

Occasional Papers

Cattle and Classrooms, the Kiwi Commodities The Global Free Trade of Education

New Zealand's public education system may be threatened by a little known global free trade agreement which would allow private foreign education providers to operate here without restriction.

In New Zealand, trade, particularly of agricultural products, is an integral part of our economy. But we tend not to think of our fairly extensive public education system, at least in primary and secondary schools, as a marketable good that can be traded like kiwifruit and cattle across international markets. This view is, however, becoming increasingly detached from the way many governments now perceive education.

Education, along with healthcare, libraries and other traditional public services, have for the past seven years been included in a little-known or understood global trade agreement called the General Agreement on Trade in Services (GATS). The GATS is organised and policed by the World Trade Organisation (WTO), which is presently run by our ex-prime minister, Mike Moore. The WTO organises 15 agreements on different areas of trade. At present 140 countries belong to the WTO and thus, GATS. Others are about to join, including China and many Pacific islands. Education accounts for US\$ 2 trillion

dollars of the world's economy each year. The aim of GATS is to liberalise and increase international trade of services, including education.

GATS works by getting member countries to sign up to particular areas or types of services in which they agree to treat foreign investors the same as domestic interests. For example, education is divided into five categories: primary, secondary, higher, adult and other. Countries can choose which categories they do not want to trade in and then make reservations to prevent trade of specific things within these. In the area of "services incidental to animal husbandry" for example, New Zealand has restricted the provision of herd testing services to those licensed by the New Zealand Dairy Board. In most services, including all education services, New Zealand has allowed trade in everything and made no reservations.

Sitting above these agreements are horizontal commitments that apply to all trade areas and cannot be reserved. The most important of these rules is that countries must treat all foreign investors equally. So New Zealand could not agree to trade education with Samoa but not Cameroon. New Zealand has reserved horizontal commitments that:

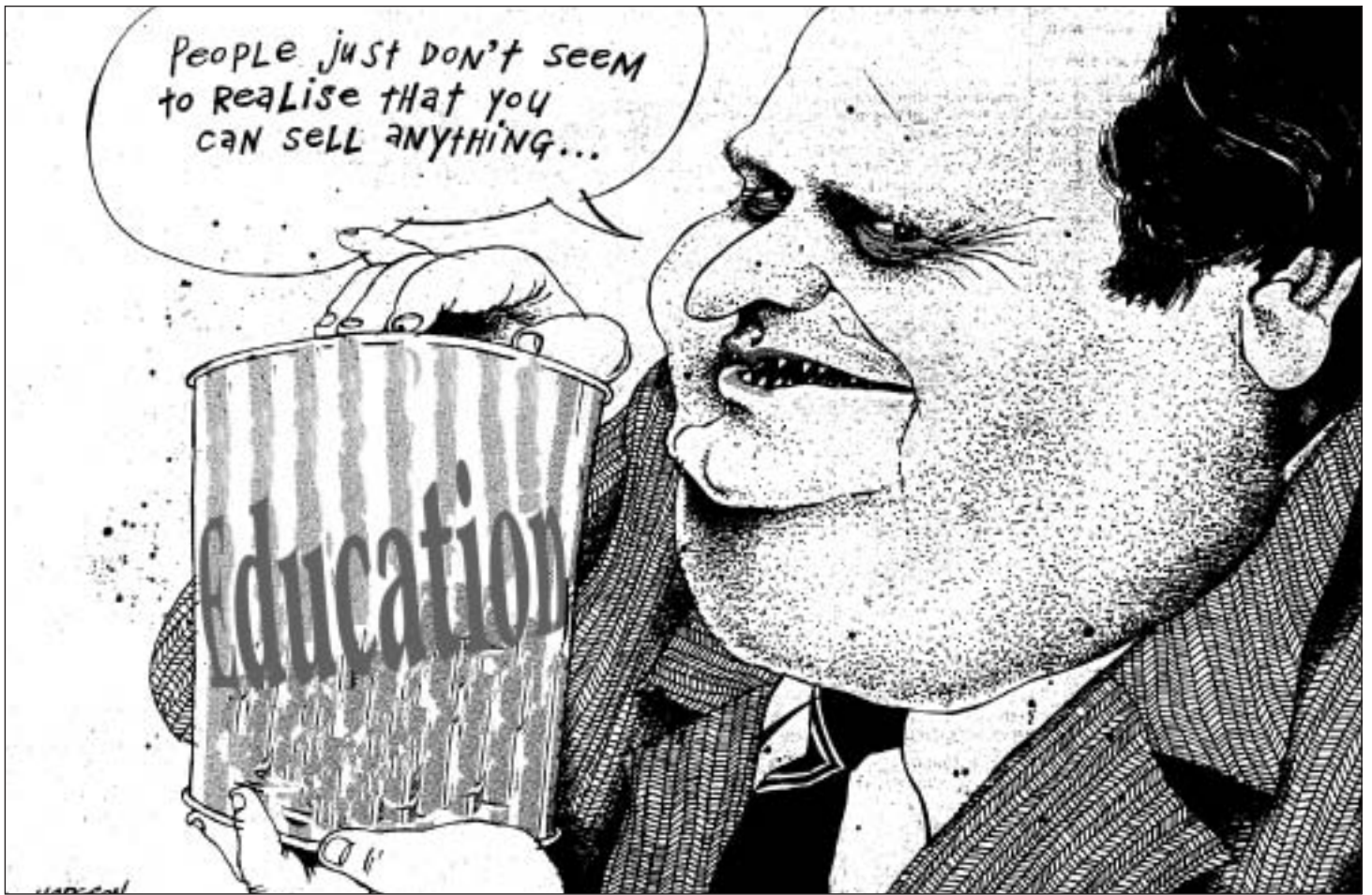
- prevent foreigners from acquiring controlling interests in New Zealand assets;
- give protections relating to immigration and customs; and
- allow more favourable treatment to any Maori person or organisation in relation to commercial or industrial undertakings.

At the last round of negotiations in Uruguay in 1994, New Zealand's approach was to aim for an agriculture/services *quid pro quo*. In other words, we placed a significant number of concessions on the table in the hope that other nations would respond by putting agriculture on the table. Unfortunately, this has not resulted in significant reciprocity from other WTO members and it means New Zealand is now one of the countries with the least number of services reserved from GATS in the world. We are among only 30 countries that have made commitments relating to education. Most of those have retained some reservations over particular areas of their education system. New Zealand has not.

GATS professes not to cover government services. Education would normally be considered a government service and thus outside the scope of free trade. However, GATS defines government services as those "exercised in the control of governmental authority" and sees government authority as one that is "supplied neither on a commercial basis nor in competition with other suppliers."¹

So, because our education system has a commercial component, such as our private early childhood centres, schools, tertiary institutions, adult education programmes and sports education, it is part of the negotiations. Likewise, professional standards and registration of teachers are also part of the negotiations because of the role they play in restricting the quality and quantity of teachers in New Zealand.

In fact the only state services in New Zealand not covered by GATS are our defence forces.



The rules of GATS affect all laws, practices, regulations and delegated powers (such as those the Teachers Council will hold). They prohibit the government or any other body in the country with governmental authority, such as city councils or the Education Review Office, discriminating against foreign corporations or investors.

The following kinds of regulations are all considered to be trade barriers²:

- limitations on the number of service suppliers (e.g. teacher training providers);
- limitations on the total value of services, transactions or assets;
- limitations on the total number of service operations or the total quantity of service output;
- limitations on the number of persons that may be employed in a particular sector or by a particular supplier;
- measures that restrict or require supply of the service through specific types of legal entity or joint venture (e.g. schools or colleges of education); and
- percentage limitations on the participation of foreign capital, or limitations on the total value of foreign investment.

Academic Marjorie Griffin Cohen (1998) identifies one particular “trade barrier” that threatens public education: “the existence of government monopolies and high subsidisation of local institutions”.³

She argues this is the ultimate aim of the GATS process:

The underlying philosophy of trade liberalisation in international trade agreements is that, whenever something can be provided by the private sector, conditions should exist so that this can occur... Clearly whenever governments operate in what is, or potentially could be, a 'market', their actions are 'barriers' to the creation of private markets and therefore need to be controlled.⁴

Each member of the WTO that signs up to an agreement, agrees to treat foreign services and service suppliers no less favourably than it treats its own services and suppliers⁵. This means government subsidies that favour local providers over foreign ones are potentially in breach of GATS (for example, local state schools but not foreign-owned private schools). Theoretically the government may have to pay compensation to foreign suppliers who suffer this "trade barrier". A trade barrier may also exist if the Teacher Registration Board (TRB) or Teachers Council chose to recognise graduates from New Zealand colleges of education but not those educated by foreign-owned private providers.

But the areas most likely to be affected by GATS are the early childhood and tertiary sectors where a large number of private providers already exist and receive government subsidies due to the policies of the last government. Now that the present government is attempting to remove elements of competition from these sectors and introduce new regulations to guarantee quality and consistency the government is restricted by GATS rules in what it can do. All new regulations need to meet the "least restrictive necessary" test. That is, they must be the least intrusive ways the government can use to meet its aim, otherwise affected businesses have the right to challenge those regulations.

The present review of tertiary education was not able to recommend a limit on the number of universities in New Zealand because that would limit the opportunities for foreign providers to set up universities. It was not the least restrictive option necessary.

So, there is a great deal of business interest global in the WTO and its agreements:

Investment houses like Merrill Lynch predict that public education will be globally privatised over the next decade, and say that there is an untold amount of profit to be made when this happens⁶

At present the world is gearing up to enter a new round of GATS negotiations. Preparations have been underway to advance the commitments made at Uruguay after the WTO's meeting in Seattle collapsed in a mire of protest and controversy. The next round of negotiations is scheduled to take place in November this year in Qatar, a small Middle Eastern monarchy that bans protest, trade unions and freedom of expression.

The concern for teachers and others in the education sector is that one of the rules in GATS states:

Members shall enter into successive rounds of negotiations, with a view to achieving a progressively higher level of liberalisation.⁷

Liberalisation is the well-known philosophy of free enterprise unrestricted by

government regulation. Proponents seek a reduced public sector, promoting the free market and the application of financial rationalism to all decisions. It has travelled widely in New Zealand in the last 17 years under the alias “Rogernomics” and “Ruthenasia”.

Countries in GATS are required to liberalise more every time they meet to negotiate and are not allowed to move back to greater state intervention in any sector.

*Bindings undertaken in GATS have the effect of protecting liberalisation policies, regardless of their underlying rationale, from slippages and reversals*⁸

This is described by researcher Larry Kuehn (1999)⁹ as the “ratchet effect” whereby governments can only move in one policy direction despite the political persuasions of those in power at the time.

Kuehn (1999) argues the pressure to fund private foreign education providers the same as public providers forces governments to cut expenditure rather than increase it. This means “limiting teacher salaries, creating worse teaching conditions and in some cases, imposing user fees”. Furthermore, he argues trans-national business has a philosophical interest in a liberalised education system:

*Business is increasingly interested in defining the nature of education so that it produces workers who fit the needs of business. When education is seen as largely in the public rather than the private interest, it is more likely to have a range of social and cultural objectives, along with economic. When it becomes privatised and part of the market, social and cultural objectives become much less important, unless they are part of the market system.*¹⁰

This has particular consequences for New Zealand, which has already placed the majority of its services in its GATS commitments. When New Zealand’s negotiators sit down at the table in Qatar, they will be compelled to concede further liberalisations. So while Maori assets and companies are presently excluded from GATS, as are our overseas investment legislation and customs, eventually our trade negotiators will have to concede these things as well. Conversely, they cannot retract anything from the negotiations, such as our public education system. To modify, withdraw from or breach any of its present commitments in GATS, New Zealand would need to pay compensation to all affected parties.

If New Zealand breaches its obligations and is challenged over it by another country, it is also liable to dispute settlement. This is similar to what happened with New Zealand’s recent victory over lamb exports to the United States. The US domestic regulations on lamb exports was hurting our trade so we sued and won, giving us the right to impose trade sanctions against the United States if it did not respond adequately. But with education it would be the other way around. New Zealand could pass a domestic regulation relating to education that the United States, with its \$6 billion¹¹ dollar education export market could then sue us over. If it won, it would have the right to take impose sanctions against us, which would be somewhat more effective than any sanctions we may take against them for failing to purchase our lamb.

Furthermore, Article VI of GATS requires governments to set up their own domestic tribunals to hear investor-to-state disputes. The same provision exists in the North American Free Trade Agreement (NAFTA) and has led to a number of decisions where corporations concerned about losing profitability forced governments to back down. For example:

- The Canadian government lifted restrictions on manufacturing an ethanol-based gasoline additive it considered hazardous after an American manufacturer said the ban hurt its business.
- A tribunal ordered Mexico to pay an American company \$16.7 million after finding Mexican environmental laws prohibiting a toxic-waste-processing plant the company was building were tantamount to expropriation.
- Delivery company United Parcel Service has filed a complaint contending that the very existence of the publicly financed Canadian postal system represents unfair competition conflicting with Canada's obligations under NAFTA.¹²

Fear of these disputes is causing poor or small countries to adopt measures they otherwise might not. Take for example this interaction between Kenya and the WTO:

*The minutes to Kenya's WTO trade policy review provide a striking example of the triumph of ideology over reason occurring at the WTO. Trade representatives praise Kenya for its privatisation initiatives, its lowering of tariffs and the opening up of its domestic markets. Comments are made about how puzzling it is that despite this admirable behaviour, Kenya is experiencing low levels of growth and foreign investment and decreased exports. Kenya promises to continue in its liberalisation path but reports that it has had to cut health and education programs and there has been an increase in poverty.*¹³

The multilateral trade process of GATS and the WTO remains a crucial one for New Zealand. New Zealand aims to be an exporting nation and much of our economy is built upon export industries: agriculture, primary produce and tourism. GATS and the WTO are one way small countries like New Zealand can ensure they remain a part of the global economy.

International business expert Professor Nigel Haworth, for example, argues if the multilateral trade process collapses from lack of support there is a danger it would be replaced with regional trading blocks that would be internally consistent but retaliatory towards each other. These blocks would be the Americas, the European Union and North Asia (China, Japan and Korea)¹⁴. New Zealand would be left out of this process, which would be economically detrimental to us.

And so, our education system finds itself playing a small part in New Zealand's trading future. International education now contributes 0.5 percent of New Zealand's gross domestic product.¹⁵ This makes it comparable with gas exploration and horticulture and nearly twice the size of our fishing industry.

So what can teachers do? The all-encompassing scope of free trade agreements often leaves individuals feeling powerless. Indeed free trade and globalisation is often painted as inevitable by both proponents and opponents. However these agreements, like all such international agreements, are political and therefore subject to democratic change or fine tuning.

If those in the education sector wish to reclaim control of the global trade of education they need to participate in the debate and empower others with their knowledge.

In order to protect New Zealand's education system from the adverse effects of GATS and free trade we need to either remove privatisation from our education sector or fundamentally alter the nature of the GATS agreement. This could include a number of steps along the way, such as:

- Establishing links with other groups and public service providers who face similar threats to the education sector. For example, our doctors, nurses and workers in the health sector sit even closer to privatisation than we do in the education sector.
- Promoting awareness of GATS (and similar agreements that either exist or are being proposed). This is a role for which educators are perhaps uniquely trained.
- Actively petitioning government and local MPs to consider the educational effects of these agreements in addition to the trade effects.
- Changing the rules of GATS to expand the definition of government service.
- Allowing governments to retract their commitments and agreements depending upon their changing political circumstances and beliefs.
- Building in more recognition and protection of the social as well as the economic responsibilities of governments into the agreements and removing the penalties non-liberalising governments currently face for retracting their commitments.

In the meanwhile, our education sits in crates alongside the kiwifruit and frozen lambs shipped to many corners of the world. For many teachers this may mean increased wealth and opportunities. But the pay-off may be that private education is on the container ships coming this way. It may well be hidden, like the Asian Tiger Moth or the Verroa Mite, in those crates and be just as hard to get rid of should it ever reach our shores.

MORE INFORMATION ON GATS IS AVAILABLE ON THESE WEBSITES:

WTO www.wto.org/english/tratop_e/serv_e/serv_e.htm

The Alliance for Democracy www.thealliancefordemocracy.org/

MFAT www.mft.govt.nz/foreign/tndtead/wto.html

The Ecologist www.theecologist.org/lastfrontier.html

The World Development Movement www.wdm.org.uk/campaign/GATS.htm

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- 2 GATS Article XVI
- 3 *WTO Background Note to the Secretariat on Education Services*, 23 September 1998 S/C/W/49
- 4 Marjorie Griffin Cohen, Professor of Political Science and Women's Studies, Simon Fraser University, British Columbia, *The World Trade Organisation and Post Secondary Education: Implication for the Public System*, www.bctf.bc.ca/social/globalization/CohenPaper.html
- 5 GATS Article XVII (note domestic suppliers need not be afforded the same protections as foreign suppliers and that governments are allowed to treat foreign providers more favourably if they were ever to want to do so.)
- 6 *The Ecologist*, February 2001, Volume 31 Number 1 p 40.
- 7 GATS Article XIX
- 8 WTO Secretariat, 9 Feb 1999
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- 10 Ibid
- 11 Kuehn, *Keep Public Education out of Trade Agreements*, www.bctf.bc.ca/social/globalization/TradeAgreements.html
- 12 Anthony DePalma, NAFTA's Nasty Little Secret, The New York Times, March 11, 2001 www.globalexchange.org/ftaa/news2001/nyt031101.html
- 13 Ellen Gould, *The 2001 GATS Negotiations: The Political Challenge Ahead*, www.thealliancefordemocracy.org/
- 14 Presentation by Dr Haworth, Professor of International Business, to the NZCTU International Committee, 31 May 2001
- 15 Speech by Hon Phil Goff at the Opening of Hawthorn Auckland English School, 16 February 2001, www.executive.govt.New Zealand/speech.cfm