



Does Domestic Regulation Promote Globally Competitive Filipino Professionals and Educational Services?

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The next round of negotiations in the World Trade Organization (WTO) will focus, among others, on trade in services. Although the Philippines has agreed to include certain industries in the services sector under the rules of the General Agreement on Trade in Services (GATS) subject to limitations on market access and national treatment, it did not commit the professional services nor the related subsector, educational services. Thus, further discussions on liberalization will subject the country to greater pressures in making commitment in trade in these two sectors.

The GATS basically aims to have a freer flow of trade in services. Almost every country, however, has its own set of domestic regulations that determine how easy or

difficult it may be to pursue this objective of a freer movement in trade of services.

This *Policy Notes* examines the situation in the Philippines by looking at the functions and powers of the two major regulatory bodies for professional and educational services in the country, namely, the Professional Regulation Commission (PRC) and the Commission on Higher Education (CHED) and assessing how the regulations they have set affect the quality of global competitiveness of Philippine higher education and professionals, and how said regulations are consistent (inconsistent) with the goal of the GATS.

Domestic regulation and international trade of services

Domestic regulation refers to laws and policies that exist in an economy which recognize the right of a nation to preserve its sovereignty by influencing activities within its borders, especially with regards to matters of public safety and national security. Thus, while the GATS ultimately aims for the elimination of barriers in the trade of services, domestic regulations, on the other hand, determine the limitations on the provision of these services.

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In the Philippines, the two major bodies that set the standards and rules for professionals and higher education are the PRC and CHED, the mandate and functions of which will be presented in the next section.

Meanwhile, the negotiations for the liberalization of trade in professional services seek to expand on the provisions contained in Article VI (4) of the GATS. Basically, these provisions refer to three criteria that serve as the guideposts for the regulations to be imposed by individual governments. These are: (a) regulations must be based on objective and transparent criteria, (b) regulations must not be more burdensome than necessary to ensure the quality of service, and (c) any licensing procedure must not, in itself, restrict the supply of the service.

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One of the current efforts related to the negotiations for the liberalization of trade in professional services is the coming up of sectoral guidelines. These have been focused on the development of a model agreement for the accounting services sector.

The basic issue for governments in accounting, as in other professional services, is to ensure the professional competence of the individual service provider, monitor professional performance, and discipline any lapses of professionalism. From a trade point of view, meanwhile, the key issue is whether the standards and procedures adopted by individual governments constitute unreasonable barriers to the trade.

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PRC and CHED regulatory functions vis-à-vis GATS' principles on domestic regulation

The framework on domestic regulation in the GATS operates mainly on three principles, namely that "each member shall ensure that all measures of general application affecting trade in services are administered in a *reasonable, objective, and impartial manner.*" (Article VI:1).

Regulation on the practice of professions facilitates the removal of market inefficiencies and seeks to lessen the social costs for consumers by minimizing the risks posed by service providers. Risks are minimized through licensing procedures, and requirements and technical standards set by the local authorities, all of which should be consistent with GATS provisions on domestic regulations (Article VI, GATS) in order to ensure the quality of service and professional competence of providers.

As mentioned earlier, there are two main regulatory bodies in the Philippines that are associated with the professional services and higher education sectors, the PRC and CHED. How do their functions and mandates jibe with the GATS principles on domestic regulations? Do the policies, standards and regulations they set ensure a high quality of higher education and professional services in the country? Do they facilitate and/or contribute to the continuous improvement of such services?

A brief look at the mandate and some of the functions of these regulatory bodies will be helpful to answer these questions.

Professional Regulation Commission (PRC). Created by Presidential Decree No. 223 on June 22, 1973, the PRC is a government agency empowered to implement various laws and policies, including the technical and ethical standards governing the practice of professions.

Pursuant to its mandate, the PRC formulates, prescribes and promulgates policies, rules and regulations, and standards relative to the admission and practice of professionals. It also administers the licensure examinations for professional practice, the issuance and renewal of professional licenses in cooperation with the various Professional Regulatory Boards (PRBs). To assure the global competitiveness and excellence of Filipino professionals, the Commission has, in previous years, enforced the compliance of the continuing professional education (CPE) requirements among various professions. As a quasi-judicial body, it also investigates and adjudicates complaints and cases against professionals.

In December 2000, the PRC Modernization Act was signed into law and at the same time repealed various other laws that defined the PRC's legal basis. With the passage of this Modernization Act of 2000, additional powers and functions were also granted to the Commission. For instance, it can require an examinee, who has failed the licensure examinations three times, to take refresher courses. It is also required to provide schools offering courses for licensure examinations with copies of sample test questions on examinations recently conducted by the Commission within six months from the release of examination results. It has to monitor the performance of schools in licensure examinations by publishing the results of their performance. In addition, it has to adopt and institute a comprehensive rating system of schools on the overall performance of their graduates on licensure examinations. However, the Act repealed the former mandatory requirement of having continuing professional education in the renewal of licenses.

Commission on Higher Education (CHED). The CHED, on the other hand, was created under R.A. 7722

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in 1994 as a separate and independent agency from the Department of Education, Culture and Sports (DECS) to oversee the system of higher education in the country and to formulate policies, plans and programs for the development of public and private higher education institutions.

Among the powers vested in the CHED are the setting of minimum standards for programs and institutions, monitoring, evaluation and imposing of sanctions on the performance of programs and institutions, and the setting of standards, policies and guidelines regarding the rationalization of programs and institutions. Some of the more specific regulations involve the entry of foreign students, establishment of schools and branches, qualification requirements for foreign students and tuition for foreign students.

Reforms in the regulatory powers of PRC and CHED

Based on a policy paper on regulatory reform on professional services, it is required for GATS members to reform their rules and practices in order to increase economic competition among the professions. In particular, governments, especially competition authorities, should rescind or modify regulations that unjustifiably prevent entry and fix prices, and that prohibit truthful, nondeceptive advertising about prices and service offerings. Member countries should make their competition laws applicable to professional business services, subject to safeguards to ensure consumer protection. They should consider developing mutual recognition agree-

ments (MRAs) and move away from policies that are restrictive in nature and adopt more developmental ones that enhance the competitiveness of students and professionals.

Looking at the functions and powers of the PRC and CHED, certain differences may be noted in their rules compared with some provisions in the GATS.

For instance, CHED's regulations regarding the entry of foreign students, qualification requirements and tuition for foreign students, and establishment of schools and branches may have an impact on the Philippines' commitments to trade in professional services.

A major difference is likewise observed between the GATS provision in Article VI:4 and the rules governing the employment of foreigners in educational and professional services. According to the domestic labor market test, employment of a foreign professional will only be allowed after the determination of the nonavailability of a person in the Philippines who is competent, able and willing to perform the services for which the alien is desired.

The labor market test under the Philippine Labor Code is one of the main barriers for trade in services. This law is especially posing trade restrictions in the education sector where foreign professionals may only be allowed to teach in the absence of any other Filipino competent enough to teach the subject where the foreigner specializes in. In addition, the foreign reciprocity rule requires that the country where the foreigner comes from must apply the same principle or standard for the entry of Filipino professionals.

At the same time, various studies have noted the need for both the PRC and CHED to undertake reforms in the higher education and professional services sector so that they can be better prepared for global competition. Many of the reforms would require these regulatory bodies to review their own functions and come up with measures that will bring about a more conducive environ-

ment for improving the quality of performance in these sectors.

Recommendations

Among these reforms and measures are the following:

Measures to improve the quality of Filipino professionals

* *Enhance the continuing professional education program.* Professionals should undergo enhancement programs to continually update their competence of the developments in their respective professions brought about

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by the modernization and advancements in technology. There is value in requiring professionals to have continuing education as a process of domestic regulation since this is in line with the protection of consumers and the promotion of public interest.

* *Enforce government regulations on the working environment for professionals.* With the entry of foreign professionals, the PRC should promote a consumer education program for the public, particularly on the rights of consumers of professional services. It should also enjoin professionals to disclose information so that consumers may be guided accordingly. In an environment of asymmetric information, the role of the PRC is to bridge this information gap.

* *Focus on the development of specialization among professionals.* Mechanisms such as specialized

apprenticeship programs, research efforts in universities connected with the industry, trade association activities, and private investments of companies ultimately create the factors that will enhance specialization among professionals.

* *Create pressures for innovation.* Firms should establish norms that exceed the toughest regulatory hurdles to stimulate the upgrading of skills and productivity among professional employees. Adequate incentive schemes should be developed to discourage local professionals to migrate and practice their professions overseas. Among such schemes are monetary incentives to young and promising professionals, and acknowledgment/recognition of outstanding works, research and inventions of professionals.

* *Expand PRC's information dissemination program.* The PRC should go beyond the dissemination of information regarding which schools are the best-performing and which are the worst, and include information on market access in other countries, avenues for professional development, and compliance of establishments to establish an appropriate business environment for professionals.

Other measures that may be considered in improving the quality of Filipino professionals and preparing them for global competition include: (a) the need to evaluate the relevance of the labor market test as requirement for allowing foreign professionals to practise in the country; and (b) the need to revisit and review the rule on advertising in order to make it a tool for the mandatory disclosure

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sure by all professionals of their service offers and corresponding prices.

Measures to improve higher education in the country

* *Improve faculty qualifications.* In light of the situation where only one-third of the higher education faculty members possess the minimum requirements to teach, there is a need to have massive faculty development programs to upgrade and retool faculty members in more than 1,300 institutions of higher learning all over the country. This should be a continuous long-term program involving various forms of faculty development programs. The core program should be that of earning graduate degrees in various fields here and abroad. This measure should be supplemented by attendance in seminars and post-doctoral studies.

* *Expand research and improve graduate education.* Related to the supply constraint mentioned above is the need to develop and expand graduate studies beyond programs in education and business. If professionals have to develop and upgrade their skills, there should be excellent quality graduate programs available in the country. Research and graduate education can be improved by limiting graduate education and research to qualified universities through a flagship/consortia system.

* *Rationalize higher educational institutions.* The huge number of both private and public higher educational institutions as well as their geographic locations and program offerings have to be rationalized since they contribute to a greater extent to the poor quality of higher education in the country. This issue of poor quality of programs in an over-expanded tertiary education setup is being addressed through a moratorium on the establishment of new programs.

* *Improve the role of CHED in information dissemination.* CHED can assist in addressing the problem of asymmetric information between graduates of educational institutions and employers. Upon graduation, institutions

should confer meaningful degrees and certificates to their graduates. Given this, an employer or parent should be able to trust that a degree signifies bona fide intellectual attainment. At the same time, CHED should disseminate information related to the compliance of higher educational institutions in meeting minimum academic requirements, faculty and student profiles, student performance, and quality of educational facilities and other inputs.

* *Rationalize the price of higher education.* For students to realize the value of higher education, a move towards internalizing the true cost of higher education should be undertaken. Public sector schools should start implementing full-cost pricing by charging higher tuition and increasing the responsibility of local government units in financing state universities and colleges (SUCs). This prescription is based on the notion that the primary ben-

eficiaries of higher education are the students and therefore they should pay for the internalized benefits. However, deserving and qualified students who cannot afford to pay must be given assistance in the form of scholarships to address the equity issues.

Conclusion

Indeed, the forthcoming negotiations on the rules of the GATS in the World Trade Organization will have numerous implications on the Philippines' regulatory setup and functions regarding professional and educational services. The end result, hopefully, will lead to the adoption of long overdue reforms in these two service subsectors that will help them become more globally prepared and competitive. Sadly, it sometimes needs pressure from international agreements and treaties before Philippine officials decide to seriously act on reforms. 📄

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