

HIGHER EDUCATION AND GATS

REGULATORY CONSEQUENCES AND
STAKEHOLDERS' RESPONSES

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PROEFSCHRIFT

ter verkrijging van
de graad van doctor aan de Universiteit Twente,
op gezag van de rector magnificus,
prof.dr. W.H.M. Zijm,
volgens besluit van het College voor Promoties
in het openbaar te verdedigen
op donderdag 29 juni 2006 om 15.00 uur

door

Aleš Vlk
geboren op 17 maart 1972
te Pilsen, Tsjechië

Dit proefschrift is goedgekeurd door de promotor en assistent promotor:

Prof. dr. M.C. van der Wende

Dr. D.F. Westerheijden

*To my father
who could not make it with us.*

Overige leden van de promotiecommissie:

Prof. dr. G. Neave

Dr. H. Šebková

Prof. dr. J.C. Verhoeven

Prof. dr. R.A. Wessels

Preface

When out of curiosity I took a course on International Trade Law at the Amsterdam Law School more than five years ago, I had no idea that it was in fact the beginning of an endeavor towards my thesis. I have to say that I was fascinated by the way in which our teacher, James Mathis, introduced us to the principles of the World Trade Organization, the General Agreement on Trade and Tariffs and most importantly the General Agreement on Trade in Services. Coinciding in 2000 and 2001 with my exposure to James Mathis' class was also the higher education community recognizing the fact that higher education in addition to other services was a part of the liberalization process. I thought it was a topic worth further exploration and started systematically looking into it. When an opportunity was given to me to pursue a doctoral study at the Centre for Higher Education Policy Studies (CHEPS) of Twente University, the above mentioned topic became a central point of my thesis.

The period between 2002 and 2005 of which a considerable part was spent in CHEPS (almost four months every year) was one of the most exciting ones in my life. I experienced the joys of marriage and even the solitude from driving for nine or ten hours on German highways. I learned how to simultaneously combine working on a thesis with a working regular hours in consultancy and human resources development back home in Prague.

I mastered many other lessons while working on my thesis. Driving back and forth and staying for a while in different places helped me discover and confirm my priorities. I realized what I really wanted to do, how I wanted to do it, and what did not really matter. While working on the thesis I also learned about my strengths and weaknesses.

A preface would not be such if I did not give acknowledgements to the others without whom the finishing of the task would have been almost impossible. In that respect I would like to thank the first of all my supervisors: Marijk van der Wende and Don Westerheijden. Although every journey has its bumpy parts, ours has led us together to a successful end. Marijk and Don represent different styles of supervision. What I personally found as the most beneficial was having them both on my side when going through various challenges of the higher education research.

My gratefulness goes literally to all other members of CHEPS, including academic and support staff. I avoid mentioning any by name in order not to disappoint the others but let it be known I do have my favorites and you know who you are. During the time I spent in CHEPS I really felt like at home, and each particular CHEPS member contributed to this feeling. The only special thanks belong to Aleksandra, Tibor and Wojciech with whom we shared similar joys as well as troubles of being part-time foreigners in the Netherlands and sometimes were left to help each other. Together we had a great time in Brinkstraat and Oldenzaalsestraat.

Successful completion of my dissertation would have been difficult without a few other people outside CHEPS. First, Peter Schilling from Sweden spent hours with me during the summer school on higher education research in Barcelona discussing my ideas of a theoretical framework and creating new perspectives for me. Second, Tembile Kulati from South Africa who helped me keep to my regular running exercise. Third, I should not forget Helena Šebková from the Centre for Higher Education Studies in Prague. She, among other things, introduced me to many areas of higher education policy as well as to CHEPS itself.

Finally, I have to express many thanks to my friends and my family in the Czech Republic who tolerated my long-term absence from home. It especially concerns my wife Petra who became very sensitive to words such as Ph.D., dissertation or research, especially during the last half year, which appeared to be very demanding and stressful. She was of great help and supported me extremely in the moments when I even started to wonder whether the route I had chosen was the right one and whether I would be able to finish it at all.

I appreciate all the people and friends who trusted me and helped in various ways to make this project happen. I only regret that my father was not able to witness it coming to the very end. He had his doubts when he saw me starting various activities and projects and leaving some of them without successful accomplishment. As a mechanical engineer he was rather skeptical about humanities and social sciences, however, I am sure he would be happy with the overall result of my research. Therefore, this book is especially dedicated to him.

Aleš Vlk,
Praha, May 2006

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1 Introduction

Every day in every way, confusion is becoming – global.
Guy Neave, 2002

The dream of all proponents of world trade without barriers came much closer to its fulfillment when the World Trade Organization (WTO) was finally brought into existence in Marrakech, Morocco, as a result of the 'Uruguay Round'¹ of multilateral trade negotiations between national governments, taking place from 1986 till 1994. The WTO agreement was signed on 15 April 1994 and entered into force on 1 January 1995. Together with the General Agreement on Trade and Tariffs (GATT), existing since 1947 and dealing with goods, two more agreements are now administered by the WTO: the General Agreement on Trade in Services (GATS) and the Trade-Related Aspects of Intellectual Property Rights (TRIPS).

As a result of the Uruguay Round a range of service sectors were selected for further liberalization including educational services. The main objective of GATS remains the same as it has been for GATT – progressive liberalization should be achieved through subsequent rounds of negotiations. During these negotiations the WTO member states are expected to take on various levels of obligations to reduce barriers in respective service sectors².

1.1 Different perspectives

Since educational services were included in GATS, the appropriateness and correctness of such a step has been repeatedly put under scrutiny. Among other things the consequences for individual students, members of academia, higher education institutions, national governments and for the society at large have been questioned. A significant disagreement with higher education's inclusion in GATS and contrasting assessments of GATS's impact on higher education have appeared in the discussions. The discourse intensified mainly during the renegotiation round launched in November 2001 in Doha, where the fourth WTO Ministerial Conference was held.

¹ A large ministerial meeting was held in Punta del Este in September 1986 in order to launch a new trade round. A very ambitious agenda was included in the final Ministerial Declaration of 20 September 1986, covering services and intellectual property. The new round of negotiations was named after the country of the meeting – the Uruguay Round.

² See chapter 3 for a detailed discussion on GATS and its negotiating mechanism.

In general, policies such as liberalization, deregulation and privatization³—which are very closely associated with the WTO and GATS' concept—have been very far from being accepted unanimously in higher education. Rather the contrary—the implementation of market-like or business-like approaches in different areas of academic activities have been continuously subject to a vivid discussion and criticism. The reason can be found in the fact that the underlying assumptions and rationales of these policies as well as the language are frequently perceived as conflicting with traditional academic goals and values. Whereas the core issues of the business world and markets include among other things profit margin, buyouts, takeovers and customer satisfaction, the principal values of the academic sphere can be found in continuous learning, appreciation for context, critical thinking, inquisitiveness, ingenuity, originality, excellence, equity, etc. (Grineski, 2000).

The general concept of liberalization itself, forming the key philosophy of the WTO and multilateral agreements under its umbrella, has also been highly controversial. The idea of lowering obstacles to international trade in goods has been traditionally accompanied with opposing views and standpoints. It has accelerated even more since services were included in the WTO scheme. A very strong criticism has emerged especially in areas in which the service in question is perceived as a public good⁴ (Education International, 2000; Public Services International, 2000; Sinclair & Grieshaber-Otto, 2002, etc.). Health and educational services, and higher education in particular, fall into this group.

The introduction of trade categories and principles to the higher education context revealed how sensitive the academic world is to external infringements. The sensitivity and controversy of including higher education into GATS can be furthermore emphasized by the observation that education has historically been connected with the nation-state, and thus perceived as being part of a cultural, political and philosophical dimension of nations and other entities. After all, “the contemporary university—three quarters of the universities have been created after 1900—is the creature of the nation state” (Scott, 1999, p. 2). But suddenly a multilateral agreement, GATS, treats education as a tradable commodity. Nevertheless, it is not the trade in higher education which is new. As highlighted by Knight (2003b), it is rather the increasing adoption of trade language and trade policy frameworks causing the opposition from academe. Furthermore, the changing rationale implies a fundamental shift not only in the perception of education, but also in the relationship between the state and higher education

³ See the following chapter, section 2.8, for further elaboration.

⁴ Public good is a good or service having two main characteristics: nonrivalry in consumption and nonexcludability. *Nonrivalry* means that increased consumption of the good by one person does not decrease the amount available for consumption by others. *Nonexcludability* represents an aspect of a good for which no one can be excluded from consuming the good (Taylor, 1995).

institutions. In this respect one can talk about a paradigm shift from capital as cultural exchange more towards capital based on cash nexus (Neave, 2002a).

1.2 Proponents and opponents

It took a rather long time until universities, the general public, and various civic movements realized what was agreed under the WTO framework during the Uruguay Round. Higher education's inclusion into GATS received almost no attention before the beginning of the renegotiation round (the Doha Round). It was in fact the renegotiation round⁵ which launched an intensive discussion within the policy-making community and academe and which has intensified the ongoing discourse about higher education's role in both national and international contexts. Since 2000 the original inclusion of educational services under GATS started to be questioned, and any suggestions to further liberalize educational services evoked intensive criticism from institutions, as individuals and by various groupings including labor unions in public services, teacher's unions, students associations and civic movements (see AUCC, 2001; Education International, 2000; ESIB, 2001; EUA, 2001; Miley, 2001; Public Services International, 2000; etc.)

Opinions and views on GATS and further liberalization of higher education have been very heterogeneous. Yet, two main opposing streams can be identified in the discussion. The first one emphasizes the benefits of further liberalization and lowering the barriers in international trade to national economies. The second one perceives GATS as a threat to education and public services in general. For the former, the introduction of a market is legitimized on the institutional level – a shift from public financing into greater market responsiveness has made the institutions search for the balance between academic quality and adequate market-oriented approach (WTO, 1998). Yet where WTO analysts talk about the balance between academic quality and market-oriented approach, their opponents warn against the danger of the slippery slope of commercialization with all its negative consequences (Education International, 2000). They also argue that higher education's inclusion in GATS might eventually weaken the position of national governments. The ability to meet non-economic national objectives through education and maintaining academic quality standards represent two examples of potentially affected governmental functions. In both instances further renegotiation of higher education services under GATS may pose a substantial threat. According to critics of GATS—their views are often in line with general anti-globalization argumentation—liberalization of certain public sectors, especially education and health, may reduce nation-states' powers to make decisions that would benefit individual countries (Public Services International, 2000).

⁵ See chapter 3 for more details.

Among the critics' most repeated claims are the following: the new round of services negotiations will force WTO members to open all their services sectors to foreign competition, public funding will be abolished, all public services will have to be open to foreign competition, liberalization under GATS will lead to deregulation of services, GATS commitments are irreversible, GATS negotiations are secretive and anti-democratic, etc.⁶ The WTO, on the other hand, makes counterarguments to these statements. It stresses that the criticism of GATS and the negotiations is 'ill-informed and hostile'. Furthermore, the WTO highlights that "scare stories are invented and unquestioningly repeated" (WTO, 2001a, p. 2).

The dividing line over the issue has been evident not only between the WTO and its main critics, but a significant division could be noticed also within parties strongly connected with education. Larsen and Vincent-Lancrin (2002) observed this trend in the on-going discussion about potential implications of increasing international trade in educational services. The Washington Forum on Trade in Educational Services, hosted by the OECD and the United States Department of Commerce in May 2002, revealed a division between the participating parties. It seemed that the debate on trade in education services, including their inclusion into GATS, was less conflicting across individual countries than across professional groups representing their own culture and interests. On the one hand, Larsen and Vincent-Lancrin identify private-sector providers, testing companies, quality assurance agencies and the business world generally as viewing liberalization of educational services in a rather positive way. On the other hand, students, traditional universities and traditional educational circles are very much opposing the idea of liberalization of educational services and sometimes the concept of trade in education as such.

Although the division between the opponents and proponents of liberalization of higher education has been much more evident between professional groups across countries and continents, a certain tension between various blocks of countries has also appeared. The dividing line can be drawn between developed and developing economies, North and South, exporters versus importers of education, etc. Norway, for example, in 2004 together with some other developed countries was accused by the South African minister of education, Professor Kader Asmal, for making a negotiation request to South Africa. It was perceived by the South African minister as very aggressive behavior; according to him it was not appropriate to deal with education under GATS (Sørensen, 2005).

The discussion on GATS and higher education has been very intense especially with respect to the potential effects of higher education's inclusion into the WTO framework. GATS as a binding multilateral agreement represents a rather complicated legal system. Also the WTO admits that it is difficult to assess the

⁶ Opponents' and proponents' views and standpoints are analyzed in more detail in chapter 8, section 8.3.

rights and obligations of individual WTO members as the GATS rules are still necessarily untested and the services schedules are much more complex than those for goods (WTO, 1999a). Therefore, the consequences of GATS' implementation into various public higher education systems are still unclear and have raised many questions.

Furthermore, as many issues regarding the impact of GATS on higher education (subsidies, state funding, accreditation, quality assurance, etc.) have not been sufficiently analyzed, the arguments of many actors have often been based on a perception of what GATS can potentially mean rather than what it really means. The way different stakeholders perceived GATS influenced their views, standpoints and argumentation as well as the activities they undertook. Finally, the information gap that has traditionally surrounded the WTO also contributed to the increasing level of uncertainty around the impact of GATS on higher education.

A vivid discussion about GATS and its impact on higher education has resulted in a large number of conflicting opinions and assumptions⁷. Besides intense criticism of GATS itself⁸, there has also been an immense variety in the assessment of GATS' impact on higher education. This large variety of opinions and judgments—one should rather say views and arguments of various actors, based often on opposing or conflicting assumptions and values—was perceived by the author as an important impulse to further elaborate the topic and get a deeper understanding of GATS and its real—meaning demonstrable and verifiable—consequences for higher education.

1.3 Body of knowledge

GATS as a specific topic has appeared in higher education research only during the last few years. However, the number of publications, articles, and studies focusing or referring to GATS has been increasing gradually. It often seems that GATS has become almost a sort of a symbol without which addressing any relevant global or international theme in higher education would be impossible. On the other hand, due to GATS' rather short history, there are still many unexplored areas regarding its impact on various parts of higher education.

There are basically two main types of sources from which one can gather relevant information about GATS and its relationship with higher education. The first is represented by traditional sources including reports, studies, scientific journal articles, publications, conference presentations, etc. The other—in this study of the same relevance as the former—contains a general discussion both inside and outside the academic community, individual's claims, political comments,

⁷ For examples of some misleading claims and major fallacies about GATS see Sauvé (2002), pp. 11-13.

⁸ See for example Sinclair & Grieshaber-Otto (2002) for a comprehensive critique of GATS.

pamphlets, memos as well as internet contributions. Yet, it can be methodologically very difficult and some would even claim not desirable to distinguish between a 'neutral' analysis and political standpoints in social sciences in general. It is especially true in areas such as GATS and higher education, where scholars are often too close to the subject they write about.

The scholarly literature devoted to GATS and higher education can generally be subdivided into two main streams. In the first group, which could be characterized as contributions at the conceptual level, GATS is associated with or subsumed under broader phenomena such as globalization, internationalization, international trade, etc. The following section gives several examples.

McBurnie (2001) associates GATS and the WTO with the economic and political dimension of globalization. In the economic dimension education can be 'commodified' as a tradable service as well as a valuable intellectual property on the global market with a demand for a skilled labor force. The rise of neo-liberalism policies as advocated by many national governments and institutional players such as the World Trade Organization and the International Monetary Fund (IMF) falls within the political dimension of globalization.

Based on Scott's (1998) distinction between globalization and internationalization Van Vught, Van der Wende & Westerheijden (2002) see GATS' negotiations as an exemplification of globalization on the one hand, while internationalization, on the other, is represented for instance by the Bologna process⁹. Internationalization refers to increased cooperation between states and activities across state borders. At the same time, it has been interpreted as an internal response to globalization, shaped and influenced on the institutional level. In the higher education context it includes among other things activities such as mobility of students and staff, internationalization of curricula and quality assurance, inter-institutional cooperation in education and research, and the establishment of international university consortia. Globalization is associated with the process of increasing convergence and interdependence of economies and liberalization of trade and markets. It has been perceived as an external socio-economic factor which cannot be influenced on the institutional level.

Some authors focus mainly on trade in higher education. Larsen and Vincent-Lancrin (2002) analyze challenges and opportunities which international trade in educational services means for the national level. They see the inclusion of

⁹ The Bologna process is a label for the process which was initiated by the Bologna Declaration signed by 29 countries in 1999. Other important milestones were meetings in Prague in 2001, in Berlin in 2003 and in Bergen in 2005, when more countries joined, bringing the total to 45 in 2005. The next meeting is planned to take place in 2007 in London. The main aim of the process is to develop a comparable and compatible—and therefore competitive—system of higher education structures in Europe through intensive cooperation among and within participating countries.

educational services under GATS as a development that has raised awareness of trends that have already taken place in post-secondary education. They distinguish between commercial and cultural approaches in terms of key policies to promote internationalization of higher education. The former is represented for instance by the United States, the United Kingdom, Australia, Canada and New Zealand, the latter by Germany and France.

The second group of contributions on GATS includes at least some assessment of its impact, although the level of perspective and analytical frameworks differ. In the first subgroup the authors mention GATS and its impact while addressing general higher education issues such as quality, quality assurance, student mobility, access, institutionalization of inter-university cooperation, governance of higher education, etc. (see Barblan, 2002; Skauge, 2002; Van Damme, 2002b; Van der Wende, 2003a). The second subgroup is different from the first in the sense that GATS is explicitly seen as the main factor, and its impact is discussed alongside various levels and topics. Some authors approach the impact of GATS on higher education in very broad terms (Altbach, 2001; Bode, 2002). Several contributions focus specifically on GATS and its impact from more technical and analytical perspectives (Knight, 2002, 2003a; Nunn, 2001; Saner & Fasel, 2003; Sauv e, 2002; Ziguras, 2002). Finally, a few studies have been undertaken with respect to the legal implications of GATS (Cottier, Breining-Kaufmann & Kennett, 2003; Gottlieb & Pearson, 2001)¹⁰.

1.4 A need for research

As one can see from the body of published literature, many authors include GATS and associated developments in their contributions to the globalization and internationalization debate. Others focus mainly on GATS and its impact on various components of higher education. In general, contributions pay attention to different aspects of GATS using various perspectives and various levels of analysis. Studies using both empirical data and theoretical concepts to explain the impact of GATS on higher education policy or on higher education in general seem to be still missing. At the same time, as noted by Robertson (2003, p. 260), we are still lacking measured analytical accounts, most particularly on "the differential consequences for national territories and their education sectors".

There is another reason for further research on GATS and associated developments in higher education. There are two factors connected to GATS and its impact that have so far been studied independently: the legal framework of GATS and its binding consequences (Cottier et al., 2003; Gottlieb & Pearson, 2001) and the role of stakeholders and their interests (Knight, 2003a; Saner & Fassel, 2003; Ziguras, 2002).

¹⁰ Further elaboration and analysis of relevant contributions form a major part of chapter 7.

However, both factors—in different ways—play a significant role in influencing the higher education landscape. Thus, an attempt should be made to combine both elements and analyze their mutual relationship in order to get a deeper understanding of GATS and its impact on higher education.

Another fact makes a comprehensive study of GATS and its impact a very desirable enterprise. The system of the WTO and international agreements included under its umbrella is far from simple and easy to take in. Unfortunately, many arguments about GATS have been made without sufficient in-depth knowledge of the issue and have been lacking supportive empirical evidence. Many scholars have relied on their colleagues, mainly in technical aspects of GATS, and have built on them without further elaboration of the issue. It has so far been very rare for higher education scholars to go deeply to the primary sources of the General Agreement on Trade in Services or other related legal documents. Yet, without such an effort the danger is obvious – the lack of knowledge on what GATS really is and how it functions might eventually lead to increased misunderstanding and inaccuracy in the debate and the decision-making process.

Finally, a need to closely focus on the relationship between globalization, trade liberalization and higher education has been put on the research agenda of networks of scholars in the field. Many questions have been suggested for further exploration by the group of scholars associated with the Centre for Higher Education Research and Development (CHERD) at the University of Manitoba in Canada. Selected topics for research are clustered around five main themes: higher education and the knowledge society, the emerging global economy, multilateral trade liberalization, regional free trade agreements, and trade in education services (CHERD, 2002). Also the Research Programme 2001-2005 of the Center for Higher Education Policy Studies (CHEPS) of the University of Twente emphasizes globalization and related issues as well as stakeholders' interest and demands as important topics of careful scientific analysis (CHEPS, 2001).

1.5 Problem statement and research questions

It has been claimed during the debate that GATS has an impact on the nation-state and its capacity to regulate higher education. This claim has been heavily contradicted by GATS proponents. Such a contradiction was therefore used as a departing point for further research. One possible way to address this puzzle is to specify and narrow down the regulatory authority of the nation-state. Therefore, the steering capacity (funding, regulation, planning, and evaluation¹¹) was selected to be the characteristic of the nation-state upon which GATS' impact shall be studied. The main research question is thus formulated as follows:

¹¹ The steering capacity in the higher education context is discussed in chapter 5.

How and to what extent does the inclusion of educational services in GATS affect the steering capacity of a nation-state in higher education?

The following three sub-questions should be addressed as well:

What is the impact of GATS on higher education legislation?

What is the position and influence of various stakeholders in GATS' negotiation on higher education?

What other relevant factors can be claimed to have a significant impact on the steering capacity of a nation-state in higher education?

1.6 Objectives of the study

The objectives of the study are threefold. The first goal is to get a further and deeper understanding of GATS' impact on higher education; more particularly its impact on the nation-state and the way it steers the higher education system. By doing so, the study is meant to be a contribution to the on-going discussion about the impact of globalization in higher education as well as to the debate about the role of a nation-state in its increasingly complex environment. At the same time, the study seeks to find connecting links between theoretical globalization concepts and to place GATS and its relation with higher education into this perspective. Finally, by discussing the globalization concepts and applying them to GATS and its impact on higher education, we can see how helpful they appear in explaining causes, consequences and interrelations in such a complex field as current higher education.

Another objective of this study is to discuss an appropriate conceptual framework which would allow us to look at the 'static' dimension (GATS' rules and disciplines) and the 'dynamic' dimension (stakeholders' standpoints, views and actions mainly during the Doha negotiation round) as both potentially influencing the higher education landscape in a particular country, and more specifically the steering capacity of a nation-state in higher education.

The third objective concerns mainly the empirical part. By analyzing and systemizing published materials on GATS and its impact on various components of higher education as well as standpoints and views of both proponents and opponents of higher education inclusion's in GATS the study seeks to increase the understanding in the study field and provide some in-depth material for further debate on the object of the research.

1.7 Structure of the study

The introductory part of the book is followed by descriptive and technical chapters. Chapter 2 gives a general overview of major developments in higher education. The shift from elite to mass higher education, various demands from higher education, diversification, the emergence of markets, economic rationales, export of higher education and new concepts of governance are discussed in order to present the evolution of the higher education landscape during the last few decades. Chapter 3 introduces the reader to basic facts and general principles of the World Trade Organization and GATS as well as what GATS actually means for higher education and what has happened since higher education was included in GATS.

Chapter 4 contains a theoretical framework of the study which should help answer the main research questions and sub-questions. General globalization literature is discussed as well as the impact of globalization on the nation-state and institutions. In order to embrace the dynamic part of GATS' impact, various concepts are also considered such as the stakeholders approach, interest groups, policy networks and multi-level governance. Chapter 5 focuses on how selected concepts such as globalization, the nation-state, steering and the stakeholders' society have been developed and used in the higher education context. Propositions, as tentative answers to the research questions and sub-questions, are stated at the end of the chapter. Chapter 6 outlines the research design of the study, operationalizes the main concepts and discusses the methods which are employed in the empirical part.

The empirical part of the book consists of four chapters. Chapter 7 summarizes, systemizes and discusses the studies devoted to GATS' impact on higher education including legal analyses. Chapter 8 contains an analysis and discussion of stakeholders' views and standpoints. Then follows Chapters 9 and 10, which are in-depth national case studies. The first one was conducted in the Czech Republic, the second one in the Netherlands. Besides the discussion of GATS' relationship to the higher education system of a particular country they also include a general overview of higher education, more specifically its main components and stakeholders, funding mechanism and higher education legislation.

The concluding part of the book has two chapters. Chapter 11 compares two conducted case studies and highlights their similarities and differences. Chapter 12 elaborates the answers to the research questions and sub-questions. Afterwards, it links back empirical findings of the study to the conceptual framework and theories. Finally, the chapter, as well as the whole book, is concluded with a couple of reflections.

2 Main developments in higher education

2.1 Introduction

The fact that educational services were included in GATS during the Uruguay Round should not be a great surprise. There were, indeed, important reasons why education as a field, and higher education¹² in particular, attracted the attention of the parties¹³ negotiating trade in services. Higher education systems worldwide have experienced tremendous and fascinating changes during the last few decades, which significantly contributed to the growing importance of higher education for society. At the same time, various developments outside academia—demographic, social, cultural, economic as well as political—have had crucial influence on the higher education landscape. Higher education around the world has faced among other things increasing student numbers, demands for accountability, reconsideration of the social and economic role of higher education, the implications of the end of the Cold War, and the impact of new technologies (Altbach & Davis, 1999). This chapter describes the most important developments in higher education in the post-war history, which contributed to its growing significance for international trade in services. The main issues include massification, increasing demand for higher education, diversification, education across borders, economic rationales for the export of higher education, the emergence of markets and, finally, the new concepts of governance.

2.2 From elite to mass higher education

The period after World War II especially witnessed major shifts in higher education systems in many developed countries. Highly qualified labor was needed to safeguard economic growth in the post-war world, and increased participation in higher education was encouraged as a means of social mobility for students from low-class and middle-class backgrounds. While in the European context education for the elite was replaced by mass education, in the United States universal access followed mass access to post-secondary education¹⁴. Additionally, a shift from elite

¹² Although the term *higher education* is used most often in the text, *tertiary education* is perceived as its equivalent. *Universities* and *higher education institutions* are also synonymous.

¹³ Before the establishment of the WTO, the negotiating countries were *de iure contracting parties* of a multilateral agreement (GATT). Only afterwards did they become *members* of an intergovernmental organization – the WTO.

¹⁴ Mass higher education is usually considered when it contains at least 15 percent of the relevant age cohort and universal when at least 50 percent of the age cohort participates (Trow, 1972).

higher education to mass higher education also resulted in internal differentiation of the sector, which was previously a characteristic feature of secondary education (Neave, 1986).

In Western Europe, for example, the last quarter of the last century witnessed a doubling of students participating in higher education, numbering 16 million around the turn of the millennium. The most significant increase took place in Portugal (four times as many students in 1999/2000 as in 1975/76), followed by Greece, Spain, Ireland, Finland, and Iceland, where the numbers at least tripled (Van der Wende & Middlehurst, 2004). Mainly as a result of political changes at the end of the 1980s, Central and Eastern Europe (CEE) countries also widened access to higher education, following the massification that started in Western Europe a couple of decades earlier. The increase in student numbers between 1995 and 2000 was impressive especially in Poland (108 percent), Hungary (80 percent), and the Czech Republic (50 percent), reflecting both the demand for higher education as well as the ability of public and private providers to meet it successfully (CEPES-UNESCO, 2003). The demand for higher education is expected to continue even more on a global scale. The number of higher education students worldwide is predicted to grow from 97 million in 2000 to 263 million in 2025 (Böhm et al., 2002).

2.3 Demands on higher education

During the last few decades traditional higher education systems have been gradually put under pressure to meet increasing demands from society. Clark (1997) identifies three major sets of demands that have appeared in higher education: besides the above mentioned demand for greater access to higher education, he also stresses that more qualifications and positions on the labor market require a university degree. Finally, governments as well as other stakeholders expect more efficient behavior from traditional higher education providers; better results should be achieved for less input (see also sections 2.7 and 2.8).

Clark's second set of demands has to do with individuals – higher requirements have been imposed on people's skills and educational background. In order to keep up with the most recent technological changes and to remain competitive on the labor market, more and more people have been encouraged to raise or change their qualification through further and higher education. The driving force behind the increased demand for higher education has also been the expectation that a higher degree would advance the social and economic status of a graduate (Mazzarol & Soutar, 2001).

The third set of demands mentioned by Clark, the expectation of more efficient behavior of public higher education providers, can be partly associated with the

following trend. Neave and Van Vught (1991) accentuate that mainly in Western Europe the number of older people has been rising and younger age cohorts have been shrinking. Government expenditures had to be shifted towards services provided for older citizens in areas such as health and pensions. As a result, higher education institutions had to face two major challenges: first, reduction in their budgets, and second and as a result, the pressure to be more efficient.

Van der Wende (2003a) distinguishes two main global demands in the higher education context. The first is caused by a growing need for wider access to higher education. It concerns especially developing and transition countries; they have been promptly integrating into world production and their young population has been increasing. The second global trend can be associated with the transition from post-industrial to knowledge economies, combined in Western countries with an aging population. More diversified and flexible modes of providing higher education are needed including life-long learning, corporate training, etc.

2.4 Diversification in higher education

Wider access to higher education and changing requirements on people's skills have resulted in a rather mixed profile of students. More and more people have been coming back to education throughout their lives. Many of them are older, have families and work full-time. A very significant section of today's student population constitutes the 'learning and earning clientele' (Van der Wende, 2002b). The development of information and communication technologies (ICT) has enabled higher enrollments of non-traditional students by offering them less rigid organization of the academic year as well as the mode of delivery ignoring physical borders of nation-states and continents. Although distance education (including online e-learning) has accounted recently (as of 2004) only for 9 percent of international student enrollment, it has been growing significantly since 1996 (OECD, 2004b). In the United States, for example, a retrieval study found that 70 percent of traditional colleges and universities offered on-line courses in 2000 (Newman & Coutturier, 2002). Douglass (2005) states that currently 97 percent of traditional public higher education institutions offer at least one on-line or blended¹⁵ course and 49 percent offer an on-line degree program. However, among all U.S. higher education students only 11 percent took at least one on-line course.

Increasing demand for higher education, the development of ICT, and the fact that public systems have not always been able to meet the need of a growing number of potential students adequately, have captured the attention of providers that stood for a long time outside the field almost exclusively reserved for traditional higher education institutions. New providers such as for-profit degree granting

¹⁵ Blended course includes both on-line and traditional classroom components.

institutions, virtual providers, and consortia of traditional institutions entered the scene. Vocational training, distance-learning, and corporate training institutions have sought a larger clientele for their courses which had been previously provided mainly for the staff of multinational companies (Larsen & Vincent-Lancrin, 2002).

As a result, one can see nowadays high diversification on both the supply and demand sides. On the one hand, new non-traditional providers have contributed to greater diversification of the supply side in higher education. On the other hand, the demand side has become more diversified as it has been driven by the expectations and needs of an increasingly heterogeneous student body.

2.5 Higher education across the borders

The shift towards mass higher education has also resulted in important developments on the international level. Many public national systems with traditional universities have not been able to respond to the demand for higher education due to their limited capacity. Students started to seek education opportunities outside their national borders. Three factors have appeared to be very important to boost the flow of students. First, English has become a global language able to compete and take over national languages in higher education (Haug, 2000). Second, students gain many advantages from studying in other countries, such as cultural enrichment, improved language skills, more prestigious degrees, etc. Third, both private and public higher education institutions have seen foreign students as a source of revenue. Thus, the demand and supply side has been increasingly matched across national borders, and cross-border¹⁶ higher education has grown rapidly (OECD, 2004b).

The average growth of students studying internationally was 9 percent per year between 1960 and 1970 and continued to grow at 6 percent in the following decades. The growth rate of international students' enrollments in the top ten receiving countries¹⁷ was around 19 percent in the 1980s and 1990s (Mazzarol & Soutar, 2001). In the OECD countries, international student mobility has doubled over the past 20 years. Larsen and Vincent-Lancrin (2003) state that the increase of foreign students was practically two times higher than the increase of the total number of students in higher education in the period between 1995 and 1999 (9 percent comparing to 5 percent). In the OECD countries the number of foreign students in higher education was estimated at around 1.5 million in 2001 (OECD, 2004b). 1.8 million foreign students studied in the OECD countries in 2002, with about 57 percent coming from outside the OECD area (Vincent-Lancrin, 2004).

¹⁶ Cross-border education refers to a "situation where the teacher, student, programme, institutions/providers or course materials cross national jurisdictional borders" (OECD, 2004b, p. 19).

¹⁷ The United States, France, Germany, the UK, Russia, Canada, Japan, Italy, Australia, and Lebanon.

Six countries (the United States, the United Kingdom, Germany, France, Australia and Japan) together accommodate more than 75 percent of all foreign students studying in the OECD countries. Among them, Australia has multiplied the number of foreign students more than thirteen-fold since 1980, and the United Kingdom has quadrupled in the same period (OECD, 2004b). In the future, the global demand for international higher education is expected to be four times higher than in 2000, exceeding 7 million places by 2025. According to the forecast more than 60 percent of international students will be generated from South and East Asia (Böhm et al., 2002).

The role of foreign students in national higher education systems seems to be even more important in the future due to the aging population in combination with the drop of secondary school-leavers. In Australia, for example, it is predicted that the recruitment of foreigners will have to be more substantial in coming years for some institutions to continue their viability. More competition for students is expected between the universities as well as between employers for university graduates (Maslen, 2003).

2.6 Economic rationale and export of higher education

The increasing number of students studying abroad has been seen and facilitated for various reasons. During the last years cultural, political, and academic approaches to international higher education have been increasingly replaced by an economic rationale. First, the 'export' of higher education has been seen by some countries as a very profitable part of their national economies. Second, the recruitment of foreign students has been driven by globalization of the economy demanding international competencies of graduates (Van der Wende & Middlehurst, 2004).

The amount of financial resources spent on higher education in the last decade shows the importance of the sector in terms of its economic power. The WTO (1998) estimated the value of international trade in higher education at about \$ 27 billion in 1995 with the United States leading in foreign student enrollment – with around 450,000. Trade in higher education increased to \$ 30 billion in 1999, accounting for three percent of total services traded in OECD countries (Larsen et al., 2001).

Countries with a considerable potential to meet the demand on a broader international scale have made higher education export a significant part of their national economies. Both traditional and non-traditional higher education providers intensified their efforts to attract foreign students. Besides, they sought various arrangements by establishing their own branches or using local institutions in countries lacking the resources to meet the demand for higher education. A leading role in exporting higher education services has so far belonged mainly to

Anglo-Saxon countries (United States, Australia, United Kingdom), pursuing a very active higher education export policy. For example American higher education institutions provide services in at least 115 countries around the world. Export earnings from foreign students represented almost \$ 11.5 billion in the U.S. economy in 2001, \$ 2.1 billion in Australia, and \$ 11.1 billion in the United Kingdom for the same year (OECD, 2004b). An ambitious plan of the United Kingdom is to increase its share in the global market from 16 percent at 2002 to 25 percent in the near future (Van Vught, Van der Wende & Westerheijden, 2002).

Exporting countries (Australia, the United States, and the United Kingdom are the world's largest net higher education exporters) have targeted areas with a high potential of incoming students. Within the OECD countries Korea, Iceland and Mexico have been sending the most students abroad in relative terms; Korea sends out 18 students for each foreign student received (OECD, 2004b). In absolute numbers the OECD data show that China, Korea and India have been the largest pools of higher education students sent to the OECD countries, followed by Greece, Japan and Germany from within the OECD. In the United States, for example, in 2001/02 India replaced China as the biggest sending country (Altbach, 2004). In Australia, half of international students in higher education come currently from Hong Kong, China and Singapore (OECD, 2004b)¹⁸. Table 2-1 lists the top 6 receiving countries which in total accommodate over three-quarters of all foreign students in the OECD countries.

Table 2-1: Top six receiving OECD countries in 2001

United States	30 %
United Kingdom	14 %
Germany	13 %
France	9 %
Australia	7 %
Japan	4 %
Total	77 %

Source: OECD, 2004.

The potential of higher education to produce revenues to the national budget has played a significant role on the domestic policy level in some countries. Australia, New Zealand and the United Kingdom are examples of countries that have adopted a revenue-generating approach to cross-border education through an integrated, government-led strategy for promoting education as an export industry (OECD, 2004b). The Australian government, following the approach of the United Kingdom, started to view universities in line with its neo-liberal policy as self-

¹⁸ For more details on Australia's export and its composition see for example Garrett & Verbik, 2003.

supporting corporations producing private goods for students-as-customers, and nominally oriented by the consumer relationship.

Australia increased the number of international students from 25,000 in 1990 to 83,000 in 1999, mainly in vocational courses in business and computing, meaning a growth of more than 300 percent in nine years (Marginson, 2001). In 2001 Australia accounted for 7 percent of all foreign students in the OECD countries, representing more than 100,000 students (OECD, 2004b). In 1995 the value of income from overseas students was AUD\$ 1.9 billion, accounting for 9 percent of Australia's total service exports. Towards the end of the last century foreign students spent in Australia over AUD\$ 5 billion a year (Mazzarol & Soutar, 2001).

Anglo-Saxon 'exporters' of higher education have been followed by smaller countries as well, especially in the Asian region. Singapore, Hong Kong and Malaysia increased the participation in higher education by supporting transnational and private provision, in many cases on commercial for-profit bases. Although they have been important importers of higher education, they recently also started promoting their educational services on the regional and global markets. Malaysia and Singapore have been utilizing both domestic and imported provision to attract students from the region. These countries are expected to achieve major import and export activity in the coming years (Garrett & Verbik, 2003). Malaysia, for example, announced that 15,000 international students from Africa, the Middle East and Europe were enrolled in private institutions in the country in 2002 (Högskoleverket, 2003).

Emerging opportunities on the global market and the proactive approach of Anglo-Saxon countries towards the export of higher education have not gone unnoticed in continental Europe. It was recognized that in the 1980s the number of European students studying in the United States for the first time exceeded the number of American students studying in Europe (Haug & Tauch, 2001). Yet, Europe in total still hosted more foreign students (over 800,000) than the United States (547,000) in 2000; the UK, Germany, and France together had a greater market share (36 percent) than the United States (31 percent). However, more than 50 percent of international students studying in Europe came from the region itself. More precisely, Europe lost its position to the United States as the number one study destination with respect to third countries (Van der Wende & Middlehurst, 2004).

The findings of a study by Reichert and Wächter (2000) also suggest that the European continent is clearly lagging behind in attracting foreign students: member states of the European Union are not competitive enough on the international market, not only in comparison to the United States, but also to Canada and Australia. The European Union (EU) has responded to these challenges mainly within the Bologna process. Some individual European governments have reconsidered their higher education policies in a broader context. Apart from the

United Kingdom also France, Germany, and the Netherlands, to give only some examples, started implementing a market-oriented approach towards international higher education (Van der Wende & Middlehurst, 2004).

2.7 Markets in higher education & marketization of higher education

We can talk about two concepts of markets in higher education – the first which has emerged across borders and the second which has been introduced on the national level by governments. The increasing demand for higher education, the effort of particular countries and institutions to meet this demand, growing student mobility, rapid development of ICT enabling on-line delivery of courses, and the emergence of new providers constitute together an international higher education market, characterized by the cross-border matching of supply and demand. This first concept of market in higher education, emerging on national as well as international levels, can be said to be run on the one hand by societies' need for more graduates and on the other hand by new opportunities. Competition on the supply side on these markets has been increasing. Newman and Coutturier (2002) identify four major forces of competition penetrating the higher education landscape and occurring with a similar pattern all over the world. The first three of them are connected with the first concept of market: (1) expanding enrollments; (2) the growth of new competitors, virtual education and consortia; and (3) the global activity of many institutions.

The second concept of market has to do with the deliberate introduction of market forces on the national level. Newman and Coutturier talk in this respect about the tendency of policy-makers to use market forces as levers for change in higher education. Market forces have been deliberately introduced as a part of governmental steering strategy to facilitate changes in higher education. Governmental efforts to apply the market as a means of higher education reform through more targeted regulation or systematic deregulation have been termed 'marketization' (Williams, 1995). The process of marketization includes instruments targeted at greater efficiency and lower costs (Neave, 1997). Governments have been doing so by, among other measures, encouraging private higher education as a supplement to state monopolies, more competitive allocation of research grants and student places, better dissemination of information for students on the quality of academic programs, etc. (Dill, 1997).

The market constitutes, together with planning, a fundamental mechanism of coordinating the government's strategy in higher education. The main ideas, however, are fundamentally different. While the key feature of governmental planning "is the effort of the government to design and implement institutional frameworks to influence the behavior of other actors ... the market is a type of interaction in which matters are disaggregated and no one is in charge"

(Van Vught, 1997, p. 214). Van Vught emphasizes that for example the Dutch government by combining governmental planning and markets has sought to address and potentially solve market as well as non-market (government) failures¹⁹.

Meek and Wood (1997) highlight two dimensions of the 'market' concept in relation to higher education – the financial and ideological. The first is associated with the challenge of national governments to meet the cost of a mass higher education system. As a consequence, higher education institutions have been forced to seek a greater proportion of their budgets from non-governmental sources, more efficient behavior, etc. The second dimension of the market is much broader. It includes the underlying principles in the relationship between higher education institutions and the state and higher education and the society in general. Enders and Neave (2002) talk in this respect about the shift from a nationally directed public service to a public service driven by individual demands.

2.8 Towards new concepts of governance

As suggested, the emergence of markets and growing competition in higher education would not have been possible without a significant shift in the relationship between the state and higher education institutions. Many national governments realized that they were not able to support a rapidly expanding sector by adequate financial resources and to continue an efficiently centralized steering of mass higher education. As a result, higher education institutions received more autonomy in their internal management in exchange for more accountable behavior. They were expected to seek additional resources and adopt a more market-driven and competitive approach in their activities. More generally—as a consequence of the economic crisis in the 1970s and a political paradigm shift towards economic liberalism—in many countries public sectors like higher education were exposed to limited funding, deregulation, privatization, and the introduction of markets or market-like mechanisms.

In the West, such a policy shift of the late 1970s and most of the 1980s was associated mainly with Margaret Thatcher's government in the United Kingdom and Ronald Reagan's administration in the United States called the 'New Right' policy. Although several New Right approaches exist, the main policy included reduction in inflation, reduction in taxes, privatization, deregulation, public sector markets, and constitutional reform. Two main ideas could be identified in the role of markets: 1) for certain types of goods they were seen as much more efficient than central planning, and 2) therefore, the implementation of a market mechanism should be beneficial to most areas (Jordan, 1993). At the same time, the policy of the New Right was based on neo-liberal assumptions including three major elements:

¹⁹ Market failure refers to any situation in which the market does not lead to an efficient economic outcome and in which there is a potential role for the government. Government failure is a situation in which the government makes things worse than the market (Taylor, 1995, p. 60).

cuts in state spending, increased involvement of the private sector in welfare state provisions, and finally, restructuring the management of the welfare state on the basis of a corporate managerial model imported from business (Hatcher, 2002).

Privatization was seen as the most important instrument of the New Right policy. Butler (1991, p. 17) defines privatization broadly as “the shifting of a function, either in whole or in part, from the public sector to the private sector”²⁰. It included processes such as the transfer of state assets entirely or partly to the private sector, the abolishment of government subsidies, the contracting out to private suppliers of the provision of publicly funded services, and the provisions for opportunities to choose private services in areas such as pensions, health insurance and education. Deregulation, as another important instrument, was expected to minimize the number of unproductive regulations causing higher prices and reducing investments. Finally, public sector markets meant that public sectors, in which privatization was for various reasons impossible, were encouraged to introduce market incentives and competition in order to increase their efficiency (Ashford, 1993). Yet, the reach of policy instruments based on the neo-liberal approach was not limited to national governments’ policies. The introduction of the market into education has been associated also with international agencies such as the World Bank, OECD, IMF and the EU, and seen as the outcome of the redefinition of citizenship and needs of the economy (Mace, Lambropoulos & Karadjia, 2000).

In CEE countries a fundamental shift in the relationship between the state and the higher education system followed after the collapse of the communist regime in 1989. Neave (2003) stresses two sets of challenges that the transition countries have faced. First, similarly to Western Europe, they have been confronted with issues such as funding, academic output and efficiency. Second, as a consequence of a political departure from a centrally planned economy, they have struggled with the demand for higher education, the restoration of self-governance and finally the restoration of academic freedoms.

Scott (2002) distinguishes three major stages through which the higher education systems of most CEE countries have gone. The first stage was characterized by dismissing the subordination of the economic system over higher education and by liberalizing academic structures as part of a wider liberalization of political structures. During the second stage, from the mid-1990s onwards, the ‘liberal absolutism’ has been gradually replaced by new notions of civic and market accountability. The third stage, currently emerging, bears two main characteristics according to Scott. First, structures institutionalizing the post-communist reforms are being built, and second, higher education of both Western and Central and Eastern Europe are rapidly converging.

²⁰ Privatization, however, can be viewed from various perspectives. Based on political goals and consequences Feigenbaum and Henig (1994) distinguish between an administrative, economic and a political perspective. Their typology, which is anchored in the motivation of key actors responsible for promoting privatization in the public area, includes pragmatic, tactical and systemic privatization.

This chapter shows that economic aspects and rationales have become increasingly important in higher education in most countries. At the same time, higher education has become global, complex (cross-border) and increasingly influenced by governance and regulation issues including privatization and liberalization. Yet the differences between various countries (for example Western Europe versus CEE) based on social and political developments continue to play a role in higher education.

After summarizing the main developments in higher education in the last few decades, the next part of the book is devoted to elaboration of the institutional trade framework. In the following chapter, the WTO and GATS are discussed including their development, main events, major rules and principles.

3 A multilateral trading system

3.1 Introduction

This chapter contains a brief overview of a multilateral trading system. A short description is given about the General Agreement on Tariffs and Trade (GATT) and its transformation into the World Trade Organization (WTO), depicting some of their main differences. Furthermore, the WTO's structure is outlined as well as its main events. Second, trade in services is discussed together with its contribution to the global economy. Then follows a description of the General Agreement on Trade in Services (GATS) and its main rules and principles. Finally, the closing section of this chapter is devoted to GATS and higher education. It shows what higher education's inclusion into GATS actually represents, and how far liberalization has gone.

3.2 From GATT to the WTO

The WTO is the principal intergovernmental organization for international trade²¹. It was built extensively on its 'predecessor', GATT, which was created in 1947 as a temporary arrangement. Since its creation GATT had gradually developed into a specialized agency, yet without having the status of an international organization (Schermers & Blokker, 2001). The main goal of GATT was to reduce customs tariffs and other impediments to trade as they have constituted substantial barriers for further economic growth. The OECD (2003) estimates that abolishing all tariffs on merchandise trade and lowering trade costs by 1 percent of the value of trade worldwide would foster global welfare by more than \$ 170 billion a year.

Since 1947 GATT oversaw eight successive rounds of multilateral trade negotiations which culminated in the Uruguay Round. Taking place between 1986 and 1994, the Uruguay Round represented the biggest negotiating mandate on trade that has ever been agreed. The agenda included strengthening the rules of the trading system, improving ways to address non-tariff measures, bringing agricultural products, textiles and clothing under the multilateral trade rules,

²¹ For the development of the multilateral trading regime, GATT, WTO and GATS, see for example Deardorff & Stern, 2002; Howse, 2002; Krueger, 1999; Sai-wing Ho, 1998; Steward, 1999, etc.

addressing trade in services²², and protecting intellectual property rights. It was also the longest negotiation round due to disagreements over issues such as agriculture, services and textiles. The result was ultimately 60 agreements and decisions on more than 500 pages. It was also substantial in economic terms: the world was estimated to gain about \$ 96 billion from the results of the round. Yet the developed countries and regions such as the United States, Japan and the EU were expected to benefit the most (Harrison, Rutherford & Tarr, 1997).

The Uruguay Round was concluded in 1994 by ratifying the results of the round by 108 states and establishing the WTO as umbrella organization for the concluded agreements. Seated in Geneva, it provides the common institutional framework for those agreements. It is argued that the WTO is in fact equal to GATT but adapted to expanded functions and put on a firmer legal footing. Still, being more formally constituted than GATT, the WTO has been expected to have better recognition and understanding by the general public but also to work more closely with intergovernmental and non-governmental organizations (Schermers & Blokker, 2001).

One of the most important changes comparing to the original GATT is the dispute settlement mechanism (DSM). Under GATT, countries were allowed to lodge complaints against other countries for violating the rules. Then an expert report was issued deciding upon the matter of the complaint. If the report was unanimously agreed by GATT members, then the offending party was required to either change its behavior or was subject to sanctions. This mechanism in fact gave every country a veto over the decision. Under the WTO dispute settlement the procedure mechanism is different. A unanimous decision is required in order to block an expert report. Therefore, the DSM became much more effective and made even large countries such as the United States go to the WTO panel with its most important complaints (Deardorff & Stern, 2002).

The WTO has five main organs – the Ministerial Conference, a General Council (which functions also as the WTO Dispute Settlement Body and the Trade Policy Review Body), the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade-Related Aspects of Intellectual Property Rights. The Ministerial Conference is the WTO's highest level decision-making body. It meets at least once every two years as required by the WTO founding charter. Ministerial Conferences as the most visible WTO events have been very closely monitored by the media and the general public.

²² For details how services became embedded in the trade mechanism see for example Drake & Nicolaïdis (1992).

The First Ministerial Conference since the end of the Uruguay Round took place in Singapore in 1996. Four main issues, called 'Singapore issues', were discussed – trade and investment, trade and competition policy, trade facilitation, and transparency in government procurement. The Second Ministerial Conference, held in Geneva in 1998, extended the mandates of the working groups on the Singapore issues. Furthermore, a decision was adopted to keep electronic commerce duty free until at least the next WTO ministerial meeting.

The Third Ministerial Conference in Seattle took place in 1999. The agenda included more than 100 proposals to open negotiations in areas such as agriculture, E-commerce, anti-dumping laws, intellectual property, services, fisheries, investment, labor and environmental standards, dispute resolution, textiles, etc. A disagreement between the members about new issues on the agenda, especially labor and environmental standards, partly caused the collapse of the conference in Seattle (Charnovitz, 2002). The meeting ended in failure, and talks were suspended. Protests against the Ministerial Conference, called the 'Battle of Seattle', increased public awareness of the WTO (also as a symbol of globalization) and partly contributed to the failure to launch a new trade round.

It was reported (Dressel, 1999) that since the Seattle conference various environmental, social labor and agricultural organizations in the United States²³ have been paying increased attention to WTO developments. They were very concerned about the potential impact of free trade principles and policies mainly on wages, safety and environmental standards. Furthermore, delegates representing developed nations in the Ministerial Conference expressed their doubts about the WTO as an institution with any respect for individual freedom and advances of democracy (Kirchhoff, 1999). Seattle and surrounding developments were seen as a serious challenge to the WTO's legitimacy (Sinclair, 2000b).

The Fourth Ministerial Conference held in Doha, Qatar, in November 2001, started the 'Doha Round' and launched an ambitious Doha Development Agenda (DDA). Together with agriculture and services other issues were also put on the agenda such as industrial tariffs, rules on subsidies and anti-dumping, environmental questions, etc. According to the Doha timetable, the negotiations were planned to be finalized by 1 January 2005. The Doha meeting, in particular the Doha Ministerial Declaration, met strong opposition from international civil society represented by some non-governmental organizations (NGOs) and social movements. They refused the outcome of the WTO Ministerial Conference, rejected the legitimacy of the Doha Ministerial Declaration and called it "the result of an outrageous process of manipulation that is totally unacceptable for an international

²³ Among organizations presented in Seattle in December 1999 were the International Brotherhood of Teamsters, the United Autoworkers, the United Steelworkers of America, the Institute for Agriculture and Trade Policy, the National Family Farm Coalition, the Alliance for Democracy, Friends of the Earth, etc.

organization"²⁴. The WTO secretariat and the major developed countries were accused of using "manipulative tactics and non-transparent, undemocratic processes" to achieve the desired results. Therefore, selected NGOs and social movements committed themselves to "fight against the disastrous aspects of the post-Doha work program of the WTO and against the undemocratic nature of the WTO system".

The main goal of the Fifth WTO Ministerial Conference, held in Cancún in 2003, was to take stock of progress in negotiations under the DDA. Important topics were access to medicines, special and differential treatment for developing countries, and liberalization of agriculture trade. Yet despite considerable movement in consultations, the participating countries were not able to agree mainly on the Singapore issues. Most of the developing countries opposed the agenda.

According to the original schedule, the Doha Round was planned to be finished by January 2005. However, the failure of the Cancún Ministerial Conference in September 2003 led to a change in the schedule of the round. A decision adopted by the WTO General Council on 1 August 2004 modified the original Doha work program – negotiations were supposed to continue beyond the original timeframe. The group of leading industrialized and developing economies (G 20) strongly influenced the agenda and for the first time put significant pressure on market opening to developing countries.

The Sixth Session of the Ministerial Conference was hosted by Hong Kong in December 2005. Although 149 member governments approved the final declaration, which was described as "significant progress", the conference cannot be regarded as a success. The Doha work program was planned to be successfully concluded in 2006. Regarding services, the member states were encouraged to participate actively in the negotiations. However, it was acknowledged that least-developed countries were not expected to make further commitments. Table 3.1 gives an overview of all Ministerial Conferences that have taken place since the end of the Uruguay Round.

Since its establishment, the WTO and the agreements under its umbrella have been subject to rather heavy criticism. It has been claimed that the WTO does not work democratically – delegates are appointed by the governments, meetings are held behind closed doors, trade disputes are decided by a tribunal with private industry input, outside appeals are not allowed, etc. The WTO opponents have often stated that behind the agenda is simply the taking of power away from citizens and local decision-makers and shifting it to non-elected bureaucrats. The system of the WTO has been claimed to transfer power from democratically elected governments to

²⁴ See the Joint Statement of NGOs and Social Movements.

Available at www.twinside.org.sg/title/ngo2a.htm, last accessed January 25, 2006.

unelected corporations in an unprecedented way by for example free trade rules taking precedence over environmental policies (Retallack, 2003).

Table 3-1: Ministerial Conferences since the Uruguay Round

1986-94	Uruguay Round
1995	WTO came formally into existence
1996	First WTO Ministerial Conference in Singapore
1998	Second WTO Ministerial Conference in Geneva
1999	Third WTO Ministerial Conference in Seattle
2001	Fourth WTO Ministerial Conference in Doha
2003	Fifth WTO Ministerial Conference in Cancún
2005	Sixth WTO Ministerial Conference in Hong Kong

GATS in particular has been intensively criticized. It has been claimed to be designed to facilitate international business at the expense of democratic governance; a business agenda promoted by international corporations has been in constant tension with democratic principles and priorities embraced by the global citizenry. Furthermore, as the agreement is not confined only to cross-border trade, it is said to invade many domestic policies such as environment, culture, natural resources, health care, education, and social services (Sinclair, 2000a).

3.3 Trade in services

Trade in services²⁵ has played an important role in economic growth globally. At the beginning of the 1990s, when the GATS draft was tabled by the GATT Director General after five years of studies, discussions, explorations and negotiations, the global trade in services such as banking, insurance, consultancy, transport, tourism, etc. amounted to \$ 850 billion annually and accounted for over a quarter of total world trade (Arkell, 1992). Another estimation suggests that global trade in services, including sales of services by affiliates of multinationals, stood at \$ 2.2 trillion in 1997 (Hoekman, 2000).

Furthermore, the data from the World Bank indicates that the service sector contributed 64 percent to the world gross domestic product (GDP) in 2000, compared to 57 percent in 1990. The World Bank predicts that developing countries are to gain from liberalization of trade in services around \$ 6 trillion between 2005 and 2015 (Arkell, 2003). The gain from further liberalization of various service sectors seems to be very crucial also for the private sector. Gunell (2000) emphasizes

²⁵ Service can be characterized as "an act or action, such as work rendered or performed for another" (August, 2000, p. 418).

that big businesses are pushing through the liberalization agenda as they expect large profits in service sectors that have traditionally been publicly regulated and financed. She adds that in Europe about 15 percent of the GDP is spent on health and education, mostly by governments.

The underlying general economic rationale for further liberalization in services remains the same as for international trade in goods (i.e., GATT). Open markets are expected to encourage quality improvement and process innovation, reduce the scope for wasteful resource use and rent-seeking, constrain the power of individual economic operators, and ensure that users have continued product availability at reasonable conditions (WTO, 1999b). The state monopolies of the WTO member states are expected to be open to competition, and key economic sectors should be deregulated. The main idea of GATS is based on the assumption that transparency and progressive liberalization serve as a means of promoting economic growth and the development of developing countries and the whole economy (Steward, 1999). Moore (2000), the former Secretary General to the WTO, highlights that trade liberalization fosters economic growth and therefore brings immense benefits to the people of the world. He adds that it does not hold true that poor countries would be better off if there were less trade and less foreign investment.

3.4 GATS – main rules and principles

Although the goal of decreasing the barriers that hinder economic growth applies to both goods and services, the mechanism of dealing with each of them differs; reduction or abolishment of tariffs (as is the case of GATT) cannot be applied to services. Therefore GATS is more about the rules regulating the conditions under which foreign services and service suppliers are allowed to operate in domestic markets and about any discrimination they have to face once they are present there (Arkell, 1992). The Uruguay Round focused on creating such rules. Negotiations tackled major conceptual issues – how to define trade, what rules and principles should be applied, etc. As a result, GATS represents a framework under which liberalization could be pursued in the future with explicit commitments (Hoekman, 2000). GATS is supposed to provide a higher level of security to traders and investors, still, the agreement does not involve actual liberalization. According to Moore (2000) actual liberalization has so far taken place only in two services sectors, namely basic telecom and financial services. The agreements on these sectors were concluded in 1997.

Based on public international law literature, GATS can be defined as a “multilateral agreement ... that contains rules and principles governing international trade in services and establishes guidelines for negotiating the future liberalization of such trade” (August, 2000, p. 417). It covers all internationally traded services with two

exceptions: first, services provided to the public in the exercise of governmental authority; and second, traffic rights and all services directly related to their exercise.

GATS consists of three interrelated parts. The first is the Agreement itself, which is often referred to as the Framework Agreement. It contains the rules applicable to all WTO member states; they are automatically parties to GATS. The second part are the sectoral annexes dealing with issues that are unique to particular economic sectors (movement of natural persons, air transport services, financial services, maritime transport services and telecommunications). The third part are the national Schedules of Specific Commitments.

The Framework Agreement is subdivided into six parts. These parts deal with I) scope and definition, II) general obligations and disciplines, III) specific commitments, IV) progressive liberalization, V) institutional provisions, and VI) final provisions. General obligations and disciplines apply to all measures affecting trade in services. Specific commitments apply only to specific service sectors²⁶ and sub-sectors²⁷ listed in member states' schedules.

Trade in services is defined under GATS by four modes of supply. Article 1 distinguishes supply of service a) from the territory of one Member into the territory of any other Member (cross-border supply; mode 1), b) in the territory of one Member to the service consumer of any other Member (consumption abroad; mode 2), c) by a service supplier of one Member, through commercial presence in the territory of any other Member (commercial presence; mode 3), d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member (presence of natural persons; mode 4).

Two of GATS' general obligations apply to all WTO member states – these are the most-favored-nation treatment (MFN) and transparency. MFN is “GATS requirement that its member states accord immediately and unconditionally to services and service providers of other members treatment that is no less favorable than that it accords to like services and service suppliers of any other state” (August, 2000, p. 422). Transparency refers to “GATS requirement that its member states publish their regulations affecting trade in services, that they notify the Council for Trade in Services of any relevant changes, and that they respond promptly to requests for information from other members” (August, 2000, p. 423).

Market access and national treatment form specific commitments of GATS. Market access is “GATS requirement that a WTO member state accord to services and service suppliers of other member states treatment not less favorable than that

²⁶ Service sectors are “any parts of the economy involving the performance of a service” (August, 2000, p. 418).

²⁷ Sewage Disposal Services are an example of a sub-sector, while Environmental Services constitute a sector.

listed in its GATS schedule” (August, 2000, p. 425). Article XVI furthermore enumerates the measures which a member state should not maintain unless otherwise specified in its schedule. National treatment is “GATS requirement that a WTO member state accord to services and service suppliers of other member states treatment no less favorable than what the member grants its own like services and service suppliers” (August, 2000, p. 425).

An important objective of GATS is to open as many service sectors of its members to market access as possible. This objective is described in Part IV of the Framework Agreement labeled Progressive liberalization. Article XIX says among other things that “... 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 ...”

During the Uruguay Round eleven basic service sectors based on the United Nations Provisional Central Product Classification (UN CPC) system (subdivided into some 160 sub-sectors or separate service activities) were selected for further liberalization – business services, communication services, construction and related engineering services, distribution services, educational services, environmental services, financial services, health-related and social services, tourism and travel-related services, recreational, cultural and sporting services, transport services, and other services not included elsewhere.

As a result of the Uruguay Round, each WTO member state tabled a Schedule of Specific Commitments containing horizontal commitments and sector-specific commitments. For each of the sector or sub-sector, limitations on market access and on national treatment were stated across modes of supply. According to Article XX of GATS, schedules of specific commitments shall be annexed to the Agreement. In each sector or sub-sector a member state has to specify: a) terms, limitations, and conditions on market access, b) conditions and qualifications on national treatment, c) undertakings relating to additional commitments d) the time frame for implementing its commitments and e) the date of entry into force of its commitments.

After this short description of GATS’ main principles, we will have a look at what a typical schedule of specific commitments looked like in 1994 at the conclusion of the Uruguay Round²⁸. The first part of the schedule includes horizontal commitments – commitments applying to all sectors included in the schedule. Across the four modes of supply, a member state indicates its limitation on market access and on national treatment and states additional commitments. The Schedule

²⁸ For a detailed description how to read specific commitments see An Introduction to the GATS (WTO, 1999a) or Guidelines for the Scheduling of Specific Commitments (WTO, 2001b).

of Specific Commitments of the Czech Republic from 15 April 1994 will be taken as an example (WTO, 1994a). In this schedule, the acquisition of real estate in mode 3 is limited in national treatment in the following way: "Limitation on real estate acquisition by foreign national and legal entities. Foreign entities may acquire real property through establishment of Czech legal entities or participation in joint ventures. Acquisition of land by foreign entities is subject to authorization" (p. 1).

After horizontal commitments, the schedule contains a list of commitments that apply only to specific sectors or sub-sectors. We will use the Schedule of Specific Commitments of the European Communities and their member states²⁹ from 15 April 1994 as an example in this case (WTO, 1994b). In the sub-sector Professional Services (sector Business Services) there are no limitations on market access in mode 3 for the category Legal Advice Home Country Law and Public International Law (p. 12). In the sector Environmental Services, sub-sector Sewage Disposal Services, mode 1 remains unbound regarding market access with a comment that a commitment on this mode of supply is not feasible. Mode 4, also for market access, remains unbound except as indicated in the horizontal section (p. 58).

Further liberalization should be achieved through changing the schedules of specific commitments. This is realized through request-offer negotiations. The request-offer negotiations take place on a bilateral country-to-country basis and are not public, although many of the requests have been leaked. First, member states were expected to submit initial requests for market access to other individual member states or groups of members by June 2002. A request could ask for a commitment in a specific sector, specify a barrier to be removed or ask for an exemption of the MFN rule. By August 2003, over 60 WTO members sent their requests to other countries (Sinclair, 2003).

Starting March 2003, member states were supposed to present their offers, in fact positive reactions to the received requests. By 2003 only 30 member states presented their offers (Sinclair, 2003), which were addressed to all WTO members in line with the MFN rule. Some of the countries made their offers public. Due to the failure of the Cancún Ministerial Conference, the General Council on August 2004 extended the deadline for the presentation of offers till May 2005.

3.5 GATS and higher education

Higher education was for a long time and in many respects exclusively associated with the nation-state. Yet, as a consequence of many interrelated political and economical developments on both national and global levels it has been irrevocably taken out of its original boundaries. Various issues traditionally related to higher

²⁹ For a specific position of the European Communities and their member states see chapter 8, section 8.4.

education on the national level (quality, quality assurance, accountability, regional development, social responsiveness, access, etc.) have been increasingly challenged and discussed by international parties including non-governmental and intergovernmental organizations. The inclusion of higher education into GATS can be seen as just one example of higher education's movement across national borders.

In the case of higher education, the four modes of supply used by GATS can be exemplified in the following way: Mode 1, cross-border supply, is represented by distance and on-line courses or commercial franchising of a course. Mode 2, consumption abroad, can be demonstrated by students receiving their education in foreign countries. Mode 3, commercial presence, involves mainly higher education institutions opening their branches abroad or joint ventures with local institutions. Mode 4, presence of natural persons, is demonstrated by professors, teachers or researchers working temporarily abroad³⁰.

The first milestone of higher education's inclusion in GATS occurred in 1994 when the Framework Agreement was signed. Several WTO members made their commitments in the sub-sector higher education, namely Australia, Congo, Costa Rica, Czech Republic, European Community (without Austria, Finland and Sweden as they made their commitments separately), Hungary, Jamaica, Japan, Lesotho, Liechtenstein, Mexico, New Zealand, Norway, Panama, Poland, Sierra Leone, Slovak Republic, Slovenia, Switzerland, Trinidad and Tobago, and Turkey. The higher education sub-sector contained 21 schedules of commitments. The cross-border supply mode (1) consisted of sixteen full commitments and the consumption abroad mode (2) contained eighteen full commitments. In the case of the commercial presence mode (3), the number of full commitments was only seven, while the number of partial commitments (with limitations) was twelve. The movement of natural persons mode (4) stayed mostly unbound³¹. Comparing to other services, education services in general were the least committed sector after energy services by 1998 (WTO, 1998).

In order to have a better idea about the openness of the higher education sub-sector at the end of the Uruguay Round, we can have a look at selected countries and their individual commitments. Among the OECD countries the most open were Australia, Switzerland and New Zealand. Australia imposes no limitations on

³⁰ This classification, however, has not been accepted without objections by higher education scholars. For instance, Knight (2003b) argues that the four modes of trade supply used in GATS do not reflect some cross-border education undertakings such as development aid projects, academic partnership or various commercial initiatives undertaken by institutions but not fitting into the four modes. Therefore, she proposes an 'education' approach as an alternative to a 'trade' approach in order, first, to embrace a wider portfolio of education-related projects and services that are not included, and second to avoid conceptualization of the international dimension of higher education only as a commercial activity.

³¹ Unbound means that no commitments have been made.

private tertiary education services including at university level. The schedule stays unbound only in mode 3 for national treatment and in mode 4 in both national treatment and market access. Switzerland's schedule was very similar, as it remains unbound only in mode 4. The same holds for New Zealand, which imposes no limitations for modes 1 through 3 in tertiary education in private institutions.

Also the schedule of the European Communities³² and its member states was very open; it stays unbound only in mode 4. However, some EC members impose their limitations. In mode 1 France requires condition of nationality in market access and Italy in national treatment. In mode 3 Italy and Spain require tests for opening private universities. Greece stays unbound for education institutions granting recognized diplomas. Otherwise, other EC members (including the Netherlands as our case study) did not impose any limitations on either market access or on national treatment. Some other European countries, future members of the EC, Austria, Finland and Sweden, did not make any commitments in higher education.

Among CEE countries, the Czech Republic imposes no limitations in modes 1 and 2 for all privately funded education. It requires citizenship of a majority of the Boards in mode 3 in commercial presence. In market access in mode 3 an authorization is needed to establish an education institution upon the condition of ensuring quality, level of education and suitability of school facilities. Poland imposes no limitations on national treatment as far as private education services are concerned. In market access it highlighted for modes 1 and 2 that public system of education and of scholarship do not cover education services supplied abroad. Hungary in mode 3 requires a license from the central authorities.

Among the countries outside Europe, Japan made commitments only in mode 3. It imposes no limitations on national treatment besides those in horizontal commitments. In market access it requires that an education institution must be established by a school juridical person. Interestingly enough, the U.S. did not make any commitments in higher education. Neither did for example Canada or South Africa.

The main mechanism to achieve progressive liberalization in services is the request-offer process. As already mentioned in the previous section, this process is usually not made public. However, some requests have been leaked (the one from the United States to the EC, Mexico, Brazil, etc.). Some countries, such as Canada, indicated publicly that they would not make any requests or offers in educational services. Some countries have made short summaries of their requests as was the example of the United States. Its request from July 2002 sought increased access for

³² The European Union (EU) was created by the European Community (EC) Treaty known as the Treaty of Maastricht (1992) and started its existence 1 November 1993. The three pillars of the EU are the European Communities, foreign and security policy, and policy and judicial cooperation. Both the EU as well as EC are used in the text, depending on the context.

higher education, training services, and testing services. The request asked all WTO member states to undertake full commitments for market access and national treatment in modes 1, 2, and 3 in privately provided education (USTR, 2002).

The European Commission published a consultation document (2003b) summarizing the requests that had been received by the European Community and its member states from other WTO member states by the deadline (June 2002). The document stated that about half of the requests received, from both developed and developing countries, asked for specific commitments in the area of education services. These requests were mostly targeted at higher education, adult education and other education services. They asked for the elimination of existing reservations in all modes of supply and for full commitments under market access and national treatment for all modes of supply in areas not yet committed. At the same time, the EC requests to other WTO members were leaked and published in February 2003³³.

Concerning higher education, one request was made to the United States. The EC requested the United States to take commitments in modes 1, 2, and 3. For mode 4 it requested the commitments for privately funded educational services as referred to in the horizontal commitments. It basically means that the EC asked the United States to become as open for the other WTO member states as has been the EC since 1994.

By January 2004 nine offers had been submitted in education (Green, 2004). The United States sent its initial offer in April 2003. In the educational services sector the United States claimed to consider commitments in higher education services, however, subject to limitation in areas such as maintaining autonomy in admission policies, setting tuition fees and developing curricula content. Furthermore, it stressed a potential limitation of U.S. federal or state government funding or subsidies to domestic schools. According to the offer foreign entities might also be ineligible for land grants, preferential treatment and any other public benefits (WTO, 2003b).

The European Union, as we can see from its Conditional Initial Offer (WTO, 2003a) decided to make no further concessions in the field of education. The commitments in the sub-sector remained the same as at the end of the Uruguay Round. Neither the Conditional Revised Offer, submitted to the WTO in June 2005 as part of the prolonged deadline for offers, included any changes in higher education (WTO, 2005).

Despite the extended schedule for negotiations it does not seem that many countries made further commitments in higher education. After all, the requests

³³ See for example www.gatswatch.org/request-offers.html. Last retrieved January 28, 2005.

and offers exchanged will become solid commitments only at the end of the Doha Round. The most significant commitments were made already at the end of the Uruguay Round. However, the number of countries that have taken some commitments in higher education has technically increased. As of April 2002, there were 33³⁴ schedules of commitments in higher education reported, compared to 21 in 1994 (OECD/CERI, 2002). Among new countries there have been Albania, China, Chinese Taipei, Croatia, Estonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Moldova and Oman. The explanation for the increased number of commitments in higher education is that those countries joined the WTO later than the founding members, so their commitments were not a result of request-offer negotiations but original.

Besides the request-offer process, a few member states have also sent their communications, which were made public and circulated among other WTO member states. These were documents expressing mainly general standpoints and views on higher education, the relationship between public and private providers, experience with an open market in higher education, suggestions for further steps to be taken, etc. However, they were not a part of the request-offer process. The United States was the first one to submit its communication already in December 2000. It was followed by New Zealand in June 2001, Australia in October the same year, and Japan delivered its communication in March 2002. Switzerland submitted its proposal during the prolonged period for negotiations in April 2005 (see chapter 8, section 8.3 for detailed discussion on the content of these communications).

The next chapter takes a theoretical approach to the key questions of this study, regarding the extent to which GATS affects the steering capacity of a national-state in higher education. A framework will be presented including the assumed relationships between globalization, trade agreements such as GATS and higher education as they were discussed in the previous chapters.

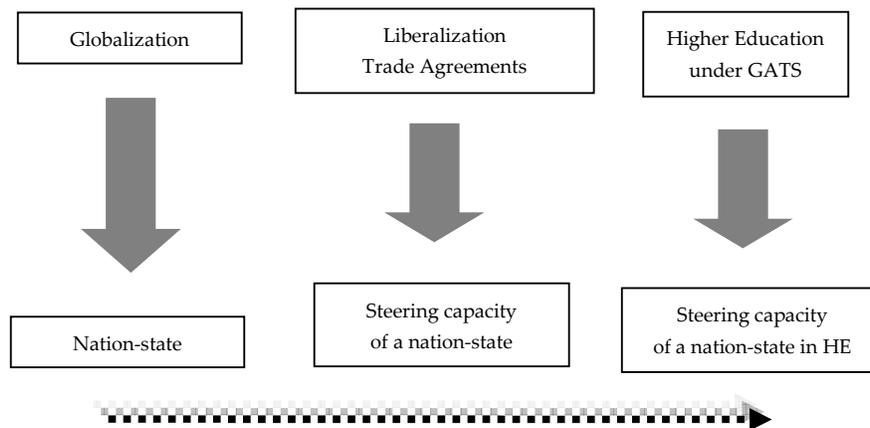
³⁴ In Appendix I on page 18 the total number of schedules is stated as 32. However, Costa Rica, which made commitments already during the Uruguay Round, is not included in the table. Therefore, the number 33 is used in the text instead.

4 Theoretical framework

4.1 Introduction

The main goal of this chapter is to introduce concepts and theories that help formulate tentative answers or propositions to the research questions presented in chapter 1. The proposed framework is expected to establish a link between theoretical assumptions concerning globalization and its impact on the nation-state, research questions, and empirical findings of this study. Within this framework, as demonstrated in figure 4-1, the WTO multilateral trading system, including GATS, is viewed as a significant part of the globalization discourse. Higher education under GATS, or more precisely the inclusion of higher education in GATS, represents a specific case of globalization. This is the sequence from left to right in the upper part of the figure.

Figure 4-1: From globalization to GATS



The nation-state is positioned at the lower part of the figure. In our conceptual view the nation-state possesses various characteristics. Among them is the capacity to steer or regulate specific fields. For the purposes of this study, we focus on the steering capacity of a nation-state in higher education. The horizontal dimension, symbolized by the arrow going from left to right in the figure, explains how we get via deduction from globalization to GATS and from the nation-state to its steering capacity in higher education.

The vertical dimension of the figure, from top to bottom, symbolizes the relationship between the global and nation level. The first column depicts globalization and its impact on the nation-state. The second column, introducing liberalization of trade agreements and their impact on the state's steering capacity, is a bridge to the third one, getting us from a general concept to a specific higher education case. The third column is in fact the main research question – the impact of GATS on the nation-state's steering capacity in higher education. This conceptualization makes a clear link between the discussion on globalization and its impact on the nation-state and the research question.

Building on the above suggested framework, the following section of this chapter (4.2) will be devoted to the globalization debate; mainly to the discourse on globalization and its impact on the nation-state. Still within the globalization debate, section 4.3 will elaborate a conceptual framework dealing with globalization and its impact on institutions by distinguishing between 'trickle-down' and 'trickle-up' trajectories. The suggested concept seeks in particular to address the question *how* the steering capacity of a nation-state is influenced by GATS.

As already discussed in chapter 1, one objective of the study is to connect the static dimension, which is represented by GATS' rules and principles and its impact on national legislation, and the dynamic dimension (stakeholders' involvement during the Doha Round, their standpoints and views, etc.). The static dimension, representing the trickle-down trajectory, is connected with GATS' legal consequences and looks at it from a public international law perspective. It will be discussed in section 4.4. The dynamic dimension, in our case identical with the trickle-up trajectory, will be discussed in section 4.5 focused on stakeholders, interest groups, international actors and multilevel governance. Table 4-1 shows the structure of the chapter. The title of each section is in the first row and the main concepts of the section make up the second row.

Table 4-1: Structure of chapter 4

Globalization	Globalization and institutions	Dynamic dimension	Static dimension
Globalization and the nation-state	Trickle-up and trickle-down trajectory	Stakeholders Interest groups International actors Multilevel governance	Public international law Trade agreements

4.2 Globalization & the nation-state

4.2.1 Globalization

When studying the impact of global developments on any phenomenon including the nation-state and its various capacities and powers, one must be very careful about the perspective which is to be applied. The results of any study depend to a large extent on the theoretical concepts and assumptions used. The perspective employed in this study is very much shaped by the developments of the world trading system due to the fact that GATS constitutes one of its main building blocks. The discussion of other globalization aspects, for example cultural or political, is therefore kept to a minimum. Similarly, the discussion whether globalization represents a qualitatively new phenomenon or is rather a continuation of something that already started decades ago is not elaborated in this study (see for example Hirst & Thompson, 1999; Held & McGrew, 2000; Guillén, 2001, etc.).

It is important not only to clarify what globalization means with respect to this study, but also to find the connection between globalization and the WTO multilateral trading system. For example Smeets (1999) argues that the WTO and its rules are first of all structured to deal with international trade, not with globalization. However, as he adds, an established multilateral trading system can be used when looking at certain aspects of globalization. Globalization is perceived as a challenge for the existing trading system defined by national boundaries and regulations. In Smeets' view the trading system and globalization are seen as two independent processes having an impact on each other.

From the perspective of this study, GATS and the negotiations between WTO members constitute an important part of what can be called the economic and political dimension of globalization (McBurnie, 2001). The nation-state with its

attributed powers is then subject to the influence of this dimension of globalization. To summarize, the system of the WTO and GATS negotiations is studied as a specific example of economic global developments affecting the capacity of a nation-state to steer or control a certain field.

The way this study perceives globalization is close to the definition that can be found in the 1998 edition of the Collins English Dictionary: “globalization is the process enabling financial and investment markets to operate internationally, largely as a result of deregulation and improved communications ...” (p. 652).³⁵ At the same time, it also seems helpful for this study to take into account the perspective of Robertson, Bonal & Dale (2001) suggesting that “globalization is the outcome of processes that involve real actors—economic and political—with real interests” (p. 472).

Hay (2003) refers to globalization as “processes which reinforce the tendency for economic and political relations to become more global in character over time” (p. 4). In that respect globalization is a descriptive term and not an explanatory one. At the same time, the existence of globalization must be resolved by empirical findings and not theoretically. It can be seen rather as a tendency or the outcome of processes which are to be explained, but do not explain.

Castells (2000b) talks about global economy. In his view the global economy is able to work as a unit in real time on a planetary scale. It is supported by the new infrastructure of information and communication technologies and it has been accelerated by deregulation and liberalization policies of national governments and international institutions. However, according to Castells, the global economy has been shaped not only by technologies and businesses but also by governments of the richest countries and international institutions such as the International Monetary Fund (IMF), the World Bank, and the World Trade Organization (WTO). At the same time, deregulation of domestic economies, liberalization of international trade and investment, and privatization of public companies have been the major policies, implemented by national governments and advocated by the above mentioned institutions, that have been the most important processes at the heart of globalization.

In the 1990s the rules and the institutions of globalization were set up either directly through individual governments or through the policies imposed on them by the IMF, the World Bank, or the WTO. Castells sees the U.S. government as the main ‘globalizer’, and the other governments have followed the trend for deregulation, liberalization and privatization for various reasons. These include a demonstrative break with the communist past in the case of CEE countries and the crisis of

³⁵ McBurnie (2001) rightly says this definition reflects much more the business-oriented neo-liberal understanding of globalization than other approaches (political, cultural, technological, etc.).

legitimacy of welfarism and government control during the 1980s in Western Europe. What can be seen nowadays as a result of globalization is according to Castells a global economy as a network of interconnected parts of economies determining to a large extent the economy of each country.

Hay (2003) distinguishes between globalization on the one hand and the openness of an economy on the other. While globalization refers to the extent to which economic transactions are genuinely global in their reach, the openness of an economy means the volume of external economic transactions in which it is involved. As an example he states that European economies³⁶ have been more open over the last forty years, yet economic relations have concentrated mainly on other European countries. In that respect, it seems more accurate to talk about de-globalization or regionalization (Europeanization).

To summarize the first section we can say that this study focuses on the economic dimension of globalization, the process enabling markets to operate internationally partly as a result of improved communication. Furthermore, it has been shaped by the world trading system and accompanied (also caused) by privatization, deregulation and liberalization policies. These processes, forming the core of globalization, have been actively advocated and implemented on both international and national levels by either intergovernmental organizations such as the IMF, the World Bank, and the WTO or by national governments. GATS, as an agreement under the WTO, is perceived as one specific materialization of such a concept of globalization.

4.2.2 *The nation-state*

This section gives a short overview on what is understood by the term nation-state. The sovereign³⁷ nation-state prevailed over competing institutional forms such as the city-league and the city-state after the medieval period, and has constituted a dominant structure in domestic and international politics since the transition from feudalism (Cerny, 1999). Nevertheless, the concept of the nation-state can be interpreted in several ways. Neave (2001) for example distinguishes the 'Roman' interpretation and the 'Saxon' interpretation of the nation-state as two extremes. The Roman state is very centralized. The central assumption under heavy centralization is that "cohesion and order are ensured by uniform and rational process, codified in law and extended into society through institutional provision which is homogeneous within the particular sphere or operational level of application" (p. 37). In the Saxon interpretation the nation-state is assigned

³⁶ In this context he means the economies of the EU member states.

³⁷ Traditionally, sovereignty has been used as a label for a politically independent system having a supreme authority and being effectively valid towards a population inhabiting a territory (see for example Crawford, 1979; Dixon, 2000; Wallace-Bruce, 1994).

a minimalist role; it is perceived as a coordinating agency. It is based on the belief that “the nation was the sum of its local communities. The nation’s institutions were thus an emanation and an extension of that essential diversity of opinions, cultures and communities which lay at the base” (p. 39).

Mainly as the result of political and economic changes in the second half of the 20th century the traditional nation-state—in our case European because in Europe the nation-state has been the most deeply rooted (Huisman, Maassen & Neave, 2001)—has found itself in a situation of much more complicated and complex governing structures. Many issues that have traditionally been connected with the nation-state have become subject to regulation of other authorities, and, at the same time, the number of actors involved in various processes has increased.

A contemporary nation-state exercises fundamental powers over certain fields of individuals’ and organizations’ activities in either the public or private sector within its sovereign territory. The intensity of power and the portfolio of instruments which are used differ with respect to the specific field of application. The regulatory capacity of the state depends on many factors such as the level of autonomy of the subjects of regulation or the importance of the field to the very existence of the system.

Nevertheless, the period after World War II witnessed many complex developments (the creation of the European Communities is only one example) which have made the position of the modern nation-state more difficult in terms of exclusive regulatory powers over its domestic affairs. Atkinson and Coleman (1992) highlight that mainly as a consequence of the implementation of new macro-economic policy instruments many areas of governance have grown in size and complexity. At the same time, political authorities have not been able to obtain sufficient political and economic resources in order to apply effective policy across all main sectors of public policy (Wallace & Wallace, 2000). As a result, the modern nation-state must on the one hand maintain a certain level of control over public affairs, on the other it must share the exercise of public authority with considerably expanding organized groups and state forms (Atkinson & Coleman, 1992).

In our view, the nation-state represents a sovereign entity that exercises fundamental powers over its territory and inhabitants. However, intergovernmental, supranational, and non-governmental organizations as well as other organized groups on both international and national levels have been increasingly shaping the way the nation-state maintains its control over public affairs. In the context of this study, the modern nation-state is a traditional European state, based on either *Roman* tradition such as France or Germany or on *Saxon* tradition, as is the example of the United Kingdom. At the same time, it has been increasingly influenced by the process of European integration (see section 4.5.5 of this chapter).

4.2.3 Globalization and the nation-state

Several sociologists and scholars from various scientific disciplines have developed theoretical concepts to explain what globalization means, what are its causes, and what impact it has on different segments of society. Many theoretical contributions have focused on the role of the nation-state in the recent global environment and on the question whether the position of the contemporary nation-state has been weakened or not. The following section will discuss some of these contributions.

Globalization, including its impact on the nation-state, can be generally viewed from two main perspectives. Held and McGrew (2000) distinguish the 'globalists' and the 'skeptics'. According to globalists contemporary globalization is a real historical development. It is a product of multiple forces, including economic, political and technological imperatives. Because of the expansion of transnational forces, national governments are increasingly locked into multilayered systems of governance. The power and the role of the traditional nation-state are declining, and political power is being reconfigured.

For skeptics, on the contrary, the concept of globalization has only marginal explanatory value. They argue that states are both the architects and the subjects of the world economy. Furthermore, national governments remain central to the governance of the world economy and regulation of economic activities due to their formal political authority. Global developments and contemporary conditions do not mean a significant threat to national sovereignty or autonomy.

Similarly, Djelic and Quack (2003) distinguish between 'believers', 'skeptics', and 'critics' within the general globalization debate. Believers look at globalization as an unavoidable and progressive drive. They believe that market competition, technological change and rationalization would ultimately produce more wealth, development and social progress. Globalization thus should not be regulated, but set free. For skeptics the nation-state still remains the main building block of global developments. It is in any case the central structure of social and economic life. According to skeptics the differences among countries will continue to exist, convergence is unlikely to increase, and the polity at the national level will restrain the globalization process. They also highlight the regionalization of exchanges around three poles – Europe, Asia and the Americas. Critics accept that globalization exists, however, they do not perceive it as a progressive force. They point out its negative consequences with respect to inequalities, sustainable growth, ecological conditions, etc. One of the main problems in their view is the diminishing of the polity and the nation-state. The polity is therefore seen as a counter power against globalization to protect especially the weak, the marginal, the minorities, the diverse and the different.

Giddens (2002), very much in line with the above mentioned views, talks about 'skeptics' and 'radicals'. Skeptics argue that the global economy does not differ significantly from the past. Economic exchange is still mostly carried out between regions rather than world-wide. Radicals, on the other hand, perceive globalization as a very real phenomenon. Its consequences can be felt everywhere. The period of the nation-state is over as nations have lost most of their sovereignty, and politicians are not capable of influencing events any more.

Guillén (2001) mentions five key issues around which theoretical and empirical research and the debate on globalization is organized. The question of particular importance to this study is whether the process of globalization undermines the authority of a nation-state. Guillén observes that the authors touching upon this issue are subdivided into two groups according to their answers to the question. The first group supports the standpoint that globalization does undermine the authority of the nation-state. The governments are losing control, globalization reduces the regulatory power of states, there is decline of the state – these are some of the assertions being used. On the other hand, the opposing group argues that globalization can be handled by nation-states, the international arena actually fosters nation-states, and nation-states are still the main actors managing world problems on behalf of their societies. Power has not been taken away from nation-states but rather has been shifted within the state. In the following paragraphs of this chapter Strange, Back and Castells represent the former group, while Cerny, Carnoy and Rhoten, and Clark stand closer to the latter.

Strange (1996) argues that the authority of the state has declined in recent years with the exception of the United States. Most states have lost control over certain functions. They are sharing them partly with other states or with other authorities, and at the same time, with world markets and enterprises operating in world markets. Strange argues that the former states' participation in the ownership and the control mainly over industry, services and trade has been weakened. However, Strange does not claim that the institution of the state is going to disappear. It is rather a matter of a significant structural change in world society and economy.

Beck (2000) talks about the first and the second age of modernity. The first age of modernity is connected with the dominant societal paradigm of the nation-state society and the political theory of the realist school. The distinguishing principles are collectivity, territoriality and boundary. Globalization, characterized in his view by three criteria, namely indifference to national boundaries, space-time compression, and an increasing network-like interconnectedness between national societies, brings in an increasing number of social processes that take place regardless of national boundaries. Therefore, the concept of the society organized around the nation-state is losing its relevance. The nation-state society is being transformed into the cosmopolitan society—a world society of individuals—resulting in the nation-state losing its political and constitutional powers.

According to Beck globalization in principle weakens state sovereignty and state structures. Global processes such as capital markets contribute to the weakening of a centralized state power.

According to Castells (2000a) the state as a central power-holding institution is undergoing a process of dramatic transformation. Global flows of wealth, communication and information have raised the question of both the state's sovereignty and its legitimacy. Although the state will not disappear, Castells argues that it is no longer a nation-state. He describes the state in the information age as a network state being made out of a complex web of power sharing and negotiated decision-making between international, multinational, national, regional, local and non-governmental political institutions. Networks of capital, production or trade are no longer centered around the nation-state. The nation-state is not a sovereign entity any more.

For the following authors, the nation-state is still a powerful player. Cerny (1997) argues that states and state actors are the most important primary sources in the transformation from states to residual enterprise associations. The main challenge for the state actors can be seen in reforming the meso-economic and microeconomic levels to improve international competitiveness. One major paradox involved is that the transformation process from the state to the enterprise association does not necessarily mean the single decline of the state. At the same time, it might even mean more state intervention and regulation in the name of competitiveness and marketization.

Furthermore, Cerny claims that liberalization, deregulation and privatization as recently adopted by an increasing number of states have had a significant impact on the emergence of the 'competition state'. However, it has rather shifted than completely reduced the intervening and regulating role of the nation-state. The nation-state has not been blown away, its role has changed. The nation-state is not able to control the market within its own territory and has even been forced to become a market actor itself—this is Cerny's main reason for adopting the term competition state. In this perspective the states and state actors are increasingly intertwined with other players in the game including trans-governmental networks, transnational cause groups, hierarchies and agencies. It seems that in certain areas government power can increase while the control and regulation of specific activities and market outcomes will continue to be diminished.

According to Carnoy and Rhoten (2002) globalization is a major force changing the world's economy with knowledge and information being the main sources. They see the relationship between the globalized political economy and the nation-state as the central issue with respect to globalization. The main question concerning that relationship—whether the power of the nation-state is diminished by

globalization—requires according to Carnoy and Rhoten a two-way answer: yes and no.

On the one hand, globalization forces nation-states to pay more attention to the promotion of their economic growth. Nation-states are increasingly focused on their economic policies in order to be more competitive on the international scale. This all decreases the resources available to stabilize the current configuration of the domestic political economy and social cohesion, to promote national identity projects or to favor workers and consumers because of competitiveness requirements. At the same time, the nation-state is much less able to reflect the interests of various social groups and identities which it represents.

On the other hand, globalization does not completely eclipse the nation-state because the nation-state still has significant control over the territory within its boundaries. From this perspective it is becoming even more important to provide a stable political environment which would attract foreign investments and maximize profits. The role of the nation-state and its regulatory capacities serve to protect the domestic level against unpredictable and undesirable global developments.

It must be mentioned that the perspective describing the decline or the weakening of a nation-state as a causal effect of the globalization process has not been the only approach by which scholars have conceptualized globalization and its impact. Clark (1999) offers an alternative to the dominant tendency which treats globalization as a set of external factors undermining the autonomy of states. In Clark's view, globalization is connected with shifts in domestic balances of social powers, and transformations in the social functions of states. He argues that globalization cannot be studied through the optics of traditional international relations theory strictly distinguishing between internal (domestic) and external actors. This separation is according to Clark artificial and misleading.

According to Clark, globalization must also be understood as a number of changes within the state itself. In this respect the question about the extent to which globalization undermines the power of a state does not seem very helpful as the state and the international system are mutually interlinked. The reflection of external factors is already present in the state, and therefore state power cannot be seen as a function of globalization. However, it does not mean that the role of the state and the constitution of its internal powers have not changed. The state's identity has undergone a significant transformation in many ways.

Sovereignty is the characteristic of a state that is supposed to be influenced most by globalization. The ability of a state to monitor and control global flows and activities taking place within its territory has been reduced. However, Clark argues that globalization does not simply diminish the state's ability to manage its own affairs. Sovereignty is rather reconstituted within the state itself. In this respect the

dual perspective—globalization versus sovereignty—must be replaced by a triangular interrelationship between the state, sovereignty and globalization. The traditional approach whereby globalization means an external threat to the state's internal capacity is therefore suggested to be superseded by another view. The processes on the domestic and international or global level are not seen as contradictory forces but rather as two different aspects of the same process or, as Clark puts it, as two alternative formulations of the same set of transitions.

Finally, Clark also questions the state's capacity in the economic sphere as it is the field in which the reduction of the state's power to control or regulate its own affairs appears to be the most crucial. The economic arguments are that the state is no longer capable of using its autonomy to manage its own economic arrangements because its capacity has been weakened by outside forces of economic globalization. Again, Clark argues that even regarding the economic affairs globalization and the state do not stand against each other but are both reshaped by their interrelated confrontation. The states and their capacity are not mere victims of globalizing forces. They are vehicles of globalization and at the same time reconstituted by it. The state is being reconstituted, and globalization, in this perspective, is an external reflection of this reconstitution.

Based on our conceptual perception of globalization, we assume that globalization as such indeed really exists and furthermore influences the institution of the modern nation-state. Although the nation-state still continues to be very powerful, some of its capacities have been changed or at least shifted and are nowadays shared with other players. The relationship between globalization and the nation-state, however, is not a one-way projection. It must be seen as a process of interaction. Nation-states have been shaping global forces, and those have afterwards influenced nation-states.

4.3 Globalization and institutions

Once we have made the assumption that globalization does have a certain impact on the nation-state, the next question is how this happens. For this purpose we use an approach suggested by Djelic and Quack (2003). They offer a way to conceptualize globalization and its impact on institutions. Although their observations and propositions are drawn mainly from the business world including global investors, the asset management industry, the European electricity market and others, the concept they use seems to be very helpful in the context of this study.

Djelic and Quack focus on globalization and its relationship with institutions. In their view, national institutions are vigorous and resistant, however, they change in time. They "reinterpret globalization as contributing to that process of change –

not destroying national institutions' frames but rather pushing along their evolution and transformation" (p. 3). At the same time globalization is mainly about the 'rules of the game' and negotiations and renegotiations of these rules. Inevitably, the processes of negotiation and renegotiation mean existing and emerging new rules.

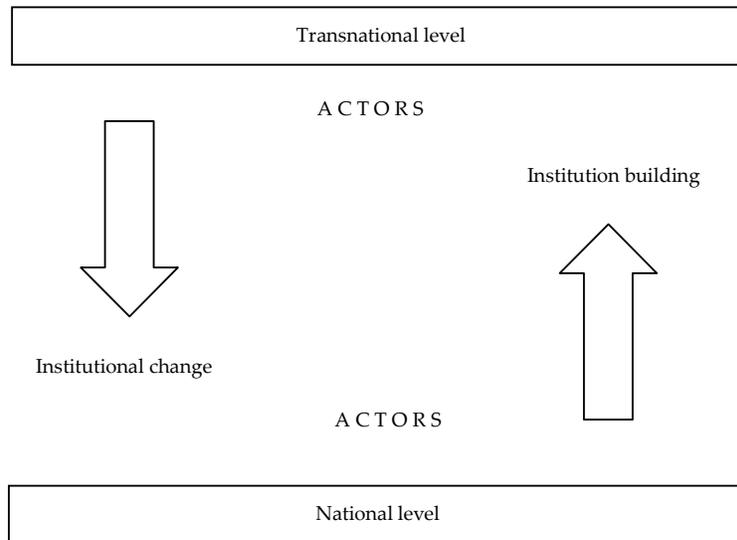
They suggest looking at globalization as a process directed in two ways. Firstly, it changes governance systems and institutions of many nation-states. At the same time, it also contributes to build up and stabilize the new institutional setting in the transnational space. Therefore, Djelic and Quack argue, globalization as such does not mean the decline of national polities or the institutions of the nation-state. It is rather perceived as a factor contributing to their reinvention and contextual rethinking. In other words, globalization affects the interplay between the national and transnational levels.

Djelic and Quack argue that globalization can be perceived as a process of institution building and institutional change, which is influenced by the interaction of various domestic and foreign actors. Figure 4-2 describes the interplay between the domestic and transnational level as explained by the authors.

In terms of institutional change—which in fact means the adoption of transnational rules on the domestic level—Djelic and Quack refer to trickle-down and trickle-up trajectories in the national societal space as illustrated in figure 4-3. The trickle-down trajectory is a top-down process with a direct impact of transnational rules on the national level. European legislation in the field of transportation and its implementation into the national legal setting of the EU member states is only one example of the trickle-down trajectory. In our case it represents the static dimension of the framework.

At the same time, the national setting can be also influenced in a rather indirect way. A trickle-up trajectory appears when actors at the transnational level initiate changes in the rule of the game. These changes eventually affect national actors who via bottom-up processes push through changes in the national setting. In this case we talk about the dynamic dimension of our framework.

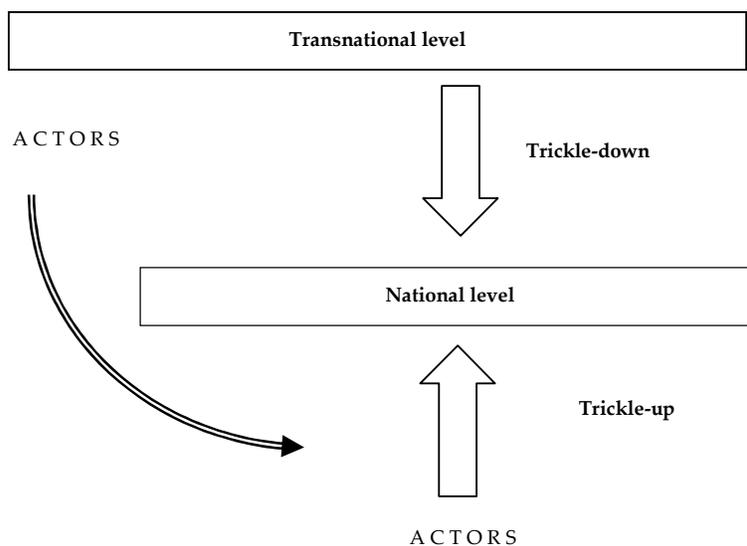
Figure 4-2: Interplay between transnational and national level



Source: Djelic & Quack, 2003

Based on Djelic and Quack's concept, we see the nation-state, and more specifically its steering capacity, as an institution that is subject to change. We also assume that globalization—in our case the multilateral trading system under the WTO and GATS in particular—influences the steering capacity of a nation-state along two dimensions. The first dimension is what Djelic and Quack call the trickle-down trajectory. This is a static part of the concept which is represented by principles of public international law, and by the WTO and GATS rules. The dynamic dimension, the trickle-up trajectory in Djelic and Quack's approach, involves actors initiating the changes on the national level. The following two sections are devoted to the discussion of both dimensions.

Figure 4-3: Trickle-down and trickle-up trajectories



Source: Djelic & Quack, 2003

4.4 Static dimension

The static dimension includes what Djelic and Quack label as a trickle-down trajectory. It represents the impact of transnational rules on national systems. In our case, the transnational rules are represented by the WTO multilateral trading system, including GATS as the most important component of this study. The main rules and disciplines of the WTO and GATS were already discussed in chapter 3. The following section gives a brief overview of public international law principles governing the multilateral trading system under the WTO.

4.4.1 Principles of public international law

Despite the fact that the nature and quality of international law has been subject to vivid discussion by many jurists and legal commentators—with respect to the existence of sets of rules governing inter-state relations, its entitlement to be called law and its effectiveness (Dixon, 2000)—we accept in our further discussion the existence of international law and we acknowledge “that members of the international community recognize that there exist a body of rules binding upon them as law” (p. 3).

Regarding the sources of international law, Article 38 of the Statute of the International Court of Justice explicitly states international conventions, international custom, general principles of law recognized by civilized nations as well as judicial decisions and the teaching of the most highly qualified publicists. GATS falls in the category of international conventions.

International conventions or treaties can be either bilateral or multilateral (which is the case of GATS). Basically, “treaties are a source of binding law exclusively for the parties in their relations *inter se*” (Dixon, 2000, p. 25). More specifically, a treaty is “a legally binding agreement deliberately created by, and between, two or more subjects of international law who are recognised as having treaty-making capacity” (p. 51). The most important pieces of work concerning the Law of Treaties are the Vienna Convention on the Law of Treaties (1969), the Vienna Convention on the Succession of States in respect of Treaties (1978), and the Vienna Convention on the Law of Treaties between International Organisations or between States and International Organisations (1986). These materials deal with questions such as what is a treaty, how is a treaty concluded, how is a treaty to be interpreted, etc.

A very important aspect of international treaties or international law is its relationship with national law. On a general level, three main theories explain such a relationship. The *monistic theory* or school represents a unitary concept of law. It treats international law and municipal (national) law as if they were an integral part of the same system. In case of a conflict, international law should unquestionably prevail. *Dualism* or the dualistic school claims that national and international law are independent of each other. They are mutually exclusive and do not affect each other. The third view is represented by the ‘Fitzmaurice compromise’. It claims that both international and domestic law operate in most cases in separate domains, and each has its supremacy in its own field. Arising conflicts are not seen as conflicts of legal systems but rather as conflicts of obligations (Wallace, 1992).

Two doctrines are distinguished on the use of international law in national legal settings. The first one is represented by *incorporation*. It means that rules of international law become automatically part of national law without any additional acts of national legislation. Rules of international law are treated as part of national law unless they are explicitly excluded. *Transformation*, on the other hand, requires expressive adoption of international law into domestic legislation. International law then becomes a part of national law only if it is explicitly included. In this respect incorporation is associated with monism, whereas transformation corresponds with dualism (Dixon, 2000).

For the purposes of this study, we look at GATS as a multilateral international treaty which either through incorporation or transformation—depending on the system accepted by an individual country—becomes a part of national law.

If a WTO member state signed GATS and made commitments, these commitments and GATS disciplines and rules are then binding for the state. Obligations arising from GATS are either automatically part of the national law (in the case of incorporation) or should be imposed on the national system by amending the national legislation.

4.5 Dynamic dimension

This section elaborates the trickle-up trajectory of Djelic and Quack's conceptual framework. Institutional changes on the national level can be achieved through actors who are active on both domestic and international levels. From our perspective their mutual interaction is also important. In order to understand the role of actors, their behavior and involvement in various processes, selected concepts and theories will be discussed further in this section. They will include stakeholder approaches, interest groups, policy networks, international actors and multilevel governance. Variations in perception of certain concepts and theories must be, however, borne in mind in terms of political and geographical settings. The role of interest groups, for example, has been perceived differently in Europe and the United States.

4.5.1 Stakeholder approach

The stakeholder concept originated in the business administration field. Freeman (1984) elaborates on the stakeholder approach in order to enhance the conceptual thinking about organizations. Since the 1960s the organizational environment in the United States gradually experienced significant internal as well as external changes. The former was represented by the differentiated attitude of owners, customers, employees and suppliers, while the government, competitors, environmentalists, special interest groups and the media are examples of the latter. Changes in both the internal and external environment led to the new approach in the organization's behavior—external actors do have a stake in the firm, and they can influence its goals and plans. Therefore it is legitimate to develop a specific strategy for their satisfaction. It means that each group in the firm's environment can affect its success. A stakeholder is defined as "any group or individual who can affect or is affected by the achievement of the firm's objectives" (p. 25).

Mitchell, Agle and Wood (1997) extend the stakeholder approach into management scholarship. The question they are primarily interested in is who and what really counts. In order to answer this question they construct a theory separating stakeholders from non-stakeholders by looking at attributes such as the *power* of stakeholders to influence the renegotiation process, the *legitimacy* of the stakeholders' relationship with the firm, and the *urgency* of their claim. According to various combinations of attributes—power, legitimacy, and urgency—different

categories of stakeholders can be distinguished. *Latent stakeholders* possess only one of the attributes, while *expectant stakeholders* are attributed possession of two attributes. Finally, *definitive stakeholders* exhibit power, legitimacy as well as urgency, and therefore the 'salience'—the degree to which managers give priority to competing stakeholders' claims—is the highest.

The stakeholder approach has been increasingly used outside business administration, even in the public administration field. A basic assumption we derive from this approach is that external actors have a stake in the activities that the nation-state undertakes as well as in the decision-making process. The power, legitimacy and urgency they claim vary across different stakeholders.

4.5.2 Interest groups

According to the literature (Kingdon, 1995; Lindblom & Woodhouse, 1993; Richardson, 1993; Wootton, 1970, etc.) the term *interest group* can be attributed the same meaning as other terms such as 'pressure group', 'lobby', 'organized group', 'private organization' or 'catalytic group'. Wootton (1970, p. 1) uses the following definitions to demonstrate what is meant by the phrase interest or pressure group:

- interest groups are all groups or associations which seek to influence public policy in their own chosen direction, while declining to accept direct responsibility for ruling the country;
- an interest group is a shared-attitude group that makes certain claims upon other groups in the society;
- a pressure group is any organization which seeks to influence government policy without at the same time willing to accept the responsibility of public office.

Lindblom and Woodhouse (1993) define the interest-groups' activities as "interactions through which individuals and private groups not holding government authority seek to influence policy, together with those policy-influencing interactions of government officials that go well beyond the direct use of their authority" (p. 75). Interest groups are not always perceived as performing positive functions. Their actions often significantly distort the policy-making process. However, the positive functions they perform are much more important. They include creating an informative link between the public and the administration by clarifying and articulating what ordinary citizens want. Interest groups, by articulating their standpoints, also help overcome vast diversity and conflicts of individual interests. Furthermore, the role of watchdogs should not be forgotten, especially in environmental issues. Finally, apart from their monitoring function, interest groups contribute to social problem solving and help build working coalitions.

Lindblom and Woodhouse also point at some tricky aspects of interest groups. Firstly, although the interest groups' activities form a key part in the policy-making process, they do not represent all the segments of society equally. Certain groups such as ethnic minorities, women or people with low income continue to be underrepresented by organized groups. Secondly, interest groups often prefer their own narrow interests to the common welfare. This is particularly true for issues that are not widely shared.

Kingdon (1995) draws a line between the actors inside and outside government. Interest groups, researchers, academics, consultants, the media, parties and other elections-related actors, and the mass public represent the participants without formal government involvement. Regarding interest groups' activities, they can be basically positive and negative. A significant part of the agenda of interest groups is supposed to consist of the latter—negative blocking as they are mainly concerned with either protecting current benefits and prerogatives or with inserting their alternatives if issues on the policy agenda are introduced by other participants with other interests.

Richardson (1993) suggests that "a pressure group may be regarded as any group which articulates demands that the political authorities in the political system or subsystem should make an authoritative allocation" (p. 1). By noting that these groups do not themselves aspire to occupy the position of authority, political parties and other groups seeking to take over the government are then excluded. Pressure groups are embedded within existing institutional structures and processes, and they act whenever the institutions change. Therefore, public policy in any society is seen as a complex and unpredictable interplay between governmental institutions, non-governmental institutions (think-tanks, corporations, local governments, churches, universities, etc.) and pressure groups. This increased complexity and unpredictability of policy-making can be partly attributed to the emergence of networks as well as to broader participation.

While opposing the assumption of classic pluralism that all important groups will organize, Olson (1965) argues that only the smallest groups will organize. They can provide themselves with collective goods without using any coercion or positive inducement. It is only in a small group where each individual finds personal gains exceeding the total cost. Olson's explanation for the existence of some large organized groups is different. The reason is that large groups have also other purposes. Big groups are in fact by-products of smaller organizations performing other functions. These organizations have the capacity to influence individuals in the large group by coercive authority and positive inducements.³⁸

³⁸ Olson spawned a whole branch of literature on the occurrence of collective action, which I will not pursue further than what is sufficient for my purpose.

Wilson (1980) offers another answer to the question why and how organizations are mobilized. To describe good and bad effects of policy he uses the terms 'benefits' and 'costs'. The intensity of a policy effect can be either 'concentrated' or 'diffused'. And the fact that the benefits and costs are either concentrated or diffused will determine the likelihood of organizations being active on a particular issue. Political mobilization is more likely to occur when the costs or benefits are concentrated.

Stone (1997) deals with certain shortcomings of traditional interest group theories. Most of them are based on market theories assuming that good interests are the strongest, and they naturally emerge in market transactions. However, Stone argues that there are many good and at the same time weak interests that need to be protected by the government. The role of the government to protect weak but legitimate interests makes the basic distinction between the market and the *polis* model of society based on democratic theories.

Stone also discusses the concept of interest. In political science a distinguishing line is drawn between objective and subjective interests. Objective interests influence people even if they are not aware of them, whereas subjective interests are the effects that people believe influence them. In common situations of everyday life people may be affected by a certain factor but they do not realize it or they believe they are affected and in fact they are not. The former situation is called lack of awareness or lack of consciousness, and the latter mistaken believe or false consciousness depending on the political science perspective. More important than the linguistic label is the fact that both kinds of situations usually occur together. When people look for causes of their problems, they often blame some selected factors and at the same time ignore other factors that could also be the cause of their problem.

For the purposes of this study we look at various proponents and opponents of GATS as interest groups. They mainly protect their benefits or prerogatives either through resisting the change of existing institutional structures or through advocating for their change. Their activities are more likely to appear when the costs or benefits related to the change of institutional structures are concentrated. However, it is often the case that people or groups focus on selected factors and blame them, although those do not have to cause their problems.

4.5.3 Policy networks

Since public decision-making has become increasingly complex, scholars and researchers have sought to find a sufficient metaphor which would fit the main features of the contemporary policy process. The network approach proposes a way in which public and private policy players connect with each other. Although there is no clear consensus over the term policy network, the approach is believed to

possess a sufficient degree of elasticity and to be able to illuminate a larger and more accurate picture of the policy-making process and thus to be more useful at predicting individual outcomes. It helps to answer two key policy analysis questions: who participates and who wields power (Atkinson & Coleman, 1992).

Policy networks are defined as dependency relations between parties with interests in the same policy areas. The focus is not so much on the actors, but on the connections among them. It is argued that the networks of bureaucrats, politicians, experts and interest groups are generally bounded in some way and in part are separate from others. Furthermore, it is assumed that the power to make decisions is not held only by governmental offices but is shared by a number of public as well as private players (John, 1999). Such a perspective is said to reflect much more realistically the policy-making process as it takes into account various types of involved actors, the connection between state administration and the institutions of civil society.

Rhodes (1997) mentions several reasons why policy networks play a central role in public policy-making. They limit participation in the policy process, define the roles of actors, decide which issues will be included and excluded from the policy agenda, through the rules of the game they shape the behavior of the actors, and privilege certain interests. It happens not only by according them access but also by favoring their preferred policy outcomes. Finally, they substitute private government for public accountability.

When talking about the players involved in public policy and their mutual relationship, it is also useful to distinguish two processes of policy-making. Collaborative policy-making puts emphasis on accommodation, consensus building and shared ownership of outcomes among the participants. In competitive policy-making the participants cooperate in one or more competing networks to influence public policy. The latter is represented by bargaining and exchange within the network or between networks (Williams, 2000).

Policy instrument studies also contributed to the policy network field. De Bruijn and Ten Heuvelhof (1998) summarize the main characteristics of policy networks. The first characteristic is *pluriformity*—the power of actors in the network varies considerably, and the level of their sensitivity to various signals is also different. The second characteristic is *isolation* as actors in the network have a certain level of autonomy within their environment. The third characteristic, expressed by for example finance, competence, political support or space, is *interdependencies*. The implication of these three characteristics combined together is that political networks are in constant change. In the network characterized by pluriformity, isolation and interdependencies, the generic instruments used bilaterally and hierarchically do not seem to be the most suitable tools for the policy-making

process. Three other groups of instruments are seen to be more useful in policy networks: communication instruments, multilateral instruments and incentives.

Bressers (1998) presents other characteristics of policy networks with respect to the choice of policy instruments. The first feature is the intensity of interactions between the actors in the network. The second characteristic is connected with the distribution of objectives—either conflicting or compatible—with the network. The third characteristic concerns the distribution of information in the network. Finally, what is also important is the distribution of power between the actors in the networks. Suitable instruments to be used for a particular situation can be identified on the basis of cohesion and interconnectedness of a policy network. The instruments would vary with respect to their normative appeal to the target group, proportionality of target group behavior and government reactions, providing or withdrawing resources to and from the target group, the target group's freedom to opt for or against application, the bilaterality or multilaterality of the instruments, and finally the role of policy makers in policy implementation.

Yet the network approach has been criticized for not being able to accommodate the internationalization of many policy domains since it has been developed primarily to assess national policy-making from a domestic point of view (Atkinson & Coleman, 1992). An inspiring example dealing with that shortcoming is the study of Winham (1986) who analyzes the Tokyo Round of GATT negotiations. He argues that understanding the structure of domestic policy networks helps to assess the factors determining the level of success during international trade negotiations.

To summarize this section we can say that public decision-making has become complex; the power to make decisions is not exclusively maintained by governmental offices but other public and private players also participate. Parties with interests in the same policy areas then interact within policy networks, however these networks are subject to constant change. At the same time the power and sensitivity of various actors in the network vary.

4.5.4 *International actors*

The traditional role of the nation-state that is challenged first of all on the global level is its being the only type of player in the international space. Although nations or nation-states continue to be important global players, they have to deal with newly emerged entities such as large multinational corporations with little attachment to any nation, international organizations and special interest groups (Morss, 1991). Interest groups are increasingly aware of global issues, and their activities are no longer limited by national borders. They have developed global networks focusing on common issues and have also entered into coalitions with other players including international organizations and public or semi-public institutions.

First of all, we should mention the increasing significance of intergovernmental and supranational organizations. They are represented for example by the EU, the most influential structure in Europe, as its member states intentionally transferred a significant part of their competencies to a supranational body. Secondly, many other groups or activities on the international level—even though not directly involved in the negotiation structures but still claiming the right of the general public or other segments of society to be fully and properly informed—have been established or initiated *ad hoc*. Finally, one can identify broader global developments: global warming, water pollution, acid rain, financial crises or international terrorism. These are events and processes that have major and sometimes unpredictable consequences no matter where they appear or how much individual states assume they are protected against them.

As a result, the nation-state in many of its activities on the national level has been dealing increasingly with players located on the international level such as large corporations, intergovernmental and non-governmental organizations and special interest groups.

4.5.5 Multilevel governance

The system of multilevel governance has been mainly discussed to describe the policy process within the European Union and the interconnectedness between the EU and the national level (see Hooghe & Marks, 2001; Kohler-Koch, 2003; Scharpf, 1999). In the process of distributional policy-making, i.e. the allocation of resources to different groups, sectors, regions and countries, more direct contacts have emerged between the European level and the structures beneath the national level. This new policy mode was given the term 'multilevel governance'. *Governance* refers to both the substance of policies and the balance of power. *Multilevel* suggests that besides public actors private ones also can exercise influence at various level, both vertically (European, national and sub-national level) and horizontally (various sectors) (Kersbergen & Waarden, 2001).

The notion of multilevel governance is based on two main assumptions. First, the national central governments have been deprived of their exclusive contacts within the EU level of policy-making. Second, the European level's inclusion has contributed to the reinforcement of 'regionalization'. Thus, the multilevel governance mode includes in the case of the EU the following components: the Commission, member Governments in the Council, the European Parliament, local and regional authorities, and since 1993 the Committee of the Regions (Wallace & Wallace, 2000).

The term governance, however, has been given different meanings over time. Mayntz (1998) describes the changing semantics of the theory of political governance. In the late 1960s and early 1970s prescriptive theories tried to find an answer to the question how to steer. In the 1970s research focused on empirical

analysis of policy development including among other things agenda setting, instrumental choice, role of law and organizational context. In the late 1970s and early 1980s the concern switched to policy implementation. Nowadays, the term governance refers to “a new mode of governing that is distinct from the hierarchical control model, a more cooperative mode where state and non-state actors participate in mixed public/private networks” (p. 1).

Furthermore, Mayntz states that the traditional governance theory has several weaknesses. It concentrates on the single nation-state, it is selectively concerned with domestic politics, and it is focused mainly on policy effectiveness, on the output and outcome of policy processes while at the same time neglecting the input of policy formation and their mutual relationship. Problems with the application of governance theory have been caused particularly by two major developments, namely European integration and globalization. Both result in the coexistence of different governance modes combining the EU and new transnational structures.

European integration, as it is understood today, began in 1945 (Urwin, 1995). It refers to institutionalized cooperation of European states through the creation of the European Coal and Steel Community (ECSC, 1951), the European Atomic Energy Community (Euroatom, 1957), and the European Economic Community (EEC, 1957). Furthermore the Single European Act (1986), the treaties of Maastricht (1993), Amsterdam (1999) and Nice (2000) set up the basis for intensive intergovernmental and supranational decision making in a whole range of policy areas (Halzhacker & Haverland, 2006). For our purposes, we are particularly interested in the top-down process of how European governance, the institutionalized result of European integration, influences the “domestic policies, politics and polities of the member states” (Börzel & Risse, 2003, p. 57).

Scharpf (2001) argues that the complexity of multilevel governance in Europe cannot be adequately explained either by the intergovernmental perspective of international relations theory or by the supranational approach of comparative politics. The European Union, a multilevel polity, can be better described by four different modes of multilevel interaction – *mutual adjustment*, *intergovernmental negotiations*, *hierarchical direction* and *joint decision-making*.

In the *mutual adjustment* mode the national governments adopt their own policies nationally, but as a response to or in anticipation of the policy choices of other governments. *Intergovernmental negotiations* refer to national policies which are coordinated or standardized by agreements on the European level. Yet the national governments remain in full control of the decision process. In the mode of *hierarchical direction* the competencies are completely centralized on the European level and exercised by supranational actors without the participation of member-state governments. Finally, *joint decisions* combine aspects of intergovernmental

negotiations and supranational centralization and apply mainly to the market-making and market correcting competencies of the European Community.

Scharpf suggests that the procedure of *open coordination* is a potentially valuable addition to the available set of governing modes. Open coordination is conceptually located between intergovernmental negotiations and mutual adjustment. Governing competencies remain fully on the national level, but national policies are not exercised in isolation. Joint processes include problem analysis, goal setting, self-commitment and self-evaluation, combined with common monitoring and central benchmarking capacities.

The notion of multilevel governance applies mainly to the phenomenon of the EU. We therefore assume that the modern nation-state in the European context and its governance in general is to a very high extent influenced by the way decision-making is organized and interconnected between the European, national and sub-national levels. Different modes of multilevel interactions are used in various fields.

The next chapter is devoted to higher education as a special case. The reason for doing so is that several theories and concepts related to the topic of the study have been elaborated in the higher education setting. Particular attention will be paid to the impact of globalization on higher education, the role of the nation-state in higher education, steering in higher education and the stakeholder concept.

5 GATS and steering capacity in higher education

5.1 Introduction

Several theories and concepts related to the theoretical framework of this study have been developed or adjusted in the higher education field. First of all, the impact of globalization on higher education is mentioned. The next two sections will make a link to the lower part of our conceptual framework (nation-state, steering capacity of nation-state, and steering capacity of a nation-state in higher education) as described in figure 4-1. Then follows a discussion of the way higher education is steered. This part is particularly important with respect to the last column of figure 4-1. Contributing to the dynamic dimension of our concept (section 4.5 of the previous chapter) the stakeholder approach is described as it has been employed in higher education. Finally, in the last section the propositions will be formulated as tentative answers to the main research question and sub-questions.

5.2 Globalization and higher education

In higher education studies, similarly as in other fields, globalization has become an important topic of scholarly writings and conferences. The main objective of this section is to introduce the reader to the way globalization has been discussed by various scholars specifically in the higher education context. While providing a target-oriented introduction, this section neither has the ambition to map, summarize or systemize the on-going discourse, nor does it build upon section 4.2 of the previous chapter, which was devoted to the general debate on globalization and its impact on the nation-state.

As the university is so much inter-linked with the nation-state, globalization has a major impact on their mutual relationship. Some authors see globalization as the most fundamental challenge faced by the university as a historical institution and, at the same time, as an important challenger for the authority of the nation-state (Scott, 1999). Torres and Morrow (2000) claim that "perhaps no place has been more subject to these processes of internationalization and globalization than university" (p. 44).

Higher education scholars (Knight, 2003c; Marginson, 2000; Scott, 1998; Van der Wende, 2002a) have been intensively discussing conceptual differences between globalization on the one hand and internationalization on the other. Knight (2003c) makes a sharp distinction between globalization and internationalization of higher education. Globalization is defined as the flow of technology, economy, knowledge, people, values, and ideas ... across borders. Globalization affects each country in a different way due to a nation's individual history, traditions, culture and priorities. Globalization is positioned as a multifaceted phenomenon and an important environmental factor that has multiple effects on education (p.3).

Meanwhile, "internationalization at the national, sector and institutional levels is defined as the process of integrating an international, intercultural or global dimension into the purpose, functions or delivery of postsecondary education" (p.2). Globalization and internationalization are not synonymous processes. According to Knight internationalization, which has an impact on higher education, is at the same time influenced by globalization.

For Marginson (2000) the term internationalization describes the growth of relations between nations and between cultures. Globalization is related to the growing role of world systems, not to the growing importance of relations between nations *per se*. Marginson highlights that globalization neither creates a single political world nor abolishes the nation-state. It changes the conditions under which nation-states operate.

According to Scott (1998) internationalization reflected a world order dominated by nation-states. Globalization, on the contrary, ignores, transcends and is even hostile to nation-states. However, Scott emphasizes that globalization cannot be regarded as a higher form of internationalization. Their relation must be seen as dialectical. In a way the new globalization can be seen as a rival of the old internationalization.

Finally, Van der Wende (2002a) sees internationalization as the increasing interconnectedness between national education systems, in which borders and national authorities are not questioned. Globalization, on the other hand, relates to the process of increasing convergence and interdependence of economies and to the liberalization of trade and markets. In a sense, internationalization can be seen as a response to globalization.

The impact of globalization on the nation-state and the role of the university has been also discussed. Kwiek (2000) talks about the decline of the nation-state's role and the increasing power of processes of globalization in connection with the identity crisis of the modern university. He sees the decline of the nation-state (or reformulation of its role in the global age) as a consequence of globalization on the one hand, and the decline of the social, cultural and political project of

modernity on the other. The role of the modern nation-state as well as the knowledge of the modern university are reconfigured.

Several scholars focus on the relationship between globalization and the nation-state while they discuss education or educational policy. For Carnoy and Rhoten (2002) globalization is mainly associated with knowledge, therefore it has a fundamental impact on the way knowledge is transmitted. Nation-states have found themselves in increasingly difficult positions. On the one hand, they are under pressure to reduce public spending on education. On the other, they have to find the resources to finance the expansion of their educational systems. On the global scope, national governments compete with each other to attract foreign investment, which requires increasing inputs into human resources, among other things their educational attainments. Globalization together with an associated ideological package—decentralization and privatization—thus affects educational policies. However, their effect can vary across regions and nations.

Vaira (2004) argues that globalization myths (minimalist state, entrepreneurialization / managerialization and the knowledge society) have been products mainly of politically and socially highly legitimated supra-national agencies such as UNESCO, the World Bank, IMF, OECD and the EU. They contribute to constructing and structuring global organizational fields in which national higher education policies and institutions have to operate. Partly as a result of the above mentioned changes higher education is witnessing deinstitutionalization of traditional policies and values and parallel institutionalization of new ones. These processes involve strong resistance, conflicts and tensions on the one hand, and effort to conciliate and adapt on the other.

Alderman (2001) makes a link between globalization and the national interest in the field of transnational higher education³⁹. In his perspective globalization is a trend where higher education providers are able to offer their services in countries outside their national boundaries. With respect to the traditional role of higher education as a part of the national economic and social systems, it is mainly the private provision of higher education that has created great polemics within the globalization debate. It is felt by many nation-states that private higher education potentially means a threat to state control over teaching in universities and also a fear of competition for public higher education institutions⁴⁰.

Robertson, Bonal and Dale (2002) discuss the impact of globalization on educational systems in general. They associate globalization with real economic and political actors and with real interests. In this perspective they see the WTO as a major

³⁹ Transnational education can be defined as education activities in which learners are located in a country different from the one in which the awarding institution is based.

⁴⁰ It must be added, however, that some states such as Japan or the United States are much more accustomed to the coexistence of private and public higher education providers.

player and GATS as a set of rules that has a potential to take over the national system. The rise of the WTO, supported by economically powerful countries and targeted to make nation-states' education systems and education provisions more amenable to a global accumulation strategy, is viewed as a particular case of globalization.

From the above mentioned contributions we can see that the discussion on globalization and its impact on higher education has been wide-ranging. Nevertheless, according to many authors it seems that higher education and the role of the nation-state in higher education policy have been increasingly influenced by globalization in one way or another.

5.3 The nation-state in higher education

Figure 4-1 in the previous chapter identified the nation-state as an object which has been influenced by globalization. The position and role of the nation-state, however, can differ with respect to various fields. The following section will give us a very brief overview of how the role of the nation-state has been perceived in higher education.

Many scholars focus on the link between the nation-state and universities. The university has been associated with the nation-state for a long time, and the connection was reinforced especially since the modern nation-state emerged as a result of the French revolution in 1789. The historical process of the transition of self-governing, mediaeval university communities into the state domain made a giant step with the foundation of the Prussian University by Wilhelm van Humboldt and the creation of the French Université Imperiale by Napoleon I between 1806 and 1808. These events are considered to be the key milestones in the history of the modern university (Neave, 2001). In the last decades of the twentieth century, however, the university as a project of the nation-state and cultural identity went through a deep process of transformation (Enders, 2005; Kwiek, 2000).

The university, an institution traditionally connected and increasingly dependent on the nation-state in terms of political as well as financial support, has also been looked upon in relation with its crisis. The salience of this view is reinforced by the fact that the university, in the form in which it is known today, is the creature of the nation-state; it serves the nation-state's professional needs and ideological requirements. Furthermore, most universities are still state institutions, and are viewed mainly in the national context (Scott, 1999).

Higher education has its characteristic features in each country. Universities and other institutions of higher learning have been established within the territory of a particular state, and the very existence of both, the university and the state, has

been very often linked together. However, the relationship between the two main actors has been subject to historical changes reflecting political and cultural values and many other factors. Therefore, the link between the highest civil authority and the institution working with knowledge has attained increased attention from higher education scholars. Three ideal types to which the reference is usually made with respect to the relationship between the university and a public authority are the 'Continental European', the 'United Kingdom' and the 'United States' (Neave, 2001).

From a historical perspective the beginning of the 19th century forms a considerable dividing line in Continental Europe. Prior to this time universities were under the supervision of either local or religious authorities and depended financially mainly on their students. Since the beginning of the 19th century the role of the state became more intensive. The period after World War II did not lead to any significant changes in this respect. The relationship between higher education and government remained fairly stable—government provided sufficient funding for higher education institutions supplying a qualified work force for the national economy. It was only at the beginning of the 1990's when this relatively stable relationship was revised towards what has been called a series of 'conditional contracts' and by some was considered as one of the most significant developments in the last few decades of higher education in Western Europe (Neave & Van Vught, 1991).

Neave and van Vught (1991) also distinguish shorter intervals with respect to the position of the government vis-à-vis higher education institutions in the last forty years. The period starting 1960, when universities faced increasing numbers of students, was overseen by the *facilitatory state*. Since the late 1970s and the beginning of the 1980s the *facilitatory state* was slowly replaced by the *interventionary state*. It became more concerned about cost savings, budgetary restrictions, and gradually about internal affairs as well as the relationship with industry. More recently, the supervisory role of the state has been weakened, universities have received larger balancing space to achieve their goals, and the *evaluative state* has emerged.

The *evaluative state*, which is probably the most suitable name for the contemporary nation-state with respect to its relationship with the higher education system in most Western as well as CEE countries, is characterized by an increased focus on quality, efficiency and enterprise. The *a priori* evaluation (input assessment) has been gradually replaced by *a posteriori* evaluation or product evaluation. The factors that have facilitated the emergence of the *evaluative state* have been among others financial effectiveness, economic change and the need for human power on both the national and international level (Neave, 1998b). Neave (1995) emphasizes that "the relationship with public authorities is now not merely contractual but also conditional, short term and subject to meeting explicit cost and

performance targets, regularly assessed and revised in the light of that assessment'' (p. 390).

5.4 Steering in higher education

Governmental steering in higher education constitutes one of the main building blocks of our conceptual framework. Referring back to figure 4-1, the steering capacity is the influenced factor of the last column. The following section gives an overview how and from which perspective steering has been discussed in the higher education context. The text starts with Clark's modes of coordination and concludes with a short elaboration of steering instruments.

In order to allow a comparison of governing relations among various national systems Clark (1983) offers a three-dimensional framework organized around three ideal types—state system, market system and professional system. These three ideal types represented by the state authority, market and academic oligarchy form the corners of one dimension of Clark's triangle of coordination. Actually existing national systems are then positioned within the triangle to indicate to what extent higher education is supervised by the state authority, run by academics themselves or influenced by market forces. Neave (1995) makes a comment with respect to the weight of the three forces in Clark's triangle. He argues that many scholars have observed the increasing influence of market forces, however, it is not clear whether the role of the state or the power of academia have been diminished.

In the context of higher education, Maassen and van Vught (1994) talk about two models of possible government steering: the *state control model* and the *state supervising model*. The policy instruments that are distinguished in steering higher education are instruments of treasure and instruments of authority. A similar conceptual framework has also been used to identify the relationship between the model of governance and the changes taking place in higher education systems in selected developing countries (see Neave & Van Vught, 1994).

In order to increase the explanatory value of the model of state steering, the dichotomy of the state control model and the state supervising model have been replaced by a more refined alternative. Gornitzka and Maassen (2000) use Olsen's (1988) typology reflecting different democratic ideas and views on the role of the state, societal actors and government agencies. The four steering models are: the sovereign state, the institutional state, the corporate-pluralist state, and the classical liberal state (state supermarket model).

In the *sovereign state steering model*, higher education is seen as a governmental instrument for reaching political, economical and social goals. The role of higher education is to implement the state's higher education policy agenda. The *institutional steering model* refers to a situation in which higher education

institutions are given a special responsibility to protect academic values and traditions against political turbulences. The state usually does not interfere with academia. The *corporate-pluralist state steering model* assumes that there are several competing and legitimate centers of authority and control with respect to higher education. Finally, under the *supermarket steering model* the role of the state is minimal; it makes sure that the market mechanism in higher education is not distorted.

After having analyzed the relationship between the government and higher education in selected West European countries Gornitzka and Maassen (2000) identify a general tendency towards the supermarket steering model. However, no model has been observed in its pure form. Rather in most countries mixes of various steering models are observed, which is called a *hybrid steering approach*.

All the above mentioned models—Clark’s triangle of coordination, van Vught’s dichotomy of the state control model and the state supervising model, Olsen’s typology of a state, and finally what Gornitzka and Maassen call a hybrid steering approach—are placed mainly within the national context. It has been only recently that external processes such as globalization and internationalization have been taken into account as factors having a significant impact on the relationship between the state and higher education. This has meant a great challenge for traditional conceptual frameworks. It has been argued that they can lose a significant part of their explanatory power by not anticipating major changes in the global environment. To deal with such shortcomings, some of the concepts have been adjusted in order to embrace a newly emerged reality⁴¹.

Van der Wende (1997) discusses and amends for example Clark’s triangle in the context of internationalization. She uses the following definition of internationalization: “any systematic, sustained effort aimed at making higher education (more) responsive to the requirements and challenges related to the globalization of societies, economy and labor markets” (p. 19). Clark’s model of coordination, with its three main forces—state authority, academic oligarchy and the market—is therefore explicitly placed in an international context, with the aim to inquire how international forces and developments affect coordination mechanisms at the national level.

Other authors (Cloete et al., 2002) also argue that although Clark’s triangle of coordination is still very useful for a basic analysis of changes in higher education, it reflects the situation in the 1980s. Since that time, the overall environment has changed significantly. That is the reason why the triangle is entirely located in a circle labeled globalization. Impulses coming from financial markets, trade

⁴¹ See for example Mayntz (1998) and her discussion on how governance theory is challenged by globalization.

liberalization, global and regional free trade agreements (WTO, EU, NAFTA, MERCOSUR, etc.), and the impact of international agencies such as the United Nations, the OECD, the IMF and the World Bank are considered to be important aspects of globalization with respect to higher education.

The inclusion of the triangle of coordination into the globalization circle demonstrates the fact that globalization as a phenomenon has an impact on all three components of the triangle. Also the original corners of the classical triangle have been changed. Instead of the state, market and academic oligarchy, the new model talks about the state, society and higher education. The concept of Cloete et al. simply suggests that when studying the relationship between the state and academic oligarchy—or in the adjusted model between the state and higher education institutions—the impact of globalization should be borne in mind.

Finally, as indicated at the beginning of this section, a more specific definition of steering is given in order to find an appropriate level for its further operationalization. For the purpose of this study the concept of government steering is characterized as an activity having to do with the influencing of behavior. More specifically, government tries to steer the decisions and actions of other actors by using certain tools and instruments and according to certain objectives (Maassen & Van Vught, 1994). Jenniskens (1997) defines government steering as “the influence by government on the behavior of societal actors, in accordance with goals formulated by government, and through the use of instruments”⁴² (p. 39). Among the instruments usually *funding*, *regulation*, *planning* and *evaluation* are distinguished (Huisman, Maassen & Neave, 2001). Westerheijden (1998) highlights quality assessment as an important steering instrument in higher education as well as in research, which appeared in the 1980’s. Since then steering has been therefore more focused on stimulating change in the lower system levels (quality improvement) than in strictly bureaucratic control (accountability).

5.5 Stakeholder concept in higher education

The stakeholder concept was already discussed in section 4.5.1 of the previous chapter. This section describes how this concept has been applied and adjusted to the higher education setting. In the last years the stakeholder concept has been used in a higher education context to express the growing accountability and responsiveness of higher education institutions vis-à-vis their environment; external actors have a stake in what universities do. Neave (2001) argues that the rise of the stakeholder society can be traced back to the late 1960s when the state lost its previous position as being the prime authority in higher education. The shift from elite to mass education had major consequences on redefining the purpose of

⁴² See Jenniskens (1997) for a thorough elaboration of steering, steering models, steering instruments and steering strategies.

higher education as well as on the legitimacy of various external actors. The community to which academia owed ultimate responsibility was redefined.

According to Maassen (2000) stakeholders in higher education mean specific groups of external actors that have a direct or indirect interest in higher education and cannot always be covered by the consumer-provider analogy. New stakeholders have penetrated the traditionally monopolistic relationship between the state and public higher education institutions with two main characteristics. First, the role of the stakeholders has become more important in the last few decades. Second, the influence of these stakeholders has also grown with respect to the internal affairs of individual higher education institutions.

Similarly, Knight (1997) defines stakeholders as “a group with a vested interest or set of responsibilities for certain activities, according to the constituency they represent or the mandate given to them” (p. 28). She uses the stakeholders’ perspective when looking at the issue of internationalization of higher education. The three main stakeholders she identified as having a central interest in the internationalization of the higher education system are the government, academia and the private sector. Other authors distinguish students as key members of the academic community, governments at all levels, enterprises and businesses (large firms as well as SMEs), different social and cultural actors as well as other universities and higher education institutions as main stakeholders (EUA, 2003).

Jongbloed and Goedegebuure (2001) apply the stakeholder approach in order to demonstrate the need for changes in the university’s structure and strategy while coping with its transforming environment and meeting the needs of its various constituencies. The trends affecting the university’s strategy includes mass individualization, the new economy, social dynamics, information and communication technologies and e-commerce, and globalization. The stakeholder university is then a university in constant dialogue with its stakeholders. The authors apply the theory of stakeholder salience (see section 4.5.1) to identify main university stakeholders and classify them according to their relative importance.

Basically, the concept of the stakeholder society in higher education means that the accountability of higher education institutions towards the national government has been extended to other actors. As a result of changes driven by general evolution in the socio-economic system—the transition from an industrial economy to a network economy—higher education institutions are forced to be in constant dialogue with their stakeholders in society. At the same time, the relationship between higher education and the stakeholder society is increasingly influenced by other developments in the society at large, the most important being the emergence of the knowledge society including ICT, globalization and internationalization, and the new public management as applied in public sectors (CHEPS, 2001). Some of these

developments might have influenced the ways in which higher education systems are regulated or steered by national governments.

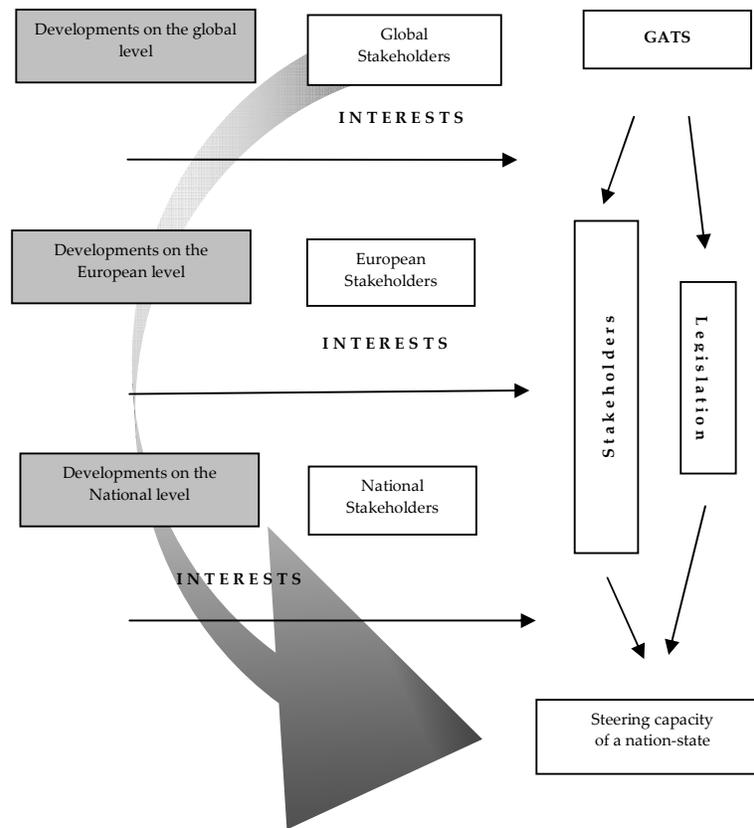
5.6 Multi-level and multi-actor reality in higher education

When all the above mentioned concepts and assumptions are combined, one has a very complex picture of higher education in a contemporary modern, in our case European, nation-state. As highlighted by Enders (2004) “local self-governance, hierarchical self-steering, quasi-market competition, authoritative interaction and stakeholderism in higher education are no longer seen as exclusive or as alternative options – they coexist and are casually interrelated” (p. 372). Furthermore, on the European level, the shift to complex multi-level governance has been witnessed (Mayntz, 1998). As a result, in the European context, a multi-level and multi-actor reality has emerged, in which higher education institutions as well as nation-states operate while being increasingly influenced by globalization and internationalization.

Figure 5-1 tries to capture the relationship between GATS and the steering capacity of the nation-state in higher education within this increasingly complex environment. The main research question, in fact the third column in figure 4-1, is placed on the right side of the figure. Based on Djelic and Quack (see chapter 4, section 4.3) GATS, as a part of the globalization process, is assumed to influence the steering capacity of a nation-state through two lines. The box labeled stakeholders represents the dynamic dimension of the framework (the trickle-up trajectory) whereas the box labeled legislation stands for the static dimension (the trickle-down trajectory).

The relationship between GATS and the steering capacity (as a dependent variable) does not find itself in isolation from various developments on the global, European and national level. Stakeholders on all levels have their interests, interact with each other, and either try to initiate the changes of the existing institutional structures or to resist them. At the end, we assume that the steering capacity of a nation-state can be influenced not only by GATS and its rules and disciplines but also, and maybe even much more significantly than we expect, by other developments taking place on various levels and being mutually interconnected.

Figure 5-1: Multi-level and multi-actor reality in higher education



5.7 Propositions

At this point we can go back to chapter 1 and look at the main research question and sub-questions. Based on the concepts and theories discussed in chapters 4 and 5 as well as figure 5-1 the following propositions as tentative answers to the main research question and sub-questions are formulated:

- 1) GATS affects the steering capacity of a nation-state through the static dimension represented by a trickle-down trajectory, i.e. binding GATS commitments and disciplines cause changes in the national higher education legislation.
- 2) GATS affects the steering capacity of a nation-state through the dynamic dimension represented by a trickle-up trajectory, i.e. the position and influence of stakeholders in the GATS negotiation process.
- 3) Other than GATS, developments on the national and (taking into account the process of European integration) especially the European level affects the nation-state's steering capacity in higher education.

In the next chapter the main concepts relevant to the research questions are operationalized. Furthermore, a detailed description of the research design is given. Finally, methods used for collecting the data are discussed as well as some limitations.

6 Operationalization, research design & methods

This chapter includes three main sections. In the first one (6.1) the main components of the research questions are operationalized. Section 6.2 describes the research design of the study. The final section (6.3) is devoted to the methods which were used to collect the materials and data as well as some methodological issues concerning the empirical part of the study.

6.1 Operationalization

The main research question, as formulated in the final section of chapter 1, reads as follows: *How and to what extent does the inclusion of educational services in GATS affect the steering capacity of a nation-state in higher education?*

The inclusion of educational services, including higher education, in GATS has two major components. The first is represented by the inclusion itself. Certain commitments were made at the end of the Uruguay Round (1994) and have been binding for the WTO member states. At the same time, general GATS rules and disciplines are applied to trade in higher education. The second component of the inclusion is the fact that higher education was further negotiated during the Doha negotiation round on the national as well as European level. During this time various stakeholders were involved in the decision-making process. Based on our conceptual framework (see section 4.3), the inclusion of higher education services in GATS is seen for the purposes of this study as having both static and dynamic dimensions – GATS' legal framework and the negotiations including the role of the various stakeholders.

With reference to the discussion in the previous chapter (section 5.4) the steering capacity of a nation-state in higher education can be characterized by instruments such as funding, regulation, planning and evaluation. This study focuses mainly on the 'commercial presence' (mode 3) or basically on foreign providers and the ability of a state to regulate them (see limitations of the study further in this chapter). For foreign higher education providers mainly two issues are of very high importance: First, the legal conditions under which they can operate. Second, whether they are allowed to receive any subsidies from public sources. Therefore, the steering capacity for the purposes of this study (especially concerning the case studies) is connected mainly with funding and regulation, and to a lesser extent with planning and evaluation.

The impact of GATS on the steering capacity of a nation-state is captured in the questions *how* and to *what extent*. The angle on the question of *how* is predetermined by the chosen conceptual framework of Quack and Djelic (see chapter 4, section 4.3). We assume that GATS may influence the steering capacity of the nation-state in higher education through the static dimension (trickle-down trajectory) embodied in the legal framework and the dynamic dimension (trickle-up trajectory) represented by stakeholders. The question: *to what extent* is limited to a binary mode – yes or no, because as the data will show, it proved rather pointless to consider the question of extent in-depth. Furthermore, by conducting in-depth case studies—discussing specific conditions and looking at the policy-making process of two selected countries—we want to find out whether other factors such as the European integration or general liberalization policies on the national level have an impact on the steering capacity of a nation-state in higher education.

6.2 Research design

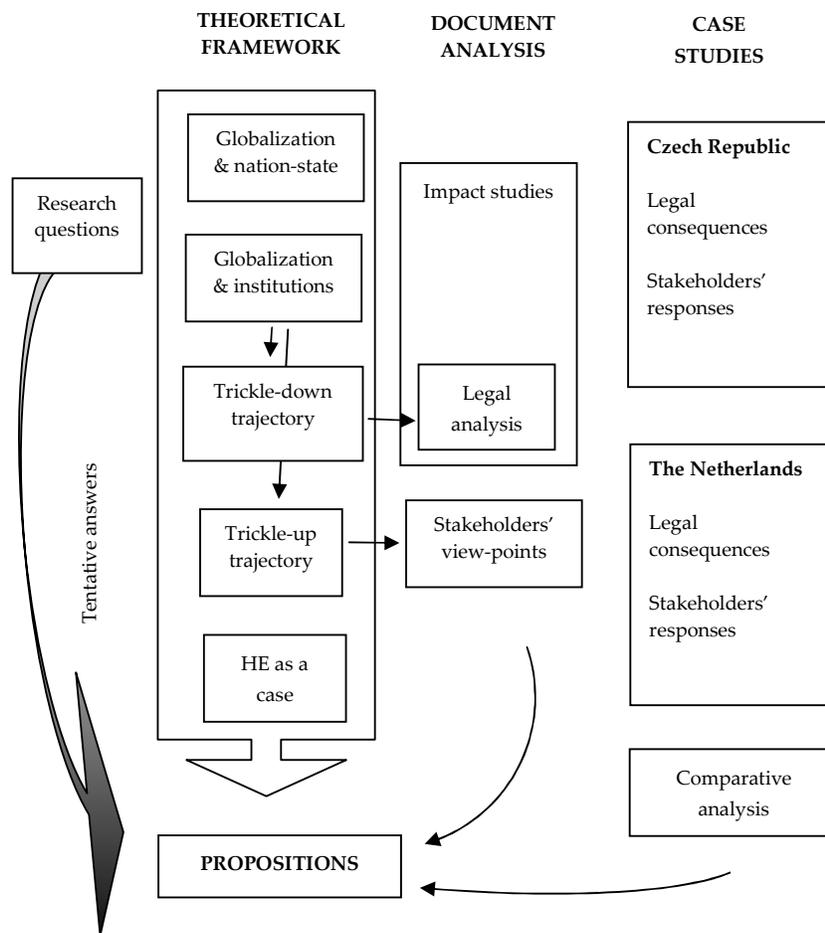
The following section explains to the reader how the research design of this study is organized and why. Figure 6-1 depicts schematically its main features. First of all, the selected theories and concepts discussed in chapters 4 and 5, forming together the theoretical framework, help to formulate propositions (see section 5.7) as tentative answers to the main research questions (see section 1.5).

The empirical part of this study consists of two major parts. The first focuses on document analysis and the second one is devoted to case studies. A substantial part of the document analysis pays attention to the contributions of authors discussing the impact of GATS on higher education. This part, reviewing the literature on GATS' impact on higher education, also includes legal analysis with respect to GATS and higher education. The second part of the document analysis looks at stakeholders and their views and standpoints. The two latter components, stakeholders' view-points and legal analyses, follow the conceptual framework suggested by Djelic and Quack (2003). The conceptual division into trickle-down and trickle-up trajectories is schematized in figure 6-1 by two arrows headed from the box 'globalization and institutions'. The two arrows, pointing horizontally from the trickle-down and trickle-up trajectories symbolize the transposition of theoretical components into the empirical part of the study.

Case studies, conducted in the Czech Republic and the Netherlands, also reflected the conceptual division between the static dimension (trickle-down trajectory) and the dynamic dimension (trickle-up trajectory). They both include sections devoted to stakeholders' responses and legal consequences. A separate chapter (11) discusses and compares the two case studies.

The results of all components of the empirical section—the ‘impact studies’ (including the legal analyses), stakeholders’ view-points and case studies—are then confronted with the propositions which are derived from theoretical assumptions in chapter 12. This is symbolized by the two arrows in the bottom right of figure 6-1.

Figure 6-1: Research design of the study



6.3 Material & data collection

The empirical part of this study contains several sections, each of them using various methods to collect and analyze data. Different sources are employed to get a comprehensive view on the issue, which is referred to as '*triangulation*' (Verschuren & Doorewaard, 1999, p. 125). One reason for using a source triangulation is to balance advantages and disadvantages of available information. At the same time it serves as a mechanism to avoid as much as possible biased views.

Based on the research design the materials and data were gathered in the following way. Starting in 2002, the materials for impact analyses and stakeholders' views and standpoints were systematically collected. More than 100 documents (journal articles, conference contributions, memos, internet publications, pamphlets, etc.) are used for quantitative as well qualitative analysis of the arguments in chapters 7 and 8. During 2004 and 2005 collected materials were analyzed and systemized in order to get deep insight into the GATS phenomenon. Based on the acquired knowledge, the case studies were prepared and conducted in both the Czech Republic and the Netherlands during 2005. When possible, relevant contributions, even if they appeared or were retrieved after the drafting of a certain section, were added.

It became apparent during collecting and categorizing various documents that boundaries between them were sometimes rather blurred. It was especially true with analytical materials and stakeholders' views and standpoints. For example many 'impact studies' published in journals and edited volumes or delivered during conferences contained their authors' clear standpoints expressing either positive or negative attitude towards GATS. On the other hand, some materials issued by stakeholders included very detailed discussion on GATS' impact as well as references to specific provisions of the agreement itself. For these reasons, a few sources are repeatedly used in several chapters. In the next sections there follow further details on criteria upon which materials were selected for each chapter.

6.3.1 *Impact analyses*

The first chapter of the empirical part examines the impact of GATS on higher education and higher education policy. The main task is to structure the approaches dealing with the assessment of GATS' impact on the nation-state from various policy perspectives, to identify the methods with the help of which the impact of GATS on the nation-state and its policy areas has been assessed, and finally to categorize the *impact* itself. As a source of information we used journal articles, chapters from edited volumes, published analyses and analytical parts

of stakeholders' materials that are employed also in chapter 8 with the help of the 'snowball' method with respect to references.

The main criterion for selecting materials for further analysis was the fact that they were primarily designed to express explicitly the view of a group or an individual on the relation between GATS and higher education, or at least that they documented or commented such a view. However, the selected contributions constituted rich material, embracing a very broad spectrum of ways to look at the issue. Due to the complexity of the matter, its political sensitivity, varying assumptions under individual arguments, etc., the analytical and methodological line in the documents was very often suppressed or not evidently clear. At the same time they possessed a different level of systemization as well as different depth of analysis.

The search for relevant materials focused on GATS and higher education. Nevertheless, when it seemed appropriate, the analysis also took into account documents reflecting views on further liberalization of higher education as well as 'commodification' and 'commercialization' of higher education as these two phenomena are seen closely connected to GATS. At the same time, selected materials discussing the impact of GATS on education in general or on public services were also included, however, only if making explicit reference to higher education as a case.

Some collected documents were far from being pure impartial analytical studies. This fact goes in line with the overall sensitivity of the issue. Many authors—very often those opposing the idea of increasing liberalization of higher education—stressed mainly negative consequences of GATS. They usually failed to be neutral about their subjective position towards the topic or to offer alternative explanations. In general, the scholarly and analytical work dedicated to GATS and its impact on higher education can be said to reflect to a rather high extent the diversity of authors' views and standpoints. Nevertheless, the polarization of the debate was not taken into account in chapter 7, as it was one of the main objectives of chapter 8.

Documents describing or explaining the way GATS works were not included in this part of the analysis, even if they contained statements that could be identified as either positive or negative with respect to GATS in relation to higher education, further liberalization of services or related issues. This note concerns especially contributions to edited volumes and journals. Such materials were used in chapter 3 in the section devoted to GATS and its main principles.

6.3.2 Stakeholders' views and standpoints

The main goal of chapter 8 is to construct a 'prototype' of a typical opponent and proponent of GATS with respect to higher education. Such a prototype was extracted from materials expressing stakeholders' views and standpoints. The content analysis of contributions focused not only on what was claimed but also which arguments were used and how they were supported.

The materials were systematically collected between the years 2001 and 2004 and analyzed afterwards. The main tool for retrieving relevant information was the Internet. The majority of study materials were found by using electronic search engines and intensive research of relevant websites. This primary 'on-line' search method was complemented by selected newspaper articles, contributions from conferences and seminars as well as individual e-mail exchange, the GATS-researchers mailing list, which was established at the end of 2003 by James Cemmell, a Ph.D. student from the Graduate School of Education at the University of Bristol, and materials collected in the GATS archive of the Center for Higher Education Policy Studies (CHEPS) at the University of Twente.

Analyzed materials have various forms. They include official documents, articles published in magazines and newspapers, contributions placed independently on the Internet, speeches at seminars and conferences, on-line news, press releases, briefings, interviews, information sheets, newsletters, statements, memos, letters, declarations as well as background notes and reports.

Several websites (see appendix III), providing a systematic overview and regularly updating their content on GATS, liberalization of services and related issues, were regularly searched to make sure that the analyzed collection contains as many available materials as possible. The snowball method was also partly applied, although by definition limited to those sources listing references. The diversity of collected materials, embracing a number of stakeholders, gives us reason to believe that no major contribution to the discussion on GATS and its impact on higher education was omitted.

Concerning newspaper and magazine articles, the portfolio of selected documents contained only articles that stated openly an opinion on GATS and higher education. Contributions that were of a descriptive nature were not used in this analysis. However, some of them were employed as a source of information in other parts of this study (chapter 3, section 3.5). Magazine and newspaper articles included in this analysis shall by no means be taken as a systematic sample of what has been published on GATS and higher education in printed media. The articles resulted mainly from the snowball method and were included if they highlighted new elements or new arguments. Selected articles from printed sources must be taken only as a minor supplement to the main on-line research.

At this point, several limitations should be stated. First, the analyzed collection was limited to stakeholders' views and standpoints that were made available to the public. For this reason, chapter 8 must be seen as an analysis of sources that were primarily designated for publication. On the other hand, we have to bear in mind that those statements were published in order to attract attention to the issue of GATS, to explain to others one's standpoints, or very often to convince others of certain standpoints. In either case, one must suspect that the arguments by nature are biased and incomplete. Yet this is exactly the reason why those arguments are interesting for this study.

On the other hand, taking the above mentioned line of reasoning, the collected materials cannot by any means provide a complete and exhaustive reflection of the attitude of all involved or potentially affected stakeholders, as it might have been demonstrated by their behavior, non-documented interaction with other stakeholders, or opinions expressed by individuals representing institutions on various occasions.

The selection of the language is also very important. All retrieved and collected materials are in English. Therefore the majority of contributions analyzed in chapter 8 came from either international organizations or from English-speaking countries such as Australia, Canada, United Kingdom and the United States. Time and financial restraints as well as the language capabilities of the author prevented further exploration of any other non-English discussion on the issue. This limitation is only partly overcome in the case studies as they outline the main points of the discussion on GATS and higher education in two non-English-speaking countries: the Netherlands and the Czech Republic.

On the other hand, GATS and other WTO related developments represent a global debate. In such a case, we would expect contributions to be published mainly in English in order to influence the debate. Therefore, we assume that the debate embodied in the English written materials encompasses all major arguments and elements of the discourse related to GATS and higher education.

Although sources of information are subject to the above mentioned limitations (electronic retrieval of materials and the language of contributions) it can be stated with a very high level of confidence that the collection of analyzed views and standpoints were assembled in such a way that they can be considered to represent sufficiently the 'on-line' discussion around GATS and further liberalization of higher education in the given period, at least to the extent that all major arguments concerning GATS and higher education were documented.

The final comment concerns the originators of collected materials. It was sometimes rather difficult to distinguish between an individual and an institution with which an individual was associated. If the author's name appeared on a document, but at

the same time the contribution was published for example in an official booklet, newsletter, publication, etc., then it was regarded as an 'institutional' view. Authors of contributions to books, edited volumes and journals were counted as individuals. Nevertheless, with the exception of some independent journalists, individual authors can almost always be associated with stakeholder organizations, institutions or 'movements'.

6.3.3 Case studies

In order to get a deeper understanding of the impact of higher education's inclusion into GATS on the steering capacity of a nation-state and to demonstrate whether and how both the GATS legal framework and the re-negotiation process (including stakeholders) influenced the national environment, two case studies in different European countries were conducted. The case studies were primarily focused on the two dimensions reflecting the trickle-down and trickle-up trajectories described in chapter 4, section 4.3. Based on the conceptual framework, one part of each case study deals with the legal consequences of GATS on domestic legislation. The second part looks at the decision-making process on the national level with a focus on behavior, involvement and interaction of various stakeholders.

For each case study the decision-making process on the national level during the re-negotiation round was traced. The method of gathering information was mainly semi-structured expert interviews. Governmental officers responsible for the GATS re-negotiation and other involved stakeholders were asked about various aspects of the decision-making process on the national level focusing in particular on their role and positions in the GATS' negotiation on higher education in the period 1995-2004.

One part of each case study was carried out with respect to the legal and regulatory consequences of GATS. The main objective was to evaluate what is the impact of GATS on the national legislation. First, we want to identify whether any obligations arising from GATS were implemented in domestic legislation. Second, we want to find out whether there were any conflicting provisions in the higher education legislation with respect to GATS' general rules and specific national commitments. Or, to put it differently, whether GATS' main obligations and disciplines affected national higher education legislation in a given time period.

Although including case studies, this study is not meant to be comparative *per se*. Behind conducting case studies on the nation level lies the underlying assumption that the impact of GATS on a nation-state and its elements (such as the steering capacity in higher education) can be reasonably assessed only within national settings. The original intention to undertake a larger number of case studies across countries with different backgrounds (developed versus developing, EU member

versus non-EU member, exporters of higher education versus importers of higher education, etc.) had to be modified due to feasibility constraints. Limiting this study to only one in-depth case study would, on the other hand, have eliminated the possibility of at least a minimum level of comparison between individual countries. Finally, the number of countries was set to two.

The selection of countries for the case study was influenced mainly by two factors. The first is the phenomenon of the European Union. The EU, or the European Commission in particular, has been playing an increasing role with respect to higher education. So the choice was made that one case study should be conducted in an 'old' EU member state, mainly due to the fact that both the European Commission and the EU member states were jointly competent to conclude GATS in 1994. Furthermore, the Commission negotiates on behalf of its member states under the World Trade Organization even when it comes to higher education services (see details in chapter 8, section 8.4)

Furthermore, an unprecedented status is associated with a number of new EU member states. Those accepted for EU membership in the middle of 2004 already made their individual commitments under GATS in 1994. Since their entrance to the EU, they were officially included in the EU negotiation mechanism. In order to be able to assess at least partly the role of the EU with respect to GATS, one case study was decided to be conducted in a 'new' member EU state.

The second reason for my country selection was the accessibility of data, persons, legal materials as well as sufficient knowledge of each system. In this respect also the language issue was considered as well as existing materials that could have been used.

For the above mentioned reasons the Czech Republic and the Netherlands were selected as suitable countries for conducting case studies. As a necessary condition, each country was either a collective or an individual member of the WTO at the time of its foundation, and both signed GATS in 1994. At the same time, the Czech Republic represents a new EU member state that negotiated the 1994 commitments on its own, whereas the Netherlands is an old member state.

Other factors were also taken into consideration when choosing these two countries. The Czech Republic is an example of a CEE country that left a centralized communist regime after 1989 and has radically changed the whole political system. This change has been reflected in all policy areas including higher education. The changes that were experienced by Western European systems gradually and over several decades have been implemented in CEE countries at a considerably higher pace, within a much shorter period. The Netherlands, on the other hand, represents a stable democratic country in Western Europe.

A scope limitation was applied also for case studies. The legal analysis of GATS' provisions and its impact on the national legislation was focused mainly to a particular mode of delivery – the commercial presence (mode 3 – see chapter 3, section 3.4) or, as is also used, the 'right of establishment'. This mode was identified during the on-going discussions on GATS as one of the most controversial.

At the same time, it must be borne in mind that the interviews and materials analysis in the Czech Republic and the Netherlands were conducted during 2005. Understandably, due to the turnover of personnel in the concerned institutions and different procedures of document storage, the accessibility of information varied between the two cases but also across players in each country, especially concerning materials from the end of the Uruguay Round in 1994.

Chapters 7, 8, 9 and 10 contain analytical and empirical parts of the study. The next chapter is devoted to a review of the literature discussing the impact of GATS on higher education.

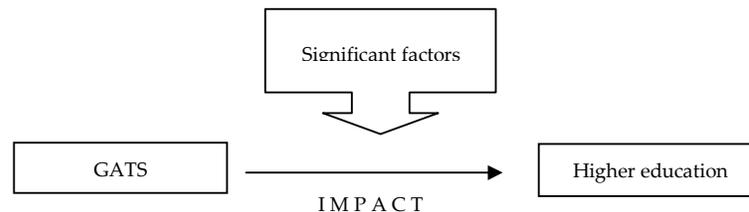
7 GATS' impact on higher education: A review of the literature

7.1 Introduction

This chapter presents an overview and analysis of the scholarly literature on GATS and its impact on higher education or—when found useful—on education in general. It discusses how the impact of GATS on higher education has been explored and studied by scholars and how systematically the issue has been approached. By systemizing and structuring scholarly contributions we want to identify observations and conclusions that can help answer our main research question and sub-questions. Another objective is to look for methodological approaches that might contribute to the case study design of the present study.

This chapter is structured according to the main elements of the GATS – HE impact model as depicted in figure 7-1: GATS, higher education, impact of the former on the latter, and significant factors influencing the relationship (i.e. how the impact is assumed or actually found to occur). Section 7.2. discusses the level of the analysis distinguishing between the national and global level. The following sections are devoted to the above mentioned elements – GATS and its components (7.3), the higher education system and its elements (7.4), impact and the significant factors determining this impact (7.5). Section 7.6 presents an overview of studies on the impact of GATS from a particular legal point of view. Finally, section 7.7 discusses the results and conclusions.

Figure 7-1: GATS-HE impact model



7.2 National and global level

The first criterion according to which the analyzed materials can be divided, is whether GATS and its impact or its implications are analyzed on the national level or globally. The impact of GATS with respect to the United Kingdom is discussed by AUT (2003), Nunn (2001), Rikowski (2003) and Worth (2000). Allport (2002), NTEU (2001), Ziguras, McBurnie and Reinke (2003a,b) focus on Australia; AUCC (2001, 2003) focus on Canada; and the impact of GATS on South Africa is elaborated by CHE (2003) as well as Pillay, Maassen and Cloete (2003). Furthermore, Schugurensky and Davidson-Harden (2003) study potential implications of GATS for countries in Latin America and Ziguras (2003) compares four countries (New Zealand, Australia, Singapore and Malaysia). Further studies focusing on the national level (e.g. on Switzerland) are presented in section 7.6 as they apply a particular legal type of analysis.

The impact of GATS on the global level is examined for example by Altbach (2001), Barblan (2002), Cohen (2000), Hirsch (2002), Knight (2002, 2003a), Larsen, Morris and Martin (2002), Larsen and Vincent-Lancrin (2002), OECD (2002), OECD (2004b), Robertson, Bonal and Dale (2002), Saner and Fasel (2003), Sauvé (2002), UN (2002), Van Damme (2002b), Van der Wende (2002a), Vijlder (2002) and Ziguras (2002).

Detailed discussion of the above-mentioned contributions follows later in the remainder of this chapter. This basic division should give the reader the main idea that the whole discussion on GATS and its impact generally takes place along two main dimensions: first on the global level, and second within national boundaries and comparatively. It appears that the studies focusing on the global level do not offer significant help with respect to methodological guidance for the present study. What is discussed more thoroughly in these contributions is the influencing phenomenon – GATS or globalization. The impacted part of our suggested model (the nation-state, its steering capacity and the higher education system) is usually mentioned only in very general and broad terms in these contributions.

The national level studies, on the contrary, pay more attention to various components of higher education systems. The question how these components are or can be influenced by GATS is also addressed. Although not extensively, some contributions still offer methodological suggestions useful for the design of case studies, and thus partly helping find answers to the main research question.

7.3 GATS

The left side of the GATS-HE impact model (see figure 7-1) represents GATS itself. It is very interesting to see which components—in our case basically the principles, rules or particular provisions—were discussed the most with respect to higher

education. Our analysis shows that attention was paid most to the following articles of GATS: Article 1.3 – ‘the Exemption Article’, Article II – Most-Favored-Nation Treatment, Article VI – Domestic Regulation, Article VIII – Monopolies and Exclusive Service Suppliers, Article XVI – Market Access, Article XVII – National Treatment, and finally PART IV – Progressive Liberalization.

Article 1.3.

The component of GATS that appeared most often in the analyzed literature was Article 1.3. (AUCC, 2001, 2003; AUT, 2003; Barblan, 2002; Knight, 2002, 2003; Larsen, Martin & Morris, 2002; Larsen & Vincent-Lancrin, 2002; Nunn, 2001; OECD, 2002, 2004; Pillay, Maassen & Cloete, 2003; Sauvé, 2002; Vijlder, 2002; Van der Wende & Huisman, 2004; Worth, 2000).

Article 1.3. of GATS specifies that:

‘services’ includes any service in any sector except services supplied in the exercise of governmental authority; ‘a service supplied in the exercise of government authority’ means any service which is supplied neither on a commercial basis, nor in competition with one or more services suppliers.

The meaning of the provision was found rather ambiguous by many commentators. The basic question which is asked is whether higher education can at all be excluded from GATS by virtue of Article 1.3. Nunn (2001) for example emphasizes that according to some GATS critics the exemption of Article 1.3. is too narrow and does not effectively exclude most public services.

Sauvé (2002) notes that ‘public services’ were understood very broadly by GATS negotiators. The WTO member states’ governments did not reach an agreement on the clarification of public services under GATS. However, it is commonly understood on the inter-governmental level that public education services and education services supplied by private actors on a non-commercial basis are excluded from GATS.

Larsen and Vincent-Lancrin (2002) agree with those arguing that the definition of public services in the GATS guidelines is rather ambiguous. Public higher education institutions in many countries provide their services on a commercial basis and compete with institutions that provide their services commercially. The political consensus for clarification of the definition is missing, therefore any specific interpretation lacks credibility.

The generally expressed opinion at the OECD/US Forum (see chapter 8, section 8.5 for more details) was that Article 1.3. does not apply to higher education, whereas the primary and secondary education sector should be exempt from GATS. On the other hand, according to some trade officials, Article 1.3. is ‘self-defining’, meaning that different services in different countries could be covered (AUCC, 2003).

It is noted that public-sector higher education—providing in many cases services on a commercial basis and competing with other commercial institutions—does not fall within the GATS definition of public services. There is very little consensus to clarify this definition, however, and there seems to be no intention to narrow the exclusion of governmental services from GATS (OECD, 2004).

It is argued that as public education providers in many systems compete with private ones, the exemption of Article 1.3. does not apply to higher education. Another issue for further discussion is whether public and private providers supply education '*like services*' and whether charging tuition fees does make public provision '*commercial*' (Knight, 2003a; OECD, 2002).

Due to the lack of clarity, especially with respect to the terms '*non-commercial basis*' and '*not in competition*', some authors express the idea that it is quite likely that public higher education sectors may not be exempt from GATS (AUT, 2003; Pillay, Maassen & Cloete, 2003). Knight (2003a) highlights that these terms are not clear especially when taking into account diversified and mixed higher education systems in various national settings.

The status of public services as government services excluded from GATS is called into question due to the co-existence of public and private providers according to Larsen, Martin & Morris (2002). At the same time they argue that "such co-existence does not necessarily mean that they are *like services*, nor that they are in competition, and therefore does not bring public services automatically into the purview of GATS. Nor does the fact that fees might be charged for some government services, e.g. for school enrollments, automatically make the service one supplied *on a commercial basis*" (p. 12).

Vijlder (2002) highlights the fact that the majority of higher education providers included in the publicly funded sector can be seen protected from GATS due to Article 1.3. On the other hand, he questions the level of the 'protection' as there are still many ambiguous, grey areas in many national systems, which are open to gradual commercialization.

Van der Wende (2003a) stresses the same point in stating that for instance the Dutch higher education system is hybrid due to market-type steering in higher education (enhancing commercially-based activities by public institutions), due to the fact that public institutions take a private status when they operate abroad, and because of constitutional conditions that define the majority of higher education institutions as private entities in the legal sense, despite the fact that they are publicly funded. The status of public institutions operating abroad as private subjects is also questioned by Knight (2002) and Barblan (2002). Barblan at the same time asks about the role of private universities fulfilling a public role.

Several comments have been made with respect to national higher education systems. Worth (2000) states that the United Kingdom public education sector is not likely to qualify as 'non-commercial' as state-run schools and universities compete with private enterprises at all levels. The UK higher education sector is made up of a mix of public and private institutions, therefore it does not seem to be protected by the exemption of Article 1.3.

A similar situation applies to the Canadian higher education sector. The existence of tuition fees, private contracts, donations and endowments might be viewed as a feature of being provided 'on a commercial basis'. At the same time, public universities can be regarded as being 'in competition with one or more service suppliers' as there operate private universities in many provinces. It also seems that Article 1.3. is being interpreted rather narrowly as can be seen from a background note on health and social services by the WTO Council on Trade in Services (AUCC, 2001).

Article 1.3.—as one can see from the above described debate—has understandably been the most discussed element of GATS. First of all, it has been caused by the fact that some of the articles' provisions do not have clear interpretation. Secondly, and probably more importantly, the reason for such a heated dispute is mainly that GATS' opponents argue that higher education is a public good. Yet higher education systems have become hybrid in their nature over years in many countries. Therefore, it is very difficult to apply certain provisions of GATS, e.g. Article 1.3., across systems containing both public and private elements.

Article II – Most-Favored-Nation Treatment (MFN)

Part II of the Agreement contains general obligations and disciplines. Article II on Most-Favored-Nation Treatment (MFN) appeared several times in contributions (AUCC, 2001, 2003; Ziguas, McBurnie & Reinke, 2003b). For more details on MNF see chapter 3, section 3.4.

It is argued that for example public post-secondary education in Canada is subject to MFN treatment, even if it does not make any further commitments in the sector. If a foreign institution is granted a right to operate within the jurisdiction of a province, such a treatment must be granted to all other WTO Member countries. It still remains unclear whether a foreign university operating within the jurisdiction of one province can automatically operate in other provinces. Similar questions are raised regarding on-line providers accredited and operating in one jurisdiction (AUCC, 2001).

It is also questioned whether in the long term, the MFN treatment does not mean 'liberalization through the back door'. Opening doors to one foreign for-profit provider must be communicated in the broader context of GATS. It seems difficult

to retract some of the current privileges that have been given to some specific countries by for example a particular country's province (AUCC, 2003).

Ziguras, McBurnie & Reinke (2003b) state that the MFN can be very significant with respect to funding foreign institutions. It is argued that allowing one foreign university to have access to subsidies—which is the case of Japanese-owned Bond University in Australia—and ruling out other foreign-owned institutions may constitute a breach of the MFN principle.

Article VI – Domestic Regulation

Article VI on Domestic Regulation was also discussed by commentators (Knight, 2002, 2003a; Sauv , 2002). Article VI in paragraph 1 says that "in sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner." The article furthermore requires each member state to maintain procedures (or tribunals) available for a potentially affected service supplier to receive a prompt review of administrative decisions affecting trade in services or appropriate remedies. Paragraph 4 of Article VI also allows the Council for Trade in Services to develop necessary disciplines in order to ensure that "... measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services ...". Those requirements should be based on objective and transparent criteria (4a), should not be more burdensome than necessary to ensure the quality of the services (4b), should not in themselves be a restriction on the supply of the service in the case of licensing procedures (4c).

Knight (2002) states that Article VI, paragraph 4 may have serious implications for education, and therefore requires further clarification. She argues that the language is purposely vague – the terms 'more burdensome than necessary' or 'quality of services' are not well defined. Therefore, it is not clear what consequences it might have for quality assurance and accreditation procedures as well as for the regulation of professions (Knight, 2003b).

Sauv  (2002) notes that Article VI, paragraph 4 has been at the center of very strong criticism. A rather controversial aim of discussions that started at the end of the Uruguay Round was to develop new disciplines which would ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not present unnecessary trade barriers. Nevertheless, the 'necessity' test has not been developed yet.

Article VIII – Monopolies and Exclusive Service Suppliers

Article VIII - Monopolies and Exclusive Service Suppliers was also discussed. According to Article VIII each member state should ensure that monopoly suppliers of a service act in line with the MFN principle and specific commitments.

At the same time, the supplier should not abuse its monopoly position in the case of supplying its services outside the scope of its monopoly rights.

It is argued that by making commitments in education services, Article VIII could be invoked. Canadian universities, for example, could be considered to have a monopoly in areas such as undergraduate liberal arts and social science programs (AUCC, 2003). If any WTO member believes that a monopoly supplier of a service in any other state does not act in line with Article VIII, a request can be made through the Council for Trade in Services to provide specific information concerning the relevant operations.

Article XVI – Market Access

Article XVI - Market Access (for more details see chapter 3, section 3.4) from Specific Commitments (PART III of GATS) was also commented upon.

It is emphasized by Sauvé (2002) that WTO members are not obliged to grant market access to foreign investors. Moreover, they can maintain existing discriminatory or quantitative restrictions. Allport (2002) points out that the national treatment obligation can be directly linked to the ability of national governments to regulate new foreign providers seeking accreditation in national jurisdictions as well as to the issue of governance structures.

Article XVII – National Treatment

Article XVII - National Treatment (see chapter 3, section 3.4 for more details) was discussed by Allport, 2002; AUCC, 2001; NTEU, 2001; OECD, 2002; Worth, 2000; Ziguras, McBurnie & Reinke, 2003b.

Worth (2000) suggests that the government payment of student fees in [the UK] public institutions can be considered as discriminatory under the GATS rules and restrictions. As a consequence, the government might be forced to either give the same subsidies to students at private institutions or abolish state financial support to students completely.

If a country decides to make a full commitment, any subsidies given to domestic suppliers must be given to foreign suppliers under national treatment. When taken to the extreme, the [Canadian] government could be subject to action due to unfair subsidy, and would have to stop preferential treatment to domestic providers. This would have serious impact on [Canadian] higher education institutions (AUCC, 2001).

Similar consequences are suggested for Australia. As it already provides public funding to two private universities, Notre Dame University and Bond University, under the national treatment obligation any new foreign university registered under the Australian jurisdiction would be entitled to receive grants of public money. The foreseen consequences include claims for public funding from

domestic private providers, reduction in grants to public institutions, and competitive tendering and voucher-based funding (NTEU, 2001; Allport, 2002).

Also focused on Australia, Ziguras, McBurnie & Reinke (2003b) elaborate the National Treatment commitment along various modes of delivery. Especially consumption abroad (mode 1) and cross-border supply (mode 2) seem to be of highest interest. Furthermore, it is also mentioned that by not committing to National Treatment for commercial presence (mode 3) the Australian government intended to keep the ability to discriminate between foreign and domestic private institutions in relation to subsidies.

The European Union, on the other hand, advocates the position that the national treatment principle does not apply to the provision of subsidies to foreign providers within public education. It is argued that governments are not required to provide foreign providers with subsidies on the same conditions as domestic ones (OECD, 2002).

PART IV – Progressive Liberalization

Finally, PART IV – Progressive Liberalization and its actual meaning for education was also mentioned. Article XIX includes the essence of the progressive liberalization concept. It reads as follows:

In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, 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.

It is expected that the ‘built-in agenda’ of progressive liberalization will address the issue of how the international market in education services can be further liberalized and the barriers to trade in education removed or reduced (OECD, 2002). Knight (2002) highlights two aspects of progressive liberalization: extending GATS coverage to more service sectors and decreasing the number and extent of measures that serve as impediments to increased trade. As a consequence of GATS’ intention to facilitate more opportunities for trade, she expects countries that are not interested in either export or import of education to be under increasing pressure to allow market access to foreign providers.

With respect to GATS and its components, it can be concluded that the main issue in the analyzed literature is whether public services and higher education in particular are excluded from GATS by virtue of Article 1.3. A clear definition of some terms of the article such as ‘on a commercial basis’ or ‘in competition’ is still missing. Other articles (Article II, Article VI, Article VIII, Article XVI and Article

XVII) are related to the ability of a government to regulate the higher education system either through subsidies, quality assurance or access to the market in general. The consequences are expected to be crucial especially for the public sector. PART IV – progressive liberalization seems to be important with respect to future pressure on countries to open their markets to foreign providers.

7.4 Higher education

The previous section discussed how various scholars operationalized GATS. The right part of the GATS-HE impact model—as important as the first one—is higher education. This section focuses on what various authors actually mean by higher education; which elements are expected or considered to be mostly affected by GATS. This section will present an overview of them. The way these elements are supposed to be influenced by GATS is discussed separately in the following section of this chapter (7.5).

As is demonstrated in the following text, higher education is operationalized at various levels: global, national and institutional. According to those levels, the contributions can be subdivided into several groups. On the most general level, the impact of GATS is discussed on cross-border education (OECD, 2002). Robertson, Bonal and Dale (2002) discuss the impact of GATS on the nation-state's education system. Some authors focus on specific segments of higher education. Both Cohen (2000) and Schugurensky with Davidson-Harden (2003) talk specifically about public education. The impact of GATS on public post-secondary education in Canada is discussed by the AUCC (2001). Contributions are also devoted to the impact of GATS on higher education institutions and their autonomy in general (Altbach, 2001), or specifically on Canadian universities (AUCC, 2003).

Apart from these different levels, the various documents can also be categorized according to the aspects of higher education they focus on, including specific policies that are being implemented on both the national and international level. The implications of GATS are discussed with respect to quality assurance (Van Damme, 2002b) and international quality frameworks, e-learning providers, regulation of foreign providers, and intellectual property rights (Larsen, Martin & Morris, 2001). Nunn (2001) looks at the impact of GATS on higher education employment, academic freedom and professional autonomy, intellectual property rights, student access and academic quality.

Knight (2002) identifies several policy issues that are relevant for GATS and its impact. They include the role of government, student access, funding, regulation of foreign or cross-border providers, recognition and transferability of credits, quality assurance and accreditation, research and intellectual property rights,

internationalization, mobility of professionals/labor force, culture and acculturation and institutional level issues.

Many issues concern societies, institutions as well as individuals. The impact of GATS is questioned in connection with the right to education and the right to development. These issues include quality assurance and accreditation, brain drain, public funding and access (UN, 2002). Other materials pay attention to equity, equality, development, democratization, academic freedom, institutional autonomy, effectiveness and efficiency, and public accountability (CHE, 2003) or access and equity, cost and funding, quality and capacity building (OECD, 2004b).

Finally, the impact of GATS is studied with respect to government regulation – the ability to steer the development of private education, the ability to control the number and location of universities, the number of students in private institutions, the range of disciplines taught and the level of supply of graduates in particular fields of study (Ziguras, McBurnie & Reinke, 2003b).

The notion of higher education is indeed very broad in studies and the contributions focusing on the impact of GATS on higher education range from individual qualities, through institutions to international systems and general concepts. Several times also the nation-state and its role in higher education is mentioned, although not elaborated in-depth, with the exception of the contribution by Ziguras, McBurnie and Reinke (2003b). Their contribution goes in a very similar direction as this study and specifies some characteristics that can be attributed to the regulatory authority of the government and its steering capacity in higher education (see section 7.7 for more details).

According to the above mentioned contributions it appears that almost all elements of higher education systems are potentially impacted by GATS according to commentators. First of all it includes national higher education systems as a whole, mainly public sectors. At the same time individual higher education institutions are subject to influence, namely their autonomy. At the same time, individual students (access) and academics (employment, academic freedom) are also perceived as potentially affected. The most important component with respect to this study which is assumed to be influenced is government regulation.

7.5 Impact

After the two main elements of the impact model (figure 7.1)—GATS and higher education—were discussed in the previous two sections, the next step is to have a look at their relationship. The questions, which are very crucial to linking the

whole analysis back to the main research question, might be formulated as follows: How do different authors analyze the impact or possible implications of GATS on higher education? How do they operationalize it? Do they offer any method which can be used across countries and policy areas? Is there any approach that can be used for case studies?

Authors use the terms *impact*, *influence* or *implications* in their contributions, however, they very often fail to elaborate to a sufficient depth what they mean by these terms. After a thorough analysis of all contributions, it must be stated that they very rarely identify or explain any specific mechanism through which higher education, its components or qualities might be impacted. Nevertheless, there are a few examples which provide at least some suggestions or guidance to the question whether at all and how GATS can impact higher education. These will be highlighted in the text.

Before going through the materials, there is one comment concerning the impact assessment itself. Rikowski (2003) thinks that although needed, an exercise to develop scenarios of what might or could happen through the application of GATS imperatives and disciplines might still be seen as partially speculative. The consequences that are expected from GATS often seem to require rather extreme conditions to be met such as very proactive (almost aggressive) behavior of other WTO member states, very strict interpretation of the WTO rules by the Appellate Body⁴³, etc. By looking at the actual legal consequences of GATS, by studying the behavior of various stakeholders, and by conducting in-depth case studies in two selected countries, this study represents an attempt to overcome such speculative and often extreme scenarios.

Analysts of GATS' impact on higher education can be subdivided into three groups. The first group of authors declares that GATS does indeed have an impact or at least a potential to impact higher education or the ability of a nation-state to provide higher education. Many contributions, however, operate only on a very general level as can be seen in the following examples. Cohen (2000) argues that GATS has a potential to limit the role of government in the delivery of public services. All higher education systems can be affected by GATS, as some private providers exist in the majority of them. Once the barriers to trade are removed, the private sector becomes very powerful, and therefore the public delivery of educational services will be undermined. Worth (2000) sees the implications of GATS in the new area of rules and restrictions on government subsidies. If the rules are agreed, the government would either have to subsidize private, foreign-owned institutions, or to cease subsidizing higher education in this way to all. Altbach (2001) talks about the implications of GATS especially in less developed economies.

⁴³ The Appellate Body is part of the WTO dispute settlement and enforcement mechanism (see Article XXIII of GATS). The Appellate Body hears appeals from panel cases.

In developing countries, by being exposed to an academic marketplace regulated by the WTO, universities would be swamped by overseas institutions and programs intended primarily to earn a profit instead of contributing to national development.

An important aspect of GATS is its orientation towards 'the market'. One argument is that GATS may lead to expanded use of electronic or distance education and contribute to more commercial or market oriented education (Knight, 2002). Another argument is that liberalization of trade in services through increased foreign investment would lead to the establishment of a two-tiered system (public for poor and sick students versus private for healthy and wealthy), brain drain, over-emphasis on commercial objectives at the expense of social objectives, and the threat to the role of the government by large and powerful private sectors. It is stressed, however, that the application of GATS' rules still remains untested and is in a process of development (UN, 2002).

Provided a country commits itself to GATS' rules, foreign education service providers would be guaranteed the right of access and operation, including the right to invest, to be given degree-granting authority, to be eligible for government grants for their own operations or for their students, or to send in their own labor. As a consequence of this, the private sector would be able to challenge government monopolies (direct subsidies and cross-subsidization within an institution) and therefore undermine public delivery of education services. As a result, GATS' rules can be seen as undermining the strategic, economic as well as social function of education in national systems (Robertson, Bonal, & Dale, 2002).

The two following comments come from the African continent. With increased liberalization foreign providers with programs of questionable quality might enter some SADC countries⁴⁴. Another aspect of liberalization in higher education would be increased migration resulting in exacerbation of the staffing situation at higher education institutions (Pillay, Maassen & Cloete, 2003).

It is often perceived that GATS has a potential to further the project of privatization of higher education. Any financial incentive, fee-paying scheme or tax incentive could be vulnerable to GATS because they can be viewed as unfair competition to private educational providers which are not included in the system. As a result, resources might be directed away from more universal forms of public education toward multi-tiered systems based on the ability to pay (Schugurensky & Davidson-Harden, 2003).

⁴⁴ SADC stands for Southern African Development Community. The members of SADC are Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania and Zimbabwe.

Some authors focus on specific articles or disciplines of GATS and try to explain how those would affect various components of higher education systems. Many of them emphasize potential significant consequences for public funding. Nunn (2001) for example argues that Article 1.3. does not apply to the higher education sector in the United Kingdom, therefore the scope of GATS allows liberalization leading to the decline of public funding. This would then impact policy areas such as employment, professional autonomy, academic quality, etc.

If a country decides to make a full commitment, the national treatment clause would remove the ability of a government to give preferential treatment to domestic providers. Any subsidies given to domestic suppliers would have to be equally given to foreign suppliers. If taken to its extreme, public funding could potentially be subject to action as an unfair subsidy (AUCC, 2001).

Similarly, through the national treatment obligation, any new foreign entrant registered in a national or regional jurisdiction (in this case Australian) would be eligible for grants of public money. That would mean among other things a reduction in grants to public institutions. Under Article IV the WTO disputes panel can override national licensing and qualification requirements or procedures (NTEU, 2001; Allport, 2002).

Another example of a potential implication of a specific GATS' article is described for the United Kingdom. Applying Market Access and National Treatment rules makes it very difficult to control the quality of the sector. Consequences of commitments in mode 4 (presence of natural persons) would mean less secure employment to the academic staff (AUT, 2003).

Concerning Australia, it is argued that through Market Access commitments the future Australia governments' ability to shape private sector provisions in the public interest might be restricted. Governments might find it difficult to control the number of providers, the number of enrolled students, the legal form of new providers or levels of foreign ownership (Ziguras, McBurnie & Reinke, 2003b).

Some comments focus directly on quality assurance. The quality assurance regimes as well as other elements of domestic regulation might be influenced while ensuring compliance with GATS. As a result their ability to ensure national quality might be reduced (Allport, 2002). It is also argued that GATS might undermine a quality assurance mechanism through the WTO panel overruling assurance regulations in the case of a trade dispute. The consequence would be weakening the quality standards in a country (Ziguras, McBurnie & Reinke, 2003b). Van Damme (2002b) highlights that the development of trade in higher education will put some pressure on quality assurance models, especially in cases where national accreditation systems act in a rather protectionist manner and pose a great obstacle for foreign providers. Van Damme also expects strictly national quality assurance and accreditation systems to be gradually

complemented or replaced by stronger international cooperation, networks and systems that will be able to address more adequately the regulatory demands of trade in higher education services.

At this point, it is also very useful to underline a parallel that is related to other liberalization policies. Especially in the context of African countries, it is very difficult to assess whether the impact of opening up trade in higher education services will be different from the rather questionable results of opening up the international trade in goods (CHE, 2003). A similar comment is made with respect to South America. Any positive effect of GATS in education is questioned due to the rather negative impact of two decades of neo-liberal experiments on social and educational equity (Schugurensky & Davidson-Harden, 2003).

Although very rarely found in the discussion of the impact of GATS, the second group of commentators attributes at least some positive effect to GATS. Schugurensky and Davidson-Harden (2003) admit that GATS might provide some potential advantages for the countries that decide to export educational services.

The third group of authors attaches GATS rather limited or no impact on higher education. Sauvé (2002), for example, states that GATS does not have the potential that has been attributed to it by its main critics. Neither is GATS the driving force behind the explosive growth in international trade in educational services in his view.

Ziguras (2002) argues that GATS neither puts pressure on governments to fund public and private institutions equally, nor prevents them from implementing policies and regulatory measures to steer private sectors in order to achieve particular social and cultural objectives. Similarly, each country is free to decide nationally to what extent it will publicly finance higher education for its own citizens. At the same time, GATS is said not to prevent WTO members from maintaining monopoly or exclusive suppliers (OECD, 2004b).

Another way to look at the relationship between an individual country's higher education system and GATS, which is very inspiring for the methodology it employs, is offered by Ziguras (2003). He looks at four tertiary education systems, namely New Zealand, Australia, Singapore and Malaysia. New Zealand and Australia made their commitments⁴⁵, whereas Singapore and Malaysia did not. Ziguras argues that in the case of New Zealand its commitments did not have an appreciable impact on the number or size of foreign providers operating in the

⁴⁵ New Zealand made a full commitment to both market access and national treatment for private tertiary education in a cross-border supply (mode 1) and commercial presence (mode 3). Australia committed to market access and national treatment for foreign tertiary providers delivering distance education programs through cross-border supply. However, in mode 3 (commercial presence), Australia committed to market access, but not to national treatment.

country. The private sector has been influenced by the extent of received public funding, and this has not been related to GATS. As Australia made commitments only in relation to private tertiary education and at the same time did not commit to national treatment for commercial presence (mode 3) its policy in discriminating between foreign and domestic private institutions in respect of subsidies remains intact.

Singapore and Malaysia, both importers of transnational education, did not make any commitments under GATS. Ziguras highlights that Singapore would have to establish more transparent guidelines and processes for approving external programs and foreign branch campuses and treating foreign universities under the same conditions as local private universities if committed under GATS in commercial presence (mode 3). In Malaysia once established, foreign universities' branch campuses are subject to the same regulations as local private universities with no further distinction. Also compulsory subject requirements are applied to all students across the private sector. It means that Malaysia's potential GATS commitments in mode 3 (commercial presence) would not mean any significant change in governmental policy.

The previous section demonstrated how the impact of GATS on higher education has been analyzed by various scholars. As was already stated at the beginning of this section, specific mechanisms through which higher education is or could be impacted by GATS are not often explored in detail (including the assumed causalities). However, some scholars have at least made clear that the impact of GATS on a specific higher education system depends, or might depend, on certain significant factors. By this term we mean conditions that would determine the impact of GATS. Table 7-1 gives an overview of the factors that were identified as significant in the analyzed materials.

Based on the selected factors, the following statement can be made: The impact GATS has or would potentially have on a country's higher education system or its various components depends among other things on:

- the country's position, i.e. economic development, decision making and (geo)political power
- the structure of the education sector and level of existing services
- the mode of service delivery

The identified factors should be borne in mind when answering our main research question, and especially the third sub-question regarding other developments on the national and European/international level affecting the steering capacity of a nation-state in higher education (see chapter 1, section 1.5). A major objective of the two case studies (see chapters 9 and 10) is also to test at least partly whether any of these factors are in fact relevant with respect to the impact of GATS on the two higher education systems under scrutiny in this

study. Therefore, both case studies include a section discussing the main characteristics of respective higher education systems, historical background, existing policies, etc.

Table 7-1: Significant factors determining the impact of GATS on HE

Authors	Significant factors
Cohen (2000)	Result of trade negotiations and the position of national governments
Altbach (2001)	Level of country's development
Larsen & Vincent-Lancrin (2002)	Various types of economy (industrialized, emerging, developing), educational sector (traditional, lifelong learning) and service provision (some or no physical mobility)
Van Damme (2002b)	Mode of delivery (cross-border supply, consumption abroad, commercial presence, presence of natural persons)
UN (2002)	Mode of service (mode 3 is seen as the most problematic), the development level of the country and its internal infrastructure, the regulatory environment as well as the level of existing services prior to liberalization
Robertson, Bonal and Dale (2002)	The capacity of a nation-state to deal with the new rules of the game in an interstate system of decision making by participating in the global agenda and influencing its outcomes. Such a capacity depends to a large extent on the economic and political power of an individual nation-state.
Rikowski (2003)	Government policy
Schugurensky & Davidson-Harden (2003)	A region's history in terms of political economy and geopolitical relations as well as organizational and corporate actors particular to the region
OECD (2004b)	Commitments made by countries, meaning that they will depend on their national decisions

7.6 Legal analysis

A final type of studies analyzed in this chapter, looking at the impact of GATS on higher education is represented by legal analyses. They are presented separately, as they look at the impact of GATS as a purely legal instrument without taking into account any other broader concepts not explicitly included in the agreement itself. This section discusses several such contributions. Attention is given specifically to those findings which further elaborate issues presented in previous sections (mainly 7.3) and to those that can be universally applied in any country.

Gottlieb and Pearson (2001) give a legal opinion concerning GATS' impact on education in Canada. The study discusses educational services in Canada, GATS definitions of services and education, GATS provisions, Canada's position under GATS, and the state of negotiations at the time of publishing the document. A significant part of the document is devoted to the definition of services supplied in the exercise of government authority (Article 1.3). An elaborated opinion is given on the phrases 'commercial basis' and 'in competition with'. The authors are of the opinion that:

a public university that charges fees to provide services with the intent of making profits would be considered as providing a service on a 'commercial basis' and to be covered by GATS; or provides services mainly with intent of competing for same service users and market rather than in fulfilling a governmental duty would be considered to be in 'competition' with other education service providers and also be covered by GATS (p. 3)

The authors furthermore discuss the impact of conditional obligations of GATS such as Market Access, National Treatment and Domestic Regulations. The situation is clear for Canada, as it has not made any commitments in the area of education. It is stated that "as long as [Canada] does not discriminate among foreign suppliers (Article II), it may therefore impose requirements on foreigners additional to those imposed on nationals" (p. 20).

Cottier, Breining-Kaufmann and Kennett (2003) study the impact of GATS on higher education services in Switzerland⁴⁶. Several general comments are important with respect to the ability of a nation-state to steer higher education. Firstly, when discussing the Most Favored Nation principle set out in Article II of GATS, the authors stress the fact that preferential arrangements are not excluded. Secondly, under Article XIV (General Exceptions), WTO members can invoke exceptions leading to restrictions of foreign offers. "Of particular importance to education is the provision that is established to prevent deceptive and fraudulent practices. Unsound and dubious offers which may deceive the public therefore can be excluded even under full market access conditions" (p. 69). Thirdly, it is emphasized that GATS does not contain disciplines on subsidies in Article XV (Subsidies)⁴⁷. At this stage, governments are not limited as to how and to what extent they can use subsidies in support of domestic suppliers. Finally, a general conclusion is drawn that:

there is no general obligation under GATS for members to give market access or national treatment (which means equal treatment for foreign and one's nationals) to other members. However, once a member has agreed a minimum level of treatment for foreign services and services suppliers, this commitment is binding (p. 71).

⁴⁶ Switzerland made full commitment for modes 1, 2 and 3 in higher education services. For other countries' commitments see chapter 3, section 3.5.

⁴⁷ Article XV anticipates negotiations on multilateral disciplines which would avoid distortional effects of subsidies. It does not impose any further obligations on WTO member states.

Authors pay specific attention to the issue of national treatment and public funding in the Swiss setting. They note that the right of foreign private operators to offer and establish higher education services in Switzerland is practically the same as for domestic institutions. The question is whether under GATS foreign providers are entitled to share public funding once they offer their services in Switzerland. It is stated that funding of public institutions—which is not explicitly address by GATS—is subject to conditions under Article XVI (Market Access) and XVII (National Treatment). At the same time, WTO members are free to condition national treatment in their specific commitments and exclude all subsidies from it.

Furthermore, members can condition the grant of funding in their domestic regulation and make it subject to specific criteria of public policy and quality standards. As a solution, "... funding may be limited to public institutions domestic and foreign. In the private sector, it may be limited to recognized institutions which correspond to assessed quality standards" (p. 79). Cottier, Breining-Kaufmann and Kennett place the subsidy issue in the broader picture. They state:

it is conceivable that, in the future, a foreign university would establish a subsidiary under Swiss company law, seek recognition and accreditation and would subsequently be eligible for funding on the basis of national treatment if all the criteria are met. This result is fully in line with the overall purpose of GATS which does not provide for better market access without compromising public policy goals of high quality education and research. In fact, as all criteria for funding are met, the institution per se would be considered to be in the interest, and part of, the Swiss educational system and contribute to its variety and to institutional co-operation (p. 80).

7.7 Discussion of results and conclusions

This chapter discussed step by step the main components of the GATS-HE impact model as depicted in figure 7-1, i.e. GATS itself, higher education, the impact of the former on the latter, and factors influencing this relationship. Individual contributions were systematically structured and those offering useful or at least inspiring ways of assessment were highlighted. The focus of this section was also on approaches and methods that have been employed, which could be useful for the design of our case studies.

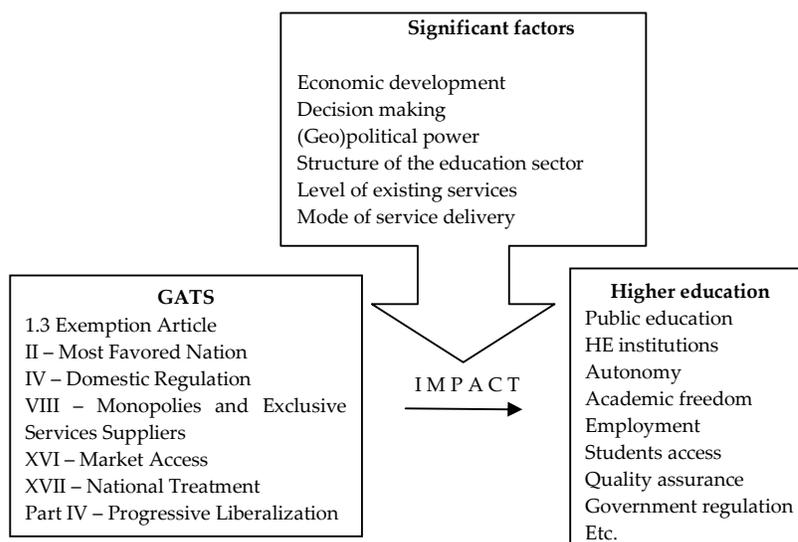
The scope and definition of the Agreement (Article 1.3), the Most-Favored-Nation Treatment (Article II), Domestic Regulation (Article VI), Monopolies and Exclusive Service Suppliers (Article VIII), Market Access (Article XVI), National Treatment (Article XVII) and Part IV (Progressive Liberalization) were the GATS parts considered most relevant by the analysts.

With respect to this study, the most important elements of higher education that could (potentially) be impacted by GATS were found to be public higher education and government regulation of higher education, including a quality assurance mechanism.

And the factors that mostly determine the way in which GATS might impact higher education were identified as the country's position, i.e. economic development, decision making and (geo)political power, the structure of the education sector and level of existing services as well as the mode of service delivery.

This means that our initial impact model can be elaborated as follows in figure 7-2. These various elements of the model shall be explored further in the national case studies in chapters 9 and 10.

Figure 7-2: GATS-HE impact model - elaborated



With respect to the approaches and methods used, the studies discussing the impact of GATS on higher education vary immensely regarding their scope, focus, depth of analysis, descriptive tools, the way in which individual components of the main model are connected, and the approach used to identify the impact itself. Most of the contributions identify and discuss important points, but the analytical elaboration of suggested connections is in many cases still diffuse or even missing. In many cases the statements lack explanations and a chain of sufficient arguments,

i.e. systematic argumentation based on valid assumptions regarding the working of trade agreements in (public) service sectors in general and within a specific national jurisdiction in particular. Many contributions contain very strong and resolute propositions, although the problems are only slightly tackled on the surface and not deeply analyzed. What is mostly absent is a solid link between GATS—its general rules and specific disciplines—and a particular national environment. A sufficient description of domestic conditions and an enumeration of relevant legal settings, which would allow to identify more precisely existing or potential collisions with major GATS principles, have been so far absent in most contributions.

Yet some methodological issues were tackled in the analyzed studies that can be used for constructing a design for our case studies on the impact of GATS on higher education (chapters 9 and 10). The first issue has to do with the question: which developments can and which cannot be attributed to GATS? At this point, many would rightly ask how one can assess an impact of something which in many cases has not taken place yet. This is indeed very difficult and to a high extent rather speculative, as Rikowski (2003) argues. To find a way around this problem, Ziguras' approach (2003) can be applied. He argues that it is very difficult to determine which developments are to be attributed to GATS. On the other hand, he argues, it is easier and much more reliable to use the following question: Which developments have happened or which directions are already open without GATS? In specific cases it might be discovered that certain national policies or measures—resulting in decreasing the barriers for trade in higher education services—have been already applied on the national level without any reference to GATS. In those cases, it might be argued that GATS itself does not have an impact on a specific higher education policy or component.

The second issue is the ability of a government to steer the developments in higher education. Ziguras, McBurnie and Reinke (2003b) elaborate in their analysis various components of the steering capacity with respect to private education, i.e. the ability to control the number and location of universities, the number of students in private institutions, the range of disciplines taught and the level of supply of graduates in particular fields of study. This specification can be used in the case studies in order to assess the ability of a nation-state to regulate foreign providers. We will look at the national regulatory framework (legislation as well as accreditation procedures) to see whether it includes tools able to influence directly or indirectly the way foreign providers can get into and operate within the system.

It was observed in the analyzed contributions that the authors were to a rather high extent inclined to take critical standpoints vis-à-vis GATS and liberalization (which seems to be related to the main concern related to Article 1.3.). The style as well as the main focus of contributions (access of foreign providers to the higher education market and their ability to operate under the same conditions as public domestic institutions) also suggest that many of them are predominantly concerned about

the position and future of the public higher education sector (see also the next chapter). Impartial and neutral analyses are associated mainly with intergovernmental organizations (e.g. OECD) or those outside higher education policy (e.g. lawyers).

The lack or diffuse state of systematic and analytic elaboration of the discussed topic—impact of GATS on higher education—can be identified as the main shortcoming of the analyzed impact studies. This conclusion is also drawn by Ziguras (2002), who states that the proponents of GATS usually assess the major barriers to free trade in higher education. These studies, however, are very general and fail to make detailed reference to particular barriers or consequences of removing them. The opponents, on the other hand, argue that public education will be destroyed by the WTO/GATS approach. Ziguras argues that such arguments are as vague as the arguments of the other party, without being able to provide very detailed case studies of past or future consequences of GATS commitments in a particular national setting. This claim again supports the intention of this study to pay detailed attention to the link between GATS and a specific national environment in the case studies.

Section 7.6, comprising selected analyses of GATS' legal implications on higher education, basically elaborated more in-depth those issues discussed in previous sections. The studies are rather modest in their conclusions and discuss various possibilities that might be under consideration. Nevertheless, it is obvious that the impact of GATS' obligations differs across individual countries. It very much depends on the conditions set up in a particular national environment (see also table 7.1). It again shows that if the impact of GATS is to be assessed, it requires a very detailed discussion of the national legal and public-policy conditions as well as the elaboration of mechanisms incorporating GATS commitments and general disciplines into the national legislation.

Finally, a few propositions, derived from these conclusions, which can be applied to the case studies, should be discussed at this point. First of all, no particular reason was found which would completely change the focus suggested for this study on legislation on the one hand, and stakeholders on the other. The discussion embodied in the contributions also supported the selection of mode 3 (commercial presence) as a way of delivery which is under very high scrutiny. It also appeared important from the analyzed literature to look closely at other developments and policies in a particular higher education setting; mainly at how higher education in general is perceived in the society and whether any other measures related to liberalization or deregulation have been applied. Second, the division between private and public institutions and the way they are treated by an individual state seems to be very important. The position and role of the private sector will therefore be closely analyzed in the case studies. Finally, one of the main concerns of GATS' critics is connected with government subsidies to public institutions.

The way government subsidies are distributed across the system and under which conditions will also be investigated.

All these insights will be taken into account for the case studies (chapters 9 and 10). Before going to a particular national setting in the Czech Republic and the Netherlands, the following chapter will elaborate the dynamic dimension (trickle-up trajectory) of our conceptual framework by analyzing the standpoints and views of various stakeholders.

8 Stakeholders' responses: document analysis

8.1 Introduction

This chapter is devoted to the dynamic dimension of the conceptual framework – the trickle-up trajectory. It analyzes how GATS was perceived by various stakeholders. The analysis embraces a very broad range of views and standpoints including attitudes towards liberalization policy in general. Both critical and supportive voices are taken into account in order to identify the most sensitive issues of the discourse and to allow confrontation of both perspectives. Another goal of this undertaking, as a complement to the previous chapter, is to determine which arguments were emphasized by stakeholders and whether and in which way they think GATS affects the steering capacity of a nation-state in higher education.

Several authors paid attention to stakeholders and their interests, reactions, and actions when discussing GATS and its impact on higher education. This issue was approached for example by Knight (2002, 2003a), Larsen & Vincent-Lancrin (2002), Sauvé (2002), Saner & Fasel (2003), Schugurensky & Davidson-Harden (2003) or Ziguras (2002). The following analysis supplements existing contributions by adding a somewhat more quantitative dimension to the whole picture.

Collected views and standpoints are subdivided into two main groupings labeled *opponents* and *proponents*. All contributions containing any objections or criticism of GATS, an inclusion of higher education in GATS, liberalization, etc. are subsumed under the former. The latter embraces views supporting and promoting liberalization of services and the GATS' mechanism itself while attributing to them an overall positive effect. In cases where it was not possible to place stakeholders in either group due to their internal complexity (for example the EU) or their tendency to facilitate the discussion on higher education and GATS but not to take a clear position on the issue (for example the OECD and UNESCO), these are discussed in separate sections (see sections 8.4 and 8.5).

8.2 Opponents

The collection of views and standpoints against GATS and further liberalization of higher education covers the period starting at the end of 1999 till the end of 2003. The number of analyzed materials was 47⁴⁸. The most intensive years with respect to activities of GATS' opponents were 2000 and 2001. Years 2002 and 2003 witnessed a decline of contributions to the discussion. Nevertheless, the campaign against education's inclusion in GATS was far from being terminated. This fact can be illustrated for example by the launch of the sign-on statement 'Take education out of GATS' in August 2003⁴⁹. Table 8-1 shows the distribution of retrieved documents in the respective years⁵⁰.

Table 8-1: Opponents – distribution of collected materials (period 1999-2003)

YEAR	1999	2000	2001	2002	2003	TOTAL
Number of materials	2	12	16	10	7	47
Percent	4	26	34	21	15	100

The *opponents* group is internally very heterogeneous. It includes international and national associations, labor unions, students associations, non-governmental organizations, civic movements, intergovernmental organizations as well as individuals. In terms of geographical coverage, opponents in our sample come from Europe, Canada, Australia, the United States and one contribution represents South America. Fifty percent of contributions are initiated by stakeholders operating on either the European or international level. The other half comes from national actors. The largest number of contributions comes from Canada, followed by Australia and the United Kingdom.

Many stakeholders advocated their views repeatedly. The most active ones can be identified as Education International (EI), an international federation of workers in education, the National Unions of Students in Europe (ESIB), and the European University Association (EUA) on the international or European level. On the national level, the Canadian Association of University Teachers appears to be very active. Some materials were issued by European 'coalitions' such as EUA and ESIB or EI and the European Trade Union Committee for Education (ETUCE). The joint

⁴⁸ Documents' names and date of publication are listed in Appendix IV.

⁴⁹ Retrieved 8 March 2004 from <http://www.gatswatch.org/educationoutofgats>. The campaign was targeted mainly at education-related organizations and educational professionals.

⁵⁰ Some materials contained no information on the date of publishing or their placement on the internet. In those cases the date of origin was estimated from the time of the web page update or from the context and content.

declaration by the Association of Universities and Colleges of Canada, the American Council of Education, the Council for Higher Education Accreditation, and the European University Association (2001) even go across continents.

In order to allow a quantitative break down, contributions were subdivided into six sub-groups. The first sub-group contains groups and individuals representing the interest of employees: trade unions, federations of workers in education, teachers federations, etc. The second sub-group includes academics, representatives of higher education institutions or associations of higher education institutions. Student unions and associations fall into the third sub-group. The fourth sub-group is made up of non-governmental organizations and the fifth of intergovernmental organizations. Finally, the sixth sub-group takes in journalists and individuals not explicitly associated with any of the above mentioned groups. These sub-groups are also distinguished with respect to the level on which they are active, either on the international/European or national level (table 8-2).

Table 8-2: Selected opponents on international/European level and national level⁵¹

International/European level	National level
Trade unions, federations of workers in education, teachers federations	
Education International UTUCE Public Services International	AUT (UK) BCTF (Canada) CAUT (Canada) CUFA/BC (Canada) NSWTF (Australia) NTEU (Australia)
HE institutions, associations of HE institutions, etc.	
European University Association Iberian and Latin American Public Universities Rectors	American Council on Education Association of Universities and Colleges in Canada Center for HE Accreditation (US)
Student organizations	
ESIB	Canadian Federation of Students National Unions of Students (Australia)
Non-governmental organizations, civic movements	
People & Planet Gatswatch	
Intergovernmental organizations	
Council of Europe	

⁵¹ For abbreviations of stakeholders see Appendix I.

The most important groups—also with respect to their interest in the future of higher education—are the first three groups, employees, higher education institutions and students. They together make up 83 percent of documents in our sample. The distribution of analyzed materials is shown in table 8-3.

Table 8-3: Distribution of selected materials across 6 sub-groups

GROUP	1	2	3	4	5	6	TOTAL
	employees	HE institutions	students	NGOs	IGOs	journalists, individuals	
Number of documents	21	10	8	3	2	3	47
Percent	45	21	17	6	5	6	100

As a next step in the analysis, the content of all contributions was studied in detail. It resulted in the identification of 37 major statements made across the various documents. These statements can be subdivided into four groups. The first group includes the statements that can be regarded as having an ‘observational’ character – they comment on the situation in higher education and try to explain the main driving forces behind on-going developments. Those statements are:

-
- 1 Education is increasingly seen as a market with an opportunity to make profit
 - 2 Private for-profit companies want to have easier access to the market in education
 - 3 Influential lobbying groups are pushing for opening the markets in education
 - 4 The United States is the major player pushing for opening the markets in education
 - 5 English-speaking countries such as the United States, UK, Australia and New Zealand want to export their education to other countries
 - 6 Industrialized countries want access to markets in developing countries
-

The second group includes statements that can be regarded as underlying assumptions, suppositions or axioms upon which another arguments or conclusions are built.

-
- 7 For-profit providers seek only cheap business-focused education
 - 8 Commercialization of education has negative consequences
 - 9 Competition without regulations and restraints has damaging effects
 - 10 Education is a public good, a public service, a public responsibility
 - 11 Education is a fundamental human right
 - 12 Education is not a tradable commodity
 - 13 Education differs from other services
 - 14 Quality education can be achieved only through state provision
-

The third group includes potential consequences of GATS. For the sake of simplification, the statements are given in the form of *GATS means ...* In this case GATS must be seen in the broadest meaning including the process of further liberalization, lowering the barriers in international trade, imposition of neo-liberal principles, introduction of market-like behavior in higher education, the notion of education as a service that can be traded, etc.

-
- 15 GATS means privatization in education
 - 16 GATS means that education will become oriented on market values and profit
 - 17 GATS means a threat to public education
 - 18 GATS means a threat to academic freedom
 - 19 GATS means a threat to institutional autonomy and independence
 - 20 GATS means introduction of tuition fees
 - 21 GATS means a threat to the traditional role of government, the state sovereignty, democratic principles and democratic decision-making
 - 22 GATS means restriction of national regulatory frameworks and governmental policies in education
 - 23 GATS means that education will be taken over by for-profit private transnational corporations
 - 24 GATS means that private and foreign providers will be entitled to the same subsidies as domestic public institutions
 - 25 GATS means that state subsidies either to institutions or to students are under threat
 - 26 GATS means that quality assurance mechanisms and standards are under threat
 - 27 GATS means that HE institutions will shift their focus from research and teaching to mainly commercial and marketing activities.
 - 28 GATS means that universal access to education is under threat
 - 29 GATS means that unprofitable subjects are going to disappear
 - 30 GATS means homogenization, sameness, the end of diversity of approaches to program content and delivery
 - 31 GATS means problems for developing and transition countries building up their education systems
 - 32 GATS means a threat to the cultural and language dimension of the society
 - 33 GATS means increased job insecurity
 - 34 GATS means that education will no longer be considered a public service
-

The last group contains propositions that can be drawn from the statements of previous groups.

-
- 35 All important stakeholders should be involved in the GATS re-negotiation
 - 36 Education should not be regulated by trade agreements
 - 37 Education should be excluded from GATS
-

Due to the sampling method which resulted in a limited number of documents it was not possible to use any standard method of quantitative analyses. Nevertheless, a simple statistical elaboration reveals some interesting patterns. In total, all 37 statements appeared in the 47 analyzed texts 181 times⁵². The distribution of statements within the four above mentioned categories is depicted in table 8-4.

Table 8-4: Distribution of statements across four categories

Category	Observations	Assumptions	Consequences	Propositions	TOTAL
Number of statements	11	34	117	19	181
Percent	6	19	65	10	100

Statement 1 scored the highest within the first group. From the second group, statements 10 and 12 were repeated in various forms. Regarding the consequences of GATS, the most used statements were 15, 17, 21, 24 and 25. Statement 37 was the most repeated statement in the last group. Table 8-5 shows the number of occurrences of most frequent statements from most to least mentioned.

Table 8-5: Occurrences of most frequent statements

Statement no.	25	10	17	15	21	24	37	12	1
Occurrence	14	14	13	13	11	10	9	9	5

In short, a typical article opposing GATS would contain nine major statements and look as follows:

1	[5x]	Education is increasingly seen as a market with an opportunity to make profit,
10	[14x]	[but] Education is a public good, a public service, a public responsibility
12	[9x]	[and] Education is not a tradable commodity.
15	[13x]	GATS means privatization in education;
17	[13x]	GATS means a threat to public education;
21	[11x]	GATS means a threat to the traditional role of government, the state sovereignty, democratic principles and democratic decision-making;

⁵² See appendixes VI, VII and VIII for more elaborated analysis across sub-groups, level of stakeholders' operation and individual years.

-
- 24 [10x] GATS means that private and foreign providers will be entitled to the same subsidies as domestic public institutions;
- 25 [14x] GATS means that state subsidies either to institutions or to students are under threat.
- 37 [9x] Education should be excluded from GATS.
-

When the subdivision of stakeholders into 6 sub-groups is taken into account, it is difficult to draw any clear conclusions from the distribution of statements. As one can see in appendix VI, all statements are distributed in identical patterns across all sub-groups. The only exceptions seem to be statements 17 and 21 - *GATS means a threat to public education* and *GATS means a threat to the traditional role of government, the state sovereignty, democratic principles and democratic decision-making*. These statements are stressed more intensively mainly by the first sub-group – trade unions, federations of workers in education, teachers' federations, etc.

In appendix VII the level on which particular stakeholders operate is taken into consideration. Statements 10 - *Education is a public good* and 35 - *All important stakeholders should be involved in the GATS re-negotiation* are supported mostly by stakeholders operating on the international or European level. On the contrary, national actors advocate statements 17, 23, and 24 significantly more. Statement 23 – *GATS means that education will be taken over by for-profit private transnational corporations* is claimed across countries (Australia, Canada, UK, United States). Statement 17 - *GATS means a threat to public education* is supported most by Canadian stakeholders, whereas statement 24 – *GATS means that private and foreign providers will be entitled to the same subsidy as domestic public institutions* is repeatedly emphasized by stakeholders from Australia. This seems to reflect different national situations as well as particular interests of individual stakeholders.

Several points should be highlighted, referring also to some of the additional sources consulted in order to get a more accurate picture of higher education and its inclusion into GATS. The first point concerns the evolution of awareness of GATS and its potential impact on higher education amongst various stakeholders. Prior to 2000, the first critical standpoints towards GATS can be traced in Australia and Canada⁵³. Then follows Europe, however, through labor-union type organizations such as Education International or Public Services International. European higher education institutions only became involved in the discussion much later. For example the activities of the EUA (a survey of the views of EUA members) started only in 2001, probably partly accelerated by the GATS proposal of the United States. The inclusion of higher education into GATS was not a new phenomenon since 1994, yet it had not been acknowledged by university circles in Europe before 2000 (Haug, 2000; Froment, 2001).

⁵³ See Barblan (2002, p. 88) for an explanation of Canadian universities' early reaction to GATS.

The data collected by Reichert and Tauch (2003) demonstrate the awareness of GATS in European higher education. At the beginning of 2003, only one third of European education ministries had developed a policy on their position towards GATS. A similar situation was true for the leaders of higher education institutions. 20 percent of rectors were fully aware of GATS negotiations, more than half of them were aware without having specific details, and almost one third said that they were not yet aware of GATS. Students seemed to be much more informed about the GATS discussion – as was declared by 17 out of 37 student associations. Finally, table 8-6 contains threats posed by the inclusion of higher education in GATS as it appeared in the above mentioned document. The list was prepared for the EUA Council on 10 October 2002.

Table 8-6: List of threats presented by GATS (identified by the EUA)

1) National authority could be undermined since the negotiations fall under the purview of the EU's DG for Trade and the European trade regulations, while higher education is still governed by the principle of subsidiarity.
2) Sectorial authority is being undermined by the fact that the EU commissioner and ministries of trade negotiate the GATS, including their making higher education offers, with no mandatory consultation of representatives of the higher education sector. Moreover, transparency regarding the process of negotiations is limited since no negotiators want to weaken their position by revealing their negotiating fields, limits or tactics.
3) Increased competition and commercialization to secure market advantage might undermine the Bologna Process which depends on cooperation and exchange of good practice.
4) The competition may result in brain drain and reduced opportunities for community-building and democratic development in some countries.
5) The increased market orientation of higher education may run counter to core academic values, the recognition of students as partners rather than customers and the commitment to widened access as mechanism for social, political and economic inclusion.
6) Since only some processes and functions of HE would fall under the GATS regime, there is a risk of fostering institutional fragmentation of higher education institutions, with part of an institution's activities falling within the GATS regime while others do not. This would make institutional steering very difficult and would weaken the strategic capacity of institutions.
7) The increase of for-profit providers and for-profit activities of public higher education institutions would result in further decreases in state funding and the erosion of European higher education as a public sector activity. Those parts of the university which operate in more competitive or lucrative spheres, which may be more entrepreneurial than others, and which are net generators of income, are often currently used to help support other parts of the university which may engage in non-commercially viable activities such as contribution to regional and community development, widening participation and encouraging social inclusion. With a widening influence of GATS such lucrative activities may be favored over others.

Source: Reichert & Tauch, 2003, p. 42

Comparing table 8-6 with the most frequent statements identified in our analysis, we can see that especially threats number 5 and 7 express the same standpoint. The problem of institutional fragmentation, raised in threat number 6, was not in

fact elaborated by any stakeholders or commentators. Threat number 4 was not stressed too much by stakeholders, however it appears as a potential influence of GATS in the impact studies (see chapter 7, section 7.5). Finally, the first three threats (numbers 1 through 3) concern the position in Europe, more particularly of the EU Member States. First, they support our proposition about the position of a nation-state in contemporary Europe (see chapter 5, section 5.6). Second, they demonstrate the complex and somewhat complicated position of the European Commission and the EU Member State when it comes to higher education under GATS (for further details see section 8.4 in this chapter).

8.3 Proponents

Thirty four documents were retrieved for the following section, covering the period between 1998 and 2003⁵⁴. Nevertheless, the collected documents for this section differ slightly from those of the opponents. In order to receive a sufficient number of materials compared to the other sample, the search could not be limited to materials explicitly supporting liberalization in education as they are less numerous in general. Therefore, the sample also includes documents of a more informative nature, sometimes only indicating general trends, however still including rationales for further liberalization.

Secondly, sources supporting or advocating further liberalization and lowering the barriers to international trade often extend their rationales and arguments to a more general level such as liberalization of services. It is another reason why materials specifically concerned with higher education are less numerous in our sample. Therefore, the contributions supporting further liberalization of services, including education and training services, cannot be regarded *per se* as directly mirroring those criticizing higher education's inclusion in GATS and its further renegotiation. Materials in the *proponents* group were collected mainly to identify major arguments and rationales of parties supporting GATS and further liberalization of services. The main objective was also to enable a comparison with arguments of the *opponents* group in the concluding section.

Proponents are regarded as those players who expressed their support for further liberalization of higher education or education in general. As well as the *opponents* they are represented by very heterogeneous groups ranging from individuals to non-governmental organizations, national governments and inter-governmental organizations. What must be stressed, however, is that a position of any national government cannot be taken as representing a consensual standpoint of a respective country. We can see for example that the Australian government supports trade in higher education and its further liberalization, while at the same

⁵⁴ See the list in appendix V.

time student organizations and labor unions are intensively opposing GATS. This goes in line with the comment of Larsen and Vincent-Lancrin (2002) about the division of stakeholders across professional groups (see chapter 1, section 1.2).

The section is organized across various actors, while the contributions of the actors flow from the most general issue to the most specific ones. Based on the analyzed documents, table 8-7 depicts selected stakeholders supporting liberalization of higher education.

Table 8-7: Selected institutional proponents of GATS and liberalization of education⁵⁵

International/European level	National level
World Trade Organization	National Committee for International Trade in Education (US)
European Service Forum	U.S. Trade representative
EU Directorate-General for Trade	Department of Commerce (US)
	Government of the United States
	Government of New Zealand
	Government of Australia
	Government of Japan

Important *proponents* were identified as the WTO, the U.S. government, and other national governments which submitted their negotiating proposals on education services by the end of June 2002 – New Zealand, Australia, and Japan⁵⁶. Also the EU Directorate-General for Trade is labeled as a proponent of liberalization of services based on the analyzed materials. Yet, its position has developed over time. At the same time, the EU as a whole is far from having an unambiguous and homogeneous view on the issue. Therefore, a special section (8.4) will be devoted to the EU in this chapter. OECD and UNESCO, intergovernmental organizations should not be called proponents of GATS at the same level as others as they did not openly advocate for liberalization of higher education. Nevertheless, they have played a significant role in the discussion on further liberalization of education. Although they are not explicitly stated in table 8-7 as *proponents*, their role and involvement in the whole process is also discussed in this section.

WTO's view

The World Trade Organization (WTO), understandably, is one of the major proponents of services' liberalization as it constitutes the very purpose of its existence. The main ideas and arguments can be obtained from an official document issued by the WTO Secretariat, the Council for Trade in Services or from various comments of WTO representatives.

⁵⁵ Our analysis included only those documents that openly stated support for liberalization. Therefore countries, who only sent their requests to other WTO members, are not included.

⁵⁶ The Swiss government, also supporting GATS, submitted its proposal only in March 2005, so it is not included in table 8.7. Its proposal is, however, mentioned in a footnote in the next section.

The document *The developmental impact of trade liberalization under GATS* (WTO, 1999b) discusses the impact of trade liberalization in general. The main argument for liberalization of services and opening of markets can be found in the following statement:

Open markets are expected to encourage quality improvement and product and process innovation; reduce the scope for wasteful resource use and rent-seeking; constrain the power of individual economic operators; and ensure users continued product availability at reasonable conditions (p. 1).

It is argued that liberalization measures that have already been achieved and recognized in selected sectors such as financial services, telecommunications or transport should be beneficial in other fields as well. Furthermore, a positive effect of binding commitments for individual countries through increased transparency and predictability is stressed.

An introduction to the GATS (WTO, 1999a) mentions another advantage of trade liberalization. It says that GATS rules and principles "should help trade to expand and to contribute to economic development worldwide" (p. 2). Still, due to the very high complexity of GATS rules and the fact that rules have not been tested yet, it is acknowledged that it is rather difficult for individual WTO members to assess the impact of GATS rules in certain service areas.

Another document of the WTO was published on its website in 2001 to "contribute to the discussion and to a greater public understanding of the GATS". The booklet *GATS - Fact and Fiction* (WTO, 2001a) can be seen partly as WTO's reaction to intensified criticism of GATS arising from various directions. It emphasizes the importance of trade policy and a multilateral trading system as a means to promote human welfare in the broadest sense. Six benefits of services liberalization are mentioned in the booklet: more competition, lower prices, faster innovation, higher employment, greater transparency and predictability, and technology transfer.

WTO's position can be also derived from views from associated individuals. Adlung (2001) from the Trade in Services Division explains some aspects of GATS on public services: He stresses that services provided in the exercise of governmental authority are exempt from GATS and furthermore clarifies that the fact that there are public as well as private providers in the same sector does not affect the exemption from GATS. Regarding the obligations of national governments, Adlung adds:

GATS neither prescribes a minimum content of country schedules, in terms of sectors included, nor are Members required in any listed sector to grant full market access and national treatment across the four modes. A relatively frequent limitation, relating to national treatment, provides for the exclusion of foreigners from domestic subsidy programs (p. 2).

Furthermore he says that any future results of WTO negotiations will not influence governments' ability to maintain or introduce domestic regulation for quality and similar purposes. Adlung highlights that GATS protects Members' sovereign right to operate technical standards as well as licensing, qualification or certification requirements for services and service suppliers.

The WTO several times answered a criticism by its opponents through representatives of the organization. In his response to Nick Kohen's column in the *Observer* (2001), Keith Rockwell, the Director of the Information and Media Relations Division, says:

No government needs to open any service sectors for negotiation, it may restrict foreign service providers and it may make demands of foreign providers. Moreover, governments may insist on price controls and may make technology transfer a requirement as part of any offer to open its market⁵⁷.

He also argue that as of March 2001 not a single developing country had been involved in any discussion to open its markets to foreign providers either in health or in education services.

Finally, the highest WTO representative, Mike Moore, the Director-General of WTO, reacted to opponents' criticism regarding public services in 2001 as follows:

Every government has the right to exclude public services from the negotiations and it is for the government to decide which service sectors they wish to liberalize and which they do not. The negotiating guidelines explicitly stress that each Member Government has the right to choose the sectors it wishes to liberalize. The GATS explicitly excludes government services from its scope and there is no question of changing those rules. Governments cannot be forced to undertake opening of their public services⁵⁸.

He continues that:

... liberalization of governmental segments of sectors such as health and education has never come up in the discussion between governments. Even the liberalization of the commercial segments of such sectors has received little attention in the negotiations. The focus of the negotiations has been on other services sectors.

Alejandro Jara, the Chairman of the Special Session of the WTO Services Council, adds: "Even for those services provided by governments on a commercial basis,

⁵⁷ Available at the WTO website: "WTO spokesman answer a critic." 19 March 2001 (accessed 16 November 2002).

⁵⁸ Available at the WTO website: "Director-general of WTO and chairman of WTO services negotiations reject misguided claims that public services are under threat." 28 June 2002 (accessed 16 November 2002).

there is nothing in the WTO rules which requires that they be privatized or liberalized.”

Finally, the document *Education Services, Background Note by the Secretariat* (WTO, 1998) deals specifically with education. First of all, it regards education as both public and private consumption. Secondly, it discusses the impact of the increased trade in higher education on the international level with respect to national systems and the economics of education. The document, among other things, draws attention to issues connected with universities such as the tendency to become too much market oriented, distraction from their core educational mission or overall cultural sensitivity. On the other hand, it stresses the fact that “access to international education may enhance domestic institutional and human capacities and promote development” (p. 9). Finally, a note is made that education services is the least committed sector after energy services.

Governments' Proposals

A very influential actor with respect to liberalization of services, and also specifically to higher education services, seems to be the U.S. government, represented for example by the U.S. Department of Commerce. The United States is considered to be

the major player behind the push for extending GATS. It hopes to use GATS as a lever to enforce greater privatisation of sectors such as health and education services and to allow greater penetration of US companies into service provision (Miley, 2001).

The position of the U.S. government is explained as follows: the main goal with respect to education is to abolish the barriers for providers of education and training, which they have to face when exporting their services. However, it is at the same time argued that the United States' goal is not to supplant, but supplement existing national systems and domestic providers. The overall objective is to increase access to education and training services, not to Americanize them (2000, NCITE).

The Executive Summary of the *U.S. Proposal for Liberalizing Trade in Services* (USTR, 2002) summarizes the U.S. approach towards liberalization in education and training services:

The United States is requesting increased access to higher education, training services and testing services provided in traditional institutional settings, such as universities or schools, or outside of traditional settings, including the workplace, or elsewhere. The United States is not requesting commitments in primary and secondary education, nor is the U.S. requesting commitments with respect to public institutions, subsidies, or other assistance in the education sector. The U.S. approach does not seek to displace public education systems, but rather proposes to help upgrade knowledge and skills through privately provided educational and training programs, while respecting each country's role of prescribing and administering public education (p. 5-6).

With respect to privatization of public services it says: "The GATS does not force or require any government to privatize any publicly provided services. The GATS, however, anticipates that in some cases public providers of services will compete with private providers of those same services" (p. 2).

The main purpose of liberalization as seen from the U.S. perspective is to enhance the array of export opportunities available to U.S. providers by increasing their access to overseas markets (Moll et al., 2001). At the same time the indispensable role of public education is stressed as the U.S. government "recognizes that education is to a large extent a government function, thus it envisions that private education and training will continue to supplement, not displace, public education systems" (p. 3).

Ascher (2001), director of Service Industry Affairs at the Office of the U.S. Representative in Washington, D.C. confirms the vision of his government: "We need to assure that opportunities remain open and that U.S. institutions can invest in overseas ventures with more legal certainty" (p. 4). He also clarifies the relationship between private and public education: According to Ascher public and private education already exist side-by-side in nearly all countries. Therefore, he argues, the U.S. proposal to further liberalize higher education markets is not aimed to privatize public higher education. Finally, Ascher touches upon the issue of governmental regulation and subsidies:

Governments, of course, will retain their right to regulate to meet domestic policy objectives. Nothing in the proposal is intended to interfere with a country's right to regulate its education sector to meet domestic objectives and nothing in the proposal is intended to interfere with the tax exempt or state-funded status of educational institutions, or policies regarding admissions, scholarships, grants or curriculum. It does not propose that a country's subsidies for higher education be made equally available to foreign providers (p. 5).

The official position of selected governments vis-à-vis further liberalization of higher education under GATS was materialized in communications which were made public and circulated among the WTO member states during the Doha Round. These communications contain rationales and explanations for further initiatives to be taken in higher education services.

The U.S. communication (2000) is based on premises that education is to a large extent a governmental function and, at the same time, that private education coexists with public education. Academic and training courses, which are mainly targeted to improve and update the skills of employees, are regarded to supplement the traditional public education system and to contribute to the development of the economy based on knowledge. Therefore, the purpose of the proposal is to "help create conditions favorable to suppliers of higher education, adult education and training services by removing and reducing obstacles to the transmission of such services across national borders through electronic or physical

means, or to the establishment of operation of facilities (schools, classrooms or offices) to provide services to students in their home country or abroad" (section II, paragraph 3). It is emphasized that the proposal would apply to countries allowing private education, while those maintaining exclusively public systems are excluded.

The proposal furthermore limits itself to education beyond the primary and secondary level. However, it suggests that training services (less theoretical and more job-related than academic courses) and educational testing services are also included as a part of education. Market access, national treatment and additional commitments are proposed to be discussed by the WTO members. In line with GATS disciplines, it is essential that "governments would retain the right to regulate to meet domestic policy objectives", and, at the same time, that "governments will continue to play important roles as suppliers of services" (section V, paragraph 8). Finally, WTO members are asked to make commitments on higher education, adult education and training services and to consider removing certain regulatory provisions or other measures such as inappropriate restrictions on electronic transmission of course materials, measures requiring the use of a local partner, etc.

The New Zealand communication (2001) stresses the benefits of increased trade in education services. Increased trade is seen as a means to generate revenue for private and state education institutions and to intensify academic exchange, cross-cultural linkages and technology transfer. It emphasizes the fact that "the reduction of barriers to trade in education does not equate to an erosion of core public education systems and standards" (section B, paragraph 3). The core of New Zealand's communication lies in the proposal to discuss and clarify some of the currently used classifications and definitions such as education services, other education services or other business services.

The communication from the Australian government (2001) says that in the field of education "Australia believes that governments must retain their sovereign right to determine their own domestic funding and regulatory policies/measures" (section I, paragraph 2). The liberalization of trade in education is seen as "a means of providing individuals in all countries with access to a wide range of educational options" (section II, paragraph 4). Furthermore, benefits associated with liberalizing education services are listed. They can be achieved through increased cross-border flows of students as well as through more educational service providers. The document enumerates a number of obstacles across modes of delivery and several principles that should be taken into account with respect to further liberalization of education. Finally, Australia suggests that other WTO member states should consider entering the same level of commitments as Australia did.

The proposal from Japan (2002) recognizes that in order to improve the quality of education and research “it is effective to promote a certain level of liberalization, while taking various governmental policy measures” (section I, paragraph 2). At the same time, the communication stresses that if any course of liberalizing the education sector shall be taken, it must be primarily confronted with maintaining and improving the quality of the service. Varying roles of central and local governments as well as differences in higher education systems across countries must also be taken into account when liberalization of education services is sought⁵⁹.

Another approach towards liberalization of education services is represented by Services 2000. It is an interdepartmental team within the Canadian government⁶⁰, participating in the GATS negotiations of the WTO. The main mission of the Services 2000 campaign was to secure markets for Canadians around the world. The proclaimed approach is very similar to the approach of the EU as will be demonstrated in the next section. It seeks to find markets for its national service providers and at the same time to secure its public services. According to Services 2000 Canada should promote export of Canadian educational services. In parallel, it should preserve its ability to maintain measures in public education such as regulation subsidies or other administrative practices.

Other Proponents

The European Services Forum (ESF) is a network of representatives from the European services sector actively engaged in the liberalization of services, however, not associated with higher education. By GATS’ critics it is perceived as one of two main influential groups⁶¹ behind the WTO scene. It is supposed to pressure the EU to negotiate on its behalf through the WTO to allow it to break into the developing world’s utility markets. During the last quarter of 2003, the ESF repeatedly supported the Doha Development Round and called upon national governments to re-launch multilateral negotiations. From the ESF’s perspective the GATS negotiations are not a controversial issue. It highlights that the multilateral trade

⁵⁹ The Swiss communication, although submitted to the WTO in April 2005 should be mentioned here as well in order to complete the picture. It highlights the fact that public and private providers co-exist next to each other across all levels of compulsory and non-compulsory education. In Switzerland, various cumulative criteria are applied in order to distinguish between the public or private nature of education services. Both services, public and private, can be delivered by the same institution. In certain cases, based on fulfillment of specific criteria, private education services can be publicly financed. Switzerland considers its education system to be a successful example of co-existence of private and public education services. GATS commitments, made by Switzerland, have not caused any difficulties during their implementation. It is underlined, on the contrary, that “they contribute to a dynamic environment for education services”. The overall view on GATS is that “the flexibility of GATS makes it an appropriate framework for a sector such as education” (section V, paragraph 16).

⁶⁰ Canada did not make any commitments in higher education in 1994.

⁶¹ The other one is the Coalition of Service Industries, a US-based group, which is supposed to lobby U.S. politicians regarding access to European health and education.

system will ensure continued economic growth not only to developed countries but also in poor countries.

Finally, there have been also a few individuals trying to look at GATS from other than an entirely critical perspective. For example Larsen and Vincent-Lancrin (2003), who are closely associated with OECD, say that trade in higher education could help widen access in the developing world. As a good example they point at programs currently running in China or India.

Ansink (2002) also sees some potential benefits of GATS for developing countries:

GATS offers opportunities for developing countries as well. Commercial education can help to open up that market, whether it is paid for with development assistance or not. Moreover, the liberalization of education services is effective at combating brain-drain. If foreign universities are able to go to the student, the student no longer has to go to another country. And private universities in poor countries - whether they are directed by development assistance or not - are much better able to gear their curricula to the specific problems of their own country, such as the need to fight malaria (p. 2).

8.4 European Union

The European Union (EU) is regarded as a supranational organization *sui generis*. Higher education's position under GATS seems also to be very specific from the EU's perspective. In 1994 the European Court gave its opinion regarding the competence of the Community to conclude international agreements concerning services, regarding Article 228(6) of the EC Treaty. The Community and its Member States are jointly competent to conclude GATS. At the same time, the approach of the EU towards liberalization of services was subject to very significant changes. For the purposes of this study, speeches by EU representatives, official documents and notes, and materials retrieved from the official EU website were used in order to map the EU's standpoint on education and GATS. The material may not be exhaustive, yet one can see from it how the position of the EU evolved over time⁶².

In 1998, Sir Leon Brittan, the vice-president of the European Commission, stresses the importance of the service sector for European wealth in general. He hopes that

The next round [of GATS negotiations] will focus overwhelmingly on market access. No sector will be excluded, and the aim must be, in no more than 3 years, to conclude an ambitious package of additional liberalisation by developing as well as developed countries, in politically difficult as well as other sectors' (Brittan, 1998, p. 2).

At the same time, Brittan underlines the indispensable role of governments, as they "will remain able to control service sectors of their economy in order to protect

⁶² See appendix V for the list of analyzed documents.

consumers and the environment, and in order to enforce their generally applicable national laws" (p. 3).

The background note *Education in the GATS* (European Commission, 2000a) highlights several interesting points. It says that the European Commission had not been approached by any education provider. Only several non-governmental organizations expressed their concern about potential consequences of GATS for education as a public good. The document summarizes the future direction of negotiations:

The next round of international negotiations on services trade will provide an opportunity to identify and open up opportunities for education service providers of the Member States to export their services abroad. At the present stage, there is considerable scope for improvement on the basis of the existing commitments undertaken by WTO members on education, where excessive restrictions may prevent suppliers from providing services trans-nationally. A fully-developed negotiating position must also take account of the interest of consumers in Community countries (p. 5).

A certain shift in rhetoric can be seen in 2000. The EU Trade Commissioner Pascal Lamy explains the position of the European Commission towards liberalization of public services.

We are not demanding, or even provoking, privatisation or general deregulation within the EU. Indeed, in areas linked to state provision, such as energy, postal services, education, culture and health, we are looking to preserve our legislative prerogatives, our cultural and social identity, and our high standards of consumer safety and protection. At the same time, we are also seeking fair and negotiated access for our service providers to such sectors in third countries. There is no contradiction in this (Lamy, 2000).

Lamy repeats the position of the EU in the European Parliament two years later, in 2002. "We have no intention of promoting or demanding the privatisation or dismantling of public services in any sector anywhere. ... our requests concern a number of sectors. Neither health nor education figure on the list" (Lamy, 2002). He continues with respect to the position of national governments and their rights: "WTO members retain the sovereign right to regulate economic and non-economic activities on their territory in pursuit of specific public policy objectives. This is a general principle."

A more critical position towards liberalization of education can be found in the document *Education and the GATS* (European Commission, 2002) prepared by the Directorate-General for Education and Culture. Although the document talks about the increasingly hybrid public-private nature of education and the opportunities of growing internationalization of education, the overall direction seems to be rather restrained. The commitments undertaken during the Uruguay Round are regarded as sufficient, and very little space is seen for further concessions. 11 Member States, having submitted their comments to the Commission, are concerned about

education as a public service: "There is concern that some rules ... , in time, threaten the public-service character of existing education systems, with implications for the freedom of Member States to organise and regulate education, to assure its quality and to allocate financing for it" (p. 2). The questions for ministerial discussion suggest the future direction of the EU with respect to education.

Is there any hard evidence of a real threat, however long-term, to public services in education? Can we take 'pre-emptive' action to safeguard that public-service/public-good character of education? If the perceived threat to public services is confirmed to be theoretical or long-term, can we develop clear scenarios of how it might develop, how secure the existing safeguards against it are, and what might be the cost of withdrawing existing commitments in terms of compensation to be offered to other WTO partners? (p. 4).

The overall support for trade policy and liberalization on the one hand, and the expression that no fear shall be felt with respect to public services on the other hand, is expressed on the EC website in its FAQ section⁶³. The Doha Round is supported in the following way:

Trade policy is one of the main pillars of the EU's relations with the rest of the world. Trade increases the choice of goods and services available to each individual. Access to cheaper inputs, to more efficient technology and to wider markets increases domestic companies' competitiveness and, in turn, leads to higher investment, growth and jobs. Both economic theory and empirical evidence clearly show that countries which are more open to trade are also those that grow fastest.

At the same time, the European Commission reassures that European services are not at risk. EU member states will be able to safeguard the quality of their public services. The GATS treaty cannot be interpreted as requiring governments to privatize or to deregulate public services. Furthermore, it is stated that the Commission included supplementary specification in horizontal commitments, allowing subsidies to the public sector and the granting of exclusive rights to public utilities.

In February 2003, when the European Commission submitted the draft offer to the European Council and the European Parliament, Pascal Lamy, the then EU Trade Commissioner, stressed that: "This is a carefully constructed proposal in the Doha negotiations. It ensures that services of collective interest in the EU, such as education and health, are preserved. In this way we ensure that the WTO is used to defend and promote the European model⁶⁴".

⁶³ Available at http://europa.eu.int/comm/trade/faqs_en (accessed March 10, 2004).

⁶⁴ Pascal Lamy quoted in the EC press release 'WTO Services: Commission submits draft offer to Council and Parliament – public services are fully defended' from 5 February 2003. Retrieved March 9, 2004 from <http://europe.eu.int/rapid>.

The *Communication from the European Communities and its Member States*⁶⁵ (WTO, 2003a), which was submitted to the WTO in June 2003, indicates the standpoint of the European Community and its member states vis-à-vis public services including higher education.

This offer cannot be construed as offering in any way the privatisation of public undertakings nor as preventing the Community and its Member States from regulating public services in order to meet national policy objectives. In all EC Member States services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators (p. 2).

To conclude, the EU found itself in a very peculiar situation with respect to higher education and GATS during the Doha Round. On the one hand, it advocated, mainly through the Directorate-General for Trade, the importance of trade in services. It also stressed the fact that in many sectors, previously run by state monopolies, liberalization and increased competition, including privatization, has led to increased quality and wider access to consumers. On the other hand, during the Doha Round, no further commitments were made in higher education and the European Commission assured that public education would stay untouched. Even the question appeared in the discussion whether existing commitments should be withdrawn and what might be the cost of it in terms of compensation to be offered to other WTO partners (European Commission, 2002). We might say that the final position of the EU reflects the compromise between the Directorate-General for Trade, Directorate-General for Education and Culture, individual member states, and various stakeholders on the European level such as the EUA, ESIB and others.

A final comment can be made with respect to various actors being involved or aware of the GATS process. During the Uruguay Round, when the initial commitments were made for higher education, the EU which was together with EU Member States competent to conclude the GATS agreement did not meet any opposition from stakeholders. However, during the Doha Round the awareness of other stakeholders increased and GATS met very strong opposition from academic and other circles⁶⁶.

8.5 OECD and UNESCO

Two intergovernmental organizations, the OECD and UNESCO, played a significant role in the process of facilitating and moderating the discussion on higher education and GATS. The OECD organized the Forum on Trade in Educational Services – a platform for discussion of the main issues and trends in

⁶⁵ See chapter 3, section 3.5 for more details on requests and offers during the Doha Round.

⁶⁶ See the discussion on opponents in section 8.2 of this chapter.

the global trade of education services, bringing together a broad range of various stakeholders.

The OECD-U.S. forum in Washington, D.C., constituting the first major international event on the topic of trade in education services, took place in May 2002. It was co-organized by the OECD's Center for Educational Research and Innovation (CERI), the U.S. Department of Education, the U.S. Department of Commerce, the National Committee for International Trade in Education, the Center for Quality Assurance in International Education, and the World Bank. It attracted participation of more than 250 scholars and officers from trade as well as education, public and private university representatives, students and other interested parties from more than 20 countries. The discussion focused heavily on trade issues, and partly on quality assurance, recognition of qualifications and accreditation. Important arguments opposing higher education's inclusion into GATS were presented and discussed at the forum, notably the Joint Declaration on Higher Education and the General Agreement on Trade in Services issued by the AUCC, ACE, EUA and CHEA in 2001.

The following meeting took place in November 2003 in Trondheim, Norway. The focus of the second conference, labeled *Managing the Internationalisation of Post-secondary Education*, shifted more towards education. An attempt was also undertaken, according to participants' wishes, to change the prevailing discourse and to make sure that participants representing various views and interests would understand each other's language. Apart from facilitating a discussion between main stakeholders both in education and trade, the OECD also published a number of documents focused on key developments in cross-border post-secondary education (see for example Green & Knight, 2004; Larsen, Martin & Morris, 2001; Sauv , 2002; Van der Wende & Middlehurst, 2004;)⁶⁷. It also closely monitored the state of play in the GATS negotiations (Nielson, 2003)

UNESCO⁶⁸ and the OECD have been working together on the *Initiative on Enhancing Consumer Protection in Cross-Border Higher Education*, which is aimed to develop guidelines in the area of quality assurance, accreditation and recognition of qualifications schemes⁶⁹. Apart from that, UNESCO organized the Global Forum on International Quality Assurance, Accreditation and the Recognition of Qualifications in Higher Education, where GATS was also discussed. The first Forum took place in October 2002 labeled *Globalization and Higher Education* and

⁶⁷ Contributions to the conference were finally published as a book (OECD, 2004b).

⁶⁸ Besides UNESCO another United Nations (UN) related institution paid attention to the liberalization of trade in services and GATS. In its report (UN, 2002) the Higher Commissioner discusses both opportunities and challenges of the liberalization of trade in services and its implications on human rights.

⁶⁹ The guidelines endorsed by the OECD and UNESCO were published in 2005. The document is available at <http://www.oecd.org/dataoecd/27/51/35779480.pdf> (accessed February 26, 2006).

brought together 120 representatives of higher education providers and various stakeholders. Issues such as trade in educational services, impact of globalization on quality assurance and accreditation and the recognition of qualifications, and public versus private higher education were discussed. It was the first global audience where much attention was paid to the north–south disparities. The second meeting of the Forum took place in Paris in June 2004 under the name *Widening Access to Quality Higher Education*. Fraudulent practices in education and other ethical challenges stood very high on the agenda during this meeting.

8.6 Discussion of the results

In this chapter we compared the analyzed documents published by *proponents* and *opponents* of further liberalization of higher education. First, we looked at both pro and contra arguments. The fact that the samples on both sides are not equal with respect to their quantity is an important finding as such, which should be attributed to the fact that documents are differently spread over and related to different types of stakeholders. It appeared during the analysis that critical views and standpoints were more intensively presented and promoted, probably because the proponents feared that they would otherwise not have had the desired effect – to inform the public, to attract attention and to influence national governments as well as intergovernmental organizations. We can also assume, mirroring the second argument, that documents explaining and supporting GATS beyond the formal (WTO) documents were less numerous as the need to promote further liberalization in public was not felt so strongly by the proponents of liberalization. In some cases, the documents promoting and explaining what GATS means and what its benefits are for services were rather responses to intensive criticism from liberalization opponents than genuine initiatives to inform the general public.

In order to accomplish the main goal of this chapter—to identify the most sensitive issues in the discourse and to allow a confrontation of both perspectives—we will match the most used statements of *opponents* (table 8.5) with counterarguments of *proponents*. That gives us a summary of the most debated, meaning the most sensitive issues, in the discussion from the stakeholders' perspective. In the following text the nine most used arguments of *opponents* are summarized and followed by the viewpoint of the *proponents*.

1 Education is increasingly seen as a market with an opportunity to make profit [5x]

The fact that education, and higher education in particular, has become more market-oriented is shared by both groups. Nevertheless, they disagree when it comes to its consequences. While the *opponents* point at negative consequences of market introduction in education (focus on profit rather than on quality, dominance of low-cost courses and disciplines, reduction of governments' power to regulate

education, etc.), the *proponents* emphasize positive sides of market (more competition, more choices for customers, more efficient institutional behavior, greater responsiveness, etc.).

10 Education is a public good, a public service, a public responsibility [14x]

The *proponents* do not seem to question the public feature of education. However, they point at its increasingly hybrid public-private nature. They stress that education exists both as public as well as private consumption. At the same time, the important role of governments in education provision is recognized.

12 Education is not a tradable commodity [9x]

This seems to be a fundamental clash between the two groups. The main assumption underlining trade in services in general is based on the fact that any service is tradable. The very fact that education was included into GATS and analyzed across four modes of delivery means that education is perceived, by the *proponents*, as a tradable commodity.

15 GATS means privatization in education [13x]

It was repeatedly stated by various parties that lowering existing barriers in education does not mean privatization of state or public educational institutions. This builds up on the fact that in most countries private education providers already co-exist with their public counterparts. Private education should not replace public education, it should continue to supplement it.

17 GATS means a threat to public education [13x]

It is stressed by the *proponents* of GATS that public services in general are not under threat. WTO member states should continue to operate public services in the way they have done it so far, including subsidies to public providers. The strategy of some parties (e.g. EU, Canada) seems to be the following: on the one hand to secure access for their domestic providers abroad, on the other hand to continue the system of domestic public provision unchanged. What is, however, anticipated is an increasing level of competition between public and private providers in certain areas of public services.

21	GATS means a threat to the traditional role of government, the state sovereignty, democratic principals and democratic decision-making [11x]
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National governments, according to *proponents*, are in charge of their decisions. No government is forced to open any service sector for negotiation if it does not wish so. In case it does, it still has a sufficient portfolio of instruments to regulate the sector and to ensure that consumers are getting the highest possible quality.

24	GATS means that private and foreign providers will be entitled to the same subsidies as domestic public institutions [10x]
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25	GATS means that state subsidies either to institutions or to students are under threat [14x]
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It is argued by the *proponents* that subsidies (either to domestic institutions or to students) will continue in order to 'meet domestic policy objectives'. Tax exempt or state-funded status of public educational institutions should not be affected either. On the other hand, there exists a critical attitude towards subsidies in general as represented for example by the U.S. Office of Trade Representatives: "There is widespread and longstanding agreement that government subsidies distort the efficient allocation and utilization of resources, thereby undermining the best foundation of economic growth and development" (USTR, 2002).

37	Education should be excluded from GATS [9x]
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The *proponents*, in contrast with *opponents*, see higher education's inclusion into GATS as an opportunity to facilitate trade in higher education, which has been growing anyway, according to them. The GATS framework might offer a transparent environment and more security for higher education providers.

Several comments should be made at this point about the polarized discourse. First, what seems to be present in almost all forms of discussion on GATS and higher education—stakeholders' views and standpoints but scholarly contributions as well (see chapter 7)—is uncertainty. As repeated by both *proponents* and *opponents*, GATS is an untested and a partly self-constituting mechanism. Its consequences are very difficult to predict on a general level. At the same time, especially in developing and transition countries, the question arises whether the application of the main principles (deregulation, privatization, more competition, etc.) will bring along the anticipated positive results in higher education.

Second, the issue of vocabulary has also become very important. Altbach (2004) expresses the feeling of many members of academia: "It is very difficult for the higher education community—and, for that matter, the general public—to

understand GATS and its implications. It is stated in 'trade speak' and the legal implications of treaties" (p. 6). In this respect, what is not entirely understood, might be perceived as potentially dangerous. Therefore, it is important that the discussion continues via publications or discussion fora, so that various stakeholders can understand each other and follow each others' language and assumptions.

Third, the GATS legal framework entered the academic environment using special rules and norms as well as assumptions. This language of free trade, liberalization policies and formal legal rules does not always correspond with the academic jargon. On the contrary, they are often seen as contradicting each other. At the same time, the WTO related agenda including GATS is perceived as highly politically sensitive. It contains principles of a neo-liberal economic approach which is not unanimously accepted across various states and cultures. All the above mentioned observations contributed to the fact that the discussion on GATS and its consequences in higher education is very polarized and sometimes very emotional.

8.7 Conclusions

Chapter 8 discussed stakeholders' views and standpoints with respect to higher education's inclusion into GATS representing the dynamic dimension of our conceptual framework. Most arguments used by opponents as well as proponents of GATS and liberalization of higher education were analyzed and finally confronted with each other. A separate section was devoted to the EU as it is too complex and internally fragmented to be labeled a proponent of GATS. The role of the OECD and UNESCO, two intergovernmental organizations which have created a platform for further discussion on trade in higher education, was also discussed in a special section.

The findings of this chapter confirm the observation of many commentators: the discussion on GATS and its implications for higher education has been distinctly polarized (Ziguras, 2002). On the one hand, we have selected national governments, international and intergovernmental organizations, and pro-trade lobby groups trying to gain access to new markets and to remove major barriers to free trade in services including higher education. On the other hand, critics of GATS besides other objections warn that GATS means a threat to public education on a global scale. It is mostly the case that opponents to GATS and liberalization of education attribute to GATS a potential to influence significantly higher education both locally and globally. The findings also support the view of Larsen and Vincent-Lancrin (2002) that the issue is polarized across professional groups representing their own culture and interests rather than across countries. In countries which can be regarded as proponents of GATS and liberalization (e.g.

Australia or the United States), there is a strong opposition against this trend from public universities, labor unions and students.

Another opinion stated in the discussion, although not prevailing, is that other developments play a more important role rather than GATS itself. They include global factors (demand for higher education, ICT technologies, increasing student mobility, internationalization, etc.) and local factors (intended policies on national government to introduce more market-oriented mechanisms in higher education). This view suggests that GATS should not be viewed as powerful as it was perceived mainly by its critics.

There were 7 major statements identified as most used by the GATS opponents. Based on the analyzed documents issued by proponents, answers to these statements were constructed. Table 8-8 summarizes these statements and associates them with opponents' and proponents' standpoints.

Table 8-8: Most frequent statements as supported by stakeholders

No.	Most frequented statements	Opponents	Proponents
1	Education is increasingly seen as a market with an opportunity to make profit [5x]	Yes, undesirable	Yes, desirable
10	[but] Education is a public good, a public service, a public responsibility [14x]	Yes	Yes, but increasingly of hybrid nature
12	[and] Education is not a tradable commodity [9x]	Yes	No
15	GATS means privatization in education; [13x]	Yes	No
17	GATS means a threat to public education; [13x]	Yes	No
21	GATS means a threat to the traditional role of government, the state sovereignty, democratic principles and democratic decision-making; [11x]	Yes	No
24	GATS means that private and foreign providers will be entitled to the same subsidies as domestic public institutions; [10x]	Yes	No
25	GATS means that state subsidies either to institutions or to students are under threat. [14x]	Yes	No
37	Education should be excluded from GATS. [9x]	Yes	No

The major statements in table 8-8 correspond well with Altbach's summary (2004) stated below.

GATS opponents do not oppose the internationalization of higher education, cross-border collaboration, or even necessarily trade in education. Overseas study, collaborative research, institutional cooperation, and other aspects of internationalization are welcomed. They do oppose at least three basic underlying elements of the WTO-GATS approach to higher education—the dominance of the market and the accompanying notion that higher education is a commodity to be traded on an open market where those who have a ‘competitive advantage’ will come to control, the idea that higher education is a private good (to be paid for by ‘users’—students), and the idea that higher education is a common commodity, easily transferable from one country to another (p. 6).

In order to conclude this chapter, we should summarize the points which are related to the main research questions. Regarding the position of a nation-state, critics of further liberalization of higher education argue that GATS means a threat to the traditional role of government, the state sovereignty, democratic principles and democratic decision-making. Furthermore, the fear is expressed that public education is under threat for mainly two reasons: firstly, private and foreign providers will be entitled to the same subsidies as domestic public institutions. Secondly, state subsidies either to public institutions directly or to students attending them will be abolished. Consequences will be the decrease of state funding for public institutions and therefore a potential lowering in quality. Proponents of GATS in higher education emphasize the fact that national governments are still the main actors in charge and decide upon regulation of a particular sector. They can use subsidies in service sectors in order to develop appropriate and most desirable policies in the public interest.

The next two chapters will be devoted to in-depth case studies on the national level. The first one was conducted in the Czech Republic and the second one in the Netherlands. Findings from both chapters 7 and 8 were incorporated in the case study design, i.e. the focus of the investigation and the formulation of the questions during the interviews.

9 National case study of the Czech Republic

9.1 Introduction

The case study is subdivided into two main parts. The first contains basic characteristics of the Czech higher education system, while the second is focused on issues related to GATS. A general introduction precedes the more specific discussion on GATS in order to provide the reader with sufficient background on the Czech system and its historical developments over recent years. The first section highlights some of the major challenges faced after 1989 and describes the components of the system together with the key actors. The funding mechanism is discussed as well as the higher education legislation. According to the author's knowledge, a similar elaboration of the higher education legislation and its development after 1990 has not yet been conducted in the Czech Republic. The second part of the chapter includes a description of the Czech Republic as a market for higher education and a chronicle of negotiation and re-negotiation of GATS commitments on the national level. Based on the conceptual framework it looks at the main stakeholders together with their views and responses (dynamic dimension) and an analysis of higher education legislation and its changes (static dimension) with respect to the selected mode of delivery (mode 3 – commercial presence).

9.2 Higher Education System in the Czech Republic

Higher education in the Czech Republic is the oldest in Central Europe. No publication dedicated to education would miss a chance to emphasize the fact that Charles University was founded in Prague in 1348 by Czech King and Roman Emperor Charles IV⁷⁰. The long-standing and indeed very interesting history of the Czech higher education system, however, is not the main topic of this study. Most historical reminiscences are avoided, and the study maps mainly the post-communist period developments.

Although Charles University itself is the most symbolic and emphasized feature of Czech higher education, the system evolved over the years, and it possesses nowadays a very high level of diversity. In 2005, the Czech higher education system consisted of 2 state, 26 public and 40 private institutions (CSVŠ, 2005).

⁷⁰ For more information see www.cuni.cz

A remarkable development of private institutions took place during the last couple of years, as they were only officially allowed to operate since 1998. There were 9 private institutions with accredited study programs in 1999. This number increased to 14 in 2001 and 27 in 2002. In 2005 there were as many as 40 private higher education institutions. A significant number of the newly established private providers are located in Prague (18 out of 27 in 2002 and 20 out of 40 in 2005). Despite the number of private providers, their students do not constitute a considerable share of the total higher education student body in the Czech Republic, which was approximately 6 percent in the academic year 2004/05. Private higher education institutions are mostly small institutions⁷¹ focusing mainly on low-cost fields of study that are not demanding in terms of laboratory and technology equipment. They provide study programs in fields such as economics (56%), law (9.5%), computer science (5%), the arts (9.5%), applied ecology (5%), humanities and social sciences (10%), and health services (5%) (Šebková et al., 2004).

Prague and Brno, the two major university cities, jointly attract approximately 60 percent of the student population. Prague alone accommodates almost 40 percent of all the students. The total number of students was around 207,000 in 2000, and 229,000 in 2001 (UIV, 2002). In the academic year 2003/2004 there were almost 270,000 students at public and private higher education institutions and nearly 4,500 students at state institutions. The number of people graduating from bachelor, master and doctoral study programs rose to 35,000 in 2003 (Šebková et al., 2004). Table 9-1 summarizes the main characteristics of the Czech higher education system in the 2004/05 academic year.

Table 9-1: Higher education system in the Czech Republic, academic year 2004/05

Type of HE institution	Number of institutions	Number of students	% of students
Public HE	26	274,962	92 %
State HE	2	4,114	1 %
Private HE	40	19,120	7 %
TOTAL	68	298,196	100 %

Source: CSVŠ, 2005

⁷¹ The size of the largest private providers such as the Institute of Finance and Administration and J.A. Komensky College of Higher Education (both located in Prague) reached 2,800 and 2,701 students respectively in 2004/05.

9.2.1 Major challenges after 1989

More than 15 years passed since the Velvet Revolution took place in former Czechoslovakia. During 1990-2005 the higher education system changed tremendously, in terms of both quality and quantity. Similar to other CEE countries, which all underwent fundamental changes in their political system, Czech higher education institutions faced the challenge to:

- change their governance and management structures to more democratic ones that would allow more autonomous behavior;
- change their curricula to match the transformation from socialist economies to market economies;
- change their mission from mainly teaching-oriented to incorporate research; and
- compete with a new sector of private higher education institutions of varying kinds⁷²

(Westerheijden & Sorensen, 1999, p. 13).

Governance and management structures

As a major change in the governing structure of Czech higher education, academic senates were introduced shortly after 1989 to enable academics and students to run their institutions without strict central government control. These 'revolutionary' senates elected new deans and rectors, who seemed to guarantee at least minimum moral and professional qualities compared with most of their predecessors, mainly political appointees. With the help of students the management of all institutions changed completely; almost 90 percent were replaced (Holenda, 1994).

Nevertheless, the sudden shift from a centralized system to a system of self-governance had its consequences. A number of problems appeared shortly after the Higher Education Act of 1990 came into force, due to the lack of experience with democratic governance within individual institutions as well as rather ambiguous designation of responsibilities on the state's side. Having acquired their autonomy, higher education institutions became very sensitive to any form of outside intervention (Šebková & Hendrichová, 1995). What was missing was a policy which would define and implement a new balance between decentralization and the role of the state (Čerych, 1997).

The process of systemic transformation initiated in 1990 was replaced in 1998 by another phase which can be called a 'consolidation period', especially with respect to public higher education institutions. Former state institutions were fully transformed into public bodies which by that time internalized new rules and principles. The Act of 1998 did not introduce any dramatic changes into the existing

⁷² The private higher education sector constitutes a specific feature of the Czech system as it was officially recognized only since 1 January 1999. It is discussed in more details in the chapter.

governing structure. Some observers asserted that the new Act mainly 'legalized' the structure of higher education institutions that had developed since 1989. Older academics, holding deans' and rectors' offices after the revolution, were slowly replaced by younger successors, many of whom had held political positions during the previous communist regime (Čermák, 1999).

A system of self-governance and high autonomy⁷³ of higher education institutions along with indirect state steering by distribution of financial resources are regarded as two main characteristics of the contemporary Czech higher education system (Šebková & Beneš, 2002). A strong feeling against interference prevails in academia; any kind of state intervention or regulation is perceived as improper and sometimes seen as a step back to 'the old times' partly due to the central planning experience from the communist era. Therefore, higher education policy is based on consensus and must be applied very carefully. All major measures must be discussed with higher education institutions' representatives⁷⁴. When formulating strategies and policies, the Ministry of Education very often operates with terms such as 'encourage', 'suggest', 'recommend', 'facilitate', 'support', etc. As a result, strategies and policies are very broad and usually leave individual higher education institutions sufficient space for maneuvering.

Changes in curricula

Curricula changed after 1989 mainly in areas such as sociology, political science and economics. Basic study materials from the West were translated, and new Czech textbooks appeared in order to satisfy the students' desire for new knowledge. Yet teaching methods very often remained the same. According to a survey on values among Czech students, there were no significant changes in the quality of instruction in the period from before 1989 until 1992 (Čermáková & Holda, 1992).

Incorporating research

The shift from mainly teaching as the mission of higher education institutions into some incorporating research succeeded. A significant reduction of the Academy of Sciences, which previously carried out the majority of research activities according

⁷³ In this respect formal and informal autonomy or rather political potential must be distinguished. On the one hand, many structural details and procedures are prescribed by the legislation. Also the Accreditation Commission possesses considerable powers in terms of study programs and their content. All of this can be seen as a limitation of autonomy. On the other hand, the legislation was basically drafted by universities themselves (see section 9.2.4), the Accreditation Commission consists mainly of academia members (the HE Act states that 'the representation of higher education institutions submits its recommended composition of the Accreditation Commission to the Minister'). Therefore, it is perceived and presented that higher education institutions in the Czech Republic possess a rather high level of autonomy. In the author's view, a more appropriate interpretation would be that the Ministry of Education's ability to implement measures and policies is limited and very much contingent on the higher education institutions' agreement.

⁷⁴ According to §92 of the HE Act "the Minister and representation of higher education institutions discuss proposals and measures that have a significant impact on higher education institutions".

to the Soviet model, helped transfer a considerable part of research to universities. However, the achievements of higher education institutions in research and development have been repeatedly called into question. It has been considered the weakest characteristic of Czech higher education. Czech research and development has shown rather unsatisfying results in international comparison in areas such as scientific publications, number of patents per capita, number of spin-offs created by universities, level of cooperation between research centers and businesses, participation in European or world-wide research networks, etc⁷⁵.

Besides the challenges mentioned above, which can be regarded as qualitative, higher education also faced a quantitative confrontation. Massification of higher education, which took place in many Western countries a few decades ago (see chapter 2, section 2.2), was postponed till the post-communist period in many CEE countries. In some countries (Hungary, Slovenia, Czech Republic) the expansion occurred within the public system, whereas for example in Poland it was the private sector that contributed to the growth in student numbers (File & Goedegebuure, 2003). During the last decade of the 20th century the number of students enrolled in higher education increased in the Czech Republic from 118,194 to 228,635 (Beneš, Huisman & Šebková, 2003), in Hungary from 108,376 to 349,301 (Csepes, Kaiser & Varga, 2003), in Poland from 408,000 to 1,698,000 (Kaiser & Wach, 2003), and in Slovenia from 36,504 to 70,755 (Huisman & Vrečko, 2003). The number of higher education students in the Czech Republic increased significantly over 10 years, although it was not as impressive as in Poland or Hungary.

While only 14 percent of 19-year olds entered tertiary education in 1989 in the Czech Republic, it was as much as 40 percent in 2000. The Ministry of Education planned to accommodate 50 percent by 2005 (MŠMT, 2000). During the academic year 2004/2005 the number of students enrolled at Czech higher education institutions was around 298,000 students (CSVŠ, 2005). Despite the extensive growth, the Czech population's tertiary degree attainment was still very low in international comparison. Only 12 percent of the population aged 25 to 34 years completed tertiary education, comparing with the Netherlands with 27 percent, and, highest in Europe, Finland with 40 percent (OECD, 2004a).

9.2.2 Components of the system and main actors

According to the legislation in force in 2005, higher education institutions in the Czech Republic are either of a university or a non-university type. An institution of a non-university type usually provides mainly bachelor study programs. If accredited, it can also provide master study programs, but it is not entitled to

⁷⁵ For more information on research and development see documents *Analýza stavu výzkumu a vývoje a jeho srovnání se zahraničím 2004*, *Národní inovační politika ČR na léta 2005-10*, *Strategie hospodářského růstu*, etc.

provide doctoral study programs. A university type higher education institution is entitled to offer study programs leading to bachelor, master as well as doctoral degrees. Both types of institutions, non-universities and universities, can be state, public or private. Apart from a few institutions of strategic importance (Police Academy and the University of Defense), all former state institutions were transformed into public legal bodies in 1998. This transformation had a significant impact mainly on property rights.

A private sector, officially recognized by the higher education legislation, was absent till 1999. The post-revolutionary Higher Education Act of 1990 did not allow operation of private institutions⁷⁶. At the same time, the attitude of traditional universities was rather unfavorable to their potential competitors. As a result, state higher education institutions functioned for one decade with almost no obligations to respond to competition. Finally, the Higher Education Act of 1998 permitted the existence of private providers starting from 1999. As they so far have been offering mainly bachelor degrees, it is still very difficult for them to compete with public institutions. The reason is that neither employers nor the general public hold the bachelor degree to be competitive with traditional master degrees awarded by public institutions. Furthermore, since no tuition fee was introduced in public higher institutions, their bachelor and master degrees are understandably of a very high attractiveness to Czech students.

Aside from the traditional higher education system, there is also a growing sector of so-called higher professional schools⁷⁷ offering degrees of diploma specialist in various fields. The system started in 1990 supported by experts from the Netherlands. After intensive lobbying by representatives of traditional universities during the discussion about the scope and structure of the new Act, higher professional schools were not included in the higher education legislation. One argument for higher professional schools to be excluded from the higher education system was that research should represent an indispensable part of higher education. Representatives of traditional universities expressed continuously their doubts about professional schools lacking research capacities. In fact, it means that these institutions are usually excluded from the system of higher education. The term 'tertiary education' as it is used in national analytical studies and strategic materials includes both higher education institutions and higher professional schools.

⁷⁶ Several private institutions such as the Anglo-American College in Prague or the Open University offered their services prior to 1998. Although they were allowed to provide teaching to fee-paying individuals, their degrees were not recognized by the Czech Ministry of Education. This issue is discussed further in this chapter.

⁷⁷ Often the English term 'tertiary professional schools' is used. In the academic year 2004/2005 there were 175 higher professional institutions with approximately 30,000 students.

The Ministry of Education acts on behalf of the state. Contrary to the era before 1989, the power of the state is rather limited. In general, the Ministry is expected to create favorable conditions for the development of higher education institutions, coordinate their activities, and carry out other duties and responsibilities imposed by the higher education legislation such as registering internal regulations of higher education institutions, drawing up an annual report on the higher education system and a long-term strategy of the Ministry, etc. Most importantly, the task of the Ministry includes allocation of funding to individual institutions and monitoring the way the money is spent (see section 9.2.3.).

A very important role in Czech higher education is played by the Accreditation Commission. It represents an expert body consisting of 21 members appointed by the Czech government. The Commission has two main goals. First, it is required to respond to applications for accreditation of study programs, applications for the right to conduct habilitation⁷⁸ procedures and procedures for the appointment of professors, foundation, merger, integration, splitting or dissolution of a faculty of a public higher education institution, applications by a corporate entity for state permission to operate a private higher education institution, and identification of the type (university or non-university) assigned to a higher education institution. Second, the Commission should care about the overall quality of higher education, including, for example, evaluation of accredited study programs and activities (CHES, 2001).

The Accreditation Commission assesses all types of study programs which seek to become part of the official higher education system. A program assessment includes the evaluation of the program's content as well as the ability of a higher education institution to deliver it. Accreditation of a study program is awarded for a limited period of time, which is usually double the standard duration of a particular program (CHES, 2001). When applying for accreditation of a study program, an institution must meet several requirements. The Higher Education Act in force (111/1998) explicitly states that the applying institution must provide "evidence of staff, financial, material, technical and information provisions pertaining to the study program for at least the standard length of study" (article 79). The accreditation procedure is still based to a great extent on inputs rather than on throughputs or outputs. The structure and qualification of academic staff is of prime importance for the decision whether a program succeeds or fails to be accredited.

⁷⁸ A successful defense of a habilitation thesis is a necessary condition for the position of an associate professor (docent). Only after completion of habilitation (*venium docendi*) is one qualified for a professor position. Contrary to some other systems where titles such as professor or associate professor usually denote a working position, in the Czech system these titles indicate academic degrees. In this respect, there are similarities between the Czech Republic and Germany or Austria and also some other CEE countries.

According to the legislation (article 92), higher education institutions are represented in policy debates by two main bodies. The Council of Higher Education Institutions is composed of academic staff and student representatives, both delegated by academic senates. The Czech Rector's Conference consists of higher education institutions' rectors. Both bodies must be consulted by the Ministry over the course of the decision-making process concerning significant higher education policies and the budgetary policy in particular.

9.2.3 Funding Mechanism

The Higher Education Act of 1998 specifies the way higher education institutions are funded.

Public higher education institutions are entitled to grants for providing accredited study programs, programs of lifelong learning and associated scholarly, research, developmental, artistic or other creative activities, as well as the development of higher education institutions. Conditions pertaining to grants, their utilization and accounting are subject to general regulations on utilization of resources coming from the state budget.

The total amount granted is strictly dependent on the long-term intentions of a public higher education institution, the long-term objectives of educational, scholarly, research, developmental, artistic or other creative activities in the area of higher education institutions prepared by the Ministry and updated annually (Long-term Plan of the Ministry), the type and financial requirements of accredited study programs and lifelong learning programs, the number of students, and the results achieved in educational, scholarly, research, developmental, artistic or other creative activities and their requirements (paragraph 18).

Allocation of funds from the state budget is seen as the most important mechanism by which the state influences higher education as a whole and the behavior of individual institutions. The amount of the lump-sum funding is based primarily on the teaching and research performance of individual institutions. The main part of the budget for teaching is determined partly by the performance formula, and partly by the contract reflecting the level of correspondence between the development plan of the institution and of the *Long-term Plan of the Ministry*. A minor part of the teaching budget is allocated according to rules other than formula-based.

A significant part of the performance formula is based on the volume of teaching activities (input-based formula). However, this part of the budget does not give any additional power to the state to promote its plans (for example, encouraging specific types of study programs, the use of ICT, staff development, support programs for young academics, etc.). A higher education institution is entirely free to redistribute the money obtained according to its internal rules (Šebková & Beneš, 2002). In other words, apart from the contract-based funding, where the money must be entirely spent on specific projects, an institution is very autonomous in

terms of the structure of their expenses. The academic senate of a higher education institution approves the structure and the total amount of the annual budget.

Contract-based funding should play an increasing role in allocating money from the state budget. The Ministry announces priority programs for each year together with the amount of associated funding. Institutions are invited to submit their projects reflecting the guidelines of particular programs. Submitted projects should also be in line with the institution's long-term plans. It is expected that the announced programs should encourage development of strong points and give the opportunity to limit weak points of the tertiary education system in general, as well as those of particular institutions (Šebková & Beneš, 2002).

9.2.4 Higher education legislation and its development

There are two main milestones regarding Czech higher education legislation. One is the Higher Education Act of 1990 and the other is the Higher Education Act of 1998. The federal⁷⁹ post-revolutionary 1990 Higher Education Act re-established the principles of institutional autonomy and academic freedom. Based on the assumption that higher education institutions had sufficient internal power to deal with their communist past, get rid of political appointees and transform themselves into modern teaching and research universities, the drafters of the Act provided them with considerable autonomy. The necessity to change the framework of higher education as quickly as possible left only little space for a deep debate across the academic community and other stakeholders, or for elaborated analysis or lesson-drawing from other countries. Already at the time of its writing, the first act was perceived as a temporary solution. It was anticipated that new legislation would be in place within 2 years. Nonetheless, the Act seemed to provide a more than sufficient legislative framework for the period of transformation.

The preparation of the new draft, however, took more time than was originally planned. Many political events—among others the split of Czechoslovakia—slowed down the work on the legislation. The new draft was submitted to the government and approved in November 1995. Yet after a heated discussion, the Parliament did not accept the new proposal and returned the draft to the Minister of Education for further corrections. The refused proposal met major opposition from many sides, but mainly from students and rectors. The submitted legislation introduced tuition fees for students and limited the autonomy of higher education institutions. Students, mainly from the Faculty of Arts at Charles University, opposed the introduction of tuition fees because the draft did not include a complementary loan scheme. Rectors accused the proposal of trying to deprive the universities of their fundamental rights and freedoms. During a very sensitive political atmosphere

⁷⁹ Already since 1968, Czechoslovakia was a federation of two states – the Czech and Slovak Republics.

before the coming parliamentary elections, neither the opposition nor the coalition took the risk to pass such a controversial piece of legislation. The draft was not put again before the Parliament.

During the period between 1996 and the end of 1998, intensive discussions took place. Students took the first step and initiated two national gatherings during 1996 and 1997. A few proposals were made, which were ultimately incorporated in new legislation. Among other things, the tuition fees were withdrawn except if students exceed the prescribed duration of their study program. Students' representatives also successfully defended a quota for their minimum participation in the faculty and university senates.

It was not always easy to find a compromise between the position of the Ministry of Education, rectors and other stakeholders, mainly students. On top of everything, the new draft was discussed at a time of political crisis and major changes in the government. The Minister of Education moved to the Ministry of Finance, and a newly appointed Minister held the office for only a couple of months. Finally, the draft was submitted to the Parliament in late 1998 and came into force starting 1999.

One interesting fact from the legislative process should be mentioned. It appeared that there were two independent drafts on the table during the discussions. One, submitted by the Ministry and the other, prepared by the Faculty of Law at Charles University in Prague. The latter was called 'the rectors' draft'. When one looks at the approved version of the act, it is clear that it possesses mainly the features of the latter one. The higher education institutions themselves—represented by Charles University and its Faculty of Law—succeeded in drafting and passing their own legislation. It can be viewed as a demonstration of their immense political power.

Compared with the old act, the new one ended up being much more detailed in order to clarify many matters that the old act left to a very broad interpretation. First of all, it strengthened the position of central administration of higher education institutions vis-à-vis their faculties. Faculties, until then, enjoyed a high level of independence which in many cases made the role of central university administration problematic. At the same time, the new Act guaranteed higher education institutions the existing level of autonomy and did not add any significant instruments to the Ministry of Education to intervene. Finally, and most importantly with respect to the topic of this study, the act introduced private higher education.

A few amendments to the act have been made since its passing. A group of opposition members of the Czech Parliament, in fact against the will of the Ministry of Education, succeeded in amending the act in 2001. Their amendment introduced

bachelor study programs⁸⁰ as an obligatory first level of higher education and with only a few exceptions as a necessary precondition if the student wants to continue in any master program. At the same time, the amendment gave higher education institutions the opportunity to offer some of their teaching capacities to students who are willing and able to pay, in the 'life-long learning mode' (Šebková et al., 2004).

According to the act a higher education institution as part of its educational activities may deliver, free of charge or for a fee, life-long learning programs designed either for occupational training or leisure activity. A higher education institution grants certificates to participants who have successfully completed life-long learning programs. In case participants of accredited life-long learning programs become regular students in line with the legislation, a higher education institution may recognize the credits they have earned in life-long learning programs up to 60 percent of credits necessary for due completion of academic studies. Contrary to expectations, many faculties offered almost the same courses to both groups of participants, paying and non-paying. Yet it is too early to assess the effect of the amendment on either the behavior of higher education institutions or the demand for higher education in the Czech Republic in general (Svatoň & Vlk, 2004).

9.3 Czech higher education system and GATS

This section focuses on themes which are closely related to GATS. First, Czech higher education is discussed as a market. Second, the renegotiation process on specific GATS' commitments is described. This part focuses on stakeholders and their role in the process (trickle-up trajectory of our conceptual framework). Third, the Czech higher education legislation is analyzed with respect to new providers who want to offer their services on the market (trickle-down trajectory).

9.3.1 Czech higher education as a market

Describing the Czech higher education system as a market can be done in different ways. The following section first touches upon the relationship between the supply and demand for higher education by discussing the national and international dimension. Furthermore, a general perception of higher education in society including the standpoints towards tuition fees is discussed.

⁸⁰ Some universities introduced a bachelor degree back in the early 1990s (Prague School of Economics, Faculty of Social Science at Charles University, etc.). The bachelor degree was officially recognized by the HE Act in 1990. However, the exact relation between the bachelor and master degree was defined neither in 1990 nor in 1998. The argument behind the amendment was that the institutions were reluctant to re-organize their study programs according to the Bologna process, and the only measure to force them to do so was a change in legislation.

Supply and demand on the national level

Concerning the supply side, the Czech higher education system has undergone significant changes with respect to the number and heterogeneity of providers since 1990. In general, the system offers nowadays a broad scale of choices in both public and private sectors. Also due to the implementation of the Bologna Declaration—especially the new bachelor, master and doctoral structure—and the increasing provision of part-time study programs, the opportunities for applicants to study in desired fields has enlarged.

According to the forecast of the Ministry of Education (MŠMT, 2000) the global supply and demand for higher education was predicted to be balanced by 2005 due to an overall demographic decline. The total supply of places at higher education institutions was estimated at 80,000. However, certain disparities in fields would continue, according to the Ministry.

The number of places available to students by 2005 reached and even exceeded the planned figures. More than 90,000 applicants entered their first academic year in fall 2005. Nevertheless, a balance between the supply and demand is far from being achieved. The chances of being accepted in a particular study program varies from 8 to 98 percent at public institutions. The chances of being enrolled at a private institution is considerably higher; only in a few cases is the chance lower than 50 percent. Among the most demanded study programs are law, medicine, pharmacy, economics and education science. The highest chances of being accepted are offered by programs such as mechanical engineering, electrical engineering, chemistry or theology (Doležalová, 2005).

It must be emphasized, however, that the number of applicants to each higher education institution is not necessarily the most appropriate indicator for assessing the demand in the system. All applicants who meet the basic requirements for entering higher education can apply to as many study programs as they wish. Many of them therefore send their applications to various institutions in order to multiply the chances of being accepted at least somewhere. As a consequence, many of them start studying programs of their second or third choice. Then those students, already participating in the higher education system, continuously try to get accepted in their prioritized programs. Because the drop-out rate is rather high—on average it is around 20 percent but at some technical faculties it reaches almost 50 percent in the first three years of study (MŠMT, 2000)—unsuccessful students repeatedly apply either to the same or different study programs.

International student mobility

Another important indicator of market dynamism is student mobility from and to the Czech higher education system. An increasing number of Czech students spend part of their studies abroad. There were 4,874 students reported to be abroad in 2001 (OECD, 2004a). The most accurate statistics are offered by the Erasmus

program. In the academic year 2003/04 3,589 Czech students spent at least one semester in another EU country. The most popular study destinations appeared to be Germany with 931 students, France with 510 students, and Great Britain with 317 students. The Nordic countries are also becoming more popular. 39 Czech higher education institutions participated in the Erasmus program in 2005 (Kramešová, 2005).

An increasing effort to attract foreign students to study at Czech higher education institutions can be observed in recent years. Nevertheless, no systematic or targeted campaign has been launched on the central level. The only activity being undertaken is a publication, *Higher Education in the Czech Republic – Guide for Foreign Students*, published biennially by the Center for Higher Education Studies. Individual institutions distribute information packages and brochures for foreign students and maintain websites in English (CSVŠ, 2005).

Despite the absence of a significant and coordinated promotion campaign on the national level, the number of foreign students studying at Czech higher education institutions has grown over the last few years. Figures differ, but all show growth. The OECD statistics (2004) indicate that there were 7,750 international students studying in the Czech Republic in 2001, whereas there were only 2,836 in 1995. Another source, using different years for comparison but indicating the same trend, states that the number of foreign students at Czech higher education institutions grew from 5,500 in 1999 to 14,300 in 2003, constituting approximately 6 percent of the student body (CSVŠ, 2005). 1,398 foreign students participated via the Erasmus program in the academic year 2003/04 (Kramešová, 2005).

One important fact must be mentioned regarding the composition of the foreign student body. According to the Ministry of Education, out of 255,000 students, the total number at public higher education institutions, 9,900 came from Slovakia in 2005. Similarly, in the private sector, 1,700 out of 20,000 students were Slovaks. There were approximately 5,500 foreign students other than Slovaks enrolled at the Czech higher education system, out of which 1,000 followed non-Czech, paid instruction (Látková & Röslerová, 2005).

Students who are able to follow instruction in Czech are treated according to the same conditions as their Czech counterparts⁸¹. This fact gives a significant advantage to Slovak students who are able to follow the Czech language easily. The number of Slovak students enrolled in Czech higher education institutions continuously increased due to the perceived higher quality of Czech universities, the higher standard of living and better study conditions for students in the Czech Republic as well as intensively discussed plans of the Slovak government to introduce tuition fees⁸². As a matter of fact, the higher level of internationalization

⁸¹ The obligation to pay tuition fees at public higher education institutions applies only to the study programs provided in English.

⁸² The attempt to pass the new law did not succeed in the Slovak Parliament in May 2005.

of the student body in Czech higher education was caused mainly by the inflow of Slovak students. Slovaks constituted roughly 4.2 percent of the student population in both public and private institutions (more than two thirds of 17,100 foreign students in 2005).

Tuition fees

Another factor affecting the supply and demand on the higher education market is the level to which students contribute financially to the system. The introduction of tuition fees, their level, the way they should be set up and all related issues have been discussed among policy-makers, academics, students and the general public. Attempts were made several times to introduce tuition fees in public higher education institutions, but the Parliament repeatedly turned down the proposals. Especially social democrats, communists and partly the Christian democrats were in strong opposition to the introduction of tuition fees. As the Social democratic party has formed the majority in the government since 1998, the governmental higher education policy was strictly confined to free higher education in order to secure access for students from low income families.

In reality, the contrary seems to have happened. The selectivity of the system remains one of its main characteristics. Despite the fact that the number of students in the Czech higher education went up since 1989, the number of children who achieved education at a level higher than their parents decreased, and the number of children who did not achieve the same or higher education as their parents increased (UIV & NVE, 1999). This fact was supported by the result of a comparative study in other European countries. The chance to receive higher education is 8.8 times higher for children of parents with a higher education background than for children of parents with only primary education in the Czech Republic. The lowest figures are 2.3 for Belgium and 2.7 for the Netherlands. The second highest number is 6.1 for Germany (SVP, 1999).

It seems that free higher education offered by public institutions is still considered a traditional and valuable achievement of Czech social policy. However, some opinion polls conducted in recent years showed that more people perceived tuition fees as an acceptable higher education policy tool. A large survey on a sample of more than 1,000 respondents was conducted in September 2003. It showed that higher education was regarded as an investment by 95 percent of the targeted group. On the one hand, 67 percent answered that higher education should be provided for free for everybody. On the other hand, answering a different question, 56 percent of respondents stated that higher education should not be for free (Sociologický ústav AV ČR, 2004).

Standpoints and views on tuition fees and related issues were thoroughly analyzed in a study conducted during 2004. The sample represented first year students in both public and private institutions, in total 4,044 respondents. In general,

a financial contribution for studies was accepted by 54 percent of students, whereas only 20 percent resolutely rejected any fees. Out of the three options offered (direct tuition fees, graduate tax, and deferred payment of tuition fees) students preferred the latter two. Direct tuition fees, however, could have direct and the highest impact on the quality improvement of education, according to the survey participants (Sociologický ústav AV ČR, 2004)⁸³.

The discussion on tuition fees has been quite polarized over the last 15 years in academia as well as in the general public. Despite several attempts in the Parliament, a tuition fee has not been introduced in public higher education institutions. It is very difficult to predict any future developments in this respect as it mainly depends on the political orientation of the government. It has been argued, however, that the free higher education provision in public institutions has contributed neither to better quality of institutions nor to increased social mobility of young people.

9.3.2 *Negotiation and re-negotiation of GATS commitments on the national level*

The Czech Republic committed itself under the GATS agreement in the sector of higher education during the Uruguay Round (see Chapter 3, section 3.2 for more details). The Czech Republic Schedule of Specific Commitments from 15 April 1994 (see the table below) shows that the sub-sector of Educational Services was limited to privately funded education services. Regarding market access and national treatment, the schedule contained no limitations in mode 1 (cross-border supply) and mode 2 (consumption abroad). Mode 3 (commercial presence) included one limitation for both market access and national treatment. Mode 4 (presence of natural persons) remained unbound.

EDUCATIONAL SERVICES

Privately funded education services (CPC 921, 922, 92310, 924, 929)⁸⁴

Limitations on market access:
Mode 1) None
Mode 2) None
Mode 3) Foreign nationals may obtain authorization from competent authorities to establish and direct an education institution and to teach. Conditions of ensuring quality and level of education and suitability of school facilities.
Mode 4) Unbound except as indicated in the horizontal section

⁸³ Stakeholders' standpoints on tuition fees are also discussed in section 9.3.3

⁸⁴ CPC stands for Central Product Classification.

Limitations on national treatment
Mode 1) None
Mode 2) None
Mode 3) None other than: majority of members of the Board must be of the Czech nationality
Mode 4) Unbound except as indicated in the horizontal section

It was not possible in this study to trace how and why the original commitments at the end of the Uruguay Round were made in the Czech Republic. With the help of minutes of meetings (MŠMT, 2004) and interviews with the key actors⁸⁵, it was possible to partly reconstruct the process of re-negotiating, however. The discussion associated with the GATS re-negotiation round concerning educational services took place between 2001 and 2003.

The Czech Republic participated in the Doha Conference (9-14 November 2001). The national delegation consisted of representatives from the Ministry of Industry and Trade, the Ministry of Foreign Affairs, the Ministry of Agriculture, the Ministry of Finance, the Ministry of Environment and the Permanent Delegation to the WTO in Geneva. A report on the conference was submitted to the government. Regarding the services sector, the right of the government to regulate the services included in the Declaration was emphasized in the report.

During its regular session on 6 March 2002, the Czech government acknowledged the results of the Doha Conference and established a steering committee for the WTO issues across various sectors. By governmental decree the steering committee was formally attached to the Ministry of Industry and Trade. It was appointed to serve as a coordinating body for the whole services sector, whereas other ministries shared their responsibility for their respective sectors. The Ministry of Education was responsible for educational, recreational and sports services.

The steering committee's main goal was to monitor the developments within the WTO and coordinate the Czech Republic's position in the negotiations. Two main deadlines were stressed with respect to the activities of the committee. First was the fifth ministerial conference taking place in Cancún in 2003. Second was 1 January 2005, when the Doha Development Agenda was supposed to end. The steering committee established nine working groups for individual sectors. Educational services were included in the working group for services. The Ministry of Education nominated their candidates, representatives of the Foreign Affairs and European Integration Department, the Higher Education Department and an official responsible for the life long learning agenda. The first meeting of the steering committee took place on 14 June 2002.

⁸⁵ Officials from both the Ministry of Trade and the Ministry of Education participating in the decision-making process were interviewed.

It is important to note that even prior to the full membership of the Czech Republic in the EU, an intensive consultation process developed between the national authorities and the European Commission with respect to the WTO agenda. A meeting was documented between the Commission and the Czech Republic's delegation taking place 20 and 21 May 2002. The agenda included mainly a comparison of already existing commitments across sectors. It also seemed from other documents that the position of the Czech Republic vis-à-vis the EU was regarded by governmental officials as one of the most important factors in the GATS re-negotiation process. At the same time, it was also emphasized that the coordination was rather difficult with respect to finding a balance between short, mid and long term priorities.

An intensive exchange of information between various state departments took place during summer of 2002. A letter dated 18 June 2002 from the Higher Education Department summarized the position of the Ministry of Education regarding the request to other WTO member states. It stated that no request is needed for Czech private higher education institutions to access the markets in third countries.

No problems were observed regarding this issue. In fact, as perceived by the Ministry, no intention of private higher education institutions to access the markets in other WTO member countries was indicated.⁸⁶

During the meeting of the working group for services, 11 July 2002, the requests for educational services were summarized. At that time, the overall negotiation position of the Czech Republic was formulated. The most important factor was to take into account the position of the EU and its *acquis* towards third countries. It was also declared, after a thorough evaluation of market access and national treatment, that no further commitments in education, travel and ecological services would be considered. The Ministry of Education compared the existing commitments of the Czech Republic and the European Union. The Ministry declared that according to its judgment "existing commitments and limitations of the Czech Republic in GATS in privately funded higher education correspond with the situation and are in line with commitments and limitations of the EU". It was also highlighted that some EU countries had additional limitations in market access as well as national treatment. The Ministry therefore stated that "the position of the

⁸⁶ Some of the Ministry of Education's officials noted during the interviews that two factors were touched upon during various discussions: First, increasing activities of Czech higher education institutions operating in Slovakia. As Slovakia is also a new EU member state, the issue was considered irrelevant with respect to GATS. Second, some of Czech public higher institutions carried out various undertakings abroad, mainly research-oriented, such as Egypt in the case of the Faculty of Philosophy and Arts at Prague's Charles University and sub-tropic South America in the case of the Czech University of Agriculture in Prague. The topic was not discussed further.

Czech Republic is to a certain extent more liberal than the position of some other EU member states.”

By that time, the Czech Republic had received only a request from the United States.⁸⁷ The request from the United States was analyzed in July 2002. A part of the request reads as follows: “members who have not already done so are requested to provide full commitments for market access and national treatment in modes 1, 2 and 3 for higher education and training services, for adult education, and for ‘other’ education.”

While answering the U.S. request, the Ministry of Education stated that the Higher Education Act enables any entity providing educational, scholarly, research, development, artistic or other creative activities to apply for accreditation of a study program. The legislation does not contain any provisions which would discriminate between any entities with their domicile either in the Czech Republic or abroad, if they wish to provide educational, scholarly, research, development, artistic or other creative activities for free or for a charged fee. The Accreditation Commission does not have either the duty or the right to evaluate the quality of such programs. Furthermore, a provider does not have to register its activities with the Ministry of Education.

Moreover, the Ministry pointed at Articles 89 and 90 of the Act, which specify the conditions under which education provided by a foreign legal entity and obtained either abroad or in the Czech Republic can be recognized. The section of the Higher Education Act labeled *Recognition of Higher Education and Qualifications Acquired Abroad* basically sets the conditions under which a certificate on recognition shall be issued for a graduate of a foreign higher education institution.

The Ministry of Education also stated that study programs can be provided by foreign legal entities without official accreditation from the Ministry. Graduates of these study programs are then regarded as graduates of a foreign higher education institution according to the Act with a possibility to request a certificate on recognition. The Ministry therefore concluded that it was possible to conduct activities in higher education services without any limitations if the provider did not seek accreditation of its study programs. From this followed that existing commitments and limitations in the field of private higher education were in line with GATS disciplines and commitments.

As a next event, another meeting of the steering committee took place on 18 October 2002. It was argued that especially in the area of services very close cooperation was needed with the EU in order to balance the commitments.

⁸⁷ Note the distinction between the Communication from the United States sent to the WTO secretariat in December 2000 and initial requests for market access that were supposed to be submitted by the end of July 2002 and were addressed directly to the requested WTO member country. See chapter 3, section 3.5 for more details.

The request was made that scholars and other members of academia with some knowledge of GATS and WTO would be available to the steering committee for consultations. Following the request, rectors and deans of public and private higher education institutions were asked by the Ministry of Education in November 2002 to suggest experts from their staff in the respective areas. By the end of 2002, a list of 13 consultants was completed and submitted to the Ministry of Industry and Trade. Two public and two private schools offered their expertise: Prague School of Economics, West Bohemian University in Pilsen, Private School of Economic Studies Prague, and the Banking Academy Prague. From the studied materials and conducted interviews it appears, however, that the selected experts have not been approached.

The working group for services under the Ministry of Industry and Trade met again on 12 December 2002. Prior to the meeting, the Ministry of Industry and Trade asked other ministries to submit their proposals for further commitments. As it received only a limited number of suggestions from the others, the Ministry of Industry and Trade formulated its own proposals. On behalf of the Ministry of Education, only a representative of the Higher Education Department participated in the working group. The respective representatives for basic and secondary education were absent. At that time the Ministry of Education did not table any further proposals.

At the end of January 2003, consultations took place between the Ministry of Industry and Trade and the Ministry of Education. It was stressed during the discussion that regarding existing GATS commitments of the Czech Republic, private higher education was limited to post-secondary technical and vocational education services. The existing limitation in mode 3 (commercial presence) was also mentioned: the majority of members of the Board must be of the Czech nationality. The Ministry of Education was asked to submit its new proposals by 11 February 2003.

The final proposal of the Ministry of Education in the area of privately funded education services contained two major changes in comparison to the original 1994 commitments. First, the category of higher education services was taken as one sub-sector under code 923. It was not further subdivided into 92310 and 92390. This is in fact only a technical matter. Second, more importantly, it voided the existing limitations on national treatment. The new list of commitments in privately funded education services looked then as follows:

Limitations on market access:
1) None
2) None
3) Foreign nationals may obtain authorization from competent authorities to establish and direct an education institution and to teach. Condition of ensuring quality and level of education and suitability of school facilities.
4) Unbound except as indicated in horizontal sections.
Limitations on national treatment
1) None
2) None
3) None
4) Unbound except as indicated in horizontal sections

In March 2003, it was decided that the Czech Republic would make no further commitments in the area of financial, cultural, educational, health and traffic services. No other horizontal commitments would be made either. Two working group sessions on services followed in the first half of 2003. The first one on 15 April, the second one on 29 May. Those sessions approved the decisions. As far as could be assessed, after that period the negotiation of education services on the national level stopped.

9.3.3 Stakeholders' views and responses

In this section, looking at the dynamic dimension of our conceptual framework (trickle-up trajectory), we will examine which stakeholders were involved and how, in the process of negotiating the Czech commitments during the Doha Round. From the studied documents and conducted interviews it seems clear that besides the Ministry of Education and the Ministry of Industry and Trade no other stakeholders were involved. One additional commitment (rather insignificant) in mode 3 on national treatment, was made by the Ministry of Education and added to the final schedule. Such a change was not considered necessary to be consulted with any other players. No actual process of negotiations between the Ministry and other stakeholders was either traced in ministerial materials or mentioned during the interviews⁸⁸.

⁸⁸ As no networking or lobbying took place with respect to the renegotiation of higher education under GATS, the interviews focused instead on stakeholders' standpoints towards liberalization of the market, foreign providers, tuition fees, higher education export, etc.

With the exception of trade unions and students, stakeholders were not involved in any kind of activities related to liberalization of services within the WTO context on either the national or European (international) level. The students participated mainly through ESIB, although no activities were undertaken in the Czech Republic. The Trade Union discussed liberalization of services in a broader perspective within the European Trade Union Confederation (ETUCE). Its representatives also participated during the demonstration against services liberalization in Brussels in March 2005.

The Ministry of Education itself does not see any difficulties with foreign higher education institutions providing their services in the Czech Republic. It perceives competition as desirable on the market, and any potential negative developments could be minimized by delivery of relevant information and a system of accreditation and mutual recognition. Competition from abroad is supported for similar reasons by the Chamber of Commerce as well as by private providers' representatives. Trade unions are much more reserved with respect to this issue. They assume that there is enough potential within domestic higher education institutions to meet the demand.

All interviewed players agreed that foreign higher education providers had to meet exactly the same criteria as domestic providers. The legislation in general does not distinguish between private domestic and foreign providers with a single exception: EU-based institutions are treated preferably, due to the EU legislation. However, certain factual/non-legal barriers for foreign providers could be found in the following facts: First, diplomas from Czech higher education institutions are still preferred on the Czech labor market. Second, as Matějů (interview, May 20, 2005) points out, a loan or grant scheme to cover living and other study-related expenses has not been developed yet. Many students therefore prefer public institutions where they do not have to pay tuition fees.

It was often expressed during the interviews that there was a significant imbalance between supply and demand of higher education in the Czech Republic. However, the situation differed across study fields. Another highlighted issue was that the demand for higher education did not sufficiently reflect the situation on the labor market. This is caused mainly by the lack of information on how successful graduates from various fields are on the labor market (wages, level of unemployment, etc.), by not well-developed consulting systems in high schools, and partly by non-existence of tuition fees in the public sector.

Tuition fees, as already mentioned in section 9.3.1, had been debated intensively since 1990 and became a very sensitive and controversial issue. This fact was confirmed by interview participants. Tuition fees are unacceptable for trade unions as well as for students. Both argue that the introduction of tuition fees would jeopardize the access of socially disadvantaged families to higher education.

Furthermore, the student union refuses any tuition fees based upon interpreting constitutional rights of Czech citizens as well as multilateral agreements on human and social rights⁸⁹. Some representatives of public higher education institutions favor the introduction of tuition fees, others argue that the tax burden is already too high for certain groups in the society.

Finally, the 'export' issue was also mentioned during interviews with the stakeholders. The main obstacle seems to be the language competencies of Czech teachers. Yet certain study fields (medicine, mechanical and electrical engineering and computer sciences) and individual institutions were rather successful in attracting a considerable number of master as well as PhD foreign students⁹⁰. An increasing demand was observed mainly from countries of the former Soviet Union, Vietnam, China, India, etc. One example of a very significant step toward further internationalization of higher education was the successful accreditation of Czech medical faculties by the U.S. accreditation agency.

Regarding the public discussion, issues such as GATS, liberalization of education, export and import did not made any significant appearance in the national media. Except several articles published by the author himself in various journals between 2002 and 2004⁹¹, the topic was hardly given any attention. One exception was Ondřej Svatoň discussing tertiary education as a service. The article appeared in 2004 in AULA, a review on higher education and research policy of the Centre for Higher Education Studies in Prague.

9.3.4 Analysis of higher education legislation with respect to mode 3

This section looks at how GATS directly impacted the national legislation through its provisions (trickle-down trajectory). Mode 3 (commercial presence) was identified as the most controversial mode by the commentators (chapter 7 – Impact Studies) as well as GATS' opponents (chapter 8 – Stakeholders' Responses). Therefore, the sections analyze how foreign providers can enter the Czech higher education market and how they are treated in comparison with domestic private higher education institutions.

The conditions under which a foreign provider can offer higher education services in the territory of the Czech Republic are specified by the legislation. The higher education acts (1990 and 1998) including their amendments and accompanying

⁸⁹ See also *Poziční dokument Školné* at <http://www.skrvs.cz>

⁹⁰ For example foreign students represent 11 percent of the student body at Charles University according to its rector.

⁹¹ *Vzdělávání překračuje hranice států* in *Hospodářské noviny* - 8.8. 2002, *Exportní univerzity* in *Ekonom* - 18.7. 2002, *Tradiční univerzity ztrácejí monopol na VŠ vzdělání* in *Lidové noviny* - 26.4. 2002, *Vysokoškolské vzdělání je dobrý vývozní artikl* in *Lidové noviny* - 5.4. 2002, *Hon na platící studenty* in *Ekonom* - 4.9. 2003, *Skrytý trh za 30 miliard* in *Respekt* - 27.9. 2004.

legislation represent the most relevant rules. Other fundamental conditions for the operation of any foreign legal entity are defined in other legislation such as the commercial code.

The Higher Education Act of 1990 set up the main framework of the post-revolutionary higher education system. Article 3 of the Act stated that “higher education institutions are established, merged, divided and dissolved in the Czech Republic by the act of the Czech National Council”. A certain role in this process was also assigned to the Accreditation Commission as it according to Article 17 “gives its opinion on the proposals to establish, merge, divide and dissolve higher education institutions and their faculties”.

Concerning the degree awarding power, Article 1 of the Act said that “higher education institutions have an exclusive right to provide higher education and award academic titles to graduates”. Furthermore, “they have a right to provide post-graduate education and the exclusive right to award respective academic titles⁹²”. Regarding the higher education institutions’ relationship with state finances, Article 6 stated that “higher education institutions and their faculties are financed from the state budget”. An official list of higher education institutions constituted an integral part of the Act.

As a result of the legislation which was in force from 1990 till 1998, the provision of higher education officially recognized by the state was granted only to then existing higher education institutions. They constituted special legal entities established by a specific law (The Higher Education Act), and their conduct was partly regulated by the Higher Education Act and partly by other applicable legislation. Only students studying at these institutions possessed the status of higher education students entitled to social security, health insurance benefits, tax exemptions and other social aid. Any other potential providers, whether domestic and foreign, were basically excluded from the system and were in fact not allowed to enter the system, as it was legally impossible. The only changes that happened within the system—the Act had to be amended in those cases—were the changes in names of some institutions and the establishment of a new university in Zlín, which was based on the existing detached faculty of the Brno Technical University.

At the same time, a few providers offered higher education courses and awarded degrees to fee paying students. They were MBA providers or bachelor degree providers. None of their degrees was regarded as an official degree by the Czech state. The degree was usually awarded by a foreign institution and recognized at the country of origin. Nor were the students of these programs entitled to student benefits, in contrast to those studying at the higher education institutions

⁹² In parallel with higher education institutions, also the Academy of Sciences possessed its own system of post-graduate training and had the right to award scientific titles.

recognized by law. The fact that the degree is not officially recognized by the state also has negative implications with respect to civil servant employment, position prerequisites and pay scales in the state sector, ability to enter post-graduate training, etc.

When the commitments under GATS were made by the Czech Republic in 1994, the Higher Education Act of 1990 was in force⁹³. As the commitments made by the Czech Republic in 1994 were exclusively limited to privately funded education services, and the Czech legal system then did not recognize a private higher education sector, the commitments meant absolutely no change to the system. The consequences of making the commitments for the Czech government with respect to its steering capacity in higher education were literally non-existent.

The Higher Education Act of 1998 brought significant changes with respect to the provision of higher education. With some further amendments, the act was still valid by the end of 2005. As a major development, the act states in Article 2 that “the higher education institutions are public, private or state”. By this provision of the act, a private sector was officially recognized as an integral part of the Czech higher education system. Furthermore, the act specifies the basic structure and duties of both public and private institutions. With respect to foreign providers seeking access to the Czech higher education market, only the option to act as a private higher education institution can be considered. Therefore, the following text is devoted to private higher education.

Article 39 of the Act introduces the principle of state permission. This article requires every legal entity that wants to provide higher education services in the Czech Republic to receive state permission as a first step. As a second step before it can start its teaching activity, it must obtain accreditation for its study programs. Article 2 of the Act states that “higher education institutions provide accredited study programs as well as life long learning programs”. Furthermore, Article 78 says that “study programs are subject to accreditation awarded by the Ministry”. It continues that “in the case of non-accredited study programs, it is impossible to admit any applicants, hold lectures, examinations or award academic degrees”. In the case of a new provider, both applications—for state permission to act as a higher education institution and for accreditation of a study program—can be submitted at the same time to the Ministry.

By the end of March 2005 the Ministry registered in total 98 requests for state permission. Individual applicants applied in 35 cases twice, in 9 cases three times, in 4 cases four times and in 1 case even seven times. Thirty nine state permissions were granted, whereas in 33 cases the Ministry decided not to award the permission, and in 23 cases the applicants themselves withdrew their applications.

⁹³ See the schedule of commitments in section 9.3.2.

Together with domestic providers there were applicants from Russia, Greece and the American Baptist Seminar seated in Switzerland.

The 1998 HE Act as well as other pieces of legislation contains a detailed description of the process of accreditation. The following text pays attention only to those provisions that are crucial in the case an applicant for accreditation is *de facto*⁹⁴ a foreign provider. Article 79 of the Act states the requirements of a written application of a higher education institution for a study program. It includes among other things components of the study program, evidence of staff, financial, material, technical and information provisions pertaining to the study program for at least the standard length of study, expected number of admitted applicants, etc.

The Act allows the possibility that other entities than holders of state permission to act as private higher education institutions can also apply for accreditation of a study program. According to Article 81, accreditation of a study program can also be requested by a legal entity undertaking educational, scholarly, research, developmental, artistic or other creative activity. Again, the entity should have its domicile either in the Czech Republic or other EU member country. However, in this case the request for accreditation for a study program must be made together with an existing higher education institution. The request should include a contract on mutual cooperation between the entity and a respective higher education institution which admits applicants and awards academic degrees to its graduates.

According to the Act, the Ministry of Education shall issue, upon agreement with the Accreditation Commission, a decree specifying the content of the written application for study program accreditation. The decree was issued on 10 February 1999 and says among other things that the application should include evidence of staff provision such as their names, academic achievements, form and extent of working contract with the provider, etc. The application also must contain very detailed evidence of financial, material and technical provision. Furthermore, the social need of the study program should be elaborated, including the opinions of relevant professional bodies. If a bachelor study program is of a professional focus, the application should for example include economic, social and demographic analyses of the region in which the institution intends to offer its program.

If the Accreditation Commission finds the submitted materials insufficient, it can ask for additional information from the applicant. The Accreditation Commission should issue its judgment whether a submitted study program meets the minimum requirements for its accreditation within 120 days from the date of its receipt (Article 79 of the Act). The Ministry has another 30 days to make a decision upon awarding the accreditation. The Act furthermore specifies that “while doing so, the

⁹⁴ *De iure* every provider (except an applicant coming from another EU country) is a domestic legal entity established according to Czech law.

Ministry pays attention to the general conception of educational, scholarly, research, developmental, artistic or other creative activity of the higher education institutions as well as to the evaluation of its activities”.

There is another piece of legislation that must be mentioned with respect to foreign providers – Ministerial Decree 183/1998. The Decree specifies the conditions under which a study program can be regarded as of a secondary or higher education level. Students of either program are then entitled to social security, health insurance benefits, tax exemptions and other social aid like other higher education students. However, if the study program is not accredited, the holder of such a degree is not regarded as a regular graduate by the Czech authorities. The degree may be automatically valid in the country of the provider, but not in the Czech Republic. The Decree’s supplement contains a list of selected institutions. By the end of 2003 there were 8 providers on the list offering their non-accredited courses to students (Svatoň, 2004).

An internal order of the Minister of Education, issued at the beginning of 2004, set the conditions under which an educational institution can be inserted into the supplement of Decree 183/1998. If a public higher education institution offers a study program similar to the one offered by the applicant for insertion into the supplement, the Ministry must ask at least one such institution about the comparability of the program. A requested public higher education institution should also express its opinion about the possibility of a potential degree’s recognition in line with Articles 89 and 90 of the Act.

As a matter of fact foreign providers of foreign degrees (or domestic providers of foreign degrees) are not completely out of the market. In principle, graduates of foreign higher education institutions can get their degrees recognized if certain criteria are met. Articles 89 and 90 describe recognition of higher education and qualifications acquired abroad.

As a result of historical developments and legal regulation, one can distinguish three main categories of private higher education providers. First, there are providers offering their services purely on a commercial basis and operating as business enterprises. They neither have to register nor report any of their activities to the Ministry of Education. In many cases, the Ministry officials can learn about the existence of such a provider only from its advertisement in the press. Example of such schools are some MBA providers⁹⁵. Second, there are providers who are not allowed to grant higher education degrees in line with Czech law, however, their students do enjoy student status with all related

⁹⁵ There were 18 MBA providers in the Czech Republic at the end of 2003 (Svatoň, 2004). In October 2005 20 MBA providers advertised their services in the press (*Hospodářské noviny*, 2005).

benefits. Third, the most numerous are private or public higher education institutions offering accredited study programs.

To conclude this section we have to state that neither general GATS disciplines nor commitments made in 1994 had any impact on the Czech higher education legislation; no amendments were necessary. Since the official recognition of the private higher education sector (in force from 1999), domestic and foreign providers have to meet exactly the same criteria in terms of state permission and accreditation of offered study programs. The existing legislation does not discriminate between domestic and foreign private higher education providers.

9.4 Conclusions

The Czech Republic was one of the WTO member states that made several commitments in higher education services already at the end of the Uruguay Round in 1994. The commitments were limited to privately funded higher education, although the private sector was not legally established until 1998 in the Czech Republic. Unlike in some other countries, the GATS re-negotiation process attracted almost no attention among either the general public or academia. Why higher education's inclusion into GATS was not perceived as an important issue can be explained by several factors. In general, tertiary education in the Czech Republic shows the features of a 'self-sufficient' system. It does not depend on either export or import. The number of students willing to pay for their education—both going to study abroad or attending institutions established by private providers in the Czech Republic—is rather insignificant as the majority of Czech students prefer to obtain their academic training in public higher education institutions for free. At the same time, there is no governmental scholarship scheme supporting Czech students to obtain their degrees abroad. Also the students' benefits are limited to students attending institutions recognized by the Ministry of Education.

The Czech Republic has not been targeted by any major public or private higher education provider from abroad. Compared to countries with a large student body, such as Russia, China or others, a population slightly exceeding 10 million people does not seem to be a very attractive market.

In general, no governmental policy has been developed supporting higher education export. There are several reasons why Czech higher education does not have the capacity to attract a significant number of foreign students in the near future. First, the institutions have not been able to meet the demand within the system and the resources to expand are rather limited⁹⁶. Second, high quality study

⁹⁶ The exceptions are some Czech private providers trying to attract Slovak students by establishing small campuses near the border with Slovakia.

programs taught in English are still lacking. Third, higher education has not been perceived as a potential export commodity and further discussion has not been stipulated by any other ministry (Ministry of Finance, Ministry of Foreign Affairs, Ministry of Industry and Trade, etc.) or by the general public.

Also the overall perception of higher education should be mentioned. After 1989 a massive privatization process took place in former Czechoslovakia as part of the political and economical transformation. As a result of right-wing government liberal policies, the Czech economy became one of the most open in the world. Interestingly enough, higher education was left out of the liberalization scheme and has developed as a highly autonomous system within the society. Supply and demand, investment approach, student choice and other market-related categories have hardly been applied or even deeply discussed in ministerial materials. The free provision of higher education by state and public institutions is considered to be part of a social system. The introduction of student fees faces rather strong opposition across the population. Although high benefits of attaining higher education for individuals are documented also in the Czech Republic, it seems that higher education is perceived mainly as a public good.

All the above mentioned facts should be borne in mind when the impact of GATS on the Czech higher education system is discussed. Partly due to domestic political and social factors and partly due to the fact that Czech higher education has not been part of the 'export-import business', the feeling that foreign traditional or non-traditional providers could mean a potential threat to the 'monopoly' of public higher education institutions or to the quality of the system has not evolved. Therefore, a discussion on the re-negotiation of higher education under GATS has not taken place in the Czech Republic in the last few years.

It proved impossible to trace in this study the rationale behind making the original commitments in 1994 in private higher education. Some ministerial officers suggested the following explanation during the interviews: as private higher education legally did not exist at the time of the Uruguay Round, it could have been seen as no harm to commit a non-existing sector.

The re-negotiation round in higher education services was limited to the inter-ministerial working group. No other stakeholders were involved. The Czech schedule of commitments was modified by leaving out the limitation on the national treatment in mode 3 (commercial presence). Besides the U.S. request (the proposal was addressed to all WTO member states and was not very specific), the Czech government was not exposed to any pressure from either domestic or foreign bodies regarding the commitments. The final decision was achieved smoothly without any dispute.

The higher education legislation was not modified due to either commitments made in 1994 or general obligations arising from GATS. All major changes in the higher education landscape, including the introduction of private providers in the market after 1998, were caused mainly by domestic developments and were partly initiated by the Bologna process. International developments such as liberalization of services, export and import of higher education and related issues were not relevant factors, neither in the legislation and decision-making process nor in policy implementation. No reference was made to GATS or to liberalization in general in any strategic ministerial or governmental document on higher education.

Concerning current national legislation, it does not seem to be in conflict with any GATS provisions concerning the commercial presence mode. Any foreign provider seeking to establish a higher education institution in the Czech Republic has to meet the same conditions as a domestic applicant. However, both domestic and foreign private providers might face a number of informal barriers. For example the fact that students do not have to pay tuition fees at public institutions can be seen as a great comparative advantage. A hypothetical line can be drawn between public and private providers rather than between domestic and foreign.

Decreasing the barriers for higher education providers, focus on export, opening the system to more institutions and other related issues did not rank among the priorities of the existing governmental higher education policy. It was mainly focused on finding a way to increase funding for the existing public institutions as a vehicle to improve the quality of the system⁹⁷. In general, higher education policy has been so far clustered almost exclusively on issues arising on the national level such as tuition fees, employability of graduates, quality assurance, implementation of the bachelor/master structure, etc. Taking into account all the above mentioned features of the Czech system and the discussed developments, there is no particular reason why existing higher education providers or other stakeholders should have been disturbed by the fact that higher education was re-negotiated under GATS.

At this point, the main research question can be addressed, taking into account the conceptual division between regulatory consequences and stakeholders' involvement. Concerning the legislation, no GATS principles had to be implemented through the national legal framework. A similar observation can be made with respect to stakeholders' activities. There was no trickle-up trajectory, initiated in relation to GATS, resulting in policy change.

Finally, we can conclude that the way the Czech government steers higher education has been influenced by factors other than GATS or liberalization policy in general. The main driving forces behind the changes in the relationship between

⁹⁷ It includes the increase of existing state funding, special programs for universities within the European structural funds and R&D grants.

the state and higher education institutions after 1989 were de-centralization and democratization of the system. These processes resulted in a very high level of autonomy and self-governance of higher education institutions. Changes in legislation and applied governmental measures in areas such as accreditation or funding were initiated by other rationales than general liberalization policies. GATS rules and the re-negotiation round in particular played no role in higher education policy and therefore can be said to have had no impact on the steering capacity on the nation-state in the Czech Republic till 2005.

10 National case study of the Netherlands

10.1 Introduction

This chapter is structured in a similar way as the previous one in order to allow comparison. The first section describes the higher education system in the Netherlands including recent changes, the main stakeholders, principles of funding and a brief description of the higher education legal framework. The second section discusses Dutch higher education as a market, describes the discussion on GATS on the national level, the views, standpoints and positions of the different stakeholders (dynamic dimension), and analyzes the legal framework (static dimension) with respect to the selected mode of delivery – commercial presence (mode 3).

10.2 Higher education system in the Netherlands

The higher education system in the Netherlands consists of two sectors. The first represents the traditional university system (*wetenschappelijk onderwijs, WO*) which is focused on academic education. The second includes *hogescholen* offering professional higher education (*hoger beroepsonderwijs, HBO*). These two sectors together form a binary system. As of 2005 it consisted of 13 research universities and 45 *hogescholen*. The boundaries between universities and *hogescholen* have become somewhat blurred over the last years, especially with the introduction of the Bachelor-Master structure. There has also been growing collaboration between institutions from the two sectors resulting in a number of institutional cooperation arrangements, including some mergers (De Weert, 2004)⁹⁸.

Next to universities and *hogescholen*, Dutch higher education includes four universities for theological education, a humanistic university, the Open University, institutes for international education (*internationaal onderwijs, IO*) and several recognized private providers⁹⁹, including a number of private teaching institutions offering certificates, diplomas and recognized degrees in diverse professional fields

⁹⁸ Despite growing collaboration and several mergers, the two systems are still very much separated. Also the study fields vary significantly.

⁹⁹ Many private institutions have a long tradition. For example Nijenrode University was founded in 1946 by Dutch multinationals such as Shell, Philips and Unilever. It offers degrees like Master of Science in Management or International Master of Business Administration. Another example is the LOI. Its history goes back to 1923 when it started distance learning courses in accounting. In 2005 it had 7 accredited Master programs and around 20,000 students enrolled on the HBO level. LOI stands for *Leidse Onderwijs Instellingen*.

(Boezeroy, 2003). Around 70 private institutions supply almost 700 higher professional study programs in fields such as translation, interpreting, property management, accounting, etc. in 2004 (Jongbloed, Salerno & Huisman, 2004). Also foreign providers including the Webster University or the Phoenix University offer their services in the Netherlands (Luijten-Lub, 2004a).

The Dutch higher education legislation in force at the time of conducting this case study distinguishes explicitly between private and public education. According to the Higher Education and Research Act from 1993 (WHW) private institutions are those “originating with an association with full legal competence or with a non-profit making foundation” (almost exclusively with Protestant or Catholic private institutions) whereas public institutions “originate with the government”. Based on Article 23 of the Dutch constitution, concerning the freedom of education, these private institutions, provided that they are officially listed in the annex to the Higher Education and Research Act, are funded on an equal base with the public institutions. They are thus private (in terms of their legal status), but government-funded institutions.

Furthermore, it is explicitly stated in the Act that the “institutions of higher education other than those listed in the annex to this Act may be recognized” (section 1.11 of the Act). They provide study programs leading to the award of diplomas equivalent to those awarded by the government-funded institutions and they are also subject to the same quality requirements. These recognized institutions are thus private and not funded by the Ministry, however, their students qualify for student grants and loans (see for more details section 1.11 of the Act).

The history of traditional university education started with the establishment of the University of Leiden in 1575. It was followed by the University of Groningen (1614), the University of Amsterdam (1632) and the University of Utrecht (1634). A range of other institutions, including three technical and an agricultural university emerged in the following centuries. Apart from these institutions, there are also institutions that were established during the second half of the last century as a way to support economic development in disadvantaged regions such as the technical universities of Eindhoven (1956) and Twente (1961) and the University of Limburg (later called University of Maastricht) in 1976 (Boezeroy, 2003).

The roots of higher professional education can be traced back to the 19th century. The Domestic Science and Technical Education Act of 1919 represented the first legal framework for a highly fragmented sector which was recognized as a distinct type of education in 1968. Till 1983, however, the sector was significantly restricted by detailed regulation—institutions of professional education were part of secondary education—although its importance and contribution to the national economy was acknowledged. Finally, the 1986 legislation legalized the already *de*

facto existing binary system and integrated the *hogescholen* into the higher education legislation (Boezeroy, 2003). Nowadays, courses delivered in the *hogescholen* are divided into seven sectors: education, engineering & technology, health care, economics, behavior & society, language & culture, and agriculture & natural management and fisheries (MOECS, 2003).

The Open University (OUNL) was established in 1984 in Heerlen. It offers distance learning courses leading to both university and higher professional degrees for those who previously did not have the chance to enter higher education¹⁰⁰. Recently, the OUNL represents an innovative approach in higher education, especially concerning the use of ICT¹⁰¹.

Institutes for International Education include only a small number of foreign students and were originally established in the 1950s to offer advanced training for people coming from developing countries. The language of instruction is English, and the focus of courses, lasting from a few weeks to two years, can be either on research or on the practical application of knowledge (HBO-Raad, 2004). The current government policy imposes more intensive cooperation between these institutes and the universities (Luijten-Lub, 2004a).

With respect to student enrollment, *hogescholen* are by far the largest providers within Dutch higher education as is demonstrated in table 10-1.

Table 10-1: Student enrollment by type of institution in 2004 of the main higher education providers¹⁰²

Universities	Hogescholen	Open University
199,350	346,210	13,000

Source: CBS, 2005

¹⁰⁰ In 1990 there were 18 OUNL study centers offering their services in the Netherlands to 53,000 participants enrolled in more than 150 programs (Vuyk, 1998). However, a decline in student numbers was witnessed, and partly due to this fact the role of the OUNL started to be reconsidered (MOECS, 2005a). In the 20th year of its existence, in 2004, the Open University ran 12 study centers in the Netherlands and 6 in Belgium. More than 7,000 students followed academic programs (6 bachelor programs and 13 master programs) in Culture Studies, Business and Public Administration, Environmental Sciences, Psychology, Law, Informatics and Educational Studies (OUNL, 2004).

¹⁰¹ In 2000 the Open University, 3 universities and 8 hogescholen set up the consortium 'The Digital University'.

¹⁰² As private providers do not publish information on the number of enrolled students, it could only be estimated at 12 percent of the total share of student population in higher education in 2003 (Jongbloed, Salerno & Huisman, 2004).

With respect to student numbers, the higher education sector—universities and *hogescholen*—has shown interesting dynamism over the last few decades. The highest level of enrollment in the university sector was achieved at the beginning of the 1990s as a result of government measures to improve access to universities. In higher professional education student numbers continued to grow steadily over the years. Table 10-2 gives an overview of the number of graduates in the last 20 years.

Table 10-2: Number of graduates in universities and hogescholen

Year	Universities	Hogescholen
1980	11,093	39,845
2000	22,710	55,870
2003	21,100	60,200

Source: CHEPS (2005a), Eurydice Eenheid Nederland (2005)

10.2.1 Major changes in recent decades

During the last 25 years several changes have taken place within the higher education system in the Netherlands not only with respect to increased student numbers. The landscape changed significantly in the 1980s. Courses offered by the universities were shortened from six to generally four years. The number of institutions offering higher professional education was reduced from 350 small schools into 51 larger multi-sectoral institutions and 34 specialized ones. Further reforms in the 1980s reviewed the distribution of teaching and research responsibilities across the system and introduced budget cuts. As a result 53 courses were terminated, several faculties closed (dentistry, pharmacy), and cutbacks were made in social sciences, humanities, and medicine. More than fifty percent of the budget cuts was channeled back to universities for innovation (Vuyk, 1998).

At the same time, the Dutch government changed its approach towards higher education institutions. ‘State control’ was replaced by a ‘supervisory’ model in the Dutch steering philosophy (Maassen & Van Vught, 1994). With the white paper on *Higher Education, Autonomy and Quality* (1985) this meant that institutions were granted more autonomy, in exchange for greater accountability. The introduction of quality assurance as an important policy instrument was an important aspect of this new steering model, sometimes characterized as ‘steering from a distance’ (De Boer, Enders & Westerheijden, 2005).

In 2003 a major change was made in the context of the Bologna process: the bachelor-master system was introduced in Dutch higher education and in parallel an accreditation system was established (see section 10.2.4 of this chapter).

Apart from the recent reforms, following various elements of the European Bologna process, some further reforms were introduced after the turn of the century in the form of experiments, notably more differentiation with respect to entrance and final requirements (selection of students, honors programs, etc.) and in relation to tuition fees. But even more important in the context of this study is the idea of creating an 'open system' (*Open Bestel*) in Dutch higher education¹⁰³. The purpose of the *Open Bestel* is to make the higher education system in the Netherlands function more as a market, i.e. to allow and at the same time fund more higher education providers on the market. It can thus be seen as a national level effort to liberalize and to some extent privatize the higher education sector. As this issue appears to be rather sensitive, the government planned to start only with experiments in selected study fields during the 2006/07 academic year. No final decision has yet been taken, and the debate is expected to continue.

10.2.2 Components of the system and its main actors

Individual higher education institutions constitute the very core of the system. As already indicated in the previous section, Dutch higher education consists of universities, *hogescholen* and the Open University according to the legislation in force in 2005. There is also a number (around 70) of private providers, both domestic and foreign, offering mainly professional degrees across various disciplines. On the boundaries of the system, with respect to the targeted group of students, the institutes of international education can be located.

The Dutch Ministry of Education, Culture and Science (*Ministerie van Onderwijs, Cultuur en Wetenschappen*) is responsible for policy in both higher education and scientific research. The Ministry publishes every four years the Higher Education and Research Plan (*HOOP*). The Ministry decides which institutions are funded by the government and which are recognized but not funded.

The university sector as a whole is represented by the Association of Universities in the Netherlands (VSNU). *Hogescholen* form The Association of Universities of Professional Education (HBO-Raad).

PAEPON (*het Platform van Aangewezen / Erkende Particuliere Onderwijsinstellingen in Nederland*) is a voluntary association of private, recognized education institutions of various levels, which are not funded by the government¹⁰⁴. One of the major concerns of the PAEPON is to maintain and increase the quality of the provision offered by its members. The association strongly opposes the fact that government subsidies are currently limited only to selected institutions on the Dutch education market and would thus be in favor of the *Open Bestel*.

¹⁰³ See more discussion on the *Open Bestel* in section 10.3.1.

¹⁰⁴ The largest, non-funded Dutch private provider, the LOI, left the association in 2005.

Since 2002 the Netherlands-Flemish Accreditation Organization (NVAO) has been responsible for accreditation procedures. According to current legislation, all study programs offered either by universities, by *hogescholen*, or by private providers and leading to a degree shall be evaluated before 2009. Those fulfilling the required criteria will be accredited for a period of six years. All accredited degree programs shall be enumerated in the Central Register of Higher Education Study Programs (CROHO) which is available to the public (HBO-Raad, 2004).

The Education Council (*Onderwijs Raad*) is an independent permanent advisory body consisting of 17 appointed individuals. It has been in place since 1919, and one of its main tasks since 1997 has been to advise the government on broader education policy and legislation.

The Netherlands Organization for International Cooperation in Higher Education, NUFFIC, is an independent, non-profit organization. Among other tasks it promotes foreign participation in Dutch higher education and helps Dutch institutions to compete on the world market.

The Netherlands Organization for Scientific Research (NWO) is an independent organization, funding fundamental and strategic scientific research.

Royal Netherlands Academy of Arts and Sciences (KNAW) acts as the employer for about fifteen research institutes with a total of approximately 1300 employees. The Academy closely collaborates with universities in the Netherlands. Students are represented by two main bodies - the LSVb (*Landelijke Studenten Vakbond*) and the ISO - (*Interstedelijk Studenten Overleg*)

The VAWO is the labor union¹⁰⁵ of workers at universities, research institutions and medical centers. Since its establishment in 1963 it has provided research workers more opportunity to influence various aspects of research policy at their institutions. Two main goals of the VAWO are to improve working conditions of young researchers and to decrease the amount of bureaucracy faced by research institutions.

The Confederation of Netherlands Industry and Employers, VNO-NCW, is the Netherlands' biggest employers' organization covering almost all sectors of the Dutch economy. It has 180 branch organizations and more than 400 individual enterprises as affiliate members.

¹⁰⁵ VAWO was selected as one representative of the labor unions in the Netherlands based on the number of members and its close association with universities. The others are for example ABVA-KABO, AC-HOP, CNV-Publieke Zaak (CNV Public) or MHP.

10.2.3 Funding mechanism

There is a fundamental distinction between publicly-funded and recognized institutions when it comes to funding higher education in the Netherlands. Publicly-funded institutions receive funding from the national government¹⁰⁶, including the three (protestant and catholic) universities and the majority of *hogescholen* with a formally private status because of their founding basis (Jongbloed & Salerno, 2002). Recognized, but not publicly-funded institutions, have to rely on sources of income other than government funding. Yet degree programs offered by either type of institution must be accredited (HBO-Raad, 2004).

In 1984 the Place-Cost Model (PCM) was introduced for universities. Four categories of activities—education, basic research, societal services and conditionally funded research—are funded through different mechanisms. The PCM-model was simplified in the early 1990s and funding is allocated to each publicly-funded institution according to a formula-based lump sum for both teaching and research (Theisens, 2004). Since 2000 the teaching component of the formula includes four main parts: basic allocation (fixed amount for each university), allocation based on granted degrees, new entrants allocation and additional allocation for facilities connected with training in veterinary sciences and dentistry. The system is called a performance-based funding model (*Prestatie Bekostigings Model - PBM*). The annual procedure is that, first, the sum total of the budget for the higher education sector as a whole is determined by the Ministry of Education, Culture and Science and approved by the Parliament. Then the whole budget is divided amongst individual higher education institutions according to the parameters mentioned above. In addition to this budget universities also receive government resources for academic teacher training, academic hospitals and unemployment benefits for former university employees (Jongbloed, 2004).

10.2.4 Higher education legislation and its development

The Higher Education and Research Act (WHW) came into force in 1993, when it replaced several acts and other rules regulating separately universities, higher professional education and research. In terms of the relationship between higher education, research institutions and the government, the Act reflected a new steering policy indicated in the 1985 White Paper (see section 10.2.1). Institutions were given greater autonomy within basic rules set by the government in order to be able to respond more effectively to the changing needs of society. The government should interfere only if necessary. Quality assurance is primarily the responsibility of the institutions, to be carried out on the basis of periodic

¹⁰⁶ The Agriculture University in Wageningen is funded by the Ministry of Agriculture, Nature Management and Fisheries. Other institutions are funded by the Ministry of Education, Culture and Science.

program review by external experts, a process supervised by the Inspectorate for Higher Education on behalf of the government. The WHW Act was amended in early 2002 to legitimize the Bachelor-Master structure at Dutch higher education institutions starting in the academic year 2002/2003. At the same time, the accreditation procedure was introduced, complementing and partly replacing the previous quality assurance scheme, as well as the European Credit Transfer System (ECTS) (Boezeroy, 2003).

Another important governmental tool to regulate higher education is the Higher Education and Research Plan (HOOP). It has been published since 1987 every two years and since 1998 on a four-year basis. The plan for the 2000-2004 period was specifically focused on broadening the responsibilities and initiatives of individual higher education institutions. On the one hand, more flexibility and autonomy was introduced in the system. On the other, in addition to existing quality assurance a separated mechanism of accreditation was launched. Another consequence of the HOOP 2000 is that institutions introducing new study programs do not have to register them with the Ministry anymore as required by the 1993 WHW Act (Boezeroy, 2003). Nevertheless, the Ministry is still responsible for overall efficiency of the system ('macrodoelmatigheid', meaning that institutions have to get approval from the Ministry when they want to start new study programs) and for its quality and access.

New higher education legislation was under discussion when this study was written. Due to many amendments the WHW Act has become rather complicated and non-transparent. The basic philosophy behind the suggested new legal framework goes in the direction of a more deregulated and demand-driven system. It includes among other things a further increase in institutional autonomy and an accountability shift more towards stakeholders ('horizontal accountability') rather than the state itself ('vertical accountability') (MOECS, 2005b). The *Open Bestel* experiments are mentioned but not incorporated in the draft of the new Act. Higher education is labeled as a non-economic service, and measures are put forward to avoid further mergers between various types of institutions. The fact that higher education is labeled as a non-economic service is important with respect to fundamental principles of trade in services (including education) under GATS as well as for the EU directive on services¹⁰⁷. The consequences of such

¹⁰⁷ The European Directive on services is aimed at removing barriers to trade in services in the internal EU market. The first draft of the Directive was submitted by then commissioner Frits Bolkenstein and approved by the European Commission in January 2004. After facing intense opposition from some EU member states, the draft went to the European Parliament in April 2005. Evelyne Gebhardt, a parliamentary reporter, suggested fundamental changes, among others also the exclusion of sectors such as health, education, public media, culture, etc. The future of the Directive is yet to be seen. A first reading of the Directive took place in the European Parliament on 14-16 February 2006. The European Commission's Directorate for Education and Culture is currently undertaking an analysis on its possible implications for the education sector.

a 'categorization' of higher education and its potential confrontation with for example GATS' article 1.3 (exemption article) are yet to be seen.

According to some observers the proposed legislation is to a very high extent influenced by political compromises between various interests, and may therefore be inconsistent as a whole. Nevertheless, the main tendency of the government to take less direct responsibility for individual elements of the system is obvious.

10.3 Dutch higher education and GATS

As in the chapter on the Czech Republic, this section discusses selected elements related to the main topic of the thesis. First, Dutch higher education is described as a market on both the national and international level while touching upon supply and demand for higher education, promotion abroad, tuition fees, and the perception of higher education as a public versus a private good. Second, the discussion on GATS and related issues is described as it took place in the Netherlands. Particular attention is paid to the positions various stakeholders take as well as to their mutual interaction representing the dynamic dimension (trickle-up trajectory) of our conceptual framework. Third, while looking at the static dimension (trickle-down trajectory), specific provisions of Dutch higher education legislation are elaborated from the point of view of GATS' commercial presence (mode 3).

10.3.1 Dutch higher education as a market

The Dutch higher education system can be described and analyzed as a market functioning at two levels, i.e. the national and the international level. The steering of Dutch higher education has in many respects adopted market-type mechanisms over the last decades. Since the mid-eighties the Dutch government has stimulated competition in the public sector in general and has encouraged the presence of private providers on the higher education market (Van der Wende, 2002a). The steering model applies instruments such as tuition fees, funding based on students and graduates, student selection (though only in limited areas and particular cases), and quality assurance (accreditation). It also concerns the *Open Bestel* experiments which can be seen as an attempt to make the Dutch system more open and to introduce (even) more competition on the higher education market.

Supply and demand on the national level

On the supply side, the Dutch higher education market is made up of various institutions ranging from public institutions funded by the state, privately founded but publicly funded institutions to recognized but privately funded (foreign and domestic) providers (see 10.2). However, in terms of student enrollment, as already described at the beginning of this chapter, publicly funded universities and

hogescholen accommodate the vast majority (an estimated 90 percent, see table 10-1) of students in Dutch higher education.

Dutch higher education institutions are funded mainly through the supply side, although some demand-driven elements have been gradually introduced such as tuition fees and funding formulas partly based on the number of new entrants and graduates. Still, the determination whether an institution is funded by the government or not is crucial. As the list of publicly-funded institutions is attached to the Higher Education Act, providing public funds to an additional institution requires a legislative amendment¹⁰⁸. For that reason, together with the limited number of higher education providers and their geographic distribution, the higher education system in the Netherlands can be described as an oligopolistic system rather than as a competitive market (Kaiser & Van der Meer, 2001)

On the demand side, access to Dutch higher education is rather open. All applicants with a qualifying secondary education diploma or higher are in principle directly admitted to the program of their choice. Nevertheless, the pressure for selection of students has increased. Since September 2000 both universities and *hogescholen* have been allowed to use a decentralized selection – up to 10 percent of available places can be granted to applicants on the basis of their motivation, working experience, talent, etc. (Boezeroy, 2003; Kaiser & Vossensteyn, 2005). The open system of admission is limited by three types of *numerus fixus* applied to a restricted number of study programs. As a result of *capacity fixus* and *labour market fixus*, measures to limit the production of graduates have been applied in the past years in fields such as medicine, biomedical sciences, biomedical health sciences, veterinary science, dentistry on the university level and ergotherapy, tourism, journalism and social juridical service in the HBO sector. If the number of applicants for a particular program exceeds the teaching capacity of an institution, an *institutional fixus* can be applied by introducing selection criteria upon applicants (MOECS, 2005a).

The demand for higher education has fluctuated over recent years (see table 10-2). Although the number of new entrants has steadily increased in *hogescholen*, the university sector witnessed its peak in the early 1990s, followed by a serious drop of about 20,000 students in the following decade. Since the end of the last millennium enrollments started to increase again. However, it has not yet reached the level of top years again.

In general, it can be observed that due to the rather diversified structure of Dutch higher education—including a public binary system, the Open University and a number of private providers—the demand for higher education has been successfully met so far. However, apart from some fields where student interest outweighs labor market demand (see above), there are also fields that suffer from

¹⁰⁸ For more details see section 10.3.4.

an insufficient number of applicants. These concern mainly studies in science and engineering. Consequently, and mostly at the post-graduate level, Dutch universities have been increasingly forced to attract more foreign students for these fields of study.

It is clear that publicly-funded higher education institutions (both public and private) absorb most of the demand for higher education in the Netherlands (almost 90%). The approximately 70 private not publicly-funded institutions (outnumbering the totality of the publicly-funded institutions) cater to only some 12 percent of the students. They have so far not succeeded in breaking the hegemony (or oligopoly as mentioned above) of funded higher education institutions on the market.

Tuition fees

Another factor influencing the demand for higher education may be the financial conditions set for students. Dutch students have to pay tuition fees in all study programs in all institutions. The tuition for publicly funded institutions is set by the Ministry. The amount was 1,476 euro for full-time students in 2004 (Vossensteyn, 2005). The income from tuition fees constitutes approximately 6 percent of total income for universities and 18 percent for *hogescholen* (Jongbloed, 2004)¹⁰⁹. Institutions can charge differential fees to part-time students, to students who are not entitled to student financial support and to non-EU students. This option to differentiate between regular students and these specific target groups has up to now been used only sporadically (Kaiser & Van der Meer, 2001). But there is a trend that part-time students have to pay substantially higher fees at some institutions and study programs and, more recently, non-EU students as well.

Dutch students are supported in meeting living costs and expenses associated with studying by a system of student grants and loans. Full-time students¹¹⁰ enrolled in recognized institutions are also entitled to receive a student grant. All students receive a basic grant for the nominal period of study (4 or 5 years), and approximately 30 percent of them also receive supplementary grants based on parental income criteria. Since 1993 eligibility for student grants was related to performance requirements. Since 1996 the grants have been provided as initial loans. The loan can only be converted into a non-repayable grant provided students obtain a degree within ten years after they originally started with higher education (Vossensteyn, 2005). Besides the grant parts of the student support mechanism, students can also take on voluntary student loans. Furthermore, students are entitled to a public transport card with which they can travel for free during working days or during the weekend.

¹⁰⁹ For the universities it represents around 17 percent of their teaching related budget.

¹¹⁰ This means all full-time (Dutch) students except for those who start studies after the age of 30 or those who have a substantial personal income, e.g. from work, orphan's pensions, etc.

International student mobility

Intensive internationalization has taken place across the system, which has been seen not only as a tool to increase the quality of the higher education system, but since the end of 1995 mainly as a vehicle to achieve the long-term competitiveness of the Dutch national economy as well as a way to generate institutional income (Van Dijk, 1997, Luijten-Lub, 2004a; Vossensteyn, Huisman & Van der Wende, 2003). Student mobility has been promoted, and intense effort has been put especially into attracting fee-paying foreign students to study in the Netherlands.

The Netherlands has been increasingly focused on promoting its higher education system to students all over the world focusing on countries with a high economic potential. Dutch higher education has been marketed abroad through the Netherlands Education Support Offices (NESO). The NESO offices have been established since 1997 in Jakarta (Indonesia), Beijing (China) and Taipei (Taiwan) to help Dutch higher education institutions create and maintain closer links with targeted destinations (Vossensteyn, Huisman & Van der Wende, 2003). Further expansion of the NESO network is foreseen; another office was opened in Hanoi (Vietnam) in November 2005. The promotion of Dutch higher education abroad is further supported by the Netherlands Foreign Trade Agency (EVD) as a part of the overall foreign economic promotion strategy of the Netherlands. This international policy that started mainly to address China, Indonesia, Taiwan and South Africa is now spread and delivered by various channels including the NUFFIC, Dutch embassies and Dutch institutes operating in Athens, Cairo, Paris, Florence, Rome, St. Petersburg and Tokyo (Luijten-Lub, 2004a).

Promoting internationalization and marketing the system abroad have several reasons. Besides academic and cultural rationales (improving the quality of education, increasing mutual understanding and social cohesion, etc.), the economic motives have played an increasingly important role. The first purpose is to attract fee-paying students in order to generate more income. Second, foreign graduates of Dutch higher education institutions are expected to be like ambassadors for the Netherlands in their home countries by developing more intensive trade and international business cooperation. Third, foreign graduates, especially in science and technology, should contribute to the research capacity of the Netherlands for example by completing their PhD research at Dutch research institutions. Finally, through increased internationalization of higher education, Dutch students who remain 'at home' should also be better prepared for an increasingly international environment in their future jobs (Luijten-Lub, 2004a).

The incoming student mobility is encouraged by several scholarship schemes. The Huygens scholarship program is aimed at seven priority countries (Indonesia, China, Japan, South Africa, Czech Republic, Hungary and Russia) and awards around 175 scholarships annually with a total budget exceeding 1.5 million Euro. The Delta program is targeted at students from China, Indonesia, Taiwan and

South Africa. In the academic year 2002/03 858 scholarships were awarded at a total budget of 3,127,700 Euro. Mainly students studying at the Institutes of International Education benefited from the so-called 'regular scholarship program' – with 1,255 awarded scholarships and a total budget of almost 16 million Euro in 2002/03 this program is the largest one. These various programs were replaced by one integrated scholarship scheme in 2005, allowing the institutions to select themselves the best qualified students.

The number of students studying in the Netherlands through the Erasmus program has been increasing over the last few years. In 2001/02 6,141 foreign ERASMUS students were enrolled in Dutch higher education institutions (Luijten-Lub, 2004a). The OECD statistics indicate that there were in total 16,589 foreign students at Dutch institutions in 2001, constituting 3.3 percent of the total student population (OECD, 2004a). As the number of international students is not centrally registered in the Netherlands, various sources state quite different numbers. The NUFFIC reports almost 42,000 international students at Dutch higher education institutions in the 2004/05 academic year, including those enrolled in EU programs, comprising approximately eight percent of the overall student body. According to the Ministry of Education, Culture and Science (based on a study carried out by EIM¹¹¹) there were 27,500 international students in the same year (Castricum, 2005).

The system of scholarships and the general student support program also stimulates the outgoing mobility of Dutch students. Besides the ERASMUS program, there are limited numbers of scholarships available for study periods in Japan (18 in 2002/03) and EEA¹¹² countries (157 in 2002/03 with a total budget of almost 1.4 million Euro). Through the Erasmus program, the main source for outgoing mobility, 4,244 Dutch students studied abroad in 2001/2002 (European Commission, 2005a). In addition, Dutch students can use their standard student support for studying abroad as long as they are registered at recognized Dutch higher education institutions. To a limited extent they can also use this support for full-time study abroad (Vossensteyn, 2004). According to the OECD data, 11,792 Dutch students were reported studying abroad in 2001 (OECD, 2004a).

Perception of higher education

The extent to which the higher education system functions as a market can also be estimated from the way various stakeholders perceive it. The issue of public subsidies, for example, seems to be rather controversial in this respect. Private providers' representatives express their view that state funding which is available only to a restricted number of institutions limits consumer choice and does not stimulate overall efficiency. They claim that the government should change the existing system and start a demand-driven funding system with a voucher-type

¹¹¹ EIM Business & Policy Research (EIM BV) is an independent research and consultancy organization based in the Netherlands.

¹¹² European Economic Area

mechanism. According to the director of the LOI, a leading private provider, the government should not distort the market with subsidies. If really necessary, then the money should go to students who decide where to go and get the best service (Kwikkers et al., 2005). As observed by the author during his interviews, this standpoint was shared only by a few representatives of public universities and politicians; they did not seem to constitute the majority (see 10.3.3.).

Luijten-Lub (2004b) found that the general feeling of higher education representatives is that higher education is a public good (i.e. that should thus be funded by the government). However, many actors acknowledge that there are limits to funding of higher education from the public purse. Therefore, the fact that students are required to pay tuition fees does not disqualify higher education as a public good. It rather emphasizes that higher education besides its public function has also private benefits – attaining higher education significantly increases individuals' chances for better employment, more options for career, etc.

At the same time, the opinion is shared that private providers can co-exist alongside public providers. During the interviews conducted by the author, some actors distinguished between teaching and research functions of higher education. For them basic research is a public good as well as teaching because they both generate positive external effects, i.e. basic research leads to innovation, whereas teaching contributes to producing a highly educated labor force, and therefore to greater productivity and greater economic growth. For this reason the need for the government to influence and regulate higher education, and public subsidies, although mainly on the demand side, appears to be crucial (Van Vught, interview, April 26, 2005).

Open Bestel

The *Open Bestel* policy illustrates the tendency to introduce more market mechanisms (i.e. liberalization and privatization) in higher education. It was intensively discussed at the national level during 2003-2004, and several documents were issued¹¹³. The main drivers behind the new concept were certain political parties—the liberal party (VVD) and the labor party (PvdA)—together with the Ministry of Economic Affairs. In PvdA a remarkable change for a social democratic party has taken place after the new party leadership in 2002. A new policy has been targeted towards wider reform of the welfare state (more responsiveness of individuals, more market-oriented approach, etc.) also in areas such as health and education. To the surprise of many stakeholders they filed a motion in Parliament in 2004 supporting the development towards the *Open Bestel*. The Social-economic Council and the Educational Council in principle also supported the idea of the

¹¹³ See for example the *Ruimte voor nieuwe aanbieders in het hoger onderwijs* [Room for New Providers in HE] published by the Education Council, the CPB Document *Een open bestel in het middelbaar beroepsonderwijs en het hoger onderwijs* [An Open System in Vocational and Higher Education], the IBO *Open Bestel* [Inter-Ministerial Inquiry into an Open System in Higher Education], etc.

Open Bestel. The rationale of the *Open Bestel* can be summarized as follows: a more market-like approach in higher education by allowing more competition between various providers in the system will lead to a more student-oriented (demand driven) attitude of institutions, which will increase the quality of education¹¹⁴. In such a system, institutions that currently do not receive any public funds would also become eligible if they met certain criteria.

The idea of opening up the Dutch higher education system and its funding was, however, far from being accepted unanimously. Many stakeholders, including the students (both ISO and LSVB), VSNU and HBO-Raad, expressed their objections towards the *Open Bestel*¹¹⁵. They were particularly afraid of 'cherry picking'¹¹⁶. According to the HBO-Raad it would be most likely that private providers will offer only lucrative programs (high demand combined with low costs – for example law, economics or computer sciences) while the public system will have to maintain costly programs that are essential to the needs of the society (e.g. natural sciences or medicine). The VSNU's position vis-à-vis the *Open Bestel* is that the Netherlands should not have an open domestic system without having at the same time an international agreement on it. For similar reasons the *Open Bestel* is criticized by the political party *GroenLinks* – a left-wing party focusing on environmental issues. Although the party supports diversity of higher education, it feels that any experiment with funding private providers in selected areas under recent circumstances might lead to unwanted consequences for equity and access to higher education and the quality of provision¹¹⁷.

10.3.2 Negotiation and re-negotiation of GATS' commitments on the national level

The first commitments of WTO member states in selected services were negotiated during the Uruguay Round. Due to the Netherlands' membership in the European Communities (EC)¹¹⁸ in 1994, its schedule of commitments constituted a part of the final EC document. Neither at the Ministry of Education, Culture and Science nor at the Ministry of Economic Affairs was it possible to trace back the details on

¹¹⁴ One of the participants in the interviews made a very interesting comparison in this respect between the Dutch and the Finnish system. The Finnish approach is represented by increasing the quality through additional funding of existing institutions whereas the Dutch approach tries to improve the quality by introducing new providers, increasing the competition, distributing the budget to a larger number of providers and thus *de facto* lowering the income of institutions from public sources (Kaffka, interview, April 20, 2005).

¹¹⁵ See for example the document *Hoger Onderwijs ziet niets in experimenten met het open bestel [Higher Education sees no Benefits in Open Bestel Experiments]* issued by the HBO-Raad, ISO, LSVB and the VSNU on 12 November 2004. Available at www.vsnu.nl.

¹¹⁶ The term refers to offering low cost courses which are demanded, while public institutions should provide study programs that are costly.

¹¹⁷ More recently (2006) the Minister of Education, Culture and Science (Party of the Christian Democrats) expressed her resistance to the *Open Bestel*.

¹¹⁸ The term European Communities (EC) is used when it is explicitly mentioned in the related documents. Otherwise the term European Union (EU) is used when discussing the European level.

negotiations which took place before the initial GATS agreement was signed in 1994. No information was available on why and how the Netherlands committed itself the way it did in the field of higher education services. The final schedule of specific commitments of the European Communities and their member states was submitted on 15 April 1994. As a result of the Uruguay Round of negotiations, the Dutch schedule of commitments in privately funded education services from 1994 looked as follows:

EDUCATIONAL SERVICES
Privately funded education services
(CPC 921, 922, 92310, 924, 929)

Limitations on market access:

Mode 1) None

Mode 2) None

Mode 3) None

Mode 4) Unbound except as indicated in the horizontal section

Limitations on national treatment

Mode 1) None

Mode 2) None

Mode 3) None

Mode 4) Unbound except as indicated in the horizontal section

It means that in the first three modes of delivery (cross-border supply, consumption abroad and commercial presence) the Netherlands made full commitments in market access and national treatment. In mode 4 (presence of natural persons) the EC as a whole did not make any commitments in specific sectors.

More than ten years later, towards the end of the re-negotiation round in 2005, the official position of the Netherlands was in line with the final EU standpoint: no further commitments in the field of education. It meant that the Dutch national schedule of commitments in higher education in 2005 remained identical to that in 1994.

The EU did not make any further commitments in education services, yet it made on behalf of its member states one educational request¹¹⁹ – to the United States.

¹¹⁹ See chapter 3, section 3.5 for the content of the request.

This request was initiated by the Dutch Ministry of Education and was still valid after the Doha Round schedule was extended. The Dutch officials said, however, that they expect that the EU request to the United States might be withdrawn at some point as a part of trade-offs in other fields.

10.3.3 Stakeholders' views and responses

Luijten-Lub (2004b) states that detailed developments with respect to GATS were generally not well known among various actors in Dutch higher education institutions with the exception of those holding top positions (e.g. rectors, presidents, etc.). According to them the consequences of GATS in higher education remained to be seen. Interviews conducted by the author proved that selected representatives of Dutch higher education had fairly decent knowledge of GATS and related developments.

The GATS topic seemed to have been introduced to the Netherlands along two main lines. The first one was represented by the Ministry of Economic Affairs (MoEA) which was assigned, as in other countries, the role of national negotiator and coordinator in areas such as trade, trade in services, General Agreement on Trade and Tariffs (GATT), GATS, etc. There are standardized procedures in place in the Netherlands such as the national Inter-ministerial Council for Trade Policy that has functioned since the existence of GATT to deal with various issues. The MoEA has been working on trade-related matters across all levels including the WTO itself, the EU as well as regular contacts with other Dutch ministries. Since the establishment of the WTO, the MoEA has been the most involved and the most informed actor concerning GATS and associated topics. The Ministry of Education, Culture and Science (MoECS), responsible for higher education policy, became involved in the whole debate on GATS much later – only after 2000 when the re-negotiation (Doha) round started.

The second line involves individuals or collective actors who obtained knowledge of GATS through various international channels. Due to their intensive participation on both European and international levels, some Dutch stakeholders became quickly familiar with the topic, and GATS started to appear in domestic speeches and discussions. It appeared the first time during the second half of the year 2001, after the issue was brought onto the scene in some other countries¹²⁰.

International events and actions such as the joint Declaration of the EUA, AUCC, ACE and CHEA from September 2001, the ESIB newsletter on commodification from November 2001, the OECD Forum in Washington in May 2002, the UNESCO

¹²⁰ Already during 1999 and 2000, GATS and its relation with higher education was discussed in Australia and Canada, critical reports were published by Education International, and the communication from the United States was delivered to other WTO member states in December 2000.

Forum in Paris in October 2002, the OECD Forum in Trondheim (2003)—to name only a few—were actively visited or monitored by Dutch participants and helped them to broaden their views. Most Dutch actors acknowledged that their first contact with the GATS debate was made by visiting international seminars and conferences, being informed by their foreign colleagues or reading the international press.

Although some stakeholders said that the discussion on the national level was not intensive enough, the issue was paid considerable attention in various circles. The Ministry of Education, Culture and Science invited selected representatives to a high level meeting to discuss GATS and related issues in October 2001. GATS and liberalization of higher education as a topic also appeared in the Dutch press (such as the journal *NRC-Handelsblad*, and the NUFFIC magazine *Transfer*). The NUFFIC organized a conference in March 2002 where some discussion was also dedicated to GATS. Another noticeable event was a debate organized by the LSVb in Amsterdam in February 2003, to mention only a few.

As in other countries, GATS became a controversial topic on the Dutch higher education scene; it appeared for a short period even at the top of the national agenda. GATS and its consequences for higher education were discussed within and between a number of institutional actors as well as in the Parliament and the Government. The phenomenon found its proponents as well as opponents. Also a few independent observers, mainly from the area of higher education research, contributed to the debate. Furthermore, GATS was often mentioned in discussions and documents dedicated to the *Open Bestel*. The following section describes the standpoints, activities and mutual interaction of various stakeholders in the period of the discussion (2001-2004) as traced back by the author with the help of document analysis and expert interviews.

Ministry of Economic Affairs

The Ministry of Economic Affairs (MoEA) was the chief negotiator on behalf of the Netherlands with respect to GATS. It participated in the discussion on the national level and tried to explain the principles and consequences of GATS in general. It also co-organized several seminars and conferences on the WTO and GATS. One conference took place in June 2003 in the Clingendaal Institute for International Relations where representatives of the EU, non-governmental organizations and other institutions discussed the WTO and GATS in a broader perspective.

According to other stakeholders, the representatives of the MoEA were the most knowledgeable among participants and often the only ones able to explain the fundamental principles of GATS. Ministerial officials highlighted several times during the interviews that “there was no intention to give up public education”. They also emphasized that the first commitments were made already a long time ago (1994), and actually nothing had happened since then. Therefore, in their view,

the fear of GATS was not justified. GATS should be perceived, according to the MoEA, as an idea of an open space and more (commercial) possibilities for Dutch providers abroad. In their view, there was in fact no threat to national sovereignty as nation states were still in charge of their subsidy policies.

It was also mentioned that making commitments for example in mode 3 (commercial presence) did not necessarily mean creating new business opportunities. A ministerial officer explained that "it has been very often the case within GATS that a country opened the market earlier and made the commitments afterwards. GATS can often add more certainty for providers already operating in the market." This was exactly the case for the Netherlands which committed itself to what was already possible and in line with the national legislation. The MoEA highlighted that in many countries any services market is in fact more open compared to what was committed under GATS.

For the MoEA the commitments made in 1994 did not seem to be so important at the moment of the interviews as the EU position would not change regarding further commitments in public services. The request from the EU to the United States was still on the table, and no further revised offers were planned to be submitted by the EU till the 'prolonged' deadline at the end of May 2005. According to the MoEA the disciplines on domestic regulation based on Article 6.4 of GATS, which are planned to be eventually developed, can have more significant consequences¹²¹.

The Ministry of Education, Culture and Science

The Ministry of Education, Culture and Science (MoECS) was introduced to the GATS topic much later (only after the start of the re-negotiation round in 2000) than the MoEA. However, since that time it actively participated in the discussion. Together with the MoEA, the Ministry organized a meeting with various stakeholders on GATS in The Hague in 2001. Responsible representatives from both ministries worked closely together and consulted each other. The Ministry was also active on the European level¹²².

On the other hand, it was stressed several times during the interviews with other participants that the MoECS' standpoint vis-à-vis GATS was to a large extent determined by high officials in charge. According to some observers during the period between 2002-2004 the Ministry seemed to be interested in the issue, perceived it as an opportunity rather than as a threat and took active part in the

¹²¹ GATS' Article 6.4 anticipates that every sector should have its own disciplines in order to ensure that various measures (qualification requirements and procedures, technical standards and licensing requirements) do not constitute unnecessary barriers to trade in services. Yet the negotiations on this topic started only around 2000, and as of June 2005 only the disciplines for accountancy were finished.

¹²² The EU request to the United States to open the higher education market up to the same level as the EU market is open to the United States was according to the MoEA officials initiated partly by the Dutch Ministry of Education, Culture and Science.

discussion. Afterwards, GATS did not appear to be among the prioritized topics on the ministerial higher education agenda anymore.

Governmental councils

GATS and higher education as an issue was brought up several times in two important advisory bodies – in the Social-economic Council and the Educational Council. The Social-economic Council discussed GATS particularly in the context of the European market. The WTO and GATS were mentioned as a relevant international context for the discussion on funding of higher education. The document *Bekostiging Hoger Onderwijs* (Funding of Higher Education) issued by the Educational Council (2003) discusses the WTO and GATS in a separate section including an elaboration of basic disciplines (MFN, transparency, etc.) and the modes of supply. It furthermore addresses Article 1.3, mainly the clause excluding the 'services supplied in the exercise of government authority'. According to the document, the consequences for commercial activities of publicly financed higher education institutions and for public subsidies were still unclear.

VSNU

The VSNU, the Association of Universities in the Netherlands, was not certain at the time when the discussion on the national level started whether it was necessary to take a position on GATS. Finally, it decided to do so by issuing a position paper (VSNU, 2002). The VSNU's main point was that public funding of higher education should not be impacted by GATS. However, the position is not entirely against GATS and removing the trade barriers in higher education. The document says that:

... in all four modes of supply, the Dutch universities believe that the barriers that hamper trade in educational services should be removed subject to four main conditions. First, ... the issue of public funding should be clarified. Second, commitments should be mutual and not asymmetrical, as is currently the case with the United States of America in comparison to a number of countries in the European Union. Third, a level playing field for suppliers of higher education should be created. Fourth, and most importantly, international quality assurance mechanisms must be developed (VSNU, 2002, p. 2).

According to the VSNU policy advisor, universities on both Dutch and European levels reacted rather critically to GATS because the consequences for public funding were not clear. Nobody at that time was able to explain the exact implications of GATS for higher education in the Netherlands. The GATS phenomenon was occasionally used by the then Dutch State Secretary for higher education as a vehicle to discuss some fundamental issues in higher education, e.g. competition within the sector, role of foreign providers, etc.

As the VSNU representative mentioned, the discussion on GATS in the Dutch context was not always well understood. Very often misleading and unclear arguments were exchanged during the period when GATS for a few months became

a hot topic. The discussion started to be even more vivid when students entered with a clearly articulated critical position on GATS and the commodification of higher education.

The main consultation partner for the VSNU was the MoEA, as it was able to explain the fundamental principles of the agreement. There was also an intensive discussion with student representatives. Nevertheless, apart from issuing the position paper and active involvement in discussions with other stakeholders, the VSNU organized no events or lobbying activities. There was no contact with the European Commission either with respect to GATS or to related issues.

Yet the activities of the VSNU were not limited to national boundaries. The VSNU played a very active part in the discussion, which took place within the European University Association (EUA). The initial standpoint of the EUA¹²³ was very defensive towards GATS and further liberalization of higher education. According to the VSNU representative, the Dutch tried to soften the EUA's position by emphasizing some potential positive effects of trade in higher education. As can be seen from later materials¹²⁴, the EUA's standpoint on GATS was indeed slightly modified.

HBO-Raad

The HBO-Raad, The Netherlands Association of Universities of Professional Education, by mission supports quality higher education and the widest possible access to higher education. In its view, quality education requires, among other things, a publicly funded higher education sector. The HBO-Raad represented a critical standpoint towards GATS. It agreed with the final position of the Dutch government not to make any further commitments in the area of higher education. The main objections were the issues of quality assurance, access and cherry picking. On the other hand, the HBO-Raad supported internationalization and cooperation across borders; especially in cases where *hogescholen* wanted to set up branch campuses in other countries themselves (i.e. are seeking access to foreign markets).

The HBO-Raad actively participated in meetings at the Ministry of Economic Affairs and the Ministry of Education, Culture and Science. It also organized internal seminars on GATS (during 2003), informed its members about its principles and developments and actively communicated with other stakeholders. Furthermore, it published a study which discussed GATS' consequences for *hogescholen*: *GATS. Implicaties voor de hogescholen van het General Agreement on Trade in Services [Implications of GATS for Universities of Professional Education]* (HBO-Raad, 2002).

¹²³ See for example the Joint Declaration on Higher Education and the General Agreement on Trade in Services by AUCC, ACEE, EUA, CHEA (2001) or the joint document by the EUA and ESIB Student and Universities: An academic community on the move (2001).

¹²⁴ The Bologna process and the GATS Negotiations (EUA, 2002).

The perception of the HBO-Raad representatives was that at the beginning of the GATS discussion “there were big fears that something is going to change overnight”. The stakeholders eventually realized that it did not happen nor would it happen very soon. At the time of the interview, GATS was not perceived anymore as a burning issue. However, it might come back within the context of the *Open Bestel* policy as well as the EU directive on services. Much more than in the Netherlands and elsewhere in the developed world, GATS seems to be pressing foremost developing countries where government funding is often so low that tuition fees are almost the same for private and public providers. This fact, according to the HBO-Raad representative, leaves only a narrow space for a national system to develop, especially in the developing world.

LSVB

Mainly through the *Landelijke Studenten Vakbond*, LSVB, students were one of the most active players in the GATS discussion in the Netherlands. The other student organization, ISO, was not really involved. The LSVB coordinated its action with the European Association of Student Unions (ESIB), to which it is linked, which in fact brought the GATS issue on the European scene¹²⁵. In line with the ESIB policy the LSVB strongly opposed GATS as well as any further commodification of higher education. However, their ultimate goal to exclude education completely from GATS did not succeed.

The LSVB undertook a whole range of activities including intensive publishing and actively approaching political parties. The LSVB organized five local workshops across the Netherlands in order to explain to Dutch students what GATS was about and what consequences it might have. It also organized several conferences on the national level. An open GATS debate was organized in Amsterdam in February 2003. In May 2003 an international seminar was held in Utrecht with a focus on differences between the Bologna process and GATS. A discussion on public and private higher education, where GATS was also mentioned, took place in Zeist in October 2004.

GATS was also discussed during one of the regular meetings between the Minister of Education, Culture and Science and the LSVB at the end of 2002. The students intensively debated their arguments against GATS with other stakeholders on the national level including political parties, NUFFIC, HBO-Raad, VSNU and also other players not directly involved in the higher education field (NGOs and labor unions).

In the middle of 2005, the LSVB’s position could be described as ‘wait and see’. However, the ESIB representative, as emphasized by the LSVB, was supposed to go

¹²⁵ To get relevant information on the European perspective, the author also conducted an interview with a former member of ESIB, who held his position from 1999 – 2001.

to Hong Kong in order to monitor the next WTO meeting (December 2005) and to make sure that all necessary information would be made available to national student unions.

NUFFIC

Although GATS is very much related to internationalization, NUFFIC as an organization did not take a formal position on it. NUFFIC contributed to the discussion mainly as a facilitator and organizer. Starting September 2001, the issues such as GATS and liberalization of higher education appeared in the Dutch press (as mentioned before, in *NRC-Handelsblad* and in *Transfer*) through a NUFFIC related free-lance journalist. A big international conference was organized by NUFFIC in March 2002 called: *The global higher education market: shifting roles, changing rules*. The conference agenda was much broader than GATS, yet it touched upon some of the fundamental issues concerning public and private elements of higher education. For the occasion, the VSNU, HBO-Raad and VNO-NCW submitted their views on higher education and the international market. NUFFIC was also involved in the discussion with students, political parties and higher education institution representatives.

According to a NUFFIC representative the organization's position was peculiar. First, its then president promoted internationalization and the positive effects of trade in higher education, although representing mainly his personal perspective. Second, NUFFIC had to represent the standpoints and views of its main clients – universities and *hogescholen* – which were at that time in strong opposition to GATS. Finally, NUFFIC, as part of its mission, pursued an important agenda for capacity building in higher education in developing countries which has to be very carefully balanced with its activities in promoting trade in higher education.

Confederation of Netherlands Industry and Employers (VNO-NCW)

GATS was discussed once during the VNO-NCW expert committees on education. The VNO-NCW is in general in favor of liberalization and free markets with respect to all kinds of services. Nevertheless, in the area of public services (including health and education) its view is that the government should be capable of setting and enforcing quality standards in order to safeguard consumer protection. The VNO-NCW's understanding is that GATS should not jeopardize this governmental responsibility. VNO-NCW representatives were present at several international conferences, but their participation in the debate on the national level was rather informal. The VNO-NCW was somewhat puzzled by the critical approach of students towards a more liberal and open higher education system in the Netherlands. According to the VNO-NCW representative "the students have nothing to lose and can only benefit if more providers operate in the system".

Political parties

GATS became a discussion topic in the Dutch Parliament and within political parties. The then State Secretary for Higher Education informed the Parliament in 2003 about the position of the Government. The discussion did not continue as the Parliament was assured that public education was excluded from GATS. Individual political parties, for example the labor party (*Partij van de Arbeid*, PvdA), discussed the issue with other parties, unions, students as well as with boards of universities. It also maintained very intensive contacts with organizations abroad such as the Education International, GEW¹²⁶ in Germany and labor parties in France. The PvdA did not take a critical standpoint against GATS.

The Groen Links party represented a political view critical towards GATS. Its general position on globalization and free trade is that the interest to liberalize markets comes only from specific countries, mainly the United States and Europe. According to Groen Links' representatives big multinational companies are getting too much power in the game without giving sufficiently back to the society. Their very critical position vis-à-vis WTO and GATS is mainly related to the lack of transparency, they ascertain. Higher education, for example, is a public good serving more than economic interests. Regarding various activities, the Groen Links distributed its position papers to other stakeholders and maintained close connection with students.

VAWO, NWO & KNAW

The VAWO, an association of workers at universities, research institutions and medical centers, was not actively involved in the GATS discussion on the national level. As the chairwoman of the VAWO declared: "the organization did not have any standpoints or views on GATS". Neither the Netherlands Organization for Scientific Research, NWO, nor the Royal Netherlands Academy of Arts and Sciences, KNAW, made active contributions to the national debate on GATS. Nevertheless, the NWO and KNAW endorsed the VSNU view on the topic as was stated in the position paper (VSNU, 2002).

Private providers

Representatives of private providers operating in the Netherlands did not seem to take an active part in the discussion concerning GATS. For example, according to the LOI representatives, they were not invited to the debate. Nevertheless, they supported further liberalization, removal of existing barriers, similar conditions for all providers and the establishment of a level-playing field.

CHEPS

It appeared from conducted interviews that the Center for Higher Education Policy Studies (CHEPS) at the Twente University contributed expertise to the discussion of

¹²⁶ Gewerkschaft Erziehung und Wissenschaft [Trade Union for the Education Sector]

GATS. CHEPS senior staff also actively participated in discussions with students, and with other stakeholders, and served on various standing and ad hoc advisory committees. One of the points they emphasized was that

When it comes to distinguishing between public and private, the Dutch higher education system as a whole as well as individual institutions can be labeled as hybrid. This is due to market-type steering approaches (enhancing commercially-based activities by public institutions), cross-border activities on a private (commercial) basis, and constitutional conditions which define the majority of HE institutions as private entities in the legal sense, despite the fact that they are publicly funded. This hybridism must be taken into consideration when policy measures are implemented on the national level. Potential consequences arising from binding EU and international (GATS/WTO) agreements should be carefully assessed (Van der Wende, 2003b and interview, April 12, 2005).

Besides individual stakeholders' standpoints and actions, several studies have been conducted on the national level with reference to GATS, mainly in the *Open Bestel* context. They did not take a normative position on GATS; they discussed whether and under which circumstances GATS must be taken into account as a factor which could have an impact on the *Open Bestel*. The inter-ministerial investigation on the *Open Bestel* (IBO, 2003) emphasizes that GATS does not as such necessitate a further liberalization of the national market (as envisaged with the *Open Bestel* plans), but that if such a choice is made, GATS would imply that foreign private providers should be treated equally towards domestic private providers seeking market access, and that this potentially influences the way in which public institutions are financed by the Dutch government. Another document, commissioned by the *Centraal Planbureau* (CPB, 2004), also mentions GATS and EU legislation as criteria with which the *Open Bestel* principles will be confronted. It is furthermore explained that it is the individual WTO member states who decide to which extent they open their higher education market to providers from other countries.

Based on interviews and documents that were published on the topic, the overall perception of GATS and liberalization in Dutch higher education can be summarized as follows: the Ministry of Economic Affairs seemed to be the main proponent of liberalization and a more market-oriented approach in general and did not see particular problems with respect to higher education. Very strong support for liberalization and a free market with respect to all kinds of services (but reserving a consumer protection role for the government especially in health and education) was also expressed by the VNO-NCW. In terms of political parties, the main liberal approach advocates were the VVD and, surprisingly, the PvdA (see section 10.3.1 on the *Open Bestel*).

Somewhere in between supporters and critics of GATS we can group the Ministry of Education, Culture and Science (mainly due to the fact that the VVD was in charge of higher education), NUFFIC and the Social-economic Council. Closer to

the critics, but still with a rather modest approach, the Education Council and the VSNU can be clustered. As critics of GATS and liberalization we can name the HBO-Raad and student organizations ISO and LSVB. Among political parties, Groen Links expressed most objections towards GATS.

Many interviewees agreed that the discussion on GATS and related issues helped to clarify and understand in more detail the topic in question. It appeared that after all, the standpoints of various stakeholders were not so much opposing as it could have been perceived at the beginning. Eventually, the position of the Dutch government as well as the whole EU not to make further commitments in the area of higher education, was accepted by most stakeholders as a correct one. At the same time, the discussion on GATS brought up issues that were somewhat sensitive and therefore not intensively discussed in public before. It concerned mainly the distinction between higher education as a public and private good and the distribution of public funds for higher education.

The general feeling of participants was that at the time of the interviews (April – June 2005) GATS was not a pressing issue anymore. It was stressed several times, however, that the topic might come back on the table in the future. Some participants, especially the representatives of higher education institutions' associations (HBO-Raad and VSNU), mentioned the EU Directive on Services as a further topic of concern. They referred to it as a 'European GATS'. To demonstrate the sensitivity of the EU Directive on Services, a HBO-Raad representative said during the interview: "We did not go to Brussels because of GATS, but we might go there to discuss the European Directive".

The debate on GATS was especially interesting in the Dutch case as for a certain time it overlapped and intertwined with policy plans on the *Open Bestel*. In fact, it seems that the main ideas behind the *Open Bestel* appeared already before the discussion took place on GATS in the Netherlands. The official agenda for the *Open Bestel* was, however, set up later. As a result, both phenomena interacted somehow with each other.

Interviewees were asked whether they could see any connection between the GATS discussion and the *Open Bestel*. Almost all of them expressed the judgment that both were independent developments which happened in parallel at the same time. As many of them admitted the discussion was sometimes mixed and confusing. Neither conceptually nor technically was the link between the two fully understood.

Although GATS and the discussion of its consequences on higher education facilitated the discussion on liberalization of the market, it has been expressed by most participants that the idea of increasing the competition on the Dutch higher education market would have appeared anyway, even without GATS taking place.

Some interviewees expressed the view that GATS was used partly as a lever for change (i.e. the introduction of the *Open Bestel*) on the national level.

With respect to stakeholders' attitudes towards both phenomena, the following observation can be made. Stakeholders critical to GATS were at the same time critical to the *Open Bestel* policy. Only in the case of the VSNU did the standpoint towards GATS seem to be more modest in comparison with its criticism of the *Open Bestel*. Such a position might be explained by the fact that the consequences of the *Open Bestel*, especially with respect to funding, seemed to be more significant and direct, as Dutch government indicated that private providers would also be funded from the overall higher education budget. It might be for the same reason that private providers (represented through PAEPON) did not take any initiative with respect to GATS but carefully monitored the developments around the *Open Bestel* and actively participated in this debate.

It was mentioned a few times by the participants across both GATS proponents and opponents that the Dutch attitude towards liberalization and internationalization is somewhat 'hypocritical'. On the one hand, the Netherlands tries to expand abroad and sell its higher education system around the globe. Both universities and *hogescholen* are encouraged to attract more full-fee paying international students to complement the public sources. On the other hand, despite the introduction of market-like mechanisms in higher education, the national system continues to be to a large extent oligopolistic by subsidizing the supply side through selected institutions and restricting market access to foreign providers.

10.3.4 Analysis of higher education legislation with respect to GATS' mode 3

Apart from distinguishing between private and public education, the Dutch higher education legislation specifically talks about government-funded higher education institutions. Such institutions, listed in the annex to the Act (WHW, 1993), are entitled to receive funding from the central government for the purpose of providing education and conducting research or teaching-oriented research. Although it is emphasized in the introduction to the Act that the higher education and research system is not static, a change in the legislation (amendment to the Act) is needed in order to add a new institution on the list of government-funded institutions.

Furthermore, private higher education institutions, other than those listed in the Act, can get recognized (see section 10.2 of this chapter). A detailed description of obtaining the approval is provided in Title 2 of the Act - Approval of and withdrawal of approval from non-government-funded higher education institutions. According to section 6.9. of the Act the decision to approve the institution is taken by the Minister only 'if the administration of the institution has demonstrated to the satisfaction of the Minister that the standard of initial

education is adequate and the condition referred to in section 1.12, subsection 2 or 3, has been met'¹²⁷. Furthermore, the Minister shall not make a decision regarding the approval until the view of the Education Council is heard.

Another tool regulating the access of private providers to Dutch higher education is the new accreditation system, which was introduced in 2002. Study programs offered by private providers must be accredited in order to be recognized by the Ministry of Education and thus have a right to grant Dutch degrees. Nevertheless, the official recognition by the Ministry does not imply that the institutions receive state funding.

In terms of the conditions to operate on the higher education market, the main dividing line can be drawn between funded and non-funded providers. Public and private higher education institutions that are funded by the government (both universities and *hogescholen*) are treated equally within their categories, i.e. their programs are funded if they meet the accreditation criteria. Another set of conditions applies to non-funded higher education providers, which are all private. If they meet the accreditation criteria, they have the right to offer a program (and to grant the according degree), for which, however, they do not receive government funding. There is no significant difference between the domestic and foreign non-funded private higher education providers. They both have to meet the same conditions if they want to offer their services. Commitments made by the Netherlands in 1994 did not change any of these conditions.

However, if the *Open Bestel* experiments are evaluated positively and mainstreamed in the future, the conditions on the higher education market in the Netherlands will change. The institutions that are not funded at the moment might be able to get government funding if they meet set criteria.

10.4 Conclusions

The GATS re-negotiation process was paid considerable attention in the Netherlands, although the discussion started later than in some other countries, such as Australia or Canada. The range of stakeholders participating in the whole process was rather large, and many were active not only vis-à-vis the others but also within their own constituencies. As in other Western European countries, the students seemed to be the most vocal and the most critical participants during the debate.

¹²⁷ Section 1.12. mentions the areas in which an approved institution must meet minimum requirements such as quality assurance, registration, teaching, examinations and the award of doctorates, and education entry requirements.

GATS and its potential consequences seem to be important to the Dutch higher education system for two reasons. The first is an increasing effort of the Netherlands to make its national higher education system more attractive for foreign students by both attracting the students to the Netherlands as well as positioning Dutch higher education institutions abroad as higher education providers. The second reason why GATS was taken seriously in the Dutch environment was due to its uncertain consequences for the existing Dutch funding system (with its already hybrid characteristics) as well as for the *Open Bestel* experiments. .

It is also important to emphasize that Dutch higher education has undergone very significant changes in the last few years with respect to a more market-driven orientation. Especially the *Open Bestel* rationale indicates that higher education is perceived as a market with a supply and a demand side and increasing competition among various providers. General tendencies in the Dutch national economy to liberalize and put more emphasis on individuals' responsibilities have also been reflected in higher education.

The parallel process of the GATS negotiations and the *Open Bestel* experiments made the situation in Dutch higher education rather complicated on the one hand, but unique on the other. Especially when one realizes how similar the rationales are behind both phenomena. The WTO promotes opening the markets through which the quality should be increased and products and services should be available at reasonable conditions¹²⁸. Almost exactly the same principle was articulated in support of the *Open Bestel* experiments – higher quality and more choices for students should be stimulated by increased competition on the national market. Competition should be achieved by opening the system to more providers and at the same time setting up similar conditions for both public and private providers. Nevertheless, the link between the two processes was not always perceived this way. In many cases the discussion on GATS served as a lever for changes on the national level. Yet the consequences of GATS' principles for a possible mainstreaming of the *Open Bestel* experiments over time was difficult to fully explore and interpret.

Regarding the GATS' negotiation itself, it was not possible in this study – similarly as in the Czech case – to find reasons why the Netherlands together with other EU member states made original commitments in higher education services in 1994. It seems probable, however, that the decision was made by the MoEA officials responsible for trade issues. Neither the MoECS nor other stakeholders were likely to take part in the process at that time.

¹²⁸ For more details see chapter 1, section 1.1.

The dynamic dimension (trickle-up trajectory), representing stakeholders and their involvement in the discussion, was rich in the Dutch case. The Doha negotiation round drew noticeable attention from various stakeholders as it is discussed in section 10.3.3 of this chapter. GATS found both opponents and proponents in the Dutch context. The students advocated critical standpoints vis-à-vis the commodification of higher education, GATS and the WTO itself. This position was originated and consulted with ESIB. Also the HBO-Raad and the VSNU expressed their objections to GATS, yet the standpoint of the latter was less critical. On the other side, mainly the MoEA was in favor of liberalization and privatization policy in higher education as much as in other sectors. The VNO-NCW was in general in favor of liberalization in all sectors including public services. Finally, the MoECS' position can be placed somewhere in between, also depending on the officials in charge. Intensive interaction took place among the stakeholders during which individual positions were explained and certain misunderstandings cleared up. In the end, despite various views on GATS and its potential consequences, the most important players supported the decision not to make further commitments in higher education. It corresponded with the overall EU position.

Neither the commitments made in 1994 nor the re-negotiation round had an impact on existing Dutch higher education legislation. The 1994 commitments only reflected what was already possible according to the legislation. Higher education legislation was not modified because of GATS' general disciplines or individual Dutch commitments. Despite some doubts—related to the hybrid character of the system, i.e. some selected private institutions are publicly funded and others are not—the existing system did not seem to be in conflict with the GATS principles in 2005. Rather the measures which are planned to be taken in the future in the direction of the *Open Bestel* might have certain consequences if the GATS' principles are applied. As was stated in various national reports, these consequences are difficult to oversee at this point, although it seems clear that foreign providers seeking market access would have to be treated in the same way as domestic private providers.

Finally, the question on how and to what extent the steering capacity in Dutch higher education is influenced by GATS and the GATS' re-negotiation round shall be answered now.

Based on our conceptual framework, the steering capacity of a nation-state is influenced through the trickle-down and trickle-up trajectories. Regarding the former, representing a static dimension, no legislative amendments had to be made in order to meet the requirements of general GATS disciplines or specific commitments made by the EU on behalf of the Netherlands in 1994. None are foreseen as a result of the re-negotiation round either.

The stakeholders' involvement, on the other hand, as the dynamic dimension of the conceptual framework, was rather intensive. Although it did not result in any

significant direct changes in the steering capacity (e.g. legal regulation), its impact might be seen in a rather indirect way. The discussion on GATS and its potential consequences on higher education in the Netherlands partly influenced the debate on the *Open Bestel*. It gave the government some arguments to push for experiments, and at the same time made stakeholders (mainly the opponents) more defensive.

Furthermore, the outcome of the stakeholders' interaction during the GATS discussion was a better understanding of each other's position and the decision to make no further commitments at the moment. Nevertheless, it is very likely that the Dutch commitments would not have been extended anyway even without any opposition from stakeholders. First, the original commitments made in 1994 were already generous. Modes 1 through 3 (cross-border supply, consumption abroad, commercial presence) did not contain any limitations, neither on market access nor on national treatment. Only mode 4 (presence of natural persons) remained unbound¹²⁹. Second, a reciprocal approach with respect to increasing the commitments in higher education was expected especially from the United States. As of May 2005¹³⁰ the United States had not made any further commitments, so there was in fact no reason why the Netherlands or the EU as a whole would make any further concessions in this respect.

The relationship between the state and higher education institutions in the Netherlands seems to have been influenced more by other factors (i.e. the drive for more national competition in the higher education sector) than GATS or the GATS re-negotiation round, although the discussion on GATS contributed to the national debate on higher education. However, the belief of most interviewed actors is that the policy change towards a more open market and increased competition in the field would certainly have taken place even without higher education being re-negotiated under the GATS scheme. Ideas, which were afterwards conceptualized in the *Open Bestel* experiments, appeared even before the GATS discussion was launched in the Netherlands. The main policy drives were concerns about the perceived lack of competition and quality of the system, its overall efficiency, more consumer-oriented provisions, etc.

It should be seen rather as a coincidence that GATS was re-negotiated at the same time when significant policy changes (*Open Bestel*) in Dutch higher education were being discussed and starting to be considered. The GATS topic was then used in the discussion on the national level as a lever for change. At the same time, GATS with both national commitments and its general disciplines might have some consequences for the steering capacity in the future, since new conditions created for domestic private providers (as a possible outcome of the *Open Bestel*

¹²⁹ See the schedule of commitments of the Netherlands in section 10.3.2.

¹³⁰ The extended deadline for the presentation of offers. See chapter 3, section 3.4 for more details.

experiments) will as a result of GATS most likely also apply to foreign providers. Therefore, principal GATS rules such as the most favored nation status or the national treatment should be carefully confronted with any future legislation changes or policy implementations, especially in the Netherlands where the boundaries between public and private higher education are already rather blurred.

The following chapter compares the two conducted in-depth case studies and highlights the main similarities and differences of higher education systems in the Czech Republic and the Netherlands. Various factors shaping the higher education landscape in both countries are then taken into account in the concluding chapter.

11 Comparative analysis

11.1 Introduction

This chapter reviews and compares the two in-depth case studies that were conducted in the Czech Republic and the Netherlands. A brief comparison of the Czech and Dutch higher education systems is carried out, focused mainly on their historical context and recent developments, the steering model, i.e. the relationship between the government and higher education institutions, market orientation, public funding, stakeholders' involvement, higher education legislation and the consequences of GATS for the steering capacity. The purpose of comparing the two case studies is to discuss their main similarities and differences. These are then taken into account when assessing the impact of GATS on higher education in general, and specifically on the steering capacity of the nation-state.

11.2 Historical context

Both the Netherlands and the Czech Republic have higher education systems with their roots going far back in history. Czech higher education can be traced back to the 14th century with the establishment of Charles University. The first Dutch institution of higher education, Leiden University, was established in the second half of the 16th century. The period of almost fifty years after World War II—when the Czech system was influenced by the communist regime—could be seen as the major difference between the two systems in the last century. It meant a fundamental change for Czech universities in several aspects: academic freedom and institutional autonomy were circumscribed, mainly political appointees took over the management of universities and faculties, research was almost entirely transferred to the Academy of Sciences, and most teachers were cut off from international networks.

Since 1989, when radical economical and political changes took place in Central and Eastern Europe, Czech higher education has undergone essential modifications in most of its components. It can be said that the Czech system, together with other higher education systems in the former communist bloc, was suddenly confronted with major challenges of modern societies, which had been faced by Western European countries already for almost half a century. Despite the fact that fifteen years have passed since the fall of the Berlin Wall, the consequences of the

communist regime on various segments of Czech society, including higher education, are still subject to vivid discussions.

11.3 The higher education system

Nowadays, both Czech and Dutch higher education systems can be described as rather stable and fulfilling their main goals. These goals include among others teaching, research, transfer of knowledge to industry and contribution to national and regional development. Both systems consist of academic and professional education – in the Netherlands the system is officially called a binary one with a split along this line. In the Czech Republic a professional higher education sector also exists, however, its scope and position is significantly different than in the Netherlands, as will be explained below.

In the Netherlands, the history of professional higher education goes back to the 19th century. It forms nowadays an equivalent part of the higher education system, regulated by the same legislation as universities. In terms of student numbers, it is by far the largest sector with almost two thirds of all students enrolled in higher education. *Hogescholen* are also allowed to call themselves ‘universities of professional education’, which contributes to their international prestige.

In the Czech Republic, a professional higher education sector was established only after 1990 as an experiment assisted by Dutch experts. It became a part of legislation in 1995, however the respective act (138/1995) regulates at the same time primary and secondary education. In 1998, a lobby of rectors of public universities strongly opposed an act which would include both professional and academic higher education. As a result, despite some very good quality institutions, professional higher education is still regarded as less prestigious and as mediocre by the general public, employers and also secondary school graduates. Currently, professional higher education accommodates only nine percent of students enrolled in higher education. 91 percent are enrolled in (mostly) public, state and private universities.

11.4 Governmental steering in higher education

In many European countries, the relationship between the state and the higher education institutions (i.e. the steering model) was historically based on the state control model. Nowadays, more often the state supervisory model is applied (see chapter 5, section 5.4). The Dutch case has the longest experience in continental Europe with the implementation of a steering model that strongly resembles the state supervisory model (Maassen & Van Vught, 1994; Maassen, 1996). The state supervisory model was also adopted in the Czech Republic (then Czechoslovakia) after 1989 mainly as an act of departure from the previous centralized regime. From the point of view of the more refined division into four steering models as

suggested by Gornitzka and Maassen (2000) (based on Olson's typology, 1998) — the sovereign state, the institutional state, the corporate-pluralist state, and the state supermarket model—both the Czech Republic and the Netherlands use a *hybrid steering approach*. Both systems hold characteristics of the *corporate-pluralist* steering model, as in both countries other stakeholders than the state itself play a role with respect to authority and control (employers, students, other ministries, etc.). However, in the Czech Republic this is to a lesser extent, as higher education institutions (based on the experience from the communist regime) are still more able to uphold the *institutional state* model, as they protect academic values and traditions against new policies. In the Dutch case, a number of elements of the *supermarket model* such as increased tuition fees, differentiation, more competition among providers, etc. have been gradually introduced (Gornitzka & Maassen, 2000).

Another difference between the two systems is that the current relationship between the state and higher education institutions in the Netherlands is the result of long-term development and very intensive discussions between involved actors. In the Czech Republic, autonomy was given back to public universities immediately after 1989 as a part of societal transformation. The assumption was made that the institutions are able to transform themselves and the state should not interfere. As a result, Czech higher education institutions nowadays possess a very high level of autonomy, comparable to their Dutch counterparts, however the way in which it has been attained differs significantly.

In both countries an accreditation system is in place as well as internal quality assurance mechanisms. The accreditation system is perceived as one of the strong points of Czech higher education as it had already been established by the 1990 Higher Education Act. The Dutch accreditation system was introduced only in 2002/3, although it builds on an external quality assurance scheme introduced in the 1980s (Jeliazkova & Westerheijden, 2004).

With respect to the instruments that are used to steer higher education they are rather similar in both countries. In the Netherlands these include funding, quality assurance mechanisms (including accreditation), long-term planning through the quadrennial Higher Education and Research Plan and the authority to intervene if deemed necessary with respect to study programs (in terms of the establishment of new programs - macro-efficiency – and access to them in exceptional circumstances through a *numerus fixus* or *labor market fixus*). The Czech state is in its steering capacity, according to its own proclamations, limited to funding (but that includes access, as the state funds a fixed number of places available for entrants per study program per year), accreditation and long-term plans. Governmental steering in Dutch higher education gradually moved from setting up the conditions to focusing on the performance of the institutions and the students. As a result, quality assurance is performed in an ex-post manner and the funding

mechanism is mainly output oriented. In the Czech Republic, the system still rather prescribes the behavior of institutions. The quality assurance emphasizes ex-ante control, and the funding mechanism is to a high extent input oriented. However, changes have been recently implemented towards a more output oriented approach such as funding based on the number of bachelor program graduates. In this respect we can see a convergence of the Czech system to the system applied in the Netherlands.

11.5 Higher education as a market

The Czech Republic and the Netherlands differ in the way in which higher education is perceived by society. In the Czech context, higher education continues to function as an independent and more or less isolated system, although some attempts have currently been made to strengthen links between higher education institutions and their environment. The need for further cooperation between universities and industry is being stressed on the national political level (by the deputy minister for economic affairs) and several measures have currently been adopted including tax incentives. Dutch higher education seems to be perceived much more as an integrated part of the society. The mission of the whole system to contribute to the overall economic development of the country, to technology transfer and innovations, to regional development etc. is clearly articulated and also increasingly performed.

In terms of market-type steering mechanisms applied in higher education, the Dutch system has adopted more features over recent years than the Czech one. Competition was introduced in public sectors including higher education, sizeable tuition fees were introduced, funding is increasingly performance-based, and (limited) student selection is allowed. At the same time, higher education policy in general has been increasingly influenced by other ministries such as the Ministry of Finance and the Ministry of Economic Affairs. These are considered to be the driving forces behind new policy directions such as the *Open Bestel* or an increased focus on internationalization. Furthermore, the current discussion on the new higher education legislation indicates that the Dutch government is in favor of further deregulation of the system and an even more distant approach in steering.

The Czech higher education system has developed in a different way. Since 1989 the Czech economy in general has been highly liberalized, mainly due to policies of the right-wing governments at the beginning of the post-communist period. Today it is one of the most open economies in the world. It appears striking that public higher education managed to keep the competition outside the field until 1998. At the same time, the regulatory power of the government with respect to higher education was set at a minimum level in 1990 and did not significantly change in 1998 with the new legislation. The system is to a very large extent driven by higher

education institutions themselves, which can be explained partly as a reaction to their behavior being prescribed for 40 years by the state. At the same time, for similar reasons, higher education policy has been so far developed and formulated in a very narrow perspective, very rarely reflecting developments outside higher education. The change in this pattern started only recently.

The supply side of Dutch and Czech higher education is very similar. Government funded institutions cater to the majority of students in both systems. In the Netherlands the share of students enrolled by private non-funded providers was estimated at only 12 percent in 2003. In the Czech Republic 7 percent of students studied at private institutions in 2004. In both systems domestic as well as foreign providers offer their services. The demand side differs, however. In the Czech Republic, despite a significant increase in enrolments (50 percent between 1995 and 2000) the public higher education sector has not yet been able to offer a sufficient number of places for all applicants, especially in the humanities and social sciences. In the Netherlands, with the exception of some fields such as medicine, the demand and supply can be said to be successfully matched.

In terms of international aspects of the higher education market, the Netherlands has shown a significantly higher level of 'internationalization' compared to the Czech Republic, especially with respect to the export of higher education. Dutch higher education has been intensively promoted abroad in order to attract foreign fee-paying students as well as to actively look for foreign candidates to take on PhD positions. The Czech Republic, although having a significant number of Slovak students (studying in the Czech language), has not developed any national policy for export of its higher education, neither has it launched any intensive campaign to represent and promote Czech higher education abroad.

11.6 Higher education providers

The Dutch and Czech higher education systems have very similar features with respect to the main characteristics of providers. The systems contain both public and private providers. In the Czech Republic state and public institutions are distinguished, although they are both government funded. Two state institutions, the Police Academy and the University of Defense, are of strategic importance and closely related to the Ministry of Internal Affairs and the Ministry of Defense respectively. Therefore special regulations are partly applied to them. In the Netherlands, private higher education institutions can possess a different status granted by the state – they can be government-funded or recognized (but not government-funded). In both countries private (not government-funded) higher education institutions can be domestic or foreign. In order to get study programs accredited, institutions in both countries must be recognized. In order to be

government-funded, institutions must be both recognized and their programs must be accredited, among other requirements.

11.7 Public and private provision

The Dutch and Czech higher education systems have another important feature in common. Public provision is the prevailing mode of delivery. In both systems, non-subsidized private providers constitute only a marginal part when it comes to student enrolments. Although the number of private providers in the Czech Republic was higher than the number of state and public institutions (40 against 27 in 2004/05), they only accommodated six percent of the total higher education student population in the same year. In the Netherlands, approximately 70 private providers (compared to less than 60 public institutions) cater to an estimated twelve percent of the total student population.

Despite the prevailing role of government-funded institutions, one major difference should be mentioned comparing the two systems. Price difference between public and private providers is much larger in the Czech Republic, as the state and public institutions do not charge any tuition fees, in contrast to their Dutch counterparts¹³¹. Czech public and state institutions are only allowed to charge students special fees if they exceed their study program's duration by more than a year or if they study another study program in parallel or after attaining one degree. Another noticeable fact is that private institutions have a much longer tradition in the Netherlands than in the Czech Republic. In the Czech Republic, many secondary school students perceived private higher education institutions to be of lower quality because they feel people are buying their degrees by paying the tuition fees¹³².

11.8 Stakeholders and their involvement in higher education policy-making

An interesting difference between the two cases can be observed when it comes to stakeholders and their involvement in higher education policy-making. In Dutch higher education various stakeholders outside academia (Ministry of Economic Affairs, Confederation of Netherlands Industry and Employers, etc.) are very actively involved. Important higher education topics are usually very intensively discussed across all those who have a stake in higher education. Major issues are also debated in governmental advisory bodies – the Education Council, the

¹³¹ Yet price competition is emerging in the Netherlands; recently a major Dutch private (distance) higher education provider, the LOI, advertised its studies being cheaper and faster than those in public Hogescholen.

¹³² This general opinion was confirmed in discussion with selected secondary school students organized by the Development and Investment Agency CzechInvest during the INVEX Trade Fair in October 2005 in Brno.

Advisory Council for Science and Technology, and the Social-Economic Council. In the Czech Republic most interaction takes place between the Ministry of Education and the higher education institutions directly. The impact of employers, Ministry of Industry and Trade and other stakeholders on higher education policy has been very limited, although the situation has apparently started to change recently¹³³.

11.9 Legal framework

The legal frameworks for higher education, applicable at the time when this study was conducted, are rather detailed in both analyzed countries. Czech legislation explicitly distinguishes between public, state and private higher education institutions. Besides general rules, specific provisions of the Higher Education Act (111/1998) are applied in each case. In general, internal organization of public and state institutions and a number of formal procedures are prescribed in detail by the legislation. In the Netherlands, the Higher Education Act (WHW, 1993) is more general in some respects. It distinguishes between public and private institutions and also distinguishes 'recognized' (private non-government funded) higher education institutions. Institutional governance structures are prescribed for all government funded higher education institutions.

Government funding is a crucial steering mechanism in both the Netherlands and the Czech Republic. Only those institutions listed in the legislation are provided with government funding. In both the Dutch and Czech cases government-funded institutions are enumerated in an appendix to the act, and the legislation must be amended if any other institutions would have to become government-funded. However, in the Czech Republic a clear line is drawn between state and public institutions on the one hand and private providers on the other. The former are explicitly entitled to receive money from the state budget. The latter are not. Yet upon meeting certain criteria (namely being a public utility organization), they can also apply for a subsidy from the state budget. In the Netherlands, state funding is granted to both public and privately founded (protestant/catholic) higher education institutions. Recognized (i.e. private non-government funded) higher education providers have to rely on other than governmental sources. Finally, table 11-1 summarizes the main characteristics of Czech and Dutch higher education as they were discussed in the text.

¹³³ During 2005 a background report on the Czech Republic for the OECD Thematic Review of Tertiary Education was conducted. For the discussion on the final version taking place in December 2005, various stakeholders were invited to submit their comments and to participate in the seminar.

Table 11-1: Main characteristics of higher education in the Czech Republic and the Netherlands

	The Czech Republic	The Netherlands
Historical background	First established in 1348 Since 1948 till 1989 a part of the communist bloc After 1989 a sudden shift from a centralized system into an autonomous one	First established in 1578 HE developed as a typical Western European system in a democratic society
Composition of HE (student enrolments)	9% - professional education 91% - academic education	63% - professional education 37% - academic education
Public & private HE (student enrolments)	93% - public (including state) 7% - private	88% - public 12% - private (estimated)
Government steering	Corporate-pluralist steering model with some elements of the institutional state	Corporate-pluralist steering model with a number of elements of a supermarket model
Steering mechanisms	Quality assurance: ex ante accreditation Long-term plans of the Ministry State funding (mainly input based)	Quality assurance: ex ante and ex-post accreditation HE and Research Plan (4 year cycle) State funding (mainly output based) Macro-efficiency (planning)
Legal framework	Distinguishes state, public and private higher education institutions Rather detailed provisions on internal organization of institutions.	Distinguishes public and private (governmental funded / or "recognized / non-government funded) HE institutions. Governance structures are described in a rather general way for government-funded HE institutions.
Governmental funding	Public and state institutions only, private upon meeting certain criteria	For public and private (government funded) institutions
HE as a market	Unmet demand for HE Public institutions charge no tuition fees No targeted effort on either export or import of HE	Supply and demand match Tuition fees for both public and private institutions Increasing focus on HE export The <i>Open Bestel</i> experiments
Stakeholders	Involvement of other stakeholders in HE policy-making is rather limited	Broader range of stakeholders actively involved in HE policy-making

11.10 Higher education and GATS

First, we look at the dynamic dimension (trickle-down trajectory) represented by the GATS regulatory framework. Both the Czech Republic and the Netherlands made commitments for private education services at the end of the Uruguay Round in 1994. Despite the fact that the Netherlands was an EU member state at the time and the Czech Republic was not, the Czech and Dutch schedules of commitments looked very similar. In modes 1 to 3 (cross-border supply, consumption abroad and

commercial presence) the Netherlands imposed no limitations. The Czech Republic used two limitations in the commercial presence mode. In mode 4 (presence of natural persons) neither the Czech Republic nor the Netherlands made any commitments.

Nevertheless, the commitments both countries made did not have any *de iure* impact on higher education in either country. In the Netherlands, by that time foreign private higher education providers were already allowed to operate on the market. In the Czech Republic, a private sector did not exist legally¹³⁴ at the time of making the commitments.

At the end of the re-negotiation round (2005) the original schedule of commitments did not change in the case of the Netherlands. The Czech Republic only abandoned the limitation concerning the Czech nationality of board members in the commercial presence (mode 3), but made no further changes. The commitments and GATS general rules and principles did not cause any change in the national higher education legislation in either country. They neither opened any additional space for foreign private providers. In the Czech Republic, since its establishment in 1998, foreign providers have to meet the same criteria as domestic private providers. In the Netherlands, foreign providers were already allowed to operate on the market under the same conditions as Dutch private non-government-funded institutions. Table 11-2 summarizes the commitments made by the Czech Republic and the Netherlands in 1994 and the change made during the Doha Round (in the case of the Czech Republic).

¹³⁴ Private institutions offered their degrees prior to 1998, however their degrees were not recognized by the Ministry of Education and the students did not enjoy the same status as students at state higher education institutions.

Table 11-2: Commitments in higher education services at the end of the Doha negotiation round – CZ and NL

Mode	The Czech Republic		The Netherlands	
	Limitations on market access	Limitations on national treatment	Limitations on market access	Limitations on national treatment
Mode 1	None	None	None	None
Mode 2	None	None	None	None
Mode 3	Foreign nationals may obtain authorization from competent authorities to establish and direct an education institution and to teach. Conditions of ensuring quality and level of education and suitability of school facilities.	None (<i>Since 2003</i>) <i>Before: majority of board members must be of the Czech nationality)</i>	None	None
Mode 4	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section	Unbound except as indicated in the horizontal section

Second, we look at the dynamic dimension of our framework (trickle-up trajectory) taking into account stakeholders, their views and involvement. Regarding the GATS re-negotiation round in higher education, a major difference between the Czech Republic and the Netherlands was witnessed with respect to stakeholders' involvement in the discussion on the national level. In the Czech Republic, the national preparation for the re-negotiation round was limited to several meetings of a working group chaired by the Ministry of Industry and Trade. In the end, a decision was made by the Ministry of Education to cancel the limitation on the national treatment at the commercial presence (mode 3) as it was not considered important or beneficial to keep it. GATS or any other related topics such as liberalization of higher education did not attract any attention either from the

media, political parties, academics, students or the general public. GATS did not become a topic of any debate on the national level at all.

In the Netherlands, on the contrary, GATS was discussed very intensively in various circles including the Government, the Parliament, student and employer organizations, the Education Council and the Social-Economic Council. Various meetings were organized by the Ministry of Economic Affairs, the Ministry of Education, Culture & Science, students and other organizations, such as NUFFIC, where GATS and related topics were discussed. After a rather heated discourse the issue slowly disappeared from the policy agenda. As derived from interviews conducted by the author and also from monitoring the media, during 2005 GATS was not perceived as a pressing issue by the Dutch stakeholders anymore, and a 'wait and see' approach was adopted by most of them. At the same time, however, the debate on liberalization of the higher education sector at the national level continued as experiments with an *Open Bestel* have been launched. This policy, however, was not directly caused by GATS, although the two topics intertwined in the debate. Introduction of more competition in higher education is rather the consequence of a broader governmental policy applied in public sectors.

11.11 Conclusions

It appears that the *de iure* impact of GATS on the steering capacity of a nation-state was not found in either case study – neither through the legal provisions (static dimension/trickle down) nor through stakeholders' involvement (dynamic dimension/trickle up). Neither the regulation of higher education (through the legal framework) nor the steering model changed as a result of GATS' national commitments and its general disciplines and rules.

With respect to the formal legal setting, the trickle-down trajectory, there was no impact of GATS traced in either case study. No changes initiated by GATS' commitments or general disciplines had to be made in the national legislation that would influence the steering capacity of the nation-state. The conditions remained in that respect the same as in 1994. In both countries, the Czech Republic and the Netherlands, GATS so far has not meant any challenge to the steering capacity of the nation-state under existing conditions.

The direct impact of stakeholders, the trickle-up trajectory, was not significant either in both countries despite very different dynamics. In the Czech Republic no strong stakeholder involvement was documented with respect to GATS; they neither supported nor opposed the Agreement. The national schedule of commitments was very slightly modified by the Ministry of Education with no intensive discussion. One answer to the question why GATS did not attract any

attention from either academia or students might be that there was a lack of information from the international environment. The second explanation might be that there was no feeling of threat from potential foreign providers as the monopoly of public institutions for government funding and their comparative advantage over private providers (non-existence of tuition fees) is still felt as politically and socially desirable and rather difficult to be challenged.

In the Netherlands, in contrast with the Czech Republic, the discussion on GATS was very intensive. The standpoints varied across the stakeholders. Some opposed GATS very strongly (for example students), others emphasized the potential positive effects of GATS on higher education. It was observed that GATS often served as a lever for change in the Dutch environment (i.e. as an argument for launching Open Bestel experiments). However, the main rationales behind current changes in higher education in the Netherlands were not inspired by GATS *per se*. Other factors should be attributed the power to change the national higher education policy and thus impact the steering capacity of the nation-state. As was already mentioned in the previous text, those were mainly general tendencies of the Dutch government to deliberately introduce less regulation and more competition into the higher education sector.

Based on the previous discussion, we can say that the Czech Republic is in general a very liberalized and open economy. The higher education sector, however, remains very protected, especially the public providers. This situation is not likely to change in the next few years as the Ministry of Education plans to increase the quality by increasing funding to existing public providers rather than by stimulating more competition in the market. As the line between public and private higher education is very clear, and at the same time foreign providers are treated under the same conditions as domestic private providers, GATS does not seem to bring any challenges, problems or significant changes in the near future under the current circumstances.

The Netherlands has a more open higher education system compared to the Czech Republic. The government is willing to liberalize the sector even further, but rather through nation-level policy. This is understandable as the government is in control at this level. Yet as GATS and such national policies are based on similar principles, the link between them cannot be completely denied. Consequently, national-level initiatives may interfere with or be impacted by GATS regulation at some point, especially in an already quite hybrid system. This has to be taken into account when further experiments are to be applied on the Dutch higher education market, especially with respect to GATS' disciplines such as the MFN and national treatment.

After comparing the Czech and the Dutch case study and discussing their main similarities and differences across various components, the next chapter will be

devoted to final conclusions and reflections. Finally, we will look back at the main research question and sub-question and link the findings of empirical parts with the theoretical framework.

12 Conclusions and reflections

12.1 Introduction

The last chapter of this thesis is dedicated to conclusions and reflections. In the first section answers to the main research question and sub-questions are presented and elaborated. The second section links the empirical findings of the study back to the initial theoretical concepts and the conceptual framework, as presented in chapters 4 and 5. Finally, the reflection section contains some additional comments on the conceptual framework, methodology and the case study selection. Also questions raised by this research and considered to be challenging for further studies in this area and for higher education studies in general are highlighted at the end of this chapter.

12.2 Answering main research question and sub-questions

In chapter 1, section 1.6, the main research question was formulated as follows:

How and to what extent does the inclusion of educational services in GATS affect the steering capacity of a nation-state in higher education?

The following three sub-questions were derived from the main research question:

What is the impact of GATS on higher education legislation?

What is the position and influence of various stakeholders in GATS' negotiation on higher education?

What other relevant factors can be claimed to have a significant impact on the steering capacity of a nation-state in higher education?

12.2.1 How does GATS affect the steering capacity of a nation-state?

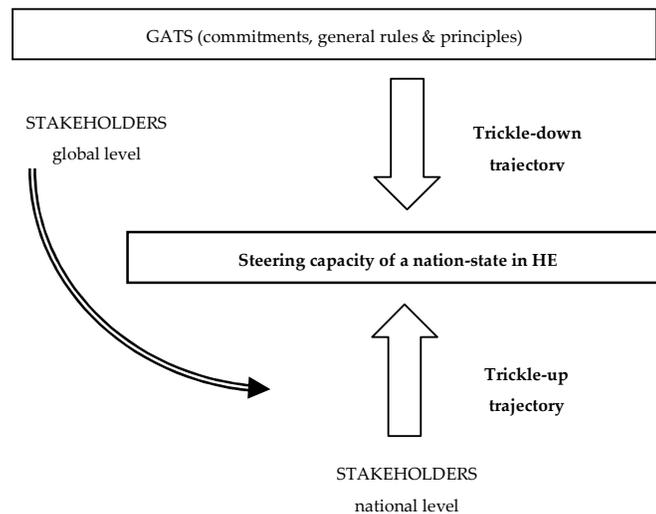
In order to answer the question *how the inclusion of education services in GATS affects the steering capacity of a nation-state in higher education*, assumptions (proposition 1 and 2) were formulated based on the conceptual framework of Djelic and Quack (2003) distinguishing between the trickle-down trajectory (static dimension) and the

trickle-up trajectory (dynamic dimension). In our particular case the trickle-down trajectory is represented by the regulatory consequences of GATS as a multilateral agreement, whereas the stakeholders and their positions in the GATS negotiation process represent the trickle-up trajectory. This was reflected in the following propositions (see also section 5.6):

- 1) GATS affects the steering capacity of a nation-state through the static dimension represented by a trickle-down trajectory, i.e. binding GATS commitments and disciplines cause changes in the national higher education legislation.
- 2) GATS affects the steering capacity of a nation-state through the dynamic dimension represented by a trickle-up trajectory, i.e. the position and influence of stakeholders in the GATS' negotiation process.

Figure 12-1 demonstrates the two trajectories. It shows that GATS commitments and general rules can affect the steering capacity of a nation-state provided that they lead to changes in the national legislation on higher education. Another way in which the steering capacity of a nation-state can be impacted is through stakeholders who initiate changes on the national level by which they may be influenced by stakeholders operating on a supranational or global level.

Figure 12-1: Djelic and Quack's framework applied to GATS



Based on: Djelic & Quack, 2003

As a tentative answer to the first sub-question, *what is the impact of GATS on higher education legislation?*, proposition 1 suggested that GATS affects the steering capacity of a nation-state through the static dimension represented by a trickle-down trajectory. Binding GATS commitments and disciplines cause changes in the higher education legislation. It was found in the two conducted national case studies that GATS commitments and disciplines did not lead to changes in the national higher education legislation. A direct impact of GATS' general principles and individual commitments made in 1994 on the national legal framework in the area of commercial presence (mode 3) was not found in either case study. Rather, the individual schedules of commitments made in 1994 reflected the then existing conditions, as codified in the legislation. The commitments of 1994 did not open any additional space for higher education providers. In the Netherlands they only confirmed access to the Dutch higher education market for foreign providers, which already existed. In the Czech Republic commitments were made in 1994 for a sector (i.e. private higher education) which was not legally constituted. When private higher education came into existence starting 1999, it conflicted neither with the commitments made nor with any GATS disciplines in general. The impact of GATS on the national steering capacity in higher education through the trickle-down trajectory was therefore not proven.

Nevertheless, the steering capacity of a nation-state can be influenced by GATS' general principles in a more indirect way. The Dutch case study demonstrates that potential consequences of GATS' main principles should be very carefully analyzed in relation with national liberalization policies. This is particularly true if the Netherlands wants to open its higher education system and fund a larger spectrum of providers at the national level, as represented for example by the *Open Bestel* experiments. If the Dutch government wants to introduce more competition in the higher education market by subsidizing selected private providers it must very carefully confront its decisions with main GATS principles such as transparency, the most-favored nation and national treatment.

A second sub-question asked about *the positions and influence of various stakeholders in the GATS negotiation on higher education*. According to proposition 2 GATS affects the steering capacity of a nation-state through the dynamic dimension represented by the position and influence of stakeholders in the GATS negotiation process. In the conducted case studies, the level of stakeholders' involvement in the GATS re-negotiation round differed between the two individual countries as well as the influence they had on higher education policy. A substantial involvement of stakeholders was observed only in the Netherlands, where the issue was discussed very intensively. Yet the push from actors was not in favor of changes, but rather against them. The commitments made in 1994 were already so generous (see the schedule of commitments of the Netherlands in table 11-2) that there was no need to liberalize the market further, according to most Dutch stakeholders. At the same time, the discussion on GATS did not have a direct impact on any policy changes in

the Dutch context, although GATS was often used as an argument (lever of change) in the *Open Bestel* debate (see McBurnie, 2001 for using globalization as a lever for changes on the national level).

In the Czech Republic the dynamic dimension through actors was completely missing. The negotiation on GATS with respect to higher education was limited to a few meetings of an inter-ministerial committee. Furthermore, no real debate dedicated to GATS and its impact on higher education took place either inside the Ministry of Education, academia or the general public.

Taking into account both case studies, we can conclude that despite dissimilar stakeholders' participation in the discussion on GATS (very intensive in the Netherlands compared to non-existent in the Czech Republic), direct impact on the steering capacity of a nation-state (demonstrated by changes in national legislation) did not appear in either case.

Yet an indirect impact of international actors on the national level in the Dutch case study can be indicated when looking at the trickle-up trajectory in figure 12-1 in broader perspective. In this respect GATS can be seen as a formalized liberalization policy advocated by stakeholders, important institutional players such as the WTO, IMF and the World Bank, on the international level. The main principles are then transferred to the national level, where stakeholders such as national governments, political parties, particular ministries, etc. implement these principles across various policies. If we accept the thesis that the principles behind the WTO liberalization policy and the *Open Bestel* policy are similar (see chapter 10, section 10.4) then the trickle-up trajectory can be said to be rather significant in this respect. This claim, however, would require intensive research into how and why this national liberalization policy in the Netherlands was exactly initiated.

A few observations and conclusions can be drawn at this point concerning the stakeholders' behavior in general, which are not particularly related to our in-depth case studies, but to the stakeholder analysis (see chapter 8). First, the wider analysis of stakeholders' views and standpoints during the re-negotiation round demonstrated that the topic of GATS and its impact on higher education and public services in general attracted a very high level of attention from various stakeholders across countries. They included higher education institutions, labor unions, students, etc. – generally those fearing the changes that GATS might bring to the higher education landscape. Intensive criticism was expressed mainly by those representing traditional academic circles. Most active were the labor unions and the students, very often on the European and international level.

Second, based on the interest group theory (Olson, 1965; Richardson, 1993; Stone, 1997; Wilson, 1980;) we assumed that stakeholders oppose GATS and mobilize because they feel that GATS represents a threat to the existing institutional

structures. The stakeholders (public institutions, students, labor unions, etc.) indeed feared that GATS would threaten their positions. The exclusive funding of public higher education institutions seemed to be the crucial issue under threat.

12.2.2 To what extent does GATS affect the steering capacity of a nation-state?

After the elaboration of propositions 1 and 2 they should be linked together by looking at the second part of our general research question: *To what extent does the inclusion of educational services in GATS affect the steering capacity of a nation-state in higher education?* When taking into account our two dimensions (legal consequences as a trickle-down trajectory and stakeholders' standpoints and actions as a trickle-up trajectory) it does not appear from the two studies we conducted that the steering capacity of a nation-state was directly influenced by GATS. The two case studies showed that it was in the end solely the nation-state which decided which commitments were made in 1994 as well as during the negotiation round. Nevertheless, the Dutch case demonstrated that the nation-state, outside the scope of GATS, deliberately introduced competition among higher education providers and other market-oriented measures. By doing so, it intentionally limited its steering capacity, replacing it partly by market mechanisms.

The above mentioned findings about the negligible direct impact of GATS contrast with the perception of many actors (see chapter 8), who perceived GATS itself – at least during the period of the author's concern between 2000 and 2004 – as a powerful phenomenon with a potential to change existing higher education structures including the steering capacity of a nation-state. Many commentators viewed and treated GATS as if it had the attributed ability. Such a power was ascribed to GATS mainly by its critics and opponents, whereas for example the WTO representatives highlighted its voluntarily character, etc. GATS itself was associated with potential changes in higher education, nationally and internationally, and those changes seemed to be feared and opposed by many stakeholders.

The findings of this study suggest that at this moment and under existing circumstances GATS alone cannot be assigned any actual power to restrict the steering capacity of a nation-state in higher education. Yet in combination with other important factors on the national level (liberalization, competition in public services, deregulation, etc.) and the global level (internationalization, globalization, etc.) it could contribute to the fact that it is becoming increasingly difficult for the nation-state to steer its higher education system. Although the nation-state is still the most important player in determining its steering philosophy and capacity in higher education, it is not the only one. As it is argued in the following text, an increasing number of actors and factors have made the position of a nation-state in higher education more complex and more complicated during the last decade.

12.2.3 *What other factors affect the steering capacity of a nation-state*

The third sub-question asked *what other relevant factors can be claimed to have a significant impact on the steering capacity of a nation-state in higher education?* According to proposition 3, other than GATS, developments on the national, and (taking into account the process of European integration) especially the European level, affect the nation-state's steering capacity in higher education.

The national level

As was demonstrated for example by the Dutch case study, the pressure for change in higher education (steering) does not necessarily arise from GATS. It rather comes from a national tendency to introduce market-like mechanisms, intensive competition, further liberalization, etc¹³⁵, although the rationale for introducing these policies may be the same on the international as well as national level. It is then the higher education policy of the government implemented on the national level (however, often referring to GATS), and not GATS itself that changes the existing structures and therefore the steering capacity of a nation-state. As said before, this can be considered a deliberate and intentional choice by the nation-state to limit its steering capacity, replacing it partly by market-type steering mechanisms.

The European level

Another important development, influencing higher education policies and the steering capacity of a nation-state in higher education is the process of European integration¹³⁶. Despite the subsidiary principle¹³⁷, according to which education in general falls under the competence of individual EU member states, the EC's role in higher education has been gradually increasing (Wit & Verhoeven, 2001; Van der Wende & Huisman, 2004). An important development in this respect concerns the Bologna process¹³⁸. The by now 45 signatory countries have been implementing changes such as the introduction of the ECTS credit system and a new structure of study programs (bachelor/master/PhD). Furthermore, Bologna also requires quality assurance or accreditation and a national qualification framework. In many cases these changes require amending or replacing legislation. In fact they mean reducing options (e.g. for the structure of study programs) or introducing new mechanisms (accreditation, national qualification framework, etc.) increasingly similar to those

¹³⁵ Similar policies in place, or rather their criticism, were traced in the document analyses for example in New Zealand, Australia and the United States.

¹³⁶ See chapter 4, section 4.5.5 for more discussion on the process of European integration.

¹³⁷ The EC must act where the objectives to be pursued can be better attained by the Community level and must not act where objectives can be satisfactorily attained by the Member states acting individually.

¹³⁸ The Bologna process did not start as an official EU policy and is not limited to EU member states only. However, it has been supported by the EU and the European Commission's role has been increasingly important.

in other countries. An even stronger example is the EU Lisbon process¹³⁹ and its reach into the performance of (higher) education systems, through the application of the Open Method of Coordination (Gornitzka, 2005). As a result, the steering capacity of a nation-state can be said to be significantly influenced. But also in these cases, it is the nation-state itself, after all, that decides (or not) to adjust to these new frameworks and targets, and implement the requisite changes, as also here it concerns a voluntary process (Bologna), or forms of consultation and 'peer pressure' (Lisbon).

The EC's position on higher education is, however, in a formal sense very limited. Furthermore, it is rather peculiar with respect to GATS. Although higher education policy falls within the member state's competence, trade is the competence of the EC. The fact that member states and the European Community, represented by the European Commission, share selected competencies with respect to GATS (see 8.4) is another factor contributing to the greater complexity of steering higher education in EU Member States. In conclusion, taking into account all the above mentioned facts, the impact of the EU level on the steering capacity of the Member States cannot be summarized in a single statement; it is a complex influence of various developments, policies and actors. It, however, contributes to the fact that it is becoming increasingly complex for a contemporary EU Member State to steer its higher education system.

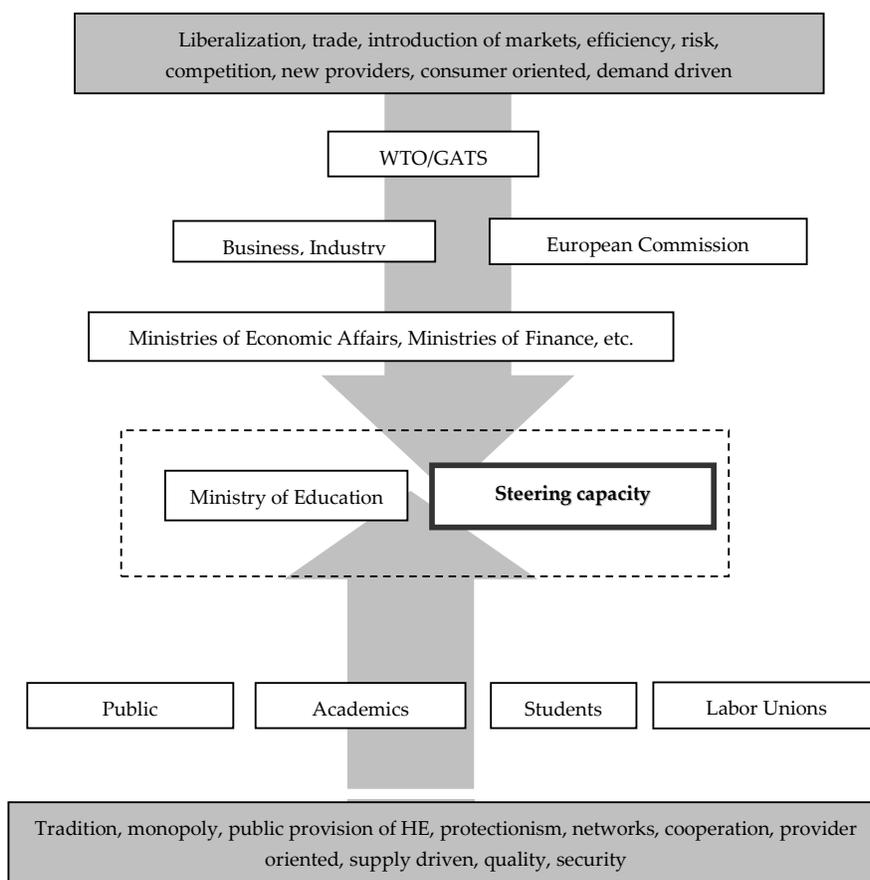
Figure 12.2 tries to model the position of a contemporary European state together with various actors and factors that in mutual interaction influence (to a different extent) the steering capacity of a nation-state. Major stakeholders and developments, discussed mostly in chapters 2, 3 and 8, are depicted in the illustration. Because it is impossible to capture the whole environment due to its immense complexity, the picture includes only the most important elements. They are those closely related to the topic of this study. The central object, the steering capacity of a nation-state in higher education, is positioned in the middle of the picture. This institution is usually most directly influenced by the ministry of education, of higher education, of education and research, etc.

The state's steering capacity of higher education is exposed to two pressures. The upper cluster in our picture represents the pressure for changes in public services in general. It is associated with liberalization, privatization and introduction of markets to the public sector. The focus is mainly on efficiency, competition and consumer-oriented behavior of providers. The underlying assumption is that more competition on the market leads to better quality of provided services, higher responsiveness and thus to greater consumer

¹³⁹ The Lisbon process started in 2000 at a special European Council called Towards a Europe of Innovation and Knowledge. It was declared that the EU should become the world's most competitive and dynamic knowledge-based economic area by 2010 (see European Commission, 2003a; 2005b).

satisfaction. The focus on consumer satisfaction means that consumers should have the main say (as each consumer knows what best satisfies her/him) in other words, higher education should be demand-driven. The World Trade Organization (WTO) constitutes the most important institutional player on the global level. The European Commission is a significant regional player advocating open markets and increasing competition. On the national level, the above mentioned principles are most often advocated by the ministries of finance, economic affairs, or trade and industry (in the Netherlands also to some extent by the Ministry of Education); they are reflected in national liberalization, deregulation and privatization policies. Economists, industry, businesses and for-profit providers more often support this perspective than representatives from the traditional academic world.

Figure 12-2: Various factors and actors influencing the steering capacity in HE



In our picture, the European Commission is positioned above the national level, representing the pressure for more competition and more open markets. However, with respect to GATS and higher education, the position of the EU or more specifically the European Commission vis-à-vis member states is not clearly 'above' them as certain competences are shared (see 8.4). At the same time, the European Commission cannot be seen as a homogenous body. For example, the European Commission is a key player in important developments influencing higher education systems such as the above mentioned Bologna process and the Lisbon strategy. The Bologna process can be positioned closer to the 'traditional' cluster as it highlights cooperation among participating parties. The Lisbon strategy, on the other hand, is much more focused on competition and economic growth, and therefore can be placed closer to the upper cluster. Yet, these two strategies seem to become more and more integrated as far as the EC's policy is concerned. A more important distance may exist between the EC's role in trade and that in education. Apart from the fact that the EC negotiates on behalf of all its member states with the WTO (see 8.4), it has recently launched its own services directive, affecting trade in service within the EU's internal market¹⁴⁰. The possible impact of that directive on higher education is currently under study within the EC's Directorate for Education and Culture.

The wider international level

Shattock (2005) acknowledges that the steering capacity of a nation-state in higher education has been increasingly influenced also by various inter-governmental organizations active in the field. He highlights that universities and national higher education policies are unique in the extent to which they are subject to supranational influences represented by country studies, thematic studies, agents, experts, steering, guiding, educational indicators, etc. He mentions mainly UNESCO, the WTO, the World Bank, OECD and the EU as relevant for the European nation-state and its higher education policy. By participating in various projects, initiated by these organizations, a particular country is usually confronted with suggestions for changes in higher education policies. Although these suggestions (introduction of tuition fees, quality assessment based on outputs rather than on inputs, etc.) are not binding, they represent efforts to influence the higher education policy of a country. The authority of the international organization can encourage a country to follow the suggestions, and therefore affect its steering capacity¹⁴¹. The choice of policies is more than before affected by other actors in a multi-actor framework. As a result, we suggest that our understanding of the concept of the nation-state's steering capacity in higher education in the European context has become more complex. Although we cannot say

¹⁴⁰ This concerns the so-called 'Bolkenstein directive'. i.e. the proposal for a directive of the European Parliament and of the Council on services in the internal market (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

¹⁴¹ This process in fact represents another example of the trickle-up trajectory based on Djelic and Quack's (2003) concept.

straightforwardly that the steering capacity of a nation-state has diminished, it is clear that it has become more complicated and less obvious to exercise it due to developments on various levels.

12.2.4 Consequences for the steering capacity of a nation-state: summary

Building on the findings of this study and on the previous discussion, we can derive the following conclusions. Based on Castells (2002) we can claim that higher education nowadays consists of complex networks embracing an increasing range of stakeholders on local, regional, national and global levels. Policy-making, decision-making, policy-implementation and evaluation in higher education are influenced by interconnected developments often initiated across national and sectoral borders (Van der Wende, 2002a). Increasing numbers of stakeholders and developments come from outside academia and outside the education sector. As a result, the steering capacity of a nation-state in higher education has become more complex to exercise. Increasing complexity, global trends and the growing variety of stakeholders involved on all levels (supranational organizations such as the EU, intergovernmental and non-governmental organizations as well as student unions, labor unions, etc.) has made the ability of the nation-state to steer the higher education system less obvious.

At the same time, global and national levels in higher education are increasingly interconnected and influence each other through multinational agreements in more general fields like trade in services. If a particular national decision is made or a national policy is applied on the national level, it might have significant consequences when it comes to international obligations. For example, subsidizing selected foreign providers might eventually open the door for others to claim the most-favored-nation principle under the WTO framework. In other words, although the nation-state still regulates and steers its national higher education system, its decisions might be confronted with its international obligations and consequences in unexpected ways.

Finally, we can address the general expectation among stakeholders', mainly the critics, that the steering capacity of a nation-state in higher education has been weakened due to GATS. The findings of the two conducted case studies do not support this assumption. Despite the increasingly complicated environment described in the previous paragraphs, our in-depth case studies rather support the claim that it is still the nation-state, either by its domestic policies or partly by its participation in international agreements (such as GATS) or supranational structures (such as the EU), which ultimately decides how the national higher education systems will function. The choice to deregulate and liberalize the higher education market is a deliberate choice of a national government which by doing so may intentionally reduce its steering capacity. It is the nation-state as the most important player which constitutes and shapes its steering capacity in

higher education, although it seems that, because of increasing interconnectedness of various policy levels, the steering capacity has become increasingly complex and less obvious to exercise than before.

12.3 Back to the conceptual framework and theories

The impact of GATS on the steering capacity of a nation-state was studied as a specific case of the impact of globalization on the nation-state. Globalization, in the perspective which was used, is connected with deregulation and liberalization (Castells, 2000b) and with real actors with interests (Robertson, Bonal & Dale, 2001). Djelic and Quack's (2003) proposition that globalization can be conceptualized as a process of institution building and institutional change influenced by the interaction of domestic and foreign players complemented this perspective. The steering capacity of a nation-state is an institution which can be changed through trickle-down and trickle-up trajectories. In the two conducted case studies both trajectories were analyzed and neither of them was identified as a significant cause for an institutional change. In the Dutch case, the role of stakeholders was, however, much greater than in the Czech Republic.

We concluded that the capacity to regulate domestic policies has come into increasingly complex circumstances. Shifts have been indeed witnessed in traditional modes of coordination of a nation-state. Governance is 'moving up' (enhancing the role of supranational and international organizations), 'moving down' (enhancing the role of intermediaries, regions, communities, and the university as corporate actor) and 'moving out' (enhancing the role of corporatization and privatization, stakeholders guidance) (CHEPS, 2005b). The situation of a nation-state in higher education, as demonstrated by the role of the EU in relation to GATS, supports the claim of Strange (1996) that many states share the functions of authority with other states or with other authorities (such as the European Commission).

Particularly the Dutch case study supports Cerny's (1997) observation that liberalization, deregulation and privatization (often introduced by the nation-state itself) have shifted the intervening and regulation role of the nation-state. Due to increasing interaction with other players, including trans-governmental networks, transnational groups, hierarchies and agencies, government's control and regulation of specific activities and market outcomes has become more complex. Both conducted case studies bear out Cerny's argument that the state and state actors are still the most important players, at least concerning GATS and higher education. Nevertheless, it is obvious that they are not the only players and have to share some of their competencies, especially in the case of EU membership.

Trickle-up processes, as described by Djelic and Quack (2003), may appear when actors on the international level initiate changes, which consequently influence national actors. The WTO or the European Commission can be seen as actors on the transnational level promoting changes which are often incorporated on the national level by the ministry of economic affairs or the ministry of finance. However, higher education and its inclusion in and re-negotiation under GATS offers also another perspective of the trickle-up trajectory. This particular example demonstrates how global changes such as inclusion of higher education in GATS are resisted on both national and global levels (for example the anti-globalization movement). Actors on the national level take their own initiative, but are also influenced by global developments or supported by the actors on the global level. It was for example the case of ESIB and its influence on the student unions in individual countries.

Looking back at the discussion on higher education and GATS, several hypotheses from theories on interest groups (Kingdon 1995; Stone, 1997, see chapter 4) can receive support from the behavior of opponents. First, one can observe negative blocking of changes connected to protecting current benefits and prerogatives as suggested by Kingdon (1995). Institutional structures on the national level, including the relationship between the state and higher education institutions (for example funding of a limited number of institutions), were perceived as being challenged by GATS by many of its opponents (see chapter 8). The findings of the study also confirm Stone's (1997) concept of subjective interest. The reaction of many stakeholders to higher education's inclusion into GATS can be regarded partly as a mistaken belief – stakeholders believed that they were affected by a certain factor and in fact they were not. GATS did not (yet) bring the changes that were anticipated at the beginning such as privatization of public higher education, abolishment of subsidies to public institutions or students, etc. If there were some changes or policies introduced on the national level (as was the case in the Netherlands), they were not caused or initiated by GATS.

The discussion on GATS and higher education can indeed be seen as an attempt by interest groups clustered around the traditional higher education system and existing structures to resist or at least minimize changes accompanied with deregulation, liberalization and privatization of public sectors. Major stakeholders' (public higher education institutions, labor unions and academics) reasons for maintaining existing structures are fairly clear, i.e. stable conditions, protection of jobs, etc. The position of students or student representatives in particular, as main opponents of change, is also understandable. Students in many European countries still oppose tuition fees in public institutions in order, as they claim, to safeguard equal access to higher education and protect the affordability for as many people as possible. One can see this position of students at public universities as protecting their privileges (free public higher education).

12.4 Reflections

The conceptual framework developed by Djelic and Quack (2003) allowed us to look at the steering capacity of a nation-state in higher education as an institution being impacted by transnational rules. It includes both dimensions – the static one (a multilateral binding agreement) and the dynamic one (actors on both national and global levels). The dynamic dimension includes both opponents and proponents of change. The framework helps to map out the main trajectories for institutional changes (trickle-down and trickle-up). However, it does not say too much about influences or effects. That is why it should be complemented with other theories or frameworks such as the interest group theory (Olson, 1965; Richardson, 1993; Stone, 1997; Wilson, 1980, etc.), which was used in this study.

Although our framework has proved useful for better understanding the way in which global developments may impact institutions on the national level, it does not provide in-depth explanations for the effects of all possible interactions between the various policy levels. It could be further elaborated and refined by applying it to processes which are being currently looked at such as the Bologna process, the Lisbon strategy, trade in higher education or internationalization of higher education. When using the suggested framework, the institution subject to global impact can be for example higher education systems in general, a segment of the system (public versus private), the steering capacity of a nation-state or even individual institutions.

Methodology

Using various methods to collect data is a useful way to get a comprehensive picture of the phenomenon of the inquiry. The combination of a review of the literature on GATS and its impact on a broader policy level, analysis of stakeholders' responses and a more specific legal analysis of GATS together with two in-depth case studies significantly contributed to a better understanding of what higher education's inclusion in GATS means. Nevertheless, the time constraints still left many areas unexplored. Interviews with representatives of the WTO, the OECD, the World Bank as well as the European Commission as important global players in higher education would have been of great value in this respect.

The generalizability of findings shall also be put into question. On the one hand, it is not conceivable to derive a universal conclusion on the impact of GATS on the steering capacity of a nation-state from the two conducted case studies. On the other hand, the two case studies demonstrate that the question whether there is any impact of GATS on (segments of) a higher education system can only be sufficiently answered by in-depth analysis of an individual country and at the same time taking into account the broader European/international context.

Case studies

By choosing the Czech Republic and the Netherlands as case studies the overall picture was narrowed to a European perspective. The developing world's reality can be very different. It is also true that those two countries did not witness any significant pressure from other WTO members to open their individual higher education systems as was for example the case of South Africa. Another perspective would be to look at the countries which have been strong proponents of liberalization of higher education such as Australia, New Zealand, the United States or Switzerland. Moreover, if any other in-depth case studies regarding GATS and higher education are to be conducted in the future, it would be very beneficial to look at systems outside the EU, to eliminate one complicating factor.

Further research

Another question is whether GATS itself is interesting enough for further analysis of higher education policy scholars. For various reasons the issue has been put aside from discussions for a while. One has to realize, however, that even if higher education in general was excluded from multilateral agreements, the agenda which is behind GATS continues to influence national policies. It seems that liberalization, deregulation and privatization of public sectors as part of the 'neo-liberal project', at least in some countries, might continue with or without GATS. Therefore, the above mentioned issues, being materialized in GATS on the international level, should be paid increased attention by the higher education policy field in any case.

Another interesting topic, already shortly mentioned above is the EU economic agenda and its relation to higher education. So far, the Bologna process has been seen as an exemplification of internationalization of higher education (Van Vught, Van der Wende & Westerheijden, 2002) in which cooperation prevails. GATS, on the other hand, has been associated with globalization, trade, markets, and competition. However, the EU in general promotes the same economic rationales including stimulation of competition on the internal market, as emphasized in the Lisbon strategy. Many challenging questions can be raised for further exploration. Among other questions, what is the impact of the new EU agenda (including the update of the Lisbon strategy, focus on research, development and innovations, call for more graduates in technical and natural sciences, etc.) and especially also the EU services directive on higher education in EU member states or more specifically on their steering capacity in higher education.

This study also indicated that questions about the relation of the state vis-à-vis higher education are continuously relevant and worthy of deep elaboration, especially as the steering capacity of a nation-state has become more complex to exercise. For example, what is the position of a state in steering services—if higher education is part of services? How to deal in the most efficient and effective way with increased and diversified demand for higher education? How to guarantee the quality of teaching and research in such diversified systems? Are subsidies to

existing providers the best policy? Should new providers be allowed onto the market? Those and many related sub-questions still represent rich and challenging areas for the higher education policy community to be explored.

Finally, a few sentences follow at the very end of this book. Confronting the WTO and GATS' perspective with academic norms and values, looking at contrasting views and stand-points of various stakeholders, and trying to assess the impact of a mechanism such as GATS which remains to a high extent untested was indeed a very challenging endeavor. It reminds us of the fact that, especially in social sciences, developments are seen from varying perspectives and are subject to different interpretations. However, it should not stop us from the effort to connect small parts of the social reality puzzle, in order to contribute to its better understanding and decrease the confusion which is, using Guy Neave's words, becoming every day in every way global.

Nederlandstalige samenvatting

Inleiding

Op 15 april 1994 is het akkoord getekend waarmee de Wereldhandelsorganisatie (WTO) werd opgericht, die voortbouwt op de sinds 1947 bestaande Algemene Overeenkomst over Tarieven en Handel (GATT). Tegelijkertijd werden het WTO-dienstenverdrag (GATS) en de Trade-Related Aspects of Intellectual Property Rights (TRIP) afgesloten. Samen met een reeks van dienstensectoren (handel, communicatie, financiële diensten, etc.) werd ook de onderwijssector geselecteerd voor verdere liberalisering.

Het feit dat onderwijs een onderdeel uitmaakt van GATS heeft gezorgd voor veel weerstand van verschillende stakeholders. De discussie over de invloed van GATS op het onderwijsveld en het onderwijsbeleid verhevigde zich met name rondom de onderhandelingsronde van november 2001 in Doha. Tijdens de discussies werd duidelijk dat er een belangrijk meningsverschil is over het al dan niet toevoegen van hoger onderwijs aan GATS en dat er tegenovergestelde verwachtingen zijn van de impact van GATS op hoger onderwijs op zowel mondiaal als nationaal niveau. Tijdens de discussies werd geponereerd dat GATS een belangrijke impact heeft op de natiestaat en diens mogelijkheid om hoger onderwijs te reguleren.

Onderzoeksvragen en doel van het onderzoek

De probleemstelling die dit onderzoek probeert te beantwoorden luidt: Hoe en in hoeverre heeft de toevoeging van onderwijs aan GATS invloed op de mogelijkheden tot sturing van hoger onderwijs door de natiestaat? Om deze probleemstelling te kunnen beantwoorden worden de volgende deelvragen onderscheiden: Wat is de impact van GATS op hogeronderwijsbeleid? Wat is de positie en invloed van de verschillende stakeholders in de GATS onderhandelingen over hoger onderwijs? Welke andere relevante factoren hebben een belangrijke impact op de sturingsmogelijkheden van de natiestaat?

Door het beantwoorden van de bovenstaande vragen draagt dit onderzoek bij aan de voortdurende discussie over de impact van globalisering op hoger onderwijs en tevens aan het debat over de rol van de natiestaat in een steeds complexer wordende omgeving. Deze studie wil ten eerste verbindingen creëren tussen

theoretische globaliseringsconcepten en wil verder GATS en zijn relatie met hoger onderwijs binnen dit perspectief plaatsen. Ten tweede biedt het onderzoek een begrippenkader dat het mogelijk maakt om te kijken naar de “statische” dimensie (regels en disciplines van GATS) en de “dynamische” dimensie (standpunten, visies en acties van de stakeholders) die beide mogelijk de sturingscapaciteiten van een natiestaat wat betreft hoger onderwijs beïnvloeden. Ten derde levert het onderzoek, door het analyseren en systematiseren van publicaties over GATS en zijn impact en de standpunten en visie van zowel voor- en tegenstanders van de toevoeging van hoger onderwijs in GATS, gedetailleerde informatie op die gebruikt kan worden voor verdere discussie over dit onderwerp.

Theoretisch kader

In het theoretische kader van dit onderzoek wordt het multilaterale karakter van de WTO (inclusief GATS) gezien als een belangrijk onderwerp binnen de discussies rondom globalisering. Er wordt in dit onderzoek aangenomen dat globalisering als zodanig bestaat en de institutie van een moderne natiestaat beïnvloedt. De natiestaat is nog steeds erg machtig, toch zijn sommige van zijn bevoegdheden en mogelijkheden veranderd of ten minste verschoven en worden deze bevoegdheden en mogelijkheden tegenwoordig gedeeld met anderen. De relatie tussen globalisering en de natiestaat moet worden gezien als een proces van interactie. Natiestaten hebben mondiale krachten gevormd, en deze hebben vervolgens de natiestaten weer beïnvloed.

Om de impact van globalisering op de natiestaat te kunnen vaststellen gebruikt dit onderzoek de aanpak die Djelic en Quack (2003) aanbevelen. Zij stellen dat globalisering kan worden gezien als een proces van instituties bouwen en institutionele verandering, dit proces wordt beïnvloed door de interactie tussen verschillende binnenlandse en buitenlandse actoren. De institutionele verandering, in feite de toepassing van transnationale regels op binnenlands niveau, kan worden bereikt door middel van de “trickle-down trajectory” (een top-down proces met een directe invloed van transnationale regels op het nationale niveau) of door middel van de “trickle-up trajectory” (actoren op het transnationale niveau initiëren veranderingen in de spelregels). Gebaseerd op de begrippen van Djelic en Quack staan in dit onderzoek voor de “trickle-down trajectory” de principes van internationaal recht en de regels van WTO en GATS. De “trickle-up trajectory” heeft betrekking op actoren (stakeholders) die de veranderingen op het nationale niveau initiëren.

Bevindingen en conclusies

Na een analyse van wetenschappelijke literatuur is gebleken dat de belangrijkste elementen van hoger onderwijs die (mogelijk) beïnvloed worden door GATS zijn:

publiek hoger onderwijs en de overheidsregulering van hoger onderwijs, inclusief een kwaliteitszorgmechanisme.

De volgende factoren worden gezien als degene die de manier waarop GATS het hoger onderwijs zou kunnen beïnvloeden het meest bepalen: de positie van het land, dat wil zeggen de economische ontwikkeling, de structuur van de onderwijssector, het niveau van bestaande diensten en de wijze waarop de diensten worden geleverd.

De analyse van de standpunten en visies van de stakeholders bevestigt een wijdverbreide opvatting : de discussie over GATS en haar implicaties voor hoger onderwijs is duidelijk gepolariseerd.

Volgens criticasters is de GATS een bedreiging voor de traditionele rol van de overheid, de soevereiniteit van de staat, democratische principes en democratische besluitvorming. Voorstanders daarentegen benadrukken dat nationale overheden nog steeds de machtigste actoren zijn en nog immer beslissen over de regulering van een bepaalde sector, inclusief hoger onderwijs.

Onderdeel van het empirische deel van het onderzoek zijn twee gedetailleerde nationale casestudies, de Tsjechische Republiek en Nederland. Het blijkt dat de jure impact van GATS op de sturingscapaciteiten van een natiestaat niet is gevonden in beide cases – noch via de wettelijke bepalingen, noch via de betrokkenheid van stakeholders. De regulering van hoger onderwijs is, evenals de vormen van sturing, niet veranderd ten gevolge van de nationale verplichtingen en de algemene richtlijnen en regels die voortvloeien uit GATS. In tegenstelling tot de Tsjechische Republiek is echter in Nederland een vrij intensieve discussie gevoerd over GATS en zijn impact.

Dit onderzoek laat verder zien dat men op dit moment en onder de huidige omstandigheden GATS op zichzelf geen feitelijke macht kan toeschrijven om de mogelijkheden tot sturing van hoger onderwijs door de natiestaat in te perken. In combinatie met andere belangrijke factoren op het nationale niveau (liberalisering, concurrentie in publieke diensten, deregulering, etc.) en wereldniveau (internationalisering, globalisering, etc.) kan GATS echter eraan bijdragen dat het steeds moeilijker wordt voor natiestaten om het hogeronderwijsstelsel te sturen. Hoewel de staat nog steeds de belangrijkste speler is in het bepalen van de sturingsfilosofie, de rol en omvang van het hoger onderwijs, is hij niet langer de enige speler.

De drang tot veranderingen in (de sturing van) hoger onderwijs komt eerder vanuit een nationale neiging om marktachtige mechanismen, intensieve concurrentie, verdere liberalisering, etc. te introduceren. Dit kan worden opgevat als een doelbewuste en opzettelijke keuze van de natiestaat om zijn sturingscapaciteit te

beperken en deels te vervangen door marktachtige sturingsmechanismen. Het proces van Europese integratie is tegelijkertijd een andere belangrijke ontwikkeling die het hogeronderwijsbeleid en de sturingscapaciteiten van de natiestaat beïnvloedt. Bovendien wordt de sturingscapaciteit in steeds grotere mate beïnvloed door andere intergouvernementele instituties zoals UNESCO, de WTO, de Wereldbank of de OECD. Dit onderzoek stelt daarom dat de sturingscapaciteit van een natiestaat wat betreft hoger onderwijs complexer is geworden. Door de toenemende complexiteit, mondiale trends en de groeiende verscheidenheid aan stakeholders die betrokken zijn op alle niveaus (supranationale, intergouvernementele en niet-gouvernementele organisaties, maar ook studenten en vakbonden, etc.) is de mogelijkheid van een natiestaat om het hogeronderwijssysteem te sturen minder evident.

Appendix I: List of stakeholders - opponents

1. Trade unions, federations of workers in education, teachers federations, etc.

International level/European Level

EI - Education International

UTUCE - European Trade Union Committee for Education

PSI - Public Services International

National level

AUT - Association of University Teachers, United Kingdom

BCTF - British Columbia Teachers' Federation, Canada

CAUT - Canadian Association of University Teachers, Canada

CUFA/BC - Confederation of University Faculty Association of British Columbia, Canada

NSWTF - New South Wales Teachers Federation, Australia

NTEU - National Tertiary Union, Australia

2. HE institutions, associations of HE institutions, associated individuals

International/European level

EUA - European University Association

LAR - Iberian and Latin American Public Universities Rectors

National level

ACE - American Council on Education, U.S.

AUCC - Association of Universities and Colleges of Canada, Canada

CHEA - Center for Higher Education Accreditation, U.S.

Andrew Hammett, University of Strathclyde, UK

3. Student organizations

International/European level

ESIB - The National Unions of Students in Europe

National level

CFS - Canadian Federation of Students, Canada

NUS - National Union of Students, Australia

4. Non-governmental organizations, civic movements, etc.

P&P - People & Planet, United Kingdom

Gatswatch, The Netherlands

5. Intergovernmental organizations

CE - Council of Europe

6. Independent individuals, journalists

Nick Mathiason, Observer, United Kingdom

Viv Miley, Australia

Andrea Foster, U.S.

Appendix II: List of stakeholders - proponents

World trade organization - Secretariat, Council for Trade in Services, Geneva

National Committee for International Trade in Education (NCITE), U.S.

Office of the U.S. Trade Representative, U.S.

Department of Commerce, U.S.

European Service Forum, Brussels

Government of New Zealand

Government of the U.S.

Government of Japan

Government of Australia

Government of Switzerland

European Union - European Commission, EU Trade Commissioner, Directorate-General for Trade

Appendix III: List of relevant websites

<http://chronicle.com>
<http://cufabc.harbour.sfu.ca>
<http://doconline.wto.org>
<http://europa.eu.int/comm/trade>
<http://gats-info.eu.int>
<http://strategis.ic.gc.ca>
www.aucc.ca
www.aut.org.uk
www.bctf.bc.ca
www.caut.ca
www.chea.org
www.cqaie.org
www.edugate.org
www.ei-ie.org
www.esf.be
www.esib.org
www.eua.be, www.unige.ch/eua
www.gatswatch.org
www.genie-tn.net/gats.htm
www.greenleft.org.au
www.learntec.net
www.llrx.com/features/wto2.htm
www.nswtf.org.au
www.nteu.org.au
www.oecdobserver.org
www.peopleandplanet.org
www.policyalternatives.ca
www.tni.org/wto
www.tradeineducation.org
www.tradewatch.org
www.ustr.gov
www.world-psi.org
www.wto.org

Appendix IV: List of analyzed documents – opponents

1999

Rober Clift, Executive Director, Confederation of University Faculty Associations of British Columbia, **Background paper on the General Agreement on Trade in Services (GATS) and Post-Secondary Education in Canada**

Bill Graham, Canadian Association of University Teachers, **WTO Threatens Our Health & Education Systems**

2000

Fred van Leeuwen, General Secretary, Education International, **A litmus test for the future of public education**

Fred van Leeuwen, General Secretary, Education International, **Education and the Wealth of Nations**

Education International, **The WTO and the Millenium Round: What is at stake for Public Education?**

Sally Edsall, Research officer, New South Wales Teachers Federation, **GATS to impact on public education**

Tom Booth, President, Canadian Association of University Teachers, **Academic Freedom as Just Another Commodity**

Public Services International, **Great Expectation: The Future of Trade in Services**

Canadian Federation of Students, **Brief on General Agreement on Trade in Services submitted by the**

Jess Worth, People & Planet, **The Threat to Higher Education**

Larry Kuehn, Director of Research and Technology, British Columbia Teachers' Federation, **Keep Public Education Out of Trade Agreements**

Nick Mathiason, **Let US in, we're hungry**

Ted Murphy , National assistant secretary, National Tertiary Education Union, **The 'New' Free Trade Agenda**

2001

Larry Kuehn , Director of Research and Technology, British Columbia Teachers' Federation, **Globalization, trade agreements and education: Trade deals prevent government from protecting education**

Alex Nunn, Jess Worth, People & Planet, **GATS and Education**

Viv Miley, **Higher education on the GATS chopping block**

ESIB, **Commodification of Education Introductory Information**

ESIB, **ESIB Statement on Commodification of Education**

Graham Hastings, National Education Research Co-ordinator, National Union of Students, **Education, Trade Liberalization and CHOGM**

Tom Booth, President, Canadian Association of University Teachers, **Canada targets education in GATS talks**

European University Association, **What is GATS (WTO) and what are the possible implications for higher education in Europe?**

Stanley O. Ikenberry, President, American Council on Education & Judith S. Eaton, President, Council for Higher Education Accreditation, **Comments About Inclusion of Higher Education Service in Pending World Trade Organization Negotiations**

Sheena Hanley, Deputy General Secretary, Education International, **Commercialisation of Public Services - Where to from here?**

Tom Booth, President, Canadian Association of University Teachers, **Decoding the Educational Services Negotiations**

Association of Universities and Colleges of Canada, American Council of Education, European University Association, Council for Higher Education Accreditation, **Joint Declaration on Higher Education and the General Agreement on Trade in Services**

ESIB, **Newsletter on Commodification of Education**

Paul Cottrell , Acting General Secretary, Association of University Teachers, **Globalisation threat to universities**

Carolyn Allport, National president, National Tertiary Education Union, **NTEU Media Release**

Eric Fromet, President, European University Association, **Help make trade rules or get stung at the market**

2002

James Cemmell, ESIB, **Extract from the ESIB policy statement on the commodification of education**

Canadian Association of University Teachers, **The General Agreement of Trade in Services: What's at Stake for Post-Secondary Education?**

Andrea Foster, **Colleges, Fighting U.S. Trade Proposal, say It Favors For-Profit Distance Education.**

Andrew Hamnett, Principal , University of Strathclyde, **Why I think higher education should stay out of GATS**

EUA & ESIB, **Students and universities: An academic community on the move**

Per Nyborg, Chairman, Committee for HE and Research, Council of Europe, **The Lisbon Convention and a possible relation to GATS in higher education**

Iberian and Latin American Public Universities Rectors, **Porto Alegre Declaration**

Per Nyborg, , Chairman, Committee for HE and Research, Council of Europe, **GATS in the light of increasing internationalization of higher education. Quality assurance and recognition**

Victor Catano, President, Canadian Association of University Teachers, **Privatization Threatens Quality of Education Across the Americas**

European University Association, **The Bologna process and the GATS Negotiations**

2003

Association of University Teachers, **GATS and higher education parliamentary briefing**

Education International, **Meeting of the Higher Education and Research Standing Committee**

ESIB, **GATS Briefing for NUS's**

Mike Donaldson, NSW State Secretary, National Tertiary Education Union, **The World Trade Organisation, GATS and Higher Education**

European University Association, **Response to the Communication from the Commission - The Role of the Universities in the Europe of Knowledge**

GATSWATCH, **Take education out of GATS**

Education International & European Trade Union Committee for Education, **EI/ETUCE Statement**

Appendix V: List of analyzed documents – proponents

1998 - 2003

WTO, Council for Trade in Services, **Education Services, Background Note by the Secretariat**

WTO Secretariat, **The developmental impact of trade liberalization under GATS, Informal note by the Secretariat**

WTO Secretariat, Trade in Services Division, **An introduction to the GATS**

US National Committee for International Trade in Education (NCITE), **Report on Services 2000 Day at US department of Commerce**

Rudolf Adlung, Trade in Services Division, WTO, **Special Presentation: The World Trade Organization, The General Agreement on Trade in Services**

WTO, **GATS - Fact and fiction**

Sara E. Hagigh, International Trade specialist with the U.S. Department of Commerce, **WTO Services Negotiations: Progress to Date and Future Outcomes**

Keith Rockwell, Director, Information and Media Relations Division, **WTO spokesman answers a critic**

Bernard Ascher, Director of Service Industry Affairs at the Office of the U.S. Trade Representative in Washington, D.C., **Education and Training Services in International Trade Agreements**

Jeroen Ansink, **GATS need not be a disaster**

Marjorie Peace Lenn, Executive director of the National Committee for International Trade in Education, **The Right Way to Export Higher Education**

Mike Moore, Director-General WTO, Alejandro Jara, Chairman of the Special Session of the WTO Services Council, **Director-general of WTO and chairman of WTO services negotiations reject misguided claims that public services are under threat**

Office of the United States Trade Representative, **U.S. Proposals for Liberalizing Trade in Services, Executive Summary**

Government of Canada, Securing markets for Canadians around the world, **Frequently Asked Questions, The GATS, Public Services, Health and Education**

Jennifer Moll, Office of Service Industries, Trade Development, U.S., **International Education and Training Services: A Global Market Opportunity for U.S. Providers**

Kurt Larsen & Stéphan Vincent-Lancrin , OECD, **The learning business: Can trade in international education work?**

Office of the United States Trade Representative, **Subsidies Disciplines Requiring Clarification and Improvement: Communication from the United States**

European Service Forum, US Coalition of Service Industries, Japan Services Network, Hong Kong Coalition of Service Industries, Australian Services Roundtable, International Financial Services London, Coalition of Services Industries of Chile, **Private sector service industries around the world call for stalled WTO negotiations to resume**

ESF, **New ESF Priorities for the DDA (Doha Development Agenda)**

ESF, UNICE, **How to get the WTO back on track: European Business Twelve Recommendations**

European Union, 1998 - 2003

Leon Brittan, Vice President of the European Commission, **European objectives for services worldwide: how the WTO can help**

European Commission, **Education experts' meeting , Education in the GATS - Background note**

Pascal Lamy, EU Trade Commissioner, **Speech at ESF (European Service Forum) in Brussels**

European Commission, **FAQ's**

Pascal Lamy, EU Trade Commissioner, **Negotiations on Services in the World Trade Organisation**

Directorate-General for Education and Culture. European Commission, **Replies from 11 Member States, Education and the GATS**

Directorate-General for Trade, European Commission, **WTO members' requests to the EC and its member states for improved market access for services, Consultation Document**

European Commission, **WTO services: Commission submits draft offer to Council and Parliament - public services fully defended**

WTO, **Communication from the European Communities and its member states**

European Commission, **Trade in Services, Sectoral Issues**

Appendix VI: Statements across various opponents' groups

Statement	STAKEHOLDERS - OPPONENTS												Total
	1 workers		2 HE institutions		3 students		4 NGOs		5 IGOs	6 individuals			
	int	nat	int	nat	int	nat	int	nat		int	nat		
1	2	1	1					1					5
2	1												1
3	1									1			2
4											1		1
5					1								1
6		1											1
7	1												1
8	1												1
9		1											1
10	3	2	4		2	1			2				14
11		1	1		2	1							5
12		2	3	1	2	1							9
13				1									1
14	1							1					2
15	1	2	2		2	2		2		1	1		13
16		1	1	1									3
17	3	7				1		1			1		13
18		3			1			1					5
19		2	1								1		4
20					1								1
21	2	5	2			1		1					11
22	1	3	2			1		1					9
23	1	4				1					1		7
24		6	1			2					1		10
25	1	5	2		2			2	1	1			14
26		1	2	1	2	1							7
27		3				1							4
28	1				1	1		1					4
29					1								1
30		1											1
31			1				1				1		3
32						1		1					2
33	1	2											3
34		2											2
35	2	1	3										6
36		2			1		1						4
37	3	2	1		1	1	1						9
TOTAL	26	60	28	4	18	16	3	12	4	3	7		181

Appendix VII: Opponents' statements across levels and countries

Statement	Level/ countries						TOTAL
	INTERNATIONAL	NATIONAL	US	CAN	AUT	UK	
1	3	2		1		1	5
2	1						1
3	2						2
4	1						1
5	1						1
6		1					1
7	1						1
8	1						1
9			1		1		1
10	11	3		2	1		14
11	3	2		2			5
12	5	4		2	1	1	9
13	1						1
14	1	1				1	2
15	6	7		3	2	2	13
16	1	2		1		1	3
17	3	10		7	2	1	13
18	1	4		1	1	2	5
19	1	3	1	2			4
20	1						1
21	4	7		4	2	1	11
22	4	5		3	1	1	9
23	1	6	1	2	1	2	7
24	1	9		2	5	2	10
25	7	7		3	1	3	14
26	4	3		1	1	1	7
27	0	4		1	3		4
28	2	2		1		1	4
29		1				1	1
30		1		1			1
31	2	1	1				3
32		2		1		1	2
33	1	2			1	1	3
34		1		1			2
35	5	1		1			6
36	2	2		1	1		4
37	6	3		2	1		9
TOTAL	83	98	3	48	24	23	181

Appendix VIII: Opponents' statements across years

Statement	YEAR					TOTAL
	1999	2000	2001	2002	2003	
1		2	2	2		5
2		1				1
3		2				2
4			1			1
5			1			1
6	1					1
7		1				1
8		1				1
9			1			1
10		3	2	5	4	14
11		1	2	2		5
12		2	2	4	1	9
13			1			1
14		1	1			2
15		4	6	3		13
16			2	1		3
17	1	6	4	2		13
18		1	3		1	5
19		1	1	2		4
20				1		1
21	1	6	3	1		11
22		3	3	3		9
23		1	4	1	1	7
24	1	3	5		1	10
25		4	4	4	2	14
26			4	2	1	7
27		1	2		1	4
28		2	2			4
29				1		1
30		1				1
31			1	1	1	3
32		1	1			2
33		1	1		1	3
34	1			1		2
35	1	1	4			6
36		1	1		2	4
37	2	3	2	1	1	9
TOTAL	8	54	64	39	16	181

Appendix IX – List of participants, interviews – the Czech Republic

František Barták

Chairman
Higher Education Labor Unions
Medical Faculty in Pilsen
Charles University in Prague

Josef Beneš

Head of the HE department
Ministry of Education, Youth and Sports

František Ježek

Chairman
Council of Higher Education Institutions
Vice-rector
University of West Bohemia in Prague

František Juránek

Senior officer
Ministry of Industry and Trade

Petr Matějů

Member of the Council of Higher Education Institutions
New York University in Prague
Institute of Sociology, Academy of Sciences

Jiří Nantl

Chairman
Council of Higher Education Institutions - student chamber
Masaryk University in Brno

Kateřina Pössingerová

Head of the ESF Unit
Ministry of Education, Youth and Sports

Josef Středula

Chairman
National Labor Union

Helena Šebková

Director
Centre for Higher Education Studies

Václav Vinš

Secretary
Accreditation Commission

Zdeněk Vršník

Head of the Education Unit
Chamber of Commerce

Ivan Wilhelm

Chairman
Rector's conference
Rector
Charles University in Prague

Appendix X – List of participants, interviews – the Netherlands

Axel Aerden (former ESIB member 1999-2001)

Policy Advisor
NVAO – Nederlandse-vlaamse accreditatie organisatie

Jeroen Bartelse

Head Policy Department/Deputy Director
VSNU – Association of Universities in the Netherlands

Marco Braeken

Senior Policy Advisor, Infrastructure International Business
Directorate-General for Foreign Economic Relations
Ministry of Economic Affairs

Dorrit Van Dalen

Policy Advisor
NUFFIC – Netherlands organization for international cooperation in higher
education

Peter van Dijk

Senior officer
Ministry of Education, Culture and Science

Koen Geven

Member of the Board
LSVB – Landelijke Studenten Vakbond

Marianne Heijndijk

Business Unit Manager
LOI – Leidse Onderwijsinstellingen

Ben Jongbloed

Senior Researcher
Center for Higher Education Policy Studies at the Twente University

Gabi Kaffka

Groen Links
Intern

Gerrit Pas

Groen Links
Policy Advisor

Chiel Renique

Senior Advisor Education and Training
VNO NCW – Confederation of Netherlands Industry and Employers

Jacques Tichelaar

Partij van de Arbeid
Member of the Parliament
Second Chamber

Egbert de Vries

Policy Advisor International Affairs
HBO Raad – Netherlands Association of Universities of Professional Education

Frans van Vught

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References

- Adam, S. (2001). *Transnational education project: Report and Recommendations*. Study commissioned for the Confederation of European Union Rectors' Conferences. Retrieved November 26, 2004 from http://www.crue.org/espaeuro/transnational_education_project.pdf
- Adlung, R. (2001). *The General Agreement of Trade in Services*. Special Presentation: The World Trade Organization.
- Alderman, G. (2001). The Globalization of Higher Education: Some Observations Regarding the Free Market and the National Interest. *Higher Education in Europe*, XXVI, (1), 47-52.
- Allport, C. (2002). *Transnational Education and GATS – an Australian perspective*. A paper presented at the EI Conference on Higher Education, Montreal, March 13-15, 2002.
- Altbach, P. G., & Davis, T. M. (1999). Global Challenge and National Response. *International Higher Education*, 14, 2-5.
- Altbach, P. G. (2001). Higher Education and the WTO: Globalization Run Amok. *International Higher Education*, 23, 2-4.
- Altbach, P. G. (2004). GATS Redux: The WTO Returns to Center State. *International Higher Education*, 37, 5-7.
- Ansink, J. (2002). *GATS need not be a disaster*. Unpublished article.
- Appela, A. (1996). Constitutional Aspects of Opinion 1/94 of the ECJ Concerning the WTO Agreement. *International and Comparative Law Quarterly*, 45, 440-462.
- Arkell, J. (1992). GATT and services. *Economic Affairs*, November 1992, 24-26.
- Arkell, J. (2003). *Background paper on GATS issues*. Paper presented at Symposium on Trade Policy Challenges in East Asia: The New Regionalism and the WTO, Singapore, February 20, 2003.
- Ascher, B. (2001). *Education and Training Services in International Trade Agreements*. Paper prepared for the Conference on Higher Education and Training in the Global Marketplace, Washington, D.C., May 10 2001.

- Ashford, N. (1993). The ideas of the New Right. In G. Jordan, & N. Ashford (Eds.), *Public Policy and the Impact of the New Right* (pp. 19-45). London: Pinter Publishers.
- Assink, V. (2002). *GATS. Implicaties voor de hogescholen van het General Agreement on Trade in Services*.
- Atkinson, M. M., & Coleman, W. D. (1992). Policy Networks, Policy Communities and the Problems of Governance. *Governance: An International Journal of Policy and Administration*, 2, 154-180.
- AUCC. (2001). *Canadian Higher Education and the GATS*. AUCC Background Paper. Retrieved January 30, 2002 from <http://homer.aucc.ca/en/>
- AUCC. (2003). *The GATS and Higher Education in Canada: An Update on Canada's Position and Implications for Canadian Universities*. Retrieved May 28, 2003 from <http://www.aucc.ca>
- August, R. (2000). *International Business Law*. Upper Saddle River, NJ: Prentice Hall.
- AUT. (2003). *Response to DTI Consultation on the General Agreement on Trade and Services*. Retrieved March 11, 2004 from <http://www.aut.org.uk>
- Barblan, A. (2002). The International Provision of Higher Education: Do Universities Need GATS? *Higher Education Management and Policy*, 14, (3), 77-92.
- Beck, U. (2000). The cosmopolitan perspective: sociology of the second age of modernity, *British Journal of Sociology*, 1, 79-105.
- Beneš, J., Huisman, J., & Šebková, H. (2003). The Czech Republic. In J. File & L. Goedegebuure (Eds.), *Real-time systems: Reflection on Higher education in the Czech Republic, Hungary, Poland and Slovenia* (pp. 41-57). Brno: Vutium.
- Bode, Ch. (2002). Germany's position towards international market competition. In D. van Dalen (Ed.), *The global higher education market* (pp. 19-25). The Hague: NUFFIC.
- Boer, H. F., Enders, J., & Westerheijden, D. F. (2005). From Paper to Practice: Two Reforms and Their Consequences in Dutch Higher Education. In A. Gornitzka, M. Kogan & A. Amaral (Eds.), *Reform and Change in Higher Education. Analysing Policy Implementation* (pp. 97-116). Dordrecht: Springer.
- Boezerooy, P. (2003). *Higher education in the Netherlands*. Country report. Retrieved February 15, 2005 from <http://www.utwente.nl/cheps/documenten/netherlands.pdf>

- Böhm, A., Davis, D., Meares, D., & Pearce, D. (2002). *Global Student Mobility: Forecasts of the Global Demand for International Higher Education*. Sydney, Australia: IDP Education Australia Limited.
- Börzel, T. A., & Risse, T. (2003). Conceptualizing the Domestic Impact of Europe. In K. Featherstone & C. M. Radaelli (Eds.), *The Politics of Europeanisation* (pp. 57-80). Oxford: Oxford University Press.
- Bressers, H. Th. A. (1998). The choice of policy instruments in policy networks. In B. G. Peters & F. K. M. van Nispen (Eds.), *Public Policy Instruments. Evaluating the Tools of Public Administration* (pp. 85-105). Cheltenham: Edward Elgar Publishing Limited.
- Brittan, L. (1998). *European objective for services worldwide: how the WTO can help*. Retrieved November 17, 2002 from <http://gats-info.edu.int>
- Bruijn, H. A. de, & Ten Heuvelhof, E. F. (1998). A contextual approach to policy instruments. In B. G. Peters & F. K. M. van Nispen (Eds.), *Public Policy Instruments. Evaluating the Tools of Public Administration* (pp. 69-84). Cheltenham: Edward Elgar Publishing Limited.
- Carnoy, M., & Rhoten, D. (2002). What Does Globalization Mean for Educational Change? A Comparative Approach. *Comparative Education Review*, 46, (1), 1-9.
- Castells, M. (2000a). Materials for an exploratory theory of the network society. *British Journal of Sociology*, 51, (1), 5-24.
- Castells, M. (2000b). *The Rise of the Network Society*. Oxford: Blackwell Publishers.
- Castells, M. (2002). *Exploration of the network society and its implications for higher education*. Paper presented at CHEPS Summer school, Barcelona, July 2002.
- Castricum, C. (2005, September 1). *Mengelmoes van cijfers*. PM, p. 25.
- CBS. (2005). *Jaarboek Onderwijs in Cijfers*. Heerlen.
- CEPES-UNESCO. (2003). *Report on Trends and Developments in Higher Education in Europe*. Bucharest: CEPES-UNESCO.
- Cerny, P. G. (1997). Paradoxes of the Competition State: The Dynamics of Political Globalization. *Government and opposition*, 32, (2), 251-274.

Cerny, P. G. (1999). Reconstructing the Political in a Globalising World: States, Institutions, Actors and Governance. In F. Buelens (Ed.), *Globalisation and the Nation-state* (pp. 89-137). Cheltenham, UK: Edward Elgar.

Charnovitz, S. (2002). Triangulating the World Trade Organization. *American Journal of International Law*, 96, (1), 28-55.

CHE. (2003). *GATS and South African Higher Education*. Kagisano Issue, 3. Higher Education Discussion Series. Retrieved May 5, 2004 from <http://www.che.ac.za>

CHEPS. (2001). *Higher Education and the Stakeholder Society*. Research Program 2001 - 2005. Retrieved April 7, 2001 from <http://www.utwente.nl/cheps>

CHEPS. (2005a). *Higher Education Monitor*. Statistical database. Enschede.

CHEPS. (2005b). *Transforming Higher Education and Research in the Knowledge Society*. CHEPS research program 2006-2010.

CHERD. (2002). *Globalization, Trade Liberalization and Higher Education: Research Areas and Questions*. Unpublished manuscript.

CHES. (2001). *Higher Education in the Czech Republic*. Praha: CSVŠ, MŠMT.

Clark, B. R. (1983). *The Higher Education System. Academic Organization in Cross-National Perspective*. Berkeley: University of California Press.

Clark, B. R. (1997). Common problems and adaptive responses in the universities of the world: organizing for change. *Higher Education Policy*, 10, (3/4), 291-295.

Clark, I. (1999). *Globalization and International Relations Theory*. New York: Oxford University Press.

Cloete, N., Fehnel, R., Gibbon, T., Maassen, P., Moja, T., & Perrold. (Eds.). (2002). *Higher Education Policy, Institutions and Globalisation: New Dynamics in South Africa after 1994*.

Cohen, M. G. (2000). The General Agreement on Trade in Services: Implications for public post-secondary education in Australia. *Australian Universities' Review*, 2/1999-1/2000, 9-15.

- Cottier, T., Breining-Kaufmann, Ch., & Kennett, M. (2003). *Liberalisation of Higher Education Services in Switzerland: The Impact of the General Agreement in Trade in Services (GATS)*. Legal opinion submitted to the Rector's Conference of the Swiss Universities (CRUS). Retrieved June 2, 2003 from <http://www bbw.admin.ch/html/pages/bbwnews/2003/1/gats-f.pdf>
- CPB. (2004). *Een Open Bestel in het middelbaar beroepsonderwijs en het hoger onderwijs*. Den Haag: CPB.
- Csepes, O., Kaiser, F., & Varga, Z. (2003). Hungary. In J. File & L. Goedegebuure (Eds.), *Real-time systems: Reflection on Higher education in the Czech Republic, Hungary, Poland and Slovenia* (pp. 60-76). Brno: Vutium.
- Crawford, J. (1979). *The Creation of States in International Law*. Oxford: Clarendon Press.
- CSVŠ. (2005). *Thematic Review of Tertiary Education*. Background Report. Rough draft.
- Čermák, V. (1999). *Jiná řešení*. Retrieved May 20, 2000 from http://www.10milionu.cz/studie/2_alternativa.html
- Čermáková, Z., & Holda, D. (1992). Changing Values Among Czech Students: before and after November 1989. *European Journal of Education*, 27, (3), 303-314.
- Čerych, L. (1997). Educational Reforms in Central and Eastern Europe: processes and outcomes. *European Journal of Education*, 32, (1), 75-96.
- Deardorff, A. V., & Stern, R. M. (2002). What You Should Know About Globalization and the World Trade Organization. *Review of International Economics*, 10, (3), 404-423.
- Dickson, T. (2002). Globalisation and higher education; the implication for private investment. In D. van Dalen (Ed.), *The global higher education market* (pp. 67-77). The Hague: NUFFIC.
- Dijk, H. van (1997). The Netherlands. In T. Källemark & M. C. van der Wende (Eds.), *National policies for internationalisation of higher education in Europe* (pp. 159-173). Stockholm: National agency for higher education.
- Dill, D. D. (1997). Higher education markets and public policy. *Higher Education Policy*, 10, (3/4), 167-185.

Dixon, M. (2000). *Textbook on International Law*, 4th Edition. London: Blackstone Press Limited.

Djelic, M., & Quack, S. (Eds.). (2003). *Globalization and Institutions*. Cheltenham: Edward Elgar.

Doležalová, J. (2005, January 17). *Vysoké školy přijmou o 15 tisíc lidí víc*. MF Dnes, p. E1.

Douglas, J. A. (2005). *All Globalization is Local: Countervailing Forces and the Influence on Higher Education Markets*. Research & Occasional Paper Series: CSHE.1.05. University of California. Berkeley.

Drake, W. J., & Nicolaïdis, K. (1992). Ideas, Interests, and Institutionalization: "Trade in Services" and the Uruguay Round. *International Organization*, 46, (1), 37-100.

Dressel, H. (1999, December 6). *Unions, farmers, activists fear World Trade group*. Las Vegas Business Press, p. 9.

Education International. (2000). *The WTO and the Millennium Round: What is at stake for Public Education?* Retrieved March 6, 2001 from <http://eie.org/pub/english/epbeipsiwto.html>

Enders, J. (2004). Higher education, internationalization, and the nation-state: Recent developments and challenges to governance theory. *Higher Education*, 47, 361-382.

Enders, J. (2005). Higher Education in times of discontent? About Trust, Authority, Price and Some Other Unholy Trinities. In I. Bleiklie & M. Henkel (Eds.), *Governing Knowledge* (pp. 31-48). Dordrecht: Springer.

Enders, J., & Neave, G. (2002). *The Changing Academic Workplace: About Autonomy, Authority, and Academic Capitalism*. An unpublished manuscript. Enschede.

Eurydice Eenheid Nederland. (2005). *Het onderwijssysteem in Nederland 2005*. Den Haag: Ministerie van Onderwijs, Cultuur en Wetenschap.

European Commission. (2000a). *Education in the GATS*. Background note.

European Commission. (2000b). *Towards a European Research Area*. COM (2000) 6 final. Brussels: EC.

European Commission. (2002). *Education and the GATS*.

- European Commission. (2003a). *The role of universities in the Europe of knowledge*. COM (2003) 58 final. Brussels: EC.
- European Commission. (2003b). *WTO member's request to the EC and its member states for improved market access for services*. Consultation document. Retrieved March 9, 2004 from <http://europa.eu.int/comm/trade/issues/sectoral/services/docs/imas.pdf>
- European Commission. (2005a). *Actual Number of ERASMUS Students by Country of Home institution 1987/88-2003/04*. Retrieved March 20, 2006 from <http://europa.eu.int/comm/education/programmes/socrates/erasmus/statisti>
- European Commission. (2005b). *Mobilising the brainpower of Europe: enabling universities to make their full contribution to the Lisbon Strategy*. COM (2005) 152 final. Brussels: EC.
- EUA. (2001). *What is GATS (WTO) and what are the possible implications for higher education in Europe*. Retrieved December 20, 2001 from <http://www.unige.ch/eua>
- EUA. (2002). *The Bologna process and the GATS Negotiations*. Retrieved August 20, 2003 from <http://www.unige.ch/eua>
- EUA. (2003). *Response to the Communication from the Commission The Role of the Universities in the Europe of Knowledge*. Retrieved August 25, 2003 from <http://www.unige.ch/eua>
- ESIB. (2001). *Newsletter on Commodification of Education No.1, November 2001*. Retrieved January 30, 2002 from <http://www.esib.org>
- Feigenbaum, H. B., & Henig, J. R. (1994). The Political Underpinnings of Privatization: A Typology. *World Politics*, 46, (2), 185-208.
- File, J., & Goedegebuure, L. (2003). On Real-time systems, change and challenges: comparative reflections. In J. File & L. Goedegebuure (Eds.), *Real-time systems: Reflection on Higher education in the Czech Republic, Hungary, Poland and Slovenia* (pp. 235-246). Brno: Vutium.
- Freeman, R. E. (1984). *Strategic Management: A stakeholder approach*. Boston: Pitman.
- Froment, E. (2001, November 9). *Help make trade rules or get stung at the market*. The Times Higher Education Supplement.

- Garrett, R., & Verbik, L. (2003). *Transnational Higher Education, Part 2: Shifting Markets & Emerging Trends*. The Observatory of borderless higher education. Briefing note.
- Giddens, A. (2002). *Runaway World. How globalisation is reshaping our lives*. London: Profile Books.
- Gornitzka, Å. (2005). *Coordinating policies for a Europe of knowledge - Emerging practices of the "Open Method of Coordination" in education and research*. Arena Working Paper no. 16/2005v.
- Gornitzka, Å., & Maassen, P. (2000). Hybrid steering approaches with respect to European higher education. *Higher Education Policy*, 13, 267-285.
- Gottlieb & Pearson. (2001). *Legal Opinion: GATS Impact on Education in Canada*. Retrieved October 23, 2002 from http://www.esib.org/commodification/documents/GATTS_Impact.pdf
- Green, M. (2004). GATS Update. *International Higher Education*, 37, 3-5.
- Green, M., & Knight, J. (2004). Cross-border post-secondary education in North America. In *Internationalisation and trade in higher education. Opportunities and Challenges* (pp. 39-86). Paris: OECD.
- Grineski, S. (2000). "I have a Feeling We're Not in Kansas Anymore": The Commercialization and Commodification of Teaching and Learning in Higher Education. *Bulletin of Science, Technology & Society*, 20, (1), 19-28.
- Guillén, M. F. (2001). Is Globalization Civilizing, Destructive or Feeble? A Critique of Five Key Debates in the Social Science Literature. *Annual Review of Sociology*, 27, 235-260.
- Gunnell, B. (2000, December 4). *Here's a real threat to sovereignty*. New Statesman, p.16.
- Harrison, G. W., Rutherford, T. F., & Tarr, D. G. (1997). Quantifying the Uruguay Round. *The Economic Journal*, 107, (444), 1405-1430.
- Hatcher, R. (2000). *Schools Under New Labour - Getting Down to Business*. Paper presented at the Conference on Privatisierung des Bildungsbereichs - Eigentum und Wertschöpfung in der Wissensgesellschaft, University of Hamburg, 15-17 June 2000.

Haug, G. (2000). *Response to Prof. Sergion Machado's presentation "Introduction to the theme of transnational education"*. Speech presented at the Conference of the directors general for higher education and the heads of the rector's conferences of the European Union, Aveiro, Portugal, 3-4 April 2000.

Haug, G., & Tauch, Ch. (2001). *Trends in learning structures in higher education II*. Follow-up report prepared for the Salamanca and Prague Conferences of March/May 2001. National Board of Education: Finland.

Hay, C. (2003). *What's Globalisation Got To Do With It?* An Inaugural Lecture delivered at the University of Birmingham, 20 March 2003. Retrieved November 25, 2003 from

http://www.bham.ac.uk/POL/SIS/departments/staff/publications/hay_inaugural.htm

HBO-Raad. (2002). *Implicaties voor de hogescholen vaan het General Agreement on Trade in Services*.

HBO-Raad. (2004). *The education system in the Netherlands*. Retrieved April 17, 2005 from <http://www.hbo.nl>

Held, D., & McGrew, A. (Eds.). (2000). *The Global Transformation Reader: An Introduction to the Globalization Debate*. Cambridge: Polity Press.

Hilf, M. (1995). The ECJ Opinion 1/94 on the WTO – No Surprise, but Wise? *European Journal of International Law*, 6, 245-259.

Hirsch, D. (2002). *Report from the OECD/US Forum on Trade in Educational Services*, Washington, DC, U.S., 23-24 May 2002.

Hirst, P., & Thompson, G. (1999). The Tyranny of Globalisation: Myth or Reality? In F. Buelens (Ed.), *Globalisation and the Nation-state* (pp. 139-178). Cheltenham, UK: Edward Elgar.

Hoekman, R. (2000). The Next Round of Services Negotiations: Identifying Priorities and Options. *Review of the Federal Reserve Bank of St. Louis*. July/August. 31-47.

Holenda, J. (1994). Higher Education Reform in the Czech Republic. *Higher Education in Europe*, XIX, (4), 94-99.

Halzhacker, R., & Haverland, M. (2006). Introduction: Cooperation and Integration among Europeanized States. In R. Halzhacker & M. Haverland (Eds.), *European Research Reloaded: Cooperation and Integration among Europeanized States* (pp. 1-17). Dordrecht: Springer.

Hooghe, L., & Marks, G. (2001). *Multilevel Governance and European Integration*. Oxford: Roman and Littlefield.

Hospodářské noviny. (2005, October 27). *Kariéra Speciál. Seznam škol, které poskytují studium MBA v České republice*, p. 6.

Howse, R. (2002). From Politics to Technocracy-and Back Again: The Fate of the Multilateral Trading Regime. *American Journal of International Law*, 96, (1), 94-117.

Högskoleverket. (2003). *The Recognition, Treatment, Experience and Implication of Transnational Education in Central and Eastern Europe 2002-2003*. Retrieved 29 September, 2003 from <http://www.hsv.se>

Huisman, J., Maassen, P., & Neave, G. (Eds.). (2001). *Higher Education and the Nation State*. Oxford: Pergamon Press.

Huisman, J., & Vrečko, D. (2003). Slovenia. In J. File & L. Goedegebuure (Eds.), *Real-time systems: Reflection on Higher education in the Czech Republic, Hungary, Poland and Slovenia* (pp. 96-111). Brno: Vutium.

IBO. (2003). *IBO Open Bestel*. Interdepartementaal Beleidsonderzoek 2003-3004, nr. 2.

Jeliazkova, M., & Westerheijden, D. F. (2004). The Netherlands: A Leader in Quality Assurance Follows the Accreditation Trend. In S. Schwarz & D. F. Westerheijden (Eds.), *Accreditation and Evaluation in the European Higher Education Area* (pp. 323-345). Dordrecht: Kluwer Academic Publishers.

Jenniskens, I. (1997). *Governmental steering and curriculum innovations. A comparative study of the relation between governmental steering instruments and innovations in higher education curricula*. Enschede: CHEPS/UT.

John, P. (1999). *Policy networks. Contribution to the Blackwell Companion to Political Sociology*. Retrieved November 22, 2001 from <http://website.lineone.net/~peter.john/polnet2.html>

Jongbloed, B. (2004). *Funding universities in the Netherlands*. Enschede.

Jongbloed, B., & Goedegebuure, L. (2001). *From the entrepreneurial university to the stakeholder university*. Paper presented at the international congress Universities and Regional Development in the Knowledge Society, Barcelona, 12-14 November 2001.

- Jongbloed, B., Salerno, C., & Huisman, J. (2004). *Over vervoagende scheidingslijnen en gelijke speelvelden: het private post-seculaire onderwijs in vijf landen*. Paper presented at symposium Hoger Onderwijs, Bestel in Verandering, Utrecht, June 2004.
- Jongbloed, B., & Salerno, C. (2002). *Funding and Recognition: A Comparative Study of Funded Versus Non-funded Higher Education in Eight Countries*. Den Haag: Ministerie van Onderwijs, Cultuur en Wetenschap.
- Jordan, G. (1993). The New Right and public policy: a preliminary overview. In G. Jordan & N. Ashford (Eds.), *Public Policy and the Impact of the New Right* (pp. 1-18). London: Pinter Publishers.
- Kaiser, F., & Meer, van der P. (2001). *Verschijningsvormen van marktwerking in het hoger onderwijs: internationale vergelijking*. Background study for the Onderwijsraad.
- Kaiser, F., & Wach, P. (2003). Poland. In J. File & L. Goedegebuure (Eds.), *Real-time systems: Reflection on Higher education in the Czech Republic, Hungary, Poland and Slovenia* (pp. 77-93). Brno: Vutium.
- Kaiser, F., & Vossensteyn, H. (2005). Access to Dutch higher education: policies and trends. In T. Tapper & D. Palfreyman (Eds.), *Understanding Mass Higher Education: Comparative perspective on access* (pp. 92-120). New York: RoutledgeFalmer.
- Kersbergen, K. van, & Waarden, F. van. (2001). *Shifts in Governance: Problems of Legitimacy and Accountability*. The Hague: Social Science Research Council.
- Kingdon, J. W. (1995). *Agendas, Alternatives, and Public Policies*. New York: Longman.
- Kirchhoff, S. (1999, November 1999). *WTO, After 5 Years, Still Getting Its Balance*. CQ Weekly, p. 2834.
- Knight, J. (1997). A Shared Vision? Stakeholders' Perspectives on the Internationalization of Higher Education in Canada. *Journal of Studies in International Education*, Spring 1997, 27-44.
- Knight, J. (2002). *Trade in Higher Education Services: The Implication of GATS*. The observatory on borderless higher education. Retrieved April 9, 2002 from <http://www.obhe.ac.uk/products/reports/pdf/March2002.pdf>
- Knight, J. (2003a). *GATS, Trade and Higher Education. Perspective 2003 - Where are we?* The observatory on borderless higher education. Retrieved January 20, 2004 from <http://www.obhe.ac.uk/products/reports/publicaccesspdf/May2003.pdf>

Knight, J. (2003b). Trade Talk—the Four Modes. *International Higher Education*, 31, 3-5.

Knight, J. (2003c). Updated Definition of Internationalization. *International Higher Education*, 33, 2-3.

Kohler-Koch, B. (Ed.). (2003). *Linking EU and National Governance*. Oxford: Oxford University Press.

Kramešová, I. (2005, March 1). *Evropské univerzity lákají české studenty*. Právo.

Krueger, A. O. (1999). Are Preferential Trading Arrangements Trade-Liberalizing or Protectionist? *Journal of Economic Perspectives*, 13, (4), 105-124.

Kwiek, M. (2000). The Nation-State, Globalisation and the Modern Institution of the University. *THEORIA. A Journal of Social and Political Theory*, 96, 74-98.

Kwikkers, P. C., Huisman, J., & van Eijkern, F. E. H. (2005). *Evenwicht zonder sturing. Wegen voor nieuw hoger onderwijs en wetenschap*. Den Haag: SDU Uitgevers.

Lamy, P. (2000). *For the EU, services are central*. Speech at the European Services Forum International Conference, Brussels, 27 November 2000. Retrieved September 4, 2002 from <http://europa.eu.int/comm/commissioners/lamy>

Lamy, P. (2002). *Negotiations on Services in the World Trade Organization*. Speech at the European Parliament, Brussels, 14 May 2002. Retrieved September 4, 2002 from <http://europa.eu.int/comm/commissioners/lamy>

Larsen, K., & Vincent-Lancrin, S. (2002). International Trade in Educational Services: Good or Bad? *Higher Education Management and Policy*, 14, (3), 9-45.

Larsen, K., & Vincent-Lancrin, S. (2003). *The learning business. Can trade in international education work?* Retrieved September 4, 2003 from <http://www.oecdobserver.org/story.php/aid/127/aid/872>

Larsen, K., Martin, J. P., & Morris, R. (2001). *Trade in Education Services: Trends and Emerging Issues*. Retrieved January 9, 2002 from <http://www.oecd.org/pdf/M00020000/M00020422.pdf>

Látková, Z., & Röslerová, P. (2005, March 24). *Slováci chystají nápor do českých VŠ*. Právo.

Lindblom, CH. E., & Woodhouse, E. J. (1993). *The Policy-Making Process*. New Jersey: Prentice Hall.

- Luijten-Lub, A. (2004a). The Netherlands. In J. Huisman & M.C. van der Wende (Eds.), *On Cooperation and Competition. National and European Policies for the Internationalisation of Higher Education* (pp. 165-192). Bonn: Lemmens.
- Luijten-Lub, A. (2004b). *The Netherlands*. Enschede.
- Maassen, P. (1996). *Governmental Steering and the Academic Culture. The intangibility of the human factor in Dutch and German universities*. CHEPS: Enschede.
- Maassen, P. (2000). Editorial. *European Journal of Education*, 4, 377-383.
- Maassen, P., & Vught, F.A. van. (1994). Alternative Models of Governmental Steering in Higher education. In L. Goedegebuure & F. A. van Vught (Eds.), *Comparative Policy Studies in Higher Education* (pp. 35-64). Utrecht: Lemma.
- Mace, J., Lambropoulos, H., & Karadjia, E. (2000). *Markets, Values and Education*. Retrieved October 23, 2002 from <http://www.ioe.ac.uk>
- Marginson, S. (2000). Rethinking academic work in the global era. *Journal of higher education policy and management*, 22, (1), 23-35.
- Marginson, S. (2001). *The Global Market in Foreign Higher Education: The Case of Australia*. A Research Paper for the ASHE Annual Conference, Richmond, Virginia, 15-18 November 2001.
- Maslen, G. (2003, January 3). *Ageing Australia faces student shortage*. The Times Higher Education Supplement.
- Mayntz, R. (1998). *New Challenges to Governance Theory*. European University Institute, Jean Monnet Chair Paper RSC No 98/50.
- Mazzarol, T., & Soutar, G. N. (2001). *The Global Market For Higher Education*. Cheltenham, UK: Edward Elgar Publishing Limited.
- McBurnie, G. (2001). Globalization: A New Paradigm for Higher Education Policy. *Higher Education in Europe*, 1, 11-26.
- Meek, V. L., & Wood, F. Q. (1997). The market as a new steering strategy for Australian higher education. *Higher Education Policy*, 10, (3/4), 253-274.
- Miley, V. (2001). *Higher education on the GATS chopping block*. Retrieved January 30, 2002 from <http://www.greenleft.org.au/back/2001/448/448p13.htm>
- Ministry of Education. (2001). *National Program for the Development of Education in the Czech Republic*. WHITE PAPER. Prague: Institute for Information on Education.

- Mitchell, R. K., Agle, B. R., & Wood, D. J. (1997). Toward a theory of stakeholder identification and salience: Defining the principle of who and what really counts. *Academy of Management Review*, 22, (4), 853-886.
- MOECS. (2003). *Higher Professional Education. System and Funding*. Retrieved 12 August 2005 from: <http://www.minocw.nl>
- MOECS. (2005a). *Topics and trends in higher education policy*. Retrieved 12 August 2005 from: <http://www.minocw.nl/bhw>
- MOECS. (2005b). *Wetgevingsnotitie 'Naar een nieuwe Wet op hoger onderwijs en onderzoek'*.
- Moll, J. R., Gates, S., Alston, J., & Quigley, L. (2001). *International Education and Training Services: A Global Market of Opportunity for U.S. Providers*. Article prepared for the publication Export America.
- Monkman, K., & Baird, M. (2002). Educational Change in the Context of Globalization. *Comparative Education Review*, 46, (4), 497-508.
- Moore, M. (2000). International Trade in Services. *Business Credit*, November/December, 32-34.
- Morss, R. E. (1991). The New Global Players: How They Compete and Collaborate. *World Development*, 19, (1), 55-64.
- MŠMT. (2000). *Strategie rozvoje terciárního vzdělávání (2000-2005)*. Retrieved April 12, 2005 from: <http://www.msmt.cz>
- MŠMT. (2004). Working archive.
- NCITE. (2000). *NCITE Update*. Report on Services 2000 Day at the U.S. Department of Commerce.
- Neave, G. (1986). On Shifting Sands: changing priorities and perspectives in European higher education from 1984 to 1986. *European Journal of Education*, 21, (1), 7-24.
- Neave, G. (1995). On Living in Interesting Times: higher education in Western Europe 1985-1995. *European Journal of Education*, 30, (4), 377-393.
- Neave, G. (1997). Markets, Higher Education and Social Responsibility. *Higher Education Policy*, 10, (3/4), 161-162.

- Neave, G. (1998a). On the Cultivation of Quality, Efficiency and Enterprise: an overview of recent trends in higher education in Western Europe, 1986-1988. *European Journal of Education*, 23, (1/2), 7-23.
- Neave, G. (1998b). The Evaluative State Reconsidered. *European Journal of Education*, 33, (3), 265-284.
- Neave, G. (2001). The European Dimension in Higher Education: An Excursion into the Modern Use of Historical Analogues. In J. Huisman, P. Maassen & G. Neave (Eds.), *Higher Education and the Nation State* (pp. 13-73). Oxford: Pergamon Press.
- Neave, G. (2002a). *Global Trends in Higher Education: Globalisation, internationalisation and policy - an historical critique*. Opening key note. International symposium "Universities for the Future?". University of Kassel, Germany. 18-19 October 2002.
- Neave, G. (2002b). The stakeholder perspective Historically Explored. In J. Enders & O. Fulton (Eds.), *Higher Education in a Globalising World* (pp. 103-120). Dordrecht: Kluwer Academic Publishers.
- Neave, G. (2003). On the Return from Babylon: A long voyage around history, ideology and systems change. In J. File & L. Goedegebuure (Eds.), *Real-time systems: Reflection on Higher education in the Czech Republic, Hungary, Poland and Slovenia* (pp. 15-37). Brno: Vutium.
- Neave, G., & Vught, F. A. van (Eds.). (1991). *Prometheus Bound. The Changing Relationship Between Government and Higher Education in Western Europe*. Oxford: Pergamon Press.
- Neave, G., & Vught, F. A. van (Eds.). (1994). *Government and Higher Education Relationship Across Three Continents. The Wind of Change*. Oxford: Elsevier Science.
- Newman, F., & Coutturier, L. K. (2002). *Trading Public Good in the Higher Education Market*. Retrieved March 4, 2002 from <http://www.obhe.ac.uk/products/reports/pdf/january2002.pdf>
- Nielson, J. (2003). *A quick guide to the state of play of GATS negotiations*. A background paper prepared for the OECD/Norway Forum on Trade in Educational Services Managing the Internationalisation of Post-secondary Education, Trondheim, Norway, 3-4 November 2003.
- NTEU. (2001). *The General Agreement on Trade in Services: Implications for the domestic regulation of higher education and professional accreditation*.
- Nunn, A. (2001). *The General Agreement on Trade in Services: An Impact Assessment for Higher Education in the UK*. Retrieved October 23, 2002 from <http://www.esib.org/commodification/documents/AUTImpact.pdf>

OECD. (2002). *The growth of cross-border education*. Paris: OECD

OECD/CERI. (2002). *Current Commitments under the GATS in Educational Services*. Background document prepared for the OECD/US Forum on Trade in Educational Services, Washington, DC, 23-24 May 2002.

OECD. (2003). *The Doha Development Agenda: Tariffs and Trade*. The OECD Policy Brief. Retrieved December 3, 2004 from http://www.oecd.org/publications/Pol_brief

OECD. (2004a). *Education at a Glance*. Paris: OECD

OECD. (2004b). *Internationalisation and trade in higher education: opportunities and challenges*. Paris: OECD.

Olsen, J. P. (1988). Administrative reform and theories of organization. In C. Campbell & B.G. Peters (Eds.), *Organizing Governance; governing organizations* (pp. 233-254). Pittsburgh: University of Pittsburgh Press.

Olson, M. (1965). *The Logic of Collective Action*. Cambridge, Mass.: Harvard University Press.

Onderwijsraad. (2003). *Bekostiging Hoger Onderwijs*.

Onderwijsraad. (2004). *Ruimte voor Nieuwe Aanbieders in het Hoger Onderwijs*.

OUNL. (2004). *Learning forever! A profile of Open Universiteit Nederland in 2004*. Retrieved 12 August 2005 from <http://www.ou.nl>

Pillay, P., Maassen, P., & Cloete, N. (Eds.). (2003). *General Agreement on Trade in Services and Higher Education in the Southern African Development Community*. Centre for Higher Education Transformation.

Public Services International. (2000). *Great Expectations: The Future of Trade in Services*. Retrieved March 6, 2001 from <http://www.world-psi.org/psi/isf/publications>

Reichert, S., & Wächter, B. (2000). *The Globalization of Education of Training: Recommendations for a Coherent Response of the European Union*. Study commissioned by the Directorate-General for Education and Culture, European Commission. Retrieved October 8, 2002 from <http://europa.eu.int/comm/education/global.pdf>

Reichert, S., & Tauch, Ch. (2003). *Trends 2003. Progress towards the European Higher Education Area*. Report prepared for the European University Association. Retrieved April 16, 2004 from <http://www.eua.be>

Retallack, S. (2003, August 25). *Blueprint for a screwed-up world*. *New Statesman*, p. 22.

Rhodes, R. A. W. (1997). *Understanding Governance*. Buckingham: Open University Press.

Richardson, J. J. (Ed.). (1993). *Pressure Groups*. Oxford: Oxford University Press.

Rikowski, G. (2003). Schools and the GATS Enigma. *Journal for Critical Education Policy Studies*, 1, (1). Retrieved January 20, 2004 from <http://www.jceps.com>

Robertson, S. L. (2003). WTO/GATS and the Global Education Services Industry. Introduction. *Globalisation, Societies and Education*, 1, (3), 259-266.

Robertson, S. L., Bonal, X., & Dale, R. (2002). GATS and the Education Service Industry: The Politics of Scale and Global Reterritorialization. *Comparative Education Review*, 46, (4), 472-496.

Sai-wing Ho, P. (1998). Multilateral Trade Negotiations and the Changing Prospects for Third World Development: Assessing from a Southern Perspective. *Journal of Economic Issues*, XXXII, (2), 375-384.

Saner, R., & Fasel, S. (2003). Negotiating Trade in Educational Services within the WTO/GATS Context. *Aussenwirtschaft*, 59, 275-308.

Sauvé, P. (2002). *Trade, Education and the GATS: What's In, What's Out, What's All the Fuss About*. OECD/US Forum on Trade in Educational Services, Washington, D.C., 23-24 May 2002.

Scharpf, F. (1999). *Governing Europe. Effective and Legitimate*. Oxford: Oxford University Press.

Scharpf, F. (2001). Notes Toward a Theory of Multilevel Governing in Europe. *Scandinavian Political Studies*, 1, 1-26.

Schermers, H. G., & Blokker, N. M. (2001). *International Institutional Law*. The Hague: Martinus Nijhoff Publishers.

Schugurensky, D., & Davidson-Harden, A. (2003). From Córdoba to Washington: WTO/GATS and Latin American Education. *Globalisation, Societies and Education*, 1, (3), 321-357.

Scott, P. (Ed.). (1998). *The Globalization of Higher Education*. Buckingham: Society for Research into Higher Education & Open University Press.

Scott, P. (1999). *Globalisation and the University*. Keynote speech. 52nd Bi-Annual Conference, Valencia, 28-29 October 1999.

Scott, P. (2002). Reflections on the Reform of Higher Education in Central and Eastern Europe. *Higher Education in Europe*, XXVII, (1-2), 137-152.

Shattock, M. (2005). European Universities for Entrepreneurship: Their Role in the Europe of Knowledge. *Higher Education Management and Policy*, 17, (3), 13-25.

Sinclair, S. (2000a). *How the World Trade Organization's new "services" negotiations threaten democracy*. Ottawa: Canadian Center for Policy Alternatives.

Sinclair, S. (2000b). *The WTO: What happened in Seattle? What's next in Geneva?* Canadian Centre For Policy Alternatives Briefing Paper Series: Trade and Investment. Retrieved April 4, 2002 from <http://www.policyalternatives.ca>

Sinclair, S. (2003). *Rough Trade: A Critique of the Draft Cancun WTO Ministerial Declaration*. Canadian Centre For Policy Alternatives Briefing Paper Series: Trade and Investment. Retrieved September 23, 2004 from <http://www.policyalternatives.ca>

Sinclair, S., & Grieshaber-Otto, J. (2002). *Facing the Facts*. A guide to the GATS debate. Ottawa: Canadian Center for Policy Alternatives.

Skauge, T. (2002). *Market or Co-operation: University Co-operation Between the South and North as an Alternative to Marginalisation by Market*. Paper for the 15th CHER Annual Conference, Vienna, 5-7 September 2002.

Smeets, M. (1999). Globalisation of International Trade and Investment. In F. Buelens (Ed.), *Globalisation and the Nation-state* (pp. 7-35). Cheltenham, UK: Edward Elgar.

Sociologický ústav AV ČR. (2004). *Studium na vysoké škole 2004*. Retrieved September 9, 2005 from <http://www.strativ.cz>

Sørensen, O. (2005). The High Profile of Trade in Higher Education Services. *International Higher Education*, 40, 6-8.

Steward, T. P. (Ed.). (1999). *The GATT Uruguay Round. A Negotiation history (1986-1994)*. The Hague: Kluwer Law International.

Stone, D. (1997). *Policy Paradox: The Art of Political Decision Making*. New York: W. W. Norton & Company.

Strange, S. (1996). *The Retreat of the State. The Diffusion of Power in the World Economy*. Cambridge: Cambridge University Press.

Svatoň, O. (2004). Terciární vzdělávání jako služba. *AULA*, 12, 2-10.

Svatoň, O., & Vlk, A. (2004). Academic staff: The extraordinary species *Homo Academicus*. In J. Enders & E. Weert (Eds.), *The International Attractiveness of the Academic Workplace in Europe* (pp. 72-93). Frankfurt: GEW.

SVP. (1999). *České vzdělání a Evropa*. Praha: SVP

Šebková, H., & Hendrichová, J. (1995). Decision-making in the Czech Higher Education after November, 1989. In K. Hüfner (Ed.), *Higher Education Reform Processes in Central and Eastern Europe* (pp. 109-117). Frankfurt am Main: Peterlang.

Šebková, H. et al. (2004). *Higher Education System in the Czech Republic*. Praha: Centre for Higher Education Studies, Ministry for Education, Youth and Sports.

Šebková, H., & Beneš, J. (2002). *Changes and innovation of the governance in higher education system in the Czech Republic*. Paper presented at the IMHE General Conference, Paris.

Taylor, J. B. (1995). *Economics*. Boston: Houghton Mifflin Company.

Theisens, H. (2004). *The State of Change. Analysing Policy Change in Dutch and English Higher Education*. Enschede: CHEPS/UT.

Torres, C.A., & Morrow, R.A. (2000). The state, globalization and educational policy. In N. C. Burbules & C.A. Torres (Eds.), *Globalization and Education. Critical Perspectives* (pp. 27-56). London: Routledge University Press.

Trow, M. (1972). The Expansion and Transformation of Higher Education. *The International Review of Education*, 18, (1), 61-84.

UN. (2002). *Economic, social and cultural rights. Liberalization of trade in services and human rights*. Report of the Higher Commissioner.

Urwin, D. W. (1995). *The Community of Europe. A history of European Integration since 1994*. 2nd Edition. London: Longman.

USTR. (2002). *U.S. Proposal for Liberalizing Trade in Services*. Executive Summary.

UIV & NVF. (1999). *Lidské zdroje v České republice*. Praha: UIV.

UIV. (2002). *Statistická ročenka školství*. Praha: UIV.

Vaira, M. (2004). Globalization and higher education organizational change: A framework for analysis. *Higher Education*, 48, 483-510.

Van Damme, D. (2002a). Convergence and diversity in European higher education: confronting or anticipating the global education market? In D. van Dalen (Ed.), *The global higher education market* (pp. 27-35). The Hague: NUFFIC.

Van Damme, D. (2002b). *Trends and Models in International Quality Assurance and Accreditation in Higher Education in Relation to Trade in Education Services*. OECD/US Forum on Trade in Educational Services, Washington, D.C., 23-24 May 2002.

Verschuren, P., & Doorewaard, H. (1999). *Designing a Research Project*. Utrecht: Lemma.

Vijlder, F. de (2002). *The global market for higher education. Shifting roles, changing rules*. Position paper commissioned by the General Director of Nuffic for the 50th anniversary conference of Nuffic, The Hague, 19 March 2002.

Vincent-Lancrin, S. (2004). *Building Capacity through Cross-border Tertiary Education*. Paper presented at the UNESCO/OECD Australia Forum on Trade in Educational Services, Sydney, 11-12 October 2004.

Vossensteyn, H., Huisman, J., & Wende, M. C. van der. (2003). *Positioneringsinstrumenten. Evaluatie NESO en DELTA*. Eindrapport. Den Haag: OCenW.

Vossensteyn, H. (2004). *Portability of student financial support*. Den Haag: OCenW.

Vossensteyn, H. (2005). *Perceptions of Student Price-Responsiveness. A Behavioural Economics Exploration of the Relationships between Socio-economic Status, Perceptions of Financial Incentives and Student Choice*. Enschede: CHEPS/UT.

VSNU. (2002). *Communication of the Dutch universities on higher education and the General Agreement on Trade in Services (GATS)*.

Vught, F. A. van (1997). Combining planning and the market: an analysis of the Government strategy towards higher education in the Netherlands. *Higher education Policy*, 10, (3/4), 211-214.

- Vught, F. A. van, Wende, M. C. van der, & Westerheijden, D. F. (2002). Globalisation and Internationalisation: Policy Agendas Compared. In J. Enders & O. Fulton (Eds.), *Higher Education in a Globalising World* (pp. 103-120). Dordrecht: Kluwer Academic Publishers.
- Vuyk, E. J. (1998). Netherlands. In Husen, Th., Postlethwaite, T.N., Clark, B.R., & Neave, G. (Eds.), *Education: The Complete Encyclopedia*, CD Rom.
- Wallace, H., & Wallace, W. (Eds.). (2000). *Policy-Making in the European Union*. New York: Oxford University Press.
- Wallace, R. M. M. (1992). *International Law: A Student Introduction*. London: Sweet & Maxwell.
- Wallace-Bruce, N. L. (1994). *Claims to statehood in international law*. New York: Carlton Press.
- Weert, E. de (2004). The Academic Workplace. Country Report The Netherlands. In J. Enders & E. de Weert (Eds.), *The International Attractiveness of the Academic Workplace in Europe* (pp. 290-309). Frankfurt: GEW.
- Wende, M. C. van der (1997). Missing Links: The Relationship between National Policies for Internationalization and those for Higher Education. In T. Källemark & M. van der Wende (Eds.), *National Policies for the Internationalisation of Higher Education* (pp. 10-41). Stockholm: NAHE.
- Wende, M.C. van der (2001). Internationalisation policies: about new trends and contrasting paradigms. *Higher Education Policy*, 14, 249-259.
- Wende, M. C. van der (2002a). Higher Education Globally: Towards new framework for research and policy. In *The CHEPS inaugural lectures 2002* (pp. 30-67). Enschede: CHEPS.
- Wende, M. C. van der (2002b). *The Role of US Higher Education in the Global E-learning Market*. Retrieved April 7, 2002 from <http://ishi.lib.berkeley.edu/cshe/publications/papers/ROP.WendePaper1.02.pdf>
- Wende, M. C. van der (2002c). *Hoger onderwijs globaliter: naar nieuwe kaders voor onderzoek and beleid*. Enschede.
- Wende, M. C. van der (2003a). Globalisation and Access to Higher Education. *Journal of Studies in International Education*, 6, (3), 1-14.

- Wende, M. C. van der (2003b). *Hoger Onderwijs en WTO-GATS: Meningen en feiten*. Science Guide. Retrieved May 15, 2005 from http://www.bruna.nl/content/Scienceguide/Genres/Forum/reactie_GATS.jsp
- Wende, M. C. van der, & Huisman, J. (2004). Europe. In J. Huisman & M. C. van der Wende (Eds.), *On Cooperation and Competition. National and European Policies for the Internationalisation of Higher Education* (pp. 17-49). Bonn: Lemmens.
- Wende, M. C. van der, & Middlehurst, R. (2004). Cross-border post-secondary education: Regional case study on Europe. In *Internationalisation and trade in higher education. Opportunities and Challenges* (pp. 87-137). Paris: OECD.
- Westerheijden, D. F. (1998). Quality assurance and steering in higher education. In A. Rip (Ed.), *Steering and effectiveness in a developing knowledge society* (pp. 69-76). Utrecht: LEMMA.
- Westerheijden, D. F., & Sorensen, K. (1999). People on a bridge. In P. A. M. Maassen, G. Neave & B. Jongbloed (Eds.), *From the Eye of the Storm: Higher Education's Changing Institution* (pp. 13-38). Dordrecht: Kluwer Academic Publishers.
- Williams, G. L. (1995). The "marketization" of higher education: reforms and potential reforms in higher education finance. In D. D. Dill and B. Sporn (Eds.), *Emerging Patterns of Social Demand and University Reform: Through a Glass Darkly* (pp. 170-193). Pergamon Press: Oxford
- Williams, N. (2000). Modernising Government: Policy Networks, Competition and the Quest for Efficiency. *Political Quarterly*, 71, (4), 412-421.
- Wilson, J.Q. (Ed.). (1980). *The Politics of Regulation*. New York: Basic Books.
- Winham, G. (1986). *International Trade and the Tokyo Round Negotiation*. Princeton: Princeton University Press.
- Wit, K. de, & J. Verhoeven. (2001): The Higher Education Policy of the European Union: With or Against the Member States? In J. Huisman, P. Maassen & G. Neave (Eds.), *Higher Education and the Nation State – The International Dimension of Higher Education* (pp. 175-232). Amsterdam: IAU Press, Pergamon.
- Wootton, G. (1970). *Interest Groups*. New Jersey: Prentice Hall.
- WTO. (1994a). *Czech Republic. Schedule of specific commitments*.

- WTO. (1994b). *European Communities and their member states. Schedule of specific commitments.*
- WTO. (1998). *Educational Services: Background Note by the Secretariat.*
- WTO. (1999a). *An introduction to the GATS.* WTO Secretariat. Trade in Services Division.
- WTO. (1999b). *The Developmental Impact of Trade Liberalization under GATS.* Informal Note by the Secretariat.
- WTO. (2001a). *GATS – Fact and Fiction.*
- WTO. (2001b). *Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (GATS).* Council for Trade in Services.
- WTO. (2003a). *Communication from the European Communities and Its Member States. Conditional Initial Offer.* Retrieved March 23, 2004 from <http://www.wto.org>
- WTO. (2003b). *Communication from the United States. Initial Offer.* Retrieved March 23, 2004 from <http://www.wto.org>
- WTO. (2004). *Special Session of the Council for Trade in Services.* Report by the Chairman to the Trade Negotiations Committee. Retrieved May 28, 2005 from <http://www.wto.org>
- WTO. (2005). *Communication from the European Communities and Their Member States. Conditional Revised Offer.* Retrieved January 23, 2006 from <http://www.wto.org>
- Worth, J. (2000). *The Threat to Higher Education. A briefing on current World Trade Organisation negotiations.* People & Planet.
- Ziguras, C. (2002). *Trade in Education Services: Liberalisation, Regulation and Public Policy.* Keynote address to the Mexican Council of Public Universities and Affiliated Institutions, University of Colima, Mexico, 23 November 2002.
- Ziguras, C. (2003). The Impact of the GATS on Transnational Tertiary Education: Comparing Experiences of New Zealand, Australia, Singapore and Malaysia. *The Australian Educational Researcher*, 30, (3), 89-110.
- Ziguras, C., McBurnie, G., & Reinke, L. (2003a). 'Hardly Neutral Players': Australia's role in liberalising trade in education services. *Globalisation, Societies and Education*, 1, (3), 359-374.

Ziguras, C., McBurnie, G., & Reinke, L. (2003b). *Implications of the GATS: are foreign universities entitled to Australian funding?* Paper presented to 17th IDP Australian International Education Conference, Melbourne, 21-23 October 2003.