

The Impact of GATS Rules on Global Higher Education and China's Legislative Response

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Abstract

The General Agreement on Trade in Services (GATS), as the core multilateral agreement under the World Trade Organization (WTO) legal framework, first explicitly incorporated “educational services” into the scope of international trade in services. This transformation redefined cross-border higher education from a traditional cultural exchange activity to a trade-regulated conduct governed by international trade law, thereby profoundly reshaping the global landscape and governance paradigm of higher education. Based on a systematic interpretation of GATS provisions regarding sectoral classification, four modes of supply, and core principles such as market access, national treatment, most-favored-nation treatment, and transparency, this article analyzes the differentiated impacts of GATS rules on the marketization process, institutional models, quality assurance systems, and educational sovereignty of higher education worldwide. This paper takes China's specific commitments on higher education services outlined in its WTO accession services schedule as a reference. It assesses China's existing domestic legal system, which takes the Regulations on Chinese-Foreign Cooperation in Running Schools as the core. The study further pinpoints several institutional flaws, such as low legislative rank, unregulated blind spots in cross-border education supply, and insufficient quality supervision mechanisms. Finally, this paper puts forward targeted paths for legislative improvement. These include optimizing foreign-related education laws, perfecting mechanisms for translating international treaties into domestic law, and reinforcing quality assurance and student rights protection. Such measures strike a balance between fulfilling international obligations and defending national educational sovereignty, thereby offering references for advancing the legal governance of China's educational opening-up.

Keywords

General Agreement on Trade in Services, International trade in educational services, Higher education, Chinese-Foreign Cooperation in Running Schools, Education legislation, Market access

Introduction

Against the backdrop of deepening economic globalization and the knowledge economy, the internationalization of higher education has evolved from traditional personnel exchanges and academic cooperation into a comprehensive cross-border flow of capital, curricula, institutions, and technical standards. Statistics released by the Organisation for Economic Co-operation and Development (OECD) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) show that the worldwide population of students receiving transnational higher education has surpassed six million. Education services have grown into a major export sector for developed economies including the United States, the United

Kingdom, Australia and Canada, whose yearly export earnings from this industry rank only behind finance and tourism [1]. Under the World Trade Organization (WTO) and the General Agreement on Trade in Services (GATS) framework, education services are listed as Sector 12 (Central Product Classification, CPC 92), covering five subsectors: primary, secondary, higher, adult, and other education. Members are required to undertake market access and national treatment commitments regarding these subsectors, thereby subjecting international education exchanges to enforceable dispute settlement mechanisms [2]. Since China's accession to the WTO in 2001, it has made limited opening commitments regarding five education

service subsectors, marking the formal integration of China's higher education market into the global trade regime [3]. Over the past two decades, the scale of international student mobility and Chinese-foreign cooperative education has kept expanding. Cross-border higher education has accordingly gradually become an important vehicle for national knowledge diplomacy [4]. Meanwhile, the Belt and Road Education Initiative has achieved remarkable progress, remaking the overall pattern of global higher education cooperation [5].

However, the domestic legal system governing international education trade remains relatively underdeveloped, facing challenges such as regulatory gaps in online degree programs, uneven quality of cooperative programs, and tensions between educational public welfare and commercial attributes. Against this backdrop, three core tasks stand out: systematically unpacking the connotations of GATS rules, assessing whether China's domestic laws align with its international commitments, and putting forward viable reform strategies. Carrying out these tasks is not only a vital theoretical research topic spanning international economic law and education law, but also an urgent practical requirement to advance law-based governance of educational opening-up [6].

Basic structure of GATS rules on international trade in educational services

Sectoral classification and four modes of supply

According to the WTO Services Sectoral Classification List (W/120), education services (CPC 92) comprise five subsectors: primary education (CPC 921, excluding compulsory state-funded education), secondary education (CPC 922, excluding compulsory education), higher education (CPC 923), adult education (CPC 924), and other education services (CPC 929, including language training). Mode 1, namely cross-border supply, defines a service delivery model. Under this model, service providers located in one WTO Member state deliver services to consumers situated in another Member state without any cross-border movement of individuals or institutions. Typical examples include offshore online courses and remote degree programs. Such educational programs gain huge development potential driven by information and communication technology progress, yet most WTO Members have either left this service mode uncommitted or imposed

stringent regulatory restrictions on it. Mode 2 (consumption abroad) involves consumers moving to the supplier's territory to receive services, namely students studying abroad, participating in joint training programs, or undertaking academic visits, constituting the largest share of current global education trade with minimal restrictions in most jurisdictions. Mode 3, or commercial presence, means service providers set up various commercial entities within the territory of another Member to deliver educational services. Typical forms include overseas campuses run by foreign universities, Sino-foreign joint education projects, franchise programs and twinning degree arrangements. This mode involves foreign investment admission and institutional supervision, and it is the most heavily restricted category listed in the Schedules of all Members. Mode 4 (presence of natural persons) covers temporary entry of foreign teachers, researchers, or administrators to engage in teaching and academic activities, generally subject to horizontal commitments on professional qualifications, work experience, and duration of stay. These classifications form the logical starting point for legal analysis and the structural basis for compiling Members' Specific Commitments Schedules.

Core principles and exception clauses applicable to education services

Part II of GATS (Articles II–XV) sets out general obligations and disciplines directly relevant to education services, including most-favored-nation (MFN) treatment (Article II), transparency (Article III), market access (Article XVI), national treatment (Article XVII), and general exceptions (Article XIV). The MFN principle requires Members not to discriminate between like services and service suppliers of different Members, prompting Members to avoid discriminatory access conditions, while allowing them to list non-conforming measures in their Article II exemptions. The transparency obligation requires prompt publication of all relevant laws, regulations, judicial decisions, and administrative rulings affecting trade in services and establishment of enquiry points, imposing demands for systematic openness of education-related administrative norms. Market access and national treatment obligations apply only to sectors and modes inscribed in a Member's schedule with "none" or specified limitations.

For unbound modes, Members retain full discretion over openness, and national treatment may be conditioned upon additional requirements that do not constitute disguised discrimination.

Notably, Article XIV of the GATS affords Members the authority to adopt or retain measures that deviate from their treaty obligations under the Agreement. Such derogatory measures are permissible when they serve legitimate policy objectives, including the preservation of public morality, the maintenance of public order, the protection of human, animal or plant life and health, and the enforcement of domestic laws compatible with the provisions of the GATS. This exemption is conditional, however: relevant measures must neither engender arbitrary or unjustifiable discrimination between jurisdictions nor operate as covert barriers to trade in services. The Education Services Note provides supplementary interpretive provisions for the scope of the GATS. It explicitly excludes services rendered in the exercise of governmental authority from the Agreement's coverage; such services refer to government-funded educational offerings operated without commercial motives. This institutional arrangement allows Members to rely on the exemptions stipulated under Article XIV to uphold their domestic educational sovereignty and cultural security [7]. Collectively, these principles and exceptions constitute a complete normative framework for international trade in education services.

Structure and legal effect of specific commitments schedules

A Member's Schedule of Specific Commitments comprises horizontal commitments (applying across all sectors, typically addressing representative offices, land use rights, and natural person movement) and sector-specific commitments (specifying market access limitations, national treatment limitations, and additional commitments). For unbound modes, Members are not subject to Articles XVI and XVII obligations and may autonomously decide openness. Once accepted by the WTO Ministerial Conference, schedules acquire binding force under international law. Pursuant to the Vienna Convention on the Law of Treaties and WTO dispute settlement practice, conflicts between domestic legislation and scheduled commitments may entail state responsibility, rendering

treaty domestication a critical indicator of legislative soundness in this field.

Differentiated impacts of GATS rules on global higher education

GATS rules have first driven the industrialization of higher education and diversification of market structures. Nations including the United States, the United Kingdom and Australia have formally framed international student recruitment and transnational higher education development as national export strategies. These jurisdictions seize global market share via streamlined student visa policies, post-graduation work entitlements and offshore branch campus construction, which in turn dismantles the long-standing monopoly held by public universities over higher education delivery [8]. This demonstration effect has fostered the rapid growth of transnational education (TNE) providers, private for-profit institutions, and education intermediaries, evolving the global higher education ecosystem toward mixed delivery models, discussions on which can also be found in Chinese scholarship on GATS governance.

Second, GATS has exacerbated North–South asymmetries in education trade. Owing to historical accumulation and linguistic advantages, developed economies dominate education exports, with the United States, the United Kingdom, and Australia alone accounting for over half of global export value, gaining substantial tuition revenue and net inflows of high-skilled talent (brain gain). Meanwhile, most developing countries remain net importers, confronting brain drain, outflow of outstanding students and faculty, and widening trade deficits, while inbound international student education has become an emerging trade growth point for China [9]. Multiple rounds of GATS negotiations have witnessed distinct divergent stances among participating Members. Developed Members consistently push for far-reaching liberalization commitments, with particular focus on Mode 1 cross-border supply and Mode 3 commercial presence. By contrast, developing Members aim to shield their domestic education systems and preserve cultural diversity. They retain unbound commitments for cross-border education supply and impose tight restrictions on fully foreign-owned educational

institutions. This persistent divergence embodies inherent structural conflicts over the distribution of interests within global education services trade. Notably, emerging economies including China, Singapore, and Malaysia have begun participating actively in global competition through inbound student recruitment and offshore campus initiatives, prompting scholarly discussion on appropriate legislative positioning within this landscape [10].

Third, GATS has compelled accelerated development of qualification recognition and quality assurance systems. The European Bologna Process established European Credit Transfer and Accumulation System (ECTS) and degree frameworks. China has signed mutual recognition agreements with more than fifty countries and promoted qualification framework alignment with Belt and Road partners. UNESCO and OECD jointly issued the Guidelines for Quality Provision in Cross-border Higher Education (2005), advocating host-country accreditation, curriculum review, and degree certification mechanisms. GATS transparency obligations have further prompted Members to systematically publish and consolidate education-related regulations, enhancing the rule of law in education administration. Chinese scholars widely emphasize that quality assurance and recognition mechanisms constitute a key domestic legal response to GATS influences.

Finally, inherent tension persists between education's public welfare nature and its traded attributes. Excessive emphasis on education as a commodity risks corporatization of public universities, tuition inflation, crowding-out of basic education resources, and erosion of equity; profit-oriented entrants under Mode 3 may undermine the core values of domestic public systems. As a countermeasure to such divergent demands, the Education Services Note removes services rendered under governmental authority from the scope of GATS regulation; these services are fully state-funded and operate on a non-commercial basis. Meanwhile, all Members are entitled to resort to the exemptions laid out in Article XIV to counter any educational services that pose threats to public order or public morality. Numerous jurisdictions fully exclude compulsory education from their GATS liberalization commitments and attach restrictive prerequisites to higher education

opening-up. Typical constraints include Chinese majority shareholding, mandatory non-profit operation, and compulsory curriculum review mechanisms. Such regulatory tools are designed to strike a balance between educational opening and public interest protection, and they offer valuable reference for domestic legal reforms worthy of in-depth research.

China's GATS commitments and evaluation of current legislation

China's commitments on education services

China's GATS commitments exclude military, police, Party school and compulsory education from liberalization coverage. The remaining horizontal commitments cover three key dimensions: Foreign education institutions may set up representative offices that are banned from commercial operations. Land use rights can be granted for a maximum of fifty years. And eligible foreign teachers are allowed entry, subject to requirements of a bachelor's degree paired with two years of working experience or senior professional titles.

Taking higher education services (CPC 923) as an example, China scheduled: Mode 1 as unbound, reserving the right to regulate or prohibit offshore online degree programs, with unapproved foreign online degrees currently ineligible for authentication. Mode 2 as none (no quantitative limits on outbound or inbound students), China has undertaken no restrictive commitments, signifying the absence of quantitative quotas governing both inbound international students and domestic students pursuing overseas studies. Under Mode 3, China opens its market to Chinese-foreign cooperative schools. Foreign investors are allowed to hold majority equity, yet fully foreign-owned educational institutions remain banned, and all such projects must secure approval from provincial or higher-level education administrative authorities. This regulatory framework can be summarized as a unique institutional model featuring exclusive cooperative operation, mandatory Chinese participation, permissible foreign majority shareholding, and a blanket ban on sole foreign proprietorship. Mode 4 is unbound beyond horizontal commitments, requiring foreign educators to enter through invitations by domestic institutions and meet qualification requirements [11]. Other subsectors

follow similar patterns, with compulsory primary and junior secondary education fully unbound. This scheduling reflects China's policy orientation of "gradual, controllable, and domestically led" education opening-up.

Current domestic framework and principal problems

China's principal legal instruments include Article 67 of the Education Law (2021 Amendment), which encourages education exchanges; Articles 12 and 36 of the Higher Education Law (2018 Amendment), authorizing international cooperation; the Promotion of Non-state Funded Education Law (2018 Amendment), addressing profit-making issues in cooperation. The Regulations on Chinese-Foreign Cooperation in Running Schools, issued in 2003 and revised in 2013 and 2019, together with its supporting implementing measures released in 2004, lay out detailed regulatory provisions covering institutional establishment, modification, student recruitment, degree awarding, supervision, assessment and closure procedures. These primary legal instruments are further complemented by auxiliary normative documents, including the Ministry of Education's Opinions on Current Issues of Chinese-Foreign Cooperative Education and the Evaluation Measures for Chinese-Foreign Cooperation in Running Schools. Existing scholarship has mapped these sources and identified shortcomings.

Major problems include, first, low legislative hierarchy and fragmented norms. The core regulation is administrative in rank, lacking systematic provisions on transparency, dispute settlement invocation, or constitutional alignment with basic education laws. Regulatory vacuums are particularly acute regarding Mode 1, as neither the Regulations nor the Degree Regulations nor the Higher Education Law clearly prescribe authentication prerequisites or oversight standards for offshore degrees, leaving numerous unapproved "diploma mill" projects in a gray zone [12]. Second, quality supervision and exit mechanisms remain crude. While requiring the introduction of "high-quality educational resources", the Regulations fail to quantify criteria (e.g., world rankings, accreditation status, and minimum foreign faculty ratios), leading to some programs operating as diploma factories [13]. Evaluations rely heavily on documentary review rather than dynamic monitoring or third-party

assessment, and exit provisions vaguely address student credit transfer and refund arrangements, leaving channels for student redress inadequate.

Third, mutual recognition coverage remains limited and weakly implemented. Although agreements cover over fifty countries, many Belt and Road states lack accords, and existing agreements tend to be framework-level, deficient in operational guidance on discipline-specific recognition and credit conversion.

Fourth, clauses on educational sovereignty and cultural security are not effectively aligned with GATS exceptions. Current law contains only general prohibitions against violating Chinese law or harming sovereignty and public interests (Article 5 of the Regulations), without explicit invocation of GATS Article XIV as an international legal defense, potentially weakening responses to WTO disputes.

Fifth, forward-looking norms on Mode 4 and additional commitments are lacking. Despite expanded recruitment of high-end foreign talent under the "Double First-Class" initiative, domestic law lacks refined rules matching GATS horizontal commitments regarding work visa categories, residence facilitation, and professional qualification recognition, constraining talent inflow to some extent. These systemic deficiencies are widely acknowledged in the literature.

Recommendations for improving China's legislation on international trade in educational services

First, China should raise legislative hierarchy and construct a systematic legal framework for foreign-related education trade. One feasible legislative proposal is to incorporate an independent chapter titled "international education exchange and cooperation" into the Education Law. This chapter would explicitly define the legal standing, competent regulatory bodies, market access thresholds, quality standards, and dispute settlement mechanisms corresponding to all four service supply modes under the GATS. An alternative reform path is for the State Council to formulate a standalone Administrative Regulation on International Trade in Educational Services. This regulation would consolidate provisions governing Sino-foreign cooperative schooling, cross-border curriculum accreditation, student right safeguards and offshore institutional registration, which addresses the existing regulatory

vacuum for Mode 1 and Mode 4 and delivers enforceable rules aligned with China's GATS Schedule commitments. Such approaches would respond to transparency requirements while avoiding normative conflicts arising from fragmented legislation.

Second, domestic transposition of GATS commitments should be refined. Specialized legislation shall attach China's GATS Schedule as an annex and establish tiered supervision mechanisms featuring observation, pilot implementation and prudent opening-up for unbound service modes represented by cross-border supply. It shall also vest the Ministry of Education with the authority to launch negotiations on commitment revisions pursuant to Article 21 and to notify relevant regulatory measures in accordance with Article XIV of the GATS. Domestic law should further define "public order", "national interest", and "educational sovereignty" in illustrative terms aligned with Article XIV, reserving space for protective measures and international legal defense. This treaty-domestic law interface constitutes a key technique for averting WTO dispute risks and safeguarding sovereignty.

Third, cross-border quality assurance and student rights protection systems should be strengthened. This research draws on the UNESCO-OECD Guidelines for Quality Provision in Cross-border Higher Education to formulate targeted regulatory requirements for cross-border higher education governance. First, relevant legislation should require admission brochures to disclose key information including the proportion of foreign curricula, qualifications of core teaching staff, degree conferral criteria, and overseas accreditation status. In addition, the law needs to set up annual quality reporting and third-party evaluation systems, and clearly stipulate credit transfer arrangements, refund standards and administrative appeal channels for school closures, with special provisions covering hybrid online transnational education programs [14]. For prospective authentication of offshore online degrees, a system combining prior filing and verification of foreign accreditation should be instituted to prevent diploma mills. Institutionalizing quality assurance represents a central dimension of domestic legal responses to GATS.

Fourth, qualification recognition networks should be expanded and sovereignty risk prevention mechanisms

improved. China should accelerate conclusion of discipline-specific mutual recognition agreements with key Belt and Road partners and promote regional qualification framework alignment platforms. Domestic legal frameworks ought to establish formal review procedures for foreign-related curricula and teaching materials, with targeted scrutiny reserved for content that undermines national unity, stirs ethnic animosity, or spreads extremist ideologies. Such laws shall further define competent review authorities, unified assessment criteria and effective remedy channels, which mitigate cultural security hazards while avoiding arbitrary screening practices that contravene the non-discrimination and transparency obligations enshrined in the GATS. Comparative studies on higher education trade regimes along the Belt and Road provide useful references for such alignment efforts.

Conclusion

GATS rules on international trade in educational services constitute an indispensable institutional variable in the ongoing reshaping of global higher education. When China acceded to the WTO, it assumed a series of commitments governing education services, which brought significant opportunities to integrate its education sector into global knowledge networks. Meanwhile, these commitments posed a stringent test for China's legal system, requiring balanced governance amid conflicting priorities: gains from educational opening versus the preservation of national educational sovereignty, and market operational efficiency versus the public welfare nature of education.

In the face of rising geopolitical uncertainties and the rapid digital transformation of education, China must move beyond reactive compliance and embrace proactive rule-making. The emergence of new modalities - such as micro-credentials, virtual transnational education, and AI-driven learning platforms - poses fresh challenges to existing GATS classifications and domestic regulatory frameworks. These developments call for forward-looking legislation that not only addresses current gaps in cross-border supply and quality assurance but also anticipates future trade disputes and technological disruptions. Furthermore, China should leverage its growing influence in multilateral forums to advocate for a more

balanced global education trade regime that respects the developmental needs and cultural sovereignty of developing countries. China can establish a sophisticated and integrated legal regime governing international education trade that aligns with GATS rules while accommodating domestic realities. This framework will balance the fulfillment of international treaty obligations with robust mechanisms for quality control and cultural security preservation. Through such institutional development, China will shift from passive compliance with international norms to proactive engagement in global education governance, ultimately fostering a new paradigm of high-level, two-way educational opening-up that integrates both inbound introduction and outbound internationalization.

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Conflicts of Interest

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