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# The Impact of the GATS on Transnational Tertiary Education: Comparing Experiences of New Zealand, Australia, Singapore and Malaysia

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## Abstract

*This paper examines the impact of the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) on transnational higher education in four countries: New Zealand, Australia, Singapore and Malaysia. The GATS is a multilateral agreement through which WTO members commit to voluntary liberalisation of trade in services, including education. Transnational (or offshore) education refers to education that is delivered by an institution based in one country to students located in a different country. Two of the countries considered, New Zealand and Australia, have made commitments under GATS to allow relatively unrestricted cross-border provision of education in their countries, while the other two countries, Singapore and Malaysia, have made no such commitment. There is currently considerable activity in renegotiating countries' commitments to GATS as part of the Doha round of WTO negotiations, and simultaneously bilateral free trade agreements are being proposed between countries in the region. In this context, this paper examines the practical impact that GATS has had on these two countries that have made commitments regarding education, and the likely impact that similar commitments by Malaysia and Singapore would have on the tertiary education systems in those major importing countries.*

## Introduction

Discussion of international trade in tertiary education has become distinctly polarised in recent years, as proponents and opponents of trade liberalisation focus their attention on the millennium round of negotiations over the General Agreement on

Trade in Services (GATS). The World Trade Organization (WTO) is leading efforts to liberalise trade in services through GATS, which is the first multilateral agreement to provide member countries with legally enforceable rights to trade in services (WTO 1995). Countries that join the GATS process make a commitment to ongoing liberalisation of trade through periodic negotiations. GATS came into force in 1995, and the first major round of renegotiations of countries' commitments (the millennium round) is currently taking place.

Supporters of freer cross-border provision of tertiary education are optimistic about future liberalisation and see the GATS framework as one means of achieving this (United States International Trade Commission 1997, section 4.11). The United States is actively promoting further liberalisation of trade in education services, asserting that the presence of foreign education providers 'increases the variety and amount of education services available to WTO members' (WTO 1998, p. 1). Accordingly, the US has argued that countries' policies on transnational education should 'be reviewed and the restrictions liberalised to the greatest extent possible' (WTO 1998, p. 2). Such deregulation is in the interests of nations that export transnational education, such as the United States, Britain and Australia. The Australian government has likewise signalled its intent to 'pursue negotiations on education services in order to encourage liberalisation commitments from WTO members and greater market access to sectors of our trading partners' (DETYA 2000a, section 2.1.5).

Meanwhile, opponents of educational trade see the GATS as increasing the power of multinational institutions at the expense of public education providers and democratic control over education policies. The WTO has been widely criticised for its lack of interest in the non-marketable value of the spheres of activity it seeks to liberalise. The Association of University Staff of New Zealand, one of the few countries that has committed fully to free trade in tertiary education, lamented that the WTO treats education

... purely as a commercial, tradable commodity. There is no recognition of its role as a means of nation-building; a local storehouse of knowledge; the vehicle to transmit culture and language; the pre-requisite for a vibrant democracy and a contest of ideas; a source of innovation and change; or a desirable activity per se. (Kelsey 1999, online)

Anti-globalisation protesters have conducted a series of high-profile demonstrations against global trade meetings, beginning in Seattle when they blockaded a WTO meeting that was to launch the millennium round of GATS negotiations. Protesters see the WTO as an anti-democratic body of world economic governance whose decisions

are made in secretive negotiations in the interests of global capital. Importing nations have been less vocal in their criticism of GATS, but have been understandably hesitant to commit to opening their private education sectors up to internationalised market forces. Public sector organisations and trade unions have seen GATS as an increased pressure in favour of privatisation of education (Education International and Public Services International 2000).

This paper examines the way in which GATS commitments impact on transnational tertiary education in four countries: New Zealand and Australia (education exporters that have made commitments under GATS), and Singapore and Malaysia (net importers of education that have not made commitments under GATS). These four countries have a history of close involvement with each other both in educational provision and in trade, and together allow for an illustration of the impact of free trade agreements on tertiary education in four quite different but closely interconnected nations.

'Transnational education' refers to education 'in which the learners are located in a country different from the one where the awarding institution is based' (UNESCO and Council of Europe 2000). Previous analyses of GATS' impact on transnational tertiary education have been as polarised as the political debate has been. On one side, governments and pro-trade lobby groups have produced assessments of what they see as the major barriers to free trade in tertiary education, in order to clarify their priorities in future negotiations (APEC 2001, GATE 1999, United States International Trade Commission 1997, WTO 1998, 2000). These studies often take the form of generalised surveys that avoid referring to specific barriers or the consequences of removing them. On the other side of the divide, there is no shortage of alarmist accounts warning that the WTO aims to destroy public education on a global scale (Altbach 2001, Barlow and Robertson 1996, Education International and Public Services International 2000, Kelsey 1997, 1999, 2000). Like many overly polemical pro-trade accounts, anti-WTO statements are often similarly vague, in that they tend to make dire predictions without providing specific illustrations of past or future consequences of GATS commitments in practice.

Education is one of twelve service sectors covered by the agreement. Governments make commitments to liberalise trade within each sector. Within the education sector, the GATS identifies several sub-sectors using United Nations Central Product Classifications, including primary education, secondary education, tertiary education, adult education and other education services. GATS further divides the delivery of services across borders into four modes of supply: consumption abroad, cross-border delivery, commercial presence and movement of natural persons. Governments can commit to each of these modes of supply separately, and those governments that

have lodged schedules of commitment in education generally place restrictions on some forms of delivery but not others.

*Consumption abroad* is trade in which the consumer travels abroad to the country where the supplier is located, and in the case of education involves students travelling abroad to live and study in another country for a number of months or years.

*Cross-border delivery* is trade in which the provider and recipient of a service remain in their own countries, such as transnational distance education. Teachers and students are able to remain in their own countries and communicate through post, fax and the Internet.

*Commercial presence* describes trade in which a foreign provider delivers services in the consumers' country, which in tertiary education typically involves a local partner organisation or a branch campus delivering a foreign program.

The *movement of natural persons* refers to people travelling across national borders to deliver services, such as lecturers traveling abroad to teach students enrolled in a transnational program.

Less than one third of the WTO's 145 member states have made commitments in the education sector, and most of these simply elaborate current policies rather than offering further liberalisation (OECD 2002). Although these 'standstill' commitments do not have the effect of further liberalising trade, they do achieve two goals of the WTO. First, they promote transparency in trade regulation by encouraging governments to clearly explain the nature and extent of the measures they use to regulate trade in a particular sector. Second, these commitments are difficult to retract, making it difficult for states to introduce protectionist measures in the future.

At its most basic level, GATS attempts to enable greater international trade in services by enhancing the transparency, or clarity, of existing measures affecting trade. GATS also strives to prevent two forms of discrimination that impede commercial activity, although these are voluntary commitments (Snape 1998). Firstly, governments can undertake to allow foreign providers to enter into a market, that is, to allow unfettered 'market access'. Secondly, governments can undertake to not discriminate between domestic and foreign service providers, that is, to extend 'national treatment' to foreign providers. When governments commit to allow market access, they agree not to protect existing education providers from competition from new entrants. This involves a commitment not to limit the number of providers, the number of students they may enrol, the legal form of new entrants (cooperative organisation, for-profit company, statutory organisation, etc.) or foreign ownership of providers. This erodes

the ability of the state to control the growth of the private sector, which is a particular concern in countries with a large private sector. When governments commit to GATS national treatment provisions, they agree to treat foreign providers no worse than domestic providers.

In the following case studies I will describe each country's level of commitment to GATS, the nature of private and transnational tertiary education, how current regulatory frameworks for transnational tertiary education relate to GATS market access and national treatment principles, and the implications of a fuller commitment to GATS. I will focus the discussion on elements of the current regulatory framework, or likely effects of GATS, that have attracted public opposition.

### **New Zealand**

In 1995, New Zealand made a full commitment to both market access and national treatment for private tertiary education in cross-border supply and commercial presence. New Zealand also made cross-industry commitments on movement of natural persons, which allow senior managers and specialists employed by foreign educational institutions to enter and work in New Zealand for specified periods (United States International Trade Commission 1997, section 4.9). This made New Zealand one of the most liberalised nations for transnational tertiary education. GATS has been a high-profile political issue in New Zealand, most notably in relation to the media. A conservative government made GATS commitments in 1994 with little consultation and when a Labour Alliance government was subsequently elected in 1999 on a platform of introducing local television content quotas, it was unable to implement these policies because they would have violated the previous government's GATS undertakings.<sup>1</sup> The tertiary education union has been actively opposing GATS, arguing that it similarly constrains future governments' education policy options.

Despite New Zealand's 1995 commitment to open market access, this does not appear to have resulted in a growth in the number of private tertiary education providers. Since 1990, private providers have had to register with the New Zealand Qualifications Authority (NZQA) in order to enter into contracts with government agencies and, as a result, the number of *registered* private providers grew rapidly from 0 to around 800 between 1990 and 1994 (New Zealand Ministry of Education 2000). The number of registered private tertiary education providers has remained relatively constant since 1994 at around 800, suggesting that the GATS commitment has not had a substantial impact in itself (NZAPEP 2000). There are still no private universities or foreign universities operating in New Zealand, and none on the immediate horizon, and the number of other private tertiary education providers has not increased substantially.

It would seem that the factor most affecting future growth is the level of public funding to the private sector. Since January 2000, private and public institutions have received the same level of tuition funding from the government for courses in the same category. However this has only led to a slight growth in the number of private providers, with around thirty new registrations, or 4 per cent growth (NZAPEP 2000, p. 13). In 2000, the New Zealand government passed legislation limiting the number of public universities to eight (primarily to prevent an Auckland polytechnic from becoming a university) but the government placed no limit on the number of private universities (Kelsey 2000). Under New Zealand's GATS obligations, the government cannot restrict the number of private universities or colleges, or the number of students enrolled. Foreign institutions must apply to the NZQA to use the title 'university', and once the new university's courses are accredited by the NZQA, they are eligible for the same level of tuition subsidies as public universities. This situation, in which the government is attempting to shape the growth of tertiary education but has no power to restrict the number or size of private sector institutions, has drawn criticism from the Association of University Staff of New Zealand (AUSNZ). Former AUSNZ president Jane Kelsey, a prominent opponent of GATS, pointed out that under the government's new policy 'no new *public* universities could be established, but private or foreign institutions could effectively set up and operate like fully state-funded universities' (Kelsey 2000). Consequently, the AUSNZ has a policy to oppose

... New Zealand's accession to or continued membership of any international arrangement that does, or is likely to: lessen New Zealand control of its own education system; increase pressures for privatisation of all or part of that system; or reduce funding for, or otherwise damage, New Zealand's public education system. (Kelsey 2000, p. 5)

Public institutions and unions are understandably concerned about their level of funding, considering that between 1980 and 1999 real Ministry of Education funding per enrolled full-time student fell by 2.3 per cent per year (Scott and Scott 2000). It is clear that changes to these funding arrangements have contributed to changing enrolment numbers in the private sector (NZ Ministry of Education 2000, p. 34). The union blames New Zealand's GATS commitment for this situation in which the government funds both the public and private sector, and squeezes the public sector to cut costs, while having very little control over the size of the private sector. However, New Zealand's GATS undertakings do not oblige it to fund the private sector, for several reasons:

1. The GATS national treatment and market access principles do not apply to 'government procurement' (Article XIII). In funding public universities, part of what governments are funding is the procurement of education services which are then offered to students, and it appears that GATS does not apply to this. However, the

specific meaning of this article has not been tested and further negotiations on government procurement are scheduled.

2. New Zealand's (and most other countries') GATS undertakings specifically apply to private education providers, meaning that public education remains unbound by the agreement. Some types of subsidies to *private* institutions that are not so clearly 'services purchased for governmental purposes', such as research funding, may have to be available on a non-discriminatory basis to foreign providers under the national treatment principle.
3. Only governments can take complaints to the WTO's dispute processes and there does not seem to be any interest on the part of governments to limit other governments' capacities to fund public education. Several of the most enthusiastic protagonists of trade liberalisation in education, the US, Australia and New Zealand, have made statements in the WTO recently explicitly recognising that education is to a large extent a government function and that the private sector should supplement, rather than displace, public provision (WTO 2000, 2001a, 2001b).

In order for foreign institutions to receive public subsidies for programs they operate in New Zealand, they must register with the NZQA and have their programs quality assured by the NZQA. At present, there is no requirement for transnational providers to meet New Zealand quality standards unless they are seeking public tuition subsidies or seeking to have their programs recognised under the National Qualifications Framework.

The Tertiary Education Advisory Commission (TEAC), established by the new Alliance government after its election in November 1999, concluded that foreign providers in New Zealand were actually less regulated than local private institutions, observing that 'transnational providers can operate in New Zealand with no restrictions other than those related to all foreign investment' (TEAC 2001, p. 16). TEAC argued that they should be regulated in the same way as other providers:

Once a trans-national provider starts offering or advertising programmes here, it has, in effect, become part of the New Zealand tertiary education system. The Commission, therefore, believes that trans-national providers seeking to operate in New Zealand should be subject to the same regulatory requirements as other providers within New Zealand, including any changes in requirements that are made as a result of this Report. (TEAC 2001, p. 19)

New Zealand has a number of bilateral agreements that impact on tertiary education. The 1983 Australia–New Zealand Closer Economic Relations Trade Agreement has

effectively meant that Australian providers have been free to operate in New Zealand (DFAT 1997). More recently, New Zealand has negotiated a bilateral agreement with Singapore that includes commitments to market access and national treatment in tertiary education in private institutions (New Zealand 2001, p. 87). While this agreement does not give Singapore providers any more access than they had already under GATS, it does provide New Zealand's educational institutions with the right to operate in more restrictive Singapore, which has not committed to open tertiary education through GATS.

Neither New Zealand's WTO undertakings nor its bilateral free trade agreements have had an appreciable impact on the number or size of transnational providers operating in the country. The size of the private sector has been primarily influenced by the extent of public funding they receive, and this is not bound by the GATS.

## **Australia**

In 1995, Australia committed to market access and national treatment for foreign tertiary providers delivering distance education programs in Australia through cross-border supply. However, in relation to the commercial presence of overseas universities, Australia committed to market access but not to national treatment principles, so that it 'continue[s] to have the ability to discriminate between foreign and domestic private institutions (eg, in relation to subsidies)' (DFAT 2001).

Australian governments currently do not distinguish between local and foreign-based providers in data collection or in funding, so it is difficult to estimate the extent of transnational provision among non-university providers. Of Australia's five private universities, two have foreign origins: Bond University was until 1999 partially foreign owned and the University of Notre Dame, while locally owned, was established with assistance from its US sibling.

Tertiary education providers that are not universities must register with a state or territory government as a Registered Training Organisation if they intend to offer certificate, diploma or degree qualifications included in the Australian Qualifications Framework. As long as the institution complies with the nationally agreed Standards for Registered Training Organisations, no distinction is made between local and overseas-based providers, although foreign institutions may be required to establish local subsidiaries with a head office in the state granting registration (Victorian Department of Education and Training 2002).

In 2000, Australian governments for the first time agreed on coherent national protocols governing market entry in higher education (DETYA 2000b). The



development of national approval protocols was motivated by three issues: concern over the diversity of processes and standards for accrediting the growing number of providers of degree programs; the perceived need for national standards to protect Australian higher education's reputation internationally; and the need to establish consistent policies for dealing with foreign providers. Instrumental in raising attention to this last point was the establishment of Greenwich University, a distance education provider that had moved to Norfolk Island from the United States. Australian governments were outraged and embarrassed when Greenwich began referring to itself as a fully-accredited Australian university. As the federal government sought ways to stop it using the title 'university', Greenwich claimed that it was being discriminated against through ad hoc regulation designed to protect established providers against competition from new foreign entrants. This episode highlighted the lack of national quality standards and approval processes for new and existing providers (McBurnie and Ziguras 2001).

The resulting National Protocols for Higher Education Approval Processes include guidelines that each state or territory will follow when considering recognition of new local universities and foreign higher education institutions wishing to operate in Australia (DETYA 2000b). The protocols state that accrediting bodies should employ a transparent process and treat proposals for new public and private universities equally. There are various other requirements for new providers; however these do not seek to limit the number or size of private sector providers. For example, the title 'university' is protected under corporations law, which requires government approval for use of 'university' in a business name, and educational institutions and RTOs that provide courses to overseas students studying in Australia must be approved to do so by the relevant state or territory governments and listed on the Commonwealth Register of Institutions and Courses for Overseas Students.

The National Tertiary Education Union (NTEU) has been critical of Australia's market access undertaking on the grounds that it limits the government's ability to regulate the private sector in terms of the number or size of providers, the intake into courses in private institutions, the type of legal entity required for registration, and by restricting the range of licensing and qualification requirements (NTEU 2000, 2001). As is the case in New Zealand, Australian unions have been concerned with growing government funding to private degree-awarding institutions, which have recently been able to compete with public universities for various competitive research and teaching grants, and have begun to receive government-funded student places for certain programs. However, unlike New Zealand, there are no accurate figures on the number of private providers in Australia throughout the 1990s so it is difficult to gauge whether the market access commitment has had any effect on the size of the private sector. Given that the Commonwealth's market access commitment did not involve

any changes to state and territory processes for recognition of new providers, it is unlikely that this measure has had any appreciable effect on the size of the private sector since 1995.

Nevertheless, there has been considerable concern about the establishment of foreign institutions operating in Australia in recent years. This has been partly a response to the Greenwich University case, but also, one suspects, because the Australian higher education industry, which is highly aggressive in exploiting commercial opportunities in neighbouring countries, is in fear of other countries' universities doing the same thing in Australia. The head of the federal education department's Higher Education Division warned of the possibility that 'new suppliers with new products are emerging to threaten the present and prospective markets of Australian tertiary institutions both on-shore and off-shore' (Gallagher 2000, p. 3). Similarly, Australian Labor Party opposition spokesperson on education, Senator Kim Carr, warned the Senate that the Greenwich University episode had drawn attention to a larger threat:

Australia does face a foreign invasion in its higher education sector. This foreign invasion has been intent on exploiting our international reputation for excellence and our particularly lax regulatory environment in higher education.... We talk a great deal about defence in this country, and so we ought to. We ought to also be discussing the defence of this country's international reputation in regard to its higher education.... Let us keep the invading cuckoo universities from fouling our nest in higher education. (Carr 1999, p. 4847)

Australia, Carr felt, was at risk from foreign 'invaders', 'interlopers' and 'freeloaders'. This concern seems to have been alleviated by the new approvals processes and more stringent legislation, which ensure that foreign providers must meet the same standards as existing providers.

The National Protocols for Higher Education Approval Processes are non-discriminatory, in that they require foreign degree-awarding institutions seeking to operate in Australia to demonstrate that they meet the standards generally required of locally based providers. To this end, a foreign university must demonstrate that: it is a bona fide institution in its own country in terms of legal and accreditation requirements; its academic standards and quality assurance arrangements are comparable to Australian institutions; and that 'appropriate financial and other arrangements exist to permit the successful delivery of the course in the Australian jurisdiction' (DETYA 2000b, p. 13).

As in New Zealand, a major concern about GATS has been the possibility that the funding provided to public institutions would have to be extended to overseas institutions operating in Australia. As discussed above, this is unlikely as Australia, like New Zealand, has made commitments only in relation to *private* tertiary education. Because Australia has not committed to national treatment for commercial presence, it can continue to discriminate between foreign and domestic private institutions operating in Australia in relation to subsidies.

## Singapore

Singapore and Malaysia provide stark contrasts to the experiences of New Zealand and Australia. Both are major importers of transnational education, and neither have made education commitment under the GATS. Singapore's local tertiary education institutions are unable to meet existing demand, resulting in a considerable demand for international education. There are two types of transnational education in Singapore: 'external' distance education programs and foreign university branch campuses. External programs are those that are offered in Singapore by a local institution in conjunction with a foreign awarding university. The number of such programs, and the total number of students enrolled in them, grew steadily from the mid 1980s when the first programs were established, until the 1997 economic crisis. Since 1997 there has been dramatic growth in enrolments, rising from around 13 990 students in 1997 to 25 400 in 1999 (Singapore Department of Statistics 2001, p. 13, Yim and Yeo 1999, p. 10). In 1999, there were 33 722 students enrolled in local universities (Singapore Ministry of Education 2000a), so if the rate of growth experienced during recent years persists, there will soon be more students enrolled in foreign universities in Singapore than in local universities.

In 1998, around 55 per cent of students were enrolled in degree courses awarded by British institutions and 40 per cent in Australian programs, with the largest enrolments in the UK Open University, University of London, RMIT, Monash University and Curtin University. External programs were offered by 56 institutions in Singapore (Singapore Department of Statistics 2000, pp. 17–18), including professional associations such as the Singapore Institute of Marketing, the Institute of Banking and Finance and the Singapore Nurses Association, private colleges such as Informatics and TMC Education Group, and foreign organisations operating in Singapore such as the British Council and IDP Education Australia.

Since the mid 1990s, the Singapore government has been encouraging a select group of elite foreign universities to offer programs and establish centres in Singapore. This approach began to pay dividends in 2000 with the establishment of two foreign universities' campuses: INSEAD and the University of Chicago Graduate School of

Business (McNulty 2000). INSEAD, an English-language business school based in Fontainebleau, France, is the first foreign university to establish a branch campus in Singapore. With the addition of Singapore to its existing campuses in the United States and Spain, the University of Chicago Graduate School of Business now claims to be the first business school with permanent campuses on three continents (Riley 2000, UCGSB 2001). The establishment of these foreign branch campuses has been celebrated by the Singapore government, which has made a point of the fact that Singapore wishes to attract a small number of elite foreign universities to establish operations. Attracting these 'world class' institutions is part of the government's plan to turn Singapore into an exporter of high quality education. Singapore's first private university, the Singapore Management University (SMU) began operation in 2000. Although not government owned, SMU was initiated by Deputy Prime Minister Dr Tony Tan, given start-up funding, buildings and land by the government, and will receive ongoing public funding (Drew 1999). SMU has a five-year collaboration agreement with the Wharton School of the University of Pennsylvania, which will support SMU in curriculum design and teaching methodology, and will establish joint research activities (Singapore Management University 2000).

Singapore would have to relinquish some of its ability to pick and choose new universities if it was to commit under GATS to place no restrictions on market entry. The government would have to establish more transparent means of selecting foreign universities that wish to establish campuses in Singapore, and may find it more difficult to hand-pick a select group of institutions while restricting entry to other institutions. A national treatment commitment for private higher education similar to Australia and New Zealand's would require the government to treat foreign universities in Singapore 'no less favourably' than it treats the local private university, SMU.

Cross-border delivery through distance education and online courses that do not have a local presence in Singapore do not require approval. Foreign programs offered by a local partner institution must obtain permission from the Ministry of Education (Singapore Ministry of Education 2001). The awarding university and the local partner must provide detailed information pertaining to the university's capacity to deliver the course in Singapore to an equivalent standard to the degree that is offered in the home country (Singapore Ministry of Education 2000b). The ministry is adamant that ultimate responsibility for the program rests with the foreign university.

It is important to note that the programme originates from the [foreign degree-awarding] educational institution concerned which is responsible for its every aspect, including matters relating to curriculum, course structure, admission criteria, academic rigours, programme

quality, teaching standard and assessments/examinations. (Singapore Ministry of Education 2001)

Significantly, the ministry implies that teaching or assessment may not be carried out by the local partner, who is restricted to administrative and support functions.

The local parties, whether they are professional bodies or business organisations, provide the overseas educational institutions infrastructure support such as in the provision of requisite physical facilities and other logistics, promotion/publicity connected with student recruitment drives, liaison between the programme provider and their students here, etc. (Singapore Ministry of Education 2001)

There seems to be some confusion about the legality of tutorials provided by staff employed by the local partner and lectures provided by visiting academics. Lecturers employed by the Portman Management Centre, for example, 'use tuition hours to explain key theories and concepts, discuss cases, analyse problems and critique projects by students', according to the centre's principal (Education 2000, p. 21). Such teaching would seem to be exceeding the role of the local provider as spelt out by the ministry. In some external programs run by the Singapore Institute of Management, the institute's lecturers develop curriculum, deliver lectures and tutorials, and set and mark assessment, under the supervision of lecturers from the awarding foreign university. Some believe that there are different rules for professional associations and private colleges. The manager of one Australian university's Singapore programs, for example, suggests that there are different regulations applying to local professional bodies and to private colleges acting as local partners (Patton 1999). Programs taught with professional bodies, he states, are able to use local tutors and intensive blocks of lectures provided by visiting academics from the awarding university. He understands that programs taught through private colleges are not able to use local tutors, and lectures given by visiting academics from the awarding university must be described as public meetings or public lectures and attendance by enrolled students cannot be a required part of the course (Patton 1999, p. 204). The current practice is that many local partner organisations provide tutorial support to students, but sometimes these are not called 'tutorials', and visiting lecturers from the awarding university routinely provide an intensive series of lectures, often over a weekend, but sometimes these are not called 'lectures'.

Because of the lack of transparency in Singapore's regulatory regime, it is difficult to know if such confusion exists because the ministry has changed its regulations over time or whether recommendations from the ministry that are communicated orally have been distorted and confused over time. The Singapore government has no

publicly available guidelines for external programs. Each application is assessed by the Ministry of Education on a case-by-case basis, and the criteria used in denying or approving programs is not known to anyone outside the ministry. Professional bodies such as the Singapore Institute of Management are not required to go through the same process when they register new programs, but instead consult with the ministry about their intentions and obtain approval from the ministry in a less formal manner.

The major impact of a commitment to market access treatment would be the requirement for the Singapore government to implement transparent guidelines and processes for approving external programs and foreign branch campuses. An indication of how Singapore may deal with such a requirement is provided by Singapore's recent bilateral agreement with New Zealand, which includes commitments to no market access or national treatment limitations in the cross border, consumption abroad or commercial presence modes of supply for all education services provided by New Zealand providers (New Zealand 2001). In that agreement, the Singapore government uses recognition of university qualifications as their main means of controlling the private sector, stating that 'specific commitments on market access and national treatment through any mode of supply shall not be construed to apply to the recognition of university degrees for the purposes of admission, registration and qualification for professional practice in Singapore' (New Zealand 2001, p. 134).

The Singapore government has always seen the education system as a means to shape its citizens to suit the political and economic needs of the nation or, as the Ministry of Education puts it, to 'mould the future of the nation, by moulding the people who will determine the future of the nation' (Singapore Ministry of Education 1998). Singapore has long been held up as a prime example of the economic benefits of state-directed globalisation. It has managed to achieve high rates of economic growth in recent decades and is regularly assessed as being one of the world's most globalised nations (Branson 2001, World Economic Forum 1996). Active engagement in a globalised economy has strengthened Singapore's paternalistic, interventionist state, which appears to have more direct control over the affairs within its territory than most states in less globalised economies (Brown 1998, Wee 1999).

## **Malaysia**

Malaysia has made commitments under GATS in financial and other services, but has not made an offer on educational services. In the early 1990s, due to the under-supply of places in local public universities, the Malaysian government faced a situation in which thousands of students travelled overseas to obtain tertiary education. At this time, according to UNESCO, only 7.2 per cent of Malaysians at university age were enrolled in local tertiary institutions, compared with 35.8 per cent in Argentina or 54.8 per cent

in South Korea (Silverman 1996, p. 25). In the 1980s there was a proliferation of private colleges that offered students matriculation year courses to facilitate entry into foreign universities. Many colleges also had 'twinning' arrangements with foreign universities, through which students could complete a one-year diploma or two-year advanced diploma with the local college that was treated by the foreign university as equivalent to the first one or two years of the degree. The curriculum and standards of these college programs, commonly referred to as 1+2 or 2+1 programs, were supervised by the foreign awarding university, usually a British, Australian or American institution. Completing part of the degree in Malaysia reduced the expense of obtaining a foreign degree because of the lower fees and lower living expenses for the years completed in Malaysia.

Private sector provision of education has a long history in Malaysia. In 1993, when the new policy was being developed, alongside the new private tertiary education colleges there were around 53 Chinese independent secondary schools, 118 private secondary schools and 20 international schools (catering primarily to the children of expatriate workers) (Kandasamy and Santhiram 2000, p. 394, Malaysian Ministry of Education 1993).

In 1995, the 20 per cent of Malaysian students who were studying abroad cost the country around US\$800 million in currency outflow, constituting nearly 12 per cent of Malaysia's current account deficit (Silverman 1996, p. 26). While part of the solution was to increase the capacity of public universities (Neville 1998), the government saw the local private sector as the key means of reducing this currency outflow and in the long term of transforming Malaysia into a net exporter of tertiary education (Ismail 1997).

With the passage of the *Private Higher Educational Institutions Act 1996*, the government formally began to encourage the private sector to play a complementary role in the provision of tertiary education. As a result of these measures, by the end of 1999 the proportion of young Malaysians between 17 and 23 years of age in tertiary education had increased dramatically to 22 per cent, with 167 507 enrolled in public universities and an estimated 203 391 in private institutions according to government figures (Johari 2000, p. 8). By 2000, there were 11 public tertiary educational institutions, seven new local private universities, three foreign university branch campuses and more than 400 private colleges approved by the Malaysian government (Challenger Concept 2000, pp. 203–4, 218–24). New private universities and branch campuses of foreign universities may only be established following an invitation from the Minister for Education. This allows the government to restrict the number and type of private universities, and is quite clearly at odds with the GATS market entrance principle.

Private colleges, and universities that have been invited to apply, must register with the Ministry of Education, and then apply to the Ministry of Education for permission to conduct each course of study or training program. These applications are assessed by the Lembaga Akreditasi Negara (LAN) to determine whether courses meet minimum standards. Institutions must provide separate documentation for each course of study, including detailed information concerning teachers, subjects, facilities, the management system and the rationale for providing the course (Challenger Concept 2000, pp. 226–7, Malaysian Ministry of Education 1997, p. 10). Most private colleges offer their own certificate and diploma programs, in addition to local and foreign matriculation programs, degree courses awarded by local universities (Education Quarterly 2000), and degree programs awarded by foreign universities. Most degree programs require students to spend the final year of study at the awarding university. In 1998, the Malaysian government granted approval for some private colleges to offer foreign university courses that would be taught entirely in Malaysia by college staff (sometimes with the participation of foreign university lecturers). These ‘3+0’ programs, as they are called, were allowed for a five-year trial period in response to the Asian currency crisis, which made it impossible for many students to complete the final year(s) of their course at overseas institutions (Lew 2000).

Once established, foreign universities’ branch campuses are subject to the same regulation as local private universities, and no substantial distinction is made in the legislation between local and foreign private educational institutions. The Malaysian government has been concerned about the cultural impact of private tertiary education, with its foreign and generally instrumental curriculum, and has stipulated compulsory subjects in the national language, Malaysian studies, and moral and Islamic studies (McBurnie and Ziguras 2001). These compulsory subject requirements have been applied to all students in private sector institutions, regardless of the national origins of their course of study. Foreign universities that have been invited to establish a campus in Malaysia must establish a Malaysian company to operate the campus, and this company must have majority Malaysian ownership. LAN approves courses in the same way, regardless of whether the course is delivered by a local private university, a foreign university branch campus or by a local private college. Foreign programs must also be accredited in the university’s home country, and foreign professional programs must be recognised by the relevant professional association in the home country.

The presence of a large number of foreign programs in Malaysia has brought the expected trade benefits, and Malaysia is already making progress in its quest to become a net exporter of tertiary education by 2020 (Malaysia 1991). There has been a rapid growth in the number of international students studying in Malaysia, jumping



from 5635 in 1997 to 22 849 in 1999 (Education Quarterly 2001, p. 14, Lee 1999). The vast majority of these students are enrolled in transnational programs in private sector institutions. However, Malaysia may in future years seek to reduce its dependence on foreign universities by treating local private providers preferentially. Committing to the GATS national treatment principle would open the possibility of compensation claims if a future Malaysian government were to discriminate in favour of local courses over transnational programs.

## Conclusion

Clearly, there are very different issues facing exporting and importing nations as they confront trade liberalisation in education. In major exporting countries such as Britain, the United States and Australia, and to a lesser extent New Zealand, the private tertiary education sector is small, while public institutions are adept at exploiting commercial possibilities, both at home and abroad. These countries' tertiary education institutions are located (commercially and culturally) close to the power centres of global capitalism, and have the resources to be able to compete with foreign institutions that establish operations within their borders. In importing countries, the situation is very different. Private tertiary education sectors in these countries are often quite large and focus on marketable programs, while the public sector teaches courses oriented towards the government's national development priorities. Governments commonly have plans for tertiary education that differ from the direction in which market forces will push providers, and these discrepancies are becoming increasingly common in countries where transnational private tertiary education proliferates. While importing countries rely on transnational tertiary education to meet labour market needs, nation-building governments often see international education as a form of culturally subversive western domination (Rudner 1997), and therefore seek to keep their regulatory options open. Importing countries are likely to follow exporting countries down the path of liberalisation of trade in tertiary education services. However, given their concern with shaping the growth of the private sector, they will most likely seek to include mechanisms in their trade commitments that allow them to retain the ability to steer the development of the private sector and to be selective about which foreign providers they permit to establish a commercial presence.

## Notes

- <sup>1</sup> GATS commitments can be withdrawn or modified once they have been in place for three years, although affected governments can seek compensation either through monetary payment or through the replacement of the commitment with

another of equivalent value. Commitments can also be suspended or withdrawn by a government if such action is necessary to protect 'public morals', maintain public order, or to protect human, animal or plant life or health. Thus it is easier to commit to liberalisation of trade than it is to reintroduce protectionist measures, leading to a 'ratchet effect' in which pro-trade political parties can introduce commitments when in office that their more protectionist opponents are stuck with when they are later in government.

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