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EDUCATION AND THE GATS

1. RESPONSES TO LETTER OF 8 JULY

Overview

Replies have been received (either formally or informally) from 11 Member States so far. Some deal in detail with a considerable number of topics, while others limit themselves to broad policy statements on a few key issues. A detailed attempt to identify the degree of support for particular propositions would thus be difficult to undertake and potentially incomplete and misleading. Nevertheless, it is already possible to identify some trends of opinion, to draw out some elements of a consensus, and to note some divergences. Higher education is clearly the main area of interest, though a number of replies also refer to other areas, in particular vocational training.

Underlying issue: the role of the GATS in relation to education

The issue influencing views on many of the detailed questions is the fundamental one of what, if anything, should be the role of the GATS in relation to education. Many Member States are cautious about dealing with education in trade fora because of concern for its public-good character. Some point out that education, especially higher education, is evolving anyhow, and that we should recognise its increasingly hybrid public-private nature: rather than perceive the GATS as a threat, they suggest that we take advantage of the opportunities which the growing internationalisation of education offers to raise quality standards within Europe and to strengthen Europe's position on the world market.

The bottom-line position taken by most Member States (though some may lean somewhat more towards one or other side of the foregoing argument) is that the commitments already given by the Community in the Uruguay round are quite sufficient, and that there is little or no scope for offering further concessions. Even in Member States where there is a willingness to consider offering some further commitments, some of the restrictions on existing commitments are seen as non-negotiable. Some take the view that we should refrain from making any requests in order not to compromise our position, while one would like to explore the scope for withdrawing existing commitments.

Education as a public service or public good

Virtually all Member States, whatever their position on other issues, stress the importance of securing education as a public service or public good. There is concern on the part of some that the rules already agreed in the Uruguay Round could, in time, threaten the public-service character of existing education systems, with implications for the freedom of Member States to organise and regulate education, to assure its quality and to allocate financing for it. The concern - explicit in some replies and latent in others - mainly springs from uncertainty about how the GATS rules for the exemption of public services apply or could apply in the future to an evolving and increasingly heterogeneous education sector, in which private operators increasingly coexist alongside public institutions and the latter institutions themselves operate in some respects on a basis analogous to private providers. A number call for further detailed examination of this issue.

Classification of education services

Views on the clarification of the nomenclature of education services generally reflect either a practical sense that the GATS nomenclature is ill-suited to education or a position of principle that educational fora (notably Unesco) are the appropriate place for discussing the nomenclature of education. Some are willing to enter discussion of the GATS nomenclature, particularly for "adult education" or "other education services", both of which give rise to some uncertainty or confusion.

Implications for action in other domains

Quite a few replies draw attention to other international fora for dealing with education issues, in particular Unesco or Bologna. This is particularly true for quality, accreditation/recognition and nomenclature issues, reflecting a concern that the WTO should not become a parallel, commercially-driven forum for dealing with education which could end up taking precedence over traditional, more consensual education-oriented fora.

Involvement of Education Ministers and their departments

Most replies comment that the Education Ministers and their officials need to take a more active interest in the GATS, without prejudice to the role of the Article 133 Committee. Some refer specifically to the Education Council and Committee, while others leave the institutional question more open.

2. STATE OF PLAY IN THE GATS CONTEXT

Request made by the EC

The Community has made one request, asking the US to take commitments on privately-funded higher education. The desirability of putting forward a request at all was the subject of considerable discussion in the Article 133 Committee, and some Member States' support for it was subject to the proviso that we should not ask the US to do more than broadly match the EU level of commitments (privately-funded education only).

Requests addressed to the EC

There is no obvious pattern to the requests addressed to the EC by other countries. In some cases they are expressed in non-specific terms and serve merely as "markers", and the detail of what is sought will only become clear as bilateral negotiations continue. The classification of educational activities used in some of the requests also suggests that those countries too have some difficulty with the existing nomenclature. It can be noted, however, that education has not yet been examined in detail in these negotiations, which suggests that it is not a high priority for the countries concerned.

The requests can broadly be categorised into two groups: one looking for the EC to drop its existing restrictions and take full commitments across all sectors or at least higher education; and a second, looking for more targeted removals of particular restrictions. In the case of the more targeted requests, the underlying logic is generally not self-evident. However, none of the requests received challenges the restriction of the EC commitments to privately-funded services.

Procedure

The Commission will listen to the detail of what non-Member countries are requesting during bilateral negotiations, and its response, formulated in the presentation of the Community's offer, will be decided with the Member States through the Article 133 Committee. Education has not been mentioned in any of the bilateral meetings with third countries which have taken place so far.

Education is to be discussed at the Article 133 Committee (Services) on 27 November together with other "sensitive" sectors including health, audiovisual and recreational services, and we should work towards that date to clarify the overall Community position on education. The Commission is to present a first draft of the Community's initial offer (i.e. its response to requests already received) to Member States by mid-January 2003. This must be finalised in time to meet the deadline for transmitting initial offers to the WTO, which is 31 March.

While discussion in the Education Council can help in the elaboration of a Community position, it is desirable that Education Ministers in all Member States should communicate with their trade colleagues so that their viewpoints are effectively communicated through the appropriate trade negotiation channels.

3. TOPICS WHICH THE EDUCATION COUNCIL MIGHT DISCUSS, OR DIRECT EXPERTS TO EXAMINE FURTHER

The GATS is envisaged as a lunchtime discussion topic for the Education Council on 12 November, which should give it greater salience and afford an opportunity for political guidance in working towards a consensus on a Community position on some key issues. This could help national authorities in formulating their respective positions in the Article 133 Committee and provide pointers for collateral action to be taken in the other fora mentioned above to take account of the impact of the traded services on the world of education and training.

Topics for Ministerial discussion

The following questions are suggested for consideration by Ministers:

- (1) *Is there any hard evidence of a real threat, however long-term, to public services in education?*
- (2) *Can we take "pre-emptive" action to safeguard the public-service/public-good character of education?*

The special character of education as a public service or public good has not come under attack in the WTO, and much of the concern expressed apparently arises from evocation of a theoretical future scenario. An issue for consideration is whether the EU should advocate some "pre-emptive" action - e.g. an interpretative statement which would draw attention to existing Unesco texts on education as a public good - in order to ensure that this character is explicitly recognised by WTO partners before the *de facto* situation has evolved to a stage where this would become more difficult. Such an approach might find support from non-EU countries, as countries which have submitted negotiating proposals on education also stress the special character of education as a public good and the need for it to continue as a public service. The aim would be to ensure general acceptance that the coexistence of private suppliers with public systems does not constitute "competition with other service suppliers", which would undermine the protection afforded by Article I 3 c of the GATS.

Although the GATS has its own institutional framework and timetable, the topic of "trade in education services" cannot be seen in isolation from other aspects of the internationalisation of education, including the interrelated issues of the attractiveness of European education, accreditation and quality assurance, and "consumer protection". The strengthening of recognised, education-oriented fora for these matters (e.g. the Lisbon convention) might help to minimise the theoretical risk of recourse to the WTO to deal with issues which are primarily educational.

Topics for subsequent discussion at official level

The ministerial discussion of the foregoing topics could help to provide guidance for subsequent discussions which might best be further prepared at official level, such as the following, and any other issues raised in Ministers' contributions:

- What line should we take on requests received from third countries and on the EC request to the US?
- Can the GATS nomenclature for education services be discussed and improved without prejudice to the status of Unesco as the specific worldwide forum for education issues?
- If the perceived threat to public services is confirmed to be theoretical or long-term, can we develop clearer scenarios of how it might develop, how secure the existing safeguards against it are, and what might be the cost of withdrawing existing commitments in terms of compensation to be offered to other WTO partners?