Chapter 10
Trade Agreements and Recognition

by

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This chapter explores the coverage of recognition of professional qualifications by the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) and a range of bilateral and regional trade agreements. It also provides a brief overview of what has been achieved to date in professional recognition internationally and the contribution that trade agreements might provide in increasing the transparency of professional recognition across borders. It also offers some preliminary thoughts on the relationship between cross-border education, recognition of professional qualifications and quality assurance in higher education.

10.1. Introduction

In recent times, a number of factors – increasing economic globalisation, reductions in transportation and communication costs, significant (temporary and permanent) migration flows, and the increasingly international labour market for the highly skilled – have led to a growing demand for greater recognition of foreign qualifications. The range of groups with an interest in the recognition of foreign qualifications is also expanding – in addition to universities assessing whether students should be accepted for further study, employers, professional associations and licensing bodies, as well as migration authorities, are also increasingly requiring information on the recognition of foreign qualifications.

Many of these same factors have formed the backdrop for the growth in international trade in services. International trade in a range of services – for example, health and education services, or professional services such as accounting and engineering – is often conducted via the temporary

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movement of individuals to supply these services. For example, trade in health services can occur when a nurse from one country moves to another country for a limited period to work in a clinic; and trade in engineering services can take place when a company with a contract to build a bridge in another country sends its engineer to supervise the project. This trade in services has also led to an increased demand for recognition of qualifications. Consequently, issues related to the recognition of professional qualifications are increasingly covered in trade agreements which include trade in services.

This chapter explores the coverage of recognition of professional qualifications by the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) and a range of bilateral and regional trade agreements. It has six sections. Section 10.2 briefly sets out a working definition of mutual recognition for the purposes of this paper. Section 10.3 outlines the key GATS provisions related to recognition and raises some of the legal issues that arise in terms of the GATS' coverage of recognition agreements. Section 10.4 provides a brief overview of what has been achieved to date in recognition internationally, in particular in agreements concluded pursuant to regional trade agreements (RTAs). Section 10.5 explores some of the reasons why progress on recognition agreements has been relatively limited to date. Section 10.6 offers some preliminary thoughts on the relationship between cross-border education, recognition of professional qualifications and quality assurance in higher education. Section 10.7 concludes. Annexes to the paper provide background information on the GATS and on a range of existing recognition agreements, both those concluded as part of RTAs and those initiated by professional bodies.

10.2. What is recognition?

Recognition can be conferred for academic purposes to enable enrolment in further study, or to enable the practice of a profession. In terms of professional qualifications, recognition usually refers to both the recognition of the equivalence of the content of the training and to the recognition of the home country's authority to certify such training through the granting of diplomas or other evidence of qualification (Nicolaïdis and Trachtman, 2000).[2]

2. There are many different contexts for recognition and definitions can differ, including between academic or professional recognition. Further, different authors take different approaches and terminology use can vary. For the purposes of this paper, the working definition of recognition used is geared towards the recognition of professional

Much recognition is based on the principle of equivalence – generally understood to mean that, where the host country's regulatory goal is addressed by home country regulation, the host country should accept the home country's regulation as equivalent. Where aspects of the host country's regulatory goals are not met (*e.g.* with regard to required local knowledge, or where there are differences in the scope of the licensed activities between jurisdictions), the host country is permitted to set additional requirements for recognition ("compensatory measures").

In practice, recognition is rarely "pure" recognition. Most recognition agreements require a considerable degree of cooperation, including in terms of analysis of the respective parties' regulatory regimes and, often, some regulatory adaptation. In general, recognition agreements: leave considerable residual powers to the host country; involve mutual monitoring between the regulatory authorities; involve some pre-conditions before recognition is granted; and include the possibility to reverse or remove recognition in view of changes to the other party's regulatory system. Additionally, many recognition agreements include a general safeguard, in addition to the specific rules of recognition, enabling the authorities to re-assert regulatory jurisdiction in order to "protect the public good" or the like (Nicolaïdis and Trachtman, 2000).

In general, recognition is a highly complex and time-consuming task. First, recognition requires, or assumes, that a country has in place a system for regulating a given profession. Development of a domestic regulatory framework for a profession is a difficult task, requiring well-developed and competent institutions able to develop systems which balance various public policy objectives, such as ensuring the quality and adequate supply of the profession. In some countries, regulatory frameworks for the professions are either poorly developed or non-existent.

Second, recognition requires a complex comparison between frameworks established to meet different sets of cultural, social and economic circumstances to determine whether the standards set are actually equivalent. Recognition also involves a number of stages: information exchange, analysis of the other party's regulatory regime, assessment of whether there are gaps and, if so, what might be appropriate compensatory measures, whether some aspects should be excluded from recognition altogether and whether any adaptation of the home country regulatory framework is required. The speed and efficacy with which these processes can be undertaken will vary with the degree of differences between the

qualifications in the context of trade in professional services, and related provisions in trade agreements.

parties – *e.g.* in terms of education system, standards, approaches to regulation and level of development – and also with the number of parties involved. Once agreed, recognition agreements also require ongoing resources for monitoring and assessment.

10.3. What does the GATS say on recognition?

Main GATS disciplines and instruments

There are a number of disciplines in the GATS related to recognition. In addition to Article VII that directly refers to recognition, other disciplines related to domestic regulation (Article VI.6) are relevant. Additional instruments related specifically to the accountancy profession have also been developed by WTO Members. A general background to the GATS, which provides some context for these specific disciplines, is at Annex I.

GATS Article VII

The GATS does not require Members to recognise the professional qualifications of other Members, nor does it require any particular standards to be applied in considering recognition. Article VII (Recognition) simply allows Members to recognise the education or experience obtained, requirements met, or licenses or certifications granted in some WTO Members and not others.[3] That is, it permits countries to break the normal rule that treatment offered to one WTO Member must be extended to all other WTO Members (the "Most Favoured Nation", or MFN, requirement that you treat all WTO Members as well as you treat your most favoured WTO Member). This deviation from MFN is based on the realistic assessment that, given the range of regulatory differences amongst Members, recognition is most likely to be agreed bilaterally or plurilaterally (*i.e.* amongst a group of Members),[4] and that a requirement to automatically extend recognition to all other WTO Members would probably result in far fewer, if any, recognition agreements being negotiated.

3. As this shows, recognition in the GATS goes beyond the question of qualifications and professional qualifications and also applies to experience obtained. Further, it goes beyond professional services and encompasses recognition in a range of services. For example, the GATS Annex on Financial Services (Article 3, Recognition) refers to recognition of prudential measures.

4. The possibility of autonomous recognition is also acknowledged in Article VII:1. Singapore has notified the WTO that it does not enter into mutual recognition agreements, but accords recognition autonomously.

The main requirement of Article VII is that WTO Members entering into recognition arrangements amongst themselves must afford adequate opportunity to other interested Members to negotiate their accession to the agreement or to negotiate a comparable agreement. That is, other WTO Members should be given the *opportunity* to demonstrate that they also meet the required standards – whether they actually do or not is a matter for the country according recognition to decide. There is no requirement in the GATS to *accord* recognition to other Members, only a requirement to give them the opportunity to try to *negotiate* such an agreement if they wish.

To facilitate this process, WTO Members must notify existing recognition measures to the WTO Council for Trade in Services (CTS) and promptly inform the CTS when they adopt new recognition measures or significantly modify existing ones.[5] A standard notification format has been developed by WTO Members for the notification of recognition agreements or arrangements.[6]

The other main requirement is that WTO Members not grant recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services. This legalistic language essentially means that WTO Members can apply whatever standards they want in according recognition, but they must apply the same standards to all WTO Members. That is, a Member cannot apply different standards in assessing doctors from country A than from country B; doctors from country A may meet the required standards and those from country B may not, but the same standards must be applied to both.

Article VII has little to say about the substance of recognition, other than noting that a Member may recognise "education or experience obtained, requirements met, or licenses or certification granted", and that recognition may be achieved "through harmonisation or otherwise". Countries are not required to use international standards; the GATS simply states that "wherever appropriate, recognition should be based on multilaterally agreed criteria". Members are also encouraged "in appropriate cases" to work "in cooperation with relevant intergovernmental and

5. The Council for Trade in Services is a body consisting of all WTO Members. The WTO Secretariat serves as the Secretariat to that body.

6. The standard format for Article VII:4 notifications covers: (1) Member notifying; (2) Article under which notification is made; (3) date of entry into force and duration; (4) agency responsible for enforcement of the regulations; (5) description of the regulations; (6) changes to existing regulations; and (7) contact from whom the text is available.

non-governmental organisations towards the development of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions".

GATS Article VI.6

Article VI.6 states that where a country chooses to make a commitment to allow access for a particular type of foreign professional, such as for education professionals, that country is required to have adequate procedures in place to verify the competence of those professionals from all other WTO Members.[7] "Adequate procedures" is not further defined.

This Article is not about recognition *per se*, but simply about having some kind of procedure to assess competence (which could be, for example, a test or other mechanism). Members are again left broad scope to determine the type of procedures they use to do this. Article VI.6 is also silent on the standards to be applied (*i.e.* the criteria used to assess competence), it merely requires the existence of adequate *procedures* – *i.e.* the availability of a mechanism for assessing competence.

Further, a country has to have actually chosen to make a GATS commitment on market access for a particular professional service for the obligation to apply. If a country allows in foreign university lecturers, but has made no GATS commitment to that effect, the obligation does not apply. A country which is allowing foreign professionals to practice in its territory even without a GATS commitment to that effect presumably still has an interest in having procedures to verify their competence, but is not under a GATS obligation to do so.

The logic of this provision is based on the difference between market access and regulation. A market access commitment by a country to allow foreign lecturers to teach does not mean that that country is obliged to accept all foreign lecturers; whether an individual is actually permitted to teach will depend on whether s/he meets the requirements of the domestic regulatory framework regarding who is competent to lecture in a university. Therefore, if there is no procedure in place to enable that foreign lecturer to prove his/her competence vis-à-vis these domestic regulatory requirements, s/he will never be permitted to teach and the promised market access cannot be used. It is for this reason – to avoid countries undermining the commitments they have made to others to allow access – that the GATS requires them to have an adequate procedure in place to verify the

7. An explanation of GATS commitments is at Annex I.

competence of foreign professionals *where* they have committed to providing access for those professionals.

Accountancy Disciplines[8]

The Accountancy Disciplines are a range of additional disciplines which apply only to trade in accountancy services and only where a Member has made commitments to allow trade in accountancy services. The Disciplines were agreed in 1998 but are yet to enter into force; they are due to do so at the end of the current round of negotiations. There has also been some discussion amongst WTO Members about the possibility of extending the Disciplines to other professional services and Members have been asked to consult with their relevant professional bodies at the national level.

The Disciplines do not require recognition; they only require WTO Members to ensure that their competent authorities take account of accountancy qualifications acquired in the territory of another Member, on the basis of equivalency of education, experience or examination requirements. The requirement to "take account of" is not further defined and is open to many interpretations. Additionally, the Disciplines require that examination or other qualification requirements be limited to subjects relevant to the activities for which authorisation is sought (*e.g.* qualification requirements for accountants cannot include a medical degree or scuba-diving certificate). Specific reference to recognition agreements in the Disciplines is limited to the role which those agreements can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education.

WTO Guidelines on Mutual Recognition in the Accountancy Sector

The WTO "Guidelines on Mutual Recognition Agreements or Arrangements in the Accountancy Sector" [WTO document S/L/38, dated 28 May 1997] were negotiated around the same time as the Accountancy Disciplines and were designed specifically to address the question of recognition agreements in the accountancy sector. The Guidelines are voluntary and non-binding. Indeed, the chapeau notes that the examples listed in the Guidelines are indicative and are intended neither to be exhaustive nor as an endorsement of the application of such measures by WTO Members.

The Guidelines provide practical advice for governments, negotiating entities or other entities entering into mutual recognition negotiations on

8. See WTO Press Release "WTO Adopts Disciplines on Domestic Regulation for the Accountancy Sector", dated 14 December 1998 (available at *www.wto.org*).

accountancy services. The Guidelines cover both the process for negotiating (*e.g.* what should be in notifications, implementation) and the substance of, recognition agreements (*e.g.* clearly state parties and their areas of competence, purpose and scope of agreement, conditions for recognition). The Guidelines do not propose answers or specific content in these areas, but rather simply list the elements which recognition agreements should include, but without further specification (*e.g.* they state that the agreement should explain the qualifications required, but do not state what these should be).

Summary

The GATS does not provide for, nor seek to undertake, recognition – it merely permits Members, in pursuing their own recognition initiatives, to break the MFN rule by according recognition to some WTO Members and not others. GATS Article VII is based on the acknowledgement that recognition will happen elsewhere, through bilateral or plurilateral agreements amongst WTO Members. The links back to multilateralism are via requirements for these agreements to be notified to the WTO so that other interested Members can know about the agreements. These Members must be provided with the opportunity, if they wish, to negotiate to join existing agreements or negotiate comparable ones.

Overall, given the variety of approaches taken (reflecting particular societal choices), and the important policy objectives involved, there are no requirements in the GATS regarding the *substance* of recognition (*i.e.* the particular standards to be applied). Disciplines regarding recognition in the GATS framework leave considerable regulatory flexibility to Members to regulate professions as they see fit. The choice of what standards or criteria to apply is a matter for each WTO Member to determine. While the same standards must be applied to all WTO Members, not all WTO Members may meet those standards and thus not all will be granted recognition.

While not mandating their use (“wherever appropriate”) or development (“in appropriate cases”), international standards, both for the practice of professions and for the granting of recognition, are encouraged – although it is again envisaged that these standards will be developed, not in the WTO, but by Members working in cooperation with relevant intergovernmental and non-governmental organisations.

Possible disciplines under Article VI:4

Article VI: 4 mandates the development of any necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary

barriers to trade in services. There is a general understanding that this excludes measures which would be considered limits on market access (see Annex I), as well as those which would be considered limits on national treatment (*i.e.* which discriminate in favour of nationals; see Annex I).[9]

According to the Article VI: 4 mandate, any disciplines developed should ensure that non-discriminatory measures relating to qualification requirements and procedures, technical standards and licensing requirements are:

- based on objective and transparent criteria, such as competence and ability to supply the service;
- not more burdensome than necessary to ensure the quality of the service;
- in the case of licensing procedures, not in themselves a restriction on the supply of a service.

These disciplines *do not* exist as yet. In the interim, disciplines under Article VI: 5 apply; however Article VI: 5 disciplines will cease to apply once any disciplines developed under Article VI: 4 enter into force. Article VI: 5 disciplines apply only in sectors where commitments have been made. They require that Members not apply licensing and qualification requirements and technical standards that nullify or impair specific commitments made in a manner which does not meet the three criteria in the bullet points above. However, all existing – or reasonably foreseeable – measures which nullify or impair specific commitments and do not meet these three criteria are excluded. In effect, as all measures which nullify or impair a commitment and which do not meet these criteria that a country already had in place, or which it could reasonably have been expected to introduce, are excluded, these disciplines are not seen as having any force. So the real focus is on what might be developed in the negotiations on Article VI: 4.

Progress on negotiations under Article VI: 4 has been very slow and there are different views amongst WTO Members on sort of disciplines which should be developed. The most controversial provision has been the requirement that any measures relating to qualification and licensing requirements and procedures and technical standards do not constitute unnecessary barriers to trade in services. A number of arguments have been raised about this provision, including:

9. See Report to the Council for Trade in Services on the Development of Disciplines on Domestic Regulation in the Accountancy Sector, WTO document S/WPPS/4, dated 10 December 1998.

- Some Members argue that any disciplines should only focus on increasing transparency, and that any "necessity test" is itself not necessary. The argument goes that, given that these are measures which also apply to nationals, a country should be free to set its standards as it sees fit – even if they might not seem to be a good idea to others. For example, if a country wishes to require that all universities include 30 trained intensive care nurses in their staff (in the interests of having quality medical care close at hand should students give birth, have heart attacks, etc.) then it should be free to do so even though this is clearly a burdensome, trade restrictive (and perhaps rather silly) requirement.

- Others argue that, in this situation, other WTO Members should be free to challenge such requirements as they are also affected by them. Other WTO Members should, they argue, be able to suggest other – equally effective and reasonably available but less trade restrictive – ways of achieving the same objective. For example, they could suggest that all universities be required to ensure that at least 50% of their staff be trained in First Aid, rather than be highly qualified medical personnel. This, it is argued, could result in a better outcome not just for trade, but also for the country concerned in terms of better, more efficient regulation (and, in this case, a better use of the skills of highly trained personnel – and a freeing up of additional university resources).

- Essentially, some Members have expressed concern that a necessity test could allow other WTO Members to "second-guess" the decisions of national regulators; while others argue that a necessity test would only look at whether there were other, equally effective and reasonably available but less trade restrictive, ways to achieve the same objective. That is, they would not question the objective itself, nor a country's right to see that objective fully achieved; they could only comment on the particular instrument or means chosen to achieve the objective.

- In any event, a number of WTO Members have argued that "ensuring the quality of the service" is too narrow and that the full range of policy objectives that countries might want to pursue should be acknowledged (*e.g.* a licensing requirement for an education provider to offer courses of instruction in the national religion may be aimed at preserving national cultural heritage).

- A further argument has been about whether any disciplines should only apply in sectors where commitments are made, rather than across all sectors. While no final decision has been formally made on this issue, the presumption created by the Accountancy Disciplines and by Article VI:5 (both of which only apply where specific commitments have been made) is that VI:4 disciplines would have the same scope of

application. Equally, the logic of the agreement would tend to suggest that such disciplines could only apply to sectors where specific commitments had been made.[10]

In terms of the possible impact of any possible disciplines which could be developed under Article VI:4 on recognition, several points are worth noting. First, there is a general understanding that possible Article VI:4 disciplines could deal only with non-discriminatory measures. Second, it is unclear that these disciplines will impact on a country's ability to set for itself the level than defines the "quality of the service"; that is, possible VI:4 disciplines could deal with whether a particular requirement is necessary to guarantee that level of quality, but not question the setting of the quality standard at that level.

Third, as Section 10.4 will indicate, experience with recognition suggests that determinations under possible Article VI:4 disciplines on whether particular licensing or qualification requirements were more trade restrictive than necessary are likely to be difficult. The limited progress on recognition agreements suggests that it has been very difficult for countries to reach a common view on whether different measures or systems meet the same objective in an appropriate fashion. The lack of agreed international standards in most service sectors is both a cause and effect of the difficulty in making such determinations.

The legal uncertainties

There are two main issues that arise in terms of the coverage of recognition agreements by GATS Article VII. The first relates to recognition agreements concluded as part of regional trade agreements (RTAs), and whether these agreements are considered to be covered by the GATS disciplines related to RTAs or to recognition. The second relates to agreements reached between industry or professional bodies and whether, given that the GATS is a government-to-government agreement, these agreements fall under the scope of GATS disciplines.

10. This argument rests on the idea that the purpose of possible Article VI:4 disciplines is to prevent frustration of trade by the "back door". Given that if a country's real aim is to exclude foreign suppliers or to discriminate against them, it is free to do so anyway under the GATS, introducing these disciplines only makes sense if there is some commitment made to allow foreign supply under some conditions in the first place. If no opportunity for foreign supply is promised, it is argued that the need to develop disciplines to prevent the use of other measures to undermine that promise disappears.

Agreements concluded pursuant to regional trade agreements (RTAs)

A number of recognition initiatives pursued in the context of RTAs are not notified under GATS Article VII (Recognition), but are included in general notifications of RTAs under Article V (Economic Integration) – *e.g.* in the notifications related to the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and the European Union.[11] Hence a WTO Member consulting Article VII notifications will not receive a full picture of all the recognition agreements in force amongst WTO Members. It could be argued that this undermines Article VII, as countries do not know that a particular recognition agreement exists and therefore cannot indicate their interest in joining the agreement or negotiating a similar agreement.

It has also been queried whether recognition agreements notified in the context of RTAs (Article V) and not under Recognition (Article VII), are in fact still subject to the disciplines of Article VII. This argument says that recognition provisions within RTAs do not constitute separate agreements for the purposes of Article VII. However, the counter-argument is that agreements on recognition are agreements on recognition, regardless of whether they were developed in the context, or form part, of an RTA, and what precise form they take. This argument notes that the relevant provisions of Article VII are very broadly worded and thus the disciplines of that Article should still apply.

Agreements concluded between professional bodies

Recognition is accorded through a wide range of agreements – agreements between states, between agencies acting under delegated authority laid down in legislation, between professional associations which may be wholly independent of government, or a combination of these actors. Agreements may be bilateral, plurilateral, binding on states, or only on parts of states (*i.e.* on certain sub-federal jurisdictions). Indeed, some of the agreements notified to the WTO under GATS Article VII concern bilateral arrangements pursued by professional bodies, implemented by sub-national regulatory authorities, and pursued consequent to RTAs.

Beviglia Zampetti (2000) argues that, even in the context of those recognition agreements pursued subsequent to an RTA, the relevant professional and self-regulatory bodies which are usually entrusted with the negotiations of these agreements are not capable of binding states at

11. Mattoo (1999) cites 11 such notifications.

international law, unless they have a clear delegation of authority to this effect. Therefore, in general, these types of agreements are more likely to have the legal status of a private contract. Agreements reached independently by professional associations are also at best a private contract; even if one of the bodies involved could be considered part of the governmental structure and competent to enter into international agreements, this is insufficient to confer the status of an international agreement.

The GATS applies to "measures taken by Members" and defines this to include those measures taken by "(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments and authorities" (Article I.3). In terms of the question raised by Beviglia Zampetti, much would depend upon how the reference to "the exercise of powers delegated" was interpreted. If, as he argues, a general delegation is insufficient to bind states at international law, it would presumably also mean that such agreements might *not* be subject to the disciplines of Article VII.

10.4. Overview of existing agreements or arrangements for recognition[12]

What has been notified under GATS Article VII?

As noted above, WTO Members are required to notify to the WTO any recognition agreements to which they are a party.[13] Thirty-nine such notifications have been made under Article VII by 19 WTO Members (counting the European Communities and its Member States as one, but including a separate notification by Germany), covering 144 agreements. These figures do not necessarily reflect the real number of recognition agreements operated by WTO Members, however. Some agreements may have been notified under Article V (Regional Integration) instead; indeed, a number of mutual recognition initiatives are contained within, or concluded under the auspices of, broader regional liberalisation or free trade agreements (see Annex II). Further, a number of recognition initiatives have been initiated and undertaken by industry itself, with little or no involvement

12. This section provides a brief overview of existing recognition agreements. For a more detailed description see "Service Providers on the Move: Mutual Recognition Agreements", available at *www.oecd.org*.

13. These notifications are public and are available at the WTO website (*www.wto.org*).

by governments (see Annex III).[14] While some of the agreements have been notified, others have not. Finally, some agreements may not have been notified due to a lack of awareness of the obligation by, or limited administrative capacity of, the competent authorities.

The majority of recognition agreements notified to the WTO relate to recognition of professional qualifications; however, some relate to recognition of academic qualifications to enable applicants to enrol in further study or training in the host country. While there is a standard format for notifications, the amount and type of information varies greatly. Some notifications simply list the agreements, noting broadly that they relate to "mutual recognition of qualifications for the exercise of professions", while others provide a short summary of the main provisions of the agreement(s). To add to the confusion, some agreements have been notified by both parties, but with slightly different descriptions (*e.g.* a number of different notifications cover the Regional Convention on the Ratification of Higher Education Studies, Qualifications and Diplomas in Latin America and the Caribbean) and there are multiple agreements covering the same service sector (*e.g.* accountancy) but with differing membership.

Who is party to Recognition Agreements?

Many recognition agreements are undertaken by neighbouring countries or as part of broader regional cooperation or integration initiatives (*e.g.* Switzerland and Liechtenstein, Switzerland and the European Union [EU]/European Economic Area [EEA],[15] Australia and New Zealand, the Baltic States). In Latin America, where recognition agreements are common and date back to the start of the 20th century, recognition is also very often part of cultural cooperation or exchange agreements of various forms. While regional/cultural links appear to be a major motivation, other types of links may also play a role – such as political linkages (as in the case of Latin American agreements from the 1970s and 1980s with geographically distant former socialist or communist states) or religious linkages (a number of Latin American countries have agreements with the Holy See). Countries with former colonial ties – and thus linguistic and possibly educational

14. There are, however, no clear-cut distinctions between agreements concluded under RTAs and industry agreements. Agreements undertaken pursuant to RTAs are often agreements not between governments, but between professional bodies.

15. Recognition arrangements within the European Union have been extended to countries of the Agreement on the European Economic Area (EEA). EEA countries are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, the United Kingdom.

similarities – (*e.g.* Latin American countries and Spain, Macau and Portugal, Australia and the United Kingdom) also tend to be parties to recognition agreements.

Most agreements also tend to be between OECD countries, and even then seem to be largely based on a shared region or common cultural/historical ties (*e.g.* agreements within the EU/EEA, between the United States and Canada, Australia and New Zealand or between United Kingdom/United States/Canada/Australia/Ireland). Agreements amongst non-member countries seem to be largely limited to intra-Latin American agreements, with the exceptions of a number of agreements between Brazil and other non-member countries.[16] While not all existing agreements may have been notified, no agreements amongst developing economies have been notified to date by countries in Africa or Asia, except for arrangements between Macau and China and Hong Kong, China respectively (Singapore has notified that it extends recognition solely on an autonomous basis).

Some non-OECD Asian and African countries are included in recognition arrangements with OECD countries, but these tend to be industry agreements or agreements concluded pursuant to RTAs. In terms of industry agreements, for example, China; Hong Kong, China; Philippines; Singapore; Vietnam and Malaysia all have some form of Mutual Exemption Arrangement with the Engineering Institute of Australia; South Africa is included in the Washington Accord on engineering (Malaysia and Singapore have provisional membership); and the South African Institute of Chartered Accountants has a bilateral agreement with the Institution of Chartered Accountants in Australia. In RTAs, recognition initiatives are included in the Japan-Singapore New Age Economic Partnership Agreement, the Asia Pacific Economic Cooperation forum (APEC) and the New Zealand-Singapore Free Trade Agreement.

A number of Latin American countries also have some form of agreement with OECD countries – for example, the Cultural Agreement between Brazil and France; Cultural and Educational Cooperation Agreement between Brazil and Turkey; Colombian mutual recognition of study certificates with Korea, Czech and Slovak Republic and the United Kingdom; and equivalence of studies in certain fields with Germany; and a number of agreements with Spain.

16. Cultural Agreement between Brazil and Morocco; Agreement on Cultural and Educational Cooperation between Brazil and China; Cultural and Scientific Cooperation Agreement between Angola and Brazil; Cultural, Educational Scientific and Technical Cooperation Agreement between Brazil and Congo.

Finally, it should also be noted that some agreements do not cover the entire territory of the WTO Member notifying – for example, the agreements on accountancy between relevant professional bodies in the United States and Australia and Canada involve only 19 and 36 US states respectively. In turn, the accountancy agreement with the United States is recognised by most (9), but not all, Canadian provinces.

What type of recognition is granted?

Notwithstanding their titles, many recognition agreements do not provide for automatic recognition of qualifications. Coverage varies widely – some are far-reaching (*e.g.* within the EU/EEA, or recognition of educational qualifications amongst the Baltic States), others provide for reduced requirements or procedures; some provide a degree of facilitation; others are limited to broader types of cooperation or dialogue. In many cases, it is not possible to tell from the WTO notification what type of recognition the agreement actually provides. While the titles of some agreements may give an indication (*e.g.* "Mutual Recognition for Qualifications for the Exercise of Professions") albeit without specifying the actual treatment granted, in many cases recognition elements are included in a broader agreement (*e.g.* on Cultural Exchange or Cooperation), giving little indication of the content.

While some agreements relate to specific sectors (usually accountants/auditors, architects and engineers), many agreements are based on a general recognition of diplomas in partner countries, on the basis of mutual trust and judgement of the equivalence of educational institutions and study programmes. This horizontal approach is taken in many agreements in Latin America;[17] in some cases this recognition is accorded for the purposes of enrolling in further study or training, in others specific recognition of professional qualifications (*e.g.* Chile and Brazil Convention on Cultural and Scientific Cooperation), or specific mention of the objective of allowing the exercise of professional activities (*e.g.* Argentina and Colombia Convention on Mutual Recognition of Certificates, Titles and Academic Grades of Primary, Secondary and Higher Education) is included.

Agreements limited to specific professions are often agreements initiated and negotiated by industry or professional bodies themselves. The

17. Standard language is found in a number of notifications by Latin American WTO Members, along the lines of "Country X will accord recognition to foreign diplomas granted in a country signatory to a bilateral or multilateral instrument to which Country X is a party. This recognition is founded on mutual trust, which is based on the nature and type of educational institutions in the countries concerned, as well as the equivalence and similarity of study programmes and plans".

content of these agreements varies considerably and includes: automatic membership of counterpart organisations (professional bodies in the United States and Canada for the accreditation of engineers; professional bodies in Australia and New Zealand on registration of architects); acceptance of examinations of other organisations (Singaporean professional body for accountants from counterpart bodies in Australia and New Zealand); partial acceptance of qualifications with bridging courses (New Zealand professional body regarding accountants from counterpart bodies in Australia and Canada); and membership of the counterpart organisation subject to assessment and further testing.

What has been achieved under regional trade agreements (RTAs)?

Experience with recognition in the context of RTAs varies (recognition initiatives under a range of RTAs are at Annex II). Some agreements, notably within the EU/EEA and the Trans-Tasman Mutual Recognition Arrangement between Australia and New Zealand, have gone far in establishing recognition, resulting (more or less) in the ability of professionals licensed in their home country to practice in other parties to the agreement. However, this level of recognition is rare, being largely limited to regional agreements aimed at deep integration between the parties.

A number of RTAs encourage the development of recognition agreements between the parties to facilitate trade in professional services. In general, these RTAs specify priority professions (*e.g.* accountancy) and delegate the negotiation of such agreements to the relevant professional bodies. Most of these recognition agreements remain works in progress. For example, even in a relatively developed and far-reaching agreement such as NAFTA, recognition has made little progress. One recognition agreement was concluded by the engineering profession in 1995, which was approved by all Canadian provinces and Mexican states, but ratified in the United States only by Texas. A recognition agreement for foreign legal consultants, also agreed in 1995, remains stalled in the review process undertaken by the Free Trade Commission and has not yet been adopted in any country. The terms and conditions for recognition agreements in accountancy and architecture are currently being negotiated amongst competent authorities of the three NAFTA parties. Under MERCOSUR,[18] some progress has been made on reciprocal recognition for architects, agronomists, geologists and

18. MERCOSUR is the Mercado Común del Sur (Southern Common Market Agreement) and includes Argentina, Brazil, Paraguay and Uruguay.

engineers already in possession of a work contract and who intend to stay abroad no more than 2 years.

RTAs generally do not provide for recognition, but simply include general language that recognition should be pursued between the parties. Some recent agreements (*e.g.* those between the European Union and Mexico, and New Zealand and Singapore) leave recognition agreements to be concluded subsequent to the agreement (generally without firm time frames), often identifying those services where market access has been granted under the agreement as a priority. Recognition agreements concluded pursuant to RTAs are often delegated to, and take the form of agreements between industry associations (rather than forming part of the RTA itself). Perhaps not surprisingly, therefore, they tend to be limited to those internationalised and highly mobile professions where most progress has already been in agreements initiated and developed by industry itself (*e.g.* architecture, engineering and accounting).

Some RTAs do not even formally envisage the development of recognition agreements; the Japan-Singapore agreement on a New Age Economic Partnership uses the language of GATS Article VII – that is, it simply permits the development of recognition agreements, but does not specify any professions for which agreements should be negotiated.

What progress has been made at the industry level?

As negotiation of recognition agreements under RTAs is normally delegated to the relevant professional bodies, there is no clear dividing line between industry agreements and those pursued consequent to RTAs. For example, NAFTA and MERCOSUR encourage the development of recognition agreements *by the relevant professional bodies* and the APEC Engineers Register is an agreement amongst professional bodies only (and not member economies). While recognition amongst EU countries is covered under the terms of the Single Market, and many agreements amongst Latin American countries are government-to-government (including because they take the form of broader cultural and educational agreements), recognition agreements relating to specific sectors amongst other countries (*e.g.* the United States, Canada, Australia) tend to be between professional or industry bodies only. These bodies may be operating under delegated authority or may be independent from government.

In some cases, notably nursing, agreements are only at the industry level, with no links to RTAs. While industry agreements are more likely to include non-OECD, as well as OECD, participants, they tend also to be between industry associations from countries sharing close historical,

colonial and cultural ties (*e.g.* Commonwealth Association of Architects). However, they can also be regional (nursing initiatives in North America, Africa and the Caribbean).

Some industry associations have worked to create agreements on recognition, or international standards, at the multilateral event. The accounting, architectural, nursing and engineering sectors have been particularly active in developing their own agreements on international standards. For example, international standards have been developed by the International Union of Architects; engineers have developed a system of recognition of equivalency of engineering education programmes under the Washington Accord; the International Council of Nurses is working to develop a Framework of Competencies for the Generalist Nurse; and the accountancy profession has been involved in long term efforts to develop international standards of practice, including a model curriculum for technical education.

Finally, in some sectors, industry certification has become more important than recognition of formal qualifications. In the information and communication technology (IT) sector, given the high demand for skills and the fast-changing nature of the industry, industry certification has become important in identifying workers with the latest skills. In the last few years there has been a strong increase in the number of technical credentials granted by companies, business associations and commercial IT bodies. By early 2000, Cisco, Microsoft, Novell and other firms or private bodies had awarded more than 1.8 million credentials certifying IT skills to individuals; and around one in seven vacancies in the United States was found to require commercial certification.[19]

10.5. Why has progress been relatively limited?

It is difficult to make an overall assessment of how much progress has been made in terms of recognition in the context of trade agreements. In many cases, it is unclear what level of recognition the agreement actually provides, and many agreements remain works in progress. However, overall, it appears that recognition has made relatively limited, halting progress.

Recognition agreements tend to be largely undertaken between similar countries, but even then progress has been modest. Most agreements remain largely between OECD countries. Indeed, in the context of the GATS negotiations, a number of developing countries have pointed to this fact and argued that lack of recognition of the qualifications of their professionals is

19. See OECD “STI Working Papers: ICT skills and employment”, DSTI/DOC(2002)10.

a major brake on their trade in an area of real export interest to them.[20] Recognition, and ways of improving the implementation of Article VII, is merging as an increasingly important issue in the GATS negotiations.[21]

Agreements are also usually between industry associations, including many of the agreements concluded pursuant to RTAs. In general, more progress is evident at the industry level; agreements between professional bodies generally accord greater recognition and have broader membership.

There are a number of reasons why such limited progress has been made on recognition of professional qualifications in the context of trade agreements. These include:

- The wide range of practices amongst WTO Members in relation to the education and training of professionals, and the equally wide range of cultural influences and assumptions that lie behind these. Indeed, the limited progress in a number of the nursing initiatives – even at the regional level – is attributed to the wide differences in education bases between the parties.
- The fear of loss of regulatory sovereignty or that recognition will lead to harmonisation of standards or practices, including at the lowest common denominator. Many professional or other regulatory bodies at the national level pride themselves on their high standards and can be reluctant to adopt or recognise others' standards as equivalent. In some cases, there is concern that particular local knowledge will not be adequately reflected in a recognition agreement.
- The absence of licensing systems for some professions or of formal qualification mechanisms in some – often developing – countries against which equivalence could be judged. Indeed, the promise of access for their professionals to other countries under an RTA has acted as a spur in some developing countries to introduce more formal licensing or other requirements for its own professionals to ensure that they will be more easily able to prove they meet the standards in other countries and therefore be able to use the access granted. This improved regulation of the professions can also have clear domestic benefits.

20. See, for example, WTO Council for Trade in Services "Communication from India: Proposed Liberalisation of Movement of Professionals under the General Agreement on Trade in Services (GATS)", S/CSS/W/12, dated 24 November 2000.

21. This debate, and possible ways to improve the implementation of GATS Article VII, are discussed in more detail in "Service Providers on the Move: Mutual Recognition Agreements", available at *www.oecd.org*.

- The difficulty of calculating the equivalence of on-the-job and formal training. This issue has become more prominent in view of the growth of certain types of professional activity – *e.g.* some forms of computer services – where formal training may be less important than practical, up-to-date experience. It also raises some particular problems for some professions (*e.g.* chefs) in some – again, often developing – countries where a greater emphasis is put on training and apprenticeships than formal qualifications.
- The fact that many recognition initiatives are led by, or require the close involvement of, professional associations. Organised, well-resourced and representative associations may be lacking in some countries. In other cases, professional associations may not be interested in facilitating the access of additional – foreign – suppliers to their country.
- The lack of awareness at the professional level of the possibilities provided by recognition agreements for high quality professionals to become more mobile. In a number of countries, professional associations can be more concerned about market invasion by foreign professionals in the event of a recognition agreement than they are interested in its potential for enhancing their own opportunities to work abroad.
- The resource-intensive and highly complex process involved in establishing recognition. Given the time, resources and expertise required to negotiate recognition agreements, there is a need for the advantages of such agreements to be clear. In the absence of a clear short-term gain to balance the costs, recognition agreements may not be viewed as a good use of resources by professional organisations responsible for their negotiation.
- For some professions, there is little interest in negotiating recognition agreements if foreigners are not permitted to practice the relevant professions in other countries. It is clear that most progress in reaching recognition agreements has been in those professions where there is a clear demand and where other countries are open to foreign professionals. For example, the worldwide shortage of nurses has increased interest in recognition initiatives to facilitate their movement. Relatively internationalised professions and professions where there are multinational companies need to move staff around the world at short notice – such as accountancy, engineering and architecture – have also seen real progress in recognition. Where the provision of some professional services is reserved for nationals, professional bodies are unlikely to see any value in negotiating recognition agreements.

The problem then is not only that recognition agreements do not seem to be happening, but that it is difficult to make them happen. The fundamental issue seems to be one of incentives to negotiate agreements – who has them and what supporting infrastructure is required. Recognition agreements tend to be demand driven and it is difficult to create demand where there is no, or limited interest in accessing another country, or where there is no skill shortage in the home country. Given the resource demands of negotiating recognition agreements, and the complex regulatory issues they involve, it is difficult to overcome the preference of countries and professional bodies to offer access and accord recognition on an "as needed" basis and thereby avoid the regulatory costs (both in terms of resources and loss of flexibility) of plurilateral negotiations.

In view of these costs, assistance might also be needed to help some professional bodies in developing countries to participate in recognition negotiations. The process of negotiating a recognition agreement can itself serve a useful technical assistance function, with dialogue and information exchange between regulatory authorities and between industry associations contributing to raising standards through improved dissemination of best practice.

10.6. Some thoughts on the relationship between cross-border education, recognition and quality assurance

The limited progress to date on achieving recognition also has implications for cross-border education. Lack of recognition of foreign qualifications can be a driver of increased cross-border education. Students may seek to acquire foreign qualifications – for example, by studying abroad, undertaking distance education with a foreign provider or attending the campus of a foreign university established in their home country – to facilitate their eventual employment in other countries, where their home country qualifications may not be recognised, or by multinational companies, which might value qualifications from particularly prestigious institutions or commercially important jurisdictions. On the other hand, however, lack of recognition of foreign qualifications by their home country may create a disincentive for students to study abroad if their qualifications may not subsequently be recognised in their own country. Equally, students' options for undertaking further study abroad may be limited in the first place if their basic home country qualifications are not recognised by the foreign institution for the purpose of enrolling in higher education or further training. Recognition might also be important for the mobility of academic professionals, in terms of whether and how the qualifications of academic

teaching staff or researchers gained in one jurisdiction are valued in another.[22]

While recognition and quality assurance are quite distinct, they are not entirely unrelated. The granting of recognition sends important signals to students, employers and professional and licensing bodies about the quality of foreign qualifications. In turn, however, the assessment of whether foreign qualifications should be granted recognition – *i.e.* whether they meet equivalent standards – relies on mechanisms for assessing their quality. The existence of quality assurance frameworks for post-secondary qualifications can thus provide vital information about the standards of institutions and programmes for the purposes of granting recognition. Quality assurance at the national level could thus be an important means of facilitating international recognition of post-secondary qualifications. Extension of quality assurance programmes to the widest possible range of educational providers would also be desirable, given the growing role of non-traditional providers and non-degree training in a range of occupations, some of which are very much the focus of international professional mobility (notably information and communication technologies).

Further, the value of the information provided by national quality assurance programmes could be enhanced by increased international cooperation and dialogue between quality assurance agencies. While some degree of convergence may be emerging, there is still a variety of practices, standards and approaches employed by national agencies. Greater international cooperation and information exchange could be important in helping authorities with responsibility for granting recognition to make sound assessments of the information provided by national quality assessment agencies. Just as the negotiation of recognition agreements in the professions requires the existence of counterpart associations in the countries concerned, quality assurance agencies will need their own counterparts at the national level, as well as international networks, to increase understanding and acceptance of different approaches to measuring quality.

Finally, if greater communication between quality assurance agencies were to lead to any moves towards understandings of common principles on what constitutes or how to measure quality, these might usefully inform the deliberation of international professional bodies attempting to develop common principles for their particular sector. The development of such

22. In general, high level academic qualifications possessed by academic teaching staff and researchers, such as PhDs, are subject to relatively fewer recognition problems compared with other professions.

common understandings for certain professions has to date has been hampered by differences in educational bases, so moves by the education community to understand these differences and think about comparability could assist professional bodies in their work. Recognition is, of course, in turn facilitated by the development of common international principles or shared understandings of the key elements required for a given profession.

Two caveats should perhaps be noted, however. First, while the quality of a professional qualification is clearly an important factor in whether a professional from one jurisdiction will be permitted to practice in another, it is not necessarily the only factor. In addition to recognition of degrees or other qualifications, governments or professional bodies may impose additional requirements, in particular for the licensed professions, for example related to local ethics laws, financial practices or membership of the national professional body. These additional requirements can form equally important parts of professional recognition and the ability to practice that profession in a given jurisdiction. Second, recognition of the relevant qualifications and other requirements does not automatically confer the right to exercise a profession; market access must be granted. In many countries, certain professions, or activities by those professions are restricted to nationals. Access for foreign providers of a range of professional services is the subject of ongoing negotiations under the GATS (see Annex I).

10.7. Conclusion

While a range of trade agreements – multilateral, plurilateral and bilateral – contain provisions related to recognition in the context of trade in various professional services, to date, they do not seem to have resulted in significant progress in the achievement of recognition of professional qualifications.

Regional trade agreements have indeed played a part by encouraging the development of recognition agreements in certain priority sectors. But this contribution is limited; while the trade agreement encourages the development of recognition agreements, negotiation of the actual recognition agreement is normally delegated to the professional bodies. The resulting agreement is also often between the professional bodies rather than the state parties to the regional trade agreement.

In the case of these agreements, as with those initiated by professional associations themselves outside of the context of regional trade agreements, the extent to which negotiations are successful depends on a variety of factors. Of major importance is whether there are sufficient incentives to negotiate the agreement (shortages of certain professions, companies or

individuals interested in working in other jurisdictions; market access enabling those services to be provided by foreigners) to balance the costs of time-consuming, complex and resource intensive negotiations. Clearly these costs will be lower where there is a greater degree of similarity between the parties – hence the tendency for recognition agreements to be concluded between countries, or professional bodies from countries, at broadly comparable levels of development and often with historical, linguistic or cultural ties.

At the multilateral level, the GATS does not encourage the development of recognition agreements, but merely permits them as an exception to MFN treatment. GATS Article VII on recognition acknowledges that recognition will happen elsewhere, through bilateral or plurilateral agreements amongst Members. The multilateral link created by the GATS is that Members are required to give other WTO Members the opportunity to join their agreements or to negotiate comparable ones. To date, there is little evidence that this provision has been used, or that countries have either tried to use this mechanism to seek to join existing agreements or have been successful in doing so.[23]

This provision might have been used more, and the transparency of existing recognition agreements enhanced, had more WTO Members complied with their obligation to notify recognition agreements to which they are a party. In particular, greater transparency would be achieved by WTO Members complying with their obligation to notify agreements that are in the process of being negotiated to enable other WTO Members to apply to join while the agreement is actually being formed. Greater transparency afforded by improved implementation of the GATS notification requirements might also assist students and education providers to know what recognition agreements exist, and which countries or professional associations are party to them.

However, there may be limits to the extent to which the current GATS disciplines can result in the greater extension of recognition. For example, while other WTO Members must be given the opportunity to negotiate to join a recognition agreement or to negotiate a comparable agreement if they wish, there is no requirement for recognition to actually be extended (*i.e.* for the negotiations to succeed).

There is also no requirement for any particular standard to be applied in the granting of recognition; only that the same standards be applied to all

23. Of the agreements notified to the WTO, that between the US and Canadian professional bodies on accountancy (see Annex II) is one of the few that indicates that it has created a body to handle requests from foreigners for reciprocal treatment.

WTO Members. Again, this requirement has certain logic in existing practice; consumer protection demands that a professional either be deemed competent or not; it does not make sense to apply lower standards to professionals from some countries rather than others. Essentially, WTO Members can confer recognition or refuse it, on whatever grounds they like (provided these do not discriminate by country of origin). Similarly, the requirement to have adequate procedures in place to verify the competence of professionals from other WTO Members does not specify what "adequate procedures" would be and only applies where a GATS commitment for that profession has been made. While this is an untested area, as a practical matter, countries that allow foreigners to practice professions tend – as a matter of good national policy and consumer protection – to have in place some procedure to ensure that they are competent.

The GATS does encourage the development of international standards, although it is clear from Article VII that it is envisaged that these standards will be developed, not in the WTO, but elsewhere by Members working in cooperation with relevant intergovernmental and non-governmental organisations. Use of international standards, both for the practice of professions and for the granting of recognition, is also encouraged by the GATS *wherever appropriate* – that is, Members are free to choose not to use them if they do not judge it appropriate to do so.

Finally, it should be noted that there are some real limitations on the applicability of GATS disciplines. Depending upon the nature of their delegated authority, it is possible that agreements negotiated amongst professional bodies may not fall under the GATS (the GATS being a government-to-government agreement only covering non-governmental bodies where they are exercising powers delegated by governmental authorities). Given the prevalence of agreements between professional bodies in recognition, this is a potentially significant issue.

Hence while trade agreements may play a limited role in encouraging recognition, in the short-term progress may depend more upon creation of the right systems of incentives to encourage professional bodies to embark on complex negotiations. Increases in professional – and student – mobility may also continue to create pressure for more solutions to recognition to be found.

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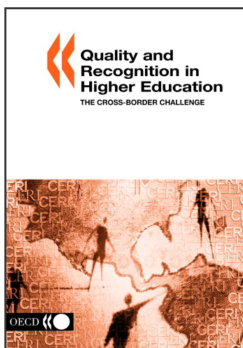

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