The Constitution of a New Global Regime: Higher Education in the GATS/WTO Framework

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Abstract
The General Agreement on Trade in Services (GATS), negotiated within the World Trade Organization (WTO), has become the main instrument for the transnationalisation of higher education. It promotes trade liberalisation in services and, thereby, the consumption of distance courses and degrees in foreign countries, the development of multinational universities and international teacher and researcher mobility. This liberalization process intends to modify, eliminate and/or harmonize a large set of regulations and laws, both national and local, in order to advance the constitution of a free trade in education international regime. For this reason, GATS/WTO is considered a key element in the current global governance of education.

This chapter addresses the negotiation process of GATS on Higher Education, and the rationale of the construction process of a new transnational education trade regime through a social constructivist approach. Specifically, it explores the strategies, ideas and positions of countries within the process, and how these elements affect the development and form of this new global regime. The primary data sources are interviews with GATS negotiators and the staff of the WTO.

Introduction
At the present time, higher education is immersed in a sea of transformations and transitions. The subject of this chapter, the inclusion of Higher Education (HE) in the material scope of the World Trade Organisation (WTO) and in the General Agreement on Trade in Services (GATS), is closely linked to two of them. The first is the transition of the conception of the university from a medium for the smooth functioning of the market to an object of the market.

1 This article is part of the project “Beyond ‘targeting the poor’: education, development and poverty alleviation in the Southern Cone. An analysis of the new political agenda in the region”, funded by the Ministry of Education and Science (Government of Spain: ref. SEJ2005-04235).
The second is the transition from a dynamic of internationalisation to one of transnationalisation.

The intensification of economic globalisation has pressured universities to expand their functions. Currently, in addition to providing means for the smooth functioning and competitiveness of the capitalist economy, universities and the services they offer are, in themselves, objects and products of this economy. Furthermore, today the operations of many universities do not differ in any way from those of conventional private industry: they merge, take each other over (Rodríguez Gómez 2004) or opt to be listed on stock exchanges (see the 'Global Education Index' compiled by the OBHE).²

This process of commodification of HE is part of a dynamic of transnationalisation, which must be distinguished from internationalisation. In the first place, internationalisation of higher education, as opposed to transnationalisation, is nothing new. In fact, the internationalisation of universities was already underway in the colonial period, when empires like those of Spain, France or Great Britain exported institutions of higher education to the colonies. The commercialisation of university education at the international level is not new either—the very first European universities were already in the habit of enrolling foreign students in their courses (Brock 2006). The principal difference between internationalisation and transnationalisation does not have to do so much with the scale of operations as with the way relationships are structured in that scale. Thus, while internationalisation structures the relationships of the university community based on national borders, transnationalisation constitutes circuits of exchange and trade in services that transcend borders, and in which universities, professors and students operate and circulate freely. Transnationalisation materialises, for example, when a university establishes branches in different countries, issues certificates recognised in foreign countries by means of in-person or on-line courses, or freely employs international teaching and research personnel. At present, the dynamics of the transnationalisation of higher education coexist with those of

² The Observatory on Borderless Higher Education
internationalisation in the same way that the dynamics of commercialisation coexist with interuniversity cooperation. Nonetheless, the former (transnationalisation and commerce) are tending to become more prevalent.

Both elements, the growing commodification and the transnationalisation of higher education, lay the foundations for the establishment of a global regime of free trade in education. But this regime is still under construction. GATS is a key legal instrument, probably the most important one, for reaching this goal, since it has the capacity to determine most of the elements that constitute a commercial regime.3

This chapter specifically focuses on the process of the construction of a global commercial regime in the area of higher education under the auspices of GATS. In particular, it analyses the reasons why the member countries of the WTO decide whether to become part of this regime through the establishment and consolidation of liberalisation commitments. Although the changes currently manifesting themselves in the area of higher education are linked to the development of the global economy and other macroeconomic processes, it is necessary to make use of an agency theory to understand the more complex explanations for these changes. The purpose of this study on the construction of a global trade regime in education is to penetrate the black box of the process in order to reveal some of its constituent mechanisms.

The subject under discussion here is of the utmost importance for various reasons. First, the process is currently happening on —the GATS negotiations have been underway almost continuously since the Uruguay Round of the General Agreement on Trade and Tariffs (GATT) from 1986 to 1994. Secondly, the process strengthens the neoliberal restructuring of universities and gives greater legal weight to a series of pro-market measures which, once put in place, are practically irreversible (Kelsey 2003; Robertson and Dale 2003).

The chapter is divided into two sections. The first examines the ways in which GATS contributes to the constitution of a global commercial regime for higher education and the political implications of this process. In the second,

3 A regime is defined as a set of explicit or implicit principles, norms, rules and procedures around which actors' expectations converge in a specific area of international relations (Ruggie 1982).
the construction of this regime is examined in depth. To this end, the process is explored on a micro level, and the positions of the member countries of the WTO at the moment of negotiating the inclusion of higher education in the GATS are systematised. In this second, empirical, section the intention is to demonstrate that there exists a series of cognitive variables (ideology, principles, beliefs, etc.) that turn out to be fundamental for understanding the positions of the member countries in the negotiation of the educational sector in the GATS and, thus, for understanding the results of these negotiations.

GATS and the regulation of a global HE market

Interestingly, GATS was not engendered with the object of expanding the flow of trade in the area of education, and still less of establishing a global regime of trade in education. The Agreement was driven, in its day, by a grouping of actors with “offensive interests” in service sectors like banking, insurance and telecommunications. Among these, the roles played by the US Trade Representative, American banks and various neoliberal think-tanks were of particular importance (Altay 2006). These actors, among others, promoted the creation of the Coalition of Service Industries, a lobby whose aim was to insert services into the international commercial regime (Feketekuty 2005) – a goal that was reached in the Uruguay Round of the GATT. At that time, ideational factors and, specifically, the action of several epistemic communities that shared causal beliefs and principles were fundamental in understanding the success of the venture (Drake and Nicolaïdis 1992). Although, it must be said that the 'idea' of trading services (and promoting the liberalisation of trade in services) would probably not have caught on to the same extent if it had had less powerful promoters.

In addition to creating the legal structure of the GATS (many of whose chapters were not, incidentally, completed) the first negotiations were

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4 In the trade negotiators jargon, when a country has “offensive interests” in a sector means that it is pushing proactively for the international trade liberalization of this sector.
undertaken towards the liberalisation of services in the Uruguay Round.\textsuperscript{5} The process, however, was not completed there, since the Agreement envisions the realisation of successive rounds of negotiations in order to achieve a progressively liberalised environment for the global trade in services. Thus, since 2000 the member countries of the WTO have been immersed in the second round of the negotiation of services. In 2001 at the Ministerial Conference at Doha it was decided that the negotiations of services would be included in a broader round known as the Development or Doha Round. This round will promote, in addition to the liberalisation of services, further liberalisation of trade in industrial, agricultural, fishing, and other products.

The negotiation of services is much more abstract than the negotiation of goods. This is due in part to the fact that services are traded in a more complex manner. Four commercial modes exist for services, each of which can be liberalised separately:

a) Cross-border supply (some examples of this mode in the field of education are e-learning and distance learning programmes in general),

b) Consumption abroad (students travel to another country for their education),

c) Commercial presence (the establishment of educational branches abroad, which involves foreign direct investment operations) and

d) Movement of natural persons (teaching and research personnel travel to a foreign country to offer their services).

Another indication of the complexity of GATS is that higher education is only one of the more than 160 sub-sectors of services that are being negotiated in parallel by the 150 countries that have signed the Agreement.\textsuperscript{6} It should be noted that higher education is the educational sub-sector that is negotiated with the most intensity. This is due to the fact that the education market is developing more strongly at post-compulsory levels. In fact, the only

\textsuperscript{5} An analysis of the levels of liberalisation in the sector of Higher Education consolidated by the member countries can be consulted in Verger (forthcoming).

\textsuperscript{6} The complete list of services can be consulted at www.wto.org/english/tratop_e/serv_e/serv_e.htm [last consulted on 25/01/07].
The collective request was led by New Zealand. See the complete text of the request at: www.esf.be/pdfs/Collective%20Requests/Education%20Services.pdf [last consulted on 10/01/07].

8 The liberalisation commitments established acquire legal status.

9 In the first section of the GATS it is established that the members must guarantee that specific measures relating to licences, technical standards or requirements for qualifications are not more trade-
A second objective of GATS is to inculcate the principle of predictability. That is, countries must guarantee that service providers will be able to carry out their activities in a stable environment in which new barriers will not be erected or old barriers re-established once they have been eliminated. To this end, GATS ‘freezes’ the commitments made, making it extremely difficult to withdraw from or reduce commitments once made. Thus Article XXI of the Agreement establishes that:

a) Members cannot withdraw their commitments until three years after they are made,

b) Notice of the modification must be given at least three months in advance and

c) Members affected by the modification can file a complaint, as a result of which it may be decided that the country that has modified its list must compensate other countries affected.

As can be seen, GATS blocks a set of regulatory frameworks and, in consequence, leads to situations in which governments can find themselves with a limited capacity for intervention (both in education and in other areas) due to the trade policies of the preceding government.

In short, the race towards free trade in services is a phenomenon that can not only be interpreted economically or commercially, but politically as well. As has been shown, the adoption of commitments by the WTO for liberalisation in the area of services limits the policy space of member countries and, at the area of concern here, entails a redefinition of the functions of the state as regulator, provider and financer of education. In consequence, it can hinder the state from solving or ameliorating through educational policies a series of problems in the areas of social cohesion, economic development or equality (Robertson, Bonal and Dale, 2002).

**GATS and global educational governance**

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restrictive than 'what is necessary to achieve the legitimate objectives of the country'. Something similar is established in the chapters on subsidies and government procurement.

10 On the other hand, the Agreement includes the possibility that, at any moment, countries can add new commitments to their lists, independently to the development of the current round of negotiations.
The regulatory power of GATS together with the sanctioning capabilities of the WTO (Jackson 2002) turn the Agreement into a key element in global educational governance (Robertson, Bonal and Dale, 2002). The contribution of GATS to global governance is not at all neutral since it consolidates a favourable environment for free enterprise and the expansion of the private sector. According to Gill (2003) GATS and the other agreements of the WTO are principal exponents in the process of the constitutionalisation of neoliberalism, a process by which neoliberal politico-economic ideology is institutionalised in a quasi-legal structure of the state and in international political conformations.

Therefore, the regime for higher education that GATS is seeking to institute belongs to a commercial regime of disembedded liberalism, rather than the one of embedded liberalism instituted by the original GATT. Furthermore, GATS is absolutely consistent with the process of neo-liberal restructuring of university systems and with the need to compensate for the effects of the fiscal crisis of governments in the area of higher education. As a result, governments immersed in the present dynamic of global competitiveness, both in the North and the South, may feel that GATS will have beneficial effects on their systems of higher education. For the former, the commercialisation of higher education services promoted by the Agreement implies an ever-increasing source of financing for universities (Larsen, Martin et al. 2002). For the latter, it can enable them, as the World Bank proclaims (WB 1994; Heyneman 2003), to concentrate scarce public resources at the primary and secondary levels, while the demand for tertiary education by the more well-to-do sectors of the population is satisfied in the transnational education market.

Finally, it should be noted that the regime of trade in education advocated by GATS clashes, in various aspects, with certain agreements and systems of international cooperation, such as those promoted by international agencies like UNESCO or universities themselves.  

11 Thus, as the ex-director

11 It is interesting to point out that the majority of traditional universities foster initiatives for cooperation and, at the same time, for the commercialisation of educational services. The rules of the WTO can lead one to interpret that certain initiatives for cooperation are obstacles to free trade (either because they distort market dynamics or because they discriminate against some centres or countries in
of the Division of Higher Education of UNESCO, Marco Antonio Rodrigues Dias, himself points out

The acceptance of the proposal of the WTO and certain countries to include higher education in the GATS is contradictory to the Paris declaration [Higher Education in the Twenty-first Century: Vision and Action] (Rodrigues Dias 2003: 13).

I ideas for and against the constitution of a regime of global trade in education

GATS does not institute an ad hoc commercial regime of services. This is due mainly to the fact that it is a 'flexible' agreement. The principle of flexibility was introduced in GATS during the Uruguay Round, at the time when the Agreement was being designed. In fact, this was the condition sine qua non for the acceptance of the insertion of services in the material scope of the WTO proposed by the countries of the South, since they considered that in this area of trade they had nothing to gain, due to their comparative disadvantage in most sectors (Drake and Nicolaidis 1992). The principle of flexibility means that services, unlike other areas of the WTO, will not be liberalised at the same pace in each country—or according to differing degrees of development—but rather, that countries will have the capacity to decide, a priori, the pace and level at which they wish to liberalise their different sectors.

The flexibility of GATS, together with other methodological variables, has been singled out by the most powerful countries, those that are more competitive in trade in services, as the principal cause of the slow advance of the liberalisation of services (Khor 2005; EC 2005). This is reflected in a document authored by the President of the Council of Trade in Services, Alejandro Jara, published after a cluster of services meeting held in June 2005. According to Jara, during the meeting a ‘considerable number of
members' identified the current methodology as part of the problem in the negotiation of services (WTO 2005). But are these the 'real' reasons why there is no advancement towards a global regime of trade in education and other types of services? This empirical study endeavours to examine these reasons in depth and, among other things, to disprove the 'hypothesis' hinted at by Jara.

**Commercial positions in negotiations on education**

The premise on which the present analysis is founded is that ideational factors are key elements in understanding transformation processes. Numerous analyses of the international system consider ideas as explanatory factors for actors' choices (Ruggie 1982), elements with constituent effects (Wendt 1999) or road maps for decision making (Jackson 1993). This perspective, markedly constructionist, is especially appropriate for the analysis of subjects that are relatively new on the political agenda, like the one dealt with here (Goldstein and Keohane 1993; Haas 2002). It is also appropriate to analyse policy changes related to complex phenomena. In these cases, policy makers use the advice of epistemic communities to define their interests and positions (Evans 2006).

It should be noted that constructivism is not the only theoretical approach to consider ideational factors as explanatory variables of policy changes and processes. The difference to other approaches, such as rationalism or institutionalism, is that constructivism understands that ideas are autonomous sources of influence and ontologically precede definitions of interests (Gofas 2006). On the other hand, rationalism assumes that interests are established beforehand and ideas are confined to acting as focus points in cases where there are different policy options. And for institutionalist authors, ideas are embedded into norms systems that act as mediators between actors interests and their political behaviour (Goldstein and Keohane 1993).

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12 In fact, from that cluster meeting until the CM in Hong Kong, discussions in the area of services were monopolised by the guidelines in which the negotiation methodology of the GATS is defined.
From the analysis of the empirical data available\textsuperscript{13}, a set of models was systematised that represents the different ways of confronting GATS negotiations in the education sector. These are theoretical models and, therefore, the position of a country is not necessarily identified with only one discursive model. In fact, the \textit{real} position of many countries can be the result of the interaction between two or more models. The models are arranged according to the predisposition to liberalise education under GATS. While there exist multiple classifications of ideational factors or intersubjective structures in the literature of the social sciences, the categories used by both Gilpin (1987) and Goldstein and Keohane (1993) in particular were found extremely useful in systematising these models.

\textit{Model 1: 'Education is not a commodity'}

This first model is subscribed to by countries that reject the establishment of commitments in the educational sector for ethical or moral reasons. It is a position irrespective of cost-benefit calculations or the knowledge of prevalent theories on the subject. Ethic-moral reasons are associated with the category of ideas that Goldstein and Keohane (1993) call \textit{principled beliefs}. Principled beliefs are normative ideas that enable us to distinguish what is proper from what is improper and what is fair from what is unfair. Some countries condition decisions taken in the negotiation of the educational sector of GATS on considerations such as those above – that is, on a set of values or an explicit ideal of education shared by different social sectors. The argument put forth by these countries is that education is a social right and a public asset that should be provided by the state. From this philosophical vantage point it is feared that GATS might undermine the public function of education and its very conception as public. In some cases there is, quite simply, an attitude of rejection to education being negotiated and traded like 'common merchandise'.

Countries with social democratic or leftist governments usually adopt this position. In some of them, civil society has pressured against the establishment of

\textsuperscript{13} Specifically, 20 interviews to trade negotiators and 4 interviews to WTO and UNCTAD staff where done.
commitments in education, or for the exclusion of education from GATS negotiations entirely (Verger and Bonal 2006).  

**Model 2: Caution towards adopting commitments**

The delegations included in this model also reject making commitments for education, but for other reasons than those mentioned in the previous model. In this case, instead of adopting a critical position for reasons of identity or because of adherence to certain values, the rejection of GATS is based on ambiguities in the text and on the uncertainties that these generate. It must be remembered that GATS is an incomplete agreement and some of its chapters are still being finalised.

The main ambiguities in GATS are found in the definition of the services included in the Agreement, in the rules and systems for national regulation, and in the classification of services. With respect to the first of these, Article I establishes that the Agreement will apply to all services in all sectors except for 'services provided in the exercise of governmental authority', which are defined as '[services] which [are] supplied neither on a commercial basis, nor in competition with one or more service suppliers'. This definition does not clearly exclude public services, since, for example, there are public universities that provide services commercially and in competition with other providers.  

As a result of this blurred border between the public and the private, those countries that do not want the liberalisation of a particular sector to affect the public sector choose not make commitments.

A second area that has not yet been finalised in the Agreement is Domestic Regulation (Article VI). Thus, it has not yet been defined which type of national policies can be considered 'more burdensome than necessary' in keeping countries from reaching their objectives. In the educational sector this might affect rules such as the definition of the curriculum by the state, the evaluation of the quality of educational centres or the accreditation of degrees obtained in other countries. For this reason, many countries condition their

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14 It must be said that there are cases of countries that oppose the introduction of education into the GATS for clearly 'anti-commodification' reasons, while they are promoting the commercialisation of education by other routes.

15 Post-graduate courses at market prices offered by certain public universities are the most widespread example of this.
offers for access to markets on knowing the contents of the disciplines of national regulation. Their logic is fairly obvious: before committing a sector or sub-sector, they want to know exactly what their obligations will be.

Something similar occurs with the classification of services, since it is still not clear what sub-sectors of services are included in the categories of services used in the negotiations. Cases have arisen in which the Dispute Settlement Body of the WTO has ruled that a country has liberalised a service sector when the country in question maintains that it had not included that sector in their list of commitments. This was the case with the USA with online games of chance,\(^{16}\) which remains ever-present in the minds and the calculations of the negotiators.

With respect to what is known as the GATS Rules, there are also grey areas that relate to their scope and meaning, which have led to the creation of a working group in the WTO on this subject. Nonetheless, unlike the National Regulation group, it is unlikely that its task will be concluded in the current round. The Rules cover three broad subjects:

\begin{itemize}
  \item[a)] Subsidies (Article XV): in the wording of the agreement it is not clear, among other things, what type of subsidies can be retained by governments for developmental reasons and to which ones the National Treatment rule must be applied;
  \item[b)] Government Procurement (Article XIII): whilst general and specific obligations do not apply to government contracts some wealthy countries, led by the EU, are pressuring for this no longer to be the case, so that their companies can participate in calls for tenders by foreign governments;
  \item[c)] Safeguard Mechanisms, which are not defined either, although, in this case, the countries that have a greater interest in their advancement are the lesser developed ones.
\end{itemize}

These measures would permit the establishment of a trial period for the liberalisation process. Thus, if a member is not satisfied with the results of

\(^{16}\) See Gould (2004).
liberalisation and can justify it in a convincing manner to the Council of Trade in Services, it may be allowed to withdraw the commitment.

Finally, the mandate for Evaluation envisaged in Article XIX of GATS has not been applied either. According to this, some WTO resources should be devoted to evaluating the results of the liberalisation of trade in services in order to determine, among other things, to what extent it benefits or harms developing countries. Since these evaluations have not been carried out, there is greater uncertainty for some countries.

Fears such as these are based on causal beliefs, that is, on theories and beliefs about cause and effect relationships that guide actors in reaching their objectives (Goldstein and Keohane, 1993). In the framework of this model, negotiators' technical knowledge of the contents of the agreement, together with the theories they construct in this respect, are a key mediator variable when trying to understand countries' positions in the negotiation of services. This knowledge, often hypothetical in nature, is not directly related to the world of education. The result of the pre-eminence of these ideas is that delegations choose not to move any pieces in the negotiations so as to avoid making experiments whose consequences are still unknown and, due to the characteristics of the Agreement mentioned above, would be difficult to reverse.

Model 3: Defensive interests
The third model, like the previous one, is made up of those delegations that refuse to establish liberalisation commitments in the education sector, basing their position on causal beliefs. However, in this case the arguments and theories that the delegations put forward are not centred on the GATS text but rather on the effects of the liberalisation of the education sector that GATS entails.

Negotiators who adhere to this model are concerned with information and knowledge relative to the opportunities and dangers of liberalising the education sector or to the potentials and weaknesses of their national educational service industries. As with the first model, education is conceived of as a sensitive sector, not so much as a matter of moral principle, but because national education systems might be harmed as a result of the
adoption of commitments for the liberalisation of trade. This posture is normally associated with governments that subscribe to a programme of economic nationalism. In the definition of this position pressure exercised from the domestic private sector acquires a certain relevancy. Thus, some associations of private universities in different countries have effectively pressured their ministers of trade not to make liberalisation commitments, thereby avoiding international competition. This position can be sustained on mere hypotheses as to the possible effects of competition, although on occasions it is based on the experiences of other countries that have damaged their domestic education sector after liberalising higher education. One of the most noteworthy of these cases was the acquisition of the Universidad del Valle (the second largest private university in Mexico) by Sylvan Learning Systems (an American education consortium), which was made possible as a result of the ratification of NAFTA\textsuperscript{17} by Mexico.

On the other hand, many countries in the South have still not developed adequate regulations in the area of higher education. They consider that acquiring liberalisation commitments could render this task difficult in the future and, consequently, the task of controlling the quality of the providers of cross-border education as well.

As with Model 2, some of the countries that adhere to this model do not give a resounding 'no' to the introduction of education into GATS. They might do so in the event that a certain series of conditions were present, like the possession of a more solid regulatory framework or a more competitive education industry.

\textit{Model 4: The most instrumental logic}

For those that inhabit this fourth model, the decision to liberalise education is not based on ethics, uncertainties associated with the grey areas of GATS or oscillation between the perceived opportunities and dangers of liberalising education. Rather, their decision is clearly based on factors extrinsic to the education liberalisation itself. Among these factors, the results of the negotiations over other areas in the Doha Round are by far the most salient. In the framework of this model we find some

\textsuperscript{17} North American Free Trade Agreement
developing countries that have no offensive interests in education services at all (or in services in general) but that might liberalise their education sector in exchange for greater liberalisation by other countries of trade in agricultural or textile products. Thus, education in the framework of this model is treated as a bargaining chip, and ideas about education do not carry any weight when explaining the results of negotiations. In cases where such ideas have been developed, educational concerns have ended up totally superseded by interests from other sectors of the economy.

**Model 5: Ode to the liberalisation of education**

Normally, countries that are close to this last model have already liberalised education in the framework of GATS. They are countries that consider fears of educational liberalisation unfounded, arguing rather that it entails a series of advantages for education systems. Among the most often mentioned of these advantages are the introduction of greater competition in the sector, the attraction of foreign investment, enhanced human resources and expertise to the education system, and the increase in the education offer. In consequence, they feel that the overall result obtained from the liberalisation process is an increase in the quality of education in the home country. In addition, they consider that fears related to the grey areas of the GATS are also unfounded.

According to what can be gathered from their discourse, the dominant rationale is that education is an economic sector that, like so many others, must be liberalised so that the system becomes more efficient and generates more wealth and well being. Although their arguments are based on certain causal relationships, the foundation of their position is fundamentally ideological in nature. Specifically, the delegations that comprise this model subscribe to a neoliberal ideology. Ideology is a broader category than causal beliefs. According to Gilpin (1987), while ideologies provide scientific descriptions of how the world works (as causal beliefs do), they also constitute normative positions on how it should work. In this sense, the governmental delegations framed in the model maintain that free trade is the

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18 Paradoxically, the delegations that most closely approximate this model criticise those that sustain positions contrary to the liberalisation of education in the GATS as doing so for 'ideological' or 'electoral' reasons.
ideal economic exchange system and that the liberalisation of trade is always desirable. Furthermore, ideologies, unlike theories, represent intellectual commitments or acts of faith that, normally, cannot be refuted by logical argument or empirical evidence (Gilpin 1987).

In describing this model, it should be noted that other country delegations are impregnated by ideology (neoliberal ones or others). What is specifically meant here is that trade negotiators that are close to the model 5 appeal to ideological reasons to justify their position in the GATS and education negotiations. The majority of countries that have liberalised their education sector did so in the Uruguay Round, when public opinion was focused elsewhere and people were generally uninformed about GATS and its implications. It is probable that if they had established their liberalisation commitments more recently, the political costs of the decision would have been much greater and the decision-making process would have been more controversial. So, it is possible that, at the time, they may have established their commitments for the liberalisation of education in a less thoughtful manner or for reasons similar to those of the previous model (that is, using education as a ‘bargaining chip’). Now, however, once these commitments have been adopted and the public debate on the relationship between GATS and education is more heated, they have adopted a rhetoric supportive of liberalisation. In other words, it is plausible to consider that they have rationalised the advantages of liberalisation a posteriori and, from what can be gathered from their arguments, based on flimsy empirical evidence.

The following chart systematises the five positions: Each of the models is described according to the type of idea that characterises it, the conception of education held (when this is related to the country's position) and the way in which ideas influence the results of the negotiations.

<table>
<thead>
<tr>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
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<tr>
<td>Type of factors</td>
<td>Moral principles</td>
<td>Causal beliefs (contents of GATS)</td>
<td>Causal beliefs (dangers of)</td>
<td>Instrumental, not ideational</td>
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Conclusions

GATS is the main international legal instrument for the constitution of a multilateral regime for trade in education. This regime will have a decidedly pro-market character since, consistent with the *raison d’être* of the WTO, it is structured around the free market and free trade rules. In addition, it entails the redefinition of the functions of the state in educational matters and the economic and social functions of education.

Nevertheless, this new regime is still under construction, in part due to the flexibility that GATS allows to member countries when consolidating liberalisation commitments. But there exist other factors of greater importance when attempting to explain the irregular pace at which the process has proceeded. The most important of them is that the application of GATS rules to the educational sector is a highly contested. The opposition to GATS usually comes from the education community (public universities, teachers unions, etc.), but, as we have observed, some government representatives in the WTO themselves also adopt a critical position. This is the main barrier to the constitution of a trade in education international regime because, in order
to create an international regime, the parties must share certain principles, aims and values. Currently, several WTO member countries have already made commitments for education under GATS and believe that this will enhance the quality and competitiveness of their education systems. Nevertheless, at the moment, some member countries refuse to adopt some of the GATS rules in the educational sector (above all, to establish liberalisation commitments) because they consider that education is a public asset that should not be partially regulated by free trade agreements. So, there is clearly a non-common understanding among countries in the principles domain of the regime, as well as a lack of convergence on the conditions and the goals that make this regime necessary.

Moreover, there is another important grouping of countries that are reluctant to make GATS commitments with regard to education solely for technical reasons (such as the presence of ambiguities in some chapters of the Agreement or certain loopholes in their own national regulations that could heighten the risks of liberalisation). However, once these questions have been resolved, these countries could be disposed to make these commitments. Another group of countries, with an even more instrumental approach, would be willing to establish commitments for liberalising education under GATS if negotiations advance in other areas (such as agriculture, industrial products, etc.).

GATS was not created with the primary objective of constructing a global regime for trade in education. However, today it is the main juridical tool used to enable the constitution of this regime. Similarly, as we infer from the position of the WTO members, many countries might opt to commit their educational sector to the GATS framework for reasons unrelated to educational objectives. This would lead to an apparently paradoxical process: the construction of a global regime for transnational education without an education rationale, relegating the conception, functions, and objectives of education to background.

The future of education in GATS is as yet not completely known. There are many variables that could influence the outcome of this process. As we have observed elsewhere, it seems that the correlation of forces at the domestic level between critics of GATS and pro-free trade sectors may tip the
scales either towards a model of free market educational transnationalisation or towards one structured on other principles, rules and procedures (Verger and Bonal 2006). Nonetheless, if the appeals of some education sectors to exclude education from GATS go unheeded, the regime of free trade in education will sooner or later be established, since the rules of the Agreement itself pave the way for a progressive liberalisation that will be difficult to reverse.

References


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