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# WINNERS OR LOSERS? LIBERALIZING PUBLIC SERVICES

Edited by Ellen Rosskam

INTERNATIONAL LABOUR OFFICE ● GENEVA

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First published 2006

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Edited by Ellen Rosskam

*Winners or losers? Liberalizing public services*

Geneva, International Labour Office, 2006.

Public service, social service, public private partnerships, public private mix,  
privatization, employment security, working conditions, workers rights, wages,  
social security, developed countries, developing countries 04.03.7

ISBN: 92-2-117497-2

*ILO Cataloguing in Publication Data*

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# **LIBERALIZATION OF HIGHER EDUCATION AND TRAINING: IMPLICATIONS FOR WORKERS' SECURITY**

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by Eva Hartmann, Sebastien Haslinger  
and Christoph Scherrer<sup>1</sup>

## **1. Introduction**

Higher education is currently undergoing a fundamental transformation, characterized by a clear orientation to the market. Many governments have implemented policies that foster competition among public institutions and between public and private institutions of higher learning and training. The latest development is the liberalization of national systems of higher education and training to allow foreign providers access to formerly closed national education “markets”.

While previously the terms of transborder cooperation in higher education were discussed and negotiated at the United Nations Educational, Scientific and Cultural Organization (UNESCO), opening markets to foreign providers falls under the jurisdiction of the World Trade Organization (WTO). The WTO administers the General Agreement on Trade in Services (GATS), agreed at the conclusion of the Uruguay round in 1994, which includes education and training services. To date, a total of 54 WTO member states have committed themselves to allow foreign providers access to parts of their education system and to treat them in the same fashion as domestic providers. Currently a new round of negotiations on further liberalization of cross-border education is underway.

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<sup>1</sup> University of Kassel, Germany. This paper was written with contributions from Nalie Belgin Erdem Pfeifle, Lorenza Villa Lever and Lucien van der Walt.

The first section of this chapter provides an overview of the current reforms in higher education and describes their likely impact, particularly on teaching staff. Since liberalization in the narrow sense of opening up to foreign providers is a recent phenomenon, in Section 2 we will also look at experiences with policies that usually precede liberalization – commercialization, deregulation and privatization. Commercialization leads educational institutions to run their institutions in a business-like fashion, as if they were delivering a service in the marketplace. Deregulation puts state institutions in competition with private (domestic) providers (frequently alongside sweeping re-regulation of the competitive activities of both types of institution). Privatization creates private providers out of state-owned institutions. The introduction of tuition fees at public universities can be considered privatization of the consumption of education.

Working conditions have generally deteriorated in higher education. While a few institutions pay well, most have lowered the pay scale and removed job security. Access has become increasingly tiered. Expensive tuition fees at institutions with a high reputation have directed most students from less well-to-do families to overcrowded and under funded public institutions or private programmes of equally dubious quality.

The second part of Section 2 explores the dynamically growing international market in higher education. Unfortunately, information on measures to regulate the access of foreign providers exists only for some countries. Some governments even lack information on foreign providers in their own country. Even less data are available on the impact of the international market on employment conditions. But by tracing the extent of liberalization and sifting through the available material, this chapter will sketch a picture of liberalization's implications for employees in the education sector. A look at the likely impact of liberalization from an economic perspective will point out some of the major risks and will identify areas where original research is warranted

To provide a more vivid account of liberalization experiences, we have invited Belgin Erdem from Turkey, Lorenz Villa Lever from Mexico, and Lucien van der Walt from South Africa to report on the restructuring of higher education in their respective countries. Their reports are in Section 3.

In Section 4 we look at global policies facilitating liberalization. The case studies already point to the World Bank's key role in the liberalization of education. In addition, we identify the OECD as another major agent for educational policy and trace both organizations' influence on the global educational agenda. Since the 1980s, this agenda has shifted towards the promotion of commercialization and privatization. To foster the expansion of higher education despite public funding cuts, these organizations recommend

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importing transnational education, a recommendation that is addressed to poor and small countries in particular.

In our fifth and final section we explain the central provisions of the GATS and present the liberalization commitments that have so far been agreed to. We find a very heterogeneous landscape where no correlation exists between the competitive strengths of a nation's educational institutions and its liberalization commitments (for example, the United States has taken on very few commitments). While few developing nations have committed themselves to opening up their education systems to foreign providers, some have liberalized access to their system completely.

Given the scarce information available on the impact of this liberalization on employment conditions, current efforts to liberalize further are alarming. While some think-tanks and non-governmental organizations have carried out their own analyses of various aspects of the liberalization of services, its implications for students and those employed in the delivery of education have yet to receive attention. We conclude the chapter with a description of the current GATS negotiations and identify some of the problem areas.

## **2. Liberalization in higher education and training**

### ***2.1. Current reforms in higher education***

Liberalization in higher education is taking place in the context of a fundamental change in the university's role in society. Once the preserve of the elite, higher education has been transformed into a mass phenomenon. From the 1960s and 1970s onwards, countries undertook a huge expansion of the education system in response to an increased interest in higher education. Between 1970 and 1997, the number of students worldwide rose from 28 million to 88 million. In the industrial countries, the number of students doubled from about 21 million to 45 million. In developing countries, there was a six-fold increase from 7 million to about 43 million (UNESCO, 2000, p.67).<sup>2</sup>

One reason for this is the growing attention paid to employees' qualifications as industry's "human capital" (OECD, 2001). The emphasis on the

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<sup>2</sup> In spite of this dynamic growth, the share of students in many developing countries is still below 10 per cent. Big geographical discrepancies also have to be taken into account. For example, the number of students in Africa rose from 500,000 in 1970 to 4.8 million in 1997, whereas in Asia/Oceania the increase was from 7.4 million to about 36 million.

importance of academic knowledge has led to a closer interaction between academia and industry, particularly in the area of science and technology. In the context of a growing world market, research and development and a highly skilled labour force have become the key to sustaining a country's economic position (Wingens, 1998, p.66; Castells, 1999; World Bank, 2002).

With the expansion of higher education, the number of teaching personnel has increased as well, with more than 6 million professionals involved in tertiary level teaching worldwide (UNESCO, 2000, p.117).

Spending (private and public) on institutions of higher education has increased, particularly in OECD countries, in the last decade. However, the differences between the countries are noteworthy. Between 1995 and 2000, spending increases were minimal in some countries such as the Netherlands, the United Kingdom and Germany, and rather substantial in other countries such as Ireland and Greece (OECD, 2003, Table B2.2). In spite of these national differences a clear trend towards declining expenditure per student can be observed all over the world when total expenditure is compared to the growing number of students (Task Force on Higher Education and Society, 2000, p.123). Hence the funding of higher education has not kept up with the costs of expansion. Student enrolment has grown faster than the level of teaching personnel, which has led to a decline in the quality of higher education. One clear indication of this is the professor to student ratio. In Italy, for instance, the ratio reached 1:30 by the end of the 1990s compared to 1:15 in Sweden (Askling, 2000, p.211; Moscati, 2000, p.147). This unfavourable ratio is topped by the almost unmanageable level of 1:59 in Germany (Adams, 2002, p.11). Ratios such as these contribute to high dropout rates and a growing time-taken-to-degree problem, paradoxically jeopardizing the opportunities mass tertiary education was supposed to provide to children from working class and low-income families (Smallwood, 2004).

Countries cope differently with the increasing demand and financial constraints on their institutions. Nevertheless, the reform agenda in most countries shows remarkable commonality (Johnstone, 1998), with two key features. First, measures have been taken to improve the efficiency of higher education institutions. The current trend towards a contractual relationship between government and institutions here plays an important role. Management-by-results in turn allows a comparison of the output of different institutions and increases pressure for rationalization. The second feature is related to liberalization policies that aim to increase private funding for higher education. In the following we look more closely at the different measures governments have taken to pursue these two objectives. Then we assess the likely impact on teaching staff of deregulation and liberalization policies in the higher education sector.

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## Contractualization

The current reform of higher education is closely linked to decentralization processes that grant more autonomy to higher education institutions. Particularly in countries where the state has traditionally played a significant role in higher education, the new approach is changing substantially the relationship between universities and governments. The ministry and the universities jointly set the objectives for each university and agree on funding levels. The universities receive lump sum funds and decide themselves how to allocate them. In short, a “contractualization” of the relationship between the state and universities has been introduced.

This “tight-loose” (Henry et al., 2001, p.99) form of governance builds on management-by-results, emphasizing the assessment of activities and rewards for performance. Performance indicators become the central mechanism for accountability. This decentralization implies a fundamental restructuring of the state’s role. Guy Neave, Research Director of the International Association of Universities, describes it as a shift from the intervening to the evaluative state (Neave, 1998). Universities are given more responsibilities in an evaluative state but without increases in public spending. In this context, institutional autonomy serves politically, in Neave’s words, “as the ‘little bit of sugar’ which makes the often very bitter medicine of budgetary compression flow down the collective academic gullet without too much gagging!” (p. 270).

In higher education, the new autonomy translates into concerns with institutional improvement and self-evaluation. A “global model of quality” has emerged, which applies both internal and external modes of assessment. Quality assurance becomes a major tool for increasing the pressure on the educational system to expand without generating more costs. Or, to quote Guy Neave once more: “Quality ... is a technique which allows a national administration to insist on ends while rigorously denying the means” (Neave quoted in Dias, 1994, p. 166).

Scott Davies and Neil Guppy call this strategy a “rationalization” project (Davies and Guppy, 1997, p.436). The question remains whether rationalization is realizable in education in the same way as in the productive sector. It is to be feared that cost cutting in education cannot be compensated by technical rationalization, and will therefore lead to a deterioration of teachers’ salaries. We will come back to this point later on.

Decentralization that goes hand in hand with a “contractualization” of the relationship between universities and the state, defined by control through performance indicators, changes the idea of a university fundamentally. “Contractualization puts an end to the idea of university as a service to the State and instead recasts it as a public service of which one of the funders and

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supporters happens to be the State” (emphasis in the original) (Neave, 1998, p. 276).

A second type of contractualization takes place through the so called voucher system. This system allows government agents to select a target population of students and give them vouchers that entitle them to a grant or a state loan. Students decide whether to consume the education at a private or public institution of higher education. A direct relationship between the “donor” and the “consumer” is thus established. Higher education institutions will increasingly be funded via the consumption of the education they provide.

These two new types of control by results increase the pressure to rationalize teaching and administrative tasks. The comparison of output to input becomes the main indicator of an institution’s effectiveness and efficiency. Students who need more attention, and time consuming voice systems, are likely to be perceived as jeopardizing the efficiency of an institution. The output orientation makes it possible to compare study programmes regardless of the “conditions of production” or whether the provider is a public or a private institution.

This trend will in the long run erode the legitimacy of the special treatment given to public institutions and is therefore fostering the second important feature of the current reforms, privatization. Changes in the educational policy of multilateral organizations such as the World Bank, described in more detail in Section 4, clearly promote this trend.

## Privatization

Considerable efforts have been undertaken to increase private funding for higher education. Nevertheless, the public-private funding ratio varies considerably between countries. In some countries private spending has increased much faster than public spending.<sup>3</sup> Privatization takes place predominantly in three forms, through the introduction of tuition fees at public institutions of higher education, through the establishment of private institutions and through outsourcing strategies. Some OECD countries introduced tuition fees for public universities decades ago, while others have introduced tuition fees only recently. Very few continue to offer higher education for free. Developing countries have also shifted costs from the taxpayer to parents and

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<sup>3</sup> Turkey is a notable example of increased private expenditure on educational institutions, with a rise in the index for private funding from 100 in 1995 to 275 in 2000, compared with a rise to 180 for the index of public funding. Other outstanding examples are Sweden and Portugal, with public/private ratios in 2000 of 114:225 and 130:292 respectively (OECD, 2003, Table B2.2).

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students. The Chilean government spearheaded this development in Latin America in 1981.

The social impact of tuition fees is highly contested. According to proponents, free education funded by taxpayers discriminates against low-income families because children of middle-income families are more likely to study (World Bank, 2002, p.55). However, studies like the one conducted by the National Center for Public Policy and Higher Education show that in the United States, where charging tuition is common, the financial burden for low-income families is substantially higher than for middle- and high-income families (Immerwahr, 2002). At the same time, the continuous increase in tuition fees in the last decade has also made it difficult for middle class students to keep up. In the academic year 2002-03, average published tuition fees for a four year public college were up 14 per cent on the previous year at USD4,115, whereas the average published price for a private four year college rose 6 per cent to USD18,569 (Farrell, 2003, p.A1; College Board, 2003a). In order to absorb at least part of this new burden, grant money became more available. But not all students benefit from this opportunity. In an effort to boost their academic prestige, many universities devote their financial aid to merit based rather than to need based grants. Studies show that middle class students are more likely to obtain such a grant than their fellow students from poorer families (Farrell, 2003).

The United States is a good example of the paradox of the commodification of higher education in a high-income country. Universities react to cuts in public spending with an increase in tuition fees. In order to alleviate the social consequences, efforts are undertaken to increase the amount of grant money, which in turn is highly subsidized by the government. The US Federal Government provides 68 per cent of direct aid to students, which is complemented by state funding (College Board, 2003b). Hence there is not so much a reduction in public funding per se but rather a shift from an institutional to an individual subsidy scheme. The main beneficiaries are private institutions, which increasingly compete with public institutions for well-off students, as well as the private finance market, which supplements grants with private loans. An illustrative example of the relationship between tuition fees and the growth of private providers is Germany, where tuition fees have not yet been introduced. In spite of the high purchasing power of the population, only a few private institutions have managed to establish themselves, since they have to compete with study programmes of high quality that are free for students (Schreiterer and Witte, 2001, p. 24).

This first kind of privatization, the introduction of tuition fees, is thus likely to promote the second kind, the establishment of private institutions (Hartmann, 2003). Some countries such as the Republic of Korea or the United States have a

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traditionally high ratio of private to public institutions, while this is a fairly recent trend in other countries. To date, private institutions play an important role in the provision of higher education in Asia, Latin America, increasingly in the former Soviet Union and Eastern Europe, and even in parts of Africa and the Middle East (Johnstone, 1998, p. 18). In the Russian Federation, a country with no history of private university education prior to 1989, private institutions now offer instruction to about 10 per cent of students (Fillipov, 2002, p. 126). The emergence of a private market in higher education on a domestic level creates in turn a favorable situation for the international market in educational services (see Section 2.3).

Privatizations furthermore foster rationalization through economies of scale. The emergence of mega universities as well as the current trend to merge universities point in this new direction. Or, as John Daniel, former Vice-Chancellor of the Open University and current President of the Commonwealth of Learning, puts it: "By developing courseware for large numbers of students, [open universities] can justify the investment required to produce high quality learning materials at low unit cost" (Daniel, 2002, p. 1).

Expansion has, in other words, become a major strategy to cut costs. This trend leads to new kind of crowding out between institutions of higher education, which is to the detriment of smaller institutions. The emerging international market in higher education fosters this consolidation.

A third type of privatization happens through outsourcing (Kirp, 2002, p. B13). Independent contractors are increasingly handling many non-teaching activities that institutions of higher education used to manage themselves. Such activities may encompass student housing, food, healthcare, bookstores, computer services, financial management, security systems, campus cleaning and event management. In some countries even student counselling and the management of alumni relations tend to be handed over to private firms, as well as the matching of students and institutions. Particularly in the context of cross-border education, many universities have started to outsource these labour intensive activities to private firms. For-profit institutions go even further. The University of Phoenix, to name a prominent example, leased the library for its New Jersey campus from a nearby institution (Kirp, 2002, p. B13).

In sum, the current changes in higher education promote a new relationship between government and universities through contractualization that facilitates comparisons of each institution's output regardless of the conditions under which it is working. A further step in the increasing orientation to the market is the voucher system that establishes a direct relationship between the government and the student, now perceived as a consumer of higher education. The introduction of tuition fees in turn tends to abolish the "comparative

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disadvantage” of private institutions that hitherto had to compete with free higher education. Assessing the impact, however, also has to take into account the increasing diversification of institutions that vary in their academic level.

Today, post secondary education is characterized in many countries by a variety of institutional types, including vocationally oriented community colleges, polytechnic schools, undergraduate colleges, specialized schools and research universities. This diversification aims at a higher responsiveness to the needs of the labour market and fosters competition between institutions. It also helps enforce the division of labour between and within higher education institutions and their academic staff. Allowing universities to determine their own tuition fees will increase stratification within the university system. Private universities benefit from this trend. In the US, the most prestigious private universities have managed to stabilize enrolment levels while increasing their revenue flow by annually raising tuition fees. For example, Harvard University's tuition fees have increased more than five fold (inflation adjusted) over the course of two decades (Adams, 2002, p. 8).

## ***2.2 Consequences for staff and faculty***

The following explores the impact of liberalization and privatization of higher education on employment conditions, particularly of teaching staff.

### **Changes in the appointment of faculty**

In many countries, institutional autonomy afforded through contractualization implies changes in academic appointments as well. Among European countries, the most sweeping change has been made in the Netherlands, which abolished civil service status for faculty and gave the universities authority to make their own appointments (DeWeert, 2001). This example indicates the considerable impact that decentralization can have on employment conditions — salary and workload, job security and tenure, procedures for recruitment and promotion, fringe benefits, pension arrangements, sabbaticals and so on. However, no overall assessment of current changes can be made, since work regimes vary among countries.

In general, three basic forms of employment regime can be identified: regulation by law; collective bargaining between representatives of employers and employees; or individual bargaining between a staff member and representatives of the employer, be it a government or institution (Enders, 2000b, p. 32). The abolition of civil service status for faculty is likely to be detrimental to the first form of regulation. The current trend to introduce performance related pay, observed all over the world, is challenging established

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structures of collective bargaining. Whether this trend is likely to foster individual bargaining depends very much on the ability of teachers' unions to mobilize, as strikes of university teachers in the United Kingdom showed in spring 2004.

The increase of institutional autonomy is generally accompanied by centralization at the institutional level that strengthens the role of rectors and deans. This trend undermines the very nature of the chair system, which is an essential element of the traditional self regulating processes of the university. Under the chair system internal decision-making power is largely vested directly in the faculties, with a voice system that includes some representation of non-academic staff and students. The power relationships are characterized by a balance that makes it impossible for the university leadership — rectors and deans — to take a decision against the majority of chair holders. Current reforms centralize the decision-making process within the universities to the detriment of this voice system. State institutions thus become more similar to private institutions, where final authority generally rests in the hands of a board of private trustees (Adams, 2002, p. 5). These boards exercise fiduciary responsibility, approve budgets, and appoint and set the terms for senior university posts in consultation with the faculties. In publicly traded private for-profit institutions, shareholders additionally play an important role.

### Increasing salary disparity

The increasing diversification of higher education linked to tuition fees that differ from institution to institution has led to a growing income disparity among faculty. Prestigious universities can raise fees without diminishing student enrolment. This revenue in turn allows the universities to recruit faculty "stars" and to increase general faculty salary levels. By contrast, public universities have to struggle with declining public spending without being able to raise tuition fees accordingly. In many African countries, this has led to a considerable drop in academic salaries that once provided a middle class lifestyle (Altbach, 2000, p. 27), contributing to an exodus of the best scholars from the continent. Also in Central and Eastern European countries academic salaries have not kept up with the cost of living. A similar trend can be observed in South Asia, especially for the large majority of undergraduate colleges. The result has been a widening disparity between salaries paid in high-ranking private and in public universities. In 1978–79, the average full professor at a public doctorate-granting university in the United States earned about 91 per cent of the salary of a typical professor at a private doctorate-granting institution. By the early 1990s, this had fallen to less than 79 per cent (Ehrenberg, 2000, p. 5).

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While the prestigious private universities can on the whole control their enrolment levels, public universities, particularly low ranking ones, have to absorb by far the larger part of the long term growth in student numbers without an adequate increase in revenue. This has led to an intensification of work (Farnham, 1999; Benmore, 2002). Low ranking private institutions are faced with a similar or even worse situation. In many countries they absorb the majority of students who have not gained access to public universities, particularly in vocational and applied programmes.<sup>4</sup>

The stratification process within the system of higher education therefore creates not only divisions between public and private institutions but also among the private institutions.

### Part-time teaching

To meet the increasing demand of students under conditions of financial constraint, many universities — public as well as private — have started to employ more part-time teachers. While part-time teaching has traditionally been widespread in regions such as Latin America, many observers see the phenomenon growing all over the world (Enders and Teichler, 1997; Farnham 1999; CEART, 2003). The rank of an institution seems to be related to the number of part-time faculty members. According to a survey carried out by the US Department of Education, the percentage of part-time work within the faculty at US community colleges rose from 22 per cent in 1970 to 60 per cent in 2001 (Longmate and Cosco, 2002, p. B14), whereas the percentage for all US institutions of higher education reached 43 per cent, up from 33 per cent in 1987. The increase in part-time teaching has been accompanied by a clear trend towards the “feminization” of part-time work. The proportion of women among full-time faculty members was 36 per cent in 1998, but the proportion among part-time teachers, at 48 per cent, was significantly higher (Wilson, 2001, p. A14).

Institutions of higher education hope to save money and gain more flexibility through part-time working. They have no commitment to the part-time faculty members. Most part-timers receive no health or retirement benefits, and their rate of pay is not proportional to that of full-time faculty members. Part-time staff often have no access to offices or laboratory space, and their

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<sup>4</sup> This is exactly the area that the US communication to the WTO defines as training: “Training services are very similar to education services, but training courses are generally less theoretical and more job-related than academic courses, often requiring hands-on operation of tools, equipment and certain devices” (WTO, 2000).

employment arrangements usually do not allow them to spend time on research or administration. This trend towards casualization of faculty working conditions is even more widespread in the new private institutions of higher education that absorb the majority of enrolments in countries such as Brazil or Chile. These institutions rely predominantly on part-time faculty (Altbach, 2000, p. 23). The Chronicle index of for-profit higher education shows that, even in the best performing publicly traded higher education companies, part-time faculty members far outnumber full-time faculty members (Chronicle of Higher Education, 2003). Increasing competition between public/not-for-profit and for-profit institutions risks enhancing this trend to the detriment of the working conditions of teaching staff.

### Employment security

There is a further trend in academic appointment practices. Many countries have coped with the mass expansion of higher education by increasing or creating non-tenured fixed term posts. According to the study by the US Department of Education mentioned earlier, the share of tenured US faculty members declined from 35 per cent to 32 per cent between 1992–93 and 1998–99 (Wilson, 2001, p. A14). One reason is the increasing share of faculty that teaches part-time since the majority of them are not tenured. But the proportion of non-tenured full-time teaching staff has also increased in recent years, from 8 per cent in 1987 to 18 per cent in 1998. In other words, a growing number of institutions do not offer tenure. Community colleges are least likely to offer tenure and public research universities the most likely, according to the US Education Department study.

The number of non-tenured teaching staff is also very high in countries where tenure is regulated through civil service rules (Altbach, 1996). The chair system linked to this kind of tenure is characterized by seniority, historically elevating one senior professor in each discipline with a variety of junior staff arranged under the chair holder. The chair holder's tenure provides strong guarantees. The most rigid chair system can be observed in European countries offering high employment security. Here, tenure is a right granted to senior members of the civil service as a result of their appointment. Professors are paid according to civil service scales, they are given a guarantee of employment, and there has been up to now little variation in salaries across the academic system. This high employment security is in strong contrast to the situation of the junior scholars who hold only fixed term appointments and cannot proceed up the ranks of one single university to the professorship. This system requires considerable mobility on the part of junior staff.

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The expansion of the teaching body has deepened the hierarchies within institutions by increasing the percentage of teaching staff working under highly casualized conditions. In Germany, to take an egregious example, only around 30 per cent of the established positions in universities are professorial, whereas around 70 per cent of staff are sub-professorial, the majority employed on fixed term contracts working part-time or full-time (Enders, 2000a, p. 41). To counteract this trend, in 2001 the German parliament limited fixed term appointments for academics to 12 years in total. This regulation, which aims to introduce a tenure track model in Germany, has been harshly criticized by some academics. Particularly experienced scholars fear that they will be replaced by younger scholars who have not yet reached the limit of 12 years (Herbert, 2002).

In many countries tenure policies themselves are undergoing changes. In some countries where tenure was linked to civil service status, attempts are being made to abolish this system. In other countries tenure never gave such a strong guarantee of employment security. In the United States, for instance, tenure can be abrogated by the universities for reasons of financial exigency, programme reorganization and other institutional reasons. But even this tenure model is increasingly being called into question. An extension of the probationary period changes in standards for dismissal of faculty, and incentives to forego tenure can be seen. In the United Kingdom, for a variety of reasons, the tenure track has been abolished altogether for new entrants to the profession (Shattock, 2001). One key objective was the upgrading of the vocationally oriented polytechnics to university status. Polytechnics did not have the right to award academic degrees, and had never had a formalized tenure system. The upgrading of the polytechnics thus went hand in hand with a downgrading of employment conditions at the universities.

Private institutions of higher education are in the vanguard of the trends examined here. They tend to provide less employment security, particularly in low ranking institutions and in countries where tenure is regulated through civil service rules. Prestigious universities are able to compensate for lack of employment security with higher salaries. This difference in employment security between private and public universities is less substantial in countries with a tenure model that does not guarantee lifelong employment. However, remarkable divergences exist depending on the position of the private institution within the system of higher education.

To sum up, a common trend towards casualization of the work of faculty members can be observed in public universities and average private universities. Increased enrolment has not usually been accompanied by commensurate growth in faculty appointments or salaries, which has led to an intensification of work. Many countries have coped with the expansion of student numbers by increasing the percentage of part-time teachers. However, these trends are not easy to

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generalize since national situations vary considerably. More research is needed in order to provide a global picture of the working conditions of academic staff. A regular statistical profile of the teaching profession, as recommended by the joint ILO/UNESCO committee of experts, would be crucial for such an undertaking (CEART, 2003).

### **2.3 Liberalization through cross-border education**

A new dimension of liberalization is linked to the emerging international market in higher education. Increasing privatization at the domestic level creates a climate that is favourable for international providers. Some countries have opened up their education system to the international market, though the conditions imposed on foreign providers vary considerably. Countries such as India or China only allow collaborative arrangements in which the awarding institution must collaborate with a local institution (UNESCO, 2003b, p. 17). Some countries charge additional taxes on foreign providers. Others, for instance, Chile, do not allow for-profit private institutions. In many cases, investors can get around such restrictions. In the case of Chile, they do so by forming a company that owns a university building and land. Officially the institution does not make a profit, but instead pays a large “rent” to the company (Bollag, 2003, p. A34). Meanwhile, South Africa, for example, has placed strict restrictions on enrolments at foreign operated private institutions. Some countries, such as Malaysia, have established clear regulations regarding the content of imported programmes. In other countries, especially in Latin America, there appears to be no regulatory system whatsoever (Cohen, 2001a, p. A47; see also Altbach, 1999).

How transnational higher education is regulated in the importing countries is still not very well explored. Most analyses concentrate on South East Asia as an emerging laboratory in the development and regulation of transnational education (McBurnie and Ziguras, 2001; Ziguras, 2003). This paucity of information on the scope and organization of liberalization of the markets for higher education and training has been the subject of recurring complaints among authors (UNESCO, 2003a, p. 7). Education has been largely absent from the debate on globalization and trade liberalization, as it was thought to be essentially a non-traded services (Dale, 2000; UNESCO, 2002). Research on the global education market and its implication for educational systems is therefore still in its infancy. As a contribution to advancing this new research area, Section 3 will provide a more detailed investigation on how particular countries regulate market access for foreign providers. However, the General Agreement on Trade in Services (GATS) is the only framework that tries to regulate the emerging market on a worldwide scale, as Section 5 will show in more detail.

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The following gives a brief overview of current trends in the international market, an outline of the main characteristics of the providers and the competitive advantages. The section will end with an assessment of the likely impact of liberalization from an economic perspective.

### Developing international education markets

The great economic significance of the education sector can be seen in the fact that, in the mid-1990s, OECD countries on average spent 5.9 per cent of gross domestic product on education, 80 per cent of these funds being direct public spending on educational institutions (WTO, 1998a, p. 3). Services offered by private education operators have been growing steadily for years, with the privatization of the education sector particularly far advanced in countries such as the United Kingdom, Australia, New Zealand, the United States and Chile (Lohmann, 2002). The range of cross-border educational services on offer is also expanding rapidly, as shown by the following presentation using the GATS classification scheme for mode of supply (see also Section 5).

#### *Mode 1 Cross-border supply*

This covers services supplied from the territory of one country to the territory of another. Increasingly, education institutions, publishers and information technology companies cooperate in designing and delivering e-learning courses (Larsen et al., 2002, p. 9). In 2000, 6 per cent of all students studying abroad took part in distance learning programmes (Larsen et al., 2002, p. 13; McBurnie and Ziguras, 2001, p. 86), with South Asia accounting for most non-OECD clients (Blumenstyk, 2003a, p. A25).

#### *Mode 2 Consumption abroad*

International trade in education services is growing strongly, especially in the tertiary sector where the largest portion consists of students studying abroad. The GATS “consumption abroad” mode of supply is thus the most important form of international trade in education services.

Export revenue from trade in higher education services was estimated at USD27 billion in 1995 and by 1999 it amounted to USD30 billion (Education International, 1999; Larsen and Vincent-Lancrin, 2003). These figures underestimate the global market in education as they refer only to foreign

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students studying at the tertiary education level in OECD countries.<sup>5</sup> According to a study conducted by Merrill Lynch, the higher education market outside the United States is worth USD111 billion a year and consists of as many as 32 million potential students (Arnone, 2002, p. A28).

The United States, with the highest number of foreign students, is the leading “exporter” of this type of education service. In 2000 it generated USD10 billion in revenues, taking fifth place among US service exports. The United Kingdom is in second place, followed by Australia and Canada in terms of revenue but by France and Germany — where study is by and large freely open to all — in terms of student numbers. In the latter countries only the living expenses of students are counted as exports (Larsen et al., 2002, pp. 7–9).

Most students come from other OECD countries, but in recent years students from developing countries, especially from Asia, have joined the ranks in great numbers.<sup>6</sup> In particular, China is becoming a significant “importer”. According to the above mentioned Merrill Lynch study, China accounts for half the potential market, in terms of both students and money.

Trade in education, however, is not just one way. The major exporters are often simultaneously the major importers.<sup>7</sup> In addition, some of the major importing countries aim to become exporters. For example, the Republic of Korea has increased the number of incoming foreign students from 5,326 in 1998 to 11,646 in 2001. Malaysia and Singapore also have ambitions to become big education exporters in the region. India has focused on Arab countries as well as countries around the Indian Ocean (UNESCO, 2003b, p. 17).

### *Mode 3 Commercial presence*

Universities in Anglo-Saxon countries increasingly have subsidiaries located in other countries. In 2000, 35 Australian universities offered 750 offshore programmes that were taken up by 31,850 students in Singapore, Hong Kong China, Malaysia and China. Three quarters of UK universities ran study

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<sup>5</sup> The average annual expenditure of students studying abroad has been estimated at \$20,600, including fees and living expenses (Larsen et al., 2002, p. 10).

<sup>6</sup> Chinese students make up 9 per cent of all foreign students in OECD countries, followed by students from India, Malaysia, and Morocco, each with a 3 per cent share. Indonesia, Singapore and Thailand combined provide 5 per cent of all OECD foreign students (Bennell and Pearce, 1998, p. 5; Larsen et al., 2002, p. 9).

<sup>7</sup> While US exports were worth USD10 billion in 2000 the United States was also the leading importer, with its students abroad spending over USD2 billion.

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programmes abroad in the 1996–97 academic year (Larsen et al., 2002, p. 9). The UNESCO/Council of Europe Code of Good Practice in the Provision of Transnational Education differentiates between collaborative and non-collaborative arrangements. The former includes franchising, twinning and joint degrees, whereby educational services such as study programmes or course sections of the awarding institution are provided by a partner institution in the importing country. The latter includes branch campuses, institutions abroad, corporate and international institutions in which educational services are offered directly by the awarding institution from one country in another country (Middlehurst, 2003, p. 8).

### The providers

The providers are a very heterogeneous group. Most have their origin in the Anglo-Saxon countries, but institutions from many other countries are rapidly moving into providing transnational education. Here, providers are categorized in six groups — corporate universities, private for-profit providers, media publishing companies, international consortia, educational brokers and public institutions.<sup>8</sup>

*Corporate universities* such as the McDonald's Hamburger Universities, Motorola University or Walt Disney University, to name but three, have developed rapidly over the past 20 years. They frequently used to be the inhouse vocational training units and were subsequently established as independent legal entities (Schiller, 2000, pp. 147–155). The promotion of lifelong learning has opened up a huge market to them. Recent estimates suggest that there are more than 2,000 initiatives developed by large companies (for example, Lufthansa or Ernst and Young) and by large organizations such as the US Army or the UK's National Health Service.<sup>9</sup> Very few seek authorization to grant university level qualifications (Middlehurst, 2003, p. 5).

*For-profit education* is not new. For example, the US based De Vry Institute was founded as early as 1931. It is one of the largest publicly traded higher education companies with annual revenues of more than \$600 million. Another US pioneer is the University of Phoenix whose online programmes enrolled close to 50,000 students in 2002 (Chronicle of Higher Education, 2003). Many US for-profit providers focus on working adults and vocational training.

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<sup>8</sup> For an overview of the dynamic field of transborder higher education, see Observatory on Borderless Higher Education, at [www.obhe.ac.uk](http://www.obhe.ac.uk), and CVCP (2000, p. 8).

<sup>9</sup> For more information, see [www.corpu.com](http://www.corpu.com).

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Others offer a wider range of programmes from associate degrees to doctorates, which are in many cases accredited.

The line between non-profit and for-profit institutions is often blurred because many private providers work in partnership with existing universities. Some institutions designated as public and not-for-profit in their home countries become private entities when they offer programmes abroad. Prominent examples are the Monash and de Montfort University campuses in South Africa.<sup>10</sup>

The group of for-profit providers is quite diverse. Some companies are very large: a number of them are publicly traded such as Education Management Corporation, Corinthian Colleges, and Career Education Corporation. These “big players” consolidated their position in the industry in the mid-1990s by buying up smaller providers. At the same time, some for-profit providers have only recently started to run institutions granting academic degrees. Kaplan, a division of the Washington Post Company, is best known for its business in providing testing preparation. It is now trying to move up the value chain by entering the market for higher education.

In recent years, a number of for-profit providers have managed to attract private investors, who have invested hundreds of millions of US dollars in higher education. For private equity funds, for-profit education has become one of the few business sectors that promise extraordinary growth (Blumenstyk, 2003a and 2003b).

The variety of this second group shows clearly that interest in transborder higher education does not only rest with institutions already in the business of providing education but is also shared by those who view it as an profitable investment.

Other important providers are publishers and media companies. The British Broadcasting Corporation (BBC) has a longstanding alliance with the UK Open University. Publishing companies have begun to build alliances with universities, colleges and other educational service providers. Pearsons, which is one of the three leaders in the market for higher education publishing, has gone into partnership with AOL to set up a “Learning Network”. This project, in collaboration with the University of Phoenix, provides customized electronic learning materials based on Pearsons’ textbooks (Middlehurst, 2003, p. 6).

Many traditional universities interested in transnational education have begun to establish regional or international consortia. Regional examples include

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<sup>10</sup> See also Section 3.

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the University of the Arctic, a consortium involving Scandinavian, Russian and Canadian institutions (Middlehurst, 2003, p. 8). Larger groupings include *Universitas 21*, a high profile international consortium of 17 universities from Asia, Australia, Europe, and North America. *Universitas 21* is a good example of the permeability of the not-for-profit/for-profit distinction. In 1999, the consortium began to participate in U21global, a company co-owned by Thomson Learning, a major academic publisher. Through this for-profit venture, the consortium hoped to enter developing markets (Arnone, 2002).

Another example is UNext.com, whose partners include Carnegie Mellon University, Columbia University, Stanford University, the University of Chicago, and the London School of Economics and Political Science. This consortium is one of the major providers of online education in business management, and its courses are marketed and sold by two electronic information companies, Thomson Learning and Knowledge Universe. The courses and the MBA degree are provided by UNext's online subsidiary, the Cardean University, whereas the course content was developed with the assistance of the consortium, whose members share in the profits (Mangan, 2002).

*Educational brokers* offer orientation in the increasingly complex marketplace. They bring together a range of partners to deliver new kinds of programmes targeting new groups of students. Western Governors' University (WGU) in the United States, for example, groups more than 30 organizations including universities, colleges and commercial companies such as Microsoft, Apple, and KPMG in order to develop and offer courses (Middlehurst, 2003, p. 7; CVCP, 2000, p. 14). Other companies supply educational providers with tools, templates and expertise that are not available to them inhouse.

Public institutions have a long history of attracting students from abroad. Of more recent vintage are attempts to cater explicitly to foreign students or to establish a campus abroad. Motives are varied. They range from enriching the learning experience of the local student body to testing the waters for for-profit undertakings. In some engineering departments foreign students are necessary to justify the expensive facilities and to staff the research projects. National organizations, such as the German Academic Exchange Service, spend large sums on grants for foreign students, and recently on establishing branch campuses abroad (Hahn, 2003). They receive government support for these endeavours because foreign students symbolize national grandeur or are seen as the future customers or business partners for export oriented industry. In the case of the European Union, student mobility is regarded not only as a major instrument for implanting a European identity but also for increasing the attractiveness of the European Higher Education Area.

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### *Competitive position*

While in the past, institutions of higher learning competed mainly for academic reputation, in a world of liberalized transnational education they will increasingly compete for market share and profitable market niches.

An important prerequisite for successful exporting strategies is the ability to award internationally acknowledged degrees. Such degrees are clearly oriented towards the Anglo-Saxon system. In Germany, for instance, where export of education is still in its infancy, the introduction of Master's and Bachelor's degrees in the context of the Bologna process is perceived as a major step forward in improving the competitive position of German universities.

Student mobility, another major precondition for trade in education, is enhanced by the introduction of a credit transfer system and the modularization of programmes. Such a system plays an important role in the creation of a European Area of Higher Education.<sup>11</sup> International providers with subsidiaries in different countries can go one better by circulating their students among their subsidiaries without losing revenue. Therefore export oriented universities have started to establish regional and international consortia whose members accept each other's credits (Middlehurst, 2003, p. 8). Flexible immigration and labour legislation is also helpful for increased student mobility (Margulies, 2002, p. A24).

Consumers' trust in the quality of education is vital for competitiveness. The reputation of a country's education system in general, and of an individual provider in particular, is taken as a quality guarantee. In this context, exporting institutions benefit from investment their countries make in research and development, whether by governments or by private firms, and more generally from the perception of the country as a world leader. To ensure the international relevance of programmes and courses, employment of foreign teachers is seen as important. The German Ministry of Education, for example, recommends an increase in the proportion of foreign professors to up to 10 per cent (Konzertierte Aktion, 2002). Flexible employment legislation is necessary to facilitate such academic mobility.

In response to increasing concerns about the quality of the transnational provision of education, codes of good practice have been formulated in recent years. These codes are intended to ensure that the quality of the exported education is comparable to the domestic provision. Up to now only major exporting countries have fully established quality assurance and accreditation

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<sup>11</sup> For more information, see  
[http://europa.eu.int/comm/education/programmes/socrates/ects\\_en.html](http://europa.eu.int/comm/education/programmes/socrates/ects_en.html).



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systems for international activities, a system that contributes to the good reputation they already enjoy (Van Damme, 2002, p. 15).

Brand labels have become especially important in the highly deregulated and competitive market for training where no internationally acknowledged degrees exist. Some “first mover” companies such as Berlitz in the language school sector have managed to build up their own label. In the light of increased competition among providers, brand labels have also become key in attracting private investors. Copyrights are gaining in importance as part of branding strategies.

The provision of education in English is a clear competitive advantage in the global marketplace and a cornerstone of the dominance of Anglo-Saxon providers. It not only attracts students from English speaking countries, but also students from other countries, who are today more likely to learn English than any other foreign language. Non-English speaking countries like Germany have started to provide courses and programmes in English as well,<sup>12</sup> though additional costs are incurred by not using the native tongue.

Nevertheless, the dominance of the English language is not quite complete. Export oriented providers in France target their services to French speaking countries. A French university has just been opened in Cairo with the explicit aim of challenging the dominance of English in the global market (Chronicle of Higher Education, 2001). The American University in Cairo has benefited in the past decades from the continuous decline of French, which was once Egypt’s second language. Other exporters have also started to target niche markets. Chinese universities, for example, “export” to Malaysia, which operates a quota system restricting access to higher education of Malaysian Chinese (Cohen, 2001b and 2001c).

Another cornerstone for exporters is their domestic market. The right to raise tuition fees creates incentives to attract more foreign students. The extra income permits the quality of instruction to be maintained despite cuts in public funding. New income sources are one of the main motives for providers to expand beyond national borders. In addition, expansion generates economies of scale for educational materials and marketing — as long as the language stays the same (Daniel, 2002, p. 1). Economies of scale have become an important competitive advantage. New technologies have considerably increased the cost of producing educational materials, and higher quality requirements have raised overhead costs. US experience has shown that smaller institutions pay proportionally more for quality assurance and accreditation (Borrego, 2001).

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<sup>12</sup> For more information, see <http://www.daad.de/hochschulen/de/5.2.2.5.2.html>

## **2.4. Liberalization experiences**

Little is known so far about the impact of liberalization in higher education, especially on teachers' working conditions. The paucity of data is remarkable. Here we attempt a preliminary assessment based on theoretical considerations from an economic perspective and experiences gained from other sectors. The case studies in Section 3 provide a more detailed account of the consequences of liberalization.

### **Education from an economic perspective**

The economic model underlying liberalization is premised on a great many assumptions. They include full access to information and rational behaviour of all market participants, the exclusivity of copyrights, the absence of external effects, as well as the absence of transaction costs and public goods. In reality, the assumptions are generally invalid, or valid only in part (see Fritsch et al., 1999, pp. 28–90).

Education is a commodity of trust (Nagel and Jaich, 2002, p. 210f.). Its defining hallmark is that even those receiving education do not have a clear picture of its properties and utility. They must trust in the education providers to offer meaningful quality content. Without complete knowledge of its utility, those less inclined to take risks will have less demand for education. Hence, a purely market based supply of education will lead to inefficiency, with investment in too few or unsuitable educational services (Eger, 2003, p. 137).

Human beings have only a limited capacity for acquiring and processing information. Decisions on whether and how to educate oneself and which services to use require analysis of a profusion of information, particularly in a highly diverse sector such as adult education. There is a conspicuous discrepancy in adult education attendance between those with low and those with high education levels (Kuwan and Thebis, 2001, pp. 27–31). Non-rationality can — from the perspective of society as a whole — also result in depressed participation levels in education.

The less transparent the market the higher the transaction costs for market participants. Transaction costs include not only the fees for research services or brokers, but also the time needed for the provision and analysis of information. Time expenditure counts toward “costs” because this time could otherwise be utilized more fruitfully (for example, in gainful employment). The higher the transaction costs, the more demand deviates from the theoretical ideal. In the extreme case of prohibitively high transaction costs, the market collapses owing to a dearth of demand (Fritsch et al., 1999, pp. 239–333).

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In addition to the individual utility of the person being educated, there can also be effects on third parties, positive or negative. Positive effects could, for example, take the form of lower sickness leave rates as a result of spinal training, or higher work productivity due to vocational training (Timmermann, 2000, p. 237). An individual's decision about education will be based primarily on personal utility, which can lead to too little demand for education from the broader perspective of society. Services whose benefits are high for society but not for the individual will be ignored (Nagel and Jaich, 2002, pp. 212 f.). If third parties have interests that go beyond private utility, then greater incentives to education must be created. This can be achieved by altering the legal framework or by internalizing external effects, for example, by way of subsidies.

### How might a completely liberalized education market evolve?

From an economic perspective a completely liberalized market exists when the state does not interfere in the regulation of the market. In practice, this means that there is no state regulation above and beyond what is generally stipulated by law. If the state presents itself as a provider or a consumer, then it may not behave differently from non-governmental market participants.

The adult education market, with its already very high level of liberalization compared with other education sectors, will serve as an example here. There are many private providers; there are few regulations concerning content, qualification of training staff, and access to the adult education market; even quality assurance often remains in the hands of the providers. Accordingly, there is a broad and varied range of educational services. Complete liberalization would essentially require the dismantling of state subsidies and the system of state recognition of examinations and degrees.

Education services would then have to be financed by fees, donations or private sponsorship. The costs for formerly subsidized services would have to rise. Consumers would only take advantage of those services that, in their view, would be beneficial to them. Since education services would be subject to market demand, the market might implode. A foretaste was provided by Germany's reform of the *Arbeitsförderungsgesetz* (law for the promotion of employment measures) in the early 1990s. The Federal Institute of Labour cut its funding drastically, triggering a spate of bankruptcies among private providers of training (Kohsiek, 2002, p. 136). Complete liberalization would further result in a massive loss of jobs. People with low income would effectively be excluded from adult education and the gulf between rich and poor would widen.

The introduction of competition between private providers will not necessarily lead to a competitive market structure. Experience of market liberalization in a variety of sectors allows one to speak of a "typical" path of

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market development. The nascent phase is characterized by tough competition with many providers and a wide range of offerings. Just a few years later, the market settles down. Providers with little capital, unattractive offerings or inept corporate policies fall by the wayside. Those remaining are likely to be large providers with standardized offerings. They can exploit economies of scale in an international branch network and, by wielding a brand name, offer putative security in a market rife with uncertainty regarding product quality. Branches of industrial corporations can take advantage of the economies of scope in product related training programmes.

Omnipresence has other advantages: brands (for example, Berlitz) are easier to introduce and establish. By bundling demand, commodities and services that are less in demand can still be offered profitably. The recent consolidation among private providers of higher education services shows clearly that economies of scale have become a dominant factor (Blumenstyk, 2003a and 2003b). New technology has increased the costs of producing learning materials. Only by enlarging the number of students can the costs per course can be lowered (Daniel, 1996).

At the end of the consolidation and concentration process, relatively few providers will control the segments of the education market most in demand (with the exception of niche providers). They will promptly endeavour to raise prices. Profits reaped in this manner are used, first, to offset losses from the market development phase and then to line the pockets of shareholders, mostly based in industrialized countries.

### *Participation in decision-making*

Education is both a “commodity of trust” and a “meritocratic good”. As the stock market scandals following the New Economy boom most recently demonstrated, markets are replete with incentives to abuse trust. The ISO 9000 certification system is unsuitable as the basis for evaluating educational services. This standard defines only how quality assurance is to be implemented, but says nothing about the quality level itself, which is set by the provider. The ISO (International Organization for Standardization) system thus does not help consumers to compare services and contributes little to market transparency. These objectives can only be achieved by devising uniform standards for the content and scope of educational services and the qualifications of teaching staff. In this respect, the quality of education cannot be assured by competition but must continue to be defined at national and international level where democratic participation is ensured.

As a meritocratic good, education as a whole is at risk of too little demand. The existence of public educational facilities nevertheless enables citizens within

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representative bodies to exercise their democratic rights. In the light of the role of education in society, and its increasing importance in the context of an emerging “knowledge society”, its provision and regulation should not be left to an anonymous insulated market but to a decision-making process where democratic participation and control as well as academic freedom are assured. In order to overcome existing inequalities, public subsidies are needed more than ever.

Moreover, the market regulation of education limits the options open to instructors and teachers alike, whose professionalism and knowledge can help safeguard the interests of the community (Nagel et al., 2002, pp. 174–176).

### *Likely impact on employees*

While proponents of liberalization strongly believe that it leads to general welfare gains, they are less sanguine about the impact on employees. To safeguard the competitiveness of German services, Dietrich Barth has recommended a more flexible labour market, and reductions in wage and non-wage costs, taxes and levies, as a way of meeting the challenge from lower paid workers in China, India and the former Soviet Union (Barth, 1998, p. 126). The prominent foreign trade expert, Gary Hufbauer, has given an even sharper formulation of the impact of further liberalization, prophesying that: “A worker will earn what she produces – evaluated at a single world price” (Hufbauer and Warren, 1999, p. 16). Put plainly, this means that the wage for low qualified workers in current high wage countries will come into line with the wage of the large mass of low qualified workers worldwide. However, no systematic assessment of the implications for labour conditions and access to basic services has been made so far.

## **3 Case studies of liberalization experiences**

For a more vivid account of liberalization experiences, we asked three researchers to relay the experiences of their respective countries. Because liberalization is a very new phenomenon, the case studies focus more on the experiences with privatization.

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### **3.1 South Africa<sup>13</sup>**

A striking feature of the South African situation is the rapidity with which the first post apartheid government, elected in April 1994 and dominated by the African National Congress (ANC), moved to adopt a neo-liberal policy framework. The 1994 policy platform of the ANC, the Reconstruction and Development Programme (RDP), was an unstable mix of Keynesian and neo-liberal prescriptions, but with the September 1994 RDP White Paper the focus shifted decisively to creating a favourable environment for private sector expansion through fiscal austerity and liberalization (Adelzadeh and Padayachee, 1994). The June 1996 strategy for growth, employment and redistribution (GEAR) advocated large scale privatization, fiscal austerity, economic liberalization and “regulated flexibility” in the labour market (Government of National Unity, 1996).

With welfare spending in 1996 constituting the largest single item of state expenditure, and education spending at nearly 7 per cent of GDP, the stress in GEAR and the 1997 White Paper on Social Welfare was on rationalizing expenditure and increasing the role of non-governmental actors in service provision. In terms of the higher education sector:

... there is a need to contain expenditure through reductions in subsidisation of the more expensive parts of the system and greater private sector involvement in higher education. This will concentrate public resources on enhancing the educational opportunities of historically disadvantaged communities (Government of National Unity, 1996, Section 6.1).

The commitment of the post apartheid government to the “creation of new South African higher education institutions based on the values and principles of non-racism and democracy” (Asmal, 2001) was thus coupled with a commitment to fiscal austerity and liberalization in the sector. This was in turn part of a broader restructuring of social welfare expenditure: spending on education was projected in 1997 to grow by only 3.4 per cent annually (van der Walt, 2000). Total welfare expenditure fell from 46.2 per cent to 44.7 per cent of the budget in financial year 1999-2000 (NEDLAC, 2000, p. 33). Given annual population growth of 1.5 per cent, and average inflation of over 7 per cent, the education budget was thus cut in real terms whilst social welfare expenditure declined as a proportion of a shrinking overall budget (van der Walt, 2000). Moreover,

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<sup>13</sup> By Lucien van der Walt, Department of Sociology, University of the Witwatersrand.

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welfare spending was to focus on creating a safety net for those unable to access private services.

With 21 public sector universities, 15 advanced technical colleges (“technikons”), and a number of colleges for teachers and nurses, South Africa has an unusually large higher education sector for an African country. Under apartheid, the system was horizontally tiered into universities, technikons and colleges, as well as divided vertically into institutions for different racial and ethnic groups, with funding concentrated on institutions for Whites. (Current government policy thus distinguishes between “historically advantaged institutions” (HAIs), and “historically disadvantaged institutions” (HDIs) established for Africans, Indians and “Coloureds”.) Then, as now, these public institutions received the bulk of their income from government. Given the highly decentralized nature of the sector — key policy decision-making power resides at institutional level — state subsidies remain the key instrument for policy reform.

In the 1980s subsidies began to be reduced, and since 1994 this process has accelerated. The prestigious University of the Witwatersrand, for example, saw its subsidy decline by a third from 1995 to 2000 (Barchiesi, 2000). In 1999 the government reiterated that, “given the magnitude of our other priorities”, public sector tertiary education would not receive additional resources (Asmal, 2001).

Government policy instead stressed income generation by the institutions. The National Commission on Higher Education, established in December 1994, concluded in 1996 that institutions must increase (fee paying) student enrolments, feeder constituencies and programme offerings, and become more responsive to societal needs — in particular, to market driven knowledge production and vocationally orientated training (Cloete and Muller, 1998, pp. 5). These recommendations were included in the July 1997 White Paper on higher education (Department of Education, 1997), and envisaged a shift to “mode 2” knowledge production, differing from both traditional and applied research insofar as it is, at once, applied, transdisciplinary, team based, and based in and funded by different organizations (Cloete and Muller, 1998).

However, the emergence of public sector “market universities” (Bertelsen, 1998), able to generate additional funding through an expansion in the number of fee paying students and through the provision of commercial research, has been largely confined to HAIs and the best resourced HDIs, notably the University of Durban-Westville and the University of the Western Cape. Elite English speaking institutions such as the University of Cape Town and the University of the Witwatersrand have commercialized primarily through the expansion of for-profit research (Bertelsen, 1998; Orr, 1997) and postgraduate student numbers. Historically, Afrikaans HAIs have focused upon a massive

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expansion of undergraduate numbers through distance education and part-time classes. Student numbers at the Rand Afrikaans University rose from 11,872 in 1990 to 22,011 in 1998 (Bolsmann and Uys, 2000, p. 12), whilst enrolments in the distance education programme of Potchefstroom University for Christian Higher Education rose 25 per cent in 2001 alone (*Business Day*, 2001). The concomitant of this expansion has been a stricter recovery of student fees, shifting the student profile away from poorer working class, mainly African, students towards middle class learners.

By contrast, HDIs were less able to raise additional funding from student fees, given a generally poorer and shrinking student population (Habib and Parekh, 2000, p.4) and low levels of cost recovery, or from research work, given a less qualified staff component and weak research reputation. Many HDIs spent the latter 1990s in crisis. Despite an occasional rhetorical veneer of market orientation, HDIs have focused upon cost cutting, departmental closures and lobbying an unsympathetic government for more aid, rather than on expansion and marketization. The National Working Group on the Restructuring of the Higher Education System recommended that the number of public sector tertiary education institutions be reduced to 21 through disestablishments and mergers (Macozoma, 2002). This merger process will effectively end the separate existence of HDIs.

The emergence of public sector “market universities” takes place alongside the rapid growth of private sector higher education in the 1990s. A rarity in the 1980s, there were up to 350 private providers by 2000, mostly small and offering programmes in a single field (Subotzky, 2001). Although data for the sector are incomplete,<sup>14</sup> it is clear that many private providers rely on courses franchised from public sector universities, making the private/public distinction often unclear (Subotzky, 2001). Other private providers franchise courses from transnational institutions such as Bond University and Monash University (Australia), Business School Netherlands and De Montfordt, which has UK links (Levy, 2003, p.8). And, whereas most private providers worldwide are legally non-profit even when commercial, in South Africa the majority are for-profit institutions (Levy, 2003, p. 3).

At present, private institutions account for only a fraction of higher education students – possibly more than 30,000 as opposed to 600,000 students in the public sector – but may be expected to increase their market share (Levy, 2003, p.7). The significance of the surge in private sector higher education in

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<sup>14</sup> This is partly a function of belated government regulation of the sector, the lack of a central data collection system, and problems of definitional ambiguity (Levy, 2003, pp. 3–4).



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South Africa lies mainly in its rapid growth, its relationship to the commercialization of public sector institutions, and the manner in which it represents a general commodification of higher learning.

The subsidy cuts and the uneven process of marketization have had important effects on academic labour. At the emerging public sector “market universities” there has been a usurpation of traditional areas of academic authority by an expansive and increasingly powerful administration through the application of private sector management models (Bertelsen, 1998; Webster and Mosoetsa 2001). Coupled to the new focus on profitable core business has been a rationalization of less viable disciplines, the increased use of administrative instruments measuring productivity, and a growing salary gap between academics and management. Thus the University of the Western Cape cut 40 academic posts in 1997 and 1998 as part of “reviewing its structures and academic programs to cut costs and to shift resources towards centres of excellence and relevance within the institution” and becoming a “major competitor” (Financial Mail, 2000). At the HDIs, however, where the market university model has foundered, the focus has been upon staff reduction.

Across the public sector, there has been a sharp increase in academic workload (Webster and Mosoetsa, 2001). In a survey of five institutions, including two “historically disadvantaged institutions” (HDIs), Webster and Mosoetsa found academic staff generally felt that their professional autonomy and status had been undermined by a welter of new controls over time and work. They also felt that work had intensified and the working week lengthened — in part due to pressure to generate additional income for the institutions — and that growing competition between staff, increased job insecurity, and divisions between full-time staff and a growing cohort of contract staff undermined job satisfaction and scholarly community. At the same time, however, there is no national union representing academic staff, union density amongst academics in the public sector is very low, and academic unions tend to be isolated from other campus constituencies, undermining solidarity. Teaching staff at private institutions are almost entirely non-unionized.

A parallel process of workplace restructuring has taken place amongst support service staff.<sup>15</sup> Although comprehensive data do not exist, support

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<sup>15</sup> This category is used here to denote non-academic, non-managerial support occupations which do not directly contribute to knowledge production and education, but which are nonetheless crucial to the function of higher education institutions. These manual and menial occupations include catering, cleaning, grounds maintenance, general maintenance and security. If unskilled and artisanal support staff are counted together, there were 15,779 such workers in 1994 out of a total workforce of 45,200 (Subotzky, 2001, p. 5).

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service outsourcing seems widespread amongst private institutions. A survey in 2001 found that all public sector tertiary education institutions had outsourced at least one support service function, and that 18 out of 21 institutions had done so since 1994. For many “historically advantaged institutions” (HAIs) this was part of a general drive to focus on the “core” business of marketization. For most “historically disadvantaged institutions” (HDIs) it was a response to financial crisis (van der Walt et al., 2002, pp.21–23). At least 5,000 out of a total of 15,779 support service jobs were lost as support functions were contracted to private companies. Whilst HDIs were well represented amongst the universities that cut the most jobs — the University of Fort Hare, for instance, shed 1,000 posts — even HAIs undertook large scale retrenchments. The University of the Witwatersrand cut 623 posts and Potchefstroom over 400 (van der Walt et al., 2002, pp. 24–26).

A number of workers have been reemployed by the outsourcing companies — 250 out of 623 at the University of the Witwatersrand — but generally at lower wages, without benefits, on an insecure basis, and under a more intense workplace discipline (van der Walt et al., 2002, pp.26–30). At the University of the Witwatersrand, wages for cleaners fell from around R2,227, plus health, pension, loan and study benefits, to R1,200 a month without benefits (van der Walt et al., 2002, p.24). Outsourcing has also resulted in general deunionization of support staff. Not only are the outsourced support service workers divided amongst four or more employers, one for each service, but few of these companies negotiate with trade unions. In only two out of 17 cases for which information was available did unions have a recognition agreement with at least one outsourcing company (van der Walt et al., 2002, pp. 29–30).

### 3.2 Mexico<sup>16</sup>

The transformation of Mexico’s higher education is marked by four main trends — expansion, differentiation, privatization and quality assurance. In the past three decades, Mexico’s higher education system has shifted from a rapid and unplanned expansion in the 1970s (with annual growth of up to 10 per cent) to slow growth (1 per cent a year) from 1986 to date. Nevertheless, the proportion of the population aged between 20 and 24 attending institutions of higher education increased from 14 per cent in 1990 to 19 per cent in 2000.

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This increase has had a direct impact upon the social stratification of Mexican society. According to World Bank studies, it produced greater wage differentiation, with a decline in the real incomes of less educated Mexicans (Lächler, 1998; Lopez-Acevedo 2001).

The expansion of higher education was accompanied by a simultaneous institutional differentiation. While traditional public universities expanded slowly, the technological institutes and universities grew rapidly, increasing their share of public higher education from 20 to 36 per cent. Technological institutes run four or five year programmes in engineering. Technological universities offer two year programmes targeted at groups traditionally excluded from public higher education. Their students typically come from families of semi skilled workers who have received an average of six years of education. Graduates of the technological universities usually enter the labour market as technicians and have to pursue further studies to move beyond this level. Thus this institutional differentiation of higher education contributes to the dispersion of wages.

Private education became part of the country's modernization policies during the presidency of Salinas de Gortari (1989–1994). These policies were a crucial element of the structural adjustment measures imposed on the Mexican government by the World Bank. The World Bank recommended the expansion of higher education at the same time as calling for cuts in public spending. Under President Salinas, the third Article of the Mexican Constitution was modified to enable the private sector and the churches to participate in education, something that until then had been prohibited by the Constitution even though it was tolerated in practice. The legalized private institutes of higher education (*Instituciones de Educación Superior*) helped meet growth targets without tapping limited public funds. The private institutions increased their share of university diplomas granted from 17.4 per cent in 1990 to 27.6 per cent in 1999. The increase was even more noticeable in the postgraduate field. Nearly five times as many students as in 1990 enrolled in private post graduate programmes.

Private providers clearly benefited from a deregulation policy that culminated in Agreement No. 279, passed by the Secretary of Public Education in July 2002. It reduced and simplified the paperwork necessary to obtain accreditation — the *Registro de Validación Oficial de Estudios* (RVOE). This means that while, as we will see below, quality assurance procedures were increasingly imposed on the public sector, the opposite is true for the private sector. For private institutions, supervision and evaluation by the Secretary of Public Education were virtually eliminated.

A two class system has emerged within the private sector: The private universities of high reputation, such as *Universidad Iberoamericana*, the

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*Instituto Tecnológico de Estudios Superiores* in Monterrey and the *Universidad La Salle*, have developed strategies for regional branches and charge very high tuition fees. As a result, it is mainly the children of well-to-do families who attend these prestigious institutions, despite the availability of grants for poor students of high academic ability. Most other students at private universities attend institutions of a second category. These offer forms of vocational training in popular demand but do not engage in research or cultural activities. The quality of their programmes is considered to be poor, but information on these institutions is still scarce.

In response to the negotiations on the North American Free Trade Agreement (NAFTA) the Mexican government has started to emphasize the quality of education. The prospect of opening their markets to Mexican graduates led the US and Canada, the other NAFTA members, to ask for quality assurance systems. Annex 1210.5 of Chapter 12 on cross-border trade in services states that the parties should encourage the relevant bodies in their respective territories to adopt “mutually acceptable standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition”<sup>17</sup>

The Mexican government responded with the creation of the Inter-Institutional Committees for Evaluation in Higher Education (CIEES). The committees are responsible for the evaluation of curricula and for setting up an accreditation system. A positive evaluation by these committees is a precondition for receiving financial assistance and scholarships for students from the National Council of Science and Technology. The establishment of accreditation councils for many academic areas followed in the mid-1990s (Ortega Amieva, 1999). This accreditation system resembles those of the United States and Canada. Some university experts, however, believe it to be inconsistent with the legally guaranteed autonomy of public universities (see Didou Aupetit, 2002, p. 139).

A second evaluation structure is directed towards the research activities of individual scholars. The evaluation results influence the salary academics receive. Salary levels are no longer standardized across faculties and universities. With the setting up of the *Programas de Estímulos al Desempeño del Personal Académico de Carrera*, individual evaluation has become institutionalized. At first, many academics refused to take part in the evaluation, but today it is common practice. The consequences are contradictory. On the one hand, these programmes helped introduce and strengthen a culture of evaluation

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<sup>17</sup> [http://www.dfait-maeci.gc.ca/nafta-alena/chap12-en.asp?#annex\\_1210\\_5](http://www.dfait-maeci.gc.ca/nafta-alena/chap12-en.asp?#annex_1210_5).

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that did not exist before. On the other hand, the fact that evaluation is so closely tied to funding and salary has fostered a competition for supplementary resources regardless of any quality improvements. The evaluations are not used to advise faculty in their efforts to improve the quality of their programmes or their research activities. Instead, they are used simply to decide who gets what.

To sum up, evaluation and accreditation quickly became part and parcel of a reform of higher education that pushes for quality improvements and a certain “professionalization” of academia. However, its orientation towards marketization and commodification of education is meeting considerable political resistance, as was demonstrated in 1999-2000 by the long student strike at the *Universidad Nacional Autónoma de México* (UNAM), the country’s main university, against the introduction of tuition fees.

So far, the Secretary of Public Education has not expressed an official opinion regarding the transnationalization of higher education. Furthermore, no systematic record of foreign universities in Mexico exists. Foreign institutions have been installed as franchises, as consortiums, or in cooperation with Mexican institutions. No state policy exists to regulate their graduate and postgraduate programmes. This bestows on them an unfair competitive advantage vis-à-vis the national public universities, which are confronted with rigid regulations requiring financial reporting and the improvement of quality.

In 2000 the consortium Sylvan Learning Systems (now renamed Laureate Education) bought an 80 per cent stake in the private Universidad del Valle de México, which has since expanded rapidly to 53,000 students in the 2004-05 academic year. For an initial investment of USD50 million Sylvan Learning Systems is reported to have made a profit of approximately USD215 million within two years (Rivera, 2003). Its success is seemingly due to the promotion of degrees in engineering and business studies, and to adding its own label to the original name of the university.

Although foreign providers should not be excluded from Mexico, there is a definite need for a public policy to deal with for-profit institutions. But, first and foremost, it is necessary to strengthen and take care of the national higher education system and its public institutions in particular.

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### 3.3 Turkey<sup>18</sup>

Since the early 1980s, Turkish universities have been pressed to adopt a market orientation. In the previous 50 years, although the institutional regulations for higher education had shifted back and forth between the von Humboldt and American models, state influence was pervasive. Istanbul University, Turkey's first university established in 1933, followed the von Humboldt model, which emphasizes academic autonomy. However, the so called American model, which stresses the financial autonomy of higher education institutions, set the pattern for the three new public universities that were established in the 1950s under the Democrat Party government (Tekeli, 2003, p. 78).

The military coups that took place in Turkey over the last century have had a big influence on the development of the higher education sector. The government that came to power after the military coup of 1960 strengthened the academic autonomy of universities while putting them under state guarantee. However, the governments established by the military coups in 1971 and 1980 abolished many of the privileges given previously to the universities. These governments aimed to increase state control over the universities, as they had been a major focus for radical student action since 1968.

After the 1980 coup and the new Higher Education Law No. 2547, the Board of Higher Education (YÖK) was established in 1982. The Board functions as a centralized decision-making body for all universities. It has full authority over the regulation of personnel issues, curriculum decisions and other aspects of university governance. Major changes have been introduced in higher education in recent years:

- Assistant posts (for junior academic staff hoping to become full professors) were downgraded to research assistantships that are only valid for the research period.
- The chair system has been replaced by the department system.
- Peer review was introduced for the academic controlling mechanism on distribution of research funds, scientific publishing decisions, and the promotion of faculty.
- Instead of being judged on a thesis, applicants for associate professorships are subject to peer review.

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Since the 1980s Turkey has been gradually opening up its economy to the world market. Privatization became one of the major instruments of the new government's structural adjustment programmes that were established to implement fiscal austerity. The reorientation in economic policy had a big impact on public expenditure in general and on expenditure for education in particular. Education's share of total public expenditure was cut from 18 per cent in 1990 to less than 9 per cent in 2001 (State Institute of Statistics, 2003). Following the World Bank's recommendation, shrinking public resources for education were redirected towards basic education. Higher education, therefore, had to look for new financial sources. At the same time enrolment of the relevant age cohort went up from 7.4 per cent in 1980 to 27.8 per cent in 1999.

In 1992, the Turkish government allowed the establishment of private higher educational institutions via foundation arrangements. Of the current 77 universities, 23 are private. Most are located in metropolitan areas. Although foundations are supposed to devote private wealth to public purposes, in fact, it tends to work the other way around (Işıklı, 2001). Public funds for education are used to support the foundation universities: up to 45 per cent of their budgets depend on the state (Board of Higher Education (YÖK), 2003). Foreign investors are not yet allowed to establish a presence on their own. However, quite a number of foreign universities run programmes in cooperation with Turkish universities. Double major programmes and joint degrees offer students the possibility to obtain a diploma from foreign universities. With the entry into force of the General Agreement on Trade in Services (GATS) in 1995, Turkey agreed to open part of its education market to foreign companies.

A second form of privatization has taken place through the introduction of tuition fees. In 1981, the Council of Ministers decided that students at public universities should pay a share of the costs. Up to 1992, this share increased to almost 20 per cent of the overall budget. However, a 1990 decree permitted an increase in the students' share of up to 50 per cent. Tuition fees for private universities vary between USD5,000 and USD15,000. These high tuition fees reflect students' social background. In 1998, the family income of students at private universities was 2.5 times higher than the family income of public university students (Board of Higher Education (YÖK), 2003; TUSIAD, 2000). This trend towards social stratification has been further aggravated by the faltering economy, which saw a decline in average household incomes during the 1990s. In addition, prospective students have to pay for special preparatory training for their entrance exams, which cost an average of \$191 in 1997 (TUSIAD, 2000).

A third type of privatization takes place through outsourcing of assistance tasks. Sales of books and stationery, special courses for the central selection examination, transport services, student hostels, canteens and dining halls are all

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examples of for-profit activities taking place on campus even at public universities.

Universities are increasingly compensating for the decrease in public funding by cutting faculty salaries. Professorial salaries decreased from \$1,060 per month in 1999 to \$740 in 2001 (Rectors' Report, 2001). Besides this general decrease in salary a clear trend towards casualization of employment conditions can be observed. Faculty members are increasingly hired under short term contracts. At the same time the pressure for more flexibility has increased, even for teaching staff with civil service status. They are frequently asked to serve in unfavourable locations, work longer hours, or are forced to accept unpaid vacation.

In sum, the commercialization trend started in 1980 is continuing and risks aggravating social stratification within Turkish society.

## **4 Global policies facilitating liberalization**

### **4.1 *International agencies*<sup>19</sup>**

The common trends described in the case studies are part of a remarkably consistent worldwide reform agenda of higher education that has emerged in the last decade (UNESCO, 2003a; Johnstone, 1998; McNeely and Cha, 1994). Looking at the current attempts to shape the educational agenda beyond the national state, we see a complex network of interactions covering the world with nodes and hubs on different levels. On the bilateral, intra-regional, inter-regional and global levels these networks bring together a variety of governmental and non-governmental actors. These different nodes and hubs may have their own particular discourse on education and represent a particular condensation of power relations (UNESCO, 2003a), but at the same time they interact with a broader network, sometimes very closely and sometimes rather loosely (Dale and Robertson, 2002). These interactions, structured by significant power differentials, foster a convergence process on a global scale. Nevertheless, there are often considerable conflicts and tensions.

On a regional level, we find interaction processes framed most prominently by the European Union, the Asia Pacific Economic Cooperation forum (APEC) and the North American Free Trade Area (NAFTA). On a supra regional level, the most influential shapers of the educational agenda are the World Bank, the

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<sup>19</sup> We would like to thank Jürgen Klausenitzer for his comments on an earlier draft of this section.



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International Finance Corporation (IFC), and the Organisation for Economic Cooperation and Development (OECD). They have strengthened their focus on education in the last three decades and by doing so have become the main pillars of an global educational regime that provides a normative framework for a international neo-liberal reform agenda.

In the following, we will provide an overview of the major changes in the educational policy of these organizations. An examination of internal conflicts and changes highlights the shifting power relations within the organizations. The organizations are therefore not only promoters of change but also terrains for power struggles. Changes of policy within the organizations have directly affected relations with other organizations. These complex inter-relations prepare the ground for a “*nouvel ordre éducatif mondial*”, a new world order of education (Laval and Weber, 2002), that is paving the way for the liberalization of higher education and training in many countries. The emergence of this new international education regime can be considered as the necessary precondition for a global market in educational services that is regulated increasingly by the General Agreement on Trade in Services (GATS). We will come to GATS in more detail in Section 5.

### Education as a productive investment – history of a discourse

The World Bank Group has become the largest multilateral donor agency in education. Up to now, the World Bank has provided some USD31 billion in loans and credits for education, and in 2003 it financed 158 education projects in 83 countries.<sup>20</sup> However, until the 1960s the World Bank rejected all requests for loans in this area. Education was not considered to improve the productive capacity of the borrowing country (Jones, 1992, p. 33). This initial reluctance to lend provides insights into the power structure of the Bank. As a bank, it has its own income in the form of interest payments, and the repayment of loans provides it with a steady pool of financial resources that have to be redeployed. This income makes the Bank more independent of its member governments than any other international institution (Woods, 2000). At the same time, it makes the Bank more dependent on the financial market, as Wall Street’s assessment of the Bank’s lending policy translates directly into the rating on its bonds. This dependence on Wall Street was one of the major reasons for the Bank’s reluctance to provide loans for education, because they risked jeopardizing its reputation in the financial community (Jones, 1992, p. 36). In addition, member governments are very unequally represented on its governing board. In contrast

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<sup>20</sup> <http://www.worldbank.org/tenthings/2ndedition/one2.htm>.

to most other organizations in the United Nations system, votes in the Bank's executive board are weighted according to the number of shares a country holds, which is related to the size of its economy. The governments of the United States, Japan, Germany, the United Kingdom and France command almost 40 per cent of all votes.

Lending for educational purposes started with the creation in 1960 of the International Development Association (IDA), the World Bank's second multilateral lending facility. IDA offers long term and highly concessional loans to the poorest developing countries, relying on regular replenishment of its resources by richer member states (Kapur et al., 1997, p. 1121). The creation of this second lending facility was strongly supported by the United States and its allies, in part to preempt the creation of a multilateral concessional loan facility under the auspices of the United Nations and in part to use the loans to counter the appeal of socialism for the newly independent nations (Jones, 1992, p. 25; Murphy, 1998, p. 71).

Under the presidency of Robert McNamara (1968-81), when the Bank's facilities quadrupled in real terms, its educational lending grew only slightly. While primary education enjoyed priority (Kapur et al., 1997, p. 259), lending for higher education declined (Hüfner, 1998, p. 297). This appears to have been a reflection of the conservatism of the Bank's lending staff. It continued to view education as consumption rather than investment. Attitudes changed in the 1980s, when the human capital theory became the Bank's major rationale for investing in primary and basic education, replacing the manpower forecasting approach.

The expansion of the lending activities of the Bank in the 1970s went hand in hand with the expansion of its research capacity. The Bank became the largest single employer of development economists and development professionals, with an administrative budget much greater than the budgets of UN organizations (Mundy, 2002, p. 485). This increasing intellectual authority of the Bank was not without consequences for the United Nations Educational, Scientific and Cultural Organization (UNESCO), which had been the specialist organization in educational matters. Whereas UNESCO had a holistic perspective on education, emphasizing the right to education, the World Bank promoted a narrow focus on economic development (Jones, 1992, p. 73; World Bank, 1974). As early as 1972, the exclusionary arrangement that required the Bank to take into account UNESCO's preliminary studies came to an end. In 1976, a joint taskforce recommended reducing UNESCO's role (Jones, 1992, pp. 110, 127). The crisis of UNESCO in the 1980s, when the United States and United Kingdom abandoned their membership, increased the distance between these two organizations and weakened UNESCO's intellectual capacity because of a lack of resources (Holly, 2003, pp. 228-237).

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The Bank's growing research capacities highlight its double role in developmental politics. First, the Bank functions as a financier. However, its loans amount to only a fraction of a nation's overall expenditure on education. The Bank's lending facilities work rather as "seed money" (Hüfner, 1998, p. 294). The impact of this seed money depends on the conjunction of the loan with specific discourses. The loans can be seen as the material enabler, an anti-blocking agent that allows a line of thinking to enter national discourse while attracting additional money from other donor agencies. Through this conjunction the Bank plays a second role as a major global policy advocate.

### The emergence of the reform agenda

The Bank reacted to the debt crisis of the early 1980s with a change in its lending policy. It shifted its attention from concrete and limited projects to sector wide institutions and national policies. Its short term stabilization programmes came with prescriptions for longer range policy changes, including sectoral reform (Helleiner, 1986, p. 48). The major elements of the reform were liberalization, financial deregulation and privatization, alongside a sharp reduction of public spending, fiscal austerity and tighter credit and money supply.

Interestingly, the centrality of structural adjustment in the Bank's policy went hand in hand with the expansion of the Bank's intellectual and research capacities. Observers described the Bank in the 1980s as a "center of a neo-classical resurgence" (Mundy, 2002, p.488). John Williamson coined the term "Washington consensus" (Williamson, 1990).

The World Bank considered the reform of the education sector to be a crucial step in the reform of the public sector, as in many countries it accounted for a sizeable part of the state budget. Framed by the rate-of-return approach, the Bank's central education unit started to develop a research programme to find out which inputs into education systems were the most efficient (Psacharopoulos and Steier, 1987). Increasingly, issues like efficiency, cost effectiveness and quality became guiding principles for educational reform. The private provision or financing of education was put at the top of the reform agenda. Tuition fees were considered to be an important instrument permitting the expansion of education without massive increases in public expenditure. This line of argument culminated in 1986 in the publication of the policy paper, *Financing education in developing countries: An exploration of policy options*, which summarized the three core Bank prescriptions for educational reforms. First, the reallocation of government spending was to be directed towards the level with the highest social returns, which was basic education. This implied that the cost of higher education was to be recovered through tuition fees. Second, a credit market

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especially for higher education was to be developed to provide loans and means tested scholarships for outstanding students from low income families. Third, the management of public education was to be decentralized and non-government and community supported schools expanded (Psacharopoulos et al., 1986). Later reports continued to elaborate on the Bank's prescription for education reform. The guiding thread throughout all these documents remained cost sharing and privatization (Jones, 1992, pp.177, 245). In the context of a wider agenda for civil service reform, the Bank's education sector lending often encourages its borrowers to delink the teaching professions from civil service pay scales and to use non-unionized or semi professional teachers (Mundy, 2002, p. 494). In other words, the Bank's education policy seems to foster a tendency towards casualization of teachers' working conditions.

### The role of the OECD

The second pillar of the global educational regime is the OECD. Unlike the Bank, the OECD is situated in Europe, staffed by many more Europeans, and has a board voting policy that does not privilege the United States. In addition, its information exchange is more targeted at experts than governments, and it enjoys a high reputation for its intellectual capacities among member states. Education has always been an issue within the OECD. In the early 1980s, its framework for educational policies changed dramatically when conservative governments came to power in some of the more powerful member states. On two main issues these governments and their experts managed to gain leadership: the linkage between education and the labour market, and the definition of quality in education. They replaced the manpower forecasting approach with a microeconomic view of the rate of return to "investment in human capital" (Papadopoulos, 1996; Becker, 2000, p.100). Efforts were made to measure input and output ratios precisely, in order to quantify the benefits of the specific skills of individuals for the knowledge-based economy (Henry et al., 2001, p.99). It was no major step to highlight the benefits for individuals, which in turn provides the rationale for cost sharing. Or, as an OECD report states: "all learners in tertiary education might be expected to contribute a share of the costs of their tuition" (OECD, 1998, p. 6).

On the issue of quality, the US administration promoted the concept of an outcome oriented quality assessment (Heyneman, 1999; Henry et al., 2001, p. 76). This shift from input to output oriented quality assessment puts the focus on institutional improvement and self-evaluation, and thereby fosters the commodification of education. For one thing, output oriented assessment increases the pressure for cost savings. In addition, it provides for a new steering mechanism that is indifferent to public or private delivery of education.

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The outcome orientation gives rise to comparative studies. Within the OECD, the United States and France pushed for the development of an outcome oriented indicator project covering a wide range of countries (Papadopoulos, 1996, p. 221). The indicators permit a close comparison between countries while abstracting from the particular objectives and institutional setup of their respective educational systems.<sup>21</sup> This new comparative method gained broad acceptance in a relatively short time. The attempt to receive a good ranking for oneself in such a world survey is closely linked with the hope of attracting more foreign investment. At the same time, governments with a bad ranking can use the negative result as a justification for restructuring their national education system.

International comparison has consequently increased convergence among national educational systems and plays a major role in the orientation of each country towards a global market. Additionally, it has changed the modus operandi of the OECD. The organization has moved from moderating the exchange of experiences among its member states to becoming a policy actor with a strong agenda setting capacity (Henry et al., 2001, p. 53; Laval and Weber, 2002, p. 78–81).

### Tertiary education: The lifelong learning paradigm

In the 1990s, the policy papers of the OECD, the World Bank, and UNESCO placed a renewed emphasis on higher education. In the name of lifelong learning and employability, the OECD called for a better match between the supply of education and training opportunities and the demand patterns of the labour market (Henry et al., 2001, p.120). This implied the dissolution of the strict divide between higher education and vocational training (Papadopoulos, 2002, p. 43f.; OECD, 1993). Accordingly, the OECD proposed the replacement of the term “higher education” by “tertiary education”.

By tertiary education, the OECD refers to a level or stage of studies beyond secondary education, undertaken in formal tertiary education institutions but also in a wide variety of other settings including in secondary schools, at work sites, via free standing, information technology based offerings and a host of private and public entities (Wagner, 1999, p. 57).

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<sup>21</sup> The OECD has extended its comparisons considerably. Since 1992 it has been publishing *Education at a glance* every year, and since the second half of the 1990s it has been carrying out broad assessments. The most prominent international comparison is probably the programme for international student assessment (PISA) that has been conducted on a regular basis since 2000.

In short, lifelong learning has become a “new policy paradigm” in a knowledge based economy, a paradigm inextricably inter-related with the mass expansion of higher education and which is used in particular to justify further commodification of higher education (Henry et al., 2001, p. 122).

The World Bank’s report, *Higher education — the lessons of experience*, published in 1994, emphasized the contribution of higher education to increases in labour productivity and higher long term economic growth. Although the report recognizes that there is “no single blueprint appropriate for every country” (World Bank, 1994, p. 4), its framework for reform clearly mirrors the OECD reform agenda (Klausenitzer, 2000). Funds are only to be provided to countries that have set up a policy framework that encourages competition and a differentiation of institutions, with an emphasis on private providers and private funding, including cost sharing with students.

The World Bank’s rate-of-return approach made also inroads at UNESCO. In 2000, the Bank cooperated with UNESCO to produce the report, *Higher education in developing countries: Peril and promise*, which basically adopted the rate-of-return approach (Task Force on Higher Education and Society, 2000). Interestingly, the report stayed silent on the issue of working conditions of teachers, though only a few years before, the General Conference of UNESCO had approved Recommendations concerning the status of higher education teaching personnel.

The collaboration between these two organizations can be taken as an indicator of a new interest in UNESCO that finally led in 2003 to the return of the United States to the organization after an absence of nearly two decades. One reason for reapproaching UNESCO might be seen in the increasing criticism of international education policy emerging in the second half of the 1990s. The financial crises in Asia, the Russian Federation and Latin America undermined confidence not only in the International Monetary Fund but also in the World Bank. By the end of the 1990s, non-governmental actors scrutinized the Bank’s education policy more closely than at any other time in the organization’s history (Mundy, 2002, p. 502).

With the 2002 report, *Constructing knowledge societies: New challenges for tertiary education*, the Bank reacted implicitly and explicitly to this criticism (World Bank, 2002). One indicator is the new reference to education as a public good. Whereas the 1994 report never referred to it, the new report calls in the name of this concept for a more balanced and comprehensive view of education. Nevertheless, the Bank has not changed its reform agenda qualitatively. It remains committed to competition, institutional differentiation, cost sharing, and the promotion of private provision of higher education. The new report picked

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up the OECD's term "tertiary education" as a replacement for higher education, as well as its penchant for lifelong learning.

In order to improve access to higher education, the OECD and the Bank recommend making use of transborder education. They advise low-income and small countries to import tertiary education, to permit a more diversified system and to expand enrolment despite limited resources (World Bank, 2002, p. 117). This pro-trade activity is complemented by the International Finance Corporation (IFC), the private sector arm of the World Bank Group. The IFC is in its own words "the first major institution to (1) enter this new industry in the emerging markets and (2) introduce private education entrepreneurs in emerging markets" (IFC, 1999, p. 9; see also Sosale, 2000).

In order to allay the fears of many governments regarding the emerging global market in education, the Bank emphasizes the need to enhance quality. Accordingly, the Bank gives high priority to the establishment of regional and international quality assurance frameworks, although it points out that these mechanisms should not be allowed to constitute rigid entry barriers (World Bank, 2002, p. 126).

In sum, the educational agenda of international organizations changed dramatically in the 1980s towards the promotion of marketization and privatization. This orientation continued in the 1990s but with a stronger emphasis on the importance of higher education for all countries regardless of their economic situation. To foster such an expansion, the World Bank has started to recommend importing transnational education, a recommendation that is addressed, in particular, to poor and small countries and strongly supported by the International Finance Corporation. These organizations have become the main pillars of an educational regime that paves the way for a global market in higher education.

### Europe: Transborder education without commodification?

The building of a European Higher Education Area is of interest for a particular reason. The European Union pursues a common higher education area, but has not yet taken the road of commodification of education. On the contrary, education ministers have reaffirmed the value of education as a public good. In order to facilitate mobility and employability, EU member states promote student mobility and the mutual recognition of degrees and diplomas. A major step was the adoption of the Convention on the Recognition of Qualifications Concerning Higher Education in the European Region in Lisbon in 1997. The Bologna Declaration of 1999 formulated the common goal of the creation of a European Learning Area (Bergan, 2002). However, the Declaration also arose from a concern about the attractiveness of higher education in Europe. For many

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policymakers, too few non-Europeans were coming to Europe for their studies, and in this concern lies the ambiguity of the European integration process. Some EU member states are very keen on exporting, even those with predominantly public universities.

## **5. GATS and education**

The General Agreement on Trade in Services (GATS) came into force in 1995 with the establishment of the World Trade Organization. GATS created a framework for the progressive liberalization of international trade in services. At the same time, a renegotiation of commitments made under the agreement was scheduled to begin in 2000. These negotiations have now been folded into the Doha round of global trade talks, which is not expected to end before late 2006 at the earliest.

### **5.1 *The central provisions of the GATS***

#### **Classification scheme**

What has been agreed on so far? First, a classification scheme for services was developed that divides services into 12 sectors. The fifth sector containing educational services is in turn divided into five categories — primary education, secondary education, higher (tertiary) education, adult education and other education services.

Furthermore, GATS distinguishes four modes of supply of trade in services:

1. cross-border supply (Mode 1): The supply of a service from one country into another (for example, e-learning over the internet);
  2. consumption abroad (Mode 2): The supply of a service within a country for consumers from another country (for example, students from abroad);
  3. commercial presence (Mode 3): The supply of a service through commercial presence in another country (for example, establishment of a Berlitz language school);
  4. movement of natural persons (Mode 4): The supply of a service by persons who move temporarily to another country for this purpose (for example, a native speaker from one country teaching staff at a language school in another country on a short term contract).
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These classifications allow a highly differentiated liberalization of services. For example, a country can limit its liberalization commitments in education specifically to Mode 2 (consumption abroad) for adult education. For good measure, it can also demand additional exceptions, for instance, requiring that only its own citizens are allowed to teach in adult education. The specific commitments are incorporated into the GATS as schedules for each country. The flexible liberalization concept of the GATS in principle allows member countries to open up their market only in those sectors where they consider it opportune to do so. But once they have signed an undertaking they are permanently bound by it, unless they provide compensation in the form of liberalization in a different sector (including goods) to trading partners who stand to lose by the change.

### GATS principles

What do countries commit themselves to when they enter individual sectors and modes of supply in their schedules? They commit themselves to upholding the central principles of the GATS, particularly those of most favoured nation treatment, national treatment and transparency.

The most favoured nation principle requires that trade concessions granted to one country must automatically be granted to all other WTO members. This principle is seen as the essential motor for the worldwide propagation of trade liberalization. However, GATS does contain some general exceptions to most favoured nation treatment, for example, for regional integration treaties. This exception is important for the EU as it prevents the trade advantages of the common market being granted automatically to countries outside the EU. Accordingly, the freedom of establishment applicable within the EU does not have to be granted to “third party countries” such as the United States. However, the EU has chosen to commit itself under the GATS to liberalize Mode 3 (commercial presence) in the primary, secondary and tertiary education fields. It thus has to grant market access equally to companies from the United States, India or any other WTO member.

The principle of national treatment says that foreign service providers must be treated no less favourably than domestic providers in any given market. This is intended to ensure a level playing field for all. Consequently, the licensing procedure for recognition as an education provider should not be more stringent for foreign providers than for domestic providers.

The GATS agreement additionally demands transparency in state regulation of the services sector, including a commitment to make all measures public that affect trade in services. Once a year, the WTO must be informed of

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changes to laws, regulations and administrative guidelines that are relevant in this regard.

### Dispute settlement procedure

A breach of commitments as laid down in the GATS agreement can be challenged in the WTO's dispute settlement procedure. The procedure is open only to member governments and not to private companies. If the WTO dispute panel and, if called upon, the Appellate Body, uphold the challenge the country may have to change its measures to comply with GATS rules. If it fails to do so, it can face retaliation.

Very few cases under the GATS have been taken to dispute settlement, none involving education. Because it is precisely in the largest trading nations that the liberalization of public services is a matter of domestic dispute, there is little interest on the part of their governments to burden the dispute settlement process with politically controversial issues.

### Public services

The GATS agreement excludes services that are "supplied in the exercise of governmental authority", but does not define these services except in a negative way:

For the purposes of this agreement [...] the term "a service supplied in the exercise of governmental authority" is any kind of service which is supplied neither on a commercial basis nor in competition with one or more service suppliers (Article 1.3c).

This suggests that the extent to which countries can exclude public services that serve to satisfy the fundamental needs of society (healthcare, education, infrastructure services) depends on the mode of supply and prevailing competitive conditions. All sectors that are partially privatized, that are moving towards privatization, or in which quasi-state or private operators are administering public tasks (for instance, in respect of certain welfare commitments), or which charge fees that could reasonably be called "commercial", potentially fall outside the protection of the sovereignty clause.

In the case of hospital services, the WTO secretariat itself had doubts whether these fell within the exception clause, since in most countries the hospital sector consists of "government and privately owned entities, which both operate on a commercial basis, charging the patient or his insurance for the treatment provided". It concluded that: "in scheduled sectors, this suggests that subsidies and any similar economic benefits conferred on one group would be

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subject to the national treatment obligation...” (WTO, 1998b, p. 11). In charging fees, providers of public health services risk being classified as operating on a commercial basis and thus coming under GATS rules (Waghorne, 2000, Annex 4).

Responding to public criticism, the WTO secretariat has reversed its stance and now states: “It seems clear that the existence of private health services, for example, in parallel with public services could not be held to invalidate the status of the latter as ‘governmental services’” (WTO, 2001, p.124; on the unclear definition of governmental authority, see also Colas and Gottlieb, 2001, pp. 10–13).

A government’s freedom to regulate its service sector could be threatened by another GATS clause, which contains a mandate to develop future rules for “qualification requirements and procedures, technical standards and licensing requirements” to ensure that these domestic regulations “do not constitute unnecessary barriers to trade in services”. It does not stop a government regulating services, including higher education, but its regulations may not be “more burdensome than necessary to ensure the quality of the service”. Fortunately, there are currently no such rules, called disciplines, for education, though they could be negotiated at some future date.

## ***5.2 Mapping liberalization in the framework of GATS***

The following section describes liberalization commitments already made in the framework of GATS by WTO members in the subsectors of higher education and adult education, which includes training services. Countries can be divided into four groups:

- No liberalization commitments: The majority of WTO members have made no liberalization commitments whatsoever. Market entry for foreign education providers is at best an exception to the rule or is subject to bilateral or regional agreements.
  - Few and differentiated liberalization commitments: Some countries have made commitments in a few subsectors and modes, mostly where no national interests or education providers are affected. In this manner, domestic education systems can be protected or “national champions” shielded, without rejecting GATS outright. The United States and New Zealand are two prominent examples.
  - Extensive liberalization commitments: A number of countries made quite extensive commitments in nearly all sectors of education services. Examples include Switzerland, the EU (excluding Austria, Finland and
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Sweden), and the transition states of Eastern Europe and the former Soviet Union.

- Full liberalization commitments: No WTO member has made unrestricted liberalization commitments in the entire education sector and in all modes.

### Sectoral agreements

Only 53 countries (a third of the WTO's membership) made liberalization commitments in the subsectors of higher education and training/adult education. Of these, 37 liberalized both subsectors, eight liberalized higher education only and eight adult education/training only. Most countries reported sectoral restrictions (see Table 2.1) – the fewest being for the consumption of education abroad (Mode 2), followed closely by cross-border supply of education services (Mode 1). As might be expected, there were more restrictions on commercial presence (Mode 3), taken by 22 WTO members, and 49 of the 53 restricted the movement of natural persons (Mode 4).

**Table 2.1 Sectoral restrictions on liberalization commitments in the subsectors of higher education and adult education/training**

Mode	Higher education		Adult education/training		Total number of countries
	Market access	National treatment	Market access	National treatment	
1	4	4	6	4	9
2	2	1	1	–	2
3	18	10	11	22	22
4	44	40	42	38	49
1-4	23	20	21	20	27

Source: WTO Services Database Online: <http://tsdb.wto.org/wto/Public.nsf/AboutFrmSet?OpenFrameset>

In addition, for all modes of supply, countries limited their obligations to provide market access and national treatment. Only Mali and Rwanda reported no sectoral restrictions whatsoever. However, they did not liberalize adult education — at least not in the framework of GATS. Thus not a single WTO member has made full market access and national treatment commitments.

The restrictions may be divided into several groups. Countries may simply not make commitments for at least one subsector and one mode of supply. This applies to 47 of the 53 members making commitments. Eighteen WTO members restrict access of foreign providers to state funding, subsidies or stipends, and in

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17 (including the EU without Finland, Austria and Sweden) liberalization is entirely or partly limited to private education services.

State approval for setting up a teaching business is required in 14 countries. Nine restrict the content of education services. Eight impose minimum requirements on the qualification of teaching staff, on the performance of providers or on the organization of courses offered.

A further group of restrictions relates to natural and juridical persons from abroad who want to establish themselves as education providers in another country. Most frequently — in nine countries — at least part of the management and/or teaching staff of an educational facility are required to be nationals. Three countries limit foreign shareholdings in domestic education providers, and another three restrict the legal form in which foreign providers may set up shop.

### Horizontal restrictions

Countries can also apply “horizontal” restrictions to all their commitments under GATS, covering all sectors. These can include a broader interpretation of governmental functions than the definition given in GATS. Thus governments can in this way restrict market access to education services, eliminating uncertainty that could arise over their status as “governmental” services where private providers operate alongside state educational institutions.

An additional restriction is the exception to the national treatment principle for branches of foreign firms. The EU reserves this right against branches of firms from non-EU states that were established contrary to EU law. In order to receive equivalent treatment, an education provider from a non EU state must set up a subsidiary within the EU according to the law of an EU member state. In addition, they must demonstrate “... a real and permanent connection to the economy of one of the member states” (WTO, 1994).

Finally, as in the sectoral agreements, the right of national treatment can be refused in the case of subsidies for foreign firms and students. Together with the previous restriction, this ensures that neither education provider nor education consumer from abroad has a right to state support.

### **5.3 The current negotiations**

As already mentioned, negotiations on further liberalization of services are now part of the Doha Development Agenda (trade round) launched in November 2001. This will eventually result in a “package deal” in which concessions on services may be exchanged for concessions on textiles or agricultural goods, for example.

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### Private sector requests

Lobbying for a multilateral services agreement began in the US, when companies who had joined forces in the Coalition of Service Industries (CSI) succeeded in having services put on the agenda of the Uruguay round of GATT (General Agreement on Tariffs and Trade). The European Commission was advised by the European Round Table of Industrialists and UNICE, the European employers' association. At the beginning of 1999, the European Services Forum (ESF) was founded with the help of the EU Commission for the specific purpose of renegotiating GATS commitments. There is a conspicuous consistency in the broad demands of US and European industry representatives. The Transatlantic Business Dialogue (TABD) provides a platform for direct coordination (see Wesselius, 2003; Fritz and Scherrer, 2002, p. 90). Their core demands relate to, among other things:

- an extension of the scope of commitments in all service sectors and all modes of supply;
- complete freedom of establishment abroad and a guarantee of majority ownership and national treatment;
- the development of competition promoting principles for domestic regulation as a focus of the GATS negotiations;
- the opening of government procurement of services to foreign providers;
- investigations into the extent of subsidies in the services sector and an assessment of a possible need for GATS regulation of subsidies (CSI, 2000; ESF, 1999; UNICE, 2000; Global Services Network).

US education companies have made the following demands for the education sector:

- facilitation measures for foreign subsidiaries, short term work permits for teaching staff and cross-border supply by video, CD-ROM and internet;
  - easier access for foreign students to US education and further training programmes in their home countries;
  - recognition by authorities in other countries of qualifications and certificates from US institutions;
  - enforcement of intellectual property rights on US education materials, and a relaxation of customs restrictions, currency controls and investment conditions (CSI, 2000, p.27).
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The main interest is focused on tertiary and adult education, with companies wanting to see a new “training” category included in the GATS classification scheme. This proposal, which has been taken up by the US Government, is essentially intended for the lucrative market in company related technical training that is organized either by the company's own employees or by external providers.

The US has also suggested adding a new subsector to education services, “Educational testing services”, defined as follows:

Educational testing services include designing and administering tests, as well as evaluating test results. These services are fundamental and essential part of the learning process, used to evaluate the student as well as the course material (WTO, 2000).

As this definition of educational testing services explicitly refers to tests and the evaluation of pupils and students, and does not mention quality development of educational institutions (evaluation, accreditation), presumably it would only cover areas such as comparative performance tests (for example, PISA), language tests, and skills and admission tests.

## 5.4 Problem areas

### *Special concerns in the supply of services*

A multilateral agreement on international trade and investment has the potential to contribute to economic growth. There is a fundamental need for an international, multilaterally negotiated body of rules, so that as many people as possible can reap the benefits of trade in goods, and particularly so that more powerful nations are not able to fix the rules for foreign trade as they see fit. A multilateral regulatory framework may also be helpful for the cross-border supply of services. All the same, there are important differences between goods and services that have to be taken into account.

In the case of trade in goods, border restrictions traditionally had the express objective of discriminating against foreign providers, in particular through the imposition of import duties. Taking the special needs of certain industries into account, it has been possible, step by step, to dismantle trade barriers in the course of successive multilateral rounds of negotiations.

By contrast, rules now set by governments for the supply of public services are based on quite different motives. They aim to ensure that basic services are provided nationwide, are universally accessible, that quality standards are

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maintained and, particularly in the case of infrastructure services, that democratic participation and control are assured. Furthermore, education has a special role in overcoming social inequalities and creating social cohesion. If all foreign service providers are to be granted equal access to provide services (most favoured nation principle) and if they are to be accorded the same treatment as domestic providers (national treatment principle), then substantive regulatory changes will be needed. These changes may conflict with the objectives inspiring the original regulations. The GATS thus has the potential to encroach deeply into a body of rules designed for quite other goals than regulating cross-border trade. This is even more the case when it comes to education. To perceive education as just another tradable good, and not as a fundamental human right or public good that is essential for social, cultural and economic development, is a fundamental change.

### ***Disregard for the conditions of service provision***

The GATS contains no reference to the conditions under which services are provided. Therefore, the doctrine of likeness applies. This doctrine, initially applied to goods, was explicitly applied to services in a 1999 WTO panel decision on the EU's banana import regime. The panel stated that: "to the extent that entities provide like service they are like service suppliers." (cited in Krajewski, 2002, p. 17; see also WTO, 1999, p. 99). In other words, if the services are comparable then differences between the service providers are of no importance. Such a definition, with a single focus on the content of the service and the mode of its delivery, involves many ambiguities. For instance, can a public university that provides a broad spectrum of courses be compared with a private supplier that only offers programmes for which there is high demand and which, moreover, does not depend on high investment in research? The panel's verdict in the banana case suggests that this question would be answered affirmatively.

Many critics of the GATS have argued that its potentially far reaching implications cannot be overestimated. Private and public entities may compete with each other regardless of whether the private entities provide the same universal supply. This may lead to "cream skimming" by private entities that only compete with public entities in areas of high profit, while the provision of services to the poor or to remote areas would be left to the government (UNISON, 2003; Zdouc, 1999, p. 333). Furthermore, working conditions for teachers and instructors in for-profit institutions are more precarious (Blumenstyk, 2003a and 2003b; Altbach, 2000; Enders et al., 2003).

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***Reserved subsidization right***

Some countries, in particular, the EU member states, reserved their subsidization rights in the last GATS round. In the EU list of commitments it is expressly stated that “the supply of a service, or its subsidization, within the public sector is not in breach of this commitment” (WTO, 1994, p. 7). Consequently, education services can be supplied in the EU by the state despite GATS. However, there is pressure from a few WTO members such as Brazil for the abandonment of the right to subsidize in Mode 3 (commercial presence) and Mode 4 (movement of natural persons).

Giving up the reserved right to subsidize would have the sharpest of impacts on the education system. Educational institutions from third countries that wanted to offer programmes in the EU could describe the public support of universities as a violation of the GATS principle of national treatment and hence as improper. Their respective home governments could then invoke the dispute settlement machinery. Even without a planned presence in the EU, proceedings of this kind could be instituted — for instance, if a commercial offer in a third country aimed primarily at international students had a comparable but publicly financed counterpart in the EU. In other words, giving up the right to subsidize would have serious consequences for the financing of the still predominantly public university system in the EU.

If the right to subsidize ceased to exist, several options would be open to ensure GATS conformity. State payments could be completely stopped. Or all universities could be directly subsidized. The allocation of funds could take place via a tendering procedure and could be implemented in a non-discriminatory way. The option most truly consistent with GATS would be a reorganization of the financing of the university system away from a subsidization of educational facilities towards a subsidization of students. They could then study at a university of their choice, managed either as a commercial enterprise or as a non-profit foundation. The institutions would be in competition for students' scholarships. Inevitably, courses for which there is only limited or unpredictable demand would come to be considered unacceptably risky. The resulting focus on popular and standardized courses would increasingly challenge the traditional understanding of higher education as a deep and broad educational experience (Kelk and Worth, 2002).

***The special case of developing countries***

In developing countries, importing education services from commercial providers may lead to new dependency. Course concepts and materials must be procured from industrial countries with foreign currency. There is the risk that

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standards, values, language and scientific innovations of the exporting countries crowd out other ideas and practices in the importing countries. It is feared that education imports might have a negative impact on the development of an independent national academic system (Altbach, 2001).

However, the voices and interests of developing countries differ. Some see imports as an opportunity to improve the national educational system, enhancing the mobility of professionals and serving as a foundation for the country's economic and political development. Countries with a long tradition of sending students abroad consider transnational provision as an interesting alternative that reduces currency drain.

Trade liberalization for whose benefit and at what cost are therefore key questions. At the heart of much debate are issues of quality and accreditation as well as other regulatory frameworks (Knight, 2002, p. 13). Experiences with liberalization have therefore to be carefully evaluated taking into account the particular conditions of developing countries.

### ***Does liberalization exacerbate gender inequality?***

Preliminary analysis of the gender dimensions of trade suggests that privatization of education within the GATS framework can affect women as students and as workers. The potential increase in education fees may limit the access to and quality of education for poor households, the majority of which are female headed. If tough choices have to be made, it will be most likely young women who will forego training and educational opportunities. Since privatization seems to go along with a downward pressure on wages and working conditions for the majority of the employees in the education sector, it is quite likely that female employees will be most affected (Young and Hoppe, 2003, pp. 15–16).

### ***Does GATS lead to the global temp worker?***

In the Mode 4 category (movement of natural persons), GATS aims at liberalizing the temporary stay of foreign workers. Until now, liberalization has been restricted to intra-firm movement of key personnel and specialists. In the current trade round, developing countries have asked for a significant reduction of the barriers to the movement of labour into the North. Industry representatives in industrialized countries have echoed this demand and the European Commission has actually offered substantial liberalization. Temporary workers are seen as a source of export earnings for developing countries. The return of highly skilled professionals to their home countries may also enhance the

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knowledge transfer from North to South. However, GATS may become a tool for the “flexibilization” of labour markets in the North. This will be especially the case if no provisions are made in GATS for respecting national labour laws and international labour standards as defined by the ILO. Developing countries run the risk of a permanent brain drain because of the high incentives for individual professionals to remain in the host country. In addition, they may have to pay for Mode 4 concessions by developed countries with concessions in other areas of the GATS, such as Mode 3 (commercial presence), which may not be in their interests.

### ***Irreversibility***

The commitments a country makes under GATS cannot easily be nullified. Once a commitment is undertaken it cannot be revoked, even if there is a political majority in the country in favour of such a step. Any new government has to take over the commitments made by the previous one, however undemocratic.

Commitments in the schedule can only be modified after three years have elapsed from the date they entered into force. In addition, the country has to offer compensation to other WTO members, so that any withdrawal from liberalization in one sector is likely to mean liberalization of another sector or another mode of service supply.

The GATS agreement does not contain an emergency clause. Though it provides for “multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination” (Article X), no consensus has been reached on this issue. Developing countries are very interested in such a clause, whereas developed countries are sceptical, arguing that the process of liberalization under GATS provides enough flexibility for countries to avoid any risk for their economy. One reason for their reserve relates to Mode 3 (commercial presence), since foreign service providers fear that an emergency clause might lead to expropriation of their subsidiaries (Fritz and Scherrer, 2002, p. 96).

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The monopoly of Dutch industry-wide schemes was not destroyed by the ECJ and that decision implicitly recognized that private bodies, indeed civil society, can also contribute to solidarity in social protection. It can be considered as an opening for other schemes with similar characteristics. Yet for now it appears to be an exception in the prevailing binary approach, as no concrete legal status has been given to such types of occupational non-profit schemes.

The proposal for a European Directive on services (known as the Bolkestein Directive) puts forward a quite different approach (EU, 2004). One of its main aspects concerns the application of “the country of origin principle”.<sup>6</sup> Service providers will be subject to the law of the country where they are established, even if they provide services to other EU member states. This new approach on services does not directly affect basic social security schemes, as they are excluded from the field of application of the proposed directive.

The provisions of Regulation No.1408/71 are indeed among the derogations from the country of origin principle, and basic compulsory pension schemes are covered by that Regulation. However, these schemes could indirectly be seriously affected by this proposal. There is a strong risk of social dumping as service providers could find a financial interest in moving into countries where social protection and financial costs are lower.

Under the EU’s subsidiarity principle, social protection has so far remained under control of member states. No harmonization proposals have yet been put on the European agenda concerning social policies. But as the Bolkestein draft expands the country of origin principle, harmonization of social protection may indeed be suggested. At least, such harmonization could avoid an excessive distortion between social costs within the EU.

Most countries would agree on a harmonization process, but it is less sure they would agree on how to harmonize social protection. There may be countries that consider that a high level of social protection would reduce productivity and competitive advantages of their companies, while other countries might consider that higher social protection was necessary in countries with lower social security standards. It would seem difficult to achieve a compromise between the

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<sup>6</sup> The “country of origin principle” was included in the version of the Directive at the time this chapter was written (see EU, 2004 in references). In February 2006, the European Parliament adopted an amended Directive in which the “country of origin principle” was removed. Since no “country of destination principle” was included to replace it, there is uncertainty that this applied principle is likely to be sorted out by the European Court of Justice through jurisprudence.

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opposing opinions on harmonization, either towards lower or higher social provisions.

To sum up, the EU has, from its creation, planned to separate competition rules from the role of services of general economic interest and monopoly. As shown above, this dual approach needs to clarify borderline cases when competition and general economic interest are in conflict. By its very nature, pension provision may combine these two aspects. Liberalization of pension services is taking place according to the different interpretations of the European Treaties in a series of case law decisions of the ECJ. However, we can wonder how jurisprudence will be maintained or changed towards increasing liberalization. There is indeed no guarantee that the current interpretation of the Treaties will continue. Moreover, EU jurisprudence and laws could be subject to the primacy of another source of law, such as the GATS, and would have to follow different rules if there were to be a conflict between the two.

### **3.2. *The WTO and GATS***

The GATS was an outcome of the trade negotiations of the Uruguay Round and entered into force in 1995. As part of the WTO approach, the target of GATS is to eliminate barriers and promote trade in services to improve economic growth and development.

This same competition principle is also one of the main factors prompting the EU's process of economic integration. Competition is perceived, by the EU and the WTO, as a motor for economic growth and well-being. Because pension schemes and other social provisions are categorized as services, they could be affected by the GATS. However, there has been no WTO case law on pensions yet, which would serve to clarify obscure legal points. Therefore, it is not clear how the GATS will affect pensions, and in particular public service pensions.

Articles 1(3)(b) and 1(3)(c) of the GATS define "services" as follows: "'services' includes any service in any sector except services supplied in the exercise of governmental authority." GATS also considers that the "'supply of a service' includes the production, distribution, marketing, sale and delivery of a service" (WTO, 1995). Thus the GATS do not define services as such. But with the two broad approaches (especially "any service in any sector"), there is no doubt that GATS considers private pension schemes as part of the agreement, and that competition rules would therefore apply to them at the EU level as well. Therefore, all privately managed pension schemes can be likened to a financial service and may be covered by a country's GATS commitments in the financial services sector (see below).

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However, market and competition rules may not apply to all privately managed services. Concerning pension services, similar issues to those presented in EU case law do not seem to be resolved in the GATS. What happens to a privately managed pay-as-you-go pension scheme? Financial management and implied rules are very different between a funded and a pay-as-you-go scheme. There is no distinction between for-profit and not-for-profit institutions. Some of the pension schemes not “supplied in the exercise of governmental authority” may also have solidaristic rules, which may not be consistent with the competition rules implied by the GATS.

The GATS also does not make clear whether public services provided by not-for-profit institutions fall under the exception of “services supplied in the exercise of governmental authority”. This represents an additional risk for all institutions that may face a change in their legal environment and status. In these circumstances, what is the future of privately managed not-for-profit social security institutions? There is a risk of impoverishment of social security provisions when there is no legal space between public/state social security programmes and private/market-based schemes. At EU level, the ECJ has not finished sorting out the complexities of pension systems in its 25 member states. However it may be useful to investigate such issues and their consequences for an agreement intended to be applied worldwide.

According to the GATS’ “most-favoured-nation” principle, “each member (of the GATS) shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.” Therefore, in the countries that have made relevant GATS commitments, all private pension suppliers should be treated equally with no national preferences, thus following purely competitive rules.

The main debate concerns public pensions, which are protected “by default” as an exception to the rule. Strangely, the concept of “services supplied in the exercise of governmental authority” is defined in two parts and the definitions can be interpreted in two ways.

One definition is in the GATS annex on financial services:

- activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
  - activities forming part of a statutory system of social security or public retirement plans; and
  - other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
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This definition gives the impression that “public retirement plans” are fully protected, as in (ii) they are explicitly mentioned. However, this definition may be in contradiction with Article 1(3)(c) of the GATS, which states “‘a service supplied in the exercise of governmental authority’ means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers”.

We can speculate on what would happen if a service supplied in the exercise of governmental authority were in competition with other suppliers. For example, what happens to a public hospital if it is in competition with a private clinic? Concerning pension schemes, in some countries the law allows insured persons and/or their employers to opt out of a public social security scheme and to contribute to a private pension scheme. In such cases, how is Article 1(3)(c) to be applied? What would be the consequences for “activities forming part of a statutory system of social security or public retirement plans”, especially since public provision is also in some cases a reference point to define a minimum pension level.

The GATS is not as integrated as the EU process described earlier. While EU states are bound by the rules decided at the EU level, WTO members are only bound by what they have decided to include in their schedules of specific commitments. On the basis of a classification of all services (United Nations, 1991), a state decides which sectors it will include in its schedule. Within a given service sector, it can decide to exclude certain, even most, services and modes of supply. Developed countries, such as the EU and the United States, have included more sectors and services in their schedules than developing countries, but most of these commitments are hedged about with restrictions and few countries have made commitments in services generally considered to be public services such as education and health.

However, under Article 19 of the GATS:

Members shall enter into successive rounds of negotiations...with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

Countries will open a service sector as long as they can also gain access to other markets. This “give and take” principle, important in extending liberalization, adds to the pressure to liberalize further, especially since some countries are more powerful in the negotiation process than others. The progressive approach implies that a “protected” service sector today will not

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necessarily be protected in the future. In such circumstances, it may become difficult to preserve any protection of social services and pensions.

A social security coverage gap is common in developing countries, as the majority of the population is excluded from social protection. Therefore, public social security provisions have a large margin of extension in developing countries. Ideally this could occur at the same time as their economic development. Could the GATS interfere in this potential public extension (Yeates, 2002)? Would the extension be allowed? The possibility exists for a country to modify its commitments once made, but only as part of a system of compensatory adjustments, which means the country would have to “maintain a general level of mutually advantageous commitments not less favourable to trade” than before.

A recurrent criticism of the WTO is that its agreements make no room for any social dimension. The lack of potential for social security extensions, especially in countries where social security coverage is inadequate, again shows that the WTO does not consider social development when framing its agenda. The implication is that social policy is a burden on economic development. However, it seems outdated to consider that a conflict exists between social and economic development. Although there is no clear understanding of all the relationships between social and economic development, many sustainable and successful experiences of development have been based on a combination of both.

#### **4. Conclusion**

Pension policies have been at the centre of the political agenda for several reasons. Ageing populations and slower economic growth have put pressure on the financial balance of public schemes, which need reform. As shown earlier, reform can either reiterate the logic of the pension system in adjusting its parameters (parametric reforms) or institute radical change in implementing individual funded private accounts while phasing out pay-as-you-go pension programmes (systemic reforms). There is no clear evidence that systemic reforms produce better results. On the contrary, they appear to produce a growing coverage gap. Nonetheless, interest in such reforms is increasing.

This interest in systemic reform reflects its connection with pensions liberalization. International regulation is influencing policy in that direction. Through case law, the EU has tried to clarify the borderline between pension schemes that fall under competition principles and those that imply solidaristic principles and the general interest of the consumer. The GATS has not yet developed such jurisprudence on pensions. In the GATS, public social services

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are ignored though potentially they could be affected and treated as any other service. The progressive liberalization process implies that an area protected when a state makes a commitment is not guaranteed the same protection later. There may be a disconnection between long-term liabilities of pension schemes and the risk of a mid-term change in the national and international legal environment.

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