

lenged under the proposed restrictions on domestic regulation.

The implication is clear: literally thousands of nondiscriminatory public interest regulations would be exposed to WTO oversight and potential challenge. At the stroke of a negotiator's pen, every WTO member government's existing GATS commitments—including those in education services—would be deepened.

The scope of these proposed disciplines is very broad. Many types of government measures covering education and other public services could be affected. Licensing requirements, for example, would apply not only to professional licensing but also to university and school accreditation, as well as broadcast licenses, licensing of health facilities and laboratories, waste disposal permits, and municipal zoning procedures. Technical standards, according to the WTO secretariat, refer not just to regulations affecting “technical characteristics of the service itself” but also to “the rules according to which the service must be performed.” This is a sweeping definition that would cover standards related to quality assurance requirements, health and safety regulations, sustainable environmental practices, and other vital regulations.

Surprisingly, this is not yet a hot-button issue among trade

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negotiators or even with many nongovernmental organizations. However, those of us who did flag these concerns with delegations in Hong Kong soon found signs of a growing unease with the planned rules on domestic regulation. The proposed disciplines, especially the necessity requirement, would unduly interfere with governments' rights to regulate services.

#### **A VICTORY FOR THE DEMANDEURS**

The ministerial mandate for members to engage in plurilateral negotiations and to develop disciplines on domestic regulation represents a major victory for the developed world. With respect to education, it means a powerful grouping of *demandeurs* led by New Zealand, the United States, and Australia will be able to place intense pressure on developing countries that are seen as potential new markets for education exports. At the same time, the capacity of developing countries to respond to a liberalized and open education marketplace will be severely constrained if new legally binding disciplines are imposed on their domestic regulatory authority.

Education services are highly regulated in most countries to promote quality, protect students, and to ensure that domestic social, economic, and cultural priorities are met. All countries, but developing nations in particular, require flexibility to maintain and to extend their regulation of education services. As education systems develop, the need for additional regulation may arise. Therefore, it is important for developing countries to retain the flexibility to apply regulations suited to their developmental goals. For these reasons, WTO members must seriously reconsider and reject any intrusion of trade law into domestic education policy. ■

## Transnational Higher Education: A South African Perspective

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In the late 1990s, transnational education providers recognized South Africa as a major growth area for higher education and entered into various collaborative arrangements with local public and private institutions or offered the programs themselves. Prior to this, the apartheid state regulated the higher education sector, and only public providers were allowed to offer higher education in South Africa. In the early stages of the postapartheid period, the Department of National Education estimated that about 50 transnational providers had begun to operate in South Africa in some form or another.

The postapartheid constitution enshrined the provision rights of private and transnational providers. In 2000, a new regulatory framework was developed and implemented to integrate both private and transnational providers into the single coordinated national landscape of higher education.

#### **DO THEY PROVIDE MORE AND DIFFERENT HIGHER EDUCATION?**

According to the new regulatory framework, all private and transnational providers had to be registered by the Department of National Education, have their qualification registered on the national qualification framework by the South African Qualification Authority, and quality assured by the Higher Education Quality Committee. In January 1999, the Department of National Education initiated the process of the registration of private higher education institutions, including

foreign/transnational providers. In 2000, 14 transnational institutions (11 universities and 3 colleges) from the United Kingdom, United States, Australia, and the Netherlands applied for registration. The Higher Education Quality Committee was not in operation at the time and the South African Qualification Authority conducted a paper-based evaluation of the proposed programs. In 2001, the Department of National Education registered four foreign institutions. The Qualification Authority granted accreditation to the programs listed below.

#### TRANSNATIONAL PROVIDERS AND PROGRAMS IN SOUTH AFRICA

The four transnational providers that offer various bachelor's and master's programs in South Africa are: De Montfort University (United Kingdom), the Business School of Netherlands, Bond University (Australia), and Monash University (Australia). In 2000, the enrollments at these four transnational institutions totaled 3,165, accounting for 0.5 percent of the total number of students enrolled in both private and public higher education. It is clear from the statistics that transnational provision is relatively small in South Africa and has the following provisioning patterns: of the 3,165 students that were enrolled in transnational provision in 2000, 88 percent were in the fields of business, commerce, and management studies; 5 percent in the fields of culture and arts; 6 percent in human and social studies; and 1 percent in health sciences and social services; 50 percent of the enrollments in transnational programs were at the master's level (MBA only) and the rest at the undergraduate level. These institutions offer programs similar to other higher education institutions and hence do not offer different education.

#### DO THEY OFFER BETTER EDUCATION?

Thirty-seven MBA programs from 13 public universities, 5 public technikons (technikons are similar to the former polytechnics in England), 4 transnational providers, and 5 local private providers were evaluated by the Higher Education Quality Committee using peer panels and criteria in 2003. The following accreditation outcomes were made public in May 2004:

*MBA programs at public universities.* Eighteen (100 percent) programs were assessed. Of these, seven (35 percent) received full accreditation, eight (48 percent) received conditional accreditation and three (17 percent) had their accreditation withdrawn.

*MBA programs at public technikons.* Five (100 percent) programs were assessed. Of these, not a single one received full accreditation, two (40 percent) received conditional accreditation, and 3 (60 percent) had their accreditation withdrawn.

*MBA programs at local private providers.* Ten (100 percent) programs were assessed. Not a single one received full accreditation, 4 (40 percent) received conditional accreditation, and 6 (60 percent) had their accreditation withdrawn.

*MBA programs offered by foreign or transnational providers.* Four (100 percent) programs were evaluated. None of these

received full accreditation, 1 (25 percent) received conditional accreditation, and 3 (75 percent) had their accreditation withdrawn.

Transnational providers fared the worst among all the institutional provider types. Three of their four MBA programs did not satisfy the minimum requirements and had the recognition of their accreditation withdrawn. The reasons for withdrawal of accreditation ranged from the lack of competent and adequate academic staff to deliver the program to the lack of curriculum depth and rigor associated with master's programs.

The MBA reaccreditation results indicated that transnational providers in South Africa were not necessarily providing education of a higher quality than local institutions. This is the case in spite of the fact that these institutions may very well be offering MBA programs of a good quality at home, which is demonstrated by the fact that many have accreditation. The MBA review showed clearly that the quality of delivery was site dependent and that justified reputations in other countries were no guarantee of good quality when programs traveled cross-border and were offered under a completely different set of resourcing conditions.

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The expansion of private and transnational higher education worldwide has been generated to a large extent by the social demand for "more," "different," and "better" higher education. South Africa is no exception.

However, empirical evidence has shown that transnational education in South Africa provides access that is not particularly significant, given the size and nature of their enrollments in comparison with the rest of the higher education system; offers "cherry-picked" programs, mainly in business and management, and does not contribute significantly to the comprehensive human resources development needs of the country; and does not offer better-quality education.

On the basis of the evidence in the preceding sections, it can be concluded that transnational institutions in South Africa do not necessarily provide "more," "better," and "different," higher education. ■