

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

Mr. David Ward
President
American Council on Education
Suite 510
One Dupont Circle NW
Washington, D.C. 20036-1193

JUN 07 2007

Dear Mr. Ward:

On behalf of Ambassador Schwab, thank you for your letter regarding your concerns with the specific commitments in higher education services that the United States has put forward in the GATS negotiations as part of our current "offer." The American Council on Education and the Council for Higher Education Accreditation have been important partners in preparing and refining our offer, and I appreciate the opportunity to respond to your concerns so that we can move ahead together.

As you indicated, our team has met with you repeatedly over lingering concerns that the U.S. offer does not adequately protect important features of the U.S. higher education from GATS challenges, including institutional autonomy. We have valued your input and have taken seriously your concerns. We have crafted a position that requires no changes to any policies or regulations, and recognizes and protects the unique blend of private and public higher education and institutional autonomy in the United States. As you can appreciate, the U.S. has no interest in putting forward commitments that we feel leave us exposed to challenges. We believe that our current offer strikes the right balance between minimizing risk and showing leadership in a sector that is important for helping countries achieve their development goals.

Your letter raises some concerns that we find to be fundamentally unfounded. For example, on the issue of institutional autonomy, you have stated that it would be unacceptable to your members if public institutions were subjected to different treatment under the GATS because they may exercise delegated powers of the government. However, there is an important distinction between delegation to one entity of power to regulate other entities (e.g., independent state licensing boards empowered to enforce state laws) and delegation to an entity to govern itself (e.g., a public university system empowered to determine standards of coursework creditworthiness). The GATS is concerned with measures that alter the conditions of competition in favor of domestic suppliers, impose quantitative limitations on the supply of a service, or set foreign equity limits in the market; it is difficult to conceive of any measure an institution could take in the course of governing itself that could do any of these.

We also disagree with your assertion that the distinction between public and private institutions could give rise to a challenge to a decision by public institutions to accept or deny credits from foreign institutions. The GATS does not obligate service suppliers to accept foreign credentials, and explicitly acknowledges that agreements to recognize education or experience are voluntary. Trade agreements envisage that qualification standards may be used to impede trade in services,

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but they also acknowledge that such standards are not in and of themselves inconsistent with GATS obligations.

Another concern that you have expressed is that our specific commitment on higher education services does not adequately protect important features of our system, based on the notion that many of these features are enumerated in a footnote rather than the body of the columns for market access or national treatment. On this matter, we are acting in accordance with the guidelines for scheduling commitments, as well as with good legal practice. The most recent scheduling guidelines emphasize limiting entries to "the elements which make it inconsistent with Articles XVI or XVII." None of the items contained in the footnote are inconsistent with the GATS market access and national treatment disciplines, and are therefore not "limitations." If we were to insert the footnote text into the market access or national treatment columns, this would suggest that we believe those measures actually are inconsistent with the obligations, which would create legal uncertainty. We provide the footnote in response to your concerns that the existence of such policies be clearly understood by our trading partners, not to secure legal protection. It is noteworthy that, in the context of the negotiations, no WTO member has questioned whether these policies are inconsistent with market access or national treatment. To the contrary, they have asked why we see the need to describe them at all.

The United States is a global leader in education services. We achieved this strength by having an open and dynamic system with a mix of public and private institutions. In the international context, the assurances provided by GATS commitments foster similar openness that can stimulate greater investment in higher education, including by the many U.S. colleges and universities seeking opportunities to establish programs and campuses in India, China, the Middle East, and elsewhere. By encouraging commitments under the GATS to common principles of nondiscrimination and market access, the United States can help to improve the quality of and access to education around the world.

Finally, I must respond to a serious factual error in the letter. You stated that USTR has not made public our current GATS offer, and that only because of a Public Citizen report in 2006 have you had access to its provisions. In fact, both the U.S. initial offer from 2003 and the revised offer of 2005 have been on the USTR website from the moment we submitted them to the WTO. The United States is a leading proponent of transparency in the WTO, and USTR felt strongly that we needed to affirm this commitment and set an example for other Members by publicly posting our offer. As you acknowledge, these provisions have been extensively discussed by USTR with ACE and CHEA representatives over the past six years, both in preparation of the offers and since. In addition, a representative from ACE has served as a member of the Services Industry Trade Advisory Committee (ITAC 10) since 2004, with access to confidential negotiating documents and regular briefings by USTR officials. USTR seeks to serve and respond to all of our constituencies as thoroughly and openly as possible, and I trust you will recognize that this process has been anything but secretive.

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I appreciate your interest in the development of US trade policy, and I look forward to your continued engagement on how to deliver better higher education services to a world desperately in need of these opportunities.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by 'K. Veroneau' and a long horizontal line extending to the right.

John K. Veroneau