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ADB Working Paper Series on Regional Economic Integration



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Shintaro Hamanaka

No. 103 | December 2012



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Abstract

On the one hand, trade in tertiary education is highly regulated; on the other hand, it is a considerably liberalized area of services. This is especially true in the case of Mode 3 of international services trade, namely overseas campuses. In the case of Japan, foreign universities are/were free to open campuses in Japan to supply tertiary education services, but those were regarded as informal education that was not recognized by the Japanese government until 2004. For campuses in Japan established by foreign universities to supply formal education services in Japan, they are required to satisfy the criteria set by the government to be examined by the University Council and the Minister; but no foreign university campus in Japan actually obtained a formal school status. Moreover, programs at the campuses in Japan were not regarded as equivalent to the programs provided at the home campuses abroad. It was only in 2004 when the Japanese government introduced a new scheme called "Japanese Branches of Foreign Universities", under which they can receive the treatment similar to formal Japanese universities except taxation, though only four campuses obtained this status so far. This paper reviews the development of regulatory status of services trade in tertiary education services, especially education through overseas campuses, and considers the policy implications on two critical issues regarding the regulation of services industry: (i) who between the government and the University Council the regulator is; and (ii) who between the home country and host country has the jurisdiction over the overseas branches of universities.

Keywords: Trade in services, education services, overseas campus, regulations, banking

JEL Classification: F19, L80, and L88

1. Introduction

The education sector has two contrasting aspects. First, it is a highly regulated services industry in which quality control is critical and market failure is deemed unacceptable even in the short-run. Second, it is adequately free from restrictions in the sense that it is impossible to prevent nationals from consuming various forms of education services provided by foreign suppliers. Studying abroad is the typical example, but recently, online distance education has also become technologically feasible.

These two aspects of education services are interrelated, especially in the case of tertiary education, because international transactions occur through various modes of supplying education services. It is not surprising if a student taking an online program under a foreign university attends a satellite campus located in his or her home country from time to time and visits the main campus in the foreign country once a year. As far as education services are supplied by foreign providers through various modes of transaction, imposing strict regulations on selected modes of supply in an arbitrary manner is becoming less effective in assuring the quality of education services consumed by the Japanese people. Simultaneously, domestic consumers may also expect the government to play some role in assuring the quality of internationally supplied education services.

Across the entire nation, Japanese students develop extremely homogenous education backgrounds by the time secondary education is completed. As a result, the domestic market for tertiary education is largely protected from international competition and the government has been able to establish a distinctive regulatory framework. The distinctive features of the education system in Japan, which are taken for granted by the Japanese people, can be an obstacle to international transactions for education services. However, the internationalization of tertiary education services is an inevitable trend in the era of globalization (OECD 2004) and Japan's education system is not an exception (Tsuruta 2006).

This paper places special focus on the international aspects of education services transactions. Identification of both the suppliers and the consumers of education services is critical in assessing international transactions for education services in Japan. Government regulations, including accreditation policies for universities, are also important because they are related to the question of categorizing education as either "formal" or "informal."¹ Barriers to the supply of education services do not usually take the form of outright prohibition; rather, services can be provided without restrictions, but these are not regarded as formal education by the government. This leads to a situation in which nationals tend to avoid consuming education services provided by foreign universities.

This paper is structured as follows. The next section briefly reviews the background and recent development of tertiary education in Japan, including international trade in

¹ In this paper, the distinction between "formal" and "informal" education is based on the status of each educational institution in Japan. Formal education is education provided by institutions that have achieved the formal status of a school under the Japanese educational system.

education services. The third section discusses restrictions imposed by the Japanese government on international education services transactions as well as domestic regulations with regard to tertiary education. The fourth section discusses fundamental issues of services industries and regulations based on the case of Japan's tertiary education services. The empirical analysis of this paper generates interesting policy implications for the appropriate regulation of services. The final section summarizes.

2. Background and Recent Developments in Tertiary Education in Japan

Tertiary education institutions in Japan are classified into three types: (i) *daigaku* (universities), (ii) *tanki daigaku (tandai)* (junior colleges), and (iii) *kōtō senmon gakkou (kōsen)* (national college of technology).² The focus of this paper is on the former two institutions because of their admission of high school graduates for 2–4 year curricula. National colleges of technology admit junior high school graduates, as opposed to high school graduates.

The central government in Japan can establish schools, including tertiary education institutions.³ As of May 2011, the central government of Japan had established 86 *koku-ritsu* (national universities). Municipal and local governments in Japan can also establish universities and junior colleges, which are usually referred to as *kō-ritsu* (public universities and junior colleges).⁴ There were 119 public universities and junior colleges as of May 2011 (95 universities and 24 junior colleges). Private universities can also be established, but only by “school juridical persons.”⁵ There were 962 private universities and junior colleges as of May 2011 (599 universities and 363 junior colleges).

2.1 Trends in Tertiary Education in Japan

The total number of formal tertiary education institutions in Japan, including both universities and junior colleges, increased continuously between 1950 and 2000 (Figure 1). In the past decade, however, the number has been declining. While the number of universities continues to increase, that of junior colleges has been declining. While many junior colleges have recently been transformed into universities, others have been closed or merged with other universities or junior colleges. However, one-third of all tertiary educational institutions in Japan are still junior colleges.

² The educational focus of national colleges of technology is on technical skill training, rather than academic research.

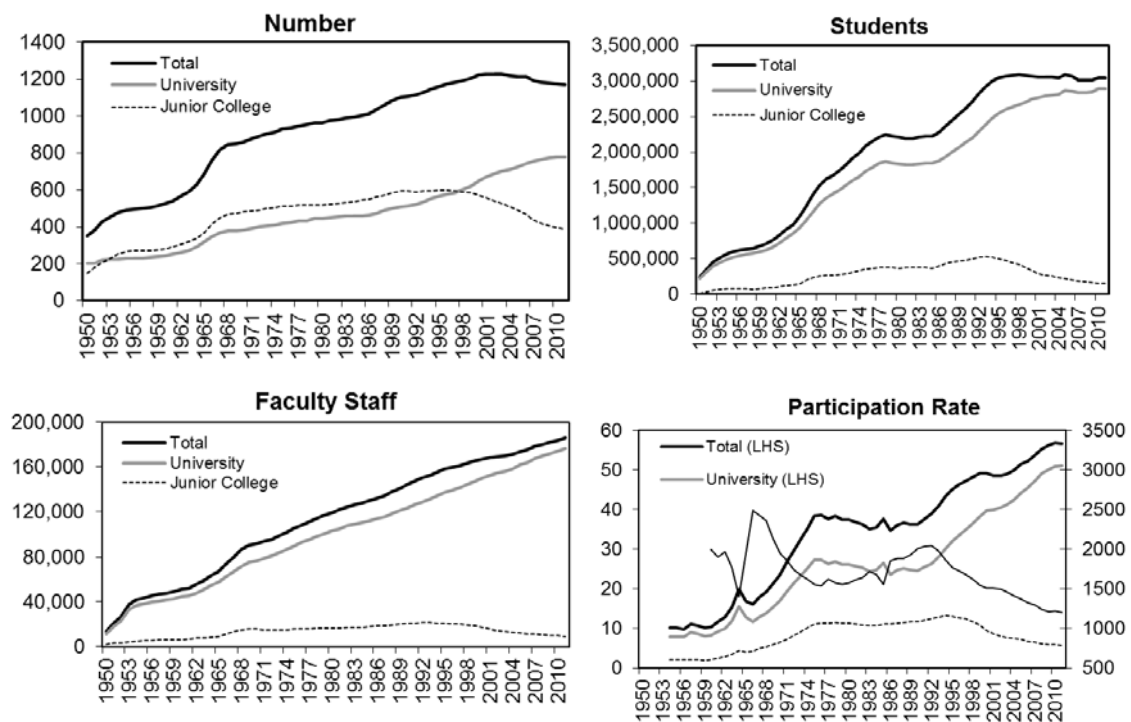
³ Before 2004, the central government directly established and ran national universities. Beginning in 2004, all national universities were converted into national university corporations. It is still possible for municipal governments and local governments to directly establish and run public universities, while a large number of public universities have recently been converted into public university corporations.

⁴ Usually, public universities do not include national universities. Thus, the term *ko-kō-ritsu* is used to refer to the total of national and public universities.

⁵ In 2004, stock-incorporated companies were first allowed to establish schools in special deregulated business zones. But their impact is still unknown. To date, three universities have been established under this new scheme.

The total number of students at universities and junior colleges increased steadily since 1950 before leveling off in the mid-1990s, and has remained at almost the same level over the past 15 years. In terms of number of students, the average size of junior colleges is significantly smaller than that of universities. While the overall number of university students in Japan is increasing, that of junior college students is declining. Thus, the role of junior colleges in tertiary education in Japan is diminishing.

Figure 1: Development in Higher Education in Japan, 1950–2011



Source: E-stat of Japan. <http://www.e-stat.go.jp/SG1/estat/List.do?bid=000001015843&cycode=0>

The student participation rate in higher education after graduating from high school increased between the end of World War II up until 1975, but then declined between 1976 and 1990. The percentage increased again after 1990 until around 2010. Despite the shrinking university-age population in Japan over the last 2 decades, the number of students enrolled remained at almost the same level due to efforts to significantly increase the participation rate in higher education. As a result, 92% of university-age individuals who desire to enroll at universities or junior colleges are able to do so as these institutions need to attract students in order to survive.

Meanwhile, the number of faculty members continues to grow despite the fact that the numbers of universities, junior colleges, and students is no longer increasing. Interestingly, the majority of foreigners working as faculty are in universities rather than junior colleges.

2.2 Services Trade in Tertiary Education: The Case of Japan

Mode 1: Online Study. In general, the share of online study is very minor as a mode of education in Japan. While 702,374 individuals entered universities or junior colleges in 2010, only 19,635 students enrolled in online courses provided by Japanese universities and junior colleges in the same year. *Hōsō Daigaku* (The Open University of Japan) was established in 1983 as the first university in Japan to exclusively provide online courses. By 2007, five universities and one junior college had been established to specialize in offering online courses.⁶ Yet, the majority of students enrolled in online courses belong to *Hōsō Daigaku*, while the size of other institutions' online student enrollment is very small. In fact, *Hōsō Daigaku* alone had a total of 80,768 students enrolled as of October 2011. (The number of students newly enrolled in the online program of *Hōsō Daigaku* annually is unknown.)

There is no data for the actual number of students studying through online programs or courses provided by foreign universities.⁷ However, it is reasonable to infer that this number is extremely low given that even Japanese universities and junior colleges offering online programs other than *Hōsō Daigaku* have difficulty attracting students.

Mode 2: Study Abroad (International Students). The number of Japanese students studying abroad increased between 1983 and 2004 (Figure 2). Since then, however, the number has fallen, with a particularly sharp decline in 2008. Yet, it is too early to conclude whether this is only a temporary decline due to the global economic downturn, or if the previous trend came to an end because of the decline in the university-age population in Japan. The major destinations for Japanese students studying abroad are North America and Europe (Table 1). Recently, the number of Japanese students studying in Chinese-speaking countries has also increased. According to Yamaguchi (2010), the number of Japanese students in the People's Republic of China (PRC) jumped from 5,055 in 1994 to 18,363 in 2006, with the share of the Japanese overseas student population studying in the PRC rising from 9.2% in 1994 to 24.0% in 2006.⁸

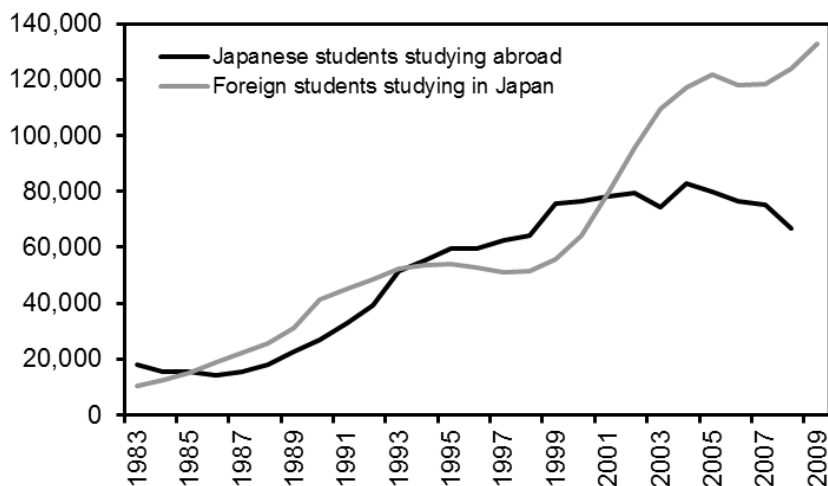
The number of foreign students studying in Japanese universities increased dramatically between 2000 and 2005, almost doubling over this period. However, the share of foreign students is still very small in Japan compared to other developed countries (Table 2). In 2008, the Japanese government launched a plan to increase the number of foreign students to 300,000 by 2020. Partly because of this plan, the number of foreign students increased substantially in 2009. Another interesting fact is that the majority of foreign students studying in Japan are from Asian countries, as shown in Table 1.

⁶ From 1983 to 2000, *Hōsō Daigaku* was the only university specializing in online study.

⁷ This is perhaps because the Japanese government does not have authority over foreign universities and there is no effective reporting system between the Japanese government and foreign universities.

⁸ The Japanese student population studying in the United States (US) declined from 42,843 in 1994 to 35,282 in 2006, representing a decline in the share of overseas Japanese students studying in the US from 78% to 46%.

Figure 2: Number of International Students



Source: Japanese students, MEXT (2010); Foreign students, MEXT (2009) and MEXT (2011).

Table 1: Destinations and Origins of International Students

Destinations of Japanese Students Studying Abroad in 2008		Countries of Origin of Foreign Students Studying in Japan in 2009	
United States	29,264	People's Rep. of China	71,277
People's Rep. of China	16,733	Rep. of Korea	17,274
United Kingdom	4,465	Taipei, China	4,686
Australia	2,974	Viet Nam	2,582
Germany	2,234	Malaysia	2,146
Taipei, China	2,182	Thailand	2,090
Canada	2,169	United States	1,805
France	1,908	Indonesia	1,596
Rep. of Korea	1,062	Bangladesh	1,508
New Zealand	1,051	Nepal	1,209
Others	2,791	Others	12,225
Total	66,833	Total	118,498

Sources: Japanese students, MEXT (2010); Foreign students, MEXT (2009).

Table 2: Foreign Students in Developed Countries

Item	US	UK	Germany	France	Australia	Japan
Number of Foreign Students	564,766	356,080	248,357	265,039	228,555	118,498
Foreign Students as Share of Total	5.5%	24.9%	12.3%	11.9%	24.2%	3.3%

UK = United Kingdom, US = United States.
Source: MEXT (2009).

Mode 3: Satellite Campuses of Foreign Universities in Japan. The first foreign university that opened a campus in Japan was Temple University, based in the United States (US), in 1982. It later obtained the status of “Japanese Campus of Foreign Universities” soon after this new system was launched by the Japanese government in 2004. (See below for more details on this status.)

To date, four foreign universities have obtained this status: (i) Temple University Japan (US), (ii) Lakeland University Japan (US), (iii) Russia Far East Federation University Hakodate Campus (Russia), and (iv) Tianjin University of Traditional Chinese Medicine Japan Campus (PRC).⁹ Thus, not all campuses of foreign universities in Japan have obtained this formal status. For example, since 1998, McGill University of Canada has been offering a Masters of Business Administration (MBA) course in Japan without being conferred such a status, and is therefore considered to be informal education.

There have been many foreign universities that have had campuses in Japan in the past but no longer do at present. Various research shows that 30–40 foreign universities opened campuses in Japan in the late 1980s and early 1990s, though the numbers vary across different studies because of the multitude and diversity of institutions established in Japan. In 1991, the National Land Agency of Japan attempted to classify these institutions into one of five categories: (i) educational base of a foreign university in Japan that offers a curriculum similar to that of the main campus in the foreign country, or provides preparatory English classes for those who would like to study at the main campus; (ii) program jointly provided by a foreign university and a Japanese institution; (iii) Japanese or Asian studies research base of a foreign university in Japan; (iv) secretariat office to assist Japanese applicants to an overseas university; and (v) institution offering English language courses.¹⁰ The National Land Agency was of the view that the first two categories should be defined as campuses in Japan in the narrow sense. As mentioned above, whether these educational institutions are conferred the formal status of a Japanese campus in the official sense is a separate issue.

⁹ In addition, two post graduate programs obtained such status in Japan: (i) Columbia University Teachers College, and (ii) Carnegie Mellon CyLab Japan.

¹⁰ In 1991, the National Land Agency identified 26 schools that fall under category (i) and 7 schools under category (ii).

There were several reasons for many foreign universities, especially US universities, to open campuses in Japan in the 1980s and 1990s. From the Japanese perspective, in light of increasing demand for higher education in the 1980s, there was an actual supply shortage of higher education services being offered by Japanese institutions; foreign suppliers filled this gap. For a Japanese student, studying at a foreign university campus in Japan was much cheaper than actually studying abroad and this became an attractive way to enjoy “foreign study.” Some municipal and local governments in Japan were also keen to host foreign university campuses because this was considered an effective tool to attract members of the younger generation to rural areas. There were several reasons from the perspective of the export side as well. For example, the first reason was a huge trade imbalance between Japan and the US in the 1980s. Many US policymakers considered tertiary education services provided to the Japanese as a promising export items from the US to Japan. Secondly, the university-age population in the US stopped increasing in the 1980s and, as such, US universities tried to expand into international markets. In addition, a reduction of funding from individual state governments in the US gave impetus to the establishment of campuses in Japan. In short, foreign universities (US universities) came to Japan to make a profit.¹¹

However, the majority of campuses in Japan established in the late 1980s and early 1990s had been closed down by the mid-1990s (Table 3), before the government introduced its Japanese Campus of Foreign Universities system in 2004. It is striking that most campuses in Japan were closed down within 5 years. Foreign university campuses in Japan failed to attract the adequate number of students for several reasons (Torii 2003; Sugihara 2009). First, tuition fees were high compared with most Japanese universities. Second, foreign universities that opened campuses in Japan were not well-known schools and were not able to develop a good reputation locally. Most of them were state universities or community colleges in the US, not the more well-known Ivy League universities. As a result, competent Japanese students were more inclined to attend Japanese universities, while less qualified students chose to attend foreign universities in Japan. Third, the level of English language proficiency of most Japanese high school graduates was not high enough to study university-level courses taught in English. Fourth, the culture of US universities was not compatible with Japanese beliefs and customs. In particular, the low graduation rates at foreign universities are problematic, especially from the point of view of many Japanese.¹² Finally, foreign campuses in Japan are not formally recognized as Japanese universities under the Japanese university system, and graduates are not regarded as university graduates in Japan. One consequence of this distinction was that graduates from campuses in Japan established by foreign universities were not qualified for postgraduate study.

¹¹ It is interesting to note that universities of other countries such as Australia are even more commercial-minded than the US universities (Marginson 2002).

¹² In Japan, getting admitted into a Japanese university (passing the entrance exam) is difficult, but once a student has been accepted, there is a high probability for graduation. In contrast, it can be graduation from—rather than admission to—a university that is more difficult in the case of foreign universities.

Table 3: Closed Campuses Established by US Universities in Japan in the 1980s–1990s

Name of the Institution	Location	Number of Students (1990)	Year Opened	Year Closed
Universities League, Japan Campus	Kanagawa	520	1987	1993
Tokyo American Community College	Tokyo	100	1988	1993
Nevada State University	Tokyo	Unknown	1988	1994
Southern Illinois University Niigata	Niigata	586	1988	2007
Seattle International Junior College	Osaka	235	1988	1993
TIC Eureka College	Tokyo	Unknown	1989	1991
McKendree College	Tokyo	60	1989	1994
Phillips University, Japan	Kyoto	1606	1989	1996
The United States International University	Osaka	320	1989	1991
City University, Japan Campus	Hokkaido	31	1990	1993
Minnesota State University, Akita Campus	Akita	254	1990	2003
Texas A&M University, Koriyama Campus	Fukushima	69	1990	1994
Arizona State University, ALCP, Japan Campus	Tokyo	40	1990	1992
Concordia University, Japan Campus	Tokyo	70	1990	1995
University of Rio Grande, Japan	Tokyo	1250	1990	1996
Oklahoma State University, Kyoto Campus	Kyoto	154	1990	1995
University of West Florida	Hyogo	233	1990	1993
Washington State Edmonds Community College	Hyogo	450	1990	1997
Oregon State Mount Hood Community College	Okayama	154	1990	1993
The City University of New York, Hiroshima	Hiroshima	343	1990	1994

US = United States.

Source: Author's compilation based on Torii (2003) and Sugihara (2009).

Mode 4: Employment of Foreign Faculty. The share of foreign faculty at Japanese universities is higher than the share of foreign students. In other words, the faculty at Japanese universities is more internationalized than their student bodies.¹³ On average, more than 5% of the faculty at Japanese universities comprises foreigners (Table 4). This is perhaps due to the multitude of foreign language training universities, which naturally have many foreign and domestic faculty members. However, the degree of internationalization of faculty varies considerably with respect to (i) management staff vs. teaching and research staff; (ii) the seniority level of staff; and (iii) national, public, and private universities.

¹³ The number of the Japanese students is roughly 3 million, while that of foreign students studying in Japan is roughly 80,000. See section 2 for details.

Administration and management-level positions are less internationalized than teaching and research positions. While it is rare for foreigners to hold executive positions in Japanese universities, such a situation seems to be more common in other countries, though international comparisons are not easy due to data limitations. There are no foreign presidents or vice presidents at national universities, and only a limited number of such at public and private universities. The degree of internationalization in teaching and research positions varies across levels as well as types of universities. In general, national universities are the least internationalized and private universities are the most internationalized in terms of the number of foreign teaching and research staff members. As for the level of positions held by foreigners, associate professor and lecturer positions, as well as part-time positions, are more internationalized than professor positions.

Table 4: Foreign Faculty at Japanese Universities

Position	National	Public	Private	Total
President	0.0% (0/87)	1.3% (1/76)	0.9% (5/557)	0.8% (6/720)
Vice President	0.0% (0/267)	0.0% (0/43)	1.0% (4/419)	0.5% (4/729)
Professor	1.2% (273/21,861)	2.7% (112/4,110)	3.2% (1,304/40,814)	2.5% (1,689/66,785)
Associate Professor	3.5% (616/17,643)	5.3% (167/3,176)	5.3% (994/18,827)	4.5% (1,777/39,646)
Lecturer	4.9% (237/4,884)	4.6% (74/1,592)	8.6% (1,198/13,884)	7.4% (1,509/20,360)
Assistant Professor	2.7% (417/15,306)	1.0% (24/2,319)	1.3% (195/15,158)	1.9% (636/32,783)
Assistant	3.8% (36/943)	0.0% (0/470)	2.0% (106/5,200)	2.1% (142/6,613)
Part-Time Position	5.2% (1,801/34,571)	5.2% (630/12,138)	7.3% (8,885/121,509)	6.7% (11,316/168,218)
Total	3.5% (3,380/95,562)	4.2% (1008/23,924)	5.9% (12,691/216,368)	5.1% (17,079/335,854)

Source: http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/020/gijiroku/08041506/003.htm

3. Restrictions and Regulations on Trade in Education Services

3.1 Restrictions on Trade in Education Services and International Services Commitments

3.1.1 Limitations on Market Access and National Treatment

Japan's education services commitments under the Japan–Philippines Economic Partnership Agreement (JPEPA) are useful in assessing the actual limitations to market access and national treatment of the services trade in tertiary education in Japan because of the standstill commitments under JPEPA. Standstill commitments refer to a situation in which the actual restrictions and the commitments made are the same; thus, there is no policy space for tighter regulations in the future. Table 5 displays Japan's commitments in education services under JPEPA. For comparison, primary and secondary education are included.

At a glance, the commitments are fairly liberal. Higher education services transactions under Modes 1, 2, and 4 are unrestricted. The only restrictions are under Mode 3. Mode 3 requires the establishment of formal education institutions by school juridical persons. In addition, footnote 25 of the commitment schedule indicates that only formal education institutions are allowed to supply higher education services. The incorporation of school juridical persons and the establishment of schools, including universities, are subject to the approval of the Ministry of Education, Culture, Sports, Science, and Technology (MEXT), which falls within the scope of domestic regulations, though national treatment is also guaranteed.

What is unique about JPEPA is that Japan's schedule of commitments does not have horizontal restrictions. However, the restrictions that are commonly found in Japan's services commitments are also included in JPEPA with regard to Japan's liberalization obligations. First, in the case subsidies, Japan's horizontal commitments always state that subsidies on research and development (R&D) in Modes 3 and 4 are not under any disciplines or regulations (governments have full discretion). Under JPEPA Chapter 7, Trade in Services (Article 70 Scope and Coverage) stipulates that “[t]his Chapter shall not apply to... subsidies provided by a Party or a state enterprise thereof, including grants, government supported loans, guarantees and insurance,” which has the same effect as the horizontal commitments that exclude subsidies. Second, in cases of movement of natural persons, Annex 8 of JPEPA includes commitments concerning business visitors, intra-corporate transferees, independent professionals, and contractual service suppliers (natural persons), all of which are commonly included in the horizontal commitments of Japan's other services schedules.

In short, the status of actual restrictions in Japan's tertiary education can be summarized as follows. First, subsidies do not fall under any disciplines; the government has full discretion. Second, there is no restriction on the provision of education services in Mode 1 (studying online), Mode 2 (Japanese students studying abroad), and Mode 4. Third, there are no restrictions in Mode 3—a commercial presence can be established in Japan

to provide education services—but these services are regarded as informal education. Only school juridical persons are allowed to establish formal schooling institutions, and only these formal schooling institutions are allowed to supply formal education (this is the same treatment with Japanese services suppliers). The approval of the incorporation of a school juridical person and the establishment of schools, including universities, are under government regulation.

Table 5: Japan's Standstill (SS) Commitments under JPEPA

Sector or Subsector	SS	Limitations on Market Access	Limitations on National Treatment
A. Primary Education Services			
Pre-school Education Services supplied by nursery schools (92110**)	SS**	1) Unbound* 2) None 3) None 4) Unbound	1) Unbound* 2) None 3) None 4) None
Child day-care services (93321)			
Primary Education Services ^{1,2} , supplied as formal education (92110**, 9219)		1) Unbound 2) Unbound 3) None except that Formal Education Institutions must be established by school juridical persons. 4) Unbound	1) Unbound 2) Unbound 3) None 4) Unbound
B. Secondary Education Services^{1,2}, supplied as formal education (9221,9222,9223)			
		1) Unbound 2) Unbound 3) None except that Formal Education Institutions must be established by school juridical persons. 4) Unbound	1) Unbound 2) Unbound 3) None 4) Unbound
C. Higher Education Services^{1,2} (9231,9239)			
	SS	1) None 2) None 3) None except that Formal Education Institutions must be established by school juridical persons. 4) None	1) None 2) None 3) None 4) None

1 These Educational Services supplied as formal education in Japan are supplied by Formal Educational Institutions. "Formal Education Institutions" mean elementary schools, lower secondary schools, secondary schools, upper secondary schools, universities, junior colleges, colleges of technology, schools for the blind, schools for the deaf, schools for the handicapped and kindergartens.

2 Specific commitments on market access and national treatment through any mode of supply shall not be construed to apply to the recognition of credits, degrees and other certificates in Formal Education.

Note: Standstill commitments shall apply only to mode 4 with respect to the sectors or subsectors where the specific commitments are undertaken.

Source: WTO Secretariat.

The above findings are more or less consistent with the empirical results of existing studies. For example, Nguyen-Hong and Wells (2003) construct the restriction index for providing education services internationally, by analyzing the actual regulations in the education sectors of 20 countries in the world (Table 6). Japan's restriction index is particularly low for Modes 1, 2, and 4 (i.e., the lower the index, the freer the sector is). The restrictions in Mode 3 are relatively high, although the absolute level is low. This is perhaps because the score for the recognition of qualifications is high (restrictive), which will be discussed later in this section.¹⁴

Table 6: Restriction Index of Higher Education Services

Economy	Mode 1 (Cross-Border)	Mode 2 (Inward Movement)	Mode 2 (Outward Movement)	Mode 3 (Commercial Presence)	Mode 4 (Natural Persons)
Argentina	0.50	2.10	0.83	0.50	-
Australia	0.50	2.05	0.25	1.30	0.50
Brazil	1.25	2.10	0.83	1.30	1.25
Canada	0.50	2.35	0.50	1.45	0.50
Chile	0.50	2.40	0.50	1.60	1.00
People's Rep. of China	2.50	1.90	2.17	4.00	3.00
Taipei, China	1.00	2.40	1.50	1.15	1.00
Hong Kong, China	0.75	3.00	1.33	0.60	0.50
India	1.00	2.30	1.17	4.29	1.50
Indonesia	1.50	1.90	1.83	3.76	1.00
Japan	0.50	1.60	0.50	1.40	0.50
Rep. of Korea	1.25	1.30	1.83	0.80	0.50
Malaysia	0.75	1.80	0.83	4.60	2.00
Mexico	0.25	1.40	0.50	0.61	0.25
New Zealand	0.50	1.57	-	1.45	0.25
Singapore	1.50	2.35	1.50	2.45	1.50
Thailand	1.00	2.80	1.00	2.30	0.50
United Kingdom	-	1.30	0.25	0.60	1.00
United States	0.50	2.05	0.83	0.60	1.00
Viet Nam	1.50	2.60	3.67	3.10	2.00

Note: The Mode 1 index has a scale between zero and 4, Mode 2 between zero and 6/5 (inward/outward), Mode 3 between zero and 7, and Mode 4 between zero and 3. A lower index means that the sector is more free.

Source: Nguyen-Hong and Wells (2003).

¹⁴ Nguyen-Hong and Wells (2003) do not provide the breakdown score to construct the aggregated restriction index for each sector. For example, Mode 3 has seven components to construct the aggregate index: (i) numbers of foreign supplies, (ii) foreign direct investment, (iii) joint venture requirement, (iv) local enrollment in international schools, (v) recognition of qualifications provided by foreign institutions, (vi) other restrictions such as repatriation of earnings, and (vii) lack of transparency.

3.1.2 Japan's GATS Commitments

Japan's education services commitments under the General Agreement on Trade in Services (GATS) are not as substantial as commitments under regional trade agreements such as JPEPA. Table 7 details the Revised Offer submitted by Japan in 2005 for the Doha Round negotiations (TN/S/O/JPN/Rev.1).

Table 7: Higher Education Services Commitments in Japan's Revised GATS Offer

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
C. Higher Educational Services ^{1,2} , supplied as formal education (9231, 9239)	1) Unbound* Unbound 2) Unbound* None 3) None except that Formal Education Institutions must be established by school juridical persons ³ 4) Unbound except as indicated in HORIZONTAL COMMITMENTS	1) Unbound* Unbound 2) Unbound* None 3) None except as indicated in HORIZONTAL COMMITMENTS 4) Unbound except as indicated in HORIZONTAL COMMITMENTS	

1 These Educational Services supplied as formal education in Japan are supplied by Formal Education Institutions. "Formal Education Institutions" mean elementary schools, lower secondary schools, secondary schools, upper secondary schools, universities, junior colleges, colleges of technology, schools for the blind, schools for the deaf, schools for the handicapped and kindergartens.

2 Specific commitments on market access and national treatment through any mode of supply shall not be construed to apply to the recognition of credits, degrees and other certificates in Formal Education Institutions, specialized training colleges (Senshu-Gakko) and miscellaneous schools (Kakushu-Gakko) under Japanese law.

3 A school juridical person is a non-profit juridical person established for the purpose of supplying educational services under Japanese law.

Source: WTO (TN/S/O/JPN/Rev.1).

First of all, the scope is limited to higher education services supplied as formal education. Thus, the establishment of an educational institution that provides informal education is allowed in Japan, but this is not reflected in Japan's GATS schedule (i.e., no standstill commitments unlike in JPEPA). Second, Mode 1 is unbound in the case of GATS, though there is no actual restriction on the supply of education services under this mode (online study). The commitments of Mode 2 and Mode 3 are the same as under JPEPA. Mode 4 is "unbound except horizontal commitments" in the case of GATS, while it is "none" in the case of JPEPA. However, it is important to note that education is the sector in which many countries in the world, not limited to Japan, are reluctant to make a commitment, although the industry is highly internationalized in real terms (Lim and Saner 2011).

3.2 Domestic Regulations and Recent Reforms

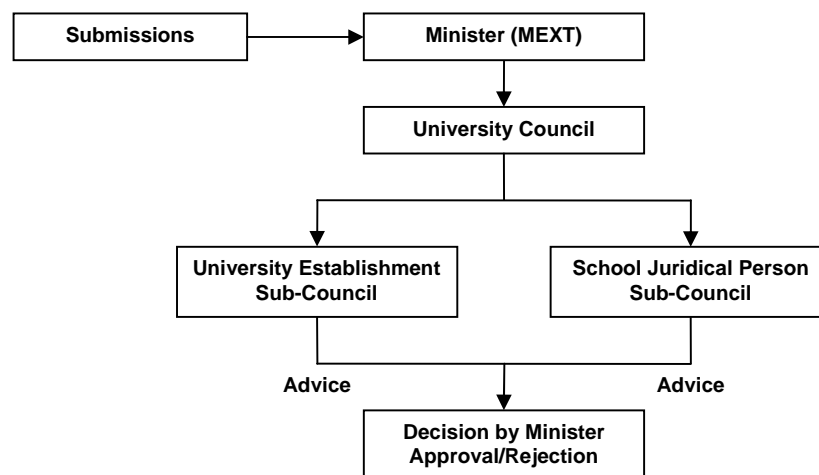
Just like other industries, market forces play an important role in disciplining this sector. In fact, some tertiary education institutions go bankrupt because they fail to attract students. The purpose of the government's domestic regulations is to ensure that tertiary education suppliers continue to stay in the market, to avoid a high incidence of bankruptcy, and maintain the minimum quality of tertiary education provided by each

institution. The first goal is pursued by the domestic regulations on school juridical persons and the second one by the domestic regulations on establishing schools (universities).

3.2.1 Domestic Regulations on the Establishment of School Juridical Persons and Formal Universities

In order to supply formal education services, both a school juridical person and a university or junior college should be established subject to the approval of MEXT. The two submissions—the incorporation of school juridical persons and the establishment of universities—are examined by different sub-councils under the University Council (Figure 3).

Figure 3: Approval Process of School Juridical Persons and Universities in Japan



MEXT = Ministry of Education, Culture, Sports, Science, and Technology.
Source: http://www.mext.go.jp/a_menu/koutou/ninka/seido.htm

When private entities establish private universities, they need to first incorporate school juridical persons.¹⁵ Without a school juridical person, a formal school cannot be established. Campuses in Japan opened by foreign universities are established either by a school juridical person incorporated by a foreign university or by a private entity incorporated by a foreign university. For example, the Japanese campus of Southern Illinois University in Niigata was established by a school juridical person. Thus, this campus may obtain university status under the Japanese university system. Temple University Japan is an example of a campus established by a private entity incorporated

¹⁵ In Japan, the national government and local governments (mainly prefectures and cities) are allowed to establish national universities and public (prefecture or city) universities.

by Temple University in the US. Thus, this campus in Japan cannot be conferred university status.

School juridical persons should rely upon donations for financing and not seek to earn a profit. Thus, in Japan, distributing profits to shareholders would not be allowed. Repatriating profits to the home country is prohibited as well, given that schools are formally incorporated by a school juridical person. Perhaps the most difficult requirement of establishing a school juridical person is that the parties must possess the land and buildings to donate. This is regarded as critical in order to maintain a financially sound educational institution. School juridical persons also do not need to preoccupy themselves with maximizing their financial position under such a system. While school juridical persons should have more than five members in the board of directors, there is no nationality requirement. The procedures and requirements for establishing a school juridical person are the same for Japanese and foreign private suppliers of education services (i.e., national treatment).

The establishment of school juridical persons is subject to the approval of MEXT. However, before taking a final decision, the Minister (MEXT) shall hear the view of the University Council. The School Juridical Person Sub-Council examines financial and administrative issues with respect to the donation criteria. The School Juridical Person Sub-Council consists of 14 committee members. While the background of each committee member varies, the majority of them are presidents of universities or university professors. For example, among the 14 committee members who have terms from April 2010 to March 2012, 11 are presidents of universities while the other 3 places are shared among a lawyer, an accountant, and a private sector chief executive officer (CEO).

The establishment of school juridical persons does not, however, automatically lead to the supply of formal education services, including formal university education. A university should be established according to relevant laws and regulations. In the example above, Southern Illinois University Niigata (but not Temple University Japan), which was established by a school juridical person, could apply for university status in Japan although it did not do so.

Once a school juridical person has been established, in order to decide on the approval or rejection of establishing a university, the Minister (MEXT) shall also hear the views of the University Establishment Sub-Council under the University Council. The University Establishment Sub-Council currently consists of 15 committee members, of which 10 members are university presidents or professors.¹⁶ The University Establishment Sub-Council examines the plan in terms of the Standards of University Establishment, which includes provisions on the program, organization, land, and buildings. In 1956, the Standards for the Establishment of Universities were established based on the provisions of Articles 3, 8, 63, and 88 of the School Education Act. The Standards include 11 chapters that specify the detailed conditions to be met (Table 8).

¹⁶ The five non-university related members include two private company CEOs, two think tank staff, and the Executive Vice President of National Consumer Affairs Center of Japan (NCAC).

Table 8: Standards for the Establishment of Universities

Chapter	Title	Articles of the School Education Act
Chapter I	General Provisions	Article 1, Article 2-3
Chapter II	Basic Organization for Education and Research	Article 3, Article 6
Chapter III	Teacher Organization	Article 7 , Article 13
Chapter IV	Qualifications of Teachers	Article 13-2, Article 17
Chapter V	Admission Capacity	Article 18
Chapter VI	Curricula	Article 19, Article 26
Chapter VII	Graduation Requirements, etc.	Article 27, Article 33
Chapter VIII	Facilities such as School Sites and School Buildings and Equipment, etc.	Article 34, Article 40-4
Chapter IX	Organization for Clerical Work, etc.	Article 41, Article 42
Chapter X	Special Provisions Concerning Inter-University Curricula	Article 43, Article 49
Chapter XI	Miscellaneous Provisions	Article 50, Article 53

Source: http://www.japaneselawtranslation.go.jp/law/detail_main?vm=&id=1864

While some campuses opened by foreign universities in Japan were established by a school juridical person incorporated by a foreign university, as aforementioned, none of them obtained formal university status in Japan.

3.2.2 Status of Japanese Campus of Foreign University (Introduced in 2004)

It is unclear why foreign universities that set up campuses in Japan have decided not to establish themselves as formal universities (as Japanese service providers) under the Japanese university system. National treatment is guaranteed and the process itself does not seem to be overly burdensome. Meanwhile, the increase in the number of the universities in Japan is significant even compared to other developed countries such as the US and UK.

Perhaps, one of the main reasons why foreign universities that have campuses in Japan have not obtained formal university status from Japanese authorities is that they value the additional flexibility in terms of education curricula and the number of credits required for graduation. However, it is unclear which of the requirements are specifically problematic.¹⁷ In fact, one official of Temple University Japan asserts

...we studied the possibility of obtaining the university status formally approved by the Japanese Ministry of Education, Culture, Sports, Science, and Technology (MEXT). However, we have so far not applied for such a status. If we became a Japanese university, our distinctive features would be lost. Most of [the] standards required by MEXT are not usually essential in the case of the US (cited in Torii 2003, p. 204).

¹⁷ Another possibility is that foreign universities may want to maintain the same education system at their campuses in Japan as their home campus because the ultimate goal is to attract Japanese students studying at the campuses in Japan to the main campus for further studies after graduating from their courses in Japan.

Campuses of foreign universities in Japan also faced certain disadvantages unless they obtained the status of a formal education institution established by a school juridical person. According to Torii (2006), these include

- (i) unavailability of student visas for foreign students studying at campuses in Japan,
- (ii) unavailability of student discounts for travel tickets for commuting to school,
- (iii) taxation on tuition fees (consumer tax),
- (iv) taxation on the profits earned by campuses in Japan,
- (v) taxation on donations to campuses in Japan,
- (vi) taxation on the incomes of teachers working at campuses in Japan,
- (vii) absence of the reduction in income tax for students,
- (viii) absence of a grace period for Japanese students in paying the national pension installment,
- (ix) ineligibility for scholarships provided by local governments in Japan,
- (x) unqualified degrees with regard to proceeding to postgraduate programs at Japanese universities, and
- (xi) unqualified credits for transferring to other (national or public) Japanese universities.

In 2004, MEXT introduced a new status called the Japanese Campus of Foreign Universities. Given that many foreign university campuses in Japan are not interested in obtaining the formal status of a university under the Japanese system, the only solution to overcome the disadvantages given to these campuses was to introduce a new scheme that would favor them without changing the government's regulation of Japanese education services supplies.

Requirements for obtaining this status are quite simple. It should be demonstrated that the programs offered at the campuses in Japan are comparable to those provided at the foreign university's main campus. With this new scheme, issues (i), (ii), (viii), (ix), (x), and (xi) were resolved. However, there was no improvement in tax-related issues (iii), (iv), (v), (vi), and (vii). In other words, the Japanese Campus of Foreign Universities scheme intends to overcome the disadvantages incurred by students studying at the Japanese campus (both foreign and Japanese students), rather than removing the obstacles to the business operations of the foreign universities per se. It is important to note that the campuses in Japan face disadvantageous treatment in taxation only when they are incorporated by a private firm rather than by a school juridical person.

Also in 2004, the regulations for off-shore campus of Japanese universities were also liberalized. Prior to this, education at off-shore campuses of Japanese universities was not regarded as formal university education under the Japanese educational system. After this policy shift, as far as conditions in Standards for the Establishment of Universities are met, education supplied by off-shore campuses of Japanese universities was considered to be the same as formal university education irrespective of the territorial basis. In fact, Waseda University established a Singapore campus in 2006 and started to offer a degree program recognized by the Japanese government. In short, the 2004 reform brought both Japanese extensions of foreign universities and foreign extensions of Japanese universities into formal university education. (Hereafter,

“overseas extension” is used to refer to both Japanese extensions of foreign universities and foreign extensions of Japanese universities.)

4. Policy Implications

4.1 Who is the Authority: The Government, The University Council, or Both?

In the context of services trade liberalization under GATS, attention has been paid to domestic regulations of licensing and qualification requirements and procedures. GATS Article VI clearly states that these should not constitute unnecessary barriers to trade in services. While all countries have a right to regulate their services industries, the transparency of domestic regulation is essential to the provision of services both domestically and internationally.

One difficult issue regarding licensing and qualification is that they are sometimes overseen by non-government bodies, although policies and measures of non-governmental bodies also fall under the jurisdiction of GATS Article I:3. For example, in many countries (but not all), a license is required to supply legal services. However, it is usually not the government but the bar association of the country that actually conducts the examination and issues the bar license. What is important here is that it is the incumbent that assesses the applicants, even though the exercise of power is indirect. There is a possibility that the bar association that consists of lawyers (incumbents) may insist upon a reduction in the number of licenses to be newly issued, on the grounds that the quality of lawyers should be enhanced.

In the case of Japan’s education services, the government sets the standards to be met by universities in a relatively clear and transparent manner. However, one could argue that the decision-making process is not as transparent as the restrictions themselves. Although the final decision of approval or rejection of establishing a university (and a school juridical person) is made by MEXT, the role of the University Council should not be overlooked. Just like the example of lawyers above, it is the University Council, which mainly consists of presidents of incumbent universities, that assesses the application of a new university. Thus, there is a possibility that the University Council may restrict the establishment of new universities. One important difference between lawyers and universities is that while the bar association is the (exclusive) authority to exercise power in the case of accepting new lawyer entrants, both the University Council and MEXT play an important role in examining the application of a new university. Thus, in the case of education services in Japan, a tangled relationship between the two authorities—the government and the University Council—is a feature of the exercise of power. The question regarding who has the authority is more nuanced in this regard. As the policies and measures of non-governmental bodies fall under the jurisdiction of GATS, the uniqueness of education services in Japan is not in the regulatory framework of the industry that involves a non-government regulator, but rather in the fact that both the government and non-government bodies are involved in exercising power.

The central argument here is not to point out the relevance of a nuanced relationship between the government and the University Council. Rather, this type of ambiguous demarcation between government and non-government bodies (such as the University Council) can be observed in many services industries in many countries. If a domestic regulation is conducted solely by either a government or a non-governmental body, the problem is rather straightforward. However, given that many services industries are highly technical in terms of their regulation, the involvement of non-government bodies such as associations is sometimes necessary. At the same time, in terms of accountability, the government often makes final decisions based on suggestions from non-government bodies. In short, it is not for the government or the association to individually assess the capacity of new entrants, but the combination of governments and non-governmental institutions, with an ambiguous demarcation, is a common form of exercising regulatory power in services industries.

An ambiguous demarcation between government and non-government bodies in exercising power has important policy implications. Given that both parties play a critical role in approving the establishment of new universities, both should also maintain transparency in the decision-making process. First, non-government bodies need to give detailed explanations of the technical assessment procedures for applications. Given the significance of their technical decisions in the overall decision-making process, they cannot simply insist that the final decision is made by the government. The transparency of a non-government body is critically important, especially when it consists of incumbents. Second, the government should explain what type of discretion they have and under what circumstances a final government decision might differ from the technical decision of a non-government body. In short, the government must explain why its decisions should not solely depend on the technical assessments made by non-government bodies.

4.2 Who Should Supervise Overseas Extensions: The Home or Host Country Authority?

The previous section discussed the ambiguous demarcation between government and non-government bodies in terms of licensing and qualification procedures. This section discusses the demarcation between home and host country authorities.

The demarcation between home and host country authorities is ambiguous, especially in case of supervision of overseas extensions of universities. In the case of Japan, neither Japanese extensions of foreign universities nor foreign extensions of Japanese universities were regarded as formal education until 2004. Furthermore, education at Japanese extensions of foreign universities was not considered to be foreign university education prior to 2004 (see below). It can be said that there was a loophole of supervision for overseas extensions of universities.

Who should supervise the overseas extension is a big issue in case of banking. Usually, when the subsidiaries are incorporated on the basis of the host country's laws, host country authorities are responsible for the supervision. Home country authorities are responsible if the establishment takes the form of a branch. Some developing countries prefer subsidiaries over branches because they can exercise power over the entities

established by foreign banks within their territory. While such a demarcation is reasonable in terms of burden sharing (Fiechter et al. 2011, p. 5), whether this can actually solve a problem is a different question. For example, the recent failure of Icelandic banks revealed that domestic authorities did not have sufficient fiscal capacity to protect the depositors of overseas branches of Icelandic banks. Interestingly, the Japanese government recently started a discussion on protection for depositors of branches of foreign banks established in Japan (*Nikkei Shimbun*, 12 April 2012). This is because responsible foreign authorities may not have sufficient capacity to solve the problem in the event of an economic crisis despite their established jurisdiction over overseas branches. Yet, protecting those depositors is essential from the Japanese perspective. If such a scheme were in place, depositors of branches of Icelandic banks in Japan would have been protected not by Icelandic authorities, but rather by Japanese authorities.

The past policy of the Japanese government was that campuses in Japan should be established based on Japanese standards so that the education provided by them could be regarded as formal education under the Japanese system. This is similar to the case of the banking sector where some developing countries prefer to allow subsidiaries based on their local laws rather than branches that are based on home country laws. The difference between banks and universities in Japan is that the authorities can easily restrict the establishment of bank branches, but the establishment of branch campuses of foreign universities is broadly allowed; this is because informal education is a fairly liberalized industry in Japan.

Interestingly, the Japanese government did not regard the education services supplied by campuses in Japan established by foreign universities as an equivalent to the programs offered by these same foreign universities in their respective home countries. For example, the graduates from Temple University in the US were qualified for post-graduate studies in Japan while the graduates of Temple University in Japan were not. The intention of this policy was to encourage campuses in Japan to be re-established under the Japanese legal system so that they could become formal education institutions. But foreign universities in Japan were reluctant to convert their status and students continued to face this problem. Returning to the analogy with banks, the introduction of the Japanese Campus of Foreign University system in 2004 can be interpreted as a policy that formally accepts branches of foreign universities rather than pursues the establishment of subsidiaries of foreign universities. This implies that the Japanese government acknowledges that the authorities responsible for a foreign university campus in Japan that do not rely on Japanese laws and regulations, are foreign authorities as in the case of the banking industry.

This implies that the Japanese government admits that the authority responsible for a foreign university campus in Japan (which is not based on the Japanese law and regulations) is a foreign authority as in the case of banking industries.

Important policy implications for the education sector can be drawn from the experience in banking sector regulations. As the experience of Icelandic banks suggests, the fact that countries acknowledge foreign authorities' jurisdiction over overseas extensions (in the form of bank branches) does not mean that the host authority is discharged from the

obligation of consumer protection and other systemic problems. What if a campus in Japan established by a foreign university is suddenly closed much as a foreign bank branch might go bankrupt? The Japanese government can insist that the closure of a foreign university's Japanese campus is beyond their responsibility since the primary regulator of the branch campus is a foreign authority. However, it is desirable that the government has a clear policy regarding "bankrupt" branch campuses for the sake of protecting Japanese consumers (students). This may include the establishment of a scheme to transfer students to other universities in Japan in the event a foreign campus goes bankrupt or a scheme to merge a bankrupt campus with other education institutions in Japan. The establishment of a scheme to minimize the costs of bankruptcy seems to be more effective than imposing restrictions at the entry stage.

5. Conclusion

Trade in tertiary education services in Japan is highly regulated; on the other hand, it is a considerably liberalized area of services. This is especially true in the case of Mode 3 of international services trade, namely overseas campuses. Foreign universities are free to open campuses in Japan to supply tertiary education services, but these programs are regarded as informal education and were not recognized by the Japanese government until 2004. Moreover, programs at the campuses of foreign universities in Japan were not regarded as equivalent to the programs provided at home campuses abroad. Campuses established by foreign universities need to satisfy the criteria set by the government to be examined by the University Council and MEXT so that they can supply formal education services in Japan. The intention of such policies is to encourage campuses to re-establish themselves under the Japanese legal system so that they come under the jurisdiction of the Japanese government. However, in practice, no foreign university campus in Japan has obtained formal school status under the Japanese system.

In 2004, the Japanese government introduced a new scheme known as Japanese Branches of Foreign Universities. Under this scheme, campuses in Japan established by foreign universities would be treated as formal Japanese universities in all matters except for taxation. The introduction of this scheme can be interpreted as a policy shift to formally admit a "branch" of a foreign university, rather than pursuing the establishment of "subsidiaries" of foreign universities. This implies that the Japanese government acknowledges that the responsible authorities for branches of foreign universities in Japan are the relevant foreign authorities.

The case study of education services in Japan in this paper has interesting policy implications for the regulatory aspects of education services as well as services policies in general. First, it is important to note that both MEXT and the University Council play important roles in assessing the application for establishing a new university. The demarcation between the two entities in exercising power is ambiguous. Thus, both parties should maintain transparency in the decision-making process. In particular, the government should explain what type of discretion it has and under what circumstances a final government decision might differ from the technical decision of a non-government body, namely the University Council. At the least, the government should be very clear

about why its decision does not solely depend on the technical assessment made by non-government bodies. The transparency of a non-government body is also critically important especially when it consists of incumbents, as in the case of the University Council.

In fact, the recent development in Japan's education policy suggests a possible abuse of regulatory decision making power by the government. In November 2012, for the first time in the recent forty years, the MEXT Minister rejected the plan of establishing three universities despite the fact that the University Council submitted its favorable views regarding the establishment of the three universities to the government. What is interesting is that the MEXT Minister, who assumed position only a month ago, insisted upon the disapproval of the universities on the ground that the University Council, consisting of incumbents should be reformed first. Since the reform of the University Council is an urgent task to be accomplished, it is understandable that the Minister did not simply follow the decision made by the University Council. However, the Minister's exercise of power in a negative way, namely the rejection of the submission despite the University Council's favorable views (as opposed to the approval of submission despite the University Council's unfavorable views) is a serious problem from the perspective of education service suppliers. The necessity of the University Council reform is an unsatisfactory reason for rejecting the submission made by an individual service supplier.

Second, the fact that countries acknowledge foreign authorities' jurisdiction over overseas extensions that take the form of branches does not mean that the host authority is discharged from the obligation of consumer protection and safeguarding from other systemic problems. The question here is similar to recent experience in the banking sector: the failure of Icelandic banks revealed that Icelandic authorities did not have sufficient fiscal capacity to protect the domestic depositors of troubled overseas branches of Icelandic banks. What if a campus in Japan established by a foreign university were to suddenly close? It would be desirable for the government to have a clear policy regarding "bankrupt" branch campuses so that the Japanese consumers (students) would not face hardship. This could entail the establishment of a scheme for students to transfer to other universities in Japan or a scheme to merge a bankrupt campus with another education institution in Japan. The emphasis of regulations should be placed on the smooth solution of bankruptcy rather than the restriction of entry, as far as the business operations of foreign universities in Japan are concerned.

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Japan's Education Services Imports

Branch Campus or Subsidiary Campus?

This paper reviews the development of regulatory status of services trade in tertiary education services, especially education through overseas campuses, and considers the policy implications on two critical issues regarding its regulation: (i) who between the government and the University Council is the regulatory body; and (ii) who between the home country and host country has jurisdiction over the overseas branches of universities.

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