



Office of the President

June 20, 2001

Mr. Joseph Papovich
Assistant U.S. Trade Representative for
Services, Investment and Intellectual Property
Office of the U.S. Trade Representative
600 17th St., N.W.
Washington, D.C. 20508

Dear Mr. Papovich:

Thank you very much for taking time to meet with representatives of the American Council on Education (ACE) and the Council for Higher Education Accreditation (CHEA) to discuss the U.S. position regarding inclusion of higher education service in pending World Trade Organization (WTO) negotiations. The meeting was very useful, and we hope it gave you an appreciation of the three unique features characterizing the higher education sector in the United States: (1) a large mix of public and private institutions, including a large non-profit sector; (2) institutional autonomy; and (3) decentralized governance.

At this juncture, we want to reiterate our serious reservations about the possible inclusion of higher education under the higher (tertiary) education services sector of the GATS. We do not believe the proposal reflects what would be in the best interests of U.S. colleges and universities or of the country as a whole. In addition, given the fundamental differences between the higher education sector in the United States and the rest of the world, ACE and CHEA doubt the ability of WTO members to fashion a common set of rules governing trade in higher education services that avoids undermining those features of the U.S. system that have contributed to its great strength and international appeal.

Is GATS an appropriate mechanism to foster international trade in education services? The question of whether and to what extent such services should be covered in GATS is a complicated one that implicates a host of sensitive issues for higher education. These include a number of areas we

touched on when we met with you:

- Any effort to distinguish between public and private education is unworkable in view of the diversity among U.S. higher education institutions. While we were encouraged by your comment that USTR does not intend to discriminate between education institutions on this basis, we are skeptical that language can be drafted that assures such a result. To illustrate the problem, we note that for covered sectors, the GATS rules apply to measures taken by governments and by non-governmental bodies in the exercise of powers delegated by governments. Arguably, actions taken by public institutions of higher education would be considered “measures” under the GATS rules, while similar actions taken by private institutions would not be so treated. As a result, U.S. public higher education institutions would lose the autonomy that is the hallmark of the quality of our system.
- U.S higher education is highly decentralized, with most of the authority for public institutions residing with the states and non-governmental accreditation bodies. Private education, though nominally under the authority of the state, is governed by private boards or councils, with similar mechanisms of quality assurance. Thus, most of the governance and regulation of private education is not a “government function”—whether of state governments or the federal government. We believe it would be very difficult for the U.S. government to make promises about these individual institutions and systems, whether public or private, that could be sustained in practice.
- Quality assurance with respect to the import and export of education services must be a key consideration in drafting any trade rules for this sector. At the same time, such rules must take account of the fact that quality assurance is not a governmental function in the United States, but is accomplished through industry self-regulation. Introduction of government regulations in this arena would be detrimental to U.S. interests.
- Any effort to deal with higher education services in the context of a trade agreement must address the concerns of developing countries to

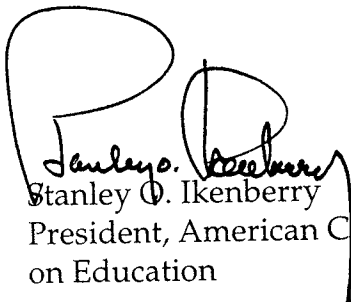
Joseph Papovich
June 20, 2001
Page Three

ensure that it does not undermine their own efforts to develop and enhance their domestic higher education systems. The U.S. proposals should explicitly recognize the special needs of developing countries, as has been done in agriculture.

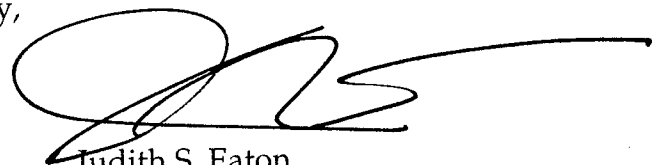
- Attention needs to be paid to the service-to-the-public-interest role that U.S. higher education institutions play to assure that any regulation does not impede this valuable capacity, either in the United States or abroad.
- We are also concerned about the heavy focus of U.S. government attention on private, for-profit institutions. As a result, in some quarters the United States is perceived as seeking to "Americanize" and "privatize" higher education throughout the world. This perception could, in turn, impede the productive partnerships that higher education institutions have developed with institutions in other countries. Indeed, the success our members have had in developing such relationships suggests the availability of other means to enhance export opportunities for U.S. educational services without the potential adverse impacts on the current U.S. system that could result from U.S. proposals.

Again, thank you for taking the time to discuss a subject that is so important to our members. We wish to work closely with USTR as you continue to formulate the government's policy concerning this aspect of the service negotiations. We would also like to include you in several upcoming ACE and CHEA events and will be contacting your office shortly with details. We look forward to continuing to work with you on these issues.

Sincerely,



Stanley C. Ikenberry
President, American Council
on Education



Judith S. Eaton
President, Council for Higher
Education Accreditation