

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.

Any comments regarding this request, including written questions of a technical nature in advance of the plurilateral meeting, may be addressed to:

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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: Subsectors 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**)² 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, accreditations 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 traveling 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 traveling 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	

	horizontal section	<p>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.</p> <p>4) Unbound except as set out in the horizontal section</p>	
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