

Trade Agreement Threats to State Higher Education Policy

Higher Education — Public Good or Tradable Commodity?

To most Americans, higher education is considered a public good, an instrument of democratization, upward mobility, and equal opportunity. But to some, it is big business—an exportable and importable commodity. For-profit education services firms want trade agreements to set higher education policy that will promote their business goals.

Not only do major corporations see global “trade in educational services” or “transnational” or “borderless” education as a hot business opportunity, they see the World Trade Organization (WTO) as an essential tool to dismantle what they deem “barriers to trade” in educational services that limit their global profit-making opportunities.

Higher Education “is simply too important to subject to broad and poorly worded GATS rules which are subject to various interpretations by WTO tribunals.”

-Govs. Thomas Vilsack of Iowa and John Baldacci of Maine 2006 letter to the U.S. Trade Representative

At the behest of for-profit higher education firms, the Bush administration has proposed to submit the U.S. higher education “service sector” to comply with the broad policy constraints contained in the WTO’s General Agreement on Trade in Services (GATS). This is a global pact designed to deregulate service sectors to the advantage of multinational firms. The GATS rules could jeopardize many basic policies: educational subsidies for public institutions; state licensing practices for higher education institutions; U.S. accreditation practices; wages and working conditions for U.S. educators; and more.

For instance, state licensing rules that attempt to weed out fly-by-night, for-profit schools are considered sound policy domestically. However, if U.S. higher education service were bound to comply with GATS rules, such policies could be challenged before international trade tribunals as overly burdensome “trade barriers” that limit foreign educational providers attempting to set up operations in the United States. For-profit education services firms argue that to create an effective “global market” in higher education services, many such domestic educational policies must be dismantled using trade agreements as a form of preemption.

In the United States, higher education institutions are regulated by states. For the most part, state leaders, public and nonprofit education institutions, and students have been unaware of the attempt to drag higher education policy under WTO jurisdiction, and have been dangerously disengaged. Unless interested parties weigh in, the U.S. higher education system could be transformed from a “public good” to a tradable commodity in a “global services market.”

State Higher Education Policies at Risk at WTO

Domestic educational subsidies: The WTO GATS “nondiscrimination” rule requires that public sector funding must be shared on an equal basis between foreign institutions and domestic institutions unless public funds are specifically exempted from the terms of the agreement. The United States has attempted to safeguard certain domestic subsidies in a broadly worded exemption to its higher education proposal, but it is unclear if this language would actually protect subsidies for public and nonprofit institutions.

U.S. accreditation policies: Unlike many other WTO signatory countries, the United States has offered virtually unlimited commitments in “cross-border” educational services. This would inundate U.S. accrediting bodies with requests to accredit overseas distance-learning schools. U.S. trade negotiating documents only include language that the U.S. purports will safeguard the U.S. accreditation system in a footnote of dubious legal consequence.

State licensing requirements: State licensing of higher education institutions is based on a large number of factors: standards to ensure financial stability and quality of educational providers and appropriate curricula; faculty qualifications; appropriate library resources and physical plant; needs tests to weed out duplicative programs; and more. Under new “disciplines on domestic regulation” being proposed in the WTO talks, individual state policies as well as state-by-state variation in policy could be challenged in WTO tribunals as “more burdensome than necessary to ensure the quality of a service.”

Efforts to police fraudulent operations: While “borderless higher education” presents for-profit providers new business opportunities, the challenges presented to regulators are extreme. Topping this list are concerns about fraud. While policing fraudulent institutions is difficult domestically, it is exponentially more difficult across borders or in the online realm. Many policies that U.S. states maintain or may pursue to protect students from scam artists could be considered GATS violations.

Wages and working conditions for educators: The implications for educators if U.S. higher education policy were bound to the WTO are also worrisome. New technology combined with unfettered cross-border supply of educational services is likely to generate further downward pressure on wages for educators. GATS negotiations also touch on our immigration policy. One such proposal would increase and lock in temporary U.S. visas for foreign educators. This is part of a global corporate effort to harmonize professional qualification requirements across borders.

How a WTO challenge of a U.S. state or federal law would work:

- The other 152 WTO signatory countries are empowered to challenge nonconforming federal and state policies as GATS violation before trade tribunals in WTO’s binding dispute resolution system.
 - State government officials have no standing before these tribunals and must rely on federal officials to defend a challenged policy.
 - The tribunals are staffed by trade officials who are empowered to judge if state policy violates WTO requirements.
 - Policies judged to violate the rules must be changed, or trade sanctions can be imposed.
 - The federal government is obliged to use all constitutionally available powers – for instance preemptive legislation, lawsuits and cutting off funding – to force state and local governments to comply with trade tribunal rulings.
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