

# AAUP

American Association of University Professors

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*Academic Freedom for a Free Society*

July 25, 2006

The Honorable Susan Schwab  
United States Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508  
Fax: 202-395-5674

Dear Ambassador Schwab:

On behalf of the American Association of University Professors (AAUP), I would like to express our strenuous objections to the expansion of World Trade Organization (WTO) and General Agreement on Trade in Services (GATS) regulations concerning higher education.

The AAUP, established in 1915, is this nation's foremost organization committed to advancing academic freedom. We have long affirmed that the freest possible international movement of scholars, students, and ideas is an indispensable part of academic freedom. We are also greatly concerned with maintaining excellence in the American higher education system, widely recognized as the most outstanding system of higher education in the world.

We have recently learned that the current Doha Round of WTO negotiations has reached an impasse and will be suspended. However, prior to this impasse the GATS renegotiation process included two proposals of great concern to us. The first is the effort by the U.S. government to include the higher education sector in the terms of the GATS. The second is to develop new "disciplines on domestic regulation" under GATS Article VI.4.

The United States has proposed to subject the higher education sector to the terms of the GATS in the current, without having consulted state governors, state higher education officials, or a broad array of higher education leaders about the proposal. Although USTR may dispute it, our analysis of U.S. negotiating documents indicates that both public and private institutions of higher education would be impacted by the U.S. proposal. At risk are a multitude of subsidies, scholarships, and student loans as well as numerous other higher education policies. The U.S. proposal (and any "safeguards" to be included in it) must be vetted rigorously by Congress, individual states, and the higher education community before the U.S. subjects this crucial sector to WTO jurisdiction.

USTR apparently rests its claim that public education is not covered by this offer on GATS Article I.3. GATS Article I.3 has a poorly written clause excepting services "supplied in the exercise of governmental authority." However, to qualify for the exception, public services cannot be supplied "on a commercial basis" or "in competition with one or more service suppliers." While U.S. negotiators may think this language is sufficient to protect public services, European negotiators concede that the Article I.3 exception is "very narrow." If fees

are charged for the service or if there are private firms providing these same services on a local, regional or national basis, the public service is not protected. Considering that public state university systems receive substantial private funding, face rigorous competition from private and for-profit providers, and charge tuition and fees to students, it is unlikely that public institutions of higher education qualify for the GATS exemption for "government services."

The GATS national treatment obligation (or nondiscrimination rule) in Article XVII requires foreign suppliers to receive the same treatment as domestic suppliers. This means that unless public funds are specifically exempted from the terms of the agreement, those funds must be distributed on an equal basis between domestic and foreign education providers and domestic and foreign students. Funds in this context would include state subsidies for public colleges and universities, and preferential tax treatment or financial aid for students. The United States has moved to exempt certain subsidies and disparate taxation policies under the GATS, but as the language targets "U.S.-owned institutions," this language may not protect public university systems or nonprofits. The national treatment rule also prohibits policies based on citizenship or residency or policies that treat domestic students differently than foreign students. Licensing requirements for in-state campuses or offices, in-state vs. out-of-state tuition rates, as well as affirmative action programs, are just a few of the policies that could be challenged under this rule. The United States has attempted to exempt some, but not all, noncompliant policies from the GATS national treatment rule.

Equally of concern are the proposed "disciplines on domestic regulation" which would implicate licensing and qualification requirements as well as technical standards, and would apply to both service operations and service personnel. The charge from the WTO is for negotiators to create rules to ensure that domestic policies governing services are "no more trade restrictive than necessary to ensure the quality of a service."

Under discussion are rules that would apply a "necessity" test, a "relevance" test, or a "relatedness" test to licensing and qualifications requirements, even for sectors not covered by a nation's GATS commitment. In other words, even if the United States were not to place higher education under GATS, these new rules could jeopardize state licensing standards for higher education institutions, accreditation standards, qualification standards for educators, and a wide range of educational "technical standards." Such measures could be challenged as "barriers to trade" in the WTO's powerful and binding dispute-resolution body.

The application of any of these rules to the higher education sector is extremely troubling. Our current system of voluntary peer accreditation and state licensing of higher education institutions is based on a large number of factors, including standards to ensure financial stability and quality of educational providers, appropriate curricula, faculty qualifications, and needs tests to reduce duplicative programming. Individual policies pursued by states, as well as state-by-state variation in policies, could be challenged as barriers to trade.

For decades, the United States has prided itself on an outstanding system of higher education. The higher education system in the United States has benefited greatly from a system of federalism that has placed the regulatory authority over the higher education system at the state level. Furthermore, our system has always been anchored in fundamental principles of peer evaluation, shared governance, and academic freedom. We see the

transfer of regulatory authority to a foreign multinational body as a serious and unwarranted blow to efforts to maintain and advance excellence in higher education in the United States.

We therefore urge you to rescind the offer of the United States to commit higher education to the WTO GATS by the July 31, 2006 deadline for "revised offers" (or as part of any resumed negotiations in this round); and to block any attempts to expand the GATS to include new "disciplines on domestic regulations." These actions would help preserve the excellence of American higher education. We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger W. Bowen". The signature is fluid and cursive, with a large initial "R" and "B".

Roger W. Bowen  
General Secretary