that regulatory measures they adopt, even if they are applied equally to foreign and domestic providers of a service, are “not more burdensome than necessary.”

Needless to say, this so-called “necessity test” is highly controversial. The US representative told the EI delegation that his government could not accept the necessity test. State governments and regulators in the United States are strongly opposed to such a provision.

Similarly, Brazil is planning to issue a proposal on domestic regulation that will “delete or dilute” the requirement of a necessity test.

Looking ahead

GATS negotiations have begun again in earnest, with officials hoping that a final deal can be reached by October of this year. EI will continue to monitor and intervene in the talks as necessary in order to ensure that the interests of teachers and other education workers are heard.
In the meantime, affiliates are encouraged to continue to lobby their governments to keep education out of GATS and to oppose the new rules on domestic regulation.

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