

**Hawke Institute Working Paper Series
No 1**

**THE WORLD TRADE ORGANISATION
AND POST-SECONDARY EDUCATION:
IMPLICATIONS FOR THE PUBLIC
SYSTEM IN AUSTRALIA**

Marjorie Griffin Cohen

Hawke Institute,
University of South Australia
Magill, South Australia
2000

© Marjorie Griffin Cohen and the Hawke Institute,
University of South Australia 2000

The Hawke Institute
University of South Australia
St Bernards Road
Magill
South Australia 5072
Australia
www.unisa.edu.au/hawke/institute/institute

ISSN 1443-9298
ISBN 0 86803 800 8

THE WORLD TRADE ORGANISATION AND POST-SECONDARY EDUCATION: IMPLICATIONS FOR THE PUBLIC SYSTEM IN AUSTRALIA

Marjorie Griffin Cohen^{*}

Just after I arrived in Adelaide in February, I read an article by Professor Steven Schwartz in the higher education section of *The Australian*.¹ He is the vice-chancellor of Murdoch University and was writing about public universities as 'Australia's last great socialist enterprise'. According to Professor Schwartz, public universities are:

- inefficient,
- 'large public works projects with guaranteed lifetime employment',
- and they need the discipline of the market to get them into shape.

Specifically, he wants higher education to be competitive and, when possible, provided by the private sector. What is more, he believes this to be inevitable because 'higher education is increasingly an international enterprise' and, therefore, will be more and more subject to the pressures of deregulation and privatisation.

He does quite a bit of public university bashing in this paper, so it is not surprising that he thinks the demise of the public system will be a good thing. What he is calling for, at the very least, is a system in which public institutions compete 'on a level playing field' with private ones. The 'level playing field' he has in mind is equal access to public funds.

I noted with interest in subsequent issues of *The Australian* that Professor Schwartz's prescriptions for universities in Australia did not go unchallenged. So I assume that *despite* official competition policy, and massive privatisation and

^{*} Professor of Political Science and Women's Studies, Simon Fraser University, British Columbia, Canada; Visiting Scholar, Hawke Institute and the Research Centre for Gender Studies, University of South Australia. This is the text of a public lecture presented by the Hawke Institute and the School of International Business delivered at the University of South Australia, Adelaide, on 7 March 2000.

¹ Steven Schwartz, 'Uni Monopoly Inc lies on the brink', *The Australian*, 16 February 2000, p 38.

deregulation exercises in Australia (as elsewhere in wealthy countries), there is still some affection for education, at least, remaining in the public domain.

I take comfort that points of view like that of Professor Schwartz's are debated and discussed before acted upon. However, today I want to talk about the ways in which Professor Schwartz's dream could come true *without* specific national policy changes — and changes that would be subject to public debate and scrutiny.

THE WORLD TRADE ORGANISATION

Educators throughout the world became riveted on the WTO just before the meeting in Seattle in December 1999 when US Trade Ambassador Charlene Barshefsky announced that the US specifically wanted free trade in education and health services included in the new round of negotiations. She made her case strictly in economic terms by pointing out that the existing 'barriers' to trade in services hurt US corporations and 'are barriers to American exports and jobs creation'. She emphasised the importance of services trade to the US: 'Our performance in a relatively closed world — \$265 billion in services exports last year, supporting four million jobs — is simply an indicator of how much we can achieve in an open market.'²

The US is the world's leader in exports of educational and training services, generating, in 1996, \$7.5 billion in exports, leading to a trade surplus in this area of \$6.6 billion. Higher education is the fifth largest service sector export in the US.

The US position on free trade in services was alarming to Canadians (and it should be also to Australians) because it indicated that areas like education and health care, areas that are primarily in the public sector, would be the targets for increased privatisation and competition from the private sector. As I will show today, the conditions of free trade, as negotiated through the WTO, will be a serious threat to the public delivery of education. But I also want to show the ways in which the increased commercialisation of universities unwittingly brings them under the long arm of international trade agreements.

THE GENERAL AGREEMENT ON TRADE IN SERVICES

Until the WTO was created out of the last round of the General Agreement on Tariffs and Trade (GATT) in 1994, there was no multilateral agreement on services. Trade agreements historically have been mainly about reducing tariffs and eliminating other barriers to trade (such as quotas on imports) on things that were produced in one place and sold in another. Some services, like transportation, communication and financial services, have always been traded, but social

2 Charlene Barshefsky, 'Services in the trading system', speech given at the World Services Conference, Washington DC, 19 June 1999.

services, like education and health care, have generally been too place-specific to be tradeable.

As the services sectors of economies have grown, and as trade in various types of services has increased, in part because of technological changes, the rules that focused only on trade in objects were inadequate to meet the needs of service exporters. The normal identification of barriers to trade (eg tariffs and quotas) did not cover the kinds of problems service companies encountered when they tried to do business. The international corporations that exported services demanded and worked for new trading rules that would foster new international markets in services.³

In the last round of international trade negotiations that established the WTO, an enormous first step was made toward a comprehensive agreement on international trade in services. This occurred through a document called the General Agreement on Trade in Services (GATS).⁴ This agreement in principle covers *all* services, including health and education services. The WTO literature explaining the GATS indicates the enormous scope of this agreement. It is not only the first multilateral agreement to ‘provide legally enforceable rights to trade in all services’, but, even more significantly, it is also the world’s first multilateral agreement on investment. As the WTO literature explains, ‘it covers not just cross-border trade but every possible means of supplying a service, including the right to set up a commercial presence in the export market’.⁵ The kinds of rights that corporations in general would have received through the Multilateral Agreement on Investment (MAI), had it not failed as a result of international public action, can be granted to investors in services through the existing GATS.

Only when a service is provided entirely by a government does it fall outside the GATS rules. Since most education systems have some private providers involved or some level of commercialisation, virtually all systems could be affected by the GATS in some way. Some analysts argue that any institution that requires the payment of fees (even a public one) would fall within the category of ‘commercial activity’ and would be covered by the GATS as it currently exists.⁶

3 The Canada–US Free Trade Agreement (FTA) was the first major international bilateral agreement to include services. The subsequent North American Free Trade Agreement (NAFTA) between Mexico, Canada, and the US replicated the FTA provisions on services and serves as a model for WTO negotiations.

4 When the GATS was negotiated and then added to the GATT, the WTO was created.

5 WTO, ‘The design and underlying principles of the GATS’, <http://www.wto.org/wto.services/services.htm>.

6 Richard Langlois, *The WTO and the Millennium Round: what is at stake for public education?*, Education International, Brussels, 1999, p 7.

The GATS applies to services like education in two distinct ways. First, it provides a general framework of obligations that applies to all countries in the WTO. This framework stipulates that there should be no discrimination in favour of national providers (the national treatment principle) and that there should be no discrimination between other members of the agreement (the most-favoured-nation, or MFN, principle).

Secondly, the GATS identifies the specific commitments of member nations, indicating on a sector-by-sector basis the extent to which foreigners may supply services in the country. There are certain basic principles that all countries must follow, although the extent to which some services, such as education, are fully open to free trade has been a matter of individual choice of nations. In this sense, the GATS has been, in part, a voluntary agreement in which countries can decide, through 'request-offer' negotiations which service sectors they will agree to cover under GATS rules. This is the good news about GATS, ie, that it is a voluntary agreement.

So far, Australia has committed itself to some aspects of free trade in higher education, but they are neither substantial nor threatening to public education. (Neither the US nor Canada signed on to any aspects of free trade in education in the initial GATS round, although this is clearly changing.)

This voluntary nature of the GATS is a very important feature which business service organisations and the US government have placed high on their priority list of things to change. Basically, it is too slow and cumbersome.

When the Seattle meeting of the WTO ended without any agreement over the negotiating agenda for the next few years, a collective sigh of relief was heard from many sources. At the very least, there was a sense that whatever changes happened at the WTO would be slow in coming and there would be time to analyse issues and organise resistance to the most odious plans. This time to analyse and organise was critical for eliminating the MAI.

However, negotiations on free trade in educational services have already begun. This is because the GATS initial agreement provided for continuing negotiations in services, or what is often referred to as a 'built-in agenda' to liberalise services.⁷ Sectoral agreements have already been reached on information technology (December 1996), telecommunications (February 1997) and financial services

7 Article XIX of the GATS provides for the ongoing negotiations:

In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization.

(December 1997). The deliberations over free trade in these areas received very little public scrutiny and have proceeded without controversy.

The new negotiations for services, through the Council for Trade in Services, began at the end of February 2000. These negotiations have been specifically charged to ‘achieve a progressively higher level of liberalization [which shall] be directed to the reduction or elimination of the adverse effects on trade in services ... as a means of providing effective market access’.⁸

TRADE IN EDUCATION

In preparation for the ongoing negotiations in services, the WTO produced a background paper that explains trade in education services and begins to identify some of the barriers to increased access to markets by private education companies.⁹ Education services are identified in five main categories based on the traditional structure of the sector:

- *Primary education* includes the normal notion of primary education and pre-school education services, but excludes child day care services and adult literacy programs.
- *Secondary education* services include high school education, technical and vocational education, and school-type services for handicapped students.
- *Higher education* includes two distinct groups: one relates to the teaching of practical skills in post-secondary, sub-degree technical and vocational education institutions and the other deals with more theoretical educational services provided by universities, colleges and specialised professional schools.
- *Adult education* refers to all education services that are not in the regular school and university systems. This includes both general and vocational subjects, literacy programs, and any education services delivered by correspondence or broadcast. It excludes any programs delivered through the regular education system.
- *Other education* services include anything not mentioned elsewhere, with the exception of recreational matters.¹⁰

8 Ibid.

9 The information which follows is from WTO, Council for Trade in Services, ‘Education services: background notes by the Secretariat’, 23 September 1998, <http://www.wto.org/wto/services/w65.htm>.

10 Ibid, Table 9.

The WTO has identified four main categories of trade in education that receive legal protection through GATS:

- *Cross-border supply* of a service includes any type of course that is provided through distance education or the internet, any type of testing service, and educational materials which can cross national boundaries.
- *Consumption abroad* mainly involves the education of foreign students and is the most common form of trade in educational services.
- *Commercial presence* refers to the actual presence of foreign investors in a host country. This would include foreign universities setting up courses or entire institutions in another country.
- *Presence of natural persons* refers to the ability of people to move between countries to provide educational services.¹¹

In each of these categories, barriers to trade have been identified. This has been part of the built-in, ongoing agenda of the GATS. The WTO was helped in this exercise of identifying barriers by an organisation called the Global Alliance for Transnational Education (GATE). GATE is primarily an organisation of private, for-profit education providers dedicated to trade liberalisation. Its vision statement identifies its purpose: 'GATE is dedicated to fostering access to quality higher education resources on a global basis, focusing on transnational education.'¹² GATE is currently conducting a cross-national survey in order to identify restrictive practices related to cross-border educational services that go beyond those currently listed in the WTO background paper.

The kinds of restrictive practices already identified by the WTO are instructive of the actions that will be the target for change. The main point to be taken from this list is that many of the practices that are identified as barriers to trade are considered normal and necessary in order to maintain public systems of education.

11 'Natural persons' are human beings. The term is used to differentiate people from 'legal' or 'juridical' persons, terms that can apply to corporations as well as human beings.

12 Its website further explains its mission (see <http://www.edugate.org.htm>):
Committed to developing and promoting transnational education as a viable means of delivering education to the world population, GATE plans to involve country accreditation parties, college and university bodies, commercial institutions, multinational corporations, and government agencies to face the challenge of evaluating degree programs and other academic standards from countries around the world.

Barriers to Establishing a Commercial Presence:

- The inability to be recognised as a degree or certificate-granting educational institution. The WTO background notes give as an example the fact that in many countries foreign education providers are allowed in the market, but they are not legally recognised as universities. The granting of degrees is restricted to domestic institutions. The document also points out that students enrolled in these foreign institutions, because of their differential status, often do not qualify for the kinds of subsidies that students in nationally based institutions receive, ie, ‘student transportation passes and financial assistance’.
- Measures that limit direct investment by foreign education providers. This includes equity ceilings that limit the size of foreign establishments.
- National requirements. This could include any national requirements for setting up an institution or courses, receiving government grants, or any other advantages that are granted to nationally based education service providers.
- Needs tests. This refers to restrictions on the type or quantity of services, or eligibility for services provided, according to a government’s assessment of what is needed. If a government, for example, discovered that the increased education of a specific type of professional, such as doctors, put unnecessary financial pressure on the public system, any attempt to correlate education with public needs could interfere with the rights of foreign educators to gain a commercial presence.
- Restrictions on recruiting foreign teachers. The WTO specifically identifies as problematic national requirements for teachers and board members in Greece and the way in which France limits the inflow of foreign professors through regulations about length of stay, payments of taxes and needs tests.
- The existence of government monopolies. This is the most intrusive of all of the ‘barriers’ identified by the WTO. Most forms of education are supplied through government monopolies that could be seen as barriers to the establishment of a commercial presence for foreign education providers. This issue will be discussed at length in the next section.
- High government subsidisation of local institutions. This ‘barrier’ appears to address the issue of government subsidies to domestic private education providers that are not available to foreign education providers. As will be discussed below, this ‘barrier’ could also apply to subsidies to public institutions in certain circumstances.

Barriers inhibiting consumption abroad

This list of barriers focuses on measures that restrict the mobility of students. As the background paper notes, at this stage the bulk of trade in education services takes place through the education of foreign students. The US, France, Germany and the UK are the leading 'exporting' countries of this type of education service. The barriers to student mobility include:

- Direct restrictions that limit the ability of students to study in other countries through immigration and visa requirements or currency controls.
- Indirect barriers, including the difficulties encountered in translating degrees into national equivalents.
- Unequal access to resources for students.

Some of these barriers to trade are unnecessary restrictions on the movement of persons and efforts to redress these issues of access are likely to receive sympathy from the higher education community. The issue of degree equivalencies is one that needs to be resolved in an international arena, as are issues related to visa requirements and immigration controls. The important point, however, is the way in which the removal of these barriers to 'consumption abroad' is applied in distinct circumstances. For example, any country that highly subsidises students may find a requirement to provide equal access to these resources to students from another country an intolerable strain on public finances. The result could be the elimination of public subsidies to all students.

Barriers related to cross-border supply of a service:

- Restrictive use of national satellites or receiving dishes.
- Restrictions on certain types of educational materials.
- Needs tests.

In some countries the issue of needs tests and restrictions on certain types of educational materials are closely related. Smaller countries frequently attempt to consciously foster their own country's research and education materials as a way of having students taught information germane to the country. The preference of educators for nationally produced education materials could be viewed as an inhibition of the cross-border supply of a service.

Barriers related to the presence of 'natural persons':

- Needs tests.
- Different approval processes for national and foreign educational providers.
- Difficulties in recognition of foreign educational credentials.
- Visa difficulties.

Some of the issues raised in this identification of barriers to the movement of natural persons are issues that deserve to be considered more thoroughly. For example, the difficulties foreign educators, particularly from third world countries, encounter in having their education credentials recognised needs to be addressed in wealthy countries. However, removing some of the other 'barriers' identified here would be much more intrusive and could undermine the nature of the public education system.

The issue of access to jobs and resources in the education field is an area that has been hotly contested in the past in some countries. When the university system was growing rapidly in the 1960s and 1970s, the disproportional presence of professors from the UK and the US in universities in former colonial countries tended to crowd out those who were educated within these countries. Some countries give hiring preference to nationals and immigrants. Accessibility to jobs in all countries for foreign educators will be especially important in private institutions and those areas of public institutions that are privately funded or have a commercial presence. Also, as more foreign education institutions establish a commercial presence, it is likely that they will want to import their own educators.

IMPLICATIONS FOR THE PUBLIC SYSTEM

Free trade in education services will affect the higher education system in distinct ways, depending on the results of the trade negotiations and what the position of various governments is in these negotiations. In what follows, examples of the kinds of restrictions that will be placed on the public system will be given for two distinct cases. One is if a country simply signs on to the total range of the existing GATS rules for higher education. The other will be to examine some of the consequences of removing the barriers to trade in education services that have been identified by the WTO.

Existing GATS rules

A commitment to fully cover educational services under the existing GATS rules would require that foreign educational service providers be guaranteed access to the educational market. This includes the right to invest within the country

(establish a commercial presence), to provide services to Australians from abroad (cross-border supply), to provide services to Australians travelling abroad (consumption abroad), and to send educators and salespersons into Australia on a temporary basis (presence of natural persons). All the distinct 'modes of supply' of educational services would be available to foreign education providers intending to provide education services to Australians.

Governments would be required to give degree-granting authority to foreign educational service providers and to ensure that non-governmental bodies that exercise delegated governmental authority, such as teachers colleges or professional associations, recognise degrees and diplomas granted by foreign educational service providers.

Foreign higher educational institutions now operate in other countries on a relatively small scale. For example, Phoenix University, a US-based private education service operating in British Columbia, targets part-time and older students for US undergraduate degrees. These are bare-bones operations that rely heavily on part-time, minimally paid teaching staff. They are not research institutions and do not provide the range of services that public universities do. They are commercial, for-profit enterprises. It is certainly conceivable that there could be some prejudice against these degrees that would devalue their worth. This could lead to demands for the right of these institutions to grant country-specific degrees or the right for their students and graduates to receive the same treatment as graduates of the public universities where they operate.

Governments would also be required to provide foreign educational service providers with the same grants, financial assistance and other advantages that they provide to like educational service providers. In the same vein, any preferential tax treatment for like schools, universities, colleges and other educational institutions would either have to be eliminated, or also given to foreign educational service providers.

These requirements that 'like' institutions be treated the same would appear to protect the public system because governments would only need to support foreign educational providers to the extent that they support 'like', that is, private, educational providers. The problem, however, is that increasingly public institutions of higher education are becoming commercialised in that they are entering into direct competition with the private sector in the financing and delivery of education services. This commercialisation of certain aspects of public institutions make them more 'like' private ones. The consequences of this are extremely important for the interpretation of trade rules and, as public institutions

come into competition with private providers through their commercialised activities, 'like' treatment can be claimed by their foreign competitors.¹³

Public grants or tax incentives for research and development by educational institutions would be problematic, as would any requirement that people within the country be given preferential access to the benefits of that publicly supported research and development. Any residency requirements that stipulated that first preference for teaching positions be given to nationals or immigrants would need to be eliminated. Also, any government-provided student loans, bursaries and other financial aid to students attending foreign educational institutions or taking courses from such institutions would need to be provided on the same basis as to students attending public institutions.

Signing on to the existing GATS in higher education would substantially affect the public nature of higher education. While some aspects of these changes may meet the approval of the education community, these changes are not ones that will be made by education bodies themselves. Once these issues are codified in the GATS, any changes will be a matter settled through dispute settlement mechanisms at the international level, not by negotiations within a country.

Eliminating 'barriers'

If the new round of negotiations succeeds in eliminating the barriers to free trade in education identified by the WTO, the private sector will receive enormous power to undermine the public delivery of educational services. One specific 'barrier' in the WTO background paper that is particularly alarming is the identification of 'the existence of government monopolies'. The underlying philosophy of trade liberalisation in international trade agreements is that, whenever something can be provided by the private sector, conditions should exist so that this can occur. These agreements are about creating and expanding private markets and, whenever possible, identifying and eliminating government actions which hinder the growth of the private sector. Clearly whenever governments operate in what is, or potentially could be, a 'market', their actions are 'barriers' to the creation of private markets and, therefore, need to be controlled.

How would the elimination of government monopolies in higher education be carried out? This is an important question because it is highly unlikely that any countries would agree to direct attacks on their public education systems, if only because of the political risks involved. Something more subtle than a direct attack will need to occur at the bargaining table to get governments to agree to the control of government monopolies. The international corporate world has had considerable experience in honing effective, gradual steps to secure a firm base in

13 It should be noted that the claim of discriminatory treatment could only be made by foreign competitors.

undermining services in the public sector. The most striking examples in the US are in the privatisation of electricity, and, even more spectacularly, the private control of prisons and social welfare programs. It is a privatisation process whose trajectory is familiar and successfully adopted in other countries throughout the industrialised world.

The first step is usually an overall attack on the funding of public institutions, by claiming that taxpayers can no longer afford to support overblown public institutions. As public institutions become weaker because of under-funding they either no longer perform well, and therefore lose public support, or they pursue other funding sources. Our universities are doing this through, for example, high user fees in certain programs, appeals for private corporate financing for research and even whole programs, and by becoming more entrepreneurial in foreign markets. These public-private initiatives steer universities toward corporate approaches to education, and, as a result, bring the universities under the rules of private trading structures.¹⁴

The other method that the private sector uses effectively is to make sure it can tap into the money the government spends on education. As with the health care industry, private educators are acutely conscious of the *vast sums of public money* spent by governments on the public service. The private educators certainly are not objecting to governments paying for education services. What they want, rather, is to have this government spending directed toward the private sectors, much in the way that private prison and welfare service providers in the US rely on government funding to buy their services. The trade agreements are a crucial step in this direction because they can enable the private sector to insist on a 'level playing field' in the education market.

Obviously in any country where publicly funded university education is of a high quality and relatively inexpensive, students will not rush to enrol in expensive private universities. As the WTO's background paper notes, there are questions about 'whether higher education can be profitable for private investors without public subsidies'.¹⁵ The task for the private education industry is to organise things in such a way that governments are forced to provide subsidies for private

14 The ability of the private sector to dominate university priorities through this process is obvious. One example of this at Simon Fraser University in British Columbia is the recent establishment of a program of Scottish Studies. This occurred only because wealthy Scots in the community wanted it to happen. It was not a priority of the university in the three-year planning process (as was a centre for Race and Gender Studies), but, because someone would fund it, the university very rapidly acquired a program in Scottish Studies.

15 WTO, 'Education services: background notes', p 9.

education.¹⁶ Generally, when the private sector begins identifying a specific area for privatisation that has long been in the public sector, it gets a toehold in the area through some marginal activity in the industry. The strategy subsequently is to complain about the existence of government monopolies and the difficulties of trying to maintain a business. The usual charge is that the public sector can provide the service cheaper than private providers can under normal commercial conditions because the public sector is subsidised by tax dollars.

When this reasoning is established, that is, that government-funded institutions have an unfair advantage, the trade agreements can support the private sector's claim to access to money in distinct ways. The most obvious is to ensure that the private sector be eligible for 'like' treatment when it comes to government subsidies.

Understanding the way in which the public sector is treated in trade agreements gives some insight into the potential impact of removing 'government monopolies' in education. The international trade agreement that has gone furthest in granting power to control public monopolies is the North American Free Trade Agreement (NAFTA). This document is important not just because it spells out in detail behaviour for government monopolies in goods and services, but also *because it is a framework document for negotiating services agreements* in the wider international arena. The following are the requirements for governments for the regulation and supervision of both private and public monopolies. They must ensure that the monopoly provides

non-discriminatory treatment to investment of investors, to goods and to service providers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and

Does not use its monopoly position to engage, either directly or indirectly ... in anti-competitive practices in a non-monopolized market in its territory that adversely affect an investment of another Party, including through the discriminatory provision of the monopoly good or service, cross-subsidization or predatory conduct.¹⁷

These are strong clauses that greatly inhibit the ability of public institutions to provide educational services in educational markets that are now in the private sphere, as many universities and colleges are now attempting to do. The clause about cross-subsidisation is particularly significant because virtually any commercial activity a university undertakes independently of its main function of public education could be identified as an unfair trade practice if it is in any way

16 The attempt to introduce the voucher system in the school system is a similar exercise.

17 NAFTA, Chapter 15, Article 1502.

supported by the university. Even a common administrative structure could be identified as a cross-subsidy.

The most important requirement in the behaviour of monopolies, however, is that any monopoly, even if it is a government monopoly, must behave according to commercial objectives. NAFTA states that any monopoly must act 'solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale'.¹⁸ The text defines 'in accordance with commercial considerations' to mean any action which is 'consistent with normal business practices of privately held enterprises in the relevant business or industry'.

The main point to make from this is that post-secondary public education is not run mainly 'in accordance with commercial considerations'. The objectives of the post-secondary system are varied, but its very existence in the public sector means that it is not primarily a profit-generating system. The wording in the NAFTA text is present precisely because, in the absence of similar objectives, the cross-comparison between public and private education is difficult to make. However, with the requirement that the objectives of all monopolies be commercial, the justification for equal treatment seems more rational.

The requirement that public institutions behave as commercial enterprises and have profit making as their primary objective can be imposed through two routes. As the public sector becomes increasingly involved in commercial actions, the NAFTA rules can be invoked. Also, it is highly conceivable that NAFTA-type rules regarding monopolies could be negotiated through the GATS negotiations. The intention of this type of language is clearly to encourage the increased commercialisation of the public sector in areas that are now relatively closed.

Another way in which the government monopoly in education could be undermined is in the way that an 'investor' is defined by the WTO. During the negotiations for the MAI, for example, attempts were made to define an 'investor' very widely so that it would include those operating for-profit and non-profit organisations as well as government-owned entities. If educators in the post-secondary system come to be defined in this way all kinds of normal practices could be challenged as unfair competition. For example, many countries require that recipients of research awards be citizens or have immigrant status. It could be possible for 'investors' in post-secondary education from a foreign country to claim that this discriminates against investment rights.

18 Ibid.

WHAT IS NEXT?

When US Trade Representative Charlene Barshefsky attended the APEC conference recently, she identified what she called 'the single greatest threat to the multilateral trading system', as being 'the absence of public support for that system and for those policies which have created that system'.¹⁹ She and other government officials around the world are determined that the public must change its collective mind. Public actions over the MAI and the WTO Seattle meeting indicate that public pressure can be effective in allowing people's interests to be heard in the international arena. At the very least these actions slow down the pace of international deep integration and give supporters of the public domain time to analyse events and understand their own interests in what is a complex array of negotiations.

For supporters of public education the continued monitoring of negotiations and informing the public about their potential impact is extremely important. As a first step, all educators should place considerable pressure on their governments to refrain from signing on to the existing GATS in education. While this is an initial step to protect public education, it may not be a sufficient step as the GATS negotiations proceed. This is because the voluntary nature of the GATS is a feature of the negotiating process that business services and the US government have high on their list of things to change. The existing process of each nation deciding, on a detailed sector-by-sector basis, which types of services will be opened to free trade is perceived as being a very slow way to bring areas like education and health care services under trade laws. The US government and private service organisations specifically want a more efficient negotiating structure than the request-offer process, and are pursuing a comprehensive agreement that is binding on all members.

Some analysts anticipate early results from the built-in negotiations on services that began at the end of February because there is a high degree of consensus on the need for liberalised services through the GATS, unlike on issues like agriculture.²⁰ Even developing countries have not raised significant opposition to an expanded services agenda. In part, this is because there are fewer domestic industries to protect in developing countries and because the public services have deteriorated so substantially that it is difficult to mobilise public support to protect them. Also, some developing countries, such as India, are beginning to export services like software programming. Sinclair identifies the *Draft ministerial text* from Seattle as an indication of the degree of consensus on services negotiations. While the draft text has no legal effect, it stipulates that 'no service sector or mode of supply shall

19 Shawn MacCarthy, 'Public must be persuaded open markets are beneficial', *Globe and Mail*, 10 September 1999.

20 Scott Sinclair, *What happened in Seattle? What's next in Geneva*, Ottawa, CCPA, 2000.

be excluded a priori', from negotiations and calls for 'horizontal' approaches to the negotiations.²¹ This indicates that all types of services will be under consideration for negotiation and that broad rules which apply across all sectors will be sought, making it harder to protect specific services like education and health.

In contrast, others maintain that there is little consensus on services issues and that the new GATS negotiations will focus on processes, rather than on meaningful substantive issues. This implies that services will not be easily negotiated and, therefore, will not move ahead quickly.²² A slower agenda will be good news for those concerned about protecting public education. However, if broad language is used to cover a wide band of services, specific discussions about free trade and education may not receive much attention.

Educators need to be wary of claims that we are worse off with the absence of specific language on issues. It is true that the WTO can affect education in a variety of different ways, even in the absence of a specific agreement, but it will be worse if education services, or some aspects of them, are specifically included.

Educators also need to guard against the strategies of 'gradualism' that might be used to secure a minimal type of agreement that can be accepted by all countries. The US Coalition of Service Industries (the organisation that was influential in getting the US to initiate a services agreement in the Uruguay round) anticipated difficulties in securing open trade in all services in the new round of negotiations. It specifically advocates the 'horizontal' approach to rule across all sectors. Its president gave an example of how something simple, like 'national treatment', if applied across all sectors, works to the benefit of private service providers.

The usual practice now in trade agreements which cover some aspect of public services, such as NAFTA, is for governments to specifically list the programs and practices they want exempted from the agreement. These exceptions to the agreements offer, at best, temporary protection for the public sector because they only protect existing measures and prevent new government programs from being initiated. That is, current policy is frozen and all new measures must conform to the trade agreements. But most problematic is that these lists of exceptions to the trade agreements identify targets for subsequent rounds of negotiations. As the president of the US Coalition of Service Industries noted, any minimal agreement in GATS would at least get countries to list the areas they wanted protected under each service. He stated that this would be 'useful as a transparency exercise,

21 WTO, *Draft ministerial text*, 3 December 1999, paragraph 28.

22 Anonymous government official, presentation to Canadian Center for Policy Alternatives Working Group on Trade, Ottawa, January 2000.

forcing countries to demonstrate explicitly their laws and practices that are trade restrictive'.²³

SUMMARY AND CONCLUSION

The failure of the Seattle meeting of the WTO to agree on an agenda for negotiating issues over the next few years was a victory for those who want to slow the process of globalisation. This does not mean, however, that all negotiations for trade liberalisation have ceased. Because of the negotiating process on services that was built into the GATS, negotiations on trade in services have already begun and are, for the most part, occurring without public scrutiny. In education services, negotiations will proceed for all levels of education, although the prime target for free trade appears to be higher education services. In education, the so-called 'barriers' to trade that have been identified by the WTO are all 'subsidies' to the public system that restrict the ability of private providers to compete for students. These barriers include the existence of government monopolies, the inability to be recognised as a degree-granting institution, restrictions on recruiting foreign teachers, and high government subsidies to local institutions.

This paper has explained why it would not be possible for an agreement on free trade in education to leave the public system intact. Rather, the kinds of measures that will provide market access for private educators will require substantial changes in the ways in which the public system operates.

Opportunities exist for those interested in the public delivery of education to affect the outcomes of the current negotiations. Many countries did not sign onto the 1994 GATS agreement on education and, while the mood of governments now appears to have changed, there is still room for the public to influence the ultimate position of the government. The rush to open all markets to free trade presents serious and substantial threats to the very existence of a vigorous public education system in the future.

23 Robert Vastine, President, US Coalition of Service Industries, 'Services 2000: innovative approaches to services trade liberalization' in *Symposium on the Agenda for the Next WTO Negotiation*, organised by Japan External Trade Organization, Tokyo, 13 May 1998.

TABLE I
SUMMARY OF SPECIFIC COMMITMENTS: EDUCATION SERVICES

Countries	Primary	Secondary	Higher	Adult	Other
Australia		X	X		X
Austria	X	X		X	
Bulgaria	X	X		X	
Congo RP			X		
Costa Rica	X	X	X		
Czech Republic	X	X	X	X	X
European Community	X	X	X	X	
Gambia	X			X	X
Ghana		X			X
Haiti				X	
Hungary	X	X	X	X	
Jamaica	X	X	X		
Japan	X	X	X	X	
Lesotho	X	X	X	X	X
Liechtenstein	X	X	X	X	
Mali				X	
Mexico	X	X	X		X
New Zealand	X	X	X		
Norway	X	X	X	X	X
Panama	X	X	X		
Poland	X	X	X	X	
Rwanda				X	
Sierra Leone	X	X	X	X	X
Slovak Republic	X	X	X	X	X
Slovenia		X	X	X	
Switzerland	X	X	X	X	
Thailand	X	X		X	
Trinidad and Tobago			X		X
Turkey	X	X	X		X
USA				X	X
Total Number of Schedules	21	23	21	20	12

Source: WTO Secretariat, 'Education services: background note', Table 5. This table indicates areas in which a country has committed itself to free trade in education.

HAWKE INSTITUTE WORKING PAPER SERIES

- No 1 Marjorie Griffin Cohen, *The World Trade Organisation and post-secondary education: implications for the public system in Australia*, 2000.
ISBN 0 86803 800 8
- No 2 Claire Woods, *Communication and writing: footprints on a territory*, 2000.
ISBN 0 86803 801 6
- No 3 Rhonda Sharp, *The economics and politics of auditing government budgets for their gender impacts*, 2000.
ISBN 0 86803 802 4
- No 4 Anne Hawke, *Measuring the impact of gambling: an economist's view*, 2000.
ISBN 0 86803 803 2
- No 5 Debra King, *Stakeholders and spin doctors: the politicisation of corporate reputations*, 2000.
ISBN 0 86803 804 0
- No 6 Lois Bryson and Alison Mackinnon, *Population, gender and reproductive choice: the motherhood questions: directions for policy*, 2000.
ISBN 0 86803 805 9

Available from: Kate Leeson, Editorial Assistant,
The Hawke Institute
University of South Australia
St Bernards Road
Magill
South Australia 5072
Australia

Telephone +61 8 8302 4371

Facsimile +61 8 8302 4776

Email: katherine.leeson@unisa.edu.au

www.unisa.edu.au/hawke/institute/institute

THE HAWKE INSTITUTE

The Hawke Institute undertakes research and fosters debate on democratic participation in political, economic and social life.

The central themes of the Institute's work are

- the social, cultural and economic aspects of globalisation and its sustainability;
- issues of participation, equity and citizenship in working life, in education and in society; and
- questions of identity, of cultural production and representation, and of our place in the international community and specifically in Asia.

The Hawke Institute hosts seminar series, conferences and public lectures. It offers Hawke Research Fellowships, visiting fellowships and scholarships, and supports the work of fourteen affiliated research centres and groups. For details of the affiliated research centres and groups see the Hawke Institute website: www.unisa.edu.au/hawke/institute/institute. As well as promoting research on a local and national level, the Institute has strong international links. It is the research arm of the Bob Hawke Prime Ministerial Centre.

Hawke Institute Director: Professor Alison Mackinnon

Telephone +61 8 8302 4370

Facsimile +61 8 8302 4776

Email alison.mackinnon@unisa.edu.au

Hawke Centre Director: Ms Elizabeth Ho

Telephone +61 8 8302 0371

Facsimile +61 8 8302 0420

Email hawke.centre@unisa.edu.au