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COMMUNICATION FROM THE UNITED STATES

Higher (Tertiary) Education, Adult Education, and Training

The attached communication has been received from the delegation of the United States with the request that it be circulated to Members of the Council for Trade in Services.

I. INTRODUCTION

1. For consideration of all WTO Members, the United States presents this proposal on higher (tertiary) education, adult education and training services. At the outset, it is important to note that the proposal recognizes that education to a large extent is a government function, but that most countries permit private education to coexist with public education. The proposal, therefore, envisions that private education and training will continue to supplement, not displace, public education systems. This paper is intended to stimulate discussion and help liberalize trade in this important sector in the world economy.

II. IMPORTANCE OF HIGHER (TERTIARY) EDUCATION, ADULT EDUCATION, AND TRAINING SERVICES

2. Higher (tertiary) education (hereinafter referred to as "higher education"), adult education, and training services are expanding rapidly, particularly through the use of the Internet. These services include academic and training courses on information technology; languages; executive, management and leadership training; driver education; and hotel and tourism education. They also include educational testing services and corporate training services. Many of these are practical courses for use on the job. Some can be used as credits toward degrees; and some are non-degree courses. Increasingly, educational institutions and publishers are teaming up with information technology companies and other experts to design courses of instruction on a variety of subjects. Large companies also are developing education and training courses to improve the skills of their employees and to keep them up to date on their latest products. Such services constitute a growing, international business, supplementing the public education system and contributing to global spread of the modern "knowledge" economy. Availability of these education and training services can help to develop a more efficient workforce, leading countries to an improved competitive position in the world economy.

III. PURPOSE

3. The purpose of this 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 and operation of facilities (schools, classrooms or offices) to provide services to students in their home country or abroad. This would apply to countries that permit private education, not to countries that maintain exclusively public systems.

IV. COVERAGE

4. The informal WTO Classification List (W/120) divides educational services into five parts: (a) primary education services; (b) secondary education services; (c) higher education services; (d) adult education; and (e) other education services. The scope of coverage of particular types of education (e.g., liberal arts, business, professional) is not specified. Clarification of the coverage is needed.

5. In terms of this proposal, "higher education" includes all tertiary education (i.e., education beyond secondary education), adult education, and training services. Such education and training encompass degree courses taken for college or university credits or non-degree courses taken for personal edification or pleasure or to upgrade work-related skills. Such education and training services can be provided in traditional institutional settings, such as universities or schools, or outside of traditional settings, including at workplaces, in the home, or elsewhere.

6. This paper proposes that coverage should clearly indicate that two types of services are included as part of the concept of education: (1) training services; and (2) educational testing services. Training services are particularly related to higher education, adult education, and other education services, whereas testing services generally are related to all types of education.

- Training services are very similar to education services, but training courses are generally less theoretical and more job-related than academic courses, often requiring hands-on operation of tools, equipment and certain devices.
- Educational testing services are a fundamental and essential part of the learning process, used to evaluate the student as well as the course material. These services include designing and administering tests, as well as evaluating test results.

V. PROPOSAL

7. This paper proposes discussion of various aspects of an open regime in the education and training sector. This would entail countries considering to apply existing GATS market access and national treatment disciplines, as well as additional GATS disciplines addressing sector-specific regulatory issues, including transparency and fairness of administration. Consistent with these disciplines, governments would retain the right to regulate to meet domestic policy objectives. Moreover, this proposal recognizes that in this sector governments will continue to play important roles as suppliers of services.

8. In addition to clarifying the classification for education, this proposal for higher education, adult education, and training services encompasses market access, national treatment, and additional commitments. The proposal is limited to education and training beyond the primary and secondary level and does not apply to primary and secondary schools. It recognizes that education to a large extent is a government function and it does not seek to displace public education systems. It seeks to supplement public education systems, affording opportunities for suppliers to make their services available to students in other countries. The intent is to help upgrade knowledge and skills through these educational and training programs, while respecting each country's role of prescribing and administering appropriate public education for its citizens. Although a small number of WTO Members has made commitments in this area, nearly all Members allow the provision of higher education, adult education, and training services by private sector service providers.

9. This paper proposes that WTO Members that have not yet made commitments on higher education, adult education, and training services formulate their commitments based on the list of obstacles identified below. Members are invited to inscribe in their schedules “no limitations” on market access and national treatment, as some Members already have done. Further, the paper proposes that all Members consider undertaking additional commitments relating to regulation of this sector. The United States has taken commitments for adult and other education, and is willing to consider undertaking additional commitments for higher education and training.

10. This proposal is not presented as a legal text, but rather as a list of obstacles identified in reviewing this service sector. Some items on the list may be market access restrictions, or national treatment limitations, or both. In addition, some obstacles, although not limitations on market access or national treatment *per se*, may result from regulatory provisions or other measures which make it difficult for foreign suppliers to market their services.

Obstacles in this sector

- Prohibition of higher education, adult education, and training services offered by foreign entities
- Lack of an opportunity for foreign suppliers of higher education, adult education, and training services to obtain authorization to establish facilities within the territory of the Member country
- Lack of an opportunity for foreign suppliers of higher education, adult education, and training services to qualify as degree granting institutions
- Inappropriate restrictions on electronic transmission of course materials
- Economic needs test on suppliers of these services
- Measures requiring the use of a local partner
- Denial of permission for private sector suppliers of higher education, adult education, and training to enter into and exit from joint ventures with local or non-local partners on a voluntary basis
- Where government approval is required, exceptionally long delays are encountered and, when approval is denied, no reasons are given for the denial and no information is given on what must be done to obtain approval in the future
- Tax treatment that discriminates against foreign suppliers
- Foreign partners in a joint venture are treated less favorably than the local partners
- Franchises are treated less favorably than other forms of business organization
- Domestic laws and regulations are unclear and administered in an unfair manner
- Subsidies for higher education, adult education, and training are not made known in a clear and transparent manner

- Minimum requirements for local hiring are disproportionately high, causing uneconomic operations
 - Specialized, skilled personnel (including managers, computer specialists, expert speakers), needed for a temporary period of time, have difficulty obtaining authorization to enter and leave the country
 - Repatriation of earnings is subject to excessively costly fees and/or taxes for currency conversion
 - Excessive fees/taxes are imposed on licensing or royalty payments.
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